

**FACTORS THAT HINDER THE UTILISATION OF INTERMEDIARY SOCIAL
WORK SUPPORT SERVICE TO ALLEGED CHILD OFFENDERS IN MOPANI
DISTRICT, LIMPOPO PROVINCE**

BY

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DECLARATION

I, Kelebogile Precious Makwala declare that the dissertation hereby submitted to the University of Limpopo for the degree, Master of Social Work is my work in my design and execution. I also swear that this work has not been previously submitted by me or someone else for a degree at this or any other University and that all material contained herein have been duly acknowledged using complete references.

Singed: 

Date: 07/09/2022

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ABSTRACT

The study concentrated on factors that hinder the utilisation of intermediary social work support services to alleged child offenders in Mopani District. The study aimed to assess knowledge from probation officers in respect of awareness, utilisation and effectiveness of referral to intermediary services, as well as the level at which they can refer alleged child offenders to an intermediary. The study employed the qualitative research design. The Integrated Service model was employed to understand the utilisation of intermediary social work support services to alleged child offenders. Purposive sampling was used to obtain nine participants who were probation officers. Ethical clearance was obtained from the University of Limpopo and gatekeepers approval from the Department of Social Development. Participation was voluntary and no one was forced to participate. The findings of the study revealed that there are no clear guidelines or legislation for probation officers to guide them on how and when to recommend the alleged child offenders to the intermediary services. The study also revealed that section 158(2) of the Criminal Procedure Act 51 of 1977 is not effective to alleged child offenders but rather is used to child victims.

Therefore, probation officers must have understanding of the role of an intermediary, process and referral when conducting assessments. As a result, the study recommends that the probation officers should come to the developmental level of the child, speak the language of the child and follow up assessment interviews as opposed to informed allegation interviews. However, training is also recommended to all probation officers about the Criminal Procedure Act 51 of 1977 and amendments of the Child Justice Act 75 of 2008 with the inclusion of intermediary services to alleged child offenders.

ABBREVIATIONS AND ACRONYMS

CCTV	Closed Circuit Television
CPA 51 of 1977	Criminal Procedure Act
CJC	Child Justice Court
CJA 38 of 2005	Child Justice Act
DSD	Department of Social Development
SALC	South African Law Commission
SASA Act 84 of 1996	South African Schools Act
P.O	Probation Officers
LPREC	Limpopo Provincial Research Ethics Committee
QDA	Qualitative Data Analysis
CSP	Computer Software Package
ISDM	Integrated Service Delivery Model

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CHAPTER ONE

GENERAL ORIENTATION OF THE STUDY

1. BACKGROUND AND MOTIVATION

As stipulated, chapter 2 of the Constitution of the Republic of South Africa Act No. 108 of 1996 guarantees, in all aspects, the safety and protection of children (South Africa, 1996). Moreover, the Criminal Procedure Act No.51 of 1997 in Section 170A as amended, affords for an appointment of an intermediary for children who testify in criminal proceedings. Nonetheless, Section 170A subsection 4 (a) of the Criminal Procedure Act No. 51 of 1997 as amended, states that an intermediary is a competent and qualified individual, including, amongst others, psychologists, medical practitioners, family counsellors, youth and child care workers, social workers and educators whose role is to create a child-friendly environment which enables free participation during court proceedings and further shields the child from hardships that might be posed by the court of law.

The need for an intermediary when a child has to testify during the criminal proceedings was presented to the South African justice system as a result of recommendations from the South African Law Commission (SALC) working paper (Fambasayi, 2016). This development was informed by the fact that the assessment of an alleged child offender by any professional should be carried out in a manner that will facilitate the recognition that some of the children who are expected to testify in court may not be in a position to narrate events that occurred and comprehend full details of the crime committed (Bradl, 2014). An alleged child offender cannot be heard well where the environment is hostile, intimidating, insensitive or unbecoming for his or her age. Hence it is important to utilise an intermediary (social worker) who will apply specialised skills to give support to the alleged child offender, then make the proceedings less hostile, less insensitive and less intimidating (Keenan, Rush & Cheeseman, 2015).

The above statement follows Section 158 (2) (a) of the Criminal Procedure Act No. 51 of 1997, which stipulates that the rights of a suspected child offender are there to provide evidence through the provision of closed-circuit television (CCTV) live stream or similar electronic media. The study, therefore, focuses on exploring factors that hinder the utilisation of intermediary social work support amenities for children who are suspected of being in conflict with the law.

The researcher has been employed as a court intermediary from 2015 by the Department of Justice (in the Mopani Region) until the time of the conclusion of this study. She has observed that in court, an intermediary service is mostly understood as supportive and applicable only to child victims of a crime instead of recommending the same service for alleged child offenders. Children in conflict with the law are still subjected to proceedings held in a Child Justice Court, irrespective of the emotional and psychological harm that the environment might pose to the child.

1.1 DEFINITION OF KEY CONCEPTS

1.1.1 An intermediary

In terms of Section 170A (4) (a) of the Criminal Procedure Act No. 51 of 1977 as amended, an intermediary is defined as a qualified person, including, amongst others, a child and youth care worker, an educator, a medical practitioner, a psychologist and a social worker whose role is to create a child-friendly environment which enables free participation during court proceedings, and further shields the child from hardships that might be posed by the court of law. In this study, an intermediary was defined as a social worker whose role is to create a child-friendly environment that enables free participation during court proceedings and further shields the child from hardships that might be posed by the court of law. This definition was adopted with the exclusion of other professions.

1.1.2. Intermediary services

Following section 170A (1) of the Criminal Procedure Law No. 51 of 1977, as amended, intermediary services are defined as a procedure considered in the juvenile court process. The physical or psychological age of eighteen (18) can cause undue mental stress or pain if you can testify in court in such a lawsuit without hiring a capable person as an intermediary (Fambasayi, 2016). This procedure is designed to allow such witnesses (including child victims or alleged minor offenders) to provide evidence through the use of intermediary services. This study adopted this definition.

1.1.3. Social Work Support

Social workers offer support to individuals and their families when they encounter difficulties and challenges. The support provided ensures that vulnerable people, including children and adults, are secured from harm (Cooper, 2013). The role of social workers is to provide services to improve people's lives by maintaining professional relationships and providing guidance and advocacy on behalf of individuals. This definition was adopted and the usage of support and service was used interchangeably.

1.1.4. Alleged child offender

According to the Child Justice Act No. 75 of 2008 (CJA) and Terblanche (2012), a presumed minor refers to any person under the age of 18 who has been in contact with the juvenile court on suspicion, or accused of committing a crime.

1.1.5 Child witness

Chapter one of the Child Justice Act No 75 of 2008:24 describes “a child witness as an individual below the age of 18 who is a victim of a crime or having witnessed the incident, irrespective of his or her role in the offence”.

1.1.6 A Probation Officer (PO)

Chapter 2 (1) (2) of the Probation Services Amendment Act No. 35 of 2002 defines a Probation Officer as an officer of every court established in the Magistrates' Courts Act No. 90 of 1993. Furthermore, in terms of Chapter 2(3) of the same Act, PO is defined as a social worker appointed as a "probation officer" under the Children's Act No. 38 of 2005, and the Probation Services Amendment Act No. 35 of 2002. POs work in the field of crime prevention. They are charged with dealing with suspected juvenile offenders, supporting and caring for crime victims, and working with families and communities. The researcher has adopted the definition in the Probation Services Act of 1991, 2002 and the Children's Act of 38 OF 2005.

1.1.7. Closed Circuit Television (CCTV)

Section 158, paragraph 2 (a) of the Criminal Procedure Act No. 51 of 1997 defines Closed Circuit Television (CCTV) as a device that is attached to the private testifying room and the main court through a monitor that is installed on the court bench. During the process of court proceedings, when the child provides evidence to the court with the assistance of an intermediary, a CCTV set enables people in the court to hear and view the child and the intermediary from the private testifying room (Department of Justice and Constitutional Development, 2015). The procedure of giving evidence is live, which means that members of the court will see and hear the intermediary and the child as they communicate evidence to a court.

1.1 8 Child Justice Court (CJC)

Chapter one of the Child Justice Act No. 75 of 2008 defines a Child Justice Court (CJC) as any court that deals with criminal related matters that have been committed by minor children below the age of 18 years. The CJC has been established to deal with bail applications, trial, plea and sentencing of an alleged child offender.

2 PROBLEM STATEMENT

Bekink (2017) stipulates that children who are suspected to have committed an offence need to be supported by an intermediary when they testify in a Child Justice Court. Thus, the Criminal Procedure Act No. 51 of 1997 (South Africa, 1997) as amended provides that an alleged child offender should be assisted by the intermediary to prevent mental stress and suffering that may occur when giving testimony in court. The use of an intermediary is frequently connected with child witnesses who are victims of crime than for child offenders who are suspected of committing a crime (Jordan, 2014). Equally, alleged child offenders require the support of the intermediary when they give evidence in court in terms of the Criminal Procedure Act No. 51 of 1977, Section 170A. In terms of section 158 (2) of the Criminal Procedure Act No.51 of 1977 as amended, a child witness, a victim and an alleged child offender are supposed to be assisted through closed-circuit television (CCTV), which is defined as a device attached to a private testifying room and the main court, which enables people in the court to hear and view the intermediary and the child as they give evidence live from the private testifying room (Department of Justice and Constitutional Development, 2015). Section 158(2) of the Criminal Procedure Act 51 of 1997 as amended, mandates that, all children who testify in child justice court, irrespective of whether a child witness or offender, must utilise the usage of the CCTV. However, the practice excludes the child offender from benefiting from the usage of the CCTV.

Probation officers are supposed to recommend intermediary support for alleged child offenders. The adversarial nature of court proceedings is regarded as another major stumbling block for the alleged child offender to give evidence in court because it allows deep cross-examination of the child (Muller & Hollely, 2011; Gulstad, 2016). The absence of utilisation of intermediary social work support service to alleged child offenders exposes the child to various difficulties in criminal justice processes, and therefore deprives the child's right to provide evidence in a "child's friendly" and non-threatening environment (Freiburger & Burke, 2010; Shook, 2014). The problem that the researcher investigated was why alleged child offenders do not receive intermediary support when testifying in court. Intermediary support is essential for child witnesses, and equally so for alleged child offenders.

An alleged child offender needs this service to reduce stress, fear and frustration that they experience when they give evidence in a Child Justice Court.

3 AIM AND OBJECTIVES OF THE STUDY

3.1 Aim of the study

The study aimed to explore factors that hinder the utilisation of intermediary Social Work support services to alleged child offenders in Mopani District.

3.1.2. Objectives of the study

The following are the objectives of the study

- To determine probation officers' understanding of the utilisation of intermediary support services towards alleged child offenders;
- To ascertain the level at which probation officers recommend intermediary services for alleged child offenders;
- To establish views of probation officers regarding the alleged child offender's participation in the proceedings within the Child Justice Court;

4. SIGNIFICANCE OF THE STUDY

Research needs to be useful by contributing either theoretically or methodologically. The relevance to practice and/or policy grounds should find worth and meaning in the research, which should be useful to the target group. The research has provided guidelines on the assessment of child offenders and the relevance of recommendations for intermediary services. The results of the study on factors that hinder the utilisation of intermediary services by Probation Officers to alleged child offenders have provided the basis for establishing if the Child Justice Act and the Criminal Procedure Act are implemented correctly. The study has also identified the strengths and weaknesses of Probation Officers regarding knowledge of intermediary services.

5. OUTLINE OF THE STUDY

CHAPTER 1: INTRODUCTION

This chapter has focused on general orientation to the study, key concepts, and preliminary and literature review. Aspects such as aims and objectives as well as the significance of the study were discussed.

CHAPTER 2: THEORETICAL FRAMEWORK THAT UNDERPINS THE STUDY

Chapter 2 of this study consists of the theory which guided the study.

CHAPTER 3: LITERATURE REVIEW

Chapter 3 discusses the literature review in line with the study aim and objectives as well as the research problem of the study. These are discussed in the context of the study.

CHAPTER 4: RESEARCH METHODOLOGY

Chapter 4 The research methodology used in the study. This includes research design, data collection, sampling and limitations of the study.

CHAPTER 5: DATA PRESENTATION, INTERPRETATION AND ANALYSIS OF THE FINDINGS

Chapter 5 deals with the data analysis, presentation and interpretation of the study findings.

CHAPTER 6: SUMMARY, RECOMMENDATION AND CONCLUSION

Chapter six includes the recommendations, summary and conclusion of the study. The next chapter will deal with the theoretical framework.

CHAPTER TWO

THEORETICAL FRAMEWORK OF THE STUDY

2.1 INTRODUCTION

The previous chapter dealt with the introduction and the outline of the study. This chapter introduces the important section which deals with the theory that underpins the study employed to assess factors that hinder the utilisation of intermediary social work support to alleged child offenders in Mopani District. The integrated service delivery model was used to navigate the study.

2.2 BACKGROUND TO THE THEORETICAL FRAMEWORK

A model may be construed as a theory applied or a theory in application. The concept “theory”, according to Gabriel (2013), is formulated to explain, predict and understand phenomena, and in many cases, to challenge and extend existing knowledge within the limits of critical bounding assumptions. The theoretical framework introduces and describes the theory that explains why the research problem exists.

In this study, the researcher used the South African Constitution, Act 108 of 1996 which contains the Bill of Rights, which provides not only basic human rights, but also social and economic rights. The Constitution, notably Section 27(1) (C), also provides for the right of access to appropriate social assistance for those unable to support themselves, the vulnerable and their dependants. The South African government is obliged to meet the basic human needs and accord these needs to the status of basic human rights. In this regard, the study used the integrated service delivery model to pursue the aim of the study.

2.3. INTEGRATED SERVICE DELIVERY MODEL

In 1994, the social welfare fraternity delivery thought the social work profession was neglected because of its historical focus on social security. Consequently, the DSD developed an integrated service delivery model (IDSM) to deal with the neglected social welfare service delivery (Department of Social Development, 2005). The IDSM was established as a national comprehensive framework to set out the nature, scope and level of social service provision in South Africa. In addition, the IDSM forms the

basis for the development of appropriate norms and standards for social service delivery. The model was developed to respond to the provision of section 27(1) (c) of the Constitution of South Africa, Act 108, 1996 for the provision on the right to access intermediary services by alleged child offenders.

The desired outcome of the service delivery model is the implementation of a comprehensive, efficient, and effective and quality service delivery system, which will contribute to a self-reliant society, and which is based on the principles of Batho Pele (IDSM, 2005). The white paper for social welfare (1997) and population policy (1998) provides the overarching policy framework for the department. The distinctive nature of statutory services (probation services) and intermediary services calls for the options for the integration of these two intervention services to address the need for alleged child offenders to utilise intermediary support service

A service delivery model is a standard for social service provision with the content of a developmental paradigm (Department of Social Development, 2005). The model affords a clear indication of factors that are either present or absent and therefore, enable a service provider to develop an intervention that should focus and suggest what the outcome of those interventions will look like. A service delivery guideline was formulated by the Department of Social Development in 2005. Further, the guideline, which was adopted as a model, was launched by Dr Jean Benjamin who was the Deputy Minister of Social Development under Minister Zola Skweyiwa.

One of the key principles of a service delivery model is that of universal access. This principle outlines that those services should be accessible to all vulnerable groups, and no individual or group should be deprived of access either because of lack of resources or lack of knowledge of how to access the services. Therefore, the integration service delivery of intermediary services and probation services will help in responding to the needs of alleged child offenders to utilise the services of the intermediary. In so doing, the department will comply with the objective of the constitution, in particular section 27 (1) (c) as well as the principle of the integrated service delivery model. By integrating probation services and intermediary services, the probation officers will be able to render effective, integrated social services to alleged child offenders.

The service delivery model emphasises that all legislations, policy and regulations should be complied with. However, alleged child offenders still do not benefit from the services provided regardless of the stipulations in sections 158(2) and 170A of the Criminal Procedure Act No. 51 of 1977 as amended. Seemingly, probation officers attached to the Department of Social Development do not comply with the principles of universal access and accountability when it comes to alleged child offenders. The principles outlined within the service delivery model strengthen the delivery of social service in the Department of Social Development and must be observed and complied with. The researcher believes that the model is relevant to this study since it is formulated from the Department of Social Development, and thus will help the researcher to determine factors that hinder the utilisation of intermediary services to alleged child offenders by probation officers.

The probation services intervention is guided by different processes, policies, time frames and models of implementation such as the Probation Services Act, 1991 (Act No 116 of 1991), the Child Justice Act (Act No. 75 of 2008), as well as the intermediary services, and are guided by a legislative framework such as Criminal Procedure Act (Act No .51 of 1977). These Acts constitute the legal framework for developmental social service delivery in South Africa. To remain relevant, however, legislation must be reviewed whenever necessary.

The researcher is also of the opinion that by using the integrated service delivery model and intermediary services, probation officers will be ensuring that the basket of services is not implemented in isolation of child victims, but rather to the alleged child offenders as well.

2.4. THE RATIONALE FOR THE SERVICE DELIVERY MODEL

The development of this service delivery model presents an opportunity to detail the nature, scope, extent and level of services that social services practitioners should be delivered within one consolidated framework. The integrated Service delivery model underpins the support that we deliver to people in our care and how we deliver it. They give probation officers a set of theoretical and philosophical principles that guide the structure, practice and delivery of services. In this research study, the

model of service delivery is about the framework for the delivery of service to alleged child offenders concerning their best interest in the child justice court for the alleged child offenders concerning the services by the intermediary services.

To do this, a developmental model for services delivery is needed, an approach that is based on the strength of individuals, groups and that recognises their capacity for growth. The researcher is of the view that probation officers are capable of assessing the alleged child offender's capacity to stand and give evidence in court without difficulties of experiencing undue mental stress and suffering during the court proceedings. The researcher is also of the opinion that by using the integrated service delivery model and intermediary services, the service will be effective since it will not be individualised components, but rather the synergy created when the key elements are combined or integrated.

South African welfare policies and social problems dictate social services rendering in South Africa. The researcher has monitored that the principle of "access to justice for all" is accessible to all children except for child offenders. Probation officers are involved in various service delivery interventions of which a specialised intervention is required. Therefore, there is a need for interventions by both probation services and intermediary services to alleged child offenders with a clear guideline to probation officers on how to integrate this intervention in practice.

2.5 CORE VALUES OF THE INTEGRATED SERVICE DELIVERY MODEL

The three core values of the integrated service delivery model are stated as follows: firstly, "the people should come first in the service delivery of social services"; secondly, "equity and freedom from discrimination and harassment should be ensured; and, thirdly, "the department should share its knowledge and expertise with other stakeholders and the broader sector and learn from them" (IDSM, 2005). Even though the Integrated Service Delivery Model (ISDM) appears to be useful to probation officers and other professions, the researcher is of the view that it has also a weak point as they sometimes miss a lot of information. For example, the alleged child offenders are neglected from services to utilise the intermediary and the CCTV. This is one of the omissions that probation officers during their holistic assessment could pick it up and address the matter adequately. It is, therefore, advisable that

probation officers be as flexible as possible when they assess the alleged child offenders.

As a framework, the service delivery model could assist probation officers to acquire a working understanding of the uniqueness of children they are working with and the vulnerability with special reference to alleged child offenders. The non-utilisation of alleged child offenders to services of an intermediary and CCTV is a concern. The non-utilisation of CCTV is because of a lack of knowledge by the probation officers, and the non-utilisation of Intermediary services appears to be a lack of supporting legislation that advocates for the alleged child offenders.

2.6 SUMMARY OF THE CHAPTER

This chapter has discussed the theoretical framework that guided this study. The discussion emphasised the integrated service delivery model, followed by the weak point and its values. The next chapter will deal with literature review on the utilisation of intermediary social work support services to alleged child offenders.

CHAPTER THREE

LITERATURE REVIEW ON THE UTILISATION OF INTERMEDIARY SOCIAL WORK SUPPORT TO ALLEGED CHILD OFFENDERS

3.1 INTRODUCTION

The previous chapter dealt with the theoretical framework of the study. In this chapter, the literature was reviewed in line with the objectives and the aim of the study to achieve the desired goal of the study. The chapter brightens current and obtainable literature on the utilisation of intermediary social work support to alleged child offenders. This was done starting from international, continental and national levels. The chapter will cover aspects such as the definition of an intermediary, the roles of an intermediary and child testifying through the intermediary. The component covered includes the assessment of child offenders by the probation officer, the constitutional rights of the child offender and the benefits of utilising the intermediary during court proceedings.

3.2 DEFINITION OF CONCEPTS

3.2.1 An intermediary

In terms of Section 170A (4) (a) as of the Criminal Procedure Act No. 51 of 1977 as amended, an Intermediary is defined as a qualified person, including, amongst others, a Child and Youth Care Worker, Educator, Medical Practitioner, Psychologist and a Social Worker whose role is to create a child-friendly environment which will enable free participation during the court's proceedings, and further shields the child from hardships that might be posed by the court of law. Section 161(2) of the Criminal Procedure Act outlines that the most basic prerequisites for a suitable intermediary would, inter alia, include the following:

- The ability to develop rapport in a short time
- The ability to communicate fluently and relate a message to the child
- A proven ability to speak in a language understood by the child
- Should have a good observations skill and be able to convey warmth, support to the child, empathy and, be objective and impartial

- Must know legal aspects, developmental stages with related intellectual and verbal abilities and knowledge on the dynamics of sexual abuse matters.

3.3 A BRIEF HISTORICAL OVERVIEW OF CHILDREN IN COURT

In the 1980s, children who would appear in court proceedings were regarded as vulnerable individuals who needed support; as a result, novel, innovative and more specialised approaches that involve child-centred court procedures were introduced to the realm of intermediary social work support for alleged child offenders. These procedures involved “placing a child in a separate room other than an open courtroom, and making use of an intermediary” (Bekink, 2014). The role of an intermediary in the court proceedings is thus to create a conducive atmosphere for a child offender. The intermediary thus encourages the alleged child offender to speak freely about the offence and its related events (Robinson, 2013). A hostile, intimidating, insensitive or unbecoming environment makes it difficult to solicit evidence from an alleged child offender (Keenan, Rush & Chessman, 2015). Therefore, intermediaries (especially as social workers) are important practitioners who would dedicate their professional skills to support the alleged child offender, to allow for a less hostile, less insensitive and less intimidating environment.

3.4 CONSTITUTIONAL RIGHTS OF THE CHILD OFFENDER

According to Fourché (2007), Kruger and Spies (2012:34), “children have the right to be heard, the right to privacy and the right to be represented legally and children are persons and not property”. These authors state that Section 6(2) of the Children’s Act 38/2005 as amended stipulates that all litigation, actions or decisions involving children’s issues must comply with the following four important considerations: First, the right not to be discriminated against based on race, gender or criminal conduct must be respected. Secondly, there is a need to “respect, protect, promote and fulfil the child’s rights as set out in the bill of rights. Thirdly, children need “to be respected fairly and equitably”. It is necessary to understand the developmental needs of children and participate in games and other recreational activities suitable for the children’s age. Fourthly, children’s disabilities must also be recognised and an environment conducive to responding to children’s special needs must be created.

Given the aforementioned considerations, the government of South Africa has a constitutional prerogative to create legislative and policy protection of rights, particularly the rights of children (Bekink & Brand, 2000; Fourché, 2007). Zaal (2011) identified examples of effort to meet the prerogative to protect children's rights in the following legislations: the Child Care Act, 1983 (Act No. 74 of 1983); the new Children's Act, 2005 (Act No. 38 of 2005); the Sexual Offences Act, 1957 (Act No. 23 of 1957) (Bekink, 2000; Brandl, 2017); the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996) and the Child Justice Act 35 of 2010. Section 7 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) describes the Bill of Rights as "a cornerstone of democracy in South Africa, which enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom" (South African constitution, Act 108 of 1996).

Section 28 of the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), states that every child has the following rights: the right to a name and a nationality from birth; the right to basic nutrition, shelter, basic health care service and social services; the right to family care or parental care, or to appropriate alternative care when removed from the family environment; the right to be protected from maltreatment, neglect, abuse or degradation. Particularly, Section 28(2) of the Constitution of South Africa Act No 108 of 1996 is confirmed as the starting point for matters concerning the child.

The aforementioned section states the following provisions concerning the protection of children's rights: firstly, the child's best interest is of paramount importance in every matter concerning the child; secondly, the best interest principle encapsulates the idea that childhood is a developing being, capable of change and in need of appropriate nurturing to enable her to determine herself to the fullest extent and to develop her moral compass; the constitutional court has emphasised the developmental impetus of the best interest principle in securing children's right to learn as they grow how they should conduct themselves and make choices in the wide and moral world of childhood. According to Fourché (2011), the Constitution of the Republic of South Africa (1996) (Law No. 108 of 1996) guarantees, among other

things, that all children have the right to be protected from abuse [Article 28(1)(d)], and the right to social work services [Article 28 (1) (c)].

The Children's Act of 2005 (Act No. 38 of 2005) came into effect on January 1, 2007, and describes certain strategies to protect children in various situations. Article 106 (4) (c) of the aforementioned legislation stipulates that designated child protection service agencies must conduct investigations and assessments when suspected of crimes, neglect or neglect involving children. Subsequently, the legislation sets the legal mandate for intermediaries in court proceedings and related events that involve children in South Africa. Intermediaries are thus appointed as skilled professionals (particularly social workers) who assist such children in the proceedings, to avoid the child's fear of being discriminated against and in following the appropriate legislation (Le Roux, 2014). The role of the intermediary in this regard is to ensure that alleged child offenders have the right to be protected from not only abuse and neglect, or discrimination in the child justice system, but also unprofessional services within the justice system. The services of the intermediary are an obligation because the child has the right to receive social work services from professionals and, specifically concerning intermediary support. Therefore, the role of an intermediary should be performed by people who have the necessary knowledge, skills and objective attitude regarding the child justice system (Dutschke, 2007; Fouche, 2011).

3.5 THE SOUTH AFRICAN CONSTITUTION

The South African Constitution of 1996 Act No. 108 of 1996 contains a clear section specifically for children's rights. In this sense, Article 28 of constitutes a "small charter for children's rights", covering various issues related to children's rights. These rights include civil and political rights, including the right to name and nationality (Article 28, paragraph 1 (a)); socio-economic rights, such as access to basic nutrition, housing, basic health services, and social services (Article 28) Paragraph 1 (c); Juvenile Justice Law (Article 28, paragraph 1 (g)); this article establishes the principle of the best interests of the child (Article 28, paragraph 2). Section 28(2) of the Constitution Act 108 of 1996 requires that the best interests of the child should be of paramount importance in every decision taken concerning a child (South African Constitution, Act 108 of 1996). Section 28(1) (g) sets out clear

principles relating to the detention of children, including that detention should be a measure of last resort and used for the shortest appropriate period.

Further, children should be kept separately from adults in detention, and treated in a manner, and kept in conditions that take account of the child's age (South African constitution, Act 108 of 1996).

3.6 CONSTITUTIONAL RIGHTS OF THE CHILD OFFENDER

According to Fourché (2007) and Kruger and Spies (2012), children have the right to be heard, the right to privacy and the right to be represented legally. Children are persons and not property. These authors state that Section 6(2) of the Children's Act 38/2005 as amended stipulates that all proceedings, actions or decisions in matters concerning children must fulfil the following four important considerations: firstly, the right to be protected from discrimination irrespective of race, gender or they are offending should be upheld; secondly, there is a need to "respect, protect, promote and fulfil the child's rights as set out in the bill of rights"; thirdly, children need "to be respected fairly and equitably"; there is a need to recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age; and, fourthly there is also a need to recognise a child's disability and create an enabling environment to respond to the special needs that such a child has.

Given the aforementioned considerations, the government of South Africa has a constitutional prerogative to create legislative and policy protection of rights, particularly the rights of children (Bekink & Brand, 2000; Fourché, 2007). Zaal (2011) identified examples of effort to meet the prerogative to protect children's rights in the following legislations: the Child Care Act, 1983 (Act No. 74 of 1983); the new Children's Act, 2005 (Act No. 38 of 2005); the Sexual Offences Act, 1957 (Act No. 23 of 1957) (Bekink, 2000; Brandl, 2017); the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996) and the Child Justice Act 35 of 2010.

Section 7 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) describes the Bill of Rights as "a cornerstone of democracy in South Africa,

which enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom” (South African constitution, Act 108 of 1996). Section 28 of the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) states that every child has the following rights: the right to a name and a nationality from birth; the right to basic nutrition, shelter, basic health care service and social services; the right to family care or parental care, or to appropriate alternative care when removed from the family environment; the right to be protected from maltreatment, neglect, abuse or degradation.

Particularly, Section 28(2) of the Constitution of South Africa Act No 108 of 1996 is confirmed as the starting point for matters concerning the child. The aforementioned section states the following provisions concerning the protection of children’s rights: firstly, the child’s best interest is of paramount importance in every matter concerning the child; secondly, the best interest principle encapsulates the idea that childhood is a developing being, capable of change and in need of appropriate nurturing to enable her to determine herself to the fullest extent and to develop her moral compass; the constitutional court has emphasised the developmental impetus of the best interest principle in securing children’s right to learn as they grow how they should conduct themselves and make choices in the wide and moral world of childhood.

According to Fourché (2011), the Constitution of the Republic of South Africa (1996) (Act No. 108 of 1996), among other things, guarantees that all children have the right to be protected from abuse [Section 28(1)(d)], and the right to receive social work services [Section 28(1)(c)]. The Children’s Act, 2005 (Act No. 38 of 2005) which became effective on 1 January 2007, outlines certain strategies for child protection in various contexts. Section 106(4) (c) of the aforementioned legislation states that designated child protection services should execute investigations and assessments where there is an alleged offence, neglect or abandonment that involves children. Subsequently, the legislation sets the legal mandate for intermediaries in court proceedings and related events that involve children in South Africa.

Intermediaries are thus appointed as skilled professionals (particularly social workers) who assist such children in the proceedings, to avoid the child's fear of being discriminated against and in following the appropriate legislation (Le Roux, 2014). The role of the intermediary in this regard is to ensure that alleged child offenders have the right to be protected from not only abuse and neglect, or discrimination in the child justice system, but also unprofessional services within the justice system. The services of the intermediary are an obligation because the child has the right to receive social work services from professionals, specifically concerning intermediary support. Therefore, the role of an intermediary should be performed by people who have the necessary knowledge, skills and objective attitude regarding the child justice system (Dutschke, 2007; Fouche, 20011)

3.7 THE CHILD JUSTICE ACT NO 75 OF 2008

Of relevance to Child Justice Act is section 35, of the Constitution which deals with the rights of arrested and detained persons. Although the act is not limited to children, it also applies equally to children and adults (South African Constitution, Law No. 108 of 1996). Some of the rights contained in section 35 include the "right to remain silence", "the right to a fair and speedy trial" and "the right to obtain a legal representative and If the defendant cannot afford one, the right to be appointed one by the state" . The child has a right to be brought before court 48 hours after the arrest "(South African Constitution, Law No. 108 of 1996, Article 35) The Child's Justice Act stipulates in its guiding principles that every child must be allowed to participate in proceedings that would result in decision that affect them (Child's Justice Act, 2008, Article 75).

3.7.1 Rights of Child offender

United Nations guidelines enlist important rights of child offenders and child witnesses (United Nations Guidelines for Prevention of Juveniles, 2016). The researcher argues that the rights are intertwined and cannot be used separately. It is worth noting that most of these rights can be realised through the services of intermediaries; for example: "the right to be treated with dignity", "the right to understand judicial procedures" and "the right to express opinions and express opinions and concerns" (South African Constitution, Law No. 108 of 1996, Article 1).

3.7.2 Protection of the right to dignity

The right to dignity is a fundamental and inherent human right enshrined in various international instruments. It is also one of the guiding principles of the UN Guidelines. The right implies that the child is treated as a human being with full rights, and not as a passive recipient of adult care and protection (Fambasayi, 2016). The right is further complemented with showing compassion for the child. The witness' "right to be treated with dignity and compassion lays the foundation for child-sensitive treatment for all child witnesses" (Fambasayi, 2016). Every child should be treated as a unique individual with unique wants, wishes, and feelings in a caring and sensitive manner, taking into account personal circumstances and immediate needs, age, mental or moral integrity, gender, disability, and maturity level. The rights of children are protected by the Constitution and the Children's Act in South Africa.

3.7.3 The right to be heard and to express views

The "right to be heard, to express views or concerns and to have those views and concerns taken seriously, is a cornerstone to ensuring that the rights of children are realized" (Fambasayi, 2016). It is enriched in the CRC. It states that children are fully-fledged persons with the right to express themselves on all matters that affect them (CRC, Article 7(1)). Those opinions must be heard and given fair consideration, taking into account age and maturity. Adults are no longer considered solely as providers, protectors or advocates, but also as negotiators and facilitators, establishing and facilitating processes that enable and empower children to express their opinions, be consulted and influence decisions. South Africa has suffered costs as a result of its ratification of the United Nations Convention on the Rights of the Child, which is an international treaty agreement. The application of the rights contained in both documents should instead be guided by the UN JDL standards. Article 37 and 40 of the UNCRC deal with the deprivation of a child's liberty and the administration of juvenile justice, respectively. Articles 40(1) – (4) establish a clear, comprehensive framework within which states must design a child-justice system.

The framework addresses concerns such as non-discrimination; the child's right to dignity and worth as well as the right to privacy; the need for children to respect the human rights and fundamental freedoms of others; the need to take the age of the child and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society into account; the presumption of innocence until proven guilty: the child's right to be informed of charges against him or her; the right to legal representation; the right to a speedy and fair trial by an impartial authority or judicial body; the right to have decisions subject to review or appeal; the need for the establishment of a specialised criminal justice system for children in conflict with the law, and the need for creating alternative dispositions to institutional care in a manner appropriate to children's well-being and proportionate both to their circumstances and the offence. The decision covers a wide range of issues and rights, and not only provides procedural safeguards and procedural protections for all children in conflict with the law, but also acknowledges that each child is an individual who should be treated and managed accordingly within the criminal justice system.

3.8 STRUCTURE OF THE PROCEEDINGS WITHIN THE CHILD JUSTICE COURT

The child justice court comprises the presiding officer, prosecution, defence, stenographer, interpreter, police officials, child offenders and parents, guardians or significant others. South Africa must ensure that the protection and care of every child are of paramount importance regardless of any circumstances surrounding them (Chapter 2(a) of the CJA & Chapter 2 of the South African Constitution Act No. 106 of 1996 (Reyneke, 2016). A Child Justice Court does not resemble a child-friendly environment for some of the child offenders to be put on trial or provide evidence (Terblanche, 2013). Therefore, these factors are not beneficial and do not offer every child offender an opportunity to actively participate in the court proceedings which creates a stumbling block to formally denounce injustice (Eilperin, 2016). It is therefore recommended that child-sensitive methods such as intermediary services be used, taking into account the age of the child offender's maturity and other suitable measures to facilitate the child's evidence collection.

3.9 CHILD JUSTICE COURT

The court environment is mostly regarded as intimidating, hostile, insensitive or inappropriate, and creates a barrier for a child offender to be heard effectively (Mallett, 2015), whereas it is important that during the proceedings in court, the atmosphere must be appropriate to enhance the child offender's participation throughout the whole process. Mc Carter, Maschi and Morgen (2014) stated that exposure of children in the criminal justice system attributes to their lack of maturity, and develop short-comings resulting in the testimony of children being treated with caution for the reasons that:

- Children can be egocentric at times;
- Their memories may be fictitious;
- They can have a hard time separating fact from fiction; and
- They may not realise the significance of telling the truth.

The intermediary is vital during the court proceeding when the child offender gives evidence. During the proceeding, the intermediary will be visible to the child, whereas the court and other relevant members forming part of the child justice court will not be seen or heard, therefore the child witness will feel comfortable (Jordan, 2014).

3.10 THE ROLES OF AN INTERMEDIARY WITHIN THE CHILD JUSTICE COURT

Fambasayi (2016) identifies the roles of an intermediary to include, amongst others, to

- communicate the evidence relating to questions conveyed from court to the child offender;
- serve as conduct in the communication between the minor offender and the court;
- protect the child from any difficulties that the court may impose;
- shield the child offender from harsh and aggressive cross-examination;
- assist the child offender in comprehending the questions; and
- perform the role of court interpreter in the proceedings, in situations where the child offender speaks a language other than English.

The intermediary builds rapport with the child offender, which enables direct participation where the child offender expresses his or her views to the intermediary (Hailbronner, 2017). Different factors, such as “language development, age and developmental stage, the child’s personality, and the trauma caused during the incident play a role in the quality of the evidence provided by a child offender” (Fambasayi, 2016). Expert knowledge is, therefore, necessary to elicit, understand and interpret the evidence of a child offender (Aull, 2012; Vaandering, 2014). Therefore, special measures such as the appointment of an intermediary should be considered in the criminal justice system to support and assist the child offender during a trial and to prevent secondary victimisation as far as possible (Criminal Procedure Act No.51 of 1977 section 170 A (1); Collica-Cox & Sullivan, 2017). During the intermediary process, the minor offender will be engaging in the proceedings without being aware of the court environment or others watching from the other sidelines (Sprague, 2014). The roles and responsibilities of the intermediary will therefore serve to assist in promoting the best interest of the child offender who will be giving evidence throughout the court proceeding.

3.11 SERVICES OFFERED BY THE INTERMEDIARY

Section 170A of the Criminal Procedure, Act 51 of 1977 provides that “the intermediary must convey the general purport of the questions from the court, prosecutor and defence to the child in a language that the child will understand”. In addition, “the questions are put to the child from the legalese of the court to the language on his developmental level” (Fambasayi, 2016). The involvement of the intermediary in this regard “means that the child does not give direct evidence and is not directly cross-examined by the court” (Kuehnle & Connell, 2011). Thus “an intermediary is a facilitator through which a child can give evidence in criminal proceedings. All examination, cross-examination of the child takes place through the intermediary” (Matthians & Zaal, 2011). The intermediary cannot ask their questions, alter the meaning of the questions to the leading questions (Hayes, Bunting, Duffy & Lazenbatt, 2011).

Research has shown that “children give better and more accurate evidence when testifying in a separate courtroom” (Muller, 2011). In addition, “children who testify in

a court experience unrealistic, adult-like expectations about their performance by the players in the legal process”. Van der Merve (2009) has revealed that “criminal court hearing is usually the most challenging, demanding, confusing and difficult environment for any child”. Muller (2004) has stated that effective preparation of the child is important as it will assist the child to be emotionally and physically ready for the trial. The intermediary’s responsibility in court, amongst others, includes empowering the child by preparing him/her for trial. Preparing the child for court does not include telling the child what to say, rather alerting him/her of the question that might be posed to him/her (Muller & Holley, 2011; Gulstad, 2016)

3.11.1 Rapport building phase

The establishment of rapport is sometimes before the substantive part of the interview (Robinson, 2013). In this regard, “rapport is designed to create a relaxed, supportive environment and to establish friendship between the child and the intermediary, primarily by getting to know the child” (Bekink, 2021). It is the researcher’s opinion that when rapport has been built between the child and the intermediary, the child might feel free to disclose the allegation put towards him.

Spencer and Lamb (2012) mentioned that “effective preparation of the child offender, as well as significant others in the child life, will enable the child to gain the required knowledge to understand the judicial process and the child offender’s role therein”. In addition, “during court preparation the child does not have to memorise a statement or be told what to say in court” (Robinson, 2013). Muller (2011) indicated that the child offender must be familiarised with what will happen during court proceedings more especially on the roles played by the Prosecutor, Magistrate, Interpreter and Defence and other officials. Hayes, Bunting, and Duffy (2011) believe that “court preparation equips a child with knowledge regarding the court structure, the procedure and what it means to testify in court”.

3.11.2 Educational phase

The intermediary is expected to guide the child offender on what to expect from the court and what will happen during this period, which may minimise stress and increase the child’s memory and self-esteem (Goodman & Bottoms, 1993). The child offender will be at ease, free to communicate and feel relieved because he/she will

know what to expect when testifying in court (Reyneke, 2016). The above researcher further elaborates that the intermediary should discuss the following trial procedure during the educational programme. Firstly, “the role of the legal professional involved in court proceedings, namely: the magistrate, prosecutor, defence attorney, the intermediary, Court orderly, interpreter and stenographer; secondly, “the child’s offender role as a witness”; thirdly “the victim’s role”; fourthly, “roles of other witnesses”; and lastly, the “function of the special courtroom, the video camera and the sound system because the child offender will be utilising the special court room rather than the open court” (Reyneke, 2016).

The preparation process “should be done in age-appropriate language and legal terminology, for example taking the oath, differentiate between telling truth or lies, found guilty and not guilty, proof beyond a reasonable doubt, convictions and acquittal should be explained to the child” (Robinson, 2013). The intermediary should encourage the child to ask if there is anything he does not understand (Katz-Levin, 2010). The intermediary may advise the child to ask for a short break if he needs to go to the toilet whilst giving evidence.

The intermediary is not allowed to coach the “child or anybody else as a contamination of the evidence can take place” because the intermediary is working as a facilitator between the court and child offender (Spencer & Lamb, 2012). Should the intermediary be aware of the merits of the case before the court commences, he/she should recuse herself from the case and refer the matter to the other intermediary (Prinsloo, 2009).

3.11.3 A stress reduction component

As their court date approaches, the child offenders’ stress levels rise, especially as it pertains to their involvement in the court trial and outcome of the trial (Muller & Holley, 2011; Gulstad, 2016). These fears manifest in the child offender having difficulties in relaxing in court, feeling anxious, and poor concentration in court (Plotnikoff, & Woolfson, 2012). They further elaborate that the intermediary should assist the child offender with the following:

- deep muscle relaxation:
- breathing deeply:

- empowerment and cognitive restructuring: and
- Desensitisation of the entire system.

According to the researcher, the above techniques can be utilised before the child stress level increases so that the child will go to court feeling more relaxed. The intermediary must observe the child. If he or she notices that the child is anxious, a short adjournment will be requested for the intermediary to debrief the child.

Plotnikoff and Woolfson (2012) have indicated the following as signs that may arise when the child offender is giving testimony in court are:

- Fidgeting with hands
- Muscle tension
- Concentration difficulties
- Shallow breathing

After the child offender has finished testifying, the researcher believes that the intermediary should spend some time with him to debrief and strengthen him by complimenting his testimony.

3.11.4 An educational component

Spencer and John (2012) indicate that the child offender needs to be familiarised with the courtroom. They further discussed what the intermediary may do to reduce the child's fear and anxiety towards the courtroom:

- allow the child to explore the courtroom;
- explain to the minor the clothing that court personnel wear;
- show the child the courtroom, pointing out the magistrate's bench, the prosecutor's seat, the attorney's tables, the witness' stand, and audience seats;
- show the child offender where the toilets are;
- If the child is required to testify in the courtroom, the court itself should be shown to him;
- familiarise the child with the closed-circuit television system and how it operates; and
- show the child the screen to be used.

During this phase, the intermediary encourages the child offender to talk both positively and negatively about issues and to respond in detail to gentle questions (Spencer & John, 2012).

3.12 TESTIFYING IN OPEN COURT

Child offenders are “vulnerable and likely to suffer harm or undue mental stress and suffering from testifying in court” (Connell, 2011). The procedures outlined in section 170A of the Criminal Procedure Act should assess the vulnerable status of child offenders. Bellengere (2013) “shows that vulnerability in the Criminal Justice system is not limited to children who are victims or complainants of sexual offences but rather to child offenders too”. According to Clark (2012), “Vulnerability is determined by the child's unique circumstances, such as biological age, social and economic background, and whether the child is a poly-victim”. In addition, similar to child witnesses and complainants, child offenders are as well unfamiliar with the judicial processes and language used in the courtroom, and thus unlikely to give evidence freely (Clark, 2012).

It is “trite that children are vulnerable and need special protection and support appropriate to the age, level of maturity and unique needs to obviate further hardship and trauma that may emanate from their participation in criminal processes” (Matthias & Zaal, 2011). Furthermore, the “use of intermediaries does not only protect the child from unnecessary trauma, it ensures that the court receives evidence that is freely presented, and more likely to be true and better understood by the court”. Bekink (2018) argues that section 170(A) requires an amendment to the inclusion of child offender in receiving services of the intermediary. The “intermediaries must be available to child offenders, and the guiding principle must be the establishment of the truth and the fundamental principles of justice in line with the ethos of the Constitution and contemporary studies on child victimization” (Bekink, 2018).

In reality, children who come into contact with the Criminal Justice System are facing challenges dealing with the adversarial environment of a court-room, that a young person may struggle to understand the language of legal proceedings, the roles of

various participants, and that the adversarial procedure involves confrontation and extensive cross-examination (Van Der Merwe & Dames, 2009). Despite this, the Child Justice Act does little to shelter a child offender from the harsh realities of the courtroom as a physical space, or the trauma involved with testifying in a criminal court (Clark, 2012). Therefore, the researcher is of the view that there is a need to appoint an intermediary in all matters concerning children.

3.12.1 Testifying in camera

One of the basic tenets of Criminal Justice Court section 35(3) (C) of the Constitution, Act No 106 of 1996 is that “trial should be held in public”. It is a principle enriched in the constitution and is of indisputable importance to ensure that the public trusts the independence and functioning of the court. On the other hand, “the court accepted vulnerability, the witness must be protected from public exposure, either because of disclosure of their identity which might endanger their lives or safety or because of discomfort or embarrassment for having to testify before an audience”, particularly where the event in issue was traumatic and sexually sensitive, and witnesses may suffer emotional or psychological harm as a result of their testimony (Prinsloo, 2009).

Section 153 of the Criminal Procedure Act 51 of 1977 is therefore in recognition of categories of people and circumstances which criminal proceedings may not take place in open court. Section 63(5) of the Child Justice Act 75 of 2008 “provides that no person may be present at any sitting of a child justice court unless his or her presence is necessary for connection with the proceedings of the child justice court or presiding officer has granted him or her permission to be present”. Therefore, the child offender is to testify on camera. Testifying in-camera means in private without media, or public presence. In such cases, complainant appear in court before the magistrate, prosecutor, defence counsel and the accused or witness (Prinsloo, 2009). The witness is put in a separate room from the courtroom, where the court and external room are connected via a CCTV system (Muller, 2004). However, in practice, the child offender would have been exposed to the courtroom environment, and members of the public.

An in-camera trial has no bearing on the accused right to counsel and to hearing the evidence brought against him, neither the right to appeal affected by the original

trials be held in camera (Spencer, 2012). It is of paramount importance to protect vulnerable witnesses, including youthful accused persons from emotional or psychological harm (Mathias & Zaal, 2011). However, “exceptional circumstances might exist in a given case that might warrant a limitation of child rights” had to be struck between balance “fair trial interests ” and “public interest” without opening the floodgates to ensure that the identification of the child on television would “be obscured through either the placing of the camera or the blurring the image” (Bekink, 2017).

Section 158(2)(c) of the Criminal Procedure Act 51 of 1977 is meant to protect the vulnerability of witnesses and accused persons from mental stress and suffering by the daunting atmosphere of a court, by exposing them not only to the courtroom, but to the public and witness family. The Criminal law sexual offences and related matters, Act 32 of 2007 as amendment emphasised that the use of closed-circuit television or similar electronic devices in court is not limited to child complainants or witnesses, but is available to assist any traumatised person who is to give evidence regardless of his age (Muller, 2017).

It is therefore of importance for the child offender also to utilise the services of CCTV and be assisted by the intermediary who will assist the child from fear of intimidation, anxiety, embarrassment and from the daunting atmosphere. The usage of the intermediary will help the court in ensuring “that the court receives evidence that is freely presented, and more likely to be true and better understood by the court” (Bekink, 2018).

3.13 Assessment of a child offender

The assessment of child offenders aims to use appropriate social work skills, knowledge and theories to gather information on the situation of children (Beesley, 2010; Allen, 2011). It further assists to develop a plan of action that will involve all the relevant interventions, including the appointment of an intermediary. Chapter 1 of the Child Justice Act 75 (2008) defines assessment in Social Work as the process of evaluating the background of the child offender, including educational, social, health status and substance abuse, to name a few. The decision of whether to recommend an intermediary for the child offender under the age of 18 should be guided by factors such as mental and biological age, intelligence, personality and the nature of

the evidence, amongst others (Platt (2011)). An assessment report compiled by the assessing probation officers should include recommendations of an appropriate service required to handle the child offender's situation, including intermediary. (Turney, Platt & Selwyn, 2011).

Section 34 (1) of the Child Justice Act 75 of 2008 "entails that every child who is alleged to have committed the offence must be assessed by the probation officer". The probation officer who has been notified by the police officers that a child has been arrested or issued with a written notice to appear or served with a summons must assess the child before the child appears at a preliminary inquiry within 24 hours. However, the probation officer may postpone the preliminary enquiry for a detailed probation report for at least 14 days. The report of the probation officer should involve collecting and analysing information about child offenders to understand their situation and determine recommendations for any further professional intervention (Section 34 (1) of the CJA).

For detained children who are still in custody, the assessment must be carried out before they appear in court for a preliminary investigation. According to Article 43 (3) (b) (i) of the Children's Justice Act No. 75 of 2008, the preliminary investigation must be conducted within 48 hours of the child's arrest. So the assessment must be conducted during this period. These periods are set out in the document itself, that is, Section 18 (3) (b) of the Child Justice Act No. 75 of 2008. Therefore, the evaluation must be carried out within the prescribed time limit. In terms of section 34(3) of the Child Justice Act, 75 of 2008, "children under the age of 10 years must be assessed within 7 days after the probation officer has been notified by a police officer that an offence has been committed".

The assessment process can be summarised as having the following main aspects:

- Obtaining pertinent information;
- Analysing the data and forming a professional conclusion about what it entails in respect of specific children and families;
- Making decisions and revising intervention strategies;
- Interviewing and/or further review the service delivery;

- Progress is being evaluated and reviewing.

Assessment should be a dynamic process, which analyses and responds to the changing nature and level of need and/or risks faced by the child. A good assessment “will monitor and record the impact of any services to be delivered to the child and family and review the help being delivered “(Beesley, 2010). The assessment report should focus on the needs of the child and on the impact any service has on the child (Section 35 of the Child Justice Act 75 of 2008). The section further indicates that the purpose of probation officer assessment should be understood as alongside the following prerogatives;

1. Firstly, “establish whether a child may require care and protection to refer the child to a children’s court in terms of section 50 and 64 Children’s Act 38 OF 2005”;
2. Secondly, “estimate the age of the child if the age is uncertain”;
3. Thirdly. “Where appropriate, establish the prospects for diversion of the matter”;
4. Fourthly, “determine whether the child has been used by the adult to commit a crime in question”;
5. Fifthly, “analyse the child’s needs and /or the nature and level of any risks being suffered by the child”;
6. Sixthly, “assess the developmental needs, maturity and cognitive and reasoning capacity of the child”;
7. Seventhly, “determine if the child can be held criminally liable of the offence”;
8. Eighthly, “formulate recommendations regarding the release or detention and placement of the child”;
9. Ninthly, “the impact the family functioning and history, the wider family and environmental factors having on the parent’s capacity to respond to their needs and the child’s developmental progress”
10. Tenthly, “provide any other relevant information regarding the child which the probation officer may regard to be in the best interests of the child or which may further any objectives of the child justice act, which is restoration”.

In this regard, the assessment processes carried out by a probation officer should occur in the best interests of the alleged child offender. Therefore, the assessment process takes into account the psychological and social aspects surrounding the alleged child offender.

3.14 FACTORS TO BE CONSIDERED BY THE PROBATION OFFICER WHEN ASSESSING THE CHILD OFFENDER

Probation officers need to assess the personal factors, psycho-social status and social factors of the alleged child offender. Such an assessment serves as a basis that informs subsequent professional interventions by the probation officer. The following are factors to be considered when assessing the child offender; “biological age and sex of the child offender”; “the level of education and maturity of a child”; “language abilities and proficiency of the child offender”; “mental and intellectual ability of the child”; “nature of alleged offence and nature of evidence to be given”; and “mental stress and physical development of the child” (Bekink, 2021).

3.14.1 Assessment report of the probation officer

Section 40(1) of the Child Justice Act 75 of 2008 indicates that the probation officer must complete the report in the prescribed manner with recommendations on the following issues, where applicable:

- The “possible referral of the matter to a children’s court in terms of section 9” of the said Act;
- Whether a “child can be diverted including to what type of program and to which service provider”;
- If a “more detailed assessment of the child is needed for example, if the child is a danger to himself/ herself: or others; where the child might be referred to a sexual offender’s program; if the social welfare history of the child calls for one; and if the child has a history of committing offences or absconding”;
- The child “should be referred to psychologists to determine criminal capacity and fitness to stand for trial”;
- “Whether the child can be released” ;

- If the “child cannot be released, a recommendation regarding placement options”;
- Whether the “matter should be transferred to a Child Justice Court in terms of section 50 or 64 and the usage of CCTV will be recommended and the utilisation of intermediary support services is paramount” and
- The “assessment report must also indicate if the child is acknowledging responsibility for the offence and if the child shows remorse”.

3.15 THE BENEFITS FOR UTILISING INTERMEDIARY SERVICES TO A CHILD OFFENDER

The use of an “intermediary enhances the children’s participation and ensures that the court receives evidence that is accurate and freely given” (Bekink, 2021). Section 170A of the Criminal Procedure Act protects child complainants and witnesses of sexual offences from the harsh effects of cross-examination by allowing them to give evidence through an intermediary (Section 170 A (4) of the criminal procedure act 51 of 1977). For detained children who are still in custody, the assessment must be carried out before they appear in court for a preliminary investigation. According to Section 43 (3) (b) (i) of the Children’s Justice Act No. 75 of 2008, the preliminary investigation must be conducted within 48 hours of the child’s arrest, so the assessment must be conducted during this period. Children who are giving writing to appear or who receives a subpoena to appear in court , are furnish with longer periods to appear in court . These periods are set out in the document itself, Section 18 (3) (b) of the Juvenile Justice Act No. 75 of 2008.

The evaluation must be carried out within the prescribed time limit. The researcher contends that using intermediaries is in the best interests of all children. As a result, it should be available to all children in courtroom processes, including child offenders. Research shows that the adversarial system, including cross-examination, is traumatic for children (Fambasayi, 2016). The use of witness tools in the criminal justice system is in the best interests of the child because the flexible nature of the best interest assessment allows for a case-by-case approach that takes into consideration the unique qualities and lived experiences of each child (Rapholo, 2016). The South African Criminal Justice system is adversarial, encountered by children in adversarial proceedings are similar whether they appear as witnesses or

children in conflict with the law or accused of committing crimes. As a result, the researcher argues that child offenders must also enjoy protections provided under section 170A of the Criminal Procedure Act 51 of 1977.

The argument is based on the assumption that children “who violate the law are themselves victims and their vulnerability is already elevated by the time they experience the criminal justice system” (Bekink, 2012). Thus, this contribution advocates the use of Section 28(2) of the “Constitution to implement and interpret safeguards” under section 170A of the Criminal Procedure Act. This approach to “child justice ensures the establishment of the truth and is an essential component of a fair trial and in line with the ethos enshrined in the Constitution” (Fambasayi, 2016). Therefore, it would be in the interests of all children in general and justice in particular for them to testify outside the adversarial framework of the courtroom. The researcher is of the view that there appears to be no justification for limiting the section to complainants and witnesses only. Therefore, intermediary services are important to all children irrespective of whether they are child accused or child witnesses.

3.16 SUMMARY OF THE CHAPTER

The chapter was summarised as follows:

1. The definition of an intermediary includes the fact that an intermediary is a qualified person, and includes, amongst others, a Child and Youth Care Worker, Educator, Medical Practitioner, Psychologist and a Social Worker whose role is to make a child-friendly domain that will allow free participation during the courts' proceedings and further protect the child from hardships that might be posed by the court of law.
2. The services offered by an intermediary are free and include the utilisation of the CCTV and in-camera benefits.
3. The role of the intermediary is to convey the overall message to the child offender, to build rapport with the child offender and to shield the hardship environment of the courtroom.

4. Testifying in-camera shows that vulnerability in the criminal justice system is not limited to children who are victims or complainants of sexual offences, but rather to child offenders too.
5. Children who utilise the services of an intermediary enhance their participation and ensure that the court receives evidence that is accurate and freely given.
6. Children became able to participate freely to the intermediary and defence and court without any experience of the courtroom and the adversarial courtroom.
7. Children who utilised the services of an intermediary are in practice child witnesses and victims. However, research has shown that even the child offender can benefit from the utilisation of an intermediary.
8. The researcher has observed that in practice, the child victim and witness testify on camera and with the support of the intermediary and without the exposure of the courtroom. However, the child offender is being exposed to the courtroom environment and members of the public.
9. Furthermore, the use of intermediaries does not only protect the child from unnecessary trauma, it ensures that the court receives evidence that is freely presented, and more likely to be true and better understood by the court.
10. The best interest of the child is of paramount importance in all matters concerning that child.
11. The argument is based on the assumption that children who violate the law are themselves victims, and their vulnerability is already elevated by the time they experience the criminal justice system. Thus, this contribution advocates the use of section 28(2) of the Constitution of South Africa Act 108 of 1996 to implement and interpret safeguards under section 170A of the Criminal Procedure Act 51 of 1977.
12. The factors that the probation officer has to consider when assessing the child offender include, among others, the biological age of the child offender, undue mental stress and suffering, age and social development, and whether the child will be able to stand for trial, and should also guide the court about the utilisation of the intermediary should the case proceed on trial.
13. The approach to child justice ensures the establishment of the truth, is an essential component of a fair trial, and is in line with the ethos enshrined in the Constitution. Therefore, it would be in the interests of all children in general and

justice in particular for them to testify outside the adversarial framework of the courtroom.

The next chapter will focus on the research methodology applied in the study.

CHAPTER FOUR

RESEARCH METHODOLOGY

4.1 INTRODUCTION

The focus of this chapter is on the framework that guides the research project that was conducted in this study. De Vos et al. (2002) and Fouché and Schurink (2011) outline research methodology as the application of several standardised methodologies and techniques in the pursuit of knowledge. The most common methodologies in social research involve qualitative, quantitative and participatory research approaches or methods (Rapholo, 2018). The essence of the research methodology is that it specifies how the researcher possibly may go about investigating what s/he believes can be known (Terre Blanche, Durrheim & Painter, 2006). This chapter deals with the research approach, research design, the population that was considered during this study and sampling techniques that were used. Lastly, data collection methods and data analysis methods were discussed.

4.2 RESEARCH APPROACH

The researcher used the qualitative research approach. The qualitative approach is a way of investigating and comprehending the meaning that individuals or groups attach to a social or human issue (Cresswell, 2011). This approach was relevant to the study since it enabled the researcher to explore factors that hinder probation officers from recommending intermediary services, especially for children who have been alleged of committing criminal offences.

4.3 RESEARCH DESIGN

The exploratory research design was utilised in this research. Exploratory research was undertaken to identify major concerns about difficulties that had not been thoroughly investigated to improve the final study design by developing operational definitions (Fouche & Schurink, 2011).

The design was relevant to the study because the researcher's aim was to determine factors that hinder probation officers from utilising an intermediary when providing services to children who are accused of committing a crime. This was because little

has been researched on factors that hinder probation officers from utilising services of an intermediary to alleged child offenders (Hoge, 2009).

4.4. POPULATION

Population refers to individuals in the universe with specified features (Strydom, 2005). The population of this study comprises probation officers in the Department of Social Development in Mopani District, Limpopo Province. The District comprises of eight Municipalities, Greater Tzaneen Municipality has eight (8) Probation Officers, Maruleng one (1), Ba-Phalaborwa had two (2), Greater Giyani two (2) and Greater Letaba had two (2) Probation Officers. The total number of probation officers in the district was fifteen (15).

4.5. SAMPLING

Sampling means taking a section or smaller number of units from a population as a representative or having a specific population (De Vos *et al.*, 2011; De Poy & Gilson, 2008; Thomas & Smith, 2003). Since the number of probation officers in the district was fairly limited, the researcher did not sample as such, she included all fifteen (15) probation officers as participants of the study.

4.6. DATA COLLECTION

According to Neuman (2000), data gathering can be divided into two categories, namely qualitative and quantitative. Durrheim (2006) cited in Terre Blanche and Painter (2006), added that data is a basic material with which researchers work. Data are generated from observation, which can take the form of numbers (quantitative) or language (qualitative). In this study, the researcher used semi-structured interviews to collect data from participants. De Vos *et al.* (2011) state that in qualitative research, the most common method of data collection is interviews. Semi-structured interviews are used to get a sense of participants' beliefs, perceptions or perspectives on a specific topic (Botma *et al.*, 2010; Greeff, 2011).

The researcher conducted individual interviews with participants to explore their views, experiences, beliefs or knowledge of probation officers of factors that they think or know hinder their utilisation of intermediary support on the services they offer to alleged child offenders. The researcher developed a data collection tool (**See**

Appendix C) with topics and questions that were based on factors that hinder the utilisation of intermediary social work support services to alleged child offenders. The researcher also informed the participants about the possible duration which the interviews would be conducted. The interviews were conducted with nine (09) probation officers individually, and data was captured more effectively through the use of audio recording interviews.

4.7. Data analysis

Data analysis is the process of bringing a mass of collected data, organisation and meaning (De Vos, 2005; Monette *et al.*, 2008; Sarantakos, 2000). Data reduction, presentation and interpretation are all part of this process. Regardless of the paradigms used to control the research, data analysis encompasses all types of data analysis acquired through methodologies (Babble & Mouton, 2001). Thematic analysis was utilised to analyse the data, which is a qualitative research technique that may be applied to a wide range of epistemological and research concerns. It is a technique for locating, organising, characterising, analysing and reporting themes found within a data set (Braun & Clarke, 2006). The thematic process was used to help the researcher to transcribe the record, and to provide a permanent record of what was and was not said in the interview.

The researcher used inductive thematic analysis where the assumption was data-driven. Because the assumptions in this study were data-driven, the themes were found and matched to the data. In this research, the pre-existing data was that the researcher needs to explore factors that hinder the utilisation of intermediary social work support services to alleged child offenders.

The researcher took into account the words used, the context in which they were used, and the frequency with which they were used, as well as what was stated and what was not mentioned, to determine the major theme (Greeff, 2011). Data were analysed using Creswell's (2009) steps in data analysis. The following are the steps in data analysis:

Table: Data analysis

Steps	Analysis Actions
<p>Step 1: Prepare the data for analysis by organising and preparing it</p>	<p>Data were sorted according to the questions on each interview</p>
<p>Step 2 Read through all data</p>	<p>The researcher became acquainted with the information gathered The researcher listened to the audio from the recording. The researcher discovered certain commonalities or patterns that began to emerge.</p>
<p>Step 3 Begin with the coding process</p>	<p>The researcher transcribed the data from the audio recorded She then analysed and started to code the data into themes</p>
<p>Step 4 Description of setting, participants, classifications and themes for analysis was done by the researcher</p>	
<p>Step 5 The researcher represented the descriptions and themes</p>	
<p>Step 6 The researcher interpreted the data or determined its significance</p>	

The researcher generated the themes in terms of the objectives of the study. The themes are presented and analysed in the next chapter.

4.8 ETHICAL CONSIDERATION

“Ethics is a set of moral principles proposed by an individual or group that establishes rules and behaviour, expectations for current conduct towards experimental subjects and respondents” (Strydom, 2011; Gray, 2009). Strydom (2011) states that to ensure that the study is ethical, researchers should pay attention to ethical issues. The following ethical issues were taken into consideration when conducting the study:

4.8.1 Permission to conduct

The researcher requested permission from the Department of Social Development (DSD) to collect data from the probation officers since the study targets them as participants. Permission was granted. Furthermore, the researcher obtained ethical clearance from Turfloop Research and Ethics Committee (**TREC45/2020**) **PG** to collect data. The Limpopo Provincial Research Committee granted full approval for collecting data on the strength of the attached Clearance Certificate (**LPREC 12/2020**) **PG**.

4.8.2 Avoidance of harm

The researcher maintains that no harm occurred to participants during the study. In this study harm may occur during the interview with the probation officers when they may feel that the researcher will belittle them or expose them of being incompetent. The researcher applied an element of respect at all times to respondents. Since she has been a social worker for 13 years, the researcher did not provide counselling to participants since there were no signs of emotional and psychological discomfort. Participants were informed about the possible impact of the investigations and that the findings were not to be used against them, but rather were to be used as proof for future reference on the study.

4.8.3 Informed consent

Informed consent entails informing participants about methods that will be followed, as well as the benefits and risks to which they may be exposed during the study (Strydom, 2011; Monette *et al.*, 2005). In this study, participants were informed about the goals and objectives of the study, as well as all research procedures to enable them to make informed decisions and to give informed consent to participate. Participants were encouraged to provide the researcher with written consent to participate in the study. No one was forced to take part in the study because it was voluntary. According to De Vos *et al.* (2011), Strydom (2005) and Fouche and Delpont (2011), to obtain informed consent, potential participants should be given all information about the goal of the study, the expected duration of their involvement, the processes that will be followed during the study, possible advantages, disadvantages and dangers which they may be exposed, as well as the researcher's credibility. The consent letter was signed by participants of the study.

4.8.4 Confidentiality and privacy

Confidentiality was maintained at all times because careless disclosure is unethical and might harm both the researcher and participants in terms of protection of privacy, which is a basic right guaranteed to all of them (Mahlatjie, 2016). According to Neuman (2006) and De Vos, Strydom, Fouche and Delpont (2012), the researcher must ensure that data is not published in a way that allows specific persons to be linked to responses. As a result, participants were notified that their identity would be protected by the concept of anonymity, and their names would not appear anywhere in the study. Anonymity means no one should be able to identify any subject after the study is over (De Vos *et al.*, 2011). This has given assurance to participants that the information shared was to be kept private, and none of their responses would be linked with their identity. This was important because the study involved individuals who are employed, and their jobs need to be secured at all costs.

The consent letter was developed in a way that it requested respondents to write their names on the form to show proof that they have consented voluntarily. During the data analysis, the researcher ensured that the respondents' names did not

appear on the findings report. Confidentiality was maintained at all times because careless disclosure is unethical, may harm the respondents, and would be a disgrace to the researcher as well. The right to privacy was a fundamental right guaranteed to all participants. To ensure both privacy and confidentiality, the researcher conducted interviews with participants at a place that did not have distraction. The researcher ensured that the place did not put any of them under threat or harm. Furthermore, since the term of confidentiality was to be adhered to, the format to be used, including the utilisation of an audio recorder and note-taking during the interview were explained to participants. All tape-recorded materials are stored in the email of the researcher. Completed interview schedules were securely held in a locked cabinet in the researcher's office where no one else had access.

4.8.5 Release or publishing of findings

On completion of the study, the researcher compiled an accurate and objective research report on factors that hinder the utilisation of intermediary services to alleged child offenders by probation officers. The researcher acknowledges that the findings of the study will be released for public consumption in a written form, and the results will be made available. The research findings as well as the recommendations were in a state of flux.

4.9 QUALITY CRITERIA

Trustworthiness is an important aspect of qualitative research and credibility is the primary criterion for appraising qualitative research (Mc Millan, 2011). Trustworthiness in qualitative research is all about establishing credibility, transferability, conformability and dependability.

4.9.1 Credibility

Credibility refers to the consistency of measurement and the range at which results are similar over different forms of the same instrument of the data collected. In other words, the same results are achieved each time the researcher applies various techniques of assessing the collected data (Babbie, 2007).

In this study, the researcher ensured that the data collected was available to provide for external checks on the research process. The researcher demonstrated data in a

manner that ensured accuracy and identified the reference adequately as a way of checking preliminary findings and interpretations against raw data from the respondents. Credibility was shown through prolonged engagement with participants and by writing notes directly after each interview.

4.9.2 Transferability

The researcher ensured that the study findings are available and applicable to other contexts, and that the questions to the respondents are similar and transparent irrespective of their demographic characteristics. The questions asked in the interview guide were to fit the utilisation of intermediary services to alleged child offenders. There were no hidden agendas on the questions. The researcher improved transferability by selecting resources and saturation data, as well as by providing a clear description of the data (Botma et al., 2010; Shenton, 2004). The researcher reached this when there was enough information to replicate the study and there was no further coding needed

4.9.3 Dependability

The researcher made sure that there is consistency in the findings, and that there is enough information from the research report so that if someone wants to replicate the study, they can do so. The researcher was accountable for the research process by producing a logical, clear and traceable document. She has kept the documents in a lockable locker and submitted them for audit purposes by an external person to examine and review the research process to ensure that the findings are consistent and could be reproduced.

4.9.4 Confirmability

The researcher ensured that the findings of the study are neutral and are based on participants' responses and not on the personal motivations of the researcher. The researcher has the data, transcripts and field notes available to provide the auditor or supervisor in order to ensure that results are free from prejudice.

4.10 Limitations of the study

The researcher conducted the study on fifteen probation officers in Mopani District. This has limited other probation officers from another district in Limpopo. The researcher had approval from the Department of Social Development to interview 15 probation officers. However, only nine (9) gave consent. The researcher did not sample her study. This is due to the limited number of probation officers in the District of Mopani.

4.11 Summary

This chapter had covered the methodology that was used to explore factors that hinder the utilisation of intermediary social work support services to alleged child offenders in Mopani District, Limpopo Province. Aspects such as research approach and design, population and sampling as well as quality criteria were detailed described. The procedure as to how data was collected and analysed as well as the limitations of the study was explained. The next chapter will focus on qualitative data presentation, analysis and interpretations.

CHAPTER FIVE

PRESENTATION, ANALYSIS AND INTERPRETATION OF EMPIRICAL FINDINGS

5.1 INTRODUCTION

The purpose of this chapter is to present, analyse and interpret the empirical qualitative findings of this study. Data were collected through semi-structured face-to-face interviews from a sample of 09 probation officers who work for the Department of Social Development in Mopani District. Six probation officers did not give consent to participate in the study and thus were excluded.

The probation officers who participated in the study have experience in working with children who are alleged to have committed criminal offences. The researcher decided not to sample the population, because the total number of probation officers in Mopani District was fairly limited. Thus, all the probation officers were included in the study. The researcher thus assigned participants pseudonyms of P1-P9 to ensure anonymity.

5.2 Description of participants

Pseudonym	Age	Gender	Race	Designation	Number of years in service of DSD
P1	36	Female	Black	Probation officers	9-10 years
P2	31	Male	Black	Probation officers	3-4 years
P3	37	Male	Black	Probation officers	7-8 years
P4	39	Male	Black	Probation officers	7-8 years
P5	34	Female	Black	Probation officers	3-4 years
P6	40	Female	Black	Probation officers	9-10 years
P7	33	Female	Black	Probation officers	3-4 years
P8	37	Male	Black	Probation officers	5-6 years
P9	29	Female	Black	Probation officers	3-4 years

5.2.1 Gender of probation officers

The majority of probation officers in the sample were females. The gender distribution of probation officers in Mopani District is dominated by females. This confirms Hicks' (2015) and Rapholo's (2018) observation that social work is a predominantly female profession.

5.2.2 Age of probation officers

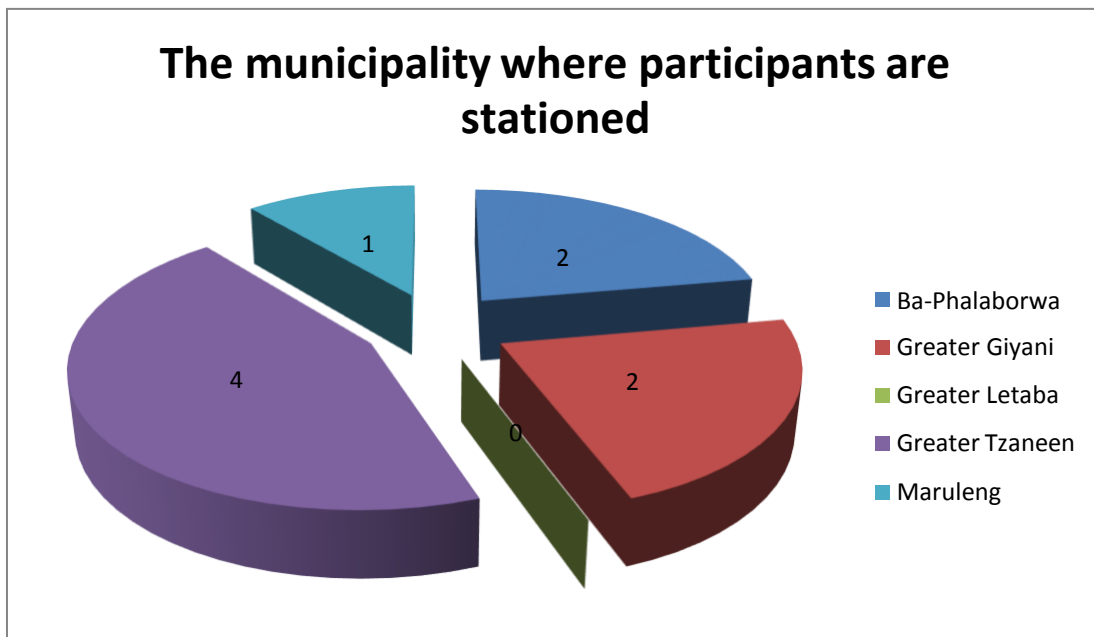
The findings of the study have indicated that most probation officers employed by the Department of Social Development in Mopani District fall within middle adulthood in terms of the stages of development (Aqib Ali & Tassimova, 2019). Probation officers in this stage are more likely to understand the importance of the utilisation of intermediary services towards alleged child offenders than the younger ones. This is because at this stage of middle adulthood, probation officers are more likely to interpret things better than the young ones. This position is supported by Beyers (2012) and Lea (2017), who indicated that people in middle adulthood are more likely to implement changes in thinking and reasoning because they are matured. Therefore, one may surmise that the potential users of intermediary services will be those who fall within middle adulthood than the early and late adulthood.

5.2.3 Experience of probation officers

The majority of probation officers in the sample are those who have been employed longer. This could be because a probation service is a specialised field in the social work profession with the requirement of training of two years before being appointed as a probation officer. Therefore, probation officers who have been employed longer have an understanding of the significance of utilisation of intermediary services than the young ones. This state of affairs is supported by Burke Mulvey, Schubert and Garbin (2014) and Mc Carter et al. (2014), who established that understanding and experience have no bearing on the usage of intermediary services. One needs to equip themselves by reading and attending workshops. Therefore, the findings suggest that all probation officers need to be capacitated with the amendment of policies and regulations to remain informed and bring a difference in their department.

5.2.4 Municipality where participants are stationed

Pie Chart 1: The municipality where participants are stationed



The majority of participants were from Greater Tzaneen Municipality. Tzaneen is considered the biggest municipality in Mopani District with a total population of 390 095 people. The smallest municipality in Mopani District is Maruleng, with a population of 94 859 (SA Stats, 2011).

5.3 Formulation of themes and sub-themes

Objectives of the study	Themes	Sub-themes
5.3.1 To determine probation officers' understanding of the utilisation of intermediary support services towards alleged child offenders	Probation officers' understanding of intermediary services	Lack of information Inaccurate knowledge Understanding the need for emotional support Work overload Burn out Unavailability of intermediary service
5.3.2. To ascertain the level at which probation officers recommend intermediary services for alleged child offenders	Aspects to be considered in the assessment of alleged child offenders for intermediary services	The age of the child The mental state of the child Nature of crime
	Factors that hinder the utilisation of intermediary services	No cooperation
5.3.4.3. To establish views of probation officers regarding the alleged child offender's participation in the proceedings within the Child Justice Court	Views of probation officers on alleged child offender's participation in Child Justice Court	Conducive environment

5.4 Presentation of findings

A semi-structured interview schedule with qualitative questions was used to gather in-depth information from probation officers employed by the Department of Social Development in Mopani District. Nine (9) probation officers were interviewed. The findings are presented as follows:

5.4.1 Theme1: Understanding the utilisation of intermediary services

Understanding the utilisation of intermediary services by probation officers helps them to assimilate new information and continually refine their professional worldview by seeing connections (Khalifa, 2017). Probation officers' understanding of the utilisation of intermediary services towards child offenders helps them to comprehend the feelings, experiences and intentions of alleged child offenders for them to provide effective service delivery and think about things from another point of view. Having understanding also allows the probation officers to move flexibly between their perspectives, and empowers them to make changes and build areas of strength as well as identify areas of improvement.

The main purpose of probation officers to understand the utilisation of intermediary services is for them to have insight information on the duties, roles and responsibilities of intermediary services so that during their assessment with alleged child offenders, they can have the capacity to implement new things and explore new ventures. The study has revealed that most probation officers have understanding of the intermediary services following the Criminal Procedure Act 51 of 1977 section 170(A). The researcher observed that most participants had an idea of what intermediary services are all about. This is proven by the following verbatim accounts by the participants in explaining the importance of intermediary services:

P1 "To relay the meaning of the message asked by the court to the child"

P 2: "To protect the child from hostile cross-examination in court"

P 6:" Intermediary ensures that the child understands the questions asked in court by interpreting to them in a language understood by the child and in a child-friendly manner"

The participants further elaborated that intermediary services are offered to children who cannot give evidence in court and children with disabilities. These findings are supported by section 170 (A) of the Criminal Procedure Act 51 of 1977, which stated that the “intermediary must convey the general purport of any questions to the witness and examination or re-examination of the witness, he helps the children to narrate his or her experience but cannot amend the meaning of the questions, change the questions or ask him or her questions”. The findings of the study revealed that if probation officers understand the utilisation of intermediary services, they will be in a good position to provide a quality, relevant and efficient service delivery to alleged child offenders. They will be skilled, capacitated with new ideas that will help them bring new opportunities and innovate new solutions to the omission of alleged child offenders to utilise the intermediary services.

5.4.2 Sub-theme: Lack of information

Despite the probation officers’ knowledge of intermediary’s services, it was found that there are those participants who lack information on intermediary services. This was evident from the following quotes:

P1: “Honestly speaking, I do not know of the services you offer as intermediaries to child offenders”

P4: “I first heard about intermediary some years back around 2013 when some people come to court for an intermediary. However, I did not know exactly what they are doing in court”

P7: “Around three years ago, before being probation officer I only knew that there is an intermediary but not knowing the duties or roles they play in court”

Lack of information is regarded as ignorance or being uninformed or unaware due to lack of knowledge or training. Harmer (2009) believes that lack of information in the workplace leads to employees’ inability to perform their duties effectively, and can lower their morale. The researcher opines that lack of information hurts service delivery in the workplace because employees will not be able to implement policies and regulations properly.

The researcher observed that although most of the participants know intermediary services, there are however some those who demonstrated a lack of information since some of the probation officers mentioned things that the intermediaries do not do, such as writing reports for the court. This could be due to a lack of information about intermediary services and lack of training of the intermediary and in-service training from the employer. Jonker and Swanzen (2009) stated that “Bethany House trained a core team of intermediaries, launched an awareness and educational campaigns for all court officials to become aware” and started to refer those who qualify for the services to utilise them.

From the findings, the researcher has noted that most of the probation officers are aware of the intermediary services following the Criminal Procedure Act 51 of 1977 Section 170(A). In South Africa, the intermediary was introduced in the Child Justice Court to assist witnesses and victims to relay the general purport of meaning to the court and to ensure that the court receives evidence that is freely presented and more likely to be true and better understood by the court. This implies that a lack of information about intermediary services from probation officers can lead to the probation officer not utilising the services of the intermediary to alleged child offenders.

The study established that awareness of intermediaries to other professionals such as court officials, nurses, psychologists, teachers and social workers is important for the benefit of prospective clients. Therefore, the findings of this study are in line with the awareness mission of Bethany House as referenced by Jonker and Swanzen (2009) because it shows that most probation officers are aware of intermediary services. The findings of the study show that training probation officers about intermediary services is needed to empower them with the knowledge for effective service delivery in their department. The Department needs to outsource relevant service providers that deal with intermediary services to train the probation officers on intermediary services. Despite the findings of the study, some participants revealed their understanding of the utilisation of intermediary services and others lack information on the services rendered by the intermediary support service. Most participants are of the understanding that alleged child offenders need emotional support.

5.4.3 Inaccurate knowledge

Regardless of those who know and those who do not know the services of the intermediary, some appear to have inaccurate knowledge about the services offered by the intermediary. This was proven by the following quotes:

P2: “Intermediaries assess children to stand for trial”

P5: “Intermediaries write and present reports to courts”

P6: “Intermediaries assess the child victims based on the merits of the cases”

P8: “Intermediaries conducts home visits to victims of crime”

The study has revealed that some probation officers perceived the key role of the intermediary as assessing the child to appear in courts. Some probation officers are misinformed about the duties of the intermediary. This statement is not supported by section 170(A)(1) of Act 51 of 1977, which “contemplates that a child will be assessed before testifying in court to determine whether the services of the intermediary should be used, then the state must arrange for the intermediary to be available at the commencement of the trial”. Furthermore, it should be noted that the task of assessment of children for appointment of an intermediary is performed by the social worker/probation officer or the psychologist.

The study findings have established that most of the probation officers conduct home visits to victims of crime and assess them based on the merits of the cases. The finding of the study reveals that this statement is inaccurate knowledge by probation officers. Fambasayi (2016) is in accord with the findings of the study since he established that should the intermediary be aware of the merits of the case before the court commences, he/she should recuse himself or herself from the case and refer the matter to another intermediary. Spencer and Lamb (2012) are in support of the findings as they indicated that the intermediary is not allowed to coach the child or anybody else as a contamination of the evidence can take place because the intermediary is working as a facilitator between court and child offender.

During the court proceedings, the child does not have to memorise a statement or be told what to say in court (Robinson, 2013). Additionally, the study findings emerged that some probation officers viewed the intermediary as ones who write and present reports to the court. Following this, it is evident that some probation officers will have difficulties in assisting the alleged child offenders. As such the Department will experience client dissatisfaction, fruitless expenditure and employees with low morale due to ineffective service delivery. The researcher believes that probation officers need to be empowered with proper skills and knowledge about the duties and responsibilities of intermediary services so that they will be able to provide effective services to the alleged child offenders.

5.4.4 Understanding the need for emotional support

Probation Officers also understand intermediary services as a source of emotional support to children who appear in court. According to Muller and Holley (2010), emotional support is a situation where the intermediary provides help and support to individuals and families during tough times, and vulnerable persons such as children, are safeguarded from danger, undue mental stress and suffering. Their roles are to listen and ask questions so that the child can talk through their feelings. By so doing, they will be able to organise and make sense in a way that reduces stress and improves communication.

Emotional support in intermediary services refers to a situation that allows a victim and witnesses with mental stress to testify in court with the assistance of an intermediary. In so doing, the intermediary will be protecting the witness and victims against hostile cross-examination by the court, prosecution and defence. The child will be allowed to talk to the intermediary only during the trial, and the intermediary will relay the meaning of the message to the witnesses. The majority of participants were of the view that alleged child offenders need emotional support in the Child Justice Court. However, the findings of this study show that majority of participants indicated that alleged child offenders do not receive emotional support from intermediary services. Some of the participants mentioned the following:

P3 “Child offenders need emotional support because some of the offences they have committed are traumatic”

P6 “Child offenders need emotional support as well because they are also children even though they are alleged to have committed the offence. A child is a child irrespective of race, gender, crime. Treatment in court should be the same”

P8 “Child offenders need emotional support because they are viewed as criminals and the court does not take into consideration that they are dealing with a child “

P9 “The child offenders need emotional support to be protected from co-accused, cross-examination and hostile environment and the gallery”

From this finding, the researcher has learned that children who are alleged to have committed the offence and due to testify in court experience are fearful of the outcome of their case. Intermediary emotional support, therefore, is seen as a protective measure which is effective to alleviate children’s fear and stress and preserve their well-being while enabling them to provide reliable testimony in court. The researcher established that some probation officers regarded emotional support as a critical point as it will assist the alleged child offenders to verbalise their feelings and emotions without fear and prejudice. This is interpreted by P1 who reported that:

P1 “Sometimes alleged child offenders withhold information during the preliminary assessment due to fear of the co-accused and because they are used by an adult to commit a crime, those children need to be supported”

However, intermediaries are well-trained professionals who are skilled to assess and notice this under a holistic assessment. In South Africa, the intermediary is appointed to provide support to children, victims, witnesses and those with mental or biological age, to enable them to get a fair trial. Therefore, the findings of the study are in line with a study by Bekink (2017), who reveals that children in conflict with “the law are vulnerable and likely to suffer harm or mental stress from testifying in court”.

The study findings are in accord with Bellengere (2013), who revealed that “vulnerability in the criminal justice system is not limited to children who are victims or complainants of sexual offences but rather to child offenders too”. Terblanche

(2012), further elaborated that “vulnerability is determined by the child unique circumstances, such as biological age, social and economic background and whether the child is a poly-victim”. Research findings show that vulnerability in the Criminal Justice system is not limited to children who are victims or complainants. Therefore, intermediary support services should be extended to alleged child offenders, and guidelines for intermediary support should be developed.

5.4.5 Work overload

The findings of the study reveal that some of the participants perceive work overload as a key factor for their inability to render effective service delivery to alleged child offenders. This finding is in accord with Wijaya (2019), who discovered that work overload is a situation where an “employee is unable to establish a balance between work and family”, and the imbalances are due to the emotional exhaustion and demands of work. Work overload represents the “weight of hours, the sacrifice of time, and the sense of frustration with the inability to complete the tasks at the time given and exceed the time and resources available to do the job” (Keratepe, 2013). The impact of work overload on probation officers was revealed by the following quotes:

P 4: “Probation officers work is demanding and exhausting”

P6: “Probation officers work has piled due to the rotation of employees during this Covid 19 pandemic”

P8: “Probation officers are unable to render effective service delivery to alleged child offenders because they cover many areas”

P9: “Due to the rotation schedule of probation officers as a result of Covid 19, it has pushed more pressure on them because they need to attend to cases within a short space of time”

The findings of the study revealed that probation officers are tasked with a lot of responsibilities to execute in a short space of time. They are therefore less productive in their work and display poor performance in their services to alleged child offenders due to work overload.

The findings of the study add value to a study by Wijaya (2019), who established that work overload might put employees at risk of being less productive, and therefore, cease to have interest in the execution of their job. This statement is supported by Karatepe (2013), who indicated that work overload results in employees being affected in their health and welfare; and physically, they may develop fatigue and back pain. A study by Suzabar, Soelton, Umar and Triwulan (2020) accords with findings by Wijaya and Karatepe (2013), who indicate that work overload results in employees developing health problems like muscular tensions and tiredness due to more work to be done with limited resources. The findings of the study confirm that probation officers might suffer the risk of having burnout due to work overload; and this will affect their effective service delivery that they render to alleged child offenders.

Therefore, probation officers must be given proper training so that their performance can increase, and become satisfied with their job of assisting alleged child offenders. The findings of the study add value to Tahir, Yusoff, Azam, Khan and Kaleem (2012), who established that if effective incentive plans and performance appraisal are implemented correctly, employees will promote probation officers' production in the workplace, and will have job satisfaction.

5.4.6 Sub -Theme 5: Burn out

The findings of the study revealed that six out of nine probation officers identified burnout as the reason for their failure to utilise intermediary services to alleged child offenders. Burnout is a prolonged response to the emotional and interpersonal stressors of the job. The study finding has shown that some probation officers mentioned that they experience exhaustion, fatigue and tiredness due to burnout at the workplace. This statement supports findings by Maslach and Leiter (2016), who emphasised that burnout in the workplace affects employees' personal and social functioning by affecting their quality of work. The following were verbatim quotes:

P3: "The probation officers lose interest in the job due to lack of resources"

P4: "The probation officers loss job fulfilment"

P5: "The probation officers work long hours and also during weekends"

P7:” The probation officers work is demoralising because there are no incentives and the implementation of (OSD) Occupational Specific Dispensation was disastrous and demotivating”

P9: “The probation officer work has no professional upliftment and growth are exposed to intimidation by gangs”

The findings of the study have revealed that burnout in the workplace has a dangerously negative impact, and might lead to probation officers feeling that they are no longer important at work; and as such, they will be disengaged from executing the quality of work when they assess alleged child offenders. Their work is demanding and exhausting due to the experience of the severity of traumatic cases that they deal with. Findings by Maslach (2018) indicated that probation officers are working with children who are accused to have committed violent crime. The study reveals that Africa is viewed as the most violent continent (Diamond, 2016), with South Africa being one of the highest crime rates globally (Clark, 2012). Research indicates that in the past, criminal offences were mostly associated with adults as perpetrators (Spies, 2012), and with children as victims (Clark, 2012). Pavlic (2012) also indicated that crime is also committed by young offenders against both adults and children, and include status offences, murder, violent crime, sexual assault as well as a child-on-child sexual abuse.

Stats SA (2015) has revealed that child offenders are involved in gangs that are dangerous and intimidating to professionals. The study findings reveal that most burnout experienced by probation officers is caused by running around requesting resources from other departments. They do not receive adequate supervision from supervisors to support them. The findings also revealed that probation officers work very hard and are at risk of attacks by gangs. The findings of the study established that probation officers need to be provided with resources to execute their work. They also need to be given incentives to motivate those who hard work in the form of danger and standby allowances. Their salary needs to be implemented correctly according to their specialised fields.

Probation officers need to be given trauma counselling to address the problem of burnout and to avoid poor performance. The department should provide them with

tools of the trade such as computers, cars printers and safe places to conduct assessment since they share offices in four to five groups, which is different from other sections like domestic violence clerks.

5.4.7 Sub-theme 5: Unavailability of intermediary service

The study findings revealed that intermediary services are inaccessible. This was established as a contributory determinant that leads probation officers not to utilise the services of the intermediary of alleged child offenders. Inaccessibility of intermediary services is a situation where the services of the intermediary are centralised in the regional office or are found at certain municipalities, while other municipalities do not have them.

This was confirmed in the following extract:

P1: “Intermediary services are not available in other municipalities such as Maruleng and Giyani”

P2: “There is a lack of trained intermediaries in the municipality”

The findings of the study established that intermediary services are inaccessible in some municipalities. The findings showed that the Department of Justice, Mopani District Tzaneen, and Municipality has only two intermediaries who serve five Magistrate Courts. Maruleng Municipality does not have an intermediary, and is assisted by an intermediary from Tzaneen Municipality. The unavailability of intermediaries results in a long postponement of cases and the travelling of long distances to access the services. This finding indicates that there is a need to enhance the services of the intermediary in Mopani District to make them accessible to those who need them concerning alleged child offenders.

5.5 Theme 2: Aspects to be considered when assessing alleged child offenders for intermediary service

The findings of the study point out factors such as the age of the child offender, the mental state of the child and the nature of the crime committed by alleged child offenders. These factors play an important role during the assessment of alleged child offenders to be considered for intermediary services.

5.5.1 Sub-theme 1: The age of the child

The research established that most of the probation officers have indicated the age of the child to be the reason for the alleged child offender's consideration for intermediary services. In South Africa, a child is regarded as a person under the age of 18 years in terms of the Constitution, Act 106 of 1996. The study findings reveal that probation officers have different views on the category of age, which might warrant them to consider during the assessment for intermediary services. This is shown by the following quotes:

P3: "The age of the child should be considered when assessing the child for intermediary services"

P5: "The age of 14 and below should be considered because these children do not have the criminal capacity to commit a crime"

P8: "The age and maturity of the child should be considered by a probation officer for intermediary consideration"

P9: "Children less than 10 should be considered since they don't know the impact of crime they are committing"

This researcher established that most probation officers perceived children under 18 years (age) to be a determining factor for consideration of intermediary services. Most probation officers shared the same sentiment:

P8: "The age and maturity should be considered when considering factors for alleged child offenders"

These findings support section 170 A (1) of the Criminal Procedure Act 51 of 1977 which states that age alone cannot be a determining factor. There should be aspects such as the maturity of the child. Therefore, the study reveals that all probation officers agree that children below 18 years should be considered for intermediary services.

5.5.2 Sub-theme 2: Mental state of the child

The majority of probation officers indicated that the mental state of alleged child offenders is another factor to be considered for intermediary services. The findings of the study established that probation officers have to assess the child's ability to report the details of the event accurately and completely. Some probation officers can be quoted as follows:

P1: "Probation officer to check the mental capacity of the child"

P3: "Probation officers to assess the child can differentiate between what is good and bad as well lies and truth"

P5: "The probation officers to assess the child willingness, to tell the truth"

P6: "The intellectual capacity of the child should be considered for consideration of intermediary services"

P7:" Child offenders are involved in some criminal activities without really paying attention to the consequences of their actions"

The study findings have indicated that the mental state of the child and willingness to tell the truth are factors to be considered for intermediary services. However, Muller (2009) indicated that the child "should not be disqualified from testifying because he is unable, to tell the truth, and lies". The emphasis is that all witnesses should be regarded as competent to testify if they can understand the questions put to them and can give answers that the court can understand. The proposed test focuses on the child's cognitive abilities.

The findings of the study are in support of normal court proceedings when they appoint an intermediary. Section 170A (5) (b) (ii) of the Criminal Procedure Act 51 of 1977 indicates that if new evidence is produced, whether by a witness in person or by the intermediary, the child for whom that intermediary was assigned will be exposed to mental anguish and suffering. Therefore, Morgan, Meristo, Mann,

Hjelmquist, Surian and Siegal (2014) are of the view that the lack of children to be exposed to the criminal justice system can be attributed to their lack of maturity and developmental shortcomings, which result in the testimony of children being treated with caution since they might have difficulties in distinguishing facts from fantasy.

5.5.3 Sub-theme 3: The nature of the crime

The majority of probation officers indicated that the nature of the crime the alleged child offender committed might be a factor for them to refer for intermediary services. The findings confirmed that most probation officers indicated that the offences that lead the child to be traumatic and stressed are the ones that they perceive important to refer alleged child offenders to the intermediary services. In support of these findings, Coughlan and Jarman (2007) have established that “whenever criminal proceedings are pending before the court and it appears to such a court that it would expose any witness under the age of eighteen to endure mental stress or suffering if he testifies in court, the court may appoint an intermediary to enable such a witness to give evidence through the intermediary”. A study by Ford, Chapman, Connor and Cruise (2012) reported that some children with complex trauma (e.g., traumatic event exposure that fundamentally disrupts the development of self-regulation or primary attachment bonds) “experienced deficits in attention, learning, memory, emotional regulation and such children have avoidant attitudes towards other and as such could serve as a barrier to treatment engagement”.

These are some of the responses from probation officers:

P2:” It is difficult for children who have alleged to have committed rape and sexual assault to testify in court, due to the stressful manner of the questions asked in an open court. Such children need help from the intermediary”

P6: “The gravity of the offence may also be a determining factor to consider intermediary services”

P9: “Some children are forcefully made to commit a crime by adults and they experience trauma during the trial. They need help from intermediary services”

The findings of the study reveal that in South Africa, an intermediary system is attempting to reduce trauma and secondary abuse in court. It is crucial that during assessment, probation officers should advocate for the use of an intermediary in all cases where a child has to give testimony.

5.6 Theme 3: Factors that can hinder the utilisation of intermediary services

The findings of the research established factors such as lack of corporation by child offenders to be the reason that may hinder probation officers' referral for intermediary services. This factor may disrupt the effectiveness of service delivery for alleged child offenders to utilise intermediary services.

5.6.1 Sub-theme1: Non-cooperation from alleged child offenders

The study revealed that probation officers have different perceptions of factors that may hinder them to refer child offenders for intermediary services. Some probation officers are of the view that lack of cooperation by alleged child offenders will be the reason for them not to refer the child to utilise the services of the intermediary. Lack of cooperation entails inadequate supervision, bad discipline, lack of positive reinforcement and lack of compliance with a court or diversion attendance (Mulder, Brand, Bullens & Van Marle, 2010). The lack of cooperation from alleged child offenders and their parents was expressed by most probation officers as a challenge in the rendering of efficient intervention. Below are quotes from some probation officers:

P2: "Probation officer will not refer the child if the child offenders are not cooperative during the assessment"

P7: "I will not refer the child offender if he does not take responsibility for the offence"

P8: "In situations where the child is not remorseful and not willing, to tell the truth, I will not refer to an intermediary"

Despite lack of co-operation being mentioned as the reason for not referring to the intermediary, some probation officers indicated that the circumstances of

the child offender will determine if they should refer them to the intermediary. Some probation officers mentioned that:

P4: "I don't think there is any circumstance that will make probation officers not to refer the child for intermediary services, because aspects that warrant the child victim to use the intermediary should also apply to the child offenders without discrimination"

Regardless of probation officers' different views about factors that hinder them from referring child offenders to intermediary services, the findings of the study establish that for as long as the child experiences trauma and stress, they need to be referred for intermediary services. Therefore, to monitor the intervention provided by probation officers, it is imperative to have cooperation and support from alleged child offenders and their parents.

5.7 Theme 4: Views of probation officers' participation of alleged child offenders in Child Justice Court

The UN (United Nation) guidelines acknowledge that children are vulnerable when testifying during the trial. The court environment is very stressful and traumatic as children sometimes have difficulties remembering details over an extended period. This is caused by the fact that the experience of giving evidence is emotional, developmentally and cognitively impossible for children to give accurate evidence due to age and maturity. In South Africa, alleged child offenders attend the child justice court in a normal court setting. Section 28(2) of the Constitution indicates the rights for children of South Africa as follows:

"Every child has that is of such age, maturity and stage development has the right to be able to participate in any matter concerning that child. The right to participate is appropriate and views expressed by the child must be given due consideration".

The findings of the study have revealed that children who give testimony in a familiar court environment are confident and are less likely to experience fear since they are prepared and empowered with skills, and are orientated with the court environment. This finding is supported by a statement by Muller (2019), who revealed that the child "cannot be heard clearly when the environment is intimidating, hostile,

insensitive or inappropriate for his or her age”. According to the findings of the study, the majority of probation officers believe that providing a suitable environment will increase the child offender’s effective involvement in the child justice court.

5.7.1 Conducive environment

The majority of probation officers mentioned a conducive environment as the reason that ensures effective participation in the Child Justice Court. Terblanche (2013) has established that the child justice court does not resemble a child-friendly environment for some of the child offenders to be put on trial or provide evidence. This finding is supportive of Muller (2019), who revealed that the child cannot be heard clearly when the environment is intimidating, hostile, insensitive or inappropriate for his or her age. Therefore, this statement is supported by the following quotes:

P1: “The child is questioned in a hostile environment which is very intimidating”

P4: “It is difficult to refer the child offender who does not take responsibility for the offence”

P7: “A conducive environment will assist the child offender to be familiar with court environment, helps them ease and understand the questions put to them by a court”

Regardless of probation officers mentioning of the court environment as their view to effective participation of alleged child offender in the Child Justice Court, some probation officers are of the view that the clearing of the gallery best suits the alleged child offenders, and the appointment of an intermediary helps them to ease the stress and fear they are experiencing in court. This statement supports section 170A of the Criminal Procedure Act 51 of 1977, which asserts that appointing an intermediary brings out professional skills in dealing with children, making proceedings less confrontational, insensitive and threatening.

The findings of the study confirmed that alleged child offenders should utilise the CCTV, and the appointment of intermediary should be considered since it will enhance their participation and empower them physically and emotionally when giving evidence in court. Section 63(5) of the Child Justice Act 75 of 2008 provides that “no person may be present at any sitting of a child justice court unless his or her

presence is necessary for connection with the proceedings of the child justice court or presiding officer has granted him or her permission to be present". However, the findings reveal that in practice, the alleged child offender is exposed to members of the community before the state can clear the gallery and the case proceeds in camera. It is very clear from the study findings that a conducive environment is critical in assisting child offenders to feel comfortable and relaxed when testifying in a Child Justice Court. A conducive environment, CCTV and the clearing of the gallery are critical because they help the alleged child offender to be less anxious and not subjected to intimidation when testifying in court.

5.8 Summary of the chapter

This chapter presented the introduction and obtained the empirical findings from participants. Data was presented in inductive thematic. The analysis of the study involved listening to recordings, readings and organising data according to each theme. A few quotes were carefully selected and presented in the findings. Data presented support the former researchers finding.

CHAPTER SIX

SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1 INTRODUCTION

The study focused on factors that hinder the utilisation of intermediary social work support services to alleged child offenders, in Mopani District, Limpopo Province. The study adopted the Integrated Service Delivery Model (ISDM) as the theoretical framework, and the qualitative approach was followed. In this regard, a case study design was adopted. The population was made of probation officers from Mopani District. The district comprises of greater Tzaneen Municipality, greater Letaba Municipality, Maruleng Municipality, Ba-Phalaborwa Municipality and Giyani Municipality. Fifteen probation officers were identified. Given the relatively small size of the population, the researcher preferred not to constitute a sample. To that end, all fifteen probation officers were deemed suitable participants of the study. Six out of these 15 did not give consent to take part in the study and were thus excluded. This brought the total number of probation officers who took part in the study to nine. Data was analysed through thematic analysis, which is a qualitative research technique that can be extensively used across a variety of epistemologies and research questions. Finally, conclusions of the findings and recommendations will be formulated.

6.2 SUMMARY OF THE STUDY

South Africa adopted the use of intermediary services in 1993; thus the South African intermediary service is still under development and improvement. The intermediary services are established in terms of section 170A of the Criminal Procedure Act (CPA), which provides protective measures towards protecting child witnesses from hardships. Sadly, this is not available to child offenders. In South Africa to date, no legislation permits the use of intermediary services for alleged child offenders. However, section 158 of the CPA allows the accused, witnesses and victims of crime to utilise the CCTV, but in practice, only the witness and victims utilise such facilities.

In South Africa, every child has a right to participate, to be heard and to be taken seriously in the criminal justice system. The appointment of the intermediary ensures that the child's voice and wishes are taken into consideration. Thus his/her rights do

not trump over others' rights, but act as a guide to ensure the protection of children in criminal proceedings. It is submitted that South Africa needs to come up with a standard procedure and rules on how to accommodate alleged child offenders in the utilisation of intermediary services. The measures taken in South Africa to protect alleged child offenders in the Child Justice Court are commendable, though there is a need to consider having the below-mentioned recommendations. The purpose of the study was to explore factors that hinder the utilisation of intermediary social work support services to alleged child offenders in Mopani District.

The study was conducted in response to the best interest of the child as a constitutional injunction for the protection of children in all matters concerning their welfare and well-being. The intermediary services are protective measures that are taken to ensure that the best interest of the child is paramount in all matters affecting the children. The best interest of the child principle is also enshrined in the South African legislative framework and is in tandem with section 28(2) of the Constitution. The Constitution provides that a child's best interest is paramount in all matters concerning the child, and the Children's Act urges that the best interest standard should be used in all children. Considering that the best interest principle is enshrined in the Bill of Rights, the constitutional court construed and declared that it is not a mere principle but an independent right. The study explored probation officers' views of aspects that hinder them to use the intermediary services to alleged child offenders, aspects to be considered in the assessment of alleged child offenders as well as their views of alleged child offenders' participation in the Child Justice Court.

The aim of the study was achieved through the following objectives:

6.3 Objectives of the study

The objectives of the study were:

2. Objective one

To determine probation officers' understanding of the utilisation of intermediary support services towards alleged child offenders. The objective was achieved

because probation officers demonstrated a lack of understanding of the utilisation of intermediary support.

The study has achieved this objective on the following themes:

6.3.1 Lack of information

Probation officers have understanding of the utilisation of intermediary support. Even though they had understanding of the existence of intermediary services, some lacked information on intermediary services. This shows that there is a lack of training about intermediary support among probation officers.

6.3.2 Inaccurate knowledge

Some probation officers are misinformed about the duties of the intermediary. The study has revealed that some of them perceived the key role of intermediary as assessing the child to appear in the courts and to write and present reports to the courts. It should be noted that the task of assessing a child for the appointment of the intermediary is usually conducted by the social worker/probation officer or the psychologist.

6.3.3 Understanding the need for emotional support

The majority of probation officers were of the view that alleged child offenders need emotional support in the Child Justice Court. However, the findings of this study show that majority of participants indicated that alleged child offenders do not receive emotional support from intermediary services.

From this finding, the researcher has learned that children who are alleged to have committed the offence and due to testify in court experience fear of the outcome of their case. Intermediary emotional support, therefore, is seen as a protective measure which is effective to alleviate children's fear and stress, and to preserve their well-being while enabling them to provide reliable testimony in court.

6.3.4 Work overload

The findings of the study reveal that some of the probation officers perceive work overload as a key factor for their inability to render effective service delivery to alleged child offenders. The officers are therefore less productive in their work, and

therefore present poor performance in their services to alleged child offenders due to work overload. These findings confirm that the officers might suffer the risk of burnout due to work overload. This will affect the effective service delivery that they render to alleged child offenders.

6.3.5 Burnout

The findings of the study have revealed that burnout in the workplace has a dangerously negative impact, and might lead to probation officers feeling that they are no longer important at work; consequently, they will be disengaged from executing the quality of work when they assess alleged child offenders. The study finding has shown that some probation officers mentioned that they experience exhaustion, fatigue and tiredness due to burnout at the workplace. The finding reveals that most probation officer's burnout is caused by running around requesting resources from other departments because they do not receive adequate supervision from supervisors to support them. Therefore, the study concludes that probation officers work very hard and are at risk of attacks by gangs.

6.3.6 Unavailability of intermediary services.

The findings of the study established that intermediary services are inaccessible from other municipalities. The findings showed that the Department of Justice, Mopani District, Tzaneen Municipality has only two intermediaries who serve five Magistrate Courts. Maruleng Municipality does not have an intermediary and is assisted by an intermediary from Tzaneen Municipality. Ba-Phalaborwa Municipality has one (1) intermediary who serves three courts: Lulekani Court, Namakgale and Ba-Phalaborwa, and in her absence, the intermediary from Tzaneen assists these courts.

3. Objective two

To ascertain the level at which probation officers recommend intermediary services for alleged child offenders, the findings revealed that the probation officers have indicated that they do not recommend child offenders to the intermediary services. The findings further revealed that the recommendation of intermediary services is beneficial to child victims and not child offenders.

The study has achieved this objective on the following themes:

6.3.7 Age of the child

The researcher established that most probation officers perceived children under 18 years (age) to be a determining factor for consideration of intermediary services.

6.3.8 The mental state of the child

The findings of the study indicated that the mental state of the child and willingness, to tell the truth, are factors to be considered for intermediary services. However, Muller (2009) indicated “that the child should not be disqualified from testifying because he is unable, to tell the truth, and lies”. The emphases are that all witnesses should be considered competent to testify if they can understand the questions asked of them and can respond with answers that the court can understand. The proposed test focuses on the child’s cognitive abilities

6.3.9 The nature of the crime committed

The findings confirmed that most probation officers have indicated that the offences that lead the child to be traumatised and stressed are the ones that they perceive important to refer alleged child offenders to the intermediary services. According to the study by Ford and Chapman (2012) some children with complex trauma, such as traumatic event exposure that fundamentally disrupts the development of self-regulation or primary attachment bonds, have attention, learning memory, and emotional regulation deficits, as well as an avoidance attitude towards others, which may serve as a barrier to treatment engagement. Even though probation officers have mentioned aspects to be considered when assessing child offenders for an intermediary, some have mentioned non-cooperation as a factor to hinder them to utilise the intermediary services.

6.3.10 Non-cooperation

Some probation officers were of the view that lack of cooperation by alleged child offenders was the reason for them not to refer the child to utilise the services of the intermediary. The findings of the study conclude that for as long as the child experiences trauma and stress they need to be referred for intermediary services.

4. Objective three:

To establish the views of probation officers on alleged child offender's participation in the Child Justice Court. The objective was achieved because the probation officers shared their views on the participation in the proceedings of the Child Justice Court towards alleged child offenders. The probation officers indicated a conducive environment as an effective reason to ensure that child offender participate effectively in the Child Justice Court.

The study has achieved this objective on the following theme:

6.3.11 Conducive environment

The findings of the study have revealed that children who give testimony in a familiar court environment are confident and less likely to experience fear since they are orientated, prepared and empowered to testify in the court environment. The study further established that most of the probation officers indicated that the effectiveness of child offenders' participation in the child justice court will be enhanced if they are in a conducive setting. Finally, the findings confirmed that intermediary services are not utilised for alleged child offenders because the law in South Africa does not yet support the use of intermediaries to alleged child offenders.

6.4 RECOMMENDATIONS

Based on the findings and conclusions drawn from the study, several recommendations are made. The recommendations may be considered and justified, as follows:

6.4.1 Legislative recommendations

The Child Justice Act No 75 of 2010 must be amended to include guidelines of referring alleged child offenders for intermediary support services. Section 170 (A) of the Criminal Procedure Act 51 of 1977 should be amended to include access to intermediary support services by alleged child offenders. South African legislation must ensure the same treatment to children regardless of whether they are child victims or alleged child offenders without violation of any child rights in terms of the Constitution of South Africa.

6.4.2 Department of Social Development: Mopani District

Probation officers in Mopani District must be capacitated on intermediary support services. The Department should provide probation officers with resources such as computers, cars, printers and a conducive environment to enable them to render effective service delivery to alleged child offenders. Probation Officers should be conversant with section 158 of the Criminal Procedure Act 51 of 1977, which stipulates that evidence can be delivered employing closed-circuit television or other electronic media, meaning the accused or witness does not have to be physically present in court. Currently, there are no guidelines in South Africa to guide probation officers on how to recommend intermediary services. Therefore, the study recommends that professional organisations, particularly the South African Council for Social Service Professions, recognise intermediary services as a distinct sector. . As a result, all intermediaries will be required to register with the council, and an ethical code of conduct can be adhered to by all intermediaries.

6.4.3 Department of Justice

Intermediary personnel must create awareness of the services they render in a multi-stakeholder setting. They must increase the number of intermediary support service personnel to ensure the availability of intermediary services throughout Mopani District because there is a need. The Child Justice Court must be prioritised. As such, cases involving children must be attended first before the gallery is populated to avoid clearing the gallery while an alleged child offender is already in court. More probation officers must be trained and employed, as there is a need for this.

6.4.4 Probation officers

Probation officers must ensure that there is ongoing assessment, and must provide support to the alleged child offenders throughout their cases. They must monitor cases of alleged child offenders in a child justice court. It is recommended that probation officers in all assessments (preliminary and holistic) should always screen the possibility of utilising intermediary services irrespective of whether or not the child is an offender. Some adult offenders might use young offenders to commit a

crime. It is recommended that probation officers should establish a rapport with alleged child offenders during the pre and holistic assessment, and create a conducive environment to enable the child to feel free.

6.4.5 Recommendations for further research

A similar study could be conducted nationally and internationally. Other studies could be conducted on the perceived benefits of intermediary services to alleged child offenders.

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APPENDICES

APPENDIX A: INVITATION TO PARTICIPATE IN THE STUDY



**University of Limpopo (Turfloop Campus)
Faculty of Humanities
School of Social Sciences
Department of Social Work**

APPENDIX A: REQUEST FOR PARTICIPATION IN THE STUDY

Dear Participant

I am a Masters' (M.A.) student in Social Work (SW) at the University of Limpopo, Turfloop Campus. You are invited to form part in the research study which forms part of my MA (SW) degree. As part of the study, I am supposed to collect data from identified participants and with you included. The research study is titled **Factors that hinder the utilisation of intermediary Social Work support service to alleged child offenders in Mopani District, Limpopo Province.**

You are assured that the session will take approximately thirty (30) minutes to one hour. During the interview, the researcher will make use of a semi-structured interview guide. You are further requested to provide your honest responses to the questions asked in the tool provided. You are also requested to read and sign the informed consent provided to you.

Thank you for your participation.

Makwala K.P

Date: 2018 /09/ 27

M.A. Social Work student

TOPIC OF THE STUDY: Factors that hinder the utilisation of intermediary Social Work support service to alleged child offenders in Mopani District, Limpopo Province.

DECLARATION OF CONSENT (PARTICIPANT)

I.....(initials and surname) being the participant in this study, hereby give permission to voluntarily participate in this research study with the following understanding:

- The researcher conducting the study is a student at the University of Limpopo (Turfloop Campus).
- The research forms part of the requirements for student's Master's degree in Social Work.
- Data will be collected by means of semi structured interview.

My rights as a participant:

- I am aware that my participation in this study is not forceful.
- I have the right to withdraw from the study at any given time.
- I have the right to refuse to give responses to any question(s) when I feel that I am not comfortable.
- I acknowledge that I have been assured that my personal information in this study will remain anonymous and my name and identity will be kept from public knowledge.

I grant permission for any information that I will reveal during the interview process, with the understanding that data collected will be utilised for the sake of this study.

I, (participant), agree to take part in this study.

SIGNATURES

Participant:

Makwala K.P
M.A. Social Work

DATA COLLECTION TOOL

SECTION A: DEMOGRAPHIC INFORMATION

Please mark with a cross (x) in an appropriate box

1. Gender

Male		Female	
------	--	--------	--

2. Which age group are you?

20-25	26-30	31-35	36-40	41-45	46-50	51-55	55

3. Population group

Black	Coloured	Indians	White	Other

4. How many years of experience do you have in your current job?

1	1-2	3-4	5-6	7-8	9-10	11-12	13-14	15

5. In which municipality are you stationed?

Ba- Phalaborwa	Greater Giyani	Greater Letaba	Greater Tzaneen	Maruleng

Section B: Understanding of utilisation of intermediary services

1. What is your understanding of intermediary services?
2. Do you think alleged child offenders can benefit from the services of an intermediary (probe?)
3. In your work experience, have you ever recommended the utilisation of the services of the intermediary for an alleged child offender? (Probe).
4. Did you experience any challenges when referring an alleged child offender for intermediary service?
5. When did you get to know about intermediary services?
6. From your experience as a Probation Officer, what are the reasons for alleged child offenders not to utilise the services of the intermediary?

SECTION C

Level at which intermediary support can be recommended to alleged child offenders

1. In your opinion, when and at what age do you think an alleged child offender should utilise an intermediary support?
2. What aspects should be considered during the assessment of an alleged child offender which can qualify the recommendation of an intermediary service?
3. Which aspects can hinder your recommendation of an intermediary service to an alleged child offender?
4. Do you think an approach when an alleged child offender is giving evidence in a Child Justice Court should differ or be considered the same as when handling a case of a child victim during an intermediary process, provide reasons for your response?
5. What do you think about an intermediary service in relation to handling stress and trauma experienced by an alleged child offender during proceedings within a Child Justice Court?

D. Views on intermediary services

1. In your experience, what are factors that hinder the utilisation of services of the intermediary to alleged child offenders?
2. What is your view of closed circuit television and the clearing of the gallery when dealing with matters related to an alleged child offender?
3. In relation to the training you have obtained in probation services as well as the legislations guiding your practice, is it recommended to utilise intermediary services for an alleged child offender in a Child Justice Court?

Thank you for your participation.

APPENDIX D: LETTER FOR PERMISSION

Makwala KP
House number. 2450
Nkowankowa
0870
13 September 2020

The Head of Department
Department of Social Development
Limpopo Provincial office
Polokwane
0700

Sir/Madam


Request for permission to conduct research with staff Probation Officers attached to Mopani District

I, Makwala KP, hereby request permission to conduct research amongst Probation Officers attached to Mopani District. The title of my study is **Factors that hinder the utilisation of intermediary Social Work support service to alleged child offenders in Mopani District, Limpopo Province**. I am currently registered with the University of Limpopo doing a Master's degree in Social Work, student number 200112504, supervised by Mrs Mahlatjie TMA who is a Lecturer in the Department of Social Work at the University of Limpopo and co-supervised by Prof. Sithole, the Director of the School of Social Sciences in the same university.

Attached please find my study proposal

Thank you in anticipation of your consideration of this request.

Yours faithfully



Makwala KP

Student

APPENDIX E: TURFLOOP RESEARCH ETHICS COMMITTEE CLEARANCE



University of Limpopo
Department of Research Administration and Development
Private Bag X1106, Sovenga, 0727, South Africa
Tel: (015) 268 3935, Fax: (015) 268 2306, Email: anastasia.ngobe@ul.ac.za

TURFLOOP RESEARCH ETHICS COMMITTEE
ETHICS CLEARANCE CERTIFICATE

MEETING: 05 March 2020

PROJECT NUMBER: TREC/45/2020: PG

PROJECT:

Title: Factors that hinder the utilisation of intermediary Social Work support services to alleged child offenders in Mopani District, Limpopo Province
Researcher: KP Makwala
Supervisor: Mrs TMA Mahlatjie
Co-Supervisor/s: Prof SL Sithole
School: Social Sciences
Degree: Master of Social Work


PROF P MASOKO
CHAIRPERSON: TURFLOOP RESEARCH ETHICS COMMITTEE

The Turfloop Research Ethics Committee (TREC) is registered with the National Health Research Ethics Council, Registration Number: REC-0310111-031

Note:

- i) This Ethics Clearance Certificate will be valid for one (1) year, as from the abovementioned date. Application for annual renewal (or annual review) need to be received by TREC one month before lapse of this period.
- ii) Should any departure be contemplated from the research procedure as approved, the researcher(s) must re-submit the protocol to the committee, together with the Application for Amendment form.
- iii) PLEASE QUOTE THE PROTOCOL NUMBER IN ALL ENQUIRIES.

Confidential



LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

**DEPARTMENT OF
SOCIAL DEVELOPMENT**

Ref : 10/6/R
Enq : MJ Moloisi
Tel : 015 230 4381 / 082 457 7120
Email : MoloisiMJ@dsd.limpopo.gov.za

Ms Makwala KP
House no. 2450
Nkowankowa
0870

Dear Madam

RE: REQUEST FOR PERMISSION TO CONDUCT A RESEARCH STUDY

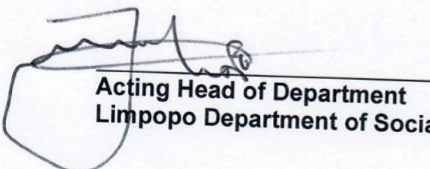
The above matter refers.

This certifies that Ms KP Makwala has been granted permission to conduct a study titled: "Factors that hinder the utilization of intermediary Social Work support service to alleged child offenders in Mopani District, Limpopo Province". Her research proposal was granted full approval and ethical clearance by the Limpopo Provincial Research and Ethics committees which sit at the Office of the Premier.

The study is significant because it seeks to tighten up existing guidelines on the assessment of child offenders and intermediary services. It is hoped that this study will make a contribution towards the effective utilisation of intermediaries when tackling cases of alleged child offenders in Limpopo Province in particular.

The study is targeting fifteen (15) Probation Officers employed by the provincial Limpopo Department of Social Development in Mopani District. The distribution is as follows: Greater Tzaneen Municipality (8), Greater Giyani (2), Greater Letaba (2), Ba-Phalaborwa (2) and Maruleng (1).

In view of the above, this letter grants Ms KP Makwala permission to conduct interviews with above-mentioned Probation Officers in Mopani DSD District offices of the provincial Department of Social Development in Limpopo Province.


Acting Head of Department
Limpopo Department of Social Development

07/10/2020
Date

21 Biccard Street, Polokwane, 0700, Private Bag x9710, POLOLKWANE, 0700
Tel: (015) 230 4300, Fax: (015) 291 2298 Website: <http://www.dsd.limpopo.gov.za>

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APPENDIX G: APPROVAL FROM OFFICE OF THE PREMIER

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LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE PREMIER

Office of the Premier

Research and Development Directorate

Private Bag X9483, Polokwane, 0700, South Africa

Tel: (015) 230 9910, Email: mokobij@premier.limpopo.gov.za

**LIMPOPO PROVINCIAL RESEARCH ETHICS
COMMITTEE CLEARANCE CERTIFICATE**

Meeting: September 2020

Project Number: LPREC/12/2020: PG

Subject: Factors that Hinder the Utilisation of Intermediary Social Work Support Services to Alleged Child Offenders in Mopani District, Limpopo Province

Researcher: Makwala KP

Dr Thembinkosi Mabila

Chairperson: Limpopo Provincial Research Ethics Committee

The Limpopo Provincial Research Ethics Committee (LPREC) is registered with National Health Research Council (NHREC) Registration Number **REC-111513-038**.

Note:

- i. This study is categorized as a Low Risk Level in accordance with risk level descriptors as enshrined in LPREC Standard Operating Procedures (SOPs)
- ii. Should there be any amendment to the approved research proposal; the researcher(s) must re-submit the proposal to the ethics committee for review prior data collection.
- iii. The researcher(s) must provide annual reporting to the committee as well as the relevant department.
- iv. The ethical clearance certificate is valid for 12 months. Should the need to extend the period for data collection arise then the researcher should renew the certificate through LPREC secretariat. PLEASE QUOTE THE PROJECT NUMBER IN ALL ENQUIRIES.

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PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE PREMIER

TO: MAKWALA KP
FROM: DR T MABILA
ACTING CHAIRPERSON: LIMPOPO PROVINCIAL RESEARCH COMMITTEE (LPRC)
DATE: SEPTEMBER 2020
SUBJECT: FACTORS THAT HINDER THE UTILISATION OF INTERMEDIARY SOCIAL
WORK SUPPORT SERVICES TO ALLEGED CHILD OFFENDERS IN MOPANI DISTRICT,
LIMPOPO PROVINCE
RESEARCHER: MAKWALA KP

Dear Colleague

The above researcher's research proposal served at the Limpopo Provincial Research Committee (LPRC). The committee is satisfied with the methodological soundness of the research proposal.

Decision: The research proposal is granted full approval.

Regards

Acting Chairperson: Dr T Mabila

Secretariat: Ms J Mokobi

24/09/2020

CONFIDENTIAL



LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE PREMIER

TO: MAKWALA KP

FROM: DR T MABILA

CHAIRPERSON: LIMPOPO PROVINCIAL RESEARCH ETHICS COMMITTEE (LPREC)

DATE: SEPTEMBER 2020

SUBJECT: FACTORS THAT HINDER THE UTILISATION OF INTERMEDIARY SOCIAL
WORK SUPPORT SERVICES TO ALLEGED CHILD OFFENDERS IN MOPANI DISTRICT,
LIMPOPO PROVINCE

RESEARCHER: MAKWALA KP

Dear Colleague

The above researcher's research proposal served at the Limpopo Provincial Research Ethics Committee (LPREC). The committee is satisfied with the ethical soundness of the proposal.

Decision: The research proposal is granted full approval and ethical clearance.

Regards

Chairperson: Dr T Mabila

A handwritten signature in black ink, appearing to be "T Mabila".

Secretariat: Ms J Mokobi

Date: 24/09/2020

A handwritten signature in black ink, appearing to be "J Mokobi".

APPENDIX H: CONFIRMATION OF SUPERVISION



University of Limpopo
Department of Social Work

Private Bag X1106, Sovenga, 0727, South Africa

Tel: (015) 268 3852, Fax: (015) 268 3636/2866, Email: tebogo.mahlatjie@ul.ac.za

To : The Head of Department

Department : Social Development

: Limpopo Provincial Office

: Polokwane

From : Mahlatjie Tebogo

Designation : Lecturer

Institution : University of Limpopo

Department : Social Work

Date : 22 October 2018

Subject : Confirmation of supervision, Makwala KP student no. 200112504

1. The above matter refers.
2. I Mrs Tebogo Madiane Anna Mahlatjie hereby confirm that Mrs. Makwala KP is a registered Masters' student in the Department of Social Work, University of Limpopo.
3. I further wish to confirm that I am responsible for the supervision of the student's research study and Prof. Sithole SL is the co-supervisor.
4. The student is being guided to conduct the study which will benefit a lot of institutions, including the Department of Social Development.

5. Kindly allow the student to collect data amongst Probation Officers attached to your department, with reference to those who are based in Mopani District.

Hoping for your positive response.

Regards

Promoter

APPENDIX I: EDITORIAL LETTER



University of Limpopo
Department of Linguistics, Translation and Interpreting
School of Languages and Communication Studies
Private Bag x1106, Sovenga, 0727, South Africa
Tel: (015) 268 3707, Fax: (015) 268 2868, email:kubayij@yahoo.com

26 August 2021

Dear Sir/Madam

SUBJECT: EDITING OF DISSERTATION

This is to certify that the dissertation entitled 'Factors that hinder the utilisation of intermediary social work support service to alleged child offenders in Mopani District, Limpopo Province' by KELEBOGILE PRECIOUS MAKWALA has been copy-edited, and that unless further tampered with, I am content with the quality of the dissertation in terms of its adherence to editorial principles of consistency, cohesion, clarity of thought and precision.

Kind regards



Prof. SJ Kubayi (DLitt et Phil - Unisa)
Associate Professor
SATI Membership No. 1002606

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