



**The practice of adult diversion by probation officers and
public prosecutors: *An exploratory study in a rural district
of KwaZulu-Natal, South Africa***

By

Bongane Morris Mzinyane

Student Number: **209513196**

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Supervisor: Dr Sibonsile Zibane

DECLARATION

I, **Bongane Morris Mzinyane**, hereby declare and confirm that this thesis is my original work. In-text and in the reference list, I have acknowledged all sources used by including accurate references to, but not limited to, books, articles, journals, laws, policies and electronic resources. Any material quoted or paraphrased from other sources has been appropriately cited. This thesis has not been previously submitted for a degree or examination at the University of KwaZulu-Natal or any other institution of higher education in South Africa and beyond. I fully understand that plagiarism or any form of ethical dishonesty constitutes a serious academic offence and that any instances of plagiarism may be dealt with strictly, according to the University of KwaZulu-Natal policies.



BONGANE MORRIS MZINYANE

DATE: 31 July 2025

Approved by the Project Promoter and Supervisor:



DR SIBONSILE ZIBANE

DATE: 31 July 2025

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I remember that our journey spans from 2009 in my 1st year class of BSW. Let me say:

*To Dr Sibonsile Zibane, I dedicate,
This humble poetic portrait, a small tribute to create.
In a realm where caring hearts unite,
A social-worker-mother-supervisor shines so bright.
With wisdom and humbleness, higher she walks,
A superwoman, where guidance abides.
In the halls of knowledge, the wisdom she imparts,
In the lives she touches, she plants in our hearts.
A mother's love within her heart does swell,
A nurturing force, like a gentle spell.
With love and care, she guides her kin,
Her family's growth, her life's sweet win.
With every education she thoughtfully designs,
An Ubuntu understanding in all her lines.
Beyond the classroom, another role she wears,
A mother's love and guidance tenderly shares.
Her heart devoted, to those she holds dear,
A source of strength, wiping away each tear.
In the realm of social work, her light does gleam,
A beacon of hope for those in need, it seems.
A champion of justice, fighting for what's right,
A voice for the vulnerable, shining so bright.
A poet's words can barely express,
The impact she leaves, a life's caress.
In the textile of my, your legacy forever transcends.*

DEDICATION

I dedicate this work to my humble beginnings in my village, eMoba, Ladysmith, where my roots are. A famous IsiZulu proverb says: “*nalapho kungakhali khona iqhude, kodwa kuyasa*” (this means success is possible even in places where it is least expected).

I also devote this win to my family.

- I dedicate this work to my maternal grandmother (*MaMdakane, intombi kaNtombana*), who survived a stroke during the journey of my PhD. I am happy that you will see this victory.
- I also dedicate it to my aunt (my second mom, Phindile Khambule)
- To my soon-to-be wife, uMaNtsele –Sanele Ntsele, this is for you, sphalaphala sam.
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 - o As Mr Nelson Mandela said:
“Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that the son of a mineworker can become the head of the mine, that a child of farmworkers can become the president of a great nation.”

ABSTRACT

Adult diversion, grounded in restorative justice principles, is an alternative pre-trial intervention that seeks to redirect offenders from the formal justice system towards rehabilitative measures. Despite its potential in South Africa's crime management horizon, adult diversion remains a grey area, characterised by under-explored processes and programmes. This study explored adult diversion processes and programmes by interviewing probation officers and public prosecutors in the UThukela District, KwaZulu-Natal, South Africa. By using a qualitative exploratory-contextual approach, this study adopted a social constructivist paradigm to capture the lived experiences of the aforementioned key practitioners. The theories framing the study were structuration theory and restorative justice theory. The participants were seven probation officers and seven public prosecutors from UThukela district in South Africa. Data was collected through individual, semi-structured interviews with participants, and reflexive thematic analysis was employed to analyse the results. Findings reveal that the perceived conceptualisation of adult diversion was essentialist and subjective, with it being described as a "second chance" for offenders, emphasising its rehabilitative and social reintegration stance. This view, however, varied across practitioners from both sample categories, highlighting disparities in the conceptualisation and application of the phenomenon. The perceived roles of participants seemed structured despite the absence of a standardising framework. Challenges identified include inconsistent application across different research sites, the lack of formal training, the rural context's constraints, limited resources, and varying perceptions among practitioners. The study also highlighted the influence of contextual factors such as socioeconomic disparities and cultural dynamics within rural areas like UThukela. It was also a key finding that while adult diversion has significant potential to alleviate pressures on the criminal justice system, its success hinges on effective stakeholder involvement, including victims, offenders, and community members. The study advocates for legislative reform to formalise adult diversion. Other key recommendations include developing accredited programmes, standardised practices, formalised training and fostering interdisciplinary collaboration among stakeholders. This research enriches understanding of adult diversion as a multidimensional practice intersecting legal, social, and cultural spheres. By foregrounding the voices of frontline practitioners, it provides critical insights into operational realities and pathways for advancing restorative justice in South Africa.

LIST OF ACRONYMS

AL	: Additional Language
BA	: Bachelor of Arts
BLC	: Bachelor of Laws Candidate
CJA	: Child Justice Act
COGTA	: Department of Cooperative Governance and Traditional Affairs
COVID-19	: Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-COV-2)
CSC	: Circumstances of the Offender, Seriousness of the Offences, and Community Interest
DPP	: Director of Public Prosecutions
DSD	: Department of Social Development
HL	: Home Language
IASSW	: International Association of Schools of Social Work
IFSW	: International Federation of Social Work
IO	: Investigation Officer
KZN	: KwaZulu-Natal
KZNDS	: KwaZulu-Natal Department of Social Development
MDG	: Millenium Development Goals
NGO	: Non-Governmental Organisation
NDP	: National Development Plan
NICRO Offenders	: National Institute for Crime Prevention and Reintegration of Offenders
NPA	: National Prosecuting Authority
NPO	: Non Profit Organisation
PHD	: Doctor of Philosophy
PO	: Probation Officer
PP	: Public Prosecutor
PSA	: Probation Services Act
RJ	: Restorative Justice
RTA	: Reflexive Thematic Analysis

SAPS : South African Police Service
SDGs : Sustainable Development Goals
TA : Thematic Analysis
UKZN : University of KwaZulu-Natal
UKZNHSSREC : University of KwaZulu-Natal Human and Social Sciences Research
Ethics Committee
UN : United Nations
UNODC : United Nations Office on Drugs and Crime
VOM : Victim Offender Mediation

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GLOSSARY OF TERMS

This part of the thesis attempts to provide the following as operational definitions:

- **Adult:** in terms of the Constitution of the Republic of South Africa 108 of 1996, an adult refers to anyone who has reached the age of majority, which is 18 years (Republic of South Africa, 1996).
- **Adult diversion:** While the research results later, in this thesis, endeavour to describe the perceived meanings of adult diversion as per the views of participants, herein is an operational definition that serves as a threshold and a point of departure for this report. Adult diversion can, arguably, be defined as a pre-trial restorative justice intervention that aims to jointly manage the restorative and justice needs of adult offenders and victims within South Africa's criminal justice system through the lenses of fairness, healing, justice and restorative justice; it rechannels legal disputes away from the formal justice system for people-centred resolutions rather than punishment.
- **Diversion:** this concept, without the prefix "adult", generally means a court process of rechanneling legal disputes away from the formal court processes such as trial and conviction/acquittal (cf. Section 1 of the Probation Services Amendment Act 35 of 2002; Republic of South Africa, 2002).
- **Practice:** this concept is defined as an "... ongoing series of practical activities" (Giddens, 1976), cited in Whittington (2015, p.146).
- **Probation Officer:** According to Section 2 of the Probation Services Act 116 of 1991, a probation officer is a qualified and appointed individual responsible for various statutory functions within the criminal justice system (Republic of South Africa, 1991). These functions, typically carried out by a social worker, include supervising individuals placed on probation, conducting pre-sentence investigations and compiling reports, developing and monitoring offender rehabilitation plans, ensuring compliance with court-ordered conditions, providing support and guidance to offenders, and reporting offender progress to the court (ibid). Probation officers must meet prescribed requirements and adhere to the said Act and its associated regulations on the specialisation of probation services (Republic of South Africa, 1991).
- **Public Prosecutor:** A public prosecutor is a legal professional employed by the state (the National Prosecuting Authority, NPA) to initiate and conduct criminal

prosecutions on behalf of the public (Republic of South Africa, 1998). Their primary role is to prove the guilt of accused persons beyond a reasonable doubt in a court of law. The National Prosecution Act 32 of 1998, in section 1 read with section 16, describes a public prosecutor as a professional appointed on the recommendation of the National Director of Public Prosecutions or a member of the prosecuting authority designated for that purpose by the National Director and subject to the laws governing the public service (Republic of South Africa, 1998).

- **Rural:** "... encompasses scattered settlements woven across communal lands, embodying a unique rural identity" (Mubangizi, 2023, p.1). In essence, Mubangizi argues that "rural" in South Africa is a multifaceted concept with historical, social, economic, and spatial dimensions.

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Chapter 1: CONTEXTUAL BACKGROUND AND ORIENTATION TO THE STUDY

1.1. INTRODUCTION

“Restorative justice is a compass, not a map” — Howard Zehr (Zehr, 2002, p.8).

This research report commences with the above metaphor about restorative justice, theorised by Prof Howard Zehr, the globally acclaimed pioneer of restorative justice literature. Zehr's assertion, "restorative justice is a compass, not a map" (Zehr, 2002, p.8), serves as a critical lens through which to analyse the complexities of crime management approaches and especially the growth of restorative justice as an alternative way of justice. Zehr's symbolic comparison of restorative justice with a compass aptly captures the essence of having alternative approaches to crime management that are not rigid but contextual and 'personal'. Unlike a map, which dictates written, recognised paths and parameters, restorative justice and its inherent approaches offer a guiding framework to crime management – a compass – that emphasises principles and values of repair and making amends over a punitive one-size-fits-all approach, which is typical in many criminal justice systems across the world (*cf.* Wood, Suzuki & Hayes, 2022). Accordingly, this thesis critically explores the practice of adult diversion in South Africa, analysing the factors that promote or hinder its implementation. It also examines the extent to which adult diversion aligns with restorative justice principles and its potential as an alternative to conventional criminal justice approaches.

In essence, this study delves into the lived experiences and perceptions of key role players—probation officers and public prosecutors—to understand how they navigate the evolving landscape of crime management. As it stands, adult diversion in South Africa does not have a legal or policy-based definition since it is a concept that is "... yet to be featured in any of South Africa's national legislation" (NICRO, 2021, p.98). While the legislative structure is not yet established, adult diversion is continually being implemented by probation officers [social workers], public prosecutors [lawyers], and other role players in the South African criminal justice system as a pre-trial alternative during the criminal court process (*ibid*). This

implies that adult diversion is still a grey area in the South African criminal justice system, with no available academic, legal or formal definition from a South African perspective. It is, therefore, in the interest of this study to utilise a qualitative protocol to explore this underexplored phenomenon.

While the research results later, in this thesis, endeavour to describe the perceived meanings of adult diversion as per the views of participants, herein is an operational definition that serves as a threshold and a point of departure for this report. Adult diversion can, arguably, be defined as a pre-trial restorative justice intervention that aims to jointly manage the restorative and justice needs of adult offenders and victims within South Africa's criminal justice system through the lenses of fairness, healing, justice and restorative justice; it rechannels legal disputes away from the formal justice system for people-centred resolutions rather than punishment. This study explores this phenomenon to contribute to knowledge by illuminating the concept of adult diversion and its practice, which is relatively under-researched within the expanse of South Africa and social work as a discipline.

1.2. BACKGROUND TO THE STUDY

1.2.1. MULTIDIMENSIONAL APPROACHES TO CRIME MANAGEMENT: AN OVERVIEW

Burdened by high crime rates, South Africa's criminal justice system has increasingly embraced restorative justice measures as complementary approaches to traditional punishment (Govender, 2020; Imiera, 2019). The emergence and institutionalisation of some of the restorative justice practices, such as child diversion, signify a move beyond retributive justice (punishment as a sole resolution) towards addressing the root causes of crime and promoting human rights and social healing for both the victim and the offender. Imiera (2020) emphasises the importance of alternative measures for dealing with certain offences and offenders to ease the burden of South Africa's correctional facilities. Imeria's call is precisely aligned with the need to incorporate alternative approaches to managing crime, especially for adult offenders and satisfying the victims (*op cit*). This view is supported by the former Constitutional Court Judge of the Republic of South Africa, Justice Edwin Cameron, who argues that "... the South African criminal justice system must adopt alternative responses to crime which include adult diversion" (Cameron, 2020, p.4).

As revealed by Maimane (2017), adult diversion is notably a crime management approach that transcends the roles of numerous academic fields such as criminal law, criminal justice, procedural law, social work, and criminology. Like many other countries, South Africa's criminal justice system [including diversion implementation] represents a complex network of role players, including probation officers [social workers] and public prosecutors [lawyers], among others, each contributing to various stages of crime management, including prevention, pre-trial, presentence, and post-sentence phases.

Far from a singular or linear solution to dealing with crime, it has been established that effective crime management requires a collaborative effort across disciplines (Barros, 2023; Payne, 2016; Taylor, 2015). This implies that managing crime is no longer simply a matter of apprehension and punishment, but it is more about pluralist approaches that incorporate interventions that are also rehabilitative and problem-solving, such as pre-trial diversion [of both children and adult offenders] (*see* Hargovan, 2008a; Lapage & May, 2016; Maimane, 2017; Robin-D'Cruz & Whitehead, 2019).

The assortment of restorative justice measures to crime management, typical in criminal justice systems across numerous nations, includes victim-offender mediation (VOM), family-group conferencing, diversion of offenders, alternative dispute resolution (ADR), compensation to the complainant and restitution (*cf.* Braithwaite, 2006; Strang *et al.*, 2013; Gxubane, 2012). Diversion, for both children and adults in many countries, has proven helpful in managing deserving criminal cases of children and adult offenders alike (Govender, 2020; Kleinhans, 2013; Maimane, 2017). Since diversion is mainly practised during a pre-trial phase, it is crucial to appreciate that it falls within a multidisciplinary continuum of crime management interventions [various stages of crime management] that commences from preventative measures, pre-trial, presentence, sentencing, and post-sentencing (Taylor, 2015). Thus, exploring a relatively under-researched crime management approach, such as adult diversion, from a social work perspective is crucial because crime is a universal and persistent social ill that transcends professional parameters, age groups, borders, and other diversities. It is crucial to note that the exploration of crime management processes, such as adult diversion, is relatively uncommon in the discipline of social work, especially in South Africa. As a result, the positionality and lens of social work in the exploration of adult diversion provide a crucial contribution to the knowledge bank and documentation of criminal justice processes.

Given this gap, this thesis explores the dynamic relationship between adult diversion processes and programmes to understand the practice of adult diversion from start to finish. The study deliberately analyses the views and experiences of heterogeneous disciplines, including lawyers [public prosecutors] and social workers [probation officers].

1.2.2. SOCIAL WORK RESEARCH IN CRIMINAL JUSTICE CONTEXTS

Social workers, particularly probation officers, are often critical stakeholders in adult diversion processes (Maimane, 2017). However, their involvement as researchers within the broader field of criminal justice discourse remains scarce, particularly in the South African context. Hargovan (2008a, p. 89) emphasises the importance of research in this area, asserting that "[r]esearch into [topics related to] criminal justice policy and its implementation is crucial in addressing issues of knowledge, quality of services, availability of resources, and education and skills". Given the importance of knowledge production in criminal justice topics, it is essential to approach research both positionally and philosophically, encouraging contributions from diverse disciplinary perspectives. While recognising this, the current study situates itself within the broader scholarship [on related topics] while valuing the positionality of existing research on diversion and other criminal justice topics. It deliberately explores a less conventional area within social work research: adult diversion, thereby contributing to the growing body of knowledge in this critical yet underexplored field.

Hargovan (2008a, p. 89) critiques the predominance of the legal perspective, noting that "... research in the purely legal arena is usually non-empirical document research, relying only on secondary data ..." such as case law and report reviews. This over-reliance on non-empirical methodologies underscores the limitations of the legal lens in comprehensively addressing the multifaceted issues within criminal justice. Consequently, the dominance of the legal perspective reveals a positional lacuna that this study aims to address.

By positioning this research within the field of social work, especially by using the qualitative protocol, the study contributes to diversifying epistemic positionality to adult diversion, restorative justice, and broader criminal justice topics. This deliberate interdisciplinary orientation underscores the study's significance in enriching knowledge

production and advancing discourse on underexplored areas within the criminal justice system.

This is crucial because, in the early 2000s, Brownell and Roberts (2002, p.1) emphasised the importance of making the 21st century "... a century of social work in [the] criminal justice" system. This call stemmed from the limited visibility of social work practice and research within the criminal justice scholarship at the time, especially in the then-research contexts of Brownell and Roberts (*op cit*). Since then, social work in South Africa has progressively sought to establish its relevance within the criminal justice system, contributing significantly to crime management processes. Social work research is slowly illuminating the growing engagement of social workers in the criminal justice system, and this includes their roles in social crime prevention (prevention phase), offender diversion at the pre-trial phase (including both children and adults), acting as court intermediaries during trials (Matthias, 2011), compiling presentence reports, and implementing correctional and community correction programmes (*see* Gxubane, 2008; Hargovan, 2013; Mathe, 2007; van Wormer, 2006).

These roles highlight the socio-legal and therapeutic contributions of social workers to the criminal justice system, as strongly argued by Trotter (2018) and in a series of his other works [see Chapter 3]. Despite the social work's advancements in the criminal justice system and probation practice, Gxubane (2008, p. 11) critiques the limited involvement of probation officers and generic social workers, whom he coins as "... implementers rather than generators..." of scholarship and policy related to criminal justice. This ongoing disparity underscores the necessity for social work research to expand its contributions to knowledge generation in this field, establishing social workers as co-creators of scientific knowledge and policy frameworks.

Scholarly efforts by South African social work researchers, including Gxubane (2012, 2015, 2018), Holtzhausen (2011), and Kleinhans (2013), among others, reflect ongoing but comparatively limited efforts to position social work as a significant co-contributor to the scholarly discourse in criminal justice. These contributions aim to cement the profession's relevance and expand its epistemic footprint in this critical area of practice and research.

Multiple research perspectives, including those from a social work lens, are vital in exploring criminal justice subjects and addressing the complex challenges present in real-life contexts. The international definition of social work highlights the duality of the profession, describing

it as both "a practice-based profession and an academic discipline" grounded in values of collective responsibility (IFSW & IASSW, 2014). This definition also underscores the multi-disciplinary nature of social work, emphasising its role in integrating diverse fields of knowledge to address social issues (ibid).

Unlike academic and non-practice-oriented disciplines within social sciences and humanities fields that primarily focus on theory and knowledge production, social work balances theory with its inherent interventionist focus. Rubin (2015, p. 1) reinforces this imperative, stating that it is essential for social work researchers to "bridge the gap between social work practice and social work research". This research addresses that positional gap by contributing to the ongoing effort to harmonise social work's practical and academic dimensions, ensuring that research informs practice while simultaneously drawing insights from real-world applications. This dual commitment to knowledge generation and application requires the researcher to explore the topic of adult diversion, which intersects with the criminal justice system and social work practice (probation services).

1.3. RATIONALE AND MOTIVATION FOR THE STUDY

Fouché and De Vos (2011), as cited by Mathebane (2017, p. 11), assert that "... topics for social work research should come from the day-to-day activities and interactions encountered in the work situation". This perspective is echoed by DeCarlo et al. (2020, p. 10), who highlight the importance of "practice wisdom" in social work research, defining it as the "... learning by doing experience" gained through practice and the intuitive knowledge social workers use to navigate complex professional spaces. These theoretical insights align with the motivations underlying this study, which were deeply rooted in the researcher's professional experiences in social work roles closely connected to the criminal justice system.

The researcher worked as a probation officer for three years in the UThukela District, actively participating in the implementation of diversion processes on issues of victims, children offenders and adult offenders. During this time, the researcher identified numerous barriers and facilitators that shaped the success of adult diversion practices, particularly in the absence of formal legislation. For instance, the lack of clear eligibility criteria for adult diversion led to confusion among stakeholders. At the same time, the absence of standardised procedures for monitoring compliance of offenders and evaluating programmes limited the

accountability mechanisms and the ability to assess their effectiveness and identify areas for improvement. Specifically, insufficient accountability mechanisms created challenges in ensuring offender compliance with diversion agreements and in safeguarding victims' rights.

Following this role, the researcher served as a court intermediary for almost five years in the Amajuba District, working as part of a multidisciplinary team within the criminal court system. Although this position did not involve direct management of adult diversion cases, it provided invaluable observational insights into the dynamics of the courtroom, the discretionary power of prosecutors, and the operational challenges faced by probation officers when dealing with adult diversion cases and other types of cases.

The researcher's dual professional experience provided a unique perspective to explore the interplay between offender rehabilitation, community reintegration, and prosecutorial discretion within the criminal justice system. This practical foundation was further enriched by the researcher's academic training in social work and problem-solving, as well as findings from a previous study, Mzinyane (2017), which explored dynamics in delivering 'child' diversion practices in rural areas. Together, these experiences informed the conceptualisation and execution of this study, grounding it in both professional practice and scholarly inquiry. Through this research, the study contributes to addressing the broader gap between social work practice and criminal justice social work research, offering valuable insights for policymakers, practitioners, and academics. Moreover, the researcher's previous participation in probation services [especially adult diversion practice] underscored its novelty in South Africa and the inherent practice opportunities and challenges.

During his tenure as a probation officer, the researcher once wrote a free verse poem reflecting on the collaborative role of probation officers and public prosecutors, titled: '*The contrapuntal sound of the court social worker*'. Image 1.1 contains two stanzas extracted from the said unpublished piece authored in 2014.

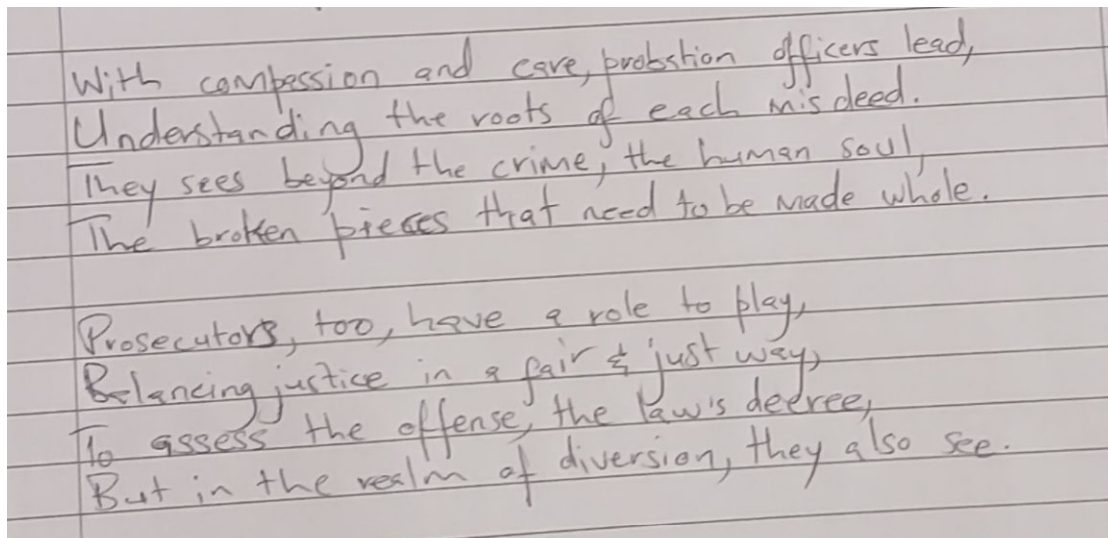


Image 1.1: An Extract from an unpublished poem by the researcher, ‘*The contrapuntal sound of the court social worker,*’ authored in 2014

The above excerpt of the poetic journaling by the researcher during his tenure as a probation officer in Ladysmith captures the elaborate link between social work and prosecution. Through the stanzas and verses depicted above, the researcher discusses the complexities of interdisciplinary roles and the challenge of simultaneously offering support and enforcing justice. These poetic musings, born from the crucible of daily practice, also ignited a scholarly curiosity within the researcher, which partly gave birth to the project in question. The patterns etched into the above stanzas illuminate the broader trends and challenges within the criminal justice system, necessitating a more systematic exploration of the symbiotic yet distinct functions of probation officers and prosecutors. As a result, this current study explores the implementation of adult diversion processes and programmes in a primarily rural UThukela District.

1.4. PROBLEM STATEMENT

“Crime rates in South Africa are high, and the criminal justice system may be unable to cope with the floodgates of formal litigation” (Imiera, 2020, p. 1). This assertion highlights the challenges faced by South Africa’s criminal justice system, which is increasingly burdened by high crime rates that lead to court backlogs and hinder effective offender prosecution. Restorative justice options, such as adult diversion, offer a promising alternative to alleviate

this strain (Cameron, 2020; Imiera, 2019; Somaru & Rautenbach, 2020). While South Africa has made significant strides in advancing restorative justice for child offenders through the Child Justice Act (CJA), which is lauded as one of the world's leading pieces of restorative justice legislation (Hargovan, 2013), adult offenders remain underserved by similar interventions. According to Gxubane and Mellish (2020), the CJA has become a continental model for African countries aspiring to implement diversion for young offenders. However, adult offenders' options remain limited, particularly at the pretrial stage, leaving a critical gap in restorative justice mechanisms for adults. NICRO (2021, p. 100) advocates for applying the lessons learned from the CJA in drafting legislative provisions for adult diversion within a possible amended Probation Services Act.

Further complicating the issue, Somaru and Rautenbach (2020, p. 645) note that while the National Prosecuting Authority has issued policy directives to guide diversion, these documents are restricted to prosecutors and lack inclusivity for other stakeholders such as magistrates, police officials, and social workers as Kleinhans (2013, p. 166) highlights, effective implementation of diversion requires collaboration among all key role players, including probation officers and NGOs like NICRO and Khulisa Social Solutions. Despite this, prosecutors maintain their position as the 'gatekeepers' of diversion (Hargovan, 2010), holding significant discretionary power. Maimane (2017, p. 3) reveals that this discretion leads to uneven application, with diversion decisions often reflecting prosecutors' subjective views rather than standardised procedures. This lack of uniformity is compounded by findings from the previous study of the researcher Mzinyane (2017), which indicate that some public prosecutors in the UThukela District displayed negative attitudes toward diversion, preferring punitive measures over restorative approaches.

The absence of a legislative and regulatory framework for adult diversion in South Africa exacerbates these challenges. NICRO (2021) notes that without a formal framework, there is no accreditation for adult diversion programmes, which undermines quality assurance. Additionally, the lack of uniformity and standardisation across provinces creates disparities in access and implementation (NICRO, 2021, p. 100). Comparative studies (Maimane, 2017) reveal that, unlike countries such as Canada, New Zealand, and England (*inter alia*), South Africa has no statute governing adult diversion, leaving it reliant on *ad hoc* practices. This context highlights the urgency of exploring the dynamics of adult diversion, particularly within rural settings where systemic and resource challenges are often more pronounced. Consequently, this study aimed to investigate the experiences and perceptions of probation

officers and public prosecutors in executing adult diversion processes and programmes, shedding light on the practical and systemic barriers to their effective execution.

1.5. FOCUS OF THE STUDY

1.5.1. Main aim of this study

The main aim of this study was to explore the implementation of adult diversion processes and programmes by probation officers and public prosecutors in the UThukela District area of KwaZulu-Natal.

This primary aim was achieved through the following objectives.

1.5.2. The specific objectives of the study

This study intended to achieve the following objectives:

- Objective 1: To explore the subjective understanding of probation officers and public prosecutors about adult diversion and their roles in the practice of adult diversion processes and programmes.
- Objective 2: To identify factors that inform, promote and hinder the practice of adult diversion processes and programmes amongst probation officers and public prosecutors in the South African criminal justice system, with a specific focus on the UThukela district.
- Objective 3: To analyse the involvement of stakeholders, such as victims, offenders, communities and all necessary professionals, in the practice of adult diversion processes and programmes in the UThukela District.
- Objective 4: To establish the views of probation officers and public prosecutors regarding practice and policy guidelines for the practice of adult diversion processes and programmes.

1.5.2. The specific research questions of the study

Aligned with the above research objectives, this study also aimed to answer the following research questions:

- Question 1: What is the understanding of probation officers and public prosecutors about adult diversion and their roles in the process of adult diversion?
- Question 2: What are the factors that inform the practice of adult diversion processes and programmes amongst probation officers and public prosecutors in the South African criminal justice system, with a specific focus on the UThukela district?
- Question 3: What is the context of involvement of stakeholders such as victims, offenders, communities and all necessary professionals in the practice of adult diversion processes and programmes in the UThukela District?
- Question 4: What are the views of probation officers and public prosecutors regarding practice and policy guidelines for the practice of adult diversion processes and programmes?

1.6. SIGNIFICANCE OF THE STUDY

Since this research explores an under-explored territory of adult diversion practices within a rural district, specifically the UThukela District of South Africa, it offers a valuable contribution to knowledge. This research project goes beyond simply exploring adult diversion practices. It has attempted to generate knowledge that can be used to improve criminal justice practices, inform potential legal reforms and pave the way for future research in this critical field. By illuminating the experiences of key actors within the system, this study attempted to contribute to a more effective and equitable application of adult diversion processes and programmes in South Africa. By exploring the experiences of public prosecutors and probation officers on the frontline, this study offers valuable insights that can contribute in the following ways:

1.6.1. Informing Social Work and Prosecutorial Practices:

As Rubin and Babbie (2010) assert, social work research transcends academic inquiry and should actively contribute to enhancing practice. The knowledge generated from this study has the potential to directly inform and refine the day-to-day practices of probation officers and public prosecutors involved in adult diversion programmes and processes. By shedding light on how these practitioners navigate the complexities and challenges of diversion, the study equips defence attorneys, prosecutors, and social workers with a deeper understanding

to better advocate for their clients. Improved advocacy and streamlined execution of diversion programmes not only enhance the efficiency of the criminal justice system but also ensure more equitable outcomes that benefit both victims and offenders.

1.6.2. Illuminating an Under-Explored Concept:

According to Pandey and Pandey (2015, p. 10), research aims to develop theories that help predict future occurrences. This study explores the concept of adult diversion, a practice gaining traction yet remaining relatively underexplored, particularly in South Africa. By investigating this emerging area, the study positions itself as a potential trailblazer in the field of adult diversion research. Given the limited scholarship on this topic, the research contributes to establishing a foundational framework for understanding adult diversion practices. Such a framework is crucial for guiding future studies and informing potential legal reforms. By examining the practices and perspectives surrounding adult diversion processes and programmes within a rural district, this study adds valuable knowledge to a growing area of interest, bridging gaps in research and practice.

1.6.3. Broader Contribution to Knowledge:

As Paltridge and Starfield (2007) propose, a doctoral thesis must make a significant contribution to its field of study. This research achieves that standard by offering insights that span multiple academic disciplines, including social work, criminology, and criminal law. The findings provide a nuanced understanding of adult diversion practices and the roles of key stakeholders, such as probation officers and public prosecutors. These insights not only enrich academic discourse but also have practical implications for policy discussions, shaping future research agendas and contributing to the development of a more effective and equitable criminal justice system.

1.6.4. Contribution of Lessons for Legal Reform

This research explores public prosecutors' and probation officers' challenges in executing adult diversion services. By analysing their experiences, this study can help troubleshoot these challenges and identify areas for improvement and law reform. Viehweg (1993) argues that research has the potential to enforce law reform. This study also develops critical

recommendations for improving and formalising adult diversion processes in South Africa, particularly considering the current lack of a legal framework.

1.7. INTRODUCING THE THEORETICAL FRAMEWORK: STRUCTURATION AND RESTORATIVE JUSTICE THEORIES

While a more detailed exploration of the theoretical framework will be presented in Chapter 2, this chapter offers a preliminary outline of its relevance to the study's central aim. Herein is the summary of the theoretical framework of this study. The study employs a theoretical framework that integrates two theories: structuration theory and restorative justice theory.

1.7.1. Structuration Theory

Developed by Anthony Giddens, structuration theory provides a comprehensive framework for understanding the dynamic nexus between human agency [individual or collective actions] and social structures [rules, systems] (Gibbs, 2017). The theory highlights how individual actions and institutional contexts shape and are shaped by each other (Giddens, 1984). This perspective is particularly helpful in exploring the actions [agency] of probation officers and public prosecutors within the constraints and opportunities presented by the South African criminal justice system. Structuration theory, with its core concept of the duality of structure (Tracy, 2013), sheds light on the informal adult diversion practices in UThukela, executed by probation officers and public prosecutors, even without formal legislation. Duality suggests structures are both enabling and constraining. Through this framework, it can be assumed that the absence of formal rules creates a less rigid structure, enabling probation officers and prosecutors to exercise agency in their decisions about diversion. Their professional backgrounds and understanding of the justice system could become a "structure" that shapes who qualifies for diversion. However, these practices also constitute the structure itself. As more cases are diverted based on these informal criteria, it becomes a precedent, influencing future decisions and potentially hardening into a de facto structure. Accordingly, this theory helps the research to analyse how the practices of the officials and co-created rules have the potential to reproduce or reshape each other constantly.

1.7.2. Restorative Justice Theory

As a supplementary lens to structuration theory, restorative justice theory, in this study, provides a normative framework that emphasises repairing harm, fostering accountability, and restoring relationships between offenders, victims, and the community (McCold & Wachtel, 2002). It is a perspective within the broader field of justice that emphasises repairing the harm caused by an alleged offender through inclusive and participatory processes (Zehr, 2002). Unlike traditional punitive approaches, restorative justice focuses on the needs and roles of all stakeholders involved—victims, offenders, and the community—aiming to foster healing, accountability, and reconciliation. Central to this theory is the belief that crime causes damage to relationships and social harmony, which must be addressed to restore balance (*ibid*). The ultimate goal of restorative justice is to transform the way society responds to crime, promoting a system that seeks to rehabilitate offenders and restore peace rather than solely punishing wrongdoing (Zehr, 2002). In this study, restorative justice theory equips the researcher to analyse adult diversion practices. It provides a framework to assess how its processes and programmes address harm, promote offender accountability, and foster victim participation in the justice process.

1.7.3. Combining Structuration Theory and Restorative Justice Theory

During the early conceptualisation of the study, the initial theoretical foundation was grounded solely in structuration theory. However, as the conceptualisation of the research proposal progressed, it became evident that an additional analytical lens was required to fully address the complexities inherent in Objective 3 of this study. This specific objective aims to analyse the involvement of various stakeholders, including victims, offenders, communities, and professionals. In this context, restorative justice theory emerged as a crucial supplement.

Restorative justice theory, which emphasises repairing harm through inclusive processes that engage all stakeholders, offers invaluable insights into the factors that promote or hinder the practice of diversion processes and programmes (Zehr, 2002). This theoretical perspective aligns closely with the goals of diversion processes and programmes, which often aim to restore relationships and address the needs of all parties involved rather than merely punishing the offender. By incorporating restorative justice theory, the study became more effective in its ability to explore how probation officers and public prosecutors facilitate or impede these processes and how their actions impact the broader community.

Moreover, restorative justice theory is particularly pertinent in analysing the involvement of stakeholders as outlined in Objective 3. This theory advocates for the active participation of victims, offenders, and community members in the justice process, fostering a collaborative approach to addressing crime and its consequences (Braithwaite, 2002). This involvement is critical in the context of UThukela District, where community cohesion and local customs play significant roles in the success or failure of diversion processes and programmes. By utilising restorative justice theory, the study was able to better understand how these stakeholders interact and contribute to the execution of diversion processes and programmes, providing a richer, more nuanced analysis.

The combination of structuration theory and restorative justice theory allows for a more holistic examination of adult diversion processes in the UThukela District. Structuration theory offers a macro-level analysis of the structural and institutional factors that shape the actions of probation officers and public prosecutors, while restorative justice theory provides a micro-level focus on the interpersonal and community dynamics that influence these processes. This triangulation of theories ensures a comprehensive understanding of both the systemic and relational aspects of adult diversion, ultimately contributing to more effective policy recommendations and practice strategies.

Lastly, the integration of restorative justice theory with structuration theory enhances the analytical framework of this study, particularly in achieving Objectives 2 and 3. This combined approach not only addresses the structural dimensions of the South African criminal justice system but also highlights the critical role of stakeholder involvement in the successful execution of diversion processes and programmes. The dual theoretical lenses provide a robust foundation for exploring the complexities of adult diversion in the UThukela District, ensuring that the study captures the full spectrum of factors influencing these processes.

1.8. OVERVIEW RESEARCH METHODS

In part of the chapter, the researcher provides an introductory or brief overview of the research methodology employed in this study. A more detailed description of the chosen methods and their justifications is presented in Chapter 4.

Research Approach: This study adopts a qualitative research approach, prioritising in-depth understanding and exploration of the lived experiences of probation officers and public prosecutors regarding adult diversion programmes and processes in the UThukela District. This approach allows for rich and nuanced data collection through open-ended inquiry. DeCarlo *et al.* (2020, p. 17) remind us that “... social work research uses organised and intentional procedures to uncover facts or truths about the social world”.

Research Paradigm: Gemma (2018, p.2) argues that “... research philosophy is what the researcher perceives to be truth, reality and knowledge”. The research is guided by a social constructivist paradigm, acknowledging the subjective nature of human experience and the importance of interpreting participants' meanings within their social context. This paradigm aligns well with the qualitative approach, allowing for the exploration of how participants perceive and make sense of adult diversion processes and programmes. The researcher's prior practical experience in the occupational space of criminal justice social work, including co-creating adult diversion processes in previous years, provided a valuable foundation [knowledge] for conceptualising the research. Nonetheless, it also necessitated the researcher to adopt a lens that appreciates subjectivist and ‘relative’ knowledge.

Research Design: Punch (2014) reminds us that a research design is essentially the basic research plan that shapes the methodological and scientific direction of the study. An exploratory-contextual research design was chosen due to limited research on the specific experiences of probation officers and public prosecutors with adult diversion processes and programmes in the South African context. This design allows for new insights and a deeper understanding of the phenomenon under investigation.

Sampling: Participants were recruited through purposive sampling, ensuring the selection of individuals with relevant experience and knowledge (probation officers and public prosecutors with experience ranging from 7 to 30+ years). A sample of $n=14$ participants, seven (7) probation officers and seven (7) public prosecutors from the eligible pool was ultimately selected, guided by the principle of data saturation to ensure the richness and depth of the collected data.

Data Collection: Data collection took place over a period of two months across fourteen research sites within the UThukela District. Data was collected through semi-structured interview schedules and audio-recorded.

Location of the study: The study aimed to recruit participants from seven magistrate's courts and seven offices of the KwaZulu-Natal Department of Social Development (KZNDS) UThukela district, totalling 14 potential sites. However, data was ultimately collected from 11 of these sites. This reduction was due to factors such as participant availability and recruitment screening. By selecting 11 sites, the researcher ensured sufficient participant recruitment for data saturation while maintaining participant anonymity.

Data Analysis: Managing the rich qualitative data that was gathered in this study was an intense exercise. The initial conceptualisation of the study aligned thematic analysis, as outlined by Braun and Clarke (2006), with the research objectives. This approach appeared suitable for identifying patterns and themes within the exploratory nature of the investigation. However, as the research journey unfolded, the complexities of the subject matter and the researcher's engagement with the data necessitated a more nuanced analytical lens.

The researcher's prior experiences within the criminal justice domain presented a potential influence on data interpretation. To mitigate this, a reflexive stance was adopted. Braun and Clarke's (2019) conceptualisation of reflexive thematic analysis provided a methodological framework that accommodated the researcher's positionality and the dynamic link between the researcher and the data. This shift was not merely a methodological adjustment but a philosophical alignment with the understanding that research is a continuous process of inquiry and refinement. It is a philosophical pursuit of wisdom, demanding a continuous interrogation of both the data and the researcher's role in its interpretation.

The transition to reflexive thematic analysis, as outlined by Braun and Clarke (2019), is consistent with the ontological assumption of the social construction of reality and an epistemological orientation that recognises the researcher as an integral part of knowledge production. By incorporating personal perspectives and biases into the analysis, a deeper understanding of the research phenomenon emerged. The guidance of the supervisor was instrumental in maintaining analytical rigour while navigating the complexities of reflexivity. Through critical dialogue, potential biases were addressed, ensuring that the analysis remained grounded in the data while acknowledging the researcher's role in shaping its interpretation.

A detailed description of the research methodology, including further justifications for the chosen approach, sampling strategy, interview guide development, and the specific steps involved in thematic analysis, is provided in Chapter 4.

1.9. LIMITATIONS OF THE STUDY

In the initial research proposal, the researcher acknowledged several potential limitations of this study, many of which were effectively mitigated during the research process. However, some constraints remain and should be carefully considered as the findings are interpreted.

Firstly, the study employed a qualitative methodology aimed at exploring the subjective experiences of public prosecutors and probation officers concerning adult diversion. While this approach provided rich and nuanced insights, it did not capture broader quantitative trends that a mixed-methods approach might achieve. Nevertheless, given the novelty of adult diversion as a research focus and the need to deeply understand the lived experiences of participants, qualitative methods were the most appropriate for this study.

Secondly, the research was conducted in mid-2022 during the easing of COVID-19 restrictions. Although stricter lockdown measures were no longer in place, some residual challenges persisted. Face-to-face interviews, a key data collection method, were initially hindered by mask-wearing requirements, which caused hesitation among participants, particularly given the researcher's location in Durban (perceived as a higher-risk urban area). However, the gradual relaxation of mask mandates and the introduction of vaccines facilitated smoother interactions. The researcher adhered strictly to safety protocols, such as using hand sanitisers and maintaining social distancing, and employed active listening techniques to focus on participants' verbal communication while navigating the initial limitations posed by mask-wearing protocols.

Thirdly, while generalizability is not an inherent goal of qualitative research, the study's focus on a single rural district may be perceived as a limitation. The findings provide detailed insights into the unique experiences of public prosecutors and probation officers in the UThukela District but may not directly translate to other regions. To address this, the study offers thick descriptions of the research setting and participant contexts, as well as detailed accounts of the researcher's positionality, enabling readers to critically assess the potential applicability of the findings to different settings. This context-specific approach fosters a deeper understanding of local factors influencing adult diversion while encouraging thoughtful reflection on its broader relevance.

The semantics of participants' accounts were carefully considered to enhance the accuracy of inferred meanings, and thick descriptions were employed to capture the richness of participants' experiences. The researcher spent extensive time in the field to build rapport with participants and gain a more profound understanding of their perspectives, ensuring the credibility of the findings.

Lastly, the researcher acknowledges the potential influence of their professional background in the criminal justice system on data collection and analysis. In qualitative research, where the researcher is inherently immersed in the study context, such influences are a common challenge. To mitigate potential bias, the researcher engaged in critical reflexivity throughout the research process, regularly self-evaluating their position and consciously setting aside personal biases. The use of a semi-structured interview guide ensured consistency in data collection, while regular supervision provided external oversight to safeguard against over-immersion and researcher bias.

Notably, the analytical process evolved from thematic analysis (Braun & Clarke, 2006) to reflexive thematic analysis (Braun & Clarke, 2019) to better account for the researcher's positionality and its potential impact on data interpretation. This reflexive approach allowed for a more nuanced and transparent analysis, ensuring the reliability and rigour of the study's findings.

1.10. OVERVIEW OF THE PRESENTATION OF CHAPTERS

Chapter 1: Contextual Background and Orientation to the Study

The current chapter introduces the reader to the study. It presents the background and rationale of this research, the problem statement, the main aim of the research, the research objectives and questions, the significance of the study, a summary of research methods and methodology, the considered limitations of the study, and the introduction of the theoretical framework.

Chapter 2: Theoretical Framework

Herein, the research details the discussion of the theoretical framework for the study. This chapter provides assumptions of selected theories, developments, justification, reflections, and the relevance of these theories to this study.

Chapter 3: Review of Related Literature

This chapter presents a review of related literature. It focuses on the foundations and evolution of adult diversion as a restorative justice practice. It also brings forth the debates on the conceptualisation of adult diversion as a practice across the world. International and continental trends in the implementation of diversion are also reviewed in line with the study variables. The chapter presents a discussion of international and national legislation and policies in relation to restorative justice options, diversion, and probation practice by social work professionals. Local developments in the implementation of restorative justice are discussed. Furthermore, this chapter discusses different types of restorative justice practices that have been documented over the years.

Chapter 4: Conducting this Research

This chapter is a reflection of the journey travelled in conducting the study. It highlights the implementation of research methods that were adopted in exploring adult diversion in South Africa. In order of sequence, this chapter presents the research approach, research paradigm, research design, sampling strategy, data collection methods and instruments, the method of data analysis, trustworthiness, ethical consideration, and the limitations of the study.

Chapter 5: Perceptions and roles of probation officers and public prosecutors in adult diversion

This chapter presents the first segment of the findings. It provides data presentation and analysis, which is in line with the purpose of the first and second research objectives of this study. Herein, the data is presented and analysed thematically.

Chapter 6: Factors influencing adult diversion In UThukela South Africa: Insights From Frontline Practitioners

This chapter presents findings that relate to the second objective of this study. It presents themes and subthemes, with thick descriptions of factors that inform, promote and hinder the practice of adult diversion processes and programmes amongst probation officers and public prosecutors in the South African criminal justice system.

Chapter 7: Communication and Involvement of stakeholders in adult diversion: the present and the anticipated future

Aligned with the intentions of objective 3 and of the study, this chapter presents data in relation to the involvement of victims, amongst other stakeholders, during the diversion of adult offenders. It also explores factors that impede and promote participation in the processes and programmes of adult diversion. Lastly it presents findings in relation to objective 4 of the study. The chapter discusses areas of improvement as discussed by the participants, who are frontliners in the practice of adult diversion within the UThukela district

Chapter 8: Conclusions, Implications and Recommendations

This chapter presents a summary of the study and the findings. The chapter also draws key conclusions in relation to the research objectives. It provides recommendations in line with the research findings.

Chapter 2: THEORETICAL FRAMEWORK

2.1. INTRODUCTION

Diversion of offenders is considered a restorative justice practice (Braithwaite, 2002; Rodliyah, 2019). Over the years, research has somewhat affirmed the link between restorative justice practices, such as diversion, and social theories (*see inter alia*; McCold & Wachtel, 2002; Mantle, Fox & Dhami, 2005; Priban, 2009; Wood, Suzuki & Hayes, 2022). These studies link restorative justice practices with the large spectrum of sociological, criminological and behavioural theories (*ibid*). Although diversion of offenders is practised within the justice system, it can be rightly declared as a social practice because it fosters dialogue and reconciliation of affected parties while moving beyond the formal legal systems (McCold & Wachtel, 2002; Hargovan, 2014; Rodliyah, 2019; Mellish & Gxubane, 2021).

This established link between restorative justice practices and social theories served as a point of departure for the researcher during an attempt to select an apt theoretical framework for the exploration of the practice of adult diversion. Based on this, the principal theory selected for this study was initially a (sole) sociological theory, structuration theory. Dhludhlu (2021) reminds us that a theoretical framework is a potent means of organising the researcher's thinking on planning, execution and completion of the research. However, as the conceptualisation of the study progressed, both structuration and restorative justice theories became the dual theories that shaped the landscape in which the discussions were established in the study.

During the early proposal development stage, the researcher initially decided upon Giddens' Structuration Theory as a theoretical framework for this study. However, further proposal development led to the realisation that the project needed a dual lens and that the structuration theory needed to be supplemented with a theory of justice, namely restorative justice. Selecting both structuration and restorative justice theories was somewhat oxymoronic due to prevailing differences in epistemology and focus of these theories, as later discussed in this chapter. Nevertheless, Zibane (2017, pp. 7-9) enlightens us in her study that, should the selection of one theory be limiting, it is still practical to select theories with

fundamental differences for complex doctoral research that transcends different disciplines and epistemology (*ibid*). Drawing precedence and lessons from Zibane (2017), this project adopted divergent but complementary lenses, namely structuration theory and restorative justice, as a theoretical framework to provide a broader perspective in exploring the practice of adult diversion.

The decision to incorporate restorative justice theory as a complementary frame for structuration theory was mainly driven by its alignment with objective 3 of this study. Objective 3 aims to analyse the involvement of stakeholders, such as victims, offenders, communities and all necessary professionals, when executing adult diversion processes and programmes in UThukela District. Restorative justice theory provides a framework for exploring the roles and contributions of victims, offenders, communities, and professionals in these processes (Braithwaite, 2002; van Wormer, 2003). It emphasises the significance of active participation and collaboration among all parties involved (McCold & Wachtel, 2002), which is pivotal for achieving the desired outcomes of diversion programmes between public prosecutors and probation officers.

Engaging both theories as a theoretical framework allows for a deeper exploration of how social structures, individual agency, and restorative principles collectively shape the practice of adult diversion processes and programmes. This duality of theories is not only justified by the need to address the research objectives or aims more effectively but also by (1) the growing recognition of the value of restorative justice in contemporary criminal justice practices (Ballington, 1998; Bezuidenhout & Booyens, 2020) and (2) the discretionary agency of role players as described by Hargovan (2014) and Maimane (2017).

Since the main aim of this study is to explore the practice of adult diversion processes and programmes by probation officers and public prosecutors in the UThukela District area of KwaZulu-Natal, restorative justice theory highlights the importance of understanding the motivations and barriers related to the participation of various stakeholders, such as victims, offenders, and community members, in the diversion process (Zehr, 1990). This understanding is essential to fully grasp the dynamics that influence the success or failure of diversion programmes and processes in the South African rural context. This perspective aligns with the principles of structuration theory by acknowledging the interplay between individual actions and structural constraints (*see* Whittington, 2015). This theory adds a

critical layer of understanding the relational and communal aspects of justice between actors and structures (*see* Gibbs, 2017).

Given the plethora and depth of scholarship exploring these two theories, this chapter briefly details their premises while clarifying their nexus with the study. The discussion begins with structuration theory.

2.2. STRUCTURATION THEORY

2.2.1. The premise of Structuration Theory

Structuration theory was initially developed by a British sociologist, Anthony Giddens, in a series of scholarly works, mainly between 1976 and 1984 (Whittington, 2015). The theory of structuration gained scholarly momentum over many decades and has been applied in different contexts to study the relationship and interaction between structures (social rules, norms, institutions) and agency (individual or collective actions). Unlike other social theories that focus on either the importance of structure or action, this theory posits that the structure and human agency are not separate entities but rather intertwined in a continuous process of "structuration" (Giddens, 1984). This means structures, such as rules and resources, both enable and constrain human actions, which in turn reproduce or transform those structures in an ongoing dual and reciprocal process (Tracy, 2016).

According to Giddens (1984, p.2), "... the basic domain of the social sciences, according to the theory of structuration, is neither the experience of the individual actor, nor any form of societal totality, but social practices ordered through time and space". This theory acknowledges the influence of social structures while recognising the power of human agency in shaping and reshaping those structures (Tracy, 2013). Structure and human agency lie at the heart of many sociological debates; however, structuration theory disrupts the traditional dichotomy between social structure and human agency. According to structuration theory, social structures have no inherent stability outside human action because they are socially constructed, and *vice versa* (Gibbs, 2017).

Giddens refers to the recursive process and relationship between structure and human agency as "the duality of structure" (Gibbs, 2017; Whittington, 2015). He argues that the 'duality of structure' is a central element of this theory (Giddens, 1984). Whittington (2015) unpacks the concept of 'duality of structure' as the reciprocal relationship and interaction between the

structure and the agency. Whittington adds that it also refers to the “ongoing series of practical activities” within any system (Whittington, 2015, p.146). This means practices are an essential feature of this theory. Whittington (2015) labels Giddens as a practice theorist who was concerned about practices but through an appreciation of the actions of actors that produce any system; in turn, systems affect the actors and their actions. This aptly aligns with this study as it also explores a practice of adult diversion, which is organically emerging with the practice of adult diversion by professional actors such as probation officers and public prosecutors.

In addition to the duality of structure and ‘practice’ as some of the building blocks of structuration theory, scholars such as Tracy (2013), Whittington (2015), and Gibbs (2017) attempted to delineate a number of concepts as central terms that build the premise of this theory. These building blocks of the theory include human action, social structures or social systems (patterns of relationships and interactions produced over time), rules and resources, routinisation, practice, time-space distancing, and structuration (*ibid*). These concepts are discussed herein in relation to this study to ground the discussion.

2.2.2. The link between “practice” and Structuration Theory

One of the key concepts in the title of this study is the term ‘practice’. The researcher rejects the use of ‘implementation’ in favour of “practice”. While “implementation” suggests a top-down, formalised process, “practice” aligns better with the chosen theoretical framework – Giddens’ structuration theory (Giddens, 1984) because “practice” emphasises the bottom-up agency of actors within the system. Notably, the researcher entered the research field with an assumption and practice experience that probation officers and prosecutors, through their repeated interactions and informal rule sets, shape how adult diversion unfolds in UThukela. Thus, this bottom-up approach, embedded in the term ‘practice’, allows for the exploration of subjective experiences (spread across a large rural district) and fosters a sense of ownership among those directly involved, potentially leading to a more flexible and responsive system for appropriate cases. According to Whittington (2015, p.145), “Giddens is a practice theorist himself; for him, understanding people’s activity is the central purpose of social analysis”. Here, “practice” refers to the situated, dynamic way that adult diversion unfolds in UThukela. Giddens himself, though not solely a practice theorist, acknowledges the importance of practices in shaping social structures. By repeated actions within a specific context (rural

UThukela), legal professionals and social workers co-construct and potentially transform the informal structure of adult diversion, highlighting the duality of structure inherent in this social practice. Therefore, "practice" captures the nuanced and evolving nature of adult diversion in this particular setting, resonating more effectively with the theoretical grounding of this research.

2.2.3. Structure and Agency in Adult Diversion Practices

While the previous section qualifies structuration theory as a theory of practice, this section discusses the central concept of structuration theory, namely the 'duality of structure'. In this study, the exploration of adult diversion by probation officers and public prosecutors is essentially understood within the auspices of the concept of duality of structure, where the interaction of structure and agency is a central feature. Tracy (2013) reminds us that the duality of structure refers to the idea that rules, policies, and structures are only made "valid" when individuals follow them and make decisions based on them. As a restatement of the research problem, adult diversion in South African courts exists and is being practised by public prosecutors and probation officers despite the absence of formal legislation. Based on the assertion of Tracy (2013), this means the concept of 'duality of structure' is instrumental in assuming that adult diversion and its associated 'self-created rules' are made valid when probation officers and public prosecutors follow them and make decisions based on them.

Understanding the practice of adult diversion practices in the absence of formal legislation necessitates exploring the interplay between structure and agency. While the lack of formal legislation for adult diversion suggests a structural constraint, structuration theory argues that social agents can reproduce and even transform structures through their actions (Gibbs, 2017). A South African legal scholar, Devenish (2007, p.21), argues that any case law (sustained jurisprudence) or precedent created in South African courts of law must be established on the principles of consistency. This means that whilst adult diversion is assumably practised within the 'doctrine of case law' as described by Devenish (2017), its sustainability within the courts may require consistency, which is often brought by formal legislation which goes beyond case law (*ibid*).

Adult diversion itself can be understood as both a structure and an agency-driven process. It emerges as a structure due to the repeated actions of prosecutors and probation officers, creating an informal framework for handling specific cases. In the spirit of this theory,

structures and agency are not static; they are constantly reproduced and modified through the very actions of social agents (probation officers and public prosecutors in the context of this study) (Tracy, 2013; Gibbs, 2017). As it stands, probation officers and public prosecutors, by repeatedly employing diversionary practices, contribute to the emergence of a precedent and informal structure within the court system and social work practice, which is also challenging to measure in terms of its consistency.

Hargovan (2014) argues that prosecutors, through prosecutorial discretion, can choose not to pursue formal charges, potentially initiating or rejecting diversionary processes. While this is the case, Maimane (2017) questions the discretionary powers of public prosecutors, especially in instances where some restorative justice practices occur ‘organically’ without any formal statute to regulate the practice. On the other hand, probation officers, based on their assessment of the offender and the offence, can recommend diversion (Gxubane, 2012). These discretionary choices of both role players, nevertheless, demonstrate the agency of these actors in shaping the practice of adult diversion within the South African context. This theory assumes that the actors sustain the structure while they are also influenced by the nature of the rules (structure) that are in place.

The above argument illuminates how this theory also allows us to move beyond a simplistic view of adult diversion as either a formal legal practice/social work practice or an individual act of leniency. It highlights the dynamic interplay between the established legal structure (or lack thereof) and the agency of multidisciplinary professionals in shaping and carrying out adult diversion processes.

2.2.4. Understanding adult diversion through the concepts of Time-space distanciation and routinisation

Sullivan *et al.* (2016, p. 450) draw on Giddens’ framework to explore the concept of ‘time-space distanciation’ as a building block of structuration theory and a construct for theorising the relations between routine, time, and space. In the same debate, Datta (2018, p. 2817) remarks: “[i]n his theory of structuration, Anthony Giddens emphasised routinisation and regionalisation of interaction”. Time-space-distanciation refers to practices or social systems that transcend across time and space (Sullivan *et al.*, 2016), while routinisation refers to repeated practices or processes of making something routine or an established practice (Datta,

2018). As a result, to explore adult diversion, it is crucial to analyse how concepts such as time-space distancing and routinisation provide a helpful lens for the study.

Despite the absence of formal legislation, indicating a lack of codified structure across time, adult diversion practices persist across geographically dispersed research sites within the UThukela district municipal area. The research participants for this study were spread across 11 sites in the UThukela District, including courts of law and offices of the KwaZulu-Natal Department of Social Development (KZNDS), spread across 11 326.12 square kilometres (COGTA, 2020). The concept of time-space distancing becomes particularly relevant in understanding what has sustained the practice of adult diversion across such a vast area, including South Africa as a whole, in the absence of codified laws. This persistence suggests a possible routinisation of practices, where probation officers and prosecutors may rely on informal rules and motivations to navigate the adult diversion process. While appreciating these assumptions, the analysis chapters provide insights into the experiences of these key role players.

In explaining routinisation as a building of structuration theory, Detta (2018) explains that routinisation is also sustained by acts of reflexivity by the actors. Actors are not simply passive followers of structures; they can reflect on their actions and adapt practices based on their experiences. In the context of UThukela, it is crucial to explore how probation officers and prosecutors grapple with the ethical and legal implications of their diversion practices and processes.

Lamp (2018) utilised structuration theory to understand the context of legal practice. In his study, he argues, "... rules are implicated in practices in three ways: they constitute patterns of action as 'practices', regulate the conduct that makes up a practice, and provide formulas for extending and adapting the practice to every new situation" (Lamp, 2018, p.273). This then helps the researcher understand the relationship between the activities of the executors of adult diversion (human agency of participants) and the actual criminal justice system in relation to adult diversion.

Influenced by the stance of Lamp (2018), this study also attempts to show that rules for practising adult diversion exist even without a law that regulates the practice. These rules of practising adult diversion are implicated in the practice of adult diversion through "patterned action as practices" (*ibid*). While the analysis chapters provide empirical results on this

subject, it can be argued at this stage that the urge to continue practising adult diversion is sustained by the formulas for extending and adapting the practice.

Routinisation of adult diversion, as a building block of structuration, helps us explore how actors (probation officers and prosecutors) may draw upon their knowledge of past practices (time) and adapt them to the specific context of each case (space). The existing informal structure, though not spatially fixed due to the dispersed nature of UThukela, transcends time through its continued application. Hence, the researcher also worked in one of the research sites within UThukela more than a decade ago, but the practice is still sustained. Through this theory, it is apt to assume that the very act of repetition may reinforce the legitimacy of adult diversion as a practice, even in the absence of formal rules. However, the research results, as presented later in this thesis, provide empirical answers.

2.2.5. The Link between Study Objectives and Structuration Theory

In an attempt to delineate structuration theory in pragmatic terms, Tracy (2013) outlined questions that are likely to be aligned with the premise of this theory. Tracy (2013, p.60) argued that

“... research questions that emerge from a structuration approach may include

- *What are the primary rules and structures that are governing action in this scene?*
- *How are everyday practices or actions serving to resist, reproduce, or legitimise these structures?*
- *How does mundane communication and interaction serve to transform or weaken these structures?”*

Given these questions, this study also attempts to explore the research questions that align with this theoretical framework, as stated by Tracy (2013) above. Firstly, one of the objectives of this study is to identify factors that inform, promote and hinder the practice of adult diversion processes and programmes amongst probation officers and public prosecutors in the South African criminal justice system. This objective aligns with two of the questions above by Tracy (2013), which are to understand the primary rules and structures that govern action in the study of practice and to understand how mundane interaction serves to transform or weaken adult diversion. Additionally, this study also analyses the context of stakeholders'

involvement, such as victims, offenders, communities and professionals, in executing adult diversion processes and programmes and explores the experiences and everyday practices of probation officers and public prosecutors in legitimising the processes and programmes of adult diversion within the criminal justice system of South Africa, especially in the UThukela district. This, therefore, serves as an indicator of how structuration theory served as a helpful lens in this study.

2.2.6. Structuration perspective on accountability, rehabilitation and deterrence of offenders: *the importance of using an additional theoretical lens*

While unpacking the relevance of structuration theory for this study, it is vital also to appreciate that the South African criminal justice system, much like others globally, faces the challenge of balancing accountability, rehabilitation, and deterrence of criminal behaviour (Ballington, 1998; Bezuidenhout & Booyens, 2020). The South African criminal justice system faces growing pressure to implement alternative dispute resolution mechanisms (Department of Justice and Constitutional Development, 2021). One such mechanism gaining traction in criminal courts of South Africa is adult diversion – the practice of diverting low-level adult offenders away from the formal court system (Maimane, 2017). Despite the potential of adult diversion in South Africa and its inherent legislative grounding, there are concerns about consistency, transparency, and accountability of adult diversion (*ibid*). While structuration theory delves into the complex interplay between agency and structure in shaping accountability, involvement of victims, rehabilitation of offenders, and their deterrence from re-offending, using an additional theory that differently perceives the phenomenon of justice was helpful. Skelton and Batley (2006) provide a framework of what can be described as the ‘restorativeness’ of diversion practices. Concepts such as accountability, involvement of victims, rehabilitation of offenders, and their deterrence from re-offending are central to the framework of Skelton and Batley (2006). Therefore, an attempt to explore the restorativeness of adult diversion, as encompassed by the spirit of objective 3 of this study, required the researcher to go beyond structuration theory.

This combined theoretical approach is particularly crucial given the absence of formal legislation surrounding adult diversion in South Africa. By employing restorative justice theory, the researcher was able to analyse how the diversion is practised thoughtfully and

whether attributes such as accountability, repairing harm, justice, and fairness are also featured.

2.3. Restorative Justice Theory

2.3.1. Premise of Restorative Justice Theory: *an unsettled terrain*

Restorative justice has been widely theorised and practised. Due to the plethora of scholarly work surrounding this concept, its epistemic foundation continues to be an unsettled academic terrain. Skelton & Batley (2006, p.1) affirm this by pronouncing that “[i]nternationally there has been a plethora of research and writing about restorative justice, which has subjected not only the theory of restorative justice to robust analysis but which has also amassed impressive evidence of specific benefits of restorative justice when compared to the mainstream criminal justice system”. On the same subject, McCold and Wachtel (2002, p.33) also state that the “... evolution of restorative justice [as a paradigm, a theory, a practice and a movement] has been a process of discovery rather than invention”. Some scholars claim its origins from North America or the global North (McCold, 2000; Skelton, 2016), while some link it with African epistemologies and those of the wider global South (Mangena, 2015; White, 2018). This affirms that restorative justice as a “... theory and practice has been substantially documented over the years, and it has withstood critical analysis” (Skelton & Batley, 2006, p. 37). Even though restorative justice is a contested concept in terms of its epistemic origins, the premise of this concept remains relatively the same, whether it is used as a paradigm, theory, practice or movement. In its multifacetedness, restorative justice is concerned with fairness, inclusion, making amends, reparation, healing, accountability, communication, peace-building and rehabilitation (Skelton & Batley, 2006).

Skelton (2016) argues that the restorative justice paradigm's conceptualisation dates back to the 1970s, quoting the works of Howard Zehr, who was a proclaimed father of restorative justice. However, in a series of works, McCold and Wachtel attempted to validate the concept of restorative justice as a fully-fledged theory (cf. McCold, 2000; Wachtel & McCold, 2000; McCold & Wachtel, 2002; McCold & Wachtel, 2003). McCold and Wachtel (2003, p. 1) argue that restorative justice is “... a collaborative process involving those most directly affected by a crime, called the 'primary stakeholders,' in determining how best to repair the

harm caused by the offence”. In their conceptualisation of the theory of restorative justice, Wachtel and McCold (2000) stated that this theory is framed by three distinct but related conceptual structures, namely: the Social Discipline Window, Stakeholder Needs and the Restorative Practices Typology. However, in their 2003 publication, McCold and Wachtel substitute ‘stakeholders’ roles’ with ‘ stakeholder needs’ (McCold & Wachtel, 2003, p. 3). This signifies that both the needs and roles of stakeholders are crucial building blocks in the theorisation and practice of restorative justice. According to these authors, in both publications, the theory of restorative justice should be discussed in relation to these building blocks. In another research, Wachtel (2016, pp.4-5) further extended these building blocks by adding terms such as Restorative Practices Continuum, Nine Affects, Compass of Shame and Fair Process. This signifies how these authors developed and strengthened the theory of restorative justice, which should ultimately guide all restorative justice practices. McCold and Wachtel (2003, p. 111) remind us that a “[t]heory is the structure that explains the relationship among the concepts”. Below, the researcher attempts to unpack these collective components of Restorative Justice theory in relation to this study.

2.3.2. Social Discipline Window and Adult Diversion

Social Discipline Window, as a building block of the restorative justice theory, is about maintaining the balance of the high levels of control/limit setting (which are punitive) with the high levels of support, encouragement, and nurture (McCold & Wachtel, 2002). In other words, the social discipline window suggests that discipline should not be solely about punishment but rather about guiding individuals towards responsible behaviour through a combination of structure and care. According to McCold and Wachtel (2002), an excessive focus on either dimension can lead to negative outcomes. For instance, high control with low support can result in a punitive and authoritarian approach, while high support with low control can lead to permissiveness and a lack of accountability (*ibid*). The ideal approach, according to the social discipline window, is a combination of high control and high support, which is characteristic of restorative justice principles (*ibid*).

The central premise of this component, according to McCold and Wachtel (2002), is to ensure that the process of dealing with offences and offending is handled through the perspective of balancing between doing things to the people (punish) and doing things with the people (support, nurture and encourage). Therefore, the researcher uses this component of

restorative justice theory to analyse the context of involving offenders, victims and other affected parties during the execution of adult diversion processes and programmes. According to Wachtel (2005), the fundamental premise of restorative justice is that people are more cooperative and more likely to make positive changes when those in positions of authority (i.e. Courts, Prosecutors and Probation Officers) do things with them rather than to them or for them. Therefore, the balance between punishment and support is important.

McCold and Wachtel (2003) made an illustrative diagram to explain the premise of the social discipline window as an important component of theorising restorative justice. Figure 2.1. below indicates this.

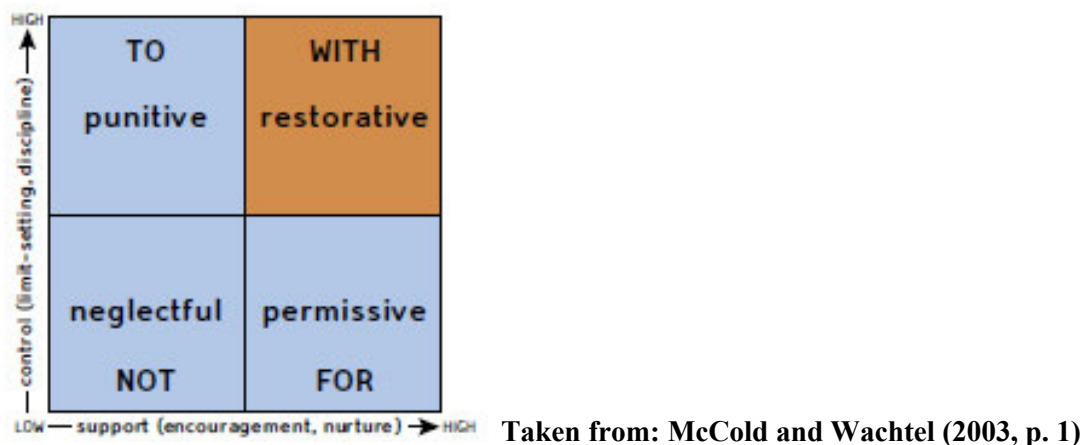


Figure 2.1.: Social Discipline Window

Figure 2.1 above provides a framework for understanding the balance between control and support in disciplinary approaches. When applied to restorative justice practices such as adult diversion, these quadrants can offer insights into different program models and their potential outcomes. The social discipline window offers a conceptual tool to understand the range of choices available to these practitioners and the potential implications of their decisions for both the offender and the community.

By applying the social discipline window, this study was implemented on the assumption that the success of adult diversion hinges on the delicate balance between control and support. Prosecutors and probation officers must determine the appropriate level of accountability and consequences for the offender while simultaneously offering opportunities for rehabilitation and reintegration. A restorative justice approach, which aligns with the high control, high support quadrant of the social discipline window, emphasises both holding offenders

accountable and providing them with the resources necessary to address the underlying causes of their behaviour.

McCold and Wachtel (2003, p.1) also argue that “[e]veryone with an authority role in society faces choices in deciding how to maintain social discipline”. McCold and Wachtel's (2003) assertion that individuals in authority roles grapple with social discipline decisions provides a critical lens through which to explore the practice of adult diversion processes and programmes in South Africa. As public prosecutors and probation officers navigate the complexities of this process without a formal legal framework, perhaps they are essentially making on-the-ground decisions about how to respond to alleged criminal offences.

However, in the absence of a formal legal framework, practitioners may be inclined to adopt a more punitive or permissive approach, reflecting different quadrants of the social discipline window. For instance, a focus on control without sufficient support might lead to overly harsh sanctions, potentially exacerbating the offender's marginalisation. Conversely, an overemphasis on support without adequate accountability could undermine the program's effectiveness and compromise public safety. Therefore, understanding the choices made by prosecutors and probation officers within the context of the social discipline window is essential for understanding the impact of adult diversion programmes and identifying opportunities for improvement even in processes of this phenomenon.

By examining how practitioners navigate the social discipline window in their practice of adult diversion, this research attempts to contribute to the development of more effective and equitable diversion programmes and processes in South Africa.

2.3.2. Stakeholders’ Roles and Stakeholders’ Needs

The earlier discussion on structuration theory accentuates role players as a crucial part of adult diversion processes and programmes. Restorative justice theory also centres stakeholders in all processes. According to (McCold & Wachtel, 2003, p.3), “crimes harm people and relationships”, and people are the centre of this theory instead of the government or elite decision-makers. This means the roles and needs of stakeholders are crucial in the design and administration of restorative justice practices such as adult diversion.

2.3.2.1. Stakeholders’ Roles

Starting with stakeholders' roles as a building block of the restorative justice theory, McCold and Wachtel (2003, p.2) argue that there are two types of stakeholders: primary stakeholders and secondary stakeholders. Figure 2.2 below clearly depicts the difference between these stakeholders.

	Harm	Needs	Responses
PRIMARY STAKEHOLDERS			
Victim(s)	direct	specific	active
Offender(s)	direct	specific	active
Families+	direct	specific	active
SECONDARY STAKEHOLDERS			
Neighbors+	vicarious	aggregate	supportive
Officials+	vicarious	aggregate	supportive

Taken from: McCold and Wachtel (2003, p.2)

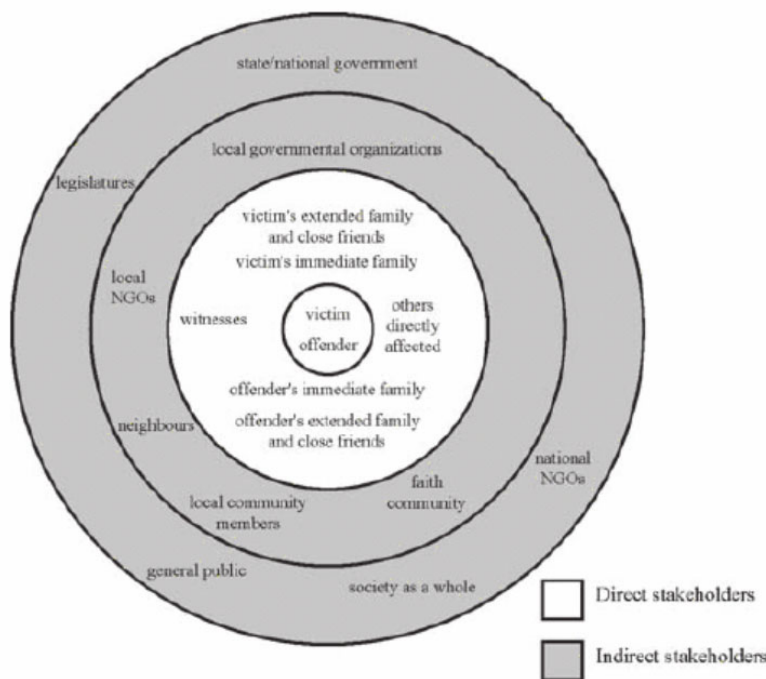
Figure 2.2.: Stakeholders Roles

This means victims, offenders, and their families need to be central in restorative justice practices. McCold and Wachtel (2003, p.2) posit that offences affect numerous stakeholders, (1) those that they refer to as “primary stakeholders” and (2) [those] that they refer to as “secondary stakeholders” (*ibid*). “The primary stakeholders are, principally, the victims and offenders because they are the most directly affected” (McCold & Wachtel, 2003, p.2). Within the category of primary stakeholders, these authors posit that primary stakeholders include “... those who have a significant emotional connection with a victim or offender, such as parents, spouses, siblings, friends, teachers or co-workers, are also directly affected” (*ibid*). In terms of the above framework, probation officers and public prosecutors would fall into the category of secondary stakeholders, which shifts the initial narrative of retributive justice processes that centre the government and state laws instead of the victims, offenders and their families (Skelton, 2016). Retributive justice is based on the premise that the offence has been committed against the state and its laws, instead of harm committed against victims as well as their families. In the context of this study, objective 3 explores the involvement of all relevant stakeholders during the practice of adult diversion processes and programmes. Figure 2.2 indicates a precise alignment of this theory with this study. As a result, in this study, the researcher conducted the data collection and analysis of the results, with the

perception of viewing the victims, offenders and communities as primary stakeholders and further analysed the role of probation officers and prosecutors through the lens of this theory. “The Stakeholder Roles structure demonstrates that repair of the emotional and relational harm necessitates the empowerment of the primary stakeholders, those most directly affected”. (McCold & Wachtel, 2003, p.3).

2.3.2.2. Stakeholders’ Needs

McCold and Wachtel (2002) classify the needs of stakeholders as crucial in the processes of restorative justice. “The injuries, needs and obligations of direct stakeholders [victims and offenders] are different than those of the indirect stakeholders [state officials]” (McCold & Wachtel, 2002, p.114). In Figure 2.3 below, these authors depict the needs of different types of stakeholders.



McCold and Wachtel (2002, p.115)

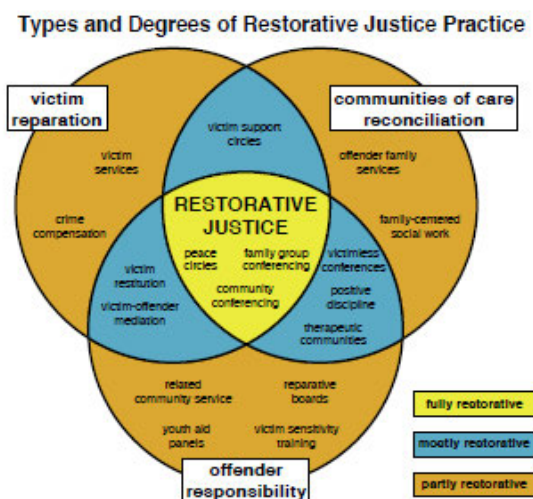
Figure 2.3.: Effects of the offence

This indicates that an offence affects everyone but at different levels. It also signposts that restorative justice processes should ‘centre’ the needs of victims and offenders in the processes of restorative justice beyond the laws, requirements, and needs of stakeholders who

are external to the offence. Offenders might need to repair harm and be rehabilitated, while victims need healing, closure and accountability. It was crucial to explore what drives probation officers and public prosecutors to practice adult diversion. The research was interested in establishing the motivation behind the practice, whether it was an organisational requirement or an organic self-realised need.

2.3.2. Restorative Practices Typology

“The Restorative Practices Typology demonstrates why the participation of the victims, offenders and their communities of care are all required to repair the harm caused by the criminal act” (McCold & Wachtel, 2003, p.4). Furthermore, restorative practices typology is a component of this theory that gauges whether the restorative justice process is either ‘partly restorative’, ‘mostly restorative’ or ‘fully restorative’ (*ibid*). These authors argue that if, for instance, the restorative justice process does not involve the victim and offender but involves one instead, it is partly restorative (*ibid*). Then, if it involves primary stakeholders and secondary stakeholders alike, it is described as fully restorative. As a result, the researcher used this component to analyse the context of the involvement of all stakeholders in order to achieve the third objective or research question of this doctoral study. The restorative practices typology, a foundational component of restorative justice theory, provides a structured approach to understanding and evaluating the diverse range of diversion processes and programmes operating within this context. Figure 2.4. depicts the restorative justice typology



Taken from McCold and Wachtel (2003, p. 3)

Figure 2.4. : Restorative Practices Typology

Figure 2.4 provides a taxonomy of restorative practices, ranging from informal and voluntary to formal and mandated interventions. This typology is invaluable in understanding the diverse range of approaches employed by prosecutors and probation officers during the conceptualisation and practice of adult diversion. It allows for a systematic analysis of the degree to which their practices align with restorative justice principles, such as victim involvement, offender accountability, and community reparation. By systematically analysing the extent to which restorative principles are integrated into practice, the researcher was able to contribute towards the development of evidence-based guidelines for adult diversion in South Africa, as per the objective of this study.

2.4. CONCLUDING REMARKS AND CHAPTER SUMMARY: CHAPTER 2

This chapter has established the theoretical framework for exploring the practice of adult diversion by probation officers and public prosecutors in the UThukela District, KwaZulu-Natal, within the context of a non-existent legal framework. By integrating structuration theory and restorative justice theory, this study seeks to understand how these professionals navigate the complex interplay between agency and structure in shaping diversion practices.

Structuration theory provides a lens through which to examine the social structures that influence practitioners' decision-making, such as organisational culture, policies, and resource availability. Simultaneously, it allows for an exploration of how practitioners actively construct and reproduce these structures through their daily practices. Restorative justice theory offers a complementary perspective by focusing on the values and principles that underpin effective diversion processes and programmes. By examining the extent to which restorative practices are embedded within diversion processes, this study aims to contribute to the development of more just and equitable outcomes for offenders and victims.

This theoretical framework serves as a foundation for the empirical investigation to follow. By combining these two theories, the study offers a comprehensive understanding of the factors that shape adult diversion practices in the UThukela District, ultimately informing the

development of evidence-based policies, processes and programmes to enhance the effectiveness of diversion initiatives in the absence of a formal legal framework.

Chapter 3:

A REVIEW OF RELATED LITERATURE

3.1. INTRODUCTION

In a qualitative study, "one cannot be sure about what literature might be relevant to their study until they have completed the research" (Taylor, Bogdan and DeVolt 2016, p. 42). Literature review becomes a journey. Given this stance by Taylor *et al.* (2016), reviewing the literature herein was also assiduous. This literature review allowed the researcher to iteratively appreciate the evolving scholarship about the selected niche area of this study (adult diversion) and the knowledge contribution of this doctoral study.

Throughout the literature review journey, the researcher came to appreciate this research's multifaceted dimensions: critical, educational and philosophical. The importance of appreciating the critical, educational and philosophical nature of a doctoral study is affirmed by Baldwin, Berks, Mills and Budden (2014, p. 1), who published an article titled: "*Putting the philosophy back into the PhD*". Baldwin *et al.* (2014) posit that, although the doctor of philosophy qualification emphasises scientific processes and erudition (scholarly culture) more, it should not neglect 'the philosophy' and/or 'the pursuit of wisdom' in all milestones of the doctoral research process, including the literature review (*ibid*). As a result, when reviewing the literature, the researcher was consciously aware and appreciative of this call. The literature review process was, therefore, educational, critical and philosophical because it allowed the researcher to locate, engage, scrutinise, debate, and synthesise the existing knowledge and developments while clarifying the contribution of this project.

During this process, the researcher had to appraise the three branches of philosophy: ontology, epistemology, and methodology. Regarding ontology, the researcher had to ask himself crucial questions during the literature review process. For instance, the researcher had to discover what exists in scholarship (literature) within this research's chosen niche. What is the nature of that which exists? What is its rigour? What is considered trustworthy by the prevailing scholarship? As a result, through this criterion, the researcher laid a foundation for the rigour of the literature review process.

Relating to the epistemological stance of available literature, the researcher evaluated the nature, origin, and limits of existing and developing knowledge (literature) on adult diversion. One of the practical epistemological manifestations of this literature review (detailed below) is the scholarly revelation of connections and differentiation between the restorative justice philosophy and the diversion of offenders. This chapter details that adult diversion, as a concept, cannot be estranged from its etiological genesis, which is the restorative justice (RJ) paradigm. The interplay or nexus between adult diversion and restorative justice is discussed throughout this chapter. Based on this connection and the shortage of local literature about adult diversion, the former argument became the point of departure for the construction of this literature review chapter.

This chapter also evaluates the methodologies adopted in the scientific production of available literature. This was done to ensure that a literature review is not merely an exhibition of the available literature but a critical engagement of scholarly material. Resembling the definition of philosophy, as defined by Berkeley (2003), the process of this literature review was "a pursuit of wisdom" or a philosophical manifestation. Song (2021, p. 408) argues that "research (more academic or scientific research) has to do with (i) linking (that is a 'conversation') what has been done (the past) with what has to be done (the present and/or future) in a way to generate new knowledge and (ii) objectifying what you are doing in a way to contribute to your chosen field (or community)". As a result, Song's position (*op cit*) became crucial throughout the development of this chapter. Through this process, the researcher was able to familiarise himself with the existing knowledge on critical variables of this research: adult diversion, social work, procedural law, criminal law, victimology, offender rehabilitation and restorative justice. By acknowledging these variables, the researcher grounded and justified the project within the broader views, inferences, scientific facts, legal stipulations, methodologies, and recommendations contained by past publications.

While searching for literature on 'adult diversion in South Africa' or diversion of adult offenders, it was clear that publications on this concept were limited, especially within the South African context. However, the researcher did not limit this literature review to 'adult diversion in South Africa'; he reviewed local and international concepts that resemble the theorisation of adult diversion as a concept and criminal justice practice. The 'resembling' concepts included pre-court diversion, pre-trial diversion, probation services, police diversion, prosecutorial diversion, pre-arrest diversion, restorative justice programmes for adults, child diversion and restorative justice schemes. By broadening the search of the literature, the

researcher was able to discover and critique related literature in an endeavour to create the backbone for the current research project.

The first part of this chapter presents literature on the conceptualisation of adult diversion. It highlighted the building blocks of adult diversion, which are crucial when developing a scholarly definition for this concept in a South African context.

Secondly, it is the discussion on the background, which is labelled as 'restorative justice before diversion'. The researcher discusses adult diversion as a process that emerges from the restorative justice paradigm. The discussion on 'restorative justice before diversion' includes subheadings such as 'punishment pluralism'; restorative justice 'as conventionally appraised'; Indigenous and African roots of restorative justice: the nexus between ubuntu and diversion; lastly, the link between restorative justice and diversion. This section presents a foundational background for adult diversion.

Thirdly, the researcher presents an international overview of adult diversion. In this section, the researcher reviewed the practice trends of numerous countries regarding adult diversion. Literature details that, internationally, social workers play a crucial part in the implementation of diversion programmes and processes. Literature that justifies the significance of probation officers and public prosecutors in executing diversion has also been reviewed in this section.

Fourthly, there is a discussion on the practice overview of adult diversion practices in South Africa. Lastly, the author presents international and local laws and policies on adult diversion.

Fundamentally, this literature review exercise reveals challenges and gaps concerning the practice of adult diversion in South Africa; such challenges are the heart of the discussion.

3.2. TOWARDS A SOUTH AFRICAN DEFINITION OF ADULT DIVERSION

Available literature confirms that, in South Africa, there is neither legislation nor legal definition for adult diversion and its inherent processes (Hargovan, 2008a; Maimane, 2017; NICRO, 2021). Even so, it is interesting to note that the practice of diversion for adult offenders is undeniably growing and continues to form part of South Africa's criminal justice system and social work practice, although there is an absence of an explicit definition for this concept (Hargovan, 2008a; Maimane, 2017).

Notwithstanding the dearth of a legal definition or scholarly definition, it is worth noting that relating definitions of adult diversion, such as the definitions of diversion of offenders (more commonly diversion of child offenders), are profusely available in the literature and legislative frameworks. As a result, the 'relating' definitions of adult diversion are analysed hereunder.

3.2.1. *Diversion and Child Diversion: lessons for defining adult diversion*

In order to understand adult diversion as a novel and/or as a 'semi-defined' concept in South Africa, it is crucial for the researcher to start by analysing the related definitions or 'kin definitions' of this concept namely: the definitions of child/youth diversion and those of diversion practice in general.

The concept of adult diversion is arguably semi-defined because its prefixing part, 'adult' and its suffixing part 'diversion' are abundantly defined. As a result, the researcher had to dissect the concept 'adult diversion' and dichotomise its building blocks in order to endeavour to establish a definition for this concept. The term 'adult' refers to the 'age of majority' described by the Constitution of the Republic of South Africa of 1996 as 18 years and above (Republic of South Africa, 1996). This then partly clarifies the concept in question. However, the definitions of the suffixing part: 'diversion', are analysed below. In addition to the definition of 'diversion' as a general concept, other differently prefixed definitions (i.e. 'child diversion') are also analysed. It was crucial to compare adult diversion with child diversion because both these types of diversion are practised and administered by criminal courts, and they are both criminal justice processes that involve different role-players such as diversion service providers, social workers, public prosecutors, defence attorneys, judges, police officials, *inter alia*. Besides that, child diversion in the Republic of South Africa is considered a yardstick and exemplary on numerous fronts (Abdulraheem-Mustapha, 2020; Hargovan, 2013; Kilekamajenga, 2018). This exercise assisted the researcher in strengthening the discourse of adult diversion theory in South Africa.

Some of the available South African definitions of diversion concerning children and diversion, in general, are as follows:

- Diversion is defined by Wood (2003, p. 1) "as strategies developed in the criminal justice system to prevent young people from committing a crime or to ensure that they avoid formal court action and custody if they are arrested and prosecuted".

- In terms of section 1 of the Child Justice Act 75 of 2008, "diversion means the diversion of a matter involving a child away from the formal court procedures in a criminal matter using the procedures established by Chapter 6 and Chapter 8 of the Child Justice Act 75 of 2008" (Republic of South Africa, 2008)
- According to the Department of Justice and Constitutional Development (2021) diversion refers to the pre-trial process of "... channelling of criminal cases [...] from the criminal justice system with or without conditions."
- The 2012 publication by the National Institute for Crime Prevention and Reintegration of Offenders (NICRO) was cited by Motshedi (2020, p. 43), where it "... defines diversion as a process before trial that is used by the courts to dispose court cases and ensure that individuals are channelled out of the criminal justice system into intervention programmes (diversion) that will contribute by assisting and rectifying their criminal behaviour".

Although the first three definitions, as above-listed, are specific to child diversion, the following are notable, crucial elements about them :

- diversion is a pre-trial process within the criminal justice system,
- diversion has the inherent benefit of helping certain offenders avoid formal court action and custody if they are arrested and prosecuted.
- diversion is a strategy of rehabilitation and is likely to curb recidivism or re-offending.

Although these elements cannot be generalised to the diversion of adult offenders, they might be helpful for the reader to understand somewhat the concept of diversion of offenders (child and/or adult) in general. Moreover, it is vital to appreciate the inference that the NICRO's definition of diversion is broader and suitable for both child and adult offenders. It is argued that the latter is relatively more applicable to the conceptualisation of adult diversion than the other listed definitions because NICRO is the pioneer of adult diversion in South Africa. Secondly, they formulated the definition of diversion in 2012 after establishing adult diversion for the first time in 2008.

The legal definition of diversion from the Child Justice Act 75 of 2008 describes the inherent processes of diversion of child offenders. It is also cross-referenced to Chapter 6 and Chapter 8 of the same legislation. Within this definition, the cross reference of chapters 6 and 8 is

somewhat opaque for a layperson or law-illiterate reader. Thus, dissecting the contents of Chapter 8 of this legislation is necessary. In a nutshell, Chapter 8 of this Act stipulates, amongst other details, the key objectives of child diversion (Republic of South Africa, 2008). Some of the objectives of diversion that are contained in section 51 (*ibid*) embrace the fact that diversion intends to:

- Section 51 (b) of the Child Justice Act aims to "encourage the child [offender] to be accountable for the harm caused by him or her;"
- Section 51 (c) of the Child Justice Act aims to "meet the particular needs of the individual child offender;"
- Section 51 (d) of the Child Justice Act aims to "promote the reintegration of the child offender into his or her family and community;"
- Section 51 (e) of the Child Justice Act aims to "provide an opportunity to those affected by the harm to express their views on its impact on them;"
- Section 51 (h) of the Child Justice Act aims to "prevent stigmatising the child offender and prevent the adverse consequences flowing from being subject to the criminal justice system;"
- Section 51 (j) of the Child Justice Act aims to "prevent the child offender from having a criminal record and"
- Section 51 (k) of the Child Justice Act aims to "promote the dignity and well-being of the child offender and the development of his or her sense of self-worth and ability to contribute to society" (*ibid*)

Of interest to the researcher is the wording of section 51(b) of the Child Justice Act, as listed above, which specifies that the diversion of child offenders aims to 'encourage the child [offender] to be accountable for the harm caused by him or her' (Republic of South Africa, 2008). The accountability of an offender to the victim is an essential element of the Restorative Justice Theory, one of the theoretical frameworks of this study.

It can, therefore, be argued that this legislated objective of child diversion intends to foster the restorative justice ethos or the reparation of the harm caused by the offender to the victim instead of a mere punishment or punitive process. Section 51 (e) of the same legislation also aligns with restorative justice principles. It aims to provide an opportunity for those affected by the harm to express their views on its impact on them. The inclusion of victims is a central feature of restorative justice. Therefore, the traces of restorative justice within the legal

objectives of child diversion indicate that restorative justice should never be separated from the ethos of restorative justice theory.

It is also crucial to note that some scholars argue that the current practice of adult diversion is similar to the days preceding the promulgation of the Child Justice Act 75 of 2008, where child offender diversion was also practised without legislation (Maimane, 2017; Skelton, 2016; Wood, 2003). In the current era, the only 'diversion dedicated' legislation that stipulates the marching orders for the implementation of one category of diversion, 'child diversion', is the Child Justice Act 75 of 2008 (as amended). While this is the case, the Child Justice Act makes explicit provisions for the diversion of child offenders, where adult diversion processes and programmes remain unregulated by an explicit formal law in South Africa (Maimane, 2017).

In the attempt to narrow the gap of the dearth of a definition of adult diversion, the research themes that later emerge in subsequent chapters report on how the participants describe and define adult diversion as they subjectively understand it. Furthermore, this is one of the fundamental contributions of this study in advancing this field of study. Since it has been argued that there is a relationship between diversion and restorative justice, the following section presents the background of restorative justice and its inherent nexus to diversion and adult diversion.

3.3. RESTORATIVE JUSTICE PHILOSOPHY BEFORE DIVERSION

In order to appreciate what restorative justice is, it is vital to appreciate what it is not. Wood *et al.* (2022) are some of the authors who claim that restorative justice is an alternative or an opposite approach to retributive justice. Therefore, from this assertion, it can be noted that restorative justice and retributive justice are two concepts that are dichotomised due to their opposing characteristics, which have been detailed and described below. Nonetheless, both restorative justice and retributive justice are theories of justice. Wenzel *et al.* (2008, p. 375) differentiate these two concepts by claiming that "retributive justice essentially refers to the repair of justice through the unilateral imposition of punishment, whereas restorative justice means the repair of justice through reaffirming a shared value-consensus in a bilateral process". These concepts are often contrasted by subjectively favouring the other approach

instead of the other, dependent on the axiological analyses of different schools of thought regarding crime management.

The following sub-section refutes the dichotomy debate of these concepts, where these concepts are often viewed as opposite instead of complementary. The literature (referred below) proposes a paradigm shift from 'retributive justice **versus** restorative justice' (**dichotomy**) to 'retributive justice **and** restorative justice' (**duality**). The section below provides discussions that propose the dual use of these paradigms as worthwhile plural approaches to the criminal justice system for adults.

refutes

3.3.1. The combination of retributive justice and restorative justice: time for crime management pluralism?

The advantages of restorative justice approaches, especially RJ approaches such as diversion, alternative dispute resolution (ADR), family group conferencing, and victim-offender mediation, are often compared against the shortfalls of the traditional criminal justice system based on retributive justice or punishment. The retributive justice (punishment-based) approaches remain dominant in the criminal justice systems of numerous countries, including South Africa (Gxubane, 2016). Although retributive justice approaches are dominant, several existing formal and informal interventions in South Africa's crime management system are based on the ethos of restorative justice. Louw and van Wyk (2016, p 490) also affirm that restorative justice is partly part of the criminal justice system, but it "... is not currently utilised to its fullest potential extent in South Africa". In affirmation, Strang (2007, p. 704) also argues that, in many countries, different types of restorative justice approaches, including diversion, "often cling to a limited role, deemed suitable for children, not grown-ups, for trivial crimes, not serious ones, for 'soft' circumstances, not difficult ones". These limitations are also no exception in South Africa due to the sluggish acceptance of restorative justice in the South African criminal justice system by some stakeholders, especially some prosecutors in the criminal justice system (Mzinyane, 2017).

Although retributive justice elements dominate South Africa's criminal justice system, "crime in South Africa remains high, and this has resulted in the public having a low opinion of the criminal justice system" (Delomoney, 2015, p 2). Additionally, Fournier-Ruggles (2011) also indicates that even in America, the "getting tough crime policy" does not reduce the crime rate nor resolve the effects of crime. However, it instead brings forth devastating effects such

as high prison populations and the evolving innovations by offenders to dodge the situation of being caught (*ibid*). The dominant use of retributive justice approaches, with the minimal use of restorative justice approaches, is often criticised for its shortfalls by several scholars (Zehr, 1990; Braithwaite, 2000; Skelton, 2016; *inter alia*). White (2011, p. vi) criticises the dominant use of the retributive justice phenomenon "as inhumane, backwards-looking, and dogmatic". Husak (2022b), a self-proclaimed retributivist, also criticises the practice of "over-punishment" in his recent publication. This then signifies that even those scholars who have written extensively about the value of "punishment" do realise the downfall of this method if it is frantically applied without measure.

Given the shortfalls of the current criminal justice system then, 'supplementing alternatives' or restorative justice options are promoted and proposed by researchers such as Skelton and Batley (2006), Hargovan (2014), Imiera (2019), and Govender (2020), as sensible approaches which should supplement the current crime management approaches in South Africa and beyond. Cameron (2020) and Somaru and Rautenbach (2020) posit that restorative justice options such as adult diversion and alternative dispute resolution seem to have the potential to lessen the burden of the criminal justice system.

Although there is a sustained growth of advocacy for the use of restorative justice approaches, Hargovan (2008b, p.25) firmly states that the restorative justice approaches, including diversion, do not intend to entirely replace the traditional criminal justice system (punishment approaches). However, they aim to supplement the current processes of the criminal justice system (*ibid*). Remarkably, the dominant use of retributive justice approaches in the criminal justice system is often criticised for being centred on the ideology of 'committing a crime against the law and the state' instead of being restorative and, therefore, centred on the needs of both the victim and the offender (Skelton, 2016). It is also criticised for emphasising the 'incapacitation of offenders' instead of encouraging accountability, rehabilitation and repair of harm caused by the offender to the victim and community (Husak, 2022a). Noteworthy, restorative justice is argued as "... an approach to justice that aims to involve the parties to a dispute and others affected by the harm (victims, families concerned, community members and offenders themselves) in collectively identifying harms, needs and obligations through accepting responsibilities, making restitution, and taking measures to prevent a recurrence of the incident and promoting reconciliation" (Department of Justice and Constitutional Development, 2021).

Given the benefits of the 'less popular' restorative justice approaches, White (2011), an American researcher, argues for a combination of retributive justice and restorative justice elements, which he refers to as 'punishment pluralism'. In affirmation, Cahill (2011) and Husak (2022a) also argue for integrating restorative justice into the criminal justice system. They further argue against criminal justice, which prioritises punishment or retribution as a hegemonic method of crime management (*op cit*). Similar to White (2011), these scholars also label this integration of restorative justice into retributive approaches as 'punishment pluralism' (*ibid*). From a South African context, Govender (2020) also posits the relevance of strengthening 'the hybrid model' in criminal justice, which would 'equally' encompass both the principles of restorative justice and retributive justice. This is important because, in South Africa, we have witnessed with the use of child diversion that punishment is always on the cards should the offender fail to comply with the restorative justice court order or a diversion court order (Gxubane, 2008; Kleinhans, 2013; and Mzinyane, 2017). Therefore, 'punishment pluralism' is a viable option in attempting to address both the restorative justice goals (rehabilitation/reparation) and the retributive goals, which becomes an option should the accused person fail to abide by the conditions of restorative justice programmes.

Perhaps it is, then, necessary to detail and contrast the building blocks of these two contrasting theories of justice, which are both crucial in the call for 'punishment pluralism', as argued by Hargovan (2008a), Cahill (2011), White (2011) and Govender (2020).

The table below highlights the building blocks of restorative justice in column A and retributive justice in column B.

Table 3.1. Restorative Justice versus Retributive Justice

COLUMN A	COLUMN B
Restorative Justice	Retributive Justice
<p>According to Skelton and Batley (2006, p. 7), the restorative justice process must achieve the following elements: -</p> <ul style="list-style-type: none"> - Addressing harm caused by the offence - Victim-oriented processes 	<p>According to Walen (2020), retributive justice lies in the following ideas: -</p> <ul style="list-style-type: none"> - Punishment should be equal to the sin committed - Crime is committed against the state

<ul style="list-style-type: none"> - Encouragement of the offender to take responsibility - Involvement of at least three stakeholders (victim, offender, mediator) - Availability of an opportunity for dialogue and participatory decision making - Respectful to all parties - Rehabilitation and making amends are fundamental 	<ul style="list-style-type: none"> - Punishment should be a deterrence to the accused - Punishment should be an incapacitation of the accused - those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment; - It is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers.
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Column B indicates the characteristics of the retributive justice paradigm, which is currently the norm in the criminal justice system for adults. From Column B, shortfalls of the existing criminal justice system are noticeable in that this approach to crime management often ignores the victims of crime. It focuses on the offence against the country's laws. In an axiological argument for restorative justice, Steyn and Lombard (2013, p. 332) state that "the well-being of victims of crime is a central feature of restorative justice services". Importantly, Column A of the table indicates that the victim is the central feature of the restorative justice approach.

Furthermore, it is apparent in the Table above that the building blocks of these two theories of justice are contrasting. Due to the existing domination of retributivism in the South African criminal justice system, this current research study then explores the practice of adult diversion, which has been labelled by Maimane (2017) as a neglected but growing restorative justice approach. Whilst restorative justice is favoured by a number of scholars, as indicated above, there are some criticisms and contradictions in the literature regarding its epistemic origins. Skelton and Batley (2006, p. 1) argue that the diversity of conceptualisation of restorative justice "has subjected not only the theory of restorative justice to robust analysis but has also amassed impressive evidence of specific benefits of restorative justice when compared to the mainstream criminal justice system". The subsequent subsections below attempt to bring forth these debates in detail.

3.3.2. *Restorative Justice 'as conventionally appraised'*

The scholarship of restorative justice is widely documented. However, this concept and theory are highly contested in terms of their epistemic origin. On this note, Govender (2020, p. 29) claims that "restorative justice is an evolving theory, deeply contested and although widely accepted, does not have a concrete universal definition because restorative justice means different things to different countries". Some authors argue that the epistemic foundation of restorative justice has been hegemonically Westernised (Choi & Severson, 2009; Schoeman, 2016; Asadullah *et al.*, 2022).

This is because the widely accepted belief about restorative justice is that it is an American philosophy pioneered by an American scholar called Prof. Howard Zehr in a series of works since the late 1970s. This philosophy has grown significantly through several scholarly discourses since its inception. Contestations about the ideological and cultural ownership of this approach have proven the universality of this concept. For example, the Chinese scholar Zhang (2021) highlights the traces of restorative justice in different Chinese traditions. On the other hand, Afrocentric scholars, such as Mangena (2015) and Schoeman (2016), also highlight the nexus of this concept to African principles. However, the Afrocentric view of restorative justice will be detailed in the subsequent subsection below.

Based on the conceptualisation of restorative justice by Zehr, "restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible" (Zehr, 1990, p. 40). This means that restorative justice is not merely aiming to punish the accused person; instead, it aims to involve the accused person(s) together with those who were affected or harmed by the crime to collectively identify and address the harms, the needs and obligations of the accused in order to restore the effects of the damage as much as possible. From the above definition of Zehr (1990), there are noteworthy building blocks of restorative justice that should not be ignored, namely: 'involving those who have a stake in an offence'; collectiveness; identification of harm caused by the offence; addressing the harm caused by the offence; healing the effects of harm; and putting things right.

"The difficulties of arriving at a perfect definition of restorative justice have led some writers to favour the idea of identifying values and 'elements' of restorative justice" (Crawford and Newburn, 2003, p. 19). Furthermore, the abovementioned building blocks of restorative

justice, as defined by Zehr (1990), have grounded the understanding of this concept for many scholars in different contexts. According to Zehr (2008, pp. 7-8), restorative justice "originated in criminal justice but was quickly applied to other arenas such as schools, churches and the workplace". This assertion by Zehr and the common belief that restorative justice originated in a Canadian criminal justice system has been disproved by scholars such as Kinyanjui (2009); Mangena (2015); Schoeman (2016); *inter alia*, who claims that restorative justice has a long history different indigenous spaces of the global South including in countries such as Kenya, South Africa, New Zealand, *inter alia*. It has been part of humanity for numerous years.

3.3.3. *Indigenous and African Roots of Restorative Justice: the nexus between Ubuntu and Diversion?*

Although there is a plethora of scientific claims that restorative justice was established in North America, contrary, there are emerging counterclaims from numerous scholars who state that the restorative justice paradigm and processes are anciently African with a long history of African existence (Asadullah, 2021; Hand, Hanks and House, 2012; Mangena, 2015; Naude, Prinsloo and Ladikos, 2003; Schoeman, 2016). According to Sloth-Nielsen and Gallinetti (2004, p.34), "some customary courts, known as *Izinkundla* (from the IsiXhosa language these refer to traditional courts/tribunals), *Izigcawu* (from the IsiZulu language these refer to traditional courts/tribunals) or *Makgotla* (from the Setswana language these refer to traditional courts/tribunals), are still used in South Africa today, mostly in rural areas". According to these authors, in the abovementioned customary courts, restorative justice remedies such as "*ukuhlawula*" or compensation are the main process-outcomes (*ibid*).

Schoeman (2013, p. 291) states, "... in traditional Africa, the concepts *ubuntu*, *community*, *indigenous justice* and *restoration* are interlinked". In the same vein, Mangena (2015) states that restorative justice is closely related to the African Ubuntu philosophy. Mayaka and Truell (2021, p. 651) provide a social work perspective by stating that "*ubuntu* as a philosophy is based on generic life values of justice, responsibility, equality, collectiveness, relatedness, reciprocity, love, respect, helpfulness, community, caring, dependability, sharing, trust, integrity, unselfishness and social change".

Drawing from the above assertions, it can be noted that similar to the tenets of restorative justice described earlier in numerous registers in this chapter, *ubuntu* also aims to advance

'responsibility, respect, community, sharing and values of justice'. Therefore, the account of Mayaka and Truell (2021) assists us in appreciating that it is, indeed, aligned with the values of restorative justice. Given the apparent inference that restorative justice originates from the principles of *ubuntu*, this could mean that diversion has benefits similar to those of the ubuntu philosophy.

Schoeman (2013) asserts that indigenous justice systems in different parts of the continent of Africa also have a long history of being grounded on values such as community, *ubuntu* and restoration. This means that even though some indigenous justice practices were not referred to as restorative justice, in Africa, they existed in different parts of the continent and possess the so-called 'contemporary ideas of restorative justice' acclaimed by different scholars of restorative justice theory. This interpretation then debunks the American-propelled idea about restorative justice, which has been suppressing African people's epistemic erudition and indigenous acumen in advancing the theory and practice of restorative justice way before Americans discovered it in the 1970s. Asadullah (2021) calls for decolonising knowledge and justice methods, specifically the 'decolonisation of understanding restorative justice'. Part of 'decolonising the understanding' of restorative justice is the acceptance that justice methods existed in Africa before the arrival of colonists and before it was labelled as restorative justice. Knowledge production, ownership, and the worldview of Africans have been victims of a foreign epistemic hegemony that should be rejected (Mignola, 2014).

The historical review of restorative justice demonstrates that it has been vastly deliberated, researched, argued and contrasted by several scholars in different contexts, which is not the case with adult diversion as a concept and a practice. The value or the axiology of restorative justice has been documented immensely. Strang (2007, p. 704), nonetheless, argues that "... it seems sometimes that there is more energy put into writing about it [restorative justice] than actually doing it". Muntingh (1997) and Mzinyane (2017) indicate that some key role players, especially prosecutors, are still unwelcoming of diversion and restorative justice methods but instead prefer offenders' punishment. Of note, the latter-cited research was published two decades apart, which means that, indeed, there are still pockets of rejections about restorative justice methods, especially diversion. Perhaps the lack of implementation and/or the rejection of restorative justice methods by some South African role players is underpinned by the African epistemic orientation of practitioners, which might not be entirely aligned with the American-centred and Eurocentric elements of the current justice system, especially in non-Western countries such as South Africa.

This debate on the African roots of restorative justice is crucial for this current study because it has been conducted in a rural context of South Africa's justice system in the UThukela District, KwaZulu-Natal. As a result, the "understanding of adult diversion" explored by this research is likely to be influenced by the contextual realities of Africa, especially the rural district of South Africa that was selected for this research. However, as presented in the later chapters, the research data has corroborated these inferences, which were speculative before the execution of data collection. Additionally, in arriving at a better understanding of 'adult diversion', for future policy reforms, it was also necessary to first provide an in-depth analysis of the concept of restorative justice, which is argued to be the archetypal genesis of diversion, child diversion and adult diversion alike.

3.3.4. The Link between Restorative Justice and Diversion

Rodliyah (2019, p. 434) also states that "the basic idea of diversion cannot be separated from the paradigm of restorative justice, which is currently being studied and considered as the future paradigm of criminal law". Despite the close links, it is essential to note that there are debates about the existing nexus between restorative justice and diversion. It is crucial to note that these two concepts are neither interchangeable nor synonymous. Instead, diversion is one of many restorative justice processes that should encompass the elements of restorative justice. Specifically, Hargovan (2013, p. 32) argues that "diversion programmes are just one of many mechanisms through which restorative values and practices may be incorporated". In addition, both Delomoney (2015) and Hargovan (2012) describe diversion as a process of restorative justice.

Similarly, the UNODC (2006) also described both restorative justice and diversion as alternative forms to the mainstream criminal justice system. Additionally, restorative justice and diversion embrace holding the offender accountable for their actions (Gallinetti, 2009). This means that diversion and restorative justice share some similarities in their conceptualisation. However, Hargovan (2012, p. 15) warns that "the terms diversion and RJ [restorative justice] are not synonymous or interchangeable, even though many diversion programmes may draw on RJ principles". An interesting element of Hargovan's assertion is that diversion programmes should feature the elements of restorative justice. Elements of restorative justice are highlighted in Table 3.1 in this chapter.

Amongst the numerous elements of restorative justice is the inclusion of the victim, which is noteworthy and fundamental in any criminal justice process. "Unlike the traditional criminal justice mechanism, restorative justice requires the active participation of everyone affected by the criminal act" (Jenkins, 2006). Additionally, Mzinyane (2017, p. 27) affirms this by arguing that "... as much as diversion has its origins and/or epistemology on the philosophy of restorative justice, but diversion is regarded as non-restorative in nature particularly if there is an absence of a victim during the restorative justice process". On this note, Strang (2007, p. 704), argues that "... where it [restorative justice] has been institutionalised, it has sometimes fallen victim to the tribulations attached to any bright idea that has been routinised and had the edges rubbed off it by practitioners just doing their job instead of being energised by a commitment to radical reinvention". This expression by Strang (2007) is fundamental to this study and framed by structuration theory. It is fundamental because structuration theory aims to study the reciprocity of human action and routinisation by stakeholders and structures. Therefore, this current study attempts to confirm this gap, as highlighted by the latter-mentioned author.

The following section then explores adult diversion practice and classification trends internationally and locally.

3.4. INTERNATIONAL OVERVIEW ON ADULT DIVERSION: *Conceptualisation and Practice Trends*

As stated earlier, the practice of adult diversion has a more extended history of institutionalisation in different parts of the world than in South Africa. For this reason, the international trends on adult diversion are reviewed. Remarkably, adult diversion is labelled differently in various countries where its implementation is legislated and institutionalised. This section starts by discussing different labels and practices of adult diversion in different parts of the world and thereafter discusses the trends of adult diversion in different countries.

3.4.1. *International conceptualisation and Practice of Adult Diversion or Restorative Justice Schemes for Adults*

Although the earlier parts of this chapter attempted to indicate that diversion and restorative justice are not synonymous, in several countries, including Canada and Scotland, *inter alia*,

some of the adult diversion programmes are still referred to, interchangeably, as 'restorative justice programmes for adults', pre-trial diversion, pre-arrest diversion, police diversion, prosecutorial diversion, amongst other sorts of names as detailed below (see Butler *et al.*, 2022; Neyroud & Slothower, 2015; Neyroud *et al.*, 2022; Webster, 2019), in some countries, adult diversion is labelled based on its contents, for instance, 'drug diversion' (Harvey *et al.*, 2007) or based on the stakeholder responsible for implementing adult diversion.

In New Zealand, for example, there is 'Police Adult Diversion', which is implemented by police officers (Maimane, 2017). Hence, the name of adult diversion is prefixed with the term 'police'. Maimane (2017) conducted a comparative study on implementing adult diversion between South Africa and countries such as England and Wales, Canada, and New Zealand. His study served as a significant enlightenment on adult diversion status in other countries compared to South Africa. Remarkably, his study was based on secondary data and non-empirical data. However, his desktop study was a trailblazer in developing adult diversion theory in South Africa, primarily due to a lack of literature and research.

In order of sequence, this chapter discusses the trends of adult diversion in countries such as the United Kingdom, the United States of America, Canada, New Zealand, Germany and Nigeria.

3.4.1.1. United Kingdom: Conceptualisation and Practice of Adult Diversion

According to Maimane (2017, p. 35), "restorative justice in England and Wales was first introduced in the late 1970s by a relatively small number of social workers and probation officers". This signifies that social workers and probation officers are the pioneers of restorative justice programmes in England and Wales. The innovative role of social workers in crime management cannot be ignored (see Trotter, 2018). In affirmation, van Wormer (2003) also asserts that the restorative justice paradigm cannot be separated from social work principles. This statement signifies that social workers have a crucial role in influencing and shaping the criminal justice system of the United Kingdom.

Davey (2005) indicates that restorative justice programmes saw a series of evolutions from 1979 to the present day. The first pilot implementation of adult diversion or restorative justice programmes for adult victims and offenders was only finalised in 2007 (Maimane, 2017). The Courts and Crime Act amendment also introduced specific legislation that formalised

adult diversion in 2013 (*ibid*). Since restorative justice programmes have been implemented since the 1970s and adult diversion programmes started in 2007, there has been a vacuum in the legislative framework for adult diversion for many years. As in South Africa, the introduction of adult diversion legislation in the United Kingdom postdated the implementation and practice of adult diversion in their court of law. This means that the phenomenon of implementing adult diversion in the absence of legislation traverses across nations. However, unlike South Africa, England and Wales have addressed the gap in specific legislation for adult diversion.

Besides the above discussion, it is also crucial to appreciate that some of the conceptual labels of adult diversion in England and Wales are diverse. Some publications in England and Wales describe adult diversion as 'pre-court diversion for adults' (Webster, 2019; Robin-D'Cruz & Whitehead, 2019; Ely, Jolaoso, Robin-D'Cruz & Morris, 2020). Although the terminology utilised in England and Wales is somewhat different from that in South Africa, sometimes, the processes of pre-court diversion for adults are comparable to South Africa's 'adult diversion', discussed by Maimane (2017). Robin-D'Cruz and Whitehead (2019) describe pre-court diversion for adults as a pre-trial process that seeks to offer a swift and meaningful response to low-level offending. These authors further state that pre-court diversion for adults,

"operates in two ways: first, individuals who are arrested and likely to receive a formal out-of-court disposal are 'diverted' into either a less serious out-of-court disposal or an informal disposal; second, individuals who are arrested and likely to be prosecuted in court are 'diverted' into either a formal out of court disposal or an informal disposal" (Robin-D'Cruz & Whitehead, 2019, p. 1)

From the above description, it is noteworthy that this process also contains some of the components of South Africa's diversion that are dissected in this chapter in the earlier conceptualisation of adult diversion. For instance, the above definition of pre-court diversion explicates that diversion or "out-of-court disposal" of criminal cases of adult offenders should involve people who are arrested or likely to be prosecuted for committing minor offences. The expression of Robin-D'Cruz and Whitehead (2019) provides some resembling features of South Africa's diversion processes, specifically the child diversion processes mentioned earlier. Although the identification of the process is labelled differently, there are similarities.

3.4.1.2. United States of America: Conceptualisation and Practice

In the United States of America, the concept of adult diversion or pre-trial rehabilitation of adult offenders started in the 1970s (Rempel, Libriola, Hunt, Davis, Reich & Cherney, 2018, p. 2; Wright & Levine, 2020). Adult diversion is also termed differently in different states of the United States of America. For instance, Kopak (2020, p.66) reveals that there are "several states have recently adopted legislation in support of pre-arrest diversion programmes that give police the authority to refer adults with behavioural health needs to treatment providers instead of placing them under arrest and booking them into local jails". The term 'pre-arrest' is a notable difference from above.

Additionally, Lapage and May (2016), based in the state of Alaska, refer to adult diversion as 'pre-trial diversion'. On the other hand, Shafer and Ashford (2015), in a different jurisdiction in the United States, in Arizona, label diversion as 'diversion' without appropriating it to adult offenders or child offenders. Although the trend and role players of adult diversion differ in the United States, it is crucial to note that adult diversion is either labelled as pre-trial diversion, pre-arrest diversion for adults or merely diversion in their context.

However, in terms of practice, Lapage and May (2016, p. 6) state that "... eligibility requirements for an offer of pre-trial diversion include a minor offence and no prior convictions". They further argue that "... diversion is not currently available for crimes against persons, weapon crimes, crimes harmful to minors, gambling, prostitution, and offences related to driving under the influence" (*ibid*). This then highlights some of the characteristics that are similar to those of England and Wales, as indicated above. The notable part is that diversion for adults is available in different states of the United States of America. It has organised and legislated eligibility criteria, which is not the case in South Africa. Another noteworthy part of the American adult diversion process is that police officials are also crucial role players in the administration of pre-arrest diversion (Kopak, 2020). Specifically, Kopak states that police officers have the authority to refer adults with behavioural health needs to treatment providers instead of placing them under arrest. This then signifies the embracement of restorative justice ethos in the United States, which involves different role players, including the police. Perhaps the inclusion of the Police Official in the restorative justice process is also worth consideration for South Africa in the future. On the other hand, the State of Illinois, as an example, has legislation that "... fosters the development of a partnership between law enforcement agencies and community

treatment providers such that officers have an alternative to arrest for adults who may have behavioural health needs" (Kopak 2020, p. 67). This means that adult diversion is truly institutionalised in several states in the United States of America.

3.4.1.3. *Canada: Conceptualisation and Practice*

As argued earlier, the scholarship reveals that restorative justice originated in Canada through the series of works of Howard Zehr (Zehr, 2008). Wilson and Hoge (2013, p.497) affirmed this and argued that Canada started implementing diversion services for adult offenders in the 1970s. Braithwaite (2004) asserts that Canada has taken restorative justice seriously since the birth of practice in 1974. The birth of restorative justice in Canada included two adult offenders who participated in the first victim-offender mediation in 1974. The "... first victim-offender mediation program occurred when two offenders charged with vandalism met with their victims to introduce compensation agreements" (Maimane, 2017, p. 23). In 2015, Manitoba, a province in Canada, launched its Restorative Justice Act, which the province calls a Canadian first, to rehabilitate offenders through reconciliation with victims and the community (*ibid*). There are clear lessons South Africa can draw from Canada's long history and this model's developments.

3.4.1.4. *New Zealand: Conceptualisation and Practice*

According to Bowen and Boyark (2003), restorative justice programmes for adults in New Zealand started in 1994; however, formal legislation for adult offender processes was first introduced in 2001. It is worth noting that in New Zealand, adult diversion is legislated in terms of several legislations: Parole Act, Victim's Rights Act and Sentencing Act (*ibid*). Types of programmes for adult offenders that are often implemented in New Zealand include family group conferencing, victim-offender mediation (VOM), and diversion (police diversion, community diversion) (*ibid*). Maimane (2017) states that these programmes were initially advocated for by volunteers who firmly believed that 'youth diversion' also had relevance to adult offenders. Besides having volunteers (of unspecified profession) as the pioneers of adult diversion in New Zealand, probation officers, social workers, and police officers are essential role players in implementing and monitoring diversion orders (Bowen and Boyark, 2003). This means there is a slight similarity in the diversion practitioners

between New Zealand and South Africa, except for the police officials who are not involved in diversion implementation in South Africa.

Going back to the types of adult diversion that exist in New Zealand, Imiera (2019, p. 16) asserts that "... in New Zealand, conferencing builds on victim-offender mediation programmes". He adds that "conferencing ensures that it brings under one roof not just the criminal offender involved in the criminal offence but also the families of those affected by the crime and the entire community" (*ibid*). The community's involvement is significant because the 'restorative justice process' is not often limited to primary victims only, but it aims to go as far as possible in addressing the concerns of everyone harmed by the offence.

The other noteworthy part is that the conditions for qualifying for adult diversion in New Zealand are similar to those in South Africa's child diversion, which the Child Justice Act details. Indeed, the processes are contextually not the same in age, but perhaps it tells South African policymakers that they may adopt the child justice conditions to develop the processes and programmes of adult diversion as well.

For instance, diversion criteria of New Zealand's adult diversion include that: (a) the offender must be a first-time offender; (b) in case the offender has a previous conviction, the conviction must be different from the offence charged with; (c) the offender must accept responsibility must also accept the conditions of the diversion (Imiera, 2019).

Another remarkable fact is that the restorative justice practices of New Zealand are also linked to traditional and ancient practices, such as Maori alternative processes for adult offenders, which have existed in the traditional justice system for ages (Maimane, 2017). This then debunks the myth of having restorative justice as a concept that was developed and pioneered in the global North.

3.4.1.5. *Germany: : Conceptualisation and Practice*

In Germany, adult diversion programmes are also institutionalised and formalised. Imiera (2019, p. 17) states that "... in Germany, the *Täter-Opfer-Ausgleich* (offender victim balancing) operates and is integrated into the German criminal code 33% of these diversion programmes are designated for adults". Having one-third of the criminal offences being diverted to adult offences shows Germany's progress towards mainstreaming restorative justice practices within the criminal justice system.

3.4.1.6. *Nigeria: : Conceptualisation and Practice*

Imiera (2019) conducted a comparative study in which he compared the restorative justice practices of South Africa and Nigeria. He found that "in Nigeria, the amnesty programme of the Nigerian authority is nothing short of applying ADR [South Africa's Alternative Dispute Resolution] in the criminal justice system" (Imiera 2019, p. 17)". This means that Nigeria has programmes in place, within the criminal justice system, that have elements of restorative justice or alternative dispute resolution. According to Imiera (2019, p. 17), "South Africa can borrow a leaf from the Nigerian and Australian experiences". He adds that "... there is a need to bring South African law into conformity with global practice in other jurisdictions where ADR is part of criminal justice mechanisms" (Imiera, 2019, p. 17). Learning from other African nations is even more relevant to South Africa than lessons from Euro-North American countries.

The following section presents the context of South Africa in relation to adult diversion.

3.5. ADULT DIVERSION PRACTICES IN SOUTH AFRICA

Maimane (2017) claims that in South Africa, adult diversion was first introduced by the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) in 2008. In 2011, the Integrated Social Crime Prevention Strategy (2011, p. 31) revealed that "[t]he South African criminal justice system does not, however, make enough use of adult diversion, with the result that large numbers of people are directed into the prison system, often for very short periods of time". A contrasting view is by Maimane (2017, p. 8) who revealed that "[a]dult diversion is currently the most utilised service of all NICRO services". While these views contrast, it is important to appreciate that adult diversion; this current is based in rural UThukela district, where NICRO has never existed. Therefore, capturing the nuanced experiences of practitioners within this jurisdiction was essential.

Maphosa and Rasool (2017) posit that there must be a heightened availability of pre-trial programmes for adult offenders in South Africa. However, these authors propose that pre-trial rehabilitative programmes for adult offenders must be linked to laws within the criminal justice system and should focus mainly on domestic violence and intimate partner violence

(Maphosa & Rasool, 2017, p. 9130). In another publication, Maphosa (2015) argued that social workers are central in implementing pre-trial adult rehabilitative programmes.

Concerning Social Work as a profession, a plethora of research has been published in an attempt to relate the profession of social work and restorative justice (Van Wormer, 2003; Van Wormer, 2006; Kleinhans, 2013; Gxubane, 2015). In another segment of her work, Van Wormer (2003) argued that restorative justice principles cannot be alienated from social work principles because they are both relevant to family practice. She added that both restorative justice and social work practice aim to empower people and bring social justice to the disputed matters in public (*ibid*). Therefore, it is crucial to investigate the practice of adult diversion by including social workers. Of note, adult diversion is a multi-disciplinary process in the criminal justice system implemented through the lens of the restorative justice paradigm to assist the offender, victim and every other stakeholder that might have been affected by the offence.

Maimane (2017) and Somaru and Rautenbach (2020) highlighted many challenges associated with the discretionary nature of adult diversion. One of them is the negative and/or inconsistent prosecutors' attitudes about diversion (*ibid*). The issue of negative attitudes towards restorative justice by prosecutors dates back to the 1990s. A study by Muntingh (1997) on the attitudes of prosecutors about diversion revealed that the majority of prosecutors had limited knowledge of the contents of various diversion programmes, which is probably due to a lack of adequate training; consequently, they were not in favour of diversion or other forms of alternatives to criminal matters. On another note, Kleinhans (2013) indicated that there is still a lack of adequate training for role-players in restorative justice programmes in South Africa. As a result, it becomes crucial to harvest the views of role players such as public prosecutors and probation officers to understand what restorative justice means to them and what kind of support they need to implement it more frequently and effectively. This proposed research intends to bring the voice of social work practitioners or probation officers into the discourse of restorative justice practices.

Another study by Naude and Prinsloo (2005) revealed that adult diversion was not popular for prosecutors and magistrates, although 13% of their participants opted for this option. Their study was quantitative and based on the attitudes of prosecutors and magistrates about restorative justice options. Hargovan (2012, p.15) argues that "prosecutors tend to see their role as one of presenting evidence in court to get convictions, rather than promoting problem-

solving". Prosecutors are the gatekeepers in criminal cases, given their inherent discretion in managing them (*ibid*). Mzinyane (2017) discovered that some prosecutors have a negative attitude towards diversion. Although his study was specific to child diversion, it indicates the inconsistency in attitudes of the 'gatekeeping' prosecutors.

On the other hand, Hargovan (2012, p. 17) discovered that "... it was encouraging to note from the interviews that prosecutors also recognised the potential of RJ for reconciliation and restoration in communities, especially when dealing with minor and petty offences emanating from conflict within families and between people known to each other that could be dealt with more appropriately outside the 'confines' of court processes and procedures". Given the inconsistency in previous research and the fact that Hargovan's study and Mzinyane's study (*op cit*) were based on child diversion, perhaps the views of prosecutors concerning adult offenders might be different, hence the importance of this current study.

Other than the trends on diversion, it is essential to review and analyse the regulatory framework for adult diversion, which is detailed below.

3.6. GLOBAL AND LOCAL LAWS AND POLICIES: WHAT INFORMS ADULT DIVERSION?

As a restatement, one of the objectives of this study is to explore factors that inform the implementation of adult diversion. Hence, this section attempts to analyse some of the international and local policies, treatises, and legislations that South Africa ratified.

3.6.1. *International Instruments on restorative justice and adult diversion*

South Africa has ratified several international instruments, guidelines, and rules for managing offenders. However, herein, the researcher pays attention to instruments that relate to adult offenders during pre-trial stages. These international instruments include the United Nations Standard Minimum Rules for Non-Custodial Measures 1990 ('Tokyo Rules'), the United Nations Guidelines on the Role of Prosecutors (1990), Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, The Kadoma Declaration on Community Service Orders in Africa, and The Ouagadougou Declaration on Accelerating Prison and Penal Reform. These instruments are detailed below.

3.6.1.1. United Nations' Standard Minimum Rules for Non-Custodial Measures 1990 ('Tokyo Rules')

In summary, the Tokyo Rules are applicable to all types of offenders [young and old], and they are applicable at all stages of the administration of justice (UNODC, 2006). In essence, the rules encourage the use of non-custodial measures in the criminal justice systems of member countries (*ibid*). Furthermore, it encourages the use of restorative justice options and multi-disciplinary partnerships between different professionals. Specifically, according to the Tokyo Rules (formally quoted as [United Nations, 1990]),

"Non-custodial measures do not restrict offenders' liberty as much as imprisonment. They do not require offenders to leave their families or communities, relinquish their responsibilities or give up any employment they might have had. Nevertheless, offenders undergoing non-custodial measures may be subject to various conditions, restrictions and requirements."

In addition, Rule 5 of the Tokyo Rules of 1990 stipulates the conditions of *Pre-Trial Disposal of Criminal Cases*.

Rule 5 stipulates that:

"where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases, the prosecutor may impose suitable non-custodial measures, as appropriate."

A crucial part of the above excerpt is that "a set of established criteria shall be developed within each legal system". However, the South African government has since failed to establish the criteria for pre-trial offences, which speaks explicitly to adult diversion, amongst other restorative justice approaches.

These rules are a yardstick for the legislators when establishing legislation that will comply with these rules and, therefore, address the shortage of legislation concerning adult diversion.

3.6.1.2. The United Nations Guidelines on the Role of Prosecutors (1990)

On the 7th of September 1990, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the United Nations Guidelines on the Role of Prosecutors. These Guidelines contain a number of subjects ranging from the qualifications of prosecutors to the role of prosecutors within the courtroom. However, concerning adult diversion, these guidelines highlight two key aspects: the criteria for discretionary prosecution and the use of alternatives to prosecution. For instance, in terms of Article 18, which reads:

In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s).

The above excerpt clearly indicates that the United Nations also endorses the diversion of offenders. South Africa is a member state of the United Nations that ratified this treaty. In compliance with this, South Africa established legislation called the National Prosecution Act 32 of 1998, which will be detailed below.

Concerning the discretionary functions and the independence of the prosecution, article 17 stipulates "... in countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution". Of interest to me is the issue of "discretionary consistency" and fairness. Of note, in an environment where there is no legislation for adult diversion, 'subjective inconsistencies' are likely. Therefore, this gap gives impetus for the current research to be presented, as is the case in the following chapters.

3.6.1.3. Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines)

According to NICRO (2021), these guidelines were adopted by the African Commission on Human and Peoples' Rights in April 2014 and provide a framework to improve the treatment of persons subject to arrest, police custody and pre-trial detention and advocate the use of alternatives to imprisonment. Specifically, Article 11(c) stipulates that "judicial authorities

shall demonstrate in the reasons for their decisions that they have considered alternatives before making a pre-trial detention order". This indicates that pre-trial detention should not be considered compared to other non-custodial alternatives for deserving cases. This does not deny the need for custodial detentions in some instances, but this treatise emphasised the comparative consideration of alternatives to captivity versus detention. Although the Guidelines are not specific to adult diversion, they highlight the caution that is emphasised by the African Union when considering captivity in some issues.

3.6.1.4. The Kadoma Declaration on Community Service Orders in Africa

This continental declaration was adopted at the International Conference on Community Service Orders held in 1997 in Zimbabwe, at which participants agreed that imprisonment should be a last resort, noting community service as a positive and cost-effective alternative, which should be preferred as a custodial sentence (UNODC, 2006). The Declaration notes the inhumane conditions and overcrowding in the prisons in Africa and that the majority of prisoners who occupy prisons are not a threat to society (*ibid*). The Declaration further acknowledges that 'Community Service is in conformity with African traditions of dealing with offenders and healing the damage caused by crime within the community' and is cost-effective to implement (NICRO, 2021).

3.6.1.5. The Ouagadougou Declaration on Accelerating Prison and Penal Reform

This treatise emphasises the importance of criminal justice policy that encourages the use of alternatives to imprisonment. The Plan of Action addresses strategies for reducing the number of sentenced prisoners, including the increased use of proven effective alternatives, such as community service and exploring other sanctions (including partially or fully suspended sentences, probation and correctional supervision).

3.6.1.5. Sustainable Development Goals: Goal 16 and Goal 17

Crime is a threat to sustainable development. Therefore, in September 2015, member states of the United Nations (UN) adopted a new sustainable development agenda entitled "Transforming our World: The 2030 Agenda for Sustainable Development" (Haywood,

Funke, *et al*, 2019). Central to the agenda are the 17 Sustainable Development Goals (SDGs), which replaced the Millennium Development Goals (MDGs) that were due to lapse in 2015 (*ibid*). Specifically, it is arguable that the SDGs (Goals 16 and 17) are directly linked to adult diversion to achieve sustainable development.

Goal 16 promotes the principles of Peace, Justice and Strong Institutions. Crime management strategies such as adult diversion directly affect peace, justice and strong institutions. Adult diversion is embedded in the principles of justice (i.e. restorative justice). It also endorses peace since its features involve the involvement of both the victim and offender(s). Lastly, it also requires strong functional institutions (i.e., the Judiciary, the National Prosecuting Authority, the Department of Social Development, the Department of Justice and Constitutional Development and non-governmental organisations) and a clear institutionalisation of adult diversion through legislation. As a result, it can be argued that this study is also aligned with this goal.

On the other hand, Goal 17 is based on a theme of partnerships for the achievement of goals. This study also highlights the interdisciplinary roles of public prosecutors and probation officers, and it is therefore crucial to relate adult diversion to this sustainable development goal. This study is a strong statement that crime prevention is not solely the responsibility of legal and criminological professions; social work can produce knowledge that is valuable to crime management.

Based on these international instruments, it is clear that South Africa has made significant commitments on international platforms to create adult diversion processes and laws. However, the critical challenge is the implementation of these aspirations. The following section presents a selection of local South African policies and laws concerning adult diversion.

3.6.2. National Policies and Laws on restorative justice and adult diversion

At a national level, there is no specific legislation on adult diversion. However, several national policies and laws indirectly relate to diversion in general and restorative justice, which is the alternative to the traditional criminal justice methods. These policies and legislations concerning adult diversion are worth analysing.

The list of these policies includes:

- 3.6.2.1. The White Paper on Social Welfare of 1997
- 3.6.2.2. The White Paper on Safety and Security 2016
- 3.6.2.3. Integrated Social Crime Prevention Strategy of 2011
- 3.6.2.4. Child Justice Act 75 of 2008
- 3.6.2.5. Service Charter for Victims of Crime in South Africa of 2004
- 3.6.2.6. The National Development Plan (NDP)
- 3.6.2.7. Criminal Procedure Act 51 of 1977
- 3.6.2.8. National Prosecution Act 32 of 1998
- 3.6.2.9. Probation Services Act of 1991 (as amended)

Below is the discussion of each of the above-listed legislative and/or policy frameworks.

3.6.2.1. *The White Paper on Social Welfare of 1997*

The White Paper on Social Welfare was one of the first policy initiatives, post-apartheid, that the South African government introduced to deal with crime, which has constantly threatened the development, harmony and welfare of all. In particular, the White Paper on Social Welfare mentions the restorative justice approach and the intensified appointment of probation officers to deal with crime in South Africa. However, this legislation does not specify anything concerning adult diversion or its processes. A noteworthy part is the reality that this policy acknowledges restorative justice as an answer, the employment of adequate probation officers and interdisciplinary intervention in the fight against crime.

3.6.2.2. *The White Paper on Safety and Security 2016*

The South African Parliament adopted this White Paper in April 2016. The policy seeks to advance an integrated approach to crime, safety and security. The White Paper proposes a 'whole of government and whole of society' approach, reaffirming that building safer communities is a collective responsibility of both government and citizens. In line with the ethos of restorative justice, which is collective responsibility, this policy also acknowledges

everyone's role in the fight against crime. Although adult diversion is not part of the discussions, it discusses restorative justice approaches to crime management.

3.6.2.3. Integrated Social Crime Prevention Strategy of 2011

According to the Integrated Social Crime Prevention Strategy (2011, p. 31), "the South African criminal justice system does not, however, make enough use of adult diversion, with the result that large numbers of people are directed into the prison system, often for very short periods of time". It further highlights the risk reduction pillars of being diverted. Specifically, it stipulates that "Diversion has the positive effect of preventing contact with others in the system that may cause harm to the person, as well as prevention of the stigma that relates to arrest and conviction" (*ibid.*, p. 32).

Crime prevention through intervention programmes:

- Diversion promotes crime prevention through creating access to intervention programmes. Those who are diverted from the criminal justice system may enter programmes intended to reduce the risk of reoffending.
- They may also engage in restorative justice programmes and processes, where they will be required to make amends to the crime victim.
- This may also result in crime prevention, as these processes often result in offenders developing a better understanding of the impact of the crime on the victims.

In essence, this policy, in its situational analysis, highlights the unpleasant reality that South Africa is not utilising enough adult diversion options, which in turn results in increased prison populations. This gap, as identified by this policy, is amplifying the relevance of this current study, which will partly diagnose the real-time challenges of adult diversion in a South African district.

3.6.2.4. Service Charter for Victims of Crime in South Africa of 2004

The Service Charter for Victims of Crime in South Africa (also known as the Victim's Charter) was established in 2004. Amongst other vital aspects, this policy provides "victims' rights", which include, amongst others, the right to compensation and the right to restitution. Notably, both compensation and restitution are crucial elements of restorative justice. This

means that this policy has always emphasised compensation and a victim-focused justice system (Strang *et al.*, 2013). However, for a very long time, the justice system has always focused on the "State Versus the Accused", neglecting the paradox of the accused versus the victim. This has been happening due to the adversarial nature of South Africa's criminal justice system.

3.6.2.5. *The National Development Plan (NDP)*

Chapter 12 of the National Development Plan (Vision 2030) highlights the vision of having "Safer Communities". According to the NDP, the 'safer communities vision' can be achieved through a seven-point plan, which is integral to the NDP. One of the pillars of the seven-point plan is about "making substantial changes to the present court process in criminal matters through practical, short and medium-term proposals to improve the performance of the courts, especially the regional court". As a result, the researcher believes that substantial changes to the present court system could mean the introduction of adult diversion as a practical proposal to deal with the shortfalls of retributive justice.

3.6.2.6. *Child Justice Act 75 of 2008 (as amended)*

This legislation is specific to child offenders. However, research by NICRO (2021) posits that there are significant lessons that the country can learn from the Child Justice Act 75 of 2008 (as amended), attempting to formalise adult diversion. This legislation highlights some of the key elements of diversion, processes which can be benchmarked, and the compliance monitoring process, amongst other aspects, which could be adapted and useful for establishing practice guidelines for adult diversion.

3.6.2.7. *Criminal Procedure Act 51 of 1977*

It is worth mentioning that this legislation is only applicable to adult offenders in relation to the 'procedural law' of dealing with offenders. As a result, section 6 of this Act stipulates the powers of prosecutors to withdraw cases. Specifically, section 6(b) of Act 51 of 1977 stipulates that a prosecutor may "at any time after an accused has pleaded, but before conviction, stop the prosecution in respect of that charge, in which event the court trying the

accused shall acquit the accused in respect of that charge" (Republic of South Africa, 1977). This then gives the prosecutor an opportunity to divert the matter and/or exercise other powers that are contained in 62 of the same Act, where a prosecutor can apply for an addition to Bail Conditions. The bail conditions could be amended and/or added with further conditions. This option is how adult diversion typically takes place since there is no specific legislation regarding it. However, this process relies on the discretion of a public prosecutor.

3.6.2.8. National Prosecution Act 32 of 1998

This legislation highlights the roles, establishment and powers of the prosecutor. Specifically, this Act aims to comply with the principles of the United Nations Guidelines on the Role of Prosecutors. This Act, therefore, regulates the actions of prosecutors and fosters uniformity, fairness and consistency. Of note, in the retributive justice system, "conflicts become the property of lawyers, and formal legal processes rob individuals of the right to full participation in the dispute resolution process" (Christie, 1977, p. 4). Even though this Act specifies the role of the prosecutors, there are still shortfalls and inconsistencies, which will be investigated further by this study.

3.6.2.9. Probation Services Act of 1991 (as amended)

Probation Services Act (PSA) provides for the establishment and implementation of programmes aimed at combating crime, rendering assistance to and treating certain persons involved in crime, and dealing with matters connected therewith. Concerning adult diversion, it highlights who is on probation, their roles, and the definition of diversion, amongst other important aspects. However, the shortfall of this legislation is that it does not specify any provisions about adult diversion and/or inherent processes. NICRO (2021) proposes that perhaps this legislation could be a perfect fit, in its future amends, for the integration of adult diversion in South Africa.

Of note, all these laws and policies are somewhat emphasising the importance of alternative measures to the criminal justice system. All these legislations are somehow enabling the implementation of diversion but in a very unclear manner. Hence, the above analysis of these policy instruments. Given this discussion, adult diversion is worth exploring due to its novelty and unavailability of laws and policies that underpin its practice at a national level.

3.7. SUMMARY OF THE CHAPTER

In this chapter, the researcher engages and analyses numerous scholarly texts, journal articles, books, editorials, government reports, local and international policies and legislations. The benefits of exploring a less-researched study niche, such as adult diversion, are that the researcher, through this chapter, was able to attempt to strengthen the discourse of adult diversion through a South African Social Work lens.

The design of this current study was then motivated by the dearth of a clear definition of adult diversion and the need to possibly generate a definition produced by the practitioners of adult diversion, which is a socially constructed process. "The difficulties of arriving at a perfect definition of restorative justice have led some writers on restorative justice to favour the idea of identifying values and 'elements' of restorative justice" (Crawford & Newburn, 2003, p. 19). Nonetheless, the appraising discussions above flag three revelations, through scholarly evidence, that (1) there is indeed a gap in South African literature on the subject of adult diversion; (2) there is positive value in the practice of restorative justice processes, including diversion; (3) and that the development of local research on the subject of adult diversion can contribute insights to the development of policy and legal frameworks on the subject of adult diversion, which currently lacks a regulating framework (*cf.* Maimane, 2017, pp. 42-43). The following section attempts to conceptualise or define this concept.

Chapter 4: CONDUCTING THIS RESEARCH PROJECT

4.1. INTRODUCTION

The execution of scholarly research often hinges on rigorous and transparent conceptualisation and application of philosophies and methodologies (Creswell, 2013). The positionality and thought process of the researcher are equally important as the research results and implications of the results, especially in qualitative research, where subjectivist and relativist handling of knowledge generally abounds.

Zulu (2018, p.333) reminds us that a research methodology chapter is supposed to be “... a narrative of the journey undertaken to complete the research” project. By framing the methodology chapter as ‘... a narrative of the journey undertaken...’, Zulu (*op cit*) emphasises the importance of providing a comprehensive and reflective account of the research process, highlighting the challenges faced, the strategies employed and, remarkably, the insights gained. Like a journey, this chapter goes beyond the demonstration of scientific methods adopted. It unpacks the study’s inherent considerations and reflections of the researcher during the planning and execution of this research process. To some extent, the chapter reveals the researcher’s ‘*initial taken-for-granted assumptions*’ and the ultimate transformation from such limitations, which unfolded during the pursuit of this study.

The exploration of adult diversion practices in the UThukela district was a complex coalescence of personal reflection and academic inquiry for the researcher, who is a former probation officer who also practised diversion of offenders within the UThukela district [research site]. This dual perspective as a researcher and former practitioner augmented the complexity of the inquiry by enabling deeper contextual understanding, context-specific

conceptualisation of the study, and reflexive interpretations of the complexities and contradictions inherent in adult diversion processes and programmes in the UThukela district.

The question of whether the researcher's prior work experience would be an asset or a hindrance to the research emerged as a critical point of reflection. A pivotal moment arrived during discussions with the study supervisor, who illuminated the necessity of carefully considering the researcher's positionality in relation to the study, the participants, and the data. The researcher's positionality as both an insider and an outsider offered invaluable insights. On the other end, it also raised concerns about potential bias and further raised questions about the maintenance of detachment, which could have compromised the trustworthiness of the project. Accordingly, a reflexive approach was crucial to navigating this complex dual positionality between personal experience and academic inquiry. This meant that the researcher had to intentionally evaluate and mitigate how his position may affect the research process and outcome.

On this topic, DeCarlo, Cummings and Agnelli (2020) acknowledge the peculiar position of social work researchers who have transitioned from the practitioner position to the role of inquirers. These authors argue that it is crucial for social workers who have transitioned from practitioners to researchers to be aware of their possible "error in thinking" and cognitive biases that might compromise their research abilities (DeCarlo *et al.*, 2020, p.10). On the other hand, these authors emphasise the importance of embracing the "practice wisdom" of social work researchers, owing to the reality that the profession of social work is, in fact, dually 'academic and practice-oriented' (DeCarlo *et al.*, 2020, p.12). The academic and practice orientation means social work is an applied human science that goes beyond knowledge production but towards application, and vice versa.

According to DeCarlo *et al.* (2020), while social work research should embrace practice wisdom, researchers still need to execute research in an organised, intentional, trustworthy and usually follow a set of affirmed scientific steps. In this research project, the researcher was actively aware and alert of his social work positionality, 'practice wisdom', 'error in thinking' and experience when conceptualising, conducting, analysing and writing up this current research project. While this study was inspired by the researcher's experience [as discussed in Chapter 1], philosophical and methodological clarity became vital in ensuring academic rigour in the midst of the researcher's positionality. In navigating the study, there was a necessity for a shift in thinking and doing, whereby intentional transformation from

being a ‘former practitioner with knowledge’ to being a doctoral researcher was necessary in order to be settled about what the researcher needed to do with his knowledge [both his experience-based knowledge and the relative knowledge of participants]. This transition involved a deliberate shift in perspective, moving from a focus on a ‘knower perspective’ to a more critical and theoretical exploration of the research topic. Likewise, this chapter provides transparency by narrating the dynamics that were associated with the philosophy of the study, the location of the study, the methodology and the methods adopted. The following section discusses the philosophical orientation of this study.

4.2. POSITIONALITY AND PHILOSOPHICAL ORIENTATION OF THE STUDY

The philosophical stance of this study pivots on the assertions of Creswell (2013, p.15), who reminds us that “[w]hether we are aware of it or not, we always bring certain beliefs and philosophical assumptions to our research”. This implies that the positionality of the researcher is central when navigating knowledge [pursuit and contribution of knowledge] or truth in qualitative research. Based on Creswell's assertion, the researcher unpacks a combination of philosophical aspects of the study that justify the researcher’s position, intentions, reasoning, and execution of the study. These include this study’s research paradigm (constructivism), and ontology (subjectivist-relativism).

4.2.1. Research Paradigm

This study is framed by social constructivism as a worldview. According to De Vos, Strydom, Fouché, and Delport (2011, p.8), social constructivism lies in the belief that "... all human beings are engaged in the process of making sense of their own worlds and continuously interpret, create, give meaning, define, justify and rationalise their daily actions" through interactions with others. This paradigm suggests that knowledge is relative, subjective and socially constructed (Fouché *et al.*, 2021). This paradigm was relevant because of its emphasis on the subjective meanings that participants attach to their experiences, together with the role of social interactions, structural context, socio-culture and historical circumstances in shaping participants’ understanding of their world (Yin, 2016).

- *Settling for a Fitting Paradigm*

During conceptualisation, the researcher initially considered the interpretivist paradigm as suitable. The study's intention of exploring the implementation of adult diversion processes and programmes through the subjective interpretations of probation officers and public prosecutors seemed to align with the interpretivist approach at first glance. However, upon the 'process of self-interview' (Olmos-Vega *et al.*, 2023, p. 246) as a preliminary test of the interview schedule, it became evident that the social constructivist paradigm would be more apt. Turin *et al.* (2024) argue that interpretivist and social constructivist paradigms are not synonymous. Both social constructivism and interpretivism recognise the subjective and socially constructed nature of knowledge. However, social constructivism focuses on the broader social and cultural factors that shape knowledge construction, while interpretivism emphasises understanding individual interpretations (*ibid*). In terms of epistemology, *interpretivism prioritizes understanding how individuals experience and interpret their reality, while social constructivism emphasizes how individuals construct their own realities through interactions with others* (Turin *et al.*, 2024, p.4) [italics added for emphasis].

While the researcher felt anxious about adjusting the initial research paradigm [interpretivism to social constructivism], he was unfettered by the assertion of Fouché *et al.* (2021, p.41), who argued that in qualitative research, "... the research design is flexible and evolves throughout the research process". The flexibility inherent in the qualitative research approach was a crucial factor in the paradigm's final choice, which ultimately became social constructivism. The shift in paradigm was crucial as social constructivism had more emphasis on how participants construct their realities and/or practices through interactions with others within their context.

4.3. THE APPLICATION OF THE RESEARCH APPROACH

This study was conducted using the qualitative research approach. The choice of a qualitative approach was motivated by the desire to contribute novel insights (Fouché *et al.*, 2021; Rubin & Babbie, 2013) into the discourse of adult diversion, a relatively under-researched area. As Yin (2016, p. 8) notes, qualitative research can contribute to the world's understanding of human social behaviour and emerging concepts. By exploring the experiences of those involved in the co-creation and sustainability of adult diversion, this study aimed to provide a deeper understanding of this emerging practice.

Given the relatively under-researched stance of adult diversion, a qualitative approach was essential to gain detailed insights into the practices and experiences of those involved in its practice [‘practice’ a concept that the researcher coined in Chapter 1 as “bottom-up implementation”, labelling practice as an inductive manifestation of the process, due to the absence of law].

The research objectives, problem, and paradigm informed the adoption of the qualitative approach. In line with the recommendations of Creswell (2013), this study considered the building blocks of this approach, such as complex reasoning through inductive logic, participants' meanings, the researcher as an instrument and critical reflexivity. These components were essential for executing a rigorous and insightful qualitative inquiry.

- Complex reasoning through inductive logic

Given the researcher's prior experience as a probation officer in Ladysmith, within the UThukela District, an inductive, bottom-up approach was deemed necessary to draw meanings directly from the data and not from the knowledge of the researcher's experience. Using inductive reasoning, as a crucial component of the qualitative research approach, mitigated the risk of "confirmatory bias", as described by DeCarlo *et al.* (2020), where the researcher's practice background might contaminate unduly the data interpretation, leading to predetermined conclusions. By employing inductive reasoning as a building block of the qualitative approach, the research prioritised the emergence of themes from the participants' narratives, minimising the potential for imposing prior knowledge or assumptions. This fostered a more grounded understanding of the participants' experiences, ensuring their perspectives formed the foundation of the analysis.

- Participants' meanings

Due to the reliance of this approach on ‘quality’ [distinct attributes as described by participants], value and subjectivity more than measurements, it meant that the study had to pay attention to understanding the meanings that participants expressed and associated with adult diversion processes and programmes (Creswell, 2013; Dhludhlu, 2021). Since there is no institutionalised definition of adult diversion as an emerging practice, participants provided their description of what diversion is, as shown in the first theme (data presentation and discussion) in Chapter 5. While this chapter does not pre-empt the research results, it is nonetheless vital to indicate that, through participants' own meanings, the study was able to gain insights into factors that inform, promote, and hinder adult diversion.

- The researcher as a tool

According to Wa-Mbaleka (2020, p. 33), the researcher must embrace his positionality as a tool or 'instrument' that has a crucial role to play in qualitative research processes. In this study, the researcher's technical skills, interpersonal skills, reflexive transparency, and ability to build rapport significantly influenced the quality of data collected and analysed. As a qualified and experienced social worker with a non-novice understanding of qualitative research, the researcher successfully navigated this role. Moreover, the researcher's insider status as a former probation officer in the UThukela district may have facilitated the participants' disclosure of profound insights and information. This insider perspective allowed the researcher to establish trust and rapport with participants, potentially leading to more candid and in-depth discussions.

The researcher's background, experiences, and inherent preconceptions also shaped the design of interview questions, the execution of data collection, and the interpretation of participant narratives. For example, the researcher's prior experience as a probation officer may have influenced the selection of interview prompts and the types of questions asked.

- Critical reflexivity : *utilising self-interview method before data collection*

Critical reflexivity was a central consideration, particularly given the researcher's eight years of direct and indirect experience with adult diversion. This process, defined by Gray (2009, p. 580) as "... the monitoring by a researcher of her or his impact on the research situation being investigated," was crucial for acknowledging and managing pre-existing knowledge.

To intentionally "bracket" personal experiences and assumptions prior to data collection, the researcher conducted a self-interview. This method, identified by Olmos-Vega, Stalmeijer, et al. (2023, p. 246) as a key technique for critical reflexivity, provided an "excellent opportunity for researchers to explore personal experiences and the theories and research that have shaped their views on their topic" (ibid.).

This self-interview served to validate the 'presumed research problem' and pre-test the data collection tools for usability and wording. Crucially, it ensured the researcher remained open to exploring participants' subjective experiences, rather than solely relying on personal, autoethnographic accounts (which were not part of this study's design). This process of resurfacing and either reaffirming or deconstructing the researcher's prior knowledge

ultimately enhanced the validity of the data collection and the objectivity of the subsequent analysis.

4.4. NAVIGATING THE RESEARCH DESIGN

Settling on a research design for this study was a process. This study was conceptualised on the premise of an exploratory research design. During the initial stages of this research project, the exploratory research design seemed to be an absolute fit for this project. The decision to initially adopt an unaugmented exploratory research design was rooted in the study's intention to explore the uncharted territory of adult diversion. Aligned with this position, Bhattacharjee (2012, p.6) asserts that "exploratory research is often conducted in new areas of inquiry, where the goals of the research are: (1) to scope out the magnitude or extent of a particular phenomenon, problem, or behaviour, (2) to generate some initial ideas (or "hunches") about that phenomenon, or (3) to test the feasibility of undertaking a more extensive study regarding that phenomenon". Therefore, the exploratory design was chosen "... to generate some initial ideas (or "hunches") about adult diversion" (Bhattacharjee, 2012, p.6) and for its ability to provide a flexible framework to uncover the nuances, complexities, and potential contradictions inherent in the practice routines of participants.

As the research progressed, particularly when the researcher re-familiarised himself with the research tools and during the piloting of the interview guide (through a self interview as detailed under data collection), it became evident that a purely exploratory approach was insufficient to capture the holistic picture of the relationship between adult diversion practices, the interdisciplinarity of participants and the rural context of UThukela District. The rurality of UThukela, with its unique socio-economic conditions [detailed in the location of the study below] and limited resources, significantly influenced the implementation and effectiveness of diversion processes and programmes. As a result, being intentional about capturing the context became crucial and more pronounced from the beginning of data collection. Silverton (2017, p.95) argues that "[...] PhD students tend to believe that what matters most is showing [the reading audience] that their research has followed a logical sequence". However, this scholar warns that "... anyone who has ever done any research knows that such a rigid sequence is rarely followed", given the dynamic nature and evolving ethical demands of the research environment (Silverton, 2017, p.95).

The shift to a merged exploratory-contextual design was crucial to understanding how the local environment shaped adult diversion practices. By incorporating contextual elements, the researcher could explore the nuanced understanding of the challenges and opportunities specific to the UThukela District.

According to Duda, Warburton and Black (2020), contextual research design is a qualitative research procedure that seeks to understand a phenomenon within its specific environment, examining the interplay between the phenomenon and its surrounding circumstances to develop a nuanced and in-depth understanding. Contextual research design is based on four principles: focus, context, partnership and interpretation (Duda *et al.*, 2020).

In an attempt to achieve ‘focus’, as the first principle of contextual research design, the researcher utilised a semi-structured interview guide, crafted according to the research objectives (see Appendices C & D). Relying on the interview guide assisted the researcher in maintaining ‘focus’ of the research aim and the research location, emphasising adult diversion and UThukela [amidst other restorative justice practices and locations].

On the other hand, Duda *et al.* (2020) argue that in order to accomplish the principle of ‘context’, one must visit the participants at the place where they perform the task being investigated. Likewise, the researcher conducted most of the interviews in the offices or work environments of the participants (this is detailed under data collection below). Conducting interviews in the offices of prosecutors and probation officers provided a valuable opportunity to interview participants within their natural work environment. The presence of files, documents, and other relevant materials in their offices created a tangible context for discussions, allowing participants to illustrate their experiences and decision-making processes with concrete examples. For example, in Chapter 6, there is an excerpt of a participant (PP1) who said:

“Yes, we do. This is it [participant is pointing at an arch lever file on their desk]. This is our Bible. They are right on my table now.” PP1

This signifies that the ‘context’ or work setting served as an advantage for participants to make the discussions ‘live’ and/or backed by real examples, which were quickly brought into the research. In embracing the third principle, partnership, the researcher treated the participants as experts who were equally co-creating knowledge about adult diversion.

On the element of partnership, the relativist ontology of the study meant that the researcher's truth relied on participants as partners, and without the rich input of their experiences and perceptions, the research project would not have been a success. Although they did not co-author the results, they were treated as partners.

To embrace the principle of interpretation, the researcher utilised reflexive thematic analysis, which ensured that the interpretation of the results was contextually interpreted through the duality of available data and the researcher's reflexive lens as a former practitioner. In affirming this stance, Duda *et al.* (2020, p.34) posit that contextual research design "... is by nature subjective; it is influenced by the interviewer's point of view, his experiences, and personality". This means the researcher's familiarity with the local context allowed for a more insightful exploration and interpretation of the findings. The following discussion unpacks the sampling processes of this study.

4.5. SAMPLING

This section dissects the topic of sampling by providing a discussion of the study's population, the sampling strategy, and the recruitment process.

4.5.1. Description of the Study's Population

In this study, the researcher selected participants from two (2) sample categories: public prosecutors (PP) and probation officers (PO). This means the study selected an eclectic sample that included social workers and lawyers. As defined in Chapter 1, probation officers are specialist social workers working in the criminal justice system, as defined by the Probation Services Act 116 of 1991, while public prosecutors are public lawyers with characteristics defined by sections 1 and 16 of the National Prosecution Act 32 of 1998.

From research sites [described in Table 4.2 in this chapter], the district has a total of eleven (11) probation officers who are spread across seven (7) offices and a total of fifteen (15) district public prosecutors spread across seven different magistrates' courts. Nine out of eleven probation officers and ten out of fifteen public prosecutors in the district met the study's criteria. The study adhered to ethical principles by respecting participants' right to voluntary participation. This means that matching the criteria did not equate to the 'automatic or coerced' inclusion of all potential participants because some of the participants [from both

sample categories] were either unavailable or unwilling to participate. As a result, a sample of seven (7) probation officers (PO) and seven (7) public prosecutors (PP) from the eligible pool was ultimately selected, guided by the principle of data saturation to ensure the richness and depth of the collected data. Vasileiou *et al.* (2018, p.1) assert that a "sample size in qualitative research is not important, but data saturation and data adequacy must be the main drivers for researchers" (*cf.* Yin, 2016). Fortunately, with a total of 14 selected participants, the researcher felt that he had achieved data saturation.

Having participants from two categories (probation officers and public prosecutors) had manifold advantages for this study. Firstly, it aided the researcher in including individuals who were best positioned to answer the research questions for this study and had first-hand experience in practising adult diversion within the UThukela district. Probation officers and public prosecutors often work collaboratively in the context of adult diversion (Hargovan, 2014; Mzinyane, 2017). As shown in the analysis chapters, their decisions and actions significantly impact the process of adult diversion. By including both groups, the study was able to examine the ways in which their roles intersect and how their experiences and perspectives influence the implementation of adult diversion processes and programmes.

The use of two sample categories also assisted the researcher in obtaining perspectives from the two professional lenses of Social Work and Law. Probation officers, as social workers, and public prosecutors, as lawyers, bring unique perspectives to the field of adult diversion. By including both groups, the study was able to capture the diverse range of perspectives and approaches that shape the practice of adult diversion. Since the study is embedded in a social constructivist paradigm, it also managed to examine the ways in which adult diversion was co-constructed and shaped through social interactions and discourses.

Additionally, the theoretical framework of this study [structuration and restorative justice theories] emphasises the importance of interconnectedness among individuals and the broader social structures that influence their actions and decisions. In the context of adult diversion, the practices and procedures implemented by probation officers and public prosecutors are influenced by broader workplace routines, diverse schools of thought of their eclectic professions, and organisational structures. By including both occupational groups, the study captured the interplay between individual agency and the structural constraints that shape their practice, as shown in the analysis chapters.

4.5.2. Sampling Strategy

Purposive sampling was used to select the population of participants in this study. This sampling strategy is interchangeably referred to as 'judgemental sampling' (*cf.* DeCarlo, 2020; Fouché *et al.*, 2021; Yin, 2016). Selected for its tenets, "... purposive sampling reflects intentional selection of research participants to optimise data sources for answering the research quest" (Johnson, Adkins & Chauvin, 2020, p.141). It seeks to select people or individuals who are judged to possess the required insights for the study.

Fouché *et al.* (2021, p.382) also remind us that "... the judgment of the individual researcher is obviously too prominent a factor in this type of sample". This assertion confirms the importance of judgment criteria or sampling criteria in purposive sampling. Consequently, purposive sampling allowed for a procedural selection of probation officers and public prosecutors who were deemed to possess the relevant knowledge and experience of the subject-in-question adult diversion. By focusing on individuals who are directly involved and practitioners in the practice and decision-making processes of adult diversion, the study aimed to capture the diverse perspectives and challenges faced by practitioners in this field. The researcher selected participants based on prejudged criteria. The selected population had the following characteristics, as depicted in the inclusion criteria below:

Table 4.1. Sampling Criteria for both sample categories

Sampling Criteria for Probation Officers and Public Prosecutors	
Probation Officers (PO)	Public Prosecutors (PP)
<ul style="list-style-type: none"> All potential probation officers were required to be employees of the KwaZulu-Natal Department of Social Development within the UThukela district area. 	<ul style="list-style-type: none"> All potential prosecutors were required to be employees of the public prosecution authority (namely the National Prosecuting Authority) within the UThukela district area.
<ul style="list-style-type: none"> The probation officers were professional social workers serving functions of being probation officers within their respective offices, in terms of the Probation Services Act 116 of 1991 (as amended) 	<ul style="list-style-type: none"> Public prosecutors must be legal professionals with legally acceptable <i>qualifications</i> who are designated to work with district court trials and are eligible to make decisions about adult diversion and its processes in their respective Magistrate's Courts within the expanse of the UThukela district area.

<ul style="list-style-type: none"> • Probation officers who have a minimum of one (1) year of experience and are designated to implement adult diversion programmes and also compile pre-trial reports on adult offenders within the UThukela district area were eligible for participation. 	<ul style="list-style-type: none"> • Prosecutors must have a minimum of one (1) year of experience in deciding on matters of adult diversion case(s) within the UThukela district area.
<ul style="list-style-type: none"> • Probation Officers who were in supervisory and management roles and also had the function of implementing adult diversion on a regular basis within the UThukela district area were eligible to become participants. 	<ul style="list-style-type: none"> • Public prosecutors must be district prosecutors and/or supervisory prosecutors who also have the function of implementing adult diversion on a regular basis within the UThukela district area.

The criterion displayed in Table 4.1 addressed the question of occupation, qualifications, years of experience, job functions, the location of eligible participants and the names of their employers. The reliance on a criterion strengthened the credibility of insights generated by this study, especially in capturing the relevant people as participants.

Everyone who did not meet the above criteria was purposively excluded because they did not possess adequate credentials required for this study. By carefully considering the criteria in the recruitment process, the researcher was able to assemble participants who had a fair amount of experience in practising adult diversion in the UThukela District. This purposive approach allowed for a more focused and in-depth exploration of the topic, contributing to a deeper understanding of the challenges and opportunities associated with adult diversion in UThukela.

4.5.3. Recruitment Process

The recruitment process is a critical stage in any research endeavour, and it must be conducted ethically to maintain the integrity and trustworthiness of the study. Herein, the researcher reflects on his journey of recruiting participants.

4.5.3.1. Recruiting probation officers

The recruitment of probation officers started after the acquisition of the gatekeeper letter signed by the provincial head of the KZN Department of Social Development (see Appendix

H). After this formal approval, the researcher still needed to negotiate entry with the district office, local office managers and supervisors to gain their support and cooperation. Even though the practice researcher had a gap of eight (8) years as a probation officer, during data collection, he was still partly familiar with some of the managers, supervisors, probation officers, and their organisational environment. As a result, negotiating entry was smoother and without challenges in the KZNDS. The researcher acknowledged that his former position as a probation officer within the same employer aided him in gaining the trust and acceptance of probation officers and their line managers.

After introducing himself to the office managers, the researcher approached potential participants individually, informed them about the study, and screened them against the sampling criteria. Those who did not meet the sampling criterion were informed, whilst those who were aligned with the requirements of the sampling criterion were then recruited to participate. The researcher was flexible in accommodating participants' preferences for screening meetings or interview locations, which helped minimise cancellations and rescheduling.

4.5.3.2. Recruiting Public Prosecutors

The recruitment of public prosecutors commenced after securing gatekeeper letters (Appendices F & G) from the National Prosecuting Authority (NPA). Given the NPA's management structure, which deviates from the district model (presented in Figure 4.1 below), the researcher required permission from two senior public prosecutors: one for the Ladysmith Management area and another for the Estcourt Management area.

The researcher began by emailing and calling public prosecutors. Initial attempts to recruit participants via email and phone proved largely unsuccessful. To overcome this, the researcher adopted a more proactive approach, personally visiting potential participants during their lunch breaks or court recesses. This in-person approach proved more effective, often changing the initial reluctance of potential participants. Similar to Zibane (2017, p.98), who also revealed that "early in my research journey I was extremely conscientised that fieldwork is dependent on the interpersonal dimensions – and thus managing and producing an acceptable researcher was critical during access negotiations and [...] my fieldwork". While navigating the recruitment process, the researcher was mindful of not coercing participants and respected their right to voluntary participation.

Waiting for prosecutors, sometimes within a courtroom in the court gallery, afforded the researcher an opportunity to observe criminal court processes that were unfolding. Although some processes that were unsolicitedly observed did not include adult diversion, they reminded the researcher about the positionality of prosecutors in ensuring that ‘the accused is ideally convicted’ (Hargovan, 2010).

As a former employee of the criminal court (both as a probation officer and as a court intermediary), the researcher knew that in order to obtain the attention of the legal professionals, he had to dress according to their culture. Coffey (1999), cited in Zibane (2017), reminds us that we locate our physical being alongside those of others as we negotiate the spatial context of the field. Consequently, in all the announced court visits, the researcher wore formal outfits, including three-piece suits, which afforded him professional credibility and the ability to blend in with the formal court culture. The researcher was aware that blending with the court culture or participants’ environment meant two things: either as a member of the public or as a member of the professionals. As a result, the latter was the ideal for this study.

Initial recruitment of public prosecutors presented challenges due to their busy schedules. While some prosecutors were eager to begin interviews immediately, others required more time and planning. The researcher adapted to these circumstances, combining recruitment and data collection in single meetings when necessary. Despite the ad-hoc nature of some data collection sessions, the researcher maintained adherence to ethical principles, including informed consent and the use of semi-structured interview schedules.

A notable difference between recruiting public prosecutors and probation officers was the level of legal scrutiny. Public prosecutors, as legal professionals, exhibited a higher level of scrutiny during the recruitment process. They inquired about the legal dynamics of the handling of their personal information, the researcher's authority to conduct the study, the study's value, and the ‘*privacy terms and conditions*’. The researcher addressed these concerns by emphasising the voluntary nature of participation, among other ethical protocols, which became more critical. Citing relevant legislation, such as the Protection of Personal Information Act (POPIA), was also a norm and point of departure for all recruitment interviews. The researcher appreciated recruiting participants who are legally empowered, such as prosecutors, because they would personally scrutinise the ethical grounds of the

research before they participate. Despite the dynamics, the researcher successfully recruited a group of eligible and willing public prosecutors who provided valuable insights during the data collection phase.

4.6. THE LOCATION OF THE STUDY

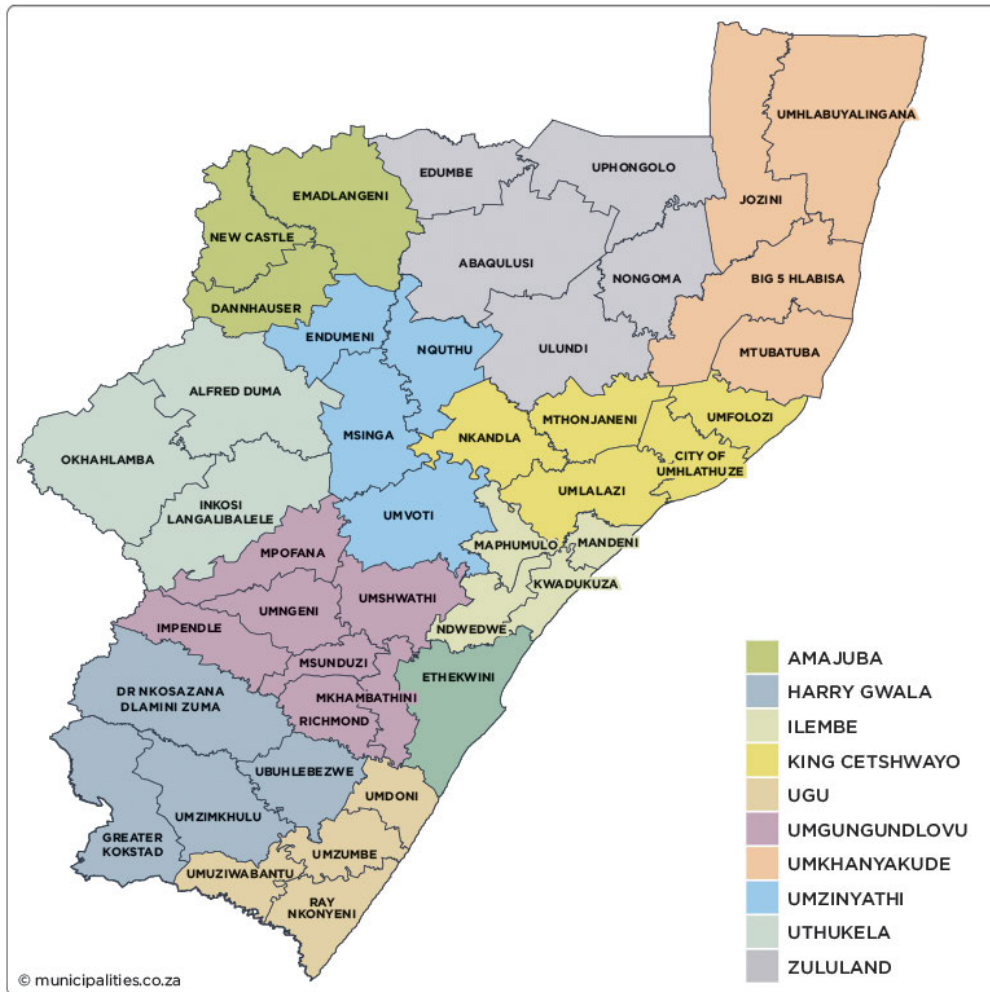
4.6.1. UThukela as a district

This research project was intentionally situated in the UThukela district area in the province of KwaZulu-Natal, South Africa. “The uThukela District is 75% rural, and most of the area comprises traditional areas” (COGTA, 2020, p.9). The rural stance of the area suggests the unique community values, lifestyle of communities, and dynamics that the criminal justice system often deals with in areas such as UThukela. The district consists of three (3) local municipal areas, namely the Alfred Duma [the expanse of Ladysmith], Okhahlamba [the expanse of Drakensberg or Bergville] and Inkosi Langalibalele [the expanse of Estcourt] (COGTA, 2020, p.6).

However, the researcher in his earlier study (Mzinyane, 2017) argued that research on the subject of diversion is often conducted in urban areas, at the exclusion of rural areas that present unique geospatial and socio-economic characteristics. Therefore, conducting a study of this calibre in UThukela positions the district as a vital region of inquiry, especially on the subject of crime management approaches and diversion.

The map below depicts the UThukela district within the KwaZulu-Natal province.

Figure 4.1. Map of KwaZulu-Natal



Adapted from: Municipalities (2024). Map of the Province of KwaZulu-Natal Depicting Districts and Local Municipalities

4.6.2. Description of the research sites in the UThukela district

This district has a total of seven (7) magistrates’ courts and seven (7) offices of the KwaZulu-Natal Department of Social Development (KZN DSD). This means the study had a total of fourteen (14) potential sites where public prosecutors and probation officers were recruited. However, not all sites were ultimately used for data collection. Instead, data was collected from 11 sites within the UThukela district. These sites included both courts of law and offices of the KwaZulu-Natal Department of Social Development.

However, due to different reasons associated with either the availability of participants or the recruitment screening processes, not all planned research sites formed part of the study location. Selecting 11 out of 14 research sites ensured that the researcher was still able to

recruit sufficient participants for data saturation to be achieved while diversifying enough sites to strengthen the chances of anonymity of participants. The table below describes the research sites that were planned versus the actual places where the researcher ended up finding participants who were simultaneously eligible, willing, and available for the study.

Table 4.2. Description of Research Sites

Research Sites that were Planned	Actual Research Sites
a) Ladysmith Magistrate’s Court	Yes, participant(s) were available, eligible and recruited
b) Ladysmith Department of Social Development	Yes, participant(s) were available, eligible and recruited.
c) Ezakheni Magistrate’s Court	Yes, participant(s) were available, eligible and recruited.
d) Ezakheni Department of Social Development	Yes, participant(s) were available, eligible and recruited.
e) Bergville Magistrate Court	Yes, participant(s) were available, eligible and recruited.
f) Bergville Department of Social Development	Yes, participant(s) were available, eligible and recruited.
g) Colenso Magistrate’s Court	Participant(s) were either not available or ineligible as per the selection criteria.
h) Dukuza Department of Social Development	Yes, participant(s) were available, eligible and recruited.
i) Ekuvukeni Magistrate’s Court	Yes, participant(s) were available, eligible and recruited.
j) Ekuvukeni Department of Social Development	Participant(s) were either not available or ineligible as per the selection criteria.
k) Estcourt Magistrate’s Court	Yes, participant(s) were available, eligible and recruited.
l) Estcourt Department of Social Development	Yes, participant(s) were available, eligible and recruited.
m) Weenen Periodical Magistrate’s Court	Yes, participant(s) were available, eligible and recruited.
n) Weenen Department of Social Development	Participant(s) were either not available or ineligible as per the selection criteria.

4.6.3. Returning to UThukela District: The Researcher’s Nostalgic Journey

The researcher was born in Peacetown [affectionately known as Emoba], a small rural settlement in Ladysmith, in the UThukela District. This place of birth and home of the researcher is part of the broader locale of the research project. The researcher also served in the same district as a student social worker and later as a probation officer for a significant number of years, employed by the KwaZulu-Natal Department of Social Development, Ladysmith Service Office. This means the researcher was in a vantage position as an insider

who had some understanding of the history, socio-cultural, and socio-economic factors of the study location.

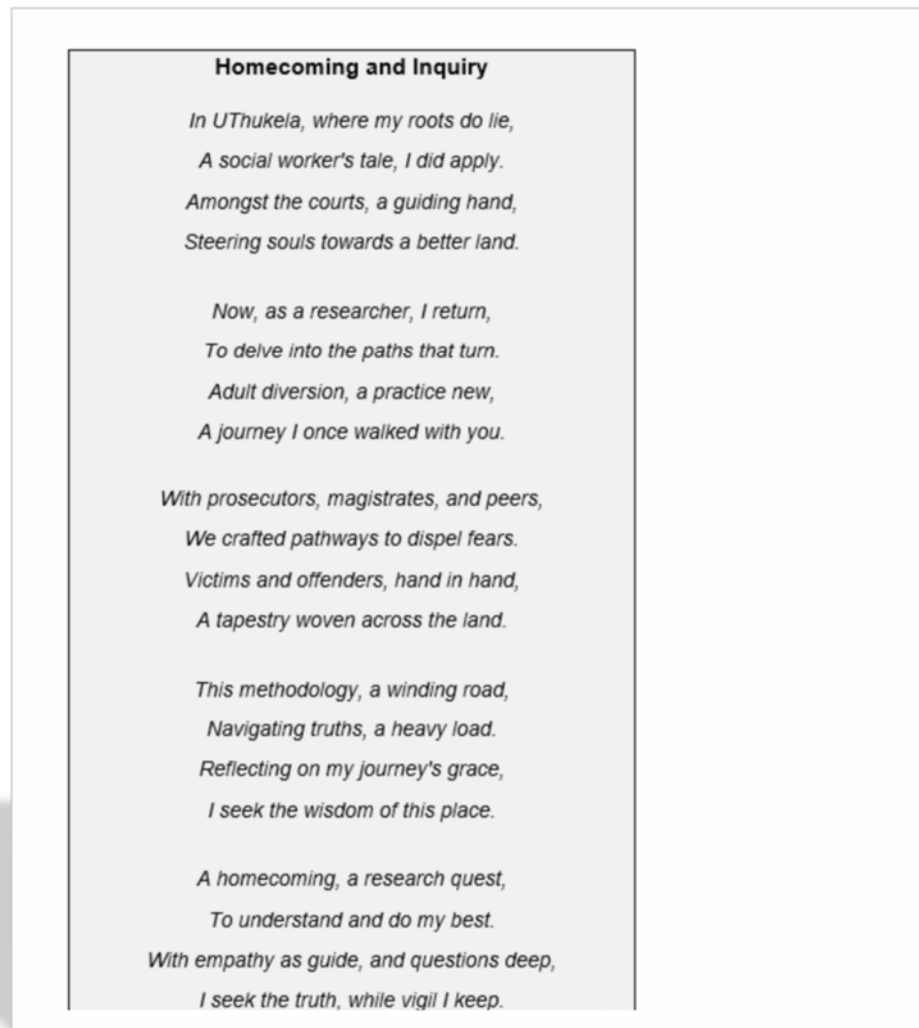
Re-entering the district as a university lecturer [employed by the Discipline of Social Work, University of KwaZulu-Natal] carried symbolic weight and power dynamics associated with the influence or seniority of the new position of the researcher. This presented the researcher as both an outsider and an insider. This inevitably influenced the research context, necessitating constant reflexivity to mitigate potential biases and power dynamics. Zibane (2017) reflected on how she navigated and dismantled complex power dynamics during her PhD research at her former high school, where many of her former teachers were still present. Now entering the school with an elevated educational and social status, she spoke about how she had to build trust and rapport by demonstrating respect and empathy and engaging in casual conversations about the shared struggles of growing up in a township. These interactions helped bridge the gap between her and the teachers, as they came to recognise shared experiences. The teachers ultimately saw Zibane as someone who embraced her roots and remained connected to her community despite her altered status. It was through such lessons that the researcher also built connections with his previous social work colleagues by sharing general struggles and practising the victory of being a social worker. This insider approach served as advantageous, as participants realised that, as much as the researcher came as an inquirer (also lecturer), he still identified as a professional social worker. Furthermore, it was essential to also balance the researcher-practitioner relationship through professional boundaries, where the researcher had to clarify the purpose of his visit, which was mainly to collect data, as described in Appendix B (Information Sheet and Informed Consent Documents).

Returning to the UThukela District as a researcher [new role] presented a vital opportunity to re-engage with a familiar yet evolving landscape. Having previously been immersed in the district's social work practice, particularly within the realm of probation services [including child and adult diversion practices], afforded the researcher a privileged vantage point from which to explore the intricacies of the system. The dual role of insider and outsider created a complex dynamic that both enriched and challenged the research process.

On the one hand, the intimate knowledge of the district's socio-cultural context and the operational realities of adult diversion processes and programmes proved invaluable. It facilitated rapport-building with participants [especially with probation officers] and enabled

a deeper understanding of the underlying issues. On the other hand, the researcher had the challenge of navigating the transition from practitioner to researcher. The researcher had to consciously reflect on his previous roles, current role, previous experiences and perspectives to attempt impartiality and rigour in the research process. Beyond the dynamics of the location, the researcher had to navigate the philosophical aspect of the project.

The poem below provides a further allegorical reflection of the researcher's considerations:



While this research did not adopt poetic inquiry as a research design, the researcher assumed that the sporadic use of poetic reflection would be helpful since it is a literary vehicle he enjoys using. The above poem, "Homecoming and Inquiry", provides a vivid yet metaphoric reflection of the intersection between the researcher and the UThukela district, serving as a parable for the researcher's personal and research journey within the expanse of UThukela. Through the lens of the poem, the researcher explores themes of identity, experience, and the complexities of conducting research in a personal context.

The poetic assertion of "*Now, as a researcher, I return*" ... "*A journey I once walked with you*" reflects the researcher's consideration of his previous experiences as a social worker (probation officer), co-creating the practice landscape of adult diversion and probation services. In addition, the opening lines firmly establish the researcher's deep-rooted connection to UThukela. This personal connection is mirrored in the description of the researcher's previous role as a social worker, suggesting a strong sense of familiarity with the community and its challenges. The line "*A journey I once walked with you*" highlights the researcher's shared experiences with the people he is now studying, emphasising the potential for empathy and understanding.

Stanza 4 presents the research process as a "*winding road*" and a "*heavy load*". This poetic imagery suggests the challenges and complexities inherent in conducting research, particularly when the researcher is navigating familiar territory. On the other hand, the researcher's reflection on the "*wisdom of this place*" indicates a desire to draw on his personal experiences and insights to inform the research. It also accentuates the challenges and complexities inherent in the researcher's quest, owing to his intimate knowledge of the location. The metaphor of "*unravelling stories*" suggests the researcher's commitment to uncovering the narratives and experiences of the participants [relativist truth beyond what he knows], which was beyond his insights as a former practitioner.

The researcher's return to the district as a researcher is described as a "*journey*" and a "*quest*". This suggests a sense of exploration but also a recognition of the challenges inherent in navigating a familiar space with a new lens. The poem concludes with a commitment to "empathy as guide" and the pursuit of "truth". This tension between empathy and objectivity is a central challenge for researchers working in personal contexts. However, the use of phrases like "heavy load" and "vigil I keep" suggests a sense of responsibility and a commitment to conducting the research with integrity.

4.7. DATA COLLECTION

The data collection process is one of the central milestones of every primary research project. Hence, this part of the chapter presents two main topics: description and justification of the data collection tool and the reflections on the data collection process.

4.7.1. Description and Justification of the Data Collection Tool

The qualitative and social constructivist stance of this study necessitated the researcher to adopt an aligned data collection strategy or tool. According to Geyer (2021, p. 355), "verbal communication is the key to the collection of authentic, descriptive, rich, and thick qualitative data". As a result, in this study, the researcher utilised individual semi-structured interviews as a verbal communication strategy in order to collect descriptive, contextual, rich, and thick qualitative data. The semi-structured interviews were conducted individually and face-to-face in this study.

The researcher utilised two sets of semi-structured interview schedules, which were contextualised and aligned with the typical roles of each sample group during their practice [see Appendices C & D]. The data collection tools had some similarities and differences in terms of some questions, given the joint and differing roles of both categories of participants in the execution of adult diversion processes and programmes.

In this study, the interviews were conducted individually to ensure privacy and expediency for the participants located within the vast UThukela district. Individual interviews allowed the researcher to schedule appointments at locations and times that were most convenient for participants, reducing the burden of travel time and minimising disruptions to their daily routines. Additionally, individual interviews provided a more intimate and confidential setting for participants to freely share their experiences and perspectives without fear of judgment or pressure from others. This was important because their accounts were viewed through an ontological lens of relativism and subjectivism.

Geyer (2021, p. 356) reminds us that semi-structured interviews hold numerous advantages, including (1) the ability of the researcher to conduct synchronous interviews that allow for flexibility in terms of follow-up questions; (2) the ability to journey with the participants as the narratives unfold; (3) the ability to collect thick and rich data from a small sample of participants; and (4) the reality that a researcher has some level of control over the individual interview. For this study, semi-structured interviews also served similar advantages.

To demonstrate how this research realised the aforesaid advantages of semi-structured interviews, as described by Geyer (2021, p.356). The researcher designed his data collection tools that were open-ended and were flexible enough to allow the researcher to probe, follow-up, seek clarity, add ad hoc questions and ultimately "collect thick and rich data from a small

sample of participants” (*ibid*). In terms of ‘journeying with the participants as the narratives unfolded’ (*ibid*), the researcher was able to converse with the participants conversationally and openly in order to allow the participants to narrate their practice accounts of adult diversion freely and in detail. The following discussion provides further details on how the researcher experienced the data collection journey.

4.7.2. Reflection on the Actual Data Collection Process

4.7.2.1. Starting the data collection

The data collection phase commenced on July 27, 2022, and extended for two months. While appointments were pre-arranged with probation officers, the dynamic nature of public prosecutor schedules necessitated unannounced visits. To ensure timely arrival for early morning interviews (7:45 am), the researcher relocated from his work address in Durban to the UThukela district (home) to ensure that he would be on time for scheduled interviews. Given the district's vastness, extensive travel was required, often involving 140-kilometre round trips. The initial plan was to systematically interview probation officers, starting with those in the researcher's hometown and gradually moving to more distant locations. However, the unpredictable availability of probation officers necessitated a more flexible approach, leading to a concurrent interview schedule with both probation officers and public prosecutors. This aligns with Silverton's (2017) assertion that data collection is a dynamic and unpredictable process, requiring researchers to remain adaptable.

4.7.2.2. The use of a voice recorder

Prior to each interview, participants were asked for their consent to audio recording. All participants agreed to audio recording, which facilitated a more natural and flowing conversation, allowing the researcher to focus on the interview with only minimal note-taking. The use of a voice recorder enabled the researcher to maintain a conscious presence during the interview, allowing for thoughtful follow-up questions while fully engaging with the participant. Aligning with the suggestion of Punch (2014, p. 151), audio recording, ‘when negotiated appropriately’, can enhance the research process.

4.7.2.3. Reflecting on the dynamics of the length of interviews

In the original research plan, the interview sessions were anticipated to span between a minimum of 45 minutes and a maximum of 1 hour and 3 minutes. However, based on the

actual interview process that unfolded, it was noticeable that all interviews with probation officers lasted longer [with an average of 1 hour], as compared to interactions with public prosecutors, who had an average interview length of 45 minutes. Especially with public prosecutors, the shortest interview was 25 minutes, whilst the longest was 1 hour and 10 minutes.

The difference in the length was attributed to two things: (1) the collegiality that was established while the researcher was employed as a probation officer, and (2) the detail of roles that probation officers have compared to public prosecutors in the practice of adult diversion processes and programmes. During the informal conversations that ensued with probation officers before the data collection, the researcher noticed that numerous probation officers had a sense of faith in the influence of the researcher or this research, mainly because the researcher was now working as an academic; perhaps he was somehow influential in one way or the other. One probation officer (PO1) kept on saying, *anisiwele Mzi* [fight for us Mzi]. This signified the level of trust that this probation officer had in the researcher, as their colleague who has an insider understanding of their challenges. Even though probation officers should be involved in policy advocacy, as alluded to by Gxubane (2008; 2010). The “new managerialism [the bureaucratic management style within the KwaZulu-Natal Department of Social Development] impacts on the functions [...] of social workers as they deal with the ideal aspirations of the profession...” (Dlamini & Sewpaul, 2015, p. 467). This means probation officers felt that perhaps this research was somewhat of an intervention to their non-advocated issues. Makhanya (2020) and Zibane (2017) both coin their research as an intervention. Although this research did not have any elements of action research, probation officers felt heard. Additionally, they had an opportunity to vent their concerns about implementing adult diversion processes and programmes. As an experienced social worker, the researcher would allow the participants to vent even aspects of their frustrations that were not related to the research.

However, the interviews with public prosecutors did not start with long informal conversations before the data collection. The researcher attributed the initial tenseness of some prosecutors to their busy schedules and, profoundly, the heterogeneity between the professions of the researcher (social worker) and that of the prosecutors (lawyers). The character difference in professions between the researcher and prosecutors “... left [... the researcher] feeling overwhelmed, realising that the gap between [him]...self and participants was even wider than [... he] had imagined” as coined by Ngcobo (2018, p.95) in her doctoral

study. Even so, the researcher managed to build a ‘minimum’ rapport to navigate the interviews successfully.

4.7.2.4. Reflecting on language use in the interviews

Another profound lesson on the process of data collection was related to the language use and language preferences of participants during data collection. In the original research plan, the researcher assumed that all participants, being well-educated and fluent in English, would prefer to conduct the interviews in English. However, this assumption proved to be unfounded. Despite the English-language interview schedules (Appendices C & D), many participants, particularly those who were African-black IsiZulu speakers, opted to conduct their interviews in IsiZulu. One participant said, “... *asidle uMageba, mfanakithi isiNgisi ulwimi lakamlungu*” (this is an IsiZulu metaphoric assertion that --- *let us discuss in IsiZulu because English is the language of work*). This meant that even educated individuals may feel more comfortable expressing themselves in their home language. The attached appendices of the interview schedules (Appendices C & D) are evidence that the interview schedules were prepared in English. Moreover, as shown in Table 5.1, in Chapter 5, eleven (11) out of fourteen (14) participants were fluent in IsiZulu as their home language.

Transitioning to conduct the majority of the interviews (n=11) in IsiZulu was possible because the researcher is also a native IsiZulu speaker. The researcher's decision to comply with the participants' language preferences presented an ethical dilemma. While the research ethics protocol had been approved for English, the principle of language justice, as discussed by Makhanya (2020), necessitated accommodating participants' language preferences.

A pivotal moment arrived when the researcher texted his research supervisor about this dilemma, and the supervisor illuminated the importance of journaling this experience and interpreting the meaning of this taken-for-granted assumption, which conflicts with the ideals of decolonising research processes. Makhanya (2024) argues that language justice is crucial even among educated individuals. By allowing participants to express themselves in their preferred language, the researcher was able to obtain more affluent and more authentic data. According to Zibane (2017, p.139), “IsiZulu is known for being tonal, expressive, and it also contains metaphors”. In her doctoral thesis, Makhanya (2020) emphasises the importance of allowing individuals who speak indigenous languages, such as IsiZulu, to be afforded an opportunity to express themselves in a language that they are more comfortable using.

The researcher's initial assumption that educated Africans would be comfortable narrating their experiences in the Euro-North-American language (English) was a reflection of the Euro-centric worldview that often underpins mainstream research. This realisation prompted the researcher to abandon their 'pre-packaged language of data collection' (as coined by Masoga & Shokane, 2021, p.23) and translate the interview schedules, on the spot during conversations, into IsiZulu. The use of IsiZulu meant that the researcher had to translate the audio records into English before they were transcribed. However, it was a social justice effort to allow participants to express themselves freely during the data collection process.

This experience highlighted the importance of decolonising research methods in African contexts, as advocated by Shokane and Masoga (2021). Chilisa (2012), as cited by Shokane and Masoga (2021, p. 24), defines decolonisation of research as "... a process of conducting research in such a way that the world views of those who have suffered a history of oppression and marginalisation are enabled". By respecting participants' language preferences, the researcher was able to create a more inclusive and authentic research environment.

This study serves as a wake-up call that language is a fundamental consideration and should be the first point of departure in the quest for decolonising research. Shokane and Masoga (2021, p. 27) posit that "... knowledge should be applied and disseminated in ways that resonate with indigenous ways of knowing, being, and doing". By conducting interviews in IsiZulu, the researcher was able to engage with participants in a way that was meaningful and culturally relevant.

4.8. EXECUTING THE DATA ANALYSIS

The data analysis was not a smooth process. It unfolded in two phases. Firstly, the researcher implemented thematic analysis as described by Braun and Clarke (2006). However, the study transitioned to the reflexive data analysis later, after the researcher noted some methodological flaws that had unfolded after he finalised his first two chapters of data analysis/presentation.

4.8.1. Starting with Thematic Analysis (TA)

As initially conceptualised in the research plan. The *familiarisation*, as described by Braun and Clarke (2006), or the process of engaging with the data, started casually in the researcher's car when he was driving back home from his research sites. During the time of

travelling back home, the researcher connected his digital recorder to the Bluetooth of his car audio system. Nonetheless, the researcher could not write down anything while he was driving. Notably, during data collection, the researcher would drive alone back home, but he was able to reflect and note some of the emerging responses that were of interest to the study. Therefore, the privacy and confidentiality of the participants were protected during this reflection and *familiarisation* process.

During the evenings of the data collection phase, the researcher would attempt the translations and transcription of the initial interviews. Translation and transcription were further exercises of *familiarisation* (Braun & Clarke, 2006), which immersed the reader in the data even further. In this study, *familiarisation* was strengthened by the researcher's self-translation of the data to ensure that the contextual meaning was not lost. Additionally, the researcher also employed manual transcription and coding instead of using technological avenues such as NVIVO, ATLAS TI, *inter alia*, that were available. Employing technology could have limited the researcher from engaging semantically and meaningfully with some of the African idioms and proverbs that participants used during interviews.

Another essential detail is that the research data was transcribed by the researcher verbatim or word for word. The verbatim transcription process assisted the researcher in accustoming himself to the contents of the data before the actual analysis started (Halcomb & Davidson, 2006, p. 39). In order to maintain the accuracy of the transcribed data, a research assistant with an honours degree who was fluent in IsiZulu and English was employed to assist the researcher with the proofreading and verification of the recordings against the transcribed data. As a quality assurance measure, the researcher would also verify the comments and the tracked notes of the research assistant regarding any mistakes identified in the transcription process.

During the translation process, the researcher realised that some of the participants' specific assertions were not possible to translate due to their metaphoric, idiomatic, and proverbial nature in their IsiZulu versions. The researcher realised that perhaps it was best to present these semantically. Braun and Clarke (2006) argue that thematic analysis has dual elements of analysis depth, which are semantic (explicit meaning) and latent (implicit meaning). By critically examining both the explicit and implicit meanings, the researcher was able to develop a more nuanced and insightful analysis, capturing the full range of participant perspectives and experiences.

The researcher transitioned to the second phase, after familiarisation, which was *coding*. In this step, the researcher attentively highlighted phrases or sentences through the use of shorthand labels or "codes" to describe what they contain or mean. However, as an initial flaw, the researcher did not acknowledge his role, perceptions, or experience on how these subjectively influenced the coding process. According to Braun and Clarke (2006), coding is a fundamental process in thematic analysis involving the identification and labelling of significant segments of data that relate to specific themes or categories. It is a way of organising and categorising qualitative data to make it more manageable and interpretable (*ibid*).

When *searching for themes*, as a third phase, the researcher grouped related codes into themes, which are higher-order concepts or patterns that emerged from the data. Similar to the warning of Braun and Clarke (2019), the researcher initially treated the data analysis process as "... the method like a baking recipe that must be followed precisely in order to ensure a successful outcome". Consequently, the research supervisor illuminated these initial mistakes, whereby themes were merely identified through a process of constant comparison, in which the researcher compared codes and themes across different parts of the data but without acknowledging their role reflexively. According to Fouché *et al.* (2021, p. 8), a constructivist researcher "... can only find meaning by developing a deep understanding of transcribed words or texts and seeking connections between their parts". On the other hand, Caulfield (2019) emphasises the importance of the researcher's attentiveness in the identification of common themes, ideas, and meanings that repeatedly come up from the transcribed data.

The researcher proceeded to the fourth phase of TA, *reviewing themes*. At this point, the researcher then started to review and refine the themes in order to ensure that they accurately reflect the data and the research question. After that, the researcher followed the 'recipe' or procedural method, where he *defined and named themes*. In this step, the researcher attentively formulated the labels for what was meant by each theme. The *writing up* of the analysis chapters was a turning point. At this stage, the researcher then summarised the findings clearly and concisely. The researcher used quotations from the data to illustrate the themes. However, the manner in which the data was initially presented lacked a reflexive orientation. Accordingly, the researcher had to augment TA with reflexive thematic analysis (RTA). This defied the assertion of Fouché (2021, p. 51), who argues that analysis is supposed to be a systematic activity where the researcher "... process[es] the data sets and

analyse[s] them according to the selected data analysis strategy decided earlier on". The researcher altered the "...analysis strategy decided earlier on" (*ibid*), due to some of the errors in applications that are noted by Braun and Clarke (2019), where they introduced RTA.

4.8.2. Augmenting TA with Reflexive Thematic Analysis (RTA)

As the research journey unfolded, the complexities of the subject matter and the researcher's engagement with the data necessitated a more nuanced reflexive and analytical lens; in this instance, the researcher ended up using reflexive thematic analysis (RTA). According to Braun and Clarke (2020, p.4), RTA is flexible in that it is suited to critical realist, contextualist, relativist, constructivist and phenomenological framings of data and meaning. This means that while this strategy of analysis is flexible, it is also suitable for this study, given the philosophical orientation that this study explained earlier.

As a result, a reflexive stance was adopted to mitigate the lack of acknowledgement of the researcher's role. Building from the work that was done, the researcher had to revise the analysis chapters and infuse reflexivity in all parts of the analysis. This shift was not merely a methodological adjustment but a philosophical alignment with the understanding that research is a continuous process of inquiry and refinement. It is a philosophical pursuit of wisdom, demanding a continuous interrogation of both the data and the researcher's role in its interpretation.

The transition to RTA is consistent with the epistemological orientation that recognises the researcher as an integral part of knowledge production. Incorporating personal perspectives and biases into the designated parts of the analysis chapters provided a more genuine interpretation of the research results that emerged. The guidance of the supervisor was instrumental in maintaining analytical rigour while navigating the complexities of reflexivity. Through critical dialogue, potential biases were addressed, ensuring that the analysis remained grounded in the data while acknowledging the researcher's role in shaping its interpretation.

The researcher's previous experiences within the criminal justice domain presented a potential influence on data interpretation. During the initial drafts of data analysis chapters, the researcher was evidently trying hard, unintentionally, to deny his subjectivist-relativist stance. Braun and Clarke (2019, p.589) are worried that:

When we first wrote about TA, we observed that the method was a poorly demarcated and rarely acknowledged, yet widely used qualitative analytic method”.

Similarly to this assertion, the initial write-up of the analysis was insincere and lacked depth about the role of the researcher in establishing the themes. A u-turn occurred when the researcher recommitted himself to the constructivist paradigm, relativist-subjectivist ontology and the tenets of structuration theory, which all acknowledge the role of the researcher as an active role player in the analysis.

Braun and Clarke (2019, p.589) warn that since their initial publication of thematic analysis (TA) in 2006 (Braun & Clarke, 2006), the method has suffered a number of challenges, including (1) being misunderstood, (2) poorly applied, (3) that it is now “prioritising procedure over reflexivity”, (4) “lacks theoretical engagement and creative scholarship”.

One area where the researcher may have fallen short is in the realm of procedural rigidity. Before transitioning to reflexive thematic analysis, there were instances where he became overly focused on following a strict coding and analysis process, potentially limiting his ability to explore unexpected or emergent themes. This could be attributed to a desire for methodological rigour and a fear of deviating from the established guidelines. In this study, the researcher may have initially prioritised procedure over reflexivity. While he aimed to be reflexive about his own biases and assumptions, there were moments when he may have become overly focused on the technical and legal aspects omitted in the data transcripts, neglecting to consider the broader context and what the participants defined as the practice of diversion.

By acknowledging these potential shortcomings, the researcher was better able to refine his approach to RTA, which is defined by Braun and Clarke (2020) as an extended TA that includes reflexivity as a central element. When applying RTA, the researcher maintained a balance between methodological rigour and flexibility, prioritised reflexivity throughout the analysis process, and engaged critically with the philosophical frameworks of the study.

4.9. ETHICAL CONSIDERATIONS

Consideration of research and professional research ethics was a crucial exercise in this study. Ethical considerations are a set of principles confirming proper conduct or behaviour during the engagement processes (Tracy, 2013). Given the fact that human beings were the subjects

of this study, a number of ethical concerns were taken into consideration. Rubin and Babbie (2013, p. 5) argue that social work research is a compassionate and practical endeavour. As a social worker, the researcher also employed compassion, ethical considerations, and practical considerations in order to avoid causing harm to participants and/or inconveniencing their workstations.

De Vos and Fouché (2011) emphasise the importance of considering research ethics when conducting any form of research. In their revised edition, Fouché *et al.* (2021, p. 14) state that professional ethics and research ethics are essential features that must be jointly considered, especially in research projects conducted by social services professionals such as social workers. "In many contexts, research is regarded as a separate activity from professional practice, but for most professionals, research conduct is subject to the professional code of conduct". Likewise, in South Africa, the Code of Ethics for Social Workers states that "the code of ethics guides all social workers when conducting research, providing direct service, educating learners, performing administrative, supervisory, editorial or consultative functions, being involved in peer review or social policy, being an expert witness or performing any other role" (SACSSP, 2017).

As detailed earlier in the recruitment section, permission was sought from crucial gatekeepers of the KZNDS and the NPA in KZN. Additionally, this study underwent a rigorous ethical review process by the University of KwaZulu-Natal's Human and Social Sciences Research Ethics Committee (UKZN HSSREC), with an ethical protocol reference number: HSSREC00004269/2022. The ethical concerns that were considered in this study included the use of informed consent, voluntary participation, the right to withdraw, confidentiality, anonymity, privacy in handling data, and permission to use a digital recorder, among other key issues.

4.9.1. Informed consent

Informed consent was sought from all individual participants, who read the informed consent sheet (see appendices) and were subsequently given an opportunity to assent should they agree to all the terms of the study.

Informed consent is, essentially, regarded as a contract between the researcher and participants (De Vos *et al.*, 2011). The term 'informed consent' is comprised of two crucial building blocks ('informed' and 'consent'), and both of these elements should be taken into consideration by the researcher. This means the researcher must ensure that the participants

are informed before he (*sic*) secures consent. Informed means participants must be fully informed of the proposed study, how data will be used, and what is expected from them without any hidden information (*op cit*). The researcher ensured that all participants had full knowledge of what they were doing; they were provided with the information sheet, and all inherent questions were clarified prior to data collection. All participants were legally eligible to give consent, and they were highly educated in reading and understanding the terms.

4.9.2. Voluntary participation and the Right to withdraw from the study.

The researcher informed the participants that their participation in the study was voluntary and that they were not forced to participate if they did not wish to participate. The researcher also informed the participants, verbally and through the information sheet (see appendices), that they have the right not to answer some questions that they would judge as uncomfortable. Their right to withdraw at any stage of the research process was also reiterated.

4.9.3. Confidentiality and Anonymity

Brennen (2017) states that participants have a right to privacy, and it is vital that their identity be protected when they request that. Likewise, in this study, the researcher ensured the anonymity of participants by using pseudonyms (i.e. PP for public prosecutors and PO for probation officers) instead of their original names and any other self-identifying information such as names of their magistrate courts, offices, race, gender, and location. UThukela District has a total of 7 magistrate's courts and eight offices of the KwaZulu-Natal's Department of Social Development with numerous potential participants. As a result, it was possible to hide the identity of participants in the final report. The provisions of POPIA also guided the researcher when processing the personal records of participants.

4.9.4. Non-maleficence/ Do no harm.

Burns and Groove (2005) argue that it is essential to avoid the infliction of direct and indirect harm to participants in any research. Research harm could be physical, financial, psychological, or otherwise (*ibid*). This study did not process any sensitive or upsetting personal information. Therefore, no emotional harm was anticipated or detected. However, the participants had an option that, should they feel uncomfortable with any line of questioning, they were at liberty not to respond or to withdraw. This was negotiated through the negotiation of entry. The gatekeepers informed the researcher of the available employee assistance programmes within their respective organisations. Additionally, the researcher

avoided disturbing the participants during their work; instead, he relied on the negotiated consent during diarised times and lunch hours.

4.9.5. Beneficence

The concept of beneficence means doing good (Tracy, 2013). According to Wassenaar (2006), as cited in Makhanya (2020, p. 63), the principle of beneficence obliges the researcher to attempt to maximise the benefits of participants' participation in the study. In this study, participants share their experiences about adult diversion and further suggested ways of improving the practice, should the results of this study influence policy reform. Prior to the beginning of all interviews, the researcher explained the potential value of this study. The researcher avoided exaggerating and/or understating the benefits of being part of this study. In fact, there are no payments or incentives for participating in the study, and that was explained upfront.

4.9.6. Linguaging

The use of the home languages of participants was an important ethical consideration, as narrated above, under the data collection section. This strengthened the credibility of experiences.

4.9.7. Data storage and management

Data management adhered strictly to the conditions stipulated by the Protection of Personal Information Act of 2014. Interview transcripts were encrypted with a password known exclusively to the researcher and the supervisor. All data is securely retained in an electronic cloud/drive for a period of five years, after which it will be destroyed, post the date of PhD submission, by either the supervisor or the candidate. The majority of the information was maintained in a paperless format and will be permanently deleted once all data has been fully utilised for PhD submissions, legal audits and subsequent publications.

4.10. TRUSTWORTHINESS IN THIS QUALITATIVE STUDY

Silverton (2017, p. 405) asserts that the quality of research is essential in qualitative research. Silverton (2017) further states that the researchers should not merely be concerned about publication quality but should also be concerned about governments and other organisations

that would access their research data, especially if such studies have a bearing on policy reform. Similarly, in this study, the researcher was concerned about the scientific rigour, quality, and trustworthiness of this project.

Since this is a qualitative study, the researcher dealt with trustworthiness by considering concepts such as credibility, transferability, dependability, confirmability, and critical reflexivity. According to Yin (2016), a qualitative study can induce credible, trustworthy, and valid data through the examination of the following concepts.

- Credibility

Credibility relates to the establishment of the truthfulness of the research results (Tracy, 2013). It is concerned with the question of whether the study is likely to reach a sound conclusion or not. As a result, in this study, the researcher explicitly described, reflected, and justified the methods that were followed. The researcher also ensured credibility through data source triangulation, as explained in the data collection section above in this chapter.

- Transferability

Transferability refers to the degree to which the research can be transferred to other contexts (Yin, 2016). The researcher ensured the achievement of this component by narrating all the steps and context of this study. A research diary was also kept as an audit trail to justify the research decisions, as detailed in this chapter. The original researcher must supply a highly detailed description of their situation and methods (Creswell, 2013). Similarly, this study has detailed every method used and its context in order to allow for the possibility of study transferability.

- Dependability-

Dependability lies on the premise that the research findings are consistent and could be repeated with the use of similar methods, similar samples, and in a similar context (De Vos *et al.*, 2011). This is measured by the standard by which the research is conducted, analysed, and presented. Each process in the study has been adequately reported in detail to enable an external reader and researcher to repeat the inquiry and achieve similar results. This also enables researchers to understand the methods and their effectiveness (Becker, 2008). The use of clear sampling criteria strengthens the dependability and depth of the thick descriptions for this research.

- Confirmability-

This process questions how the research findings are supported by the data collected (Tracy, 2013). This study draws inferences from the actual quotations or thick descriptions of participants. In order to achieve this component of trustworthiness, the researcher detailed all the methods in relation to the theoretical framework of this study.

- Critical reflexivity-

Critical reflexivity refers to "the monitoring by a researcher of her or his impact on the research situation being investigated" (Gray, 2009, p.580). As stated earlier, the researcher recognised the importance of critical reflexivity in ensuring the study's trustworthiness. By engaging in self-interviews (explained earlier), the researcher was able to critically examine their own assumptions, biases, and power dynamics that could potentially influence the research process. By acknowledging and addressing the researcher's own positionality, the critical reflexivity exercise minimised the risk of imposing their own interpretations onto the participants' experiences.

4.11. CONCLUSION

This chapter highlighted the journey that the researcher took to explore the implementation of adult diversion by public prosecutors and probation officers in rural UThukela. The chapter started by discussing the philosophical underpinnings of this study. It, thereafter, presented a discussion of how the qualitative research approach dovetailed with the social constructivist research paradigm and exploratory-contextual research design. Furthermore, this chapter highlighted the sampling and the data collection process. Importantly, this chapter provided the scientific trail of this research study. This methodological scaffold provides a robust foundation for the subsequent analysis and interpretation of the findings, enabling a deeper understanding of the complex factors influencing the implementation of adult diversion. The succeeding chapters present the empirical findings of the study. As a former practitioner with a deep understanding of the field, the researcher acknowledges the limitations of a purely objective approach. The subsequent chapters aim to disrupt the traditional notion of objective research, embracing an anti-positivist stance that recognises the researcher's inevitable influence on the research process. Through the use of RTA, the researcher seeks to uncover the subjective dimensions of the research, thereby offering a more comprehensive and authentic interpretation of the data.

Chapter 5

PERCEPTIONS AND ROLES OF PROBATION OFFICERS AND PUBLIC PROSECUTORS IN ADULT DIVERSION

5.1. INTRODUCTION

The discussion of the research findings in this chapter and the two preceding chapters (Chapters 5, 6 and 7) builds upon the foundation laid in the previous chapters of this thesis. Placed as the first instalment of data analysis, this chapter presents the participants' understanding of adult diversion and the professional roles that they attach to its practice. The intentions of this chapter are aligned with the broader research aim of this study, but more expressly, research objective one (exploration of participants' understanding of and roles in adult diversion) and a portion of research objective two (the exploration of factors that promote adult diversion factors promote adult diversion).

The data presentation herein lies on the tenets of structuration theory, which suggests a reciprocal relationship between individuals and social structures, wherein participants actively shape and are shaped by their social structures. Based on this, this study assumed that the perceptions or understanding of adult diversion processes and programmes by participants can significantly influence how they perceive their professional roles and, ultimately, their routine practice of the phenomenon. Therefore, examining the interplay between participants' comprehension of adult diversion and their inherent perceived roles becomes crucial for understanding factors that promote the mundane practice of adult diversion within the UThukela district. The study also assumed that the definition of adult diversion, its perceived purpose, its perceived benefits and its practice might likely vary across different geospatial contexts because there is a "... lack of uniformity and standardisation of adult diversion processes across provinces" in South Africa (NICRO, 2021, p.100). Based on this, it was essential for this chapter to explore the social construction of adult diversion through the perceptions of key role players in the UThukela district. The study's subscription to the conventions of social constructivist research brought the researcher to the assertions of Fouché *et al.* (2021), who emphasise the importance of understanding the intersection between participants' meanings, interactions and sustainability

of their social practices, as these interconnected elements drive human behaviour and shape their reality.

While the researcher attempted to compartmentalise the findings into distinct chapters for organisational clarity, the underlying interconnectedness of the themes suggested a constant rearrangement of themes and a necessity to view the findings as an interrelated whole. Although specific research objectives delineate Chapters 5, 6, and 7, the data itself reveals a complex interplay of factors that transcends these compartmental boundaries (chapters) that the researcher created (*see* Ngcobo, 2018). The very nature of adult diversion, as an interdisciplinary and multifaceted process involving various stakeholders and interventions, defies simple categorisation. Despite the division of findings into Chapters 5, 6, and 7, the themes explored within each chapter are intrinsically linked, painting a cohesive picture of the adult diversion process. Thus, the research findings should be interpreted through a lens of collectiveness.

The experiences and perceptions of probation officers and public prosecutors are not isolated entities but rather intertwined components of a complex system. Deliberately, Table 5.1. Below is the depiction of not just Chapter 5 but also of themes contained in Chapters 6 and 7. The empirical findings discussed in this chapter narrate the themes that exhibit how participants from both sample categories define adult diversion, its inherent benefits, and their routine roles in a successful adult diversion practice.

The [interconnected] themes and subthemes contained in the analysis as a whole (including this chapter) are outlined in Table 5.1. below.

Table 5.1. Layout of Themes and Analysis Chapters

CHAPTER 5: Perceptions and roles of probation officers and public prosecutors in adult diversion
Theme 1: Participants' understanding of adult diversion
<ul style="list-style-type: none">• Sub-theme 1.1: Adult diversion as a second-chance option for offenders• Subtheme 1.2: Adult diversion as an important alternative in crime management
Theme 2: Perceived roles of participants in adult diversion processes and programmes
<ul style="list-style-type: none">• Subtheme 2.1: The inclusive, troubleshooting and holistic problem-solving role of probation officers in adult diversion

- Subtheme 2.2: Adult diversion and Prosecutorial decision-making role

CHAPTER 6: Factors influencing adult diversion in UThukela, South Africa: insights from frontline practitioners

Theme 3: The link between adult diversion, structural and institutional factors

- Subtheme 3.1: Availability of departmental policy directives on adult diversion for public prosecutors
- Subtheme 3.2. Unavailability of departmental policy directives on adult diversion for probation officers
- Subtheme 3.3. Adult diversion versus the Circumstances of the offender, Seriousness of the offences and Community interest (C.S.C.)
- Subtheme 3.4. Adult diversion and the help of assistant probation officers
- Subtheme 3.5. Decisions on language barriers and adult diversion

Theme 4: Perceived limitations of adult diversion in Uthukela

- Subtheme 4.1. Heavy workload in probation services as a limitation for adult diversion
- Subtheme 4.2. Lack of Diversion Services Providers in UThukela
- Subtheme 4.3 Programmes shortage, improvisation, inconsistencies of (adult) diversion in UThukela
- Subtheme 4.4. Inconsistencies in monitoring and reporting of diversion compliance
- Subtheme 4.5. Consequences of lack of training about adult diversion

CHAPTER 7: Communication and Involvement of stakeholders in adult diversion: the present and the anticipated future

Theme 5: Victim Involvement, Restorative Justice and Adult Diversion

- Subtheme 5.1. Involvement of the victim by some participants in adult diversion processes
- Subtheme 5.2. Restorative justice as a rationale for involving the victim in adult diversion processes
- Subtheme 5.3. Victims' exclusion from adult diversion processes by some participants

Theme 6: Communication and interaction of professionals in adult diversion processes and programmes

- Subtheme 6.1. Informing probation officers about adult diversion cases
- Subtheme 6.2. Resource limitation, rurality and stakeholder interaction for adult diversion purposes
- Subtheme 6.3. Adult diversion and power dynamics between probation officers and public prosecutors

- Subtheme 6.4. Boardroom routines between probation officers and public prosecutors,
- Subtheme 6.5. Interaction of participants with ‘other’ stakeholders during adult diversion.

Theme 7: Towards adult diversion reform: *Recommendations by participants*

- Subtheme 7.1. A necessity for a standard framework or a regulating law for adult diversion
- Subtheme 7.2. Lessons from child diversion for the establishment of an adult diversion framework
- Subtheme 7.3. Participants’ recommendations on accreditation of adult diversion programmes and training
- Subtheme 7.4. Role clarification for adult diversion role players

In order of sequence, chapter 5 begins with a discussion of the demographic profile, followed by a discussion of the empirical findings.

5.2. ANALYSIS OF THE DEMOGRAPHIC PROFILE OF PARTICIPANTS

Presented in Table 5.2. Below, the researcher charts numerous characteristics of the study’s participants that were aligned with the sampling criteria. Table 5.2. presents the pseudo names of participants presented in occupational codes, PO= probation officer and PP= public prosecutors; it also presents participants’ occupational roles, location of work, language(s), qualifications, and years of work experience.

Table 5.2. Demographic presentation of participants

Pseudonym	Occupation & Location of Work	Language(s)	Qualification(s)	Years of experience
PO1	Probation Officer in UThukela district	IsiZulu (HL) & English (AL)	BA Social Work	13 years
PO2	Probation Officer in UThukela district	IsiZulu (HL) & English (AL)	BA Social Work	12 years
PO3	Probation Officer in UThukela district	IsiZulu (HL) & English (AL)	B Social Work	12 years
PO4	Probation Officer	IsiZulu	B Social Work	10 years

	in UThukela district	(HL) & English (AL)		
PO5	Probation Officer in UThukela district	IsiZulu (HL) & English (AL)	BA Social Work	11 years
PO6	Probation Officer in UThukela district	IsiZulu (HL) & English (AL)	B Social Work, Diploma in Public Management	10 years
PO7	Probation Officer in UThukela district	IsiZulu (HL) & English (AL)	B Social Work	10 years
PP1	Public Prosecutor in UThukela district	English (HL)	B Laws	17 years
PP2	Public Prosecutor in UThukela district	English (HL)	B Proc, B Laws	26 years
PP3	Public Prosecutor in UThukela district	IsiZulu (HL) & English (AL)	B Laws	12 years
PP4	Public Prosecutor in UThukela district	English (HL)	BLC B Laws	30 years
PP5	Public Prosecutor in UThukela district	IsiZulu (HL) & English (AL)	B Laws	9 years
PP6	Public Prosecutor in UThukela district	IsiZulu (HL) & English (AL)	B Laws	7 years
PP7	Public Prosecutor in UThukela district	IsiZulu (HL) & English (AL)	B Laws	7 years

Table 5.2. Demographic presentation of participants

5.2.1. Number of Participants from both Sample Categories

Since the attainment of representation was not a primary goal of the sampling protocol of this study (Vasileiou *et al.*, 2018), the researcher did not anticipate having a specific number of

participants from both professions: Probation Officers (PO) and Public Prosecutors (PP). Nevertheless, the study coincidentally ended up with a balanced number of $n=7$ probation officers and $n=7$ public prosecutors. Factors such as the sampling criteria and voluntary participation rendered the final participants, who then coincidentally became an equal number from each professional category.

The balanced representation (co-incidental) offered several advantages that contribute to the richness and diversity of views within the research findings, mainly because this study gave neither primacy to probation officers nor public prosecutors. Probation officers and public prosecutors play distinct roles in the criminal justice system, each with unique mandates, insights and experiences. Accordingly, a (co-incidental) equal number of participants from both groups ultimately ensured that the study avoided a biased focus on either perspective among the two sampled categories, leading to a more comprehensive understanding of the practice of adult diversion.

5.2.2. Language Proficiency and Educational Level

Table 5.2 above indicates that all study participants held a bachelor's degree, with some possessing advanced qualifications. Their level of education also reflected their proficiency in English. Consequently, the researcher initially assumed that the interviews would be conducted in English, as it is the official language of work in Criminal Justice spaces. However, it became evident that the majority of the research participants (7 POs and 4 PPs) spoke IsiZulu as their mother tongue. This necessitated the consideration of language justice, as highlighted by Makhanya (2024). In fact, it was the participants themselves who requested to be interviewed in IsiZulu. Since the researcher is bilingual, he was able to conduct the interviews in the participants' preferred language, which was a liberating experience. This element offers important lessons for the decolonisation of social research, as discussed in the previous chapter.

5.2.3. Participants from the same district

Aligned with the intentions of the study, Table 5.1. indicates that all $n=14$ participants were working in the same district (UThukela). As described in the location of the study section in Chapter 4, the UThukela district has specific socio-economic, cultural, or resource (in)availability factors that influence the practice of social workers (including probation

officers). While the findings may not be directly applicable to all settings, based on the context of UThukela, they can provide valuable evidence-based knowledge for practitioners working in similar contexts and policymakers. Given the participants' knowledge of the district, the study had the potential to identify location-specific factors and their impact on the practice of adult diversion.

5.2.4. Years of Experience of Participants

While the study has a criterion to recruit participants with a minimum of 1 year of experience, participants who ended up being the cohort of this study had a range of experience from 7 to 30 years. This suggests that the study or project involved participants with rich knowledge and different levels of expertise, as per their distinct longevity of experience. As a result, the research findings (presented in Chapters 5, 6 and 7) are also symbolic of the depth and various views attributed to the diversity of years of experience.

5.3. PRESENTATION AND DISCUSSION OF RESEARCH FINDINGS

THEME 1: PARTICIPANTS' UNDERSTANDING OF ADULT DIVERSION

Exploring the participants' foundational understanding of adult diversion formed a significant part of this study. The participants' responses are presented in the following sub-themes. (i) adult diversion as a second-chance option for offenders; (ii) adult diversion as an important alternative in crime management;

Subtheme 1.1. Adult diversion as a second-chance option for offenders

As a launchpad to explore participants' perceptions of adult diversion, the researcher asked participants to define this concept. Several probation officers and public prosecutors consistently described adult diversion as a strategy for offering offenders a second chance, evidenced by their comments below. When attempting to define, PO5, PO6 and PO1 expressed the following views:

“Oh! To define it? Well, it is about helping those who have broken the law and those who have committed a crime... we assist adults, and we give them a second chance”

PO5.

“My understanding of adult diversion is when a person is given another chance outside the criminal justice system. That is how I can explain it...” **PO6.**

“My understanding of adult diversion is about giving the adult offender a second chance... so that they can realise and learn from their mistakes” **PO1.**

Based on these assertions, PO1, PO5, and PO6 expressed a shared understanding of adult diversion as a "second chance" opportunity. For instance, both PO5 and PO1 utilised the term ‘*second chance*’ in their respective responses, while PO6 utilised the term ‘*another chance*’. Their collective opinions convey a notion that adult diversion affords adult offenders an additional opportunity to make amends or correct their behaviour outside the criminal justice system. On the other hand, PO6’s use of the phrase ‘*outside the criminal justice system*’ aligns with the generic definition of diversion [without the prefix adult] as outlined by NICRO (2012), cited in Motshedi (2020, p.43). Where NICRO’s definition also utilises the phrase ‘*away from the formal criminal justice system*’. This implies that it is a process that deters offenders from the formal criminal justice system.

The researcher's initial anticipation of a concrete definition of adult diversion from experienced professionals was challenged by the participants' responses. For instance, both PO1 and PO6 utilised a prefixing phrase “*my understanding of adult diversion*”. The use of this phrase implies that their definitions of adult diversion were not solely derived from formal sources or literature but were influenced by personal experiences, beliefs, and values, thereby demonstrating the recursive nature of social practices.

Affirming the above, PO2 also expressed the following remarks when asked to describe adult diversion:

“According to how I do it, I think it is a process of giving promising offenders a second chance in life, especially scholars. If someone is, maybe, having a degree or is studying at a tertiary institution, I consider them for diversion” **PO2.**

“... in most cases, it would be people who are attending some formal education or employed who are eligible for adult diversion” **PO7.**

The beginning part of his/her response reads: “*According to how I do it...*” also signifies that this probation officer’s conceptualisation of adult diversion relies on his/her perceived operationalisation of the process. Besides the association of adult diversion with his/her perception, PO2 went further to describe the characteristics of those who deserve a second chance. Both PO2 and PO7 recounted that those who are considered for adult diversion must be “*promising offenders*”, someone who is perchance “... *studying at tertiary*” or a “*scholar*”. This then implies that adult diversion is an alternative form of justice that is perceived to provide deserving offenders with an opportunity to make amends for their mistakes in life. In affirmation, a study by Zarkin, Alexander, *et al.* (2015) reveals that diversion offers an alternative cost-saving approach to the criminal justice system. Specifically, Zarkin *et al.* (2015) argue that diverting offenders who have the potential to become better citizens in future has *positive net societal benefits*. PO2 and PO7 also affirm this position when s/he describe adult diversion and its characteristics.

Other than the above excerpts, another participant [probation officer] provided the following remark when describing adult diversion:

“I think I can describe it as an approach of protecting individuals from getting a criminal record; it actually safeguards them for their future, it gives them an opportunity to appreciate the consequences of their actions... You know Bongane [name of the researcher], it is not like an offender is just released freely when they get adult diversion, they are given a second chance of rebuilding their lives and realise their mistakes” **PO3**

From the above statement, one can conclude that PO3 perceives adult diversion as a protective approach because it contributes to the positive future of diverted offenders without tainting their names with the consequences of having a criminal record. Kimpel (2022, p.439) also affirms that “[d]iversion allows a defendant to earn a dismissal of a charge by satisfying conditions set by the prosecutor or court, thereby avoiding conviction” or a criminal record.

The above quotation also portrays adult diversion as a process that does not merely exonerate offenders without any form of recourse. However, they are conditionally released and afforded an opportunity to rebuild their lives. The above extract positions adult diversion as a helping criminal justice process that does not merely absolve diverted offenders without enforcing the ‘restoration’ element, which is an essential aspect of restorative justice

practices (see Braithwaite, 2014). The latter response indicates the perception of this participant (PO3), which values the ‘rebuilding’ element of the adult diversion process.

In the same question, a public prosecutor (PP6) provided the following response when asked to describe or define adult diversion:

“It is not all offenders deserve a trial and conviction, you know, so adult diversion gives people who enter the court system a renewed opportunity to become better people through those programmes by social workers” PP6

Evidenced by this above quote, PP6 also perceived adult diversion as a process that “gives people who enter the court system a renewed opportunity to become better people”. This means that s/he also saw value in the practice of adult diversion because it provides the offender with a renewed opportunity to become a better person. Even though this public prosecutor did not utilise the phrase ‘second chance’ in a similar way to his/her other counterparts, s/he referred to adult diversion as a ‘renewed opportunity’, which can be construed to mean the same thing. The perception of PP6 aligns with the restorative justice theory, which also shares the sentiments that ‘not all offenders deserve a trial and conviction’ (Louw & van Wyk, 2016, p.490). On this topic, Braithwaite (2014) also argues that restorative justice theory advances the view that not all offenders deserve punishment; instead, some offenders deserve restoration and a renewed opportunity.

Another public prosecutor [PP1] also links adult diversion with the ‘second chance’ phrase in their description of the concept. PP1’s exact words are as follows:

“As much as I am a public prosecutor, but I am not a persecutor, I also have an obligation to decide on how best I can deal with the case, so sometimes I give them a second chance” PP1

Similar to other participants cited above, PP1 also utilised the phrase ‘I give them a second chance’. Besides the use of this expression, the extract of PP1 shows a different ideological position by a public prosecutor, which rejects the ‘getting tough approach to the offenders’ (Husak, 2022b). PP1’s rejection of the prosecutors’ as the equivalence of ‘prosecution as persecution’ of those who are accused of being in conflict with the law indicates that they view themselves as helping agents. This is despite the revelation by Hargovan (2012, p.13) that there is “[a]n international appraisal of prosecutors’ perceptions [that] depicts a uniform tendency for prosecutors to see their role as one of ‘presenting evidence in court to get

convictions, rather than promoting problem-solving'...". This "get-tough" approach (*see* Husak, 2022b) is further reinforced by Hargovan's (2014) characterisation of public prosecutors as the "gatekeepers of diversion".

In contrast to some prosecutors who oppose diversionary options (Green & Bazelon, 2019; Mzinyane, 2017), PP1 actively appreciates the value of adult diversion as a criminal management initiative. PP1's departure from a purely punitive approach stems from his (*sic*) understanding of the prosecution's role as extending beyond mere punishment. This perspective aligns with the United Nations Guidelines on the Role of Prosecutors (1990), which South Africa has ratified. These guidelines emphasise a balanced approach that considers both traditional prosecution and alternative options like restorative justice. By embracing restorative justice, PP1 demonstrates a commitment to rehabilitation and addressing the root causes of crime rather than solely focusing on punishment.

PO7 also used the phrase second chance in the description of adult diversion. PO7's exact comment is as follows:

“Adult diversion is something that I can describe as an institution that assists adult people in realising their mistakes. If he commits a minor mistake, then the court would award him a second chance, that is how we do it, a second chance to fix their mistakes, going forward in life, through programmes that we offer” PO7.

This probation officer described adult diversion as “*a second chance to fix their mistakes, going forward in life, through programmes that we offer*”. This probation officer echoed the sentiments of PO1, PO5, PP1, PP6, and PO6, characterising adult diversion as “*a second chance*”, as discussed above. However, of interest to the researcher is the use of the term institution by this participant. One of the literal meanings of the concept ‘institution’ is by Mohr and White (2008, p.488), who argue that “... the term is used to describe particular types of conventions or practices for managing social interactions ... at other times a broader constellation of activities, values, norms, social structures, and role systems are understood to define a kind of functional arena or field”. This means that the term ‘institution’ can be associated with an established practice.

In the context of the criminal justice system, an established practice could mean a legislated or formalised practice. However, in the absence of a formal legal framework which would ultimately institutionalise the practice of adult diversion, PO7 still described adult diversion as an ‘institution’ (Hargovan, 2008; Maimane, 2017; NICRO, 2021). It can be concluded that

PO7 perceives adult diversion as being ‘institutionalised’ due to the persistent practice of this phenomenon, the co-creation of its rules and norms, and the validation of its processes in the absence of a formal legal/policy framework.

Despite the researcher not initially inquiring about victims during the definition of this concept, the participants, as seen in this subtheme, consistently framed adult diversion as an intervention solely for the offender, neglecting to mention the victim as an essential beneficiary of the process. This thought-provoking oversight suggests a potential limitation in the current understanding of adult diversion, highlighting the need for a more balanced approach that acknowledges the impact on both parties involved. The fact that some responses appreciated the ‘restorative’ nature of adult diversion means that participants were aware of the restorative justice stance of adult diversion, which is to ‘help’, ‘realise mistakes’, and ‘learn’ (Braithwaite, 2014). This is evidenced by the following assertions,

- PO1 said: “*so that they [offenders] can realise and learn from their mistakes*”.
- PO2 said: “*I think it is a process of giving promising **offenders** a second chance in life*” [bolded for emphasis]
- Furthermore, PO3 says adult diversion “*actually safeguards them [**offenders**] for their future; it gives them an opportunity to appreciate the consequences of their actions.*”

It is worth mentioning that, as interviews progressed, the researcher asked to ascertain why the victim is not being mentioned in the description of adult diversion: “... *is it because the victims are not an important part of adult diversion?*”. In response, PO3, as corroborated by other participants as shown in Chapter 7 [see subtheme 5.3], “... *well for the offender, the benefit is just that they don’t get a criminal record, but for the victim, they do not benefit much. They are sometimes left with more questions than answers as to why the offender was not kept in jail...*”. This means PO3 confirms the one-sided orientation of the practice of adult diversion in UThukela.

Therefore, the researcher's critical examination of how participants in this study conceptualised adult diversion by omitting the victim was evoked by the descriptions of adult diversion where some participants emphasised the ‘restoration’ of the offender whilst not paying much attention to the process for ‘justice’ for the victim nor paying attention to the ‘restoration’ of both the victim and the offender. The following sub-theme goes further to present the perceived benefits of adult diversion by participants. By identifying the

advantages of adult diversion, as discussed in the following subtheme, participants point to factors that sustain and promote its broader practice and sustainability in UThukela.

Subtheme 1.2: Adult diversion as an important alternative in crime management

To explore factors that promote adult diversion in UThukela, the researcher probed participants [from both sample categories] about the benefits that they attach to the practice of this phenomenon. From both sample cohorts, most participants thought it was a helpful alternative for managing certain types of crimes [petty crimes] and offenders who have distinct characteristics. In this subtheme, the researcher starts with the comments of probation officers before those of prosecutors.

The first illustration of the responses of probation officers is that of PO2, PO5 and PO6, who said:

“You know, if adult diversion was not there, some people would go to prison for petty crimes and end up being influenced by the jail environment to become hardened criminals. So, I can say diversion becomes that cushion and provides possibilities for us as social workers to intervene ... offenders end up learning things that were not initially planned. However, through the exposure to the programme, my clients from XXX [censored area], who grew up without much guidance sometimes, get to be exposed to some life skills. Some of them are sometimes school dropouts and unemployed, so even with their background, they had skipped certain points of guidance at school, so adult diversion plays that guidance role” PO2.

“... just imagine, there is a case where the offender was a police trainee, he was 22 years old and he could not afford a criminal record, so diversion helped” PO5.

“Okay, the first advantage is that it prevents a person from getting a criminal record. Secondly, people get to learn certain things through what we offer here. They also get to learn that there are other ways of fixing mistakes whilst you are already within the criminal justice system, other than being detained in prison” PO6.

This perspective by PO2, PO5 and PO6 conveys the idea shared by many in UThukela, where adult diversion is described as an important alternative to traditional crime management processes. PO2 makes a connection between adult diversion, petty crimes, and individuals

who lack basic life skills due to dropping out of school. On the same subject, a study by Khumalo and Alhassan (2021) affirms the view of PO2 by providing an analysis that illuminates the connection between those who lack basic life skills, illiteracy and the commission of crime.

PO2 argues that individuals who have dropped out of school and engaged in criminal activity may lack essential life skills and guidance typically provided by formal education, making them susceptible to delinquent behaviour, and adult diversion programmes offer a potential solution. Correspondingly, PO5 The probation officer's statement also underscores a critical perceived value of adult diversion in South Africa, where adult diversion mitigates the long-term negative consequences of a criminal record. By highlighting the case of a young police trainee who could have faced significant career repercussions due to a criminal record, PO5 emphasises the programme's ability to address individual circumstances and the potential for mitigating the severe impact of criminalisation. This statement implicitly acknowledges and recognises the human cost of criminalisation, emphasising the potential for adult diversion to prevent the unnecessary stigmatisation and social exclusion that often accompany a criminal record.

On the same note, PO6's assertion implies that adult diversion contributes valuable life skills for offenders who have come across the criminal justice system but are sent to adult diversion programmes. PO2 and PO6 confirm the findings by Motshedi (2020), who discovered that diversion programmes for child offenders provide valuable life skills for offenders. This then implies that by participating in adult diversion programmes, even adult offenders inadvertently gain unconventional opportunities for gaining life skills, personal growth and development, which would not have been possible should the case have proceeded through the traditional crime management processes that are rather punitive (*cf.* Cameron, 2020).

Moreover, in the above quote, PO2 argues that "*If adult diversion was not there, some people would go to prison for petty crimes and end up being influenced by the jail environment to become hardened criminals*". It can be drawn from this comment that by diverting deserving individuals away from incarceration, there is a possibility of reducing the offender's exposure to negative influences associated with incarceration and minimising the risk of future criminal behaviour (*see* Bhuller *et al.*, 2018). In this regard, PO2 posits the protective function of adult diversion, describing it as a "cushion" that shields individuals from the negative influences of the criminal justice system. On the other hand, PO6 emphasises the

preventive function of diversion, noting that it can shield individuals from the long-term consequences of a criminal record. This aligns with the broader goal of restorative justice theory to reduce recidivism and promote social reintegration. These perspectives by PO2, PO5 and PO6 align with the principles of restorative justice, which seek to repair harm and promote healing.

On the same point, PO7 said:

“... adult diversion gives people an opportunity to attend life skills... you know it deals with adults; we can label them as adults, but some are not well-skilled. During the sessions, some would say: Oh! I never knew about this. That is when you see that they are learning something new through their offending behaviour. They learn because they are now more relaxed; they are now with a social worker, not in court and not with the police, but they are merely conversing with a social worker now”

PO7.

Similar to PO2, this participant also highlights the adult diversion programme's capacity to provide essential life skills to adult offenders, many of whom lack the necessary skills to navigate life successfully due to their social background. PO7 describes the adult diversion environment as “... more relaxed”. S/he further says, “... they are now with a social worker, not in court and not with the police”. The emphasis on a relaxed and supportive environment, facilitated by social workers rather than law enforcement, underscores the rehabilitative nature of adult diversion and the value of probation officers as specialist social workers within the criminal justice system. Probation officers' contribution to the criminal justice system contrasts with the potentially harsh, sometimes traumatic and stigmatising experiences associated with traditional criminal justice processes (see Butler *et al.*, 2022; Kopak, 2020; Webster, 2019). Smith (2005 & 2021) shows that there are significant traces of social work values, social work identity and social work ideology in the practice of probation officers. Thus, the comment of PO7 and the view by Smith (2005) signifies the unique professional contributions of probation officers (as social workers), which is different from the approach of police and other professionals within the criminal justice system, adding value and a change of perspectives among diverted offenders (*cf.* Moore, Stuewig & Tangney, 2016; Shafer & Ashford, 2015). By providing a safe and supportive space for therapy, learning and growth, PO7's view implies that adult diversion empowers individuals to make positive changes in their lives. PO7's perspective about the benefits of adult diversion further

reinforces the notion of adult diversion as a much-needed alternative to traditional criminal justice processes. According to Integrated Social Crime Prevention Strategy (2011, p. 32), “[d]iversion has the positive effect of preventing contact with others in the system that may cause harm to the person, as well as prevention of the stigma that relates to arrest and conviction”.

PO4 said:

“... the moment you enrol them on our programme sessions, they get to realise that they should not actually participate in bad behaviour... You know, for some offenders, through adult diversion, they change to become better people, so it helps for real”

PO3.

The statement "*they get to realise that they should not actually participate in bad behaviour*" suggests that the programme itself acts as a powerful learning experience. Through participation in the program, offenders may gain insights into the consequences of their actions, develop empathy for victims, and acquire new skills and coping mechanisms that can help them avoid future criminal activity. PO3 emphasises the transformative potential of adult diversion, stating that "*for some offenders, through adult diversion, they change to become better people*". This highlights the program's capacity to facilitate positive behavioural change and contribute to the rehabilitation and reintegration of offenders into society. However, it is important to acknowledge that the effectiveness of adult diversion programmes can vary significantly depending on various factors, including the specific program design, the quality of program implementation, and the individual characteristics of the offenders.

During the same conversation with PO7, when this probation officer was asked to provide an example of how adult diversion has served as a helpful alternative, s/he said:

“Yho! Adult diversion has a huge, huge role to play in our society! Especially here since we have a big number of uneducated people and a huge number of older adults in rural areas. I remember this one case where a very old man went to a hardware shop to buy some workers' tools and fix some minor things at his home. This old man had a disease associated with memory loss. So, while he was shopping, he saw another item that he needed and took it to the till-point [pay point]. He had other bigger items in his shopping basket, and this specific item was right in his hand, but unluckily, he totally forgot to pay for the smaller item in his hand and went to the exit.

When he reached the exit, the security official accused him of theft and called the police. So, you could realise even from the assessment that it was a shame, poor old man who was even diabetic, suffered memory loss and had never stolen anything in his whole life. So, if his matter was diverted, he could have really suffered, so adult diversion helps a lot” PO7.

From this case example of adult diversion, the researcher realised a unique contribution of adult diversion to elderly offenders, as an often overlooked vulnerable group within the criminal justice system (Nduli & Mthembu, 2024). The letter comments by PO7 highlight the distinct benefits of adult diversion toward offenders who are elderly and suffer from memory loss and other illnesses. The above comment affirms the findings of Nduli and Mthembu (2024), who argue that the elderly (geriatric) offenders are a ‘special’ category of adult offenders who require special attention during their encounter with the criminal justice system due to their unique special needs, in terms of social, psycho-social, mental, physical or medical characteristics. Aday and Krabill (2006, p. 238), on the subject of elderly offenders within the criminal justice system, also recommended that it is “...important to [carefully] review some of the existing policies from the time older offenders are apprehended until they leave the system”.

Reading from the PO7 account, the consideration of adult diversion in the case of the quoted older man prevented this man’s exposure to the trauma of detention if the case had been handled through the mainstream criminal justice system. This then supports the premise of therapeutic jurisprudence, a law paradigm co-joining social work and law, which appreciates the importance of integrating healing and well-being into the legal processes, which is typically based on rigid and harsh approaches that either retributive or based legal positivism [rigidity of law application despite its psycho-social impact] (Madden Wayne, 2003).

Other responses that further confirmed the notion that adult diversion is a much-needed alternative in the criminal justice system are those by PO1 and PO4, who said:

“... some of them get to be rejected even by their own families; they are rejected in communities. Even their exposure to the court system is traumatic for them [the alleged offenders], so our interventions help” PO1

“... as a social worker, I deal with that problem, which is a core cause of the offence. In other words, I rehabilitate them” PO4.

PO1 and PO4's responses highlight the role of adult diversion in addressing the social and emotional needs of offenders through their interaction with the criminal justice system. PO1 emphasises that many offenders face rejection and trauma, both from their families and the criminal justice system. In this regard, a study by Hecker, Hermenau, Crombach, and Elbert (2015) reveals that offenders are also susceptible to trauma. Consequently, their trauma needs to be acknowledged by practitioners in the criminal justice system. Thus, in this context, adult diversion, especially according to PO1, serves as a shielding mechanism, protecting offenders from further harm that prevails in their social background while also supporting them in the quest for restoration.

PO4's statement that s/he "... deal with that problem which is a core cause of the offence " accentuates the therapeutic and transformative potential of adult diversion. Moreover, the practice approach of PO4 also indicates that s/he was able to separate the offence from the offender. This probation officer had a professional view that criminal behaviour is instigated by particular underlying social problems, which implies that the alleged offender or diveree should not be seen as the problem. PO4 perceived his (*sic*) role as that of someone who is there to help (helping professional/social worker), which also enabled him (*sic*) to perceive the process of adult diversion as a much-needed alternative. This non-stigmatising approach by PO4 is crucial in the advancement of the ethos of restorative justice within the 'hard on crime' mainstream criminal justice system (*see* Van Ness *et al.*, 2022). By addressing the underlying issues that contribute to criminal behaviour, such as social isolation and lack of support, the comments of PO1 and PO4 confirm adult diversion as an empowering mechanism for offenders to make positive changes in their lives.

Besides the views of the probation officers above, some participants from the cohort of public prosecutors also confirmed the notion of adult diversion as a helpful alternative. Some of the responses are as follows:

"...at least it has rehabilitation programmes that are offered, anger management, things like that, it is better than saying, I am sorry I won't hit you again, my mother or my sister, yah... Well, in terms of advantages thus far, I have to say that we have not had repeat offenders. Mm-hmm. So, the programmes that are being offered are, I would say, assisting them in helping them with the various issues that are resulting in the offences that they commit" **PP1.**

The PP1's perspective on adult diversion highlights its potential to reduce recidivism and promote rehabilitation. As noted by this prosecutor [PP1], the presence of adult diversion in UThukela has caused a significant decrease in repeat offenders. Whilst it is a limitation that the study did not acquire quantitative data in this regard, the assertion and confidence of PP1 about the contribution of adult diversion programmes suggest their effectiveness in preventing future criminal behaviour. This positive outcome can be attributed to the programme's focus on addressing the root causes of offending behaviour and providing individuals with the tools and support they need to make positive changes in their lives, as per the view of PP1.

Similar to probation officers, PP1 also highlights the value of the rehabilitative nature of adult diversion programmes in dealing with offenders. PP1 argues that adult diversion is characterised by tangible programmes that have the potential to address the underlying causes of the problem, such as 'anger management' and *inter alia*, which are often the instigators of violent and offending behaviour of adult offenders. Additionally, PP1 also argued that having adult diversion "*...is better than saying I am sorry, I won't hit you again, my mother or my sister*". This contribution of adult diversion is notable because other existing forms of alternatives for handling offenders, such as alternative dispute resolution (ADR), as contextually defined by Imiera (2019), lack the rehabilitative elements that are uniquely brought by adult diversion. ADR is a less formal, quicker and less expensive way to resolve disputes by allowing offender(s) and victim(s) to deal with their matter without formal litigation, but it lacks programmes; it is often handled by prosecutors in their offices to dismiss matters (Imiera, 2019). Even the Domestic Violence Act of 1998 (as amended) also provides for the issuing of protection orders for victims as litigation alternatives in some cases. However, such court orders lack compulsory rehabilitation programmes to deal with the real cause of the crime-causing behaviour.

The views of PP1 position adult diversion programmes as problem-solving that align with the broader goals of restorative justice, which seeks to repair harm and promote rehabilitation (Gxubane, 2018). Despite the benefits discussed by PP1, the Integrated Social Crime Prevention Strategy (2011, p. 31) reveals that "... the South African criminal justice system does not, however, make enough use of adult diversion, with the result that large numbers of people are directed into the prison system, often for very short periods ...".

Other public prosecutors also added that:

“... it helps, I think it helps because some young adults would be doing matric [12th grade in high school] when they commit offences, so it helps them not to have a criminal record” **PP3**

“I understand adult diversion as trying to, uhm, divert certain cases away from the normal court process, to give them an opportunity to rehabilitate...” **PP2**

The perspectives of PP3 and PP2 underscore the rehabilitative and protective functions of adult diversion. PP3 emphasises the potential long-term consequences of a criminal record, particularly for young offenders who may still be pursuing their education. By diverting cases away from the formal criminal justice system, adult diversion can mitigate the negative impact of a criminal record on future opportunities. PP2 further emphasises the rehabilitative aspect of adult diversion, highlighting its role in providing opportunities for individuals to address the underlying causes of their offending behaviour. This aligns with the broader goals of restorative justice, which seeks to repair harm and promote rehabilitation. Both prosecutors recognise the potential benefits of adult diversion in terms of preventing future crime and promoting positive social change. Their perspectives highlight the need for a balanced approach to justice that combines punishment with rehabilitation and restorative justice principles.

Another prosecutor said:

“... obviously, we also look at the individual offender, and if it seems that the offender will benefit from any type of programme on offer, we consider it; we don't want to, in layman's terms, throw everybody in jail, um, you know, depending on the personal circumstances and, and information we have or what information is given to us” **PP4**

PP4 believes that not all offenders deserve ‘jail time’. Instead, the personal circumstances of certain offenders need to be considered when handling them during pretrial stages. Additionally, the latter assertion also reveals that s/he perceives adult diversion as one of the alternatives in the justice system because they [as members of the public prosecuting authority] *“... don't want, in layman's terms, to throw everybody in jail...”*. This implies that adult diversion is a unique crime management response that offers interventions beyond the court’s reprimand, especially when dealing with adults who often do not benefit from such intervention. It was also noteworthy to observe such a response from a seasoned prosecutor (30 years) in a managerial role (PP4), as their position of authority could indirectly shape the organisational culture and, consequently, the actions of their subordinates.

All these assertions by all the participants cited above confirm the perception of adult diversion as a much-needed alternative in South Africa's criminal justice system. Based on the above accounts of participants, the researcher aligns the advantages of adult diversion with factors that likely promote and sustain adult diversion in UThukela [as per the intentions of research objective 2 of this study]. This means that practice is influenced by the motivations and perceptions of the actors, while perceptions and motivations are also sustained by the routine of practice as experienced (*see* Whittington, 2015). The next theme presents the research findings on the perceived professional roles of participants in relation to the practice of adult diversion.

THEME 2: PERCEIVED ROLES OF PARTICIPANTS IN ADULT DIVERSION PROCESSES AND PROGRAMMES

This theme accounts for the perceived roles of probation officers and prosecutors during the adult diversion processes and programmes. As a fulfilment of a portion of research objective 1 of this study, the exploration of the perceived roles of probation officers and public prosecutors in adult diversion processes was vital for the researcher. While with probation officers, the researcher was interested in their roles in both the processes and programmes of adult diversion, with public prosecutors, the researcher was interested in prosecutors' roles in relation to the processes of adult diversion. The discussion of research results in this section begins with the discussion of a subtheme related to probation officers' roles before delving into those of prosecutors. A subtheme that describes the roles of probation officers is titled: *the inclusive, troubleshooting and holistic problem-solving role of probation officers in adult diversion*. This subtheme captures what is contained by the data in relation to the perceived roles of probation officers. In contrast, the subtheme that captures the roles of public prosecutors is titled: *adult diversion and prosecutorial decision-making role*.

Subtheme 2.1: The inclusive, troubleshooting and holistic problem-solving role of probation officers in adult diversion

During the discussions with probation officers, they were asked to describe their day-to-day roles in the processes and programmes of adult diversion. In light of this question, most probation officers ($n=6$) described their roles as an organised routine and systemic practice

that embraces an inclusive and collective approach to adult diversion processes and programmes. As per the results below, adult diversion seemed to have a patterned structure that involved the assessment, intervention and monitoring roles that involved offenders, their families, police officials, and *inter alia*. Their responses were as follows:

“[my role] ... is to investigate, compile a report, present it in court, have a session with the family of the accused, set the rules for the sessions, provide programmes, to monitor the behaviour... although there are no accredited programmes like with child diversion” PO3

“... okay, as a probation officer, eh, I would firstly receive a request from the prosecutor in court. The requisition form would be requesting the pretrial report of the social worker. Then we would do the investigation to establish what has happened, whether he admits responsibility for the offence, whether he has previous convictions, or whether he has been arrested before. We also establish their behaviour at home and assess their social environment... So, if I see that this person is a good person and has not been in conflict with the law before, and they are determined to change, then I recommend adult diversion. Again, it must be a minor offence... I then select which modules from different [child diversion] programmes I am going to select for each person, so it is not uniform” PO1

“My role is normally to investigate, to get home circumstances, right? I also need to get the reason behind the commission of the offender. After that, I would then recommend adult diversion, then we plan with the client regarding our life-skills sessions” PO4.

“Okay, after I have presented the report in court and recommended that the person must be sent to adult diversion and the court agrees with that recommendation, then I would meet with the person [alleged adult offender]; their members of the family, and make all of them understand that as a social worker, I will commonly meet with their family member. During those meetings, I explain what diversion is and also iron out their expectations of what is going to happen going forward...” PO5

The above comments indicate a typical step-by-step routine of adult diversion practices by some probation officers (POs), PO3, PO1, PO4 and PO5, of three different offices in the expanse of UThukela. Based on these assertions, it is noticeable that adult diversion processes are fairly structured despite the lacuna of a standardised approach. Their assertions

offer insights into their multifaceted roles that encompass a routine probation officer's investigation, assessment, statutory functions (compilation of a pretrial report and presenting it in a criminal court), programme development, family inclusion and compliance monitoring [supervision of offenders].

Three of the above probation officers, PO3, PO1 and PO4, underscore the significance of thorough investigation and/or assessing the social circumstances of the alleged offenders. This implies that, with crime, there is often a social question to answer, which may require a thorough assessment and intervention. The views of the abovementioned probation officers also imply that professional assessments during adult diversion processes often inform the practice. PO1, for instance, highlights the need “*to establish what has happened, does he admit responsibility for the offence, does he have previous convictions, or has he been arrested before*”, to establish the offender's social character and home environment. This aligns with the core principles of restorative justice, which, among other things, emphasises the understanding of the harm caused, enforcing accountability of offenders, considering previous convictions and seeking to repair behaviour within the social environment. PO1's view is also traceable in the affirming comments of PO3 and PO4. By conducting a comprehensive assessment, it seems that probation officers have an inherent ability to identify the root causes of the offender's behaviour and tailor interventions accordingly. This aligns with the spirit of section 4 of the Probation Services Act 116 of 1991, which also emphasises the probation officer's generic role [non-specific to adult diversion] in assessment and programme implementation (Republic of South Africa, 1991). NICRO (2021) identified a limitation of having a law such as the Probation Services Act, which is rather generic and non-specific to the complexities of implementing adult diversion.

On the other hand, PO4 indicated that as part of the social work assessment, s/he would also seek reasons behind the commission of the offence. This means that PO4 is often intentional about understanding the offender and possibly establishing tailor-made interventions during programme implementation. Ruhland (2020) emphasises the relationship between probation practice and the values of social work. Moreover, Loudon and Skeem (2013) discovered in their study that an assessment plays a crucial role in helping probation officers, even social workers in general, gain comprehensive insights and understanding of the needs, strengths, and challenges of offenders and their families. Such knowledge helps inform the development of appropriate interventions and treatment plans tailored to the individual's specific circumstances (*op cit.*). On the same note, PO1 and PO5's statements accentuate the

involvement of family members in the adult diversion process. By engaging with the family, POs can gain valuable insights into the offender's social context and support network. Additionally, family involvement can enhance the effectiveness of diversion by providing additional support and accountability and a strengthened possibility of successful rehabilitation. Trotter (2013) has also underscored the importance of “collaborative family work”, where in Chapter 7 of the same book, Trotter indicates that problem exploration leads to effective intervention strategies.

After assessing the circumstances of the case and establishing the social factors that relate to crime, POs 1 and 4 discuss the process of selecting and implementing programmes for adult diversion. PO1 explicitly states, "*I then select which modules from different [child diversion] programmes I am going to select for each person, so it is not uniform*". This suggests these social workers' pragmatic approach to programme design, recognising the probation officer's ability to create programmes from nothing in order to address the diverse needs of the offender population.

While PO4 draw inspiration from child diversion programmes, they acknowledge the need for flexibility and adaptation to suit the specific needs of adult offenders. PO4's account emphasises the discretionary nature of the adult diversion process. POs play a crucial role in determining the suitability of offenders for adult diversion, often considering factors such as the severity of the offence, prior criminal history, and the offender's willingness to change. While this discretionary power allows for individualised assessments, it also raises concerns about potential bias and inconsistency in decision-making [the next chapter provides further discussion and empirical findings about this concern]. While the adaptation of child diversion programmes for adult offenders, this practice may be necessary in the absence of specific adult programmes [accredited similar to child diversion], it raises questions about its age appropriateness. Arguably, adult offenders may require tailored interventions that address their unique needs, which child-focused programmes may not adequately meet.

Beyond programme implementation, the above quotes indicate that the roles of probation officers do not end at a programme level. However, it includes other statutory functions inherent to the probation officers' roles during adult diversion. PO1 also emphasise his statutory functions of compiling a report and presenting such forensic reports in court. PO1 and PO3 cited their role in compiling a pretrial report in a criminal matter, presenting it in court, having a session with the family of the accused, and setting rules for the session of

diversion programmes. The compilation of a court report implies that the role players of adult diversion who are situated in the court of law rely on the assessment of social workers in making decisions in the pretrial processes.

PO3 further emphasises the importance of monitoring and supervision in ensuring compliance with adult diversion requirements, as set out by the court order. This aligns with the dynamics faced by probation officers when “working with involuntary clients” (*see Trotter, 2022, p.2*). Trotter (2022) emphasises the importance of understanding the unique challenges and needs of involuntary clients and the necessity for practitioners to develop effective interventions that promote positive change and prosocial behaviour. By effectively monitoring offenders, PO3 imply that probation officers are able to identify any emerging issues and provide additional support as needed. Therefore, the role of monitoring and supervision of offenders is in line with the generic scope of work of ‘probation services’ as outlined in Regulation 1 of the Regulations Relating to the Registration of a Speciality in Probation Services (Republic of South Africa, 2013).

Other probation officers also provided much more detailed explanations regarding their roles in the processes and programmes of adult diversion. Their comments that affirmed the above were as follows:

“Once the prosecutors have noted the possible case of adult diversion, they then refer it to us for an assessment, for example, there was a gentleman this morning who was here, he came from court and we screened him too and realised that he is a suitable candidate for adult diversion, he then signed a contract in order to begin the intervention” PO6

“... it starts from the prosecutor, giving you a requisition, [sigh] then maybe if the requisition form does not clearly indicate the contact details of the diversion person, then I contact the investigating officers. The investigating officer normally knows the person [alleged adult offender] face-to-face and where they stay; they would give us those details and even share alternative numbers. So, once I get hold of the person, I plan for their home visit appointment, and then I compile my home circumstances report” PO7.

Among numerous other issues that PO6 mentioned about probation officers’ roles, s/he also spoke about the signing of a "contract" as a formalisation of the adult diversion process, with both the probation officer and the offender agreeing to specific terms and conditions. This

contractual arrangement may serve to enhance accountability and compliance, ensuring that the offender adheres to the agreed-upon interventions, expressly because Trotter (2022) describes offenders as involuntary clients who present significant and unique dynamics to the social worker-involuntary client relationship. Rooney and Mirick (2018, p.20) emphasise the ethical pillars of working with involuntary clients, which include autonomy, beneficence, non-maleficence, justice, and fidelity, recognising the need to balance these principles while navigating the unique challenges of respecting client autonomy within the context of involuntary interventions by social workers. In the case of adult diversion, as a yet-to-be-legislated practice, PO6 is exercising caution to balance the ethics of engagement and the existing informality of adult diversion.

While adult offenders are often involuntary clients, PO6 and PO7 revealed that their role as probation officers is dependent on the agency of public prosecutors, who are seen as the originators or gatekeepers to determine whether or not diversion would happen. Both PO6 and PO7 stated that public prosecutors are the actual initiators of adult diversion. In their responses, they specified that “*it [adult diversion] starts from the prosecutor*”. These findings confirm the research of Hargovan (2012, p.15), who argued that “[a] number of possibilities for diversion exist within this discretionary system, and the decision to divert is largely dependent on the prosecutor”. This, therefore, signifies the important role of a prosecutor in the gatekeeping of adult diversion. Thus, their discretion requires standardisation and legislative regulation, which is a clarion call of this study.

PO7's account affirms the earlier statements by PO3 and PO4 about the investigative role of POs in adult diversion. PO7 also specified the role of the police [investigating officers] in the practice of diversion. PO7 stated that the police would often provide further contact details that often aid in finding the accused or their homes, especially in instances where the details that are provided in the ‘requisition form’ do not clearly show the details of the alleged offender. This response strengthens the already-known discourse that adult diversion is multi-disciplinary and interdisciplinary. Furthermore, it can be argued that these responses highlight the co-creation and collaborative endeavours of adult diversion among different role players. The collaboration between POs and investigating officers seems to be essential in this process.

Regarding the role of the police in diversion, Kopak (2020) and Maimane (2017) reveal that police officials in countries such as New Zealand and the United States of America play a

crucial role in the practice of diversion for adults. Both these authors reveal that in the aforementioned countries, there are diversion options that are referred to as ‘police diversion’ (Neyroud & Slothower, 2015) because police officials solely implement them. However, in South Africa, the findings above provide evidence that police officials play a non-direct role in the processes of adult diversion, i.e. they are responsible for ‘family finding’ and/or providing additional details when probation officers are required to trace the diverted offenders.

Subtheme 2.2: Adult diversion and prosecutorial decision-making role

Public prosecutors were asked to describe their roles in the adult diversion processes as they perceive them. PP2 responded by saying:

“The moment I have a docket in front of me and I see the age and I see he is a scholar and whatever, then I immediately go to court and I’ll say to the court, I consider adult diversion because of the age and because of, ehm, the fact that this person is schooling and but can we find out whether this accused is pleading guilty, admitting the offence? Sometimes the defence will stop me, or sometimes the accused will stand up and say I want legal aid or Would you please consider adult diversion? And if it is a 30-year-old who’s not employed, sitting at home... Yeah, so it can come either from me or the defence. Normally, it doesn’t come from the accused. These things normally come from the attorney or from me [prosecutor], and 99% it’s from me. I will say, no, I think we should try it here,” PP2.

Based on the findings above, PP2’s statement reveals a discretionary power and agency of prosecutors to initiate adult diversion, heavily influenced by social factors such as age and employment status. The emphasis is on the offender’s age and educational status, suggesting a desire to protect people, with the potential of being rehabilitated, from the negative consequences of formal criminal justice processes. PP2’s willingness to consider diversion based on the offender’s plea of guilt highlights the importance of pretrial interventions that are anchored upon restorative justice principles.

While PP2’s emphasis on age, education, and plea of guilt is commendable, it is important to ensure that these decisions are made in a fair, transparent, and consistent manner. NICRO (2021) raises concerns about potential inconsistency in decision-making, as there is no

determining law, as is the case with child diversion guided by the Child Justice Act 75 of 2008 (Republic of South Africa 2008). Article 17 of the United Nations Guidelines on the Role of Prosecutors of 1990 stipulates that “in countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution” (United Nations, 1990).

Another noticeable part of the response is the potential for defence attorneys to influence the adult diversion decision, which illuminates the collaboration that exists among litigants in criminal cases at a pretrial phase. PP2's assertion that adult diversion is typically initiated by either the prosecution or the defence and rarely by the accused themselves underscores the power dynamics at play in the criminal justice system. This suggests that offenders may have limited agency in determining their own legal fate, especially given the ongoing discourse on ‘represented access to justice being associated with power dynamics’ such as wealth, education and status (Dugard, 2008; Yaroshefsky, 2021). This signifies that public prosecutors often relate better to their “learned colleagues” [defence attorneys] rather than negotiating with the offender himself (*sic*) (*see* Yaroshefsky, 2021)

Another prosecutor said:

“So, with adult diversion, the docket would come to me as a first appearance [decision docket]. At that stage, we normally don’t know whether it would be for adult diversion until he appears at the first appearance in court. After they have been allocated an attorney, then it is the responsibility of the defence attorney to make that application...” **PP3**

Similar to the latter assertion of PP2, PP3 also highlight the central [collaborative] role that defence attorneys have in relation to adult diversion. On the other hand, PP3's statement highlights the individualised nature of the diversion process, where decisions are often made on a case-by-case basis. The lack of a clear referral mechanism or standardised criteria for identifying suitable candidates for diversion suggests a degree of uncertainty and inconsistency, and a possibility of ‘some cases falling through the cracks’ if someone [prosecutor or attorney] who is not legally obliged would forget to consider or initiate diversion.

Additionally, the late stage at which diversion is considered, after the first court appearance, may limit the effectiveness of the process. Kopak (2020) argues that the benefits of including

police officials as the first point of contact in the criminal justice system are that they are the best people to screen for possibilities of restorative measures. If diversion is delayed to the pretrial stage, opportunities for early intervention and rehabilitation may be missed (*ibid*).

On the other hand, PP1 said:

“If I'm approached by the defence [attorney] to consider an adult diversion, I don't necessarily just accept ... Okay, once we receive representation for adult diversion, we obviously look at the factual nature of the case.” **PP1**

PP1's statement underscores the importance of a balanced approach to diversion. This excerpt reveals the discretionary power held by public prosecutors in adult diversion decisions. PP1 emphasises that they do not automatically accept all diversion applications. Instead, a thorough assessment of the case facts is conducted. Significantly, the prosecutor's discretion extends beyond merely considering the offender's circumstances. It also encompasses an evaluation of the case's suitability for diversion, which may involve factors like the seriousness of the offense and the impact on the victim. The statement "*sometimes we don't even need to contact the complainant*" suggests that in some instances, the prosecutor may determine that diversion is inappropriate based on their own assessment of the evidence and the applicable legal criteria, even without seeking input from the victim. This highlights the significant role of the prosecutor in gatekeeping access to diversion programmes and ultimately shaping the course of justice for the accused. Other participants said:

“well it doesn't cause any challenge because whenever a there is docket, a person who is supposed to decide on that docket is the prosecutor, the police officers submit the dockets to us so that we can make a decision regarding it... at the end of the day, it is the prosecutor who has the final say in court to say, am I diverting this matter or not it” **PP5**

“We are normally not involved when adult diversion process is being initiated, so the prosecutor would then take the responsibility of compiling a request for us to assess the matter”, **PO1.**

The latter assertion by PP5 and PO1 highlights the discretionary role of a prosecutor in deciding whether to enrol the docket or not. PP5, confirms the notion that, at times, it would be the defence of who initiates the proposal of adult diversion, although such instances are

seldom, according to her. While that is the case, PP5's statement still affirms the central role of PPs in decision-making regarding diversion.

PP6 also provided a detailed account of her step-by-step activities in their adult diversion practices. PP6's exact words were as follows:

“... okay, so we get the docket, and we check if there is enough evidence to enrol the matter or not. If the evidence is enough, then I enrol the matter in the court roll; if it is not enough, you won't enrol it. Then, when the matter goes to court, you'd notice as a prosecutor that maybe he has stolen something worth R20 or R50... there and there, you'd consider adult diversion; even after you've considered adult diversion you still need to obtain further information from the investigating officer [police official] for bail enquiry, so when the investigating officer is investigating for bail, ehm, they would normally come back with information about the accused's pending cases, ehm and other things, what are views of complainant. And then if the bail is not opposed, then the person would be awarded bail. We would tell the court and tell the court after bail that this what we intend to do with the matter [consideration of adult diversion], but I would still want the offender to be assessed by a probation officer, maybe I'd ask for a remand [postponement] of two weeks for probation officers to compile a report. Usually they would tell us that they only need two weeks you see, from there I'd draft a requisition and send it to DSD [Department of Social Development] and await a response. If they [probation officers] say he is a suitable candidate to be diverted, we ask for a report, hand in the report to the court and then ask the court [magistrate] to award a diversion court order from that point in time”

PP6

This excerpt provides insights into the prosecutor's step-by-step of a typical case of adult diversion. It provides perspective on the prosecutor's decision-making process in fulfilment of adult diversion. PP6 highlights the crucial role of prosecutorial discretion at the outset, emphasising the initial assessment of evidence as a prerequisite for proceeding with the case. Notably, the prosecutor's consideration of diversion appears to be influenced by subjective factors such as the perceived seriousness of the offense, exemplified by the reference to the value of stolen goods. Furthermore, the excerpt accentuates the collaborative nature of the process, involving input from various stakeholders, including the investigating officer (who provides information on the accused's criminal history and sometimes the complainant's

views) and probation officers (who conduct assessments of the offender's suitability). The involvement of probation officers in the adult diversion process is a positive development. By assessing the offender's suitability for adult diversion and providing recommendations, probation officers seem to help ensure that appropriate interventions are implemented. However, the time constraints associated with the criminal justice system may limit the ability of probation officers to conduct thorough assessments and develop individualised treatment plans. This multi-layered decision-making process highlights the overall effectiveness of adult diversion and the complexities in the administration of justice.

The United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 1990) encourage the use of diversion and non-custodial measures as alternatives to imprisonment, emphasising the role of prosecutors in promoting non-custodial measures as alternatives to imprisonment in deserving matters and in considering individual circumstances. In this instance, PP6's statement highlights a complex interplay of factors that influence the decision to initiate adult diversion. While the prosecutor initially assesses the strength of the evidence and determines whether to proceed with a formal prosecution, subsequent information, such as the nature of the offence and the offender's background, may lead to a reconsideration of this decision.

Article 17 of the United Nations Guidelines on the Role of Prosecutors of 1990 stipulates that “in countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution” (United Nations, 1990). However, in South Africa, there is no law or published rules or regulations that provide guidelines to enhance fairness and consistency of approach in making decisions in the prosecution processes relating to adult diversion. Instead, prosecutors recounted their perceived routines concerning adult diversion, which ultimately highlighted their role as decision-makers in the adult diversion process.

5.4. CONCLUSION OF THE CHAPTER

In the absence of a concrete definition of adult diversion, this chapter contributed to knowledge by presenting a detailed interpretation of participants' understanding of adult diversion and their perceived roles in its execution within the UThukela District. The findings

highlight a lack of a clear and consistent definition of adult diversion, but a definition that is attached to the perceived advantages of adult diversion. The association of adult diversion with '*its benefits*' and the diverse description of the concept is somewhat associated with the sustainability of the phenomenon. The chapter revealed the importance of inter-agency collaboration in the successful implementation of adult diversion. The findings of this chapter underscore the need for a more standardised approach to adult diversion in South Africa. The following chapter explores factors that inform and hinder the success of adult diversion practice in UThukela.

Chapter 6:

FACTORS INFLUENCING ADULT DIVERSION IN UTHUKELA, SOUTH AFRICA: *INSIGHTS FROM FRONTLINE PRACTITIONERS*

6.1. INTRODUCTION

Crime remains a persistent challenge across nations despite the institutionalisation of various crime management strategies over time. This persistence highlights the multifaceted nature of crime and the ongoing need for effective and alternative solutions. As nations worldwide strive to achieve the 2030 Agenda for Sustainable Development, with its emphasis on peace, justice, and strong institutions encapsulated in Sustainable Development Goal number 16, there is a pressing need to explore the complex interplay of factors influencing criminal practices within South African communities.

The emergence of adult diversion as a multifaceted approach represents a shift from the exclusivity of traditional punitive measures, with this emerging practice aiming to redirect individuals away from formal prosecution and incarceration towards alternative pathways focused on rehabilitation, restitution, and community reintegration. Understanding the dynamic chemistry between structural factors and participants' practices and how these factors recursively shape and reshape one another is crucial to comprehending the landscape of adult diversion processes and programmes within the rural UThukela district.

This chapter embarks on a comprehensive exploration of the factors that influence the utilisation and expansion of adult diversion within the UThukela district area. These factors are either positive or negative drivers of adult diversion processes and programmes. This research initially attempted to separate factors that inform, promote, and hinder adult diversion. This assumption, while seemingly logical, proved to be an oversimplification during data analysis. The research findings revealed a more nuanced reality: factors influencing adult diversion exhibit a complex interplay. Instead of discrete categories, a spectrum emerged, with factors possessing both positive (driving/promoting) and negative (impeding) dimensions.

Furthermore, these factors exhibited a transcendence, meaning they simultaneously influenced multiple aspects of the diversion process. For instance, the chapter presents the structural factors of adult diversion and the limitations of adult diversion programmes. Among these factors, the researcher noted the interconnectedness of data. This interconnectedness necessitates a more holistic understanding that moves beyond simplistic categorisation.

By commencing with the exploration of structural and institutional factors (with numerous subthemes), this chapter acknowledges their profound influence on the diversion landscape. These overarching factors create the context within which individual and community-level factors operate. By recognising the interplay between these broader forces and the more immediate influences, the research aims to provide a more comprehensive and nuanced understanding of the complex dynamics underlying adult diversion. The chapter also extended to an analysis of the limitations inherent within adult diversion programmes themselves. All these factors collectively depict the reality of adult diversion in UThukela.

6.2. THEME 3: THE LINK BETWEEN ADULT DIVERSION, STRUCTURAL AND INSTITUTIONAL FACTORS

As per research objective two, this study had a strong interest in understanding the drivers of adult diversion in UThukela. This theme depicts structural and institutional factors influencing adult diversion. By using the term influencing adult diversion, the researcher was not concerned about distinguishing the positive and negative but presented the macro dynamics of adult diversion in UThukela.

Subtheme 3.1. Availability of departmental policy directives on adult diversion for public prosecutors

When asked about the availability of departmental policies or guidelines which frame adult diversion processes, public prosecutors shared their experiences as follows:

“Yes we do, this is it [participant is pointing at an arch leverfile]. This is our Bible. They are right on my table now. Yes, so there are policies and directives... we consider them to decide who qualifies [for adult diversion]” PP1

“yeah, we have rules, we have directives... they include ADR [alternative dispute resolution], diversion and other restorative justice options... I think they are only applicable to us...” PP2

“yes we do, the prosecutorial directives also mention adult diversion... it is only for us... obviously, it causes problems because we sometimes have to use our directives to guide others, which often causes resistance because social workers also want to do it according to how they were taught” PP3

The comments provided by the cited public prosecutors consistently affirm the presence and significance of intra-departmental policies and directives governing adult diversion

The comments provided by the cited public prosecutors consistently affirmed the existence and significance of their intra-departmental policies and directives governing adult diversion. The policy directives cited by the prosecutors apply to them as employees of the National Prosecuting Authority (NPA). These directives serve as an essential framework guiding their practice in adult diversion processes. From a procedural law point of view, King (2023) argues that formal rules and procedures should guide the criminal justice system processes.

PP1 refers to the prosecutorial guidelines on diversion as “... *our Bible*...”. This metaphorical description accentuates the perceived authority and importance of these directives from which they attain guidance for their practice. On the same note, section 179, read together with section 22(1)(c) of the National Prosecuting Authority Act 32 of 1998, provides the National Director of Public Prosecutions with the power to provide directives or a "prosecution policy which must be observed in the prosecution process" (Republic of South Africa, 1996; Republic of South Africa, 1998). Therefore, the policy directives that the participants referred to were established under this cited domain of the national director of public prosecutions. The National Director of Public Prosecutions issues the prosecutorial

directives that participants referred to at a strategic level. However, at an operational level, public prosecutors have discretionary powers to decide whether to prosecute or not to prosecute a case (see perceived roles of public prosecutors in Chapter 5). Additionally, these directives remain applicable to the NPA, and they remain an internal organisational policy, not a law (legislation applicable to all).

The responses of PP2 and PP3 highlight the exclusivity of the prosecutorial guidelines in question. These participants said: “...*I think they are only applicable to us...*” PP2, while PP3 said, “... *it is only for us...* ”. This indicates that the available policy directives are only applicable to public prosecutors, even though adult diversion is a multidisciplinary practice with diverse professional role players.

While pointing out the exclusivity of the available policy directives to the NPA, PP3 further stated that some of the shortfalls of being the only role players who have specific policy guidelines for adult diversion are that: “*it causes problems because ... [public prosecutors] sometimes have to use ... [their] prosecutorial directives to guide others which often causes resistance because social workers also want to do it according to how they were taught*”. In other words, the assertion of PP3 implies that policy directives that are intra-departmental and only applicable to public prosecutors create problems when adult diversion is a domain of multiple stakeholders, such as social workers (probation officers) and other role players. Furthermore, the exclusivity of policy directives for adult diversion also disturbs mutual teamwork during the collective administration of adult diversion processes. While having the prosecutorial directives is an important, or rather, a helpful driver of adult diversion practices, its exclusivity illuminates the gap that is brought by the lack of universal legislation specific to adult diversion, which would cut across all stakeholders regarding roles, procedures and mandates.

During the interview with PP4, this prosecutor initially offered to provide the researcher with a copy of the directives during the data collection interview for reference purposes. However, when s/he (PP4) attempted to make photocopies of the said policy directives for the researcher in her office printer, s/he noticed that the directives had a copyright disclaimer that prohibited external distribution. According to PP4, prosecutors were prohibited from distributing copies of this policy to non-members of the NPA.

PP4 comments in this regard were that:

“... eish sorry! I wanted to make a copy of what I am referring to, but I can't share. I'm prohibited, as you see [pointing to the disclaimer at the bottom of the page]” **PP4.**

This action confirmed the exclusivity of these directives whilst their application is externalised or even imposed on other interdisciplinary practitioners (see the latter assertion of PP3 above). These findings confirm the revelation of Somaru and Rautenbach (2020, p.645), who stated that “[t]he National Prosecuting Authority has issued a comprehensive document containing policy directives that are available only to prosecutors”. Somaru and Rautenbach (2020) also add that these Prosecutorial Guidelines on the Management of Criminal Cases are neither published (for the public) nor instructional to every stakeholder within the criminal justice system. However, they apply only to the members of the prosecution (*ibid*).

Collectively, the narratives of public prosecutors indicate that despite the absence of a universal legal framework (for every stakeholder) on adult diversion, the National Prosecuting Authority has attempted to institutionalise the practice of adult diversion by introducing the aforementioned policy guidelines. Hence, adult diversion is a crucial part of the mundane court process of public prosecutors, which prompted the national director of public prosecution to issue operational directives as per the powers vested upon her by Act 32 of 1998. It is an important admission that the researcher, with his inherent work experience in probation services, expressly diversion services in UThukela, had assumed that public prosecutors did not have any policy guidelines regarding adult diversion. Hence, from his probation officer's point of view, prior to the research inquiry, he presumed adult diversion was entirely informal and a product of social construction. Coming from a point of not knowing, it was, therefore, a point of learning for the researcher as the data revealed a different picture. Creswell (2013) also coins qualitative research, similar to the current project [grounded on relativism], as an opportunity for the researcher to learn from the participants and/or the research project.

Subtheme 3.2. Unavailability of departmental policy directives on adult diversion for probation officers

The researcher also probed the experiences of probation officers regarding policy availability. The responses of probation officers were as follows:

“... so it would be better if there were guidelines for us, that will inform us on what type of cases should we consider for adult diversion.” PO7

“Mostly, it is my understanding as a social worker [that informs my practice], sometimes I ask those older who were before us and seek their wisdom” PO2

“... so everyone is doing it according to their own way” PO4

“So as probation officers, we end up finding our own ways of doing it, ...” PO6

The aforementioned statements from probation officers suggest a lack of awareness regarding any formal policy guidelines. Instead, their responses highlighted reliance on ‘own ways’ or improvised rules, reflecting the gap in existing policy, as noted by the participants. This suggests that probation officers primarily operate within the informal realm when handling adult diversion. This stands in contrast to prosecutors, who cited clear policy directives, as mentioned in the previous subtheme. The absence of a formal policy framework for probation officers in diversionary work with adult offenders raises concerns about consistency and accountability.

PO7 suggests that it would be better if there were guidelines for probation officers. The responses of PO2 and PO7 highlight the reliance on informal knowledge and personal judgment in decision-making. The reference to social work principles, for example, “...*my understanding as a social worker*” PO2, suggests that probation officers are drawing on broader professional ethics and values of social work to guide their practices. The reliance on the wisdom of experienced colleagues also underscored the importance of interdepartmental mentorship amongst probation officers (social workers) and the value of institutional memory in shaping adult diversion practices in UThukela. Thus, whilst policy unavailability for probation officers could be construed as a limitation, it is, concurrently, a driver of adult diversion in UThukela because the participants indicate that despite policy unavailability, they still have the impetus to pursue adult diversion (also see Chapter 5, subtheme 1.2).

The responses of PO4 and PO6 emphasise the lack of standardised procedures and the consequential inconsistency in decision-making. Inconsistency in probation services often leads to disparities in the application of diversionary measures, potentially affecting the outcomes for offenders and victims (Gxubane, 2012). The absence of clear guidelines for one party (probation officers), while prosecutors have their intradepartmental policy directives, may also disturb practice cohesion between prosecutors and probation officers. Naik and Kim

(2010) argued that policy misalignment between stakeholders results in operational problems if the actions of some role players are guided by a framework that is not known to other role players of the same practice.

While appreciating the relational entanglement between the functions of probation officers and those of public prosecutors, the researcher utilises Figure 6.1. below to illustrate what it means for UThukela to when practice guidelines of adult diversion are paradoxical.

Figure 6.1. The Dichotomy of Intradepartmental Policy (Un)Availability

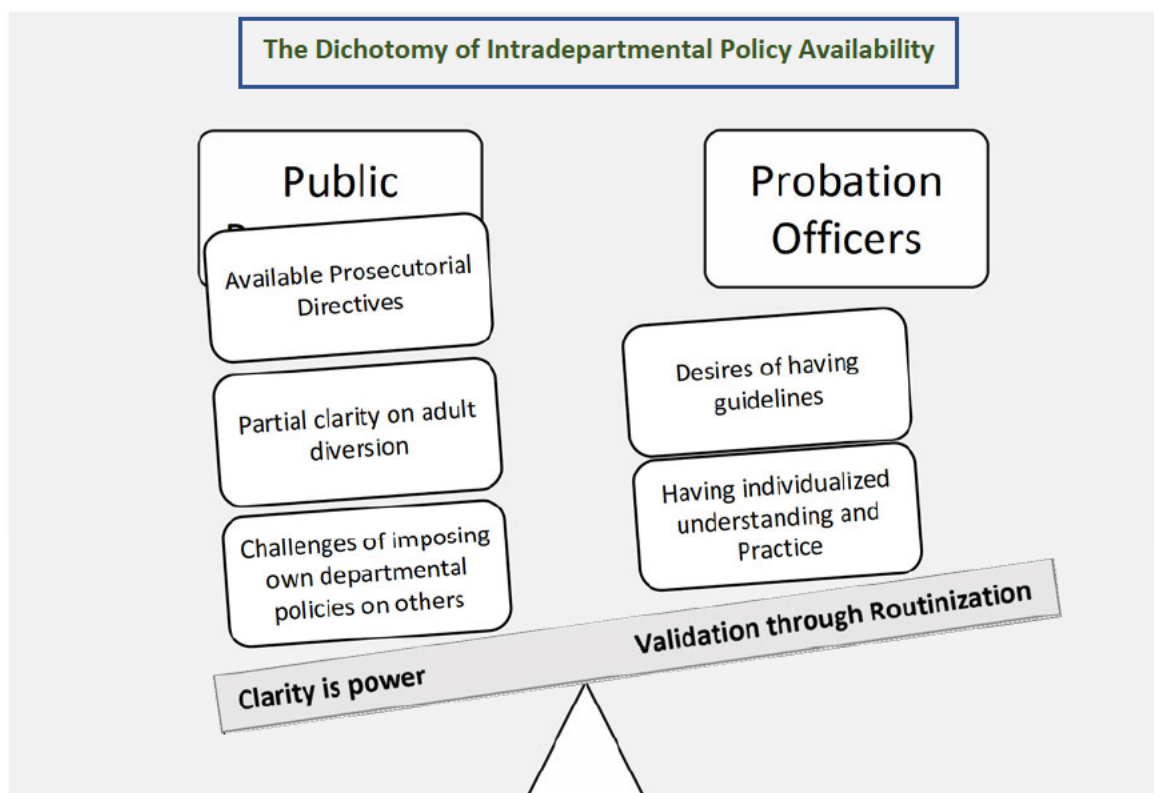


Figure 6.1. The Dichotomy of Intradepartmental Policy (Un)Availability

Subtheme 3.3. Adult diversion versus the Circumstances of the offender, Seriousness of the offences and Community interest (C.S.C.)

When asked about eligibility criteria for adult diversion, participants acknowledged the disparity in organizational policy directives between their two employers. The following are the responses of probation officers:

“adult diversion is normally suitable for people who have committed less serious crimes, it is when someone has not committed an offence that is ‘too big!’” PO5

“It is whereby we deal with cases that are not that much severe. Actually, it is those cases that have minimal chances of direct imprisonment if the case was to go on an actual trial... for me to be honest, it’s assault GBH, common assault... [pause] in terms of theft it depends, oh! And shoplifting. So, those are the cases that I would consider for adult diversion... [remorse] it plays a huge role in my decision-making and even in my recommendation of adult diversion. Sometimes I would even argue against it if the person does not show remorse. I even remember one case where I presented a report to state that the accused did not deserve adult diversion and the case was reinstated to the normal [trial] process” PO1

“From my personal experience, those that I have dealt with mostly, are shoplifting and if I assess these cases closely I would normally realise that some of them are generally shoplifting. Most of them, you would realise that it was not an intention to steal, but it is cases where you see that this incident can happen to anyone; it can happen to me... As I said earlier, it is petty crimes, yah!, but I remember there was once a case of common robbery where the accused had robbed the victim of their hat. There are now these trending and stylish hats called K-Way, they are famous in the township, so they had stolen that... [that] case was considered for adult diversion” PO2

“Eh, adult diversion is when an adult offender has committed a minor offence, and then, we view whether that person has no previous offences, they accept the responsibility of the charge and show remorse for their actions, we then observe that perhaps if this person is prosecuted, if this person is trialled and sentenced it would ruin their life, maybe they are responsible parents, then the only way that would assist him is for us to consider him adult diversion, to avoid a criminal record which may deter him from getting work.” PO4

From the above accounts, it was clear that these participants had consistent eligibility criteria for adult diversion cases [with CSC components]. The **circumstances of the offender** were among the key considerations of probation officers. PO4 emphasised the importance of factors such as a lack of prior offences, acceptance of responsibility, and remorse. PO4 stated, *"Eh, adult diversion is when an adult offender has committed a minor offence, and then, we*

view whether that person has no previous offences, they accept the responsibility of the charge and show remorse for their actions". These factors are crucial in assessing the potential for rehabilitation and the likelihood of reoffending.

The **seriousness of the offence** was another crucial factor mentioned. In the assertions of the above-quoted probation officers, there is a notable use of phrases such as “less serious crimes” PO5, “petty crimes” PO2, “remorse” PO1, and “*minor offences*” PO4. PO2 further elaborated on the nature of these offences, suggesting that the actions of offenders are sometimes impulsive or situational rather than a deliberate intent to commit serious harm. Based on this interpretation of the assertion of PO2, it can be argued that the availability of adult diversion in South Africa brings valuable contributions to the lives of offenders who encounter the criminal justice system for petty crimes, which, according to the participants, can be rehabilitated without obtaining a criminal record. Prominent scholars of the restorative justice approach (Braithwaite, 2014; van Wormer, 2003; Zehr, 1990) clarify that, amongst its numerous objectives, this restorative justice approaches also consider the seriousness of the offence, the assumption of measures to prevent a recurrence of the crime, and seeking assistance for offenders.

PO1 and PO5 confirmed the stance of PO2, especially on the subject of the seriousness of the offence as an eligible criterion. PO2 classified petty crimes to include theft by shoplifting, assault common, assault with intent to cause grave bodily harm [assault GBH] and common robbery, which is associated with a smaller value of stolen goods. Due to the low-order severity of these types of cases, they are distinguished by the above-quoted probation officers as offences that they deem eligible for adult diversion in their practice. The seriousness of cases was, in simpler terms, a condition of eligibility for adult diversion. These eligibility criteria are aligned with that of child diversion (see Child Justice Act 75 of 2008). Therefore, NICRO (2021) was correct in saying that the future of yet-to-be-legislated adult diversion should resemble the already existing structure provided for child diversion processes, which is an important yardstick for adult diversion.

On the other hand, **community interest** was implicitly considered in the decision-making process of probation officers. By adult diverting offenders from the formal criminal justice system, probation officers aimed to minimise the negative impact on offenders’ lives, such as job prospects, parenting responsibility and social relationships. This approach aligns with the

principles of restorative justice, which seeks to repair harm and promote healing within the community.

Corroborating the above assertions on the nature of offences, PO7 said:

“... when the court refers a case for adult diversion, they would normally look at the nature of the offence, does he/she has previous cases, how severe these cases are before they contact us [probation officers] for a possible adult diversion recommendation” PO7

The assertion of PO7 also affirms that factors such as “*the nature of the offence*”, “*previous cases*”, and “*... how severe these cases are*” are important factors which probation officers consider, especially in the expanse of the UThukela district area.

The accounts of public prosecutors also resembled this C.S.C triple factor, which they consider, respectively as legal professionals, during the practice of adult diversion. Their responses were as follows:

“I think it must be more petty crimes, we do it for shoplifting, maybe M.I. to P, malicious injury to property, assault common and assault GBH [grievous bodily harm] where it is not that serious, ehm, and I think you can even consider adult diversion in housebreaking cases especially when it was in a family setting, person breaks into the granny’s house or neighbour’s house, something like that, you know” PP2

“I take each case as it comes, obviously schedule five and schedule six offences, uh, that’s totally out of the question, however, if we look at a theft by shoplifting, for example, I consider such” PP1

“... scholars especially are considered because we do not want them to start adulthood with a criminal record” PP3

Similar to probation officers, the above extracts indicate that some public prosecutors also considered the circumstances of the offender, the seriousness of the offence and the interest of the community as eligibility criteria for adult diversion. For instance, PP1 also posits that, during the administration of adult diversion processes, s/he utilises the schedules of offences [legal categorisation of offences due to severity] that are outlined by the Criminal Procedure Act 51 of 1977 as his (*sic*) frame of reference. Of note, Schedules 5 and 6 of the Criminal Procedure Act 51 of 1977, as cited by PP1, list the offences (i.e. murder, rape, treason, etc.)

for which the courts are more likely to keep the accused in custody pending trial (du Toit and Ferreira, 2015). These latter listed offences are considered to be serious and/or violent (White, 2011).

PP3 indicated that they consider accused persons who are scholars and/or enrolled in an education programme [circumstances of the offender]; and that identification helps the prosecution to prevent some accused adults from starting "... *adulthood with a criminal record*" [community interest]. The argument also centres on the potential of adult diversion, particularly in cases of petty crimes, to align with principles of restorative justice and *ubuntu*. While both PP1 and PP2 recognise the applicability of adult diversion in such cases, PP2's perspective is particularly noteworthy. PP2's willingness to consider adult diversion, even in cases of housebreaking within a family setting, demonstrates an awareness of its potential to reintegrate offenders, repair harm, and restore relationships. This approach aligns with the principles of *ubuntu*, which emphasises the interconnectedness of individuals and other people. Engelbrecht and Kasiram (2012) state that there is a strong connection between the principles of *ubuntu* and family work. Kuwali and Kuwali (2013) also argue that decolonising legal practices through the integration of philosophies like *ubuntu* is crucial. By prioritising family preservation, PP2's approach embodies *ubuntu's* core principle of "I am because you are" (Mangena, 2015). This perspective is further supported by the alignment of restorative justice practices and Afrocentric principles, as discussed in Chapter 2.

Collectively, the accounts of probation officers and those of public prosecutors suggest that the C.S.C. triple factor plays a significant role in shaping adult diversion practices, especially for probation officers within the UThukela district. By carefully considering the circumstances of the offender, the seriousness of the offence, and the interests of the community, probation officers can make informed decisions about the most appropriate course of action. Prominent contributors to the literature on restorative justice (*see* Hargovan, 2012; Skelton and Batley, 2006; Zehr, 1990) also affirm that restorative justice practices need to consider the nature of the offence, circumstances of the accused and the interest of the community, *inter alia*. As shown in the previous theme, probation officers had established the eligibility criteria despite not having a specific policy directive within KZNDS, their employers, to inform their decisions for diversion.

Subtheme 3.4. Adult diversion and the help of assistant probation officers

Out of eight (8) service offices of the KZN Department of Social Development in UThukela, only two (2) offices had assistant probations. The offices that had the presence of assistant probation officers provided the following accounts about working with assistant probation officers:

“[A deep sigh] their role is so huge, as I was saying, I have never attended any training on diversion but many of the things that I know, I learnt them from YYY [censored name of the assistant probation officer], s/he has been around and focusing on probation services more than me... s/he really helps me with a lot of things because the workload is unmanageable so she helps me with many things... wherever I go she is there” **PO6**

“when it comes to compliance and non-compliance of offenders I can’t comment much because we don’t have issues there XXX [name of the assistant probation officer] would normally fetch them from home, because our office is situated in an area that is outside of the community so it is difficult to evaluate compliance, although there are few, in between, offenders who run away... no, it is the assistant probation officer who deals with that [complaint], the assistant probation officer would generally inform the probation officer through a report that, no this one is not complying and we should do one two and three... in terms of non-complying candidates it is then the probation officer who would take over and reprimand the person about the consequences of non-compliance” **PO2**

“We are being assisted by our assistant probation officers, s/he is the one who was trained... yes, it was a former probation officer and our assistant probation officer XXX [censored name], both of them were trained. One of them, an assistant probation officer implements the programmes” **PO1**

The above citation indicates that assistant probation officers offer much-needed relief in terms of adult diversion processes and programmes. These excerpts reveal a significant reliance on assistant probation officers [in offices where assistant probation officers are present] for the successful implementation of adult diversion programmes. These comments also highlight potential gaps in the professional development and workload management of probation officers. PO6 explicitly states, the assistant probation officers’ “... role is so huge, ... I have never attended any training on diversion but many of the things that I know, I learnt them from YYY [censored name of the assistant probation officer],” acknowledging that

their knowledge is derived mainly from on-the-job learning facilitated by their assistant probation officers. This suggests a potential gap in formal training for probation officers and the informal nature of knowledge dissemination within the department, coming from subordinate paraprofessional staff to professional staff members. Probation Services Amendment Act, positions the assistant probation officer as a subordinate of probation officers. Additionally, PO6 also states that the assistant probation officer helps lessen the unmanageable workload that they face as social workers. This signifies the collaborative relationship that exists between assistant probation officers and probation officers.

Furthermore, PO2 describes how the assistant probation officer plays a crucial role in monitoring offender compliance, including rural home visits and reporting on non-compliance. This suggests a significant delegation of critical tasks to assistant staff, potentially due to the heavy workload of probation officers. This is further supported by PO1's statement, "*We are being assisted by our assistant probation officers, s/he is the one who was trained... yes, it was a former probation officer and our assistant probation officer XXX [censored name], both of them were trained. One of them, an assistant probation officer, implements the programmes*". This observation raises questions about the division of labour and the role of probation officers in programme delivery, suggesting a potential underutilisation of their skills and expertise. Additionally, PO2 indicated that their assistant probation officer goes the extra mile to fetch offenders from their homes and deliver them to the office for the programmes of adult diversion that they offer. Importantly, this study confirms the findings of Mzinyane (2017), who also discovered that fetching involuntary clients or diverted offenders from home actually strengthens compliance. The study by Mzinyane further discovered that in some regions of Ladysmith, which is part of UThukela, public transport is sporadic due to the remoteness of some rural regions. Therefore, the attempt of "*taking the services to the people*" (Mzinyane, 2017, p. 86) and/or fetching the clients (as narrated by PO2) actually mitigates the rural dynamics that come with rendering diversion in UThukela.

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rural areas. Therefore, the attempt of “taking the services to the people” (Mzinyane, 2017, p. 86) and/or fetching the clients (as narrated by PO2) actually mitigates the rural dynamics that come with rendering diversion in UThukela.

These findings highlight the need for a more equitable distribution of responsibilities and a re-evaluation of the roles and responsibilities of both probation officers and assistant probation officers within the context of adult diversion programmes and processes. Additionally, investing in comprehensive training programmes for all staff members involved in diversion implementation is crucial to ensure consistent and effective service delivery.

Subtheme 3.5. Decisions on language barriers and adult diversion

When asked as to how did this probation officer handled illiterate offenders, one of the probation officers said:

“... for some people, reading is not their thing, so we give them handwork to do, just to capacitate them” PO6

This response indicates that through the limitation of illiteracy, her ability to improvise as a probation officer afforded her room for rendering “handwork” instead of programmes that required reading. According to Peterson and Lund (2011), language barriers are one of the factors that impede success in certain programmes. Although their study was based on mental health, the researcher is generalising it for the context of illiterate adult offenders.

Additionally, PO6 further stated that:

“... we often have a challenge that many of the people do are not able to read and write in English, it results to a point where the programme is not serving its purpose, it becomes ineffective, and the person [the adult offender] ends up not learning anything. As a result, we end up giving those who can't read prescribing community work, even the community work has its own challenges in that some of the people would even undermine adult diversion because they know that I would go to the social worker's offices to wash government cars and that's it, the following day they would wash cars, we end up not having any deterrence effect... So in community work they do not write anything, they just do tasks. Even community work, we now regard it as a

programme... it was community work together with prison visit, but due to COVID, we could not proceed with prison visit” PO6

The above excerpt indicates that the improvised enrolment of illiterate offenders in ‘handwork’ activities such as community service (i.e. cleaning government cars) often demoralises these offenders as it does not bear any deterrence effects or rehabilitation (see Rice, 2010). These findings have policy implications for those who create programmes to bear in mind the constitutional rights of equality and freedom of language. Given that PO6 was ‘mixing and matching’ modules that came from child diversion programmes, it meant that she was merely adapting an English programme to adult offenders.

Lastly, the observation of PO6 regarding literate and illiterate offenders was as follows:

“... what I have noticed is that the accused persons who have gone to multi-racial schools, they progress so so well in the programmes [adult diversion programmes]... with Rhythm of Life they do not encounter comprehension challenges. I will make an example with one client who was in court last week, Monday, if I am not mistaken. You know he got his programme homework on Monday, with questions, by Friday! He had already returned the completed questions, so those who understand English perform better. I even checked if he had answered correctly, and I noticed that everything was okay and that his English was understandable. But the other ones have a problem” PO6

This signifies that there is an existing language inequity that has not yet been addressed, which ultimately marginalises and impedes the success of certain offenders due to their language proficiency. These findings indicate that there is still a long way to go in ensuring that indigenous languages are incorporated into all programmes, including those that are within the criminal justice social work (i.e. probation services as a whole and adult diversion).

6.3. THEME 4: PERCEIVED LIMITATIONS OF ADULT DIVERSION IN UTHUKELA

Although semi-structured interview schedules framed the conversations with participants, it was remarkable that factors that hindered the practice of adult diversion kept on emerging at different intervals of the interviews.

This section of the thesis highlights significant implications for social work and policy that are informed by the dynamics of the limitations presented herein.

Subtheme 4.1. Heavy workload in probation services as a limitation for adult diversion

During the interviews with probation officers, the researcher noticed that some probation officers would utilise the research sessions as an opportunity to vent about their working conditions, which included comments about heavy workloads, lack of specialised job requirements and lengthy discussions about the limitation of resources, *inter alia*. These discussions emerged consistently when the researcher delved into questions relating to the limitations of adult diversion in UThukela. Similar to Zibane (2017), who coined research as an intervention, the researcher navigated carefully the discussion about the limitations of adult diversion and the ethical obligation of beneficence. Some of the detailed excerpts from the data of probation officers are as follows:

“... workload is too much, I am also dealing foster care cases amongst other things, I am also be dealing with luncheon clubs [social services programmes for the elderlies] at the same time, so the workload is just too much... as a result, adult diversion would pile up... Mhmm, yeah we used to have a service provider, I would notice that they were helpful, it was really easier during those times... yes the burden came to us, that resulted to programmes not being implemented properly, even with child diversion there is now a huge gap” PO7

“to be specific, it’s because of the workload, in our area XXX alone [censored area], there are many cases of crime, so we have many referrals for adult diversion. So that means as probation officers we would not do thorough work, we tick and pass” PO1

“social workers are the best people for programme implementation, but you know, the problem with DSD [acronym for his/her employer], probation officers are not only focusing on probation services, so we do everything including foster care. We do everything you know” PO5

“It is a challenge for probation officers because I can say to work in probation services is so not organised, you do not decide that there is a juvenile that I need to assess, while you have planned an adult diversion programme, the police can easily call me to inform me that there is a juvenile in custody, so that is an emergency, so

you have to postpone the session or cancel, so it is difficult for programmes... it could be better if we had service providers, institutions such as Khulisa who are accredited to do specific programmes of diversion, so that a client would know that once I have done my assessment as a probation officer, Khulisa should take over by implementing programmes, I think it becomes easy ... You end up not doing the programme properly because you are working here whilst thinking that there are other commitments that I have to do” PO4

These above-cited responses indicate a significant strain on probation officers' capacity to implement adult diversion programmes effectively due to overwhelming responsibilities. These participants highlighted issues of excessive workload, which are compounded by a lack of specialised probation responsibilities and competing priorities. They expressly argued that these factors often hinder their ability to provide comprehensive and timely services. Even though the study was not quantitative, PO1 indicated that “... *there are many cases of crime...*” in one of the locations s/he serves. PO1 also said they “*have many referrals for adult diversion*”, which signifies the pressure, compounded by other responsibilities, that this probation officer has to juggle when practising adult diversion.

PO1 highlights the implications of the heavy workload in that “... *as probation officers, we would not do thorough work, we tick and pass*”. The use of the phrase, ‘*we tick and pass*’ meant that probation officers would likely do what Kemp, Mntambo, *et al* (2021) referred to as “pushing the bench”. This means that they are likely doing the work for the sake of compliance, which is described by Wirkus, Babicka-Wirkus, Opora and Stasiak (2021) as signs of burnout due to work overload. In fact, the recent study by Wirkus *et al.* (2021), which investigated ‘burnout and stress among probation officers’ in the context of Poland, also shows that due to work overload, probation officers’ morale is likely affected in an adverse way. In affirmation, PO4 said s/he also has to juggle between preparing a presentence report, the demands of the child justice court and adult diversion. As per the views of PO4, they end up not doing the adult diversion programme properly because they would be fulfilling one responsibility while thinking that there are other commitments related to adult diversion and more. PO7 emphasised the impact of diverse caseloads, including foster care and elderly care services, on their ability to dedicate sufficient time to adult diversion.

The excerpts of PO5 and PO7 extend the complexity of this challenge because these participants indicate that these probation officers also had high workloads and were not

specialising in the job functions of being probation officers as stipulated in the Regulations Relating to the Registration (Republic of South Africa, 2013). Instead, they were performing other generic duties of social workers within the Department of Social Development. In the South African context, probation service is a social work specialisation established by the Probation Services Act 116 of 1991 (as amended) and Regulations Relating to the Registration of a Specialty in Probation Services as a specialisation of social work within the criminal justice system (Republic of South Africa, 1991; Republic of Social Africa, 2013). While probation services have been declared by law as a social work specialisation for over a decade now, issues of excessive workload due to non-specialisation are still a concern in the practice of probation officers, which limits their ability to render adult diversion services effectively.

This non-adherence with the Regulations on Specialisation of Probation Services (Republic of Social Africa, 2013) has practice implications for probation officers who practice adult diversion in UThukela. Some of the implications are stated by PO7, who said, “... *as a result, adult diversion would pile up*”. The ‘piling up’ of adult diversion cases means that some candidates who have been selected for adult diversion are likely affected, and their guaranteed human right of having an undelayed criminal justice encounter as stipulated by section 35 of the Constitution of the Republic of South Africa, is likely infringed.

Another important dynamic to the above discussion is that this study was based in numerous offices (8 offices of the KZN Department of Social Development) within the UThukela District, as discussed in Chapter 4. The diversity and vastness of the research location means that PO4, PO5 and PO7 were serving three different towns (Bergville, Ladysmith and Estcourt), which are part of the spread of UThukela. However, their claim of ‘doing everything’, being “always busy”, and ‘doing foster care’ was common among these participants despite a considerable distance between their workstations. While appreciating the argument of Burrows (2019) and Dlamini and Sewpaul (2015) that there is a shortage of employed social workers in South Africa, it is assumed that probation officers were burdened with additional duties because their employer may have delegated more duties being delegated to them, as registered social workers, due to the shortage of generic social work practitioners in their jurisdiction.

Collectively, the challenges raised by probation officers resulted in several negative consequences, including delays in programme implementation, insufficient monitoring of

offenders, and a reduced likelihood of successful rehabilitation. The participants' suggestions for addressing these issues included the increased utilisation of specialised diversion service providers, such as Khulisa Social Solutions NPO, to alleviate the burden on probation officers and improve the quality of diversion programmes and processes. The following subtheme discusses the lack of specialised diversion service providers in detail.

Subtheme 4.2. Lack of Diversion Services Providers in UThukela

Probation officers also mentioned the limiting effects of the lack of accredited diversion services providers in the whole of UThukela district. Their responses in this regard were as follows:

“Mhmm, yeah we used to have a service provider, I would notice that they were helpful, it was really easier during those times... yes the burden came to us, that resulted to programmes not being implemented properly, even with child diversion there is now a huge gap” PO7

“Actually, Khulisa [former diversion service provider in the area] was doing all right, you know they had all the programmes, ... we are constrained,” PO3

“Remember that in the UThukela area, we no longer have a diversion service provider previously it was NICRO or Khulisa if I am not mistaken [the researcher notes in agreement], now all their work of implementing diversion programmes has shifted to us at the Department of Social Development” PO1

*“there was Khulisa and the Department terminated their contract as service providers, so we run the programmes ourselves... [the participant laughs] for us in terms of programmes **siyaziphekela siziphulele siziphakele** [the bolded phrase is a metaphoric IsiZulu idiom which means “I solitarily-cook, decide when to take off the pot out of the fire and decide when to dish up”...]” PO6*

“No, we do not have diversion service providers, it is only us as DSD, we only render programmes that we have, there are no other providers” PO4

Six out of seven interviewed probation officers highlighted the absence of an accredited diversion service provider such as NICRO or Khulisa Social Solutions as a limitation for adult diversion in UThukela. These responses from the probation officers indicate a

significant decline in the quality and effectiveness of adult diversion programmes in UThukela due to the absence of these service providers. The probation officers expressed nostalgia for the time when an organisation like Khulisa was contracted to implement diversion programmes, highlighting the increased workload and challenges they now face.

The comments of PO4 and PO6 indicate that the Department of Social Development (which used to be the principal funder of Khulisa Social Solutions in KwaZulu-Natal) terminated the funding contract of Khulisa as their diversion service provider, which resulted in programme implementation that was administered by Khulisa now shifting to probation officers in the employment of the Department of Social Development. Khulisa was the only diversion service provider in UThukela (Mzinyane, 2017). As a result, the termination of their funding status in the province of KwaZulu-Natal meant that the UThukela district area no longer had a service provider of accredited diversion programmes in UThukela. PO7 said: *“I would notice that they were helpful, it was really easier during those times... yes, the burden came to us”*. This implies the void that was left by the exit of the only service provider that was available in this area. During the researcher’s tenure as a probation officer and in his previous research in this location (Mzinyane, 2017), the researcher also noted the helpfulness of service providers. Whilst Mzinyane (2017) highlighted the exemplary work that Khulisa did in rendering diversion service, he had, however, labelled the solitary of Khulisa Social Solutions as the only diversion service provider as a limitation. Mzinyane (2017) labelled having one diversion provider as a limitation in the availability of programmes as compared to the cities. This meant that rural districts and towns lacked service providers in 2017, and they lack service providers even now. The situation worsened when Khulisa closed its doors in 2018. This highlights the inequity of distribution of service providers and diversion services between rural areas and urban areas.

The termination of Khulisa’s contract as a diversion service provider placed a significant burden on probation officers, who are already overwhelmed with other responsibilities (see above subtheme), especially in the UThukela’s programme provision was already constrained even prior to 2017 due to the then solitariness of Khulisa (see Mzinyane, 2017). This has led to a decline in the quality of programme implementation, as evidenced by PO6’s use of the IsiZulu idiom ***"siyaziphekela siziphulele siziphakele,"*** which metaphorically conveys the solitary nature of their work and the lack of external support (bolded for emphasis and translated by the researcher).

On the same note, the assertion of PO3 also attests to the constraints of probation officers regarding the lack of service providers. Specifically, PO3 used the phrase: “... *we are constrained*”. It is important to note that this lack of diversion service providers is not the case in urban areas such as Cape Town (see Mgzulwa and Gxubane, 2019), Durban (see Hargovan, 2013; Ntuli and Singh, 2019) and Polokwane (see Magano, Ramphabana and Rapholo, 2022). This shortage of diversion service providers in rural districts such as UThukela has huge practice implications for the workload of probation officers within districts that are already marginalised and clouded by numerous other rural dynamics during the implementation of diversion (*cf.* Mzinyane, 2017). Dlamini and Sewpaul (2015) classified the heavy load of social workers within the Department of Social Development as a huge area of concern.

Another notable comment is by PO1 who said: “*Remember that in the UThukela area, we no longer have a diversion service provider...*”. By using the word “*remember*” this probation officer implied that the researcher should also be aware or should be able to recall (as a former probation officer in the area) that in their district, they no longer have an external diversion service provider. As a fact, the researcher is indeed aware that the UThukela district area used to have a diversion service provider called Khulisa Social Solutions. In a previous study by the researcher (Mzinyane, 2017), the facilitators of diversion programmes from Khulisa formed part of the sample of that specific study, where the researcher explored the implementation of child diversion programmes within the same district. The 2017 study indicated the ‘systemic relay’ of the (child) diversion process between public prosecutors, probation officers and diversion programme facilitators from Khulisa. In UThukela, Khulisa implemented comprehensive diversion services (child diversion programmes and adult diversion programmes) (Mzinyane, 2017). The absence or closure of Khulisa within UThukela, which used to be the only diversion provider, means that the burden of work has now shifted to probation officers, whose other responsibilities are complex as listed in the Probation Services Act 116 of 1991, Child Justice Act 75 of 2008 and the Criminal Procedure Act 51 of 1977.

In an affirming statement, a public prosecutor (PP3) also confirmed the assertion of probation officers of lack of diversion service providers. The verbatim comment of PP3 is as follows:-

“*yeah, we use DSD [Department of Social Development]... here in Ladysmith we do not have any other alternative since there was a closure of Khulisa, we don't.*” **PP3**

Given the shortage of service providers, the following section extends this discussion by deliberating findings relating to the consequences of a lack of diversion service providers and a lack of accredited programmes for adult offenders who are diverted in UThukela. Furthermore, the next section focuses on the data that amplifies the dynamics of programme improvisation and inconsistencies among probation officers.

Subtheme 4.3. Programmes shortage, improvisation, inconsistencies of (adult) diversion in UThukela

When probation officers were probed about the implications of not having a diversion service provider in UThukela, their responses highlighted the shortage of diversion programmes. Some of the verbatim comments are as follows:

“... yes I think since there are no programmes [for adult offenders] everyone does it their own way... there are no written guidelines that tell us what session 1, session 2 and so on should look like. Even with the number of sessions, I often just decide that with this one I do 3 sessions, then with this one, I will do 4 sessions with her/him... oh yes, you use your own discretion as a probation officer, that no here I am using so many sessions, then here I will use so many sessions” PO4

“I then select which modules from different [child diversion] programmes am I going to select for each person, so I can say, it's not uniform” PO7

“... sometimes, I have to create my own modules” PO6

“... it's 8 sessions or 10 sessions, but it is more than 5 sessions” PO1

According to NICRO (2021, p.21), there is a “... decrease in the number of diversions due to the limited number of accredited diversion services and service providers (NGOs)”. Unlike any other social work service or specialisation, probation officers are not creators of diversion programmes; instead, diversion programmes are supposed to be accredited, centrally created and monitored (*see* section 56 of the Child Justice Act and sections 3 and 4(1) of the Probation Services Act 116 of 1991). Similar to the discovery of NICRO (2021, p.21), this study also revealed that probation officers felt that they were limited in their practice of adult diversion due to the lack of accredited diversion programmes specific to adult offenders.

Badenhorst (2013) highlight the importance of having an adequate pool of accredited diversion service programmes rendered by accredited service providers (see section 1 of the Child Justice Act) because the duties of probation officers limit their ability to create diversion programmes, given the accreditation requirement which scaffolds diversion in South Africa. Even with child diversion, section 56 of the Child Justice Act 75 of 2008 stipulates that diversion programmes should be accredited to ensure quality assurance.

Therefore, the above extracts imply that, in the UThukela district, probation officers have no specific programmes that are designated for adult diversion. Furthermore, the comments reveal a significant gap in standardised procedures and guidelines for adult diversion programmes, contrasting sharply with the structured framework mandated by the Child Justice Act for child diversion. This suggests that many probation officers, accustomed to the structured approach of child diversion, may be inadvertently applying similar expectations to adult diversion despite the lack of equivalent legislative frameworks and support structures. While the Probation Services Act assigns the responsibility for program establishment to the Minister of Social Development, the absence of clear guidelines and standardised procedures for adult diversion leaves significant discretion to individual probation officers, as evidenced by their flexibility in determining program duration and content. This lack of standardisation raises serious concerns regarding inconsistency, inequity, limited accountability, resource misallocation, and, ultimately, the effectiveness of adult diversion programmes in achieving their rehabilitative goals. Furthermore, the absence of standardised procedures can contribute to a lack of professional development and training for probation officers, hindering their ability to effectively design and implement diversion programmes.

PO4 raised a concern that, as probation officers, they do not have any guidelines to inform them on what each session should entail and how many sessions should be deemed to be adequate for a typical adult diversion programme. Their socialisation in the child diversion system created this expectation, which, by law, requires probation officers to render accredited diversion programmes (see section 56 of the Child Justice Act 75 of 2008). This implies that probation officers employ their discretion to decide the nature of each session of all 'self-created' diversion programmes for adult offenders. Chapter 4 of the Policy Framework for Accreditation of Diversion Services (2010) stipulates the reasons for accrediting diversion programmes.

While policy guidelines mandate the accreditation of diversion programmes (see Policy Framework for Accreditation of Diversion Services), PO7 and PO6 narrated that they would merely select chapters or modules from different child diversion programmes to tailor-make appropriate programmes for each offender. The assertions of PO7, PO6 and PO4 indicate that probation officers use their professional prerogative and discretion to create programmes, especially since they do not have a designated diversion service provider within the expanse of UThukela. From a different perspective, one could appreciate the professional agency (autonomy of actions) of probation officers. However, it is unsettling to note that both PO4 and PO7 state that the creation of each programme is “*not uniform*” and “*since there are no programmes [for adult offenders], everyone does it their own way*”. It can further be argued that the lack of uniformity impedes the confidence of probation officers regarding their adult diversion offerings.

The contradictory narratives of PO1 and PO4 are also notable, where they provided different accounts regarding the length of the programmes. PO1 states that the programme length is “*... 8 sessions or 10 sessions, but it is more than 5 sessions*” while on the same note, PO4 said, “*... even with the number of sessions, I just decide that with this one I do 3 sessions, this one I will do 4 sessions with her/him*”. These contradictory descriptions of programmes’ length imply that there are paradoxical inconsistencies in the practice of adult diversion by probation officers who serve within the same district area and province. Lessons that can be drawn from South Africa’s child diversion are that their programme lengths and programme contents are accredited, which ensures that the programme inputs are properly prepared which strengthens the confidence of facilitators regarding the expected programme outcomes. However, a counterargument by Zastrow and Hessenauer (2017) is that social work practice is enriched by its ability to individualise interventions. However, Knijn (2004) argued that too much discretion and individualisation of social services interventions pose a risk for the intervention evaluation. Given Knijn's argument, it is important to appreciate the importance of balancing the agency of social work professionals and maintaining the structure (programmes, rules, and values) of the profession. These results are contributing new insights regarding the reality of practising adult diversion programmes.

From the variety of interviews, more probation officers detailed the extent of their improvisation and inconsistency regarding programme creation and implementation. Some of their responses were as follows:

“We do implement Rhythm of Life programme, although it was only accredited for children only” PO1

“... although there are no accredited programmes like with child diversion... Yeah [laughs] you sway it here and there and adapt it to suit the individual... Yes we use diversion programmes that are accredited for child offenders because there are no other ones, there are no other programmes that we were trained to implement for adult diversion” PO3

“We do have a few child diversion programmes that we implement on adult offenders, but there is this programme that is fit for all called ‘Rhythm of Life’, so Rhythm of Life is useful for adults and children, sometimes I end up asking myself to whether is this programme for children or adults, whom was it created for?... yes, it is accredited for children” PO6

“remember the life skills programmes that we were implementing are strictly for children... they are accredited for child diversion... that is why I was saying with certain sessions [even though they are designed for children] clients would say ‘Wow!! I should have known this while I was still a child’, from that I can notice that they feel that this programme was meant for children, but then life skills are life skills everyone needs them” PO7

The above responses indicate that probation officers were using diversion programmes that are accredited for children, and they often implement them for adult offenders as well. Of note, by definition, according to section 10(3)(iii) of the Child Justice Act (Republic of South Africa, 2008), an accredited programme as recognised by this Act refers to programmes that are specifically designed to suit the needs of children. The above responses imply that there was a misappropriation of child diversion programmes that are legally accredited for child offenders and their inherent unique attributes. PO7 used the phrase, “... *the life skills programmes that we were implementing are strictly for children*”. Her use of ‘strictly’ shows the awareness of the legal rigidity of the programmes that they are improvisationally implementing for adults. In simpler terms, programme accreditation is a process of quality assurance that assures the public that a diversion programme meets specific standards and criteria. Therefore, it was noteworthy that probation officers were using child-designated programmes and implementing them for adults, whose needs are likely different from those of children. However, the lack of available programmes might have pushed these participants

to improvise and use what they have. Probation officers of UThukela “*bayizephekela baziphulele, baziphakela*” (they ‘cook’ their own programmes as rightly stated by PO6 in an earlier quote above).

Mahlangu (2016, p. 36) defines the Rhythm of Life programme as follows:

Rhythm of Life is a life skills programme for children who have been in conflict with the law or have been referred by their school, SAPS or any other institution. The programme is 8-weeks with one session held each week. It is offered in group settings. It is adopted for individual sessions; however, it was not initially intended for individual casework sessions.

Despite the above definition of Rhythm of Life programme and its clear allocation as a programme for children, PO6 said “*Rhythm of Life is useful for adults and children, sometimes I end up asking myself to whether is this programme for children or adults, whom was it created for?*”. This ironic statement proves that some probation officers were confused and yet confident that the target population of the Rhythm of Life programme is all age groups.

On the other hand, there was one probation officer who was confident and clear about her *modus operandi* of ‘mixing and matching’ the programmes that were designed for children. Their remark is as follows:

“I think it does work [participant is referring child diversion programmes], you know when I get adult clients who are still relatively young, maybe who are between the ages of 18-25, I would notice that they are still applicable to this age group, although the programmes are for children but they work. But with some activities in these programmes, you can realise that they are designed for children and they are playful activities, So I would realise that I would take a 40-year-old adult and enrol him on such activities. It even becomes clear to you as a social worker that this child programme will not assist him... This results in a point where I am left with no choice but to just teach the client without concentrating much on the activities that are part of the module that I selected. ...for that reason, you end up not implementing the whole module, but just taking those certain aspects of it to avoid playful activities for children... You can just see [laughs] that I can’t play with a 40-year-old adult because certain parts of the programmes are designed as playful and they are for children...”

PO4

The comment of PO4 indicates that PO4 was able to critically analyse the Rhythm of Life programme and discern elements which are inappropriate for certain age groups. From her subjective evaluation of the programme, PO4 states that she thinks the children's programmes are effective, especially to "*adult clients who are still relatively young, maybe who are between the ages of 18-25*". This means some of the aspects of children's programmes are perceived to work even for young adults between the ages of 18 and 25. However, in certain age groups, such as 40-year-olds, PO4 would "... *end up not implementing the whole module, but just taking those certain aspects of it to avoid playful activities for children*". She substantiated her assertion by saying: "*You can just see [laughs] that I can't play with a 40-year-old adult because certain parts of the programmes are designed as playful and they are for children*"

As a confirmation of the aspect of age-appropriateness, PO2 said:

"... for instance, there is Social Behavior Change, as a programme, but it has a specific age target. I can't implement Social Behaviour Change to a 40-year-old, I have to check" **PO2**

From the discussion with PO2, it was clear that he is also aware 'age-appropriate' factor that is inherent in the programmes. Upon further exploration and probing he added that:

"I have to check what type of the offence, for example, you'd find that the person is abusing drugs or they were abusive to children. Automatical at DSD we have a KE-Moja Programme for substance abuse, I believe it is accredited, ... we have a Parenting Programme to deal with the issue of parenting skills, so for adult diversion per se we do not have specific programmes, we use what is available in the Department" **PO2**

"With adult diversion, we do not have structured programmes, but once I have a client, I assess their problem, I then see that they problem one, two three and four, I then look into the programmes that we have particular programmes that are child diversion, besides the programmes of children we also look at other programmes that we have as the department, it could be Parenting Programme, Social Behaviour Change Programme, and other programmes that we have in our unit of Social Crime Prevention... then I determine, that since I have assessed this client and identified these problems, which then could be a good programme to solve her issues... for example if an adult offender is maybe struggling from peer pressure, we then look at

child diversion programmes and see if is there a programme that addresses peer pressure, adults also suffer from peer pressure you know. So for example, there is a programme called Rhythm of Life, which is designed for child offenders but there is a module within it that addresses peer pressure, I would then apply that module to this specific client for him to get help. I would sometimes also look at my assessment report and realise that the client is struggling with communication, I would also again explore our available programmes to identify a module that deals with communication. You know Mzi [alias of the researcher] I would use different programmes to mix different modules in order to design my own programme and give my client a responsive programme. As I said, session one would be on peer pressure. Session 2 be on communication, and so on and so on, but it all depends on the needs of the client” PO4

The lengthy response of PO4 and PO2 gave an impression that these probation officers actually use programmes that are within the pool of programmes within DSD, not merely programmes that are designated as programmes for adult diversion. According to Khosa, Dube and Nkomo (2017, p. 70), “The “Ke Moja” programme was launched in 2003 and was rolled out to schools in all the five regions of South Africa’s Gauteng Province”. The KE-MOJA programme was intended to curb the scourge of drug abuse, as it is grounded on the etymology of its name, which is derived from *Tsotsi Taal* (township language), meaning “I am fine without drugs” (*ibid*, p. 71).

PO2 and PO4 seemed to be more focused on ensuring that their programmes were aligned with the needs of the offenders, more than just replicating the processes of child diversion towards the adult diversion system. These probation officers went further to state that they would even use parenting programmes, social behaviour change programmes, etc. in cases that deserve such.

Given these diverse approaches of practice by different probation officers, PO4 stated that:

“... we must have specific programmes for adults rather than me picking and choosing how I mix up the programme... right now there is not uniformity, I do it my way, and the other person [probation officer] do it their way. Same as myself, I would also perform the programme this way today and if another offender comes tomorrow I also implement it in a different way... yes, it is not even uniform for me” PO4

PO4 raised an important suggestion, which is that she calls for “*specific programmes for adults rather than me picking and choosing how I mix up the programme*”. She remarkably states that she is picking and choosing. Although professional prerogative and discretion is important, but this probation officer highlighted some limitation of having too much room for improvisation and discretion. She cited a dual lack of uniformity, which the researcher describes as:

- ‘**Interpersonal** lack of uniformity’- where different probation officers implement it their own way, and;
- ‘**Intrapersonal** lack of uniformity’- even the same probation officer fails to replicate the same programme twice. In other words, PO4 implies that she even suffers from an impossibility of transferability of her own programme.

Another different dynamic on the subject of programmes was narrated by PO6 who said:

“... counselling yeah, that's how I can say it... sometimes it is not a programme to say, but I would just set up counselling with them, but sometimes I would notice from the assessment that this one needs me to see them at once or twice, then I would let them proceed with their lives” PO6

This assertion indicates that, similar to other probation officers, PO6 had unlimited liberty and discretion regarding programme implementation. This probation officer even states that “*sometimes it is not a programme to say, but I would just set up counselling with them*”. Whether this works effectively or not is a subjective perception in UThukela due to the absence of accountability mechanisms.

As indicated in the problem statement of this study, it may be difficult to pledge quality assurance in instances where programmes are inconsistently created, where there is an improvised length of programmes and a lack of assurance of what each programme should entail. Given these deliberations, the following section goes further to depict the reality of monitoring compliance and non-compliance of adult offenders who have undergone the afore-discussed improvised programmes.

Subtheme 4.4. Inconsistencies in monitoring and reporting of diversion compliance

In a South African context, all practices of probation officers, whether they are on issues of children or adult offenders, require them to monitor probationers [legal term for offenders who are undergoing the supervision of probation officers.

When the participants were asked about their role in the processes of supervising and/or monitoring diverted adult offenders, probation officers recounted the following:

“to show you how relaxed it is, I once had a case of a student who was at a varsity, [smiles] to tell you the truth, I never had a session with that student for about 3 months, until he was on university vacation. Even in that case, no prosecutor bothered to ask about the monitoring report...” PO4

“my role is to provide the programmes or the sessions. It is to monitor, then finally I write a report if a person has completed the sessions or not. Although, with adult diversion, eish; nobody cares whether the offender has completed a diversion or not, nobody cares...” PO3

“... yeah, the case would just be withdrawn like that, I have never submitted a compliance report and nobody from court has ever asked me about compliance because they [public prosecutors] just withdraw the case soon after the diversion court order is issued” PO7

The above comments by PO4, PO3 and PO7 indicate that the processes of monitoring adult diversion are either flawed or non-existent in UThukela. The mere fact that a probation officer (PO4) can unilaterally delay the implementation of an adult diversion programme without any consequential request of compliance reports by public prosecutors means that the administration of adult diversion needs policies that will enforce accountability and proper administration of the processes. McGregor (2010) argued that the advantage of diversion is that it allows offenders to be enrolled in rehabilitative programmes and monitored and supervised by probation officers for compliance; if offenders violate the conditions of diversion, probation officers can report to the prosecutor to reinstate the charges. However, the assertions of PO4 and PO7 indicate adult diversion is practised under circumstances where there is little or no accountability for the enrolment and compliance of offenders in adult diversion. Remarkably, PO7 said: *“... nobody from the court has ever asked me about compliance because they [prosecutors] just withdraw the case soon after the diversion court order is issued”*. The reality that prosecutors are merely withdrawing cases means that they

are nullifying the possibility of recourse that diversion possesses, as afore-described by McGregor (2010).

The use of the phrase “*nobody cares whether the offender has completed a diversion or not*” by PO3 affirms the existence of a problem regarding the monitoring of adult diversion in UThukela. PO3 is aware that one of her roles is to monitor and report whether the offender has complied or not. However, this probation officer has an impression that their monitoring of compliance is an unimportant business to public prosecutors.

When the conversation with PO3 continued, she said:

“yeah, we do monitor and have some sessions, ehm, we only report that monitoring on NFD [a performance monitoring tool for the Department of Social Development]... Yho!!! Monitoring is so important because if the diversion order indicates that they should come back home at 6pm every day, then it is important that I monitor that and ensure that I had emphasised that with all family members. So, I use their family members and parents to ensure that their behaviour changes” **PO3**

The above narrative indicated that even though probation officers are not held accountable by prosecutors, their employer has established and is enforcing an accountability mechanism, namely NFD [non-financial data] in which they report compliance and non-compliance. Besides the availability of NFD as an accountability mechanism for monitoring compliance, the perception of PO3 is evidently positive regarding monitoring compliance of offenders. She saw value in implementing monitoring. PO3 narrated how she uses parents and family to enforce positive behaviour change among diverted offenders. Trotter (2018) highlights the value of involving families in the practice of “working with involuntary clients”. This means the practice of PO3 is aligned with the study recommendations of Trotter (2018) and in a series of his work on the subject of working with involuntary and probation work (see Trotter, 2006; Trotter, 2016).

PO4 stated:

“... the advantage of it is that it is different from child diversion. Unlike child diversion, it does not have a time frame, they normally don't give us a time frame, and you would have the liberty of taking as long as you wish. Even if you delay, as a probation officer to submit the report, nobody would follow up regarding compliance.

While for child diversion, when the date of reporting back to court reaches then I am obliged to report back to the prosecutor” PO4

As previously noted, PO4 was among the probation officers who expressed concerns regarding the absence of diversion service providers in the area and the resulting increased workload. Consequently, she perceived the lack of follow-up and flexible timeframes for reporting compliance as an advantage and a relief for probation officers. PO4 indicated that she is not immediately obliged to report back to the public prosecutors in a similar way as is the case with child diversion.

It was ironic to note that a public prosecutor who works directly with PO4 said:

“Well, in terms of advantages thus far, I have to say that we have not had repeat offenders. So, the programmes that are being offered are, I would say, assisting them with the various issues that emerge from the offences that they commit” PP1

The above extract is a contradiction to the assertions of PO4 because the probation officer had reported that ‘*nobody would follow up regarding compliance*’. Therefore, the assertion that they had no repeat offenders led the researcher to conclude that there were no known repeat offenders by PP1 because she perhaps did not follow up on the compliance of diverted offenders.

A different perspective regarding monitoring of compliance was noted from the transcripts of PO2, PO5 and PO6, who said:

“yes we monitor both compliance and non-compliance and then report back to court to say this person has complied or has failed to complete the programme” PO2

“at the end of the day, a probation officer is a social worker, when we deal with compliance of offenders we always remember our identity as social workers, so for example, if someone is not compliant, we first try and trace them at home, try and involve families before we report them back to court as non-compliant people... I think going to court is a last resort, but we first try to help the person” PO5

“if a person has not complied we normally write a compliance report and return it back to court, some offenders are lucky because they would get a lenient magistrate who would return them back to diversion for further social workers interventions”

PO6

These excerpts signify that there is an inconsistency in monitoring practices within UThukela. Unlike the earlier accounts of PO7, the afore-quoted probation officers stated that they do monitor compliance. PO2 indicated that he monitors those who complied and those who failed to complete. While PO5 provided another unique narrative. PO5 indicates that she always remembers her identity as a social worker, although she works as a probation officer. In substantiating her stance, this probation officer indicated that should the person fail to comply, she does not merely report them back to court for harsher consequences, but she starts by attempting to assess and intervening with the purpose of helping the person. As shown, in Chapter 1, the connection between social work interventions and criminal law processes is best described by the therapeutic jurisprudence theory, which is a legal theory that lies on the premise that it is important to utilise psychological and social science knowledge to mitigate the effects of the legal processes and to promote positive outcomes for individuals who experience the legal system (*see* Madden and Wayne, 2003). Therefore, it is arguable that PO5 was advancing therapeutic jurisprudence through her rehabilitative stance. Purkiss, Kifer, Hemmens, and Vermer (2003, p. 12) cited in Mzinyane (2017, p. 39), “[f]rom inception, probation service providers have faced the oft-competing goals of law-enforcement, public safety and the rehabilitation of offenders”. This means that PO5 was striking the balance of ‘law-enforcement’ and rehabilitation which she associated with her social work identity.

On another hand, PO6 also indicated that there are sometimes lenient magistrates as well, who also do not merely implement punishment, but they would offer second chances to those who did not comply. Therefore, this signifies that there is indeed a fertile ground for adult diversion and restorative justice within the criminal justice system because some influential role players (such as some magistrates as indicated by PO6) still believe in the value of helping the accused persons whose circumstances warrant the need for them to get help. However, one cannot blindly generalise about the perceptions of magistrates, given that they did not form part of the sample of this study. Nevertheless, the subjective experiences of probation officers regarding magistrates in the administration of adult diversion are still providing some valuable insights regarding the environment of adult diversion in UThukela.

Another inconsistency in the issue of monitoring compliance and non-compliance of adult offenders was the notable pattern of data regarding the reporting formats that probation officers utilise in journaling the outcomes of their monitoring. In this respect, PO3 said:

“... it is not similar to child justice where we have Form 9 [prescribed form for reporting compliance of child offenders] for monitoring and reporting of compliance if the adult offender disappears then I have no form... no we do not have a form for reporting” PO3

Prominent in the latter quotation is when PO3 said *“it is not similar to child justice where we have Form 9 for monitoring and reporting of compliance, if the adult offender disappears then I have no form... no we do not have a form for reporting”*. In her assertion, PO3 compares the well-established (legislated) child diversion with the limited adult diversion which is practised in a state of legislative opacity. In child diversion, PO3 highlighted the availability of Form 9 which gives clarity regarding monitoring of (child) diversion. However, with adult diversion, she indicated that they do not have a form, which may mean that the lack of legislation for adult diversion makes it hard for probation officers to know which formats should they utilise to monitor compliance. PO1 also confirmed the assertion of PO3.

“For child diversion, we use Form 9 in order to monitor and report compliance to court, but with adult diversion, we don’t have a prescribed form, I developed my own form for monitoring” PO1

A notable assertion in PO1’s report is when she said *“I developed my own form for monitoring”*. This indicates that in the absence of legislation, some people develop their customised formats of practice, which sustains the structure [adult diversion system] or the social practice due to the agency of practitioners and their routinisation of adult diversion practices. However, PO2 who works within the same office as PO1 provided more context regarding the creation of the reporting form,

“no, it was designed in this office... yes, most its contents are copied from FORM 9” PO2

PO2 indicated that they adapted their monitoring form from Form 9. This indicates that in practice there is borrowing, benchmarking and/or adaptations that are derived from the child diversion to ‘semi’ institutionalise or validate the practice of adult diversion, in the absence of certain legalistic resources, such as a statute with its regulations, for adult diversion.

On the same issue of reporting formats, PO6 and PO4 said:

“There is a report format that we use for compliance and non-compliance, but I am not sure if this format was from the Department of Justice or it was created by my

predecessor probation officers... it is a report that I found here, I do not know about its history” PO6

“with adult diversion we don’t have any specific form that we use to report compliance, I just compile a report to state that this person was referred for adult diversion, this is what transpired, he attended, how was his behaviour, I don’t have any specific form that is form the regulations from law” PO4

The response of PO6 contradicts the account of PO1, who developed his own improvised reporting form for monitoring compliance. Instead, PO6 states that he is not sure about the initiator of the current existing form. PO6 alleges that the form might have been created by his predecessors or the Department of Justice. However, the notable issue is that the agency of PO6 and the ‘semi’ structured process of adult diversion has been sustained by “a continuous interaction between an active agent and his or her structure” (Giddens 1992, cited in Zibane, 2017, p. 26)

Lastly, PO5 further provides a different dynamic of inconsistency when she remarks:

“...then for adults, we do not have a standard form... if the person has not complied I have to report using FORM 9...” PO5

The assertion of PO5 highlights the misappropriation and misinterpretation of the Child Justice Act 75 of 2008 and its inherent regulations. Regulations of the Child Justice Act specify in regulations 33 and 34 that Form 9 is a prescribed form for reporting compliance of the child offender. Nonetheless, due to a lack of reference for PO5, who works 60 kilometres away from PO6, PO2 and PO1, she merely implemented the legal resources and provisions of the child justice system and found them to be useful for adult diversion.

In light of this whole theme, it is evident that inconsistent had numerous faces and it is clear that there is a lack of accountability regarding the misuse of child justice laws and the ‘delay of action’ regarding monitoring by some probation officers.

Subtheme 4.5. Consequences of lack of training about adult diversion

Participants described their training needs in relation to adult diversion, along with some challenges they have faced. They stated the following:

"We have attended generic training on restorative justice, ADR, Child Justice Act, ehm, but I don't remember being exclusively trained on adult diversion" **PP1**

"Unfortunately, I was never trained on adult diversion" **PO3**

"... sometimes we have case discussions if we encounter challenges, we consult other probation officers, but the advice that I would receive from different probation officers is always different. The other one would say I could do it this way, another one would say I do it this way, but you find out that each person does adult diversion their own way... at the end of the day we do different things because there are no written guidelines that tell us how..." **PO4**

"My initial understanding of diversion, in general, is that it is a concept that was mainly for children, we studied child diversion in tertiary. When adult diversion came into the picture we had a challenge: first, what was it? And who was to implement adult diversion?" **PO1**

"for me I would say it's a challenge because when one is being inducted to probation services from generic social work practice, we do not get training on programmes, so it's difficult... so I can say you are just thrown in the deep end, it is either you swim or you sink. It actually calls for intelligence on how fast you can grasp the processes. If you are slow, you get into trouble because there is really no training. So, in a way, it gets to be problematic because I have to juggle between doing presentence reports, at the same time there is this programme that I need to implement, so you can even feel in your gut that 'you know I am not sure whether I am doing the correct thing or not', so it is really frustrating" **PO6**

"... we don't have tools for adult diversion, what we do when helping children we do it as well with adults... we use the very same information.... no no no, we have not [been trained], I can only confirm training for child programmes only, for adult no" **PO5**

The participants' statements suggest a direct correlation between the lack of specialised training on adult diversion and the observed confusion and inconsistency in its implementation. PP1 explicitly states, "*We have attended generic training on restorative justice, ADR, Child Justice Act, ehm, but I don't remember being exclusively trained on adult diversion,*" highlighting a gap in their professional development. This lack of specific training

is further emphasised by PO3 who states, "*Unfortunately, I was never trained on adult diversion.*"

This lack of specialised knowledge appears to contribute significantly to the inconsistencies observed in practice. PO4 describes the situation, stating, "... sometimes we have case discussions if we encounter challenges, we consult other probation officers, but the advice that I would receive from different probation officers is always different. The other one would say I could do it this way, and the other one would say I do it this way, but you find out that each person does adult diversion their own way...". This variation in approaches, stemming from a lack of standardised training and guidelines, creates uncertainty and undermines the consistency and effectiveness of adult diversion programmes.

Furthermore, PO1's statement, "*My initial understanding of diversion, in general, is that it is a concept that was mainly for children, we studied child diversion in tertiary. When adult diversion came into the picture we had a challenge: first, what was it? And who was to implement adult diversion?*" reveals a potential disconnect between academic understanding and the practical realities of adult diversion implementation. This lack of clarity and guidance further exacerbates the confusion and inconsistency observed among practitioners.

Finally, PO5's observation, "*... we don't have tools for adult diversion, what we do when helping children we do it as well with adults... we use the very same information,*" highlights a potential reliance on approaches developed for child diversion, which may not be entirely suitable or effective for adult offenders. This lack of specialised tools and resources further underscores the need for comprehensive training and support specifically tailored to the unique challenges of adult diversion. The existing confidence and competence of practitioners about child diversion supports the recommendations of a recent NICRO research report, which proposes that the anticipated future formalisation and institutionalisation of adult diversion must draw lessons from the existing child diversion, which is well structured and has been proven to be impactful by evidence-based research (NICRO, 2021). It is evidenced by the latter comments that child diversion is considered a bedrock adult diversion because participants felt that their knowledge of adult diversion was influenced by their experience and training regarding child diversion.

Collectively, the participants' statements strongly suggest a direct link between the lack of specialised training on adult diversion and the observed confusion, inconsistency, and potential misuse of child diversion approaches. Addressing this gap through comprehensive

training programmes, the development of standardised guidelines, and the provision of specialised resources are crucial steps towards improving the effectiveness and consistency of adult diversion programmes.

6.4. CHAPTER CONCLUSION

This chapter embarked on an exploration of the multifaceted factors influencing adult diversion within the UThukela district, South Africa. Recognising the global imperative for alternative justice pathways, particularly within the framework of the 2030 Agenda for Sustainable Development, this research aimed to understand the dynamic interplay between structural factors and the practices of individuals involved in the diversion process.

Initially, the study attempted but failed to compartmentalise the data into distinct categories of factors (inform, promote, hinder) influencing diversion. However, data analysis revealed a more nuanced reality: factors exhibit a complex interplay, existing on a spectrum with both positive and negative dimensions. Furthermore, these factors transcend simplistic categorisation, simultaneously influencing multiple aspects of the diversion process.

The chapter commenced with an examination of structural and institutional factors, highlighting their profound influence on the diversion landscape. This exploration extended to an analysis of the limitations inherent within adult diversion programmes themselves. These limitations, such as resource constraints, lack of adequate training, and inconsistent implementation, can significantly hinder the effectiveness of diversion efforts. By recognising the interconnectedness of these factors, including the limitations of the programmes themselves, this research moves beyond simplistic categorisation towards a more holistic understanding of the complex dynamics underlying adult diversion in the UThukela district. This understanding is crucial for developing effective and sustainable diversion programmes that contribute to a more just and equitable society while simultaneously addressing the identified limitations to maximise their impact. Various implications of the limitations were also noted in relation to these. This chapter provides valuable insights for policymakers, practitioners, and researchers seeking to improve the effectiveness and sustainability of adult diversion. Understanding the complex interplay of factors and addressing the identified limitations contributes to the development of more informed and evidence-based approaches to promoting restorative justice and reducing

reliance on traditional punitive measures. Further conclusions in relation to this aspect are presented in detail in Chapter 8.

Chapter 7:

COMMUNICATION, INTERACTION AND INVOLVEMENT OF STAKEHOLDERS DURING ADULT DIVERSION: *THE PRESENT AND THE ANTICIPATED FUTURE*

7.1. INTRODUCTION

Rodliyah (2019, p. 434) reminds us that "[t]he basic idea of diversion [this may include adult diversion] cannot be separated from the paradigm of restorative justice". In affirmation, Skelton and Batley (2006) provide a framework of what they coin as the 'restorativeness' of diversion practices. By 'restorativeness' of diversion, these scholars proposed central concepts to restorative justice [diversion] practices such as (1) accountability, (2) involvement of victims, (3) involvement of other stakeholders in restorative justice practice (4) rehabilitation of offenders, and the promotion of deterrence from re-offending (*ibid*).

This chapter explores the involvement of 'all necessary' stakeholders in adult diversion practice. Specifically, it explores the involvement and interactions of key stakeholders within the adult diversion process, including victims/complainants, offenders, criminal justice professionals, and the community. While structuration theory emphasises the agency of actors and the system as a crucial part of social processes (adult diversion processes in this study), restorative justice theory, on the other hand, also centres on stakeholder involvement and interaction in all processes. According to (McCold & Wachtel, 2003, p.3), "crimes harm people and relationships", and people should be the centre of criminal justice processes instead of the conventional prioritisation of 'government law' as purported by the traditional retributive justice system which is without restorative justice practices. This means that the exploration of the roles and needs of stakeholders is a critical area of inquiry, as these stakeholders or those that are described as stakeholders, are and should be crucial in the design and administration of restorative justice practices such as adult diversion.

According to McCold and Wachtel (2003, p.2), the concept of "*stakeholders' roles*" is a critical building block of restorative justice theory. McCold and Wachtel (2003) argue that

there are two types of stakeholders: primary stakeholders and secondary stakeholders. As shown in Chapter 2 of this thesis (Figure 2.2. recapitulated below), victims, offenders, and their families are central in restorative justice practices, and they are categorised as *primary stakeholders*, according to McCold and Wachtel (2003, p.2). Probation officers, public prosecutors, and other professionals would fall into the category of secondary stakeholders (*ibid*). This, therefore, shifts the traditional narrative of retributive justice processes that centre the government and state laws instead of the victims, offenders and their families (Skelton, 2016).

	Harm	Needs	Responses
PRIMARY STAKEHOLDERS			
Victim(s)	direct	specific	active
Offender(s)	direct	specific	active
Families+	direct	specific	active
SECONDARY STAKEHOLDERS			
Neighbors+	vicarious	aggregate	supportive
Officials+	vicarious	aggregate	supportive

Taken from: McCold and Wachtel (2003, p.2)

Figure 2.2.: Stakeholders Roles (From Chapter 2 of this thesis)

Therefore, in this chapter, the researcher attempts to start by discussing findings that relate to the involvement of primary stakeholders and also those that link with secondary stakeholders in the processes and programmes of adult diversion. This aim of the chapter is linked with research objective three (analyse the involvement of stakeholders, such as victims, offenders, communities and all necessary professionals, in the practice of adult diversion processes and programmes in the UThukela District). Moreover, the chapter also attempts to capture the views of probation officers and public prosecutors regarding practice and policy guidelines for the practice of adult diversion processes and programmes (as emphasised by objective 4 of 2the study). While the chapter attempted to capture only findings that link to the two mentioned research objectives, most of the findings are relevant to objective 2 (factors that inform, promote and hinder adult diversion processes and programmes in UThukela). As argued previously, the research findings are interconnected and must be interpreted as a whole.

7.2. THEME 5: VICTIM INVOLVEMENT, RESTORATIVE JUSTICE AND ADULT DIVERSION

Building upon the theoretical framework outlined previously, which centres on the structure, actors or stakeholders and the reparation of harm caused by the offence, this theme examines the experiences and perspectives of probation officers and prosecutors in relation to how they consider the inclusion or exclusion of victims or complainants. Subthemes that are discussed herein include: (1) involvement of the victim by some participants in adult diversion processes, (2) restorative justice as a rationale for involving the victim in adult diversion processes, and (3) victims' exclusion in adult diversion processes by some participants.

Subtheme 5.1. Involvement of the victim by some participants in adult diversion processes

“A restorative process [...] aims to amplify victims' voices to help offenders understand the impact of their behaviours, and by doing so, helps to address the causes of those behaviours” (Procter-Legg, Hobson & Quimby, 2024, p. 219). In this regard, participants shared their perceptions and experiences regarding the role of the victim in adult diversion processes in UThukela. Some of the perceptions of six out of fourteen participants are as follows:

“yes we consider the views of the victim a lot, in my court the prosecutor would sit down with the victim and ask them if they would be comfortable if the case would be referred to adult diversion” PO5

“I will talk about myself, for me, from beginning to the end, the victim is always there, although during the ruling [in court] the victim is often not involved” PO2

“... we also have to go an extra mile because I don't only write my report based on the perpetrator only but I have to go an extra mile and involve the victim... we do involve them, even their views we include them... I would say the victim needs to be involved in one way or another because we even do our probation officers' reports because the victims, they are the ones whose rights were violated, even giving them the support, they must be prioritised” PO1

These excerpts highlight the importance of proactive efforts, consistent consideration of victim perspectives throughout the process, and the need for standardised procedures to ensure equitable and meaningful victim involvement. While this is the case, it is crucial to

note that three out of seven probation officers embraced victims' inclusion. PO1 strongly emphasises the importance of victim-centred approaches within adult diversion processes (cf. Strang *et al.*, 2013). PO1 explicitly states that involving the victim is not merely an additional step but a fundamental aspect of their work. They argue that victims, as those whose "*rights were violated*," should be "*prioritised*" throughout the process. This perspective aligns with the core principles of restorative justice, which prioritise the needs and experiences of victims and seek to address the harm caused by crime. PO1 highlights the importance of victim input in informing the probation officer's assessment. This suggests a recognition that victims possess valuable insights into the impact of the crime and the offender's behaviour, which can inform the development of appropriate and effective diversion plans. PO1 emphasises the need to "*go an extra mile*" beyond perpetrator-focused reports, acknowledging that victim involvement requires proactive effort and a shift in perspective.

PO2 emphasises the inherent importance of the victim throughout the entire justice process, stating that "*from beginning to the end, the victim is always there*". While acknowledging the victim's presence, this statement also implicitly recognises the challenges in ensuring their consistent and meaningful involvement, particularly during crucial stages like court proceedings. This suggests a need for systemic improvements to facilitate victim participation at all stages. On the other hand,

PO5 emphasises the importance of considering "*the views of the victim a lot*," indicating a high level of importance placed on victim perspectives. However, the phrase "*in my court*" suggests that this practice may not be uniform across all courts, highlighting potential variations in the extent and quality of victim inclusion depending on the specific court and the individuals involved. This emphasises the need for an introduction of standardised procedures to ensure consistent and effective victim engagement across all jurisdictions.

Some public prosecutors recounted their views regarding how they also involve the victim in adult diversion processes. Their responses were as follows:

"... and we would look at the views of the victim as well. I would not engage on adult diversion without, if there is a victim involved without, you know, explaining to the victim, consulting with the victim and, and to hear their feelings about the process... Um, I would ask the investigating officer [detective] to bring the victim to court. If all else fails, it can be telephonic by myself. I would prefer to have the victim, you know, a one-on-one discussion, perhaps with an interpreter if the person doesn't speak

English. But yes, that's what I would prefer to do, just make the whole process more transparent and gauge the feelings of the victim... it is always better to wait until the probation officer has prepared a report and then to call the victim and perhaps read relevant portions of the report and recommendations and the type of programmes that the probation officer is looking at to offer.” PP4

“with victims, yes I normally want them to have a say, they must write a formal statement where they give consent to adult diversion... it is a normal statement taken by the investigating officer that is normally indicating that they are okay for the offender to be diverted” PP5

“I am the people’s lawyer, I stand for the interests of the complainant... if the complainant is not happy, with the option of diversion or any other alternative of restorative justice. We cannot proceed with that diversion, no. So it's a prerequisite for us, if I can put it that way, that the complainant has to give us the go-ahead to say yes.” PP1

PP1 also added that:

“Number one, sometimes we don't even need to contact the complainant because we use our discretion to say, uh, unfortunately, your representation has been unsuccessful. But in cases where we see that there are prospects of diversion, what we do is we then contact the complainant and explain the process like I've indicated earlier. If the complainant is satisfied and happy with the prospect of diversion, then we actually send a requisition to the Department of Social Development indicating our proposal that we want to consider the offender as a person, a suitable candidate for diversion and then thereafter we get the necessary report from them after interviewing and so on.” PP1

From the above comments, it can be noted that PP4 strongly emphasises the importance of prior consultation and informed consent from the victim before proceeding with any adult diversion programme, stating that they would "*not engage on adult diversion without... explaining to the victim, consulting with the victim and... hear their feelings*". This highlights the recognition of some prosecutors that victim input is crucial and should not be an afterthought. PP1 clearly positions the prosecutor as an advocate for the victim, stating that they "*stand for the interests of the complainant*". They emphasise the importance of obtaining the victim's consent as a non-negotiable prerequisite for proceeding with any adult diversion

decision, stating that the "*complainant has to give us the go-ahead to say yes*". This reinforces the centrality of victims' consent in the decision-making process.

PP5, moreover, suggests a more formalised approach to obtaining victim consent, requiring a written statement to document their approval for the diversion program. This approach provides a clear record of the victim's consent and can help to ensure accountability and transparency within the justice system. These excerpts demonstrate a strong commitment to obtaining informed consent from victims and prioritising their needs and interests throughout the decision-making process. These practices align with the principles of restorative justice and contribute to a more victim-centred approach to justice (see Braithwaite, 2000; Strang *et al.*, 2013). The following subtheme reveals some of the reasons why the aforementioned practitioners were in favour of including the victim.

Subtheme 5.2. Restorative justice as a rationale for involving the victim in adult diversion processes

Those participants who included the victims in adult diversion processes and programmes were asked to share their motivation for considering the victim, and they shared the following remarks:

“so adult diversion ... allows offenders and victims to both be involved in the process of rebuilding their broken relationship... for me, it involves compensation, I would refer to one of my cases where it went to a point where the offender paid the complainant, it was a case where there was damage to the windows of the complainant, and the perpetrator was even involved in the actual labour of replacing the broken window glasses” PO1

“ah, victim is not involved much as compared to other cases, but I involve them by checking if they are okay with adult diversion being recommended. I would ask them that ‘are you okay if adult diversion becomes an option in your case?’, then I ask them if they are willing to see the perpetrator if that offender want to apologise, then I would check as to what state they are in... There is a case where I encouraged the offender to sign a letter apology, that was restorative justice” PO5

“they also need to be considered even during programmes because I believe they are also hurt by the actions of the offender so they need to be educated and they need

some services as the victims... it should not seem like we are only focusing on the perpetrator only, they are the only focus” PO2

PO2 added that:

“When we invite victims, they are able to get closure through adult diversion programmes” PO2

Delomoney (2015) emphasises the imperative that diversion processes must possess the elements of the restorative justice philosophy, which involves the reparation of harm, making amends and addressing conflicts through the participation of both the victim and offender. The probation officers' responses, above, reveal a strong alignment with restorative justice principles, as articulated by McCold and Wachtel (2003) and Braithwaite (2000). PO1 emphasises the restorative potential of adult diversion, stating that it *"allows offenders and victims to both be involved in the process of rebuilding their broken relationship"*. This aligns with the core principle of restorative justice, which focuses on repairing the harm caused by crime and restoring relationships between the offender, victim, and the community (*cf.* Hargovan, 2014). This is further exemplified by PO1's case example, where the offender was involved in *"the actual labour of replacing the broken window glasses,"* demonstrating a practical application of restorative justice principles through direct reparation to the victim. PO2 highlights the importance of acknowledging the victim's needs and experiences, stating that *"they are also hurt by the actions of the offender so they need to be educated and they need some services as the victims"*. This emphasises the recognition that victim harm is not solely emotional but can also have practical and material consequences. Moreover, PO2 emphasises the potential for *"closure"* for victims through their involvement in adult diversion programmes, aligning with the restorative justice principle of healing and reconciliation. Lastly, PO5 demonstrates a proactive approach to victim engagement by seeking their consent and assessing their willingness to participate in restorative processes, such as meeting with the offender for an apology. These responses collectively demonstrate a strong understanding and application of restorative justice principles within the context of adult diversion processes.

Subtheme 5.3. Victims' exclusion in adult diversion processes by some participants

While some participants, as highlighted in the preceding subthemes, expressed support for victim inclusion in adult diversion processes, others [the majority] articulated opposing viewpoints. For instance, PO3, PO6, PO7 and PO4 specifically identified obstacles that hinder their will and attempts to involve the victims in adult diversion processes. Their views are as follows:

“Some requisition forms do not even have the details of the complainant, those details remain in the police docket and we do not have access to the police file” PO3

“... In my assessment, no, I do not normally involve the victim... in my report, there is no section or portion that captures the views of the victim, that’s how I found the report format, it does only assesses the offender and their social background” PO6

“eish in most of my previous cases I do not involve the victim, because it would be cases of shoplifting, so there is no victim... sometimes I involve the victim if the case is involving some level of abuse... but some victims just don’t wanna come” PO7

“with some of the cases that we get, we don’t really know who the victim is because the assault case could be as a result of a street fight where both parties had assaulted each other. So, sometimes the person who is now your offender could be the one who was not the instigator of the fight” PO4

Gxubane (2012) states that all restorative justice processes [which is also applicable to adult diversion] need to acknowledge and accommodate the conceptual dichotomy of restorative justice, which is ‘restoration’ and ‘justice’. The ‘restoration’ part of restorative justice focuses on helping and enhancing accountability, *inter alia*, but the element of ‘justice’ should be about the acknowledgement and realisation of justice for everyone, especially the victim, within the process.

Therefore, the above perceptions reveal several challenges to effectively involving victims in adult diversion processes. PO3 highlights the significant barrier of limited access to victim information, stating that *"Some requisition forms do not even have the details of the complainant"*. This lack of access to crucial information about crucial stakeholders, such as the complainants, hinders the ability of probation officers to engage with victims, understand their perspectives, and ultimately achieve the interest of justice. Although PO3 mentioned that the requisition forms that they received were omitting important information about the victim, a prosecutor who works directly with PO3 said: *“Probation officers can’t tell us that*

they can't get the victim, we give them full details, we tell them to remain behind to get the details" **PP2**. Based on these conflicting accounts, the researcher was left unsure about the correct account between these two practitioners.

On the other, PO6, as shown above, emphasises the limitations of existing assessment tools, stating that *"there is no section or portion that captures the views of the victim"* in the standard report format. This lack of structured mechanisms for incorporating victim input reinforces the existing system's focus on the offender rather than on the broader impact of the crime. PO7 acknowledges the varying nature of offences, stating that *"in most of my previous cases I do not involve the victim, because it would be cases of shoplifting"*. This highlights the perception that victim involvement may not be necessary or relevant in all cases, contrasting with the emphasis on victim-centred approaches advocated by other probation officers (e.g., PO1, PO2).

Furthermore, PO4 points to the complexities of certain cases, such as *"street fights where both parties had assaulted each other,"* where identifying a clear victim can be challenging. These responses collectively illustrate the practical and systemic barriers that hinder effective victim inclusion in adult diversion processes within the UThukela district.

PO4 also added that:

"... as a probation officer I think I am normally serving the accused person, but I know that according to the correct way of doing things I should balance the views of the victim with those of the offender, but the offender's assessment is more indepth when it comes to adult diversion reports" **PO4**

The latter statement by PO4 highlights an internal conflict experienced by some probation officers in balancing their responsibilities towards both the offender and the victim. PO4 acknowledges that their primary focus often leans towards serving the *"accused person,"* reflecting the inherent power dynamics within the criminal justice system. While recognising the importance of considering the *"views of the victim,"* the officer admits that the offender's assessment typically receives greater attention in the context of adult diversion reports. This imbalance may stem from several factors, including a lack of clear guidelines for incorporating victim perspectives and systemic biases within the criminal justice system itself. This statement underlines the need for systemic changes to address these imbalances. Clear guidelines, dedicated resources, and specialised training on victim-centred practices are crucial to ensure that the needs and perspectives of victims are adequately considered

throughout the adult diversion process (see Strang *et al.*, 2013). Findings from the researcher's previous study on child diversion within the same district (Mzinyane, 2017) highlighted the tendency to overlook victims' needs in diversion processes.

On the same note, other probation officers said:

"No, no I do not know why the victims are not part of the diversion programmes, but I wish someday we can consider them because they are also involved, the cases are not about the offenders but about the victim," PO7

"... well for the offender, the benefit is just that they don't get a criminal record, but for the victim, they do not benefit much, they are sometimes left with more questions than answers, as to why was the offender not kept in jail..." PO3

"no, our programmes do not include the victims... any other person is not considered by our programmes... the exclusion of the victim is one of the reasons why people do not believe in the justice system, it is the reason why some would just take the law into their own hands because inconsistent processes in Ladysmith, Estcourt and anywhere does not serve justice" PO6

PO6 added that

"In most times, adult diversion cases are petty crimes so the victims are sometimes not considered because there is nothing that binds us to involve them... truly speaking the victims are bit sidelined in a way, I think they are sidelined... nobody bothers about the victims, everyone's focus is normally on the accused whereby the focus is on the wrong cause by the accused... maybe it could be better if they could say for next four weeks you must go and clean Shoprite [name of the supermarket] because you have wronged Shoprite, as a business, that could serve justice and improve the benefit to the business as a victim" PO6

These excerpts highlight significant concerns regarding the exclusion of victims from adult diversion programmes in the UThukela district. PO7 states, *"the cases are not about the offenders but about the victim,"* emphasising that victim experiences should be central to the justice process. However, PO3 acknowledges that victims *"do not benefit much,"* often leaving them with *"more questions than answers"* and a sense of injustice. This sentiment is echoed by PO6, who argues that the exclusion of victims *"is one of the reasons why people do not believe in the justice system"* and contributes to a lack of public trust. PO6 further

criticises the current focus on the offender, suggesting that it "*is on the wrong cause*" and that more emphasis should be placed on addressing the harm caused to the victim, such as through community service that directly benefits the victimised entity, as illustrated by the example of cleaning "Shoprite" [a supermarket affected by the crime] after a theft (*see Rice, 2010*). These statements collectively emphasise the critical need for greater victim involvement in adult diversion programmes to ensure a more just and equitable outcome for all parties involved.

Some prosecutors also said:

"[laughs] With regard to adult diversion, we don't normally invite the complainant or their view; it is only when the victim would ask it, then we would explain and inform them that that person has been sent to adult diversion" **PP6**

"No, we don't invite them [victims] during the pretrial processes, especially when adult diversion is being considered, and maybe that is not even correct, but there is no Act [legislation] that stipulates that we must invite complainants during adult diversion court processes" **PP2**

These excerpts from prosecutors highlight a significant gap in current practices regarding victim inclusion in adult diversion processes. PP6 candidly states that victims are "not normally invited" and are only informed about the diversion after the fact, indicating a passive and reactive approach to victim engagement. This approach, while seemingly efficient, disregards the importance of obtaining informed consent and actively seeking victim input in the decision-making process.

PP2 further emphasises this point, stating that there is "*no Act [legislation] that stipulates that we must invite complainants*". This lack of clear legal or procedural guidance contributes to the limited involvement of victims in pretrial processes, including those related to adult diversion. These statements collectively illuminate a significant disconnect between the principles of restorative justice, which emphasise victim-centred approaches, and the current practices within the justice system.

PP2 and PP3 also added that:

"Not if it's a shop, like theft by shoplifting... I think in cases where there are real victims, we consider diversion" **PP3**

“In cases where there are real victims, yes, um, I would consider the victim, but like I said in my court, adult diversion is mainly for shoplifting and things like that...” **PP2**

PP2 and PP3’s identical statements, *"in cases where there are real victims,"* suggest a perception that certain offences, such as shoplifting, may not involve *"real"* victims or that their experiences are not considered significant enough to warrant their involvement in the justice process. This perspective reflects a narrow understanding of victimisation and may contribute to the exclusion of victims from restorative justice processes, even in cases where their experiences may have significant emotional and economic impacts. These statements also highlight the need for a broader understanding of victimisation and the potential impact of various offences on individuals and communities. Recognising the diverse forms of victimisation, including those resulting from seemingly minor offences, is crucial for ensuring that all victims have the opportunity to participate in the justice process and have their needs and concerns addressed.

From further engagement with probation officers, PO7 provided said:

“I would sometimes make the offenders write an apology letter to the victim, but my main challenge with shoplifting cases for bigger supermarkets is I would remain unsure if the offender needs to send it to the store manager or to the security officer or who... so it is difficult to involve victims in shoplifting cases, but in most cases, I would ensure that the victim writes the apology letter so that they can take responsibility of their action” **PO7**

Unlike PP22 and PP3, who see no possibility of engaging victims in supermarkets, PO7 acknowledges the value of restorative measures such as apology letters but expresses difficulty in identifying the appropriate recipient of the apology within the complex organisational structure of a large supermarket. This ambiguity creates a significant obstacle to effective victim engagement and can undermine the restorative potential of the process. The statement *"I would ensure that the offender writes the apology letter so that they can take responsibility of their action"* suggests that the focus may be primarily on the offender's accountability rather than on direct engagement with the victim. While acknowledging the importance of offender accountability, this approach may not fully address the needs and concerns of the victim [as business owners] and may limit the potential for genuine restorative outcomes, as argued by Braithwaite (2000) in his theorisation of restorative outcomes. Therefore, the excerpt of PO7 reveals the need for clear guidelines and support

mechanisms to facilitate effective victim engagement in shoplifting cases. This may include establishing clear protocols for identifying and contacting the appropriate victim representatives, providing guidance and support to victims in developing impact statements, and training probation officers on effective victim engagement strategies. By addressing these challenges, probation officers can better integrate victims into the restorative justice process and ensure that their needs and concerns are adequately addressed.

It is crucial to note that the perspectives of the participants quoted in this subtheme contrast sharply with those of some participants who actively seek victim input and emphasise the importance of their participation (see Subtheme 5.1. above). These contrasting viewpoints highlight the need for greater consistency and harmonisation of practices across different sectors of the justice system to ensure that victims are meaningfully involved in all stages of the justice process, including those related to adult diversion.

7.3. THEME 6: COMMUNICATION AND INTERACTION OF PROFESSIONALS IN ADULT DIVERSION PROCESSES AND PROGRAMMES

As established above through the argument of McCold and Wachtel (2003), there are two levels of stakeholders in restorative justice theory: primary victims and secondary stakeholders. This theme focuses on the interaction, communication and engagement of secondary stakeholders during adult diversion processes in UThukela. In order of sequence, subthemes that are discussed herein include: (1) informing probation officers about adult diversion cases, (2) resource limitation, rurality and stakeholder interaction for adult diversion purposes, (3) adult diversion and power dynamics between probation officers and public prosecutors, (4) boardroom routines between probation officers and public prosecutors, (5) interaction of participants with ‘other’ stakeholders during adult diversion.

Subtheme 6.1. Informing probation officers about adult diversion cases

Understanding the interaction and communication routines among stakeholders is central to research objective three and the theoretical framework of this study. Probation officers were asked how they are regularly informed about adult diversion cases to understand the

communication channels and practices related to adult diversion in UThukela. Their responses were as follows:

“The prosecutor would call me, and they normally ask if I am available in the office so that they can arrange someone to deliver their requisition form for adult diversion, so if I am available, I would inform them, or I would just pass by their offices in court to fetch the requisition form” **PO7**

“the court clerk would call me and inform me of an available requisition for adult diversion” **PO5**

“as you can see, we don’t even have a telephone line, let alone emails [smiles]... we are using our personal cellphones ...so they send the photo of the adult diversion request on WhatsApp and that would ensure that we are aware of the case. Remember in the past the investigating officers were not delivering the requests to us, they would just keep it in the docket, but now the prosecutor is ensuring that we receive it” **PO1**

“we communicate through WhatsApp, and that is where they send the requisition forms for adult diversion screening” **PO3**

“no we don’t. We do not have enough resources for us to render adult diversion properly because, for starters, I would cite the issue of communication look just now, we were disturbed by a call from court where they are calling me from my own personal cellphone, we do not have enough work tools, some offices do not have telephones [deep sigh]” **PO6**

These comments indicate the evolving nature of communication channels regarding adult diversion referrals among role players. While traditional methods such as phone calls and direct visits to the prosecutor's office are still utilised (as evidenced by PO7 and PO5), the emergence of technology, specifically WhatsApp [social media platform], is increasingly crucial in facilitating communication, particularly in resource-constrained environments where basic infrastructure like telephone lines or email may be lacking (as highlighted by PO1, PO3 and PO6). The use of informal and technological means of communication, while potentially enhancing accessibility, may also raise concerns regarding data security, confidentiality, and the potential for inconsistencies in information transfer. Nonetheless, Mishna *et al.* (2022) make a clarion call for social workers to embrace the emergence of the

use of social media in professional social work practice, but with an acknowledgement of ethics and law.

Another probation officer said:

“... we can’t only rely on the contact details that are only furnished in the requisition papers only, the investigating officers [detectives], must have clear family findings roles, sometimes the cellphone numbers of perpetrators provided do not go through.”

PO3

This excerpt highlights gaps in communication and, expressly, a crucial challenge faced by probation officers in effectively engaging with offenders in diversion processes due to the unreliability of contact information provided in requisition papers. PO3 emphasises the need for more robust and reliable mechanisms for obtaining and verifying offender contact information. This necessitates a greater degree of collaboration with investigating officers, who should be actively involved in conducting thorough family findings and ensuring the accuracy of the contact details provided. The acknowledgement that provided cellphone numbers often prove to be invalid highlights the critical importance of verifying and updating contact information throughout the diversion process to ensure effective communication and programme engagement.

While most probation officers recounted a process where the court personnel facilitates communication, PO6 said:

“what would happen is that an offender would come to me with a referring requisition form from the court that requests an assessment report which must screen him for adult diversion suitability... in some cases, the prosecutor would refer the offender to my office with the requisition form and that offender would just not come and I would be surprised when the prosecutor calls me to ask for the pretrial report of so and so whom the prosecutor sent to me... some offenders just decide not to come” **PO6**

The above comment from PO6 demonstrates a significant challenge faced by probation officers, which is a lack of communication between the court personnel and probation officers. It was interesting to note that at PO6’s area of operation [one of the research sites in UThukela], they often send offenders from court to the offices of probation officers as a way of facilitating the referral through what the researcher coins as a ‘test of commitment’ and agency of offenders. As Trotter (2022) points out in his work on involuntary clients,

individuals mandated to participate in these diversion programmes often exhibit resistance and reluctance. PO6's observation that some offenders "*just decide not to come*" aligns with Trotter's assertion that involuntary clients may view diversion as an infringement on their autonomy and freedom (see Trotter, 2016). Trotter (2022) emphasises the importance of building rapport and establishing a therapeutic alliance with involuntary clients. He suggests that practitioners should prioritise empathy, genuineness, and active listening while acknowledging the client's resistance and frustrations. As Trotter (2015, p.23) notes, "reflective listening, self-disclosure, humour, and the appropriate use of authority" are crucial interpersonal skills for working effectively with this population. Furthermore, Trotter advocates for a collaborative approach, emphasising the importance of involving clients in the decision-making process whenever possible. By empowering clients to take ownership of their treatment plans and actively participate in their own rehabilitation, practitioners can increase engagement and improve the likelihood of successful outcomes.

These accounts of how probation officers are involved signify a diversity of approaches employed in UThukela to ensure the involvement of probation officers as stakeholders in the processes of adult diversion. The following subtheme goes further to discuss the involvement of victims in adult diversion within the expanse of UThukela.

Subtheme 6.2. Resource limitation, rurality and stakeholder interaction for adult diversion purposes

While the researcher sought to understand the involvement of stakeholders, communication patterns and interaction among stakeholders, the issue of limited organisational resources seemed to hinder the restorative justice imperatives of adult diversion, especially in a rural setting such as UThukela. The assertions of stakeholders in this regard were as follows:

"no it terms of resources, we struggle a lot, in terms of cars you'd find that they are fewer as compared to the number of social workers within our office. Even with computers, that is another problem, even with space for programme implementation, we use our office space, so the office is sometimes not suitable for certain activities but we make it work. We don't even have a stable internet at DSD, our servers are always down" **PO4**

"we need resources, we need laptops desktops, there was a time where I did not have a laptop and I was sharing with others. Even cars, we need cars for home visits but

the Department indicated that they would not buy departmental cars anymore... they suggested that we must apply for Scheme B [petrol reimbursement and approval of using one's personal vehicle] with our own cars, of which it is not every social worker that has their own cars" PO2

well, with adult diversion we are compelled to implement adult diversion programmes within the offices because we do not have cars" PO6

Fetching offenders from home and implementing diversion programmes in satellite offices within rural communities of offenders proved to improve compliance of involuntary clients (Mzinyane, 2017). Therefore, the availability of organisational resources such as vehicles becomes crucial when implementing diversion within rural settings (*ibid*) and when dealing with the dynamics of involuntary clients, as discussed by Trotter (2016). However, the above assertions reveal that resource limitations significantly impact their ability to interact and effectively implement programmes and ultimately involve required stakeholders meaningfully in adult diversion processes. PO4 emphasises the critical role of adequate resources, citing challenges with vehicle availability, limited computer access, and inadequate office space for program implementation. These constraints directly impact the ability of probation officers to conduct home visits, access necessary information, and provide a conducive environment for program activities. Similarly, PO2 also emphasises the impact of limited resources on staff mobility, stating that the lack of departmental vehicles necessitates reliance on personal vehicles for home visits, which may not be feasible for all social workers. This limitation directly affects their ability to effectively engage with offenders and their families in their communities. Of note, as shown in Chapter 5, involving families becomes a crucial part of the practice of probation officers when executing adult diversion responsibilities. PO6 acknowledges the constraints imposed by limited resources, stating that they are "*compelled to implement adult diversion programmes within the offices*" due to the lack of transportation. This limitation restricts the range of program activities and may limit the effectiveness of the program in addressing the underlying causes of offending behaviour. These responses collectively demonstrate how resource limitations create significant barriers to effective communication, interaction, and stakeholder involvement, ultimately hindering the successful implementation of adult diversion programmes in the UThukela district.

On the same note, PO5 demonstrated the depth of challenges that they face in rural areas.

“Unlike with child diversion, with adult diversion investigating officers do not have a clear role to play, while they could be working to help us navigating rural challenges, such as lack of house numbers and street names, so it is difficult for us, while detectives are trained to trace people... we find it hard to find certain offenders who are referred to us for adult diversion” PO5

This excerpt from PO5 highlights the critical role that investigating officers could play in supporting adult diversion programmes, particularly in rural areas. PO5 observes that unlike in child diversion cases, where investigating officers have a more defined role, their involvement in adult diversion is often unclear. This lack of clarity hinders the effective implementation of diversion programmes, particularly in rural areas where challenges such as "lack of house numbers and street names" can complicate the process of locating and engaging with offenders. PO5 further said

“we are using our personal cellphones” PO5

“we have a challenge in finding them, we are using our personal cellphones... it’s not even how many months, its been years now. That has consequences because I have even been threatened by certain people because my personal number is out there. Those who were threatening me were against the decision that the court took, although my recommendation was in their favour... So we need phones because we end up being vulnerable” PO1

The excerpts from probation officers in the UThukela district highlight the significant risks and vulnerabilities associated with the reliance on personal cell phones for official communication, particularly in a resource-constrained rural setting. PO5 simply states "we are using our personal cellphones," underscoring the lack of adequate official communication devices. PO1 further elaborates on the severe consequences of this practice, stating that they have "been threatened by certain people because my personal number is out there". This situation not only compromises the personal safety and security of probation officers when working with risky involuntary clients but also undermines their ability to effectively and ethically fulfil their duties. The use of personal cell phones raises concerns about data security, privacy violations, and the potential for misuse of personal information. Furthermore, the lack of secure communication channels can hinder effective collaboration with other stakeholders, such as victims, community members, and other agencies involved in the justice process. This reliance on personal resources in a resource-constrained

environment exacerbates existing inequalities and creates significant challenges for the effective implementation of adult diversion programmes in the UThukela district.

“at least now they are building a new office, you see how squashed other people are, we do not have confidentiality when implementing adult diversion sessions... Yes, I have to, because many people who are diverted for diversion are not available during the week, so they are available over the weekend... some are scholars, some are working... no we don't get paid” PO3

“I think the Department is aware of our resource concerns, but I do not know who is pushing it that we have cellphones and cars for work” PO7

Asthana *et al.* (2009) argue that rural areas are typically not allocated adequate organisational resources for social services. These excerpts from probation officers in the UThukela district further illustrate the significant impact of resource limitations on the effective implementation of adult diversion programmes. PO3 highlights the lack of appropriate office space for conducting confidential program sessions, stating that *"we do not have confidentiality when implementing adult diversion sessions"*. This lack of privacy can hinder open and honest communication and create a barrier to effective engagement with offenders. PO7 acknowledges the Department's awareness of resource constraints but expresses frustration regarding the lack of action to address these issues, particularly regarding the provision of official vehicles and communication devices. The statement *"I have to, because many people who are diverted for diversion are not available during the week, so they are available over the weekend... some are scholars, some are working... no we don't get paid"* (PO3) highlights the significant personal sacrifices made by probation officers to fulfill their duties, often going beyond their official working hours without receiving any compensation. These challenges, exacerbated by the rural context of the UThukela district, significantly impact the quality and effectiveness of adult diversion programmes and hinder the ability of probation officers to provide the necessary support and guidance to offenders.

Further discussions with participants revealed the following:

“when prosecutors send us the requests, they normally say SSS [censored rural area], they do not specify next to what, you know. There are no house numbers [in rural areas] it would prefer if for example in the request prosecutors were writing nicknames of offenders as well, to make things easy... when I ask who is Mxolisi Zwane [pseudo name], you'd notice that bystanders don't know that person by their

formal name... we find it hard to find certain offenders who are referred to us for adult diversion” PO5

“... in terms of rural areas, I won’t lie it is difficult, for example a prosecutor would just write ZZZ [censored rural area], so ZZZ is a very big area, so if one just writes ZZZ in their requisition papers then I just do not know where to start... yes, even to investigate. So, sometimes they would also include the telephone numbers of the accused, but due to poor network reception, the call would go straight to voicemail” PO1

“... when I contact some police officials to would tell me frankly that ‘yoh XXXX [censored name of the probation officer] with that one I last saw him [referring to the offender] when I arrested him’. Then I would ask him [referring to the police officer], what is their house number? Then maybe the police would suggest that we go together with them to their place of work if they are employed, sometimes the police official would suggest that we go to the school of the adult offender if maybe they are still schooling...” PO7

These excerpts highlight the significant challenges faced by probation officers in locating and engaging with offenders in rural areas, particularly due to inadequate and inconsistent information provided in referrals. PO5 emphasises the importance of providing more specific location details and alternative identifiers, such as nicknames, in referral documents. This would significantly improve the efficiency of the referral process and facilitate the timely engagement of offenders in diversion programmes. PO1 further emphasises the difficulties associated with vague location descriptions, such as "ZZZ" (censored rural area), which provide insufficient information for locating offenders. PO7 highlights the critical role of interagency collaboration in overcoming these challenges. The suggestion of collaborating with police officers to locate offenders through their workplaces or schools demonstrates the importance of leveraging existing relationships and information networks within the community. These excerpts underscore the need for improved communication and information sharing between agencies involved in the justice process. Clearer referral protocols, including standardised formats for providing accurate and comprehensive offender information, are crucial to ensure the effective and timely implementation of adult diversion programmes in rural areas. This further reveals how the rural context of UThukela, compounded by resource limitation, affects the effective involvement of offenders in

restorative justice processes. Sithole (2018) conducted a study on child diversion within a rural context. In her research, she argues that “more research needs to be done, especially in the rural areas of South Africa in general and KZN specifically” (Sithole, 2018, p.vi).

Subtheme 6.3. Adult diversion and power dynamics between probation officers and public prosecutors

During discussions with numerous participants, the issue of power dynamics between probation officers and public prosecutors emerged as critical.

For instance, some probation officers reveal the following :

“... they do not accept my recommendations [of adult diversion] but there are some prosecutors who question it, who are not a fan of adult diversion, some who would say ‘even this one qualifies for adult diversion’, sometimes it would seem as if they perceive me as an amateur who is not familiar with what they are doing. But some do accept diversion” PO6

“... it starts from the prosecutor; some prosecutors would decide or tell me to recommend adult diversion, so I have no choice but to then recommend and implement adult diversion” PO7

The above comments from probation officers in the UThukela district reveal the complex power dynamics that exist in their interactions with prosecutors during the adult diversion process. They reveal that some probation officers (PO6 and PO7) felt marginalised, dictated upon and overpowered by public prosecutors during the processes of adult diversion. PO6 quotes instances where prosecutors "question" or even "do not accept" the probation officer's recommendations for adult diversion, suggesting a power imbalance where the prosecutor's opinion may hold greater weight. This dynamic seemed to create tension and undermine the collaborative spirit that is essential for the successful implementation of restorative justice programmes. Equally, PO7 describes a situation where prosecutors exert significant influence over the diversion process by "*deciding or telling me to recommend adult diversion,*" leaving the probation officer with limited autonomy in their assessment and recommendations. PO6 also state that there are some public prosecutors "*who are not a fan of adult diversion*". Additionally, the narratives of PO6 and PO7 reveal that these probation officers felt helpless. The use of phrases such as:

“... so I have no choice but to then recommend and implement adult diversion” and “they perceive me as an amateur” indicate the undue devaluation of probation officers as professionals who have inherent professional prerogative and independence in the criminal justice system. Both the above probation officers were experiencing oppressive behaviour despite the provisions of the Probation Services Act 116 of 1991, which establishes probation services as role players within the criminal justice system. This legislation also awards generic powers and duties to probation officers in the criminal justice system. One of the powers as stipulated in section 4(1)(a) is that:

The powers and duties of probation officers shall include the investigation of the circumstances of an accused with a view to reporting to the court on his treatment and committal to an institution, as well as the rendering of assistance to his family. (Republic of South Africa, 1991)

Despite the aforementioned statutory mandate of probation officers as guaranteed by the law, it is evident in this study that probation officers’ recommendations were sometimes influenced unduly by public prosecutors who were arguably overreaching and undermining the professional prerogative of social work professionals. Halliday, Burns, *et al.* (2009) also confirm that one of the important roles of probation officers is to ‘recommend to the court’. Social workers often play a crucial role in providing assessments, recommendations, and support to legal professionals in making informed decisions (Young, 2016). However, they have limited direct influence on legal proceedings or sentencing outcomes (*ibid*). This limited influence is seen as contributing to a perception that their input is less significant, further marginalising their contributions.

Another important dynamic to this is the fact that PO7 and PO6 were serving in two different towns within the uThukela district, and they were more than 100km apart. However, the realities of marginalisation were common between the two of them.

When PO7 was asked whether s/he feels respected by some prosecutors, s/he said:

“Not all! Not all! [Lutho! lutho!] [the participant used an IsiZulu phrase ‘lutho lutho!’], the prosecutor would just send me back and tell me that I told you to recommend adult diversion. You know Mzi [alias of the researcher], even when I state my facts to her and tell her that I found one, two, and three. Remember that my assessment includes even a home visit right?... someone had a problem of alcohol and my recommendation in that instance was to send the offender to a rehabilitation

centre, but the prosecutor rejected my opinion and told me that the case was going to easily withdrawn from the court roll if we do adult diversion, so with rehab we still needed to postpone the case, be allocated an admission date and so on... [deep sigh] that is how my recommendation was rejected” PO7

The above expression reveals that, during the processes of adult diversion, some prosecutors are undermining the professional prerogative of probation officers. The fact that PO7 said “... *the prosecutor would just send me back and tell me that I told you to recommend adult diversion*” indicates the depth in which she experienced marginalisation felt by a probation officer. In light of this, international literature supports the notion that social workers within criminal justice are marginalised by legal professionals (Halliday, *et al*, 2009; Young 2016). Halliday *et al* (2009) conducted an ethnographic study that analysed the ‘street-level bureaucracy, interprofessional relations, and coping mechanisms of criminal justice social workers in Scotland’. One of their findings was that “[s]ocial workers were uncertain of their place within the legal domain and concerned about their credibility as criminal justice professionals” (Halliday *et al*, 2009, p. 405). The reason for the existing asymmetry in power relations between legal professionals and social workers within the criminal justice system is ‘differing professional values’ (Young, 2016, p. 99). Additionally, as argued by Hargovan (2010), legal professionals often hold more authority and decision-making power. While legal professionals primarily focus on legal processes, social workers are often responsible for addressing the social and psychological needs of individuals involved in the system (Young, 2016). The differing priorities and perspectives often contribute to the marginalisation of social workers, as their expertise is undervalued or overlooked. This could be problematic because social workers are portraying themselves as the ‘implementers of diversion programmes’. This means their voices as ‘screeners of diversion’ [probation officers] are as equally important as the voices of ‘decision makers of adult diversion’ [public prosecutors, as earlier revealed in subtheme 2.2. in Chapter 5]. The success and failure of adult diversion programmes depend on the mutual partnership between role players. It is, therefore, important to acknowledge their voices since their role is also crucial when implementing adult diversion. Giddens (1984) states that power can be seen as a “resource” and a factor that contributes to the marginalisation of certain actors and/or domination of those with “authoritative resources”. According to Giddens, authoritative resources allow agents to control persons, whereas allocative resources allow agents to control material objects (*ibid*). It can, therefore, be argued that public prosecutors felt that they had

“authoritative resources” due to the powers that were allocated to them by numerous legislations, which are somewhat limited for social workers within the criminal justice system.

On the other hand, the restorative justice theory also recognises the significance of restoring power imbalances that are often convened by the commission of offences (Braithwaite, 2014). It is, therefore, through the lens of this theory that the researcher notes the lack of mutual partnership between the role players of adult diversion and the ‘power imbalance’ which occurs during the practice of this specific restorative justice process in the UThukela district area. The above-explored dynamics of interdisciplinarity during the processes of adult diversion indicate that there are existing power dynamics that often unduly influence the outcomes of restorative justice.

To affirm the evidence on the manipulation of probation officers’ recommendations during adult diversion processes, a seasoned prosecutor said:

“I haven't had such a situation recently, but I sit down with the probation officer and, and try and find common ground, perhaps explain, uh, why whatever is recommended might not be suitable or not be good enough. You know, that type of thing. But, it will be the prosecutor still has, um and the court, at the end of the day decides on, on the sanction.” PP4

The response of PP4 confirms that, indeed, public prosecutors make attempts to influence the professional recommendation and prerogative of probation officers during adult diversion processes. Even though the response of PP4 sounded polite, it confirms that PP4 also attempted indirectly to sway probation officers away from their professional recommendations, as informed by their professional assessment (see 4.4.1.1. above). The use of words such as “*whatever is recommended might not be suitable or not be good enough*” indicates that, at times, some prosecutors would have preconceived recommendations that they would expect from probation officers during the court processes of adult diversion.

PO7 also added that sometimes “*some [prosecutors] would be polite in trying to persuade me to change my recommendation, they would ask me as ‘would you consider to recommend like this?’*”. This view confirms that even though there could be prosecutors who appear as ‘polite’ during their acts of undermining the professional views of social workers, they nonetheless make attempts to unduly overreach their mandate when working with professionals from a non-legal profession such as social work.

While there are existing, subtle power inequalities, one of the public prosecutors said:

“I strongly believe that social workers have a huge value in adult diversion implementation” PP7

This affirms the experience of the researcher within the criminal justice system, it can be argued that the presence of social work professionals as probation officers in the criminal justice system brings several valuable contributions and benefits. However, the existing hegemony of some prosecutors defeats the potential and rich contribution of this different breed of social workers (probation officers). Probation officers consider the social, psychological, and environmental factors that contribute to an individual's involvement in the criminal justice system. Their unique perspective enables them to address not only the legal aspects but also the underlying socio-legal issues and holistic needs of individuals, such as mental health, substance abuse, family dynamics, and community support systems. Nonetheless, Halliday *et al.* (2009, p. 413) revealed in their study, “[d]espite the fact that social workers were confident professionals in their routine engagement with offenders and each other, many became less confident in having to engage with the legal domain through report writing”. Of note is that this was also the case in this study.

These situations highlight the potential for undue influence from prosecutors, which can compromise the objective and independent assessment of the offender's suitability for diversion by a suitably qualified professional (the probation officer). These observations underscore the need for clearer guidelines and protocols that define the roles and responsibilities of each stakeholder involved in the adult diversion process, where the guidelines could emphasise the importance of collaborative decision-making, mutual respect, and the sharing of information and expertise to ensure that the best interests of both the offender and the victim are served. Young (2016, p. 98) reveals in her study that “[t]he profession of social work and field of criminal justice [including probation practice] currently maintain an uneasy partnership in criminal justice settings where social workers are employed ...”. Young adds that the uneasy partnership between social workers and the rest of the practitioners within the criminal justice is due to the ‘differing professional values’ (Young, 2016, p. 99). Consequently, this subtheme affirmed this argument, where some probation officers revealed their uneasy relationship with some prosecutors.

Subtheme 6.4. Boardroom routines between probation officers and public prosecutors

This part of the chapter explores how communication practices establish whether there were platforms where problems related to adult diversion were addressed. The responses of participants regarding communication structures were as follows:

“yes we have a caseflow management meeting where these issues are discussed” **PP1**

“in case flow meetings at least everyone is available, so issues of adult diversion are also an agenda item there” **PP3**

“Sometimes my manager attends the case flow meetings, and they do not really know our challenges in relation to adult diversion so we don’t get to resolve some of the issues because we don’t get to sit down in the table and talk” **PO5**

“we have an open door policy with our probation officers they come anytime for us to talk” **PP4**

“No we do not have collective meetings, but at one point I once spoke with Prosecutor X [PP2] to suggest that we need to have meetings where we involve even SAPS [South African Police Service]... in our meetings with NPA we often have challenges with the police where the police would just forget to send the requests to us, one police officer just kept the request on his docket until the next court date, so some of the problems are caused by those who are never part of our meetings with NPA” **PO1**

The responses from participants reveal that there are existing communication platforms in UThukela. However, the responses also show how communication practices both reproduce and challenge existing structures within the UThukela district's justice system, aligning with structuration theory. Formal structures, such as "case flow management meetings" (PP1, PP3), serve as established channels for communication and decision-making regarding adult diversion. However, these structures can also reproduce existing power dynamics and hinder effective collaboration. PO5, for example, highlights how the exclusion of key stakeholders, such as probation officers, from these meetings can limit their ability to address critical challenges related to adult diversion. Conversely, informal communication channels, such as the "open door policy" (PP4), can facilitate more fluid and responsive interactions between stakeholders. However, these informal channels may also lack the formal structure and accountability necessary for consistent and effective communication. Furthermore, the responses highlight how individual agency can both reinforce and challenge existing structures. PO1, for instance, actively sought to challenge the existing communication

structure by proposing the inclusion of SAPS in interagency meetings. This initiative aimed to address the issue of delayed case referrals caused by poor communication and a lack of coordination between agencies. However, the success of this initiative was ultimately dependent on the active participation and cooperation of all stakeholders, demonstrating the interplay between agency and structure in shaping communication practices and outcomes.

Subtheme 6.5. Interaction of participants with ‘other’ stakeholders during adult diversion

This section presents the accounts of communication dynamics between the participants and numerous secondary stakeholders, such as police detectives, magistrates, probation officers and public prosecutors. Below is what the participants stated:

“Remember in the past the investigating officers were not delivering the requests to us, they would just keep it in the docket, but now the prosecutor is ensuring that we receive it” PO4

PO4 highlights a positive shift in interagency communication, noting that prosecutors are now actively ensuring that referral requests are received by probation services. This improved coordination is crucial for the timely and effective implementation of adult diversion programmes. However, challenges remain. Another probation officers said:

“in adult diversion, I have never seen or communicated with the investigating officer, some police officers do not have the information of the offenders and it makes it difficult... so there is no procedure that I would say it is standardised for the involvement of the police” PO6

PO6, above, emphasises the lack of standardised procedures for police involvement, leading to inconsistent communication and information sharing. PO1, PO3 and PO5 also stated their views:

“For me, it’s a funny answer, I would say [laughs], sometimes when you are interviewing an offender you would just realise that this person is bluffing with me, they are telling something that is not true. Remember, sometimes I would have spoken to the police and have some knowledge of facts, so if they lie to me it means they are not remorseful, so remorse is important” PO1

“If you contact the I.O. [investigating officer, the detective], they will give me the details of the victim. So I normally contact the I.O. to get the number of the victim to establish how has the crime affected them, but in my actual report, there is a smaller portion that speaks to the assessment of the victim” **PO5**

“I wish there was a way of removing the names of perpetrators from the records of SAPS as people with pending cases, since adult diversion has no clear communication protocols, SAPS remain unaware that the case was finalised through adult diversion” **PO3**

The comments also reveal how information from IOs (investigating officers) can be valuable in assessing the credibility of offender accounts. PO1 emphasises the importance of corroborating offender statements with information obtained from police investigations to assess their remorsefulness. However, PO3 highlights a significant limitation, noting that the lack of clear communication protocols regarding adult diversion outcomes can lead to outdated information within police records. Furthermore, the excerpts demonstrate the potential for IOs to contribute valuable information regarding victim impact. PO5 emphasises the importance of IOs as a source of information for contacting victims and assessing the impact of the crime. On this issue, one of the prosecutors, PP6 said:

“so when the investigating officer is investigating for bail, ehm, they would normally come back with information about the accused’s pending cases, ehm and other things, what are views of complainant.” **PP6**

PP6 highlights the potential for IOs to provide valuable information beyond the scope of the immediate investigation, such as information about the accused's pending cases and the views of the complainant. This information can be crucial for conducting thorough assessments and developing appropriate diversion plans.

Interaction with stakeholders was not limited to police officials. Participants also spoke about the dynamics of interacting with magistrates among other stakeholders.

“others [new prosecutors or new magistrates] do but sometimes Magistrate X [filtered name] would be temporarily replaced by Magistrate Y, and you’d find out that the new magistrate does not have the knowledge about adult diversion... sometimes another challenge that we are experiencing recently is the reshuffling of

prosecutors and there would be changes as a result we would end up not receiving requests [for adult diversion assessment] on time” PO6

“To be honest we didn’t have problems with communication and getting requests... but it happened that recently we had new magistrates, and it was difficult to communicate with them... they would only want us to only concentrate on the courtwork demands and not any other thing” PO2

These comments reveal a significant impact of personnel changes and the varying levels of understanding of adult diversion processes among judicial officers on the effectiveness of these initiatives. PO6 emphasises the disruption caused by frequent staff changes, particularly among magistrates, noting that the lack of consistent knowledge and understanding of adult diversion among new magistrates can lead to delays, confusion and ultimately hinder the successful implementation of these programmes. PO2 further elaborates on this point, noting that some magistrates may prioritise other court-related demands over adult diversion, potentially undermining the effectiveness of these alternative justice pathways. These challenges underscore the critical need for comprehensive training programmes for all judicial officers on adult diversion programmes, their objectives, and their implementation procedures. Additionally, establishing platforms for knowledge sharing and communication among judicial officers, such as mentorship programmes or online forums, can ensure consistent understanding and application of adult diversion principles. Furthermore, developing and disseminating clear and concise guidelines for all stakeholders involved in the adult diversion process, including magistrates, prosecutors, and probation officers, is crucial for ensuring the consistent and effective implementation of these processes.

“I will talk about a case that happened recently on Friday, I think it was the 15th, and the prosecutor wanted my report ready on the following week, weekdays, which is impossible” PO1

PO1 describes a situation where the prosecutor demanded a report "ready on the following week, weekdays," which is deemed "impossible" by the officer. This unrealistic timeframe creates significant pressure on probation officers, potentially compromising the quality and thoroughness of their assessments.

The above findings collectively highlight the critical role of interagency communication and collaboration. While positive shifts, such as improved communication between prosecutors and probation services, have been observed, significant challenges persist. These include

inconsistent police involvement, limited information sharing, and varying levels of understanding of adult diversion processes among judicial officers. These findings underline the need for standardised procedures, clear communication protocols, comprehensive training programmes, and platforms for knowledge sharing among all stakeholders to ensure the effective and equitable implementation of these alternative justice pathways. The following theme discusses the participants' recommendations on how adult diversion can be improved in UThukela and beyond.

7.4. THEME 7: TOWARDS ADULT DIVERSION REFORM: RECOMMENDATIONS BY PARTICIPANTS

This theme accounts for the attainment of research objective 4, which solicited to establish the views of probation officers and public prosecutors regarding practice and policy guidelines for the practice of adult diversion processes and programmes. Some of the subthemes that emerged and are detailed below chronologically include (1) a clarion call for an introduction of a law or standard framework that would be specific to adult diversion, (2) the necessity to draw lessons from the structure that has been established already for child diversion to benchmark for the formalisation of adult diversion in the future, (3) a call for an introduction to accredited programmes and training for stakeholders, (4) role clarification.

The recommendations of participants contained herein are linked to a number of issues that they had raised throughout the findings chapters of this thesis. Their recommendations do not merely capture their ideal adult diversion environment but also provide a contextual response to why the participants are proposing such an environment.

Subtheme 7.1. A necessity for a standard framework or a regulating law for adult diversion

Numerous participants established the necessity to have a standard framework and/or a law that should regulate adult diversion in South Africa. Starting with probation officer's responses, all seven probation officers who were part of the sample said:

“so that we can know which cases gets to be diverted to which programme, there must be a law for adult diversion” **PO2**

“I wish we could have a law to regulate adult diversion...” PO1

“if we want this thing to be effective, it must be legalised, it must have a law, describing all processes, they can do it, I know they can do it, they did it when they designed child diversion” PO3

These excerpts from probation officers in the UThukela district strongly emphasise the need for a standardised legal framework for adult diversion programmes. PO2, PO1, and PO3 explicitly state the need for "a law for adult diversion" to guide the process, ensure consistency, and enhance effectiveness. On the other hand, PO4 (below) highlights the need for standardised reporting templates, emphasising the current reliance on adapted pre-sentence reports, which may not adequately capture the specific needs and requirements of adult diversion assessments.

“... I think we must have predesigned reporting templates for adult diversion, as it stands, we adapted the report for the pre-sentence report, and we use that for pretrial reporting, it only differs at the recommendations where we recommend adult diversion, I wish we had a reporting template for adult diversion assessment which is standardised by law or regulations, that could help you know” PO4

PO5, PO6 and PO7 also added that:

“at least we could have an Act [legislation for adult diversion]... the Act should consider including sections that speaks about compensation to the victim. The Act should also introduce timelines for certain milestones of the adult diversion process, where there would be maybe a 14 days for certain things, just like with child diversion, I want structure Mzi” PO5

“Eh, I think this whole thing should go back to law, where there would be a law that would describe which schedules are deserving of diversion, right now I could say we are basing this thing on a norm... sometimes I feel as if I am diverting from the norm when I do as I think... so we need a law” PO6

“trainings must also be done once the processes are formalised through a law for the whole country, bro, we want a law that cuts across prosecutors, probation officers, police, magistrates and everyone involved” PO7

Based on the above comments, PO5 elaborates on the desired elements of such legislation, advocating for the inclusion of provisions for victim compensation and the establishment of clear timelines for different stages of the diversion process. PO6 underscores the need for a legal framework to define which types of offences are suitable for diversion, emphasising the current reliance on informal norms and the potential for inconsistencies in decision-making. Finally, PO7 emphasises the need for comprehensive training for all stakeholders, including prosecutors, police officers, magistrates, and probation officers, once a standardised legal framework is in place. These collective statements signify the strong desire among probation officers for a more formalised and structured approach to adult diversion, emphasising the need for clear legal guidelines, standardised procedures, and comprehensive training to ensure the consistent, equitable, and effective implementation of these programmes across the justice system.

Prosecutors also shared their views in this regards, wherein PP3, PP7, PP6 and PP4 said:

“it is exactly that, it must force us to involve complainants, it must mention the schedule of offences, even exceptions” PP3

“if there could a law that says everyone who is maybe registered at tertiary institution qualifies for adult diversion that could give us a structure, or let me say a frame, because you’d notice that with some cases even when I think the case is eligible for adult diversion but the defence attorney is not of that view and we end up not considering it because of lack of interest or knowledge from attorneys, so if there could be a law it could be better” PP7

“Maybe they need legislation, a policy or something that is universal for everyone. And that is like depicting, highlighting the rules of everyone that the police has this role, the probation officer has similar to the Child Justice Act” PP2

As the discussion progressed, PP2 also added that:

“if there could be a law that legislation must force us to involve complainants in the process, it must also list all offences that must be considered for adult diversion, it must factor in other conditions, isn’t it, I am referring to conditions such as such exceptions in processes of adult diversion” PP2

“Maybe we need a legislation, a policy or something that is universal for everyone, and that is like depicting, highlighting the rules of everyone that the police has this role, the probation officer has this duty, similarly to the Child Justice Act” PP4

“I don’t think the legislation would be necessary, it's not like we have a crisis or something like that, as long as NPA has directives, we don’t need a law” PP6

These excerpts from public prosecutors in the UThukela district strongly advocate for a standardised legal framework for adult diversion programmes. PP3 emphasises the need for legislation to "force us to involve complainants" and to clearly define the "schedule of offences" eligible for diversion. PP7 highlights the need for clear eligibility criteria, suggesting that a law could establish specific categories of offenders, such as tertiary students, who may be particularly suitable for diversion programmes. This would provide greater consistency and reduce reliance on individual discretion and potential biases, such as those arising from defence attorney opinions. PP2 and PP4 emphasise the need for a standardised framework that clearly defines the roles and responsibilities of all stakeholders involved in the process, similar to the Child Justice Act. This would enhance interagency collaboration, improve communication, and ensure consistency in the application of diversion programmes across different jurisdictions.

While PP6 expresses reservations about the necessity of legislation, arguing that existing prosecutorial directives are sufficient, the majority of respondents strongly advocate for a more formalised approach. These statements collectively underscore the need for a comprehensive and standardised legal framework for adult diversion that addresses the current challenges and ensures consistent, equitable, and effective implementation of these programmes across the justice system.

Subtheme 7.2. Lessons from child diversion for the establishment of adult diversion framework

A number of participants strongly believed that there were lessons to be learnt from the child justice system. This is aligned with NICRO's (2021, p.100) argument that there is a need "... [t]o apply lessons learned from CJA [Child Justice Act 75 of 2008] when drafting [legal] provisions for adult diversion in the possible amended PSA [Probation Services Act]". It is also evident in all analysis chapters that numerous participants consistently compared adult

diversion processes and programmes with child diversion. This is perhaps because, in the African continent, South Africa has commendable and well-developed child justice and diversion management systems for managing crimes committed by young offenders (Abdulraheem-Mustapha, 2020; Kilekamajenga, 2018). Hargovan (2013) also describes the CJA as one of the best legislations in the world. Gxubane and Mellish (2020) also argue that South Africa's CJA has become a yardstick for many African countries that desire to implement diversion for young offenders.

In this respect, the recommendations of some participants were as follows:

“I think there is a lot we can learn from child diversion, its law is clear about timelines, it is clear about the schedule of offences and the seriousness of each offence and which cases qualify for which type of diversion and length of diversion programmes, so with adults, we just do according to our thoughts, but you know these things Mzi... you know, the child justice process, including child diversion, is well developed, you know, and it is well monitored because it involves children, but I wish the same case would be dedicated for adult offenders, where all processes and programmes for adult diversion are streamlined” PO4

“I think, there is some lessons that we can learn [from child diversion]... there must be provisions for assessment considerations, victim inclusion” PO6

“adult diversion is taken from child diversion, the only difference is that it is mandatory with cases of children because there is a law” PP7

“just like with child justice, we need accredited programmes for adult diversion, I think that would give us confidence about what we do, right now even when the court asks me, what I do with adult diversion I have to tell them how I improvise, sometimes the magistrates would never be confident enough because they are used to us giving them manuals for accredited child diversion programmes that are accredited, we need structure I think, we need structure” PO4

The above recommendations from participants reveal a strong desire among probation officers and prosecutors in the UThukela district to learn from the successes of the Child Justice Act (CJA) in improving adult diversion processes and programmes. PO4 highlights the CJA's strengths, such as clear timelines, defined schedules of offences, and established criteria for eligibility and programme duration, which are currently lacking in adult diversion.

This lack of structure leads to inconsistencies and a reliance on individual discretion, as evidenced by PO4's statement that they "*just do according to our thoughts*". PO6 suggests the importance of incorporating key elements from the CJA, such as "*provisions for assessment considerations and victim inclusion*". PP7 acknowledges the existing similarities between child and adult diversion, noting that the key difference lies in the mandatory nature of diversion for children due to the robust legal framework provided by the CJA. PO4 posits the need for accredited programmes for adult diversion, similar to those available for children, to enhance the quality and consistency of interventions and build confidence among all stakeholders. These statements collectively underscore the need for a more formalised and structured approach to adult diversion, drawing lessons from the successful implementation of the Child Justice Act to ensure that adult diversion programmes are effective, equitable, and consistent across the justice system.

Subtheme 7.3. Participant's recommendation on accreditation of adult diversion programmes and training

Other recommendations from participants related to adult diversion programmes, accreditation of these programmes and training of stakeholders. The views of participants in this regard were that:

"they must bring back accredited service providers of diversion, so that the programmes can be effective, as for us we juggle the cases with the whole of social work, as you know it Mzi [nickname of the researcher], we are not really probation officers here but social workers who also do probation services [giggles]" PO3

"rural areas should also have proper service providers, I am talking of the likes of NICRO, Khulisa, we are struggling as it stands, they have forgotten about us, I once worked in Durban, things are much better in the city" PO2

These excerpts from probation officers in the UThukela district highlight the critical need for increased access to specialised services and resources to enhance the effectiveness of adult diversion programmes. PO3 emphasises the importance of accredited service providers, stating that "*they must bring back accredited service providers of diversion*". This highlights the current reliance on limited resources and the lack of specialised expertise within the probation service. PO3 further emphasises that probation officers in rural areas often find

themselves overburdened with a wide range of social work responsibilities, limiting their capacity to implement and monitor diversion programmes effectively. PO2 echoes this sentiment, highlighting the lack of access to specialised service providers such as NICRO and Khulisa in rural areas. This lack of access limits the range of available interventions and can significantly impact the effectiveness of diversion programmes. These statements underscore the need for increased investment in community-based resources, including the expansion of accredited service providers and the development of robust referral systems to connect offenders with appropriate support services. By leveraging the expertise of specialised service providers, the justice system can enhance the quality and effectiveness of adult diversion programmes, improve outcomes for offenders, and better address the underlying causes of crime.

Other participants said:

“If we could have accredited programmes for adult diversion, they should be individualised and not designed for groups so that they can be more effective to each person, each case is unique... in rural areas such as [censored location], if I were to wait for groups, a person would wait for the whole year because cases are seldom unlike with the cities” PO7

“I think improvement should start with the provision of accredited programmes by DSD or other service providers, remember we are using lifeskills programmes such as Rhythm of Life, those programmes are accredited for child offenders, we actually don't have programmes for adult offenders... with some programmes the offenders would say but this is for children...” PO5

“I wish that programmes could be created and rendered in multiple languages, so that each person can choose as which language he more comfortable with...” PO6

These statements collectively recommend the need for a more nuanced and individualised approach to adult diversion, with a focus on developing and implementing culturally appropriate and evidence-based programmes that address the specific needs and circumstances of each offender. This may involve exploring a range of interventions, including individual counselling, group therapy, skills development workshops, and community-based initiatives tailored to the specific needs and circumstances of each offender.

PO7 highlights the importance of individualised programmes, arguing that "*each case is unique*" and that "*group programmes*" may not be suitable for all offenders. This emphasises the need for flexibility and adaptability in program design to address the specific needs and circumstances of each individual offender. PO5 suggests the importance of developing and implementing accredited programmes specifically designed for adult offenders. The current reliance on programmes developed for children can be ineffective and may not adequately address the unique needs and challenges faced by adult offenders. PO6 further emphasises the need for cultural sensitivity and inclusivity, advocating for the provision of programmes in multiple languages to accommodate the diverse linguistic needs of offenders in the UThukela district.

Lastly PO4, PO1, PO2 and PO6 said:

“with adult diversion there has never been trainings before, we need specific programmes that are specific for adult diversion” **PO4**

“For us to successfully implement adult diversion, in a correct way, there must be a thorough training for those people who are specialising in diversion, there must be accreditation. The programmes also needs to be deeper than this, right now we sometimes us programme for children” **PO1**

“the training should not be limited to current probation officers but it must be extended to other social workers as well so that we can have a back-up, that when somebody resigns we know that there is a back-up or continuity” **PO2**

“in an ideal world... it could be better if as probation officers we could also offer supplementary therapeutic interventions after the adult diversion time has lapsed, but due to our workloads it is impossible, you know the story Mzi” **PO6**

PO4 highlights the lack of specific training for adult diversion, stating that "there has never been trainings before". This lack of specialised training can hinder the effectiveness of program implementation and may lead to inconsistent approaches and suboptimal outcomes. PO1 further emphasises the need for "thorough training" and "accreditation" for professionals involved in adult diversion, ensuring that they possess the necessary knowledge, skills, and competencies to effectively implement and monitor these programmes. PO2 recognises the importance of building capacity within the broader social work profession, advocating for the inclusion of other social workers in training programmes to ensure continuity and

sustainability of services. Finally, PO6 acknowledges the limitations of current service delivery models, recognising the need for ongoing support and aftercare services for offenders following the completion of diversion programmes. This highlights the need for a comprehensive system of support that extends beyond the initial program and addresses the long-term needs of offenders.

Subtheme 7.4. Role clarification for adult diversion role players

Some participants recommended the need for a comprehensive framework that clearly defines the roles and responsibilities of all stakeholders, including prosecutors, police officers, probation officers, and other relevant agencies, within the adult diversion process.

“Roles of the police should be clarified in a possible law in future because with some police officials they would just say you know [censored name of the probation officer] I do not have the details of that accused person you are dealing with, I have never been to their home, if I were to direct you I would be lying, so their roles are just informal in terms of their case management once the case is being dealt with through the adult diversion process” PO7

“we must not be dictated upon by prosecutors on what we must do in terms of adult diversion, they must respect our professional standing...” PO6

“... roles of who? You mean the prosecutors and police? Well [laughs] I think we assume those roles because we don't have a law, once I do my part especially with compliance reports I don't know what the prosecutor would do with my report... I think the law should clarify the roles of everyone you know, especially for adult diversion, even the process it must be clarified. Even with the guidelines I think, those things must be documented in some law” PO4

These statements collectively recommend the need for a comprehensive legal framework that clearly defines the roles and responsibilities of all stakeholders, including prosecutors, police officers, probation officers, and other relevant agencies, within the adult diversion process. This framework should promote interagency collaboration, respect professional boundaries, and ensure that the best interests of all parties involved are served.

PO7 stresses the lack of clarity regarding the role of police officers in supporting adult diversion, stating that some officers "*do not have the details of the accused person*" if they were to provide guidance. This lack of clarity and information sharing hinders effective communication and collaboration between probation officers and police. PO6 highlights the need for greater autonomy and respect for the professional judgment of probation officers, emphasising that "*we must not be dictated upon by prosecutors*". This underscores the importance of establishing clear boundaries and respecting the expertise of each stakeholder within the diversion process. PO4 emphasises the need for greater clarity and transparency in all aspects of the diversion process, including the roles and responsibilities of all stakeholders. The officer highlights the lack of clear guidelines and procedures, stating that "*once I do my part... I don't know what the prosecutor would do with my report*". This uncertainty creates confusion and hinders effective communication and coordination between agencies.

7.5. CHAPTER CONCLUSION

This chapter was the last instalment of the research findings for this thesis. This chapter contributes new knowledge to the understanding of adult diversion in the UThukela District by providing empirical data on the perspectives and experiences of key stakeholders. Specifically, the chapter offers valuable insights into the extent and nature of stakeholder involvement in diversion processes, identifying both strengths and weaknesses in current practices. By examining the views of probation officers and public prosecutors, the chapter sheds light on the practical and policy challenges faced in implementing effective diversion programmes. These findings have significant implications for improving the effectiveness and accessibility of adult diversion in the UThukela District by informing the development of more inclusive and responsive programmes that better meet the needs of all stakeholders. The following chapter draws from the preceding chapters, including this one, to summarise, draw conclusions and recommendations.

Chapter 8:

CONCLUSIONS, IMPLICATIONS AND RECOMMENDATIONS

8.1. INTRODUCTION

“In recent years, the focus has shifted from the philosophy of restorative justice to its potential for implementation and the benefits it might bring; to the ways in which it has been implemented in some countries, and likely to be implemented in the future; taking into account the legal, institutional and/or constitutional parameters of justice systems at the beginning of the third millennium. An examination of some critical issues surrounding restorative justice may provide useful insights into the way various countries have responded to rising crime rates and justice demands” (Hargovan, 2008b, p.24).

This concluding chapter starts with the above statement, which shows that as early as the late 2000s, the restorative justice discourse in South Africa and beyond had already started to

shift from **notion to action** or rather from conceptual scrutiny to a pragmatic focus of its implementation and potential tangible benefits (*cf.* Hargovan, 2008b, p.24). This shift aligns with the focus of this thesis, which explores the practical realities of adult diversion – a key component of restorative justice – within the rural UThukela District of KwaZulu-Natal, South Africa.

This study addresses a significant gap in the literature, as research on the intersection of restorative justice practices, particularly adult diversion, with the realities of practitioners remains scarce in South Africa and the continent of Africa. The findings of this study, grounded in the lived experiences and professional insights of practitioners [from Law and Social Work], highlight the opportunities, lessons, structures and challenges of executing adult diversion processes and programmes without a comprehensive legislative and regulatory framework. This research expands upon the existing [limited] literature by contributing an exploration of lived experiences and professional perceptions of key role players in the field of diversion of offenders. By incorporating the researcher's own experience as a former practitioner of adult diversion, the study offers a deeper understanding of how this practice is implemented within its specific context.

It is against this backdrop that this final chapter serves as a culmination of the preceding chapters, summarising the adopted scientific methods, synthesising the key findings, discussing their broader implications, and offering recommendations for future research, policy reform, and enhancing the effectiveness of diversion processes and programmes.

8.2. SUMMARY OF THE RESEARCH METHODS AND PHILOSOPHY

This study utilised a qualitative research protocol and a social constructivist paradigm to explore the practice of adult diversion processes and programmes by probation officers and public prosecutors in the UThukela District area of KwaZulu-Natal. From the introductory chapter, this thesis reinforced the idea that adult diversion is one of the numerous restorative justice approaches (*cf.* Braithwaite, 2002; Hargovan, 2008b; Rodliyah, 2019). While some restorative justice practices are formalised (in different contexts), it was established that adult diversion in South Africa is a grey area [approach of restorative justice] whose exploration contributes new insights and expands the knowledge bank.

While centred on the concept of restorative justice as a broader auspices of adult diversion, this study drew on the metaphoric statement by Prof Howard Zehr, the internationally acclaimed father of restorative justice, who argued that "restorative justice is a compass, not a map" (Zehr, 2002, p.8). This meant that unlike a map, which dictates a rigid path towards a predetermined destination, restorative justice and its inherent approaches [including its emerging approaches such as adult diversion] offer a guiding framework to crime management– a compass – that emphasises principles and values of repair and making amends over a punitive one-size-fits-all approach.

Zehr's assertion cohered with the spirit of this study – a research endeavour that also showed findings that confirm that the current practice of adult diversion is more of a 'compass, not a map' (*ibid*). As revealed by the participants, adult diversion is being implemented without any guiding law that directly regulates or frames its operationalisation, but rather a product of subjective meanings and co-creation by its role players within South Africa's [probation] social work practice and the South African criminal justice system. On the other hand, evidence in the literature also affirmed that, in the South African criminal justice system, there is a "... lack of uniformity and standardisation of adult diversion processes across provinces" (NICRO, 2021, p.100). Therefore, the study provided the lived experiences and meanings that practitioners from the disciplines of law and social work attach to their practice of adult diversion, which is influenced by the context of their professional values and district area, UThukela, KwaZulu-Natal.

In Chapters 1, 2 and 3, the study delineated the multifaceted use of the term restorative justice within this study, where the concept, in some areas, is coined as a paradigm (Skelton, 2016), an approach (Strang, 2007; Strang *et al.*, 2013), a theory (McCold & Wachtel, 2002) and a practice (Braithwaite, 2002). While the study used the term restorative justice interchangeably in the aforementioned contexts, the literature review captured in Chapter 3 revealed literature revealed that "the terms diversion and RJ [restorative justice] are not synonymous or interchangeable, even though many diversion programmes may draw on RJ principles" (Hargovan, 2012, p. 15). In an attempt to elaborate on differences [similarities] in the concepts of diversion and restorative justice, this study debated the 'restorativeness of diversion' in Chapter 3. It further revealed empirical results on the same note in Chapter 7.

In Chapter 2, the study integrated restorative justice and structuration theories to merge the study's dual spirit of social research and criminal justice research, therefore strengthening the

analytical framework of this study. The combination of two theories, a theory of justice and a social theory, not only addressed the socio-structural dimensions of the South African criminal justice system but also allowed the researcher to highlight the critical role of stakeholder involvement in the successful execution of diversion processes and programmes. The dual theoretical lenses provide a robust foundation for exploring the complexities of adult diversion in the UThukela District, ensuring that the study captures the full spectrum of factors influencing these processes, both from social and justice lenses.

Conducting the study in UThukela in 11 research sites in the UThukela district was a homecoming experience for the researcher because the researcher had strong ties, being born and raised there and having worked as a social worker and probation officer in the district, the researcher possessed both insider knowledge and outsider status as ‘now a researcher’. This dual role presented unique challenges and opportunities.

This study employed an inductive approach to knowledge construction, prioritising the emergence of findings from the data itself. To enhance the robustness of these findings and to embrace a relativist knowledge positionality, the researcher diligently sought to capture both agreeing and disagreeing assertions from participants. This strategy aimed to avoid the pitfalls of confirmation bias and to acknowledge the inherent diversity of perspectives within the studied phenomenon (cf. DeCarlo *et al.*, 2020).

Furthermore, recognising that the researcher's own experiences or ‘practice wisdom’, as labelled by DeCarlo *et al.* (2020), inevitably shaped their understanding of the phenomenon, a reflexive lens was consistently applied. This involved critical self-examination of personal biases and assumptions and how these might influence data collection, interpretation, and analysis. By acknowledging the potential for subjectivity, the researcher strived to minimise the imposition of their own preconceived notions onto the research process.

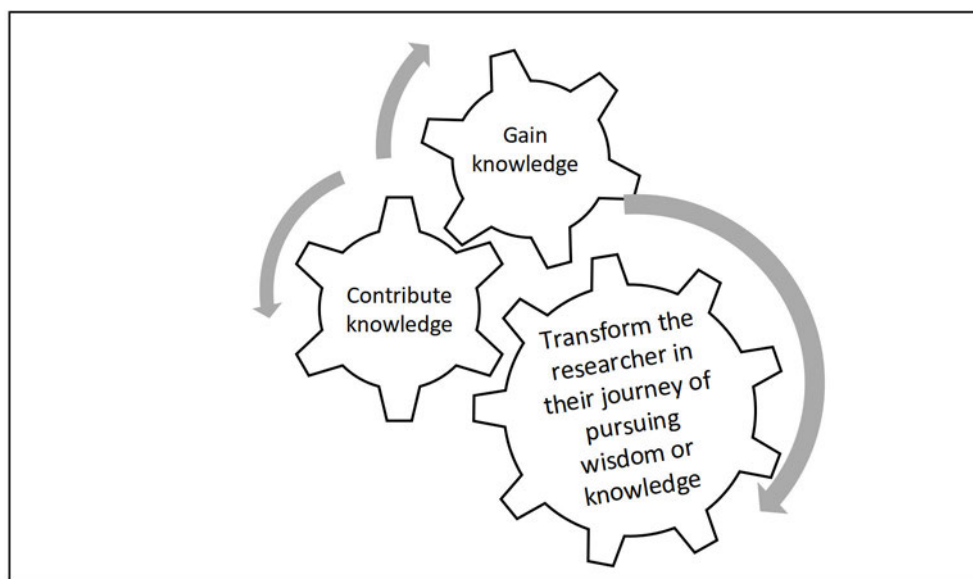
A non-essentialist yet relativist worldview underpinned this approach. While acknowledging the existence of multiple truths and the importance of understanding these truths within their specific contexts, the researcher refrained from assigning inherent or universal essences to the phenomenon. This allowed for a more nuanced appreciation of the diverse and interconnected realities experienced by participants, fostering a deeper understanding of the phenomenon beyond the researcher's own lived experiences.

Participants were recruited through purposive sampling, ensuring the selection of individuals with relevant experience and knowledge (probation officers and public prosecutors with

experience ranging from 7 to 30+ years). The study recruited 14 participants from six magistrate's courts and five offices of the KwaZulu-Natal Department of Social Development (KZNDS) UThukela district, totalling 11 sites (Table 4.2. in Chapter 4). Seven probation officers and seven public prosecutors were selected from the eligible pool of two cohorts, guided by the principle of data saturation to ensure the richness and depth of the collected data. The data collection phase commenced on July 27, 2022, and concluded extended for two months. Data was collected through semi-structured (individual) interviews, audio-recorded, translated (where necessary), and analysed through a combination of thematic and reflexive thematic analysis.

Chapter 4 illuminated that the process of implementing the research methods should not be expected to be a smooth sail but a pursuit of wisdom, or rather a complex journey of attempting to **acquire** and **contribute knowledge**, as depicted by Figure 8.1.

Figure 8.1.: Navigating knowledge in this Doctor of Philosophy Study



Silverton (2017, p.95) had already warned that “[...] PhD students tend to believe that what matters most is showing [the reading audience] that their research has followed a logical sequence [however]... anyone who has ever done any research knows that such a rigid sequence is rarely followed”, given the dynamic nature and evolving ethical demands of the research environment. For the researcher, it was more complex because he initially subscribed to the idea of rendering a neat or perfect project that had no inherent mistakes in order for it to be acceptable as a science. Nevertheless, the study's antipositivist framework

enabled a departure from the linear [unadaptable] model of knowledge production, which posits a singular, objective reality amenable to scientific measurement (cf. Yin, 2016).

Like a journey, Chapter 4 unpacked the study's inherent considerations and reflections of the researcher during the planning and execution of this research process. To some extent, the chapter revealed the researcher's '*initial taken-for-granted assumptions*' and the ultimate transformation from such limitations, which unfolded during the pursuit of the study. Through the journey of planning, replanning, adaptation and accountability [as captured by the methodology], the study adopted an exploratory-contextual research design due to limited research on the specific experiences of probation officers and public prosecutors with adult diversion processes and programmes in the South African context. Adaptation of some research processes as per the need was necessary, as supported by Fouché *et al.* (2021, p.41), who argued that in qualitative research, "... the research design is flexible and evolves throughout the research process". An ultimate 'arrival' to exploratory-contextual research design allowed for new insights and a deeper understanding of the phenomenon being studied (Bhattacharjee, 2012; Duda *et al.*, 2020) while appreciating the context of rural UThukela, the contexts of probation practice and prosecutorial environment in South Africa.

8.3. SUMMARY AND CONCLUSION OF MAJOR FINDINGS

Starting with a restatement of the research objectives, this study intended to achieve the following objectives:

- Objective 1: To explore the subjective understanding of probation officers and public prosecutors about adult diversion and their roles in the practice of adult diversion processes and programmes.
- Objective 2: To identify factors that inform, promote and hinder the practice of adult diversion processes and programmes amongst probation officers and public prosecutors in the South African criminal justice system, with a specific focus to the UThukela district.
- Objective 3: To analyse the involvement of stakeholders, such as victims, offenders, communities and all necessary professionals, in the practice of adult diversion processes and programmes in the UThukela District.

- Objective 4: To establish the views of probation officers and public prosecutors regarding practice and policy guidelines for the practice of adult diversion processes and programmes.

While mindful of these research objectives, the findings were therefore presented in three chapters (Chapters 5, 6, & 7). The researcher attempted to compartmentalise the findings into distinct chapters (each linked with specific research objectives) for organisational clarity. However, the actual findings revealed that the experiences and perceptions of probation officers and public prosecutors are interconnected within a complex system, forming a collective picture of the adult diversion landscape and transcending different research objectives. This interconnectedness necessitated a cross-referenced observation of the findings, which is synthesised in this final chapter [see the following section].

Repeating the assertion of Mama (1995, p.159), cited by Ngcobo (2018, p.233), in the presentation of the summary of the main findings herein, "a neat story ending with all capillaries cauterised and stitched with surgical precision" will not be prioritised. For instance, Chapter 5, focusing on participants' understanding of adult diversion and their roles (objective 1), uncovered a strong link between their understanding and their descriptions of the benefits of diversion, which relates to objective 2 (factors promoting the practice of adult diversion). This highlights the crucial interplay between participants' comprehension of diversion and their perceived benefits or the exhibition of factors that promote the practice of this phenomenon. Furthermore, while Chapter 7 was intended to cover objectives 3 and 4, factors that promote and hinder the practice of adult diversion in UThukela (objective 2) were unexpectedly revealed. For example, the inconsistent inclusion and exclusion of victims was linked with objective 2.

8.3.1. PARTICIPANTS' UNDERSTANDING OF ADULT DIVERSION **[Chapter 5]**

8.3.1.1. Adult diversion as a second-chance option for offenders

Alignment of this finding with research objective(s)	❖ Research objective 1
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The dearth of a direct South African definition of adult diversion necessitated a deeper investigation into the perspectives of experienced practitioners. It was anticipated that

engaging with professionals who directly implement adult diversion processes and programmes would provide valuable insights into their operational definitions of this concept. In fact, the researcher initially anticipated obtaining a concrete definition of adult diversion from experienced professionals who practice the phenomenon in question daily.

Instead of a concrete definition of adult diversion, participants from both sampling categories described adult diversion through an essentialist lens, a description that highlighted its benefits, instead of a cohesive [formal] definition of the concept. Participants [both probation officers and prosecutors] uniformly recognised adult diversion as a mechanism offering "second chances" for offenders, aligning with their understanding of its primary function as an alternative to traditional criminal justice processes involving trial and a possibility of a conviction and criminal record. The 'second chance' narrative was evident in statements expressed by several participants. These statements suggested a shared understanding among practitioners that adult diversion offers offenders an opportunity for rehabilitation and reintegration into society.

Some participants pronounced adult diversion as a protective mechanism safeguarding offenders from the stigma of a criminal record and providing an opportunity for personal and social reintegration, in their assertions the concept 'second chance' was still utilised. This aligns with restorative justice principles, emphasising rehabilitation and addressing the root causes of crime (Braithwaite, 2002; Skelton, 2016). While some participants, particularly public prosecutors, demonstrated a departure from a purely punitive approach, recognising the value of diversion as an alternative to incarceration, the findings also reveal a potential gap between the ideal and the reality of diversion practice.

In the description of adult diversion by participants, there was also a use of terms such as "promising offender", while seemingly benevolent, may inadvertently perpetuate existing biases and inequalities. By prioritising the rehabilitation of certain offenders deemed more "deserving" (e.g., students, employed individuals), the focus may shift away from addressing the underlying social and economic factors that contribute to criminal behaviour, such as poverty, inequality, and lack of opportunity. These factors often disproportionately impact marginalised people, those who live without 'promise' as coined by participants, perpetuating cycles of disadvantage and criminalisation.

As a final thought, it can be argued that based on the data presented in subtheme 1.1. in Chapter 5, the practitioners' understandings of adult diversion [probation officers and public

prosecutors] are profoundly subjective and influenced by personal experiences, professional values [as lawyers and social workers], and individual beliefs rather than solely by formal definitions. This confirms the findings by Maimane (2017) and NICRO (2021), who said without clear guidelines and procedures, the implementation of adult diversion processes and programmes is left mainly to the discretion of individual practitioners (*ibid*), potentially leading to disparities in access to diversion programmes and exacerbating existing inequalities within the criminal justice system.

8.3.1.2. The benefit of adult diversion in addressing petty crimes and offenders with specific characteristics [Chapter 5]

Alignment of this finding with research objective(s)	❖ Research objective 1
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Another key finding that emerged was when participants consistently viewed adult diversion as a valuable alternative to traditional criminal justice processing, particularly for addressing petty crimes and offenders with specific characteristics. In the UThukela district, several probation officers emphasised the potential of diversion to mitigate the negative consequences of incarceration. One probation officer highlighted the risk of "hardened criminals" developing within the prison environment, emphasising that diversion can act as a "cushion" and prevent this from happening. Another probation officer stressed the importance of protecting individuals from the long-term consequences of a criminal record, citing the example of a young police trainee who could have faced significant career repercussions. This affirms the findings of Agan and Starr (2017), who revealed that there are normally adverse effects that a criminal record could have on the future employment prospects of an individual and their wider family.

Furthermore, more probation officers described how these programmes can provide valuable life skills, which may be lacking in the lives of some offenders. This aligns with Motshedi (2020), who found that diversion programmes provide valuable life skills. One probation officer highlighted the relaxed and supportive environment of diversion programmes facilitated by social workers as a key factor in promoting positive change. Kirkwood and Hamad (2019) state that the ideology of social work cannot be divorced from probation services, especially in countries where social workers also serve as probation officers in the criminal justice system. In a series of his work in the field of involuntary clients, including

probation work, Trotter (1987; 1997; 2003; 2009; 2018) has attempted to show that probation services are an extension of social work and should encompass what he coins as “pro-social orientation or modelling- an approach to working with offenders that emphasises the positive reinforcement of pro-social behaviours and values”. In UThukela, probation officers seemed to embrace the pro-social orientation when working with involuntary clients, including offenders and victims.

On the other hand, public prosecutors also recognised the value of diversion as an alternative to incarceration. One prosecutor emphasised the importance of rehabilitative programmes, such as anger management, in addressing the underlying causes of offending behaviour. This perspective aligns with the broader goals of restorative justice, which seeks to repair harm and promote rehabilitation (Gxubane, 2018). Another prosecutor highlighted the potential of diversion to prevent future crime by mitigating the negative impact of a criminal record, particularly for young offenders who may still be pursuing their education. This aligns with the Integrated Social Crime Prevention Strategy (2011), which emphasises the importance of diverting individuals from the criminal justice system to prevent unnecessary contact with the system and the associated stigma.

Based on these findings, the researcher appreciated the fact that probation officers and public prosecutors saw worth in the practice of adult diversion, which ensured its sustainability in the South African criminal justice system and social work practice even though there is a lack of legislation that regulates, validates, and sustains their practice of it, in the uThukela district area and beyond. Given the benefits of adult diversion, the former Constitutional Court Judge of the Republic of South Africa, Justice Edwin Cameron, argues that “... the South African criminal justice system must adopt alternative responses to crime which includes adult diversion” as a way of maximising from its benefits (Cameron, 2020, p.4).

8.3.1.3. The role of probation officers as being inclusive, troubleshooting and holistic problem-solvers in adult diversion processes and programmes [Chapter 5]

Alignment of this finding with research objective(s)	❖ Research objective 1 & 3
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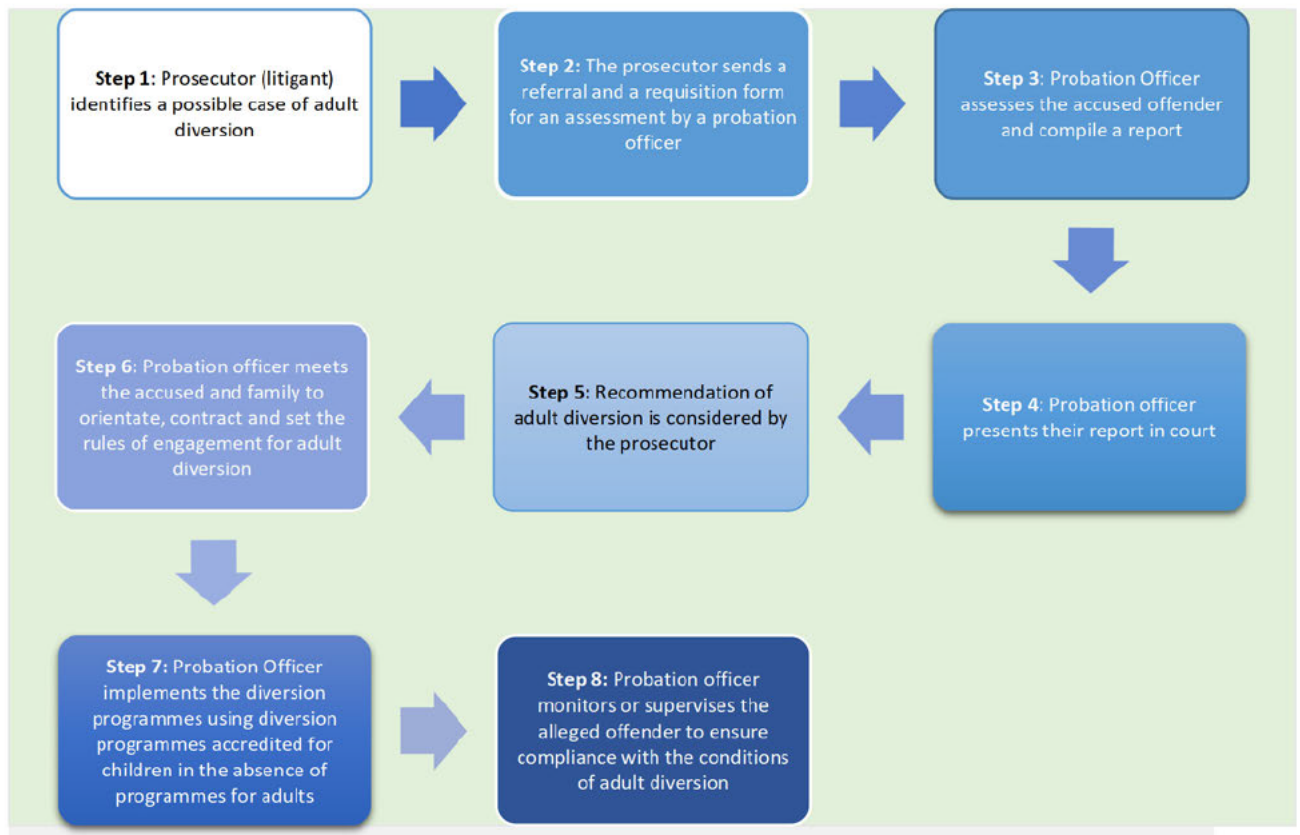
Due to the fact that this research delved into the perceived day-to-day roles of probation officers within the adult diversion processes and programmes in the UThukela District, its findings revealed similarities [differences] between the roles of probation officers and a multifaceted approach characterised by a systematic and structured process. Probation officers described their roles as encompassing a range of critical functions, including thorough investigation and assessment of the offender and their social circumstances. This involves gathering information about the offence, assessing the offender's risk level, and identifying potential underlying causes of criminal behaviour, aligning with the core principles of restorative justice that emphasise understanding the harm caused and seeking to repair behaviour within the social environment.

Furthermore, probation officers play a crucial role in compiling pre-trial reports for the court, presenting their findings and recommendations regarding the suitability of the offender for diversion. This highlights their expertise in providing crucial social work assessments to inform judicial decision-making. Notably, probation officers emphasised the significance of engaging with the offender's family members, recognising the importance of family involvement in the rehabilitation process and aligning with Trotter's (2013) emphasis on "collaborative family work".

Beyond assessment, probation officers are actively involved in programme development and implementation. They develop programmes by selecting chapters in children's programmes and implement them as adult diversion programmes for adult offenders, considering the individual needs and circumstances of each adult offender. While recognising the potential benefits of adapting existing child diversion programmes, probation officers acknowledged the need for flexibility and the development of interventions specifically tailored to the unique needs of adult offenders. This highlights the discretionary nature of their role, allowing for individualised assessments and programme planning. However, this discretionary power also raises concerns about potential bias and inconsistency in decision-making, particularly in the absence of a clear and standardised legal framework for adult diversion.

Figure 5.1. provides a summary of the perceived routine and roles of probation officers during adult diversion programmes and processes as a whole.

Figure 5.1. The perceived routine of probation officers during adult diversion processes and programmes in UThukela



While the figure above does not provide a generalisable model of adult diversion, it offers a valuable contribution to the understanding of the role of probation officers in UThukela. By acknowledging the limitations of the research and the context-specific nature of the findings, it is apt to appreciate the insights offered and its potential to inform future research and practice.

8.3.1.4. Prosecutorial decision-making role in adult diversion processes

Alignment of this finding with research objective(s)	❖ Research objective 1
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Hargovan (2012, p. 17) discovered that "... it was encouraging to note from the interviews that prosecutors also recognised the potential of RJ for reconciliation and restoration in communities, especially when dealing with minor and petty offences emanating from conflict within families and between people known to each other that could be dealt with more

appropriately outside the 'confines' of court processes and procedures". Aligned with this view, the research findings herein also reveal that prosecutors play a pivotal role in initiating and guiding the diversion process.

One prosecutor emphasised that their decision to consider diversion is heavily influenced by factors such as the offender's age, educational status, and plea of guilt. This suggests a desire to protect individuals with high rehabilitation potential, such as young people and students, from the negative consequences of a criminal record. This approach aligns with the principles of restorative justice, which prioritise rehabilitation and reintegration (cf. Gxubane, 2018).

However, the reliance on these factors raises concerns about potential bias and inconsistency in decision-making. As NICRO (2021) highlights, the absence of a clear legal framework for adult diversion in South Africa may contribute to inconsistencies in decision-making. The United Nations Guidelines on the Role of Prosecutors (1990) emphasise the need for clear guidelines to enhance fairness and consistency in prosecutorial decisions, including those related to diversion.

Furthermore, the analysis reveals a significant role for defence attorneys in initiating and influencing diversion decisions. Prosecutors acknowledged that diversion proposals often originate from defence attorneys, highlighting the power dynamics at play within the criminal justice system. This suggests that access to legal representation may significantly influence an offender's chances of being diverted.

The process of initiating and implementing diversion involves a complex interplay between various stakeholders. Prosecutors play a crucial role in assessing the suitability of cases for diversion, considering factors such as the seriousness of the offence, the offender's background, and the potential for rehabilitation. They also collaborate with other actors, including investigating officers [police] and probation officers, to gather information and make informed decisions. Lastly, the findings highlight the significant role of public prosecutors in the adult diversion process.

8.3.2. FACTORS THAT INFORM AND LIMIT [PROMOTE] ADULT DIVERSION IN UTHUKELA [Chapter 6]

Alignment of this finding with research objective(s)	❖ Research objective 2
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The positioning of adult diversion as a multifaceted approach represents opportunities and limitations, as influenced by structural and organisational factors. It also presents a shift from the exclusivity of traditional punitive measures, with this emerging practice aiming to redirect individuals away from formal prosecution and incarceration towards alternative pathways focused on rehabilitation, restitution, and community reintegration. Understanding the dynamic chemistry between structural factors and participants' practices and how these factors recursively shape and reshape one another is crucial to comprehend the landscape of adult diversion processes and programmes within the rural UThukela district.

8.3.2.1. Inconsistent (un)availability of departmental policy directives on adult diversion for public prosecutors and probation officers

Alignment of this finding with research objective(s)	❖ Research objective 2
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It was revealed that while public prosecutors operate within the framework of internal prosecutorial directives [which is available for them] issued by the National Director of Public Prosecutions (NDPP), as mandated by section 179, read together with section 22(1)(c) of the National Prosecuting Authority Act 32 of 1998 (Republic of South Africa, 1998), probation officers reported a significant gap in the availability of similar policy guidelines for their own practice. This disparity in policy access has shown to have significant implications for the consistency and effectiveness of adult diversion programmes.

The prosecutorial directives, while providing a degree of internal consistency within the NPA, remain exclusive to prosecutors. As one prosecutor noted, "*it causes problems because ... [public prosecutors] sometimes have to use ... [their] prosecutorial directives to guide others, which often causes resistance because social workers also want to do it according to how they were taught*". This highlights the limitations of an intra-departmental policy framework in guiding a multi-disciplinary process like adult diversion. The absence of a shared understanding of roles, responsibilities, and best practices across agencies leads to miscommunication and inconsistencies in decision-making and, ultimately, hinders the effective implementation of diversion programmes and processes.

Furthermore, the exclusive nature of these directives may limit transparency and accountability within the adult diversion process. As one prosecutor noted, the restricted access to policy documents can hinder efforts to improve transparency and accountability within the criminal justice system. Somaru and Rautenbach (2020) emphasise this point, noting that these prosecutorial guidelines are "available only to prosecutors" and are not readily accessible to other stakeholders within the criminal justice system. This lack of transparency can limit opportunities for critical evaluation, learning, and improvement within the adult diversion system.

The absence of a transparent and standardised policy framework for probation officers may also contribute to inconsistencies in practice. As one probation officer stated, "*Mostly, it is my understanding as a social worker [that informs my practice],*" highlighting the reliance on personal and professional judgment as a social worker to guide their decision-making. While these professional ethics provide a valuable framework, the absence of specific guidelines for adult diversion may lead to variations in practice, potentially affecting the outcomes for offenders and victims.

Figure 6.1. displayed in Chapter 6 of this thesis highlights the significant impact of [un]available policy frameworks on the practice of adult diversion between two collaborative agencies. The availability of clear, consistent, and accessible guidelines for all relevant stakeholders, including probation officers, is crucial for ensuring the effective and equitable implementation of diversion programmes. The development of a comprehensive and unified framework for adult diversion [preferably a law], applicable to all stakeholders within the criminal justice system, is essential for addressing the current limitations and enhancing the effectiveness of this important alternative to traditional criminal justice processing.

8.3.2.2. The Eligibility of Adult Diversion: Circumstances of the offender, Seriousness of the offences and Community Interests (C.S.C.)

Alignment of this finding with research objective(s)	❖ Research objective 2
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This research explored the eligibility criteria for adult diversion within the UThukela District, focusing on the perspectives of probation officers and public prosecutors. Findings revealed a

shared understanding among participants that eligibility for diversion is determined by a constellation of factors, which the researcher has termed the "C.S.C. triple factor": **Circumstances of the Offender, Seriousness of the Offence, and Community Interests.**

Probation officers emphasised the importance of considering the offender's circumstances, including their prior criminal history, acceptance of responsibility, and level of remorse. One probation officer stated, "... *I would even argue against it if the person does not show remorse*". This focus on individual circumstances aligns with the core principles of restorative justice, which emphasises understanding the underlying causes of offending behaviour and tailoring interventions accordingly (Braithwaite, 2014; van Wormer, 2003; Zehr, 1990).

The seriousness of the offence was another crucial factor mentioned by participants. Probation officers and prosecutors alike identified "petty crimes" such as shoplifting and minor assaults as more suitable for diversion. PP1, for example, explicitly stated that "*schedule five and schedule six offences, uh, that's totally out of the question,*" referring to serious offences listed in the Criminal Procedure Act 51 of 1977 (Republic of South Africa, 1977). This focus on the seriousness of the offence reflects an understanding of the need to prioritise public safety and ensure that diversion is reserved for appropriate cases.

Community interest was also implicitly considered in the decision-making process; by diverting offenders from the formal criminal justice system, probation officers and prosecutors aimed to minimise the negative impact of a criminal record on the offender's future opportunities, such as employment and social relationships. This approach aligns with the principles of restorative justice, which seeks to repair harm and promote healing within the community (Braithwaite, 2014). As one probation officer stated, "... to avoid a criminal record which may deter him from getting work". This focus on minimising the negative societal impacts of a criminal record reflects an understanding of the broader implications of criminal justice involvement for individuals and their communities.

The perspectives of both probation officers and public prosecutors suggest a shared understanding of the importance of considering these factors – Circumstances of the Offender, Seriousness of the Offence, and Community Interest – when determining eligibility for adult diversion. This shared understanding, while not explicitly articulated in formal legislative guidelines, as is the case with child diversion in South Africa, reflects a developing understanding of best practices within the UThukela District.

It can be concluded that while a formal, standardised framework for adult diversion may be lacking, practitioners within the UThukela District have developed their own criteria for eligibility based on their professional experience and understanding of restorative justice principles. This "bottom-up" approach, while valuable, highlights the need for a more formalised and standardised approach to adult diversion within the district to ensure consistency and equity in decision-making.

8.3.2.3. Language adaptation, assistant probation officers' contribution in adult diversion

Alignment of this finding with research objective(s)	❖ Research objective 2
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This research explored the implementation of adult diversion programmes within the UThukela District, highlighting the significant challenges posed by language barriers and the crucial role of assistant probation officers in program delivery.

Regarding the role of assistant probation officers, findings revealed that probation officers consistently emphasised the significant contributions of their assistant colleagues. One probation officer stated s/he had never been trained on diversion but relied on the knowledge and expertise of their auxiliary colleagues. This reliance on informal knowledge transfer within the department may suggest a gap in formal training opportunities for probation officers regarding adult diversion.

Assistant probation officers were found to be involved in various aspects of the diversion process, including: (1) assisting with case investigations, compiling reports, and conducting home visits; (2) implementing and facilitating diversion programmes, including life skills training and other interventions; (3) monitoring offender compliance with program requirements, conducting home visits, and reporting on non-compliance; (4) providing support and guidance to offenders throughout the diversion process, including assisting with transportation to and from program sessions.

The involvement of assistant probation officers in these critical areas significantly enhances the effectiveness of diversion programmes. By alleviating the workload of probation officers and providing direct support to offenders, assistant probation officers contribute to improved program outcomes and increased client satisfaction. However, the reliance on assistant

probation officers to carry out critical aspects of the diversion process also raises concerns about the potential for workload imbalance and the underutilisation of the skills and expertise of qualified probation officers.

Secondly, the study revealed significant challenges posed by language barriers in the effective implementation of adult diversion programmes. As one probation officer observed, "many of the people do are not able to read and write in English, it results to a point where the programme is not serving its purpose, it becomes ineffective". This highlights the limitations of programmes primarily delivered in English, particularly for offenders with limited English proficiency. The use of community service as an alternative in such cases, while well-intentioned, may not always be an effective or appropriate intervention. As the probation officer observed, "they know that I would go to the social worker's offices to wash government cars, and that's it," suggesting that these tasks may not be perceived as meaningful or rehabilitative by the offenders (*see* Rice, 2010).

The observation that offenders with higher levels of English proficiency tend to perform better in diversion programmes underscores the significant impact of language on program outcomes. As one probation officer stated, "those who understand English perform better". This highlights the need for culturally sensitive and linguistically appropriate interventions that cater to the diverse linguistic needs of offenders.

These findings have significant implications for the successful implementation of adult diversion programmes. Firstly, they emphasise the need to address language barriers proactively through the provision of culturally and linguistically appropriate services. This may include the use of interpreters, the development of program materials in multiple languages, and the recruitment and training of bilingual staff. Secondly, they highlight the importance of ongoing evaluation and program adaptation to ensure that diversion programmes are accessible and effective for all offenders, regardless of their language proficiency.

These findings accentuate the need for a more inclusive and equitable approach to adult diversion that recognises and addresses the diverse linguistic needs of offenders while also ensuring the equitable distribution of responsibilities and the optimal utilisation of human resources within the probation service. This aligns with the broader principles of restorative justice, which emphasise cultural sensitivity and respect for diversity (Braithwaite, 2014).

8.3.2.4. Systemic Constraints, Heavy Workload and Improvisation in the Implementation of Adult Diversion Programmes in UThukela

Alignment of this finding with research objective(s)

❖ Research objective 2

The findings from the research highlight the complex and interrelated challenges faced by probation officers (POs) and public prosecutors (PPs) in implementing adult diversion programmes and processes in South Africa’s UThukela district. These challenges, discussed through synthesised themes, reveal systemic inefficiencies that hinder effective programme delivery.

There were instances where probation officers consistently emphasised their overwhelming workload as a significant barrier to implementing adult diversion programmes effectively. The dual responsibilities of managing probation services and handling generic social work tasks, such as foster care and elderly support, create a fragmented work structure. One probation officers noted, “*the workload is just too much... as a result, adult diversion would pile up,*” illustrating how excessive responsibilities lead to delays and reduced quality in programme implementation. This multifaceted workload reflects broader issues of burnout and work overload discussed in Wirkus *et al.* (2021), where such conditions adversely impact morale and service quality . Despite probation services being legislatively established as a specialised social work domain (Probation Services Act, 1991; Republic of Social Africa, 2013), non-adherence to these standards perpetuates inefficiency and reduces focus on adult diversion .

The absence of accredited diversion service providers exacerbates this issue. Many POs lamented the termination of partnerships with organisations like Khulisa, previously pivotal in programme delivery. Another probation officers metaphorically described the current state as “*siyaziphekela siziphulele siziphakele*” (we ‘cook’ our own programmes), which reflects the solitary and improvised nature of their efforts post-service provider withdrawal. The uneven distribution of service providers, favouring urban areas, further marginalises rural districts like UThukela, intensifying inequities in access and programme quality.

PPs corroborated these challenges, with one prosecutor acknowledging, “*we do not have any other alternative since there was a closure of Khulisa,*” illustrating the reliance on overburdened POs in the absence of external service providers.

Compounding these challenges is the lack of standardised programmes for adult diversion, leading to inconsistencies in practice. Many POs admitted to improvising by adapting child diversion modules for adults. One probation officer explained, “*I select modules from different [child diversion] programmes,*” while another probation officer revealed the absence of structured guidelines, admitting to using discretion in determining the content and duration of programmes. This improvisation often resulted in an “*intrapersonal lack of uniformity,*” as a probation officer described, where even the same officer could not replicate their programme consistently. The legal framework mandates accreditation for child diversion programmes (Child Justice Act, 2008), underscoring the gap in quality assurance for adult programmes . These ad hoc approaches hinder programme evaluation, accountability, and efficacy, as discussed by Badenhorst (2013) and Knijn (2004), who argue for balanced discretion and structured intervention .

As a final thought, the findings underscore systemic gaps in workload management, service provider availability, and programme standardisation. These challenges collectively impair the effectiveness of adult diversion programmes, perpetuate inequities, and risk undermining rehabilitative goals. Addressing these interconnected issues requires systemic realignment to ensure that probation officers can meet the demands of their specialised roles while maintaining programme quality and equity across diverse communities.

8.3.2.5. Systemic inconsistencies in the monitoring and reporting of adult diversion compliance

Alignment of this finding with research objective(s)	❖ Research objective 2 & 3
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The findings reveal significant inconsistencies and gaps in the monitoring and reporting of compliance in UThukela’s adult diversion programmes, exacerbated by weak accountability mechanisms and a lack of standardised practices. Probation officers described a disconnect between their monitoring efforts and prosecutorial oversight. One probation officer noted that the absence of follow-up from public prosecutors allowed significant delays in programme implementation, with no repercussions for non-compliance. Another probation officer expressed frustration at the perceived lack of prosecutorial interest in compliance reports, stating that cases are often withdrawn immediately after the diversion order is issued. This practice undermines the supervisory goals of adult diversion, which McGregor (2010)

highlights as essential for ensuring accountability and allowing recourse for offenders who fail to comply with the conditions of diversion.

While probation officers acknowledged their role in monitoring and reporting compliance, some described how systemic shortcomings, including excessive workloads, limit their ability to fulfil these responsibilities effectively. One officer explained that, despite reporting compliance through departmental performance monitoring systems, such efforts are often not prioritised or valued by the courts. Others described employing creative strategies, such as involving family members to reinforce positive behavioural changes, aligning with Trotter's (2018) findings on the value of family involvement in rehabilitation. This suggests that, although probation officers strive to uphold their responsibilities, the lack of formal accountability structures diminishes the overall effectiveness of their efforts.

The absence of standardised tools and legislative clarity further exacerbates these inconsistencies. Officers compared adult diversion unfavourably to child diversion, which benefits from well-defined frameworks and prescribed reporting formats such as Form 9. In contrast, they described how adult diversion relies on improvised tools, with some probation officers creating their own forms or adapting formats initially designed for child offenders. These adaptations reflect an attempt to compensate for structural gaps, but they also introduce variability and risk compromising the relevance and specificity required for adult cases. This aligns with Purkiss *et al.* (2003), who noted the competing goals of enforcement and rehabilitation in probation services, highlighting how such inconsistencies can disrupt the balance between these objectives.

Additionally, the lack of legislative regulations for adult diversion contributes to the variability in practice. Some probation officers noted that the absence of mandated timeframes for compliance reporting creates a perception of flexibility, which relieves some of their workload pressures but also weakens accountability. Others pointed to the reliance on informal practices inherited from predecessors, which perpetuates inconsistent monitoring and reporting processes. Giddens' (1992) structuration theory, as cited by Zibane (2017), provides a useful lens to understand how these informal practices emerge from the interaction between agents and structural voids, sustaining the current fragmented system of adult diversion.

Despite these challenges, some probation officers demonstrated a strong rehabilitative ethos, emphasising the importance of prioritising social work principles in dealing with non-

compliant offenders. For example, they described efforts to trace offenders and engage with their families before resorting to legal consequences, reflecting the principles of therapeutic jurisprudence described by Madden and Wayne (2003). However, this variability in enforcement approaches underscores the broader inconsistencies in how compliance is monitored and reported.

8.3.3. THE INVOLVEMENT OF STAKEHOLDERS, SUCH AS VICTIMS, OFFENDERS, COMMUNITIES AND ALL NECESSARY PROFESSIONALS, IN THE PRACTICE OF ADULT DIVERSION PROCESSES AND PROGRAMMES IN THE UTHUKELA DISTRICT [Chapter 7]

Alignment of this finding with research objective(s)	❖ Research objective 2 & 3
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Skelton and Batley (2006) provide a framework of what they coin as the ‘restorativeness’ of diversion practices. By ‘restorativeness’ of diversion, these scholars proposed central concepts to restorative justice [diversion] practices such as (1) accountability, (2) involvement of victims, (3) involvement of other stakeholders in restorative justice practice (4) rehabilitation of offenders, and the promotion of deterrence from re-offending (*ibid*). Of interest in this summary of findings are dynamics of [non]involvement of ‘all necessary’ stakeholders in adult diversion practice. According to McCold and Wachtel (2003, p.2) the concept of “*stakeholders’ roles*” is a critical building block of restorative justice theory. McCold and Wachtel (2003) argue that there are two types of stakeholders: primary stakeholders and secondary stakeholders. Victims, offenders, and their families are central to restorative justice practices, and they are categorised as *primary stakeholders*, according to McCold and Wachtel (2003, p.2). Probation officers, public prosecutors, and other professionals would fall into the category of secondary stakeholders (*ibid*).

8.3.3.1. Inconsistent Victim Involvement, Restorative Justice, and Adult Diversion

Alignment of this finding with research objective(s)	❖ Research objective 3
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The findings reveal significant inconsistencies in victim involvement within adult diversion processes in the UThukela District, reflecting systemic challenges and varying interpretations of restorative justice principles. While some probation officers and public prosecutors recognised the centrality of victims in restorative justice, their practices varied significantly, highlighting a fragmented approach to victim inclusion. One probation officer emphasised the importance of including victims throughout the justice process, aligning with the restorative justice principle of addressing harm and promoting closure for victims (Procter-Legg *et al.*, 2024). This was supported by accounts of efforts to involve victims in compensation or apology mechanisms, demonstrating alignment with restorative ideals of repairing relationships (Delomoney, 2015).

However, the majority of participants highlighted practical and systemic barriers to victim involvement. For example, probation officers reported challenges such as limited access to victim information and the absence of standardised tools for including victim perspectives in diversion reports. Public prosecutors also noted that victim input was not always sought during pre-trial processes, attributing this gap to the absence of clear legislative mandates. These inconsistencies were particularly evident in cases involving shoplifting or ambiguous victim identities, where some participants deemed victim involvement unnecessary. Such perspectives diverge from restorative justice theories, which emphasise the importance of centring victims in justice processes, even in cases with indirect or less tangible forms of harm (McCold & Wachtel, 2003).

The findings also reveal a disconnect between the theoretical underpinnings of restorative justice and the operational realities of adult diversion. While some participants acknowledged the importance of balancing the needs of offenders and victims, others expressed frustration at systemic biases that prioritise offender rehabilitation over victim-centred outcomes (*see* Strang *et al.*, 2013). The lack of structured mechanisms for victim engagement, such as formalised consent procedures or standardised reporting formats, further exacerbates these disparities. Participants highlighted the need for clearer protocols, especially in cases involving corporate victims or larger entities, where identifying the appropriate representatives for restorative practices posed a significant challenge.

The findings show a fragmented and inconsistent approach to victim involvement in adult diversion processes in UThukela. While some practices align with restorative justice ideals, systemic limitations and divergent interpretations of victim-centred principles contribute to

significant variability (*cf.* Strang *et al.*, 2013). These findings highlight the tension between restorative justice theory and its practical application, revealing a need for greater consistency in ensuring that victims' voices are meaningfully included in all stages of adult diversion.

8.3.3.2. Resource Limitations, Communication Dynamics, and Power Imbalances in Adult Diversion

Alignment of this finding with research objective(s)	Research objectives 1, 2, 3
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The findings illustrate complex systemic challenges in the implementation of adult diversion processes in the UThukela district, shaped by resource limitations, communication inefficiencies, and power dynamics between probation officers (POs) and public prosecutors (PPs). Resource constraints emerge as a dominant theme, with probation officers highlighting critical deficits in vehicles, office space, and secure communication tools, such as official cellphones or emails. One probation officer reported being compelled to use personal cellphones for official communication, a practice that compromises both data security and personal safety. This reliance on personal resources reflects a lack of institutional support, exacerbated by the rurality of the district, where inadequate infrastructure, such as absent house numbers or poor network reception, further hinders effective implementation. These constraints align with Asthana *et al.*'s (2009) argument that rural areas often receive insufficient resource allocations for social services.

Communication among stakeholders is marked by both innovation and gaps. Probation officers noted the increased use of WhatsApp for transmitting diversion referrals, an adaptation necessitated by resource scarcity but fraught with concerns about confidentiality and professionalism. Despite this innovation, systemic inefficiencies persist. For instance, probation officers reported receiving incomplete or vague offender details, complicating efforts to locate individuals for diversion assessments. One probation officer highlighted that prosecutors often failed to include specific geographic identifiers or alternative contact methods, leaving officers reliant on informal networks or collaboration with investigating officers to trace offenders. These challenges echo Trotter's (2022) observations on the complexities of engaging involuntary clients, who may exhibit resistance or be difficult to locate.

Power dynamics between probation officers and public prosecutors further complicate the implementation of adult diversion. Probation officers described feeling marginalised and overruled by prosecutors, who at times rejected or altered their recommendations without adequate consultation. One probation officer described how their recommendation for rehabilitation was overridden in favour of diversion to expedite case closure, highlighting the prioritisation of expediency over professional assessments. This aligns with Young’s (2016) findings on the uneasy partnership between social workers and legal professionals in criminal justice settings, driven by differing professional values and priorities. Giddens’ (1984) concept of "authoritative resources" provides a helpful framework for understanding these dynamics, as prosecutors wield legal authority that can undermine the autonomy and expertise of probation officers.

The findings also underscore the impact of inconsistent stakeholder engagement on the efficacy of adult diversion. While some probation officers reported improved collaboration with prosecutors, others highlighted the absence of standardised procedures for involving police, magistrates, and victims in diversion processes. Changes in judicial personnel, as noted by one probation officer, often disrupted established communication routines and created knowledge gaps regarding diversion principles. This variability reflects the broader systemic fragmentation in the administration of adult diversion and its reliance on individual actors rather than cohesive institutional frameworks.

8.3.4. Participants’ Recommendation for Formalisation and Systematic Enhancement of Adult Diversion Processes and Programmes: Towards Guidelines for Practice and Legal Reform

Alignment of this finding with research objective(s)	Research objectives 4
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This summary of findings herein is a combination of subthemes contained in Chapter 7, subthemes 7.1., 7.2., 7.3., 7.4. By summarising these four subthemes to establish a major finding, the researcher intended to attain objective 4, which reads: *to establish the views of probation officers and public prosecutors regarding practice and policy guidelines for the practice of adult diversion processes and programmes.*

In this regard, the findings highlight a unified emphasis by probation officers (POs) and public prosecutors (PPs) on the necessity for a structured, consistent, and collaborative framework in the practice of adult diversion processes. Across all themes, participants highlighted the critical lack of a legal foundation akin to the Child Justice Act (CJA), which serves as a benchmark for structured child diversion. The absence of clear guidelines for eligibility, program implementation, and the roles of stakeholders has led to fragmented practices and inconsistencies.

Probation officers consistently advocated for a statutory framework that defines case eligibility, standardises reporting templates, and includes timelines for key processes. They emphasised the need for provisions addressing victim compensation and the accreditation of programmes tailored to adult offenders rather than adaptations of existing child-focused models. Similarly, public prosecutors underscored the importance of legislation that not only clarifies the schedule of offences eligible for diversion but also delineates roles across the justice system. This consensus aligns with existing literature that identifies the success of the CJA as rooted in its robust legal structure and stakeholder collaboration (Abdulraheem-Mustapha, 2020; NICRO, 2021). Furthermore, participants noted the limitations posed by a lack of accredited service providers and training, particularly in rural areas, highlighting resource disparities that affect the equitable application of diversion programmes.

Both groups pointed to the CJA as a model for adult diversion, citing its structured timelines, defined offence schedules, and the availability of accredited programmes. The findings suggest a clear need for adult diversion programmes to move beyond informal norms to a system that integrates comprehensive legal, procedural, and training components. Additionally, the importance of role clarification for prosecutors, probation officers, police, and other stakeholders was a recurring theme, reflecting concerns over professional autonomy and interagency collaboration.

8.3.4.1. Towards Adult Diversion Guidelines and Betterment

In exploring Objective 4, the views of POs and PPs provide significant insights into the formulation of practice and policy guidelines for adult diversion. Below, the suggested guidelines are elaborated under key subtopics, with an emphasis on the views of participants, their potential applicability beyond the UThukela district, and insights from existing literature.

❖ **Legal and Procedural Framework**

A consistent theme among participants was the need for a statutory framework to govern adult diversion comparable to the Child Justice Act (CJA). A probation officer indicated that clear legislation would provide "timelines, templates, and eligibility criteria," thereby ensuring uniformity across practices. Public prosecutors similarly advocated for legislation to define the "schedule of offences" eligible for diversion and delineate stakeholder roles.

Literature supports this perspective, with NICRO (2021) highlighting the importance of legal frameworks in ensuring consistent diversion practices. Abdulraheem-Mustapha (2020) points to the CJA as a benchmark for other legal systems seeking to implement structured juvenile diversion programmes. However, while these insights are drawn from UThukela district participants, they highlight principles that could be adapted in other South African contexts or internationally.

❖ **Accreditation and Program Design**

Participants noted the current reliance on child-focused programmes adapted for adult offenders, which limits their effectiveness. Probation officers emphasised the need for "accredited, individualised programmes" designed specifically for adults. Furthermore, they suggested that these programmes should address offender-specific needs, including language preferences and cultural sensitivities, particularly in rural areas where resources are sparse.

The literature on diversion programmes stresses the importance of evidence-based and culturally appropriate interventions. Hargovan (2013) describes how tailored programmes contribute to better outcomes by addressing the unique needs of offenders. This aligns with participants' call for a more flexible approach that recognises the heterogeneity of adult offenders.

❖ **Training and Capacity Building**

The need for specialised training for probation officers, prosecutors, and other stakeholders was a recurring concern. One probation officer noted, "There has never been training specifically for adult diversion," which limits practitioners' ability to implement programmes

effectively. Participants also called for inclusive training initiatives that extend to all social workers, ensuring continuity of services even amidst staff turnover.

This finding resonates with international literature. For instance, Kilekamajenga (2018) argues that professional development for justice practitioners is essential for the effective implementation of diversion frameworks. In this context, capacity-building initiatives must incorporate practical and theoretical components to equip stakeholders with a comprehensive understanding of diversion practices.

❖ **Role Clarification and Interagency Collaboration**

The absence of clearly defined roles for stakeholders emerged as a significant barrier to effective diversion processes. A probation officer expressed frustration over the lack of clarity regarding police responsibilities, while a prosecutor highlighted the need for interagency collaboration similar to that mandated under the CJA.

Research by Gxubane and Mellish (2020) underscores the importance of defined stakeholder roles in fostering collaboration and ensuring accountability. A comprehensive framework must delineate responsibilities while promoting respect for professional boundaries, thereby enhancing communication and efficiency.

Proposed Framework for Adult Diversion in South Africa

Herein, Figure 8.2. below is a visual representation of the framework for adult diversion guidelines. The diagram organises the key components of the guidelines, as per the spirit of objective 4, into a tiered structure:

- i. **Foundation:** Legal Framework.
- ii. **Structure:** Accredited Programmes and Resources.
- iii. **Capacity:** Stakeholder Training and Collaboration.
- iv. **Adaptation:** Cultural and Contextual Sensitivity.
- v. **Evaluation:** Monitoring and Feedback Mechanisms.

Each tier builds upon the previous one, emphasising the interconnected and layered nature of the proposed guidelines. Let me know if you need any adjustments or additional elements.

Figure 8.2. Proposed Framework for Adult Diversion Guidelines in South Africa

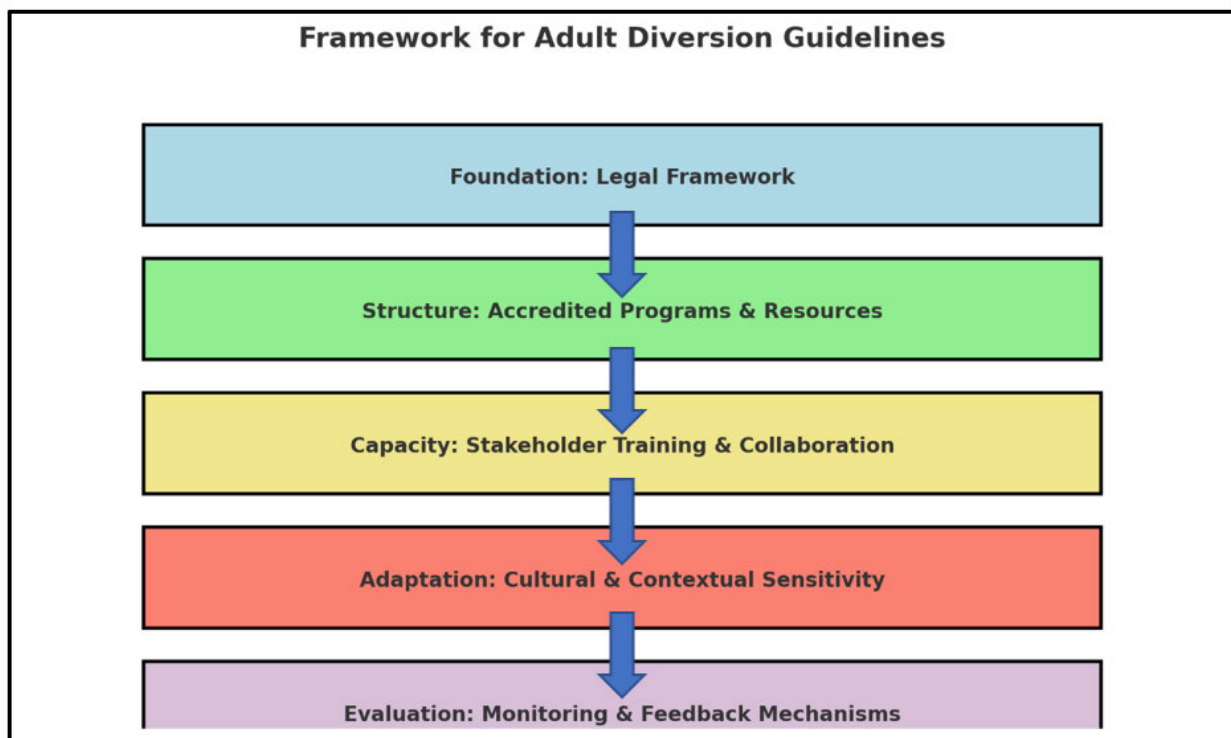


Figure 8.2. Proposed Framework for Adult Diversion Guidelines in South Africa

Based on the above framework [reflected in Figure 8.2.], The diagram represents a tiered framework, capturing the interconnected components necessary for effective adult diversion guidelines. Each level builds upon the one below, ensuring a cohesive and comprehensive approach. Here's a breakdown of each tier:

i. Foundation: Legal Framework (Base Level)

- **Purpose:** This forms the foundation of the framework, emphasising the need for a formal legal structure to underpin adult diversion practices.
- **Key Elements:**
 - Clear definitions of eligibility criteria for offences and offenders.
 - Timelines for diversion processes (e.g., assessment completion, program reporting).

- Inclusion of restorative justice principles, such as victim involvement.
 - **Role in Framework:** Establishes uniformity and ensures that all stakeholders operate within a shared legal and procedural context.
-

ii. **Structure: Accredited Programmes and Resources**

- **Purpose:** Addresses the need for specialised, adult-focused intervention programmes and equitable access to resources.
 - **Key Elements:**
 - Development of accredited programmes tailored specifically for adult offenders, moving away from reliance on child-focused models.
 - Expanding the presence of service providers like NICRO and Khulisa to underserved areas, particularly rural regions.
 - **Role in Framework:** Builds on the foundation by providing the tools and resources needed for consistent and effective diversion interventions.
-

iii. **Capacity: Stakeholder Training and Collaboration**

- **Purpose:** Ensures that all stakeholders are equipped with the knowledge, skills, and collaborative practices necessary for implementing adult diversion.
 - **Key Elements:**
 - Training for police, probation officers, prosecutors, and other relevant actors in diversion principles and practices.
 - Interdisciplinary capacity-building to promote teamwork and professional respect.
 - Backup training for social workers to address staff turnover.
 - **Role in Framework:** Creates a knowledgeable and well-coordinated network of practitioners to operationalise the legal and structural elements effectively.
-

iv. **Adaptation: Cultural and Contextual Sensitivity**

- **Purpose:** Adapt the framework to the diverse socio-cultural and linguistic needs of offenders, ensuring inclusivity and relevance.
 - **Key Elements:**
 - Development of multilingual materials and programmes to accommodate linguistic diversity.
 - Context-specific interventions for rural and urban environments, considering socioeconomic disparities.
 - **Role in Framework:** Makes the diversion process accessible and equitable, addressing the unique challenges of different offender demographics.
-

v. **Evaluation: Monitoring and Feedback Mechanisms (Top Level)**

- **Purpose:** Ensures the framework remains effective and responsive through continuous assessment and refinement.
 - **Key Elements:**
 - Standardised templates for case reporting and evaluation.
 - Feedback loops involving offenders, stakeholders, and program administrators.
 - Data collection and analysis to identify trends, successes, and areas needing improvement.
 - **Role in Framework:** Maintains accountability and fosters improvement, ensuring the framework evolves to meet emerging challenges and needs.
-

❖ **Diagram's Hierarchical Design**

- **Sequential Flow:** The arrows between tiers signify progression—each level builds on the one before. A solid legal foundation supports structural components, which are operationalised through capacity building and adapted to cultural contexts, with evaluation ensuring ongoing effectiveness.

- **Holistic Approach:** The framework integrates legal, structural, and human-centric elements, reflecting the complex and multi-dimensional nature of diversion practices.

❖ **Broader Applicability of Guidelines**

While this adult guideline or framework originates from the UThukela district context, its core principles have broader relevance. The emphasis on legal frameworks, accredited programmes, stakeholder training, and role clarification reflects universal best practices in diversion processes. As Gxubane and Mellish (2020) argue, lessons from successful justice systems, such as South Africa's CJA, can inspire similar reforms globally. However, the guidelines must be adapted to local conditions, acknowledging differences in cultural, legal, and systemic factors. By fostering consistency, equity, and collaboration, these guidelines not only address the specific challenges identified in UThukela but also offer valuable insights for other jurisdictions seeking to improve their adult diversion frameworks.

8.4. CONTRIBUTION OF THE STUDY

This study makes a significant contribution to knowledge by focusing on the experiences and perceptions of probation officers and public prosecutors to address a critical gap in the understanding and operationalisation of adult diversion within the South African criminal justice system. It contributes to a multidisciplinary discourse of adult diversion, integrating participants from the disciplines of social work and law to the conceptualisation and practice of adult diversion practices while attempting to develop guidelines for future consideration. By utilising the dual lenses of restorative justice theory and structuration theory, the research provides a robust framework for exploring the interplay between individual agency and systemic structures in the absence of formal legislation.

❖ **Academic Contribution**

One of the study's most compelling contributions is the illumination of adult diversion as an under-researched and poorly understood phenomenon. This research is possibly pioneering

the scholarly exploration of this practice within South Africa, particularly within the rural context of the UThukela District. By highlighting the discretionary nature of adult diversion and its dependence on informal norms, the study addresses critical gaps in existing literature. The integration of restorative justice theory adds depth to this exploration by examining how diversionary practices foster accountability, repair harm, and promote restorative outcomes, as articulated by Zehr (2002) and Braithwaite (2002).

Additionally, the study extends structuration theory by demonstrating how the absence of formal legislative structures enables the emergence of informal practices through the agency of frontline actors, such as probation officers and public prosecutors. This dynamic illustrates Giddens' (1984) concept of the duality of structure, where agency and structure are co-constitutive. It also underscores the importance of routinisation and reflexivity, as articulated by Datta (2018), in sustaining these practices across time and space.

❖ Practice Contribution

From a practical standpoint, the study provides actionable insights into the challenges and facilitators of adult diversion. By documenting the lived experiences and perspectives of frontline practitioners it offers a nuanced understanding of how adult diversion is operationalised in a context marked by legislative gaps, resource constraints, and professional discretion. The findings have direct implications for enhancing the practices of social workers, prosecutors, and other stakeholders in the criminal justice system.

❖ Policy Contribution

The research provides evidence to support the advocacy of legislative reform to formalise adult diversion practices. By identifying the limitations of the current discretionary system, the study supports the development of a structured legal framework similar to the Child Justice Act. It also underscores the need for accredited programmes and training initiatives to ensure consistency and quality in diversion practices.

❖ Multidisciplinary Contribution

This study transcends disciplinary boundaries by integrating insights from social work, law, and criminology. It enriches the academic discourse on restorative justice by exploring its practical application in adult diversion while contributing to the broader understanding of how social systems evolve through the interplay of agency and structure. This multidisciplinary approach exemplifies the importance of collaboration in addressing complex social issues like crime and justice.

❖ Contribution on knowledge and the illumination of the need to decolonisation of language of data collection

This study significantly contributes to knowledge by demonstrating the importance of decolonising research methodologies. A pivotal aspect of this decolonisation process involved respecting participants' language preferences. Despite the initial assumption that English would be the preferred language of communication, the researcher found that many participants, particularly those who were African-black IsiZulu speakers, preferred to conduct interviews in their mother tongue. This finding challenged the Eurocentric assumption that educated individuals would necessarily be more comfortable communicating in English.

As Makhanya (2020) argues, language justice necessitates accommodating participants' linguistic preferences, even among educated individuals. By allowing participants to express themselves in IsiZulu, the researcher was able to obtain more authentic and nuanced data, as "IsiZulu is known for being tonal, expressive, and it also contains metaphors" (Zibane, 2017, p.139). This experience underscores the importance of acknowledging the limitations of pre-packaged research methodologies, particularly those rooted in Eurocentric assumptions. As Masoga & Shokane (2021, p.23) point out, researchers must abandon their "pre-packaged language of data collection" and instead prioritise the linguistic preferences of participants.

This study aligns with Chilisa's (2012) definition of decolonising research as a process that "... enables the world views of those who have suffered a history of oppression and marginalisation". By respecting participants' language preferences, the researcher created a more inclusive and authentic research environment, fostering a deeper understanding of the participants' experiences and perspectives. This approach is crucial for ensuring that knowledge is "applied and disseminated in ways that resonate with indigenous ways of knowing, being, and doing" (Shokane & Masoga, 2021, p. 27).

This study demonstrates that language is a fundamental consideration in decolonising research. By prioritising participants' linguistic preferences, researchers can move beyond Eurocentric assumptions and generate more authentic and meaningful knowledge that reflects the lived experiences and perspectives of diverse communities.

8.5. RECOMMENDATIONS

8.5.1. Recommendations for Future Research

Exploring Comparative Contexts: Future research could examine the implementation of adult diversion in urban areas or other rural districts to assess the generalisability of findings.

Quantitative Studies: This study recommends the incorporation of quantitative methods to measure the impact of adult diversion on recidivism rates, victim satisfaction, and community safety.

Cross-National and Cross-Location Studies: This study proposes a consideration of comparative studies between rural settings and cities and also between South Africa and countries with formal adult diversion frameworks, such as Canada or New Zealand, England and Wales, which could provide additional insights.

Stakeholder Perspectives: Further research could explore the perspectives of victims and offenders to complement the findings from probation officers and prosecutors.

8.5.2. Recommendations for Practice

Training and Capacity Building: There should be a development of specialised training programmes for probation officers, prosecutors, and police officials, including magistrates and administrators, to enhance their understanding and execution of adult diversion practices.

Interdisciplinary Collaboration: Stronger collaboration between social workers, prosecutors, and community-based organisations should be fostered to improve the delivery and outcomes of diversion programmes.

Standardised Norms and Standards: Standardised templates and procedures should be created and disseminated to assess and implement adult diversion across jurisdictions.

Alignment of Adult Diversion with Restorative Justice Philosophy: There should be a strong advocacy for and standardisation of including the victims in adult diversion programmes and processes

8.5.3. Recommendations for Policy Reform

Legislative Framework: There should be a strong advocacy for the introduction of legislation to formalise adult diversion processes, drawing on lessons from the Child Justice Act. As argued by NICRO (2021), adult diversion should consider adapting the Probation Services Act in order to include specific sections that comprehensively legalise its practice.

Accreditation of Programmes: There should be an intentional development and timebound of accreditation criteria and quality assurance processes for adult diversion programmes to ensure consistency, quality, and cultural relevance.

Resource Allocation: There should be a fair allocation of resources to expand the availability of diversion programmes in rural areas and to address disparities in access and service delivery.

8.6. THE CONCLUDING REMARKS ABOUT THE THESIS

This study underscores the critical importance of adult diversion as a restorative justice practice within the South African criminal justice system. It highlights the ingenuity and adaptability of frontline practitioners who navigate legislative and resource constraints to implement diversionary practices. By integrating structuration theory and restorative justice theory, the research provides a comprehensive understanding of the systemic and relational dynamics that shape adult diversion.

The findings not only illuminate the challenges and opportunities within the UThukela District but also offer valuable lessons for other contexts. This study is a call to action for policymakers, practitioners, and researchers to collaborate in developing a justice system that prioritises rehabilitation, accountability, and social harmony. Through its multidisciplinary approach, the thesis contributes to the advancement of knowledge, practice, and policy in a

way that bridges theory and action, ultimately paving the way for a more restorative and inclusive justice system.

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Appendices

Appendix A- [Ethical Clearance Approval](#)

09 June 2022

Bongane Morris Mzinyane (209513196)
School Of Applied Human Sc
Howard College

Dear BM Mzinyane,

Protocol reference number: HSSREC/00004268/2022
Project title: The practice of adult diversion by probation officers and public prosecutors: an exploratory study in a rural district of KwaZulu-Natal, South Africa
Degree: PhD

Approval Notification – Expedited Application

This letter serves to notify you that your application received on 16 May 2022 in connection with the above, was reviewed by the Humanities and Social Sciences Research Ethics Committee (HSSREC) and the protocol has 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.

This approval is valid until 09 June 2023.

To ensure uninterrupted approval of this study beyond the approval expiry date, a progress report must be submitted to the Research Office on the appropriate form 2 - 3 months before the expiry date. A close-out report to be submitted when study is finished.

All research conducted during the COVID-19 period must adhere to the national and UKZN guidelines.

HSSREC is registered with the South African National Research Ethics Council (REC-040414-040).

Yours sincerely,

Professor Dipane Hlalele (Chair)

/dd

Humanities and Social Sciences Research Ethics Committee

Postal Address: Private Bag X54001, Durban, 4000, South Africa

Telephone: +27 (0)31 260 8350/4557/3587 Email: hssrec@ukzn.ac.za Website: <http://research.ukzn.ac.za/Research-Ethics>

Founding Campuses:  Edgewood  Howard College  Medical School  Pietermaritzburg  Westville

INSPIRING GREATNESS

Appendix B- Information Sheet and Informed Consent Format

Informed Consent Letter

Dear Participant,

Please note the below information about this research project.

Research Topic : The practice of adult diversion by probation officers and public prosecutors: an exploratory study in a rural district of KwaZulu-Natal, South Africa

Student number	: 209513196
Degree	: Doctor of Philosophy
UKZN HSS Research Ethics Committee number	: HSSREC00004269/2022
Responsible institution for this research project	: University of KwaZulu Natal School of Applied Human Science TELEPHONE: 031 260 1216 ZibaneS@kzn.ac.za

Information

My name is Bongane Morris Mzinyane and I am currently a registered Doctor of Philosophy (Social Work) student at the University of KwaZulu Natal (Howard College Campus). It is a requirement for the aforementioned qualification that I should carry-out a research project as a fulfillment for this qualification. Therefore, I am requesting your voluntary participation in this study as you are a role player in the provision of diversion services to adult offenders within the UThukela District. Your experience will be useful in ascertaining strengths and areas of improvements in the provision of diversion services in this area. Your insights can also influence policy and law reform. The information that you will provide is valuable and it will be utilized for research purposes only.

Purpose of the Research

This study aims to explore the implementation of adult diversion processes and programmes in UThukela district of KwaZulu-Natal.

Procedures

Data for this study will be collected through interviews. You will be required to participate in a face-to-face interview with me (the researcher). The interview will span between 45 minutes and 1 hour. The interview will be conducted at a time that suits you and in a place that is accessible to you. Questions that will be explored during these interviews will require your experience-based responses. You are at liberty to choose not to answer any question(s).

Potential Benefits of the Research

It is hoped that the outcome of this research will highlight the strengths and areas of improvement in the provision of diversion services to young offenders in this area. Your views and experiences as key role-players in diversion services will provide significant input in enriching the theory of diversion and further informing the areas of improvement.

Potential Risks and Discomforts

I aim to ensure confidentiality by not including your identifying particulars in the final dissertation and any subsequent publications. However, since many of the key role players in the UThukela District area know each other anonymity might be comprised in the final publication of the project because of the possibility that participants might indirectly identify the responses of other participants.

The use of an Audio Recorder

The use of an audio-recorder is merely for data collection only. This is to ensure that the information is correctly captured. These records will then be transcribed for data analysis purposes only. The information that you will provide will be kept confidential since no identifying details, personal details, contact details and physical addresses will be published in the final dissertation of the research. The recordings (tape records and transcripts) of the interviews will only be accessed and processed by myself, and my research supervisor. Note, that you can either choose to give consent/not give consent to audio for our interview being recorded.

Rights of the Participants of this research

1. You have a right to withdraw at any-phase and time of the research project
2. You can choose not to answer any questions that you are not comfortable with.
3. You have a right to contact the researcher, research supervisor and the research office if you have any further questions.

Payment for Participation

Your participation is without any remuneration and/or incentives.

If you have any queries or require further details about the project in question; do not hesitate to contact my project supervisor/research office (contact details are below-mentioned)

Researcher's contact details	Supervisor's details
Mr Bongane Mzinyane	Dr Sibonisile Zibane
bmzinyane@ymail.com (email)	ZibaneS@ukzn.ac.za (email)
031 260 2277 (Tel)	031 260 1216 (Tel)
██████████ (Cell)	

This study has been ethically reviewed and approved by the UKZN Humanities and Social Sciences Research Ethics Committee (approval number HSSREC00004269/2022).

the UKZN Humanities & Social Sciences Research Ethics Committee, contact details as follows:

HUMANITIES & SOCIAL SCIENCES RESEARCH ETHICS ADMINISTRATION
Research Office, Westville Campus
Govan Mbeki Building
Private Bag X 54001
Durban
4000

HSSREC00004269/2022

DECLARATION OF PARTICIPATION

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

I understand that I am at liberty to withdraw from the project at any time, should I so desire. I understand the intention of the research. I hereby agree to participate. YES/NO _____

I consent I do consent to have this interview audio recorded. YES/NO _____

SIGNATURE OF PARTICIPANT

DATE

Thank you for your contribution to this research

Appendix C- Interview Schedule for Probation Officers

Interview Schedule for Probation Officers

Researcher : Bongane Mzinyane

Degree of study : Doctor of Philosophy Social Work (University of KwaZulu-Natal)

Topic: The practice of adult diversion by probation officers and public prosecutors: an exploratory study in a rural district of KwaZulu-Natal, South Africa

Demographic information

Job title: _____ Years of experience: _____

Qualifications: _____

Name of employer: _____

District and local municipality: _____

Age: _____ Gender: _____ Race: _____

Objective 1: To explore the subjective understanding of probation officers and public prosecutors about adult diversion and their roles in implementing adult diversion processes and programmes.

Questions for Objective 1:

- a) What is adult diversion, and how can you define it?
- b) What do you understand about adult diversion?
- c) What are the benefits and advantages of having adult diversion programmes for the offender and victim?
- d) How is the South African criminal justice system benefiting from adult diversion?
- e) How do you implement adult diversion? Please provide a step-by-step guide.
- f) What is your role in the process of adult diversion in court?
- g) Do you have specific adult diversion programmes? If yes, what is your role in the implementation of adult diversion programmes?
- h) What do you understand about the processes of monitoring and reporting compliance and non-compliance of adult diversion? Who does compliance monitoring?
- i) How is adult diversion different from other forms of pretrial restorative justice options?
- j) How should adult diversion be **ideally** implemented, and by whom?

Objective 2: To identify factors that inform, promote and hinder the implementation of adult diversion processes and programmes amongst probation officers and public prosecutors in the South African criminal justice system, with a specific focus to the UThukela district..

Questions for Objective 2:

- a) Do you get the opportunity to implement adult diversion in the UThukela district?
- b) Which cases are more suitable for adult diversion, according to your knowledge?
- c) How do you decide on these cases? Is there a specific schedule for adult diversion?

- d) What informs your discretion as a probation officer when deciding whether to recommend diversion or not?
- e) Do the court and/or prosecutors normally accept your recommendation of adult diversion?
- f) Does race influence the choice of the court or prosecutor to divert an adult offender? If yes, to what extent?
- g) Do age, gender, culture, educational background, and health status of an accused influence the choice of the court or prosecutor to divert an adult offender? If yes, to what extent?
- h) When did you start to implement adult diversion in the UThukela District?
- i) What informs your implementation of adult diversion processes and programmes?
- j) What manual, or training influences your implementation of adult diversion programmes?
- k) What training have you received in relation to adult diversion?
- l) What policy or law document(s) guide your implementation of diversion programmes?
- m) Do you have programmes that are accredited for adult diversion in your organization?
- n) What are the consequences of not reporting non-compliance of adult offenders?
- o) Who created programmes that you implement for adult diversion?
- p) What is the nature of adult diversion programmes in UThukela (therapeutic or educational)?
- q) Who are the service providers of adult diversion in UThukela?
- r) To what extent do the available programmes and service providers affect your implementation of adult diversion programmes?
- s) How long are your programmes and what informs the length of these programmes?
- t) What is the quality assurance process for adult diversion processes and programmes in UThukela?
- u) What are the detailed contents of your diversion programmes?
- v) Do you think other probation officers implement adult diversion in a similar fashion to yours?
- w) Do you have adequate resources (venues, cars, operational resources, material programmes) to implement adult diversion programmes and processes?
- x) Ideally, what should inform your implementation of adult diversion programmes?

Objective 3: To analyse the involvement of stakeholders, such as victims, offenders, communities and all necessary professionals, in the implementation of adult diversion processes and programmes in UThukela District.

Questions for Objective 3:

- a) What is the normal (step-by-step) communication process regarding adult diversion?
- b) Which stakeholders are you typically involved in decision-making regarding adult

diversion?

- c) How often do you interact with the victims during the implementation of adult diversion?
- d) What is the role of victims during the decision processes of adult diversion and during the implementation of adult diversion programmes?
- e) Are victims given an opportunity to compile victim impact statements on issues of adult diversion?
- f) Do probation officers include the views of the victims in their adult diversion (pre-trial) reports?
- g) How often do you interact with the offenders during the implementation of adult diversion?
- h) What is the role of offenders during the decision processes of adult diversion and during the implementation of adult diversion programmes?
- i) Do probation officers consider the remorse of offenders when they recommend adult diversion?
- j) How often do you interact with the public prosecutors, police, magistrates or other stakeholders during the implementation of adult diversion?
- k) What is the role of public prosecutors, police, magistrates or other stakeholders during the decision-processes of adult diversion and during the implementation of adult diversion programmes?
- l) To what extent do your adult diversion programmes include restitution, apology, compensation, reparation of harm and community service?
- m) What happens after the person has completed adult diversion? To whom do you report?
- n) How do you handle monitoring of compliance and non-compliance of adult diversion?
- o) How is it like to work with prosecutors and other role players in the implementation of adult diversion?
- p) How is it like to implement adult diversion without national legislation or policy?

Objective 4: To establish the views of probation officers and public prosecutors regarding practice and policy guidelines for the implementation of adult diversion processes and programmes.

Questions for Objective 4:

- a) If there was legislation that is specific to adult diversion, what should it focus on?
- b) How can the South African legislature improve the monitoring of adult diversion?
- c) What lessons can we learn from child diversion as outlined in the Child Justice Act in order to develop a framework for adult diversion (please be detailed)?
- d) What are your views regarding the ways of resolving the challenges that you have highlighted?
- e) What are your recommendations for the improvement of the provision of adult

diversion in a rural district such as UThukela?

- f) What is your wish list in relation to your work context and adult diversion in particular?
- g) Who is responsible for resolving the challenges of communication between stakeholders?
- h) What training aspects do you think must be improved for communities, victims, offenders, prosecutors and other involved stakeholders?

Thank you!!!

Appendix D- Interview Schedule for Public Prosecutors

Interview Schedule for Public Prosecutors

Researcher : Bongane Mzinyane

Degree of study : Doctor of Philosophy (University of KwaZulu-Natal)

Topic: The practice of adult diversion by probation officers and public prosecutors: an exploratory study in a rural district of KwaZulu-Natal, South Africa

Demographic information

Job title:

Years of experience:

Qualifications:

Name of employer:

District and local municipality:

Age:

Gender:

Race:

Objective 1: To explore the subjective understanding of probation officers and public prosecutors about adult diversion and their roles in implementing adult diversion processes and programmes.

Theme questions for Objective 1:

- a) What is adult diversion?
- b) What do you understand about adult diversion?
- c) Which cases are more suitable for adult diversion, according to your knowledge?
- d) What are the benefits and advantages of having adult diversion programmes for the offender and victim?
- e) How is the South African criminal justice system benefiting from adult diversion?
- f) How is adult diversion different from the Alternative Dispute Resolution or from other forms of pretrial restorative justice options?
- g) Do you have specific adult diversion programmes? If yes, what is your role in the implementation of adult diversion programmes?
- h) How do you implement adult diversion? Please provide a step-by-step guide.
- i) What is your role in the process of adult diversion in court?
- j) What do you understand about the processes of monitoring and reporting compliance and non-compliance of adult diversion? Who do monitoring of compliance?
- k) How should adult diversion be **ideally** implemented, and by whom?
- l) What are the challenges of implementing adult diversion in the UThukela area?

Objective 2: To identify factors that inform the implementation of adult diversion processes

and programmes amongst probation officers and public prosecutors in the South African criminal justice system, with a specific focus on the UThukela district..

Theme questions for Objective 2:

- a) Do you get the opportunity to implement adult diversion in the UThukela district?
- b) Which cases are more suitable for adult diversion, according to your knowledge?
- c) How do you decide on these cases? Do you have a schedule of offences?
- d) What informs your discretion as a prosecutor when deciding whether to divert or not?
- e) As a prosecutor, do you normally accept probation officers' recommendations for adult diversion?
- f) Do you openly speak with your other litigants (defence attorneys) regarding adult diversion? If so, what is their influence on your selection of adult diversion as a way of handling a criminal case?
- g) Does race influence the choice of the court to accept the diversion of an adult offender? If yes, to what extent?
- h) Do age, gender, culture, education background, and health status of an accused influence the choice of the court to divert an adult offender? If yes, to what extent?
- i) When did you start to implement adult diversion in the UThukela District?
- j) What are the normal processes that you have established in this court in order to implement adult diversion in a doable way?
- k) What informs your implementation of adult diversion processes and programmes?
- l) What manual or training influences your implementation of adult diversion programmes?
- m) In what way does training on adult diversion influence your implementation of adult diversion processes and programmes?
- n) What policy or law document(s) guide your implementation of diversion programmes?
- o) Do you have programmes that are accredited for adult diversion in your organization?
- p) What are the consequences of not reporting non-compliance of adult offenders?
- q) Who created programmes that you implement for adult diversion?
- r) What is the nature of adult diversion programmes in UThukela (therapeutic or educational)?
- s) Who are the service providers of adult diversion in UThukela?
- t) To what extent do the available programmes and service providers affect your implementation of adult diversion programmes?
- u) How long are your programmes, and what informs us of the length of these programmes?

- v) What are the detailed contents of your diversion programmes?
- w) In what way do the available service providers and programmes influence your choice of implementing or not implementing diversion?
- x) Do you think other prosecutors implement adult diversion in a similar fashion to yours?
- y) What is the quality assurance process for adult diversion processes and programmes in UThukela?
- z) Do you have adequate resources (venues, cars, operational resources, material programmes) to implement adult diversion programmes and processes?
- aa) Ideally, what should inform your implementation of adult diversion programmes?

Objective 3: To analyse the involvement of stakeholders, such as victims, offenders, communities and all necessary professionals, in the implementation of adult diversion processes and programmes in UThukela District.

Theme questions for Objective 3:

- a) What is the normal (step-by-step) communication process regarding adult diversion?
- b) Which stakeholders are you typically involved in decision-making regarding adult diversion?
- c) How often do you interact with the victims during the implementation of adult diversion?
- d) What is the role of victims during the decision processes of adult diversion and during the implementation of adult diversion programmes?
- e) Are victims given an opportunity to compile victim impact statements on issues of adult diversion?
- f) Do probation officers include the views of the victims in their adult diversion (pre-trial) reports?
- g) How often do you interact with the offenders during the implementation of adult diversion?
- h) What is the role of offenders during the decision processes of adult diversion and during the implementation of adult diversion programmes?
- i) Do probation officers consider the remorse of offenders when they recommend adult diversion?
- j) How often do you interact with the public prosecutors, police, magistrates or other stakeholders during the implementation of adult diversion?
- k) What is the role of public prosecutors, police, magistrates or other stakeholders during the decision processes of adult diversion and during the implementation of adult diversion programmes?
- l) To what extent do your adult diversion programmes include restitution, apology, compensation, reparation of harm and community service?

- m) What happens after the person has completed adult diversion? To whom do you report?
- n) How do you handle monitoring of compliance and non-compliance of adult diversion?
- o) How is it like to work with prosecutors and other role players in the implementation of adult diversion?
- p) How is it like to implement adult diversion without national legislation or policy?

Objective 4: To establish the views of probation officers and public prosecutors regarding practice and policy guidelines for the implementation of adult diversion processes and programmes.

Theme questions for Objective 4:

- a) If there was legislation specific to adult diversion, what should it focus on?
- b) How can the South African legislature improve the monitoring of adult diversion?
- c) What lessons can we learn from child diversion as outlined in the Child Justice Act in order to develop a framework for adult diversion (please be detailed)?
- d) What are your views regarding the ways of resolving the challenges that you have highlighted?
- e) What are your recommendations for improving the provision of adult diversion in a rural district such as UThukela?
- f) What is your wish list in relation to your work context and adult diversion in particular?
- g) Who is responsible for resolving the challenges of communication between stakeholders?
- h) What training aspects that you think must be improved for communities, victims, offenders, prosecutors and other involved stakeholders?

Thank you!!!

Appendix E1- Similarity Report: Turnitin Digital Receipt



Digital Receipt

This receipt acknowledges that Turnitin received your paper. Below you will find the receipt information regarding your submission.

The first page of your submissions is displayed below.

Submission author: Bongane M Mzinyane
Assignment title: PhD Submission
Submission title: PhD Thesis BM Mzinyane 5 February 2025.docx
File name: PhD_Thesis_BM_Mzinyane_5_February_2025.docx
File size: 6.3M
Page count: 309
Word count: 100,042
Character count: 584,140
Submission date: 05-Feb-2025 07:33AM (UTC+0200)
Submission ID: 2580168533



The practice of adult diversion by probation officers and public prosecutors: An exploratory study in a rural district of KwaZulu-Natal, South Africa

by

Bongane Morris Mzinyane

Student Number: 20051196

A thesis submitted in fulfillment of the requirements for the degree of
Doctor of Philosophy (Human Sciences (Social Work))

SCHOOL OF SOCIAL WORK
SCHOOL OF APPLIED HUMAN SCIENCES
COLLEGE OF HUMANITIES
UNIVERSITY OF KWAZULU-NATAL
HOWARD COLLEGE CAMPUS, DURBAN, SOUTH AFRICA

05 February 2025

Supervisor: Dr Shondile Okome

Appendix E2- Similarity Report: Summary of Score¹ Turnitin

PhD Thesis BM Mzinyane 5 February 2025.docx

ORIGINALITY REPORT

9%	8%	5%	0%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

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1. UKZN accept similarity below 15%, as per Policy

Appendix F- Gatekeeper Letter: National Prosecuting Authority Estcourt



**National
Prosecuting
Authority**
of South Africa

Private Bag x7057, Estcourt, 3310. Telephone number: 036 352 3030. Email: izuma@justice.gov.za

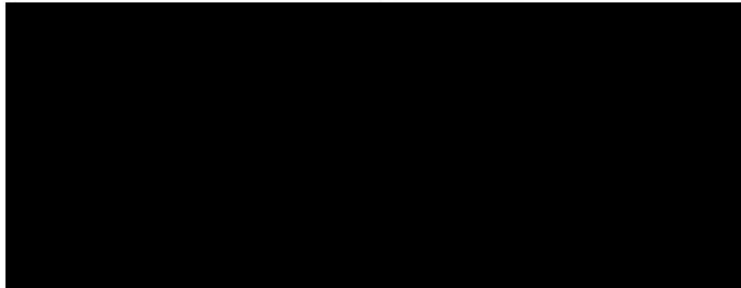
Date: 06 April 2022

PhD Candidate: Social Work
University of KwaZulu-Natal
Howard College Campus,
School of Applied Human Sciences
Social Work Department
Durban
4002

Dear Mr B.M. Mzinyane

Re: Permission to conduct Postgraduate Research with NPA employees

As per your request, I hereby grant you permission to conduct your doctoral research (through individual interviews) with the public prosecutors in Estcourt, Weenen and Colenso (KwaZulu-Natal). Kindly ensure that your research proceedings do not impact on the court work of all involved public prosecutors.



Senior Public Prosecutor
Estcourt



Appendix G- Gatekeeper Letter: National Prosecuting Authority Ladysmith

**Director of Public Prosecutions
Kwazulu Natal
Office of the Senior Public Prosecutor
Ladysmith – NKZN cluster**



Enquiries: Mrs. R. Schuler
File number: 9/1/6/5

**LADYSMITH
MAGISTRATE'S COURT
PRIVATE BAG X 9930
LADYSMITH
3370**

Tel: +27 366376771
Fax: +27 366355137

16 Keale Street
Ladysmith
3370

rschuler@justice.gov.
za

PhD Candidate: Social Work
University of KwaZulu-Natal
Howard College Campus,
School of Applied Human Sciences
Social Work Department
Durban
4002

Dear Mr B.M. Mzinyane

**Re: Permission to conduct Postgraduate Research with NPA
employees**

You are hereby granted permission to conduct your doctoral research with the public prosecutors in Ladysmith, Ezakheni, Ekuvukeni and Bergville (KwaZulu-Natal).

Kindly ensure that your research does not impact on the court work of all involved prosecutors.

Yours faithfully,

**MRS R SCHULER
SENIOR PUBLIC PROSECUTOR
LADYSMITH**

Justice in our society, so that people can live in freedom and security

Page 1 of

**Appendix H- Gatekeeper Permission Letter: KZN Department of Social
Dev.**



KWAZULU-NATAL PROVINCE
SOCIAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

**DIRECTORATE:
HUMAN RESOURCE UTILISATION & DEVELOPMENT**

FAX : 033 264 2075
Telephone / Ucingo / Telefon : 033 264 2083
Enquiries / Imbuzo / Navrae : Ms PSN Makhoba
E-mail :
Reference no. : S.6/9/2

174 Mayors Walk,
Private Bag X9144
PIETERMARITZBURG
3200

Mr BM Mzinyane
Unit 31 Derrilyn
178 Esther Roberts Road
Glenwood, Durban
4001

Contact No: [REDACTED]
Email: MzinyaneB@ukzn.ac.za

Dear Mr Mzinyane

**PERMISSION TO CONDUCT RESEARCH UNDER A TOPIC "THE PRACTICE OF ADULT
DIVERSION BY PROBATION OFFICERS AND PUBLIC PROSECUTORS:
ANEXPLORATORY STUDY IN A RURAL DISTRICT OF KWAZULU-NATAL, SOUTH
AFRICA".**

1. This matter has reference.
2. Kindly be informed that the permission has been granted by the Head of Department for you to conduct research in the department, for you to fulfill the requirement of your PhD in Social Work.
3. The permission authorizes you to: -
 - (a) Access 07 service offices in UThukela District under Midlands Cluster, which are Ezakheni Service Office, Ladysmith Service Office, Dukuza Service Office, Ekuvukeni Service Office, Bergville Service Office, Weenen Service Office and Escourt Service Office, and conduct semi-structured one on one interviews with 08 Probation Officers and 04 Social Work Supervisors who has experiences as Probation Officers in the department, at their consent deemed relevant to your research project and maintain high level of confidentiality; and
 - (b) Share your findings with the Department.
4. The Head of Department wishes you all the best with your studies

Regards

[REDACTED]
MRS NI VILAKAZI
HEAD OF DEPARTMENT
DATE: 18/05/10 ZC

GROWING KWAZULU-NATAL TOGETHER