



**AN EXPLORATION OF CHILD OFFENDERS IN THE RURAL AREA OF IXOPO,
KWAZULU-NATAL PROVINCE**

By

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.....

Signature

Thule Angel Qhamukile Sithole (207502109)

.....

Date

DEDICATION

This study is dedicated to all stakeholders and professionals working with children in conflict with the law, especially those assigned in the rural areas. It is also dedicated to the betterment of service delivery and improvement of lives of these children(s) rural communities. It is also dedicated to all who had faith in me and shown supported throughout this study, especially my supervisor Dr W. Maluleke; I appreciate your efforts. Thank you all overall.

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- To my family and friends who supported me throughout until completion of this study.
- To the editor, I thank you for the language editing of this dissertation.
- Finally, to God himself. **THANK YOU, WITHOUT YOU COMPLETING THIS STUDY WOULD NOT HAVE BEEN POSSIBLE.**

ABSTRACT

The problem of child and youth offenders is a worldwide problem generally. Thus, the rural area of Ixopo in KwaZulu-Natal (KZN) is no exception to this problem. The statistics of child offenders in the area of this study has increased rapidly in the past three (03) financial years and the levels of criminal activities that children engage in gets more serious every yearly.

This study looks at the contributory factors that underpin child offending within the rural area of Ixopo in KZN. The qualitative research approach was followed in this study and purposive sampling was adopted to gather data from one (01) Focus Group Discussion (FGD) with six (06) Social Workers from the local Department of Social Development (DSD) of Ixopo area. Furthermore, face-to-face Semi-Structured Interviews (SSI) with twelve (12) children in conflict with the law, 12 guardians and parents of these children were utilised. Overall, this study consisted of 30 selected participants. This study also interpreted documents, including the official assessment reports and pre-sentence reports done on these twelve (12) children. The data analysis of this study involved seven stages of phenomenological inquiry.

For findings of this study, it was established that the Social workers feel that the issues relating to broken families, lack of resources to ensure proper implementation of the available programs and policies contribute on child offending. It was also reported that the children guardians and parents believe that media influence, economic stress and absence of father figures are the major push factors to child offenders. In collaborations, the high rate of single parents and child headed household were also on top of discussions with the selected participants.

In the documentary study, it was evident that these children have lost ambition and consequently see no hope outside the life of crime and they were all school dropouts; this was supported by the consulted literature and legislative framework, which presented the history and development of the Juvenile Justice System (JJS), drawing back from the ancient times up to the present moment.

In this analysis, the researcher noted a great transformation, more especially with the Child Justice Act [CJA] (Act No. 75 of 2008) and other introductory governmental policies developed to respond to this subject effectively. In this analysis it was also confirmed that the topic under research is about to reach saturation. However, the present study showed that there was a big gap in the body of knowledge, since there is a lack of studies conducted in the rural areas and this study fills that *lacuna*.

Through this study, it is acknowledged that child offending might be common in nature and extent; however, the circumstances surrounding these practices vary from place-to-place and the intolerable vast environmental factors plays a pivotal role in the high rate of child offenders.

For recommendation, the grassroots of child offenders are difficult to determine, since the contributory factors differs but associated to social factors, secondary to these current strategies is ineffectiveness to address the associated crime as it is deeply rooted to elusive factors, which Social workers nor the local police or other relevant stakeholders can manage. This study concluded that more research needs to be done especially in the rural areas of South Africa in general and KZN specifically. The studies in question should focus on larger groups of people in different rural communities across the country or KZN to understand the depth of this problem and hopefully inform relevant and effective interventions.

Keywords: Child offenders, (Children) in-conflict with the law, Ixopo rural area, KZN Province, Social Development

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LIST OF SYMBOLS AND ACRONYMS

ACRWC:	African Charter on the Rights and Welfare of the Child
AD:	<i>Anno Domini</i> (in the year of the Lord)
ADHD:	Attention Deficit Hyperactivity Disorder
AIDS:	Acquired Immune Deficiency Syndrome
BBC:	British Broadcasting Company
BC:	Before Christ
CC:	Constitutional Court
CFSD:	Criminology and Forensic Studies Discipline
CJA:	Child Justice Act (Act No. 75 of 2008)
DCS:	Department of Correctional Services
DSD:	Department of Social Development
DPP:	Director of Public Prosecution
DoJ & CD:	Department of Justice and Constitutional Development
EPWP:	Extended Public Works Programme
FGD:	Focus Group Discussions
GBH:	Grievous body Harm
HIV:	Human Immunodeficiency Syndrome
IMC:	Integrated Marketing Communications
IQ:	Intelligence Quotient
JJS:	Juvenile Justice System

KZN:	KwaZulu-Natal (Province)
NGO:	Non-Government Organisation
NICRO:	National Institute for Crime Prevention and Reintegration of Offenders
NPO:	Non-Profit Organisation
SAPS:	South African Police Service
SSI:	Semi-Structured Interviews
SVJ:	Serious Violence Juvenile
UKZN:	University of KwaZulu-Natal
UN:	United Nations
UNCRC:	United Nations on the Rights of the Child
US:	United States
USA:	United States of America
YES:	Youth Empowerment Scheme

CHAPTER ONE

GENERAL ORIENTATION IN TERMS OF THE RESEARCH PROBLEM

1.1. INTRODUCTION

Child offending is an epidemic that is on the rise both locally and globally. This problem is escalating in spheres of the earth. The rising question is; “*what we are doing wrong as a country and as a nation (South Africa)?*” Therefore, this study was conducted with the hope to answer one of the most asked questions especially in the most neglected parts of South Africa, being Ixopo rural area of KZN Province, among others. This was viewed as the main reason for this study, coupled with an attempt to understand the contributory factors relating to child offending, the facet on “*how young individual future leaders are currently (i.e. post democracy advert) trapped in the web of crimes as the last resort?*”

In connection to the presented background *Supra*, the main aim of this study was to explore the contributions of child offenders while focusing on Ixopo area of KZN and to provide recommendations in addressing this scourge effectively by soliciting the perceptions of relevant stakeholders. This study has also looked at the associated effects and risk factors to crime causation on children of Ixopo area, KZN. This study was demarcated to the following push drivers: substance abuse, single parenthood, or lack of father figures as role models, social, economic stress, the demographic makings, and standards of living (Castells, 1997:39), to name but a few. The researcher attempted to understand identities with a communal context in line with set values and normalisation of crime within this rural area of KZN.

This study acknowledges that to understand child offenders, research to be undertaken should explore normalised behaviours from communities. Issues relating to broken family systems need to be addressed to ascertain its causative factor to societal problems within a specific community (Pelser 2008:9) and with this study; the researcher hoped to gather a clearer understanding of what causes child offenders in Ixopo area.

The consulted literature of this study revealed that the local experience refers to what is felt, seen, and understood by other people in the immediate environment with reference to how things should be done, the shaping of one's own view in terms of what is "normal", "routine" and "everyday" forms the crux of this thinking. This then provided the framework for the development of self-identity and understanding of what is required to connect, fit and achieve in what is dubbed "normal environment". It is in this way that a culture develops and is replicated. For clarity, "Child offenders" used to be known as "juvenile offenders." The term "juvenile" was changed to "child" in the new CJA (Act No. 75 of 2008). Therefore, child offenders have been a topic of great interest both locally and internationally, as it seems to be on the rise.

The research done in Washington, United States by Catalano, Loeber and Mckinney in 1999 indicates that children exposed to certain risk factors in their families, school (among their peers) and in their communities are at greater risk of becoming Serious Violent Juvenile (SVJ) offenders. Further indications suggest that multiple rather than single factors (multiple be that when the child is exposed to more than one risk factors, for example broken family, substance abuse and peer pressure can be more at risk than the child who is only faced with peer pressure but has a loving and supportive family and does not abuse substance), place children in becoming SVJ offenders. Thus, intervention efforts directed toward any single source of influence, for example; family, school or peers are unlikely to be successful. Programs must target several risk factors in a variety of settings (Catalano, Loeber and Mckinney, 1999:2).

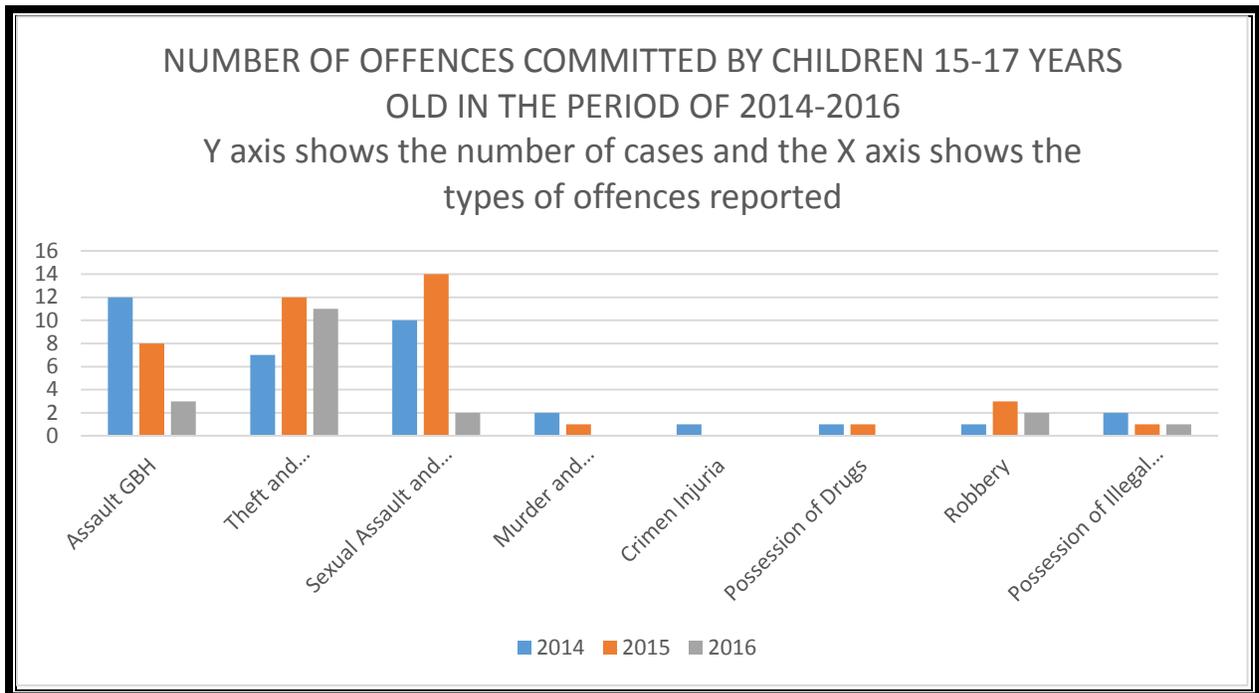
1.2. PROBLEM STATEMENT

The research problem that was investigated in this study was that many children in the Ixopo area of KZN crime for them is viewed as a normal way of life. There appears to be a correlation between the socio-economic, psychological context of the children and the incidence of child delinquency. Another interest to this study was the role of substance abuse in child delinquency. In the past five years (2011-2016) that the researcher had worked as a social worker and probation officer at Ixopo, KZN, the observation of a great number of children who dropout from school was witnessed.

This does not conform to our new democracy advertisement and the Constitution of Republic of South Africa Act (Act No. 108 of 1996) particularly Chapter 2 of the Bill of Rights that clearly stipulates the basic human rights and the importance of education, in essence; an individual expect more for children from disadvantaged communities, Ixopo area included.

However, this area appears to be influenced by how the people in that community live their lives that is standard of living and contribute to what is understood by them as a good way of living. Crime is viewed as an acceptable way of life in this area and this destroys the next generation, which refers to children who are the future of the nation. Furthermore, socio-political context played a role in directing the behaviour of human beings including children and this can involve many factors such as single parenthood, economic stress and high rates of orphans and vulnerable children with no parental guidance. The combination of these factors can lead to substance abuse to destroy the lives of children and pushing them into even more criminal acts

Figure 1: Committed offences by children (2014-2016) in Ixopo area



Source: Researcher's illustration

1.3. RESEARCH AIM AND OBJECTIVES

1.3.1 Research aim

“The research aim is the broad statement of desired outcome or the general intentions of the research, which paint a picture of your research project”. It is also, about what the research desires to do or intends to research about, to reveal overall intentions of the problem under investigation. It signals what and/or where the researcher aspires to be by the end of the study to be conducted. It is based on what the researcher desires to know or investigate. It is the point of doing the research. An aim is therefore generally broad. It is ambitious, but not beyond possibility. The study aims are “general statements concerning the overall goal’s ends or intentions of teaching” (www.erm.ecs.soton.ac.uk).

Considering the above, the aim of this study was to make a significant contribution to the board of knowledge by “*informing an understanding of the socio-political and economic contextual factors that contribute to the incidence of child offenders in the Ixopo area, KZN.*” This study involved important role-players in the community who assist in the prevention of crime – such as the child offenders, the guardians and parents and public servants (Social Workers) - to gain a clearer understanding of the risk factors, which contributed to child offenders. In this way, the researcher was able to gain an insight into the importance of the involvement of these selected participants in the pre-and-post factors of child offending in Ixopo area of KZN. More importantly, the involvement of these role-players was ethically obtained, and their views solicited through interviews in their own respective homes and workplaces.

1.3.2 Research objectives

“Research objective is a clear, concise, declarative statement, which provides direction to investigate the variables”. This process further refers to the specific steps to achieve your aim. The objectives explain how one goes about achieving his or her aim (www.soas.ac.uk).

Therefore, the objectives of this study were designed five folded as follows:

- To identify and eliminate socio-economic factors that contributes to child offending in the Ixopo area, KZN.
- To understand the extent of child offenders in Ixopo area KZN
- To explore the contributory factors of child offenders in Ixopo area KZN.
- To contribute to the existing knowledge on child offenders in the rural areas of KZN.
- To explore the role and effectiveness of the systems in place that address child offenders in Ixopo area, KZN.

1.4. RESEARCH QUESTIONS

“A research question is the fundamental core of a research project, study or review of literature. It focuses the study, determines the methodology and guides all stages of inquiry, analysis and reporting” (www.researchrundown.com). With this definition considered by the researcher, the research questions to guide this study were as follows:

1.4.1 Main question

What are the underlying contributory factors that lead to child offenders in Ixopo area, KZN?

1.4.2 Sub questions

- What is the extent of child offenders in Ixopo area, KZN?
- What is the impact of child offenders in Ixopo area, KZN?
- How effective are the systems in place to address child offenders in Ixopo area, KZN?

1.5. CONCEPTUAL DEMARCATIONS

1.5.1 Child

A Child is defined in the Children's Act (Act No. 38 of 2005) as any human being under the age of 18 years old. Furthermore, the CJA (Act No. 75 of 2008) views "a child as someone who is under the age of 18.

The CJA is specifically intended for children between the ages 10 and 18". The CJA states that:

- A child under the age of 10 years cannot be arrested. This means that a child under 10 years does not have criminal capacity and cannot be charged or arrested for an offence. In such a case, the child will be referred to the Children's Court in accordance to the Children's Act (Act No. 35 of 2005).
- A child older than 10 years but below the ages of 14 years is presumed to lack criminal capacity unless the state proves that he or she has criminal capacity. Such a child can be arrested.
- A child above 14, but under the age of 18 years old, is said to have criminal capacity and can be arrested.

1.5.2 Offender

- An offender is an accused defendant in a criminal case or one convicted of a crime
- The name offender is used for a person who is guilty of an offence according to the law, (www.thelawdictionary.org/offender).

1.5.3. Rural area

- A rural area is an open swath of land that has few homes or other buildings, and does not have many people.
- A rural area's population density is very low. Many people live in a city, or urban area. Their homes and businesses are located very close to one another. In a rural area, there are fewer people, and their homes and businesses are located far away from one another.

- Agriculture is the primary industry in most rural areas. Most people live or work on farms or ranches. Hamlets, villages, towns, and other small settlements are in or surrounded by rural areas.
- Throughout the world, more people live in rural areas than in urban areas. This has been changing rapidly, however. Urbanisation is happening all over the world. (www.nationalgeographic.org/enclopedia/rural-area/).

1.6. STUDY JUSTIFICATIONS

This study aimed to identify the contributory factors that underpin child offenders in the Ixopo area to formulate a conceptual framework to be guided by typologies of the subject under investigation to inform effective and collective prevention programs to achieve successful results in addressing this problem. It was envisaged that this information would hopefully reduce the number of children who graduate into various crimes in their early ages. This study was informed by several other areas involving the effectiveness of crime prevention programmes, the effect of economic stressors and risk factors in the family and community (Sherman, Gottfredson, Mackenzie, Eck & Bushway 1999:n.p; Weatherburn & Lind, 1998:n.p; Catalano, *et al.* 1999:n.p) respectively.

The society can benefit by looking more deeply into these factors and ways to deal with them. The researcher hopes that in this way vulnerable children who are victims can be protected and those who are already affected can be helped. In social work context, addressing these types of questions can help boost the profession and add value to the prevention programmes that are already in use.

In addition, this study has shown the importance of prevention programmes such as crime prevention, family preservation, victim empowerment and parenting programmes accordingly; not for the sake of meeting targets but to affect life and instil change. This study is intended to also help universities to add to the academic content relating to factors contributing to child offenders especially in the rural areas referring to this study.

This study did not intend to duplicate on what has previously been conducted elsewhere. However, it has built on some of the elements that have already been identified by other scholars and formed a strong foundation for this study. It has mainly examined existing research on child offenders and used this information to identify commonalities, themes and patterns of child offenders that may occur in a particular group of children. This was drawn to identify solutions to deal with the contributory factors to child offenders.

1.7. STUDY LIMITATIONS

The study had various limitations mostly as it was a qualitative study. When conducting a qualitative study, there are **various resources needed**, the study had to **rely mostly on the selected participants**, and the **analysing of the findings** of this study was not an easy task to do. This study was only **limited to one area** and with a **limited number of participants**.

The **findings of this study cannot be generalised** to a wider community and other participants hence it was a qualitative study, which mainly looked at the participants' experiences and perceptions of this phenomenon. There is **not much literature on child offenders** in the rural areas of South Africa. The researcher had to **rely mainly on foreign literature** to form basis of this study.

When conducting a study, it requires **money and time** that was a great limitation. This study required **transportation** to and from, while attending the conducted interviews and the **appointment setting** was also a factor since some participants of this study were working and could only make time on weekends and that affected the amount of time that the researcher had to complete the study, hence it took longer than expected.

1.8. SCOPE OF THE STUDY

The premise that underpinned this study was based on exploration of child offenders in Ixopo area, KZN, the risk factors that lead to their criminal behaviour were also identified, collated, and analysed. The rationale of this study provided the prevention programmes directed to child

offending should be evidence-based, this can be likely appropriate in responding to societal behavioural challenges in the Ixopo, KZN.

The adopted qualitative research approach explored the contributory factors in the actual system to gain a lasting solution to this problem. This study was primarily based on the researcher's work experiences for the last three [03] years (2014-2016) as a Probation Officer in the Ixopo area. This was based on the researcher's encounters with child offenders and the processes in handling their cases.

In collaboration to the presented statement; the collected data included documents and reports on the crimes committed by these children and interviews with the selected participants. To support this, the researcher has given a projection of the statistics of the crimes committed by children between the ages of 15-17 years old for the past three years [2014-2016] (Refer to figure 1 of this study).

1.9. SUMMARY

The chapter (One) provided an overview of this study. It provided the research problem and definitions of the key concepts that is, conceptual demarcations, while focusing mostly on following definitions: Child, Offender and Rural area. It gave a clear indication of the aims, objectives and research questions posed in this study. The next chapter (two) will provide literature review and legislative frameworks on subject under study. The purpose of this chapter was to familiarise the reader with the existence of child offenders in South Africa and responses of JJS; locally and internationally.

CHAPTER TWO

LITERATURE REVIEW AND LEGISLATIVE FRAMEWORKS

2.1. INTRODUCTION

This chapter is set to give an over view and historical developments pertaining JJS. This chapter also conceptualises the historical development of the JJS on a global perspective. This system is drawn back to the very ancient laws up to the current laws and narrows down to historical happenings of JJS in South Africa context. This is set to create a clear picture of how the JJS has evolved over the years globally and how the global perspective interlinked or influenced the evolution of the JJS in South Africa. Most importantly, this chapter delves in detail the legal framework surrounding child offenders in South Africa.

2.2. THE HISTORICAL DEVELOPMENT OF JUVENILE JUSTICE: GLOBAL PERSPECTIVES

Child offenders have moved from a harsh reality to a more devastating fact globally. This places more need to understand its nature and development globally. The issue of child offender is not a new problem in the globe, however; it has long existed in the history of time. It may only be the trends and behaviours and mostly how it has been dealt with before that may differ. The behaviour has always existed but rather was previously ignored or dealt with in a more informal way, making it to be a new pandemic; hence, it has been made a legal and public issue. Looking back in the history globally, child offending has never faded nor vanished. That stated, it is evidence that JJS has long been in existence but has somehow developed through the ages.

Maris (1988:614) describes JJS as “agencies at all levels of governments together provide how criminal offenders are apprehended, tried and punished. These include the South SAPS, the Department of Justice and Constitutional Development (DoJ & CD) and Department of Correctional Services (DCS)”. This system draws back to the ancient past “Antiquity times” until to date; however, many developments have been made thus far.

2.2.1 Ancient Years

In the early years of life, crime and criminality had no age and classification. This does not excuse the fact that it has always existed even in the young generations of the time. There was no distinguishing between the young and the old. Laws may have been put in place, but it had no preference and accommodation of age, class or gender. As it is stated that “before the nineteenth century there was no provision for young offenders, who were treated no differently than adults and could be sent to prisons or hanged” Burke (2008:47). The legal concept of Juvenile systems is relatively new, but it came to life through the on-going recognition of crime, especially among the young. In the olden days punishments were not set apart by offences, the harsh forms of punishment were handed out regardless of the nature of the offence and the reasons for committing such offences. During the ancient times the people of Mesopotamia lived under the rule of the Babylonian King Hammurabi, Hammurabi created his code of laws, which consisted of 282 laws” (www.thenagain.info). It is noted that this law of the Babylonians incorporated all matters related to the daily living. It also included laws for specified offences and punishments. Harsh forms of punishments were handed out. One rule was specifically aimed at children who disobeyed their parents, for example if a child strikes his father, his hands shall be cut off (Regoli & Hewitt, 1994:26).

Another development came about and there the Mosaic Law, which was found in the ‘Old Testament’ in the form of 10 commandments and other laws. The Mosaic law listed the forms of unacceptable behaviours as well as the accompanying punishment, for example, a person may not steal from another, kill another, or curse their parents as such a behaviour was viewed unacceptable and was punishable with death. These laws did not refer to how to deal with offending children (Bezuidenhout & Joubert, 2006:13). In all these laws, there was no differentiation of the child and the adult. Children were incarcerated in the same manner. The Hebrew people were the first to make division of childhood; however, they did not distinguish according to the age of personal responsibility. Infancy- birth to 6 years old, Puberty- 7-13 years old for males and 7-12 years old for female, Pre- adulthood- all the years from puberty to 20 years old (Bezuidenhout & Joubert, 2003:13).

Bezuidenhout and Joubert (2003:13-14) further explain that after the division of childhood there was then the Roman Law (450 Before Christ (BC) which was called the Law of the Twelve Tables and is often referred to as the fountainhead of Roman Law. With this law, there was no evidence that the law treated young people differently. Emphasis on criminal responsibility was not made, instead it was central to the issue of liability for wrongdoing. An infant was defined as incapable of speech and lacking intelligence and therefore without the capacity to make intelligent choices. This view was also held for the insane. As a result, during this time criminal responsibility was fixed at the age of seven years old. When a child has reached the age of puberty of which it was set for girls to be the age of 12 and for boys to be at the age of 14 years old, the child was viewed as fully criminally responsible for his or her actions. When the child has reached this age of puberty, it was then believed that the child was capable of criminal intent and was aware that certain behaviour was wrong. By *Amino Domino* (AD) 597, any code violation prescribed enforced punishment, usually in terms of the payment of damages. Children were not excluded from this enforced punishment. Documents described cases where children as young as six years old were hanged or burned at the stake.

There was then the Anglo-Saxon period (AD 449-1066) which had brutal and capital punishment where death sentence became a form of punishment, which was enforced on anyone from ages 10 or 12 years and older. The king of the time was concerned about the number of young people who were executed under the death penalty [BBC-History-Anglo-Saxon Law and Order] (www.bbc.uk/history).

2.2.2 The 'Middle Ages'

During the middle ages, there was the English Common law, which recognised the status of a child and recognised that a child from ages 0-7 was not criminally responsible for his or her actions. It then from ages 7 to 14 years old, placed the burden on the state to demonstrate or prove that the child formed criminal intent, knew right from wrong and understood the consequences of their actions. There was no close contact between parents and their children because children were viewed as possessions (Kratcoski & Kratcoski, 1996:70).

During this period, many young children died from diseases or fell victims to malnutrition and as a result, infanticide and child abandonment reduced the number of living children. “Moreover, in the pre-modern era, the child mortality rate often exceeded 75 percent during the first five years of life and it would have made very little sense to have developed emotional attachments to your children let alone making plans for their future” (Hoyles & Evans 1989) (in Burke 2008:26).

In this time, the father exercised complete control over his family. As a result, very few children received education and in this case, sons were expected to work on the land. Daughters were considered a burden on the family and the only salvation for the girl child was a good dowry through an arranged marriage, which was a good outcome for her family. Children were used as objects of sexual abuse. Boys as young as seven started working for others, where they learnt skills or household duties. If children refused to work, they were disobedient and often penalties for misbehaviour were meted out without consideration of the child’s age. Children were in some instance even killed (Bezuidenhout & Joubert, 2003:15). The punishment of criminal children was still very similar to adults, for example, corporal or public, banishment and slavery. As it is further stated that “in pre-modern times childhood had not been a distinct period of development as young children dressed like adults and were viewed in the same manner as their elders and participated fully in adult life, including the drinking of alcohol” Burke (2008:26).

2.2.3 The Renaissance and Colonial period

The JJS developed a more humanistic approach towards Criminal Justice System (CJS) in the Renaissance Era. Many children were put in schools and removed from workforce. There was a renewed interest in learning, supervision of and attention to children was acknowledged. The influence of Protestant Reformation affected the handling and treatment of children with respect to their moral training, education, and discipline (Bezuidenhout & Joubert, 2003:14). Urbanisation came to the rise as most families in the United States of America (USA) were influenced by it , which rich children saw education as the vehicle and poor children could receive equal opportunities for virtually unlimited social, aesthetic, political and moral achievements (Kratcoski & Kratcoski, 1996:72). In this time, that was when positive development in the JJS came to life and urbanisation had a good influence on the lives of the children.

The colonial era when the English Common Law was utilised and adopted to the developing Juvenile Justice System was effective in the period from 1636 to 1824. The family was viewed as the primary source of social control of children. This law was easy and uncomplicated in that the family was seen as the cornerstone of the community. An offending youth was thus more afraid of being sent back to his family for disciplinary action than of being in the hands of the police, probation, and parole officials (Bezuidenhout & Joubert, 2003:15). Imprisonment became uncommon, as many children who offended were found “innocent” to spare them corporal punishment. Instead, public dunking and whipping were often used as a form of discipline and in extreme situations expulsion from the community or death penalty also known as capital punishment was meted out. Sometimes in cases of theft, a child’s parents were fined (Bartollas, 1993:12). In other societies, they believed so much in the lifestyle of strict morality and religion. In this essence, children were understood to fall in sin and mischief. If a child is seen with these tendencies the only way they believed that the child could be corrected was through discipline and training. As it is revealed that children were not imprisoned for crimes but rather punished, execution sermons were used as a warning against the consequences of sin. In this period, rigid control was exercised over children (Bezuidenhout & Joubert, 2003:16).

In 1646, the Massachusetts Stubborn Child Law detailed punishments for disobedient youth. This law permitted the parents to execute unruly (disobedient and uncontrollable child) sons, but if they are 16 years or older. This law provided for the capital punishment for male children. With this law, the family still served as the basic unit of control with the father as the head of the family. If the family failed to control the child, the family was fined, or the child was removed in the parental care and placed in alternative care. If the child was more stubborn he would then be sent to the workhouse (Bezuidenhout & Joubert, 2003:16). During the 17th and 18th centuries in England there were numerous changes in pursuit of the recognition of children’s rights as follows (that is, not in order of importance):

- The nuclear family structure became dominant as marriages were now based more on feelings and no longer parental arrangements or economic reasons. There was greater concern on childrearing and children in general. Children were sent to school and discipline applied for academic as well as moral lapses (Bezuidenhout & Joubert, 2003:16).

- The apprenticeship movement was characterised by the placement of youths in the care of adults other than their parents, where they were taught specific skills. If a young apprentice was unruly, he could be punished. When incarceration was used as punishment, the youth offender was kept away from adult offenders (Bezuidenhout & Joubert, 2003:16).
- Chancery courts were established to protect the welfare of children. Children were seen as being under the collective protection of the king, who acted as parents' patria (father of the nation). Parents' patria thus served as an intervention tool in the lives of families and children (Siegel 2002) (in Bezuidenhout & Joubert, 2003:16).

Bezuidenhout and Joubert (2003:16) further state that from 1652 South Africa served as a halfway station for the ships of the Dutch East India Company and since then Holland and England have influenced the basis of the South African legal system. We must view all legal developments in this light, as punishment was and still is based on the overseas countries' legal views. Regoli and Hewitt (1994:28) discuss the following examples of cases reported in a criminal court in London between 1684 and 1758:

- 17 January 1684, John Atkins, a little boy, was indicated for stealing a silver tankard valued at 10 pounds. He was found guilty, sentenced and sent out of the country.
- 16 April 1735, John Smith, a young boy, was indicated for stealing four yards .that is, approximately 4m of printed linen valued at 5 shillings. He was found guilty, sentenced and exiled from the country.
- 7 December 1758, Thomas Lyon, a 12-year-old, was sentenced to be transported for seven years for stealing a watch.

The chamber of Justice acted as mediator in cases where children had disobeyed their parents. Absolute obedience from children was expected and any transgressions resulted in the child being harshly disciplined in the same manner as slaves were disciplined (Bezuidenhout & Joubert, 2003:16). Punishment was not prescriptive and could be in the form of a recommendation to the governor from the aforementioned Chamber of Justice.

2.2.4 Industrialisation era

The industrialisation era according to Bezuidenhout and Joubert (2003:16 & 17), took the period of 1824 to 1899. In this period, “the typical family in America was replaced as the centre of processes by the production and factory setting. The family’s position as an economic unit was undermined and numerous rigorous attempts were made to persuade people to move from their rural settings to the cities. With immigration came immigrants who possessed different value systems”. This migration process created many problems for families and children as children became an important source of cheap labour and were in high demand. The factory owners, then the government and religious institutions assumed the role family changed as the religious as well as educational functions. This issue of immigrants gave birth too many social issues as people of the time became more dependent and many children were being neglected and not cared for and as result delinquent children or children who offended increased daily. The institutions who dealt with children who were brought into the courts evolved. It came to a push that children offenders had to be arrested, housed, tried, and imprisoned along with adult offenders. Since there was no specific structure that was in place to detain Juvenile offenders, this resulted in sexual exploitation as well as advanced criminal behaviour amongst the children.

Looking at all these factors that came to life in this era, “the need for a distinctive criminal justice process for young offenders was actually first proposed by liberal-minded magistrates who questioned the validity of sending children into prison while awaiting trial for minor offences. Thus, legislation was first introduced into parliament in 1840 that would have enabled magistrates to deal with children under the ages of 12 immediately, act as the moral guardians’ destitute and delinquent juveniles, advocate training, and discipline in industrial schools rather than imprisonment. However, “The House of Lords” rejected the legislation, because it denied the children the right to a jury trial and was deemed contrary to the existing dominant criminal justice system or punishment (Burke, 2008:48).

Burke (2008:48-49) summarises the Justice or punishment model of youth justice, which was based on the following factors:

- Based on the rational actor model of criminal behaviour notions that young people have a free will and choose to offend.
- Offenders should be held responsible for their actions and punished if they transgress.
- The level of punishment inflicted should be commensurate with the seriousness of the offence committed.
- Offenders should be punished for the offence committed and not based on whom they are or the social conditions in which they live.

The rate of homeless children and the children who needed care and protection increased rapidly. The need to provide care and supervision was off paramount important and that was when The House of Refuge was established. This institution was responsible for removing children from prison and the places for the homeless were then established. According to Bartollas (1993:13) cited in Bezuidenhout and Joubert (2003:17) these institutes served as substitutes for the family, they were the places that provided order and discipline for children which was like family institutions. (Kratcoski & Kratcoski, 1996:74) further explained that these institutes enforced the importance of obedience and conformity through strict discipline, which was believed at the time to be the best method of preparation for life in the future. This institution flourished during the half of the 19th century such that by the middle of the century new reform schools, foster homes and child savers had been developed. The people behind this reform, “child savers”, worked tirelessly to introduce the first juvenile court in the world in Cook County, Illinois, in the USA. The central idea of this movement, embodied in the Illinois Juvenile Court Act of 1899, was that neglected, dependent and delinquent children should be dealt with in a separate children’s court (Skelton, 2011:414). The child savers promoted the idea of putting a separate justice system for children in place. The argument was that children should be separated from adults, both in court and in institutions and should be treated according to different procedures from those used for adult. The child savers pushed for a compulsory school attendance for all youths from six to sixteen years old as prevention of juvenile crime.

“Although numerous attempts had been made to confine women and children separately, this distinction did not occur within prisons. The situation pertaining particularly to youths was described as unsatisfactory, as is evident in his Lordship L. Meijer’s plead of 1897, namely that youths be separated and that special institutions be made available.” Although the Volksraad was agreeable to this happening, nothing materialised” Venter (1959:109) cited in Bezuidenhout and Joubert (2003:18-19). After the end of the Anglo-Boer War in South Africa in 1902, former legislation was scrapped and replaced by British laws Venter (Bezuidenhout & Joubert, 2003:18).

Bezuidenhout and Joubert (2003:19) further highlight the significant changes within this period of the 18th century those are worth noting as follows:

- **1825:** The first facility for separate detention for adults and youths was established through the institution of the New York House of Refuge.
- **1833:** The use of state penitentiaries for youthful offenders, that is, those under 18 years of age, was restricted to Illinois.
- **1848:** The first state-sponsored reformatory for children in America was opened.
- **1869:** Provision was made for the presence of a state agent within the court setting whenever a child was considered for commitment to a state penitentiary in the USA.
- **1870:** In Suffolk County, the trials for youths under 16 years of age were held separate from criminal trials.
- **1878:** A probation officer was appointed with investigational as well as supervisory powers in the USA.
- **1878:** The Attorney-General of the Cape Colony in South Africa set 20 000 Pounds aside for the establishment of an institution for youth offenders.
- **1889:** The Porter Reformatory School supervised by a special board of control was instituted in South Africa.
- **1898:** Rhodes Island in the USA tried to segregate youths under 16 years of age who were awaiting trial, and provision was made for separate arraignment, trials and record keeping.

Common law in the 19th century made provision for youths within the legal system. Children under the age of 7 were considered “not guilty of a felony” because they could not differentiate between right and wrong. A child between the ages of 7 and 14 years old was considered guilty of a felony, unless the court could find that he or she could discern between right and wrong. Only then could the child be found guilty of felony. Children over the age of 14 years were held criminally responsible for their actions. Punishment that was meted out was fixed by law and graded by judicial practices according to the nature of the offence (Bezuidenhout & Joubert, 2003:18). Little attention was paid to age variables and the principles of equality before the law. ‘Youths were being hanged and imprisoned along with adults’ counterparts. There was a growing interest in finding solutions for certain problems resulting from industrialisation, urbanisation and immigration. There was also a growing interest in a more humanitarian approach. The concepts of adolescence, the period between 12 and 17 years of age, was viewed as a time of continuing vulnerability and emotional turmoil and significant changes were made in the juvenile justice system during the 19th century.

The child-saving movement exerted its influence on the system from the last two decades of the 19th century to the 1930s. Historically, the South African law treated children differently to adults in the criminal justice system. Age has always been a mitigating factor in relation to criminal responsibility as well as sentencing. “Porter reformatory was open to all races, though by 1909 the dormitories were segregated. In the same year, Houtpoort Reformatory was established at Heidelberg in the Transvaal. Industrial schools developed in a different manner; these facilities were not developed as places of detention or correction, but to provide state controlled practical, industrial education” (Skelton, 2011:418).

During 1934, South Africa appointed a committee to consider whether to dispense with the criminal procedure as applied to juvenile offenders. The Young Offenders Bill (Bill 189) was drafted which framed a specialised criminal justice process for children. This Bill was published at the same time as the Children’s Bill of 2014 (Number 30 of 2014). The Minister of Education decided the Children’s Bill should be promulgated with an addition of a few provisions relating to child offenders. This made provision for the power to refer cases to the children’s court and to consider reform schools as a sentencing option.

When the consolidated Bill was never passed into law as the Children's Act of 1937, the Young Offenders Bill was never passed, and children continued to be taken to the mainstream criminal justice process. Only a few measures were applied in recognition of their youthfulness. These measures included closed court proceedings, assistance from parents or guardians and additional sentencing measures such as referral to reformatory. During 1948, the National Party came to power and the building blocks for apartheid were put into place. The following decades were a bleak time for child offenders, with few positive developments in the law or practice. Corporal punishment and imprisonment were used as disciplinary measures (Skelton, 2011:419).

2.2.5 The historical development in the Juvenile Justice System from 1990 until 2005

The use of corporal punishment for juvenile offenders became shockingly popular over the next century and by the early 1990s the state carried out more than 30000 whippings per year, see *S v Williams and others (1995 (7) BCLR 861 (CC))*¹

During the early 1990s, South Africa emerged from apartheid and by that time, many countries were in the grip of the "law and order approach". The USA led the way but was not leading by good example. The situation in the USA at the time was a big concern, as a large number of children were included in the adult criminal justice system. It seems that the justice system in the USA was offence driven, with the type of offences determining whether a juvenile must be tried as a child or adult. This approach does not properly recognise differences in development, maturity, capacity and culpability between adults and children. Children were referred to adult court and minimum sentencing laws aimed at adults became applicable to children. When the United Nations Convention on the Rights of the Child (UNCRC) entered into force, the USA was not a signatory owing to 22 states permitted capital punishment of individuals who had committed their crimes as juveniles. It is reported that 19 juvenile offenders were executed in the USA between 1990 and 2005. Although this number represents a small percentage of the total

¹ Whipping as a sentence for juveniles was the first matter concerning juvenile offenders to come before the Constitutional Courts as established by the first democratic government and the court struck down whipping as being unconstitutional because it was a cruel and unusual punishment.

that faced the death penalty in the USA during this period, the practice was widely criticised by international bodies and organisations. A landmark ruling in the US Supreme Court outlawed the execution of Juvenile Offenders in the USA, but to date a small number of countries worldwide still implement this practice sometimes because of religious laws (www.ncbi.nlm.nih.gov>articles).

The South African court, considering the criteria for the best interest of the child, placed emphasis on rehabilitation and the integration into society. The child's age was the main consideration for the child not to be committed to detention. According to the South African Constitution, a child has the right not to be detained except as a last resort and can only be detained for a short period of time (www.saflii.org/za/cases/ZASCA/127.html).

2.2.6 The development in Juvenile Justice System since 2005

In 2005, the US Supreme Court was presented with an opportunity to rule on the constitutionality of the death penalty for juveniles, in the case of Christopher Simmons, who was on death row for a murder he committed when he was 17. Until the USA was one of the few countries in the world that retained the death penalty for children on its statute books and continued to execute offenders who were younger than 18 when they committed the offence (Skelton, 2011:422).

On 1 March 2005, the USA Supreme Court made a judgement that it was unconstitutional to execute offenders who were under the age of 18 at the time of commission of the crime. This ruling affected 72 youth offenders in 12 states who subsequently faced the penalty of life imprisonment. Life imprisonment without parole is prohibited as a sentence for a child by the UNCRC (Skelton, 2011:423).

In South Africa, the Criminal Law Amendment Act (Act No. 105 of 1997) introduced minimum sentences. When the Act was promulgated, it excluded all children below the age of 16 from its operation: 16 and 17-year olds were included in the ambit of the Act, but the procedure for them was different from the procedure for adults. The applicability of minimum sentences has been resolved by the Supreme Court of appeal in *S v B*, which held that the minimum sentences do not apply to 16 and 17 years old.

The case involved a 17-year-old boy who had been convicted of murder and sentenced to life imprisonment; his appeal against his sentence was upheld on the basis that, in the opinion of the court, minimum sentences did not automatically apply to persons below the age of 18 years (Skelton' 2011:423). Following this case, the Criminal Law Amendment Act (Act No. 38 of 2007) was passed, which unambiguously applied minimum sentences to 16 and 17-year olds. In a Constitutional Court ruling, the Constitution prohibits minimum sentencing legislation from being applied to 16 and 17-year olds. The court confirmed the order of constitution invalidity handed down by the High Court and Sections of the Criminal Law Amendment Act (Act No. 38 of 2007) were declared invalid. This did not erase the concerns about the serious offences committed by children under the age of 18 years. This still left a very important concern that even though it is said that detention for children must be set as the last resort, imprisonment is sometimes necessary.

The South African Law at the time stipulated that life imprisonment does not allow for the possibility of parole, and the pre-parole period is 25 years. This means that a juvenile cannot be considered for parole until he or she has served 25 years of the sentence (Skelton 2011:426). The CJA came into place and gave a solution to the above-mentioned issue of maximum sentence for children. It sets 25 years as the maximum period of imprisonment to which a child (14 years or older) can be sentenced. It also makes the provision for the Youth offenders can be considered for parole after spending half of their sentences in prison. This new law presented a new and positive step towards the treatment and sentencing of juvenile. It does away with life imprisonment for juvenile offenders (Skelton' 2011:426).

2.3. THE HISTORICAL DEVELOPMENT OF CHILD JUSTICE LEGISLATION IN SOUTH AFRICA

South Africa in the past has been known and famous for the apartheid where rights and privileges of the black people and mostly the apartheid government-controlled children. When the apartheid government came to party in 1953 it approved the Bantu Education Act which the effects and impact of that Act is still felt even today mostly by the black child. One can argue that the world or the country had long been in turmoil and disruption stemming from the ancient

laws. Even more so South Africa alone it is evidence in many ways that the most destruction and chaos emerged during the apartheid era.

The need for Juvenile Laws came about in those dark days of the apartheid era, when the youths who fought for the struggles of apartheid with one goal to free the country were detained for long periods and held in prison cells without being charged or trial.

Currently South Africa is said to have a population of about 46 million and half of that population is under the age of 25 years old (Pelser, 2008:1). Consequently, it is an unfortunate fact that South Africa has a very high number of child offenders. There are many reasons for this pandemic stemming from different factors, as it is un-ignorable that many factors contribute to this issue, with some reasons known and some not. It is a good thing, one of the most lovable things about our beloved country is that South Africa is a unique diverse country characterised by many different cultures. As beautiful as this is, it is one of the biggest reason South Africa has such a high number of child offenders and it seems so difficult to deal with them.

2.3.1 1994 South Africa had its very own first democratic elections

Democracy means that everyone has a say in how the country is run. In a democratic state, citizens put the government into power. The adult citizens of a democracy elect their government. One way they do this is by choosing people to represent them in a parliament. In a multi-party system, the party that gets the majority votes governs the country, (www.cfcr.org.za). “In 1995 the community law centre headed by the honourable Dullah Omar, who became the then Minister of Justice contributed to two prominent initiatives in the sphere of juvenile justice, which led to the release of children from prison and advocating for a comprehensive juvenile justice law reform. After the establishment of the Inter-Ministerial Committee on youths in trouble with the law in 1996, the department of Welfare was tasked with the transformation of the JJS into one centralised system. Legislation was also imposed for the establishment of special courts where children or youths involved in crime were heard separately from adults” (Raymond’ 2004:14). However, complicated South Africa’s situation is retaining to juvenile justice system. South African Child Justice Legislation does provide for the children in conflict with the law.

2.3.1.1 The United Nations Convention on Children's Rights

The UNCRC is an international instrument that was established in 1989, which gives substantial guidance to countries seeking to enhance the delivery of children's right-based services and programmes. It was established mainly to protect the rights of all children internationally. It also provides, together with other related international instruments, the international framework within which children in conflict with the law should be managed (Gallinetti, 2009:9). The UNCRC consists of 54 rules. All these rules apply to all children, however for this research only those rules that apply to children who conflict with the law are discussed.

- **Article 1:** Gives the definition of who is considered a child in term of the law. Everyone under the age of 18 years has all the rights in the convention. This article has made a good provision in extending the age of a person who is considered a child by the law. The reality does show that not all children who are 18 years old are matured enough to be adult yet the law forces them to be adult at that age. There are still children in their early 20s who still behave and act like children who cannot make informed decisions, and more so most children who are 18 years old in the rural areas are still in school and they are treated as teenagers.
- **Article 3:** The best interest of the child must be a top priority in all decisions and actions that affect the child. All adults should do what is best for children. When adults make decisions, they should think about how those decisions will affect the children. This applies to the lawmakers and governments. In all matters affecting the child, the child's own views must be considered. In the society we live in this is not happening circumstances take top priority in the lives of the poor. In some families, you find that children are forced to drop out of school and look after their younger siblings for the parents to go to work and provide for the family. In this instant and many more the interest of the child is compromised and no longer a priority.
- **Article 4:** Governments have the responsibility to do all they can to make sure every child can enjoy their rights by creating systems and passing laws that promote and protect children's rights. Government are obliged to then take all necessary steps to ensure that the

minimum standards set by the Convention in these areas are being met. They must help families and communities to create environments that can help children reach their full potential.

In paper, our government has managed to pass laws that promote and protect children; however, the system does not support those laws taking for instance, the high rate of school dropouts. There are no systems in place that ensure that all children are in school always. The other thing that government have overlooked is the high rate of abandoned children. The government is reluctant about parents who abandon and neglect their children, as they are not enforced into their responsibilities as parents.

- **Article 13:** Freedom of expression entails that every child must be free to express his or her thoughts and opinions and to access all kinds of information, if it is within the law. Freedom of speech is still prohibited especially in the black community where a child cannot say what he or she mean and mean what he or she says. In some families the child is not allowed to speak directly with their parents, there are lines of communication that are in place. For example, if the child wants to ask for something from his or her parents he or she must do that through an older sibling or some respectable relative who does not even stay with the child. By the time the message reaches the parents it may no longer be what the child exactly said.
- **Article 16:** Stipulates that every child has a right to privacy. The law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation. The country is far from achieving this when we still have children who are raped and killed even by their own immediate family members.
- **Article 19:** Stipulates that every child has the right to protection from violence, abuse and neglect. Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them. Just like in article three (3) the government is not doing anything to achieve this end. The situation shows the total opposite. Children are being abused and neglected daily by their own parents and the statistics are always increasing. Instead of the government protecting these children, the government seems to be protecting the parents and robbing the

children to grow up in families not children's homes, while their parents continue to bear more children only to neglect them again without being given any kind of punishment.

- **Article 20:** Speaks of children who are unable to live with their families. If a child cannot be looked after by his or her family the government must give them special protection and a place to live. The government has achieved this as many children are provided with homes in children's homes and youth care centres, even though the foster care systems for those children who are in need and cannot stay with their families.
- **Article 37:** Stipulates that no one can punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release. The CJA has provided guidelines into ensuring that children are not treated cruelly, and it is happening.
- **Article 40:** Specifically deals with Juvenile Justice. Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for fairness and quick resolution of judicial or alternative proceedings. The South African government has worked so hard to achieve this through the CJA and in ensuring that it is followed accordingly.

2.3.2 The African Charter on the Rights and Welfare of the child

The African Charter on the Rights and Welfare of the Child (ACRWC) or Children's Charter was adopted by the Organisation for African Unity in 1990 and came to force in 1999. The ACRWC is very similar to the UNCRC in terms of its outlook on juvenile justice. However, the UNCRC follows a collective approach and combines the rights with responsibilities and the ACRWC especially regarding child Justice is more limited in scope than the UNCRC, (Badenhorst, 2003:17). The African Charter on the Rights and Welfare of the Child is a comprehensive document that sets out the rights and defines universal principles and norms for the status of children. It consists of 48 articles, dealing with different rights of children. The

ACRWC was created because it was believed that the UNCRC did not deal with some important socio-cultural and economic realities that are part of Africa.

This was created after the realisation that the African cultures and values plays an important role in the lives of children, so they needed to be included when dealing with the rights of the child. Some traditional African practices are often in conflict with the rights of the child such as child marriages and rights of children born out of wedlock. The ACRWC includes all these traditional and customary issues related to children. The ACRWC has the higher power and legal authority than any custom and because of its higher authority it followed just like the UNCRC. Many articles apply to children in conflict with the law, however article 17 is the most important article in this regard, as it deals directly with the legal administrative protection of children in conflict with the law as follows:

- **Article 1: Obligation of state parties:** Governments that are parties to this charter must recognise the rights, freedoms and duties that arise from it. They shall also domesticate them through their legislative process. This charter however shall not replace any better effective mechanism (in the protection of the rights and welfare of the child as stipulated by international law) within the state. However, customs, traditions, cultural or religious practices that are inconsistent with the rights, duties and obligations contained in this charter must be discouraged by the government. In relation to this article there still gaps in the systems in ensuring and supporting what is meant to be achieved by this article, as it elaborated in Article four (4) of the UNCRC these two articles are there to achieve the same goal.
- **Article 2: Definition of the child:** The charter defines a child as every human being who is below the age of 18 years. This article is the same in most legislation that are talking about the rights of the child. For example, Article 1 of the UNCRC, The constitution of the republic of South Africa, the CA and the CJA.
- **Article 4: Best interest of the child:** All actions and decisions to be taken concerning the child by any person or authority, the best interest of the child shall be the primary consideration. This also includes a judicial and administrative proceeding that involves a

child who can communicate his or her views. This article is the same and has the same goals as explained in Article three (3) of the UNCRC as mentioned above.

- **Article 5: Survival and development:** It states that every child has an inherent right to life. Governments must take all necessary measures to ensure the survival and protection of children and the law must protect development of the child since it is part of the child's right to life. This charter also states that the government should not pronounce death sentences on crimes committed by children. The government has made a great provision into achieving the goals of this article. The government has done away with the death sentence and harsh punishment especially for children.
- **Article 10 - Protection of privacy:** Children's privacy (at home, school or otherwise) must be protected against unlawful and arbitrary interference, especially to the point where it affects their reputation. However, parents and legal guardians have the obligation to exercise reasonable supervision over the conduct of their children. The goals of this article are more or less the same as Article 16 of the UNCRC. As much as it is stated that the children should be protected and supervised always. The reality is humanly impossible to achieve this, the parents and guardians can only do so much, and they cannot be with their children 24/7.
- **Article 12: Leisure, recreation, and cultural activities:** Governments must recognise and promote the rights of children to fully participate in cultural and artistic life as well as engage in play and recreational activities appropriate to their age and good for their growth and development. This sounds good on paper not in real life especially in the rural areas where there is no leisure, recreation, and cultural activities. Even if there are facilities, they are not to standard and appropriate for the age groups of the children. Most rural schools do not even teachers to offer this expertise. For example, even the recreation parks are not available in the rural areas.
- **Article 16: Protection against child abuse and torture:** Governments must take specific legislative, social, and educational measures to protect the child from all forms of torture, inhuman and degrading treatment, especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. This should involve effective monitoring and reporting mechanisms to ensure prevention and identification of cases. Government has done a fair share in ensuring that the goals of this article are achieved, especially through education

through which children are being taught about their rights and responsibilities. The government has also put channels in place like the child line toll free help line.

- **Article 17: Administration of JJS:** the charter provides that if the law convicts a child, his /her sense of dignity and self-worth must be preserved. It also provides that all forms of torture, inhuman and degrading treatment or punishment must be removed. The provisions of this article are also made in Article 37 of the UNCRC as mentioned above.
- **Article 19: Parental care and protection:** Governments should protect the child's right to enjoy parental care and protection as well as the right to be in regular contact with parents in case of separation (and in the event of the dissolution of) marriage. The Charter insists that no child shall be deprived of maintenance by reference to the parents' marital status. The government has made sure that no child grows up without a home. The government is trying to ensure that a child grows up in a stable even environment through children's home and foster homes if both parents are not available to provide this for this child. In the case of parental separation and divorce, there is family court and family advocates apart from social workers who are to ensure that this is achieved.
- **Article 31: Responsibility of the child:** The child has responsibilities towards his or her family, the society, the community, the state, and the international community. These, subject to his or her age, include: working for the cohesion of the family; respect for parents, superiors, and elders always; service to the national community, physical and intellectually; preserving and strengthening African cultural values; and upholding the integrity of his or her country. This is the same as the provision by the constitution that every right has a responsibility, and no one's right should infringe on anybody's rights. Through education, the government is doing a fair share of the job in ensuring that children are educated about their responsibilities as the children.

2.3.3 The South African Constitution on Children's Rights

“In 1994, after decades of living under an apartheid government, the first democratic election was held in South Africa. For the first time South Africa could call itself a democracy because

everyone who was a citizen of South Africa could vote in elections. The constitutional assembly was constituted with the task of drawing up a Constitution to represent the interests and needs of all the people of South Africa. Included in the Constitution was a Bill of Rights which gives people rights and responsibility” (www.eduplace.com).

A constitution is the highest law in the land and must be respected by all government bodies. It is higher than parliament and it can override any law that parliament makes if the law goes against the constitution. No law can go against the Constitution, whether it is a customary law or a law that parliament makes. The South African constitution came into operation in 1996; it is a document that consists of 14 chapters. It says how government should rule the country and it includes a bill of rights.

It was adopted to establish a society that is based on demographic values, social and economic justice, equality, and fundamental human rights. The constitution aims to improve the quality of life of all people living in South Africa, creating the freedom for all people, including children, to reach their full potential. The reasons for the country to need the constitution as stipulated in (www.eduplace.com) are as follows:

- It sets out the social values that the country believes in.
- The structures of government
- What powers and authority a government and government bodies have
- The rights of the citizens
- The relationship between government and citizens
- Aspects of the relationships between citizens
- Its stops it is new government from passing its own laws that contradict the constitution.
- It is also much more difficult to change the constitution than any other law, as it needs a two-thirds majority vote in parliament.
- The constitution therefore protects democracy in South Africa.

2.3.3.1 The Constitution and children

The constitution recognises that many children (especially black children) in South Africa have not been given the opportunity to live and act like children; this was especially true before 1994. Children were denied the opportunity to have a normal family life and they were often introduced to adult responsibilities much too early in life. The constitution therefore recognises that because of this unfortunate situation, children could come into conflict with the law.

Thus, society has a responsibility to deal with a problem that it has created, although not done on purpose. In response, the constitution specifically makes mention of children, and singles out for protection.

- **Section 28: a “Mini-Charter” of Children’s Right**

This is a very important section to the protection of children. It provides us with a list of rights and be a mini-charter of children’s rights. It covers diverse issues such as civil and political rights, socioeconomic rights and the rights of children in conflict with the law. For this study, it will only look closely at children in conflict with the law. According to Constitution Section 28(9), it defines the child as any person under the age of 18 years. All people over the age of 18 years are considered adults.

- **Section 35: Arrested, detained, and accused persons (What protection does the constitution render to the children in conflict with the law?)**

This section is also relevant to child justice since it deals with arrested, detained and accused persons. These rights apply to children as well as adults and they include the right to remain silent, the rights to a fair and speedy trial, the right to a legal representative, be at their own expense or at the expense of the state if they cannot afford one and substantial injustice would result if the accused were not presented by a legal representative (Gallinetti, 2009:10).

Section 28 (1) (g) is particularly important because it sets out specific and clear principles on how to deal with children in conflict with the law (Gallinetti, 2009:10). It protects children by stating that a child in conflict with the law has the right to the following:

- Not to be detained, except as a measure of last resort, and if detained, only for the shortest appropriate period.
- To be treated in a manner and to be kept in conditions that take the child's specific age into consideration.
- While in detention, to separate children from adults, and to separate the boys from the girls.
- That family, parental or appropriate alternative care must be approved.
- To be protected from maltreatment, neglect, abuse, or degradation.
- Not to be subjected to practice that could place a child's wellbeing, educational, physical, mental, or spiritual life in danger.
- A child's moral and social development must also be protected.

A very important guideline of the constitution in dealing with juveniles in the 'child's best interests' standards, can be found in Section 28(2) of the Constitution. It is stipulated in the constitution that a child's best interest be of paramount importance in every matter that has to do with a child.

2.3.4 Legislative framework on Child Justice in South Africa

South Africa has a population of about 46 million and half of that population is under the age of 25 years old (Pelser, 2008:1). The high number of youths and different aspect of the socioeconomic factors of our South African country becomes the very unfortunate cause or reason for South Africa to have such a high number of child and youth offenders. These offenders eventually graduate to offenders that are more serious. This mere fact of the situation that our beloved country is in demolishes the hope that is given by the well-known saying that 'children are the future of the nation'. Such a statement points out that children are very important and how they are handled and dealt with is of paramount importance. They need to be promoted to the level where they grow to become responsible and well-developed leaders and citizens of this country. The status of our country when it comes to child offending is shocking and has since grown over the years. This state makes one to lose hope in a bright future of the nation when our future leaders and hope for the country are stolen by the pandemic of crime.

It is not a hidden or unknown fact that it is very hard to deal with children in conflict with the law. Thankfully, South Africa has grown in developing and bringing forward the instruments that can be used to give insight into the best way to deal with children in conflict with the law. South Africa is a rainbow nation characterised by many diverse cultures, which makes dealing with young offenders more complicated. The constitution of South Africa clearly highlights the rights and culture of every child to be respected and considered in every interaction or intervention done with that child be it in conflict with the law or not.

It is stated that “through the adoption of the international instruments, as well as through the principles of our constitution, children and their rights are regarded as very important by the South African Government. However, prior to the adoption of the CJA, an integrated and coordinated way to deal with children was still lacking, and separate juvenile courts were not established in South Africa. Children charged with crimes continued to appear in the adult criminal courts (Skelton 2011:417)’. Activists for children’s rights continued to strive for a more better and good way to responding to crime. They achieved that through the creation of the CJA.

2.3.4.1 Child Justice Act (Act No. 75 of 2008)

There has been a joint effort by non-government organisations committed to children’s rights issues, to bring about appropriate law reform. The IMC policy document has set the tone for development and implementation of the Child Justice Bill now known as “The CJA”, regardless of the unsuccessful attempt at amending existing legislation to improve the situation relating to juvenile offender. (Lazelda, 2005:21). “The CJA has had a long and tumultuous history. The process which resulted in the Act being signed into law on 7 May 2009 and finally came into effect on 1 April 2010 began in late 1996 with the appointment of a Project Committee of the South African Law Commission (as it was then known as the South African Law Reform Commission) to investigate juvenile justice” (Gallinetti, 2009:7). The evaluation and study of the history and development of the juvenile justice system reveals the fact that children should not be regarded as adults and that they should receive special consideration and treatment. The UNCRC and related international instruments makes it clear that every legislative approach should aim to promote the wellbeing of the child, and to deal with each child in an individualised manner. This is because children do not have the level of maturity, as adults as well as they do

not hold the same criminal capacity as adults. Therefore, it is of paramount importance that they are accommodated to the level of their maturity. It is understood that there is no better way to achieve this than having a legislative framework that fulfil this vision and protects children regardless of their criminal behaviour.

The CJA also take into consideration the other most important fact that a child who has been found in conflict with the law does not mean that he or she will grow up to be an adult offender or continue with criminal activities. The act also sets out treatment strategies that are meant to protect the children in conflict with the law. Therefore, if a child offender is treated correctly at an early stage the child can be rehabilitated completely and grow up to be a law-abiding adult, even more so be a living example to other children.

Many legislations have been put in place over the time in dealing with children in conflict with the law, such as the Criminal Procedure Act (Act No. 51 of 1977), the Child Care Act (Act No. 74 of 1983) which is now the Children's Act (Act No. 35 Of 2005), the Correctional Services Amendment Act (Act No. of 2012) and the Probation Services Act (Act No. 35 of 2002). Therefore, it is said that the CJA aims to replace this fragmented approach and to establish one piece of legislation that provide authorities with the guidelines to deal constructively with those children in conflict with the law (Sloth-Nielsin, 2001) (in Skelton & Tshehla 2008:1-2).

- **The induction of Child Justice Act (Act No. 75 of 2008)**

The CJA is an effort to provide South Africa with comprehensive child legislation. The Act incorporates the rights of children to be protected and treated in an age-appropriate way together with due process rights. The main aim is to establish a separate criminal justice system for children in conflict with the law as well as regulating systems that deal with children in conflict with the law. It also provides a standardised procedure and guidelines for the roles and responsibilities of all those who deal with children in conflict with the law to afford and maintain effective implementation of the Act. It focuses on the rights of children, but also accountability and it aspires to instil respect for the basic freedom of others. Diversion, alternative sentencing, and restorative justice are methods used by the Act to prevent crime and to promote a safer

society (Gallinetti, 2009:7-8). This all works towards preventing children from re-offending. This Act is used as a regulatory framework in the different CJS processes where children in conflict with the law are guided and controlled. It sets out and defines all the functions, roles, and responsibility of all stakeholders in the JJS.

- **The objectives of Child Justice Act (Act No. 75 of 2008)**

Section 2 of this Act clearly gives what the Act hopes to achieve. This section serves as an important function as it stipulates all the objectives of the Act and provides the context within which the Act must be read and interpreted. They represent the aim, which the legislation seeks to achieve by providing a regulatory framework for children in conflict with the law. The following objectives are specifically mentioned in the CJA (Act No. 75 of 2008), as outlined in (Gallinetti 2009:12) and (Victor-Zietsman & Malherbe, 2012: n.p).

- **To establish a CJS for children in conflict with the law:** the first objective emphasises the protection of the rights of children in conflict with the law as provided in the constitution, as well as in South Africa's international obligations. The possibility of diversion is mentioned in the first objective, and it is specifically stated that matters that cannot be done diverted should be handled by child justice courts.
- **To expand and entrench the principles of restorative justice in the JJS:** Restorative justice provides the stage for the Act to function on and consequently the concept of restorative justice is explicitly included as an objective. The whole Act is based on ideas and principles of restorative justice.
- **To place increase emphasis on the effective rehabilitation and reintegration of children to minimise re-offending:** Reintegration of children is encouraged through the emphasis of the Act on the involvement of parents and families, as well as the community. It is recognised increasingly that, when the child leaves the JJS, interventions in offending children's lives need to be supported. The Act also acknowledges the extent of crime in South Africa and the need to put emphasis on preventing crime, rather than on merely reacting to it.

- **To balance the interests of children and of other members of society, especially the victims of crime:** this restorative justice approach of the Act should not be seen as a “soft” approach and it must be remembered that the Act aims to hold the child in trouble with the law accountable for his or her actions to the victim, the victim’s family, the child’s family and also the community as a whole.
- **To provide special mechanism, processes, or procedures to deal with children in conflict with the law:** in doing so, the Act specifically makes mention of the fact that South Africa should take account of its regional and international obligations, specifically the UNCRC, as well as the ACRWC. This Act states that there are long-term benefits to a less harsh approach in appropriate cases. This Act discusses the most important factors about the child justice system. It covers all the important matters related to handling children in conflict with the law.

It clearly gives out all the important and relevant definitions, as well as guiding principles and these are provided to ensure the effective application of the Act. The other important factor covered in the Act is age of criminal capacity of the child. It gives a clear indication through specification of ages that the child cannot yet be held criminally liable for his or her actions as that child is still considered immature and lacks criminal capacity. This Act also gives methods of detention and other methods to punish or rehabilitate children without detention, as detention is considered the manner of last resort. This Act also sets out the instructive methods into getting the child at the court proceedings, for example;

- **Preliminary inquiry**

In addition, the Act gives guidelines on the roles and duties of different role players in the child justice system such as in the Preliminary inquiry, such as Police Official, Probation officer, Prosecutor, Magistrate, Presiding officer, Parents and Diversion service provider. It also gives directions to secure care centres and youth care facilities where children can be kept safe while awaiting trial or for the duration of their sentence. It clearly states all the specifications needed for a child to qualify for any form of intervention, be it the child the child goes to Children’s Court, Diversion or Child Justice Court, even the secure care centres and youth care centres.

- **Offences covered in the Child Justice Act (Act No. 75 of 2008)**

The Act has no specific offences, however, it is said that “it applies to all criminal offences. However, it divides them into three schedules depending on the seriousness of the offence. Schedule one (1) contains the least serious offences and Schedule three (3) the most serious offences.

These schedules then have different implications for children in terms of one of them. For instance, children charged with Schedule three (3) offences (the most serious) can only be diverted in exceptional circumstances (Gallinetti, 2009:16)”. It further states that if the child is charged with more than one offence the most serious offence is the one that gives directions into dealing with that child. The examples of the offences that are covered in each Schedule are as follows, according to Gillinetti (2009:66):

- **Schedule one**

- Theft (including stolen goods) below value of R2500.
- Fraud below the value of R1500.
- Common Assault.
- *Crimen iniuria*.
- Act of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual assault).
- Possession of illicit dependence-producing drugs below the value of R500.

- **Schedule Two**

- Theft (including stolen goods) above the value of R2500.
- Fraud above the value of R1500.
- Robbery, other than robbery with aggravating circumstances.
- Assault involving the infliction of grievous bodily harm.
- Housebreaking.
- Culpable homicide.
- Sexual assault.

- Possession of illicit dependence-producing drugs above the value of R500 but below R5000.
- **Schedule Three**
 - Rape.
 - Murder.
 - Kidnapping.
 - Robbery, where there are aggravating circumstances, or it involves the taking.
 - Treason.
 - Sedition.
 - Possession of illicit dependence-producing drugs above the value of R5000.

2.3.4.2 Chapter two of the Act: Criminal capacity and liability of youthful offenders

- **Minimum age of criminal capacity**

The CJA (Act No. 75 of 2008) as defined above makes many provisions concerning a child whom it defines as any person below the age of 18 years old. Amongst those provisions, the Act also considers the different stages and developments of the child, about the reliability of the child for his or her actions. The Act explains in detail the criminal capacity of the child and how it is determined. The term “criminal capacity” refers to the fact that a person can be held accountable or reliable for his or her criminal behaviour or the crime he or she has committed or accused of. Before the Child Justice Act came into use, there was a minimum age of criminal capacity. The age of criminal capacity before the Act came into operation as regulated by the common law was seven years old. “A child below the age of seven years old was irrebuttable presumed to be *doli incapax* (in other words lacking criminal capacity), a child between the ages of 7 and 14 years was rebuttably presumed to *doli incapax* and a child older than 14 years old was regarded as having full criminal capacity” (Gallinetti, 2009:18). Later a gap in this was identified and the Act increased the age of criminal responsibility to 10 years old in terms of section 7(1) of the CJA. Meaning that a child who committed an offence while he or she was under the age of 10 years old could not be held responsible for the offence, and could not be prosecuted, Gillinetti (2009:18).

- **The Child Justice Act (Act No. 75 of 2005)**

As said above the Act has raised the minimum age of criminal capacity for children to 10 years of age. “Section 7(2) of the Act states that a child who is ten (10) years or older but under the age of 14 years at the time of the alleged commission of the offence, is presumed not to have criminal capacity unless it is subsequently proved beyond a reasonable doubt that the child had such capacity at the time of the alleged commission of the offence” (Gallinetti, 2009:18).

This statement suggests and confirms that even in the new child justice Act, children who are 14 years and older are still considered to have full criminal capacity. In this essence the question remains, how then do we deal with children under the ages of 10 years old because the truth of the matter is that they are and more exposed to criminal activities. That leading them to being deemed as alleged offenders because of the acts they engage in. This question is mostly important as it is a known fact that if the behaviour is not stopped first hand it is highly likely to escalate in so much as giving birth to a child offender and more so an adult offender.

- **Manner of dealing with child under the age of 10 years**

Thankfully, this Act does provide a guide into dealing with these children in Section 9 of the Act. Section 9 gives clear instructions and procedure for action where a child under the age of 10 years old is accused of an offence. Gillinetti (2009:20) states that the inclusion of this section does not mean that the child is criminally reliable for the alleged offence. The main role players in dealing with children who are suspected of committing an offence who are under the age of 10 are the officials and probation officers.

- **Section 9:** Duties of the police and probation officer as outlined in Gallinetti (2009:20) and in the CJA (i.e. 19-21) in dealing with children under the age of 10. This Act states that where a police official has reason to believe that the child suspected of committing an offence is under the age of 10 years old :
- The police official may not arrest the child or issue a summons or written notice to appear at the preliminary inquiry.

- The police must immediately hand the child over to his or her parents, or guardian or an appropriate adult.
- If no such person is available or if it is not in the best interest of the child to hand the child to such person, the child will be handed over to a suitable child and youth care centre. This situation usually involves street children who have no home or any adult support.

After adhering to these principles, the police official must immediately notify the probation officer. The probation officer who receives the notification must assess the child in the manner prescribed by law. This assessment must take place as soon as possible and not later than seven days after being notified and after assessing a child in terms of Sub-section (2), the probation officer may, in the prescribed manner choose from the following:

- Refer the child to a children's court.
- Refer the child for counselling and therapy.
- Refer the child to an accredited programme, specifically designed for the needs of children under the age of 10 years old.
- Arrange support services for the child.
- Arrange a meeting where the child and the parent(s) or appropriate adult must be present to provide additional information. This additional information is obtained to assist the probation officer to understand the circumstances surrounding the allegations against the child.
- The probation officer will then be able to formulate a written plan on how to deal with specific the child and relevant to the circumstances involved.

The probation officer has a responsibility to make known the outcome and the plan of action concerning the child. The written plan must at least include the following:

- The objectives to be achieved for the child and the period within which they should be achieved.
- Contain details of the services and assistance to be provided for the child.

- Specify the details of the person or organisations to provide the services and assistance to the child.
- Specify the responsibility of the child and parent(s), appropriate adult or a guardian.

If the child fails to comply with any obligation imposed in terms of section 9, the child must be referred to a children's court to be dealt with in terms of the Children's Act (No.38 of 2005). The Act in terms of raising the age of criminal capacity to the age of ten (10) years old did a great job because we live in a multicultural society.

Children are raised differently, especially in African cultures where children are not taught from a young age right from wrong and they are not allowed to ask questions from adults. At least at the age of ten (10) years old they are in school and that is where they are taught about life and right from wrong. In this stage, they are starting to differentiate and understand good and bad behaviour. This can be meaningful even when children are being assisted as prescribed by the Act if found to be in conflict with the law. There is greater chance for them to be rehabilitated and taken away completely from the world of crime since education has already laid a foundation of right and wrong.

- **Section 10:** Procedures in dealing and deciding whether to prosecute the child between the ages of 10 and 14 years as outlined in Gallinetti (2009:18-19) and in the CJA (Act No. 75 of 2008). The African Law further determines that even though a minimum of age of criminal capacity is set at 10 years old, a child between the age of ten (10) and 14 years at the time of the alleged commission of the offence is presumed to lack criminal capacity, unless proven otherwise beyond a reasonable doubt by the state that the child had such capacity at the time of the alleged offence. It is then the duty of the public prosecutor to prove to the court that the child had the ability to know the difference from right and wrong, and that the child had the ability to act according to that knowledge.

In determining whether the child had the ability when he or she committed the offence, in terms of this section the public prosecutor who is required to decide whether to prosecute a child must consider various factors including the following:

- The educational level, cognitive ability, domestic and environmental circumstances, as well as the age and maturity of the child.
- The nature and the seriousness of the alleged offence.
- The probation officer's assessment report.
- The impact of the alleged offence on any victim.
- The interests of the community.
- The prospect of establishing criminal capacity in terms of section 11 if the matter were to be referred to a preliminary inquiry.

- The appropriateness of diversion.
- Any other relevant factor.

If the prosecutor believes child is likely to be proved to have criminal capacity, the prosecutor can follow one of two possible routes:

- Divert the matter in terms of chapter 6 if the child is alleged to have committed a schedule 1 offence, or.
- Refer the matter to a preliminary inquiry as provided for in chapter 7

However, if the prosecutor believes criminal responsibility will not be proved. The prosecutor may refer the child to a probation officer to be dealt with in terms of section 9. The provision that will apply to such a child will be like the provision of handling a child who is under the age of ten (10) years.

- **Section 11:** Proof of criminal capacity as outlined in Gallinetti (2009:19-20) and in the CJA (that is, 22-23). In deciding the inquiry magistrate or child justice court must, in terms of Section 11(2), consider the assessment of the probation of officer and his or her recommendations. "In terms of Section 11(3) of the Act the inquiry magistrate or the child justice court may also, on its own accord, or on the requests of the prosecutor, order that the child be evaluated by a suitably qualified person. This person must assess the child's cognitive, moral, emotional, psychological, and social development and provide a report of

the evaluation within 30 days of the court order, whereas the probation officer's assessment is usually completed within only 48 hours" (Gallinetti 2009:19).

- **The duty of a probation officer in this regard:** The probation officer is to make recommendations in the assessment report on the possible criminal capacity of the child if the child is ten (10) years or older, but under the age of 14 years as on measures to be taken to prove criminal capacity such as referring the child to a psychologist for assessment.
- **The duty of the prosecutor or legal representative:** May request an evaluation of the criminal capacity of the child.
- **The duty of a presiding officer:** Must have considered the probation officer's report on the issue of age and criminal capacity and must possibly order an evaluation of the child either of his or her own accord or if a prosecutor or the child's legal representative requests one.
- **The determination of the child's age:** In South Africa the answer to this question is not always simple. Many children do not know their age and it is sometimes hard to even locate the parents of the children to give a clear indication of the child's age. Birth certificates are not always available some do not even have an immunisation card to refer to. In order to address this issue as it made clearer in the previous discussion that it is very important to know the exact age of the child who is alleged to have committed a crime. The Act then provides measures to assist on age estimation and age determination, as well as where there have been an error regarding the age of a child. The following measures are executed by three key roles- players who holds different duties in this regard:
 - Police officials;
 - Probation officers; and
 - Presiding officers
- **Section 12:** Duties and responsibility of the police officers in determining the age of a child where age of a child is uncertain relying in the following:
 - If a child is probably below the age of ten (10) years, then the police should follow the procedure in section nine (9), which involves taking the child to a probation officer.

- If a child is ten (10) years or older and under the age of 14 years or is between 14 and 18 years, then the police must deal with the child in terms of the arrest, detention, and release provisions of the Act. This means that the police can issue a summons or written notice for the child to appear in court or arrest the child.
 - If the police detain the child prior to the first appearance, then they need to follow provisions of section 27, which deals with the placement options prior to the child's first appearance at the preliminary inquiry.
 - If, however a probation officer has estimated, or a child justice court determined the age of the child, then the procedures for a child of that particular apply.
- **Section 13:** Duties of a probation officer in determining the age of a child:
 - If the probation officer assesses the child and is not certain about the child's age, the probation officer must make an age estimation of the child's age and complete a form prescribed by the Act, which is form three (3) of this Act.
 - In making the age estimation, the probation officer can use certain information such as previous age estimations, statements by parents or the child, school documents, baptism or other religious certificates, or age estimation by medical practitioners.
 - The probation officer must then submit his or her age estimation to the inquiry magistrate (magistrate who chairs the preliminary inquiry) on a prescribed form.
 - If later, more information arises regarding the child's age, then the probation officer can change his or her estimation provided it is before the child is sentenced.
 - **Section 14:** Duties of the presiding officer in determining the age of the child:
 - The inquiry magistrate at the preliminary inquiry or a judicial officer who presides in a child justice court can make age estimation. (Note: The term presiding officer includes an inquiry magistrate or a judicial officer at the child justice court).
 - This differs from age estimation, as this is where the presiding officer sets the child's age where it was uncertain. The age estimation is just an approximation of the age based on the information the probation officer collected. The presiding officer gets to decide on what the age of the child is.

- In determining a child's age, the presiding officer may consider the age estimation report by the probation officer or any other document or statement by a person, subpoena (summons) the person produces this additional document if necessary or call for a medical examination if necessary.
- Once the presiding officer has determined the child's age, he or she must enter it on the record of proceedings.

If it is found that the age of the child is incorrect, sections 16 of the act provides the procedures on how to correct this. These procedures apply to presiding officers.

2.3.4.3 Justice system on children: Pre-trial procedures and detention

The JJS Act provides procedures to dealing with the children in conflict with the law. When dealing with children the procedures are straight and narrow as when dealing with adult offenders. Previous sections of this chapter have laid a foundation as to how juvenile justice has evolved over the years. This chapter has taken us from way back to the time where we are now and operating under the CJA, which is our instrumental guide into dealing with child offenders. The importance of a child has been outlined in detailed and in this section of the chapter, the researcher aims to outline the details and procedures of pre-trial and detention.

At first, we have what is called the preliminary inquiry which is a new procedure created by the CJA to facilitate the management of the management of children in conflict with the law as outlined and detailed in Chapter 7 of the CJA. The preliminary inquiry provides a platform in which all different key role players in ensuring that the best interest of the child is always of paramount when they are found to conflict with the law. The preliminary inquiry provides a place for all these role players to agree on the way the matter is to be handled going forward. "This procedure is aimed at preventing children from getting lost in the system. The preliminary inquiry is basically the child's first appearance in court" (Gallinetti, 2009:38). There are four general themes or purposes for the preliminary inquiry to take place. It provides for the sets of decisions to be taken regarding the child. It ensures that an individualised response is used in

each decision that is made on as much information as could possibly be in a short space of time. Gillinetti (2009:38).

- **The identified themes:**

- The first purpose is dealing with the assessment of the offender as well as establishing care and protection of the child. This purpose is mainly to establish the likelihood of the child needing care and protection which may result to the matter of the child being dealt with in the Children's' Court in terms of section 50 the Children's Act (Act No. 38 of 2005).
- The second purpose is to investigate and establish whether there is any possibility that the matter can be diverted.
- The third purpose is to provide the opportunity for the child and his or her parents to be part of the proceedings and voice out any questions or concerns with regard to the proceedings. It also allows them the opportunity to ask for legal representation and understand the rights they have before the inquiry and the proceedings.
- The fourth purpose is to decide on the detention or release of the child and whether to take the matter to the child justice court for the formal trial to proceed.
- **Section 43:** This section states that "the preliminary inquiry is an informal pre-trial procedure and may be held in a court or any other suitable place. So while this is essentially the first appearance of the child in a court, the aim is to make it as informal as possible" (Gallinetti, 2009:38).

Gallinetti (2009:39-42) further outlines the important aspects of the preliminary inquiry as follows:

- **The purpose of the preliminary inquiry**

This Act significantly sets out what this procedure aims to achieve so that all role-players are clear about what needs to happen at the preliminary inquiry as referred in section 43 as follows:

- Consider the assessment report and the recommendations made by the probation officer.
- Establish from the prosecutor whether the matter can be diverted before the plea.
- Identify a suitable diversion option, if applicable.

- Decide whether the matter should be referred to children’s court because of a child possibly needing care and protection.
- Make sure that all relevant information relating to the child is considered when decisions are made regarding diversion or release and detention.
- Ensure that the views of all present are considered.
- Encourage the participation of the child and his or her parent, an appropriate adult or a guardian in decisions concerning the child.
- Determine the release or placement of a child.

This serves as guide for the presiding officer to ensure that all the above issues are dealt with during the inquiry.

- **The applicability of children preliminary inquiry**

The preliminary inquiry is applicable to all children who are alleged to have been found in conflict with the law, unless:

- The prosecutor has diverted the child.
- The prosecutor withdrew the charges against the child.
- The child is under the age of ten (10) years.

- **The location of preliminary inquiry**

- Section 43(3) (b) (i) states that a preliminary inquiry must be held within 48 hours of a child’s arrest.
- If the child has been handed a written notice or served with a summons, then it must be held within the time periods sets out in the written notice or summons.
- The 48-hour rule emphasises the Act’s intention to finalise the matter of a child as soon as possible to prevent unnecessary delays in finalising the child’s case.

Nevertheless, section 48 does allow the preliminary inquiry to be postponed. However, to prevent unnecessary delays, tight periods are provided for such postponements as described below:

- Firstly for 48 hours to either finalise a decision regarding diversion, establish the views of the victim on whether the child should be diverted; to find alternatives to detention; assess the child where no assessment has previously been undertaken or for the purposes of further investigations.
- Secondly, after the first postponement, one final postponement of another 48 hours is permitted but only if this can facilitate diversion. If the preliminary inquiry is not finalised by this time, the inquiry must be closed, and the matter must proceed in the normal course, namely plea and trial.
- Finally, there is provision for longer postponement of 14 days where a more detailed assessment of the child is necessary. This would be in the case related to the following example:
 - A more detailed assessment is needed where a child is a danger to himself or others.
 - The child could be referred to a sexual offenders' programme.
 - The social welfare history of the child calls for one.
 - If the child has a history of committing offences or absconding.

- **Orders made at the preliminary inquiry:**

- A diversion orders.
- An order to refer the matter to the Child Justice Court for plea and trial (in this case the child must be referred to the Legal Aid Board for legal representation, unless the child already has legal presentation).

- **Section 44: who should be present during the preliminary inquiry?**

- Inquiry magistrate (presiding officer) who chairs the inquiry; he or she has a neutral role but can ask questions and require more information to help make his or her decisions regarding the child.
- The child (that is, if the child does not attend a warrant of arrest may be issued for the child).

- The child’s parents, an appropriate adult, or a guardian (if they do not attend, they are guilty of an offence and a warrant of arrest can be issued for them).
- The probation officers.
- Any other person that the presiding officer believes may contribute to the outcome of the inquiry; such as the prosecutor, court interpreter and a legal representation if the child requires one.
- If a diversion order is a likely outcome of the preliminary inquiry, the probation officer should identify a diversion service provider to be present.

However, the presiding officer can excuse any person if it is in the best interest of the child to proceed without them or they are undermining the nature and purpose of the inquiry. However, the reasons for such exclusion must be recorded. On the other hand, the presiding officer can also allow other persons to attend the inquiry if they have an interest in the matter or they can contribute to the outcome of the inquiry Gallinette (2009:40).

- **Methods to secure a child’s presence at the preliminary inquiry**

“When a child is considered of committing an offence and is apprehended, there are three ways in which a child’s presence in a court at the preliminary inquiry can be secured” (Gallinetti, 2009:23). The following can be used to ensure this presence:

- Written notice (first option).
- Summons (second option).
- Arrest (last and as a means of last resort).

- **Written notice**

A written notice is provided for in section 18 of the Act, and it applies only to children suspected of committing schedule 1 offence. When a police official apprehends such a child, he or she must give the child a written notice to appear at the preliminary inquiry. This notice must clearly indicate the date, time, and a place of the preliminary inquiry. It is important to note that the Act emphasises that the notice should be handed to the child in the presence of his or her parent(s),

guardian or appropriate adult. If such an adult is not available, the police official may still hand the notice to the child, but this should happen only in exceptional cases. A way of a signature or mark should acknowledge receipt of the notice, Gallinetti (2009:23).

- **Summons**

A summons is not limited to a specific Schedule offence, and it is usually applicable when time has elapsed since the alleged offence was committed. In most instances, it is used when a prosecutor has decided, after reading the “decision” docket, to charge someone, or where a case has previously been withdrawn and is now re-opened. As with the written notice, it should specify the date, time and a place of the preliminary inquiry. It is important to note that the Act emphasises that the notice should be handed to the child in the presence of his or her parent(s), guardian or appropriate adult. If such an adult is not available, the police official may still hand the notice to the child, but this should happen only in exceptional cases. A way of a signature or mark should acknowledge receipt of the summons, Gallinetti (2009:23-24).

- **Arrest**

This method is not always recommended or used as it is known for its infringement of a person’s rights and, although it might be justified, it should be used as a matter of last resort. A child who has committed a Schedule 1 offence should not be arrested, unless there are compelling reason to do so. Gallinetti (2009: 24-25).

When a child is arrested the police official who affects the arrest must:

- Inform the child of the nature of allegations against him or her;
- Inform the child of his or her rights;
- Explain to the child immediately the procedures to be followed in terms of the Act; and
- Notify the child’s parent(s), an appropriate adult or guardian of the arrest. However, if the police official fails to do so he or she must submit a report stating the reason he or she could not do so to the presiding office at the preliminary inquiry.

A police official must notify the probation officer immediately or within 24 hours that a written notice has been handed to the child, or summons has been served on a child or that the child has been arrested Gallinetti (2009:25). A police official must take any child who has been arrested (and not released) to the relevant magistrate court within 48 hours of the arrest. This must happen irrespective of whether the child has been assessed or not, Gallinetti (2009:25).

- **Detaining a child and the preliminary inquiry (Pre-trial detention)**

The South African constitution clearly states that the best interest of a child is always of a paramount. So as a rule, in the South African law children should not be locked up, especially when there has been no trial. The constitution clearly states that children should be detained only when necessary and that detention is used as a measure of last resort. It also states that if it happens that the children are detained, they should be detained only for the shortest appropriate period Gallinetti (2009:26).

This Act gives the following guidance regarding two situations as regulated by section 24(2) (a)(b):

- Release and detention of a child before the child's first appearance at the preliminary inquiry. Before the child's first appearance at a preliminary inquiry, the police official must consider placing the child in a child and youth care centre. It is only when such a centre is appropriate or applicable that the child can be detained in a police cell or lock-up. However, the police must ensure that the child is alone and there are no adults in that cell. The Act emphasises that no child should be detained in a prison before his or her first appearance at a preliminary inquiry.
- Release and detention after the child's first (or any later) appearance at the preliminary inquiry. The Act provides for the following three options after the child has appeared at the preliminary inquiry:
 - The release of the child into the care of the parent(s), an appropriate adult or guardian, regardless of the type of crime that has been committed. If the adult does not see to it that the child attends the trial, the adult will be guilty of an offence and can be fined or even imprisoned for up to three months.

- The release of the child on his or her own recognisance. This will not apply to serious crimes. If the child fails to appear in court on the specified date, time, and place, or fails to comply with the conditions set, a warrant of arrest may be issued. When the child then appears in court, the presiding officer must inquire why the child failed to appear in court or why the child did not comply with the conditions.

Section 24(3) gives us the factors that must be considered to establish whether it is in the interests of justice to release the child. These factors include the following:

- The best interest of the child.
- Previous convictions.
- Presumed lack of criminal capacity.
- Interests and safety of the community.
- Seriousness of the offence.

Should the presiding officer decide that the child must be released, he or she may set the conditions for the release. The following conditions may include reporting to the police, staying at a specific address, and being placed under a specific person's supervision.

- The release of the child on bail when none of the other options are applicable. Section 25 of the Act provides for a specific bail procedure and it stipulates that application for release of the child on bail should be considered at three different stages:
 - Whether it is in the interest of justice to release the child on bail.
 - If so, then the ability to pay the money should be considered.
 - If unable to pay, the presiding officer must set other conditions that do not include money.

- **The process of detaining a child**

This Act clearly indicates that all avenues should be investigated to rather release the child and not to detain a child. However, the Act does realise that detention might be necessary in certain situations, and therefore the Act provides for the following options:

- Placement in a child and youth care centre (Section 29). The presiding officer must, in terms of section 29 (2) take the following factors into account before deciding to detain a child in a child and youth care centre:
 - The age and maturity of a child.
 - The seriousness of the offence.
 - The risk that the child is a danger to self or others in the centre.
 - The level of security and whether it is appropriate in light of the seriousness of the offence.
 - The availability of accommodation in the centre.

In this case the presiding officer must also consider the recommendations of the probation officer in the assessment report, unless the information is outdated as a result a long period between the assessment and the trial, in which case the presiding officer must obtain information from the manager of the centre.

- Placement in a police cell before the child's first appearance.
- Placement in a prison. Unfortunately, it is necessary at times to detain a child in prison while the child waits to be put on trial. Section 30 of the Act regulates this situation. Section 30(1) specifically states that a presiding officer may only send children in prison awaiting trial if the child is 14 years or older and charged with a schedule 3 offence of which is the most serious offence such as murder or rape. However, if there are substantial and compelling reasons to do so, the presiding officer can send a child who is 14 years and older to prison to await trial for a Schedule one (1) and two (2) offence. These reasons will include the following:
 - The detention is necessary in the interest of the administration of justice or the safety of the child, or community, or another child in detention.
 - The likelihood that the child will be sentenced to imprisonment if convicted.

- A bail application has been denied or postponed, or the child has not complied with previous bail conditions.

There is an additional protection of a child older than 14 years but younger than 16 years in section 30 (2) of the Act provides that this child may only be detained in prison if, in addition to the factors mentioned above, the Director of Public Prosecution (DPP) or an authorised prosecutor issues a certificate which confirms that there is sufficient evidence to institute a prosecution against the child for an offence referred to in Schedule three (3) and the child is charged with the offence, Gallinetti (2009:30). The probation officer must do an assessment report of the child stating the findings and recommendations. When a presiding officer must make decisions if a child is to be detained in a prison or not he or she must consider the recommendation of the probation officer.

This is a serious decision to be made by a presiding officer; therefore, Section 30(3) requires a presiding officer to also consider any relevant evidence placed before him or her, including evidence in respect of the following:

- The best interest of the child.
- The child's state of health.
- Previous convictions.
- Previous diversions.
- Charges that might be pending against the child.
- The danger that the child poses to self, or another person, or a child in the youth care centre.
- Any danger that the child may pose to the safety of members of the public.
- Whether the child can be placed in a child and youth care centre, which complies with the appropriate level of security.
- The risk of the child absconding from a child and youth care centre.
- The probable period of detention until the conclusion of the matter.
- Any impediment to the preparation of the child's defence or any delay in obtaining legal representation, which may be brought about by the detention of the child.
- The seriousness of the offence in question.

- Any other relevant factor.

Once the presiding officer takes a decision to detain a child awaiting trial, the presiding officer must do the following at every court appearance (Gallinetti 2009:30 & 31); Section 32 of the CJA (Act 75 of 2008):

- Decide whether it is necessary to keep the child in detention.
- Provide reasons for further detention, which must be placed on record.
- Where applicable, consider a reduction of the amount of bail.
- Establish if the child is treated properly, and if the child is kept in suitable conditions. If there is a problem with the way in which the child is treated, the investigating officer must order an inspection or investigation. Any decisions made in this regard must be put on record.

To conclude on the issue of detention, it must be said that there have been horrific abuses of children in the past while in the police custody. For this reason, the Child Justice Act provides detailed instructions regarding the detention of children. Section 28 clearly indicates the following (Gallinetti, 2009:31):

- Children must be kept separate from adults.
- Children are entitled to visits from family members, legal representatives, social workers, religious workers, health workers, probation officers or any other person who is entitled to visit.
- The special needs of children should be taken into consideration, and immediate and appropriate health care must be provided, as well as adequate food, water, blankets and bedding.
- Should a child suffer any injury or severe psychological trauma, the Act provides specific procedures to report this. In a case, the station commissioner must see to it that the child immediately receives the necessary care and treatment, upon which he or she must report the incident to the National Commissioner of Police.

The Act also provides for a register of all children who are detained at police station. This register may be examined by an appropriate person in a prescribed manner.

In relation to court proceedings, Section 33(2)(c) instructs that when children are being transported to and from court they may not be transported with adults, but this will apply only as far as is reasonably possible. If a child is transported with adults, the police official must provide reasons to the presiding officer. Children should also not be kept with adults in the holding cells at court, and boys should be kept separately from girls.

- **Duties of the police regarding this process**
 - Issue a written notice in terms of section 18 if releasing a child.
 - Ensure the provisions of section 28 are adhered to in relation to the conditions of detention of children in police cells.
 - Ensure that the provisions of the Act are adhered to when releasing or detaining children (Gallinetti, 2009:31).
- **Duties of the presiding officer:**
 - Ensure the provisions of the Act are adhered to when releasing or detaining children.
 - When releasing children on their own recognisance, warn the child to appear on the next appearance date and to comply with the conditions of release as discussed above.
 - When releasing children into the care of a parent, guardian or appropriate adult, warn them to appear on the next appearance date and ensure that the child complies with the conditions of release (Gallinetti, 2009:32).

2.4. ASSESSMENT OF JUVENILE OFFENDERS

The CJA makes another important provision amongst others for every child alleged to have committed an offence to be assessed. The Act provides guidelines for the assessment of children in conflict with the law. It is stated that “the desirability of pre-trial assessment was first advocated at the international conference on juvenile justice reform in 1993. Assessment was pioneered by the Provincial DSD in the Western Cape” (Gallinetti, 2009:33). The scholar further states that “the inter-Ministerial Committee on young people at risk decided to base assessment on the concept of developmental assessment because of the pioneer project in the Western Cape. The focus was placed on the child’s strengths and abilities rather than pathology attached on the

offence or family environment from which the child had come from. The CJA is the regulatory framework making pre-trial assessment part of the criminal justice system in relation to children” (Gallinetti, 2009:33).

2.4.1 The Background of an ‘Assessment’

“Assessment” in the child justice field refers to a process of gathering information about the child offender relating to the historical development of the child, the circumstances of the child, the behaviour of the child and the circumstances and facts surrounding the child’s alleged criminal activity, (Van Niekerk 2006: B2-1). The Probation Services Amendment Act (Act No. 35 of 2002) define assessment as “an evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factor” (Gallinetti, 2009:33).

The assessment is the very important report when dealing with child offenders as it is said that the Act puts the best interest of the child first and treats every case differently. This means that a proper assessment of a child in conflict with the law will enable professionals in the criminal justice system to make decisions that are in the best interest of the child, that ensure the safety of the community and that will serve the interest of justice, (Van Niekerk, 2006: B2-1).

2.4.2 The selection and suitability of children assessments

The Act, in terms of Section 34, provides that every child who is alleged to have committed an offence, even those under the age of 10 years old and have therefore no criminal capacity must be assessed. An assessment can however be dispensed within terms of Section 41(3) by a prosecutor if it is in the best interest of the child. The reasons for the dispensation must be placed on the record of the case. The inquiry magistrate can also dispense with the assessment in terms of Section 47(5) at the preliminary inquiry if it is in the best interest of the child to do so. (Gallinetti, 2009:33).

2.4.3 The purpose of assessment

“Importantly, the Act sets out clear objectives for the assessment. This provides a guide for probation officers so that they know what the core issues are that the assessment must cover” (Gallinetti, 2009:34). These purposes are demarcated to the following:

- Estimate the probable age of the child.
- Give the family background and psychosocial development of the child.
- Gather information relating to any previous convictions, previous diversion or pending charge in respect of the child.
- Formulate recommendations regarding the release or detention and placement of the child.
- Determine whether a child needs care and protection and should be transferred to the children’s court.
- Determine measures to be taken if dealing with a child under 10 years old.
- Establish the prospect of diversion.
- Express a view on whether expert evidence would be required in relation to the criminal capacity of a child who is ten (10) years and older, but below 14 years.
- Consider if adults to commit crime used the child.
- Provide any other relevant information regarding the child which the probation officer may regard to be in the best interest of the child or which may further any of the objectives of the Act.

2.4.4 The assessment location

Gallinetti (2009:34) explains in detail when an assessment can take place in the following:

- In terms of Section 43(3)(i) of the Act a child must be assessed prior to his or her appearance at a preliminary inquiry. A preliminary inquiry must be held within 48 hours after the child’s arrest, the assessment must take place within this period.
- Longer periods are applicable in the case of children who have been given a written notice to appear or been served with summons. The periods are specified in the summons document and the assessment must take place within these times.

- In terms of Section 34(3) children under the age of 10 years must be assessed within 7 seven days after the probation officer has been notified by a police official that an offence has been committed.

2.4.5 Who should be present during an assessment?

As outlined by (Gallinetti, 2009:34), the child, his or her guardian or an appropriate adult must attend the assessment. The probation officer must make every effort to locate the child's parent(s) to conclude the assessment, if he or she is not able to locate the parent(s), guardian or an appropriate adult he or she can ask the assistance of the police to locate that person. The assessment can take place in absence of the parent(s), guardian or an appropriate adult if all reasonable efforts have been taken to locate them.

The probation officer excludes the above-mentioned persons if there are equitable circumstances. Equitable circumstances can be the following as outlined by (Gallinetti, 2009:34):

- If their employment is in jeopardy for being absent from work.
- If he or she has disrupted, undermined or obstructed the assessment.
- The parent(s), guardian or appropriate adult was the one that caused the child to commit the crime.
- The parent, guardian or appropriate adult is unduly influencing the child.

According to Section 38(3), a probation officer in addition to the child's parent(s), guardian or an appropriate adult may permit the following persons to attend an assessment:

- A diversion service provider.
- Researcher.
- Any other person whose presence is necessary or desirable to the assessment.

2.4.6 Who is responsible for making an assessment?

The person responsible for making an assessment is a Probation Officer, who is a qualified professional. The probation officer is the recognised professional in the criminal justice system, which provides probation services in terms of the Probation Services to the court in which the

child is set to appear in. The probation is a qualified and experienced social worker appointed in the DSD. This social worker must be registered with the South African Council for Social Services Professions. Powers and duties of the probation officer at the assessment as outlined in (Gallinetti, 2009:35): Section 39 of this Act sets out the powers and duties of the probation officer in relation to the assessment, they must exercise the following:

- Explain the purpose of the assessment of the child.
- Inform the child of his or her rights.
- Explain to the child the immediate procedures to be followed in terms of this Act so that the child knows what is going on.
- Ask whether the child intends to acknowledge responsibility for the offence.

In addition, the probation officer may also do the following:

- Consult with any person or contact any person who has additional information relevant to the assessment, including a prosecutor, police official or diversion service provider, and consult with that person in private.
- Encourage the child's participation in the assessment.
- Where a child is accused with another child or other children of committing an offence assess the children simultaneously if this will be in the best interest of all the children concerned.

2.5. DIVERSION PROGRAMMES

Diversion is defined as “the channelling of prima facie cases from the formal criminal justice system on certain conditions to extra-judicial programmes, at the discretion of the prosecution” (Munthing & Shapiro, 2009:27). The CJA also has placed lots of options and ways of dealing with children and protecting them. It is always said that imprisonment is there as the last resort to punishment especially when it comes to children. Diversion is there as a form of dealing with

cases outside of court. It is an alternative to imprisonment; it involves the referral of cases away from the formal criminal court procedures where there exists a suitable amount of evidence to prosecute (Gallinatti, 2009:43).

Raymond (2004:22) defines diversion as “an alternative to imprisonment whereby programmes are developed based on community base sentencing. Diversion further entails any community alternative to prosecution when children admit to their crime”. Gallinetti (2009:43) states that “in terms of the Act diversion is achieved in the following three ways:

- **Firstly:** Diversion is achieved by way of prosecutorial diversion for minor offences committed.
- **Secondly:** At the preliminary inquiry, through an order of the inquiry magistrate.
- **Thirdly:** During the trial in the child justice court, through an order of the court.

2.5.1 The purpose of diversion

Diversion aims to make children understand the impact of their crimes on others and to make sure that they put right what they have done wrong. It is done by providing specific interventions like guidance programmes for the child concerned, and by helping families and the community learn how to guide children in their decisions away from crime. Diversion was never regulated in the criminal justice system. The CJA is very clear on its purposes and what is expected from various role players, Gallinette (2009:43). Section 51 of the CJA states the objectives regarding the diversion interventions:

- Deal with a child outside the CJS in appropriate cases.
- Encourage the child to be accountable for the harm caused by him or her.
- Meet the needs of the individual child.
- Promote the reintegration of the child into his or her family and community.
- Provide an opportunity to those affected by the harm to express their views on its impact on them.
- Encourage the rendering to the victim of some symbolic benefit as compensation.
- Promote reconciliation between the child and the person or the community harmed.

- Prevent stigmatising the child and adverse consequences flowing from being subject to the CJS.
- Reduce the potential for re-offending.
- Prevent the child from having a criminal record.
- Promote the dignity and well-being of the child, and the development of his or her sense of well-worth and ability to contribute to society.

2.5.2 The consideration for diversion programme

The candidate for diversion is not a clear-cut straight thing to determine who the actual candidate for diversion is. It is said that every case entering the criminal justice system has its particular and different facts which then makes it very hard to formulate standardised guidelines for diversion (Munthing, 2006: B6-8). Hence, the constitution of the Republic of South Africa and human rights states the following regarding diversion for juveniles:

- When deciding whether to divert a case or not, consideration must be given to what will be in the best interests of the child.
- No child should be unfairly discriminated against based on race, gender, ethnic or social origin, sexual orientation, disability, religion, conscience, belief, culture, language, birth, or socio-economic status, that is, all children must have equal access to diversion;
- Corporal punishment and public humiliation may not be elements of diversion and
- A child under the age of 13 may not be required or permitted to perform community service or any other work as a diversion or condition of diversion.

In terms of the offence allegedly committed, it is extremely difficult to formulate criteria, as each case has its own characteristics and considerations. Section 41 of the CJA gives prosecutors authority to divert matters before preliminary inquiry. This only applies to Schedule one (1) offence, and diversion options may only be to a level one (1) diversion option. Diversion can however, take place throughout the criminal justice system. Once the prosecutor has identified a candidate for diversion, he must consider the following information as stated in section 52 of the CJA:

- The child acknowledges responsibility for the offence.
- The child has not been unduly influenced to acknowledge responsibility.
- There is a prima facie case against the child.
- The child and, if available, his or her parent(s), an appropriate adult or a guardian, consent to diversion.
- The prosecutor indicates that the matter may be diverted in accordance with Sub-section (2) of the DPP indicating that the matter may be diverted in accordance with Sub-section (3).

The child as well as his parent(s) must be advised that participation is voluntary and that, should the offender not meet all the requirements, and the case will not be withdrawn. If a child is 10 years or older but under the age of 14 years, criminal capacity must be proved. A probation officer must screen a candidate and thereafter advise the prosecutor on suitability of the candidate for the programme.

2.5.3 Advantages of diversion

Diversion programmes can offer significant advantages to the child offender. These programmes have proved to be highly successful in preventing repeating offences and offer children significant development opportunities to turn their lives around. Badenhorst (2011:5) believes diversion focuses on keeping children out of the criminal justice system and use families and communities as resources to help the child. The child offender can escape the stigmatisation and negative labelling from involvement in the criminal justice system. Diversion helps reduce the number of children who get involved into deep into the CJS.

Diversion can teach children accountability and responsibility for their actions. Various role players in the child justice field such National Institute for Crime Prevention and Reintegration of Offenders (NICRO) run diversion programmes for children who have been in trouble with the law. Diversion programmes need to be transformational in nature, it must focus on changing behaviour, thought and attitude, to name a few (Steyn, 2010:5). This supports the fact that many children get involved in crime because they lack personal skills and development to differentiate from right and wrong. Some of the children have not been granted the opportunity to have the guidance and support of good role models in their lives. Diversion helps to assist them in

developing a good and responsible behaviour. Steyn (2010:165) believes diversion holds a diversity of benefits for child offenders, their families as well as the justice system. They remain in their lives without getting a criminal record. Diversion of children plays a central role in the Act. Any child accused of committing any crime can be diverted from the CJS.

The Act provides a framework for diversion and therefore reduces risks of discriminatory applications and practices relating to diversions. Diversion may be considered throughout the child justice process until closure before the prosecution. As noted above diversion has been practiced for several years in South Africa, especially in urban areas.

2.5.4 Diversion options

The cases of children that are brought before court differ in many ways and the children's circumstances are not the same. More so it is a known fact that once the child has been under the CJS and obtained a criminal record, that child's life has been ruined forever, chances of that child making it in life without discrimination and being labelled are minimised. That is also a most likelihood that once a child has been thrown to the dip of the CJS and got a criminal record that child has a greater chance of re-offending and keep coming back to the system. It is of these reasons that CJA makes provisions that support that avoiding at all cost to put children in the criminal justice system as it is considered disadvantageous for the life and wellbeing of the children. Diversion gives a different and beneficial way of dealing with children as it comes with the hope that by intervening with suitable skills and interpersonal training early on, the track of re-offending and children holding criminal records can be avoided. In terms of Section 54 of CJA the following factors must be considered when a diversion option is selected as outlined in (Gallinetti, 2009:45) as follows:

- The diversion option must be at the appropriate level.
- The child's cultural, religious, and linguistic background.
- The child's educational level, cognitive ability, and domestic and environmental circumstances.
- The proportionality of the option recommended or selected, to the circumstances of the child, the nature of the offence and the interests of society.

- The child's age and developmental needs.

“Section 54(2) provides that the various diversion options may be used in combination with each other. This allows flexibility and creativity and focus on a particular child's needs” Gallinetti (2009:45). This Act sets out two different levels of diversion options, these levels are linked to the schedule, which contains lists of offences based on the seriousness of the offences. Gallinetti (2009:44) gives a summary of the diversion options as follows:

- **Level one:** applies to schedule one offence, and if any period is applicable, it may not exceed the following:
 - 12 months in the case of children under the age of 14 years.
 - 24 months for children 14 years or older.
- **Level two:** applies to schedule two and three offences, and if any period is applicable, may not exceed:
 - 24 months in the case of children under the age of 14 years.
 - 48 months in the case of children of 14 years of age and older.

2.5.4.1 Level one diversion options

They range from informal orders to admission to formal interventions and programmes. They consist of the following:

- An oral or written apology to a specified person or persons or institution.
- A formal caution, with or without conditions.
- Placement under a supervision and guidance order; reporting order; compulsory school attendance order, family time order, peer association order; good behaviour order, an order prohibiting the child from visiting, frequenting or appearing at specified places.
- Referral to counselling or therapy.
- Compulsory attendance of vocational, educational, and therapeutic programmes.
- Symbolic restitution.

- Restitution of specified object.
- Community service.
- Provision of some service or benefit by the child to a specified victim or victims.
- Payment of compensation.

2.5.4.2 Level two diversion options

They include the possibility of options available under level 1, but supplement those with interventions that are more intensive to address the seriousness of the offence. They include the following in addition to level one:

- Compulsory attendance of vocational, educational, or therapeutic programmes, which may include a period of temporal residence;
- Referral to intensive therapy, which may include a period of temporary residence; and
- Placement under the supervision of a probation officer on conditions, which may include the restriction of the child's movement without prior written approval.

Diversion is not only limited to these levels but for the cases of children they are the core and main options available. There are other options, which may be considered as somewhat level three (3) kind of diversion option even when not stipulated as such. These diversion options are for matters involving serious or repeat offending. It can include orders of six months or more, with a possible residential element. It also involves community service of up to 250 hours over a period of a year. These options can only apply to children who are 14 years and older. The CJA advocates that children can be placed in any registered diversion option if it attempts to fulfil the purposes of diversion. Section 53(7) of the Act provides, for family group conferences and victim offender mediations or other restorative justice processes to be available as diversion programmes and these programmes are not restricted to a particular level.

2.5.4.3 Diversion programmes

Children who have been accused of a crime are often diverted out of the official CJS, with or without special conditions, and into programmes aimed at developing life skills as an alternative to imprisonment. These programmes are designed to help mend the child's behaviour and

educate the child of the dangers of criminal behaviour and giving him alternative and a way to build good behaviour. Most children who really comply with these programmes have a better chance of not re-offending or falling back into the system. Diversion programmes are recognised with the recognition that most children fall into criminal behaviour because they lack personal skills and guidance to good behaviour. The diversion options usually depend on an individual's circumstances and the seriousness of the offence. It could be referral to counselling or a course at a specific organisation. The duration is determined accordingly as the options some of these programmes can even last over a year or couple of years depending on the circumstances involved. A diversion order in the form of form six (6) of the Act may include an order to complete several diversion programmes available.

These programmes are run by the provincial DSD and a Non-Government Organisation (NGO) or Non-Profit Organisation (NPO) funded and accredited by the department like NICRO. Therefore, there are five diversionary options to child offenders that are offered by NICRO at and Munthing (2011:3) discuss these options as follows:

- **Victim Offender Mediation:** This programme brings together the victims and offenders in an attempt to reach an agreement that addresses the needs of both parties. It is a facilitated mediation or reconciliation meeting between the victim and offender. This meeting can not only be limited to victim and offender, but it can also include all parties that include other who have been affected by the incident in some way or the other (Sloth-Nielsen & Gallinetti 2005:145).
- **Pre-trial Community Service:** The offender must perform many hours of community service in lieu of prosecution. The number of hours is determined by NICRO in consultation with the public prosecutor. NICRO also monitors the performance of the client and reports the prosecutor. The child will be placed in a suitable community service setting, depending on their skills and where they are needed the most. On completion of the service, the charges will then be withdrawn. This may or may not be linked to the above options.
- **Youth Empowerment Scheme:** The life skills training programme involves the offender and their parents or guardians are encouraged to participate in this programme. This

programme is spread over a few weeks and addresses issues such as conflict resolution, crime and the law, parent-child relationship and responsible decision making.

- **The Journey:** The journey is an intensive long-term programme for young people mostly at risk and who are challenged to engage in a long-term process of working towards constructive and independent living. It has a strong adventure component, which confronts the child's actions. The journey encourages self-expression, commitment, accountability, and a sense of community. It is aimed at the more serious offenders, multiple offenders, and early school leavers.
- **Family Group Conference:** Family group conferences are defined as "bringing together the offender and his or her family with the victim in a prepared and structured way. The family is encouraged to support the offender in taking responsibility for his or her actions" (Sloth-Nielsen and Gallinetti, 2005:145). A family group conference is like victim offender mediation but involves the family friends of the child offender in a process aimed at restoring the balance and prevent re-offending.

Preventing recidivism is an important component of a family group conference and all family group conferences must put plans in place that will prevent further offending. The involvement of significant others is central to the process. The capacity and how these programmes are being offered vary from different provinces. The diversion programmes are mostly available in urban areas. In the rural areas, diversion programmes are very limited because of a lack of resources and availability of relevant role players. In such cases are simply withdrawn. If a prosecution is instituted, the eventual sentence imposed is usually the stereotyped and inappropriate postponement or suspending of cases without any proper interventions (Skelton, 2006: B6).

There are informal diversion options that are available as listed as follows by Munthing (2006: B6-12):

- An oral or written apology to the victim or victims.
- A warning by the prosecutor.
- Symbolic restitution in respect of a specific object to the victim, specified person or persons of the alleged offence.
- Restitution of a specified object to a specified victim or victims of the alleged offence.

2.5.4.4 Monitoring and adherence to Diversion Programmes

The first step is for the Probation officer to complete an assessment for the child who has been arrested. The probation officer in his or her assessment must assess the suitability of the child for diversion and make a recommendation accordingly. The recommendation of the probation officer is then presented at the preliminary inquiry. If the child is granted diversion, a diversion order is then made as a binding order to the child. The child is then responsible for making sure that he or she adheres to it. It is stated that if a child fails to comply with the diversion order, the probation officer or other suitable person must notify the magistrate, inquiry magistrate (presiding officer) or child justice court in writing of the failure.

This is done because in terms of Section 57 of the CJA, when making a diversion order the magistrate, inquiry magistrate or child justice court must designate a probation officer or suitable person to monitor the child's compliance with the diversion order (Gallinetti, 2009:48). After the report of non-compliance has been submitted to court the child is then brought before the court and an inquiry must be held in to determine the circumstances leading to the non-compliance of the diversion order. If it is found that the child's non-compliance was his or her own accord and no other external or circumstances beyond his or her control, the Act provides for the following three options as described in Gallinetti (2009:49).

- The prosecutor may decide to proceed with prosecution against the child.
- The presiding officer may record the acknowledgement of responsibility made by the child as an admission made by the child and proceed with the trial.
- If the matter does not go to trial, it can be decided on another diversion, which is more heavy and intense than the initial one.

Gallinetti (2009:49) states that "if it is found that the failure is not due to the child's fault, the magistrate, inquiry magistrate or child justice court may:"

- Continue with the same diversion option with or without altered conditions;

- Ask or apply any other diversion option; or
- Make an appropriate order, which will assist the child and his or her family to comply with the diversion option initially applied, with or without altered or additional conditions.

If the child successfully completes the diversion order the probation officer or other suitable person must submit a report to the prosecutor who deals with the matter. This report must comply with the requirements as stipulated by the CJA.

2.6. CONTRIBUTORY FACTORS TO CHILD OFFENDING

Child offending is a broad issue and there are many factors that contribute to it. There are many explanations as to why children deviate to crime and these explanations vary in many ways depending on the circumstances involved be it individual circumstances, social, psychological and even economical with many examples under these categories to name the few but not limited to dysfunctional families, poor education systems, unemployment, peer pressure, lack of social activities in the area, media, alcohol and substance abuse, normalised behaviours and multicultural communities. There are factors that can be uncovered depending on the place, person and circumstances involved. For this study, the researcher drew on a few theories to help unpack and group the most common and relevant contributory factors to child offending. Unpacking these theories assisted the researcher in gaining a clear and more in-depth understanding on the factors contributing to juvenile offenders.

2.6.1 Theoretical framework

The theoretical frameworks that were used to guide this study were Social Disorganisation Theory, Rational Choice Theory, Routine Activity Theory and Neutralisation and Drift Theory. These theories give a very clear and great baseline and background into understanding the contributory factors in child offenders

2.6.1.1 Social Disorganisation Theory

This theory developed by Williams and McShane (1994) is the theory used to understand the inability of local communities to realise common values of their residents or solve commonly experienced problems. The theory focuses on place and tries to explain why some communities experience high levels of crime while others do not. It is also stated that “Cloward and Ohlin maintain that crime is largely focused in lower class neighbourhoods” (Finley, 2007:70). They further make four important elements that constitute “Social Disorganisation” as follows:

- Low economic status.
- A mixture of different ethnic groups.
- Highly mobile residents moving in and out of the area.
- Disrupted families and broken home.

This theory was most relevant for the study, as the study was trying to understand the contributory factors of child offenders in Ixopo. It also helped to understand why the level of child offenders has been so high in this particular area. It also touches on the elements that are mentioned as the biggest problems of this area such as low economic status and disrupted families and broken homes. This theory also goes to explain that “crime will be highest in areas where there is the least organisation and fewest stakes in the neighbourhood. In such disorganised areas, there is a high amount of turnover, and thus, less bonding by residents to their neighbourhood. Accordingly, the goal of most community members is to leave these areas, and they become uninterested in their community, neighbours, schools, business opportunities, and so on. The turnover also leads to a cycle of disinterest that makes it difficult for policies that urge community involvement in attempts to social problems” (Finley, 2007:255).

2.6.1.2 Rational Choice Theory

This theory is used to understand social behaviour. It describes the human being as the rational actor who freely chooses behaviour, both conforming and deviant based on their calculations. It also points out that the state is responsible for maintaining order and preserving the common

good through a system of law (Gul, 2009:42)”. Rational Choice Theory has a number of underlying assumptions and (Finley, 2007:231) highlights the three assumptions as follows:

- **First** is that all individuals have goals, or they strive for utility, such as wealth.
- The **second** assumption is that individuals behave and live within their means when working towards their goals.
- The **third** one, the rational choice is the choice that best achieves the goal using the last means.

This theory gives a clear perspective to some factors that lead children into committing crime. In their own perspectives resorting to crime is a rationalised choice that they make to survive. For example, in a poor community in the rural areas where education is not prioritised, or opportunities are not available. When children have no food at home and no one is employed, their main goal is to sleep with a meal and have money to provide their needs. The only last means that is rationalised to them is to go to the nearest farm, steal veggies and sell them. That is criminal behaviour, but it is a rationalised choice for them as they can say the benefits of that crime outweighed the risk of committing such a crime.

2.6.1.3 Routine Activity Theory

This is a theory of criminal events; it suggests that the organisation of routine activities in society creates opportunities for crime. In other words, the daily routine activities of people including where they work, the routes they travel to and from school, the groups with whom they socialise, the shops they frequently go to and so forth strongly influence when, where and to whom crime occurs (Williams & McShane:1994:222). Finley (2007:239) explains this theory as “The routine activities of people in their everyday lives place them in greater positions for criminal victimisation. These recurrent activities occur at home, at work, and other avenues away from home and consist of family activities, other social activities, employment, and activities involving the general provision of food and shelter, such as shopping. The theory suggests that for crime to occur, three elements or variables must be present: a desired object, or potential victim, a person or persons motivated to commit a crime involving the valued object, and the absence of a capable guardian”.

An example of this can be a child who wants to buy substances and comes across a wallet with cash and no one is looking, the desire for that wallet can motivate the child to steal that wallet. This theory also applies mostly in rape cases when a child desire to have sex with a girl and that girl is available as a potential victim, her routine to always go to the shop on her own late and there is no guardian exposes her to fall victim of this child who always desired to have sex with her.

2.6.1.4 Neutralisation and Drift Theory

This theory proposes that juveniles sense an obligation to the law. However, when this obligation is strained they tend to drift to crime. An example of the Neutralisation and Drift Theory is that when a child does not get spending money at home and his friends does, that child is then able to rationalise that stealing from his parents is okay because he feels he deserves that money for him to fit in with his friends.

Sykes and Matza (2009:1) list five principles or techniques of the Neutralisation Theory as follows:

- **Denial of Responsibility:** this is where the criminal views himself as a victim based on circumstances.
- **Denial of Injury:** this is where the criminal feels like the actions committed were victimless because no one was physically hurt, or the crime was committed against another criminal.
- **Denial of victim:** this goes back to circumstances. The general population in this case considers victims so they deserved this kind of treatment.
- **The condemnation of the condemners:** this is when the criminal sees the labeller as a deviant in disguise, they are just out to get them, or by attacking them, the wrongfulness of their behaviour is confused.
- **Appealing to Higher loyalties:** the requirements of larger society have to be pushed to the side because of affiliation in smaller groups, who directly provide fidelity and protection to the individual for example, gangs

It is also stated that “individuals are capable of drifting from being completely law-abiding to being completely free of restraint. Although Matza maintain that people live somewhere in between, some individuals move from one extreme in behaviour to the other. This is not an overnight process, but is instead gradual” (Finley, 2007:57). For the purpose of this study the researcher has found that all five techniques of the theory are most relevant to the study since it looks at different factors that contribute to children committing crime. The theory shows that factors contributing to crime differ from individual circumstances hence all these techniques are all relevant to the study

2.7. THE CONTRIBUTORY FACTORS TO CHILD OFFENDING

The study of the risk factors in crime is the most common and the biggest interest in the criminology and sociology research. In all the research that have been done over the years, most researchers have identified several factors that they believe contribute to child offenders and criminality in general. “Sociology thinkers suggest that it is not just one single factor, but many factors working together, that increase the likelihood of juvenile delinquency” (Van Staden, 2015:26). However, for this study contributory factors into child offenders was done in order to find linkages between the most known contributory factors and those relevant to the rural setting of which the researcher have found it to be neglected in most research.

2.7.1 Individual risk factors

When the children are born and grow-up, they develop differently. The development of the child can sometimes determine some characteristics of bad behaviour in that child. Some behaviour in children can be triggered by genetics, social and environmental factors. The individual factors that can be identified as triggers of delinquent behaviours in children could be the cognitive development, early development of anti-social behaviour, emotional factors, and Attention Deficit Hyperactivity Disorder (ADHD). The children with ADHD disorder cannot pay attention, they are impulsive, cannot sit still and they tend to just do things without thinking and they do not care about the consequences of their actions. The way children start to express emotions can determine or point out that the child is likely to end offending someday.

At some stage, children cannot express emotions especially those emotions of anger. One may find that a child throws thing or hit people when they are angry and break whatever is in front of them. If that emotional development of a child is not corrected early that child is highly likely to find him or herself on the wrong side of the law at a young age. “Overall studies have shown that impulsive, non-anxious boys are more likely to commit delinquent act at twelve to thirteen years” (Farrington, 1998) (in Van Staden, 2015:27). Van Staden (2015:28) further highlights that poor cognitive development and behaviour problems during the early childhood could explain the association between academic achievement and offending. Studies show that delinquents verbal Intelligence Quotients (IQs) tend to be lower than their nonverbal IQs. Delinquents also have lower global IQ’s and lower school achievement rates compared to non-delinquents.

The other most predictors of the individual factors in children are categorised in terms of biological traits such as age, gender and racial or ethnic background. Age on its own is not a characteristic let alone be defined as a criminogenic factor. However, age categorises stages of development gives clear understanding of group categories as that age group that is mostly likely to be delinquent. (Smith 2002) in (Bezuidenhout & Joubert, 2003:68) argues that “the explanation for the effects of age lie in the detailed process of development and in associated meanings and social roles. Some tendencies, termed personality traits, such as impulsiveness, excitement seeking, assertiveness, modesty and dutifulness may influence behaviour in particular situations”.

Some children at an early age show aggressive behaviours, children who get into fights mostly in the early ages such as 5 years old; they develop an anti-social behaviour, which can be another factor for that child to becoming a child offender at his teenage age. The child who grew up with a short temper is likely to be in conflict the law. Furthermore, gender traits also play an important role in individual behaviour. Going to the ancient past, many have been raised to believe that boys are more masculine, and they are allowed to be rebellious and play aggressive games in their early ages as a sign of development to be a true man and a leader. On the other hand, women have always been raised to be emotional beings and soft people and that the boys are the heads of households and they lead in all structures of life. This is the reason one will find in statistics that male criminals outnumber the female criminals.

Bezuidenhout and Joubert (2003:69) state that the DCS in South Africa pointed out that the number of sentenced youths in custody in May 2002 was 14600 males, compared with 285 females. When considering gender as a risk factor the focus should be on characteristics associated with the young, such as impulsiveness, rebelliousness, and deceitfulness. It is said that girls experience less of these characteristics as they are always protected and told that their place is at home, on the other side boys are more exposed to these characteristics than girls are. These characteristics are as the result of the way children are emancipated from a very young age in terms of gender. This can be best supported in the rural areas where they still practice traditional myths and cultures.

The boys are still raised to know that for them to be man they should show aggression, “they should toughen up”. Most of these children get into violence acts to prove their manhood rather than as a criminal behaviour. The more this is condoned and praised then it becomes most likely that these children will never see anything wrong being violent because they are man. This also plays an important role in the cases of sexual violence young boys in the rural areas grow knowing that women must submit herself to the man and fulfil the man’s needs, as it is ‘her duty’. This then makes it difficult for young men to understand that young girls have a right to say ‘No’.

2.7.2 Social risk factors

Bezuidenhout, *et al.* (2003:54) state that criminogenic risk factors on a social level can occur in four domains: the family, school, community, and peer groups. These factors or domains do not function independently but instead they affect one another.

2.7.2.1 Family

The family is the very most crucial part of any human being’s life. It is no secret that the very first thing in life that guides who a person grows up to be through interactions is the family. Bezuidenhout and Joubert (2003:58) provide that “the family or parent is usually the first institution an individual interacts with. The importance of the family in socialising young people, teaching them the rules of behaviour in society and taking the appropriate steps to keep them within those rules cannot be overemphasised. The lack thereof creates a risk of coming into

conflict with the law”. There are many elements of the family that can be discussed and that play some of the crucial roles in shaping an individual especially a young person. The most important issue to first understand in this regard is the exact meaning of family.

2.7.2.2 The family structure

Many definitions of family are available. In some cases, the definition of family differs from one person to the other. For this study, few definitions will be mentioned to create a clear picture as to why this domain is so much important in moulding a young person’s life. The traditional family that is known to everyone is a social group that consists of a mother, a father, and children in one house. According to Sacco and Kennedy (1994:186) a family is a married couple consisting of a husband and a wife and any unmarried children of any age, or a single parent together with any unmarried children who live with him or her. However, the most general view and explanation of the family is that a family is generally any sustainable pattern of relationships according to which domestic life is organised. The way in which family is determined relies on the society and cultural beliefs of that society.

Family systems have since been weakened over the years. The families we have now are not as what our forefathers would have had a family. For example, the family before had a notion of extended family who all played a role in the organisation of the domestic life of that particular family or community. Now we find that these systems have been broken in so many ways and the family now is not as it used to be. It is revealed that “in general family factors influence young children more than older children, but peer relationships become increasingly influential as the child progresses through the early school years. Some of the significant risk factors are associated exclusively with early onset (age 6-11) and late onset (age 12-14)” (Lipsey & Derzon, 1999) (in Van Staden, 2015:28).

Family structure and parenting style have since changed and exposing children to more criminal behaviour. Such as that mentioned in Van Staden (2015:28-29); authoritarian parenting, characterised by harsh and intrusive behaviours in conjunction with a lack of warmth and positivity, may put children at greater risk of involvement in aggressive behaviour by modelling

coercive and power asserting techniques to children who may in turn view these behaviours as effective with peers. The typical nuclear family that is composed of both parents and children have been non-existent in the lives of many. Many home especially in the rural areas are comprised of what Thorn (1980:41) describes as disorganised family where there is lack of leadership, guidance, and control. Parents in such a family system are not able to provide direction and guidance to their children. They fail to assist children to develop their own internalised self-control. Parenting has since been left in the hands of the schools and the teachers must try hard to build what has already been broken from the onset. One would find parents blaming teachers and the education system for the bad behaviour of their children, yet the home environment is not secure, and discipline is threats of violence and swearing.

There is another element of broken families; most children grow up not knowing their belonging because they have been raised by a distant relative with the father is supposedly unknown, the mother has left to look for jobs in the urban areas and never bothered to return home. In most instances the grandparents who are so old that they need care themselves, as children must step up and become parents to several children in one household with no assistance to any appropriate adult. These families from the very onset have lost the meaning and value of what a family has to offer, which is guidance and control to children from the very early stages of the child. The result is that these children would not have their own sense of control, they must rely on the external forces other than parents to instil control, and they easily resist because it is something they were not taught off from a very young age. (Siegel and Senna, 1991:243) argue that children from broken homes usually display problem behaviour, such as improper conduct and hyperactivity, then children from intact families. When a family is broken it is said that the members of the family get disintegrated and often end up fighting, involved in conflict, hostility, and aggression, which may turn to result to criminal behaviour. Another notion of the broken family where children turn to be rebellious, ungovernable, truant and abuse alcohol are children from a family broken because of marital conflict (Sykes and Cullen, 1992:118).

The biggest thing to note is that a family does not have to be physically broken to make children to be rebellious and increasing their risk of criminal involvement. The most dangerous aspect of the broken family is psychological and social aspects of the broken family that drives children to

criminality. The lack of father figures especially for boys plays another imperative role in the family and the behaviour that is adopted by a young boy. Most children who get into violent behaviour sometimes do not know their fathers or the fathers abandoned them and denied their responsibility. These children turn to display anger and they never realise their worth as children. The criminal life somehow gives them meaning to support their internalised belief that they are nothing even their own father did not want them. The high rate of alcohol abuse within the families increases the likelihood of children being involved in criminal behaviour and drug use.

Another problem in families is the child headed household. Many children are orphaned, and they have been left on their own with no adult supervision and no parental support. The AIDS pandemic has resulted in several children to be orphaned and living alone with no parental support. Children must assume the responsibility of parents and adults, as they must care for other family members and younger siblings. Most of the parents who died of HIV/AIDS had no source of income, so the children are usually left with nothing and they must make means with whatever they can get in poor communities. *“Can one expect to find a normal socialisation and control to take place in a child headed household with no source of income?”* In response, there is no adult who is there to give guidance to the children.

Most of these children are likely to get involved in crimes such as housebreaking and theft, business robbery, shoplifting and theft in general. Their actions are often justified to survive and put food on the table as they often go without food for days.

2.7.2.2.1 Styles of parenting

The styles of parenting are another risk factor to child offender. The children of teenage mothers are at most risk of being delinquent and offending at an early age. These mothers still need guidance on their own and they have not lived their lives to the full and now they are forced to move from being children to being mothers, this is always a tough thing to do for them and they do not know how to provide guidance and security for their own children. Another important factor in parenting is the understanding of the different stages of development for children. Most parents especially in the rural areas do not understand these stages. Hence, they do not know

what is expected for a child and at what stage. Like that, of teenage mothers, the pregnancy would have not been planned and they are not ready for motherhood. She may not know how to handle the child.

Some parents have no patience for the child and expect too much too soon from the child without understanding why the child is the way he or she is. They do not understand that children cannot control their bodily function and reactions to it. That is where one finds corporal punishment starts and the child gets beating up at a very young age. That is where these children grow understanding that beating is the only way to get the message across. They can start by being bullies or being charged for assault at some stage in their adolescent life.

When growing up most children imitate what their parents do and take it as the most rightful and acceptable thing whether it is bad or not. This is because parents are supposed to be the initial role models in their children's lives. The problem starts when the child is born by parents who have delinquent and criminal behaviour. Most of the children fall into that trap. This is mostly common to domestic abuse cases where boys grow up knowing that beating a woman is the only way to be heard and respected, because they see their fathers do it. It is also mentioned that parents who are unable to deal with stresses of life such as, alcohol or drug abuse, financial problems, depression and poor housing conditions tend to be aggressive.

These parents are usually not fit or competent to raise their children properly and that raises greater chances of these children getting into crime than those who grow up in families with less undesirable circumstances (Siegel and Senna, 1991:254). There are also parents who have all the necessary material things to create a right environment for the child, but naturally lack the basic problem-solving skills. As research show like that done by Loeber and Dishion (s.a) (in Siegel and Senna 1991:245) which suggested that boys who were found to be most aggressive were typically raised by parents with poor problem-solving skills, these parents use inconsistent methods of discipline. Parents that use harsh and inconsistent methods of discipline also experience additional social problems in children related to delinquency, such as parental substance abuse and deviance.

These parents on top of the lack of problem-solving skills they further lack the crucial seven parenting skills as outlined by Patterson (s.a) (in Trojanowicz & Marash, 1992:123) as follows:

- Notice what the child is doing.
- Monitor this over long time.
- Model social-skill behaviour.
- Clearly state house rules.
- Consistently provide relevant punishment for transgressions.
- Reinforce conformity.
- Negotiate disagreements so that conflicts and crisis do not escalate.

These authors further make a point that failure to perform these parenting skills often leads to delinquent behaviour. Such parents are not attached to their children and they are motivated to be effective to their kids. For example, if a child steals something they do not punish the child for transgressions regardless of them noticing the child's behaviour. Their punishment is usually shouting, threatening, and physical assault, which does not have much impact on the child's behaviour or pushing the child to stop the behaviour.

2.7.2.2.2 School (educational risk factors)

The school is another important socialising institution for the child following that of the family. For some children it is not hidden fact that they learn most of the good behaviours at school and as well as the bad behaviours. They get to be around different children from different backgrounds. It is true that the way children experience school environments change them for either better or for worse. The school environment has a great effect on the child's self-esteem and self-worth. Most children are bullied at school and that affects their academic performance. Failure at school has a great impact on the self-esteem of the child. (Chaiken 2000) (in Bezuidenhout & Joubert, 2003:63) supports that "failure at school is caused by poor academic performance, poor attendance or, more likely, expulsion or dropping out of school. Expulsion is

an important factor in predicting future criminal behaviour. A strong association between expulsion and delinquent behaviour has been found". It is further stated that when learners are expelled or suspended from school they are released into the community without supervision and structured activities, as many parents work outside of home, the opportunity exists for these learners to commit illegal acts (Bezuidenhout & Joubert, 2003:63).

Conditions in schools are another big problem in South African schools. Lack of discipline in schools remains the same since the new democracy. It is a known fact that violence is still escalating in schools and that impacts negatively on learners. (Bezuidenhout & Joubert, 2003:63) state that "the department of education and parents suffers financial losses as schools tend to use their funds to repair minor damages caused by the acts of vandalism. Some schools must deal with damage caused by vandals daily, but weekends are regarded as the worst. Vandals have been known to damage windows, furniture, and electric appliances. It has been said that vandalism can also be a symptom of an underlying problem such as poverty, where children steal classroom doors or aluminium from the blackboard to sell to buy some food". In the rural areas the most common problems are the school size in schools. In one class, one will find that there are learners who can make up 3 classes being taught by one teacher. The resources are not adequate to meet the needs of all these students. The monitoring of children is undoable due to the high number of school children that must be monitored by one teacher.

This condition allows children to enter school premises with drugs and weapons. There is high discrepancy between our public schools and private schools especially when it comes to facilities and resources. That is why one finds a high rate of failure in our rural public-school children than those in the private schools. These conditions play an important role in children from public schools committing crime and dropping out of school. The teachers who work under these unpleasant conditions get discouraged and find no motivation to do well in their job. High number of teachers resigns from the public school to get jobs in the private schools. The teachers in public schools cannot rely on parents' support in the education of their children, as they show no interests in the education of their children and the performance of their children put the burden on the teachers only.

2.7.2.2.3 Role of Community

The community variables differ from place to place. The most common variables are poverty, community disorganisation, and the availability of substances (such as drugs and alcohol), pro criminal behaviour, beliefs, and a climate of violence. Most areas are poverty-stricken, and they have no resources to keep the children away from criminal activities. Some areas are disadvantaged in nature just as most areas surrounding Ixopo have what is usually called chronic poverty. The poverty in these areas last long and have no prospect of improving. Children in these areas have nothing that gives them hope or that makes them view life outside of that place.

Their lives are at a standstill and there are no employment opportunities or leisure activities to take the children's mind out of the criminal behaviour due to the lack of activities in the community. The availability of drugs and alcohol is the only leisure activity that is available for the young children. The cultural diversity in communities adds to the disorganisation of communities. The norms and values of the communities are not standardised due to diversity. It is said that "community disorganisation and low neighbourhood engagement also places youths at risk of engaging in criminal activities. The availability of drugs, weapons and exposure to violence and other crimes in the neighbourhood also contributes to criminal outcomes for young residence. More so the community norms and values favourable to violence and weak community consequences for violence negatively influence decision-making process among youth" (Van Staden, 2015:36).

The economic deprivation of communities is the most important factor amongst communities. "Economic strain and deprivation are universally accepted as factors contributing to crime. It is not poverty per se that contributes to crime, but how people experience their financial situation within their social environment. The majority of poor people do not commit crime, but those who feel deprived will often resort to crime" (Bezuidenhout & Joubert, 2003:54). The high rate of unemployment in our rural community has channelled the mind of young people and it has given rise to what is called the state of apathy. Young people no longer look for any opportunities available but rather take the easy way, which is crime as the only opportunity to improve their lives, in that way they are able to justify their actions. Brits (1994:94) state that

“data collected on the unemployment issue between 1958 and 1990 show a clear connection between unemployment and crime. Higher levels of unemployment are linked to higher levels of arrests”.

2.7.2.2.4 Peer groups

Peer association amongst adolescent especially in schools and among teenagers has been linked to criminal activities in some instances. Children still need to feel the sense of belonging and fitting in with the popular group in schools and in the community, and consequently idolise their peers. Many young people get into deviant behaviour as a way of impressing their friends and wanting to gain acceptance from them. It is true that most children are now involved in drugs not because they wanted to, but because the group of friends they wanted to associate with were doing and he or she felt side-lined and unfitting if he or she was not smoking or drinking alcohol.

In the urban areas, they even form formalised gangs and to get in you need to be initiated. That initiation phase includes many things such as being forced to steal, use drugs or even rape to qualify as part of the gang. More so, in the rural areas the gangs do exist, the only difference is that it is not as formalised as in the urban areas. One will find that there are those popular groups at school that everyone wants to be part of, with some of the gang members coming from good families and have nice clothes.

When it comes to young girls, they even get involved in romantic relationships and sleeping with older man to get money to buy alcohol and clothes so that they can be part of these groups. Some children do not get fortunate to get these sugar daddies, so they resort to stealing. It is true that most children who are involved in housebreaking and theft even assault GBH, report that they did all of that under the influence of friends and the demands of proving themselves to friends. As a result it is always evident that the learned behaviour associated with peers has the most negative effect on young children and the most common cause for criminal engagements within teenagers. (Bezuidenhout & Joubert, 2003:66) state that “researchers generally agree that most delinquent behaviour, especially the more violent forms are committed in groups and there seem

to be an agreement in the causal path of the delinquent youth, that is, from peers to criminal behaviour”.

2.8. UNDERSTANDING THE EXTENT OF CHILD OFFENDERS IN SOUTH AFRICA

Child offenders in South Africa seem to be on the rise and it starts small on the status offences. Bezuidenhout and Joubert (2003:24) explain that “certain behaviours are considered misbehaviour only when committed by children and youths. This is due to the youths’ status in society. They are referred to as status offences and are not illegal in South Africa”. The following are examples of these status offences as found in (Tsiwula, 1998:5):

- Truancy.
- Alcohol consumption.
- Running away from home.
- Incurability.
- Immoral conduct.

It is further provided that “as regards the status offence of alcohol abuse, it is postulated that South Africa could be producing a nation of drunks, because children are abusing alcohol from a very young early age” Bezuidenhout and Joubert (2003:24). The problem of high crime amongst the youths is associated with these status offences of whom they usually get away with it at a very young age. As said above that alcohol start as a status offence, most young children are known to be committing this offence yet there is nothing done about them.

The society has normalised some of these behaviours as a way of living. Alcohol has become a part of life and it has been normalised that young children can abuse alcohol as a way of having fun and nothing is done about it. The problem is when they get older, they are already addicts, and they can do anything possible to satisfy their addiction, where they can even steal. The risk factors mentioned above such family, absent father figures, disorganisation in communities, peer influence, school performance and availability of drugs and alcohol all affect children and the youths and have a bearing on criminal behaviour. Many of our children in South Africa experience a number of these factors in one go and that increases the theory that most of our

children and youths are at risk of becoming offenders in their early stages of life. Although accurate statistics that paint the full picture of the nature and extent of child offenders in South Africa are not available, a few published articles give a clear idea of this phenomenon. Pelsler, (2008) in the article learning to be lost: youth crime in South Africa gives a picture of the nature and extent of child offenders. Some of the author's points and statistics are summarised below as follows:

- Given South Africa's Demographics, half of the population of some 46-million is under the age of 25.
- 52.4% of the victims of theft reported that their property had been stolen in school.
- Assault was typically reported to occur at school 26%.
- Robbery that was typically to take place at school 13.7 %.
- Perpetrators that were identified for robbery and were known to community members who were learners 20.8%.
- Classmates of victims who were identified as primary perpetrators of school violence (94.4% for threats, 94.1% for assault, 55.4% for robbery and 29.5 % for theft).

“Apart from describing the extent of violence in South African schools the research also paints a worrying picture of a general criminality and disorder” (Pelsler, 2008:3). Palmary and Moat (2002:3) state that “the South African Police Services do not keep statistics on the age of the offender in their crime data. However, one factor, which illustrates the extent of involvement by young people in crime, is the high number of young people in prison.

For instance, in June 2002, “45357 young people under the age of 26, including 1799 under the age of 18, accounted for 36% of the entire population of sentenced prisoners in South Africa. Amongst awaiting trial prisoners there were 27070 people under the age of 26, including 2162 under the age of 18, accounting for 53% of the awaiting trial prisoner population.” If this was the situation in 2002, one cannot begin to imagine the state our statistics are in now as it has been said that instead of decreasing the numbers are increasing every day. If there have been so many children who are in prison and awaiting trial how many more children are under the different

alternatives options to imprisonment. Then clearly, our South is nowhere near the reduction of this problem.

2.9. SUMMARY

This chapter has given an overview of the literature relating to child offenders. It has drawn on the historical development of child offenders from ancient times. It has given a full picture of where and how this problem of child offenders started and where it is now especially in South Africa. It drew back from the very ancient laws and how it has since developed up to this far. It further examined the relevant legislations and transformations in dealing with the issue of child offenders in South Africa.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1. INTRODUCTION

In research there are two research approaches; quantitative and qualitative. Qualitative research entails the extraction of knowledge, explanation or clarification from the qualitative data gathered, which allows a specific or main theme to appear (Nieuwenhuis, 2007:99). Quantitative research entails the use of numeric data from a nominated population to produce findings to the entire population that is being studied; it is a methodical and an unbiased method (Maree & Pietersen, 2007:145). The collected information is then interpreted using statistical processes (Verhoeven, 2011:111).

This chapter gives a description of the method that was used in the study, while chapter two gave a summary of the existing literature, identified gaps, and value that could be added by this study. Hence this chapter outlines not only just the method used in the study but the research design, as well as the sampling method. The study followed a qualitative approach. Hennings (2004: 3 & 4) stipulates that the decision to use a research method is dependent on the type of enquiry that the researcher intends to conduct. The qualitative approach was suitable for the study since the researcher wanted to explore the effects of child offenders, as the qualitative approach is inductive and seeks to establish the findings.

3.2. DESCRIPTION OF STUDY LOCATION

Ixopo is a town in the KZN and falls under *Ubuhlebezwe* local municipality. *Ubuhlebezwe* is one of the four local municipalities that constitute the Harry Gwala District. It is located along the eastern boundary of the Harry Gwala District Municipality. It covers an area of approximately 1606m² with a total population of 112 726 which represents 23% of the Harry Gwala District Municipality's total population. It has 14 wards.

Ixopo area plays an important role in terms of the possible location for industry, commerce and other economic activity. It is a major education and health centre and assists in the diffusion of new ideas and technologies to the rural areas. It is also the primary base for the operation of many departments and service providers.

3.3. METHODOLOGY

3.3.1 Study Population

Daymon and Holloway (2011) state that a population is the entirety of elements such as people or organisations. The ideal population for this study was designed as follows: 12 children who conflicted with the law in the area of Ixopo, age group 15-17, 12 Guardians/parents of the children in the area of Ixopo and six (6) Social workers from the Department of Social Development Ixopo Service Office. However, due to the scope of the study time and distance these participants were not interviewed collectively.

3.3.2 Sample Size and Procedure

According to Blaxter, Hughes and Tight (2001) there are wide ranges of sampling strategies that can be utilised. Blaxter, *et al.* (2001) divides them into two groups: probability and non-probability sampling. Sampling saves time, labour and therefore money by reducing the numbers of cases involved. It allows for a concentration of effort on high quality information about the smaller number of cases involved (Mann, 1985:121). In a random sample, there is an equal probability of participants being chosen for the sample (Bailey, 1982:75) as they are chosen indiscriminately and not with favour as a personal choice.

The sample of this study was purposively chosen non-randomly. Following Brink (2002), the sampling elements were chosen from the population by non-random methods. The sampled group was a representation of a wider group which was studied, and as such their characteristics were added together to present the general picture of the group itself (Mann, 1985:110).

To narrow down the sample frame, the overall population for this study were 30 participants. The population target for this study were 12 children who have been in conflict within the law; age group 15-17, 12 Guardians of the children and 6 Social workers. The sample was from Ixopo

area and the main reason for choosing these specific participants was because they represent the greater population who deal closely with child offenders and those affected by issues of child offenders and the child offenders themselves who have committed various crimes. Hence, the study could not allow the whole community to be part of the research due to time constraints and costs. The population was selected randomly from the cases that have been reported to the department of social development presenting different types of crimes committed. The social workers were selected through an analysis of all 14 with regard to the crime rates in each ward wards and area social workers of the top six wards with the highest of child offenders were selected.

3.3.3 Methods of Data Collection

3.3.3.1 Documentary Study

In collecting data, the researcher used documentary sources whereby the official case files and reports of the children in conflict with the law acted as official documents. According to Creswell (2014:190) the ‘researcher may collect qualitative documents, for example, public documents, newspapers, minutes of meetings or official documents’. The researcher also asked questions to these documents as it was supported that ‘one can ask questions to document in the same ways as one might ask questions of research participants’ (Mathews & Rose, 2010: 82). The researcher also used personal experience that she has a social worker working around Ixopo and working directly with the children in conflict with the law, as it is stated that ‘qualitative researcher can use personal experience as data collection method’ (Litchman, 2014:44).

The researcher analysed some of the public documents as literature research. This literature was collected and integrated with the data that was collected during the focus group and interviews. To add on this other documents that analysed and interpreted were the official reports from the researcher’s workload, of which were the assessment reports for the children in conflict with the law and the pre-sentence reports to add on the value of data provided.

The researcher read the existing literature that proved to be the most valuable publications for the study. Some of the primary and secondary data that were consulted by the researcher are as follows:

- Constitution of the Republic of South Africa Act (Act No.108 of 1996).
- CJA (Act No. 75 of 2008).
- 12 official reports of children who have been assessed (six - 6 for preliminary inquiry assessment and six - 6 for pre-sentence reports).

3.3.3.2 Face-to-face interviews

In sum, the researcher conducted interviews with 24 participants in their place of residence who included, 12 children who have conflicted with the law age group 15-17 and 12 Guardians/parents of these children (that is, face-to-face interviews – according to the researcher, in this interview type, the researcher had direct communication with the selected participants in accordance to the interview schedule guide. This method allowed for detailed information and attitudes to be gathered from these participants in this study.

These interviews were SSI in nature consisting of several key questions that helped to define the areas that were explored, but also allowed the interviewer or interviewee to diverge in order to pursue an idea or response in more detail” (www.nature.com). This kind of interviews helped the interviewer and the interviewee to engage formally, as the interviewer used an interview guide. To this course, the researcher planned and developed questions and topics to be discussed during the interview in question, which helped to follow up on the responses and identify study themes.

3.3.3.3. Focus Group Discussion

The FGD is a term used to describe interviews that are conducted with a group of individuals, usually a group of people with the same interests. According to Dantzker and Hunter (2012) (in Maluleke, 2016:24) “FGD lies in interviewing several individuals in one setting. This method is not meant to replace individual interviews but to gather information that can perhaps not be collected easily by means of individual interviews. This refers to an information gathering method where the researcher directs the interaction and inquiry. The advantages of using FGDs include: limited expenses, flexibility and stimulation and can be particularly interesting”.

FGDs help to gather more data in a very short space of time and it also save money. They open a platform for exploring interviewees to explore different themes by engaging in a discussion with

each other. In this case the researcher takes a role of a facilitator rather than an interviewer. This helps the participants to interact with each other and build on each other's responses. Six (6) selected Social Workers were selected for this FGD as previously stated the group was conducted in the boardroom of the Department of Social Development (Ixopo Service office).

3.3.4 Methods of data analysis

Holloway and Wheeler (1996) argue that during data analysis of phenomenological enquiry, the researcher aims to uncover and produce a description of lived experience. This was described through verbatim interviews and then analysed, using thematic analysis. After transcription, the researcher went through an intensive process of repeatedly reading and reviewing the transcripts and audiotapes.

The main objective of this stage was to identify the fundamental thematic content in each transcript, based on the words of the participants. In facilitating the analysis, the seven stages of phenomenological analysis outlined by Colaizzi (1978:46) were used in this study, which were; organising data according to the research questions, which related to the objectives of the study; the words and sentences relating to the common problems of child offenders, patterns of crime committed and the socio-economic commonalities were highlighted or identified. Themes with same meaning were grouped together and sub-themes were developed. Themes with common characteristics were identified and defined five principal themes representing the risk factors of child offenders. Finally, the transcripts were again read to ensure that the final themes corresponded to the understanding of the experiences described by the interviewees.

3.3.5 Methods to ensure Trustworthiness

Trustworthiness is the crucial part of the qualitative study. It is highlighted that “trustworthiness in qualitative research is to support the argument that the inquiry's results are worth paying attention to” (www.universalteacher.com). In ensuring trustworthiness, there are different methods that are applied and for this study, the researcher has chosen two, which are Validity and Reliability.

3.3.5.1 Methods taken to ensure validity

- **Credibility**

For this study credibility was the most suitable principle to ensure validity since “the key criterion or principle of good qualitative research is found in the notion of trustworthiness: neutrality of its findings or decisions” (Babbie and Mouton, 2001:270). The researcher proved credibility of this study for the participants and anyone affected by the study hence making it easy to find comparability between the reality and what the study sort to achieve. This was achieved by prolonged engagement of the researcher in the field of study until data saturation occurred. Thorough observation and ensuring that the information gathered in the study had been checked with the source of information assisted in trustworthiness of the findings. After all the data were collected and analysed the researcher went back and checked with the respondents to see if that was what they said and agreed with it.

- **Transferability**

Transferability refers to the degree that the research can be transferred to another context. In as much as the study has focused on one area and specific individuals it hoped that the findings will be transferable to other similar contexts. The researcher took every precaution to ensure that the findings were useful in that it can be applied to other participants or other settings facing the similar problem.

3.3.5.2 Methods taken to ensure reliability

- **Conformability**

The researcher remained neutral to all the findings and was not biased to make sure that the study conforms to all its original objectives.

- **Dependability**

In this the researcher, ensured that the findings of this study were consistent, and they could be repeated. This was achieved through the way in which the research was conducted, analysed, and presented. Each process in the study was reported in detail.

3.4. ETHICAL CONSIDERATIONS

When conducting a social research study a researcher is guided by the codes of ethics and there are general ethics of the research that must be considered by the researcher like that of the social work services profession code of ethics and the UKZN research ethics. The study is about the personal lives of the participants, which they did not want to be known by the public.

The researcher ensured that the following ethical considerations were taken into consideration namely voluntary participation, confidentiality, and no harm to the participants to be selected as mentioned in Babbie and Mouton (2001)

3.4.1 Confidentiality

- Researcher identified a given person's response but promised not to do so publicly.
- Several techniques were employed such as pseudonyms to ensure that subjects' identities were protected and not became public.
- A researcher was trained in her ethical responses.
- All names and addresses were removed from questionnaires and replaced by identification numbers.
- A researcher then created a master identification file that linked numbers to names to permit later correction of missing or contradictory information.
- This file was only being available for legitimate purposes.

3.4.2 No harm to participants

- The study did not injure people that were studied.
- The researcher kept in mind that the subjects can be harmed psychologically during the research and made provision for such incidents through psychosocial support during and after the interview.
- It is said that about any research runs the risk of injuring other people, so care was taken in this regard.
- It was difficult to eliminate all injuries due to the intensity of the interviews and the distinctive characteristics of the participants, especially to the guardians.

- This study did however produce unpleasant effects so there was Informed consent.
- Sensitivity to the issue and experience with its application - improved researcher's tact in delicate areas of research.

3.4.3 University of KwaZulu-Natal research ethics

- **Citation and Acknowledgement:** “it is important in all publications, including such documents as research proposals, to cite all sources properly”(http://research.ukzn.ac.za)
- **Plagiarism:** “is the unattributed and unaccredited use of the ideas and work of others whether this is published work or in unpublished work” (www.research.ukzn.ac.za). The researcher ensured that she acknowledged to all consulted sources.

3.4.4 Voluntary participation

- The study did not pose an intrusion into peoples' lives.
- It required people to reveal personal information.
- Participants were given the right to participate, or not, as it is said that no person should be forced to participate. The researcher allowed the participants to voluntarily participate in the study and give consent to every information.
- They did not expect any rewards; some volunteers were motivated by the belief that they will personally benefited by the outcome of the study.
- The researcher was clear about the purpose of the study and the expected benefits from the participants.

3.5. SUMMARY

The chapter has given a detailed explanation of the methodology that was followed in conducting the research. The research design of the study has been explained in detail. The sampling techniques and the research instruments employed have been described. Validity, reliability, and data analysis processes have been explained, as well as the ethical considerations for the study. The results obtained, and discussion is mentioned in the next chapter.

CHAPTER FOUR

DISCUSSION AND INTERPRETATION OF FINDINGS

4.1. INTRODUCTION

Child offending as discussed in the previous chapters is still the biggest problem that is faced by our beloved country South Africa, taking back to chapter one where the researcher looked at the objectives of the study and the initial problem leading to the study. A picture of the problem and the answers that the study seeks to be answered through this study was painted. Chapter two then looked at the subject through analysing existing literature. The researcher in chapter two drew from the very ancient times concerning juvenile justice system and took it to where we are now. Chapter two advocated for a big transformation and that as a country we have since transformed tremendously when it comes to JJS. However, one can still argue, and it is still the concern of the researcher that yes as a country and internationally we have since transformed so much with regards to juvenile justice system, but even more so, the question still remains, what seems to be the problem still After so much transformation child offending is still the problem that is slowly getting out of hand overtime. Chapter three then gave the details of the methods that were used and in collecting data for the study. This chapter then present the findings, discussions and interpretation of the data collected.

4.2. FINDINGS RELATED TO STUDY METHODOLOGY

A qualitative approach was followed in the study. Data was gathered from one focus group discussion conducted in November 2017 with six (6) Social Workers from the DSD Ixopo Service Office. The semi structured interviews with 12 parents or guardians of children who have conflicted with the law. Document analysis where the researcher used 12 reports of the children who have been assessed, six (6) for preliminary inquiry and six (6) for presentencing was utilised. All the participants were purposively non-randomly chosen.

The following 11 questions in bold were asked by the researcher during the FGDs and SSIs, (the researcher's motivation for framing the questions are after each question and they are not in bold as the questions). The responses are given after each question as quoted verbatim in italics:

4.2.1 Based on your experience, do you consider child offenders in the rural area of Ixopo KwaZulu-Natal to be more widespread in the last three years (2014-2016)? [Please elaborate on your answer]

This question was asked to kick start the conversation on a positive note and get the views and picture of where the respondents are at with regards to the topic without imposing the views and ideas of the researcher.

- *“It is very high and instead of decreasing it is increasing in many ways every year as there are more children getting involved in crime and causing it to be on the rise” (SSI- Parents).*
- *“The number of cases that are brought forward are increasing and it is no longer petty crimes anymore just like house breaking and rape. For example, in the ward that I am assigned at more rape cases that I receive are no longer rape committed by adults, but children especially with their home and they rape their relatives. So, in my opinion child offending has gone out of control” (FGD - Social Worker).*
- *“Looking back in the olden days where children could simply just accept that they are struggling in their homes and seeks help from neighbours. That has since vanished as children have now assumed a role of family responsibility and taking care of their siblings. Children now have resorted to crime especially theft as a way of supporting their families and in that way, they feel their criminal ways are justified. Another cause to the high rate of crime in the rural areas is the availability of drugs like woonga, dagga and many more children steal and sell stolen goods to satisfy their addictions” (FGD - Social Worker).*

4.2.2. Based on your experience, which wards in the Ixopo KwaZulu-Natal area have the high rate of child offenders?

This question was intended to get the perceptions of the Social Workers as they are the ones working on the ground, but more so to get an insight of the most areas that they believe to have higher rate of child offenders in all 14 wards of Ixopo.

Ward 1 *“Mahhehle kwakumele kube inxenye ye Fairview ubugebengu ezinganene engathi zaloywa ingane zakhona nabantu abadala igcwele ubugebengu obusabisayo leyandawo”* Losely translated in English *(Mahhehle area should have been part of ward four Fairview, the crime committed by children in that area you’d swear they were cursed, even adults. That place has the scariest crime rate ever)* **(SSI - Parents)**

Ward 2 Ixopo town *“there has been a high rate of house breaking and recently the one that has been happening just now where they target one street a day and you find in the morning most cars in that street have been broken into and took whatever that is inside”* **(FGD - Social Worker)**

Ward four as it also has informal settlement and coloured area. *“Ward I believe is the leading ward when it comes to house breaking and theft as it also has the high rate of children who are into or dependant on drugs. Most of stolen goods even from other wards are usually found in ward 4”* **(SSI - Parents) and (FGDs- Social Workers).**

Ward 6, ward 11 and ward 12 e are three wards most identified for high rape cases, assault GBH and even murder and attempted murder cases. *“Hlokozi, Nokweja and Mazabekweni are very high on rape, assault and even attempted murder. The recent murder cases of school children killing each other were reported in these wards. Rape by school children seems to be an everyday thing in these three wards”* **(FGD - Social Worker).**

4.2.3. Based on your experience, what are the most common crimes committed by children in Ixopo area, KwaZulu-Natal?

This question was intended to get an understanding and the awareness of the social workers regarding the problems of child offenders and hopefully give some of the cases that were brought to their attentions.

“Petty theft” (FGD - Social Worker)

“Gang related crimes - You will find groups in the schools and they even work together to do robberies and house breaking and selling stolen goods. You’d find they end up stabbing each other because they will be fighting for the money” (SSI – Guardian)

“Young children have developed a culture of gangsters where they have divided themselves according to groups with some calling themselves Amaroto. These groups end up stabbing each other for a simple reason as that one stays in an area of the opposite gang without any dispute” (FGD - Social Worker).

4.2.4. Based on your experience, what are the causes of child offending in Ixopo area of KwaZulu-Natal Province?

This question was asked to get the causal factors that they know contribute to this phenomenon, since they are the ones who do generic social work and seat in war room and as such they have a more in-depth view of the problems beings raised at ward level.

“Media especially mzansi bioskop like Mlazi gangstars. Television (TV) makes crime and drugs to be cool so if the it’s on TV and looks cool then definitely the youth will imitate, idols and want it” (FGD - Social Worker)

“Lack of leisure activities, apart from school there are no activities that keep children busy like sports to keep children busy. Children are bored” (SSI - Guardian)

Lack of ambition amongst children leading to high rates of school dropout. *“Lack of opportunities as there are no colleges and any institutions that offer training or education after graduating from high school. This makes children to see no reason to continue with school”* (FGD - Social Worker)

“High rate of unemployment in the Ixopo area has many people unemployed and most depend on child support grant as support system for the families” (SSI - Parents)

Dysfunctional families with many children growing up with grandparents. There is a high rate of orphaned and vulnerable children in Ixopo. *“There is a lack of positive role models as most of the children do not have father figures in their lives. If a single parent does not raise children, it’s the grandparents, distant relative or even come from a youth/child headed household. There is no longer that family unity within families”* (FGD - Social Worker)

“Illiteracy amongst families” (FGD - Social Worker)

4.2.5. Based on your experience, who are the role players on responding to child offenders’ in the rural area in Ixopo, KwaZulu-Natal?

This question was asked to ascertain to what extent the respondent know of the role players that are available in the area that deal with child offending.

“Social workers, Police officers and Traditional leaders” (FGD - Social Worker and SSI-Parent)

4.2.6. Based on your experience, what are the typical standards of processing cases of child offenders in Ixopo, KwaZulu-Natal?

This question was asked to get an understanding of the respondents about the standards of processing the cases and their effectiveness in the area.

“Is to report the cases to the nearest police station” (SSI - Guardian)

“In most cases they deal with them within the family and don’t report some cases, especially rape cases” (FGD - Social Worker)

“Some cases are brought to the social workers instead of being taken to the police” (FGD - Social Worker)

4.2.7. Based on your experience, how effective are the current strategies on responding to child offenders in the rural area of Ixopo, KwaZulu-Natal?

This question was intended to understand the availability of the strategies and their effectiveness in the area when it comes to responding to child offenders.

Almost all respondents had the view that the strategies that are in place are not effective at all.

“No, the government has placed good policies in place, but a strategy without resources becomes useless and ineffective” (FGD - Social Worker)

“Akukho nokukodwa okubona kusebenza ngoba kwama social worker afika usuku olulodwa bagcine ngokukhuluma kubesekuphelile, amaphoyisa ahlezi enga bophi athi izingane zincane, mekwenzekile abopha inkantolo iyawachitha amacala. Nezike zithathwe izingane ziyogcinwa lakugcinwa khona abantwana zibuya zixake khakhulu ithemba alisekho impela”. Loosely translated into English (There is nothing that seems to be working because even the social workers only come once and do the talking only and you will never see them again, the police don’t arrest these children because they are young, when they eventually make an arrest the court throws the case out of court. Even the children that have been taken to places of safety always come back with a more rebellious behaviour than before. Therefore, there is no hope anymore) (SSI – Guardians and Parent).

4.2.8. Is there any alternative strategy that can be implemented to respond to child offenders in the rural areas such as Ixopo, KwaZulu-Natal?

This was intended to get the ideas and hopes of the respondents with the strategies that can be used or even the other unutilised strategies that available in the area.

“The government can investigate adding more leisure activities” (FGD- Social Worker)

“The building of colleges and employment opportunities in the rural areas” (SSI - Parent)

“Uhulumeni kumele aqashe osonhlalakahle babebaningi, aphinde abanike izinsiza kusebenza. banomsebenzi omkhulu futhi aza angabenzi ubulungiswa ekusebenzeni kwayo” Loosely translated into English (The government must employ more social workers and give them all the needed resources as their work is too much and they don’t do justice to their work due to the workload and the unpredictability of their work) (SSI – Guardian and Parent)

4.2.9. Based on your experience, what are the challenges on responding to child offenders in the rural area Ixopo KwaZulu-Natal?

This question was intended to get the problems on the ground level and challenges that are faced by all that are meant to respond to child offenders or the challenges that hinders the process of responding to child offenders.

- *“Most community members in Ixopo still associate child offending with witch-craft and ancestors” (FGD - Social Worker)*
- *“Many cases are being thrown out of court because people don’t want to testify” (FGD - Social Worker)*
- *“Social work is no longer about doing quality services and having impact. It is now more driven by targets and numbers without really seeing the difference” (FGDs - Social Worker)*
- *“People don’t want to testify” (SSI - Parent)*
- *“Late reporting of cases and lack of evidence available to actually prosecute” (FGD - Social*

Worker)

- *“Lack of availability of youth care centres (place of safety)” (FGD - Social Worker) and (SSIs - Guardian).*

4.2.10. Describe your experience on the effects of child offenders in the rural area in Ixopo, KwaZulu-Natal?

This question was intended to steam up discussions as to the effects of child offenders in the respondents’ opinions and views.

“Sexual grooming in a sense that cases of rape are not reported, and they are hidden and dealt with within the families. This has affected the community a lot in that those children grow up thinking that having sex at young age is normal and hence raising women who tolerate abuse and don’t report and man who will remain abusive and dominant” (FGDs - Social Worker)

“The high rate of teenage pregnancy and school drop outs leading to a lost generation with no hope for the future” (FGD - Social Worker)

“Ubugebengu bezingane abuzophela isikhathi esiphila kuso sesiyasabisa, ingane ezincane ziyadlwengulana, ziyagwazana kanye nabantu abadala azisabasabi” Loosely translated into English (Child crime will not end since the life that we now live in is a very scary period. Children rape other children, they stab and kill one another, and the children no longer respect the elderly) (SSI – Guardian and parent)

“Akeasekho umuntu osehamba ngokukhululeka emphakathini njenganakuqala umuntu usesaba ngisho ingane yakhe uqobo” loosely translated into English (There is no person who can walk freely in the community like before, a person is now scared even of his or her own child) (SSI – Guardian)

4.2.11. Any other comments you would like to make, regarding the response to child offenders in the rural area in Ixopo in KwaZulu-Natal?

This question was an open question intending to get the feel and any other comments and thought about the response to child offenders.

“Our government has policies in place but the resources to support those policies and ensuring their effective implementations are not available in rural areas” (FGD - Social Worker)

“If our government can look at the practicality and effectiveness of the policies and find ways to ensure that they are implemented thoroughly, and they are helping those in need” (FGD - Social Worker)

“By the look of things child offenders are still going to escalate since those who get arrested don’t get punished and come out and even brag to other children that nothing has been done against them. I believe the punishment to combat this is not enough to scare these children in to living criminal lives completely, instead they find ways to advance even further” (FGD - Social Worker)

“The awareness and prevention programmes that are usually done are not effective since there are no follow ups done after the programs. These programs are now done to push the target then helping those in need and seeing a difference.” (FGD - Social Worker)

“Counsellors or government should do camps for boys and girls and talk to them collectively about the social ills and motivate them to do good and better their lives” (FGD - Social Worker)

“We need the mobile police stations in the deep rural areas because really it is hard to go to town due to unemployment and lack of transport” (SSI - Guardian)

“Mobile libraries, leisure activities such as centres where children can go, learn different sports

to keep them busy and gain interest in something different other than criminal activities” (FGD - Social Worker)

4.2.12 Findings relating to the documentary studies

Twelve official reports from the researcher’s workload, which were six (6) assessment reports for the preliminary inquiry and 6 pre-sentence reports were analysed and the findings were as follows:

The reports that were analysed were all for male children aged between 15 and 17. These children were charged with the most common crimes in the rural area of Ixopo KZN, which were housebreaking and theft, assault GBH and rape. These children were all dropouts with only two who managed to get to high school, the one dropped out after finishing grade 8 and the other after finishing Grade ten (10). It was also identified that only out of the 12 of these children were raised by both parents, single parents raised the rest and grandparents raised the majority. Only one child was the head of the house in a child headed household. Only three (03) children out of the twelve (12) were first time offenders. The rest has been involved in more than one crime in their lifetime. Many of these children have received various interventions but continued with the life of crime. Four (04) of these children have attended the diversion program and completed, but they still offend. The other four (04) have attended the diversion program and completed, but they still offend. Seven (07) have been placed in the youth care centres because of the danger they possessed in the community. One (01) has even been placed in the reformed school, came back, and re-offended. Currently most of these children are in Westville.

The reasons that were identified for their criminal involvement were peer pressure, substance abuse, easy money and when it comes to rape offence they mentioned as well that they believed it was their right since the victims were their girlfriends and as such they consider it not rape. Only one mentioned that he was just experimenting. All these cases were referred to CJC at the preliminary inquiry due to the seriousness of the offences, most were not first-time offenders and some did not take full responsibility of their actions. Out of the six (06) presentence reports four were recommended for imprisonment. Only two were recommended suspended sentences.

4.3. IDENTIFIED STUDY CHALLENGES AND THEMES

As indicated in chapter three that the data were collected in 3 groups, one was a focus group discussion done with 6 social workers employed at the Department of Social Development (Ixopo Service Office). The other interviews were done with the 12 parents or guardians of the children who had conflicted with the law. Data were also collected using 6 assessment reports and 6 pre-sentence reports for children who had been against the law. The questions were asked to these reports as Mathews and Rose (2010:82) that the researcher can also ask questions to the documents in the same way they might ask participants say it.

4.3.1 Theme one: Prevalence of dysfunctional families

The social workers, parents and children that were interviewed all made a great emphasis on the family factors that play and contribute enormously on the behaviours of the children who get in conflict with the law. Amongst other things that led to the above-mentioned theme of dysfunctional families was that around Ixopo the idealistic family unity such as a nuclear family has become minimal and so almost non-existent. Most children grow up with no father figures in their lives. The very common notion is that grandparents in one home are raising children with many cousins and distant cousins. Some of the mothers of those children have long passed on and some left the rural areas to go to the urban areas and look for a better life. They left their children behind and did not look back.

In other families, single parents with no form of support are raising children. Some of these single parents are still in their youth stages and they are illiterate. They lack parenting skills and have no form of support on how to raise a child. Some of these parents can be easily manipulated into believing their children even when they are lying to them. This is because it is easy for them to miss the different stages and development in their children, they do not know how a teenager's mind works and ways to control them. Some children are forced to grow up and take roles of being parents and caring for their siblings at a very young age. This family system is known as

child headed households. These children lack guidance and support. These open room for them to find a fast fix to life and being easily drawn into criminal life to provide for their families.

4.3.2 Theme two: Economic stress directed to the family

The high rate of unemployment plays an important role in the lives of these children. Most families are faced with the struggle for survival. This changes their priorities; yes, the policies place a great emphasis on the ideal way of living where the best interest of the child is of paramount importance. The reality around Ixopo goes against that notion due to unstoppable circumstances of economic starvation in the community. The parents are more worried about how to put food on the table, some even at the very expense of their children. Some children are presented as orphaned to get hold of the foster care grant to support the family. No one seems to care about the stigma and criminal grooming that are involved in lying about the parents being dead when they are alive. Children grow up knowing that to survive you must lie and manipulate your way into life.

4.3.3 Theme three: Lack of ambition among children

The children of Ixopo area do not seem to have any ambition about their lives and future. The lack of resources and role models in the area leads to an increase of children who grow up not seeing any life beyond high school. Most young girls grow up longing to be in their teen stages and get involved with man who can support them and hopefully marry them. Some getting pregnant and getting the Child Support grant seems to be the way of life.

The boys on the other hand look out to the older brothers who left school at an early age and started a life of crime and they are living well in their eyes, which make it easier for them to drop out of school and find themselves into the world of crime. None of the children that were interviewed showed any interest or concern about the fact that they did not even make it to Grade seven (7), to them it was fine. One them even said something in the lines ‘why waste your time going to school when all those who finished school are struggled like everyone else, it makes no difference, maybe unless you are living in the urban areas not in Ixopo’.

4.3.4 Theme four: The loss of spirit of *Ubuntu* from community members (loss of humility amongst people).

Back in the days, it was always believed that it takes a village to raise a child, but this has changed as people no longer look out for each other. Some people have a better stand in life than others, but those who afford and have resources to help turn a blind eye. The community is only happy if its own children are not engaging in dangerous behaviours that can put it in danger. When a neighbour's child is doing wrong, it is not anyone's problem and even if one can help. If our community has not lost the spirit of *Ubuntu*, taking care of the needy, and mostly giving to the less fortunate, maybe the high number of children who give their lives into crime will decrease.

4.3.5 Theme five: Media Influence on the children

The things that are shown to be cool by the media influence our youths in a great way. The children grow up wanting the finer things in life, so they grow up saying that if the media says it is cool than I must have it. Many celebrities have portrayed that being educated does not guarantee you a future. Take the movies that are being played in *lokshin bioskop* like *Mlazi gangster*, which makes the life of crime to be cool. The music videos and alcohol advertisements make use of drugs and alcohol to be cool for the children who have no zeal for a brighter future through education but want the easy way out. One of the parents even mentioned a few celebrities that children often refer to when they are told about stopping the lives of drugs and education. Take *Zodwa Wabantu* she is making approximately R35000.00 a month just by being naked and dancing in clubs. *Babes Woduma* who has been criticised for not even being able speak proper English, but she is making more money and that attracts youths more than the hard life of struggling with education.

4.4. SUMMARY

This chapter gave an overview of the extent and seriousness of child offending. The comments made by the social workers gave a view that more still needs to be done and the parents and guardians do not show any hope for their children in the future. Children have given themselves into crime and drugs and it seems that this type of life is a normalised way of life in Ixopo. The family structures have been broken, it no longer takes a village to raise a child, the community is also broken, and children have lost ambition and see no future outside of the life of crime and truancy. The media has become the role model of our youths today and it is shown that they do not take the good out of the media, but all that is meant to destroy their lives.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1. INTRODUCTION

This chapter presents the summary, conclusion, and the recommendations for future research studies. It gives a summary of the previous chapters. The recommendations and strategies to improve the above identified study challenges and themes. The aim of the study was to attempt to make a significant contribution to a more informed understanding of the socio political and economic contextual factors that contribute to the incidence of child offenders in Ixopo.

The objectives of this study were designed five folded as follows:

- To identify and eliminate socio-economic factors that contributes to child offending in the Ixopo area, KZN.
- To understand the extent of child offenders in Ixopo area, KZN
- To explore the contributory factors of child offenders in Ixopo area, KZN.
- To contribute to the existing knowledge on child offenders in the rural areas of KZN.
- To explore the role and effectiveness of the systems in place to address child offenders in Ixopo area, KZN.

These objectives were accomplished and the summary of how the study unfolded and ensured the accomplishment of these objectives is summarised in this chapter.

5.2. IDENTIFIED STUDY CHALLENGES AND THEMES

5.2.1 Theme 1: Prevalence of Dysfunctional families

5.2.1.1 Recommendations and strategies to improve theme 1

The issue of dysfunctional families was the most discussed topic from social workers, parent or guardian and the children themselves. It was an evident matter that it cannot be avoided or be done away completely. However, protective measures to assist the situation seemed to be the only hope into fighting this epidemic of the loss of structured family as a first guiding institute for children in general. To combat this issue, the researcher makes the following recommendations and strategies to assist the government and all relevant stakeholders in dealing with the matter.

- The issue of lack or absent father figures and men that still make family relations a top priority was identified as the biggest problem leading to dysfunctional families. The researcher recommends that the government and the community at large come together in planting a seed to young men that are growing up.
- There should be ongoing programs designed and implemented specifically for young men as early as Grade one (01). They need to teach them about the importance of being a present father figure. There should be those few adult fathers who had been there for their families and coming together in teaching these young men to grow up and break the cycle of absent father figures by helping them understand the important roles of being a father.
- This can be achieved by bringing back studies in schools such as bible studies that were once provided in schools where pastors will be allowed in schools to come and teach children. These kinds of studies can be utilised for this purpose.
- The government can also formulate policies that focus on young men.

5.2.2 Theme 2: Economic stress to the family

5.2.2.1 Recommendations and strategies to improve theme 2

The government has tried and brought the system of grants and Extended Public Works Programme (EPWP) in assisting those in need and breaking the cycle of poverty.

- The most identified problem in this regard is the issue of fraud and misuse of these grants.
- The government needs to create a very strong monitoring tool supported by policies that enforce criminal charges to those found guilty of this.
- It is a worrying issue that the people who are most deserving of grants are not all getting them and there are known people in the government structures that are known to be selling this service when it is a free government initiative. That is why one finds that those who are most in need end up not getting the grant.
- For example, the researcher came across an issue of an old woman who does not receive old age pension because somebody somewhere is in receipt of that pension using her Identity Document without her knowledge. This has affected the four children who cannot get the grants because they have only the grandmother who can apply on their behalf and the system is failing them.

5.2.3 Theme 3: Loss of Ambition among children

5.2.3.1 Recommendations and strategies to improve theme 3

- Community outreach programmes and awareness need to teach the public about the way we talk to our young children. For instance, telling a growing up child that even if you can wish to be a doctor there is no way that can be achieved as it is for the rich not the poor and rural communities. The making of examples with the youth with metric and have gone nowhere in life is not helping; instead it is killing the dreams and hopes for the better future. We need talks that support the dreams of children in many ways.
- The local government needs to scout the relevant mentors that children can relate with. These mentors can be people who grew up in the neighbourhood and studied and yielded positive results in life. Their visibilities in the eyes of the children can revive the ambition to want to do better and make them see possibilities.
- Encourage children that not all people will make it in life with a university degree but encourages skills and talents of the young people so that they will know that even if they do not make it to university they have something to fall back on.

5.2.4 Theme 4: The loss of spirit of *Ubuntu* from community members

5.2.4.1 Recommendations and strategies to improve theme 4

The recommendation goes out to the local government and other relevant authorities to teach our rural communities that it takes a village to raise a child.

- Neighbours need to know what is happening to their neighbours and offer a hand.
- Motivate people that there might be a family that goes to sleep without eating yet there is a close family by that affords a meal every day.
- There are children who have no adult supervision in their homes, as they are the living in child headed households. The community can expect the government to come and teach those children right from wrong and to see that they are taking a right path to life, yet it is the community and neighbours who can do that for these children.

5.2.5 Theme 5: Media influence on the children

5.2.5.1 Recommendations and strategies to improve theme 5

Media and technology has killed our communities in that children media and cell phones have become their only recreational services. They have nothing else to do.

- Our government has built one stop centres in the rural areas which are not functioning. These structures need to be evaluated and a portion turned into recreation centres that will encourage children to be children.
- Bring back the native games in our communities like three tins and concerts where children are encouraged to display their talents and kept busy.
- The leisure activities can assist a lot by taking the minds of the children from media. Media is there to make money not teaching the children good and motivating them. Bearing in mind that in the rural areas there is limited parental guidance to help monitor what the children watch in TV and do not watch.

5.3. STUDY SUMMARY

This study explored the contributory factors to child offenders in the rural area of Ixopo KZN. The research aims, and objections were given in (chapter one). The researcher studied and analysed relevant literature in (chapter 2). The researcher identified the need to look back into the historical development of the juvenile justice globally and drew back to the development of the juvenile justice in South Africa. The researcher discussed the key transformations made up until this far regarding juvenile justice system. An overview to the legislative framework that have since been developed, like the Constitution of the Republic of South Africa, the UNCRC, the ACRWC and the Child Justice Act which gave an overview on the procedures and strategies available in dealing with the issue of child offenders, such as the assessment of the child, diversion programs and pre-trial and detention of children. This was done in order to give an in-depth knowledge to the body of the study and direction to achieving the goals and objectives of the study.

In achieving the set goals, the study adopted a qualitative approach. An in-depth knowledge and understanding to the research methodology that was followed was given in (chapter three). It gave the research design and explained it into detail. The researcher gave a description of the location of the study, study population consisting of 6 social workers, 12 children who have been against the law and 12 guardians and parents of the children who have been in conflict with the law. The sample size and procedure were given in detail. The methods of data collection that were used were Documentary analysis, semi-structured interviews and focus groups. Methods of data analysis were also discussed as well as ethical considerations. Through the discussions and presentations of findings which were given in (chapter 4), the researcher was then able to give the identified study challenges and themes and discussed them thoroughly.

5.4. CONCLUSION

The goals of the study were reached through the qualitative research approach. The findings of the study also revealed that the scourge of child offenders is and still will be the biggest challenge to our South African country as a whole. This study provided a different view and a very important fact that even though it may seem that the problem of child offenders has been overdone in many surrounding areas, a big gap still exist specially in the rural areas where some of the factors mentioned above are still overlooked and these areas remain neglected.

The problem may be common to many, but the circumstances and related issues differ. This is why the study showed great importance as it opened eyes to the researcher and hopefully to many that have a vested interest in achieving the goals set out in our constitution, which creating a crime free generation. The researcher through this study hopes to reach as many relevant stakeholders by adding in the board of knowledge. In conclusion, the researcher hopes to pave a way to the betterment of the lives of our future leaders which are our young children.

The findings and recommendations made in this study can positively contribute to the board of knowledge and inform effective strategies and tools to fight this pandemic.

5.5. FUTURE RESEARCH STUDIES

This research study only focused on a small group within the rural area of Ixopo. It was identified that such research has not been done in many rural setting but the ones that showed to be similar studies were done in urban areas. It is true that the life styles of the rural areas and urban areas are not the same. Therefore, the findings and recommendations of the urban areas cannot be applicable to the rural setting.

- More qualitative studies need to be done with larger groups in the rural communities to get an in-depth understanding of the problem and hopefully inform relevant and effective intervention.
- Comparative studies need to be done between rural communities to help inform development of policies and a collective approach to the problem.

- The evaluation of the existing strategies and programs needs to be done in order to identify gaps and effectiveness of these programs.
- A research study with other relevant stakeholders such as the police officers, tribal authorities, NGOs, NPOs and Faith Based Organisations (FBOs) needs to be undertaken.

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ANNEXURE A: INTERVIEW SCHEDULE GUIDE



1. Based on your experience, do you consider child offenders in the rural area of Ixopo KwaZulu-Natal (UKZN) to be more widespread in the last three years (2014-2016)? (Please elaborate on your answer).
2. Based on your experience, which wards in the Ixopo KZN area have the high rate of child offenders?
3. Based on your experience, what are the most common crimes committed by children in Ixopo area, KZN?
4. Based on your experience, what are the causes of child offending in Ixopo area of KZN Province?
5. Based on your experience, who are the role players to respond to child offenders in the rural area in Ixopo, KZN?
6. Based on your experience, what are the typical standards of processing cases of child offenders in Ixopo, KZN?
7. Based on your experience, how effective are the current strategies on responding child offenders in the rural area of Ixopo, KZN?
8. Is there any alternative strategy that can be implemented to respond to child offenders in the rural areas such as Ixopo, KZN?
9. Based on your experience, what are the challenges on responding to child offenders in the rural area Ixopo KZN?
10. Describe your experience on the effects of child offenders in the rural area in Ixopo, KZN?
11. Any other comments you would like to make, regarding the response to child offenders in the rural area in Ixopo in KZN?



ANNEXURE A: UHLA LWEMIBUZO

1. Ngokolwazi lwakho (isipiliyoni), ngabe ubona ubugebengu bezingane endaweni yasemakhaya aseXopo KwaZulu-Natali bande kakhulu keleminyaka emithathu edlule (2014-2016)? (sicela uthi ukulanda kabanzi kwimpendulo yakho).
2. Ngokolwazi lakho (isipiliyoni), eziphi izindawo/izigodi zendawo yaseXopo KZN ezine zinga eliphezulu kakhulu lobugebengu bezingane?
3. Ngokolwazi lwakho (isipiliyoni), eziphi izinhlobo zobugengu ezande kakhulu nezijwayeleke ukwenzeka njalo ezenziwa izingane endaweni yaseXopo, KZN?
4. Ngokolwazi lakho (isipiliyoni), kungabe yizimbangela ezenza ubugebengu bezingane endaweni yaseXopo esifundazweni saKwaZulu-Natali?
5. Ngokolwazi lakho (isipiliyoni), obani ababambe iqhaza ekulweni nobugebengu bezingane endaweni yaseXopo KZN?
6. Ngokolwazi lakho (isipiliyoni), eziphi izindlela ezijwayelekile zokwenza amacala ezingane eXopo, KZN?
7. Ngokolwazi lakho (isipiliyoni), ngabe zisiza ngayiphi indlela, izindlela ezibekelwe ukubhekane nobugebengu bezingane endaweni yaseXopo, KZN?
8. Ingabe zikhona yini izindlela obona ukuthi zingasetshenziswa ukubhekana nobugebengu bezingane ezindaweni zasemakhaya ezifana neXopo, KZN ngaphandle kwalezi ezikhona manje?
9. Ngokolwazi lakho (isipiliyoni), ingabe yiziphi izingqinamba okanye izinselelo ezibakhona ekulwisaneni nobugebengu bezingane endaweni yasemakhaya aseXopo, KZN?

10. Chaza kabanzi ngolwazi nesipiliyoni onaso ngezinsela ezibangwa ubugebengu bezingane endaweni yasemakhaya aseXopo, KZN?
11. Kungabe kukhona okunye ofisa ukukudalula noma ukukwengeza mayelana nezindlela zokunhekelela ubugebengu bezingane endaweni yaseXopo, KZN?

**ANNEXURE B: LETTER TO REQUEST TO CONDUCT RESEARCH WITH
DEPARTMENT OF SOCIAL DEVELOPMENT OFFICIALS**



Dear Service Office Manager

**REQUEST FOR PERMISSION TO CONDUCT RESEARCH IN THE DEPARTMENT OF
SOCIAL DEVELOPMENT**

I am Thule A.Q Sithole a Masters candidate from the Department of Criminology and Forensic Studies at the University of KwaZulu-Natal (UKZN). The research I wish to conduct for my master's dissertation involves "the exploration of child offenders in the rural area of Ixopo in KwaZulu-Natal Province". This study will be conducted under the supervision of Dr. Witness Maluleke (UKZN).

I am hereby requesting your permission to approach four social workers in your office to do focus group discussions with them on their experiences in working with child offenders. The cooperation of your workers will assist me with a sound knowledge of the topic and finishing the dissertation.

Upon completion of the study, I undertake to provide you with the full dissertation on request. The confidentiality of the members who will form part of the study and the department is assured as they will remain anonymous.

Should you require further clarity you can contact my supervisor Dr. W Maluleke on this number 031 260 1061 or email him: MalulekeW@ukzn.ac.za

Your cooperation will be greatly appreciated.

Yours sincerely

Thule Sithole

Masters Criminology and Forensic Studies

ANNEXURE C: CONSENT LETTERS USED FOR DATA COLLECTION

C1: INFORMED CONSENT



Dear Participant

I am Thule Sithole, a Master's candidate from the Department of Criminology and Forensic Studies at the University of KwaZulu-Natal. In order to complete this degree, I am conducting research on child offenders in the rural area of Ixopo in KwaZulu-Natal Province. The main aim of the study is to explore child offenders in the rural area of Ixopo KwaZulu-Natal Province.

Your co-operation will assist me in reaching my aim. Furthermore, the knowledge and information gained will help make recommendations in dealing with child offenders especially in the rural areas. It will also help to inform relevant programs needed in the rural areas with regards to child offenders. To gather the information needed for the research, the researcher would like to ask questions.

Please note that:

- Your confidentiality is guaranteed as your inputs will not be attributed to you in person, but reported only as a population member opinion.
- The interview may last for about an hour.
- Any information given by you cannot be used against you, and the collected data will be used for purposes of this research only.
- Data will be stored in secure storage and destroyed after 5 years.

- You have a choice to participate, not participate or stop participating in the research. You will not be penalized for taking such an action.
- Your involvement is purely for academic purposes only, and there are no financial benefits involved.
- If you are willing to be interviewed, please indicate (by ticking as applicable) whether or not you are willing to allow the interview to be recorded by the following equipment:

Audio equipment (**Mark with X**)

Willing	Not willing

I can be contacted at: 0786315837 or thulesithole1@gmail.com

Should you require further clarity you can contact my supervisor Dr. W Maluleke on this number 031 260 1061 or email him: MalulekeW@ukzn.ac.za.

You can also Contact the Research Office:

P. Mohun

HSSREC Research Office.

Contact Number: 031 706 4557 Email: mohunp@ukzn.ac.za

DECLARATION

I..... (Full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project; 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.

SIGNITURE OF PARTICIPANT

DATE

.....

.....

C1: INCWADI YEMVUMO NOLWAZI



Isikole Se-sayensi yezenhlalo

Ikolishi Lezobuntu

Inyuvesi ya KwaZulu-Natal

Esigcemeni sase Howard College

Mhlanganyeli Othandekayo

Igama lami uThule Sithole, ngingumfundi ofundela Ezobugebengu Ngesiqu esiphezulu, eNyuvesi yaseKwaZulu Natali, eHoward College, eNingizimu Afrika.

Nginogqozi lokufunda ngobugebengu bezingane endaweni yase Xopo KwaZulu-Natali. Ukuze ngithole leminingwane, nginesifiso sokunibuza imibuzo embalwa.

Ukubambisana nani kuloluphenyo kungasiza kakhulu ekutholeni lonke ulwazi engilidingayo. Ukuze ngikwazi ukwenza ukudlulisa umbono wami ngokusebenzisana nezingane ezenza ubugebengu ezindaweni sasemakhaya.

Ngicela niqaphele ukuthi:

- Imfihlo yakho iqinisekisiwe ngoba ozokufaka ngeke kuchasiselwe kuwe mathupha, kodwa izobikwa njengeline ilunga labantu.
- Ukuxoxisana kuzothatha isikhathi esingange hora, kungenzeka kuhlukaniswe, lokhu kuya ngokuthi wena ufuna kuphi.
- Noma imiphi imininingwane osinika yona ayikwazi ukusetshenziswa kuwe, futhi okuqokelelilwe kuzosetshenziselwa lolu cwaningo kuphela.

- Okuqokeleliwe kuzobekwa endaweni evikelekile mase iyabhujiswa emva kweminyaka emihlanu.
- Unelungelo lokukhetha ukubamba iqhaza, ukungalibambi iqhaza noma ukuyeka ukubamba iqhaza kucwaningo. Angeke uhlawuliswe ngokuthatha lesi sinyathelo.
- Lolucwaningo ludalelwe ukuthi liqoqe imininingwane ngezimo ezinomthelela ebugebengweni bezingane ezindaweni zasemakhaya.
- Ukuzibandakanya kwakho, kuyingxenye yenhloso yezemfundo kuphela futhi azikho izinzuzo ngokwezimali ezithintekayo.
- Uma uzimisele ukuthi ungabuzwa ngaloludaba, cela ukhombise (ngokuthikha lapho kusebenza khona) ukuthi uyavuma noma awuvumi ukuthi inkulumo yakho iqophwe kusetshenziswa imishini elandelayo:

Ngiyavuma

Angivumi

Imshini yokuqhophisa inkulumo

Ungaxhumana nami:

Imeyili: thulesithole1@gmail.com

Inombolo Yocingo: +27 78 631 5837

Umphathi wami uDokotela W Maluleke otholakala Emnyangweni Wezobugebengu nemfundo ye-Phorensic, eNyuvesi Ya KwaZulu-Natali, Howard College.

Imininingwane Yokuxhumana naye: Imeyili: MalulekeW@ukzn.ac.za

Inombolo Yocingo: 031 260 1061

Ungaxhumana nehhovisi lezocwaningo:

P. Mohun

HSSREC Research Office.

Ucingo: 031 706 4557 Imeyili: mohunp@ukzn.ac.za

Isivumelwano

Mina..... (amagama aphelele amhlanganyeli) ngalamazwi ngiyaqinisekisa ukuthi ngiyaqonda okuqukethwe kule kulencwadi nobunjalo baloluncwaningo,

futhi ngiyavuma ukuba yingxenye yalolucwaningo.

Ngियाqonda ukuthi ngikhululekile ukuhoxa kulolucwaningo nganoma isiphi isikhathi uma ngithanda.

UKUSAYINA KOMHLANGANYELI

USUKU

.....

.....

ANNEXURE C2: CHILD ASSENT DOCUMENT



Dear Participant

PROJECT TITLE: An exploration of child offenders in the rural area of Ixopo in KwaZulu-Natal Province

INVESTIGATOR: Thule Sithole, a Master's candidate from the Department of Criminology and Forensic Studies at the University of KwaZulu-Natal

I am conducting research on child offenders in the rural area of Ixopo in KwaZulu-Natal Province. The main aim of the study is to explore child offenders in the rural area of Ixopo KwaZulu-Natal Province.

A research study is a way to learn more about people. If you decide that you want to be part of this study you will be asked to be interviewed about your experiences on child offenders.

There are some things about this study that you should know. To gather the information needed for the research, the researcher would like to ask questions. Some questions will be personal and sensitive.

Please note that:

- Your confidentiality is guaranteed, as your inputs will not be attributed to you in person, but reported only as a population member opinion.
- The interview may last for about an hour.
- Any information given by you cannot be used against you, and the collected data will be used for purposes of this research only.
- Data will be stored in secure storage and destroyed after 5 years.

- You have a choice to participate, not participate or stop participating in the research. You will not be penalised for taking such an action and your parents know about the study.
- Your involvement is purely for academic purposes only, and there are no financial benefits involved.
- If you are willing to be interviewed, please indicate (by ticking as applicable) whether or not you are willing to allow the interview to be recorded by the following equipment:

	Willing	Not willing
Audio equipment		

I can be contacted at: 0786315837 or thulesithole1@gmail.com

Should you require further clarity you can contact my supervisor Dr. W Maluleke on this number 031 260 1061 or email him: MalulekeW@ukzn.ac.za

You can also Contact the Research Office:

P. Mohun

HSSREC Research Office.

Contact Number: 031 706 4557 Email: mohunp@ukzn.ac.za

DECLARATION

I..... (Full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project; 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.

SIGNITURE OF PARTICIPANT

DATE

.....

.....



ANNEXURE C2: INCWADI YEMVUMO NOLWAZI LWEZINGANE

Isikole Se-sayensi yezenhlalo

Ikolishi Lezobuntu

Inyuvesi ya KwaZulu-Natal

Esigcemeni sase Howard College

Mhlanganyeli Othandekayo

UCWANINGO: UKUCWANINGWA NGOBUGEBENGU BEZINGANE ENDAWENI YASE XOPO KWAZULU-NATALI

UMCWANINGI: Thule Sithole, umfundi ofundela Ezobugebengu Ngesiqu esiphezulu, eNyuvesi yaseKwaZulu Natali, eHoward College, eNingizimu Afrika.

Nginogqozi lokufunda ngobugebengu bezingane endaweni yase Xopo KwaZulu-Natali. Inhloso yokwenza lolucwaningo ukufunda kabanzi ngobugebengu bezingane nezimo ezenza izingane zizibandakanye ebugebengwini, ezindaweni zasemakhaya eXopo KwaZulu-Natali.

Loluhlobo locwaningo luyindlela yokwazi kabanzi ngabantu. Uma uqoka ukuba yingxenyane yalolucwaningo uzocelwa ukuba ubuzwe imibuzo. Eminye yaleyo mibuzo kungenza ngephathelene nempilo yakho uqobo futhi izwela kuwe.

.

Ngicela niqaphele ukuthi:

- Imfihlo yakho iqinisekisiwe ngoba ozokufaka ngeke kuchasiselwe kuwe mathupha, kodwa

izobikwa njengelinye ilunga labantu.

- Ukuxoxisana kuzothatha isikhathi esingange hora, kungenzeka kuhlukaniswe, lokhu kuya ngokuthi wena ufuna kuphi.
- Noma imiphi imininingwane osinika yona ayikwazi ukusetshenziswa kuwe, futhi okuqokelelilwe kuzosetshenziselwa lolu cwaningo kuphela.
- Okuqokeleliwe kuzobekwa endaweni evikelekile mase iyabhujiswa emva kweminyaka emihlanu.
- Unelungelo lokukhetha ukubamba iqhaza, ukungalibambi iqhaza noma ukuyeka ukubamba iqhaza kucwaningo. Angeke uhlawuliswe ngokuthatha lesi sinyathelo. Nabazali bazisiwe ngalolucwaningo.
- Lolucwaningo ludalelwe ukuthi liqoqe imininingwane ngezimo ezinomthelela ebugebengweni bezingane ezindaweni zasemakhaya.
- Ukuzibandakanya kwakho, kuyingxenye yenhloso yezemfundo kuphela futhi azikho izinzuzo ngokwezimali ezithintekayo.
- Uma uzimisele ukuthi ungabuzwa ngaloludaba, cela ukhombise (ngokuthikha lapho kusebenza khona) ukuthi uyavuma noma awuvumi ukuthi inkulumo yakho iqophwe kusetshenziswa imishini elandelayo:

Ngiyavuma	Angivuma
Imshini yokuqhophisa inkulumo	

Ungaxhumana nami:

Imeyili: thulesithole1@gmail.com

Inombolo Yocingo: +27 78 631 5837

Umpathi wami uDokotela W Maluleke otholakala Emnyangweni Wezobugebengu nemfundo ye-Phorensic, eNyuvesi Ya KwaZulu-Natali, Howard College.

Imininingwane Yokuxhumana naye: Imeyili: MalulekeW@ukzn.ac.za

Inombolo Yocingo: 031 260 1061

Ungaxhumana nehhovisi lezocwaningo:

P. Mohun

HSSREC Research Office.

Ucingo: 031 706 4557 Imeyili: mohunp@ukzn.ac.za

Isivumelwano

Mina..... (amagama aphelele amhlanganyeli) ngalamazwi ngiyaqinisekisa ukuthi ngiyaqonda okuqukethwe kule kulencwadi nobunjalo baloluncwaningo, futhi ngiyavuma ukuba yingxenye yaloluncwaningo.

Ngiyaqonda ukuthi ngikhululekile ukuhoxa kulolucwaningo nganoma isiphi isikhathi uma ngithanda.

UKUSAYINA KOMHLANGANYELI

USUKU

.....

.....

ANNEXURE D: DEPARTMENT OF SOCIAL DEVELOPMENT FINAL APPROVAL LETTER



FAX	: (031) 8341071	IXOPO OFFICE
Telephone / Udingo / Telefon	: (031) 8341668/9	Plot 11/12, Shop U7, Private Bag X503
Enquiries / Imibuzo / Aankwag	: Mrs PB Ngcobo	IXOPO
E-mail	: ixopo@knsoddev.gov	3276
Date	: 22 May 2017	

Dear: Student

CONSENT TO CONDUCT RESEARCH IN THE DEPARTMENT OF SOCIAL DEVELOPMENT

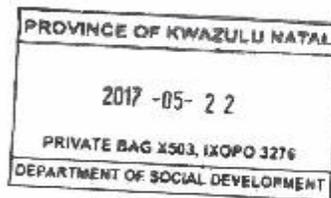
This letter serves to notify you that your request to conduct research with the social workers of Ixopo Service Office has been received with great pleasure. Therefore, on behalf of the management I hereby give permission for you to proceed with your research. Looking forward to learning about the outcome of your research.

Kind Regards

Mrs PB Ngcobo

Service Office Manager

Ixopo Service Office



ANNEXURE E: UNIVERSITY OF KWAZULU-NATAL FINAL ETHICS APPROVAL



23 November 2017

Ms Thule AQ Sithole 207502109
School of Applied Human Sciences – Criminology and Forensic Studies
Howard College Campus

Dear Ms Sithole

Protocol reference number: **HSS/0765/017M**
Project Title: **An exploration of child offenders in the rural area of ixopo In KwaZulu-Natal Province.**

Full Approval – Full Committee Reviewed Protocol

In response to your application received 12 June 2017, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol, has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

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.

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

Yours faithfully


.....
Dr Shantika Naidoo (Deputy Chair)
Humanities & Social Sciences Research Ethics Committee

/pm

cc Supervisor: Dr Wilness Mafuleke
cc Academic Leader Research: Dr Jean Steyn
cc School Administrator: Ms Ayanda Ntuli

Humanities & Social Sciences Research Ethics Committee
Dr Shantika Singh (Chair)

Westville Campus, Govan Mbeki Building
Postal Address: Private Bag 354001, Durban 4000

Telephone: +27 (0) 31 260 3582/93804467 Facsimile: +27 (0) 31 260 4606 Email: shantika@ukzn.ac.za / kwuzssec@ukzn.ac.za / mothumane@ukzn.ac.za
Website: www.ukzn.ac.za


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