

**Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: *the experiences and perceptions of key role-players.***

by

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**DECLARATION ON PLAGIARISM**

I hereby declare that this dissertation,

“Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: *the experiences and perceptions of key role-players.*”

is the result of my own work, unless specifically indicated to the contrary in-text by references and quotations. It has never been submitted in part or in full for any qualification/publication in any institution of research or higher learning.

  
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## **DEDICATION**

This dissertation is dedicated to the time I served as a Probation Officer in the KZN's Department of Social Development, Ladysmith Service Office.

## Abstract

The offending behaviour youth is common in many communities. In line with the international policies, South Africa has established a separate justice system for children that promote the child justice agenda during the implementation of diversion services to children. Scholars in the field have expressly argued that diversion is the central feature of the South Africa's child justice system. As a result, this study has endeavoured to explore the implementation of diversion services to young offenders in Emnambithi/Ladysmith, KwaZulu-Natal, South Africa.

This study was qualitative. Its sampling strategy was purposive. The sample of this study included probation officers, assistant probation officers, public prosecutors and diversion programme facilitators. The study aimed at exploring the implementation of diversion services to young offenders. The experiences of key role players were the main source of data. The researcher utilised semi-structured interview schedules as the instrument of data collection. The data was conducted individually for each participant. The study was guided by systems theory.

The main findings in this study showed that the factors that hinder the implementation of diversion services include, *inter alia*: inconsistent attitudes of prosecutors towards diversion, the non-involvement of victims during the diversion court processes, inconsistencies in training amongst prosecutors, lack of programmes for children with special needs, attitudes of divertees, shortage of transport for diversion programme facilitators and challenges in communication. Additionally this study, revealed factors that promotes the implementation of diversion services, amongst these factors was: adequate training of diversion programme facilitators on diversion programmes and the Child Justice Act, lengthy years of experience among other prosecutors, decentralisation of diversion services by Khulisa Social Solutions. This study further revealed that the key role players of diversion had positive attitudes towards monitoring of compliance and non-compliance. Additionally, it was a finding in this study that the positive of attitudes of key role players regarding monitoring of compliance did not guarantee a rightful implementation of the monitoring process. Poor records management was amongst the challenges that impeded the process of monitoring compliance.

Some of the key recommendations were that there is a need to educate the general public about child justice processes and restorative justice. It was also recommended in this study that there should be a formulation of diversion programmes that will cater for the needs of children who have learning challenges. This study further recommended the importance of effective communication amongst key role players.

## LIST OF ACRONYMS

|        |   |
|--------|---|
| ACRC   | African Charter on the Right and welfare of the Child                       |
| APO    | Assistant Probation Officer   |
| CJA    | Child Justice Act 75 of 2008  |
| CJS    | Child Justice System  |
| UNCRC  | United Nations' Convention on the Rights of the Child                       |
| DPF    | Diversion Programme Facilitator   |
| DPP    | Director of Public Prosecutions   |
| DSD    | Department of Social Development  |
| FGC    | Family Group Conference   |
| KZN    | KwaZulu-Natal   |
| NGOs   | Non-Governmental Organisations  |
| NPA    | National Prosecuting Authority  |
| NPO    | Non-Profit Organisation   |
| NICRO  | National Institute for Crime Prevention and the Reconciliation of Offenders |
| PP     | Public Prosecutor   |
| PI     | Preliminary Inquiry   |
| PO     | Probation Officer   |
| RSA    | Republic of South Africa  |
| SA     | South Africa  |
| SALRC  | South African Law Reform Commission   |
| SAPS   | South African Police Services   |
| TRC    | Truth and Reconciliation Commission   |
| UKZN   | University of KwaZulu-Natal   |
| UN     | United Nations  |
| UNICEF | United Nations Children's Fund  |
| VOM    | Victim Offender Mediation   |

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# CHAPTER 1- INTRODUCTION TO THE STUDY

*The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence. (Rule, 5.1., UN Beijing Rules, 1985)*

## 1.1. INTRODUCTION

Children and youth are constantly part of the statistics of crime perpetrators and/or offenders. “South Africa has alarmingly high crime rates and a significant proportion of offences are committed by juveniles” (Van der Merwe and Dewes, 2009) cited in (Ntshangase, 2016: 6). Child delinquency in South Africa motivated for the establishment of child-focused programmes and legislations in order to respond to problems that are associated with young offending.

South Africa is amongst many countries that have established a separate criminal justice system for children who are in conflict with the law. The existence of the South Africa’s child justice system is maintained by the assorted roles of numerous stakeholders including police officials, probation officers, prosecutors, magistrates, diversion programme facilitators, *inter alia*. In South Africa, the Constitution of the Republic South Africa (Act 108 of 1996) has specially demarcated the rights of children. Specifically, it is enshrined in the Constitution (section 28) that children have a right not to be detained, except for a measure of last resort (Republic of South Africa, 1996). Therefore, this means that the Constitution was the first legislation, post-1994, to validate ‘alternative responses’ of dealing with children who are in conflict with the law. Specifically, diversion of young offenders is one of the alternative responses to deal with youth delinquency.

The existence of the Constitution of the Republic of South Africa alone was not adequate in the enforcement of diversion and in defining the roles of stakeholders of the South Africa’s child justice system. Post-apartheid, there were a number of consultations and research studies which challenged the South African policy makers and the legislature to establish mechanisms of dealing with problems that there were triggered by the absence of a legislation that was based on the subject of child justice. In 2008, the Child Justice Act 75 of 2008 was gazetted and therefore formalized diversion of young offenders. This legislation mapped out all the processes that should be adhered to when administering child justice processes such as

diversion services for young offenders; selection of diversion options; monitoring of compliance and non-compliance; amongst other factors (McGregor, 2010).

This study explored the implementation of diversion services to young offenders in the Emnambithi/Ladysmith municipal area. The findings of this research study emanated from the experiences of key role players in relation to their day to day practices of diversion services to young offenders. In order of sequence, this chapter presents: the background and rationale of the study; the problem statement; research objectives; key questions; summary of the research methodology; theoretical framework; significance of the study; definition of key concepts; and the outline of chapters.

## **1.2. BACKGROUND AND RATIONALE FOR THE STUDY**

The motivation for this study was underpinned by two factors, the gaps in existing research and the researcher's experiences as a social work professional that was designated as a probation officer.

### **1.2.1. Gaps in existing research**

Steyn (2011:20) noted that "limited work has been conducted in South Africa regarding diversion theory and the potential impact of different diversion strategies on children in conflict with the law". He further noted that "[v]ery little evidence exists as to what type of interventions work in local, South African contexts and conditions, and also which [diversion] programmes work best for particular profiles of child offenders" (Steyn, 2011: 7). Steyn (2011) therefore highlighted the importance of building a knowledge base on the theory of diversion relevant to the South African context. Other researchers have also noted the need for more research on diversion. Kleinhans (2013: 4) stated that "after the implementation of the Child Justice Act, there was no platform for the facilitators of diversion programmes to express their opinions regarding these programmes". Hargovan (2013:32) also indicated that "recent research indicates that 'good [outcome] evaluation practice is lacking in South African programmes". For these reasons, a study that seeks the experiences of key role players in the implementation of diversion services is essential. As articulated in the objectives below, this study sought to depict the implementation of South

African diversion services particularly in a small town that is dominated by a huge number of rural areas.

### 1.2.2. Professional impetus

Furthermore, this study stems from the researcher's interest in the child justice practices which was triggered by his job designation. Being employed in the KwaZulu-Natal Department of Social Development as a Probation Officer introduced the researcher to the actual administration of child justice services. This drew much of the researcher's attention as a novice in social work practice. Van Wormer (2003) argued that the principles of restorative justice cannot be alienated from social work principles because they are both relevant to family practice. She (*ibid*) added that, both restorative justice and social work practice aims to empower people and bring about social justice to the disputed matters in the public.

In addition, whilst working as a Probation Officer, the researcher further realised that there are many other crucial role players, outside social work, who play significant roles in ensuring the synergy amongst the key stakeholders of the child justice system. The implementation of diversion services to young offenders invites joint inputs of numerous stakeholders including probation officers, assistant probation officers, public prosecutors and diversion programme facilitators. Therefore, these systemic relations were worth exploring.

## 1.3. PROBLEM STATEMENT

The Emnambithi/Ladysmith municipal area is mainly rural and characterised by shocking and violent crimes (Ladysmith IDP, 2012). Many of the previous studies on the child justice system, have been urban based. Muntingh (1997); Steyn (2011); Badenhorst (2011); Els (2012); Hargovan (2013); Ntshangase (2016); *inter alia* based their research projects within the context of urban areas. This means that there is a shortage of studies that depict the implementation of diversion within the rural context. Thus, it was essential to explore diversion; particularly in a small town such as Emnambithi/Ladysmith.

Vermooten (2005) indicated that numerous nations did not have 'benevolent' mechanisms in place in order to handle young offenders humanely. Instead children were often detained together with adult offenders and under harsh conditions (Ansell, 2005; Skelton and Tshehla,

2008; Els, 2012). Children's rights were greatly compromised and the principles of restorative justice were then seen as unimportant in dealing with young offenders (Hargovan, 2008).

As mentioned above, the Child Justice Act 75 of 2008 has formalized the implementation of diversion services for young offenders. In the midst of the Child Justice Act, a number of researchers such as Badenhorst (2011), Steyn (2011), Ntshangase (2016), amongst others, have noted numerous challenges associated with the implementation of the Child Justice Act and the implementation of diversion. Some of the challenges include the following issues:

- Lack of programmes for children with learning disabilities (Kleinhans, 2013)
- Decrease in the number of diversions (Khumalo, 2010; Badenhorst, 2011)
- Lack of training of all the role players in the child justice system (Badenhorst, 2011 and Kleinhans, 2013)
- Lack of public awareness about the Act, its provisions and benefits is one of the challenges that were discovered (Badenhorst, 2011).
- Additionally, lack of training of police officers about the Act also manifests more challenges.(Badenhorst, 2011)
- Shortage and unavailability of probation officers (Badenhorst, 2011)
- Lack of uniformity in the official forms used by the courts (Badenhorst, 2011)

The above mentioned problems have disjointed the child justice system. But most interestingly, this study has also explored both factors that promote and those that impede diversion services to young offenders.

#### **1.4. RESEARCH OBJECTIVES**

Fouché and Delport (2011: 94) emphasized importance of having clear and practical objectives in a research project. Below are the research objectives that guided this study:

- To explore the views of probation officers, assistant probation officers, prosecutors and diversion programme facilitators on the factors which impede and promote diversion services to young offenders in the Emnambithi/Ladysmith municipal area.

- To depict factors that restrict the selection of diversion options/programmes for young offenders within the Emnambithi/Ladysmith Municipal area
- To explore the monitoring of compliance and non-compliance of diversion orders.
- To ascertain the areas of improvement in the provision of diversion services.

## **1.5. KEY QUESTIONS**

The key research questions were as follows:

- What are the views of probation officers, assistant probation officers, prosecutors and diversion programme facilitators on the factors which impede and promote diversion services to young offenders in the Emnambithi/Ladysmith municipal area?
- What are the factors that restrict the selection of diversion options/programmes for young offenders within Emnambithi/Ladysmith Municipal area?
- How is monitoring of compliance and non-compliance of diversion orders being undertaken?
- What can be done to improve the provision of diversion services?

## **1.6. SUMMARY OF RESEARCH METHODOLOGY**

This section provides a synopsis of the research approach and methodology. Chapter Three of this dissertation has detailed the research approach and methodology of this study.

### **1.6.1. Research approach**

This study was qualitative and utilised an exploratory-descriptive research design. Terre Blanche, Durrheim and Painter (2006: 34) explain that ‘research designs are plans that guide the arrangement of conditions for collection and analysis of data’.

### 1.6.2. Sampling

A non-probability sampling procedure was adopted in this study. This study involved four samples. The table below demonstrate the sampling strategy for this study

**Table 1.1. Summary of Sampling Design**

| <b>Sample Number</b> | <b>Designation</b>               | <b>Method of Sampling</b> | <b>Total</b> |
|----------------------|----------------------------------|---------------------------|--------------|
| Sample 1:            | Probation officers               | Entire population         | 2            |
| Sample 2:            | Assistant probation officers     | Entire population         | 2            |
| Sample 3:            | Diversion programme facilitators | Entire population         | 3            |
| Sample 4:            | Public prosecutors               | Purposive sampling        | 5            |
| <b>TOTAL SAMPLE</b>  |                                  |                           | <b>12</b>    |

This study involved the entire population of probation officers (excluding the researcher), assistant probation officers, and diversion programme facilitators within the Emnambithi/Ladysmith municipal area. It was feasible to select the entire population of the first three samples because the number of participants in these 3 groups was limited. Selecting the entire population of 3 sample groups strengthened the trustworthiness of the findings because there were no one, amongst the first 3 samples, who was excluded and, consequently, unable to share their experiences and perceptions of the child justice system.

Moreover, I used purposive sampling in order to recruit public prosecutors (sample 4) who formed part of this research. In this study, the researcher chose research participants who had the potential of providing the required insights of diversion. Noteworthy, it was not every prosecutor who had the experiences of the child justice system.

The sampling strategy has been detailed in chapter 3.

### 1.6.3. Data collection and analysis

In this study, I used semi-structured interviews as the main instrument of data collection. These interviews were administered face to face and individually. Four (4) different interviewing schedules were used in order to ensure the relevance of the questions to each

sample group. Data was audio recorded in order to capture the verbatim responses of participants.

According to Terre Blanche *et al.* (2006), qualitative data requires an approach appropriate to analysing texts, visuals or narrative. In this study, data was analysed using thematic analysis. The use of semi-structured interviews assisted me in inducing themes during the analysis because the data was partially structured and therefore reflected some patterns of responses and topics.

### **1.7. THEORETICAL FRAMEWORK**

Systems theory was a relevant theoretical and conceptual tool in understanding the collective efforts of different key-role players in the implementation of diversion services to young offenders. According to Dugmore (2013: 17) a “systems approach identifies the individual parts or elements of a system and then seeks to understand the nature of their collective action or reciprocal relationship”.

Systems theory views society as a system; a whole unit made up of different interrelated parts or subsystems (Tshiwula 1998); (Tshem, 2009: 29). This framework is based on the opinion that nothing can be understood when it is isolated from the system (*ibid*). According to Zastrow and Kirst-Ashman (2010) a system is a set of elements that form an orderly, interrelated, and a functional whole that work together for a common objective. All of the relationships within the subsystems of an organization are interdependent on each other and can directly affect the operation of the system (*ibid*). Haralambos and Holborn(1995) cited in Tshem (2009: 29) explain that with systems theory “whole is greater than sum of its parts” and in order to understand any part of the system, that part must be seen in relation to whole system”. This view is corroborated by Hogan (2013: 11) who argued that “for a team/group/organization to be successful, it cannot consist of individuals who are working independently and without cohesion”. Hogan (2013) emphasises the importance of cohesion, interdependence and a common goal. This means that the team’s goals have to be the focus and the individual goals should be secondary to those of organization (*ibid*).

This study viewed each role player in relation to other role players. Hence, every stakeholder within the child justice system plays a distinct but crucial role in the process of diversion.

Their roles are further reciprocally-affected by the roles of one or more other stakeholders during the implementation process of implementing diversion services to young offenders.

Within South Africa's child justice system, the occupational roles of probation officers, assistant probation officers, prosecutors and diversion programme facilitators are interrelated and interdependent in order to achieve the prospects of the Child Justice Act 75 of 2008. Hence they all implement and administer diversion services to young offenders through different inputs. In this study, this framework has been utilized to understand the systemic influences, systemic challenges and positive systemic practices during the implementation of diversion services to young offenders. Moreover, this theory has been utilized in this study to contextualize both the literature review and the findings of this study.

In summary, this study employed systems theory because this theoretical framework permitted me to perceive the work of role players of diversion as an interdependent structure.

## **1.8. SIGNIFICANCE OF THE STUDY**

Qualitative studies have the potential of interpreting internal realities of subjective experiences of the participants (Terre Blanche *et al*, 2006: 6). In this regard, this study explored the implementation diversion services to young offenders, therefore it highlighted challenges and best practices in the implementation of diversion services. This means that this study has endeavoured to address the gap in literature relating to the South Africa's child justice system. Specifically, it has contributed considerably to literature pertaining to the implementation of diversion services for young offenders. Additionally, this study has illustrated some of the systemic influences by key role players during the implementation and administration of diversion services to young offenders. Furthermore, this research project has depicted challenges and areas of improvement pertaining to monitoring of compliance and non-compliance of diversion orders. As a result, the findings and recommendation that are discussed in this dissertation might be crucial for policy-makers and scholars.

Moreover, it is hoped that this study will raise awareness amongst key role players of diversion regarding their positive and negative systemic influence during the implementation of diversion. This study has noted the shortage of adequate training, among different stakeholders, as an influential factor that impedes the implementation of diversion services to

young offenders. Therefore, it is hoped that the outcome of this study will be made accessible to the management of the departments and organisations that are involved in the implementation and administration of diversion services to young offenders. As a result, heightened awareness amongst key role players has the potential of influencing future policies and practices.

## **1.9. DEFINITION OF DOMINANT CONCEPTS**

The main concepts that are featured recurrently in this dissertation are discussed below:

### **1.9.1. Key role player**

This concept ‘key role-player’ is commonly used in numerous disciplines. Generally, it is used to refer to stakeholders or people who are contributing some action in the process of achieving a collective and/or systemic outcome. Els (2012: 9) defined this term as follows: “key role player refers to a person who assumes or acts out a necessary and particular role”.

In the context of this study, key role-players are practitioners that form part of the administration and implementation of diversion services for young offenders. These multi-disciplinary practitioners are: probation officers; assistant probation officers; public prosecutors and diversion programme facilitators.

### **1.9.2. Diversion**

Section 1 of the Child Justice Act 75 of 2008 defines diversion as follows: “diversion means diversion of a matter, involving a child, away from the formal court procedures in a criminal matter by the means of procedures established by Chapter 6 and Chapter 8” of the Child Justice Act. In Chapter 2, this concept is detailed and contextualised.

### **1.9.3. Young offender**

Both, the Constitution of the Republic of South Africa and the Children’s Act 38 of 2005 define a child as a person who is under the biological age of 18 years. Therefore, a ‘young offender’ is a person who is in conflict with the law but who is under the biological age of 18 years. This group of individuals is normally referred to as: “juvenile offender”; “child

offender”; “youth offender” (Tshiwula, 2002; Badenhorst, 2011, *inter alia*). For the purpose of this study, I have chosen to use the concept ‘young offender’ due to its impartiality when merging children and youth. Noteworthy, Ansell (2005) argues that children and youth are two dissimilar groups of individuals.

#### 1.9.4. Restorative Justice

Section 1 of the Child Justice Act 75 of 2008 defines restorative justice as an “approach to justice that aims to involve the child offender, the victim, the families concerned and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation”. Crawford and Newburn (2003: 21) argue that due to the diversity of practices subsumed under the restorative justice umbrella it is often difficult to define the term restorative justice. Nonetheless, for the purpose of this dissertation, the aforementioned definition of restorative justice, from the Child Justice Act, has been adopted because it describes the context of child justice in South Africa.

### 1.10. FINDING YOUR WAY IN THIS DISSERTATION: *PREVIEW OF CHAPTERS*

**Chapter 1-** In this chapter the researcher has introduced and given a broader perspective of the study. The researcher has also endeavoured to briefly discuss the background and rationale of this research; the problem statement; the research objectives and questions; theoretical framework; summary of research methodology; significance of the study; and the definition of key concepts in this study

**Chapter 2-** In this chapter, literature have been reviewed in relation to child justice and restorative justice. In an order of sequence, this chapter presents discussions regarding the international and local policies/legislation on child justice; links between restorative justice and diversion; punishment versus restorative justice; the context of diversion in South Africa; and trends in monitoring of compliance and non-compliance of diversion orders.

**Chapter 3-** This chapter maps out the methodological approach that was followed in carrying out this research. Sequentially, this chapter presents the research design; sampling; data

collection; the method of data analysis; trustworthiness; ethical consideration; and the limitations of the study.

**Chapter 4-** This chapter focuses on the presentation and analysis of the research findings. Sections that are covered in this chapter are namely: profile of participants; diversion court processes; accredited diversion programmes in Emnambithi/Ladysmith; monitoring of compliance and non-compliance; systemic challenges; and areas of improvement. Data has been presented qualitatively with the use of thick descriptions.

**Chapter 5-** In this chapter major conclusions and recommendations are made according to the research findings. Themes from chapter 4 are revisited in this chapter.

# CHAPTER 2- LITERATURE REVIEW

## 2.1. INTRODUCTION

Over the past two decades of Constitutional democracy in South Africa, the concepts: child justice, restorative justice and children's rights strongly became a widespread subject of interest both for academics and policy makers (Ntshangase, 2016). This chapter contextualizes youth diversion and restorative justice both internationally and locally. This literature review is underpinned by the principles of systems theory. This means that this chapter has endeavoured to present the implications of global interconnectedness and the occupational linkage amongst the key role players within the South African child justice system.

In an order of sequence, this chapter presents discussions regarding the international and local policies/legislation on child justice; links between restorative justice and diversion; punishment versus restorative justice; the context of diversion in South Africa; and trends in monitoring of compliance and non-compliance of diversion orders.

## 2.2. INTERNATIONAL DEVELOPMENT OF A SEPARATE CRIMINAL JUSTICE SYSTEM FOR YOUNG OFFENDERS: POLICY AND LEGISLATIVE FRAMEWORKS

### 2.2.1. Youth offending as an international concern

“The involvement of children in crime has become a significant social problem in communities in South Africa and other parts of the world” (Nicholas, Rautenbach and Maistry, 2010: 251). McGregor (2010) also argued that the dynamics of youth offending and the rehabilitation of offending youth are not exclusive to certain countries but are a global concern. As a result, a number of international policies (including rules, guidelines and conventions) have been established, over the years, in order to respond to youth delinquency. These international policies have been influential to the administration of child justice in many countries across the globe (Ansell, 2005).

One of the pioneers of systems theory, Bertalanffy (1930) cited in Benathy, 1996) perceived the world as an ordered organisation instead of being a chaos. Tshem (2009: 20) also argued that “the influence of the international community on South Africa has allowed the principles of restorative justice to be embedded in child justice legislation”. These views imply that the world nations are indeed interconnected and influential amongst each other. As a result, the ethos of restorative justice has permeated to the South African child justice legislation.

Below, is the discussion on the historical development of international policy frameworks that are related to the concept of child justice.

### 2.2.2. Historical development of international policies for the child justice system

As early as 1923 the League of Nations accepted the Declaration on the Rights of the Child (Ansell, 2005). However, a specialized child justice policy reform initially materialised in 1985 where the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules) were adopted (Dixon and Van der Spuy, 2004). In 1989 the United Nations adopted the United Nations Convention on the Rights of the Child (‘UNCRC’). Subsequently, in 1990 the United Nations further adopted two policies which were also focused on child justice, namely: the United Nations Guidelines for the Prevention of Juvenile Delinquency (UN Riyadh Guidelines, 1990) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UN JDL Rules, 1990). Moreover, on a continental level, the Commission for African Unity adopted the African Charter on the Rights and Welfare of the Child in 1990 (Ntshangase, 2016).

Pertaining to child justice, it is therefore concluded that the era of significant policy development began in the mid-1980s until the early 1990s (Skelton and Tshehla, 2008). This is marked by the number of statutory frameworks which were published and adopted, in the international arena, during this period. As from the early 1990s, numerous nations used these policies as a frame of reference with regard to child justice because these policies were already in force. Of note, South Africa is one of the countries that ratified the abovementioned international policies.

Profoundly, all of the aforementioned policies intended to be kind and considerate to young offenders (Vermooten, 2005). Additionally, these international policies also provided the impetus for the establishment of juvenile diversion, rehabilitation and restorative justice

practices for young offenders (Dixon and Van der Spuy, 2004: 117). A brief overview of the aforementioned policies is discussed chronologically below. In order of sequence, the United Nations Convention on the Rights of the Child (UNCRC) has been detailed first; United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') comes second; United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UN JDL Rules) has been detailed thirdly; African Charter on the Rights and Welfare of the Child (1990) concludes the discussion on international policies.

#### 2.2.2.1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules')

As mentioned above, the Beijing Rules are marked amongst the earliest guidelines that emphasized the subject of Child Justice as an area of specialized attention. In this section, some of these rules are reviewed and discussed.

Rule 1.6 stipulates that "juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes" (United Nations, 1985). In other words, this rule suggests that the role-players in the child justice system should operate in a systemic and coordinated manner and further be exposed to personnel development programmes which would reciprocate to improve their competences in the delivery of services within the child justice system. Rule 1.6 emphasises the importance of a coordinated child justice system. Of note, this research study explored the systemic connections amongst the key role players of diversion.

In addition, Rule 5 stipulates that "the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence" (United Nations, 1985). This rule noted the well-being of young offenders as an area of special consideration. This means that the Beijing Rules are rights-based and in favour of alternative methods of dealing with young offenders.

Furthermore, Rule 11.4 of the Beijing Rules further stipulates that diversion of children away from the formal criminal justice system should be the first option in deserving cases (*ibid*). Specifically, this rule introduced the concept of juvenile diversion as an option that should be

considered first. This means the Beijing rules are one of the international policies that motivated for the integration of diversion to the formal criminal justice system.

Dixon and van der Spuy (2004: 117) argued that the Beijing rules influenced the contents of UNCRC in 1989 and the UN JDL rules in 1990 because the Beijing Rules were passed prior to the UNCRC and UN JDL rules. However, the UNCRC and UN JDL rules have been detailed in the subsequent sections in this chapter.

#### 2.2.2.2 United Nations' Convention on the Rights of the Child 1989 ('UNCRC')

According to Ntshangase (2016: 19) The United Nations' Convention on the Rights of the Child "is a dominant legislative framework governing the rights of children at an international level". After the end of the apartheid regime, South Africa ratified this convention in order to show its commitment to safeguard the rights of children. The UNCRC provides a broad standpoint with regard to child protection and the rights of children internationally. This international convention "...was the most rapidly ratified international conventions ever, ratified within eight years by most the UN's 189 member countries" (Ansell, 2005: 228-229).

Article 37 of the UNCRC prioritises the protection of children, even in instances where they have committed offences. Specifically, Article 37 (b) of the UNCRC (1989) reads:

*"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". (United Nations, 1989)*

This article suggests that the rights of children should be prioritised in the child justice system. On the other hand, Article 40 of the UNCRC (1989) indicates that governments are required "to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings of children" who have alleged broken the law (United Nations, 1989).

The provisions of articles 37 and 40 gave impetus for the establishment, existence and sustainability of diversion work. Particularly, the countries that have ratified the UNCRC have the responsibility of establishing and supporting alternative processes which would

divert young offenders from the mainstream criminal justice structures. According to Sloth-Nielsen and Gallinetti (2004: 24):

*“It has been argued that, because diversion has been included at international law level, it can no longer be treated merely as a discretionary service provided by welfare organisations, or as being solely dependent on the personal preference of individual prosecutors or magistrates or the goodwill of the police. In terms of the principle, States are obliged by their commitment to the Convention on the Rights of the Child to ensure that, at the very least, directives, guidelines or legislation are developed to promote the use of diversion” (ibid).*

This means that the establishment of statutes that provides for the implementation of diversion are a requirement of all countries that have adopted the UNCRC. Ansell (2005: 232) adds that:

*“Governments are required to make their laws compatible with the CRC. This is difficult in many African countries, [...] local courts are often reluctant to integrate international law with local customs. [...] The CRC can only be pleaded directly in a national court of law if its provisions are directly incorporated into national law.” (ibid)*

It is evident from the above commentary that compliance with the UNCRC is still a challenge in some parts of the world. Nonetheless, in South Africa diversion has been incorporated into national law. Below is the discussion of the UN JDL Rules.

#### 2.2.2.3. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UN JDL Rules)

The UNJDL Rules were adopted by the United Nations General Assembly in 1990 (United Nations Rules, 1990a). These rules were adopted in the same year as the UNCRC. Similar to the UNCRC and the Beijing rules, the UNJDL rules are also embedded in the principles of children’s rights and child protection.

The UNJDL Rules aim to ensure that juvenile detainees and offenders receive fair treatment which is considerate of their age and stage of development (*ibid*). The UN JDL Rules have set a weighty standard that ought to be followed by countries that have ratified these rules.

These rules, provided scope on the extent to which the liberty of a child offender may be limited. But most importantly, these rules emphasises the importance of child protection.

The introduction of these rules mandated that member states to restructure their hostile child justice systems. Specifically, Rule 1 specifies that the “...juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles” (United Nations, 1990a: 1). This signifies the importance of child protection despite the offences that have been committed by a young offender. Moreover, it is provided for in Rule 17 that the detention of a young offender before trial shall be avoided to the extent possible and limited to exceptional circumstances (*ibid*). In other words, Rule 17 emphasises the importance of non-custodial measures against children who have committed offences. However, the common factor between Rule 1 and Rule 17 is the fact that alternative measures should be considered when dealing with young offenders.

Below is the discussion on the African Charter on the Rights and Welfare of the Child.

#### 2.2.2.4 African Charter on the Rights and Welfare of the Child (1990)

The African continent has a long history of degrading and/or ill-treatment of children particularly in countries where there are political unrests and violence (Sloth-Neilsen and Gallinetti. 2004). Many authors, including Ansell (2005) have articulated the extent to which the African continent has been notorious for cruelty against youth and children due to a number of political, cultural and religious unrests which have led to children being recruited to national militaries, being imprisoned with adults and other forms of brutality.

Sloth-Nielsen and Gallinetti (2004: 46) argued that: “from Nigeria to Kenya, from South Africa to Uganda, novel initiatives to implement the letter and spirit of the children’s rights agenda within the sphere of children in trouble with the law have mushroomed in the immediate past”. Sloth-Neilsen and Gallinetti (2004: 12) add that in the African continent “there has been a notable crossover of ideas, based on site visits, student liaison, and networking between non-governmental organisations involved in both policy making and service delivery in the child justice field”. Therefore, this means that despite the negative publication about African brutality towards children, there are positive initiatives in many African countries which have endeavoured to uphold children’s rights.

The African Charter (1990) is amongst the core guidelines, in the African continent, that has endeavoured to defend children's rights. Markedly, the concept of child justice was also enshrined by this policy. Specifically, article 17 of the African Charter reads as follows:

*“every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others”* (Clarke, 2012: 4).

In addition, article 17(3) specifies that “the essential aim of [special] treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation” (African Charter cited in Clarke, 2012). This provision indicates the importance of re-integration, reformation and family care. This means that young offenders should be reintegrated and reformed whilst they remain in the care of their families.

#### 2.2.2.5. Conclusion: International policies on child justice

In the above section the provisions of the UN Beijing Rules, UNCRC, UN JDL Rules and the African Charter on the Rights and Welfare of the Child were reviewed. These international policies uphold the philosophy of children's rights and child protection. Furthermore, these policies motivated for the establishment alternative measures of rehabilitating, reforming and re-integrating young offenders.

“A combination of international law, including international conventions and a variety of statutes lay down fundamental rights for children” (Vermooten, 2005: 13). This implies that a variety of international conventions and rules have proved to complement each other. Moreover, these international laws have motivated for the establishment of national child justice legislations that are protective to young offenders. Most importantly, these policies are all based in the children's rights agenda. After having reviewed the provisions of the abovementioned global legislative-frameworks it is, then, evident that the world is indeed a coordinated-system which impacts on each other's legal environment more especially in the debates around children and youth. According to Haralombos and Holborn (1995) in order to understand any part of the system, then that part must be seen in relation to the whole system.

## 2.3. THE CHILD JUSTICE SYSTEM: SOUTH AFRICAN POLICY AND LEGISLATION

In line with the philosophy of democracy and the abovementioned international policies: “South Africa has developed a number of laws that deal with the management of children in conflict with the law” (Nicholas *et al*, 2010: 254). Laws and policy guidelines that incorporate child justice include, the Constitution of the Republic of South Africa Act 108 of 1996; Criminal Procedures Act 51 of 1977 (as amended); Children’s Act 38 of 2005 (as amended), Social Crime Prevention Model (2011); and the Child Justice Act 75 of 2008. These are the main policies and legislative frameworks that have shaped the South Africa’s child justice system (*ibid*).

These policies and legislations are discussed based on the following order: Constitution of the Republic of South African Act 108 of 1996; The Child Justice Act 75 of 2008 and the Children’s Act. Of particular importance are provisions that speak to children’s rights and the diversion processes.

### 2.3.1 The Constitution of the Republic of South Africa (Act 108 of 1996)

Section 28 of the Constitution (Act 108 of 1996) details the rights of children. Outstandingly, Section 28(2) stipulates that “the best interest of the child is of paramount importance” (Republic of South Africa, 1996). This means that Constitution of the Republic South Africa is strongly embedded in the rights-based agenda. In addition, Section 28 (1)(g), states that every child has the right not to be detained in custody, except as a measure of last resort (*ibid*). It is further stated that in an instance where a child is detained, he or she may be detained only for the shortest period of time (*ibid*). Section 28 of the Constitution is consistent with the provisions of the UNCRC, African Charter, UNJDL Rules, amongst others. In affirmation, Temba and De Waal (2002) cited in Ansell (2005: 232) argued that the Constitution of the Republic of South Africa is compatible with the international conventions.

Dixon and van der Spuy (2004: 116) stated that section 28(1) (g) of the South African Constitution sets out two principles for child justice which are the “last resort principle” and “shortest period of time principle”. This means that the Constitution also enshrines the rights of young offender.

Dixon and van der Spuy (2004) stated that the South African Constitution motivated for the establishment of a legislation that would provide details on the procedure of dealing with children who are in conflict with the law. Hence, the subject of child justice has been marginally discussed in Act 108 of 1996. Below, the provisions of the Child Justice Act 75 of 2008 are discussed.

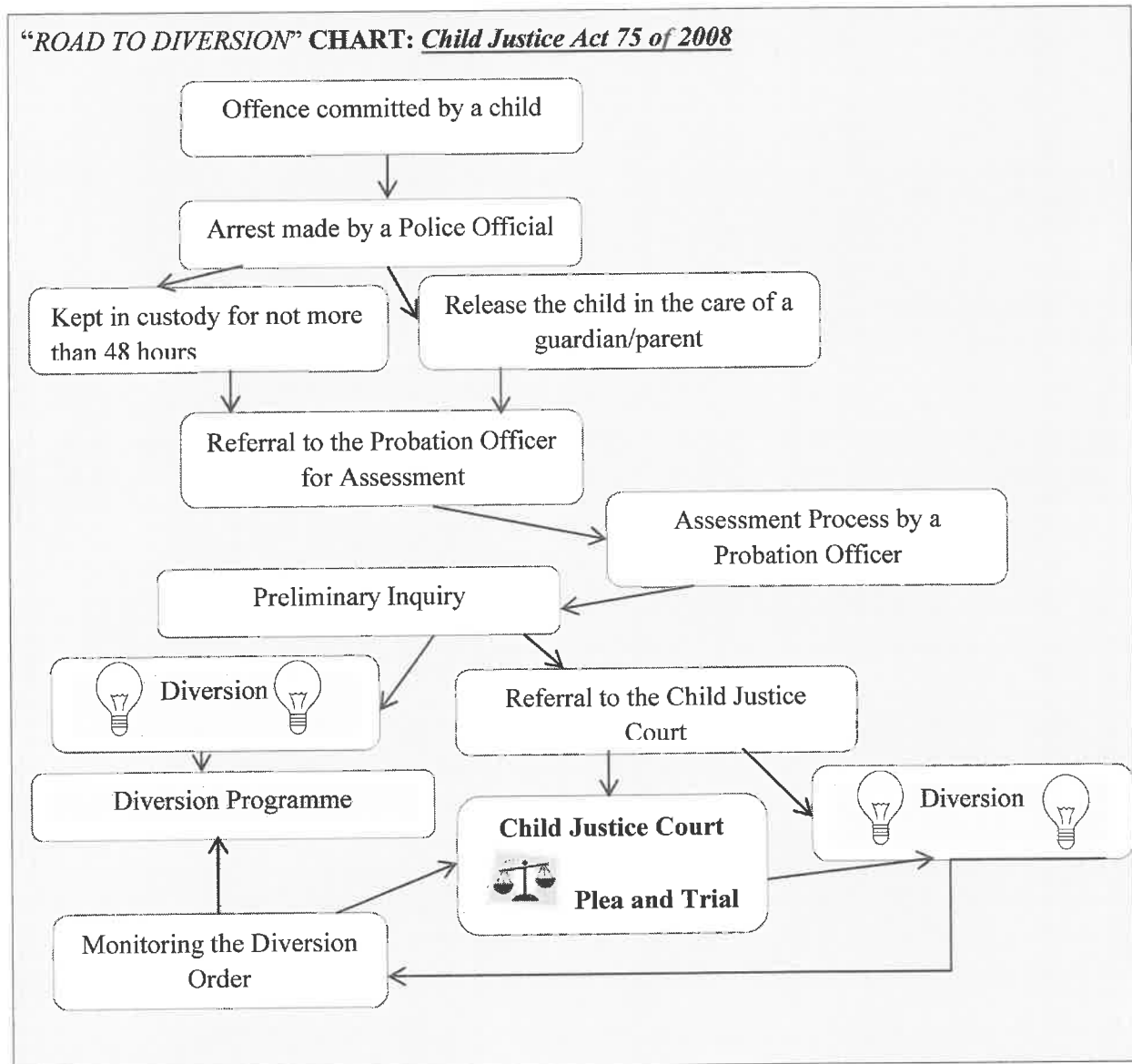
### 2.3.2 The Child Justice Act 75 of 2008 (CJA)

“There is much to be admired about the [...] Child Justice Act 75 of 2008” (Khumalo, 2010: 121). The introduction of the Child Justice Act 75 of 2008 established a clear procedure for dealing with young offenders. The preamble of the CJA defines the aim of this Act as follows:

*“to establish a criminal justice system for children, who are in conflict with the law, in accordance with the values underpinning our Constitution and our international obligations, by, among others, creating, as a central feature of this new criminal justice system for children [...];”*

This means that the Child Justice Act 75 of 2008 incorporates the values of the international policies and those of the Constitution of the Republic of South Africa. The CJA highlights the procedure of dealing with young offenders from the stage of arrest to the final stages which are either diversion or sentencing of young offenders. Below the process of South African child justice system has been charted. The below diagram is in line with the provisions of the CJA (Act 75 of 2008):

**Figure 2.1.: Charting the Child Justice Process**



The above diagram indicates that diversion can be considered either at the Preliminary Inquiry (section 49) or in the Child Justice Court (section 67) before the plea, during the trial or at any stage before the conclusion of case of a young offender (Republic of South Africa, 2008). Additionally, section 57 of the Child Justice Act makes provision for monitoring of compliance of diverted young offenders (*ibid*). This Act also maps out the roles of different role players, including the roles of police officials, probation officers and prosecutors. The CJA has detailed all the finer nuances regarding the implementation of diversion services to young offenders and the administration of the child justice as whole.

Chapter 8 of the Act has detailed the aims of diversion, process of diversion, diversion and the options (*ibid*). Chapter 10 of the Child Justice Act provides the consideration of restorative justice options such as the Victim Offender Mediation, Symbolic Restitution and Family Group Conferencing (*ibid*). This Act has further detailed the step by step methods of implementing diversion in order to ensure uniformity and credibility of implementation. According to Mbambo (2005) diversion is a central feature for the South African child justice system. These provisions of the CJA signify that South Africa is one the countries that have established a conducive environment for the administration of diversion and the UN's child justice agenda (which is discussed earlier in this chapter). Hargovan (2013: 25) has made the following remark: "*the Child Justice Act 75 of 2008 is arguably one of the best pieces of child justice legislation in the world. A central objective of the Act is to encourage the diversion of young offenders away from formal court procedures, giving children the opportunity to express their views on the circumstances of their offending behaviour*". It is thus safe to argue that this Act has provided clear direction which must be taken by the key role players during the execution of their duties as per the instructions and mandates of this Act, particularly when implementing diversion services to young offenders.

This Act has been praised by a number of academics; however, some of the studies have shown that the implementation of this Act is still questionable. Later in this chapter, challenges pertaining to the implementation of diversion and the child justice process will be discussed.

### 2.3.3. Children's Act 38 of 2005 on Child Justice

The main focus of the Children's Act 38 of 2005 is on child protection. However, diversion is briefly mentioned in section 144 (1)(h). This section of the Act marked diversion of young offenders as one of the early intervention strategies which can ensure child protection particularly to children at-risk. Noteworthy, in section 150(1)(c) of the Children's Act children who display uncontrollable behaviour are therefore regarded to be in need of care and protection. Section 138 (1)(b) of the same Act reads as follows: "no person may without lawful authority or reasonable grounds- detain a child with the result that the child is kept out of the care of a person entitled to lawfully care for the child". This suggests that the child's sense of belonging should be considered when dealing with young offenders. These provisions make it clear that the Children's Act is one of the statutes that embrace the

children's right principles, including those of children who are found to have committed penal offences.

#### 2.3.4. Concluding remarks: the South African Child Justice Legislation.

The South Africa's legislative frameworks discussed above provides for the existence of a separate criminal justice system for children. These statutes included the Constitution of the Republic of South Africa; the Child Justice Act and the Children's Act. Section 28 of the Constitution makes provision for the rights of children, including the rights of child offenders. The CJA has numerous provisions that map out the processes of dealing with child offenders. The Children's Act also makes significant provision regarding the protection of children. As a result, it can be concluded that the aforementioned statutes have created a conducive and benevolent environment for young offenders in South Africa. It is also noteworthy that these legislations are in-line with the international standards. Below, is the comparison of retributive justice and restorative justice.

#### **2.4. PUNISHMENT VERSUS RESTORATIVE JUSTICE OPTIONS AS A RESPONSE TO CRIME: "THE RISE OF AN ALTERNATIVE"**

Ntshangase (2016) argued that youth diversion can be viewed as a new way of punishing children in a manner that is less harmful but rather more beneficial to young offenders. "The pursuit of criminal justice often includes an implicit expectation, first, that someone must be blamed or found guilty and, second, that some form of punishment should be delivered" (Drake, Munchie and Westmarland, 2010: 15). This means that to many people the accomplishment of justice/fairness means different things. "There would seem to be a near universal belief that society has a right to formally admonish those who transgress its behavioural boundaries" (Drake *et al*, 2010: 15).

Punishment has an in-depth history across the world. This response, towards injustices, has been nurtured, documented, institutionalised and practiced for many years by many societies (Zehr, 2002). This has motivated for the rejection of restorative justice as a philosophy that is sought to be integrated in the criminal justice systems of many countries (Zehr, 2002).

According to the United Nations (1999) cited in Mbambo (2005: 13) “Punishment is the state’s response to criminal law breakers. It is the last phase of the criminal justice system, the end of a long and complicated process that began with the commission and detection of an offence”. “Traditionally, the sentences handed down upon conviction may involve a fine, imprisonment [... *inter alia*]” (Vermooten, 2005: 3). However, since the introduction of restorative justice philosophy it has been clear that punishment is not the absolute end of the criminal justice process, rather there could be other post-sentence interventions which are based on the notion of restorative justice such as Victim Offender Dialogue (VOD) (Lundman, 2001). Additionally, in some instances punishment can also be substituted by other pre-trial, and presentence restorative justice options such as diversion, family group conferencing amongst others (*ibid*). These latter statements are contrary to Mbambo’s statement that punishment is “the end the criminal process”; rather punishment can be substituted for rehabilitative options.

*“Since 1994 South Africa has faced many challenges but none so widely experienced as crime. The day-to-day perceptions of living in South Africa are characterised by crime, violence and uncertainty. The criminal justice system is undeniably overloaded. Not surprisingly, the criminal justice system is seen by many to be biased, unrepresentative and unjust. However, there are signs of a shift away from punitive and retributive criminal justice practices towards rehabilitative, educational and restorative options.”*

(Muntingh and Shapiro, 1997: 4)

Muntingh and Shapiro (1997: 6) argue that “it is necessary to reflect on the intended purposes of punishment before diversion/restorative justice is discussed”. Muntingh and Shapiro (1997) add that the purposes of punishment include amongst many the following:

- “- to act as deterrent for the offender and society against involvement in crime;
- to protect society against offenders;
- to attain retribution;
- to rehabilitate the offender;
- to make restitution to the victim.” (*ibid*)

The below animated diagram depicts the views of the society about punishment.

**Figure 2.2.: Questionable Justice?**



Adapted from : : <https://prometheuscomic.files.wordpress.com/2007/07/prometheus-illusion-of-justice.jpg>

(Drake, Munchie and Westmarland 2010: 7)

Figure 2.2 above indicates that everyone in society has a perceptual-contribution in the creation of the reality of what is fair and what is unjust, especially in instances where an offence has been committed. This means that societal expectations about justice and the responses to crime may vary, depending on whether the social-beliefs about justice are based on retributive justice or restorative justice principles.

Numerous researchers, such as (Tshem 2009; Kleinhans, 2013; Vermooten, 2005; Skelton and Tshela, 2008), amongst others, have endeavoured to highlight how unkind the criminal justice has been towards children, in South Africa and beyond, over many years. Punishment was the main response in many countries when dealing with criminal offenders, both young and old (*op cit*). It is only in the 1980s, where the world has witnessed the establishment of separate conventions, policies and statutes that speaks to children's rights, child protection and child-based restorative justice practices (Ansell, 2005). Age alone did not automatically afford children the privilege of being protected and dealt with separately in a different justice system which is designed exclusively for young offenders. In light of this, Bezuidenhout and Joubert (2008: 3) indicated that "before the recognition of childhood and adolescence as distinct developmental phases, child rearing practices in England and America were, to a large extent, characterised by cruelty and inhumane treatment". Punishment has always been a known and accepted response in many nations in dealing with felony and misbehaviour of people of all ages.

A report by the United Nations Office for Drug and Crime Prevention has indicated the numerous disadvantages and effects that come with punishment (United Nations, 1999).

Harsher punishment options such as life sentence and the deprivation of liberty has resulted to human rights debates and major evolution in crime policy across borders (United Nations, 1999). Punishment, as a universal philosophy that underpins many criminal justice structures, has resulted to the increase in prison occupancy in many countries (*op cit*). This form of justice (incarceration) did not discount young offenders from being part of the statistical indicators (Department of Social Development, 2011: 2). This signifies that punishment cannot be a sole solution to the war against crime.

In the midst of all international and local crime policies, there are still conflicting views regarding the retributive justice and restorative justice paradigms. According to Drake, Munchie and Westmarland (2010: 16) retributive justice underpins the notion of ‘punishment to fit the crime’ and the notion of ‘justice being seen to be done’. Whilst on the other hand, restorative justice underpins the notion of ‘healing, getting closure, repairing the damage caused by the crime and making amends’ (Skelton and Tshehla, 2008).

The philosophy of restorative justice has gained global attention and it has offered the opportunities of redressing the effects of crime than merely imposing punitive responses to the offender (Zehr, 2002). Hargovan (2008) argued that restorative justice was not introduced to, completely, substitute retributive justice but it has the prospects of achieving the outcomes that cannot be met through retributive justice alone. The restorative justice ethos, lies on the ability of an offender to account for their offensive actions and further put emphasis on remedial effects to, both, the offender and the victim (*ibid*). According to Daly and Immarigeon (1998) the concept of restorative justice refers to an alternative process for resolving disputes, to alternative sanctioning options, or to a distinctively different, “new” mode of criminal justice organized around principles of restoration to victims, offenders, and the communities in which they live. Below, I have discussed the context of diversion in South Africa.

## **2.5. LINKS BETWEEN RESTORATIVE JUSTICE AND DIVERSION: INTERNATIONAL AND LOCAL PERCEPTIONS**

This section presents the discussion on the links between restorative justice and diversion services for young offenders.

“Restorative justice has come to mean different things to different people” (Hargovan, 2008: 90). Some people tend to think that restorative justice means diversion. Hargovan (2008) has endeavoured to clarify this misconception by stating that:

*“[t]he terms diversion and restorative justice are not synonymous or interchangeable. Restorative justice process may include diversion but a diversion on its own, with no participation by the victim, is not necessarily restorative in nature.”* (Hargovan, 2008: 91)

This means 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. Diversion of young offenders has its origins in the principles of restorative justice and the rights-based principles (Hargovan, 2008). Both restorative justice and diversion embraces the notion of holding the offender accountable for their actions (Gallinetti, 2009). According to Hargovan (2013: 32) “diversion programmes are just one of many mechanisms through which restorative values and practices may be incorporated”. This implies that diversion programmes are the sub-elements of restorative justice philosophy. As much as diversion is not interchangeable with restorative justice, but Els (2012) argued that, when dealing with young offenders, it could be beneficial to integrate traditional diversion programmes with a restorative justice option such as family-group conferencing. Furthermore, Els (2012) emphasised that children emerge from family systems, therefore it is important to involve the wider family during the implementation of diversion programmes. Through this, the aims and prospects of the restorative justice paradigm could be achieved (*ibid*).

According to Crawford and Newburn (2003: 19) the popularity of the term ‘restorative justice’ has seen it pulled in divergent and competing perceptions as it is shaped to meet the interests and ideologies of different groups, professions and organisations. “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 and Newburn, 2003: 19). According to Skelton and Batley (2006: 7) programmes and processes of restorative justice must be based on the following elements:

- Addressing harm caused by the offence
- Victim oriented processes

- Encouragement of the offender to take responsibility
- Involvement of at least three stakeholders (victim, offender, the mediator)
- Availability of an opportunity for dialogue and participatory decision making
- Respectful to all parties

Adapted from Skelton and Batley (2006: 7)

Below are the building blocks of measuring the ‘restorativeness’ of a restorative justice programme (Skelton and Batley, 2006). Skelton and Batley (2006: 6) highlighted the following values as elements and building-blocks of a benign Restorative Justice definition. These values can also be used to measure the restorativeness of Restorative Justice Practices (hereafter, RJP). These values can be summarised as follows

**TABLE 2.1: Charting the meaning of Restorative Justice Practices**

| Restorative Justice Principle | Characteristics of the restorative justice process   |
|-------------------------------|--|
| <b>1. Encounter</b>           | <ul style="list-style-type: none"> <li>✓ Meeting</li> <li>✓ Narrative</li> <li>✓ Emotion</li> <li>✓ Understanding</li> <li>✓ Agreement</li> </ul>  |
| <b>2. Amends</b>              | <ul style="list-style-type: none"> <li>✓ Apology</li> <li>✓ Changed behaviour</li> <li>✓ Restitution</li> <li>✓ Generosity</li> </ul>  |
| <b>3. Reintegration</b>       | <ul style="list-style-type: none"> <li>✓ Acknowledging human dignity and worth</li> <li>✓ Providing material assistance</li> <li>✓ Offering moral and spiritual direction</li> </ul>                                     |
| <b>4. Inclusion</b>           | <ul style="list-style-type: none"> <li>✓ An invitation</li> <li>✓ Acknowledgement that the person invited has unique interests</li> <li>✓ Recognition that he or she might want to try alternative approaches</li> </ul> |

(Adapted from Skelton and Batley, 2006: 6)

Table 2.1. highlights four principles that shape the practice of restorative justice. Restorative justice is one of the most flexible theories and social movements which can be adapted in numerous ways in order to achieve “rehabilitation, peace-building, and healing” (Zehr, 2002). It was discussed earlier in this chapter that the current South African child justice reform has been informed by the principles of restorative justice and children’s rights which are embedded in a number of international conventions, rules and scholarly documents.

Section 1 of the Child Justice Act 75 of 2008, defines restorative justice as “an approach to justice that aims to involve the child offender, the victim, the families concerned, and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation” (Republic of South Africa, 2010). This definition of restorative justice consolidates the practices of diversion and those of restorative justice. More interestingly, the ideology of peace-building, rehabilitation and prevention are embraced in the South Africa’s child justice legislation.

According to Skelton and Batley (2006: 1)

*“internationally 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”.*

The philosophy of restorative justice, rehabilitation and child diversion has been adopted by numerous countries such as New Zealand, Australia, England, Uganda, South Africa, Ghana and Kenya.

*“Restorative Justice is recognised as being closely linked to African traditional justice systems. This traditional form of justice preceded colonisation and still exists in South Africa today. Modern restorative justice system practice has its roots in victim-offender mediation (VOM), which became popular in the Western world during the 1970s”* (Skelton and Batley, 2006: 19)

In affirmation, Sloth-Nielsen and Gallinetti, (2004: 34) mentioned that the principles of restorative justice accords with the African indigenous justice system. In their deliberation, Sloth-Nielsen and Gallinetti, state that the African justice system involves informal justice

systems for instance “some customary courts, known as *Izinkundla*, *Izigcawu* or *Makgotla*, are still used in South Africa today, mostly in rural areas” (*ibid*). This means that, as much as the conceptual-etymology of restorative justice began in the Western nations, but it was easily adapted to Africa and South Africa merely because the philosophy and principles of restorative justice are consistent with the African indigenous justice systems. In South African society there is a popular *Nguni* proverb which implies the importance of interconnectedness of people. The proverb reads: “*umuntu ngumuntu ngabantu*” (Elemide, 2009). This African proverb further extends on the spirit of *Ubuntu*, in spite of the faults that one commits against each other but as a nation there is interconnectedness. The formation of the Truth and Reconciliation Commission (TRC) is a typical example of how restorative justice has been practiced in South Africa (Zehr, 2002). Daly and Immarigeon (1998: 2) argue that “restorative justice has emerged in varied guises, with different names, and in many countries; it has sprung from sites of activism, academia, and justice system workplaces”. This implies that despite the names that may be labelled to a restorative justice process, the important factor is the integration of all affected parties in a dialogue that aims to bring about closure in an offence that has been committed to person who is part of the community.

“Methods of restorative justice such as diversion of young offenders, family-group conferencing and victim-offender mediation have caused debates among individuals and groups who still stand to believe that retributive/punitive justice is the sole solution towards felony and delinquency of offenders across countries of the world” (Hargovan, 2008). In this regard, Hargovan (2008: 4) argues that “[o]ne set of countries, led by the United States is adopting the punitive, no compromises, just-deserts route, accompanied by minimum sentences, curfews and privatization of prisons”; whilst restorative justice practice is partly supplementing punitive justice in many other countries (*ibid*).

Skelton and Batley (2006) conducted a nation-wide qualitative study which explored the implementation of restorative justice services. Their actual research took place in mid-2005. This research was able to identify strengths, weaknesses and opportunities for enhancement of existing programmes through capacity development and support (*ibid*: 3). According to the research of Skelton and Batley (2006), it became evident that in South Africa there are various programmes which are “fully restorative” and those that are “partially restorative”. This means that the abovementioned researchers had a scale of measuring the extent of

‘restorativeness’ on each project in the country. It was evident that when they reported on KwaZulu-Natal, specifically, they overlooked the scope of restorative practices in Ladysmith; although they attempted to investigate projects in neighbouring towns such as Newcastle, amongst others. Thus, this gave the impetus for the narrow-focus of this research project which was then based in Emnambithi/Ladysmith. Their research was the “first attempt of capturing a nation-wide [qualitative] information of what is happening” (Skelton and Batley, 2006: 3).

## **2.6. CONTEXT OF DIVERSION OF YOUNG OFFENDERS IN SOUTH AFRICA**

### **2.6.1. History and developments of diversion in South Africa**

According to Mbambo (2005:76) “experiments with diverting young offenders were pioneered by the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO)” In the early 1990s – with the cooperation of public prosecutors – NICRO introduced the use of diversion as an alternative to incarceration, especially for children who had committed petty offences (*ibid*). Sloth-Nielsen and Gallinetti, (2004: 38) remarks: “commencing with the introduction of a life skills diversion programme in 1992 – presented to some 200 children in one province of the country – diversion has spread geographically to all South African provinces. During 2001/2, more than 16 000 children were accepted onto the diversion programmes of the National Institute for Crime Prevention (NICRO)”.

These innovations date back to a point where diversion was being offered without any existing statutory framework in place, up to a period where there was a formation of the first draft of the Child Justice Bill which was later endorsed as law (the Child Justice Act 75 of 2008). According to Sloth-Nielsen (1999:469) cited in Tshem (2009: 16) “although campaigning for the drafting of separate child justice legislation can be traced back to the 1980s, [but] it was only with South Africa’s readmission to the international community that this early advocacy work yielded results”. Early experiments of diversion in the South African child justice system were informed by the provisions of international laws and academic debates regarding the children’s rights agenda (Skelton and Tshehla, 2008).

In the early 2000s various scholars wrote intensely about the Child Justice Bill before it was formally passed into law (Child Justice Act 75 of 2008). It was during this period where the

prospects of diversion of young offenders were adequately highlighted. Academic debates were triggered by the fact that there was no legal framework, in place, which extended from the provisions of section 28(1)(g) of the RSA Constitution and other international agreements. During the consultative process of the Child Justice Bill, diversion has been delved-into by numerous scholars in the international and South African arenas.

Vermooten (2005) revealed in her study that after apartheid but prior to the promulgation of the Child Justice Act, children were still harshly prosecuted and kept in prisons whilst awaiting trial. In affirmation, Tshem (2009: 13) remarks: “[t]he South African criminal justice system has a history of not being kind to children and youth in trouble with the law”. For many years this has been locating children at a vulnerable position of being harshly prosecuted for their criminal behaviour, thus ignoring their children’s rights (Tshiwula, 1998). Zenzile (2008: 3) also argued that since there has been no proper legislation in place which spoke to ‘diversion’ this resulted in a great number of children-in-conflict with the law, being subjected to inhumane treatment by the authorities, including being thrown into prisons with older offenders.

Qualitative studies by Hargovan (2008) and Skelton and Tshela (2008) explain that the concept ‘diversion’ has its origin and epistemology in the restorative justice paradigm. For this reason various research initiatives have been based on the broader concept of restorative justice with minimal insight to the ‘implementation of diversion’ as a standing process of restorative justice. In particular, many of these studies were conducted prior to the promulgation of the Child Justice Act 75 of 2008 as a law.

In addition, Mbambo (2005:84) highlighted that “research has shown that recidivism rates are lower for children that have participated in diversion programmes”. This indicates that diversion of young offenders has brought positive outcomes in South Africa. On the other hand, Davis and Busby (2006) conducted a study which was based on the views of the diversion programme participants. In this study they highlighted that “the feedback received was of a positive nature and most of the research participants verbalised a positive personal change after participating in the programmes [of diversion]” (Davis and Busby, 2006: 1). However, this study was conducted prior the promulgation of the Child Justice Act 75 of 2008.

Some of the research on diversion does not aid much because these research projects were conducted prior to the proclamation of the Child Justice Act 75 of 2008. Below, I have discussed challenges regarding the implementation of the diversion and the CJA.

**2.6.2. Challenges with the implementation of the diversion and Child Justice Act 75 of 2008**

Despite the explicit processes that are provided for in the CJA, numerous studies have shown that, there are still challenges pertaining to implementation of the Child Justice Act and diversion in particular (Steyn, 2012; Badenhorst, 2011; Els, 2012, Kleinhans, 2013). These authors pinpointed numerous challenges that are related to the implementation of the Child Justice Act in different parts of the country.

Badenhorst (2011) evaluated the “implementation of the Child Justice Act 75 of 2008”. One of the main arguments of Badenhorst (2011) is that the Act has good intentions, however the outcomes are questionable. Badenhorst (2011) revealed that lack of training of key role players is one the factors that impede the implementation of the CJA.

Badenhorst (2011) highlighted 13 challenges regarding the implementation of the child justice legislation.

| <b>Challenges regarding the Implementation of the Child Justice Act</b>   |
|---|
| 1. Lack of public awareness about the Act, its provisions and benefits is one of the challenges that were discovered by the study of Badenhorst (2011). |
| 2. Additionally, lack of training of police officers about the Act also manifests more challenges.  |
| 3. Decrease in the number of arrest   |
| 4. Shortage and unavailability of probation officers  |
| 5. Decrease in the number of diversions   |
| 6. Conducting preliminary inquiries   |
| 7. Postponement of proceedings  |
| 8. Legal representation   |
| 9. Evaluation of the criminal capacity of children 10 years or older but under the age of 14 years  |

|  |
|--|
| 10. Transportation of children in detention                              |
| 11. Lack of uniformity in the official forms used by the courts          |
| 12. Educational programmes for children awaiting trial in prisons        |
| 13. Lack of training of all the role players in the child justice system |

**TABLE 2.2: Challenges pertaining to the Implementation of then Child Justice Act. (Badenhorst 2011)**

These challenges indicate that the introduction of a separate criminal justice system for children did not eliminate all the challenges within the child justice system. Based on these findings by Badenhorst (2011) it is my intention, in the analysis chapters, to benchmark against these challenges and therefore ascertain whether the Emnambithi/Ladysmith municipal area bears some of the abovementioned challenges.

With regard to the challenges of diversion, Khumalo (2010) indicated in her research findings that lack uniformity, regarding the implementation of diversion services, was amongst the key challenges regarding the implementation of diversion. Correspondingly, Kleinhans (2013) also noted that there has been inconsistency regarding the implementation of diversion in South Africa. This means that the theoretical prospects of the CJA are positive whilst there had been numerous challenges with its implementation.

Mbambo (2005: 88) argues that, as much as the notion of diversion has been noted to be appealing to policy-makers and scholars but the “challenge is to ensure that court personnel and people dealing directly with child offenders recognise the value of diversion and also make use of the diversion opportunities available at every level”.

Khumalo’s (2010) research was qualitative and it was based in Port Shepstone KwaZulu-Natal, South Africa. In her qualitative study, Khumalo sampled probation officers and prosecutors as participants. Notably, Khumalo (2010) excluded the assistant probation officers and programme facilitators of diversion services to young offenders. Her findings showed that “diversion has been marked by inequalities such as urban biasness of diversion services, racism and discrimination, based on gender and age” (Khumalo 2010: 34). Hence, this was the situation in year 2010, in Port Shepstone. Additionally she added that:

*“The study, through interviews with probation officers and prosecutors, revealed that most of the justice personnel, the probation officers and the prosecutors find diversion to be the best way of punishing and rehabilitating the juvenile offender. The reasons they gave for being in favour of diversion are that the juvenile offender is given the chance to re-learn and re-evaluate what are acceptable values and actions within society. Often, the idea of the difference between right and wrong is used to capture this view. Diversion for them represents a second chance for a normal life, an opportunity to (re)learn accepted societal values and conducts.”* (Khumalo, 2010: 118)

This means that Khumalo noted positive attitudes, about diversion, amongst the key role players of youth diversion. In contrast on earlier, a study by Muntingh (1998) discovered that the majority of prosecutors had false knowledge of the content of various diversion programmes, which was probably due to lack of adequate training. This signifies that in the mid-1990s, some of the role players in diversion, such as prosecutors, were uninformed about contents of diversion services. “At times probation officers encounter challenges and obstacles which are due to a lack of cooperation of the role players within the criminal justice system” (Tshem, 2009: 17). In light of these conflicting results, it was then clear that the setting (time and place) pose a significant impact in the research findings of different authors about the attitudes of key role players in the child justice system.

Els (2012: 115) in her study discovered that the lack of an appropriate information system was an impediment in the implementation of diversion services to young offenders in Pheonix and Pinetown areas. She mentioned that “the court is unable to tell whether or not a child has been through the system before. This makes it difficult to determine eligibility for referral to a diversion programme” (*ibid*).

Botha (2007) and Steyn (2011) also conducted studies which explored the effectiveness of diversion programmes. Specifically, Steyn (2011) articulated that his study identified various challenges in providing diversion. According to Steyn (2011: 165) a “cross-cutting challenge relates to the absence of parents in programme delivery”. In this regard, a study by Els (2012) explored the involvement of parents and family members in diversion programmes. In her research, the findings revealed that “...the majority of the children benefitted from the programme in terms of positive behaviour change and preventing reoffending” (Els, 2012: 112). Moreover, Els (*op cit*) mentioned that parents who had supported their children during the course of the programme tended to have better relationships with their children, and were

able to sustain the outcomes of the programmes more efficiently. With regard to compliance with the diversion order, Els (2012: 115) discovered that "...some children and family members do not attend the required sessions due to inadequate financial resources".

Additionally, Tshem (2009) conducted an exploratory study that investigated the implementation of family-group conferencing from the perspectives of the parents and the young-offenders themselves. Family-group conferencing is part of the prescriptions of the Child Justice Act 75 of 2008 and the Probation Services Act 116 of 1991 (as amended). In her study, Tshem (2009) revealed the quadrilateral relationship that exists among the young offenders, victims, probation officer and the SAPS (South African Police Service) in enabling the achievement of this restorative justice process (family-group conferencing). This study exhibited the insights and experiences of young offenders and their parents but it overlooked the experiences of the role-players of diversion which are probation officers, assistant probation officers, prosecutors and diversion programme facilitators. Kleinhans (2013: 166) argued that "collaboration between different role players is needed for the effective implementation of the Act; therefore opportunities for regular networking should be created by establishing a forum focusing on issues regarding the Child Justice Act and youth diversion."

Vermooten (2005) conducted a desktop-study which dissected whether the South African child justice policies and intervention practices on juvenile offenders were on par with international standards. Vermooten (2005) concluded that the legislation that was in-force prior to the promulgation of the CJA as law, was not benevolent to young offenders and their rights. Furthermore, the then legislation was not intelligibly in-line with the child-friendly provisions that are stipulated in the abovementioned national and international statutes (*ibid*). Nonetheless, the scientific methodology of Vermooten's study was indeed qualitative however it did not involve face to face interviews with the role players of child justice. Additionally, this study paid a special focus on the sentencing and intervention options of juvenile offenders. Moreover, Vermooten's study was conducted prior to the existing child justice legislation.

In 2013, Hargovan (2013) conducted a study at Khulisa Social Solutions (Pinetown) where she investigated the statistical information of children who were referred to Khulisa from April 2013 to September 2013. Furthermore, she interviewed diversion programme

facilitators and young offenders. This means that her study was both quantitative and qualitative. In this study the "... profile of the children was compiled from documentary/statistical information in 'divertee' case files at Khulisa's regional office in Pinetown" (Hargovan, 2013: 27). This study highlighted that diversion service providers "tend to not pay much attention to an evidence-based approach to programme delivery, and do not put in place adequate mechanisms whereby the efficiency and effectiveness of the programme can be properly measured".

Other challenges that exists in the child justice system is the fact that: "little or no attention is given to the long-term interests of the child offender, the victim and the community" (Gxubane, 2010: 37). In affirmation, De Klerk (2012: 1) also argued, in her study, that in the criminal justice system "there is one crucial role-player that is often forgotten, namely the victim".

My study has attempted to depict the current status-quo of the implementation process in diversion in Emnambithi/Ladysmith. Hence, the results are detailed in chapter 4. Supervision and monitoring of diverted young offenders is one of the mechanisms of enforcing diversion in South Africa. Below, this phenomenon has been discussed.

## **2.7. TRENDS OF MONITORING AND SUPERVISING YOUNG OFFENDERS IN SOUTH AFRICA**

It is without doubt that juvenile offenders are a typical example of involuntarily clients to rehabilitative services (Trotter, 2006). In this regard, involuntary clients are known to be averse to diversion services therefore monitoring of diversion orders becomes critical (*ibid*). "Typically, compliance monitoring involves bringing defendants back to court post-plea/post-disposition to ensure adherence to court ordered conditions," (Centre for Court Innovation, 2002: 1). It is further extended in the text that "... regular compliance hearings sends the message to defendants that the court takes [...] crimes seriously and is informed about defendants' behaviour, and that non-compliance with court orders and mandated programs will be met with swift sanctions" (*ibid*).

At a national level, the South African Child Justice Act 75 of 2008 is enforcing the manner in which court orders should be monitored particularly when the child offender has been diverted (Child Justice Act, section 57). Specifically, section 57 (1) of the CJA states that the

inquiry magistrate should designate a probation officer or any other suitable person to monitor compliance and non-compliance of a child who is diverted, after having committed a criminal offence. This section stipulates a statutory mandate to probation officers for supervising children who have assumed the process of diversion. However, it is concerning that the Child Justice Act does not indicate a clear description of a *suitable person*. It is also concerning that this vagueness of the CJA particularly with regard to who should monitor diversion (suitable person) might result in inconsistent practices regarding monitoring of compliance and non-compliance of diversion orders. Indeed it is explained in the CJA that the Probation Officer should monitor diversion orders, however with regard to other practitioners (suitable persons) the Act is unclear in demarcating the credentials of ‘suitable persons’ in a situation where diversion orders are not monitored by Probation Officers. Emerging from this concern, it is within the scope of this study to explore the manner in which monitoring of diversion order is being practiced.

The regulations of the Child Justice Act 75 of 2008 provide guidelines regarding the role of public prosecutors in dealing with compliance and non-compliance of young offenders with the diversion order. McGregor (2010) has endeavoured to summarise the procedure of implementing the process of monitoring the diversion order. McGregor’s views are as follows:

- In an event where a child has complied with all the conditions of the diversion order then it is a principled expectation that the prosecutors should withdraw the case against the young offender (McGregor, 2010).
- Contrary in an event where it is reported that the child has failed to comply then the consequences would then be the restoration of all charges and that the case should be transferred to the Child Justice Court for plea and trial (*ibid*).

Monitoring of compliance and non-compliance (of diversion orders) informs the public prosecutors, among other role-players in criminal justice, about the next action to be taken towards the child when the child has either complied or defaulted against the provisions of the diversion order. Whilst on the other hand, monitoring also informs interested parties about the effectiveness of the diversion process in criminal cases that are involving young offenders. In this regard, Khumalo (2010) has argued that there is an ambiguity as to whether non-compliance with diversion orders should lead to retribution (punishment) and/or to alternative restorative justice measures. In light of this, section 58 of the Child Justice Act

provides that it is in the discretion of the prosecutor or the child justice court to decide as to whether prosecution continues or an alternative diversion option is considered.

Tshem (2009: 18) noted that the “lack of cooperation of young offenders poses challenge in the successful implementation of diversion programmes”. In the same vein, Tshem adds that “when a young offender fails to adhere to the stipulated conditions of a diversion programme, probation officers make a recommendation to court that normal court proceedings should be instituted against the young offender” (*ibid*). In affirmation, Hargovan (2013: 30) conducted a study at Khulisa Social Solutions, in her findings it is a highlight that some of the child offenders often lack interest to comply with diversion programmes. It is further mentioned in the same text that, some of the challenges which leads to non-compliance was the issue of transport (bus strikes and transport costs) (*ibid*). This signifies that compliance and non-compliance of young offenders can be surrounded by various conditions, given the country’s status of inequality.

An Australian author (Trotter, 2006: 183) discussed an approach of monitoring involuntary clients that is called “single case study evaluation” where the worker normally evaluates the progress of the client against specific objectives through the course of intervention. He adds that, this type of monitoring generally “...involves the client commenting on their progress” (*ibid*). Hargovan (2013) noted that Khulisa Social Solution also uses the same method of evaluating their diversion programmes.

Trotter (2006: 4) argues that a “probation officer, [...], has a responsibility to ensure that the probationer carries out the requirements of the court order”. Furthermore, he adds that the “probation officer might have to report to a court about the progress of the probationer”. In essence, Trotter (2006) is arguing about the dual roles that the probation officer has to, simultaneously, undertake which is the ‘surveillance role’ and the ‘rehabilitation role’. As a result, the author highlights the difficulties that are normally experienced by probation officers when they are working with involuntary clients [child offenders in this respect]; particularly when the worker has to monitor compliance and render therapy to the offender. In affirmation, American scholars have argued argued that “[f]rom inception, probation service providers have faced the oft-competing goals of law-enforcement, public safety and the rehabilitation of offenders” (Purkiss, Kifer, Hemmens, and Vermer, 2003: 12). Therefore, these competing roles have proved to affect the manner in which probation officers monitor court orders, particularly in Australia and in the United States of America. As a result, it is of

concern that there is a gap in South African literature regarding the experiences of probation officers when they monitor court orders. As a result, this study has partly investigated the practice of monitoring of court orders in the child justice system by establishing the experiences of key role players within the child justice system. It is a concern that most of the studies regarding compliance of diverted youth are not local.

Archambeau (2011) have argued that one of the primary roles of probation officers is their supervisory role. On the other hand Kisten (2001) argues that social workers are not well confident and equipped to render court services. In affirmation, Peters (2011: 359) stated that social work education does not provide adequate guide for organizing effective probation services. Additionally, Khumalo (2010) is also concerned whether social workers, in South Africa, are adequately trained in the application of statutes since their legal responsibility has also increased.

## **2.8. CONCLUSION: CHAPTER 2**

This chapter contextualises and further discussed previous studies on child justice and restorative justice. In this chapter both international and national statutory/policy frameworks that inform the existence of diversion of services for young offenders are discussed. This chapter indicated the influence of international crime policies to the South African child justice practices. This chapter also discussed the difference between restorative justice and punishment. Additionally, the links between diversion and restorative justice were discussed. It further detailed the context of diversion in South Africa. This discussion included the history of child justice in South Africa and challenges associated with the implementation of diversion.

Discussions in this chapter asserted that the rights-based approach, restorative justice philosophy and the principles of children's rights influenced the development of the child justice system internationally. As discussed in this chapter, the South Africa's child justice system has seen profound challenges and developments over the past decades. Previous research has shown that the presence of separate child justice legislation does not eradicate problems in the child justice system (Badenhorst, 2011) and Kleinhans (2013). Therefore, grass-root studies that scrutinize the implementation challenges are essential.

The following chapter discusses the methodological approach of the study.

## CHAPTER 3- RESEARCH APPROACH AND METHODOLOGY

### 3.1 INTRODUCTION

In this chapter the research methodology used in this study is detailed. In order of sequence, the following is discussed: the research approach and research design, the location of the study, sampling strategy, data collection, data analysis, issues of validity and reliability, ethical considerations and limitations to the study. Below, is the discussion of the research approach.

### 3.2. RESEARCH APPROACH

This study was implemented qualitatively. Rubin and Babbie (2013) stated that qualitative paradigms deal with subjective data as perceived by the participants. An interpretative qualitative approach was most viable because this research study intended to explore and describe the experiences of key role-players regarding the implementation of diversion services to young offenders.

De Vos, Strydom, Fouché and Delport, (2011: 8) argue that a qualitative interpretative approach “maintains 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”. The interpretative approach “is an approach that aims to understand people” (Maree, 2007: 47). In addition, according to Terre Blanche, *et al.* (2006: 273-274) an “interpretive paradigm involves taking people’s subjective experiences seriously, as the essence of what is real for them (oncology), making sense of people’s experiences by interacting with them and listening carefully to what they tell us”. Through the use of this approach, experiences of key role players were obtained and interpreted.

An interpretative paradigm afforded the key-role players of diversion an opportunity to describe, interpret and further give meaning to their actions when implementing the processes of diversion to young offenders. According to Maree (2007: 64) qualitative approaches are

used to answer questions about the complex nature of phenomena. As a result, the latter arguments gave motivation about the viability of an interpretative approach to this study.

### **3.3. RESEARCH DESIGN**

Terre Blanche *et al.* (2006: 34) explained that “research designs are plans that guide the arrangement of conditions for collection and analysis of data”. A descriptive-exploratory research design was adopted in order to pursue detailed information about the implementation of diversion services in Emnambithi/Ladysmith. Due to the qualitative nature of this study, a descriptive-exploratory research design was feasible because it was therefore possible to obtain and understand the experiences of key role players when administering diversion services.

Neuman (2011); Fouché and De Vos (2011: 95-96) define both exploratory and descriptive designs comparatively. Neuman (2011) states that the advantages of using descriptive and exploratory designs are that these research designs aid a qualitative researcher to gain unrestrained thicker descriptions and deeper meanings. A descriptive research design presents a picture and specific details of a situation, social setting and relationships (Fouché and De Vos, 2011: 96). Comparatively, an exploratory research is conducted in order to gain insight into a situation, phenomenon, community or individual (Fouché and De Vos, 2011: 95-96). The next section describes the location of the study.

### **3.4. LOCATION OF THE STUDY**

This study was conducted in South Africa, KwaZulu-Natal, in a municipal area named Emnambithi/Ladysmith Municipal area. This municipal area is part of the UThukela District Municipal. Below is the map that illustrates the spread of Emnambithi/Ladysmith municipal area:

**Figure 3.1.: Map Overview of Emnambithi/Ladysmith Municipal Area**

(Adapted from IDP Ladysmith 2012-2017)



Emnambithi/Ladysmith municipal area comprises of three (3) magisterial courts and two (2) Service Offices of the Department of Social Development. In addition, within the location of this research study, there is one (1) accredited diversion service provider which is *Khulisa Social Solutions*. This area currently functions as the main economic hub of the Uthukela District Municipality with most of the regional offices and industries located in it (*ibid*).

Emnambithi/Ladysmith is in the Midlands of KwaZulu-Natal province. “Emnambithi/Ladysmith spans over an area of 3 020 km<sup>2</sup> of which 70% is rural land with limited basic services and infrastructure” (Ladysmith IDP, 2012). In terms of infrastructure this location is noticeably disadvantaged. However, it is further articulated in the Ladysmith IDP (2012) that high crime rates is a threat to the limited resources of this location. Below, the sampling strategy for this study is discussed.

### 3.5. SAMPLING STRATEGY

A non-probability sampling procedure was adopted in this study. Stydom and Delport (2011: 392) refer to non-probability sampling as a selection technique that is characterised by the following features:

- “where some units of the population have a zero chance of being selected” (*ibid*);
- “where the probability of being selected cannot be determined”(*ibid*);
- “and where there are no rules regarding the sample size” (*ibid*).

According to Terre Blanche *et al.* (2006: 71) the “population selected for the study should be those to whom the research question applies”. In affirmation, Haselau (2015: 17) remarks: “qualitative sampling’s aim is to provide rich information, and so there are two main considerations – that of appropriateness, and of adequacy”. Therefore, this study comprised of four samples namely:

- Sample 1: Probation Officers
- Sample 2: Assistant Probation Officers
- Sample 3: Diversion Programme Facilitators
- Sample 4: Public Prosecutors

This study involved the entire population of probation officers (excluding the researcher), assistant probation officers, and diversion programme facilitators within the Emnambithi/Ladysmith municipal area. It was feasible to select the entire population of the first three samples because the number of participants in these 3 groups was limited. Selecting the entire population of 3 sample groups strengthened the trustworthiness of the findings because there was no one, amongst the first 3 samples, who was excluded and consequently unable to share their experience of the child justice system.

Moreover, the researcher used purposive sampling in order to recruit public prosecutors (sample 4) who formed part of this research. According to Strydom and Delpont (2011), purposive sampling ensures that the researcher chooses a particular case because it illustrates some features that are of-interest for the study. This means that, in this study, the researcher chose research participants who had the potential of providing the required insights of diversion. Noteworthy, it was not every prosecutor who had the experiences of the child justice system. The sampling design has been detailed in the table below:

**Table 3.1. Sampling Design**

| Sample Group | Discipline                       | Number of participants | Sample type                              | Employer                             | Criterion for sampling   |
|--------------|----------------------------------|------------------------|--|--------------------------------------|--|
| Sample 1     | Probation officers               | 2                      | Entire population (excluding researcher) | KZN Department of Social Development | (a) Must be working in Emnambithi/Ladysmith<br>(b) Must be working with young offenders  |
| Sample 2     | Assistant Probation Officers     | 2                      | Entire population                        | KZN Department of Social Development | (a) Must be working in Emnambithi/Ladysmith<br>(b) Must be working with young offenders  |
| Sample 3     | Diversion Programme Facilitators | 3                      | Entire population                        | Khulisa Social Solutions             | (a) Must be working in Emnambithi/Ladysmith<br>(b) Must be facilitating diversion programmes for young offenders   |
| Sample 4     | Public Prosecutors               | 5                      | Purposive Sampling                       | National Prosecuting Authority, KZN  | (a) Must be working in Emnambithi/Ladysmith<br>(b) Must be involved in the prosecution of young offenders<br>(c) Must have a minimum experience of one year. |

The above table indicate that the selected population was chosen because of their valuable characteristics. The characteristics of the participants were in-line with the research

objectives. This means that all selected participants had the potential of revealing the systemic issues surrounding the implementation of diversion services in Emnambithi/Ladysmith. The total number of 12 participants participated in the research: 2 probation officers, 2 assistant probation officers, 3 diversion programme facilitators and 5 public prosecutors from 3 magistrates' courts. According to Fouché and Delport (2011: 66) in qualitative research, "data sources are determined by information richness of settings". The next section discusses data collection.

### **3.6. DATA COLLECTION**

This section is discussed as follows: data collection instrument; experiences of data collection, the setting of the interviews and recording of data. But firstly, the researcher have discussed the rationale for adopting semi-structured interviews as the main instrument for collection of data.

#### **3.6.1. Data Collection Instrument**

In this study I used semi-structured interviews (Appendix 1) as the method of data collection. According to Fouché and Delport (2011: 65) "qualitative researchers, as key instruments, collect data themselves through interviewing participants". Likewise, in this study I collected the data myself, in order to easily drive the process of semi-structured interviewing.

The benefit of utilizing semi-structured interviews is that this type of data collection instrument is mutually flexible, informal and interactive (Naidoo, 2010). Furthermore, this type of interview allowed me to predesign themes and/or open-ended questions that were later used for the actual interview process and during data analysis (Rubin and Babbie, 2013).

During the process of data collection, this research instrument guided me to keep track of the primary intention of the study and further allowed me to be flexible enough to probe and also add more open-ended questions which emerged from the responses of the participants. Strydom (2011: 335) argues that keeping the research objectives in mind is very important because it helps any researcher to stay on track and be able to distinguish between what is important and what is not. During the interviewing process, I was able to follow up on particular interesting responses that were emerging along the conversation. Additionally, in

later interviews I was also able to clarify and verify some of the findings that emerged from the responses of the first few respondents. As a result, the participants were able to give detailed information and a fuller picture about their subjective meanings of the research phenomenon.

Since the study involved four (4) sample categories, it is worth-mentioning that four interview schedules were developed. Each interview schedule was distinctly intended for each sample group, ranging from Sample 1 to Sample 4. Within each interview schedule, some of the interview themes were common across the four sets of the interview schedules. The reasoning behind this was to explore whether their individual views, regarding certain topics, were either alike or contradictory. On the other hand, some of the interview themes were different from one another given the diversity of job functions amongst the four sets of key role-players in the child justice system, particularly when implementing diversion.

Developing both common and dissimilar interview themes served as an advantage during the data analysis, when identifying common themes, triangulating and interpreting. Below is the discussion on my data collection experiences.

### 3.6.2. The actual experience of data collection: *setting of the interviews*

As mentioned earlier, the interviews were conducted by the researcher himself. The interviews ranged between 36 minutes to 1 hour 24 minutes for some participants. Data was collected in English because all participants were literate and fluent in English.

The location where all 12 interviews were conducted was non-threatening, and quiet. According to Yin (2011) the actual environment of the interview should be non-threatening; quiet; comfortable; and also afford participants their privacy during the research process. In this respect, all the individual interviews were conducted in a place where the participants normally perform their daily duties. All interviews were conducted in an office setting, where I was solely discussing the research questions in the absence of any other third party. I made appointments with all respondents to conduct the study in their respective offices rather than requesting the participants to come to a place that was chosen by me. This ensured that all participants were comfortable enough; hence they were located in a familiar environment during the research interviews. It was essential to collect data in a place where there were

minimal chances of intimidation and disturbances. As a result, this assisted me in securing their availability. Additionally, the interviews were conducted during times that were also proposed by the interviewees. According to Terre Blache *et al.*, (2006) the setting of the interview is crucial for data collection, because it determines the quality of responses from the participants. Below, is the discussion about the process of recording data.

### 3.6.3. Language

All participants held a minimum of one tertiary qualification. This means that the participants of this study were all literate and therefore understood English as a language of instruction. All 12 interviews were conducted in English. I had ascertained that all the participants were comfortable and fluent to use English. The participants were at liberty to use their indigenous languages. However, all participants allowed the researcher to use English through to the end of data collection.

### 3.6.4. Recording of Data

According to Maree (2007: 89) “recording of data must be done in a meticulous manner”. This process is further important because it directly affects the credibility of the collected data. In this regard, Els (2012) also stated that it is difficult for a researcher to simultaneously asks questions whilst he/she is recording the responses.

As a result, in this study an audio recorder was utilized in order to capture the conversation word for word. Since the use of sound recorder is an ethical issue, thus it is worth-mentioning that permission was obtained from all participants prior to the use of this apparatus. Royse (2011) argues that some participants might feel threatened where a sound recorder is being utilized during the interview. Participants also had a choice of requesting the researcher to switch-off the audio recorder at any stage of the interview. Fortunately, none of the participants requested that the sound recorder should be switched-off, as result it was utilised for all 12 interviews. The raw data of this research project was recorded in a verbatim manner. This type of recording was advantageous during the process of data analysis.

The process of recording and transcribing was done meticulously, in order to avoid compromising the quality of data that was captured from a qualitative interview. Below is the discussion of data analysis

### **3.7. DATA ANALYSIS**

Royse (2011: 309) describes data analysis as the stage of research whereby the collected data “comes alive”. This means that the process of analysing data helps, both, the researcher and the reading audience to make sense of data that was gathered. Royse (2011: 309) further stated that during data analysis it’s when “patterns emerge, trends are detected” and it where the confirmation of underlying assumptions gets to be established.

Specifically in this study, data was analysed through the use of thematic analysis. Fouché and De Vos (2011: 91) describe thematic analysis as one of the ideal approaches of analysing data in qualitative study. Thematic analysis is defined as the scrutiny and/or the breakdown of printed text or documents that seek to quantify the raw data in terms of pertinent categories (Neuman, 2011). As highlighted above that in this research, data was audio-recorded and transcribed; as a result it was viable to apply thematic analysis because individual transcripts were available to be used as ‘printed texts’ (*ibid*).

Data analysis was inductive in nature, in a sense that I was able to identify multiple passages that were common and contradictory within the responses of all participants. This was done with caution in order to guard against altering and misinterpreting the experiences of key-role players in the child justice fraternity. As mentioned above in this chapter, the sample of the study was diverse, however their experiences were somehow interdependent. As a result the responses of the participants were diverse but significant for verifying the truthfulness of the responses of one participant against the responses of other participants.

According to Terre Blanche and Durrheim (1999) and Yin (2011: 177) thematic analysis includes five (5) stages. These stages includes (1) familiarization and immersion; (2) inducing of themes; (3) elaboration; (4) interpretation and (5) checking. In this study, the researcher followed the similar trend during the analysis in order to scrutinize, dissect and report the findings of the study.

### 3.7.1. Familiarization and immersion

The first step was familiarization and immersion. According to Clark *and* Braun (2006: 16) most qualitative researchers collect data themselves; as a result they often come to the analysis with preliminary knowledge of the responses of the participants. During familiarization and immersion, I repeatedly perused the transcripts in order to familiarize myself with the contents of each interview. The researcher further listened to the audio records of the research several times, in conjunction with the textual transcripts. This helped the researcher to gain a preliminary understanding of the findings. According to Terre Blache *et al.* (1999) cited in (Ntshangase, 2016: 58) during this stage the researcher is expected to read texts repeatedly and may further highlight some of the text with different and customized colours for the purpose of categorizing the findings in successive phases of the analysis. Likewise, the researcher embarked in this exercise in order to initiate the analysis process.

### 3.7.2. Generating themes

According to Sherman and Reid (1994: 56) the task of the qualitative researcher is to meaningfully transform the richly textured data into useful and understandable information. Therefore, the second step required the researcher to commence with coding and thereafter create subtopics that were in line with the research objectives. According to Maree (2007: 105) coding is the process of reading carefully through transcribed texts, line by line, and dividing it into meaningful analytical units. After creating these meaningful analytical units, the researcher started to scan data that match these subtopics.

Themes that were generated were in line with the research objectives and systems theory. This means that the themes were not detaching the experiences of one sample from the experiences of the rest of the participants. Instead, the generated themes were inclusive of the experiences of interdependent sample groups and individual participants.

The initial semi-structured interview schedules/questions made it easier to generate some of the themes because most of the obvious topics were derived from the semi-structured interview schedules. However, some of the themes emerged from the unsolicited responses

that were common amongst participants. Under each theme, the researcher generated sub-themes.

Creating themes and sub-themes helped me to manage the data and further arrange the findings in a manner that is presentable and understandable. Neuman (2011) warns that researchers should not assume that the generated themes and subthemes are final and unchanging during thematic analysis. Due to the plethora of findings, this exercise required imperturbability because most of the themes had to be rearranged several times before they were grouped analogously. The key findings of this study are presented, thematically, in Chapter 4 of this research project.

### 3.7.3. Elaboration

The third step was elaboration. Rubin and Babbie (2013) state that the main purpose of elaboration is to capture the finer nuances of meaning not captured by one's original coding system. One can view this process as the analysis of coded data (Ntshangase, 2016). During this stage, I carefully looked into the data with an enhanced level of scrutiny. Additionally, I amplified the meaning of the excerpts that were coded initially. Prior to this stage, data seemed linear and independent, but after coding and recoding I was able to view data in a circular and interdependent pattern.

### 3.7.4. Interpretation and checking

The final step of thematic analysis is interpretation and checking. Maree (2007: 111) argues that during the first stages of data analysis a researcher simply has descriptive summaries of participants' experiences. Maree (2007) adds that the main purpose of the last step of thematic analysis is to apply an analytic motion into the data. During this stage I was able to contextualise and theorise the findings in an explanatory way. During this stage, the researcher is expected to make sense of the situation and further analyses the information in conjunction with the research objectives as a way of judging as to whether the interpretation was in line with the research questions (De Vos *et al*, 2011). In this stage of the analysis, I was able to clearly understand and interpret the findings.

## **3.8. ASSESSMENT OF QUALITY: TRUSTWORTHINESS**

De Vos *et al.* (2011: 419) describes the process of evaluating the factors that affects trustworthiness in a study as the ‘assessment of quality’. Trustworthiness is discussed under the following headings: credibility; transferability; dependability and reflexivity.

### 3.8.1. Credibility

According to De Vos *et al.* (2011: 419) credibility is an alternative term of internal validity. This means that the goal of assessing credibility is to demonstrate that the inquiry was conducted in a manner that identifies and describes the findings accurately.

One of the factors that ensured credibility of the results was the fact that this research was interactional; this means that this research made use of primary data. Furthermore, I personally conducted field interviews in order to gather the herein empirical data. In addition, participants were also literate and fluent in English.

Additionally, referential adequacy was used in the form of audio recordings of the interviews. The data was transcribed word for word. Therefore, this ensured credibility. Additionally, the use of four samples further assisted the researcher to compare the accounts of different participants.

To further ensure credibility, the selection of the entire population for three samples and purposive sampling for sample number 4 ensured that I select the most appropriate participants for the study. The researcher made use of correspondence checking as all the transcripts were e-mailed to the project supervisor, who checked them against the data analysis chapters. Audio records and transcripts will be archived for the purposes of referential adequacy.

### 3.8.2. Transferability

According to Naidoo (2010: 63) transferability “refers to whether the findings can be applied to other contexts and settings”. In order to ensure transferability, this research report has attempted to give the context, reasoning and sequential details of the steps taken during the planning, execution and reporting of this research project.

The setting of the interview; the context of the study and the dynamics of Emnambithi/Ladysmith have been fairly documented in this report. Moreover, all of the methods used to execute this research were highlighted clearly in Chapter 1 and Chapter 3. Chapters 4 and 5 of this research report provide tables, graphs and thick descriptions. This might help other researchers to clearly capture the semantics from the thick descriptions of the research.

### 3.8.3. Dependability

Yin (2011) stated that dependability is an alternative of reliability. In this study dependability was ensured by the researcher documenting the processes of data collection and analysis. The manner in which the data was collected and analysed has a direct effect on the truthfulness of the results. “Research needs to have concrete data sources which will yield information that is truthful, thus valuable to readers” (Ntshangase, 2016: 60). The sample of this study was purposefully selected in order to capture their experiences and therefore strengthen the dependability of the results.

### 3.8.4. Confirmability

De Vos *et al.* (2011: 421) describes confirmability as a process of assessing the objectivity in a qualitative research project. This means that findings of the research study should focus on the enquiry and not reflect the bias of the researcher. The research report should be fairly detailed in order to allow another person to confirm the findings (*ibid*). In order to ensure confirmability, I have fairly included thick descriptions in order to support my conclusions. Additionally, semi-structured interview schedules were used as an instrument of data collection in order to ensure that the collected data is mostly limited within the research objectives instead of other emerging interests of the researcher. I further assessed my personal biases through reflexivity, as discussed below.

### 3.8.5. Reflexivity

Gray (2009:580) cited in Haselau (2015: 91) describes reflexivity “as the monitoring by a researcher of her or his impact on the research situation being investigated”. As a probation officer employed at the time of the research, the researcher had his own experiences regarding the implementation of diversion. Some of the researcher’s experiences included the fact that he knew that the administration and implementation of diversion services was not consistent across the three magistrates’ courts that form part of the Emnambithi/Ladysmith

area. Prior to this research the researcher did not understand the underpinning reasons for this inconsistency. This knowledge influenced the study positively because, during the data collection process the researcher was critical in understanding the theory behind the existing inconsistency in the practice of diversion services.

This study necessitated me to change roles from being a probation officer in the provision of diversion services towards being a researcher. At the time of the study the researcher was a novice probation officer. All the other probation officers and participants had a longer work experience in the child justice field than the researcher. The researcher's limited experience had a positive impact when probing for responses. In this regard, the researcher's limited experiences in the child justice system helped the researcher to be more of a researcher than a probation officer. The researcher constantly kept the research objectives in mind.

Moreover, this study influenced the researcher's post-research practice as a probation officer because he had first-hand knowledge about the challenges and the suggestions of the key role players in the child justice fraternity. Below is the discussion on ethical considerations.

### **3.9. ETHICAL CONSIDERATIONS**

According to Royse (2011: 50) every researcher should be mindful of ethical obligations that accompany the practice of research. Royse (2011) adds that researchers need to ensure that the research is undertaken in a responsible manner. Given the fact that human beings were the research subjects in this study, thus ethical concerns were taken into consideration. The following ethical issues were considered closely:

- Informed consent

According to Gray (2014: 75) "the principle of informed consent means that research participants are provided with sufficient and accessible information about a project". Therefore, in this study, all research participants gave informed consent to be part of the research project. Appendix 2 is an example of the format that was used in order for participants to give concern. They were given thorough information about the research, ranging from the:

*Identifying particulars of the researcher; Duration of the interviews; Contact details of the research supervisor; Purpose of the research; Procedure of the research; Use of an audio-*

*recorder; Potential benefits of the research to the society; Potential risks and discomforts; Rights of the participants of this research; Payment for participation; Details of the researcher/supervisor and the UKZN's research office.*

This means that all participants partook in the study with full knowledge of what the study entailed. The participants were not deceived about anything, concerning the study, prior to their involvement in the project.

- Audio recorder

The use of an audio recorder presented an ethical concern. Maree (2007) emphasized the importance of seeking consent from the participants prior to any the use of any recording apparatus including audio-recorders, video cameras, etc. As a result, the researcher obtained permission from the participants regarding the use of an audio recorder. In this respect, all participants felt comfortable to be interviewed in the midst of an audio recorder. They gave formal consent, through signatures, for the use of this instrument.

- Confidentiality and anonymity

According to Kumar (2014: 286) “it is unethical to identify an individual respondent and the information provided by him/her” in the final research report. In the analysis chapter, the researcher ensured anonymity of the participants by labelling them based on numbers instead of their identifying particulars. In Chapter 4, the profiles of participants are not discussed individually. Instead they are described collectively based on their sample groups.

Additionally, in terms of confidentiality, the researcher ensured confidentiality or the privacy of participants through the use of individual interviews. Additionally, the interview transcripts of participants were not labelled with names. The thick descriptions are also presented in an imperviously.

- Voluntary participation

Participation in a research project should be voluntary (Kumar, 2014). Participants were aware of the voluntary nature of their participation. The participants were informed of their right of choosing to withdraw from being part of the research at any given phase of the study. The participants were also aware of their right of providing selective responses when they felt uncomfortable with some of the questions.

- Method of research: avoiding harm to the participants

Gray (2014) states that it is crucial to ensure that social research methodologies do not inflict any harm to the participants of the project. This research was not experimental; as a result, there was no physical harm, mental and emotional distress during the research process. The data collection instrument did not impose any form of harm to the research objects/participants.

- Consent from gate-keepers

The researcher obtained permission from all concerned authorities in order to conduct research with their human resources. Specifically, the researcher obtained permission of the Senior Public Prosecutors who serves and oversee the Ladysmith Magistrates' Court, Colenso Magistrates' Court and Ezakheni Magistrates' Court. Additionally, the researcher further obtained permission from the Head of Department (KZN Department of Social Development) in order to interact with probation officers and assistant probation officers in Ladysmith Department of Social Development and Ezakheni Department of Social Development. Lastly, the researcher also obtained written permission from the Regional Manager of Khulisa Social Solutions in order to interact with diversion programme facilitators. Appendixes 4-6 display the consent letters from different gatekeepers.

- Ethical Clearance from the University of KwaZulu-Natal

The researcher obtained a Certificate of Ethical Clearance from the UKZN's Humanities and Social Sciences Research Ethics Committee (HSSREC). This certificate is displayed in appendix 3 of this dissertation. This ethical clearance provided approval for the execution of this research as an ethically-sound project.

### **3.10. LIMITATIONS OF THE STUDY**

Any projects, including research projects, are not immune to limitations, weaknesses and threats. Most likely, limitations can compromise the success of a research project (Maree, 2007). Below, I have outlined the limitations of this study and further discussed steps that were taken in order to minimise and/or eliminate the threats and weaknesses.

- Research approach: qualitative nature of the study

Since the study was qualitative (interpretative), the quantitative side of data was not explored. In order to further ensure practicality of this research, the researcher chose to use a single approach in order to solely 'explore' and 'describe' the experiences of participants in the implementation of diversion.

- Position of the researcher, reflexivity and objectivity

Being employed as probation officer within the Emnambithi/Ladysmith municipal area could have served as a limitation during the implementation of data collection. However, I was able to make a transition from being a probation officer towards being a researcher. The use of semi-structured interviews helped me to remain focused and therefore capture what was important and in-line with the research objectives. Earlier in this chapter I have discussed reflexivity under the subtopic: assessment of quality: trustworthiness.

- Sample size

A total of 12 participants could be a concern for some of the reading audience. However, the qualitative nature of the study helped to curb this limitation. Recruiting the entire of population of 3 sample groups further ensured that representation of key role players is ensured in this study. In-depth interviewing helped to capture rich insights and therefore eliminated the issue of sample size. Some of the participants have worked in Emnambithi/Ladysmith and in other areas as well. Therefore, their responses were able to highlight comparative accounts about their experiences in Ladysmith and elsewhere. This factor gave an unpremeditated benefit to the study because I was able to understand the work-culture of other geographical locations in relation to Emnambithi/Ladysmith municipal area.

### **3.11. CONCLUSION**

In this chapter, the research approach and processes of this study were described and discussed. The approach to this study was qualitative interpretative in nature. This study included 12 participants, which included the entire population of probation officers (2 participants excluding the researcher), assistant probation officers (2 participants), and diversion programme facilitators (3 participants). Additionally, a purposive sampling of public prosecutors (5 participants) was utilized in order to recruit participants that met the sampling criteria of the study. Semi-structured interviews were adopted in this research as a

data collection instrument. The reasons for choosing thematic analysis were also discussed in this chapter. This chapter further included discussions on trustworthiness and ethical considerations.

The research findings will be discussed in chapter 4 respectively.

## CHAPTER 4: DATA ANALYSIS AND PRESENTATION OF FINDINGS

### 4.1. INTRODUCTION

In this study, thematic analysis was adopted in order to make sense of the qualitative data that was collected. This chapter focuses on the presentation of the research results and the analysis of data. This chapter is clustered into seven sections, under each section there are themes and sub-themes. In a chronological order, the sections that are covered in this chapter are namely: profile of participants; diversion court processes; accredited diversion programmes in Emnambithi/Ladysmith; monitoring of compliance and non-compliance; systemic challenges; and recommendations by participants.

This study explored the reality and the implementation of diversion services to young offenders in Emnambithi/Ladysmith municipal area. Therefore, the results of this study are discussed in line with the research objectives and systems theory. Since this is a qualitative research, the research findings have been presented with the use of direct quotes. When presenting the findings, the identifying particulars of participants have been disguised in order to ensure anonymity. In the case of direct quotations, all participants are referred to by participant's category and numbers as illustrated in Table 4.1 below.

### 4.2. PROFILE OF PARTICIPANTS

The demographic details of the participants are presented in Table 4.1 below.

**Table 4.1 Presentation of Participants**

| No. | Participant | Designation       | Years of experience in Child Justice Services | Qualification(s)        | Proficient Language(s) |
|-----|-------------|-------------------|---|-------------------------|------------------------|
| 1   | PO1         | Probation Officer | 5 years                                       | Bachelor of Social Work | IsiZulu<br>English     |
| 2   | PO2         | Probation Officer | 3 years                                       | Bachelor of Social Work | IsiZulu<br>English     |
| 3   | PP1         | Public Prosecutor | 4 years                                       | LLB                     | IsiZulu<br>English     |

|    |      |                                       |          |   |   |
|----|------|---------------------------------------|----------|---|---|
| 4  | PP2  | Public Prosecutor                     | 23 years | LLB   | Afrikaans<br>English                      |
| 5  | PP3  | Public Prosecutor                     | 4 years  | LLB   | IsiZulu<br>English                        |
| 6  | PP4  | Public Prosecutor                     | 9 years  | LLB   | IsiZulu<br>English                        |
| 7  | PP5  | Public Prosecutor                     | 7 years  | LLB   | IsiZulu<br>English                        |
| 8  | DPF1 | Diversion<br>Programme<br>Facilitator | 8 years  | Bachelor of Arts:<br>Psychology<br>(Hons)         | English<br>Afrikaans                      |
| 9  | DPF2 | Diversion<br>Programme<br>Facilitator | 8 years  | Certificate in<br>Social Auxiliary<br>Work        | IsiZulu<br>English                        |
| 10 | DPF3 | Diversion<br>Programme<br>Facilitator | 6 years  | B.A: English<br>Secondary<br>Teacher's<br>Diploma | IsiZulu<br>SeTswana<br>SeSotho<br>English |
| 11 | APO1 | Assistant<br>Probation Officer        | 3 years  | Certificate in<br>Social Auxiliary<br>Work        | IsiZulu<br>English                        |
| 12 | APO2 | Assistant<br>Probation Officer        | 9 years  | Certificate in<br>Social Auxiliary<br>Work        | IsiZulu<br>English                        |

As shown in Table 4.1 above, this study incorporated four samples, namely probation officers, public prosecutors, diversion programme facilitators and assistant probation officers. This study included diverse groups (subsystems) of role-players who were investing different inputs in the completion and the synergy of the child justice system. Muntingh (2007: 332) argued that the functioning of any criminal justice system is dependent on the systemic decisions of officials.

The work experience of all participants, in the child justice field, ranged from 3 years to 23 years of service within the child justice system. Furthermore, participants who had the longest years of experience (i.e. PP2, PP4, DPF1, DPF 2 and APO2) were involved in the child justice system prior to and post the introduction of the Child Justice Act 75 of 2008. Therefore, their participation in this study was beneficial since I was able to compare their

experiences regarding the reality of diversion post and prior to the introduction of the Child Justice Act 75 of 2008. Therefore, this is an indication that participants of this research study had a wealth of experience in the child justice system. Below, the researcher have discussed the demographic summary of all participants according to their distinct sample groups.

#### **4.2.1. Sample 1: Probation Officers (POs)**

During the time of data collection, both probation officers were employed by the KwaZulu-Natal's Department of Social Development in different service offices in Emnambithi/Ladysmith. As a result, these probation officers served different magistrates' courts and Police Stations in Emnambithi/Ladysmith. Both probation officers worked as generic social workers prior to being designated as probation officers.

#### **4.2.2. Sample 2: Public Prosecutors (PPs)**

All prosecutors had a professional legal qualification, and were employed by the National Prosecuting Authority (NPA). These public prosecutors were based in three different magistrates' courts within the Emnambithi/Ladysmith municipal area. Their experiences in child justice ranged between 4 years and 23 years. A common factor among the selected prosecutors is that they all had experience in the implementation of diversion services to young offenders. Three of these public prosecutors (PP1, PP3, PP5) were practicing in the lower ranks of prosecution; while two of the prosecutors (PP2 and PP4) were rendering managerial and administrative functions. Of these supervisory prosecutors, one of them was employed as a Senior Public Prosecutor (SPP); whilst the other one was employed as a Control Prosecutor: *Districts Courts*.

#### **4.2.3. Sample 3: Diversion Programme Facilitators (DPFs)**

The diversion programme facilitators were employed by Khulisa Social Solutions and therefore served the whole of the Emnambithi/Ladysmith municipal area. The experience of the facilitators ranged between 6 years and 8 years. The qualifications of these participants included a Bachelor of Psychology (Hons); Certificate in Social Auxiliary Work; Bachelor of

Arts (English) and Secondary Teacher's Diploma (STD). The language proficiency of these participants was inclusive of English, IsiZulu, Sesotho and Setswana.

#### **4.2.4. Sample 4: Assistant Probation Officers (APOs)**

These participants were employed by the KwaZulu-Natal's Department of Social Development. They were located in two different service offices within Emnambithi/Ladysmith. These participants were proficient in IsiZulu and English. Both APOs had certificates in Social Auxiliary Work. Their experience ranged from 3 years to 9 years in the child justice field. One of the Assistant Probation Officers (APO2) had worked for NICRO prior to being appointed by the Department of Social Development. The second assistant probation officer (APO1) had no prior experience in the child justice field.

### **4.3. SECTIONS: THEMES AND SUB-THEMES**

The data analysis is presented according to the following sections:

Section 1: Diversion Court Processes

Section 2: Accredited diversion programmes in Emnambithi

Section 3: Monitoring of Compliance and Non-compliance

Section 4: Systemic Challenges

Section 5: Areas of improvement and proposed solutions by participants

#### **4.3.1. SECTION 1: DIVERSION COURT PROCESSES**

The experiences of the participants in relation to diversion court processes are presented in this section. This section is presented based on the following themes and sub-themes:

**Table 4.2. Presentation of Themes and Sub-themes: *Diversion Court Processes***

| Themes  | Sub-themes   |
|---|--|
| Process of Diversion                                  | <ul style="list-style-type: none"> <li>○ Prosecutors' knowledge of diversion processes</li> <li>○ Attitudes of prosecutors towards diversion</li> <li>○ Probation Officers' diversion recommendations</li> <li>○ Diversion at the Preliminary Inquiry and at the Child Justice Court</li> <li>○ Knowledge of prosecutors about the contents of diversion programmes</li> <li>○ Inconsistency in prosecutorial diversion</li> <li>○ Lack of public knowledge about diversion court processes</li> <li>○ Exclusion of victims or complainants during diversion court processes.</li> </ul> |
| Gaps in the diversion options in Emnambithi/Ladysmith | <ul style="list-style-type: none"> <li>○ Limitation of diversion services providers</li> <li>○ Khulisa's diversion programmes</li> <li>○ Gaps in the provision of diversion services</li> </ul>  |

#### 4.3.1.1. Theme 1: Process of Diversion

Participants were given an opportunity to express their understanding and experiences with regard to diversion processes. The responses of participants were remarkably diverse and inconsistent.

In Chapter 2 of this dissertation, Figure 2.1 highlights the ideal process of diversion as per the Child Justice Act 75 of 2008. In this regard, this section presents the systemic decisions of officials regarding the court processes prior to diversion. This theme is discussed in terms of seven subthemes, as shown in Table 4.2 above.

##### 4.3.1.1.1. Sub-theme 1: Prosecutors' knowledge of diversion processes

This sub-theme presents the descriptions of prosecutors with regard to diversion processes.

PP4 provided the following description regarding his understanding of diversion processes:

*“What normally happens is; firstly a docket is brought to the prosecutor, he must read the docket and satisfy himself or herself about the strength of the case against the child. If the*

*prosecutor is satisfied that there is sufficient evidence to prosecute the child, then it must be established from the child whether or not he admits responsibility of the crime that he committed. If the prosecutor is satisfied that the child admits responsibility then the prosecutor will have to look at the schedule in which the case falls and then decide on whether or not diversion will be suitable ... I believe that it is very important in our society that juveniles are given second chances.” (PP4)*

The above response was provided by prosecutor (PP4) who had 9 years of experience in the child justice field. Of note, a detailed description was common from all prosecutors with more years of experience in the field.

PP2, who had 23 years of experience, made the following remark:

*“I’ve been dealing with diversion for many years. I think even before it really became a formal process, as we have the Child Justice Act now; I understand it as a way of dealing with child offenders in a way that will give them an opportunity to have a clean record and become clean from whatever transgression they’ve done, and hopefully to teach them through a diversion programme to change their ways and not to make hardened criminals out of them right from the start but give them a second chance” (PP2)*

Remarkably, both the response of PP2 and PP4 reveal that these two prosecutors convincingly understand diversion processes and the significance of diversion in the life of a young offender.

On the other hand, PP3 (who had 4 years of experience) provided a shorter description of diversion processes:

*“Okay in simple, or let me say, my interpretation of it: it’s when a suspect or the accused is saying ‘yes I admit, or I take responsibility for what I did’ then he would be diverted.” (PP3)*

Additionally, PP5 (who had 4 years of experience) also gave a short description regarding his understanding of diversion processes. His description was as follows:

*“... diversion is where we try as prosecutors, we try to avoid giving the person or a child a criminal record then we try other ways in resolving the matter” (PP5)*

When, PP5 was probed to further describe the process of diversion, he then made the following remark:

“... briefly that’s how I can describe diversion” (PP5)

In conclusion, this sub-theme had shown that prosecutors who had longer prosecutorial experience were more knowledgeable about diversion court processes as compared to prosecutors who had shorter years of experience. This sub-theme further revealed that prosecutors who gave a comprehensive description of diversion process were also mindful of the significance of diversion. Therefore, more knowledge about diversion processes yielded positive attitudes towards diversion services. This study further revealed that some of the prosecutors (PP3 and PP5) were less confident about their knowledge of the Child Justice Act. These prosecutors gave shorter descriptions of diversion processes. Their understanding seemed limited. Later in this chapter, section 4 provides details regarding the gaps in the training needs of prosecutors. The next sub-theme discusses the attitudes of prosecutors towards diversion.

#### 4.3.1.1.2. Sub-theme 2: Attitudes of prosecutors towards diversion

Public prosecutors displayed diverse attitudes towards diversion of young offenders. Table 4.3 below presents the attitudes of different prosecutors towards diversion.

**Table 4.3 Attitudes of prosecutors towards diversion**

| <b>Prosecutor</b> | <b>Attitude</b> | <b>Responses</b>   |
|-------------------|-----------------|--|
| PP1               | Negative        | <p><i>“But here in [this area] we were experiencing problem where there were children who were doing things [crime] whilst being aware of the fact that this age thing is working for them. [...] so in my personal perspective I thought that the children are getting the wrong message with this diversion thing.”</i></p> <p><i>“to me it doesn’t make sense so I started to put everybody to the Child Justice Court”</i></p> |
| PP2               | Positive        | <i>“I think it [diversion] definitely makes a positive impact”</i>   |
| PP3               | Positive        | <i>“Well in terms of assisting children by avoiding criminal records, then it does play a role.”</i>   |
| PP4               | Positive        | <i>“To be honest with you, I believe that it is very important in our society that juveniles are given a second chance, this is so because</i>   |

|     |          |   |
|-----|----------|---|
|     |          | <i>they got different backgrounds”</i>  |
| PP5 | Positive | <i>“it is important [...] hence I mentioned earlier on the fact that the accused will not get a criminal record, because obviously will be resolved out of court”</i> |

It is shown in Table 4.3 above that four out of the five prosecutors perceived diversion as an important aspect of the child justice system. One prosecutor (PP1) however expressed a negative view of diversion. This prosecutor (PP1) felt that young offenders were abusing the generosity of the South African child justice system. Therefore, she stated that the level of her strictness, regarding diversion, would send a message of discouragement to young offenders. She provided a number of reasons to support her position and attitude towards diversion of young offenders:

*“We’ve not been diverting a lot of people; I speak from my experience [...] I can only speak of the one case that I diverted” “This diversion thing has not been taken seriously even by us [prosecutors] in terms of how it should be happening” (PP1)*

Of note, PP1 was the only public prosecutor in her magistrate’s court who dealt with child justice matters. It is thus clear from the comments above, that diversion was not a priority in this court. Gxubane (2010: 37) argued that the child justice system should entail “holistic and multidisciplinary interventions”. Consequently, incongruent attitudes of the key role players of the child justice system have proved to be an impediment when implementing diversion within the expanse of Emnambithi/Ladysmith. However, section 5 (of this chapter) has detailed the systemic challenges that were caused by the inconsistency in training and knowledge among the key role players of diversion in Emnambithi/Ladysmith. Below is the discussion on probation officers’ diversion recommendations.

#### 4.3.1.1.3. Sub-theme 3: Prosecutors’ experiences of probation officers’ diversion recommendations

The prosecutors and the probation officers shared their experiences with regard to probation officers’ diversion recommendations.

Table 4.4 below presents the experiences of the five public prosecutors regarding probation officers’ reports and recommendations.

**Table 4.4 Prosecutors’ perceptions of probation officers’ reports and diversion recommendations**

| <b>Prosecutor</b> | <b>Responses</b>   |
|-------------------|--|
| PP1               | <i>“The quality is usually good in respect of telling you about the child and the circumstances, that’s what I can comment on [...] It’s only good in telling you the current situation of the child, yes I can say that much about the report”</i>  |
| PP2               | <i>“It was a challenge for a year or so to get those reports, but I can say for the last 6 months the reports are coming back yes. We do get them.”</i>  |
| PP3               | <i>“Well, I regard the social worker [...] as someone who’s an expert, right; someone who has been able to study the behaviour of the offender.”</i><br><i>“I rate the social workers as competent enough to give a proper report when it comes to the P.Is [preliminary inquiries]”</i>   |
| PP4               | <i>“... it’s also important to make use of the probation officers’ report. Yes, probation officers because they are people who go out there in the field to investigate and bring a lot, and bring a detailed report, where the prosecutor will peruse the report and at least have a clue in mind as to the social and psychological factors with regard to the child. So it is very important to look at the probation officer’s report on deciding to divert the child”</i> |
| PP5               | <i>“I’ve noticed that the way other probation officers prepare their reports, some are comprehensive, while in some of them the information will be limited, and if the information is limited then the Magistrate will have a problem with that and that probation officer will be in trouble”</i>  |

Table 4.4 illustrates that most of the prosecutors (PP1, PP2, PP3, and PP4) were either satisfied about probation officers’ reports or probation officers’ diversion recommendations. PP5 was the only prosecutor who showed dissatisfaction with some of the reports of probation officers. Noteworthy, PP5 was the only prosecutor who was dealing with child justice matters in his court, including the administration of diversion. However, having a negative experience with probation officers’ reports prosecutor did not have an impact to his attitude towards diversion. As shown in Table 4.3 in the preceding sub-theme, this prosecutor appreciated the importance of diversion and he also stated that he often accepted probation officers’ diversion recommendations.

Remarkably, PP1 (as a prosecutor who showed negative attitude towards diversion) mentioned that she often receives well-written reports from probation officers. Nonetheless, as discussed in the preceding sub-theme above, this prosecutor (PP1) was against any recommendation that suggests diversion.

Pertaining to the experiences of probation officers on the acceptability of their diversion recommendations, one of the probation officers (PO1) was satisfied with the fact that her recommendations were often accepted by prosecutors and the courts. However, the other probation officer (PO2) felt helpless because her recommendations were often not accepted. Noteworthy, PO2 was working directly with PP1. In this regard, PO2 provided the following remarks:

*“Sometimes they don’t take my recommendations. It depends on the prosecutor, because diversion gives the offender the opportunity of accounting for their actions. [...] but mostly here in my court they don’t like diversion; it is very rare that they would consider it.”* (PO2).

These findings indicate that there is inconsistency regarding the diversion experiences of the two probation officers. The above comment further shows that even though social workers are required to assess and recommend diversion in terms of section 40(2) of the Child Justice Act, but the legal professionals make the final decision. Muntingh (2007: 332) argued that the proper functioning of any criminal justice system is dependent on the systemic decisions of officials. Therefore, the rejection of probation officer’s opinions was one of the factors that disturbed the unanimous collaboration of all role players within the child justice system.

The next sub-theme presents the findings on diversion at the Preliminary Inquiry (P.I) and at the Child Justice Court (CJC).

#### 4.3.1.1.4. Sub-theme 4: Diversion at the Preliminary Inquiry (P.I) and diversion at the Child Justice Court (CJC)

This sub-theme is presented as follows: diversion at the preliminary inquiry; and diversion at the Child Justice Court.

With regard to diversion at the preliminary inquiry, the views of PP3 were as follows:

*“the moment the child is being brought to court [CJC] after the P.I process, automatically we just shut down and say: he did not admit responsibility back then in the P.I, so this time around we would just treat him as an adult and proceed in a criminal court.” (PP3)*

The above response implies that PP3 only considered diversion at the preliminary inquiry (P.I). In an event where the child was not diverted at the preliminary inquiry, she stated that she would no longer show any mercy towards the young offender, instead she often treat young offenders as adults in a criminal court. Furthermore, PP3 perceived diversion of young offenders in the CJC as an irrational practice. This view implies that this prosecutor is not embracing the objectives of the Child Justice Act (CJA) in section 2(a) of the CJA. Specifically, it is stipulated in section 2(a) of the Child Justice Act that the South African child justice system should safeguard the rights of young offenders as they are provided for in the Constitution of the Republic of South Africa. However the findings of this study indicated that one of the prosecutors, in the Emnambithi/Ladysmith, did not welcome diversion of young offenders in a Child Justice Court other than in the preliminary inquiry.

Unlike PP3, another prosecutor (PP2) stated that he often consider diversion at any given time, this includes diverting children at the P.I and at the Child Justice Court. His views were as follows:

*“[we divert] any time before judgment or let’s say maybe the child does not acknowledge responsibility at the P.I [preliminary inquiry] or the matter is too serious for diversion at this stage, then the matter will proceed to Child Justice Court. But any time before judgment the matter can still be diverted” (PP2)*

The views of PP2 were opposing those of PP3. Interestingly, both PP2 and PP3 were working in the same court. This means that there was either a lack of communication or inconsistency in the practice of these prosecutors. In addition, the difference in their years of experience was amongst the factors that determined prosecutors’ administration of diversion within the child justice system. As seen in Table 4.1 above, PP2 was more experienced than PP3. Of note, the views of PP2 were in line with the provisions of the Child Justice Act. According to Gallinetti (2009) it is per the provisions of the Child Justice Act that diversion can be considered at any stage of the child justice processes.

Furthermore, two prosecutors (PP4 and PP5) also gave insights of their experiences with regard to diversion at the Child Justice Court (CJC). Their responses were as follows:

*“I can recall one matter where in the middle of the [CJC] proceedings we decided to send the child for diversion.” (PP4)*

*“We were on the sentencing stage when I remember correctly on that matter, a trial converted into an inquiry and we ended up diverting that particular child, it was a child offender” (PP5)*

Both PP4 and PP5 recalled some instances where they have considered diversion at the Child Justice Court. Their views were unlike those of PP3 who stated that she does not consider diversion beyond the P.I stage. PP2, PP4 and PP5 provided positive experiences with regard to diversion at the Child Justice Court.

Lastly, it was interesting to note that PP1 (one out of the five prosecutors) was confusing diversion at the Child Justice Court with postponement of sentence in terms of section 297 of the Criminal Procedures Act 51 of 1977. When she was asked whether she would divert a young offender in the child justice court, she provided the following response:

*“Like I said, the only thing that we do is postponement of sentence. I don’t know if it counts or if it happens to be a form of diversion or what. But what we do, me and [...] (the magistrate) we go through the whole trial as it is. Then we postpone the passing of sentence which results in the child not having a previous conviction.” (PP1)*

“The CJA extended the opportunity to divert a case even in the Child Justice Court” McGregor (2010: 48). However, PP1 neither understood the provisions of the CJA with regard to diversion at the P.I nor diversion at the child justice court. As a result, it was common that the prosecutors who had fewer years of experience were less knowledgeable about the provisions of the Child Justice Act. However, Section 4 (Systemic Challenges) of this chapter has detailed the findings in relation to inconsistency of training between old and newer prosecutors.

The Child Justice Act aims to standardize all child justice practices. However, the contradictory views of prosecutors imply that there was inconsistency in the implementation of diversion services to young offenders in Emnambithi/Ladysmith. Below, is the discussion on prosecutors’ knowledge of the contents of diversion programmes.

4.3.1.1.5. Sub-theme 5: Prosecutors' knowledge of the contents of diversion programmes in Emnambithi/Ladysmith

Knowledge of prosecutors with regard to the contents of diversion programmes was explored in this study. Therefore, Table 4.5 below presents the findings in this regard.

**Table 4.5. Knowledge of prosecutors about the contents of diversion programmes**

| <b>Prosecutor</b> | <b>Responses</b>   | <b>Knowledge of programme contents</b> |
|-------------------|--|--|
| PP1               | <i>"I'm really clueless about what they do or what has been their success rate"</i>  | No knowledge                           |
| PP2               | <i>"As far as I know they [programmes] are one-on-one as well as group work and in some instances, families are also called in. family-group conference but in certain cases"</i>  | Well-informed                          |
| PP3               | <i>"In terms of contents I'm not really aware per se, but I know that there's level 1 and a level 2 diversion. I think I've dealt with those. But in terms of the actual courses which they offer on those particular diversion programmes or levels, we were never told".</i>   | No knowledge                           |
| PP4               | <i>"I know them because they sent me a list of their programmes, but unfortunately I can't just tell you which programmes are those, but I do have the list"</i>   | Well-informed                          |
| PP5               | <i>"I must be honest there with you as well on that one, no I don't know the content of the programmes. I do not know anything about them, but I trust them simply because the children will be accompanied by their parents to attend those programmes, so I believe that whatever they are offering there will be genuine they can't offer something that is of bad quality in front of the parents"</i> | No knowledge                           |

Table 4.5 above indicates that three out of the five prosecutors were unaware of the contents of diversion programmes. Two out of the five prosecutors (PP2 and PP4) expressed some knowledge regarding the contents of diversion programmes. Noteworthy, PP2 and PP4 were in managerial positions and they were the only two prosecutors who were aware of the programme contents. This implies that the two managerial prosecutors (PP2 and PP4) might have failed to share their knowledge with the rest of the prosecutors. Consequently, this has created an inconsistency in child justice practices among prosecutors because their knowledge was noted to be unequal.

Prosecutors are central to the administration of diversion in South Africa (Ntshangase, 2016: 39). The final decision to or not to divert comes from them (*ibid*). It was discovered that most public prosecutors were not clearly aware of the programme contents. As a result, it is concerning if the prosecutors have a bleak understanding of the processes of programme implementation. In two decades ago, Muntingh (1997) conducted a study on attitudes of prosecutors towards diversion; it was discovered that majority of prosecutors had limited knowledge of the contents of various diversion programmes, which is probably due to lack of adequate training and/or effective modes of communication. The results of Muntingh's research confirm the findings of this study; two (2) decades later, it is still a reality that prosecutors were still not aware of the programme contents.

The next subtheme presents inconsistency in the implementation of prosecutorial diversion.

#### 4.3.1.1.6. Sub-theme 6: Inconsistency in prosecutorial diversion

Herein are the views of prosecutors regarding their experiences of prosecutorial diversion. When PP1 and PP3 were asked about their experiences of prosecutorial diversion they then provided the following responses:

*“As I told you, I’ve only done one diversion and it was a normal diversion”* (PP1)

*“No, I have never ever done it ”* (PP3)

Commonly, both PP1 and PP3 had four years of experience in the child justice system. Noteworthy, both of them did not have experience of prosecutorial diversion even though they had been active role players in the child justice system for period of four years. On the other hand, it was noted that PP5 did not understand the processes of prosecutorial

diversion. When he was asked about his experience of prosecutorial diversion, he provided the following response:

*“Prosecutorial diversion? You mean without taking the matter to court?”* (PP5)

*“... a social worker is always available when we implement diversion”* (PP5)

The responses of PP5 indicated that lacked knowledge regarding the process of prosecutorial diversion. It was further evident that PP5 had never implemented prosecutorial diversion. This means that three out of the five prosecutors did not have the experience of prosecutorial diversion, even though section 41 of the Child Justice Act gives prosecutors a statutory mandate to administer this type of diversion.

Contrary, PP2 and PP4 shared experiences that were different from those of PP1, PP3, and PP5. Their views were as follows:

*“Yes I’ve done it... prosecutorial diversion is for minor offences, oh what we call it, it’s Schedule 1 offences and it’s called prosecutorial diversion, I think it’s section 41 if I’m not mistaken of the Child Justice Act. That would mean that before the matter is enrolled or before eh.... Actually, it is a much quicker, shorter way of diverting the matter. It’s still done in front of the Magistrate but on the recommendation of the prosecutor”* (PP2)

*“The prosecutor may remotely, on his own decides on prosecutorial diversion, if he deems it fit.”* (PP4)

Both PP2 and PP4 stated that they have implemented prosecutorial diversion in the past. Their responses also indicated that they were knowledgeable about the processes of prosecutorial diversion. However, both PP2 and PP4 were working in the same magistrate’s court. This means that the implementation of prosecutorial diversion was correctly implemented in a single magistrate’s, even though Emnambithi/Ladysmith municipal area has three magistrate’s courts that deal with criminal cases, including the child justice matters.

Below is the presentation of finding about the lack of public knowledge about diversion and the child justice legislation.

#### 4.3.1.1.7. Sub-theme 7: *Lack of public knowledge about diversion court processes and the Child Justice Act*

Probation officers and public prosecutors shared their perceptions with regard to the lack of public knowledge about diversion. Assistant probation officers (APOs) and diversion programme facilitators (DPFs) did not share their experiences in this regard because they did not have first-hand experiences of court processes that are related to diversion of young offenders.

Two probation officers, who answered in the affirmative, provided the following responses:

*“I think they [the community] need education, but we don’t have time... they merely assume that the courts are releasing young offenders because they don’t care about their losses and the damages that were caused by the child offenders” (PO2)*

*“...honestly the community does not have information on diversion” (PO1)*

The responses of both probation officers indicated that the public was unaware of either diversion or the restorative nature of the criminal justice system. The wider community members are the end users of the law. Therefore, lack of public knowledge about the laws and legal processes that directly affects them serves as an impediment in the implementation of the child justice legislation (Badenhorst, 2011).

Prosecutors also shared their experiences regarding the lack of public knowledge about diversion processes and the CJA as a whole.

In this regard, PP1 was concerned that young offenders and the community (as a whole) did not clearly understand the objectives of diversion and the CJA, instead they were misinterpreting the intentions of the existing child justice system. Her response was as follows:

*“You’d realise that these people don’t really know how this whole justice system works... They really don’t understand that it [diversion] can work in the interest of their child and against the child... From what I’ve been seen in court and the influx of these cases the children are thinking only on the basis of that, ‘the Child Justice Act is only protecting us from going to court’, nothing else. Even some parents would actually not want to give the Probation Officer their child’s birth certificate, you would have the whole family there and the mother saying ‘no I got back from a certain house I don’t know where it is, it was with the father’, and you will see that no this person don’t want to give information. No, they don’t understand diversion” (PP1)*

PP3 also shared his experiences in this regard.

*“You’d still find [...] that complainants would come to court and say ‘but why was this one released’? Then you’d explain that he’s a minor, that’s why he is not before court and they always find it difficult to understand why the said minor is not standing in a criminal court, but was merely diverted in terms of the diversion programmes that are ran by the social workers. So there’s still a problem in respect of community knowledge about the CJA [Child Justice Act]” (PP3)*

Another prosecutor shared the following experience:

*“we find that after diversion, the victim will come to the office and say I opened a case against so and so who is a juvenile but now I see him walking on the street, so the society or our community they are not trained and they do not know why the person is granted bail; why the person is released in the care of the guardian... what I have noticed is most of the victims they are not happy about the diversions because they believe that if a person has committed an offence he must be punished by court so they are not happy about it.” (PP4)*

PP4 further stated that:

*“I’ve noticed is that the community confuse the Criminal Procedure Act with the Child Justice Act, because, because they will ask you why the child was released... So it is important to explain to the community that if the crime has been committed by the juvenile there is a specific Act that deal with the juvenile only and if it committed by the adult there is a specific Act which is used to deals with the adult, so they should not be frustrated by seeing someone who has committed an offence who is a juvenile being released in the care of the guardian, and the next thing is the community doesn’t know that children are diverted they just think the case is finished so he’s not doing anything more” (PP4)*

The above responses indicate that public prosecutors felt that the general public was unaware of diversion court processes. It is further stated in the responses that some of the prosecutors (PP1, PP3, PP4) have had experiences where the victims/complainants would go to court to enquire about the progress of their cases. This signifies that the victims were not always involved during the court processes that involve young offenders. The responses above also indicate that the community was still expecting retribution from courts even on matters that were perpetrated by children. Therefore, it is evident that the wider society did not understand the concept and processes of diversion. Badenhorst (2011) also noted that lack of public

knowledge impedes the implementation of the CJA. In Emnambithi/Ladysmith municipal area, it is shown in these responses that there were challenges regarding the knowledge of the public about diversion.

The Integrated Development Plan (IDP) of Ladysmith indicated that Emnambithi/Ladysmith municipal area was one of the locations that were faced with illiteracy and high crime rate (Ladysmith IDP, 2012). However, education and knowledge have a liberating function in our everyday life (Cebekhulu, 2015:67). The wider society should be aware of the laws and basic legal processes that govern them. Nonetheless, in Emnambithi/Ladysmith, lack of community awareness about diversion court processes was one of the factors that impeded the implementation of diversion to young offenders. Lack of public knowledge about diversion was a direct result of the exclusion of victims during diversion court processes. Below, is the presentation of results regarding non-involvement of victims during diversion court processes.

#### 4.3.1.1.8. Sub-theme 8: Exclusion of victims or complainants during diversion court processes

This sub-theme is presented based on the following order: the responses of public prosecutors, the responses of probation officers and the responses of diversion programme facilitators.

- Responses of public prosecutors

When PP1 was asked whether the victims should be involved in diversion court processes, her response was as follows:

*“I think so [I think victims should be involved in Preliminary Inquiries] because that will give them an understanding and maybe it could be a quicker solution in finding whether to divert or to proceed to Child Justice court because sometimes you’d find that you think it’s serious it’s stubbing and the complainant is like ‘no I understand I don’t really want the case to go on’ and all that stuff” (PP1)*

Another public prosecutor shared the following experience:

*“I have never met a complainant, where one has to explain [diversion processes]” (PP2)*

The above responses indicate that PP2 does not involve the victims during diversion court processes. Yet on the other hand, PP1 detailed the importance of involving the victims of crime as the joint decision-makers of diversion. Specifically, she believes that if the victims were involved during the preliminary inquiry they would then be able to express their views as to whether the young offender should be diverted or not. Her response further implies that, if the victims were involved during diversion she would then certainly know the expectations of the victims from the criminal justice system and therefore act responsively.

Rodgers (2009: 1) argued that the victims are slowly being removed from the criminal justice system as they were once the key decision makers of the outcomes of charge against the complainant. Rodgers adds that the assumption is that the state (prosecution) should act in the best interest of the victims. It was concerning to realise that, in Emnambithi/Ladysmith, prosecutors such as PP2 did not realise the importance of involving the victims in diversion court processes. According to Hargovan (2008) diversion is a restorative justice process, as a result all restorative justice process should involve the victims of crime.

- Responses from probation officers

On the same subject, the two probation officers shared the following responses:

*“Usually [...] when it is all over and done with, we go back to the victim and explain that this was a Court decision to divert the child and that there is nothing more to be done on the case because usually the victims do not understand what had happened [with the case of a young offender].” (PO1)*

However, PO2 answered in the contrary and said:

*“Not always, it’s not because I do that deliberately but at time I would be expected to attend three cases at a time. Since, I am the only probation officer here, time constraints gets to me.” (PO2)*

The responses of probation officers indicate that there was inconsistency in the practice of the two probation officers. PO1 mentioned that she normally made efforts to contact the victims and thus inform them about diversion. While, PO2 asserted that she was often not involving the victims diversion court processes because of time constraints. Inconsistent social work practices can be misleading and therefore affect the image of social work.

- Responses from diversion programme facilitators

In this respect, DPF1 and DPF3 provided the following responses:

*“In some cases you find that [victims] they don’t even know that the child have been referred for diversion” (DPF1)*

*“We contact [with the victims] when we make an appointment. Oh, yes we meet them for restorative justice sessions, that’s when we meet. We call them mention that “so and so is in the programme,” (DPF 3)*

The responses of the two diversion programme facilitators suggest that in some cases the victims were often not informed that the child has been diverted. Whilst in some cases, the victims get to be informed by the programme facilitators.

In conclusion, the responses of prosecutors, probation officers and programme facilitators suggested that there was inconsistency of practices regarding the involvement of the victims. It is stated in the Victims’ Charter that amongst the rights that victims of crime have, they have the right to receive information (Department of Social Development, 2007). However, in Emnambithi/Ladysmith the right to information is either overlooked or perceived inconsistently by the key role players in the criminal justice system. This means that there was a gap in service delivery because the victims were often forgotten.

Restorative justice suggests that an offence is committed against the victim instead of the state (Skelton and Batley, 2006). This signifies the importance of involving the victims during diversion court process because diversion is part of the several restorative justice processes. Gxubane (2010: 37) raised a concern that “little or no attention is given to the long-term interests of the child offender, the victim and the community”. Section 2(b)(iii) and 2(b)(iv) stipulates that the Child Justice Act intends to involve victims in all restorative and reconciliation processes. However, it was a finding in this study that some prosecutors did not involve victims in diversion court processes.

This means that the exclusion of victims during diversion court processes was one of the factors that impeded the implementation of diversion in Emnambithi/Ladysmith. The next theme presents gaps and challenges in diversion options that were available in Emnambithi/Ladysmith municipal area.

#### **4.3.1.2. Theme 2: Gaps in diversion options in Emnambithi/Ladysmith**

The following sub-themes are discussed herein: limitation of diversion service providers, Khulisa's diversion programmes and gaps in the provision of diversion programmes.

#### 4.3.1.2.1. Sub-theme 1: Limitation of diversion services providers

During the time of data collection, Khulisa Social Solution was the only accredited diversion service provider that was available in the whole of Emnambithi/Ladysmith municipal area. Participants had different views pertaining to the monopoly Khulisa Social Solutions. This sub-theme is discussed based on the following order: responses of public prosecutors; the responses of probation officers; and the responses of assistant probation officers.

- Responses from public prosecutors

Under this subject, the views and experiences of the prosecutors were as follows:

*"... The concern right now is that they do not have enough referrals, [...] They [Khulisa] offer more than the need at the moment"* (PP2)

In contrast, other prosecutors provided the following responses:

*"Unfortunately for us [in Ladysmith] we only have Khulisa, but some years ago when I was an Attorney in Pinetown my clients used to be referred to NICRO, and there was a programme called Changing Society, something like that..., yah unfortunately for us in Ladysmith we only have Khulisa"* (PP4)

*"It will appear that here we do not have other organizations that are offering the same services. So we are confined to Khulisa. We usually send our offenders to Khulisa, but in these other areas like at Empangeni there are other organizations that are offering similar type of services and they were all good. It was like, in a way they were competing, so they were all aiming high they wanted to be excellent in order to get more referrals"* (PP5)

On the other hand, PP3 did not understand the difference between the Department of Social Development and Khulisa Social Solutions. When asked if she was aware of any available accredited diversion service providers within Emnambithi/Ladysmith, she stated the Department of Social Development was the only diversion service provider that she knew. Her response was as follows:

*“In Ladysmith, I only know of DSD [Department of Social Development], but in the Utrecht/Newcastle area, I knew of DSD together with Khulisa. I don't know if Khulisa does work here in Ladysmith?” (PP3)*

The above responses imply that different prosecutors perceived the limitation of diversion service providers, in Emnambithi/Ladysmith, differently.

PP2 thought that a single diversion service provider (Khulisa) was adequate in dealing with the diversion needs of Emnambithi/Ladysmith. PP2 was aware of the fact that, during the time of data collection, there was a decline in diversion referrals. Consequently, Khulisa is underutilised.

On the other hand, PP3 was unaware of the existence of Khulisa Social Solutions in Ladysmith even though she was an active role player in the implementation of diversion services to young offenders. PP3 was further not clear about the distinction between the KwaZulu-Natal's Department of Social Development and Khulisa Solutions. This means that her lack of knowledge could have had implications to her administration of diversion services to young offenders.

Moreover, it is seen in the above responses that PP4 and PP5 motivated for more diversion service providers because they have worked in other geographical areas where there were more than one diversion service providers. PP4 and PP5 felt that their choice of diversion service providers and programmes were limited to Khulisa Social Solutions. PP4 and PP5 both compared their experiences of Emnambithi/Ladysmith with the circumstances of other geographical areas. These prosecutors also stated that the addition of more diversion service providers would increase the pool of available programmes and further bring about positive competition amongst the service providers. As a result, positive competition could benefit the children who are in conflict with the law.

- Responses of probation officers

Under the same subject, one of the probation officers (PO1) expressed her views. The responses of PO1 were as follows:

*“I once had a case where a child had committed Rape but then it was done by NICRO [Pietermaritzburg] and the child was transferred to NICRO because I know Khulisa does not have a programme for Schedule 3 offences ... NICRO in Maritzburg yes [...] the social*

*worker at NICRO was the one who had to do monitoring [of compliance] ... I wouldn't be able to go to Pietermaritzburg and monitor the child'* (PO1)

This implies that the limitation of diversion service providers, has led to a situation where a probation officer, in Emnambithi/Ladysmith, had to refer to organisations that were located in other towns. Consequently, this has resulted in difficulties during monitoring of compliance.

- *Responses of assistant probation officers*

An assistant probation officer who has worked for NICRO in the past also suggested the need for more diversion programmes and service providers. His views were as follows:

*"I would say NICRO has got a wide range of programmes because for an example NICRO has got a programme called The Journey, where the divertees are being taken away to a workshop that is far away from home for a weekend, where they'd learn more about life skills"* (APO2)

The above response suggest that there is a need for other forms of programmes such, for instance, programmes that would also involve wilderness therapy. A study by Steyn (2011) also characterised wilderness therapy, mentorship, *inter alia*, as significant programme theories which needs to be explored and incorporated to diversion programmes by the developers of diversion programmes. In addition, Botha (2007) also suggested that wilderness therapy should be one of the diversion approaches that should be incorporated in the South African child justice system.

In conclusion, this sub-theme presented the perceptions of public prosecutors, probation officers and assistant probation officers, regarding the limitation of diversion services providers in Emnambithi/Ladysmith. Public prosecutors shared different views regarding the limitation of diversion programmes and diversion service providers. Two out of the five prosecutors felt that there should be more diversion programmes and services providers, whilst one of the prosecutors felt that Khulisa was adequate to serve the diversion needs of Emnambithi/Ladysmith. On the other hand, one of the probation officers highlighted the implications of the limitation of diversion service providers towards monitoring of diversion orders. Lastly, one of the assistant probation officers mentioned the fact the shortage of service providers leads to the shortage of programme approaches such as wilderness therapy. This means that the limitation of diversion service providers is amongst the factors that impede the implementation of diversion services in Emnambithi/Ladysmith. The limitation of

diversion service providers is a challenge that has been noted by a number of researchers, including Gallinetti (2009) and Badenhorst (2011). This study also revealed that some of the participants suggest that there should be more than one diversion services provider in order to bring about positive competition and further increase the pool of programme approaches.

4.3.1.2.2. Sub-theme 2: *Khulisa Social Solutions' diversion programmes*

As mentioned above, Khulisa Social Solutions was the only accredited diversion service provider that served the whole of Emnambithi/Ladysmith municipal area. Therefore, the diversion programmes that are discussed herein are those that were offered by Khulisa Social Solutions during the period of data collection.

Diversion Programme Facilitators (DPFs) listed the following programmes as their core programmes that they implement on a daily basis to rehabilitate young offenders who have been referred to them by the courts of law. It was quite crucial to capture and understand these programmes in order to understand the context of challenges that are related to the implementation of such programmes.

**Table 4.6 Diversion programmes at Khulisa Social Solutions**

| <b>Name of the Programs</b>                | <b>Focus area</b>                | <b>Method</b> | <b>Target group</b> | <b>Duration</b>   |
|--|----------------------------------|---------------|---------------------|---|
| Positively Cool Senior Diversion Programme | Life Skills                      | Group work    | 14-18 years         | -8 weeks for Level 1 Diversion<br><br>-16 Weeks for Level 2 diversion |
| Positively Cool Junior Diversion Programme | Life Skills                      | Group work    | 10-13 years         | -8 weeks for Level 1 Diversion<br><br>-16 Weeks for Level 2 diversion |
| Silence the Violence                       | Violent and Aggressive Behaviour | Group work    | 10-18 years         | -8 weeks for Level 1 Diversion<br><br>-16 Weeks for Level 2           |

|                    |  |            |             |   |
|--------------------|--|------------|-------------|---|
|                    |  |            |             | diversion   |
| Facing your Shadow | Diversion for Sexual Offenders   | Group work | 14-18 years | -8 weeks for Level 1 Diversion<br><br>-16 Weeks for Level 2 diversion |
| Recycle Programme  | Aftercare programme for monitoring compliance with the diversion order | Individual | 10-18 years | Not specified   |

The above table indicates that Khulisa Social Solutions had numerous programmes for young offenders. Most of the programmes that were rendered by Khulisa were group-based. Additionally, these programmes were inclusive of different focus areas such as: life skills, violent behaviour, sexual offences and aftercare.

According to Kleinhans (2013) and Mathe (2004) every scientifically grounded programme should match the treatment needs of offenders. Therefore, it was discovered that Khulisa’s programmes were also age-focused and further dealt with a number of treatment needs. The duration of Khulisa’s programmes were related to the two levels of diversion, as stipulated in section 53 of the Child Justice Act 75 of 2008, namely Level 1 diversion and Level 2 diversion options. The duration of Level 1 programmes was 8 weeks; whilst the duration for Level 2 programme was 16 weeks.

DPF1 mentioned that the Positively Cool Programme is separated into two because it has to match the intellectual capacity of child offenders. Positively Cool Junior Programme is designated for children between the ages of 10-13 years; whilst Positively Cool Senior Programme was designated for children between the ages 14 and 18 years. In this regard, the responses of DPF1 were as follows:

*“The reason why we separate them it’s because of the level of the child or age of the child”* (DPF1).

DPF1 stated that the main reason for separating the Positively Cool programme into two segments was due to their goal, as an organisation, of rendering age appropriate services.

Given this summary of the programmes, all diversion programme facilitators, further, provided a number of factors that impede their implementation of these diversion programmes. Below is the discussion of these challenges.

4.3.1.2.3. Sub-theme 3: Gaps in the provision of diversion services

There are a number of gaps in the diversion programmes that were offered in Emnambithi/Ladysmith municipal area. As seen above, Khulisa did not have programmes that were strictly designed for offenders who have special needs in terms of intellectual deficiencies of some diverted young offenders. Additionally, these programmes put a high emphasis on group therapy and little emphasis on casework methods, wilderness therapy and clinical family therapy. Steyn (2012) argued that group approaches fails to address the needs of individuals. Kleinhans (2013: 137-139) also noted that there was a shortage of diversion programmes that focused on special needs, family-based programmes, individual counselling programmes and programmes that incorporated cognitive therapy. In this respect, the findings of this study confirm the findings of the aforementioned studies.

The next section presents the accredited diversion programmes in Emnambithi/Ladysmith.

**4.4. SECTION 2: ACCREDITED DIVERSION PROGRAMMES IN EMNAMBITHI/LADYSMITH**

This section is presented based on the following theme and sub-themes.

**Table 4.7. Presentation of themes and sub-themes: accredited diversion programmes in Emnambithi/Ladysmith**

| <b>Themes</b>  | <b>Sub-themes</b>   |
|--|---|
| Factors that impede the facilitation of diversion programmes | <ul style="list-style-type: none"> <li>○ Learning disabilities in some divertees</li> <li>○ Improvised methods during programme implementation</li> <li>○ Probation Officer’s Reports: Illegible, incomplete and handwritten</li> <li>○ Challenges in implementing restorative justice methods</li> </ul> |

|   |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>○ Lack of transport to reach rural areas</li> <li>○ Lack of parental support</li> </ul>   |
| Factors that promote the facilitation of diversion programmes | <ul style="list-style-type: none"> <li>○ Adequate training amongst diversion programme facilitators.</li> <li>○ Decentralized diversion programmes: services were taken to the child offender</li> </ul> |

#### 4.4.1. Theme 1: **Factors that impede the facilitation of diversion programmes**

This theme is discussed in terms of the sub-themes that are presented in Table 4.7 above.

##### 4.4.1.1. Sub-theme 1: *Learning disabilities in some divertees*

Participants (DPF1, DPF3) characterized learning disabilities of divertees as one of the factors that disturb them when they implement diversion programmes. In this regard, the views of DPF3 were as follow:

*“One [of the challenges when implementing a diversion programme] is the learning disabilities of the children. You know it is heart-breaking to find the child in grade 8 but the child can’t even spell their names. To me that child had been pushed to that grade without being thoroughly taught. A child in grade 8 can’t read. It’s heart-breaking that’s a big challenge.”* (DPF3)

DPF1 explained that some of the diversion programme activities would require young offenders to read out-loud within a group setting. This means that their learning struggles had direct effects towards compliance with diversion programmes because their inability to learn ordinarily diminished their self-esteem and confidence.

Moreover, this means that learning disabilities did not only impede the effective facilitation of diversion programmes, but it also contributes in non-compliance of children with the diversion order. Kleinhans (2013) noted that there was a shortage of diversion programmes that dealt with children with special needs. Kleinhans (2013: 62) also mentioned that young offenders who were intellectually impaired were unlikely to participate actively during a diversion programme. Kleinhans further argued that learning disabilities was one of the causes of continued juvenile delinquency. According to Els (2012) early intervention

programmes, including diversion programmes, may require a certain level of intellectual commitment from the juvenile offender.

In conclusion, this research revealed that learning disability was one of the core factors that impeded diversion programme facilitators from, effectively, implementing diversion programmes that were designed generically for all young offenders. Diversion programme facilitators led to the modification of the prescribed accredited programmes due to various challenges. Below is a presentation of findings on the improvised methods that were often adopted by programme facilitators during the implementation of diversion programmes in Emnambithi/Ladysmith.

#### 4.4.1.2. Sub-theme 2: *Modified methods during programme facilitation*

It was a finding in this study that the Positively Cool Programmes, both Junior and Senior, had two different manuals. Based on the programme manuals, Positively Cool Programme is a group-based diversion programme. This means that it was prescribed by the programme manuals that these programmes should be implemented in groups because most of the sessions require interaction amongst the divertees.

All diversion programme facilitators mentioned challenges that led to the modification of the prescribe methods of facilitating the diversion programmes. Their responses were as follows:

*“In some instances it’s difficult to render them [programmes] individually, they should be group-based, but you get one divertee in this area and another one in another area, therefore you have to adapt it and change it, but we do all the activities that are on the manual with the divertee” (DPF1)*

*“Yah it [programme manual] emphasizes interaction of course, but sometimes we are forced to have one child. We are not forced per se, but we have no other choice; if the child is the only divertee in that area then we have to implement [individually].” (DPF1)*

*“We have no any other choice, if the child is the only child in that area then we have to implement” (DPF2)*

*“It depends, you can use the same manual and use it to your advantage whether it is individual or in as a group. As I said earlier it’s much fun when is it in group but if it is an individual it means that you as a facilitator should become active and play with the child so*

*that your teachings becomes effective, but it is more fun in a group, but the content is valuable to both.*” (DPF3)

The responses of all three (3) programme facilitators indicate that they all knew that the diversion programmes were best implemented in groups and according to the prescriptions of the manual. However, due to fluctuating and limited numbers of divertees they had to improvise the programme contents in order to suit individual needs.

Additionally, their responses also indicate that they did not have much choice, but to modify the programmes from one divertee to another. Steyn (2012) noted in his research study that there was a shortage of individual-based diversion programmes in South Africa. Consequently, in Emnambithi/Ladysmith this shortage resulted in the adaptation of group-based programmes. Khulisa’s diversion programmes were designed to carry-out predicted and uniform outcomes (Ntshangase, 2016). However, in a situation where programme facilitators had to amend the programmes contents, it was thus likely for the programme outcomes to be dissimilar.

Modification of diversion programme had implications for quality assurance. Noteworthy, section 56 of the Child Justice Act (Act 75 of 2008) makes provisions for accreditation of diversion programmes. Accredited diversion programmes require quality assurance, as regulated by regulation 34 of the Child Justice Act 75 of 2008. This means Khulisa Social Solutions was accredited to render programmes that were quality assured. However, due to challenges that were mentioned in this sub-theme, it can thus be concluded that in Emnambithi/Ladysmith diversion programmes were improvised from time to time. Consequently, that could be marked as one the factors that impeded the implementation of diversion services to young offenders in Emnambithi/Ladysmith municipal area.

The next sub-theme presents challenges that were encountered by diversion programme facilitators regarding the assessment reports from probation officers.

#### 4.4.1.3. Sub-theme 3: *Probation Officer’s Reports: handwritten, incomplete and illegible*

All diversion programme facilitators expressed negative experiences with the quality of assessment reports that they received from the probation officers within the Emnambithi/Ladysmith municipal area. One of the DPFs made the following remark:

*“We receive the assessment form and the Form 6. Sometimes either the assessment form is filled out or not filled out nicely. It’s not neat, sometimes it is handwritten, untidy and you can’t read it. The writing is light and if it’s faxed you can’t see what is written.” (DPF1)*

Another participant gave the following response:

*“Probation officers do assess [child offenders] but many times I have the feeling that they assess by proxy and I don’t actually think they go to the homes of the children because if they had gone to the homes of the children they would recommend better, better service or better... Please let me call it better service to the children. You know why I say that they don’t even go there. Some divertees come without contact numbers and the probation officers don’t bother about that [...]. The other thing, probation officers would say that the home is conducive to bring up the child and when you go to those homes it’s the opposite.” (DPF3)*

Other programme facilitators stated that they do not trust the information that is being provided by probation officers. Their responses were as follows:

*“I wish there was maybe a format on the computer that refuses that copy and paste” (DPF1)*

*“I do not trust it [probation officer’s report], because sometimes we find cases ‘that how on earth they referred a child like this to us’, where they should have referred the child to somebody else. You know, how come they didn’t uncover such and such about the child.” (DPF2)*

*“There are some probation officers that really, really do an excellent job we prefer staying with them our whole lives because they do their jobs thoroughly ...but sometimes you find ones that disappoints us ...I don’t know if it’s the amount of their workload, yes maybe” (DPF2)*

Diversion programme facilitators highlighted their despondency and disappointment about some of the reports that they receive from probation officers. Programme facilitators mentioned that having an illegible report meant that they had to start over again and re-assess the child which resulted in them delaying their core duties which were to facilitate diversion programmes. Assessment is the statutory responsibility of probation officers, in terms of section 34 of the Child Justice Act (Act 75 of 2008). Remarkably, in Emnambithi/Ladysmith

it was interesting to learn that some of the statutory responsibilities of probation officers, such as assessment, were shifted to programme facilitators.

Nevertheless, Table 4.4 above indicates that 4 out of 5 public prosecutors were happy with the quality of probation officers' reports. However, in respect of diversion programme facilitators (DPFs) they all expressed despondency regarding the quality of reports that they get from probation officers. Of note, the same reports that were received by prosecutors were then copied and thereafter forwarded to diversion programme facilitators.

In conjunction with the views of prosecutors, DPF2 was the only programme facilitator who made an exception with regard to the reports of certain probation officers. DPF2 indicated that some of the probation officers were truly excellent with their jobs, including the quality of their reports. This exception justified the positive outlook of prosecutors with regard to good probation officers' reports. This means that some of these prosecutors (as indicated in table 4.4) were referring to the experiences that they have had with the 'excellent' probation officers that were referred by DPF2. However, Kisten (2001) stated that it was common that stakeholders often grumbled about the quality of social workers reports.

System's theory emphasises the significance of cooperation amongst stakeholders/subsystems in any functional system (Tshem, 2009). This means that it is important for probation officers to play their roles effectively in order to maintain the smooth-running of the child justice system. Below is the discussion on the challenges that were experienced by diversion programme facilitators when implementing some of the restorative justice methods, which are incorporated in diversion programmes.

#### 4.4.1.4. Sub-theme 4: *Challenges in implementing restorative justice methods*

Khulisa's diversion programmes include some of the restorative justice methods such as victim-offender mediation, mediated apology, *inter alia*. Diversion programme facilitators mentioned that they often experienced challenges when implementing the restorative justice contents (i.e. mediated-apology) of diversion programmes.

In this respect, two of the programme facilitators provided the following remarks:

*"Sometimes it is very difficult. In some cases you contact the victim and they don't want to hear about the divertee and in other cases they are very willing to meet with them because*

*they understand the circumstances. In some cases you find that they don't even know that the child has been referred for diversion. They feel that it is a soft punishment ... that they should've been punished more.” (DPF1)*

*“Some [victims] still carry the grudge that this child has done this and that to them ... They normally don't want to see the divertees and we also feel that it's not safe to expose children to them because normally you just hear from the phone when you make an appointment that this man is still angry, this man doesn't want to see the child....” (DPF3)*

The above responses signify that diversion programme facilitators were faced with challenges regarding the implementation of restorative justice methods. As indicated by DPF1 some of the victims feel that diversion is somewhat ‘*a soft punishment*’. In affirmation, Gxubane (2010: 40) argued that: “restorative justice is often perceived as a lenient approach to dealing with offenders”. Moreover, Mathe (2004) and Skelton and Tshehla (2008) also argued that the notion of restorative justice is still not universally accepted by everyone. Clearly, the responses of diversion programme facilitators, as presented in this sub-theme, suggest that in Emnambithi/Ladysmith the idea of restorative justice and/or diversion is still not accepted by the victims of crime. DPF1 also mentioned that she often encountered challenges in an event where the victims were unaware that the criminal case had taken the route of diversion and/or restorative justice. However, the implications of excluding the victims in diversion court process are discussed above in this chapter (section 1).

In conclusion, these findings suggest that the lack of participation from the victims served as an impediment in the implementation of diversion programmes. It was also difficult for the DPFs to facilitate restorative justice options with the victims who were neither aware nor accepted the notion of restorative justice as an integral part of the formal justice system. Below, is the discussion about transport needs of programme facilitators.

#### 4.4.1.5. Sub-theme 5: Lack of transport to reach rural areas

It is worth-mentioning that Khulisa Social Solutions had established satellite workstations across all municipal wards of the Emnambithi/Ladysmith municipality. Therefore, during the implementation of diversion programmes, the diversion programme facilitators had to go to the satellite office that was nearest to the young offender in order to implement the programme. In this regard, one out of the three programme facilitators noted the lack of

transport as one of the impediments in the provision of diversion services in Emnambithi/Ladysmith. DPF3 reported as follows:

*“The big challenge is when they live in the rural areas. According to Khulisa, the facilitator has to go to the divertee because many of them cannot afford to come to town. Number two, is the challenge of transport, [...] being in the rural areas becomes a big challenge where taxis are not fast...they come at different times”* (DPF3)

DPF3 further stated that:

*“Currently I am busy with the children at a place called [...]. There is no transport there. If you don't have the taxi in the morning the next one is about eleven o'clock and the other one is about two when the schools are out and that is it. The next one is from town bringing the people home so it means I have to walk ten to twelve KMs on foot and you can imagine you arrive there exhausted.”* (DPF3)

These responses indicate the magnitude of challenges that were faced by diversion programme facilitators when they implement diversion programmes. The shortage of vehicles means that diversion programme facilitators were compelled to either use public transport or walk long distances in order to serve their beneficiaries. Walking in remote rural areas was one of the challenges that confronted diversion programme facilitators due to lack of reliable transport. This was also delaying service delivery since the DPFs would spend unsolicited hours in rural areas due to the shortage of transport. Khulisa Social Solutions did not have a company car that was to be utilized by the programme facilitators. DPF1 mentioned that they would be reimbursed for using their own money in order to reach out to service-beneficiaries.

Hargovan (2013) noted that socio-economic circumstances of young offenders were among the main factors that impeded them from attending diversion programmes in the Durban area. Likewise, in Emnambithi/Ladysmith some of the young offenders cannot afford to go to town, to the headquarters of the diversion service provider. As a result, diversion programme facilitators were then compelled to reach out and take the services to the people. However, reaching out to the young offenders came with transport challenges as discussed above. Regulation 30(c)(iv) of the Child Justice Act stipulates that it is the responsibility of the Department of Social Development to ensure that all the necessary resources of implementing diversion programmes are available and accessible. However, transport was one of the

logistical resources seemed to be a challenge in Emnambithi/Ladysmith. Below is a discussion about the lack of parental involvement in diversion programmes.

#### 4.4.1.6. Sub-theme 6: *Lack of parental involvement*

It was a finding in this study that Khulisa's programmes requires the involvement of either parents and/or significant others from the families of diverted young offenders. In this respect, diversion programme facilitators reported that the lack of parental involvement was one of the factors that impeded the implementation of diversion programmes in Emnambithi/Ladysmith. Below is the presentation of responses of all three (3) programme facilitators with regarding the lack of parental involvement:

*"It's just with the parenting skills it's a bit touchy because you go into a community or meet the parents to talk to them about parenting skills. It's like you are insulting them. Sometimes they become offended, they feel insulted because it's like they feel they cannot be or know how to be a parent."* (DPF1)

*"But in some cases the parents don't want to attend parents' workshop. It's a challenge we have to run behind them, some parents, yes, they do understand they are involved in the child's life but then you get those parents that are just there for the sake of being there"* (DPF1)

The experiences of this participant were echoed by experiences of the two other diversion programme facilitators. These participants made the following remarks:

*"The other one is the attitude of the parents, the siblings or the people in the family, if they have a negative attitude about diversion it becomes difficult to facilitate, because they will make it difficult for the child to come. They would make it difficult for you to implement the programme they make it even difficult for the child to write home-work; they will not be there to help."* (DPF2)

*"Particularly when I do parental workshops, some parents cannot even go to the school where we hold sessions. So it becomes important to go to their homes"* (DPF3)

DPF1 mentioned that some parents would not participate in parental workshops because they would feel offended that they were taught parenting skills, which implies their incompetency in raising their children.

The responses of all diversion programme facilitators indicated that they were experiencing challenges with regard to the involvement of parents in diversion programmes. According to Corzine (2011) cited in Els (2012: 96) “we must do all we can to empower parents and communities to protect our youth and to encourage healthy behaviour”. This view signifies the importance of parental support in building a utopic nation. Els (2012), Badenhorst (2011), Gallinetti (2009), amongst others, noted that parental support was a challenge in the implementation of diversion and/or the child justice legislation. Therefore, their findings were confirmed by the findings of this study. The next theme discusses the factors that promote the implementation of diversion programmes.

#### 4.4.2. Theme 2: **Factors that promote the facilitation of diversion programmes in Ennambithi/Ladysmith**

This theme is discussed under two sub-themes as mentioned in Table 4.7 above.

##### 4.4.2.1. Sub-theme 1: *Adequate training amongst diversion programme facilitators*

It was noted that all programme facilitators were confident about their knowledge of the Child Justice Act and the diversion programmes that are mentioned in Table 4.6 above. With regard to training, the programme facilitators provided the following responses:

*“We try to do our trainings every month, we try to have two or three [trainings] every month. [...] Our trainings are within Khulisa, in some instances with regard to supervisors we do have consultants that trains us on supervision.”* (DPF1)

*“Yes I understand it [Child Justice Act] with regard to my duties”* (DPF1)

*“Yes we have been trained on the programmes, [...] it is adequate, but as I’ve said earlier there’s still room for learning”* (DPF2)

*“Like I said before, I’ve been here for such a long time so I have been trained, we get to be trained, we always familiarise ourselves, we always remind ourselves, we always do top-up training, we do our own tests we make sure that we are on the same page.”* (DPF2)

*“That is one good thing about Khulisa, they don’t just throw you in the deep end, there are trainings to accommodate the newly appointed”* (DPF3)

The above responses indicate that all programme facilitators were trained in diversion programmes and in the Child Justice Act. Therefore, it can be determined that the training needs of diversion programme facilitators were adequately met. Kleinhans (2013) noted in her study that diversion programme facilitators were not adequately trained on programmes that they were rendering to young offenders. However, in Emnambithi/Ladysmith programme facilitators specified that they were regularly trained and that they would often receive 'top up trainings' from time to time. It was a finding in this study that the management of Khulisa Social Solutions were able to relay the information to the staff through meetings and formal training. It was interesting to note that Khulisa Social Solutions is the only stakeholder (within the child justice system) in the spread of Emnambithi/Ladysmith that does trainings on monthly basis. Skelton and Tshehla (2008: 13) emphasized the importance of training of the diversion programme facilitators. In conclusion, the adequate training of all diversion programme facilitators was one of the factors that promoted the implementation of diversion programmes in Emnambithi/Ladysmith.

#### 4.4.2.2. Sub-theme 2: *Decentralized diversion programmes: services were taken to the child offender*

It was interesting to note that, Khulisa Social Solutions have decentralised their services. It was a finding in this study that Khulisa Social Solutions had satellite service points in every municipal wards of Emnambithi/Ladysmith municipal area. This means that Khulisa was able to reach even the deep rural areas. One of the participants stated that:

*"It's Khulisa's policy that we must take the service to the child"* (DPF1)

This signifies that Khulisa Social Solutions was aware of the socio-economic circumstances of their clients. Muntingh (2007: 329) stated that "it can safely be assumed that most children who enter the justice system are already vulnerable [...] by a number of risk factors are likely to have been present in the child's life". Therefore, the decentralization of diversion services at Khulisa was noted to be an instrumental factor in the improvement of diversion services to young offenders. Trotter (2006) mentioned in his research that it is often difficult to obtain voluntary attendance of involuntary clients. This means that it is likely for involuntary clients (young offenders), in the child justice system, to default on programmes that might benefit them. A study by Muntingh (2007: 349) suggested that diversion programmes and service providers are mainly situated in urban areas; as a result, accessibility to these services was a

major challenge in rural areas for young offenders. However, the findings of this study indicate that there have been improvements regarding the past reality of ‘urbanized diversion service providers’ (*ibid*). Furthermore, it is suggested by the finding of this study that the ‘decentralisation of diversion programmes’ by Khulisa Social Solutions has been one of the factors which improved the implementation of diversion services to young offenders within Emnambithi/Ladysmith and beyond.

The next section presents findings regarding the perceptions and experiences of participants about monitoring of compliance and non-compliance of diverted young offenders.

**4.5. SECTION 3: MONITORING OF YOUNG OFFENDERS IN TERMS OF THE CONDITIONS OF THE DIVERSION ORDERS**

The themes and sub-themes in this section are shown in Table 4.8 below:

**Table 4.8 Presentation of themes and subthemes: *Monitoring of young offenders in terms of the conditions of the diversion orders***

| <b>Themes</b>   | <b>Sub-themes</b>   |
|---|---|
| Monitoring of compliance and non-compliance in relation to diversion orders | <ul style="list-style-type: none"> <li>○ Attitudes of key role players towards monitoring</li> <li>○ Process of monitoring compliance and non-compliance of diverted young offenders</li> <li>○ Measures to encourage compliance of diverted young offenders with diversion orders</li> </ul> |
| Process of reporting compliance and non-compliance of young offenders       | <ul style="list-style-type: none"> <li>○ Formative Reporting</li> <li>○ Summative Reporting</li> <li>○ Implications of not reporting compliance</li> <li>○ Measures to ensure effective reporting of compliance</li> </ul>  |
| Challenges during monitoring of compliance                                  | <ul style="list-style-type: none"> <li>○ Attitudes of divertees</li> <li>○ Poor records management: loss of</li> </ul>  |

#### 4.5.1. Theme 1: **Monitoring of compliance and non-compliance in relation to diversion orders**

This study discovered several flaws and best practices in the implementation of monitoring of compliance within the child justice system. This theme is presented in terms of the four subthemes as illustrated in Table 4.8 above.

##### 4.5.1.1. Sub-theme 1: *Attitudes of key role players towards monitoring*

All participants appreciated the importance of monitoring. The accounts of probation officers (POs), assistant probation officers (APOs), public prosecutors (PPs) and diversion programme facilitators (DPFs) indicated positive attitudes towards monitoring of the diversion orders of young offenders. In this respect, the remarks of the participants were as follows:

*“It is important, because we want to ensure that this child grows up, and becomes a grown up as a law abiding citizen, so it is important to monitor that he is doing everything [...], that is said he must do...”* (PP5)

*“I think it’s important to see the progress of the child with regard to compliance”* (DPF1)

*“I think it’s more important because you can’t just divert the child and leave it like that, you should monitor the child’s progress on diversion.”* (PO1)

*“I think we have to do that as probation officers so that we can be able to see how the child is doing; whether he is remorseful? Whether he is changing or he is merely continuing with his bad behaviours.”* (PO2)

*“It’s important, but if the child is diverted without Form 6 [the diversion order] then the child does not feel that he is still under the care of the Magistrate. He also does not feel that diversion is a serious thing. So if I monitor Form 6 [the diversion order] should be attached”* (APO2)

The above responses indicate that participants had a similar attitude towards monitoring of young offenders. The above cited participants emphasised the significance of monitoring

compliance of young offenders. Nonetheless, positive attitudes towards monitoring of compliance and non-compliance does not guarantee effective implementation of monitoring, rather attitudes can be rhetoric and/or theoretical. In light of the positive attitudes of key role players towards monitoring of compliance, below is the presentation of results on the actual processes of monitoring in Emnambithi/Ladysmith municipal area.

4.5.1.2. Subtheme 2: Process of monitoring compliance and non-compliance of young offenders

Participants were asked to describe their experiences of monitoring compliance and non-compliance of young offenders. In this respect, participants gave diverse accounts of their experiences. Probation officers (POs) and diversion programme facilitators (DPFs) gave their versions of day to day practices of monitoring compliance of diverted young offenders. Table 4.9 below presents the experiences of probation officers and diversion programme facilitators with regard to monitoring. Noteworthy, the responses of assistant probation officers are therefore excluded in this subtheme because they were not active role players in all monitoring processes.

**Table 4.9 Process of monitoring compliance and non-compliance**

| <b>Participant</b> | <b>Views of participants</b>   |
|--------------------|--|
| PO1                | <i>“We normally monitor what the court order entails and we monitor the Level of diversion that you are in, we visit the child at school...at home; we ask parents about [the child’s] behaviour; we visit Khulisa on how the child is conducting himself during the diversion programme, the progress, and everything. Thereafter we report back” (PO1)</i>   |
| PO2                | <i>“I usually monitor the child at home and at school if he is doing the homework” (PO2)</i>   |
| DPF1               | <i>“We try as much as possible. We make contact with the Probation Officers in order to draft [referral] letters... We are constantly speaking with parents to get the child to attend the programme and to find out the challenges. If the child is still not complying, we then speak to the Probation Officer and the decision is made in conjunction with the Probation Officer and that is when we refer back.”</i> |

|      |  |
|------|--|
|      | (DPF1)   |
| DPF2 | <p><i>“We monitor the child monthly. We look at the month as a whole ,the progress on how the child has been attending, the parent’s involvement whether the child hasn’t been found offending or doing this and that, so that is how we monitor it”</i></p> <p>(DPF2)</p> |

The above excerpts indicate that both probation officers do monitor young offenders. However, both probation officers did not clarify their timeframes for their monitoring. Furthermore, PO1 and PO2 did not have a specific programme that frames their monitoring processes. This indicates that monitoring by probation officers is not well structured as compared to that of diversion programme facilitators.

On the other hand, diversion programme facilitators were more transparent regarding their timeframes and the processes of monitoring. Furthermore, Table 4.6 above indicates that diversion programme facilitators had a programme (The Recycle Programme) that they were implementing in order to monitor the progress of a diverted offender. The responses of DPF1 highlight corroboration between the programme facilitator and the probation officers. DPF1 indicated that she usually works hand in hand with the probation officer during the process of monitoring of compliance and non-compliance of young offenders. DPF2 indicated that they monitor the child’s progress on a monthly basis. She further emphasised the involvement of a parent during monitoring.

It is also shown in the above excerpts that Khulisa’s role was quite significant in ensuring that the children comply with diversion orders. According to Ntshangase (2016: 107), “as an accredited organisation, Khulisa is suitable for monitoring a child’s compliance with the diversion order”, thus the court entrusts that role to Khulisa. However, Section 57 of the Child Justice Act provides that the probation officer or any other suitably qualified person should be assigned the role of monitoring compliance and non-compliance of divertees. The child justice legislation does entrust organizations, but it obligates probation officers and/other suitably qualified persons to assume the role of monitoring compliance and non-compliance of diverted young offenders. Noteworthy, in Emnambithi/Ladysmith the courts normally assign the role of monitoring, solely, to probation officers. This means that diversion programme facilitators cannot be held responsible for the failure of monitoring and

reporting because they were often not appointed through the diversion order to monitor diverted young offenders.

Nevertheless, it was interesting to note that diversion programme facilitators from Khulisa were committed in exercising the role of monitoring compliance in all diversion cases despite that they were not ordered by the court to do so. Ntshangase (2016: 107) argued that the availability of a single diversion service provider in the area makes the implementation of diversion programmes to be less scattered because one service provider works with the child through to the end. In the next subtheme, the factors that facilitate compliance of young offenders with the conditions of the diversion order are discussed.

#### 4.5.1.3. Subtheme 3: *Measures to encourage compliance of diverted young offenders with diversion orders*

It was interesting to note that diversion programme facilitators and probation officers had established a culture of encouraging compliance of young offenders. Therefore, in this subtheme the responses of diversion programme facilitators are presented prior to those of probation officers. The responses of DPF2, in this regard, are presented as follows:

*“Some people can hardly afford money to buy bread, so never mind coming to our offices. It’s a challenge, but also don’t forget that we take the services to the participant. We go to the participant [...]. [Normally] we ask if they can afford to come to town, if they can, then they are welcome, but if they cannot afford then we take the services to their place.”* (DPF2)

The response of DPF2 indicates that the ‘decentralisation of diversion services’ (as discussed in page 94 above) was instrumental in promoting compliance of young offenders. This aspect was therefore amongst the factors that promoted the both the implementation of diversion programmes and the implementation of monitoring of diverted young offenders in Emnambithi/Ladysmith. Below, is the presentation of another method that was employed by the probation officers in order to promote compliance of diverted young offenders. PO1 gave the following remarks:

*“Usually Khulisa would contact me, informing me that so... and so... is not complying. We usually do case conferencing, we call the parents of the child, and we’d do several sessions with the child to give him a chance of proving him or herself. Then if a child is failing to*

*comply, we then refer the matter back to Court. There are no other ways beside the fact that we do case conferencing, we do home-visits. Actually, we do all means to put the child back on track. But then if we are failing with the child we refer the child back to Court for non-compliance in terms of Form 9.” (PO1)*

The response of PO1 indicate that she normally use case conferences, home-visits and family support in order to promote compliance of diverted young offenders. Els (2012) describes family support as a fundamental feature in ensuring continued compliance with the diversion order. On the other hand, Hargovan (2013) noted that some of the young offenders merely lack motivation, whilst some children cannot comply due to transport costs, amongst other socio-economic needs. However, it is seen that in Emnambithi/Ladysmith there were measures in place, to prevent children from being reported and therefore move deeper into the criminal justice system. It is indicated in the above citation that PO1 would only refer the child back to court, for non-compliance, as a measure of last resort. Furthermore, it was common amongst the responses of probation officers and diversion programme facilitators that they only report non-compliance of diverted young offender as an option of last resort.

The initiatives of promoting compliance of diverted young offenders were instrumental in ensuring that the young offenders were able to attend diversion despite their socio-economic margins and attitudes towards rehabilitation. Trotter (2006) stated that it is typical of ‘involuntary clients’ (including young offenders) to lack commitment towards rehabilitative programmes. A study conducted by Muntingh (2001) cited in Ntshangase (2016: 96) indicated that most divertees complied with diversion because they were afraid of prison and did not want to get a criminal record. Nevertheless, the above findings suggest that the key role players of child justice system, in Emnambithi/Ladysmith, were rightly committed to deal with involuntary clients.

Below is the discussion about the process of reporting. In this regard, participants shared their experiences.

#### **4.5.2. Theme 2: Process of reporting compliance and non-compliance of young offenders**

Reporting is an outcome of monitoring. Reporting is one of the measures of ensuring accountability, sound administration and good governance. In Emnambithi/Ladysmith, key

role players have two ways of reporting namely; progress or formative reporting and summative or final reporting.

#### 4.5.2.1. Sub-theme 1: Formative Reporting

In the context of diversion of young offenders, formative reporting can be defined as a process of communicating the programme milestones to the relevant stakeholders as prescribed by the Child Justice Act 75 of 2008. In terms of formative reporting, DPF1 and DPF2 provided the following responses:

*“We report monthly to the Department of Social Development but with court it depends on whether we have a case that has been completed on that month”* (DPF1)

*“We report to DSD [the Department of Social Development] more than the court”* (DPF2)

The responses of DPF1 and DPF2 indicate that formative reporting was one of the monthly activities of diversion programme facilitators in Emnambithi/Ladysmith. Noteworthy, both programme facilitators mentioned that they report monthly to the Department of Social Development, whilst they were only sending completion reports to the court at the end of the programme.

PP2 and PP4 confirmed that as prosecutors they often received completion reports instead of progress/formative reports. Their responses were as follows:

*“As far as I remember they [diversion programme facilitators] report back when a child has completed a programme, so that would be at the end of the programme or rather when the child does not attend a programme. So in that regard, they report earlier then.”* (PP2)

*“Progress report? No, we don’t get progress report; we only get the compliance [summative] report”* (PP4)

On the other hand, PO1 also confirmed that as a probation officer she often received progress reports from the DPFs on a monthly basis. Her response was as follows:

*“They [programme facilitators] normally hand deliver reports on case conferences, monthly progress and on final completion of a diverted young offender”* (PO1)

However, PO2 complained about the lack of communication between herself and the diversion programme facilitators. Her response was as follows:

*“At one time I was attending a training workshop at Estcourt and when I came back I was informed by the facilitator that they have already sent the child back to Court and this happened without me being told. So, I would say that there is no communication between us. That is a challenge because I believe that if the facilitator and the child were having issues I should be informed as a probation officer. But the facilitator that I just mentioned above, she always inform me when she encounters challenges with child offenders from my area. [...] So I would say that, everything depends on the attitudes of facilitators.”* (PO2)

PO2 complained about formative reporting of diversion programme facilitators. Hence, she cited some incidents where she was not satisfied with the extent of communication between her and the diversion programme facilitators. However this experience was only exclusive to PO2, as it is shown above that PO1 was satisfied with the patterns of communication between herself and the programme facilitators. PO2 stated that the lack of communication between her and the programme facilitators has resulted to a point where she only reacts to the complaints of DPFs about the progress of a diverted young offender. The views of this probation officer were as follows:

*“Usually, I do it [formative monitoring] when the child presents some problems. Then that is only when I would intervene, but if everything is okay and the facilitator don't complain about anything then I wouldn't...”* (PO2)

Inconsistent experiences of two probation officers, with regard to formative reporting, resulted in inconsistent practices. As shown in the preceding subtheme above (page 99), PO1 was able to intervene in instance where young offenders were not complying because of the strong communication between herself and the programme facilitators. Nonetheless, PO2 was unable to intervene in cases where diverted young offenders presented non-compliance issues because she was regularly not contacted about such problems.

In the next subtheme, summative reporting is discussed.

#### 4.5.2.2. Sub-theme 2: Summative Reporting

In the context of diversion of young offenders, summative reporting can be defined as a process of communicating the final outcome with the relevant stakeholders as prescribed by the Child Justice Act 75 of 2008. In respect of summative reporting, participants shared their experiences. Probation officers provided the following comments:

*“We use Form 9 from the Child Justice Act”* (PO1)

*“I use the format that I developed, I just write in simple what is happening and that the case must be returned back to court”* (PO2)

The responses of the two probation officers indicate that the reporting practices of PO1 and PO2 were not the same. It is shown in the above excerpts that one of the probation officers (PO2) does not use the prescribed format in order to report compliance and non-compliance to court. In contrast, it is shown that PO1 used Form 9 in order to report about compliance and non-compliance of diverted young offenders. Section 57 (5) and regulation 34(1)(a) of the Child Justice Act stipulates that Form 9 is the prescribed form that must be utilised by designated probation officers in order to report compliance and non-compliance of diverted young offenders. It was, however, a finding of this study that one of the probation officers (PO2) did not use Form 9. When she was asked to provide reasons for non-compliance with prescriptions of the Child Justice Act, she casually made the following remark:

*“They never asked for that [Form 9]”* (PO2)

This means that PO2 was not firmly aware of the need to comply with the provisions of the Child Justice Act. Noteworthy, PO2 was working directly with PP1, the prosecutors who lacked training on the Child Justice Act (see Table 4.13 below). Therefore, lack of training on the Child Justice Act had systemic implications in the expanse of Emnambithi/Ladysmith because probation officers and prosecutors were practicing inconsistently.

In addition, prosecutors and diversion programme facilitators also commented on summative reporting. Their responses were as follows:

*“In the experience in which I have had, I have never seen even the Form 9 saying that the minor has fully complied or whether or not the minor has not fully complied. I have never seen it. So in respect of the State and the social workers I don't think it is properly done because we never know.”* (PP3)

The remarks of PP5 were as follows:

*“It will be the non-compliance that we are interested in” (PP5)*

The views of PP5 were shared by all other prosecutors. DPF1 confirmed that prosecutors were all interested in summative reporting. The responses of DPF1 were as follows:

*“I think they [prosecutors] are just interested in the success, the number of completions, it doesn't really matter how the child progressed as long as the child has completed and he's off their court room” (DPF1)*

PP5 stated that as prosecutors they were not actually interested on monthly progress of the child, instead they were only interested knowing whether the diverted young offender had complied or not.

This indicates that PO2 expected the public prosecutors to send a request with regard to compliance reports. Consequently, if the prosecutors fail to request compliance reports then she would not submit compliance reports. This implies that PO2 did not understand the significance of reporting compliance to the prosecutor. The experiences of PO2 were confirmed by PP1, who works directly with PO2. PP1 made the following remark:

*“We don't follow it up and neither are we given the feedback [by the probation officer]. So I think that part of communication was disrupted and left disrupted, nobody bothered to repair it in that we should have a meeting and discuss really how can this happen or how long does it take, so we can set a minimum deadline to say when it [Form 9] should be here”*

*“Like with the one I diverted I didn't have any feedback of. Ok the child did go to diversion but there's no communication between us and the DSD to say okay we done now these are the amount of children that have finished diversion this one did well so you can close off the docket or whatever we don't get that so even for us that has become chain that when we divert we just divert throwing out the door and then you never have to worry about it.”*

When PO2 was asked whether uses Form 9 or any other self-initiated format in order to report compliance, she then made the following assertion:

*“I just use the format that I developed, I just write what is happening and that the case must be returned back to court”*

This signifies that in one of the magistrate’s courts in Emnambithi/Ladysmith, summative reporting was one of the reporting procedures that was neither considered nor taken seriously both by the prosecutor (PP1) and the probation officer (PO2).

However, PO1 shared an opposite experience with regard to summative reporting. Her views were as follows:

*“We use Form 9 from the Child Justice Act”* (PO1)

Unlike PO2 the views of PO1 indicate that she utilised the prescribed Form 9 as the reporting format. Furthermore, she had a deadline as to when she would report back to court with regard to compliance. These results confirm the findings of Khumalo (2010) that there is inconsistency in the implementation of the child justice legislation. The following sub-theme presents the implications of not reporting.

**4.5.2.3. Sub-theme 3: Implications of not reporting compliance**

Two out of the five prosecutors were concerned that some of the probation officers had never returned compliance reports (Form 9) to the court. Their views are presented in Table 4.10. below:

**Table 4.10 Implications of not reporting compliance and non-compliance**

| <b>Participants</b> | <b>Responses</b>  |
|---------------------|---|
| PP1                 | <p><i>“What happens is that there were times where we’ve asked about whether it [diversion] works or not; and we didn’t get a proper response from the Social Worker [...] so I was then starting to put everybody to the Child Justice Court.”</i> (PP1)</p> <p><i>“If we were having a proper system where we were getting feedback and then we would know how is it helping children and then we would be more open to sending children to diversion programmes because we would realise how had worked for certain children whether it’s successful or not successful;”</i> (PP1)</p> |
| PP3                 | <p><i>“Well we know that, based on what the Act is providing, they [young</i></p>   |

offenders] *should be brought back to court and give reasons why they failed to comply. Should it be that it's unjustified reasons then they should be referred back to the children's court now or where they are going to be tried in the criminal court now. But I have never seen that happening in reality because I never know whether there is compliance or non-compliance.*" (PP3)

*"Since now we don't know whether there is compliance or non-compliance we simply divert in a position of not knowing if this is working or not. If we were getting reports [Form 9] then we gonna know that diversion is effective or not effective. [...] You have to know whether there is compliance or non-compliance, so that you know at the end of the day whether the time you are spending at the P.I. is just a waste of time or you are really contributing towards assisting these minors for uplifting or changing their lives."* (PP3)

The above responses indicate that lack of reporting was somehow changing the attitudes of prosecutors regarding diversion. Hence, they were unsure whether diversion was effective or not.

PP1 and PP3 stated that they were interested in knowing about the impact of diversion on children. The responses of PP1 indicate that she had sought feedback from the probation officer in the past, but she did not get a response regarding the progress of diverted young offenders. As result, PP1 indicate that if she was constantly receiving reports her negative attitude towards diversion would change because she would be informed as to whether diversion is helping young offenders or not. PP3 also emphasised the importance of receiving feedback regarding compliance and non-compliance of diverted young offenders. PP3 further stated that she had never received feedback (Form 9 reports) from probation officers. As a result, PP1 had lost enthusiasm of considering diversion because she has never received monitoring reports from probation officers.

Feedback is one the core principles of systems theory. It is crucial in ensuring that the system maintains its equilibrium. As a result, in an instance where all role players communicate and give feedback, then it is likely that all role players would have common knowledge and

understanding (Zastrow and Kirst-Ashman, 2010). Gaps in communication and reporting have thus proved to be a factor that impedes the implementation of diversion services to young offenders.

4.5.2.4. Sub-theme 4: *Measures to ensure effective reporting of compliance*

Regardless of the experiences of PP1 and PP3, as presented in the preceding sub-theme; PP2, PP4 and PP5 stated that they have established a method of ensuring effective reporting. This method is namely: *Setting of clear deadlines regarding the lifespan of diversion orders*. Below, is the presentation of the responses of the prosecutor . Of note, each of the prosecutor, who gave the following responses, were emerging from the three sampled magistrate’s courts:

**Table 4.11     Setting of clear deadlines regarding the lifespan of diversion orders.**

| <b>Participant</b> | <b>Responses</b>  |
|--------------------|---|
| PP4                | <i>“Previously we had a problem with that [monitoring], but the Preliminary Magistrate now made sure that when the decision has been made that the child is diverted, there is next a demarcated date that has been given for filing the compliance report, so it has been compulsory for the Form 9 to be completed” (PP4)</i> |
| PP2                | <i>“The cases would be pending to the date or for the week in which the child is supposed to have finished [completed the prescriptions of the diversion order]. So that would be our way of monitoring in order to know when the compliance report is due.” (PP2)</i>  |
| PP5                | <i>“We do have the system in place and they give those [compliance reports] to the clerk of court and they are filed in a certain cabinet. So they do keep the records of those reports, so we are able to tell, because the clerk of court will be having information of the matters that have been diverted” (PP5)</i>        |

The above responses indicate that in the past, the prosecutors in Emnambithi/Ladysmith had a challenge with lack of reporting of compliance and non-compliance of diverted young offenders. However, two of the prosecutors (PP2 and PP4) mentioned that in their courts they have been seeing improvement, because they have erected a method of ensuring the receipt of

compliance reports from the designated probation officer. Hence, these prosecutors were then able to track the deadlines of diversion orders and the submissions of compliance reports.

The responses of prosecutors (as presented in Table 4.11) were confirmed by the responses of PO1 who shared the following comment:

*“The magistrate would give you the timeframe in which you must report back”* (PO1)

It was interesting to note that the experiences of prosecutors, regarding reporting of compliance, were different because three out of the five prosecutors (PP2, PP4 and PP5) were seeing improvements regarding the process of reporting compliance and non-compliance whilst the other two prosecutors (PP1 and PP3) presented complaints with regard to lack of reporting. The responses of three prosecutors, as presented in Table 4.11 above, indicates that these prosecutors were satisfied with the reporting of compliance because they have established a method of ensuring effective monitoring. On the other hand, the preceding sub-theme (sub-theme 3) presented the complaints of two of the prosecutors regarding lack of reporting. This is therefore symbolic that the experiences of public prosecutors were inconsistent which led to inconsistent attitudes towards diversion (as presented earlier in this chapter).

The next theme focuses on the challenges that were faced by participants during monitoring.

#### 4.5.3. Theme 3: **Challenges during monitoring of compliance**

This theme is discussed based on the following sub-themes namely: Attitudes of divertees; and Poor records management: *loss of compliance reports*.

##### 4.5.3.1. Sub-theme 1: *Attitudes of divertees*

Negative attitudes of diverted young offenders were noted amongst the factors that impedes compliance of young offenders. The views of participants were as follows:

PO2 stated that:

*“Sometimes I try to talk to the child, but at one time the child was very rude when I tried talking to him. He was so rude and there was no way that I could continue talking to him. The child was referred back to court.”*

DPF3 asserted that:

*“There was once a diverte at Ezakheni he would see me first and runaway and I wouldn’t know where to look for him and then the siblings would say, he said we must say we don’t know where he is.”*

The above excerpts indicate that the attitudes of children and lack of commitment from divertees is one of the factors that prevent young offenders from completing diversion programmes. Hargovan (2013) noted that negative attitude of young offenders towards diversion is a causative factor of non-compliance. Trotter (2006), recommended ways of dealing with involuntary clients, some of these ways include: fun-oriented therapy, solution-focused therapy, patience, and innovation. Trotter (2006) argues that the negative attitudes of young offenders or involuntary clients are one of the inevitable challenges in the child justice system. It could be expected that a person who attends rehabilitation based on committal is likely to lack commitment. Below, I have discussed another challenge that impedes implementation of diversion, particularly a challenge that occurs during monitoring of compliance and non-compliance.

#### 4.5.3.2. Sub-theme 2: Poor records management: loss of compliance reports

All diversion programme facilitators expressed their concerns about the poor filing of compliance reports by the probation officers and prosecutors. Specifically, these participants were concerned that prosecutors and probation officers often lose the compliance reports that they submit. Consequently, Khulisa is then expected to incessantly resubmit these reports. The assertions of these participants were as follows:

*“We have challenges. I’m going to say I’m afraid they don’t keep their records as a result they call here often to request things that they should be having, like documents that should be there and also sometimes we find that they question you about things that you’ve submitted already ... [but surprisingly] they wouldn’t know where they’ve kept it” (DPF2)*

This response was echoed by the views of another programme facilitator who commented as follows:

*“I have had no challenges, the thing is that they lose our reports there and then they want us to send reports over and over again” (DPF3)*

DPF1 also had a similar concern:

*“With challenges in reporting [...] we hand-deliver the documents but they get lost, then we have to follow up. But that’s why we now have a proof, a register so that you’d get to fill every time we deliver something and you write down the person that has received it [...] in order to protect ourselves.” (DPF1)*

The above responses indicate that all programme facilitators had a common challenge. Poor records management amongst other role players affected their enthusiasm of reporting compliance and non-compliance because their compliance reports were often misplaced by probation officers and prosecutors. As result, poor records management was therefore marked as a factor that impeded the implementation of diversion service to young offenders in Emnambithi/Ladysmith.

**4.6. SECTION 4: SYSTEMIC CHALLENGES THAT IMPEDE THE IMPLEMENTATION OF DIVERSION SERVICES**

This section is presented based on the themes and sub-themes that are presented in Table 4.12 below.

**Table 4.12 Presentation of themes and sub-themes: Systemic challenges**

| <b>Themes</b>                      | <b>Sub-themes</b>   |
|------------------------------------|---|
| Communication amongst stakeholders | <ul style="list-style-type: none"> <li>○ Functionality and frequency of stakeholders’ meetings</li> <li>○ Challenges of prosecutors regarding communication</li> <li>○ Challenges of diversion programme facilitators regarding communication</li> </ul>  |
| Training needs of key role players | <ul style="list-style-type: none"> <li>○ Inconsistent training amongst public prosecutors on the Child Justice Act</li> <li>○ Inconsistent training amongst assistant probation officers</li> <li>○ Experiences of role players with regard to</li> </ul> |

#### 4.6.1. Theme 1: **Communication amongst stakeholders**

Two subthemes are discussed in this theme namely: functionality and frequency of stakeholders meetings; and lack of effective communication.

##### 4.6.1.1. Sub-theme 1: *Functionality and frequency of stakeholders' meetings*

It was a finding in this research study that there was a functional stakeholders meeting called *case flow management meeting*. This meeting was convened by the senior magistrate. Case-flow management meetings were held monthly. It was further stated by participants that this forum was inclusive of all the key stakeholders in the criminal justice system, including the Department of Justice, National Prosecuting Authority, Department of Social Development, Department of Correctional Services, Department of Transport, and the South African Police Service. Diversion and other child justice matters were also part of the agenda and therefore discussed in this forum.

However, participants raised numerous challenges pertaining to communication.

##### 4.6.1.2. Sub-theme 2: *Challenges of prosecutors regarding communication*

Lack of effective communication is one the factors that were noted amongst the systemic challenges. Some of the comments of prosecutors were as follows:

*“I believe there is opportunity at the case flow management meeting that are held monthly with DSD, DCS as well as SAPS. Khulisa are not often invited or always present. But if there are challenges it could be discussed there.”* (PP2)

*“Well, it’s a tricky one, it might happen that there are those meetings with the bosses and whoever but it’s just that we as the prosecutors in court we are not aware of such meetings but as far as I’m concern I know nothing of such.”* (PP3)

*“There’s no communication between us and the DSD [Department of Social Development]”*  
(PP1)

*“So I think [...] communication was disrupted and left disrupted, nobody bothered to repair it in that we should have a meeting and discuss”* (PP1)

The responses of PP2 indicate that he was aware of the existence of the case-flow management meetings. Furthermore, his comment indicates that he has been attending the stakeholders. Noteworthy, PP2 was serving in management as a control prosecutor as a result he often attended meetings. However, PP3 was not aware of any stakeholders meetings. The response of PP3 indicated that there was a gap of communication between herself and PP2 (supervisor). This means that PP2 did not convey information to his subordinate about the matters that involves other stakeholders.

According to Kleinhans (2013: 166) “opportunities for regular networking by all stakeholders should be created by establishing a forum focusing on issues regarding the Child Justice Act and youth diversion”. However, the lack of communication amongst prosecutors was one of the key factors that impeded the implementation of diversion services in Ennambithi/Ladysmith. As presented earlier in this chapter the prosecutors who were on managerial positions (PP2) and (PP4) were implementing the provisions of the child justice legislation in a more effective way. One of the reasons for the gap in service delivery amongst experienced prosecutors and the less experienced was the fact that the prosecutors who were on the junior ranks were often unaware of the meetings and they further not in touch with other stakeholders; the responses of PP1 are above imply that they were not in touch with stakeholders from the Department of Social Development. Below is the presentation of results regarding the challenges of diversion programme facilitators regarding communication.

#### 4.6.1.3. Sub-theme 3: *Challenges of diversion programme facilitators regarding communication*

Diversion programme facilitators were also concerned about the lack of communication. Some of their responses were as follows:

*“There is that case-flow meeting that we have recently been invited to but in that meeting it’s just statistics that are discussed and few challenges. That’s it.”(DPF1)*

*“Prosecutors’ attendance in our meetings and workshops is not good, so it’s difficult sometimes to get them to attend” (DPF2)*

The above responses suggest that DPF1 was unhappy with the statistical nature of the case-flow management meetings. Additionally, DPF1 indicated that as Khulisa, they were recently invited to the case flow meetings. This means that for a long period Khulisa was not part of case-flow meetings. However, the responses of DPF2 indicate that, as diversion programme facilitators, they have tried to initiate meetings where they have failed to secure the attendance of prosecutors. Of note, earlier in this chapter the researcher discussed the implications of prosecutors’ lack of knowledge about Khulisa’s programme contents. It is therefore concluded that communication between prosecutors and programme facilitators was inadequate and ineffective. Consequently, the lack of communication has proved to affect the process of diversion in Emnambithi/Ladysmith. One of the diversion programme facilitators suggested that it could be better if they were allowed to attend Preliminary Inquiries because that is where they could communicate and therefore be part of the diversion referral from the start. Her comment in this regard was as follows:

*“We do wish to attend because it will give us the platform to speak about diversion and give the stakeholders the understanding of why the programme is needed for the juvenile whether it is appropriate for the juvenile to attend because sometimes we get children that should be going to SANCA or should be going to a secure centre or to a rehab centre but they are coming to Khulisa but we can’t work with them because they have such terrible substance abuse problems and they are sitting in front of us high and when we try to teach them and they don’t want that and they stop pretending and we have to refer back to court.” (DPF1)*

The above response suggests that the involvement of diversion programme facilitators in Preliminary Inquiries could minimize errors during referral because the DPFs would be present to explain the actual programme contents and further verify the compatibility of potential divertees with their programmes. The suggestion of DPF1 was triggered by challenges that they have encountered in the past. Arguably, lack of communication between prosecutors and the programme facilitators instigated challenges such as the error in diversion referrals. Below is the discussion of training needs of diversion key role players.

4.6.2. Theme 2: Training needs of key role players

Lack of training was one the systemic factors that impeded the implementation of diversion services to young offenders. This theme is discussed in terms of three subthemes namely: inconsistent training amongst public prosecutors on the Child Justice Act; inconsistent training amongst assistant probation officers; and experiences of key role players with regard to the training needs of police officials.

4.6.2.1. Sub-theme 1: Inconsistent training amongst public prosecutors on the Child Justice Act 75 of 2008

Prosecutors provided different responses regarding their training needs on the Child Justice Act. Table 4.13 below presents comparative accounts of three prosecutors.

**Table 4.13 Training on the Child Justice Act: the responses of prosecutors**

| <b>Prosecutor</b> | <b>Position</b>         | <b>Responses of prosecutors</b>   |
|-------------------|-------------------------|---|
| PP1               | Prosecutor (lower rank) | <i>“We haven’t had a lecture on it [Child Justice Act]. Even us, as Prosecutors we just go on a touch and go basis, but as we face different situations we go back to the Act to see what does this mean now but not to say as I’m sitting here I got a full overview picture because I haven’t had training on that” (PP1)</i> |
| PP2               | Senior Prosecutor       | <i>“I’ve been dealing with diversion for many years. I think even before it really became a formal process, as we have the Child Justice Act now” (PP2)</i><br><i>“I would say it’s [Child Justice System is] better off with the Act because it’s more structured; there are more clear cut provisions you know.”</i>          |
| PP4               | Control Prosecutor      | <i>“We often receive training from the Office of the DPP [Director of Public Prosecutions] on the Child Justice Act and they just focus on the Act itself.” (PP4)</i>   |

The responses of PP1 indicate that she has never been trained on the Child Justice Act. PP1 is the same prosecutor who had negative attitude towards diversion. PP1 did not have adequate

confidence about her level of training on the CJA. It is therefore evident that lack of formal training amongst some of the prosecutors can affect their attitudes and perceptions towards diversion. Consequently, their lack of training affects the manner in which she dealt with young offenders and the community as whole.

The views of PP2 imply that she was confident about her knowledge of the child justice system. Additionally, she stated that she has been involved in the child justice system prior to and after the Child Justice Act came into force. Her views further imply that she has noted improvements in the child justice system, especially since there is now legislation in force. The responses that were provided by PP2 during the research interview were evident that she values the provisions of the Act.

On the other hand, PP4 stated that he has been trained on the CJA. Therefore, he was confident with his knowledge of the Act.

Collectively, the above responses indicate that some of the prosecutors were trained on the CJA whilst one of the prosecutors was not well aware of the objectives of the Act due to a gap in training. These findings imply that there was inconsistency of training amongst the prosecutors in Emnambithi/Ladysmith. In addition this shows that, within the National Prosecuting Authority (NPA), there were no strict measures of auditing the frontline professionals who implements the child justice legislation. Inconsistency of training leads to inconsistency of attitudes and practices. As a result, the negative attitudes of some of the prosecutors proved to have a direct effect on the work of some of the probation officers (PO1). Systems theory is based on the view that, in any system, all parties should collaborate and be interdependent (Zastrow and Kirst-Ashman, 2010). Therefore, in order for the child justice system to run effectively as machinery, the knowledge of role players should be similar. Below, is the discussion about inconsistent training amongst assistant probation officers.

#### 4.6.2.2. Sub-theme 2: *Inconsistent training amongst assistant probation officers*

Assistant probation officers mentioned that lack of training was one the main factors that impeded them from implementing diversion, effectively, to young offenders. Their responses with regard to lack of training were as follows:

*“Since 2011 never, I have never been trained [...], as I have mentioned that I have never received any training, possibly if I was exposed to training they would explain what is expected of me and therefore have a clear understanding of my role.” (APO1)*

*“I was trained on home-based supervision; it was in 2007 in Newcastle” (APO2)*

The above responses indicate that between the two assistant probation officers one of them was never trained, whilst the other assistant probation officers (APO2) had received training. It was also discovered during the research interviews that these APOs did not share knowledge between themselves.

APO1 further stated that her supervisor has failed to properly describe the duties of an assistant probation officer. As a result, APO1 was clueless about her own job description and what is expected from an assistant probation officer. In this respect, she commented as follows:

*“Actually, to speak the truth, I do not even have a copy of my job description, the one that I have it’s for social auxiliary workers, in general, and not the assistant probation officer, as a result, I end up doing whatever in the office.” (APO1)*

*“No I think she (supervisor), also, does not understand my job because most of the times she would tell me that “No I don’t know this, I don’t know that”. So I think she also needs clarity of what is supposed to happen. I think training would change even my perception and my production” (APO1)*

The comments of APO1 signify that she did not have clear guidelines to frame her practice. Additionally, it can be argued that the Department of Social Development has also failed to support assistant probation officers through training, skills development and other personnel management mechanisms such as performance management system. Due to lack of training, APO1 felt hopeless and discouraged. In this regard, she provided the following remark:

*“before in the past I was following [PO1 real name has been omitted] everyday, wherever she is I’m there, but then now I am not going anywhere” (APO1)*

Assistant Probation Officers are a significant group of social services practitioners who can play a significant role in ensuring sound administration of the child justice system. As a result, their lack of training was a serious concern. In the South African labour force, skills development is a statutory mandate, as per the prescriptions of the Skills Development Act 97

of 1998. The Skills Development Act aims to develop the skills of the South African workforce and to improve the quality of life of workers and their prospects of work. Additionally, the key objectives of the Skills Development Act were to improve productivity in the workplace and the competitiveness of employers. This means that employers have a statutory obligation of ensuring continuous human resource development.

The fact that APOs have not been fully effective in their roles it has then led to a point where other key role-players felt that APOs were invisible and therefore cannot be regarded as key role-players in the implementation of diversion. It is thus concluded that lack of training can warrant ineffectiveness of employees within the workforce of an organisation. Below is the discussion on the experiences of key role players with regard to the training needs of police officials.

#### 4.6.2.3. Sub-theme 3: *Experiences of key role players with regard to the training needs of police officials*

As shown in chapter 3, police officials were not part of the sample of this study. However, public prosecutors and diversion programme facilitators shared their experiences with regarding to challenges that experiences when they work with police officials. Below are responses of the participants in this regard:

*“I have had problems in the past, where the Magistrate will strike the matter off the roll because the documents were not properly filled in by the police officials. So I think they need a little bit of training there.”* (PP4)

*“They [SAPS] do not write the age of the child. They just indicate the date of birth and then they just send the child to the police cells without first investigating the guardian of the child, they just send the child to the police cells , in the same cells with the adult accused or adult suspects which creates problems”* (PP4)

In this regard, PP3 provided the following response:

*“Well in terms of Police Officials, I think there’s still a bit training to be done for them to be fully appraised with this Act because you’d find that they would arrest a minor and put him in custody with adult people and only after they realise that it’s a minor so they have to keep them separate. So there is a need for some training to be done with SAPS.”* (PP3)

However, the views of prosecutors were highlighting the legal implications of lack of training amongst law enforcement officers. The experiences of the above-mentioned public prosecutors indicate that they have witnessed flaws being committed by police officials. Hence, PP4 stated that a case had to be withdrawn due to the fact a police official had failed to correctly fill the prescribed documents. PP3 indicated that lack of training amongst the police had led to the violation of children's rights. Both PP3 and PP4 stated that lack of training amongst the police had negative implication towards the child justice system. Chapter 3 of the Child Justice Act gives Police officials a number of statutory obligations.

On the other hand, diversion programme facilitators provided the following response regarding the training needs of police officials:

*"I experience great challenges with SAPS, and I feel that they are the reason for our low case load for diversion in the Emnambithi district. It is so low, it's partly due to the lack of understanding by SAPS"* (DPF2)

*"They [SAPS] feel that it's too hard for them to fill in those forms when it comes to juveniles and that's why we don't get the [referrals] juveniles. So that means they don't understand the importance of diversion, they don't understand the importance of giving children the second chance; they are letting them back on the street like that, they are giving them the opportunity to do what they did again."* (DPF1)

The above responses of DPFs indicate that diversion programme facilitators have experienced challenges in relation to the police officials. The DPFs justified that their challenges were caused by inadequate training amongst the police officers. Programme facilitators complained about the lack of training amongst police officials because they had direct dealings with the police.

According to programme facilitators lack of training amongst the police had resulted to the decreasing numbers of diversion referrals in Emnambithi/Ladysmith. Both Badenhorst (2011) and Khumalo (2010) discovered that lack of training of police officers on the Act created challenges on the implementation of the Child Justice Act (75 of 2008). The findings of this study also suggest that lack of training amongst the police was one of the factors that impede the implementation of the diversion and the Child Justice Act as whole. The next section presents findings on the recommendations of participants.

#### 4.7. SECTION 5: RECOMMENDATIONS BY PARTICIPANTS

Participants suggested solutions in order to curb some of the predominant challenges that they were faced with during the implementation of diversion services to young offenders. These solutions are discussed below:

##### 4.7.1. Theme 1: Public Education on the Child Justice Act (CJA)

In about the CJA, Participants proposed intensified public awareness campaigns about diversion and Child Justice Act as a way of dealing lack of knowledge among the wider public. Some of the suggestions of the participants were as follows:

*“I think they [the community] need education”* (PO1)

*“It is our responsibility to teach them”* (PO2)

*“You know, it is important that the community must know, firstly about the importance of the Child Justice Act. Secondly, about the consequences of non-compliance, because what I’ve noticed is that the community confuse the Criminal Procedure Act with the Child Justice Act”* (PP4)

The above responses indicate that participants were petitioning the education of the wider community particularly on diversion and the CJA as a whole. Below, is the presentation of suggestions regarding the involvement of victims during diversion processes.

##### 4.7.2. Theme 2: Involvement of victims during diversion processes

Participants signified the importance and implications of involving the victims of crime during the processes of diversion. Some of the responses were as follows:

*“I know for the fact that it is important that we involve the victims in deciding to the diversion”* (PP4)

*“... it could be a quicker solution in finding whether to divert or not”* (PP1)

The above responses indicate the potential role of victims as the decision makers in matters that involve young offenders. De Klerk (2012: 1) argued, in her study, that in the criminal justice system “there is one crucial role-player that is often forgotten, namely the victim”. As much the Child Justice Act emphasises the well-being of the child offenders however section 2 (b)(iv) and section 70 of this Act highlights the importance of involving the victims in child justice matters. Therefore, involving the victim in preliminary inquiries could strengthen the elements of restorative justice during diversion processes. Below are the suggestions on improved communication.

#### 4.7.3. Theme 3: Improved communication

Participants made suggestion regarding the improvement of communication. Their suggestions were as follows:

*“I think it’s about time that we join hands” (DPF2)*

*“I suggest we must have platform where all people dealing with children come together so we have a common understanding of the children. Where we are able to identify children’s problems and get the relevant assistance” (DPF3)*

*“So my suggestion is communication is the key as always, as is always with any Department or whatsoever.” (PP1)*

*“Probably we need to restart from scratch and be repaired with some communication.” (PP1)*

*“My personal feeling is that, it is imperative to have these meetings with other role players where we specifically discuss the Child Justice Act so that we all on the same page” (PP4)*

The above responses suggest the importance of communication and collaboration among key role players in the child justice system. PP4 suggested that regular meetings ensure uniformity among role players. Communication is one the core principles of systems theory. According to Kleinhans (2013: 166) “collaboration between different role players is needed for the effective implementation of the Act”. Kleinhans (2013: 166) adds that “opportunities for regular networking should be created by establishing a forum focusing on issues regarding the Child Justice Act and youth diversion” (*ibid*).

#### **4.8. CONCLUSION: CHAPTER 4**

This chapter presented the research findings and the analysis. It was revealed in this chapter that there were numerous challenges in relation to diversion court processes. Secondly, numerous factors that promote and impede diversion programmes were detailed in this chapter. Thirdly, factors that affected the effectiveness of monitoring diversion court orders were discussed. Moreover, systemic challenges were discussed in this chapter. Lastly, this chapter presented the suggestions of participants regarding the main factors that impede diversion services to young offenders in Emnambithi/Ladysmith municipal area.

This chapter was discussed on the basis of thematic analysis. The next chapter will discuss the major conclusions and recommendations.

# CHAPTER 5- CONCLUSIONS AND RECOMMENDATIONS

## 5.1 INTRODUCTION

This final chapter revisits the research objectives and therefore concludes as to whether the research objectives were met or not. In order of sequence this chapter firstly presents the summary of the methodology. Secondly, this chapter presents the summary of the main findings and conclusions. Lastly, in this chapter recommendations for child justice practice and further research were presented.

The objectives of this study were as follows:

- To explore the views of probation officers, assistant probation officers, prosecutors and diversion programme facilitators on the factors which impede and promote diversion services to young offenders in the Emnambithi/Ladysmith municipal area.
- To depict factors that restricts the selection of diversion options/programmes for young offenders within the Emnambithi/Ladysmith Municipal area
- To explore the monitoring of compliance and non-compliance of diversion orders.
- To ascertain the areas of improvement in the provision of diversion services through exploring the suggestions of role players in the provision of diversion in the Emnambithi child justice system.

As part of the conclusions, this chapter also assesses the extent in which these objectives were met.

## 5.2. SUMMARY OF THE METHODOLOGY

This research study was qualitative in nature, and it adopted the principles of an interpretative approach. The study involved four samples, with an overall number of 12 participants. Participants included the entire population of diversion programme facilitators, probation officers, assistant probation officers and a purposive sample of 5 public prosecutors. These participants were interviewed individually in order to gather the data for this research. Their responses were presented within the context of systems theory. Semi-structured interview schedules were used as the main instrument for data collection. The study was focused in

Emnambithi/Ladysmith municipal area in order to depict the reality of diversion services to young offenders in a relatively small town that is dominated by numerous rural areas. Below is the presentation of the main conclusions that were drawn from this research project.

### 5.3. SUMMARY OF MAIN FINDINGS AND CONCLUSIONS

The main findings and conclusions will be discussed under each objective. Each objective covers a number of sub-themes. These sub-themes emanated from the findings that were presented in chapter 4 of this dissertation.

#### 5.3.1 Objective 1: Factors that impede and promote the implementation diversion services to young offenders in the Emnambithi/Ladysmith municipal area.

The main factors that impede and promote the implementation of diversion are presented in Table 5.1 below.

**Table 5.1 Factors that impede and promote diversion services to young offenders in Emnambithi/Ladysmith municipal area**

| <b>Main findings on objective 1</b>   |   |
|---|---|
| <b>Column A</b>   | <b>Column B</b>   |
| <ul style="list-style-type: none"> <li><b>Factors that impede diversion</b></li> </ul>  | <ul style="list-style-type: none"> <li><b>Factors that promote diversion</b></li> </ul> |
| 1. Inconsistent attitudes of prosecutors towards diversion                              | 1. Decentralised diversion services by Khulisa Social Solutions                         |
| 2. Lack of effective communication amongst prosecutors                                  | 2. Adequate training amongst diversion programme facilitators from Khulisa              |
| 3. Inconsistent training amongst prosecutors  | 3. Longer years of experience in some prosecutor served as an advantage                 |
| 4. Inconsistent training amongst assistant probation officers                           | 4. Fluency in dominant languages by diversion programme facilitators                    |
| 5. Lack of public knowledge about diversion processes and the child justice legislation |   |

|   |  |
|---|--|
| 6. Lack of coordination amongst key role players  |  |
| 7. Exclusion of victims or complainant during the court processes of diversion                              |  |
| 8. Challenges in implementing restorative justice methods during the implementation of diversion programmes |  |
| 9. Learning disabilities in some diverted young offenders   |  |
| 10. Probation Officer's Reports: <i>Illegible, incomplete and handwritten</i>                               |  |
| 11. Challenges of transport in order to reach rural areas   |  |
| 12. Lack of parental support  |  |

Based on Table 5.1 above it is clear that the factors impede diversion services outnumbered the factors that promote diversion services. This indicates that in Emnambithi/Ladysmith, there challenges were far more than the strengths.

As presented in chapter 4, the factors that promoted the implementation of diversion services were 'decentralised diversion services', 'adequate training among diversion programme facilitators', fluency in dominant languages and longer years of experiences was advantageous to some of the public prosecutors

Regarding decentralised diversion services, it was presented in this study (see page 93 in Chapter 4) that this initiative had proved to be effective in reaching out to those young offenders that resides in remote rural areas and those that cannot afford to reach town in order to attend diversion sessions. Decentralised diversion services is one the factors that were noted amongst the best practices in Emnambithi/Ladysmith. The fact that Khulisa Social Solutions took services to young offenders, it thus minimized the burden of transport costs and absenteeism by diverted young offenders. As a result, it encourages compliance with diversion programmes. Of note, these findings are contrary to the findings Hargovan (2013) who noted that diversion services were, in most cases, urban-biased. However,

Emnambithi/Ladysmith proved to counter the socio-economic challenges of diverted young offenders.

It was further noted that the diversion programme facilitators were all fluent in dominant languages of the area which is IsiZulu, English, and SeSotho (see table 4.1 in Chapter 4). Furthermore, the ability of DPFs to speak indigenous languages proved to be helpful in the implementation of diversion to young offenders in Emnambithi/Ladysmith municipal area.

Furthermore, adequate training amongst diversion programme facilitators was one of the factors that improved diversion services to young offenders. In turn, all other key role players were not complaining about the incompetency of diversion programme facilitators (see section 4.4.2.1). Systems theory emphasises the importance of interconnectedness. Therefore, this means that the merits of diversion programme facilitators brought steadiness in the child justice system.

Another factor that promoted the implementation of diversion services was the lengthy experiences of two of the prosecutors (see section 4.3.1.1.1). Seemingly, their attitudes towards diversion were positive because they understood and embraced the importance of diversion services. Unlike the newer prosecutors, PP2 and PP4 were adequately trained on the Child Justice (see section 4.6.2.1 in chapter 4). Furthermore, these prosecutors were aware of the contents of diversion programmes. Therefore, it is concluded that their presence in the child justice system, in Emnambithi/Ladysmith, was advantageous to the multi-disciplinary of diversion services.

Despite, these best practices of the diversion programme facilitators, it was shown in Table 5.1 that the child justice system of Emnambithi/Ladysmith had numerous impediments, including the fact that the administration of diversion was inconsistent amongst prosecutors. Moreover, it was revealed, in the findings, that the more experienced prosecutors were not conveying their wealth of knowledge to the prosecutors who had fewer years of experience. Exclusion of victims during the court processes also served as a challenge in Emnambithi/Ladysmith (section 4.3.1.1.8.). Lack of public knowledge about the CJA and the diversion processes seemed to be an impediment in in the implementation of diversion services to young offenders (section 4.3.1.1.7). Amongst the key impeding factors were the challenges faced by diversion programme facilitators which included the learning disabilities of young offenders and challenges in implementing restorative justice methods as part of diversion programmes. It was a finding that some of the victims are not willing to participate

in restorative justice (victim offender mediation) process because they are adequately aware about the concept of diversion. Some of the participants shared that some of the victims misinterpret the diversion processes (see section 4.3.1.1.7 in chapter 4).

Given the above discussed factors, it can therefore be concluded that the researcher was able to explore factors that impede and promote diversion services to young offenders in Emnambithi/Ladysmith municipal area. The objective-in-question was therefore achieved. Below is the discussion of objective 2.

### **5.3.2. Objective 2: Factors that restrict the selection of diversion options and programmes in Emnambithi/Ladysmith Municipal area**

The semi-structured interview schedules (see appendix 1) were able to explore factors that informs the selection of diversion options in Emnambithi/Ladysmith from all key role players. This means that this objective was also met. Of note, it was presented in chapter 4 that in Emnambithi/Ladysmith municipal area the selection of diversion is influenced by two factors:

- Limited diversion service providers
- Limited diversion programmes

Concerning the limitation of diversion service providers it was articulated in Chapter 4 (section 4.3.1.2.1) that Emnambithi/Ladysmith is served by one accredited service provider which is Khulisa Social Solutions. It was further presented that some participants felt that there should be more diversion service provider in order to bring about ‘positive competition’ (section 4.3.1.2.1.). However, some of the participants felt that a single diversion service provider was adequate to serve the community of Emnambithi/Ladysmith municipal area.

On the subject of available diversion programmes, some of the participants shared their concern regarding the limitation of diversion programmes. One of the key concerns where that Khulisa does not have a programme that caters for children with special needs. Additionally, one of the probation officers shared an experience where she had to refer a young offender to NICRO in Pietermaritzburg because that child had committed a schedule 3 offence. Of note, Khulisa did not have an appropriate programme that was going to fit the needs of some of the young offenders. Therefore, it is safe to conclude that in Emnambithi/Ladysmith diversion services are selected based on convenience and/or

availability. Key role players did not have enough service providers as compared to bigger cities. Steyn (2011) and Kleinhans (2013) also raised a concern with respect to the limitation of diversion programmes and programme approaches. Below is the discussion of objective 3.

### **5.3.3. Objective 3: Monitoring of compliance and non-compliance against the diversion order**

Monitoring of compliance and non-compliance is one the key features of the South Africa's child justice system. Therefore, this study explored the implementation of monitoring of compliance and non-compliance of diverted young offenders.

Firstly, this study (section 4.5.1.1. Chapter 4) was able to reveal that all key role players displayed a positive attitude towards monitoring compliance. However, section 4.5.1.2 (in Chapter 4) revealed that the practices of probation officers (in terms of monitoring compliance) were inconsistent. It is detailed in chapter that one of the probation officer did not use the prescribed Form 9 (from the regulation of the CJA) in order to report compliance and non-compliance of diverted young offenders. It was further shown in the preceding chapter that the DPFs were monitoring compliance and non-compliance even though they are not mandated by the court order to report back to court.

Another factor that was noted in chapter 4 is that, probation officers and diversion programme facilitators have established ways of encouraging compliance of young offenders. Specifically, it was revealed that diversion programme facilitators and probation officers works collectively in order to reform and rehabilitate a young offender who is failing to comply. Trotter (2006) noted patience as one of the many ways of 'working with involuntary clients'. As a result, it was noted in Emnambithi/Ladysmith that probation officers and programme facilitators were displaying patience towards their 'involuntary clients'.

Lastly, with regard to monitoring of diverted young offenders, probation officers and programme facilitators conveyed some common challenges that they often experience when they monitor compliance of young offenders (section 4.5.3). These challenges included the attitudes of young offenders and poor records management. Programme facilitators were concerned that other stakeholders often lose the programme reports that they often sent to prosecutors and probation officers. As a result, they noted this challenge as one of the factors that impede the implementation of diversion services for young offenders in

Emnambithi/Ladysmith. Given the above discussion, it can thus be concluded that this objective achieved. The next section presents recommendations. Recommendations are separated into three segments namely: recommendations by key role players; recommendations for improved practices and recommendations for further research.

#### **5.3.4. Objective 4: Areas of improvements: recommendations by participants**

Ascertaining areas of improvements was amongst the objectives of this study. In this respect, participants provided few suggestions in order to curb the challenges that they are experiencing in the child justice arena. Their recommendations included improved communication, public education on the CJA, and the involvement of victims during diversion processes.

Specifically, the participants suggested that it is their collective responsibility as a multi-sectorial team to educate the general public about the provisions of the Child Justice Act. Furthermore, it was suggested by participants that the victims of crime should play a visible part in the process of diversion. It was further suggested by the participants that their ties of communication should be strengthened.

Participants of this study raised some weighty proposals that should indeed be taken into consideration by all stakeholders. Below are the recommendations of the researcher regarding the improvement of the diversion services to young offenders.

### **5.4. RECOMMENDATIONS**

#### **5.4.1. Recommendations for improved practices: recommendations by researcher**

Under this section the researcher has discussed recommendations for improved practices.

##### **5.4.1.1. *Improved and uniform training of all key role players***

The issue of inconsistency features predominantly in this study. Therefore, it is recommended that the management of all the involved departments and organisation assess the training needs of its employees. Furthermore, all officials who lack training should be exposed to

personnel development programmes that are specifically focused on the subject of child justice. Officials who are inadequately trained have a potential of affecting the end-user of their services which is the clientele system. It was truly a concern to realise the inconsistency in training and in attitudes amongst prosecutors and between the assistant probation officers. It was learnt in this study that inconsistency in training leads to inconsistent attitudes and inconsistent practices. Therefore, training could ensure standardization of services and further improve the standard of service delivery to the most vulnerable. Noteworthy, the Skills Development Act 97 of 1998 mandates all employers to ensure continued development of employees.

#### *5.4.1.2. Formulation of diversion programmes for children with special needs*

Every child is equal before the law. Therefore, it is recommended that all the accredited diversion service providers should establish diversion programmes that will cater for children who have learning disabilities. Specifically, it is further recommended that these organisations should develop programmes that would accommodate young offenders who are suffering from different types of disabilities because no one is immune to offending. Diversion programmes should also accommodate young offenders who are unable to write and read due to learning challenges. Kleinhans (2013) also appealed that in the future there should be diversion programmes that will deal directly with young offenders who have special needs.

#### 5.4.2. Recommendations for further research

It is recommended that future research projects should study the feasibility of creating diversion programmes that would focus on children with special needs. It is an area of great concern that the marginalised children who have special needs are being neglected at the moment. It also a recommendation that victims should be involved during the diversion court processes.

Additionally, it is a recommendation that there should be a research project that would scrutinize the knowledge of police official regarding the child justice legislation. Additionally, research projects that would investigate the challenges of police official pertaining to child justice are recommended. The challenges of police officials should be

understood because most of the participants were complaining about the incompetency of the police.

#### **5.5. CONCLUDING REMARKS**

Although there is a room for further research, but the results of this study answered all the anticipated questions that were initially intended. This chapter further highlighted a number of challenges and best practices. Therefore, it is suggested that the reading audience should take note of the pertinent recommendations of this study and further take cognisance of the areas of excellence on diversion services that were unveiled by this research. One these prominent merits were the decentralisation of diversion services. It is suggested that other accredited diversion service providers should benchmark and use this methods of taking the services to the people.

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## **LIST OF APPENDICES**

**NB:** In order of arrangement the appendices are as follows:

**Appendix 1:** Copies of semi-structured interview schedules for:

Appendix 1.1. a) Probation Officers

Appendix 1.2. b) Assistant Probation Officers

Appendix 1.3. c) Diversion Programme Facilitators

Appendix 1.4. d) Public Prosecutors

**Appendix 2:** Copies of information sheet and informed consent forms

**Appendix 3:** Ethical Clearance

**Appendix 4:** Permissions from gate-keepers:

(a) Department of Social Development

(b) National Prosecuting Authority

(c) Khulisa Social Solutions

**Appendix 1:**  
**Copies of semi-structured  
interview schedules**

# **Appendix 1.1**

## **SEMI-STRUCTURED INTERVIEW SCHEDULE FOR PROBATION OFFICER(S)**

## SEMI-STRUCTURED INTERVIEW SCHEDULE FOR PROBATION OFFICER(S)

**Research Topic** \_\_\_\_\_: *Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: the experiences of key role-players.*

**Researcher's Name** \_\_\_\_\_: Bongane Morris Mzinyane

**Responsible institution for this research project** \_\_\_\_\_: University of KwaZulu Natal

**Participant's name-** \_\_\_\_\_: \_\_\_\_\_

### BASIC-BIOGRAPHICAL DATA

- Name of the Service Office
- Duration of service as a Probation Officer in Emnambithi/Ladysmith Municipal area
- Duration of service as a role-player in rendering diversion services other than in Emnambithi/Ladysmith Municipal area [explain]

### DIVERSION (with reference to your experience)

- Process of diversion [Explain]
- Significance of diversion [Explain]
- Willingness to divert repeat offenders [explain]
- Selection of diversion options and programmes [Explain]
- To what extent does the Child Justice Act 75 of 2008 serves as a clear guide for the diversion services to young offenders [explain]
- Considering the interests of the community (victim or complainant) when diverting a young offender [explain]
- Types of diversion programmes that you usually recommend (What types, Why these types)
  - LEVEL 1 Diversion
  - LEVEL 2 Diversion
- Accredited Diversion Programmes that are available within the Department of Social Development
- Accredited Diversion Programmes that are available in Emnambithi /Ladysmith Municipal area

- Contents and methodology of the aforementioned accredited diversion programmes [explain]
- Most popular diversion options/programmes in Emnambithi/Ladysmith [Explain]
- What happens in respect of educating young offenders; their family members; and victims of crime (complainants) about diversion when an offence has been committed by a child [Explain]
- To what extent are young offenders encouraged to admit responsibility for an offence in order for them to qualify for diversion [explain]
- Accredited Diversion Service Providers in Emnambithi/Ladysmith [Explain]
  - Accessibility of their services
  - Availability of their services
  - Credibility of their services [Your views]
- Challenges in your relationship with the diversion service provider(s)
- Factors that promote your relationship with the diversion service provider(s)

#### **DIVERSION OF YOUNG OFFENDERS AT DIFFERENT PHASES**

- Your role during the initial phase of every diversion programme in Emnambithi/Ladysmith [explain]
- Your role during the middle phase of every diversion programme in Emnambithi/Ladysmith [explain]
- Your role during the termination phase of every diversion programme in Emnambithi/Ladysmith [explain]

#### **PROFESSIONAL RELATIONSHIPS WITH OTHER ROLE PLAYERS IN DIVERSION SERVICES WITHIN EMNAMBITHI/LADYSMITH**

- Availability and functionality of Child Justice Forums/other forms of stakeholders meetings in the area, where you discuss issues surrounding the provision of diversion services [Elaborate]
- Frequency of these meetings
- Attendance of role-players of diversion services in stakeholders meetings [Elaborate]
- Professional relationship with the Court (Clerk of the Court) [Explain]

- Arrangements of Preliminary Inquiry(s)
- Professional relationship with Public Prosecutors [Explain]
  - Value of your recommendations
  - Expectations regarding monitoring of diversion orders
- Professional relationship with the inquiry magistrate at Preliminary Inquiry(s) [Explain]
- Professional relationship with accredited diversion service provider [Explain]
  - Progress Reports on diversion programmes
  - Frequency of reporting
  - Type of reporting (Telephone, Fax, Email, SMS, Hand-delivered)
- Professional relationship with victims and complainants where crimes have been committed by young offenders with regard to Victim-Offender Mediation/Family-group conferencing [Explain]
- Your involvement during diversion programmes implementations [Explain]

#### **RELATIONSHIP WITH YOUNG OFFENDERS AND FAMILY MEMBERS**

- Relationship with young offenders during Probation Officer's Assessment Process
- Consent to diversion [what normally happens]
- What is your opinion about how young offenders see the diversion?
- Long-terms links between a Probation Officer and families after diversion has been completed
- Your role after assessment; but before the child is diverted [explain]
- Your role in behavioral modification, aftercare, parenting education.

#### **MONITORING OF COMPLIANCE AND NON-COMPLIANCE WITH DIVERSION ORDERS**

- Significance of monitoring compliance and non-compliance of young offender with respect to diversion orders.
- Process of monitoring [explain]
- Nature of supervision
- Process and frequency of reporting back to court (inquiry magistrate and prosecutor)
- Reporting Format for compliance and non-compliance

- Measures of record-keeping to ensure monitoring of diversion
- Consequences of non-compliance with diversion orders.
- Other challenges experienced while rendering diversion in Emnambithi/Ladysmith  
[elaborate]

|   |
|---|
| <b>AREAS OF IMPROVEMENT IN THE PROVISION OF DIVERSION</b> |
|---|

- What suggestions would you like to make in respect of diversion services in Ladysmith
- 
- 

Thank you

**APPENDIX 1.2**

**SEMI-STRUCTURED INTERVIEW  
SCHEDULE FOR ASSISTANT PROBATION  
OFFICER(S)**

SEMI-STRUCTURED INTERVIEW SCHEDULE FOR ASSISTANT PROBATION  
OFFICER(S)

**Research Topic** \_\_\_\_\_ : *Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: the experiences of key role-players.*

**Researcher's Name** \_\_\_\_\_ : Bongane Morris Mzinyane

**Responsible institution for this research project** \_\_\_\_\_ : University of KwaZulu Natal

**Participant's name-** \_\_\_\_\_ :

**BASIC-BIOGRAPHICAL DATA**

- Name of the Service Office
- Duration of service as an Assistant Probation Officer in Emnambithi/Ladysmith Municipal area
- Duration of service as a role-player in rendering diversion services other than in Emnambithi/Ladysmith Municipal area [explain]

**DIVERSION (with reference to your experience)**

- Process of diversion [Explain]
- Significance of diversion [Explain]
- Selection of diversion options and programmes [Explain]
- Accredited Diversion Programmes that are available within the Department of Social Development.
- Accredited Diversion Programmes that are available in Emnambithi /Ladysmith Municipal area.
- Contents and methodology of the aforementioned accredited diversion programmes
- Most popular diversion options/programmes in Emnambithi/Ladysmith [Explain]
- What happens in respect of educating young offenders; their family members; and victims of crime (complainants) about diversion when an offence has been committed by a child [Explain]
- Accredited Diversion Service Providers in Emnambithi/Ladysmith [Explain]
  - Accessibility of their services
  - Availability of their services

Credibility of their services [Your views]

- To what extent does the Child Justice Act 75 of 2008 serves as a clear guide for the diversion services to young offenders [explain]
- Challenges in your relationship with the diversion service provider(s)
- Factors that promote your relationship with the diversion service provider(s)
- Experiences with regard to diversion in Emnambithi/Ladysmith Municipal area

#### **ROLE OF AN ASSISTANT PROBATION OFFICER [based on your experience]**

- Your role in the Department of Social Development [explain]
- Extent of your involvement in decision-making with regard to diversion of young offenders [explain]
- Further comments regarding your role as Assistant Probation Officer? [explain]

#### **PROFESSIONAL RELATIONSHIPS WITH OTHER ROLE PLAYERS IN DIVERSION SERVICES WITHIN EMNAMBITHI/LADYSMITH**

- Availability and functionality of Child Justice Forums/other forms of stakeholders meetings in the area, where you discuss issues surrounding the provision of diversion services [Elaborate]
- Frequency of these meetings
- Attendance of role-players of diversion services in stakeholders' meetings [Elaborate]
- Professional relationship with Public Prosecutors [Explain]
  - Expectations regarding monitoring of diversion orders
- Professional relationship with accredited diversion service provider(s) [Explain]
  - Progress Reports on diversion programmes
  - Frequency of reporting
  - Type of reporting (Telephone, Fax, Email, SMS, Hand-delivered)
- Professional relationships with Probation Officers [explain]
- Professional relationship with victims and complainants where crimes have been committed by young offenders with regard to Victim-Offender Mediation/Family-group conferencing [Explain]
- Your involvement during diversion programmes implementations [Explain]

## **DIVERSION OF YOUNG OFFENDERS AT DIFFERENT PHASES**

- Your role during the initial phase of every diversion programme in Emnambithi/Ladysmith [explain]
- Your role during the middle phase of every diversion programme in Emnambithi/Ladysmith [explain]
- Your role during the termination phase of every diversion programme in Emnambithi/Ladysmith [explain]

## **DIVERSION REGISTER**

- Storage and access to this register
- Frequency of updating this register

## **RELATIONSHIP WITH YOUNG OFFENDERS AND FAMILY MEMBERS**

- What is your opinion about how young offenders see the diversion?
- Long-term links between you, the child and their families after the process of diversion has been completed [explain]
- Your role after assessment; but before the child is being diverted [explain]
- Your role in crime prevention, aftercare services to young offenders, and parenting education.

## **MONITORING OF COMPLIANCE AND NON-COMPLIANCE WITH DIVERSION ORDERS**

- Significance of monitoring compliance and non-compliance of young offender(s) with respect to diversion orders.
- Process of monitoring
- Nature of supervision
- Process and Frequency of reporting back to court (inquiry magistrate and prosecutor)
- Reporting Format for compliance and non-compliance

- Measures of record-keeping to ensure monitoring of diversion
- Sympathy and non-compliance of young offenders [do you exercise pity during monitoring]
- Consequences of non-compliance with diversion orders
- Your experiences with regard to Home-based supervision of young offenders [explain]
- Other challenges experienced while rendering diversion services in Emnambithi/Ladysmith [elaborate]

|   |
|---|
| <b>AREAS OF IMPROVEMENT IN THE PROVISION OF DIVERSION</b> |
|---|

- What suggestions would you like to make in respect of diversion services in Ladysmith
- 
- 

Thank you

## **APPENDIX 1.3**

# **SEMI-STRUCTURED INTERVIEW SCHEDULE FOR DIVERSION PROGRAMME FACILITATOR(S)**

SEMI-STRUCTURED INTERVIEW SCHEDULE FOR DIVERSION PROGRAMME  
FACILITATOR(S)- KHULISA SOCIAL SOLUTIONS

**Research Topic** \_\_\_\_\_: *Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: the experiences of key role-players.*

**Researcher's Name** \_\_\_\_\_: Bongane Morris Mzinyane

**Responsible institution for this research project** \_\_\_\_\_: University of KwaZulu Natal

**Participant's name-** \_\_\_\_\_:

**BASIC-BIOGRAPHICAL DATA**

- Duration of service as a Diversion Programme Facilitator in Emnambithi/Ladysmith Municipal area
- Duration of service as a role-player in rendering diversion services other than in Emnambithi/Ladysmith Municipal area [explain]

**DIVERSION SERVICES IN EMNAMBITHI (with reference to your experience)**

- Number of accredited diversion programmes that you facilitate to young offenders
- Contents and methods of which these programmes are being offered [explain]
  - Are they Individual-oriented; Group work-oriented and/or Community-based-oriented [Explain]
  - Contents/Methods of each diversion programme that you facilitate during the initial phase of the programme [explain]
  - Contents/Methods of each diversion programme that you facilitate during the middle phase of the programme [explain]
  - Contents/Methods of each diversion programme that you facilitate during the termination phase of the programme [explain]
- Challenges while facilitating diversion programmes [explain]
- Most popular programmes that you normally facilitate [elaborate]
- Evaluation of programme effectiveness
- Other accredited diversion service providers available in Emnambithi/Ladysmith
- Other accredited diversion service provider in South Africa

- Do you wish that Khulisa Social Solutions was offering any of the accredited programmes that are being offered by NICRO, BUSASA, among other accredited diversion service providers [explain, why]
- Sufficiency of diversion programmes in responding to the delinquency/felony of young offenders within the area [explain]
- Manageability of the workload [explain]
- To what extent does the Child Justice Act 75 of 2008 serves as a clear guide for the diversion services to young offenders [explain]

### **TRAINING NEEDS OF DIVERSION PROGRAMME FACILITATORS**

- Training needs of diversion programme facilitators related to diversion [explain]
- Frequency of your training related to diversion services.

### **RESOURCES**

- Human resource to facilitate diversion programmes [explain]
- Organisational resources to facilitate diversion programmes [explain]
- Physical resources [space, building] to facilitate diversion programmes [explain]

### **PROFESSIONAL RELATIONSHIPS WITH OTHER ROLE-PLAYERS IN DIVERSION SERVICES WITHIN EMNAMBITHI/LADYSMITH**

- Availability and functionality of Child Justice Forums/other forms of stakeholders meetings in the area, where you discuss issues surrounding the provision of diversion services [Elaborate]
- Frequency of these meetings [explain]
- Attendance of role-players of diversion services in stakeholders' meetings (forums) [Elaborate]
- Your attendance of Preliminary Inquiries in Court [explain]
- Professional relationship with the Court (Clerk of the Court) [Explain]
  - Arrangements of Preliminary Inquiry(s)
- Professional relationship with Probation Officer and Assistant Probation Officers [Explain]

- Referral system
- Frequency of contact
- Nature of contact (Telephone, Fax, Email, SMS)
- Challenges with regard to contact
- Professional relationship with Public Prosecutors [Explain]
  - Reporting back to Court
- Professional relationship with victims and complainants (where crimes have been committed by young offenders) with regard to Victim-Offender Mediation/Family-group conferencing [Explain]
- Parental involvement during the implementation diversion programmes [Explain]
- Ways in which you curb challenges of parental involvement

#### **RELATIONSHIP WITH YOUNG OFFENDERS AND FAMILY MEMBERS**

- What is your opinion about how young offenders see the diversion?
- What happens in respect of educating young offenders; their family members; and victims of crime (complainants) about diversion when an offence has been committed by a child [Explain]
- Long-term links between Khulisa and families after diversion has been completed
- Cooperation with social services practitioners where a case is beyond your control
- Your role in prevention, behavioral modification, aftercare of young offenders, parenting education [explain duly]

#### **MONITORING OF COMPLIANCE AND NON-COMPLIANCE WITH DIVERSION ORDERS**

- Significance of monitoring compliance and non-compliance of young offender(s) with respect to diversion orders.
- Process of monitoring
- Reporting process to Department of Social Development
- Challenges in reporting
- Process and Frequency of reporting back to court and Department of Social Development (explain)
- Measures of record-keeping to ensure monitoring of diversion

- Consequences of non-compliance with diversion orders.
- Other challenges experienced while rendering diversion in Emnambithi/Ladysmith  
[elaborate]

|   |
|---|
| <b>AREAS OF IMPROVEMENT IN THE PROVISION OF DIVERSION</b> |
|---|

- What suggestions would you like to make in respect of diversion services in  
Ladysmith
- 
- 

Thank you

## **APPENDIX 1.4**

# **SEMI-STRUCTURED INTERVIEW SCHEDULE FOR PUBLIC PROSECUTOR(S)**

## SEMI-STRUCTURED INTERVIEW SCHEDULE FOR PUBLIC PROSECUTOR(S)

**Research Topic** \_\_\_\_\_: *Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: the experiences of key role-players.*

**Researcher's Name** \_\_\_\_\_: Bongane Morris Mzinyane

**Responsible institution for this research project** \_\_\_\_\_: University of KwaZulu Natal

**Participant's name** \_\_\_\_\_: \_\_\_\_\_

### BASIC-BIOGRAPHICAL DATA

- Name of the Court
- Duration of service as a Public Prosecutor in Emnambithi/Ladysmith Municipal area
- Duration of service as a role-player in rendering diversion services other than in Emnambithi/Ladysmith Municipal area [explain]

### DIVERSION (with reference to your experience)

- Process of diversion [Explain]
- Significance of diversion [Explain]
- Consideration of Prosecutor's Diversion [explain]
  - When is it considered
  - How does it differ
- Consideration of diversion in Child Justice Court
  - What criteria being employed to consider this type of diversion
- Willingness to divert repeat offenders [explain]
- Considering the interests of the community (victim or complainant) when diverting a young offender? [explain]
- Selection of diversion options and programmes [Explain]
- To what extent does the Child Justice Act 75 of 2008 serves as a clear guide for the diversion services to young offenders [explain]
- Types of diversion programmes that you usually approve [Support your choice]
- Accredited Diversion Programmes that are available within the Department of Social Development

- Accredited Diversion Programmes that are available in Emnambithi/Ladysmith Municipal area
- Your knowledge regarding the contents and methodology of the aforementioned accredited diversion programmes.
- To what extent are young offenders encouraged to admit responsibility for an offence in order for them to qualify for diversion [explain]
- Most popular diversion options/programmes recommended by Probation Officer(s) in their reports [Explain]
- Accredited Diversion Service Providers in Emnambithi/Ladysmith [Explain]
  - Accessibility of their services
  - Availability of their services
  - Credibility of their services [Your views]
- Challenges in your relationship with the diversion service provider(s)
- Factors that promote your relationship with the diversion service provider(s)

|   |
|---|
| <b>PROFESSIONAL RELATIONSHIPS WITH OTHER ROLE PLAYERS IN<br/>DIVERSION SERVICES WITHIN EMNAMBITHI/LADYSMITH</b> |
|---|

- Availability and functionality of Child Justice Forums/other forms of stakeholders meetings in the area, where you discuss issues surrounding the provision of diversion services [Elaborate]
- Frequency of these meetings
- Attendance of role-players of diversion services in stakeholders' meetings [Elaborate]
- Professional relationship with Probation Officers [Explain]
  - Submission of Probation Officer's assessment report
  - Submission of Form 9 Compliance Monitoring Form
- Professional relationship with the inquiry magistrate at Preliminary Inquiry(s) [Explain]
  - Consideration of your views in a case of a young offender
- Professional relationship with accredited diversion service provider [Explain]
  - Progress Reports on diversion programmes
  - Frequency of reporting
  - Type of reporting
  - Nature of contact with diversion service provider(s)

- Professional relationship with victims and complainants (where crimes have been committed by young offenders) with regard to Victim-Offender Mediation/Family-group conferencing [Explain]

**MONITORING OF COMPLIANCE AND NON-COMPLIANCE WITH DIVERSION ORDERS**

- Significance of monitoring compliance and non-compliance of young offender(s) with respect to diversion orders.
- Process after the child has not complied with the diversion order.
- Consideration of a probation officer/assistant probation officers' recommendations after having monitored a young offender [explain]
- Experiences with regard to probation officers' monitoring reports
- Reporting Format for compliance and non-compliance
- Experiences regarding compliance with the prescribed reporting format (Form 9).
- Measures of record-keeping to ensure deadlines for probation officers to report back.
- Consequences of non-compliance with diversion orders.

**AREAS OF IMPROVEMENT IN THE PROVISION OF DIVERSION**

- What suggestions would you like to make in respect of diversion services in Ladysmith
- 
- 

Thank you

## Appendix 2:

# **Copies of information sheet and informed consent forms**

## INFORMATION SHEET TO THE PARTICIPANTS

**Research Topic** \_\_\_\_\_: *Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: the experiences of key role-players.*

**Student's Name** \_\_\_\_\_: Bongane Morris Mzinyane

**Student number** \_\_\_\_\_: 209513196

**Degree** \_\_\_\_\_: Master of Social Work (research)

**Responsible institution for this research project** \_\_\_\_\_: University of KwaZulu Natal  
School of Applied Human  
Science  
TELEPHONE: 031 260 7922  
[matthiasc@kzn.ac.za](mailto:matthiasc@kzn.ac.za)

### Foreword of the Researcher

*My name is Bongane Morris Mzinyane and I am currently a registered Master of 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 young offenders within the Municipal area which is Emnambithi/Ladysmith. Your experience will be useful in ascertaining strengths and areas of improvements in the provision of diversion services in this area. The information that you will provide is valuable and it will be utilized for research purposes only.*

### Identifying Particulars of the researcher

*Name of the Researcher* : Bongane Morris Mzinyane

*Student number* : 209513196

*Research Institution* : University of KwaZulu Natal, Howard College Campus

*Researcher's contact* : 036 631 1175 (Office Tel)

**073 995 0853** (Cellphone)

### **Purpose of the Research**

This research aims to explore and describe the implementation of diversion services to young offenders by understanding the experiences of Probation Officers, Assistant Probation Officer, Public Prosecutors, and Diversion Programme Facilitators within the Emnambithi/Ladysmith.

### **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 1 hour to 1 and half hours. 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 Emnambithi/Ladysmith municipal 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 a Audio (Cellphone) 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)

| <b>Researcher's contact details</b>                                  | <b>Supervisor's details</b>  |
|--|--|
| Mr Bongane Morris Mzinyane   | Prof Carmel Rose Matthias  |
| <a href="mailto:bmzinyane@ymail.com">bmzinyane@ymail.com</a> (email) | <a href="mailto:matthiasc@ukzn.ac.za">matthiasc@ukzn.ac.za</a> (email) |
| 036 631 1170 (Tel)   | 031 260 7922 (Tel)   |
| 078 468 5533 (Cell)  |  |
| <b><u>UKZN-HSSREC Research Office</u></b>                            |  |
| Contact: Ms P Ximba  |  |
| Tel: 031 260 3587  |  |
| Email: <a href="mailto:ximbap@ukzn.ac.za">ximbap@ukzn.ac.za</a>      |  |

**INFORMED CONSENT FORM**

**Research Topic** \_\_\_\_\_ : *Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: the experiences of key role-players.*

**Student's Name** \_\_\_\_\_ : Bongane Morris Mzinyane

**Student number** \_\_\_\_\_ : 209513196

**Degree** \_\_\_\_\_ : Master of Social Work (research)

**Responsible institution for this research project** \_\_\_\_\_ : University of KwaZulu Natal  
School of Applied Human  
Science TELEPHONE: 031  
260 7922  
[matthiasc@kzn.ac.za](mailto:matthiasc@kzn.ac.za)

I \_\_\_\_\_ [full names of the participant] hereby confirm that I understand the contents of this document as well as 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 consent/do not consent to this interview being audio-recorded.

Additionally, I thereby confirm that the following themes which are contained in the above Information Sheet were clearly explained to me in English (which I clearly understand)

- Identifying Particulars of the researcher
- Purpose of the Research and Procedure
- The use of an audio-recorder
- Potential Benefits of the Research to the Society
- Potential Risks and Discomforts
- Rights of the Participants of this research
- Payment for Participation(s)

.....

Signature of the participant

.....

Date

.....

Signature of the Researcher (Bongane Mzinyane)

.....

Date

**Appendix 3:**  
**Ethical Clearance**



15 August 2014

Mr Bongane Morris Mzinyane 209513196  
School of Applied Human Sciences – Social Work  
Howard College Campus

Protocol reference number: HSS/0608/014M

Project title: Implementation of diversion services for young offenders within the Emnambithi/Ladysmith Municipal area: the experiences of key role-players.

Dear Mr Mzinyane

**Full Approval – Expedited**

This letter serves to notify you that your application in connection with the above has now been granted full approval.

Any alterations to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach/Methods must be reviewed and approved through an amendment /modification prior to its implementation. Please quote the above reference number for all queries relating to this study. Please note: Research data should be securely stored in the discipline/department for a period of 5 years.

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

Best wishes for the successful completion of your research protocol.

Yours faithfully

.....  
Dr Shenuka Singh (Chair)

/px

cc Supervisor: Professor Carmel Rose Matthias  
cc Academic Leader Research:  
cc School Administrator: Ms Ausie Luthuli

---

Humanities & Social Sciences Research Ethics Committee

Dr Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building

Postal Address: Private Bag X54001, Durban 4000

Telephone: +27 (0) 31 260 3587/8350/4557 Facsimile: +27 (0) 31 260 4809 Email: [gimba@ukzn.ac.za](mailto:gimba@ukzn.ac.za) / [anvanm@ukzn.ac.za](mailto:anvanm@ukzn.ac.za) / [mohupo@ukzn.ac.za](mailto:mohupo@ukzn.ac.za)

Website: [www.ukzn.ac.za](http://www.ukzn.ac.za)



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**Appendix 4:**  
**Permissions from gate-keepers**



**KZN PROSECUTING AUTHORITY  
OFFICE OF THE SENIOR PUBLIC PROSECUTOR**

---

PRIVATE BAG X 9930, LADYSMITH 3370 TELEPHONE: (036) 637 6771 -  
6312759, FAX: (036) 6353107 e-mail: rschuler@justice.gov.za

---

23 June 2014

The Probation Officer  
Department of Social Development  
LADYSMITH Service Office  
3370

Dear Mr. Bongane M Mzinyane

**RE: PERMISSION TO CONDUCT RESEARCH AMONGST  
PROSECUTORS**

I hereby confirm that you may conduct your research with the prosecutors of the  
Lady smith and Ezakheni Magistrate's Courts.

As discussed you will ensure that the interventions do not impact on their court  
work.

Yours faithfully,

**R SCHULER  
SENIOR PUBLIC PROSECUTOR  
LADYSMITH**



10 July 2014

Mr B Mzinyane

130126 Peacetown

PO Box 2775

LADYSMITH

3370

**RE: TO CONDUCT RESEARCH AT KHULISA SOCIAL SOLUTIONS LADYSMITH**

I refer to your letter dated 2 June 2014.

We would like to support you with this process but as you will know we have to adhere to our company's policy's and procedure. We therefore need to request that you forward your questions to us before hand in order to ensure that the information that you require can be disclosed. We also need to inform you that we are not allowed to provide you with any information regarding our clients.

You are welcome to communicate with the District Coordinator from our Ladysmith office.

We will try our best to accommodate you because we understand the importance of the research for the outcome of your studies.

Yours sincerely

Susan Theunissen

Regional Manager: KZN Midlands

**KHULISA SOCIAL SOLUTIONS NPC | NEWCASTLE**

Directors: LA van Selm (Managing), NE Chinkanda PhD, C.R. Jeffrey, M Lubega, TDS Madinginye, KC Makhubele, I Mann, D.A. McCartney, PMK Mvulane, Prof R Peacock PhD, ZD Qwemesha, BL Will  
76 Sutherland Street, Newcastle, South Africa, 2940 P O Box 1748, Newcastle, 2940, Kwa-Zulu Natal  
Tel: +27 (0)34 326 3664 Fax: +27 (0)34 326 3665 Email: info@khulisa.org.za Website: www.khulisa.org.za  
Registration No: 98/001994/08 VAT Number: 4160197192 PBO Number (Tax Exemption): 930010654



social developi

Department:  
Social Development  
PROVINCE OF KWAZULU

FAX : (0)  
Telephone/ Ucingo / Telefoon : (0)  
Date/ Usuku/ Datum : 19  
Enquiries / Imibuzo / Navrae : N. Manaraj  
E-mail : nishi.maharaj@kznsocdev.gov.za or bmzinyana@ymail.com

Ladysmith Service Office  
12 Murchison Street, Private Bag 9936  
Ladysmith  
3370

### SUBMISSION

**To** : The Acting Head of Department, Department of Social Development,  
Pietermaritzburg.

**From** : The Service Office Manager, Ladysmith Service Office

**SUBJECT** : Permission for an employee to conduct research

**Purpose:** The purpose of this submission is to obtain the approval of the Acting Head of Department (KZN-DSD) for a DSD employee to conduct research for Master of Social Work degree

#### Discussion

Mr Bongane Morris Mzinyane (persal 64-759091) is currently a registered Master of Social Work student at the University of KwaZulu-Natal (Howard College Campus). Therefore, it is a requirement for the aforementioned qualification that he should carry-out a research project as a fulfilment for this qualification under the supervision of Professor Carmel Rose Matthias (UKZN). Mr BM Mzinyane is an employee of the Department of Social Development; hence he is rendering services as a Probation Officer in Ladysmith Service Office.

In essence, Mr BM Mzinyane is hereby requesting permission from the department to conduct a research project in the Department with two (2) Probation Officers and (2) Assistant Probation Officers who are serving at the Ladysmith and Ezakheni Service Offices. This research project will consist of a single interview with each of the officials.

Furthermore, Mr BM Mzinyane's qualification (Master of Social Work Research) may also aid him through the process of Specialization of Probation Officers. Hence, a master's degree in social work is one of the pre-requisites for this registration as per regulations-concerned. Supplementary to this submission, Mr BM Mzinyane has attached a letter that has full details of his project.

#### Financial Implications

There are no financial implications to this project.

Recommendations

It is recommended that authority be granted for the official-concerned (Mr Bongane Morris Mzinyane) to conduct research with four (4) departmental officials as per request. Supplementary to this submission, Mr BM Mzinyane has attached a letter that has full details of his project.

N. Maharaj  
N. Maharaj  
Service Office Manager(Ladysmith)  
Date: 19/06/2014  
Supported/Not Supported


Mrs N Murugan  
Mrs N Murugan  
Senior Manager: Uthukela District  
Date : 4/7/2014  
Supported/Not Supported

Mrs P.M Mhlongo  
Mrs P.M Mhlongo  
General Manager  
Date : 2014/07/07  
Supported/Not Supported

Ms N.G Khanyile  
Ms N.G Khanyile  
Acting Deputy Director  
Date : 18/7/2014  
Supported/Not Supported

Mrs N.G/M Mbanjwa  
Mrs N.G/M Mbanjwa  
Acting Head of Department  
Date 22/07/14  
Approved/Not approved

*Ethical issues to be strictly adhered to and research to be shared with Dsd management prior to its publication.*

*Pis note the a HOD's remarks*  
  
2014/08/07