

**A CRITICAL ANALYSIS OF HUMAN TRAFFICKING FOR SEXUAL
EXPLOITATION**

By

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DECLARATION

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I, Juanida Suzette Horne, declare that the study titled “A critical analysis of human trafficking for sexual exploitation” is my own work. I have acknowledged all the sources that I have used or quoted in this study with complete references. I also declare that this study has not been submitted before for any degree or examination at any other university.

SIGNATURE

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2014-04-30

DATE

ACKNOWLEDGEMENTS

I dedicate this thesis to my loving daughter

LAUREN SUZETTE HORNE

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ABSTRACT

This study was conducted with the aim to critically analyse how the crime of human trafficking for sexual exploitation can be identified in order to develop practical guidelines to be used during the identification of this crime in South Africa. In this study the researcher conducted a review of pertinent literature, both international and national, to gain an understanding of the problem being researched.

The explanatory sequential mixed-method design was used with the main purpose to use the qualitative data to help explain in more detail the initial quantitative results obtained. The explanatory sequential mixed-methods design assisted the researcher to follow a procedure whereby the mixed-mode survey design was applied to collect data through questionnaires. These questionnaires were in the form of mailed, self-administered surveys and in-person interviews with human trafficking provincial coordinators, police officials and investigators of human trafficking within the nine provinces country wide during the first quantitative phase of this study. The data were analysed and followed up during the second qualitative phase with interview schedules that were used in semi-structured one-on-one interviews with the following persons: police investigators working at the SAPS organised crime units who dealt with and investigated cases of human trafficking where victims were trafficked for sexual exploitation; state prosecutors working at the National Prosecuting Authority who dealt with, identified and prosecuted human trafficking cases where victims were trafficked for sexual exploitation in South Africa; NGOs who work in the field of counter-trafficking and victim assistance; and an international police investigator who dealt with, identified and investigated human trafficking cases where victims were trafficked for sexual exploitation.

The researcher is of the opinion that this study (analysing how the crime of human trafficking for sexual exploitation can be identified in order to develop practical guidelines to be used during the identification of this crime in South Africa) presents a significant contribution to the identification of human trafficking for sexual exploitation incidents in South Africa and subsequently presents practical guidelines that can be used during the identification of this phenomenon in South Africa.

SUMMARY

“Modern slavery – be it bonded labour, involuntary servitude, or sexual slavery – is a crime and cannot be tolerated in any culture, community, or country... [It] is an affront to our values and our commitment to human rights.”

(US Secretary of State Hillary Rodham Clinton, US Department of State,
Trafficking in Persons Report, 2010)

This study was conducted with the aim to critically analyse how the crime of human trafficking for sexual exploitation can be identified in order to develop practical guidelines to be used during the identification of this crime in South Africa. In this study the researcher conducted a review of pertinent literature, both international and national, to gain an understanding of the problem being researched. Relevant international legislation which informs South African legislation was accordingly considered in order to explain the current legal framework that forms the foundation to address this problem.

A survey was conducted to gain insight into the phenomenon of human trafficking in South Africa. Thereafter interviews were conducted in order to understand the meaning provided by individuals to the problem researched. The researcher also explored how the federal police in Australia address the specific problem relating to the identification and investigation of human trafficking, as they have appointed a leading human trafficking task team focusing on this phenomenon in specific. Links and associations were identified through the knowledge and facts gained in this study, exploring past events and theories developed from former research relating to this topic. This formed the foundation of the study in order to describe and explain future application of findings emanating from this research.

The explanatory sequential mixed-method design was used with the main purpose to use the qualitative data to help explain in more detail the initial quantitative results obtained. The explanatory sequential mixed-methods design assisted the researcher to follow a procedure whereby the mixed-mode survey design was applied to collect data through questionnaires. These questionnaires were in the form of mailed, self-administered surveys and in-person interviews with human trafficking provincial coordinators, police officials and investigators of human trafficking within the nine provinces country wide during the first quantitative phase of this study. The data were analysed and followed up during the second qualitative phase with interview schedules that were used in semi-structured one-on-one interviews with the following persons: police investigators working at the SAPS organised crime units who dealt with and investigated cases of human trafficking where victims were trafficked for sexual exploitation; state prosecutors working at the National Prosecuting Authority who dealt with, identified and prosecuted human trafficking cases where victims were trafficked for sexual exploitation in South Africa; NGOs who work in the field of counter-trafficking and victim assistance; and an international police investigator who dealt with, identified and investigated human trafficking cases where victims were trafficked for sexual exploitation.

Through a critical analysis of the identification process of the phenomenon of human trafficking for sexual exploitation, the purpose of this research was to gain a better understanding of this phenomenon and establish, develop and provide practical guidelines, procedures and recommendations to the South African Police Service to identify these cases more successfully. The specific research objectives and research questions answered in this study to address the research aim were divided into five categories:

- Explore and describe the phenomenon of human trafficking.
- Determine the nature and extent of the legal arena to criminalise human trafficking, to prevent human trafficking, and to protect trafficking victims upon which South African legislation is based.
- Explain how the identification of the phenomenon of human trafficking fits into the policing process.
- Explore the current situation regarding the procedures followed to identify the phenomenon of human trafficking for sexual exploitation.

- Develop practical guidelines, procedures and recommendations for police officials to identify human trafficking for sexual exploitation incidents more successfully.

The trafficking of women and children for commercial sexual purposes lies in the expansion and ever growing sexual entertainment industry, which is most importantly a demand-driven phenomenon. The exploitation of victims for profit through the use of force, fraud or coercion remains the common denominator of this crime and the trade of human beings continues to evolve into new and more multifaceted forms of exploitation, using debt contracts and other means to coerce people for the purpose of profit gain. Women and children are perceived as the most exploitable and controllable and therefore are deemed to be the most in demand to contribute to this expanding and very competitive economic market driven by maximum profit.

It is imperative and fundamental to have an understanding of the trafficking of persons as a crime committed against an individual and therefore it is of the utmost importance that police personnel serving in the South African Police Service (one of the key role players within the Criminal Justice System), are conversant with the means of trafficking, what it constitutes and what attributes and features this phenomenon includes. Through the development of practical guidelines, procedures and recommendations for police officials to identify human trafficking for sexual exploitation incidents more successfully, data obtained from both literature and interviews contributed immensely in the identification of incidents of human trafficking in order to prevent and address this crime successfully.

The researcher is of the opinion that this study (analysing how the crime of human trafficking for sexual exploitation can be identified in order to develop practical guidelines to be used during the identification of this crime in South Africa) presents a significant contribution to the identification of human trafficking for sexual exploitation incidents in South Africa and subsequently presents practical guidelines that can be used during the identification of this phenomenon in South Africa.

KEY TERMS:

Criminal justice system; policing; crime; organised crime; transnational crime; criminal investigation; identification of the crime; police investigator; trafficking in persons; sexual exploitation; victim; sex trafficker; modus operandi.

ABBREVIATIONS AND ACRONYMS

BA	Bachelor of Arts
B-Tec	Bachelor of Technology
CJS	Criminal Justice System
CSE	Commercial Sexual Exploitation
CSF	Community Safety Forums
CSEC	Commercial Sexual Exploitation of Children
CPA	Criminal Procedure Act
CT	Cape Town
DBE	Department of Basic Education
DCS	Department of Correctional Services
DHA	Department of Home Affairs
DHS	Department of Human Settlements
DIRCO	Department of International Relations and Cooperation
DNA	Deoxyribonucleic acid
DOC	Department of Communications
DOD	Department of Defence and Military Veterans
DOH	Department of Health
DoJCD	Department of Justice and Constitutional Development
DPCI	Directorate Priority Crimes Investigation
DPP	Director of Public Prosecutions (SA)
DSD	Department of Social Development
DST	Department of Science and Technology
ECC	Executive Coordinating Committee
FCS	Family Violence, Child Protection and Sexual Offences Unit
FICA	Financial Intelligence Centre
ICD	Independent Complaints Directorate
ILO	International Labour Organisation
IOM	International Organisation of Migration
ITPA	International Tax Planning Association
JCPS	Justice Crime Prevention and Security Cluster
JHB	Johannesburg
GBH	Grievous Bodily Harm
HODs	Head of Departments
HSRC	Human Sciences Research Council
KOM	Koordineringsenheten for Ofre for Menneskehandel
LASA	Legal Aid South Africa
MECs	Members of executive councils
MMS	Multimedia Messaging Service
MO	Modus Operandi
MOU	Memoranda of understanding
NGO	Non-governmental organisation
NICRO	The South African National Institute for Crime Prevention
NPA	National Prosecuting Authority (SA)
NT	National Treasury
PAT	Problem Analysis Triangle
PE	Port Elizabeth
PES	Police Emergency Services

POCA	Prevention of Organised Crime Act 121 of 1998
PTSD	Posttraumatic stress disorder
SALRC	South African Law Reform Commission
SARA	Scanning, Analysis, Response and Assessment
SA	South Africa
SARS	South African Revenue Service
SSA	State Security Agency
SAPS	South African Police Service
SMS	Short Message Service
SOA	Sexual offences Act
SOCA	Sexual Offences and Community Affairs
STATS SA	Statistics South Africa
TBVC	Transkei, Bophuthatswana, Venda and Ciskei
TIP	Trafficking in Persons Report
TIP Report	Trafficking in Persons Report (USA)
TVPA	Trafficking Victims Protection Act
TVPRA	Trafficking Victims Protection Reauthorization Act
UN	United Nations
UNICEF	United Nations Children's Fund
UNISA	University of South Africa
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organised Crime
UNHRO	Uganda National Health Research Organisation
US	United State of America

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CHAPTER 1

GENERAL ORIENTATION TO HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION IN SOUTH AFRICA

1.1 INTRODUCTION

South Africa is viewed as a prime and major destination, source and transit country for the trafficking of women and children for sexual exploitation. Victims of this inhumane crime are promised a better life in South Africa, but they are abducted, threatened, coerced, deceived and sold into sexual slavery for as little as R380.00 (Seale, 2006:3). South Africa's porous international land borders, combined with civil and political unrest, a lack of economic opportunities and powerful market demands for sex work, have ensured a continuous flow of trafficked victims to, from and through South Africa (Delpont, Koen & Mackay, 2007:34).

According to the International Organisation of Migration's office in Pretoria, human trafficking earns the world's criminal syndicates between R60-billion and R84-billion a year (Hosken, 2007:6). This organisation is further of the belief that up to one million people per year are trafficked across the world's borders, and up to 800 000 of these cases involve women and children trafficked for sexual exploitation. According to Thoko Majokweni of the National Prosecuting Authority of South Africa, close to 80 per cent of the people trafficked in South Africa are sexually exploited in comparison to the international figure of 60 per cent (Mtyala, 2007:5).

The International Organisation of Migration (IOM) further indicates that some law enforcement officials are denying that there is any human trafficking in South Africa, due to lack of sufficient statistics. This organisation is also of the opinion that the concept of human trafficking is not widely understood and therefore not regarded as an urgent problem (Donne, 2007:14). This repudiating of human trafficking incidents in South Africa is furthermore complicated by the absence of promulgated legislation and the non-existence of official crime statistics on this crime of human trafficking. According to Pharoah (2006:23) incidents of human trafficking are reported by the South African Police Service (SAPS) within other crime categories, such as rape, kidnapping, abduction, assault, soliciting and immigration-

related offences. The Human Sciences Research Council (HSRC, 2010:10) also contends that the lack of legislation and the absence of a co-ordinated database hinder efforts by government and civil society to effectively address the problem in terms of prevention, prosecution and protection.

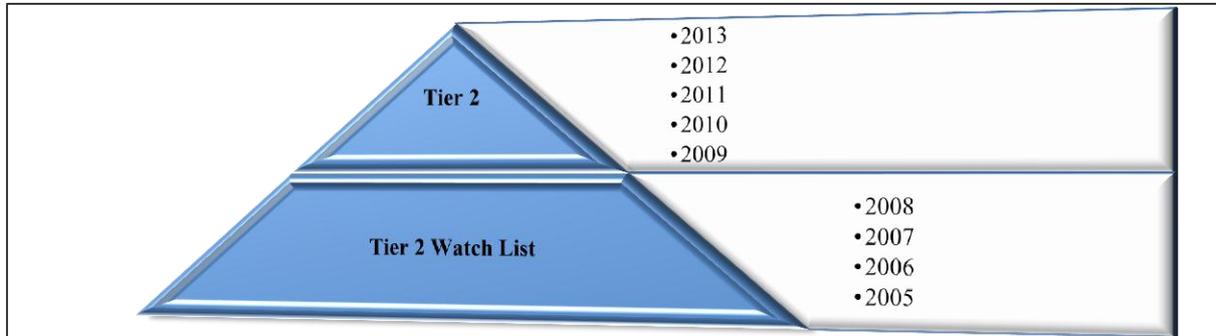
Professor Vasu Reddy, acting Director of the Gender and Development Unit at the HSRC, is of the opinion that statistics on human trafficking are unreliable due to the fact that these cases are rarely reported and because the victims cannot report it or are unwilling to report it to the authorities. He further indicates that there is still an enormous need for evidence-based research in this regard (Mbanjwa, 2007:1).

According to Chief Justice Pius Langa, the then Chief of Justice of the Constitutional Court, the predominance of trafficking lies in the reality that traffickers can make profits on drugs only once, but they can sell the same person again and again and profit substantially. He further points out that human trafficking in Southern Africa is generally attributed to poverty, unemployment, shortages of basic needs and traditional practices that commodify women and make their sale acceptable (Human trafficking as terrible as slavery, 2007). Molo Songololo, a non-governmental organisation (NGO), believes that 10 years of experience reveals that the situation in South Africa has not improved (Kamaldien, 2005).

Literature shows that the government of South Africa does not currently comply fully with international minimum standards set to eliminate human trafficking (Trafficking Victims Protection Act, 2000) (TVPA). The South African Government has also failed to provide sufficient data and statistics on human trafficking crimes investigated and prosecuted, or on resulting convictions or sentences achieved. Adding to this non-adherence is the failure of providing information on government's efforts to protect human trafficking victims and government's continued actions to deport and/or prosecute suspected victims without providing the required protecting services. Due to the country's failure to subsequently portray increasing efforts to address human trafficking, South Africa was once again placed on the Tier 2 watch list in 2008, for a fourth consecutive year (US Department of State Trafficking in Persons (TIP) Report, 2008:228). In 2009 South Africa was placed on the Tier 2 list and it has maintained this status in the latest release of the US Department of State TIP

Report (2009:260; 2010:297; 2011:327; 2012:315; 2013:333). This Tier 2 placement of South Africa from 2005 until 2013 is illustrated in figure 1 below.

Figure 1: South Africa’s Tier Ranking 2005 to 2013



(US Department of State TIP Report, 2013:333)

In table 1 below the descriptions of the Tier placements, namely Tier 1, Tier 2, Tier 2 watch list and Tier 3 are tabled as defined in the US Department of State TIP Report (2013:55).

Table 1: The Tiers

Tier 1	Tier 2	Tier 2 Watch List	Tier 3
Countries whose governments fully comply with the Trafficking Victims Protection Act’s (TVPA) minimum standards.	Countries whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves in compliance with those standards.	Countries whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves in compliance with those standards and: <ul style="list-style-type: none"> a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring itself in compliance with minimum standards was based on commitments by the country to take additional future steps over the next year. 	Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

According to the US Department of State TIP Report (2013:333), South Africa's government does not currently comply fully with the minimum set standards to eliminate human trafficking. The clandestine nature of this crime, the lack of information and statistics and the absence of comprehensive legislation hinder efforts of law enforcement to vigorously investigate, prosecute and prevent this phenomenon against humanity successfully in South Africa. The question can now be raised whether the South African Government is knowledgeable about this crime's phenomenon, its extent, its elements, its geographical spread, its victims, its perpetrators, their modus operandi and its results and implications.

Due to the South African authorities' apparent obliviousness and failure to recognise the depth and seriousness of human trafficking in South Africa, it seems that it is not currently possible to determine the exact nature and extent of trafficked victims for sexual exploitation in South Africa. This directly results in the ineffectiveness of law enforcement to identify, investigate, prosecute, and prevent this horrific, inhumane crime against humanity in South Africa.

1.2. RATIONALE OF RESEARCH (PROBLEM STATEMENT)

Leedy and Ormrod (2005:47) elucidate that the heart of any research lies within the research problem and therefore it is of the utmost importance that researchers continuously clarify what they are doing during the various stages, while conducting research. These authors further express the importance of stating research problems clearly and completely in order to ensure that a research problem says precisely what is meant. However, Creswell (2013:130) warns that the term "problem statement" may be wrong in referring to the problem under investigation. He believes it might be better to use the phrase "the need for the study" or "creating a rationale for the need for the study". For this reason the researcher named the heading of this section: Rationale of research.

The criminal justice system and more specifically police officials, fulfil a very important role in the investigation and prevention of human trafficking, both nationally and internationally (see the discussion on the South African Criminal Justice System (CJS) in paragraph 5.2 and 5.3 of chapter 5). This is substantiated by Farrell, McDevitt and Fahy (2008:13), who state

that human trafficking is viewed as a rising crime and an increasingly important human rights concern worldwide that poses a serious challenge to law enforcement in the 21st century.

High expectations are continuously placed on law enforcement agencies and relevant role players, particularly investigators, to combat and investigate the crime of human trafficking successfully. Moreover, the challenges experienced worldwide by the criminal justice systems and investigators are overshadowed by the fact that various human trafficking incidents are mistakenly labelled and perceived as immoral social occurrences or even contraventions, and these incidents are therefore not necessarily regarded as crimes that justify the involvement of law enforcement.

In a study by Van Zyl and Horne (2009), the various challenges and difficulties faced by investigators when investigating child trafficking cases, are highlighted. Amongst the challenges identified in that study is the lack of adequate guidelines provided to investigators when investigating trafficking cases, as well as the absence of a structuring of investigation units to deal with these investigations. These authors further found that investigating officers experience various difficulties with the investigation of these cases, specifically in identifying the crime of trafficking during their investigations.

The investigation of human trafficking presents a unique challenge to police officials due to the complexity of these cases. According to Pharoah (2006) almost no research has yet been conducted in South Africa on the challenges that will be experienced when trafficking cases are to be investigated and offenders prosecuted. The successful identification and investigation of this hidden crime, human trafficking – that takes place mostly in a hidden world – will be practically impossible if the difficulties in understanding the extent of this phenomenon, identifying and investigating this crime and proving the elements of this crime, are not effectively dealt with and addressed in South Africa.

1.3 DELIMITATION OF THE STUDY

This study distinctively focused on available information regarding identification techniques utilised to identify criminal human trafficking for sexual exploitation during the investigation of these crimes in South Africa. This research will only focus on the trafficking of women

and children for sexual exploitation. Due to the hidden nature and extent of this research problem, primary and secondary data were gathered through the selected and applied methodology and variables in the study in order to address the formulated research questions.

As the study was conducted from a South African perspective and the research was conducted on the technique of identification utilised to identify the crime of human trafficking for sexual exploitation, the participants were identified based on their direct involvement and experience in this phenomena. Although there are different role players in the South African CJS, this study focused on the SAPS as one of the main role players within the South African CJS. The specific police investigators responsible to combat and investigate human trafficking as a crime, were accordingly included in this study, together with other relevant role players such as non-governmental organisations (NGOs) and state prosecutors identified by the police investigators. Case dockets could unfortunately not be analysed by the researcher, because permission could not be obtained since there were no cases registered specifically under the crime code of human trafficking at the time of the study. The human trafficking legislation had also not been promulgated during the time of the study and accordingly the SAPS did not have a specific crime code for this crime.

1.4 AIM OF THE RESEARCH

Denscombe (2002:11) highlights the five main aims of scientific research as: an understanding of properties; an understanding of relationships; the production of theories; the prediction of outcomes; and confirmation of the findings by other researchers. Denscombe (2012:20) also says that research should never promise outcomes that cannot be delivered, but that the aims should indicate the direction in which the research will go and should offer direction to the target the researcher hopes to hit (Denscombe, 2012:49).

Fouché and De Vos (in De Vos, Strydom, Fouché & Delpont, 2011:94) explain that the terms aim, goal, purpose and objective are frequently used by researchers interchangeably as synonyms for each other. They further explain that the aim, goal or purpose can be viewed as the dream (something you plan to do or achieve), whereas the objective refers to the steps one has to take (one by one) at the basic level within a certain period of time in order to attain that

dream – what one planned to do or achieve. For this study the researcher will accordingly refer to the *research aim* as the dream that the researcher wishes to achieve.

The *aim* of this study is to critically analyse how the crime of human trafficking for sexual exploitation can be identified in order to develop practical guidelines to be used during the identification of this crime in South Africa.

1.5 OBJECTIVES OF THE RESEARCH

According to Fouché and Delpont (in De Vos et al., 2011:108), the objectives of the research elucidate the specific issues that the researcher intends to examine and should accordingly be clearly stated and specific in nature. The specific research objectives of this study in order to address the research aim, are to:

- Explore and describe the phenomenon of human trafficking.
- Determine the nature and extent of the legal arena upon which South African legislation is based, to criminalise human trafficking, to prevent human trafficking and to protect human trafficking victims.
- Explain how the identification of the phenomenon of human trafficking fits into the policing process.
- Explore the current situation regarding procedures followed to identify the phenomenon of human trafficking for sexual exploitation.
- Develop practical guidelines, procedures and recommendations for police officials to facilitate more successful identification of human trafficking for sexual exploitation.

It is, therefore, deemed that this study presents an original contribution to the identification of this crime arena, specifically in relation to human trafficking for sexual exploitation, and it may accordingly contribute to and influence local, regional and international knowledge and practices.

1.6 RESEARCH QUESTIONS

Research questions provide the required detail and direction, as well as a clear picture of what is to be investigated (Denscombe, 2002:31). In order to address the rationale and the aim of this research, the key themes of the research were identified through the development of research questions that would guide the researcher in managing and analysing the data that emerged (Noaks & Wincup, 2004:122). Jesson, Matheson and Lacey (2011:18) explain that a research question provides the structure for the whole of the literature review of a research study and suggest that defining the research question is a crucial step that points the way for the research investigation.

Further to the above, Denscombe (2012:82) is of the viewpoint that research questions show how the research will be put into practice. Research questions should specify what factors and what relationships will be investigated to provide data that will be useful in addressing the aims of the research. However, Denscombe (2012:82) warns that research questions should not be confused with “data collection questions” or questions that appear on schedules.

In order to provide direction and structure to the study, to understand the research rationale better, to enable the researcher to contribute to the solution thereof and to achieve the objectives of this study, the following research questions were formulated and answered in this study:

1. What does the phenomenon of human trafficking entail?
2. What is the nature and extent of the legal arena upon which South African legislation is based, to criminalise human trafficking, prevent human trafficking and protect trafficking victims?
3. How does the identification of the phenomenon of human trafficking fit into the policing process?
4. What is the current situation regarding procedures followed to identify the phenomenon of human trafficking for sexual exploitation?

5. What practical guidelines, procedures and recommendations can be offered to police officials to facilitate more successful identification of human trafficking for sexual exploitation?

1.7 PURPOSE OF THE RESEARCH

Babbie (2010:92) reasons that three of the most useful purposes for conducting research are exploration, description and explanation and that most studies will accordingly comprise of these elements. The author of this study has further noted that considerable research in criminal justice is conducted to provide knowledge and understanding of the phenomenon, to explore, describe and explain the nature or frequency of a problem and to indicate causality between variables or events. In this study the researcher conducted a review of pertinent literature, both international and national, to gain an understanding of the problem being researched. Relevant international legislation, which informs South African legislation, was also considered in order to explain the current legal framework that forms the foundation to address this problem. The researcher furthermore made use of a survey during the collection of data in phase 1 in order to gain insight into the phenomenon of human trafficking in South Africa. Thereafter interviews were conducted during phase 2 of the data collection in order to understand the meaning provided by individuals to the problem researched. The researcher also explored how the federal police in Australia address the specific problem relating to the identification and investigation of human trafficking, as they have a leading human trafficking task team appointed to focus specifically on this phenomenon. The researcher identified links and associations through the knowledge and data gained in this study in order to explore the relationships that exist between the identification and the investigation of this horrendous crime. The exploration of past events and theories developed from former research relating to this topic specifically, was used as a foundation in order to describe and explain the future application of findings and recommendations emanating from this research.

The purpose of this research as derived from the description of Denscombe (2002:27) is as follows:

1.7.1 Evaluation of the situation

In the present study the researcher investigated the current situation regarding procedures followed to identify the crime of human trafficking for sexual exploitation. The specific intention was to evaluate strengths and weaknesses of current policies in order to determine how these procedures might be improved. This was done by interviewing investigators and other persons involved in handling incidents of human trafficking. Unfortunately, the researcher could not analyse case dockets because permission to analyse case dockets could not be obtained, since there were no cases registered specifically under the crime code of human trafficking. The reason for this is because at the time of the study legislation regarding human trafficking had not been promulgated and the SAPS did not have a specific crime code for this crime.

1.7.2 Exploration

The reason for this research was further to explore and provide a descriptive analysis of the complex phenomenon of human trafficking, with specific reference to the identification of criminal human trafficking for sexual exploitation in South Africa. In order to create an understanding of properties in this study, the researcher at the starting point clarified the properties of the phenomenon of human trafficking as a hidden crime that needs to be identified in order to be investigated. The researcher gathered and recorded relevant knowledge and data in order to classify and categorise this information, with the purpose to discover and advance the body of knowledge in this field of study. Through the knowledge and data gained in this study, the researcher identified links and associations in order to explore possible relationships that exist between the identification and the investigation of this horrendous crime. The exploration of past events and theories developed from former research relating to this topic specifically was used as a foundation to formulate the future application of findings and recommendations emanating from this research. The purpose of exploring the existing body of literature is primarily to describe how things are (Denscombe, 2002:27). In exploring new data and breaking into new territory, the researcher endeavours to expand national and international literature.

1.7.3 Applied research

The main motivation for this research was the desire to solve the practical problems as described in the problem statement above and to make recommendations to improve procedures. The researcher aims to arrive at recommendations for good practice that will address the problems as identified in the problem statement (Denscombe, 2002:27). Through a critical analysis of the identification process of this crime, the purpose of this research was to gain a better understanding of this crime and to establish, develop and provide practical guidelines, procedures and recommendations to the SAPS to identify these cases more successfully.

1.7.4 Empowerment of those being researched

This research was conducted to illuminate the elements of human trafficking for sexual exploitation, thereby assisting police investigators and identified key role players in South Africa to successfully identify and investigate this crime for presentation in a court of law. This study will therefore be made available to the SAPS, as one of the key role players in the South African CJS, to be used in the informing and training of their police officials regarding the identification and investigation of this phenomenon. Lastly the researcher will report on the findings of this research by presenting it accordingly in an accredited scientific journal in order to share any new knowledge obtained in this study (Denscombe, 2012:50).

1.8 KEY THEORETICAL CONCEPTS

According to Creswell (1994:106), key concepts are defined so that readers can better understand the context in which the terms are being used, or their unusual or restricted meaning. The purpose of defining the key concepts used in a research study is twofold. Firstly, presenting a specific working definition allows readers to understand exactly what is meant by each key concept. Secondly, the definition of concepts focuses the researcher's observational strategy (Maxfield & Babbie, 2005:120). Berg (2007:36) supports this statement and emphasises the value of conceptualising a term in order to ensure that readers understand what is meant by certain concepts and to further enable readers to appraise how

effectively identified key concepts are applied in a study. The following key theoretical concepts of the research are accordingly defined:

1.8.1 Criminal justice system

This term is used to reflect all participants in the process of identification of a crime, its prosecution and its punishment. Traditionally, this includes the police, justice and correctional services but can also include social services for their role in youth crime, as well as community and non-governmental service providers (Smit, Minnaar & Schnetler, 2004:255 and Geldenhuys, 2011:6). The South African criminal justice system (CJS) will come under specific scrutiny in this study.

1.8.2 Policing

Policing is a term we apply in the process of preventing and detecting crime and maintaining order. It is an activity that might be engaged in by any number of agencies or individuals (Newburn, 2008:17). Within this research study criminal investigation is regarded to form part of prevention and detecting.

1.8.3 Crime/offence

These terms are used to describe the action which caused the offender to be tried and sentenced in a court. For present purposes the concepts are used as synonymous (Terblanche, 2012:316).

1.8.4 Organised crime

This term refers to a non-ideological enterprise involving a number of persons in close social interaction, organised on a structured basis with different levels/ranks, for the purpose of securing profit and power by engaging in illegal and legal activities (Estes, 2001:8).

1.8.5 Transnational crime

A crime can be deemed transnational in nature if it meets the following criteria of the United Nations Convention Against Transnational Organized Crime (UNTOC) and the Protocols thereto: "(a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State" (United Nations Office on Drugs and Crime (UNODC), 2004:6).

1.8.6 Criminal investigation

Criminal investigation is the process of legally gathering evidence of a crime that has been or is being committed (Brown, 2001:3).

1.8.7 Identification of the crime

Identification of a crime concerns situation identification, that is to say, the type of crime committed, if any, and what kind of information or clues can possibly be collected (Du Preez, 1996:2).

1.8.8 The police investigator

Also referred to as criminal investigator, investigator, investigative officer or detective, this person's primary role is the investigation of crimes with responsibilities including: conducting and managing the investigation; laying criminal charges; preparing the criminal case for court; and, as requested, assisting the prosecutor when the case goes to court (Watkins, Anderson & Rondinelli, 2013:108).

1.8.9 Trafficking in persons

The UNODC (2004:42-43) describes "Trafficking in Persons" as defined in terms of the UNTOC and the Protocols thereto as:

- (a) The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of Article 3(a) of the Trafficking in Persons Protocol shall be irrelevant where any of the means set forth in subparagraph (a) above have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of Article 3(a) of the Trafficking in Persons Protocol;
- (d) “Child” shall mean any person under eighteen years of age.

1.8.10 Sexual exploitation

A practice by which a person achieves sexual gratification, financial gain or advancement through the abuse or exploitation of a person’s sexuality by abrogating that person’s human right to dignity, equality, autonomy, and physical and mental well-being; for example trafficking, prostitution, prostitution tourism, mail-order-bride trade, pornography, stripping, battering, incest, rape and sexual harassment (Hughes, 1999:3).

1.8.11 Victim

The term victim includes individuals who, individually or collectively, have suffered injury (physically or mentally), harm, emotional suffering, economic loss or significant impairment of their fundamental rights through acts or omissions that are in violation of criminal laws by forces beyond their control (Goodey, 2005:10).

1.8.12 Sex trafficking

The term “sex trafficking” means the recruitment, harbouring, transportation provision, or obtaining of a person for the purpose of a commercial sex act (TVPA, 2000:8).

1.8.13 Modus operandi

Modus operandi (crime method) can be defined as a combination of criminals’ habits, techniques and strange behavioural patterns, which they are inclined to follow and from which they seldom deviate (Van Rooyen, 2007:15). Alternatively, modus operandi may describe the patterns of behaviour that serial violators of crime will continue from crime scene to crime scene (Fish & Fish, 2014:62).

1.9 RESEARCH STRUCTURE

To gather data, the researcher utilised various methods and techniques such as: extensive literature research guided by the research questions and the aim of the research; documents such as circulars, policies, standing orders and documentation that were not available to the public; self-administrative questionnaires; and semi-structured interviews. In writing up the report the researcher decided to employ an integrated approach whereby data from literature, documents, questionnaires and the interviews were integrated to get a better understanding of the phenomenon and the problems that investigators experience. An integrated approach, according to the viewpoint of the researcher, will also contribute to a better understanding amongst those involved in the investigation, prosecution and combating of the phenomenon.

Chapter 1: General orientation to human trafficking for sexual exploitation in South Africa.

Chapter 2: Methodological framework of the study.

Chapter 3: An overview of the phenomenon of human trafficking.

Chapter 4: An overview of the legal framework of human trafficking in the international and national arena.

Chapter 5: An overview of how the identification of a crime fits into the policing process.

Chapter 6: The identification of human trafficking for sexual exploitation.

Chapter 7: Findings, recommendations and conclusion.

CHAPTER 2

METHODOLOGICAL FRAMEWORK OF THE STUDY

2.1 INTRODUCTION

The general orientation for this study was discussed in chapter 1. The researcher also presented the rationale for this research, the aim and objectives of the study, as well as specific research questions which provided direction of what will be investigated in this study.

Chapter 2 will present the philosophical worldview underpinning this study. It will also explain the procedures and specific methods of data collection, analysis and interpretation used to gather the data and to resolve the specific research problem and achieve the set objectives in answer to the researcher questions.

2.2 PHILOSOPHICAL WORLDVIEW OFFERED IN THE STUDY

The research approach or the plan to conduct the research that was used to study the research rationale was informed by the philosophical worldview, research design and specific research methods of data collection, analysis and interpretation applied in this study.

Creswell (2014:6) describes worldviews as a basic set of beliefs that guide action and a general philosophical positioning of the world and the nature of the research that a researcher will apply in a study. Worldviews are also described by various authors Crotty (1998); Lincoln, Lynham, and Guba (2011); Mertens (2010) and Neuman (2009) as paradigms, epistemologies and ontologies or broadly conceived research methodologies.

The philosophical worldviews underpinning this study, namely the post-positivist worldview, the constructivist worldview and the pragmatic worldview, will be presented followed by the research design that is related to the philosophical worldviews and the specific methods of research that were applied in the research.

2.2.1 The post-positivist worldview

Creswell (2014:7) states that the post-positivist worldview is also called scientific research and empirical science, as well as post-positivism, because it represents the thinking after positivism based on the fact that one cannot be positive about claims of knowledge when studying the behaviour and actions of humans. De Vos, Strydom, Schulze and Patel (in De Vos et al., 2011:7) explain that in terms of positivism there is a reality that needs to be studied, captured and understood. Post-positivists, although they argue that reality can only be approximated, depend on multiple methods as a way of capturing as much of the reality as possible.

This worldview is appropriate for the present study, as it allows the researcher to use a small sample size while using multiple methods to collect data, information and evidence from the participants in this research (Creswell, 2014:7).

2.2.2 The constructivist worldview

De Vos, Strydom, Schulze and Patel (in De Vos et al., 2011:7) explain that in constructivism, the participants in research become actively involved in all the phases of the process and they thus are partners in the total research undertaking as they seek understanding of the world in which they live and work.

According to Creswell (2014:9), the social constructivist worldview maintains that individuals seek understanding of the world they live and work in. In this worldview the goal of the research is to rely on the participants' understanding and views of the situation being studied. Open-ended questions ensure that participants can construct the meaning of a situation and the researcher can listen carefully to what the participants say or do in their life and work setting. Because the researcher's intent with this study is to make sense of the meanings that the participants have about the world they work in, this worldview is appropriate and is well suited for this study.

2.2.3 The pragmatic worldview

Creswell (2014:10) explains that the pragmatic worldview, as a philosophical underpinning for mixed-methods studies, focuses on the research problem in social science research, whereby pluralistic approaches are used to derive knowledge about the problem. He further clarifies that pragmatism as a worldview arises out of actions, situations and consequences. Instead of focusing on methods, the emphasis is placed on the research problem and all approaches available are applied to understand the problem. For the mixed-methods research this worldview opens the door to multiple methods, different worldviews, different assumptions, different forms of data collection and different methods of data analysis.

This worldview is appropriate for the present study as it is not committed to any one system of philosophy and reality and applies to mixed-methods research. This worldview enabled the researcher to make use of both quantitative and qualitative data, which provided the best understanding of the research problem under investigation. It allowed the researcher to draw from both quantitative and qualitative assumptions when the research was conducted. The application of this mixed-methods research was conducted in two phases in this study. In the first phase the researcher applied the mixed-mode survey design to collect data through questionnaires used in e-mailed, self-administered surveys, as well as in-person interviews with respondents, after which the data were analysed and used in the second phase of the study. In the second phase the researcher made use of interview schedules to conduct semi-structured one-on-one interviews with participants in order to explain the survey responses.

According to Mouton (1998:14) various views are offered that interpret science as a loosely held network or “web” of related statements. Most researchers at the methodical level accept that quantitative and qualitative tools are compatible and the choices of specific approaches are determined by the specific research problem under investigation (Mouton, 1998:40).

Mouton (1998:16) further explains that most contemporary philosophers in the field of social science acknowledge and argue that scientific knowledge is more generally accepted as a loosely knit web or “fabric”, where some statements are more closely and logically connected and other statements are possibly only indirectly connected or related. Therefore, in terms of this study, the researcher deemed it appropriate to include and approach this research from

the following worldviews, namely: the post-positivist worldview; the constructivist worldview; and the pragmatic worldview, which underpinned this study.

2.3 RESEARCH APPROACH AND DESIGN

Data and methodology are both mutually dependent and mutually supporting. Therefore, the methodology applied in research should at all-time take into account the nature of the data that will be collected to resolve the specific research rationale (Leedy & Ormrod, 2005:93). “When we talk about a general strategy for solving a research problem, we are talking about a research design. The research design provides the overall structure for the procedure the researcher follows, the data the researcher collects, and the data analyses the researcher conducts” (Leedy & Ormrod, 2005:85). Simply put, the research design involves planning. In this light, research methodology is employed to extract meaning from data and to some extent the data to be collected, will dictate the research method.

Pitts and Smith (2007:4) are of the opinion that research is purposive knowledge generation. That is, we set out explicitly to create knowledge in relation to a specific set of problems or challenges. Silverman (2000:7) explains that methodology describes how one will go about when conducting research about any occurrence or incidence that cannot be deemed simply true or false in nature, but will rather be viewed as *more* useful or *less* useful. In this regard, Leedy and Ormrod (2005:94) further explain that different research problems lead to the application of different research designs and methods, which determine the manner of collecting different types of data and accordingly different interpretations of collected data.

Methodologies can either simply be defined very broadly, for example qualitative or quantitative, or more specifically, for example grounded theory (Silverman, 2000:79). However, Creswell (2013:22) is of the opinion that the methodologies used by qualitative researchers are characterised as inductive, emerging, and shaped by the researchers’ experience in collecting and analysing data. He states that the logic that qualitative researchers follow is inductive “from the ground up, rather than handed down from the theory or the perspectives of the inquirer” (Creswell, 2013:22).

In this study the researcher made use of the exploratory and descriptive research approach, because the research involves the study of human behaviour within the framework of descriptive research. The descriptive design is also the most common design objective in criminal justice research, because it allows for the use of different data collection strategies and the analysis of secondary sources within social settings and the people within them (Champion, 1993:59). According to Champion (1993:59), description settings are selected for investigation, and findings collected through for example questionnaires, interviewing, observation and the analysis of secondary sources, are described as they are found.

In this study the application of descriptive research provided detailed insight into the phenomenon of human trafficking, which takes place within a social setting that addresses and provides answers to the particular research questions (Fouché & De Vos, in De Vos et al., 2011:96).

2.3.1 Mixed-methods research design

Creswell (2014:81) explains that many different terms are used for this approach, such as integrating methods, synthesis, quantitative and qualitative methods, multi-method and mixed methodology. In mixed-methods research design, the researcher brings together approaches that are included in both the quantitative and qualitative formats. Creswell (2014:4) describes mixed-methods research as an approach which involves the collection of both quantitative and qualitative data. These two forms of data are then integrated through the use of distinct designs applicable in each field, involving specific philosophical assumptions and theoretical frameworks. Using a combination of quantitative and qualitative approaches brings about a more complete understanding of the research problem under investigation. The mixing of data from both these formats ensures a stronger understanding of the problem as it involves the collection of both quantitative (closed-ended) and qualitative (open-ended) data in response to the research questions under investigation (Creswell, 2014:217).

In order to conduct this descriptive research, a combination of quantitative and qualitative research was employed, using the explanatory sequential mixed-methods design. The researcher used a combination of a qualitative and quantitative research approach (mixed methods). According to Du Plooy (2002:37), the approach applied by the researcher will be

directed by the research aim and objectives. The researcher anticipated using this combined approach, both qualitative and quantitative, to test theoretical assumptions in more than one way, and to increase the reliability and validity of observations, analyses and findings (Du Plooy, 2002:39-40). This is commonly known as mixed-methods research and triangulation whereby different tools, strategies and techniques, such as questionnaires, interviewing, observation and the analysis of secondary sources within the qualitative and quantitative framework, are used to gather data (Creswell, 1994:174). In triangulation, researchers make use of “multiple and different sources, methods, investigators and theories to provide corroborating evidence” (Creswell, 2013:251). Triangulation involves corroborating evidence from different sources to shed light on a theme or perspective. Champion (1993:122) states in this regard that two or more data gathering techniques are normally used in the investigation of social phenomena within the criminal justice environment. According to Leedy and Ormrod (2005:99), triangulation is also common in mixed-methods research designs, in which both quantitative and qualitative data are collected to answer a single research question. Triangulation enhances validity in the sense that it suggests that social phenomena are a little “more than one”, and that a study managed to grasp more than one of those dimensions (Mason, 1998:148).

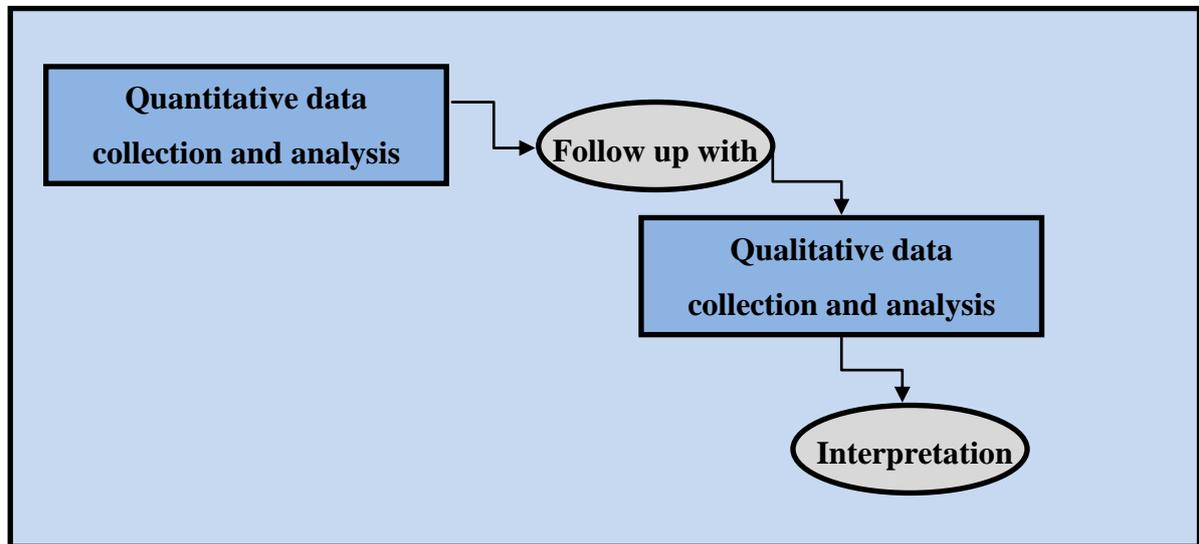
Within this research, the researcher followed a mixed-methods research strategy as this strategy allows for triangulation, whereby multiple approaches to data collection are examined. In this study the mixing of methods further allowed the researcher to integrate and connect the quantitative and qualitative data collected. Moreover, the results from the quantitative method were used to enable the researcher to identify participants to interview during the application of the qualitative method (Creswell, 2009:14).

2.3.2 Explanatory sequential mixed-methods design

The explanatory sequential mixed-methods design is used with the main purpose of utilising the qualitative data to help explain in more detail the initial quantitative results obtained (Creswell, 2014:224). This design is illustrated in the following figure, namely figure 2 as presented by Creswell (2014:220). The design involves a two-phase project in which the researcher collects quantitative data in the first phase. These results are then analysed and used to progress to the qualitative phase, in which participants are purposefully selected and

the types of questions are determined that will be asked during this phase (Creswell, 2014:224).

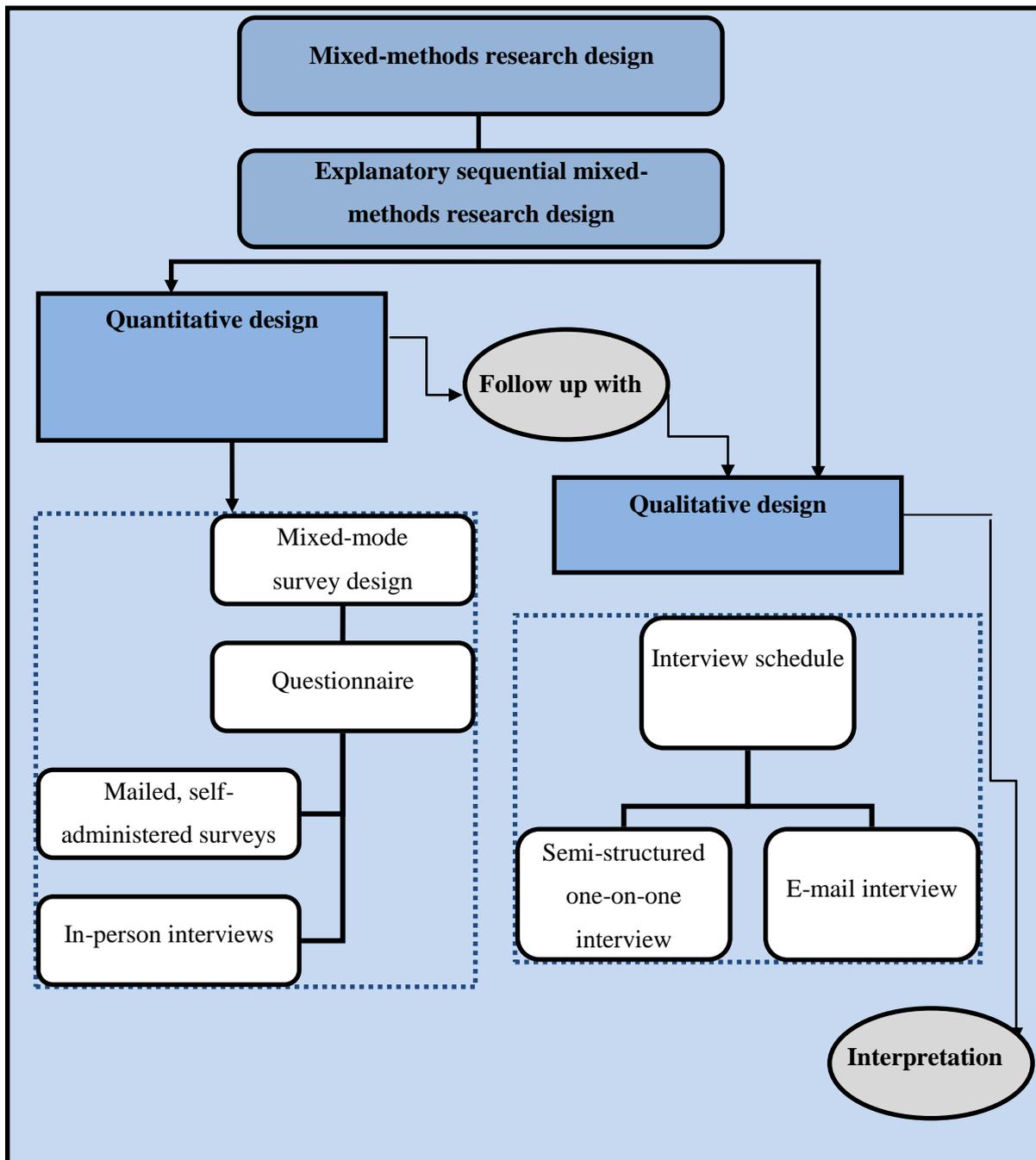
Figure 2: Explanatory sequential mixed-methods design



(Source: Creswell, 2014:220)

The explanatory sequential mixed-methods design assisted the researcher to follow a procedure whereby the mixed-mode survey design was applied to collect data through questionnaires used in mailed, self-administered surveys and in-person interviews with participants during the first quantitative phase of this study. The researcher then analysed the data, followed during the second qualitative phase by interview schedules that were used in semi-structured one-on-one interviews with participants in order to explain the survey responses as illustrated in the following figure, namely figure 3.

Figure 3: Mixed-methods and research design



(Source: Adaptation from Creswell’s sequential mixed-methods diagram, 2014:220)

In this research the researcher made use of both primary and secondary information sources as described by Mouton (2001:71). Primary data are generated by a researcher who is responsible for the design of the study, as well as the collection analysis and reporting of the data. These new data are used to answer specific research questions. Primary data are characterised by the fact that they are the result of direct contact between the researcher and

the source, and that they have been generated by the application of particular methods by the researcher (Blaickie, 2003:18). According to Leedy and Ormrod (2001:95), primary data are often the most valid, the most illuminating and the most truth-manifesting.

Stewart and Kamins (1984:1) describe secondary data as raw data that were collected by someone else either for a general or official purpose or for a specific research project. The secondary data consist of sources of data and other information collected and archived in some form. These sources include government reports, archived data sets, industry studies, as well as traditional books and journals found in libraries. According to Leedy and Ormrod (2005:89), secondary data are not derived from the truth itself but rather from primary data. Secondary data are collated, comprising published and unpublished information obtained from books of national and international origin, relevant journals, magazine articles, newspapers, organisational documents, government publications, legislation and information available on the internet (Mouton, 2001:71).

In this study, primary data were obtained in two phases. Firstly through the explanatory sequential mixed-methods design: the researcher followed a procedure whereby the mixed-mode survey design was applied to collect data through questionnaires used in mailed, self-administered surveys and in-person interviews with participants during the first quantitative phase of this study. The data were analysed and then followed up during the second qualitative phase with interview schedules that were used in semi-structured one-on-one interviews with participants in order to explain the survey responses. These questionnaires and interview schedules were carefully prepared and pre-tested and were conducted with specific participants who had been identified through the responses on the questionnaires in phase 1, analysed regarding their specific knowledge, experience and exposure to the identification, investigation and dealing with cases of human trafficking.

2.3.3 Mixed methods: Phase 1 quantitative design

Creswell (2014:4) describes quantitative research as an approach for testing objective theories by examining the relationship among variables. Numbered data can in return be measured and analysed with the aim of testing theories deductively, building in protection

against bias, as well as controlling for alternative explanations in order to generalise and replicate findings of the research.

In the quantitative approach, phase 1 of data collection, the researcher made use of the survey research design which provides a quantitative description of trends, opinions or attitudes of a population. Bachman and Schutt (2014:190) explain that survey research involves the collection of data from a broad spectrum of social settings or a sample of individuals, through their respective responses to questions about themselves. Survey research makes use of questionnaires or structured interviews for data collection with the intent of generalising from a sample to a population (Creswell, 2014:13).

According to Bachman and Schutt (2014:191), survey research (regardless of its scope) is a popular choice of design as it features versatility, efficiency and generalisability in a research study. Bachman and Schutt (2014:215) explain that most surveys are highly structured and may include some open-ended questions.

2.3.3.1 Mixed-mode surveys

Mixed-mode surveys allow researchers to combine different survey designs and thus allow the strengths of the one survey design to compensate for the weaknesses of another survey design. Using this mixed-methods survey can maximise the likelihood of securing data from the different participants by interviewing non-respondents in a mailed survey in person (Bachman & Schutt, 2014:215).

In this study, the researcher made use of the mixed-mode survey design by using both e-mailed, self-administered surveys, as well as in-person interviews. As recommended by Bachman and Schutt (2014:216), the researcher firstly made use of in-person interviews, as they are recommended to be the strongest design and generally preferable when sufficient resources are available. Secondly, the researcher made use of e-mailed self-administered surveys to collect data from participants located in the different provinces, taking into consideration the cost-effectiveness and time period of collecting the data in the study. Making use of both these approaches ensured that the researcher obtained a 100 per cent response rate from the identified sample of participants in this quantitative phase 1 of the

study. Within the application of this design the researcher took care to address the requirements and guidelines to maximise the response rate, as suggested by Bachman and Schutt (2014:216), namely:

- A personalised and professional cover letter was included, whereby participants were informed of their valuable contribution to the study.
- The researcher ensured that the questionnaire included contingent questions and patterns were skipped infrequently.
- Individual questions were stated clearly and were understandable to all participants.
- The participants were ensured that the interviews will be kept confidential and anonymous and numbers were accordingly allocated to each questionnaire.

2.3.4 Mixed methods: Phase 2 qualitative design

Creswell (2014:4) describes qualitative research as an approach applied to explore and understand the meaning provided by individuals to a social or human problem. Emerging questions and data collected from participants bring about inductive data analysis building from particulars to general themes of which the researcher must make interpretations and meaning.

Qualitative research includes focus groups, in-depth interviews and extensive examination of documents. This is essential in the following situations: when previous research and theories yield scanty information about the topic and issues; when there are likely to be strong contextual effects (that is, the previous research and theories may not be a useful guide in the specific situation confronting the researcher); and when researchers want to enhance the validity of their interpretations by drawing on the experiences of those most involved in the research setting itself (Pope, Lovell & Brandl, 2001:369).

2.4 DATA COLLECTION

Qualitative research in this study complemented the quantitative research and added to the understanding of circumstances in which human trafficking occurs and criminal justice is

administered, through providing rich and additional data to flesh out the skeleton that was provided by the quantitative data collected. The use of qualitative techniques in this research further offered the researcher the opportunity to make a distinct contribution by elucidating the context in which human trafficking takes place and the meanings attached to this crime (Noaks & Wincup, 2004:11). In this regard, the researcher conducted semi-structured one-on-one interviews and e-mail interviews with participants identified through the e-mailed, self-administered surveys and in-person interviews with participants, which included responses from police officials who dealt with cases related to human trafficking. These interviews were conducted in order to determine the methods, techniques and procedures applied by these authorities in identifying these crimes and dealing with cases of human trafficking for sexual exploitation.

The researcher further conducted semi-structured one-on-one interviews and e-mail interviews with police investigators, NGOs and state prosecutors in an attempt to explore the participants' understanding of human trafficking and to shed light on the complexity, ambiguity, contradictions and process to identify the crime of human trafficking for sexual exploitation in order to investigate this horrendous crime (Yates, 2004:165). Permission to conduct these e-mailed, self-administered surveys and in-person interviews with participants in the quantitative phase, as well as the semi-structured one-on-one interviews and e-mail interviews in the qualitative phase was obtained from the relevant authorities and documents are included as annexures A, B, C, and D. Through a qualitative approach the researcher was further enabled to describe and explain the procedures followed by the various role players in identifying and investigating these cases of human trafficking.

To gather data, the researcher made use of different mixed-methods techniques: extensive literature research guided by the research questions and the aim of the research; documents, such as circulars, policies, standing orders and documentation not available to the public; self-administrative questionnaires; and semi-structured interviews. In writing up the report the researcher decided to make use of an integrated approach where data from literature, documents, questionnaires and the interviews were integrated to get a better understanding of the phenomenon and the problems that investigators experience. An integrated approach, according to the viewpoint of the researcher, will also contribute to a better understanding

amongst those involved in the investigation, prosecution and non-government officials involved in the combating of the phenomenon.

The data collection techniques within the mixed-methods research design, which included both quantitative and qualitative research methods used by the researcher in this study, were:

2.4.1 Literature

According to Creswell (2009:25), the foundation for conducting a literature review is to share the results of other studies that are similar to the study being undertaken, to provide a framework for establishing the importance of the study undertaken, as well as to provide a benchmark for comparing the results of the study with other findings. The literature study was used to contextualise the researcher's study, to explain and argue the data obtained, as well as to indicate the relevance of the findings in this research in relation to the existing body of literature (Henning, Van Rensburg & Smit, 2004:27). The literature in this study was furthermore used inductively, as it was incorporated throughout the discussion of the study and it accordingly was used to substantiate, compare and contrast the themes and results that emerged from the study (Creswell, 2009:27).

The following steps as recommended by Fouché and Delport (in De Vos et al., 2011:134) and Creswell (2009:29) were used when literature was collected in this study:

- The research topic was determined, studied and analysed in order to find similar literature on the problem. The researcher began by identifying the key concepts, namely identification process, identification of crime, human trafficking, sexual exploitation, criminal investigation and forensic investigation in an attempt to find literature on the topic and research questions in the study.
- The separate concepts of the topic, as well as the key words of the compiled research questions, were then used to search the computerised database of the University of South Africa (Unisa) library for journals, books, research reports, short dissertations, dissertations and theses related to the topic. In addition to this, the researcher also requested a literature search to be

conducted by the Unisa subject librarian assisting the School of Criminal Justice.

- The researcher then searched the online computerised databases of the Unisa library website that are most frequently reviewed by social science researchers, such as Google Scholar, ProQuest, the Social Science Citation Index and others. The internet was also used through “search topics/words” in order to find material relating to this research and to obtain literature relevant to this research.
- The Unisa library at Pretoria and Florida, as well as other libraries in and around Pretoria, were visited in order to find books, journals, statutes, articles and any other material related to this research. An intensive electronic search was also conducted on the internet in order to find material relating to this research. The researcher determined which of the articles and books existed in the Unisa library and the sources not available were requested through an interlibrary loan. The sources studied in this research were accordingly listed in the list of references.
- The researcher then browsed through the relevant literature obtained and the literature directly related and central to the researcher’s study was duplicated for further study. Throughout this process the researcher continuously strived to obtain a sense of whether the obtained literature will make a useful contribution to the researcher’s understanding of the literature obtained in the study.
- Throughout the process of identifying relevant literature, the researcher compiled a literature map, providing a visual picture that illustrated how the researcher’s study fits into the larger body of the literature obtained through the literature review. Summaries were also compiled of the relevant literature obtained, to be discussed in the relevant chapters of the study and accordingly referenced in the list of references.

2.4.2 Documentary sources

Documentary sources may be defined as records relating to individuals or groups of individuals (Miller & Brewer, 2003:80). Noaks and Wincup (2004:107) explain that

documentary evidence can be a valuable resource in qualitative studies and accordingly it has an important part to play in the triangulation of methods used in a study. The existing documentary evidence, namely: circulars, policies, standing orders and all documentation not available to the public, was used to supplement and give illustrative examples of the findings obtained from data gathered by the researcher (Robson, 2000:100).

The researcher made use of the research questions and aims to determine what information was to be sought from the documentary sources. The documents were analysed against the following questions:

1. Guidelines which explain the phenomenon of human trafficking.
2. Guidelines given to direct investigators to identify human trafficking.
3. Procedures and instructions on the identification and investigation of human trafficking for sexual exploitation.

None of these documentary sources clarified any of these questions directly.

2.4.3 Interviews

Personal interviews, whether they are face-to-face or over the telephone, allow the researcher to clarify ambiguous answers and, when appropriate, seek follow-up information. Because such interviews take time, however, they may not be practical when large sample sizes are important (Leedy & Ormrod, 2005:185). Face-to-face interviews take place in a personal contact situation between one interviewer and one interviewee. Three broad styles of conducting interviews are available: informal interviews, semi-structured interviews and structured interviews (Robson, 2000:88). Face-to-face interviews have the distinct advantage of enabling the researcher to establish rapport with potential participant and therefore gain cooperation; thus, such interviews yield the highest response. However, the time and expense involved may be prohibitive if the interviewees reside in a variety of states or countries (Leedy & Ormrod, 2005:184).

2.4.3.1 Quantitative data collection: Phase 1

Leedy and Ormrod (2013:95) explain that quantitative research is used to answer questions about relationships among measured variables with the purpose of explaining and controlling phenomena, whereas qualitative research is used to answer questions about the complex nature of phenomena with the purpose of describing and understanding the phenomena from the participants' point of view.

Surveys can be used for descriptive, explanatory and exploratory research purposes and are mainly used in research that studies individual people. Surveys are one of the best recommended methods to collect original data for describing a population that is too large to be observed directly by the social researcher. Probability sampling in survey research provides a group of participants whose characteristics may be taken to reflect those of the larger population that are studied. Structured questionnaires in this matter provide data in the same form from all participants in the study (Babbie, 2010:254).

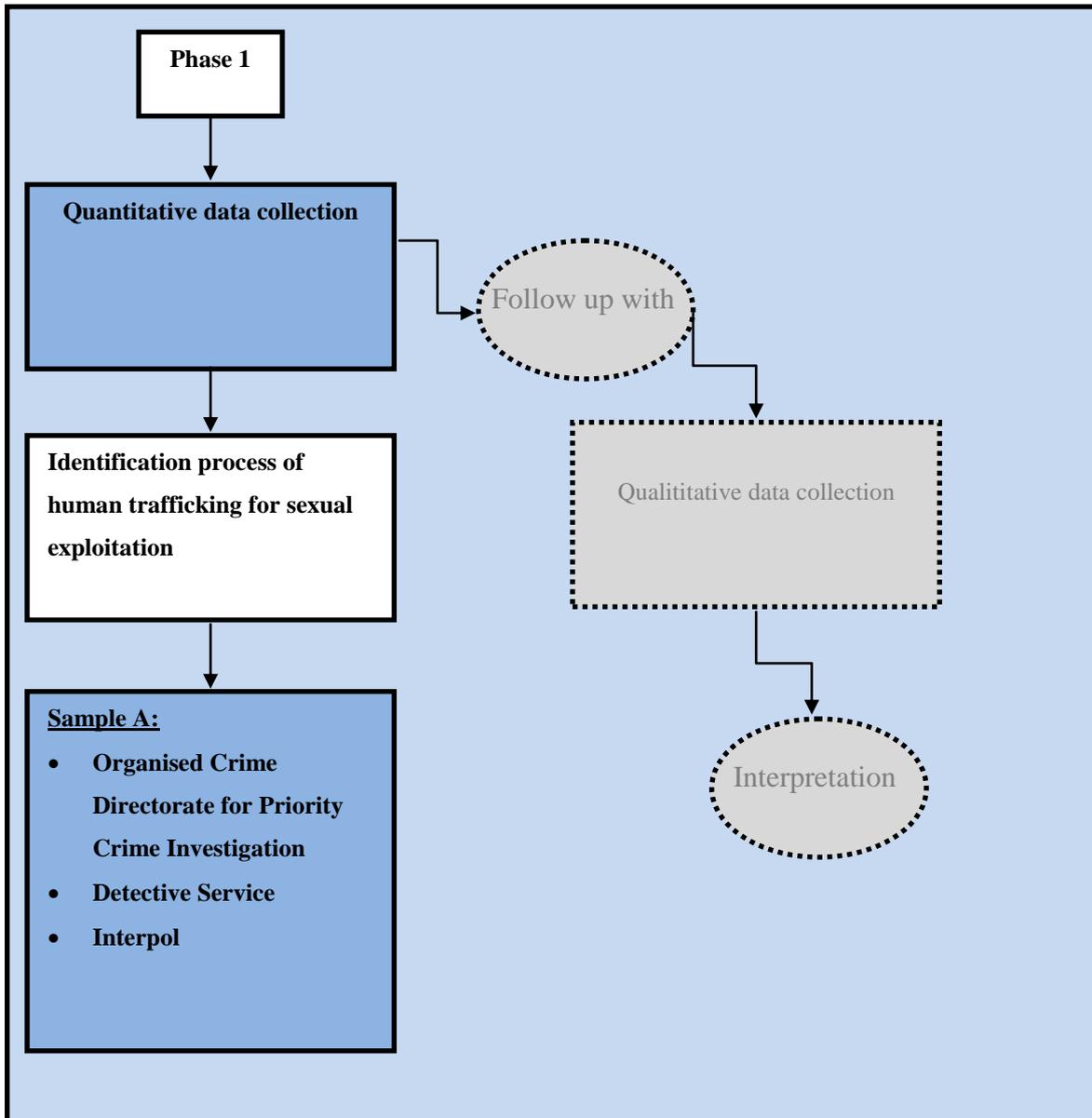
Babbie (2010:256) describes a questionnaire as a document containing questions and other types of items that are designed to search for information that is appropriate for analysis. Within the quantitative design and quantitative data collection phase of this study, the researcher made use of survey research design, using e-mailed, self-administered surveys and in-person interviews with participants in order to establish the nature and extent of human trafficking in South Africa. According to the views of Greenfield (2002:173) surveys can be effective to obtain an accurate description of the nature and extent of the specific crime in the present study.

In this study, the researcher compiled a questionnaire based on questionnaires and interview schedules used in a previous research report, namely Understanding and improving law enforcement responses to human trafficking, prepared by The Institute on Race and Justice at North-eastern University under grant number 2005-IJ-CX-0045, number for the National Institute of Justice. The original questionnaires and interview schedules were studied and used as a basis for this research and amended with the permission obtained from the author of that report. The permission obtained is included as annexure E. The original questionnaires and interview schedules used in the North-eastern University Institute on Race and Justice

Study, are included as annexure F. The amended questionnaire compiled by the researcher was used to conduct mailed, self-administered surveys, as well as in-person interviews with police officials working at: the Directorate Priority Crime Investigations: Organised Crime at the National Office; the Detective Service Family Violence; Child Protection and Sexual Offences Investigations at the National Office; Interpol; and the respective provincial coordinators and investigators of human trafficking within the nine provinces of South Africa. This was done to determine the nature and extent of human trafficking in South Africa. Permission was obtained from the SAPS to conduct this research and accordingly conduct interviews with the identified participants (as noted above with reference to annexures A, B, C and D).

The original questionnaires and interview schedules referred to above have already been applied successfully in an international context. The researcher therefore used these questionnaires and interview schedules as a basis to combine and integrate the various questions and accordingly amended the information obtained to be used in this study specifically. This information was also customised to a South African context and the drafted compiled questionnaire in this phase 1 of the study was piloted with the researcher's co-supervisor, as well as a highly rated and acknowledged research professor within the academia before it was used to collect information from the participants in the study. The guidelines, suggestions, comments and corrections required were accordingly considered and addressed. The final approved questionnaire used in the self-administered surveys and in-person interviews with participants, is included as attachment A. In this self-administered surveys and in-person interviews with participants the questionnaire contained the same questions which were posed to all the participants in this phase of the research. This quantitative phase, phase 1, of data collection is illustrated in an adaptation from Creswell's sequential mixed-methods diagram (2014: 220) in the following figure, namely figure 4.

Figure 4: Quantitative data collection Phase 1



(Source: Adaptation from Creswell’s sequential mixed-methods diagram, 2014:220)

Relating to the data gathered in the survey, it needs to be noted that some of the questions asked to the participants were specifically not included, discussed and analysed within this study due to the confidentiality of the information and also because some of the data did not directly form part of the final scope of the study.

2.4.3.2 Qualitative data collection: Phase 2

Creswell (2014:4) describes qualitative research as an approach applied to explore and understand the meaning provided by individuals to a social or human problem. Emerging questions and data collected from participants bring about inductive data analysis, building from particulars to general themes of which the researcher must make interpretations and meaning. In the qualitative approach, phase 2 of data collection, the researcher interviewed the participants because it is viewed the predominant mode of data collection in qualitative research (Greeff, 2011:342). The researcher made use of an interview schedule and applied the semi-structured one-on-one interview method, as well as the e-mail interview method to interview participants in this study.

The researcher made use of an interview schedule which was based on questionnaires and interview schedules used in a research report, namely Understanding and improving law enforcement responses to human trafficking, prepared by The Institute on Race and Justice at North-eastern University under grant number 2005-IJ-CX-0045, number for the National Institute of Justice (as noted above in the quantitative data collection phase). The amended questionnaire used in phase 1 of this study, as well as the original questionnaires and interview schedules, were once again studied and used as a basis for this qualitative data collection phase, phase 2 (with the permission obtained from the author of this report as mentioned above with reference to annexure E). These participants consisted of:

- The respective provincial coordinators, police officials and investigators of human trafficking within the nine provinces of South Africa, who were included in sample A, phase 1 of the study, as well as relevant role players identified by them, including:
 - Police investigators working at the SAPS organised crime units who dealt with and investigated cases of human trafficking where victims were trafficked for sexual exploitation.
 - State prosecutors working at the National Prosecuting Authority who dealt with, identified and prosecuted human trafficking cases where victims were trafficked for sexual exploitation in South Africa.

- NGOs who work in the field of counter-trafficking and victim assistance.

Semi-structured, one-on-one in-person interviews were conducted with the majority of the participants and the e-mail interview method was used to interview participants who were located in the different provinces, taking into consideration the cost-effectiveness and time period of collecting data for the study. Making use of both these approaches ensured that the researcher obtained a 100 per cent response rate from the identified sample of participants in this qualitative phase 2 of the study. Within the application of this design the researcher took care to address requirements and guidelines to maximise the response rate as suggested by Bachman and Schutt (2014:216-222) namely:

- A personalised and professional cover letter was included whereby participants were informed of their valuable contribution to the study.
- Rapport was established by explaining what the interview entailed and how it would be used.
- The researcher ensured that the interview schedule included contingent questions and patterns were skipped infrequently.
- Individual questions were stated clearly understandably to all participants.
- The participants were ensured that the interviews will be kept confidential and anonymous. Numbers were accordingly allocated to each interview schedule.

During the conducting of both the semi-structured one-on-one interviews, as well as the e-mail interviews, the researcher used a standardised semi-structured interview schedule which was developed for the respective participants in samples B1, B2, C and D. Separate interview schedules were developed for each of the four different categories of participants namely:

- (1) The respective provincial coordinators, police officials and investigators of human trafficking within the nine provinces of South Africa, who were included in sample A, phase 1 of the study, sample B1. Police investigators who dealt with, identified and investigated human trafficking cases where victims were trafficked for sexual exploitation, sample B2.

- (2) State prosecutors who dealt with, identified and prosecuted human trafficking cases where victims were trafficked for sexual exploitation, sample C.
- (3) Non-government officials working at organisations that work in the field of counter-trafficking and victim assistance, sample D.
- (4) International police investigators who dealt with, identified and investigated human trafficking cases where victims were trafficked for sexual exploitation, sample E.

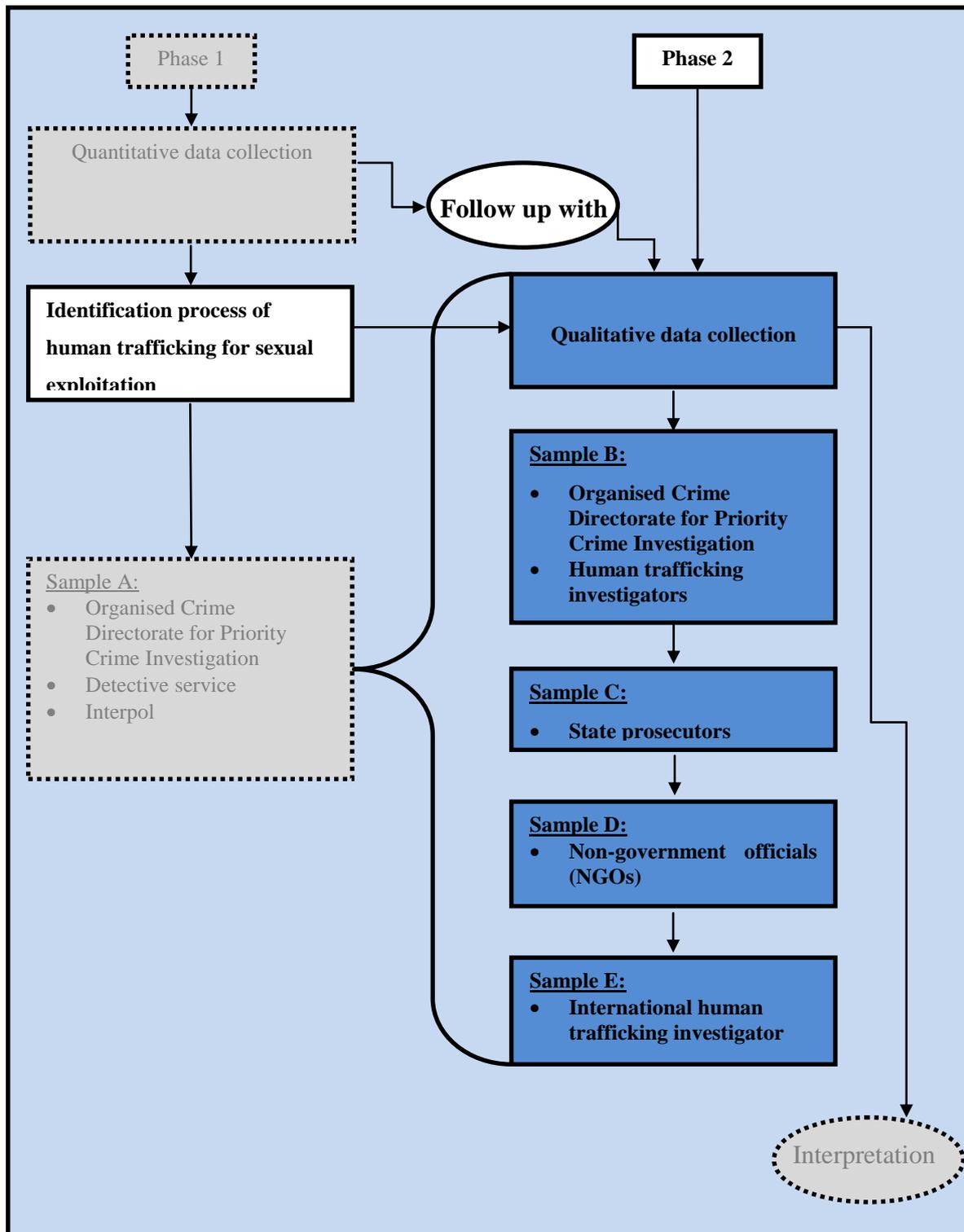
The separate interview schedules for each of the four different categories of participants contained the same questions respectively in each of the interview schedules, thus the same questions were posed to the participants in these respective samples. During this qualitative data collection phase, phase 2, the researcher recorded the participants' answers to gather information both in written format and on a digital recorder (where one-on-one interviews were conducted), to obtain opinions, determine the frequency of various answers and find relationships between answers to different questions (Adler & Clark, 2003:231). As noted above, the original questionnaires and interview schedules used as a basis for this study, with the required permission, had already been applied successfully in an international context.

The researcher therefore followed the same procedure as in the quantitative phase of the data collection, phase 1, and used the amended and approved questionnaire used in phase 1, together with the amended questionnaires and interview schedules as a basis to combine and integrate the various questions, and accordingly amended the information obtained to be used in this study specifically. This information was customised to a South African context and the drafted interview schedule in phase 2 was piloted with the researcher's co-supervisor, as well as a highly rated and acknowledged research professor within the academia before it was used to collect information from the participants in this phase of the study. The guidelines, suggestions, comments and corrections required were accordingly considered and addressed. The final approved interview schedules used in the one-on-one interviews, as well as the e-mail interviews with participants is included as attachments B, C and D.

The amended and approved interview schedule used in the one-on-one interviews, as well as the e-mail interviews with the participants in sample B of this study, namely the respective provincial coordinators, police officials and investigators of human trafficking within the nine provinces country wide [sample B1] and police investigators working at the SAPS organised

crime units who dealt with and investigated cases of human trafficking where victims were trafficked for sexual exploitation [sample B2], was then used to extract the relevant questions posed to the participant interviewed in sample E. This was done during the qualitative phase of data collection, phase 2, to gain an international perspective on the identification and investigation of human trafficking. This interview schedule used in the one-on-one interviews with the participant in sample E, is included as attachment E. This qualitative phase of data collection, phase 2, is illustrated in an adaptation from Creswell's sequential mixed-methods diagram (2014: 220) in figure 5 below.

Figure 5: Qualitative data collection Phase 2



(Source: Adaptation from Creswell’s sequential mixed-methods diagram, 2014:220)

Relating to the data gathered from the interviews, it needs to be noted that some of the questions asked to the participants were specifically not included, discussed and analysed

within this study due to the confidentiality of the information and also because some of the data did not directly form part of the final scope of the study.

2.4.4 Population and sampling procedures

According to Strydom (2011:223), the term population sets boundaries on the study units and refers to individuals in the universe who possess specific characteristics. Bless and Higson-Smith (2000:85) further describe population as that group of people which is the object of the research and about which the researcher wants to determine some characteristics. Sekaran and Bougie (2009:262) submit that “a research population” refers to the entire group of people, events, or things of interest that the researcher wishes to investigate.

The population in this research consisted of police investigators who dealt with and investigated cases of human trafficking where victims were trafficked for sexual exploitation; state prosecutors who dealt with, identified and prosecuted human trafficking cases where victims were trafficked for sexual exploitation; and non-government officials (NGOs) working at organisations that work in the field of counter-trafficking and victim assistance.

The target population is the population to which the researcher ideally would like to generalise the results of the study (Welman & Kruger, 2000:122). Taking the reasons for the use of samples into consideration as discussed by Strydom (2011:224) and Champion (1993:87), the target population in this study was:

- Police investigators working at the SAPS organised crime units who dealt with and investigated cases of human trafficking where victims were trafficked for sexual exploitation.
- State prosecutors working at the NPA who dealt with, identified and prosecuted human trafficking cases where victims were trafficked for sexual exploitation in South Africa.
- NGOs who work in the field of counter-trafficking and victim assistance.

The purposive or judgement sampling and snowball sampling methods that were used by the researcher will now be discussed in terms of phase 1 and phase 2 of the research, with a schematic representation of each phase below:

2.4.4.1 Quantitative phase of sampling: Phase 1

Bachman and Schutt (2014:119) explain that in purposive sampling each element in the research is selected for a specific purpose. Purposive sampling is also referred to as judgement sampling, because the researcher applies his or her own judgement about the selection of individuals. A purposive sample may be a key informant survey in which individuals who are particularly knowledgeable about the aspect under investigation, are included.

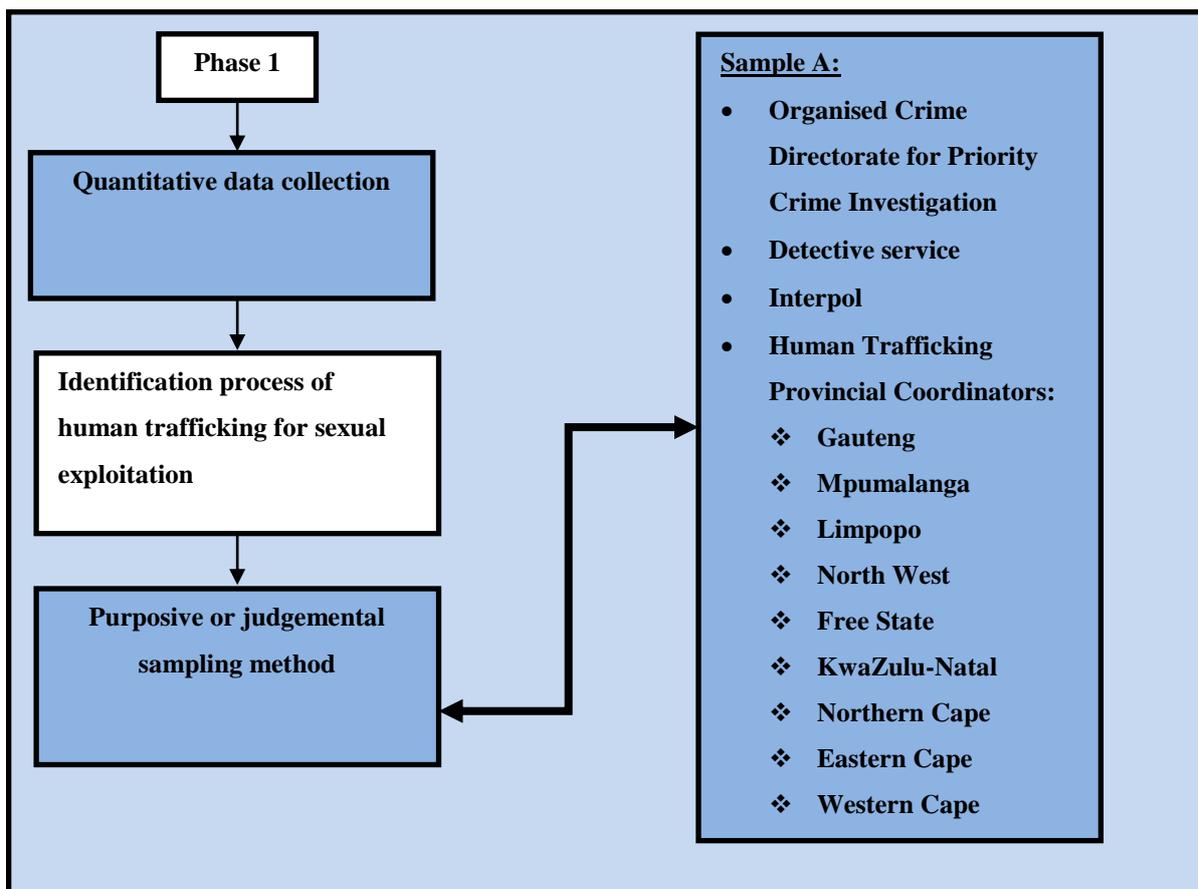
In the first phase of the study, phase 1, which entailed the quantitative collection of data, the non-probability sampling method (purposive or judgement sampling) was used to select sample A. Sample A consisted of police officials and investigators working at the Organised Crime Directorate for Priority Crime Investigation at the National Office; the Detective Service Family Violence; Child Protection and Sexual Offences Investigations at the National Office; Interpol; as well as the respective provincial coordinators of human trafficking within the nine provinces of South Africa. In order to ensure that a purposive sample is selected that will adequately represent the phenomenon under investigation, the participants were selected based on the following criteria:

- The participants are police officials placed in senior management positions who represent, coordinate and manage the specific crime of human trafficking under investigation in this study country wide, both at the national head office as well as in all nine provinces.
- They are knowledgeable about the phenomenon being studied in this research, namely the nature and extent of human trafficking in South Africa.
- Permission was obtained from the required authorities to interview these participants and they were willing to be interviewed.
- They are representative of the range of points of view in this study.

Creswell (2014:224) states that in the explanatory sequential mixed-methods design (the design used in this study) the second phase of the data collection follows on the first phase with purposeful sampling. The key highlighted by Creswell (2014:224) is that the qualitative data collection must build directly on the quantitative results. The same individuals that data

were collected from in the quantitative phase, phase 1, should be included in the qualitative phase, phase 2 of the research, because the intent of the explanatory sequential mixed-methods design is to follow up the quantitative results and explore the results in more depth. The quantitative phase of this study consisted of a total of 12 participants, three participants from the respective head offices and nine participants from the respective provinces country wide. The 12 participants interviewed in sample A are presented in figure 6 below:

Figure 6: Purposive or judgement sampling of sample A



2.4.4.2 Qualitative phase of sampling: Phase 2

In the second phase of the study, phase 2, which entailed the qualitative collection of data, firstly the non-probability sampling method (purposive or judgement sampling) was used and secondly the snowball sampling technique was used. The non-probability sampling method (purposive or judgement sampling) was used to select sample B1. Sample B1 consisted of the nine respective provincial coordinators, police officials and investigators of human

trafficking within the nine provinces in South Africa who had been included in sample A, phase 1 of the study.

Bachman and Schutt (2014:119) explain that in snowball sampling one member of the population is identified and that individual is then asked to identify others in the population, who are then asked to identify others and so the method continues. The snowball sampling technique is also recommended for hard-to-reach or hard-to-identify interconnected populations where at least some members of the population know each other.

In this study the researcher made use of the snowball sampling technique to interview other identified participants during the conducting of the interviews, due to the hidden nature and extent of this research problem. Snowball sampling is a multistage sampling procedure by which a small initial sample from the target population enlists other members of the population to participate in the study. The starting point for a snowball sample is the initial sample of population members, each of whom is asked to name all the other population members he or she knows (Hoyle, Harris & Judd, 2002:188).

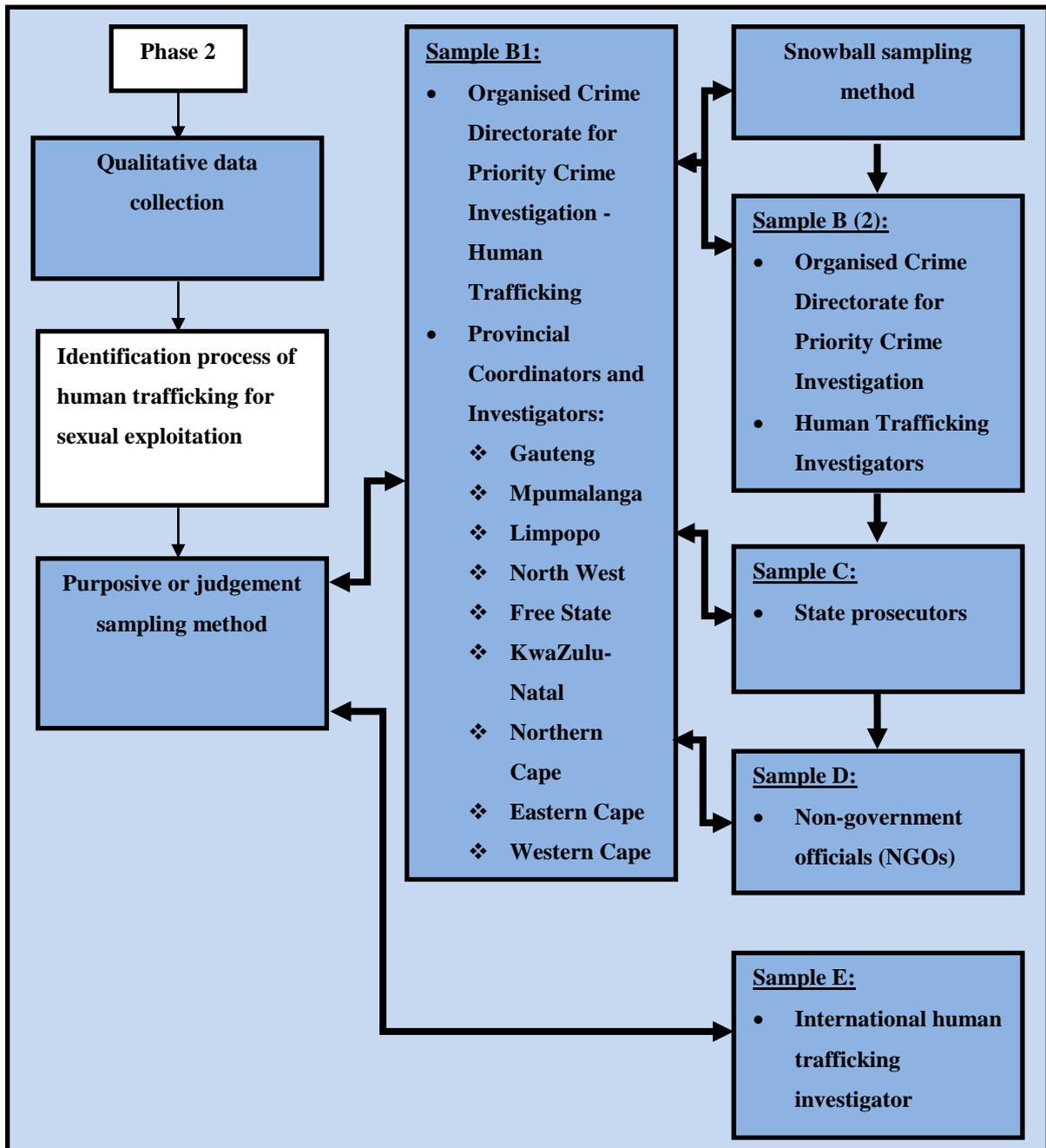
This sampling technique was used by the researcher due to the clandestine nature of this phenomenon, the lack of information and statistics and the absence of comprehensive legislation and policy. Participants were requested to identify people who could make up the sample (Champion, 1993:108). The snowball sampling technique was used to select samples B2, C and D. In this regard sample B1, which consisted of the respective nine provincial coordinators, police officials and investigators of human trafficking within the nine provinces of South Africa (who had been included in sample A, phase 1 of the study), was used as point of departure and these participants were specifically requested to identify others in the population who the researcher could interview in relation to the identification and investigation of human trafficking for sexual exploitation.

Permission was obtained from the required authorities to interview these participants and they were willing to be interviewed. The researcher also continued to request participants as they were interviewed from samples B2, C, D to accordingly identify others in the population who the researcher could possibly interview. Samples B2, C and D accordingly consisted of the following participants, namely: sample B2 consisted of nine police officials investigating

cases of human trafficking; sample C consisted of five state prosecutors working at the National Prosecuting Authority who dealt with, identified and prosecuted human trafficking cases where victims were trafficked for sexual exploitation in South Africa; and sample D consisted of two NGOs who work in the field of counter-trafficking and victim assistance. The participants in samples B2, C and D were accordingly identified and interviewed.

The researcher furthermore made use of the non-probability sampling method (purposive or judgement sampling) to conduct an interview with an international human trafficking investigator, who is also the task team leader of one of the leading human trafficking task teams in Australia. The participant is a federal police officer placed in a senior management position that manages, coordinates and investigates the specific crime of human trafficking under investigation in this study in an international country. The participant is extremely knowledgeable about the phenomenon being studied in this research, namely the nature and extent of human trafficking and this participant's interview is presented as sample E. The 26 participants interviewed in samples B1, B2, C, D and E are presented in figure 7 below:

Figure 7: Purposive or judgement sampling of samples B1 and E and snowball sampling of samples B2, C and D



2.5 DATA ANALYSIS

Creswell (2014:224) says that in the explanatory sequential mixed-methods design the quantitative and qualitative databases are analysed separately, because the quantitative results are used to plan the qualitative phase to be conducted in this research approach. He further argues that the quantitative results may not only inform the sampling procedure, but may also direct the researcher towards the type of qualitative questions to ask the participants during the second phase of qualitative research.

Leedy and Ormrod (2005:150) state that “there is no right way to analyse data.” Researchers begin with a “large body of information” and “through inductive reasoning, sort, and categorise it” and “boil it down to a small set of abstract, underlying themes.” Rubin and Rubin (1995:226-227) state that data analysis can begin whilst interviews are taking place and Bauer and Gaskell (2000:355) state that data analysis consists of any approach to reduce the complexity of the data material and to come to a coherent interpretation of what is and what is not the case. In data analysis researchers arrange and portray the data in ways that help detect patterns or problems, explore associations that exist in the data, and generally see if the data are consistent with their hypotheses and theories (Hoyle, Harris & Judd, 2002:425).

In this study the researcher analysed the qualitative data through content analysis. Denscombe (2010:281) explains that content analysis can be used with any “text”, whether it is in the form of writing, sounds or pictures and it is used as a way of quantifying the contents of that text. Denscombe (2010) further explains that content analysis generally follows a logical and relatively straightforward procedure and in the case of content analysis, there is a strong focus on measurement. This author further states that although content analysis is used in conjunction with qualitative data, it produces quantitative measurements and in this respect it might be seen as quite positivistic in its approach.

During the data analysis phase of this study the researcher firstly analysed the twelve e-mailed, self-administered surveys and in-person interviews conducted with sample A, which consisted of police officials working at the Directorate Priority Crime Investigations: Organised Crime at the National Office; the Detective Service; Family Violence Child

Protection and Sexual Offences Investigations at the National Office; Interpol; and the respective provincial coordinators, investigators of human trafficking within the nine provinces of South Africa. This quantitative phase, phase 1 of the study, was then used to continue with the 26 interviews in the qualitative phase, phase 2 of the study to ensure that the one database built on the other.

After the research design and the means of measuring the relevant variables had been determined, the researcher initially planned on using the data analysis procedures as described by Tesch (1990:142) to analyse the data in this study. However, after conducting, transcribing and coding the interviews the researcher found the data derived from the interviews to be unusually and exceptionally dispersed. This led the researcher to use content analysis specifically to analyse the data, and therefore feedback will be provided in this regard accordingly. In this process the researcher followed the six steps provided by Denscombe (2010:282) to engage in a systematic process of analysing the data gathered:

1. **Choose an appropriate sample of texts or images:** The researcher began with the analysis of data from sample A, which had been obtained in the first phase, the quantitative phase of the study. The researcher read the transcriptions carefully as the interviews were conducted and transcribed in order to gain the necessary background information.
2. **Break the text down into smaller component units:** The researcher focused on the topics and not the content while taking notes of transitions from one topic to the next. Topics were accordingly captured in the margin of the transcribed interviews. The researcher captured every word of the specific answers provided to each question individually.
3. **Develop relevant categories for analysing the data:** The researcher proceeded to identify and determine the different kinds of categories. The categories were identified in the form of key words directly related to the study, the research rationale and the specific research questions, aim and objectives to be addressed.
4. **Code the units in line with the categories:** The researcher continued to code the data and thorough attention was given to the text to ensure that all the relevant words were coded and captured on the computer electronically, using

NVivo 10. The text in the transcribed interviews was accordingly coded to the identified topics and the researcher ensured to keep detailed notes of everything relating to the data being analysed.

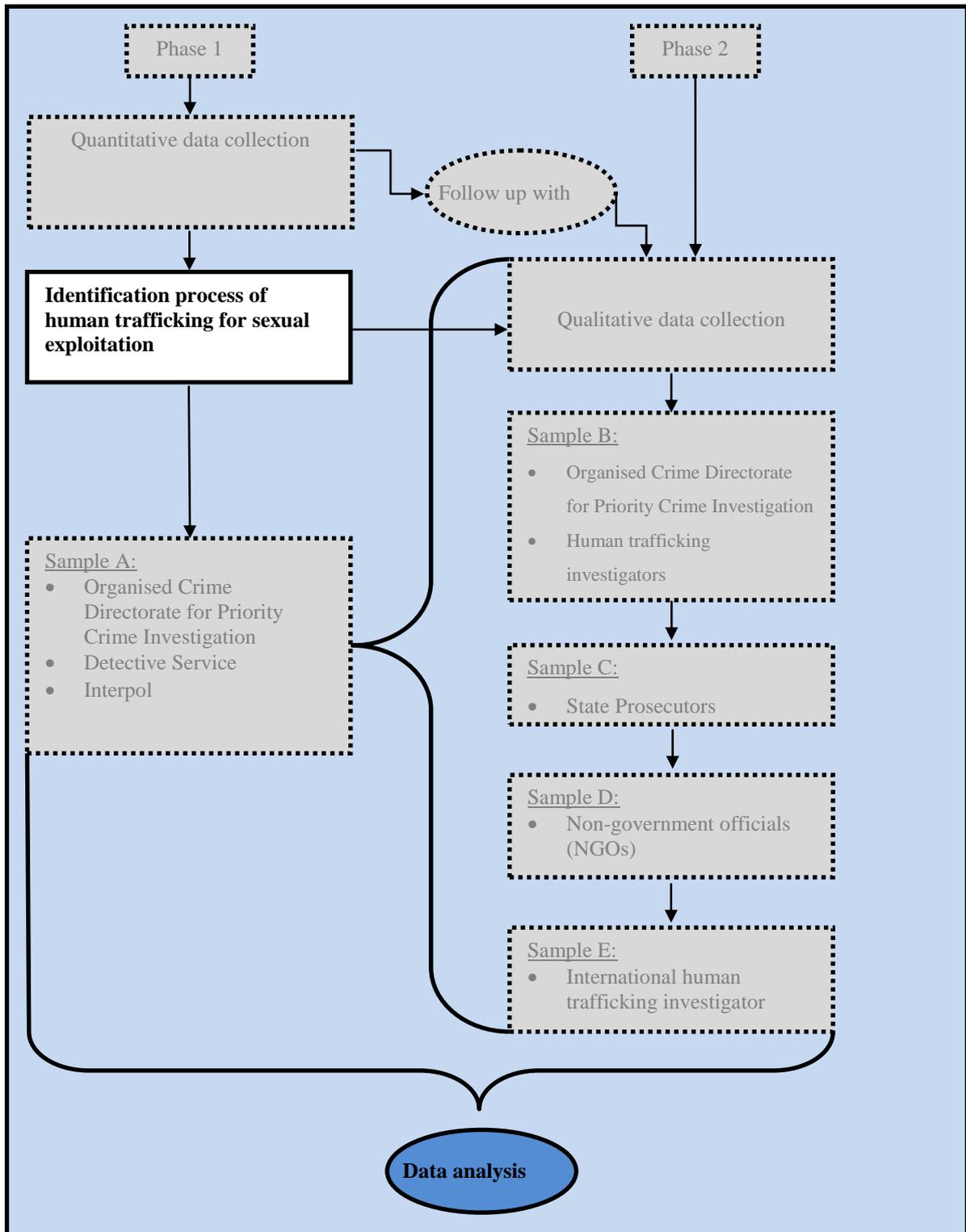
5. **Count the frequency with which these units occur:** The researcher thereafter proceeded to count the number of times the various units relating to the answers given, occurred.
6. **Analyse the text in terms of the frequency of the units:** The researcher concluded the data analysis process by analysing the data in terms of the frequency of the units and their specific relationship with other units that occurred within the text. During this phase the researcher focused on the actual content of the transcribed interviews. The content for each category was identified and summarised and during this process the researcher specifically looked for commonalities, uniqueness, confusions and contradictions in the content, as well as for missing information relating to the research questions. The researcher then finally linked all the units that could possibly be linked in order to enable the researcher to provide feedback on the data analysed.

According to Creswell (2014:203), researchers must verify transcripts to make sure that the transcripts do not contain obvious mistakes made during the transcription and the researcher accordingly verified all the data transcribed, coded and analysed. During this verification process the researcher made use of an external co-coder and also ensured that there was not a drift or shift in the definition or meaning of the codes, as allocated by the data analyst. Codes were cross-checked by the researcher during the verification, as recommended by Creswell (2014:203).

Furthermore, in addition to the analysis process above, as recommended by Leedy and Ormrod (2005:150), the researcher ensured to organise the information obtained during the data analysis process followed above and also ensured to place the data into categories relating to each other. The information was perused and compared to look for variations and nuances in meanings and to discover connections between themes. The information was then categorised and classified in order to make sense of what the information means. The researcher finalised the process through a consensus discussion with the external co-coder. Lastly the information was integrated and summarised to present an accurate, detailed and

suitable interpretation of the research conducted. The data collected from samples A, B1, B2, C, D and E, in total 37 interviews, were analysed as presented in an adaptation from Creswell’s sequential mixed-methods diagram (2014: 220) in figure 8:

Figure 8: Data analysis phase

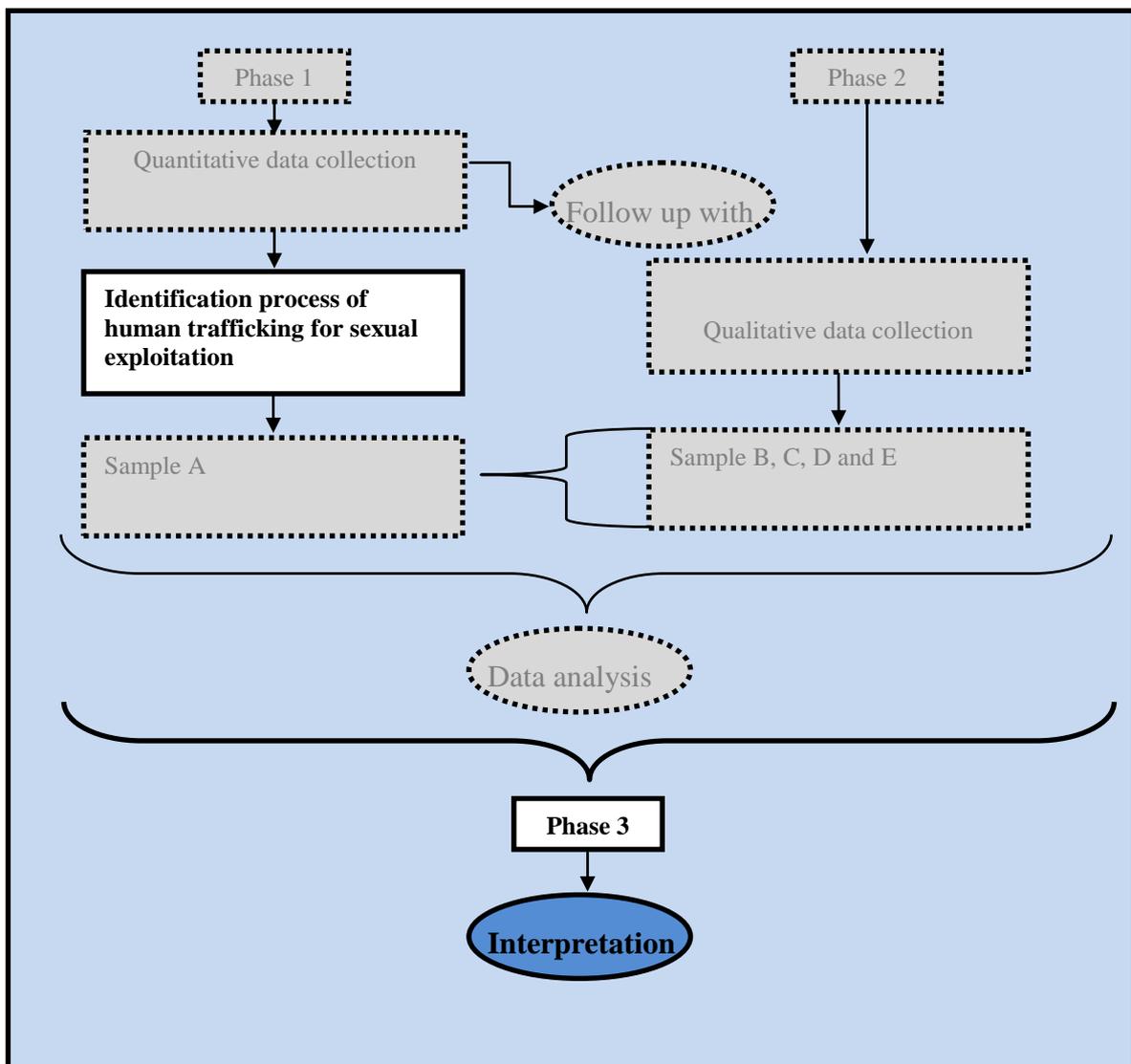


(Source: Adaptation from Creswell’s sequential mixed-methods diagram, 2014: 220)

2.6 DATA INTERPRETATION

Creswell (2014:225) explains that the mixed-methods researcher interprets the results of the quantitative phase 1, as well as the qualitative phase 2 in the discussion of the study. In this study the researcher presented a theoretical discussion on the literature, then a discussion on secondary data that had been researched and collected, followed by an interpretation of the reported primary data collected, namely the quantitative first phase results and then the qualitative second phase results. The data interpretation phase, phase 3, is illustrated in an adaptation from Creswell's sequential mixed-methods diagram (2014:220) in figure 9 below:

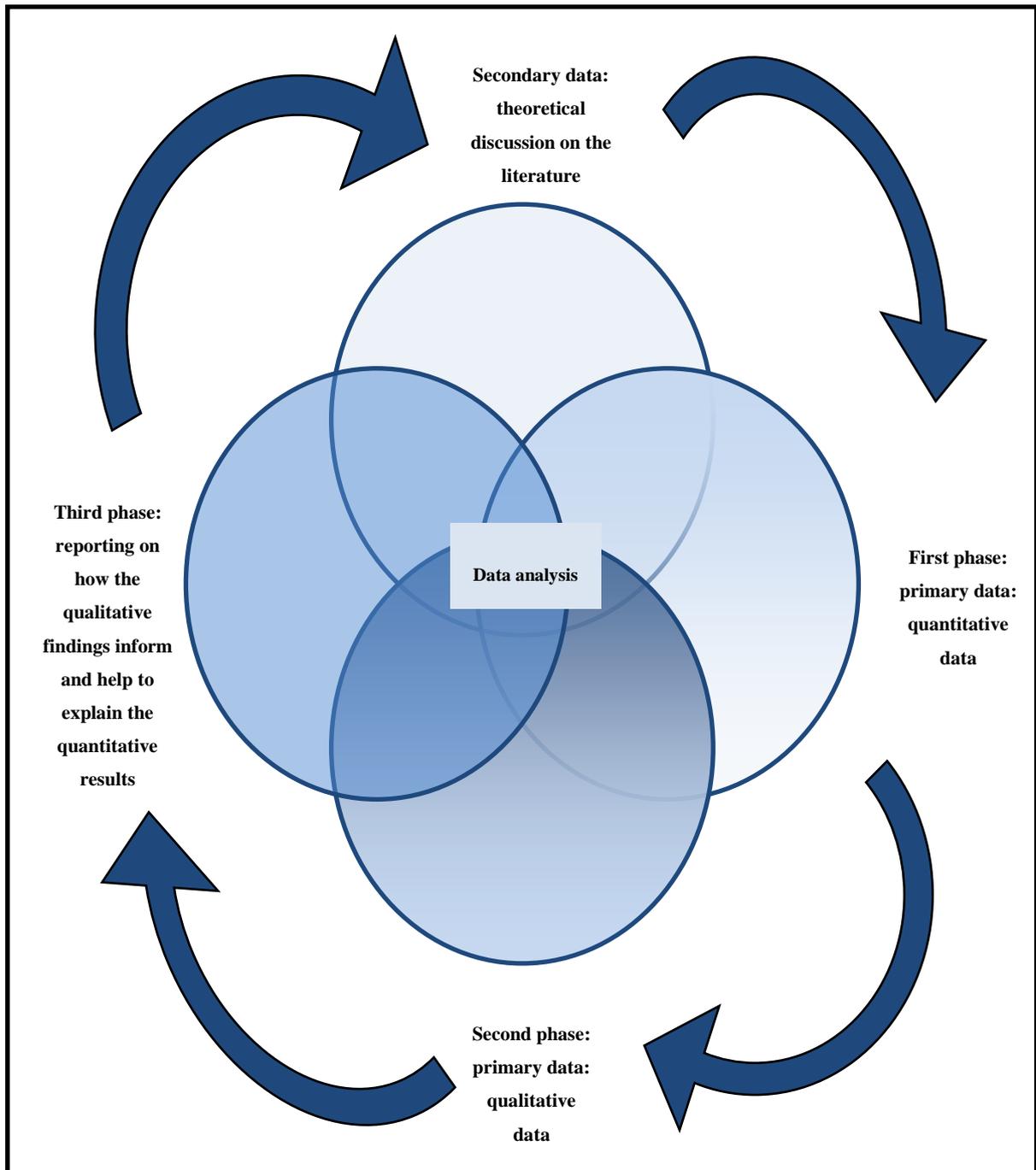
Figure 9: Data interpretation Phase 3



Adaptation from Creswell's sequential mixed-methods diagram (2014:220)

Followed by this reporting the research will continue with a third phase of reporting on how the qualitative findings inform and help to explain the quantitative results. This approach ensures that the intent of this design, namely to have the qualitative data provide more depth and insight into the quantitative results, is served as described by Creswell (2014:225). This phase is illustrated in a schematic representation of the data interpretation in figure 10 below:

Figure 10: Schematic representation of data interpretation



Creswell (2014:225) explains that in mixed-methods studies researchers need to determine the validity of the quantitative methods applied in the study and should discuss the validity of the qualitative findings. In the present study the researcher weighed all of the options for following up on the quantitative results, ensured to include the same samples in both phases of the study and endeavoured not to overlook important explanations that needed further understanding in order to ensure that the one phase built on the other.

The validity of the explanatory sequential mixed-methods approach used in this study was further enhanced by making use of a data analysis service provider, namely Emoyeni Research Collaborations.

2.7 METHODS EMPLOYED TO ENSURE VALIDITY

Validity concerns the accuracy of the questions asked, the data collected and the explanation offered. Generally it relates to the data and the analysis used in the research (Denscombe, 2002:100). Collins and Hussey (2003:58) further explain that validity is the extent to which research findings correctly and truthfully represent what is happening in a situation. The researcher ensured that all the necessary measures regarding face validity were taken into account to ensure that the interview schedule questions represent what they are supposed to represent.

In this research the researcher further ensured validity by:

- Including and making use of a good sample selection.
- Compiling research questions in relation to the topic being researched, and implementing the same set schedule of questions to each participant in the samples.
- Ensuring that the participants understand the questions asked in the questionnaire and interview schedules.
- Reflecting and indicating the answers of the participants as received and not influencing the participants in any way.

Silverman (2000:177-185) discusses five interrelated ways of thinking critically about qualitative data analysis in order to ensure more valid findings. These findings, presented by the latter author, were accordingly addressed in the present study as follows:

2.7.1 The refutability principle

We can only conclude on information objectively because we have sufficient information. The researcher did everything possible to confirm every piece of information gathered regarding the topic to ensure validity (Silverman, 2000:178). In this regard Creswell (2013:252) explains that with a rich, thick and detailed description, the researcher enables readers to not only transfer information to other settings, but furthermore to determine whether findings can be transferred because shared characteristics are identified.

2.7.2 The constant comparative method

Qualitative researchers should always avoid drawing any conclusion without sufficient facts. Every piece of information gathered should be inspected and analysed. In this study the researcher continuously inspected, compared and analysed all the data as obtained (Silverman, 2000:180). In this regard Creswell (2013:252) explains that rich, thick and detailed description involves the researcher providing details which can emerge through physical, movement and activity description or involve describing from general ideas to the narrow, when writing about a theme.

2.7.3 Comprehensive data treatment

To explain the above concept, the following quotation from Silverman (2000:180) is relevant: “One should not be satisfied until your generalization is able to apply every single gobblet of relevant data you have collected”. Singleton and Straights (1999:455) comment that data analysis happens when theory and data are compared. According to Hoyle, Harris and Judd (2002:245), data analysis helps and guides the researcher to explore and determine if the data are consistent with the topic and also to detect patterns or problems. In the present study the researcher presented a comprehensive and integrated description of the phenomenon under investigation, namely human trafficking.

2.7.4 Deviant-case analysis

Silverman (2000:181) states that the qualitative researcher should not be satisfied by explanations which at first glance address and explain almost all the variance in their data. Instead, the qualitative researcher should use every piece of data until all the data can be accounted for. In this study the researcher accordingly used all the data obtained through the surveys and interviews conducted, and the identification and further analysis of data through content analysis accordingly strengthened the validity of the research.

2.7.5 Using appropriate tabulations

Silverman (2000:184) demonstrates some uses of quantification in research with a qualitative design. He further notes that the researcher should be able to tabulate and see that “it is problematic to count participants’ questions when your only data are field notes”. In this regard he states that there is no reason why qualitative researchers should not, where appropriate, use quantitative measures for example simple counting techniques based on members’ own categories. In this study the researcher included counting techniques based on theoretically derived information from both the surveys and interviews conducted (Silverman, 2000:185).

According to Leedy and Ormrod (2005:97), the validity of a study is presented and influenced by the accuracy, meaningfulness and credibility of the research project as a whole. The validity of a research study is reflected by the controls exercised to ensure that the conclusions drawn from the research are truthfully warranted by the research data collected, and secondly if what was found within the research can be generalised about the world beyond that specific situation. These two aspects directly address the concerns of internal and external validity.

The researcher at all times strived to adhere to the recommendations and requirements to address both internal and external validity of a research study, as proposed by Leedy and Ormrod (2005:97-100). Regarding internal validity, the researcher ensured that the conclusions that were derived from the research were defensible and accordingly justified from the data collected during the research. Relating to external validity the researcher

addressed and applied the strategies of compliance by conducting research in the outside world, which yielded results with a broader applicability to other real-world contexts. The researcher also ensured that a suitable sample of the population (to which the researcher wished to draw conclusions) was interviewed to make sure that conclusions drawn have validity and applicability across diverse situations. The sample used in this study was viewed as suitable, since all units investigating and coordinating the crime of human trafficking in South Africa were included. These units are also the only existing units, and they were included in both phases of the research – phase 1 quantitative and phase 2 qualitative phase.

According to Leedy and Ormrod (2005:99), triangulation is common in mixed-methods designs, as is the case in this research where both quantitative and qualitative methods were used to collect data in order to answer the research questions of this study. The use of these mixed methods led to greater validity and reliability than a single methodological approach.

2.7.6 Credibility/authenticity

Schurink, Fouché and De Vos (in De Vos et al., 2011:419) explain that credibility is the alternative to internal validity and with credibility the goal is to demonstrate that the research was conducted in such a manner to ensure that the participants had been accurately identified and described. The credibility of qualitative research can be increased through prolonged engagement and persistent observation in the field, triangulation of different methods, making use of formalised qualitative methods, and member checks.

The researcher of this study ensured that the qualitative phase of the research was accordingly undertaken by using formalised qualitative methods, guaranteeing triangulation through the use of the explanatory sequential mixed-methods research design, prolonged engagement, and member checks. Through the application of these strategies the researcher ensured the credibility of this study.

This research was conducted to illuminate elements of human trafficking for sexual exploitation, thereby to assist police investigators and identified key role players in identifying this crime in South Africa, in order to successfully present the case in a court of law. This study will therefore be made available to the SAPS as one of the key role players in

the South African CJS, to be used in the informing and training of their police officials on the identification and investigation of this phenomenon. Lastly, the researcher will report on the findings of this research in an accredited scientific journal in order to share any new knowledge obtained in this study (Denscombe, 2012:50).

2.7.7 Transferability

Schurink, Fouché and De Vos (in De Vos et al., 2011:420) explain that the researcher must question whether the findings that the research produced can be transferred from a specific situation to another. This is viewed as an alternative to external validity or generalisability.

In this study the researcher stated the theoretical parameters of the research, as well as the theoretical framework to illustrate how the data had been collected and analysed, which was guided by methodological concepts and models. This will enable the reader of this study to see how the research ties into a body of theory (Schurink, Fouché & De Vos, in De Vos et al., 2011:420). The researcher also strategically decided to enhance the generalisability of the study by triangulating multiple sources of data. In this respect data from different sources were used to corroborate and elaborate the research conducted.

Schurink, Fouché and De Vos (in De Vos et al., 2011:420) recommend the use of multiple informants or more than one data-gathering method to greatly strengthen the study's usefulness for other settings. Both these recommendations were applied in this study.

2.7.8 Dependability

Schurink, Fouché and De Vos (in De Vos et al., 2011:420) explain that the researcher must ask whether the research process is presented logically and well documented. Dependability is noted as the alternative to reliability, whereby the researcher attempts to account for changing conditions in the phenomenon chosen for research to be conducted on.

The researcher further ensured the dependability of this research by making sure that the research questionnaires and interview schedule questions were consistent in meaning across all members of the targeted group, in all the samples A, B1, B2, C, D and E, and that they

were delivered objectively. The researcher furthermore ensured that the participants in the study were purposively selected as they were individuals who had all experienced the phenomenon in question. Lastly, the researcher also ensured to bracket personal experiences from the study to ensure that the participants' understandings and experiences were captured, thereby revealing a fresh perspective towards the phenomenon being studied.

2.8 METHODS EMPLOYED TO ENSURE RELIABILITY

Reliability concerns the manner in which the data are collected during the research and specifically the fact that the data should be consistent and not misrepresent or alter the findings of the research. Reliability involves an evaluation of the specific methods and techniques applied to collect data during the research (Denscombe, 2002:100). Collins and Hussey (2003:58) further explain that reliability pertains to the findings of the research and is one of the aspects, together with validity, that determine the credibility of findings derived from research conducted.

Reliability is concerned with the question of stability and consistency. Singleton and Straits (1999:114) ask the question: "Will repeated applications of the operational definition under similar conditions yield consistent results?" Reliability furthermore relates to the methods of data collection and the concern that these methods should be consistent and not distort the findings. Generally it entails an evaluation of the methods and techniques used to collect the data (Denscombe, 2002:100).

Will the same methods used by different researchers and/or at different times produce the same results? The requirement is that the application of a valid measuring instrument to different groups under different sets of circumstances should lead to the same observation (Mouton & Marais, 1990:79). In this regard Bauer and Gaskell, (2000:363) state that an instrument measures a phenomenon consistently if applied repeatedly or by different persons.

The researcher ensured that measures were taken so that the methods of data collection were consistent and did not distort the findings in order to meet the requirements for reliability. The researcher further ensured reliability in this research by ensuring that the research and interview schedule questions were consistent in meaning for all members of the targeted

group, delivered objectively and pre-tested as such. Another researcher should be able to reproduce this methodology exactly, as this research is reliable (given that attitudes will not be changed in the meantime) and the results should be substantively similar to this research. The information obtained, where possible and for the study purposes, was gleaned from initial sources (Denscombe, 2002:100).

As recommended by Denscombe (2002:101), the researcher continuously assessed the research process for consistency, as it is estimated that if other factors are not interfering with the research and if nothing has changed during the research, the research should deliver the same results. Therefore, the data collection methods used in this study are deemed reliable when they produce similar findings when applied under the same circumstances in different settings, or by different researchers or with the same people at different times or with separate groups of similar people at the same time.

Schurink, Fouché and De Vos (in De Vos et al., 2011:419) explain that two prominent qualitative researchers, Lincoln and Guba, propose the following alternative constructs, namely credibility/authenticity, transferability and dependability to be addressed in a qualitative study, as they are believed to reflect the assumptions of the qualitative paradigm more accurately. Because the second phase of this study consisted of a qualitative design, the researcher addressed these constructs in terms of this phase of the research conducted.

2.9 ETHICAL CONSIDERATIONS

According to Bernard (2013:23), the biggest problem in doing research in human behaviour is not the selection of the right sample size or making the right measurements, it is doing those things ethically, so that you can live with the consequences of your actions. This is also the viewpoint of Leedy and Ormrod (2013:104), when they say: “Whenever human beings or other creatures with the potential to think, feel, and experience physical or psychological distress are the focus of investigation, researchers must look closely at the ethical implications of what they are proposing to do.”

In this research the researcher at all times refrained from subjective interpretation of the information received and did not deviate at all from the interview schedule when the

participants were interviewed. All information obtained was reflected as received and this research is the researcher's own work.

As prescribed by Leedy and Ormrod (2005:101), the following ethical considerations received attention and were subsequently adhered to in this research:

- **Protection from harm:** The researcher ensured that the identity of all participants in this study is protected to guarantee that the participants are not identified, victimised or intimidated as a result of them participating in this study. The participants were allocated a number on their responses and during their interviews, which ensured that their names were not visible to anyone but the researcher who collected the information and personally conducted the interviews.
- **Informed consent:** The participants were informed of the nature of this research and were all given the choice whether to participate willingly or not. The researcher at all times bore in mind that participation in this research was strictly voluntary. An informed consent form that clarifies the nature of this research, as well as the participants' role in this research, was completed before questionnaires were submitted and interviews were conducted. In this regard the following information was captured in the specific consent forms, included as annexure G:
 - The nature of the specific research being conducted.
 - The specific role of the participants as well as the participation required and the duration of the participation.
 - A clear indication stipulating voluntary participation as well as the fact that participation can be terminated at any time.
 - A list indicating any possible discomfort that may be experienced, if any, by participants.
 - The assurance that all responses will be treated with utmost confidence by the researcher and that all participants will remain anonymous within this research.

- The contact particulars of the researcher as well as information on where and by which means the researcher can be contacted, should there be any questions or concerns relating to the study.
- The researcher also included an offer to provide detailed information about the study, once the study is completed.
- This consent form also included a place for the participants in the research to sign and date the form, thereby indicating their agreement to participate voluntarily in this research.
- **Right to privacy:** The researcher at all times respected the participants' right to privacy. The researcher ensured to present all the information obtained in this research in such a manner that would protect the identity of the participants by allocating code numbers to each questionnaire completed and interview conducted.
- **Honesty with professional colleagues:** The researcher at all times reported the findings in this research in a complete and truthful manner. The procedures followed and the methods used were reported on without misrepresenting what was done and what was found in this research. Furthermore, the researcher ensured that all sources were acknowledged and therefore the necessary credit was given where due.
- **Internal review boards:** The research proposal was approved by the Research Committee of the Department of Criminology at Unisa, and the researcher obtained the approval of the College Board of the College of Law to conduct this research. Approval was also obtained from the SAPS to conduct the research within their organisation and to interview the participants in this research.
- **Professional codes of ethics:** The researcher at all times adhered to Unisa's policy on research ethics (Unisa, 2007).

In chapter 3 the phenomenon of human trafficking will be discussed in terms of the Palermo Protocol's definition of trafficking and sexual exploitation. The prevalence and characteristics of human trafficking and the causes and consequences of this phenomenon will also be discussed in terms of the geographical dynamics of human trafficking, specifically in South Africa.

CHAPTER 3

AN OVERVIEW OF THE PHENOMENON OF HUMAN TRAFFICKING

“Trafficking is a complex, diverse, and controversial phenomenon, which has made the search for a definition a ‘terminological minefield’.”

(Cathy Zimmerman & Charlotte Watts, US Department of State TIP Report, 2009:15)

3.1 INTRODUCTION

It has been eight years since South Africa signed and ratified the United Nations Convention against Transnational Organised Crime (UNTOC) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, referred to as the Palermo Protocol, and still today very little is known about the true extent and nature of this phenomenon of trafficking in South Africa.

Globally the number of studies on the trafficking in persons has grown considerably over the past 12 years since the ratification of the Palermo Protocol. However, knowledge in South Africa remains moderately superficial regarding the scope and means of trafficking, as the collection of data on this hideous and atrocious crime remains very challenging.

Continuous and ever-growing media interest has increased the view that South Africa in this modern day is perceived as a trafficking hub and the number one target in the world for organised crime syndicates (Hosken, 2004). In answer to research question 1, namely: “What does the phenomenon of human trafficking entail?” (paragraph 1.6 of this study), it is fundamental to have an understanding of the trafficking of persons. This phenomenon exists in many forms, although as a whole it forms part of an interrelated web of varying contexts wherein a crime against an individual is committed.

As averred in chapter 1, this research will only focus on the trafficking of women and children for sexual exploitation, as this is one of the forms of trafficking that remains an ever growing problem and which has become a well-organised international criminal enterprise. Money is the single most important force behind the trafficking of human beings and this

crime is generating some of the highest sources of illegal income, ranking just below drugs and gun dealing (Goździak & Bump, 2008:13).

Various challenges are experienced in analysing the trafficking of human beings. Amongst the confusion relating to distinguishing factors between trafficking, migration and smuggling and the debate of transport, voluntary and consent elements further contribute to the perplexity of this phenomenon. This chapter will explore and provide a descriptive analysis of the complex phenomenon of human trafficking and will endeavour to achieve the research objective (paragraph 1.5 of chapter 1), namely to explore and describe the phenomenon of human trafficking. The researcher is well aware of the fact that this research is limited to the research of the trafficking of women and children for sexual exploitation, but has decided, for clarity purposes, to focus in this chapter on human trafficking to get a complete picture of the phenomenon. In order to create an understanding of this phenomenon, it is of utmost importance to comprehensively conceptualise the phenomenon of trafficking, what it constitutes and what attributes and features are included.

3.2 THE PHENOMENON OF HUMAN TRAFFICKING

Globally, concerns and reports over numerous activities of oppression, bondage and slavery, date back as early as the beginning of written history. The specific distress relating to forced movement and exploitation of people dates back to the abolitionist movement of the 19th century (Pharoah, 2006:3).

According to Pharoah (2006:4), the International Agreement for the Suppression of the White Slave Trade of 1904, which was the first international agreement to combat “white slavery”, sought to address the fraudulent or violent recruitment of women for prostitution in another country and did not actually link slavery to prostitution in specific. The International Convention for the Suppression of the Traffic in Women that came into force in 1933 specifically condemned the recruitment of women for prostitution in another country. This convention furthermore required signatories to punish “any person who procures, entices or leads away, even with her consent, a women or a girl of full age for immoral purposes to be carried out in another country”, and ever since then the occurrence of prostitution has become synonymous with trafficking (Pharoah, 2006:4).

In this regard, Pharoah (2006:3) elaborates, that it is only during the late part of the 19th century that the modern-day trafficking debate evolved when a series of articles on the “white slave trade” was published by the British Pall Mall Gazette. Various stories were published of abduction, organised rape, sale of young women and the luring of children into prostitution, the tricks used to kidnap them and the corruption that allowed the trade to grow and become a profitable crime. These published articles not only caused moral panic, which resulted in the development of national and international legislation to stop the trade, but also powerfully impacted on the perception of human trafficking. These articles associated and bonded the two debatably distinct topics, namely prostitution and slavery, which till today creates confusion regarding the phenomenon of human trafficking.

The continuous concern over the nature and impact of organised crime resulted in the contemporaneous and rising interest in human trafficking in the 1980s. During the 1990s the phenomenon of trafficking in specific reappeared on the agenda of the United Nations General Assembly and the Commission for Human Rights and these deliberations continued in 1993 at the World Conference on Human Rights, as well as in 1995 at the World Conference on Women. In 1998 the General Assembly included the development of the internationally accepted and ratified Palermo Protocol in the mandate of the intergovernmental ad hoc committee, which was tasked with the drafting of the United Nations Convention against Transnational Organised Crime (Pharoah, 2006:5).

3.3 HUMAN TRAFFICKING DEFINED

Traditionally the phenomenon, human trafficking, was associated with prostitution, smuggling and illegal migration, and more present day with the Commercial Sexual Exploitation of Children (CSEC). The majority of anti-trafficking legislation globally also contains prostitution laws, which aim to criminalise and regulate the sex trade. Before the year 2000, when the United Nations Trafficking Protocol Supplementing the United Nations

Trafficking in persons

The United Nations Office on Drugs and Crime (UNODC, 2004:42-43) defines “Trafficking in persons” in terms of The United Nations Convention against Transnational Organised Crime (UNTOC) and the Protocols thereto, as:

- (a) “The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or

Convention against Transnational Organised Crime (UNTOC) was finalised, there was no internationally agreed upon definition of trafficking to all key stakeholders in this field (Sanghera, in Kempadoo, Sanghera & Pattanaik, 2005:10).

The phenomena of “human trafficking” and “trafficking in persons” have been used interchangeably and both have subsequently been used as an umbrella term for the act of recruiting, harbouring, transporting, providing or obtaining of a person for compelled labour or commercial sex acts through the use of force, fraud, or coercion (US Department of State TIP Report, 2012:33).

The United States of America Trafficking Victims Protection Act (TVPA) of 2000 is the first comprehensive federal law to address trafficking in persons and this law provides a three-pronged approach that includes prevention, protection, and prosecution. The purposes of the TVPA of 2000 are: to combat trafficking in persons (a current and modern sign and appearance of slavery whose victims are mainly women and children); to ensure just and effective punishment of traffickers; and to protect their victims. This act defines “severe forms of trafficking in persons” in section 103(8) as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

(b) “The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of Article 3(a) of the Trafficking in Persons Protocol

This TVPA of 2000 section 103(9) specifies that the term “sex trafficking” means the recruitment, harbouring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

The TVPA of 2000 furthermore encapsulates that trafficking contains all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.

The meaning of the specific terminology namely “coercion”, “commercial sex act” and “debt bondage” is defined in terms of section 103 of the TVPA of 2000:

“(2) COERCION

The term ‘coercion’ means:

- (a) threats of serious harm to or physical restraint against any person;
- (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (c) the abuse or threatened abuse of the legal process.

(3) COMMERCIAL SEX ACT

The term, ‘commercial sex act’, means any sex act on account of which anything of value is given to or received by any person.

(4) DEBT BONDAGE

The term ‘debt bondage’ means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as

**Trafficking Victims Protection Act
(TVPA) of 2000**

The TVPA of 2000 defines “severe forms of trafficking in persons” as:

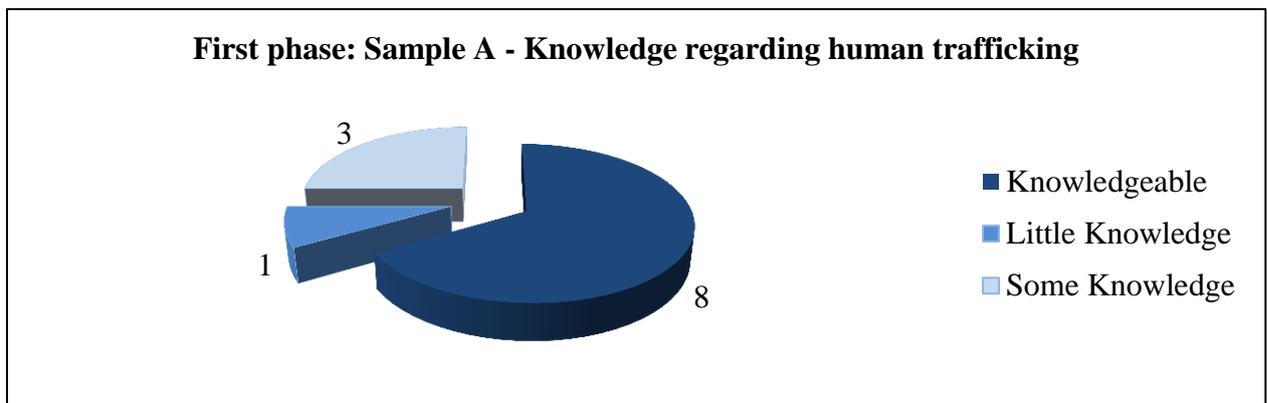
- a. “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- b. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

A victim need not be physically transported from one location to another in order for the crime to fall within these definitions.”

reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”

In this study, it was deemed important to establish how knowledgeable the participants are with regard to the issue of human trafficking. In answer to this the participants of sample A, in the first phase of the research, indicated their knowledge to be as illustrated in figure 11 below:

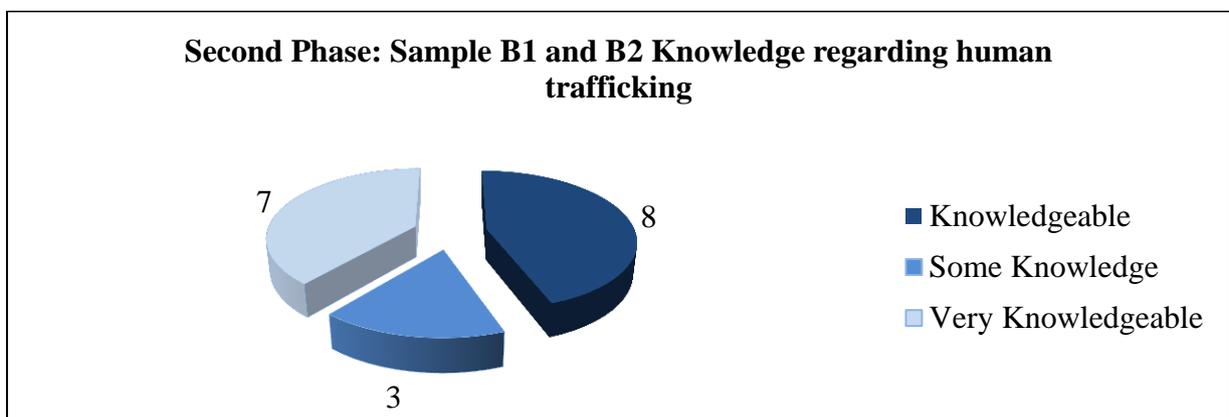
Figure 11: First phase: Sample A - Knowledge regarding human trafficking



Ten of the participants in this first phase of the research furthermore indicated that they would like more knowledge and development with regard to issues of human trafficking.

During the second phase of the research, 15 of the police participants in samples B1 and B2, indicated that they would like more knowledge and development with regard to issues of human trafficking. They indicated their knowledge to be as illustrated in figure 12 below:

Figure 12: Second phase: Sample B1 and B2 - Knowledge regarding human trafficking



The state prosecutors in sample C, interviewed during the second phase of the research, indicated that they are very knowledgeable (1), knowledgeable (3) and have some knowledge (1) regarding the issue of human trafficking and only one state prosecutor indicated that more knowledge and development with regard to issues of human trafficking would be required. The NGOs, sample D, interviewed during this phase indicated that they are knowledgeable and only one NGO indicated that more knowledge and development with regard to issues of human trafficking would be required.

From the 37 participants interviewed, eight indicated to be very knowledgeable, 21 indicated that they are knowledgeable; seven indicated that they have some knowledge and one indicated to have little knowledge on the issue of human trafficking. However, 27 participants conveyed that they would require more knowledge and development with regard to issues of human trafficking.

The participants in samples A, B1, B2, C and D were asked what they understand by the term “human trafficking”. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The answers of the participants are presented in table 2 below:

Table 2: Participants’ understanding of human trafficking

Sample A (Police)	Sample B1 and B2 (Police)	Sample C (State prosecutors)	Sample D (NGOs)
• Exploitation (6)	• Exploitation (12)	• Exploitation (3)	• Exploitation (2)
• Recruitment (7)	• Recruitment (11)	• Recruitment (3)	• Recruitment (2)
• Transportation (7)	• Transportation (15)	• Transportation (3)	• Transportation (2)
• Deception (4)	• Deception (12)	• Deception (2)	
• Force (6)	• Force (11)	• Force (2)	
• Fraud (4)	• Fraud (4)	• Fraud (2)	
• Harboring (7)	• Harboring (8)	• Harboring (1)	
• Threat (6)	• Threat (5)	• Threat (1)	
• Abduction (2)	• Abduction (4)		
• Abuse of power (3)	• Abuse of power (2)		
• Having control over another person (1)	• Having control over another person (4)		
• Held against will without consent and free will (1)	• Held against will without consent and free will (7)		

Sample A (Police)	Sample B1 and B2 (Police)	Sample C (State prosecutors)	Sample D (NGOs)
	<ul style="list-style-type: none"> • Modern day slavery (1) 	<ul style="list-style-type: none"> • Modern day slavery (2) 	
<ul style="list-style-type: none"> • Benefits or payment to achieve consent (1) 			
<ul style="list-style-type: none"> • Coercion (1) 			
<ul style="list-style-type: none"> • Defined in United Nations Protocol (1) 			
<ul style="list-style-type: none"> • Definition stated in Criminal Law (1) 			
<ul style="list-style-type: none"> • Forced labour or services (3) 			
<ul style="list-style-type: none"> • Giving or receiving of payments (2) 			
<ul style="list-style-type: none"> • Human beings as subject of trade (1) 			
<ul style="list-style-type: none"> • Illegal adoptions (2) 			
<ul style="list-style-type: none"> • Palermo Protocol (1) 			
<ul style="list-style-type: none"> • Position of vulnerability (3) 			
<ul style="list-style-type: none"> • Prostitution or sexual exploitation (3) 			
<ul style="list-style-type: none"> • Receipt of person (6) 			
<ul style="list-style-type: none"> • Removal of organs (3) 			
<ul style="list-style-type: none"> • Slavery and similar (3) 			
<ul style="list-style-type: none"> • Transfer (6) 			
	<ul style="list-style-type: none"> • Perpetrator sells person for financial benefit (5) 		
	<ul style="list-style-type: none"> • Sex related offences (5) 		
	<ul style="list-style-type: none"> • Manipulation (3) 		
	<ul style="list-style-type: none"> • Payment to achieve consent (5) 		
	<ul style="list-style-type: none"> • Rights are being violated (1) 		
	<ul style="list-style-type: none"> • Debt bondage (2) 		
	<ul style="list-style-type: none"> • Kidnapping (2) 		
	<ul style="list-style-type: none"> • Child adoption across borders(2) 		
		<ul style="list-style-type: none"> • Movement of person for trafficker benefit (1) 	
		<ul style="list-style-type: none"> • Financial benefit to trafficker (1) 	

The majority of the participants included the terms exploitation, recruitment, transportation, deception, harbouring, threat, force and fraud in their understanding of the term human trafficking, as contained in the definition of human trafficking discussed above. Several of the participants furthermore included some of the other concepts contained in the definition, namely the receipt of persons, transfer, abduction, the abuse of power or of a position of

vulnerability, the giving or receiving of payments or benefits to achieve consent and having control over another person. Some of the participants also included the concept of being held without consent and free will in their understanding, which is part of having control over another person. Only one participant included the term coercion, which is contained in the second part of the definition and which forms an integral part of the trafficking in persons as one of the elements of this phenomenon, and is one of the means of how this crime is executed. Furthermore, only one participant referred to the concept of debt bondage and none of the participants made any reference to the last part of the definition, namely involuntary servitude or peonage.

In terms of the TVPA of 2000 and the Palermo Protocol the act of human trafficking can include, but does not ultimately require, movement of persons. Victims of this crime can be considered trafficking victims irrespective of whether they were “born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked”. The core of this phenomenon centres on the offenders, namely the traffickers’ goal of abusing, misusing, enslaving and exploiting their victims and the numerous coercive, forceful and deceptive means they use to do so (US Department of State TIP Report, 2010:5).

A universally agreed upon definition, accepted by all the key stakeholders in this field, is now contained in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (UNTOC), which was adopted in 2000. This convention came into force in September 2003, and is known as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Sanghera, in Kempadoo et al., 2005:10). The definition of trafficking persons as contained in the Palermo Protocol will now be elaborated on with specific focus on the elements set out in this definition.

3.3.1 The Palermo Protocol

The United Nations Convention against Transnational Organised Crime (UNTOC), with the purpose of promoting cooperation to prevent and combat transnational organised crime more effectively, is a legally binding instrument through which state parties commit to taking a series of measures against transnational organised crime (UN, 2002c:5). The UNTOC is further supplemented by three different protocols, namely: (1) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; (2) the Protocol against the Smuggling of Migrants by Land, Sea and Air; and (3) the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, which was entered into force on 25 December 2003. These three Protocols are referred to as the “Palermo Protocol” due to the fact that the Protocol was adopted in Palermo, Italy.

For the purpose of this study only the first protocol, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Trafficking Protocol) will be addressed. The study will also address the framework upon which South African legislation is based and the international instrument which sets forth an international standard to its signatories for enacting domestic legislation, which is directly relevant to the aim of this study. The main purpose of the creation of this specific protocol was to ensure that a universal instrument was developed, which not only addresses all aspects of trafficking in persons, but also aims to provide a convergence in the states' domestic offences in the investigation and the prosecution process with the objective to protect the victims of trafficking in persons (Touzenis, 2010:8).

“I never, in my life, felt more certain that I was doing right than I do in signing this paper.”

*President Abraham Lincoln,
upon signing the Emancipation
Proclamation into effect.*

On 20 February 2004 South Africa ratified the United Nations Convention against Transnational Organised Crime (UNTOC) and the Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children, referred to as the Palermo Protocol, thereby committing itself to criminalise trafficking in persons, investigate, prosecute and convict traffickers of this crime and to institute various other measures, such as protecting

and assisting victims, with full respect for their human rights (HSRC, 2010:i). The 2011 US Department of State TIP Report remarks that 142 countries have ratified the Palermo Protocol and each year advances are noted in prosecutions, victim identification and protection and prevention measures in terms of this report (US Department of State TIP Report, 2011:4).

3.3.2 Palermo Protocol's definition of trafficking

The Palermo Protocol is viewed as a significant milestone and contains the first internationally agreed-upon and accepted legal definition of the concept human trafficking. The UNTOC and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, referred to as the Palermo Protocol (United Nations Office on Drugs and Crime, 2004:42-43) Article 3(a) of the Trafficking in Persons Protocol, defines the trafficking in persons as follows:

- (a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.
- (c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article.
- (d) 'Child' shall mean any person under 18 years of age.

As described by Pharoah (2006:7) and illustrated in table 3 below, this definition of the trafficking in persons deals with all the actors involved in this phenomenon, from recruiters to end users, and seeks to address three main components or elements of this crime namely:

- The **action** of recruitment, transportation, transfer, harbouring or receipt of victims.
- The **means** to recruit the victim and maintain their cooperation through threat, use of force or power, coercion, abduction, fraud, deception, abuse of power, position or vulnerability, or giving or receiving of payments or benefits to a person having control of the victim, to achieve consent.
- The **purpose** of the process, which is the exploitation of victims, including at a minimum, exploiting the prostitution of others, other forms of sexual exploitation, forced labour or services, slavery or similar practices, and the removal of organs.

Table 3: Elements contained in the Palermo Protocol’s definition of trafficking

ACTION (WHAT)	MEANS (HOW)	PURPOSE (WHY)
<ul style="list-style-type: none"> • Recruitment • Transportation • Transfer • Harbouring • Receipt of victims <p style="text-align: center;">(What is done)</p>	<ul style="list-style-type: none"> • Threat • Use of force • Use of power • Coercion • Abduction • Fraud • Deception • Abuse of power • Abuse of a position • Abuse of vulnerability • Giving or receiving of payments or benefits to a person having control of the victim to achieve consent <p style="text-align: center;">(How is it done)</p>	<ul style="list-style-type: none"> • Exploitation of prostitution or other forms of sexual exploitation • Forced labour or services • Servitude • Slavery or similar practices • Removal of organs <p style="text-align: center;">(Why is it done)</p>

(Source: Pharoah, 2006:8)

The participants in samples B1, B2 and C were asked to explain the typical criminal elements that the crime of human trafficking would entail, based on their experience. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer. The answers of the participants are presented in table 4 below:

Table 4: Participants’ explanation of criminal elements of the crime human trafficking

Sample B1 and B2 (Police)	Sample C (State Prosecutors)	Association between Table 3 and Table 4
• Recruitment (7)	• Recruitment (4)	Action
• Threat (2)	• Threat (2)	Means
• Force (3)	• Force (2)	Means
• Exploitation (13)	• Exploitation (4)	Purpose
• Transportation (8)	• Transportation (3)	Action
• Kidnapping (7)	• Kidnapping (1)	Means
• Rape (2)	• Rape (1)	Action
• Harboring or receipt of victims (2)	• Harboring or receipt of victims (1)	Action
• Deception (8)	• Deception (2)	Means
• Fraud (7)	• Fraud (1)	Means
• Abduction (8)		Action
• Assault (2)		Action
• Living in proceeds of crime (5)		Action
• Corruption (2)		Action
• Murder (1)		Action
• Sexual and criminal offences (3)		Action
• Child stealing (1)		Action
• Without consent (2)		Action
• Substance abuse (1)		Action
• Control of another person (1)		Action
• Unlawful intention (1)		Means
	• Intimidation (Coercion) (1)	Means
	• Prostitution (Exploitation) (1)	Purpose
	• Forced marriages (Forced services) (1)	Purpose
	• Sale (1)	Action

The majority of the participants included the key elements of this crime as contained in the Palermo Protocol’s definition of trafficking. Some of the participants also included rape, assault, murder, living in proceeds of crime, child stealing, substance abuse, sale and unlawful intention in their understanding of the typical criminal elements that the crime of human trafficking would entail. Although not all of these are contained within the Palermo Protocol’s definition and elements, they are to some extent relevant to the crime.

According to Touzenis (2010:23), the crime of trafficking involves many areas of the law for example criminal, immigration, labour and human rights, although it is fundamentally viewed as a criminal act with a human rights dimension. This author, Touzenis, further indicates that the elements of the crime of trafficking as defined in the Palermo Protocol, include various actors, each of whom plays a distinctive role in creating a victim of trafficking. This

highlights the fact that it is a crime which does not require only one person to carry out all the activities from recruitment to exploitation, but that numerous persons can be involved in the trafficking of a victim/s.

South Africa, as a signatory to the United Nations Palermo Protocol, should bring its definition of human trafficking within its criminal code in line with this protocol. Although the specific wording of the definition may differ from the definition as set out in the Palermo Protocol, the conduct of the act of trafficking in persons must be criminalised (Touzenis, (2010:25).

Clawson, Dutch and Cummings (2006:4) note that under the United States definition, the emphasis is placed on the presence of coercion and differential power between the trafficker and the victim, and it does not require transportation or movement of the victim in specific for this crime to occur. Thus, the question arises if the physical movement of victims is a defining or essential provision for this phenomenon? Kruger (2010:306) points out that some sources, for example the 2008 Annual Trafficking in Persons Report (US Department of State TIP Report, 2008), argue that movement of victims is not required by either the international definition in the Trafficking Protocol or the United States definition in section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA, 2000). This author, Kruger, further notes that on the contrary, in other sources it is argued that the movement or transport of a trafficked victim is an essential requirement if this action is to be defined as human trafficking.

The interpretation of the notion of transportation or movement, which is not specifically defined in the Palermo Protocol, thus remains problematic as the literal meaning of this terminology (trafficking) implies to take someone from one place to another. This may result in various debates whether distance should be associated with a foreign location (which would increase the vulnerability of a victim and facilitate control) or if the mere transportation over even a minimal distance would fulfil in the definition of trafficking (HSRC, 2010:4).

Kruger (2010:181) states that in practice victims are restricted by their traffickers by means of stringent control throughout the trafficking process, to ensure that they do not escape and

possibly deny traffickers from continuing profits through the exploitation of their victims. In this regard the Palermo Protocol does not include the control exercised by traffickers over their victims as an element of this crime, although this deed of control is acknowledged in literature as another distinctive feature of this crime (Kruger, 2010:181).

Gould and Fick (2008:91) in this regard state that the definition of trafficking in persons, as contained in the Palermo Protocol, is extremely broad. They argue that the reason for this could be two-fold. First of all, the Protocol's purpose is to assist countries to formulate domestic legislation in order to prosecute offenders who recruit victims and transfer them into situations of extreme exploitation. Furthermore, the definition of sexual exploitation had to be broad enough to ensure that states which have decriminalised or legalised sex work, were not excluded from this internationally accepted definition. Despite the broad definition, it remains imperative that governments are informed of what exactly they are encountering when addressing the problem of human trafficking in their respective countries. Governments should have clarity on whether the problem they are dealing with is organised crime, forced labour, labour exploitation, sexual exploitation, migration, smuggling or prostitution, or all of these (Gould & Fick, 2008:91).

The specific acts of exercising control over victims and restricting their freedom, could serve as definite indicators that a person is indeed a victim of this crime. Given the already difficult circumstances under which this phenomenon is taking place, the discussion above enlightens the mystification that remains present regarding the act of control over a victim, the interpretation of the notion of transport and the perplexity that arises when this crime needs to be identified and investigated.

3.4 EXPLOITATION

Exploitation may be defined as a practice by which the exploiter achieves sexual gratification, financial gain or advancement through the abuse or exploitation of another person's sexuality by abrogating that person's human right to dignity, equality, autonomy, physical and mental well-being. Examples of exploitation are trafficking, prostitution, prostitution tourism, mail-order-bride trade, pornography, stripping, battering, incest, rape and sexual harassment (Hughes, 1999:3).

In terms of the Palermo Protocol, exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, practices similar to slavery, servitude, and the removal of organs (United Nations, 2000c:2). According to Kruger (2010:52), exploitation (as the purpose of this crime) is a fundamental part of the crime of human trafficking, because offenders of this crime exploit their victims in order to gain profit. The exploitation of victims may occur at the initial stages when a victim is trafficked or contacted, however, the main element of this criminal action is executed at the place of destination.

Kruger (2010:52) continues to explain that a closer examination of the human trafficking definition in the Palermo Protocol discloses that the trafficker must have the intention (purpose) to exploit the victim of this crime, however it is not required that the actual exploitation must have taken place. This offence is therefore reckoned to have been completed at a very early stage during the committing of this crime. The mere “intention” to exploit a trafficking victim fulfils the requirements for this crime to be deemed as committed, even if the victim had not eventually been exploited (Kruger, 2010:52).

Intention, which is one of the general elements of a crime, is defined by Snyman as “the will to commit the act or cause the result set out in the definitional elements of the crime, in the knowledge of the circumstances rendering such act or result unlawful” (Snyman, 2008:182).

3.5 TRAFFICKING FOR THE PURPOSE OF COMMERCIAL SEXUAL EXPLOITATION

The relationship between trafficking and Commercial Sexual Exploitation (CSE) has been understood through diverse perspectives and the different forms that this phenomenon usually takes are prostitution, pornography, cybersex and sex tourism. Trafficking for sexual exploitation characteristically includes abuse within the commercial sex industry. In other cases, offenders exploit victims in private homes, often demanding both sex and work. The use of force in the majority of incidences can be direct and violent or psychological (US Department of State TIP Report, 2009:7).

The participants in samples B1, B2, C and D were asked to describe their understanding of the term “sexual exploitation” and in specific “human trafficking for sexual exploitation”. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer. The answers of the participants are presented in table 5 below:

Table 5: Participants’ understanding of human trafficking for sexual exploitation

Sample B1 and B2 (Police)	Sample C (State Prosecutors)	Sample D (NGOs)
• Force (12)	• Force (3)	• Force (2)
• Recruited (1)	• Recruited (2)	• Recruited (1)
• Performing sexual acts (21)	• Performing sexual acts (6)	• Performing sexual acts (2)
• Against free will and (2)	• Without consent (1)	• Against will or without consent (2)
• Financial gain for trafficker (9)	• Earnings taken by trafficker (4)	• Financial gain for trafficker (2)
• Victim is used (7)	• Victim has no benefit (2)	
• Sex slaves (5)	• Prostitution (5)	• Victim deployed for sexual and related activities (3)
• Exploitation (8)	• Exploitation (3)	
• Deceived (4)	• Deceived (4)	
• Free movement is restricted (3)	• No freedom (1)	
• Pornography or sexual websites (1)	• Pornography (1)	
• Substance abuse (4)	• Substance addiction (2)	
	• Debt bondage (2)	
• Forced labour (9)		
• Organ removal (1)		
• Abuse (4)		
• Child prostitution or youth sex trade (2)		
• Vulnerable targets to traffickers (2)		
• Abduction (1)		
• Humans being sold (1)		
• Extreme violations of human rights (1)		
	• Removed from supporting network (1)	
	• Victims are rotated or sold to other traffickers (1)	
	• Transported (1)	
	• Raped or gang raped (2)	
	• Living off the earnings of prostitution (2)	
	• Most commonly known form of trafficking in SA (1)	
		• Involves movement in or out country (2)
		• Fear for trafficker (1)
		• Lured (1)

Sample B1 and B2 (Police)	Sample C (State Prosecutors)	Sample D (NGOs)
		<ul style="list-style-type: none"> • Sustaining a forced dependency (1)

The majority of the participants conveyed their understanding of human trafficking for sexual exploitation to include: the performing of sexual acts; financial gain for the trafficker; the victim is used and has no benefit; victims are deceived and exploited as sex slaves; lured into prostitution; and deployed for sexual and related activities.

The participants in samples B1, B2 and C were asked to explain the typical criminal elements that the crime of human trafficking for sexual exploitation would entail, based on their experience. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The answers of the participants are presented in table 6 below:

Table 6: Participants’ explanation of criminal elements of the crime human trafficking for sexual exploitation

Sample B1 and B2 (Police)	Sample C (State Prosecutors)
• Prostitution or sexual purpose (8)	• Sexual element (5)
• Recruitment (1)	• Recruitment (3)
• Exploitation (3)	• Exploitation (3)
• Deceived (7)	• Deceived (1)
• Violence and threats (2)	• Threats (2)
• Force (4)	• Force (2)
• Transportation (3)	• Transportation (2)
• Fraud (1)	• Fraud (1)
• Without consent (1)	• Without consent (1)
• Kidnapping (2)	• Kidnapping (2)
• Rape (6)	• Rape (2)
• Pornography (1)	• Pornography (1)
• Abduction (4)	
• Assault (2)	
• Corruption (1)	
• Living on proceeds of crime (3)	
• Withholding freedom of movement (2)	
• Drugs (2)	
• Money Laundering (1)	
	• Sexual assault (2)
	• Prostitution for traffickers’ financial gain (2)
	• Harboring (1)
	• Trafficker pays for submission to consent (1)
	• Debt bondage (1)

Since no explanation of the typical criminal elements of the crime human trafficking for sexual exploitation could be found in literature, the proposed criminal elements of this phenomenon were based on the responses of the participants above, also including elements of the phenomenon of human trafficking not mentioned by the participants and suggested for inclusion, as presented in table 7 below:

Table 7: Proposed criminal elements of the crime human trafficking for sexual exploitation

ACTION (WHAT)	MEANS (HOW)	PURPOSE (WHY)
<ul style="list-style-type: none"> • Recruitment • Transportation • Harboring <p style="text-align: center;">(What is done)</p>	<ul style="list-style-type: none"> • Threat • Use of force • Abduction • Fraud • Deception • Withholding freedom of movement • No consent • Violence • Kidnapping • Rape • Assault • Corruption • Drugs <p style="text-align: center;">(How is it done)</p>	<ul style="list-style-type: none"> • Exploitation of prostitution • Prostitution sexual purposes • Pornography • Living on proceeds of crime • Money Laundering <p style="text-align: center;">(Why is it done)</p>
ELEMENTS NOT MENTIONED BY PARTICIPANTS AND SUGGESTED TO BE INCLUDED BASED ON CRIMINAL ELEMENTS OF HUMAN TRAFFICKING		
ACTION (WHAT)	MEANS (HOW)	PURPOSE (WHY)
<ul style="list-style-type: none"> • Transfer • Receipt of victims 	<ul style="list-style-type: none"> • Use of power • Coercion • Debt bondage • Abuse of power • Abuse of a position • Abuse of vulnerability • Giving or receiving of payments or benefits to a person having control of the victim to achieve consent 	<ul style="list-style-type: none"> • Other forms of sexual exploitation • Forced services • Servitude

The international participant interviewed was asked to describe the typical criminal elements that the crime of human trafficking for sexual exploitation would entail, based on her experience. She explained as follows:

The crime human trafficking is a very broad crime and in terms of the elements for sexual exploitation, must the trafficker have an intention. The trafficker brings the person either across the border or into the country, so they facilitate their entrée or their exit so it can go both ways. There has to be some level of threat, force or coercion and in order to do that and it can be for all sorts of things namely it can be literally deceptive recruitment where they entice the victims to come out and work in a nail salon when they get here they not working in a nail salon they working in a brothel so they deceived them so they basically bribe them to come out to a country.

There can also be circumstances where the victim will come out to a country knowing if they come out they will provide sexual services then the type of service they provide is not what they were told for example they would be required to provide unsafe sex, provide services without a condom. Another example would be that the victims know that they coming out and they pay for example three or four thousand dollars for their air fares and when they get their visas organised through the syndicate and arrive in the country they find that they owe them another ten thousand dollars and so they are debt bonded. The key is that the target got to be manifestly excessive and way outside the realm what you expect, it can be that they can either never pay it off or they keep getting fined no matter how much they work, the debt does not go away.

In this regard we also have servitude which is fundamentally that the victims are not free to cease their employment or to leave, and that has to be once again by threat or force. That threat under the new legislation in our country can be psychological as much as physical which is one of the new parts which was included into the legislation.

Regarding the elements of this crime there has to be a movement with the trafficking side and there has to be a level of threat, force or coercion, except for with children, with children there is no consent, threat or force required. Generally what the victims believe they are coming out to do and then what actually occurs are two different things, for example their passports taken and victims are threatened to be deported and they don't work for the traffickers and the traffickers will get them deported, this is an offence in itself. In general the key in exploitation of some sort lies within that there needs to be some level of threat or force and there need to be some deception.

The threat is the most difficult part for u and viewed as the grey part. The concept of what is free to live, if you are not locked in or threatened with physical abuse or something that is tangible it is quite difficult to prove because the victims don't speak the language or because they get driven to work they do not know where they are, and this is by nature not free.

One need to criminalise the buying of the sex work opposed to making sex work illegal, if you reduce prostitution you reduce trafficking by nature.

The participants in samples B1, B2 and C were furthermore asked to describe the element of conduct of the crime human trafficking for sexual exploitation, based on their experience. This was also an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The answers of the participants are presented in table 8 below:

Table 8: Participants’ description of the element of conduct of the crime human trafficking for sexual exploitation

Sample B1 and B2 (Police)	Sample C (State Prosecutors)
• Exploitation (5)	• Exploitation (3)
• Transportation (4)	• Transportation (2)
• Deception (10)	• Deception (1)
• Force (6)	• Force (2)
• Threats (5)	• Threats (1)
• Sexual acts (6)	• Prostitution (2)
• Recruitment (2)	• Recruitment (1)
• Abduction (2)	• Abduction (1)
• Fraud (1)	• Fraud (1)
• Abuse of power (1)	• Abuse of power (1)
• Assault (1)	• Assault (1)
• Substance abuse and addiction – drugs (1)	• Substance abuse and addiction (1)
• Deprived of freedom of movement (2)	
• Lack of education (1)	
• Unemployment (1)	
• Poverty and feminisation of poverty (1)	
• Gender discrimination (1)	
• Domestic violence (1)	
• Over population (1)	
• Greed (1)	
• Without consent (2)	
• Identification documents removed (1)	
• Victim under trafficker observation (1)	
• Unlawful intention (1)	
• To the benefit of the trafficker – financial (1)	
	• Intimidation (1)
	• Transfer (2)
	• Harboring (2)
	• Kidnapping (2)
	• Debt bondage (2)
	• Control or authority over another person (2)
	• Authority of control (1)

Sample B1 and B2 (Police)	Sample C (State Prosecutors)
	<ul style="list-style-type: none"> • Harbours (1)
	<ul style="list-style-type: none"> • Sale (1)
	<ul style="list-style-type: none"> • Supply (1)
	<ul style="list-style-type: none"> • Procurement (1)
	<ul style="list-style-type: none"> • Disposal or receipt of a person (1)
	<ul style="list-style-type: none"> • Illegal child adoption (1)
	<ul style="list-style-type: none"> • Payment or benefit to achieve consent (1)
	<ul style="list-style-type: none"> • Abusing vulnerability (1)

In addition, the participants in sample C explained that conduct is not an element to be proved and explained that the conduct of the crime of human trafficking for sexual exploitation involves different role players, namely the recruiter, the transporter and the exploiter, each fulfilling a different role as illustrated in table 9 below:

Table 9: Participants’ summary of the different role players in the conduct of the crime of human trafficking for sexual exploitation

Recruiter	Transporter	Exploiter
<ul style="list-style-type: none"> • Recruitment • Deceiving • Grooming the victim 	<ul style="list-style-type: none"> • Transportation of victim • Could be rape involved • Degrading and breaking victim down to be vulnerable 	<ul style="list-style-type: none"> • Rape • Force • Physical abuse • Food deprivation • Mental abuse • Substance abuse

The majority of the participants described the element of conduct of the crime human trafficking for sexual exploitation, based on their experience, to include: deception (11 out of 22); force (8 out of 22); sexual acts and prostitution (8 out of 22); exploitation (8 out of 22); threats (6 out of 22); and transportation (6 out of 22). Most of these elements of conduct of the crime human trafficking for sexual exploitation were also summarised by the participants in their description of the different role players, namely the recruiter, the transporter and the exploiter, each fulfilling a different role as illustrated, in table 9 above.

3.6 HUMAN TRAFFICKING VERSUS HUMAN SMUGGLING

In terms of the Protocol against the Smuggling of Migrants by Land, Sea and Air (Palermo Protocol) the “smuggling of migrants” shall mean the procurement, in order to obtain (directly or indirectly) a financial or other material benefit from the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. In addition

this protocol further clarifies the meaning of “illegal entry” by defining it as “crossing borders without complying with the necessary requirements for legal entry into the receiving State” (Kruger, 2010:157).

Smuggling is viewed in essence as a voluntary, time-bound occurrence in which mediators are paid a fee to assist their clients (often referred to as migrants, asylum seekers or refugees) to illegally cross borders into a country of which they are not citizens. The relationship between the two parties ends once the destination is reached. On the contrary, trafficking of persons involves coercion and deception where victims are recruited for the purpose of exploitation. The principal intention of exploitation is therefore the determining factor that sets the phenomenon of trafficking apart from smuggling and migration (Pharoah, 2006:17).

Kempadoo et al., (2005:xii) explain that the difference between smuggling and trafficking rests upon the intention for which the movement of the person took place. Pharoah, (2006:17) supports this viewpoint and acknowledges that although trafficking and smuggling often share certain characteristics, the implied purposes (intentions for movement) of the act of trafficking and smuggling differ. Kruger (2010:158) extensively deliberates the similarities between the two concepts of human trafficking and human smuggling. The underlying intersections between these two phenomena are presented in table 10 below:

Table 10: Similarities between the two concepts of human trafficking and human smuggling

Human smuggling	Element of similarity	Human smuggling and human trafficking
The process of human smuggling consists of a business deal between the mediator and the client after which the client is transported illegally across an international border.	Process	The human trafficking process also generally involves the movement of the person (victim) to the destination location.
Both human trafficking and human smuggling constitute a crime as both these phenomena involve the violation of laws.	Crime	Both human trafficking and human smuggling constitute a crime as both these phenomena involve the violation of laws.
Due to the enticement of profit involved in both these phenomena, often organised criminal networks are involved in these events.	Organised criminal networks	Due to the enticement of profit involved in both these phenomena, often organised criminal networks are involved in these events.
In the occurrence of human smuggling, the mediator benefits in the process through the payment received by the client to take him or her illegally across an international border.	Illegal and profitable business enterprises	In human trafficking, the trafficker benefits from the exploitation of the victim.

(Source: Kruger, 2010:158)

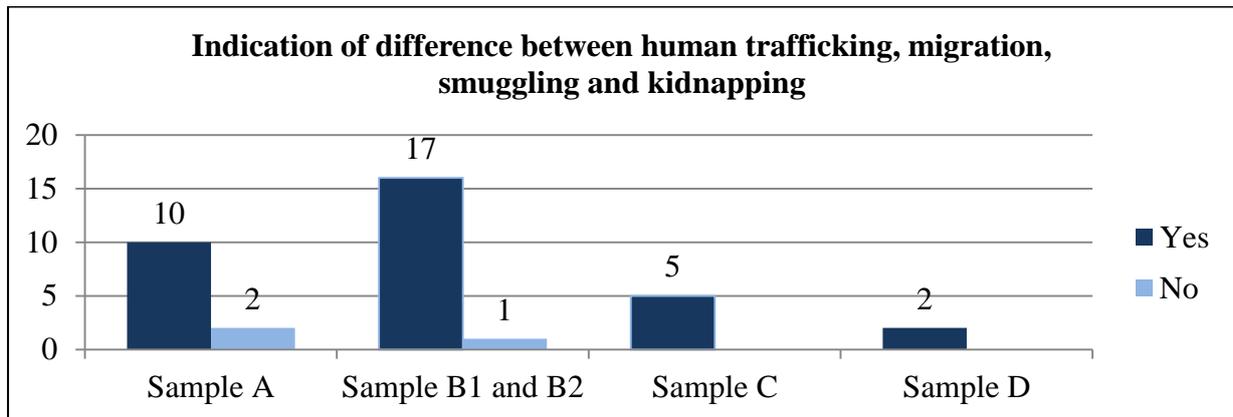
Even though human trafficking and human smuggling are different types of crime, these two crimes are in essence both committed against a person. The correlation between and similarities of these two phenomena often make it very difficult for victim service providers and law enforcement entities to determine specifically whether the crime of either human smuggling or of human trafficking had been committed (Kruger, 2010:163).

Kruger (2010:163) explains that to determine the differences between these two phenomena, one should focus on the fact that in the incidence of human smuggling the crime is referred to as a “victimless crime”. This is due to the fact that the smuggled persons are not deemed to be victims but rather clients and participants in the crime of their illegal crossing of an international border. The commodity involved here is viewed as a service and the relationship between these two parties usually ends once the destination of the smuggled person is reached. Therefore the crime of smuggling is deemed as a crime committed against the state. However, in the crime of human trafficking the commodity involved is a human being and a crime is committed against an individual. The traffickers maintain strict control over their victims and the relationship between the perpetrator and the victim continues after the place of destination is reached, involving “the on-going exploitation of the victims to generate profit for the traffickers” (Kruger 2010:161).

A further distinguishing difference can be identified in the element of means, specifically regarding the matter of consent. As clients involved in the smuggling process, these individuals knowingly consent to be illegally smuggled across an international border through the payment of a fee to the service provider by the mediator in this process. On the contrary, even if victims of human trafficking seemingly consent, their “consent” is annulled due to the illegal, fraudulent, coercive or deceptive means that are applied to obtain their consent (Kruger, 2010:161).

The participants in samples A, B1, B2, C and D were asked whether they think there is a difference between human trafficking, migration, smuggling and kidnapping. This was a close-ended question where the participants could either answer yes or no, and if their response was yes, they were requested to elaborate on the differences between human trafficking, migration, smuggling and kidnapping. The answers of the participants are presented in figure 13 below:

Figure 13: Participants’ view on difference between human trafficking, migration, smuggling and kidnapping



The majority of the participants responded that there is a difference between human trafficking, migration, smuggling and kidnapping (33 out of 36) and only three out of 36 participants indicated that there is no difference between human trafficking, migration, smuggling and kidnapping.

The differences between human trafficking, migration, smuggling and kidnapping, as provided by sample A in this open-ended question, are portrayed in table 11 below. Some of the participants provided more than one answer (responses indicated in brackets).

Table 11: Sample A - Description of differences between human trafficking, migration, smuggling and kidnapping

Human trafficking	Migration	Smuggling	Kidnapping
<ul style="list-style-type: none"> • Exploitation (6) • Recruitment (5) • Transportation (3) • Without agreement (2) • By means of deceiving (2) • Restriction of free movement (1) • Illegal border crossing (1) 	<ul style="list-style-type: none"> • Illegal entry (3) • Financial or material benefit (2) • Person moves freely from one area to another (1) • Procurement (1) • Willing participant (1) 	<ul style="list-style-type: none"> • Person is assisted to enter illegally or exploit (3) • Two people assisting each other (1) 	<ul style="list-style-type: none"> • Restriction of person's free movement (3) • Illegal removal (2) • Ransom demand (2) • Without permission (2) • Forceful removal (1)

The differences between human trafficking, migration, smuggling and kidnapping as provided by sample B1 and B2 in this open-ended question, are portrayed in table 12 below. Some of the participants provided more than one answer (responses indicated in brackets).

Table 12: Samples B1 and B2 - Description of difference between human trafficking, migration, smuggling and kidnapping

Human trafficking	Migration	Smuggling	Kidnapping
• Deception (21)	• Free movement and willing participant(9)	• Free movement and willing participant(7)	• Ransom demand (6)
• Exploitation (20)	• Procedure is followed (1)	• Consents to be smuggled (12)	• Person is removed (10)
• Force (14)	• Illegal documents (1)	• Crime against the state (2)	• No exploitation (1)
• Without consent (20)	• Normal circumstances under law (2)	• Relationship ends on arrival (8)	• Within normal environment (1)
• Identification documents removed or not legal (6)		• Something concrete for financial gain (1)	• Means of threat or force (6)
• Crime against victim (1)		• Illegal border crossing (10)	• Victim kept in detention for sexual purposes (1)
• To the benefit of trafficker – financial (10)		• Illegal documents (2)	• Unlawfully depriving a person of movement (6)
• Humans are involved (4)		• Labour related offence (1)	• Without consent (1)
• Outside of normal environment (3)			• Furtherance of another crime (1)
• Recruited (8)			
• Transported (16)			
• Sex related offence (4)			
• No free movement (2)			
• Controlled by trafficker (8)			
• Abduction (5)			
• Threat (3)			
• Abuse (3)			
• Rights are being violated (1)			
• Substance abuse (1)			
• Harboring of persons (2)			
• Labouring services (1)			
• Fraud (1)			
• Debt bondage (1)			
• Slavery (1)			
• Continues relationship (5)			

The differences between human trafficking, migration, smuggling and kidnapping as provided by sample C in this open-ended question, are portrayed in table 13 below. Some of the participants provided more than one answer (responses indicated in brackets).

Table 13: Sample C - Description of difference between human trafficking, migration, smuggling and kidnapping

Human trafficking	Migration	Smuggling	Kidnapping
<ul style="list-style-type: none"> • Exploitation (4) • Without consent (4) • Deceived (3) • No free movement(2) • Child removed from support network (2) • Movement without consent (2) • Victim selection don't testify against trafficker (1) • Victim sold (1) • Debt bondage (1) • Crime against person (1) • Abuse of power (1) • Forced (1) • Financial gain for trafficker (1) 	<ul style="list-style-type: none"> • Across borders (2) • Financial commitment (2) • Free movement (2) • Voluntarily (2) • No deception or abuse of power (1) • Chance of kidnapping (1) • Illegal documentation obtained (1) • Illegal migrants obtain services to be smuggled (1) 	<ul style="list-style-type: none"> • Consent to be smuggled (4) • Illegal border crossing (2) • Relationship ends at destination arrival (2) • Something concrete (1) • Free movement (1) • Offence against state (1) 	<ul style="list-style-type: none"> • Victim is kept against will (4) • Unlawful deprivation of freedom (2) • Limited movement (2) • No exploitation (2) • Sexual utilisation involved (1) • Force (1) • Threats (1) • Connected to other crimes committed (1) • Ransom demand (1)

The differences between human trafficking, migration, smuggling and kidnapping as provided by sample D in this open-ended question, are portrayed in table 14 below. Some of the participants provided more than one answer (responses indicated in brackets).

Table 14: Sample D - Description of difference between human trafficking, migration, smuggling and kidnapping

Human trafficking	Migration	Smuggling	Kidnapping
<ul style="list-style-type: none"> • Recruitment (2) • Transportation (2) • Exploitation (1) • Deceit (1) • Not voluntarily (1) • Possible elements of kidnapping (1) • Relationship continues (1) 	<ul style="list-style-type: none"> • Through illegal channels (1) • Voluntary action (1) • Voluntary movement (1) 	<ul style="list-style-type: none"> • Business transaction (1) • Relationship with smuggler is exploitative (1) • Transaction comes to an end (1) • Voluntary movement (1) • Without force or deceit (1) 	<ul style="list-style-type: none"> • Does not necessarily involve exploitation (1) • Held against will (1) • Held for a period of time (1) • Held for blackmailing (1) • Victim is taken (1)

The differences between human trafficking, migration, smuggling and kidnapping as provided by samples A, B1, B2, C and D as presented in tables 11, 12, 13 and 14 above, are subsequently summarised in table 15 below.

Table 15: Summary of differences between human trafficking, migration, smuggling and kidnapping

Human trafficking	Migration	Smuggling	Kidnapping
• Deception (27)	• Free movement and willing participant (12)	• Free movement and willing participant (9)	• Ransom demand (9)
• Exploitation (31)	• Procedure is followed (1)	• Consents to be smuggled (16)	• Person is removed (11)
• Force (15)	• Illegal documents (2)	• Crime against the state (3)	• No exploitation (4)
• Without consent (27)	• Normal circumstances under law (2)	• Relationship ends on arrival (11)	• Within normal environment (1)
• Identification documents removed or not legal (6)	• Illegal entry (3)	• Something concrete for financial gain (1)	• Means of threat or force (2)
• Crime against victim (2)	• Financial or material benefit (2)	• Illegal border crossing (12)	• Victim kept in detention for sexual purposes (1)
• To the benefit of trafficker – financial (11)	• Procurement (1)	• Illegal documents (2)	• Unlawfully depriving a person of free movement (2)
• Humans are involved (4)	• Voluntarily (3)	• Labour related offence (1)	• Without consent (1)
• Outside of normal environment (3)	• Across borders (2)	• Person is assisted to enter illegally or exploit (3)	• Furtherance of another crime (1)
• Recruitment (15)	• No deception or abuse of power (1)	• Two people assisting each other (1)	• Illegal / forceful removal (3)
• Transported (16)	• Chance of kidnapping (1)	• Without force or deceit (1)	• Restriction of person's free movement (5)
• Transportation (5)	• Illegal migrants obtain services to be smuggled (1)	• Something concrete (1)	• Connected to other crimes committed (1)
• Sex related offence (4)	• Voluntary movement (1)	• Business transaction (1)	• Sexual utilisation involved (1)
• No free movement (5)	• Through illegal channels (1)	• Relationship with smuggler is exploitative (1)	• Victim is kept against will (5)
• Controlled by trafficker (8)			• Unlawful deprivation of freedom (2)
• Abduction (5)			• Held for a period of time (1)
• Threat (3)			• Held for blackmailing (1)
• Abuse (3)			
• Rights are being violated (1)			
• Substance abuse (1)			
• Harboring of persons (2)			
• Labouring services (1)			
• Fraud (1)			

Human trafficking	Migration	Smuggling	Kidnapping
• Debt bondage (2)			
• Slavery (1)			
• Continues relationship (5)			
• Illegal border crossing (1)			
• Child removed from support network (2)			
• Movement without consent (2)			
• Victim selection – don't testify against trafficker (1)			
• Abuse of power (1)			
• Not voluntarily (1)			
• Possible elements of kidnapping (1)			
• Relationship continues (1)			

3.7 SCOPE OF HUMAN TRAFFICKING

The phenomenon of human trafficking has not only become an important human rights concern in modern society, but also poses a serious challenge to law enforcement in the 21st century. The collection of reliable data as to the true nature and scope of this crime has been ever challenging, which can be linked to the overlap of this crime with various other crimes, in particular smuggling and prostitution. The challenges continue, regardless of the endeavours by different organisations and governments worldwide to estimate the true nature and scope and to record the characteristics of this crime. Till today, large gaps remain in the area of data collection, which directly impacts on and limits our knowledge available on the scale and working of this crime, as well as the most effective means to identify, investigate and address this crime (Farrell et al., 2008:13). Varied estimates are presented globally on the scope and nature of human trafficking and the International Labour Organisation (ILO) holds forth that there are approximately 12.3 million adults and children at any time in forced labour, bonded labour and commercial sexual servitude (US Department of State TIP Report, 2009:8).

The unknown and unseen nature of the crime of human trafficking furthermore presents several challenges relating to the calculation of accurate estimates on the prevalence of human trafficking worldwide. As in the situation of many other crimes, victims are unwilling

and hesitant to report their victimisation for fear of punishment towards them and vengeance to their family members. Both offenders and victims of human trafficking mostly form part of a hidden population, as victims are predominantly under forceful surveillance by their captors with very little contact and exposure to the outside world. Victims are often informed by their traffickers that they will be put in jail or deported, should they report their situation, and therefore they do not seek help and avoid contact with law enforcement, irrespective of the severe physical and mental abuse they are subjected to. Kruger (2010:86) affirms this experience by elaborating that due to threats with dire consequences, victims do not readily report trafficking and therefore they remain very difficult to identify and access as victims of this phenomenon. The majority of incidents of human trafficking still remain vague and are never recorded as neither the offender or the victim is recognised by governmental agencies such as law enforcement (Farrell et al., 2008:13). In support of the fact that trafficking activities are hidden and difficult to track and capture for record purposes, Kruger states that official data available on human trafficking probably just represent the tip of the iceberg (Kruger, 2010: 86).

Even though the number of agencies fighting against the trafficking in human beings has increased tremendously and new sources of data are released continuously, there is still no single organisation that specifically corresponds and centralises the collection and collation of human trafficking statistics worldwide. Thus, the confusion remains for policy makers, as they are continuously presented with conflicting data relating to this phenomenon (Farrell et al., 2008:13). Kruger (2010:86) shares this concern and notes that the majority of trafficking cases still remain undiscovered and therefore not captured and included in data collection and official crime statistics. This deficiency in accurate data and statistics is further strengthened because only a few governments officially collect and analyse data on the scale of trafficking due to the low priority that the trade of human beings receives in various countries.

The lack of legislation in many countries further contributes to the non-availability and collection of data on the convictions of traffickers. Offenders of this crime are mostly convicted of other crimes such as kidnapping, rape, assault, murder or fraud. The crime of human trafficking is therefore seldom recorded as such, which results that even official data and statistics captured on the conviction of trafficking offenders are problematic and not a true reflection of the nature and scope this phenomenon. Accordingly, both the lack of

prosecution and the difficulty in securing successful convictions contribute to insufficient data on this phenomenon (Kruger, 2010:86-88).

The participants in samples B1, B2, C and D were asked to name the different form/types of human trafficking. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The answers of the participants are presented in table 16 below:

Table 16: Different forms/types of human trafficking

Sample B1 and B2 (Police)	Sample C (State Prosecutors)	Sample D (NGOs)
• Sexual exploitation (18)	• Sexual exploitation (4)	• Sexual exploitation (2)24
• Labour exploitation (16)	• Labour exploitation (4)	• Labour exploitation (2)22
• Domestic servitude (5)	• Domestic servitude (3)	• Domestic servitude (1)9
• Organ trafficking (8)	• Organ trafficking (4)12	
• Illegal adoptions (4)	• Illegal adoptions (4)8	
• Forced marriages (7)	• Forced marriages (3)10	
• Slavery (7)	• Slavery (1)8	
• Ritual purposes (1)		
• Debt bondage (2)		
• Pornography (1)		
• Human sale (4)		
• Street begging (2)		
• Impregnation of female to sell her child (2)		
	• Child trafficking(4)	
	• Drug trafficking (1)	
	• Orphan trafficking(1)	
	• Military services (1)	
	• Forced begging (1)	

The majority of the participants named the following different form/types of human trafficking, namely sexual exploitation (24 out of 25) and labour exploitation (22 out of 25). Some of the participants listed: organ trafficking (12 out of 25); forced marriages (10 out of 25); domestic servitude (9 out of 25); illegal adoptions (8 out of 25); and slavery (8 out of 25). A few of the participants mentioned: human sale (4 out of 25); child trafficking (4 out of 25); impregnation of female to sell her child (2 out of 25); debt bondage (2 out of 25); and street begging (2 out of 25). The following types were each mentioned respectively by one out of 25 responses: trafficking for ritual purposes; pornography; forced begging; military services; drug trafficking; and orphan trafficking.

The participants in samples A, B1 and B2 were asked what the likelihood is that the following types of crimes, namely domestic violence, prostitution, sexual assault, kidnapping, murder, labour trafficking, sex trafficking, organ trafficking, domestic servitude and street begging by children, will be encountered over the next 12 months by their province? This was a close-ended question where the participants were provided with choices which they could choose from. The choices of the participants are presented in table 17 below:

Table 17: Possible types of crimes to be encountered in provinces

Types of crime	Likelihood of occurrence									
	1 Not likely at all		2 Somewhat likely		3 Unsure		4 Likely		5 Very likely	
	Samples		Samples		Samples		Samples		Samples	
	A	B1 and B2	A	B1 and B2	A	B1 and B2	A	B1 and B2	A	B1 and B2
Domestic violence	1	2			1	1	5	8	5	7
Prostitution	2	1		2	1		5	9	4	6
Sexual assault	1	1	1		1		5	13	4	4
Kidnapping	1	3		2	2	2	7	6	2	5
Murder		1	2	2	1	3	4	5	5	7
Human trafficking										
• Labour trafficking	1	1	1	2	2	4	5	8	3	3
• Sex trafficking		1	2		2	3	5	8	3	6
• Organ trafficking		4	5	3	3	5	4	3		3
• Domestic servitude	2	1	1	4	3	3	4	8	2	2
• Street begging by children	1	1	1	4	3	2	4	4	3	7

The responses of the participants will be elaborated on in terms of the total number of crimes likely to be reported, namely 10 times by the total number of 30 participants in samples A and B1 and B2, which equals 300 responses.

- The majority of the participants responded that it is **likely** that the following types of crimes will be encountered over the next 12 months within their respective provinces (120 responses out of 300): domestic violence, prostitution, sexual assault, kidnapping, murder, labour trafficking, sex trafficking, organ trafficking, domestic servitude and street begging by children.
- Some of the participants responded that it is **very likely** that the following types of crimes will be encountered over the next 12 months within their respective provinces (81 responses out of 300): domestic violence, prostitution, sexual assault, kidnapping,

murder, labour trafficking, sex trafficking, organ trafficking, domestic servitude and street begging by children.

- A few of the participants were **unsure** of the likelihood that the following types of crimes will be encountered over the next 12 months within their respective provinces (42 responses out of 300): domestic violence, prostitution, sexual assault, kidnapping, murder, labour trafficking, sex trafficking, organ trafficking, domestic servitude and street begging by children.
- A few of the participants responded that it is **somewhat likely** that the following types of crimes will be encountered over the next 12 months within their respective provinces (32 responses out of 300): domestic violence, prostitution, sexual assault, kidnapping, murder, labour trafficking, sex trafficking, organ trafficking, domestic servitude and street begging by children.
- The minority of participants responded that it is **not likely at all** that the following types of crimes will be encountered over the next 12 months within their respective provinces (25 responses out of 300): domestic violence, prostitution, sexual assault, kidnapping, murder, labour trafficking, sex trafficking, organ trafficking, domestic servitude and street begging by children.

The majority of the participants (more than 50%) responded that it is either **very likely or likely** that the following types of crimes will be encountered over the next 12 months within their respective provinces (total of 201 responses out of 300): domestic violence (25 responses out of 30); prostitution (24 responses out of 30); sexual assault (26 responses out of 30); kidnapping (20 responses out of 30); murder (21 responses out of 30); labour trafficking (19 responses out of 30); sex trafficking (22 responses out of 30); organ trafficking (10 responses out of 30); domestic servitude (16 responses out of 30); and street begging by children (18 responses out of 30).

3.8 PREVALENCE OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION PROBLEM

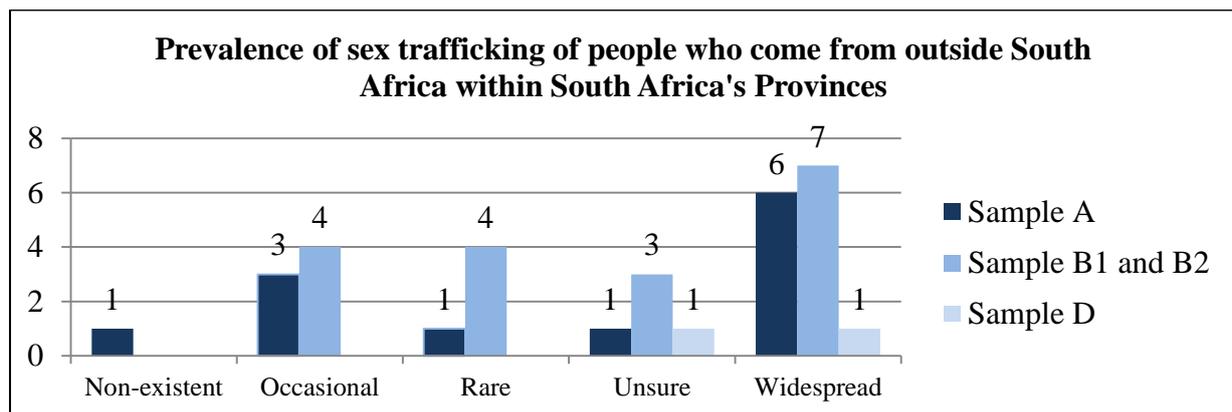
The trafficking in persons is continuously intensified and can be ascribed to various factors that include the global economy, increased travel, ever growing demand for low cost labour, inadequate and/or lack of legislation, the potential victimisation and criminalisation of victims, to name but a few. Even though victims of human trafficking crime are encouraged

to leave the economic struggles of their home countries in search of better opportunities, movement itself is not what constitutes the crime of trafficking. The force, fraud or coercion that is exercised on a victim by another person to perform and or remain in the service of that person, are the determining and defining elements of this crime of trafficking (Farrell et al., 2008:13).

The phenomenon of human trafficking involves a variety of crimes and exploitation including violence, cruelty and ill-treatment of victims. The exploitation of victims for profit through the use of force, fraud or coercion remains the common denominator of this crime and the trade of human beings continues to evolve into new and more multifaceted forms of exploitation, using debt contracts and other means to coerce people for the purpose of profit gain (US Department of State TIP Report, 2009:7).

The participants in samples A, B1, B2 and D were asked, in their experience, how prevalent sex trafficking is within their respective provinces of people who come from **outside** South Africa. This was a close-ended question and the answers of the participants are presented in figure 14 below:

Figure 14: Participants’ experience of prevalence of sex trafficking of people who come from outside South Africa within South Africa's provinces

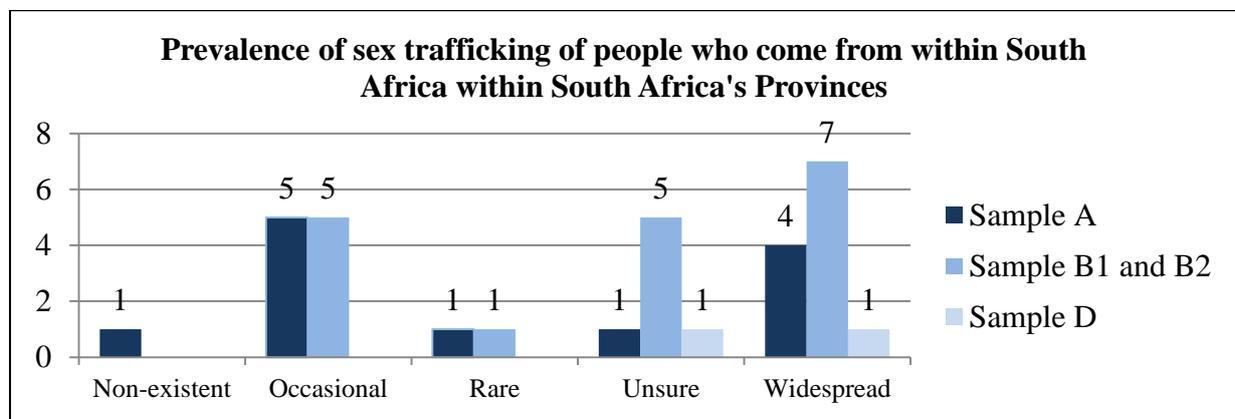


Of the 32 participants interviewed, 14 participants indicated that in their experience sex trafficking within their province of people who come from **outside** South Africa is widespread. Seven participants responded that it occurs occasionally; five participants noted that it is rare and one participant indicated that it is non-existent. Five of the participants were

unsure on the prevalence of sex trafficking of people who come from **outside** South Africa within their respective provinces.

The participants in samples A, B1, B2 and D were asked, in their experience, how prevalent sex trafficking is within their respective provinces of people who come from **within** South Africa. This was a close-ended question and the answers of the participants are presented in figure 15 below:

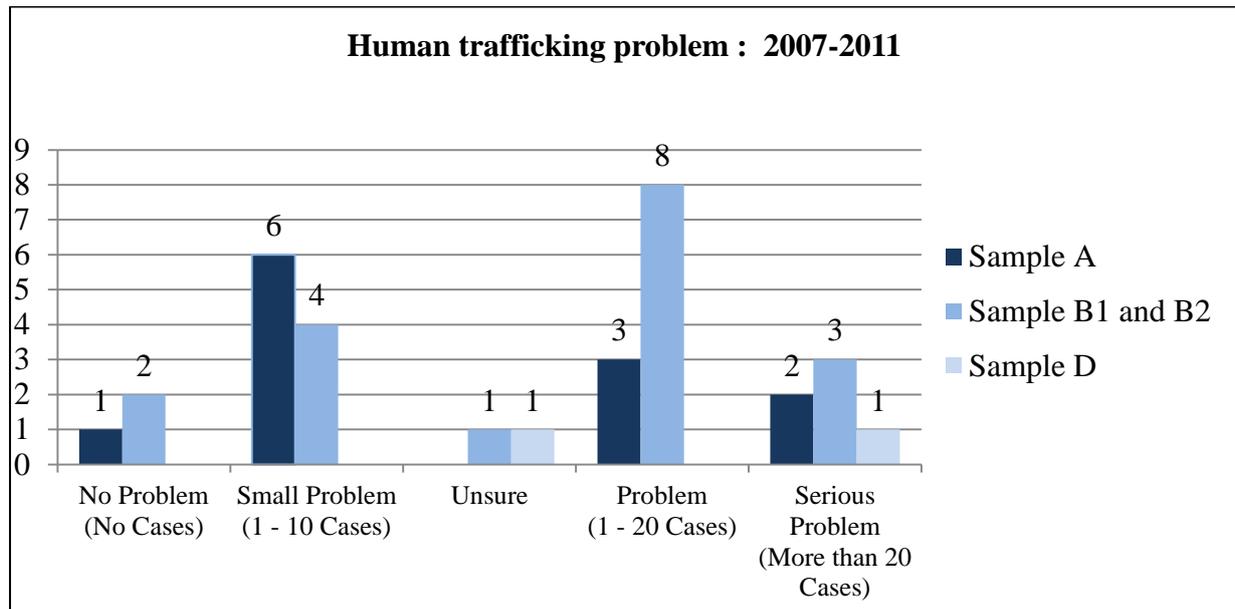
Figure 15: Participants’ experience of prevalence of sex trafficking of people who come from within South Africa within South Africa's Provinces



Of the 32 participants interviewed, 12 participants indicated that in their experience sex trafficking within their province of people who come from **within** South Africa, is widespread, 10 participants responded that it occurs occasionally, two participants noted that it is rare and one participant indicated that it is non-existent. Seven of the participants were unsure on the prevalence of sex trafficking within their respective provinces of people who come from **within** South Africa.

The participants in samples A, B1, B2 and D were asked, in their experience, how they would rate the human trafficking problem in their respective provinces during the past five years (2007-2011). This was a close-ended question and the answers of the participants are presented in figure 16 below:

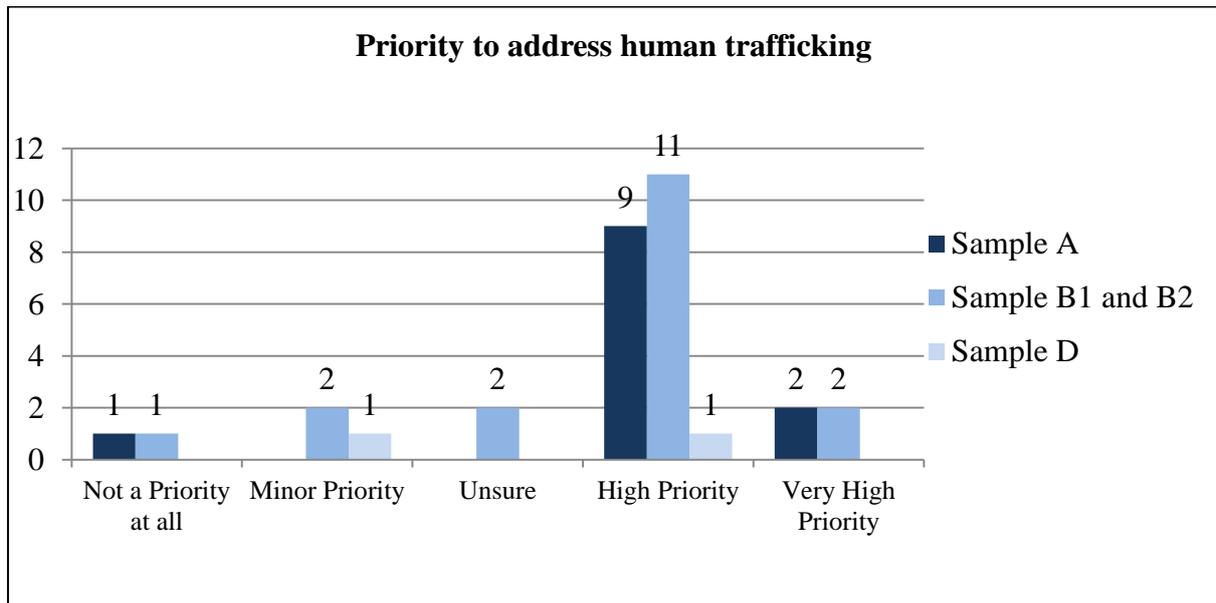
Figure 16: Participants’ experience of human trafficking problem within their province: 2007-2011



The majority of the participants rated the human trafficking problem in their respective provinces during the past five years (2007-2011) to be either a problem (11 out of 32) or a small problem (10 out of 32). Some of the participants indicated that the human trafficking problem in their respective provinces during the past five years (2007-2011) is a serious problem (6 out of 32). Some participants noted that it is not a problem and there were no cases within their respective provinces (3 out of 32) and two participants were unsure whether it is a problem or not within their respective provinces.

The participants in samples A, B1, B2 and D were asked, in their experience, how much of a priority is the need to address human trafficking in their respective provinces. This was a close-ended question and the answers of the participants are presented in figure 17 below:

Figure 17: Participants’ experience of priority to address human trafficking within their province



The majority of the participants responded that the addressing of human trafficking in their respective provinces is a high priority (21 out of 32) and a few participants indicated that it is a very high priority (4 out of 32). Only a few participants responded that the addressing of human trafficking in their respective provinces is either a minor priority (3 out of 32), not a priority at all (2 out of 32) and two participants were unsure on this aspect.

3.9 CHARACTERISTICS OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

Trafficking in persons consists of different stages which can be listed as: the recruitment of persons from a village or a city; the transportation of these persons to a designated transit point; the possible shift to a central location; and then the move to the ultimate location where they are exploited. The victim, who becomes highly profitable, expendable, reusable and resalable with a low risk, is a central key to this phenomenon. The different elements involved in the process of trafficking create a large number of changes and combinations of different locations and people, which adds to the complex and hidden nature and extent of this phenomenon (UN.GIFT, 2008:9).

Offenders of this crime are known to come from diverse criminal networks which range from unaffiliated individuals, small groups, gangs and organised crime syndicates. In market terms the status of traffickers vary from individual entrepreneurs, small “mom and pop” operations or sophisticated, organised rings. These traffickers of human beings employ various methods, which often include the use of established networks. They adapt their methods of operation frequently to ease the recruiting of their victims. They also obtain the cooperation of corrupt officials to avoid the risk of being detected and to ultimately increase their profit (Farrell et al., 2008:17).

Our understanding of the processes through which victims are trafficked and victimised, as well as the characteristics of these victims, remains restricted. The majority of victims trafficked for sexual exploitation are impoverished and many are deceived through lucrative opportunities and false promises of economic opportunities that await them in more affluent destination countries (Farrell et al., 2008:17).

3.10 CAUSES AND CONSEQUENCES OF HUMAN TRAFFICKING

UN.GIFT (2008) reports that there has been a significant rise in the magnitude of trafficking and this phenomenon reports to be reaching severe dimensions worldwide in the recent context of globalisation. This growth in the phenomenon of trafficking has been ascribed to several causes, including gender discrimination, war and armed conflict, poverty and various other forms of natural disasters. These factors in themselves are, however, not deemed as the causes of trafficking in persons as they merely contribute to the vulnerability of victims and render them more prone to a variety of harms (Sanghera, in Kempadoo et al., 2005:7).

The likelihood that a country will become a source of trafficking is greatly influenced by the economic and political instability of that country. Internal armed conflict, civil unrest and natural disasters furthermore displace populations and increase their vulnerability for exploitation and abuse. Traffickers use false promises of good working conditions and higher wages in foreign countries to lure victims into their networks. Victims who seek a better life for themselves and their families are easily deceived by these false promises (US Department of State TIP Report, 2003:53).

The driving (push) factors that are ascribed to circumstances that encourage victims to leave their home countries are listed as: persistent unemployment; lack of education; lack of information; gender discrimination; poverty and deprivation; lack of legislative and policy protection; and harmful socio-cultural practices. The convincing (pull) factor that draws people into the trafficking (referred to as the demand side of trafficking) is reported to be economic inequality, which results in neighbouring cities, regions or countries being attractive destinations for people in highly impecunious cities, regions and countries (UNODC, 2009:3).

The trafficking of women and children for commercial sexual purposes lies in the expansion and ever growing sexual entertainment industry, which is most importantly a demand-driven phenomenon. Women and children are perceived as the most exploitable and controllable and are therefore deemed to be the most in demand to contribute to this expanding and very competitive economic market, driven by maximum profit gaining (Sanghera, in Kempadoo et al., 2005:7).

3.11 GLOBAL REPORT ON HUMAN TRAFFICKING

The number of countries that have taken steps to implement the United Nations Protocol against Trafficking in Persons has doubled over the past few years. Sexual exploitation is by far still the most commonly identified form of trafficking in persons and this form of trafficking tends to be more visible in city centres or along highways.

The majority of persons involved in human trafficking are reported to be women, not only as victims, but also as traffickers who were mostly former victims of human trafficking (UNODC, 2009:6-7). The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 added to the original law a new requirement, namely that foreign governments provide the Department of State with data on trafficking investigations, prosecutions, convictions, and sentences in order to be considered in full compliance with the TVPA's minimum standards for the elimination of trafficking (Tier 1). The data were collected for the first time in the 2004 US Department of State TIP Report and are presented in table 18. The statistics presented in the 2011 and 2013 TIP Reports report are estimates only, given the lack of uniformity in national reporting structures.

Table 18: Global statistics presented in the TIP Report

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2005	6,178	4,379		40
2006	5,808	3,160		21
2007	5,682	3,427		28
2008	5,212	2,983	30,961	26
2009	5,606	4,166	49,105	33
2010	6,017	3,619	33,113	17
2011	7,206	4,239	41,210	15
2012	7,705	4,746	46,570	21

(Source: Trafficking in Persons Report (TIP) 2011 and 2013; US Department of State TIP Report, 2012:44; US Department of State TIP Report, 2013:46)

Table 19 shows the data of African countries (including South Africa in specific) on trafficking investigations, prosecutions, convictions and sentences, as submitted in order to be considered in full compliance with the TVPA's minimum standards for the elimination of trafficking (Tier 1). The statistics presented in the 2011 and 2013 TIP Reports are estimates only, given the lack of uniformity in national reporting structures.

Table 19: Africa's statistics presented in the TIP Report

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2005	194	58		12
2006	170	51		3
2007	123	63		5
2008	109	90	7,799	10
2009	325	117	10,861	8
2010	272	163	9,626	5
2011	257	218	10,094	2
2012	493	252	10,043	4

(Source: Trafficking in Persons Report (TIP) 2011 and 2013; US Department of State TIP Report, 2012:53; US Department of State TIP Report, 2013:57)

3.12 GEOGRAPHICAL DYNAMICS OF HUMAN TRAFFICKING IN SOUTH AFRICA

The Republic of South Africa is situated at the southern tip of Africa, forming part of the Southern African region and is bordered by Botswana, Mozambique, Namibia, Swaziland and Zimbabwe. Lesotho is situated within South Africa's borders. According to the 2012 and 2013 TIP Reports (US Department of State TIP Report, 2012:315; US Department of State

TIP Report, 2013:333) South Africa is a source, transit and destination country for men, women and children who are subjected to forced labour and sex trafficking. The 2012 and 2013 TIP Reports specifically reflect the trafficking in South Africa as presented in table 20 and as relating to children, girls, women and ukuthwala (the practice of abducting young girls and forcing them into marriage).

Table 20: Reported trafficking in South Africa

Children	Trafficked mainly within the country, from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban, and Bloemfontein and girls are mainly subjected to sex trafficking and domestic servitude.
Girls	Subjected to sex trafficking and domestic servitude.
Women	Recruited and transported to Europe and the Middle East where they are forced into prostitution or domestic service.
Women and girls	Trafficked to South Africa for legitimate work in South Africa, but on arrival are subjected to prostitution, domestic servitude and forced labour or are taken onward to Europe for forced prostitution.
Ukuthwala	The forced marriage of girls as young as 12 to adult men. This practice of ukuthwala is still prevalent in some remote villages in Eastern and Western Cape provinces, leaving these girls vulnerable to forced labour and prostitution.

(Source: Trafficking in Persons Report (TIP) 2012 and 2013: US Department of State TIP Report, 2012:315; US Department of State TIP Report, 2013:333)

According to the information released in the 2012 and 2013 TIP Reports, Nigerian syndicates continue to dominate the commercial sex trade within South Africa through local criminal rings, street gangs and organised child prostitution. It is also reported that Chinese nationals coordinate the sex trafficking of Asian nationals and that Russian and Bulgarian crime syndicates operate in the Cape Town sex trade. In 2011 victims were discovered in Bangladesh and Turkey and to a lesser extent women are recruited and transported to Europe and the Middle East where they are forced into prostitution or domestic service (US Department of State TIP Report, 2012:315; US Department of State TIP Report, 2013:333).

The 2013 TIP Report furthermore reflects that criminals and taxi drivers transport Zimbabwean migrants, including children, at the borders into South Africa where they are subjected to sex or labour trafficking on arrival in South Africa. This report also reflected that in 2012 South African trafficking victims were identified in Brazil and four South African women were reported being forced to serve as drug mules to Bangladesh or Thailand via Brazil in 2012. In 2012 Namibian authorities apprehended child sex tourists from South Africa, China, Indian, Pakistani, Rwandan and Somali while Ugandan nationals were

intercepted in Malawi, Mozambique, Swaziland, Tanzania and Zambia en route to potential exploitation in South Africa (US Department of State TIP Report, 2013:333).

The 2012 and 2013 TIP Reports, further elaborate that traffickers control their victims through debt bondage, forced use of drugs and alcohol, intimidation and threats, the use of force, witchcraft and withholding of their passports. Women and girls from the Democratic Republic of the Congo, Mozambique, Swaziland, Zimbabwe, Thailand, Cambodia, India, Russia, Ukraine, Bulgaria, China and Taiwan are recruited and trafficked to South Africa for legitimate work in South Africa, but on arrival are subjected to prostitution, domestic servitude and forced labour or are taken onward to Europe for forced prostitution (US Department of State TIP Report, 2012:315; US Department of State TIP Report, 2013:333).

According to the 2012 TIP Report (US Department of State TIP Report, 2012:316) the South African Government still does not fully comply with the minimum standards for the elimination of trafficking, although it is making significant efforts to do so. Endeavours to address the numerous forms of human trafficking in South Africa remain limited by systemic challenges, which include the following:

- Laws that do not comply with the 2000 UN Trafficking in Persons Protocol.
- Inadequate resources dedicated to fighting human trafficking.
- Low awareness of the full extent of the trafficking problems.

Revision of and stakeholder consultation on the draft comprehensive anti-trafficking bill was continued by the Parliamentary Portfolio Committee on Justice and Constitutional Development, and several departments accordingly began to draft required implementing regulations. These steps and the draft anti-trafficking bill (first drafted in 2003) remained, however, in parliament for a fourth year.

Irrespective of the South African Government's considerable financial resources, anti-trafficking law enforcement personnel and protective service providers, large sections of the country do not have the required and sufficient funds and coordination mechanisms to respond to the trafficking challenges effectively.

The absence of promulgated legislation and formal procedures to screen and identify victims of trafficking amongst vulnerable groups, including women in prostitution and illegal migrants, remain a significant drawback in this country (US Department of State TIP Report, 2012:316).

3.12.1 Trafficking within national borders – domestic trafficking in South Africa

The International Organisation of Migration (IOM) noted that South Africa has the potential for high levels of internal trafficking within its national borders, also referred to as domestic trafficking, due to the country's unique socio-political history and economic inequalities. Trafficking victims who are trafficked internally within South Africa are mostly recruited from provinces, such as Mpumalanga, Limpopo, Northern Cape and Eastern Cape, which are viewed as regions with a lower socio-economic status. Internal trafficking also occurs from informal settlements or the rural areas of Gauteng, the Western Cape and the Free State. These trafficked victims are predominantly trafficked to the city centres of Pretoria, Johannesburg, Durban, Bloemfontein and Cape Town (HSRC, 2010:7).

3.12.2 Trafficking of persons across South African borders – international trafficking in South Africa

Many young South Africans are seeking opportunities to work overseas and since they are so eager and willing to migrate to foreign countries in search of work opportunities, they may easily fall prey to being trafficked. According to the TIP Report of South Africans there are, however, not many cases reported that are trafficked abroad and it is reported that there is far less trafficking out of South Africa than into the country (HSRC, 2010:17).

The US State Department TIP Reports (US Department of State TIP Report, 2012:315; US Department of State TIP Report, 2013:333) allude to the fact that South African women are mostly trafficked to Europe and the Middle East for sexual exploitation and domestic servitude. It is further reported that Nigerian syndicates are more actively trafficking South African women from South Africa to the United States for African clients in that country. The 2012 and 2013 TIP Reports furthermore state that the main reason why trafficking cases to foreign countries are not documented is because victims in foreign countries are unable to

receive assistance from law enforcement, NGOs and other role players within the field, and therefore little is known about their fate. The lack of awareness and knowledge about this phenomenon furthermore contributes to the non-identification of victims (US Department of State TIP Report, 2012:315; US Department of State TIP Report, 2013:333).

3.12.3 Trafficking to South Africa from other African countries

South Africa shares borders with six neighbouring countries, namely Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe and each of these countries has a number of entry points into South Africa. Mozambique and Zimbabwe, which are directly adjacent to South Africa, are viewed as the major countries of origin for trafficking into South Africa. The trafficking of persons predominantly takes place across the borders of the country, as these extensive and unpatrolled borders provide the ideal opportunities and circumstances to traffic victims into South Africa undetected. Criminal syndicates exploit circumstances at border posts where bribery and inefficient border control points enable the illegal trafficking of persons into the country (HSRC, 2010:15).

Numerous types of trafficking in human persons have been identified in the trafficking stream from Africa. Young girls seem to make up the largest component of this trafficking, which includes sexual exploitation, prostitution, pornography, street begging, domestic servitude, forced labour and trafficking for the removal of body parts (or *muti*). According to Kruger (2010:47), trafficking victims are lured to South Africa with legitimate offers of employment and money is often paid to minors' parents with false promises of better lifestyles and educational opportunities, as well as promises of money to be sent back to families.

According to the HSRC (2010:141), South Africa is a relatively stable and prosperous country in a mainly poor and relatively unstable continent and this is one of the contributing factors making South Africa a preferred destination and transit country for migrants from the rest of Africa. Furthermore, it is noted that the borders of South Africa are not adequately protected and this contributes to the illegal trafficking of person's across the borders.

The participants in samples B1, B2 and D were asked to list the most known routes of human trafficking in South Africa. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some participants accordingly provided more than one answer (responses indicated in brackets). The answers of the participants are presented in table 21 below:

Table 21: Most known routes of human trafficking in South Africa

Sample B1 and B2 - (Police)	Sample D - (NGOs)
International	
• International (2)	• Eastern countries to SA (1)
• From SA to Brazil (1)	
• From Thailand to SA (1)	
• From China to JHB and CT (2)	
South Africa – Neighbouring Countries	
• From Maputo to JHB and CT (2)	• SA to neighbouring countries (1)
• From Lesotho to SA (2)	
• From Zimbabwe to SA (2)	
• From Mozambique to SA (4)	
National	
• National (3)	• Inter provincial (1)
• Rural area to city (1)	• Between major cities (1)
• Between cities (1)	• Rural to urban (2)
• Durban (4)	
• East London (3)	
• PE (4)	
• OR Tambo Johannesburg (5)	
• Cape Town (2)	
• Eastern Cape (2)	
• Gauteng to Cape Town (2)	
• Northern Cape Parks, Upington, Keimoes, Cape Town (1)	
Borders	
• Borders (5)	
• Lebombo (3)	
• Mussina (1)	
• Maseru (1)	
• Limpopo (1)	
Other	
• Air (7)	
• Land (4)	
• Sea (6)	

The participants in the study reported on very few known routes of human trafficking incidents internationally, which is in accordance with the literature discussion that there is less trafficking out of South Africa than into the country. As South Africa shares borders with six neighbouring countries, some of the participants included the known routes of human trafficking to be the borders of Lesotho, Mozambique and Zimbabwe. Mozambique and

Zimbabwe are directly adjacent to South Africa and Lesotho is situated within South Africa's borders, and these are thus viewed as the major countries of origin for trafficking into South Africa. In this regard 14 of the 32 participants indicated that the incidence of sex trafficking of people who come from **outside** South Africa to their respective provinces is widespread. Seven participants responded that it is occasional, as presented in figure 14 above.

The majority of the participants stated known routes of human trafficking to be into the city centres of Pretoria, Johannesburg, Durban, Bloemfontein and Cape Town and furthermore noted that trafficking takes place by air, land and sea. In this regard 12 of the 32 participants indicated that sex trafficking of people who come from **within** South Africa is widespread in their provinces, and 10 participants responded that it is occasional, as presented in figure 15.

3.13 SUMMARY

Eight years since South Africa signed and ratified the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking, human trafficking remains to be regarded as one of the highest sources of illegal income, especially regarding women and children for sexual exploitation. As the trafficking of woman and children for sexual exploitation is one of the forms of trafficking that remains an ever growing phenomenon and has become a well organised international criminal enterprise, it is imperative and fundamental to have an understanding of the trafficking of persons as a crime committed against an individual. It is thus of utmost importance that investigators serving in the SAPS (one of the key role players within the South African CJS) are conversant with the means of trafficking, what it constitutes and what attributes and features this phenomenon includes in order identify, prevent, investigate and prosecute this crime successfully.

Still today, very little is known about the true extent and nature of this phenomenon of trafficking in South Africa. The unknown and unseen nature of the crime of human trafficking furthermore presents numerous challenges relating to the calculation of accurate estimates on the prevalence of this phenomenon. Policy makers are continuously confronted with conflicting data relating to human trafficking, as there is still no single organisation that specifically corresponds and centralises the collection and collation of human trafficking statistics, neither in South Africa, nor worldwide. A further concern is that the majority of

trafficking cases remain undiscovered and therefore not captured and included in data collection and official crime statistics, which directly impacts on and contributes to the deficiency in accurate data and statistics. The lack of enacted and working legislation in many countries, including South Africa, further contributes to the non-availability and collection of data on the conviction of traffickers. This also contributes to the fact that offenders of human trafficking are convicted of other crimes, such as kidnapping, rape, assault, murder or fraud.

The trafficking of women and children for commercial sexual purposes lies in the expansion and ever growing sexual entertainment industry, which is most importantly a demand-driven phenomenon. The exploitation of victims for profit through the use of force, fraud or coercion remains the common denominator of this crime. The trade of human beings continues to evolve into new and more multifaceted forms of exploitation, using debt contracts and other means to coerce people for the purpose of profit gain. Women and children are perceived as the most exploitable and controllable and are therefore deemed to be the most in demand to contribute to this expanding and very competitive market, driven by maximum profit.

In chapter 4 the legal framework of human trafficking in the international and national arena will be discussed in terms of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (Palermo Protocol) supplementing the United Nations Convention Against Transnational Organized Crime, (UNTOC), which is the primary instrument and framework upon which South African legislation is based. The Trafficking in Persons Bill [B7-2010] (South Africa, 2010) will also be discussed in terms of the three-pronged approach, prosecution, protection, and prevention as proposed and recommended by the published US Department of State TIP Reports.

CHAPTER 4

AN OVERVIEW OF THE LEGAL FRAMEWORK OF HUMAN TRAFFICKING IN THE INTERNATIONAL AND NATIONAL ARENA

“Here and around the world, trafficking in persons destroys lives. It threatens communities. It creates instability. It undermines the rule of law. And it is a horrendous assault on our most dearly held values of freedom and basic human dignity. We, along with every nation, bear the responsibility to confront modern slavery by punishing traffickers and helping survivors get their lives back on track.”

(Secretary of State John F. Kerry, US Department of State TIP Report, 2013:21)

4.1 INTRODUCTION

The global prevalence of trafficking in persons remains a universal problem. The solution to addressing this rising, atrocious phenomenon, lies with each individual country that is responsible to proclaim and enact legislation to curb this crime. South Africa has been identified as a predominant destination for victims from within the country, the region and beyond – serving as a destination, transit and country of origin of victims in the practising of this monstrous commerce. Legislation to criminalise human trafficking and protect victims is imperative in an effort to address this atrocious crime and to undertake and execute anti-trafficking efforts and practices in South Africa.

South Africa has ratified and is a signatory of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), supplementing the United Nations Convention Against Transnational Organized Crime (UNTOC), which came into operation on 29 September 2003 and 25 December 2003 respectively (Qaba, 2009:1). The Palermo Protocol requires undersigned participants to adopt legislation to prevent and punish human trafficking.

The South African Government initiated the process of drafting human trafficking legislation in 2003, but it was only tabled in parliament in March 2010. This human trafficking legislation is deemed pressing, as the lack thereof not only hinders anti-trafficking efforts in

South Africa, but also impedes the prosecution of offenders. At present, the justice system is compelled to use fragments of other laws to prosecute, which often prove to be ineffective in the successful conviction of offenders. Furthermore, the penalties are often not comparative in relation to the harshness of human trafficking crimes.

At the time of finalising this study, no clear directions were available on when the South African Prevention and Combating of Trafficking in Persons (TIP) Bill was expected to be enacted. The Prevention and Combating of Trafficking in Persons Act 7 of 2013, was signed into law on 29 July 2013. However, its operationalization remains dependent on regulations required by a number of role-players, such as the Department of Home Affairs. Because this newly enacted legislation has not been put into operation, although it is receiving urgent attention and the plan is to have it operationalized, as soon as possible (with no target date communicated), this new Bill will accordingly not be addressed and will not form part of the discussions within this study.

Accordingly, this chapter addresses the second research question (paragraph 1.6 of this study), namely: What is the nature and extent of the legal arena upon which South African legislation is based, to criminalise human trafficking, prevent human trafficking and protect trafficking victims? A comprehensive review of all international instruments relevant to human trafficking falls outside the framework of this study. Therefore, only primary instruments forming the international legal framework on human trafficking will be referred to. This will be followed with a discussion on the international instruments (protocols) that developed over time, constituting the broad international and African regional framework on human trafficking in answer to the research objective, nature and extent of the legal arena upon which South African legislation is based, to criminalise human trafficking, to prevent human trafficking and to protect human trafficking victims.

In the context of this study global legislation (the Palermo Protocol, supplementing the UNTOC), as the framework upon which South African legislation is based and the international instrument which sets forth an international standard to its signatories for enacting domestic legislation, will be discussed. The review of the legislation will furthermore be aligned with the specific focus of the study, namely the identification process of human trafficking for sexual exploitation in South Africa. The Trafficking in Persons (TIP)

Report will be presented and the current situation and practice in South Africa, relating to existing legislative measures currently in place to prosecute and prevent human trafficking, will be discussed. These legislative measures are covered in answer to the research objective, namely to determine the nature and extent of the legal arena upon which South African legislation is based, to criminalise human trafficking, to prevent human trafficking and to protect trafficking victims (paragraph 1.5 of chapter 1).

4.2 INTERNATIONAL CONCEPTUAL EXPLICATION OF HUMAN TRAFFICKING

4.2.1 Defining human trafficking

The terms human trafficking and trafficking in persons are used concurrently as an umbrella term for the act of recruitment, harbour, transport, providing or obtaining of an individual for compelled commercial sex acts or labour through the use of fraud, coercion or force (US Department of State TIP Report, 2013:29).

The UNTOC and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, referred to as the Palermo Protocol (United Nations, 2000c) Article 3(a) of the Trafficking in Persons Protocol definition, as portrayed in chapter 3 in paragraph 3.3, form the foundation for this discussion.

The US Department of State TIP Report (2013:29) states that the core of this phenomenon is traffickers' goal of exploitation, by enslaving their victims through numerous and untold deceptive and coercive practices applied in the execution of this crime. This report further explains that the crime of human trafficking can include, but does not require, movement. Victims of this crime may thus be considered victims, irrespective of the fact whether they were borne into a state of enslavement and bondage, were transported to the exploitative situation, had previously consented to work for a trafficker, or even partook or played a role in a crime as a direct result of being trafficked.

4.2.2 Defining sex trafficking

Severe forms of trafficking in persons, as defined in the Trafficking Victims Protection Act (TVPA) of 2000 sections 103, 103(8) and 103(9), specifically as presented in paragraph 3.3 of chapter 3 in this study, underpin the grounding of this discussion.

The US Department of State TIP Report (2013:29) states that an adult person who is deceived, forced or coerced into prostitution, or maintained in prostitution through these or either one of these means (even after initially consenting), is considered a victim of trafficking. A person's initial agreement to participate in prostitution is not legally formative if such a person is after consent held in service or bondage through physical force or emotional or psychological manipulation. Any person involved in the recruitment, harbouring, transporting, obtaining or providing of another person into prostitution, through force, coercion or deception, is thus responsible for trafficking crimes.

Sex trafficking may furthermore also occur with debt bondage, when girls and women are maintained and forced to continue in prostitution. This debt bondage is enforced on victims through the use of unlawful debt supposedly incurred through their recruitment, transportation or even their indecent and boorish sale (the price for which they were bought), and then expected to pay the debt before they are entitled to be free (US Department of State TIP Report, 2013:29).

4.2.3 Elements of human trafficking

According to the Trafficking Victims Protection Act (TVPA) of 2000 (United Nations, 2000c), as illustrated in table 3 of chapter 3, human trafficking comprises three basic elements:

1. **Action** (what?): The recruitment, transportation, transfer, harbouring or receipt of persons.
2. **Means** (how?): By means of threat or the use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of

vulnerability, or by the giving or receiving of payments or benefits to achieve the consent of a person, thereby having control over another person.

3. **Purpose** (why?): For the purpose of exploitation.

Leggett (2004:2) explains that when looking at the first element (action), movement of the victim is implied but not essential. In this regard he notes that transnational movement is thus not required, which results in the manifestation of domestic trafficking. He further elaborates that the second element (means) includes both direct application of force, as well as trickery and the abuse of vulnerability. The common denominator is that there exists a difference in power between the trafficker and the victim, and if the victim is a child, this differential is implied by the Protocol. If this element of means is fulfilled, any perceptible consent of the trafficked person is considered to be irrelevant. According to Leggett (2004:2), the third element (purpose) involves the encumbered term exploitation. However, the Protocol clearly states that this must rise to the level of sexual exploitation or prostitution, forced labour, slavery or organ removal.

4.3 INTERNATIONAL LEGAL FRAMEWORK

Numerous international and regional instruments have developed over time, constituting the broad international legal framework on human trafficking. South Africa has not yet enacted legislation that deals solely with the issue of human trafficking. However, the country has taken a number of steps in that direction. Preceding the release of the proposed Prevention and Combating of Trafficking in Persons Bill, South Africa signed and ratified the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Relevant international conventions, as presented in the US Department of State TIP Report (2013:409), are illustrated in table 22 below:

Table 22: International conventions

UN Protocol to Prevent, Suppress & Punish Trafficking in Persons		ILO Convention 182, Elimination of Worst Forms of Child Labour	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography		Optional Protocol to the Convention on the Rights of the Child in Armed Conflict		ILO Convention 29, Forced Labour	ILO Convention 105, Abolition of Forced Labour
Signature	Ratification, Accession (a), or Acceptance (A)	Ratification	Signature	Ratification, Accession (a)	Signature	Ratification, Accession (a)	Ratification	Ratification
X	X	X		X(a)	X	X	X	X

(Source: The US Department of State TIP Report, 2013:409)

Najemy (2010:179) mentions that in addition to these international conventions, as presented in the US Department of State TIP Report, South Africa has also signed and ratified the following international instruments related to trafficking in persons, namely:

- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949, signed in 1950, ratified in 1951).
- The Convention on the Elimination of All Forms of Discrimination against Women (1979, signed in 1993, ratified in 1996).
- The Rome Statute of the International Criminal Court (2002, signed in 1998, ratified in 2000).

- The Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (1979, ratified in 2005).
- The Hague Convention no.33 on Protection of Children and Cooperation in Respect of Inter-country Adoption (1993, ratified in 2003).
- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000, ratified in 2003) (UN, 2000b).
- The 1989 UN Convention on the Rights of the Child (ratified in 1995).

The signing and ratification of these agreements clearly demonstrate South Africa's commitment to fighting human trafficking, albeit the South African Government cannot utilize these international agreements to prosecute human traffickers without first enacting and implementing South African legislation (Najemy, 2010:180).

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), supplementing the UNTOC, remains the primary instrument that forms the foundation of the international legal framework on human trafficking. It sets forth an international standard to its signatories for enacting domestic legislation. This Palermo Protocol is accordingly the framework upon which South African legislation is based.

4.3.1 The Palermo Protocol

In recognition of being identified as a destination, transit and country of origin of victims in pursuing this offensive crime, South Africa has signed and ratified the UNTOC and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), which came into operation on 29 September 2003 and 25 December 2003 respectively (Qaba, 2009:1).

Qaba (2009:1) states that the Palermo Protocol compels signatory participants to criminalise trafficking, investigate and prosecute traffickers and to undertake border control measures. Qaba (2009:1) further explains that each country must, in accordance with its means: provide measures to protect and assist victims of trafficking; inform and educate trafficking victims

and potential trafficking victims, as well as the general public; train law enforcement and border officials; and also cooperate with each other and civil society.

4.4 THE TRAFFICKING IN PERSONS (TIP) REPORT

Since the investiture of the United States Victims of Trafficking and Violence Protection Act of 2000, the United States annually issues the Trafficking in Persons (TIP) Report addressing and disseminating information about the emergent global problem of human trafficking. In this TIP Report there are four possible tier placements, ranging from full compliance to little or no compliance, namely: Tier 1, Tier 2, Tier 2 Watch List, and Tier 3 (Najemy, 2010:172).

In his recent opening address the Secretary of the United States, Mr John F. Kerry, emphasised that each country's government bears primary responsibility for responding to the crime of human trafficking and accordingly the TIP report is regarded as the golden standard in assessing how well governments meet this responsibility (US Department of State TIP Report, 2013:3).

4.4.1 Ranking of countries in TIP Report

The TIP Report places each country onto a tier (one of four) each year, based on the extent of the action taken to combat trafficking by each respective country's government. Each country's government is analysed, based on the extent of its efforts to reach and ensure compliance with minimum standards of the Trafficking Victims Protection Act (TVPA) of 2000 for the elimination of human trafficking, which are consistent with the Palermo Protocol (US Department of State TIP Report, 2013:29).

South Africa was placed on the Tier 2 watch list in 2008 for a fourth consecutive year. In 2009 South Africa was placed on the Tier 2 list and the country has maintained this status until the most recent release of the US Department of State TIP Report (2008:228; 2009:260; 2010:297; 2011:327; 2012:315; 2013:333). South Africa maintained this Tier 2 ranking as the Government does not fully comply with the minimum set standards for the elimination of trafficking. The descriptions of the Tier placements, namely Tier 1, Tier 2 watch list, Tier 2

and Tier 3, are illustrated in table 1 of chapter 1 of this study, as defined in the US Department of State TIP Report (2013:55).

After six years it would be an improvement and progression for South Africa to achieve a Tier 1 ranking. Even though a Tier 1 ranking is the highest ranking in the TIP report, it does not indicate that a country has no human trafficking, but it rather shows that a government ranked Tier 1 meets the TVPA’s minimum standards. It furthermore indicates that a government acknowledges the existence of this crime in their respective country and has made efforts to address this problem (US Department of State TIP Report, 2013:41). Najemy (2010:174) states that the enactment of the Prevention and Combating of Trafficking in Persons Bill, coalesced with appropriate and suitable implementation procedures and measures, should be enough to remove South Africa from its current placement on the Tier 2 position, ideally bringing the country up to full compliance with US and international standards for human trafficking.

The tier rankings in the 2013 TIP Report reflect an assessment of the following efforts of governments, namely legislation and prosecution, victim identification, support, assistance and protection and prevention measures, as illustrated in table 23 below:

Table 23: 2013 TIP Report assessments of governments’ legislation and prosecution, victim identification, support, assistance and protection and prevention measures

Legislation and prosecution	Victim identification, support, assistance and protection	Prevention measures
<ul style="list-style-type: none"> • Enactment of legislation by governments to prohibit severe forms of trafficking in persons, as defined by the TVPA. • Implementation of human trafficking laws through vigorous prosecution of the prevalent forms of trafficking in the respective country. • Provision of criminal punishments for trafficking offenses. • Inclusion of criminal penalties prescribed for human trafficking offenses with a maximum of at least 	<ul style="list-style-type: none"> • Implementation of proactive victim identification measures together with systematic procedures to guide law enforcement and other government-supported front-line responders in the process of victim identification. • Instituting government funding and partnerships with NGOs to provide victims with access to primary health care, counselling and shelters. • Implementation of victim protection efforts that include access to services 	<ul style="list-style-type: none"> • Implementation of governmental measures to prevent human trafficking, including efforts to curb practices identified as contributing factors to human trafficking.

<p>four years deprivation of liberty, or a more severe penalty.</p>	<p>and shelters.</p> <ul style="list-style-type: none"> • Ensuring the provision of legal and other assistance to victims that are consistent with domestic law. • Ensuring that legal proceedings are not prejudicial to victims' rights, dignity, or psychological well-being. • Ensuring the safe, humane, voluntary repatriation and reintegration of victims. 	
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(Source: The US Department of State TIP Report, 2013:43)

The US Department of State TIP Report of 2013 states that 188 countries are reported on and that this report had taken a specific in-depth look at one of the leading and most prevalent problems being experienced by countries in the prevention of human trafficking, namely the challenge of effective and accurate identification of victims of this crime (US Department of State TIP Report, 2013:3).

4.4.2 South African Government's status

The last five years' TIP Reports consecutively stated that the South African Government does not fully comply with the minimum standards for the elimination of human trafficking, although acknowledging that the country is making significant efforts to do so. This report accordingly recommended South Africa to pass and enact the Prevention and Combatting of Trafficking in Persons Bill, for each of the respective five years (2008:228; 2009:261; 2010:298; 2011:328; 2012:316; 2013:334).

The 2013 TIP Report stated that the South African parliament passed comprehensive anti-trafficking legislation, namely the Combating and Prevention of Trafficking in Persons Bill, which awaited presidential signature. The key role players in the South African CJS, as discussed in paragraph 5.3 of chapter 5 of this study, namely the South African Police Service (SAPS), National Prosecuting Authority (NPA) and the Department of Social Development (DSD), accordingly commenced steps to prepare for the implementation of this legislation. However, some other key government departments had not yet started to prepare their respective directives (US Department of State TIP Report, 2013:335).

4.4.3 Prosecution imparted in South Africa

The majority of prosecutions that had been instituted regarding trafficking in persons in South Africa over the period 2006 to 2009 were not concluded. The US Department of State TIP Reports of 2011, 2012 and 2013 respectively included and reported on only three successful prosecutions in the history of South Africa (US Department of State TIP Report, 2011:329; 2012:316; 2013:335). These three successful prosecutions consisted of:

1. The country's first successful trafficking prosecution was concluded in court in Durban during March 2010. This case originated in 2007 and involved a husband and wife charged with 22 counts of racketeering, money laundering, and offenses under the Sexual Offenses Act (SOA) and Immigration Act. Both defendants were convicted on 17 counts under the Prevention of Organised Crime Act (POCA), the SOA, and Immigration Act and the offenders were sentenced in 2011.
2. The second successful trafficking prosecution was concluded in the Pretoria regional court and the offender was sentenced a convicted trafficker in July 2011. This case was detected early 2008 and during February 2008 a Mozambican woman was charged under the SOA and labour laws with child trafficking and forced labour for exploiting three Mozambican girls in prostitution and domestic servitude. The Pretoria regional court sentenced this convicted trafficker to life imprisonment, the most severe penalty ever applied in a trafficking case in South Africa.
3. During 2013 another trafficking offender was convicted in South Africa which marked the third successful conviction in the country's history. The Grahamstown High Court convicted and sentenced a sex trafficker to 10 years' imprisonment for procuring an 11-year old girl for an Eastern Cape man in April 2012.

4.4.4 US Department of State TIP Reports judgements imparted to South Africa

The US Department of State TIP Reports of 2009, 2010, 2011, 2012 and 2013 enunciated the following significant aspects, as reflected and summarised in table 24 below, as the primary

findings impacting on the performance of the government of South Africa not fully complying with the minimum set standards required for the elimination of trafficking in its country (US Department of State TIP Report, 2009:261; 2010:298; 2011:328; 2012:316; 2013:334).

Table 24: Primary judgements impacting on the performance of the South African Government

Year	Stated findings
2009	<ul style="list-style-type: none"> • Foreign victims face inadequate protection from the South African Government and are at times treated as criminals. • Little or no information is made available about the status of pending prosecutions and the South African Government suspended development of a national anti-trafficking plan of action to start the process anew.
2010	<ul style="list-style-type: none"> • The South African Government committed minimal funding for anti-trafficking law enforcement activity or victim protection, notwithstanding the availability of government financial and other resources, in relation to the considerable financial and personnel contributions from a large number of foreign donors and NGOs.
2011	<ul style="list-style-type: none"> • The absence of an all-inclusive and enacted law that fully defines trafficking, empowers police and prosecutors, outlines provisions and allocates funding for victim care, is the greatest impediment to anti-trafficking efforts in South Africa.
2012	<ul style="list-style-type: none"> • Endeavours undertaken in South Africa to address the numerous forms of human trafficking remains limited by various systemic challenges, including laws that do not conform with the 2000 UN TIP Protocol, inadequate awareness of the full extent of the trafficking problems and insufficient resources committed to fighting human trafficking. • The absence of formal procedures for the screening and identification of trafficking victims in South Africa remained a significant gap. • Notwithstanding the South African Government's substantial financial resources, protective service providers and anti-trafficking law enforcement personnel in most parts of the country lacked sufficient funds and coordination mechanisms to answer and respond to the trafficking challenges effectively.
2013	<ul style="list-style-type: none"> • The identification and investigation of trafficking cases remained a challenge in South Africa. • The South African Government has in its efforts against sex trafficking prosecuted low-level cases with one to three victims typically from South Africa or neighbouring countries. However, larger international syndicates involving Nigerian, Thai, Chinese, Russian and Bulgarian traffickers, who dominate the sex trade in several South African cities, have not been successfully prosecuted. • Eminent brothels including some that have formerly used sex trafficking victims, continued to operate in South Africa without police intervention. • The South African Government neglected and was unsuccessful to prosecute any officials, and failed to prosecute any officials supposedly involved in trafficking related crimes, including border, immigration and police officers who may be among the clients of sex trafficking victims or who work in collusion with traffickers. • Language interpretation of foreign languages impacting negatively and hindering the investigation of trafficking cases, prosecution of suspected offenders and screening of victims who spoke only Thai, Chinese, Russian, Spanish, Bulgarian and Ukrainian, remained a significant problem in South Africa. • Even though officials seemingly encouraged trafficking victims to participate in the investigation and prosecution of trafficking offenders, and accordingly provided long-term care to foreign victims who did so, this was often thwarted by the lack of legal alternatives to deportation, available under South African law, for victims to countries

Year	Stated findings
	<p>where they may face suffering or retribution.</p> <ul style="list-style-type: none"> • Prosecutors in South Africa continued to experience difficulties and complications in pursuing some trafficking cases, as victims often chose to return home or at times the Department of Home Affairs (DHA) deported trafficking victims before they had been thoroughly interviewed or were able to participate in the prosecution of their trafficking offenders. • Notwithstanding the SOA's requirement that sex trafficking victims not be charged with crimes committed as direct result of being trafficked, some victims in South Africa were nonetheless arrested and jailed. • The lack of institutionalisation of anti-trafficking for officials by the South African Government further constrained progress in South Africa. However numerous departments have initiated plans for training in 2013 to harmonise with the passage of anti-trafficking legislation.

(Source: US Department of State TIP Report, 2009:261; 2010:298; 2011:328; 2012:316; 2013:334)

The US Department of State TIP Report accordingly makes recommendations for each country which they should address and implement, in adherence to the minimum required standards, to eliminate trafficking in their respective countries. These recommendations specific to South Africa are summarised below.

4.4.5 US Department of State TIP Reports suggestions imparted to South Africa

The US Department of State TIP Reports of 2009, 2010, 2011, 2012 and 2013 (US Department of State TIP Report, 2009:261; 2010:298; 2011:328; 2012:316; 2013:334) articulated the following primary suggestions to the South African Government to focus on and accordingly apply and put into effect in endeavouring to not only comply with the minimum set standards as required, but also to eliminate trafficking in the country. It is recommended that South Africa:

- Pass and enact the draft Prevention and Combatting of Trafficking in Persons Bill and begin implementing the legislation.
- Continue to create and increase awareness among all levels of government officials as to their specific tasks, responsibilities and accountabilities under the anti-trafficking provisions of the SOA and Children's Amendment Act.
- Allocate more substantial financial resources to anti-trafficking personnel and programmes.

- Ensure the availability of translators to assist victims in obtaining care, cooperating with law enforcement, and testifying in court.
- Ensure to investigate and prosecute officials implicated and suspected to be involved in trafficking.
- Institute and maintain formal systems and procedures to regularly compile national statistics on the number of trafficking cases prosecuted and victims assisted.
- Protect children from commercial sex acts, support the adoption of measures to protect children from sexual exploitation in travel and tourism and accordingly support prevention strategies developed by NGOs to address the demand for commercial sex acts.

4.5 CURRENT LEGISLATION FOR HUMAN TRAFFICKING IN SOUTH AFRICA

Najemy (2010:172) states that the South African Law Reform Commission (SALRC) released the final version of the Prevention and Combating of Trafficking in Persons Bill on 25 November 2008, which took the Government over four years to draft. This proposed legislation not only gives full effect to the Palermo Protocol, but also to those that provide for the creation of inter-sectorial task teams throughout the country in order to facilitate its effective implementation, and should enable South Africa to competently fight human trafficking within and across its borders.

Najemy (2010:172) explains that this proposed legislation was created to give effect to the Palermo Protocol in order to:

- Address the trafficking of persons within or across the border of South Africa.
- Prevent trafficking in persons.
- Provide for an offence of trafficking in persons including other offences associated with trafficking in persons.
- Provide for measures to protect and assist victims of trafficking in persons.
- Provide for matters connected therewith.

4.5.1 Current legislative practice in South Africa

At the time of concluding this study South Africa did not have a legal definition of human trafficking, neither in the common law nor in statute. According to Qaba (2009:3), there are, however, numerous existing common law crimes and statutory offences available to prosecution, in terms of which a person or persons suspected of being involved in the trafficking of persons for the purposes of sexual exploitation may be charged, depending on the circumstances of a particular case.

According to Qaba (2009:1), in the absence of legislation, the National Prosecuting Authority (NPA) has encountered unique problems in ensuring a reasonable response to the occurrences of human trafficking. This author further explains that human trafficking prosecutions have proceeded on an ad hoc basis, noticeable and observable to the specifics of crimes, such as abduction, kidnapping, assault, indecent assault and rape, which do not completely attract as hefty judgements as a specific trafficking in person's offence would impose.

Najemy (2010:180) states that the legislators in South Africa have also, in addition to employing criminal statutes, amended a number of acts in order to provide minimal coverage of human trafficking issues. These include chapter 18 of the Children's Act 38 of 2005 (South Africa, 2005); section 50(A) of the Child Care Act 74 of 1983 (South Africa, 1983); and chapter 5 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (South Africa, 2007). The current provisions available in both the common and legislative law that may be used for the prosecution of trafficking in persons for sexual exploitation will be discussed below:

The absence of enacted human trafficking legislation in South Africa furthermore limits prosecutors to deal only with those perpetrators that are directly linked to the human trafficking offence resulting from the trafficking of the victim, and thus excludes the perpetrators behind the scenes, as this is often an organised criminal activity (Qaba, 2009:2). The following legislative measures are accordingly utilised in the prosecution of human trafficking cases, namely: the Child Care Act 74 of 1983 (South Africa, 1983) as amended; the Sexual Offences Act 23 of 1957 (South Africa, 1957); the Prevention of Organised Crime Act 121 of 1998 (South Africa, 1998c); the Prevention of and Combatting of Corrupt

Activities Act 12 of 2004 (South Africa, 2004a); the Immigration Act 13 of 2002 (South Africa, 2002a) as amended; the Films and Publications Act 65 of 1996 (South Africa, 1996b) as amended; the Corruption Act 94 of 1992 (South Africa, 1992); the Intimidation Act 72 of 1982 (South Africa, 1982); the Riotous Assemblies Act 17 of 1956 (South Africa, 1956) in framing conspiracy and incitement charges; and the Constitution of the Republic of South Africa Act 108 of 1996 (South Africa, 1996a).

4.5.1.1 The South African Constitution

Kruger (2010:415) states that, apart from international and regional requirements to combat the trafficking of persons, the Constitution of the Republic of South Africa 1996 (hereafter referred to as the Constitution), correspondingly provides national human rights commitments relevant to human trafficking. This author further explains that the rights of all people in South Africa are protected in the Bill of Rights within the Constitution and therefore places an explicit obligation on the South African Government to “respect, protect, promote and fulfil” these rights of the people. It is thus clear that the government’s duty to uphold fundamental rights also applies to the rights of trafficked persons, even though the Constitution does not specifically make provision for or refer to human trafficking.

Given that the Constitution is the supreme law of the Republic of South Africa, any law or conduct inconsistent with it, is regarded as invalid. Pithey (2004:7) states that in terms of sections 28, 231, 232 and 233 of the Constitution, international law has persuasive authority in the courts, not binding authority, unless passed into domestic law. These sections as explained by Pithey (2004:7) will subsequently be summarised.

4.5.1.1.1 Section 28 of the Constitution of the Republic of South Africa 1996

The protection of the rights of children is enshrined in the Bill of Rights in chapter 2 of the Constitution. Section 28 of the Constitution provides the context for legislation that protects children, and offers what many children’s rights activists regard as the cornerstone for developing specific legislation prohibiting trafficking in persons – particularly children (Pithey, 2004:7). In terms of section 28 of the Constitution:

- “(1) Every child has the right-
- (a) to a name and a nationality from birth;
 - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - (c) to basic nutrition, shelter, basic health care services and social services;
 - (d) to be protected from maltreatment, neglect, abuse or degradation;
 - (e) to be protected from exploitative labour practices;
 - (f) not to be required or permitted to perform work or provide services that-
 - (i) are inappropriate for a person of that child’s age; or
 - (ii) place at risk the child’s well-being, education, physical or mental health or spiritual, moral or social development;
 - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be -
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child’s age;
 - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child’s best interests are of paramount importance in every matter concerning the child.
- (3) In this section “child” means a person under the age of 18 years.”

4.5.1.1.2 Sections 231, 232 and 233 of the Constitution of the Republic of South Africa 1996

Sections 231, 232 and 233 of the Constitution deal specifically with the use of international

law in South Africa. In terms of section 231 of the Constitution an international agreement binds South Africa, but it only becomes law when it is accordingly enacted into law by national legislation. Section 233 of the Constitution furthermore prescribes that when a court interprets any legislation, the court must prefer any reasonable interpretation of law that is congruent with international law over any alternative interpretation that is contradictory with international law (Pithey, 2004:7).

As South Africa is a signatory to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), these sections (Sections 231, 232 and 233 of the Constitution) lay the foundation of the interpretation of internal legislation (Pithey, 2004:8). The signing and ratification of the Palermo Protocol has furthermore placed an obligation on the South African Government to bring its domestic laws and policies in line with the standards set by these international instruments.

4.5.1.2 Common law

Qaba (2009:3) explains that, as there are no common law provisions dealing specifically with trafficking in South Africa, alternative options are used to charge and prosecute persons suspected of being involved in the trafficking of a person for sexual exploitation. These alternative options include:

- **Abduction:** The unlawful and intentional removal of an unmarried minor from the control of his or her parents or guardian with the intention of having sexual intercourse with the minor.
- **Kidnapping:** The unlawful and intentional deprivation of a person of his or her freedom of movement.
- **Rape:** The act of sexual penetration of a victim, without their consent.
- **Indecent assault:** The unlawful and intentional assault with the object of committing an indecency.
- **Assault (either common or with the intent to inflict grievous bodily harm):** The unlawful and intentional application of force to the person of another.

4.5.1.3 Sexual offences act 23 of 1957

The Sexual Offences Act 23 of 1957 (SOA) (South Africa, 1957) criminalises prostitution and various activities related to prostitution, including brothel-keeping, procuring, and living on the proceeds of prostitution. Qaba (2009:4) states that the SOA has a number of provisions that may be of use when prosecuting a case involving human trafficking for sexual exploitation.

In terms of section 2 of the SOA, it is illegal to keep a brothel. Kruger (2010:464) explains that the SOA furthermore provides that persons are deemed to keep a brothel (if such a person is managing, or assisting in the managing of a brothel, or is knowingly receiving money at a brothel) and therefore this section of the SOA broadens the prospect to prosecute perpetrators that (as part of a human trafficking setting) share in the profits or assist in the running of a brothel.

In terms of section 9 of the SOA, it is an offence to procure a child to have unlawful carnal intercourse with another person and section 10 of the SOA prescribes that it is unlawful to procure an adult female for the same reasons. Section 12 of the SOA furthermore criminalises the detaining of a female against her will, either with the intention that she would have sexual intercourse with a male, or with the intention that she be detained in a brothel. In terms of section 14 of the SOA sexual offences with youths are prohibited and section 20 of the SOA prohibits living off the earnings of prostitution or assisting in the commission of indecent acts (Qaba, 2009:4).

4.5.1.4 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

According to Kruger (2010:466) the crime of human trafficking, especially for sexual exploitation, typically involves sexual abuse of the trafficked person. The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (South Africa, 2007) may be used successfully to prosecute and punish perpetrators involved in human trafficking for sexual exploitation, as a multitude of sexual offences are included in this statute. The common law offences of rape and indecent assault were replaced with the comprehensive

statutory offences of rape and sexual assault and have accordingly amplified the protection of victims against sexual misconduct with these broadened definitions (Kruger, 2010:467).

According to Kruger (2010:468) not only are a number of offences against persons of 18 years and older provided for, but various offences have also been instituted to provide for the special protection of persons who are mentally disabled and to protect children. Regarding children, the broadly defined offences of sexual exploitation, promoting child sex tours and sexual grooming of children, are especially useful for the prosecution of agents involved in child sex trafficking. The grooming of children to encourage and prepare them to commit sexual offences has become a serious concern in South Africa (Kruger, 2010:469). Numerous other offences that are encompassed in this Act to protect children include the proscription against children being used for child pornography, as well as children being exposed to child pornography or pornography (Kruger, 2010:471).

4.5.5 The Child Care Act 74 of 1983 and Children's Act 38 of 2005

Pithey (2004:8) explains that both the Child Care Act 74 of 1983 (South Africa, 1983) and the Sexual Offences Act 23 of 1957 (South Africa, 1957) may be used successfully in the prosecution of persons when individuals have been geographically removed from where they would choose to be and are forced to provide sexual services to other persons. Qaba (2009:3) states that the Child Care Act 74 of 1983 (South Africa, 1983) as amended, is specifically targeted at the protection of children. Section 50A of this Act provides for the protection of children, specifically against the commercial sexual exploitation of children, whereas section 51 prohibits the unlawful removal of children and section 52A prohibits the employment of certain children.

Kruger (2010:447) comments that, notwithstanding that the provisions of the Child Care Act 74 of 1983 (South Africa, 1983) were repealed by the Children's Act 38 of 2005 (South Africa, 2005), this Child Care Act 74 may still be used for prosecution in trafficking cases that occurred prior to 1 April 2010 when the legislation was repealed. The Children's Act 38 of 2005 (South Africa, 2005) is deemed one of the most important Acts available for prosecution in South Africa. Najemy (2010:181) states that chapter 18 of the Children's Act 38 of 2005 (South Africa, 2005) deals with trafficking in children and was accordingly

enacted to combat trafficking in children in South Africa to give effect to the Palermo Protocol to Prevent Trafficking in Persons. Act 38 of 2005 also presents a comprehensive definition of trafficking (regarding child trafficking victims), which extends the one found in the Palermo Protocol to Prevent Trafficking in Persons. This Act furthermore declares that the Palermo Protocol to Prevent Trafficking in Persons is operational in South Africa and that its requirements are accordingly law, subject to the provisions of the Children's Act 38 of 2005 (South Africa, 2005).

The Children's Act 38 of 2005 (South Africa, 2005) is divided into sections which outline target areas for the increased prevention of human trafficking, the protection of human trafficking victims, and the prosecution of human trafficking offenders. These target areas include: international cooperation; proscription of behaviour facilitating trafficking in children; proscription of trafficking in children; prohibition of parental trafficking of children; providing assistance to children who are victims of trafficking; treatment and repatriation of victims of human trafficking; and protocols for reporting instances of child victimisation (Najemy, 2010:181).

4.5.6 The Prevention of Organised Crime Act 121 of 1998

Pithey (2004:8) states that activities of preventing human trafficking may be conducted in terms of the Prevention of Organised Crime Act 121 of 1998 (POCA) (South Africa, 1998c). Provision is made in chapter 2 of the POCA for offenses relating to racketeering, which is defined as the planned, on-going, continuous or repeated participation or involvement in any offence referred to in schedule 1 (rape, kidnapping and indecent assault) and statutory offences described in sections 14 and 20 of the SOA.

This POCA subsequently makes it an offence to be involved in racketeering, to receive, use and or invest in any property accordingly derived from a pattern which includes activities of racketeering. In the event of using the provisions of chapter 2 of the POCA for the prosecution of human trafficking, the greatest challenge that the prosecution may be confronted with would be to prove the organised element of the conduct and the pattern of the racketeering activity (Pithey, 2004:9). In terms of the POCA numerous proscriptions are also provided for, which include: chapter 3 that deals with the proceeds of unlawful activities;

chapter 4 that deals with criminal gang activities; as well as chapters 5 and 6 that deal with the forfeiture of assets obtained unlawfully (Qaba, 2009:4).

Hilton (2007:52) comments that human trafficking is deemed a very profitable business for organised crime. The POCA provides for criminal confiscation and civil forfeiture of the proceeds of unlawful activities and is thus currently reckoned the strongest weapon against sex traffickers. This Act successively presents a two-pronged system for recovering these proceeds, namely:

- Confiscation after a conviction by a court of law.
- Civil forfeiture without the need of a conviction.

The legislature has thus presented courts with a pervasive power by allowing the issuing of a restraint order without a legal conviction of the offender, provided there is at least a reasonable prospect of getting a conviction (Hilton, 2007:52).

4.5.7 Miscellaneous legislation

According to Pithey (2004:9), prosecutors need to be attentive and knowledgeable in the application of laws that are appropriate to the alleged criminal conduct predicted and foreseen in human trafficking. In addition to the legislation discussed above, there are numerous other pieces of legislation that may be used to prosecute activities that may constitute trafficking, namely, the:

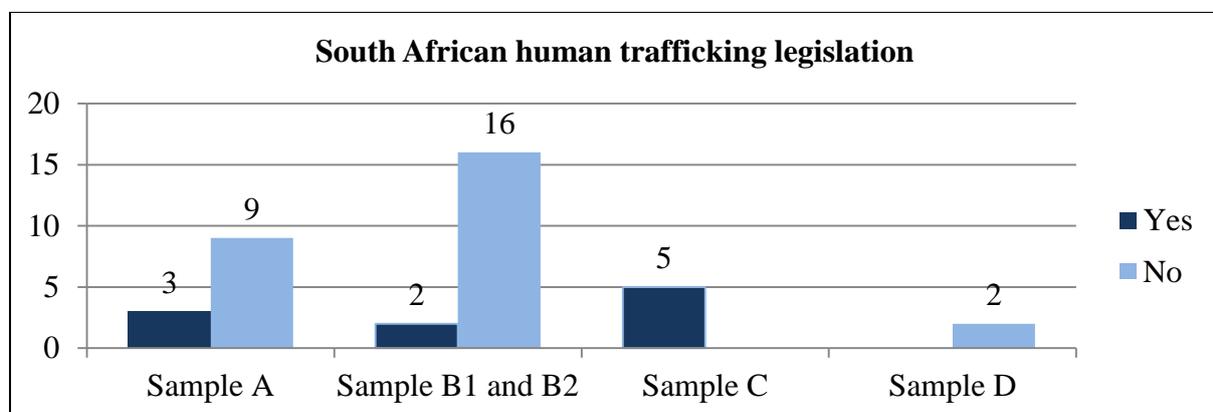
- Riotous Assemblies Act 17 1956.
- Intimidation Act 72 of 1982.
- Corruption Act 94 of 1992.
- The Films and Publications Act 65 of 1996.
- The Immigration Act 13 of 2002.
- Prevention of and Combatting of Corrupt Activities Act 12 of 2004.

Pithey (2004:9) states that international instruments also require of signatories to develop and implement adequate measures ensuring that victims of trafficking are compensated for

damages suffered. Currently South African legislation does not make sufficient provision for this requirement and victims thus have to rely on section 300 of the Criminal Procedure Act 51 of 1977 (South Africa, 1977), which makes compensation possible if an offence caused damage or loss of property, including money. However, this does not provide human trafficking victims compensation relating to pain and suffering, including the emotional and psychological damage experienced in this crime. Pithey (2004:10) furthermore indicates that additional challenges, which might be experienced in the prosecution of human trafficking cases, include the proper identification of cases that constitute trafficking in persons. Thus a concrete understanding of exactly what is meant by trafficking is required from both the SAPS and the prosecution.

The participants of this study in samples A, B1, B2, C and D were asked if they knew whether South Africa has specific human trafficking legislation. This was a close-ended question where the participants could either answer yes or no, and if their response was yes, they were requested to list the specific legislation? The answers of the participants are presented in figure 18 below:

Figure 18: Participants’ view on human trafficking legislation in South Africa



The majority of the participants (73%) responded that South Africa does not have specific human trafficking legislation (27 out of 37) and the few who indicated that South Africa does have legislation (10 out of 37) made mention that the draft Bill is awaiting approval. These participants listed the following legislation that is currently being used. This was an open ended question and some of the participants accordingly provided more than one answer (responses indicated in brackets).

- Children's Act (8)
- Criminal Procedure Act (3)
- Prevention of Organised crime Act (1)
- Sexual Offenses Act (9)
- Section 71 (3)
- Prevention and Combatting of Trafficking in Persons act (3)
- Prevention of Organised Crime Act 121 of 1998 (2)
- Provisions in SOCA (2)
- Basic Conditions of Employment Act 75 of 1997 (1) (2)
- Immigration Act 13 of 2002 (1) (2)
- Films and Publications Act 65 of 1996 (2)
- Corruption Act 94 of 1992 (2)
- Extradition Act 67 of 1962 (2)
- International Cooperation in Criminal Matters Act 75 of 1996 (2)
- Refugee Act (1)
- Common Law Offence Act (1) (1)
- Statutory Law (1)
- New legislation not in working yet (3) (1)
- Human trafficking for sexual exploitation (1).

The participants in samples A, B1 and B2 were asked, in their experience, how challenging is the problem that no trafficking legislation is in place with regard to addressing human trafficking in their respective provinces. This was also a close-ended question and twenty-one (21 out of 30) of the participants indicated that it is very challenging; five (5 out of 30) indicated that it is occasionally challenging; one (1 out of 30) of the participants indicated that it is not challenging; and three (3 out of 30) participants indicated that they are unsure. The majority of the participants (more than 50%) thus indicated that the lack of legislation to address human trafficking within South Africa, is experienced as very challenging.

The participants in sample A were asked if they knew if there is a formal procedure/protocol/policy in place that provides instructions for police officials on how to **identify** human trafficking cases? This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were

requested to list the specific legislation. Six (6 out of 12) of the participants indicated that there is a procedure; two (2 out of 12) indicated that there is a protocol; and two (2 out of 12) indicated that there is a policy. In this regard three (3 out of 12) participants indicated that there is not a procedure; three (3 out of 12) indicated that there is no protocol; and two (2 out of 12) indicated that there is no policy. Three (3 out of 12) participants were unsure if there is a procedure; seven (7 out of 12) were unsure if there is a protocol; and eight (8 out of 12) were unsure if there was a policy. The majority of the participants (more than 50%) were thus unsure if there was a procedure/protocol/policy on how to identify human trafficking case.

The participants in samples B1 and B2 were also asked if they knew if there is a formal procedure/protocol/policy in place that provides instructions for police officials on how to **identify** human trafficking cases. This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were requested to list the specific legislation. Two (2 out of 18) of the participants indicated that there is a procedure/protocol/policy and both participants listed the Palermo Protocol and also made mention that general training is received and no policy is needed to investigate suspicion. Fourteen (14 out of 18) of the participants indicated that there is not a procedure/protocol/policy in place and two (2 out of 18) were unsure if there is a procedure/protocol/policy. The majority of the participants (more than 50%) thus indicated that there is not a procedure/protocol/policy in place on how to identify human trafficking cases.

These participants in samples B1 and B2 were asked in their experience, how useful formal procedures/protocols/policies in identifying human trafficking cases are. This was also a close-ended question and nine (9 out of 18) of the participants indicated that it is useful; five (5 out of 18) indicated that it is very useful; two (2 out of 18) of the participants indicated that they are unsure; and two (2 out of 18) indicated that it is somewhat useful.

The participants in sample A were asked if they knew if there is a formal procedure/protocol/policy in place that provides instructions for police officials on how to **investigate** human trafficking cases. This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were requested to list the specific legislation. Six (6 out of 12) of the participants indicated that

there is a procedure; two (2 out of 12) indicated that there is a protocol; and one (1 out of 12) indicated that there is a policy. In this regard one (1 out of 12) participant indicated that there is not a procedure; one (1 out of 12) indicated that there is no protocol; and one (1 out of 12) indicated that there is no policy. Five (5 out of 12) participants were unsure if there is a procedure; nine (9 out of 12) were unsure if there is a protocol; and ten (10 out of 12) were unsure if there is a policy. The majority of the participants (more than 50%) were thus unsure if there is a procedure/protocol/policy on how to investigate human trafficking case.

The participants in samples B1 and B2 were also asked if they knew if there is a formal procedure/protocol/policy in place that provides instructions for police officials on how to **investigate** human trafficking cases? This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were requested to list the specific legislation. Three (3 out of 18) of the participants indicated that there is a procedure/protocol/policy and listed the Palermo Protocol, special force order, Criminal Procedure Act, several legislation Acts, presentation by the NPA and only guidelines for investigation. Fourteen (14 out of 18) of the participants indicated that there is not a procedure/protocol/policy in place and one (1 out of 18) was unsure if there is a procedure/protocol/policy. The majority of the participants (more than 50%) thus indicated that there is not a procedure/protocol/policy in place on how to investigate human trafficking case.

These participants in samples B1 and B2 were asked in their experience, how useful are formal procedures/protocols/policies in investigating human trafficking cases. This was a close-ended question and nine (9 out of 18) of the participants indicated that it is useful; four (4 out of 18) indicated that it is very useful; three (3 out of 18) of the participants indicated that they are unsure; and two (2 out of 18) indicated that it is somewhat useful.

The participants in sample A were asked if they knew if there is a formal procedure/protocol/policy in place that provides instructions for police officials on how to respond to human trafficking cases. This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were requested to list the specific legislation. Six (6 out of 12) of the participants indicated that there is a procedure; two (2 out of 12) indicated that there is a protocol; and one (1 out of 12) indicated that there is a policy. In this regard two (2 out of 12) participants indicated that

there is not a procedure; two (2 out of 12) indicated that there is no protocol; and two (2 out of 12) indicated that there is no policy. Four (4 out of 12) participants were unsure if there is a procedure; eight (8 out of 12) were unsure if there is a protocol; and nine (9 out of 12) were unsure if there is a policy. The majority of the participants (more than 50%) were thus unsure if there is a procedure/protocol/policy on how to respond to human trafficking cases.

The participants in sample A were asked if they knew if there is a formal procedure/protocol/policy in place that provides instructions for police officials on whom to contact for assistance with human trafficking victims. This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were requested to list the specific legislation. Six (6 out of 12) of the participants indicated that there is a procedure; four (4 out of 12) indicated that there is a protocol; and four (4 out of 12) indicated that there is a policy. In this regard three (3 out of 12) participants indicated that there is not a procedure; two (2 out of 12) indicated that there is no protocol; and one (1 out of 12) indicated that there is no policy. Three (3 out of 12) participants were unsure if there is a procedure; six (6 out of 12) were unsure if there is a protocol; and seven (7 out of 12) were unsure if there was a policy. The majority of the participants (more than 50%) were thus unsure if there is a procedure/protocol/policy on whom to contact for assistance with human trafficking victims.

These participants in sample A were asked in their experience, how useful are formal procedures/protocols/policies in identifying, investigating and responding to human trafficking cases. This was a close-ended question and eight (8 out of 12) of the participants indicated that it is useful; one (1 out of 12) indicated that it is very useful; two (2 out of 12) of the participants indicated that they are unsure; and one (1 out of 12) indicated that it is not useful.

Even though the majority of the participants indicated either that there are no procedures/protocols/policies in place, or they were unsure if there are procedures/protocols/policies in place on how to identify and investigate human trafficking cases, the majority of the participants from samples A, B1 and B2 indicated that formal procedures/protocols/policies in identifying and investigating human trafficking cases, are useful. The participants in sample A respectively listed the following legislation relating to

procedures/protocols/policies in place for the identification and investigation of human trafficking cases, responding to human trafficking cases and victim assistance in human trafficking cases, as presented in table 25 below:

Table 25: Participants’ view of legislation relating to procedures/protocols/policies in place for the identification and investigation of human trafficking cases, responding to human trafficking cases and victim assistance in human trafficking cases

Procedure/protocol/policy: Identification	Procedure/protocol/policy: Investigation	Procedure/protocol/policy: Responding	Procedure/protocol/policy Victim assistance
<ul style="list-style-type: none"> • Awaiting new legislation (1) • DPCI mandate (1) • IOM and Interpol manual (1) • National instructions (2) • Section 11 of Organized Crime Act (1) 	<ul style="list-style-type: none"> • DPCI mandate (1) • Intelligence driven investigation (1) • IOM and Interpol manual (1) • National instructions (2) • Organised crime component (1) • Section 11 of Organized Crime Act (1) 	<ul style="list-style-type: none"> • DPCI mandate (1) • Intelligence driven investigation (1) • IOM and Interpol manual (1) • National instruction (1) • Organised crime component (1) 	<ul style="list-style-type: none"> • Part of investigative strategy (1) • Social development to assist (1) • Witness protection, NGO, IOM (1)

The participants in sample D were asked if they knew if there is a formal procedure/protocol/policy in place that provides instructions for NGOs on how to identify incidents of human trafficking. This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were requested to list the specific legislation. One (1 out of 2) of the participants indicated that there is a procedure/protocol/policy and listed guidelines for implementation of programme and training by the IOM; and one (1 out of 2) of the participants indicated that there is not a procedure/protocol/policy in place.

The participants in sample D were asked if they knew if there is a formal procedure/protocol/policy in place that provides instructions for NGOs on how to assist human trafficking victims. This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were requested to list the specific legislation. One (1 out of 2) of the participants indicated that there is a procedure/protocol/policy and listed guidelines for implementation of programme; and one (1 out of 2) of the participants indicated that there is not a procedure/protocol/policy in place.

The participants in sample C were asked if they knew if there is a formal procedure/protocol/policy on the prosecution of human trafficking cases. This was a close-ended question where the participants could either answer yes, no or unsure to each, and if their response was yes they were requested to list the specific legislation. Three (3 out of 5) of the participants indicated that there is a procedure/protocol/policy and listed the NPA document, a docket referred to as DPP and parts of Acts; and two (2 out of 5) of the participants indicated that there is not a procedure/protocol/policy in place. These participants in sample C were asked in their experience, how useful did they find formal procedures/protocols/policies in identifying, investigating and responding to human trafficking cases. This was a close-ended question and three (3 out of 5) of the participants indicated that it is useful; one (1 out of 5) indicated that it is very useful; and one (1 out of 5) of the participants noted that existing directives do not deal extensively with the issue.

The international participant interviewed (sample E) was asked whether they have specific legislation that deals with these crimes (human trafficking) and explained as follows:

We are a Destination country. We proportionally have less of the crime type. Although we have the Human Trafficking legislation since 2003/2004, we still quite young in the crime type, we have had new legislative amendments come in this year to broaden the definition of human trafficking and the offending for example, we now cover force marriages, which was not in our old legislation. Our legislation is thus growing. We found that we had some very big cases in 2003/2004 predominantly around slavery and now days like most crime types the traffickers have evolved, they are clever, they have moved away and it is more difficult for us to prove such type of offending. It is about debt bondage, it is about contracts and payments, modus operandi's has changed to try and reduce their culpability and try and hide the crime. We have also noticed because human trafficking is quite new and we are a destination country a lot of the community don't believe we have trafficking in our country and they don't understand it.

4.6 PROPOSED SOUTH AFRICAN LEGISLATION: PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL

Najemy (2010:172) states that on 25 November 2008, the South African Law Reform Commission (SALRC), submitted the draft Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) to the Minister of Justice and Constitutional Development. This proposed legislation of South Africa would establish criminal offenses for trafficking in persons and seems to be in full compliance with the standards as required in the Palermo Protocol to Prevent Trafficking in Persons. This Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) was published for public comment in early 2009 and as the period for public comment closed on 15 June 2009, the Department of Justice tabled the Bill in parliament in March 2010 (Najemy, 2010:188).

The US Department of State TIP Reports propose and recommend a three-pronged approach to end global human trafficking by focusing on *prevention*, *prosecution* and *protection*. Najemy (2010:185) states that South Africa's proposed Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) presents legislation for: the *prevention* of human trafficking; the *prosecution* of human trafficking through newly formulated offenses and penalties for traffickers; the *protection* and compensation of victims, as well as procedures for identification and general administrative measures – including a renewed commitment to international cooperation. In addition, this proposed legislation also provides an inclusive definition of the elements of trafficking and exploitation that not only includes but also surpasses the definitions provided in the Palermo Protocol to Prevent Trafficking in Persons.

The proposed Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010), section 1 states that “trafficking in persons” has the meaning assigned to it in section 4(1); “Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons” means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000; and section 4 of this Bill defines trafficking in persons as follows:

- (1) Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of-
 - (a) a threat of harm;
 - (b) the threat or use of force or other forms of coercion;
 - (c) the abuse of vulnerability;
 - (d) fraud;
 - (e) deception;
 - (f) abduction;
 - (g) kidnapping;
 - (h) the abuse of power;
 - (i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
 - (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons.
- (2) Any person who-
 - (a) adopts a child, facilitated or secured through legal or illegal means; or
 - (b) concludes a forced marriage with another person, within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence.

The proposed Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010), section 1, also states that “exploitation” includes, but is not limited to:

- (a) all forms of slavery or practices similar to slavery;
- (b) sexual exploitation;
- (c) servitude;
- (d) forced labour;
- (e) child labour as defined in section 1 of the Children’s Act;

- (f) the removal of body parts; or
- (g) the impregnation of a female person against her will for the purpose of selling her child when the child is born; and

“sexual exploitation” means the commission of-

- (a) any sexual offence referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act; or
- (b) any offence of a sexual nature in any other law.

In the light of the three-pronged approach, *prevention*, *prosecution* and *protection*, as proposed and recommended by the US Department of State TIP Reports, a summary of the draft Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) will accordingly be presented to illustrate South Africa’s intention of compliance to these requirements.

4.6.1 Prevention

Najemy (2010:187) states that chapter 2 of the Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2012) is aimed at preventing trafficking in persons and entails measures to increase public awareness. It mandates that the inter-sectorial Committee establish public awareness programmes or other measures for the prevention of trafficking in persons designed to:

- (a) inform and educate members of the public, especially those who are vulnerable or at risk of becoming victims of trafficking, foreigners who apply for South African visas who may be victims of trafficking, and South African citizens or permanent residents who depart for work abroad, on issues relating to trafficking in persons;
- (b) inform and educate victims of trafficking on:
 - (i) their rights as victims;
 - (ii) legal or other measures in place to ensure their safety, recovery and repatriation; and

- (iii) organisations, institutions or law enforcement agencies that may be approached for assistance or information;
- (c) discourage the demand for and the supply of victims of trafficking that fosters the exploitation of such victims, especially women and children.

Najemy (2010:186) furthermore states that in agreement with article 6 of the Palermo Protocol, the Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) also provides for programmes to increase public awareness, placing a foundation for the prevention of human trafficking.

4.6.2 Prosecution

Najemy (2010:186) contends that once the Prevention and Combating of Trafficking in Persons legislation has been enacted in South Africa, the National Prosecuting Authority will be complemented with an arsenal of tools to prosecute traffickers, including any person who has even minimal involvement with the movement of trafficking victims into, through and out of South Africa. This Act establishes penalties for:

- Trafficking in persons.
- Any conduct that facilitates trafficking in persons.
- Carrying victims of trafficking into, through or out of South Africa.
- Engaging in conduct that causes another person to enter into debt bondage, confiscating, possessing, concealing or destroying documents.
- Using the services of or intentionally benefitting from a victim of trafficking.

Chapter 3 of the Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) introduces offenses and penalties obligating it a crime to intentionally traffic another human being (Najemy, 2010:186). The Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) further provides that a court of the Republic of South Africa may exert jurisdiction outside of the Republic if the person to be charged:

- (a) Is a citizen of the Republic.
- (b) Is ordinarily resident in the Republic.

- (c) Has committed the offence against a citizen of the Republic or a person who is ordinarily resident in the Republic.
- (d) Is after the commission of the offence present in the territory of the Republic or in its territorial waters or on board a ship or aircraft registered or required to be registered in the Republic.
- (e) Is for any reason not extradited by the Republic or if there is no application to extradite that person.
- (f) Is a juristic person or a partnership in terms of any law in the Republic.

Najemy (2010:186) elucidates that a footnote to the Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) states: “Schedule 1 to this Bill amends the Criminal Law Amendment Act 105 of 1997 (South Africa, 1997) by including the offence of trafficking in persons in schedule 2, part 1 of that Act.” This inclusion, therefore, effects that a regional or High Court may deliver sentences of imprisonment for life on any person it has convicted of the offence of trafficking in persons.

4.6.3 Protection

The Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) provides for the protection of victims of trafficking by specifically proscribing the criminal prosecution of victims in certain circumstances, for example if a victim violates another statutory or common law provision as a direct result of being trafficked (Najemy, 2010:186).

Najemy (2010:186) explains that chapter 4 of this Bill deals with the identification and protection of victims of trafficking, and addresses the procedures on the reporting and referral of both child and adult victims of trafficking to the correct authorities, to ensure their safety. This chapter furthermore includes specific measures to be taken to assist a child trafficking victim and to provide health care to victims. In accordance with article 9 of the Palermo Protocol, this Bill subsequently includes measures for the identification and protection of trafficking victims.

Chapter 5 of the Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) addresses the status of foreign victims of trafficking, and chapter 6 of this

Bill further elaborates on the available services for adult victims of trafficking, including a list of the minimum norms and standards that must be delivered to and provided for such victims (Najemy, 2010:186).

Najemy (2010:188) states that the Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) not only addresses the compensation of victims, as well as the deportation and repatriation of victims, but also includes general implementation provisions which include measures for dealing with trafficking by a parent, guardian or other person who has parental responsibilities. In addition, general directions for implementation and procedures that must be followed by the State, as well as rights for international cooperation, are also included in this Bill.

The Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010) furthermore calls on the assistance of social workers, social service professionals, doctors, nurses and healers, immigration officials and labour inspectors to report all instances where they have reasonable grounds to presume and conclude that an adult person is a victim of trafficking. The proposed legislation thus places a positive commitment on other functioning members of the State to be more involved, thereby creating a more unified approach to South Africa's fight against trafficking in persons (Najemy, 2010:186).

This new proposed legislation of South Africa, namely the draft Prevention and Combating of Trafficking in Persons Bill [B7-2010] (South Africa, 2010), accordingly addresses the three-pronged approach, *prevention*, *prosecution* and *protection*, as proposed and recommended by the US Department of State TIP Reports, and is likely to be effective in all areas – if all the departments called upon in the proposed legislation contribute and work together to solve the prevalence of human trafficking in South Africa.

In this study the participants in sample C were asked to describe their experience in prosecuting human trafficking cases. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The answers of the participants included that they specialised in sexual offences and against children (1); learnt by trial and error (1); by doing

own research (1); gained experience in extreme sexual prosecution (1); and gained experience in victims' processing (1). The participants noted that these cases are long and mentally draining (2); language barrier is challenging (1); victims have trust issues (1); victims don't want to testify and go back to the trafficker (1); one participant noted that investigations are not always properly done (1); and one other participant noted that support was received from a good investigating team (1). The participants furthermore indicated that they had experiences where victims withdrew a case after two years (1); the accused on bail was absconded (1); and previously trafficked victims were involved in a new case (1).

The participants in sample C were asked to provide some examples of the types of cases that have involved the prosecution of human trafficking for sexual exploitation, based on their experience? This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The answers of the participants included the following:

- False job offers and better life offers (3)
- Substance abuse (3)
- No freedom of movement (3)
- Victims forced (3)
- Required to conduct prostitution (2)
- Without consent or against will (2)
- Prostitution to support addiction (2)
- Trafficked girls from Mozambique (2)
- Trafficker paid expenses (2)
- Nigerian trafficked two females from Durban (1)
- Large number of young girls (1)
- Financial benefit of trafficker (1)
- Assaulted (1)
- South Africans recruited for marriages (1)
- Nigerian trafficked with drugs (1)
- Victims withdrew case after two years (1)
- Accused on bail absconded (1)

- Warrants of arrest out for two accused (1)
- Current case involves two females and two mentally disabled victims (1)
- Previously trafficked victims involved in new case (1)
- Trafficking for sexual purposes cases referred to other provinces (1)
- Victims recruited in Eastern Cape transported to other provinces (1)
- Prostitution to repay debt bondage (1)
- Swazi used girl for sex slave (1)
- Forced marriage for sexual exploitation (1).

The participants in sample C were asked if the prosecution of human trafficking for sexual exploitation cases is treated differently in any way from the prosecution of other crimes, based on their experience. Three of the participants responded yes and two participants responded no. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The answers of the three participants, explaining the different handling of human trafficking cases in relation to other crimes, included that human trafficking cases are handled under organised crime (1); different elements are involved (1); and these cases are very complex matters due to multi-facets (1). These crimes are committed across borders (1); across multi-divisions and jurisdictions (2); and require specialised prosecutors (1). These cases are referred to as social problems and not criminal offences (1); victims might be involved with other crimes (1); the SAPS dismisses complaints from sex workers (1); and judicial officers are not up to date with the term of human trafficking (1).

The participants in sample C were asked, based on their experience, what is the sentence or punishment handed down to someone convicted of human trafficking for sexual exploitation. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The answers of the participants included life imprisonment (3); the case was still in court (1); harsh minimum sentences (1); and disparity between prescribed and imposed sentences (1).

The participants in sample C were furthermore asked to explain, based on their experience, what is needed from the police/investigators to successfully prosecute human trafficking for sexual exploitation offenders. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants included the following requirements:

- Proactive investigation (1)
- Specialised officers (2)
- Trained in investigative techniques (3)
- Interest, compassion, empathy, willingness (5)
- No corruption (1)
- People's person to connect with victim (1)
- Know the elements of the crime for statement (1)
- New information comes forth in each consultation (1)
- Female interpreters (1)
- Evidence should be chronological, systematic and logical (1)
- Psychologist to write victim impact report (1)
- Understand other crimes that might be involved (1)
- Investigator must have writing skills (1)
- Notes should be taken before formal statement (1)
- Investigator has to communicate with prosecutor (1)
- Willingness of victim to testify (1)
- Multi sectorial approach (1)
- Prosecution guided investigation (1)
- Multi-agency approach to share resources and knowledge (1)
- Investigators need to find corroborating evidence (1)
- Proper police training (1)
- Knowledge on concepts and definitions of trafficking (2)
- Knowledge of legislation (1)
- Know what the elements of the offence are (1)
- Obtain the correct affidavit according to offences and elements of crime (1)

- Knowledge of basic indicators of trafficking (1)
- Identification of victim and case could lead to justice (2).

It is clear that prosecutors deem it an important and integral part of the prosecution process that it involves honourable, trained and specialised police/investigators with sound people skills, communication and writing skills. They should also be knowledgeable on the elements of the crime of human trafficking and be informed on legislation. They should have the ability to collect evidence in a chronological, systematic and logical way. A multi-sectorial approach during the conducting of proactive investigations, which are guided by prosecution, is imperative to successfully prosecute offenders of human trafficking for sexual exploitation.

The participants in sample C were asked, based on their experience, in the absence of legislation on human trafficking, how they would determine the crime on which to charge the suspect. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants responded that duplication charges must be considered (2); that the facts will determine relevant crimes (1); that one must formulate as many charges as possible (1); and that one must make use of other legislation relevant (4). This includes legislation such as common law offences (3); statutory offences (1); sexual offences act (2); prevention of organised crime act (1); immigration act (2); drugs and drug trafficking act (2); business act (1); kidnapping act (1); assault act (1); and the children's act (1).

In answer to the question, namely: "Based on your experience, in the absence of legislation on human trafficking, for what crimes do you charge suspects suspected of human trafficking?" the participants in sample C listed several crimes as presented in table 26. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets).

Table 26: Alternative crimes to charge suspects of human trafficking

Alternative crimes to use in the absence of human trafficking legislation	
•	Kidnapping (5)
•	Rape (5)
•	Racketeering (3)
•	Assault GBH (3)
•	Immigration charges (3)
•	Drugs and trafficking (2)
•	Money laundering (2)
•	Abduction (2)
•	Keeping a brothel (1)
•	Living on earnings of prostitution (1)
•	Extortion (1)
•	Exploitation (1)
•	Corruption (1)
•	Local authority municipal bylaws (1)
•	Fraud (1)
•	Child labour (1)
•	Basic conditions of employment (1)
•	Intimidation (1)

The majority of the crimes as listed above by the participants in sample C that are used to charge suspects suspected of human trafficking, in the absence of legislation on human trafficking, are in accordance with the crimes proposed by the literature discussed earlier in this chapter to ensure that trafficking offenders are called to justice, even though these crimes do not attract as hefty judgements as specific trafficking in persons sentences would.

The participants in sample C were asked: “What are the primary barriers you face in prosecuting a case of human trafficking for sexual exploitation?” and “What do you think might help you to overcome the primary challenges you face in prosecuting a case of human trafficking for sexual exploitation?” These were open-ended questions where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants noted the following barriers and aspects to overcome the challenges they face in prosecuting a case of human trafficking for sexual exploitation, as presented in table 27.

Table 27: Primary barriers and aspects to overcome the challenges in prosecuting a case of human trafficking for sexual exploitation

Barriers in prosecuting a case of human trafficking for sexual exploitation	Aspects to overcome the primary challenges in prosecuting a case of human trafficking for sexual exploitation
<ul style="list-style-type: none"> • Lack of accredited language practitioners (3) • Lack of specialised investigators (1) • Legislation (1) • Corruption (1) • Lack of police skills for financial investigation (1) • Lack of proactive investigators (1) • Political and embassy interference (1) • Victim does not want to lay charges (1) • Victim does not want to stay in SA to testify (1) • Proper police training (1) • Concepts and definitions of trafficking (1) • Know what elements of the offence are (1) • Obtain the correct affidavit according to offences and elements of crime (1) • Basic indicators of trafficking (1) • Identification of victim and case (1) • Victim as witnesses (1) • Complex as result of being trafficked (1) • Vulnerable people (1) • Trust issues (1) • Substance dependence (1) • Problems to distinguish between different incidents (1) • Problem to provide detail (1) • Negative attitudes and preconceived ideas towards prostitutes (1) • Properly investigated cases (1) • Different sets of legislation to draft charge sheet (1) • Victim leaves safe house to return to trafficker (1) 	<ul style="list-style-type: none"> • Database of accredited language practitioners (4) • Specialised investigators (1) • Legislation (1) • Stop police corruption (1) • Proper and adequate training (3) • Specialised prosecutors (1) • Be sympathetic when taking victim to safe place (1) • Don't take victim statement on the scene (1) • Give medical assistance (1) • Take victim to safe and secure shelter (1) • Know the legislation (1) • Give the victim time to eat and sleep before taking a statement (1) • Victim to claim damages from trafficker (1) • Concepts and definitions of trafficking (1) • Know what elements of the offence are (1) • Obtain the correct affidavit according to offences and elements of crime (1) • Basic indicators of trafficking (1) • Identification of victim and case could lead to an injustice (1) • Multi-sectorial team effort approach (1) • Fast track prosecution - difficult (1)

Based on the feedback provided by the participants, it is clear that the prosecution is faced with several barriers when prosecuting cases of human trafficking for sexual exploitation. These barriers include victims who do not want to lay charges; who do not want to stay in South Africa to testify; who leave safe houses to return to the trafficker; who have problems to provide details regarding their trafficking; who are vulnerable people with trust issues and substance dependence; and who are experienced as difficult as a result of being trafficked.

From the feedback provided, prosecution furthermore faces several barriers in terms of the police who have problems to distinguish between the different incidents of trafficking; have a shortage of specialised investigators; have inadequate police skills for financial investigation; have insufficient police training and knowledge on the elements of the offence of human trafficking; who are unable to obtain proper affidavits containing the elements of this crime;

who partake in corruption; who have a shortage of proactive investigators; and who portray negative attitudes and preconceived ideas towards prostitutes.

In terms of the feedback provided by the participants regarding the judiciary, legislation and general aspects, the prosecution is additionally faced with several barriers, which include the absence of specific human trafficking legislation; different sets of legislation to draft a complete charge sheet; a lack of trafficking concepts and definitions; problems to identify victims and cases; a lack of basic indicators of trafficking; political and embassy interference; and a shortage of accredited language practitioners/interpreters when prosecuting cases of human trafficking for sexual exploitation.

Based on the feedback provided by the participants, the prosecution is furthermore of the viewpoint that the following aspects might assist them to overcome the primary challenges they face in prosecuting a case of human trafficking for sexual exploitation:

- **Victims:** Taking victims to a safe and secure shelter; being sympathetic when taking victims to safe places; not to take victims' statement on the scene; giving victims time to eat and sleep before taking a statement; arranging medical assistance for victims; and assisting victims to claim damages from traffickers.
- **Police:** Specialised investigators; proper and adequate training; knowledge of human trafficking legislation, the concepts, definitions and elements of trafficking and the basic indicators of trafficking; obtaining the correct affidavit according to offences and elements of crime; the identification of victims and cases; reducing police corruption.
- **Judiciary, legislation and general aspects:** A database of accredited language practitioners; promulgated human trafficking legislation; specialised prosecutors; and a multi-sectorial team effort approach.

In answer to the question: "What do you need to support you in prosecuting cases of human trafficking for sexual exploitation?" the participants in sample C communicated several needs as listed below. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose.

Some of the participants accordingly provided more than one answer (responses indicated in brackets).

- Proper and adequate training (4)
- Network of people to assist (2)
- Legislation (1)
- Strong law enforcement people (1)
- Accredited NGO support and shelter (1)
- Network with foreign accredited language practitioners (1)
- Victim willing to testify (1)
- Concepts and definitions of trafficking (1)
- Know what the elements of the offence are (1)
- Obtain the correct affidavit according to offences and elements of crime (1)
- Basic indicators of trafficking (1)
- Identification of victim and case could lead to justice (1)
- Platform for communication, sharing, solving, assistance (1)
- Training of judicial officers to understand the crime (1).

These prosecutors view the following as imperative support for them to prosecute cases of human trafficking for sexual exploitation: legislation; adequate training; knowledge of indicators and elements of the offence; complete statements; networking; victim cooperation; victim support; and identification of victims and cases.

The participants in sample C were asked: “What prosecution practices for incidents of human trafficking for sexual exploitation have you implemented in the past during the prosecution of these cases?” and “Describe any positive impacts of these prosecution practices that you have implemented?” This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants noted the following prosecution practices implemented and positive impacts of these prosecution practices implemented, as presented in table 28.

Table 28: Prosecution practices implemented and positive impacts of these prosecution practices implemented

Prosecution practices implemented	Positive impact of prosecution practices implemented
<ul style="list-style-type: none"> • Interview victim while information is still fresh (4) • Determine if victim of human trafficking (1) • Refer victim to safe house (1) • Refer victim to witness protection (1) • Refer victim for counselling and therapy (1) • Extend permits at home affairs for foreigners (1) • Contact foreign embassy (1) • Make extensive notes before statement is done (1) • Look at elements of crime (1) • Guide investigation to instil proactive investigation (1) • Identify the correct charges (1) • Build trust relationship with victim (1) 	<ul style="list-style-type: none"> • Victim preparation long before court date (2) • Give victim perspective on what happened (2) • Safe and protected victims cooperate with state (1) • Establish network of relevant role players (1) • Establish network for victim support (1) • Prosecuting testing case according to new TIP law for trafficking (1) • Able to present correct charges (1) • Get an understanding of the victim (1)

From these prosecution practices previously implemented regarding incidents of human trafficking for sexual exploitation, it can be concluded that much emphasis was placed on the well-being of the victim. The positive impact of these previously implemented prosecution practices similarly portray the support and thorough preparation of victims to testify in cases.

In answer to the open-ended question, namely: “What are the most important lessons learnt regarding the prosecution of cases of human trafficking for sexual exploitation that you would want to share with others?” the participants in sample C summarised the points listed below. They could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets).

- Interview victim while information is fresh (3)
- Victim well-being comes before prosecution (2)
- Take care of the victim first (1)
- Without victim evidence there is no case (1)
- Prevent secondary abuse and trauma to victim (1)
- Expect the unexpected (1)
- Traditional investigation methods do not work (1)
- Consult with all persons as soon as possible (1)

- Have your own support network (1)
- Victims pointed embassy interpreters out as traffickers (1)
- Do not use interpreters from embassies (1)
- Have more than one investigator on your team (1)
- One investigator can be manipulated (1)
- Understand the dynamics of these cases and victims (1)
- If investigator leaves, the case can go on (1)
- Team approach - trust is built with other investigators (1)
- Have a network of people to assist with victim issues (1)
- Know your case, victim needs and law (1)
- Do research (1).

From the listed important lessons learnt regarding the prosecution of cases of human trafficking for sexual exploitation, it is clear that once again the victims' well-being and needs should receive preference, as without the victims' evidence there are no cases. It is deemed of utmost importance to understand the dynamics of these cases and victims, because traditional investigation methods do not work and the focus should thus be on a team approach and making use of support networks.

4.7 SUMMARY

The rights of all South Africans are protected in the Bill of Rights in the Constitution. The South African Government is therefore obligated to "respect, protect, promote and fulfil" these rights of the people. The government's responsibility to uphold fundamental rights also applies to the rights of trafficked persons, albeit the Constitution does not specifically make provision for or refers to trafficking in persons per se.

The absence of South African legislation specifically against trafficking in persons is possibly the sternest obstacle in responding to the crime of human trafficking. The proper identification and investigation of cases that constitute trafficking in persons are amongst the additional challenges experienced in South Africa. It is therefore imperative that a concrete understanding is established of exactly what is meant by trafficking in persons, by both the SAPS and the prosecution. Human trafficking prosecutions have proceeded on an improvised

basis, noticeable and observable to the specifics of crimes such as abduction, kidnapping, assault, indecent assault and rape. However, it is clear that addressing the phenomenon of human trafficking through enacted legislation, is deemed imperative in South Africa as a country of transit, destination and origin of victims in this appalling trade.

The primary instrument that forms the foundation in the international legal framework on human trafficking, which accordingly sets forth an international standard to its signatories for enacting domestic legislation, is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (Palermo Protocol) supplementing the United Nations Convention Against Transnational Organized Crime. This instrument, referred to as the Palermo Protocol, is subsequently the primary instrument and framework upon which South African legislation is based. Each country's government is solely responsible to address the crime of human trafficking and accordingly the US Department of State TIP Reports, which are released on a yearly basis, are considered the golden standard in assessing how well governments meet this responsibility.

It is reasoned in this study that South Africa should endeavour to meet the minimum standards set out in the TIP Reports through the enactment of the Prevention and Combating of Trafficking in Persons Act 7 of 2013, signed into law on 29 July 2013 (however, not yet implemented). This should be combined with appropriate and suitable implementation procedures and measures, which are currently pending on regulations required by a number of role-players. This enactment and implementation of legislation in South Africa should also bring about the removing of the country from its current placement on the Tier 2, maintained for the last five years, ideally placing the country on the Tier 1 status, thereby bringing the country up to full compliance with US and international standards for human trafficking.

In the next chapter, chapter 5, an overview of how the identification of a crime fits into the policing process, together with the functions and responsibilities of the role players within the South African CJS, will be discussed.

CHAPTER 5

AN OVERVIEW OF HOW THE IDENTIFICATION OF A CRIME FITS INTO THE POLICING PROCESS

Together, and in cooperation with our partners around the world, we can work to end this terrible injustice and protect the rights to life and liberty entrusted to us by our forebears and owed to our children.”

(US President Barack Obama, US Department of State TIP Report, 2012)

5.1 INTRODUCTION

The primary purpose of the South African Criminal Justice System (CJS) is to prevent crime. The South African CJS is designed to ensure justice for all in the Republic of South Africa, and this takes effect through the SAPS who investigates crime; the prosecution who prosecutes crime; the judiciary who presides over criminal and civil trials and must ensure that suspected criminals are given a fair trial; and correctional services that rehabilitates offenders. In line with the purpose of the South African CJS, the goal of investigation is the prevention of crime through arrest and prosecution of the suspect.

Because one of the objectives of investigating crime is to lawfully obtain sufficient information and evidence to identify the responsible person, it is deemed imperative that investigators are skilled in investigation techniques and legal knowledge. Investigators need to be aware of the possible value of any potential information related to the specific investigation and accordingly be knowledgeable on the evidential requirements of the various crimes. The value of the different identification categories together contribute to the actual history and sequence of events of an incident, through the correct identification of a crime.

In answer to research question 3, namely: “How does the identification of the phenomenon human trafficking for sexual exploitation fit into the policing process?” (paragraph 1.6 of this study), it is fundamental to have an understanding of the South African CJS and its processes, which are regulated by the Criminal Procedure Act (CPA) 51 of 1977 (South Africa, 1977). A closer look is also required of the composition and responsibilities of key role players

functioning within the South African CJS, namely the South African Police Service (SAPS), judiciary, National Prosecuting Authority (NPA) and correctional services. Following the discussion of the structure of the SAPS as one of the key role players within the South African CJS to ensure that persons who commit offences are brought to justice, the legislative framework from which the SAPS derives its powers and functions, will be summarised. This is followed by a brief overview of the following divisions within the SAPS:

- Detective Service (Criminal Investigation).
- Forensic Science Services (support provided to investigate crime).
- Visible Policing.
- Crime Intelligence.
- Protection Services.

These divisions are mandated with the power and functions to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law in South Africa. This chapter will accordingly answer to the research objective, namely to explain how the identification of the phenomenon of human trafficking fits into the policing process. A discussion will be presented on the functions and responsibilities of role players within the South African CJS who are responsible for the identification and investigation of human trafficking; who ensure that trafficking perpetrators are charged and held responsible for their criminal actions; who preside over criminal and civil trials and must ensure that trafficking offenders are given a fair trial; and who must ensure that suspected criminals (if convicted) serve their sentences.

The objectives of crime investigation are regarded as the identification of the crime; the gathering of evidence; finding information; the individualisation of the crime; arrest of the criminal; recovery of stolen property; determining the truth; ensuring obedience to the law; as well as involvement in the prosecution process (Du Preez, 1996:4), lays the foundation for the discussion of the specific objective identification, which is viewed as the application of science in the investigation of crime. Because the detection, prevention and investigation of crime are viewed as an integrated process which encompasses the individualisation of a crime through the application of investigative and scientific methods and techniques, the categories of *situation identification*, *witness identification*, *conduct identification* and *suspect*

identification are accordingly briefly described. The cumulative value of each of these categories portrays and contributes to the actual history and sequence of events of an incident, through the correct identification of a crime to individualise that crime by the elements of the crime as identified earlier in the thesis.

5.2 SOUTH AFRICAN CRIMINAL JUSTICE SYSTEM

*“We need justice in our society so that
all people can live in freedom and security”* (NPA, 2008:7)

The South African Criminal Justice System (CJS) is based on a blend of Roman Dutch and English law and over the years has included an array of respected international legal systems. The Constitution of the Republic of South Africa Act 108 of 1996 (South Africa, 1996a) was designed to provide a system of human rights and is the foundation upon which the South African CJS rests. The Constitution furthermore sets the core values upon which this system is based and directs South African courts in both interpreting and implementing laws in South Africa (Dyson, 2012:6).

Van der Merwe (2012:6) argues that criminal justice consists of criminal procedure, the law of evidence in criminal proceedings, substantive criminal law, the law of sentencing, as well as the law governing prisoners and prisons. Van der Merwe further explains that criminal procedure accordingly forms part of a criminal justice system. She continues that the mutual binding factor between these laws is that they all primarily deal with crime and offenders and form a coherent whole in ensuring firm and fair enforcement of the rules of substantive law, in accordance with constitutional and all other legal requirements in the interest of society.

Peak (2004:12) states that within a criminal justice system the police, courts and correctional components work and interact together to function like a process within this system. The police enforce the laws and protect the community, the courts weigh evidence (of the matter that serves before them in terms of individual rights, community needs and the requirements of the law), and the correctional facilities work with the specific offender to rehabilitate and return the offender to the community. According to Travis (2012:71), there ought to be law, as no matter how wrong the behaviour in question is, one can do nothing about it unless there

is a law against it. Travis explains further that any criminal justice system is controlled by the law, therefore the power of the justice system to control behaviour often leads people to pass laws.

Dyson (2012:28) states that the South African CJS is an essential service that is available to all people within the Republic of South Africa and is accordingly designed to ensure justice for all in South Africa. The overall objective of the South African CJS, namely to prevent crime, takes effect through the SAPS who investigates crime, the prosecution who prosecutes crime and the correctional services that rehabilitate offenders. The Criminal Procedure Act (CPA) 51 of 1977 (South Africa, 1977) regulates the criminal justice process within the South African CJS and prescribes the steps that must be followed, one after the other until the criminal justice process comes to an end in each case. The criminal justice process consists of the following four stages, namely pre-trial, trial, sentencing and legal remedies after judgement and sentencing (Joubert, 2010:214).

The SAPS is one of the main role-players involved in the pre-trial process of the criminal justice process. They are responsible for investigating crime including identifying and arresting suspected perpetrators. The investigation of crime, which is the responsibility of police officials in terms of section 205(3) of the Constitution (South Africa, 1996a), is the first phase of the pre-trial process. This part of the process commences when a crime is committed and continues until the trial of the perpetrator ends. The pre-trial process cannot begin if an offence is not reported to the police by someone or if it is not discovered by the police that an offence has been committed (Joubert, 2010:214).

The investigation of crime is the main objective of the pre-trial process in order to establish if there is sufficient evidence to indicate a suspect's guilt. In this regard Monckton-Smith, Adams, Hart and Webb (2013:2) define criminal investigation as a process organised to meet the demands of the judicial system. These authors present an international definition of criminal investigation contained in the United Kingdom Criminal Investigations and Procedures Act 1996, which defines criminal investigation as "an inquiry to ascertain if an offence has been committed, to identify who is responsible, and to gather admissible evidence to be placed before a judicial authority" (Monckton-Smith et al., 2013:2). There are accordingly three noticeable objectives contained in this definition, namely to establish if an

offence has been committed, to identify who committed the crime, and to gather admissible evidence for presentation in a court of law. Police officials should thus understand the whole criminal justice process, as the community expects of the police to know what behaviour constitutes a crime and to accordingly identify the crime (the criminal justice process will be discussed in detail under paragraph 5.4). Police officials are, therefore, required to have a thorough knowledge of criminal law in order to take a complete statement that contains all the elements of the specific crime reported or identified in each case (Joubert, 2010:215).

Joubert (2010:215) states that the CPA (South Africa, 1977), together with other legislation such as the South African Police Act 68 of 1995 (South Africa, 1995) and the Constitution (South Africa, 1996a), provides the SAPS with the required authority to gather evidence and investigate crime in the execution of their official duties. Police officials need to have a comprehensive and excellent knowledge of the relevant statutory provisions, especially the CPA (South Africa, 1977), as their duties include the power to interview, arrest, search, seize and take fingerprints of certain people. In the execution of these duties they need to ensure that they at all times operate within the limits of their investigative powers, such as described in sections 10, 12 and 35 of the Constitution (South Africa, 1996a). The SAPS must be familiar with the extent of their authority, functioning as one of the main role players in the South African CJS.

5.3 CRIMINAL JUSTICE SYSTEM ROLE PLAYERS

The most important role players in the South African CJS are (Joubert, 2010:214):

- The South African Police Service (SAPS), who must ensure that suspected criminals are identified, arrested and brought to court.
- The judiciary, who presides over criminal and civil trials and must ensure that suspected criminals are given a fair trial.
- The National Prosecuting Authority (NPA), who ensures that perpetrators of crime are charged and held responsible for their criminal actions.
- Correctional services, who must ensure that suspected criminals, if convicted, serve their sentences.

The composition and responsibilities of these role players are in brief presented below:

5.3.1 The South African Police Service (SAPS)

The SAPS is largely responsible for the prevention, detection and investigation of crime in South Africa. Section 205 of the Constitution (South Africa, 1996a) states:

- (1) The South African Police Service must be structured to function in the national, provincial and, where appropriate, local spheres of government.
- (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.
- (3) The objectives of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

The SAPS consists of various different units and encounters with the public mainly take place through either the uniform or detective branch members. Uniform members conduct patrols and execute mainly crime prevention and police station duties. Once crimes are reported the detective branch members investigate the crimes and gather evidence to present in court for prosecution purposes (Dyson, 2012:10).

5.3.2 The judiciary

The judiciary consists of judges and magistrates who preside over criminal and civil trials (Dyson, 2012:10). The Constitution (South Africa, 1996a: sections 165 and 166) states:

165. Judicial authority:

- (1) The judicial authority of the Republic is vested in the courts.
- (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
- (3) No person or organ of state may interfere with the functioning of the courts.

- (4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
- (5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies.

166. Judicial system. The courts are:

- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts;
- (d) the Magistrates' Courts; and
- (e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts.

The judiciary is deemed independent and neutral. Parties who have no commitment to the State, or any other body and the general public, have no direct access to them in respect of a criminal case that serves before them. They furthermore have no prior knowledge of the facts or evidence of the cases that serve before them and must at all times ensure that suspected criminals are given a fair trial (Dyson, 2012:10).

5.3.3 The National Prosecuting Authority (NPA)

The NPA is vested with the power to decide whether to prosecute or not. The NPA's power to institute criminal proceedings on behalf of the State is promulgated in the Constitution (South Africa, 1996a: section 179) and the National Prosecuting Authority Act 32 of 1998 (South Africa, 1998b: section 20).

In terms of section 20 of the National Prosecuting Authority Act 32 of 1998 (South Africa, 1998b), the power of the NPA vests in the prosecuting authority and shall, for all purposes, be exercised on behalf of the Republic, as stated in section 179 of the Constitution (South Africa, 1996b) and according to all other relevant sections of the Constitution, are to:

- (a) institute and conduct criminal proceedings on behalf of the State;
- (b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
- (c) discontinue criminal proceedings.

The Constitution (South Africa, 1996b: section 179) states:

- (1) There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of:
 - (a) National Director of Public Prosecutions, who is the head of the prosecuting authority, and is appointed by the President, as head of the national executive; and
 - (b) Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament.
- (2) The prosecuting authority has the power to institute criminal proceedings on behalf of the State, and to carry out any necessary functions incidental to instituting criminal proceedings.

The NPA's tasks furthermore include support of the investigation of cases, discontinuing criminal proceedings where necessary and ensuring at all times that perpetrators of crime are charged and held responsible for their criminal actions (Dyson, 2012:10).

The participants in sample C were asked how many years they had been in the criminal justice field. All of the participants responded more than 10 years (5). Three of the participants indicated that they had served more than 10 years in their current position and two participants indicated six to 10 years. The participants in sample C were furthermore asked "What are the primary roles in the position you occupy?" This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). These participants' responses regarding their primary roles in the position they occupy, are listed below.

- Prosecution (4)
- Guide investigations (2)
- Advise police (1)
- Decision making in criminal matters (1)
- Organised crime prosecution (1)
- Litigation in criminal trial for state (1)
- Chairperson - Gauteng anti-human trafficking task team (1)
- Member of task team (1)
- Part of training team (1).

5.3.4 Correctional services

Correctional services must ensure that suspected criminals, if convicted, serve their sentences. In terms of section 2 of the Correctional Services Act 111 of 1998 (South Africa, 1998a), the purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by:

- (a) enforcing sentences of the courts in the manner prescribed by this Act;
- (b) detaining all prisoners in safe custody whilst ensuring their human dignity;
and
- (c) promoting the social responsibility and human development of all prisoners and persons subject to community corrections.

Correctional services must furthermore ensure that society is protected through incarcerated offenders being secure and rehabilitated. They are responsible for the effective and humane incarceration of inmates and the effective management of the remand processes pertaining to prisoners. They are also responsible for the rehabilitation and the social reintegration of offenders into the community as law abiding citizens (Department of Correctional Services, 2013).

5.3.5 Other role players

The South African CJS also includes legal representatives who comprise advocates and attorneys. Advocates are accountable to their local bar council and bound by their professional rules. Advocates are specialist attorneys who litigate in the High Court, who can appear in any court and are instructed by attorneys in difficult or serious cases. They are bound by their professional rules and are accountable to their local bar council. Attorneys are bound by the rules of their profession and are also accountable to their local law societies. They are officials of the courts responsible to ensure a fair trial, making sure that justice is done and also serve as legal representatives who appear on behalf of accused persons. They may be heard in all of the country's lower courts and can also acquire the right of appearance in the superior courts (Dyson, 2012:11).

Various other role players deliver a service in court and amongst these are the clerk of court who is responsible for the administrative part of the functioning of the court and the interpreter who provides translation services to those who do not speak the language of the court (English in South Africa) as their mother tongue. A court orderly, who is a police official, is also at all times assigned to maintain good order and security in the courtroom (Dyson, 2012:12).

5.3.6 Criminal procedure as component of the South African CJS

According to Geldenhuys (2012:6) criminal procedure regulates matters, such as the duties and powers of the criminal courts and prosecuting authorities; the powers and duties of the police as far as the investigation of crime is concerned; bail rights of suspects, arrested and accused persons; and pre-trial procedural matters, to name a few.

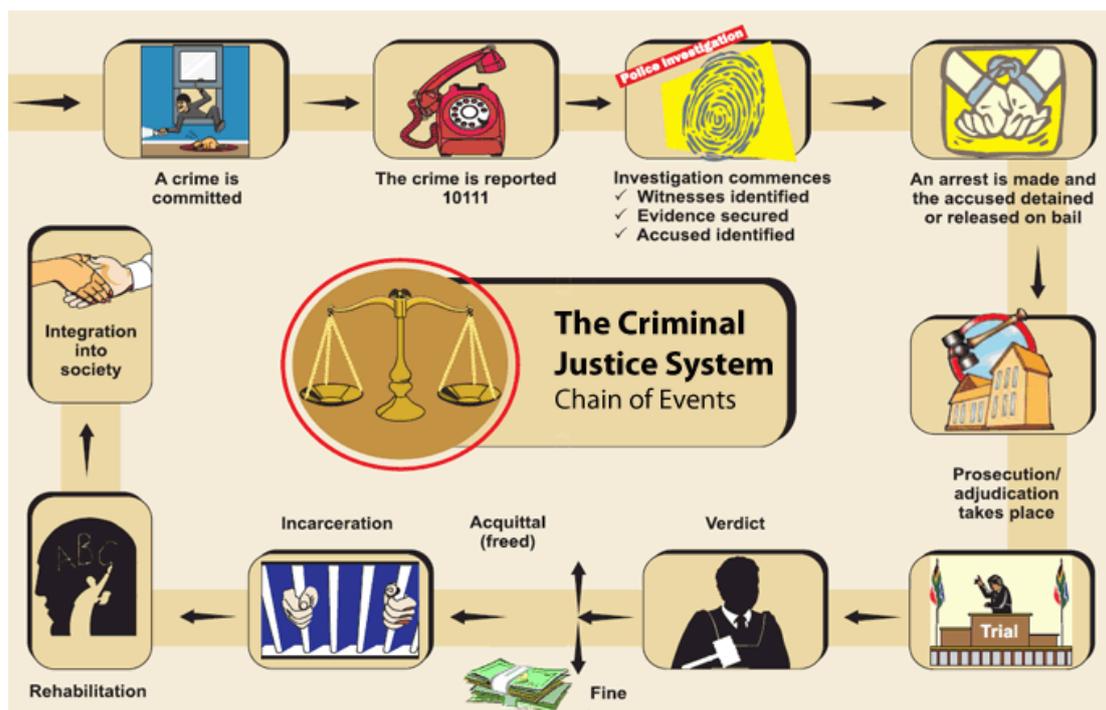
For Geldenhuys (2012:6), criminal procedure also functions as part of a criminal justice system. According to Geldenhuys (2012:6), criminal justice consists of criminal procedure, substantive criminal law, the law of evidence in criminal proceedings, the law of sentencing and the law of governing prisoners and prisons. The common binding factor between the mentioned branches of the law is that they all deal with crime and the perpetrator and form a

coherent whole to ensure that there is a fair enforcement of the rules of substantive law, in accordance with constitutional and other legal requirements (Geldenhuys, 2012:7).

5.4 THE CRIMINAL JUSTICE PROCESS

The process of the South African CJS is herewith illustrated in figure 19, as presented by the Department of Justice and Constitutional Development (DoJCD, 2013). After the visual illustration, for the purpose of this study, a basic summary of the functioning of the South African CJS will follow to provide the reader with a broad overview of the system, as the entire system has many facets and sectors which are too detailed and vast to include in this study.

Figure 19: The South African Criminal Justice System (CJS) - Chain of events



(Source: Department of Justice and Constitutional Development [DoJCD], 2013)

The criminal justice process commences once a crime has been committed and is either reported by a victim of crime (called a complainant) or discovered by the police. A complainant is required to contact the police by either visiting the police station or meeting the police at the scene of crime in order to open a case through a statement, which will be taken by the police. This statement forms a very important part of the investigation and

prosecution process, as it forms the basis of possible future court proceedings (Dyson, 2012:13).

The complainant's statement forms part of a case docket, which is opened and registered by the SAPS for further investigation. An investigating officer, who is appointed to the case from the detective branch, is required to collect all the necessary and available evidence to sufficiently link a suspect to the offence. This information (in the form of statements) and evidence are then compiled in the case docket, which is prepared for onward submission to the prosecutor. An accused (if arrested for certain less serious offences) may either be released by the police on a warning or has to be taken to a court within 48 hours after being arrested and placed in custody. If taken to court, a bail hearing will take place to determine whether or not bail will be granted, and if bail is granted the conditions of the bail will be set. Having been presented with a case docket by the SAPS, the prosecutor becomes involved in a case (Dyson, 2012:13).

When the prosecutor is presented with a case and he/she is content that there is adequate evidence to prosecute an accused, the case will be scheduled for trial and a court date will be scheduled on the court roll. An accused person is presumed innocent until proven guilty in the South African CJS. The trial will commence with the prosecutor reading the charges to the accused, upon which the accused will be required to plead either guilty or not guilty. When an accused pleads, the case will be scheduled for trial where both the prosecutor and the accused or his legal representative will receive the opportunity to present evidence in the case. After the closing of the case by the defence, both the prosecutor and the defence are to present their line of reasoning as to why the accused should or should not be convicted in the case (Dyson, 2012:24).

All the evidence is analysed and summarised by the judiciary, magistrate or judge, who presides over the case, where after judgement is passed and the accused is either found guilty or not guilty. After judgement has been passed both the prosecution and the defence are permitted to present evidence or arguments in either reduction or increasing of the sentence. Sentencing of the accused can be in the form of imprisonment, a fine, a suspended sentence, correctional supervision, community service or a combination of these sentences. If a sentence of imprisonment is passed, the accused is detained at a correctional service facility

where the process of rehabilitation and the social reintegration of the accused into the community as law abiding citizens, will commence (Dyson, 2012:24).

5.5 JUSTICE, CRIME PREVENTION AND SECURITY

“All people in South Africa are and feel safe” (DoJCD, 2013)

The priority of the South African CJS, namely to “intensify the fight against crime”, is supported by the Justice, Crime Prevention and Security Cluster (JCPS), whose main responsibility is to ensure that all people in South Africa are and feel safe. This JCPS has adopted an integrated approach to impact crime in South Africa and will continue with initiatives and measures to improve prevention, detection, investigation and prosecution in South Africa through incorporated strategies, policy and frameworks, as well as increased capacity (DoJCD, 2013).

The focus of the JCPS is to improve the efficiency and effectiveness of departments within this cluster. The delivery partners in the fight against crime within the JCPS, some in primary roles and others in secondary and supporting roles, include the following entities:

The Departments of:

- Justice and Constitutional Development (DoJCD)
- South African Police Service (SAPS)
- Correctional Services (DCS)
- National Prosecuting Authority (NPA)
- State Security Agency (SSA)
- Defence and Military Veterans (DOD)
- Home Affairs (DHA)
- Health (DOH)
- Social Development (DSD)
- Statistics South Africa (STATS SA)
- National Treasury (NT)
- Legal Aid SA (LASA)
- Communications (DOC)

- Basic Education (DBE)
- International Relations and Cooperation (DIRCO)
- Human Settlements (DHS)
- Science and Technology (DST).

Delivery partners at national, provincial and local level include heads of departments (HODs); all JPSC departments and Community Safety Forums (CSF) at local level; and safety and security members of executive councils (MECs) (The Presidency, Republic of South Africa, 2013).

The SAPS, as one of the main role players in the South African CJS, forms an integral part of the JCPS and contributes directly to this cluster through its planning process, including the Strategic Management and Annual Performance Plans compiled by the organisation. The SAPS will maintain their contribution to actively play a role in the establishing of an integrated, efficiently restructured, modernised and coordinated South African CJS in support set outcomes of the JCPS (SAPS Strategic Management, 2013).

If one analyses figure 19, there is clear evidence that the purpose of the South African CJS is to prevent crime. The illustration in figure 19 takes us from the point where the crime is committed, through the reporting, investigation, arresting, prosecution, trial and the sentencing stages, where the accused is acquitted, fined or incarcerated with the purpose of rehabilitation and the integration into the society.

This reminds one of the viewpoints of Olivier (1997), Lyman (2002), Brandl (2008) and Becker (2009) where the purpose of investigation is highlighted as the prevention of crime. Brandl (2008:4) refers to purpose of investigation as to solve the crime, to produce evidence to support a conviction in court and to provide a level of service to satisfy crime victims. Becker (2009:xvii) has a more harsh viewpoint in that he says that the main purpose of investigation is to convict the criminal. Lyman (2002:16) also regards the purpose of investigation to include the prevention of crime through arrest and prosecution of the suspect. Lyman (2002:16) identifies three (3) types of investigation responses, which are: reactive (which entails the investigator responding to a crime that has been committed); proactive (which involves investigations into anticipated criminal activity); and preventive (which is

achieved through arrests and aggressive prosecutions). Olivier (1997:228) found in his research that investigation is the best crime prevention technique because effective investigation, arrest and supporting the prosecutor in court will deter criminals from committing crime.

5.6 THE SOUTH AFRICAN POLICE SERVICE

The South African Police Service (SAPS) is a term the majority of residents in South Africa are familiar with. The concepts, policing as a process and the police as an organisation, are two terminologies recognised to cover many divisions. In terms of the Constitution (South Africa, 1996a: section 205), “police service” refers to an organisation that is responsible for a safe and secure environment in South Africa. The term policing, on the other hand, is viewed as a process which can be performed by any number of agencies or individuals and refers to the course of action of preventing crime, investigating crime and maintaining order in our country (Mawby, 2008:17).

Recently there have been a number of changes within the SAPS regarding their structure and organisational functions in specific. Therefore, the structure, vision, mission, legislative mandate and responsibilities, specifically relating to the SAPS investigation of crime in South Africa, will be presented as found during June 2013. This discussion will accordingly be as portrayed on the official SAPS website and set out in the Strategic Plan for the South African Police Service 2010-2014 (SAPS Strategic Management, 2013) and (South African Police Service, 2013).

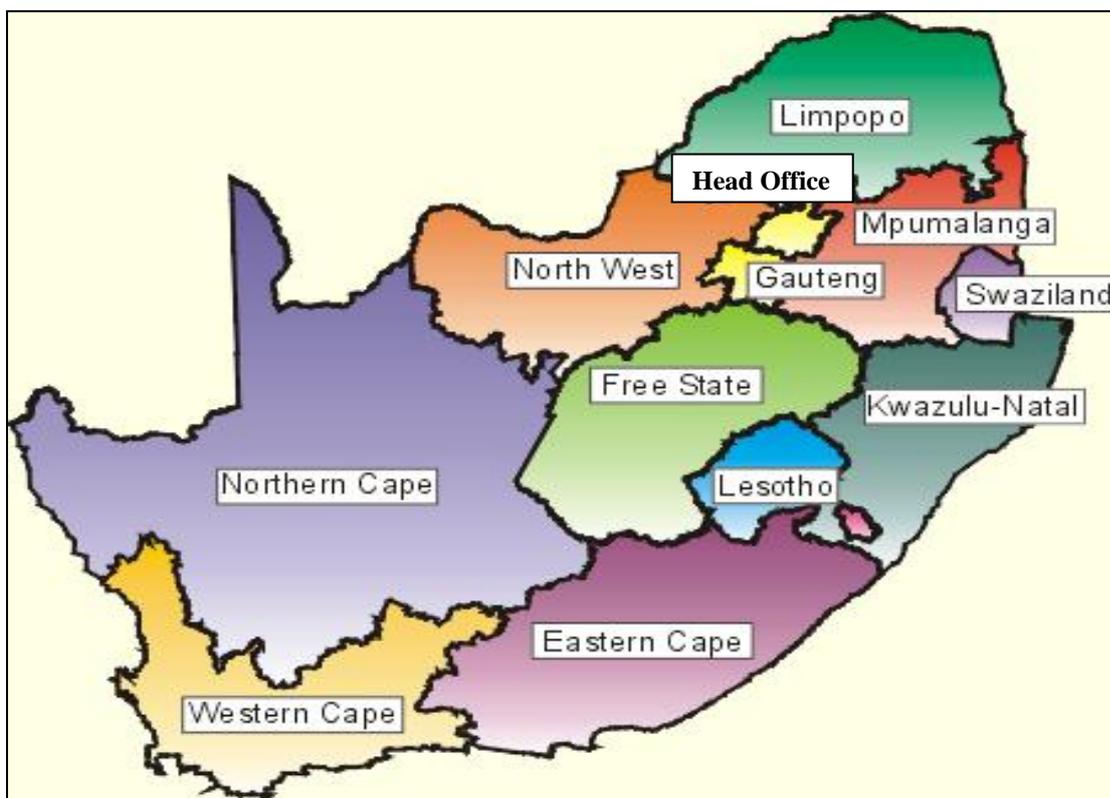
5.6.1 Structure of the South African Police Service

In 1994, South Africa became an internationally accepted democracy, which brought about many changes in the country and more specific in policing. South Africa was formerly divided into development regions (old South Africa) and homelands, which consisted of TBVC States (Transkei, Bophuthatswana, Venda and Ciskei) and self-governing territories (Gazankulu, Kangwane, Kwandebele, Kwazulu, Lebowa and Qwaqwa), each with its own policing agency. These 11 policing agencies (the old South African Police and 10

Homelands) were all established under different legislation and all had their own uniform, rank structure and conditions of service (South African Police Service, 2013).

With the adoption of the interim Constitution in 1994 in South Africa, the former 11 policing agencies were closed down and all were integrated into a united South Africa consisting of nine policing provinces namely: Eastern Cape, Free State, Gauteng, Kwazulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West and Western Cape (excluding Lesotho and Swaziland) as illustrated below in figure 20 (South African Police Service, 2013).

Figure 20: Policing provinces in South Africa



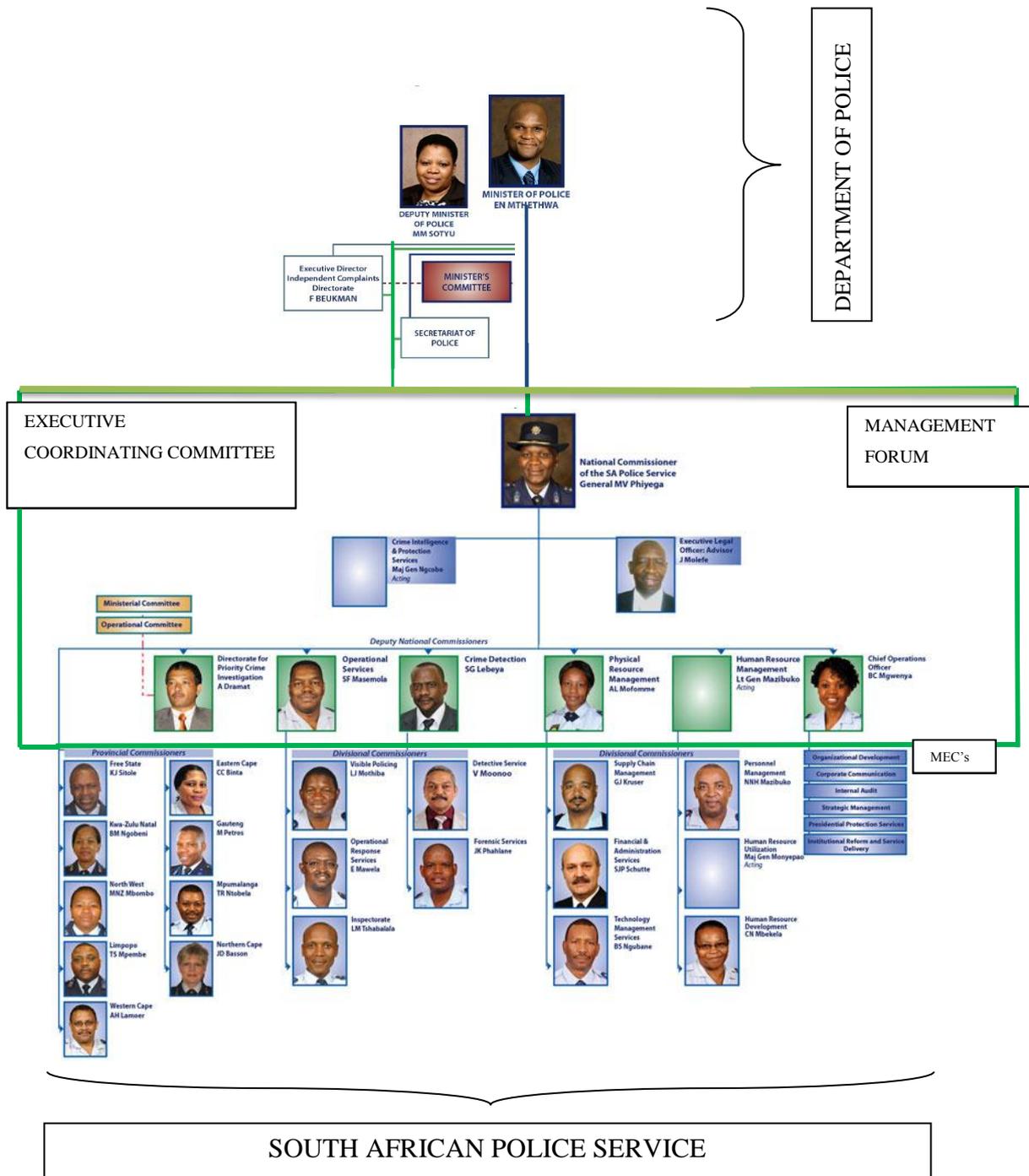
(Source: South African Police Service, 2013)

A single National Police Service for South Africa, serving under the executive command and control of a National Commissioner and appointed by the President, was instated by the new Constitution and marked the beginning of the SAPS as known today. The National Commissioner of Police forms part of the Executive Coordinating Committee (ECC) together with the Minister of Police, Deputy Minister of Police and Members of the Executive Councils responsible for Safety and Security at provincial level; as well as the Independent Complaints Directorate (ICD) whose purpose is to ensure effective coordination of the Police

Service and effective cooperation among spheres of government in terms of section 206[8] of the Police Service Act 68 of 1995 (South Africa, 1995).

The Management Forum of the SAPS further consists of: the National Commissioner; Deputy National Commissioners; Divisional Commissioners; and Provincial Commissioners who are responsible to promote operational cooperation and coordination in the SAPS in terms of section 10 of the Police Service Act 68 of 1995 (South Africa, 1995). The structure, as well as Executive Coordinating Committee and Management Forum, is presented in figure 21 (South African Police Service, 2013):

Figure 21: Structure of Department of Police and South African Police Service



(Source: South African Police Service, 2013)

Within the nine provinces there is a total of 1 146 (one thousand one hundred and forty six) police stations, which consist of 157 518 sworn officers and 41 849 civilians, thus a total of 199 367 members serving within the SAPS (as at April 2013). The 2008 mid-year estimate for the total population of South Africa stated a figure of 47 849 800 citizens. These figures

bring about a police - population ratio of one serving police member for every 303 citizens in South Africa. The ratio of the serving sworn police officers per citizen in each of the nine provinces in South Africa is depicted in table 29 (SAPS Strategic Management, 2013):

Table 29: Police - population ratios

Total number police officers (excluding civilians): 157 518 April 2013	
Total population: 47 849 800 (mid-year estimate for 2007 - Source: Statistics South Africa)	
Province	Ratio of Police Officers
Nationally	1 : 303 (1 police official for every 303 citizens)
Eastern Cape	1 : 359 (1 police official for every 359 citizens)
Free State	1 : 255 (1 police official for every 255 citizens)
Gauteng	1 : 277 (1 police official for every 277 citizens)
Kwazulu/Natal	1 : 414 (1 police official for every 414 citizens)
Limpopo	1 : 462 (1 police official for every 462 citizens)
Mpumalanga	1 : 375 (1 police official for every 375 citizens)
Northern Cape	1 : 170 (1 police official for every 170 citizens)
North West	1 : 361 (1 police official for every 361 citizens)
Western Cape	1 : 245 (1 police official for every 245 citizens)

(Source: SAPS Strategic Management, 2013)

5.6.2 Vision, mission and legislative mandate of the SAPS

The present Minister of Police, Mr E.N. Mthethwa, in his foreword of the Strategic Plan for the South African Police Service 2010-2014, specifically accentuates the vision of the SAPS to create a safe and secure environment for all the people in South Africa. The Minister further emphasises the fact that the importance of the vision of the SAPS needs to be realised in order to succeed in creating a better life for all our people in South Africa (SAPS Strategic Management, 2013:ii). In support of this vision statement, the SAPS included the following four mission statements in the Strategic Plan for the South African Police Service 2010-2014 (SAPS Strategic Management, 2013:1):

- To prevent and combat anything that may threaten the safety and security of any community.
- To investigate all crimes that threatens the safety and security of any community.
- To ensure offenders are brought to justice.
- To participate in efforts to address the root causes of crime.

The constitutional mandate of the SAPS is derived from the Constitution of the Republic of South Africa Act 108 of 1996 (South Africa, 1996a) as the supreme law of South Africa. Smit and Schnetler (2004:12) state that section 205(3) of the Constitution (South Africa, 1996a) very clearly specifies the objectives of the SAPS, namely:

- To prevent, combat and investigate crime.
- To maintain public order.
- To protect and secure the inhabitants of the Republic and their property.
- To uphold and enforce the law.

In terms of section 205(2) of the Constitution (South Africa, 1996a), national legislation must establish the powers and functions of the SAPS and must accordingly enable the SAPS to fulfil its responsibilities effectively. Although various statutes stipulate the policing powers of the SAPS, only the South African Police Service Act 68 of 1995 (South Africa, 1995), as amended by the South African Police Service Amendment Act 57 of 2008 (South Africa, 2008), describes the functions of the SAPS as noted in the Strategic Plan for the South African Police Service 2010-2014 hereunder. The Strategic Plan for the South African Police Service 2010-2014 (SAPS Strategic Management, 2013:3) explains that in terms of the Police Service Act 57 of 2008 (South Africa, 2008), there is a need to provide a police service throughout the national territory in order to perform the following functions:

- To ensure the safety and security of all persons and property in the national territory.
- To uphold and safeguard the fundamental rights of every person as guaranteed by chapter 2 of the Constitution.
- To ensure cooperation between the SAPS and the communities it serves in the combating of crime.
- To reflect respect for victims of crime and an understanding of their needs.
- To ensure effective civilian supervision over the SAPS.

The Strategic Plan for the South African Police Service 2010-2014 (SAPS Strategic Management, 2013:3-4) furthermore clearly stipulates the legislation from which the SAPS derives its powers and functions, enabling the execution of the activities as required and

mandated in terms of section 205 of the Constitution (South Africa, 1996a) and it is herewith depicted in table 30:

Table 30: Legislation from which the SAPS derives its powers and functions

Legislative Act	Act Number
<ul style="list-style-type: none"> • The South African Police Service Act, 1995, as amended by the South African Police Service Amendment Act, 2008 • The Criminal Procedure Act, 1977 • The Regulation of Interception of Communications and Provision of Related Information Act, 2002 • The National Strategic Intelligence Act, 1994 • The Domestic Violence Act, 1998 • The Prevention and Combating of Corrupt Activities Act, 2004 • The Inter-Governmental Relations Framework Act, 2005 • The Sexual Offences Act, 2007 	<ul style="list-style-type: none"> • Act No. 68 of 1995 • Act No. 57 of 2008 (as amended by the South African Police Service Amendment Act) • Act No. 10 of 2012 (South African Police Service Amendment Act) • Act No. 51 of 1977 • Act No. 70 of 2002 • Act No. 39 of 1994 • Act No. 116 of 1998 • Act No. 12 of 2004 • Act No 13 of 2005 • Act No. 32 of 2007

(Source: Section 205 of the Constitution of the Republic of South Africa Act 108 of 1996)

For the purpose of this study, an overview of the main functions of the SAPS, as specified in section 205(3) of the Constitution (South Africa, 1996a), will be briefly presented in terms of *criminal investigation*, *crime prevention* and *crime intelligence*.

5.6.3 Detective Service (Criminal Investigation)

In terms of section 205 of the Constitution (South Africa, 1996a), the SAPS is mandated to investigate crime, and the investigation of crime as a core function of the SAPS plays a crucial role in the combating of crime in South Africa. The effective investigation of crime contributes to the successful prevention of crime and therefore plays a significant role in the fight against crime in South Africa (South African Police Service, 2013:9).

The investigative capacity of the SAPS comprises the following two divisions each under its own divisional head, namely the Detective Service and the Directorate for Priority Crime Investigation (DPCI), also known as “The Hawks”. The main functions of the Detective Service include the effective investigation of all general crimes, which are not being

investigated by other investigation units, as well as the effective investigation of family violence, child protection and sexual offences.

On the other hand, the main functions of the DPCI (established in 2009) are to prevent, combat and investigate national priority offences, as well as any other offence referred to it by the National Commissioner. The DPCI is a specialised division that has been established by an Act of Parliament and specifically focuses on the prevention, combatting and investigation of national priority offences, in particular serious organised crime, serious corruption and serious commercial crime (South African Police Service Amendment Act 10 of 2012) (South Africa, 2012b). The DPCI is composed of a Commercial Crime Unit; Financial Investigation and Assets Forfeiture Unit; Organised Crime Unit; the Priority Crime Management Centre; and Support Services (South African Police Service, 2013).

The past decade brought about several structural changes within the detective environment of the SAPS. The most notable changes were the closure of some of the specialised units within the SAPS, for example the closing of the Unit for Family Violence, Child Protection and Sexual Offences (FCS). The executive and management of the SAPS, together with sectors of the community, have clearly identified the need for the re-establishment of certain of these closed down specialised units (SAPS Strategic Management, 2013).

In 2003 the SAPS did (in terms of law enforcement responses to human trafficking) establish a Human Trafficking Desk within the Organised Crime Unit. Although human trafficking did take place in South Africa, it had thus far not been viewed as a formal crime. There was no South African promulgated legislation in place addressing this specific crime and subsequently international legislation and standards were being followed. In the absence of promulgated legislation in South Africa, the SAPS investigated the phenomenon of human trafficking and case dockets were presented to the prosecution for decision and prosecution under various other crimes such as rape, abduction and assault – to mention only a few.

The Human Trafficking Desk was established to coordinate all trafficking-in-persons issues reported from the nine provinces within South Africa; to advise the provinces and organised crime units on complex matters arising from trafficking in persons' investigations; and to provide training to members of organised crime units tasked with the investigation of

human trafficking cases. This desk is furthermore responsible to liaise with relevant counterparts within the SAPS on a national, provincial and local level, as well as external role-players; to refer investigations to provinces; to monitor such investigations through monthly progress reports; and to monitor and evaluate whether the Organised Crime Unit effectively addresses organised crime involving the trafficking of persons (HSRC, 2010:10).

The participants in samples A, B1 and B2 of this study were asked what their professional involvement with regard to human trafficking entailed. The majority of the participants responded that they are the human trafficking coordinators within their respective provinces. In response to the question on how long they had respectively served within this position, of the 30 participants in samples A, B1 and B2, altogether 16 indicated one to five years, seven participants indicated six to 10 years, one participant indicated less than one year and six participants indicated more than 10 years.

The participants in sample A were asked: “What does your professional involvement with regard to human trafficking entail?” The participants in samples B1 and B2 were asked: “What are the primary roles in the position you occupy?” These were open-ended questions where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). These participants’ responses regarding their professional involvement with regard to human trafficking and their primary roles in the position they occupy, are presented in table 31:

Table 31: Participants’ professional involvement and primary roles in positions occupied with regard to human trafficking

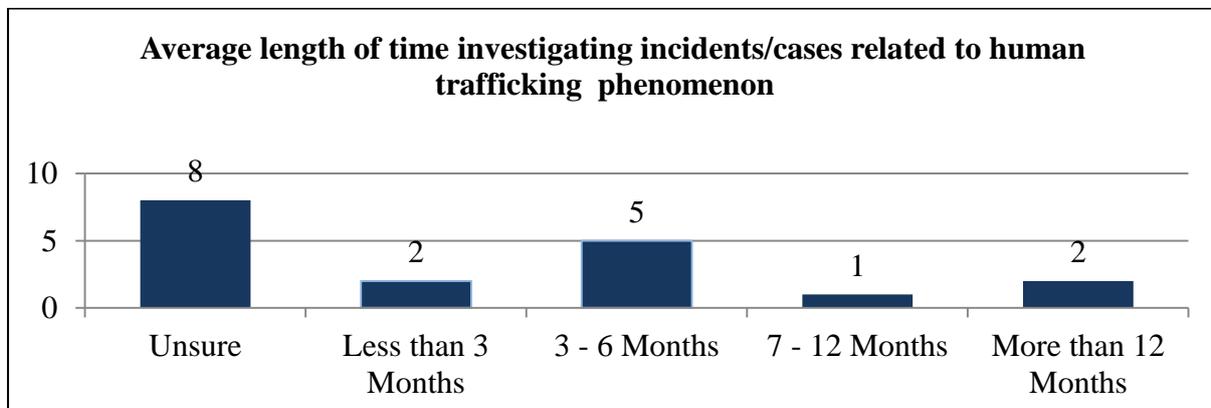
Sample A: Professional involvement with regard to human trafficking	Samples B1 and B2: Primary roles in position occupied
<ul style="list-style-type: none"> • Coordinator (6) • Command investigations (1) • Conduct disruptive operations (2) • Court related (2) • Information gathering (1) • Investigation of related crimes (7) • Liaise with stakeholders (1) • Facilitate investigation (1) • Share experience and knowledge (1) 	<ul style="list-style-type: none"> • Manage - investigations (3) • Manage - operations (1) • Investigate - fraud, corruption (3) • Assisting in guidelines for investigation (1) • Investigate - organised crime (2) • Investigate - human trafficking (6) • Coordinator - human trafficking (3) • Manage, coordinate detective activities (1) • To fight crime and to stop human trafficking (1)

Sample A: Professional involvement with regard to human trafficking	Samples B1 and B2: Primary roles in position occupied
<ul style="list-style-type: none"> • Responds to rescue missions (1) • Training interventions for SAPS (1) • Victim related (1) 	<ul style="list-style-type: none"> • Manage - administrative responsibilities (1) • Investigation - crime (1) • Combat street and brothel prostitution (1) • Assisting in all provincial reported cases (1) • Community awareness campaigns (1) • Project investigation (1)

The participants in samples B1 and B2 were asked how many years they had been an investigator and of the 18 participants, 12 participants indicated more than 10 years, two participants indicated six to 10 years, three participants indicated one to five years and one participant indicated less than one year. Regarding their qualifications, nine of the 18 noted that they had passed grade 12 and the other nine of the 18 participants noted that they have a tertiary qualification namely: National Diploma in Policing (4 of 18), B-Tech Policing (2 of 18), B-Tech Degree (1 of 18), Diploma in Business Skills (1 of 18) and BA Law (1 of 18).

The participants in samples B1 and B2 were asked approximately how many incidents/cases related to the phenomenon human trafficking they had investigated over the time period from 2007 to 2011 (investigation could include collecting evidence, interviewing witnesses, writing reports and following up on leads) and a total of 132 cases or incidents were noted by the participants. These participants were furthermore asked to indicate the average length of time they spent investigating an incident/case related to the phenomenon human trafficking. Their responses are presented in figure 22:

Figure 22: Participants’ average length of time spent on investigating incidents/cases related to human trafficking phenomenon



Even though a total of 132 cases of investigation were noted by the participants (which could include collecting evidence, interviewing witnesses, writing reports and following up on leads), the majority of the participants were unsure on the average length of time they spent investigating incidents/cases related to the phenomenon human trafficking.

The participants in samples B1 and B2 were furthermore asked to describe their experience in the investigation of human trafficking. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). These participants' responses regarding their experience in the investigation of incidents/cases related to the phenomenon human trafficking are listed below:

- It is a long and intensive process (3); at times one feels down and out (1); the complexity of the crime is challenging (1); investigations are extremely challenging (2); investigations must be conducted thoroughly (1); one must determine if it is a crime or not (1); one must identify victims from perpetrators (1); one must secure a safe environment for victims (1); and one must trace experienced prosecutors (1).
- There is a growing amount of cases (2); in some cases victims are lying (1); the tradition needs to be understood and respected (1); and the multiplicity of stakeholders involved is challenging (1).
- There is a general lack of trust (2); a lack of information (1); and all ethnical groups are potential targets (1).
- Victims are being abused, sexually and exploited (1); victims have no hope for life (1); victims fear for their lives (1); victims blame themselves for what happened (1); victims don't show interest (1); victims sometimes need a free taxi to residence (1); one must determine the condition, treatment, mental or physical state of victims (1); and ensure to follow up on victims as soon as possible (1).

Even though these participants in samples B1 and B2 noted that the investigation of incidents/cases related to the phenomenon human trafficking is a long and intensive process,

requires thoroughly conducted investigations and that the complexity of this phenomenon (as well as the investigations itself) is extremely challenging, the majority of the participants in contrast indicated that the average length of time they spent on investigating these incidents, is between one and six months.

In answer to the question if there is a specialised human trafficking unit, group or member within the participant's province assigned to *oversee* human trafficking related investigations, three of the participants responded no and 15 of the participants in samples B1 and B2 responded that there is a specialised unit. They noted the following units: organised crime unit (6); DPCI (5); specific appointed investigators (4); provincial task team for human trafficking (1); and coordinator of the human trafficking desk (1).

These participants were also asked if there is a specialised human trafficking unit, group or member within their province assigned to *conduct* human trafficking investigations. Two participants responded no and 16 participants indicated that there is a specialised human trafficking unit, group or member assigned to conduct these investigations, namely: organised crime unit (7); DPCI (6); specific appointed investigators (4); and provincial task team for human trafficking (1). The majority of the participants noted an organised crime unit and DPCI consisting of an organised crime unit.

The participants in samples B1 and B2 were asked: "Is there a reporting mechanism in place within the SAPS to track cases related to the elements of the phenomenon of human trafficking?" Seven of the participants responded no and the majority of the participants, 11 out of 18 responded yes. The participants who responded yes were accordingly asked to explain the reporting mechanism in place within the SAPS to track cases related to the elements of the phenomenon human trafficking cases. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The 11 participants' explanation included that the case must be reported to the police station (4); the police station contacts the provincial coordinator (3); and that the organised crime office will be asked to investigate the case (2). Other reporting mechanisms noted by the participants included: missing persons records (1); the police main frame (1); local criminal records (1); special force orders (1);

coordinated and investigated by provinces (2); station (2); and provincial (2) level; and the DPCI investigation team (2). The participants' responses regarding a reporting mechanism within the SAPS to track cases related to the elements of the phenomenon of human trafficking cases, differed from various sections, organisations and levels indicating no central mechanism, procedure or structure through which these cases could be tracked.

5.6.4 Forensic science services

The support provided to investigation of crime is deemed a key enabling factor in the successful investigation of reported crime within the SAPS. The division Forensic Services is one of the primary support divisions to the investigation of crime within the SAPS. This division is regarded as a line function division of the SAPS particularly responsible for forensic science services; the collection and analysis of physical evidence related to crime prevention and crime detection; crime scene management; processing and the provision of criminal history and related information; the management of criminal records; and the facilitation of technology development in the SAPS. These functions include a variety of specialised fields, such as the science of ballistics, biology, chemistry, explosives, fingerprints, questioned documents and scientific analysis (South African Police Service, 2013).

5.6.5 Visible policing (crime prevention)

The main functions of the division Visible Policing within the SAPS are to enable police stations to institute and preserve safety and security and to give effect to the objects of policing, as contained in the Constitution. In terms of the Strategic Plan for the SAPS 2010-2014 (SAPS Strategic Management, 2013), this division comprises the following components:

- Crime prevention, which provides strategic and policy direction for basic crime prevention and visible policing services rendered at police stations, including community service centres and operational policing duties.
- Firearms, liquor and second hand goods control (FLASH), which regulates the administration of firearm licences and eradicates the proliferation of firearms

for the availability and use in crime and violence; and ensures compliance and enforcement of firearm, liquor and second hand goods control legislation.

- Police emergency services (PES), which render a rapid response service in respect of crimes in progress, and provides K9 (SAPS Dog Unit) and mounted services, including the rendering of veterinary services.

5.6.6 Crime intelligence and protection services

The division Crime Intelligence and Protections Services was established to render a crime intelligence service to the SAPS and specific protections services to identify individuals and or institutions. Crime intelligence is viewed as a key informational support function to the division Visible Policing, the division Detective Service, as well as the DPCI, and directly contributes to the investigation and prevention of crime. This division operates at various levels within the SAPS and provides products and services that address the needs of their clients. These include identifying crime prone areas and suspects and conducting operations focused on violent organised crime, security intelligence, property-related crimes and crimes dependent on police action for detection (SAPS Strategic Management, 2013).

In terms of the Strategic Plan for the SAPS 2010-2014 (SAPS Strategic Management, 2013), this division is regarded as a line function division of the SAPS that is responsible for maintaining effective gathering, analysis and coordination of crime intelligence at both tactical and strategic level. It is also responsible to provide comprehensive security cover to all identified dignitaries. This division specifically renders the following functions:

- The collection, collation, analysis, coordination and dissemination of crime intelligence to ensure the neutralisation, prevention and combating of crime by providing accurate intelligence for the purpose of strategic and tactical utilisation.
- An effective and efficient counter and security intelligence service.
- An effective and efficient operational support service with regard to all resources available in support of intelligence, collection methodology.
- The ensuring of dignitary safety.

- The ensuring of the regulation of physical security in the government, national key points and strategic installations.
- An effective and secure global police communication system, access to a range of criminal databases and proactive support for police operations nationally, internally and internationally.

These divisions, namely the Criminal Investigation (Detective Service), the Directorate for Priority Crimes Investigation (DPCI), Forensic Science Services, Visible Policing (Crime Prevention) and Crime Intelligence as the main functions of the SAPS, together play a vital role in the successful prevention, combatting and investigation of human trafficking incidents and cases. As the identification and investigation of human trafficking for sexual exploitation require the use of intelligence data to direct police resources and investigations, as well as the use of experts in the examination or analysis of physical evidence, equally important is the application of prevention approaches, strategies, actions and measures to address these incidents and cases in society.

5.7 OBJECTIVES OF CRIME INVESTIGATION

The objectives of investigation are identified and described by Du Preez (1996:4), Bennett and Hess (2004:14), Joubert (2001:5), Lyman (2002:14), Swanson, Chamelin, and Territo (2003:28) and Dutelle (2014:8) as identification of the crime, gathering of evidence, finding information, individualisation of the crime, arrest of the criminal, recovery of stolen property, determining the truth, ensuring obedience to the law, and involvement in the prosecution process.

The participants in samples B1 and B2 were asked, based on their experience, what they believed the objectives of investigating crime are. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The majority of the participants noted the obtaining of evidence for successful prosecution (9); crime (5) and suspect (5) identification; the gathering of facts (4); to reveal the truth (2); to apprehend and recover (1); and to participate in a court of law prosecution process (2), which may be deemed in accordance

with the literature as discussed above. Some of the participants also included to determine the cause of the illegal action that took place (2); to investigate the perpetrator (2); victim identification (1); and bring perpetrator to court (4), which inevitably forms part of the investigation process. Some of the participants also included crime prevention (4) and rehabilitation (1) in their response, which relates directly from the successful investigation of crime.

For the purpose of this discussion, the research objective to “explain how the identification of the phenomenon of human trafficking fits into the policing process” will be discussed in answer to the third research question of this study, namely: “How does the identification of the phenomenon human trafficking for sexual exploitation fit into the policing process?”

Gilbert (2004:33) states that modern criminal investigation, specifically relating to physical evidence connecting a suspect to crime, has evolved from ancient origins over time and has accordingly become very important. The application of science in the investigation of crime was born through Alphonse Bertillon’s method of criminal identification based on scientific principles called anthropometry (Gilbert 2004:19). Numerous other individuals contributed to the development of criminalistics with unique discoveries and scientific theories in the field of crime investigation, which led to the well-known belief of criminal investigators, namely the Locard principle, that “every contact leaves a trace”.

Identification of a crime concerns situation identification, that is to say the type of crime committed, if any, and what kind of information or clues can possibly be collected (Du Preez, 1996:2). According to Van Heerden (1976:195), identification consists of different categories, which all contribute to the individualisation of a crime. The cumulative nature and value of identification are portrayed in the fact that a series of identifications is often required to individualise guilt or innocence. The use and application of different identification categories are presented in variable combinations, depending on the type of crime, and therefore each must be considered both individually, as well as collectively. An investigation hypothesis is formulated by the investigator on the crime scene, which is an open statement determined and confirmed through the use of different categories of identification. In this regard it is the investigator’s responsibility to confirm the crime through the application of the different categories of identification. The cumulative result of the outcome confirms or

disproves the hypothesis. Once the investigation hypothesis is confirmed through the application of identification that a crime had indeed been committed, it is no longer a suspicion or assumption but a statement of fact, whereby the conduct of the crime can be individualised.

The investigation hypothesis remains open in all stadiums throughout the entire investigation process to ensure that all the information and evidence which could possibly relate and contribute to the solving of the crime, are collected. If one of the identification categories is not completely addressed, the investigation hypothesis remains open and therefore cannot be cumulatively individualised, which results that a case could not be successfully presented to court. The closed hypothesis therefore relates to the solving of all the aspects of the conduct in question (Van Heerden, 1976:195).

Du Preez (1996:4) reasons that the categories of identification present three components, namely:

- The people involved in the identification of the victim, suspect and witness, either directly and/or indirectly.
- The nature of the conduct and the manner in which it had been executed.
- The unlawful character of the action which points to the identification of the crime.

For the purpose of this discussion the following different identification categories will briefly be described to portray the cumulative value of each, namely: *situation identification*, *witness identification*, *conduct identification* and *suspect identification*.

5.7.1 Situation identification (identification of the crime)

Bennett and Hess (2004:4) suggest that the first objective and thus starting point in a criminal investigation, is to determine whether a crime has in fact been committed and thereafter it must be determined if the evidence supports a specific offence. These authors further explain that knowledge of the elements of crime is essential in gathering evidence to prove that a crime has in fact been committed. The crime situation must be identified in terms of the

judicial requirements for the furnishing of proof, as well as in terms of all observations that were made at the crime scene. In most cases the circumstances of the crime events can be determined through thorough investigation of the crime scene together with interviews of complainants, victims and witnesses (Marais & Van Rooyen, 1990:19). In this category of identification the type of crime committed, if any, as well as what kind of clues, information and evidence can possibly be collected during the investigation of the crime, must be identified (Du Preez, 1996:4).

Gilbert (2004:63) suggests that the investigation of crimes can be divided into three general phases, namely the preliminary, the in-depth and the concluding investigation phase. This author further argues that the exposure of the criminal offense forms part of the preliminary investigation phase and that this step is accordingly vital to the success of the investigation.

According to Van Heerden (1976:195), this category of situation identification furthermore determines the investigation hypothesis. The investigator uses his knowledge and experience in an effort to shed light on all the factors involving the crime situation. The investigation hypothesis is the acceptance that a crime has been committed, but that it has not yet been proved. Gilbert (2004:55) supports this notion by stating that the forming of a hypothesis is to construct an explanation for an occurrence. The investigator must at all times identify the crime situation with an open approach and attitude at the hand of both the required judicial elements, as well as observations at the crime scene.

Du Preez (1996:18) indicates that the investigator, by means of the hypothesis, endeavours to recreate the crime scene for the purpose of the investigation. This reconstruction is soundly based on observable facts through theory and observation by means of deductive, inductive and rational argumentation of the investigator in an attempt to identify the crime and reconstruct the crime-scene.

In the investigation process critical thinking is specifically assisted by the deductive and inductive method of reasoning. Many investigators employ a combination of these two methods of reasoning or argumentation referred to as rational argumentation, or put emphasis on one over the other, depending on the nature of the investigation (Gilbert, 2004:39).

The deductive and inductive argumentation and rational reconstruction as discussed by Du Preez (1996:18-19) and Gilbert (2004:39) are presented below in table 32 in order to list the key elements of these three approaches.

Table 32: Deductive argument, inductive argument and rational reconstruction

Deductive argument	Inductive argument	Rational reconstruction
Generalisations to particular facts - reasoning or substantiation of the general.	The particular (facts) leading to the general - generalisations and theories.	Alternative manner of reasoning.
Logical argumentation - deductions made from a situation should not exceed the bounds of reasonableness and should be tested by objective criteria for validity or invalidity.	Empirical observations – information is collected methodically and analysed critically.	A combination of deductive and inductive argumentation.
Theory is formulated by the feature of general occurrences as well as the relevant phenomena and circumstances.	Any premise or approach of an argument in support of a conclusion is refused without empirical justification.	The rational theory of the crime takes all possible theories into account.
Theory is supported by means of a precise and critical analysis of the relevant information about the crime.	True supporting evidence leads to the most likely conclusions. Supporting suppositions offer gradual support – from little to much – to these conclusions.	The normal theory of the crime takes all possible theories into account.
True premises - evidence for the conclusion - lead to true and actual conclusions.	Premises offer considerable inductive support to conclusions – it can be asserted that the conclusion is the most likely.	Fundamental questions aimed at determining the unlawful nature of the situation and establishing liability should be answered by this approach.
The truth of the conclusion is already included by implication or positively in the truth of the premises.	New empirical information may be collected which will change the logic of the argument.	The menaces withheld in false premises, inequitable conclusions, errors of logic, ignorance about possible alternatives and the possible inability to differentiate between reality and probability must be guarded against.
The investigator must guard against subjectivity and tunnel vision as there is a danger of gathering information selectively which tends to confirm a prejudiced and predetermined theory.	The investigator must demonstrate an exceptionally high degree of objectivity – this form of argumentation should receive primary consideration.	The investigator needs to rely on his own intuition, imagination, inventiveness and creativity to strengthen his cognitive and analytical powers. Speculation must be based on good judgement and dominated by logic and sober thinking. The investigator must ensure that the correct manner in which the joint processes of argumentation should proceed must be acquired and applied with caution.

(Source: Du Preez, 1996:18-19; Gilbert, 2004:39-40)

Du Preez (1996:4), like Bennet and Hess (2004:4), states that the information, facts and evidence obtained and collected must consequently confirm that an act, subscribed by the juridical elements of the specific crime, indeed amounts to unlawfulness and that a specific person is responsible for the commission of the specific crime. Situation identification is of the utmost importance, as the incorrect identification of a crime could result in an investigation that is focused and directed in a wrong direction, whereby valuable information and evidence are lost resulting in an unconfirmed hypothesis.

The protection of the crime scene during the preliminary investigation is of critical importance as the successful outcome of the preliminary investigation may be diminished by the passage of time (Gilbert 2004:67). This author furthermore reasons that the probability of a successful investigation decreases with the passage of time from when the suspect commits the crime to the arrest of the suspect. Gilbert (2004:67) continues to argue that numerous factors impact on this phenomenon and presents that the longer a suspect remains at large, the greater the possibility becomes that:

- The suspect escapes from the crime scene.
- Evidence removed from the crime scene by the suspect is destructed or disposed of.
- Witnesses or victims are inaccurately identified.
- Victims or witnesses are unwilling to testify in court.
- The case is suspended by the police.
- The suspect constructs credible alibis for his or her whereabouts.
- Possible contamination of the crime scene or loss of physical evidence occurs.

5.7.2 Witness identification

Gilbert (2004:67) argues that the identification of witnesses also forms part of the preliminary investigation phase. This author accordingly explains that in addition to the crime scene, another primary focus of the investigation will be the involved people. In this regard victims, witnesses and any other person who can add information and shed light on the investigation are of great importance and value to the preliminary investigation. Witnesses must therefore

be promptly identified and located and victims must accordingly be asked to identify witnesses who may have been present during the commission of the crime.

According to Van Heerden (1976:196), this form of identification is not always the best evidence as it is subject to various factors including human error, inadequate observation and reporting, proposition, suggestion and incorrect associations. However, through the use of this identification category the unlawful conduct and the general nature of events are collected at the hand of witness statements. The conduct of the suspect is individualised through the sequence of events as it is collected and declared in the statements of complainants and witnesses.

5.7.3 Conduct identification

Conduct identification is the source element of determining the relation of a person's conduct to the crime under investigation. Gilbert (2004:253) argues that because a suspect's identity is mostly unknown to a victim, the investigator's first and foremost goal is to identify a suspect. The conduct of a suspect plays a determining role in the modus operandi, which is considered to be a strong tracing element during the investigation of crime. Investigators should in this regard thus trace offenders' movements from initial to post committing of the crime under investigation. It is of paramount importance that complete and clear information relating to the method of operation be captured in the preliminary report, as these reports serve as the foundation for successful investigation and subsequently provide the entire South African CJS with essential information.

5.7.4 Suspect identification

According to Van Heerden (1976:198), this identification category is based upon the positive identification of the suspect as the person who committed the alleged crime, rather than the identification of the person's unlawful involvement. It encompasses identification techniques such as description of persons, sketches, identification parades, coincidental identifications, photo identifications, voice-identifications and modus operandi.

Bennett and Hess (2004:161) explain that some criminal cases require that suspects be developed, traced, identified and then arrested, while other cases begin with an arrest and proceed to identification. It is most important that investigators prove the elements of a crime and establish evidence that connects the suspect with the criminal act, irrespective if a suspect is known or has confessed to the crime. These authors furthermore suggest various forms of developing, tracing, locating and identifying suspects, which include but are not limited to:

- Identifying suspects at the scene.
- Field identification/Show-up identification (apprehending a suspect while committing a crime).
- Developing a suspect through information provided by victims, witnesses and other persons who have knowledge about the crime or the suspect, physical evidence left at the crime scene, modus operandi information or the psychological profiling of a suspect.
- Photographic identification.
- Identification parades.
- Information in police dockets, through informants, surveillances, undercover assignments and raids.

According to Gilbert (2004:513), most often cases are referred to investigators with an unknown-suspect category, meaning that the suspect's *actions* might be known, however identification of the *person* has not been made. This author confirms that even though a suspect's identity is known it is of the greatest importance that information provided by victims or witnesses be confirmed through identification procedures. A lack of suspect identification and the absence of physical evidence to connect a suspect to a crime, often account for low apprehension rates in criminal cases (Gilbert, 2004:75).

The crime of human trafficking for sexual exploitation is not restricted to one crime scene and could vary from the source, transit and destination point, as well the transportation used and various places of exploitation of the victim. This aspect is elaborated on in chapter 6 where the identification of human trafficking for sexual exploitation is discussed in more detail.

The participants in samples B1, B2 and D were asked: “Based on your experience, what is identification?” This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). These participants’ responses regarding their views on the identification process in human trafficking crimes are presented in table 33:

Table 33: Participants’ views on identification

Sample B1 and B2: Identification	Samples D: Identification
<ul style="list-style-type: none"> • Identification of elements of crime (7) • Identification based on information at hand (7) • Identifying victim of trafficking (6) • Positive information (1) • Identification of trafficker (1) • Identifiable structures indicating similarity (1) • Stereotype approach of victim (1) • What is done - recruitment, transporting, harbouring (4) • How is it done - threat or force (1) • Why is it done - exploitation (1) • Taking advantage of vulnerable person (1) 	<ul style="list-style-type: none"> • Clarify victim status (1) • Identification of situation (1) • Observation (1) • Responding to observed signs (1) • Seeing signs (1)

The majority of the participants in samples B1, B2 and D explained that identification is based on information at hand (7) and included identifying the elements of crime (7) and identifying the victim of trafficking (6). Some of these participants also made mention of the identification of factors such as what is done, how it is done and why it is done through looking at specific signs, observation and then responding to information and signs observed (9). The minority of these participants also included the identification of the situation (1) and the identification of the suspect (1). Based on the feedback provided by the participants, the participants included situation identification, which forms part of the nature and conduct of the crime as discussed in the literature above. However, although the majority of the participants included the identification of the victim, none of the participants made mention of the identification of witnesses and only one participant included the identification of the suspect.

The participants in samples B1, B2 and D were asked, based on their experience, what is meant by the concept of identification process. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided

from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The majority of these participants responded that it is a process used in identification (4); one must determine if person is a victim of trafficking (6); and that in this process the victim must be recruited, transported, exploited (4). Some of the participants responded that one must identify information and elements of crime (3); identify the crime (2); identify perpetrators (1); conduct interviews (1); and question how, when, where, why, what may identify the concept (2). Some of the participants also noted observation (1); clarifying the victim's status (1); determining of exploitation and harbouring (1); as well as the victim's expectation and sheltering needs of the victim (1). Based on these participants' feedback the majority of the participants related it to human trafficking in terms of the identification of the victim, the victim's status and the victim's needs, as well as the elements, circumstances and concept of the crime.

The participants in samples B1 and B2 were asked, based on their experience, what it means to identify a crime. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. The majority of the participants noted that one must determine if all the elements of the crime are present (10); identify the contradiction to law (7); and one must gather evidence for the prosecution of perpetrators (1). The majority of the participants' responses were in accordance with the discussion in the literature relating to the identification of the elements of the crime.

In answer to the open-ended question, namely: "Describe the category 'situation identification' in order to identify a crime, based on your experience" the participants in samples B1 and B2 summarised the points listed below. They could provide their own answers to the question and no choices were provided from which they could choose. Some participants accordingly provided more than one answer (responses indicated in brackets).

- In terms of identifying a crime based on the situation, one needs to identify:
 - Situation that the investigator comes across (2)
 - Environment in which the person is (4)
 - Detection and identification of the crime (3)
 - Based on leads at the scene indicating crime (2)

- Condition of the victim (2)
- Question what, who, where, how, why (2)
- Recruitment, transportation, harbouring, exploitation (2)
- Conduct interview to secure victim and perpetrator (1)
- Remove the victim to place of safety (1)
- Based on action and verbal uttering of people indicating crime (1)
- In terms of the application of identification, one needs to identify:
 - The place (1)
 - The purpose it is used for (1)
 - What happens in the property (1)
 - The reason for the person's presence (1)
 - Look at brothels, clubs, street prostitution (1)
- In terms of the victim, one needs to identify:
 - The person that is exploited (2)
 - What is the victim exploited for (2)
 - Place of origin (2)
 - How did they come to the country (2)
 - Why did they come here (1)
 - Who brought them and why (1)
 - Does the person have own free will or is the person being forced (1)
 - Check victim activities and routine (1)
 - Body language (1)
 - Questioning the victim (2)
 - Victim to sell sex for trafficker (1)
- In terms of the people, one needs to identify:
 - Who comes frequently (1)
 - Who is the owner of the property (1)
 - Modus operandi of crime (1)
 - Police trap (1)
 - Exchange of money (1)
 - Connected to other crimes (1).

Although participants were required to describe the category *situation identification* in order to identify a crime, the participants' responses included identification in terms of identifying a crime based on the situation, the application of identification and the identification of the victim and the people. Some of the participants' responses addressed the aspects addressed in the literature discussed, namely the detection and identification of crime, leads at the scene indicating crime and questioning what, who, where, how, why. However, the majority of the participants' responses related the identification of the crime focusing specifically on human trafficking victims and their circumstances and needs.

In answer to the open-ended question, namely: "Based on your experience, what are the basic steps to identify cases of human trafficking?" the participants in samples B1 and B2 summarised the points listed below. As they could provide their own answers to the question and no choices were provided from which they could choose, some of the participants accordingly provided more than one answer (responses indicated in brackets).

- Proof trafficking is taking place through elements of crime (5)
- Confirm recruitment (5)
- Confirm exploitation (5)
- Confirm transportation (4)
- Identify victim (4)
- Question location versus place of origin (3)
- Freedom of movement infringed (2)
- Interview victim and get statement (2)
- Investigate surrounding circumstances (2)
- What, how, why it is done (2)
- Question location and employer of victim (2)
- People that need help (1)
- Basic unit of crime of trafficking (1)
- Process intelligence on traffickers (1)
- Confirm benefit of the accused (1)
- Question consent to exploitation (1)
- Surveillance (1)
- Forensic identification (1)

- DNA (1)
- Ballistic identification (1)
- Gathering information (1)
- Identify suspects or perpetrators (1)
- Secure conviction (1)
- What is the will and intention of the victim (1)
- Physical appearance of victim (1)
- Check the victim's routine (1)
- Counselling for victim (1)
- Ask for identification documents (1).

Based on these participants' feedback, the majority of the participants' responses for the basic steps to identify cases of human trafficking, referred to the identification of the elements of the crime including recruitment, transportation and exploitation (what, how, why), even though the legislation of human trafficking had not been promulgated in South Africa during the time of the study and the elements of the crime are identified based on international legislation. The participants furthermore included practical steps of identification based on the victim's appearance and circumstances, as well as the application of general investigation methods and techniques.

The participants in samples B1 and B2 were asked based on their experience, which additional observations should be made in order to confirm the suspicion of an incident of human trafficking for sexual exploitation. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants responded that one must conduct actual reconnaissance on premises, persons, and perpetrators (5); one must observe all the people visiting the property as well as clients visiting the premises (3); how much time visitors spend at property (2); the gender and age of visitors (1); the type of car they use (1); the location of persons' identification documents (1); the interaction between the victim and perpetrator (1); the manner in which victim is approached (1); and the manner the victims dress, talk and behave (1). One must also observe if the minors involved in sexual behaviour are not acting out of free will (1); make use of print media (2); the internet (1); modus

operandi information (2); and undercover observations (1). Based on these participants' feedback on which additional observations should be made in order to confirm the suspicion of an incident of human trafficking for sexual exploitation, the majority of the participants' responses included practical observation methods relating to the circumstances, environment and persons involved.

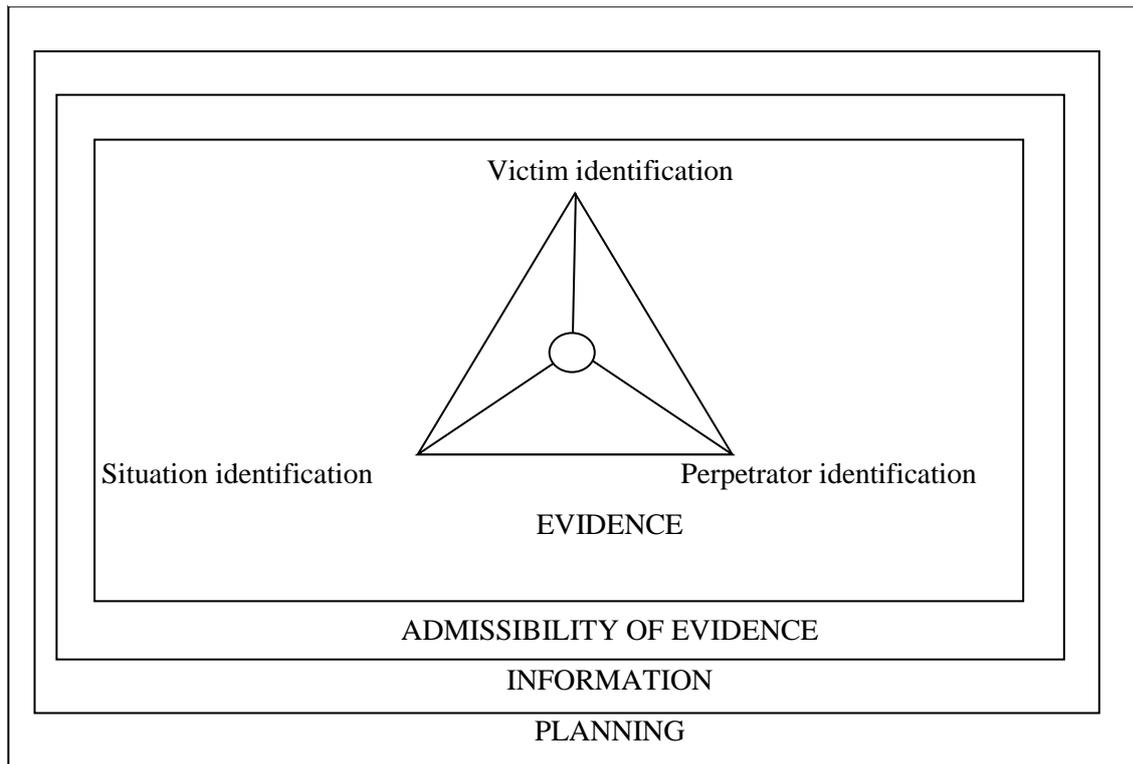
In answer to the question if identification plays an important role in criminal investigation, the participants responded that in their experience identification most definitely plays an important role in criminal investigations (10), contributes to successful investigations (6) and forms part of the chain to conclude if crime had been committed (2).

5.8 INDIVIDUALISATION

Lee, Palmbach and Miller (2001:184) define individualisation as the process followed by identification to establish if a specific sample is unique, even among members of the same class. Du Preez (1996:6) explains that individualisation begins at the crime scene and where identification entails merely the categorising of something or somebody without the drawing of comparisons, individualisation on the other hand is concerned with comparison (usually of the contested object in question found at the crime scene with one of known origin).

Van Rooyen (2004:17-18) explains that the investigator conducts his investigation through the gathering of all relevant information in a systematic manner in order to determine the precise nature and sequence of events that transpired in the crime. All the information is gathered in an orderly and methodical way, which is performed in a systematic and purposeful manner. The individualisation process is seen as the "golden thread" in an investigation and the three aspects to this individualisation process are identification of the perpetrator, identification of the victim and identification of the crime. The identification of the situation, the victim and perpetrator of the crime is illustrated in figure 23, adapted from Van Rooyen (2004:14) as part of the investigative process in which the "golden thread" of individualisation is weaved through the various phases in a systematic and orderly approach.

Figure 23: Situation, victim and perpetrator identification



(Source: Van Rooyen (2004:14))

Du Preez (1996:6) suggests that the process of individualisation takes place to determine individuality and usually consists of a succession of identifications and comparisons to:

- Positively individualise the various objects in dispute or in question.
- Irrefutably establish and reveal the criminal connection of the object or the person providing that standard of comparison.

Not all evidence has the necessary assessable features and characteristics to obtain individualisation. However, if identified evidence is assessed and resulting examinations identify any feature or characteristic that is not shared or collective between the known and questioned sample, then the samples are accordingly excluded from having the possibility of originating from a common source (Lee et al., 2001:184).

5.9 SUMMARY

It is of the utmost importance that investigators serving in the SAPS, which is one of the key role players within the South African CJS, are able to identify all relevant information that can shed light on the investigation. Investigators must at all times be aware of the possible value of any potential information related to the specific investigation and accordingly be knowledgeable on the evidential requirements of the various crimes. The value of the different identification categories together contribute to the actual history and sequence of events of an incident. This is achieved through the correct identification of a crime, in-depth investigation of a crime scene and the meticulous note taking and reporting, which together illustrate the relationship and linkage of suspects, objects or clues in relation to the crime.

In the next chapter, chapter six, the identification of human trafficking will be discussed in terms of the current situation on the procedures followed to identify the crime of human trafficking for sexual exploitation. This chapter will furthermore present role players and policymakers with information on the technique of identification to identify the crime of human trafficking for sexual exploitation during the investigation of these crimes in South Africa in order to investigate these cases more successfully.

CHAPTER 6

THE IDENTIFICATION OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

“The reality is detestable, nauseating – but we cannot allow ourselves to turn away. In order to put an end to this worldwide injustice, we must become as organized, as sophisticated, and as relentless as the criminal syndicates who perpetrate it.”

(Lucy Liu, actress and UNICEF ambassador, US Department of State TIP Report, 2010:34).

6.1 INTRODUCTION

The hidden nature of this atrocious crime of human trafficking for sexual exploitation contributes to the challenges experienced in the identification of these incidents. The crime of human trafficking for sexual exploitation not only involves multiple offenders and crime scenes but also takes place across various jurisdictions, which furthermore hampers the identification of victims who are exploited in this horrendous offence. The general lack of awareness and understanding of the nature of this crime contributes to difficulties experienced in clearly identifying the victims of these crimes, and as such providing them with the required assistance.

Research question 4 asks: “What is the current situation regarding the procedures followed to identify the phenomenon of human trafficking for sexual exploitation” and research question 5 asks: “What practical guidelines, procedures and recommendations can be offered to police officials to facilitate more successful identification of human trafficking for sexual exploitation?” (paragraph 1.6 of this study). In answer to these two research questions it is fundamental to have an understanding of the elements of human trafficking for sexual exploitation, the characteristics and traits of traffickers, their respective roles and the means and modus operandi used by traffickers during the recruitment, transportation and exploitation phase of their victims. An overview of the functioning of trafficking groups, organised criminal groups, criminal enterprises, business enterprises together with trafficking as an organised crime approach, will contribute to a better understanding of the offenders of these atrocious crimes.

This is followed by a brief overview of the following aspects, namely human trafficking victims and their willingness to cooperate with authorities, the use and application of sources and resources of information in the identification and discovering of human trafficking incidents, as well as the training and education of personnel to identify victims. A discussion will follow on proactive identification approaches required for identifying incidents of human trafficking for sexual exploitation and cooperative partnerships between various role players. Possible indicators of this continuously expanding and ever growing horrendous crime of human trafficking for sexual exploitation will also be discussed to establish an awareness and understanding of the identification of this hidden crime.

This chapter will accordingly answer to the research objectives, namely to “explore the current situation regarding the procedures followed to identify the phenomenon of human trafficking for sexual exploitation” and to “develop practical guidelines, procedures and recommendations for police officials to facilitate more successful identification of human trafficking” (paragraph 1.5 of this study). The challenges, barriers and red flags inherent to human trafficking incidents, together with the procedures of identification, as well as best practices to identify human trafficking for sexual exploitation, will accordingly be discussed and presented. Identifying incidents of human trafficking, together with the identification of victims of these incidents, is fundamental to prevent and address this crime successfully.

6.2 HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

Severe forms of trafficking in persons as defined in sections 103, 103(8) and 103(9) of the Trafficking Victims Protection Act (TVPA) of 2000 (presented in paragraph 3.3 of chapter 3 and discussed in paragraph 4.2 of chapter 4 of this study), together with the elements of human trafficking (discussed in paragraph 4.2.3 of chapter 4 of this study) support the context of this discussion and will be briefly overviewed to lay the foundation for the identification of incidents of human trafficking for sexual exploitation.

The Trafficking Victims Protection Act (TVPA) of 2000 sections 103, 103(8) and 103(9) define “severe forms of trafficking in persons” as:

- a. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- b. the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

A victim need not be physically transported from one location to another in order for the crime to fall within these definitions.

The US Department of State TIP Report (2013:29) states that when an adult is a victim of trafficking, such a person is coerced, forced or deceived into prostitution or maintained in prostitution through one of these means, even after initially consenting. Persons involved in recruiting, harbouring, transporting, providing or obtaining a person for these purposes under these circumstances, are subsequently responsible for trafficking crimes. The crime of human trafficking for sexual exploitation (sex trafficking) may also occur within debt bondage, as women and girls are forced to continue in prostitution through the use of unlawful debt supposedly incurred through the transportation, recruitment or even the sale of these women and girls. Exploiters then insist that such debt must be paid off by these women and children before they can be free.

The US Department of State TIP Report (2013:31) proclaims that child sex trafficking encompasses that a child (under 18 years of age) is being induced to perform a commercial sex act and it is not necessary to prove force, fraud or coercion against their trafficker for the crime to be characterised as human trafficking. This report furthermore states that there are no exceptions to this rule and accordingly no cultural or socioeconomic rationalisations should prevent the rescue of children from sexual servitude.

In terms of Article 3(a) of the Trafficking Victims Protection Act (TVPA) of 2000 it is evident that human trafficking for sexual exploitation contains three essential elements, based on the definition of “severe forms of trafficking in persons”, namely:

- **Acts** (what is done): Recruitment, transportation, transfer, harbouring and receipt of persons.
- **Means** (how it is done): Use of force, threat of the use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, and giving or receiving payments or benefits to achieve the consent of a person or having control over another person.
- **Purpose** (why it is done): Prostitution, other forms of sexual exploitation, forced labour or services, slavery, practices similar to slavery and servitude.

This definition of severe forms of human trafficking for sexual exploitation, together with the elements thereof, namely acts, means and purpose as discussed above, will form the basis of deliberating the identification of incidents of human trafficking for sexual exploitation.

6.3 CHARACTERISTICS, TRAITS, ROLES AND MODUS OPERANDI OF TRAFFICKERS

According to David (2007:2), human trafficking is not an occurrence that takes place on its own, nor is it a static event. Human trafficking is rather viewed as a process that involves multiple offenders and crime scenes, often across various jurisdictions and which finally leads to the exploitation of victims of this horrendous offence. This author furthermore states that the international legal definition of the crime of human trafficking is not only complex, but also includes a number of concepts and terms that need to be clarified and defined, because an unclear understanding will directly affect law enforcement in the identification and investigation of this crime.

Worldwide, very little is known about traffickers who participate in the trade and exploitation of human beings for the purpose of sexual exploitation. This lack of information about how traffickers commit trafficking crimes, who assists them in the commissioning of these crimes, their respective relationships and roles in criminal networks, their specific relationships to victims and the modus operandi they employ in the trafficking of their victims, have a direct impact on the successful identification of traffickers and those who assist them (UNODC, 2008:2).

The identification of traffickers and the successful investigation of this crime are often dependent on the reporting of these incidents by victims, as well as the willingness and ability of victims to testify against their traffickers in order to secure a successful prosecution. In the absence of promulgated legislation successful convictions of the perpetrators of these crimes remain low and a continuous belief is created among traffickers that the exploitation of trafficking victims can continue with little risk of them being detected and accordingly brought to justice (UNODC, 2008:2).

Criminal profiling of traffickers can be employed as a method to assist in the successful identification and investigation of these perpetrators. Globally criminal profiling, also known as criminal investigative analysis or criminal intelligence analysis, is used by the police as an investigative tool to analyse offenders' methods, characteristics and traits in order to identify and investigate suspected criminals and ultimately solve crimes. The employment of criminal profiling in the identification of traffickers can assist the police in identifying these perpetrators and possibly apprehending the traffickers and their victims, for example at the point of entry into or exiting from a country (UNODC, 2008:2).

6.3.1 Characteristics and traits of traffickers

Shelly (2007:120) states that traffickers are extremely diverse, are of different ethnicities, operate on every continent and range from multinational criminal organisations to family businesses. In this form of transnational crime, women not only assume a larger role as recruiters and madams, but also as kingpins of major smuggling operations, where they assume a leading, active and prominent position. In this regard the UNODC (2008:2) highlights that even though traffickers can be men or women, female traffickers are often used to recruit victims as they would more easily be perceived as credible and authoritative.

According to Shelly (2007:121), many of these women previously worked as prostitutes within the trafficking network and are represented on the lower levels of a trafficking network, where they recruit girls for trafficking; manage the brothels; supervise, control and organise girls and women trafficked for sexual exploitation; coordinate their activities; collect the income they make; or are the bookkeepers of the networks. Some female victims of sexual exploitation become traffickers themselves. Once their debt has been paid off to their

trafficker, they either use the same method to make money or use the opportunity as a promotion of their role within the trafficking network, sometimes out of fear of threatened violence, should they escape or leave the trafficking network (UNODC, 2008:5).

UNODC (2007:12) describes a trafficker in the crime of human trafficking for sexual exploitation (in an illustrative and not exhaustive list of offenders), as follows:

- Any person who is involved in any act in the process of trafficking.
- Any person who gains or makes a profit or exploits a person who:
 - passes through a chain, from the point of source area, through the transit area to the point of final destination; and
 - from any act involved in the process of exploitation of the trafficked persons.
- A recruiter.
- Agents of recruiters.
- The seller of the trafficked person.
- The buyer of the trafficked person.
- The transporter.
- The conspirator.
- The abettor.
- The customer or clientele.
- The pimp.
- The brothel madam.
- The brothel managers.
- The financier.
- The parent(s) or guardian(s) who knowingly traffic or sell or cause to sell their children.
- Any other person who is knowingly involved in any act of commission and or conscious, intentional or purposeful omission in the process of human trafficking.

6.3.2 Roles of traffickers

In order to enable the identification of the phenomenon of human trafficking for sexual exploitation, it is important to have an understanding of the various roles as well as different levels of the trafficking hierarchy that are fulfilled and occupied by traffickers during the different stages of this phenomenon. The different functions that are performed by traffickers in the hierarchy of roles within a trafficking operation are listed according to UNODC (2008:10) as:

- **Master trafficker:** The master trafficker is at the top of the hierarchy and accordingly manages, modulates and orients trafficking activities. The master trafficker furthermore profits the most from trafficking activities and enjoys a high level of anonymity.
- **Primary trafficker:** The primary trafficker is responsible for identifying sources of supply and demand and accordingly procures, buys and sells human trafficking victims in the various identified locations according to the demand identified.
- **Secondary traffickers:** The secondary traffickers are responsible for delivering the human trafficking victims to the primary traffickers. These secondary traffickers often include relatives, friends or associates of the victims or petty and local criminals.
- **Grassroots intelligence gatherers:** The grassroots intelligence gatherers are responsible for visiting various locations, which could include for example public areas of interest, markets, stations and many more, in order to gather intelligence and information about vulnerable persons. This intelligence and information collected are in return reported to the primary or master trafficker.

The various roles which traffickers perform in the simplified phases of the trafficking of victims for sexual exploitation are outlined in the UNODC (2008:11) to be:

- **Recruiters:** The recruiters are the individuals who recruit victims.
- **Transporters:** The transporters are the individuals who transport the recruited victims throughout the various stages of the trafficking either within a country,

internally, and or across borders, transnationally, to the specific place where the victims are exploited.

- **Exploiters:** The exploiters are the individuals who exploit the victims for example through prostitution or other forms of sexual exploitation.

6.3.3 Modus operandi of traffickers

Shelly (2007:125) states that traffickers recruit, transport and exploit their victims and maintain control over their victims through a variety of recruitment techniques, modes of transport and forms of exploitation. The various techniques of recruitment, transportation methods, manners and procedures of exploitation employed by the traffickers, are only limited by the imagination of the respective traffickers. In the following sections the modus operandi for the recruitment, transportation and controlling of the victim will be briefly overviewed.

6.3.3.1 Recruitment of the victim

The UNODC (2008:10) states that the relationship between a recruiter and a victim is not only insightful into the traits and characteristics of traffickers, but also to the modus operandi employed by traffickers to recruit their victims. Shelly (2007:127) indicates that human trafficking does not have a ready supply of victims (as in the case of drugs) and thus traffickers must spend immense effort and time to recruit victims for sexual exploitation. According to the UNODC (2008:10), recruiters are selectively employed, based on their potential appeal to possible victims and they are accordingly very skilled at gaining the trust of victims to manipulate them. Shelly (2007:126) states that trust is more certainly created between individuals of the same ethnic group, who speak the same language or have similar cultural foundations. In this regard, the UNODC (2008:10) reports that recruiters are often found to be from the same ethnic group as the trafficked victim, because trust is much easier established and communication is much clearer between recruiters and victims of the same ethnic group. The violation of this trust is found to be just as distressing as physical or psychological abuse undergone by trafficking victims.

According to Shelly (2007:127), a wide variety of recruitment techniques are used, ranging from recruitment that takes place on a personal basis to recruitment through advertisements and websites. The UNODC (2008:10) report confirms the luring of victims into sexual exploitation through false advertisements in newspapers, and states that where the print media is regulated, traffickers rather make use of direct contact with victims. This report also notes that victims are often enticed with false promises of work, as well as the offering of affordable vacations, marriage services, study programmes at universities, modelling contracts and participation in beauty contests.

Shelly (2007:127) notes that recruitment often takes place through family, friends and acquaintances and even through men who befriend young girls pretending to be their boyfriends. According to the UNODC (2008:10), victims are not only recruited from own families or acquaintances but extreme poverty may also drive families to sell their own family members, including their own children. Victims are also offered work in nightclubs as dancers but are not informed of the expectation that sexual services must be rendered to customers. The reality of the offers made to victims is at all times different from the specific presentations that are made and offered to victims (Shelly, 2007:128).

6.3.3.2 Transportation of the victim

According to the UNODC (2008:10), the transportation of victims who are trafficked is a complicated matter, as it may not only involve the movement of a person within a country but may also involve the transportation of a victim through or to other countries by various means and across several borders. Shelly (2007:130) states that various techniques are used to transport victims of trafficking to facilitate their entry into other countries. These techniques often involve corruption, as many officials need to be either bribed or extorted to assist in this process. The transportation of victims over long distances may bring about several logistical challenges. Transportation must be coordinated and traffickers accordingly need to ensure that the victims are fed, housed in transit and delivered in a serviceable condition. Victims are often transported in dreadful conditions ranging from small boats without any protection from the rain or sun, in poorly ventilated compartments of trucks, or in holds of cargo vessels in which they often become very ill without receiving any medical care, as costs are minimised by traffickers (Shelly, 2007:130).

6.3.3.3 Controlling the victim

Psychological intimidation, physical and emotional violence, torture and threats to families are mostly used by traffickers to control their victims. Victims who resist their traffickers are tortured and abused in front of other victims and those who continue to resist are often thrown to their death from windows of buildings or left to die from severe injuries obtained during the torture and abuse. Victims of trafficking furthermore often find themselves to have no legal status within a country of destination, as their passports and documents had been confiscated by their traffickers. This also brings about further dehumanisation of the victims and prohibits the victims from escaping. They cannot seek any protection from their own country's embassies as they have no proof of citizenship. Attempts of escape by victims also bring about ferocious and inhumane punishment as a warning to other victims who might consider escaping. To coerce the victims they are often repeatedly raped and beaten by violent criminals who are employed by the traffickers (Shelly 2007:131).

Shelly (2007:131) explains that this atrocious coercion of the victims and methods of controlling the victim symbolise the discourse of the former slave traders, who justified the horrific treatment of their slaves by referring to them as ignorant savages. However, the intimidation of both the victim and their families at home distinguishes modern-day trafficking from the slave trade of former centuries, since the international links between traffickers enable them to accordingly deploy violence at all stages of their network (Shelly, 2007:132). The respective trafficking groups as criminal and businesses enterprises will be discussed hereafter, which range from informal low-level contacts to highly organised criminal networks.

The participants in samples B1, B2 and D of this study were asked, in their experience, what are the means used by traffickers to traffic human trafficking victims for sexual exploitation. These participants were furthermore asked to share their experience of what the typical modus operandi would be of human traffickers who traffic victims for sexual exploitation. These were open-ended questions where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 34:

Table 34: Participants’ experience of means used and modus operandi of human traffickers

Means used by traffickers to traffic victims for sexual exploitation	Modus operandi of traffickers who traffic victims for sexual exploitation
Samples B1 and B2	
<ul style="list-style-type: none"> • Land travel (3) • Air travel (3) • Deception (9) • Sea travel (1) • Recruitment (5) • Transportation (5) • Harbouring (1) • Abuse of power (2) • Documentation confiscated (1) • Promote the way to fortune (2) • Substance abuse (5) • Violence and threats (1) • Abduction (1) • Kidnapping (2) • Poverty (2) • Force (2) • Woman and children sold into trafficking (1) • Debt bondage (1) • Exploitation (3) 	<ul style="list-style-type: none"> • Trafficker is well dressed with nice car (1) • Victim is deceived (1) • Promise of accommodation (1) • Promise of legal documents (1) • Promises of lucrative salaries (4) • Promises of better work and life (10) • Soliciting and debt bondage (5) • Promise of education (2) • Marriage proposal (1) • Victim is exploited (4) • Recruitment (5) • Abuse of power (4) • Threat or force (3) • Abduction (1) • Fraud (1) • Identification documents removed (3) • Violent action against victim (3) • Gang rape (1) • Forced substance dependency (1) • Threat of harm to victim's family (1) • Exploiting victim's fear not to leave (4) • Engagement in illegal activities (1) • Poor and jobless people are easy targets (2) • Debt bondage (2) • Isolated, separated from society (2)
Sample D	
<ul style="list-style-type: none"> • Creating debt bondage (1) • Deceit (1) • Distorted Ukutwala (1) • Exposure to substance abuse (1) • Fear (1) • Forced (1) • Ignorant victims (1) • Kidnapping (1) • Luring (1) • Manipulation (1) • Payment in goods to caregivers (1) • Travel under false pretences (1) 	<ul style="list-style-type: none"> • Advertising (1) • Deceit (1) • Force (2) • Good income and career (2) • Keeping the victim vulnerable (1) • Manipulation (1) • Promises (1) • Recruitment (1) • Relationship changes from parasitic to symbiotic (1) • Victims of trafficking involved in crime (1) • Win victim’s trust (1)

Based on the feedback provided by the participants, the majority of the participants in samples B1 and B2, and all of the participants in sample D noted the means used by the traffickers in accordance with the elements (how) contained in the Palermo Protocol’s definition, as illustrated in table 3 of this study. Some of the participants also included the

action (what) in their explanation of the means used by the traffickers. Regarding the typical modus operandi of human traffickers the majority of the participants in samples B1, B2 and D explained the modus operandi used in terms of the recruitment and control of the victim. However, none of the participants provided any explanation regarding the transportation of the victims.

The international participant (sample E) was asked what means are used by traffickers to traffic human trafficking victims for sexual exploitation, and also what the typical modus operandi would be of human traffickers who traffic human trafficking victims for sexual exploitation. Based on this participant's experience, she explained as follows:

They fly them in without a doubt. Mostly the only way they can get here. They fly them in on the visas they get for them and these visas are mostly fabricated. They get them in here for a year. The traffickers are getting good now, they bring the girls in for three months and then take them out and send them home so – almost impossible for us to catch, the victims are out of the country before we get even half a chance and by the time the girls realise they are exploited they are back home. Without the victim there is no case.

From the sex industry they either entice them by a number of different ways and it relates back to the type of offending, everything from the naive girl overseas that wants to make money and knows a friend of a friend and gets told come and work here in a nail salon or karaoke bar and they will organise everything for you, when they come out here they end up in brothel. They completely deceptive recruited but they enticed by money and a good job to getting out of their circumstances they in. The second type is when they know they going to come out here to be a sex worker but then they're exploited – they not free to leave, they fined, their conditions of living is horrendous – they all live in one apartment – they don't have any freedom in a way they can participate. Then the debt bondage girls come out here with the knowledge they going to work and pay off their debt but then they don't realise the fine system.

Once a syndicate has been operating for a while – we asked one of the women involved in recruiting the girls – they pay the fines for the girls – the manager pays

the fine for the girl and she gets the money from the girls and pays it over to the head. We asked them what happens if you don't pay over the fine – they said we won't even consider not paying it – they so entrenched in you won't consider it because we scared – scared of what – well nothing really - a reputation but that is a problem for us because when something's been entrenched for so long and a reputation is built – especially we found it with young Asian females. We have not found so much drug dependency. There are some brothels with more drugs in them and the girls in them are more affected. We have more Botox actually – in the recent syndicate we brought down the girls were forced to get Botox and they only like 20 to 22 and they get their noses done – plastic surgery – and then they get into more debt.

6.4 FUNCTIONING OF TRAFFICKING GROUPS

According to the UNODC (2008:15), one needs to develop an understanding of the traffickers in order to identify and investigate this phenomenon, which takes place from unstructured, informal, low-level contacts through to very well-organised international networks. In order to create an understanding of the functioning of trafficking groups, a brief overview of trafficking groups as criminal and business enterprises and trafficking as an organised crime approach, will herewith be presented.

6.4.1 Trafficking groups as criminal enterprises

The UNODC (2008:15) describes an organised criminal group as defined in the Transnational Organised Crime Convention as: “A structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit.” The various criminal groups operate in different criminal structures, which range from small groups of individuals that may comprise family networks or are connected through shared ethnicity, while large scale criminal enterprises are conducted on an international level and oversee the entire network, from the recruitment to the exploitation of victims. The various key structural models of organised criminal groups involved in human trafficking include the following five groups, which primarily use violence as an essential means to carry out their activities, namely:

- a. **Rigid hierarchies:** These groups are identified by a strong internal discipline system with a single person in charge. These groups are organised into several cells who report to the single person in charge.
- b. **Developed hierarchies:** These groups are identified by a degree of autonomy within their own functioning. These groups have a hierarchical line of command and have several regional structures within their hierarchy.
- c. **Hierarchical conglomerates:** These are group associations of organised crime groups with a single governing body.
- d. **Core criminal groups:** These groups consist of primary individuals who are horizontally structured.
- e. **Organised criminal networks:** These groups do not necessarily consider themselves to be organised criminal entities and they are defined by strategic activities of key individuals. These individuals shift associations and groupings and their roles are accordingly determined by their skills and the capital they may contribute.

6.4.2 Trafficking groups as business enterprises

The five trafficking groups mentioned above can also be categorised as different types of business models, since profit remains the main objective of traffickers irrespective of the structure within which they operate. An understanding of the group and model they operate within sheds light on the modus operandi used by traffickers, as well as the means by which their operations may be prevented (UNODC, 2008:15). The following five models are noted by the UNODC (2008:15-16) report:

- a. **Natural resource model:** This model focuses on short-term profits which are often used to purchase other commodities with a rapid turnover. These groups sell women in the same manner as natural resources and focus on the recruitment of women and the selling of women to either the most proximate crime group or to go-between agents who accordingly deliver the women to the markets. Within this model there is a significant violation of human rights as these groups have no interest in gaining long-term profits from the women trafficked and have no connections to the victims' families.

- b. **Trade and development model:** This model functions in the same manner as a business that is combined from the start to the end and the control from the recruitment to the exploitation accordingly allows for high long-term profits. The profits are returned through underground banking and within this group there is less significant violation of human rights as traffickers have long-term interests in gaining profits from victims and often have connections to the victims' families.
- c. **Supermarket model:** This model is based on a large-scale of supply and existing demand and accordingly focuses on maximizing profits through the movement of a large number of humans, not charging huge sums for each person. These groups make use of people who are specialised in this trade to transport individuals and often exploit vulnerable individuals. The detection of these groups is difficult as the trafficking of victims is often hidden within smuggling operations. Significant profit sharing takes place with local border officials and the majority of the profits are returned in the purchasing of land and farms. Within this model there are high violations of human rights and moralities as very little profit is gained from each victim trafficked.
- d. **Violent entrepreneur model:** This model focuses on high profits that are used to finance other illegal activities or to invest profits in legal businesses. These groups often take over existing markets of trafficking by using force against current crime groups and a substantial amount of corruption is used within their activities. A large number of women are sold by these crime groups and these groups maintain control over their victims from the recruitment phase through to the exploitation phase. Within this model there are extreme violations of human rights which include the use of brutal violence against their victims.
- e. **Traditional slavery with modern technology:** This model consists of multi-faceted crime groups of which human trafficking forms part of one of their criminal profiles. These groups combine modern transport links with traditional practices and make use of psychological, as well as physical pressure to coerce their victims. A small amount of the profit is spent in their local operations of the crime groups and sometimes even returned to family members of victims. However, the majority of their profit is invested in other

illegal activities. Within this model there are a significant number of violations of human rights as victims are exploited in extreme physical and precarious conditions.

6.4.3 Trafficking as an organised crime approach

According to the UNODC (2007:7), human trafficking is viewed as a multidimensional organised crime that extends both beyond national and international borders. This crime is multidimensional as it involves:

- Elements of several crimes, such as the abduction, buying, selling, sexual abuse, sexual exploitation and criminal confinement.
- Crime scenes range from the source through the transit to the destination area.
- Multiple abusers who are accordingly networked and organised and who apply multiples abuses on their victims.
- Continuous crimes beginning from the recruitment or procurement of victims and continuing until the victims are rescued.
- The obtaining of profits at several levels of activities as victims are traded, sold and exploited over and over again.

The participants in samples B1, B2 and D of this study were asked if, in their experience, they found that human trafficking is associated with other crimes. All of the participants (20 of 20) responded yes to this close-ended question where the participants had to choose either yes or no. These participants were furthermore requested to indicate how likely human trafficking is to be associated with any of the crimes as listed in table 35 under the type of crime. These participants' responses are accordingly indicated.

Table 35: Participants' view on likelihood of human trafficking associated with crimes indicated

Type of crime	Likelihood of occurrence				
	1 Not likely at all	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Drug trafficking				14	6
Tax evasion	3	1	5	5	6
Arms dealing	4	3	8	1	4
False identification	2	3	2	7	6
Organ trafficking	1	5	5	5	4
Computer-assisted crimes	4	1	4	8	3
Organised crime				10	10
Prostitution				10	10
Terrorism	6	2	9	2	1
Pornography	1	1	3	8	7
Conspiracy	2	1	8	7	2
Gangs		3	6	7	4
Corruption and bribery	2		2	8	8
Money laundering		2	3	7	8

The responses of the participants will be elaborated on in terms of the total number of crimes reported, namely 14 types of crime indicated by the total number of 20 participants in samples B1, B2 and D, thus 20 times 14, which equals 280 responses.

- The majority of the participants responded that it is either likely or very likely that the following types of crimes are associated with human trafficking: drug trafficking; tax evasion; false identification; computer-assisted crimes; organised crime; prostitution; pornography; gangs; corruption; bribery; and money laundering (152 responses out of 200).
- The rest of these participants responded that it is either somewhat likely or not likely that these crimes are associated with human trafficking: (23 responses out of 200); or they were unsure (25 responses out of 200).
- Some of the participants responded that it is either likely or very likely (26 responses out of 80); somewhat likely or not likely at all (24 responses out of 80); or they were unsure (30 responses out of 80) that arms dealing, organ trafficking, terrorism and conspiracy are associated with human trafficking.

6.5 HUMAN TRAFFICKING VICTIMS OF SEXUAL EXPLOITATION

According to Strategic Police Matters (2011:44), victims of crime include those who have individually or collectively suffered harm, which could include physical or mental injury, emotional pain and distress, economic loss or substantial damage of their fundamental rights through acts or omissions that are in violation of criminal laws. A victim of human trafficking is furthermore described in terms of Strategic Police Matters (2011:44) to include any “natural person who has been subjected to human trafficking or who is believed to be a victim of human trafficking irrespective of whether the trafficker is identified, arrested, prosecuted or convicted.”

According to David (2007:2), human trafficking cases are mostly elusive, understated, indefinable and complex, resulting that the line between voluntary work and criminal exploitation is difficult to identify and locate, and furthermore challenging to prove. The circumstances of human trafficking victims often vary tremendously as in some instances they may hold legitimate visas and in other cases not; sometimes they may be located in the sex industry and in other instances not; at times victims are controlled through physical confinement and violence and occasionally not. In instances where control and coercion are exercised over victims in more subtle ways, victims are either threatened with violence or harm to themselves or their families, with imprisonment or deportation by authorities and with increased debt – to mention only a few.

David (2007:2) states that victims of human trafficking fail to report their experiences to the police due to fear of punishment by their traffickers. Victims may also believe that they have committed a crime and regard the situation as a result of their own wrong doing. Therefore they live in fear of imprisonment and deportation and they lack trust in law enforcement. This is supported by Farrell (2012:81) who states that even though perpetrators restrict victims’ ability to seek assistance and hide them away from the police, victims of human trafficking for sexual exploitation do not necessarily identify themselves as victims. These victims are often reluctant to come forward to the police as they know prostitution is illegal and sometimes they rather identify themselves as engaged in crimes with a perception that they would be arrested by the police. Moreover, victims of human trafficking for sexual

exploitation often have a history of abuse and trauma, which makes it even more difficult for them to acknowledge that they are being victimised (Farrell, 2012:83).

Victims of human trafficking for sexual exploitation not only fear revenge from their traffickers, but also fear violence from their traffickers and the various role players within the trafficking network (Farrell, 2012:84). According to Farrell (2012:85), these victims also face additional fears of threats by their traffickers that their families in their home countries will be harmed and that they will be deported, should they seek assistance from the police. Victims of human trafficking for sexual exploitation are unfortunately often misclassified by the police as offenders, either when they do seek assistance or are identified through other police investigations (Farrell, 2012:87). Farrell (2012:89) states that the inability of victims to speak English furthermore contributes to the misinterpretation of their victimisation by interpreters who are relied on by the police to relay the victims' experiences.

According to David (2007:2), the lack of cooperation by victims of human trafficking is exacerbated by the fact that they do not identify themselves as victims and they believe their circumstances are a mere form of bad luck. These victims may have experienced continuous and severe forms of abuse and trauma, which directly impact on their psychological state of mind and rational behaviour. Farrell (2012:113) confirms the reluctance of cooperation by elaborating that victims of human trafficking for sexual exploitation, who have experienced severe trauma and abuse and who are extremely fearful, are not easily convinced to cooperate during investigations of these cases. Therefore multiple interviews are sometimes required to be conducted with these victims.

This author further notes that the police are at a disadvantage if they do not receive proper training on how to interview human trafficking victims, or if they do not have adequate resources in this regard. These victims of human trafficking for sexual exploitation often also need a variety of services, including medical and psychiatric care to deal with the physical and emotional trauma experienced, before they are ready to cooperate with the police and testify in court against their traffickers. It is therefore important that the police build strong relationships with victim service providers. This will not only ensure that adequate shelters are in place for victims but will also assist the police in dealing with victims during the

investigation of these cases, thereby enhancing the chances of constructing successful cases against perpetrators of these crimes (Farrell, 2012:133).

Farrell (2012:137) contributes that the police need to know what types of evidence to look for when identifying and investigating cases of human trafficking for sexual exploitation in order to corroborate victims' statements. This author furthermore notes that the police need to be familiar on how to talk to victims, accordingly know how to interview victims and subsequently know how to gain the trust and cooperation of victims in order to ensure successful investigation of these cases to be presented for prosecution of these offenders.

According to Strategic Police Matters (2011:44), victims of human trafficking may share certain mutual and generic personality traits and characteristics that could make them more vulnerable to traffickers. These victims often come from countries or communities with high rates of crime, poverty and corruption where they lack both family support and educational opportunities. These victims may also be found among persons living in socially excluded communities, such as immigrants and refugees, homeless persons, ethnic minorities, persons with mental and or physical disabilities or victims of crimes, such as domestic violence and abuse. The UNODC (2007:10-11) describes a victim of human trafficking for sexual exploitation (in an illustrative and not exhaustive list of victims) as:

- Any human being that is trafficked.
- Any person above the age of 18 and who through either force or threat of force, abuse of power, coercion etc. was or is required to perform sexual acts without their consent, by any other person(s).
- Children (any child who is likely to be trafficked is viewed as a child in need of care and protection is therefore a victim who should be rescued).
- Any person who has been recruited, harboured, transported, detained, obtained, or procured for criminal sexual exploitation.
- Any human being who has been detained in a brothel with or without consent.
- Any human being who has been detained in or at any premises with the intent of criminally exploiting that person.

All trafficked persons are victims, irrespective of stated or seeming voluntariness.

- Any human being found in a brothel or at any place of criminal sexual exploitation whose jewellery, wearing apparel, money, property, etc. have been withheld from the person.
- Any human being who has been seduced for prostitution by any person having either custody or charge or care over the person or who has a position of authority over that person.
- Any human being who is made to have sex with another person for profit or gain of a third person.

The participants in samples B1, B2 and D were requested to briefly describe their experience in working with human trafficking incidents and victims. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 36.

Table 36: Participants' experience in working with human trafficking incidents and victims

Experience in working with human trafficking incidents and victims		
Sample B1 and B2		Sample D
Victims	Incidents	Victims
<ul style="list-style-type: none"> • No proper safe houses for victims (2) • Some are genuine victims (1) • Non-cooperative victims (7) • Victim is traumatised (2) • Victim does not trust anyone (4) • Victims differ in age and gender (1) • Victims' level of education differs (1) • Victims are addicted to narcotics (3) • Victim does not want to stay in place of safety till case is finalised (1) • Victim is emotionally unstable (3) • Victim lacks self-esteem (1) • Victim's family in danger (1) • Victim's fear of family and community judgement (1) 	<ul style="list-style-type: none"> • No proper interpreters (5) • Victim identification possible (1) • Interviewing techniques (1) • Intelligence gathering (1) • Place identification (1) • Investigative techniques (1) • Knowledge on approaching the victim (3) • Communication plays major role (2) • Conduct proper interview (1) • Take victim for medical examination (1) • Trace family members and relatives (2) • Investigate all allegations in full (1) • Interview with department of foreign affairs (1) • Frustrating due to lack of resources (1) 	<ul style="list-style-type: none"> • Provide training (1) • Supportive counselling (1)

Based on the feedback of the participants in samples B1 and B2 the majority responded that victims are not cooperative. The participants in samples A, B1, B2, C and D were furthermore asked if, based on their experience, victims of human trafficking for sexual exploitation cooperate with police officials, NGOs or state prosecutors. This was an open-ended question where the participants could provide their own answers to and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets).

The majority of the participants responded that victims of human trafficking for sexual exploitation do not cooperate with police officials, NGOs or state prosecutors (15 of 25) mostly due to fear of deportation (5); intimidation (3); violence (3); traffickers (3); prosecution (1); being in a cell (1); being treated as criminals and not victims (2); difficulty building trust in police (5); victims are not able to overcome addiction (1); victims fall back into prostitution or return to trafficker (1); victims vanish (1); language barriers experienced by victims (2); and police corruption (1). Some of the participants (7 of 25) responded that there is limited cooperation with police officials, NGOs or state prosecutors from victims of human trafficking for sexual exploitation. Only three of the participants (3 of 25) responded that victims of human trafficking for sexual exploitation do cooperate with police officials, NGOs or state prosecutors, which could lead to the conviction of perpetrators (1). Other responses were that victims only cooperate if the police member has knowledge in how to deal with the victim (1) and they only cooperate after rehabilitation (1).

These participants in samples B1, B2, C and D were asked, in their experience, to indicate the reasons why victims of trafficking for sexual exploitation might not cooperate with police officials, NGOs or state prosecutors. This was a close-ended question and the participants had to choose the most relevant option for each of the levels of frequency why victims of trafficking for sexual exploitation might not cooperate with police officials, NGOs or state prosecutors. The participants' responses are presented in table 37.

Table 37: Participants’ view of reasons why victims of human trafficking do not cooperate with police officials, NGOs or state prosecutors

Reasons trafficking victims might not cooperate with police officials	Level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Fear of deportation		2	4	5	14
Fear of retaliation (self and/or family)		1	2	8	14
Lack of social support/isolation			8	4	13
Feelings of shame or embarrassment		1	1	10	13
Lack of knowledge about the role of the police		1	2	7	15
Lack of knowledge about victims’ rights	2	3	2	7	11
Lack of trust in the SA CJS				1	24
Language barriers		1	1	6	17
Inability to identify self as a victim	1	2	3	7	12
Victim engaged in potentially illegal activity		2	2	9	12
Other: Fear of being killed Lack of trust in NGO employees such as social workers. Substance withdrawal		1	2		1 1 1

The responses of the participants will be elaborated on in terms of the reasons why victims of trafficking for sexual exploitation might not cooperate with police officials, NGOs or state prosecutors, namely 10 reasons given by the total number of 25 participants in samples B1, B2, C and D, thus 10 times 25, which equals 250 responses.

- The majority of the participants (145 out of 250) responded that the reasons why victims of trafficking for sexual exploitation might not cooperate with police officials, NGOs or state prosecutors are frequently fear of deportation; fear of retaliation (self and/or family); lack of social support/isolation; feelings of shame or embarrassment; lack of knowledge about the role of the police; lack of knowledge about victims’ rights; lack of trust in the South African CJS; language barriers; inability to identify self as a victim; and victim engaged in potentially illegal activity.
- Of these participants some (64 out of 250) responded that the reasons above are occasionally the reasons, very few participants (13 out of 250) responded seldom, and the minority of the participants (3 out of 250) responded never. Only some of the participants (25 out of 250) responded that they are unsure

of the reasons why victims of trafficking for sexual exploitation might not cooperate with police officials, NGOs or state prosecutors.

The participants in samples B1, B2, C and D were asked, based on their experience, what the needs of victims of human trafficking for sexual exploitation are. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 38:

Table 38: Participants' experience on the needs of human trafficking for sexual exploitation victims

Human trafficking for sexual exploitation victims' needs		
Sample B1 and B2	Sample C	Sample D
<ul style="list-style-type: none"> • Victim safety and shelter (12) • Safety for their family in country of origin (1) • A better life and work (2) • Victims are vulnerable (1) • Education(3) • Support structure (7) • Financial support (2) • Medical attention (6) • Trauma counselling (10) • Food (2) • Patience (1) • Security and trust in judicial procedures (1) • Substance rehabilitation facility (1) • Skills development (3) • Reintegration to society (3) • Interpreters (1) • Sense of belonging (1) • Some want nothing to do with court procedure (1) • Love and motivation (1) • Social and spiritual guidance (2) 	<ul style="list-style-type: none"> • Community support (2) • Educational support (2) • Employment skills (2) • Health care service (2) • Detoxification (1) • Lifestyle change (1) • Mental health care service (2) 	<ul style="list-style-type: none"> • Place of safety and security (4) • Counselling and therapy (3) • Support structure (1) • Basic life needs (3) • Education about what really happened (1) • Social intervention (2) • Drug rehabilitation (3) • To be free from sexual exploitation (1) • Trust (1) • Unbiased, knowledgeable people to assist them (1) • Medical assistance (2) • Awareness of SA CJS process and be informed (1)

The participants in samples B1, B2 and D were asked what they need to support them when working with victims of human trafficking for sexual exploitation. This was an open-ended question where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly

provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 39:

Table 39: Participants' needs when working with victims of human trafficking for sexual exploitation

Needs when working with human trafficking for sexual exploitation victims	
Samples B1 and B2	Sample D
<ul style="list-style-type: none"> • Accredited language practitioners (7) • Secured shelters (8) • Proper profiling of victim (1) • Resources to conduct investigation (3) • Time flexibility when doing surveillance (1) • Availability of vehicles (2) • Health and rehabilitation assistance (5) • Food (1) • Department of Social Development (3) • Female investigators (1) • Criminal justice system (CJS) (1) • Support and advice from prosecutors (1) • Training (4) • Victim service providers (1) • Department of Foreign Affairs (1) • Social workers (3) • Dedicated manpower (4) • Adequate space to interview (1) • Financial assistance (1) • Councillors (2) • Access to telephone (1) 	<ul style="list-style-type: none"> • Equip victim for life circumstances (2) • Non-institutional environment (2) • Safe house for victim (2)

Based on the feedback provided by the participants regarding the needs of victims of human trafficking for sexual exploitation and the specific needs of participants to support them when working with victims of human trafficking for sexual exploitation, there is a direct correlation on the services required to address the needs of victims of human trafficking for sexual exploitation.

The participants in samples B1, B2 and D were asked, based on past cases of human trafficking for sexual exploitation that they had worked on, how they typically became aware of an incident of human trafficking for sexual exploitation. These participants were furthermore asked to describe their typical response after becoming aware of an incident of human trafficking for sexual exploitation. These were both open-ended questions where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one

answer (responses indicated in brackets). The participants' responses are presented in table 40:

Table 40: Participants' awareness of human trafficking for sexual exploitation and response to these incidents

Awareness of human trafficking for sexual exploitation Incidents	Response to incidents of human trafficking for sexual exploitation
Samples B1 and B2	
<ul style="list-style-type: none"> • Victims coming forward (1) • Victims reporting to embassies in RSA (1) • Number of people visiting the property (2) • Time period spent in house (1) • Time of flow of visitors (1) • Dress code (1) • Behaviour (3) • Intelligence (2) • Informant and community information (4) • Thorough investigation followed by information received (1) • Reports (1) • Suspicious activities (2) • Substance abuse (1) • Identified by fraud unit (1) 	<ul style="list-style-type: none"> • Immediate action if necessary (1) • Investigative approach (2) • Infiltrate the syndicate (2) • Interview victim or possible victim (6) • Confirm activities in house (2) • Question willingness to do activities (1) • Question how they came here (1) • Confirm payment (1) • Question who takes the money (1) • How is victim benefitting from activity (1) • Identify crime (4) • Direct or undercover involvement (1) • Open enquiry, investigate, register operation (2) • Remove victim to place of safety (5) • Medical examination to determine sexual or physical abuse (2) • Social welfare involvement to support victim (2) • Arrests and court proceedings may follow (4) • Take statements (2) • Provide counselling (2) • Observe, plan, operationalize, rescue (1) • Gather information (1) • Inform human trafficking task team (1)
Samples D	
<ul style="list-style-type: none"> • Police official (1) 	<ul style="list-style-type: none"> • Assess circumstances (1) • Assess victim condition (1) • Build rapport (1) • Determine medical needs (1) • Determine risk (1) • Determine immediate safety needs (1) • Ensure safety (2) • Psychological counselling (1) • Victims referred to NGO (1) • SAPS (1)

The international participant interviewed (sample E) was asked, looking back on past cases of human trafficking for sexual exploitation that she had worked on, how did she typically become aware of an incident of human trafficking for sexual exploitation. This participant was also asked to describe her typical response after she became aware of an incident of

human trafficking for sexual exploitation. This participant’s responses are presented in table 41:

Table 41: International participant’s awareness of human trafficking for sexual exploitation and response to these incidents

Awareness of human trafficking for sexual exploitation incidents	Response to incidents of human trafficking for sexual exploitation
<ul style="list-style-type: none"> • <i>Victims presence</i> • <i>Victims alert police</i> • <i>NGOs alert us</i> • <i>Talk to lots of people in the community.</i> • <i>Talk to people on the front line – teachers and nurses.</i> • <i>Collect and gather intelligence.</i> • <i>Know the big crime groups in your community.</i> • <i>Activate hidden intelligence.</i> • <i>Punch every snippet of information into a system to get to the bigger picture.</i> • <i>Go out and look for victims in your community.</i> • <i>Build intelligence through a team approach.</i> • <i>We do a lot of work the police force, the state police forces and federal police and NGOs who get funding in the space from a social point of view we do a lot of education we find the more we get out the more we bring it to the attention of the people the more reporting we get – so it’s hard to know what the problem is - it’s like most victim based crime its under reported and heavily underreported because most of the people involved are foreign nationals because they come to the country and most vulnerable for exploitation.</i> 	<ul style="list-style-type: none"> • <i>Initiate proactive investigation.</i> • <i>Talk to lots of people in the community.</i> • <i>Collect and gather intelligence.</i> • <i>Build a picture and start up a case.</i> • <i>Actively pursue investigation and all means.</i> • <i>Know the big crime groups in your community.</i> • <i>Activate hidden intelligence.</i> • <i>Punch every snippet of information into a system to get to the bigger picture.</i> • <i>Talk to NGOs in your community.</i> • <i>Go out and look for victims in your community.</i> • <i>Shut down relationships with their traffickers.</i> • <i>Build intelligence through a team approach.</i>

Based on the feedback provided by the participants in samples B1, B2, D and E regarding their awareness and response to these incidents of human trafficking for sexual exploitation, it is clear that the majority of the participants become aware of these incidents either through victims’ presence, circumstances, suspicious behaviour or appearance and reporting, as well as through intelligence gathered or information obtained. The majority of the participants’ responses to these incidents included immediate action through questioning, confirmation and taking various actions to respond to these incidents, as illustrated in their respective responses.

The participants in sample D were asked, based on their experience: “What the standard procedure is to followed once a human trafficking victim seeks help or is referred to you for

services?” This was an open-ended question where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants responded that the procedure followed was to identify the victim as a human trafficking victim (1); to admit the victims to a place of safety (1); and to inform the SAPS for further action and investigation (1).

The participants in sample C were asked, based on their experiences: “What types of services, if any, have you been able to provide to victims of human trafficking for sexual exploitation?” This was an open-ended question where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants listed the following types of services:

- Proper prosecution of trafficker (1)
- Provision of witness protection (1)
- Referrals for medical assistance (2)
- Liaising with embassy (1)
- Referral to shelters (4)
- Build personal relationship with victim and shelter personnel (1)
- Emotional support (2)
- Court preparation for victim (2)
- Mental assistance (1)
- Introduction to magistrate beforehand (1)
- General support at court (1)
- Department of social development (1)
- Proper consultation (1)
- Obtaining documents for victim employment (1).

These participants in sample C, in addition, raised the following concerns when rendering a service to victims of human trafficking for sexual exploitation, namely that centres can only accommodate victims for a certain period of time (1); victims return to traffickers (1); drug rehabilitation is a huge concern (1); the influence between victims is a concern (1); the lack

of funding for psychological treatment is a concern (1); and the lack of court directed evidence reports is also a concern (1).

The participants in sample C were furthermore asked, based on their experiences: “How have you dealt with language barriers from victims, offenders or witnesses in human trafficking for sexual exploitation cases?” This was an open-ended question where the participants could provide their own answers to the questions and no choices were provided from which they could choose. The participants responded that they made use of trusted interpreters (2); other victims have translated for them (1); they have obtained interpreters from universities (1); and one of the participants also noted that court interpreters are not always trustworthy and are sometimes biased towards the offenders (1).

The participants in sample D were asked: “What are the most important lessons learnt regarding working with victims of human trafficking for sexual exploitation that you would want to share with others?” This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants’ responses included that it is a long process (1); victims are vulnerable to re-trafficking (1); victims have mental health issues (1); victims may suffer from post-traumatic stress disorder (PTSD) (1); and victims have addiction issues (1).

6.6 IDENTIFICATION OF INCIDENTS OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

Due to the hidden nature of human trafficking for sexual exploitation, proactive identification approaches, plans and strategies are required, as well as various resources and sources of information to support the identification and discovering of this crime. Of equal importance is the training and education of personnel in positions to identify victims of human trafficking for sexual exploitation, as well as for various role players who form cooperative partnerships in order to identify these incidents.

6.6.1 Sources and resources of information

Clawson and Dutch (2011:4) state that even though it is difficult to identify incidents of human trafficking, victims are often identified by the police through the investigation of other crimes such as prostitution, assault, kidnapping and domestic violence, which are associated with human trafficking and also even murder. According to these authors many sectors within communities have the potential to come into contact with victims of this atrocious crime. Victims of human trafficking for sexual exploitation often obtain similar injuries as those of rape and domestic violence. Therefore, service providers such as health workers, dental staff, emergency room personnel and clinic workers, amongst others, can assist police officials in the identification of these victims. Various other sources of referral could include human trafficking hotlines or individuals who are at times on the front line and could potentially encounter contact with victims, even though they have little training or experience. Such sources of referral include social workers; domestic violence and sexual assault shelters; faith-based and community organisations; religious leaders; community leaders; school personnel; public citizens; business owners; departmental inspectors; postal workers; and beauty salons – to mention but a few (Clawson & Dutch, 2011:4).

According to the UNODC (2007:15-16), sources of information are viewed as a major area of intelligence collection in the identification and discovering of human trafficking incidents, as well as the rescuing of human trafficking victims. The UNODC (2007:15) further contributes that the confidentiality of sources of information should be maintained at all costs, and lists the following sources (in an illustrative and not exhaustive list of sources) from where or whom information could be obtained or intelligence could be collected:

- E-mails, SMSs, MMSs and other social networking media.
- Illegal narcotics and drug dealers.
- Dealers in legal and illegal liquor trade.
- Source, destination and transit points for example bus stops, airports, railway stations, and tourist attractions, as well as immigration and customs offices at borders.
- Friendship clubs.
- Websites.

- Social networking advertisements.
- Illegal abortion clinics.
- Help lines and help desks operated by NGOs.

The participants in samples A, B1, B2 and D were asked, in their experience, how likely it is that each of the following sources of information would be used to uncover human trafficking for sexual exploitation in their specific province. This was a close-ended question where the participants had to choose the most relevant option for each of the sources of information. The participants' responses are presented in table 42:

Table 42: Participants' views on sources of information occurrence

Sources of information	Likelihood of occurrence				
	1 Not at all likely	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Calls for service when a complaint is reported by a victim	2	4	3	19	4
Identified by law enforcement officials	1	6	4	15	6
Alerts from health or social service providers, faith-based organisations or victim service groups	3	5	9	10	5
Tips from members of the community	1	3	7	16	5
Tips from informants or co-conspirator	2	4	2	19	5
Media reports on possible incidents	2	9	6	13	2
Media reports relating to classifieds and questionable advertisements		8	3	16	5
During the course of investigation of other crimes (e.g. prostitution, drugs, domestic violence)		3	2	18	9
Raids conducted by the police		1	4	16	11
Missing persons reports	2	5	6	12	7
Referrals from NGOs or NGO officials	2	6	2	17	5
Referrals from inspectional services or other regulatory agencies	2	10	7	11	2

The responses of the participants will be elaborated on in terms of the sources of information, listed in table 42, that would be used to uncover human trafficking for sexual exploitation in their specific province, namely: 12 sources of information listed by a total number of 32 participants in samples A, B1, B2, and D, thus 12 times 32, which equals 384 responses:

- The majority of the participants (182 out of 384) responded that it is likely and some of the participants (66 out of 384) responded that it is very likely that these sources of information listed in table 42 above would be used to uncover human trafficking for sexual exploitation in their respective provinces.
- Some of the participants (64 out of 384) responded that it is somewhat likely and the minority of the participants (17 out of 384) responded that it is not likely at all that these sources of information listed in table 42 above would be used to uncover human trafficking for sexual exploitation in their respective provinces. In addition, some of the participants (55 out of 384) responded that they were unsure if these sources of information listed in table 42 above would be used to uncover human trafficking for sexual exploitation in their respective provinces.

The participants in sample D were asked, based on their experience: “What does it mean to identify a victim?” They responded that it is to determine a person’s situation (1); to interpret the history (1); and also to interpret the signs (1). The participants in samples B1, B2 and D were furthermore asked what *resources they use* to identify incidents of human trafficking for sexual exploitation, as well as what *lack of resources* they experience in identifying incidents of human trafficking for sexual exploitation. These were both open-ended questions where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants’ responses are presented in table 43:

Table 43: Resources used by participants to identify incidents of human trafficking for sexual exploitation and lack of resources experienced to identify these incidents

Resources used in identifying human trafficking for sexual exploitation incidents	Lack of resources experienced to identify incidents of human trafficking for sexual exploitation
Samples B1 and B2	
<ul style="list-style-type: none"> • Surveillance or observation (2) • Social workers or professionals (2) • Undercover operations and surveillances (1) • Human resources (3) • Conduct observations (1) 	<ul style="list-style-type: none"> • Proper surveillance teams (1) • Accredited language practitioners (5) • Time (1) • Vehicles (4) • Funding (3)

Resources used in identifying human trafficking for sexual exploitation incidents	Lack of resources experienced to identify incidents of human trafficking for sexual exploitation
<ul style="list-style-type: none"> • Camera and or video camera (3) • Book for notes (1) • Intercept phone calls (1) • Sec 252A entrapment (1) • Intelligence (4) • Escort, brothel, accommodation houses (1) • Night clubs and massage parlours (1) • Any communication between human sources (2) • Interpreters (1) • Informers (4) • Law enforcement agents (2) • Court intelligence (1) • Print media (3) • Internet websites (2) • Community complaints (2) • Inspections or managed patrols (1) • NGO (2) 	<ul style="list-style-type: none"> • Training (1) • International communication between counterparts (1) • Electronic monitoring device (2) • Access to systems to follow passport (1) • Personnel (1) • Safe houses (3) • Rehabilitation centres (1) • Social workers (1) • Informers (1)
Sample D	
<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Lack of capacity of people (1) • Lack of identification and response (1) • Lack of victim cooperation (1) • Fear (1) • Shame (1)

Based on the feedback provided by the participants regarding the resources they use to identify incidents of human trafficking for sexual exploitation, as well as what lack of resources they experience in identifying incidents of human trafficking for sexual exploitation, there is a direct correlation on the resources used and resources required to identify incidents of human trafficking for sexual exploitation.

The participants in samples A, B1, B2 and D were asked, in their experience, how challenging the problem is of a lack of resources within their organisation necessary to identify human trafficking cases within the community that they serve and with regard to addressing human trafficking in their province. This was a close-ended question and 11 (11 out of 32) participants indicated that it is very challenging; 10 (10 out of 32) indicated that it is occasionally challenging; five (5 out of 32) indicated that it is seldom challenging; four (4 out of 32) indicated that it is not challenging; and two (2 out of 32) participants indicated that they are unsure.

The participants in sample D were asked if there is a reporting mechanism in place within their agency to track trafficking cases. Both of the participants responded that there is no mechanism in place to track these cases. These participants were also asked what resources are currently in place to help their organisation deal with cases of human trafficking. One of the two participants indicated a domestic abuse centre (1), the other participant indicated none. These participants were asked what challenges their organisation is faced with when attempting to help victims of human trafficking. The participants mentioned a lack of public support (1); lack of support from law enforcement (1); no in-house therapy (1); no place of safety geared towards victims of trafficking (1); no programme to integrate victims of trafficking effectively (1); and the risk of recidivism and intimidation that victims are faced with (1). These were open-ended questions where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets above).

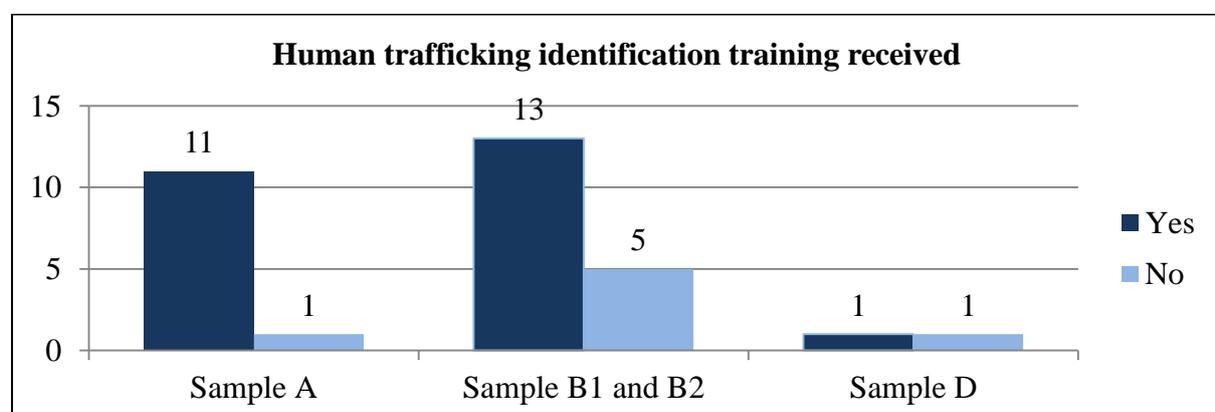
6.6.2 Training of police officials to identify incidents of human trafficking

According to Clawson and Dutch (2008:4), the identification of victims of human trafficking, is dependent on training and education of personnel in positions to identify victims of human trafficking. This is supported by Farrell (2012:93), who contributes that training forms a critical component in order to properly identify incidents of human trafficking, as police officials need to know what they are looking for in an attempt to identify these incidents successfully. Farrell (2012:93) in addition states that it is most likely that police personnel conducting patrols and first responders who come into contact with human trafficking victims, are not necessarily trained investigators or specialised unit personnel. These personnel, who are most likely to come into contact with victims, are also the personnel who have often received little or even no training on how to identify or respond to incidents of human trafficking. This on its own might create a problem towards the successful identification and thus investigation of these incidents and cases, as these police officials might not even realise that they are dealing with a victim of human trafficking (Farrell, 2012:93).

Farrell (2012:98) contributes that in addition to training on how to identify incidents of human trafficking, the successful identification of human trafficking for sexual exploitation by police officials is furthermore reliant on police officials' interviewing techniques and foreign language skills, or (when lacking foreign language skills) access to objective interpreters who could be available in a timely manner when needed. According to Farrell (2012:13) institutional challenges are often addressed by the establishing of specialised units and the appointment of specialised personnel to investigate and prosecute specific types of offences. Specialisation not only serves to provide decision makers with additional training relating to new or prioritised crimes, but also serves to assist with the investigation of cases that have more specific evidentiary challenges, as in the case of investigating incidents of human trafficking for sexual exploitation. Farrell (2012:13) in addition states that specialisation is intended to promote consistency in decisions about the charging and processing of cases. Therefore, cases of a certain nature are allocated to a small group of highly trained investigators and or prosecutors who continuously work with victims throughout the entire investigation and or prosecution process.

The participants in samples A, B1, B2 and D were asked if they or any of their colleagues in their provinces had received training on how to identify cases of human trafficking. This was a close-ended question where the participants could either answer yes or no, and if their response was yes they were requested to indicate the type of training specifically related to human trafficking that they or other colleagues in their province had received. The answers of the participants are presented in figure 24:

Figure 24: Participants' view on identification of human trafficking cases training received



The majority of the participants responded that they or their colleagues had indeed received training on how to identify cases of human trafficking (25 out of 32). Only seven out of 32 participants responded that they or their colleagues had not received training on how to identify cases of human trafficking in their respective provinces.

The participants in sample C were asked if they had undergone any training in prosecuting human trafficking cases. If they had indeed undergone training, they were asked to list the types of training courses they had attended. All five of the participants in sample C responded that they had undergone training in the prosecution of human trafficking cases. The type of training is presented in table 44, together with the type of training those participants in samples A, B1, B2 and D had received. Some of the participants accordingly provided more than one answer (responses indicated in brackets).

Table 44: Type of human trafficking training received

Human trafficking training			
Sample A	Samples B1 and B2	Sample C	Sample D
<ul style="list-style-type: none"> • In-service training (9) • New recruit training (1) • Publications (3) • Regional conferences (3) • National conferences (6) • International conferences (5) • Off-site professional training (1) • Other (3) which consisted of International Immigration Organisation (IOM) (1) and Workshops (1) 	<ul style="list-style-type: none"> • In-service training (14) • New recruit training (1) • Publications (1) • Regional conferences (4) • National conferences (4) • International conferences (3) • Off-site professional training (4) • Courses (1) 	<ul style="list-style-type: none"> • International Immigration Organisation (IOM) (3) • National Prosecuting Authority (NPA) (2) • Training for IOM and NPA (2) • Self-study (1) • Training courses and workshops (1) • Trained role players in the SAPS (1) • Trained social workers (1) • Justice college training on sexual offences (1) • Train the trainer course in human trafficking (1) 	<ul style="list-style-type: none"> • International Immigration Organisation (IOM) (1) • Generic training in counselling (1) • Generic training in therapeutic work (1)

The participants in samples A, B1, B2, C and D were asked if, in their experience, there is a need for training in any of the following areas relating to human trafficking that are listed in table 45. This was a close-ended question where the participants could either answer yes or no and the participants' responses are presented in table 45 below.

Table 45: Human trafficking training required

Sample	A		B1 and B2		C		D	
	Yes	No	Yes	No	Yes	No	Yes	No
Understanding the issue of human trafficking	12		15	3	5		2	
Understanding the legislation that could be used in a human trafficking case	12		16	2	5		2	
Understanding the role of law enforcement in human trafficking cases	12		16	2	5		2	
Methods for identifying incidents of human trafficking	12		15	3	5		2	
Methods for investigating cases of human trafficking	12		15	3	5		2	
Methods for responding to cases of human trafficking	12		15	3	5		2	
Methods for preventing human trafficking	12		17	1	5		2	
Understanding the role of prosecutors in human trafficking cases	12		16	2	5		2	
Understanding the role of non-governmental officials in human trafficking cases	12		15	3	5		2	
Understanding the role of victim service providers in human trafficking cases	12		15	3	5		2	
Collaborating with other role players in human trafficking cases	12		15	3	5		2	

The responses of the participants will be elaborated on in terms of the need for certain types of training listed in table 45, namely 11 types of training required by a total number of 37 participants in samples A, B1, B2, C and D, thus 37 times 11, which equals 407 responses.

- The majority of the participants (379 out of 407) responded yes, they have a need for training in the types of training listed in table 45. Only 28 participants (28 out of 407) in samples B1 and B2 responded that they do not have a need for training in the types of training listed in table 45.

6.6.3 Proactive identification of incidents of human trafficking

According to Farrell (2012:73), the identification of human trafficking refers to the manner in which these incidents come to the attention of police officials and are accordingly properly classified as a crime of such. Crimes are identified by the police in various ways that can either be reactive or proactive. Reactive identification of an incident of human trafficking for sexual exploitation takes place when a police official either receives a call from the

community, service provider or a hotline (relating to an incident that had occurred), or when a call is received from a victim. Proactive identification of an incident of human trafficking for sexual exploitation takes place when police officials develop intelligence (relating to criminal incidents or activities within their communities), and accordingly apply investigatory resources and sources to identify victims and suspects.

Farrell (2012:73) states that the identification of human trafficking incidents within communities and the assessment of victims of these incidents are certainly of the most noteworthy challenges the police are continuously faced with. Incidents of human trafficking and victims of these crimes must be successfully identified in order for the police to investigate these cases and prosecutors to prosecute the offenders of these crimes.

The hidden nature of human trafficking for sexual exploitation furthermore demands proactive identification approaches, plans and strategies. According to (Farrell, 2012:79) proactive policing requires not only innovative strategies but also increased intelligence and additional resources. This author furthermore notes that without additional resources for police personnel and training, the police would not necessarily identify more incidents of human trafficking – and without more identified incidents the police may not be able to motivate for more resources, which often limits the police to develop intelligence using more readily available resources, such as internet searches.

Farrell (2012:100) states that proactive investigative strategies are viewed as a powerful tool for improving the identification of human trafficking incidents. Reactive investigatory methods remain ineffective due to victims' unwillingness to contribute to investigations. Farrell said that even though the lack of proactive identification strategies is partly due to the lack of training of police personnel, first responding police officers often play a critical role in the identification of human trafficking incidents. Often human trafficking training is mostly presented to specialised investigation personnel, even though these are not the individuals who are on the ground and mostly likely to encounter incidents of human trafficking in their daily workings (Farrell, 2012:103). Farrell further notes that it is thus imperative that these first responding police officers and relevant service providers receive training on how to identify incidents of human trafficking.

6.6.4 Cooperative partnerships between various role players in the identification of human trafficking for sexual exploitation

David (2007:2) states that law enforcement needs to work closely with a range of agencies, including NGOs, as they are most likely to come into contact with victims of trafficking through indirect means, such as referrals and also cannot rely on crime reports alone. David says that the police should accept its dependence on NGOs, as victims often lack trust in law enforcement and NGO personnel could accordingly build trusting relationships with victims more easily. NGOs are also viewed to have the required skills and experience to counsel, treat and accommodate victims of human trafficking. Intelligence required in the successful identification and investigation of traffickers is more likely to be provided to NGOs than to the police themselves (David, 2007:4).

According to David (2007:4), NGOs should in the same manner also accept their dependence on law enforcement, as law enforcement officers have the legal powers and resources to respond to requests and subsequently remove identified victims from exploitive situations. The police could furthermore provide the required protection to victims, as well as subsequently refer victims of human trafficking to NGOs for assistance. David (2007:4) states that, as the clarification of roles and responsibilities are imperative to enhance the cooperation between the police and victim support services, a memorandum of understanding (MOU) as a strategy effectively used in various contexts, could be compiled to address matters such as:

- Objectives that form and support mutual cooperation.
- Clarification of division of roles and responsibilities.
- Standard operating procedures addressing for example the referral of victims.
- Foundation of information sharing and maintaining of confidentiality.
- Strategies for regular communication between the relevant parties.

The participants in sample C were asked if, based on their experience, there is a working partnership between the police and state prosecutors on human trafficking issues. All of the participants (5 of 5) responded yes. To the follow-up question that if there is indeed a working partnership between the police and state prosecutors, how successful that

relationship is, the participants responded as follows: it depends on the individual (1); depending on if the individual is dedicated or lazy (1); competent or incompetent (1); experienced or inexperienced (1); and skilled or unskilled (1). These participants furthermore noted that one needs to build and nurture a relationship (1); that the prosecutor is to be available for advice and assistance (1); that corruption is a major problem (1); that there is a lack of resources (1); and also that the partnership can be successful if all the stakeholders work together (1). The participants in sample D were similarly asked if there is a working partnership between their organisation and their local police and or state attorney's office. Only one of the participants (1 of 2) responded that there is an informal partnership.

The participants in samples B1, B2 and D were asked to name some of the organisations that their unit or organisation works with in incidents of human trafficking for sexual exploitation. These participants were furthermore asked if there are any other specific individuals (that they are currently not working with), who they would like/need to work with on human trafficking for sexual exploitation incidents, and to accordingly name them. These were open-ended questions where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 46:

Table 46: Participants' current and required/needed collaboration regarding human trafficking for sexual exploitation incidents

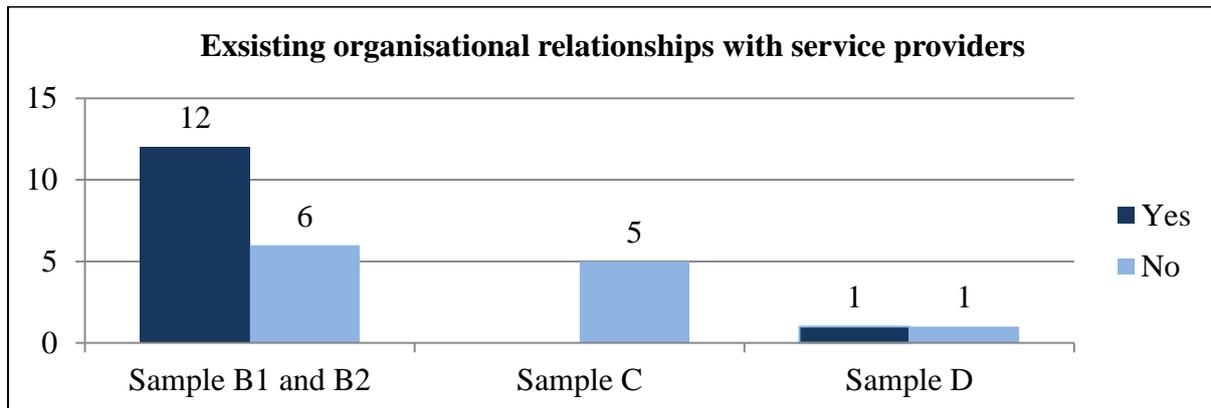
Collaboration with organisations	Collaborations required/needed
Samples B1 and B2	
<ul style="list-style-type: none"> • Non-governmental organisations(8) • Cell phone service providers (1) • SARS (2) • SARPCO (1) • NICRO and UNHRO (1) • DHA (3) • Not for sale (1) • Annex (1) • Correctional service (1) • Department of Home Affairs (10) • Department of Social Development (6) • Department of Social Welfare (3) • Department of Justice (3) • Department of health (5) • Department of Foreign Affairs (1) 	<ul style="list-style-type: none"> • Accredited language practitioners (3) • NGOs (5) • Universities (1) • Embassies of victim's country (1) • SARS (1) • Department of Home affairs (2) • Department of Social Development (2) • Metro police (1) • Social workers (1) • Interpol (1) • FCS (1) • All people to assist in elimination of trafficking (1) • State prosecutors (1) • Prosecutors and judges (1)

Collaboration with organisations	Collaborations required/needed
Samples B1 and B2	
<ul style="list-style-type: none"> • Immigration (1) • National Prosecuting Authority (12) • Witness protection programme (1) • Crime intelligence (2) • Law enforcement (3) • Organised Crime Unit (1) • Foreign law enforcement agencies (1) • International Organisation of Migration (5) • Interpol (1) • Embassy involved (2) • City of Cape Town vice squad (1) • DSD (2) • CPV (1) • Trauma councillors (1) 	<ul style="list-style-type: none"> • Cooperation between role players (1) • DPP, FICA, DSD (1) • Hospice (2) • Caregivers (2) • Educators (2)
Sample D	
<ul style="list-style-type: none"> • IOM (1) • Institute for Child Witness and Research (1) • Mercy House (1) • Private individuals (1) • Saartjie Baardman (1) • Salvation Army (1) • SAPS (1) 	<ul style="list-style-type: none"> • Local and provincial government (1) • SAPS (1) • Investigation (1)

Based on the feedback provided by the participants, regarding current collaborations in terms of human trafficking for sexual exploitation incidents, as well as specific individuals (that they are currently not working with) who they would like/need to work with on human trafficking for sexual exploitation incidents, there is a direct correlation on the current and required/needed collaborations. The need to work with accredited language practitioners and universities was also noted.

The participants in samples B1, B2, C and D were asked if their organisation has an existing relationship with any service providers that are able to meet the immediate needs of victims of human trafficking for sexual exploitation. This was a close-ended question where the participants could either answer yes or no, and if their response was yes they were requested to list the service providers. The answers of the participants are presented in figure 25:

Figure 25: Existing relationships with service providers to address human trafficking for sexual exploitation victims' needs



The majority of the participants (13 out of 25) responded that they do have an existing relationship with service providers that are able to meet the immediate needs of victims of human trafficking for sexual exploitation. Twelve out of 25 participants responded that they do not have an existing relationship with any service providers that are able to meet the immediate needs of victims of human trafficking for sexual exploitation.

These participants in samples B1, B2, C and D accordingly listed the following service providers with which their respective organisations have an existing relationship to meet the immediate needs of victims of human trafficking for sexual exploitation. The service providers listed by the participants are presented in table 47:

Table 47: List of service providers to meet victims of human trafficking for sexual exploitation's needs

Service providers to meet victims of human trafficking for sexual exploitation's needs		
Sample B1 and B2	Sample C	Sample D
<ul style="list-style-type: none"> • Department of Social Development (6) • NGOs (8) • IOM (3) • Social welfare (2) • Child protection (1) • Open door crisis centre (1) • Department of Home Affairs (2) • Victim empowerment (1) • Annex (1) • Not for sale (2) 	<ul style="list-style-type: none"> • None – long-term provision is problematic (1) 	<ul style="list-style-type: none"> • Mercy house (1)

Service providers to meet victims of human trafficking for sexual exploitation's needs		
Sample B1 and B2	Sample C	Sample D
<ul style="list-style-type: none"> • Kwanobuhle Outreach Centre (1) • Uitenhage provincial hospital (1) • Department of Health (1) • NPA (1) • Safe houses (1) • Drop in centres hospice (2) • Salvation Army (2) • Women network (2) 		

6.7 INDICATORS OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

According to the KOM Project (2008:10), an indicator is one of numerous reasons for believing that an individual could be in a potential human trafficking situation. It could thus be any sign that one can read by interpretation of observations, statements, facts or any other information relating to a possible victim. Indicators could possibly lead to further investigation of an individual's situation, although the presence or absence of some indicators may not necessarily prove or disprove human trafficking per se, as an integrated appraisal of the total situation is required. According to the KOM Project (2008:10), the following possible indicators, which can apply to any individual of any nationality and ethnicity or other collective affiliation, regardless of the kind of exploitation (although not all present in all situations of human trafficking of victims), could lead to the identification of possible human trafficking incidents. People who are trafficked, may:

- Be abused or subject to coercion, deceit or control.
- Be in a vulnerable situation.
- Not have control over their own passport or travel documents.
- Believe that they have to perform acts or work to the profit of others against their free will.
- Give the impression that their movements are being controlled and monitored.
- Not know the address of their work place or their residence.
- Behave as if others have coached them and when being directly addressed, permit others to speak on their behalf.
- Be unable to communicate freely with other individuals.

- Be bound by debt to their traffickers.
- Have had their travel costs paid by the trafficker, which they must accordingly pay back by working or providing services in the country of destination.
- Have made choices under false pretences or in response to false promises by their traffickers.
- Have made choices in a vulnerable situation where few other real choices appeared possible in their situation.
- Be exposed to violence or threats to their own persons or those of their family or friends in their countries of origin.
- Show signs of fear, abuse, violence or stress.
- Suffer from injuries that may seem to be caused by assault, abuse or other violent control measures.
- Suffer from repetitive straining injuries which might typically arise from unacceptable working conditions.
- Have limited or no access to necessary medical assistance.
- Have limited or no opportunities for social interaction with other individuals.
- Be disciplined by fear of punishment
- Be part of a hierarchy which consists of power relationships amongst victims in the same situation that limit their ability to speak openly with others present about their situation.
- Be forced to commit violations of the law in the destination countries as part of the exploitation.
- Be threatened with threats of reporting them to the authorities.
- Show a lack of trust and fear of authority persons.
- Be equipped with false travel or identity documents.
- Be afraid to reveal their residence or country of origin status.
- Receive very little or even no payment for work or services provided.
- Work or provide services under strenuous and unacceptable conditions
- Be unable to complain about or negotiate their working conditions.
- Have limited, partial or even no access to their own income.
- Have unlawfully long working hours and days over longer periods with no days off.

- Be in a situation where they are continuously moved across national and international borders or from town to town to work or provide services.
- Live under unacceptable conditions with limited facilities.
- Come from a place known to be a country of origin or source of human trafficking.
- Be present in places where unlawful sale of services or goods often takes place.
- Be identified and associated in or in connection with an area known to be an arena for the exploitation of human trafficking victims.

According to the KOM Project (2008:11), the exploitation of human trafficking victims may occur in different regions and in a number of arenas and thus the individual's specific life situation should always be interpreted for possible identification of them as victims. The KOM Project (2008:11) accordingly provides a list of some examples of arenas and contexts in which human trafficking may occur (although not exhaustive, neither cast in stone and only examples), namely:

- Street prostitution and indoor prostitution (brothels, houses, flats, clubs, massage parlours, hotels).
- Pornography either in magazines or online.
- Paedophile rings.
- Arranged or forced marriages.
- Domestic service or childcare.
- Family firms, cleaning firms, or the restaurant service.
- The construction or mining industry.
- Agriculture.
- Street performance, street hawking or street begging.
- Thefts and other various crimes of gain.
- Production, trafficking, use and distribution of drugs or other narcotics.
- Organ donation.

According to the KOM Project (2008:11), the phenomenon of human trafficking is continuously expanding and ever growing, which indicates the constant revision of possible

indicators to identify victims of this horrendous crime. The KOM Project (2008:20) accordingly provides a list of some of the indicators for human trafficking for sexual exploitation in prostitution and other sexual purposes (although not exhaustive), namely that the victim:

- Is allowed to retain only part or not any of the earnings from selling sex.
- Has debt that is to be paid off by selling sex.
- Is not allowed to leave the prostitution business at own free will or when he or she wishes.
- Is not allowed and has little or no ability to decide which or how many customers he or she wishes to service.
- Is not allowed or has little or no ability to decide what kind of sexual services he or she can or is allowed to offer.
- Is not allowed or has little or no ability to refuse requests for unprotected and or violent sex.
- Has either wrong information, no information or very little information about the rules for prostitution in a country.
- Shares accommodation with others working in the prostitution business, pays high rent and is not herself or himself registered as tenant.
- Services are advertised on a website or in magazines of a country in the correct language of the country; however the victim cannot speak the specific language of the country.

In terms of the Strategic Police Matters (2011:55), aspects such as deception, coercion and abuse of vulnerability of victims are amongst some of the means of control that traffickers often use during the trafficking of victims in all of the different phases (recruitment, transportation and exploitation). Although these means do not have to be present in child trafficking, it should still be considered as trafficking. In identifying victims of human trafficking during the recruitment and transfer phase the Strategic Police Matters (2011:55-56) provides the following list of possible indicators (although not exhaustive) as presented in table 48 and developed in the Delphi Research Project. This could serve as reference and guidance in the identification of human trafficking for sexual exploitation victims, depending on the local conditions and current situation at hand.

Table 48: List of possible indicators of human trafficking for sexual exploitation

Recruitment (including transfer and transportation) by deception	Recruitment (including transfer and transportation) by coercion	Recruitment (including transfer and transportation) by abuse of vulnerability
<p>The victim is often deceived about the:</p> <ul style="list-style-type: none"> • Nature of the employment as well as the employer and location. • Working, housing and living conditions. • The legality and content of a condition of service contract. • The legal documentation or the obtaining of legal immigration and migration status. • Recruitment and travelling conditions. • Salaries earned and debt incurred. • Promises of adoption and marriage. • Family reunions and visits to country of origin. • Access to education and development opportunities. 	<ul style="list-style-type: none"> • The use of violence against victims. • Forced marriages, forced adoptions or the selling of victims. • Abduction. • Debt bondage. • The confiscation of documents. • The isolation or confinement of victims. • The use of threat of reporting to authorities. • The use of threat of violence against the victims and their families. • The use of threats to inform the victim’s family, community or public about the victim’s situation. • The withholding of the victims’ money earned. 	<ul style="list-style-type: none"> • The abuse of a difficult family situation. • The abuse of illegal statuses. • The abuse of lack of understanding the local language and education. • The abuse of lack of information provided to victims. • The abuse of cultural and or religious beliefs. • The control of victims by exploiters. • Economic reasons. • The provision of inaccurate information about the law and or attitude of authorities to victims. • The fragile psychological and emotional situation as well as family and personal situation of the victim.

These indicators discussed above should remain flexible and serve as guideline and example to police personnel depending on the current situation and trends of the form of human trafficking being identified, as well as the age of the victim (Strategic Police Matters, 2011:56).

The participants in sample D were asked what elements of crimes or behaviours might alert their organisation that an individual being helped may be a victim of human trafficking for sexual exploitation. This was an open-ended question where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants provided more than one answer and their responses included the following: signs of a dysfunctional background (1); victims report their involvement in crime (1); and victims report their trafficker (1). The participants in samples B1, B2 and D were furthermore asked, based on their experience, how they would determine if an incident is a case of human trafficking for sexual exploitation. This was an open-ended question where the participants could provide their own answers to the questions and no choices were

provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 49:

Table 49: Participants' experience in determining incidents as a case of human trafficking for sexual exploitation

Determining incidents as a case of human trafficking for sexual exploitation	
Samples B1 and B2	Sample D
<ul style="list-style-type: none"> • From the victim (3) • Operations (1) • Surveillance (2) • Check elements of crime (4) • Check victim's response (1) • Victim has fear when questioned about activities (2) • Analysing of victim (2) • Interpretation of circumstances and situation (2) • Interviewing (3) • Victimization (1) • Exploitation (2) • Victim has no documentation (2) • Age of the victim (2) • Bondage (1) • Victim not a resident in the area (2) • Observing constant movement to and from property (1) • Recruitment, transportation, harbouring, exploitation (1) 	<ul style="list-style-type: none"> • Responding to observed signs (1) • Seeing signs (1) • Dress code (1) • Impact on victim (1) • Modus operandi (1) • Recruitment (1) • Young girls locked up in house (1)

Based on the feedback provided by the participants on how they determine if an incident is a case of human trafficking for sexual exploitation, the majority of the participants' responses included the appearance, behaviour, responses from and circumstances of the victim. Some of the participants noted the elements of the crime of human trafficking.

These participants in samples A, B1, B2 and D were asked, in their experience, how challenging the problem is of inability to identify human trafficking victims within the community that they serve, with regard to addressing human trafficking in their province. This was a close-ended question and fifteen (15 out of 32) of the participants indicated that it is very challenging, ten (10 out of 32) indicated that it is occasionally challenging, three (3 out of 32) indicated that it is not challenging, two (2 out of 32) indicated that it is seldom challenging, and two (2 out of 32) indicated that they are unsure.

6.8 CHALLENGES, BARRIERS AND RED FLAGS INHERENT TO HUMAN TRAFFICKING INCIDENTS

Farrell (2012:74) states that due to the hidden nature of the crime of human trafficking, the police are often faced with a number of challenges in the successful identification of human trafficking victims and offenders. The methods used by traffickers in the manner they move, house and communicate with their victims during the exploitation of their victims, continuously change and this in itself furthermore presents additional challenges to the police to identify potential victims (Farrell, 2012:75).

According to Farrell (2012:74), current research on the responses of police to human trafficking incidents, has identified several challenges regarding the successful identification of human trafficking in practice. These challenges include a general lack of knowledge among the police regarding the problem of human trafficking; the police have limited experience in the investigation of these cases and the lack of protocols and policies within the police organisational structure to guide them in the identification and investigation of these incidents and cases.

According to Farrell (2012:8), human trafficking cases are viewed as the most time and labour intensive matters undertaken, as these cases are not only complex but also present several challenges to the police in working with highly traumatised victims. Farrell (2012:223) furthermore states that the police are dependent on victims' statements. The interviewing of victims thus forms a crucial step in the investigation and prosecuting of these cases. Victims frequently give contradictory statements due to their fear and the trauma experienced. These conflicting statements often pose a credibility challenge during the prosecution of these cases. Corroborating evidence, such as cell phone records, hotel receipts and surveillance videos may all be collected by the police at crime scenes to support victims' statements during the prosecution of offenders. Moreover, new legislation is also challenging for prosecutors, as the elements required to establish a prima facie case are sometimes abstruse and unclear until proven in court. Prosecutors are often required to charge offenders of human trafficking cases with crimes of which the legal elements are more established, leading prosecutors to believe that they have a greater possibility of successful conviction (Farrell, 2012:10).

The police and prosecutors are the critical role players within a criminal justice system. When legislature passes laws it is both the police and the prosecutors who must close the gap between laws promulgated and captured in books, and laws in action. An operational understanding of the law needs to be promoted. As the daily activities of both the police and prosecutors are mostly firmly established, there is sometimes resistance to changing practices in response to new legislation (Farrell, 2012:11).

The participants in samples B1, B2, D and E were asked what primary barriers they face in identifying an incident of human trafficking for sexual exploitation. The participants in samples B1, B2 and D were furthermore asked what possible solutions they think might help to overcome the challenges they face in identifying an incident of human trafficking for sexual exploitation. These were open-ended questions where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 50:

Table 50: Primary barriers in identifying incidents of human trafficking for sexual exploitation and possible solutions to overcome these challenges

Primary barriers in identifying incidents of human trafficking for sexual exploitation	Possible solutions to overcome challenges in identifying incidents of human trafficking for sexual exploitation
Samples B1 and B2	
<ul style="list-style-type: none"> • No cooperative victims (1) • No future plan for victim (1) • No safety guarantee for cooperative victims (2) • Lack of community knowledge (1) • Lack of police knowledge (1) • Allow time for observation (1) • Flexibility of working hours (1) • Lack of community cooperation (1) • Training (1) • Crime intelligence (1) • Resources (2) • Red tape in communication internationally (1) • Secrecy and right to privacy of a person (1) • Difficulty in observing closed houses (1) • No legislation (1) • Accredited language practitioners (12) • Safe houses (1) • Informers (1) 	<ul style="list-style-type: none"> • Get all players needed (3) • Training police and community (6) • Funding (2) • Set up structures (1) • Dedicated investigators (2) • Flexible working hours (1) • Community cooperation (1) • Legislation and implementation (2) • Interpreters (2) • Availability of accredited language interpreters (11) • Specialised court and prosecutions (1) • Long-term safety environments for victims (2) • Department of Home Affairs to assist investigation regarding foreigners (1) • Victim cooperation (1) • Community and victims must be free to report cases (1) • Share knowledge and resources (1) • Clamp down corrupt officials (1) • Rehabilitation centres (1)

Primary barriers in identifying incidents of human trafficking for sexual exploitation	Possible solutions to overcome challenges in identifying incidents of human trafficking for sexual exploitation
Sample D	
<ul style="list-style-type: none"> • Community resistance due to cultural practices (1) • Lack of community involvement (1) • Lack of legislation (1) • Lack of police commitment to conduct unconventional investigations (1) • Lack of police resources (1) • Traditional investigation methods not adequate (1) 	<ul style="list-style-type: none"> • Capacity and knowledge of community members (1) • Capacity and knowledge of law enforcement officials (1) • Capacity and knowledge of NGOs (1) • Capacity and knowledge of service providers (1) • Community involvement (1) • Specific legislation (1) • Training SAPS and NPA (1)
Primary barriers in identifying incidents of human trafficking for sexual exploitation	
Sample E (International participant)	
<ul style="list-style-type: none"> • <i>Culture and language is a massive barrier.</i> • <i>Trust – the community we deal with is Korean and they have a lot of mistrust to authority. You need to get them to trust you enough to get them to understand you not just sending them back home but will assist them. We have a lot of Arab, Indian, South East Asian and African forced marriages.</i> • <i>Language Barriers – Huge – Massive – we employ interpreters nearly full time – that’s one of the vulnerabilities, they come out and they don’t speak English so they can get exploited because they don’t understand the language and they don’t understand the culture in Australia.</i> 	

Based on the feedback provided by the participants in samples B1, B2 and D regarding primary barriers they face in identifying an incident of human trafficking for sexual exploitation, as well as what they think might help to overcome the challenges, the majority responded that a lack of accredited language practitioners is one of the primary barriers experienced. Some of the participants also noted a lack of knowledge, training, cooperation and resources. The international participant interviewed (sample E) also included language as a huge barrier within her country. The participants in samples B1, B2 and D subsequently included the availability of accredited language interpreters, the enhancement of knowledge capacity and cooperation as possible solutions to overcome these challenges.

The participants in samples B1, B2, D and E were asked, based on their experience, to list any number of “red flags” that might indicate an incident that involves the crime of human trafficking for sexual exploitation. This was an open-ended question where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants’ responses are presented in table 51:

Table 51: Participants’ experience of “red flags” that might indicate an incident that involves the crime of human trafficking for sexual exploitation

“Red flags” as indication of incidents of human trafficking for sexual exploitation	
Samples B1 and B2	Sample D
<ul style="list-style-type: none"> • Suspected trafficker: <ul style="list-style-type: none"> ○ Suspects like to be hairdressers (1) ○ Suspects like to help (1) ○ Suspects play innocent and defensive (1) ○ Suspects’ appearance (1) ○ Suspects’ behaviour (2) ○ Nigerian crime syndicates (1) ○ Suspects’ control over victim (1) • Suspected victim: <ul style="list-style-type: none"> ○ Victims’ appearance (1) ○ Victims’ behaviour (2) ○ Victim cry when approached (2) ○ Victim is fearful (2) ○ Victim is shy to look at people (3) ○ Reachability of victim (2) ○ Victims’ behaviour and body language (4) ○ Victims’ appearance (1) ○ Victim under trafficker’s observation (1) ○ Involvement of minors (1) ○ Victims are usually single (1) ○ Seldom have any form of identification (3) ○ Do not operate for themselves (1) ○ No means of own cash or transport (1) ○ Minimum possessions and often no jewellery (1) ○ No direct family at immediate location (1) ○ No direct access to communication (1) ○ Meals would be supplied (1) ○ Speaks a different language than the area of location (1) ○ May be physically and psychological abused (2) ○ Comes from poor economic background (1) ○ People highly dependent on her income (1) ○ Willingness to operate in appalling circumstances (1) ○ Possible substance abuse (2) ○ Very little information about trafficker (1) ○ Does not know the area or nearest police station (1) ○ Has been transported to location (1) ○ Recruited by means of deception (1) ○ Victim in brothel viewed as prostitute and not helped (1) ○ Under trafficker’s observation and control (1) ○ Substance abuse (1) • Environment: <ul style="list-style-type: none"> ○ Condition and environment (1) ○ Victims usually share a room on the premises (1) ○ Brothels (1) ○ Prostitution (1) ○ Slavery (1) ○ Constant movement to and from property (1) ○ A lot of young girls present (1) ○ Public not providing information (1) 	<ul style="list-style-type: none"> • Don't know where they are (1) • Clothing of victims (1) • No identification documentation (1) • Social isolation (1) • Unable to speak the language (1)
Sample E (International participant)	
<ul style="list-style-type: none"> • <i>We apply the “Not Quit Right Principle” – look for anything extraordinary which seems not right.</i> 	

Based on the feedback provided by the participants regarding their experience relating to “red flags” that might indicate an incident of human trafficking for sexual exploitation, the majority of the participants’ responses related to the victims’ background; appearance; behaviour; reactions; actions; and circumstances; as well as the suspects’ appearance; behaviour; circumstances; and also the environment in which these incidents are observed. The international participant interviewed (sample E) furthermore confirmed that red flags which could possibly indicate an incident of human trafficking for sexual exploitation, can be determined by looking for anything extraordinary which seems “not right”, and accordingly called this action the “Not Quit Right Principle”.

6.9 PROCEDURES OF IDENTIFICATION OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

According to the KOM Project (2008:6), standard screening and interview protocols serve as an effective and important practice for both police personnel, as well as victim service providers to identify victims of human trafficking for sexual exploitation. Therefore, these protocols need to be made available to a wide audience of individuals who might come into contact with victims of human trafficking for sexual exploitation. This KOM Project (2008:6) furthermore notes that it is of essential importance that these screening and interviewing protocols be continuously revised and updated to ensure that they are culturally appropriate and relevant in terms of addressing the correct terms. Of equal importance is the use of trained interviewers who understand the impact of the trauma on victims and their specific cultures. These interviewers should preferably be of the same gender, race and or ethnicity as the victim.

The use of active multidisciplinary teams, task forces and or associations is deemed as an encouraging practice in the effective identification of victims of human trafficking for sexual exploitation (KOM Project, 2008:6). Task forces, for example anti-trafficking task forces in specific, are viewed as a crucial resource to facilitate communication, coordination and information sharing across the different role players involved in incidences of human trafficking for sexual exploitation.

The KOM Project (2008:12) notes that the identification of possible victims of human trafficking often commences with a concern that a possible victim may be exploited and is in a situation wherein the individual requires help. An integrated evaluation of the information obtained through observations and conversations with the possible victim is required in order to determine if the individual is a possible victim of human trafficking for sexual exploitation.

Observation of a possible victim of human trafficking for sexual exploitation may include experiencing numerous features of an individual's behaviour that give reason for concern. An individual may for example show signs of stress or fear under circumstances where such reactions would normally be unusual; an individual may show signs that he or she is being controlled by another person at the cost of his or her own freedom; an individual might not be in control of his/her own passport; might receive constant visits from unknown individuals; might not have access to post or e-mails; and might not have a key to his/her own place of work or home. Observations on their own do not often allow for the correct determination of whether an individual is a victim of human trafficking for sexual exploitation or not, and thus the observations require to be followed up or supported with an interview with the specific individual (KOM Project, 2008:12).

The KOM Project (2008:12) states that, when conducting an interview with an individual to identify the possibility of that person being a victim of human trafficking for sexual exploitation, it is of the utmost importance that careful consideration is given to various factors. These factors as provided in the KOM Project (2008:12) are in terms of the individuals themselves, the circumstances and the place. Relevant recommendations are to ensure:

- That the correct person with the required skills and capability of relating to a victim's trauma conducts the interview.
- That the person being interviewed receives the necessary care in the form of physical security, emotional support, food and rest.
- That the interviewer gains the confidence of the person. In this regard careful consideration should be given to where and how the interview takes place as well as the interviewee's gender, age, education and background.

- That respect is shown for the wishes of the person being interviewed regarding who the person prefers to talk to.
- To listen to the person's own description of experienced threats and abuse.
- That the interview room where the interview is conducted is free of disturbances and to accordingly ensure that one's mobile phone is switched off to ensure no distractions.
- To explain to the possible victim what your role as interviewer is.
- To explain to the person that you are concerned about the person and that help, assistance and protection are available to the person if desired.
- To provide the person with realistic information relating to the person's rights and assistance and protection available.
- That the person understands the questions and messages relayed to him/her.
- To ask several questions from various different angles in order to obtain a common understanding between the possible victim and the interviewer in determining if the person is in fact a victim of human trafficking for sexual exploitation.

The KOM Project (2008:6 & 13) provides the following list of sample screening questions to assist in the possible identification of a victim of human trafficking:

- Can you leave the residence or the place of work whenever you wish to do so?
- Do you have to ask anyone for permission if you need to visit the shops, a doctor, hairdresser, family members, friends and so forth?
- What type of work do you do?
- Do you have your own set of keys to the place of work or place of residence where you work or stay?
- Where do you sleep and eat?
- Do you have to ask permission to eat, sleep or go to the bathroom?
- What is your working and living conditions like?
- Do you have control over post or e-mails addressed to you?
- Does someone else read your post or e-mails for you?
- Do you receive a salary?

- Does your employer pay your salary into your own bank account to which only you have access?
- Can you leave your employment?
- Did you buy the SIM card for your mobile phone yourself?
- Are you allowed to receive calls at your convenience?
- Can you change SIM cards or phone numbers whenever you want or need to?
- Do you control your own passport or travel documents?
- Has your identification or travelling documentation been taken from you?
- Have you or your family been threatened?
- Are there locks on your doors or windows that you cannot unlock?
- Do you pay off any debt incurred from your employment?

The Strategic Police Matters (2011:18) reports that the police are confronted on a daily basis with a variety of offences and therefore they should be able to distinguish possible incidents of human trafficking from all other crime. The police should have knowledge and be in a position to recognise the most important indicators of human trafficking and accordingly be able to identify victims and refer them to relevant service providers for required assistance.

The Strategic Police Matters (2011:42) notes that the problem-solving model most frequently used in community policing is “SARA”, namely scanning, analysis, response and assessment, as this model helps to ensure that crime related problems are effectively identified and accordingly addressed. This problem-solving model in terms of scanning analysis, response and assessment consists of the following tasks namely:

- a. **Scanning:** Identifying and prioritising problems.
- b. **Analysis:** Researching what is known about the problems.
- c. **Response:** Developing of solutions.
- d. **Assessment:** Evaluating the success of the responses.

The Strategic Police Matters (2011:42) furthermore notes that in analysing specific crime problems the community policing also recommends making use of the problem analysis triangle (PAT) to subsequently break problems down into three constituent elements, namely

the location, the victim and the offender. The SARA problem-solving model and the PAT, problem analysis triangle can thus be applied together in order to proactively and systematically design counter-strategies to identify and investigate incidents of human trafficking.

In terms of the location it is imperative to be aware that crime scenes of human trafficking for sexual exploitation are not restricted to brothels or places of exploitation, but can also include the following places as noted in the UNODC (2007:12):

- The source point where the victim was recruited.
- The transit point, including places of stop-over, pass-on, handing-over, transfer.
- The destination point where the victim was taken.
- The vehicles used for transportation of the victims to and from the various places (source, transit, destination and exploitation).
- The places where the trafficked victim is sexually exploited under the frontage of other businesses, callings, professions and employment.
- The places where the victim has been taken to or sent by the trafficker for the making or recording of pornographic materials as well as the places where pornographic material has been transported, stored, sold, purchased or used.

The only thing consistent about a crime scene is the variety. Because of the diversity there are many ways to classify a crime scene (James & Nordby, 2009:167). No matter what the crime scene or where the location, no two crime scenes are ever the same (Becker & Dutelle, 2013:28). A crime scene not only encompasses the geographic area but also entails persons and things. Protecting the area is pointless if what it contains is not also protected. Aspects such as the entryways, exits and travel routes to and from the scene should all be protected against contamination (Becker & Dutelle, 2013:28). The area and the material objects within the scene can usually easily be secured. More difficult though, is the preserving of people on the scene. People should be preserved in the same way as any other evidence.

There are many different definitions for the term “crime scene”. For the purpose of this discussion, an appropriate definition is offered by Van Heerden (1986:217), where he refers

to the scene of crime as “a field laboratory”, where objects of dispute, fabricated by the suspect, can be located for laboratory tests at a later stage. Ragle (2002) describes a crime scene as anywhere evidence may be located that will help explain the events (Dutelle, 2014:14). Based on this working definition, a crime scene (primary and secondary) could then be regarded as any place where evidence may be found which could be used to prove a crime.

Crime scenes can be classified according to the location of the original activity. According to this, the site of the original activity can be labelled as the primary crime scene. Any subsequent crime scene is then labelled as a secondary crime scene. This labelling of crime scenes does not classify according to importance but simply to the designation of sequence of locations. The crime scene includes all the areas through which the participants moved while entering to commit the crime, while committing the crime, and while leaving the crime scene. Normally the crime scene is a single, well-defined area, but it may encompass several areas (Becker & Dutelle, 2013:28).

Another way of classifying a crime scene is that of James and Nordby (2009:168). They classify a crime scene on the size of the scene. According to this classification, a single macroscopic crime scene could compose of many microscopic crime scenes (James & Nordby, 2009:168). An example of this is the body of a gunshot victim dumped in a field, which could represent several scenes within the overall crime scene of the field, namely the body, the body's wounds and the ground around the body. Within a macroscopic crime scene another type of crime scene could exist, namely microscopic crime scenes. A microscopic crime scene is then focused on the physical evidence found on the macroscopic crime scene. The microscopic crime scene will focus on the trace evidence on the body, the gunshot residue around the wound and tire tread marks in the ground next to the body (James & Nordby, 2009:168).

The crime scene of a crime of human trafficking for sexual exploitation could easily fit the macroscopic and microscopic classification because the actions of the perpetrator are not limited to one area. The macroscopic scene could start where the perpetrator is trying to convince the victim to come with him/her, following the victim, abducting the victim and transporting the victim to a place where he/she is kept for sexual exploitation. The body of

the victim is then the microscopic scene where trace evidence as proof of the sexual exploitation will be found.

The Strategic Police Matters (2011:50) recommends that it is of the greatest importance that the benefit of the doubt be given to individuals who claim that they have been subjected to exploitation, possibly related to incidents of human trafficking. A possible victim of human trafficking should thus be considered and accordingly treated as a victim.

The participants in samples B1, B2 and E were asked, based on their experience, what identification practices they are aware of for incidents of human trafficking for sexual exploitation that seem to be particularly innovative and effective in producing positive results. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 52:

Table 52: Participants' experience of innovative and effective identification practices for identifying incidents of human trafficking for sexual exploitation

Innovative and effective identification practices for identifying incidents of human trafficking for sexual exploitation
Samples B1 and B2
<ul style="list-style-type: none"> • Video and audio surveillance (2) • Undercover operations (1) • Proper interviewing techniques • Monitoring premises (1) • Interception (1) • Random raids to brothels and strip clubs(3) • Prostitution (1) • Analysing of victim (1) • Use of affluent suburb (1) • Frequent visiting vehicles (1) • Location of identification documents (1) • Determine owner of property (1) • Determine payment by victim received (1) • Check dustbin for medication or products indicating sexual activity (1) • Monitor print media (1) • Involve dog unit (1) • Good relationship with all role players (1)
Sample E (International participant)
<ul style="list-style-type: none"> • <i>Criminals modify their behaviour continuously.</i> • <i>Look at possible involvement of immigration agents – look at all the visas a specific immigration agent has approved.</i>

Innovative and effective identification practices for identifying incidents of human trafficking for sexual exploitation

- *You have to follow a team approach with experienced investigators who think laterally.*
- *You have to do target flagging and concentrate on specific places.*

Based on the feedback provided by the participants regarding identification practices that seem to be particularly innovative and effective in producing positive results for incidents of human trafficking for sexual exploitation, the majority of the participants’ responses related various investigation methods and techniques, as presented in table 52. The international participant interviewed (sample E) noted the importance of target flagging, following a team approach as well as being alert of the possible involvement of officials required to process documentation of victims during the their trafficking.

The participants in samples B1 and B2 were asked what identification practices for incidents of human trafficking for sexual exploitation they had implemented in the past. These participants where then furthermore asked to describe any positive impacts of such identification practices. These were open-ended questions where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly either provided more than one answer or no answer at all (responses indicated in brackets). The participants’ responses are presented in table 53:

Table 53: Identification practices implemented and positive impacts of implemented identification practices for identification of human trafficking for sexual exploitation incidents

Identification practices implemented	Positive impacts of implemented identification practices
Samples B1 and B2	
<ul style="list-style-type: none"> • Video and audio surveillance (1) • Undercover operations (2) • Interviewing techniques (1) • Monitoring (1) • Interception (2) • Timing for observation (1) • Interview possible victims (1) • Victim could be taken to a place of safety (1) • Victim identification possible (1) • Gather information (2) • Registration of enquiries (1) 	<ul style="list-style-type: none"> • Identify and arrest perpetrators (5) • Rescue the victims (3) • Traffickers moved away from area (1) • Project driven investigations (1) • All allegations to be official enquiries (1) • Application of the Sexual Offences Act (1)

Identification practices implemented	Positive impacts of implemented identification practices
<ul style="list-style-type: none"> • Interviewing neighbours (1) • Verifying, profiling and description operations (2) • Disruptive action at places, drug distribution points (1) • Media coverage prepare victims for interviews (1) • Traditional investigative methodology (1) • Follow the investigation procedures (1) 	

Based on the feedback provided by the participants regarding what identification practices for incidents of human trafficking for sexual exploitation they had implemented in the past, as well as any positive impacts of such identification practices, the majority of the participants' responses included the application of various identification and investigation methods and techniques, as presented in table 53 above, which subsequently led to the identification and arrest of offenders as well as the rescuing of trafficked victims.

The participants in sample C were asked, based on their experience, what evidence they would need in statements to identify the crime of human trafficking. This was an open-ended question where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants listed the following evidence as needed in statements:

- How recruitment took place (2)
- What means was used (2)
- What type of exploitation (2)
- Circumstances under which exploitation took place (2)
- Identification of perpetrators (1)
- Proper victim statements (2)
- Gynaecologist report indication of prostitution (1)
- Victim consultation (1)
- Victim support centre look for substance abuse (1)
- Chronologically what happened and who did what (1)
- Victim's age (1)
- Dates of commission of offences (1)

- Treat with the same principles that apply to racketeering (1)
- Proper police training (1)
- Concepts and definitions of trafficking (1)
- Legislation (1)
- Know what elements of the offence is (1)
- Obtain the correct affidavit according to offences and elements of crime (1)
- Basic indicators of trafficking (1)
- Identification of victim and case could lead to an injustice (1)
- Transportation, how did victim travel (1).

Based on the feedback provided by the participants regarding what evidence they need in statements to identify the crime of human trafficking, it is clear that the elements of the crime of human trafficking must be contained within the statements, as well as a complete chronological description of the sequence of trafficking as it took place (when, where, what, who, how and why).

6.10 BEST PRACTICES TO IDENTIFY HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

The participants in samples B1, B2, D and E were asked if, based on their experiences, they could suggest practical guidelines on how to identify incidents of human trafficking for sexual exploitation. This was an open-ended question where the participants could provide their own answers to the questions and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants' responses are presented in table 54:

Table 54: Participants’ experience of practical guidelines on identifying incidents of human trafficking for sexual exploitation

Practical guidelines on identifying incidents of human trafficking for sexual exploitation	
Samples B1 and B2	Sample D
<ul style="list-style-type: none"> • Interview victim (2) • Surveillance (2) • Undercover operations (2) • Visit brothel, strip show restaurants (3) • Age of girls on such premises (2) • Language spoken (1) • Victim not making eye contact (1) • Signs of acting outside normal routine (1) • Appearance (1) • Use of drugs (1) • Restriction of movement (3) • House where a lot of young girls share a room (1) • Training in understanding the crime (1) • Monitor print media (2) • Do routine investigation, look for information (1) • Follow up on suspect information (1) • Legislation (1) • Not in control of their ID, passport, money, cell phone (2) • Look for sealed or used condoms (2) 	<ul style="list-style-type: none"> • A National Institute Community Development and Management (NICDAM) programme was developed (1) • Training for health care providers is needed (1) • Unconventional investigation methods are required (1)
Sample E (International participant)	
<ul style="list-style-type: none"> • <i>Always try and give the first respondent – the victim – understanding.</i> • <i>Coach the victim.</i> • <i>Listen to what the victim says about her passport – do not know how it was applied for.</i> • <i>They do not know where the local supermarket is.</i> • <i>They do not know where the local church is.</i> • <i>They live in isolation.</i> • <i>Look at the victim’s body language indicators.</i> • <i>“Not Quite Right” Principle.</i> • <i>Ask more about the victim’s social life – their friends.</i> • <i>Look if they have been coached by immigration.</i> • <i>Ask questions about their transportation.</i> • <i>Ask open ended questions that might indicate isolative behaviour.</i> 	

Based on the feedback provided by the participants, suggestions of practical guidelines on how to identify incidents of human trafficking for sexual exploitation included the following: the application of unconventional investigation methods; undercover operations; surveillance; interviewing the victim; doing routine investigations; visiting brothels, strip shows and restaurants as well as houses where a lot of young girls share a room; look for information regarding the restriction of movement; the age of girls on such premises; persons not in control of their ID, passport, money or cell phones; look for sealed or used condoms; languages spoken; victims not making eye contact; signs of acting outside normal routine;

appearance; and use of drugs. They added that training in understanding the crime is required, as well as promulgated legislation and that one needs to follow up on suspect information.

The international participant interviewed (sample E) in this regard noted that one should always try and give the first respondent, namely the victim, commitment of understanding. Coach the victims and listen to what the victims says about their passports and their knowledge about their specific surroundings and the circumstances under which they live and work. This participant once again noted that the “Not Quite Right” principle should be applied.

The participants in samples B1, B2, D and E were asked what the most important lessons were that had been learnt regarding the identification of incidents of human trafficking for sexual exploitation that they would want to share with others. This was an open-ended question where the participants could provide their own answers to the question and no choices were provided from which they could choose. Some of the participants accordingly provided more than one answer (responses indicated in brackets). The participants’ responses are presented in table 55:

Table 55: Participants’ experience of most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation

Most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation	
Samples B1 and B2	Sample D
<ul style="list-style-type: none"> • Perseverance, dedication, enthusiasm (2) • Suspects pretend to be helpful (1) • Victims are fearful, angry and shy (1) • Incidents happen in well-developed areas with strong security (1) • Suspect is defensive (1) • Security officials are paid to keep quiet (1) • Gate access control book can assist in identification of suspects (1) • Apply basic investigation principles (1) • Utilise investigation aids (1) • Process of information and evidence collection (2) • Profit and money gain for perpetrators (1) • Focus on cases to prove it (1) • Treat victim with respect (1) • Assist victim with medical help (1) • Training needed (1) 	<ul style="list-style-type: none"> • There is a lack of understanding the crime (1) • One needs to ensure to have an intervention strategy (1) • There is not much support for victims in place (1) • We have a patriarchal society (1) • The prostitution stigma regarding victims does not help (2) • One needs to use criteria and practical guidelines to identify victims (1) • Victims do not report the true nature of the cases (2) • Personnel needs training (1)

Most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation	
Samples B1 and B2	Sample D
<ul style="list-style-type: none"> • Think outside the box (1) • Be alert and know what to look for (1) 	
Sample E (International participant)	
<ul style="list-style-type: none"> • <i>You have to have intelligence.</i> • <i>You have to have a balanced approach.</i> • <i>You have to focus on the pillars – Education and Investigation goes hand in hand.</i> • <i>You have to have a balanced approach between investigation and making the youth aware.</i> • <i>Build relationships.</i> • <i>Ensure liaison between the police.</i> • <i>You have to have a specialist team.</i> • <i>Ensure liaison with possible first responders – Teachers, People there on the front line, nurses, community to tell you just where the brothels are in order to do further observation and collect intelligence on happenings.</i> 	

Based on the feedback provided by the participants regarding most important lessons learnt about the identification of incidents of human trafficking for sexual exploitation that they would want to share with others, the participants in samples B1, B2, and D provided practical guidelines which included: the processing of information and evidence collection; the application of basic investigation principles; the utilisation of investigation aids; thinking outside the box; being alert and knowing what to look for; as well as to focus on cases in order to prove it. These participants furthermore noted that security officials are paid to keep quiet and that gate access control books can assist in the identification of suspects. Regarding the victims these participants added that one must treat victims with respect; assist them with medical help; that the prostitution stigma regarding victims does not help; that one needs to use criteria and practical guidelines to identify victims; and that one must be aware that victims do not report the true nature of the cases. They also included that personnel needs training and that one must have a look at the profit and money gain for perpetrators. The international participant interviewed (sample E) contributed that the most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation, are that one has to have intelligence; have a specialist team; focus on the pillars, namely that education and investigation go hand in hand; that one has to maintain a balanced approach between investigation and making the youth aware; that one has to build relationships; and that one has to ensure liaison between the police and possible first responders, teachers, people on the front line, nurses and the community to tell one just where the brothels are in order to do further observation and collect intelligence on happenings.

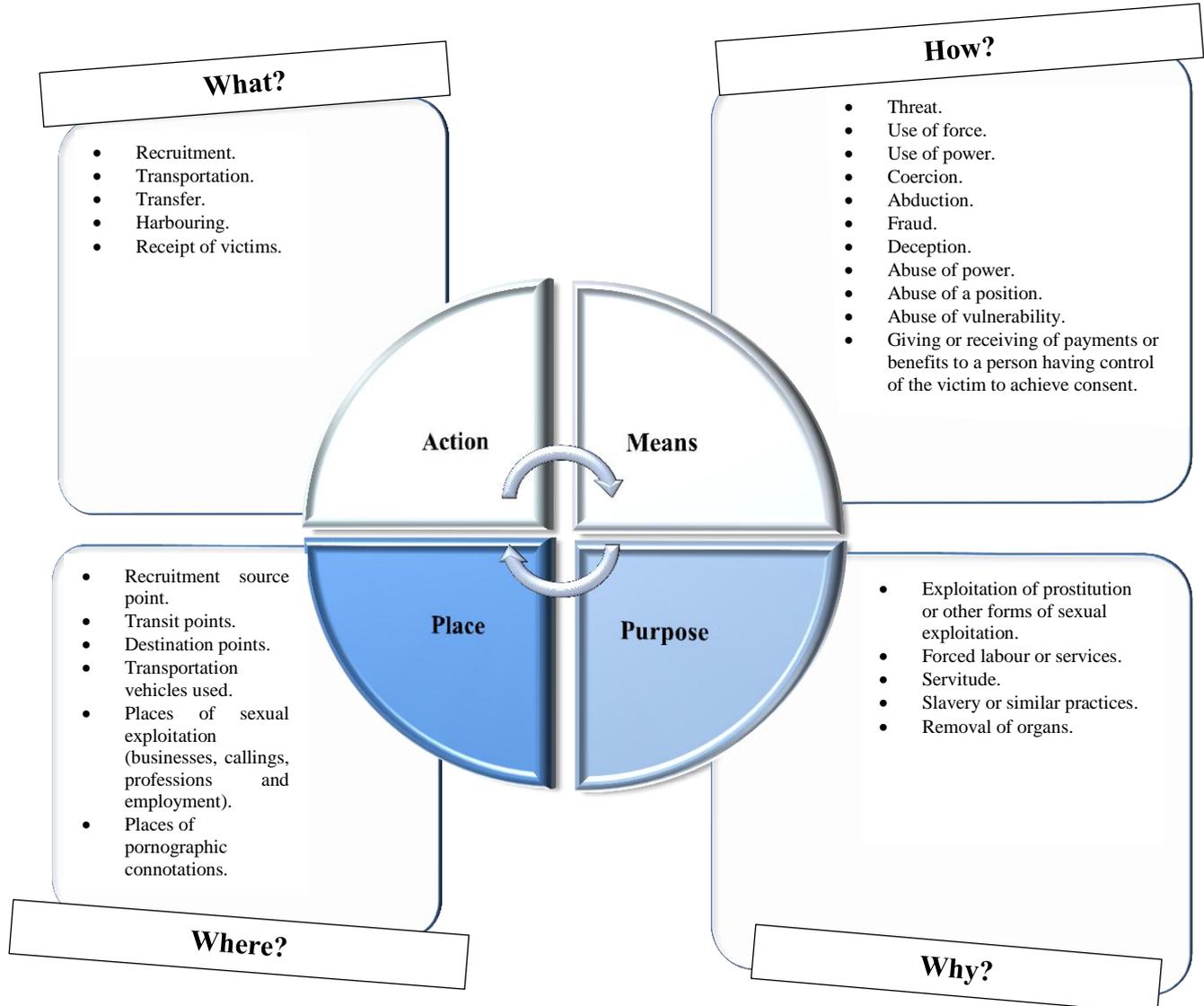
Figure 26: Model - recommendations for the policing of human trafficking for sexual exploitation

Sample screening questions:

- Can you leave the residence or the place of work whenever you wish to do
- Do you have to ask anyone for permission if you need to visit the shops, a doctor, hairdresser, family members, friends and so forth?
- What type of work do you do?
- Do you have your own set of keys to the place of work or place of residence where you work or stay?
- Where do you sleep and eat?
- Do you have to ask permission to eat, sleep or go to the bathroom?
- What is your working and living conditions like?
- Do you have control over post or e-mails addressed to you?
- Does someone else read your post or e-mails for you?
- Do you receive a salary?
- Does your employer pay your salary into your own bank account to which only you have access?
- Can you leave your employment?
- Did you buy the SIM card for your mobile phone yourself?
- Are you allowed to receive calls at your convenience?
- Can you change SIM cards or phone numbers whenever you want or need to?
- Do you control your own passport or travel documents?
- Has your identification or travelling documentation been taken from you?
- Have you or your family been threatened?
- Are there locks on your doors or windows that you cannot unlock?
- Do you pay off any debt incurred from your employment?

Sexual Exploitation – Additional Indicators:

- Continuous movement to various locations.
- No identification documents.
- Escorted and under control of others.
- No freedom of movement.
- Minimum items of clothing.
- Limited knowledge of environment.
- Tattoos' and marks of ownership.
- Unprotected and violent sex.
- Signs of abuse.
- Signs of deprivation of food, water, sleep, medical care and basic life necessities.
- No friends and family.
- No social interaction.



Statements: The elements of the crime of human trafficking must be contained within the statements including a complete chronological description of the sequence of trafficking as it took place (when, where, what, who, how and why). Imperative aspects to include within statements:

- Victim's age.
- Dates of commission of offences.
- Method of recruitment.
- Means used.
- Transportation used.
- Circumstances under which exploitation took place.
- Type of exploitation.
- Identification of perpetrators.
- Elements of the offence.

PAT Problem Analysis Triangle (PAT)

“Not Quite Right”
(looking for anything extraordinary which seems not quite right)

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Situation

6.11 SUMMARY

This chapter explored the elements of the crime human trafficking for sexual exploitation. The focus was on the characteristics, traits and roles of traffickers and their functioning within trafficking groups as organised criminal groups, criminal enterprises and business enterprises. A discussion was presented on trafficking as an organised crime, as well as the means and modus operandi used by traffickers during the recruitment, transportation and exploitation phase of their victims, which endeavoured to create a better understanding of the offenders of these atrocious crimes. This was followed by a discussion of human trafficking victims and their willingness to cooperate with authorities. The chapter presented an in-depth look at the use of sources and resources of information in the identification and discovering of human trafficking incidents, as well as the training and education of personnel to identify victims. The focus also fell on proactive identification approaches required in identifying incidents of human trafficking for sexual exploitation and cooperative partnerships between various role players. A discussion followed on possible indicators of this continuously expanding and ever growing horrific crime of human trafficking for sexual exploitation, to establish awareness and understanding of the identification of this hidden crime.

Chapter 6 deliberated challenges, barriers and red flags inherent to human trafficking incidents, together with the procedures of identification, as well as best practices to identify human trafficking for sexual exploitation. This was done to explore the current situation regarding procedures followed to identify the phenomenon of human trafficking for sexual exploitation. Because the identification of incidents of human trafficking and the identification of victims remain fundamental to prevent and address this crime successfully, data were presented as obtained from literature and interviews conducted with police officials, NGOs, state prosecutors and an international human trafficking investigator (who is also the task team leader of one of the leading human trafficking task teams in Australia). This was done to develop practical guidelines, procedures and recommendations to police officials to identify human trafficking for sexual exploitation incidents more successfully.

In chapter 7, the final chapter, the findings made during this research will be discussed followed by recommendations forthcoming from the findings, and the conclusions derived from this study will be reflected.

CHAPTER 7

FINDINGS, RECOMMENDATIONS AND CONCLUSION

“The problem of modern trafficking may be entrenched, and it may seem like there is no end in sight. But if we act on the laws that have been passed and the commitments that have been made, it is solvable”

(US Secretary of State, Hillary Rodham Clinton, US Department of State TIP Report, 2012)

7.1 INTRODUCTION

Chapter 7 will address the findings and recommendations of this study. The research aims and research questions, as formulated in chapter 1 (paragraphs 1.4 and 1.6) and addressed in this study, will be re-stated. This will be followed by a discussion on the primary and secondary findings emanating from the research questions in addressing the research aim, and accordingly the presentation of recommendations forthcoming from the findings.

Chapter 2 explained the methodology of this study. A survey was used during the collection of data in phase 1 in to gain insight into the phenomenon of human trafficking in South Africa. This was followed by the conducting of interviews during phase 2 of the data collection in order to understand the meaning provided by individuals to the problem researched. In chapters 3, 4, 5 and 6 a review was conducted of pertinent literature, both international and national, to gain an understanding of the research rationale and relevant international legislation which inform South African legislation. South African legislation was explored in order to explain the current legal framework that forms the foundation to address the research problem. The identification of human trafficking was furthermore explored by determining how the federal police in Australia focus on the identification of this phenomenon, as they have a leading human trafficking task team. Links and associations that exist on the identification of this horrendous crime were determined. The exploring of past events, theories developed from former research and interviews conducted, were used as a foundation to describe and explain the future application of the findings emanating from this research.

7.2 RESEARCH AIMS

The aim of this study was to critically analyse how the crime of human trafficking for sexual exploitation can be identified, in order to develop practical guidelines to be used during the identification of this crime in South Africa.

Through a critical analysis of the identification process of this crime the purpose of the research was to gain a better understanding of this crime and to establish, develop and provide practical guidelines, procedures and recommendations to the South African Police Service (SAPS) to identify these cases more successfully. The specific research objectives of this study, in order to address the research aim, were divided into five categories, namely to:

- Explore and describe the phenomenon of human trafficking.
- Determine the nature and extent of the legal arena upon which South African legislation is based, to criminalise human trafficking, to prevent human trafficking and to protect human trafficking victims.
- Explain how the identification of the phenomenon of human trafficking fits into the policing process.
- Explore the current situation regarding procedures followed to identify the phenomenon of human trafficking for sexual exploitation.
- Develop practical guidelines, procedures and recommendations for police officials to facilitate more successful identification of human trafficking for sexual exploitation.

This study presented an original contribution to the identification of this phenomenon, specifically in relation to human trafficking for sexual exploitation, which accordingly contributes to and influences local, regional and international knowledge and practices.

7.3 RESEARCH QUESTIONS

In order to provide direction and structure to the study, to understand the research rationale better, to enable the researcher to contribute to the solution thereof and to achieve the

research aims, purpose and objectives identified in the study, the following research questions were formulated and answered in this study:

1. What does the phenomenon of human trafficking entail?
2. What is the nature and extent of the legal arena upon which South African legislation is based, to criminalise human trafficking, prevent human trafficking and protect trafficking victims?
3. How does the identification of the phenomenon human trafficking fit into the policing process?
4. What is the current situation regarding the procedures followed to identify the phenomenon of human trafficking for sexual exploitation?
5. What practical guidelines, procedures and recommendations can be offered to police officials to facilitate more successful identification of human trafficking for sexual exploitation?

7.4 FINDINGS

The findings, which are based on information that was obtained from both international and national sources, as well as from the survey conducted and participants interviewed, will be reported on to answer each of the specific research questions in this study.

7.4.1 The phenomenon of human trafficking

The first research question relates to what the phenomenon of human trafficking entails. The data collected and responses from interviews answered this question in terms of the following.

7.4.1.1 Definition of human trafficking

The literature showed that the United States of America Trafficking Victims Protection Act (TVPA) of 2000 is the first comprehensive federal law to address trafficking in persons. This law provides a three-pronged approach that includes prevention, protection and prosecution.

The literature described the purpose of the TVPA of 2000, namely: to combat trafficking in persons (a current and modern sign and appearance of slavery whose victims are mainly women and children); to ensure just and effective punishment of traffickers; and to protect their victims. The Palermo Protocol (the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children) is viewed as a significant milestone and contains the first internationally agreed-upon and accepted legal definition of the concept human trafficking. It includes specific terminology, such as:

- Recruitment, transportation, transfer, harbouring or receipt of persons.
- By means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability.
- The giving or receiving of payments or benefits to achieve the consent of a person or having control over another person, for the purpose of exploitation.
- Exploitation, which includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- The consent of a victim of trafficking to the intended exploitation set forth as above shall be irrelevant where any of the means as described above have been used.
- The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means such as threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability.
- “Child” shall mean any person under eighteen years of age.

The researcher closely looked at the data provided by the police participants in the survey during the first phase of the research, as well as the police, state prosecutor and NGO participants interviewed in the second phase of the research. This data revealed that in their understanding of the term human trafficking, the majority of the participants included most of the terminology as mentioned above relating to exploitation, recruitment, transportation,

deception, harbouring, threat, force and fraud. However, only some of the participants included some of the other concepts contained in the definition, namely the receipt of persons; transfer; abduction; the abuse of power or of a position of vulnerability; the giving or receiving of payments or benefits to achieve the consent and having control over another person; and to be held without consent and free will. Only one participant included the term coercion, which forms an integral part of trafficking in persons as one of the elements of this phenomenon and one of the means of how this crime is executed. Furthermore, only one participant referred to debt bondage and none of the participants made any reference to the last part of the definition, namely involuntary servitude or peonage or a child in specific.

It was considered important to establish how knowledgeable the participants are with regard to the issue of human trafficking. The data gathered from the police participants in the survey during the first phase of the research, as well as from the police, state prosecutor and NGO participants interviewed in the second phase of the research, revealed that of the 37 participants interviewed, eight indicated to be very knowledgeable, 21 indicated that they are knowledgeable, seven indicated that they have some knowledge and one indicated to have little knowledge on the issue of human trafficking. However, 27 participants conveyed that they require more knowledge and development with regard to the issue of human trafficking.

7.4.1.2 Human trafficking for the purpose of commercial sexual exploitation

The literature study revealed that traditionally the phenomenon of human trafficking was associated with prostitution, smuggling and illegal migration, and in the present-day it is more often associated with the Commercial Sexual Exploitation of Children (CSEC). The United States of America Trafficking Victims Protection Act (TVPA) of 2000 defines “severe forms of trafficking in persons” in section 103(8) as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.
- The recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for

the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The data gathered from the police, state prosecutor and NGO participants interviewed in the second phase of this research, revealed that the majority of the participants described their understanding of the term “sexual exploitation” and specifically “human trafficking for sexual exploitation”, to include the performing of sexual acts; financial gain for the trafficker; the victim is used and has no benefit; victims are deceived and exploited as sex slaves and into prostitution; and deployed for sexual and related activities.

7.4.1.3 Elements of human trafficking for sexual exploitation

The literature described the elements of the phenomenon human trafficking to entail:

- **Action (What is done?):** Recruitment, transportation, transfer, harbouring and receipt of victims.
- **Means (How it is done?):** Threat, use of force, use of power, coercion, abduction, fraud, deception, abuse of power, abuse of a position, abuse of vulnerability and giving or receiving of payments or benefits to a person having control of the victim to achieve consent.
- **Purpose (Why it is done?):** Exploitation of prostitution or other forms of sexual exploitation, forced labour or services, servitude, slavery or similar practices and removal of organs.

The data gathered from the police participants interviewed in the second phase of the research revealed that the majority of the police participants included the key elements of this crime as contained in the Palermo Protocol’s definition of trafficking. Some of the participants also included rape; assault; murder; living in proceeds of crime; child stealing; substance abuse; sale; and unlawful intention in their understanding of the typical criminal elements that the crime of human trafficking would entail. Although not contained within the definition and described as elements, most of these responses are to some extent indirectly relevant to the crime.

No explanation of the typical criminal elements of the crime human trafficking for sexual exploitation could be found in literature. The proposed criminal elements of this phenomenon are presented in table 56 below. These proposed criminal elements are compiled from data obtained from the police and state prosecutor participants interviewed during the second phase of the research, as well as elements of the phenomenon of human trafficking not mentioned by the these participants but suggested by the researcher for inclusion.

Table 56: Proposed criminal elements of the crime human trafficking for sexual exploitation

ACTION (WHAT?)	MEANS (HOW?)	PURPOSE (WHY?)
<ul style="list-style-type: none"> • Recruitment • Transportation • Harbouring • Transfer • Receipt of victims <p style="text-align: center;">(What is done?)</p>	<ul style="list-style-type: none"> • Threat • Use of force • Use of power • Coercion • Debt bondage • Abuse of power • Abuse of a position • Abuse of vulnerability • Giving or receiving of payments or benefits to a person having control of the victim to achieve consent • Abduction • Fraud • Deception • Withholding freedom of movement • No consent • Violence • Kidnapping • Rape • Assault • Corruption • Drugs <p style="text-align: center;">(How is it done?)</p>	<ul style="list-style-type: none"> • Exploitation of prostitution • Prostitution sexual purposes • Other forms of sexual exploitation • Forced services • Servitude • Pornography • Living on proceeds of crime • Money laundering <p style="text-align: center;">(Why is it done?)</p>

The data obtained from the police and state prosecutor participants interviewed in the second phase of this research, described the element of **conduct** of the crime human trafficking for sexual exploitation, to include deception (11 out of 22); force (8 out of 22); sexual acts and prostitution (8 out of 22); exploitation (8 out of 22); threats (6 out of 22); and transportation (6 out of 22).

Most of these elements of conduct of the crime human trafficking for sexual exploitation were also summarised in the data of the state prosecutor participants interviewed during the second phase of the research in their description of the different role players (recruiter, transporter and exploiter) each fulfilling the following different roles:

- **Recruiter:** Recruitment, deceiving and grooming the victim.
- **Transporter:** Transportation of victim, rape could be involved and degrading and breaking the victim down to be vulnerable.
- **Exploiter:** Rape, force, physical abuse, food deprivation, mental abuse and substance abuse.

7.4.1.4 Human trafficking, migration, smuggling and kidnapping

The literature study showed that, even though the crimes of human trafficking and human smuggling are in essence both committed against a person, the difference between these two concepts was described to rest upon the intention for which the movement of the person took place. Furthermore, it became clear that these two phenomena often share certain characteristics and that the implied purposes, intention for movement and the act of trafficking and smuggling of persons encapsulate the differences between these two concepts, which can be summarised as follows:

- **Process:** The process of human smuggling consists of a business deal between the mediator and the client, after which the client is transported illegally across an international border. The human trafficking process also generally involves the movement of the person (victim) to the destination location.
- **Crime:** Both human trafficking and human smuggling constitute a crime as both these phenomena involve the violation of laws.
- **Consent and crossing of borders:** Smuggled migrants usually consent to being smuggled and the act of smuggling accordingly involves illegal border crossing and entry into another country. Trafficking, on the other hand, does not necessarily involve crossing a border and victims may cross borders legally.

- **Exploitation:** Smugglers generate money from facilitating the movement and illegal entry of persons and the transaction ends there. Traffickers on the other hand generate money from the ongoing exploitation of their respective victims.
- **Organised criminal networks:** Due to the enticement of profit involved in both these phenomena, often organised criminal networks are involved in these events.
- **Illegal and profitable business enterprises:** In the occurrence of human smuggling the mediator benefits in the process through payment received by the client to take him or her illegally across an international border. In human trafficking, the trafficker benefits from the exploitation of the victim.

The data obtained from the police participants in the survey conducted during the first phase of the research, as well as the police, state prosecutor and NGO participants interviewed during phase 2 of the research, revealed that there is a difference between human trafficking, migration, smuggling and kidnapping (34 out of 37). Only three out of 37 participants responded that there is no difference between human trafficking, migration, smuggling and kidnapping. The differences as summarised by these participants are presented in table 57:

Table 57: Summary of differences between human trafficking, migration, smuggling and kidnapping

Human trafficking	Migration	Smuggling	Kidnapping
• Deception	• Free movement and willing participant	• Free movement and willing participant	• Ransom demand
• Exploitation	• Procedure is followed	• Consents to be smuggled	• Person is removed
• Force	• Illegal documents	• Crime against the state	• No exploitation
• Without consent	• Normal circumstances under law	• Relationship ends on arrival	• Within normal environment
• Identification documents removed or not legal	• Illegal entry	• Something concrete for financial gain	• Means of threat or force
• Crime against victim	• Financial or material benefit	• Illegal border crossing	• Victim kept in detention for sexual purposes
• To the benefit of trafficker – financial	• Procurement	• Illegal documents	• Unlawfully depriving a person of free movement

Human trafficking	Migration	Smuggling	Kidnapping
• Humans are involved	• Voluntarily	• Labour related offence	• Without consent
• Outside of normal environment	• Across borders	• Person is assisted to enter illegally or exploit	• Furtherance of another crime
• Recruitment	• No deception or abuse of power	• Two people assisting each other	• Illegal / forceful removal
• Transported	• Chance of kidnapping	• Without force or deceit	• Restriction of person's free movement
• Transportation	• Illegal migrants obtain services to be smuggled	• Something concrete	• Connected to other crimes committed
• Sex related offence	• Voluntary movement	• Business transaction	• Sexual utilisation involved
• No free movement	• Through illegal channels	• Relationship with smuggler is exploitative	• Victim is kept against will
• Controlled by trafficker			• Unlawful deprivation of freedom
• Abduction			• Held for a period of time
• Threat			• Held for blackmailing
• Abuse			
• Rights are being violated			
• Substance abuse			
• Harboring of persons			
• Labouring services			
• Fraud			
• Debt bondage			
• Slavery			
• Continues relationship			
• Illegal border crossing			
• Child removed from support network			
• Movement without consent			
• Victim selection don't testify against trafficker			
• Abuse of power			
• Not voluntarily			
• Possible elements of kidnapping			
• Relationship continues			

7.4.1.5 Different forms/types of human trafficking

The data gathered from the police, state prosecutor and NGO participants interviewed during phase 2 of the research, revealed that the majority of these participants named the different form/types of human trafficking as being sexual exploitation (24 out of 25) and labour exploitation (22 out of 25). Some of these participants listed organ trafficking (12 out of 25); forced marriages (10 out of 25); domestic servitude (9 out of 25); illegal adoptions (8 out of 25); and slavery (8 out of 25). A few of these participants also mentioned human sale (4 out of 25); child trafficking (4 out of 25); impregnation of female to sell her child (2 out of 25); debt bondage (2 out of 25); and street begging (2 out of 25). Other responses included trafficking for ritual purposes; pornography; forced begging; military services; drug trafficking; and orphan trafficking – each respectively with 1 out of 25 responses.

The data obtained from the police participants in the survey conducted during the first phase of the research, as well as the police participants interviewed during phase 2 of the research, showed the likelihood that the following types of crimes will be encountered over the next 12 months in their province: domestic violence; prostitution; sexual assault; kidnapping; murder; labour trafficking; sex trafficking; organ trafficking; domestic servitude; and street begging by children. This likelihood was responded on by the participants as follows:

- The majority of the participants (120 out of 300) responded that it is **likely** that the above types of crimes will be encountered over the next 12 months in their province.
- Some of the participants (81 out of 300) responded that it is **very likely** that the above types of crimes will be encountered over the next 12 months in their province.
- A few of the participants (42 out of 300) were **unsure** of the likelihood that the above types of crimes will be encountered over the next 12 months in their province.
- A few of the participants (32 out of 300) responded that it is **somewhat likely** that the above types of crimes will be encountered over the next 12 months in their province.

- The minority of participants (25 out of 300) responded that it is **not likely at all** that the above types of crimes will be encountered over the next 12 months in their province.

The data gathered from the police participants in the survey conducted during the first phase of the research, as well as the police participants interviewed during phase 2 of the research, thus showed that the majority of the participants (201 out of 300 – more than 50%) responded that it is either **very likely or likely** that the following types of crimes will be encountered over the next 12 months in their province: domestic violence (25 out of 30); prostitution (24 out of 30); sexual assault (26 out of 30); kidnapping (20 out of 30); murder (21 out of 30); labour trafficking (19 out of 30); sex trafficking (22 out of 30); organ trafficking (10 out of 30); domestic servitude (16 out of 30); and street begging by children (18 out of 30).

7.4.1.6 Prevalence of sex trafficking of people who come from outside and from within South Africa within South Africa's provinces

Data obtained from the police participants in the survey conducted during the first phase of the research, as well as the police and NGO participants interviewed during phase 2 of the research, reflected how prevalent they believe sex trafficking is in their province – firstly from **outside** and secondly from **within** South Africa.

In answer to the first question, 14 of these participants responded that it is widespread; seven participants responded that it is occasional; five participants noted that it is rare; and one participant indicated that it is non-existent. Four of the participants were unsure on the prevalence of sex trafficking in their province of people who come from **outside** of South Africa.

Of the 32 responses relating to the prevalence of sex trafficking in their province of people who come from **within** South Africa, 12 participants indicated that it is widespread; 10 participants responded that it is occasional; one participant noted that it is rare; and one participant indicated that it is non-existent. Seven of the participants were unsure on the prevalence of sex trafficking in their province of people who come from **within** South Africa.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police and NGO participants interviewed during phase 2 of the research, revealed that the majority of the participants rated the human trafficking problem in their respective provinces during the past five years (2007-2011) to be either a problem (11 out of 32) or a small problem (10 out of 32). Some of the participants indicated that during the past five years (2007-2011) human trafficking in their respective provinces had been a serious problem (6 out of 32). Some participants noted that it is not a problem and reported that there had been no cases within their province (3 out of 32). Two participants were unsure whether it is a problem or not within their respective provinces.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police and NGO participants interviewed during phase 2 of the research, furthermore showed that the majority of the participants responded that the addressing of human trafficking in their respective provinces is a high priority (21 out of 32). A few participants indicated that it is a very high priority (4 out of 32). Only a few participants responded that the addressing of human trafficking in their respective provinces is either a minor priority (3 out of 32) or not a priority at all (2 out of 32). Two participants were unsure on this aspect.

7.4.1.7 Human trafficking in South Africa – push and pull factors, prevalence and known routes

The literature overview showed that the growth of the phenomenon of trafficking has been associated with several causes including gender discrimination, war and armed conflict, poverty and various other forms of natural disasters. These factors in themselves are, however, not deemed as the causes of trafficking in persons. They merely contribute to the vulnerability of victims and the likelihood that a country will become a source of trafficking is deemed more greatly influenced by the economic and political instability of a country.

The literature furthermore explained that push factors are ascribed to circumstances that encourage victims to leave their home countries, such as persistent unemployment; lack of education; lack of information; gender discrimination; poverty and deprivation; lack of legislative and policy protection; and harmful socio-cultural practices. On the contrary, the

pull factors that draw people into the trafficking (referred to as the demand side of trafficking) are reported to be economic inequality, resulting in neighbouring cities, regions or countries being attractive destinations for people in highly impecunious cities, regions and countries.

Literature found that the root of trafficking women and children for commercial sexual purposes, lies in the expansion and ever growing sexual entertainment industry, which is most importantly, a demand-driven phenomenon. Furthermore, women and children are perceived as the most exploitable and controllable and are therefore deemed to be the most in demand to contribute to this expanding and very competitive economic market driven by maximum profit gaining.

Literature presented that South Africa is a relatively stable and prosperous country in a mainly poor and relatively unstable continent. This is one of the contributing factors making South Africa a preferred destination and transit country for migrants from the rest of Africa. The borders of South Africa are not adequately protected and therefore contribute to the illegal trafficking of persons across the borders. South Africa shares borders with six neighbouring countries, namely Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe. Each of these countries has a number of entry points into South Africa. Mozambique and Zimbabwe, which are directly adjacent to South Africa, are viewed as the major countries of origin of trafficking into South Africa. The trafficking of human persons predominantly takes place across the borders of the country as these extensive and unpatrolled borders provide ideal opportunities and circumstances for traffickers to move victims into South Africa undetected. Criminal syndicates exploit circumstances at border posts where bribery and inefficient border control points enable the illegal trafficking of persons into the country. Many young South Africans are also seeking for opportunities to work overseas and since they are so eager and willing to migrate to foreign countries in search of work opportunities, they may easily fall prey to being trafficked.

Literature furthermore showed that due to the country's unique socio-political history and difficult economic inequalities, South Africa has the potential for high levels of internal trafficking within its national borders, also referred to as domestic trafficking. Trafficking victims who are trafficked internally within South Africa are mostly recruited from provinces

such as Mpumalanga, Limpopo, Northern Cape and Eastern Cape (viewed as regions with a lower socio-economic status), as well as from informal settlements or the rural areas of Gauteng, the Western Cape and the Free State. These victims are predominantly trafficked to the city centres of Pretoria, Johannesburg, Durban, Bloemfontein and Cape Town.

Based on the literature, information specifically related to trafficking in South Africa as released in the US Department of State TIP Reports of 2012 and 2013, concludes:

- Children are trafficked mainly within the country from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban and Bloemfontein.
- Girls are subjected to sex trafficking and domestic servitude.
- Women are recruited and transported to Europe and the Middle East where they are forced into prostitution or domestic service.
- Women and girls are trafficked to South Africa for legitimate work in South Africa, but on arrival are subjected to prostitution, domestic servitude and forced labour or are taken onward to Europe for forced prostitution.
- Ukuthwala (the forced marriage of girls as young as 12 to adult men) is still practised in some remote villages in the Eastern and Western Cape provinces, leaving these girls vulnerable to forced labour and prostitution.
- Nigerian syndicates continue to dominate the commercial sex trade within South Africa through local criminal rings, street gangs and organised child prostitution.
- Chinese nationals coordinate the sex trafficking of Asian nationals and Russian and Bulgarian crime syndicates operate in the Cape Town sex trade.
- Victims were discovered in Bangladesh and Turkey and to a lesser extent women are recruited and transported to Europe and the Middle East, where they are forced into prostitution or domestic service.
- Criminals and taxi drivers transport Zimbabwean migrants, including children, at the borders into South Africa where they are subjected to sex or labour trafficking on arrival in South Africa.
- South African trafficking victims were identified in Brazil and four South African women were reported being forced to serve as drug mules to Bangladesh or Thailand via Brazil.

- Namibian authorities apprehended a child sex tourist from South Africa and Chinese, Indian, Pakistani, Rwandan, Somali and Ugandan nationals were intercepted in Malawi, Mozambique, Swaziland, Tanzania and Zambia en route to potential exploitation in South Africa.
- Traffickers control their victims through debt bondage, forced use of drugs and alcohol, intimidation and threats, the use of force, witchcraft and withholding of their passports.
- Women and girls from the Democratic Republic of the Congo, Mozambique, Swaziland, Zimbabwe, Thailand, Cambodia, India, Russia, Ukraine, Bulgaria, China and Taiwan are recruited and trafficked to South Africa for legitimate work in South Africa, but on arrival are subjected to prostitution, domestic servitude, and forced labour or are taken onward to Europe for forced prostitution.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police and NGO participants interviewed during phase 2 of the research, revealed very few known routes of human trafficking incidents internationally. This is in accordance with the discussion on the literature that there is less trafficking out of South Africa than into the country. As South Africa shares borders with six neighbouring countries some of the participants included the known routes of human trafficking to be taking place at the borders of Lesotho, Mozambique and Zimbabwe. In accordance with the literature discussion, Mozambique and Zimbabwe (directly adjacent to South Africa) and Lesotho (situated within South Africa's borders) are viewed as the major countries of origin of trafficking into South Africa. In this regard 14 of the 32 participants interviewed indicated that sex trafficking of people who come from **outside** South Africa is widespread in their province. Seven participants responded that it happens occasionally, as presented in figure 14 above. The majority of these participants included known routes of human trafficking to be into the city centres of Pretoria, Johannesburg, Durban, Bloemfontein and Cape Town and furthermore noted that trafficking takes place by air, land and sea. In this regard 12 of the 32 participants interviewed indicated that in their province sex trafficking is widespread of people who come from **within** South Africa. Ten participants responded that it happens occasionally.

7.4.2 The legal framework of human trafficking in the international and national arena

The second research question relates to the nature and extent of the legal arena upon which South African legislation is based in order to criminalise human trafficking, prevent human trafficking and protect trafficking victims. The data collected and responses from interviews answered this question in terms of the international arena and the national arena.

7.4.2.1 The international arena

Literature informs us that South Africa (as a destination, transit country and country of origin of human trafficking) signed and ratified the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), which came into operation on 29 September 2003 and 25 December 2003 respectively.

Literature also presented that the United States annually issues a Trafficking in Persons Report (US Department of State TIP Report) which addresses and disseminates information about the emergent global problem of human trafficking and places each country onto a tier (one of four), based on the extent of the action taken to combat trafficking by each respective country's government. Each country's government is accordingly analysed for the elimination of human trafficking, based on the extent of its efforts to reach and ensure compliance with minimum standards of the Trafficking Victims Protection Act (TVPA) of 2000, which are accordingly consistent with the Palermo Protocol.

Literature found that the last five TIP Reports consecutively stated that the South African Government does not fully comply with the minimum standards for the elimination of human trafficking, although acknowledging that the country is making significant efforts to do so. The following primary suggestions have been articulated to the South African Government to focus on and accordingly apply and put into effect:

- Pass and enact the draft Prevention and Combatting of Trafficking in Persons Bill and begin implementing the legislation.

- Continue to create and increase awareness among all levels of government officials as to their specific tasks, responsibilities and accountabilities under the anti-trafficking provisions of the Sexual Offences and Children's Amendment Acts.
- Allocate more substantial financial resources to anti-trafficking personnel and programmes.
- Ensure the availability of translators to assist victims in obtaining care, cooperating with law enforcement and testifying in court.
- Ensure to investigate and prosecute officials implicated and suspected to be involved in trafficking.
- Institute and maintain formal systems and procedures to regularly compile national statistics on the number of trafficking cases prosecuted and victims assisted.
- Protect children from commercial sex acts, support the adoption of measures to protect children from sexual exploitation in travel and tourism and accordingly support prevention strategies developed by NGOs to address the demand for commercial sex acts.

7.4.2.2 The national arena

Literature presented that at the time of the study South Africa did not have a legal definition of human trafficking, neither in the common law nor in statute. Numerous existing common law crimes and statutory offences are currently used to charge and prosecute persons suspected of being involved in the trafficking of persons for the purposes of sexual exploitation, namely: the Child Care Act 74 of 1983 as amended; the Sexual Offences Act 23 of 1957; the Prevention of Organised Crime Act 121 of 1998; the Prevention of and Combatting of Corrupt Activities Act 12 of 2004; the Immigration Act 13 of 2002 as amended; the Films and Publications Act 65 of 1996 as amended; the Corruption Act 94 of 1992; the Intimidation Act 72 of 1982; the Riotous Assemblies Act 17 of 1956; and the Constitution of the Republic of South Africa 1996.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police, state prosecutor and NGO participants interviewed during

phase 2 of the research, revealed that the majority of these participants (more than 50%) responded that South Africa does not have specific human trafficking legislation (27 out of 36). The few who indicated that South Africa does have legislation (9 out of 36) made mention that the draft Bill is awaiting approval and listed the following legislation that is currently used:

- Children's Act 38 of 2005.
- Criminal Procedure Act 51 of 1977.
- Prevention of Organised Crime Act 121 of 1998.
- Sexual Offences Act 23 of 1957.
- Basic Conditions of Employment Act 75 of 1997.
- Immigration Act 13 of 2002.
- Films and Publications Act 65 of 1996.
- Corruption Act 94 of 1992.
- Extradition Act 67 of 1962.
- International Cooperation in Criminal Matters Act 75 of 1996.
- The Riotous Assemblies Act 17 of 1956.
- The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.
- Provisions in SOCA.
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (Palermo Protocol) supplementing the United Nations Convention against Transnational Organised Crime.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police participants interviewed during phase 2 of the research, presented that twenty-one (21 out of 30) of the participants indicated that it is very challenging that no trafficking legislation is in place in their province with regard to addressing human trafficking; five (5 out of 30) indicated that it is occasionally challenging; one (1 out of 30) of the participants indicated that it is not challenging; and three (3 out of 30) participants indicated that they are unsure. The majority of the participants (more than 50%) thus indicated that the lack of legislation to address human trafficking within South Africa is experienced as very challenging.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police and NGO participants interviewed during phase 2 of the research, showed that nine (9 out of 32) of the participants indicated that there is a formal procedure/protocol/policy in place that provides instructions for police officials on how to **identify** human trafficking cases. In this regard eighteen (18 out of 32) participants indicated that there is not a procedure/protocol/policy and five (5 out of 32) indicated that they were unsure if there is a procedure/protocol/policy. The majority of the participants (more than 50%) thus indicated that there is not a procedure/protocol/policy in place on how to identify human trafficking cases.

The data from the police participants interviewed during phase 2 of the research furthermore revealed that nine (9 out of 18) of these participants indicated that these procedures are useful; five (5 out of 18) indicated that formal **procedures/protocols/policies** in identifying human trafficking cases are very useful; two (2 out of 18) of the participants indicated that they are unsure; and two (2 out of 18) indicated that it is somewhat useful. Even though the majority of the participants indicated that there were no procedures/protocols/policies in place on how to identify human trafficking cases the majority of the participants in the survey conducted with the police participants during the first phase of the research, as well as the police participants interviewed during the second phase of the research, indicated that formal procedures/protocols/policies in identifying and investigating human trafficking cases are useful.

The data from the state prosecutor participants interviewed during phase 2 of the research showed that four (4 out of 5) of the participants indicated that there is a procedure/protocol/policy on the prosecution of human trafficking cases. They listed an NPA document, a docket referred to as DPP and parts of Acts. One (1 out of 5) of the participants indicated that there is not a procedure/protocol/policy in place. These participants were also asked how useful formal procedures/protocols/policies are in the prosecution of human trafficking cases. Three (3 out of 5) of the participants indicated that it is useful; one (1 out of 5) indicated that it is very useful; and one (1 out of 5) of the participants noted that existing directives do not deal extensively with the issue.

The data from the international participant interviewed during phase 2 of the research revealed that they have **specific legislation** that deals with these crimes (human trafficking), and explained that her country is deemed a destination country. This participant commented that they have proportionally less of the crime type. Although they have had human trafficking legislation since 2003/2004, they are still quite “young” in this type of crime. They have had new legislative amendments in 2013 to broaden the definition of human trafficking and they now cover forced marriages, which was not in their previous legislation. Their legislation is thus growing.

The data from the state prosecutor participants interviewed during phase 2 of the research summarised their respective **experiences** in prosecuting human trafficking cases. This included that they specialised in sexual offences and offenses against children. The state prosecutors furthermore noted experience gained during prosecution, included experience in extreme sexual prosecution and working with victims in these cases. They also learnt a lot by doing their own research and through trial and error, which includes practical experience.

The participants noted that these cases are long and mentally draining, the language barrier is challenging, victims have trust issues, they don't want to testify and go back to the trafficker. One participant noted that investigations are not always properly done and one other participant noted that support was received from a good investigating team. The participants furthermore indicated that they have had experiences where the victims withdrew cases after two years, the accused on bail absconded and previously trafficked victims became involved in a new case. Three (3 out of 5) of these state prosecutor participants contributed that the prosecution of human trafficking for sexual exploitation cases are treated differently than the prosecution of other crimes. Two (2 out of 5) participants noted that these cases are not treated differently. The answers of the three participants explaining the different handling of human trafficking cases in relation to other crimes included that human trafficking cases are handled under organised crime, different elements are involved and that these cases are very complex matters due to multi-facets. These crimes are committed across borders, across multi-divisions and jurisdictions and require specialised prosecutors. Furthermore, participants indicated that these cases are sometimes referred to as social problems and not criminal offences. The victims might be involved with other crimes, the SAPS is inclined to

dismiss complaints from sex workers and judicial officers are not up to date with term of human trafficking.

The data from the state prosecutor participants interviewed during phase 2 of the research contributed that the sentence or punishment handed down to someone convicted of human trafficking for sexual exploitation, included life imprisonment, harsh minimum sentences and that there is a disparity between prescribed and imposed sentences. These participants communicated their **needs** from the police/investigators to successfully prosecute offenders of human trafficking for sexual exploitation, to be:

- Proactive investigation.
- Specialised officers.
- Trained in investigative techniques.
- Interest, compassion, empathy, willingness.
- No corruption.
- People's person to connect with victim
- Know the elements of the crime for statement.
- New information comes forth in each consultation.
- Female interpreters.
- Evidence should be chronological, systematic and logical.
- Psychologist to write victim impact report.
- Understand other crimes that might be involved.
- Investigator must have writing skills.
- Notes should be taken before formal statement.
- Investigator has to communicate with prosecutor.
- Willingness of victim to testify.
- Multi sectorial approach.
- Prosecution guided investigation.
- Multi agency approach to share resources and knowledge.
- Investigators need to find corroborating evidence.
- Proper police training.
- Knowledge on concepts and definitions of trafficking.

- Knowledge of legislation.
- Know what elements of the offence are.
- Obtain the correct affidavit according to offences and elements of crime.
- Knowledge of basic indicators of trafficking.
- Identification of victim and case could lead to justice.

The data from the state prosecutor participants interviewed during phase 2 of the research indicated that, in the **absence of legislation** on human trafficking, they determine the crime on which they have to charge a trafficking suspect by considering duplication charges. These participants stated that the facts will determine relevant crimes, that one must formulate as many charges as possible and that one must make use of other legislation relevant, for example: common law offences; statutory offences; Sexual Offence Act; Prevention of Organised Crime Act; Immigration Act; Drugs and Drug Trafficking Act; Business Act; Kidnapping Act; Assault Act; and the Children's Act.

The data from the state prosecutor participants interviewed during phase 2 of the research furthermore indicated that, in the **absence of legislation** on human trafficking, the following crimes are used to charge suspects suspected of human trafficking, namely: kidnapping; rape; racketeering; assault GBH (Grievous Bodily Harm); immigration charges; drugs and trafficking; money laundering; abduction; keeping a brothel; living on earnings of prostitution; extortion; exploitation; corruption; local authority municipal bylaws; fraud; child labour; basic conditions of employment; and intimidation. The majority of the crimes listed by these participants that (in the absence of legislation on human trafficking) are used to charge suspects of human trafficking, are in accordance with the crimes proposed by the literature discussed in chapter 4 to ensure that trafficking offenders are called to justice, even though these crimes do not completely attract as hefty sentences as specific trafficking in persons sentences would.

The data from the state prosecutor participants interviewed during phase 2 of the research related several **barriers** when prosecuting cases of human trafficking for sexual exploitation. These barriers include victims who do not want to lay charges, who do not want to stay in SA to testify, do not want to become involved as witnesses and leave safe houses to return to the trafficker. Moreover, victims often have problems to provide detail regarding their

trafficking. They are vulnerable people with issues regarding trust and substance dependency and are experienced as being difficult as a result of being trafficked.

These participants furthermore expressed the following **barriers** in terms of the police who have problems to distinguish between other crimes and incidents of trafficking: lack of specialised investigators; lack of police skills for conducting financial investigation; insufficient police training and knowledge on the elements of human trafficking; unable to obtain proper affidavits containing the elements of this crime; partake in corruption; lack of pro-active investigators and properly investigated cases; negative attitudes and preconceived ideas towards prostitutes.

The data from the state prosecutor participants interviewed during phase 2 of the research reflected aspects that might assist them to overcome the primary challenges they face in prosecuting a case of human trafficking for sexual exploitation. In terms of **victims**, they mentioned: taking victims to a safe and secure shelter; being sympathetic when taking victims to safe places; not to take victims' statements on the crime scene; giving victims time to eat and sleep before taking a statement; arranging medical assistance for victims; and assisting victims to claim damages from traffickers.

In terms of the **police** these participants conveyed that the following aspects could lead to more efficient justice and could prevent police corruption: specialised investigators; proper and adequate training; knowledge of human trafficking legislation; the concepts, definitions and elements of trafficking and the basic indicators of trafficking; the obtaining of the correct affidavit according to offences and elements of crime; the identification of victims and cases.

Lastly, in terms of the **judiciary**, legislation and general aspects, these participants related the following aspects that might assist them to overcome the primary challenges they face in prosecuting a case of human trafficking for sexual exploitation: a database of accredited language practitioners; promulgated human trafficking legislation; specialised prosecutors; and a multi-sectorial team effort approach.

The data from the state prosecutor participants interviewed during phase 2 of the research presented the following as imperative to **support** them in prosecuting cases of human

trafficking for sexual exploitation legislation: adequate training; knowledge of indicators and elements of the offence; complete statements; networking; victim cooperation; victim support; and identification of victims and cases.

The data from the state prosecutor participants interviewed during phase 2 of the research indicated the following **prosecution practices** for incidents of human trafficking for sexual exploitation that they had implemented in the past during prosecution of these cases, namely: to interview victims while information is still fresh; determine if the person is indeed a victim of human trafficking; refer the victim to a safe house; refer the victim for witness protection; refer the victim for counselling and therapy; extend permits for foreigners at the Department of Home Affairs; contact the foreign embassy; make extensive notes before the statement is done; look at elements of the crime; guide the investigation to instil proactive investigation; identify the correct charges; and build a trust relationship with the victim.

In addition, the data from the state prosecutor participants interviewed during phase 2 of the research, described the following **positive impacts** of these prosecution practices that they had implemented: victims are prepared long before the court date; victims are given a perspective on what had happened; victims are safe and protected; victims co-operate with the State; networks of relevant role players are established; networks for victim support are established; being able to present correct charges; being able to test cases according to the new Trafficking in Persons Act; and getting an understanding of the victim.

The data from the state prosecutor participants interviewed during phase 2 of the research proposed the following most important **lessons learnt** regarding the prosecution of cases of human trafficking for sexual exploitation. In terms of **victims**: to interview victims while the information is fresh; that victims' well-being comes before prosecution; to take care of the victims first; to prevent secondary abuse and trauma to victims as without the victim's evidence there is no case; and to expect the unexpected.

These participants furthermore proposed the following lessons learnt in terms of the **police**: traditional investigation methods do not work; consult with all persons as soon as possible; have more than one investigator on your team as one investigator can be manipulated and if an investigator leaves the case, the case can go on; understand the dynamics of these cases

and victims; have a team approach – trust is built with other investigators; have one's own support network; have a network of people to assist with victim issues; know your case as well as the victims' needs and the law; conduct research; and lastly, bear in mind that some victims pointed out interpreters from embassies as their traffickers, and therefore one should not use interpreters from embassies without proper caution.

The literature overview indicted that the South African Prevention and Combating of Trafficking in Persons Act 7 of 2013 was signed into law on 29 July 2013. However, this Act has not yet been implemented as some key government departments have not prepared their respective directives, combined with appropriate implementation procedures and measures, currently pending on regulations required by a number of role-players. This enactment and implementation of legislation in South Africa should bring about the removing of the South Africa from its current placement on the Tier 2 position, which the country has maintained for the last five years. It would ideally place South Africa on Tier 1, bringing the country up to full compliance with US and international standards for the combating of human trafficking. This legislation will not only give full effect to the UN Palermo Protocol, but will also address the trafficking of persons within or across the border of South Africa; prevent trafficking in persons; provide for an offence of trafficking in persons, including other offences associated with trafficking in persons; provide for measures to protect and assist victims of trafficking in persons; and provide for matters connected therewith.

Literature furthermore revealed that the enacted Prevention and Combating of Trafficking in Persons legislation in South Africa will, once it has been implemented, complement the National Prosecuting Authority (NPA) with an array of tools with which to prosecute traffickers. This will include any person who has even minimal involvement with the movement of trafficking victims into, through and out of South Africa. The Act will establish penalties for trafficking in persons; any conduct that facilitates trafficking in persons; carrying victims of trafficking into, through or out of South Africa; engaging in conduct that causes another person to enter into debt bondage; confiscating, possessing, concealing or destroying documents; and using the services of or intentionally benefitting from a victim of trafficking.

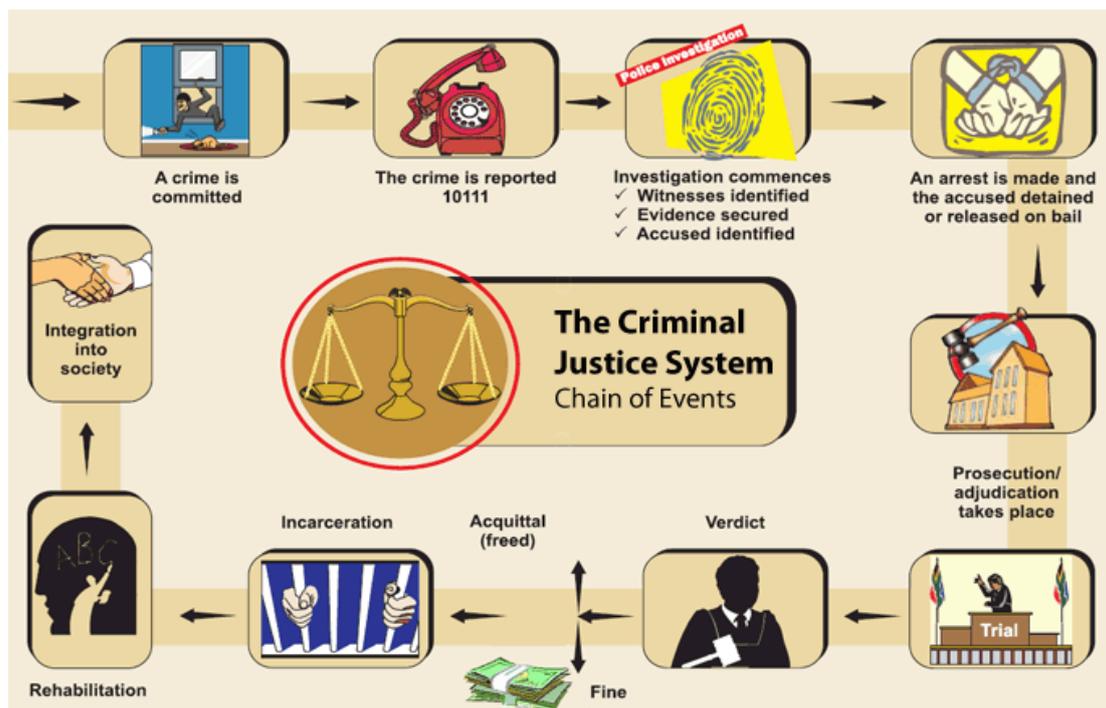
7.4.3 The identification of a crime within the policing process

The third research question relates to how the identification of the phenomenon human trafficking fits into the policing process. Data collected and responses from interviews answered this question in terms of the following.

7.4.3.1 The criminal justice process

The process of the South African Criminal Justice System (CJS) (as presented by the Department of Justice and Constitutional Development and illustrated in figure 19 of chapter 5), can be visually illustrated as in figure 27 below.

Figure 27: The South African Criminal Justice System (CJS) - chain of events



(Source: Department of Justice and Constitutional Development (DoJCD), 2013)

This research found that an analysis of figure 27 above bears evidence that the purpose of the South African CJS is to prevent crime. This illustration in figure 27 takes one from the point where the crime is committed, through the reporting, investigation, arresting, prosecution, trial and the sentencing stages where the accused is either acquitted, fined or incarcerated with the purpose of rehabilitation and integration into the society.

7.4.3.2 The criminal justice system role players

Based on literature, the key role players functioning within the South African CJS are identified as:

- The South African Police Service (SAPS), consisting of various different units, largely responsible for the prevention, detection and investigation of crime in South Africa.
- The judiciary, consisting of judges and magistrates, presiding over criminal and civil trials.
- The National Prosecuting Authority (NPA), invested with the power to decide whether to prosecute or not. The NPA supports the investigation of cases, discontinues criminal proceedings where necessary and ensures at all times that perpetrators of crime are charged and held responsible for their criminal actions.
- Correctional services, which must ensure that suspected criminals, if convicted, serve their sentences and ensure that society is protected through incarcerated offenders being secure and rehabilitated.
- The South African CJS also includes legal representatives who comprise:
 - Advocates who litigate in the High Court, who can appear in any court and are instructed by attorneys in difficult or serious cases.
 - Attorneys who are officials of the courts, responsible to ensure a fair trial making sure that justice is done. They also serve as legal representatives who appear on behalf of accused persons and they may be heard in all of the country's lower courts and can also acquire the right of appearance in the superior courts.
- Various other role players who deliver a service in court. Amongst these are the clerk of court who is responsible for the administrative part of the functioning of the court, the interpreter who provides translation services to those who do not speak the language of the court (English) as their mother tongue, as well as a court orderly (a police officer) who is assigned to maintain good order and security in the courtroom.

The data from the state prosecutor participants interviewed during phase 2 of the research indicated that they had all been in the criminal justice field for more than 10 years. Of these participants three indicated that they had served more than 10 years in their current position, and two participants indicated that they had served six to 10 years in their current position. These participants summarised their primary roles in the positions they occupy as: prosecution; guide investigations; advise the police; decision making in criminal matters; organised crime prosecution; litigation in criminal trials for the state; acting as chairperson of the anti-human trafficking task team; being a member of the task team as well as forming part of a training team.

7.4.3.3 The South African Police Service

Literature indicated that the main functions of the SAPS are found within the divisions of Criminal Investigation (Detective Service); the Directorate for Priority Crime Investigation; Forensic Science Services; Visible Policing (Crime Prevention); and Crime Intelligence. Together these divisions play a vital role in the successful prevention, combating and investigation of human trafficking incidents and cases. The identification and investigation of human trafficking for sexual exploitation requires the use of intelligence data to direct police resources and investigations, as well as the use of experts in the examination or analysis of physical evidence. Equally important is the application of prevention approaches, strategies, actions and measures to address these incidents and cases in society.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police participants interviewed during phase 2 of the research, revealed that these police participants are the human trafficking co-ordinators within their respective provinces. Sixteen (16 of 30) of these participants indicated that they had served one to five years in this position; seven participants indicated six to 10 years; one participant indicated less than one year; and six participants indicated more than 10 years.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police participants interviewed during phase 2 of the research, furthermore summarised their professional involvement with regard to human trafficking and their primary roles in the positions they occupy as follows:

- **Professional involvement:** Coordinator; command investigations; conduct disruptive operations; court related information gathering; investigation of related crimes; liaise with stakeholders; facilitate investigations; share experience and knowledge; respond to rescue missions; training interventions for SAPS; and victim related responses.
- **Primary roles in positions occupied:** Managing investigations; managing operations; investigation of fraud and corruption; conducting project investigations; assisting in guidelines for investigation; investigation of organised crime; investigation of human trafficking; coordination of the prevention of human trafficking; managing and coordinating detective activities; to fight crime; prevent human trafficking; managing administrative responsibilities; investigation of crime; combatting street and brothel prostitution; assisting in all provincial reported cases; and community awareness campaigns.

The data from the police participants interviewed during phase 2 of the research revealed that 12 participants indicated more than 10 years, two participants indicated 6 to 10 years, three participants indicated 1 to 5 years and one participant indicated less than one year of professional involvement with regard to human trafficking. Of these participants 9 of the 18 participants noted that they have a tertiary qualification, namely: National Diploma in Policing (4 of 18); B-Tech Policing (2 of 18); B-Tech Degree (1 of 18); Diploma in Business Skills (1 of 18); and a BA Law (1 of 18).

A further analysis of the data from the police participants interviewed during phase 2 of the research revealed that 132 human trafficking related cases or incidents were noted by these participants that they had they investigated over the time period from 2007-2011 (investigation could include collecting evidence, interviewing witnesses, writing reports and following up on leads). These participants were furthermore asked to indicate the average length of time they spend investigating a human trafficking case. Of the 18 participants, eight responded that they were unsure; five responded three to six months; two responded more than 12 months; two responded less than three months; and one participant noted seven to 12 months. Even though a total of 132 cases were noted by the participants (which could include collecting evidence, interviewing witnesses, writing reports and following up on leads), the

majority of the participants were unsure on the average length of time they spend investigating a human trafficking cases/incidents.

In answer to the question if there is a specialised human trafficking unit, group or member within the participant's province that is assigned to **oversee** human trafficking investigations, data from the police participants interviewed during phase 2 of the research revealed that three of the participants responded no and 15 of these participants responded that there is a specialised unit. They noted the following units: organised crime unit; DPCI; specifically appointed investigators; provincial task team for human trafficking; and coordinator of the human trafficking desk. These police participants were also asked if there is a specialised human trafficking unit, group or member within their province that is assigned to **conduct** human trafficking investigations. Two participants responded no and 16 participants indicated that there is a specialised human trafficking unit, group or member that is assigned to conduct these investigations, namely: organised crime unit; DPCI; specifically appointed investigators; and a provincial task team for human trafficking. The majority of the participants noted an organised crime unit and DPCI consisting of an organised crime unit.

In answer to the question: "Is there a reporting mechanism in place within the SAPS to track human trafficking cases?" the data from the police participants interviewed during phase 2 of the research revealed that seven of the police participants responded no and the majority of the participants (11 out of 18) responded yes. These police participants who responded yes were accordingly asked to explain the reporting mechanism in place within the SAPS to track human trafficking cases. The 11 police participants' explanation included that the case must be reported to the police station, the police station contacts the provincial co-ordinator and that the organised crime office will then be asked to investigate the case. Other reporting mechanisms noted by the participants included missing persons records; the police main frame; local criminal records; special force orders; co-ordinated and investigated by provinces; station and provincial level; and the DPCI investigation team. The participants' responses regarding a reporting mechanism within the SAPS to track human trafficking cases differed from various sections, organisations and levels indicating no central mechanism, procedure or structure through which these cases could be tracked.

7.4.3.4 Investigation of crime

The data from the police participants interviewed during phase 2 of the research summarised their understanding of the investigation of crime to include: the gathering of all evidence for arrest or prosecution; to operate in a legal manner; the analysing of illegal action; the gathering of information; the obtaining of documentation and physical evidence; a systematic search of the truth; establishing exactly what occurred; identifying elements of crime; and to detect, investigate, uncover, and prevent the commission of offenses. The majority of these participants defined the investigation of crime as the systematic search for the truth to gather all evidence for arrest or prosecution in accordance with the literature as discussed above. Some of the participants moreover noted the identification of the elements of the crime and the obtaining of physical evidence in order to gather information to establish exactly what had happened.

7.4.3.5 Objectives of investigation of crime

The data obtained from the police participants interviewed during phase 2 of the research, described the objectives of investigation of crime to include: the obtaining of evidence for successful prosecution; crime and suspect identification; the gathering of facts; to reveal the truth; to apprehend and recover; and to participate in a prosecution process within a court of law in accordance with the literature as highlighted below. Some participants included: to determine the cause of the illegal action that took place; to investigate the perpetrator; victim identification; and bringing the perpetrator to court, which inevitably forms part of the investigation process. Some of the participants also included crime prevention and rehabilitation in their response, which relates directly to the successful investigation of crime.

7.4.3.6 Identification

The data from the police and NGO participants interviewed during phase 2 of the research revealed that identification is based on information at hand and included identifying the elements of crime and identifying the victim of trafficking. Some of these participants also made mention of the identification of factors such as what is done, how it is done and why it is done. This is achieved through looking at specific signs, by observation and then

responding to information and signs observed. The minority of these participants also included identification of the situation and identification of the suspect. The participants included situation identification, which forms part of the nature and conduct of the crime as discussed in the literature above. However, although the majority of the participants included the identification of the victim, none of them made mention of the identification of witnesses and only one participant included the identification of the suspect.

In addition, the data from the police and NGO participants interviewed during phase 2 of the research described the identification process as a specific process that is used in the identification and investigation arena. One must determine if person is a victim of trafficking and bear in mind that in this process the victim must be recruited, transported and exploited. Some of the participants responded that one must identify information and elements of the crime; identify the crime; identify perpetrators; conduct interviews; and use question, such as how, when, where, why and what, which may help to identify the concept. Some of the participants also noted observation; clarifying the victim's status; determining of exploitation and harbouring; the victim's expectation; and sheltering needs of the victim. Based on these participants' feedback the majority related human trafficking in terms of the identification of the victim, the victim's status and needs, as well as the elements, circumstances and concept of the crime.

The data from the police participants interviewed during phase 2 of the research revealed that they believe the identification of a crime entails determining if all the elements of the crime are present, identifying the contradiction to law and gathering evidence for the prosecution of perpetrators. The majority of the participants' responses were in accordance with the discussion in the literature relating to the identification of the elements of the crime.

The data from the police participants interviewed during phase 2 of the research described the category "situation identification" in order to identify a crime, as follows:

- **The situation:** One needs to identify the situation that the investigator comes across; identify the environment in which the person is; detect and identify the crime; evaluate the leads at the scene that could indicate the crime; evaluate the condition of the victim; question what, who, where, how and why;

determine the recruitment, transportation, harbouring and exploitation; conduct interviews to secure the victim and perpetrator; and evaluate the actions and verbal utterings of people indicating the crime.

- **The application of identification:** One needs to identify the place; the purpose it is used for; what happens at the property; the reason for the person's presence; and look at brothels, clubs and street prostitution.
- **The victim:** One needs to identify the person that is exploited; what is the victim exploited for; the place of origin; how did they come to the country; why did they come to the country; does the person execute his/her own free will or is he/she being forced; check the victims' activities and routines; evaluate their body language; question the victims; establish if victims have to sell sex for traffickers; and remove the victims to a place of safety.
- **The people:** One needs to identify who comes to the premises frequently; who is the owner of the property; the modus operandi of crime; use police traps; observe the exchange of money; and establish connection to other crimes.

Further analysis showed that although these participants were required to describe the category "situation identification" in order to identify a crime, their responses included identifying a crime based on the situation, the application of identification and the identification of the victim and the people. Some of the participants' responses addressed the aspects mentioned in the literature discussed, namely: the detection and identification of crime; leads at the scene indicating crime; and questioning what, who, where, how, why. However, the majority of the participants' responses described the identification of the crime by focusing specifically on human trafficking victims and their circumstances and needs.

The data from the police participants interviewed during phase 2 of the research included the following basic steps to identify cases of human trafficking: prove trafficking is taking place through elements of crime; confirm recruitment; confirm exploitation; confirm transportation; identify victim; question location versus place of origin; freedom of movement infringed; interview victim and get statement; investigate surrounding circumstances; what, how, why it is done; question location and employer of victim; people that need help; basic unit of crime of trafficking; process intelligence on traffickers; confirm benefit of the accused; question consent to exploitation; surveillance; forensic identification; DNA; ballistic identification;

gather information; identify suspects or perpetrators; secure conviction; what is the will and intention of the victim; physical appearance of the victim; check the victim's routine; arrange counselling for the victim; and ask for identification documents.

Based on these participants' feedback the majority of responses regarding basic steps to identify cases of human trafficking included identification of the elements of the crime, including recruitment, transportation and exploitation (what, how, why) – even though the legislation of human trafficking had not been promulgated in South Africa during the time of the study and the elements of the crime were being identified based on international legislation. The participants furthermore included practical steps of identification based on the victims' appearance and circumstances, as well as the application of general investigation methods and techniques.

The data from the police participants interviewed during phase 2 of the research presented the following additional observations that should be made in order to confirm the suspicion of an incident of human trafficking for sexual exploitation: one must conduct actual reconnaissance on the premises, persons and perpetrators; one must observe all the people visiting the property, as well as clients visiting the premises; how much time visitors spend at the property; the gender and age of visitors; the type of car they use; the location of persons' identification documents; the interaction between the victim and perpetrator; the manner in which the victim is approached; as well as the manner the victims dress, talk and behave. One must also observe if the minors involved in sexual behaviour are doing so out of free will. One should make use of the print media, the internet and modus operandi information, as well as undercover observations. Based on these participants' feedback the majority of the responses to additional observations included practical observation methods relating to the circumstances, environment and persons involved.

In answer to the question if identification plays an important role in criminal investigation, the data from the police participants interviewed during phase 2 of the research indicated that the majority responded that identification most definitely plays an important role in criminal investigations, it contributes to successful investigations and forms part of the chain to conclude if a crime has been committed.

7.4.4 The identification of human trafficking for sexual exploitation

The fourth and fifth research questions relate to the current situation regarding procedures followed to identify the phenomenon of human trafficking for sexual exploitation, and practical guidelines, procedures and recommendations that can be offered to police officials to identify human trafficking for sexual exploitation incidents more successfully. Data collected and responses from interviews answered this question in terms of the following.

7.4.4.1 Means and modus operandi of traffickers

The data from the police and NGO participants interviewed during phase 2 of the research indicated the following means used by traffickers to traffic human trafficking victims for sexual exploitation: women and children are sold and lured into trafficking by land, sea and air travel; through recruitment, transportation, harbouring and exploitation; through the use of force, fear, abuse of power, manipulation, violence, threats, deception and debt bondage. Abduction, kidnapping and distorted Ukutwala are also used and victims' documentation is confiscated. Victims are furthermore transported under fabricated visas and they travel under false pretences.

The data from the police and NGO participants interviewed during phase 2 of the research revealed the following typical modus operandi of human traffickers: the traffickers are well dressed with nice cars; they win the victims' trust and they keep the victims vulnerable. Victims are recruited, deceived, manipulated, exploited, forced and violently treated; they are threatened with harm to themselves, as well as their families; victims are abused; enticed by money; their fines are being paid for them; they are kidnapped; abducted; presented with fraudulent transactions and advertisements. They are promised accommodation, legal documentation, lucrative salaries, better work and life conditions, education, marriage proposals and a good income and career. Victims are furthermore gang raped and forced into illegal activities, substance abuse and debt bondage. Their identification documents are removed, they are isolated from the society and their relationship changes from parasitic to symbiotic.

The majority (152 out of 200 – more than 50%) of the police and NGO participants interviewed during phase 2 of the research responded that it is either likely or very likely that the following types of crimes are associated with human trafficking: drug trafficking; tax evasion; false identification; computer-assisted crimes; organised crime; prostitution; pornography; gangs; corruption and bribery; and money laundering. The rest of these participants (23 out of 200) responded that it is either somewhat likely or not likely or they were unsure (25 responses out of 200) that the above crimes are associated with human trafficking. Some of the participants (26 out of 80) responded that it is either likely or very likely, somewhat likely or not likely at all (24 out of 80) or they were unsure (30 out of 80) that arms dealing, organ trafficking, terrorism and conspiracy are associated with human trafficking.

7.4.4.2 Victims of human trafficking for sexual exploitation

The literature study found that a victim of human trafficking for sexual exploitation can be defined as:

- Any human being who is trafficked.
- Any person above the age of 18 and who through either force or threat of force, abuse of power or coercion, was or is required to perform sexual acts without their consent, by any other person(s).
- Children (any child who is likely to be trafficked is viewed as a child in need of care and protection and is therefore a victim who should be rescued).
- Any person who has been recruited, harboured, transported, detained, obtained or procured for criminal sexual exploitation.
- Any human being who has been detained in a brothel with or without consent.
- Any human being who has been detained in or at any premises with the intent of criminally exploiting that person.
- Any human being found in a brothel or at any place of criminal sexual exploitation whose jewellery, wearing apparel, money or property has been withheld from that person.

- Any human being who has been seduced for prostitution by any other person having either custody, charge or care over the person or who has a position of authority over that person.
- Any human being who is made to have sex with another person for profit or gain of a third person.

The data from the police, state prosecutor and NGO participants interviewed during phase 2 of the research revealed that victims are not cooperative. Further analysis showed that this lack of cooperation is mostly due to fear of: deportation; intimidation; violence; trafficker prosecution; being in a cell; being treated as criminals and not victims; as well as difficulty building trust in police. Moreover, victims are sometimes not able to overcome substance addiction; they fall back into prostitution or return to the trafficker; victims disappear; language barriers are experienced by victims; and the investigation is compromised due to police corruption. The data also showed that only sometimes there is limited cooperation with police officials, NGOs or state prosecutors from victims of human trafficking for sexual exploitation and that it very seldom happens that victims of human trafficking for sexual exploitation do cooperate with police officials, NGOs or state prosecutors. Victims only seem to cooperate if the police member has knowledge of how to deal with the victim and they only cooperate after rehabilitation.

Further analysis of this data showed that the reasons why victims of trafficking for sexual exploitation might not cooperate with police officials, NGOs or state prosecutors, include mostly fear of deportation; fear of retaliation (self and/or family); lack of social support/isolation; feelings of shame or embarrassment; lack of knowledge about the role of the police; lack of knowledge about victims' rights; lack of trust in the criminal justice system; language barriers; inability to identify self as a victim; and the victim is engaged in potentially illegal activity.

The data from the police, state prosecutor and NGO participants interviewed during phase 2 of the research displayed the needs of victims of human trafficking as: community support; employment skills; education and skills development; health and mental health assistance, medical assistance; trauma counselling and therapy; detoxification; drug and substance rehabilitation; lifestyle changes; basic life needs; better life and work; social intervention; a

place of safety and security; a support structure; financial support; food; safety; trust; patience; safety for their families in country of origin; education about what really happened; a sense of belonging; love and motivation; social and spiritual guidance; to be free from sexual exploitation; unbiased, knowledgeable people to assist them; awareness of CJS process; security and trust in judicial procedures; interpreters; and reintegration to society.

The data obtained from the police and NGO participants interviewed during phase 2 of the research presented the following needs to support them when working with victims of human trafficking for sexual exploitation: accredited language practitioners; health and rehabilitation assistance; secured shelters and food for victims; proper profiling of victims; resources to conduct investigations; access to telephones; time flexibility when doing surveillance; availability of vehicles; female investigators; support and advice from prosecutors; training; dedicated manpower; adequate space to conduct interviews; financial assistance; involvement of criminal justice system role players; support from the departments of Social and Development and Foreign Affairs; victim service providers; councillors and social workers to equip victims for life circumstances. Based on data relating to the needs of victims of human trafficking for sexual exploitation and their specific needs to support them when working with victims of human trafficking for sexual exploitation, there is a direct correlation on the services required to address the needs of victims of human trafficking for sexual exploitation.

Based on the data from the police and NGO participants, as well as the international participant interviewed during phase 2 of the research regarding their awareness and response to these incidents of human trafficking for sexual exploitation, it is clear that the majority of the participants became aware of these incidents either through victims' presence, circumstances, suspicious behaviour or appearance and reporting, as well as through intelligence gathered, informants and community information obtained. The majority of the participants' responses to these incidents included immediate action through questioning, confirmation and taking various actions to respond to these incidents. The data from the international participant furthermore revealed that in responding to these incidents one should initiate proactive investigation; talk to lots of people in the community; collect and gather intelligence; build a picture and start up a case; actively pursue investigation and all means; know the big crime groups in your community; activate hidden intelligence; punch every snippet of information into a system to get the bigger picture; talk to NGOs in your

community; go out and look for victims in your community; shut down relationships with their traffickers; and build intelligence through a team approach.

The data from the NGO participants interviewed during phase 2 of the research presented the following standard procedure to be followed once a human trafficking victim seeks help or is referred to them for services: identification of the victim as a human trafficking victim; taking the victim to a place of safety; and informing the SAPS for further action and investigation.

The data from the state prosecutor participants interviewed during phase 2 of the research posed the following types of services that have they been able to provide to victims of human trafficking for sexual exploitation: proper consultation with the victim; proper prosecution of the trafficker; provision of witness protection; referrals for medical assistance; liaising with embassies; referral to shelters; building of personal relationships with victims and shelter personnel; emotional support to victims; court preparation for victims; mental assistance to victims; introduction to magistrate beforehand; and general support at court.

In addition, the data from the state prosecutor participants interviewed during phase 2 of the research uncovered the following concerns when rendering a service to victims of human trafficking for sexual exploitation: centres can only accommodate victims for a certain period of time; victims return to traffickers; drug rehabilitation is a huge concern; the influence between victims; lack of funding for psychological treatment; lack of court directed evidence reports.

The data from the state prosecutor participants interviewed during phase 2 of the research revealed the following manners in which these participants have dealt with language barriers: they made use of trusted interpreters; other victims have translated for them and they have obtained interpreters from universities. One of the participants also noted that court interpreters are not always trustworthy and are sometimes biased towards the offenders.

The data from the NGO participants interviewed during phase 2 of the research posed the following most important lessons learnt regarding dealings with victims of human trafficking for sexual exploitation that they would want to share with others: it is a long process; victims are vulnerable to re-trafficking; one should be aware that victims may have mental health

issues and posttraumatic stress disorder (PTSD); bear in mind that victims may have addiction issues.

7.4.4.3 Sources and resources of information

The literature showed the following sources from where or whom information could be obtained or intelligence could be collected: e-mails, SMSs, MMSs and other social networking media; illegal narcotics and drug dealers; dealers in the legal and illegal liquor trade; source, destination and transit points for example bus stops, airports, railway stations, and tourist attractions, as well as immigration and customs offices at borders; friendship clubs; websites; social networking advertisements; illegal abortion clinics and help lines; and help desks operated by NGOs.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police and NGO participants interviewed during phase 2 of the research, presented the likelihood of occurrence of the following sources: calls for service when a complaint is reported by a victim; identified by law enforcement officials; alerts from health or social service providers; faith-based organisations or victim service groups; tips from members of the community; tips from informants or co-conspirators; media reports on possible incidents; media reports relating to classifieds and questionable advertisements; during the course of investigating other crimes (e.g. prostitution, drugs, domestic violence); raids conducted by the police; missing persons reports; referrals from NGOs or NGO officials; and referrals from inspectional services or other regulatory agencies that would be used to uncover human trafficking incidents within their specific provinces, namely:

- The majority of the participants (182 out of 384) responded that it is likely and some of the participants (66 out of 384) responded that it is very likely that the above sources of information would be used to uncover human trafficking for sexual exploitation in their respective provinces.
- Some of the participants (64 out of 384) responded that it is somewhat likely and the minority of the participants (17 out of 384) responded that it is not likely at all that these sources of information would be used to uncover human trafficking for sexual exploitation in their respective provinces.

- In addition, some of the participants (55 out of 384) responded that they were unsure if these sources of information would be used to uncover human trafficking for sexual exploitation in their respective provinces.

The data from the NGO participants interviewed during phase 2 of the research put forward that the meaning of victim identification is to determine a person's situation, to interpret the history and also to interpret the signs. The data from the police and NGO participants interviewed during phase 2 of the research furthermore revealed the following resources they use to identify incidents of human trafficking for sexual exploitation: surveillance or observation; social workers or professionals; undercover operations and surveillances; human resources; conduct observations; camera and or video camera; book for notes; intercept phone calls; Sec 252A entrapment; intelligence; escort services; brothels; accommodation houses; night clubs; massage parlours; any communication between human sources; interpreters; informers; law enforcement agents; court intelligence; print media; internet websites; community complaints; inspections; managed patrols; and NGOs.

Further analysis of the data from the NGO participants interviewed during phase 2 of the research revealed the following lack of resources they experience in identifying incidents of human trafficking for sexual exploitation: funding; training; vehicles; time; international communication between counterparts; electronic monitoring devices; access to systems to follow passports; personnel; safe houses; rehabilitation centres; social workers; informers; lack of capacity of people; lack of identification and response; and lack of victim cooperation.

The research found that, based on the feedback provided by the participants regarding the resources they use to identify incidents of human trafficking for sexual exploitation, as well as what lack of resources do they experience in identifying incidents of human trafficking for sexual exploitation, there is a direct correlation on the resources used and resources required to accordingly identify incidents of human trafficking for sexual exploitation.

The data from the NGO participants interviewed during phase 2 of the research posed that there is no mechanism in place to track human trafficking cases. The data from these participants furthermore revealed the following challenges their organisation is faced with

when attempting to help victims of human trafficking: a lack of public support; lack of support from law enforcement; no in-house therapy; no place of safety geared towards victims of trafficking; no programme to integrate victims of trafficking effectively; and the risk of recidivism and intimidation that victims are faced with.

7.4.4.4 Training on the identification of human trafficking for sexual exploitation

The literature showed that the identification of victims of human trafficking is dependent on training and education of personnel in positions to identify victims of human trafficking. The literature furthermore confirmed that training forms a critical component in order to properly identify incidents of human trafficking, as police officials need to know what they are looking for in an attempt to identify these incidents successfully.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police and NGO participants interviewed during phase 2 of the research, revealed that the majority of these participants (25 out of 32) or their colleagues have received training on how to identify cases of human trafficking. Only seven out of 32 participants responded that they or their colleagues have not received training on how to identify cases of human trafficking in their respective provinces. The data from state prosecutor participants interviewed during phase 2 of the research presented that they have all undergone training in the prosecution of human trafficking cases.

The data from the police participants in the survey conducted during the first phase of the research, as well as the police, state prosecutor and NGO participants interviewed during phase 2 of the research, demonstrated the type of training they have received as presented in table 58:

Table 58: Type of human trafficking training received

Human trafficking training			
Police (Survey)	Police (Interviews)	State Prosecutor (Interviews)	NGOs(Interviews)
<ul style="list-style-type: none"> • In service training • New recruit training • Publications • Regional conferences • National conferences 	<ul style="list-style-type: none"> • In-service training • New recruit training • Publications • Regional conferences • National conferences 	<ul style="list-style-type: none"> • International Immigration Organization (IOM) • National Prosecuting Authority (NPA) 	<ul style="list-style-type: none"> • International Immigration Organization (IOM) • Generic training in counselling

Human trafficking training			
Police (Survey)	Police (Interviews)	State Prosecutor (Interviews)	NGOs(Interviews)
<ul style="list-style-type: none"> • International conferences • Off-site professional training, • Other which consisted of International Immigration Organization (IOM), and workshops 	<ul style="list-style-type: none"> • International conferences • Off-site professional training courses 	<ul style="list-style-type: none"> • Training for IOM and NPA • Self-study • Training courses and workshops • Trained role players in the SAPS • Trained social workers • Justice College training on sexual offences • Train the trainer course in human trafficking 	<ul style="list-style-type: none"> • Generic training in therapeutic work

The data from the police participants in the survey conducted during the first phase of the research, as well as the police, state prosecutor and NGO participants interviewed during phase 2 of the research, revealed that the majority of the participants (379 out of 407) do have the need for training in terms of the following areas: understanding the issue of human trafficking; understanding the legislation that could be used in a human trafficking case; understanding the role of law enforcement in human trafficking cases; methods for identifying incidents of human trafficking; methods for investigating cases of human trafficking; methods for responding to cases of human trafficking; methods for preventing human trafficking; understanding the role of prosecutors in human trafficking cases; understanding the role of non-governmental officials in human trafficking cases; understanding the role of victim service providers in human trafficking cases; and collaborating with other role players in human trafficking cases. Only 28 out of 407 of the police participants interviewed during the second phase of the research, indicated that they do not have a need for training in the types of training as listed above.

7.4.4.5 Cooperative partnerships between various role players in the identification of human trafficking for sexual exploitation

The literature showed that law enforcement needs to work closely with a range of agencies, including NGOs, as they are most likely to come into contact with victims of trafficking through indirect means, such as referrals, and also cannot rely on crime reports alone. The

literature furthermore suggested that a memorandum of understanding (MOU), as a strategy effectively used in various other contexts, should be compiled to address matters, such as: objectives that form and support mutual cooperation; clarification of the division of roles and responsibilities; standard operating procedures addressing for example the referral of victims. This MOU should form the foundation of information sharing and maintaining of confidentiality and should contain strategies for regular communication between the relevant parties.

The data from the state prosecutor participants interviewed during phase 2 of the research revealed that there is a working partnership between the police/investigators and state prosecutors on human trafficking issues. Further analysis showed that the success of the relationship depends on the individuals themselves – depending on aspects such as if the individual is dedicated or lazy, competent or incompetent, experienced or inexperienced and skilled or unskilled. The data from these participants furthermore noted that one needs to build and nurture a relationship; that the prosecutor is to be available for advice and assistance; that corruption is a major problem; that there is a lack of resources; and also that the partnership can be successful if all the stakeholders work together. The data from the NGO participants interviewed during phase 2 of the research revealed that there is an informal partnership between their organisation and their local police and or state attorney’s office.

The data from the police and NGO participants interviewed during phase 2 of the research identified organisations that their unit or organisation works with in a case of human trafficking, as well as specific individuals that these participants would like/need to work with on human trafficking cases. These organisations and individuals are presented in table 59:

Table 59: Participants’ current and required/needed collaboration regarding human trafficking cases

Collaboration with organisations	Collaborations required/needed
Police (Interviews)	
<ul style="list-style-type: none"> • Non-Governmental Organisations(8) • Cell phone service providers (1) • SARS (2) • SARPCO (1) 	<ul style="list-style-type: none"> • Accredited language practitioners (3) • NGOs (5) • Universities (1) • Embassies of victim's country (1)

Collaboration with organisations	Collaborations required/needed
Police (Interviews)	
<ul style="list-style-type: none"> • NICRO and UNHRO (1) • DHA (3) • Not for sale (1) • Annex (1) • Correctional service (1) • Department of Home Affairs (10) • Department of Social Development (6) • Department of social Welfare (3) • Department of Justice (3) • Department of Health (5) • Department of Foreign Affairs (1) • Immigration (1) • National Prosecuting Authority (12) • Witness protection program (1) • Crime intelligence (2) • Law enforcement (3) • Organised crime unit (1) • Foreign law enforcement agencies (1) • International organisation for migration (5) • Interpol (1) • Embassy involved (2) • City of Cape Town vice squad (1) • DSD (1) • CPV (1) • Trauma councillors (1) 	<ul style="list-style-type: none"> • SARS (1) • Department of Home affairs (2) • Department of Social Development (2) • Metro police (1) • Social workers (1) • Interpol (1) • FCS (1) • All people to assist in elimination of trafficking (1) • State prosecutors (1) • Prosecutors and judges (1) • Cooperation between role players (1) • DPP, FICA, DSD (1) • Hospice (2) • Caregivers (2) • Educators (2)
NGO (Interviews)	
<ul style="list-style-type: none"> • IOM (1) • DSD (1) • Institute for Child Witness and Research (1) • Mercy House (1) • Private individuals (1) • Saartjie Baardman (1) • Salvation Army (1) • SAPS (1) 	<ul style="list-style-type: none"> • Local and provincial government (1) • SAPS (1) • Investigation (1)

Based on the feedback provided by the participants regarding current collaborations in terms of human trafficking for sexual exploitation incidents, as well as specific individuals that they would like/need to work with on human trafficking for sexual exploitation incidents, the research found that there is a direct correlation on the current and required/needed collaborations. The need to work with accredited language practitioners and universities was also noted.

The data from the police, state prosecutor and NGO participants interviewed during phase 2 of the research revealed that the majority of the participants (13 out of 25) have an existing relationship with service providers that are able to meet the immediate needs of victims of

human trafficking for sexual exploitation. Twelve out of 25 participants do not have an existing relationship with service providers that are able to meet the immediate needs of victims of human trafficking for sexual exploitation.

The following existing relationships with service providers that are able to meet the immediate needs of victims of human trafficking for sexual exploitation, were put forward by these participants: the Department of Social Development; NGOs; IOM; Social Welfare; Child Protection; Open door crisis centre; Department of Home Affairs; Victim empowerment; Annex; Not for sale; Kwanobuhle Outreach Centre; Uitenhage provincial hospital; Department of Health; NPA; Safe houses, Drop in centres hospice; Salvation Army; Women network; and Mercy House.

7.4.4.6 Indicators of human trafficking for sexual exploitation

Literature presented the following possible indicators (which can apply to any individual of any nationality and ethnicity or other collective affiliation, regardless of the kind of exploitation) that could lead to the identification of possible human trafficking incidents in terms of human beings who are trafficked, as well as examples of arenas and contexts in which human trafficking may occur, as put forward in table 60:

Table 60: Possible indicators of human trafficking

Possible indicators of human trafficking	
Human beings who are trafficked	Arenas and contexts in which human trafficking may occur
<ul style="list-style-type: none"> • Are abused or subject to coercion, deceit or control. • Are in a vulnerable situation. • Do not have control over their own passport or travel documents. • Believe that they have to perform acts or work to the profit of others against their free will. • Give the impression that their movements are being controlled and monitored. • Do not know the address of their work place or their residence. • Behave as if others have coached them and when being directly addressed permit others to speak on their behalf. • Are unable to communicate freely with other individuals. • Are bound by debt to their traffickers. • Have had their travel costs paid by the trafficker, which they must accordingly pay back by working or providing services in the country of destination. • Have made choices under false pretences or in response to false promises by their traffickers. • Have made choices in a vulnerable situation where few other real choices appeared possible in their situation. • Are exposed to violence or threats to their own persons or those of their family or friends in their countries of origin. • Show signs of fear, abuse, violence or stress. • Suffer from injuries that may seem to be caused by assault, abuse or other violent control measures. • Suffer from repetitive straining injuries which might typically arise from unacceptable working conditions. • Have limited or no access to necessary medical assistance. • Have limited or no opportunities for social interaction with other individuals. • Are disciplined by fear of punishment • Are part of a hierarchy which consists of power relationships amongst victims in the same situation that limits their ability to speak openly with others present about their situation. • Are forced to commit violations of the law in the destination countries as part of the exploitation. • Are threatened with threats of reporting them to the authorities. • Show a lack of trust and fear of authority persons. • Are equipped with false travel or identity documents. • Are afraid to reveal their residence or country of 	<ul style="list-style-type: none"> • Street prostitution and indoor prostitution (brothels, houses, flats, clubs, massage parlours, hotels etc.). • Pornography either in magazines or online. • Paedophile rings. • Arranged or forced marriages. • Domestic service or childcare. • Family firms, cleaning firms, or the restaurant service. • The construction or mining industry. • Agriculture. • Street performance, street hawking or street begging. • Thefts and other various crimes of gain. • Production, trafficking, use and distribution of drugs or other narcotics. • Organ donation.

Possible indicators of human trafficking	
Human beings who are trafficked	Arenas and contexts in which human trafficking may occur
<p>origin status.</p> <ul style="list-style-type: none"> • Receive very little or even no payment for work or services provided. • Work or provide services under strenuous and unacceptable conditions • Are unable to complain about or negotiate their working conditions. • Have limited, partial or even no access to their own income. • Have unlawfully long working hours and days over longer periods with no days off. • Are in a situation where they are continuously moved across national and international borders or from town to town to work or provide services. • Live under unacceptable conditions with limited facilities. • Come from a place known to be a country of origin or source of human trafficking. • Are present in places where unlawful sale of services or goods often takes place. • Are identified and associated in or in connection with an area known to be an arena for the exploitation of human trafficking victims. 	

Literature furthermore revealed the following possible indicators for human trafficking for sexual exploitation, namely that the victim: is allowed to retain only a part or not any of the earnings from selling sex; has debt that is to be paid off by selling sex; is not allowed to leave the prostitution business at own free will or when he or she wishes; is not allowed and has little or no ability to decide which or how many customers he or she wishes to service; is not allowed or has little or no ability to decide what kind of sexual services he or she can or is allowed to offer; is not allowed or has little or no ability to refuse requests for unprotected and or violent sex; has either wrong information, no information or very little information about the rules for prostitution in a country; shares accommodation with others working in the prostitution business; pays high rent and is not herself or himself registered as tenant; services are advertised on a website or in magazines of a country in the correct language of the country, but the victim cannot speak the specific language of the country.

A further analysis of the literature presented a list of possible indicators (that should remain flexible and serve as guideline and example to police personnel depending on the current situation and trends of the form of human trafficking being identified, as well as the age of the victim). These indicators are presented in table 61 below, as developed in the Delphi

Research Project, and could serve as reference and guidance in the identification of human trafficking for sexual exploitation victims, depending on the local conditions and current situation at hand.

Table 61: List of possible indicators of human trafficking for sexual exploitation

Recruitment (including transfer and transportation) by deception	Recruitment (including transfer and transportation) by coercion	Recruitment (including transfer and transportation) by abuse of vulnerability
<p>The victim is often deceived about the:</p> <ul style="list-style-type: none"> • Nature of the employment as well as the employer and location. • Working, housing and living conditions. • The legality and content of a condition of service contract. • The legal documentation or the obtaining of legal immigration and migration status. • Recruitment and travelling conditions. • Salaries earned and debt incurred. • Promises of adoption and marriage. • Family reunions and visits to country of origin. • Access to education and development opportunities. 	<ul style="list-style-type: none"> • The use of violence against victims. • Forced marriages, forced adoptions or the selling of victims. • Abduction. • Debt bondage. • The confiscation of documents. • The isolation or confinement of victims. • The use of threat of reporting to authorities. • The use of threat of violence against the victims and their families. • The use of threats to inform the victim's family, community or public about the victim's situation. • The withholding of the victim's money earned. 	<ul style="list-style-type: none"> • The abuse of a difficult family situation. • The abuse of illegal statuses. • The abuse of lack of understanding the local language and education. • The abuse of lack of information provided to victims. • The abuse of cultural and or religious beliefs. • The control of victims by exploiters. • Economic reasons. • The provision of inaccurate information about the law and or attitude of authorities to victims. • The fragile psychological and emotional situation as well as family and personal situation of the victim.

The data from the NGO participants interviewed during phase 2 of the research showed that the elements of crimes or behaviours that might alert their organisation that the individual being helped is a victim of human trafficking are signs of a dysfunctional background, victims report their involvement in crime and victims report their trafficker.

The data from the police and NGO participants interviewed during phase 2 of the research revealed the following factors to determine if an incident is a case of human trafficking for sexual exploitation: through surveillance operations; responding to observed signs; interviewing; interpretation of circumstances and situations; calls from victims; analysis of victims; observing of constant male movement to and from property; presence of the elements of the crime; observing of recruitment, transportation, harbouring and exploitation

practices; the victims' responses are observed, as well as signs that the victim has fear when questioned about activities; victimisation of victims; victim has no documentation; the age of the victim; bondage; victim is not a resident in the area; the victim's dress code; young girls locked up in a house; the impact on the victims; as well as the modus operandi of suspected traffickers.

Further analysis of the data from the police participants in the survey conducted during the first phase of the research, as well as the police and NGO participants interviewed, revealed that in their respective provinces the problem of inability to identify human trafficking victims within the community is very challenging (15 out of 32); occasionally challenging (10 out of 32); not challenging (3 out of 32); seldom challenging (2 out of 32). Two (2 out of 32) participants indicated that they are unsure.

7.4.4.7 Primary barriers and red flags in identifying incidents of human trafficking for sexual

Literature found that, due to the hidden nature of the crime of human trafficking, the police are faced with a number of challenges in the successful identification of human trafficking victims and offenders. The methods used by traffickers in the manner they move, house and communicate with their victims during the exploitation of their victims, continuously change. This in itself presents additional challenges to the police to identify potential victims.

The data from the police and NGO participants, as well as the international participant interviewed during phase 2 of the research regarding the primary barriers they face in identifying an incident of human trafficking for sexual exploitation, as well as what they think might help to overcome the challenges they face in identifying an incident of human trafficking for sexual exploitation, showed that the majority of the participants experienced a lack of accredited language practitioners, as well as a lack of knowledge, training, cooperation and resources. The international participant interviewed also included language as a huge barrier within her country. The police and NGO participants subsequently included the availability of accredited language interpreters, the enhancement of knowledge capacity and cooperation as possible solutions to overcome these challenges experienced in identifying incidents of human trafficking for sexual exploitation.

The data from the police and NGO participants, as well as the international participant interviewed during phase 2 of the research, revealed “red flags” that might indicate an incident that involves the crime of human trafficking for sexual exploitation. These were described by the majority of the participants relating to the victim’s background, appearance, behaviour, reactions, actions and circumstances, as well as the suspect’s appearance, behaviour and circumstances and also the environment in which these incidents are observed. The data from the international participant interviewed furthermore confirmed that red flags (which could possibly indicate an incident involving the crime of human trafficking for sexual exploitation) can be determined by looking for anything extraordinary which seems not right, and accordingly called this action the “Not Quit Right Principle”.

7.4.4.8 Identification practices for incidents of human trafficking for sexual exploitation

The literature overview indicated that the police are confronted on a daily basis with a variety of offences. Therefore, they should be able to distinguish possible incidents of human trafficking from all other crimes. The police should have knowledge and should be in a position to recognise the most important indicators of human trafficking and accordingly be able to identify victims and refer them to relevant service providers for required assistance. Literature furthermore found that the use of active multidisciplinary teams, task forces and or associations is deemed an encouraging practice in the effective identification of victims of human trafficking for sexual exploitation.

Further analysis of literature showed that in analysing specific crime problems, community policing recommends making use of the Problem Analysis Triangle (PAT) to subsequently break problems down into three constituent elements, namely the location, the victim and the offender. The SARA problem-solving model and the PAT as posed by literature, can thus be applied together to proactively and systematically design counter-strategies to identify and investigate incidents of human trafficking.

Literature presented the following factors, in terms of the individuals themselves, the circumstances and the place, to be taken into consideration when conducting an interview with an individual to identify the possibility of the person being a victim of human trafficking for sexual exploitation:

- Ensure that the correct person with the required skills, capable of relating to a victim's trauma, conducts the interview.
- Ensure that the person being interviewed receives the necessary care in the form of physical security, emotional support, food and rest.
- Ensure that the interviewer gains the confidence of the person. In this regard careful consideration should be given to where and how the interview takes place, as well as the interviewer's gender, age, education and background.
- Respect the wishes of the person being interviewed regarding who the person prefers to talk to.
- Listen to the person's own description, experienced threats and abuse.
- Ensure that the interview room where the interview is conducted is free of disturbances and accordingly ensure that the interviewer's mobile phone is switched off to prevent distractions.
- Explain to the possible victim what your role as interviewer is. Explain to the person that you are concerned about that person and that help, assistance and protection is available if desired.
- Provide the person with realistic information relating the person's rights, assistance and protection available.
- Ensure that the person understands the questions and messages relayed to him or her. Ask several questions from various different angles in order to obtain a common understanding between the possible victim and the interviewer in determining if the person is indeed a victim of human trafficking for sexual exploitation.

Based on the literature, the following list of sample screening questions is presented to assist in the possible identification of a victim of human trafficking:

- Can you leave the residence or the place of work whenever you wish to do so?
- Do you have to ask anyone for permission if you need to visit the shops, a doctor, hairdresser, family members, friends so forth?
- What type of work do you do?
- Do you have your own set of keys to the place of work or place of residence where you work or stay?

- Where do you sleep and eat?
- Do you have to ask permission to eat, sleep or go to the bathroom?
- What are your working and living conditions like?
- Do you have control over post or e-mails addressed to you?
- Does someone else read your post or e-mails for you?
- Do you receive a salary?
- Does your employer pay your salary into your own bank account to which only you have access?
- Can you leave your employment?
- Did you buy the SIM card for your mobile phone yourself?
- Are you allowed to receive calls at your convenience?
- Can you change SIM cards or phone numbers whenever you want or need to?
- Do you control your own passport or travel documents?
- Has your identification or travelling documentation been taken from you?
- Have you or your family been threatened?
- Are there locks on your doors or windows that you cannot unlock?
- Do you pay off any debt incurred from your employment?

Further analysis from the literature revealed the following places in terms of the location, which is of the utmost importance to be aware of when crime scenes of human trafficking for sexual exploitation are identified, as these scenes are not merely restricted to the brothel or places of exploitation, but could also include: the source point where the victim was recruited; the transit point, including places of stop-over, pass-on, handing-over, transfer or the destination point where the victim was taken; the vehicles used for transportation of the victims to and from the various places (source, transit, destination and exploitation); the places where the trafficked victim is sexually exploited under the frontage of other businesses; callings, professions and employment; the places where the victim has been taken to or sent by the trafficker for the making or recording of pornographic materials; as well as the places where pornographic material has been transported, stored, sold, purchased or used.

The data from the police participants interviewed during phase 2 of the research revealed the following identification practices that they are aware of for incidents of human trafficking for sexual exploitation that seem to be particularly innovative and effective in producing positive

results: video and audio surveillance; undercover operations; proper interviewing and techniques; monitoring premises; interception; random raids to brothels and strip clubs; analysing of victim; use of affluent suburb; frequent visiting vehicles; location of identification documents; determine owner of property; determine payment received by victim; check dustbin for medication or products indicating sexual activity; monitor print media; involve dog unit; and maintain good relationships with all role players. The international participant interviewed during the second phase of the research contributed that criminals modify their behaviour continuously. This participant advises to look at possible involvement of immigration agents and to look at all the visas a specific immigration agent has approved. One also has to follow a team approach with experienced investigators who think laterally and one has to do target flagging and concentrate on specific places.

The data from the police participants interviewed during phase 2 of the research introduced identification practices for incidents of human trafficking for sexual exploitation that they had implemented in the past during investigations, as well as the positive impacts of these identification practices that they had implemented. These practices are presented in table 62 below:

Table 62: Identification practices implemented and positive impacts of implemented identification practices for identification of human trafficking for sexual exploitation incidents

Identification practices implemented	Positive impacts of implemented identification practices
Police (Interviews)	
<ul style="list-style-type: none"> • Video and audio surveillance • Undercover operations • Interviewing techniques • Monitoring • Interception • Timing for observation • Interview possible victims • Victim could be taken to a place of safety • Victim identification possible • Gather information • Registration of enquiries • Interviewing neighbours • Verifying, profiling and describing operations • Disruptive action at places, drug distribution points • Media coverage • Prepare victims for interviews • Traditional investigative methodology • Follow the investigation procedures 	<ul style="list-style-type: none"> • Perpetrators are easily arrested • Rescue the victims • Identify and arrest perpetrators • Effective arrest and prosecution • Traffickers moved away from area • Project driven investigations • All allegations to be official enquiries • Application of the Sexual Offences Act

The data from the state prosecutor participants interviewed during phase 2 of the research put forward the following evidence needed in statements to identify the crime of human trafficking:

- How recruitment took place?
- What means was used?
- What type of exploitation took place?
- Circumstances under which exploitation took place.
- Identification of perpetrators.
- Proper victim statements.
- Gynaecologist report as indication of prostitution.
- Victim consultation.
- Victim support centre to look for substance abuse.
- Chronologically what happened and who did what.
- Victim's age.

- Dates of commission of offences.
- Treat with the same principles that apply to racketeering.
- Proper police training.
- Concepts and definitions of trafficking.
- Legislation.
- Know what elements of the offence are.
- Obtain the correct affidavit according to offences and elements of crime.
- Basic indicators of trafficking.
- Identification of victim and case could lead to an injustice.
- Transportation, how did victim travel?

7.4.5.9 Practical guidelines to identify incidents of human trafficking for sexual exploitation

The data from the police and NGO participants, as well as the international participant interviewed during phase 2 of the research, indicated the following practical guidelines on how to identify incidents of human trafficking for sexual exploitation, as presented in table 63:

Table 63: Participants’ experience of practical guidelines on identifying incidents of human trafficking for sexual exploitation

Practical guidelines on identifying incidents of human trafficking for sexual exploitation	
Police (Interviews)	NGO (Interviews)
<ul style="list-style-type: none"> • Interview victim • Surveillance • Undercover operations • Visit brothel, strip show restaurants • Age of girls on such premises • Language spoken • Victim not making eye contact • Signs of acting outside normal routine • Appearance • Use of drugs • Restriction of movement • House where a lot of young girls share a room • Training in understanding the crime • Monitor print media • Do routine investigation and look for information • Follow up on suspect information 	<ul style="list-style-type: none"> • A National Institute Community Development and Management (NICDAM) programme was developed , • Training for health care providers is needed • Unconventional investigation methods are required

Practical guidelines on identifying incidents of human trafficking for sexual exploitation

- Legislation
- Not in control of their ID, passport, money, cell phone
- Look for sealed or used condoms

International participant (Interview)

- Always try and give the first respondent – the victim – understanding.
- Coach the victim.
- Listen to what the victim says about her passport – do not know how it was applied for.
- They do not know where the local supermarket is.
- They do not know where the local church is.
- They live in isolation.
- Look at the victim’s body language indicators.
- Application of the “Not Quite Right” Principle.
- Ask more about the victim’s social life – their friends.
- Look if they have been coached by immigration.
- Ask questions about their transportation.
- Ask open ended questions that might indicate isolative behaviour.

Based on the feedback from the police and NGO participants, as well as the international participant interviewed during phase 2 of the research, suggestions of practical guidelines on how to identify incidents of human trafficking for sexual exploitation included: the application of unconventional investigation methods; undercover operations; surveillance; interviewing the victim; doing routine investigations; visiting brothels, strip shows and restaurants as well as houses where a lot of young girls share a room; and to look for information regarding the restriction of movement.

These participants furthermore noted that one should look at the age of girls on such premises; persons not in control of their ID, passport, money or cell phones; look for sealed or used condoms; languages spoken; victims not making eye contact; signs of acting outside the normal routine; appearance; and use of drugs. In addition they added that training in understanding the crime is required, as well as promulgated legislation and that one needs to follow up on suspect information. The international participant interviewed in this regard noted that one should always try and give the first respondent, namely the victim, commitment of understanding. Coach the victim and listen to what the victim says about her passport and their knowledge about their specific surroundings and the circumstances under which they live and work. This participant once again noted that the “Not Quite Right” Principle should be applied.

The data from the police and NGO participants, as well as the international participant interviewed during phase 2 of the research, furthermore displayed the following most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation that they would want to share with others, as presented in table 64:

Table 64: Participants’ experience of most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation

Most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation	
Police (Interviews)	NGO (Interviews)
<ul style="list-style-type: none"> • Perseverance, dedication, enthusiasm. • Suspects pretend to be helpful. • Victims are fearful, angry and shy. • Incidents happen in well-developed areas with strong security. • Suspect is defensive. • Security officials are paid to keep quiet. • Gate access control book can assist in identification of suspects. • Apply basic investigation principles. • Utilise investigation aids. • Process of information and evidence collection. • Profit and money gain for perpetrators. • Focus on cases to prove it. • Treat victim with respect. • Assist victim with medical help. • Training needed. • Think outside the box. • Be alert and know what to look for 	<ul style="list-style-type: none"> • There is a lack of understanding the crime. • One needs to ensure to have an intervention strategy. • There is not much support for victims. • We have a patriarchal society. • The prostitution stigma regarding victims does not help. One needs to use criteria and practical guidelines to identify victims. • Victims do not report the true nature of the cases. • Personnel need training.
International participant (Interview)	
<ul style="list-style-type: none"> • You have to have intelligence. • You have to have a balanced approach. • You have to focus on the pillars – Education and Investigation go hand in hand. • You have to have a balanced approach between investigation and making the youth aware. • Build relationships. • Ensure liaison between the police. • You have to have a specialist team. • Ensure liaison with possible first responders – teachers, people on the front line, nurses and the community to tell you just where the brothels are in order to do further observation and collect intelligence on happenings. 	

Based on the feedback of the data from the police and NGO participants, as well as the international participant interviewed during phase 2 of the research regarding the most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation that they would want to share with others, the police and NGO

participants included the most important lessons learnt as: the processing of information and evidence collection; the application of basic investigation principles; the utilisation of investigation aids; thinking outside the box; being alert and knowing what to look for; as well as to focus on cases in order to prove it.

These participants furthermore noted that security officials are paid to keep quiet and that gate access control books can assist in identification of suspects. Regarding the victim these participants added that one must treat victims with respect; assist them with medical help; that the prostitution stigma regarding victims does not help; that one needs to use criteria and practical guidelines to identify victims; and that one must be aware that victims do not report the true nature of the cases. They also included that personnel need training and that one must have a look at the profit and money gain for perpetrators.

The international participant interviewed contributed that the most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation, are that one has to have intelligence, have a specialist team, focus on the pillars (education and investigation go hand in hand); that one has to maintain a balanced approach between investigation and making the youth aware; that one has to build relationships and that one has to ensure liaison between the police and possible first responders (teachers, people on the front line, nurses and the community) to tell one just where the brothels are in order to do further observation and collect intelligence on happenings.

7.5 RECOMMENDATIONS

The following recommendations are proposed, derived from the findings made in this study.

7.5.1 The phenomenon of human trafficking

It is recommended that:

- Once the enacted Prevention and Combating of Trafficking in Persons Act has been implemented, the various role players within the South African CJS receive training based on definitions contained within the enacted legislation

to ensure that a shared and unified understanding of this phenomenon is accepted and practised across all the spheres and departments.

- The criminal elements of the crime human trafficking for sexual exploitation be identified and clearly delineated within the criminal law to ensure the successful identification of this phenomenon.
- All police personnel receive training about the nature and criminal elements of human trafficking, specifically human trafficking for sexual exploitation, in order to ensure a complete understanding of this phenomenon to aid in the successful identification of this phenomenon as well as the required evidence necessary to secure successful prosecution of offenders.

7.5.2 The legal framework of human trafficking in the international and national arena

It is recommended that:

- South Africa begins with the implementation of the enacted Prevention and Combatting of Trafficking in Persons Bill.
- South Africa develop and implement protocols, policies and standard operating procedures on the identification of human trafficking, including human trafficking for sexual exploitation, to provide guidance to various role players within the CJS and human trafficking service providers in order to ensure the successful identification and addressing of this phenomenon.
- South Africa continue to increase awareness among all the various role players within the CJS and related human trafficking role players and service providers on the provisions of the enacted Prevention and Combatting of Trafficking in Persons Bill.
- South Africa ensures the availability of accredited translators to assist victims in obtaining care, to cooperate with law enforcement and to testify in court.
- South Africa institute and maintain formal systems and procedures to regularly compile national statistics on the number of trafficking cases that are prosecuted.

7.5.3 The identification of a crime within the policing process

It is recommended that:

- Police personnel receive continuous training on the various identification methods and techniques available to identify incidents of human trafficking for sexual exploitation.
- Police personnel and human trafficking service providers receive continuous training on the identification of human trafficking victims, specifically victims of human trafficking for sexual exploitation, as well as proper communication with victims and victim assistance, including knowledge of services available for victims and the addressing of victims' needs.
- Clearly defined processes and procedures together with clearly delimited roles and responsibilities be clarified and promulgated to deal with human trafficking and in specific human trafficking for sexual exploitation incidents, both within the CJS as well as with human trafficking service providers.
- Clear guidelines, policies and procedures be developed and implemented about how the identification, addressing and prevention of the phenomenon of human trafficking, specifically human trafficking for sexual exploitation, fits into the policing process together with the local crime combating and prevention priorities.

7.4.5 The identification of human trafficking for sexual exploitation

It is recommended that:

- Police personnel develop an understanding and accordingly receive training on the modus operandi of traffickers to establish the various means used by traffickers in trafficking their victims, in order to facilitate the identification of traffickers, enable the disruption of trafficking activities as well as to assist in the prevention of potential traffickers from trafficking victims and to improve the successful identification, addressing and prevention of human trafficking, specifically human trafficking for sexual exploitation.

- An integrated management information system and centralised database be developed and implemented to track and manage human trafficking cases in order to provide reliable statistics as well as an extremely valuable repository of information relating to the phenomenon of human trafficking, in specific human trafficking for sexual exploitation.
- Police personnel, as well as related role players dealing with human trafficking incidents and victims, receive training in understanding the issue of human trafficking; understanding the legislation that could be used in a human trafficking case; understanding the role of law enforcement in human trafficking cases; methods for identifying incidents of human trafficking; methods for investigating cases of human trafficking; methods for responding to cases of human trafficking; methods for preventing human trafficking; understanding the role of prosecutors in human trafficking cases; understanding the role of non-governmental officials in human trafficking cases; understanding the role of victim service providers in human trafficking cases; and collaborating with other role players in human trafficking cases to ensure the successful identification, addressing, combating and prevention of this phenomenon.
- All academic research relating to the phenomenon of human trafficking, specifically human trafficking for sexual exploitation, be made available to the police, as well as to related role players dealing with human trafficking incidents, and that victims and university personnel conducting research within this specific field not only share their research findings but also participate in training interventions with the police and related role players dealing with human trafficking incidents and victims.
- The “Not Quite Right” (looking for anything extraordinary which seems not quite right) principle as practised by the Australian Federal Police in the identification of human trafficking, specifically human trafficking for sexual exploitation, be adopted and practised by the SAPS personnel in order assist in the possible successful identification of these incidents and their victims.
- Multi-disciplinary task teams be instituted in all of the provinces of South Africa to specifically focus on the sharing and dissemination of information relating to human trafficking, specifically human trafficking for sexual

exploitation, together with strategies for the successful identification, addressing, combating and prevention of this phenomenon.

- The SARA problem-solving model together with the problem analysis triangle (PAT) be introduced and applied by the various role players within the CJS together with the human trafficking service providers to proactively and systematically design counter-strategies to identify incidents of human trafficking, specifically those involving human trafficking for sexual exploitation.
- The most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation, as well as the suggestions of practical guidelines on how to identify incidents of human trafficking for sexual exploitation as found, described, explained and illustrated within this study, be included within the training manuals, guidelines and standard operating procedures of police personnel, as well as human trafficking victim service providers in order to aid these personnel in the possible successful identification of human trafficking for sexual exploitation incidents.
- Extended awareness programmes relating to the identification and prevention of human trafficking, in specific human trafficking for sexual exploitation, be continuously presented to not only the various role players who are involved with the human trafficking per se, but also to the public community and that they specifically be included within the education curricula of primary, secondary and high schools in order to educate and empower the community and learners on the dynamics relating to this horrendous phenomena.

7.5.5 Additional research

This research recommends that further research is conducted:

- On the specific means used by traffickers, their modus operandi, as well as research determining the true nature and extent of human trafficking in South Africa.

- On the implementation of the enacted Prevention and Combating of Trafficking in Persons legislation in South Africa and subsequently the effect of the working of this legislation in practice.
- After the implementation of the enacted Prevention and Combating of Trafficking in Persons legislation in South Africa, that further research be conducted on practical guidelines, procedures and recommendations which could be offered to police officials to identify human trafficking for sexual exploitation.

7.6 CONCLUSION

This study was conducted with the aim to critically analyse how the crime of human trafficking for sexual exploitation can be identified in order to develop practical guidelines to be used during the identification of this crime in South Africa. In this study the researcher conducted a review of pertinent literature, both international and national, to gain an understanding of the problem being researched. Relevant international legislation which informs South African legislation was accordingly considered in order to explain the current legal framework that forms the foundation to address this problem.

A survey was conducted to gain insight into the phenomenon of human trafficking in South Africa. Thereafter interviews were conducted in order to understand the meaning provided by individuals to the problem researched. The researcher also explored how the federal police in Australia address the specific problem relating to the identification and investigation of human trafficking, as they have appointed a leading human trafficking task team focusing on this phenomenon in specific. Links and associations were identified through the knowledge and facts gained in this study, exploring past events and theories developed from former research relating to this topic. This formed the foundation of this study in order to describe and explain future application of findings emanating from this research.

In this study the exploratory and descriptive research approach was used as it allowed for the use of different data collection strategies and the analysis of secondary sources within social settings, as well as the people within them, which provided detailed insight into this phenomenon of human trafficking. A combination of quantitative and qualitative research

was conducted (mixed methods and triangulation), using the explanatory sequential mixed-methods design which was directed by the research aim and objectives to test theoretical assumptions in more than one way, and to increase the reliability and validity of observations, analyses and findings.

The explanatory sequential mixed-method design was accordingly used with the main purpose to use the qualitative data to help explain in more detail the initial quantitative results obtained. The explanatory sequential mixed-methods design furthermore assisted the researcher to follow a procedure whereby the mixed-mode survey design was applied to collect data through questionnaires used in mailed, self-administered surveys and in-person interviews with participants. During the first quantitative phase of this study the data were analysed and then followed up during the second qualitative phase with interview schedules that were used in semi-structured, one-on-one interviews with participants in order to explain the survey responses.

Data were gathered from the following participants in this study: the respective provincial coordinators, police officials and investigators of human trafficking within the nine provinces country wide (sample A) in phase 1 of the study; the relevant role players identified by them, which included police investigators working at the SAPS organised crime units who dealt with and investigated cases of human trafficking where victims were trafficked for sexual exploitation (samples B1 and B2); state prosecutors working at the NPA who dealt with, identified and prosecuted human trafficking cases where victims were trafficked for sexual exploitation in South Africa (sample C); NGOs who work in the field of counter-trafficking and victim assistance (sample D); and an international police investigator who dealt with, identified and investigated human trafficking cases where victims were trafficked for sexual exploitation (sample E) during phase 2 of the study.

Although there are different role players in the CJS, the centre of this study was concentrated on the SAPS as one of the main role players within the South African CJS. The specific police investigators who are responsible to combat and investigate human trafficking as a crime successfully, were accordingly included in this study together with the relevant role players, namely NGOs and state prosecutors identified by the police investigators.

The research aim was attained by answering the following research questions:

1. What does the phenomenon of human trafficking entail?
2. What is the nature and extent of the legal arena upon which South African legislation is based, to criminalise human trafficking, prevent human trafficking and protect trafficking victims?
3. How does the identification of the phenomenon of human trafficking fit into the policing process?
4. What is the current situation regarding procedures followed to identify the phenomenon of human trafficking for sexual exploitation?
5. What practical guidelines, procedures and recommendations can be offered to police officials to facilitate more successful identification of human trafficking for sexual exploitation?

Still today, very little is known about the true extent and nature of this phenomenon of human trafficking in South Africa. The unknown and unseen nature of the crime of human trafficking furthermore presents numerous challenges relating to the calculation of accurate estimates on the prevalence of this phenomenon. The trafficking of women and children for commercial sexual purposes lies in the expansion and ever growing sexual entertainment industry, which is most importantly a demand-driven phenomenon. The exploitation of victims for profit through the use of force, fraud or coercion remains the common denominator of this crime and the trade of human beings continues to evolve into new and more multifaceted forms of exploitation, using debt contracts and other means to coerce people for the purpose of profit gain. Women and children are perceived as the most exploitable and controllable and therefore are deemed to be the most in demand to contribute to this expanding and very competitive economic market driven by maximum profit.

Even though it is eight years since South Africa signed and ratified the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking, Especially Women and Children, it remains one of the highest sources of illegal income, especially regarding women and children for sexual exploitation. As the trafficking of woman and children for sexual exploitation is an ever growing phenomenon which has become a well organised international criminal enterprise, it is imperative and

fundamental to have an understanding of the trafficking of persons as a crime committed against an individual. It is thus of the utmost importance that investigators serving in the SAPS, which is one of the key role players within the CJS, are conversant with the means of trafficking, what it constitutes and what attributes and features this phenomenon includes in order to identify, prevent, investigate and prosecute this crime successfully.

The rights of all South Africans are protected in the Bill of Rights in the Constitution and the South African Government is therefore obligated to “respect, protect, promote and fulfil” these rights of the people. The Government’s responsibility to uphold fundamental rights equally applies to the rights of trafficked persons, even though the Constitution does not specifically make provision for or refer to trafficking in persons per se. The absence and lack of legislation specifically against trafficking in persons, is possibly the sternest obstacle in responding to the crime of human trafficking. Policy makers are continuously confronted with the presentation of conflicting data relating to human trafficking, as there is still no single organisation that specifically corresponds and centralises the collection and collation of human trafficking statistics, neither in South Africa, nor worldwide. The majority of trafficking cases still remain to be undiscovered and therefore not captured and included in data collection and official crime statistics, which directly impacts on and contributes to the deficiency in accurate data and statistics.

The primary instrument that forms the foundation in the international legal framework on human trafficking and accordingly sets forth an international standard to its signatories for enacting domestic legislation, is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention Against Transnational Organized Crime. This instrument, referred to as the Palermo Protocol, is subsequently the primary instrument and framework upon which South African legislation is based. Each country’s government is solely responsible to address the crime of human trafficking and accordingly the US Department of State Trafficking in Persons (TIP) Report, which is released annually, is considered the golden standard in assessing how well governments meet this responsibility.

It is reasoned that South Africa should meet the minimum standards as set out in the US Department of State TIP Report through the enactment of the Prevention and Combating of

Trafficking in Persons Act, Act No 7 of 2013, signed into law on 29 July 2013. However, this Bill is not in working yet, pending on regulations that are required by a number of role-players. This enactment and implementation of legislation in South Africa should also bring about the removing of the country from the its current placement on the Tier 2, maintained for the last five years, ideally placing the country on the Tier 1, bringing the country up to full compliance with US and international standards for combating human trafficking.

The proper identification and investigation of trafficking cases that constitute trafficking in persons are amongst the additional challenges experienced in the prosecution of human trafficking cases in South Africa. It is therefore imperative that a concrete understanding of exactly what is meant by trafficking is required from both the SAPS and the prosecution. Human trafficking prosecutions have proceeded on an improvised basis visibly perceptible to the specifics such as abduction, kidnapping, assault, indecent assault and rape. However, it is clear that the addressing of the phenomenon of human trafficking through enacted legislation is deemed imperative in South Africa as a country of transit, destination and origin of victims in the practising of this appalling trade.

It is of the utmost importance that police personnel serving in the SAPS, one of the key role players within the CJS, are able to identify all relevant information that can shed light on the identification of human trafficking for sexual exploitation incidents. The value of the different identification categories together contribute to the actual history and sequence of events of an incident through the correct identification of a crime, in-depth investigation of a crime scene and the meticulous note taking and reporting, which together illustrate the relationship and linkage of suspects, objects or clues in relation to the crime. The elements of the phenomenon of human trafficking for sexual exploitation, the characteristics, traits and roles of traffickers, their functioning within trafficking groups (organised criminal group enterprises, business enterprises) together with trafficking as an organised crime, as well as the means and modus operandi used by traffickers during the recruitment, transportation and exploitation phase of their victims, are therefore deemed fundamental to create an understanding of the offenders of these atrocious crimes.

Some aspects have been identified as being of utmost importance in establishing awareness and understanding of the identification of this hidden crime. These include: knowledge

pertaining to human trafficking victims and their willingness to cooperate with authorities; the use and application of both sources and resources of information in the identification and discovering of human trafficking incidents; the training and education of personnel to accordingly identify victims; proactive identification approaches required in identifying incidents of human trafficking; cooperative partnerships between various role players; and possible indicators of this continuously expanding and ever growing horrific crime.

The challenges, barriers and red flags inherent to human trafficking incidents, together with the procedures of identification as well as best practices to identify human trafficking for sexual exploitation are essential in exploring the current situation regarding the procedures followed to identify this phenomenon. Through the development of practical guidelines, procedures and recommendations to police officials to identify human trafficking for sexual exploitation incidents more successfully, data obtained from literature, as well as interviews conducted with police officials, NGOs, state prosecutors and an international human trafficking investigator, contributed immensely to the identification of incidents of human trafficking and the identification of victims of these incidents.

The researcher is of the opinion that this study, analysing how the crime of human trafficking for sexual exploitation can be identified in order to develop practical guidelines to be used during the identification of this crime in South Africa, presents a significant contribution to the identification of human trafficking for sexual exploitation incidents in South Africa, and subsequently presents practical guidelines that can be used during the identification of this phenomenon in South Africa.

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ATTACHMENT A

A Critical Analysis of Human Trafficking for Sexual Exploitation - Your participation is important for this research

This study is conducted as part of the researcher's PhD studies at the University of South Africa.

The successful identification and investigation of this hidden crime will be practically impossible if the difficulties in understanding the scope and extent of this phenomenon, as well as the successful prosecution thereof, are not effectively dealt with.

This interview schedule is the second part of a two-phase research project designed to evaluate the identification process of human trafficking for sexual exploitation in South Africa and it carries the support of the South African Police Service (SAPS). Approval letters are attached as per Annexure A.

The purpose of this research is to gain a better understanding of human trafficking and to establish, develop and provide practical guidelines, procedures and recommendations to police officials to identify and investigate human trafficking cases more successfully.

Police officials fulfil a very important role in the investigation and prevention of human trafficking, both nationally and internationally. This is substantiated by Farrell, McDevitt and Fahy (2008:13), who state that the increase in human trafficking can be viewed as an increasingly important human rights concern worldwide, posing a serious challenge to law enforcement in the 21st century.

Your participation in this research is of major importance for the establishment of guidelines for the successful identification and investigation of this crime and for ongoing crime prevention efforts in this area.

For the purposes of this interview schedule, trafficking in persons is defined as follows:

The United Nations Palermo Protocol (see South African Law Commission, 2004) states:

- (a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of (human) organs.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age (United Nations 2000).

All interviews will be treated as strictly confidential

Your participation in this study is voluntary and can be terminated at any time. All responses will be treated with the utmost confidentiality by the researcher and all participants will remain anonymous. The names of the organisations participating in this study may be included. All participants will be allocated a number and completed interview schedules will be captured on an electronic database. All computerised notes will be stored on a secure, password-protected computer. Transcribed interviews will be kept in a secure place for a period of three years as required by the university rules. The transcribed interviews will thereafter be destroyed.

The researcher’s study will be made available to the SAPS upon completion.

The original interview schedule was developed by The Institute on Race and Justice at Northeastern University, and supported under grant number 2005-IJ-CX-0045 awarded by the National Institute of

Justice. It has been adapted for this South African study by the researcher, with the necessary reference to the original authors.

If you have any queries about this interview schedule, please contact Mrs Juanida Horne at 011 471 2118 or hornejs@unisa.ac.za.

Thank you for your cooperation.

Mrs Juanida Horne

PhD student

UNISA

QUESTIONNAIRE: PHASE ONE

FOR OFFICE USE ONLY

RESPONDENT NUMBER: _____

SECTION A: Background

1. Your Province

- A Eastern Cape
- B Free State
- C Gauteng
- D Kwazulu/Natal
- E Limpopo
- F Mpumalanga
- G Northern Cape
- H North West
- I Western Cape

2. Briefly describe your current position.

3. How long have you served in this position? [Please mark the most relevant box].

A Less than 1 year	B 1 – 5years	C 6 – 10 years	D More than 10 years

4. What does your professional involvement with regard to human trafficking entail?

SECTION B: Concept / Phenomenon of human trafficking

5. What do you understand under the term human trafficking?

6. How knowledgeable are you with regard to the issue of human trafficking? [Please mark the most relevant box].

1 No knowledge	2 Little knowledge	3 Some knowledge	4 Knowledgeable	5 Very knowledgeable

7. If your answer to question 6 (above) is 1, 2 or 3 would you personally like more knowledge and development with regard to the issue of human trafficking? [Please mark the most relevant box].

A Yes	B No

8. Do you think there is a difference between human trafficking, migration, smuggling and kidnapping? [If yes, please answer question 9, if no proceed to question 10].

A Yes	B No	C Unsure

9. If answer to question 8 is yes, briefly describe the differences between these concepts?

10. In your experience, how prevalent are the following forms of human trafficking within **your Province**? [Please mark the most relevant box].

Types of Trafficking	1 Widespread	2 Occasional	3 Unsure	4 Rare	5 Non-existent
Sex trafficking of people who come from outside South Africa.					
Sex trafficking of people from within South Africa.					

11. Do you know if South Africa has specific human trafficking legislation? [If yes, please answer question 12, if no proceed to question 13].

A Yes	B No	C Unsure

12. If answer to question 11 is yes, briefly list the specific legislation?

13. In your experience, how would you rate the human trafficking problem in **your Province** during the past five years (2007 – 2011)? [Please mark the box most relevant].

1 No problem (No Cases)	2 Small problem (1 to 10 Cases)	3 Unsure	4 Problem (1 to 20 Cases)	5 Serious problem (More than 20 Cases)

14. In your experience, how much of a priority is the need to address human trafficking in **your Province**? [Please mark the box most relevant].

1 Not a priority at all	2 Minor priority	3 Unsure	4 High Priority	5 Very High priority

SECTION C: Training in Human Trafficking

15. Have you or any of your colleagues **your Province** received training on how to **identify** cases of human trafficking? [If yes, please answer question 16, if no proceed to question 17].

A Yes	B No	C Unsure

16. If yes, approximately how many colleagues have received training on how to **identify** cases of human trafficking?

17. Have you or any of your colleagues **your Province** received training on how to **investigate** human trafficking cases? [If yes, please answer question 18, if no proceed to question 19].

A Yes	B No	C Unsure

18. Approximately how many of your colleagues have received training on how to **investigate** human trafficking cases?

19. Have you or any of your colleagues **your Province** received training on how to **respond** to human trafficking cases? [If yes, please answer question 20, if no proceed to question 21].

A Yes	B No	C Unsure

20. Approximately how many of your colleagues have received training on how to **respond** to human trafficking cases?

21. What type of training relating to human trafficking in specific have members **your Province** received? [Please mark **all** the boxes that are relevant – in other words, more than one response is possible].

- A In service training
- B New recruit training
- C Publications

- D Online / Web based training program
- E Regional Conferences
- F National Conferences
- G International Conferences
- H Off site professional training
- I Other (Please specify): _____

22. What was the source of the training as indicated in question 19 above? [Please mark **all** the boxes that are relevant – in other words, more than one response is possible].

- A SAPS specific training
- B Department of Justice curriculum
- C Independent consultant / trainer
- D Community-based agency / service provider
- E Other (Please specify): _____

23. In your experience, is there a need for training or assistance in any of the following types of training in **your Province**? [Please mark all the boxes that are relevant].

Type of training or assistance needed:	Yes	No
Understanding the issue of human trafficking.		
Understanding the legislation that could be used in a human trafficking case.		
Understanding the role of law enforcement in human trafficking cases.		
Methods for identifying cases of human trafficking.		
Methods for investigating cases of human trafficking.		
Methods for responding to cases of human trafficking.		
Methods for preventing human trafficking.		
Understanding the role of prosecutors in human trafficking cases.		
Understanding the role of Non-Governmental Officials in human trafficking cases.		
Understanding the role of victim service providers in human trafficking cases.		
Collaborating with other role players in human trafficking cases		

SECTION D: Identification and Investigation of Human Trafficking

24. In your experience, is there a specialized human trafficking unit, group or member within **your Province** that is assigned to **oversee** human trafficking **investigations**? [If yes, please answer question 25, if no proceed to question 26].

A Yes	B No	C Unsure

25. If the answer to question 24 is yes, provide the name of the unit, group or member within **your Province** that oversees human trafficking investigations.

26. Is there a specialized human trafficking unit, group or member within **your Province** that is assigned to **conduct** human trafficking **investigations**? [If yes, please answer question 27, if no proceed to question 28].

A Yes	B No	C Unsure

27. If the answer to question 26 is yes, provide the name of the unit, group or member within **your Province** that conducts human trafficking investigations.

28. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for police officials on how to **identify** human trafficking cases? [Please mark all the boxes that are relevant]. [If yes, please answer question 29, if no proceed to question 30].

IDENTIFY	A Procedure	B Protocol	C Policy
Yes			
No			
Unsure			

29. If the answer to question 28 is yes, list the name of the procedure/protocol/policy.

30. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for investigators on how to **investigate** human trafficking cases? [Please mark all the boxes that are relevant]. [If yes, please answer question 30, if no proceed to question 31].

	A Procedure	B Protocol	C Policy
Yes			
No			
Unsure			

31. If answer to question 30 is yes, list the name of the procedure/protocol/policy.

32. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for police officials on how to **respond** to human trafficking cases? [Please mark all the boxes that are relevant]. [If yes, please answer question 33, if no proceed to question 34].

	A Procedure	B Protocol	C Policy
Yes			
No			
Unsure			

33. If answer to question 32 is yes, list the name of the procedure/protocol/policy.

34. In your experience, how useful are formal procedures/protocols/policies in identifying, investigating and responding to human trafficking cases? [Please mark the box most relevant].

1 Not useful	2 Somewhat useful	3 Unsure	4 Useful	5 Very useful

35. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for police officials on who to **contact for victim assistance**? [If yes, please answer question 36, if no proceed to question 37].

A Yes	B No	C Unsure

36. If answer to question 34 is yes, list the name of the procedure/protocol/policy.

37. Would you utilize a task team **your Province** during the course of an investigation of human trafficking? (Such a task team might include other police personnel, community based agencies and service providers?) [If yes, please answer question 37, if no proceed to question 38].

A Yes	B No	C Unsure

38. If answer to question 37 is yes, indicate which organizations are represented on the task team. [Please mark **all** the boxes that are relevant – in other words, more than one response is possible].

- A State Prosecutor
- B Immigration and Customs Enforcement
- C Department of Home Affairs
- D Department of Foreign Affairs
- E Department of Labour
- F Interpol
- F Non-Governmental Official
- G Community Organisations
- H Victim Service Providers
- I Religious Groups
- J Church Organisation
- K Other (Please specify): _____

39. In your experience, how likely is it that each of the following **sources of information** would be used to uncover human trafficking in **your Province**? [Please mark the box most relevant for each of the sources of information].

Sources of Information	Likelihood of Occurrence				
	1 Not at all likely	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Calls for service when a complaint is reported by a victim					
Identified by Law Enforcement Officials					
Alerts from health or social service providers, faith-based organizations or victim service groups					
Tips from members of the community					
Tips from informants or co-conspirator					
Media reports on possible incidents					
Media reports relating to classifieds and questionable advertisements					
During the course of investigation of other crimes (e.g. prostitution, drugs, domestic violence)					
Raids conducted by the police					
Missing Persons Reports					
Referrals from Non-Governmental Organizations or Non-Governmental Officials					
Referrals from inspectional services or other regulatory agencies					
Other (Please specify): _____ _____					

40. In your opinion, what is the likelihood that the following **types of crimes** will be encountered over the next 12 months **your Province**? (Note: Human trafficking cases are included, and other types of violent crimes are included for comparison purposes). [Please mark the box most relevant for each type of crime].

Types of Crime	Likelihood of Occurrence				
	1 Not likely at all	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Domestic Violence					

Prostitution					
Sexual Assault					
Kidnapping					
Murder					
Human Trafficking					
• Labour Trafficking					
• Sex Trafficking					
• Organ Trafficking					
• Domestic Servitude					
• Street Begging by Children					

41. To your knowledge, has any member **in your Province**, ever investigated any human trafficking related cases to date? (Investigation can include collecting evidence, interviewing witnesses, writing reports and following up on leads?) [If yes, please answer question 42, if no proceed to question 43].

A Yes	B No	C Unsure

42. If answer to question 41 is yes, list the CAS numbers or enquiry number of the human trafficking related investigations that were conducted within **your Province** during the past five years (2007 – 2011)?

SECTION E: Problems and Challenges to Addressing Human Trafficking

43. In your experience, how challenging are the following problems with regard to addressing human trafficking in **your Province**? [Please mark the boxes most relevant to each of the problems associated to human trafficking]

Problems to addressing human trafficking	1 Very challengin g	2 Occasional challenging	3 Unsur e	4 Seldom challengin g	5 Not challengin g
No trafficking legislation in place.					
Lack of support for human trafficking investigations.					
Confusion regarding the mandate to investigate human trafficking cases – When is a case being investigated by the					

FCS and when is the Organised Crime Unit responsible.					
Negative attitudes and preconceived ideas towards prostitution.					
Inability to identify human trafficking victims within the community that you serve.					
Inability to identify the existence of the crime – human trafficking within the community that you serve.					
Lack of resources within your organization to necessary to identify human trafficking cases.					
Lack of resources within your organization to investigate human trafficking cases.					

SECTION F: Any other comments

44. Can you refer the researcher to any police member within **your Province** who has experience in identifying and investigating human trafficking cases? [If yes, please answer question 45, if no proceed to question 46].

A Yes	B No	C Unsure

45. If answer to question 44 is yes, list the contact information of the police member within your Province, or elsewhere in South Africa.

Contact person: _____ Telephone Number: _____ E-Mail: _____

Contact person: _____ Telephone Number: _____ E-Mail: _____

Contact person: _____ Telephone Number: _____ E-Mail: _____

ATTACHMENT B

A Critical Analysis of Human Trafficking for Sexual Exploitation - Your participation is important for this research

This study is conducted as part of the researcher's PhD studies at the University of South Africa.

The successful identification and investigation of this hidden crime will be practically impossible if the difficulties in understanding the scope and extent of this phenomenon, as well as the successful prosecution thereof, are not effectively dealt with.

This interview schedule is the second part of a two-phase research project designed to evaluate the identification process of human trafficking for sexual exploitation in South Africa and it carries the support of the South African Police Service (SAPS). Approval letters are attached as per Annexure A.

The purpose of this research is to gain a better understanding of human trafficking and to establish, develop and provide practical guidelines, procedures and recommendations to police officials to identify and investigate human trafficking cases more successfully.

Police officials fulfil a very important role in the investigation and prevention of human trafficking, both nationally and internationally. This is substantiated by Farrell, McDevitt and Fahy (2008:13), who state that the increase in human trafficking can be viewed as an increasingly important human rights concern worldwide, posing a serious challenge to law enforcement in the 21st century.

Your participation in this research is of major importance for the establishment of guidelines for the successful identification and investigation of this crime and for ongoing crime prevention efforts in this area.

For the purposes of this interview schedule, trafficking in persons is defined as follows:

The United Nations Palermo Protocol (see South African Law Commission, 2004) states:

- (a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of (human) organs.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age (United Nations 2000).

All interviews will be treated as strictly confidential

Your participation in this study is voluntary and can be terminated at any time. All responses will be treated with the utmost confidentiality by the researcher and all participants will remain anonymous. The names of the organisations participating in this study may be included. All participants will be allocated a number and completed interview schedules will be captured on an electronic database. All computerised notes will be stored on a secure, password-protected computer. Transcribed interviews will be kept in a secure place for a period of three years as required by the university rules. The transcribed interviews will thereafter be destroyed.

The researcher’s study will be made available to the SAPS upon completion.

The original interview schedule was developed by The Institute on Race and Justice at Northeastern University, and supported under grant number 2005-IJ-CX-0045 awarded by the National Institute of

Justice. It has been adapted for this South African study by the researcher, with the necessary reference to the original authors.

If you have any queries about this interview schedule, please contact Mrs Juanida Horne at 011 471 2118 or hornejs@unisa.ac.za.

Thank you for your cooperation.

Mrs Juanida Horne

PhD student

UNISA

INTERVIEW SCHEDULE: PHASE TWO

FOR OFFICE USE ONLY

PARTICIPANT NUMBER: _____

SECTION A: Background

Your directorate/office

- A Directorate Priority Crime Investigations: Organised Crime
- B Detective Service
- C Interpol

1. Your province

- A Eastern Cape
- B Free State
- C Gauteng
- D KwaZulu-Natal
- E Limpopo
- F Mpumalanga
- G Northern Cape
- H North West
- I Western Cape

2. Gender

A Male	B Female
-------------------------	---------------------------

3. What are your tertiary qualifications?

4. What is your current position?

5. How long have you served in this position? [Please mark the most relevant box.]

A Less than 1 year	B 1 – 5 years	C 6 – 10 years	D More than 10 years

6. What are your primary roles in the position you occupy?

7. How many years have you been an investigator?

A Less than 1 year	B 1 – 5 years	C 6 – 10 years	D More than 10 years

SECTION B: Concept/phenomenon of human trafficking

8. What do you understand by the term “human trafficking”?

9. In your experience, what are the most known routes of human trafficking in South Africa?

10. Based on your experience, name the different forms/types of human trafficking.

11. Based on your experience, what are the typical criminal elements that the crime of human trafficking would entail?

12. Do you think there is a difference between human trafficking, migration, smuggling and kidnapping?
[If yes, please answer question 13; if no, proceed to question 16.]

A Yes	B No	C Unsure

13. If your answer to question 12 was yes, briefly describe the differences between human trafficking and migration.

14. If your answer to question 12 was yes, briefly describe the differences between human trafficking and smuggling.

15. If your answer to question 12 was yes, briefly describe the differences between human trafficking and kidnapping.

16. Do you know if South Africa has specific human trafficking legislation? [If yes, please answer question 17; if no, proceed to question 18.]

A Yes	B No	C Unsure

17. If your answer to question 16 was yes, briefly list the specific legislation.

18. In your experience, how would you rate the human trafficking problem in **your province** during the past five years (2007 – 2011)? [Please mark the most relevant box.]

1 No problem (No cases)	2 Small problem (1 to 10 cases)	3 Unsure	4 Problem (1 to 20 cases)	5 Serious problem (More than 20 cases)

19. In your experience, how much of a priority is the need to address human trafficking in **your province**? [Please mark the most relevant box.]

1 Not a priority at all	2 Minor priority	3 Unsure	4 High priority	5 Very high priority

20. Name some of the organisations that your unit works with in a case of human trafficking.

21. Are there any other specific individuals that you would like/need to work with on human trafficking cases that you are currently not working with? If so, please name them.

22. In your opinion, what is the likelihood that the following **types of crimes** will be encountered in **your province** over the next 12 months? (Note: Human trafficking cases are included, and other types of violent crimes are included for comparison purposes.) [Please mark the most relevant box for each type of crime.]

Types of crimes	Likelihood of occurrence				
	1 Not likely at all	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Domestic violence					
Prostitution					
Sexual assault					
Kidnapping					
Murder					
Human trafficking					
• Labour trafficking					
• Sex trafficking					
• Organ trafficking					
• Domestic servitude					
• Street begging by children					

23. Is there a reporting mechanism in place within the SAPS to track human trafficking cases? [If yes, please answer question 24; if no, proceed to question 25.]

A Yes	B No	C Unsure

24. If your answer to question 23 was yes, explain the reporting mechanism in place within the SAPS to track human trafficking cases.

25. How knowledgeable are you with regard to the issue of human trafficking? [Please mark the most relevant box.]

1 No knowledge	2 Little knowledge	3 Some knowledge	4 Knowledgeable	5 Very knowledgeable

26. If your answer to question 25 was 1, 2 or 3, would you personally like more knowledge and development with regard to the issue of human trafficking? [Please mark the most relevant box.]

A Yes	B No

27. Describe your experience in working with human trafficking victims.

28. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for police officials on whom to **contact for assistance with human trafficking victims**? [If yes, please answer question 29; if no, proceed to question 30.]

A Yes	B No	C Unsure

29. If your answer to question 28 was yes, list the name of the procedure/protocol/policy.

30. Approximately how many **human trafficking** related arrests have you made since 2007? Please indicate the total number of arrests for each year listed below.

A 2007	B 2008	C 2009	D 2010	E 2011

31. Approximately how many of these arrests were related to **human trafficking for sexual exploitation**? Please indicate the total number of these arrests for each year listed below.

A 2007	B 2008	C 2009	D 2010	E 2011

32. What is the average age of perpetrators of human trafficking that you have arrested since 2007 (past five years)? [Please mark the most relevant box.]

- A Less than 18 years old
- B 18 - 24 years old
- C 25 - 29 years old
- D 30 - 39 years old
- E 40 - 50 years old
- F More than 50 years old
- G Varies (please explain): _____

33. Approximately what percentage of perpetrators of human trafficking that you have arrested since 2007 was male and how many were female? Please indicate the total percentage for each gender listed below.

A Male %	B Female %

34. Based on your experience, what is the average age of most of the human trafficking victims in the cases that you have investigated within your province since 2007 (past five years)? [Please mark the most relevant box.]

- A Younger than 6 years old
- B 6 – 11 years old
- C 12 – 17 years old
- D 18 - 24 years old
- E 25 - 29 years old
- F 30 - 39 years old
- G 40 - 50 years old
- H More than 50 years old
- I Varies (please explain): _____

35. In your experience, how often do human trafficking cases result in the following outcomes? [Please mark the most relevant box.]

Outcomes of human trafficking cases	Outcome level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Case is investigated, but does not lead to one or more arrests					
Case is investigated, arrests are made, but does not lead to prosecution					
Case is investigated, arrests are made and leads to prosecution but defendant is acquitted					
Case is investigated, arrests are made and leads to prosecution where defendant is convicted					
Other (please specify): _____ _____					

36. Do you find that human trafficking is associated with other crimes? [If yes, please answer question 37; if no, proceed to question 38.]

A Yes	B No	C Unsure

37. If your answer to question 36 was yes, in your experience, how likely is **human trafficking** to be associated with any of the following crimes? [Please mark the most relevant box for each type of crime.]

Type of crime	Likelihood of occurrence				
	1 Not likely at all	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Drug trafficking					
Tax evasion					
Arms dealing					
False identification					
Organ trafficking					
Computer-assisted crimes					
Organised crime					
Prostitution					
Terrorism					
Pornography					
Conspiracy					
Gangs					
Corruption and bribery					
Money laundering					
Other (please specify): _____ _____					

38. In your experience, how challenging are the following problems with regard to addressing human trafficking in **your province**? [Please mark the most relevant box for each of the problems associated with human trafficking.]

Problems in addressing human trafficking	1 Very challenging	2 Occasionally challenging	3 Unsure	4 Seldom challenging	5 Not challenging
No trafficking legislation in place.					
Lack of support for human trafficking investigations.					
Confusion regarding the mandate to investigate human trafficking cases – when is a case investigated by the FCS and when is the Organised Crime Unit responsible?					
Negative attitudes and preconceived ideas towards prostitution.					

Inability to identify human trafficking victims within the community that you serve.					
Inability to identify the existence of the crime of human trafficking within the community that you serve.					
Lack of resources within your organisation necessary to identify human trafficking cases.					
Lack of resources within your organisation to investigate human trafficking cases.					

39. What do you understand by the term “sexual exploitation”?

40. Based on your experience, what is your understanding of human trafficking for sexual exploitation?

41. Based on your experience, what are the typical criminal elements that the crime of human trafficking for sexual exploitation would entail?

42. Based on your experience, describe the element of conduct of the crime human trafficking for sexual exploitation.

43. In your experience, how prevalent are the following forms of human trafficking within **your province**? [Please mark the most relevant box.]

Types of trafficking	1 Widespread	2 Occasional	3 Unsure	4 Rare	5 Non-existent
Sex trafficking of people who come from outside South Africa.					
Sex trafficking of people from within South Africa.					

44. In your experience, how would you rate the human trafficking for sexual exploitation problem in **your province** during the past five years (2007 – 2011)? [Please mark the most relevant box.]

1 No problem (No cases)	2 Small problem (1 to 10 cases)	3 Unsure	4 Problem (1 to 20 cases)	5 Serious problem (More than 20 cases)

45. In your experience, what are the means used by traffickers to traffic human trafficking victims for sexual exploitation?

46. In your experience, what is the typical modus operandi of human traffickers who traffic human trafficking victims for sexual exploitation?

47. Based on your experience, do victims of human trafficking for sexual exploitation cooperate with police officials?

48. In your experience, what are the reasons why victims of trafficking for sexual exploitation might not cooperate with police officials? [Please mark the most relevant box.]

Reasons trafficking victims might not cooperate with police officials	Level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Fear of deportation					
Fear of retaliation (self and/or family)					
Lack of social support/isolation					
Feelings of shame or embarrassment					
Lack of knowledge about the role of the police					
Lack of knowledge about victim's rights					
Lack of trust in the criminal justice system					
Language barriers					
Inability to identify self as a victim					
Victim engaged in potentially illegal activity					
Other (please specify): _____ _____					

49. Based on your experience, what are the needs of victims of human trafficking for sexual exploitation?

50. Does your organisation have an existing relationship with any service providers that are able to meet the immediate needs of victims of human trafficking for sexual exploitation? [If yes, please answer question 51; if no, proceed to question 52.]

A Yes	B No	C Unsure

51. If your answer to question 50 was yes, list the service providers.

52. What do you need to support you when working with victims of human trafficking for sexual exploitation?

SECTION C: Training in identification and investigation of human trafficking

53. Have you undergone any training on the investigation of crime? [If yes, please answer question 54; if no, proceed to question 55.]

A Yes	B No

54. If your answer to question 53 was yes, list the types of training courses you have attended on the investigation of crime.

55. Think about previous human trafficking training you have attended: What about the content of the training event made it most useful to you?

56. Have you received training on how to **identify** incidents of human trafficking?

A Yes	B No	C Unsure

57. Have you received training on how to **investigate** human trafficking cases?

A Yes	B No	C Unsure

58. What type of training relating to human trafficking specifically have you received? [Please mark **all** the boxes that are relevant – in other words, more than one response is possible.]

- A In-service training
- B New recruit training
- C Publications
- D Online/Web-based training programme
- E Regional conferences
- F National conferences
- G International conferences
- H Off-site professional training
- I Other (please specify): _____

59. What was the source of the training indicated in question 58 above? [Please mark **all** the boxes that are relevant – in other words, more than one response is possible.]

- A SAPS-specific training
- B Department of Justice curriculum
- C Independent consultant/trainer
- D Community-based agency/service provider
- E Other (please specify): _____

60. Name the service providers that presented any of the human trafficking training which you received.

61. In your experience, is there a need for training in any of the following areas relating to human trafficking? [Please mark all the boxes that are relevant.]

Type of training needed	Yes	No
Understanding the issue of human trafficking		
Understanding the legislation that could be used in a human trafficking case		
Understanding the role of law enforcement in human trafficking cases		
Methods for identifying incidents of human trafficking		
Methods for investigating cases of human trafficking		
Methods for responding to cases of human trafficking		
Methods for preventing human trafficking		
Understanding the role of prosecutors in human trafficking cases		
Understanding the role of non-governmental officials in human trafficking cases		
Understanding the role of victim service providers in human trafficking cases		
Collaborating with other role players in human trafficking cases		

SECTION D: Investigation of human trafficking

62. Based on your experience, how would you define the term “investigation of crime”?

63. Based on your experience, what are the objectives of investigation of crime?

64. Approximately how many human trafficking cases have you investigated since 2007? (Investigation can include collecting evidence, interviewing witnesses, writing reports and following up on leads. In addition, cases may include more than one suspect or victim.) Please indicate the total number of cases that involved investigations for each year listed below.

A 2007	B 2008	C 2009	D 2010	E 2011

65. List the CAS numbers or enquiry number of the human trafficking related investigations that you conducted during the past five years (2007 – 2011). (This information is required for docket analysis purposes.)

66. What is the average length of time you spend investigating a human trafficking case? [Please mark the most relevant box.]

A Less than 3 months	B 3 – 6 months	C 7 – 12 months	D More than 12 months	E Unsure

67. In your experience, is there a specialised human trafficking unit, group or member within **your province** that is assigned to **oversee** human trafficking **investigations**? [If yes, please answer question 68; if no, proceed to question 69.]

A Yes	B No	C Unsure

68. If your answer to question 67 was yes, provide the name of the unit, group or member within **your province** that oversees human trafficking investigations.

69. Is there a specialised human trafficking unit, group or member within **your province** that is assigned to **conduct** human trafficking **investigations**? [If yes, please answer question 70; if no, proceed to question 71.]

A Yes	B No	C Unsure

70. If your answer to question 69 was yes, provide the name of the unit, group or member within **your province** that conducts human trafficking investigations.

71. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for investigators on how to **investigate** human trafficking cases? [Please mark all the boxes that are relevant.] [If yes, please answer question 72; if no, proceed to question 73.]

	A Procedure	B Protocol	C Policy
Yes			
No			
Unsure			

72. If your answer to question 71 was yes, list the name of the procedure/protocol/policy.

73. In your experience, how useful are formal procedures/protocols/policies in investigating human trafficking cases? [Please mark the most relevant box.]

1 Not useful	2 Somewhat useful	3 Unsure	4 Useful	5 Very useful

74. Do you serve on any task team during the course of an investigation of human trafficking? (Such a task team might include other police personnel, community-based agencies and service providers.) [If yes, please answer question 75; if no, proceed to question 77.]

A Yes	B No	C Unsure

75. If your answer to question 74 was yes, indicate which organisations are represented on the task team. [Please mark **all** the boxes that are relevant – in other words, more than one response is possible.]

- A State Prosecutor
- B Immigration and Customs Enforcement
- C Department of Home Affairs
- D Department of Foreign Affairs
- E Department of Labour
- F Interpol
- F Non-governmental official
- G Community organisations
- H Victim service providers
- I Religious groups
- J Church organisation
- K Other (please specify): _____

76. If your answer to question 74 was yes, briefly describe the responsibilities of the task team.

77. How frequently do you encounter the following issues when investigating cases of human trafficking?
 [Please mark the most relevant box.]

Issues encountered when investigating and prosecuting cases of human trafficking	Outcome level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Lack of victim cooperation					
Language barriers/lack of or inadequate translator services					
Lack of support with victim service providers/community-based organisations					
Resistance from police officials to pursue or assist in case investigations					
Resistance from State Prosecutor to pursue cases					
Lack of adequate resources (e.g. time, money, staff)					
Lack of adequate training					
Lack of adequate knowledge					
Lack of procedures/protocols to identify and respond to human trafficking cases and victims of trafficking					
Other (please specify): _____ _____					

78. In your experience, how frequently is each of the following investigative responses used to build human trafficking cases in the community that you serve? [Please mark the most relevant box.]

Potential investigative responses	Level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Surveillance					
Undercover operations					
Raids or other overt operations					
Collaboration with other law enforcement agencies					
Pursuing paper trails (bank receipts, tax records)					
Wire tapping/communication monitoring					
Investigate linkages to other criminal enterprises					
Providing victim support services					
Other (please specify): _____ _____					

79. What resources do you use to **investigate** human trafficking cases?

80. Based on your experience, which resources do you **lack** when **investigating** human trafficking cases?

81. Describe your experience in the investigation of human trafficking.

82. Based on your experience, what are the three most emerging trends you have experienced while investigating human trafficking cases.

83. What are the primary **barriers** you face in **investigating** a case of human trafficking?

84. What do you think might help to overcome the challenges you face when investigating cases of human trafficking?

85. Based on your experience, can you suggest practical guidelines on how to **investigate** cases of human trafficking?

86. What do you need to support you in **investigating** cases of human trafficking?

SECTION E: Identification of human trafficking

87. Based on your experience, what is **identification**?

88. Based on your experience, what is meant by the concept of **identification** process?

89. Based on your experience, what does it mean to identify a crime?

90. Based on your experience, what are the basic steps to **identify** cases of human trafficking?

91. Based on your experience, describe the category “situation identification” in order to identify a crime.

92. How would you apply the above description in identifying an incident of human trafficking for sexual exploitation?

93. Based on your experience, which additional observations should be made in order to confirm the suspicion of an incident of human trafficking for sexual exploitation?

94. Based on your experience, do you think that **identification** plays an important role in criminal investigation?

95. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for police officials on how to **identify** human trafficking incidents? [Please mark all the boxes that are relevant.] [If yes, please answer question 96; if no, proceed to question 97.]

IDENTIFY	A Procedure	B Protocol	C Policy
Yes			
No			
Unsure			

96. If your answer to question 95 was yes, list the name of the procedure/protocol/policy.

97. In your experience, how useful are formal procedures/protocols/policies in **identifying** human trafficking incidents? [Please mark the most relevant box.]

1 Not useful	2 Somewhat useful	3 Unsure	4 Useful	5 Very useful

98. Looking back on past cases of **human trafficking for sexual exploitation** that you worked on, how did you typically become aware of an incident of human trafficking for sexual exploitation?

99. After you became aware of an incident of **human trafficking for sexual exploitation**, describe your typical response.

100. In your experience, how likely is each of the following **sources of information** to be used to uncover incidents of human trafficking for sexual exploitation in **your province**? [Please mark the most relevant box for each source of information.]

Sources of information	Likelihood of occurrence				
	1 Not at all likely	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Calls for service when a complaint is reported by a victim					
Identified by law enforcement officials					
Alerts from health or social service providers, faith-based organisations or victim service groups					

Tips from members of the community					
Tips from informant or co-conspirator					
Media reports on possible incidents					
Media reports relating to classifieds and questionable advertisements					
During the course of investigation of other crimes (e.g. prostitution, drugs, domestic violence)					
Raids conducted by the police					
Missing Persons reports					
Referrals from non-governmental organisations or non-governmental officials					
Referrals from inspectional services or other regulatory agencies					
Other (please specify): _____ _____					

101. What resources do you use to **identify** incidents of human trafficking for sexual exploitation?

102. What **lack** of resources do you experience in **identifying** incidents of human trafficking for sexual exploitation?

103. What are the primary **barriers** you face in **identifying** an incident of human trafficking for sexual exploitation?

104. What do you think might help to overcome the challenges you face in identifying an incident of human trafficking for sexual exploitation?

105. Based on your experience, how do you determine if an incident is a case of human trafficking for sexual exploitation?

106. Based on your experience, list any number of “red flags” that might **indicate** an incident that involves the crime of human trafficking for sexual exploitation.

107. Based on your experience, can you suggest practical guidelines on how to **identify** incidents of human trafficking for sexual exploitation?

SECTION H: Best practices

108. Based on your experience, what **identification** practices are you aware of for incidents of human trafficking for sexual exploitation that seem to be particularly innovative and effective in producing positive results?

109. Based on your experience, what **investigation** practices are you aware of for cases of human trafficking for sexual exploitation that seem to be particularly innovative and effective in producing positive results?

110. What **identification** practices for incidents of human trafficking for sexual exploitation have you implemented in the past during investigations?

111. Describe any positive impacts of these **identification** practices that you have implemented.

112. What **investigation** practices for cases of human trafficking for sexual exploitation have you implemented?

113. Describe any positive impacts of these **investigation** practices that you have implemented.

114. What are the most important lessons learnt regarding the **identification** of incidents of human trafficking for sexual exploitation that you would want to share with others?

115. What are the most important lessons learnt regarding the **investigation** of cases of human trafficking for sexual exploitation that you would want to share with others?

SECTION I: Any other comments

116. Can you refer the researcher to any **police member** within **your organisation** that has experience in identifying and investigating human trafficking cases? [If yes, please answer question 117; if no, proceed to question 118.]

A Yes	B No	C Unsure

117. If your answer to question 116 was yes, list the contact information of the police member within your province, or elsewhere in South Africa.

Contact person: _____
Telephone number: _____
E-mail: _____

118. Can you refer the researcher to any **state prosecutor** that has experience in prosecuting human trafficking cases? [If yes, please answer question 119; if no, proceed to question 120.]

A Yes	B No	C Unsure

119. If your answer to question 118 was yes, list the contact information of the state prosecutor within your province, or elsewhere in South Africa.

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

120. Can you refer the researcher to any **NGO** that has experience in human trafficking incidents (working with human trafficking victims and or assisting you in these incidents and or cases)? [If yes, please answer question 121; if no, proceed to question 122.]

A Yes	B No	C Unsure

121. If your answer to question 120 was yes, list the contact information of the state prosecutor within your province, or elsewhere in South Africa.

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

ATTACHMENT C

A Critical Analysis of Human Trafficking for Sexual Exploitation - Your participation is important for this research

This study is conducted as part of the researcher's PhD studies at the University of South Africa.

The successful identification and investigation of this hidden crime will be practically impossible if the difficulties in understanding the scope and extent of this phenomenon, as well as the successful prosecution thereof, are not effectively dealt with.

This interview schedule is the second part of a two-phase research project designed to evaluate the identification process of human trafficking for sexual exploitation in South Africa and it carries the support of the South African Police Service (SAPS). Approval letters are attached as per Annexure A.

The purpose of this research is to gain a better understanding of human trafficking and to establish, develop and provide practical guidelines, procedures and recommendations to police officials to identify and investigate human trafficking cases more successfully.

Police officials fulfil a very important role in the investigation and prevention of human trafficking, both nationally and internationally. This is substantiated by Farrell, McDevitt and Fahy (2008:13), who state that the increase in human trafficking can be viewed as an increasingly important human rights concern worldwide, posing a serious challenge to law enforcement in the 21st century.

Your participation in this research is of major importance for the establishment of guidelines for the successful identification and investigation of this crime and for ongoing crime prevention efforts in this area.

For the purposes of this interview schedule, trafficking in persons is defined as follows:

The United Nations Palermo Protocol (see South African Law Commission, 2004) states:

- (a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of (human) organs.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age (United Nations 2000).

All interviews will be treated as strictly confidential

Your participation in this study is voluntary and can be terminated at any time. All responses will be treated with the utmost confidentiality by the researcher and all participants will remain anonymous. The names of the organisations participating in this study may be included. All participants will be allocated a number and completed interview schedules will be captured on an electronic database. All computerised notes will be stored on a secure, password-protected computer. Transcribed interviews will be kept in a secure place for a period of three years as required by the university rules. The transcribed interviews will thereafter be destroyed.

The researcher’s study will be made available to the SAPS upon completion.

The original interview schedule was developed by The Institute on Race and Justice at Northeastern University, and supported under grant number 2005-IJ-CX-0045 awarded by the National Institute of

Justice. It has been adapted for this South African study by the researcher, with the necessary reference to the original authors.

If you have any queries about this interview schedule, please contact Mrs Juanida Horne at 011 471 2118 or hornejs@unisa.ac.za.

Thank you for your cooperation.

Mrs Juanida Horne

PhD student

UNISA

INTERVIEW SCHEDULE: STATE PROSECUTORS

FOR OFFICE USE ONLY

PARTICIPANT NUMBER: _____

SECTION A: Background

1. Your province

- A Eastern Cape
- B Free State
- C Gauteng
- D KwaZulu-Natal
- E Limpopo
- F Mpumalanga
- G Northern Cape
- H North West
- I Western Cape

2. Gender

A Male	B Female
-------------------------	---------------------------

3. What are your tertiary qualifications?

4. What is your current position?

5. How long have you served in this position? [Please mark the most relevant box.]

A Less than 1 year	B 1 – 5 years	C 6 – 10 years	D More than 10 years

6. What are your primary roles in the position you occupy?

7. How many years have you been in the Criminal Justice Field?

A Less than 1 year	B 1 – 5 years	C 6 – 10 years	D More than 10 years

SECTION B: Concept/phenomenon of human trafficking

8. What do you understand by the term “human trafficking”?

9. Based on your experience, name the different forms/types of human trafficking.

10. Based on your experience, what are the typical criminal elements that the crime of human trafficking would entail?

11. Do you think there is a difference between human trafficking, migration, smuggling and kidnapping?
[If yes, please answer question 12; if no, proceed to question 15.]

A Yes	B No	C Unsure

12. If your answer to question 11 was yes, briefly describe the differences between human trafficking and migration.

13. If your answer to question 11 was yes, briefly describe the differences between human trafficking and smuggling.

14. If your answer to question 11 was yes, briefly describe the differences between human trafficking and kidnapping.

15. Do you know if South Africa has specific human trafficking legislation? [If yes, please answer question 16; if no, proceed to question 17.]

A Yes	B No	C Unsure

16. If your answer to question 15 was yes, briefly list the specific legislation.

17. How knowledgeable are you with regard to the issue of human trafficking? [Please mark the most relevant box.]

1 No knowledge	2 Little knowledge	3 Some knowledge	4 Knowledgeable	5 Very knowledgeable

18. If your answer to question 17 was 1, 2 or 3, would you personally like more knowledge and development with regard to the issue of human trafficking? [Please mark the most relevant box.]

A Yes	B No

19. Do you find that human trafficking is associated with other crimes? [If yes, please answer question 20; if no, proceed to question 21.]

A Yes	B No	C Unsure

20. If your answer to question 19 was yes, in your experience, how likely is **human trafficking** to be associated with any of the following crimes? [Please mark the most relevant box for each type of crime.]

Type of crime	Likelihood of occurrence				
	1 Not likely at all	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Drug trafficking					
Tax evasion					
Arms dealing					
False identification					

Organ trafficking					
Computer-assisted crimes					
Organised crime					
Prostitution					
Terrorism					
Pornography					
Conspiracy					
Gangs					
Corruption and bribery					
Money laundering					
Other (please specify): _____ _____					

21. What do you understand by the term “sexual exploitation”?

22. Based on your experience, what is your understanding of human trafficking for sexual exploitation?

23. Based on your experience, what are the typical criminal elements that the crime of human trafficking for sexual exploitation would entail?

24. Based on your experience, describe the element of conduct of the crime human trafficking for sexual exploitation.

25. In your experience, what are the reasons why victims of trafficking for sexual exploitation might not cooperate with state prosecutors? [Please mark the most relevant box.]

Reasons trafficking victims might not cooperate with state prosecutor	Level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Fear of deportation					
Fear of retaliation (self and/or family)					
Lack of social support/isolation					
Feelings of shame or embarrassment					
Lack of knowledge about the role of the state prosecutor					
Lack of knowledge about victim's rights					
Lack of trust in the criminal justice system					
Language barriers					
Inability to identify self as a victim					
Victim engaged in potentially illegal activity					
Other (please specify): _____ _____					

26. Based on your experience, what are the needs of victims of human trafficking for sexual exploitation?

27. Based on your experience, how have you dealt with language barriers from victims, offenders or witnesses in human trafficking for sexual exploitation cases?

28. Based on your experience, what types of services, if any, have you been able to provide to victims of human trafficking for sexual exploitation?

SECTION C: Training in prosecution of human trafficking cases

29. Have you undergone any training in prosecuting human trafficking cases? [If yes, please answer question 30; if no, proceed to question 31.]

A Yes	B No

30. If your answer to question 29 was yes, list the types of training courses you have attended on the prosecution of human trafficking cases.

31. In your experience, is there a need for training in any of the following areas relating to human trafficking? [Please mark all the boxes that are relevant.]

Type of training needed	Yes	No
Understanding the issue of human trafficking		
Understanding the legislation that could be used in a human trafficking case		
Understanding the role of law enforcement in human trafficking cases		
Methods for identifying incidents of human trafficking		
Methods for investigating cases of human trafficking		
Methods for responding to cases of human trafficking		
Methods for preventing human trafficking		
Understanding the role of prosecutors in human trafficking cases		
Understanding the role of non-governmental officials in human trafficking cases		
Understanding the role of victim service providers in human trafficking cases		
Collaborating with other role players in human trafficking cases		

SECTION D: Prosecution of human trafficking cases

32. Describe your experience in prosecuting human trafficking cases.

33. Approximately how many human trafficking cases have you prosecuted since 2007?

A 2007	B 2008	C 2009	D 2010	E 2011

34. Approximately how many offenders have been convicted of human trafficking since 2007?

A 2007	B 2008	C 2009	D 2010	E 2011

35. Based on your experience, can you provide some examples of the types of cases that have involved the prosecution of human trafficking for sexual exploitation?

36. Based on your experience, is the prosecution of human trafficking for sexual exploitation cases treated differently in any way from the prosecution of other crimes?

37. Based on your experience, what is the sentence or punishment handed down to someone convicted of human trafficking for sexual exploitation?

38. Based on your experience, what is needed from the police/investigators to successfully prosecute human trafficking for sexual exploitation offenders?

39. Based on your experience, how does human trafficking for sexual exploitation investigations differ from other investigations in terms of what you need to successfully prosecute human trafficking offenders?

40. Based on your experience, is there a working partnership between the police/investigators and state prosecutors on human trafficking issues?

41. If there is a working partnership between the police/investigators and state prosecutors, how successful is that relationship?

42. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions on **the prosecution** of human trafficking cases? [Please mark all the boxes that are relevant.] [If yes, please answer question 43; if no, proceed to question 44.]

	A Procedure	B Protocol	C Policy
Yes			
No			
Unsure			

43. If your answer to question 42 was yes, list the name of the procedure/protocol/policy.

44. In your experience, how useful are formal procedures/protocols/policies in the prosecution of human trafficking cases? [Please mark the most relevant box.]

1 Not useful	2 Somewhat useful	3 Unsure	4 Useful	5 Very useful

45. Based on your experience, in the absence of legislation on human trafficking how do you determine the crime on which you have to charge the suspect?

46. Based on your experience, in the absence of legislation on human trafficking, for what crimes do you charge suspects suspecting of human trafficking?

47. Based on your experience, what evidence do you need in statements to identify the crime of human trafficking?

48. Based on your experience, what are the three most emerging trends you have experienced while prosecuting human trafficking cases.

49. What are the primary **barriers** you face in **prosecuting** a case of human trafficking for sexual exploitation?

50. What do you think might help to overcome the primary **challenges** you face in **prosecuting** a case of human trafficking for sexual exploitation?

51. What do you need to support you in **prosecuting** cases of human trafficking for sexual exploitation?

52. What **prosecution** practices for incidents of human trafficking for sexual exploitation have you implemented in the past during prosecution of these cases?

53. Describe any positive impacts of these **prosecution** practices that you have implemented.

54. What are the most important lessons learnt regarding the **prosecution** of cases of human trafficking for sexual exploitation that you would want to share with others?

55. Based on your experience, can you suggest practical guidelines on how to **investigate** cases of human trafficking?

SECTION I: Any other comments

56. Can you refer the researcher to any police member that has experience in identifying and or investigating human trafficking cases in your province, or elsewhere in South Africa? [If yes, please answer question 57; if no, proceed to question 58.]

A Yes	B No	C Unsure

57. If your answer to question 56 was yes, list the contact information of the person in your province, or elsewhere in South Africa.

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

58. Can you refer the researcher to any state prosecutor that has experience in prosecuting human trafficking cases? [If yes, please answer question 59; if no, proceed to question 60.]

A Yes	B No	C Unsure

59. If your answer to question 58 was yes, list the contact information of the state prosecutor within your province, or elsewhere in South Africa.

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

60. Can you refer the researcher to any NGO that has experience in human trafficking incidents (working with human trafficking victims and or assisting you in these incidents and or cases)? [If yes, please answer question 61; if no, proceed to question 62.]

A Yes	B No	C Unsure

61. If your answer to question 60 was yes, list the contact information of the NGO within your province, or elsewhere in South Africa.

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

ATTACHMENT D

A Critical Analysis of Human Trafficking for Sexual Exploitation - Your participation is important for this research

This study is conducted as part of the researcher's PhD studies at the University of South Africa.

The successful identification and investigation of this hidden crime will be practically impossible if the difficulties in understanding the scope and extent of this phenomenon, as well as the successful prosecution thereof, are not effectively dealt with.

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- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age (United Nations 2000).

All interviews will be treated as strictly confidential

Your participation in this study is voluntary and can be terminated at any time. All responses will be treated with the utmost confidentiality by the researcher and all participants will remain anonymous. The names of the organisations participating in this study may be included. All participants will be allocated a number and completed interview schedules will be captured on an electronic database. All computerised notes will be stored on a secure, password-protected computer. Transcribed interviews will be kept in a secure place for a period of three years as required by the university rules. The transcribed interviews will thereafter be destroyed.

The researcher’s study will be made available to the SAPS upon completion.

The original interview schedule was developed by The Institute on Race and Justice at Northeastern University, and supported under grant number 2005-IJ-CX-0045 awarded by the National Institute of

Justice. It has been adapted for this South African study by the researcher, with the necessary reference to the original authors.

If you have any queries about this interview schedule, please contact Mrs Juanida Horne at 011 471 2118 or hornejs@unisa.ac.za.

Thank you for your cooperation.

Mrs Juanida Horne

PhD student

UNISA

INTERVIEW SCHEDULE: NONE-GOVERNMENT OFFICIALS (NGO'S)

FOR OFFICE USE ONLY

PARTICIPANT NUMBER: _____

SECTION A: Background

1. Your province

- A Eastern Cape
- B Free State
- C Gauteng
- D KwaZulu-Natal
- E Limpopo
- F Mpumalanga
- G Northern Cape
- H North West
- I Western Cape

2. Gender

A Male	B Female
-------------------------	---------------------------

3. What are your tertiary qualifications?

4. Provide a brief description of your organization and describe how it became involved in trafficking issues.

5. What is your current position?

6. How long have you served in this position? [Please mark the most relevant box.]

A Less than 1 year	B 1 – 5 years	C 6 – 10 years	D More than 10 years

7. What are your primary roles in the position you occupy?

8. How many years have you been an NGO?

A Less than 1 year	B 1 – 5 years	C 6 – 10 years	D More than 10 years

SECTION B: Concept/phenomenon of human trafficking

9. What do you understand by the term “human trafficking”?

10. What do you understand by the term “sexual exploitation”?

11. Based on your experience, what is your understanding of human trafficking for sexual exploitation?

12. In your experience, what are the most known routes of human trafficking in South Africa?

13. Based on your experience, name the different forms/types of human trafficking.

14. Do you think there is a difference between human trafficking, migration, smuggling and kidnapping?
[If yes, please answer question 15; if no, proceed to question 18.]

A Yes	B No	C Unsure

15. If your answer to question 14 was yes, briefly describe the differences between human trafficking and migration.

16. If your answer to question 14 was yes, briefly describe the differences between human trafficking and smuggling.

17. If your answer to question 14 was yes, briefly describe the differences between human trafficking and kidnapping.

18. Do you know if South Africa has specific human trafficking legislation? [If yes, please answer question 19; if no, proceed to question 20.]

A Yes	B No	C Unsure

19. If your answer to question 18 was yes, briefly list the specific legislation.

20. In your experience, how would you rate the human trafficking problem in **your province** during the past five years (2007 – 2011)? [Please mark the most relevant box.]

1 No problem (No cases)	2 Small problem (1 to 10 cases)	3 Unsure	4 Problem (1 to 20 cases)	5 Serious problem (More than 20 cases)

21. In your experience, how would you rate the human trafficking for sexual exploitation problem in **your province** during the past five years (2007 – 2011)? [Please mark the most relevant box.]

1 No problem (No cases)	2 Small problem (1 to 10 cases)	3 Unsure	4 Problem (1 to 20 cases)	5 Serious problem (More than 20 cases)

22. In your experience, how prevalent are the following forms of human trafficking within **your province**? [Please mark the most relevant box.]

Types of trafficking	1 Widespread	2 Occasional	3 Unsure	4 Rare	5 Non-existent
Sex trafficking of people who come from outside South Africa.					
Sex trafficking of people from within South Africa.					

23. In your experience, how much of a priority is the need to address human trafficking in **your province**? [Please mark the most relevant box.]

1 Not a priority at all	2 Minor priority	3 Unsure	4 High priority	5 Very high priority

24. Name some of the organisations that your organisation works with in a case of human trafficking.

25. Are there any other specific individuals that you would like/need to work with on human trafficking incidents that you are currently not working with? If so, please name them.

26. In your opinion, what is the likelihood that the following **types of crimes** will be encountered in **your province** over the next 12 months? [Please mark the most relevant box for each type of crime.]

Types of crimes	Likelihood of occurrence				
	1 Not likely at all	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Human trafficking					
• Labour trafficking					
• Sex trafficking					
• Organ trafficking					
• Domestic servitude					
• Street begging by children					

27. How knowledgeable are you with regard to the issue of human trafficking? [Please mark the most relevant box.]

1 No knowledge	2 Little knowledge	3 Some knowledge	4 Knowledgeable	5 Very knowledgeable

28. If your answer to question 27 was 1, 2 or 3, would you personally like more knowledge and development with regard to the issue of human trafficking? [Please mark the most relevant box.]

A Yes	B No

29. Describe your experience in working with human trafficking victims.

30. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for NGO's on how to **identify incidents of human trafficking**? [If yes, please answer question 31; if no, proceed to question 32.]

A Yes	B No	C Unsure

31. If your answer to question 30 was yes, list the name of the procedure/protocol/policy.

32. To your knowledge, is there a formal procedure/protocol/policy in place that provides instructions for NGO's on how to **assist human trafficking victims**? [If yes, please answer question 33; if no, proceed to question 34.]

A Yes	B No	C Unsure

33. If your answer to question 32 was yes, list the name of the procedure/protocol/policy.

34. Based on your experience, what is the standard procedure followed once a human trafficking victim seeks help or is referred to you for services?

35. Based on your experience, do you immediately notify the police if a human trafficking victim seeks help or is referred to you for services? [If **no**, please answer question 36; if yes, proceed to question 37.]

A Yes	B No

36. If your answer to question 35 is no, why do you not immediately notify the police if a human trafficking victim seeks help or is referred to you for services?

37. Approximately how many **human trafficking incidents** have you encountered in your line of work since 2007? Please indicate the total number of arrests for each year listed below.

A 2007	B 2008	C 2009	D 2010	E 2011

38. Approximately how many of these incidents were related to **human trafficking for sexual exploitation**? Please indicate the total number of these arrests for each year listed below.

A 2007	B 2008	C 2009	D 2010	E 2011

39. Approximately how many **human trafficking victims** have you assisted in your line of work since 2007? Please indicate the total number of arrests for each year listed below.

A 2007	B 2008	C 2009	D 2010	E 2011

40. Based on your experience, what is the average age of most of the human trafficking victims in the incidents of human trafficking for sexual exploitation that you have assisted in since 2007 (past five years)? [Please mark the most relevant box.]

- A Younger than 6 years old
- B 6 – 11 years old
- C 12 – 17 years old
- D 18 - 24 years old
- E 25 - 29 years old
- F 30 - 39 years old
- G 40 - 50 years old
- H More than 50 years old
- I Varies (please explain): _____

41. Do you find that human trafficking is associated with other crimes? [If yes, please answer question 42; if no, proceed to question 43]

A Yes	B No	C Unsure

42. If your answer to question 41 was yes, in your experience, how likely is **human trafficking** to be associated with any of the following crimes? [Please mark the most relevant box for each type of crime.]

Type of crime	Likelihood of occurrence				
	1 Not likely at all	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Drug trafficking					
Tax evasion					
Arms dealing					
False identification					
Organ trafficking					
Computer-assisted crimes					
Organised crime					
Prostitution					
Terrorism					
Pornography					
Conspiracy					
Gangs					
Corruption and bribery					
Money laundering					
Other (please specify): _____ _____					

43. In your experience, how challenging are the following problems with regard to addressing human trafficking in **your province**? [Please mark the most relevant box for each of the problems associated with human trafficking.]

Problems in addressing human trafficking	1 Very challengin g	2 Occasionally challenging	3 Unsur e	4 Seldom challengin g	5 Not challengin g
No trafficking legislation in place.					
Lack of support for human trafficking victims.					
Negative attitudes and preconceived ideas towards prostitution.					
Inability to identify human trafficking victims within the community that you serve.					
Inability to identify the existence of the crime of human trafficking within the community that you serve.					
Lack of resources within your organisation necessary to identify human trafficking cases.					
Lack of resources within your organisation to assist human trafficking victims.					

44. What are the challenges your organization is faced with when attempting to help victims of human trafficking?

45. In your experience, what are the means used by traffickers to traffic human trafficking victims for sexual exploitation?

46. In your experience, what is the typical modus operandi of human traffickers who traffic human trafficking victims for sexual exploitation?

47. Based on your experience, do victims of human trafficking for sexual exploitation cooperate with NGO's?

48. Based on your experience, do victims of human trafficking for sexual exploitation cooperate with police officials?

49. In your experience, what are the reasons why victims of trafficking for sexual exploitation might not cooperate with NGO's? [Please mark the most relevant box.]

Reasons trafficking victims might not cooperate with police officials	Level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Fear of deportation					
Fear of retaliation (self and/or family)					
Lack of social support/isolation					
Feelings of shame or embarrassment					
Lack of knowledge about the role of the police					
Lack of knowledge about victim's rights					

Lack of trust in the criminal justice system					
Language barriers					
Inability to identify self as a victim					
Victim engaged in potentially illegal activity					
Other (please specify): _____					

50. In your experience, what are the reasons why victims of trafficking for sexual exploitation might not cooperate with police officials? [Please mark the most relevant box.]

Reasons trafficking victims might not cooperate with police officials	Level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Fear of deportation					
Fear of retaliation (self and/or family)					
Lack of social support/isolation					
Feelings of shame or embarrassment					
Lack of knowledge about the role of the police					
Lack of knowledge about victim's rights					
Lack of trust in the criminal justice system					
Language barriers					
Inability to identify self as a victim					
Victim engaged in potentially illegal activity					
Other (please specify): _____					

51. Based on your experience, what are the needs of victims of human trafficking for sexual exploitation?

52. Does your organisation have an existing relationship with any service providers that are able to meet the immediate needs of victims of human trafficking for sexual exploitation? [If yes, please answer question 53; if no, proceed to question 54.]

A Yes	B No	C Unsure

53. If your answer to question 52 was yes, list the service providers.

54. Is there a working partnership between your organisation and your local police and/or state attorney's office? [If yes, please answer question 55; if no, proceed to question 56.]

A Yes	B No	C Unsure

55. If your answer to question 54 was yes, how successful is that working partnership?

56. Can you provide examples of incidents and/or cases where your organization and the above-mentioned organization or service provider have collaborated on trafficking investigations?

57. Is there a reporting mechanism in place within your agency to track trafficking cases? [If yes, please answer question 58; if no, proceed to question 59.]

A Yes	B No	C Unsure

58. If your answer to question 57 was yes, what is the reporting mechanism that is in place within your organization to track human trafficking cases?

59. Can you provide examples of incidents and/or cases where your organization and the above-mentioned organization or service provider have collaborated on trafficking investigations?

60. What do you need to support you when working with victims of human trafficking for sexual exploitation?

61. What resources are currently in place to help your organization deal with cases of human trafficking?

SECTION C: Training in identification of human trafficking

62. Have you received training on how to **identify** incidents of human trafficking?

A Yes	B No	C Unsure

63. What type of training relating to human trafficking specifically have you received? [Please mark **all** the boxes that are relevant – in other words, more than one response is possible.]

64. Name the service providers that presented any of the human trafficking training which you received.

65. In your experience, is there a need for training in any of the following areas relating to human trafficking? [Please mark all the boxes that are relevant.]

Type of training needed	Yes	No
Understanding the issue of human trafficking		
Understanding the legislation that could be used in a human trafficking case		
Understanding the role of law enforcement in human trafficking cases		
Methods for identifying incidents of human trafficking		
Methods for investigating cases of human trafficking		
Methods for responding to cases of human trafficking		
Methods for preventing human trafficking		
Understanding the role of prosecutors in human trafficking cases		
Understanding the role of non-governmental officials in human trafficking cases		
Understanding the role of victim service providers in human trafficking cases		
Collaborating with other role players in human trafficking cases		

66. Do you serve on any task team during the course of working with an incident or case of human trafficking? (Such a task team might include other police personnel, community-based agencies and service providers.) [If yes, please answer question 67; if no, proceed to question 68.]

A Yes	B No	C Unsure

67. If your answer to question 66 was yes, indicate which organisations are represented on the task team. [Please mark **all** the boxes that are relevant – in other words, more than one response is possible.]

- A State Prosecutor
- B Immigration and Customs Enforcement
- C Department of Home Affairs
- D Department of Foreign Affairs
- E Department of Labour
- F Interpol
- F Non-governmental official
- G Community organisations
- H Victim service providers
- I Religious groups
- J Church organisation
- K Other (please specify): _____

68. If your answer to question 66 was yes, briefly describe the responsibilities of the task team.

69. How frequently do you encounter the following issues when working with incidents of human trafficking? [Please mark the most relevant box.]

Issues encountered when investigating and prosecuting cases of human trafficking	Outcome level of frequency				
	1 Never	2 Seldom	3 Unsure	4 Occasionally	5 Frequently
Lack of victim cooperation					
Language barriers/lack of or inadequate translator services					
Lack of support with victim service providers/community-based organisations					
Resistance from police officials to					

pursue or assist in case investigations					
Resistance from State Prosecutor to pursue cases					
Lack of adequate resources (e.g. time, money, staff)					
Lack of adequate training					
Lack of adequate knowledge					
Lack of procedures/protocols to identify and respond to human trafficking cases and victims of trafficking					
Other (please specify): _____ _____					

SECTION E: Identification of human trafficking

70. Based on your experience, what is **identification**?

71. Based on your experience, what is meant by the concept of **identification** process?

72. Based on your experience, what does it mean to identify a victim?

73. Based on your experience, what are the basic steps to **identify** incidents of human trafficking?

74. Based on your experience, how do you normally **identify** incidents of human trafficking?

75. Based on your experience, how do you use witnesses to identify the crime of human trafficking for sexual exploitation?

76. Looking back on past incidents of **human trafficking for sexual exploitation** that you worked on, how did you typically become aware of an incident of human trafficking for sexual exploitation?

77. Looking back on past incidents of **human trafficking for sexual exploitation** that you worked on, how are victims normally referred to you? (Self referral, Police Officials, State Attorneys, Neighbours, concerned citizens groups, ethnic community groups, Other service providers.)

78. After you became aware of an incident of **human trafficking for sexual exploitation**, describe your typical response.

79. What elements of crimes or behaviours might alert your organisation that the individual being helped is a victim of human trafficking? (For example, how does your organisation differentiate between cases involving human trafficking and those involving prostitution and/or human smuggling?)

80. In your experience, how likely is each of the following **sources of information** to be used to uncover incidents of human trafficking for sexual exploitation in **your province**? [Please mark the most relevant box for each source of information.]

Sources of information	Likelihood of occurrence				
	1 Not at all likely	2 Somewhat likely	3 Unsure	4 Likely	5 Very likely
Calls for service when a complaint is reported by a victim					
Identified by law enforcement officials					
Alerts from health or social service providers, faith-based organisations or victim service groups					
Tips from members of the community					
Tips from informant or co-conspirator					
Media reports on possible incidents					
Media reports relating to classifieds and questionable advertisements					
During the course of investigation of other crimes (e.g. prostitution, drugs, domestic violence)					
Raids conducted by the police					
Missing Persons reports					
Referrals from non-governmental organisations or non-governmental officials					
Referrals from inspectional services or other regulatory agencies					
Other (please specify): _____ _____					

81. What resources do you use to **identify** incidents of human trafficking for sexual exploitation?

82. What **lack** of resources do you experience in **identifying** incidents of human trafficking for sexual exploitation?

83. What are the primary **barriers** you face in **identifying** an incident of human trafficking for sexual exploitation?

84. What do you think might help to overcome the challenges you face in identifying an incident of human trafficking for sexual exploitation?

85. Based on your experience, how do you determine if an incident is a case of human trafficking for sexual exploitation?

86. Based on your experience, list any number of “red flags” that might **indicate** an incident that involves the crime of human trafficking for sexual exploitation.

87. Based on your experience, can you suggest practical guidelines on how to **identify** incidents of human trafficking for sexual exploitation?

SECTION H: Best practices

88. What are the most important lessons learnt regarding the **identification** of incidents of human trafficking for sexual exploitation that you would want to share with others?

89. What are the most important lessons learnt regarding working with victims of human trafficking for sexual exploitation that you would want to share with others?

SECTION I: Any other comments

90. Can you refer the researcher to any **police member** within **your organisation** that has experience in identifying and investigating human trafficking cases? [If yes, please answer question 89; if no, proceed to question 90.]

A Yes	B No	C Unsure

91. If your answer to question 88 was yes, list the contact information of the **police member** within your province, or elsewhere in South Africa.

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

92. Can you refer the researcher to any **state prosecutor** that has experience in prosecuting human trafficking cases? [If yes, please answer question 91; if no, proceed to question 92.]

A Yes	B No	C Unsure

93. If your answer to question 90 was yes, list the contact information of the **state prosecutor** within your province, or elsewhere in South Africa.

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

94. Can you refer the researcher to any **NGO** that has experience in working with human trafficking incidents (working with human trafficking victims and or assisting you in these incidents and or cases)? [If yes, please answer question 93; if no, proceed to question 94.]

A Yes	B No	C Unsure

95. If your answer to question 92 was yes, list the contact information of the **NGO** within your province, or elsewhere in South Africa.

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

Contact person: _____ Telephone number: _____ E-mail: _____

ATTACHMENT E

A Critical Analysis of Human Trafficking for Sexual Exploitation - Your participation is important for this research

This study is conducted as part of the researcher's PhD studies at the University of South Africa.

The successful identification and investigation of this hidden crime will be practically impossible if the difficulties in understanding the scope and extent of this phenomenon, as well as the successful prosecution thereof, are not effectively dealt with.

This interview schedule is the second part of a two-phase research project designed to evaluate the identification process of human trafficking for sexual exploitation in South Africa and it carries the support of the South African Police Service (SAPS). Approval letters are attached as per Annexure A.

The purpose of this research is to gain a better understanding of human trafficking and to establish, develop and provide practical guidelines, procedures and recommendations to police officials to identify and investigate human trafficking cases more successfully.

Police officials fulfil a very important role in the investigation and prevention of human trafficking, both nationally and internationally. This is substantiated by Farrell, McDevitt and Fahy (2008:13), who state that the increase in human trafficking can be viewed as an increasingly important human rights concern worldwide, posing a serious challenge to law enforcement in the 21st century.

Your participation in this research is of major importance for the establishment of guidelines for the successful identification and investigation of this crime and for ongoing crime prevention efforts in this area.

For the purposes of this interview schedule, trafficking in persons is defined as follows:

The United Nations Palermo Protocol (see South African Law Commission, 2004) states:

- (a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of (human) organs.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age (United Nations 2000).

All interviews will be treated as strictly confidential

Your participation in this study is voluntary and can be terminated at any time. All responses will be treated with the utmost confidentiality by the researcher and all participants will remain anonymous. The names of the organisations participating in this study may be included. All participants will be allocated a number and completed interview schedules will be captured on an electronic database. All computerised notes will be stored on a secure, password-protected computer. Transcribed interviews will be kept in a secure place for a period of three years as required by the university rules. The transcribed interviews will thereafter be destroyed.

The researcher’s study will be made available to the SAPS upon completion.

The original interview schedule was developed by The Institute on Race and Justice at Northeastern University, and supported under grant number 2005-IJ-CX-0045 awarded by the National Institute of

Justice. It has been adapted for this South African study by the researcher, with the necessary reference to the original authors.

If you have any queries about this interview schedule, please contact Mrs Juanida Horne at 011 471 2118 or hornejs@unisa.ac.za.

Thank you for your cooperation.

Mrs Juanida Horne

PhD student

UNISA

INTERVIEW SCHEDULE: INTERNATIONAL

FOR OFFICE USE ONLY

PARTICIPANT NUMBER: _____

1. (Question 4 and 5) In which department do you work? What is your position within this division/department?
2. (Question 68 and 70) Who investigates human trafficking in your country?
3. (Question 16) Do you have specific legislation that deals with these crimes? Please elaborate.
4. (Question 41) Based on your experience, what are the typical criminal elements that the crime of human trafficking for sexual exploitation would entail?
5. (Question 45) In your experience, what are the means used by traffickers to traffic human trafficking victims for sexual exploitation?
6. (Question 46) In your experience, what is the typical modus operandi of human traffickers who traffic human trafficking victims for sexual exploitation?
7. (Question 53 and 54) Have you undergone any training on the investigation of human trafficking? [If yes, list the types of training courses you have attended on the investigation of human trafficking.
8. (Question 98) Looking back on past cases of human trafficking for sexual exploitation that you worked on, how did you typically become aware of an incident of human trafficking for sexual exploitation?
9. (Question 114) After you became aware of an incident of human trafficking for sexual exploitation, describe your typical response.

10. (Question 103) What are the primary barriers you face in identifying an incident of human trafficking for sexual exploitation?
11. (Question 106) Based on your experience, list any number of “red flags” that might indicate an incident that involves the crime of human trafficking for sexual exploitation.
12. (Question 107) Based on your experience, can you suggest practical guidelines on how to identify incidents of human trafficking for sexual exploitation?
13. (Question 109) Based on your experience, what identification practices are you aware of for incidents of human trafficking for sexual exploitation that seem to be particularly innovative and effective in producing positive results?
14. (Question 114) What are the most important lessons learnt regarding the identification of incidents of human trafficking for sexual exploitation that you would want to share with others?
15. (Question 115) Is there any advice – most important lessons learnt that you want to share with others or could offer to a police investigator who must investigate a case of human trafficking for sexual exploitation?

Thank you for your invaluable contribution to this study. I appreciate you taking time to participate in this research and I value any feedback that you may have regarding the problem, identification and investigation of human trafficking.

List of references

Farrell, A., McDevitt, J. & Fahy, S. (2008). *Understanding and improving law enforcement responses to human trafficking*. Boston: Northeastern University.

South African Law Reform Commission. (2004). *Trafficking in persons*. Issue paper 25.

ANNEXURE A

SUID-AFRIKAANSE POLISIEDIENS**SOUTH AFRICAN POLICE SERVICE**

Privaatsak/Private Bag X94

Reference Nr Verwysing	3/34/2
Navrae Enquiries	Col J Schnetler / SAC D Mataboge
Telefoon Telephone	012-393 3177 / 452f
Faksnommer Fax number	012-393 3178

**STRATEGIC MANAGEMENT COMPONENT
HEAD OFFICE
PRETORIA**

2011-07-11

- A. The Deputy National Commissioner
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION **For att: Brig R Vermaak**
- B. The Divisional Commissioner
DETECTIVE SERVICES **For att: Col A Pienaar**
- C. Acting Section Head
INTERPOL **For att: Col Naidoo**

**RE: RESEARCH PROPOSAL: A CRITICAL ANALYSIS OF THE IDENTIFICATION
PROCESS OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION**

- A-C 1. The research proposal received from JS Horne pertaining to the above mentioned topic, refers.
2. The aim of the research is to critically analyse the technique of identification utilised to identify the crime of Human trafficking for sexual exploitation during the investigation of these crimes in South Africa.
3. The researcher will conduct interviews by means of questionnaires with detectives at the Organised Crime Unit, the SAPS Family Violence, Child Protection and Sexual Offences Unit as well as Interpol officials who are dealing with human trafficking cases where victims were trafficked for sexual exploitation.

4. In accordance with National Instruction 1/2006: Research in the Service, this office has perused the proposal and recommends it, subject to the final approval of the Deputy National Commissioner: DPCI, the Divisional Commissioner: Detective Services and Acting Section Head: Interpol . If the study is approved, the researcher must ensure that this office receives a copy of the final research report.

With kind regards


MAJOR GENERAL
HEAD OF STRATEGIC MANAGEMENT
GE MOORCROFT

ANNEXURE B

South African Police Service



Suid-Afrikaanse Polisiediens

Private Bag
Privaatsak

X30 ! Pretoria

Fax No:
Faks No: 012 393 2193

Your reference/U verwysing: **JS Horne**
My reference/My verwysing: **3/15/121**
Enquiries/Navrae: **Lt Gen Moonoo**
Maj Gen Botsheleng
Tel: **012 393 1826/7**

THE DIVISIONAL COMMISSIONER
DIE AFDELINGS KOMMISSARIS
DETECTIVE SERVICE
SPEURDIENS
PRETORIA
0001

2011-09-30

The Head
Strategic Management
Head Office
PRETORIA

APPLICATION FOR RESEARCH IN THE SERVICE: JS HORNE

1. This office hereby acknowledges your request on the above-mentioned subject.
2. This office has no objection in assisting the researcher to meet his/her objectives of the research.
3. I trust that this office will be given sufficient time prior to the date given for interactive discussion with the researcher.
4. The application is approved.
5. A copy of the final research document to be forwarded to this office for our information
6. Thanking you in anticipation.


LIEUTENANT GENERAL
DIVISIONAL COMMISSIONER: DETECTIVE SERVICE
V MOONOO

Date: 2011-09-30

ANNEXURE C

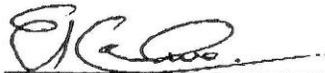
The Head
Directorate for Priority Crime Investigation
SA POLICE SERVICE

APPLICATION TO CONDUCT RESEARCH IN THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI) ENVIRONMENT: JUANIDA SUZETTE HORNE

1. Research request from Juanida Suzette Horne based at UNISA Florida Campus, Florida received for consideration.
2. The aim of the research is to critically analyse the technique of identification utilised to identify the crime of Human Trafficking for sexual exploitation during the investigation of these crimes in South Africa.
3. The researcher will conduct interviews by means of questionnaires with detectives at the Organised Crime Unit, the SAPS Family Violence, Child Protection and Sexual Offences Unit, as well as Interpol officials who are dealing with human trafficking cases where victims were trafficked for sexual exploitation.
4. Attached find research application.
5. Kindly confirm your decision on the applicant's request.

RECOMMENDED/ NOT RECOMMENDED

Research supported for gaining better insight into the phenomenon of human trafficking

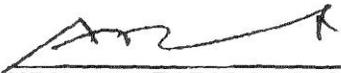


BRIGADIER
ACTING COMPONENT HEAD : ORGANISED CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
E KADWA

DATE: *2011/09/06*

APPROVED/ ~~NOT APPROVED~~

.....
.....
.....



LIEUTENANT GENERAL
HEAD : DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
DEPUTY NATIONAL COMMISSIONER : SOUTH AFRICAN POLICE SERVICE
A DRAMAT

DATE: 2011-09-07

ANNEXURE D

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X301, PRETORIA, 0001
Posbus/Post Office Box

Verwysing Reference	JS Horne
Navrac Enquiries	Col A Naidoo
Telefoon Telephone	012 407 0439/012 407 0449
Faksnommer Fax Number	012 407 0405/6

**CORPORATE COMMUNICATION
INTERPOL
HEAD OFFICE
PRIVATE BAG X94
PRETORIA
0001**

2011-09-12

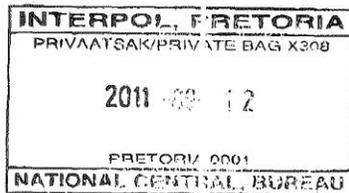
The Head
National Strategic Management
Head Office

RESEARCH: JC HORNE

1. This office hereby acknowledges your request on the above mention matter.
2. This office has no objection in assisting the researcher to meet his/her objectives of the research proposal.
3. I trust that this office will be given sufficient time prior to the date given for the interactive discussion with research.

**COLONEL
ACTING SECTION HEAD: INTERPOL NCB PRETORIA
CORPORATE COMMUNICATION: HEAD OFFICE
A NAIDOO**

Date:



ANNEXURE E

Sexual Offences and Community Affairs Unit



NATIONAL PROSECUTING AUTHORITY
SOUTH AFRICA

HEAD OFFICE

Tel: +2712 845 6000
Fax: +27 12 845 7375

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue Weavind Park Silverton
Pretoria

P/Bag X752, Pretoria, 0001
South Africa www.npa.gov.za

TO: MS JUANIDA HORNE

RE: PERMISSION TO CONDUCT QUALITATIVE INTERVIEWS- HUMAN TRAFFICKING.

Dear Juanida,

This serves to confirm that you are granted permission to interview five prosecutors who are specialists on human trafficking jurisprudence. Kindly note that information on matters not finalised and under investigation may not be shared with you.

Regards,

A handwritten signature in black ink, appearing to be 'Luvuyo Mfaku', written over a dotted line.

Luvuyo Mfaku

Justice in our society, so that people can live in freedom and security

ANNEXURE F

From: Horne, Juanida
Sent: 20 June 2011 12:14 PM
To: am.farrell@neu.edu
Subject: APPLICATION FOR PERMISSION TO USE QUESTIONNAIRE AS A BASIS

Dear Prof Amy Farrell,

I am a Phd student with the University of South Africa (UNISA). During my literature search I found the study "Understanding and Improving Law Enforcement Responses to Human Trafficking" Final Report (June, 2008).

I am planning on doing a similar study within South Africa. The topic of my Phd is "A Critical Analysis of the Identification Process of Human Trafficking for Sexual Exploitation". I would like to use and amend the Questionnaire in this study above within my Phd study to fit the South African environment.

Herewith I would like to request the permission of the author/s to use their questionnaire as a basis for my study. Due credit will accordingly be given to the authors of the study.

Kind Regards

Juanida Horne
Senior Lecturer: Forensic Investigations
Department of Police Practice



☐: +27 (0) 11 471 2118
☐: +27 (0) 11 471 2255
☐: hornejs@unisa.ac.za
☐☐: www.unisa.ac.za

From: Farrell, Amy [am.farrell@neu.edu]
Sent: 20 June 2011 02:30 PM
To: Horne, Juanida
Subject: RE: APPLICATION FOR PERMISSION TO USE QUESTIONNAIRE AS A BASIS

Hello Juanida,

We would be happy to have you use the questionnaire in South Africa and would be interested in seeing the results. Attribution to the authors from Northeastern University would be important as well as an indication that the study was supported by Award No. 2005-IJ-CX-0045, awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Could you send us a copy of your study once it is completed.

Take care, Amy

ANNEXURE G

APPENDIX A: QUESTIONNAIRE 1 SURVEY MATERIALS

Dear Law Enforcement Official,

In recent years human trafficking has become an important human rights and law enforcement issue facing many of our local communities. The U.S. Department of Justice has contracted with Northeastern University to conduct a study that examines law enforcement responses to the crime of human trafficking. Your assistance in completing the enclosed surveys is critical to understanding both the prevalence of human trafficking problems and identifying successful models for recognizing, reporting and intervening in situations of human trafficking.

Your agency's participation in this study is completely voluntary and confidential. At any time you may decline to answer specific questions. This packet includes two questionnaires, one to be filled out by the Chief and one to be filled out by the person in the agency most familiar with human trafficking issues.

Even if your agency has not had a case of human trafficking it is important to complete Questionnaire One which asks about attitudes as well as experiences with human trafficking in your community. Questionnaire Two should only be completed if your agency has had any experiences investigating cases of human trafficking or working with victims of human trafficking.

If you would prefer, both questionnaires can be filled out online at www.irj.neu.edu/projects/criminal_justice. If your agency chooses not to participate we ask that you return the blank survey in the return envelope.

Thank you for taking the time to assist us in this important study. The information you provide will help the U.S. Department of Justice more accurately assess the magnitude of human trafficking problems in local communities and help agencies throughout the country more successfully respond to human trafficking victimization.

UNDERSTANDING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING QUESTIONNAIRE 1

Conducted by:
Northeastern University
Boston, MA 02115
www.irj.neu.edu

Sponsored by:
U.S. Department of Justice
National Institute of Justice

FREQUENTLY ASKED QUESTIONS

Why is this study being conducted?

This study is designed to provide information to law enforcement agencies, investigators, prosecutors and service providers about current law enforcement responses to trafficking and to identify successful models for recognizing, reporting and intervening in situations of human trafficking.

What agencies are involved in the survey?

We are sending mail surveys to a random sample of local, county and state law enforcement agencies across the United States.

Why is your participation important?

Your participation in this study is entirely voluntary. However, we need complete information from a wide range of agencies that may have opinions or experiences with human trafficking for the study to provide accurate results.

What if our agency did not have any human trafficking cases?

Please fill out Questionnaire 1 and return it. Your attitudes and opinions about human trafficking are very important to us even if you did not have a human trafficking case. Questionnaire 1 is intended to be filled out by the chief or the highest ranking officer within the respective law enforcement agency or their designee. Questionnaire 2 should be filled out only by departments who have encountered human trafficking cases. We ask that Questionnaire 2 be completed by the person with the most experience handling human trafficking cases for that particular agency. If you prefer, both surveys can be filled out online at www.irj.neu.edu/projects/criminal_justice.

What security and confidentiality protections are in place for this study?

Federal law prohibits us from disclosing any information that could identify any person or agency involved in a case or who responds to this survey. Also, information that could link a specific agency with any data gathered will be accessible only to the researchers, all of whom have signed non-disclosure agreements, as required by federal law. The number at the bottom of each survey will only be used to identify when surveys have been returned. All responses to the survey questions remain confidential. Further, federal law states that information gathered for research studies is immune from legal process, including subpoenas, and may be used for statistical studies only.

Who can we contact for questions or if we want a summary of the survey results?

If you have questions about the survey or would like a summary of the results of the survey, please contact Dr. Amy Farrell at 617-373-7439 (am.farrell@neu.edu) or Project Manager Stephanie Fahy at 617-373-2176 (s.fahy@neu.edu). If you have questions or concerns about the confidentiality and protection of information from this survey please contact the office of Research Integrity, Northeastern University at 617-373-4588.

Glossary of Terms (Please refer back to the glossary for clarification of any terms used in the survey)

Certification	<p>Certification allows victims of trafficking who are non-U.S. citizens to be eligible for a special visa (T visa) and certain benefits and services under any Federal or state program or activity to the same extent as a refugee. To receive certification, victims of trafficking must:</p> <ul style="list-style-type: none">• Be a victim of severe human trafficking as defined by the Trafficking Victims Protection Act of 2000 (TVPA)• Be willing to assist with the investigation and prosecution of trafficking cases; and• Have completed a bona fide application for a T visa; or• Have received continued presence status from U.S. Customs and Immigration Services in order to contribute to the prosecution of human traffickers. Continued Presence is granted by U.S. Immigration and Customs Enforcement (ICE) as a form of interim relief (different from the T visa). This allows victims to stay in the U.S. for a limited time (usually a year) as long as they are cooperating with ICE in the investigation and prosecution of human traffickers. Victims also become eligible for certification to start receiving assistance, including work authorization and medical benefits.
Continued Presence	
Debt Bondage	<p>Victims become bonded laborers when their labor is demanded as a means of repayment for a loan or service in which the terms and conditions have not been defined or in which the value of the victims' work is greater than the original sum of money "borrowed."</p>
Domestic Trafficking Forced Labor	<p>Trafficking of U.S. citizens or permanent residents within the U.S. A situation in which victims are forced to work against their will, under the threat of violence or some other form of punishment. Forms of forced labor can include domestic servitude, agricultural labor, sweatshop factory labor, janitorial, food service, other service industry labor, and begging.</p>
International Trafficking Juvenile Labor Trafficking	<p>Trafficking of people from foreign countries into the U.S. For the purposes of this survey, a juvenile is a person under the age of 18. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of</p>
Sex Trafficking	<p>subjection to involuntary servitude, peonage, debt bondage or slavery. The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud or coercion or, when the person forced to perform such an act is under the age of 18.</p>
Smuggling	<p>Smuggling is different from trafficking in that it is voluntary; whereas trafficking always involves force or coercion. Smuggling is always transnational, and trafficking can be either domestic or transnational. Finally, trafficking results in ongoing profits for traffickers from victims' labor while smuggling often involves single payment for transportation.</p>
T Visa	<p>Under the Trafficking Victims Protection Act of 2000, the T visa was established to allow victims of severe forms of trafficking to become temporary residents of the U.S.</p>

QUESTIONNAIRE 1

To be completed by the chief or highest ranking officer within the law enforcement agency.

For the purposes of this survey **human trafficking** is defined as:

The recruitment, harboring, transportation, provision, or obtaining of a person for one of three following purposes:

Labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or

A commercial sex act through the use of force, fraud, or coercion; or

If the person is under 18 years of age, any commercial sex act, regardless of whether any form of coercion is involved.

These definitions do not require that a trafficking victim be physically transported from one location to another, only that their services be extracted by force, fraud or coercion.

Note: Human trafficking is often mistakenly confused with smuggling; however, smuggling is voluntary while trafficking always involves force, fraud or coercion **AND** smuggling is always transnational whereas trafficking can occur across international borders, between states or between cities within a single state.

1) How prevalent are the following types of human trafficking within your jurisdiction?

Types of Human Trafficking	Prevalence of the Trafficking Problem				
	Widespread	Occasional	Rare	Nonexistent	Unsure
Labor trafficking of people who come from <u>outside</u> the US, including victims of forced labor or domestic servitude.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Labor trafficking of people <u>within</u> the US, including victims of forced labor or domestic servitude.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex trafficking of people who come from <u>outside</u> the US, including victims of commercial sex acts.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex trafficking of people <u>within</u> the US, including victims of commercial sex acts.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

2) Is there a specialized human trafficking unit, group or officer within your agency that is assigned to oversee trafficking investigations?

- Yes
- No

3) Have any members of your department received training on how to identify and respond to human trafficking cases?

- Yes
- No (if no, skip to question #7)

4) Approximately how many officers have received training?

--	--	--	--

5) What type of training have officers received? (check all that apply)

- In service training
- New recruit training
- Roll call briefing
- Publications
- Online / Web based training program
- Regional conferences
- National conferences
- Off site professional training
- Other (please specify): _____

6) What was the source of the training? (check all that apply)

- Statewide curriculum
- Department of Justice (DOJ) curriculum
- Regional Community Policing Institute (RCPI)
- Independent consultant/trainer
- Community-based agency/service provider
- Other (please specify): _____

7) Do you have a formal procedure/protocol/policy in place that provides instructions for law enforcement on how to identify and respond to human trafficking cases as well as who to contact for victim assistance? (if available, please attach a copy of the policy to the completed survey)

- Yes
- No (if no, skip to question #9)

8) What year was that procedure/protocol/policy put into place?

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9) Does your agency utilize a task force during the course of an investigation? Such a task force might contain other law enforcement personnel, community based agencies and service providers.

- No
- Yes (please indicate which organizations are represented on your task force.)
 - U.S. Attorney
 - Immigration and Customs Enforcement
 - Department of Labor
 - FBI or other federal law enforcement
 - Community Organizations
 - Victim Advisor
 - Municipal Law Enforcement
 - State Police
 - Sheriffs Department
 - District/County/State Attorney
 - Victim Service Providers
 - Other: _____

10) If you have had trafficking cases or a case was to arise in the future, how challenging would it be for your agency to overcome the following problems of addressing human trafficking?

Problems to addressing human trafficking	Level of Frequency				
	Very Challenging	Occasionally Challenging	Seldom Challenging	Never Challenging	Unsure
No state trafficking legislation in place	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of awareness or concern about human trafficking within the community that you serve	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of support for trafficking investigations among officers within your agency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inability to identify the existence of trafficking victims or a trafficking problem within the community that you serve	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of resources within your agency to identify and investigate trafficking cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11) How likely is it that each of the following sources of information would be used to uncover human trafficking in the community that you serve?

Sources of Information	Likelihood of Occurrence				
	Very Likely	Likely	Somewhat Likely	Not Likely	Unsure
Calls for service	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Alerts from advocacy groups/victim service groups	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tips from members of the community	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tips from informant or co-conspirator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Media reports	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
During the course of investigation for other crimes (e.g., prostitution, drugs, domestic violence)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Missing Persons Reports	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Referrals from inspectional services or other regulatory agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other: _____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

12) What is the likelihood that your agency will encounter the following types of crime over the next 12 months? (NOTE: Human trafficking cases are included, and other types of violent crimes are included for comparison purposes).

Types of Crime	Likelihood of Occurrence				
	Very Likely	Likely	Somewhat Likely	Not Likely	Unsure
Other Violent Crimes					
Hate crime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sexual assault	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Kidnapping	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Robbery	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Murder	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Assault & battery	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Human Trafficking					
Labor trafficking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex trafficking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

13) To date, have any members of your department ever investigated any human trafficking cases or made arrests that involve victims of human trafficking? (Investigation can include collecting evidence, interviewing witnesses, writing reports and following up on leads.)

- No
- Yes (please ensure that questionnaire 2 is being completed by the appropriate designee.)

Please provide the following background information:

Your Position or Title: _____

Years in your present position:

--	--

Size of Agency (Number of Sworn Officers):

--	--	--	--

State:

--	--

Type of Agency:

- Municipal Law Enforcement
- State Law Enforcement
- Sheriff

Optional Information:

Sometimes it is helpful to contact a respondent directly to clarify information from the survey. Please provide the following information below if you would be willing to be contacted for a brief follow-up interview.

Your Name: _____

Department or Unit: _____

Agency Name: _____

Telephone Number: _____

If your agency has investigated human trafficking cases or cases involving victims of human trafficking please ensure questionnaire 2 is being completed by the appropriate designee.

If not, the survey is complete. Please return the survey in the pre-addressed envelope that contains postage. Thank you for your time. Your opinions are very important to us.

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APPENDIX B: QUESTIONNAIRE 2 SURVEY MATERIALS

UNDERSTANDING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING QUESTIONNAIRE 2

Conducted by:
Northeastern University
Boston, MA 02115
www.irj.neu.edu

Sponsored by:
U.S. Department of Justice
National Institute of Justice

FREQUENTLY ASKED QUESTIONS

Why is this study being conducted?

This study is designed to provide information to law enforcement agencies, investigators, prosecutors and service providers about current law enforcement responses to trafficking and to identify successful models for recognizing, reporting and intervening in situations of human trafficking.

What agencies are involved in the survey?

We are sending mail surveys to a random sample of local, county and state law enforcement agencies across the United States.

Why is your participation important?

Your participation in this study is entirely voluntary. However, we need complete information from a wide range of agencies that may have opinions or experiences with human trafficking for the study to provide accurate results.

What if our agency did not have any human trafficking cases?

Questionnaire 2 should be filled out only by departments who have encountered human trafficking cases. We ask that Questionnaire 2 be completed by the person with the most experience handling human trafficking cases for that particular agency. If you prefer, this survey can be filled out online at www.irj.neu.edu/projects/criminal_justice.

What security and confidentiality protections are in place for this study?

Federal law prohibits us from disclosing any information that could identify any person or agency involved in a case or who responds to this survey. Also, information that could link a specific agency with any data gathered will be accessible only to the researchers, all of whom have signed non-disclosure agreements, as required by federal law. The number at the bottom of each survey will only be used to identify when surveys have been returned. All responses to the survey questions remain confidential. Further, federal law states that information gathered for research studies is immune from legal process, including subpoenas, and may be used for statistical studies only.

Who can we contact for questions or if we want a summary of the survey results?

If you have questions about the survey or would like a summary of the results of the survey, please contact Dr. Amy Farrell at 617-373-7439 (am.farrell@neu.edu) or Project Manager Stephanie Fahy at 617-373-2176 (s.fahy@neu.edu). If you have questions or concerns about the confidentiality and protection of information from this survey please contact the office of Research Integrity, Northeastern University at 617-373-4588.

Glossary of Terms (Please refer back to the glossary for clarification of any terms used in the survey)

Certification	<p>Certification allows victims of trafficking who are non-U.S. citizens to be eligible for a special visa (T visa) and certain benefits and services under any Federal or state program or activity to the same extent as a refugee. To receive certification, victims of trafficking must:</p> <ul style="list-style-type: none">• Be a victim of severe human trafficking as defined by the Trafficking Victims Protection Act of 2000 (TVPA)• Be willing to assist with the investigation and prosecution of trafficking cases; and• Have completed a bona fide application for a T visa; or• Have received continued presence status from U.S. Customs and Immigration Services in order to contribute to the prosecution of human traffickers.
Continued Presence	<p>Continued Presence is granted by U.S. Immigration and Customs Enforcement (ICE) as a form of interim relief (different from the T visa). This allows victims to stay in the U.S. for a limited time (usually a year) as long as they are cooperating with ICE in the investigation and prosecution of human traffickers. Victims also become eligible for certification to start receiving assistance, including work authorization and medical benefits.</p>
Debt Bondage	<p>Victims become bonded laborers when their labor is demanded as a means of repayment for a loan or service in which the terms and conditions have not been defined or in which the value of the victims' work is greater than the original sum of money "borrowed." Trafficking of U.S. citizens or permanent residents within the U.S.</p>
Domestic Trafficking Forced Labor	<p>A situation in which victims are forced to work against their will, under the threat of violence or some other form of punishment. Forms of forced labor can include domestic servitude, agricultural labor, sweatshop factory labor, janitorial, food service, other service industry labor, and begging.</p>
International Trafficking Juvenile Labor Trafficking	<p>Trafficking of people from foreign countries into the U.S. For the purposes of this survey, a juvenile is a person under the age of 18.</p>
Sex Trafficking	<p>The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.</p>
Smuggling	<p>The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud or coercion or, when the person forced to perform such an act is under the age of 18.</p>
T Visa	<p>Smuggling is different from trafficking in that it is voluntary; whereas trafficking always involves force or coercion. Smuggling is always transnational, and trafficking can be either domestic or transnational. Finally, trafficking results in ongoing profits for traffickers from victims' labor while smuggling often involves single payment for transportation. Under the Trafficking Victims Protection Act of 2000, the T visa was established to allow victims of severe forms of trafficking to become temporary residents of the U.S. A recipient of the T visa may be eligible for permanent residence status after three years if he/she meets the following conditions:</p>

QUESTIONNAIRE 2

To be completed only by those departments that have had human trafficking cases or have investigated cases involving victims of human trafficking. To be completed by an individual within the agency who has the most experience with cases of human trafficking.

For the purposes of this survey **human trafficking** is defined as:

The recruitment, harboring, transportation, provision, or obtaining of a person for one of three following purposes:

Labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or

A commercial sex act through the use of force, fraud, or coercion; or

If the person is under 18 years of age, any commercial sex act, regardless of whether any form of coercion is involved.

Note: These definitions do not require that a trafficking victim be physically transported from one location to another.

1. Investigation and Prosecution of Human Trafficking Cases

- a) Approximately how many total human trafficking cases has your agency investigated since 2000? (Investigation can include collecting evidence, interviewing witnesses, writing reports and following up on leads. In addition, cases may include more than one suspect or victim.)

Please indicate the total number of cases that involved investigations for each year listed below.

2000	<input type="text"/> <input type="text"/> <input type="text"/>	2004	<input type="text"/> <input type="text"/> <input type="text"/>
2001	<input type="text"/> <input type="text"/> <input type="text"/>	2005	<input type="text"/> <input type="text"/> <input type="text"/>
2002	<input type="text"/> <input type="text"/> <input type="text"/>	2006	<input type="text"/> <input type="text"/> <input type="text"/>
2003	<input type="text"/> <input type="text"/> <input type="text"/>		

- b) Approximately how many human trafficking related arrests have been made since 2000?

Please indicate the total number of arrests for each year listed below.

2000	<input type="text"/> <input type="text"/> <input type="text"/>	2004	<input type="text"/> <input type="text"/> <input type="text"/>
2001	<input type="text"/> <input type="text"/> <input type="text"/>	2005	<input type="text"/> <input type="text"/> <input type="text"/>
2002	<input type="text"/> <input type="text"/> <input type="text"/>	2006	<input type="text"/> <input type="text"/> <input type="text"/>
2003	<input type="text"/> <input type="text"/> <input type="text"/>		

- c) What is the average age of perpetrators of human trafficking who have been arrested since 2000?
- Less than 18 years old
 - 18-24 years old
 - 25-29 years old
 - 30-39 years old
 - 40-50 years old
 - More than 50 years old
 - Varies (please explain): _____

- d) Approximately what percentage of perpetrators of human trafficking who have been arrested since 2000 were:

Male	<input type="text"/>	<input type="text"/>	<input type="text"/>	%
Female	<input type="text"/>	<input type="text"/>	<input type="text"/>	%
<hr/>				
Total	100%			

- e) Of all the human trafficking cases that you have worked on since 2000, which of the following countries listed below have perpetrators of human trafficking originated from? (check all that apply)

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> United States | <input type="checkbox"/> China |
| <input type="checkbox"/> Columbia | <input type="checkbox"/> India |
| <input type="checkbox"/> Korea (South) | <input type="checkbox"/> Malaysia |
| <input type="checkbox"/> Mexico | <input type="checkbox"/> Nigeria |
| <input type="checkbox"/> Peru | <input type="checkbox"/> Philippines |
| <input type="checkbox"/> Russia | <input type="checkbox"/> Thailand |
| <input type="checkbox"/> Ukraine | <input type="checkbox"/> Vietnam |
| <input type="checkbox"/> Other (list all that apply): _____ | |

- f) Since 2000, how many of each type of trafficking case listed below has your agency investigated? (See glossary on page 2 for definitions of the different types of trafficking)

Types of Human Trafficking Cases	Number of Cases			
	None	1 case	2 cases	3+ cases
Labor Trafficking				
Bonded labor / debt bondage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Domestic servitude (e.g. nanny, maid)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Commercial agricultural situations (e.g. fields, processing plants, canneries)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Construction sites	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Factory work / sweatshops	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Forced begging	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Restaurant work	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial work	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Food processing (e.g. slaughter houses)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify): _____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex Trafficking				
Pornography	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Forced prostitution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Servile marriage / mail-order bride	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex tourism and entertainment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Forced stripping / dancing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Forced escort services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify): _____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- g) What is the average length of time you spend investigating a human trafficking case?
- Less than 3 months
 - 3 to 6 months
 - 7 to 12 months
 - More than 12 months
 - Unsure
- h) Does your agency utilize a task force during the course of an investigation? Such a task force might contain other law enforcement personnel, community based agencies and service providers.
- No
 - Yes (please indicate which organizations are represented on your task force.)

<input type="checkbox"/> U.S. Attorney	<input type="checkbox"/> Municipal Law Enforcement
<input type="checkbox"/> Immigration and Customs Enforcement	<input type="checkbox"/> State Police
<input type="checkbox"/> Department of Labor	<input type="checkbox"/> Sheriffs Department

- | | |
|---|---|
| <input type="checkbox"/> FBI or other federal law enforcement | <input type="checkbox"/> District/County/State Attorney |
| <input type="checkbox"/> Community Organizations | <input type="checkbox"/> Victim Service Providers |
| <input type="checkbox"/> Victim Advisor | <input type="checkbox"/> Other: _____ |

i) Since 2000, has your agency brought any formal charges against individuals involved in human trafficking?

- No
- Yes (please indicate the types of charges from the list below)

Federal

- | | |
|--|---|
| <input type="checkbox"/> Human trafficking violations (TVPA) | <input type="checkbox"/> Mann Act violations |
| <input type="checkbox"/> Racketeering violations (RICO) | <input type="checkbox"/> PROTECT Act |
| <input type="checkbox"/> Fraudulent document offenses | <input type="checkbox"/> Immigration offenses |
| <input type="checkbox"/> Involuntary servitude statutes | <input type="checkbox"/> Labor violations |
| <input type="checkbox"/> Money laundering | <input type="checkbox"/> Tax Evasion |
| <input type="checkbox"/> Operation of unlicensed money transfer business | <input type="checkbox"/> Other: _____ |

State

- | | |
|--|--|
| <input type="checkbox"/> Human trafficking violations (TVPA) | <input type="checkbox"/> Civil rights violations |
| <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Assault |
| <input type="checkbox"/> Prostitution related charges | <input type="checkbox"/> Rape |
| <input type="checkbox"/> Murder | <input type="checkbox"/> Other: _____ |

j) How often do human trafficking cases result in the following outcomes?

Outcome	Level of Frequency				
	Frequently	Occasionally	Seldom	Never	Unsure
Case is investigated, but does not lead to an arrest(s)	<input type="radio"/>				
Case is investigated, any arrests are made, but does not lead to a prosecution	<input type="radio"/>				
Case is investigated, any arrests are made, and leads to prosecution where defendant	<input type="radio"/>				

is acquitted	<input type="radio"/>				
Case is investigated, any arrests are made and leads to prosecution where defendant is convicted	<input type="radio"/>				

k) How frequent are the following outcomes for foreign victims of human trafficking identified by your agency? (For definitions of continued presence and T-visa please see glossary on page 2)

Outcome	Level of Frequency				
	Frequently	Occasionally	Seldom	Never	Unsure
Deportation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Granted continued presence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Granted a temporary visa (T-visa)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other: _____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

l) How frequently does your agency encounter the following issues when investigating and prosecuting cases of human trafficking?

Issues in Investigating/Prosecuting Cases	Level of Frequency				
	Frequently	Occasionally	Seldom	Never	Unsure
Lack of victim cooperation	<input type="radio"/>				
Language barriers/lack of or inadequate translator services	<input type="radio"/>				
Lack of coordination with federal agencies	<input type="radio"/>				
Lack of support with victim service providers/community based organizations	<input type="radio"/>				
Resistance from federal law enforcement to pursue or assist in case investigations	<input type="radio"/>				
Resistance from U.S. Attorney or District Attorney to pursue cases	<input type="radio"/>				
Lack of adequate resources (e.g. time, money, staff)	<input type="radio"/>				
Lack of adequate training/Lack of adequate knowledge	<input type="radio"/>				
Lack of procedures/protocols to identify and respond to human trafficking cases and victims of trafficking	<input type="radio"/>				
Other: _____	<input type="radio"/>				

m) Does your agency have a separate record keeping/record management system in place for human trafficking cases?

- Yes
- No

n) If you answered yes to the above question, is it computerized?

- Yes
- No

Few people in law enforcement have investigated human trafficking cases. As a result, your expertise on the following questions about best practices for identification and investigation are critical.

2. Strategies for Identifying and Responding to Cases of Human Trafficking

- a) In general, how frequently does each of the following events bring human trafficking cases to the attention of your agency?

Ways Human Trafficking First Comes to the Attention of Law Enforcement	Level of Frequency				
	Frequently	Occasionally	Seldom	Never	Unsure
Calls for service	<input type="radio"/>				
Referrals from community based or faith based organizations	<input type="radio"/>				
Referrals from other law enforcement agencies	<input type="radio"/>				
Referrals from regulatory agencies (e.g. health inspectors, labor department)	<input type="radio"/>				
Referrals from criminal justice agencies that are non-law enforcement (e.g., probation)	<input type="radio"/>				
During the course of usual investigations (e.g., drug raids, calls for domestic violence)	<input type="radio"/>				
Tips from informants	<input type="radio"/>				
Undercover operations (e.g., collaborative investigations with Federal and State law enforcement)	<input type="radio"/>				
Other: _____	<input type="radio"/>				

b) In general, how important is each of the following as indicators of human trafficking in your investigations?

Indicators of Human Trafficking	Level of Importance				
	Very Important	Important	Somewhat Important	Not Important	Unsure
Victims are non-English speaking	<input type="radio"/>				
Victims do not have control of their own identity/travel documents	<input type="radio"/>				
Victim will have very little or no pocket money (sign that a trafficker or pimp controls all the money)	<input type="radio"/>				
Evidence of malnutrition, dehydration or poor personal hygiene	<input type="radio"/>				
Evidence of bruises or other signs of battering	<input type="radio"/>				
Victim appears fearful and non-cooperative	<input type="radio"/>				
Makeshift living quarters (e.g., does the victim appear to live in the same place that he or she works?)	<input type="radio"/>				
Heavy security at the commercial establishment or work site (barred windows, locked doors, electronic surveillance, guards)	<input type="radio"/>				
Unusually high foot traffic at establishment	<input type="radio"/>				
Frequent movement of victims (e.g., women/girls are frequently moved from one brothel to another)	<input type="radio"/>				

c) Do you find that human trafficking is associated with other crimes?

No

Yes (check all that apply)

Drug trafficking

Tax evasion

Arms dealing

False identification

Organ trafficking

Computer-assisted crimes

Organized crime

Prostitution

Terrorism

Pornography

Conspiracy

Gangs

Corruption and bribery

Money Laundering

Other: _____

d) How frequently is each of the following investigative responses used to build human trafficking

cases in the community that you serve?

Potential Investigative Responses	Level of Frequency				
	Frequently	Occasionally	Seldom	Never	Unsure
Surveillance	<input type="radio"/>				
Undercover operations	<input type="radio"/>				
Raids or other overt operations	<input type="radio"/>				
Collaboration with other law enforcement agencies	<input type="radio"/>				
Collaboration with code enforcement and inspectional service agencies	<input type="radio"/>				
Pursuing paper trails (bank receipts, tax records)	<input type="radio"/>				
Wire tapping/communication monitoring	<input type="radio"/>				
Investigate linkages to other criminal enterprises	<input type="radio"/>				
Providing victim support services	<input type="radio"/>				
Other: _____	<input type="radio"/>				

3. Characteristics of Human Trafficking Victims

a) What is the average age of most of the human trafficking victims identified within your community since 2000?

- Less than 18 years old
- 18-24 years old
- 25-29 years old
- 30-39 years old
- 40-50 years old
- More than 50 years old
- Varies (please explain): _____

b) Approximately what percentage of **juvenile** (under 18 years of age) human trafficking victims identified within your community since 2000 were:

Male	%
Female	%
Total	100%

c) Approximately what percentage of **adult** human trafficking victims identified within your community since 2000 were:

Male	%
Female	%
<hr/>	
Total	100%

- d) Of all the human trafficking cases that you have worked on since 2000, which of the following countries listed below have victims of human trafficking originated from? (check all that apply)

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- | | |
|---|--------------------------------------|
| <input type="checkbox"/> United States | <input type="checkbox"/> China |
| <input type="checkbox"/> Columbia | <input type="checkbox"/> India |
| <input type="checkbox"/> Korea (South) | <input type="checkbox"/> Malaysia |
| <input type="checkbox"/> Mexico | <input type="checkbox"/> Nigeria |
| <input type="checkbox"/> Peru | <input type="checkbox"/> Philippines |
| <input type="checkbox"/> Russia | <input type="checkbox"/> Thailand |
| <input type="checkbox"/> Ukraine | <input type="checkbox"/> Vietnam |
| <input type="checkbox"/> Other (list all that apply): _____ | |

e) Human trafficking victims present many unique challenges for law enforcement. How frequently is your agency faced with each of the following challenges when working with victims of human trafficking?

Challenges Presented by Trafficking Victims	Level of Frequency				
	Frequently	Occasionally	Seldom	Never	Unsure
Victim distrust of law enforcement	<input type="radio"/>				
Victims do not identify themselves as a victim	<input type="radio"/>				
Language barriers	<input type="radio"/>				
Cultural barriers	<input type="radio"/>				
Lack of social services for human trafficking victims	<input type="radio"/>				
Lack of housing or adequate shelter	<input type="radio"/>				
Other: _____	<input type="radio"/>				

- f) In your opinion, how frequently do each of the following reasons decrease victim willingness to cooperate with law enforcement?

Reasons Trafficking Victims Might Not Cooperate with Law Enforcement	Level of Frequency				
	Frequently	Occasionally	Seldom	Never	Unsure
Fear of deportation	<input type="radio"/>				
Fear of retaliation to self and/or family	<input type="radio"/>				
Lack of social support/isolation	<input type="radio"/>				
Feelings of shame or embarrassment	<input type="radio"/>				
Lack of knowledge about law enforcement's role	<input type="radio"/>				
Lack of knowledge about victim's rights	<input type="radio"/>				
Lack of trust in the criminal justice system	<input type="radio"/>				
Language barriers	<input type="radio"/>				
Inability to identify self as a victim	<input type="radio"/>				
Victim engaged in potentially illegal activity	<input type="radio"/>				
Other: _____	<input type="radio"/>				

- g) Does your agency have an existing relationship with any service providers who are able to meet the immediate needs of trafficking victims?

- Yes (if yes, what type of agency?): _____
 No

- h) How frequently is each of the following modes of communication used when attempting to work with non-English speaking trafficking victims?

Modes of Communication	Level of Frequency				
	Frequently	Occasionally	Seldom	Never	Unsure
Outside translator service	<input type="radio"/>				
In-house translator	<input type="radio"/>				
AT&T language line	<input type="radio"/>				
Victim service provider/social service case worker translators	<input type="radio"/>				
Other: _____	<input type="radio"/>				

- i) Has your agency assisted foreign trafficking victims?

- Yes
 No

- j) If you answered yes to the above question, which of the following were attempted? (check all that apply)

- Assisting victims in meeting basic needs (i.e. food, clothing, shelter)

Please provide the following background information:

Your Position or Title: _____

Years in your present position:

Size of Agency (Number of Sworn Officers):

State:

Type of Agency:

- Municipal Law Enforcement
- State Law Enforcement
- Sheriff

Optional Information:

Sometimes it is helpful to contact a respondent directly to clarify information from the survey. Please provide the following information below if you would be willing to be contacted for a brief follow-up interview.

Your Name: _____

Department or Unit: _____

Agency Name: _____

Telephone Number: _____

Please return the survey in the pre-addressed envelope that contains postage. Thank you for your time. Your opinions are very important to us.

APPENDIX C: REMINDER LETTER AND SHORTENED QUESTIONNAIRE 1

Postcard Reminder

Dear Law Enforcement Official,

In early October researchers from Northeastern University sent you a survey on human trafficking and our records indicate that we have not yet heard back from you. Your response to this survey is very important to us even if you have not had a case of human trafficking in your agency. This study will help the Department of Justice more accurately assess the magnitude of human trafficking problems in local communities and assist agencies throughout the country to more successfully respond to human trafficking victimization and identify and interdict traffickers.

If you would like to fill out the survey online it is still available at www.irj.neu.edu/projects/criminal_justice. If your agency is choosing not to fill out this survey, we just ask that you return the blank survey in the return envelope. We would also like to remind you that all of your responses will be completely confidential.

If you and your agency have already taken the time to fill out this survey we greatly appreciate your help. If you have any questions or problems with filling out the survey, you can contact Stephanie Fahy at 617-373-2176 or s.fahy@neu.edu.

Letter for Shortened Survey

Dear Law Enforcement Official:

Human trafficking is one of the largest criminal enterprises in the United States and is increasingly coming to the attention of law enforcement, who are faced with the responsibility of identifying and responding to this growing crime. Last October researchers from Northeastern University sent you a survey on human trafficking that is sponsored by the U.S. Department of Justice, and our records indicate that we have not yet heard back from you. We recognize that you receive many requests to complete surveys, and that your time is very limited. Therefore, we have shortened the survey considerably, so that it is one page (front and back) and takes most agencies less than five to ten minutes to complete.

Your response to this survey is very important to us even if you have not had a case of human trafficking in your agency. This study will help the Department of Justice more accurately assess the magnitude of human trafficking problems in local communities and assist agencies throughout the country to more successfully respond to human trafficking victimization.

If you and your agency have already taken the time to fill out the original survey we greatly appreciate your help. We would also like to remind you that your agency's participation in this study is completely voluntary and confidential. At any time you may decline to answer specific questions. If you have any questions or problems with filling out the survey, you can contact either Dr. Amy Farrell at 617-373-7439, am.farrell@neu.edu or Stephanie Fahy at 617-373-2176, s.fahy@neu.edu.

Thank you for taking the time to assist us in this important study.

UNDERSTANDING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING

Conducted by:
Northeastern University
Boston, MA 02115
www.irj.neu.edu

Sponsored by:
U.S. Department of Justice
National Institute of Justice

FREQUENTLY ASKED QUESTIONS

Why is this study being conducted?

This study is designed to provide information to law enforcement agencies, investigators, prosecutors and service providers about current law enforcement responses to trafficking and to identify successful models for recognizing, reporting and intervening in situations of human trafficking.

What agencies are involved in the survey?

We are sending mail surveys to a random sample of local, county and state law enforcement agencies across the United States.

Why is your participation important?

Your participation in this study is entirely voluntary. However, we need complete information from a wide range of agencies that may have opinions or experiences with human trafficking for the study to provide accurate results.

What if our agency did not have any human trafficking cases?

Please fill out the survey and return it even if you have not had any trafficking cases. Your attitudes and opinions about human trafficking are very important to us even if you did not have a human trafficking case.

What security and confidentiality protections are in place for this study?

Federal law prohibits us from disclosing any information that could identify any person or agency involved in a case, or any person or agency who responds to this survey. Also, information that could link a specific agency with any data gathered will be accessible only to the researchers, all of whom have signed non-disclosure agreements, as required by federal law. Further, federal law states that information gathered for research studies is immune from legal process, including subpoenas, and may be used for statistical studies only.

Who can we contact for questions or if we want a summary of the survey results?

If you have questions about the survey or would like a summary of the results of the survey, please contact Dr. Amy Farrell at 617-373-7439 (am.farrell@neu.edu) or Project Manager Stephanie Fahy at 617-373-2176 (s.fahy@neu.edu). If you have questions or concerns about the confidentiality and protection of information from this survey please contact Nan Regina, Director of Research Integrity, Northeastern University at 617-373-4588.

Glossary of Terms (Please refer back to the glossary for clarification of any terms used in the survey)

Certification	<p>Certification allows victims of trafficking who are non-U.S. citizens to be eligible for a special visa (T visa) and certain benefits and services under any Federal or state program or activity to the same extent as a refugee. To receive certification, victims of trafficking must:</p> <ul style="list-style-type: none">• Be a victim of severe human trafficking as defined by the Trafficking Victims Protection Act of 2000 (TVPA)• Be willing to assist with the investigation and prosecution of trafficking cases; and• Have completed a bona fide application for a T visa; or• Have received continued presence status from U.S. Customs and Immigration Services in order to contribute to the prosecution of human traffickers.
Continued Presence	<p>Continued Presence is granted by U.S. Customs and Immigration Services (ICE) as a form of interim relief (different from the T visa). This allows victims to stay in the U.S. for a limited time (usually a year) as long as they are cooperating with ICE in the investigation and prosecution of human traffickers. Victims also become eligible for certification to start receiving assistance, including work authorization and medical benefits.</p>
Debt Bondage	<p>Victims become bonded laborers when their labor is demanded as a means of repayment for a loan or service in which the terms and conditions have not been defined or in which the value of the victims' work is greater than the original sum of money "borrowed."</p>
Domestic Trafficking	<p>Trafficking of U.S. citizens or permanent residents within the U.S.</p>
Forced Labor	<p>A situation in which victims are forced to work against their will, under the threat of violence or some other form of punishment. Forms of forced labor can include domestic servitude, agricultural labor, sweatshop factory labor, janitorial, food service and other service industry labor, and begging.</p>
International Trafficking	<p>Trafficking of people from foreign countries into the U.S.</p>
Juvenile	<p>Person under the age of 18.</p>
Labor Trafficking	<p>The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.</p>
Sex Trafficking	<p>The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud or coercion or, in which the person forced to perform such an act is under the age of 18.</p>
Smuggling	<p>Smuggling is different from trafficking in that it is voluntary; whereas trafficking always involves force or coercion. Smuggling is always transnational, and trafficking can be either domestic or transnational. Finally, trafficking results in ongoing profits for traffickers from victims' labor while smuggling often involves single payment for transportation.</p>
T Visa	<p>Under the Trafficking Victims Protection Act of 2000, the T visa was established to allow victims of severe forms of trafficking to become temporary residents of the U.S. A recipient of the T visa may be eligible for permanent residence status after three years if he/she meets the following conditions: They are a person of</p>

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

good moral character; They have complied with any reasonable request for assistance in the investigation during the three-year period; They will suffer extreme hardship if they are removed from the U.S.

The Trafficking Victims Protection Act of 2000 defines “Severe forms of Trafficking in Persons” as Sex Trafficking: the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud or coercion, or in which the person forced to perform such an act is under the age of 18 years; or Labor Trafficking: the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

UNDERSTANDING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING

Conducted by: Northeastern University, Boston MA

Sponsored by: U.S. Department of Justice

For the purposes of this survey human trafficking is defined as: The recruitment, harboring, transportation, provision, or obtaining of a person for one of three following purposes;

Labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or

A commercial sex act through the use of force, fraud, or coercion; or

If the person is under 18 years of age, any commercial sex act, regardless of whether any form of coercion is involved.

These definitions do not require that a trafficking victim be physically transported from one location to another, only that their services be extracted by force, fraud or coercion.

1) How prevalent are the following types of human trafficking within your jurisdiction?

Types of Human Trafficking	Prevalence of the Trafficking Problem				
	Widespread	Occasional	Rare	Nonexistent	Unsure
Labor trafficking of people who come from <u>outside</u> the US, including victims of forced labor or domestic servitude.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Labor trafficking of people <u>within</u> the US, including victims of forced labor or domestic servitude.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex trafficking of people who come from <u>outside</u> the US, including victims of commercial sex acts.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex trafficking of people <u>within</u> the US, including victims of commercial sex acts.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

2) Is there a specialized human trafficking unit, group or officer within your agency that is assigned to oversee trafficking investigations? Yes

No

3) Have any members of your department received training on how to identify and respond to human trafficking cases? (if not, skip to question #6) Yes

No

--	--	--	--

4) Approximately how many officers have received training?

5) What type of training have officers received? (check all that apply)

In service training

- New recruit training
- Roll call briefing
- Publications
- Online / Web based training program
- Regional conferences
- National conferences
- Off site professional training
- Other (please specify): _____

6) Do you have a formal procedure/protocol _____des instructions for law enforcement on how to identify and respond to human trafficking cases as well as who to contact for victim assistance? Yes No

7) How likely is it that each of the following sources of information would be used to uncover human trafficking in the community that you serve?

Sources of Information	Likelihood of Occurrence				
	Very Likely	Likely	Somewhat Likely	Not Likely	Unsure
Calls for service	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Alerts from advocacy groups/victim service groups	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tips from members of the community	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tips from informant or co-conspirator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Media reports	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
During the course of investigation for other crimes (e.g., prostitution, drugs, domestic violence)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Missing Persons Reports	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Referrals from inspectional services or other regulatory agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

8) To date, have any members of your department ever investigated any human trafficking cases or made arrests that involve victims of human trafficking? (Investigation can include collecting evidence, interviewing witnesses, writing reports and following up on leads.) Yes No

If your agency **has had human trafficking cases** we would be interested in conducting an additional phone interview to gather further information. Please provide your contact information below so that we may reach you.

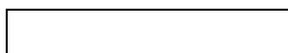
Your Name: _____

Agency Name: _____

Telephone Number: _____

E-mail Address: _____

If you have any questions about the survey, please contact Project Manager Stephanie Faby at 617-373-2176 (s.faby@neu.edu)



**APPENDIX G:
INTENSIVE CASE STUDY PROTOCOLS, INTERVIEW QUESTIONS AND CONSENT
FORMS**

Protocol for Human Trafficking Interviews

Interviews will be conducted with agencies and individuals who are part of human trafficking task forces in Boston, Massachusetts, Houston, Texas and Phoenix, Arizona. The purpose of the interviews is to collect information about how these jurisdictions are utilizing a multi-disciplinary approach to confront the challenges of identifying, investigating and prosecuting cases of human trafficking. Interviews will be conducted with key stakeholders from federal, state and local law enforcement as well as US and District Attorneys, and various non-governmental organizations/service providers.

The names and identities of all individuals participating in interviews will be kept confidential; however, the names of organizations taking part in the study may be included. All interviewee names will be given a unique personal code number and linked to personal contact information on a master log. Only personal codes will be used in transcripts of interviews - no names or other identifiers are to be recorded. Follow up that needs identifiers can be conducted through reference to the log, which will be secured along with focus group notes in a locked drawer inside a locked office. All computerized notes will be stored on a secure, password protected computer or server. Access to the data will be restricted to research staff only.

Prior to Conducting Interviews:

Schedule interviews, either in person or by telephone.

Verbally inform the individual that the study is voluntary and confidential.

Administer passive consent, and briefly explain the study to the individual.

Ask questions that are designed for the agency in which the interviewee works (see below – questions for law enforcement, attorney, or service provider focus groups) or use the questions as a guideline for discussion.

Questions for Law Enforcement:

1. How do you define human trafficking within your agency?
 - a. Focus on sex work?
 - b. Focus on labor trafficking?
 - c. Connection to existing local criminal networks?
2. What elements of crimes or behaviors might alert law enforcement officers in your agency to investigate for trafficking?
 - a. For example, how do officers/agents differentiate between cases involving human trafficking and those involving prostitution and/or human smuggling?
3. What is the scope of the local trafficking problem according to police?
 - a. How many trafficking investigations have there been in your agency?
 - b. To what extent is the trafficking international versus domestic in your agency?
 - c. Do you see a shift away from traditional crimes (e.g., drug dealing, weapons trading) to trafficking in persons or is human trafficking being integrated within these traditional crimes?
4. What is the nationality of the majority of human trafficking victims encountered by your agency and how are they arriving at your jurisdiction?
5. What resources are currently in place to help law enforcement investigate cases of human trafficking in your agency?
 - a. Do police officers/agents receive any training to help identify human trafficking cases?
 - b. If so, when was the training conducted and by whom?
 - c. What is the extent of the training?
6. Does your agency have a special unit or group of officers/agents who are investigating trafficking cases?
 - a. If so, how are cases or incidents referred to this unit?
 - b. Are there other ways you believe your agency could enhance trafficking investigations?
7. Is there a reporting mechanism in place within your agency to track trafficking cases?
 - a. If so, what is it? How long has it been in place?
 - b. Is trafficking indicated on standard incident forms?
8. According to the local police, have trafficking investigations increased over the past five year?
 - a. If so, why?
 - i. Actual increase of trafficking locally

- ii. Increased focus on problem of trafficking – old problems re-defined.
 - b. Are there any statistics backing up claim that investigations are increasing? If so, how are trafficking incidents recorded by the local police?
9. Is there a working partnership between the local police department and federal law enforcement/federal prosecutors on trafficking issues?
- a. If so, how successful is that relationship?
 - b. Does that relationship build off any previous local/federal partnerships?
 - c. Can you give examples of cases where local police and federal prosecutors have collaborated on trafficking investigations?
 - d. If no collaboration exists, what are the challenges?
10. Is there a working partnership between law enforcement and service providers on trafficking issues?
- a. If so, how successful is that relationship?
 - b. Does that relationship build off any previous law enforcement/service provider partnerships?
 - c. Can you give examples of cases where law enforcement and service providers have collaborated on trafficking investigations?
 - d. If no collaboration exists, what are the challenges?

Questions for Prosecutors:

1. How does your agency define human trafficking?
 - a. How are sex trafficking, labor trafficking and smuggling distinguished from one another?
2. How long has your agency been actively aware of the problem of trafficking?
3. Have trafficking incidents mainly been reported to your agency by local or federal law enforcement?
4. How many human trafficking cases have been prosecuted, and how many people have been convicted of human trafficking?
 - b. Can you provide some examples of the types of cases that have involved trafficking?
 - c. Are these cases treated differently in any way from other crimes?
5. Has the number of trafficking cases being prosecuted increased over the past five years?
6. Typically, what is the sentence or punishment handed down to someone convicted of human trafficking.

- d. Are penalties more or less severe for different types of trafficking (i.e. sex trafficking, labor trafficking, etc.)
- 7. What are some of the challenges your agency faces when prosecuting trafficking cases?
- 8. Is it easier to prosecute offenders who are connected to existing local criminal networks?
- 9. What is needed from police/agents to successfully prosecute trafficking offenders?
 - e. How do trafficking investigations differ from other investigations in terms of what your agency needs to successfully prosecute trafficking offenders?
- 10. Is there a working partnership between the local police department and federal law enforcement/federal prosecutors on trafficking issues?
 - f. If so, how successful is that relationship?
 - g. Does that relationship build off any previous local/federal partnerships?
- 11. What challenges has your agency faced when working with trafficking victims?
 - h. How has your agency dealt with language barriers from victims, offenders or witnesses?
- 12. What types of services, if any, has your agency been able to provide to victims?
 - i. Has your agency been involved in petitions for T-visas?
- 13. How has your agency worked with or utilized local service providers to assist with cases or victim safety?

Questions for Service Provider Focus Group:

- 1. Provide a brief description of the agency and describe how it became involved in trafficking issues.
- 2. How does your agency define human trafficking? What is the agency's definition of severe forms of human trafficking?
- 3. What is the scope of the local trafficking problem according to your agency?
 - a. How many trafficking victims have you helped or encountered in your line of work?
 - b. Are clients more likely to be victims of one type of trafficking over another? For example, do you see more victims of sex trafficking versus labor trafficking?
 - c. To what extent is the trafficking international versus domestic in your agency?

4. Do you believe there is a connection between the human trafficking cases your agency encounters and existing criminal networks?
 - a. If so, what is that connection?
5. How are victims normally referred to you?
 - a. Self referral
 - b. Law enforcement (local, state, federal)
 - c. US and/or District Attorneys Office
 - d. Neighbors, concerned citizens groups, ethnic community groups
 - e. Other service providers
6. What is the standard protocol once a victim seeks help or is referred to you for services?
 - a. Do you immediately notify law enforcement?
 - b. If not, why?
7. What are the challenges or barriers your agency is faced with when attempting to help victims of human trafficking?
8. Is there a working partnership between your agency and local, state and federal law enforcement/US and/or District Attorneys/other service providers?
 - a. If so, how successful is that relationship?
 - b. Does that relationship build off any previous partnerships?
 - c. Can you give examples of cases where your agency and the above-mentioned agency have collaborated on trafficking investigations?
 - d. If no collaboration exists, what are the challenges?
9. What elements of crimes or behaviors might alert your agency that the individual being helped is a victim of human trafficking?
 - a. For example, how does your agency differentiate between cases involving human trafficking and those involving prostitution and/or human smuggling?
10. How successful do you believe the TVPA has been in combating human trafficking?
 - a. Do you believe the number of trafficking investigations has increased over the past five years? If so, why?
11. What resources are currently in place to help your agency handle cases of human trafficking?
 - a. Do service providers receive training?
 - b. If so, when was the training conducted and by whom?
 - c. What is the extent of the training?
12. Is there a reporting mechanism in place within your agency to track trafficking cases?
 - a. If so, what is it?

13. How long has it been in place? Provide a brief description of the agency and describe how it became involved in trafficking issues.
14. What is the scope of the local trafficking problem according to your agency?
 - a. How many trafficking victims have you helped or encountered in your line of work?
 - b. Are clients more likely to be victims of one type of trafficking over another? For example, do you see more victims of sex trafficking versus labor trafficking?
 - c. To what extent is the trafficking international versus domestic in your agency?
15. Do you believe there is a connection between the human trafficking cases your agency encounters and existing criminal networks?
 - a. If so, what is that connection?
16. What is the nationality of the majority of human trafficking victims encountered by your agency and how are they arriving at your jurisdiction?
17. How are victims normally referred to you?
 - a. Self referral
 - b. Law enforcement (local, state, federal)
 - c. US and/or District Attorneys Office
 - d. Neighbors, concerned citizens groups, ethnic community groups
 - e. Other service providers
18. How does your agency define human trafficking? What is the agency's definition of severe forms of human trafficking?
19. What is the standard protocol once a victim seeks help or is referred to you for services?
 - a. Do you immediately notify law enforcement?
 - b. If not, why?
20. What are the challenges or barriers your agency is faced with when attempting to help victims of human trafficking?
21. Is there a working partnership between your agency and local, state and federal law enforcement/US and/or District Attorneys/other service providers?
 - a. If so, how successful is that relationship?
 - b. Does that relationship build off any previous partnerships?
 - c. Can you give examples of cases where your agency and the above-mentioned agency have collaborated on trafficking investigations?
 - d. If no collaboration exists, what are the challenges?

22. What elements of crimes or behaviors might alert your agency that the individual being helped is a victim of human trafficking?
 - a. For example, how does your agency differentiate between cases involving human trafficking and those involving prostitution and/or human smuggling?
23. How successful do you believe the TVPA has been in combating human trafficking?
 - a. Do you believe the number of trafficking investigations has increased over the past five years? If so, why?
24. What resources are currently in place to help your agency handle cases of human trafficking?
 - a. Do service providers receive training?
 - b. If so, when was the training conducted and by whom?
 - c. What is the extent of the training?
25. Is there a reporting mechanism in place within your agency to track trafficking cases?
 - a. If so, what is it?
 - b. How long has it been in place?

Informed Consent to Participate in an Interview

Dear Task Force Member,

Researchers from the Institute on Race and Justice at Northeastern University are conducting interviews with individuals who work at agencies, which make up anti-human trafficking task forces. The interviews are one component of a study aimed at understanding and improving law enforcement responses to human trafficking. We are asking for you to share your professional experiences as they relate to human trafficking.

You were selected to participate in this research because of your role in the task force and because you possess important knowledge of these issues. It is important for you to understand that researchers will not ask any questions of a personal nature relating to human trafficking. You will be asked about your perception of your job as it pertains to human trafficking, not about your own, if any, personal experiences with trafficking or trafficking victims. This is a one-time interview involving approximately 12 specific questions relating to human trafficking. The interview should take about 60 minutes, depending on the length of your answers.

If you choose to participate, only the researchers will see the information about you. No reports or publications will use information that can identify you in any way. All interviewee names will be given a unique personal code number and linked to personal contact information on a master log. Only personal codes will be used in notes and transcripts of interviews - no names or other identifiers are to be recorded. Access to notes and data will be restricted to research staff at the Institute on Race and Justice and secured in a locked drawer inside a locked office or on a password protected computer or server. By taking this step, there will be no link between your interview and your identity.

Your participation in this interview is strictly voluntary; at any time you may decline to answer questions or participate altogether with no penalty to you. If you do not participate or if you decide to quit, you will not lose any rights, benefits, or services that you would otherwise have.

We want you to understand completely the project in which you are about to participate, the scope of the questions we will ask, and how the research team will use the information you might provide us. If you have any questions about the study or problems as a result of the study, you may contact Stephanie Fahy, Senior Research Associate, Institute on Race and Justice, 400 Churchill Hall, Northeastern University Boston, MA, 02115-5000, tel. 617-373-2176. You may call anonymously if you wish.

You may also contact Nan Regina, Director of Research Integrity, 413 Lake Hall, Northeastern University, Boston, MA, 02115-5000, tel. 617-373-7570.

Thank you for taking the time to assist us in this important study.

ANNEXURE H

INFORMED CONSENT FORM

Affiliation: STUDENT AT UNISA

Researcher: MRS JUANIDA SUZETTE HORNE

Title of Study: A CRITICAL ANALYSIS OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

Purpose of Study:

The *aim* of this study is to critically analyse how the crime of human trafficking for sexual exploitation can be identified in order to develop practical guidelines to be used during the identification of this crime in South Africa.

Procedures:

The researcher will conduct a survey by using questionnaires in the form of mailed, self-administered surveys and in-person interviews and conduct semi-structured one-on-one interviews and e-mail interviews with the help of interview. The interviews will not be longer than three hour, but may end sooner by natural process or on request of the respondent/participant or researcher, depending on the circumstances.

Risks and Discomforts:

The participant may become tired or feel emotional discomfort at which point a break may be requested or the interview may be postponed to a later date or terminated if so desired. The researcher will make every effort to ensure the comfort and minimize the risks for the respondent.

Benefits:

It is my hope that the participants partaking in this study will feel the satisfaction of contributing to solving a social problem and facilitating in illuminating the problem for those studying the phenomena, which may help others in the future. The participants shall also assist in providing insight into the problem, which can stimulate future research, and thus be of even greater help in the future. On a personal level, it is the hope of the researcher that the

participants will obtain personal satisfaction once they have discussed certain issues with the researcher and thus gaining personal insights that were not gained prior to the interview.

Participant's Rights:

Participation in this study is voluntary and may be withdrawn at any time without negative consequences for the participant. All information is treated as confidential and anonymity is assured by the researcher. The data shall be destroyed should the participant wish to withdraw. The researcher (and her study leader) is the only individuals who will have access to raw data from interviews, and hereby ensure that data will be treated as stipulated above.

Right of Access to Researcher:

Participants are free to contact the researcher at the telephone number as stipulated on this form, at a reasonable hour, in connection with interview particulars, if they so wish.

THANK YOU FOR YOUR PARTICIPATION IN THIS STUDY.

I, the undersigned, agree to participate in this study voluntarily without duress.

Signed aton this.....day of20.....

Signature: (Print Name.....)

Mrs Juanida Horne
PhD student
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