HOW MUCH PUNISHMENT IS ENOUGH: THE CRIMINAL RECORD AS A DEATH SENTENCE?

by

Mbongiseni Mdakane

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Supervisor: Professor M. E. Fourie

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DECLARATION

I, Mbongiseni Mdakane, student number 36518409 declare that *How much punishment is enough: the criminal record as a death sentence* is my own work and that all the sources used or quoted have been indicated and acknowledged by means of complete references.

18 February 2022

SIGNATURE   **DATE**

ACKNOWLEDGEMENTS

DEDICATION

I dedicate this study to the living memory of "Sqoko", aka "Katiba". May his soul rest in peace.

8 SUSPECTS ARRESTED, 1 DEAD AFTER FOILED CASH-IN-TRANSIT HEIST IN THE VAAL

JOHANNESBURG - Police said they arrested eight suspects after an attempted cash-in-transit heist at Evaton Mall in the Vaal. The group was handcuffed on Friday during a joint operation between the Johannesburg Metro Police Department and the South African Police Service.

From: https://ewn.co.za/2019/06/08/8-suspects-arrested-1-dead-after-foiled-cash-in-transit-heist-in-the-vaal, retrieved on 26 August 2019.

Headlines and picture courtesy of Eyewitness News

Abstract

Social reintegration studies posit that there is relentless and subtle governance in society that aims to exclude people with a criminal record from participating in the labour market. Generally speaking, the majority of these studies focus exclusively on ex-offenders who return home after successfully participating in higher education, while ignoring the effects of a criminal record, especially given the increasingly emerging cohort of people living with the stigma of, and discrimination against, a criminal record. Notwithstanding the myriad of challenges and complexities that ex-offenders encounter when applying for admission to professional licensing bodies and/or employment, this study, situated in a qualitative paradigm, incorporated the Social Identity Theory (SIT) to explore and illuminate the lived experiences of six ex-life-imprisonment offenders (ex-lifers) as they navigated South Africa's labour market in search of employment. To address the study's main research question, their views, perceptions and experiences regarding South Africa's labour market were considered with those of a human resource manager, the DCS's skills development director and various gatekeepers to the Law, Education, Social Work and Psychology professions as the study's primary sources of data. This framework served to guide the study's design achieved through social constructionism while adopting a phenomenological stance, intertwined with a qualitative policy document analysis methodology. Based on the study's findings, applications and admission to practise, including access to labour markets, are context-bound and subscribe to the "fit and proper" clause that functions as a "sieve" for assessing and identifying "defects" in character, thereby regulating the conditions that justify the admission and rejection of people with a criminal record. On a more positive note, the "dynamics of criminal records", namely, the "nature and severity of the offence" committed, the "age and time of conviction", and the "association between the job and/or training applied for" vary, as are the circumstances leading to each criminal record. Therefore, despite being portrayed as a "double-edged sword" with adverse implications for "concealment and non-disclosure", by itself, a criminal record is not commensurate to automatic disqualification, since each criminal record is unique, and constructed entirely based on "individual merit".

Abstrak

Sosiale herintegrasiestudies stel voor dat daar meedoënlose en subtiele bestuur in die samelewing is wat daarop gemik is om mense met 'n kriminele rekord uit te sluit van deelname aan die arbeidsmark. Oor die algemeen fokus die meerderheid van hierdie studies uitsluitlik op oud-oortreders wat huis toe terugkeer nadat hulle suksesvol aan hoër onderwys deelgeneem het, terwyl die gevolge van 'n kriminele rekord geïgnoreer word, veral gegewe die toenemend opkomende groep mense wat met die stigma van, en diskriminasie teen, 'n kriminele rekord leef. Nieteenstaande die magdom uitdagings en kompleksiteite wat oud-oortreders teëkom wanneer hulle aansoek doen om toelating tot professionele registrasieliggame en/of indiensneming, het hierdie studie, geleë in 'n kwalitatiewe paradigma, die Sosiale Identiteitsteorie (SIT) geïnkorporeer om die geleefde ervarings van ses oud-lewenslange oortreders, terwyl hulle Suid-Afrika se arbeidsmark navigeer op soek na werk, te ondersoek. Om die studie se hoofnavorsingsvraag aan te spreek, is hul sienings, persepsies en ervarings rakende Suid-Afrika se arbeidsmark oorweeg asook dié van 'n menslikehulpbronbestuurder, die Departement van Korrektiewe Dienste se vaardigheidsontwikkelingsdirekteur en verskeie hekwagters tot die Regte-, Onderwys-, Maatskaplike werk- en Sielkunde-professies as die studie se primêre bronne van data. Hierdie raamwerk het gedien om die studie se ontwerp, wat deur middel van sosiale konstruksionisme bereik is, te rig, terwyl dit 'n fenomenologiese standpunt ingeneem het, verweef met 'n kwalitatiewe beleidsdokument-ontledingsmetodologie. Gebaseer op die studie se bevindinge, is aansoeke en toelating tot praktisering, insluitend toegang tot arbeidsmarkte, konteksgebonde en onderskryf dit die "pas en behoorlik" klousule wat funksioneer as 'n "sif" vir die assessering en identifisering van "gebreke" in karakter, en daardeur regulering van die voorwaardes wat die toelating en verwerping van mense met 'n kriminele rekord regverdig. Op 'n meer positiewe noot, die "dinamika van kriminele rekords", naamlik die "aard en erns van die oortreding" wat gepleeg is, die "ouderdom en tyd van skuldigbevinding", en die "assosiasie tussen die werk en/of opleiding waarvoor aansoek gedoen word" verskil, asook die omstandighede wat tot elke kriminele rekord lei. Daarom, ten spyte daarvan dat dit as 'n "tweesnydende swaard" uitgebeeld word met nadelige implikasies vir "verberging en nie-openbaarmaking", op sigself, is 'n kriminele rekord nie in ooreenstemming met outomatiese

diskwalifikasie nie, aangesien elke kriminele rekord uniek is, en geheel en al gebaseer op "individuele meriete".

Sleutelwoorde: kriminele rekord, Suid-Afrika, Departement van Korrektiewe Dienste, lewenslange gevangenisstraf, sosiale herintegrasie, herhaling, korrektiewe onderwys, kriminele afwesigheid, geleefde ervaring, korrektiewe fasiliteit

Isishayelelongokufingqiwe

Ucwaningo lokubuyiselwa komphakathi emphakathini lubeka ukuthi kunokubusa okungapheli nokucashile emphakathini okuhlose ukukhipha abantu abanerekhodi lobugebengu ekubambeni iqhaza emakethe yezabasebenzi. Ngokuvamile, iningi lalezi zifundo ligxile kakhulu kulabo ababeyizephula-mthetho ababuyela emakhaya ngemva kokubamba iqhaza ngempumelelo emfundweni ephakeme, kuyilapho beshaya indiva imiphumela yerekhodi lobugebengu, ikakhulukazi uma kubhekwa ukukhula kwezinga labantu abaphila nokucwaswa, kwerekhodi lobugebengu. Naphezu kwezinkulungwane zezinselelo nobunzima labo ababeyizephula-mthetho abahlangabezana nazo lapho befaka izicelo zokwamukelwa ezinkampanini ezinikezela ngamalayisensi kanye nokuqashwa. Lolucwaningo olutholakala endaweni yezinga eliphakeme luhlanganise i-Social Identity Theory (SIT) ukuze luhlole futhi lukhanyise kabanzi ulwazi ngempilo yabayisithupha ababeboshelwe ubugebengu njengoba bezulazula emakethe yezabasebenzi eNingizimu Afrika befuna umsebenzi. Ukubhekana nombuzo obalulekile wocwaningo, imibono yabo, imibono kanye nolwazi lwabo mayelana nemakethe yezemisebenzi yaseNingizimu Afrika kucatshangelwe kanye naleyo yomphathi wezabasebenzi, umqondisi wokuthuthukiswa kwamakhono we-DCS kanye nabalinda amasango behlukene bomsebenzi wezoMthetho, wezeMfundo, ezeNhlalakahle nezeNgqondo njengezisebenzi imithombo eyinhloko yocwaningo olunzulu.

Lolu hlaka lusebenze ukuqondisa umklamo wocwaningo ozuzwe ngokwakhiwa komphakathi ngenkathi kwamukelwa isimo se-phenomenological, esihlanganiswe nendlela yokuhlaziya idokhumenti yenqubomgomo ezingeni eliphambile. Isisekelo salokho okutholakele ngocwaningo, izicelo kanye nokwenza ngokusezingeni elamukelelayo ukufinyelela ezimakethe zabasebenzi, kuhambisana nengqikithi futhi kuhambisana nesigatshana "sokufaneleka nesifanele" esisebenza "njengesisefo" sokuhlola nokuhlonza "amaphutha" ngohlamvu, ngalokho. ukulawula izimo ezivumela ukwamukelwa kanye nokwaliwa kwabantu abanerekhodi lobugebengu. Okuhle nakakhulu ke, "ukushintshashintsha kwamarekhodi obugebengu", okungukuthi, "imvelo nobukhulu becala" elenziwe, "iminyaka kanye nesikhathi sokugwetshwa", kanye "nokuhlangana phakathi komsebenzi noma ukuqeqeshwa okufakele izicelo" ziyahluka, njengoba zinjalo izimo eziholela kurekhodi ngalinye lobugebengu. Ngakho-ke, naphezu kokuvezwa "njengenkemba ebukhali nhlangothi

zombili" enemithelela emibi "yokufihla nokungadalulwa", ngokwalo, irekhodi lobugebengu alihambisani nokuhoxiswa okuzenzakalelayo, njengoba irekhodi ngalinye lobugebengu lihlukile, futhi lakhiwe ngesisekelo esipheliwiseyo. "ukufaneleka komuntu ngamunye"

Izidikimba ezingomogo:

Irekhodi lobugebengu, Umnyango wezokuqondisa izigwegwe ngokomthetho eningizimu Africa, ukugwetshwa udilika jele, ukubuyisana nokuhlanganiswa kabusha nomphakathi, ukoboshwa gokuphindaphindiwe, imfundiso yezobuligiswa, ukungaphinde uzibandakanye nobugebengu, isipiliyoni ngempilo, nendawo yezokuqondisa.

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Acronyms and abbreviations

CJS - Criminal Justice System

COVID-19 - Coronavirus disease, 2019

CPA - Criminal Procedure Act

DCS - Department of Correctional Services

GST - General Strain Theory

HE - Higher Education

HPCSA - Health Professions Council of South Africa

HRD - Human Resource Development

IPA - Interpretative Phenomenological Analysis

LSSA - Law Society of South Africa

NBCSA - National Bar Council of South Africa

NGO - Non-Governmental Organisation

NSFAS - National Student Financial Aid Scheme

ODL - Open Distance Learning

PAM - Prison Adjustment Model

REC - Research Ethics Committee

RSA - Republic of South Africa

SACE - South African Council for Educators

SACSSP - South African Council for Social Services Professions

SANDF - South African National Defence Force

SAPS - South African Police Services

SES - Socioeconomic Status

SIT - Social Identity Theory

UK - United Kingdom

Unisa - University of South Africa

USA - United States of America

VOD - Victim Offender Dialogue

Definitions and key terms

Life incarceration - refers to offenders serving a life sentence. According to the Correctional Services Act 111 of 1998 (ss. 73 (6) (iv) (vi) and 78 (1)) (Republic of South Africa, 1998), the possibility of release on parole is dependent on two factors, namely: (1) an offender serving a life sentence may be considered for parole supervision on the recommendation of the Minister of Correctional Service; and/or (2) an offender serving a life sentence may be considered for parole supervision by the Minister of Correctional Services provided that the offender has already served 25 years of his/her sentence, or when an offender attains the age of 65 or has already spent 15 years behind bars.

Correctional officers - refers to the personnel of the DCS. These individuals are accountable for maintaining safety in, and control of, the prison; administrative duties, including the training and treatment of offenders, as well as preparing and assisting offenders for their release and reintegration into their community.

Higher Education - [means all] learning programmes leading to qualifications higher than Grade 12 or its equivalent in terms of the National Qualifications 5 Framework as contemplated in the South African Qualifications Authority Act 58 of 1995 and includes tertiary education as contemplated in Schedule 4 of the Constitution of the Republic of South Africa, 1996.

Inmate - any person, whether convicted or not, who is detained in custody in any correctional centre or remand detention facility, or who is en route from one such centre or facility to another as defined by the Correctional Service Act 111 of 1998 (Republic of South Africa, 1998).

Rehabilitation - comprises education, skills training, sports, recreation, arts and culture opportunities, healthcare and psychological treatment, maintenance of family and community connections, a safe and healthy detention environment and post-release support to ensure that the offender is rehabilitated to prevent him/her from leaving prison worse than when he/she first entered it.

Sentenced offenders - refers to convicted persons sentenced to incarceration or correctional supervision (Republic of South Africa, 1998).

PROLOGUE

Over the years, societies have been confronted with an increasingly emerging cohort of people living with the stigma of, and discrimination against, a criminal record. I happen to be one of those people. There are many more others like me, thousands maybe, ex-offenders who return home with academic qualifications post incarceration. To this end, local and international research on the reintegration of ex-offenders confirms, consistently so, that there is a relentless and subtle governance occurring in society of which the purpose seems to be the exclusion of people with a criminal record from participating in the labour market (Dlamini, 2016; Saliba, 2012). According to scholarly findings on the reintegration of ex-offenders, having a criminal record serves as an impediment to opportunities such as gainful employment, access to higher education (HE) and many other areas of life (Mujuzi, 2014; Mujuzi & Tsweledi, 2014; Rust, 2017). Eloquently called an "invisible stigma", a criminal record dictates "how people manage a detail of life that, while not outwardly visible, may bring them disrespect, disregard, or rejection if revealed" (Jay, 2013, p. 27). In fact, having a criminal record is described as analogical to wearing an invisible coat - you can feel that you are wearing it, yet you constantly wonder if it is visible to others (Jay, 2013).

As a scholar living with the stigma and identity of a criminal record, I know what it feels like. Based on my intimate knowledge of the criminal record, and having consulted a plethora of legal prescripts and scholarly findings, I can attest that South African research, particularly from a psychological point of view, has overlooked the role played by a criminal record when it comes to posts requiring affiliation with professional bodies such as the National Bar Council of South Africa (NBCSA), the Health Professions Council of South Africa (HPCSA), the South African Council for Educators (SACE), or the South African Council for Social Services Professions (SACSSP). The minute research that does touch on the criminal record either focuses on entry-level, low-skilled jobs, or purposefully selects study participants who have committed non-violent crimes to the exclusion of ex-offenders who have committed violent crimes, thereby ignoring the nature and inherent weight of a criminal record on the prospects of finding employment. As argued by Weiman (2007), ex-offenders who committed non-violent offences such as theft or fraud

stand a better chance of finding employment than ex-offenders who committed violent offences such as murder and robbery. Thus, to add to the body of knowledge, the present study purposefully selected six ex-offenders previously sentenced to a term of life imprisonment with professional degrees in Education, Law, Psychology and Social Work, and explored their lived experiences as they navigated South Africa's labour market in search of employment. It is precisely this gap in the literature that has been disregarded by scholars in general, government policy, and more specifically the White Paper on Corrections (2005), that triggered this research.

In this study I play a dual role: (1) as an ex-offender living with the stigma and identity of a criminal record, and (2) as a researcher in the quest for acquiring knowledge about the role of the criminal record - how it is experienced and socially constructed by ex-life-term imprisonment offenders (ex-lifers). To begin to understand these experiences, while simultaneously accounting for a well-balanced and comprehensive report, social constructionism was used as an overarching lens to illuminate the participants' views, perceptions and experiences regarding South Africa's labour market. In addition, employer preferences and attitudes were explored to highlight power differentials in the labour market – specifically in hiring job applicants with previous criminal convictions. Various study participants, including a representative from the DCS's Directorate for Skills Development, were consulted and interviewed as primary sources of data to explain how, if at all, these experiences inform the success and/or failure of reintegration efforts by job seekers with previous criminal convictions. Lastly, as part of secondary data, documents and policies that simultaneously masquerade to include and exclude ex-offenders in the labour market were also consulted. In practice, this implied configuring the criminal record in a way to collectively understand the perspectives of both employers as representatives of the labour market and ex-lifers as job seekers with a criminal record.

CHAPTER 1

GETTING AND GOING ALONG: THE CRIMINAL RECORD AS A SOCIAL CONSTRUCT AND OBJECT OF THIS STUDY

The past 30 years have seen enormous changes in the philosophy and practice of sentencing and corrections. The strong emphasis on rehabilitation that existed for the first seven decades of the 20th century gave way in the 1970s to a focus on fairness and justice, by which sentences reflected "just deserts" rather than a utilitarian motive. Sentencing practices later moved toward a crime-control model that emphasized incarceration as a way to reduce crime in the community; this crime-control model became increasingly popular during the 1980s and 1990s. Discussion of sentencing and corrections in the 21st century must begin with a review of these changes and their impact on the criminal justice system (Layton Mackenzie, 2001).

1.1 INTRODUCTION: HOW MUCH PUNISHMENT IS ENOUGH?

According to Carlsmith (2006), punishment is a fundamental and essential component of our daily social life; admittedly, our social behaviour can be attributed to our use of punishment and our reaction to its use. In the legal fraternity, punishment is classified into the following two broad justifications; namely retribution and utility. Retribution refers to just deserts: people who violate the law deserve to be punished and should suffer in proportion to their transgressions (Carlsmith, 2006, Mackenzie, 2001). In this regard, punishment, is considered an end in itself; and morally justifiable (Carlsmith, 2006; Mackenzie, 2001). This approach is referred to as a "just-deserts" or retribution perspective.

Another justification for punishment involves deterrence and incapacitation, both aimed at restricting offenders' future transgressions. According to the deterrence theory (see Nagin, 1998, for a review) potential offenders are rational beings, and consequently punishment alters the cost-benefit ratio, so that offending becomes an unattractive option (Bentham, 1843/1962). Whereas the incapacitation theory argues that previous transgressions serve as the best predictor of future offending - therefore, to prevent future offending, it is in the best interest of society to incarcerate those who offend (Carlsmith, 2006).

Both past and present, literature predominantly focuses on the administration of punishment and little attention is given to the criminal record as an extension of punishment post-incarceration. In fact, there is surprisingly little research on the lived experiences and the psychological effects of a criminal record on those previously sentenced to life-imprisonment (ex-lifers). While studying the literature, it seemed to

be warranted to ask the following question: What are the lived experiences of ex-lifers as they re-enter society via South Africa's labour market in search of employment? Moreover, exploring the subjective reality of ex-lifers from a social-constructionist point of view, together with how this reality affects their self-concept are currently given little attention in South Africa.

The year 2020 was a huge milestone for South Africa as it marked 26 years of democracy. In carceral spaces, the previous two decades are particularly significant insofar as the cohort of offenders sentenced to life imprisonment in South Africa during the political and civil unrest in the 1990s are trickling back into society as their sentence begin to expire.

Here it seems necessary to define the parameters of the terms "life sentence" and "life imprisonment", which will be used interchangeably throughout this thesis. In South Africa, offenders given a custodial sentence of life-imprisonment qualify for parole after having served at least 25 years of the sentence, or on a date determined by the Minister (Correctional Services Act, 1998 (Act No.111 of 1998, np)). However, strangely, but notably, there is a dearth of literature in South Africa regarding the effects of a criminal record, particularly in the case of ex-lifers who acquired professional academic qualifications during their incarceration.

More worrying though, is the lack of psychological theory explaining the transition from offender to ex-offender, which is a critical stage in the reintegration and rehabilitation of ex-lifers, as it carries with it a criminal record. It is this unrelenting document, namely, a criminal record, that forms an obstacle in the pursuit of quality employment or membership of specific councils and professional institutions such as the HPCSA or the NBCSA. According to research, stable or good-quality employment reduces the propensity to reoffend, especially when ex-offenders are immediately absorbed into the labour market as part of their social reintegration (Ramakers et al., 2017; Uggen, 1999).

For ex-offenders, employment triggers an abundance of societal benefits, because it not only keeps them preoccupied in the workplace, translating into safer societies, but also, curtails time spent with delinquent friends while resocialising with conventional people such as co-workers (Warr, 1998). Moreover, employment is

central to ex-offenders' identity construction and how they ultimately view themselves as having transitioned (from offender to employee), thereby creating an alternative identity as employee rather than his/her previous offending self (Baron & Byrne, 2002; Dlamini, 2016; Dufour et al., 2015; Guse & Hudson, 2014; Hopkins & Farley, 2015). Yet in my own experience, I can attest that time and again, ex-offenders' prospects of finding and keeping quality employment are often overshadowed by the stigma of, and discrimination against a criminal record.

Apart from the stigma and discrimination brought on by a criminal record, ex-offenders generally face a host of challenges such as low levels of education, meaning that most of them are inexperienced, underskilled and limited in the jobs and careers that they can pursue which places them at a disadvantage when it comes to job hunting (Otero & Barrera, 2021; Johnson, 2015; Scott, 2010). Without employment, ex-offenders have limited financial resources to support themselves and their family, which invariably leads to financial strain, compounded by feelings of inadequacy, and ultimately recidivism.

Some scholars describe this effect as a "debt to society which can never be re-paid"; while Van Zyl Smit (2003) calls it a "civil disability", implying that ex-offenders are precluded from accessing certain civil functions and types of employment as a result of their criminal record. Other findings are that due to being excluded and marginalised, ex-offenders often experience a criminal record as a lifelong debt to society with little to no prospects of reprieve (Love, 2002).

We, as ex-offenders often experience this lasting effect as being exclusionary and marginalising. Our criminal history invariably surfaces to constrain our legitimate mobility. In retrospect, unemployment is not only detrimental to ex-offenders, their families and their community, but also destructive and counterproductive at the societal level. Many ex-offenders are released with little formal education, few economic resources and poor preparation for the labour market tend to relapse quickly and return to prison.

It is precisely due to these shared experiences that I ask the following question: *How much punishment is enough: is a criminal record a death sentence?* The question (How much punishment is enough?) is a rhetorical one, since it is instantaneously

answered by a metaphor (the criminal record as a death sentence) to reflect and contextualise my lived experiences of searching for employment with a criminal record. Yet far beyond resonating with my current experiences, this study was conceptualised to explore the social identity of other long-term ex-offenders as they navigated South Africa's labour market in search of employment. Central to that exploration were the participants' quality of lived experiences and how they had been socially constructed. In highlighting these experiences, the current study posed the following question: What is the interplay between ex-lifers' social identity and their labour market reintegration experiences?

The next section contains an overview of South Africa's history with a particular emphasis on the correctional system summarising how the Department of Correctional Services (DCS) transitioned from what it was during the apartheid era to its current form.

1.1.2 Incarceration trends and the changing composition of the South African correctional system

At the end of the apartheid era in the early 1990s and amidst growing fears and tension, South Africa experienced one of its most violent episodes in history that escalated into high crime rates. In January 1995, barely a year after South Africa became a democracy, the country's correctional centres had an official capacity of 96 361 but an actual population of 116 846. The new political dispensation led to many laws, policies, and statutes being amended, adjusted or completely repealed. One of these prescripts was the Minimum Sentencing Act passed into law in 1997, and implemented in 2004, mandating life sentences for a variety of offences, including rape, murder and robbery with aggravating circumstances (also referred to as Schedule-6 offences).

In the haste to manage the country's high crime volumes, the Criminal Procedure Act (CPA), 51 of 1977 was rigorously revised prior to the passing of the final Constitution in order to make it difficult for offenders accused of committing serious offences (i.e. Schedule-6 offences) to obtain bail (Open Society Foundation for South Africa, 2008). More worrying was the fact that under this Act, offenders sentenced to life imprisonment would be eligible for parole only after serving 20 to 25 years in prison.

As the sentencing regime grew more severe, there was an exponential growth in offenders serving a life sentence.

As explained by Johnny Steinberg (2005), during the apartheid era, prison volumes were regulated by using two mechanisms, namely presidential amnesties and a flexible parole system, which were both used liberally. Increasingly, the direct effects of replacing these two mechanisms resulted in prisons being overcrowded to bursting point. For almost for a decade, the number of sentenced offenders grew consistently and inexorably from 116 846 to 136 500 by 31 July 2004 (Steinberg, 2005). This sudden and dramatic increase in the correctional population can, in all likelihood, be attributed to dubious policy decisions and the replacement of the parole policy with the credit system. The credit system refers to a system through which offenders earn credits for appropriate behaviour (White Paper on corrections, 2005).

The above issue is expounded in which I present the counterargument that among other flaws, the Minimum Sentencing Act (discussed in detail in chapter 3 three of this thesis) is neither in harmony with, nor in the best interest of the country. By implementing the Minimum Sentencing Act, government dismally failed to pre-empt that, in the long-term, imposing longer sentences, firstly would not only lead to overcrowded prisons, but secondly, would exert budgetary constraints in terms of detaining an aging and diminishingly less dangerous cohort of the prison population, and, thirdly, that upon "settling their debt to society" (i.e. on the expiry of their custodial sentence), the very same cohort of offenders would, once again enter society as fully-functional citizens.

Nevertheless, as will be discussed in chapter 2 of this thesis (containing a review of the literature), it is not clear whether imposing longer sentences serves the punitive goals of criminal deterrence, and, by extension, societal safety. In fact, there is a strong line of research disputing that a marginal increase in the severity of punishment increases the levels of deterrence among offenders (Steinberg, 2005). Results from the United States of America (USA) where minimum sentencing regimes were introduced in the late 1970s to the early 1980s suggest that imposing longer sentences for serious offences inevitably leads to increases in prison volumes.

Lastly, the theory behind the Minimum Sentencing Act is also contrary to the tenets of the age-crime curve, in terms of which youth offenders reoffend more often than older offenders, and with advancing age, there is a significant decline in offenders' crime rate (see, for example, Dufour et al., 2015; Farrington, 1986; Giordano, 2014; Gottfredson & Hirschi, 1990; Sampson & Laub, 1993).

Criminal careers are thought to decline with the introduction of a more conventional lifestyle such as involvement in parenthood and employment, and separation from delinquent friends (MacDonald et al., 2011; Mdakane, 2016). Similarly, Farrington (1986), a staunch advocate of the age-crime curve, found that most youth offenders begin their criminal career at around the age 14, peak in late adolescence, and begin ending their careers only around their late twenties. A graphic representation of this relationship takes the form of a bell-shaped curve characterised by an onset (when the criminal career begins), followed by a peak period (the highest point in the curve where most offending occurs), and finally a downward slope (when an individual's criminal career ends). In this regard, Social bond theorists would argue that social bonds with family and employment, and not longer sentences, serve as deterrents from committing crime (Laub & Sampson, 2003; Sampson & Laub, 1993).

Together, these results suggest that "(if) increasingly severe sentences for serious crimes do not serve the purpose of deterrence, [then] there is another purpose of punishment which they do not serve particularly well either: the incapacitation of high-risk offenders" (Steinberg, 2005, p. 7).

1.2   IS A CRIMINAL RECORD A DEATH SENTENCE?

From the earliest prescriptions to the end of the 19th century, the principal aim of incarceration was simply the containment and punishment of those administered through the world's legal systems; as such, there were no thoughts of rehabilitation (Farrington, 2007). It was not until 1971 that the concept of rehabilitation gained currency and popularity among Western writers and policymakers. To the extent that the prescriptions contained in the White Paper on Corrections (2005) are also "informed by the strategic imperatives of correcting offending behaviour, rehabilitation and correction as a societal responsibility" (p. 5) suggests that South Africa, too, subscribes to the notion of the rehabilitation model.

Employment, in this regard, is arguably a crucial catalyst and has been cited in many local and international studies as a key component in the successful reintegration of ex-offenders. Research results from New Zealand's offender population suggests that offenders who plan for parole via employment are less likely to be reconvicted than offenders who do not have employment plans (Dickson & Polaschek, 2014).

But equally so, according to the literature, the ex-offenders' willingness and desire to work is often crushed by unsuccessful job applications due to the stigma and label of a criminal record (Muntingh, 2009). According to Holzer et al. (2002), when considering an applicant with a criminal record, prospective employers do so guided by their own set of criteria, since "employers, [too] can be held liable for the criminal actions of their employees under the theory of negligent hiring. Legally, negligence is premised on the idea that one who breaches duty of care to others in an organization or to the public is legally liable for any damages that result" (p. 3).

Thus, based on the theory of negligent hiring, ex-offenders may be discouraged to apply for admission to practice, or may even be prohibited to apply for licences to register, in certain occupations, including jobs involving the handling of finances and contact with children, certain health services, and law firms, to name a few. Some prospective employers hold the view that a criminal record is indicative of some character defect that may pose a higher than usual risk of dishonesty and unreliability (Holzer et al., 2002; Slabbert & Bomme, 2014).

With respect to both ex-offender and employer attitudes, in a British study (National Association for the Care and Resettlement of Offenders, 1998), it was found that 42% of 200 ex-offenders identified their criminal record as the main reason for being unsuccessful at the job interview stage (Western et al., 2001); and in Europe as well, employer discrimination was found to be the main barrier to hiring ex-offenders (Human Rights and Equal Opportunity Commission, 2004; Jay, 2013; Scott, 2010).

Furthermore, in South Africa it was found by the Public Service Commission (PSC) (2009) that as at 31 July 2008 only 223 persons with a criminal record were permanently employed in the Service, representing a mere 0.02% of the 1.1 million public servants employed. These figures, plus the fact that the total number of South African citizens with a criminal record is unknown, yet estimated to be around

millions (Mujuzi, 2014; Mujuzi & Tsweledi, 2014), confirm the view that a considerable number of ex-offenders continue to be affected by their criminal record.

Likewise, research conducted in Australia suggests that having a criminal record is rated the fourth highest of five disadvantageous conditions, indicating that people with a criminal record are perceived as less likely to obtain and maintain employment than people in other disadvantageous conditions (Graffam et al., 2008). From these studies, it thus becomes clear that employer attitudes and beliefs play a significant role in the labour market experiences of ex-offenders, as they suggest a general reluctance among employers to hire people with a criminal record. Below, three specific barriers to obtaining meaningful employment are highlighted. These barriers are as follows: (a) the nature of the offence, (b) the level of employment applied for, and (c) premature declaration of the criminal record. These barriers were specifically chosen because they later inform the aims and objectives of the study to be discussed in the next section.

1.2.1 Barriers to obtaining meaningful employment

Existing literature exploring the effects of a criminal record, as well as many informal accounts between myself, and members of the DCS, together with male and female ex-offenders, including parolees and their family, suggests that being unemployed and repeatedly rejected by the labour market leaves ex-offenders demotivated, discouraged and with a sense of hopelessness. Here, international perspectives on the management of job applicants with a criminal record indicate an increase in discriminatory practices such as enquiring about previous criminal convictions unrelated to job-specific requirements (Fitzroy Legal Service, 2005; Human Rights and Equal Opportunity Commission, 2004; Public Service Commission, 2009).

Below, follows a discussion of these barriers.

1.2.1.1 *The nature of the offence*

Research on the successful reintegration of ex-offenders continues to single out correctional education as instrumental in the criminal desistance process (Graffam et al., 2008; Hopkins & Farley, 2015). The association between crime and education is predicated on the assumption that if people are educated, they will be less likely to

commit crimes (Hopkins & Farley, 2015; Scott, 2010). Recent studies by Agboola (2017), Guse and Hudson (2014), Johnson (2015), as well as Tønseth and Bergsland (2019), all seem to converge on the finding that offenders who study while incarcerated do so with the hope that they will, in future, relish the opportunity to participate in the labour market.

Yet, while we reasonably assume that the positive outcomes derived by incarcerated students are somehow driven and motivated by aspirations to become future employees, the paradox of the above studies is that they overlook the nature of the offence committed by conveniently selecting study participants who committed non-violent crimes, to the exclusion of ex-offenders who committed violent crimes. As illustrated by Weiman (2007) over a decade ago, and later corroborated by Scott (2010), ex-offenders who committed non-violent crimes stand a better chance of finding employment than ex-offenders who committed violent crimes.

1.2.1.2   The level of employment applied for

More equivocally and in furtherance of the above, I contend that these studies gravitate towards entry-level, low-skilled jobs, thereby ignoring the effects of a criminal record in relation to occupations requiring affiliation with particular institutions and professional bodies (see also Johnson, 2015; Rust, 2017). Thus, to fill the gap in the literature, purposive sampling was used to select and conduct semistructured interviews with two distinct groups of study participants, namely six ex-lifers and six professionals (one each from the SACE, the LSSA, and the DCS, an Unisa human-resource practitioner, and two representatives from the SACSSP).

The rationale for selecting these individuals and institutions as representatives of the labour market, together with ex-lifers as job seekers with a criminal record centred on the idea of constructing alternative social realities rather than striving for one objective truth, as well as ensuring that no one voice is privileged over the other. Furthermore, the views and opinions of study the participants were all supplemented with secondary data (in the form of policy and document analyses). At the time of the study, all the documents (policies, advertisements, etc.) used during the analysis were publicly available.

1.2.1.3   Premature declaration of the criminal record

Consistent with the 'Ban the Box' US movement in the USA, over the past couple of decades, research around the globe indicates that labour markets are becoming vigilant about, and extra-cautious in whom they hire - such that recently there has been a great deal of reliance on vetting procedures by companies in both the private and the public sector to assess, among other things, the job applicant's trustworthiness (Jay, 2013; Saliba, 2012). It needs to be added here that Ban the Box is the name of an American campaign by advocates for ex-offenders aimed at removing the check box asking whether applicants have a criminal record from hiring applications; the purpose, of which, is to enable ex-offenders to display their qualifications in the hiring process prior to being asked about their criminal record.

However, there is more to this than meets the eye. Chapter 3 of this study explores power differentials disguised as legal prescripts and how they regulate conditions that seem to justify and simultaneously promote the automatic inclusion and exclusion of ex-offenders in the labour market. The chapter thoroughly analyses, among other documents, the government's Z83 vacancy application form, which was specifically selected for its relevance, as well as on the basis that it demands an explicit declaration of past misdemeanours. Since a criminal record reinforces the stereotype that ex-offenders are "undeserving" job candidates, disclosure of such a record is often accompanied by risks of being excluded/eliminated during the short-listing period (Frana, 2010; Mujuzi & Tsweledi, 2014).

Thus, consistent with this premise and as discussed in chapter 6 (Presentation and discussion of the findings), I argue that the premature disclosure of a criminal record during the early stages of recruitment allows employers, organisations and institutions to use such a record as a screening tool to single out "undeserving" job candidates. All of the above suggests that the nature of the offence, the level of employment applied for and the premature disclosure of a criminal record all determine the inherent weight of the ex-offender's criminal record and, by implication, the job/position applied for. From this perspective, it seemed fitting to, on the contrary, explore the benefits of ex-offenders' correctional education for the pursuit of quality employment by those who committed Schedule-6 offences. With

respect to the above category, the following question was posed: How does correctional education contribute to the success or failure of ex-lifers securing quality employment post-incarceration?

1.3   AIMS OF THE STUDY

In this study, social constructionism was used to explore the role played by a criminal record and to determine how this record was socially constructed by ex-lifers who sought to reintegrate into South Africa's labour market via employment. The participants in this study were adult male ex-lifers of African descent with degrees in Law, Education, Psychology and Social Work. Using theoretical triangulation, the Social Identity Theory (SIT) was integrated into the study to further illuminate how labour market reintegration experiences, together with the stigma and label of a criminal record, influenced and constructed ex-offenders' identity upon reintegrating into the labour market.

Among others, policies and documents aimed at addressing the previous criminal conviction clause were also analysed to illustrate how having a criminal record both shaped and regulated the conditions that invariably seemed to describe, classify and predict the future behaviour of ex-offenders (Saliba, 2012). The analysis posed the following primary research questions, namely, first, what prescripts inform or guide the rehabilitation through education discourse? Secondly, what public knowledge is made available to prospective students intending to apply at an institution of HE? Thirdly, is it compulsory to disclose previous criminal convictions when applying for a post, or to professional bodies for admission, a licence or registration?

The secondary research questions were framed as follows: do employers, (or professional bodies) consider applicants' criminal history as a selection criterion/precondition for employment (or admission?) If yes, is the use of criminal record checks by employers (or professional bodies) legal/constitutional? Finally, what are the implications for applicants/employees who deliberately or purposefully conceal their criminal record? In addition to the above, the benefits (or lack thereof) associated with correctional education were explored to determine whether HE contributed to the labour market reintegration successes of ex-lifers post-incarceration.

In essence, the overall aim of the study was to demonstrate that having a criminal record produces a negative ideology in society, entrenched by an attitude and discourse that serve to simultaneously construct and maintain the automatic inclusion and exclusion of ex-offenders in specific job markets and professions. To bring these experiences to the fore, I integrated my personal experience as an ex-offender with those of other ex-offenders living with the stigma and label of a criminal record to describe, and systematically analyse, the criminal record so that those who are unlike us - that is, those without a criminal record, may come to understand the myriad of challenges ex-offenders face and endure in their daily life.

1.4   THE STUDY DESIGN AND MODES OF ENQUIRY

This study was conducted in the province of Gauteng, South Africa, with data for the study collected and triangulated over a period of four years (2017–2020). All the interviews took place in the cities of Pretoria and Johannesburg. To answer the study's research question, namely: what are the lived experiences of ex-offenders seeking to reintegrate via South Africa's labour market in search of employment following a term of life imprisonment?, mandated the use of a qualitative exploratory research design, because such an approach seeks to understand a problem or issue from the participants' perspective. This approach is consistent with social constructionism, which states that the world around us is not objective, but socially constructed, and therefore relative in nature (Edley, 2001; Gergen, 1999). In practice, this implies that how reality is experienced and interpreted varies from person to person.

Thus, for the purposes of this study, namely to determine how the participants live with and make sense of a criminal record, as well as how this record is socially constructed by both sets of participants (i.e. ex-offenders as job applicants/employees with a criminal record and employers as representatives of the labour market) the subjective reality of each of the participants was elicited, explored and audio recorded. The language used to communicate with the participants varied - some of the interviews were conducted predominantly using a mixture of IsiZulu, IsiXhosa, South and Northern Sotho, English, a bit of Afrikaans, as well as prison lingo.

The recordings were subsequently transcribed verbatim in preparation for the analysis. Interpretative Phenomenological Analysis (IPA) is compatible with Social constructionism in that they both share a commitment to the exploration of personal lived experience (Smith, 2004) which yields deep and rich data that transcends the surface meaning of the participants' narratives. A detailed discussion of the process of analysis, including the results of the study is provided in chapter 6. The chapter concludes with a summary and recommendations for future research. I also illustrate how I approached each section of the study and the challenges encountered during the study, but more importantly, how I managed to circumvent these challenges.

1.5   OUTLINE OF THE THESIS

The thesis comprises a prologue, seven chapters and an epilogue.

Chapter 1: Getting and going along: the criminal record as a social construct and object of this study

Chapter 1 serves as an orientation to the study, and states the research problem and the context in which the study is based. The aims of the study, and the methods of data gathering are discussed, and a brief indication of the contents of subsequent chapters is given.

Chapter 2: Crime and punishment

Chapter 2 presents international literature identifying previous seminal work and the current situation regarding criminal record research. The chapter concludes with a critical reflection on South Africa's carceral spaces pre- and post-apartheid.

Chapter 3: Policy and document analyses

Chapter 3 analyses policy documents regulating the access/denial of access of student-applicants with a criminal record to South Africa's HE institutions and the labour market.

Chapter 4: Through the looking glass: social constructionism as a theoretical framework

The theoretical framework underpinning the study is social constructionism, the main concepts and relevance to the study of which are discussed. The chapter further justifies the use and application of the Social Identity Theory (SIT) as a psychological

lens through which the findings are seen and made sense of. Robert Agnew's General Strain Theory (GST), the Routine Activity Theory, as well as the Labelling Theory are also discussed.

Chapter 5: Rules of engagement: study method and approach

This chapter explains the study methods and the sampling procedures and processes followed in obtaining the data of the study. Every aspect of implementing the research design as well as the rationale for choosing specific techniques to collect, analyse and make sense of the data are explained and justified.

Chapter 6: Discussion and implications of the findings

This chapter discusses the findings of the study. It presents the results of the interviews and observations made during the field work. It further details how the data collected were analysed, interpreted and evaluated to ascertain their contribution to psychological theory.

Chapter 7: A means toward closure: strengths, limitations and future recommendations

This chapter provides a summary of the study. Conclusions are drawn: the limitations of the study are identified, and recommendations for future research are made. Lastly, my thoughts, reflections and experiences are reported as is the role I have undertaken in strengthening the trustworthiness of the data.

CHAPTER 2

CRIME AND PUNISHMENT

By increasing insecurity, destroying families and depriving Africans of all rights and hope, apartheid has obviously created a class of dehumanised beings in Soweto…[and according to] *Mr Lennox Mlonzi, Soweto's crime* [can be] *described as "a by-product of the capitalist and racist laws of the South African government."* (Sikakane, 1977, p. 29)

2.1   INTRODUCTION

The previous chapter introduced and contextualised the criminal record as the subject of study, whereas the present chapter provides a global as well as a local overview of incarceration, including its aims and ideals. It further examines the profile of the incarcerated population by considering factors associated with primary and secondary deviance, and pathways to (un)successful social reintegration, before concluding with the different processes of decarceration. The chapter ends with a discussion on the development of the Department of Correctional Services (DCS) in South Africa pre- and post-apartheid.

2.2   INCARCERATION: A GLOBAL PERSPECTIVE

Globally, the aims of incarceration and institutional confinement are generally governed by the principles of incapacitation, deterrence, retribution and rehabilitation (Akanji et al., 2018; Anene, 2013; Antwi, 2015; Omasanjuwa & Loum, 2021; Uchenna, 2019). However, despite these fundamentals, research has critiqued penal policies for their focus on incapacitation, deterrence, retribution, and, to a lesser extent, rehabilitation (Antwi, 2015; Dako-Gyeke & Baffour, 2016), particularly with regard to social reintegration challenges. In the case of Africa, for example, several studies have commented on the global rise in recidivism rates, and questioned the effectiveness of incarceration by counterarguing that punishment works against rehabilitation (Akanji et al., 2018; Ayuk et al., 2020; Uchenna, 2019).

For instance, research from Ghana reveals that social rejection and a lack of civic engagement are the main causes of recidivism (Antwi, 2015; Dako-Gyeke & Baffour, 2016), while Glover et al., (2018) conclude that a harsher sentencing regime fails to act as a deterrent among Ghanaian high-risk offenders. Akanji et al. (2018) also express the view that Nigerian prisons prioritise security over rehabilitation, and, inevitably, make incarceration a fertile ground for recidivism and Simasiku's (2018) study confirms that despite various interventions aimed at reducing recidivism in

Zambia, reoffending is still on the rise. High rates of recidivism have also been documented in Kenya (Muthee, 2020; Omboi, 2015), Zimbabwe (Dube-Mawerewere & Chiborise, 2017; Ndarasika, 2015), Cameroon (Besin-Mengla, 2020), as well as Mozambique (Niquice et al., 2018). One can therefore surmise that incarceration engenders recidivism, and that high rates of recidivism, in turn, undermine the rehabilitation process. As can be gathered from the writings of Omasanjuwa and Loum (2021) In The Gambia, incarceration is a failed system in Africa.

Together, the above studies advocate a paradigm shift in attitudinal change (Koman, 2019), and alternatives to imprisonment.

2.2.1 Penal exceptionalism and the import model

In Europe, Scandinavian countries such as Norway, Denmark and Sweden are considered pioneers of penal exceptionalism and the import model (Koman, 2019). Penal exceptionalism is characterised by humanitarian prisons that, as far as possible, are unusually favourable and approximate to life outside (e.g. low imprisonment rates, shorter sentences and limited access to criminal records), relative to Western countries (Pratt, 2008a; Pratt, 2008b, cited in Koman, 2019; Ramakers et al., 2017). Correspondingly, contentious debates regarding the importation of the colonial legacy, as well as persuasive calls for alternatives to imprisonment, have occupied centre stage in several African countries, including Gambia (Omasanjuwa & Loum, 2021), Kenya (Muthee, 2020; Mutubari, 2017), Nigeria (Uchenna, 2019) and Botswana (Pilane, 2019).

Several other African scholars, including Yenkong (2011) in Cameroon and Peters (2002) in Egypt, also highlighted the global and African perspectives on imprisonment. Together, these studies documented the global history of incarceration and the influence of colonisation in Africa. Peters (2002), for instance, compared the development of the Egyptian penal system during the 19th century (when Britain colonised Egypt between 1829 and 1882) with the European penal system; the aim of which was to banish and replace corporal and capital punishment. Comparably similar to other African studies, Pilane's (2019) doctoral thesis shows that Botswana, as a former British colony, imported English law, and consequently a retributive justice system and penal code that are inconsistent with Africa's restorative justice system.

Rosidah and Ali (2021) explain that the former system "provides punishment to create peace in the community and a deterrent effect on the perpetrators of crime" whereas the latter system "seeks to produce a level of legal awareness as well as inculcation of guilt and a desire to be responsible of (sic) the mistake (sic) that were committed to the perpetrators of crime" (n.p.). Conceivably, the practice of retribution over reconciliation is inconsistent with the African ways of restoring relations. Crime, generally, is a humanitarian problem and does not exist by itself; it is a complex phenomenon related to other social structures (Padayachee, 2008; Rosidah & Ali, 2021).

With this in mind, commentators such as Peters (2002), as well as Omasanjuwa and Loum (2021), have expressed the view that prisons are ideal for controlling the population and concealing punishment by centralising state power. More equivocally, West African scholars in Ghana (Antwi, 2015; Dziwornu, 2021) and Gambia (Omasanjuwa & Loum, 2021) also add that the idea of incarceration and the European penal philosophy are colonial imports filtered through Africa and contradict the customary values of many African states. Altogether, these studies highlight the failure of the correctional system to rehabilitate offenders, and conclude that the ideals of incarceration and rehabilitation are not met in Africa due to mass incarceration and prison overcrowding, budgetary constraints, as well as inadequate personnel and programme facilities (Antwi, 2015; Besin-Mengla, 2020; Dziwornu, 2021).

2.2.2 Mass incarceration and prison overcrowding

Prison overcrowding is an international phenomenon, and research in many countries shows that the rate of incarceration is on the rise. For instance, as far as South America is concerned, research indicates an exponential growth of the prison population in countries such as Brazil and Argentina (Otero & Barrera; 2021; Dos Santos et al., 2014). Onuferova (2016) also attests to overpopulated prisons in the Czech Republic, yet concedes that they are below the European median rates (including Russia and Turkey). A study conducted in the USA by Castek et al. (2015) shows that the Orleans Parish Prison (OPP) located in New Orleans, Louisiana incarcerates more people per capita than any other region in the world. Therefore, using the USA as a yardstick, several West African scholars compared Nigerian and

US prisons and alluded to overcrowded prisons in both countries (Ayuk et al., 2020; Onwuka et al., 2021). Other African scholars also confirmed an upsurge in the prison population in Kenya (Muthee, 2020), Ghana (Glover et al., 2018), Zambia (Simasiku, 2018), Swaziland (Bruyns, 2007) and Botswana (Pilane, 2019).

Notwithstanding the above, South Africa has the highest proportion of inmates in Southern Africa, with an average of 413 per 100 000, compared to 160 per 100 000 in Sub-Saharan Africa, and 145 per 100 000 worldwide (Scheibe et al., 2011). As far as Southern Africa is concerned, Pilane (2019) shows that because of Botswana's dual legal system, offenders tried via customary courts are denied legal representation, inevitably, leading to a higher conviction rate as well as prison overcrowding. Bruyns (2007) also found that traditional courts in Swaziland contributed to the high frequency of short-term incarceration. Although a number of interventions were previously implemented to reduce prison overcrowding, Dube-Mawerewere and Chiborise (2017), for instance, concluded that remission as a strategy to reduce overpopulation was ineffective in Zimbabwe because overpopulation hampers many prisons in effectively carrying out their mandate, which is rehabilitating offenders and facilitating their social reintegration.

All in all, the above studies lend support to the notion how excessive imprisonment impacted on overcrowding.

2.2.3 Economics of incarceration

A plethora of international studies continue to show that the economic costs of crime and operational costs associated with incarceration are exceptionally high (Antwi, 2015; Ndarasika, 2015; Onuferova, 2016; Rudell & Winfree, 2006; Uchenna, 2019). As contended by Onuferova (2016, p. 4), for instance, the cost of crime in the Czech Republic invariably "exceeds its planned boundaries…and other measures of punishment, the costs of arrest, convictions, expenditures on police and courts…". North American scholars also explored the costs of criminal record expungement and found that "the fees applied to criminal record checks in Vancouver [Canada] were associated with an increase in salary costs and revenue targets..." (Honey-Ray, et al., 2010, p. 4). Ironically, African studies, particularly those conducted in West Africa, show that Gambia, for instance, has some of the lowest incarceration rates,

yet the prisons are dilapidated and remain in a state of neglect (Omasanjuwa & Loum, 2021).

Similarly, studies conducted in the East African countries of Kenya, Zambia and Zimbabwe emphasise inadequate personnel employed by the departments of correctional services (Omboi, 2015; Simasiku, 2018), as well as inadequate programme facilities aimed at promoting rehabilitation (Ndarasika, 2015). Similar findings are reported in other African states. For example, mostly predominant are challenges related to inadequate personnel and resources such as medical care, poor infrastructure and lack of vocational training, including facilities intended to rehabilitate both male and female Nigerian offenders (Anene, 2013; Ayuk et al., 2020). To this end, research concludes that budgetary constraints constitute a key challenge facing the departments of correctional services in Africa (Antwi, 2015; Ndarasika, 2015; Uchenna, 2019).

Also lending support to these findings is Bruyns's (2007) doctoral thesis, which documents inadequate professional staff (social workers and psychologists) and correctional programmes aimed at rehabilitating offenders in Swaziland, including poor infrastructural design and a lack of information technology systems. Thus, drawing from these and other seminal studies, research concludes that generally, the correctional population is reluctant, and lacks the necessary motivation, to participate in correctional rehabilitation programmes (Antwi, 2015; Glover et al., 2018) due to factors associated with primary deviance. Next, the profile of the incarcerated population will be considered, and then the factors associated with primary deviance will be explored.

2.3   PROFILE OF THE INCARCERATED POPULATION

An intercontinental evaluation of incarceration trends highlights the importance of context when profiling developed versus developing countries in respect of crime. In East Asia, for instance, research shows diversified attributes of juvenile delinquency among Chinese offenders (Wu, 2020) and strongly suggests that the immediate family is the primary agent accountable for socialising youth into delinquent behaviour (Yang & Lei, 2019). Similarly, socio-environmental conditions of youths from broken families without proper education was found to engender street life, and consequently delinquency, among Indonesian youths (Rosidah & Ali, 2021), while

evidence from China and Japan proposes that as youths develop further, they become impulsive, more risk-taking, and often do not appreciate the long-term consequences of their actions (Suzuki & Takeuchi, 2020; Yang & Lei, 2019).

Collectively, these repercussions comprise unemployment, poverty, a low socioeconomic status and barriers to educational and professional opportunities. To this end, scholars from Singapore anticipate that due to globalisation, those with a low education and skills will continue to lose their job and wages, thus compounding the economic stress of low-income families (Ng & Ho, 2013). Notably, in South America, the profile of the incarcerated population in Argentina's prisons shows a predominance of male youth offenders (between the ages of 18 and 35 years) with low levels of education and income (Otero & Barrera, 2021). Other international studies have also explored the socio-demographic attributes of male offenders in terms of age and gender. In Spain, research has recently indicated that the average crime rate of male offenders exceeds that of females by 11.1 for every 100 000 inhabitants, and that male offenders are generally unemployed during the commission of the offences (Santos-Hermoso et al., 2021). Despite these findings, other researchers in Spain have found inconsistent results regarding the criminal and demographic profiles of perpetrators of crime (Pecino-Latorre et al., 2019).

In Africa, research shows that droves of juvenile delinquents in countries such as Kenya and Mozambique are influenced by wealth, material gain as well as constructions of masculinity as reflected-meaning (Niquice et al., 2018; Omboi, 2015). Therefore, based on the types of infractions committed (e.g. theft and robbery), one can surmise that offenders constitute a vulnerable and disadvantaged group characterised by low levels of education, high unemployment and socioeconomic disadvantage (Otero & Barrera, 2021). Comparably, the demographics of offenders in the Eastern and Southern regions of Africa also show that the majority of the offending population come from economically disadvantaged communities characterised by poverty and high levels of unemployment (Bruyns, 2007; Muthee, 2020; Omboi, 2015). By way of concluding and based on the evidence presented above, antecedents to criminality in Asia, as well as the profile of the incarcerated population in South America, appear relatively similar to those in Africa, as studies suggest that the majority of the incarcerated population come from disadvantaged social groups.

2.4   FACTORS ASSOCIATED WITH PRIMARY DEVIANCE

A large body of criminological research has considered the various factors associated with primary deviance (see fig. 2.1 below).
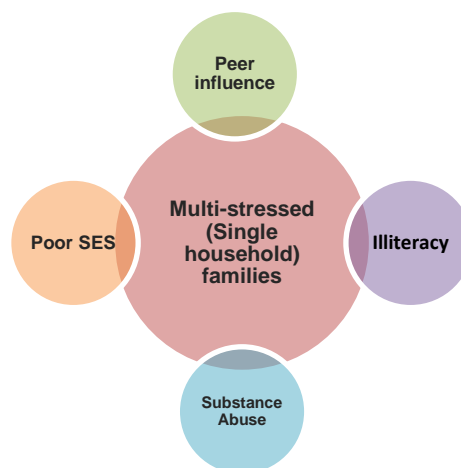
Figure 2.1 Factors associated with primary deviance

In Southern Africa, for instance, Munikwa (2020), Matlakele and Erasmus (2017), Bruyns (2007), Niquice et al. (2018) as well as Fredericks et al. (2021), have all explored the factors associated with primary deviance in Zimbabwe, Botswana, Swaziland, Mozambique and Namibia respectively. Together, these studies, as well as those conducted in Nigeria and Ghana, show that youth offending (or juvenile delinquency) is associated with multi-stressed or single parent household families, peer group influence, low levels of education, substance abuse and a lack of financial resources due to unemployment (Anene, 2013; Antwi 2015).

2.4.1   Multi-stressed (single household) families

In accordance with the model of multi-stressed low-earning families developed in Singapore by Ng and Ho (2013), economic instability arising from financial hardship engenders familial tension, and emotional distress leading to separation or divorce, and in turn results in child maladjustment. Regarding family structure, single parent household families are associated with the development of delinquent behaviour. Research support for this notion stems from, among others, countries such as Argentina and Indonesia, as well as several African states, including Benin, Kenya, Mozambique and Ghana. Together, these studies have sought out to explore youth offending, and conclude that a dysfunctional family system and a psychosocial environment contribute to delinquent behaviour among youth offenders (Otero &

Barrera, 2021; Djidonou et al., 2016; Glover et al., 2018; Niquice et al., 2018; Omboi, 2015; Rosidah & Ali, 2021). In particular, the study by Djidonou et al. (2016) claims that orphanage due to broken and single parent families increases youth offending by 250% in Benin. According to Djidonou et al. (2016), parental absence and neglect provide a sense of belonging to a deviant subculture. Other West African studies have also confirmed an association between family poverty (due to unemployment) and the development of criminogenic needs of Nigerian and Ghanaian offenders (Akanji et al., 2018; Glover et al., 2018).

Similarly, research from Kenya, Mozambique and Zimbabwe shows that families of the incarcerated population are characterised by poverty and low SES due to either informal labour participation or unemployment (Dube-Mawerewere & Chiborise, 2017; Niquice et al., 2018; Omboi, 2015; Ndarasika, 2015). These findings mirror those found in Sub-Saharan Africa. In Namibia, for instance, Fredericks et al. (2017), together with Bruyns (2007) in Swaziland, and Matlekele and Erasmus (2018) in Botswana all confirm the association between delinquency and dysfunctional families.

2.4.2 Age, gender and peer group influence

The relationship between age and crime is best explained by the age-crime curve. In terms of this relationship, those who reoffend more tend to be relatively young (between the ages of 16 and 35) and that with advancing age, there is a significant decline in the commission of crime. In South America, for instance, research indicates that the incarcerated population in Argentina comprises young males between the ages of 18 and 35 (Otero & Barrera, 2021), while the 515 000 inmate capacity of Brazil suggests an overrepresentation of male offenders (Dos Santos et al., 2014).

Parallel to the above, Djidonou et al.'s (2016) descriptive and cross-sectional study involving 117 youth offenders in a Child and Adolescent Care Centre in Benin also indicates the median age to be 16.1 years; while from these findings, the association between the age of onset of criminal activities and gender becomes apparent. Towards this end, a comparative study conducted in Beninese and Nigerian prisons shows that female offenders comprise only 2% of the total Nigerian prison population, suggesting an overrepresentation of male offenders (Anene, 2013).

Research from Southern Africa expresses a similar pattern regarding the association between age, gender and crime. For instance, research has confirmed that the association between youth delinquency among Zimbabwean offenders (Dube-Mawerewere & Chiborise, 2017; Ndarasika, 2015), as well as males aged 16 to 25 in Swaziland (Bruyns, 2007).

Comprehensively considered, these findings appear to be on par with other research results reported in West African countries such as Ghana and Nigeria (Akanji et al., 2018; Anene, 2013; Glover et al., 2018). More interestingly, East African studies equally support the association between age and delinquency as supported by the age-crime curve but further attribute the expression of aggression and violence to sociocultural factors such as the construction of masculinity (Niquice, et al., 2018; Omboi, 2015). Scholars in Zambia and Zimbabwe highlight peer group influence as one of the factors associated with primary deviance (Dube-Mawerewere & Chiborise, 2017; Ndarasika, 2015; Simasiku, 2018). Other than peer group influence, research also documents the prevalence of substance abuse (Matlakele & Erasmus, 2017) and poverty and unemployment (Bruyns, 2007), as well as a lack of education and stable housing (Fredericks et al., 2021), among the incarcerated population.

From the foregoing discussion, research concludes that peer pressure is strongly felt in the teenage years (Onuferova, 2016), with the majority of the incarcerated population being males. Together, these factors affect the propensity to criminal behaviour by augmenting primary deviance while compromising the level of education.

2.4.3 Truancy, substance abuse and youth offending

Globally, there exists a relationship between criminal offenders and the attainment of low levels of education. International research has equally alluded to high levels of illiteracy and criminal behaviour among the incarcerated population (Otero & Barrera, 2021; Niquice et al., 2018; Rosidah & Ali, 2021; Sikand & Reddy K, 2007). In East Africa, research reveals low levels of education among the incarcerated population in Zambia, Mozambique and Zimbabwe (Dube-Mawerewere & Chiborise, 2017; Ndarasika, 2015; Niquice et al., 2018; Simasiku, 2018), while in West Africa, the study conducted in Benin by Djidonou et al. (2016) shows the association between

youth offending and truancy, as well as the use of psychoactive drugs and a high school drop-out rate (76,9%).

Similarly, the epidemiological study conducted by Dos Santos et al. (2014) in 105 of Brazil's state prisons reaffirms the association between drug and alcohol abuse dependency and criminal behaviour among male and female sentenced offenders. The use of psychoactive substances is also reported by participants in Zand-Kurtovic's (2017) study in the Netherlands; while recent research from Cameroon consolidates the view that the incarcerated population consumes drugs and alcohol to find solace, and a stepping stone to criminality (Besin-Mengla, 2020).

2.5   PATHWAYS TO (UN)SUCCESSFUL SOCIAL REINTEGRATION AND FACTORS ASSOCIATED WITH SECONDARY DEVIANCE

Maruna et al. (2004, p. 5) define offender reintegration as follows:

> *A systematic and evidence-based process by which actions are taken to work with the offender in custody and on release, so that communities are better protected from harm and reoffending is significantly reduced. It encompasses the totality of work with prisoners, their families, significant others in partnership with statutory and voluntary organisations.*

Similarly, the DCS defines 'social reintegration' as a process that facilitates the acceptance and effective readjustment of offenders into their communities, beginning from the early stages of the inmates' detention, and continues well after release in ensuring that they become law-abiding citizens (Kunene, 2008). Construed this way, it implies that social reintegration is not an event, but rather, a protracted process that involves a multitude of factors geared towards helping offenders successfully reintegrate into their community, the aim of which is to prevent them from reoffending (Davis et al., 2012; Healy & O'Donnell, 2008; Muntingh, 2005; Shinkfield & Graham, 2009).

Ironically, research documents social reintegration challenges accompanied by high rates of recidivism. For instance, research from West Africa confirms the relationship between social reintegration challenges and repeat offending in Ghana (Antwi, 2015; Dako-Gyeke & Baffour, 2016; Glover et al., 2018). By highlighting the sociodemographic attributes and predisposing factors to recidivism, these studies confirm that a dysfunctional family system, attainment of low/basic education curtailed at an early age, poverty perpetuated by unemployment, as well as societal

and community rejection, all compounded secondary deviance in Ghana. Antwi's (2015) doctoral thesis, in particular, is instrumental in showing the association between illiteracy, high unemployment rates, substance abuse and repeat offending among a subpopulation of Ghanaian recidivists. Other West African researchers have also proclaimed and expounded on the social reintegration challenges encountered by ex-offenders in the two neighbouring countries, Cameroon and Nigeria (Adegboyega, 2020; Akanji et al., 2018; Anene, 2013; Besin-Mengla, 2020).

As an example, the study conducted by Besin-Mengla (2020) identifies community rejection, restricted employment opportunities and housing problems as compounding the social reintegration challenges of ex-offenders in Cameroon. Similarly, Nigerian researchers have identified poor disposition of rehabilitation programmes, peer group influence, prisonisation, illiteracy, as well as a lack of accommodation and poor employment prospects upon release as augmenting reintegration challenges. To the extent that the same results have been confirmed in East African states (including Zambia, Kenya and Zimbabwe), serves to pronounce and elaborate the reintegration challenges faced by ex-offenders upon release (Dube-Mawerewere & Chiborise, 2017; Mutubari, 2017; Ndarasika, 2015; Simasiku, 2018). Taken as whole, the manifestation of social reintegration challenges suggests a lack of after-care services.

Although it is cumbersome to enumerate the impact of all socioeconomic determinants of crime separately (Onuferova, 2016), an effort is made in subsequent sections to discuss some of these factors, including, among others, stigmatisation and collateral consequences due to a criminal record, labelling without de-labelling, as well as social and community rejection upon reintegration.

2.5.1 Association between stigma and discrimination

Research has established that people living with the stigma of, and discrimination against a criminal record often experience socioeconomic barriers and community rejection upon reintegrating into society (Akanji et al., 2018; Antwi, 2015; Ayuk et al., 2020; Otero & Barrera, 2021; Boachie & Asare, 2015; Fredericks et al., 2021; Wells, 2013). Stigma is defined by Goffman (1963) as a discrediting feature in an individual making him/her different from others and of a less pleasant kind. Dako-Gyeke and Baffour (2016) differentiate three types of stigma, namely enacted stigma (extent to

which stigmatised persons believe that they have actually experienced discrimination by others), anticipated stigma (extent to which individuals expect to be stigmatised when their identity is revealed), and internalised stigma (extent to which stigmatised persons approve of the negative beliefs and feelings associated with their status). Among the most frequently stigmatised groups are ex-offenders (Lephale, 2016), the LGBTIQ+ community (Maschi et al., 2016), the disabled (Nkhata, 2020), racial minorities (Wells, 2013), including obese people (Viviers & Smit, 2014).

Two experimental studies, one conducted in the Czech Republic aimed at investigating the problematics of unfairly discriminating against the previously incarcerated during a job hunting process (Onuferova, 2016), and another in India, which examined the prevalence of discrimination in the job application process of private sector enterprises (Thorat & Attewell, 2007), conclude that discriminatory processes exist even in the job application phase. Likewise, Wells (2013) replicated Devah Pager's study in the USA using a mixed method approach to examine the effects of a criminal record on employment opportunities, the results of which supported previous research confirming employment discrimination against people with a criminal record. From these findings, several authors, among which Dako-Gyeke and Baffour (2016), have highlighted the association between stigma and discrimination as described by Goffman's (1963) seminal work on the management of spoiled identity, and together, these studies confirm that labelling engenders class bias and social favouritism (for in-groups, while excluding out-groups) in employment-based hiring (Onuferova, 2016; Thorat & Attewell, 2007; Wells, 2013).

2.5.2 Labelling without de-labelling

In Western Europe, Zand-Kurtovic and Rovira (2017) mention the relentless and cumulative stigma encountered by ex-offenders, while in Africa, Ayuk et al. (2020) refer to social, political and cultural stigmatisation. A more recent phenomenological study incorporating the labelling theory sought out to explore the experiences of Kenya's offender population. The results show that concealment of a criminal record is a popular choice employed as a coping mechanism among ex-offenders (Muthee, 2020). Similar results came from Spain and the Netherlands (Zand-Kurtovic, 2017; Zand-Kurtovic & Rovira, 2017).

In West Africa, research also indicates an association between the labelling of Nigerian and Ghanaian ex-offenders and self-fulfilling prophecies (Adegboyega, 2020; Dako-Gyeke & Baffour, 2016), while in Cameroon, research indicates that labels associated with collateral consequences engenders Cameroonian ex-offenders to either conceal their criminal records or to self-exclude (Besin-Mengla, 2020). The term self-exclusion refers to a scenario where applicants with a criminal record actively avoid applying for employment as a result of being fearful that their criminal history will be used to discriminate against them (Fitzroy Legal Service Inc. & Job Watch, 2005).

In Australia, Saliba (2012) identifies screening procedures as encouraging ex-offenders to automatically self-exclude from job applications. In short, these studies argue that through labelling, ex-offenders feel socially devalued, and consequently, that the social costs of recidivism due to the social stigmatisation and discrimination against ex-offenders augments the crime rates (Dako-Gyeke & Baffour, 2016; Glover et al., 2018). Recently, a study conducted among a subpopulation of Namibian recidivists also confirmed the association between the stigmatisation of ex-offenders in the labour market and discriminatory practices such as the participation of ex-offenders in low entry and poor paying jobs (Fredericks et al., 2021).

Likewise, Muthee (2020), as well as Dube-Mawerewere and Chiborise (2017) report that in East Africa (Kenya and Zimbabwe respectively), offenders invariably experience stigmatisation by labour markets, particularly discrimination in relation to housing and employment. Together, these studies suggest that "[p]eople with criminal records can be seen as labelled…[and the] improper labelling of people will lead to the emergence of secondary deviance (Wu, 2020, p. 378).

2.5.3 "Character contamination" and prisonisation

Other related factors maintaining secondary deviance are "character contamination" and prisonisation. Prisonisation is synonymous with "prison desensitisation", and refers to the process where offenders become more hardened and imbibe negative values such as recruitment into gangsterism and other deviant prison subcultures (Anene, 2013). In a more recent study, Besin-Mengla (2020) explain prisonisation as the tendency to gravitate to criminal subcultures that simultaneously serves to maintain a sense of belonging. Towards this end, research from West Africa

accentuates the phenomenon of prisonisation as one of the pathways to the unsuccessful social reintegration of ex-offenders and conclude that owing to "character contamination", incarceration has little deterrent value in countries such as Nigeria and Ghana (Anene, 2013; Antwi, 2015; Glover et al., 2018).

Similarly, as far as East Africa is concerned, Simasiku (2018) and Dube-Mawerewere and Chiborise (2017) have also written about prison subculture in both Zambian and Zimbabwean prisons. According to these studies, criminal subcultures are aggravated by the multi-ethnicity, multi-cultural and racial composition of prisons, and that there is evidence to suggest that "character contamination" and prisonisation contribute to increased rates of criminality and recidivism in African states.

2.5.4 Social and community rejection

In Africa, there appears to be a deep-seated negative perception of previously incarcerated individuals. In West Africa, for instance, research documents family and social rejection, as well as general hostility by community members (Antwi, 2015; Dako-Gyeke & Baffour, 2016; Glover et al., 2018). Specifically, Besin-Mengla (2020) identified community rejection as one of the challenges facing Cameroonian ex-offenders. Likewise, research posits that Zimbabwean and Ghanaian ex-offenders experience reintegration challenges in the form of inadequate community and family support (Antwi, 2015; Dako-Gyeke & Baffour, 2016; Dube-Mawerewere & Chiborise, 2017; Glover et al., 2018). Consequently, to the extent that many are shunned by their family and community, they find it difficult to form legitimate bonds and remain single and unmarried, and thus end up developing bonds with criminal subcultures (Antwi, 2015).

Other similar studies confirm that many recidivists are single and remain unmarried owing to reintegration challenges, including hostile family and community members (Besin-Mengla, 2020; Ndarasika, 2015). Taken together, a hostile society serves to maintain deviant subcultures, an assertion finding support from a study conducted in Southern Africa that also identifies social and community rejection as factors contributing to secondary deviance among a group of Namibian ex-offenders (Niquice et al., 2018).

2.5.5 Collateral consequences and socioeconomic vulnerability

Having a criminal record has far-reaching consequences that manifest into socioeconomic challenges such as poverty and high levels of unemployment. In Europe, Asia and North America, studies have noted that the presence of a criminal record in Canada, China, and the Czech Republic has a wide range of legal restrictions imposed on people with a criminal record. Most of these legal restrictions exist in the professional sphere, where a criminal record is an obstacle to engaging in certain activities (Rudell & Winfree, 2006; Voronin, 2021; Wu, 2021). In China, for instance, "most enterprises are very concerned about the criminal records of the candidates when recruiting employees, and…a number of laws stipulate that "persons who have criminal records shall not, within a certain period or forever, engage in such occupations as civil servants, certified public accountants, lawyers, prosecutors, judges, teachers, accountants, auctioneers, directors, and supervisors of companies, senior managers and "medical practitioners" Wu (2021, p. 379).

Other collateral consequences involve the security industry. For instance, in Eastern European states such as the Czech Republic, the law requires the absence of a criminal record for any crime as a condition for occupying certain positions such as serving in the police (Voronin, 2021). Similarly, according to research, nine West African countries, including Senegal (Reeves, 2011), Cote d'Ivoire (Pepe & Sjoberg, 2011), Liberia (Griffiths & Volasek, 2011), Mali (Dicko-Zouboye & Sjoberg, 2011), Niger (Boubacar & Sjoberg, 2011) and Nigeria (Dayil et al. & Sjoberg, 2011), require a clean criminal record from its "defence" and "armed force" recruits as well as security personnel. Consequently, all applicants applying at security sector institutions (SSI) must provide a certificate of "good conduct" and a clean criminal record.

The recruitment used by the security institutions of Liberia goes beyond criminal record screening by even including the screening of next-of-kin, together with the applicants' photographs published on the media; while Holvikivi and Valasek (2011) confirm that the security sector in Senegal also employs criminal record screening to vet its security personnel. Boachie and Asare (2015) comment that in Ghana, criminal record background checks are used mainly for pre-employment screening purposes for applicants for the police, military and health sectors and result in

collateral consequences for ex-offenders. Researchers in Kenya equally comment on criminal background checks and expose the so-called "project sanitise" where security guards are required to submit their criminal record as part of a screening test (Diphoorn, 2016; Muthee, 2020).

Adegboyega (2020) in Nigeria, Antwi (2015) in Ghana, as well as Simasiku (2018) in Zambia, all confirm that criminal records result in collateral consequences that translate into a variety of disqualifications, including, but not limited to, foster parenting (Frimpong-Manso et al., 2020), recruitment for the police force (Mensah, 2019), as well as accommodation and employment (Dako-Gyeke & Baffour, 2016; Glover et al., 2018). Other studies conducted in the Southern African region also report collateral consequences due to possessing a criminal record (Dube-Mawerewere & Chiborise, 2017; Fredericks et al., 2021). For instance, Fredericks et al. (2021) confirm that a criminal record in Namibia results in collateral consequences such as unemployment, working in low-paying jobs and/or poor-quality jobs, while entry into Botswana's Defence Force equally illustrates that it requires a clean criminal record (Kgosieile, n.d.; Moweunyane, 2017).

2.5.6   A risk-averse attitude

In some European countries such as the Czech Republic, France, Germany and Spain, it is unlawful for employers to ask for a criminal record unless there is a clear connection between the job applied for and a criminal record (Voronin, 2020; Zand-Kurtovic & Rovira, 2017). Even so, research suggests mounting evidence of unlawful criminal record screening, even for low-entry jobs, regardless of clear stipulations indicating which jobs require employees without a criminal record. For instance, Hammad (2012) reports that criminal record screening in Egypt results in collateral consequences for textile industry workers with a criminal record, and also for workers in the urban transportation business. Hammad (2012) elaborates that as far back as the 1950s, Uber and career drivers were subjected to a criminal background check to mitigate risk, so that licences were granted to applicants with no criminal record as a sign of trust.

Other comparable research conducted in North Africa indicates that for protection and control purposes, the political and civic rights of Tunisians with a criminal record are curtailed (Pouessel, 2017) for instance, by the Tunisian electoral system

permitting only those with a clean criminal record to vote (Pouessel, 2017), as is political participation and access to employment, public organs, school and employment in China (Wu, 2020). Also, Suber (2017) observes that while chronic migration by Tunisians can be attributed to mass unemployment, due to the scanning of fingerprints used by Europe's deportation system in Italy aimed at border securisation and restricting movement from Tunisia to Italy, there are collateral consequences for Tunisians having a criminal record. Other studies also confirm the inability of people with a criminal record to obtain a visa for travelling to other countries (Dako-Gyeke & Baffour, 2016; Fordham, 2020).

These barriers, including many others discussed in this section, serve to attest that a criminal record is a social handicap and a stumbling block to employment, education and many other areas of life such as voting and travelling (Lam & Harcourt, 2003; Rudell & Winfree, 2006). In conclusion, countries with more collateral consequences for people with a criminal record such as the US, the UK and Australia are classified as having a risk-averse attitude. In the Netherlands, for instance, the law requires all prospective employees to be screened and "[t]he more risk averse a society is, the more preventive measures employers take towards job applicants and employees, so the screening of criminal backgrounds increases" (Zand-Kurtovic & Rovira, 2017, p. 508).

2.6   THE VALUE EMPLOYMENT IN SOCIAL REINTEGRATION

The relationship between crime and unemployment is complex and ambiguous at best (Onuferova, 2016). On the one hand, a study conducted in the USA found that nearly two thirds of employers reported that they would not hire a person with a criminal record (Holzer et al., 1996) - implying that ex-offenders encounter significant barriers to employment opportunities. Also, in Canada, Scott (2010) established that employers are generally unwilling to hire ex-offenders and that the resistance to hire increases for those convicted of violent crimes. Australia, too, researchers surveyed 83 of 300 employers and found that only 12% of employers agreed to hire an ex-offender (Albright & Denq, 1996). Employer willingness to hire ex-offenders was higher for those with a college degree, with a vocational trade, or having completed two training programmes. Employers further cautioned that although they would hire

ex-offenders on the basis of government incentives, they were generally reluctant to hire ex-offenders convicted of a violent crime or crimes against children.

On the other hand, other studies reveal enormous community benefits associated with ex-offender employment in Australia (e.g. less crime, greater public safety and reduced costs to government in terms of lower recidivism rates), as well as an array of potential social justice benefits (e.g. improved community attitudes toward ex-offenders) (Graffam et al., 2008), and other researchers in Canada argue that ex-offender employment provides income, structure and routine, as well as an opportunity to increase social networks, enhance self-esteem and provide psychological health (Graffam et al., 2004; Scott, 2010). Chavez and Dawe (2007) also brought to our attention that not only do ex-offenders benefit from employment, but also the community profits from the decrease in costs associated with recidivism. In the African context, Fredericks et al. (2021) in Namibia, Mutubari (2017) in Kenya, Akanji et al. (2018), as well as Anene (2013) in Nigeria, all emphasise the importance of vocational skills training and prison education in order to facilitate the employment opportunities of ex-offenders upon reintegration.

2.6.1 Research on occupations that reduce reoffending

In support of the notion that not all types of occupations reduce re-offending, Ramakers et al. (2017) uses longitudinal data in the Netherlands to examine the role of employment characteristics in ex-offenders' recidivism risks. A key finding of the study was that the mere presence or absence of a job did not reduce ex-offenders' recidivism risks after confounding factors were controlled for. In fact, Ramakers et al.'s (2017) study reaffirmed that ex-offenders in high-quality jobs are less likely to reoffend than ex-offenders in low-quality jobs, and further replicated Uggen's (1999) findings that employment programmes connecting ex-offenders to temporary and low-skilled jobs did not reduce reoffending, since they failed to significantly alter ex-offenders' social position.

To this end, studies from the Netherlands, Australia, Finland and Canada are in support of the positive link between employment and reduced levels of offending and conclude that employment is fundamentally key to social reintegration (Graffam et al., 2004; Savolainen, 2009; Scott, 2010; Zand-Kurtovic & Rovira, 2017). Warr (1998) adds that being employed plays a crucial role in regulating ex-offenders'

routine activities by altering the types of friends that they have, which in turn translates into quality time spent with law-abiding friends, colleagues and family. This view finds support from West African studies confirming that a lack of job opportunities and the general unavailability of employment act as pathways to unsuccessful social reintegration for many Nigerian ex-offenders (Adegboyega, 2020; Anene, 2013; Ayuk et al., 2020).

2.7   DECARCERATION: A FIZZY-FUZZY AREA

According to Antwi (2015), society is punitive as well as unforgiving, and based on the literature reviewed, it can reasonably be argued that there is tacit clemency in society, except for people with a criminal record. Conceivably so, as the argument hinges on the right to know versus privacy (Zand-Kurtovic & Rovira, 2017). In regarding the above, evidence shows many opposing constructions of criminal record expungement, as the term carries different meanings in different countries, and even in different jurisdictions within a country (Rudell & Winfree, 2006). Criminal record expungement is synonymous with pardon, which is consistent with the African philosophy of Ubuntu (humaneness) that accentuates the mending and repairing of strained relations, which is vital for ex-offenders' re-entry (Magano, 2019). In Ethiopia, for instance, criminal record expungement means deleted or "presumed non-existent". In fact, Article 179 of Ethiopia's Penal Code restricts public access to young offenders' criminal records, even though the criminal records can, in turn, be revoked (Fisher, 1970).

Likewise, according to the criminal law of the Czech Republic, the expungement of a criminal record depends on the punishment imposed. For instance, it may take 10 to 15 years for more serious offences and 3 to 5 years for less severe cases to be expunged (Onuferova, 2016; Voronin, 2021). Voronin (2021) adds that in the East European context, criminal records can be stored even up to a century. Implicitly, even upon expiry of the sentence, a criminal record still becomes registered on the appropriate register, which compounds the reintegration, as well as the resocialisation, of ex-offenders and also significantly affects the possibility of carrying out professional activities. Also, research from Canada established that although criminal record expungement could be granted in some Canadian states, it was not recognised in some US states (Rudell & Winfree, 2006). The same study also found

not only that criminal record expungement was costly, but also that those sentenced to life imprisonment did not qualify. It is against this backdrop and for similar reasons that the present study was conceptualised, but this time with regard to South Africa, as set out below.

2.8   THE DEVELOPMENT OF CORRECTIONS IN SOUTH AFRICA PRE-AND POST-APARTHEID

Historically, South Africa operated on the notion that prisons were places of punishment, and that punishment was executed through migrant and forced labour (South African history online, 2017). In the early 1960s, the large-scale incarceration and sentencing of political prisoners attracted international organisations such as the Red Cross and the United Nations (UN), and consequently, the management of the prisons was impacted severely (South Africa history online, 2017). Since 1995,

In 1993, following the general elections in 1994, prisons in South Africa were demilitarised (Matshaba, 2007), and this signalled a shift away from the previous apartheid government to a new human rights culture into the correctional system of South Africa (White Paper on Corrections, 2005). The National Crime Prevention Strategy also adopted an Integrated Justice system approach aimed at making the criminal justice system more effective, and intended to ensure a lower risk of reoffending (White Paper on Corrections, 2005). Nowadays the focus is more on the rehabilitation of offenders. The transformation in South Africa began with the replacement of the Prison Act 8 of 1958 with the Correctional Services Act 111 of 1998, which prioritised the rehabilitation of offenders through education (Mkosi & Mahlangu, 2015).

South Africa's White Paper on Corrections (2005) is a premise that identifies corrections as a societal responsibility, the main aim of which is rehabilitation. According to the White Paper on Corrections (2005), the responsibility for renewing unity in the family and community levels lies with the entire society, while it is the duty of the DCS to interpret the concept of the White Paper into working activities. The White Paper also takes full cognisance of South Africa's past and is therefore mindful of the fact that not only persons from dysfunctional families but also members of affluent families and persons with high-paying jobs engage in criminal activities. Still, profiling the SES of South African offenders drives home the reality

that the vast majority of the offenders emanate from impoverished communities plagued by poverty and hunger, dysfunctional families and a general distorted value system (Agboola, 2017; Mabuza & Roelofse, 2013; Muntingh & Gould, 2010; Tadi & Louw, 2013). When families are dysfunctional, they provide a fertile ground for acts of criminality.

2.8.1 Inside South Africa's correctional centres

According to the 2017/2018 annual report, the DCS of South Africa had 243 prisons of which 235 were active with an inmate population of 164 129. Here, a clear distinction should be made between two custodial facilities, namely remand detention facilities (meant for awaiting trial detainees), and correctional institutions (meant for sentenced offenders) (White Paper on remand detention management, 2014). According to research, although a majority of crimes in South Africa are perpetrated by males, recent statistics show an increase in the number of crimes committed by female offenders (DCS, 2017). On an international level, females commit significantly less crime than males, and their trajectories to criminal behaviour also differ extensively from those of males (Schwartz & Steffensmeier, 2008).

Recent studies by Parry (2019) and Qhogwane (2017) show that female offenders comprise only 2,5% of the total South African offender population, the demographic distribution of which is 1% Asian, 18% Coloured, 79% Black and 2% White. The DCS (2018) categorises its offenders into three groups, namely, 'children (those younger than 18 years), accounting for 0,1%, youth offenders (those between the ages of 18 and 20 years), accounting for 2,8%, and adult offenders (those older than 20 years, accounting for 97,1%, of the population. The architectural design of most of the prisons comprises various spaces such as communal and single cells, court yards, playgrounds and sports facilities, offices, visiting areas, kitchens and ablution facilities. However, the mind-numbing infrastructure and grey colours observed in many of these prisons bears testimony to the fact that they were designed to prioritise security, with no rehabilitation prospects in sight (Frowein, 2012; Yakobe, 2011).

Agboola (2017) and Qhogwane (2017), both arguing from a feminist perspective, state that although female offenders differ significantly from male offenders, gender-

specific needs continue to be neglected. MacDonald (2013) provides a list of these, by pointing out that since correctional facilities reflect a patriarchal design with male offenders in mind, structures such as security, accommodation, sanitary arrangements, education, treatment and healthcare programmes do not satisfy the unique needs of female offenders.

2.8.2 Reforming South Africa's offenders

The current mission of the DCS is derived from the guiding principles of the White Paper on Corrections (2005), which aims to address criminal behaviour and bring about positive social change (Fourie, 2015; Van Zyl, 2008). This implies that offenders must be supported to enable them to contribute meaningfully in their communities once they are released (Kunene, 2008). Overall, rehabilitation statistics in South African correctional centres reflect that over the past five years, offenders have attended a fair share of the rehabilitation programmes. For the 2017/2018 financial year, the DCS (2018) reported that over 86 000 offenders had successfully completed rehabilitation programmes aimed at improving offender literacy, imparting educational skills, as well as meeting offenders' psychological, spiritual and health care needs. The DCS further reported that a total of 14 577 offenders had acquired new skills through its various skills development programmes over the 2017/18 period, during which 10 996 offenders accessed training through adult and further educational training (DCS, 2018). The report also stated that 1 494 parolees and probationers who had undergone the same skills training development received employment during that financial year (DCS, 2018).

However, the current study notes with interest that only the statistic (1 494) is revealed, and that characteristics of the vacancy, such as the duration of the employment (permanent or casual) and occupational level (professional or low-entry level) are duly omitted. Instead, a closer inspection reveals that the majority of the offenders seemed to be participating in social work service programmes (108%), as well as sports, recreation and culture programmes (92%). Few offenders seem to be accessing formal education (20%) and psychological services (12%) (Jules-Macquet, 2014). An even lower percentage seemed to be participating in agricultural activities and production workshops (DCS, 2012/2013). Such figures create the distorted impression that the DCS is succeeding with its mandate to rehabilitate and reform

South African offenders. In retrospect, what these rehabilitation participation figures fail to account for is the quality of lived experiences of these 1 494 parolees and probationers as they navigated South Africa's labour market in search of employment. It is furthermore interesting to note that none of these statistics disaggregate the parolees and probationers with regard to the offences that they committed (i.e. violent vs non-violent).

2.8.3 Incarcerated tertiary students and the provision of Higher Education

There exists a large number of studies in the field of correctional education, both nationally and internationally (Frank et al., 2012; Jay, 2013; Johnson, 2015; Hopkins & Farley, 2015; Mkosi, 2013; Wake et al., 2013). Some studies find that offenders who engage in correctional education are most likely to acquire employment after release, and that when they become financially stable to fend for themselves, they no longer reoffend (Quan-Baffour & Zawada, 2012). Many of those studies affirm that offenders who study behind bars do so for various reasons, such as that correctional education is a gateway to higher levels of education – especially to those offenders who missed out on the opportunity of schooling, while others regard correctional education as a cornerstone of successful social reintegration (Hopkins & Farley, 2015; Johnson, 2015).

All in all, these studies look at formal education as an enterprise towards furthering tertiary education, thereby suggesting that having a qualification and a profession is a gateway to finding quality employment and becoming self-sufficient. In South Africa, few studies, if at all, are dedicated to exploring incarcerated students' lived experiences and the meanings attached to HE by ex-lifers (Mdakane et al., 2020). Therefore, the current study acknowledges that while education is key to providing offenders with skills and knowledge (Correctional Services Act 111, 1998), there are subtle challenges inherent in the process (Frank et al., 2012; Hopkins & Farley, 2015; Mkosi, 2013), such as the adequate provision of HE in correctional centres.

For instance, Jules-Macquet (2014), recounted in 2013 that only 20% of offenders in South African correctional centres were enrolled on formal qualifications in three categories, namely adult basic education (ABET), tertiary, and vocational education. Twenty percent (i.e. 32 400 offenders) out of a total prison population of 162 000

seals the argument that achieving rehabilitation through education remains a huge milestone in South Africa. Similarly, out of the 30 775 offenders incarcerated in Australian prisons as at 2014, only a handful of offenders were found to have enrolled in HE (Hopkins & Farley, 2015; Wake et al., 2013).

These statistics are fundamentally significant insofar as correctional education is heralded as a constitutional right in South Africa (Magano & Mafumbate, 2019; Republic of South Africa, 1996). By implication then, education is a basic human right granted to all citizens, and is not curtailed by incarceration. This right is further endorsed by the international human rights law (CESCR-article 13) in stipulating that everyone has equal rights to education, thus including incarcerated students. Furthermore, the United Nations Standard Minimum Rules for the Treatment of Prisoners (section 77(1)) instructs that provision of further education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of education (UNESCO, 2012; United Nations Office on Drugs and Crime, 2014). By application then, these prescripts imply that prisons should ensure that incarcerated students consistently have access to education and distance education through both physical and on-line access to resources.

Alternatively, to avoid idling, prisons often provide offenders with work opportunities for which they receive a stipend or gratuity for their efforts. The offenders mostly work as cleaners, monitors, gardeners, cooks, and, to a lesser extent, tutors. However, conflict often arises when they have to attend school, because the jobs that they have often clash with school hours. Other comparable studies find that correctional education is challenged by overcrowded classes, a lack of adequate teaching resources and high rates of absenteeism, which leads to offenders dropping out of school (Mabuza & Roelofse, 2013; Schimer, 2008). Further adding to the high drop-out rates are offenders with pending court cases and those with medical conditions requiring external hospitalisation who, oftentimes make the provision of education more challenging. Also, unlike in prisons in Europe and Australia, much of the research conducted in South African carceral spaces reveal that correctional education is shrouded in a web of controversy (Johnson, 2015; 2021; Mkosi, 2013).

The study by Kabeta (2017) recently confirms Baffour's (2012) sentiments that South African citizens view the education of offenders as an attrition of public resources, and the author further emphasises that society still holds the perception that educating offenders is compensating for their crimes and wasting taxpayers' money. Despite the educational opportunities made available to incarcerated students, security restrictions such as lockdowns, search and seizures, and a lack of qualified staff to supervise and oversee educational activities all add up to work against the purpose of rehabilitation. In addition to this, studies by Johnson (2015), Mdakane et al. (2021), and Mkosi and Mahlangu (2015) all reveal numerous personal and institutional challenges encountered by incarcerated students regarding transfers, mental disorders, substance abuse, an anti-learning culture, unsupportive prison officials, noise disturbances and a lack of effective channels to communicate with the university.

Other similar studies report that prisons are bureaucratic institutions focusing predominantly on frequent lockdowns, headcounts, court hearings, offender transfers, and many others (Johnson, 2015; McKinney & Contronea, 2011; Mitra, 2008; Mkosi, 2013; Watts, 2010). Altogether, these factors suggest that education and offender rehabilitation are not priorities in prisons - instead, more emphasis is placed on security, rather than on offender development (Luyt, 2021; Mnguni & Mohapi, 2015).

2.9 PARADOX: THE SOUTH AFRICAN PRISON SYSTEM AND THE DISCOURSE OF FAILURE

Similar to Australian offenders, South African "inmates are not only offenders to be rehabilitated, they are also a labour force to be utilized" (Hopkins & Farley, 2015, p. 39). In exactly the same manner, to counter reoffending in New Zealand, it is reported that the Department of Corrections deliberately incorporates employment as a key strategy to achieve a 25% reduction in rates of recidivism (Maughan, 2013). However, owing to contextual differences, findings and recommendations from international studies are somehow difficult to compare, implement or generalise in South Africa. For instance, crime in South Africa is complex in nature; it does not have a clear-cut explanation despite its persistence and pervasiveness (Van Bueren et al., 2003).

According to the Crime Index for Country (2018), South Africa has the fourth highest number of crimes committed in the world, especially as far as violent crimes are concerned. Africa Check (2019), for instance, notes an increase in the number of rape incidences from 50 108 in the 2017/18 financial year to 52 420 in the 2018/2019. Other studies also confirm that globally, South Africa has high rates of sexual offences (Woodhams & Labuschagne, 2012) and ranked the second most committed offences in that category, only surpassed by murder. These statistics, without a shadow of a doubt, configure South Africa at the centre stage - both nationally and internationally. This, in itself, is paradoxical, because despite the annual expenditure of over R76 billion by the SAPS and a further R16 billion by the Department of Justice and Constitutional Development (Treasury, 2010), crime is still on the rise.

According to Burger et al., (2010), in the six-year period between 2004 and 2010, the police budget increased by almost 132 per cent from R 22,7 billion to R 52,6 billion. It is interesting to note that even though a large proportion of this budget went to recruiting additional personnel, the murder rate of 51 people per 100 000 reported by the SAPS (Etheridge et al., 2016) remained high, and was eight times more than the international average of six (Lampert, 2015). Other serious offences such as hijacking and business theft and robberies also showed an increase in the 2015/16 annual crime statistics (Etheridge et al., 2016). Finally, compounding and adding further complexity to the South African prison system are inefficiencies in the Criminal Justice System (CJS), such as lengthy court processes, court backlogs, as well as undue lengths of remand detention that exert more pressure on the correctional service system (Steinberg, 2006). It is therefore not unsurprising that the DCS is facing serious challenges such as overcrowding, a flawed parole system, high rates of recidivism, gangsterism and the smuggling of contrabands.

2.9.1 Overcrowding and recidivism

Overcrowding and poor conditions are a reality in most South African prisons (Simooya, 2010). In this regard, studies by Ntsobi (2005) and Steinberg (2005) both projected the rise of the South African offender population more than a decade and half ago when they commented that the steady rise in the number of sentenced offenders would reach terrifying rates that would in turn pose a problem, for the

Department in terms of rendering effective rehabilitation programmes. Three years later, similar sentiments were expressed by Padayachee (2008), reaffirming that South Africa's prison population had resulted in overcrowding in many of the country's prisons. The ripple effects due to overcrowding, staff shortage and security concerns implies that inmates, especially maximum-security offenders, are locked up most of the day and spend a greater proportion of their time behind bars. Thus, access to recreational and learning facilities both decrease, owing to the prison administrator's capacity to maintain security and good order (Steinberg, 2005).

Research also suggests that where there is a high concentration of offenders, the health of the offenders is likely to be adversely affected. A study by Simooya (2010) shows that overcrowding and congestion increase the spread of communicable diseases such as Hepatitis C (HCV), human immunodeficiency virus (HIV) and tuberculosis (TB) in prisons. Another criticism levelled at the DCS is that many of the prisons built decades ago come up short on the physical space required to rehabilitate those under the care of the Department of Corrections. In the 2017/18 Annual Report, the Deputy Minister states that ageing and outdated infrastructures, gang-related activities and overcrowding exacerbate security incidents and frustrate security efforts within correctional centres (DCS, 2017). Recidivism, just like overcrowding, remains a challenge in South Africa. Recidivism refers to the extent to which offenders reoffend upon release from prison, with estimated rates of between 55% and 95% in South Africa in the year 2014 (Jules-Macquet, 2014). Although there are no official recidivism statistics for South Africa, Schoeman (2010) estimates recidivism to be between 55% and 97%, while a more recent study by Khwela (2015) estimates recidivism rates of 50% and 70% for the country within a period of three years after offenders' release from incarceration.

In this regard, Khwela (2014, 2015) notes that despite the various programmes implemented by the DCS to reduce reoffending, the DCS still does not equip offenders with basic capabilities to function in society post-incarceration, and that this alienates ex-offenders from the broader community and from accessing economic opportunities such as employment, which ultimately leads to recidivism. In line with the challenges set out above, the present study notes that there is not much research focusing specifically on the social reintegration and rehabilitation of ex-offenders once sentenced to life-imprisonment in South Africa. Therefore, to capture

these experiences and gain clarity on the use of, and request for, criminal record checks, including the influence that these have on the labour market prospects of ex-lifers, this study was undertaken. It will hopefully illuminate our understanding of the lived experiences of ex-lifers seeking to gain employment within the South African context.

2.10   SUMMARY OF THE CHAPTER

This chapter provided a global as well as a local overview of incarceration with specific reference to social reintegration post-incarceration. It further highlighted the problem of mass incarceration and prison overcrowding before presenting the idea of penal exceptionalism and the import model through profiling the incarcerated population as well as factors associated with primary deviance. By profiling the factors associated with the (un)successful social reintegration of ex-offenders, the chapter outlined, among others, the relationship between secondary deviance and stigma, labelling without de-labelling, as well as "character contamination" and prisonisation before concluding with a discussion on the development of the Department of Correctional Services in South Africa pre- and post-apartheid. In the next chapter, policy documents affecting ex-offenders' HE prospects and labour market opportunities during and after incarceration will be analysed.

CHAPTER 3

POLICY AND DOCUMENT ANALYSES

Our public institutions exist for a reason…[and]*… Education is a thing that we know people need in our society. If our public institutions are going to fulfill their missions they have to consider that the large majority of people who are impacted by the criminal justice system are the very people that they have a mission to serve. Unless they make that connection they are going to miss the mark. I think it is up to us to make them see that connection.* (Vivian Nixon, Executive Director, Community and College Fellowship, cited in Jay 3013)

3.1   INTRODUCTION

The previous chapter explored global literature on discrimination against criminal records. In this chapter, the concept of punishment is discussed, and the powerful role of the criminal record and how its construction regulates and infringes upon offenders and ex-offenders' opportunities during and post-incarceration are illustrated. A total of 40 policy documents that simultaneously promote and deny access to HE students and job applicants with a criminal record were purposefully selected and reviewed. These institutional policies and processes were analysed and compared with respect to their similarities and differences in managing HE students and job applicants with a criminal record. The chapter begins by defining what policy documents are, followed by the study's rationale for using policy and document analyses as a data triangulation strategy, prior to providing guidelines regarding the criteria for how these policy documents were selected and reviewed. The chapter concludes by explaining the effects of a criminal record and its implementation in relation to applying for employment in South Africa's labour market.

3.1.1 What are policy documents?

Policy documents are defined as rich, useful and ready-made sources of data that are compiled, retained and used in social sciences research as documentary evidence (Berku, 2019; Kafu, 2018). Policy documents can also be used to interpret events and gain insight into the relationship between written and unwritten, past and present, spoken and visual data (Kafu, 2018). Relative to other forms of data acquisition (e.g. interviews, questionnaires or data based on observation), policy documents include readily available data that are often free or obtainable at only a small cost (Rapeta, 2019). Therefore, policy documents as texts or written communication are convenient to use, since they exist prior to the research and can

be collected in a shorter period of time and analysed for either their social or their historical value (Ndou, 2015). The range of documents that may be used by social scientists include diaries, letters, essays, personal notes, biographies and autobiographies, institutional memoranda and reports, as well as government pronouncements and proceedings (Siwela, 2018). Other examples of policy documents include official documents such as "annual reports, financial statements, newsletters, budget justifications, and especially documents on the inner workings of programs" (Owen, 2014 p. 11).

3.1.2   Why use policy and document analyses?

Although quite a number of scholars have published on the subject of criminal records in South Africa (Mujuzi, 2014; Mujuzi & Tsweledi, 2014; Rust, 2017); the literature also shows that there is a dearth of policy analysis in as far as access to HE is concerned for students with a criminal record (Mugume, 2017; Slabbert & Bomme, 2014). Bowen (2009) opines that policy documents have different uses in relation to providing data on the context within which research participants operate; they provide supplementary research data by means of tracking change and development and verifying or corroborating evidence from other sources.

However, in the context of this study, it is necessary to highlight the difference between the use of documents as part of the data-collection strategy and the literature review of a study. According to Nieuwenhuis (2006), the two do overlap in the sense that they both incorporate data sources in some or other written format, but using document analysis as part of the data gathering strategy is something distinct from reviewing literature. Notwithstanding the above, both data collection strategies (known as data triangulation) were incorporated in this study to help answer the research questions as outlined in table 3.1 below.

Table 3.1 Document analysis protocol

What framework guides the management of people with a criminal record in South Africa's labour market?	Are persons applying for admission, licences or registration to professional bodies required to disclose their criminal record? If yes, is this voluntary/involuntary?
Are South Africa's labour policies evolving enough to accommodate the growing cohorts of people	Do prospective employees have to disclose their criminal record? If yes, what and how much

with a criminal record into the labour market?	information must be disclosed?
What prescript/s inform or guide the discourse on rehabilitation through education?	Do employers and professional bodies use a person's criminal history as a selection criterion? If yes, to what extent?
What public knowledge is made available to prospective students intending to study at an HE institution?	Is it legal/constitutional to use a person's criminal history as a selection criterion when hiring persons with criminal a record?
	What are the implications for employees/applicants who conceal their criminal record?

The documents selected for this study constitute a field for research in their own right. To this end, they are considered as situated and collective (social) products that are produced in social settings, rather than fixed and stable entities in the world (Owen, 2014). According to some studies, the purpose of analysing policy documents is to learn about a situation, person or event being studied (Merriam & Tisdell, 2016), while Silverman (2005) states that one performs policy and document analyses to produce reliable evidence regarding the phenomenon under investigation. This implies that documents are unpretentious in terms of the research process; they are flexible, which makes document analyses relevant in understanding the effects of a criminal record when applying for employment or registering with professional bodies.

This view is shared by Henning et al. (2004), who consider the collection of documents as valuable sources of information. Another key advantage for reviewing policy documents is that these documents provide background information prior to designing the research project. For instance, policy documents can either corroborate observational and interview data, or refute them, in which case the researcher is "armed" with evidence that can be used to clarify or perhaps challenge the status quo (Owen, 2014). Martella et al. (2013) further outline the advantages of document analysis as involving permanent products that can be studied by several individuals at different times. In this way, one can reasonably assume that documents reconstruct events and help provide information about social relationships that is unobtainable through interviews (Rapeta, 2019).

Altogether, this implies that policy documents are important sources of data in many research designs, and that it can be concluded that document analyses are relatively less costly and less time-consuming since they cover data over an extended period, in different events and in a variety of settings (Berku, 2019; Bowen, 2009). Mertens (2010) concurs with this view in affirming that whereas it is impractical for researchers to be in all places at all times, document analysis, on the other hand, provides researchers with data that would otherwise be unattainable. In the next section, the guidelines and criteria used for selecting, analysing and reviewing policy documents are expounded.

3.2 CRITERIA AND GUIDELINES FOR SELECTING AND ANALYSING POLICY DOCUMENTS

The analytical process (depicted in figure 3.1 below) was undertaken between 1 September 2018 and 30 October 2020. Prior to embarking on the process of selecting documents related to the management of people with a criminal record, I had to make important decisions as to which documents were more important and/or relevant than others. Creswell (2005) offers certain guidelines that should be followed in the document analysis process, namely: the identification of useful documents; distinguishing between private and public documents; obtaining permission to use the documents; determining the accuracy, completeness and usefulness of the documents prior to obtaining the permission to use them. Based on the above, it was essential to construct guidelines explaining what characterises the policy documents selected for this study as sources of information.

Consequently, three criteria were drawn up that assisted me to document information relevant to the understanding and interpretation of policies focusing on the management of student-applicants with a criminal record (Ndou, 2015).
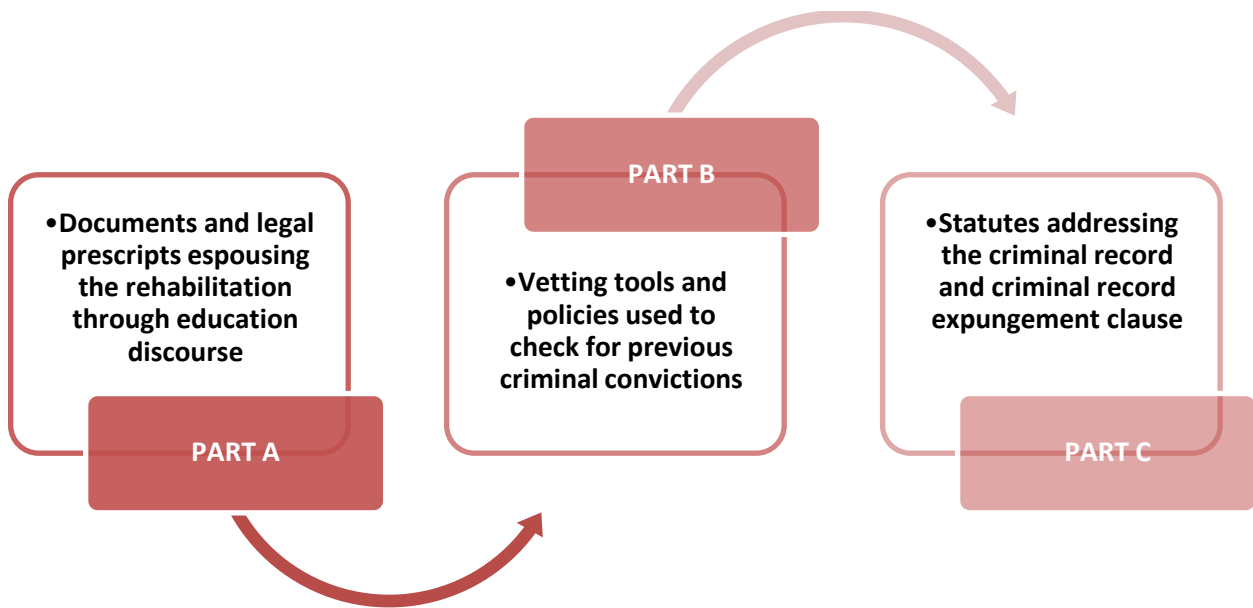
Figure 3.1 Process of analysing policy documents

In total, 40 official documents (see table 3.2 below) were selected and reviewed. To commence with, the policy documents targeted for analysis had to be authentic, credible, representative and meaningful (Scott, 2006). The documents selected for this study met these criteria, because, as previously indicated, they were rich sources of information, stable, legally valid and contextually relevant (Chipangura, 2016). Furthermore, despite being institutional documents and policies, the policy documents identified for this study were publicly available, and therefore accessible to all members of the research community (e.g. all the reviewed policies were freely available, accessible and downloadable on the internet).

Consistent with the above criteria, Kafu (2018) and Suri and Clarke (2009) further advise researchers not to take these policy documents at face value, but to explore how they were constructed, and how they are used and interpreted. This view is supported by MacDonald and Tipton (1996), who also advise that in documentary research, nothing should be taken for granted. Then the final criterion is that the policy under exploration ought to be conceptually clear and simple, theoretically sound, and stated in terms of desired changes accomplished among target groups (Ndou, 2015). Armed with this knowledge, I ensured that all the documents selected for analysis were subjected to thorough scrutiny. For instance, while reviewing these documents, I applied Owen's (2014, pp. 19-20) advise that as researchers our focus

"should be with the selective device through which the facts were produced; what facts were selected to be written down and which were rejected".

To this end, each document was reviewed and examined as an institutional document to (1) explore and articulate the kind of information required from student-applicants in relation to their criminal records, and the reasons for requesting such information, (2) establish what mechanisms are used by institutions, professional bodies and employers to promote and/or deny access to student-applicants with a criminal record, and (3) examine the contents of admission and application forms used to access these professional bodies, including any indication of how the information is stored, accessed or shared. More importantly, the context within which these policy documents were written and the circumstances of their construction were noted, where applicable, the most salient policy modifications that took effect over the past years were further considered. The analysis concluded by paying special attention to the publication dates (e.g. while some of these documents are current, and others are retrospective in nature), the audience of these documents in terms of their intended receiver, and lastly, the implications of these documents in relation to applying for employment and/or gaining membership or readmission to these institutional or professional bodies.

MacDonald and Tipton (1996, cited in Punch, 2014) and Siwela (2018) recommend Denzin's triangulation framework to make sure that everything is checked from more than one angle. A checklist was subsequently developed in line with the basic research questions and the literature review (Berku, 2019). Lastly, since Best and Kahn (2006) warn that data contained in documents can be distorted and irrelevant, in an effort to corroborate while consolidating the data contained in these policy documents, I wrote countless emails requesting one-on-one interviews with council and institutional representatives (Ndou, 2015), to the point of physically visiting these institutions on several occasions after arranging appointments via emails and telephone. The discussion in the sections below, namely, parts A, B and C, are the end results of the analysis undertaken by the study.

3.3   PART A: DOCUMENTS AND LEGAL PRESCRIPTS ESPOUSING THE REHABILITATION THROUGH EDUCATION DISCOURSE

The guidelines mentioned immediately above informed the design of the document analysis protocol used in this study (see table 3.1 above).

Table 3.2 Policy documents

PART A	PART B	PART C
Constitution of the Republic of South Africa Act, 1996	Unisa qualification brochures (2018, 2017)	Public Service Commission (2009)
White Paper on Corrections (2005)	Unisa Social Work brochures, 2018-2021 SACSSP application form, 2020 SACSSP Act No. 110 of 1974 Unisa Social Work post, 2019	Criminal Procedure Act No. 51 of 1977; Mugume (2017); Mujuzi (2014); Rust (2017); Slabbert and Bomme (2014)
Correctional Services Act No. 111 of 1998	Unisa Psychology brochures, 2018-2021 HPCSA application forms, 2013-2020 HPCSA Act No. 56 of 1974 Unisa Psychology posts (2020, 2018)	
Unisa's 2020 student on-line admission form	Unisa College of Education brochures, 2018-2020 SACE application form, 2020 SACE Act No. 31 of 2000 Employment of Educators Act No. 76 of 1998 Unisa College of Education post, 2018	
NSFAS Act No. 56 of 1999	Unisa College of Law brochures, 2018-2020 LSSA application form, 2020 NBCSA application form, 2020 Unisa Law post, 2020	
Protection of Public Information Act No. 4 of 2013	Z83 application form, 2017 Unisa's application form for a	

	permanent academic post, 2017	
	Unisa's application form for a permanent administrative post, 2017	

Recently, a number of international studies relied on policy document analyses as a strategy for triangulating both qualitative and quantitative research data (Abbe, 2017; Berku, 2019; Bowen, 2009; Chipangura, 2016; El-Jardali et al., 2014; Kafu, 2018; Mabuza, 2020; Muchinda et al., 2021; Ndou, 2015; Owen, 2014; Rapeta, 2019; Siwela, 2018). In the health industry, for instance, El-Jardali et al. (2014) used the Lebanese Voluntary Health Insurance policy to gain insight into the construction of policies in Lebanon, while Muchinda et al. (2021) used policy analysis to explore the healthcare needs of Zambia's inmates. Similarly, in exploring the healthcare needs of Ethiopian children, Abbe (2017) used policy document analyses in triangulating qualitative data for his doctoral thesis and in the USA, Owen (2014) employed document analysis intended to supplement qualitative interviews regarding pre-employment background checks in Georgia's Institute for Technology.

Likewise, for their doctoral theses, both Chipangura (2016) and Kafu (2018) incorporated policy document analyses into their mixed method design, as did Ndou (2015) with his phenomenological research on the implementation of education policies in the province of Limpopo, South Africa. The criteria used for the present study allowed for a well-balanced examination of legal prescripts explaining access to HE, including clarity on the role of the criminal record upon admitting student-applicants with a criminal record.

The following two questions guided the analysis of part A:

(1)   What prescripts inform or guide the rehabilitation through education discourse?

(2)   What public knowledge is made available to prospective students intending to apply at an institution of HE?

To answer these questions, the Constitution of the Republic of South Africa, 1996, the Correctional Services Act, 1998, the DCS's White Paper on Corrections (2005), Unisa's 2020 on-line student admission form, the NSFAS Act, 1999 and the POPI

Act, 2013, were reviewed and analysed. There were three reasons for analysing these policy documents, namely: first, to determine how the criminal record is constructed in HE by exploring the prescripts that inform or guide the rehabilitation through education discourse; secondly, to determine the mechanism/s used to promote access and request for information regarding previous criminal convictions of potential students, and the reasons for requiring such information; and thirdly, to document the kind of public knowledge made available to prospective students or applicants with criminal convictions, and whether these policy documents serve as any recourse for student-applicants with a criminal record when applying to study at an institution of higher learning.

3.3.1 The criminal record and access to Higher Education

The Constitution of the Republic of South of Africa is the supreme law of the country. To this end, it makes possible the provision of education and training regardless, of one's circumstances. Mugume (2017, n.p.) adds that "the Higher Education Act of 1997 was the first post-1994 fundamental policy initiative designed to ensure regulated transformation of institutions of higher learning...[in] ensuring access to higher education for more students from previously disadvantaged communities and also to avail employment opportunities." Implicitly, correctional institutions and institutions of higher learning in South Africa are constitutionally mandated and compelled to provide education to offenders. Specifically section 29(1) of the Constitution stipulates the following "Everyone has the right (a) to basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible (p. 12)."

To accomplish this task, the Correctional Services Act, 1998, section 41(1) recommends that "the Department must provide or give access to as full a range of programmes and activities, including needs-based programmes, as is practicable to meet the educational and training needs of sentenced offenders (n.p.)". Similarly, the White Paper on Corrections (2005) places the rehabilitation of offenders at the centre of all DCS activities with the focus on offending behaviour while equipping offenders with skills necessary for their social reintegration. Also, prescripts enshrined in South Africa's White Paper on Corrections (2005) confirm that people

under correction must be provided with education. It states that "[t]he constitutional imperative for schooling is not a right that is curtailed by incarceration... (p. 69)".

These regulations are consistent with international instruments indicating that education in prisons must be in line with the educational system of the general society and, that provision must be made for the continuity of the educational activity of people incarcerated in prison, including those released on parole. Likewise, the European Prison Rules (Council of Europe, 2006) state that it is the duty of the correctional services, politicians and policy-makers to ensure that offenders' rights to education are met. In Norway, for instance, access to education is a civil right, and this right encompasses incarcerated students and individuals with previous criminal convictions (Tønseth & Bergsland, 2019). As far as South Africa is concerned, the White Paper on Corrections (2005, p. 40) proposes the following: "Employment and making a contribution to the wealth of the community by means of production is a key component to rehabilitation and the prevention of recidivism." Moreover, to acknowledge and extend the rehabilitative role of employment, section 61(1) of the Correctional Services Act, 1998, emphasises that "[u]pon release and as part of [the ex-offender's] social reintegration...persons subject to community corrections must make a reasonable effort to find employment...(n.p.)".

Consequently, and parallel to the provisions of section 29(1) of the Constitution, it stands to reason that a subpopulation of incarcerated students and individuals with a criminal record will take up an interest in furthering their education in professionalised careers that require admission and subsequent registration with particular councils. Nevertheless, it is interesting to note that while it remains the responsibility of the DCS to ensure that offenders are appropriately skilled in market-related skills, the provision of schooling refers to only basic adult education as a priority, and there is no explicit mention of HE as a priority. More importantly, there is neither mention nor consideration of the criminal record upon the offenders' reintegration and/or transition into the economically active sector of society.

3.3.2 The National Student Financial Aid Scheme (NSFAS)

To the extent that "continuity in education and training [are] in line with Government policy" in South Africa (White Paper on Corrections, 2005, p. 47), on November 1999 the government gazetted the NSFAS to promote access to HE for poor students

(Mugume, 2017). In accordance with the NSFAS Act, 1999 (p. 4), "[t]he aim of the NSFAS is to provide financial aid to eligible students who meet the criteria for admission to a Higher Education programme…[and]…to allocate funds for loans and bursaries to eligible students". In terms of "who can apply", the eligibility criteria are provided for by section 18, which stipulates that "[a]ny student may, subject to the [conditions and] provisions of this Act, apply…to the NSFAS for a loan or a bursary… (p. 12)". However, such conditions include the use of the means test and the loan conversion of up to 40 per cent of any loan as incentive for academic success. Also, reference is made to section 21(3), which stipulates that there are implications for non-repayment of the loan. In this regard, the Act states that "[i]f a borrower fails to make repayments as provided in this Act, his or her name may be placed by the board on any list of defaulting debtors published by any person or body whose business it is to compile and publish such lists (p. 14)".

Arguably, the NSFAS policy conceals several important disadvantages with implications for unemployed graduates with a criminal record. First, it makes financial aid accessible to incarcerated students without determining the nexus between the qualification enrolled for and the offence committed. Secondly, the NFSAS fails to take into account the implications of having a criminal record on job seeking prospects, specifically with reference to incarcerated students. Thirdly, lack of recourse regarding the loan resettlement by students with a criminal record implies that for as long as these students remain unemployed, the principal debt is never repaid and, as a result, they are perpetually in debt because the interest accrues indefinitely (Lephale, 2016).

In a more recent study, Mabuza (2020) sought to explore why 31 drop-out students funded by the NSFAS in North Gauteng dropped out of HE institutions using a phenomenological design. The study confirmed that incarcerated students encounter additional challenges such as insufficient support and funding, relative to "normal students", causing them to drop out. For instance, the study results indicated that "[s]tudents funded by NSFAS come from poor backgrounds and they cannot afford to pay their studies…[because they] are often allocated insufficient funding by NSFAS and some aspects of their studies are not covered. This leaves them with educational debts, which they have to settle" (Mabuza, 2020, p. 111).

3.3.3 Unisa's student on-line admission form and the POPI, 2013

Act

To help redress South Africa's past inequalities, fundamental policies such as the Higher Education Act, 1997, were designed and enacted to reconfigure the national HE system and facilitate the provision of HE to previously disadvantaged South Africans. However, in the context of incarceration, it should be noted that Unisa is the leader in Open Distance Learning (ODL), and the most popular among incarcerated tertiary students, in South Africa. Moreover, since Unisa is also championed as Africa's leading ODL institution with approximately 400 000 students (Ngubane-Mokiwa & Letseka 2015), this investigation will be limited to mainly this university. To reflect this inclusivity, Unisa's website states the following "Everyone wanting to start a new qualification must apply for admission. This includes first-time Unisa applicants." (https://www.unisa.ac.za/sites/corporate/default/Apply-for-admission/Undergraduate-qualifications). Unisa's student on-line application process is the first source of information for prospective students, and provides sufficient data regarding the type of information solicited by the university from student-applicants.

During the entire application process, there is neither mention nor consideration of the applicant's criminal record, except for the question: "Are you a prisoner?", to which the applicant must respond with either "yes" or "no". At the end of the application process, the applicant is required to declare that all the particulars are true and correct and that he/she will comply with all the rules, regulations and decisions of the university. However, what is particularly eye-catching is the declaration that "I, as a student registered with Unisa or an applicant intending to study with Unisa hereby consent that UNISA may use, distribute, process and communicate my personal data and information for all required academic processes pertaining to my application/registration to study with UNISA…" Despite South Africa having the POPI Act, 2013, it is noteworthy that the storage of, and the rationale for, accessing and distributing such personal information by the university is hardly explained to the applicants, nor is the Act mentioned anywhere in the application process.

According to the POPI Act, 2013, "personal information" refers to information relating to an identifiable, living, natural person, and, where applicable, an identifiable,

existing juristic person, including, but, not limited to, information relating to the education or the medical, financial, criminal or employment history of the person. Consequently, the Act stipulates how personal information can be managed, and therefore shared, at different levels. In this context, this implies that higher learning institutions that request information about the criminal history of applicants are equally mandated by the Act to also indicate how the requested data will be managed and handled. With regard to requesting personal information, section 13(1) of the POPI Act, 2013, read in conjunction with section 14(1), requires, among other things, that "[p]ersonal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party", and furthermore that "records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected…" (POPI, 2013, p. 26).

3.4   PART B: VETTING TOOLS AND POLICIES USED TO CHECK FOR PREVIOUS CRIMINAL CONVICTIONS

In line with the guiding questions developed for the document analysis protocol of this study (see table 3.1 above), part B provides a thorough examination of purposefully selected Unisa brochures, national advertised posts, including application forms used to gain membership to institutional or professional bodies, as well as pieces of legislation aimed at explaining the process of admission to these institutional or professional bodies. Consequently, in an effort to answer the questions below, Unisa's academic brochures (2018-2020) (attached as appendices 1-3) were examined, followed by brochures underscoring the training, development and registration of professionals in the disciplines of Law (appendix 5), Social Work (appendices 4 and 6), Psychology (appendix 7) and Education (appendix 8).

These four professional programmes were specifically selected because following South Africa's democratisation in 1994, student massification has equally shown tremendous transformation in Law and the Social Sciences. Presently, it is not uncommon for incarcerated students to pursue professionalised degrees in, for example, Law, Social Work, Psychology and Education. Therefore, the analysis focused on comparing the different brochures to evaluate the kind of information made available to prospective student-applicants with a criminal record and to show

how various institutions or professional bodies fare in terms of managing student-applicants with criminal records while simultaneously exposing the mechanisms that promote and/or deny admission to these institutional or professional bodies.

The analysis of these documents aimed to answer the following research questions:

(1)   Is it compulsory to disclose previous criminal convictions when applying to professional bodies for admission, a licence or registration? If yes, what, and how much, information must be disclosed?

(2)   Do professional bodies consider applicants' criminal history as a selection criterion/precondition for admission? If yes, to what extent?

Supplementary to the above, a variety of recruitment advertisements for permanent lecturers in the disciplines of Law, Social Work, Psychology and Education, as well as Unisa's form used to apply for these posts were purposefully selected and reviewed, with the aim of establishing the kind of mechanisms used to simultaneously promote and deny access to job applicants with a criminal record in South Africa's labour market. Here, the post-specific requirements and recommendations for each of the above disciplines, as well as the implications for job applicants with a criminal record were illuminated. Another set of related aims was to establish whether Unisa's application form contained any specific questions necessitating applicants to declare their criminal record, the reasons for requesting such information, and whether the form required any specific declaration by the job applicants. Below follows an analysis of the professions of Law, Social Work, Education, and Psychology.

3.4.1 Legal practitioners

3.4.1.1   Career path and training

According to the National Bar Council of South Africa (NBCSA), all legal practitioners are called lawyers, including judges, magistrates, advocates, attorneys and university lecturers (Law @ Unisa, 2018). For this reason, there are multitude of specialisations in the legal profession, including mercantile law, criminal law and private law to mention a few. In terms of practice, legal practitioners can be divided

into two categories, namely advocates, who are specialists, and attorneys, who engage in all kinds of legal work.

Accordingly, some, but not all, the careers in law have a strict mandatory requirement that all individuals working in a certain field must be registered with a professional body. It is particularly for this reason that career guidance in law is clear and unambiguous about the criminal conduct and criminal history of prospective students and practitioners. This is because admission to the legal profession is regulated "by statute as well as the inherent common-law power of the court over practitioners" (Slabbert & Bomme, 2014, p. 1504). In practical terms, this means that apart from satisfying the minimum academic requirements, students are also expected to satisfy the Law Society of South Africa (LSSA) and the NBCSA that they are "fit and proper" to be admitted to the legal profession (Law @ Unisa, 2018, p. 12). Personal fitness, in this context, refers to integrity and honesty. According to the LSSA, an applicant on parole is still fulfilling his/her sentence and is thereby automatically regarded as not fit and proper for either the registration of articles or admission to practice law.

In the light of the above precondition, it therefore became paramount to explore the level of synergy and consistency between Unisa's School of Law, the LSSA and, the NBCSA to better understand the career path of students with a criminal record in the legal profession. For the purposes of the above inquiry, a Unisa College of Law brochure (2018) (attached as appendix 5), together with the 2019 LSSA application form (appendix 9), a 2019 NBCSA membership form (appendix 10), and a 2020 College of Law recruitment advertisement (appendix 11) were analysed. From the brochures, it was clear that Unisa's Law qualifications (higher certificates, diplomas, advanced diplomas, master's and doctoral degrees) are acknowledged and endorsed by the NBCSA, but there was a discrepancy, in that while Unisa, offers these professional programmes to all students, scrutiny of both the LSSA and the NBCSA forms indicates that the contents of the forms are constructed in such a way that they enquire about previous criminal convictions. The LSSA form, for instance, asks the following question: "Have you ever been found guilty of a criminal offence?", whereas, the NBCSA form is constructed in such a way that it asks applicants to list previous and pending criminal convictions, disciplinary convictions and/or civil claims.

Another notable observation was that whereas the NBCSA form does not give any further instructions regarding the details of the offence when answered in the affirmative, the LSSA form states that "a senior member of the Law Society will conduct a personal interview with a prospective candidate attorney before registration of a service contract or contract of articles by the Law Society, in order to determine whether a person can be regarded as a fit and proper person for entering the profession. Specific attention will be given to previous convictions". With reference to the above, one is left to conclude that all applicants must fully declare their criminal record prior to being admitted to these professional bodies, and that the conundrum whether students with a criminal record may practise law is best resolved by a law society and higher court. In other words, determining whether an applicant is fit and proper to become a legal practitioner involves, among others, the applicant appearing before the relevant law society and high court and stating on record that he/she has a Law degree and, despite having previous criminal convictions, wishes to practise law.

Therefore, the applicant is accountable for declaring all previous criminal convictions, as well as for providing a detailed explanation of the offences and also for illustrating that despite his/her criminal record, he/she is fit and proper to become a legal practitioner as far as integrity, honesty and trustworthiness are concerned. Research from South Africa seems to confirm that admission to the legal profession is attainable, provided the applicant shows successful evidence of having undergone a complete and permanent reformation - that is, acknowledging that he/she committed a wrongful act but is now fit and proper to join the legal profession (Lephale, 2016; Slabbert & Bomme, 2014). Notwithstanding the above, it should be noted that in certain circumstances the applicant may experience difficulty in discharging this onus, due to the nature of the offence committed (Slabbert & Bomme, 2014). Thus, with regard to admission to the legal profession, much hinges on whether the applicant made sufficient disclosure and proved that he/she underwent a complete and permanent reformation of character (Slabbert & Bomme, 2014).

Similarly as far as educators were concerned, the Public Service Commission (2009) reiterated that an employee appointed in a post on the grounds of misrepresentation (e.g. failing to disclose a criminal record) may be discharged in terms of the Employment of Educators Act, 1998, on the grounds of misconduct. In conclusion,

based on the brochures consulted, it is hard to stipulate any hard and fast rules with respect to admission to the legal profession, because across South Africa, each law society adjudicates on each application based on both the facts and merits of the application. Put differently, as guardians of the law, each law society exercises its own discretion in managing applicants with previous criminal convictions and prescribes the process to be followed with respect to admission.Yet, regardless of the verdict arrived at by a law society, a disgruntled applicant may still approach the court because ultimately, the onus is on the court to reach the final decision. This, in itself, indicates that a criminal record is not an insurmountable obstacle to practise law, despite the final decision and judgment being subjective and based on the court's own sense of appropriateness (Slabbert & Bomme, 2014).

3.4.1.2   *Applying for a permanent academic post*

Finally, a 2020 College of Law advertisement (appendix 11) aimed at recruiting six senior lecturers and five lecturers was also consulted and analysed. The advertised posts were open to applicants from both academia and non-academia. Out of these posts, three lecturer posts mentioned as part of the recommendations that applicants must be registered with a professional body, but did not specify any further details. This instruction concerned only applicants from non-academia, and not from academia. The remaining eight posts, namely: six senior and two lecturer posts did not require registration with a professional body. However, none of the posts advertised mentioned or considered the criminal history of the applicants. Yet, the review of the application process indicated that to apply for a permanent academic post at Unisa, job applicants are required to use Unisa's internal application form to, among others, disclose personal information regarding previous criminal cases/offences.

That information was established as follows: "Have you ever been found guilty of a criminal offence?" "If yes, specify the details on a separate memo." In a subsequent section, the following question is asked: "Have you ever had a sentence imposed?", followed by several alternatives to select from. As before, an affirmative response to the question automatically requires a detailed explanation of the offence, including the time served or the fine paid in rands in the event of admission of guilt. In the context of the present study, an interesting observation already made by Mujuzi

(2014, p. 282) was that documents such as the application forms for vacant posts "are silent on whether or not having a criminal record will adversely affect a person's application for a job…[and] are also silent on whether the criminal record in question should be related to the job…" Hence, Mujuzi and Tsweledi (2014, p. 247) warn that "[a] person may not even get shortlisted for an interview if he has a criminal record."

Other similar and comparable studies assert that application forms for vacant posts have an inherent discriminatory clause that directly prevents ex-offenders from applying for a post, particularly when there has not been a lapse of ten years. Comprehensively considered, this line of research serves to illustrate that "chances of securing a decent and well-paying job are slim" for student-applicants with a criminal record (Lephale, 2016, p. 190). In the next section, the profession of a university lecturer in Social Work is explored.

3.4.2 Social workers

3.4.2.1   *Access to Higher Education and training*

For the purposes of this enquiry, Unisa's College of Human Sciences brochure (appendix 4), a Social Work brochure (appendix 6), a SACSSP application form (appendix 12), the SACSSP Act, 1974 (appendix 13) and a College of Human Sciences (Social Work) vacant post (appendix 14) were reviewed to ascertain the level of synergy and consistency between Unisa as provider of HE and the Council for Social Workers. The purpose of selecting these policy documents was to explore whether they considered or asked any questions relating to the applicants' criminal history and conduct, as well as the rationale for requesting such information. Furthermore, the aim was to determine whether any specific declaration was sought from the student-applicants. Correspondingly, the analysis commenced with contrasting the 2018 Social Work brochure with the 2021 Social Work brochure, during which significant alterations regarding the criminal history or conduct of students were observed. The 2021 Social Work brochure, in complete contrast with the 2018 Social Work brochure, is unique in that it explicitly highlights the prerequisites for gaining access to the Social Work profession. Whereas there is neither mention nor consideration of students' past criminal conduct in the 2018 Social Work brochure, the revised 2021 Social Work brochure explicitly mentions a formal background policy check by the Social Work council.

The prerequisites are highlighted, starting with the Higher Certificate in Social Auxiliary Work, and then the Bachelor's, Master's and doctoral degrees in Social Work. For example, the admission requirements for the Higher Certificate in Social Auxiliary Work in the 2021 Social Work brochure are explicitly stipulated as follows:

Applicants should note that this is a selection qualification, in which they will be assessed to ascertain suitability to the profession. In addition to the above requirements, applicants will be subjected to the following: A police clearance for criminal convictions checks aligned with the definition of a 'fit and proper person' by the South African Council for Social Service Professions (SACSSP)…[furthermore]…applicants must include, together with their documentation, a receipt from SAPS indicating that they have applied for a police clearance certificate. Successful applicants must submit this clearance certificate at the time of registration.

The rules clearly state that students must be registered with the SACSSP at the beginning of their studies. The brochure then states that "[t]he Department of Social Work at Unisa will facilitate registration with the council at the time of registration or as soon as possible after registration." The brochure, in bold print, emphasises and explicitly reiterates that "students will be required to submit the police clearance before they register". Similarly, it is also unambiguously stated in the admission rules for the bachelor's degree in Social Work that students are subject to a police clearance for criminal convictions checks in line with the council's definition of a "fit and proper person". Also reiterated in bold print under the qualification rules in the 2021 brochure is the warning that "students will not be able to register without the police clearance". Therefore, a police clearance certificate or compulsory evidence purporting that students truly applied for a police clearance must be submitted to the university at the time of registration.

The 2021 Social Work brochure therefore states the admission requirements for the programme in such a clear manner that it is implied that in the future, if students cannot obtain a licence to practise after completing the course or are prevented to register with the council due to their criminal record, Unisa's Department of Social Work will not be held accountable (Mugume, 2017). Lastly, the admission requirements for both a master's and a doctoral degree in Social Work were reviewed and compared, where it was consistently found that, as was the case with all the levels of qualification here, it was stipulated that both master's and doctoral students must be registered with the council, and that evidence of such registration and updated membership must accompany their application. The brochure further recommended that since Social Work is practice-oriented, candidates for a masters' degree must have practised as a social worker for a minimum of two years.

Below, the process of affiliation with the SACSSP is expounded.

3.4.2.2   Registration with, and the provisions of, the SACSSP Act, 1974

According to the SACSSP Act, 1974, the council and its professional boards have explicit responsibilities and powers regulating the education, training and qualifications of social workers. Consequently, the council is mandated to "…approve institutions, schools and departments that provide education and training with respect to professions falling within the ambit of the professional board". Moreover, the Act stipulates that only candidates with the prescribed qualifications may register with the council, and that this is done in collaboration with all HE and training institutions. The process of registration with the SACSSP was explored, and it was found that the SACSSP, just like the NBCSA requires Social Work students to declare their criminal records during the application process. The specific question on the admission form reads as follows: "Have you ever been found guilty of an offence by a court of law?" Here as well, an affirmative response to the question leads to the applicant being probed to supply further details of the offence, namely: "…specify the nature of the offence of which you were convicted, and the year in which the offence took place and the sentence passed".

While these policy documents appear to uphold the "fit and proper person" requirement, further scrutiny indicates that they disaggregate applicants with a criminal record from those without. In addition, the form contains the following directive "Training institutions to inform the Council of the outcomes of any criminal offence that led to a disciplinary hearing which the person was found guilty and convicted." The authority with which this prescript was constructed exemplifies that power resides in the hands of the council and its professional boards. Although such applications have inherent difficulty in achieving success, it cannot altogether be deduced that a criminal record is as an insurmountable obstacle to successful admission to the Social Work profession; but that such applications may succeed only in exceptional circumstances.

3.4.2.3 *Applying for a permanent academic post*

A 2019 College of Human Sciences advertisement aimed at recruiting a senior lecturer and lecturer in Social Work was reviewed. These posts were open to applicants from both academia and non-academia. A close examination of the advertisement revealed that "current registration with the SACSSP including evidence of current registration" was listed as a post-specific requirement, and not as a recommendation, for both the lecturer and the senior lecturer posts. This instruction did not distinguish between applicants from academia and non-academia, implying that both categories were subjected to this clause. This is problematic, in the following three ways.

First, the construction of this advertisement displays the extent to which professional boards regulate and approve the compulsory registration of lecturers in Social Work, and by extension, vacant posts in Social Work. Moreover, as already pointed out, Unisa's internal application form for vacant posts does make enquiries into the criminal conduct of applicants, but, similar to the Law recruitment advertisement discussed above, this advertisement also did not mention or consider the criminal history of the applicants. Secondly, access to HE is perceived to rehabilitate and prepare offenders for the labour market; yet, close examination of these policy documents showed noticeable silence regarding the growing numbers of students with a criminal record attempting to access these professional bodies, suggesting that these students remain largely ignored and unaccounted for. Thirdly, all of this together points to a lack of synergy in as far as the management of student-applicants with a criminal record is concerned.

In conclusion, one can argue that power dynamics in the form of policy documents are what constitute the labour market, especially the private sector, which consolidates the idea that in the labour market power resides in the hands of the employers, and that they, as such, reserve the right to decide which applicant to accept and/or reject - implicitly deciding the destiny of applicants with a criminal record (Dlamini, 2016).

3.4.3 Educators

3.4.3.1   Development and professional training

Consistent with the analyses undertaken for the disciplines of Law and Social Work, a Unisa College of Education brochure (appendix 15), a SACE application form (appendix 16), the Council of Educators Act, (appendix 17), the Employment of Educators Act, 1998 (appendix 18) and a 2018 College of Education vacant post advertisement (appendix 19) were selected and reviewed to explore whether these policy documents considered, or asked, any questions relating to the criminal conduct or history of applicants, as well as the rationale for requesting such information. Another related aim was to determine whether any specific declaration was sought from the student-applicants. To ascertain the level of synergy and consistency between Unisa as provider of HE and SACE, the analyses undertaken for this section inevitably involved the process of examining the employment prospects of applicants with a criminal record in South Africa's labour market.

Inquiry into the brochures indicated that the College of Education comprises five different levels of qualification, namely higher certificates in Education, diplomas, advanced diplomas, master's and doctoral degrees. None of the qualifications under the umbrella of the College of Education either mentioned or considered the criminal history of the students. The brochures only signalled the Bachelor of Education degree (BEd) as the initial teaching degree for all students to be registered as fully qualified professional educators. When contrasted with the registration of Social Work students, the analysis revealed that the process of registration of educators with SACE is left up to the students, and is not the responsibility of the College of Education, as is the case with Unisa's Department of Social Work.

For example, all the brochures under the BEd qualification rules for the Foundation, Intermediate and Senior phases consistently state that students must register with SACE from the first year of BEd registration. It is precisely because of the above-mentioned reason that the SACE admission form was reviewed, and much like the NBCSA and the SACSSP admission forms, the SACE form requires applicants to declare their criminal history during the application process.

For example, the form poses the following question: "Have you been convicted of a criminal offence?" Similar to previous instances, an affirmative response to the question predisposes the applicants to divulge further details of the offence. In addition, the declaration section of the form states the following: "I also hereby give SACE permission to check if there are no previous convictions against me by any tribunal." What is intriguing and legally objectionable, is the following question: "Do you have a valid police clearance certificate?" Whereas the College of Education brochures disregard information relating to students' previous criminal convictions, the analysis showed that SACE actively pursued this information.

This is problematic insofar as the criminal history and criminal conduct of students are entirely ignored under the admission and qualification rules in the College of Education brochures. In default of this information, one is inclined to conclude that there is institutional inconsistency in regard to the admission criteria for student-applicants with a criminal record. Below, the regulatory powers and parameters of SACE are explored.

3.4.3.2   *SACE regulations and parameters governing university lecturers*

A 2018 College of Education advertisement aimed at recruiting seven senior lecturers, twelve lecturers and two junior lecturers was examined. The analysis revealed that almost all the advertised posts (20 out of 21) indicated as part of either the post-specific requirement or recommendation that the incumbent must be "affiliated to at least one professional or academic association". In the light of this development, further attention was given to the SACE Act, 2000, and the Employment of Educators Act, 1998. Upon close inspection, the analysis revealed that neither of the Acts either mentioned or considered the criminal record, leading to the conclusion that the council does not have a guiding policy for applicants with previous criminal convictions.

Moreover, in terms of SACE's regulatory powers, it was found that the SACE Act, 2000, regulates all educators, lecturers and management staff of colleges. Yet, for the prescript to be binding, one is first required to be a professionally registered educator and secondly, the Employment of Educators Act, 1998, consolidates the argument that the Act applies to the employment of educators at (1) public schools

(2) Further Education and Training colleges (3) departmental offices and (4) adult basic education centres. Thus, in terms of its application, university lecturers are exempted from this Act. Furthermore, the Act implicitly excludes applicants whose offences were committed before registration with SACE. Highlighting this difference is critical, because exceptional circumstances do exist such as in the case of applicants convicted of an offence before and after embarking on the application process.

3.4.4 Academic training and registration of practitioners in Psychology

Finally, the procedure regarding the academic training and formal registration of Psychology students was examined to determine the level of synergy and consistency between Unisa as provider of HE and the HPCSA. In this regard, Unisa's Psychology brochure (appendix 7), two HPCSA application forms (appendix 20(i)-(ii)), and the HPCSA Act, 1974 (appendix 21), were reviewed, and so was the 2018 Unisa advertisement for vacancies in the Department of Psychology (appendix 22). The purpose of reviewing these policy documents was to establish whether they considered or posed any questions relating to the criminal conduct or history of student-applicants, and also the rationale for requesting such information. The other intention was to determine whether any specific declaration was sought from the student-applicants.

First, all the four Psychology brochures were reviewed and juxtaposed. The investigation showed that the Bachelor of Arts Honours degree in Psychology and the Master's degree in Clinical Psychology were the only programmes available for registration in 2020. Consequently, the review process excluded programmes such as the Bachelor of Psychology, Bachelor of Arts in Psychology and Master's in Research Psychology, because they were unavailable due to recurriculation. Common to all the Psychology brochures was the conspicuous silence regarding the criminal history and conduct of students in the admission requirements and qualification rules. Furthermore, there was neither a request for a police clearance, nor an indication of how the students' registration process would be facilitated between Unisa's Department of Psychology and the HPCSA.

Implicitly, and by virtue of this silence, it is assumed that all students, including students with a criminal record, are aware of the programme's future requirement - that is, the precondition to register with the HPCSA in order to practise Psychology as a profession. Thus, based on this faulty line of reasoning, together with Mugume's (2017, n.p.) assertion, this has a negative impact on students' career prospects, as they may complete their training and yet be unable to qualify for certain jobs post-graduation, and "…this is…more of a requirement set by the HPCSA which is implemented by institutions" of HE. It is also in accordance with this premise that the admission forms and accompanying legal prescripts governing the healthcare professions were investigated, which will now be discussed.

3.4.4.1 Registration with the HPCSA

For the above-mentioned investigation, two HPCSA application forms were reviewed and contrasted, namely Form 23 (2013) was compared and contrasted with Form 24 (2020). All in all, the construction of these forms was found to be problematic in two ways, namely:

First, the forms showed that upon registration with the HPCSA as healthcare practitioners all student-applicants are required to declare any criminal record that they may have. In addition, the forms explicitly indicate that "…[t]he Council, in the normal course of its duties, reserves the right to divulge information in your personal file to other parties". However, collecting applicants' personal information about a possible criminal record requires clear reasons to be provided for requesting such information, including when the information will be removed from the HPCSA's system, and destroyed (Mugume, 2017). Yet, regardless of this clause and despite the country's POPI Act, 2013, the forms made no mention of how applicants' personal information would be stored and shared with other third parties, nor did they explain the rationale for requesting such information, or mention the Act anywhere.

Secondly, another slight cosmetic difference between Form 23 (2013) and Form 24 (2020) was noted. For instance, while Form 23 (2013) stated the following: "I also declare that I have never been convicted of any criminal offence…. and that, to the best of my knowledge and belief, no proceedings involving or likely to involve a charge of offence…is pending against me at present"; Form 24 (2020) stated "I also declare that I have never been convicted of any criminal offence…and that, to the

best of my knowledge and belief, no proceedings involving or likely to involve a charge of offence…is pending against me *in any country* at present."

The articulation of this binding treaty implies that these forms were redesigned to help protect the council in case of future court litigations by disgruntled applicants, both nationally and internationally, since it obligates the signing of a declaration expressing applicants' understanding of the professional requirements and liability for any future consequences should it be discovered that applicants fall short of the requirements (Mugume, 2017). All these factors underscored the context in which the council exercises its discretion as to whether or not, notwithstanding the conviction, the applicant is still fit and proper to be admitted to practice psychology as a profession. In this respect, issues of power and the legality with which professional bodies misuse this power, for instance, in the form of criminal record checks, advocate a research agenda that ensures that such institutions consider applicants with a criminal record and the misopportunities that they have in South Africa's labour market when designing and developing policies specific to the South African context.

3.4.4.2 Regulations governing the healthcare professions

Several provisions that form the key to the HPCSA Act, 1974, also warranted analysis, chief among them the provisions and regulations governing contraventions by registered and unregistered persons. Examples of infringements and penalties for contravening the Act include a fine, incarceration, and one's name being removed from the register. The Act further prescribes that aggrieved applicants can approach the High Court of South Africa to appeal against the penalty decision. Subject to the outcome of the hearing, restrictions may, for instance, be lifted, resulting in one's name being restored in the register. However, extended consideration was given to section 45(1), which refers to previous criminal convictions. Section 45(1) reads as follows:

Every registered person who, either before or after registration, has been convicted of any offence by a court of law may be dealt with by the professional board in terms of the provisions of this Chapter if the professional board is of the opinion that such offence constitutes unprofessional conduct, and shall be liable on proof of the conviction to one or other of the penalties referred to in section 42: Provided that, before imposition of any penalty, such person shall be afforded an opportunity of tendering an explanation to the professional board in extenuation of the conduct in question. [Subs. (1) substituted by s. 44 of Act 89/97]

In terms of this regulation, an offence refers to non-compliance with the requirements of the HPCSA Act, 1974, as well as to criminal and unprofessional conduct by registered and/or unregistered persons. Articulated in this manner, inevitably suggests that applicants can be differentiated as follows: first-time applicants with a criminal record prior to registration with the HPCSA, and registered healthcare professionals convicted of an offence after registration with the HPCSA. To the extent that the latter is distinguishable from the former, it became fundamentally significant to illustrate and highlight the distinction between first-time applicants and applicants for re-admission after having been struck off the roll due to unprofessional conduct.

Slabbert and Bomme (2014) opine that in the case of the former, an applicant who broke the law and subsequently harboured a criminal record prior to registration with the HPCSA could have misunderstood the gravity of his/her errant ways when the offence/s were committed, which also includes not knowing the future impact of the criminal record on one's chosen career. Conceived this way, first-time applicants could be viewed as entirely distinct from the former who, despite full knowledge of their wrongful doing proceeded to contravene the regulations of the healthcare professions. Furthermore, while a criminal conviction against a registered practitioner is perceived as bringing the HPCSA into disrepute, and thus as a direct contravention of the ethical code, the same can be contested as inapplicable to first-time applicants (Slabbert & Bomme, 2014).

Given the above, as well as an interpretation of the HPCSA Act, 1974, one can reasonably assume that, at best, the criterion used to select applicants who are adjudged legally fit and proper points to practicing exclusionary and discriminatory policies in the light of a lack of statute and framework that equally provide for the clear management of applicants with a criminal record.In fact, the admission of applicants with a criminal record into the healthcare professions remains unaccounted for, since the Act is silent on issues pertaining to the nexus (i.e. the connection between the offence committed and the specific category of accreditation applied for) and nature of the offence (i.e. violent vs non-violent), as well as the period when the offence was committed. This unwarranted subjugation of applicants with a criminal record by the HPCSA creates a domino effect that reduces the opportunities of securing quality employment, as discussed in the section below.

3.4.4.3   The recruitment of lecturers in Psychology

With reference to section 22 of the Constitution of the Republic of South Africa, 1996, "[e]very citizen has the right to choose their trade, occupation or profession freely…[although]…The practice of a trade, occupation or profession may be regulated by law." Loosely interpreted, it means that people with a criminal record are entitled to access the labour market in the same way as other South African citizens. Yet the management of people with previous criminal convictions in the labour market remains unclear, if not well-defined (Mujuzi, 2014; Slabbert & Bomme, 2014).In the light of this gap, a 2018 Department of Psychology advertisement aimed at recruiting three senior lecturers and eight lecturers was reviewed and examined to establish whether non-affiliation with the HPCSA was a disadvantage in regulating job applicants' prospects when applying for lecturing posts.

The analysis revealed that in addition to satisfying the minimum requirements (such as possessing the relevant qualification), applicants must also be registered with the HPCSA under one of the following categories: Clinical, Counselling or Research Psychology (see appendix J). The fact that registration with the HPCSA was a priority and constituted part of the post-specific requirements instead of a recommendation signified the HPCSA's powerful role in regulating the applicants' prospects of being employed as a lecturer. A post-specific requirement, as opposed to a recommendation implies that registration with the HPCSA is compulsory for job applicants to even make it through the shortlisting phase. Consequently, the role of the HPCSA as gatekeepers of the healthcare professions, together with the influence it has over training institutions, infiltrates the labour market, where people with a criminal record miss out on practicing their chosen career due to non-affiliation with the HPCSA.

Overall, the policy document analyses undertaken in part B illustrated that almost to a certain degree, institutions and professional bodies do probe into applicants' criminal record as a precondition for admission. For instance, the application forms analysed in part B, while differing in context, all have one thing in common: all of them require applicants to declare their criminal records as well as the details surrounding the offence and conviction. However, upon closer inspection, institutional inconsistency is apparent in the degree to which applicants are required

to furnish this information. Owing to the policies and the decision-making powers vested in these councils, organisations and institutional bodies, the automatic disqualification of ex-offenders, due to their criminal record, seems inevitable, regardless of their academic achievements and background training (Agboola, 2017; Mujuzi, 2014).

3.5 PART C: STATUTES AND REGULATIONS ADDRESSING THE CRIMINAL RECORD AND CRIMINAL RECORD EXPUNGEMENT CLAUSE

Parallel to the ensuing discussion, so far, the configuration and evidence already presented portray the criminal record as a material fact in applications concerning work and admission to practise, yet cannot altogether be regarded as an absolute bar, since each case is judged on its merit. Extending from this ambiguity, the analysis posed four questions, namely, first, is it mandatory for applicants to disclose their criminal record when applying for a post? If yes, what, and how much, information must be disclosed? Secondly, do employers use a criminal history as a selection criterion? If yes, to what extent? Thirdly, is the use of criminal record checks by employers legal/constitutional? In other words, are vetting procedures governed by legislation? Finally, what are the implications for applicants/employees who deliberately or purposefully conceal their criminal record?

The identification of these research questions underscored the framework necessary for the policy document analyses of part C. This was followed by the identification and subsequent review of government's Z83 (appendix 23) and Unisa's administrative application form for vacant posts (appendix 24), South Africa's Criminal Procedure Act, 1977 (appendix 25) and the Public Service Commission's report (2009), as well as consultation of literature expounding on the criminal record and criminal record expungement clause. The purpose of analysing these policy documents was to explore the contents of, and rationale for criminal record disclosure and retention, as well as to find out whether there were any frameworks that address previous criminal records in South Africa's labour market.

3.5.1 Criminal offenders and the protocol used to access the labour market

This section examines and contrasts the Z83 form as an official application form for a government post and Unisa's application form for an administrative post. The aim and function of the Z83 form is to identify and select candidates to be interviewed for an advertised post in any government department. Thus, the exclusive selection of these documents was underscored by the fact that although the two forms represent different sectors of the labour market (i.e. public and private), they both compel job applicants to declare their previous criminal convictions. For instance, under "personal information", the Z83 form asks the following question: "Have you been convicted of a criminal offence or been dismissed from employment?" Further on, under "special notes", is the following explanation: "This information will only be taken into account if it directly relates to the requirement of the position." Moreover, concerning professional registration, the form says the following "If your profession or occupation requires State or official registration, provide date and particulars of registration." Finally, to authenticate the information provided by the applicants, the form stipulates the following: "I declare that all the information provided…is complete and correct to the best of my knowledge. I understand that any false information supplied could lead to my application being disqualified or my discharge if I am appointed."

Similarly, Unisa's application form for a permanent administrative post was examined and contrasted with the Z83 form. The review showed that in the case of the former, job applicants with a criminal record are subject to scrutiny, as they too are required to provide a detailed account of the offence. A more in-depth question, namely: "Have you ever had a sentence imposed?" is followed by a variety of sentence options to choose from, such as the period of incarceration served and the fine paid in rands in the event of an admission of guilt. Also, to authenticate the information provided by the applicants, the declaration reads as follows: "I…hereby declare that the information I have provided on this form is correct and give consent that references may be contacted and credentials verified." Further scrutiny highlighted the fact that the forms were dissimilar regarding the position of the disclosure of criminal offences - that is, the precise location on the forms requiring information

about previous criminal convictions. Comparing the two forms, namely, revealed that whereas the declaration of criminal offences constituted part of the personal information on the Z83 form, on the administrative application form, it did not. Also, the declaration of a criminal record was located towards the bottom of the form, whereas on the Z83 form the disclosure was located towards the top of the form, already suggesting its relevance beforehand.

From the analysis point of view, the practice of using criminal record checks, particularly the premature declaration of previous criminal convictions, directly contributes to labour market disparities. As noted by Mujuzi and Tsweledi (2014), this practice culminates in two distinct classes, namely - applicants with, and applicants without, a criminal record. In this regard, findings in South Africa and Australia suggest that instead of considering job applicants on merit with both negative and positive credentials being given equal weight, the existence of a criminal record as a negative credential somehow receives top priority (Lephale, 2016; Saliba 2012). This is problematic insofar as it illustrates the criminal record's ability to travel beyond incarceration, where it disguises itself in exclusionary measures that hinder the successful reintegration of ex-offenders into the labour market (Saliba, 2012). Similar research from the USA suggests that vetting procedures are used with a specific intent, and that intent is disproportionately aimed at identifying those who were previously in conflict with the law (Jay, 2013). Consequently, this leverages employers, organisations and institutions to unjustly use the criminal record as a screening tool to not only identify and discriminate between job applicants, but also exclude those with a criminal record from participating in the labour market.

In conclusion, the disclosure of a criminal record suggests that although gathering applicants' criminal records information remains essential for both sectors, one could also argue that for Unisa, this does not seem to be a priority. It could also be said that while the Z83 application form alludes to the nexus as the rationale for requesting information on previous criminal offences, the administrative application form does not disclose such information. In this regard, the Z83 application form seems consistent with international perspectives on the management of job applicants with previous criminal convictions, indicating that previous offences should be taken into consideration, provided that they are related to the job-specific

requirement. Inevitably, this necessitated the exploration of statutes explaining the criminal record and use of vetting procedures from a purely South African perspective.

3.5.2 The function of the criminal record in South Africa's labour market

In addition to the above discussion, South Africa's main labour law relations Acts, namely the Labour Relations Act 66 of 1995 (LRA) and the Basic Conditions of Employment Act 75 of 1997 (BCEA), were consulted to understand the effects of a criminal record upon applying for employment. The analysis established that the two regulations were equally silent, as there was no mention or consideration of the criminal record. The mere silence and total disregard of the criminal record by South Africa's labour laws warranted the analysis of the Public Service Commission's report (2009). According to that report, the declaration of a criminal record is not necessarily aimed at side-lining those who were once in conflict with the law, but rather for the employer to evaluate the potential impact this may have on the job requirement and on the organisation as a whole (Public Service Commission, 2009).

Although employers are generally discouraged from adopting policies that unreasonably discriminate against job applicants with a criminal record, available evidence suggests that there are occasions where employers are justified, and even permitted, to monitor job applicants or employees with a criminal record (Mujuzi, 2014). These would be instances where (1) it is a mandatory obligation of the government to protect children against abuse and safeguard the public's interests; (2) there is a need to protect the business interests of the employer, or (3) there is a connection between the previous conviction and the job applied for (Public Service Commission, 2009). To the extent that employers are entitled to enquire and consider previous criminal convictions when assessing an applicant's suitability for employment (Mujuzi, 2014; Public Service Commission, 2009) could also result in unintended negative consequences by creating the false impression that a criminal record is a risk factor for reoffending, whereas in truth there is no evidence that applicants with a criminal record are more prone to recidivism once admitted/employed.

3.5.3 Constructing and deconstructing the criminal record

The last part of the analysis examined the Criminal Procedure Act (CPA) 51 of 1977, sections 271 A, B, and C. The purpose of examining the CPA, 1977, was to find out how the criminal record was constructed and deconstructed. Also central to this exploration were the reasons for or purpose(s) of criminal record retention. In other words, what do criminal records aim to achieve? In the legal fraternity, criminal records are used by the courts when imposing sentences to assess the criminal history of the offender, in which case previous convictions normally count against the offender and result in a more severe penalty. Furthermore, as indicated in the preceding section, criminal record retention and monitoring serve a protective role in society and are used not only by the courts for the purposes of sentencing, but also by prospective employers.

In South Africa, estimating the period of time to pass before an employer could reasonably assume that an applicant with a criminal record was sufficiently "low risk" to be hired, resulted in various complex legislative interventions and often a confusing set of yardsticks dealing with criminal records and their expungement. First, the CPA, 1977, gives no recognition of the offence but only the sentence imposed and the time lapse from the date of conviction. Secondly, section A stipulates that certain convictions (i.e., minor convictions not exceeding six months' imprisonment) fall away after a period of 10 years has elapsed. Thirdly, conversely, section 271B states that a criminal record must be expunged after a period of ten years has elapsed, except for sexual offences against children. Lastly, section 271C prescribes the automatic expungement of a criminal record for offences classified as unconstitutional under a government.

However, determining the most appropriate threshold value for the type of job and the level of risk-tolerance for certain employment environments can be very challenging and may further add layers of complexity. As indicated above, in South Africa, the CPA, 1977, prescribes that certain convictions "fall away" after ten years and that without new arrests or convictions, a person's criminal record essentially loses its predictive value. However, researchers such as Maruna (2009) critique the retrospective and passive nature of simply waiting for years to pass to identify criminal inactivity, particularly since a decade is a long time to wait for an

employment opportunity, and even early studies of criminal desistance claim that even ''a five-year or ten-year crime-free period is no guarantee that offending has terminated'' (Farrington, 1986, p. 201).

3.6   SUMMARY OF THE CHAPTER

This chapter considered legal prescripts and policies related to the provision of HE, as well as legal documents explaining the criminal record and criminal record expungement clause. At the institutional level, the analysis focused on the different kinds of information required by the different councils in order to gain access to these institutions, as well as compared the ways in which these institutions manage student-applicants with a criminal record. The chapter also reviewed application forms that simultaneously promote access, while denying opportunities for people with previous criminal convictions. The evidence suggests that organisations, institutions and professional bodies that request such information are acutely aware of having such applicants in their ambit, yet have no processes or policies designed to manage the admission of applicants with previous criminal convictions. Given the absence of policies on the management of people with a criminal record in South Africa, and the ad hoc basis in which some of these cases are dealt with, this chapter established the need for a research agenda specific to the South African context on the development of policies that improve access for people with a criminal record. In the next chapter, the theoretical framework underpinning the study is expounded.

CHAPTER 4

THROUGH THE LOOKING GLASS: SOCIAL CONSTRUCTIONISM AS A THEORETICAL FRAMEWORK

It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.
Sherlock Holmes, by Sir Arthur Conan Doyle

4.1   INTRODUCTION

Chapter 3 of this thesis elucidated how policy documents regulate ex-offenders' opportunities during and post-incarceration. The present chapter introduces social constructionism as the study's frame of reference. First, the criminal record as a phenomenon of interest is addressed, and later the reader is acquainted with the concept of lived experience. To the extent that the study aimed at exploring the lived experiences of ex-lifers living with the stigma of, and discrimination against a criminal record, the rationale for integrating interpretivism, constructivism and phenomenology as philosophical frameworks indispensable for arriving at this understanding, including positioning the study's perspective in regard to its epistemology and ontology is underscored. Thirdly, the reason why the Social Identity Theory (SIT) and the General Strain Theory (GST) were cross-pollinated with the Labelling Theory and Routine Activity Theory (also known as theoretical triangulation) to help foreground the study is elaborated on.

4.2   THE CRIMINAL RECORD AS SUBJECT OF INTEREST

In the present study, a review of the policy documents in chapter 3 established that there are a number of professions and occupational licensing bodies, for example in the legal and healthcare professions that seek to restrict the participation (admission, registration and/or licensing) of persons with a criminal record through the development of licensing and registration rules that in turn accentuate the relevance of applicants' criminal record in relation to the inherent requirements of a particular job or profession (HREOC, 2004; Mugume, 2017). This thesis explored the lived experiences of such ex-offenders, people who attempt to join the labour market after some time in prison. To this end, a plethora of South African studies in criminal justice, both in Law and Criminology (see, e.g., Bruyns & Nieuwenhuizen, 2003;

Lephale, 2016; Mujuzi, 2014; Mujuzi & Tsweledi, 2014; Muntingh, 2009; Rust 2017; Slabbert & Bomme, 2014), and Sociology (see Agboola (2017) and Dlamini (2016)) and Psychology, (see James (2016) and Makhuza (2020)), as well as in Education (see Johnson (2015) and Mugume (2017)) all examined the employment prospects of job applicants with a criminal record.

In this regard, research shows that having a criminal record makes ex-offenders significantly less employable (Agboola, 2017; Graffam et al., 2008; Muntingh, 2018; Schmitt & Warner, 2010). Reaffirming this notion are two of the most critically acclaimed and pioneering studies by Holzer et al. (1996, 2002), which involved surveying the attitudes of approximately 3 000 US employers. The studies reported that almost two thirds of employers in the USA were less likely to hire ex-offenders or persons with a criminal record (Holzer et al., 1996, 2002). Likewise, in Australia, having a criminal record was rated the fourth highest of five disadvantageous conditions, indicating that people with a criminal record are perceived as being less likely than people with other disadvantageous conditions to obtain and maintain employment (Graffam et al., 2008; HREOC, 2004; Saliba, 2012). Other similar and comparable studies in Canada and the UK also reported that employers are generally unwilling to hire people with a criminal record and that the resistance to hire increases for ex-offenders convicted of violent offences (Scott, 2010; Weiman, 2007).

The writings of Muntingh (2009), as advocated by Slabbert and Bomme (2014), as well as Schmitt and Warner (2010), proclaimed that it is untrue that ex-offenders are demotivated or incapable of satisfying the inherent requirements of a particular job, but rather that (1) the nature of the offence committed (violent versus non-violent), (2) the time lapse since the commission of the crime, and (3) the nexus (the direct link/connection between one's previous criminal conviction and the particular position applied for) all act independently to lower the employment prospects of job applicants with a criminal record. Consequently, ex-offenders encounter a human capital deficit that complicates the guidance to high-quality jobs (Ramakers et al., 2017), particularly when the applicants' criminal record poses an unacceptably high risk (such as when they fulfil all the criteria as set out above or when applying to work with children) (HREOC, 2004).

As indicated in the preceding chapter, there are specific mechanisms and pieces of legislation in South Africa that prohibit employers from employing people with a criminal record. However, while some of these professions and occupations are quite specific about the types of convictions that disqualify applicants for licensing, registration and admission, others are not. Moreover, there is no steadfast rule in determining the inherent requirements for a particular job, since each job is different and each person's criminal record is unique. Also, Article 1(1)(a) of the International Labour Organisation (ILO) 111 defines "discrimination" in employment as:

> Any distinction, exclusion or preference made on the basis of …
> [a criminal record] … which has the effect of nullifying or impairing
> equality of opportunity or treatment in employment or occupation.
> Article 1(2) provides for an exception to this general definition, known as the
> inherent requirements exception, which states:
> Any distinction, exclusion or preference in respect of a particular job
> based on the inherent requirements thereof shall not be deemed to be
> discrimination.

However, neither the HREOC Act, nor the ILO 111 define what is meant by the "inherent requirements" of a job, except for the general understanding that there is no discrimination when applicants are denied employment or promotion on the basis that they cannot fulfil the essential aspects of a particular job (HREOC, 2004). In the context of the present study, the lack of understanding of the barriers encountered by ex-lifers, such as their reintegration into the labour market, was viewed as problematic insofar as being denied job opportunities (because of a criminal record) could also be said to extend to ex-lifers as well (Mujuzi & Tsweledi, 2014). In conclusion, to the extent that ex-offenders are openly and unfairly discriminated in the labour market reiterates the notion that punishment is perpetual, and it is this feeling of being condemned to a death sentence via a criminal record that inspired/motivated this study to use social constructionism, together with interpretivism, to explore and understand the constructions of the criminal record from the perspective of the participants, as well as establish the material effects criminal records have on ex-lifers (Saliba, 2012).

4.3   TOWARDS A CONSTRUCTIONIST AGENDA

The philosophy around this study revolved around understanding the meanings and lived experiences of ex-lifers and how they made sense of their experiences. As an emerging scholar, choosing social constructionism afforded me the opportunity to

become intimately engaged in the research through philosophical assumptions that guided and directed my thinking and action. MacLeod (1997, cited in Gablin, 2014) states that social constructionism has multiple features that makes it distinct from other theories or schools of thoughts. For example, social constructionism takes a critical stance on the taken-for-granted knowledge in society that often serves the values and interests of dominant groups (Mazabow, 2007). It upholds the notion that the way people understand the world is a product of both historical and cultural processes of interaction and negotiation between and among different groups of people. Finally, it aims at redefining certain taken-for-granted psychological constructs as being socially constructed, rather than being intrinsic to the individual.

It is, however, beyond the scope of the present study to provide a comprehensive background and historical overview of social constructionism. Instead, in figure 4.1 below, I demonstrate the co-existence and synergy between the various approaches as my intention is to provide a coherent theoretical framework that links social constructionism with phenomenology and Social Identity Theory. Each of these approaches incorporates elements of epistemology, ontology and methodology, but to varying degrees, (e.g., social constructionism looks at how reality is socially constructed between people and created and recreated through human interactions, while the Social Identity Theory focuses on the processes used by people to define social reality and their own position relative to others in that reality (Tajfel, 1975, 1978b), and finally phenomenology, which is the product of how people interpret the world (Groenewald, 2004). I do, however, recognise that a purist approach would insist on more sharply delineating the contradictions and dividing lines between these approaches, and within each approach, but for the purposes of starting to develop a deeper understanding of the impact of the criminal record I believe that the three approaches can be used together. Below follows the rationale for the use of interpretivism and social constructionism.
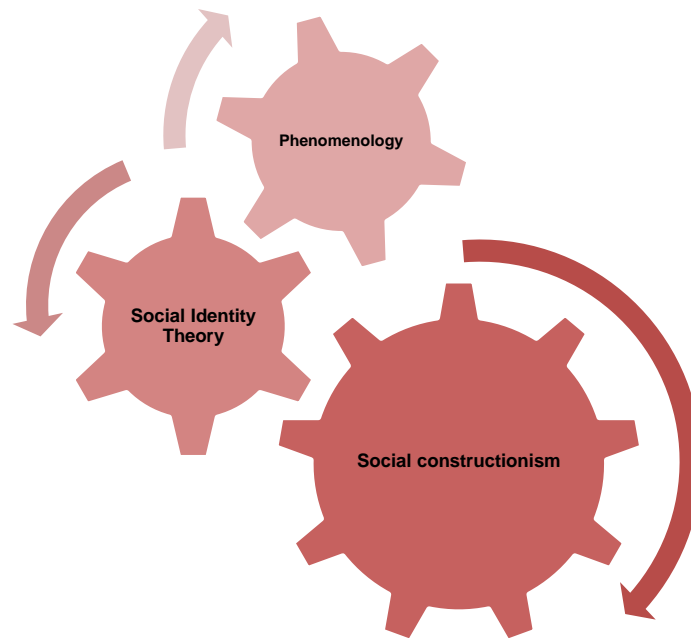
Figure 4.1 Graphic presentation of the theoretical framework

4.4   WHY USE INTERPRETIVISM AND SOCIAL CONSTRUCTIONISM?

The aim of the present study was to gain an in-depth understanding of the experiences of ex-lifers; therefore, interpretivism was integrated with the social constructionism paradigm. Creswell (2007, 2009) equates paradigm with worldview, defining worldview as a general philosophical assumption that researchers apply in their studies. Lukenchuk and Kolich (2013) define paradigm in three ways, namely as a system of inquiry, as a model, and as a way of knowing. Thus, a research paradigm helps researchers choose the right research approach and methods consistent with the research problem as a guide for research endeavour (Shannon-Baker, 2016). In the present study, social constructionism provided practical guidelines for managing and understanding diversity and the context of multiple perspectives (Rodwell, 2015). This is because social constructionism holds the notion that an individual has the ability to construct and acquire meaning, and to discover this meaning, researchers must interact with study participants (Nel & Mil, 2018).

In other words, there are alternative ways of discovering the world other than by direct observation, and these are our perceptions and interpretations of the world. Similarly, study participants use their perceptions to interpret what their senses tell

them, and researchers construct meanings and interpretations based on those of their participants. This meaning, however, lies buried within the text and can be comprehended only through deep reflection and dialogue with study participants (Ponterotto, 2005). Thus, to construct the meanings that people have about the world (Creswell, 2013), or attach to their cultural and historical context (Mills et al., 2006), interpretivism and constructivism were best suited for a phenomenological study such as this one, as both approaches seek to generate research findings based on the interpretations and knowledge as constructed through participants' personal experiences and perspectives. Social constructionism shares common premises with the interpretive approach (Owen, 1995; Smith & Eatough, 2017) in that both contend that knowledge is produced by exploring and understanding (not discovering) the social world of study participants, focusing on meaning and interpretations. Therefore, both approaches are cognisant that our knowledge of the world is based on our understanding, which in turn is based on our reflection on events and the lived experiences of study participants (Ormston et al., 2014).

4.4.1 A dialectical and hermeneutical approach

Constructionist methodologies are both dialectical and hermeneutical in nature (Denzin & Lincoln, 2011). This means that in the former case, constructionist research underscores a comparison between, or a contrasting of constructions, either in an attempt to reach consensus, or failing that, to promote an agenda for negotiation regarding the "issues and concerns that define the nature of the inquiry" (Schwandt, 1994, p. 128). Cropley (2019) further advises that "reality" is subjective in nature, and that people construct personal views of the world on the basis of their interaction with the external world, and Creswell (2007), who also remarks that reality is subjective in nature, hence the multiple realities of participants, supports the notion that researchers construct knowledge in collaboration with the researched, and that the researcher acknowledges the values of the researched.

Therefore, my main task was to gain insight into these subjective constructions in order to understand the criminal record as experienced and interpreted by study participants. Consistent with the above, in this study, I constructed meanings from the interaction with the study participants, extensively relying on the different views

of the study participants to construct knowledge of the criminal record by listening carefully to what the study participants had to say, or did, during my interaction with them (Creswell, 2013). Overall, the focus was on deriving multiple perspectives over a one "true" perspective. To the extent that interpretivism is influenced by hermeneutics, a hermeneutical approach that accepts that multiple realities exist, although imperfectly grasped (Hatch, 2002; Henning et al., 2004), was used to access study participants' meanings, feelings and interpretation of the criminal record in order to understand the labour market experiences of ex-lifers. The gathered information was arranged into themes and categories that were later formulated into patterns, theories or generalisations and then compared with the existing literature. This is called an inductive approach (Creswell, 2014).

The rationale for using an inductive approach was to consolidate the extensive primary data collected through personal conversations with study participants (chapter 6 of this study) with the literature (chapter 2 of this study) and policy documents (chapter 3 of this study) into a brief summary format, establish clear links between research objectives and the summary findings, and develop a model or theory underlying the structure of experiences or processes of navigating South Africa's labour market in search of employment with a criminal record (Thomas, 2003). As expounded in the paragraph below, constructionism as a paradigm is in line with an epistemological stance of knowledge generation through multiple realities, the ontological stance of multiple realities, and an axiological angle of the interconnectedness between the values of the researcher and the research project.

4.4.2 Epistemology

How is reality socially constructed? The key to constructionist research is a transactional and subjective epistemology that views meaning as something co-constructed between participants and researchers (Denzin & Lincoln, 2011). According to Mazabow (2007), a "stand-point epistemology" of constructionist research has always begun its inquiry from the perspective of those who are subjugated and oppressed in society. In the present study, the oppressed and subjugated are ex-offenders living with the stigma of, and discrimination against a criminal record. Under constructionist thinking, reality is shaped by individual

experiences, and knowledge is seen and believed to be a process of meaning-making that is co-constructed through dialogue between the researcher and the researched (Creswell, 2013). Waring (2012) also confirms the view that in constructionist research, epistemology constitutes the accounts and observations of the world that provide indirect indications of phenomena, and so knowledge is developed through the process of interpretation. Mazabow (2007) further adds that the epistemology of constructionist research should be the ideological (discourses) that makes up the social world - which can be studied by analysing what people actually say and do. In other words, knowledge may be attained only by interacting with study participants, and that answers the question of how we discover and analyse knowledge from participants.

4.4.3 Ontology

A constructionist viewpoint of reality is that it (reality) is socially constructed through human activity and that prior to its discovery via social construction it does not exist (Hartas, 2010; Mertens, 2010). Waring (2012) contends that this reality is neither objective nor singular in nature, but consists of multiple realities that are constructed by individuals through lived experiences and interactions with others (Creswell, 2013). Therefore, social reality or an absolute reality valid for all persons does not exist – rather, multiple and diverse perspectives from which people interpret and perceive social facts do exist (Corbetta, 2003). In other words, the social world is not objective in nature, but is rather a fluid set of social constructions, stories or narratives (the product of how people talk about, and act towards, what they consider to be real) (Mazabow, 2007). By implication then, a constructionist paradigm assumes a relativist ontology (Denzin & Lincoln, 2011). This means that reality is based on perceptions and experiences that may be different for each person and may change over time and contexts (Eriksson & Kovalainen, 2016). Based on this premise, each person perceives reality from a constellation of different viewpoints, and therefore no two people will perceive the world in the same way (Williamson, 2006). In fact, people encounter a diversity of interpretations about the world because human reality is mutually and socially constructed and presented (Willing, 2001). Thus, from an ontological perspective, there are diversified realities, and this diversification ascertains each individual's perceptions of reality.

4.5   PERCEIVING THE WORLD THROUGH PHENOMENOLOGICAL EYES

Social constructionism assumes that reality is constructed within a particular context. In the present study, I served a dual purpose: (1) as an ex-offender living with the stigma and identity of a criminal record, and (2) as a researcher studying the identities and lived experiences of other ex-offenders living with the stigma of, and discrimination against a criminal record. Based on the above, hermeneutical phenomenology seemed appropriate to incorporate in the present study, because it is an approach orientated to the lived experience and interpretation of responses as portrayed by study participants (Dowling, 2007). Furthermore, hermeneutical phenomenology is based on a paradigm of personal knowledge and subjectivity, emphasising the significance of personal perspective and interpretation (Groenewald, 2004). Correspondingly, and based on my intimate knowledge of the criminal record, one could reasonably formulate the opinion that I had some level of understanding of the phenomenon under investigation.

However, the focus was the participants' lived experiences, especially their points of view regarding searching for employment with a criminal record in South Africa's labour market. In a phenomenological study, these views are as imperative as the unity in participants' experiences, and that unity is called an "essence" (Johnson & Christensen, 2014). In order to understand the effects of a criminal record in South Africa's labour market, Merriam et al. (2007, p. xv) describe phenomenology as a "quest" for understanding a phenomenon from the participants' perspective as they make sense and meaning of their world. This meaning is not immediately discernible - it has to be interpreted in order for it to be useful and meaningful (Dowling, 2007). Since hermeneutical phenomenology follows an interpretive approach, it was equally important to analyse and understand each participant's experience, actions and perceptions. Doing so was consistent with a relativist ontological stance assumed by this study.

As advised by Wertz et al. (2011), study participants may share a common experience of a phenomenon, but their experiences may be simultaneously nuanced and dissimilar. It was my duty to interpret the meaning of these experiences and present them in a descriptive manner that provides a framework for the participants'

lived experiences, including an account of what transpired during the research, as echoed by study participants (Johnson & Parry, 2015). Admittedly, potential discrepancies do occur as a result of misinterpreting study participants' responses, and this is what makes phenomenology a difficult option. According to Richards (2012), something is always lost in translation between what is studied and the research product. Even meanings are not fixed, because the text itself is a dialogue and an exchange of ideas that is multilayered with different frames of references (Sarup, 1993). Persuading study participants to speak openly and share their experiences in a phenomenological study is another challenging endeavour (Groenewald, 2004; Johnson & Parry, 2015).

Cumulatively, these challenges add to the criticism of phenomenology. For instance, Giorgi (2009) notes that bracketing one's personal or prior experience during a research study can, at times, prove difficult to control or suspend due to preconceived notions about the phenomenon. This can lead to interference in the interpretation and data analysis. Another criticism is that phenomenologists rely mostly on information from study participants, which can lead to the subjectivity of the data, thus rendering it as non-credible. These shortcomings were mitigated in the present study by employing numerous techniques, such as data and theoretical triangulation, as well as member checks (see chapters 2, 3 and 5 of this study) (Easterby-Smith et al., 2012). Next follows a discussion of the main theory used for the present study - that is, the Social Identity Theory (SIT) by Henri Tajfel (1978; 1979), a Polish-born survivor who was also inspired by his personal experiences of discrimination and intergroup conflict during World War II.

4.6 THEORETICAL TRIANGULATION: TOWARDS AN INTEGRATED APPROACH

4.6.1 The Social Identity Theory (SIT)

The search for a positive social identity can take many different forms. In this regard, research indicates that employment is central to identity construction and reconstruction, because it creates alternative identities for ex-offenders and how they ultimately view themselves. One of the major and well-known theories in social

psychology, the SIT, begins with the premise that individuals define their own identity with regard to social groups, and that such identifications work to protect and bolster self-identity (Islam, 2014). Social identity is defined as "that part of an individual's self-concept which derives from his knowledge of his membership of a social group (or groups) together with the emotional significance attached to that membership" (Tajfel, 1974, p. 69). In terms of the SIT, the selfconcept comprises two subsystems, namely a personal identity and a social identity (Baron & Byrne, 2002). Personal identity refers to self-descriptions in terms of personal, physical, or intellectual trait, while social identity refers to a person's definition of him-/herself (Baron & Byrne, 2002).

A key premise claimed by the SIT is that people simultaneously hold multiple selfconcepts that can be regarded as working identities. To the extent that these working identities involve the actualisation of a social role such as that of a student or employee (Dufour et al., 2015), implies that they are malleable and open to change. By extension, the identity and social context of people serving time behind bars also evolves as they go through the different transformative stages - initially upon admission to a correctional facility, and subsequently after release (social reintegration) (Guse & Hudson, 2014; Frank et al., 2012). To this end, the theory considers the perceived attributes of the prevailing social structure, including the different strategies people use to cope with a devalued social identity. Many groups in society are devalued - for instance, unemployed ex-offenders. As demonstrated in chapter 3 of this thesis, laws and policies may pose constraints on which forms of social identity improvement can be realistically achieved; thus, the question of how people with a criminal record define themselves becomes not only theoretically, but also psychologically, important.

4.6.1.1 Threat to the social identity

Although peoples' identity is generally known to be stable, the level of identification with one's group tends to change over time and across social contexts (Doosje et al., 2002). Changes in social context exert strain on people's social identity, and this requires some degree of coping (Baron & Byrne, 1997). These two premises are strikingly similar to the labour market experiences of ex-offenders seeking employment with a criminal record. Accordingly, in the present study, the SIT was

implemented to try to understand how ex-lifers personify their social identity while taking into account their perceptions and reintegration experiences of South Africa's labour market. Owing to the criminal record, which in turn brings about labour market discrimination, many ex-offenders are subject to a social identity threat. This is likely to occur during individual mobility when transitioning from one group to the next, or when internal definitions of self do not correspond to the way in which they are treated by others.

Individual mobility is an individual-level strategy used by people to escape, avoid or deny belonging to a devalued group, and seek instead to be included in (or attempt to "pass" as a member of) a group of higher social standing (Tajfel, 1975). Examples here are ex-offenders who seek to escape their plight by pursuing HE or a career that allows them to be seen as a member of a high-status professional group (e.g. as a university lecturer, psychologist, social worker or lawyer), rather than as a member of a group that has a low status in society. A key feature of the SIT in this regard is that it offers a variety of different strategies that members of low-status social groups can implement in order to alleviate their situation and improve the value of their social identity. However, in instances where ex-offenders feel emotionally ready to join the labour market, but due to group boundaries (a criminal record) perceive it to be impermeable, they are likely to feel cognitively excluded and more in-bound to their group. "Because social identity effects are based on protection and enhancement of self-concepts, threat to the self-concept would intuitively be related to the strongest identity effects" (Islam, 2014, p. 1742).

In the case of people living with the stigma and identity of a criminal record, many of whom are ex-offenders, the inaccessibility of the labour market more than likely contributes to their regression into criminal activity, particularly if they start believing that they are worthless and that employers will never give them a chance. These thoughts engender the "mere categorisation" effect. The "mere categorisation" effect induces people to think of themselves in terms of "us" and "them" (categorising individuals into groups) and is sufficient to make people behave differently based on their in-group/out-group status. In this regard, the SIT focuses on social context as the key determinant of self-definition and behaviour. People's responses are understood in terms of subjective beliefs about different groups and the relations

between them. Thus, the SIT aims to understand and explain how people can come to adopt and behave in terms of a social (rather than a personal) identity. How does this impact upon our feelings, thoughts, and behaviours? The SIT tries to answer these questions by pointing to the implications of social identity for the perceptions and behaviours of individuals, and by examining the way in which this impacts on social relations between individuals and groups.

4.6.1.2 Identity management

How are the identities of a devalued group managed by ex-offenders who feel that by virtue of their criminal record status their access to the labour market, including the material and psychological benefits associated with it, are restricted? "From a critical psychology perspective, SIT offers important insights regarding the social identity bases of discrimination, prejudice, and intergroup conflict…" (Islam, 2014, p. 1782). It begins by describing the psychological processes that explain how people's social identity differs from their personal identity. Through the process of social categorisation, individuals become clustered into groups. When individuals are categorised into the same group (e.g., those with and those without a criminal record), they are assumed to share some central group-defining feature that distinguishes them from others who do not possess this feature (Tajfel, 1978a).

Because of these classifications, people tend to focus on similarities between individuals within the same category, while accentuating differences between individuals who are classified into different categories. Implicitly, this promotes in-group favouritism, defined as the tendency to systematically allocate more points to a member of one's own group than to a member of another group, thus, when people are categorised into groups, they are perceived in terms of characteristic group features that define their social identity, while neglecting individual traits that define their uniqueness. Perceived this way, social categorisation can engender intergroup discrimination. Social comparison, on the other hand, is the process through which characteristic group features are interpreted and valued. To the extent that people care about the groups that they belong to (i.e., in-groups), they will be motivated to emphasise the distinct identity of those groups, and to uphold, protect, or enhance the value afforded to those groups and their members. On occasion this may occur at the expense of other groups and their members (i.e., out-groups) (Tajfel, 1978c).

4.6.2 The General Strain Theory (GST)

Strain, in the form of unemployment, increases the likelihood that people with a criminal record will experience negative emotions such as anxiety, disappointment, depression, fear and resentment. Being rejected over and over again leaves ex-offenders demotivated, discouraged, and with a sense of hopelessness (Dlamini, 2016). In my experience, as illustrated by Robert Agnew's (1992) GST and later corroborated by Polizzi (2010), the inability to accomplish a specific goal such as getting employment produces strain that "represents a fundamental assault on the way in which existence is lived and made meaningful through the everyday interaction with the social world" (p. 1055). The GST was formulated at a social-psychological level and focuses on negative relationships with others: that is, relationships in which others do not treat the individual as he/she would like to be treated (Agnew, 1992). The GST is able to use its explanatory power to help us understand a range of phenomena, such as examining the negative individual experiences that precipitate into criminal behaviour (Agnew, 2006a).

In his seminal work, *Pressured into crime: an overview of general strain theory*, Agnew identifies three major types of strain believed to contribute to reoffending: (1) negative treatment by others, (2) loss of something of value, and (3) inability to achieve specific goals (Agnew, 2006a). The description of strain as presented by Agnew and White (1992) resonated with my previous experience of the criminal record, and seemed relevant to incorporate in the present study, particularly because the theory considers a variety of emotional and contextual components of lived experience. In Merton's typology, conformity to success goals and legitimate means is the most common role adjustment, marked by the pursuit of economic and social ends through educational preparation and labour market achievement. However, when the legitimate means to success goals are blocked, criminal motivation increases. In summary then, failure to provide employment to ex-offenders simply because of a history of previous criminal convictions breeds a society in which ex-offenders who are already unemployed gravitate to crime as a means to survive and end up in correctional centres or experience recidivism (Ngabonziza & Singh, 2012). Once again, pathways leading to reoffending in the form of economic

marginalisation, unfair discrimination and oppression are re-enacted and left to play themselves out (Agboola, 2017).

4.6.3 The Labelling Theory

The stigma of, and discrimination against, a criminal record is best explained by the work of sociologists Edwin Lemert and Howard Becker. The Labelling Theory, developed in the 1950s and 1960s, provides a sociological perspective that focuses on the role of social labelling in the development and maintenance of crime and reoffending. It further examines how social groups create and apply the development of criminal behaviour (Benburg, 2009). According to the Labelling Theory, when ex-offenders re-enter society, they do so automatically, carrying with them the stigma and label of a criminal record (James, 2016; Makhuza, 2020). Although criminal behaviour can be initially attributed to various causes and conditions, once individuals have been labelled or defined as criminals, they often encounter new problems that stem from the reactions of self and others to negative stereotypes (stigma) that are attached to the criminal label (Becker, 1963; Lemert, 1967).

These labels often create the perception or notion that ex-offenders are untrustworthy and pose an imminent danger to society. In turn, these beliefs augment the likelihood of criminal behaviour and reoffending becoming stable and chronic. In the words of Lemert (1967), deviant behaviour can become a "means of defense, attack, or adaptation" (p. 17) to the problems created by labelling. The implications of labelling due to the attached stigma fuels ex-offenders' beliefs that they are nothing else but criminals, leading to society's perception of them (Mabuza & Roelofse, 2013; Murphy et al., 2011). However, while society uses the criminal record as a stigmatic label to justify its condemnation of the ex-offenders' past criminal actions, the labelling theory, on the other hand, opines that being labelled or defined by others as a criminal offender could trigger processes that stabilise or consolidate criminal behaviour. A study by Muntingh (2009) found that the willingness and desire to work by ex-offenders are often crushed by unsuccessful job applications due to the stigma and label of having a criminal record. It therefore seems that an imposing challenge curtailing the prospects of finding quality employment by ex-offenders is entrenched by the stigma and discrimination that they

encounter, and "…many of such people may end up not being fully reintegrated in society due to the stigma attached to those with criminal records" (Mujuzi, 2014, p. 296).

4.6.4 The Routine Activity Theory

According to the Routine Activity Theory, employment is seen to reduce criminal behaviour, because it limits the opportunity structure for such behaviour. As reported by Warr (1998) two decades ago, being employed plays a crucial role in regulating ex-offenders' routine activities by altering the types of friends with whom they associate. Put differently, employment can lead to a reduction in criminal behaviour through the accumulation of conventional ties that accompany steady employment. This means that through conventional others, ex-offenders are able to accumulate bonds with their employer and co-workers. Therefore, based on notions of social control theories, the expectation is that ex-offenders who are able to retain a job during the six-month follow-up period are less likely to reoffend than ex-offenders who lose this job. An inference that can be drawn from this theory is that ex-offenders with a full-time job are less likely to reoffend than ex-offenders who have a part-time job (Ramakers et al., 2017).

In summary, given the stigma associated with a criminal record, including the widespread labour market based discrimination (Rudell & Winfree, 2006), exploring how ex-lifers construct the meaning of a criminal record, together with how they make sense of their lived experiences, are best explained using a combination of social constructionism, hermeneutical phenomenology and the Social Identity Theory infused with Becker's Labelling Theory and Agnew's General Strain Theory. Viewed in isolation, each approach, or theory lacks the explanatory power sufficient enough to understand the complex and complicated nature of social reintegration. Therefore, to construct a coherent and holistic understanding of the process of social reintegration, a large body of research incorporated phenomenology, the Labelling Theory, together with various strain theories to form the lens through which to interpret the study's data and explain various forms of stigma owing to possessing a criminal record, which is invariably experienced as strain/unemployment

(Adegboyega, 2020; Besin-Mengla, 2020; Kurtovic, 2017; Kurtovich & Rovira, 2017; Muthee, 2020; Omboi, 2015; Onuferova, 2016; Tafadzwa, 2015).

4.7   SUMMARY OF THE CHAPTER

This chapter explained social constructionism as the study's frame of reference. It further provided the rationale for the use of hermeneutical phenomenology to help understand and interpret the construction of a criminal record. Theoretical triangulation, as well as various criminal justice models on punishment, was also considered.In the next chapter, the implementation of the study's methodology and processes followed to conduct the study are clarified.

CHAPTER 5

RULES OF ENGAGEMENT: STUDY METHOD AND APPROACH

In organizations with conflict, people may vie for your allegiance, wanting you to identify with one side or the other. They try to convince you that the way they see things is right and that you should join them in their struggle against those they define as the enemy. Although as a strategy it is trying at times, and close to impossible at others, in general it is best to remain neutral. If you identify with one side, it will be difficult to understand or have access to the people on the other side. . . .Spread yourself around, spending time with various people. Have a sympathetic ear to all sides and do not talk about one group in front of the other. (Bogdan & Biklen, 2007, p.100)

5.1 INTRODUCTION

The previous chapter considered the theoretical framework of the study, and the present chapter outlines and justifies the methodology used in the study, with specific attention to the research approach, design, participant selection, data collection methods, as well as the data analysis process. The main aim of the study was to investigate the lived experiences of ex-lifers living with the stigma of, and discrimination against a criminal record as they navigated South Africa's labour market in search of employment. Another, related aim, of the study was to find out from Unisa, together with other professional licensing bodies, how they managed student-applicants with a criminal record when it comes to their registration and having them as an employee/member. The framework that guided the research approach also provides the rationale for using hermeneutics within a qualitative research paradigm. The final section of this chapter describes the measures employed to ensure the trustworthiness of the results, the research ethics surrounding the study, as well as methodological challenges and constraints due to the COVID-19 epidemic.

5.2 RESEARCH APPROACH

There are three research approaches commonly used in the social sciences, namely, quantitative, qualitative and mixed methods (Creswell, 2003). Within each research approach, there are specific procedures aimed at guiding researchers in collecting information and suggesting solutions to a problem. Parallel to the research questions posed by this study (namely, what are the lived experiences of ex-lifers as they navigate South Africa's labour market in search of employment, and what meanings do they attach to, and how do they make sense of, these experiences?), qualitative methods of inquiry were regarded as appropriate and relevant to gain an

in-depth understanding of the criminal record while simultaneously constructing and developing knowledge based on the participants' lived experiences.

The qualitative approach, also known as the constructivist or post-positivist approach (Leedy, 1997), is interested in the day-to-day living of individuals, and researchers subscribing to this approach strive to construct meanings by interpreting their study participants' experiences (Denzin & Lincoln 2013; Fraenkel & Wallen, 2006). These could be their subjective beliefs and emotions about a particular condition, or simply the meanings that they attribute to their experiences, including their actions and interests (Denzin & Lincoln, 2011; Newby, 2010). Thus, portraying the world (first-hand) as experienced by study participants, qualitative research provided a much needed voice to these participants (in this case, ex-lifers who may not have been heard before) (De Vos et al., 2011; MacArthur, 2004).

To the extent that the labour market experiences of ex-lifers has thus far been a qualitatively unchartered territory, implied that the qualitative approach used for the study was the best fit for an interpretative phenomenological paradigm employed by this study. In other words, to obtain a holistic, in-depth understanding of how study participants experienced the criminal record and the meanings attached to it, one would necessarily use qualitative methods of enquiry. Therefore, conversing with ex-lifers in the present study about their choices and motivations for pursuing HE, including the barriers associated with finding and maintaining employment, or simply knowing their thoughts when applying for employment, and to have them expand on their responses so as to gain more clarity and insight into their attitudes and behaviour, necessitated a qualitative approach. In its application, Cropley (2019) states that the central premise of qualitative research would be to examine how study participants make sense of their criminal record experiences.

In conclusion, it could be conceded that qualitative research focuses on "the socially constructed nature of reality, the intimate relationship between the researcher and what is studied, and the situational constraints that shape inquiry" (Denzin & Lincoln, 2005, p. 14). It is because of these attributes that the qualitative research approach was adjudged appropriate and pragmatic for this study, since it sought to explore participants' labour market experiences in relation to the criminal record.

However, notwithstanding the above, qualitative research is often criticised for relying too heavily on the subjective interpretations of researchers (De Vos et al., 2002). Acknowledgement of this shortcoming is addressed in the section on reflexivity in this study, highlighting integrity as a major ethical attribute that ensures that the findings emanate from the original data - that is, from the participants' narratives. This concern is also addressed in the final section of the chapter which describes the measures employed to ensure the trustworthiness of the results of the study.

5.3   A HERMENEUTICAL PHENOMENOLOGICAL DESIGN

Although there are numerous types of qualitative research designs, the most popular and frequently used designs are basic interpretative studies, case studies, content analysis, ethnography, grounded theory, historical studies, narrative inquiry, and phenomenological studies (Ary et al., 2014; Creswell, 2012). Out of these, none is superior to the other; rather, the selected design should be the best one that answers the study's research questions (Denzin & Lincoln, 1994). As ascertained from chapters 2 and 3 (the literature review and the discussion on policy and document analyses), there is a dearth of literature on the labour market experiences of people with a criminal record, particularly on the experiences of ex-lifers. Instead, there has been much research on governance, law reform, human rights and the processes of managing offenders without listening to, or consulting, offenders and ex-offenders (Muntingh, 2009). Of particular concern to Muntingh (2009), is the absence of offenders' voices in a world that appears to be dominated largely by the voices of DCS, the parliament, service delivery organisations, academics and human rights activists.

Therefore, crafting the research design for the present study took cognisance of, and was underscored by, the premise that each person's experience of the criminal record is unique, and varies from one study participant to the next. As indicated above, listening to ex-lifers and knowing what they think and say about the criminal record was, in the context of this study, important in the co-construction of knowledge, since such participants are ultimately the ones endowed with consolidating our understanding of what they experience in their everyday life, and can build upon, but also suggest improvements, where required (Muntingh, 2009).

To achieve this understanding, two South African doctoral studies have shown convergence and synchronicity of qualitative methods of enquiry with a hermeneutical phenomenological design (Mabuza, 2020; Makgopa, 2019). That is why I chose a phenomenological design - it allowed me the space to "enter" and examine each participant's individual experience of the criminal record, rather than approaching the participants in a group setting.

According to Johnson and Parry (2015), a phenomenological design can be either descriptive or interpretive in nature. The former of these uses language to articulate the intentional objects, while the latter focuses on the meaning that has to be interpreted. I chose the latter option as the best approach, because exploring the complexity of these experiences (stigma and discrimination due to a criminal record), and interpreting them in turn required a research design and methodology that combined both phenomenological and constructionist approaches. To this end, the phenomenological design adopted by the present study allowed for the individual lived experiences of study participants to be examined and interpreted in relation to their labour market experiences. Consequently, it seemed befitting to employ a hermeneutical phenomenological design, as it was my contention that it would offer a more nuanced understanding of this specific cohort of ex-lifers.

5.4 METHODOLOGY

This section describes the data collection methods and the techniques used in the study to select, recruit and obtain permission to study the participants. An explanation of the spectrum of interconnected methods, sources and multiple actions undertaken to collect the study's data, known as data triangulation (Denzin & Lincoln, 1994) is provided for. The three main methods used to collect data for the study involved the recording of human experiences through one-on-one interviews, as well as the reviewing of policy documents and extant literature (Punch, 1988). The section further describes where the study took place and how data were analysed and interpreted to enhance our understanding of the lived experiences of ex-lifers living with the stigma of, and discrimination against a criminal record. Lastly, since the COVID-19 epidemic created a unique situation where the world, for the first time came to a virtual standstill, the impact of COVID-19 on the research process will also be discussed.

5.4.1 Participant selection and recruitment procedures

Sampling, also known as participant selection, is defined by Monareng (2009) as a process of choosing a group of people, events, behaviours or other elements with which to conduct a study where the research population cannot be managed due to its size. De Vos et al. (2005) also define sampling as a small portion of the total population that together comprise the subject of the study. In the present study, the data sources required to answer the study's research question comprised six ex-lifers, a DCS skills development expert, a Unisa human resources development expert, a SACE representative, an LSSA representative and lastly, representatives from the SACSSP. As indicated in table 5.1 below, the manner in which, and the criteria according to which, study participants were identified and selected were informed by the aims of the study (Polit & Beck, 2004), and this yielded a heterogeneous sample of 11 participants (see the demographic details of the participants below). Such heterogeneity was expressed through the diversity of participants, whose attributes and experiences were not the same.

Prior to the identification and recruitment of the study participants, I consulted my supervisor, as well as three other critical readers from Unisa's Department of Psychology on numerous occasions, about the choice and relevance of study participants. To the extent that the ultimate selection of the study participants was informed by both the experience and the expertise of each individual person, one can conclude that all the 11 participants were selected in a purposeful manner. Purposive sampling refers to the selection of units, be they individuals or groups of individuals, because they possess specific attributes that pertain to the study's research questions (Teddlie & Yu, 2007). For instance, Unisa's human resources development expert was selected for the purpose of exploring the dynamics of the South African labour market with the intention to understand the processes and procedures behind hiring job applicants with a criminal record, or the lack of it.

The DCS's skills development expert was also purposefully selected, since the DCS is the official custodian of ex-lifers - as such, its views on HE as a path to the avenue for rehabilitation and social reintegration of offenders mattered, and were of paramount significance. The representatives from the various professional licensing bodies were also selected on the premise that they were knowledgeable and

conversant with the application process and registration procedures involving the management of applicants with a criminal record. Their knowledge, experiences, opinions and reflections assisted me to better understand the reintegration of ex-lifers via the labour market. Therefore, conversations with the DCS's representative and experts from the various professional licensing bodies helped me to look at the issue of criminal record management from different perspectives, thereby enriching the findings of the study. All in all, the expertise of all the 11 participants was invaluable for the purposes of arriving at a well-rounded and balanced report that represents more than one perspective on this issue.

Other variants of sampling procedures (such as snowball and convenience sampling) were also incorporated into the study, and used simultaneously with purposive sampling. To explain: although I was acutely aware of the fact that ex-lifers holding Unisa professional degrees are rare, and thus hard to locate, through my personal networks, I effected chain referral sampling, also known as snowball sampling, to recruit the first two ex-offenders who, in turn, introduced me to the other four ex-offenders who met the inclusion criteria for the study (discussed below). Snowball sampling is defined as a method for studying a network structure whose concern it is to reach difficult-to-access or hidden populations (Heckathorn, 2011; Tracy, 2013). The last sampling strategy used for the study was convenience sampling, as advised by De Vos et al. (2011) because the Unisa human resource development (HRD) expert was in close proximity and therefore easily accessible and available during the time of the study, and also because I was a lecturer in Unisa's Department of Psychology at the time of the study.

Table 5.1 Demographic details of study participants (part 1)

Study participant	Pseudonym	Age (in years)	Ethnicity	Employment status	Qualification & level of education	Sentence
1	Thulani Tshabalala	46	isiZulu	Self-employed (street vendor)	Psychology (honours)	1 life sentence + 20 years
2	Sibusiso Zungu	43	isiZulu	Self-employed (street	Psychology (honours)	1 life sentence

					vendor)	
3	Duncan Molefe	42	Sesotho	Unemployed	Bachelor's degree in Social Work	4 life sentences + 39 years
4	Rock Lefatse	44	Setswana	Employed (fixed-term contract)	Law (master's candidate)	1 life sentence + 3 years
5	Moruti Letlapa	48	Sesotho	Unemployed	Bachelor of Laws (LLB)	1 life sentence
6	Sifso Khumalo	47	isiZulu	Employed (permanent)	Education (PhD candidate)	1 life sentence

(1) Thulani Tshabalala

Thulani Tshabalala, born in KwaZulu-Natal; South Africa, after matriculating relocated to Johannesburg, where he was hired as a security guard, but was retrenched after a year. After that, life became so hard, that he began living a life of crime. At the time of the interview, Thulani was 46 years old, officially unemployed, making a living as a street vendor. He confessed to having been a multiple-offender prior to his incarceration. Thulani qualified for participation in the study, because of having served out two separate counts: (1) a life sentence + 20 years for murder and armed robbery, and (2) a further 15 years. He was apprehended in 1999, and subsequently sentenced in 2000. Thulani was released in 2018, after spending a total of 19 years behind bars, and after upgrading his matric results, qualified to register for a bachelor's degree and then enrolled for a BA degree in Psychology in 2007.

(2) Sibusiso Zungu

Sibusiso Zungu was born in Pietermaritzburg in 1976, KwaZulu-Natal-South Africa, the youngest of four children. He lost his father at the age of 14, when he was in grade 8. In 1994, when South Africa became a democracy, Sibusiso completed his matric and for the next two years was employed as a security guard around Isipingo (Durban), hopping from one security job to the next until 1996, when he relocated to

Johannesburg. Upon arrival there, he temporarily stayed with his cousin who owned a flat in Hillbrow. After securing employment as a security guard, he became self-sufficient and could afford his own place in the Alexandra township. While at work one morning in May 2000, he was apprehended for house robbery and murder, committed by him and his accomplices the previous year. Two years later, he was sentenced to life imprisonment and was released in April 2019, after spending approximately 19 years in prison. While incarcerated, Sibusiso enrolled for a degree in psychology in 2005, and graduated in 2011. At the time of the interview in 2019, Sibusiso was enrolled for an honours degree in Counselling Psychology.

(3) Duncan Molefe

Duncan Molefe, a former employee of the South African National Defence Force (SANDF), was born in Emndeni, the South Western Townships of Johannesburg (Soweto), in 1977. Duncan, who had two sisters, grew up an orphan. Peer pressure, lack of a support structure at home and growing up in a destitute, child-headed household, quickly transformed Duncan into a young breadwinner. At the age of 19, having just returned from exile in Tanzania, Duncan was integrated into the South African army after having served as Azanian People's Liberation Army (APLA) soldier. Although employed, Duncan realised that he did not earn enough to support himself and his family, which ultimately led to a life of crime. In 1998, Duncan was apprehended and in 1999 sentenced, to four life sentences plus an additional 39 years. After a decade in prison, Duncan started studying - first matric, then a bachelor's degree in Social Work in March 2019, and exactly two years later he received his official certificate to practice.

(4) Rock Lefatse

Rock Lefatse was a 44-year-old LLB graduate, a part-time employee, and a former lifer. He was raised by a single mother and has one sibling, a younger sister. While still a youth, one fateful Saturday evening outside a pub in the Alexandra township, Rock became embroiled in a fight, resulting in the death of a fellow teenager. In 2001, he was sentenced to life imprisonment for count 1 (murder) and for count 2 a further three years (grievous bodily harm (GBH)). In 2005 he registered for an LLB degree at Unisa and in 2019, at the time of our interview, he was enrolled for a master's degree in Law, and doing part-time work following the completion of the LLB degree in 2012. An interesting twist here was that whereas the law enforcement

agencies were able to "successfully" expunge his GBH offence, the same cannot be said for the offence of murder.

(5) Moruti Letlapa

Forty eight-year-old Moruti Letlapa had eight siblings, and grew up in Zola, Soweto. He remembered growing up poor - his mother, a domestic worker, not being able to provide for the entire family, including sending them to school. Because of the financial difficulties at home and living adjacent Soweto's Naledi railway station, Moruti had plenty opportunities to "hustle". Despite all odds, the self-proclaimed repeat offender made it to matric, only to fail it twice. In the course of his conversation, he mentioned being a delinquent from a very young age, and ultimately being apprehended in June 1998. According to Moruti, poverty, together with growing up amidst South Africa's most volatile apartheid era, contributed to his delinquent behaviour. During his incarceration, Moruti amusingly said, "…because learning was out of my head, I had to start by doing standard 8 and that was back in 2000". After spending a total of 18 years in prison, Moruti was released in 2016, and at the time of our interview was doing practicals for a Law firm after recently obtaining an LLB degree from Unisa.

(6) Sifso Khumalo

Sifso Khumalo was a soft-spoken, 47-year-old ex-lifer from KwaZulu-Natal, South Africa. He was incarcerated for 14 years in the Winchester maximum correctional facility, (from Jun 2001 and Nov 2015). When he went to prison at the age of 29, he had already matriculated, and began pursuing a career Education. His passion for teaching led to him participating in prison education as an Adult Basic Education and Training (ABET) tutor. He then enrolled with Unisa for a Higher Certificate in ABET, progressing to a series of qualifications: a Higher Diploma in ABET, an Advanced certificate in Education, and an honours and a master's degree in Education. At the time of our interview in 2019, Sifso was registered with SACE as a member and had held a number of posts. He was also registered for a doctoral degree, and was permanently employed as a lecturer.

Table 5.2 Demographic details of the study participants (part 2)

	Pseudonym	Current employment	Length of employment	Previous employment	Media of communication	Race

			(in years)			
7	Mpho Madingoane	SACE Manager: Legal Affairs and Ethics	14	Manager: Legal and Discipline	English and Sesotho	Black
8	Sunette Meyer	DCS Director: Skills Development	21	High School Educator; Deputy Director: Formal Education	English and Afrikaans	Coloured
9	Marissa van Schalkwyk	Unisa Manager: Human Resource Development	9	HR consultant and advisor	English and Afrikaans	Coloured
10	O' Reilly Setlogolo	LSSA school principal	+/- 20	Advocate of the High Court	English and Sesotho sa Leboa	Black
11	Tshepang Didintle and Ike Mofokeng	SACSSP Manager	2 (each)	Social worker	English and Sesotho	Black

(7) Mpho Madingoane

Mpho Madingoane, a lawyer by profession, was a manager for legal affairs and ethics at SACE. Previously employed at the Department of Labour, and then at the Engineering Council of South Africa as an officer responsible for the legal and disciplinary section of the council, he in total, had practiced for a decade before taking up employment with SACE. In July 2020, at the time of Mpho's interview, he had been in the employ of SACE for 14 years, his job, among others, being to receive complaints of unethical conduct against educators and of the submission of fraudulent documents, and, more importantly in the light of this study, to provide of legal advice to the council regarding "applicants who want to be registered with the council but are, [or] have been found to have been, in conflict with the law at some point". Mpho, with his personal experience of the admission process, and his rich and detailed accounts, came across as knowledgeable and compassionate, yet thorough and assertive in the execution of his duties.

(8) Sunette Meyer

Sunette Meyer was the director of skills development at the DCS. Prior to her appointment in October 1998, she was a high school educator in Geography and counsellor, but left that position to join the DCS as an educator. Having worked her way through the hierarchy, she was promoted to deputy director of formal education with the core responsibility of coordinating tertiary education. She then moved through the ranks and was promoted to her present position, namely Deputy Director: skills development. She described herself as being "a perfectionist", a "performance-" and "self-driven" person. Her 21-year-long service with the DCS came to the fore during our conversation as, on numerous occasions, she displayed her first-hand experience and understanding of a life-long adjustment to prison life, as well as the motivations for offenders' career choices and aspirations. Accordingly, her insights and views made her invaluable for the study as far as the provision of education in prison was concerned, as well as for the DCS, as a department tasked with correcting offenders' behaviour, managed this task through HE.

(9) Marissa Van Schalkwyk

Marissa van Schalkwyk was a human resource advisor and manager at Unisa. She has well over 15 years of experience in recruitment after previously having worked at the University of the Western Cape and the Human Sciences Research Council. Marissa joined Unisa in October 2010, and in 2019 was managing approximately 30 members of staff responsible for the recruitment of both academic staff (professors, senior lecturers and lecturers), and support staff within the Unisa colleges. Such wealth of experience in recruitment made Marissa the ideal study participant to converse with about Unisa's policies pertaining to the hiring or non-hiring of job applicants with previous criminal convictions. "I run this thing", said Marissa, "…in HR; [one] must not be a pretty face with just make-up", highlighting her diligence, tenacity and hard work, but more importantly, my interaction with Marissa showcased her photogenic memory, an attribute considered rare, given the context of the study.

(10)   O' Reilly Setlogolo

O' Reilly Setlogolo was an advocate of the High Court and principal and manager of the LSSA, a distance learning school for practical education in Law. He had been with the school for about 20 years as one of the instructors and lecturer in the High Court's Civil Procedure module. O' Reilly's wealth of experience and the positions he

held made him an ideal study participant. As an advocate of the High Court, he was conversant with, and shared his own personal experience in the admission of legal practitioners to the High Court. Furthermore, as principal and manager of a legal school responsible for the admission and training of Law graduates, O' Reilly's insights and experiences were also invaluable for clarifying the management of student-applicants with previous criminal convictions.

(11)   Tshepang Didintle and Ike Mofokeng

Tshepang Didintle and Ike Mofokeng were both managers at the SACCSP, but in slightly different positions. At the time of their interview in January 2020, both had been registered professionals employed at the council for just over two years. Ike was the registrations manager, while Tshepang was the education, training and development manager. Fundamental to our trilateral face-to-face discussion were the following lived experiences: "I have worked with offenders in the courts…and as a council, we believe in the rehabilitation of and caring for the vulnerable", versus "I am an advocate for children and families...I believe that compliance is very important". Correspondingly, Tshepang's primed psyche of previously having worked with offenders, together with Ike's 25 years of experience as a registered practitioner in child and family care, allowed for a uniquely balanced view regarding the admission, registration, and, by extension, social reintegration of social work students with a criminal record within the ambit of the SACCSP.

5.4.2 Where the study took place, and the criteria for participation

At the time of the study, all the 11 research participants, including the professional licensing bodies, were geographically spread out between the two major cities of Johannesburg and Pretoria in the province of Gauteng, South Africa. The criteria for participating in the study were as follows: (1) the study participants had to be adult male ex-lifers of African descent previously convicted for crimes classified as schedule-6 offences (e.g. violent or aggressive offences such as rape, murder and robbery), and (2) had to be in possession of, or registered for, a professional Unisa qualification leading to registration and/or affiliation with a professional licensing body. While I cannot claim that the sample of ex-lifers recruited for this study was representative of the entire South African ex-offender population, the participants'

profiles suggested to me that the sample had enough labour market experience to tell well-informed stories based on their lived experiences (Muntingh, 2009).

Conversely, there were no specific criteria for inclusion for each of the representatives and experts from the various councils and institutions (SACE, the SACSSP, the LSSA, Unisa and the DCS). Their understanding and constructions of previous criminal convictions were, in the context of this study, relevant for gaining clarity and a balanced perspective from a variety of role players other than ex-offenders. Suffice it to conclude that the selection of study participants in the present study highlighted the inevitability of using personal discretion to make assumptions about study participants' reliability and competency (Strydom & Venter, 2002), based on either their personal experience, job relevance or expertise.

Nevertheless, I consciously followed Bogdan and Biklen's (2007) advice and included a variety of study participants. For instance, the first two ex-offenders were purposefully selected, because they were registered for a degree in Psychology, although being at different levels of their career and two other ex-offenders were also purposefully selected, because of being registered for a degree in Law, although at a different level: one of the participants was selected after having just completed a bachelor's degree in Social Work, and the one was purposefully selected because of being registered for a doctoral degree in Education. Whereas some of the ex-offenders were unemployed and looking for a job, others were employed, with their employment status varying between permanent employment, fixed-term contract employment and self-employment. Thus, conducting the interviews with the ex-lifers varied from taking place in their homes to their places of work.

5.5   DATA COLLECTION

In order to empirically understand the lived experiences of people living with the stigma of, and discrimination against a criminal record, data were collected from a number of different sources (one-on-one in-depth interviews with study participants, official policy documents, as well as academic literature) between March 2017 and December 2020. The three data collection techniques were intentionally chosen for the purposes of data triangulation, defined as the practice of simultaneously soliciting data from various sources. Interviews, for instance, are renowned for their flexibility as a research tool that can be used to gather different data sets, including factual

data and views, as well as personal narratives, making them ideal for answering a wide range of research questions (Atkins & Wallace, 2012). Three types of interviews can be used in social science research, namely, structured, unstructured and semistructured interviews. Of these three, I chose semistructured interviewing as a research tool that is both interactive and capable of producing rich and valuable data (Punch, 2005).

5.5.1 Conversations with the study participants

After receiving ethical approval from Unisa (apps 26(i)-(ii)) and the DCS (appendix 27), the study participants were each invited to participate, and sign a consent form giving permission to audio-record the interview process. For the purposes of this study, one-on-one conversations with ex-lifers was considered the primary method for understanding what it means to live with the stigma of, and discrimination against a criminal record, and how the study participants made sense of that meaning. Then followed semistructured conversations with each of the 11 participants. According to Denscombe (2008), in-depth interviews (also known as "conversations with purpose") constitute a data collection strategy with a conversational-like style, relative to other formal events with predetermined response categories. Semistructured interviewing had the following advantages:

First, to the extent that the interview guide comprised open-ended questions, it afforded me the flexibility to probe and make follow-up questions (Babbie, 2010; Parker, 2005) in order to gain a detailed picture of each study participant's lived experience. Open-ended questions were important for the conversations with the study participants, as they enabled further solicitation of information that would otherwise not have been obtained using structured, or even closed-ended, questions. Secondly, using an interview guide (appendix 28(i)-(ii)), I was able to incorporate a list of predetermined questions, thereby helping me to probe and make follow-ups during my conversations with the participants (Greeff, 2002; Lankshear & Knobel, 2004). Thirdly, it allowed me to check that the participants understood what they were being asked (Atkins & Wallace, 2012; Gray, 2014), as well as change the order of questions according to the direction of the interview (Gray, 2014), and the freedom to not repeat the interviews in exactly the same way with each participant (Lankshear & Knobel, 2004).

Fourthly, it was found to be useful in that it created purposeful interactions through which I learned a great deal of knowledge about the lived experiences and the meanings behind these experiences in terms of what ex-lifers do and think when applying for a post or registering with a professional licensing body (Mears, 2012), which, in turn, afforded me the opportunity to spend more time with the participants until I felt the data had reached a point of saturation (Harding, 2013). Although all the interviews were semistructured in nature, permitting a conversational style, not all of them took place face-to-face or in the comfort of the participants' home. Some difficulties were experienced during the research process, especially during data collection, as discussed under "methodological constraints" in the next section.

Here, Litchman (2010) advised that collecting qualitative data can sometimes involve interviews at the workplace of the interviewee, or by phone, and Bryman (2008), had already proposed that researchers conduct in-depth interviews telephonically, which is much more affordable and quicker than face-to-face interviewing. Following Bryman (2008) and Litchman (2010), in the present study, the interview with Mpho Madingoane (SACE Manager: Legal Affairs and Ethics) took place by telephone because of COVID-19 lockdown regulations, while the interviews with Sunette Meyer, O'Reilly Setlogolo as well as Ike and Tshepang Didintle took place at the privacy of their workplace offices. Each time, prior to the interview, I made an effort to establish some level of rapport with the participants, re-introducing myself, and re-explaining the purpose of the interview and the reasons for the study being conducted. The participants were also reminded that their participation in this research study was voluntary, and that they were at liberty to withdraw at any given time.

Multiple interview guides (see apps. 28 (i)-(ii)), prepared in line with the aims of the study, were designed to suit each of the different categories of participants, and to guide the interview process. Reviewing the literature helped to identify key themes, as well as guide the interview schedule to focus on the core questions that needed to be asked. Easy questions were asked at the beginning of the interview, with more difficult questions following during the interview. All eleven interviews were conducted in the language that the participants felt comfortable with. Here, the importance of my multilingualism and fluency in speaking the participants' preferred language, including, but not limited to, "prison lingo", "Sepetori" and "Tsotsitaal"

should be reiterated and emphasised. Thus, the majority of the participants could communicate in their home language, be it Sesotho, Setswana or isiZulu. Others spoke a mixture of English and Afrikaans, while still others preferred to speak English. I believe that allowing participants to speak freely in their own chosen language is one of the most important aspects of restoring the subjugated voices of ex-offenders.

At each interview, there were a notepad, two pens and an audio recorder with spare batteries that I checked and tested at every occasion, and well in advance of the interview. The conversations took approximately 30 to 90 minutes each, and were orchestrated in such a way that they were informal in nature and allowed the study participants to do most of the talking, while I listened and took notes. Permission to take notes during the interview was sought from the participants prior to the interview, as was the use of an audio recorder to ensure an accurately recorded conversation (Creswell, 2012). Being multilingual and fluent in all the three languages predominantly used during the interviews, namely isiZulu, seSotho and English, I transcribed all 11 interviews manually and verbatim shortly after each proceeding, with a few of them requiring translation into English.

It should however be noted that in some instances verbatim recordings in other languages had to be translated into English. In such instances, there could be distortions and discrepancies, so that the transcripts and the field notes needed to be consulted to help triangulate the data to verify and confirm verbatim quotes, metaphors or specific narratives. Occasionally, to prevent losing the essence of these expressions, colleagues in Unisa's Department of Linguistics were consulted for assistance in the back translation of these expressions. During the interviews, important themes emerged, which were then documented. The interview process took 13 months (from Jun. 2019 to Jul. 2020 to complete). Selecting a small group of participants proved advantageous, in that I was able to manage and analytically reduce the substantial amount of data while the context was still clear and vivid in my mimd.

5.5.2 Methodological constraints and challenges due to COVID-19

The process of applying for ethical clearance and conducting all the interviews for the study took three years to complete. The application process for ethical clearance commenced in January 2018. The three letters giving permission (apps. 26(i)-(ii) and app. 27) were received on respectively 1 February, 6 August and 2 November 2018. Interviewing the six ex-lifers took three months (two interviews in Jan. 2019, two in Feb. 2019, and two in Mar., 2019). Organising and interviewing the remaining five participants took 16 months: two months (Apr. to May 2019) to organise and interview Unisa's human resources expert, two months (Jun. 2019 to Jul. 2019) to organise and interview the LSSA representative, three months (Aug. 2019 to Oct. 2019) to organise and interview the DCS's skills development expert, and three months (Nov. 2019 to Jan. 2020) to organise and interview the SACSSP representatives.

During this period, I also tried to email and physically visit the HPCSA's offices, but, the council did not respond to my request for/invitation to an interview. Ethically, I was aware that research participants should not be coerced to participate in a study, but that participation should be free and voluntary (Prinsloo et al., 2019). Therefore, I accepted that not all study participants identified would be willing, available and prepared to participate in the study, no matter how indispensable or crucial their participation. Owen's (2014) and Chipangura's (2016) studies helped me to realise that there could be unexpected limitations brought on by study participants who either ignored interview requests by totally disregarding emails in that connection, or just decline completely to participate. The council's non-responsiveness, however, was unfortunate, in that a conversation with their representative might have given this study more clarity and a better perspective on how applicants with a criminal record, especially ex-lifers are managed by the council (an area that the HPCSA Act seems to disregard).

Also, the interviewing process was hindered by the worldwide outbreak of the coronavirus. As of midnight 26 March 2020, many South African citizens were officially subjected to an unprecedented 21-day lockdown as a measure to contain the spread of the virus. Due to the COVID-19 pandemic and the subsequent

lockdown, researchers were prohibited from conducting face-to-face interviews, which overwhelmingly decelerated the interviewing process, adding a further six months' of waiting for the last interview with the SACE representative (Feb. to Jul. 2020 to take place). Unisa's Ethics Review Committee (Mar. 2020) also insisted that face-to-face interviews posed an inherent risk to the participants and/or researchers and should not be embarked upon for the duration of the lockdown period, did not stop me from completing the last interview of the study in that the interview was conducted by telephone for the sake of social distancing. The interview was recorded by simultaneously using a digital voice recorder and a cell-phone.

5.5.3 Policy and document analyses

Data for this study were also generated through using policy and document analyses, which helped to obtain rich and relevant information. Policy document analysis is a data collection technique used to analyse data primarily through reading and comparing policies and documents in order to identify links and patterns that could be correlated or corroborated (Johnson, 2015). As elaborated on in chapter 3 of this study, since it is impossible for a researcher to be in all places at all times, policy documents are invaluable as they provide the researcher with information that would otherwise be unavailable. For this study, information was retrieved and reviewed only from documents that were relevant to the research, such as Unisa brochures, application forms for vacant posts and policies, amounting to 40 documents (Mertens, 2010).

These policy documents were analysed and integrated with the literature, data sets of transcripts from the interview recordings and field notes for cross-referencing. Furthermore, they helped to identify gaps in some areas of legislation and, where relevant, their shortcomings. More importantly, these documents were analysed to demonstrate the function of the criminal record in perpetuating and maintaining populist truth claims within society (Saliba, 2012), as well as to explore how these policy documents use the criminal record to regulate the opportunities of people with a criminal record in South Africa's labour market, and how do they do it. Thus, the purpose of reviewing these policy documents was, where possible, to triangulate, information emanating from the interviews with the various participants, or lack

thereof, for a full and comprehensive understanding of the impact of the criminal record.

5.5.4 Data analysis: Interpretative Phenomenological Analysis

In this study, the interview transcripts were analysed thematically, using the IPA method. IPA is an appropriate method to use in psychology because it allows for the deep exploration of the participants' lived experiences and how they make sense of that personal experience (Smith, 2004). In doing so, the role of the researcher is recognised as double hermeneutic and assumes an epistemological position in the sense that, "[t]he participant is trying to make sense of their personal and social world; [while] the researcher is trying to make sense of the participant trying to make sense of their personal and social world" (Smith, 2004, p. 40). Consequently, the life-world and the meanings constructed by study participants are not obvious; they have to be reconstructed and interpreted in order for them to be meaningful and useful, which is crucial for a hermeneutical study such as this one (Smith & Osborn, 2009).

Several other scholars have used IPA (see, for example, James, 2016; Mabuza, 2020 and Makhuza, 2020) as a method of analysis to reduce large and complex data, by organising and making sense of the data in ways that allow for the development of codes, patterns, and themes. Smith and Osborn (2009) suggest the following six steps in utilising IPA as a data analysis method: (1) reading and rereading (2) initial noting (3) developing emergent themes, (4) moving to the next case (5) searching for connections across emergent themes, and (6) looking for patterns across cases. Data analysis for the study began as soon as the data had been collected to avoid a situation where the data would accumulate, and thereby become too cumbersome to manage (McMillan & Schumacher, 2014).

The first step involved familiarising myself with the data by repeatedly listening to the audio-recordings before transcribing verbatim 11 hours, 12 minutes and 18 seconds of interviews into a text form (Lodico et al., 2010). By listening to the audio-recordings and typing up the transcripts, I ensured to immerse myself thoroughly in the data (Gray, 2014). Secondly, to get a sense of the whole data, all the 11 transcripts were reviewed repeatedly, one after the other, while making notes in the margins of the interview transcripts, and underlining the most salient words, metaphors, and phrases used by the participants. The repetition of keywords, the

tone and the emotional responses of the participants were also noted down, which made the comprehension of the content better. Thirdly, to organise the data into workable units so as to identify similarities, patterns and inconsistencies (Taylor-Powell & Renner, 2003), all the 11 the interview transcripts were organised according to individual participants by grouping responses together, across participants (Best & Kahn, 2006). To this end, Smith and Osborn (2009), highlight the interpretation of the interview transcripts to get the sense of the life-world of the participants, while Johnny Saldana (2009) recommends descriptive coding, specifically for studies involving document analysis because these types of studies begin with general questions (see table 3.1).

Various forms of qualitative data are receptive to the coding process, including, but not limited to field notes, interview transcripts and policy documents. According to Saldana (2009, p. 3), a code is "most often a word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language-based visual data.", while Owen (2014, p. 16), states that "[c]oding lays down the groundwork for uncovering patterns and developing themes toward greater understanding of data." The data analysis tool chosen for this study was descriptive coding. Each of the 11 interview transcripts were read line by line and separated into small segments and specific units of data (Maree, 2007). The verbatim quotes of the participants were used to create code labels, and each unique code represented a specific unit of data. According to Saldana (2016), searching for patterns in coded data involves grouping things together that are either repetitive, or perceived to share a particular attribute. The coding process was achieved in the following three ways:

First, an extensive list of first cycle codes was constructed and organised by arranging the codes into categories. For instance, I categorised the codes that shared similarities by grouping them into clusters that logically and intuitively fit together, while removing the codes that seemed to apply to the same phenomenon (Gray, 2014). Secondly, the codes were checked for the development of additional categories and subcategories. Similar codes were grouped together to form categories which were then labelled to capture the essence of the codes. Only the categories that represented the main ideas were used to describe the meaning of similar coded data (McMillan & Schumacher, 2014).

Thirdly, pattern, axial, and theoretical coding, also known as second cycle coding was used. This process was undertaken to establish an association between information already known with that articulated by the study participants. From the large volume of data, the patterns and interrelations between the codes were combined to form emergent themes, and 11 superordinate and 36 subordinate themes were developed (see table 6.1). This stage involved answering the study's research questions by developing links amongst the identified themes, labelling, relabeling and reconfiguring some of them in ways that best captured the essence of the views of the participants (Smith & Osborne, 2009).

5.6   DATA STORAGE

As it was incumbent on myself to describe how the data would be stored and protected in this study before, during and after data collection (Creswell 2013). Hard and soft copies such as interview notes and voice recordings were kept securely in a filing cabinet to which no one except myself had access (Stake, 2006). I further made back-up copies of computer files that were stored on memory sticks, while the electronic files were transferred onto a laptop stored separately in a locked cabinet. The computer files were encrypted with a password for security purposes. Back-ups are important for avoiding accidental damage and deletion of stored information. These data storage principles were followed to ensure proper data storage and to protect the confidentiality and anonymity of the participants in this study.

5.7   TRUSTWORTHINESS IN QUALITATIVE RESEARCH

Trustworthiness in qualitative research is determined by credibility, transferability, dependability and confirmability (Kumar, 2011). To enhance the quality of the data and to ensure rigour, Cohen et al. (2000) argue that trustworthiness replaces conventional views of reliability and validity in qualitative research. In line with Guba's criteria as stated in Shenton (2004), the following measures were observed in this study:

5.7.1 Credibility

Credibility revolves around the question of whether findings from a research study are credible and believable from the perspective of the participants (Becker & Bryman, 2004; Trochim & Donnelly, 2007). Two data collection methods were used

to build credibility in this study, namely, semistructured interviews, and policy and document analyses. Credibility was further consolidated through member checking and triangulation, each of which is discussed below.

5.7.2 Member checking

Creswell (2013), Mertens (2010) and Stake (2010) all describe member checking as a giving a draft copy of interview transcripts to the study participants and requesting them to check and verify the accuracy and credibility of the constructions developed as a result of the data collected and analysed. In this study, member checking took place during the interview, as topics were rephrased and probed to obtain more complete and subtle meanings (McMillan & Schumacher, 2014). At the end of each interview, the participant's constructions, were summarised and it was verified whether the notes were a true reflection of what they had said (Baxter & Jack, 2008; Hamilton & Corbett-Whittier, 2013). This also increased the time spent with the study participants, and allowed me the opportunity to look for precision and new meanings.

5.7.3 Triangulation

Triangulation is a process involving the use of different methods or sources of evidence to shed light, or corroborate evidence, on a theme or perspective (Creswell, 2013; Mertens, 2010) to which Tellis (1997) adds that no single method has leverage over the other; rather, the complementary nature of these methods means that they can be used simultaneously. To this end, triangulation for this study was achieved via multiple methods. In this study, the literature reviewed in chapter 2 and the policy documents analysed in chapter 3 of the study served as data triangulation, while incorporating the different theories in chapter 4 served as theoretical triangulation. Both methods were used for comparing the conversations held with the study participants, as discussed in chapter 6 of the study. The process of triangulation helped produce convergence, by showing how each different method independently either produced the same conclusion, or contradicted the information shared by the study participants.

5.7.4 Transferability

Transferability is defined by Ary et al. (2010) as the degree to which the findings of a qualitative study can be applied or generalised to other situations or contexts and deliver similar results, which in the context of this study, implied that the onus was on

me to disclose as much detail as possible to enable the reader to make judgements about the transferability of the study (Mertens, 2010). Thus, in addressing the transferability of this study, an effort was made to provide detailed information about the design of the study (participant selection and recruitment, data collection instruments such as the interview guides, and analysis). The process was documented off and on the field from the beginning until the end of the study. Since the study was qualitatively oriented, I also strove to provide accurate, detailed and complete descriptions of the contexts and study participants to determine the readability of the research findings, and their transferability (Ary et al., 2010).

5.7.5 Dependability

Dependability refers to the extent to which the approach and the process used for developing interpretations in the study are dependable, and whether the findings are stable over time (Gill et al., 2018; Moser & Korstjens, 2018). In addressing the dependability of the present study, I established an audit trail of all the stages of the research process as advised by Becker and Bryman (2004), by first, inviting my peers and critical readers in Unisa's Department of Psychology to check the validity of the interpretations, and secondly, by keeping all the records (original field notes, e-mail communications, observations made, and important dates), including specific sections of the interviews that were of particular significance to me (Robinson & Lai, 2006). Moreover, code-recoding and multitriangulation methods were incorporated into the study to establish and ensure dependability and appropriateness.

5.7.6 Confirmability

Confirmability refers to the extent to which the collected data is supportive of the findings of the study, as well as the researcher's interpretation, including whether the same findings can be replicated by other scholars (Trochim & Donnelly, 2007). Confirmability also deals with the idea of neutrality, or the extent to which the study is free of bias in the interpretation of results (Ary et al., 2010). In addressing the confirmability of the present study, formal documents, policies and participants' verbatim-transcribed quotes were used to support the findings of the study. Furthermore, it must be noted that IPA negates bracketing as it is impossible to be disconnected from the research process (Smith & Osborne, 2009). However, an effort was made to manage my dual positionality, including my personal values and preconceived notions so as not to interfere and encroach on the results of the study

in any unwanted way. Lastly, the confirmability audit of the study was carried out with the dependability audit mentioned immediately above (Mertens, 2010).

5.8   REPORTING THE FINDINGS OF THE STUDY

In chapter 6 of this study, the conversations held with the study participants are reported on and interpreted by directly referring to the participants' own words to enact the lived experiences of people living with the stigma of, and discrimination against, a criminal record (Lodico et al., 2010). Interpreting the findings of the study involved describing what the participants said and did, based on the information collated from the interview transcripts and field notes. Thereafter, I developed categories and searched for links between the concepts and categories created from the transcripts and field notes (Gray, 2014), constructed themes from the codes, and entered them into a process of coding and recoding. After developing the initial ideas about the connections, the literature and the policy documents reviewed in chapters 2 and 3 respectively were consulted to verify whether there was evidence supporting and/or refuting the emerging codes. To help describe the social identity of people living with the stigma of, and discrimination against, a criminal record, the participants' lived experiences were contrasted, supplemented and integrated with a combination of personal experience and the social science construct (Creswell, 2013) in order to create themes, (see table 5.1 above) which were ultimately used to explain the findings by attaching meaning and significance to the entire analytical process (Taylor-Powell & Renner, 2003).

5.9   ETHICAL CONSIDERATIONS

According to Unisa's Research Ethics Policy (Unisa, 2012), any research study involving human participants must go through the ethical clearance process, which, in the present study, involved the following three phases:

First, permission to conduct the study was sought from the Research Ethics Committee (REC) of Unisa's Department of Psychology to ensure that the study abides by ethical standards and scientific criteria (see app. 26(i)). Secondly, after the initial permission was granted, a letter of approval (app. 27) was requested from the DCS to interview its DCS skills development expert and the six ex-lifers, since the DCS officially being the custodian of ex-lifers. Thirdly, and lastly, a letter of permission was sought from, and granted by, the Research Permissions

Subcommittee (RPSC) of the Senate Research, Innovation, Postgraduate Degrees and Commercialisation Committee (SRIPCC) to interview Unisa's HRD expert (see app. 26(ii)). As illustrated in the methodological constraints discussed above, the whole process took 11 months. Prior to each interview, I invariably presented the consent form for the study participant to read and consent to before participating in the study (Kumar, 2014).

Since the main data collection strategy for the study relied on conversing and interacting with human participants, it was imperative for the study not to cause the study participants any harm. Thus, as discussed below, it was incumbent on myself given the context of this study to consider ethical dimensions such as building trust and rapport with the study participants, keeping their identity private and confidential, as well as keeping the information shared anonymous. Below follows an illustration of the process of obtaining consent from study participants:

5.9.1 Informed consent

Informed consent is a principle that ensures that the study participants have been informed of the details of the study, its aims and objectives, and what it involves (processes and procedures), including what is expected of them, and what they have consented to participate in (Ryen, 2016). All the participants in the present study were solicited in a purposeful manner, and were approached through chain referrals or snowballing. Initial contact was established by cellphone, the short messaging service (SMS), by e-mail or by a visit to their office (during working hours). Once the participants had agreed to participate in the study, the details of the study were explained and both the importance of the study and their participation in it were conveyed (Cohen et al., 2000; Fraenkel et al., 2012).

It was emphasised that signing the consent form served as a guarantee that they had read, understood and agreed to voluntarily participate in the research study and could decline participation at any time (Ryen, 2016; Sotuku & Duku, 2015). Since the study was geared towards understanding the lived experiences of ex-lifers, from time to time it became inevitable for the participants to divulge personal information relating to being either stigmatised or discriminated against, because of their criminal history. For this reason, the study participants were reassured that there would be no foreseeable risks and hazards associated with participating in the study. The same

courtesy was extended to the other set of participants. In so doing, the study participants were given a choice to either participate in, or to decline to participate in, the study (Ary et al., 2014; Sotuku & Duku, 2015). By affording the study participants the right to make an informed choice, their autonomy was respected (Atkins & Wallace, 2012). On every occasion, the participant's consent form was read, signed and stored in a locked cabinet, separate from the study results (McMillan & Schumacher, 2014).

5.9.2 Building trust and rapport with the study participants

Trust and rapport form the cornerstone of every research endeavour, yet it so happens that occasionally, offenders decline to participate in research studies because of their double vulnerability (Prinsloo et al., 2019). Despite being an emerging scholar and ex-offender, I made every effort not to over-rely on my insider status (as an ex-offender, and as an academic), which helped me to approach the study as an open vessel (i.e. a researcher in the quest for knowledge), rather than as an expert (both as an ex-offender and as an academic) who already understands the lived experiences of ex-lifers. The advantage of using this approach was that it brought me closer to the study participants. After arranging to meet the study participant, at a time most convenient to him/her, I visited his/her home or workplace, often spending time (over days or weeks) with him/her before the interviews to become acquainted, which, according to Ryen (2016), is essential for building up a good, trusting relationship between study participant and researcher.

5.9.3 Confidentiality

Confidentiality refers to the protection of private and sensitive information; divulging this information to others could thus be regarded unethical. In the present study, keeping research information private and confidential involved removing study participants' personal identifiers, from all the research documents (e.g. data collection forms), so that no connections could not be made. For instance, in the case of ex-offenders, removing the participants' real names, home and workplace addresses was important, so that the crimes they committed could not be traced back to them. Following the interviews with the participants, I ensured that no one else except my supervisor and myself had access to the data set. Confidentiality was

also ensured by not sharing their information with any other person for any purpose other than research (Kumar, 2014).

5.9.4 Anonymity

Corresponding to the above, Kumar (2014) states that it is unethical to identify participants during a research study, implying that researchers are obligated to protect the identity of their participants by using either pseudonyms or numbers instead of their real names, personal particulars and/or identifiers, including where the research was conducted. Owing to the sensitive nature of this study, I wished to protect the study participants by anonymising the data, together with information identifying the study participants, so that the participants' identity was concealed from the readers of the study (Flick, 2015; Gray, 2014). The above can be done by replacing the participant's real name with a pseudonym as advised by Cohen et al. (2000) and Henning et al. (2004), and confirmed by Fraenkel and Wallen (2006).

5.10 SUMMARY OF THE CHAPTER

This chapter considered the rationale for using a qualitative methodology to explore the social identity of ex-lifers as they navigate South Africa's labour market in search of employment. It further remarked on the specific selection of study participants, and provided an exposition of the data collection techniques, as well as the data analysis process. Finally, ethical considerations and measures taken to ensure the safety of the participants were discussed. In the next chapter, the results of the study will be presented, and the findings will be discussed.

CHAPTER 6

PRESENTATION AND DISCUSSION OF THE FINDINGS

Formal studies are just a piece of paper. Sunette Meyer (Skills Director at the DCS)

6.1   INTRODUCTION

Chapter 5 outlined the methodology used in this study, whereas the present chapter focuses on the phenomenological interviews held with 12 of the participants in the study. As illustrated in Figure 6.1 below, the results of the interviews will be discussed in relation to the literature (Chapter 2), policy documents (Chapter 3) and the theoretical framework (Chapter 4) underpinning the study. To contextualise but retain the authenticity of the findings, each theme will be linked with the personal experiences of the participants in order to illuminate their lived experiences. This will be done by referring to extracts from the transcribed interviews to highlight observable patterns and contradictions between the experiences of the participants while noting the uniqueness of each participant's experience and relating it to the range of research findings.
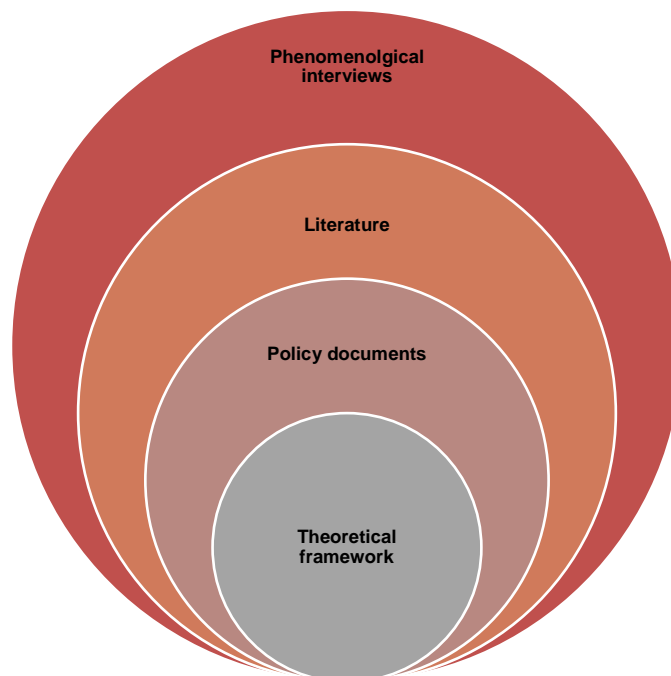
Figure 6.1 Construction of Chapter 6

Firstly, an explanation of each theme is provided as chronologically listed in Table 6.1 below. This table provides a summary of the superordinate and subordinate themes that emerged during the phenomenological analysis of the interviews.

Table 6.1 Table of themes

SUPERORDINATE THEMES	SUBORDINATE THEMES
I can't face the music	On growing up: historical undertones of the apartheid era
	Family dynamics as functions of delinquency and criminality
	Socioeconomic conditions as functions of recidivism
The tales of hurting men	Battles of and with existentialism: resuscitating a lifeless life
	Intrinsic versus extrinsic motivation
	Internalisation of blame and the Prison Adjustment Model (PAM)
"Stormy weather" ahead	Observing others
	HE comes with (financial and emotional) costs
	The DCS's attitude to HE
	Formal studies are a piece of paper
Moving walls and pushing boundaries	Valence: second chances are opportunities for redemption
	Start from the bottom, work your way up
	Construction of alternate identities
	Networks and forming new establishments
Home free…nearly	On "coming out"
	Partial versus full disclosure
	Subsequent declaration as anxiety provoking
	Implications of concealment and non-disclosure
A double-edged sword	Is declaration commensurate with reformation?
	Unmet employment expectations and insecurities regarding the labour market
	Painful imaginations
Lurking in the shadows	Stigmatisation as double punishment
	Criminal record as instant disqualifier
	Self-exclusion and hopelessness
Not what it seems to be	A multi-tiered gatekeeping process
	Duty to protect the public

	Helping the helpless
No eyes, no ears	System disconnectedness
	Judgment on the merits
	Impracticalities of criminal record expungement
A "trustworthy" stranger?	Sieve as a test for defect in character
	Is the "fit and proper" test a reliable assessment tool?
	Labels instil doubt in the minds of the employer
One can, the other can't	Nexus and the inherent requirements of a job
	Severity or nature of the offence
	Period of or age at conviction

6.2   PHENOMENOLOGICAL INTERVIEWS WITH THE PARTICIPANTS

6.2.1 I can't face the music

The successful social reintegration of ex-offenders, together with many proponents of criminal desistance theory such as Sampson and Laub's (1993) age-graded informal social control theory, Giordano's (2014) theory of cognitive transformation, and Bushway and Paternoster's (2014) identity theory of criminal desistance, accentuates the protective role of employment as counteracting recidivism. A closer analysis of the extracts below supported this view. The perception held by ex-offenders was:

…one should at least have some kind of an income rather than sitting like this and doing nothing…I am avoiding temptations that you usually come up so that I don't find myself reoffending and going back to prison, plus I'm already a parolee serving a life sentence. – Duncan Molefe

Why did he [Katiba] *resort to going back to a life of crime? Although I do not condone the commission of crime, yet everybody needs money and finance is life. If you are financially unsustainable, you have children, nephews, a family that looks upon you to assist and you have your own life that you have to take care of and yet you are not providing. That's why most ex-cons commit crime because they see nothing that can bring resolution to this. The only thing they know is to commit crime; therefore they associate themselves with criminals and commit crime. That's how one of our friends was shot dead in a cash-in-transit heist.* – Moruti Letlapa

…After my release, I find that I can't support my children, I can't do anything, including month ends where even I'm expected to provide for the things they need…I'm expected to support at home but I

can't do all of those things. So, this becomes very hard; it hurts a lot and it is very painful. In addition, it hits the family, the whole family, because at least I should be assisting at home. – Thulani Tshabalala

This superordinate theme was constructed from the three subthemes in the first section of Table 6.1 above. In sum, these extracts show that as an ex-offender, there is a strong expectation not only to be self-sufficient but also to support one's family after release from incarceration. Yet central to this theme were participants' narratives of financial insecurity to support themselves and their families which was experienced as being very painful and difficult to manage, hence the saying "I can't face the music". In my experience as an ex-offender, I can testify that the status of being unemployed and the inability to provide financially following a period of incarceration is emotionally hurtful and psychologically taxing. However, incarceration (especially long-term incarceration) is conceived by many delinquent associates as a "rite of passage"; thus, successfully going through the experience of incarceration is an acknowledgment to them that "one has earned his stripes". This is probably what occurred to Katiba. However, to avoid "reoffending and going back to prison", one is required to constantly resist advances from delinquent friends and "temptations" to offend, and this is what Duncan referred to when he said "I am avoiding temptations that you usually come up…"

Correspondingly, details regarding the participants' SES were key because in accordance with the GST, there is reason to argue that destitute and unemployed ex-offenders are more likely to experience poverty and lack of employment opportunities as strenuous, which ultimately manifests in criminogenic needs. As asserted by Moruti above, poverty and financial unsustainability are persuasive enough to drive ex-offenders to associate with more seasoned criminals with the intention of committing more crime. Correspondingly, research indicates that loss of daytime activity results in ex-offenders loitering aimlessly on the streets and consequently committing crime (Zand-Kurtovic, 2017). Therefore, one can reasonably assume that poverty and unemployment are both instigators and drivers of recidivism. How these two come together was explained by Moruti as that the inability to earn a living overrides the experiences of incarceration. These results seem to confirm earlier findings that incarceration alone does not serve as deterrence from committing crime (Qhoqwane, 2018). In contrast, fulfilling the need

or drive to support one's family becomes a driving force, as highlighted by participants. Furthermore, lacking sufficient material possessions due to the historical undertones of the apartheid era in South Africa was also noted as a powerful instigator for committing crime and, by extension, recidivism. Broadly, this theme demonstrated that the participants constructed their stories based on the history and politics of the apartheid system and that family dynamics and social pressure all acted as functions of recidivism. In this regard, South Africa's transformation into a democratic state was comparable to other countries, including African states. For instance, Onuferona (2016) notes that changing from a communist to a democratic state significantly raised crime rates in the Czech Republic. Similarly, political unrest in Kenya facilitated the formation of political gangs and significantly raised youth violence (Omboi, 2015); while research from West Africa shows that following Ghana's independence in the 1950s, the country's crime rates increased (Dziwornu, 2021).

On growing up: historical undertones of the apartheid era

Research from China speculates that youth offenders often struggle to appreciate the long-term effects of their delinquent behaviour due to their raging hormones (Yang & Lei, 2019); whereas research from Africa indicates that political transformations, especially to a democratic dispensation, ignited social unrest and consequently crime rates (Dziwornu, 2021). Therefore, to establish a holistic picture and "story" of the participants, it was imperative that I began each interview/discussion with a reflective stance of the past and its consequence for the present. Thus, I started by exploring the childhood experiences of the participants, and instantly the historical connotations of the apartheid era emerged in relation to how the participants had been politically indoctrinated. It transpired from my conversations with Duncan and Moruti that both had been born and raised in Soweto during a period of political turmoil and upheaval in South Africa.

Almost four and a half decades ago, Sikakane (1977, p. 8) described himself and Soweto as "the largest single modern ghetto in Africa…a bastard child born out of circumstances following dispossession of the African people…[and] out of white greed and racism perpetrated against the Africans". Through racial segregation, the apartheid system "dictated…in no uncertain terms that South Africa was for whites

only and they, as blacks, had no claim to it" (Sikakane, 1977 p. 77). It was for these reasons that in 1989, Duncan (aged 15 years) was introduced to politics and subsequently exiled to Tanzania from 1992 to 1994 following his recruitment into the Pan Africanist Congress of Azania (PAC). At 19 years, he was integrated into the South African Defence Force (SANDF) and as a private. During my conversations with Moruti and Rock, they remarked:

> [Although] *I haven't made research yet, but where I come from…in the township of Soweto, I believe that one-third of the population has criminal records…due to the historical and political backgrounds which influenced people that commission of an offence is not a crime per se, but it was disposition of what was taken from our forefathers.* – Moruti Letlapa

> *I am not quite sure what is the actual reason for having a criminal record, but hence I told you that it is mainly due to the past regime…past apartheid laws which sought to prevent black men from being successful.* – Rock Lefatse

Other researchers also established a link between youth and crime. In his study, Onuferova (2016, p. 5) concluded that "young men of poorer backgrounds and lower education tend to rationally decide for crime as it instantly gives them higher returns than having a legitimate job" but he subsequently conceded that "…the tendency to commit crime lowers with age". In the opinion of Sikakane (1977, p. 28), "Mr Average Soweto Sojourner is not a born murderer, [rather] he is moulded by the repressive and exploitative system into a drunken and stupefied killer." The perceptions of Duncan and Moruti suggested that crime was racially justified and normalised in the eyes of the participants.

> *… I grew up under a heavy political environment whereby I was actively involved in politics. I was recruited by one of the senior citizens in my community and started participating in political activities at a very young age. It was around 1989. Basically, I knew nothing until I reached age 15. At age 15, I was a bona fide member…that's why I say from 1992, I was heavily involved…I was a Pan Africanist, a member of the PAC…[and]…in 1992 I ended up going to exile in Tanzania and came back in 1994. The ideology was that we were fighting for the land…as the PAC, we believed that our land was taken by force, you see? Now the land must come back; we had to fight for our land. We were the oppressed; we had to face our oppressors, hence there was ANC that tried but we were the radical ones from the PAC.* – Duncan Molefe

> *…to be honest, political influence and financial circumstances…My mother was a domestic worker and we were, she had nine children and she was a single mother of which she couldn't, she was unable to provide for us financially to take us to school…[plus]…I grew up the during apartheid era where black people were oppressed by white people and then with the influence of Africanism, that*

African National Congress, specifically, Pan Africanism, which is that we have to dispose white people from what they [appropriated] *as it is our resources that have been taken away from our forefathers…that's when I started committing crime against white people and foreigners.* – Moruti Letlapa

Broken families as functions of delinquency and criminality

A closer inspection of the participants' family structures revealed that some participants came from broken and child-headed household families with no support structure due to absent and/or single parenting. Thus, conversing with these participants consolidated the idea that lack of parental guidance and family support (either in the form of a father figure or both parents), including the constrained financial backgrounds of their families, had contributed to their delinquent behaviour while growing up. As previously noted, offenders' narratives of lack of family support and structure are all too well documented in the literature (Djidonou et al., 2016; Glover 2018; Matlakele & Erasmus, 2017). This claim was supported by the extracts below:

…back at home, no one was employed and maybe at that time we used to earn R1 050 of which the responsibility was all mine…the family did not have any support structure…although I was in the army, but I wasn't earning that much, the money wasn't enough so I thought, no man, in trying to raise funds, one should also be involved in these criminal activities that I ended up in. – Duncan Molefe

…some of us, because we have been imprisoned for a long time, and due to our lengthy sentences, we are released only to find that there is no longer support from our families. You find that, for example, issues of HIV which destroys many families. When I was released, for example, three of my family members had already passed on because of HIV. So yes, beginning from the year 2000 until now, you find that when a person is released from prison, they do so without any support structure. – Thulani Tshabalala

Similarly, during my conversation with Rock and Sibusiso, I picked up that they too attributed their delinquency to single parenting, specifically their absent fathers. To this end, they said:

I, being the child that I was, having no father figure, life took me the wrong direction which ended up having me on the wrong side of the law. – Rock Lefatse

…It had always been my passion and dream to study, but due to financial constraints at home, especially because my dad had already passed on, there was that challenge; but I had that little hope that one day, if I can grab hold of this much cash, I will still further my studies. – Sibusiso Zungu

In the same breath, as a single parent of nine, Moruti reported that his mother could not financially afford to send her children to school or even keep them there. A lack of parental supervision was all too evident when Moruti recollected his childhood memories, underscoring that one's childhood upbringing has direct implications for future delinquent behaviours. This is how he put it:

I've never been employed in my entire life…before committing crime; I started by selling fruits and peanuts at the Duduza station because I stayed next to the [railway] *station. That's where my criminal mind-set began…we started off by boarding trains illegally and commuting to the suburbs* [white neighbourhoods]. *We didn't even know what we were doing there…and so we would start breaking into the houses, snatching white ladies' bags...* – Moruti Letlapa

In Kenya, Omboi (2015) undertook a study in Mathare (a collection of slums in Nairobi) to test the influences of youth unemployment on crime rates. The results showed that many youth failed to get legal gainful employment and thus engaged in stealing, prostitution and violent robberies to meet their basic needs. Omboi (2015) deduced that high unemployment rates deprived many youth of alternative ways of earning a living, raising high crime rates in the process. Therefore, from these findings, I speculated that the poor SES of the participants' families, together with the lack of parental guidance required for a healthy childhood, had ignited the participants' criminal careers. After completing his matric as a teenager, Thulani relocated from rural KZN to the city of Johannesburg in Gauteng in search of employment. He said:

…When I completed matric and arrived in Johannesburg, I was employed by a security company. I worked there for one year and we were subsequently retrenched…still, the money wasn't enough. I was earning R1 000, approximately R1 500 around 1998, 1999. That money was enough for just spending, in fact, to survive; it wasn't money that I could also support my family with. The money was too little compared with the money I used to earn while still working at the previous firm. So, it was very hard and so I ended up quitting that job at that security company, which is the reason why I pursued crime. – Thulani Tshabalala

The finding that Thulani and Duncan were both employed at a young age (in the security industry and SANDF respectively) yet decided to quit their jobs to pursue crimes of robbery with financial gratification as the end goal intrigued me. First, I deduced that role reversal (from childhood to adulthood) came into effect at an early age for the participants. For instance, children assume adult roles by taking up employment in order to sustain their families financially, which not only threatens but

also disrupts their education and forces them ultimately to drop out of school at a very young age. According to Oneferova (2016, p. 5), youth development is closely related to peer pressure, "since people make decisions about their education during their formative years when they are mostly influenced by their parents as well as peers". Secondly, this conversation confirmed the literature that not just any vacancy or kind of occupation can reduce criminality and/or recidivism, but permanent or long-term jobs with a high salary are thought to augment the chances of criminal desistance (Ramakers et al., 2017; Uggen, 1999). Third, ex-offenders seemed to gravitate more towards reoffending when they experienced strain in the form of unemployment (Fredericks et al., 2021; Matlakele & Erasmus, 2017). Lending support to this notion was Moruti, who remarked as follows:

I don't think I can say I'll never go back to crime, and people must not judge us in terms of going back to crime because if one had to look at the choices that he [Katiba] *had at that time as a man, you find that you go to bed on an empty stomach and there are children who are also going to bed on an empty stomach. It is a two-time chance that even with this law degree I can find myself reoffending or being picked up by law enforcement agencies, as it has happened with my friend.* – Moruti Letlapa

Furthermore, in accordance with the literature (Bruyns, 2007; Djidonou et al., 2016; Glover, 2018; Mawerewere & Chiborise, 2017), there is evidence suggesting an association between delinquency and the age–crime curve. Therefore, as a third point, the fact that all the participants were well over their forties at the time of the interviews (in 2019) supported the theory of the age–crime curve, which posits that the onset of criminal careers is around one's youth, peaking during adulthood (i.e. mid-twenties to thirties) and sharply declining around the forties to fifties. In conclusion, with respect to the participants' criminal histories, as theorised by the age–crime curve, the age bracket of forty and above suggested that the participants were well over their prime in relation to their criminality and these results showed consistency with criminal desistance by age and maturity.

Poverty and unemployment as functions of recidivism

The previous theme established, among others, that criminality and delinquency are a manifestation of broken families and lack of parental supervision. In retrospect, while it might have initially appeared that for some of the participants coming from broken families (due to single parenting or the absence of both parents) was a powerful instigator to commit crime, the present theme configures the participants'

poor SES as another motive for their criminality and subsequent recidivistic behaviours (Muthee, 2020; Mutubari, 2017; Niquice et al. 2018). In essence, this theme underscores the intersection between the participants' adverse childhood experiences such as poverty fuelled by financial pressure to provide for themselves and their families as explicated by the GST. Perceived from this lens, the results of the study indicated that poverty and unemployment were inextricably linked and experienced as strain which varied according to intensity. Two extracts, one from Thulani and one from Moruti, suggested that poverty is a powerful motive to commit crime/reoffend.

The one thing I can say is, when a person is released from prison and they do not find employment, there comes other opportunities which are accompanied by many challenges…one is expected to be self-reliant and support himself, yet you find that one is looking for a job without success. It's hard to become patient in those circumstances and you end up being embroiled in complex situations which is very unfortunate. – Thulani Tshabalala

...It's difficult to talk about finances. I am not exactly sure how I am surviving because I am relying on other people to sustain me and if those people cannot provide any more then what's going to happen, it's difficult, I have to make other choices…it's difficult, I don't know what to tell you because now you have to rely or depend on other people to provide for you. Like the family becomes tired of you and it's like now you are useless and you know you are useful and important. – Moruti Letlapa

According to these two accounts, the subjective feeling of being "useless" creates a culture of dependency "because you rely on other people" and this becomes challenging because "you know you are useful and important" but when one "comes back" from prison, there are "no opportunities for employment" and "[i]t's hard to become patient in those circumstances". Another equally important finding was that resisting temptations to reoffend led to subtle feelings of strain. This view was clearly articulated by Thulani and Duncan, who opined:

For someone who makes a living out of committing crime, even when he ends up in prison, he knows very well he's making a living out of crime…[because]…when he comes back and there are no opportunities for employment, that thing comes back in his mind that he used to survive through committing crime, so temptations become high for him to relapse. – Thulani Tshabalala

…one should at least have some kind of an income rather than sitting like this and doing nothing…I am avoiding temptations that you usually come up so that I don't find myself reoffending and going back to prison, plus I'm already a parolee serving a life sentence. – Duncan Molefe

Also central to feeling tempted or temptations is the theory of relative deprivation, which contends that being deprived of material possessions (due to poverty and/or lack of unemployment opportunities) contributes to offenders regressing to their former criminal behaviour. Of particular significance here are Thulani and Duncan, who reported that they both had quit their jobs because they had believed the money they had earned was insufficient – which ultimately lured them into a life of crime. Thus, despite the protective role of employment, according to Thulani, one can still be lured into a life of crime:

It means…observing your community and seeing people who are successful yet unemployed; they are committing crime while you wake up and go to a job that doesn't pay very well…you become discouraged and end up involving yourself in criminal activities because you can see that these people are living a lavish life and in your mind, you think this is how I can survive too; but on the contrary, this is how you are lured into trouble. – Thulani Tshabalala

By sharing their thoughts and ideas, the participants hinted at a possible association between exclusion and secondary deviance. Further analysis revealed that the participants' unemployment aggravated lingering doubt and uncertainty about reoffending in the future. As elaborated in detail under Theme 10 (A "trustworthy" stranger?), this was also consistent with the notion that "criminal records instil doubt in the minds of the employer". In essence, and based on the participants' accounts, the foregoing discussion theorises and concludes that the history and socio-politics of South Africa (namely, poverty and apartheid), also taking into cognisance the participants' family dynamics (such as child-headed households/families, lack of parental supervision as a result of single parenting and minimal exposure to education), all acted as functions of criminality and delinquency. The results are also consistent with literature that supports the notion that poverty and unemployment supersede education to act as functions of criminality and recidivism (Anene, 2013; Djidonou et al., 2016). Taken together, this theme contends that upon social reintegration, ex-lifers experience considerable emotional pressure, ranging from financial insecurity (through unemployment), family pressure to support and sustain themselves (financially to societal expectations of a crime-free life, which all culminate into feelings of strain and manifest into criminogenic needs (Ayuk et al., 2020; Omboi, 2015; Glover, 2018; Simasiku, 2018).

6.2.2 The tales of hurting men

When I was sentenced to life imprisonment, due to lack of information at the time, I was under the impression that I was going to die in prison…that I would never go out of this place alive; even the judge mentioned it that he removes me permanently from society. So, I entered prison knowing very well that I will never go back outside. – Moruti Letlapa

It took me time; I stayed 10 years without studying. I was hopeless…they say once you are sentenced to life imprisonment, your sentence never ends…life sentence hurts because as I am saying, I went back to school in 2009, all these other years I did nothing. I was hopeless. One is forever hopeless in there. – Duncan Molefe

After I was convicted to life imprisonment in 2002, the sentence became extremely heavy on my conscience. I couldn't focus on anything…my mind was under a great deal of stress during that time, taking into account that I was still attending a further charge for another case. – Thulani Tshabalala

The superordinate theme "The tales of hurting men" was constructed from the three subordinate themes listed in Table 6.1 in this chapter. The subthemes were clustered together because they share a similar attribute insofar as the psychological pain of life imprisonment was experienced and described by the participants. For instance, based on the participants' subjective feelings, the results showed that life imprisonment (or permanent removal from society) "hurts" and was "extremely heavy on [one's] conscience", "knowing very well" that one "will never go back outside" again. Against this backdrop and drawing directly from Frankl's (1969) existential theory, the results showed that the participants were constantly confronted with "a great deal of stress" in the form of the existential vacuum of prison; a perpetual sense of hopelessness contemplating that they were "going to die in prison" because a life "sentence never ends"; and, more importantly, to create meaning by deciding on whether to change their lives around.

Furthermore, in demonstrating Haney's (2006) writings, it was imperative that I explored the study's rhetoric question "How much punishment is enough?" in order to bring into context the psychological pain inflicted by long-term imprisonment. For example, all the ex-offenders who participated in this study were serving from a minimum of one life sentence to a maximum of four life sentences and 39 years in prison (refer to Chapter 5, Table 5.1). Thulani, for instance, informed me that he had been convicted for several offences and ultimately served multiple sentences concurrently. Among these were one life sentence (+ 20 years' imprisonment) and a

further 15-year sentence for an offence he had committed earlier. Thus, premised on the length of the participants' convictions, the theme "The tales of hurting men" captures the excruciating pains of life imprisonment and documents how these were experienced by the participants. The first subordinate theme considers battles and challenges of existentialism following a sentence of life imprisonment. The second and third themes illustrate how, through PAM, participants "resuscitated" their lives through the "internalisation of blame" as well as the importance of offenders' intrinsic motivation as a psychological construct associated with the normal adjustment of offenders sentenced to life imprisonment.

Battles of and with existentialism: resuscitating a lifeless life

Based on the results of this study, almost all newly-admitted life imprisonment offenders go through predictable phases when they enter a correctional facility for the first time. In particular, for offenders serving life sentences, the experience of incarceration is overwhelming: it institutionalises them (in other words, their "mind[s] become confined to prison life") and leaves them disoriented ("lost in the system"). Experienced as culture shock (Where do I fit in?), prison becomes the one environment to which all offenders are expected to get accustomed to and adapt as early as their first day of incarceration. Thus, the participants' preoccupation with struggles of "fitting in" was construed as strangers trying to adapt to a new lifestyle, with varying patterns of adaptation from one participant to the next.

In the context of imprisonment, culture shock was described by Sunette Meyer as a psychological condition of stress and uncertainty that manifests during the early phases of incarceration due to new and strange circumstances. As an ex-lifer, Moruti referred to "a certain fear [that exists] in prison", which he associated with the phobia of being "locked in" and "confined to prison life". Anene (2013) and Antwi (2015) both refer to this phenomenon as "prisonisation", whereby long-term offenders inevitably adjust to prison life. At this stage, offenders gradually lose autonomous decision-making powers and begin to perceive incarceration as inevitable, thus ultimately defining themselves within the prison context. Consequently, "to battle" prisonisation in order to uplift themselves and "get out of [the] situation" in which they found themselves, it appeared that ex-offender participants did soul searching through introspecting and exploring alternatives of "remain[ing] relevant". Two of the

identified needs were the need for spiritual awareness and the need for education. To illustrate, Sunette and Moruti said:

…you feel destitute, lonely, you feel left out, you feel lost in the system. Then first, no education, you must get spiritual awareness. Where do I fit in? This is where the spiritual workers come in and give you that spiritual awareness…they start working on your psyche and tell you that, yes you are still a human being, you are still worth it…and then you become aware of your own needs…and you identify those needs as your own and will include the need to uplift yourself. And for you who are inside the correctional centre…what do you see to uplift yourself? To get out of this situation that you are in? Education is a way out. – Sunette Meyer

…there is a certain fear in prison, the perception that when you stay for a long time, your mind becomes confined to prison life. In order to battle that, in order to be relevant, at least you can study, then education will open your mind, regardless of how long you are going to stay in prison but as long as you are relevant. I wanted to remain relevant, to be honest. I didn't want my mind to be locked in; I continually told myself that they would rather lock my body but not my mind. That's why I was informed and advised that education is the key that will open one's mind. – Moruti Letlapa

The idea of education as "the key" and "way out" narrative emerged strongly among the participants. The extracts below underscore the idea that the participants relied on education to find meaning and "resuscitate" themselves from the life sentences they were serving. Reflecting on the notion that education transforms lives and brings hope to incarcerated students, Thulani remarked:

…it [the private prison] *had the kinds of programmes that when I looked at raised questions such as "With the life sentence I'm serving, if I enter prison with nothing, am I prepared to leave prison with nothing?" I must do something that will change my life, to turn my life around for when I arrive outside. That is when I started conducting my research in terms of, if I were to study, which field would I passionate about?* – Thulani Tshabalala

This was echoed by Moruti:

…what I am I going to fall back on if it might happen I get a second chance in life? I get parole, what am I going to do with my life? Am I going back to doing crime or should I do something that will assist me in getting a better opportunity by participating in the economy of the country, which is a degree? – Moruti Letlapa

With local and international researchers claiming that ex-offenders who engage in HE are more likely to get absorbed in the labour market and desist from crime relative to uneducated and unemployed ex-offenders (Anene, 2013; Mulenga, 2020; Pilane, 2019), I thought it necessary to explore the importance and meaning of HE

from the perspectives of the participants. The analysis revealed subtle yet inconspicuous motivations and ambiguities for participating in HE. I probed these, and Rock said:

…not only do I study to empower myself, but…after studying I will secure employment which would help me fend for my family. – Rock Lefatse

Rock portrayed HE as a tool to empower himself and take his family out of poverty. Similarly, during my conversation with Sunette, she mentioned:

In 2019…I want 24 000 offenders to be trained in accredited skills; that is my personal target and I will go through lengths to reach that target. But I'm not reaching that target for reaching the target; I'm reaching the target to make sure people that are incarcerated have the appropriate skills and an added advantage to help them find employment, to be employable…[so] *you can feed…you can go and buy at Shoprite and you pay your children's school fees.* – Sunette Meyer

In respect of the two accounts above, and by way of conclusion, three arguments can be made: (1) Making sense of life imprisonment appears to have facilitated participants' decisions to turn their lives around towards a more sustainable, crime-free life by (2) empowering themselves via education, since HE was perceived as fundamentally important for attaining employment after incarceration. However, by doing so, (3) the participants also attached different meanings to HE, with employment expectations being highlighted the most. This finding sharply contrasted with Theme 6 (A double-edge sword), which demonstrates that the participants' labour market expectations to fend for themselves and their families were generally unfulfilled.

Intrinsic versus extrinsic motivation

The conclusions made immediately above implicitly delineate offenders in terms of their participation and non-participation in correctional education, and further delineate incarcerated students' intrinsic and extrinsic motivation for participating in HE. As reported by Sunette Meyer, there are some offenders who, either due to their age or given that they will be released with criminal records, steadfastly choose not to study while incarcerated because they see no value in education. For instance, to try and facilitate their parole dates, Sunette exemplified extrinsic motivation by referring to offenders who, under the pretext of joining a training programme, would study or participate in correctional education as an incentive for early parole but

nevertheless do not complete their education because "they are in and out". She commented:

…There are many of them who feel education is a waste of time. There are two groups…they are either too old or too young. The middle-of-the-road group is always willing to change and they are willing to be educated. – Sunette Meyer

With this in mind, it can be deduced that the ex-offenders who participated in this study constituted "the middle-of-the-road group", implying that they were intrinsically motivated to study and were neither too young nor too old, which could have contributed to them participating in the research study. At the same time, the factors enumerated under Theme 1 are also given cognisance as possibly contributing to the perception of education as a waste of time, including but not limited to poor labour market prospects, academic incompetence, past traumatic school experience, general dislike of school, and engagement and preoccupation with deviant groups and peers. All these factors combined imply that offenders are less likely to join/participate in correctional education because educational achievement does not appear to offer tangible benefits. In the opinion of Sunette, healthy adjustment in prison (discussed subsequently) requires some form of motivation and that motivation must originate from within (intrinsically). The type of internal motivation Sunette referred to was demonstrated by Duncan when he elaborated on the rationale for participating in correctional education. He reasoned:

…I was providing indirect counselling to these lads. I had the skill of talking to them and they felt better afterwards, with some eventually going back to school…That is what also motivated me to go back to school and finish up. – Duncan Molefe

In contrast to Duncan's intrinsic motivation for participating in education, Moruti attributed his own motivation as stemming from external "privileges". He said:

I didn't even see myself completing law; I had never even imagined myself completing or being in possession of a law degree. I simply studied to push time…At that time, when you were studying in prison, there were certain privileges that you received compared to those who were not studying, because in maximum, in order to get to the reception [admission area of the prison], *you must have an escort or an official and you have to explain where you are going. But then if you were studying and carrying books, the officials were lenient to such an extent that when you tell them that you are going to school, they just opened the gates.* – Moruti Letlapa

While conversing with Sifiso and Sunette, I also picked up that there equally seemed to be an intrinsic need to be accepted by one's family. Sunette elaborated on the expectations of the family, while Sifiso highlighted the importance of family support during incarceration. They remarked as follows:

> …[The] *intrinsic need to be accepted is also basic, the intrinsic need to be accepted by your family…the needs of your* [family]*…that is the drive. And also, one of the intrinsic motivation factors is we, what are the expectations of your family while you are incarcerated. You must also service their needs to believe in you and the easiest way to believe in you, if you can say that I took out pen and paper and studied.* – Sunette Meyer

> *…When I went into prison, I already had matric, so I started studying there, uh lot of challenges, funding and stuff like that, but the family supported me a lot to be able to continue studying…At the time, I didn't think I was building a career; I thought I wanted to do what I wanted to do, but do it the right way because I became passionate about it.* – Sifiso Khumalo

> *Initially, my mother was paying* [for me]*, but because she wasn't earning enough money, she couldn't afford anymore due to financial reasons and I couldn't further my studies. Ultimately, I contacted Unisa and after that I requested NSFAS to assist me financially so that I can pursue my dreams. I successfully secured a bursary with NSFAS which helped me to bridge the gap between the finances that I was encountering.* – Rock Lefatse

Altogether, these extracts indicate that the participants seemed to have similar views and demonstrate the involvement of psychological constructs in the decision to study. Consequently, both internal motivation and resilience inspired the question "What psychological theory explains a healthy course versus maladjustment of offenders sentenced to life imprisonment?" – to which my attention now turns.

Internalisation of blame and the Prison Adjustment Model (PAM)

This theme is predicated on the assumption that first-time and newly sentenced offenders are more susceptible to denial at the early stages of their incarceration (i.e. from admission to approximately two to two and half years, as illustrated by the ascendancy of the graph in Figure 6.3 below) that gradually flattens out with the progression of years to indicate normalisation and a healthy course of adjustment). Upon exploring the participants' adjustments during their incarceration, my curiosity was instantly aroused by Thulani and Moruti's remarks because they corroborated Sunette's account. They said:

…if you can get your hands on the statistics, you will find it's people with two years and longer. The first year, you are interested in anything about DCS because you still blame, you still angry. The second year, you came around to say maybe I also have a percentage…I also contributed to a small version of why I'm incarcerated. Then you get alternatives in the second year. Towards the end of the second year, you say okay…I found God. I found my maker. The third year, you say here I am; you realise you're in prison…what am I going to do with my time? The third year, you start realising, okay…it's not my mother's fault, it's not my father's fault, it's not my girlfriend's fault, it's not my friend's fault, it's my fault that I am in here. Okay, the social workers work on you, then the other programmes except education start to work on you [because] *I believe before an offender joins any education and training programme, they need to…uh…go through social work and spiritual care. Because it's when you start finding yourself.* – Sunette Meyer*

…I know deep down inside myself, I have a wish for a brighter future. So I wanted to study so that when I am released from prison, it becomes clear that the reason I was incarcerated…or how I got to be involved in criminal activities was just a terrible mistake that I have already realised, so I had to correct that by going back to school. Indeed, I knew that it was time to make corrections so that when I arrive outside, I can support my family and grow in life and live a positive life without problems. –
Thulani Tshabalala

I cannot say I am special because I was not the only one serving life sentence and studying. I would imagine that most life imprisonment offenders are the ones who are studying compared to those who are doing minimum sentences. – Moruti Letlapa

These accounts resonated with my past experience as an incarcerated offender and made me appreciative of my insider perspective. To this end, and parallel to the claim made above, I fully support Sunette's exposition because – in a strikingly manner – the one thing that made sense during my 22-year sentence was formal education. I did not pursue HE as soon as I was in the correctional system; it was only after a couple of years following the acceptance of my sentence that I began contemplating going back to school. Likewise, some of the participants recalled that after their convictions, education was the least of their priorities. Therefore, based on this finding, I coined PAM as a psychological theory explaining a healthy course of adjustment versus maladjustment of offenders sentenced to life imprisonment. In terms of this theory, and specifically for the offenders who participated in this study, a healthy normal course of adjustment implies that there must be ownership and accountability of the offence committed – also referred to as the process of internalisation which is accompanied by a subjective feeling and willingness to accept the blame and therefore one's sentence. Figure 6.2 below shows the normal trajectory of a prison sentence in relation to its acceptance. I reason that reaching

out to family members and receiving spiritual care and awareness – be it psychological and/or social work intervention – are in accord with PAM, and this indicates a normal course of adjustment.
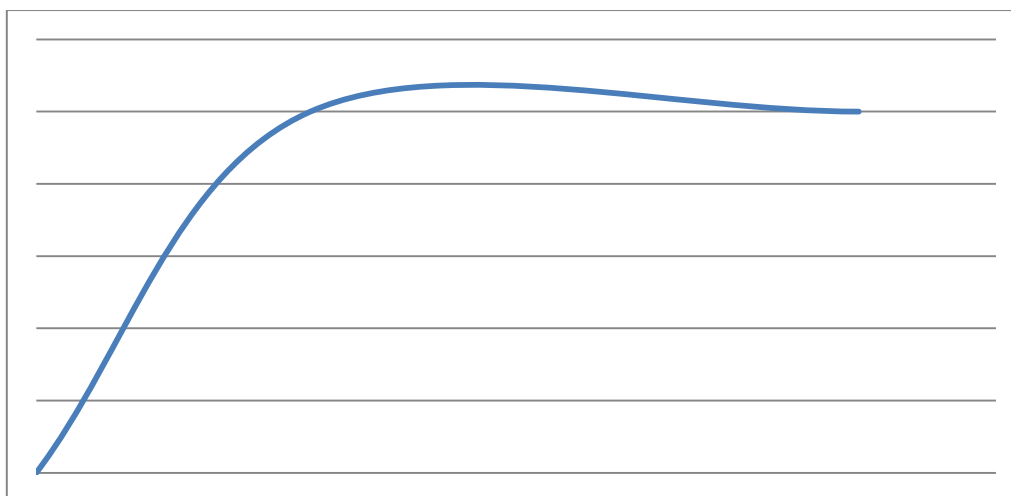
Figure 6.2 Graphic presentation of normal and healthy course of adjustment

Whereas taking accountability or the blame represents a normal course of adjustment, denial or externalisation occurs when blame is projected outward to other people and ultimately culminates in maladaptive coping mechanisms. In the context of this study, maladaptive coping mechanisms can take various forms, including the use of counter-productive strategies and ideologies as well as the perception of education as a waste of time, which in turn serves to justify any lack of action on the part of the offender. These also include adopting a culture of complacency, ignorance and passiveness. Denial can be understood as preoccupation with the non-acceptance of the prison sentence because it is perceived to either moderate or ease the impact of the sentence.

The extracts below clearly articulate the issue of prison acceptance versus denial. Instead of being in denial, the participants accepted their sentences. The finding that ex-lifers who "accepted" their convictions and simultaneously served as models for other offenders to "see" that they were "surviving" and "able to adapt" implies that the participants could also "restart from scratch" and rewrite their life biographies. This is what they said:

It wasn't like that with me; no…I accepted it [life sentence]. *I was never in denial…I did not. From back then until the time I was released, I was never in denial.* – Sibusiso Zungu

Even other fellow inmates were able to adapt…they were surviving…I could see them, so this also
meant I could also restart my life from scratch and continue with my life just like other people. –
Thulani Tshabalala

Similarly, reflecting on his normal course of adjustment in prison, Sifiso reported using his matric certificate to gain access to the prison's school section when he joined as a tutor and assisted in teaching fellow offenders. He said:

…The following year, or following years, I don't exactly remember when, I requested to be relocated
to the education section, but what assisted was that I already had matric, so I went there to teach
because the minimum requirement to teach ABET at that time was a matric qualification…So I went
there with my matric certificate in order to teach people ABET. – Sifiso Khumalo

Once more, Sifiso's account consolidated the idea of education as "the key" that sets the tone (or presents opportunities) for one to be successful. It further re-endorsed Sifiso as falling into the category of the "middle-of-the-road group" which Sunette described earlier as being receptive to rehabilitation via education.

6.2.3 "Stormy weather" ahead

It is by no means a new revelation that correctional education is inundated with institutional challenges arising from systemic challenges such as academic delays and distractions, the negative attitude of prison administrators towards HE, studying under duress with minimal student support and incurring financial problems resulting in participants not completing their degrees/studies in the prescribed period (Johnson, 2015; Mabuza, 2020; Scott, 2010). The participants' narratives of their lived experiences of participating in HE confirmed that studying in prison was a turbulent journey compounded by many institutional challenges, both from Unisa and the DCS (Mdakane et al., 2021). Notwithstanding that South Africa is cited as an exemplary country in driving the rehabilitation and reintegration discourse in Africa, Dissel's (2000) opines that a lot of work still needs to be done. Indeed, a number of factors seem to be at play. The present study notes that while the acquisition of knowledge and skills are important during incarceration (Correctional Services Act 111, 1998), there are challenges inherent in the process (Frank et al., 2012; Hopkins & Farley, 2015; Watts, 2010). The accounts below served as testimony to these claims.

I've been studying, even though, you know, it has never been rosy. It's been quite an interesting
journey even though there were challenges, there were ups and downs. Understanding the

environment you were in, confined. In prison, we don't have a lecturer, so studying through ODL, one must have finances to be able to contact the lecturer if there are things you do not understand in your tutorial letter. So I went through a lot at Matatshe…it's a very poor institution in terms of corresponding with an institution of higher learning. So I became stuck upon being stuck…I stayed almost three years eMatashe Thohoyandou. – Sibusiso Zungu

…other limitations are that everything you study, especially at master's level, your research must be limited in such a way that you must conduct your research right here, otherwise you will have a problem of getting out if you want to conduct your research elsewhere, collecting data outside…you must do everything right here. – Sifiso Khumalo

It didn't sit well with me. I felt bad, it was a setback, it delayed my academic progress and from completing my studies…I would've completed within four years but the years kept increasing such that it took me almost seven years to complete…This also demoralised me because I was of the impression that correctional services assists with our rehabilitation but somehow I realised that this was not the case and I felt betrayed, especially after working hand-in-hand with that social worker in programmes where I was also a facilitator. I saw that they were depriving me the right to empower myself. – Duncan Molefe

Implicitly, these accounts amplify the participants' emotional pain. Thus, to capture and illuminate these inherent yet subtle challenges, the first subordinate theme (Observing others) focuses on the participants' acquisition of HE. The second subordinate theme looks at the DCS's collective attitude to HE. Finally, as suggested by the narratives and shared lived experiences of the participants, the third and fourth themes illustrate that with a criminal record, "formal studies are [just] a piece of paper" that comes at both emotional and financial costs. Correspondingly, the four subordinate themes discussed hereunder are clustered together within this particular superordinate theme ("Stormy weather" ahead) because collectively they seem to represent an element involving or characterised by the offenders' painful experiences of participating in HE during incarceration.

Observing others

This subordinate theme was informed by the participants' experiences of the lack of formal career guidance and counselling. By requesting the participants to reflect on their career choices, I noticed immediately that none of them had received prior formal career guidance and counselling. In fact, the participants' career choices appeared to have been based on intuition and advice from other unprofessional sources, without necessarily contemplating the implications and repercussions for

their own chosen careers in respect of future employability prospects. This is what they said:

…when a person comes to me, already they have a preconceived idea of what he wants to be, he wants to become a lawyer…Firstly, find out what I want to study for…eh…will I be able to find employment in the labour market…then when I try to convince him otherwise, they don't want to listen. People come to me who are in for rape then they say I want to be a teacher; you tell them that career is no longer open for you anymore. The moment that you were found guilty of that act…that career choice closed. But they don't want to listen because sometimes people have their own ideas…guys that are in need of education who are incarcerated must be able to eh… willing to accept that there are certain limitations in the open labour market and they must choose alternatives. –
Sunette Meyer

I think it [career advice] *was good apart from the fact that I wasn't told how morally a person should conduct himself. Well, the teacher told me that I should pursue law and only left it just like that; it was left in a comma and not in a full stop because I ended up committing crimes which ultimately destroyed or almost destroyed my law career. Even now, I am still struggling to find my feet in the law profession. I believe he* [the teacher] *was supposed to have at least sat with me, had a chat with me to say that if you want to pursue this particular profession, these are your requirements. This is how you should conduct yourself; this is how you should behave; you should not get into trouble with the law and things like that. So unfortunately, that was not the case, so I being the child that I was having no father figure, life took me the wrong direction which ended me up having me on the wrong side of the law.* – Rock Lefatse

I found myself developing an interest to go back to school after I was inspired by fellow offenders who were ahead of me in terms of their qualifications…there were offenders who were studying law, others were studying B.Com [but]*…my reasons for going back to school, I was encouraged by a fellow friend and inmate who pointed out to me that due to my age and the years that I would still have to spend in prison, my career in football could be jeopardised and suggested that I rather consider education because in prison education was free. That's when we, after passing matric, we were granted an opportunity by Unisa to study for a certificate to become ABET practitioners.* – Moruti Letlapa

Moruti's account consolidated the view that he too had observed from others, affirming that he had not receive any form of career counselling while in prison. These remarks also confirmed that the participants' development of career aspirations had been influenced by other inmates and teachers who had all provided unprofessional career guidance and counselling. Thus, based on these accounts, a number of deductions were made.

First, these extracts created the impression that career guidance in prison is informal and unofficial, as the participants pursued their careers because of "observing others". This view was cemented by Duncan, who remarked:

…Ok, there were some correctional officials who used to encourage us, including other fellow inmates coming from private prisons saying to us, "Ah! You are just loitering around and doing nothing; other inmates are studying." – Duncan Molefe

Second, Moruti conceded that after matriculation, he pursued law after he had been influenced by a friend. Likewise, the reason why Rock pursued law was because of his former school teacher's influence in the corridors of the school. He elaborated on the issue by stating:

…not having a father made life difficult because I did not have any father figure who was going to advise me in advance...I didn't even know the reason why I was going to school. The only thing that motivated me to go to school was the fact that I was excelling in my studies whereby I was taking position number 1. – Rock Lefatse

Third, upon exploring registration issues (i.e. determining the participants' knowledge and their awareness of registering with, for instance, the LSSA and affiliation with the NBCSA), I found that they did not possess such information. Their responses were as follows:

To be honest, I was not aware, I didn't have that information, I only heard of it whilst I was about to complete that there is a specific council of advocate [and] *law society that I have to apply to grant me a certificate to practice, and seek to scrutinise me and my previous life as to whether do I have a previous conviction and if that is the case then I will not be accepted. –* Moruti Letlapa

I enrolled for law not knowing much about the profession. I followed this stream because of the advice I received from my old school teacher…In actual fact, I didn't even know what the law profession really meant. – Rock Lefatse

Similarly, in my conversation with Thulani, he confirmed that he had single-handedly undertaken research to explore his career ambitions in terms of finding out what he was passionate about. Upon reaching his decision to study psychology, I probed whether he was aware of the requirement to register with the HPCSA and the implications of applying as an ex-offender with a criminal record. He said:

…Before I started studying psychology, I was not informed that eventually I would have to register with the council [HPCSA] *which regulates the psychology profession. I chose it because I liked it. –* Thulani Tshabalala

In a similar fashion, Duncan reasoned:

…There were social work students coming in [prison] *to conduct their study practicals in prison, so I thought it would be convenient for me as well to enrol for a social work degree and change in due course because I'm here in prison and I saw them coming in to conduct their practicals…So how could I be denied that opportunity while I myself am in prison? – Duncan Molefe*

By choosing his qualification independently without consulting anyone, Duncan's action resembles those of other participants and was construed as downplaying the role of career guidance. The result was that all the participants were unaware of the imminent registration issues with the respective councils. For instance, Rock said that he had only become aware of the requirements to register with the LSSA at the latter stages of his law degree. This lack of knowledge intrigued me insofar as it reconfirmed the participants' varied pathways to participating in HE, with some stemming from passion and others witnessing fellow incarcerated offenders. Therefore, the inference drawn here is that the participants' future potential careers in relation to the crime/offence committed were not considered in relation to accessibility to those professions in terms of the fit and proper clause. Hence, under the theme "Observing others", it is concluded that the participants enrolled for their qualifications based of what they had observed from others without receiving formal career guidance and thus being unaware of the requirement to register with specific councils at the completion of their qualifications (either for occupational purposes and/or performance of their practicals).

HE comes with (financial and emotional) costs

As a former incarcerated student, I entered the research field fully conscious of the complexities of studying behind bars, notably the exorbitant cost of HE. This notion is supported by Moore (2016) and Mabuza (2020, p. iv), whose recent findings established that the majority of HE students dropped out "because of insufficient funding, late allocation of funds, stringent NSFAS requirements [including] late payment or non-payment of allowances…" Thus, the central question guiding the construction of this theme was "How were the participants able to afford and finance their HE studies? While the participants confirmed to have studied at some point through the assistance of NSFAS, in my conversations with Duncan and Moruti, both highlighted that they had studied their matric and N-courses free of charge (courtesy of the DCS). Yet, ironically, they attained their university degrees (social work and

law degrees respectively) through the financial assistance of NSFAS, since the DCS does not fund HE. In discussing this issue, the participants said:

I applied for NFSAS when I started. My first year, for example, I studied it via NFSAS, but the second and third years I paid for myself. In actual fact, there was a family member who was paying for me because NFSAS was no longer willing to finance my studies. Their reasons were not clear cut; in some instances they would say…one day they said my age is a problem because when I complete my BA degree I will already be unemployable, something of that sort. In fact, it was not clearly stipulated because I even tried speaking with NFSAS managers in Pretoria. – Thulani Tshabalala

I studied throughout via NSFAS…It was not always easy…you had to receive certain documents as part of the NSFAS requirements…sometimes these documents had to be posted via mail, do you understand, from KZN coming this side to secure all the required documents. Still, after that, if they give you that funding, there are challenges with the modules registered in relation to quotations at the bookshops, all those stages. – Sibusiso Zungu

I was first exposed to NSFAS when they still required documents from home that would show the income of the household and all that to support your application. And they changed and said as long as you're in prison, they require only a letter of your admission stating that you're in prison and no other document as supporting your application. That caused a problem, which was how things were when I left, you had to support [your application]*, so in other words, you are competing with people on the outside who have access to those things while you don't have them, which I thought was a little bit unfair.* – Sifiso Khumalo

NSFAS sponsored everyone; it didn't discriminate against anyone in terms of the type of sentence an individual was serving... It also did not require any information regarding the nature of the crime. It only required proof of residence in South Africa and the next of kin that you are indeed a South African and you can be able to be traced after completing your degree when you are employed in order to pay back the funds. – Moruti Letlapa

Construed from the participants' perspectives, these remarks highlighted intricate findings regarding NSFAS – and in light of the "limitations" set out above, one can surmise that previous access and openness to the NSFAS funding model relied on a one-size-fits-all approach, since it "sponsored everyone" (including life-imprisonment-offenders), thereby ignoring offenders' security classification codes and the nature of the offences committed. As will be shown subsequently, disregarding this information sharply contradicted the fit and proper requirement, thus entrenching feelings of having incurred perpetual debt among the participants. Despite the financial assistance from NSFAS, the results still showed that access to HE came neither cheap nor easy. Moruti and Thulani elaborated on this claim:

I've just graduated and currently I am not studying, although I have considered furthering my studies into master's, but I've decided to give myself at least one year to sort out my finances, seek a job or find employment because it is tough out here. Without employment or without money, there is nothing you can do, reason why I could not further my studies. I wanted to be financially stable so I can sustain myself. – Moruti Letlapa

Due to the late issuing of my results by Unisa, the person paying for my studies became suspicious that I was dishonest, that maybe I wasn't studying all this time, so he withdrew from sponsoring me. Based on that, I encountered the problem of proceeding with my honours because here I am…outside now and my project is to find employment, preferably in the field of psychology where I can work to finance my honours degree and continue studying. – Thulani Tshabalala

Thus, owing to circumstances beyond their control, but mainly due to financial constraints, some of the participants were coerced to defer their studies. For example, Sibusiso cited personal reasons and poor administration of the prison education system, but especially that his funding had been terminated around 2014. Still on this subject, because I had already established from my conversation with the participants that they were aware of the terms and conditions of the NFSAS contract (i.e. part bursary, part loan), I asked all the participants whether they considered repaying the loan. This is how they responded:

How can I repay NSFAS whist I am unemployed? I am going to pay NSFAS immediately when I have a contract of employment and it says I am working. I am unemployed now, how can I pay? Meaning I was given information that I must put to the drain. – Moruti Letlapa

I do not I have the means to pay…I am unemployed. – Duncan Molefe

I'm economically inactive; I don't work so to speak. So how do you expect me to refund you? Automatically, it's a challenge…I don't work, where do you expect me to get the money from? It's self-sabotage because there is no one saying they do not want to repay their debt. But as of now I'm not working, but I'm willing to pay the refund as per the assistance I got through your financial institution. So I understand the terms and conditions of that contract I bound myself… unfortunately the very same people from the government are the ones rejecting me, sometimes even private institutions play a better role. But the very same government that gave me this thing is also rejecting me. – Sibusiso Zungu

No, I am not paying. Because currently I don't have the means nor the capacity to pay back the money because after I completed my studies, there was no government institution that wanted to bring me on board…although I fully wanted to pay them but since well I couldn't find employment in the government sector then I was discouraged from paying such. – Rock Lefatse

From these narratives, it seemed warranted that the non-repayment of the loan as part of the contractual obligation effectively meant that the participants found themselves in perpetual debt while simultaneously running the risk of being blacklisted. Finally, both Moruti and Rock made an interesting observation:

…Once the qualification has been granted, an opportunity for employment may present itself and ex-offenders will be in a position to repay NFSAS. Now, if they don't employ us as qualified professionals in our respective fields, then how is NFSAS going to help those who are coming after us? – Moruti Letlapa

…The very same NSFAS that took me to school, which by the way is a government institution, is failing me long after I have graduated to get me employment, to say relax the law when it comes to previous convictions because these people have been sponsored by us and as such at one stage we will need them to repay the money so at least the money they repay can help others that are coming behind them, but that is not happening even today. – Rock Lefatse

By implication then, one can reasonably assume that the non-repayment of the loan adversely affects NSFAS's sustainability and funding model as a business and financial institution, further reinforcing this study's finding that HE comes at both financial and emotional costs. Mabuza (2020, p. iv) recommends that the student-centred model should be "overhauled and replaced with an integrated system…[to] assist in the efficient administration of NSFAS".

The DCS's attitude to HE

Prison studies all over the world consistently show that attitudes play a significant role, specifically where research indicates that participation in correctional education breeds contempt among prison officials (Mutubari, 2017; Watts, 2010). "An eye for an eye makes the whole world go blind" – this quote by Mahatma Gandhi underscores the notion that if we keep punishing those we deem cruel, we are no better than bad people. How is this relevant? When one enters prison, two categories of people are immediately discernible: offenders and prison officials. Although simplistic, in reality this distinction inescapably constitutes the "us" and "them" binary. As a former incarcerated individual, my experience –supported by many informal conversations I have had with other offenders and ex-offenders – suggests that the DCS is a "system in transition" undergoing a noticeable paradigm shift in as far as the initiation and indoctrination of correctional officials are concerned. For instance, it is irrefutable that the DCS in an amalgamation of the "old

cohort" of prison officials recruited in the "old days" of the Department of Prisons (and therefore conceived as still implementing the old punishment rhetoric) and the "new cohort" of prison officials recruited after the transition to the Department of Correctional Services (and therefore perceived as advocating the new rehabilitation discourse). Nevertheless, I acknowledge that this polarisation may not invariably be clear-cut when it comes to categorising correctional officers' attitudes because others may fall in between, thus demystifying this binary. However, with the exception of a few correctional educators, the views and opinions of the participants suggested overwhelmingly that prisons continue to masquerade on paper (e.g. White Paper on Corrections, 2005) as being pro-education while they are in fact experienced as anti-education. This premise is predicated on the following account:

Initially, I tried during the early years of my sentence…around the 2000s to go back to school, but ay' I was hopeless and the correctional officials also demotivated me by saying, "Ah! you, you are wasting your time, you will never leave prison with so many years. Do you know anyone who was ever released with a life sentence except for Nelson Mandela?" What I encountered upon my arrival [in prison] *ended up demoralising me.* – Duncan Molefe

Moruti's response and observations, however, seemed aligned with my experiences of correctional officials' attitudes to HE:

…the treatment in prison is twofold, it depends on the particular official and how they view education but majority of the officials in prison, to be honest they encourage education. There are those few elements that have a negative attitude towards offenders who are studying. – Moruti Letlapa

I probed further and asked Moruti to explain what he meant by "negative attitude" and he responded thus:

The preventive measures, the demoralising part, portraying education as unimportant, that you are here in prison to serve a sentence and not here to study. Even if they see that through education you are attempting to empower yourself, it will never work for you because you have a criminal record…The criminal record becomes an issue whilst you are still in prison. – Moruti Letlapa

In a similar way, to contextualise his experiences regarding correctional officers' attitudes to HE, Sibusiso reiterated his version as follows:

…other related challenges you had to go through, understanding that some members [of correctional services] *or other warders are not happy that you are studying because they come from where they come from and are hired as security personnel. So now, if you study while you've been an offender, committing crimes outside and all of a sudden you are receiving money* [financial/study assistance]

and they are the ones who submit the assignments on your behalf…it doesn't sit well with them…well with some of them…some are very good. – Sibusiso Zungu

Thus, for the most part, as reflected in the extracts above, correctional officers' attitudes to HE seemed to vary. Therefore, based on these results, the correctional officers' attitudes could not be determined since this area was beyond the scope of the study.

Formal studies are a piece of paper

Formal studies are just a piece of paper…you don't have skills; you have knowledge…When you finish with your tertiary qualification, you just have a piece of paper. But it is what it is, you have a piece of paper, you don't have experience, which nowadays is a must in the labour market. They are always looking for people with experience; a person with experience is always better viewed and better favoured. – Sunette Meyer

During my conversation with Moruti, being aware and in the moment allowed me to pick up similar sentiments and a sense of exasperation in his voice when he said:

I am confused, I don't know whether I am going forward or backwards; it's like now I am having a piece of a paper that will never work for me after all the efforts and the sacrifices I made in terms of changing my life. – Moruti Letlapa

Based on these accounts, I derived the understanding that education alone does not guarantee employment in the labour market. Elaborating succinctly on this issue, Sifiso said:

It [education] *is important, but it alone, there's not much it can achieve, you need other things added over and above to make it, alone, it doesn't make you successful but puts you on a platform, it sets opportunities, it sets the tone for you to be successful. – Sifiso Khumalo*

In this regard, researchers advocate bridging the gap between HE and the field of work (Hopkins & Farley, 2015; Quan-Baffour & Zawada, 2012; Seelig & Rate, 2014). Correspondingly, connecting the verbatim quotes of the participants seemed to construct the idea that HE "is important" because "it sets the tone for…opportunities, but [nevertheless] it alone…doesn't make [one] successful" if one still goes to "bed on an empty stomach and there are children…going to bed on an empty stomach". Implicitly, by itself, HE was shown to be an inadequate "hook for change". In other words, the dynamic and complex nature of the desistance process requires more than mere exposure to HE in terms of successful rehabilitation and reintegration. In accordance with Moruti, who said:

…it depends on the financial circumstances you are facing as an ex-con, irrespective of the papers [qualifications], *that does not help you because of the stigma of being an ex-con.* – Moruti Letlapa

Further renouncing the "rehabilitation through education" discourse while corroborating the finding that HE alone without employment "does not help", Sunette emphasised:

Formal education alone doesn't guarantee employment, as there appears to be an oversupply in the labour market. And…people [employers] *are weary in the current climate, people are very afraid to appoint ex-offenders. Especially if the reason why you were incarcerated for a crime is attached to an aggressive act and the current situation we have with the ex-offender who murdered that girl from Eastern Cape is not doing good for the people.* – Sunette Meyer

This account seemed to confirm and reflect that one's previous criminal history is powerful enough to distort/shape other peoples' perceptions (especially employers) regarding the applicant's future criminal conduct.

Given these accounts, I enquired from the participants whether they would have proceeded to pursue their qualifications had they known or been informed of these challenges prior to enrolling. They responded thus:

No, I wouldn't; I would not do that because I would know what I would be putting myself into. That is like wasting my time by studying something that will never benefit me…meaning I was given information to put in the drain. But based on the silence between Unisa and NSFAS, that created an impression that what I am doing is applicable. – Moruti Letlapa

I have a psychology degree but at the same time I find myself a cleaner and sweeping streets…it's the same as having just wasted my time. – Thulani Tshabalala

Similarly, during my conversation with Duncan, I found resonance of this relentless and "perpetual punishment" of the criminal record when I enquired "How important is this [SACSSP] certificate to you?" He commented as follows:

It's important in the sense that without it, you won't practice your profession… you won't be a professional social worker without registering with the council; you are not considered a fit and proper person to practice. – Duncan Molefe

Consequently, this also implied that access to and openness to the labour market depended on context. This finding resonates with Theme 7 and confirms that a criminal record is a regulator of opportunities. It also showed that access to the SACSSP relied on the fit and proper clause as a requirement for admission to the profession. Thus, as a final point, the finding that the participants felt they had

wasted their time by pursuing HE with no future prospects of finding employment is not only further entrenched by Duncan's account but also inspired feelings of resilience, as demonstrated by the next theme.

6.2.4 Moving walls and pushing boundaries

The primary question guiding this study was "What are the lived experiences of ex-lifers as they reintegrate into society via South Africa's labour market in search of employment?" In concert, the theme "Moving walls and pushing boundaries" and the four subthemes listed hereunder are clustered together because they depict the participants' stories of resilience and mental agility. Based on the results of the study, there is an argument to be made that despite being sentenced to life imprisonment, there was still a glimmer of hope among the participants that someday they would be released and that they would redeem themselves. Insofar as the meanings attached to second chances and how participants made sense of it and constructed the idea that coping with a devalued social identity (i.e. by progressing from uneducated offender to the construction of a new, legitimate career) comprised prison identity management crises (co-existence of conflicting identities), there must be a willingness to reveal one's true identity and start from the bottom and work one's way up while simultaneously forming new as well as reaching out to old but legitimate networks. For example, the participants conceived of HE and volunteering as second opportunities to redeem themselves and "start from the bottom and work [their] way up". Collectively, this is what the participants said, beginning with Sunette who referred to offenders' prison identity crises:

People don't give you their real identity in prison…there is this fear that many people, many are offenders with outstanding cases. They are afraid to reveal their own identity…[so]*...there is this fear that their outstanding cases will reveal themselves…their real identities…*[but]*…if you say you are rehabilitated while you are incarcerated, you must be able to say "I'm willing to reveal my identity". –*
Sunette Meyer

Therefore, owing to the fear of revealing their true identities in prison, some offenders (according to Sunette) develop prison identity crises by concealing their true identities and/or constructing alternative ones, suggesting the co-existence of multiple identities. However, Moruti emphasised hope. He said:

…After realising that I was about to complete my degree, there was hope I could be given a second chance to go outside. That's when it occurred to me that with my degree, there's an opportunity to be

given a chance as a lifer, that I can go back to society and be employed so I can restrain from crime
[because]*…if a person has served his sentence, he is supposed to be given a second chance and start his life on a clean slate.* – Moruti Letlapa

Despite being "permanently removed from society", this particular extract illustrated Moruti's visions and ambitions for a constructive life. In essence, this account confirmed that dreams and hopes for a brighter future were associated with valence, accompanied by the pursuit of HE. Next, to demonstrate how participants started from the bottom and worked their way up, I specifically make reference to the extract below, captured during my conversation with Duncan when I asked "How do you make ends meet?" He said:

I'm currently at the Department of Health as a community health worker…I have been volunteering there since I got out of prison because I'm unemployed…I've been doing this voluntary work for four years now, for which they provide me with a stipend. It [stipend] *has gone up a bit now; it's R3 500 according to the minimum wage because last it was R2 500. Although it's not enough, it's too little; it doesn't do anything, but I am holding* [on] *to it because at least I can bath. What if…what about someone who doesn't receive the R3 500? They have to eat, they have to provide…* – Duncan Molefe

It was encouraging to note the value of HE on social reintegration, with volunteering assuming a prominent role, as explicated by Duncan above and championed by the routine activity theory (Warr, 1998). This theory posits that strong social bonds (e.g. employment) decreases crime participation via its effects on one's activity and lifestyle patterns (Schreck, et al., 2002). For instance, as central tenets, it argues that society stands to derive considerable benefits by augmenting the employment prospects of people previously in conflict with the law because keeping ex-offenders preoccupied in the workplace and/or volunteering (as pointed out by Duncan above and Sibusiso below), for example from 08h00 to 16h00, reduces the propensity of recidivism, since with the stipend they received, "at least [they showed they could]…cover some costs" and thus avoid the inclination of reoffending. Therefore, in its application, the results of the study showed that one less offender roaming the streets translates into safer communities.

I've worked a bit here in Waterkloof, even though I was only getting a stipend. I was doing it so I'd be able to cover some costs…I got that job through Fear Free Life; they usually partner with other companies so they told me about it…They said "[Sibusiso]*, there's a plumbing company, do something in the meantime. But when the time comes, we'll call you to come and facilitate*

programmes for us because that's your field and it's what you've been doing throughout". – Sibusiso Zungu

Valence: second chances are opportunities for redemption

I believe everyone deserves a second chance, for example this lady was in a very abusive relationship, the husband, to the extent that he wrote on her thighs "sfebe" [bitch] with a bottle. Can you imagine "sfebe" with a bottle on the thigh? So that's how abusive the relationship was and many years into it, she ended up killing him in self-defence; well, she ended up in prison. I think she served 10 years or more, and the question is should we ostracise her and say no you have killed in your past life and exclude everything else that was surrounding her, that she went through at the time, simply because somebody died. It's a question you can ask, and say no she doesn't deserve a profession because in her past life she did one, two, three. I don't believe that. I say let's afford them an opportunity, let them prove themselves; they deserve to earn a living, they deserve a second chance. That's what I would say. I am for it, except with some it's with caution as I say, from experience this person went and killed his girlfriend; the community is still angry, suppose we register him, we are aware that the community is still angry, actually they don't want him, but he wants a job in the same community, should we risk it? – Mpho Madingoane

I decided to go back to school and study because…I did not want to commit crime again when I am released from prison… I wanted something to sustain me upon my release other than crime. In all honesty, I wanted a positive change in my life because to reoffend means I will go back to prison and that will be the end of my life…That is why I wanted to study so that when I leave prison, it is clear that how I got incarcerated and involved in issues of crime was a terrible mistake that I have realised and had to correct when I started going back to school…I knew it was time to make corrections. – Thulani Tshabalala

…mainly to empower myself academically, to take myself and my family out of poverty that we have endured since I was born. Basically, I wanted a better living, not only for me, but also for my family. – Rock Lefatse

Connecting the narratives of the participants helped to construct the theme "Second chances are opportunities for redemption" to highlight the finding that even for offenders sentenced to life imprisonment, there was still hope for "a second chance to go outside" and "prove themselves" by "earn[ing] a living" through being "employed" so that they could take themselves and their loved ones "out of poverty" and simultaneously "restrain from crime". At the same time, a common underlying thread showed the importance of HE in assisting the participants to prepare for life after incarceration (also known as valence). Research conducted by Dickson and Polaschek (2014) in New Zealand's correctional system exploring the role of valence in release planning among its population of offenders found that it is the quality of

planning that offenders make, rather than the types of plans made, which are crucial in predicting whether or not an offender will go on to reoffend. This shows the importance of pursuing HE to help "sustain" and "empower" themselves "academically", and to foster "positive change". This was eloquently articulated by Duncan:

I wasn't sure [that I will ever be released]*, I wasn't sure, but one is called upon to motivate themselves and improve their lives you see?* – Duncan Molefe

In making this pronouncement, Duncan helped to address the question "How do life-imprisonment-offenders even begin to aspire and prospect for a brighter future and prepare for life post-incarceration?

Start from the bottom, work your way up

Number one, be upfront with your situation, where you are coming from, not everyone will give you a chance but…there will be. I believe there will be someone willing to give you a chance. And to start at the bottom, like every graduate, they must start every year in an income bracket. Unfortunately, you have a criminal record [and] *that is something that you will be living with…that is a regret that you will have to live with for the rest of your life. But at the end of the day, be willing to start at the bottom and then work your way up.* – Sunette Meyer

I heard about a job opportunity in Gauteng and I was in KZN; they wanted a project manager…I thought the salary was better, so I left Westville because the salary was bad. I also needed to find a way to live, you see, have money so I can develop myself, Then I was forced to leave what I loved and came to Gauteng to become a project manager for a construction company, which was something completely different from what I knew and trained for. – Sifiso Khumalo

In 2019, at the time of the interviews, Sifiso and Rock were both registered for their postgraduate degrees (PhD and master's degree respectively) at Unisa and reported that they had already matriculated when they had entered prison (so did Sibusiso). Thulani, however, informed me that although he had already matriculated when entering prison, he did not pass his matric very well; he then reregistered for matric and soon after obtaining exemption proceeded to enrol at Unisa in 2007 for a BA degree in Psychology. However, of particular significance was that two of the participants (namely, Duncan and Moruti) reported pursuing their prison education from high-school level. For example, in recollecting, Moruti said:

I began studying at Leeuwkop Maximum [Correctional Centre]*…I started at high school because when I was young, I wrote matric twice but failed it. Then I felt…the period I missed in class forced me*

to begin at Standard 8 and not to pursue matric immediately because learning was [already] *out of my head at that time; it would have been difficult for me to go straight into Grade12. –* Moruti Letlapa

Similarly, Duncan reported obtaining his matric first, before completing his vocational training (N6 in Marketing), followed by his registration at Unisa for a bachelor's degree in Social Work. Thus, in keeping with the previous theme, these extracts suggested that despite a criminal record, second opportunities and chances for redemption in society partly hinged on the participants "start[ing] at the bottom" – that is, on a "clean slate…like every graduate" and "work [their] way up". This view was informed by the participants' progression from completing their high school education to joining the ranks and community of scholarship through HE and thus the labour market. However, I was equally intrigued because not all the participants were employed at the time of the interviews. Therefore, it was critical to explore from those who were unemployed how they managed to sustain themselves financially. As before, the responses identified volunteering as not only a crucial component of the reintegration process of the participants by providing stipends, but also critical in assisting them (ex-offenders) to acquire work experience while preparing for the world of work. I share and support this view because the participants and I share a strikingly similar experience in that I too began as a volunteer in Unisa's Directorate for Career Counselling and Development (DCCD) in 2012. Also lending support to this view was Moruti, who said:

I'm unemployed. What I'm doing here is not work because I'm still learning the practicals of the field and there is no contract of employment between myself and the employer; it's just volunteering. – Moruti Letlapa

I posed a similar question to Duncan and asked how he managed financially; he confirmed receiving a monthly stipend of R3 500 at the clinic where he had been volunteering. However, I picked up a slight contradiction in the participants' responses in that Thulani and Sibusiso had taken slightly different paths. For instance, Thulani informed me that initially he had done odd jobs in construction companies but the instability of the construction sector had forced him to become a street vendor at a taxi rank in Johannesburg, selling food and refreshments. He further mentioned that the life and business of a street vendor were not only challenging but also risky due to the high competition and demand for customers. Likewise, Sibusiso informed me that he had ended up leaving the plumbing job due

to health complications and had gone on to establish an informal shop (spaza shop). These results are common in South Africa, as many ex-offenders are informally employed and operate as street vendors and taxi drivers, or work in NGOs affiliated with the reintegration of fellow ex-offenders. Consequently, due to their participation in the informal labour market, many of them encounter a human capital deficit that complicates guidance to high-quality jobs. In this regard, reintegration studies continue to underscore the importance of job quality and further confirm that many ex-offenders are employed in temporary and low-paying jobs such as in construction and manufacturing industries (Uggen, 1999; Ramakers et al., 2017), with some cautioning that ties to low-quality jobs are ineffective in curbing criminal behaviour (Crutchfield & Pitchford, 1997; Uggen, 1999). To put it into perspective, Uggen (1999) used a sector-dependent job quality measure. His seminal work pointed out that only "high-quality" jobs with "adequate hours and pay" (Allan & Steffensmeier, 1989 as cited in Uggen, 1999) or "satisfying employment" (Witte, 1979; Shover, 1996) leading to "viable work careers" (Duster, 1987 as cited in Uggen, 1999) are thought to affect recidivism. Therefore, Uggen (1999) concluded that the quality of employment is more strongly associated with criminal behaviour than its mere presence or absence. In other words, only when ex-offenders' jobs are economically rewarding, personally satisfying and meaningful will they begin to envision progress towards success goals and avoid deviancy (Uggen, 1999).

Construction of alternate identities

Exploring the labour market reintegration experiences of the participants involved investigating the interplay between their social identities as ex-lifers and their labour market reintegration experiences. Exploring triggers to social identity, including how the participants coped with a devalued social identity, became even more pertinent. Consistent with SIT, the results of the study confirmed that there must be a willingness to reveal, manage and/or cope with a devalued social identity (Ellemers, & Haslam (2012). For example, offenders who have violated their parole conditions (especially habitual offenders sought by law enforcement for outstanding cases) tend to be more likely to conceal their original identities (who they are and where they come from). Previously, Thulani confirmed that in 2002, after being sentenced to life imprisonment, he also had suffered a great deal of stress because he was still attending an outstanding case. The stress thereof and the resulting fear, as

explained by Sunette earlier, manifest in an identity crisis. Some offenders, out of fear of revealing their true identities in prison, either conceal their true/original identities and construct alternative ones – suggesting the co-existence of multiple identities (that is, one's true identity and an alternative or working identity). In this regard, Sunette remarked as follows:

There are so many offenders inside who are in with aliases because they think if they reveal their identity at the time of incarceration, they think those fingerprints the police took at the beginning will come back to haunt them. – Sunette Meyer

Thus, to the extent that offenders' criminal careers tend to come back and haunt them through outstanding cases, the results confirmed that some offenders construct alternative identities. Therefore, in establishing how the participants managed their identities during and after incarceration, and to thoroughly get to know each participant, I made an effort to begin each interview session or "conversation" with the following broad ice-breaking question: "Tell me, for people who do not know who you are, who are you, where do you come from and where are you headed in life?" This question had explicit and direct implications for the participants' social identities (i.e. how they perceived and described themselves before and after incarceration). The results of the study confirmed the interplay between the participants' social identities and their labour market reintegration experiences. For example, Rock highlighted the post-incarceration identity crisis by stating:

…That is a difficult question which is almost all the time asked during interviews and I do badly in those interviews. – Rock Lefatse

In addition, the results showed that the participants must be willing to reveal their true identities. According to the literature, employment is key or central in ex-offenders' identity construction and how they ultimately view themselves as having transitioned (from offender to employee), thereby creating alternative identities as employees instead of their previous offending selves (Baron & Byrne, 2002; Dlamini, 2016; Dufour et al., 2015; Guse & Hudson, 2014; Hopkins & Farley, 2015). Moreover, employment is integral to successfully reintegrating ex-offenders back into their communities while promoting positive lifestyle change.

Networks and forming new establishments

Forming new establishments while networking with old yet legitimate acquaintances transpired very strongly during my conversations with the participants. This was particularly evident in the following extract:

When I got out of prison, I applied for a teaching post in Greytown, next to Westville, because that's where they knew my work…it's the district office. They knew my work through those interactions, but they only knew the papers…they didn't know the face behind the papers. When there were workshops, one or two people from the district would come to workshop the educators, so I was also there; I was allowed to attend those workshops. So, I used those connections to showcase myself to those officials at DHET that I'm out, can they place me. Then they decided to place me at Westville again. – Sifiso Khumalo

During my conversation with Sifiso, he provided a rich and detailed response that not only resonated with my experience but also a theme I found less popular in the literature. For instance, in providing his response to the question "How did you find your first job?", Sifiso conceded establishing "connections" while in prison and using them "to showcase" himself to the Department of Higher Education and Training (DHET) authorities. However, fundamental to this response was that a few months later, he relocated to Gauteng where he was hired as a project manager. He reflected thus:

Well in that instance it was case of relations – who knows who – so I was able to get that job…so that's what worked for me, but my passion was not there. You see, I was working, performing as expected but I had to put in extra effort; the advantage was that it helped me get closer to Unisa. I came physically for the time first to the [x] *Department, to have a look at the opportunities they had. Then I also had the opportunity to see my supervisor, the person who was supervising me all these years.* – Sifiso Khumalo

In a similar manner, Duncan and Sibusiso explained that after a couple of months following their release from prison, they both had approached various establishments in search of employment opportunities. Sibusiso said:

Those guys [Fear Free Life] *hooked me up to have something to do while I wait for a vacancy where they can employ me so I can roll out programmes.* – Sibusiso Zungu

Fear Free Life is an NGO that was founded by former gang members in Kutama Sinthumule Correctional Centre, where Sibusiso had previously served his life sentence. This NGO exclusively focuses on assisting ex-offenders like Sibusiso with

reintegration challenges, such as helping them to find placement and/or employment (https://commongoodfirst.com/story/fear-free-life/). Similarly, Duncan reported doing community work as a volunteer at a ward-based outreach NGO inside a clinic in Soweto. An interesting finding was that although Duncan had been placed to do community work, he ended up using his time and connections at the clinic to establish relationships and supervision opportunities where he ended up being supervised by the clinics' social worker for his Social Work practicum (at the very same clinic, albeit not under the same NGO). Thus, according to social bond theorists (Sampson & Laub, 1993; Lab & Sampson, 2003), as ex-offenders gradually form new establishments and increase their network capacity, the conventional roles in which they find themselves (such as jobs and marriages) increase social control and by extension strong, quality social bonds. The idea is that employers provide a direct social control function, thus monitoring the conduct of ex-offenders in the process (Craig, Diamond & Piquero, 2014). Another protective factor that likely reduces the propensity of reoffending but is much less talked about in the literature is relocation. Criminology studies, despite arguing from a social disorganisation framework, have confirmed that youth offending declines by 50% (Ludwig, Duncan & Hirschfield, 2000 cited in Onuferova, 2016) when ex-offenders relocate to communities where there are fewer opportunities for re-establishing their previous delinquent friendships than ex-offenders resocialised into the same disorganised communities from where they originally came (Surtherland, 1947; Gottfredson & Hirschi, 1990).

6.2.5 Home free…nearly

…there are a lot of tertiary students leaving DCS that do not get employment outside. Firstly, when an employer interviews you, are you honest to say that I was incarcerated? Or do you want the employer to find it out later? – Sunette Meyer

…on that point, it's very significant…you must immediately be seen by the court to have come out without being prompt to come out, on your own…come forth right to the court and say, this is the truth of my life but in spite of this truth of my life, I am still applying for admission as a legal practitioner. As I'm saying, take the court in your confidence. Don't hide things with the hope that they won't be found out. – O'Reilly Setlogolo

I come across this person, and again this person doesn't declare he has a criminal record…so I mean, we say to you, you must declare and now look at that one, he didn't declare. So, in the appointment letter we say any errors or omissions, we have the right to withdraw the appointment

letter and that is what you sign up with us. So, you see, the problem with people that don't declare, my experience has been that they always get caught out. – Marisa van Schalkwyk

This superordinate theme was constructed around the complex web of issues emanating from criminal record disclosure and the inconsistency with which the participants had experienced their degrees of "coming out". There are varying degrees of declaration, that is "coming out" comprises three levels: (1) the non-disclosure of a criminal record (i.e. complete concealment), (2) partial and full disclosure, and (3) the less popular "subsequent declaration". In particular, the results of the study showed inconsistencies in that not all the participants believed that criminal record disclosure negatively impacted their chances of finding employment and, by extension, their educational and development prospects. However, to the extent that all the participants were acutely aware that concealing a criminal record carries legal implications, the question whether to disclose or not to disclose revealed numerous conflicting findings with one common resounding convergence, suggesting that concealment and subsequent declaration of a criminal record were both experienced as anxiety provoking. Thus, in essence and supplementary to the above, the theme – "Home free…nearly" communicates the finding that initially (during the application process and admission stages), the non-disclosure and concealment of a criminal record may be undetected by employers and/or professional registration bodies. However, at the same time, its dormancy could neither be ascertained nor guaranteed by the participants because "people that don't declare…always get caught out" and consequently suffer penalties for non-disclosure. In the following section, I dissect these levels of "coming out".

On "coming out"

There are varying degrees of "coming out", with previous research suggesting that concealing one's criminal record functions as a coping mechanism (Muthee, 2020). Thus, understanding how professional licensing and registration bodies managed student-applicants with criminal records, I explored the distinction between criminal record management of student-applicants who transgressed before and after their applications. Specifically, I wanted to understand what happens to student-applicants with criminal records. It was interesting to note that decisions about disclosure, including how much information to disclose, were handled differently by the participants based on the merit of whom they were interacting with. For example, it

transpired that Rock, despite being affiliated and employed as a fixed-term contractor, never disclosed his criminal records. He reasoned:

I, being the person that I am, being an honest person, I used to fully disclose before I could even apply. I used to…but now, after having learnt the difficult way, that in actual fact disclosing such criminal records is to my discredit, I decided not to disclose any more. I decided to be, not to be dishonest, but not to turn [expose] *my life upfront.* – Rock Lefatse

With this in mind, and in order to arrive at a more balanced view, I explored criminal record management from the perspective of the HRD consultant (Marisa van Schalkwyk) perspective as well as Mpho Madingoane (as the council representative) to ascertain whether in their line of duty they had ever encountered student-applicants who did not declare their criminal convictions. Marisa said:

I've got personal experience whereby people with criminal records didn't declare…if the application form refers to, that you must declare if you have a criminal record or if you were fired or anything…whatever the detail… I would always encourage people to declare because for me to declare, you basically put yourself ahead but if don't it's a problem. – Marisa van Schalkwyk

I asked Mpho the same question and he too confirmed that there had been instances where student-applicants had not declared their criminal records at SACE. He recalled:

Yes, I think we've had about two instances of people not declaring, you wouldn't know…one would say I don't have, but in reality they have it; unfortunately you find them out or someone just tips you off to say this person has [a criminal record]. – Mpho Madingoane

In sum, taking into cognisance the three extracts above, one can reasonably formulate the argument that despite being fully aware of the implications of non-disclosure (namely, that it is "…a problem" viewed as dishonesty should it ever be exposed), ironically – based on his previous experiences – Rock decidedly took the risk "not to disclose any more" because being an "honest person" had thus far not been to his advantage. His acute awareness of this predicament was elaborated as follows:

Yes, your assumption is quite correct. They [my employers] *don't know* [about my criminal records]*, and I intend on keeping it that way…If they are to find out, then summarily I am going to be dismissed from work, like for that particular reason.* – Rock Lefatse

Therefore, corresponding to what is proclaimed by the participants above, it stands to reason that some student-applicants preferred concealing their criminal

backgrounds when seeking employment and/or applying for professional licensing or registration. The phrase "I intend on keeping it that way" reaffirms this secrecy which constitutes the first level of "coming out" (i.e. concealment and non-disclosure of a criminal record).

Partial versus full disclosure

The second theme "Partial versus full disclosure" is the next level of criminal record disclosure. When conversing with the participants, I picked up several inconsistencies in relation to the disclosure of their criminal records. So, I proceeded to explore the underlying factors motivating them to disclose and/or withhold information about their criminal records. Whereas Duncan disclosed his criminal record status voluntarily at the councillor's office, he withheld this information from his academic supervisor. He explained it as follows:

I found it to be different, you see, the supervisor was appointed to me by Unisa…I didn't take it as a relationship that I can disclose because…not that relations were, the only purpose for our meetings was for supervision for that day and to submit whatever I'm submitting…[However] *with Professor X, I was able to disclose to him because of the referral, since I had already disclosed to the councillor that I am so and so.* – Duncan Molefe

You find some people who tell you from the onset that it won't work; even when you try to reason with them their answer remains the same. You can read between the lines with some people…so you end up keeping it to yourself and just work because you know that your intention is not to stay in that job for long. I just need to do this so I can be able to continue with my modules and complete my degree. – Sibusiso Zungu

Unlike Rock, who steadfastly chose to conceal his criminal history, the responses of Duncan and Sibusiso suggested that criminal record disclosure depended on the context. Therefore, a key finding of the study is the distinction between partial and full disclosure. For example, Sifiso was hired for three different jobs and all of them required varied degrees of disclosure, beginning with not disclosing at all to partial disclosure and, lastly, full disclosure. To highlight these differences, I asked Sifiso to explain how he managed all three jobs, to which he replied:

…When I got out of prison to teach in prison, the officials I spoke to were in Pinetown. They were aware where this person was coming from, so I never went through that process which required me to disclose or not to disclose. I was just a conversation that I am out now, can I have a job, just as you would ask for a job. – Sifiso Khumalo

Similar to the vacancy in Gauteng, the owner of the construction company where he worked was fully aware of his criminal history; likewise, he never disclosed his criminal record because it was also a prearranged job. The extract above sparked interesting questions, namely: Is it mandatory for job applicants to disclose their criminal records when applying for vacancies? If yes, what and how much information must be disclosed? When I spoke to the participants about the issue of disclosing their criminal records, they said:

I declare my previous criminal conviction based on the fact that I do not want to be caught by surprise. If I'm granted an opportunity to work and it arises that I do have a criminal record, it would amount to dishonesty from the onset. That is why I feel it is important to disclose from the start. – Moruti Letlapa

…I do disclose my criminal record, I have no reason to hide it because if my employer hires me only to find out later that I have a criminal record, that is dishonesty and can even make me lose my job. So, it is better for the employer to know from the onset that I have a criminal record and then decide whether or not to employ me. – Thulani Tshabalala

It is compulsory for a teacher to be a registered SACE member, but with tertiary education [university lecturers] *it is not compulsory, they just want a teacher. But what I have noticed is that even here when I applied there was a section where you had to explain about your criminal history; they ask you about it, so I told them the truth that I was arrested, how long I was arrested for, because it asks you.*
– Sifiso Khumalo

Kurtovic and Rovira (2017) and Zand-Kurtovic (2017) termed this phenomenon "proactive disclosure". They explained that it occurs when student-applicants openly declare their criminal records to prospective employers in anticipation that either their criminal records will be revealed or their past is irrelevant, particularly in instances where there is a relationship of trust. A common thread across these three accounts was that the participants openly declared their criminal records "from the onset" to avoid dishonesty. Yet what transpired very subtly and was discussed in detail under the theme "A double edged-sword" is the finding that criminal record disclosure appeared involuntary, rather than voluntary, as suggested by the phrases "it [criminal record disclosure] is compulsory…I do not want to be caught by surprise…[because concealment] can even make me lose my job". To this end, it was concluded that except for police clearance certificates, there was no formal way of verifying the details of the offence except for the participants having to "explain…[their] criminal history".

Subsequent declaration as anxiety provoking

Given the context of the study, an interesting phenomenon that transpired but is less emphasised in criminal record research and comprises the third subtheme is subsequent declaration as anxiety provoking. For example, a review of the policy documents in Chapter 3 of this study also did not reveal any information on subsequent declaration. However, in this study, the meaning of honesty as illustrated in the previous subtheme showed that it carried significant implications for how much detail the participants disclosed, and this was also similar to subsequent declaration. Rock testified as follows:

I did not disclose my criminal record because they did not ask me and that was a good thing because had I disclosed, then I doubt I would have had the job by now. I'm even scared of disclosing, like they always speak that honesty is the best policy but I have a different view. Because yes, honesty is the best policy, is the best principle; however, it's prejudicial. It does not work for people with criminal records because once you decide to be honest, such honesty is taken against you. – Rock Lefatse

While it may appear logical for Rock not to declare his criminal records on the basis that it reduces employment prospects, Mpho delivered a counter-argument and emphasised that concealment, and by extension subsequent declaration, carried severe implications such as the issuance of a Section 23 letter and removal of one's name from the register (i.e. the record of the names of all persons registered, or provisionally registered with SACE). He said:

…We'll send you the letter, give reasons why we should not remove your name from the register, but you can re-apply and go and convince. I think chances are, they may just consider you for registration, I am just thinking, because you came out clean maybe they may consider you. – Mpho Madingoane

From the foregoing discussion and drawing from this account, two polarised views came to the fore: the first is referenced from Rock when he remarked "I intend on keeping it that way" and the second is referenced from Mpho when he replied "because [ultimately] you came out clean maybe they may consider you". The first view was associated with living in secrecy and demonstrated the unwavering determination to discreetly conceal a criminal record. By contrast, the second view demonstrated subsequent declaration. Subsequent declaration is "involuntary declaration" that manifests from the anxiety-ridden state of concealing one's criminal background (or consciously withholding vital details) at the initial application stages.

Owing to the anxiety and apprehension of being "found out", my experience has always been that those who decisively "come out" and disclose their criminal records do so because of the fear of non-disclosure, together with the relentless pressure that comes with living a life of secrecy knowing that you "lied…your conscious gets the better of you [while the] secret is eating [you] inside" to the point where it is experienced as unbearable. Mpho narrated the following example to illustrate the dynamics of subsequent declaration:

I've had, not on the registration side but on my discipline side, wherein an educator asked a learner out and along the way for sure he realised that I could get into trouble, he went to the learner and apologised. That complaint came as if the teacher was asking the learner out, that's how it came. When we investigated, it transpired that the teacher admitted that yes I asked the learner out but the following day or days later I went back and apologised and the learner confirmed that was what had happened but she [the learner] *reported him because she loved him and felt disappointed that now he is no longer following through with his proposal. So now the question is, are we going to prosecute him? He was guilty then but he rectified it, so we couldn't even proceed with the matter because he corrected it; we couldn't in this instance…*[So] *you say I did not declare, let me go and declare; the questions asked would be, "Would you have been registered had you declared it beforehand? You should ask yourself, "Would we have registered that person? Did this person trick us into registering them?" Hence, I say you will receive a letter saying give reasons why we shouldn't remove your name.* – Mpho Madingoane

It can be deduced from this account that the educator's initiative to rectify and correct his transgression, albeit "after the fact", further elaborates the concept of subsequent declaration. In accordance with research, the teachers' anticipation that the employer would eventually discover this transgression might have prompted proactive disclosure (Kurtovic & Rovira, 2017; Zand-Kurtovic, 2017). Thus, research has equated subsequent declaration with reduced amounts of stress, as ex-offenders have to conceal a part of their past to employers (Lebel, 2008) while, at the same time, hiding the truth conjures up feelings of apprehension (Kurtovic & Rovira, 2017; Zand-Kurtovic, 2017). To understand the prevalence of subsequent declaration, I enquired about its occurrence from the participants and they recounted as follows:

…it has never happened, not in my lifetime in this office. But I'm just thinking, because I'm unable to say how council would act or do in such a way because it hasn't happened, but your conscious gets the better of you if it were to happen. The following definitely is what would transpire. Let's say okay guys I lied to you, we have the duty to send you a Section 23 letter and state, give reasons why we shouldn't remove your name. That is what will definitely happen, if that were to happen. – Mpho Madingoane

Similarly, Ike said:

Professional conduct, they have the answer for that. But what I'm thinking because this is research and this is my opinion. If, for example, I had a secret I kept and I never declared it at the beginning and I worked and I worked and I worked for two months, two years down the line. I realise that what a good organisation this is, I think I did not do good or justice to this organisation, boss, colleagues and that secret is eating me inside and I decide to disclose, I think it's the right thing to do and it doesn't mean when a person discloses at a certain point after they have been employed, they will be dismissed. – Ike Mofokeng

Therefore, based on the above responses, it appeared that subsequent declaration was not only unprecedented but also held different meanings for different participants. In conclusion, it stands to reason that while the decision to ultimately come out clean "doesn't mean a person will be dismissed", for the most part, the results of the study showed that on all three levels of "coming out", there are different implications for concealment, non-disclosure and subsequent declaration.

Implications for concealment and subsequent declaration

What are the implications for student-applicants or employees who deliberately or purposefully conceal their criminal records during the recruitment process? Generally, "if an applicant attempts to withhold information or falsify information pertaining to previous convictions, the employee will be disqualified from further employment consideration in any position with the company due to falsification of an application" (Boachie & Asare, 2015, p. 115).

The academic world is a very small world and there are cases where people didn't declare. Fortunately for me, I've got a very photogenic memory; I remember people's surnames. I just have that talent. This person came for a very senior position and didn't declare his criminal record and I think the criminal record was for culpable homicide. So in my previous job I was also in recruitment, meaning I have to verify applications, I have to verify your criminal record, I have to verify credit record…I picked up that this person has a criminal record for culpable homicide and I checked his application, so I had to bring it under the attention of management…and that person had already had an employment letter. Long story short, after the legal department got involved, they paid him out a year's salary. – Marissa van Schalkwyk

With this information in mind, I explored how significant or insignificant was the non-disclosure of a criminal record by student-applicants. Mpho replied as follows:

Non-disclosure will have an effect that if you are found out, which happens, teachers are constantly being checked by their employers, so if you are found out, you are guaranteed to deregistration in

terms of Section 15 Subsection 3 of the Employment of Educators Act. You are deemed to have resigned, your registration was based on fraud, you did not declare, you withheld information and you will be deregistered on those basis and your employer has to remove you from employment, not may, must remove you. The Act demands that, if you don't declare. – Mpho Madingoane

It [non-disclosure] *is another thing...*[interjection by Tshepang]*…It is a problem…it is dishonesty…*[interjection by Ike]*…if we can find out later because it will come out and it will have huge implications, so…it's better to disclose earlier, on the letter…on your own.* – Tshepang Didintle and Ike Mofokeng

Similarly, when I enquired from O' Reilly about the implications of concealment and ramifications of non-disclosure, he said:

People apply for admission and ultimately get caught out by the functionalist judiciary…the judicial system and having their bluff called out and their application for admission dismissed on the basis that they lied to the court…you will be in serious trouble, the ultimate penalty, the application will be thrown out at a blink of an eye. – O'Reilly Setlogolo

Taken together, these remarks verified that criminal record concealment "is a problem" if "caught out [or] found out" because it is viewed as having "lied" by withholding key information. Therefore, due to connotations of "fraud" and "dishonesty", non-disclosure carries "huge implications" such as "deregistration" and dismissal from work. My curiosity at this time centred on investigating the existence and use of vetting procedures (or an equivalent formal verification system). Thus, by carefully balancing the perspectives of Marisa and Tshepang, the results revealed that Unisa and professional licensing bodies relied on anonymous "whistleblowing". The participants said:

You know the nice thing with working in the academic field is, as I explained to you, that people circulate so I might have picked it up but you see the circle we're in, somebody would have just said "hey but this one'. Hence, I come back to the fact that unfortunately you know this is a very unique situation that we have with the universities. We all compete for the same people, so there is always recycling of people, so basically that's that, somebody would have picked it up. – Marisa van Schalkwyk

We will not know, we don't know…any person can report any person [but] *it doesn't mean it's true, so we follow all processes…If they are reported to us, we call them; it's not that we just dismiss people...take away people's certificates .and cut them off...we call them...we listen to them...and establish the facts.* – Tshepang Didintle

…Unfortunately, you find them out or someone just tips you off to say this person has, then in that instance we send you what's called a Section 23 letter, you lied to council and based on that you are

deregistered. We registered you based on fraud because you didn't declare everything, so we send you a Section 23 letter to which you have to explain yourself. If you don't, we recommend to council to remove your name. – Mpho Madingoane

…there are many, many who transgress. We don't know, but those that we know, in many cases, people within the community, they actually report, they report that such a thing has happened. Social workers in childhood care, for instance, have abused a person or something was stolen or they did something. That counts to professional conduct. – Ike Mofokeng

Despite receiving information in this manner, it is clear that the accused individual would still be required to undergo the processes stipulated under Theme 8 "Not what it seems to be" to verify and/or proof false any allegations of non-disclosure.

6.2.6 A double-edged sword

I thanked myself and my advisors, the people I received supervision from, from the time I was interacting with Unisa because I went to them to seek advice and said okay, here are the posts I would like to apply for, what should I do? This is what they want, here are the requirements. They advised me to tell the truth and not hide anything. I am now thankful for their advice…[because] *I realised that being honest helped me.* – Sifiso Khumalo

…when you analyse this, it means they liked me…After an interview, normally you do not get a call if they are not interested in you. But immediately when they call you, it means…it creates the impression that they are taking you…of which, indeed, they called me and booked me for fingerprints verification. Unfortunately, when the results came back, they indicated that I am a parolee serving a life sentence, hence they decided they won't communicate further with me…[so] *we try to apply for jobs but once they know you have a criminal record, even though you can divulge…its already a minus 10; you are still regarded as untrustworthy, people don't trust you, irrespective of your crime, the period you committed it, how many years it's been…it doesn't matter, people don't take that into consideration. You're being judged by your past rather than your present and that demoralises.* – Duncan Molefe

Until now, the results of the study have overwhelmingly suggested that full disclosure (as opposed to partial disclosure and non-disclosure) remains in the best interest of society and "to tell the truth and not hide anything" when applying for vacancies and/or admission to professional licensing bodies. Ironically, society's construction of "honesty is the best policy" was invariably experienced by the participants as a double-edged sword. This sentiment was shared strongly among the participants. For instance, Duncan reiterated that despite ex-offenders' efforts to reintegrate into society through employment, his experience was that disclosing his criminal past disadvantaged him. He felt strongly that he was still judged based on his past,

implying that he was still perceived as "untrustworthy". This implicitly undermined any previous and/or future efforts of rehabilitation and was specifically identified as a source of discouragement. These claims are substantiated by the two subordinate themes "Unmet employment expectations and insecurities of the labour market" and "Painful imaginations". Notwithstanding these findings, "A double-edged sword" revealed mixed feelings and inconsistencies among the participants regarding the issue of whether or not disclosing their criminal records assisted them in their pursuit of employment or acted to their disadvantage. The sharp contrast between the participants' responses gave rise to the construction of this superordinate theme which captures the irony of the criminal record as evidenced by Sifiso and Thulani's accounts: "I was disclosing, whether they asked or not, I just disclosed…" and "…to tell you the truth, there are times where I think of not disclosing and see what will happen in the future because disclosing disadvantages me and it makes my life stagnant."

Is declaration commensurate with reformation?

The previous theme established that early and full disclosure of criminal records was a key requirement when applying for vacancies and/or admission to professional licensing bodies. For instance, reviewing Unisa's vacancy application forms (Appendices 24(i) (ii)) and various admission forms indicated that student-applicants and other job applicants were obligated to declare their criminal records immediately upon applying. Inevitably, this led me to explore the meanings behind criminal record disclosure and how the participants made sense of it. Instantly, and within the boundaries of my investigation, I picked up that criminal record declaration was commensurate with reformation. For example, I enquired from Marisa, Mpho and O'Reilly about the significance of voluntary versus involuntary disclosure. Marisa responded thus:

The function of the panel is to apply their minds in terms of the type of person we are going to take in the institution…that is why there is a panel and the quorum is five. So those five people have to apply their minds based on the information presented to them; you see [because] *there were instances where people with criminal records were appointed. That, I mean was the advice of the panel. Those people convinced the panel. That is why I say to declare is very important so those people convinced the panel that that person is reformed. – Marisa van Schalkwyk*

From Marisa's response, I got a clear sense that voluntary disclosure (as opposed to involuntary disclosure) is key. Consequently, I probed Mpho on what and how much information should be declared, as well as to what extent was this disclosure voluntary or involuntary? He said:

…you have to make that declaration…it's a requirement. It's key; better declare and you will go through the process, be transparent. I've noticed that those who have been open actually got assisted, more than those who were not open about their previous convictions…so just be transparent and leave it to the council. – Mpho Madingoane

Similarly, O'Reilly's response to the question above was in the affirmative. Reflecting on the significance of voluntary disclosure at the LSSA, he said:

…we need to be aware we are dealing with people who are of acceptable characters…You cannot be expected to be adjudged by the court to have been fit and proper only to find out you gave it…you misled it…on the question of fitness and properness, you must display to the court you are prepared to take the court into your confidence. – O'Reilly Setlogolo

Connecting the participants' narratives suggested that voluntary disclosure was not only significant during the application and admission phase, but also represented an indication or the extent to which rehabilitation had occurred. For example, although Sifiso was technically not obligated to register with any council as a university lecturer, nonetheless he went ahead and applied despite his criminal record and was accepted as a member of SACE. The following response of Sifiso captured his experience:

I didn't feel they fought with me or anything; it was as if they were doing it to put it on record…the only challenge I had was with SACE…their form is like the form from Unisa. It has a section that requires you to disclose your criminal record and they have an interest in knowing what you were arrested for, all those things, uh, which I found challenging, but I wrote there and told them. Then SACE does this: they call you for an interview and ask you about the nature of your criminal offence, they want to know, from my view, they want to know if you can deal with children and if your offence, or your previous offence… Yah so their document has that, that's what I can say was a challenge. – Sifiso Khumalo

However, in contrast, my conversation with Sibusiso about the completion of the Z83 form highlighted involuntary disclosure. He remarked as follows:

In that case, you're forced to disclose. With me, it's either I leave it out or I fill it in. I'll just hear from them…but anyway, with others, you can see that thing will put you in a disadvantage. It's a notion that exists and very prevalent in society that once you have this thing [criminal record]…*I know in terms of*

security, you're no longer eligible to be employed. Either way, I feel that when it comes to survival, I sometimes don't need to disclose. There are instances where I feel I should just use common sense, even though common sense is not always common to everybody. – Sibusiso Zungu

I only wait for interviews to be conducted and asked during the interview whether I have such a criminal record or not. – Rock Lefatse

I was intrigued by these two extracts, particularly because (as emphasised by Sibusiso above) each job interview has a context. In my experience, I can attest that at times one can easily tell where each potential employer stands on the issue of hiring people with criminal records. Furthermore, I support the finding that there are job interviews where job candidates (including myself) were not required to disclose their criminal records; yet, I made sure to disclose every time. On the one hand, these accounts reaffirm research findings on employer attitudes while, on the other hand, they reaffirm studies on offender attitudes. According to O'Reilly and Mpho, it was critically important that I disclosed every detail of the offence. As elaborated further on Theme 11 "One can, the other can't", the details of the offence (including the period when it occurred) and the association between the offence and the job and/or training applied for are also critically important. To corroborate the above assertion and add emphasis, O'Reilly recalled and narrated a story about when he had represented a client with a criminal record in court applying for admission to practice as a legal practitioner. Key to this discussion was the importance of early and voluntary disclosure, as "[o]ne of the judges asked, 'Are you aware your client has a criminal record?'" In conclusion, the question "Is transparency commensurate with reformation?" appeared to have been answered by the voluntary disclosure of the participants (as opposed to involuntary disclosure).

Unmet employment expectations and insecurities regarding the labour market

Efforts to access the labour market signify a strong motivation by ex-offenders to break away from a criminal career. As articulated by Sampson and Laub (1993), there is more to employment than just having money or attaining economic survival. The employment of ex-offenders provides a source of social control from which to draw a positive identity (Savolainen, 2009). Conceivably, the state of unemployment perpetuates ex-offenders' regression into crime, particularly if they perceive themselves as worthless and that employers will never hire them. In my

conversations with the participants, it transpired that different participants derived different meanings from HE, with employment expectations playing a central role.

At the conceptualisation phase of this study, I argued that the premature disclosure of a criminal record during the premature stages of the recruitment process allowed employers, organisations and institutions to use the criminal record as a screening tool to single out "undeserving" job candidates; and the above extracts seemed to confirm these suspicions. For instance, according to Duncan, he had applied at various companies and organisations in both the public and private sectors (in business and health). He recounted the number of times he had applied for vacancies and – strikingly similar to Moruti further below – he almost always did not receive a response. He said:

I applied at XYZ; they called me for an interview for the first time and I never received any feedback. The second time, I was called for an interview and even there I disclosed during the interview and they were so impressed with me…They asked me whether there was anything I wanted to say and I told them that currently I'm from prison, hence I disclosed…At the end of the interviews, they congratulated me, saying you were the best, you were the best. They used those words when I was leaving and sure enough, seven days later I received a follow-up call from their HR informing me that they want me to come back for the second time, but this time for fingerprint screening. That's when I was called in town where they arranged fingerprint screening for me. Those things left and since then I never received any call from them…I tried sending emails, but no response. – Duncan Molefe

I apply at numerous government institutions without getting any response…It's really sad that in one's life, previous history can prevent someone to change while the South African government has an institution called correctional services which they put their money to rehabilitate offenders but still, they don't trust correctional services that correctional services has done its job by producing potential professionals. – Moruti Letlapa

These two responses resemble those of other participants, albeit from different perspectives. Rock and Thulani commented as follows:

I remember I used to disclose them, I remember going to an interview at the TMP after having successfully completed all stages during the interview. The last question I remember was whether I have a criminal record. And bear in mind, by then, I had 39 modules and only left with one module to complete my degree and after that I did not get any call. So, the only reasonable conclusion I drew was the fact that I had disclosed my criminal record, hence I was not called. – Rock Lefatse

I try and apply for other jobs because I studied Human Resources from NI to N6 in business studies, so I apply in business management jobs and you find that there's a problem with the criminal record. It is not easy. I once applied at B College and the minimum requirement was N6 and I was

disadvantaged by the criminal record, my age, and things like that. And so, this way I become a person who's continuously applying for vacancies, constantly on the phone, internet…scouting for job opportunities. Unfortunately, I haven't found employment. – Thulani Tshabalala

In essence, the four extracts above underscored the participants' unemployability challenges. These experiences were similar to the general population of ex-offenders, as supported by the literature. In ascertaining whether all the procedures and protocols were followed when applying for vacancies and admission to practice, I asked the participants to explain the processes they had followed and it transpired that they had adhered to all the rules and regulations explicated on the application/admission forms. With this understanding, I proceeded to explore the participants' subjective feelings on how they experienced the reality of their situation (i.e. not being hired after acquiring HE and declaring their criminal records). A significant finding emanating from this investigation showed that unmet employment expectations "hurt deeply" and that this affected the entire family. Thulani said:

It hurts deeply, it hurts a lot…In actual fact, it is hurting the whole family; it doesn't hurt me alone. It violates the whole family because they knew I was studying while in prison and they had hopes that through education, I will be able to provide upon my release. – Thulani Tshabalala

Also consolidating this view was Rock, who reiterated that discrimination in the labour market did not only occur in the public sector, but also in the private sector. For instance, he said that even after excelling at several job interviews, he still could not secure employment in the private sector. He said:

…not only do I study to empower myself but…after studying, I will secure employment to help me fend for my family…[Yet criminal records] *are a problem because whenever I apply, more especially in the government departments, I cannot secure any employment even for internships. I tell you, I've had countless interviews in different departments…I cannot be appointed as an attorney* [and/or] *approved as an advocate…I encountered a scenario whereby I was discriminated even by the private* [sector] *I couldn't secure any employment after having excelled in the interviews…for example, the so-called agencies. I attended one interview in Sandton, whereby an international firm was looking for someone to represent them in court so I thought I was the perfect candidate for that particular post. Only to find out that I have a criminal record and I told them upfront that I have that particular criminal record and they told me that no unfortunately our client is not looking for such a person or calibre, so you have to wait for a certain period. In actual fact, I was encouraged to wait until I can expunge that criminal record so I can be eligible…till today I'm still working on expunging this criminal record.* – Rock Lefatse

Experiences of labour market discrimination were also shared by Duncan, who said:

…no one will hire you…I also tried at correctional services where I currently sign [community corrections]. *I told them that I am a social worker and I facilitate life skills programmes, but they refused. They simply said "You are just a prisoner". They themselves said that* [and] *such things are discouraging…Sometimes I feel like going to school does not help, especially when you are a prisoner because the stigma of coming from prison even if you study, no one will hire you, we see the practicality of it when we get outside.* – Duncan Molefe

The expression "Sometimes I feel like going to school does not help" exemplified the incongruence between some of the participants' careers and their labour market aspirations. This disconnect was further highlighted by Moruti, who argued that there were no guarantees that people with criminal records would be hired in the labour market. He said:

…There is a possibility that I, being an honest person and disclosing my previous conviction, could provide an impression to the potential employer that I am fit and proper to occupy that position. But I am not certain because I am not the only one who has been declined employment. My battle will be with the law in terms of applying to become an advocate; that will be the determining factor as to whether my criminal conviction will be a bar for me not to participate in the economy of the country, taking into account that I obtained a degree similar to any other South African citizen whose practicing in this field. – Moruti Letlapa

From the extracts above, it was clear that acquiring HE and the voluntary disclosure of criminal records were insufficient to assist the participants in reaching their labour market expectations. In Australia, Hopkins and Farley (2015, p. 41) commented that "[w]hile employment is undoubtedly a key element in successful rehabilitation and re-entry, in the postmodern labour market no degree or certificate is a guarantee of economic security". Thus, not knowing in advance whether the participants would qualify for a job seemed to compound their insecurities during the job searching process. Likewise, participants in Kurtovic's (2017) study were reportedly oblivious and apprehensive about the collateral consequences imposed on them at the completion of their sentences. In the present study, the results indicated that the participants' unemployment was reinforced by the stigma and discrimination of a criminal record which further emanated painful imaginations, as established in the following subtheme.

Painful imaginations

Contemporary research posits that ex-offenders encounter bleak prospects in the labour market, with a handful of employers willing to hire them. In Ghana, for

instance, scholars found an association between high recidivism rates and lack of employment opportunities (Antwi, 2015; Dako-Gyke & Baffour, 2016). Similarly, lack of employment opportunities and reintegration challenges are perceived as predisposing factors of recidivism in Nigeria (Adegboyega, 2020; Ayuk et al., 2020). Thus, in consideration of these findings, the subtheme "Painful imaginations" concerns the participants' subjective feelings and reconstructions of how they felt and made sense of South Africa's labour market. For example, when I spoke to the participants, I picked up feelings of despondency, resentment and discouragement in the following accounts:

…there are certain gaps that creep up and you find there is no breadwinner, you are the only provider and end up working as a security guard with a psychology degree because of the need to support one's family. This demotivates us and makes us feel bad. – Thulani Tshabalala

There is resentment, to be honest, because deep down I'm fully aware what I'm capable of…why can't we do 1-2-3? Do you think a person can go through so many modules only to go back to crime? If you were to ask a person "Do you know how hectic it is to study inside prison?" It exhausts all other avenues, to get all the necessary requirements, documents and do all of that…Do you think that person would still have time to waste? – Sibusiso Zungu

In a similar manner, after completing law school, Rock found a myriad of challenges confronting him. Thus, phrases and expressions such as "waste of time", "feel bad" and "demotivates" inspired me to probe further and examine these challenges. For instance, Rock reiterated that due to his criminal record, he had struggled to register his articles with the Transvaal Provincial Law School. Based on his previous convictions, he confirmed that he could neither be appointed as an attorney nor admitted as an advocate owing to the "discriminatory process" which relegates ex-offenders to menial jobs. Rock said:

…people settle for whatever [because] *they are prevented, rejected or denied the opportunity to exercise or practice their field of interest based on their previous convictions…it is a discriminatory process and one's life has to be destroyed by that…*[since] *after graduation, if you want to pursue the law profession then you have to get your articles registered by the relevant law society, which law society is relevant to me is the Transvaal Provincial Law Society which I am under. I have to have that registered but I couldn't register my articles because I have a criminal record and the articles clearly state that if you have a criminal record then you are not eligible to be in the law profession* – Rock Lefatse

In light of the above, I expanded my enquiry to Moruti and I gathered that he too felt uncertain and anxious. He explained as follows:

…To do my articles requires a lot of effort and money to register; yet it doesn't have any certainties as to whether after completing my articles, I will be admitted to be an attorney due to the fact that I have a criminal record…the Legal Practice Act states clearly that one has to explain or motivate why he or she sees themselves as a fit and proper person. I believe that's where the challenge will be because that's where the element of disclosure has to be furnished from my side and then it will depend what decision they take; however, I believe the general bar council of advocates will be in a position to oppose my application. It is a struggle I know and have heard from others who also studied law that it is going to be difficult for me to be granted the certificate to practice as an advocate and that difficulty will arise from the general council of advocates, which is the Bar Council. – Moruti Letlapa*

Despite the exorbitant registration fee, the narrative "It is a struggle I know [of] and have heard from others" seemed popular and all too familiar among long-term HE incarcerated students, as validated by Sunette's comment. She remarked:

And the people who did accounting…okay, the lawyers I cannot say much about them because it's a difficult situation. But for people who did psychology, I will first ask them what is the crime you committed? Is it aggressive? Now let us check if and how far your qualifications will take you. So, study psychology but branch out of psychology in your honours years to something else…an HR-related industrial psychology, don't do straight psychology, do industrial psychology…it is so much better than getting a job as a straight psychologist. Those are the things that I would advise a person because I'm qualified to give that advice. – Sunette Meyer

Once more, this conversation highlighted the absence of official career guidance and counselling when pursuing HE during incarceration. In the words of Sunette, "the problem is that those who have tertiary qualifications also have a wrong perception of what is happening in the labour market. They think…[rather] they believe their skills are needed; not really, not necessarily…" She added:

When you do AET, you have knowledge…now what do the TVET colleges bring to the table? We bring skill to the table. There are no limitations. If you have AET Level 4 and you express the need for skills training, we accommodate you. We bring accredited skills training…[but] *when you finish your tertiary qualification, you just have a piece of paper…My apologies, I do not mean anything bad, but it is what it is, you have a piece of paper. You don't have experience, which nowadays is a must in the labour market…they are always looking for people with experience. People with experience are always better favoured and better viewed.* – Sunette Meyer

As a final point, it was against this backdrop that Marisa van Schalkwyk was sought out during this study to confirm and/or refute these claims by expanding on the

dynamics of the labour market. Accordingly, I explored Marisa's construction of the criminal record and she responded by saying:

…Well, let's put it this way, I can only comment based on policy. The policy doesn't exclude people with criminal records…that's what I will say. I mean specifically in the academic world, we do those criminal checks and credit checks; it depends on what you do. Like a person who's working in finances and securities…no…there, they don't have time to play…I mean people appointed in finance are going to work with money and also the securities, that's where they do all those extra checks. –
Marisa van Schalkwyk

These nuanced differences between the types of professional training applied for, access to vacancies and prescripts enshrined in policy directives are addressed in detail in the three subthemes to follow, namely: "No eyes, no ears", "A 'trustworthy' stranger?" and "One can, the other can't".

6.2.7 Lurking in the shadows

The superordinate theme "Lurking in the shadows" was constructed based on the participants' views and opinions regarding the negative connotations and repercussions of a term of life imprisonment. In essence, this theme underscores the participants' experiences of the criminal record as endowed with the power to lie discreetly dormant in the background while subtly hindering the labour market prospects of ex-offenders by regulating their self-development opportunities. In accordance with this pronouncement, socioeconomic challenges and the impossibility of finding a job after incarceration force ex-offenders to remain deviant and demotivated to conform to society's norms due to an inferiority complex (Onuverova, 2016). Indeed, there was accord among the participants that criminal records have long-term negative effects. For some, this negative experience was conceived of as a "double punishment" aggravated by the stigma of having a criminal record. For example, Mpho Madingoane revealed that once one has a criminal record, it never goes away: "…it is something that follows you through and through and it messes you up." The implication is that criminal records act as automatic disqualifiers to job and training opportunities, and this culminated in a sense of hopelessness followed by self-exclusionary practices. The participants said:

…its people who had a life before they became teachers. For example, while you're still in high school and then you want to be a teacher and those things follow up, simple things like just stealing from a

shop, stealing yoghurt, so they follow up, they follow you through…because it is something that follows you through and through and it messes you up. – Mpho Madingoane

I started reading documents, DCS and criminal justice documents, trying to understand how I can rid myself of this criminal record because it does affect me. I was sentenced to life imprisonment, so even now, DCS always follows me, having relations with me, when I move I must report, when I cough (laughs) you see, so they want to know where you are, what you are doing, and all of that. – Sifiso Khumalo

…You know, you can acquire a criminal record by paying a small traffic fine which will come and haunt you 10 years later. So even despite me having qualifications, I still can't find a permanent job because of the criminal record I have. So basically I am still paying for it and I believe I will pay for it even for the next coming years of my life. – Rock Letlapa

Key to this experience is the notion that criminal records are bestowed with the ability to lay discreetly dormant for protracted periods of time. First, according to the participants, a criminal record can be acquired "while…still in high school" and "follow…through" until adulthood, both for serious offences and minor misdemeanours such as traffic violations and/or stealing yoghurt from a shop. Second, "despite…having qualifications", it appeared that for ex-offenders sentenced to long-term imprisonment, efforts to detach themselves from the DCS proved challenging.

Against this backdrop, it would seem that criminal records are the determining criteria that tend to disqualify student-applicants from gaining access to professional training and/or job opportunities. In support of this was Rock's account when he testified that "I am still paying for it and I believe I will pay for it even for the next coming years of my life". He elaborated thus:

…it is bad to have a criminal record. It actually does more than preventing you; it ruins your whole life you know! It's like you are forever paying for the criminal record, even more so after the court has found you guilty and you have paid by going to prison and the likes; so yes, it destroys one's life. You even pay for it years after. – Rock Lefatse

The difficulty of getting past a criminal record in one's life was also a challenge highlighted by Sifiso. He said:

…because of your criminal record, you have to sit and explain yourself and go through those processes; it's not nice to talk about having been in prison. You see, we do talk about it because we are trying to help other people not to walk into those traps of going into prison. As I mentioned, we speak to youth at risk on radios, focusing on how I can stop people from going to prison, those in

prison, because to leave with this thing is a stigma; it is a burden that you carry all the time. – Sifiso Khumalo

Therefore, the study concluded that life imprisonment reinforced the notion that debt owed to society is hardly ever repaid through incarceration. Instead, the branding associated with this debt justified post-incarceration punishment, as more and more ex-offenders found it almost impossible to repay their debt to society – the symbolic interpretation thereof being that criminal records invariably and discreetly lurk in the background to regulate labour and other HE opportunities.

Stigmatisation as double punishment

Consistent with the phenomenological approach adopted in the study, the subtheme "Stigmatisation as double punishment" was constructed following the interpretation and the sense and meaning making of the experiences of living with criminal records from the participants' worldviews (perspectives). Until now, the results have suggested that ex-offenders are treated differently in society, almost with suspicion, because of their criminal records. This difference in treatment was construed as unfair discrimination by the participants, particularly by those who still sought employment and registering with professional licensing bodies. When probing for the effects of criminal records on their careers, I managed to pick up tones of exasperation in the participants' voices and this was in relation to the relentless punishment and rejection of people with criminal records in the labour market. This is what Moruti and Marisa said:

…a criminal record is a challenge and needs to be approached in a very serious light. I don't know how, but under the South African law and in terms of Section 35 of the Constitution, no one can be punished twice for the same offence…the criminal record plays that role indirectly because it is a double punishment… a criminal record is a punishment on its own. – Moruti Letlapa

But why must they be punished twice because they already have a criminal record? And so they paid for their sins and so why must they again be punished by marketing jobs? – Marisa van Schalkwyk

Based on Duncan's account below, stigmatisation because of a criminal record is another hurtful form of punishment – only this time, it is punishment after incarceration. He expressed his views as follows:

It hurts me, hence it's still perpetual punishment…a criminal record is a continual punishment, irrespective of how or whatever achievements you have achieved, it is always there, it is a red dot on a white piece of paper that closes doors for us...Currently, I am trying to apply; they want that. Does it

mean a person's life has to pause until 10 years again, without getting a job, without being cleared, not practicing their profession? They have to wait another 10 years, hence it's another sentence. You come from a 15–17-year sentence and get outside, only to be told that I have to wait another 10 years before doing this thing? – Duncan Molefe

The symbolic expression of the criminal record or metaphor used by Duncan to describe the criminal record as "a red dot on a white piece of paper" was interpreted as signifying danger, apprehension or cause for alertness on the part of employers/training institutions and/or professional licensing bodies when dealing with or interacting with people with criminal records. Furthermore, it transpired that the criminal record served as an impediment to business opportunities as well as stifling personal and academic freedom. To exemplify the finding that the criminal record is always a permanent dent in one's life, during my conversation with Sifiso, he shared similar ideas about the Uber taxi business. He said:

For example, if I want to leave this environment [HE] *and go into the business world, there are businesses I won't be eligible to start, something as simple as accessing the Uber taxi industry… I cannot own a car and put it on Uber because they want, they check those things, criminal records and stuff, so you see that it affects me? It suffocates me. In other words, it makes me tied up even when I am no longer in prison; it has that thing.* – Sifiso Khumalo

I further noticed nuances and resonance of this relentless and "perpetual punishment" because of a criminal record during my conversation with Duncan and Sifiso (e.g. "closes doors", "life has to pause until 10 years", "suffocates" and "tied up"), consistent with Sibusiso's use and choice of words (e.g. "aborting my life" and "burying me while I'm still alive") as reflecting punishment after incarceration. For instance, given the extract below, it seemed probable that the criminal record was symbolically equated with a feeling of demise; hence, the study's metaphor and conceptualisation of the criminal record as a "death sentence":

That means you're aborting my life; you're burying me while I'm still alive…let's start off by calling a spade a spade. In the government sector, particularly those in the labour department alongside higher learning institutions understand [that] *there's this notion of labelling a person. They want to put the spotlight on the one without a criminal record…leaving behind those who are rough around the edges.* – Sibusiso Zungu

Based on the shared experiences of the participants, one would contend that "labelling a person" with a criminal record is emotionally and psychologically taxing. As pronounced by Sibusiso above, "those who are rough around the edges" suffer

the stigma and discrimination accompanying the label. For instance, once a person is labelled a sexual offender, even if they pay "for their sins", the label lingers on to further punish and stigmatise the person by permanently keeping his/her name on the sexual offenders list.

Criminal record as instant disqualifier

As already pointed out, seminal studies conducted locally and abroad seem to be in accord that criminal records serve to regulate the HE and labour market prospects of people previously in conflict with the law. Participants in the present study also explicated collateral consequences by referring to a spectrum of examples with the common resounding narrative underscoring criminal records as instant disqualifiers to make use of business, education and employment opportunities (Mawerewere & Chiborise, 2017; Saliba, 2012; Yannick, 2018). Other similar and comparable studies report that seeking a job while having a criminal history is cumbersome and engenders criminal record-based discrimination (Muthee, 2020; Onuferova, 2016). For example, to establish a sole proprietorship in Cameroon, applicants must not have a criminal record (Yannick, 2018). Similarly, applying for a capital loan to start a business in Zimbabwe requires that one does not have a criminal record (Mawerewere & Chiborise, 2017). In Ghana, research shows that ex-offenders who have acquired HE suffer from an absence of gainful employment due to their criminal records (Glover et al., 2018). I noticed similar trends in the present study and Duncan, Sifiso and Rock corroborated these claims:

I cannot proceed to master's level, especially at Unisa, reason being they say it's compulsory that you have to register with the professional board and have two years' experience working as a social worker before one can register for master's. Those are the requirements in social work. – Duncan Molefe

According to Duncan, this prerequisite automatically excluded him given the nature of his offence because he could not progress to the master's programme, since the requirements were such that he first had to register with the council of social work for a minimum period of two years to accumulate work experience prior to his registration for master's studies. Consequently, he experienced this task as overwhelming and a nearly impossible undertaking. Sifiso automatically disqualified himself:

I can't travel freely, I can't interact with other scholars in other countries. If there are papers I need to present or need to attend, or listen to other scholars in other places, I can't do that freely, because there's that thing whether will I be welcomed. Will I be able to travel and go there? All those things… –
Sifiso Khumalo

The sentiments expressed by Sifiso above were reiterated by Rock, who illuminated the effects and implications of having a criminal record as follows:

It [criminal record] *prevents you from doing many things…Basically, you are allowed to have a licence but you are prevented from having the means of supporting yourself by acquiring a public driving licence permit, you understand? When you apply for a visa, they check whether you have a previous conviction and if you do have a previous conviction, you are disqualified from having such…If you want to establish yourself as an entrepreneur, you are disqualified from being a manager of your own company because you have that particular previous conviction...If you want a gun licence, you are prevented from having such. Hence, I am telling you that it permeates all spheres of life. –* Rock Lefatse

In this extract, Rock accentuated that criminal records are indeed problematic. For instance: Earlier he testified that criminal records ruin people's lives because they become the unjust regulator of opportunities. Here, he continued to exemplify that criminal records affect people's lives socially and occupationally. Several other studies have converged on the finding that the lack of a criminal record on job applications is one of the factors considered to be of utmost importance by employers (Onuferova, 2016).

In the same way, when I asked Sibusiso if there were instances that he could recall where he had applied for a vacancy and was unsuccessful, he said:

There's one, I once applied for here in Waterkloof. It was ran by a physiotherapist and they said "Eish, a criminal record"; and with others it raises eyebrows, especially in this profession where you'll be dealing with different kinds of people. Actually, you can see that this thing is disadvantaging people. – Sibusiso Zungu

The notion that a criminal record "raises eyebrows…[when] dealing with [certain] kinds of people" was also clearly articulated by Sifiso, together with the apprehension and anxiety he had experienced when applying for his first job following his release from prison. He recalled the process as follows:

…that was a big challenge because the head of the centre didn't approve of me coming from outside to work there; he saw me as a threat. I know the systems there; I could smuggle stuff he would not like in his centre. But through negotiations, you see, because I remember we had a lot of meetings,

talking about this and that and for me, being searched was different from the other teachers who came from outside, until he adjusted and was comfortable with the fact that I was teaching. – Sifiso Khumalo

Thus, given the above extracts, one can surmise that the subtheme "Criminal record as instant disqualifier" was constructed based on the common yet distinct experiences of the participants in relation to the difficulties of accessing job, business and educational training opportunities with a criminal record.

Self-exclusion and hopelessness

The third and last key finding to emerge under the superordinate theme "Lurking in the shadows" is the subtheme "Self-exclusion and hopelessness". This subtheme was constructed following the participants' feelings of discouragement and hopelessness regarding future education and employment prospects. These findings echo previous research indicating a preference for withdrawal strategies (Kurtovic & Rovira, 2017; Zand-Kurtovic, 2017). According to the research, when student-applicants forecast a possible rejection, they automatically exclude themselves from applying and thus avoid the exclusionary practices and stigmatising attitudes they predict to encounter in a job or education (Zand-Kurtovic, 2017). For example, student-applicants are rejected for tertiary education in the Netherlands, even for minor offences that do not pose a serious risk (Kurtovic & Rovira, 2017; Zand-Kurtovic, 2017). Perceived this way, criminal records become an obstacle that constitute a risk of not completing education, thus leading to exclusion. As the participants interpreted a criminal record as signifying "continual", "double" and "perpetual punishment",– there was a strong sense of apprehension that ultimately culminated in self-exclusionary practices. This premise was predicated on the following accounts:

I get discouraged to the point whereby I no longer apply for any government posts because I already know I won't be considered…[and] *it has nothing to do with my abilities and capabilities.* – Rock Lefatse

…if government can remove that provision saying you must declare if you have a criminal record so people may not be discouraged…so that people may not self-exclude from applying for such posts and opportunities. I believe there will be a way forward. – Moruti Letlapa

According to Dlamini (2016), being rejected repeatedly leaves ex-offenders demotivated, discouraged and with a sense of hopelessness. Job applicants with

criminal records are more likely to develop a sense of apprehension and automatically self-exclude from applying for vacancies because of the belief that they will never be hired. For instance, "I get discouraged to the point whereby I…self-exclude from applying for…posts and opportunities" exemplifies despondency. Yet, if we disregard those who are unemployed (including those who have given up on finding employment), this engenders recidivism because these are the very people who are encouraged and enticed by crime (Kingdom & Knight, 2004). Rock and Sifiso recounted their feelings as follows:

I had to draw an inference starting the day I applied up until the day of the interview…Why is it that I was not successful? And those were the questions I was asking myself. Why was I not successful? And I came to the conclusion that it is because of the criminal record I have that disqualified me. Remember, even in the Z83 government application form, they ask you a question whether you have a criminal record, so like you have to declare whether you have or you don't have. I was not ticking "Yes, I have a criminal record". Although there is a provision, they tell you that it is only for population or data-taking purposes and that it will not be taken to the prejudicial of an individual. However, I felt like, in actual fact that was the other way around, conversely so, it was only taken to discriminate against people with criminal records. – Rock Lefatse

…people with a profession are the ones most affected by the criminal record…This thing continuously makes you feel discriminated against on a lot of other things, especially if you are progressive in life. It affects people who are progressive more than people who are stagnant; its ugly because you will feel its impact when you want to travel here to UK to work or something. For instance, when I see calls for papers, there are some that I don't even pay attention to because I know that my criminal record on its own has already stopped me. – Sifiso Khumalo

A criminal record is a burden to all inmates, to all ex-cons actually, because it becomes futile for inmates who are still pursuing their studies with the objective of changing and becoming law-abiding citizens not knowing what they will be facing upon release and after they have completed due to experiences of discrimination; that is, a criminal record. – Moruti Letlapa

Taken as a whole, these results show that ex-offenders automatically exclude themselves from job hunting, believing that employers' attitudes (as engendered by their criminal record) are the reason why they are not hired, rather than believing a more qualified or experienced candidate is better suited for the job. To highlight these beliefs, a British study (National Association for the Care and Resettlement of Offenders, 1998) found that 42% of 200 ex-offenders reported that their criminal records were identified by employers as the reason for being unsuccessful at the job interview stage. Thus, in respect of these findings, it seems imperative to consider

the dual role played by employers and society, not only in managing people with criminal records but also during the reintegration of ex-offenders through being afforded gainful employment (Public Service Commission, 2009).

6.2.8 Not what it seems to be

To recapitulate, the preceding superordinate theme ("Lurking in the shadows"), in particular the subtheme "Criminal record as instant disqualifier", established that for the most part criminal record disclosure amounts to either self- or categorical exclusion of student-applicants with criminal records when seeking employment and/or admission to practice. However, in contrast, the superordinate theme "Not what it seems to be" emerged, counter-suggesting the existence of a multi-tiered gatekeeping process (comprising, for instance, "conduct division", "fit-to-teach committee" and "recommending body") whose task is the evaluation of the advantages and disadvantages of hiring and/or registering student-applicants with criminal records. In addition, the results indicated discrepancies regarding the synergy and interrelatedness of the various professional licensing bodies in working together with Unisa to help facilitate the employment and/or registration of people with criminal records, including the performance of their own duties (i.e. to protect and prevent harm to clients and/or the public). The participants said the following:

Ok, you see this form, there is a space in the application form for them to declare, they actually indicate. It's up to them, was it robbery, for how long…type of offence…they actually openly declare that to us. But like I said before, we don't disadvantage them, we don't, we still accept the applicant…but as registration, we work with other divisions like professional conduct because ours is purely to register, but professional conduct is to see beyond registers…because we set up people who were already in trouble with the law. For example, when an applicant or application comes for registration and we say a person has declared that I killed a person before and I was convicted, I was 10 years in prison, that is where we refer that matter to the professional conduct division. That professional conduct division is not there to disadvantage people; it actually forms support for us to follow certain procedures. – Ike Mofokeng

…that will be determined by the fit-to-teach committee, especially for serious offences, rape, murder, robbery, depending on what may have led you to committing those offences. Cases of a very serious nature get referred to what is called a fit-to-teach committee comprising of a three panel member to whom you have to appear before and present your case and that panel is the one that determines whether you should be registered or may be registered with conditions and so forth. So basically, they want to know about you, the circumstances that led you into committing what you have committed, have you gone through the victim–offender processes and what was the outcome and so forth, have

you had any or have you gone through any rehabilitative courses and what was the recommendation, usually those from social work (reports) and so forth, so they demand to know of those from you as an applicant who has a previous conviction. – Mpho Madingoane

In terms of the selection committee, HR only facilitates advice…the ultimate decision is taken by the recommending body…[and] I can only comment based on policy. The policy doesn't exclude people with criminal records, that's what I will say…the panel has to apply their minds to what are the advantages and disadvantages because remember, the union are there, employment equity is there and the subject experts are there and those are the people that basically have a say. – Marisa van Schalkwyk

From the preceding extracts, I quote: "we still accept the applicant[s]" previously "in trouble with the law"; however, "for serious offences [such as] rape, murder [and] robbery", "the ultimate decision" is "determined by the fit-to-teach committee", "the recommending body" and "the professional conduct division" [because] "HR only facilitates advice…those are the people that basically have a say" "whether [one] should be registered or may be registered with conditions". Consequently, what appeared immediately apparent when connecting the participants' narratives were the power dynamics between student-applicants, the labour market and the various professional licensing bodies. The same findings were brought to light by Dlamini (2016) and Saliba (2012), who wrote that "power resides in the hands of the employer" because they hold the "ultimate decision" and, by implication, regulate the labour market prospects of people previously in conflict with the law. Therefore, the superordinate theme "Not what it seems to be", in particular the subtheme "A multi-tiered gatekeeping process" appeared to completely refute the notion of a criminal record as being an automatic disqualification from HE opportunities and magnet for unfair discrimination in the labour market.

A multi-tiered gatekeeping process

…The HR advisor basically does not have decision-making powers; the role of the HR advisor is the filling of posts [and to] act as facilitator and advisor…the CoD is primarily the one that will draft the advert but is not the ultimate power in that process because remember, everything is a committee. For the interviews to take place, the panel or committee needs to form a quorum of five…If you look at the make-up of the committee in terms of the requirements, the policy, there must be five people on the panel… it must be the chairperson, it must be the subject expert, it must be the CoD… it must be a representative from the department and obviously also Senate and employment equity…the two unions must be invited and if there are not five people on that panel, it means the interview can't go on. – Marisa van Schalkwyk

I believe compliance is very important, hence I came to council to enforce and ensure that those who practice childhood care in the social work profession are actually compliant with legislation as stipulated in the Act, and ensure that the training and education for social services practitioners is of quality and also ensure that training institutions are complying to the norms and standards of the council because at the end of the day those students are expected to register with us. [So] *we do not allow training to happen that we are not part of and even do not understand the content of…we are playing the role of ensuring quality and training across the country.* – Ike Mofokeng

From these remarks, one can formulate the idea that for quality assurance purposes, an open, transparent gatekeeping process exists that is informed by a hierarchy of norms, standards, procedures and adherence to protocol such as applying for police clearance when hiring and/or registering student-applicants with criminal records. For instance, during my conversation with Mpho, it became apparent that there are a variety of committees such as the fit-to-teach and reinstatement committees and processes to be adhered to and student-applicants with criminal records are summoned to appear before these committees to make a representation about their criminal records – all aimed at protecting and serving the interests of society while carefully balancing the needs of student-applicants. Marisa informed me that prior to an advert "going out", there are processes in place and committees that oversee those advertisements. A clear justification for this process was provided by Ike, who said:

…This piece of information is actually to support people, support professionals to do their work in the best possible way, knowing there is somebody out there who can support me. All we want at the end of the day is effective and efficient service delivery to the clients; that is all we want. So, as much as you saw this and you know and you had questions around it, but the main aim is to make sure there is service delivery… so it's two things. It's protecting the applicants and also protecting the service recipient… It's actually a win-win situation. – Ike Mofokeng

Furthermore, my conversation with Mpho confirmed that as the ethics manager, his core responsibilities entailed assisting the legal and discipline section of the council by providing legal advice, receiving and dealing with matters relating to the submission of fraudulent documents, complaints and irregularities against teachers (and possibly having to prosecute them), and assisting the registration division with issues relating to the management of student-applicants who intend to register with the council but were found to have been in conflict with the law previously. To verify this process, I reached out to Duncan, who confirmed that on 25 March 2019, Unisa had conferred on him a Bachelor of Social Work degree and immediately after he

had embarked on the process of registering with the SACSSP. It transpired during our conversation that Duncan had already approached the SACSSP and had been instructed to complete the application form and disclose any criminal offences he had before returning the form for data capturing, including a non-refundable fee of R660. At the time of our conversation in 2019, three months had already passed since Duncan's application to the council.

In the same way, I deduced from the multiplicity of examples Marisa provided that in the context of employment, it had not come to the point where Unisa had been told they were in contravention of labour law and policies either by unfairly discriminating against people with criminal records or negligent hiring. Instead, she emphasised that Unisa relied heavily on the recommending body, with guidance provided through strict adherence to labour law and policies. Ostensibly, this finding explained the absence of litigation against Unisa for excluding student-applicants with criminal records from accessing the labour market. To illustrate with an example, I can testify that I was first hired by Unisa as a student-worker in 2015 and permanently appointed as a lecturer in the Department of Psychology in December 2019 with full knowledge of my previous criminal convictions. Taken together, these results suggested that liability in terms of trust lies within the selection committee that is present during the interviews as knowledge experts in tuition, research, community engagement and academic citizenship. In this regard, Marisa described the interview panel as constituted in such a way that the experts also "psycho-analyse" job candidates. She said:

…It is a committee tasked with ensuring that they hire a person who is not going to put the university into disrepute because nobody wants to associate themselves with people who are criminal convicts.
– Marisa van Schalkwyk

In conclusion, within the context of our conversation, Marisa clarified that it would be difficult for job applicants to deceive the recommending committee, whether lying or concealing their criminal records, as "they have been around the block a couple of times; they can manage to detect the person that's not [truthful]". From these words, I felt a sense of déjà vu, remembering scenes and events of my own interview replaying in my subconscious. These thoughts were a reaffirmation for me of the existence of a multi-tiered gatekeeping process.

Duty to protect the public

The second subtheme to emerge was the "Duty to protect the public". When applying to register with professional licensing bodies, either for registration or for readmission purposes, applicants are required to among others inform the council of any criminal offences that might have resulted in the student-applicant being found guilty or convicted. In my conversations with the participants, I became curious and explored the rationale behind requesting student-applicants' criminal history as well as the rationale behind criminal record retention. The aim of embarking on this investigation was to confirm and/or refute findings in Chapter 3, and the extracts below strongly indicated that councils were vested with the responsibility and duty to protect the public.

> *There has been an outcry to say, as a council for educators, do you know the people you are registering, what is their status with regards to the community, have they been convicted, could they have been listed or enrolled on the sexual offenders register or on the register for persons declared unfit to work with children, do they have previous convictions, if they do, what's the nature of those previous criminal convictions or have they been dismissed by employers previously and if they were dismissed, what were they dismissed for, could it have been for serious form of misconduct and so forth. Hence, now it is a requirement that you must submit your police clearance which is not older than six months…just to check who you are. Are you fit and proper, can you be said to be fit and proper, can we entrust you with our children?* – Mpho Madingoane

> *…we need to be aware we are dealing with people of acceptable characters…that is a practice that is translated in the form of a national statute. Eh…national legislation, passed by national legislature! To say...let's empower the court. Court! Before somebody comes and wants to be admitted to practice law, and by extension somebody wants to come and be unleashed unto the unsuspecting public, this person must be adjudged by the court. Duly authorised…to say yes, we have allowed Mr Mdakane as one of the considerations, for it to satisfy itself that it is unleashing this person unto the unsuspecting public.* – O'Reilly Setlogolo

Once more, drawing from the extracts above, one can reasonably posit that in the current climate, there is a need for constant status verification in the labour market, as evidenced from the submission of police clearance certificates which in itself suggests that "power resides in the hands of [the] authorities" because courts and professional licensing bodies ultimately decide the fate of student-applicants with criminal records in determining access to HE, training and development opportunities. Furthermore, the results indicated a need for stricter vetting procedures aimed at protecting the public but also developing policy measures

aimed at upholding the interests of society. During my conversations with Ike and Tshepang, they advocated that as gatekeepers of the social work profession, their duty was to protect the vulnerable:

…registered childhood independent workers, registered social workers, whether they be social auxiliary or auxiliary occupational…these professionals work with the most vulnerable people. There are vulnerable people in those communities where they work, children who are already abused, they work with families who have gone through tremendous trauma. So…in the interest of client service…it's in the interest of the clientele, like of the families, communities, children who were abused already, some of them 10 times…[So] *we need to be stricter, because for me, well because of my experience as well because I am an advocate for children and families…we don't want to take chances when we work with those vulnerable people; we should never take chances at all. And we cannot experiment even once. One of the service recipients is protecting against secondary abuse; we don't want that. So, if there can be anything added or changed, I would say we need to make our procedures more stricter.* – Ike Mofokeng

…we felt like, as much as we wanted to protect everybody, we also wanted to protect the students, so that they don't find themselves like in a situation that we are finding ourselves in. – Tshepang Didintle

The sense to "protect everybody", especially "vulnerable people" (including "children…families, communities" and "students"), emerged strongly in this theme to justify the council's responsibility to protect the public. However, it also exemplified an inclusive approach whereby social work students who were previously in conflict with the law were also accommodated to register with the council.

Helping the helpless

With reference to the third subtheme "Helping the helpless", the results of the study conveyed that it was relatively more advantageous to disclose one's criminal record than it initially appeared. In this respect, the accounts below by Tshepang and Mpho informed the observation already made in Chapter 3 that criminal records are a material fact in applications for employment and admission to practice, hence the construction and implementation of interventions aimed at helping to accommodate student-applicants with previous criminal records. In highlighting these interventions, these participants remarked as follows:

…we realised this perception, that it's disadvantaging a lot of our students. So as council, we developed norms and standards for universities. These norms and standards were approved last year and we consulted all the universities. – Tshepang Didintle

After going through the process, the fit-to-teach committee, well…not all of them have had that, but most of them yes, having gone through the process, they were assisted. By assisted, I mean they got registered, most of them with conditions, but usually the condition is more monitoring because "Can we trust you, Mdakane?" Then someone else monitors, someone else presents a report, "I am happy with Mdakane". We take that into account when we register you. So, you will be registered permanently or conditionally for 12 months or for 24 months, depending on the report by your supervisor. – Mpho Madingoane

From the conversations with these participants, it further transpired that there was evidence of a process of consultation between the SACSSP and HE institutions (particularly Unisa) regarding the admission, training and registration of social work students with criminal records. In support of this, Tshepang elaborated:

…as much as we don't want to discriminate or block anybody from studying the profession of their choice, we had to make this information [available] at the beginning…and we did not want to exclude and discriminate anyone, [so] we said even before we get close [to registration], we have to include the requirement that every time [or] before we admit the student in your programme, we get the police clearance to check whether the person has previous criminal offences and whatever…but we are not saying if those thing are [there] we cannot allow people to be admitted into the programme. –
Tshepang Didintle

Therefore, parallel to the above and taking cognisance of the account below, one could argue that the process of assessment by professional registration bodies is not cast in stone, implying that criminal record disclosure did not translate into automatic exclusion from registration. However, it implied the following:

…council just wants to know about you, what did you do in your past life. I did the following, and this is what I did to correct myself, I am sorry; and council will decide based on your presentation whether to register you or not, and you will note that a lot of people have previous convictions, a lot of people.
– Mpho Madingoane

Comprehensively considered, as well as based on personal experience, it made complete sense for student-applicants to reveal their identities right at the start of the registration process by declaring their criminal records, since, after all, for placement purposes, professional registration bodies assess and appraise all applications. Further lending support to this view was Mpho, who reiterated that SACE relied on conditional registration as part of placing student-applicants with criminal records. Therefore, in light of the above, one could conclude that there was considerable evidence in this study to support the notion that "helping the helpless" is an inclusive approach involving, among others, varying degrees of placement opportunities and

assistance to student-applicants with criminal records through the development of norms and standards, specifically by professional registration bodies, for universities. Tshepang asserted, "…if we feel like this one challenges us, we convene a panel, we sit down, we assess, we see how to assist".

6.2.9   No eyes, no ears

By and large, from the preceding theme, it is conceivable that there are hardly any policies to refer to nor guidelines regulating student-applicants with criminal records in South Africa's labour market and, by extension, admission to professional registration bodies – to which my attention now turns. However, what was most notable and imperative to critique is the observation that policies and documents (police records, police clearance letters, affidavits, application and/or admission forms) lack human emotion. As depicted by the superordinate theme "No eyes, no ears", as well as based on the results of the study, documents are emotionless and gravely ignore contextual and relevant information because they are constructed with the intention to comprehensively summarise a rather complex event on behalf of the student-applicant. Furthermore, due to exclusion of choice, these documents gravely violate the POPI Act, 2013, because there is no option for neutrality. Stated differently, the documentation required as part of the application and/or registration process dictates what information is included and excluded, thereby regulating to how much personal information employers and/or professional registration bodies have access. Thus, from the foregoing discussion, the only reasonable conclusion to make is that the profound lack of control over personal information leads to discrepancies (i.e. "system disconnectedness") between training institutions, professional licensing bodies and the labour market. In reaffirming this predicament, Tshepang opined as follows:

We are saying to universities…let's work together to ensure we assist students because lots of students study and complete their qualifications and after completion, when they go out and try to look for employment, the employer will say "Do you have a criminal record?" and if they say yes, they are not employable whereas the universities have allowed them to go through with their studies. –
Tshepang Didintle

Connecting the two accounts of O'Reilly and Tshepang below seemed to further consolidate the view that despite the gatekeeping process implemented by the various committees, "there's [still] no standard policy" guiding the management of

student-applicants with criminal records because "every case is judged on its merit". Consequently, and as elaborated on in detail during the discussion of the two subthemes "Judgment on the merits" and "Impracticalities of criminal record expungement", it transpired that lack of policy directive pertaining to student-applicants with criminal records meant that in general there was no uniformity in the management of people with criminal records because all applications were adjudicated based on individual merit, with some criminal records receiving more leniency than others. Sibusiso highlighted this distinction as follows:

There's a thin line because if you've served a life sentence, they [employers] *let you know that they can't consider you. They only consider things like fine served* [minor offences] *for a certain period of time, so you can see there's still segregation in that system…they tell you that you don't qualify. There are sections which clearly state this, even when you go to sign* [periodic monitoring]*, you see them on the wall. So you can see that there's still segregation because the very task that can be performed by someone who served a life sentence can be a challenge to someone that served 12 years. A very plain job that a person can do with ease but by virtue of them being a lifer, they end up not having those kinds of opportunities presented to them.* – Sibusiso Zungu

System disconnectedness

The subtheme "System disconnectedness" was constructed based on the participants' responses to the question "What framework guides the resocialisation of student-applicants with criminal records into mainstream society, either via the labour market or professional registration bodies?" In my conversations with Ike and Tshepang, they confirmed that in response to the silent legislation pertaining to the registration of student-applicants with criminal records, the social work council subsequently developed "norms and standards" that were formally approved in 2019 to help manage social work students with criminal records. In retrospect, I construed the establishment of these "norms and standards" as commendable of the social work council in attempting to create a seamless synergy between the two institutions (Unisa and the SACSSP). The reason being that at the time of the interview in 2019, Duncan (an ex-lifer and social work student) elaborated on pertinent but subtle challenges encountered by incarcerated social work students. He said:

Upon my release, I was left with the 3rd- and 4th-year practical modules only because while in prison, I did not get the opportunity to conduct my practicals. The prison refused and said ay! I can't do practicals based on the fact that I have to go attend workshops for my practical sessions, which are centralised and provided by Unisa; so prison wouldn't allow me to go there…they said an offender is

not permitted to attend school outside the prison premises. They said I was supposed to have checked upon registration that this thing will require what-what and what-what. They said they will never allow us, it just doesn't happen. I tried. – Duncan Molefe

Duncan informed me that owing to the lack of a policy directive, he was coerced into deregistering his social work practical modules with the intention to defer them to a later period. Thus, the fact that Duncan was unable to complete the remaining modules alluded to a disjuncture between Unisa as an institution of higher learning (in particular, the Department of Social Work) and the DCS as the custodians of incarcerated social work students. Moreover, this piece of evidence suggested a direct contravention of the Constitution of South Africa; the White Paper on Corrections, 2005; and the Correctional Services Act, 1998 (as discussed in detail in Chapter 3 of this thesis). Tshepang affirmed this view when sharing her perspective as follows:

…when we do collateral clearance, we check what is in the system. That will be the best guide to clear everyone [because] *your legislation is silent but at the end of the day when something happens, they want to act. So I think we have to put measures in place for everyone to know, like understand at the beginning before I start the programme that it might be difficult…to ensure that there are no surprises. People must know from the beginning, like if I do this...this might happen; if I do this, this might happen. –* Tshepang Didintle

Implicitly, I constructed meanings of "system disconnectedness" from Tshepang's account above, albeit in a different context. For example, expressions such as "legislation is silent" and "people must know…to ensure that there are no surprises" consolidated the finding in Chapter 3 of this thesis that the DCS's policy (including the social work brochures) was silent on the issue of incarcerated students attending practical modules, thus effectively disturbing their learning process.

However, Tshepang further highlighted that only in 2019 were training institutions (with Unisa being one of them) alerted to the compulsory requirement compelling social work student-applicants to declare their criminal records, including attaching a police clearance certificate as part of the addendum accompanying the application. To this end, and also consistent with the theme "A double-edged sword", I reasoned that when social work students apply for admission to practice, they are in fact making an involuntary declaration on the application form by disclosing details of their criminal histories.

Similarly, there was a lack of policy directive regarding the management of student-applicants with criminal records at SACE and the LSSA. The results of the study showed inconsistencies insofar as requesting information about student-applicants' criminal records and criminal histories. To exemplify these minute discrepancies, I enquired from Mpho and O'Reilly whether SACE and the LSSA had any policies for managing student-applicants with criminal records and their responses were both negative. I probed further and enquired about the use of criminal record checks as a standard procedure, to which they replied:

…The least we can do as a council, is to get information about you, hence we want your police record, the police clearance; it's the least we can do, others we request information from Department of Justice the national sexual offenders register. – Mpho Madingoane

…we don't go to that extent; we don't have those facilities. That's how far we go, to say…Mister, you intending student, can you be open with us and tell us your possible previous misdemeanours? Remember, when you apply for admission, you apply through an affidavit, which you sign under oath. To say so I begot or affirm that all the documents or what you have said in the affidavit…they are all the truth. The truth, the whole truth and nothing but the truth. – O'Reilly Setlogolo

To ascertain the various ways in which vetting procedures are used as a standard procedure in the context of employment, I enquired from Marisa whether Unisa conducted criminal background checks such as verifying a job applicant's information through the submission of an affidavit and police records. Her response was:

It depends…basically, for academic stuff, we only do reference checks and academic qualification; we don't do any criminal background checks…they only check if you have the qualification and of course we do reference check. I mean we wouldn't go dwell into the criminal record; for what? If you look at the work we do, is it really valid to say we don't want people with criminal records because remember, it's the type of work we do. These people are…these academics are going to lecture, so I mean I don't see how the criminal record comes in. – Marisa van Schalkwyk

Another inconsistency highlighted by the study to further demonstrate "system disconnectedness" juxtaposes Sifiso and Mpho's accounts below:

I wonder if I had approached, for example, SACE to teach in mainstream…to teach at high school, what would have transpired in that interview. Would they have allowed me? Would I have received the certificate? – Sifiso Khumalo

Our parameters extend to public schools, Grade R to Grade 12, private schools and independent schools, the same up to Grade 12. Further Education and Training, now they are called TVET and

officials in the department, those who are educators…[so] *not in universities, we do not regulate lecturers in universities. Those are regulated by the Department of Higher Education and Training…that is why, if you check Section 21 of the SACE Act, no person should take up employment as an educator unless they are registered with the council; and once registered, then we have jurisdiction over you, you shouldn't be employed unless you are registered, for regulatory purposes.* – Mpho Madingoane

Comprehensively considered, one can surmise that the responses of the participants above revealed a lack of consistency, uniformity and standard policy in regulating student-applicants with criminal records. Thus, firmly grounded in this theme is the reaffirmation that professional registration bodies function differently and their levels of jurisdiction vary. For example, the results of the study demonstrated that SACE did not have jurisdiction over university lecturers, hence Sifiso managed to register with SACE despite his criminal record; whereas other professional registration bodies such as the SACSSP regulated all university lecturers, including those at TVET colleges. Furthermore, the discrepancies presented above signify that while some participants, despite having committed murder, can on the basis of their chosen careers, together with the allotted councils, be allowed professional registration, others such as Rock struggled to register with the NBCSA, partly because (as elaborated on in the next theme) professional registration bodies adjudicate each application based on merit.

Judgment on the merits

Building on the previous subtheme ("Judgment on the merits") extends the findings of the study by showing that Unisa, as a representative of the labour market, together with SACE, the SACSSP and the LSSA as gatekeepers of the various professions, relied on the merit system because their policy documents (as reviewed in Chapter 3 of this thesis) did not explicitly exclude or prohibit student-applicants with criminal records from applying for vacancies and/or professional registration. To substantiate this, I present the following excerpt of a discussion between myself and O'Reilly.

Interviewer: [Therefore] this means the Law Society does not have a policy with regards to applicants with previous criminal convictions?

O'Reilly: mhm

Interviewer: Then, I assume there is no policy

O'Reilly: There's no standard policy, yes.

Interviewer: There's no standard policy?

O'Reilly: Every case is judged on their merit.

There were several other points of convergence among the participants, for example Tshepang remarked:

> *We look at each person as an individual...*[so] *each case is treated as a...legal case...*[and applications are adjudged based] *on their merits.* – Tshepang Didintle

Likewise, Marisa commented as follows:

> *I can only comment based on policy. The policy doesn't exclude people with criminal records, that's what I will say.* – Marisa van Schalkwyk

My conversation with Marisa affirmed that despite Unisa's policies, there was no existing framework specifically designed for regulating job applicants with criminal records, as each application was individually assessed based on merit. Furthermore, it transpired during my conversations with the participants that no formal vetting procedures were implemented either by Unisa or the various professional registration bodies because they depended on a system based on trust and honesty. For instance, out of curiosity, I enquired whether – apart from the application and admission forms which obviously require details about the student-applicants' criminal record history and conduct – professional registration bodies had alternative means of soliciting student-applicants' criminal records besides the use of affidavits, police records and clearance letters. The response was a resounding no. Instead, the results of the study consistently showed that individual applications were adjudged on the merits of the case and was based on a system of trust. Therefore, the student-applicants' degree of openness during the application and/or admission process hinged on their truthfulness and authenticity to disclose, rather than concealing their criminal records. This truthfulness and authenticity were expected to be corroborated by documentation such as up-to-date affidavits, police records and clearance letters. In sum and by way of conclusion, it appeared that there was convergence among the participants' narratives that the application process did not include vetting of student-applicants – and along this premise, it can be deduced that no formal or pre-existing framework was guiding the management or regulation of student-applicants with criminal records.

Impracticalities of criminal record expungement

As indicated by its title ("Impracticalities of criminal record expungement"), the third and final subtheme was constructed based on the shared experience of the participants that criminal record expungement was impossible, since the DCS had no specific policy directive aimed directly at expunging the criminal records of ex-offenders sentenced to life imprisonment. Unlike ex-offenders who can compute and estimate exactly when their sentences expire, ex-offenders sentenced to life imprisonment were uncertain about whether or when their sentences would expire. The results further showed that they were also unsure about whether they qualified for criminal record expungement. From the six ex-lifers who participated in this study, Rock was the only one who had pursued criminal record expungement for one of his two previous offences. To explore the effectiveness and efficiency of criminal record expungement from the perspective of someone who had undertaken it and whether it served as a worthy recourse for ex-lifers, I requested Rock to explain the process of expungement. In summary, he disclosed that he had paid approximately R500 and waited about six months to expunge his first criminal record. Excitedly, I probed whether he had considered expunging the second criminal record. He recalled:

No, criminal record expungement doesn't work…until such time I get admitted I cannot speak for any other person. Maybe to other people it may work but for me, I know for a fact that it doesn't. The law has always been discriminative against me and no matter how hard I try to be on the safe side of the law, to be a law-abiding citizen, the law does not see my fruits. – Rock Lafatse

He then proceeded to relay an incident where he had approached the local police station with the intention to expunge his second criminal record, only to be shown the initial record still existed on the system. Based on his recollection, he said:

I went back to the police station after I had expunged the previous one [offence] *only to be shown on the system* [it still appeared]*…I was quite amazed to see I had expunged it theoretically but when they went onto the system, it still showed that Rock Lefatse, on this date, committed this crime and this clearly means that even when I apply for a post and they conduct a criminal background check, they will find that case still hanging in there. And I will be disqualified without understanding that I had expunged it.* – Rock Lafatse

Similar sentiments were expressed by Duncan and Moruti, who given their experiences and challenges of attempting to expunge their criminal records, felt that as an option (or recourse for ex-lifers) criminal record expungement was neither

attainable nor feasible. When I asked whether they (Duncan and Moruti) had considered criminal record expungement, they reflected thus:

…Yes, (sighs) criminal record expungement…it is on my mind, but there are certain things preventing me from pursuing it. First of all, before I can do it, one has to do what they call police clearance; you cannot apply for criminal record expungement without having been cleared first…at least I heard that's how the procedure goes…[also]…*in order for me to be cleared on the police clearance, it has to be 10 years, you see? One should wait for a period of 10 years before they are cleared, and I don't know in my case hence I'm serving a life sentence whether will it be possible to be cleared after those 10 years because normally they clear people sentenced to a number, that is people who were serving years, not life sentence. Meaning now I do not qualify to do it because last I went to Lens* [Lenasia] *to do a police clearance, they asked me when I was released. I said 2015 and they said I don't qualify. –*
Duncan Molefe

When I asked Moruti the same question, including what were his thoughts on criminal record expungement, he answered as follows:

I haven't tried it because it has processes one has to follow from what I heard and I do not qualify because this is my third year. If I do try it, it will be just a procedure, it won't work for me. It will be just like trying my luck, maybe if I am lucky…but I doubt I can be granted expungement. I was shocked to discover that someone's criminal record had been expunged. In my mind, I thought this thing was not working or maybe due to close connections with seniors, influential people in the country. Not something that is applied fairly or objectively to everyone because most of the people I know have applied for criminal record expungement, especially with the type of crimes I was convicted for, aggressive crimes, it's difficult for a person who committed aggressive crimes to be awarded criminal record expungement. – Moruti Letlapa

To affirm consistency across this experience, I also asked Sifiso whether he had considered applying for criminal record expungement as an option to address his challenges and he responded:

Well, I hadn't yet tried it…it takes time, that's how I can put it, because there is a date they said it will end on, which is 2021, eh so…and then what I understand so far, is that after a period of 10 years after your sentencing date, then you can apply for expungement, but I am still finding help and advice on how can I deal with this life sentence I am faced with. – Sifiso Khumalo

In conclusion, and based on the five extracts supporting this subtheme, there seemed to be evidence suggesting that there are inherent challenges to criminal record expungement by ex-lifers. For instance, the finding that criminal record expungement is a costly, protracted endeavour that lacks a clear policy directive aimed at expunging ex-lifers' criminal records was more prominent. Also, given this

context, one should bear in mind that one of the requirements of SACE that further entrenches the unemployment of ex-lifers is to have the student-applicant's criminal record expunged first, prior to registration, which implies waiting a period of 10 years from the day of conviction. Also reaffirming this notion were Sifiso and Rock saying that for people serving life sentences, the lack of clear policy directives aimed at resocialising ex-lifers was experienced as an extra burden, both financially and administratively. In summary, this subtheme shows that unless there are clear policy directives aimed at managing the reintegration of ex-lifers, a one-size-fits-all approach seems problematic.

6.2.10 A "trustworthy" stranger?

The superordinate theme "A 'trustworthy' stranger?" is predicated on three subthemes, as indicated in Table 6.1 of this chapter. In concert, these three subthemes convey the metaphor of the "sieve analysis". In the context of this study, sieve analysis refers to the practice or procedure used by training such as Unisa, legal institutions such as the High Courts, and professional registration bodies such as SACE and the SACSSP to infuse the fit and proper clause as an appraisal tool or mechanism to test for among others "defect" of character by progressively screening student-applicants for "unsavoury characteristics" prior to allowing them professional registration (i.e. to pass through). In performing their duties as gatekeepers of the respective professions, the participants said:

> *We need to be aware that we are dealing with people who are of acceptable* characters [so]
> *let's…have this person go through our sieve to see if he does not have uhm…unsavoury characteristics among them…that is a practice* [laughs] *that is eh…translated in the form of a national statute. Eh…a national legislation, passed by national legislature!...Let's empower the court. To say court! Before somebody comes and wants to be admitted to practice law, and by extension somebody wants to come and be unleashed unto the unsuspecting public, this person must be adjudged by the court. Duly authorised…to say yes, we have allowed Mr* Gumede *as one of the considerations for it to satisfy itself that it is unleashing this person unto the unsuspecting public.* – O'Reilly Setlogolo

In line with O'Reilly's explanation above, one can reasonably formulate the idea that student-applicants with criminal records are generally perceived of with suspicion and treated with caution. According to Saliba (2012), this justifies the need to regulate ex-offenders beyond prison walls and long after they have served their

sentences. To this end, the purpose of the "sieve" as a social construct upholding and protecting society's interests was eloquently elucidated on by Mpho:

There has been an outcry to say…as a council for educators, do you know the people you are registering, what is their status with regards to the community, have they been convicted, could they have been listed or enrolled on the sexual offenders register or on the register for persons declared unfit to work with children, do they have previous convictions, if they do, what's the nature of those previous criminal convictions or have they been dismissed by employers previously and if they were dismissed, what were they dismissed for, could it have been for serious form of misconduct and so forth. Hence, now it is a requirement that you must submit your police clearance which is not older than six months…just to check who you are, are you fit and proper, can you be said to be fit and proper, can we entrust you with our children? – Mpho Madingoane*

These results suggested that there was accord among the participants that the "requirement" to pass the fit-and-proper test hinged heavily upon the student-applicant's criminal record "status", together with the submission of "police clearance letters" and affidavits verifying that student-applicants are "fit and proper" as well as "…of acceptable characters" prior to being admitted and "unleashed unto the unsuspecting public". In addition, these narratives consolidated the argument that people previously in conflict with the law and consequently having acquired criminal records are automatically tainted as contagiously soiled and branded by society as dirty. The metaphorical choice of words used to describe this finding drew support directly from Mpho's account: "If you are clean, you are clean, there's no reason to suspect you…[but a criminal record]…messes you up…something as "petty"; petty in inverted commons because it's something that follows you through and it messes you up." Parallel to this notion, Rock affirmed the above premise as follows:

My first application was in 2017. I did an application to be admitted as an advocate and the law council objected that I have a criminal record. Until today…there is no one who can tell me exactly why, why does that have to do with my ability to conduct litigation in the courtroom. Now we are in 2019 and my case hasn't been heard in the High Court. The Law Council always objects; they find such small technicalities that will not enable you to get through to the court of law so that your application can be heard. – Rock Lefatse

Sieve analysis as a test for defect of character

The first theme to emerge under these subordinate themes was "Sieve analysis as a test for defect of character". This theme demonstrates that the concept of sieve analysis is a social construct incorporated by professional registration bodies as a

measure (or indicator) of the extent to which student-applicants', and by extension ex-offenders', rehabilitation has occurred. Furthermore, this subtheme contends that in order to test for authenticity and reliability, professional registration bodies incorporate the sieve analysis as a measure of future professional conduct. It therefore disregards rehabilitation through education. For instance, in the following extracts, the participants emphasised "go[ing] through the process" and spoke about the evidence of self-reformation, including correcting or fixing what seemed to be broken:

…let's start here, every offender I would love to believe deserves a second chance. That's the approach of council, that's why I say what they consider the most is the nature of the offence and what you did to fix, to rehabilitate yourself and so forth. [Hence] *a lot of people* [with criminal records] *got registered, but they had to go through the process; as I said, the registration usually comes with conditions and we want to know about you, before you get registered, so you will be registered maybe provisionally for 12 months.* – Mpho Madingoane

The response was similar to that provided by Ike:

…it's [criminal record] *not in any way disadvantaging the client and the applicant…uhm, hence in some cases they would conclude the case, maybe with or without registration, I don't know. But in many cases, they complete the case and call the person, talk to person and then we...when the file comes to us, they say case closed. So that is how we deal with it. But professional conduct is involved; and more often than not the same file comes back...and alright the directive is to register, you do not question and just register the person.* – Ike Mofokeng

It was against this backdrop that in Chapter 3 of this thesis, I reviewed policy documents for the admission of student-applicants to professional registration bodies and training institutions such as Unisa and the LSSA. To put it into perspective, I examined the admission requirements for Unisa law students. The results showed that admission to practice law (i.e. admission to practical legal training) required, among others, an LLB degree and tuition fee, but also hinged heavily on the Legal Practice Act, which is a social construct for deciding on admission to practice law. In its application, this Act subjects law students to a selection criteria prior to being accepted or rejected into the programme. In so doing, the Legal Practice Act dictates "who can and who cannot" practice law. This finding will be expanded on under the study's final theme "One can, the other can't". The implication is that once they are released from the correctional system and ready to reintegrate into society via the labour market, law students with criminal records encounter a human capital deficit

in the form of labour market discrimination. O'Reilly and Mpho explained this as follows:

> *…the selection criterion is there; to be enrolled, obviously they need minimum academic qualifications, practical vocational training and the student has to comply with certain statutory requirements. Eh…like now with the Legal Practice Act…the Legal Practice Act has some sections which regulate application to be admitted at schools of practical legal training which* [in turn] *regulate the actual admission of trained students who have passed examinations to be admitted as legal practitioners of the High Court of the country.* – O'Reilly Setlogolo

> *…to do my articles requires a lot of effort and money to register; yet it doesn't have any certainties as to whether after completing my articles, I will be admitted to be an attorney due to the fact that I have a criminal record…the Legal Practice Act states clearly that one has to explain or motivate why he or she sees themselves as a fit and proper person.* – Moruti Letlapa

Several conclusions were drawn from the extracts above. First, there appeared to be a strong requirement for student-applicants to be fit and proper in order to practice law. In the context of judicial appointment, the word "fit" means "qualified or suited to purpose, competent and deserving", while the word "proper" refers to "excellent, admirable, commendable, fine, goodly, of high quality, of good character or standing, honest, respectable, worthy, fit, apt, suitable" (Mashoko, 2018). These requirements are reflective of the High Court as the adjudicator of the fit and proper construct, the aim of which is to assess defect of character (i.e. previous criminal conduct) while simultaneously pre-empting future professional conduct. Research reveals that the nationality of student-applicants is also a key determining factor to practice law. In this regard, Hajjaji (2017) noticed that certain categories of lawyers qualified to apply for judicial positions and that it was rare to find a foreign judge within any judicial system. Therefore, the study found that, as a social construct, the sieve analysis is used as a standard procedure to screen out undeserving applicants and those inappropriately qualified are not appointed as judges (Mashoko, 2018). In conclusion, through the multi-tiered gatekeeping process demonstrated under Theme 8, sieve analysis is used among others to appraise the probability of future misconduct by ensuring that student-applicants are fit and proper for the workplace.

Is the "fit and proper" test a reliable assessment tool?

As illustrated in Chapter 3 of this thesis, decisions about fitness and properness in the law fraternity are the High Court's prerogative. Notably also, in this study, the

previous subtheme (sieve analysis) converged on a similar finding that student-applicants with criminal records are subjected to the sieve analysis as a test for defect of character. For this reason and flowing directly from this theme, I inspected the meaning of the fit and proper clause among the participants and the results of the study showed that different meanings were attached to the fit and proper clause as a reliable assessment tool for judgement of character. For instance, with specific reference to student-applicants' aspirations to become legal practitioners, O'Reilly emphasised that there were norms and standards in the law discipline that had to be adhered to; among these, he mentioned the inherent requirement to satisfy the court that the student-applicant is a fit and proper person to be admitted and thus practice law. Articulated in this way, the High Courts become institutions endowed with the legal power to deliberate upon and decide what qualifies as admission into the law discipline.

Almost in a similar fashion, both Ike and Tshepang attested that as stipulated by Sections 16 and 17 of the Social Work Act, student-applicants are required to satisfy the council that they are fit and proper prior to being allowed to register and practice the social work profession. Strictly speaking, despite knowing that the fit and proper subject fell within the domain of the professional conduct division, I intentionally examined the meaning of the fit and proper clause from the participants' perspectives. To Ike, "fit and proper" meant meeting all the criteria prescribed by the social work council, namely possessing the relevant qualification, being able to function at an optimal level and "never in conflict with the law before"…but he quickly retracted and said that "It did not mean that when one was once in conflict with the law before, they are no longer fit and proper".

Tshepang, however, identified periods of dormancy as one of the contributing factors disqualifying student-applicants from practicing social work. She said:

…if there are applications they feel cannot be registered, [for example] *a person can be a social worker or complete their qualification as a social worker and stay for more than 10 years without doing social work…there is a panel who sits and then they assess you. We call you, we have a panel discussion, we ask a few questions and establish the reasons…We even check the knowledge that you are having because sometimes other people don't practice but keep reading, so if we find that you've been updating yourself and then you are aware of the new developments, we can register you. But most of the time you will find that we cannot register* [applicants] *because they were not involved with the developments...those we don't regard them as fit and proper.* – Tshepang Didintle

It was at this moment during our conversation that Tshepang, in an attempt to explicate the fit and proper clause by exemplifying the role of professional conduct, used a case publicised in the media of a social worker in Ekhuruleni Municipality whose alleged offence related to defrauding tender processes. Conceivably, and well within the boundaries of this study, the revelation that some professionals tended to conceal their criminal records during the admission phase while others committed criminal acts during their employment, even under oath, challenged the fit and proper test as an unreliable tool. The three extracts below confirm this claim:

…there are many, there are many who transgress, we don't know. We don't know…but I can tell you now, we have got lots of social services professionals, childhood care included, and social workers who, after registration, have done a lot of harm to communities, harm to the families of the children…to the most vulnerable. A lot of harm, and when we look at them we say "Wow, how did this person become a social worker?" – Ike Mofokeng

…you will note that a lot of people have previous convictions, a lot of people. – Mpho Madingoane

Many of our colleagues have been found to have lied to the court at earlier stages. Either during their working as legal practitioners, attorneys, advocates or even at admission state. – O'Reilly Setlogolo

Based on the extracts above, I contend that the fit and proper test is an invalid assessment tool to determine future professional misconduct because (1) there are student-applicants who conceal their criminal records during the application process and (2) employees have been caught committing various acts of misconduct in the workplace. Transgressions in the workplace, including acts of misconduct that are against the disciplinary code are also to some extent not in compliance with the labour laws of South Africa. Consequently, committing an act of misconduct such as theft is not only an offence in terms of the disciplinary code, but also an offence for which an employee may be held criminally liable in terms of South African criminal law. Thus, taken together, it means the fit and proper test failed to predict future authenticity, reliability and honesty among student-applicants who concealed their criminal records as well as in identifying future misconduct among employees. In this regard, the only conclusion one can draw is that the fit and proper test is an unreliable or poor assessment tool for exposing future professional misconduct and, by extension, a defect of character. The results of the study suggested that student-applicants may be adjudged fit and proper today, only to be found unfit and improper the next day.

Labels instil doubt in the minds of the employer

As pointed out already, the findings established in Theme 5 of this study "On coming out" revealed ambiguities and contradictions in the participants' beliefs about criminal record disclosure. The theme posited that despite ex-offenders' efforts to access the labour market, their determination to do so was invariably impeded by potential employers who did not trust job applicants with criminal records. In support of this finding, for instance, a survey conducted by Pager, Western and Bonikowski (2009) revealed that the majority of US employers did harbour negative attitudes towards people with criminal records. Similarly, the present study showed that criminal record disclosure carried connotations of uncertainty pertaining to the employability of ex-offenders, since employers perceived them to be more of a liability than a human resource. From these experiences, one can surmise that stigmatisation accomplished through labelling and trivialising ex-offenders efforts such as "You are just a prisoner" served to maintain and justify the exclusion of some participants from labour market participation. Once more, I draw upon Duncan, who recounted as follows:

> *…no one will hire you…I also tried at correctional services where I currently sign* [community corrections]. *I told them that I am a social worker and I facilitate life skills programmes, but they refused. They simply said "You are just a prisoner". They themselves said that* [and] *such things are discouraging…* – Duncan Molefe

Sharing almost similar sentiments, Sifiso and Sibusiso attested that by "labelling a person", the labour market and training institutions construct ex-offenders as a threat to society by putting a spotlight on "those who are rough around the edges". For example, Sifiso reminisced that due to his ex-offender status, after his release from Westville Correctional Centre (which was the same prison where he was incarcerated), he experienced formidable challenges when applying for a teaching post because additional approvals and affirmation were required. He said:

> *…that was a big challenge because the head of the centre didn't approve of me coming from outside to work there; he saw me as a threat. I know the systems there, I could smuggle stuff like* [contraband] *in his centre. But through negotiations, you see, because I remember we had a lot of meetings, talking about this and that and for me being searched was different from the other teachers who came from outside, until he adjusted and was comfortable with the fact that I was teaching.* – Sifiso Khumalo

…let's start off by calling a spade a spade. In the government sector, particularly those in the labour department alongside the higher learning institution sector, they understand [that] *there's this notion of labelling a person. They want to put the spotlight on the one without a criminal record…leaving out those who are rough around the edges.* – Sibusiso Zungu

From the extracts above, it seemed that the mere presence of a criminal record appeared to create doubts in the minds of employers, thus the continuous need for reassessment, re-evaluation and reaffirmation when it comes to student-applicants with criminal records. To consolidate this claim, I enquired from Mpho, whether there were any other red flags that created doubt in the minds of the employer. He said:

Usually, the determining criteria is the criminal record, because they don't, you wouldn't be invited if you have not been convicted of an offence or misconduct. If you clean, you are clean, there's no reason to suspect you no… – Mpho Madingoane

Similarly, sentiments affirming that people with criminal records were indeed subjected to reassessment and re-evaluation reverberated during my conversation with Ike. He said:

I mean, that is why we would also say, give a police clearance…if I'm not mistaken, I think it's a standard practice in the country, it is a standard practice when one wants to apply for different things in the country, it's called a common practice…and for us it's a matter of following the regulation as well; it's important. – Ike Mofokeng

This extract further confirmed that by requesting criminal record histories and police clearance letters from student-applicants, the SACSSP functioned in almost exactly the same way as SACE and the LSSA. For example, student-applicants with criminal records were shown to undergo the sieve process prior to full registration, and even when conditionally registered. In sum, these results were interpreted as implying that student-applicants with criminal records always created "doubt" in the minds of employers and this was explained by the constant need to invariably monitor student-applicants where they work. Considered comprehensively, the dynamics of the criminal record (as explicated in the study's last theme) combine to create a lingering sense of doubt in the minds of employers, resulting in the unemployment of many ex-offenders.

6.2.11 One can, the other can't

The study's final superordinate theme "One can, the other can't" concerns the dynamic nature of criminal records in relation to the inherent requirements of a job

and professional training applied for. In essence, this theme argues that criminal records are unique, with specific reference to the (1) nexus (i.e. association) between employment and/or training applied for and the criminal record, (2) the nature/severity of the offence committed, and (3) the period of or age at conviction (see Figure 6.3 below).
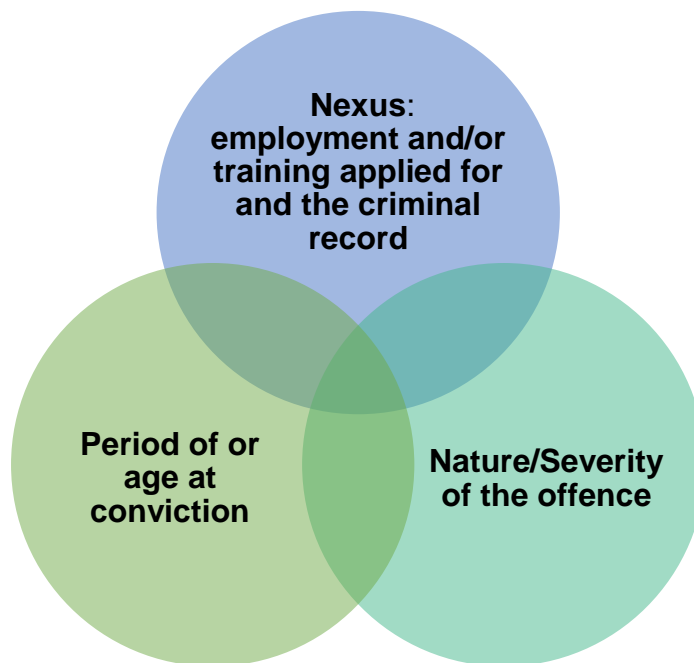

Figure 6.3 Dynamic nature of criminal records

The construction of the three subordinate themes depicted in Figure 6.3 above emanated from a thorough comprehension of the phenomenological narratives of the six ex-offender participants. As discussed previously, the results from Theme 2 engendered the notion that historical events, life circumstances and motives that led up to the participants' offences and subsequent incarceration were all unique and interacted differently to produce diverse outcomes in relation to their chosen future careers. The extracts by O'Reilly and Mpho below served to confirm this.

…one of the cases I handled in my office, this applicant had a criminal record and still applied for admission. Now the criminal record was picked up by the High Court on the day during the application…the case had been made for the admission of the applicant as a legal practitioner of the honourable court, stuff like that. That was the language which we used and the judge, the presiding officer said…Mr O'Reilly, look at paragraph so and so…then when I prrr…for the first time, I did not know that this guy was convicted. I mean the guy was detailed. He said they were found guilty of theft of six cans of beer during a student excursion…inter-varsity competitions or whatever. He had disclosed but the problem was…he had been left on the ledge by somebody he had originally briefed

to appear on his behalf. So here I was on the day, at the wrong time at the wrong place for me but at the right place at the right time for him...stupid levels of greatness…they had time to react to the file and I was seeing the file for the first time. But then I faced the firing squad in the form of the two judges. Remember there are two judges in an application process…[and] *the judges took me to task about it.* – O'Reilly Setlogolo

O'Reilly informed me that after careful and much deliberation by the two judges, the applicant had been allowed admission and later registered as a law practitioner with the NBCSA. Yet, the results of the study showed that on other occasions, a completely different outcome could be reached. Mpho elaborated as follows:

There have been cases whereby they couldn't recommend for a number of reasons, usually you find the person…the recent one that we had, the guy was convicted of murdering…I think his girlfriend and the girlfriend's mother because he was angry. He got home…he came to visit his girlfriend and didn't find her and when he came back later, he found her. He was angry, out of jealousy, he shot her and shot the mother-in-law also. So, they tried the victim–offender process, the family doesn't want to hear anything about him and the council felt we could be opening a can of worms that we may not be able to close because the community where he lives is very angry. As much as he served his sentence, but they couldn't register him, so yah, it does happen…you could see he is an angry person…Can we trust you to contain yourself tomorrow? As I say, it's a panel's call, they recommend to council whether registration should be given or not. – Mpho Madingoane

Similarities and dissimilarities emerged upon comparing and contrasting the two extracts above. For instance, criminal records appeared to be constructed based entirely on different events and circumstances (i.e. the severity or nature of the offence as well as the age of the offender or period of conviction). This showed, on the one end of the spectrum, that criminal records are not the same yet carry implications for criminal desistance where, for instance, student-applicants are allowed registration, thus augmenting their employment opportunities. Sifiso Khumalo is one such example. Interestingly, on the other end of the spectrum, conflicting results were noted when Moruti conceded that there was a widespread notion among ex-offenders that councils discriminate unfairly against people with criminal records; however, this view was disputed by Ike, who also provided his view (in the extract below).

It is a discriminatory process that results in qualified ex-cons resorting back to their life of crime, because it's like they are not accepted in society, especially the government because they are the ones who exercise this uh, previous conviction. – Moruti Letlapa

I don't think we are excluding people, I don't think council excludes as such. Uhm hence the procedures and policies in place and practices in place that ensure everybody is included, but with caution of course. – Ike Mofokeng

Linking the narratives above led to the conclusion that student-applicants who are unable to access the labour market based on the subjective feeling of "the community" as well as the council's perception that they "could be opening a can of worms" further consolidated the argument that failure to access the labour market "result[ed] in qualified ex-cons resorting back to their life of crime". In sum, these accounts exemplified that despite criminal record declaration, how councils regulated and managed student-applicants with criminal records significantly depended on the dynamics of the criminal record. Therefore, owing to the varying dynamics, it made sense to conclude that, on the one hand, a student-applicant with a criminal record can be allowed to register and practice their chosen profession; however, on the other hand, another can be denied admission to register and practice their chosen profession, thereby significantly increasing their odds of recidivism.

Nexus and the inherent requirements of a job

In Chapter 3 of this thesis, the inherent requirements of various jobs associated with, for example, law, education, psychology and social work professions were explored and it was concluded that they vary with respect to the requirements and recommendations of the vacancy. The present theme confirmed that the association between the offence and the job applied for were taken into account when hiring job applicants with criminal records. For instance, in my conversation with Marisa, she vehemently red-flagged the direct link between the previous offence and the job applied for as a considerable discrediting factor. Initially, she cautioned that job applicants working in the finance and security industries, regardless of the nature of their previous convictions and intervention received, would less likely be employed. She said:

…You see, it's not about the criminal record. It's also about what were you charged for at work, you see? Like I did explain to you that thing of plagiarism; we will never hire a professor that has a history of plagiarism. Ai! that one it's just a no…You see, so we don't just look at the criminal record; it also talks to your conduct at your previous employer. If now you were fined for plagiarism…We won't hire you. – Marisa van Schalkwyk

Three other participants seemed to converge on the finding that prior to admission or rejection, the association between the offence committed, the professional training applied for and subsequent registration of student-applicants with criminal records was a key factor. This association was confirmed by linking the accounts in the three extracts below. In summary, these accounts showed that the more similar the association between the previous offence (and by extension the criminal record) and the job/training applied for, the harder the chances of registration.

…they are not really looking for the nexus. They won't ask if it happened in a school or so; it's just you as a person, so they will invite you as a person, you as an applicant, without looking at the nexus, if it happened in a school ai! that makes your life much more difficult…but if it was of a sexual nature, its seldom that it would be, much as you may apply for expungement but there may be many other conditions. – Mpho Madingoane

Ok, for example, if a person raped a child and was convicted and then served time and maybe the sentence or record has been expunged or whatever, even before that, we will always, like Mr Ike said, we involve professional conduct, just to give the person information. Like, we advise you not to work with children because you previously had this kind of offence. So, to play it safe, even for us as council, we will not feel comfortable with you working with children at childhood educational care centres because there you will be in contact with children. We believe that people get rehabilitated but you know people relapse on the way. – Tshepang Didintle

The moment that you were found guilty of that act…that career choice closed…guys that are in need of education who are incarcerated must be able to eh…willing to accept that there are certain limitations in the open labour market. – Sunette Meyer

Nature of the offence and the inherent requirements of registration

In further extending my line of enquiry into the dynamics of the criminal record, I probed the participants' knowledge on whether professional registration bodies considered the nature of the crime (i.e. the severity/seriousness of the offence and/or whether the crime committed was violent or non-violent) when determining the fate of student-applicants with criminal records. Mpho and O'Reilly responded affirmatively to this question, attesting that among others the determining factor was "the nature of [the] conviction" and "graveness of the criminal misconduct". They said:

…depending on, of course, the nature of your conviction also, for example, a person who was convicted of murder will definitely have to appear, rape will have to appear, robbery will have to appear, theft depending, it depends, some people are just habitual criminals, having been convicted

more than once for the same offence. They will take into consideration the age of your conviction and so forth, so that's the declaration you will have to make to them…and depending on your presentation, if they are satisfied they may recommend your registration with or without conditions. –
Mpho Madingoane

Yeah, but then the question is the graveness of the misconduct, of the criminal misconduct. I mean this guy was…the crime was committed when he was still a teenager at some university. – O'Reilly
Setlogolo

…if , for example, you are charged by the council and your name is removed from the roll. Once your name is removed, your employer must also remove you from employment, [but if] *you apply for what is called reinstatement, because you were a member and your name was removed… if it recommends for your reinstatement, which seldom happens, if you've been, let's say removed for sexual offences be rest assured chances of you coming back are very slim, they are not zero but they are very slim, extremely. –* Mpho Madingoane

In addition to these three extracts, I also factored in Marisa's account who also reported that Unisa's HRD also considered the nature of the offence committed when hiring job applicants, but quickly conceded that this criterion did not seem to have much bearing on whether job applicants were hired or not. To this end, she said:

When I said no, I meant that let's say you were in finance and now you apply again in the finance job, that one, no!...It's just the connection because I mean I am just using an example of speeding, what does that have to do with teaching students? You see, what correlation is there because I don't see any? – Marisa van Schalkwyk

Emphasis upon, or connotations associated with the words "correlation" and "connection" seemed to justify the notion that the HRD also considered the nature of the offence, especially if there was a direct association between the occupation applied for and the criminal offence. From this account, and based on personal experience, I can confirm Marisa's statement that the criminal record did not seem to come into effect when Unisa recruited job candidates unless if there was a direct association with the job applied for. Thus, this subtheme was predicated on the finding that labour markets and professional registration bodies consider the severity/seriousness of the offence (in terms of violent versus non-violent) when considering job or student-applicants with previous criminal convictions.

Age at conviction and the inherent requirements of registration

Together, the two subthemes above presented the argument that the nature of a criminal record and its connection to the job applied for came into effect when labour markets and professional registration bodies appraised student-applicants with criminal records. The third subtheme seemed to converge into a similar finding. For example, it appeared that some time lapse had to come into effect before student-applicants with criminal records could be admitted to register and practice their chosen careers. As suggested by the literature and corroborated by the results of this study, the age at which student-applicants were apprehended (youth versus adulthood), convicted and subsequently incarcerated (either to short- or long-term imprisonment) consolidated the assertion that "the more recent the commission of the offence, the less the chances of [registration and ultimately] admission" (Lephale, 2016; Rust, 2017). In the same way, it can be assumed that the opposite is equally true for ex-offenders who qualified for expungement. In other words, the longer the conviction or time served, the greater the chances of admission or registration. Mpho clarified this with an example as follows:

…let's say it was petty theft; 20 years ago, you stole a pen. It's seldom that they would call you; they may just, through my office…just say ok this one, we can after qualifying for expungement, but then you must apply for the expungement of your conviction or of your record, because its 10 years and beyond. If you qualify for expungement, let's say we don't register you today, tomorrow you come with a record that says it has been expunged, we have to register you… – Mpho Madingoane

This was confirmed by Mpho, who replied as follows:

…even when you're a serial killer or serial rapist, for example, we will simply advice you, taking into account when this offence was committed. The more recent the commission of the offence, the less the chances of admission ultimately. – O'Reilly Setlogolo

Elaborating further on this topic, Mpho said:

…that's when these things kick in, so if it's an offence that happened while you were still a child, running around stealing from shops and so forth, chances are you may be [registered]*, depending of course, on the nature of the offence…it may have happened while you were still a child, it's okay but we still want to know, we want a report about you and your conduct.* – Mpho Madingoane

Therefore, from my discussions with the participants, it can be concluded that the dynamics of the criminal record (i.e. the nature/severity of the offence, age at/time of conviction and nexus) are key factors that are taken into account when the labour

market and professional registration bodies appraise job and/or student-applicants for possible registration and/or employment. These results were consistent with previous literature (Boachie & Asare, 2015; Mashoko, 2018; Mujuzi & Tsweledi, 2014; Slabbert & Bomme, 2014).

6.3   CHAPTER SUMMARY

This chapter provided an interpretation of the study's findings, underscoring 11 superordinate and 36 subordinate themes. Overall, exploring the participants' lived experiences provided much-needed insight into the plight of ex-lifers as they navigate South Africa's labour market in search of employment. The next chapter contains the conclusion, limitations and recommendations for future research.

CHAPTER 7

CONCLUSION, LIMITATIONS AND

RECOMMENDATIONS FOR FUTURE RESEARCH

To put people behind walls and bars and do little or nothing to change them is to win a battle but lose a war. (Warren E. Burger, US Former Chief Justice, *Kiplinger's Personal Finance*, April 1981; *New York Times*, 9 February 1981)

7.1   INTRODUCTION

This chapter is divided into three parts and contains the summary and conclusions of the study. The first part is a recap of this thesis. The second part discusses the major findings of the study and establishes whether the research questions have been answered. The third and last part deals with the challenges encountered during the study and recommendations for future research.

7.2   SUMMARY OF THIS THESIS

Chapter 1 introduced the study and configured the criminal record as the object of the thesis. It commenced with the exploration of punishment and posed the question "Is a criminal record a death sentence?" Chapter 1 also presented the research aims and objectives. Social constructionism was used to explore the meanings attached to the criminal record by a group of ex-lifers who sought to reintegrate into South

Africa's labour market. This was followed by the presentation and discussion of the study design, including the exact steps followed in answering the research questions.

Chapter 2 provided an overview of the criminal record from a global, an African, a sub-Saharan and a Southern African perspective. Seminal studies highlighting contemporary research on the value of employment (specifically occupations that reduce reoffending) among former incarcerated tertiary students and their prospects of social reintegration were explored.

In **Chapter 3**, legal documents relating to the provision of HE as well as the employment processes for lecturers (particularly at Unisa), including policies explaining the criminal record and criminal record expungement clause, were evaluated. In conclusion, the chapter established the need for a research agenda for addressing the absence of policies on the management of student-applicants with criminal records in the South African context.

In **Chapter 4**, social constructionism as the study's frame of reference (epistemology) and the rationale for using social identity theory (ontology) and hermeneutical phenomenology (methodology) to help interpret the construction of a criminal record were elucidated. Theoretical triangulation applied in the study, argued through Lemert and Becker's labelling theory (that ex-offenders reintegrate into society already with the stigma and label of a criminal record), Social identity theory (which posits that changes in the social context of ex-offenders, for instance their unemployment, strain their social identities) and Agnew's general strain theory (which contends that strain in the form of unemployment increases the likelihood that student-applicants with criminal records will experience negative emotions, leading to a cycle of reoffending) were also used.

Chapter 5 outlined the research design, specifically the rationale for incorporating hermeneutics into a qualitative methodology. The selection and recruitment procedures used during the study were described, followed by a pen sketch of each participant. The demographics of the participants were tabulated for easy reading and this was accompanied by an exposition of the inclusion criteria and study site. It was further explained that in exploring the social identities of ex-lifers and the measures taken to ensure the safety of the participants, methodological constraints

were encountered due to COVID-19. For instance, the interviews with the participants were conducted over three years. The chapter concluded with a discussion on thematic data analysis.

Chapter 6 provided the presentation and discussion of the findings. This chapter commenced by presenting a table of the emergent themes. This was followed by unpacking the interview data (discussing and interpreting the research findings). Each superordinate theme was constructed from a constellation of subordinate themes, and all were supported by verbatim quotes from participants and literature pertinent to each theme to refute and/or substantiate the data as well as determine the extent to which the outcome of the analysis supported the study.

7.3   MAJOR FINDINGS

The primary aim of this study was accomplished, namely to explore the lived experiences of ex-lifers seeking to reintegrate into South Africa's labour market in search of employment, as well as the meanings attached to this experience and how the participants made sense of it. The secondary aims of the study were also achieved.

7.3.1 What this research has established

Socioeconomic conditions (such as poverty and unemployment), family dynamics (such as broken families, single-parenting and child-headed households/families) and South Africa's political history (apartheid) influenced the participants' criminal trajectories, as expounded by the age crime curve. In line with Agnew's GST (2006), adverse childhood experiences due to lack of parental supervision and family guidance all factored together to produce strain and manifested in the form of delinquent behaviours, criminality and recidivism. Interestingly, the study demonstrated via PAM how a sample of ex-offenders previously sentenced to life imprisonment used their incarceration to (1) battle the existential vacuum of prison by (2) acquiring HE as a "remedy" to soothe against the conviction of life imprisonment and in so doing constructed alternate identities and began preparing for life post-imprisonment. The theme "Second chances are opportunities for redemption" attested to these findings. For example, the results of the study showed that as part of redeeming themselves, HE also rekindled participants' spirit to be industrious by starting from the bottom (for instance, acquiring their matric

certificates and forming new networks and establishments) and working their way up (from initially participating in voluntary work to being appointment as external contractors at Unisa and finally as permanent members of staff, e.g. lecturer).

Another key finding demonstrated of the study showed that ex-offenders who participated in HE did so at their own volition and without any exposure to official career guidance and counselling. Instead, their narratives suggested that their participation in HE was predominantly ascribed to passion and inherent motivation to study, as well as observing other tertiary students. The theme "Painful imaginations" provided a summary of offenders' career aspirations, which were subsequently perceived as incongruent relative to their initially perceived labour market expectations. Thus, lack of formal consultation on their career choices, as well as the DCS's attitude of indifference towards HE, made participation and investment in "formal studies" both emotionally painful (based on the subjective feelings involved) and expensive (due to the costs incurred as well as debt for participating in HE). This theme showed that acquiring "a piece of paper" was a process that required considerable levels of mental fortitude and financial stability.

The theme "On 'coming out'" established inconsistencies about the meanings attached to criminal record disclosure by different participants, leading to varying degrees of criminal record disclosure – from full and partial disclosure to concealment. For some of the ex-offender participants, criminal record disclosure amounted to reformation and honesty; for others, criminal record disclosure represented a blessing (the belief that disclosing facilitated gainful employment and professional registration) and a curse (the belief that criminal record disclosure was an instant disqualifier from gainful employment and professional registration). Interestingly, a related yet subtle dimension of criminal record disclosure was "subsequent declaration" – a type of "involuntary declaration" stemming from the anxiety of concealing one's criminal record at the application/registration phase and, out of fear of being found out, feel coerced to declare subsequently. Thus, against this backdrop and emanating directly from this theme were participants' experiences of the criminal record as a "double-edged sword".

Stemming directly from the participants' lived experiences was the psychological torment and "anxiety-provoking emotions" engendered by concealment and non-

disclosure of their criminal records, a sense of hopelessness due to "unmet employment expectations" that culminated in feelings of despair and apprehension. To this end, "Lurking in the shadows" reaffirms the findings by many scholars that criminal records are indeed an "extension of punishment" post-incarceration, with the result that student-applicants with criminal records ultimately exclude themselves from labour market participation due to perceived stigmatisation and discrimination. Similarly, the theme "A 'trustworthy' stranger?" established that criminal records signalled "a defect of character" and instilled "fear and doubt" in the minds of employers. Due to "system disconnectedness" owing to a lack of formal inscriptions managing and/or disqualifying student-applicants with criminal records, the study found resounding inconsistencies regarding admission of students with criminal records to various professions, occupations and councils. However, in safeguarding employers and the public against potential harm, as well as striving to strike a balance between transparency and inclusivity of student-applicants with criminal records, gatekeepers were found to rely on a multi-tiered gatekeeping process and used the "fit and proper" clause as a "sieve" or "assessment tool" to evaluate future misconduct.

On a more positive note, the study concluded that the "dynamics of criminal records" (namely the nature and severity of the offence committed, the age and period of conviction and the association between the vacancy and/or training applied for) vary, as are the circumstances leading to each criminal record. The implication thereof is that despite being portrayed as a double-edged sword with adverse implications for "concealment and non-disclosure", by itself a criminal record is not commensurate with automatic disqualification because each criminal record is unique and constructed entirely based on "individual merit".

7.4   CHALLENGES ENCOUNTERED AND RECOMMENDATIONS FOR FUTURE RESEARCH

7.4.1 Challenges encountered during the study

As is predictable with sensitive and controversial topics, many difficulties were encountered during this study. Complications during each of the data collection phases were summarised under different headings of the thesis. Oftentimes, these

constraints obstruct and curtail the extent to which a study proceeds and affect the robustness of the results. According to Fink (2003), limitations in a study lead to potential weaknesses and are beyond the researcher's control. In the present study, countless efforts (email requests and physical visits to the Arcadia offices in Pretoria) to get the HPCSA to participate in the study proved futile; consequently, in consultation with my supervisor and due to ethical considerations, I halted my pursuit. In addition to the above, 13 participants (myself included) are a relatively small sample size – implying that the findings and recommendations of this research cannot be generalised (Lincoln & Guba, 1989) either to the HPCSA or to other ex-offenders, but can only be limited to this study. However, despite this limitation, the richness and diversity of the participants' voices made this study worthwhile. For instance, this study offered a compelling autobiography of transformation and story about the power of HE for people living with the stigma and discrimination of a criminal record. The evidence presented helped in identifying affirmative measures whereby various stakeholders (the government, NGOs, offenders, ex-offenders, educational institutions, communities and the labour market) can act in synergy towards recreating policies that are inclusive of job and student-applicants with criminal records.

7.4.2 Recommendations for future research

This study, like many other studies, makes yet another call for a strictly South African research agenda aimed at the development and design of policies to include people with criminal records into South Africa's labour market. To help facilitate ex-offenders' chances of criminal desistance, rather than recidivism, society's unresolved tension that culminates in punishment beyond incarceration can longer go unchallenged, hence a research indaba will ensure that HE institutions and professional registration bodies consider student-applicants with criminal records when developing policies specific to the socio-historical context of South Africa.

It is therefore recommended that the policy documents analysed in chapter 3 be amended, so that they clearly delineate which types of offences (violent versus non-violent) warrant access or denial of admission to practise which profession, and the reasons for it (nexus and time lapse). Furthermore, in line with the POPI Act, (2013) institutions interested in such information should explicitly indicate the rationale for

requesting such information. Finally, to protect Unisa alumni and their career after graduation, Unisa brochures should clearly outline the programmes requiring strict criminal history screening, to ensure a smooth transition between Unisa and the various professional bodies. For example, Unisa, in collaboration with the various professional bodies, can help formulate clear policy guidelines that regulate, while providing career guidance services to incarcerated Unisa students and/or applicants with previous criminal convictions (e.g. by explicitly outlining the conditions that qualify or disqualify the registration of applicants with a criminal record with these professional bodies)

7.5   CHAPTER SUMMARY

This chapter provided an overview of Chapters 1 to 6 of this thesis as a brief synopsis of the research process. The chapter further discussed the major findings of the research, and outlined the challenges encountered during the study and recommendations for future research.

EPILOGUE

This study took five years to complete, from January 2017 to December 2021. My personal involvement and professional engagement in the study have transformed me over these years, so articulation of my intimate reflections, impressions and the emotional impact of the writing process seems warranted. As evident in Fourie's writings (2015 p. 84), two years prior to my doctoral enquiry, I "Mdakane… [had already] embarked on a study into the policy and practices of the Health Professions Council of South Africa (HPCSA) and specifically the obstacles experienced by offenders out on parole in registering with the HPCSA as student psychologists". The overall aim was to encourage policy makers at the HPCSA to review their policies and re-inscribe them to become inclusive, taking into consideration the reintegration process of student-applicants with criminal records like myself. It is therefore clear that prior to my doctoral thesis journey, several years were spent preparing for this thesis. Correspondingly, the purpose of this section is to expand on and illuminate those years, especially the lessons learned and the ordeals I encountered. Creswell (2013, p. 216) maintains that researchers must be aware of how these experiences may have shaped the findings, conclusions and interpretations drawn in the study.

As recommended by Creswell (2013, p. 215), in the epilogue of this thesis, I declared my status and position as both object (researcher) and subject (ex-offender) of the study to reveal stereotypes, biases and past experiences that could possibly interfere with the research process such as participant recruitment, data gathering and analyses of the results. As expected, I entered the field of criminal record research with an abundance of personal experience as an ex-offender. From time to time, some of these experiences resonated strongly with those of ex-offender participants and were challenging because of my schema as an "insider" with intimate knowledge about the salient issues and challenges encountered by student-applicants with criminal records. However, in ensuring that this did not negatively influence the study, gradually over the years, colleagues at Unisa's Institute for Open and Distance Learning and in the Department of Psychology (researchers and clinical psychologists) trained me as an emerging scholar to cautiously craft and balance my personal experience while carefully synthesising the knowledge gained from engaging in a wide scholarship comprising transdisciplinary perspectives as

well as a member of Unisa's community engagement project, the Inside-out Outside-in South African Corrections Interest Group.

For example, my resolute commitment to phenomenology as the study's chosen design implied that in practice, balancing the roles of researcher and ex-offender by "bracketing" (or remaining neutral) at specific points of the study became a challenge (Owen, 2014). Debatably, while it may be argued that there is no role for emotion in research, as it impedes objectivity, I contend that being "present" and "in the moment" with participants at times makes it impossible to exclude all emotion, particularly during the interview and analysis stages. "Bracketing", as posited by Lučid-Ćatic (2011, p. 33), is a complex and illusive phenomenon, specifically when one studies one's own kind. Maso (2003, p. 40) lists emotions, intuitions, experiences, meanings, values, commitments, presuppositions, prejudices and personal agendas as inevitable during the research process. To this list, I add bracketing by posing the question "To what extent can we, as qualitative researchers, preclude the role of our personal emotions and previous experiences during the co-construction of knowledge with participants?"

In line with the above quandary, I as the narrator of this text acknowledge the internal manifestations that emanated from embarking on a research project like the present study (Palaganas et al., 2017, p. 426), and concede that concealing one's emotions is nearly impossible. Consequently, to supplement the richness of the data, I made an effort to embed (rather than conceal) my knowledge in the text by integrating my innermost personal experience of the criminal record as an ex-offender with the voices and experiences of other ex-offenders in the co-construction of contemporary research that I sincerely hope will reach a wider and even more diverse audience that traditional research would – a move earmarked for the personal and social transformation of people living with the stigma and discrimination of a criminal record (Bochner, 1997; Ellis, 1995; Goodall, 2006; Hooks, 1994). Concluding then, I confirm that practically (rather than theoretically) research involving human subjects is far from sanitised and therefore the more it relates to personal experience, the more meaningful and engaging it is.

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