

**AN ANALYSIS OF THE PROSECUTION-LED INVESTIGATION MODEL IN  
MURDER CASES**

by

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## **DECLARATION**

“I, Nkosinathi Wonderboy Myeza, student number 43740812, declare that **An analysis of the prosecution-led investigation model in murder cases** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I submitted the thesis/dissertation to originality checking software and that it falls within the accepted requirements for originality.

I further declare that I have not previously submitted this work, or part of it, for examination at Unisa for another qualification or at any other higher education institution.”

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**SIGNATURE**  
**(NW Myeza)**

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**DATE**

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“A good head and good heart are always a formidable combination. But when you add to that a literate tongue or pen, then you have something very special” (Nelson Mandela).

## **ABSTRACT**

**Title:** **An analysis of the prosecution-led investigation model in murder cases**

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## **SUMMARY**

The investigation of crime is one area in which the South African Police Service is measured on. There is no doubt that poor application of investigation methods results in acquittal of criminals or, at worst, failing to identify the perpetrator. In murder cases, the response from the communities who are directly affected is usually unpleasant and intolerable. This is so because murder is a crime against human life. One death in the family will have significant, undesirable implications to the family involved and, to a certain extent, the community.

Violent crime such as murder has a negative effect, not only on the family who has lost the loved one, but also has a severe direct impact on the economy. For instance, no potential investors would want to associate themselves with a country where the incidence of violent crimes has become the norm and where the government appears to be reluctant to take tangible actions to remedy the situation. For years, the South African Police Service applied one methodology in murder investigations, even though their crime statistics showed that this type of crime was constantly increasing and required drastic steps to curb it.

This study gives a detailed analysis of the prosecution-led investigation model and its feasibility in murder cases. This research was conducted on the basis that this model appears to work successfully in commercial crimes, judging by the conviction rates reported annually by the National Prosecuting Authority. The study discusses the current investigation model used by the South African Police Service in the investigation of murder and compares it to an intelligence-led investigation model.

It then examines the meaning of the prosecution-led investigation. Finally, international experiences in terms of criminal investigation and prosecution procedures are discussed and compared with those of South Africa. The researcher explored the models from the selected countries and interviews conducted were used as a foundation for describing and explaining the future application of the findings emanating from this research. Using the qualitative approach, data was gathered by means of a literature review and qualitative interviews with the sampled participants to answer the research questions.

The researcher is of the view that this study (analysing the prosecution-led investigation model in murder cases) presents a significant contribution to the development of practical guidelines that can be used to effectively and efficiently investigate murder cases.

#### **KEY TERMS**

Criminal Investigation; Prosecution-Led Investigation; Intelligence-Led Investigation; Evidence; Criminal Justice System; Prosecution; Suspect; Crime; Crime Combating; Investigation; Policing; Model; Murder.

## TABLE OF CONTENTS

|   |              |
|---|--------------|
| <b>DECLARATION</b> .....  | <b>i</b>     |
| <b>ACKNOWLEDGEMENTS</b> .....   | <b>ii</b>    |
| <b>ABSTRACT</b> .....   | <b>iv</b>    |
| <b>KEY TERMS</b> .....  | <b>v</b>     |
| <b>TABLE OF CONTENTS</b> .....  | <b>vi</b>    |
| <b>LIST OF TABLES</b> .....   | <b>xvi</b>   |
| <b>LIST OF FIGURES</b> .....  | <b>xviii</b> |
| <b>ABBREVIATIONS</b> .....  | <b>xix</b>   |
| <b>1. CHAPTER 1: GENERAL ORIENTATION OF THE PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES</b> ..... | <b>1</b>     |
| 1.1 INTRODUCTION .....  | 1            |
| 1.2 PROBLEM STATEMENT .....   | 2            |
| 1.3 RESEARCH AIMS .....   | 5            |
| 1.4 PURPOSE OF THE RESEARCH .....   | 5            |
| 1.4.1 Exploration .....   | 5            |
| 1.4.2 Description .....   | 5            |
| 1.4.3 Explanatory .....   | 6            |
| 1.5 RESEARCH OBJECTIVES .....   | 6            |
| 1.6 RESEARCH QUESTIONS .....  | 7            |
| 1.7 KEY THEORETICAL CONCEPTS .....  | 7            |
| 1.7.1 Criminal investigation .....  | 8            |
| 1.7.2 Prosecution-led investigation .....   | 8            |
| 1.7.3 Intelligence-led investigation .....  | 8            |
| 1.7.4 Evidence .....  | 8            |
| 1.7.5 Criminal Justice System .....   | 8            |
| 1.7.6 Prosecution .....   | 9            |
| 1.7.7 Suspect .....   | 9            |
| 1.7.8 Crime .....   | 9            |
| 1.7.9 Crime combating .....   | 9            |
| 1.7.10 Investigation .....  | 9            |
| 1.7.11 Policing .....   | 9            |
| 1.7.12 Model .....  | 9            |
| 1.7.13 Murder .....   | 10           |

|           |   |           |
|-----------|---|-----------|
| 1.8       | BACKGROUND OF THE PROSECUTION-LED INVESTIGATION.....    | 10        |
| 1.9       | LIMITATIONS OF THE STUDY.....                           | 12        |
| 1.10      | RESEARCH STRUCTURE .....                                | 13        |
| <b>2.</b> | <b>CHAPTER 2: METHODOLOGICAL FRAMEWORK OF THE STUDY</b> | <b>16</b> |
| 2.1       | INTRODUCTION.....                                       | 16        |
| 2.2       | PHILOSOPHICAL WORLDVIEW OFFERED IN THE STUDY .....      | 16        |
| 2.2.1     | Pragmatic worldview.....                                | 17        |
| 2.2.2     | Transformative worldview.....                           | 17        |
| 2.2.3     | Constructivist worldview .....                          | 18        |
| 2.2.4     | Post-positivist worldview.....                          | 19        |
| 2.3       | RESEARCH APPROACH AND DESIGN .....                      | 20        |
| 2.3.1     | Quantitative approach .....                             | 20        |
| 2.3.2     | Mixed-methods approach .....                            | 21        |
| 2.3.3     | Qualitative approach.....                               | 21        |
| 2.4       | DATA COLLECTION .....                                   | 22        |
| 2.4.1     | Literature .....  | 24        |
| 2.4.2     | Interviews .....  | 25        |
| 2.4.2.1   | Unstructured interviews.....                            | 26        |
| 2.4.2.2   | Structured interviews .....                             | 26        |
| 2.4.2.3   | Semi-structured interviews .....                        | 27        |
| 2.4.3     | Questionnaires .....                                    | 31        |
| 2.5       | POPULATION AND SAMPLING PROCEDURES .....                | 32        |
| 2.5.1     | Simple random sampling .....                            | 35        |
| 2.5.2     | Purposive sampling .....                                | 37        |
| 2.6       | DATA ANALYSIS .....                                     | 38        |
| 2.7       | DATA INTERPRETATION.....                                | 40        |
| 2.8       | METHODS TO ENSURE VALIDITY (CREDIBILITY) .....          | 41        |
| 2.8.1     | Refutability principle .....                            | 42        |
| 2.8.2     | Constant comparative method.....                        | 42        |
| 2.8.3     | Comprehensive data treatment .....                      | 43        |
| 2.8.4     | Deviant-case analysis.....                              | 43        |
| 2.8.5     | Using appropriate tabulations.....                      | 44        |
| 2.8.6     | Credibility/authenticity.....                           | 44        |

|           |   |           |
|-----------|---|-----------|
| 2.8.7     | Transferability .....   | 44        |
| 2.9       | METHODS TO ENSURE RELIABILITY (DEPENDABILITY) .....   | 45        |
| 2.9.1     | Dependability .....   | 45        |
| 2.9.2     | Conformability .....  | 46        |
| 2.10      | ETHICAL CONSIDERATIONS .....  | 46        |
| <b>3.</b> | <b>CHAPTER 3: INVESTIGATION OF MURDER IN SOUTH AFRICA ...</b>   | <b>49</b> |
| 3.1       | INTRODUCTION .....  | 49        |
| 3.2       | ORIGINS OF CRIMINAL INVESTIGATION .....   | 50        |
| 3.2.1     | Jonathan Wild - England .....   | 51        |
| 3.2.2     | Henry Fielding - England .....  | 53        |
| 3.2.3     | Eugene Vidocq - France .....  | 53        |
| 3.3       | DEVELOPMENT OF CRIMINAL LAW IN SOUTH AFRICA .....   | 54        |
| 3.3.1     | Definition of Criminal Law .....  | 54        |
| 3.3.2     | Old South Africa and law .....  | 57        |
| 3.3.2.1   | Cape Colony .....   | 57        |
| 3.3.2.2   | Natal, Orange Free State and Transvaal .....  | 59        |
| 3.3.2.3   | Union of South Africa .....   | 59        |
| 3.4       | SOUTH AFRICAN POLICE SERVICE LEGISLATIVE AND POLICY<br>FRAMEWORK RELATING TO CRIMINAL INVESTIGATION ..... | 60        |
| 3.4.1     | South African Police Service Code of Conduct .....  | 61        |
| 3.4.2     | Criminal Procedure Act No. 51 of 1977 .....   | 62        |
| 3.4.3     | Interim Constitution of the Republic of South Africa, Act No. 200 of<br>1993 .....                        | 64        |
| 3.4.4     | South African Police Service Act, No. 68 of 1995 .....  | 65        |
| 3.4.5     | National crime prevention strategy .....  | 70        |
| 3.4.6     | Constitution of the Republic of South Africa of 1996 .....  | 71        |
| 3.4.7     | White Paper on safety and security .....  | 73        |
| 3.5       | UNDERSTANDING OF CRIMINAL INVESTIGATION .....   | 75        |
| 3.5.1     | Criminal investigation defined .....  | 78        |
| 3.5.2     | Objectives of criminal investigation .....  | 80        |
| 3.6       | DEFINITION OF MURDER .....  | 82        |
| 3.7       | ELEMENTS OF MURDER .....  | 83        |
| 3.7.1     | Unlawful .....  | 84        |

|           |  |            |
|-----------|--|------------|
| 3.7.2     | Killing.....   | 85         |
| 3.7.3     | Of a person.....   | 85         |
| 3.7.4     | With intention.....  | 85         |
| 3.8       | INVESTIGATION PHASES IN MURDER.....  | 87         |
| 3.9       | SKILLS REQUIRED TO BE A COMPETENT INVESTIGATOR.....  | 93         |
| 3.10      | DUTIES AND RESPONSIBILITIES OF THE INVESTIGATOR IN MURDER INVESTIGATION.....                                     | 96         |
| 3.10.1    | Case docket.....   | 97         |
| 3.10.2    | Crime scene.....   | 98         |
| 3.10.3    | Identification, collection and preservation of evidence.....   | 99         |
| 3.10.4    | Individualisation of evidence.....   | 104        |
| 3.10.5    | Warrant of search.....   | 107        |
| 3.10.6    | Warrant of arrest.....   | 108        |
| 3.11      | CURRENT MURDER INVESTIGATION MODEL USED BY THE SAPS.....   | 111        |
| 3.12      | INTELLIGENCE-LED INVESTIGATION MODEL.....  | 114        |
| 3.12.1    | Definition of intelligence.....  | 115        |
| 3.12.2    | Intelligence-led investigation versus intelligence-led policing.....   | 116        |
| 3.12.3    | Intelligence cycle.....  | 117        |
| 3.12.4    | Importance and relevance of intelligence in murder investigation.....  | 122        |
| 3.13      | CURRENT INVESTIGATION MODEL USED BY THE SAPS IN MURDER CASES VERSUS THE INTELLIGENT-LED INVESTIGATION MODEL..... | 129        |
| 3.14      | SUMMARY.....   | 134        |
| <b>4.</b> | <b>CHAPTER 4: MEANING OF THE PROSECUTION-LED INVESTIGATION.....</b>  | <b>135</b> |
| 4.1       | INTRODUCTION.....  | 135        |
| 4.2       | LEGAL FRAMEWORK AND POLICIES RELATING TO THE PROSECUTION SERVICE.....  | 136        |
| 4.2.1     | Constitution of the Republic of South Africa of 1996.....  | 137        |
| 4.2.2     | National Prosecuting Authority Act No. 32 of 1998.....   | 139        |
| 4.2.3     | Criminal Procedure Act No. 51 of 1977.....   | 142        |
| 4.2.4     | Prosecution policy.....  | 145        |
| 4.2.5     | National Prosecuting Authority code of conduct.....  | 147        |
| 4.3       | OBJECTIVES OF PROSECUTION.....   | 149        |

|           |  |            |
|-----------|--|------------|
| 4.4       | IMPORTANCE OF THE RELATIONSHIP BETWEEN THE INVESTIGATOR AND PROSECUTOR .....                           | 154        |
| 4.5       | PROCESS OF PROSECUTION.....  | 161        |
| 4.5.1     | Role of the police investigator in the prosecution process.....  | 165        |
| 4.6       | MEANING OF THE PROSECUTION-LED INVESTIGATION MODEL .....   | 167        |
| 4.6.1     | Approach by the Directorate of Special Operations.....   | 173        |
| 4.6.1.1   | Duplication of mandates of existing crime-fighting bodies .....  | 182        |
| 4.6.1.2   | Selection of cases by the Directorate of Special Operations .....                                      | 182        |
| 4.6.1.3   | Gathering of intelligence by the Directorate of Special Operations ...                                 | 183        |
| 4.6.1.4   | Level of involvement of the prosecutors in the investigations .....                                    | 184        |
| 4.6.2     | Approach by the Specialised Commercial Crime Unit .....  | 184        |
| 4.7       | ADVANTAGES OF THE PROSECUTION-LED INVESTIGATION MODEL.....   | 195        |
| 4.7.1     | Cooperation between the Commercial Crime Unit and the Specialised Commercial Crime Unit .....          | 196        |
| 4.7.2     | Immediate availability of investigative and legal expertise.....                                       | 198        |
| 4.7.3     | Factors contributing to the success of the prosecution-led investigation model.....                    | 199        |
| 4.8       | DISADVANTAGES OF THE PROSECUTION-LED INVESTIGATION MODEL.....  | 202        |
| 4.8.1     | Lack of legislation .....  | 202        |
| 4.8.2     | Personal relationship between the investigator and prosecutor .....                                    | 203        |
| 4.8.3     | Lack of resources .....  | 204        |
| 4.9       | PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES .....  | 207        |
| 4.10      | SUMMARY .....  | 209        |
| <b>5.</b> | <b>CHAPTER 5: CRIMINAL INVESTIGATION AND PROSECUTION PROCEDURES: AN INTERNATIONAL COMPARISON .....</b> | <b>211</b> |
| 5.1       | INTRODUCTION .....   | 211        |
| 5.2       | UNITED REPUBLIC OF TANZANIA.....   | 212        |
| 5.2.1     | Overview of the Tanzanian Police Force .....   | 212        |
| 5.2.2     | Legislation and guidelines relating to criminal investigation and prosecution.....                     | 215        |
| 5.2.2.1   | Constitution of the United Republic of Tanzania of 1977 .....  | 216        |

|         |   |     |
|---------|---|-----|
| 5.2.2.2 | Police force and auxiliary services act of 1939 .....   | 217 |
| 5.2.2.3 | Criminal Procedure Act No. 9 of 1985 .....  | 218 |
| 5.2.2.4 | National Prosecutions Service Act No. 27 of 2008 .....  | 221 |
| 5.2.3   | Role of the prosecutor in criminal investigation .....  | 223 |
| 5.3     | UNITED STATES OF AMERICA.....   | 224 |
| 5.3.1   | Constitution of the United States of America of 1787 .....  | 225 |
| 5.3.2   | Overview of law enforcement in the United States of America .....   | 227 |
| 5.3.3   | Legislation and guidelines relating to criminal investigation and prosecution.....                                      | 230 |
| 5.3.3.1 | United States Code of 1948 .....  | 231 |
| 5.3.4   | State of California.....  | 233 |
| 5.3.4.1 | Constitution of the State of California of 1879 .....   | 234 |
| 5.3.4.2 | Penal code of the State of California of 1872 .....   | 236 |
| 5.3.4.3 | Overview of Los Angeles Police Department .....   | 236 |
| 5.4     | REPUBLIC OF MALAWI .....  | 238 |
| 5.4.1   | Overview of the Malawi Police Service.....  | 240 |
| 5.4.2   | Legislation and guidelines relating to criminal investigation and prosecution.....                                      | 241 |
| 5.4.2.1 | Penal Code, Act No. 22 of 1929 .....  | 241 |
| 5.4.2.2 | Police Act, No. 26 of 1946 .....  | 246 |
| 5.4.2.3 | Criminal Procedure and Evidence Code, Act No. 36 of 1967 .....  | 250 |
| 5.4.2.4 | Constitution of the Republic of Malawi, Act No. 20 of 1994 .....  | 251 |
| 5.5     | REPUBLIC OF FRANCE .....  | 258 |
| 5.5.1   | Overview of French Police.....  | 260 |
| 5.5.2   | Legislation and guidelines relating to criminal investigation and prosecution.....                                      | 262 |
| 5.5.2.1 | Penal Code of 1992.....   | 262 |
| 5.5.2.2 | Code of Criminal Procedure of 1957 .....  | 265 |
| 5.5.2.3 | Constitution of the Republic of France of 1958.....   | 272 |
| 5.6     | SYNOPSIS OF THE COMPARISON OF CRIMINAL INVESTIGATION AND PROSECUTION PROCEDURES IN MALAWI, FRANCE AND SOUTH AFRICA..... | 277 |
| 5.7     | SUMMARY .....   | 281 |

|           |  |            |
|-----------|--|------------|
| <b>6.</b> | <b>CHAPTER 6: RESEARCH FINDING, RECOMMENDATIONS AND CONCLUSION .....</b>   | <b>282</b> |
| 6.1       | INTRODUCTION .....   | 282        |
| 6.2       | RESEARCH AIMS.....   | 283        |
| 6.3       | RESEARCH QUESTIONS .....   | 283        |
| 6.4       | FINDINGS .....   | 284        |
| 6.4.1     | Current investigation model used by the SAPS in murder cases versus the intelligence-led investigation model .....   | 284        |
| 6.4.1.1   | Definition of criminal investigation .....   | 284        |
| 6.4.1.2   | Objectives of criminal investigation.....  | 285        |
| 6.4.1.3   | Definition of murder .....   | 285        |
| 6.4.1.4   | Elements of murder .....   | 286        |
| 6.4.1.5   | Reporting of murder cases .....  | 288        |
| 6.4.1.6   | Assigning of murder cases to the police investigators.....   | 288        |
| 6.4.1.7   | Specific training that the police investigator has to undergo before being assigned to investigate murder cases .....  | 289        |
| 6.4.1.8   | Role (duties and functions) of the police investigator in the investigation of murder cases.....   | 289        |
| 6.4.1.9   | Role fulfilled by the prosecutor in a murder investigation .....   | 291        |
| 6.4.1.10  | Role of the police investigator in the prosecution process of murder cases .....   | 292        |
| 6.4.1.11  | Specific standing orders/Standard operating procedures/legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation ..... | 293        |
| 6.4.1.12  | Specific procedures that have to be followed by the police investigator upon receiving a new murder case.....  | 293        |
| 6.4.1.13  | Existence of task teams or specialised units investigating murder cases at station level.....  | 294        |
| 6.4.1.14  | Existence of task teams or specialised units investigating murder cases in Malawi Police Service .....   | 295        |
| 6.4.1.15  | Existence of task teams or specialised units investigating murder cases in French National Police.....   | 295        |
| 6.4.1.16  | Police investigators' interaction with the prosecuting authority while murder cases are still under investigation .....  | 295        |

|          |   |     |
|----------|---|-----|
| 6.4.1.17 | Definition of the intelligence-led investigation model .....  | 296 |
| 6.4.1.18 | Importance and relevance of intelligence in murder investigation .....  | 297 |
| 6.4.1.19 | Difference between the current investigation model used by SAPS in murder cases and the intelligence-led investigation model .....                    | 298 |
| 6.4.1.20 | Problems faced by police investigators when investigating murder cases .....  | 299 |
| 6.4.2    | Meaning of the prosecution-led investigation model.....   | 299 |
| 6.4.2.1  | Objectives of prosecution .....   | 300 |
| 6.4.2.2  | Definition of the prosecution-led investigation model.....  | 300 |
| 6.4.2.3  | Prosecution-led investigation model followed in commercial crimes .   | 301 |
| 6.4.2.4  | Difference between the intelligence-led investigation model and the prosecution-led investigation model .....   | 301 |
| 6.4.2.5  | Importance of the relationship between the investigator and prosecutor .....  | 302 |
| 6.4.2.6  | Role of the police investigator in the prosecution-led investigation model .....  | 303 |
| 6.4.2.7  | Reporting of commercial crime cases to SCCU.....  | 303 |
| 6.4.2.8  | Assigning commercial crime cases to the SCCU prosecutors .....  | 304 |
| 6.4.2.9  | Specific policies/guidelines/operating model that the prosecutor has to follow upon being assigned a commercial crime case.....                       | 304 |
| 6.4.2.10 | Meeting with the SAPS investigator to discuss the case under investigation .....  | 305 |
| 6.4.2.11 | Frequency of meetings between the investigator and prosecutor with regard to a specific investigation in the prosecution-led investigation model..... | 306 |
| 6.4.2.12 | Advantages of the prosecution-led investigation model.....  | 306 |
| 6.4.2.13 | Disadvantages of the prosecution-led investigation model.....   | 307 |
| 6.4.2.14 | Effectiveness of prosecution-led investigation model in cases other than commercial crimes.....   | 308 |
| 6.4.2.15 | Use of the prosecution-led investigation model in murder cases.....   | 309 |
| 6.4.2.16 | Use of prosecution-led investigation to improve the success in murder cases .....   | 309 |
| 6.4.3    | International experiences in terms of criminal investigation and prosecution procedures .....   | 309 |

|          |  |            |
|----------|--|------------|
| 6.4.3.1  | Location of prosecuting authority that prosecutes murder cases in Malawi .....   | 309        |
| 6.4.3.2  | Location of prosecuting authority that prosecutes murder cases in France .....   | 310        |
| 6.4.3.3  | Investigation model used in Malawi Police Service when investigating murder cases.....   | 310        |
| 6.4.3.4  | Advantages of murder investigation model used by Malawi Police Service .....   | 310        |
| 6.4.3.5  | Disadvantages of murder investigation model used by Malawi Police Service .....  | 311        |
| 6.4.3.6  | Understanding the prosecution-led investigation by the MPS participant .....   | 311        |
| 6.4.3.7  | Investigation model used in French National Police when investigating murder cases.....  | 311        |
| 6.4.3.8  | Advantages of murder investigation model used by French National Police.....   | 311        |
| 6.4.3.9  | Disadvantages of murder investigation model used by French National Police.....  | 312        |
| 6.4.3.10 | Understanding prosecution-led investigation by FNP participant .....   | 312        |
| 6.4.3.11 | Comparison of criminal investigation and prosecution procedures in Malawi, France and South Africa.....                        | 312        |
| 6.4.4    | Practical guidelines, procedures and recommendations that can be offered to SAPS to successfully investigate murder cases..... | 313        |
| 6.5      | RECOMMENDATIONS .....  | 314        |
| 6.5.1    | Current investigation model used by the SAPS in murder cases versus the intelligence-led investigation model.....              | 315        |
| 6.5.2    | Meaning of the prosecution-led investigation model.....  | 315        |
| 6.5.3    | International experience in terms of criminal investigation and prosecution procedure.....                                     | 315        |
| 6.5.4    | Additional research.....   | 316        |
| 6.6      | CONCLUSION.....  | 316        |
|          | <b>LIST OF REFERENCES .....</b>  | <b>320</b> |
|          | <b>ATTACHMENTS .....</b>   | <b>344</b> |

|  |            |
|--|------------|
| ATTACHMENT A: INTERVIEW SCHEDULE FOR SAMPLE A .....                                | 344        |
| ATTACHMENT B: NATIONAL PROSECUTING AUTHORITY .....                                 | 352        |
| ATTACHMENT C: MALAWI POLICE SERVICE .....  | 357        |
| ATTACHMENT D: FRENCH NATIONAL POLICE .....   | 363        |
| <b>ANNEXURES</b> .....   | <b>369</b> |
| ANNEXURE A: PERMISSION TO CONDUCT RESEARCH IN SAPS.....                            | 369        |
| ANNEXURE B: PERMISSION TO CONDUCT RESEARCH SAPS KWAZULU<br>NATAL .....             | 372        |
| ANNEXURE C: PERMISSION TO CONDUCT RESEARCH NATIONAL<br>PROSECUTING AUTHORITY ..... | 375        |
| ANNEXURE D: CONSENT FORM.....  | 379        |
| ANNEXURE E: ETHICAL CLEARANCE UNISA.....   | 381        |
| ANNEXURE F: TURNITIN DIGITAL RECEIPT .....   | 383        |

## LIST OF TABLES

|             |  |     |
|-------------|--|-----|
| Table 3.1:  | Participants' definition of criminal investigation.....  | 80  |
| Table 3.2:  | Participants' understanding of the objectives of criminal investigation.....   | 82  |
| Table 3.3:  | Participants' definition of murder .....   | 83  |
| Table 3.4:  | Participants' understanding of the elements of murder.....   | 86  |
| Table 3.5:  | Participants' responses regarding the reporting of murder cases at their stations .....  | 89  |
| Table 3.6:  | Participants' responses regarding the assignment of murder cases to the police investigators .....   | 92  |
| Table 3.7:  | Participants' responses regarding the specific training that the police investigator has to undergo before being assigned to the investigation of murder cases .....     | 96  |
| Table 3.8:  | Participants' responses regarding the specific procedures that have to be followed by the police investigator upon receiving a new murder case....                       | 106 |
| Table 3.9:  | Participants' understanding of the role (duties and functions) of the police investigator in the investigation of murder cases .....                                     | 109 |
| Table 3.10: | Participants' views regarding the problems that police investigators face when investigating murder cases .....  | 110 |
| Table 3.11: | Participants' responses regarding Interaction between the police investigators and prosecuting authority while murder cases are still under investigation.....           | 114 |
| Table 3.12: | Participants' definition of the intelligence-led Investigation model .....   | 121 |
| Table 3.13: | SAPS intelligence-led model applied in the investigative environment ....  | 125 |
| Table 3.14: | Participants' views of the importance and relevance of Intelligence in murder investigation.....   | 128 |
| Table 3.15: | Participants' views regarding the difference between the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model ..... | 130 |
| Table 3.16: | Current investigation model used by the SAPS in murder cases versus the intelligence-led investigation model.....  | 130 |
| Table 4.1:  | Participants' responses regarding the role fulfilled by the prosecutor in a murder investigation.....  | 148 |
| Table 4.2:  | Participants' understanding of the objectives of prosecution .....   | 153 |
| Table 4.3:  | Participants' views about the importance of the relationship between the investigator and prosecutor.....  | 160 |

|             |   |     |
|-------------|---|-----|
| Table 4.4:  | Participants' views of the role of the police investigator in the prosecution process of murder cases.....  | 166 |
| Table 4.5:  | Participants' views of the role of the police investigator in the prosecution-led investigation model .....   | 169 |
| Table 4.6:  | Participants' definition of the prosecution-led investigation model .....   | 172 |
| Table 4.7:  | Participants' understanding of the difference between the intelligence-led investigation model and the prosecution-led investigation model .....  | 177 |
| Table 4.8:  | Conviction rates of the DSO from 2002/03 to 2008/09 .....   | 181 |
| Table 4.9:  | Conviction rates of the SCCU from 2002/03 to 2009/10 .....  | 186 |
| Table 4.10: | Conviction rates of the SCCU from 2010/11 to 2016/17 .....  | 186 |
| Table 4.11: | Participants' views on the effectiveness of the prosecution-led investigation model in cases other than commercial crimes.....  | 187 |
| Table 4.12: | Participants' responses pertaining to the frequency of meetings between the investigator and prosecutor regarding a specific investigation in the prosecution-led investigation model ..... | 193 |
| Table 4.13: | Participants' views relating to the use of the prosecution-led investigation model in murder cases.....   | 194 |
| Table 4.14: | Participants' responses relating to specific policies/guidelines/operating model that the prosecutor has to follow upon being assigned a commercial crime case .....                        | 195 |
| Table 4.15: | Participants' views of the advantages of the prosecution-led investigation model.....   | 201 |
| Table 4.16: | Participants' views of the disadvantages of prosecution-led investigation model.....  | 205 |
| Table 4.17: | Participants' views on the use of the prosecution-led model to improve the success rate in murder cases.....  | 206 |
| Table 4.18: | Operational steps in the prosecution-led investigation model for murder cases .....   | 208 |
| Table 5.1:  | California's criminal justice system with specific reference to criminal investigation and prosecution.....   | 233 |
| Table 5.2:  | Synopsis of the comparison of criminal investigation and prosecution procedures in Malawi, France and South Africa .....  | 278 |

## LIST OF FIGURES

|             |   |     |
|-------------|---|-----|
| Figure 3.1: | Criminal law and its place in the South African Legal System .....  | 55  |
| Figure 3.2: | Organisation chart of the SAPS .....  | 67  |
| Figure 3.3: | Organisation chart of a police station with specific reference to the detective service and a group responsible for murder investigation..... | 69  |
| Figure 3.4: | Components of criminal investigation.....   | 76  |
| Figure 3.5: | Elements of criminal investigation .....  | 77  |
| Figure 3.6: | Three phases in the crime investigation process.....  | 91  |
| Figure 3.7: | Five phases of the intelligence cycle .....   | 119 |
| Figure 4.1: | Goals and objectives of prosecution.....  | 151 |
| Figure 4.2: | The interaction between the criminal investigation and prosecution process .....  | 158 |
| Figure 4.3: | Sub-programmes in the NPA .....   | 171 |
| Figure 4.4: | Organisation chart of the NPA with specific reference to DSO in 2004....  | 175 |
| Figure 4.5: | Organisation chart of the DSO with specific reference to its operations in 2004 .....   | 176 |
| Figure 4.6: | DSO troika principle .....  | 180 |
| Figure 4.7: | Sub-programmes in the NPA with specific reference to the SCCU.....  | 185 |
| Figure 4.8: | Investigator and prosecutor cooperation during investigation .....  | 196 |
| Figure 5.1: | Structure of TPF Criminal investigation department .....  | 214 |
| Figure 5.2: | LAPD organisation chart with reference to the CID .....   | 237 |
| Figure 6.1: | Proposed prosecution-led investigation model in murder cases.....   | 314 |

## ABBREVIATIONS

|                                     |  |
|-------------------------------------|--|
| <b>ABA</b>                          | American Bar Association                                   |
| <b>ANC</b>                          | African National Congress                                  |
| <b>APCOF</b>                        | African Policing Civilian Oversight Forum                  |
| <b>APOF</b>                         | African Police Oversight Forum                             |
| <b>APRI</b>                         | American Prosecutors Research Institute                    |
| <b>BIIP</b>                         | Bureau of International Information Programs               |
| <b>BJA</b>                          | Bureau of Justice Assistance                               |
| <b>CCU</b>                          | Commercial Crime Unit                                      |
| <b>CHRI</b>                         | Commonwealth Human Rights Initiative                       |
| <b>CIAC</b>                         | Crime Information Analysis Centre                          |
| <b>CID</b>                          | Criminal Investigation Department                          |
| <b>CIG</b>                          | Crime Intelligence Gathering                               |
| <b>CIMC</b>                         | Crime Information Management Centre                        |
| <b>CJS</b>                          | Criminal Justice System                                    |
| <b>Constitution of California</b>   | Constitution of the State of California of 1879            |
| <b>Constitution of France</b>       | Constitution of the Republic of France of 1958             |
| <b>Constitution of Malawi</b>       | Constitution of the Republic of Malawi, Act No. 20 of 1994 |
| <b>Constitution of South Africa</b> | Constitution of the Republic of South Africa of 1996       |
| <b>Constitution of Tanzania</b>     | Constitution of the United Republic of Tanzania of 1977    |
| <b>Constitution of USA</b>          | Constitution of the United States of America of 1787       |
| <b>Criminal Procedure Act</b>       | Criminal Procedure Act No. 9 of 1985                       |
| <b>CPA</b>                          | Criminal Procedure Act No. 51 of 1977                      |
| <b>CPEC</b>                         | Criminal Procedure and Evidence Code, Act No. 36 of 1967   |
| <b>CPT</b>                          | Center for Policing Terrorism in United States of America  |
| <b>CR</b>                           | Crime Register   |
| <b>CSC</b>                          | Community Service Centre                                   |
| <b>CTA</b>                          | Crime Threat Analysis                                      |
| <b>DNDPP</b>                        | Deputy National Director of Public Prosecutions            |
| <b>DPCI</b>                         | Directorate for Priority Crime Investigation               |
| <b>DPP</b>                          | Director of Public Prosecutions                            |
| <b>DSO</b>                          | Directorate of Special Operations                          |
| <b>FBI</b>                          | Federal Bureau of Investigation                            |
| <b>France</b>                       | Republic of France   |
| <b>IAP</b>                          | International Association of Prosecutors                   |
| <b>IBAHRI</b>                       | International Bar Association's Human Right Institute      |
| <b>IGP</b>                          | Inspector-General of Police                                |

|  |   |
|--|---|
| <b>Interim Constitution</b>              | Interim Constitution of the Republic of South Africa Act No 200 of 1993 |
| <b>IPID</b>                              | Independent Police Investigative Directorate                            |
| <b>IRLI</b>                              | Irish Rule of Law International   |
| <b>ISS</b>                               | Institute for Security Studies  |
| <b>LAPD</b>                              | Los Angeles Police Department   |
| <b>LLB</b>                               | Bachelor of Laws  |
| <b>KZN</b>                               | KwaZulu-Natal   |
| <b>Malawi</b>                            | Republic of Malawi  |
| <b>MLC</b>                               | Malawi Law Commission   |
| <b>MPS</b>                               | Malawi Police Service   |
| <b>National Prosecutions Service Act</b> | National Prosecutions Service Act No. 27 of 2008                        |
| <b>NCPS</b>                              | National Crime Prevention Strategy                                      |
| <b>NDPP</b>                              | National Director of Public Prosecutions                                |
| <b>NPA</b>                               | National Prosecuting Authority  |
| <b>NPA Act</b>                           | National Prosecuting Authority Act No. 32 of 1998                       |
| <b>NPS</b>                               | National Prosecutions Service   |
| <b>OPJ</b>                               | <i>Officiers de la Police Judiciare</i>                                 |
| <b>OSISA</b>                             | Open Society Initiative for Southern Africa                             |
| <b>PCA</b>                               | Penal Code, Act No. 22 of 1929  |
| <b>PCLU</b>                              | Priority Crimes Litigation Unit   |
| <b>Penal Code</b>                        | Penal Code of 1992  |
| <b>Penal Code of California</b>          | Penal Code of the State of California of 1872                           |
| <b>PJ</b>                                | <i>Police Judiciare</i>   |
| <b>Police Act</b>                        | Police Act No. 26 of 1946   |
| <b>Police Force Act</b>                  | Police Force and Auxiliary Services Act of 1939                         |
| <b>PSC</b>                               | Public Service Commission   |
| <b>SABC</b>                              | South African Broadcasting Corporation                                  |
| <b>SAP</b>                               | South African Police  |
| <b>SAPS</b>                              | South African Police Service  |
| <b>SAPS Act</b>                          | South African Police Service Act No. 68 of 1995                         |
| <b>SCCC</b>                              | Specialised Commercial Crime Court                                      |
| <b>SCCU</b>                              | Specialised Commercial Crime Unit                                       |
| <b>SDPP</b>                              | Special Director of Public Prosecutions                                 |
| <b>SO</b>                                | Standing Orders   |
| <b>SOCA</b>                              | Sexual Offences and Community Affairs                                   |
| <b>South Africa</b>                      | Republic of South Africa  |
| <b>TPF</b>                               | Tanzanian Police Force  |

|                 |  |
|-----------------|--|
| <b>UK</b>       | United Kingdom                           |
| <b>UNISA</b>    | University of South Africa               |
| <b>UNODC</b>    | United Nations Office on Drugs and Crime |
| <b>Tanzania</b> | United Republic of Tanzania              |
| <b>US</b>       | United States                            |
| <b>USA</b>      | United States of America                 |
| <b>USC</b>      | United States Code                       |
| <b>VOC</b>      | Verenigde Oostindische Compagnie         |

## CHAPTER 1

### GENERAL ORIENTATION OF THE PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES

#### 1.1 INTRODUCTION

In most countries, crime is one of the most complex challenges that threaten the safety and security of society. As such, the Republic of South Africa (South Africa) is not immune to this phenomenon. According to Burger (2007:1), South Africa is known as one of the countries with high levels of violent crimes.

The South African Police Service (SAPS) is the national law enforcement organisation mandated with the maintenance of safety and security of South African society (SAPS, 2014a). The SAPS has a Detective Service that is mandated to investigate criminal cases and bring the perpetrators to book. Poor investigation of crimes and the subsequent acquittal of the perpetrators may have a negative effect on the already fragile relationship between the police and society. Most of the time when a suspected perpetrator is arrested for a criminal offence, society expects swift and successful prosecution of that perpetrator. In addition, society expects that the said perpetrator must be incarcerated after conclusion of the court trial. In this way, when the perpetrator is sent to the correctional facility, the interest of justice is served.

To ensure that the interest of justice is served fairly, Burger (2011:1) postulates that there should be cooperation among the relevant stakeholders. In this regard, the responsibility of the SAPS in investigating crime is a constitutional mandate and is confirmed in section 205(3) of the Constitution of the Republic of South Africa of 1996 (Constitution of South Africa), which lists the objectives of the police service as the following:

- To prevent, combat and investigate crime;
- To maintain public order;
- To protect and secure the inhabitants of South Africa and their property; and
- To uphold and enforce the law (South Africa, 1996a).

Even though the criminal investigation is the core responsibility of the SAPS, the prosecution-led investigation is the model of investigation whereby the prosecution has a significant role in the investigation of crime from the beginning up to the prosecution level. While the investigator is investigating and deciding whether to make an arrest, the prosecutor is also evaluating the case to determine whether the investigator has provided enough information, verbally and in written case (incident) reports to enable the prosecutor to believe that he/she can prove a case (Swanson, Chamelin, Territo & Taylor, 2012:645).

In commercial crime cases that are investigated by the Commercial Crime Unit (CCU) of the Directorate for Priority Crime Investigation (DPCI), the prosecutor of the Specialised Commercial Crime Unit (SCCU) of the National Prosecuting Authority (NPA) becomes involved once the case has been registered and allocated to an investigator of the DPCI. The investigator will not proceed with investigation until the case has been referred to a specific prosecutor and a discussion between the two has taken place. It is against this background that this study endeavors to analyze the prosecution-led investigation model in murder cases.

In this Chapter 1, the researcher discusses the problem statement; research aims; purpose of the research; research objectives and research questions. Key theoretical concepts, the background of the prosecution-led investigations and limitation of the study are also discussed. In the conclusion to this chapter, the research structure is highlighted.

## **1.2 PROBLEM STATEMENT**

In order for the SAPS to fulfil its role as mandated by the Constitution of South Africa, it has to develop scientifically proven approaches to policing and benchmark itself against the international norms and standards in the field. Benchmarking is a form of comparing and contrasting the performance of an organization against its historical performance(s) or against the performances of various organizations (Levy & Valcik, 2012:112). Researching of what works in other countries may go a long way in providing positive results in an organization such as the SAPS, which is faced with operational and strategic challenges.

Looking at the SAPS crime statistics for 2013/14, it was revealed that while a number of crimes were decreasing countrywide, murder cases increased by 5% (SAPS, 2014a). At the National Firearms Summit that was held on 24-25 March 2015 in Cape Town, South Africa, Revena Fourie, Acting Civilian Secretary for Police, presented a report titled "The role of the oversight in firearms management." In her report, Fourie reveals that the murder figures have increased from 16 259 in 2012/13 to 17 068 in 2013/14 (Fourie, 2015). Since then, the situation seems to have deteriorated, as evident in the SAPS crime statistics for 2014/15 released on 29 September 2015, which showed that 17 805 murder cases were reported in South Africa (SAPS, 2015b). The SAPS crime statistics for 2016/17 also showed that 18 673 murder cases were reported in 2015/16 and increased to 19 016 in 2016/17 (SAPS, 2017). In addition, the SAPS crime statistics for 2017/18 released on 11 September 2018 show that in the reported year, 20 336 murders were committed, an increase of 7% compared to 2016/17 (SAPS, 2018).

Commenting on the SAPS crime statistics for 2013/14, Gareth Newham, the Institute for Security Studies (ISS) Head of Governance, Crime and Justice Division, stated that suspects are detected in only 29,6% of murder cases reported to and by the police (Independent Media, 2015). In total, these statistics indicate that there is an upsurge in the number of murder cases reported, while the detection and conviction rates remain very low, which point to the quality of investigation conducted. This is indeed a matter of concern to every citizen of this country.

To Bouma, Ling and Wilkinson (2012:32), the statement of a research problem must explicitly identify the issues on which the researcher chooses to focus. This view is echoed by Welman, Kruger and Mitchell (2012:14), who add that the researcher studies the problem in order to obtain a solution for the situation that has been identified as problematic. The researcher has been involved in criminal investigation in the SAPS for ten years, is a former member of the DPCI and can attest to the problems related to investigation of cases such as murder. The researcher is fully aware that in the investigation of murder cases, the SAPS investigators are not procedurally compelled to seek guidance from the prosecutors at the onset of the investigation but would finalize the investigation and then submit the case dockets to the prosecutors for a decision whether to prosecute or not. In most instances, the

prosecutors, after studying the case dockets, would simply refer the case dockets back to the investigators for further investigation, or would decline to prosecute.

Of concern is the fact that the prosecutors are not obliged to meet the investigators and discuss the cases under investigation but will simply provide instructions in the investigation diary of the case dockets in the hope that the said instructions are understood by the investigators. In the same manner, when the case docket returns from the prosecutor, the Detective Branch Commander would simply endorse the instructions from the prosecutor without enquiring or understanding the instructions. For those reasons, the burden of correctly understanding the instructions lies with the investigator. As a result of this, the possibility of the flow of information being incorrectly interpreted is great. The courage and commitment to investigate the case successfully may be lost during the flow of information.

It is worth noting that while the intelligence-led investigation provides answers to questions such as how, who, where and when the crime was committed, the prosecution-led investigation is focused more on obtaining the specific and admissible evidence for successful prosecution of the perpetrator. While the intelligence-led investigation can be developed within the structures of the police, the prosecution-led investigation requires cooperation between the police and the NPA in order to be successful. In support of this view, Crawford (1997:25) states that crime cannot be addressed solely by the police but requires a holistic approach, based on shared effort, information, resources and expertise among key agencies. The prosecution-led investigation model can be viewed as a secondary tool for exchanging information, investigative skills and techniques between the NPA and the SAPS in the early stages of investigation, up to its conclusion, in order to enhance the successful prosecution of the case.

The main problem that necessitated this research is that no specific model of investigation is followed by the SAPS investigators to deal with murder cases. Although the prosecution-led investigation model proved to be successful in the SCCU, there is no evidence that it is applied in the investigation of murder cases.

### **1.3 RESEARCH AIMS**

Leedy (1993:11), supported by Denscombe (2012:50), asserts that the aim of the research is to discover new facts and their correct interpretations in order to revise accepted conclusions, theories, or laws in the light of newly-discovered facts, or to revise the practical application of such a conclusion. The aim of this research is to analyze how the prosecution-led investigation model can be used in the investigation of murder cases in South Africa.

### **1.4 PURPOSE OF THE RESEARCH**

The purpose of the research is seen as the steps taken to achieve the research aim. Maxfield and Babbie (2005:19-20) and Marshall and Rossman (2016:75) are of the view that while research in the criminal justice discipline serves different purposes, it encompasses the exploration, description and explanation of the problem under study. Terre Blanche, Durrheim and Painter (2006:44) state that exploratory, descriptive and explanatory research focuses on the goals of the research.

#### **1.4.1 Exploration**

The exploratory studies are used to carry out preliminary investigations into relatively unknown areas of research (Terre Blanche et al., 2006:44). In agreement, Maxfield and Babbie (2012:10) state that exploration in the criminal justice discipline is conducted to explore a specific problem. The exploratory research should be transparent and provide details of how and where the information would be obtained by the researcher. It should be the intention of every researcher to explore how investigators nationally and internationally attend to the problem under investigation. To accomplish this, the researcher has to read extensively and analyze data in an attempt to explore the field. In this study, the researcher explored the prosecution-led investigation model by means of review of pertinent literature, both internationally and nationally. Furthermore, qualitative interviews were conducted with the sampled participants who formed part of the study.

#### **1.4.2 Description**

To Gray (2014:36), descriptive studies endeavor to 'draw a picture' of a situation, person or event, or show how things are related to each other. Descriptive research describes the phenomenon clearly and accurately. The researcher observed the

problem arising and described what he had observed. During the interviews, participants were asked to describe their understanding of the prosecution-led investigation model. In this way, the participants provided similar or different descriptions of the phenomenon according to their understanding. According to Terre Blanche et al. (2006:558) and Maxfield and Babbie (2012:10), descriptive research aims to describe a phenomenon without providing a causal explanation of it.

### **1.4.3 Explanatory**

While descriptive studies may ask 'what' kinds of questions, explanatory studies seek to ask 'why' and 'how' questions (Gray, 2014:36). Explanatory studies are designed to identify causality, and the focus of the designs should be on eliminating possible rival hypotheses (Terre Blanche et al., 2006:47). In support of this view, Maxfield and Babbie (2012:11) add that in explanatory research, the researcher seeks to explain things. In this regard, detailed questions relating to the prosecution-led investigation model were put to the participants in order to obtain explanations from them. Although the purpose of this research is to conduct exploratory research, it is worth noting that all three research purposes (exploration, description and explanatory) complement each other. This view is substantiated by Babbie (2013:27), who points out that studies may serve more than one of these purposes.

## **1.5 RESEARCH OBJECTIVES**

The objectives of the research are understood as being the intentions of the researcher, namely illustrating what the research is all about. While the aims of the research are general statements, the objectives are clear statements of intended outcomes, all of which can be measured in some way (Gray, 2014:53). To achieve the aim of this research, the following objectives have been formulated:

- To determine how the current investigation model used by the SAPS in murder cases compares to the intelligence-led investigation model.
- To explore and describe the meaning of the prosecution-led investigation model.
- To explore and describe international experiences in terms of criminal investigation and prosecution procedures.

- To develop practical guidelines, procedures and recommendations for the SAPS to successfully investigate murder cases.

## **1.6 RESEARCH QUESTIONS**

According to Leedy and Ormrod (2013:39), the questions can be an excellent way of collecting data and providing guidelines on how the researcher should analyze and interpret data. Flick (2014:145) and Tracy (2013:15) support this opinion and state that research questions are the core feature of beginning a research project. In following the submissions of Flick (2014:145), Leedy and Ormrod (2013:39) and Tracy (2013:15) this research attempts to answer the following research question: What is the significance of the prosecution-led investigation as a model for investigating murder cases?

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

- How does the current investigation model used by the SAPS in murder cases compare to the intelligence-led investigation model?
- What is the prosecution-led investigation model?
- What are the international experiences in terms of criminal investigation and prosecution procedures?
- What practical guidelines, procedures and recommendations can be offered to SAPS to successfully investigate murder cases?

## **1.7 KEY THEORETICAL CONCEPTS**

Hagan (2012:18) asserts that the key concepts are the starting point in all scientific endeavors. Similarly, Leedy and Ormrod (2013:43) add that the value of defining the key concepts that are used in a research effort can be found in a text that is read with understanding. The process through which we specify what we mean when we use particular terms in research is called 'conceptualization' (Babbie, 2014:133). Consequently, the key theoretical concepts used in this research are defined below:

### **1.7.1 Criminal investigation**

According to Osterburg and Ward (2010:5), criminal investigation involves the collection of information and evidence for identifying, apprehending and convicting suspected offenders. It is a systematic search for the truth that can assist the court to arrive at the correct conclusion about the crime.

### **1.7.2 Prosecution-led investigation**

Schönteich (2001:1) and the Secretariat of the Anti-corruption Network for Eastern Europe and Central Asia (2010:8-9) define 'prosecution-led investigation' as the process whereby, throughout the investigation, the prosecutor allocated to the case contributes his analytical skills, and his assessment of the elements of the offence and the evidence that is available to support the prosecution of the offence being investigated.

### **1.7.3 Intelligence-led investigation**

To Gunter and Hertig (2005:17) and the Parliamentary Joint Committee on Law Enforcement (2013:5), the intelligence-led investigation forms part of the criminal investigation; however, it is actually designed to collect information about the illegal activities.

### **1.7.4 Evidence**

Evidence is defined by Zinn and Dintwe (2015:442) as the admissible information used by a court of law to reach a decision on any matter brought before the court for adjudication. Evidence can be in the form of oral statements, documents as well as objects.

### **1.7.5 Criminal Justice System**

Dammer and Albanese (2011:2) state that the Criminal Justice System (CJS) is the term used to explain and understand all of the agencies whose goal is to control crime. In the context of South Africa, Joubert (2010:214) identifies the role-players within the CJS as the SAPS, NPA, the Judiciary, and Correctional Services.

### **1.7.6 Prosecution**

Zinn and Dintwe (2015:449) define prosecution as the process of instituting criminal proceedings against a person or organization in a criminal court for the alleged violation of a criminal, common or statutory law.

### **1.7.7 Suspect**

A suspect is a person or organization that is suspected of having committed a crime (Zinn & Dintwe, 2015:451). A suspect is also known as a 'perpetrator' and can only be referred to as the 'accused' once officially charged with a crime.

### **1.7.8 Crime**

Zinn and Dintwe (2015:440) define crime as the unlawful and blameworthy conduct for which punishment is prescribed. It is an act or conduct that is punishable by the State in criminal proceedings.

### **1.7.9 Crime combating**

To Osborne, Deborah and Wernicke (2003:12) and Statistics South Africa (2015:48), crime combating relates to the fighting of crime by the law enforcement agencies as a defensive reaction against criminal behaviour.

### **1.7.10 Investigation**

Investigation is, according to Zinn and Dintwe (2015:445), an act or process of investigating an incident to search out and examine the particulars of that event in order to learn the facts about something hidden, unique or complex, and especially to find a motive, cause or culprit for the incident.

### **1.7.11 Policing**

According to Mawby (2008:17), the term "policing" refers to a process that can be performed by any number of agencies or individuals, and refers to the course of action of preventing crime, investigating crime and maintaining law and order.

### **1.7.12 Model**

Bryant (in Tong, Bryant & Horvath, 2009:15) defines a model as an idealized "template" for best action.

### **1.7.13 Murder**

Burchell (2013:562) defines murder as the unlawful and intentional killing of another person.

## **1.8 BACKGROUND OF THE PROSECUTION-LED INVESTIGATION**

The model “prosecution-led investigation” is not new in South Africa. Its origins date back to 1999 when the former President of South Africa, Thabo Mbeki, announced in his opening address to parliament that a special investigation unit was to be established to deal with national priority crimes. Consequently, the Directorate of Special Operations (DSO) was established within the NPA. Members of the DSO were given the same powers as the SAPS in respect of the investigation of crime, entry, search and seizure, arrests and execution of warrants. Different from the SAPS, the DSO members held official titles such as “Special Investigator,” “Senior Special Investigator” and did not investigate ordinary crimes such as housebreaking and assault.

According to the NPA Annual Report for 2005/06, the DSO primarily focused in the following major areas of crime:

- Organised criminal groups;
- Complex and serious financial crimes;
- Public and private sector corruption; and
- Offences of racketeering and money laundering, created in terms of the Prevention of Organised Crime, Act No. 21 of 1998 (NPA, 2006).

What made the DSO to be uniquely different from the SAPS was that they used a multi-disciplinary approach to the investigation of crime. The rationale behind the directorate was the integration of three traditionally separate functions: intelligence, investigations and prosecutions (Schönteich, 2001:3). This model was widely known as “*troika*” because special investigators, analysts and prosecutors worked together as teams in the projects with prosecutors directing investigations from the onset. On finalization of the investigation, the same prosecutors would adduce the evidence in court, thus ensuring successful prosecution of the offender. In other

words, this meant that they investigated and prosecuted their own cases without requesting assistance from other units or institutions.

Different from the DSO, the SAPS did not and currently does not have dedicated prosecutors, except in the DPCI environment, who are on standby to receive new cases, thus directing the investigation from the outset to the successful prosecution of serious and violent crimes such as murder. Not only the SAPS lacks the dedicated prosecutors but also the Independent Police Investigative Directorate (IPID), a body tasked with investigating misconduct of the police, as confirmed by Glen Angus, the Acting KwaZulu-Natal Provincial Head of the IPID. In the IPID 2013 Strategic Plan, which was tabled in Parliament on 7 May 2013, Glen Angus highlighted the importance of getting the prosecutor involved early in the investigation in order to assist with the investigation of the cases, thus ensuring effective turnaround times (Angus, 2013).

Because of this coordinated approach, the DSO recorded high conviction rates when compared to their counterparts in the SAPS. It is, however, noted that the same approach arguably contributed to the closure of the DSO in 2009. There was a general perception that the involvement of the prosecutors in the early stages of investigation was problematic in that the separation of powers was compromised. Further argument by those who were opposed to this methodology was that one cannot investigate and prosecute the same case, therefore when the case was before the court, a successful conviction was almost guaranteed.

While it is widely accepted that the investigation and prosecution functions should be clearly separated, it is argued that these functions should be integrated in order to be effective and efficient. In this regard, the prosecution-led investigation model appears to be used effectively by other countries. For instance, in the Republic of France, the prosecutor takes a leading role in directing the investigation.

According to the 2012 Report by the French Ministry of Justice, in criminal proceedings, the public prosecutor must be informed immediately of all offences committed, as well as whether the police department is holding any person in custody for the purpose of its investigations (French Ministry of Justice, 2012:10). It is further stated that the office of the prosecutor will then consider the case and

decide on the charges and what direction to take the case. The prosecutor may decide to prosecute or decline to prosecute, in accordance with the principle of prosecutorial discretion.

## **1.9 LIMITATIONS OF THE STUDY**

Limitations affect how far researchers are able to generalize their conclusions and how confident they can be about the reliability of the conclusions (Hofstee, 2011:87). Marshall and Rossman (2016:85) opine that by pointing out the study's limitations, it demonstrates that the researcher understands that there are no perfect research designs. During the course of this research study, the researcher encountered various limitations. To increase the trustworthiness of this study, the researcher deems it necessary to report these limitations as follows:

- Lack of adequate financial support for travelling to conduct intensive research. Although financial support was provided by the University of South Africa, it was not enough to cover all expenses relating to the research project. The researcher used his own funds to pay some of the expenses incurred, including travelling expenses.
- Reluctance of the participants to be tape-recorded. To counter this restriction, the researcher made use of field notes and asked the same question differently to determine the accuracy of the responses.
- Difficulties in securing appointments for face-to-face interviews with some of the participants. The researcher had to constantly interact with the participants to secure their cooperation. In some instances, the researcher opted for email and telephonic interviews, as alluded to by Creswell (2014:191) and Flick (2014:234), due to the non-availability of some participants for face-to-face interviews.
- Before the researcher could commence with one of the interviews, a SAPS participant advised that he could not continue with the interview, due to an emergency. As a result, the participant requested the deputy of the designated participant to act on his behalf, although he is a non-commissioned officer.
- Although the researcher had requested a sample of five NPA participants, only three were made available by the NPA. However, this limitation had little or no impact on the results of the research, as these participants are experts in the

prosecution-led investigation model, thus they fall in the purposive sample category.

- The police departments of some countries that were selected to form part of the study declined to grant interviews to the researcher. This happened after the researcher had gathered voluminous literature from various international and national articles, policies, books and pieces of legislation about their criminal investigation and prosecution procedures. In this case, the United States of America (USA), represented by the Los Angeles Police Department (LAPD), flatly declined to grant the interview on the basis that they would not benefit from the study. The Tanzania Police Force (TPF) indicated that the office of their Inspector-General of Police was being relocated to another city. For this reason, they also declined to grant the interview. As a result, the researcher decided to include both LAPD and TPF as part of literature review.

The limitations mentioned above had little impact on the actual research process and did not affect the generalisation of the results of the study. This is so because the researcher envisaged that such limitations were possible and had to put into place measures to guard against them.

## **1.10 RESEARCH STRUCTURE**

In order to ensure that the research report is well-structured and the research aims, objectives and questions are addressed properly, this thesis is divided into the following chapters:

### **Chapter 1: General orientation of the prosecution-led investigation model in murder cases**

In this chapter, the problem statement, research aims, purpose of the research, research objectives and research questions are discussed. Key theoretical concepts, background of the prosecution-led investigations and limitations to the study are also discussed. The research structure is highlighted in the conclusion to the chapter.

## **Chapter 2: Methodological framework of the study**

In this chapter, the philosophical worldview offered in the study is presented. It is followed by the research approach and design, data collection, data analysis and data interpretation. In the conclusion of the chapter, methods to ensure validity and reliability are extensively explained, together with the ethical considerations applied during this study.

## **Chapter 3: Investigation of murder in South Africa**

This chapter firstly discusses the origins of criminal investigation, development of criminal law in South Africa and the SAPS legislative and policy framework relating to criminal investigation. Understanding criminal investigation, elements of murder and investigation phases in murder is also discussed. In addition, the current murder investigation model used by the SAPS, skills required to be a competent investigator, duties and functions of the investigator in a murder investigation and the intelligence-led investigation model are discussed. In the conclusion of the chapter, the current investigation model used by the SAPS in murder cases is compared with the intelligence-led investigation model.

## **Chapter 4: Meaning of the prosecution-led investigation**

This chapter investigates the legal framework relating to the prosecution service, the objectives of prosecution, and the importance of the relationship between the investigator and prosecutor. Furthermore, the process of prosecution and the prosecution-led investigation model are discussed. The advantages and disadvantages of the prosecution-led investigation model are also discussed. To conclude the chapter, the prosecution-led investigation model for murder cases in the form of operational steps is proposed.

## **Chapter 5: Criminal investigation and prosecution procedures: An international comparison**

This chapter explores the criminal investigation and prosecution procedures of the following countries: United Republic of Tanzania; United States of America; Republic of Malawi and Republic of France. Subsequently, a synopsis of the

comparison between criminal investigation and prosecution procedures in Republic of Malawi, Republic of France and Republic of South Africa is highlighted.

### **Chapter 6: Research findings, recommendations and conclusion**

This chapter analyses, interprets and discusses the findings and recommendations. It further provides a conclusion in respect of the outcome of the study.

## **CHAPTER 2**

### **METHODOLOGICAL FRAMEWORK OF THE STUDY**

#### **2.1 INTRODUCTION**

In Chapter 1, the researcher discussed the general orientation of the study. The problem statement that formed the basis of the study, the research aims; the purpose of the research and the research objectives were discussed. In addition, the research questions that the researcher intended to answer were also discussed. In concluding the chapter, the researcher discussed key theoretical concepts, the background of the prosecution-led investigation, limitations of the study, and the research structure.

In this Chapter, the philosophical worldview pertaining to the study is presented. It is followed by the research approach and design, data collection, data analysis and data interpretation. In conclusion, the methods to ensure validity and reliability are extensively explained, together with the ethical considerations applied to this study. The application of these methodological aspects is addressed to resolve the specific research problem and achieve the set research objectives in answer to the researcher's questions in this study.

#### **2.2 PHILOSOPHICAL WORLDVIEW OFFERED IN THE STUDY**

According to Creswell (2009:6), most researchers use terms such as 'paradigms,' 'epistemologies,' 'ontologies,' 'approach' and 'research methodologies,' however, the term 'worldview' is the most suitable. This author goes further to explain that this term means 'a set of beliefs that guide action.' Creswell (2014:5) persuasively argues that in planning a study, the researchers have to think through the philosophical worldview assumptions that they bring to the study, the research design that is related to this worldview, and the specific methods or procedures of research that translate the approach into practice. Creswell (2014:6) further argues that the worldviews that arise are based on the following factors: disciplined orientation, students' advisors/mentors' inclinations, and past research experiences.

Various worldviews are found in social research. For instance, Creswell (2014:6) mentions pragmatic worldview, transformative worldview, constructivist worldview and post-positivist worldview as the most widely discussed worldviews in literature. These worldviews are discussed below.

### **2.2.1 Pragmatic worldview**

To Creswell (2014:10), the pragmatism arises out of actions, situations and consequences. In this worldview, researchers look to the 'what' and 'how' to research, based on the envisioned consequences. In the pragmatic worldview, researchers have a choice to select the methods, techniques and procedures of research that could meet their requirements and needs. Creswell (2014:11) holds the view that the pragmatic worldview is best suited to mixed–method researches, as they use both qualitative and quantitative data in order to provide the best understanding of a research problem.

A qualitative approach makes the contact and communication between the researcher and the participants possible. According to Creswell (2013:22), the methodologies used by qualitative researchers are characterised as inductive, emerging, and shaped by the researchers' experience in collecting and analysing data.

### **2.2.2 Transformative worldview**

In summarising the key features of the transformative worldview, Creswell (2014:10) states the following:

- It places central importance on a study of the lives and experiences of diverse groups that have traditionally been marginalised.
- In studying these diverse groups, the research focuses on inequities based on gender, race, ethnicity, disability, sexual orientation, and socioeconomic class that result in asymmetric power relationships.
- The research in the transformative worldview links political and social action to these inequities.

- Transformative research uses a programme theory of beliefs about how a programme works and why the problems of oppression, domination, and power relationships exist.

Research in the transformative worldview is more focused on providing a voice to the marginalised groups. The views of the research participants with regard to their own current and historical experiences shape the way in which data can be collected and interpreted by the researcher.

### **2.2.3 Constructivist worldview**

Walliman (2011:21) submits that constructivism is also called ‘interpretivism,’ ‘relativism’ and ‘idealism.’ In this research, the terms ‘constructivism’ and ‘interpretivism’ will be used interchangeably, as alluded to by Denscombe (2010:121). Creswell (2014:8) states that constructivism is typically seen as an approach to qualitative research. On the other hand, Walliman (2011:21) postulates that in constructivist worldview, the researcher is not observing the phenomena from outside the system but is bound to the human situation he is studying. Arguing his point further, Creswell (2014:6) describes the elements of constructivism as follows:

- Understanding;
- Multiple participants’ interpretations;
- Social and historical construction; and
- Theory generation.

In line with the views expressed by Creswell (2014:8) and Walliman (2011:21), the following points associated with the constructivist worldview were considered during the interaction with the research participants:

- The researcher considered that it is normal for individuals to develop interpretations of their experiences.
- The researcher ensured that he relied as much as possible on the research participants’ views of the situation being studied.
- The researcher initiated the discussion by asking open-ended questions. He then listened carefully to what the participants meaning.

- The researcher understood that his own background would shape his interpretation of the information, due to personal experience. In this case, the researcher was previously employed as a criminal investigator in the SAPS, and for that reason, the researcher's experience and background played a significant role in the interpretation of the information, as alluded to by Withrow (2014:80), who points out that the critical researchers do not attempt to be unbiased but instead believe that they should use their research skills to effect social change.
- Finally, the researcher recognised the fact that the purpose of the interviews was to make sense of the opinions the participants have about their situation.

Because the researcher's intention with this study was to make sense of the opinions that the participants have about the world they work in, consequently, this worldview was appropriate and well suited to this study.

#### **2.2.4 Post-positivist worldview**

Creswell (2014:7) contends 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, Strydom, Fouché & Delpont, 2011:7) explain that in terms of positivism there is a reality that has 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 was appropriate for the present study, as it allowed 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). In terms of this study, the researcher therefore deemed it appropriate to include and approach this research from the following worldviews, namely the constructivist and post-positivist worldviews, which underpinned this study.

## **2.3 RESEARCH APPROACH AND DESIGN**

Research approaches are plans and the procedures for research that span the steps from broad assumptions to detailed methods of data collection, analysis, and interpretation (Creswell, 2014:3). In order to achieve the objectives of this study, it was required of the researcher to carefully apply a relevant research design. To Denscombe (2010:99-100), a good research design does three things: firstly, it provides a description of the various components of the research; secondly, it provides a rationale for the choice of research strategy in relation to the research questions; and thirdly, it explains how the key components of a research project link together.

According to Bless, Higson-Smith and Sithole (2013:130), a research design relates directly to answering a research question. Based on these suggestions it is clear that the nature of data and the problem to be researched will determine the methodology most appropriate for the research, as alluded to by Leedy (1993:139). Vermeulen (1998:10) persuasively argues that there are two main approaches to the research used in social science, namely a qualitative approach and a quantitative approach. However, Creswell (2014:3) holds the view that, in addition to the two main research approaches mentioned by Vermeulen (1998:10), there is also the mixed-methods approach, which incorporates elements of both qualitative and quantitative approaches. These research approaches are discussed below.

### **2.3.1 Quantitative approach**

Henning, Van Rensburg and Smit (2004:3), supported by Delpont and De Vos (in De Vos et al., 2011:48), explain that in quantitative study (i) the focus is on control of all the components in the actions and representatives of the participants, (ii) the variables will be controlled and (iii) the study will be guided by a strong focus on how variables are related. Creswell (2014:4) describes quantitative research as an approach of testing objective theories by examining the relationship among the variables. The quantitative research mainly deals with the generation of statistics by using survey research, using methods such as questionnaires and structured interviews. Since the aim of this research was to explore the phenomenon and not statistical, the researcher is of the view that the research aims and purpose could not be achieved by means of the quantitative approach.

### **2.3.2 Mixed-methods approach**

Mixed-methods research is an approach to inquiry involving collecting both qualitative and quantitative data, integrating the two forms of data, and using distinct designs that may involve philosophical assumptions and theoretical frameworks (Creswell, 2014:4). This writer goes further to say that the use of both qualitative and quantitative approaches provides a more complete understanding of a research problem than either approach alone. This is more so because in qualitative approach, the responses tend to be more open-ended, while in quantitative approach they are closed-ended. Although quantitative and qualitative methods differ in specific areas and are capable of complementing each other, the researcher is of the view that in this study, the mixed-method approach was not ideal, since statistical data were not required to answer the research questions.

### **2.3.3 Qualitative approach**

In quantitative research, researchers collect data (that is, measurements or frequencies) according to a very specific set of steps, and in so doing, attempt to remain as objective and neutral as possible, while in qualitative research, the researchers are more inclined to qualitative approach in which the plan of the research is flexible and circular (Bless et al., 2013:16). To illustrate these points further, Mason (2009:7) provides the following key points about qualitative data:

- It should be systematically and rigorously conducted;
- It should be accountable for its quality and its claims;
- It should involve critical self-scrutiny by the researcher or active reflexivity; and
- It should produce explanations or arguments, rather than claiming to offer mere descriptions.

The researcher is of the opinion that the qualitative approach provides answers to the research problem by way of arguments and well-explained discussions. The aim of qualitative approach is mainly to establish new ways of looking at and understanding a particular phenomenon by means of the analysis of human experiences of their social reality (Creswell, 2003:18 and Kraska & Neuman, 2012:10).

The researcher selected the qualitative approach as it gave him ample time to listen to the sampled participants in order to obtain first-hand information from them. The qualitative approach offered a holistic and in-depth explanation of a complex social world; through its use, the researcher sought to understand, explain and explore the prosecution-led investigation model in murder cases. This approach is also in line with the opinions of Miles and Huberman (1994:27) and Strydom and Delport (in De Vos et al., 2011:391), who assert that qualitative researchers usually work with small samples of people, nested in their context and studied in-depth - unlike quantitative researchers, who aim for larger cases and seek statistical significance.

## **2.4 DATA COLLECTION**

According to Creswell (2009:178), data collection involves the gathering of information from the relevant players within a setting. Data collection is, therefore, a technique of obtaining and analysing information. If researchers apply methodological triangulation, in most cases they refer to various ways of collecting data (Flick, 2014:187). Marshall and Rossman (2016:141) assert that qualitative researchers typically rely on four primary methods for gathering information, namely: participating in the setting, observing directly, interviewing in-depth, and analysing documents and material culture with varying emphases. Creswell (2009:178), in agreement with Denscombe (2002:70), argues that the idea behind the research is to purposefully select participants and sites that will best help the researcher to understand the problem and the research question. To Denscombe (2002:70) and Hofstee (2010:57), data collection may comprise measuring objects, performing archival research, examining an organisation's records, or interviewing participants; accordingly, it is crucial to gain access to documents and people for the purpose of research so that researchers do not engage in speculation on the subject. Kumar (2011:138) identifies two types of data, namely: primary data and secondary data that can be gathered about a situation, person, problem or phenomenon.

According to Blaikie (2010:160), primary data are generated by a researcher or researchers who is/are responsible for the design of the study, and the collection, analysis and reporting of the data. In following the view of Blaikie (2010:160), the researcher collected the primary data to answer the research questions and

considered primary data as valid, since he was personally in contact with the sources of information, such as the face-to-face interviews with the participants, as indicated by Marshall and Rossman (2016:141). In the qualitative study, face-to-face interviews are regarded as the best practical method of primary data collection, due to the physical interaction between the researcher and participants. Using this method, the researcher observes the reaction of the participant when answering the questions. The researcher has an opportunity to ask the participant whether the research question being answered is understood correctly.

With regard to secondary data, Blaikie (2010:160) and Babbie (2010:288) argue that secondary data are raw data that have already been collected by someone else, either for some general information purpose, such as a government census or other official statistics, or for a specific research project. Data collected by other researchers are often used to address new research questions (Maxfield & Babbie, 2012:234-235). These authors further state that secondary analysis of data collected by other researchers has become an increasingly important tool. They contend that numerous criminal justice researchers have re-analysed data collected by others to reduce the high cost of collecting original data, and also due to the fact that data for secondary analysis is readily available. Despite these advantages of collecting the secondary data, Babbie (2010:293), supported by Maxfield and Babbie (2012:236), warns that the disadvantage may emerge in the form of validity. When one researcher collects data for one particular purpose, there is no assurance that the collected data will be appropriate to the next researcher's study (Maxfield & Babbie, 2012:236).

The researcher collected both primary and secondary data to search for common themes. This method of data collection is, according to Hagan (2014:249), called "triangulation." According to Flick (2014:183), triangulation is a combination of various methods, study groups, local and temporal settings, and different theoretical perspectives in dealing with a phenomenon. Triangulation methods assume that it is relatively hopeless to attempt to demonstrate the validity or reliability of one measurement by using only one method (Hagan, 2014:249). While employing the triangulation method, the researcher was aware of the disadvantage surrounding the secondary data, as highlighted by Babbie (2010:293) and Maxfield and Babbie

(2012:236), and took extra care to ensure that the data collected were valid. The following qualitative data-collection techniques, namely literature, interviews and questionnaires were considered in this research and are discussed below:

#### **2.4.1 Literature**

Literature review assists the researcher to identify what is already known about the subject that he is interested on. In other words, it alerts the potential researcher to what is already known about the subject, thereby avoiding repetition. This view is supported by Du Plooy-Cilliers, Davis and Bezuidenhout (2014:101), who submit that the purpose of a literature review is to place the research study at hand into perspective, to determine what other scholars have written on the topic, as well as to identify the main models and theories that are relevant. These views can be interpreted as finding out what is already known and not known about the research topic.

According to Gray (2014:54), the literature review serves the following purposes:

- To demonstrate the key theories, arguments and controversies in the field;
- To highlight the way in which the research area has been investigated to date; and
- To identify inconsistencies and gaps in the knowledge that are worthy of further investigation.

The importance of literature review as shown above indicates that the overall significance of the literature review is to provide insight and a view of the extent of what has been researched. Withrow (2014:28) provides the following scope of source material as part of data collection:

- Books: of all kinds;
- Journals: local, national and international, practitioner-oriented or research-based, popular and academic journals;
- Reports: produced by institutions or organisations of different kinds, including employers, governments, political parties and independent bodies;
- Popular media: the daily and weekly press, magazines, radio and television broadcasts;

- Computer-based materials: Web sites, textbooks and journals;
- Memos, minutes, internal reports: produced by the organisations under study and that are relevant to the research topic;
- Letters, diaries and other personal documents produced by individuals of interest; and
- Experts: provide practical and timely information.

The researcher conducted the literature review, using the following summarised steps as suggested by Creswell (2012:81):

- The researcher identified the key terms that were used to search literature.
- The researcher visited University of South Africa (UNISA) library and Durban Metropolitan libraries to search for literature that covers the research topic, aims, key concepts and questions.
- The researcher identified and critically evaluated the literature for its relevance.
- The researcher organised the selected literature by taking notes on the relevant literature.
- The researcher wrote a summary of the literature for inclusion in the research study.

Since this is a qualitative study, the researcher conducted an extensive literature review. The researcher read and analysed the remarks and the references about the prosecution-led investigation model as it is perceived and implemented in different countries around the globe. It should be stated at this stage that the researcher had, during the conceptualisation of the research topic, conducted the literature review in relation to the prosecution-led investigation model. The aim of the literature review was to determine whether any literature with similar topic exists. No literature with similar research topic could be found.

#### **2.4.2 Interviews**

According to Dantzker and Hunter (2012:126), an interview is the interaction between two individuals where one of them seeks to obtain recognisable responses to the specific questions. The interview is one technique of collecting data that could provide first-hand information from the interviewee. The interview method involves

questioning or discussing issues with people. It could be a very useful technique for collecting data which would probably not normally be accessible by using techniques such as observation or questionnaires (Blaxter, Hughes & Tight, 2006:172).

In agreement with Dantzer and Hunter (2012:126) and Blaxter et al. (2006:172), Creswell (2014:191) states that the interviews can be conducted face-to-face, telephonically, in group interviews and by e-mail on the Internet. Creswell (2014:191) goes on to list the advantages of the interview as follows:

- It allows the researcher to control the line of questioning.
- The participants can provide historical background of the phenomenon.
- It is useful when the participants cannot be observed directly.

According to Dawson (2009:27) there are many types of interviews, and the most common of them are: unstructured, structured and semi-structured interviews. These types of interviews are discussed below:

#### **2.4.2.1 Unstructured interviews**

According to Marshall and Rossman (2016:147), qualitative researchers rely extensively on in-depth interviewing. Unstructured or in-depth interviews are sometimes called “life history interviews” (Dawson, 2009:27). In agreement, Rubin and Rubin (2012:29) state that one of the features of the in-depth qualitative interviews is that the interviewers look for rich and detailed information, not for ‘yes-or-no,’ ‘agree-or-disagree’ responses. Esterberg (2002:89) argues that unstructured interviews are often conducted in a field setting, in conjunction with an observational study. There are no sets of prepared questions in the unstructured interviews, as the questions come naturally during the interview proceedings. According to Dantzer and Hunter (2012:59), the unstructured interviews are less rigid than structured and semi-structured interviews. In unstructured interviews, the questions are open-ended and are generated during the interaction.

#### **2.4.2.2 Structured interviews**

The most commonly used quantitative data-gathering methods in the social sciences are undoubtedly the self-administered questionnaires and the structured

interviews, both of which to keep the researcher at a distance from actual social processes (Blaikie, 2010:205). To Welman and Kruger (2001:160) and Blaikie (2010:25), in a structured interview, the interviewer is restricted to the particular questions and wording as they appear on the interview schedule. This means that the questions in the structured interview are not flexible, they must be asked exactly as written, and the interviewer is prohibited from deviating from the structured questions.

Dantzker and Hunter (2012:58) make a point that most structured interviews are quantitative in that they consist predominantly of closed-ended questions. This view is also held by Dawson (2009:29), who contends that structured interviews are used in quantitative research. Following the advice from Dawson (2009:29) and Dantzker and Hunter (2012:58), the researcher decided not to use the structured interviews, as this study is qualitative in nature.

#### **2.4.2.3 Semi-structured interviews**

According to Leedy and Ormrod (2001:184) and Marshall and Rossman (2016:150), in a semi-structured interview the researcher may augment the standard questions by adding one or more individually tailored questions to obtain clarification or probe a person's reasoning. Esterberg (2002:87) and Hagan (2014:152) submit that the goal of the semi-structured interviews is to explore a topic more openly and to allow interviewees to express their opinions and ideas in their own words.

Dawson (2009:28) is of the view that semi-structured interviews are the most common type of interviews used in qualitative social research. This author goes further to say that in the semi-structured interview; the researcher will have to ask the same questions that have been asked in previous interviews; however, the researcher will also want the interview to remain flexible so that other important information can still be mentioned. It is important to allow the interviewees to voice their experiences in their own words, even though the main questions of the interview would remain the same. The use of semi-structured interview is therefore different from the structured interview in that in the structured interview; the questions cannot be changed or interpreted otherwise. Since this is qualitative research and in order to achieve the objectives of this study, this researcher chose

to use semi-structured interviews so as to allow participants to provide more details and explanations in their own words to answer the research questions.

De Vos (in De Vos & Fouché, 1998:178) and Strydom (in De Vos et al., 2011:240) reason that a pilot study is a prerequisite for the successful execution of a research project. Pilot studies can be useful, not only for trying out strategies, but also to buttress the argument and rationale for a genre and strategy (Marshall & Rossman, 2016:105). Before conducting interviews, the researcher conducted a pilot study involving two SAPS Detective Branch Commanders and one Senior State Advocate from SCCU. The intention of the pilot study was to determine the types of responses that the researcher was likely to get during the execution of the research project, as stated by Marshall & Rossman (2016:105). The responses received from the participants of the pilot study with regard to the sequence of the questions and the wording were used to develop the interview schedules. The intention of the pilot study was to test the comprehensibility of the research questions in the interview schedules and to ensure that the questions were standardised, understandable and relevant to the study. The participants in the pilot study did not form part of the research project.

The researcher conducted semi-structured interviews with the SAPS and NPA participants individually in order to answer the research questions according to their knowledge and experience. The participants were sampled from the target population of the SAPS and NPA.

In addition, the researcher conducted semi-structured interviews with the participants representing the Republic of Malawi (Malawi) and the Republic of France (France) in order to understand their criminal investigation and prosecution procedures and to compare them to the model used in South Africa.

- Malawi was chosen on the basis of being a previously colonised African country and that it is a predominantly English-speaking country. These aspects were similar to the South African perspective.
- France was selected due to the unique early involvement of the prosecutor in criminal investigation and subsequent prosecution of criminal cases.

The researcher sought to establish whether Malawi and France have specific models of murder investigation that are different from the South African perspective. In this case, the researcher wanted to determine how these two countries investigate and prosecute murder cases, considering their legislation and geographical locations.

During the interviews, the researcher considered the following guidelines for a productive interview suggested by Leedy and Ormrod (2013:154-157):

- **Identify some questions in advance**

Novice researchers often have greater success when they prepare a few questions in advance and ensure that all the questions are addressed at some point during the interview (Leedy & Ormrod, 2013:154). The researcher compiled the interview schedules from the research questions. These research questions were relevant to the participants' experiences.

- **Consider how participants' cultural backgrounds might influence their responses**

Be sensitive to the fact that culture may play a significant role in how your participants interpret and respond to your questions, and experiment with multiple ways of asking for the kinds of information you ultimately want to obtain (Leedy & Ormrod, 2013:154-156). The participants consisted of various races, therefore the researcher was, throughout the interviews, fully aware that their cultural backgrounds might influence their responses.

- **Ensure that the participants are representatives of the group**

You should choose people whom you expect to give you typical perceptions and perspectives (Leedy & Ormrod, 2013:156). The researcher used the simple random sampling method to select the SAPS participants, as suggested by Maxfield and Babbie (2011:236). In selecting the NPA participants, the researcher was guided by Maxfield & Babbie (2011:244) to obtain the sample by means of purposive sampling. In this regard, the researcher was satisfied that the chosen sample met the requirement highlighted by Leedy and Ormrod (2013:156).

- **Find a suitable location**

In theory, you can conduct an interview anywhere that people are willing to talk to you (Leedy & Ormrod, 2013:156). Prior to the interviews, the participants were asked to choose suitable locations for their individual interviews. The participants were comfortable to conduct the interviews at their offices.

- **Get written permission**

Explain the nature of the study and your plans for using the results (Leedy & Ormrod, 2013:156). The researcher ensured that the relevant permissions were obtained from the SAPS, NPA, authorities of Malawi and France before interacting with the participants. The purpose of the interviews was explained to the participants and their consent was duly obtained.

- **Establish and maintain rapport**

Begin the conversation with small talk that can break the ice (Leedy & Ormrod, 2013:156). It was imperative for the researcher to establish rapport with the participants to mitigate the uneasiness that is felt when one is confronted by a stranger. Before conducting the interviews with the SAPS participants, the researcher introduced himself and discussed his time in the SAPS' employ before going to the private sector. This reassured the participants that the researcher was not a stranger to the SAPS or to criminal justice as a whole. A similar strategy was used during the interaction with the participants from Malawi and France. With regard to the NPA participants, the researcher reminded the participants that he was previously attached to the CCU in Durban, which is in the same building as SCCU.

- **Focus on the actual rather than on the abstract or hypothetical**

You are more likely to get revealing information if you ask what a person does or would do in a specific situation (Leedy & Ormrod, 2013:157). In this regard, the researcher ensured that the questions in the interview schedules were more specific and related to the professional fields of the participants.

- **Do not put words into people's mouths**

Let people choose their own way of expressing their thoughts (Leedy & Ormrod, 2013:157). The participants were issued with the interview schedules in which they could give their answers according to their understanding of the research questions. Where necessary, the researcher assisted only to explain the research questions.

- **Record responses verbatim**

Whether you use handwritten notes, shorthand, a tape recorder, or a laptop computer, capture everything the person says, especially if the interview is an unstructured one (Leedy & Ormrod, 2013:157). The participants responded to the research questions by handwriting their replies in the interview schedules.

- **Keep your reactions to yourself**

Although you won't necessarily want to maintain a continual 'poker face,' you're more likely to get accurate information if you don't show surprise, agreement, or disapproval of what someone tells you (Leedy & Ormrod, 2013:157). The researcher did not interrupt the participants or offer his own opinions about the research questions and answers provided.

- **Remember that you are not necessarily getting the facts**

As confident and convincing as some of your participants may be, you should always treat their responses as perceptions rather than as facts (Leedy & Ormrod, 2013:157). Throughout the interviews, the researcher was fully aware that the responses of the participants might not necessarily be facts but perceptions.

### **2.4.3 Questionnaires**

According to Ellis, Hartley and Walsh (2010:185), questionnaires are research instruments in which persons from whom researchers are seeking information can provide that information, usually in written form. Blaikie (2010:205) and Welman, Kruger and Mitchell (2005:175) state that the questionnaires have to be prepared in such a way that respondents can complete them without any assistance other than built-in and/or separate, written instructions. Blaxter et al. (2006:64), and (Blaikie, 2010:205) opine that on first consideration, the use of questionnaires as a research

technique might be seen as a quantitative strategy, whereas interviews and observations might be thought of as qualitative techniques.

A key area of concern in the design of the research questionnaires is relevance. Kanjee (in Terre Blanche et al., 2006:485), supported by Maxfield and Babbie (2012:175), lists the following initial tasks that should be considered when designing the questionnaires:

- Clarify the reason for the study.
- Determine the information required from the respondents.
- List the research questions that should be answered.
- Identify any additional information required to address the research questions.

The researcher believed that the use of questionnaires would not be relevant in this study, therefore, conducting interviews with the participants as a method of data collection was deemed suitable and sufficient for this qualitative study.

## **2.5 POPULATION AND SAMPLING PROCEDURES**

A population can be defined as the total number of possible units or elements that are included in the study (Gray, 2014:148). According to Dantzker and Hunter (2012:110), a population is a complete group or class from which information is to be gathered. Expressing their view, Saris and Gallhofer (2014:9) state that they believe that one possible issue that has to be considered when conducting research is to decide whether to report about the population as a whole or about a specific subgroup. Consequently, the ideal population in this research is all Detective Branch Commanders who deal with and had dealt with and investigated cases of murder, as well as all NPA prosecutors but such a number of participants would be too big and impossible for the researcher to handle, because of budget and time constraints. The researcher therefore decided on a target population.

The target population is the population to which the researcher ideally would like to generalise the results of the study (Welman & Kruger, 2000:122). Houser (2014:178) agrees and states that the target population includes all individuals or objects that are of interest to the researcher and to whom/which the study results are applied. Owing to the large number of police stations and NPA offices in which

these Detective Branch Commanders and prosecutors are based, the researcher concluded that it would be impractical, expensive and time-consuming to conduct interviews with all of them.

By making use of and adhering to the views expressed by Welman and Kruger (2000:122) and Houser (2014:178), the researcher chose the province of KwaZulu-Natal (KZN) to generalise and interpret the results of the target population. The accounting police stations (also known as 'cluster stations') and NPA prosecutors in KZN were chosen because, at the time of registering this study, the researcher resided in the province of KZN, therefore the costs and time required to conduct the interviews would be reduced. KZN is also the place where the problem was identified.

The target population for this study consisted of the following:

- All Detective Branch Commanders from KZN accounting police stations. These Detective Branch Commanders are Commissioned Officers.
- All NPA prosecutors in the province of KZN attached to SCCU, situated in Durban. In SCCU, most prosecutors hold the ranks of State Advocates and Senior State Advocates.

The researcher decided to make use of sampling methods on the basis that a sample is a selection of elements from a population that is used to make a statement about the whole population, as alluded to by Blaickie (2003:161). The basic principle of sampling is that it is possible to produce accurate findings without the need to collect data from each and every member of a survey 'population' (Denscombe, 2010:23).

The following are summarised main advantages of sampling, as compared to the collection of data from the whole population, as described by Bless et al. (2013:98-99):

- Gathering of data from a sample is less time-consuming.
- Gathering data from a sample is less costly, since the costs of research are proportional to the number of hours spent on data collection.

- Sampling may be the only practical method of data collection.
- Sampling is a practical way of collecting data when the population is infinite or extremely large, thus making a study of all its elements impossible.

According to Blaxter, Hughes and Tight (2001:162) and Maxfield and Babbie (2012:133) there are two main groups of sampling, namely probability sampling and non-probability sampling. Blaxter et al. (2001:162-163) and Maxfield and Babbie (2012:145-153) further assert that the probability sampling approach is widely understood as a probability random sampling where every individual or object in the population of interest has an equal chance of being chosen for study, while non-probability sampling is used when the researcher lacks a sampling frame for the population in question, or where a probabilistic approach is not deemed to be necessary.

Maxfield and Babbie (2011:236-238) list types of probability sampling, as follows:

- Simple random sampling;
- Systematic sampling;
- Stratified sampling;
- Disproportionate stratified sampling; and
- Multi-stage cluster sampling.

On the other hand, Blaxter et al. (2001:162-163) and Maxfield and Babbie (2012:153-156) are of the view that the following constitute non-probability sampling:

- Convenience sampling;
- Voluntary sampling;
- Quota sampling;
- Purposive sampling;
- Dimensional sampling; and
- Snowball sampling.

The researcher chose both simple random sampling as a probability method, and purposive sampling as a non-probability sampling. These sampling methods are discussed below:

### **2.5.1 Simple random sampling**

For the simple random sample, the participants consisted of the Detective Branch Commanders of the KZN accounting police stations. These accounting police stations were chosen because the researcher resided in the KZN province, therefore the cost and time spent on conducting interviews were reduced. The accounting police stations generally record the highest number of violent crimes, such as murder. Each accounting police station has an average of seven police stations under its control.

The Detective Branch Commanders of the accounting police stations were chosen because:

- they hold higher police ranks, such as Captains, Lieutenant-Colonels and Colonels, and are likely to have investigation experience and academic qualifications;
- they are required to do monthly inspection of case dockets to establish the progress of investigation as well as to identify problems that the investigators might have;
- they act as mentors to the investigators under their command;
- case dockets are submitted to them for their certification before going to court and vice versa; and
- in general, Detective Branch Commanders are seasoned police officers, notwithstanding the fact that some of them might not have been previously involved in the investigation of cases; however, this presumed shortcoming is negated by internal training they have to attend before being appointed as Detective Branch Commanders.

In selecting the Detective Branch Commanders, it was important for the researcher to consider that the intention of the study is to, among other things, influence the policy-makers. Consequently, individuals in strategic positions such as the

Detective Branch Commanders might provide answers to the research questions, as opposed to the investigators, who are the fieldworkers.

In order to select a simple random sample, a list of all accounting police stations in KZN was obtained to establish the sampling frame. Once the sampling frame had been established, a simple random sample was produced by assigning a single number to each element in the frame, not skipping any number in the process (Maxfield & Babbie, 2011:236).

At the time of this study there were twenty-six accounting police stations in KZN. The names of these accounting police stations were placed in a box and ten names were selected randomly to form a sample. The following KZN accounting police stations were subsequently selected:

- Umlazi SAPS;
- Durban Central SAPS;
- Brighton Beach SAPS;
- Ladysmith SAPS;
- Eshowe SAPS;
- Newcastle SAPS;
- Plessislaer SAPS;
- Ulundi SAPS;
- Empangeni SAPS; and
- Vryheid SAPS.

In this way, each selected KZN accounting police station was represented by its own Detective Branch Commander. During the interviews, the researcher confirmed that out of ten participants, nine have academic qualifications ranging from the National Diploma: Police Administration to postgraduate degrees. All of them had attended the mandatory Detective Course and some have attended the Detective Commanders Course. In addition, at the time of the interviews, the SAPS participants collectively had more than three hundred and five (305) cumulative years of experience in the SAPS and one hundred and sixty-nine (169) years of experience as Detective Branch Commanders. The researcher believed that the

sample of participants is a good sample and that it is in line with the views of Bless and Higson-Smith (1995:87) and Blaikie (2010:185), who state that good sampling implies the following:

- A well-defined population;
- An adequately chosen sample; and
- An estimate of how representative of the whole population the sample is.

As a result, the simple random sample consisted of ten SAPS participants and is categorised in this study as Sample A.

### **2.5.2 Purposive sampling**

The second sampling technique used in this research was the purposive sampling. This type of sampling is also known as ‘judgemental sampling’ and it involves selecting specific elements of a target population (Hagan, 2014:117). Occasionally it may be appropriate to select a sample on the basis of our own knowledge of the population, its elements, and the nature of our research aims - in short, based on our judgement and the purpose of the study (Maxfield & Babbie, 2011:244). As a result, the purposive sampling was made up of the NPA prosecutors who are attached to the SCCU, which is situated in Durban in the province of KZN.

At the time of this study, there were fourteen prosecutors attached to the SCCU, and five of them were selected to participate in this research. The reason for this number is purely mathematical, as it is a fair fraction of 30% of SCCU prosecutors in Durban. The SCCU prosecutors were selected because the “prosecution-led investigation model” is currently used in the SCCU offices across the country as an effective investigative approach to commercial crimes. The SCCU, in cooperation with the CCU, adopted this model in response to the increasing number of commercial crime cases.

These SCCU prosecutors have experience in the execution of the prosecution-led investigation methodology. As reflected in paragraph 1.9 of Chapter 1, which deals with the limitations of the study, the NPA offered only three prosecutors to be interviewed. However, the researcher believes that this sample was still good as, at the time of the interviews, these prosecutors were all seasoned Senior State

Advocates who had more than thirty years combined experience in the prosecution-led investigation model. In addition, these NPA participants hold Bachelor of Laws (LL B) degrees, which is the minimum requirement to be appointed as a State Advocate. The purposive sample of the NPA thus consisted of three NPA participants and is categorised in this study as Sample B.

Furthermore, the researcher made use of the purposive sampling method to conduct interviews with each participant representing the police departments of Malawi and France. Before interviews could be conducted, requests were sent to each country to provide the researcher with details of each senior police officer who had more than ten years' experience in criminal investigation. The researcher considers ten years' experience as reasonable and sufficient for having sound judgement in respect of criminal investigation methodology. The reason for this request was to ensure that the researcher conducts interviews with relevant representatives of police departments who are knowledgeable of the criminal investigation procedures used in their respective countries. Both Malawian and French police representatives were senior officers, with more than twenty years and twenty-three years of experience in the criminal investigation, respectively. They both belong to the specialised units, namely: Homicide Section (Malawi Police Service) and *Police Giudiciare* (French National Police). Accordingly, the researcher categorised these participants as follows:

- Representative of Malawi Police Service: Sample C.
- Representative of French National Police: Sample D.

In total, this means that in this study the simple random sample and purposive samples consisted of fifteen participants.

## **2.6 DATA ANALYSIS**

Qualitative data analysis is the interpretation and classification of linguistic (or visual) material, with the following objective: to make statements about implicit and explicit dimensions and structures of meaning-making in the material and what is represented in it (Flick, 2014:370). Qualitative methods are applied not only for data collection but also for data analysis (Mariampolski, 2001:7 and Blaikie, 2010:211). In this regard, Marshall and Rossman (2016:214) state that the process of bringing

order, structure, and interpretation to a mass of collected data is messy, ambiguous, time-consuming, creative, and fascinating. Marshall and Rossman (2016:215) go further to state that in qualitative studies, data collection and analysis typically go hand in hand, as the researcher builds a coherent interpretation. According to Ellis et al. (2010:236), studies classified as 'content analyses' use written or other symbolic communication as data. Esterberg (2002:168) and Marshall and Rossman (2016:166) believe that data analysis includes activities such as looking for patterns in data (similarities and differences), comparing cases, building typologies and conducting a content analysis. In order to achieve these activities, Miles and Huberman (1994:50) and Marshall and Rossman (2016:216) recommend the "early data analysis" in qualitative research. Miles and Huberman (1994:50) further state that the "early data analysis" helps the researcher in the following ways:

- Cycle back and forth between thinking about the existing data and generating strategies for collecting new, often better data;
- It could be a healthy corrective for built-in blind spots;
- It makes analysis an on-going, lively enterprise that contributes to the energizing process of fieldwork; and
- Permits the production of interim reports that are required in most evaluation and policy studies.

Consequently, data analysis begins with the process of data capture, as alluded to by Flick (2014:371). In this study, the researcher analysed the qualitative data by means of content analysis. Esterberg (2002:171) and Babbie (2010:333) describe content analysis as generally involving a systematic analysis of any written material such as books, magazines, diaries, letters, minutes of meetings, transcripts of television programmes, interview transcripts, and field notes.

During the analysis phase, the researcher analysed written material as and when it became available, in line with the views expressed by Esterberg (2002:168), Miles and Huberman (1994:50) and Marshall and Rossman (2016:166). Since understanding the data analysis forms an integral part of the research, as it provides the basis the findings and recommendations of the research, the researcher used

the following steps of data analysis, as described by Creswell (2014:197-200) to ensure the best possible results:

- Step 1: Data were organised and prepared for analysis.
- Step 2: All data were read in order to get ideas and impressions.
- Step 3: Data were coded by means of categorisation.
- Step 4: During the coding process, a description of the setting or people, as well as categories or themes, were generated for analysis.
- Step 5: The description and themes were then presented in the qualitative narrative.
- Step 6: In this final step, the results were interpreted.

## **2.7 DATA INTERPRETATION**

Marshall and Rossman (2016:207) and Miles and Huberman (1994:11) postulate that from the start of data collection, the researcher to decide what things mean and notes regularities, patterns, explanations, possible configurations, causal flows, and propositions. According to Henning et al. (2004:106), and Creswell (2014:178), once all the sets of data have been coded and categorised, the researcher is left with the important task of seeing the whole, and in interpreting the data, the following questions should be asked:

- What are the relationships in meaning between all these categories?
- What do they say together?
- What do they say about each other?
- What is missing?
- How do they address the research question (s)?
- How do these categories (together) link with what the researcher already knows about the topic?
- What has been foregrounded in the analysis?
- What has moved to the background?
- What additional data gathering and/or analysis has/have to be completed?

The interpretation of the data was guided by deduction, logical reasoning, systematisation and in-depth analysis of the above questions, as alluded to by Henning et al. (2004:106), and Creswell (2014:178).

## **2.8 METHODS TO ENSURE VALIDITY (CREDIBILITY)**

According to Ellis et al. (2010:124), validity refers to the degree to which one is measuring what is intended to be measured. Validity of qualitative data depends on the methodology applied by the researcher, and the accuracy of data determines the validity of the research (Patton, 2002:11). According to Kumar (2011:184), one of the areas of difference between quantitative research and qualitative research is in the use of, and the importance given to, the concepts of validity and reliability. The procedures for assessing validity and reliability may, according to Singleton and Straits (2010:145), seem so complex and cumbersome to the extent that some researchers find it difficult to pass beyond this stage of research.

Schurink, Fouché and De Vos (in De Vos et al., 2011:419) remark that two qualitative researchers, namely Lincoln and Guba, suggest four indicators, namely credibility, transferability, dependability and confirmability, in a qualitative study to determine trustworthiness, and it is these four indicators that reflect validity and reliability in qualitative research.

Maxfield and Babbie (2012:212) and Vithal and Jansen (2010:32) state that validity is an attempt to check out whether the meaning and interpretation of an event is sound, or whether a particular measure is an accurate reflection of what you intend to find out. If a highly unreliable measure cannot be valid, how can you measure something accurately if the results fluctuate wildly? (Singleton & Straits, 2010:131). Silverman (2000:188) asserts that the procedure and methodology that the researcher used must be clearly described in such a way that when another researcher repeats the research, he would produce the same outcomes. To strengthen the validity of findings, Silverman (2013:289-296) mentions the interrelated ways of critical thinking about qualitative data analysis, namely: refutability principle, the constant comparative method, comprehensive data treatment, deviant case analysis and using appropriate tabulations. These interrelated ways are discussed below, followed by the indicators of trustworthiness.

### **2.8.1 Refutability principle**

One solution to the problem of anecdotalism is simply for qualitative researchers to seek to refute their initial assumptions about their data in order to achieve objectivity (Silverman, 2013:289). According to Creswell (2014:201), to strengthen the accuracy of data in qualitative research, the researcher must conduct follow-up interviews with participants in the study and provide an opportunity for them to comment on the findings.

The researcher ensured that all participants were contacted. The aim of the follow-up interviews was to verify the validity of the information that the participants had submitted during the first round of interviews, even though some of them were reluctant to be re-interviewed. Nonetheless, the intention of the researcher was to ensure that he had sufficient and correct information to strengthen the validity. Besides all these interventions, Silverman (2013:289) points out that the knowledge gathered is provisional, subject to the subsequent study, which may come up with baffling evidence.

### **2.8.2 Constant comparative method**

Silverman (2000:180) postulates that the researcher should continuously inspect, compare and analyse all the data as obtained. The comparative method means that the qualitative researcher should always attempt to find another case with which to test out a provisional hypothesis (Silverman, 2013:290). In this study, the researcher ensured that all data were inspected for accuracy, compared and analysed. Firstly, the same standardised interview schedules were used specifically for the selected samples. In other words, the researcher developed and administered the same interview schedule for all participants of Sample A and the same method was applied for Sample B. For the purpose of international comparison, the researcher used the same interview schedules for Sample C and Sample D, considering the differences in legislation relating to criminal investigation and prosecution procedures that govern the countries of the participants. In this regard, the researcher ensured that in the interview schedules, the names of the police departments in Samples C and D were recorded correctly.

The researcher is of the view that in order to measure something accurately, consistency has to be applied. The answers provided by the participants were measured and compared to ensure that they answered the research questions as alluded to by Fink (1995:50), who states that to obtain validity, the researcher has to employ standards that have a meaningful link to the research questions.

### **2.8.3 Comprehensive data treatment**

Silverman (2013:292) points out that in qualitative research, the researcher works with smaller data sets as compared to quantitative research; for that reason, the researcher should not be satisfied until one generalisation can be applied to every single piece of relevant data collected. According to Steyn (2002:71), the results of a research study can be generalised to groups that participated in the research. The generalisation occurs when qualitative researchers study additional cases and generalise findings to the new cases (Creswell, 2014:204).

Care was taken to ensure that the participants were credible and had knowledge of the phenomenon under study. The researcher deemed the selected samples to be correct and is of the view that any researcher will arrive at similar findings when conducting additional research, following a similar research process in a similar context.

### **2.8.4 Deviant-case analysis**

To Silverman (2013:292), the qualitative researcher should not be satisfied with the explanations that appear to explain nearly all the variances in their data but they should use every piece of data until it can be accounted for. Peräkylä (in Silverman, 2011:369) states that after having established a pattern, the researcher's next task is to search for and examine deviant cases: cases where 'things go differently' - most typically, cases where an element of the suggested pattern is not associated with the other expected elements.

During the interviews with participants, the researcher was mindful of the non-verbal communication that the participants might have expressed when answering questions. Equally, the researcher was also cautious of triggering reactions that might influence the responses of the participants. The researcher analysed all data that were obtained through interviews and literature review to identify any deviant

cases. To strengthen the validity of the research, the researcher made use of content analysis. Throughout the study, the researcher remained as objective as possible.

#### **2.8.5 Using appropriate tabulations**

Silverman (2013:296) states that it is a mistake to count for the sake of accounting. He further states that without a theoretical rationale behind the tabulated categories, counting only gives a spurious validity to research. He urges that qualitative researchers should not close their eyes to the importance of using quantification in the qualitative research. Simple counting techniques, theoretically derived and ideally based on members' own categories, could offer a means to survey the whole corpus of data ordinarily lost in intensive qualitative research (Silverman, 2013:298). In this regard, the researcher included counting techniques derived from the interviews as alluded to by Silverman (2013:296-298).

#### **2.8.6 Credibility/authenticity**

Credibility deals with the congruence of the findings with reality (Shenton, 2004:14). 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 as to ensure that the participants had been accurately identified and described. In this research, participants were selected from the SAPS and NPA. In the CJS, the SAPS is mandated to conduct criminal investigation, while the NPA is responsible for the prosecution of the alleged offenders. The researcher believed that in order to answer the research questions, the participants from these two institutions were most suitable. The researcher increased the credibility of the findings by means of prolonged engagement and persistent observation in the field, triangulation of different methods, making use of formalised qualitative methods, and member checks.

#### **2.8.7 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. To ensure transferability, the researcher ensured

that personal information of the participants such as qualifications and experience was obtained and considered. Even though the researcher encountered problems with this data collection, such as that some of the participants were of the view that the personal information such as age and race was too sensitive, the majority of them nonetheless answered the questions. The researcher is of the view that the findings can be transferred from a specific situation to another.

## **2.9 METHODS TO ENSURE RELIABILITY (DEPENDABILITY)**

Reliability of data is influenced by the following variables: the researcher, the participant, the measuring instrument, the research context and the circumstances under which the research is conducted (Leedy & Ormrod, 2005:92). According to Singleton and Straits (1999:114) and Gray (2014:184), reliability is concerned with questions of stability and consistency. It has to do with the question of whether repeated applications of the operational definition under similar conditions yield the same results.

'Dependability' is the concept used in qualitative research in relation to reliability (Botes, 2003:183). Ritchie, Lewis, Nichollis and Ormston (2014:354-355) are of the opinion that reliability remains relevant for qualitative research if the researcher can show the audience as much as possible of the procedures that have led to a particular set of conclusions, which is what the researcher intended to do in his research.

### **2.9.1 Dependability**

According to Marshall and Rossman (2016:262), the researcher must be prepared to discuss how he or she plans to account for changing conditions in the phenomenon chosen to study and changes in the design caused by an increasingly refined understanding of the setting. 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 he has chosen for his research. The researcher ensured the dependability of this research by making sure that the questions in the interview schedules were consistent in each category of samples. These were in

addition to the pilot study, also first submitted to the supervisor for evaluation before being used as instruments in the study. All the processes that the researcher followed were documented accordingly.

### **2.9.2 Conformability**

Confirmability, which is similar to replicability, requires that other researchers or observers be able to obtain similar findings by following a similar research process in a similar context (Bless et al., 2013:237). It is only possible if both researchers follow the process in an identical manner for the results to be compared (Kumar, 2011:185). To ensure confirmability, the researcher should keep detailed record of all the literature consulted. As a result, the researcher will be able to prove that the findings and interpretation of the findings did not derive from his imagination but are clearly linked to the data, as viewed by Liamputtong (2013:26). During data collection, the researcher was open-minded and avoided leading the participants to the answers that the researcher wished to acquire. In this way, the study was completely guided by the literature review.

To achieve reliability, the researcher firstly ensured that the selected samples were appropriate for the study. Secondly, the researcher ensured that the interviews were consistent and that the interview schedules for all participants in each sample were the same. The researcher further ensured that the questions in the interview schedule for international comparison followed a similar pattern. The data were thoroughly and consistently interpreted so that the raw data and the meanings that the participants attached to it could be dependable and consistent.

### **2.10 ETHICAL CONSIDERATIONS**

According to May (2011:61), ethics is concerned with an attempt to formulate codes and principles of moral behaviour. To adhere to the ethical requirements of research, the researcher followed the key principles of research ethics as stipulated in Denscombe (2010:331-337), summarised as follows:

- **Participants' interests should be protected**

The researcher ensured that the SAPS, NPA and individuals participating in the study would not suffer any personal or reputational harm, either then or in future.

The researcher ensured that the relevant permission to conduct the study was granted by the SAPS and NPA. The relevant permissions are categorised as follows:

- SAPS: Research Division Head Office (Annexure A).
- SAPS: KwaZulu-Natal Provincial Commissioner (Annexure B).
- NPA: Head Office (Annexure C).

- **Participation should be voluntary and based on informed consent:**

The participants were requested to give informed consent by means of the consent form (Annexure D). The participants were informed about the nature of the research, the choice of participating in the research, the choice of withdrawing at any time, and that participation was voluntary.

The researcher produced a brief summary of the aims of the research and the nature of data to be collected. To achieve this, he compiled an interview schedule for each interview. The interview schedules are marked as follows:

- SAPS (Attachment A);
- NPA (Attachment B);
- MPS (Attachment C); and
- FNP (Attachment D).

- **Researchers should operate in an open and honest manner with respect to the research**

The researcher did not use other researchers' work without acknowledging them in this study.

- **Research should comply with the laws of the country:**

The researcher strictly complied with the legislation governing intellectual property rights and copyright matters. The researcher also complied with legislation relevant to the research.

Furthermore, the researcher also complied with ethical principles as provided for in UNISA's policy on ethics (UNISA, 2007). Ethical Clearance was obtained from the

Ethical Clearance Committee of the College of Law, UNISA (Annexure E). This thesis was submitted to originality checking software. A Turnitin Digital Receipt was subsequently issued (Annexure F).

The investigation of murder in South Africa will be discussed in Chapter 3. The origins of criminal investigation, development of criminal law in South Africa, and SAPS' legislative and policy framework relating to criminal investigation will also be discussed. This will be followed by discussion on an understanding of criminal investigation, a definition of murder, the elements of murder, and the investigation phases in murder. In addition, skills required to be a competent investigator, the duties and functions of the investigator in a murder investigation, the current murder investigation model used by the SAPS and the intelligence-led investigation model will be discussed. In the conclusion to the chapter, the current investigation model used by the SAPS in murder cases versus the intelligence-led investigation model, forms part of the discussion.

## CHAPTER 3

### INVESTIGATION OF MURDER IN SOUTH AFRICA

#### 3.1 INTRODUCTION

“Suspect released in Richmond murder case, investigation continues: Police ...” (Petersen, 2017:1). This was the headline on the Web site of East Coast Radio on 6 April 2017, referring to the release of a 36-year old suspect from custody who had been arrested in connection with the murder of Richmond Municipality's Deputy Mayor. Petersen (2017:1) further states that the suspect was released from custody due to lack of evidence linking him to the murder.

The headline above is one of many shocking incidents that various media houses continuously report about in South Africa. According to Muncie, Talbot and Walters (2010:2), crime appears to be a constant source of anxiety, fascination and national and international despair. For many years, criminal investigation has proved to be one of the difficult tasks in the CJS. Far more problematic are the intangible processes that have a critical impact on the way an investigation proceeds (Monckton-Smith, Adams, Hart & Webb, 2013:1). In the context of this study, the headline above indicates that there is a problem in the investigation of murder cases. Notably, not much has been said about formulating strategies to curb this problem. Violent crime is a deeply emotive topic, and graphic illustrations of it abound on television and cinema screens and in newspapers, colouring the political and criminal justice responses not just to violence but to crime in general (Levi & Maguire (in Maguire, Morgan & Reiner, 2002:795)).

The continuous negative reports by various media houses regarding the manner in which murder investigations is conducted by the SAPS and subsequent release of the suspects, justify the importance of understanding the current murder investigation model used by the SAPS. While criminal investigation has been widely described and explained by various authors, there is no evidence that suggests that the current murder investigation model used by the SAPS has been thoroughly researched.

This chapter will explore and provide a descriptive analysis of the investigation of murder in South Africa. It will endeavor to answer the sub-research question: “How does the current investigation model used by the SAPS in murder cases compare to the intelligence-led investigation model?” as described in paragraph 1.6 of Chapter 1. To put the discussion into perspective, the researcher firstly discusses the origins of criminal investigation, the development of criminal law in South Africa, and the SAPS’ legislative and policy framework relating to criminal investigation. This is followed by the discussion on an understanding of criminal investigation, a definition of murder, the elements of murder and the investigation phases in murder. Furthermore, the skills required to be a competent investigator, the duties and functions of the investigator in a murder investigation, the current murder investigation model used by the SAPS, and the intelligence-led investigation model will be discussed. In the conclusion to the chapter, the current investigation model used by the SAPS in murder cases versus the intelligence-led investigation model will also be discussed. The following discussion relates to the origins of criminal investigation.

### **3.2 ORIGINS OF CRIMINAL INVESTIGATION**

It would be impractical to attempt to accurately determine the origins of criminal investigation. However, various authors have tried to make sense of what might be accepted as the origins of criminal investigation. Gilbert (2010:2) states that the vast history of criminal investigation can be appreciated only in the light of our distant past. Long ago, the principle of ‘an eye for an eye’ meant that criminals were punished in the same manner as their offence (Anderson, Dodd & Roos, 2012:7). Gilbert (2010:2) further states that in ancient times, criminal investigation started by the groups known as *tribes or clans*. If a member of a particular family violated the moral code of a tribe, the other family members were held responsible for detection, apprehension, and even execution of the offending member (Gilbert, 2010:2).

This practice meant that entire communities could be held responsible for the criminal conduct of individual family members. As a result, communities were then obliged to investigate among themselves and identify the responsible family member who had committed the criminal act. Gilbert (2010:2) goes further to state that as civilization developed, social and cultural traditions were codified into formal

laws, and countries such as Egypt and Greece assigned criminal detection responsibilities almost exclusively to military units.

According to Osterburg and Ward (2014:13), the concept of criminal investigation can be traced back thousands of years to early times in China and other parts of Asia, as well as the Middle East, where agents of governments used illegal means of identifying transgressors of public order, based on confessions. According to Bryant (in Tong, Bryant & Horvath, 2009:13), in the past, criminal investigation was dominated by a reactive model of investigation. Bryant (in Tong et al., 2009:13) further asserts that this model relied on confessions as a means to secure a conviction.

While it is almost impossible to establish the exact origins of criminal investigation, most scholars agree that European countries played a major role in discovering and shaping criminal investigation to what it is today (Hale, 1994:3; Gaines & Miller, 2005:109 and Reid, 2003:11). According to Jones and Johnstone (2012:15), the roots of Western civilization reach deep into antiquity, as do the problems of crime and punishment. It is significant that the idea of criminal investigation was born out of crime and violence. However, according to Reid (2003:9), to be convicted of crime, a person must violate the criminal law.

During ancient times, the punishment for a crime was very harsh and criminals were punished without facts surrounding the incidents being ascertained. It became increasingly clear that a new and more organized approach to dealing with crime was needed (Hale, 1994:3). Historical development of criminal investigation can therefore be studied by looking at some key figures that were involved in general investigative activities and provided innovative ways that changed the way criminal investigation was conducted by succeeding generations.

### **3.2.1 Jonathan Wild - England**

During the eighteenth century, major population movements began to occur in Europe. According to Gilbert (2007:2), people moved from rural areas to metropolitan cities in search of better opportunities, and the most affected cities were London in England, and Paris in France. Gilbert (2010:3) states that these population shifts were called the 'Industrial Revolution.' In this regard, Gunter and

Hertig (2005:3) assert that Jonathan Wild was a buckle-maker who was living in rural England and then moved to London.

The migration of the masses came with challenges such as increased levels of crime. Gilbert (2010:4) states that during this period, people could not venture into the streets of London without the fear of being victimized. The increased levels of crime caused the governments to move beyond traditional night-watches and use the military units to maintain law and order and combat crime. The government of England, in an attempt to stop the floodtide of crime, introduced a system for refunding the expenses of prosecutors and witnesses, known as the 'Parliamentary Reward System' (Gilbert, 2010:3). Lushbaugh and Weston (2012:4) submit that the Parliamentary Reward System was established in 1689 for the conviction of crimes such as robbery, burglary, and counterfeiting.

According to Gilbert (2007:3), the intention of the Parliamentary Reward System was to reward the officials and the victims who made efforts to catch and prosecute those responsible for these crimes. In essence, the Parliamentary Reward System paid for the apprehension of criminals. London authorities later realized that the System was being abused by the police officials, and as a result it was abolished in 1818 (Gilbert, 2007:3). To counter this problem, Gilbert (2007:3) states, London authorities introduced modern criminal investigation, which was widely known as "Thief-takers." Thief-takers were private individuals who charged a fee to trace the thief and recover the stolen property (Gilbert, 2010:3).

Gunter and Hertig (2005:3) assert that Jonathan Wild, who came to London to run a brothel, was recruited by the police officials as a Thief-taker. He became London's most effective investigator in the 1720s and died in 1748. His method of operation was, upon learning of the theft, to persuade the thieves to give him the stolen goods in return for a portion of the money paid by the victim for the return of the property. According to Gilbert (2010:3), Jonathan Wild's actions made popular the logic of "sending a thief to catch a thief." He, like other Thief-takers to follow, was found guilty of stealing the very items returned to grateful owners (Gilbert, 2010:4).

### **3.2.2 Henry Fielding - England**

According to Osterburg and Ward (2014:14), Henry Fielding, a well-known writer, was appointed as the magistrate of the Bow Street court in London in 1748. During this time, London's streets were rife with criminal activities that were escalating on an almost daily basis. Henry Fielding tried to deal with the rising crime rate by enlarging the scope of the government's crime-fighting methods and assigning to his court a few constables who had been accustomed to night-watchman duties, to perform some criminal investigative functions (Osterburg & Ward, 2014:14).

These Runners, as they came to be known, were also used to guard the King and to investigate various crimes such as robbery and murder (Lushbaugh & Weston, 2012:4). According to Tong (in Tong et al., 2009:3), the Runners were considered to be one of the first organized attempts at policing and provided the basis on which to create the Detective Branch of the Metropolitan Police. Gilbert (2010:6) states that Henry Fielding relinquished control of the Bow Street court to his brother, Sir John Fielding, in 1753. Sir John Fielding also served as magistrate of the Bow Street court for more than twenty-five years and was knighted for his efforts in fighting crime (Lushbaugh & Weston, 2012:4). Although Henry Fielding played a significant role in developing criminal investigation functions, his brother, Sir John Fielding, took the credit and was considered the father of the modern police detective (Lushbaugh & Weston, 2012:4).

### **3.2.3 Eugene Vidocq - France**

According to Dempsey (2003:4), Eugene Francois Vidocq, a former convict, voluntarily became a police informer in Paris after his release from prison in 1809. He used his knowledge of the underworld and provided information to the police regarding the activities of the criminals and later on, authorised by the police, to arrest criminals. At that time, like in any other industrialisation that was taking place in Europe, France had a very serious problem of crime. In particular, the streets of Paris were inaccessible due to the high level of crime. As a result of Eugene Francois Vidocq's unprecedented success in criminal investigation, more than eight hundred criminals were arrested. The *Police de Sûreté* (Security Police), France's new police detective bureau, was created in Paris in 1817 under the leadership of Eugene Francois Vidocq (Dempsey, 2003:4 and Gilbert, 2010:5).

According to Dempsey (2003:4), Eugene Francois Vidocq believed that serious crimes could best be fought by the criminals through his investigative methods. He employed twenty discharged convicts from whom he later created the nucleus of his private investigation company. Dempsey (2003:4) further states that Eugene Francois Vidocq would then arrest his own men on bogus charges and send them to prison, where they served as spies, gathering information on crimes and criminals inside and outside of prison. As a result of his investigative methods, police officials in Paris grew envious of Eugene Francois Vidocq's ability to trace and arrest criminals.

After ten years of active detective work, Eugene Francois Vidocq resigned from his post, much to the relief of the Paris police, and started his own private investigative business; however, he was arrested a number of times for suspected criminal conduct (Gilbert, 2010:5). Gilbert (2010:5) further states that Eugene Francois Vidocq's-mémoires, which were published in Paris in 1829, did much to popularise his methods of criminal investigation. The following discussion looks at the development of criminal law in South Africa and its link to the investigation of crime.

### **3.3 DEVELOPMENT OF CRIMINAL LAW IN SOUTH AFRICA**

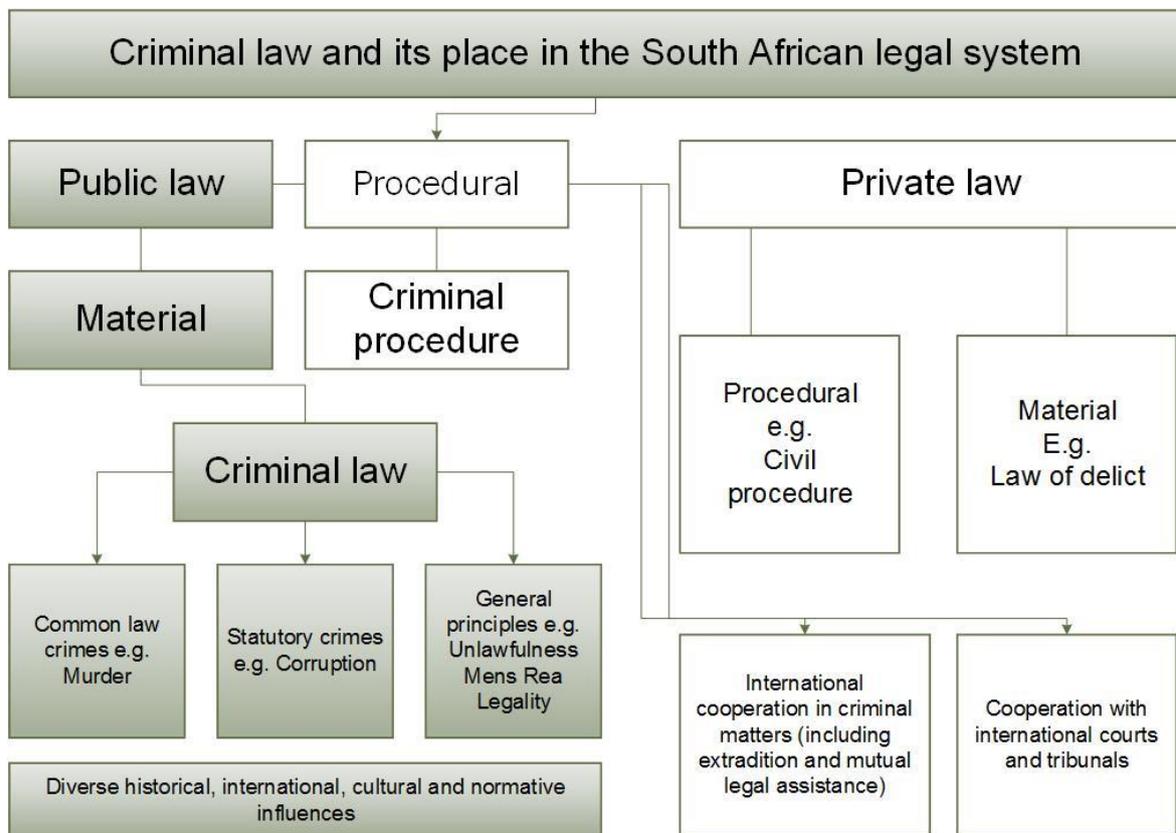
First of all, it is necessary to define criminal law before its development in South Africa be discussed. This is because a criminal investigation cannot be conducted if there is no violation of criminal law. For this reason, criminal investigation cannot be isolated from criminal law.

#### **3.3.1 Definition of Criminal Law**

The study of criminal law generally focuses on substantive law, namely the principles of law according to which criminal liability (guilt or innocence) is determined, while the law of criminal procedure, together with the law of evidence, generally focus on the procedures used to determine criminal liability and develop theories concerning punishment (Kemp, Walker, Palmer, Baqwa, Gevers, Leslie & Steynberg, 2015:4). Kleyn and Viljoen (2010:98) and Burchell (2011:1) define criminal law as the branch of national law that defines certain human conduct as crimes and provides for the punishment of those persons with criminal capacities who unlawfully and with a guilty mind commit crime.

While the researcher understands the existence of international criminal law and its role in the South African legal system, this study is focused more on the national legal system that describes the circumstances and procedures according to which the State may punish a person who has committed an offence. Kemp et al. (2015:4), state that criminal law usually refers to internal or domestic criminal law, which is governed by the legal system of the country concerned. For this reason, international criminal law is excluded.

Various authors on the subject of criminal law differ significantly among themselves as to where exactly some divisions of the law fit into the overall classification. However, Jordaan and Dintwe (in Zinn & Dintwe, 2015:257) state that criminal law falls within the sphere of public law. In agreement, Kemp et al. (2015:5), state that criminal law and its place in the South African legal system form part of public law. Kemp et al. (2015:5), further illustrate their point as per Figure 3.1 below:



**Figure 3.1: Criminal law and its place in the South African Legal System**

(Source: Kemp et al., 2015:5)

Looking at the location of criminal law in Figure 3.1 above, it is clear that it prohibits certain human conduct. Murder as a prohibited conduct is clearly highlighted in the common-law crimes segment. According to Snyman (2015:5), criminally punishable human conduct is sometimes referred to as a “crime” and sometimes as an “offence.” Essentially, the criminalisation of human conduct in modern societies arises in response to four main factors or pressures:

- The protection of basic human interests;
- Public morality;
- The promotion of public welfare; and
- The need to ensure the preservation of the State (Kemp et al., 2015:7).

Meintjes-Van der Walt, Singh, du Preez, de Freitas, Chinnian, Barrat, Govindjee, Iya, de Bruin, & Van Coller (2011:218) argue that the aim of criminal law is to define individual behaviour that goes against the law, so that offenders who break the law can be punished. Anything done outside the mandate of the law is unlawful (illegal) and may, depending on the facts, constitute a crime, which is punishable by the State (SAPS, 2015a:5). According to Burchell (2011:10), criminal law can be regarded as an administrative system that involves the following functions:

- **Law enforcement:** This function involves the monitoring of the public’s observance of the law and, where necessary or appropriate, the enforcement of laws through the use of force, the investigation of crime and the arrest and interrogation of suspected offenders.
- **Prosecution of offenders:** This is a process involving various procedures for determining whether a person, said by the police to have committed a crime, did indeed do so, and the determination of the punishment to be inflicted for having done so.
- **Punishment of the convicted:** Since punishment involves deprivation of liberty, property or the infliction of suffering, the elementary principles of fairness require that only those that deserve punishment should suffer it.

In the South African context, crimes are classified as common-law crimes or statutory-law crimes. Common laws are those laws that are not codified, originating from Roman-Dutch and English laws. Kleyn and Viljoen (2010:80) classify murder,

robbery and rape as common-law crimes. Statutory-law crimes can be defined as written laws that are passed by Parliament in order to prohibit certain types of conduct. For example, offences relating to the driving of a motor vehicle are classified as statutory offences. Joubert (2014:2) states that common law is the historical component of the South African law, evolving from a variety of older legal systems in Europe. This author further submits that common-law and statutory-law crimes form part of criminal law. According to Kemp et al. (2015:6), criminal law was developed because of two main factors, namely:

- The desire for vengeance; and
- The pervasive influence of religious beliefs and practices.

### **3.3.2 Old South Africa and law**

South Africa is one of the African countries that were previously colonised. According to Meintjes-Van der Walt et al. (2011:33), the colonisation of South Africa started with the arrival of settlers who wanted to protect themselves against those who were suspected of stealing their property. The old South Africa was made up of four provinces, namely: Cape Colony, Natal, Orange Free State and Transvaal. These provinces are discussed below as follows:

#### **3.3.2.1 Cape Colony**

According to Kleyn and Viljoen (2010:31), the territory of the Netherlands lies in Western Europe and first formed part of the Western Roman Empire. These authors further submit that in 1579, the independence of the Republic of the United Netherlands, which consisted of seven provinces, namely Holland (Dutch), Utrecht, Zeeland, Gelderland, Groningen, Friesland and Overijssel, came into existence. From this submission, it can be argued that the Republic of the United Netherlands was influenced by Roman law since it was initially part of the Western Roman Empire. However, according to Joubert (2014:3), in Holland, the Roman law was incorporated and adjusted to become the law of that province and referred to as “Roman-Dutch law.”

At the beginning of the seventeenth century, the Dutch parliament delegated its authority over foreign territories to the Dutch East India Company (Rautenbach,

2012:13). The criminal law of Holland, as it was in the year 1652, was the seed of the modern South African criminal law when it was planted in the Cape of Good Hope by Dutch settlers who had come to colonise this part of Africa (Burchell, 2011:32). One of the settlers to arrive in South Africa was Jan van Riebeeck in April 1652. It can therefore be argued that the industrialisation in South Africa started during the arrival of Jan van Riebeeck, who was an employee of the Dutch East India Company, the *Verenigde Oostindische Compagnie* (VOC). According to Meintjes-Van der Walt et al. (2011:18), the VOC introduced the legal system of Holland to the Cape Colony and later to the interior of Southern Africa. The arrival of more Dutch settlers necessitated the formation of Dutch Watch, a paramilitary organisation, to protect themselves against any potential attacks. Lochner (2014:4) submits that the main purpose of Dutch Watch was to guard the Cape Colony's borders and to combat and investigate stock theft.

After the British occupation of the Cape Colony, English law started to influence the legal development in Southern Africa (Meintjes-Van der Walt et al., 2011:31). According to Swanepoel, Lötter and Karels (2014:6), when the British colonised the Cape in 1795, they promulgated the first Charter of Justice in terms of which a court system was implemented and English court procedures were introduced. In order to exert their influence further, British settlers took control of Dutch Watch, which later became Cape Town Police Force.

As in any other industrial development in the world, the Cape Colony experienced an increase in various crimes. During this period, the form of court procedures that were used to fight crime was inquisitorial. Burchell (2011:32) states that in 1795 the British settlers replaced this form of procedure with the accusatorial procedure that was applied in England without formally replacing the Roman-Dutch law. The basic system of criminal law remained Roman-Dutch, but the English influence was significant, at least initially, in both form and substance (Burchell, 2013:8).

Defining inquisitional procedure, Ally and Mokoena (2013:2) state that it is the process in a criminal procedure where the presiding officer actively participates in the proceedings, which include determining the order in which cross-examining is to proceed, the scope and the type of questions that may be asked, and the witnesses who may testify in court. In agreement, Schwikkard and Van der Merwe

(2002:10) assert that the inquisitorial model is judge-centred; it proceeds from the premise that a trial is not a contest between two opposing parties but essentially an inquiry to establish the material truth.

Explaining the accusatorial procedure, Swanepoel, Mokoena, Karels and Basdeo (2012:5) assert that the presiding officer is in the role of detached umpire who should not enter the arena of the fight between the prosecution and the defence, for fear of not being impartial or losing perspective as a result of all the dust caused by the fray. When the police complete their investigation, they pass the case docket to the prosecution to decide on the appropriate charges. In court, the criminal trial takes the form of a contest between two theoretically equal parties (the prosecution and the defence) who do the questioning, in turn leading their own witnesses and cross-examining the opposition's witnesses (Swanepoel et al., 2012:5).

### **3.3.2.2 Natal, Orange Free State and Transvaal**

Meintjes-Van der Walt et al. (2011:33), state that the Dutch settlers who were not happy to live under British rule decided to leave the Cape Colony and went on to establish the independent territories of Natal, Orange Free State and Transvaal. The migration of the Dutch settlers to other parts of Southern Africa ensured that the Roman-Dutch law did not diminish. However, their independence was short-lived, as British settlers invaded them, in the process extending the English law practices. On 1 April 1883, trafficking and smuggling in firearms and stock theft led to the creation of the police force in Natal, and this police force was tasked with investigating and combating these crimes (Lochner, 2014:4). This author goes further to state that the discovery of gold in the then Transvaal and Orange Free State led to the establishment of police forces under the *Locale Wetten der Zuid-Afrikaansche Republiek*, Act No. 1 of 1871. Later on, these police forces were reorganised to conform to the Metropolitan Police model and shifted their functions from military to that of a police function, including criminal investigation.

### **3.3.2.3 Union of South Africa**

Meintjes-Van der Walt et al. (2011:34), state that the territories of Natal, Orange Free State, Cape Colony and Transvaal united in 1910 to form the Union of South Africa. According to Kleyn and Viljoen (2010:32-33), the Union was established by

an Act passed by the British Parliament and proclaimed as the Union of South Africa. Section 59 of the Union of South African Act of 1909 prescribed that the British Parliament was the sovereign legislative authority in South Africa. In terms of this arrangement, the police, prosecution, courts and correctional services (prisons) reported to one minister, namely the Minister of Justice. In 1961, the Union of South Africa became a Republic in terms of the Constitution of the Republic of South Africa, Act No. 32 of 1961 (Rautenbach, 2012:15). This author goes further to state that the Citizenship of National States Act, No. 26 of 1970, an Act passed by the South African parliament, linked blacks for internal constitutional purposes to the self-governing territories of the various black groups by means of citizenship.

The discussion above indicates that criminal law in South Africa is a truly mixed system. In this regard, Burchell (2013:8-9) and Ally and Mokoena (2013:6) assert that it blends Roman-Dutch, English and uniquely South African elements, which all require testing against the norms and values of a justifiable Bill of Rights. Anderson et al. (2012:7), point out that some acts have been recognised as crimes for many centuries. These crimes include murder, theft and assault, and are considered common-law crimes. In the following discussion, the researcher explores the SAPS legislative and policy framework relating to criminal investigation.

### **3.4 SOUTH AFRICAN POLICE SERVICE LEGISLATIVE AND POLICY FRAMEWORK RELATING TO CRIMINAL INVESTIGATION**

Statistics have shown that over the years, the crime problem has exceeded the capabilities of the CJS. It appears that the deterrent majors such as risks of being arrested and sentences posed after the conclusion of court trials are not enough to curb criminal conduct. Just as in most countries of the world, the South African CJS is based on four pillars, namely: the police, the prosecution service, the courts and the prison system. These pillars provide direction as to how the law should be applied by the State. Meintjes-Van der Walt et al. (2011:5), list the following main functions of law:

- Setting pre-existing, impartial rules, based on criteria that can be used to judge and settle conflicts;
- Protecting the rights and freedoms of the individual;
- Facilitating, or making change possible;

- Protecting society by serving as a framework that defines orderly conduct;
- Providing a mechanism to legitimise actions by the State;
- Protecting and preserving the legal system; and
- Providing institutions and procedures to settle disputes.

Even though the responsibility of crime lies within the CJS as a whole, the first line of defence against criminal conduct is the SAPS. This means that police officials have to be professional and disciplined in the execution of their duties. According to Swanepoel et al. (2014:3), the police officials' role in the proper functioning of the CJS cannot be overstated. These authors further assert that without police officials, criminal law, criminal procedure and the law of evidence would become moot, and a sovereign State would descend into chaos. Commenting on the legislative and policy framework, Newburn, Williamson and Wright (2011:xxv) assert that criminal investigation is a subject that figures extensively in government policy, in the media and in the public imagination.

The following discussion relates to the South African Police Service's Code of Conduct, Criminal Procedure Act No. 51 of 1977, Interim Constitution of the Republic of South Africa, Act No. 200 of 1993, South African Police Service Act No. 68 of 1995, National Crime Prevention Strategy, Constitution of the Republic of South Africa of 1996, and the White Paper on Safety and Security.

### **3.4.1 South African Police Service Code of Conduct**

Underpinning the conduct of the SAPS members is the Code of Conduct, which directs how the SAPS members should conduct themselves. The SAPS Code of Conduct states as follows:

We, as Police Officials of the SAPS commit ourselves to the creation of a safe and secure environment for all people in South Africa by –

- Participating in endeavours to address the root causes of crime in the community;
- Preventing action which may threaten the safety or security of any community; and
- Investigating criminal conduct which has endangered the safety or security of the community and bringing the perpetrators thereof to justice.

In realisation of the aforesaid commitment, we shall at all times –  
uphold the Constitution and the law;  
be guided by the needs of the community;  
give full recognition to the needs of the SAPS as my employer; and  
cooperate with the community, government at every level and all other  
related role-players.

In order to achieve a safe and secure environment for all the people of  
South Africa we undertake to-  
with integrity, render a responsible and effective service of high quality  
which is accessible to every person and continuously strive towards  
improving this service;  
utilise all the available resources responsibly, efficiently and cost-  
effectively to maximise their use;  
develop our own skills and participate in the development of our fellow  
members to ensure equal opportunities for all;  
contribute to the reconstruction and development of, and reconciliation in  
our country;  
uphold and protect the fundamental rights of every person;  
act impartially, courteously, honestly, respectfully, transparently and in an  
accountable manner;  
exercise the powers conferred upon us in a responsible and controlled  
manner; and  
work actively towards preventing any form of corruption and to bring the  
perpetrators thereof to justice (SAPS, 2014b).

Taking the Code of Conduct of the SAPS into consideration, it can be deduced that  
police investigators should operate within a clearly defined legal framework in order  
to gather evidence for the purpose of prosecution in court. In addition, they have to  
keep up to date with all changes in the legislation that might have an impact on their  
investigations.

### **3.4.2 Criminal Procedure Act No. 51 of 1977**

As previously indicated, prior to 1994 democracy South Africa consisted of four  
provinces. However, for the purpose of segregation, ten homelands were created  
by the then government. These homelands were divided into self-governing

territories and independent states. Natal, Cape Colony, Orange Free State and Transvaal were the only provinces that were recognised in the old South Africa. The independent states consisted of Transkei, Bophuthatswana, Venda and Ciskei while the self-governing territories comprised KwaZulu, QwaQwa, Lebowa, Gazankulu, KaNgwane and KwaNdebele.

The homelands had their own policing agencies, which effectively brought the number of policing agencies to eleven, including the then South African Police (SAP) (Brewer, 1994:284). The policing agencies of the homelands were financially dependent on the South African government. The SAP members were seconded to the homelands' policing agencies to provide training that was more focused on the use of force, in terms of the Criminal Procedure Act No. 51 of 1977 (CPA).

The CPA makes provision for procedures and related matters in criminal matters (South Africa, 1977). According to Joubert (2014:6), the criminal procedure regulates, *inter alia*, the duties and powers of the criminal courts and prosecutorial authority; the duties and powers of the police, especially in the course of the investigation of a crime; the rights of suspects and arrested persons. The CPA is the body of rules that determine how a person suspected of having committed a crime is investigated, brought to court, prosecuted, convicted or acquitted, sentenced if convicted, and whether and how he or she may apply for a review or appeal (Swanepoel et al., 2014:5). The latter are of the view that the purposes served by the CPA are as follows:

- The CPA provides a process that vindicates substantive criminal law goals;
- It provides a dispute-resolution mechanism that allocates scarce resources efficiently and that distributes power among State officials; and
- State-citizen disputes can be resolved in a manner that commands the communities' respect for the fairness of process and the reliability of the outcomes.

Swanepoel et al. (2012:3), further assert that the CPA is sometimes referred to as the Criminal Procedure Code, which might imply that it is the sole source of criminal procedure rules. Benson, Jones and Horne (in Dintwe & Zinn, 2015:10) state that while various role-players in official investigations derive their powers and functions

from different pieces of legislation, government policy or organisational/institutional policy, there are two primary pieces of legislation with which all investigations have to comply, namely the Constitution of South Africa and the CPA. While this statement includes investigators in both private and public sectors, these two pieces of legislation are not optional in the SAPS but have to be complied with at all times. For instance, the police investigators' powers of search and seizure are derived from sections 21 and 22 of the CPA. These two sections clearly refer to the police officials, thereby excluding forensic investigators. For that reason, police investigators must have a comprehensive understanding of when to apply these pieces of legislation.

### **3.4.3 Interim Constitution of the Republic of South Africa, Act No. 200 of 1993**

During the transition to the new democratic regime, South Africa had to undergo transformation along the political and social lines in order to prepare itself for a new constitutional dispensation. To lay the foundation of the transformation, the Interim Constitution of the Republic of South Africa, Act No. 200 of 1993 (Interim Constitution) was agreed upon by the majority of the political parties who were involved in the negotiations regarding the new constitutional state. The Interim Constitution introduced a new system of government that was aimed at taking South Africa from its apartheid past into a future based on equality and democracy (Meintjes-Van der Walt et al., 2011:45). Although this Interim Constitution was agreed upon by the various political parties in November 1993, it only came into operation on 27 April 1994. The Interim Constitution served as a foundation to allow sufficient time for further negotiations to take place and the formulation of the final constitution. The Interim Constitution further required the State to establish various institutions to protect human rights.

In respect of the police, the Interim Constitution established a single National Police Service for South Africa. Section 214 of the Interim Constitution provided the establishment of the SAPS, which was to be structured at both national and provincial levels, and function under the direction of the national government as well as the various provincial governments. Section 215 of the Interim Constitution stipulates the powers and functions of the police, as follows:

- Prevention of crime;
- The investigation of any offence or alleged offence;
- The maintenance of law and order; and
- The preservation of the internal security of the Republic (South Africa, 1993).

The provision of section 215 of the Interim Constitution clearly indicates that during the transition phase towards the democratic South Africa, the SAPS members were obligated to execute their duties and functions in accordance with the then Interim Constitution.

#### **3.4.4 South African Police Service Act, No. 68 of 1995**

The South African Police Service Act, No. 68 of 1995 (SAPS Act) originated in response to the Interim Constitution, which required legislation to provide for the establishment and regulation of the SAPS to be structured at both national and provincial levels and function under the direction of the national government as well as the various provincial governments (South Africa, 1995). The SAPS Act was assented by the President of South Africa on 4 October 1995 (South Africa, 1995).

Swanepoel et al. (2012:16), submit that the national police is an independent government organ that is under the ultimate control of the relevant cabinet minister. According to the SAPS Act, the activities of the national police include the following:

- Ensure the safety and security of all persons and property in the national territory;
- Uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Interim Constitution;
- Ensure cooperation between the Service and the communities it serves in the combating of crime;
- Reflect respect for victims of crime and understanding of their needs; and
- Ensure effective civilian supervision over the Service (South Africa, 1995).

While it is remarkable that the SAPS members derive their powers of investigating crime from the CPA, the SAPS Act also authorises them to conduct the investigations. According to Ally and Mokoena (2013:42), members of the SAPS have the power to search, without a warrant, any person, premises, other place,

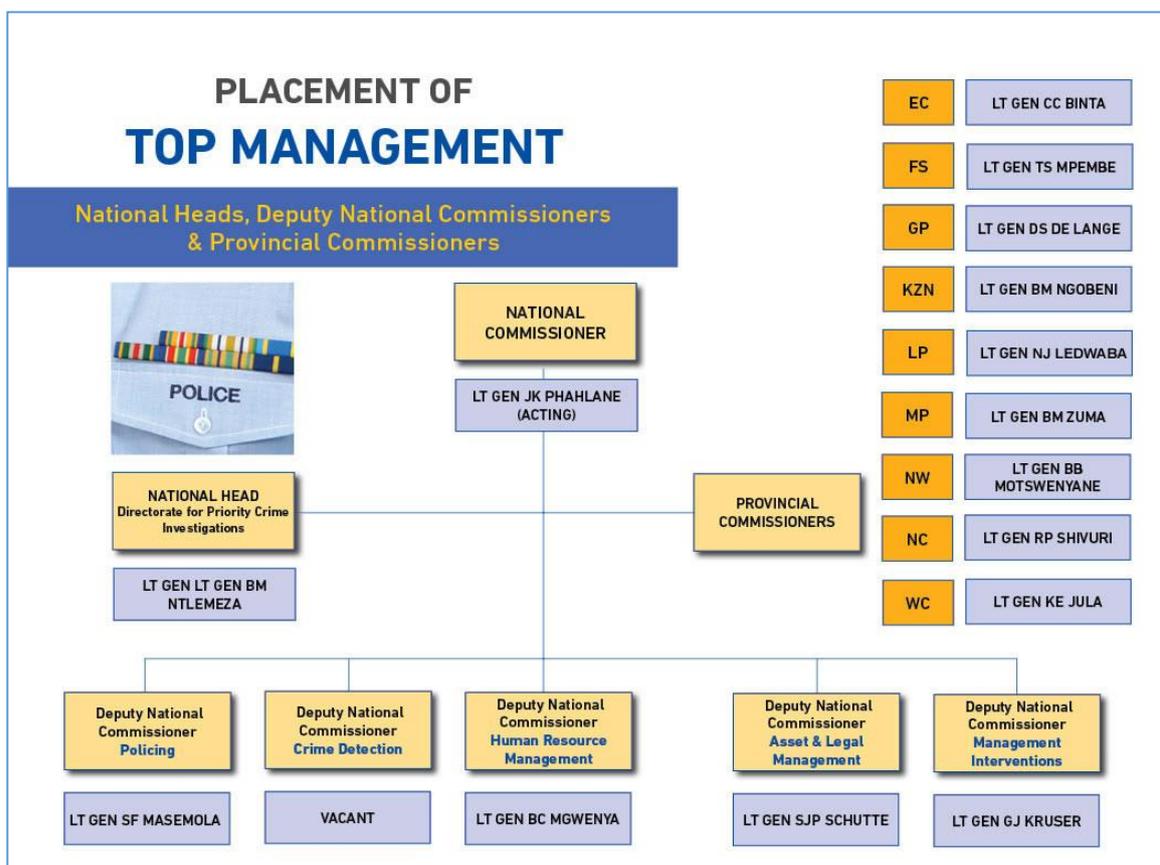
vehicle, vessel or aircraft, or any receptacle or object of whatever nature or circumstances. According to the SAPS Act, the National Commissioner of the SAPS, who is the accounting officer, is based at Head Office in Pretoria, Gauteng. The SAPS is also represented in all nine provinces of South Africa. These provinces are KwaZulu-Natal, Limpopo, Western Cape, Eastern Cape, North West, Mpumalanga, Gauteng, Northern Cape and Free State. Each province has its own Provincial Commissioner managing the activities of the service within the province. All operational divisions have their Provincial Heads in each province and report to their respective Heads in Pretoria.

The SAPS Act has numerous times been amended, which affected its investigative structure. More significant are the SAPS Amendment Act No. 57 of 2008 and the SAPS Amendment Act No. 10 of 2012, which were both ratified by the President of South Africa on 30 January 2009 and 14 September 2012 respectively. According to the SAPS Amendment Act No. 57 of 2008, the SAPS Act was amended in order to, among others:

- enhance the capacity of the SAPS to prevent, combat and investigate national priority crimes and other crimes, by establishing a separate Division in the SAPS, the DPCI;
- provide for the transfer of powers, investigations, assets, budget and liabilities of the Directorate of Special Operations, established in terms of the National Prosecuting Authority Act No. 32 of 1998 (NPA Act), to the SAPS;
- provide for the appointment of the Head of the DPCI;
- ensure a multi-disciplinary and integrated approach in the prevention, combating and investigation of the above-mentioned crimes by providing for the secondment of personnel from other Government departments or institutions to the DPCI;
- provide for the security screening of and integrity measures for personnel of the DPCI;
- provide for the designation by the President of a Ministerial Committee to oversee the functioning of the DPCI;
- provide for Parliamentary oversight in respect of the activities of the DPCI;

- provide for the establishment of a mechanism to deal with complaints of a serious nature pertaining to the DPCI; and
- provide for transitional arrangements, including the selection of personnel, to implement the Act.

According to the SAPS Amendment Act No. 10 of 2012, this amendment was in response to the Constitutional Court judgement, which found that the DPCI lacked the necessary operational independence to fulfil its mandate without undue influence (South Africa, 2012). Both the SAPS Amendment Act No. 57 of 2008 and the SAPS Amendment Act No. 10 of 2012 effectively created two investigative components within the SAPS, namely the Detective Service and the DPCI. These investigative units are responsible for general investigation of crime and priority crimes, respectively. For the purpose of this study, the researcher focused on the Detective Service. Figure 3.2 below illustrates the organisation chart of the SAPS.



**Figure 3.2: Organisation chart of the SAPS**

(Source: SAPS, 2016)

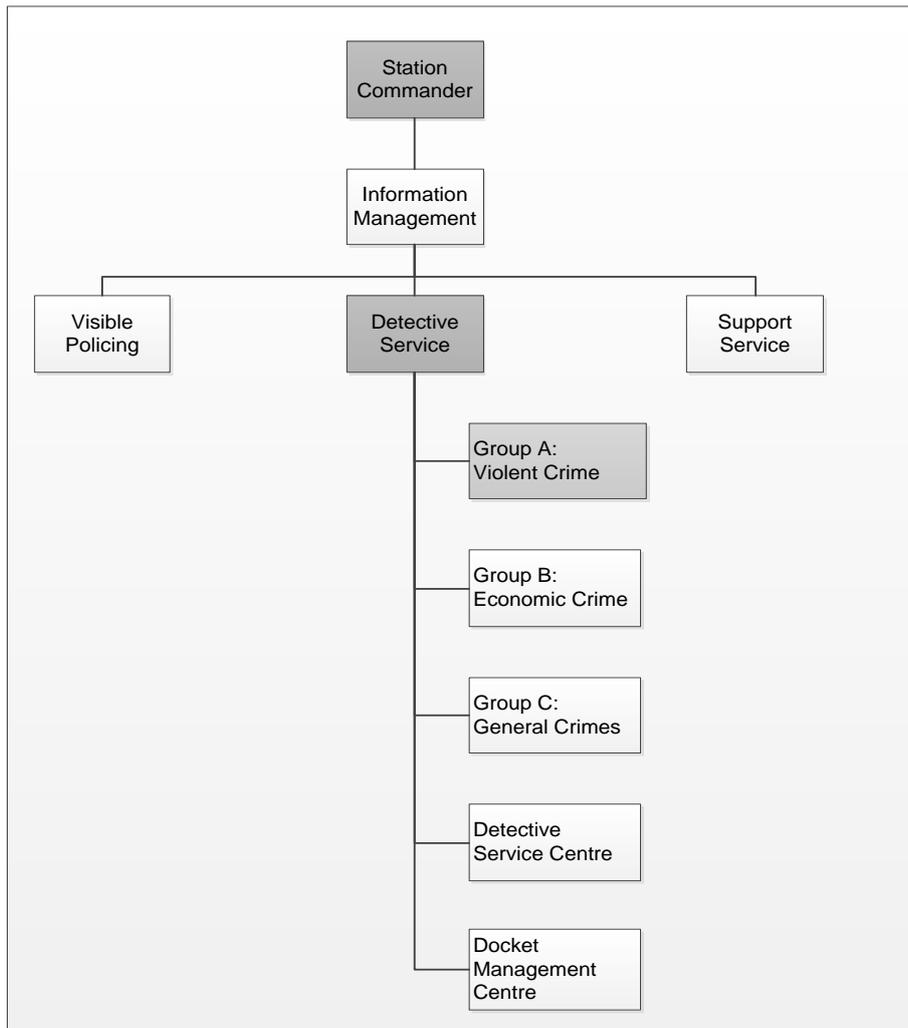
Figure 3.2 above shows that the National Commissioner is the Head and Accounting Officer of the SAPS and directly reports to the Minister of Police. Under the National Commissioner, there are five Deputy National Commissioners who directly report to the National Commissioner. These Deputy National Commissioners are responsible for Policing, Crime Detection, Human Resource Management, Asset and Legal Management and Management Interventions.

According to South African Broadcasting Corporation (SABC) (2016), the then Acting National Police Commissioner, Lieutenant-General Kgomotso Phahlane, had on 2 February 2016, announced that the organisation chart depicted in Figure 3.2 above would once again be restructured to be in line with what he termed “Back to Basics Approach.” Lieutenant-General Kgomotso Phahlane stated that the Back to Basics Approach would include:

- Heightening police visibility;
- Safety of police during crime-fighting operations; and
- Improving detective work and crime scenes (SABC, 2016).

It should be noted that as from April 2018, the Minister of Police, Bheki Cele, made changes to the top management of the SAPS. These changes include the appointment of the permanent National Commissioner, General Khehla Sitole who replaced Lieutenant-General Kgomotso Phahlane. The Minister of Police further appointed Lieutenant-General Tebelo Mosikili as the permanent Head of Crime Detection, a position that has been vacant for quite some time.

Bruce, Newham and Masuku (2007:24-25) assert that at each police station in the province there is a Detective Branch that is responsible for all crimes reported in the station’s area of policing. These Detective Branches have Detective Branch Commanders who directly report to the Station Commanders. Under the Detective Branch Commanders are police investigators who are normally called “detectives” and carry the case dockets. Figure 3.3 shows the typical organisation chart of a police station, with specific reference to the Detective Service and a Group responsible for murder investigation.



**Figure 3.3: Organisation chart of a police station with specific reference to the detective service and a group responsible for murder investigation**

(Source: SAPS, 2012)

Looking at Figure 3.3 above, it is noted that the Station Commander is the Head of the police station and is ultimately responsible for the command and control of all other sections, including the Detective Service segment. The Station Commander is accountable to the Cluster Commander, who in turn directly reports to the Provincial Commissioner. For the purpose of this study, the Detective Branch shall mean the Detective Service. It is also important to note that at police station level, members of the Detective Branch are divided into groups that are assigned to investigate the specific crimes. Therefore, murder cases are investigated by the Violent Crime Group, as illustrated in Figure 3.3.

The participants in Sample A were asked: “Do you have task teams or specialised units in your station that investigate murder cases? If any, please elaborate.” This

was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. All participants confirmed that in their stations the Violent Crime Group is responsible for murder cases and other serious contact crimes such as robberies. The responses of the participants are, therefore, consistent with the literature as indicated in SAPS (2012).

### **3.4.5 National crime prevention strategy**

In May 1996, the South African government adopted a National Crime Prevention Strategy (NCPS) in order to deal with the increased level of crime. The idea behind the NCPS was that dealing with crime required a wide array of developmental and preventive measures, as opposed to traditional methods of enforcing the law by means of arrests and criminal court processes. The NCPS has the following objectives:

- The establishment of a comprehensive policy framework that will enable Government to address crime in a coordinated and focused manner, and will draw on the resources of all government agencies, as well as civil society;
- The promotion of a shared understanding and common vision of how we, as a nation, are going to tackle crime;
- The development of a set of national programmes that serve to kick-start and focus the efforts of various government departments on delivering quality service aimed at solving the problems leading to high crime levels;
- The maximisation of civil society's participation in mobilising and sustaining crime-prevention initiatives; and
- Creation of a dedicated and integrated crime-prevention capacity that can conduct ongoing research and evaluation of departmental and public campaigns, as well as facilitate effective crime-prevention programmes at provincial and local level (South Africa, 1996b).

The NCPS was coordinated by means of the Department of Safety and Security; however, following restructuring of this Department, the initiative was moved to the SAPS Crime Prevention Division. According to Newham (2005:5), the NCPS prioritised and paid specific attention to the following categories of crime:

- Crimes involving firearms;
- Organised crime;
- White-collar crime;
- Violence against women and children;
- Violence associated with inter-group conflict;
- Vehicle theft and hijacking; and
- Corruption in government.

In an attempt to reduce the violent crimes, the NCPS drafted a four-pillar approach to formulate a crime-prevention strategy that encompassed the following:

- Pillar 1: The Criminal Justice Process.
- Pillar 2: Reducing Crime through Environmental Design.
- Pillar 3: Public Values and Education.
- Pillar 4: Trans-national crime (South Africa, 1996b).

Looking at the pillars above, it is clear that the most significant pillar of all is Pillar 1, as it is meant to fast-track the process of arrest, prosecution and conviction. In this Pillar it is noted that the interaction between the institutions involved is critical for enhancement of the efficiency of the CJS.

#### **3.4.6 Constitution of the Republic of South Africa of 1996**

The Constitution of South Africa was promulgated on 18 December 1996 and commenced on 4 February 1997, effectively replacing the Interim Constitution (South Africa, 1996a). According to Meintjes-Van der Walt et al. (2011:45), the Constitution of South Africa was previously known as “Constitution of the Republic of South Africa Act No. 108 of 1996,” however, the Act number was removed from the title of the constitution in 2005. The reason for this is that the constitution, unlike other Acts of South Africa, was not passed by Parliament, but was adopted by the Constitutional Assembly (Meintjes-Van der Walt et al., 2011:45).

As indicated in Chapter 1, the SAPS is the only governmental institution mandated by the Constitution of South Africa to, among other things, investigate crime, as stipulated in section 205 of the Constitution of South Africa. Joubert (2010:4) points out that the Constitution of South Africa is not an ordinary Act of Parliament; it is the

supreme law of South Africa. This means that any law or conduct inconsistent with it is invalid, and any sanctions or obligations imposed by it must be fulfilled. Stressing this viewpoint, Klinoff (2012:349) submits that the constitutionality of any law is evaluated and concluded judicially. Such supremacy also means that investigation must be conducted justly, fairly and within the ambit of the law (Myeza, 2014:33). Most importantly, Chapter 2 of the Constitution of South Africa makes provision for the Bill of Rights. Sections 7 and 8 of the Constitution of South Africa guarantee the rights of all people living in South Africa, which must be respected, protected and promoted by the State. Section 9 of the Constitution of South Africa stipulates that everyone is equal before the law and has a right to equal protection.

In a nutshell, the Bill of Rights applies to law and is binding on all organs of the State, the executive and judiciary. This means that the rule of law applies to everybody, and nobody is above the law (Nel & Joubert (in Smit, Minnaar & Schnetler, 2004:26)). It then follows that the South African government, through its constitution, is obliged to uphold the rights of all South Africans and all those who live in it. These rights include the right to life and the right to freedom and security of the person, as enshrined in section 11 and 12, respectively (South Africa, 1996a).

With regard to suspected perpetrators, section 35 of the Constitution of South Africa sets out the rights of everyone who is arrested, detained or accused of a crime. Swanepoel et al. (2014:28-35), stress the importance of these rights during criminal investigation, as summarised below:

- The right to remain silent - section 35(1) (a).
- The right to be informed of the right to remain silent - section 35(1) (b).
- The right to protection from self-incrimination - section 35(c).
- The right to be brought before a court as soon as possible, to be charged and to be released if the interests of justice permit - section 35(1) (d)-(f).
- The right to be informed of the charge, to consult with a legal practitioner and to challenge the lawfulness of detention - section 35(2) (a)-(d).
- The right to humane detention conditions and the right to communicate with friends and family - section 35(2) (e) and (f).
- Trial-preparation rights - section 35(3) (a) and (b).

- The right to be presumed innocent - section 35(3) (h).
- Language rights - section 35(3) (k) and 35(4).

However, these rights are subject to a limitation clause, as provided in section 36 of the Constitution of South Africa. According to this section 36, the rights in the Bill of Rights may be limited only in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society, based on human dignity, equality and freedom, considering all relevant factors, including-

- The nature of the right;
- The importance of the purpose of the limitation;
- The nature and extent of the limitation;
- The relation between the limitation and its purpose; and
- Less restrictive means to achieve the purpose (South Africa, 1996a).

In agreement with section 36 of the Constitution of South Africa, Ally and Mokoena (2013:15) state that in order to ensure that the guilty are convicted and innocent civilians are protected, the police are authorised by legislation to interfere with the pre-trial rights of the alleged offender. The researcher, in concurrence with Ally and Mokoena (2013:15), submits that indeed, when police investigators obtain confidential information from third parties in accordance with section 205 of the CPA, they are violating individuals' right to privacy, as contemplated in section 14 of the Constitution of South Africa. However, such violation of privacy may be justifiable in lawful criminal investigation, therefore it falls within the ambit of section 36 of the Constitution of South Africa.

### **3.4.7 White Paper on safety and security**

Although the NCPS is still in existence and it still guides the activities in the CJS, the SAPS came up with strategies building on the pillars as highlighted in paragraph 3.4.5, to enhance effectiveness and efficiency. In 1998, the then Minister of Safety and Security, Sydney Mufamadi, presented a White Paper on Safety and Security. According to this document, it was stated that the work of fighting crime had become more complex, therefore the SAPS should upgrade the skills, competency and capacity of its members (Department of Safety and Security, 1998:18). It was further

stated that while the police are only one component in securing a conviction, police investigators have to conduct proper investigations and support prosecutors in order to increase the conviction rate.

Below is a summary of the interventions to improve investigations that were listed by then Minister of Safety and Security:

- **Increase numbers:** The number of personnel involved in investigations was to be increased to improve the ability of the police service to deal efficiently and effectively with the case load. This was to be in line with the international standard.
- **Training:** The establishment of the SAPS Detective Academy, which would absorb new police investigators and skilling of specialised investigation units.
- **Detective management:** The roles and authority of detective management had to be clarified and performance indicators for detectives had to be set and monitored.
- **Crime intelligence:** The collection, analysis and management of crime intelligence had to be improved.
- **Specialised investigation units:** Specialised units should continue to be established where a high degree of skill, a particular technique, experience or knowledge was required.
- **Sharing the burden:** The shifting of some of the investigations to other role-players and spheres of government was to be examined in order to allow experienced detectives to focus on serious crimes (Department of Safety and Security, 1998:18-19).

While the White Paper on Safety and Security clearly identifies the need for skilling police investigators and providing support to prosecutors with regard to prosecuting offenders, not much was said about how the interaction between the police investigators and prosecutors would be implemented. Nonetheless, it was emphasised that the contribution of policing to safety and security would be divided into two aspects, namely:

- **The arrest of the suspects.** To remove them from society and deny them the opportunity to continue with their criminal activities.

- **The successful prosecution of the arrested suspects.** To act as a strong deterrent to potential offenders (Department of Safety and Security, 1998:15).

The participants in Sample A were asked: “Are there any specific Standing Orders/Standard Operating Procedures/legislation that compel investigators to meet with prosecutors and discuss the cases that are under investigation? Please explain.” This question was also posed to Sample C and Sample D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. All participants indicated that there were no Standing Orders/Standard Operating Procedures/legislation that would compel police investigators to meet with prosecutors and discuss the cases that are under investigation. It is important to note that one participant stated that it is common practice for police investigators to meet with prosecutors. When comparing the responses of the participants to the literature, it was clear that there were no specific Standing Orders/Standard Operating Procedures/legislation that compelled police investigators to meet with prosecutors and discuss cases that are under investigation. In the following paragraph, the researcher discusses the understanding of criminal investigation.

### **3.5 UNDERSTANDING OF CRIMINAL INVESTIGATION**

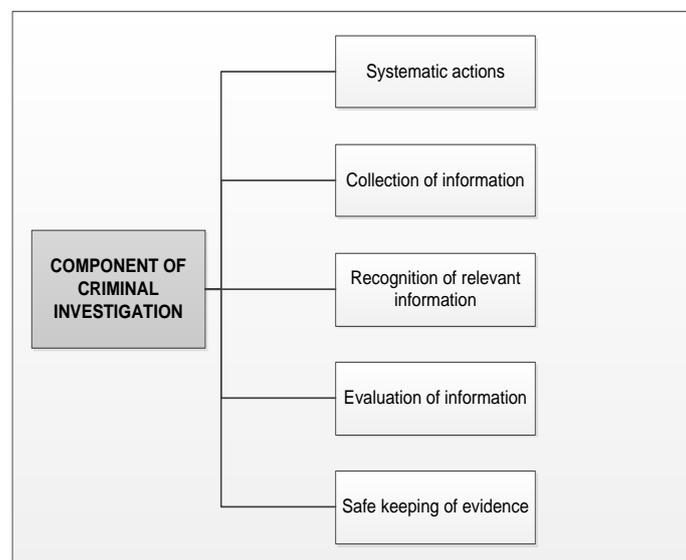
Police officials have many responsibilities to fulfil in society. One of the responsibilities is to conduct a criminal investigation after a complaint has been reported to them. According to Newburn (in Newburn et al., 2011:3) in most countries, the development of an investigative capability was skewed in favour of patrols, and it took some time before formal criminal investigation functions and departments were created. Stelfox (in Newburn et al., 2011:629) asserts that criminal investigation was traditionally not viewed by the police as an activity that was sufficiently distinct from general policing to warrant separate professional practice.

Since then, criminal investigation, which is also known as ‘detective work,’ is portrayed as requiring some form of expertise superior to that of other departments. Indeed, there is no doubt that the criminal investigation function has changed over

the years and requires some degree of expertise. In order to conduct criminal investigation, a police official has to be trained in respect of various pieces of legislation and investigative methodologies. Gilbert (2007:33) states that criminal investigation is a logical, objective, legal inquiry involving a possible criminal activity. He goes further to state that the results of this inquiry, if successful, will answer the following questions:

- Did a criminal violation occur, as described by a code or statute?
- Where and at what time and date did the crime occur?
- Who were the individuals involved in the planning, execution, and after-effects of the violation?
- Is a witness to the criminal activity present?
- In what manner or by what method was the crime perpetrated?
- Is there an indication of guilt or innocence to aid judicial officials in determining a just solution to the case?

UNISA (2006:69) describes the components of criminal investigation as shown in Figure 3.4 below:

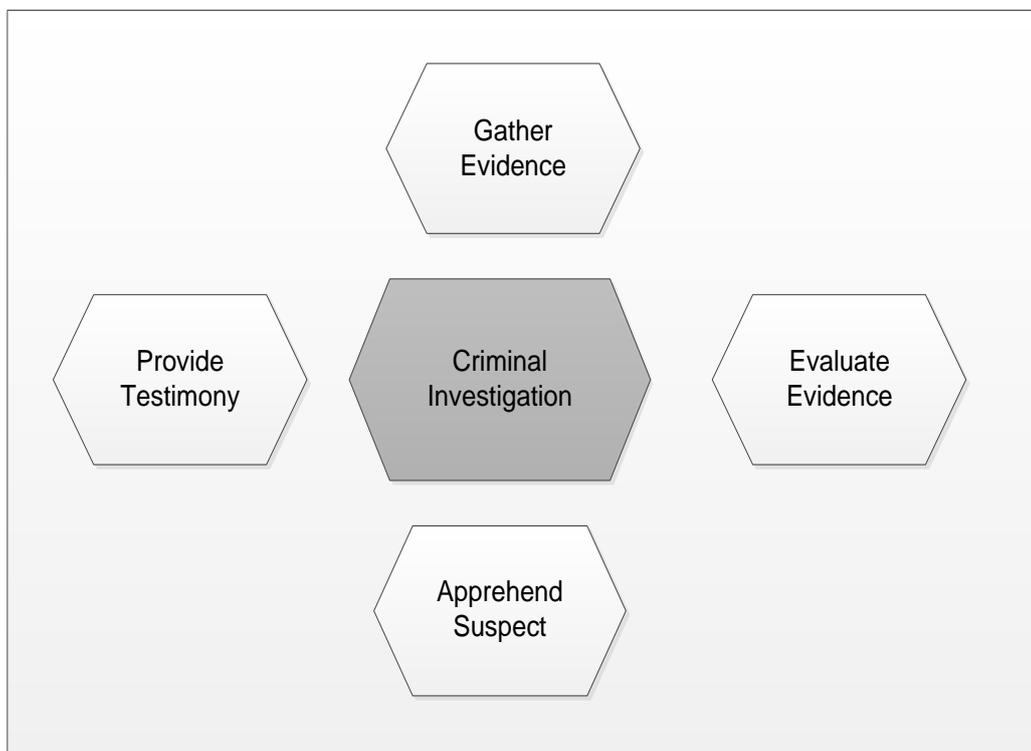


**Figure 3.4: Components of criminal investigation**

(Source: UNISA, 2006:69)

Looking at Figure 3.4 above, the term “information” is constantly used as opposed to “evidence.” The researcher agrees with the use of this term in this context.

Indeed, when the investigator searches for evidence, the first thing he or she would have come across was the information. According to McDevitt (2012:118), investigators must be trained to recognise that virtually any interaction is a potential source of information. By evaluating the collected information and determining its relevancy, the investigator would be systematically searching for evidence. In any investigation, knowing where to search for the first basic piece of information is crucial; and of equal importance is to know how to find this information easily and quickly (Technikon Pretoria, 2003:75). Although presenting a different view but similar to the submission of UNISA (2006:69), Figure 3.5 illustrates the elements of criminal investigation as described by the Federal Bureau of Investigation (FBI) (2015:42):



**Figure 3.5: Elements of criminal investigation**

(Source: FBI, 2015:42)

Clearly, according to Figure 3.5 above, gathering of evidence is the cornerstone of other actions that may follow in the investigation process. Practically speaking, there must be some form of evidence that links a suspect before any arrest could be made. However, as correctly pointed out by the FBI (2015:42), while some aspects of criminal investigation may occur sequentially, they can also take place

simultaneously. This is evident when the suspect attempts to evade the CJS before gathering of evidence could be completed. In this regard, the law enforcement agency involved may arrest the suspect, thus ensuring that he or she stands the criminal trial, as confirmed by Pollock (2012:15), who states that one of the goals of law enforcement is to investigate crime and arrest those suspected of committing a crime. After the criminal investigation process has been completed, the prosecutor will have to choose whether to file a formal accusation against the accused person, dismiss the case, or request the matter to be adjourned for further investigation.

### **3.5.1 Criminal investigation defined**

Criminal investigation is not a single event but a process with many interdependent elements (McDevitt, 2012:20). Van der Westhuizen (1993:1) defines criminal investigation as a systematic search for the truth, with the primary purpose of finding a positive solution to the crime, with the help of objective and subjective clues. Axelrod and Antinozzi (2003:8) add value to the discussion and define criminal investigation as the process of discovering, collecting, identifying, preparing, analysing and preserving evidence to prove the truth or falsity of an issue of law. In agreement with Van der Westhuizen (1993:1), Axelrod and Antinozzi (2003:8) and Orthmann and Hess (2013:8) state that criminal investigation is a constructive process that uses deductive reasoning, a logical process in which a conclusion follows from specific facts.

Criminal investigation involves the lawful tracing of people and instruments that may, directly and indirectly, contribute to the reconstruction of a crime situation and supply information about the persons involved in it (Marais, 1992:1). Osterburg and Ward (2014:5) state that criminal investigation encompasses the systematic collection of information and evidence for identifying, apprehending and convicting suspected offenders. In line with the views expressed by other authors in this study, Prinsloo (in Van der Westhuizen, 1993:17) asserts that criminal investigation includes the identification of a crime situation by means of three components, namely:

- The people involved either directly or indirectly in the identification of the victim, perpetrator or witness.

- The nature of the deed and the way in which it was executed.
- The unlawful character of the deed.

The researcher agrees with the definition provided by the various authors mentioned above. To put it simply and clearly, criminal investigation is the process of gathering evidence to prove or disprove certain allegations made against the suspect. This process has to be done systematically and in compliance with the laws of the country. Bennet and Hess (2004:5) argue that successful criminal investigation depends on the following principles:

- A logical order of events actions is followed.
- Physical evidence is procured in accordance with the law.
- All witnesses are successfully interviewed.
- All suspects are legally and efficiently interviewed.
- Leads are followed and properly investigated.
- All information regarding the case is carefully and thoroughly recorded and reported.

In view of the definition of criminal investigation, it can be deduced that all issues must be supported by the evidence. Equally important is the fact that the evidence gathered must be able to identify the innocent, as pointed out by Orthmann and Hess (2013:13), who state that the investigator seeks the truth, not simply proof of the suspect's guilt.

The participants in Sample A were asked: "How would you define criminal investigation?" This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.1 below:

**Table 3.1: Participants' definition of criminal investigation**

| Sample A  |
|---|
| <ul style="list-style-type: none"><li>• Systematic search for the truth to prove guilt or not of the offender (six).</li><li>• Identification of people and physical objects to prove crime (three).</li><li>• Getting facts and clues from the crime scene to identify the perpetrator and prove guilt (three).</li><li>• Process of individualisation, identification, arrest and prosecution of perpetrator (two).</li><li>• Identification of real evidence and witnesses to prepare a court case (two).</li><li>• Study of facts to identify, locate and prove the guilt (one).</li><li>• Investigation by the police into an alleged offence or crime (one).</li><li>• Collection and preservation of evidence (one).</li></ul> |

(Source: Feedback from participants)

From Table 3.1, six participants were of the view that criminal investigation is a systematic search for the truth to prove guilt or not of the alleged offender. Three participants stated that criminal investigation involves identification of people and physical objects to prove crime, while others provided different views. It is the contention of this researcher that the responses of all participants were not far removed from the definition of criminal investigation. However, it is clear that the perceptions of at least six of the participants agreed with the literature, as highlighted by Axelrod and Antinozzi (2003:8), Orthmann and Hess (2013:8), Osterburg and Ward (2014:5) and Van der Westhuizen (1993:1) in that criminal investigation is a systematic search for the truth.

### **3.5.2 Objectives of criminal investigation**

To Becker (2005:11-12), the objectives of criminal investigation are crime detection, locating and identifying the suspect, locating, recording and processing evidence, recovering property, preparing for trial and convicting the accused. Benson et al. (in Zinn and Dintwe, 2015:13), provide comprehensive objectives of criminal investigation, as follows:

- A systematic, organised search for the truth;
- Detecting crime;
- Identifying crime;
- Locating and identifying suspects;

- Locating, recording and processing evidence while observing all constitutional considerations;
- Gathering objective and subjective evidence about an alleged crime or incident;
- Discovering certain facts, or ascertaining the existence of such facts;
- Arresting the perpetrator while observing all constitutional considerations;
- Recovering property;
- Preparing for trial, which would include the completion of accurate documentation; and
- Getting the accused convicted by testifying and assisting in the presentation of legally obtained evidence and documents.

In generalising the objectives of criminal investigation, Newburn (2008:438) states that they are meant to generate knowledge in relation to the investigation and to produce evidence. There is a general understanding amongst the authors: Axelrod and Antinozzi (2003:8), Becker (2005:11-12), Benson et al. (in Zinn & Dintwe, 2015:13), Newburn (2008:438), Orthmann and Hess (2013:8), Osterburg and Ward (2014:5) and Van der Westhuizen (1993:1) regarding the definition of criminal investigation and its objectives. It is noted that criminal conduct would have to be suspected before a criminal investigation can be conducted. It is a technique of reconstructing a past criminal act in an attempt to identify the offence and the offender, with the intention to prosecute. Criminal investigation therefore consists of a number of investigative methods that make up the broad body of knowledge that can be acquired through experience and further studies.

The participants in Sample A were asked: “What are the objectives of criminal investigation?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer, and their respective responses are indicated in brackets and presented in Table 3.2 below:

**Table 3.2: Participants' understanding of the objectives of criminal investigation**

| Sample A  |
|---|
| <ul style="list-style-type: none"><li>• To identify the perpetrator and secure a conviction (nine).</li><li>• To gather evidence that will be presented in court (eight).</li></ul> |

(Source: Feedback from participants)

The majority of the participants decisively indicated that the objectives of criminal investigation are to gather evidence that will be presented in court, and to identify the perpetrator with a view to secure a conviction. The participants' submissions appear to indicate that they are knowledgeable with regard to the objectives of criminal investigation, as shown by the literature, indicated by Becker (2005:11-12), Benson et al. (in Zinn and Dintwe, 2015:13) and Newburn (2008:438).

In the following discussion, the researcher discusses the definition and elements of murder as a crime that forms the basis of this research. It is important to understand the definition and elements of this crime before it is investigated. Without proper understanding, the investigator might end up with a botched investigation. Expressing the same sentiment, Gilbert (2010:52) states that law-enforcement officers should understand what actions constitute various criminal acts. It is also important to understand what action should be taken after establishing the type of crime committed. The following discussion relates to the definition of murder.

### **3.6 DEFINITION OF MURDER**

Murder is regarded as the most serious form of criminal conduct against the human life. According to Kemp et al. (2015:296), human life and physical integrity have been described as legal interests protected by criminal law. Murder as an offence forms part of the unwritten common law and is therefore not found in any written legislation (Swanepoel et al., 2014:21). Defining murder, Joubert (2001:104) states that it is the unlawful and intentional causing of death to someone. Similarly, Burchell (2013:562) and Kemp et al. (2015:297), assert that murder is the unlawful and intentional killing of another person. From the definition of murder provided by the authors above, it is clear that in order to be called 'murder,' the act of killing should be intentional and that the victim should die as a result of the act committed

by the perpetrator. Most importantly, one could be convicted of murder irrespective of the absence of the body of the deceased.

The participants in Sample A were asked: “How would you define murder?” This question was also posed to the participants in Sample C and Sample D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.3 below:

**Table 3.3: Participants’ definition of murder**

| Sample A   |
|--|
| <ul style="list-style-type: none"><li>• Unlawfully and intentionally causing death of another human being (nine).</li><li>• Killing of another person (one).</li></ul> |

(Source: Feedback from participants)

The majority of the participants provided a clear definition of murder by stating that it is unlawfully and intentionally causing the death of another person. One participant stated that it is the “killing of another person,” without giving further details. Accordingly, the majority of the participants’ responses are consistent with the literature as highlighted by Burchell (2013:562), Joubert (2001:104) and Kemp et al. (2015:297).

Although it is not the intention of this study to embark on an examination of the detailed legal arguments surrounding murder cases, it is, however, imperative that the elements of murder be briefly discussed, as they directly affect the manner in which murder investigations are conducted.

### **3.7 ELEMENTS OF MURDER**

Osterburg and Ward (2010:6) contend that to establish whether a crime has been committed, it is necessary to understand criminal law and the elements of the criminal act. According to Joubert (2001:46), a crime generally consists of four elements, namely: unlawfulness, act, legality and culpability. Adams, Caddell and

Krutsinger (2004:17) argue that in the absence of one of the elements, a crime cannot be proven.

In view of the contention of these authors, the elements of murder, according to Burchell (2013:563), are unlawful; killing; of a person; and with intention. These elements of murder are discussed below as follows:

### **3.7.1 Unlawful**

Unlawfulness refers to human conduct that is prohibited by the State. Describing unlawfulness, Snyman (2008:97-98) states that it refers to conduct that is contrary to the community's perception of justice, or to the legal conviction of the community. Although the human conduct may be unlawful, it does not automatically mean that a person is therefore guilty of crime. There would be instances where the accused may raise self-defence as grounds for justification. Swanepoel et al. (2014:47), assert that there are specific requirements that the court would have to consider to determine the lawfulness of the accused's conduct. These requirements are as follows:

- The attack against which the accused defended himself or herself must be unlawful;
- The attack must be against a legal interest (legal interest includes the accused's own life and physical integrity, a third person's life, the accused's property, and personal freedom);
- Threatening but not yet completed;
- The accused's defence must be directed at the attacker;
- The accused's defence must be necessary;
- The accused's defence must be reasonably proportionate to the danger posed by the attack and should not be more harmful than necessary to avert the attack; and
- The accused must have known that he or she was acting in private defence at the time of the incident concerned.

### **3.7.2 Killing**

Swanepoel et al. (2014:44), submit that a person acts voluntarily if he/she is able to subject his/her bodily movements to his/her will or intellect. In protecting human life, South African law does not necessarily identify the unlawful method by which a human life was ended. The emphasis is on the voluntary act of killing another person, which is prohibited. However, the unlawful method of killing another person serves as an aggravating factor if the perpetrator is found guilty of an offence. Burchell (2013:563) argues that although in most cases death is caused by the direct administration of force to the victim's body such as stabbing, shooting, beating, poisoning and gassing, it can be caused indirectly. For instance, indirect killing may include inducing the victim to drink poison or fall from a cliff. It is essential, however, to note that in most cases, such killing may not necessarily mean the perpetrator is guilty of murder. To secure the conviction, the State will have to show that the perpetrator had intended to kill the victim.

### **3.7.3 Of a person**

There is no doubt that in the act of murder, the action of the perpetrator should result in the death of another person. In this regard, killing of an animal is excluded. Generally, a person is regarded as a human being who was born alive and was still alive when another person caused his or her death. According to Orthmann and Hess (2013:263), a death certificate completed by a medical doctor is sufficient to prove the death of a person. Illustrating this point further, Kemp et al. (2015:298), submit that if the accused attacked someone with the intention of killing him, but the person was already dead, the accused will be charged with attempted murder since he did not, in fact, kill another living human being.

### **3.7.4 With intention**

A person is said to be criminally culpable if he possesses the necessary mental ability to distinguish between right and wrong. Swanepoel et al. (2014:39), submit that a person possesses criminal capacity when he or she is able to distinguish between right and wrong and to act in accordance with such insight. According to Snyman (2008:181), a person commits an act intentionally when his or her will is directed towards the commission of the act or causing the result, and he or she is aware that his or her conduct complies with the definitional elements of the crime

and knows that the act is unlawful. It appears that there are two requirements that have to be met in order to determine the culpability in a murder case: firstly, intention to commit an act, and secondly, the mental state of the accused. For instance, a mentally unstable person cannot be prosecuted for murder if the court finds that the said person is indeed mentally unstable.

According to Swanepoel et al. (2014:51), there are three types of intention, namely direct intention (*dolus directus*), indirect intention (*dolus indirectus*) and *dolus eventualis*. This researcher is of the view that in murder cases there are two types of *dolus*, that is, *dolus directus* and *dolus eventualis*. *Dolus directus*, according to Burchell (2013:346), arises when a person commits an offence with the purpose and object of killing another person, while in *dolus eventualis*, a person foresees the risk of the death of another person occurring, but nevertheless continues with the act and appreciating the fact that death might occur of the person at whom the act is directed. Culpability takes the form of either intention or negligence. It therefore follows that in the case of murder, one cannot be found guilty of murder if the court finds that the cause of death was through negligence (Burchell, 2013:562).

The participants in Sample A were asked “What is your understanding of the elements of murder?” This question was also posed to the participants in Sample C and D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.4 below:

**Table 3.4: Participants’ understanding of the elements of murder**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• Unlawful, intentional act of killing a person (seven).</li> <li>• Unlawfulness, intentional act of killing a person and punishable (one).</li> <li>• Unlawfulness, intentional conduct and culpability (one).</li> <li>• Unlawful and intention (one).</li> </ul> |

(Source: Feedback from participants)

Table 3.4 indicates that the majority of the participants were of the view that the elements of murder are unlawful, intentional act of killing a person. Significantly, one participant mentioned unlawfulness, intentional conduct and culpability as the elements of murder, while the other participant stated only unlawfulness and intention. When comparing the responses of the participants, it is clear that the perceptions of the majority of the participants agree with the literature as indicated by Burchell (2013:563) and to a certain extent by Snyman (2008:97-98), Swanepoel et al. (2014:44), and Kemp et al. (2015:298).

Understanding the definition and elements of murder does not necessarily mean that one will therefore be able to conduct a murder investigation. As in any other criminal cases, there are certain phases that have to be adhered to in a murder investigation. These phases are discussed below.

### **3.8 INVESTIGATION PHASES IN MURDER**

Murder investigation generally starts when the police become aware of the crime that was either reported by the witness or victim, or self-initiated by the police. Siegel (2011:13) states that in order for a criminal investigation to take place, the crime must come to the attention of the police – and then a sequence of steps begins. According to Van der Watt (in Zinn & Dintwe, 2015:160), once the crime has been reported, the preliminary investigation phase commences. Gilbert (2010:57) explains the phases of criminal investigation as follows:

- **Preliminary investigation phase**
  - Offence determined.
  - Suspect arrested, if possible.
  - Crime scene protected.
  - Victims and witnesses identified.
  - Basic statements taken.
  - Crime scene processed.
- **In-depth investigation phase**
  - Preliminary investigation data re-examined.
  - Crime scene re-visited.
  - Crime scene processed further.

- Existing and new victims and witnesses located and interviewed.
- Documents processed.
- Facts and evidence gathered.
- Application of criminalistics arranged.
- **Concluding investigation phase**
  - Case suspended.
  - Case successfully concluded and prepared for prosecution.

While Van der Watt (in Zinn & Dintwe, 2015:160) agrees with the phases of criminal investigation, as illustrated by Gilbert (2010:57) above, he, however, divides the “Concluding investigation phase” into two phases, as follows:

- **Judicial phase**
  - Bail application.
  - Trial or hearing.
- **Rounding-off phase**
  - Submission of official reports and forms.
  - Disposal of exhibits.
  - Closure of file/case.

Critical to the preliminary investigation phase explained by Gilbert (2010:57) above is the swift arrival of the first officer or patrol officer at the crime scene after crime has been reported to the station (SAPS, 2008:302). Reporting of the murder incident to the police can be done by witnesses or a member of the community (Palmiotto, 2013:14). According to Palmiotto (2013:164), the success of a murder investigation often depends on the initial activities of the first officer at the crime scene. The researcher contends that the rapid arrival of the first officer at the crime scene has the following benefits:

- Further contamination of the crime scene by the onlookers can be avoided.
- Injured persons may need emergency assistance.
- A dying person may provide crucial information regarding the crime.
- The suspect may still be in the vicinity of the crime scene.
- Witnesses may still be in the vicinity of the crime scene.
- Destruction of evidence by weather conditions may be avoided.

However, McDevitt (2012:15) highlights some of the common complaints relating to patrol officers that include the report writing, witness handling, crime scene and/or evidence management, and poorly conducted preliminary investigations. He then argues that it is important to train the patrol officers in criminal investigation. Noting the concerns raised by McDevitt (2012:15), the researcher is of the view that the preliminary investigation phase is the most complex and a cornerstone for further action, therefore it has to be undertaken by an investigator who, in addition to general understanding of the legislation, is observant, intelligent, has a good memory, has a report-writing capability, is proficient in crime scene techniques, and has the ability to communicate with people at all levels. Experience has shown that a poorly conducted preliminary investigation compels the investigator to retake statements from witnesses in order to, among others, identify the perpetrator or even the crime committed, including the location of the crime scene.

The participants in Sample A were asked: “How are murder cases reported at your station?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.5 below:

**Table 3.5: Participants’ responses regarding the reporting of murder cases at their stations**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• Reported personally by the community members (seven).</li> <li>• Reported telephonically by the community members (five).</li> <li>• Station receives calls from Radio Control (three).</li> <li>• Reported by a hospital (two).</li> <li>• Reported by witnesses (one).</li> </ul> |

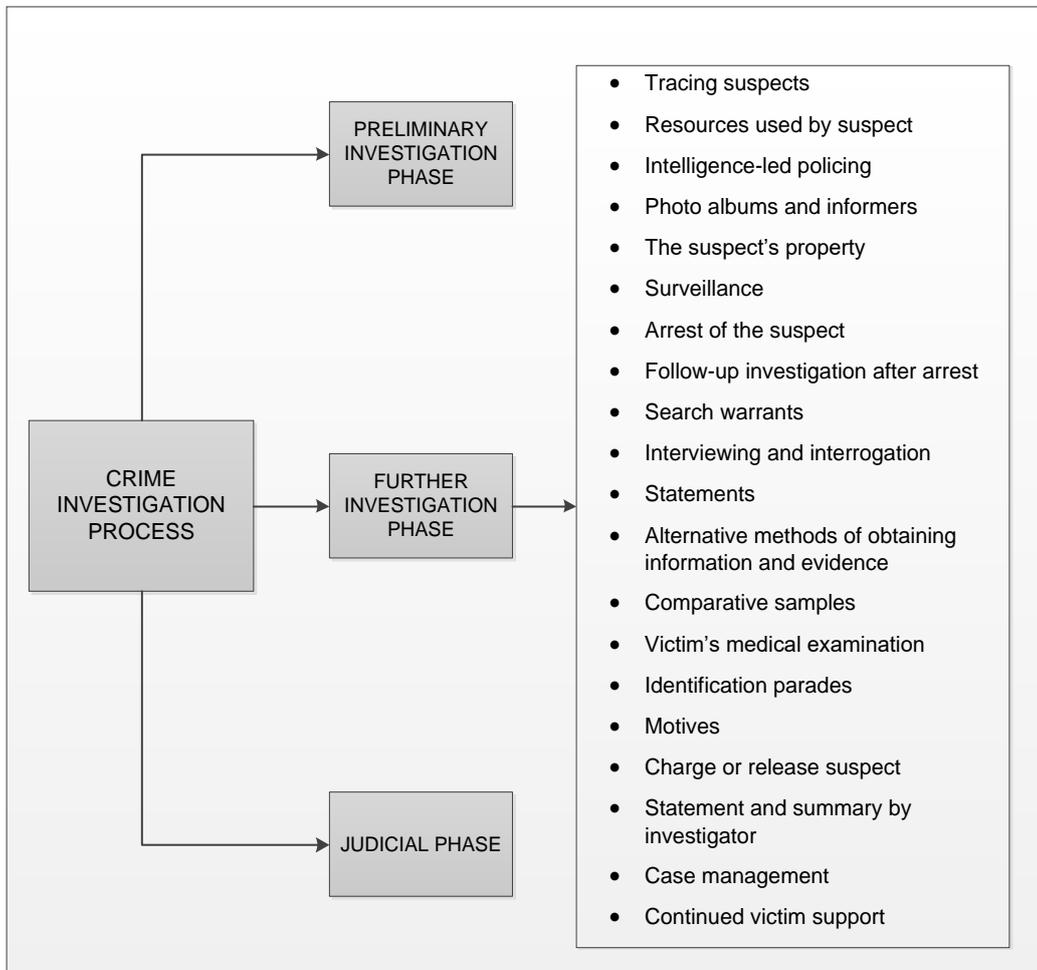
(Source: Feedback from participants)

The responses of the participants indicate that there are various methods according to which murder cases can be reported to the stations. Seven participants indicated that members of the community personally make reports to the stations. Five participants mention telephone calls made by community members, while three participants referred to information received from Radio Control. With regard to

Radio Control, it is evident that the information would have to be reported by community members before it is disseminated to the relevant stations. Only two participants stated that the hospitals inform the stations about the deceased and one participant stated that witnesses make reports to the station.

The responses of the participants indicate that the persons who have knowledge of the murder cases make reports to the police either personally or telephonically. The murder cases' reports are made to the police, either via Radio Control or directly to the police stations. Ultimately, the police station dispatches the first officer to the crime scene. The responses of the participants are accordingly, consistent with the opinions of Gilbert (2010:57), Palmiotto (2013:14), SAPS (2008:302), Siegel (2011:13) and Van der Watt (in Zinn & Dintwe, 2015:160).

It is pointed out by Gilbert (2010:59) that generally, regardless of the crime involved, protection of the crime scene is one of the first procedures that has to be performed upon arrival of the police. Accordingly, it can be concluded that the further investigation phase will be successful only if the preliminary investigation phase is accurate and detailed. Describing the three phases of criminal investigation, with emphasis on the further investigation phase, Van Niekerk, Lochner, Naidoo and Zinn (in Zinn & Dintwe, 2015:211) present the diagram in Figure 3.6 below:



**Figure 3.6: Three phases in the crime investigation process**

(Source: Van Niekerk, Lochner, Naidoo and Zinn (in Zinn & Dintwe, 2015:211))

As depicted in Figure 3.1 above, criminal investigation processes follow the same pattern that consists of the preliminary investigation phase, the further investigation phase and the judicial phase. However, circumstances may dictate that all three phases of investigation should run concurrently, as pointed out in paragraph 3.5. One example is when a suspect is arrested while the investigator is conducting the preliminary investigation. This would mean that if there is sufficient evidence linking the suspect to the crime, the suspect should be processed to appear in court within a reasonable time, as stipulated in section 35 of the Constitution of South Africa. Once the suspect appears in court, this would mean that the investigator would have to continue with the preliminary investigation phase and the further investigation phase in order to conclude the investigation before a trial can take place. Effectively, this implies that all phases are intertwined, with the judicial phase being the end-result.

According to SAPS (2008:302-309), once the preliminary investigation has been conducted by the police investigator on standby, the case docket is handed over to the Detective Branch Commander, who in turn assigns it to another police investigator or to the same investigator who conducted the preliminary investigation, for further investigation. As previously highlighted by Gilbert (2007:33), it is clear that the police investigator has to be a skilled, experienced professional who has specialist knowledge in order to be successful in the criminal investigation. Tong (in Tong et al., 2009:198) affirms this view by stating that the key requirement for achieving professionalism appears to be specialist knowledge and expertise.

The participants in Sample A were asked: “Following from the above question, how are these murder cases assigned to the police investigators?” This question was also posed to Sample C and Sample D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose.

Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.6 below:

**Table 3.6: Participants’ responses regarding the assignment of murder cases to the police investigators**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• Assigned to the Violent Crime Group (four).</li> <li>• Assigned to the police investigators by Detective Branch Commanders (four).</li> <li>• Assigned in accordance with the experience of the investigators (three).</li> </ul> |

(Source: Feedback from participants)

Four participants indicated that murder cases are assigned to the police investigators by the Detective Branch Commanders. Another four participants stated that these cases are assigned to the Violent Crime Group, while three participants made a reference to the cases being assigned in accordance with the experience of the investigators. The first two responses in Table 3.6 clearly show that the Detective Branch Commanders receive cases and assign them to the members of the Violent Crime Group, consistent with SAPS (2008:302-309) and

SAPS (2012). The responses of three participants correspond to the submissions of Gilbert (2007:33) and Tong (in Tong et al., 2009:198). From the experience of this researcher, in general, the police investigators who are attached to the Violent Crime Groups are well experienced, therefore, the responses of the last three participants are not far from the truth.

The following discussion examines the skills required to successfully investigate crimes such as murder. The researcher intends to show that not every police officer can be a competent investigator.

### **3.9 SKILLS REQUIRED TO BE A COMPETENT INVESTIGATOR**

Criminal investigation is a skill that cannot be acquired within a short period of time. It needs perseverance and an eagerness to learn new things on a daily basis. According to Orthmann and Hess (2013:11), successful criminal investigation involves a balance between scientific knowledge acquired by means of study and experience, and the skills acquired as a result of the artful application of learned techniques. Sennewald and Tsukayama (2006:17-18) list the following qualities of a competent investigator:

- Observant;
- Resourceful;
- Patient;
- People-oriented;
- Understands human behaviour;
- Knowledgeable about legal implications of the work;
- A skilled communicator;
- Receptive;
- Possessed of a sense of well-being;
- Dedicated to the work;
- A self-starter;
- Sceptical;
- Intuitive;
- Energetic;
- A good actor;

- Capable of sound judgement;
- Logical;
- Intelligent;
- Creatively imaginative;
- Of good character; and
- Professional.

Birzer and Roberson (2011:14) opine that the competent investigator must have the skills and knowledge of the following:

- Criminal and procedural law;
- Methods of interrogation;
- Understanding a crime scene;
- Understanding modus operandi;
- Spotting patterns in criminal behaviour;
- Understanding the causes of criminality; and
- Developing a case for prosecution.

In line with the views expressed by Birzer and Roberson (2011:14), Lochner (2014:8) and Sennewald and Tsukayama (2006:17-18) lists the following comprehensive skills that a competent investigator should have:

- A thorough understanding of the principle of individuality, the Locard exchange principle, and the Lochner principle;
- Knowledge of criminal law and criminal procedure law;
- The ability to apply the correct methods of interrogation and interviewing;
- The ability to understand and manage a crime scene and to act according to the set rules and guidelines;
- The ability to develop a case for prosecution;
- An understanding of what modus operandi means;
- The ability to identify patterns in criminal behaviour;
- An understanding of the causes of criminal behaviour;
- The necessary objectivity and logic to play a positive role throughout the investigation process;

- Self-discipline;
- The ability and capacity to work hard and function effectively in a team environment;
- Patience to solve the crime that is being investigated;
- Creative thinking in order to solve the crime;
- A streetwise approach and good judgement;
- The ability to function within the rules and regulations of the institution;
- Good organisational skills; and
- The ability to apply technical knowledge when required.

Although not stated by the authors above, the researcher is of the view that the ability to work under pressure is one of the skills that is needed in this environment, since criminal investigation is strenuous and stressful in nature. For instance, some crime scenes in murder cases require one to be prepared to view and analyse horrible victim wounds or decomposing bodies. There are generic duties and responsibilities that have to be performed by the police investigator in murder cases that may be helpful in investigating the case successfully. However, it is clear that such competences and skills require some training and development over a reasonable period of time in order to become a competent investigator. The Detective Learning Programme is one of the interventions that aim to help the new investigators to develop the skills required to be competent investigators in murder cases (SAPS, 2008).

The participants in Sample A were asked: “Is there any specific training that the police investigator has to undergo before being assigned to investigate murder cases?” This question was also directed to the participants in Sample C and D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.7 below:

**Table 3.7: Participants' responses regarding the specific training that the police investigator has to undergo before being assigned to the investigation of murder cases**

| Sample A  |
|---|
| <ul style="list-style-type: none"> <li>• Detective Learning Programme (six).</li> <li>• In-service training through mentoring (four).</li> <li>• Basic Crime Scene Management (two).</li> </ul> |

(Source: Feedback from participants)

The majority of the participants indicated that the Detective Learning Programme is the specific training that the police investigator has to undergo before being assigned to investigate murder cases, as indicated by SAPS (2008). However, four participants mentioned mentoring as part of the specific training. It is the view of the researcher that mentoring is not recognised training but a method of transferring skills from one person to another. Two participants mentioned Basic Crime Scene Management when responding to the question; however, there was no literature to support this view. In the following paragraph, the researcher discusses the duties and responsibilities of the investigator in a murder investigation.

### **3.10 DUTIES AND RESPONSIBILITIES OF THE INVESTIGATOR IN MURDER INVESTIGATION**

Despite the fact that the first officer on the crime scene plays a significant role, it is the investigator who determines the possible success or failure of the criminal investigation. This is so because the investigator is supposed to or should apply scientific methods of investigations that are not readily available from the first officer who attends the crime scene. These include verifying and authenticating the preliminary investigation conducted by the first officer who attended the crime scene, revisiting the crime scene, identifying evidence, preserving and collecting evidence, and ensuring that where necessary, the physical evidence is sent for examination.

The success of the methods depends directly on the investigator's knowledge, perseverance, attentiveness and ability to communicate effectively (Marais, 1992:2). In agreement with Marais (1992:2) and Orthmann and Hess (2013:11) add that investigations involve great attention to detail, an exceptionally suspicious nature at the appropriate time, considerable training in the classroom and the field,

an unusual ability to obtain information from diverse types of personalities under adverse circumstances, and endless patience and perseverance. Benson et al. (in Zinn & Dintwe, 2015:24), assert that in conducting the investigation, investigators must:

- apply scientific knowledge acquired by mean of study and experience;
- use skills acquired by artfully applying the learnt techniques;
- expand their ability to see relationships between essentially unrelated facts; and
- question the incontestable.

It is clear that not every police official can simply be appointed as an investigator to execute these duties and functions. Enquiries and observations – investigations – require some degree of logic and reasoning (Gunter & Hertig, 2005:21) therefore there are certain requirements that must be met in order to be a successful investigator. The duties and functions of the investigator in murder investigation are discussed below.

### **3.10.1 Case docket**

Considering the phases in criminal investigation explained by Van Niekerk et al. (in Zinn & Dintwe, 2015:211), above, it is imperative that the investigator receives the case docket as soon as possible. According to SAPS (2008:302-309), the investigator on duty should acknowledge the case docket for preliminary investigation. In the preliminary phase of the investigation, the investigator will have first information of the crime, which would mostly likely be confirmation of the murder as well as the location of the crime scene. Equally important is determination of the existence of all the elements of murder in the case docket. This can be achieved by reading the case docket and identifying the relevant information. According to Peterson (1994:270), the collection of information is simply an act of gathering information that will be used for the investigation of crime. Byrd (2004:1) urges that before the investigator gathers evidence, it is imperative to start by identifying all relevant information that might give an indication of the crime committed.

When a crime report is received, the information should be thoroughly assessed to find an appropriate way of dealing with it (Benson et al., (in Zinn & Dintwe, 2015:22)). It is therefore critically important to analyse the information contained in

the case docket before any action can be taken, as the record of investigation, describing all the activities pertaining to the investigation of the case will be recorded in the case docket by the investigator in line with the views highlighted in the submissions of UNISA (2006:69) and the FBI (2015:42), discussed earlier in this chapter.

### **3.10.2 Crime scene**

It is of utmost importance for the investigator to visit the crime scene as a method of reconstructing the past. It would not be possible for the investigator to have first-hand information and observations without having visited the crime scene. A crime scene is, according to Van Rooyen (2004:94), an actual site, area or location in which an incident took place. While in the context of a murder case, the crime scene is always the location where the murder was committed, Genge (2002:105) contends that a person's body could be a crime scene. The researcher agrees with the sentiments of Van Rooyen (2004:94) and Genge (2002:105), as there is no doubt that the body of the deceased might well be an actual site in which evidence, proving an act of murder, might be established. In this context, it is therefore argued that finding the body must be the primary focus of the investigation. However, it should be pointed out that in some rare incidents, South African courts will still convict the suspects in the absence of the body of the deceased.

Osterburg and Ward (2010:98) state that on arrival at the crime scene, the investigator must note the following details to write a report and, possibly much later, to answer questions by defence counsel at trial:

- Who reported the crime, the time of arrival; and how long it took to respond;
- The weather conditions and visibility;
- The names of the persons at the crime scene, in particular, the names of those who had already examined the scene or any part of it;
- The facts of the case as ascertained by the first officer at the crime scene; and
- Subsequent actions for taking over responsibility for the crime scene from the uniformed officer who was in charge up to that point.

There is no doubt that the above-mentioned details should be recorded by the first officer who attends the murder scene. However, in most cases, the first officers are

uniformed members, therefore they do not necessarily possess the investigative skills as compared to the investigators. Dutelle (2011:5) states that the duty of the first officer is to secure the scene and conduct the initial stages of documenting by securing and preserving the physical evidence. Douglas and Douglas (in Douglas, Burgess, Burgess & Ressler, 2013:22) assert that a violent crime such as murder may not only emotionally detach the investigator from the offence, but it may also desensitise investigators to minute clues offered by the crime scene. In this regard, an inexperienced investigator or a uniform member may indeed be affected by the horrifying murder crime scene. It is, therefore, important to compare and verify reports made by the first officer in order to ensure that all material evidence required has been obtained.

### **3.10.3 Identification, collection and preservation of evidence**

Identification, collection and preservation of evidence are the responsibilities of the investigator. According to Van Graan and Budhram (in Zinn & Dintwe, 2015:46), identification entails the act of identifying a person or object. These authors further mention the following categories of identification:

- Situation identification;
- Witness identification;
- Victim identification;
- Imprint identification;
- Origin identification;
- Action identification;
- Perpetrator identification; and
- Cumulative identification.

The categories of identification are essential in the criminal investigation so as to obtain evidence. In criminal investigation, the investigator should be able to separate information from the evidence. In this regard, Gilbert (2004:57-58) states that an investigator must have the capability to recognise evidence, and to establish whether it will be legally admissible in a criminal trial. According to Girard (2011:15), the ability to recognise what is and what is not evidence is a skill that is best learned through experience. Schwikkard and Van der Merwe (2002:18) identify two types of

evidence, namely oral evidence and real evidence. In agreement with Schwikkard and Van der Merwe (2002:18), Dutelle (2011:13-14) submits that the two types of evidence associated with criminal investigation are testimonial evidence and real or physical evidence. However, Girard (2011:32) holds the view that there are four types of evidence, namely:

- Testimony;
- Documentary;
- Physical; and
- Demonstrative evidence.

The researcher is of the view that evidence can be divided into two types, namely physical and testimonial. Physical evidence may then be subdivided into impression, biological, firearms and ammunition, arson and bombs evidence, and chemicals and controlled substances, as explained by Girard (2011:16). In murder investigation, both physical and testimonial evidence is equally important. It should be noted that testimonial evidence relates to witnesses who would normally describe what happened and even provide a description of the suspect. To Douglas and Douglas (in Douglas et al., 2013:22) the commission of a violent crime involves all the same dynamics of normal behaviours, therefore the same forces that influence normal everyday conduct also influence the suspect's actions during an offence. Consequently, the behaviour of the suspect during the commission of an offence may be better described by the witnesses during the interviews and supported by the physical evidence.

Gudjonsson (in Newburn et al., (2011:470) highlights the following seven principles of investigative interviewing that were implemented in England in 1992:

- The objective of the investigative interview is to obtain accurate and reliable accounts from victims, witnesses and suspects in order to discover the truth about the subject matter under investigation.
- The officer should approach the interview with an open mind and test the information obtained against what is already known or what can be reasonably established.
- The interviewer must always act fairly in the circumstances of each case.

- The interviewer is not obliged to accept the first answer given and persistent questioning does not have to be seen as unfair.
- The officer has the right to question the suspect, even in cases where the suspect chooses to exercise his/her right to remain silent.
- During interviews, officers are free to ask questions to ascertain the truth, except in cases of child victims of sexual or violent abuse, which are to be used in criminal proceedings.
- Victims, witnesses and suspects who are vulnerable must always be treated with special consideration.

In support of the seven principles mentioned by Gudjonsson (in Newburn et al., (2011:470) with regard to the witnesses, Lochner (2014:14) opines that investigators should always keep in mind the importance of a complete and accurate witness statement because the success or failure of any investigation largely depends on the accuracy of the information that is obtained from the witness. According to Joubert (2013:43), the investigator must therefore know how to:

- trace the witness;
- contact the witness;
- interview the witness;
- take statement from the witness; and
- safeguard the statement.

Dissimilar from testimonial evidence, physical evidence is 'silent,' therefore it has to be identified and collected. Physical evidence is 'real' evidence that is visible and recognisable as a liquid, object, print or instrument (Marais, 1992:6). This means that physical evidence can be identified and collected by applying various methods of crime scene search. Van der Watt (in Zinn & Dintwe, 2015:191-193) lists the following methods of crime scene search:

- Spiral search method;
- Strip search method;
- Grid search method; and
- Zone search method.

In Girard (2011:13), the author is of the view that it is the responsibility of the investigator to coordinate the search. Pepper (2005:8) opines that the investigator must be able to do the basic crime scene investigation, which includes the identification of evidence at the crime scene if the crime scene investigator is not readily available. This opinion is also highlighted by Lee, Palmbach and Miller (2001:1) who state that the investigator should recognise potential physical evidence at a crime scene and preserve it. This is important because there could be times when the crime scene investigators are not able to attend to the crime scene immediately.

Lee et al. (2001:274), define identification as a process that utilises the class characteristics of an object or known substance to compare with evidence collected from a crime scene. For instance, if a bullet point is found in the body of the deceased, a conclusion can be drawn that a firearm might have been used to commit murder.

Girard (2011:16) and Van Graan and Budhram (in Zinn & Dintwe, 2015:51) mention the following physical evidence that can be identified at murder scenes:

- **Impression evidence**
  - Tyre tracks.
  - Footprints.
  - Toolmarks.
  - Latent fingerprints.
  - Palm prints.
- **Biological evidence**
  - Blood.
  - Saliva.
  - Semen.
  - Vaginal fluids.
- **Firearms and ammunition evidence**
- **Arson and bombs evidence**
- **Chemicals and controlled substances**

Some of the physical evidence that might be identified at a murder scene that is not mentioned by Girard (2011:16) is the human hair and documentary evidence. Van Graan and Budhram (in Zinn & Dintwe, 2015:55) state that there are two types of identification, namely direct identification and indirect identification.

The direct method of identification refers especially to techniques to identify perpetrators, such as personal descriptions, sketches, identification parades, incidental identification, photo identification, voice identification, identification by means of closed-circuit television and perpetrator's *modus operandi* (Van Graan & Budhram (in Zinn & Dintwe, 2015:55-56)).

Explaining indirect identification, Van Graan and Budhram (in Zinn & Dintwe, 2015:63) state that it concerns physical evidence and phenomena by which the identity of the offender and his/her part in the incident may be determined.

Looking at the physical evidence named above, it can be deduced that physical evidence must be collected and preserved in a manner that ensures its integrity before and after it has been sent to and received from the scientific laboratory or expert concerned with examination. Marais (1992:9) provides the following guidelines to preserve physical evidence:

- The crime scene should be surveyed in its entirety and notes should be made of the location of all obvious physical clues, points of entry and exit, signs of action, and size and shape of the scene area.
- Movement within the area should be restricted and care taken not to destroy or disturb any evidence during the examination.

This maintenance of integrity is called "chain of evidence." Buckles (2003:81) defines chain of evidence as the means of verifying the authenticity and legal integrity of evidence by establishing its origins and who handled it before being presented in court as evidence. To Van der Westhuizen (1996:29), the chain of evidence implies the continuous, safe possession and identification of physical information, which is also of the greatest importance for the purpose of individualisation.

In order to maintain chain of evidence, Van Rooyen (2004:12) provides the following guidelines:

- The number of people who handle the physical evidence from the time it was found to the time it is presented in court should be limited.
- Records should be kept of people who handle the physical evidence, the reason, date and time it was handled.
- The name of the person who receives the physical evidence should be recorded in the package bag.
- The signed receipt of the person accepting the evidence should be obtained.
- Upon receiving it back, the person receiving the evidence, should note the changes (if any) and the condition, and this information must be brought to the attention of the court.

As pointed out by Van Graan and Budhram (in Zinn & Dintwe, 2015:64) the mere identification of an object does not have much evidential merit unless it is positively linked to a specific individual. In other words, an object that is tendered in court as evidence must show, by means of individualisation, that a certain act or conduct was carried out by a certain individual.

#### **3.10.4 Individualisation of evidence**

Individualisation can take place only after the physical evidence has been identified and collected. Van Graan and Budhram (in Zinn & Dintwe, 2015:64) assert that the overall aim of individualisation is to individualise the incident as the act of a particular person or persons. According to Marais (1992:19), individualisation is based on and takes place through comparison. Individualisation is completed when the object in dispute and the standard of comparison have the same origin (Van Rooyen, 2001:58). A standard of comparison is an authentic specimen of known origin, i.e. a comparable, specific object that is obtained from the crime scene, objects, vehicles or persons directly or probably involved in the crime (Marais, 1992:19).

In support of the opinions expressed by Marais (1992:19) and Van Rooyen (2001:58), Van Graan and Budhram (in Zinn & Dintwe, 2015:65) affirm that individualisation involves comparison, usually of the disputed object found at the scene of an incident, with an object of known origin obtained from the suspect

person. Van Graan and Budhram (in Zinn & Dintwe, 2015:64) and Van der Westhuizen (1996:06) state that a process of individualisation takes place to determine individuality and consists of identifications and comparisons that have a twofold aim, namely:

- to individualise positively the various objects in dispute; and
- to conclusively determine the criminal involvement of the object or person providing the standard of comparison.

According to Van Rooyen (2004:12), individualisation refers to the demonstration that a particular sample is unique even among the members of the same class. Van Graan and Budhram (in Zinn & Dintwe, 2015:65) state that to add value to the investigation process, the identification and individualisation must meet the following requirements:

- Uniqueness;
- Individuality;
- Invariability;
- Reproducibility; and
- Classifiability.

The identification, collection and individualisation of evidence may, according to Marais (1992:6), be used to:

- identify the perpetrator;
- connect the perpetrator with the crime scene;
- prove an element of a crime;
- indicate the associative link between one crime or events with another;
- provide the investigator with general background information and clues; and
- confirm or refute the veracity of statements made by witnesses.

It is important to note that the investigator has a minimal role to play in the individualisation of the physical evidence. Only experts in the specific fields such as examination of fingerprints and examination of human hairs can testify as experts in the examination of such physical evidence. This means that the role of the

investigator at the crime scene is to identify, collect and preserve evidence for the individualisation process by the experts in the relevant fields.

The participants in Sample A were asked: “What are the specific procedures that have to be followed by the police investigator upon receiving a new murder case?” This question was also posed to the participants in Sample C and Sample D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose.

Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.8 below:

**Table 3.8: Participants’ responses regarding the specific procedures that have to be followed by the police investigator upon receiving a new murder case**

| Sample A  |
|---|
| <ul style="list-style-type: none"> <li>• Visit the crime scene and search for evidence (eight).</li> <li>• Interview witnesses (seven).</li> <li>• Summon the experts to the crime scene (five).</li> <li>• Keep a record of the activities and collect exhibits (three).</li> <li>• Arrest the suspect (two).</li> <li>• Attend the post-mortem (two).</li> <li>• Contact next of kin (two).</li> <li>• Sign for the case docket (one).</li> <li>• Produce the case docket for 24-hour inspection (one).</li> <li>• Comply with the instructions of the Detective Branch Commander (one).</li> </ul> |

(Source: Feedback from participants)

The majority of the participants agree with Benson et al. (in Zinn & Dintwe, 2015:22), Osterburg and Ward (2010:98), SAPS (2008:302-309) and Van Niekerk et al. (in Zinn & Dintwe, 2015:211), that the police investigator should obtain the case docket and attend the crime scene as soon as possible to conduct the preliminary investigation. Seven of the participants mentioned interviewing of the witnesses. These responses should be understood in the context of specific procedures that have to be carried out during the preliminary investigation, as alluded to by

Gudjonsson (in Newburn et al., (2011:470)) and Lochner (2014:14). Similarly, summoning of the experts to the crime scene as mentioned by five participants, forms part of the preliminary investigation. What is not supported by the literature is the response of one participant who stated that the police investigation has to comply with the instructions of the Detective Branch Commander. Clearly, the Detective Branch Commander would have insight into the case docket after the preliminary investigation has been conducted and the case docket brought for 24-hour inspection. Accordingly, the researcher contends that the instructions of the Detective Branch Commander can be followed only during the further investigation phase.

### **3.10.5 Warrant of search**

It is sometimes necessary to search a suspect's person or property for clues in order to solve a crime or to prove the case (Kleyn & Viljoen, 2010:150). According to Cross (2008:216), a warrant of search is a legal document that authorises law enforcement officers to search for and seize evidence related to an investigation that may possibly be used in court. Section 21 of the CPA describes how the search warrant application can be made (South Africa, 1977).

According to Joubert (2005:129), the search and seizure should, wherever possible, be conducted only in terms of a search warrant issued by a judicial officer, such as a magistrate or judge who must decide whether or not there are reasonable grounds for the search. Joubert (2001:237) explains that the application for a warrant of search must be in writing and should provide the following information:

- A description of the crime alleged to have been committed;
- That the crime was committed within the area of jurisdiction where the application is made and if not, then the suspect is known to be within the area of jurisdiction; and
- That there are reasonable grounds for believing that the suspect has committed the crime, based on information obtained under oath.

Section 21(2) of the CPA provides that a search warrant issued under section 21(1) of the CPA shall require a police official to seize the article referred to in section 20 of the CPA (South Africa, 1977). It further authorises the police official to search any

person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises as described in the warrant.

### **3.10.6 Warrant of arrest**

A warrant is a written order that instructs that the person described in the warrant must be arrested by a peace officer in connection with a crime mentioned in the warrant, and that such person must be brought before a lower court in terms of section 50 of the CPA (Joubert, 2013:259). According to section 43 (1) of the CPA, any magistrate or justice may issue a warrant of arrest of any person upon the written application of a public prosecutor or a commissioned officer of police—

- which sets out the offence alleged to have been committed;
- which alleges that such offence was committed within the area of jurisdiction of such magistrate or, in the case of a justice, within the area of jurisdiction of the magistrate within whose district or area application is made to the justice of such warrant, or where such offence was not committed within such area of jurisdiction, which alleges that the person in respect of whom the application is made, is known or is on reasonable grounds suspected to be within such area of jurisdiction; and
- which states that from information taken upon oath there is a reasonable suspicion that the person in respect of whom the warrant is applied for has committed the alleged offence (South Africa, 1977).

The information above clearly shows that the investigator would have to make an application for both search and arrest warrants through the prosecutor before they are authorised by the court. It is also clear that the prosecutor would have to have access to the case docket to determine the merit of such applications. Notwithstanding the provision of section 22 of the CPA and based on the current model of murder investigation, the prosecutor becomes aware of the investigation when these applications are made. Alternatively, the prosecutor gets to know about the case after the suspect has been arrested without a warrant and appears before court.

The participants in Sample A were asked: “What is the role (duties and functions) of the police investigator in the investigation of murder cases?” This question was also posed to the participants in Sample C and Sample D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.9 below:

**Table 3.9: Participants’ understanding of the role (duties and functions) of the police investigator in the investigation of murder cases**

| Sample A  |
|---|
| <ul style="list-style-type: none"> <li>• Identify and arrest the perpetrator (eight).</li> <li>• Collect evidence (eight).</li> <li>• Determine whether crime has been committed (crime scene attendance) (seven).</li> <li>• Present the case to court (five).</li> <li>• Attend autopsy (four).</li> <li>• Interview suspects and witnesses (four).</li> <li>• Obtain reports of fingerprints, ballistics, pathologists, DNA, CCTV footages (four).</li> <li>• Secure exhibits (three).</li> <li>• Conduct further investigation (three).</li> <li>• Task informers and intelligence service (two).</li> <li>• Identify the victim (one).</li> <li>• Secure the crime scene (one).</li> <li>• Search the crime scene and vicinity (one).</li> <li>• Oppose the bail application (one).</li> <li>• Secure conviction (one).</li> </ul> |

(Source: Feedback from participants)

Table 3.9 above depicts the views of the participants with regard to the role (duties and functions) of the police investigator in the investigation of murder cases. The majority of the participants highlighted the importance of attending the crime scene, gathering the evidence and arresting the perpetrator. Accordingly, the responses of the majority of the participants are consistent with the submissions of Byrd (2004:1), Marais (1992:6), Van Graan and Budhram (in Zinn & Dintwe, 2015:64), Van Niekerk

et al. (in Zinn & Dintwe, 2015:211), and Van Rooyen (2004:12). In support of the majority of the responses of the participants, the researcher is of the view that the roles (functions and functions) of the police investigator in the investigation of murder cases can be a futile exercise if the first officer attending the crime scene failed to secure it as described by Osterburg and Ward (2010:98). Some participants went further to state that it is the role of the police investigator to present the case before the court. This submission should be understood in the context of having sufficient evidence to ensure the prosecution process. However, it is noted that only one participant mentioned securing of the crime scene in his submission.

Preservation of the crime scene is critically important in the investigation of murder. There is always a danger that if the crime scene is not secured and preserved, the subsequent gathering of evidence may render such evidence inadmissible in court. Equally important is the fact that only two participants mentioned the tasking of informers and intelligence service when responding to the questions. This could mean that the informers and crime intelligence do not necessarily play a significant role in the investigation of murder cases.

The participants in Sample A were asked “What are the problems that the police investigators face when investigating murder cases?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.10 below:

**Table 3.10: Participants’ views regarding the problems that police investigators face when investigating murder cases**

| Sample A  |
|---|
| <ul style="list-style-type: none"> <li>• Witnesses not willing to testify against the accused (nine).</li> <li>• Crime scene not properly cordoned off (four).</li> <li>• Delay in arrival of experts to the crime scene (three).</li> <li>• Delay in identification of the suspect (one).</li> <li>• Delay in obtaining evidence from section 205 (one).</li> <li>• Lack of eyewitnesses (one).</li> </ul> |

(Source: Feedback from participants)

The majority of the participants indicated that one of the main problems that the police investigators face when investigating murder cases is the unwillingness of the witnesses to testify against the accused. Four of the participants indicated the cordoning off of the crime scene, while three participants mentioned the late arrival of the experts at the crime scene. Other participants individually stated the lack of eyewitnesses, delay in obtaining evidence from section 205 of the CPA application, and delay in the identification of the suspect.

When looking at the responses of the participants, it is evident that witnesses play an integral role in the identification of the suspect, as alluded to by Joubert (2013:43). However, the main challenge identified by the participants that was not addressed by the literature is the reluctance of witnesses to testify against the accused. Four of the responses of the participants correspond to the literature as highlighted by Lee et al. (2001:1), and Dutelle (2011:5). In the discussion to follow, the researcher highlights the current murder investigation model used by the SAPS.

### **3.11 CURRENT MURDER INVESTIGATION MODEL USED BY THE SAPS**

In order for the SAPS to conduct an official criminal investigation, a complaint must be laid at the police station to the police official on duty. According to Swanepoel et al. (2014:122), the investigation process is initiated when the police receive a complaint from a member of the public or are instructed by the National Commissioner of Police or requested by the prosecuting authority to investigate a matter. While this is a generic statement, it is worth noting that in the case of a murder incident, a case is immediately opened for investigation once the complaint has been confirmed. For that reason, there would be no need to take instruction from the National Commissioner or the prosecuting authority. Currently, the SAPS follow the same procedure in all criminal cases for investigation, with the exception of commercial crime cases.

The following is a current murder investigation model that is followed by the SAPS, as described by SAPS (2008:302-309):

- **Report of a complaint**

- The process starts when a complaint is received at the Community Service Centre (CSC).

- The case must be evaluated and a case docket should be opened by the official on duty in the CSC.
- Similarly, the investigator must evaluate the information in the case docket upon receiving it before he or she attends to a complaint or if a complaint is received at his or her office.
- **Opening of a case docket**
  - The front page of the case docket must be fully completed.
  - The A1 statement must contain all elements of the crime in this case, which is murder.
  - A1 statement must be signed, filed and marked properly.
- **Registration of a case docket**
  - After a case docket has been opened, it is then registered in the Crime Administration System (CAS) or Crime Register (CR) (depending on which system the station is using).
- **Transfer of the case docket to the Crime Office**
  - The Crime Office investigators screen the case docket and conduct preliminary investigations.
  - They also attend to the administrative matters before forwarding the case docket to the Investigating Officers.
- **Transfer of the case docket to the Detective Branch**
  - The Investigating Officer on duty signs for the case docket in the CR and enters it in the Detective Crime Control Register. In the case of CAS, the Investigating Officer acknowledges receipt of the case docket and conducts a further preliminary investigation.
  - After the preliminary investigation, the Investigating Officer hands the case docket to the Detective Branch Commander.
  - The Detective Branch Commander allocates the case docket to the Investigating Officer.
  - The Investigating Officer acknowledges receipt for further investigation.
- **Inspection procedures**
  - The Detective Branch Commander conducts a 24-hour inspection of the case docket, followed by a monthly inspection.

- The Detective Branch Commander conducts the case docket inspection for the accused's first court appearance or if the case docket is submitted to the Senior Public Prosecutor for a decision.
- In addition, the case docket inspection is conducted every time the case docket is taken to court or returned from court.
- **Disposal of case docket**
  - Upon finalisation in court or where there is no prospect of arrest and prosecution, the case docket is disposed of by following the Standing Orders (SOs) for case docket disposal.

It should be emphasised at this point that the researcher focused on the current murder investigation model to establish the interaction between the police investigator and prosecutor, therefore correspondence that is normally filed in the "B clip" of the case docket is excluded. However, it is worth noting that in commercial crime investigations, the prosecutors of the SCCU and investigators of CCU file the agreed investigation plan in this clip as a method of communication.

The participants in Sample A were asked: "How do the police investigators interact with the prosecuting authority while murder cases are still under investigation? Please explain." This question was also directed at the participants in Sample C and D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.11 below:

**Table 3.11: Participants' responses regarding Interaction between the police investigators and prosecuting authority while murder cases are still under investigation**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• Interaction takes place by means of instructions in the investigation diary (five).</li> <li>• Police investigators visit the prosecutors in their offices before an arrest can be made (four).</li> <li>• Prosecutors provide guidance in the investigation diary after the first appearance of the accused (three).</li> <li>• Case dockets are sent to the prosecutors for decision (two).</li> <li>• The case docket is brought for application for the warrant of arrest (one).</li> </ul> |

(Source: Feedback from participants)

Five of the responses of the participants suggest that most of the interaction between the police investigator and prosecutor takes place by means of instructions in the investigation diary. It was stated by three participants that prosecutors provide guidance in the investigation diary after the first appearance of the accused. Two participants said that the case dockets are sent to the prosecutors for decision. In this regard, the prosecutor makes entries in the investigation diary, highlighting what must be done. However, four participants stated that police investigators visit the prosecutors in their offices before an arrest can be made. There was one participant who indicated that the interaction takes place when the case docket is brought by the police investigator for application for the warrant of arrest. Although worded differently, it is evident that all the responses of the participants are consistent with the opinion of SAPS (2008:302-309). The following discussion relates to the intelligence-led investigation model.

### **3.12 INTELLIGENCE-LED INVESTIGATION MODEL**

The use of intelligence by law enforcement agencies has been in existence for decades and it is still being used today. However, the dynamics of crime are ever-changing and influenced by various factors (SAPS, 2015b:17). Technikon Pretoria (2003:48) debates that the time-consuming length of traditional intelligence is not suitable for the present dynamic environment where useful intelligence is required immediately in order to aid effective decisions.

It is indisputable that modern criminals use technology and tactics to conceal their criminal activities. In this regard, McDevitt (2012:31-32) confirms that criminals tend to perfect their own offences and become “specialists.” To argue his point further by means of an example, McDevitt (2012:32) maintains that successful burglars do not just decide one morning to become thieves, and successful forgers do not often venture into the world of armed robbery. Taking the view of McDevitt (2012:31-32) into consideration, this means that law enforcement agencies should not rely solely on the conventional methods of investigation. The challenge for law enforcement is to be prepared for this increasing sophistication in order to reduce the impact of criminal activities on our communities United Nations Office on Drugs and Crime (UNODC), 2010:8). To ensure that these criminal activities are disrupted and the responsible individuals are identified, law enforcement agencies across the world are required to gather and analyse meaningful information. The following discussion relates to definitions of intelligence, intelligence-led investigation versus intelligence-led policing, intelligence cycle, and the importance and relevance of intelligence in a murder investigation.

### **3.12.1 Definition of intelligence**

The term “intelligence” is sometimes distorted by various law enforcement agencies. The most common mistake is to consider ‘intelligence’ as synonymous with ‘information’ (Peterson, 2005:3). The researcher contends that the collected information is not intelligence. Orthmann and Hess (2013:207) argue that the collected information plus analysis is intelligence. In providing a comprehensive definition, Lerner (2010:1) states that intelligence is the collection, culling, analysis, and dissemination of critical and strategic information.

According to Zinn and Dintwe (2015:445), intelligence is the processed information that may indirectly assist investigations. Peterson (2005:3) argues that intelligence is not what is collected; it is what is produced after collected data have been evaluated and analysed. John and Maguire (in Newburn et al., 2011:203) opine that there has been a considerable investment in improving and linking intelligence on a national and international level.

### **3.12.2 Intelligence-led investigation versus intelligence-led policing**

Various law enforcement agencies across the world use the term “intelligence-led policing” or “intelligence-led investigation” upon the application of intelligence in crime-combating operations. There seems to be various opinions among the authors with regard to the use of the terms “intelligence-led policing” and “intelligence-led investigation.” According to Peterson (2005:9), intelligence-led policing focuses on key criminal activities. This author goes further to state that once crime problems have been identified and quantified by means of intelligence assessments, key criminals can be targeted for investigation and prosecution.

Adding to the confusion, Orthmann and Hess (2013:208) state that the intelligence-led policing model has been adopted by the law enforcement agencies in the USA and United Kingdom (UK) for community policing. According to ISS (2015:50), the intelligence-led policing model is a conceptual framework for conducting the business of policing. ISS (2015:50) further states that intelligence-led policing is an information-organising process that allows policing agencies to better understand their crime problems, thus enabling them to make informed decisions on how best to approach specific crime challenges. The intelligence-led policing model seeks to increase the effectiveness of policing through greater emphasis on the problem-oriented policing (Newburn et al., 2011:665-666). According to Gunter and Hertig (2005:17), intelligence-led investigations are also part of a criminal investigation; however, they are not designed to fulfil the goals of criminal investigation. The researcher understands that in the context of the USA, this submission is probably true. However, in the South African context, the opposite is true. This is because the SAPS are mandated to gather their own intelligence by applying techniques such as the intelligence-led investigation model to, *inter alia*, fulfil the goals of criminal investigation.

The researcher is of the view that the interpretation of these terms is academic in nature. Operationally, both intelligence-led policing and intelligence-led investigation serve one purpose, which is to combat crime in one way or another, by means of the analysis of intelligence. For the purpose of this study, the terms ‘intelligence-led policing’ and ‘intelligence-led investigation’ will be used interchangeably.

### **3.12.3 Intelligence cycle**

There are various phases in the intelligence cycle that can be identified. According to Peterson (2005:6-7), the intelligence cycle consists of six phases, which are summarised as follows:

- **Planning and Direction**

- Effective planning assesses existing data and ensures that additional data collected will fill any gaps in the information already on file.
- To be effective, intelligence collection must be planned and focused; its methods must be coordinated, and its guidelines must prohibit illegal methods of obtaining information.
- Planning requires an agency to identify the outcomes it wants to achieve from its collection efforts.

- **Collection**

- Intelligence analysis requires collecting and processing large amounts of information.
- Data collection is the most labour-intensive aspect of the intelligence process.
- New technology such as new or updated laws supports this emphasis.
- Historically, intelligence operatives use physical surveillance, electronic surveillance, informants, undercover agents, newspaper reports and public records as the most common sources for data collection.

- **Processing/collation**

- Processing/collating involves sifting through available data to eliminate useless, irrelevant or incorrect information, and to arrange the data in a logical order.
- Collation is performed by using sophisticated databases with text-mining capabilities.
- Database design is critical for retrieving and comparing data. Many computer software companies offer database products, but most require fine-tuning to tailor them to law enforcement agencies' needs.
- Processing and collation also involve evaluating the data being entered.
- Information placed into an intelligence file is evaluated for the validity of the information and the reliability of its source.

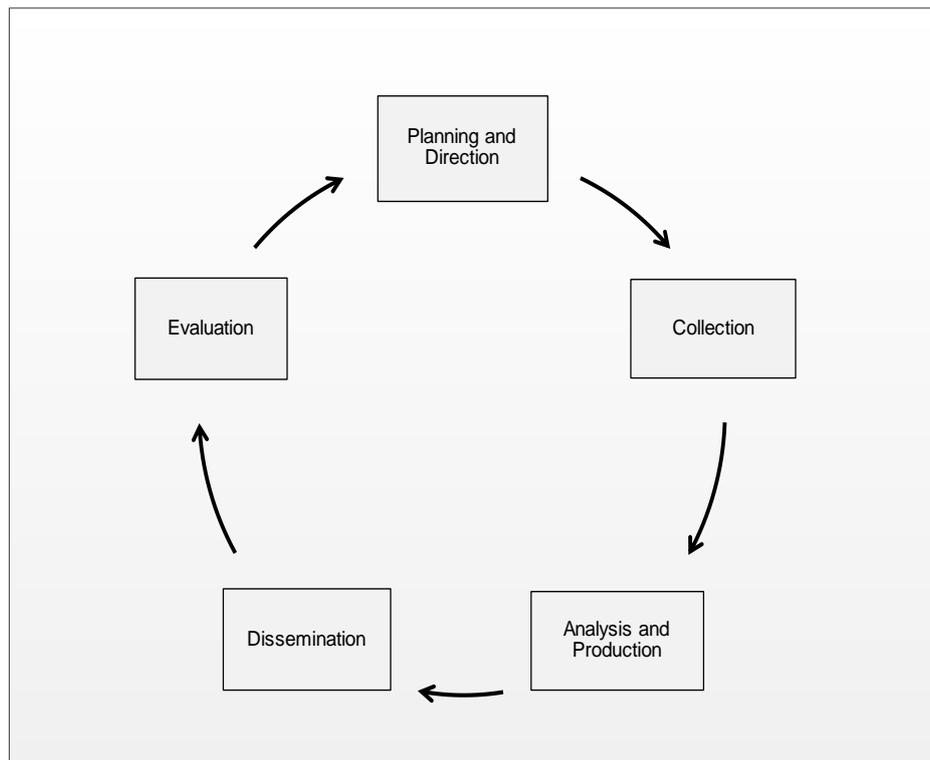
- **Analysis**
  - Analysis converts information into intelligence.
  - Analysis is quite simply a process of deriving meaning from data.
  - The analytic process tells us what information is present or missing from the facts or evidence.
  - In law enforcement intelligence operations, data are analysed to provide further leads in investigations, to present hypotheses about who committed a crime or how it was committed, to predict future crime patterns, and to assess threats facing a jurisdiction.
  - The process, along with investigative experience, also points out what has been done and what operational steps have to be taken.
- **Dissemination**
  - Dissemination requires getting intelligence to those who have the need and the right to use it in whatever form is deemed most appropriate.
  - Intelligence reports kept in the intelligence unit fail to fulfil their mission.
- **Re-evaluation**
  - Re-evaluation is the task of examining intelligence products to determine their effectiveness.
  - Part of this assessment comes from the consumers of intelligence; that is, the managers, investigators, and officers to whom the intelligence is directed.

In sharp contrast with Peterson (2005:6-7), SAPS (2008:477-478) lists the following eleven phases of the intelligence cycle applied in the SAPS investigative environment:

- Problem/task;
- Planning and direction;
- Collection;
- Evaluation;
- Collation;
- Analysis;
- Interpretation;
- Production;
- Dissemination;

- Action; and
- Feedback/closure.

On the other hand, the Center for Policing Terrorism in United States of America (CPT) (2006:6) differs from both Peterson (2005:6-7) and SAPS (2008:477-479), and holds the view that there are five phases in the intelligence cycle. These five phases are illustrated in Figure 3.7 below:



**Figure 3.7: Five phases of the intelligence cycle**  
(Source: CPT, 2006:6)

The submissions of Peterson (2005:6-7), SAPS (2008:477-478) and CPT (2006:6) clearly indicate that there is a discrepancy with regard to the number of phases in the intelligence cycle. Besides these discrepancies, there are four main phases, namely: Planning and Direction, Collection, Analysis and Dissemination that can be found in these submissions. Looking at the first main phase (Planning and Direction), it is important that ‘good’ information should be collected for analysis. To collect the information, one has to identify the reliable source. Identification of the source of information would include planning and directing how the information would be collected, as depicted in Figure 3.7 above. In selecting the source of

information, the investigator must consider the type of information required and its relevancy.

Pretoria Technikon (2003:76-78) provides the following summary of factors that the investigator may use to make the decision of selecting the source of information:

- **Capability**
  - Instructions and requests for information must be issued only to sources that are capable of providing the required information.
- **Availability**
  - Sources must be used only when they are available to collect information.
- **Accuracy**
  - To be of value, information should be confirmed, otherwise it will be difficult to evaluate and interpret it properly.
- **Timeliness**
  - For information to be of value, the client must receive it in time to act on it accordingly.
- **Risk**
  - The collection of information often involves considerable risks, civil and criminal.
- **Reliability**
  - The most directly acquired information is often the most reliable.
- **Security**
  - There is always a need to protect sources, particularly those who are covertly collecting information.
- **Directness**
  - Collection must be considered in the light of evidence likely to be supplied, whether it is direct or circumstantial.
- **Cost**
  - Information is an expensive commodity, therefore the investigator must have a budget to work with.

While the factors described by Pretoria Technikon (2003:76-78) above are important, the researcher contends that the time of the incident and the time in which

the information was obtained is critically important. The timeliness factor therefore influences the other factors and can be used to consider whether the information can be collected or not.

The participants in Sample A were asked: “How would you define the intelligence-led investigation model?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.12 below:

**Table 3.12: Participants’ definition of the intelligence-led Investigation model**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• Following up information and collecting evidence (four).</li> <li>• Acting on the information provided by Crime Intelligence (four).</li> <li>• Clues and leads followed by Crime Intelligence during investigation (three).</li> <li>• Crime Intelligence informs police about crimes being planned for a particular area (two).</li> <li>• Crime Intelligence assists with tracing of suspects (one).</li> <li>• Investigation driven by Crime Intelligence to solve the case (one).</li> <li>• Investigation prior to arrest (one).</li> </ul> |

(Source: Feedback from participants)

In defining the intelligence-led investigation model, four participants stated that it is following up information and collecting evidence. Another four participants stated that it relates to acting on the information provided by Crime Intelligence. Three participants were of the view that the intelligence-led investigation model is about the clues and leads followed by Crime Intelligence during investigation. Notably, only one participant clearly stated that Crime Intelligence assists with tracing of suspects. One participant, who appeared to be contradicting the response that Crime Intelligence assists with tracing of suspects, stated that the intelligence-led investigation model is an investigation driven by Crime Intelligence to solve the case. Clearly, it is not the responsibility of Crime Intelligence to solve the cases but rather that of the criminal investigation component. Another participant stated that it is an investigation prior to arrest.

When comparing the responses of the participants and the literature, it is evident that the participants did not have a comprehensive understanding of what an intelligence-led investigation model is. This is understandable because these participants do not form part of the intelligence structure of the SAPS, and due to the nature of the intelligence operations, they are not exposed to the Crime Intelligence processes. In view of this reason, the researcher had expected this limitation from the participants. The responses of the participants should therefore be understood in the context of Crime Intelligence having a role to play in the collection of intelligence, which is then disseminated to the police investigators for further action. Accordingly, these responses are inconsistent with the submissions of Gunter and Hertig (2005:17) and ISS (2015:50) in respect of the definition of an intelligence-led investigation model.

#### **3.12.4 Importance and relevance of intelligence in murder investigation**

The use of intelligence as a criminal investigation tool is critically important to all countries who have a problem with crime. There is evidence that the intelligence systems and practices were developed in England and Wales in the 1970s and 1980s (John & Maguire (in Newburn et al., 2011:200)). John and Maguire (in Newburn et al. 2011:201), further states that in the mid-1980s, the UK experienced increased crime rates despite having invested heavily in personnel and technology. As a result, one of the options that came to the fore to fight such increases in crime rates was the development and growth of an intelligence-led investigation model.

The following are the summarised reasons for the development and growth of an intelligence-led investigation model by UK authorities, highlighted by John and Maguire (in Newburn et al. (2011:201-203)).

- **Perceived ineffectiveness of reactive policing**
  - The frustration in central government and among senior police ranks regarding failure to achieve reductions in crime rates or increases in detection rates, despite increased investment in personnel and technology.

- **Limitations on interviewing and “confession evidence”**
  - The new search for investigative strategies had seen a reduction in the number of cases in which police were able to rely on uncorroborated “confession evidence” to secure a conviction.
- **Advances in technology**
  - The impact of advances in technology on extending the potential of proactive policing techniques.
- **Increased focus on serious and organised crime**
  - Concern about increasingly sophisticated methods used by criminals involved in serious and organised crime led to the need to develop equally sophisticated tactics to target the criminals.
- **Pressures for more efficient and effective use of resources**
  - The emphasis by government on more efficient and effective use of resources had an impact on the development of intelligence.

There is no doubt that the reasons put forward by the UK authorities above still exist and apply to most countries that are faced with the high incidence of violent crimes. Needless to say, South Africa is one of those countries.

Crime Intelligence is one of the components of the SAPS that play a critical role in pursuit of their mandate, as provided for in the Constitution of South Africa. SAPS (2015b:120) states that the role of intelligence in solving crime is of paramount importance to enable successful prosecutions. In improving criminal investigations, the Department of Safety and Security (1998:19) highlighted the following in respect of the Crime Intelligence component:

- The value of crime intelligence to policing is directly related to the extent to which it is useful for the prevention and investigation of crime.
- The gathering and collection of crime intelligence must take place within the confines of the law.
- The informer system remains an integral component of the investigation function. However, it must be continuously appraised for quality, reliability, extensiveness and integrity. It is vital that the system of crime intelligence be

effectively developed across all South African communities. Cooperation with intelligence agencies is essential in this regard.

- Crime intelligence analysts should be appointed to the SAPS to assist in improving the quality of intelligence used by detectives.
- To be effective, intelligence should be accessible – with due regard to issues of security – to relevant users within the police service.

Describing the role of crime intelligence analysts, UNODC (2010:6) lists the following core functions:

- To gather information, to understand it and the relevance or relationship of each piece to all of the others.
- To develop this information objectively to arrive at an understanding of the whole.
- To communicate this understanding to others and so to put the intelligence process to practical use.

Zinn (2010:120) states that crime intelligence is information about crime that has been systematically processed into a form that can be readily accessed and used to track down criminals and combat crime. It is therefore clear from the intelligence process provided by Peterson (2005:6-7) that the police investigator may request the assistance of the intelligence operatives to trace the suspect, while ensuring that the evidence gathered will be admissible in court. According to Kelly, Chin and Schatzberg (1994:361), the following are elements of a successful intelligence process:

- Guidelines and specifically assigned responsibility for determining the kind of information that shall be kept in the files;
- The method of reviewing the material for continued usefulness and relevance;
- A systematic flow of pertinent and reliable information;
- A uniform procedure for evaluating, cross-indexing and storing information;
- A system for proper analysis of information;
- A system capable of rapid and efficient retrieval of all information;
- Explicit guidelines for disseminating information from the files; and

- Security procedures.

The elements of the successful intelligence process described by Kelly et al. (1994:361), above are indeed significant in murder investigations. These elements highlight the importance of focusing on the relevant information that may be used by crime intelligence operatives during investigation and tracing of the murder suspect. For the purpose of this study, crime intelligence operatives are members of the SAPS Crime Intelligence component. Crime intelligence operatives have powers to execute policing functions that are bestowed on them in terms of the Constitution of South Africa, the SAPS Act and the National Strategic Intelligence Act No. 39 of 1994. Table 3.13 below illustrates the intelligence-led model applied in the SAPS investigative environment.

**Table 3.13: SAPS intelligence-led model applied in the investigative environment**

| THE INTELLIGENCE PROCESS  | INVESTIGATIVE ENVIRONMENT   |
|---------------------------|---|
| 1. Problem/task           | <ul style="list-style-type: none"> <li>• Study the station matrix, station Crime Threat Analysis (CTA) and case docket content.</li> </ul>  |
| 2. Planning and direction | <ul style="list-style-type: none"> <li>• Level of evaluation to create direction and instruction.</li> <li>• Acquiring assistance from all the relevant stakeholders (Crime Information Analysis Centre (CIAC), Crime Information Management Centre (CIMC), Crime Intelligence Gathering (CIG), Technical Support Unit, experts and own informers.</li> <li>• Access to information in case docket to crime intelligence operatives.</li> </ul> |
| 3. Collection             | <ul style="list-style-type: none"> <li>• Access statements and evidence to identify gaps.</li> </ul>  |
| 4. Evaluation             | <ul style="list-style-type: none"> <li>• Evaluate statements and evidence for completeness and co-relatedness on a continuous basis.</li> <li>• Assessment of details of matrix to establish commonalities or related incidents.</li> </ul>   |
| 5. Collation              | <ul style="list-style-type: none"> <li>• Statements and evidence must be collated into:               <ul style="list-style-type: none"> <li>- Matrix (case docket analysis) – (CIAC).</li> <li>- Timeline analysis - (CIMC).</li> </ul> </li> </ul>  |

| THE INTELLIGENCE PROCESS | INVESTIGATIVE ENVIRONMENT  |
|--------------------------|--|
|                          | <ul style="list-style-type: none"> <li>- Profiling - (CIMC).</li> <li>- Information from informers – (CIG).</li> <li>- Technical and physical surveillance reports.</li> <li>- Experts' reports.</li> </ul>                |
| 6. Analysis              | <ul style="list-style-type: none"> <li>• Linkages are established via collation and the analysis results are reported back to the investigator.</li> <li>• Direction for investigation is given in this report.</li> </ul> |
| 7. Interpretation        | <ul style="list-style-type: none"> <li>• Recommendation and interpretation of tactical and strategic analysis by the analyst to be evaluated by the investigator for practical application.</li> </ul>                     |
| 8. Production            | <ul style="list-style-type: none"> <li>• Recommendations are received back and the investigator makes decisions based on the current feedback.</li> </ul>  |
| 9. Dissemination         | <ul style="list-style-type: none"> <li>• Relevant information to relevant stakeholders in the SAPS.</li> </ul>   |
| 10. Action               | <ul style="list-style-type: none"> <li>• Tactical operation (sting operation).</li> </ul>  |
| 11. Feedback/Closure     | <ul style="list-style-type: none"> <li>• Final feedback to relevant stakeholders.</li> <li>• Intelligence file closed.</li> </ul>  |

(Source: SAPS, 2008:477-478)

The SAPS intelligence-led model in the investigative environment described above comprises eleven steps and is premised on the collection, analysis, coordination and dissemination of crime intelligence for tactical, operational and strategic use at station, provincial and national level (ISS, 2015:51).

There are similarities in the intelligence process described by Peterson (2005:6-7) and the SAPS intelligence-led model as illustrated in Table 3.13 above. However, in the SAPS intelligence-led model it is noted that the process starts from studying the station matrix, station CTA and case docket content. This is very important in murder investigations. More so because murder investigations are reactive in nature, therefore it would mean that there are certain areas where data would have to be collected to determine, among other things, the frequency of the incidents

(station matrix), the location of the incident (station CTA and the case docket content), and the possible description of the suspect (case docket content). The description of the suspect can be identified only during the analysis, which is the sixth step in the SAPS intelligence-led model.

According to Gunter and Hertig (2005:33), crime analysis is a system for identifying short-term patterns of criminal behaviour and characteristics associated with that behaviour. The following is a summary of the basic functions of crime analysis as described by Gunter and Hertig (2005:33):

- **Crime pattern detection** - such as crime type by time, day and season;
- **Crime-suspect correlations** - so that a specific suspect can be linked to a particular crime;
- **Target profiles** - to determine likely future crimes;
- **Crime forecasting** - for an area so that future crime rates can be predicted;
- **Exception reports** - that indicate areas where a level of crime occurs above a specified norm; areas that are out of control are then identified;
- **Crime trend forecasting** - where future trends in criminal activity can be identified; and
- **Resource allocation** - targeting and prioritising investigative resources must be based on hard data, and so, too, must protective resources, such as increased manpower allocation.

The crime analysis process described by Gunter and Hertig (2005:33) above indicates that it also forms part of the intelligence-led investigation. It is therefore clear that the intelligence-led investigation model is a tool that can be effectively used in the SAPS to, *inter alia*, trace the suspects in murder cases. This assessment is partly supported by Gunter and Hertig (2005:17) who assert that the intelligence-led investigation model forms part of the criminal investigation; however, it is more designed to collect information about the illegal activities. It is further noted in the phases of criminal investigation, as illustrated in Figure 3.6 by Van Niekerk et al. (in Zinn & Dintwe, 2015:211), that indeed the intelligence serves to support criminal investigation.

The participants in Sample A were asked: “In your understanding, can you explain what the importance and relevance of intelligence in murder investigation are?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.14 below:

**Table 3.14: Participants’ views of the importance and relevance of Intelligence in murder investigation**

| Sample A  |
|---|
| <ul style="list-style-type: none"> <li>• It could lead to the arrest of the suspect even if little information is known about the suspect (six).</li> <li>• It provides information about key witnesses and suspects (three).</li> <li>• It saves time and resources (three).</li> <li>• Information provided can lead to evidence (two).</li> <li>• It could assist in the reconstruction of the murder scene (one).</li> <li>• It could lead to the hidden bodies (victims) (one).</li> <li>• Accurate information is provided (one).</li> <li>• Major key to the war against crime (one).</li> </ul> |

(Source: Feedback from participants)

In Table 3.14 above, the majority of the participants stated that the importance and relevance of intelligence in murder investigation are that it could lead to the arrest of the suspect, even if little information is known about the suspect. Similarly, three participants added that it provides information about key witnesses. The other three participants pointed out that time and resources saved. It is also important to take note of the view of two participants who stated that the information provided could lead to evidence.

It is clear that the majority of the participants understood the importance and relevance of intelligence in murder investigation. However, it is significant that one participant mentioned that intelligence could assist in the reconstruction of the murder scene. This response clearly shows that the participant did not understand the importance meaning of intelligence in murder investigation. This is more so because intelligence has nothing to do with the reconstruction of the crime scene,

which is the responsibility of the investigator for court purposes. Nonetheless, the majority of the responses are consistent with the opinions of Department of Safety and Security (1998:19), Kelly et al. (1994:361), and Zinn (2010:120). In the following discussion, the researcher looks at the current murder investigation model used by the SAPS versus the intelligence-led investigation model.

### **3.13 CURRENT INVESTIGATION MODEL USED BY THE SAPS IN MURDER CASES VERSUS THE INTELLIGENT-LED INVESTIGATION MODEL**

Many authors have written extensively with regard to the meaning of intelligence, its application and relevance to the CJS. In the South African context, the importance of intelligence is evident in the SAPS Act, Constitution of South Africa and the National Strategic Intelligence Act No. 39 of 1994.

There is no doubt that intelligence has a critical role to play in murder investigations. According to SAPS Annual Report 2008/09, the purpose of crime intelligence is to analyse crime information and provide technical support for criminal investigations and crime prevention operations (SAPS, 2009:126). Similarly, according to SAPS Strategic Plan 2014-2019, one of the strategic objectives of crime intelligence is to support criminal investigation (SAPS, 2015a:7-8). From the submissions of SAPS (2009:126) and SAPS (2015a:7-8) it can be concluded that if the intelligence-led investigation is launched for the purpose of arresting the suspect, it would mean once the suspect has been identified and arrested, the intelligence-led investigation would automatically be terminated since its aim would have been achieved.

The participants in Sample A were asked: "What is the difference between the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model?" This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 3.15 below:

**Table 3.15: Participants' views regarding the difference between the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• In an intelligence-led investigation model, the information about the crime and suspect is followed (eight).</li> <li>• In the current investigation model, evidence is gathered by the investigating officer (eight).</li> <li>• The current model is also intelligence-driven (one).</li> </ul> |

(Source: Feedback from participants)

There is a clear agreement among the majority of the participants with regard to the difference between the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model. The views expressed above indicate that the intelligence-led investigation model relates to gathering of information about the crime and suspect, while the current investigation model is focused more on the gathering of evidence. Accordingly, the responses of the majority of the participants are consistent with the opinions of Gunter and Hertig (2005:33), Peterson (2005:6-7) and SAPS (2008:302-309).

To compare the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model, the researcher developed Table 3.16, derived from various sources:

**Table 3.16: Current investigation model used by the SAPS in murder cases versus the intelligence-led investigation model**

| CURRENT MURDER INVESTIGATION MODEL   | INTELLIGENCE-LED INVESTIGATION MODEL  |
|--|---|
| <ul style="list-style-type: none"> <li>• Complaint is received by the SAPS at the CSC.</li> </ul>  | <ul style="list-style-type: none"> <li>• No action taken by Crime Intelligence.</li> </ul>                            |
| <ul style="list-style-type: none"> <li>• Case docket is registered and allocated to the Detective Branch Commander.</li> <li>• The first police officer attends the crime scene. The investigator on duty also attends the crime scene.</li> </ul> | <ul style="list-style-type: none"> <li>• No action taken by Crime Intelligence.</li> </ul>                            |
| <ul style="list-style-type: none"> <li>• Investigator conducts the preliminary investigation phase and submits the</li> </ul>  | <ul style="list-style-type: none"> <li>• The content of the case docket is shared with Crime Intelligence.</li> </ul> |

| CURRENT MURDER INVESTIGATION MODEL  | INTELLIGENCE-LED INVESTIGATION MODEL   |
|---|--|
| <p>case docket to the Detective Branch Commander after 24 hours for inspection.</p>   |  |
| <ul style="list-style-type: none"> <li>The case docket is received from Detective Branch Commander for further investigation by the investigator.</li> </ul>  | <ul style="list-style-type: none"> <li>The station CTA is recorded and noted by Crime Intelligence component.</li> </ul>   |
| <ul style="list-style-type: none"> <li>The investigator continues with the further investigation phases.</li> </ul>   | <ul style="list-style-type: none"> <li>The planning and tasking are done by Crime Intelligence operatives.</li> </ul>  |
| <ul style="list-style-type: none"> <li>Information is shared with Crime Intelligence operatives with regard to the suspect.</li> </ul>  | <ul style="list-style-type: none"> <li>Collection of information from the statements to identify <i>modus operandi</i>, possible motive and description of the suspect.</li> <li>Various resources, including informers and technical support, are activated.</li> </ul> |
| <ul style="list-style-type: none"> <li>The investigator continues with the gathering of evidence. This includes identification and preservation of evidence for individualisation and presentation in court.</li> <li>During this phase the case docket will be inspected monthly by the Detective Branch Commander.</li> </ul> | <ul style="list-style-type: none"> <li>Collation of information by eliminating irrelevant and incorrect information takes place.</li> <li>Relevant and correct information is put in a logical order.</li> </ul>   |
| <ul style="list-style-type: none"> <li>Further investigation phase continues.</li> </ul>  | <ul style="list-style-type: none"> <li>Analysis of information to identify further leads and missing information is conducted.</li> </ul>  |
| <ul style="list-style-type: none"> <li>Further investigation phase continues.</li> </ul>  | <ul style="list-style-type: none"> <li>Interpretation of information for practical application of the possible execution action is recommended to the investigator.</li> </ul>   |
| <ul style="list-style-type: none"> <li>The investigator may decide to apply for a warrant of arrest in terms of section 21 of CPA or the application of section 22 of CPA.</li> </ul>   | <ul style="list-style-type: none"> <li>The recommended action in the form of the intelligence report is submitted to the investigator for a decision.</li> </ul>   |
| <ul style="list-style-type: none"> <li>The investigator may request support from the stakeholders to execute the arrest.</li> <li>The investigator may request other operational units such as Tactical</li> </ul>  | <ul style="list-style-type: none"> <li>If the investigator agrees with the recommended action, the information is shared with relevant stakeholders.</li> </ul>  |

| <b>CURRENT MURDER INVESTIGATION MODEL</b>  | <b>INTELLIGENCE-LED INVESTIGATION MODEL</b>   |
|--|---|
| Response Team or Special Task Force for support. In this regard, the investigator's decision would depend on the Crime Intelligence report.  |   |
| <ul style="list-style-type: none"> <li>• Execution phase takes place.</li> </ul>   | <ul style="list-style-type: none"> <li>• Execution phase takes place.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• The suspect is processed for first court appearance.</li> <li>• The Detective Branch Commander inspects the case docket and certifies that the case docket is ready for court before it is submitted to the prosecutor.</li> </ul>  | <ul style="list-style-type: none"> <li>• Debriefing after the execution phase takes place.</li> <li>• Depending on the success of the execution phase, the Crime Intelligence file will be closed.</li> <li>• The intelligence-led investigation is thus terminated.</li> </ul> |
| <ul style="list-style-type: none"> <li>• Upon the first court appearance of the accused, the judicial phase is initiated.</li> <li>• This phase includes bail hearing and subsequent prosecution of the accused.</li> <li>• In this phase, the investigator, upon request by the prosecutor, calls the witnesses and present evidence in court.</li> </ul> |   |
| <ul style="list-style-type: none"> <li>• The Detective Branch Commander is further required to conduct inspection of the case docket every time it is taken to court or received from court.</li> </ul>  |   |
| <ul style="list-style-type: none"> <li>• Upon finalisation of the case, the case docket is disposed of according to the SOs for case docket disposal.</li> </ul>   |   |

(Compiled by the researcher from the following sources: SAPS, 2008:302-309; SAPS, 2008:477-478; Gunter & Hertig, 2005:33; Peterson, 2005:6-7; UNODC, 2010:6 and CPT, 2006:6)

Table 3.16 above depicts how the current murder investigation model used by the SAPS compares to the intelligence-led investigation model. It is vital to note that the majority of authors consulted in this Chapter 3 agree that the intelligence-led investigation can be used in one way or another in the criminal investigation process. As presented in Table 3.16, the current murder investigation model used by the SAPS implements its own procedures of investigation, which are quite

different from the intelligence-led investigation model. These procedures are evident in the responsibilities of the police investigator immediately after the case docket has been registered. The first important responsibility of the police investigator is to conduct the preliminary investigation, as alluded to by Gilbert (2010:57), while in the intelligence-led investigation model, the crime intelligence operative remains inactive until the 24-hour inspection in the case docket has been conducted by the Detective Branch Commander.

The current murder investigation model used by the SAPS and the intelligence-led investigation model share the following features:

- They are both used in the criminal investigation process in pursuit of the truth; however, they commence at different stages.
- Their objective is to take the case to court for the prosecution process.
- Their processes are applied in a systematic and organised manner.
- They comprise the application and use of different investigation methods and techniques.

In both the current murder investigation model used by the SAPS and the intelligence-led investigation model, the various responsibilities of the investigator and the crime intelligence operative are clearly defined. However, it is clear that the investigator plays a significant role in both models. The differences between the current murder investigation model used by the SAPS and the intelligence-led investigation model are summarised as follows:

- The success of the intelligence-led investigation model is measured by the quality of the intelligence report, which leads to the arrest of the suspect, while in the current murder investigation model, the conviction of the suspect is always judged as a success.
- In the intelligence-led investigation model, the focus is more on the identification of the suspect, while in the current murder investigation, the focus is on gathering the evidence linking the suspect with murder.
- The application and use of the investigation methods and techniques in the intelligence-led investigation model are not subject to court scrutiny, while in the

current murder investigation model, the investigator is normally called upon to testify about how he or she obtained the evidence.

- In the intelligence-led investigation model, crime intelligence operatives work undercover to gather intelligence and it is usually not known that they are SAPS members, while in the current murder investigation, the investigator is the “face” of the case, and is therefore usually known by all stakeholders, including the public.

The researcher contends that the intelligence-led investigation model forms an integrated part of the current murder investigation model. The researcher further argues that if the intelligence-led investigation model is used correctly, it could be an effective tool in criminal investigation to fast-track the arrest of the suspects, as alluded to by Van Niekerk et al. (in Zinn & Dintwe, 2015:211), who state that the intelligence serves to support the criminal investigation. The support referred to by Van Niekerk et al. (in Zinn & Dintwe, 2015:211), is not confined to the identification of the suspect through the analysis of intelligence only, but also to provide the possible support required to execute the arrest.

### **3.14 SUMMARY**

Since South Africa had ushered in democracy, one of the challenges that the democratic government has been struggling with is to come up with a strategy that will effectively reduce violent crimes such as murder. For years, the SAPS statistics indicate that murder is constantly increasing, on a yearly basis. Even though various interventions such as the intelligence-led investigation model are useful to support murder investigations, it appears that these interventions are not effective.

In Chapter 4, the researcher discusses the meaning of the prosecution-led investigation model. The discussion starts with the legal framework and policies relating to the prosecution service, objectives of prosecution and the importance of the relationship between the investigator and prosecutor. The process of prosecution and the meaning of the prosecution-led investigation model are also discussed. This is followed by discussing the advantages and disadvantages of the prosecution-led investigation model. The chapter concludes by discussing the prosecution-led investigation model in murder cases.

## CHAPTER 4

### MEANING OF THE PROSECUTION-LED INVESTIGATION

#### 4.1 INTRODUCTION

Successful criminal investigation leads to prosecution. The prosecution can be instituted only if a *prima facie* case can be made against the accused person. According to Redpath (2012:41), a *prima facie* case means that the allegations and supporting statements available to the prosecution are of such a nature that, if proved in a court of law on the basis of admissible evidence, the court should convict. Effectively, this means that the success of the prosecution depends on the quality of the criminal investigation conducted.

Bureau of Justice Assistance (BJA) (2001:9) describes prosecution-led investigation as the process where the prosecutor is involved in the early stage of the investigation, with the intention to guide the investigation process from the time the crime is reported until the case is brought to court. In this regard, the involvement of the prosecutor should be understood in the context of guiding the investigation and not literally conducting the investigation per se. In following the same opinion, Navickienė (2010:339) states that the efficiency of criminal investigation partly depends on cooperation between the investigators and prosecutors. Similarly, NPA (2013:12) asserts that effective cooperation with the police and other investigating agencies from the outset is essential to the efficacy of the prosecution process.

Once again, the crime statistics as reported by the SAPS for 2016/17, are indeed a cause for concern to all citizens of South Africa. These statistics indicate that 19 016 people were murdered during the reported period, as compared to 18 673 murders in 2016 (SAPS, 2017). According to Tait (2007:1), two indicators are used to measure the state of crime and safety, namely:

- The levels of recorded crime; and
- The public perceptions of safety.

With this in mind, this means that for ordinary South African citizens, the chances of being safe, let alone feeling safe, is diminishing day by day. According to the

Department of Labour (2012:13), South African citizens perceive the SAPS as being unable to deal with their safety and security needs. Clearly, with these statistics proving that the fight against the most violent crime is not winnable, the perception of the South African citizens as reported by the Department of Labour (2012:13) is not an exaggeration. As will be shown later in the chapter, the prosecution-led investigation model appears to be working well in commercial crime cases in terms of conviction rates; however, this model has not yet been applied in violent crimes such as murder. In this chapter, the researcher will argue that the application of the prosecution-led investigation model in murder cases may yield positive results in terms of conviction rates, which in turn may send a strong message to the would-be perpetrators that crime does not pay.

This chapter will endeavor to answer the sub-research questions, namely: “What is the prosecution-led investigation model?” and “What practical guidelines, procedures and recommendations can be offered to SAPS to successfully investigate murder cases?” as reflected in paragraph 1.6 of Chapter 1. The researcher will firstly discuss the legal framework and policies relating to the prosecution service, the objectives of prosecution, and the importance of the relationship between the investigator and prosecutor. The process of prosecution and the meaning of the prosecution-led investigation model are also discussed. The chapter further discusses the advantages and disadvantages of the prosecution-led investigation model. This chapter concludes by discussing the prosecution-led investigation model in murder cases.

The researcher contributes with this study by means of proposing an investigation model of murder cases that could be effective and efficient. In the following paragraph, the researcher discusses the legal framework and policies relating to the prosecution service.

#### **4.2 LEGAL FRAMEWORK AND POLICIES RELATING TO THE PROSECUTION SERVICE**

The NPA plays a critical role in the proper functioning of the CJS to ensure that the rule of law is upheld. Prosecutors have a unique position in the CJS in that they are the only people who regularly come into contact with every other part of the CJS (ISS, 2009a:101). The main role of the prosecutor is, however, to prosecute those

who are suspected of having violated the law. The prosecution process, which is mostly associated with criminal cases, actually means the process of engaging in a lawsuit, in which the prosecuting party presents relevant evidence to support its position (Neubauer & Meinhold, 2013:36).

According to Jordaan and Dintwe (in Zinn & Dintwe, 2015:257-258), the person bringing the case before a criminal court is a prosecutor, who is an employee of the NPA, or a legal practitioner who has received a delegation to prosecute a matter from a Director of Public Prosecutions. For this reason, prosecutors are considered as gatekeepers to the CJS.

In South Africa, the prosecution service in its current form is largely governed by the Constitution of South Africa, NPA Act, CPA and the prosecution policy. From the onset it should be expressly mentioned that the intention of this study is to establish whether the prosecuting authority might be able to play a meaningful role in criminal investigation, especially in murder cases. Therefore, the focus is more on the criminal investigation function, rather than the prosecution. The legal framework and policy relating to the prosecution service are discussed below, starting with the Constitution of South Africa.

#### **4.2.1 Constitution of the Republic of South Africa of 1996**

The Constitution of South Africa determines that the prosecuting authority has the power to institute criminal proceedings on behalf of the State and to carry out any necessary incidental functions (Swanepoel et al., 2014:118). Section 179 of the Constitution of South Africa states the following with regard to prosecution service:

- (1) There is a single national prosecuting authority in South Africa, structured in terms of an Act of Parliament, and consisting of-
  - (a) A National Director of Public Prosecutions (NDPP), 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 (DPPs) 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 institute criminal proceedings.
- (3) National legislation must ensure that the DPPs-
  - (a) Are appropriately qualified, and
  - (b) Are responsible for prosecutions in specific jurisdictions, subject to subsection 5.
- (4) National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice.
- (5) The NDPP-
  - (a) Must determine, with concurrence of the Cabinet member responsible for the administration of justice, and after consulting the DPPs, prosecution policy, which must be observed in the prosecution process;
  - (b) Must issue policy directives which must be observed in the prosecution process;
  - (c) May intervene in the prosecution process when policy directives are not complied with; and
  - (d) May review a decision to prosecute or not to prosecute, after consulting the relevant DPPs and after taking representations within a period specified by NDPP, from the following:
    - (i) The accused person.
    - (ii) The complainant.
    - (iii) Any other person or party whom the National Director considers to be relevant.
- (6) The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.
- (7) All other matter concerning the prosecuting authority must be determined by the national legislation (South Africa, 1996a).

It is evident that section 179 of the Constitution of South Africa aims to provide a framework for establishing the prosecuting authority, its functions as well as reporting lines. The NPA is the only body authorised by the Constitution of South Africa to prosecute on behalf of the State. Significantly, the DPPs are responsible for public prosecutions. However, Kleyn and Viljoen (2010:203) point out that the

DPPs delegate this authority to State Advocates (in the high courts) and to public prosecutors (in the lower courts). Although the NPA fulfils its role as mandated by the Constitution of South Africa, it derives its powers from the NPA Act.

#### **4.2.2 National Prosecuting Authority Act No. 32 of 1998**

The NPA Act was assented by the President on 24 June 1998 and commenced on 16 October 1998. According to section 2 of the NPA Act, there is a single national prosecuting authority established in terms of section 179 of the Constitution of South Africa (South Africa, 1998). Joubert (2001:13) states that the NPA Act was formulated to simplify the cooperation between various government departments within the CJS. These departments include the SAPS, Justice and Correctional Services. With regard to the formation of the NPA, Swanepoel et al. (2014:118), submit that it comprises the following:

- One DPPP;
- Four Deputy National Directors of Public Prosecutions (DNDPPs);
- One NDPP;
- Nine DPPs;
- Four Special Directors of Public Prosecutions (SDPPs);
- A number of Deputy Directors of Public Prosecutions; and
- Prosecutors (in magistrates' court and in the High Court).

Schönteich (2001:14) asserts that the title “prosecutor” is generic and refers to any person who may represent the State in court to prosecute those charged with crime. This author further states that in South Africa, there are different levels of prosecutors with different powers and functions. According to Redpath (2012:69), prosecutors with an LLB degree and at least two years’ prosecutorial experience, and who are Advocates of the High Court can become State Advocates and present cases in the High Court. Considering the submissions of Redpath (2012:69) and Schönteich (2001:14), it follows that not all prosecutors in the NPA are Advocates. There are certain requirements that a prosecutor has to meet before applying and being granted the right to appear in the High Courts as an Advocate.

According to section 20 of the NPA Act, the powers, duties and functions of members of the prosecuting authority are as follows:

- (1) The power, as contemplated in section 179 (2) of the Constitution of South Africa and all other relevant sections of the Constitution of South Africa, 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, vests in the prosecuting authority and shall, for all purposes, be exercised on behalf of South Africa.
- (2) Any Deputy National Director shall exercise the powers referred to in subsection (1) subject to the control and directions of the National Director.
- (3) Subject to the provisions of the Constitution and this Act, any Director shall, subject to the control and directions of the National Director, exercise the powers referred to in subsection (1) in respect of-
  - (a) the area of jurisdiction for which he or she has been appointed; and
  - (b) any offences which have not been expressly excluded from his or her jurisdiction, either generally or in a specific case, by the National Director.
- (4) Subject to the provisions of this Act, any Deputy Director shall, subject to the control and directions of the Director concerned, exercise the powers referred to in subsection (1) in respect of-
  - (a) the area of jurisdiction for which he or she has been appointed; and
  - (b) such offences and in such courts, as he or she has been authorised in writing by the National Director or a person designated by the National Director.
- (5) Any prosecutor shall be competent to exercise any of the powers referred to in subsection (1) to the extent that he or she has been authorised thereto in writing by the National Director, or by a person designated by the National Director.
- (6) A written authorisation referred to in subsection (5) shall set out-
  - (a) the area of jurisdiction;
  - (b) the offences; and
  - (c) the court or courts, in respect of which such powers may be exercised (South Africa, 1998).

There is a clear association between section 179(2) of the Constitution of South Africa and section 20(1) (a) of the NPA Act. They both confirm the powers bestowed on the NPA as an organ of the State, to institute criminal proceedings and carry out any functions incidental to instituting criminal proceedings. In other words, these two sections indicate that there is no other institution that can conduct prosecution on behalf of the State besides the NPA.

With regard to the meaning of “instituting criminal proceedings and to carry out any necessary functions incidental to institute criminal proceedings,” various authors and publishers appear to differ significantly. For instance, Montesh (2007:4) is of the view that instituting criminal proceedings is not the same as investigating an alleged crime. On the other hand, Independent Projects Trust (2011:10) and Redpath (2012:65) suggest that the NPA has the power to investigate crime as provided in the NPA Act. Upon analysis of the preamble to the NPA Act and section 179(2) of the Constitution of South Africa, Swanepoel et al. (2014:121), come to the conclusion that the prosecution may conduct investigations. In support of their argument, Swanepoel et al. (2014:121), submit that an Investigating Director in the office of the NDPP may, in terms of section 28(2) (a) of the NPA Act, decide in the case of special offences (such as those relating to organised crime) to conduct an investigation and ask the DPCI, or a member of that directorate, or any prosecutor from the prosecuting authority, to conduct the investigation or part thereof on his or her behalf and to report to him or her.

Adding to the confusion, the International Association of Prosecutors (IAP) (2014:51) states that in the institution of criminal proceedings, prosecutors will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence. Effectively, this suggests that the investigation would have to be completed before the prosecutor can institute the criminal proceedings.

The functions of the investigator in criminal investigation generally include determining whether a crime has been committed and what type of crime; collecting evidence; arresting suspects; recovering stolen properties or exhibits, and compiling case dockets in a clear and concise manner for the prosecutor (Hails, 2005:2) and (Benson et al. (in Zinn & Dintwe, 2015:13)). Birzer and Roberson (2012:354) add

that the prosecutor plays a significant role in the criminal trial and provides legal advice to law enforcement while the criminal investigation is proceeding. In line with this opinion, there is a strong argument that prosecutors are indeed involved in the investigation of crime, thereby fulfilling the requirement of “instituting criminal proceedings and to carry out any necessary functions incidental to institute criminal proceedings,” as provided in terms of Section 179(2) of the Constitution of South Africa.

Be that as it may, what is remarkable is that the prosecuting authority becomes involved during or after the investigation of the case. This is critical in the administration of the CJS. The functions of the investigators and prosecutors are intertwined, however; they keep their separation of powers as provided in the Constitution of South Africa. In other words, the South African CJS is structured in such a way that when crime is committed and reported to the SAPS, the investigation should take place and if sufficient evidence exists, the perpetrator should be prosecuted by the NPA, unless compelling circumstances direct otherwise. In addition to the Constitution of South Africa and the NPA Act, the CPA provides the prosecutor with powers to address the court and adduce evidence in prosecuting the cases.

#### **4.2.3 Criminal Procedure Act No. 51 of 1977**

The CPA provides powers to the prosecutor to address the court and adduce evidence. According to section 150(1) of the CPA, the prosecutor may at any trial, before any evidence is adduced, address the court for the purpose of explaining the charge and indicating, without comment, to the court what evidence he or she intends adducing in support of the charge. Section 150 (2) of the CPA states that:

- (a) The prosecutor may then examine the witnesses for the prosecution and adduce such evidence as may be admissible to prove that the accused committed the offence referred to in the charge or that he committed an offence of which he may be convicted on the charge.
- (b) Where any document may be received in evidence before any court upon its mere production, the prosecutor shall read out such document in court unless

the accused is in possession of a copy of such document or dispenses with the reading out thereof (South Africa, 1977).

In effect, section 150 of the CPA empowers the prosecutor to conduct the prosecution on behalf of the State. Similarly, the prosecutor has the power to withdraw the charge or stop the prosecution against the accused. This provision is found in section 6 of the CPA. This section states that an Attorney-General or any person who is conducting prosecution at the instance of the State or anybody or person conducting a prosecution under section 8 of the CPA may:

- (a) Before an accused pleads to a charge, withdraw that charge, in which event the accused shall not be entitled to a verdict of acquittal in respect of that charge.
- (b) At any time after an accused has pleaded, but before conviction, stop the prosecution in respect of that charge, in which event the court trying the accused shall acquit the accused in respect of that charge (South Africa, 1977).

Section 6 of the CPA further states that where a prosecution is conducted by a person other than an Attorney-General or a body or person referred to in section 8 of the CPA, the prosecution shall not be stopped unless the Attorney-General or any person authorised thereto by the Attorney-General, whether in general or in any particular case, has consented thereto (South Africa, 1977). In line with section 6 of the CPA, UNISA (2006:13) asserts that there are times where the investigation may run into difficulties after the accused has been arrested and appeared before the court. Under these circumstances the prosecutor may be forced to withdraw the charges against the accused and request the investigator to gather additional evidence.

Importantly, the CPA provides the prescription of right to institute prosecution and is found in section 18 of the CPA. The right to institute a prosecution for any offence, other than the offences of-

- murder;
- treason committed when the Republic is in a state of war;
- robbery, if aggravating circumstances were present;
- kidnapping;

- child-stealing;
- rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;
- the crime of genocide, crimes against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002; or
- trafficking in persons for sexual purposes by a person as contemplated in section 71 (1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or
- using a child or person who is mentally disabled for pornographic purposes as contemplated in sections 20(1) and 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, shall, unless some other period is expressly provided for by law, lapse after the expiration of a period of 20 years from the time when the offence was committed (South Africa, 1977).

As indicated in section 6 of the CPA above, reference is made to the Attorney-General. This reference emanated from the assent of the CPA by the then President of South Africa on 21 April 1977. During the apartheid era, powers of prosecution rested with the Attorney-General. Prior to the formation of the Union of South Africa in 1910, the prosecuting authority, at least in the Transvaal, was vested absolutely in the Attorney-General (Redpath, 2012:9). Between 1926 and 1992, successive ministers of justice effectively controlled the Attorneys-General, the country's most senior prosecutors, whose powers extended largely along provincial lines (ISS, 2014:6).

However, the changes that came with the new democratic government also affected the prosecution service. ISS (2014:6) states that after 1994, the African National Congress (ANC) who formed the democratic government, successfully petitioned for a constitutional provision to establish the NPA, whose head was to be appointed by the President. The change of the title of Attorney-General to that of NDPP occurred during this period. Such change of the title is reflected in section 179(1) (a) of the Constitution of South Africa. The appointment of the NDPP by the President is largely discretionary – the only requirements are that whomever the president appoints must have legal qualifications to practise law in all courts of the

country, be a South African citizen, and “be a fit and proper person” (Redpath, 2012:6). The requirements that are highlighted by Redpath (2012:6) do not necessarily apply to the NDPP only. All prosecutors should have legal qualifications and “be fit and proper persons” to prosecute on behalf of the State. However, it is the responsibility of the NDPP to determine the prosecution policy and issue policy directives, which must be observed by all prosecutors in the prosecution process.

#### **4.2.4 Prosecution policy**

A policy direction should provide clear, unambiguous reasons for the existence of an entity. According to the NPA (2014:14), the NDPP is required in terms of section 179(5) (a) and (b) of the Constitution of South Africa to determine prosecution policy and issue policy directives, which must be observed in the prosecution process. NPA (2014:14) further states that the prosecution policy and any amendments thereto must be determined with the concurrence of the Minister responsible for the administration of justice and after consultation with the DPPs. Emanating from the Constitution of South Africa and the NPA Act as described above, the NPA has a policy that guides prosecutors in the way they should exercise their powers, carry out their duties and perform their functions (Redpath, 2012:50). The prosecution policy was reviewed in 2010 and amended in June 2013 (NPA, 2013:2).

The prosecution policy directs prosecutors to exercise their discretion to assess the case and whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution. It is well known that South African courts are reluctant to comment on the discretion exercised by the NPA and generally do not interfere with the NPA’s *bona fide* exercising of its discretion because the prosecuting authority has the power to decide to prosecute and because, when an accused is on trial, he or she has the fullest opportunity to put his or her defence to the court, cross-examine prosecution witnesses and rely on the right not to be convicted unless the prosecution can prove his or her guilt beyond reasonable doubt, based on admissible evidence presented in terms of a regular procedure (Swanepoel et al., 2014:121).

The prosecution policy states that the prosecutor has the discretion to make decisions that affect the criminal process (NPA, 2013:4). This discretion can be exercised at specific stages of the process, for example—

- the decision whether or not to institute criminal proceedings against an accused person;
- the decision whether or not to withdraw charges or stop the prosecution;
- the decision whether or not to oppose an application for bail or release by an accused person who is in custody following arrest;
- the decision about which crimes to charge an accused person with and in which court the prosecution should be instituted;
- the decision whether or not to enter into a plea or sentence agreement;
- the decision whether or not the case should be diverted;
- the decision whether or not to accept a plea of guilty tendered by an accused person;
- the decision about which evidence to present during the trial;
- the decision about which evidence to present during sentence proceedings, in the event of a conviction; and
- the decision whether or not to appeal to a higher court in connection with a question of law, an inappropriate sentence or the improper granting of bail, or to seek review of proceedings (NPA, 2013:4).

It is noteworthy that the discretionary function of taking a decision should be exercised with caution, as alluded to by Christou (2005:1321), who states that prosecutors are expected, in accordance with the law, to perform their duties fairly, consistently and expeditiously; to respect and protect human dignity; and to uphold human rights. In agreement with Christou (2005:1321), Suter (2014:31) opines that the difficult decisions must be confronted, not side-stepped, and in deciding the way forward, the prosecutor must apply professional judgement, legal competence and practical life experience.

While the prosecution policy is more concerned about prosecuting the cases, it also requires the prosecutor to study the case docket to ensure that the investigation was conducted properly before taking a decision. Although prosecutors have

discretion whether to prosecute or not, Redpath (2012:48) points out that, in the South African context, a prosecutor has a duty to prosecute if there is a *prima facie* case and there is no compelling reason for a refusal to prosecute. This reasoning is in line with the legality principle, which demands that every case in which there is enough evidence and in which no legal hindrances prohibit prosecution, has to be brought to court. One may therefore add that when the prosecutor decides not to prosecute, his or her reasons should be sound and based on facts. In addition, the prosecutor must consider the public interest in the case and always be mindful of the code of conduct when fulfilling the prosecuting duties.

#### **4.2.5 National Prosecuting Authority code of conduct**

Most departments of the South African Government or institutions have a code of conduct that all employees are required to comply with. The NPA is not immune to this practice. All new prosecutors are provided with a copy of the code of conduct upon taking the oath of office. The following is a summary of the salient features of the NPA code of conduct, as provided by Schönreich (2001:36):

- Prosecutors should respect, protect and uphold justice, human dignity and fundamental rights, as entrenched in the Constitution.
- The prosecutorial discretion to institute and stop proceedings should be exercised independently in accordance with the prosecution policy, and should be free from undue political and judicial interference.
- Prosecutors should take into consideration the public interest, as distinct from partisan interests or concern.
- If requested by interested parties, prosecutors should supply reasons for the exercise of prosecutorial discretion, unless the individual rights of persons such as victims, witnesses or accused may be prejudiced, or where it may not be in the public interest to do so.
- Prosecutors should safeguard the rights of an unrepresented accused.
- Prosecutors should perform an active role in criminal proceedings, including the institution of prosecutions and, where authorised by law or consistent with local practice, in the investigation of crime and supervision over the legality of the investigations.

Schönteich (2001:36-37) further asserts that the NPA Act imposes a duty on the NDPP to bring the United Nations guidelines on the role of the prosecutors to the attention of the directors of public prosecutions and prosecutors. These guidelines are as follows:

- Prosecutors should give due attention, or shall make every effort to withdraw the prosecution, when an impartial investigation shows the charge to be unfounded.
- In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process.
- In accordance with national law, prosecutors shall consider waiving prosecution, discontinuing proceedings, or diverting a criminal case from the formal CJS, with full respect for the rights of the suspects and victims (Schönteich, 2001:36-37).

The participants in Sample A were asked “What is the role fulfilled by the prosecutor in a murder investigation?” This question was also posed to Sample C and Sample D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.1 below:

**Table 4.1: Participants’ responses regarding the role fulfilled by the prosecutor in a murder investigation**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• To guide investigation (nine).</li> <li>• To conduct a bail application (one).</li> </ul> |

(Source: Feedback from participants)

The majority of the participants were of the view that the role fulfilled by the prosecutor in a murder investigation is to guide the investigation. These responses are consistent with the literature in that the evidence should be legally obtained to stand the scrutiny of the court, as alluded to by Benson et al. (in Zinn & Dintwe, 2015:13)), Birzer and Roberson (2012:354) and Hails (205:2). The role of the prosecutor, therefore, is to ensure that all legal requirements are met before the

case is placed on the court roll. It is significant that one participant mentioned handling the bail application as the role fulfilled by the prosecutor in a murder investigation. This response was not supported by the literature.

The discussion above shows how the legal framework and policies of the NPA relate to the prosecution process. It is important to note that the NPA was established through section 179 of the Constitution of South Africa, therefore it derives its mandate, powers and functions from the Constitution of South Africa. It is also important to note the responsibility of the NDPP with regard to issuing the prosecution policy. This policy gives direction as to how the prosecution should be conducted. It also provides discretion to the prosecutors whether or not to prosecute the case. The discussion also notes the role fulfilled by the prosecutor in murder investigation, taking into consideration the relevant legislation and prosecution policy. The following discussion relates to the objectives of prosecution.

### **4.3 OBJECTIVES OF PROSECUTION**

As indicated earlier in this chapter, it is the responsibility of the police to investigate criminal complaints. On the other hand, one of the most important roles of prosecutors is to ensure that police investigations comply with the law during the investigation of crime. To Bester (2002:29), the investigator should gather sufficient evidence to link the accused person with the crime in order to increase the prospects of successful prosecution and subsequent conviction. Schönreich (1999:1) identifies some of the factors that hinder the successful prosecution of cases, as follows:

- A number of cases are withdrawn before they get to the trial stage because victims do not have a clear-cut understanding of and convincing confidence in the criminal justice processes arising from inordinate delays in the nation's criminal courts.
- Many cases often go undetected due to the public's general unwillingness to assist the police in its crime investigations, and to testify against crime for appropriate prosecution in criminal trials. Apart from that, many other crimes go undetected because of the police's weak criminal investigation capabilities, especially in respect of forensic investigations.

- Several cases are also lost due to the shortage of adequately trained and experienced prosecutors handling criminal matters.

Tyska and Fennelly (1999:96) state that a successful investigation should be characterised by the following:

- A logical sequence is followed.
- All available physical evidence is legally obtained.
- All witnesses are effectively interviewed.
- All suspects are legally and effectively interrogated.
- All leads are thoroughly developed.
- All details of the case are accurately and completely recorded and reported.

For a successful investigation, the main objective of prosecution is to determine whether an accused person has violated the law, and if the person is found guilty, to recommend the appropriate sanction to the court as proposed by Joubert (2013:32). According to Marianne and Ballin (2011:283), the objectives of prosecution are as follows:

- Discovering the truth;
- Utilising an adversarial process of adjudication;
- Utilising an accusatorial system of proof;
- Minimising erroneous convictions;
- Minimising the burdens of accusations and litigation;
- Providing for lay participation;
- Representing the dignity of the individual; and
- Maintaining fairness.

Taking a different view, Nugent-Borakove (in Worrall & Nugent-Borakove, 2008:97) states that the prosecution's objectives are associated with three primary prosecution goals, which in turn are operationalised into a menu of performance measures associated with the various practices of a prosecutor's office. To illustrate her point, Nugent-Borakove (in Worrall & Nugent-Borakove, 2008:98) provides the following interrelationship between the goals and objectives of the prosecution, as illustrated in Figure 4.1 below:



**Figure 4.1: Goals and objectives of prosecution**

(Source: Nugent-Borakove (in Worrall & Nugent-Borakove, 2008:98))

In describing the objectives of prosecution, Nugent-Borakove (in Worrall & Nugent-Borakove, 2008:97) firstly identifies the goals, namely:

- To promote the fair, impartial and expeditious pursuit of justice;
- To ensure safer communities; and
- To promote integrity in the prosecution profession and effective coordination in the CJS.

These goals are then aligned to the objectives of prosecution, from which the performance measures of the prosecutors can be generated. Clearly, there is a difference between the goals and the objectives mentioned by Nugent-Borakove (in Worrall & Nugent-Borakove, 2008:98) above. Explaining the difference, American Prosecutors Research Institute (APRI) (2004:5) states that goals describe the intended end — the long-term impact of prosecutorial efforts — while objectives represent shorter-term impact, often viewed as “benchmarks” of progress being made towards the attainment of a goal.

Looking at the submissions of Marianne and Ballin (2011:283) and Nugent-Borakove (in Worrall & Nugent-Borakove, 2008:97-98), an inference can be made that the role of the prosecutor in the criminal proceeding is thus to assist the court to arrive at the truth and to ensure that justice is done, as dictated by the law. Ultimately, the goal and the objective of any CJS is the effective and efficient delivery of justice.

In agreement with the views expressed by Marianne and Ballin (2011:283) and Nugent-Borakove (in Worrall & Nugent-Borakove, 2008:97-98), the NPA (2013:2) states that at the highest level, the objectives of the NPA are to contribute to a better life for all by ensuring justice in society so that people can live in freedom and security. However, it is imperative to note that besides having clear objectives of prosecution as well as relevant legislations, the prosecution function cannot be possible without the role of the police service. The researcher contends that without the involvement of the police service, the prosecution would be impossible.

The participants in Sample B were asked: “What are the objectives of prosecution?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.2 below:

**Table 4.2: Participants' understanding of the objectives of prosecution**

| Sample B   |
|--|
| <ul style="list-style-type: none"><li>• Promote fair justice (three).</li><li>• Victims are treated fairly (two).</li><li>• Prosecute offenders without fear or favour (two).</li><li>• Deal with crime effectively (one).</li><li>• Reduce crime (one).</li><li>• Ensure safer communities (one).</li><li>• Secure conviction and appropriate sentence (one).</li><li>• Compliance with the Constitution of South Africa (one).</li></ul> |

(Source: Feedback from participants)

As shown in Table 4.2 above, while all the participants strongly hold the view that the objectives of prosecution are to promote fair justice, some added the prosecution of offenders without fear or favour, and fair treatment of the victims. Furthermore, the participants mentioned several additional points, as they considered them to be part of the objectives of prosecution. These points range from reducing crime, and ensuring safer communities, to compliance with the Constitution of South Africa.

When comparing these responses to the literature, it is evident that the promotion of justice in a fair manner, as alluded to by Marianne and Ballin (2011:283), Nugent-Borakove (in Worrall & Nugent-Borakove, 2008:97-98) and the NPA (2013:2), came out strongly as one of the objectives of prosecution. Remarkably, one participant stated securing a conviction and appropriate sentence, which is consistent with the submissions of Joubert (2013:32) and Marianne and Ballin (2011:283). While the researcher agrees with the appropriate sentence, the issue of securing a conviction might be open to criticism, as some people may interpret it as meaning to convict the suspect at all costs, even including the manipulation of the evidence. The following discussion examines the importance of the relationship between the investigator and prosecutor.

#### **4.4 IMPORTANCE OF THE RELATIONSHIP BETWEEN THE INVESTIGATOR AND PROSECUTOR**

In any environment, good relationships contribute to the success of the team. Becker and Dutelle (2013:14) argue that investigators and prosecutors are the most visible members of any criminal investigation team. Both the investigators and prosecutors play a vital role in the South African criminal justice process, and without their effective cooperation, justice will not be served. According to Atkinson (2010:158), investigators and prosecutors should always work closely together but says that the final responsibility for the decision whether to prosecute or not rests with the prosecution services.

While the investigator is investigating and deciding to make an arrest, the prosecutor is also evaluating the case to determine whether the investigator has provided enough information, verbally and in written case (incident) reports to enable the prosecutor to believe that he/she can prove a case (Swanson et al., 2012:645). These writers further argue that investigators and prosecutors should act in harmony on the basis of mutual trust and confidence in order to prosecute the case successfully. Cooperation between the investigators and prosecutors thus ensures a shared understanding of the goal of investigation and prosecution. This understanding includes the weakness and strength of the case. Early engagement between an investigator and a prosecutor to discuss evidence will create a stronger team ethic, an important line of communication, and also prevent issues from arising at too late a stage to be resolved (Suter, 2014:xvii).

The functions and professional duties of investigators and prosecutors have traditionally been separated (Redpath, 2004:63). While it is not disputed that the prosecutor should take the decision to prosecute or not to prosecute independently, it is argued that prior to taking that decision, the prosecutor has to consult the investigator in order to understand some aspects of the investigation conducted. In other words, such consultation empowers the prosecutor to decide whether there is a *prima facie* case to be made against the accused person. This assessment is supported by Snyman (2015:227) who states that according to general principles, the burden of proving the presence of all elements of the crime beyond reasonable

doubt rests upon the State. In this case, the State is represented by the prosecutor, with assistance from the investigator.

In building a good relationship, Technikon Pretoria (2003:200-201) highlights the following behavioural issues that can influence or build a good relationship between the investigator and prosecutor:

- **Cultural differences**
  - Different cultures have different worldviews. The way of doing things will also be different.
- **Communication**
  - Each person has his or her own unique way of communicating, verbally or in writing.
- **Competition**
  - Competition is found in each and every workplace and it could play a destructive role if not managed properly. Competition between investigators and prosecutors could cause an unhealthy situation.
- **Conflict and no compromise**
  - There is conflict in each and every relationship. The key to resolve this is to compromise.
- **One must accommodate another person**
  - It is true that an investigator or a prosecutor might be inexperienced. There is a need to accommodate each other to build a strong relationship of trust. The ultimate goal is not to exploit another person's lack of experience, but to prosecute a suspect successfully in court.
- **Respect**
  - Respect for a person and his or her expertise.
- **Cooperation**
  - Only through full cooperation between both parties will they be able to have success in each and every case.
- **Perceptions**
  - Wrong perceptions about each other will lead to conflict and may result in unsuccessful prosecutions.

One of the aspects that often frustrate the relationship between the investigator and prosecutor is the failure of the investigator to bring the witnesses to court on time. Anderson et al. (2012:9), describe witnesses as people who are called by the prosecutor to come to court to testify about what they know of the case. In an attempt to improve the relationship between the investigator and prosecutor with regard to the witnesses, SAPS (2008:458) provides the following guidelines:

- The investigator should build a relationship of trust with the witness.
- It is important that the investigator, in cooperation with the prosecutor, enable the witness to refresh his/her memory by means of their statements before the start of the proceedings.
- Advise the witness not to discuss the case with anybody before, during and after the court proceedings, especially with other witnesses in the case.
- Advise the witness not to discuss cross-examination with witnesses who still have to testify.
- Acquaint the witness with the position of the role-players in court.
- Acquaint the witness with the form of address in respect of the role-players in court.
- Support the witness in staying calm before and after the testimony has been given.
- Instruct the witness to listen attentively when a question is put to him/her, before an answer is given.

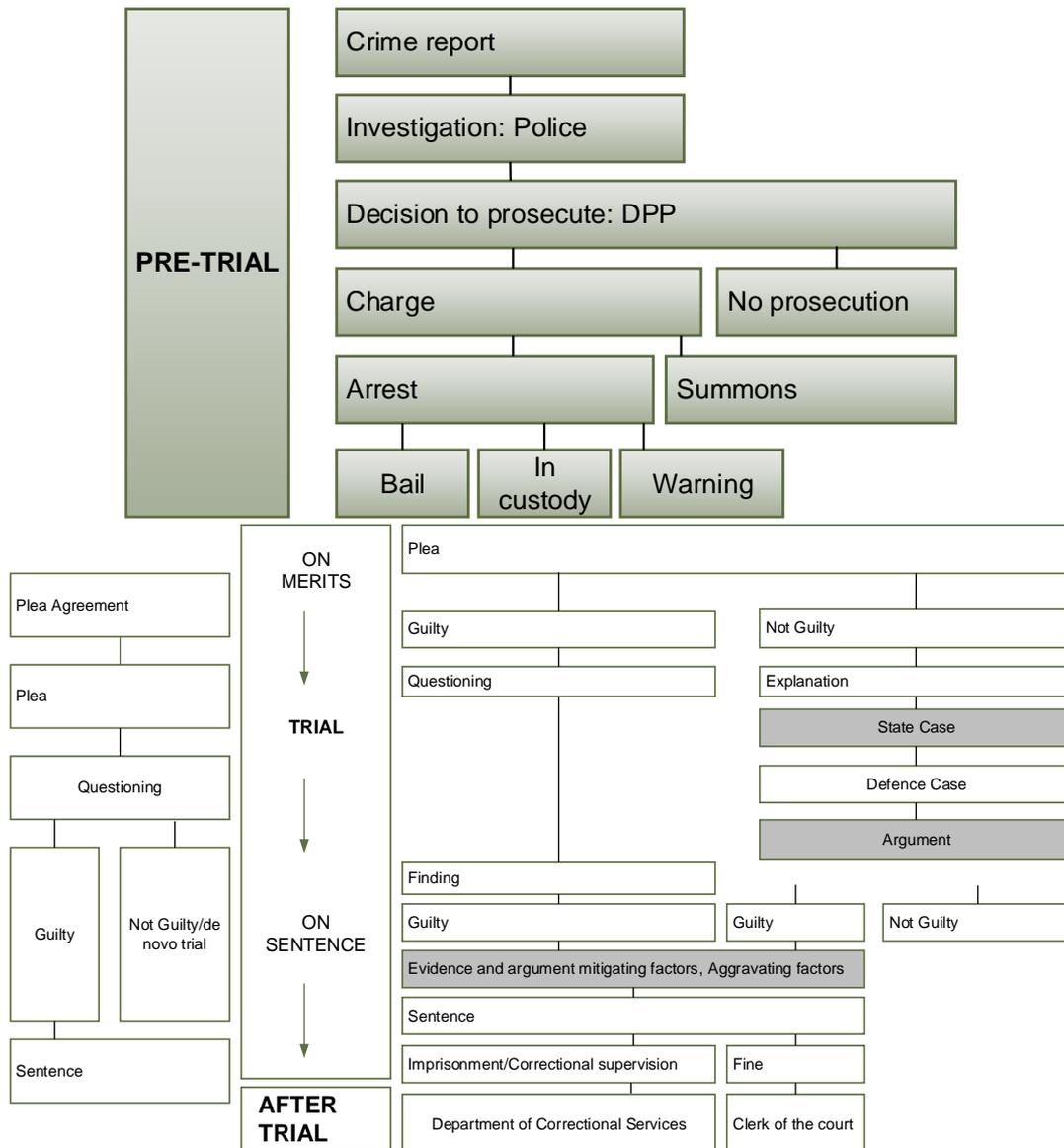
As indicated above, the guidelines provided by SAPS (2008:458) relate to the witnesses only. Joubert (2013:43-44) adds the following aspects that have to be handled with care in order to positively influence the relationship between the investigator and prosecutor:

- **The case dockets**

- The prosecutor relies on the information in the case docket to enable him/her to decide whether or not to prosecute, therefore it must contain all the facts and evidence that are relevant to the case. Most importantly, evidence that might be declared inadmissible in court must be included in the case docket to give the prosecutor a complete picture of the case.

- The investigator must file his or her affidavit in the case docket chronologically, highlighting the investigation conducted.
- **The witnesses**
  - It is the responsibility of the investigator to ensure that witnesses are in court on time. However, the prosecutor has to inform the investigator which witnesses will be required to testify, thus both the investigator and prosecutor must consult in this regard before witnesses are summoned.
  - It is also important that the investigator bring the witnesses to the prosecutor before the court proceedings. This is to ensure that the witnesses are fully informed of what is expected from them when testifying.
- **The accused**
  - The accused in detention has a right to apply for bail. In order to ensure that the accused is rightfully granted bail, the investigator and the prosecutor have to consult before deciding whether or not to oppose bail.
  - It is important that the investigator inform the prosecutor with regard to the accused's attitude during the investigation. This information might be critical, particularly when it comes to sentencing.
- **The defence**
  - The investigator may not comment on the case to the defence without the involvement of the prosecutor. Equally, when the defence wishes to view the case docket, such request should be referred to the prosecutor.

These aspects, as articulated by Joubert (2013:43-44) above, must be adhered to in order to ensure that there are no elements of surprise during the trial. One may then conclude that by eliminating these elements, the good relationship between the investigators and the prosecutors is enforced. Figure 4.2 below depicts the interaction between the criminal investigation and the prosecution process:



Appeal/Review

**Figure 4.2: The interaction between the criminal investigation and prosecution process**  
(Source: Klein & Viljoen, 2010:149)

Figure 4.2 above shows where the criminal investigation and prosecution process interact in the CJS. It further illustrates that the interaction between the investigator and prosecutor starts during the pre-trial phase. The purpose of the pre-trial process is to investigate the crime carefully, and then to decide whether there is sufficient evidence to indicate the suspect's guilt and to start the prosecution process (Joubert, 2014:227). Although not shown in Figure 4.2, it is evident that the interaction between the investigator and prosecutor continues during the prosecution phase. This is more so because the investigator would most likely be

called to testify as a witness regarding his or her investigation. In support of this view, Swanson et al. (2012:645), argue that the success or failure of a criminal investigation is often ultimately measured in terms of the quality and effectiveness of the investigator's presentation of evidence to a court.

Arguing their point further, Swanson et al. (2012:645), submit that all law enforcement officers should be knowledgeable in respect of the courtroom proceedings and the functions of the prosecution and the defence in order to be effective. Acquiring such knowledge is important because the investigator is often required to testify as a witness in court regarding the investigation of the case. Joubert (2001:339) provides the following summary of the aspects to which the investigator has to pay attention when testifying in court:

- The investigator will feel in control when on the witness stand if he or she speaks slowly, emphasises syllables, controls his or her breathing and varies his or her tone of voice.
- It is important that the investigator meets the prosecutor before the examination-in-chief to prepare the questions.
- Upon making a mistake in the witness stand, the investigator must correct it as quickly as possible and try to forget about it.
- When differing with the cross-examiner, the investigator should do so with conviction.
- On the witness stand, the investigator must deal with half-truth questions by first acknowledging the part that is true separately before denying the untrue part vehemently.
- It is a good idea to know the role-players in the court setting by their names.
- The investigator must be able to listen carefully to the cross-examiner's words and use this knowledge to take control.
- The investigator, as a witness, should be aware that a dispute or debate at key moments may have a positive or negative effect on his or her credibility and the acceptability of the evidence.
- The investigator must handle the cross-examiner's intimidation by responding calmly and keeping to the facts.

- The investigator should remember that the last impression he or she makes should be positive.

The discussion above indicates the importance of a good working relationship between the investigators and the prosecutors. Although they are employed by different government institutions, it is, however, important that such relationship is developed for the benefit of the CJS. Having considered all factors that may influence the relationship, the prosecutor must also bear in mind his or her ethical duty as an officer of the court, which is primarily to the court, to assist the court to arrive at a just verdict, and not simply secure a conviction at all costs (Redpath, 2004:63).

The participants in Sample A were asked: “In your understanding, is the relationship between the investigator and prosecutor important? Please explain.” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.3 below:

**Table 4.3: Participants’ views about the importance of the relationship between the investigator and prosecutor**

| Sample A  |
|---|
| <ul style="list-style-type: none"> <li>• Yes, the relationship is important (ten).</li> <li>• Yes, they have a mutual goal to present the true facts of the crime (four).</li> <li>• Yes, the evidence presented in court is the product of the investigator (three).</li> <li>• Yes, to ensure successful prosecution (three).</li> <li>• Yes, communication and cooperation are improved (two).</li> <li>• Yes, both the investigator and prosecutor act on behalf of the victims (one).</li> <li>• Yes, the objectives of investigation and prosecution are understood (one).</li> </ul> |

(Source: Feedback from participants)

Looking at Table 4.3 above, there is clear agreement among the participants that the relationship between the investigator and prosecutor is important. In support of their views, the majority of participants stated that the investigator and prosecutor have a mutual goal to present the true facts of the crime. It is also critically important

to note that some participants, when justifying their views, stated that the evidence presented in court is the product of the investigator, as highlighted by Atkinson (2010:158). Accordingly, all the responses of the participants are consistent with the submissions of Joubert (2014:227), Swanson et al. (2012:645), and (Suter, 2014:xvii) in respect of the importance of the relationship between the investigator and prosecutor. The following discussion examines the process of prosecution.

#### **4.5 PROCESS OF PROSECUTION**

As discussed in Chapter 3, criminal investigation is a reactive process that involves responding to crimes in a systematic manner, resulting in the arrest and charging of the accused person. This process subsequently merges with the prosecution process for the accused person to answer to certain allegations against him or her. The process of prosecution means that there is sufficient evidence against the accused person to stand trial and answer charges against him or her. Zinn and Dintwe (2015:449) describe prosecution as the process of instituting criminal proceedings against a person or organisation in a criminal court for the alleged violation of a criminal, common or statutory law.

The common law or adversarial legal tradition on which South Africa's criminal procedure is based, is founded on the notion that the best way of determining guilt or innocence is by a contest between two parties, namely the accuser and the accused (Redpath, 2012:47). He goes further to explain that in the adversarial legal tradition, the prosecutor fills the role of the accuser, rather than the victim, while the presiding officer plays the role of a detached umpire between the warring parties.

In deciding whether to proceed with prosecution, the prosecutor will have to obtain the case docket from the investigator and assess the evidence. The test is whether a reasonable person will at first, glance form the opinion that there is sufficient evidence to prove the case against the accused (Kleyn & Viljoen, 2010:151). There are a number of factors that the prosecutor must consider before forming an opinion that there is a prospect of successful prosecution of the case or not. The NPA (2004:8) provides the following guidelines to the prosecutor in order to take an informed decision:

- Prosecutors should not allow their judgement to be influenced by factors such as their personal views regarding the nature of the offence, or the race, ethnic or national origin, sex, religious beliefs, status, political views or sexual orientation of the victim, witnesses or the offender.
- Act with objectivity and pay due attention to the constitutional right to equality and fairness.
- All relevant circumstances must be considered. Ensure that reasonable enquiries with regard to the evidence are made, irrespective of whether these enquiries are to the advantage or disadvantage of the alleged offender.
- Consider; *inter alia*, the nature and seriousness of the offence, the interests of the victim and the broader community, and the circumstances of the offender.

In addition to the above-stated guidelines, the prosecutor has to consider the following questions provided by the NPA (2013:5) before proceeding with prosecution:

- **How strong is the case for the State?**
  - Is the evidence strong enough to prove all the elements of an offence?
  - Is the evidential material sufficient to meet other issues in a dispute?
- **Will the evidence be admissible?**
  - Will the evidence be excluded because of the way in which it was acquired or because it is irrelevant or because of some other reason?
- **Will the state witnesses be credible?**
  - What sort of impression is the witness likely to make?
  - Are there any matters that might properly be brought up by the defence to attack the credibility of the witness?
  - If there are contradictions in the accounts of witnesses, do they go beyond the ordinary and expected, thus materially weakening the prosecution's case?
- **Will the evidence be reliable?**
  - If, for example, the identity of the alleged offender is likely to be an issue, will the evidence of those who purport to identify him or her be regarded as honest and reliable?

- **Is the evidence available?**
  - Are the necessary witnesses available, competent, willing and, if necessary, compellable to testify, including those who are out of the country?
- **How strong is the case for the defence?**
  - Is the probable defence of the accused person likely to lead to his or her acquittal in view of the facts of the case?

Once the prosecutor is satisfied that he or she has taken an informed decision that would best serve the interests of justice, the prosecution of the case should proceed without fear, favour or prejudice. According to ISS (2009a:105), the prosecutor should take the following steps to prepare for the trial:

- Evaluate the evidence in the case docket received from the SAPS.
- Consult with the investigating officer regarding the evidence, investigation, availability of witnesses and possible exhibitory evidence.
- Consult with the victim, witnesses and others who may be required to testify in court.
- Draft a charge sheet.
- Research the law, reported case precedents and other material necessary to support the case.
- Prepare documentary evidence — documents, reports, files, photos, statements, and the like — that may have to be presented during the hearing.
- Arrange and manage processes to ensure that witnesses are subpoenaed for the hearing.
- Enquire into, and examine, any previous criminal conduct of the accused person — normally through the SAPS 69 record provided by the police.
- Secure exhibits for hearing dates.
- Consult with the defence about possible pleas in terms of Section 105(a) of the CPA, or possible admissions in terms of Section 220 of the same CPA, in an effort to expedite the trial.
- Prepare an address or argument to present to court at the conclusion of evidence.

- Prepare an address to assist the court in deciding on an appropriate sentence following a conviction — this may be enjoined by further witnesses the prosecutor decides to call to support his/her address.

Although the steps mentioned by ISS (2009a:105) above are time-consuming, errors should be avoided at all costs to ensure that the case is successfully prosecuted. It would be embarrassing to the prosecutor and the State if the prosecution fails due to his/her negligence. The following is a summary of the prosecution process as described by Swanepoel et al. (2014:122-123):

- If the decision is made to prosecute, the case goes to court for the purposes of charging and arraigning the accused.
- In court, the accused may apply to be released on bail for the duration of the proceedings, up to conviction and sentence.
- In court, the accused will be asked to plead and the prosecutor will be the first to call witnesses to give evidence to prove that the accused is guilty.
- The accused may then present evidence him-/herself personally or through a lawyer and call witnesses to testify.
- After both sides have been heard, the presiding officer decides in his/her verdict whether the accused is guilty or not guilty.
- If the accused is guilty, the presiding officer sentences him or her.
- An accused who wants to appeal against the decision or sentence may request the trial court to be released on bail pending the appeal.
- A trial may be postponed a number of times for further investigation or allow the accused the time to consult with or employ a legal representative.

It is evident that there are a number of factors that the prosecutor has to consider before deciding to prosecute. The decision to prosecute cannot be taken lightly; it has to be well thought out. To prosecute means that someone is being accused of wrongdoing. In most cases, criminal cases are conducted in open courts where the public has access, therefore prosecuting someone borders on violation of human rights. If the prosecution fails, the accused person may claim that the decision to prosecute was malicious and he/she is likely to sue the State. Most importantly, the decision to prosecute or not has to serve the interests of justice. Although it is the

prerogative of the prosecutor to decide whether or not to prosecute, it is desirable that such decision be taken in consultation with the investigator. Such consultation ensures that the investigator is empowered to provide an explanation to the victim of the crime and that both the investigator and prosecutor are seen as the team in the CJS. To highlight the importance of the investigator, the following discussion relates to the role of the investigator in the prosecution process.

#### **4.5.1 Role of the police investigator in the prosecution process**

The job of the investigator involves gathering evidence to prove a specific case in court. According to Hails (2005:353), the investigator is, in addition to investigating the crime and asking the prosecutor to file the charges, responsible for the preservation of the physical evidence and serving of subpoenas on witnesses to ensure that they come to court to present their evidence. In support of this opinion, SAPS (2008:457) describes the role of the investigator prior and during the trial as follows:

- Ensures that the necessary certificate in the case docket has been completed by the Detective Branch Commander that the investigation has been finalised, and the matter is ready for trial.
- Ensures that the case docket is forwarded to the prosecutor at least three days before the trial date, enabling him/her to prepare.
- Ensures that all witnesses have been properly subpoenaed to attend and be available for consultation with the prosecutor if necessary.
- Ensures that all exhibits handed in are available for court.
- Attends court on the trial date and remains present, unless otherwise arranged with the prosecutor.
- Complies with requests for an outstanding investigation to be done.
- Remains present and supports the prosecutor during the trial.

The role of the investigator throughout the criminal process cannot be overstressed. In the researcher's experience, some of the investigators believe that they have no role to play in the prosecution of the case. There is a general belief among the investigators that attending the court proceedings is a waste of time if one does not have to testify. The researcher contends that this belief or perception is

misinformed. Supporting the prosecutor during the prosecution proceedings is one of the cornerstones of successful prosecution of a case. These sentiments are echoed by Suter (2014:xvi) who states that without a coordinated approach from the commencement of the investigation, the prosecution will become disjointed and more likely to fail.

The participants in Sample A were asked: “What is the role of the police investigator in the prosecution process of murder cases?” This question was also posed to Sample C and Sample D, and their responses are discussed in Chapter 5. This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.4 below:

**Table 4.4; Participants’ views of the role of the police investigator in the prosecution process of murder cases**

| Sample A  |
|---|
| <ul style="list-style-type: none"> <li>• Ensure that witnesses are present at court (eight).</li> <li>• Be present at court and give evidence where necessary (eight).</li> <li>• Ensure that the exhibits are available at court (six).</li> <li>• Ensure that accused is present at court (one).</li> </ul> |

(Source: Feedback from participants)

The views of the participants as depicted in Table 4.4 above indicate that the majority agreed that the police investigator must ensure that the witnesses are present at court. They also stated that the police investigator should be present at court and give evidence where necessary. These views are consistent with the views of SAPS (2008:457) and Hails (2005:353). Six participants mentioned that the police investigator must ensure the availability of the exhibits at court, which is also consistent with the literature. Only one participant was of the view that it is the responsibility of the police investigator to ensure that the accused is present. In this regard, the researcher is unable to agree with this view on the basis that, under normal circumstances, when the accused is in custody, the court orderlies are responsible for transportation of the awaiting-trial prisoners. Similarly, if the accused was granted bail, the court warns the accused to be present at court on the date

determined by the court. There is no literature that supported this view. The following discussion focuses on the meaning of the prosecution-led investigation model.

#### **4.6 MEANING OF THE PROSECUTION-LED INVESTIGATION MODEL**

The extent of the involvement of the prosecutor in the investigation of crime is a matter that is widely debated internationally. Apart from their responsibility to dispose criminal cases for prosecution, prosecutors in every country play some important roles in criminal investigation, despite the differences in basic legal principles (IAP, 2014:53). IAP (2014:53) further asserts that in some countries, prosecutors have an overall responsibility for investigation, while in others they have a limited role in carrying out an investigation.

Historically, in the common law and some civil law systems, the police investigated crime and could decide whether charges should be laid against an individual (IAP, 2014:54). According to Brammertz (2016:7), the role of the prosecutor in the investigation process is crucial because he/she cannot expect investigators to simply gather the “right” evidence. In concurrence with the submission of Brammertz (2016:7), Gunter and Hertig (2005:52) opine that poorly performed investigations harm the victims, suspects, members of the courtroom workgroup, and society as a whole. Brammertz (2016:7) goes further to state that prosecutors must work with investigators early in the investigations and inform them what issues have to be investigated and proved in order to successfully prosecute.

In South Africa, the prosecution-led investigation model means the early involvement of the prosecutor in the investigation of the case. As indicated in paragraph 4.1, BJA (2001:9) describes the prosecution-led investigation as the process where the prosecutor is involved at the early stage of the investigation, with the intention to guide the investigation process from the time the crime is reported until the case is brought to court.

In a nutshell, the prosecutor gets to know about the case when the investigation starts, and he/she then provides guidance to the investigator to ensure that the evidence gathered is relevant and legally sound for successful prosecution. The advent of new and sophisticated methods of perpetrating crimes and increasing

complexities within the law have led to increased prosecutorial intervention in the police investigation and greater cooperation between these two groups, where previously such intervention or cooperation did not exist (IAP, 2014:54).

For convenience purposes, in this study, the 'prosecution-driven' investigation and the 'prosecution-guided' investigation shall mean the 'prosecution-led' investigation. Discussing the prosecution-led investigation, Little (1999:728-729) urges that while prosecutors may not play an investigative role in all or even most criminal cases, the importance of the investigative role lies not in the number of cases it affects, but in the significance of the role in the matters where it arises. The researcher agrees with Little (1999:728-729) that there is a need for early involvement of the prosecutor in the investigation of priority crimes such as murder.

Similar to any other relatively new concepts, the prosecution-led investigation is not immune to criticism. The main concern articulated against the 'prosecution-led investigation' is that a prosecutor who becomes intimately involved in an investigation could become ethically compromised (Redpath, 2004:63). However, such concern can be countered by the argument regarding the doctrine of separation of powers between the police who investigate, and the prosecutors who decide whether to prosecute or not. This separation of powers and efforts makes it possible for prosecutors to provide much-needed professional legal advice during a complex investigation, while at the same time not adversely affecting the prosecutor's role and status as an independent arm of the justice process (IAP, 2014:28). The separation of powers between the investigators and prosecutors is critical in the effective administration of the CJS. It promotes objectivity and independency of the SAPS and NPA. It further provides the CJS with a yardstick to measure the lawfulness and the constitutionality of the criminal investigation and subsequent prosecution.

The participants in Sample A were asked: "What is the role of the police investigator in the prosecution-led investigation model?" This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.5 below:

**Table 4.5: Participants' views of the role of the police investigator in the prosecution-led investigation model**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• Gather all possible evidence as requested by prosecutor (eight).</li> <li>• Prepare witnesses for trial (two).</li> <li>• Meet the prosecutor for update on progress of the case (two).</li> <li>• Arrange a pre-trial interview with a prosecutor (one).</li> <li>• Get further guidance from the prosecutor (one).</li> <li>• Testify in court (one).</li> <li>• Lead preliminary investigation (one).</li> </ul> |

(Source: Feedback from participants)

Table 4.5 above depicts the responses of the participants with regard to the role of the police investigator in the prosecution-led investigation model. There were eight responses that indicated that the police investigator has to gather all possible evidence as requested by the prosecutor. Two participants added that the police investigator must prepare witnesses for trial. Another two participants indicated that the police investigator must meet with the prosecutor for an update on the progress of the case. Other responses such as that the police investigator leads the preliminary investigation, testifies in court, gets further guidance from the prosecutor, and arranges a pre-trial interview with a prosecutor were also noted.

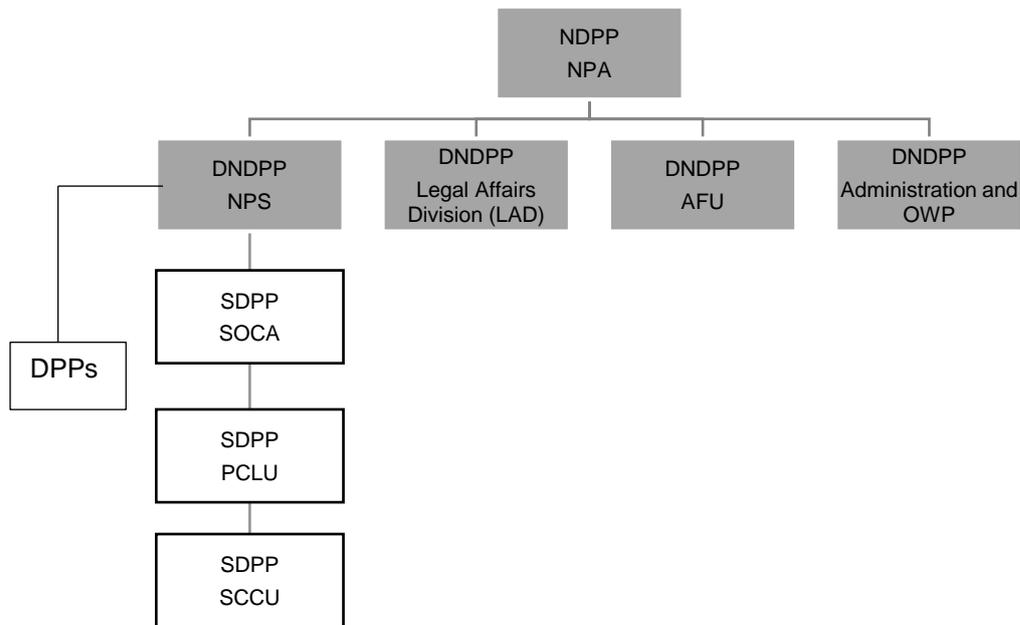
When comparing the responses of the participants with the literature, it is evident that the majority of the participants do not have a common understanding of the role of the police investigator in the prosecution-led investigation model in accordance with the literature but only a broad or generic understanding. With regard to one response pertaining to the preliminary investigation, it is indeed correct that the police investigator must conduct the preliminary investigation before the case docket is brought to the prosecutor. The subsequent meeting between the police investigator and prosecutor would be a futile exercise if the police investigator and the prosecutor do not both know the background to the case. This is also consistent with the separation of powers, as highlighted by IAP (2014:28); however, this response, too, shows that the participant did not fully understand the role of the police investigator in the prosecution-led investigation model in accordance with the literature.

In order to understand the prosecution-led investigation model and its application, it is important to highlight previous and current business units in the NPA. According to ISS (2009a:99), the NPA is divided into seven core business units, all supported by a Corporate Services unit. These business units are:

- National Prosecutions Service (NPS);
- Integrity Management Unit;
- Asset Forfeiture Unit;
- Sexual Offences and Community Affairs (SOCA);
- SCCU;
- Witness Protection Unit; and
- Priority Crimes Litigation Unit (PCLU) (ISS, 2009a:99).

As shown above, the DSO is not included as one of the business units in the NPA. It should be noted that such exclusion is based on the fact that the DSO was already abolished in 2009. On the other hand, Redpath (2004:40) mentions the Crime Information Collection Unit as one of the business units, which is not listed above.

Looking at the business units provided by ISS (2009a:99) and Redpath (2004:40), one may not comprehend as to what constituted the business units during 2004 and 2009. To avoid such confusion, it is important to note that the NPA is a relatively new institution that may require that it constantly re-establishes its leadership structure and business units in order to achieve its objectives. These changes are evident in the NPA Annual Report for 2015/16, which refers to Sub-Programmes and not business units, as were previously known. Figure 4.3 below shows the Sub-Programmes in the NPA:



**Figure 4.3: Sub-programmes in the NPA**

(Source: NPA, 2016:19)

As illustrated in Figure 4.3 above, the NPS currently is a Sub-Programme of the NPA, which is primarily responsible for general and specialised prosecutions and the possible appeals (NPA, 2016:19). Within the NPS Sub-Programme, the following specialised prosecution units are active: SOCA, PCLU and SCCU. In addition, the general prosecutions under the DPPs are noted. This means that the DPPs in all nine provinces report to the DNDPP of NPS. Although the prosecution-led investigation model is still practised by the CCU of the DPCI in conjunction with SCCU, it was widely publicised by the now-defunct DSO, which was an investigative unit in the NPA.

The participants in Sample A were asked: “How would you define the prosecution-led investigation model?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.6 below:

**Table 4.6: Participants' definition of the prosecution-led investigation model**

| Sample A   |
|--|
| <ul style="list-style-type: none"><li>• Investigator and prosecutor interact about the case (seven).</li><li>• Prosecutor guides the investigation (three).</li><li>• Prosecutor gets involved from the early stages of the investigation (two).</li><li>• Prosecutor may visit the crime scene (one).</li><li>• Prosecutor gets involved after the arrest of the suspect and requests certain evidence (one).</li><li>• Prosecutor may get involved before the arrest and identify outstanding evidence (one).</li><li>• Prosecutor reads the docket and makes entries, highlighting the outstanding evidence (one).</li><li>• Prosecutor advises the investigator which crimes to investigate (one).</li><li>• Prosecutor leads the witness at court during the trial (one).</li></ul> |

(Source: Feedback from participants)

Table 4.6 shows how the participants defined the prosecution-led investigation model. It is evident that the majority (seven) of the participants are aware that in the prosecution-led investigation model there must be some form of interaction between the investigator and prosecutor. However, it is evident that the majority of them lack understanding of the model. Only two participants stated that the prosecution gets involved in the early stages of the investigation, which is consistent with the opinions of BJA (2001:9) and Brammertz (2016:7). Notably, one participant showed that he had no idea about the prosecution-led investigation model in that he stated that the prosecutor leads the witness at court during the trial. The inference that can be drawn about the majority of the participants is that they did not comprehensively understand the meaning of the prosecution-led investigation model. This is understandable, as these participants are not exposed to the prosecution-led investigation model, since it is applied only in the CCU-SCCU set-up. In the following discussion, the researcher examines the approaches used by the DSO and the SCCU in implementing the prosecution-led investigation model.

#### **4.6.1 Approach by the Directorate of Special Operations**

While it would serve no purpose to focus on what the DSO should have done or not have done to avoid being disbanded (since they do not exist anymore), it is important to discuss their approach to the investigation.

In September 1999, the South African Government committed itself to introducing fresh and bold initiatives regarding the establishment of a crime-fighting capacity to effectively investigate and prosecute national priority crimes in South Africa (SAPS, 2006:63). The NPA's enabling legislation provided the new prosecuting authority with a powerful capacity to combat crime in the form of Investigating Directorates (ISS, 2014:7). These Investigating Directorates, which consisted of Organised Crime, Serious Economic Offences and Corruption, were established in line with section 7 of the NPA Act (South Africa, 1998).

According to section 7(4) (a) of the NPA Act, the head of an Investigating Directorate was to be assisted in the exercise of his or her powers and the performance of his or her functions by-

- (i) One or more Deputy Directors;
- (ii) Prosecutors;
- (iii) Officers of any Department of State seconded to the service of the Investigating Directorate in terms of the laws governing the public service;
- (iv) Persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the Investigating Directorate; and
- (v) Any other person whose service is obtained by the head of the Investigating Directorate (South Africa, 1998).

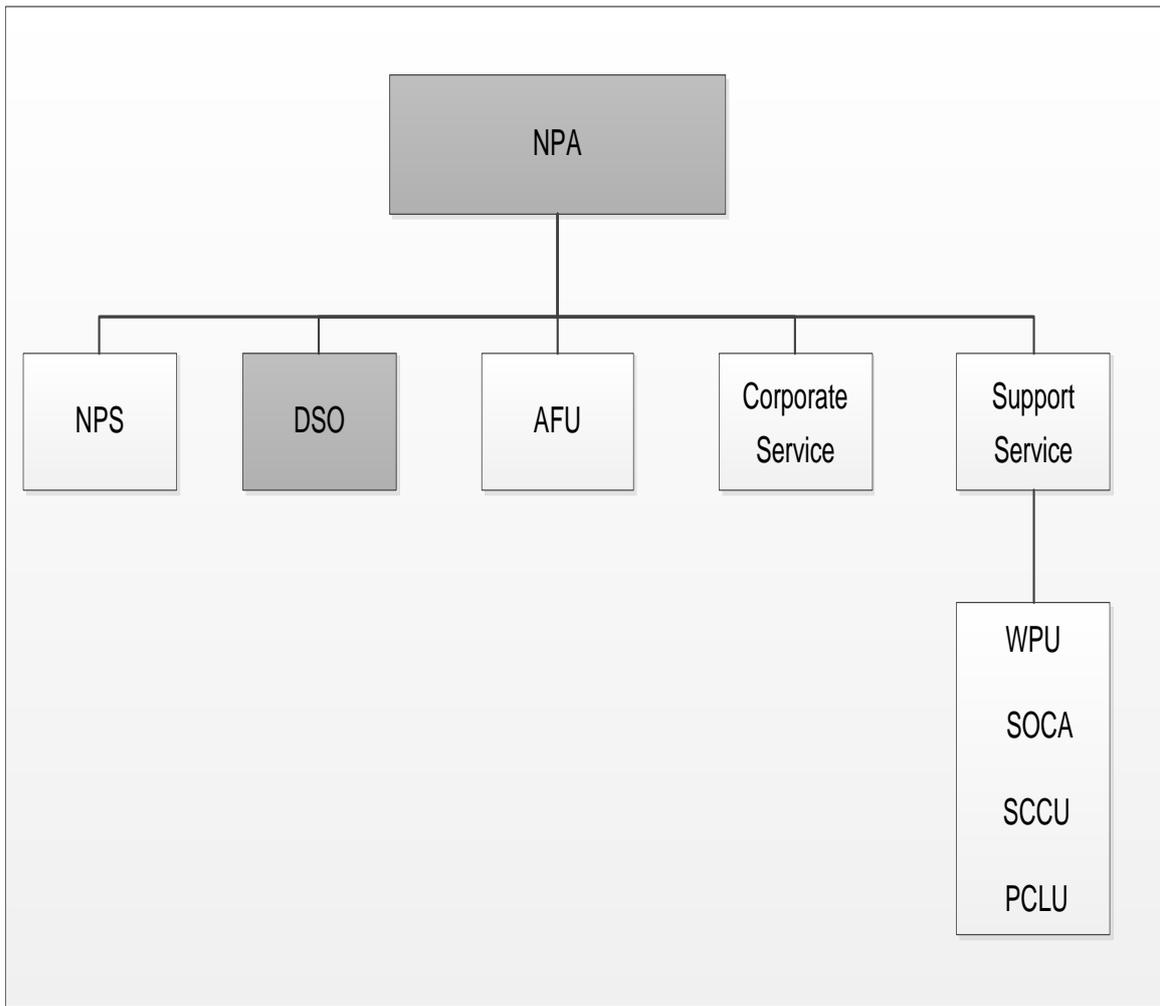
It is evident from section 7(4)(a) (iii) of the NPA Act that the officers referred to, included the SAPS investigators. The main objective of the Investigating Directorates was to investigate and prosecute high-profile cases of corruption, organised crime and serious economic offences (South Africa, 1998). The Investigating Directorates were meant to enable prosecution-driven investigations, where investigations are conducted under the close guidance and assistance of a

senior prosecutor to ensure that evidence collected can be used effectively in court (ISS, 2014:7).

Sections 26 to 29 of the NPA Act provided wide powers of investigation to the Investigating Directorates (South Africa, 1998). However, the South African Government later realised that these Investigating Directorates lacked the investigation capacity; as a result, an additional Directorate called DSO was formed in compliance with the NPA Amendment Act No. 61 of 2000. It should be noted that the DSO was already operational when the NPA Amendment Act No. 61 of 2000 came into being. According to section 7(1) (a) of the NPA Amendment Act No. 61 of 2000, the DSO was established with the aim to—

- (i) investigate, and to carry out any functions incidental to investigations;
- (ii) gather, keep and analyse information; and
- (iii) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings, relating to:
  - (aa) offences or any criminal or unlawful activities in an organised fashion;
  - or
  - (bb) such other offences or categories of offences as determined by the President by proclamation in the Gazette (South Africa, 2000).

The term “organised fashion” is defined by the Basel Institute on Governance (2012:38) as including the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics. Figure 4.4 below illustrates the organisation chart of the NPA, with specific reference to DSO in 2004:

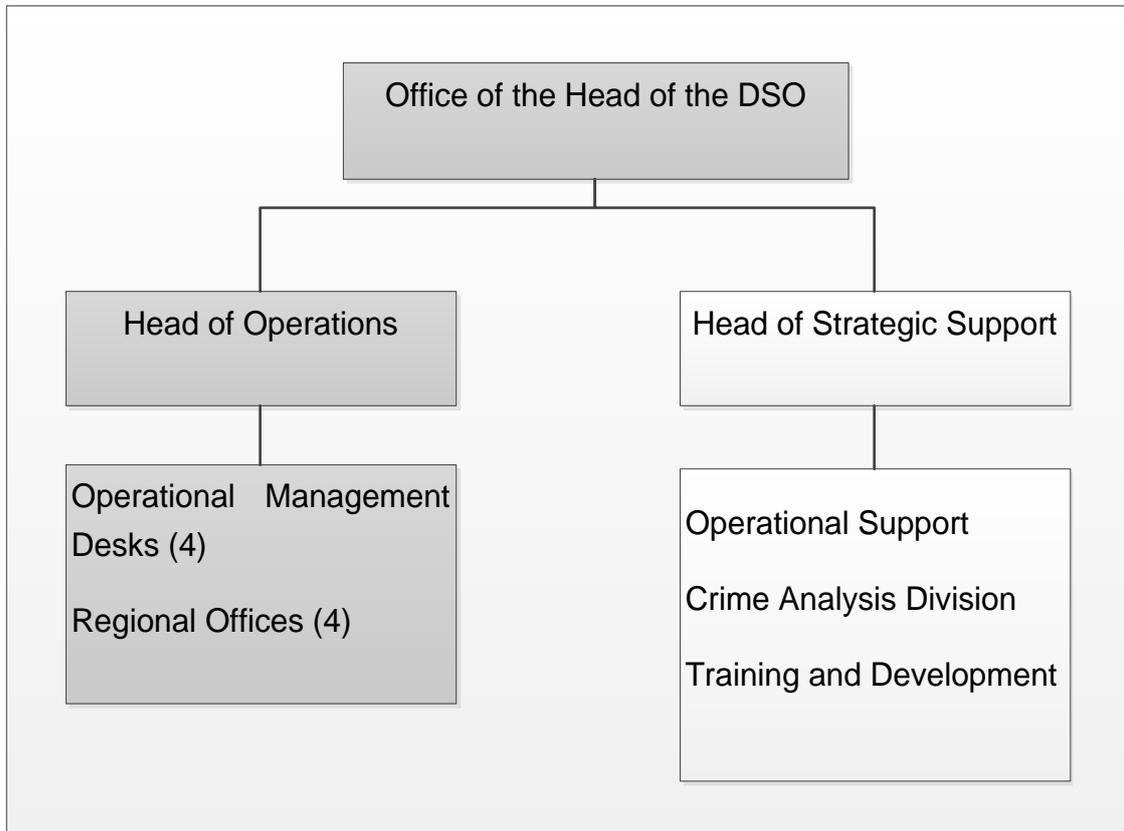


**Figure 4.4: Organisation chart of the NPA with specific reference to DSO in 2004**

(Source: Redpath, 2004:42)

Figure 4.4 above indicates that the DSO was part of the NPA and depended on other entities within the NPA in order to be effective and efficient in its operations. As indicated earlier, the DSO was abolished in 2009, and as a result the organisation chart of the NPA was realigned and units were renamed Sub-Programmes.

In Figure 4.5 below, the organisation chart is shown of the DSO with specific reference to its operations in 2004:



**Figure 4.5: Organisation chart of the DSO with specific reference to its operations in 2004**  
(Source: Redpath, 2004:42)

Although the establishment of the DSO was announced in September 1999, according to ISS (2012:4), the DSO came into legal operation in January 2001. It is a well-known fact that the DSO was already operational and it was making headlines in the local media before it legally operated in 2001. As earlier indicated in the NPA Amendment Act No. 61 of 2000, the DSO was a multidisciplinary agency in the NPA that had the investigative capacity to prioritise and investigate serious criminal or unlawful conduct that had been committed. Its objective was to investigate and prosecute such offences in the most efficient and effective manner, using the prosecution-driven investigation model (ISS, 2014:7).

In his paper titled “Prosecution-lead Investigation: A practical overview,” presented at the 2<sup>nd</sup> World Conference on Modern Criminal Investigation, Organised Crime and Human Rights, Durban, South Africa on 5 December 2001, Advocate Bulelani Ngcuka, the former NDPP of the NPA, stated the following with regard to prosecutors involved in the prosecution-led investigation model:

Integration or closer cooperation between the investigator and prosecutor should not be equated with role confusion. The distinction between the role of the investigator and prosecutor should not become blurred. The investigator is still the best person to perform the function of collecting the evidence. The prosecutor can review, advise and direct the investigator, however all the time mindful of the fact that he or she remains an officer of the court with certain ethical obligations. It is important that the prosecutor maintain a healthy distance from the actual gathering of evidence in order to ensure that these ethical obligations are not compromised. The prosecutor is there to guide the investigation not to do the job of the investigator. The prosecutor must at all times, be wary not to end up as a fact witness. There may well be cases where a prosecutor has become so steeped in the investigation that he should not prosecute that particular criminal case. By and large this situation can be avoided and care should be taken to do so. Failure to do so will result in the prosecutor being called as a witness and therefore precluded from conducting the prosecution, which defeats the purpose behind assigning the prosecutor the case from the onset.

It would appear that Advocate Bulelani Ngcuka had some concerns with regard to the prosecution-led investigation model. Indeed, the possibility of the prosecutor becoming actively involved in the investigation rather than guiding the investigator was as real then as it is today. As the NDPP, it was important for him to emphasise the duty of the prosecutor, as the officer of the court, not to be too deeply involved in the investigation of the case.

The participants in Sample A were asked: “What is the difference between the intelligence-led investigation model and the prosecution-led investigation model?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.7 below:

**Table 4.7: Participants’ understanding of the difference between the intelligence-led investigation model and the prosecution-led investigation model**

| Sample A   |
|--|
| <ul style="list-style-type: none"> <li>• In the intelligence-led investigation model, the information is shared to link the suspect with the crime, while in the prosecution-led investigation model, the prosecutor guides the investigation (seven).</li> <li>• In the intelligence-led investigation model, the information is gathered, while in the prosecution-led investigation model, the prosecutor consults with witnesses (one).</li> <li>• In the intelligence-led investigation model, the evidence is gathered by the investigator at the crime scene, while in the prosecution-led investigation model, the prosecutor leads the physical and forensic evidence (one).</li> </ul> |

**Sample A**

- The intelligence-led investigation model is about proactive risk management, while the prosecution-led investigation model, it's a multidisciplinary team consisting of investigators, prosecutors, political analysts and forensic experts (one).

(Source: Feedback from participants)

Looking at Table 4.7 above, it is noted that the majority of the participants understand the difference between the intelligence-led investigation model and prosecution-led investigation model. Their submissions are understood to mean that the intelligence-led investigation model focuses on sharing of information, while the prosecution-led investigation model relates to guiding the investigation. These responses show that the majority of the participants do not have a comprehensive understanding of the difference between the intelligence-led investigation model and the prosecution-led investigation model in accordance with the literature but have only a broad or generic understanding. Besides these responses, some participants demonstrated a total lack of understanding of both the meaning of and the difference between these models. For instance, one participant stated that in the intelligence-led investigation model, the evidence is gathered by the investigator at the crime scene, while in the prosecution-led investigation model, the prosecutor leads the physical and forensic evidence. Another participant stated that the intelligence-led investigation model is about proactive risk management and risk management, while in the prosecution-led investigation model, it is a multidisciplinary team consisting of investigators, prosecutors, political analysts and forensic experts.

There would be no justification for the existence of a government entity or any entity if clear objectives are not highlighted. According to the NPA Annual Report 2005/06, the strategic objectives of the DSO were:

- to develop crime information products that strengthen a proactive approach within the DSO, and give it a pre-emptive edge;
- to combat organised crime in a focused manner that visibly asserts the DSO's mandate, and tactically impacts on a reduction in serious crime;
- to deliver services that respond to client complaints in respect of criminal activity;

- to enhance partner management and cooperation with Government and other agencies, to enable and support the work of the DSO;
- to ensure effective financial management that ensures Public Finance Management Act compliance, and encourages value-for-money service delivery;
- to ensure effective management and compliance by means of quality governance;
- to achieve business effectiveness and efficiency by means of operational excellence;
- to attract, develop, retain and manage people in a manner that bolsters the multidisciplinary approach of the DSO;
- to position the DSO as a unique, select crime-fighting agency that inspires public confidence and widespread stakeholder support/engagement;
- to increase work performance and impact, measurable as value-for-money;
- to counter organised crime in a more focused manner that gives the DSO a pre-emptive edge;
- to position the DSO as an elite crime-fighting agency that prides itself on a multi-disciplinary approach;
- to draw from the best practice in international law enforcement to improve effectiveness; and
- to exploit partner cooperation and collaboration, in order to enhance service delivery (NPA, 2006:33).

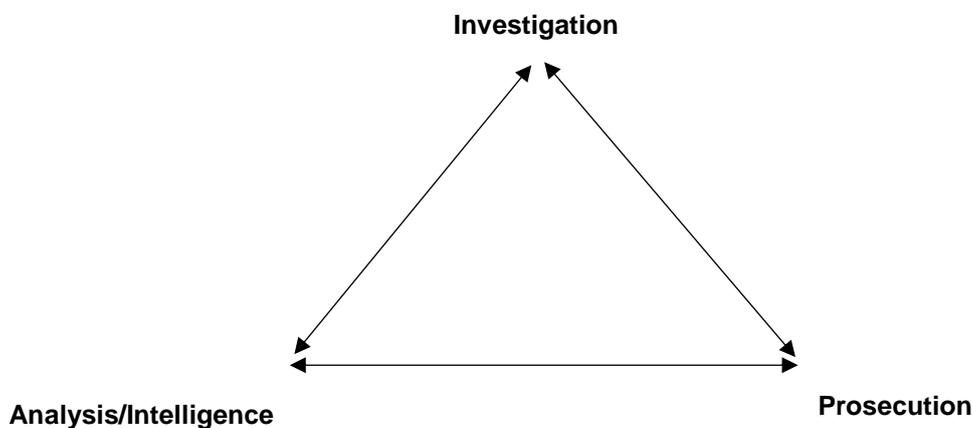
The DSO was created in 1999, at the same time as organised crime in South Africa was beginning to become problematic (Redpath, 2004:81). At that time, the Government believed that the conventional approach to law enforcement in dealing with organised crime was considered to be ineffective. In agreement with Redpath (2004:81), ISS (2012:4) states that the Government's failure to deal with organised crime was at least partly what motivated the establishment of the DSO within the NPA.

Redpath (2004:30) submits that at the inception of DSO, the term "prosecution-led investigation" was an accurate and unequivocal description of its operation. Describing the original process in the prosecution-led investigation model, Redpath

(2004:30) states that the case would be the primary responsibility of the investigator, with the assigned prosecutor acting in an advisory capacity, until the matter is court-ready, after which the matter becomes the primary responsibility of the prosecutor. However, during the years to come, the DSO regions began experimenting with a different system (Redpath, 2004:30). Teams were formed to work on different projects. According to Montesh (2007:130), these formations were to be known as the “troika principle.” In her 2006 Commission of Inquiry Report, Judge Khampepe describes the troika principle as a methodology that combines the expertise of prosecutors, crime data analysts and police investigators (South Africa, 2006:18).

ISS (2012:5) states that the DSO investigative team consisted of investigators, prosecutors and analysts who collected intelligence information. ISS (2012:5) goes further to state that after completing an investigation, investigators would refer a case to court and the prosecutor who was involved in the initial stage of the investigation would lead the prosecution.

Figure 4.6 depicts the DSO troika principle, as described by Montesh (2007:130).



**Figure 4.6: DSO troika principle**  
(Source: Montesh, 2007:130)

The Public Service Commission (PSC) (2001:64) describes the core competency of the DSO as the seamless integration of the intelligence, investigative and prosecutorial functions in the quest to disrupt and reduce organised crime. Redpath (2004:26) states that all DSO investigators had the powers as provided in the CPA bestowed upon police officials relating to:

- the arrests;
- the execution of warrants;
- the entry and search of premises;
- the investigation of offences;
- the attendance of accused person in court;
- the seizure and disposal of articles; and
- the ascertainment of bodily features of an accused person.

In essence, powers bestowed upon the police officials in relation to the investigation of crime were also exercised by the DSO investigators by way of the promulgation of the NPA Act. However, according to the Basel Institute on Governance (2012:39), section 26(2) of the NPA Act, as amended by the NPA Amendment Act No. 61 of 2000, provided that powers given to the DSO would not derogate from the powers conferred on the SAPS in respect of the investigation of any criminal offences.

In view of the separation of powers between the investigators and the prosecutors, one may conclude that while there is nothing wrong with investigators and prosecutors working together from the initial to final stages of the investigation, it becomes untenable when the prosecutor is actively involved in the fieldwork such as conducting search and seizure, interviewing of witnesses and suspects, and attending the crime scenes. This appeared to be the case with the DSO. Redpath (2004:31) asserts that some DSO prosecutors felt uncomfortable in the lead roles in investigations, feeling that it compromised their duty as officers of court to be investigator group heads. Perhaps their discomfort with this arrangement was never properly reported to the DSO management. Apart from the discontent with regard to their methodology, the DSO's performance in terms of conviction rates indicated a gradually ascending scale, which showed that it was indeed a formidable and successful unit throughout its existence. Table 4.8 explains the DSO's conviction rates from 2002/03 to 2008/09:

**Table 4.8: Conviction rates of the DSO from 2002/03 to 2008/09**

| 2002/03 | 2003/04 | 2004/05 | 2005/06 | 2006/07 | 2007/08 | 2008/09 |
|---------|---------|---------|---------|---------|---------|---------|
| 86%     | 94%     | 88%     | 82%     | 85%     | 94%     | 98%     |

(Source: NPA, 2008:37 and NPA, 2009:15)

Based on the conviction rates shown in Table 4.8 above, it would appear that there was indeed a need for the establishment of the DSO to curb organised crime, which was perceived as a threat to the economic integrity of the country. According to ISS (2014:7), the DSO demonstrated the effectiveness of the prosecution-driven investigations for successfully prosecuting complex crimes. Looking at Table 4.8 above, and owing to the DSO's lifespan, it is only fair to conclude that the conviction rates of the DSO were exceptional. In support of this view, ISS (2009b:17) comments that the DSO was widely revered for the effectiveness and integrity of its members, and for its high prosecution rates. In contrast to its exceptional success, there were some concerns with regard to its operations. These concerns are discussed below:

#### **4.6.1.1 Duplication of mandates of existing crime-fighting bodies**

The obvious concern was the duplication and fragmentation of mandates of the existing crime-fighting bodies. According to Redpath (2004:49), the DSO's mandate, both legislative and operational, was organised crime; however, the SAPS have a number of specialised units whose mandates are to investigate the threat of organised crime. Such parallel mandates triggered unnecessary competition and tension between the SAPS and the DSO, as opposed to working together. In order to avoid this situation and in view of the fact that the opinion of the Government was that the conventional approach to law enforcement in dealing with organised crime was ineffective, consideration should have been given to moving the Organised Crime Unit of the SAPS to the DSO, thereby ensuring that the organised crime mandate would become the sole responsibility of the DSO.

#### **4.6.1.2 Selection of cases by the Directorate of Special Operations**

The second concern was the tendency of the DSO to pick and choose cases from the SAPS. PSC (2001:46) states that the DSO has discretionary powers of being able to choose which cases they want to investigate. The SAPS investigators, on the other hand, do not have such luxury, as they are compelled to investigate every case that is reported to them. From the researcher's experience, upon analysing the case, the DSO investigators perused the case dockets that were already under investigation by the SAPS investigators and where the prospects of successful prosecution existed, they would take those cases. Should the case be successfully

prosecuted, the DSO would claim all accolades. As a result of this conduct, the relationship between the SAPS and DSO became strained.

#### **4.6.1.3 Gathering of intelligence by the Directorate of Special Operations**

The third concern that instigated a breakdown of cooperation between the SAPS and DSO was the fact that the DSO's analysts were allowed to gather intelligence. As indicated by Montesh (2007:130) and ISS (2014:5), that in applying the troika principle, the DSO employed analysts to gather intelligence during the investigations. Section 209(1) of the Constitution of South Africa stipulates that any intelligence service, other than the intelligence division of the defence force or police service, may be established by the President only, as head of the national executive, and only in terms of national legislation (South Africa, 1996a). Section 3 of the National Strategic Intelligence Act No. 39 of 1994 states, *inter alia*, that it shall be the function of the SAPS to gather, correlate, evaluate, coordinate and use crime intelligence in support of the objectives of the SAPS, as stipulated in section 205(3) of the Constitution of South Africa (South Africa, 1994).

Having considered section 209(1) of the Constitution of South Africa, read together with section 3 of the National Strategic Intelligence Act No. 39 of 1994, it is evident that the DSO did not have a mandate to gather, correlate, evaluate, coordinate and use crime intelligence. Despite the fact that section 7(1)(a) (ii) of the NPA Act mandated the DSO to gather, keep and analyse information relating to offences or any criminal or unlawful activities committed in an organised fashion, or such other offences or categories as determined by the President by the proclamation in the Gazette, it did not go as far as referring to the gathering of intelligence. In support of this understanding, Judge Khampepe, in her 2006 Commission of Inquiry Report, explicitly stated the following with regard to the intelligence-gathering capability of the DSO:

The welter of evidence before the Commission as well as the on-site visit to the DSO revealed that the DSO has established intelligence gathering capabilities. This goes beyond the ambit of its information gathering mandate set out in section 7 of the NPA Act (South Africa, 2006:66-67).

#### **4.6.1.4 Level of involvement of the prosecutors in the investigations**

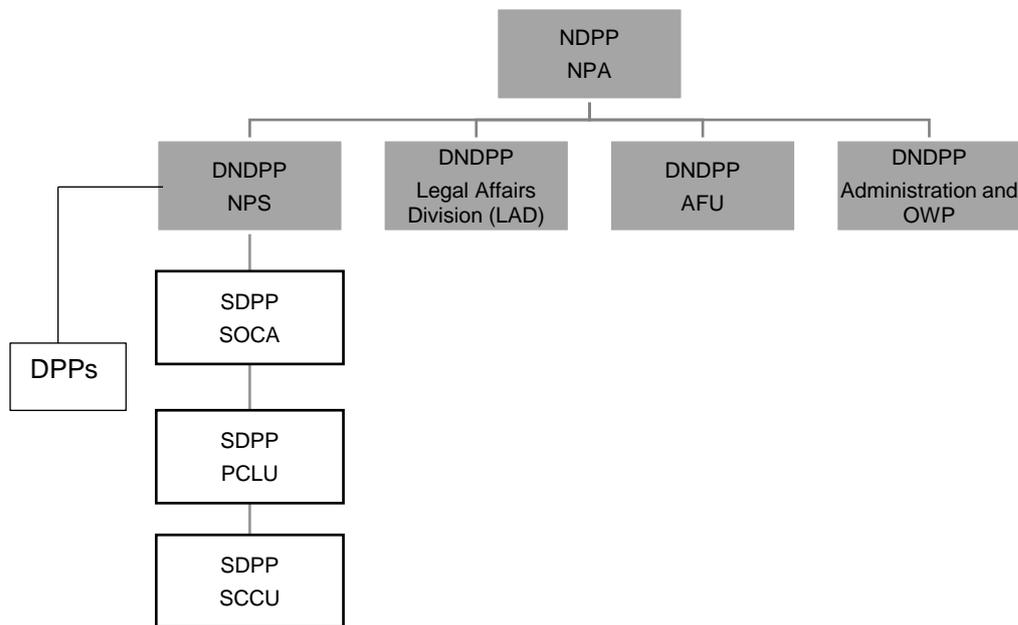
The fourth concern that has surrounded the DSO since its inception was the level of involvement of the prosecutors in the investigations that resulted in what was seen as concrete proof of loss of objectivity. With this in mind, it was alleged by those who were against the DSO that the DSO was used to pursue political agendas and target certain individuals in the ANC. One of the examples put forward was that of the then Deputy President, Jacob Zuma, who was allegedly charged in the “court of public opinion” by Advocate Bulelani Ngcuka by publicly announcing that there was a *prima facie* case against him but that it was not winnable. According to APRI (2004:2), prosecutors are ethically bound to enforce laws, seek appropriate punishment for the convicted and also seek justice that includes the promotion of public safety, system integrity and the protection of the rights of the accused.

It would appear that besides the recommendation of Judge Khampepe that the DSO should be retained within the NPA, the ANC demanded its disbandment. Subsequently, the DSO was formally disbanded in 2008 and its investigators were incorporated into SAPS to form the DPCI in 2009. This was done by means of the NPA Amendment Act No. 58 of 2008 and Chapter 6A of the SAPS Act. However, later on, the Constitutional Court declared Chapter 6A of the SAPS Act inconsistent with the Constitution of South Africa and invalid to the extent that it failed to secure an adequate degree of independence for the DPCI (Redpath, 2012:66). As a result, the legislation was further amended by the SAPS Amendment Act No. 10 of 2012, which was subsequently deemed to be sufficient to address the independency of the DPCI. The prosecutors who were attached to the DSO remained within the NPA and continued with prosecution of cases as their core business function.

#### **4.6.2 Approach by the Specialised Commercial Crime Unit**

From the onset, it is important not to confuse the SCCU with the Specialised Commercial Crime Court (SCCC). The latter is self-explanatory; it is a criminal court that hears commercial crime cases. According to Altbeker (2003:35), the SCCC was established in September 1999 by way of a partnership between the SAPS, the NPA, the Department of Justice and Business against Crime for the purpose of hearing commercial crime cases. On the other hand, the SCCU falls within the NPS

Sub-Programme in the NPA. Figure 4.7 depicts the Sub-Programmes in the NPA, with specific reference to the SCCU.



**Figure 4.7: Sub-programmes in the NPA with specific reference to the SCCU**  
(Source: NPA, 2016:19)

The SCCU is headed by SDPP at national level. It is a specialist prosecution unit that hosts specialist prosecution expertise and executes strategies to effectively prosecute complex commercial crimes, including corruption and cybercrime (NPA, 2014:67). Altbeker (2003:39) states that the SCCU prosecutes cases that fall into two broad categories, namely:

- Statutory offences defined in terms of the numerous pieces of legislation regulating business activity conduct; and
- Various forms of fraud and theft.

The client base of the SCCU comprises a broad spectrum of complainants in commercial cases, ranging from private individuals and corporate bodies to state departments (Department of Justice and Constitutional Development, 2012:351). From experience, the researcher submits that even though the SCCU has a wide range of clients who may approach the SCCU directly, all commercial cases are registered with the SAPS to initiate investigation. According to NPA Annual Report 2005/06, the SCCU's strategic objectives were:

- Ensuring speedy and effective prosecutions, linked to ensuring that investigators and prosecutors were properly coordinated and managed;
- Providing increased access to SCCU services;
- Ensuring that customers were treated in accordance with the Bill of Rights and Batho Pele principles;
- Ensuring that sound business processes were followed; and
- Transformation of the NPA and development of skilled staff.

Critical to this study is the first strategic objective, which relates to the prosecution of the cases. This strategic objective would not be possible without the integrated approach used by the investigators and the prosecutors. Although this strategic objective was highlighted a few years ago, it is still applicable today. This is evident in the NPA Annual Report 2015/16 where the importance of coordinating the investigation and the prosecution functions is emphasised. The success of SCCU is well documented in the NPA Annual Reports, indicating high conviction rates for a number of years. In Table 4.9 and Table 4.10 below, the conviction rates of the SCCU from 2002/03 to 2009/10 and from 2010/11 to 2016/17 are shown.

**Table 4.9: Conviction rates of the SCCU from 2002/03 to 2009/10**

| 2002/03 | 2003/04 | 2004/05 | 2005/06 | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|---------|---------|---------|---------|---------|---------|---------|---------|
| 95,9%   | 95%     | 94,8%   | 94,6%   | 96,6%   | 94,1%   | 93,7%   | 93,7%   |

(Source: NPA, 2006:45 and NPA, 2010:25)

**Table 4.10: Conviction rates of the SCCU from 2010/11 to 2016/17**

| 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 | 2015/16 | 2016/17 |  |
|---------|---------|---------|---------|---------|---------|---------|--|
| 92,5%   | 91,6%   | 91%     | 93,9%   | 94,3%   | 94,1%   | 92,1%   |  |

(Source: NPA, 2011:24 and NPA, 2017:41)

Looking at Table 4.9 and Table 4.10, one may conclude that the SCCU is one of the best performing Sub-Programmes of the NPA. However, it should be noted that the SCCU would not have recorded such high conviction rates without the involvement of the CCU. This is so because police cannot prosecute offenders and prosecutors cannot investigate crimes (McDevitt, 2012:106). Therefore, the

application of the prosecution-led investigation model should be applauded in this regard.

The participants in Sample B were asked: “Do you think that the prosecution-led investigation model can be effective in cases other than commercial crimes?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Their respective responses are indicated in brackets and presented in Table 4.11 below:

**Table 4.11: Participants’ views on the effectiveness of the prosecution-led investigation model in cases other than commercial crimes**

| Sample B  |
|---|
| <ul style="list-style-type: none"> <li>• Yes, but the prosecutor should guard against the possibility of getting too involved in the investigation (one).</li> <li>• Yes (one).</li> <li>• Yes, but only if it receives the full support and active participation by management of the SAPS and NPA (one).</li> </ul> |

(Source: Feedback from participants)

The responses of the participants indicate that they agree that the prosecution-led investigation model can be effective in crimes other than commercial crimes. Two of the participants elaborated on their answers by stating that it can be effective only if it receives the full support and active participation by the management of the SAPS and NPA, and that the prosecutor should guard against getting too involved in the investigation process. In this regard, when the prosecutor gets too involved it may result in a situation whereby, he/she becomes a witness in his/her own case. There was no literature that could be compared to the responses of the participants.

The following is the process followed by the CCU and the SCCU in the prosecution-led investigation model as described by Altbeker (2003:37-38):

- A complaint that falls within the remit of the SCCU is laid at a police station by the complainant or may be lodged directly at the SCCU or the CCU.
- The Detective Branch Commander at the police station identifies the case as ‘belonging’ to the CCU and forwards the case docket to the commanding officer of the CCU in the particular jurisdiction.

- On receipt of the case by the CCU, it is booked out to an investigator for preliminary investigation, to be completed within 14 days. This investigation consists of making sure that the offence falls within the mandate of CCU and obtaining whatever evidence already exists, as well as possibly retaking the complainant's statement. In addition, the investigator completes a draft investigation plan, setting out what evidence is to be collected and the timeframes within which this will be done.
- Within 14 days the commanding officer reviews the case docket and investigation plan in conjunction with the investigator, and hands the documents to the workflow administrator of the SCCU, who will allocate the work to the appropriate prosecutor.
- Once the prosecutor has received the case docket, he/she is required to meet with the investigator within 14 days in order to review the information already at hand, as well as the draft investigation plan, which sets out the responsibilities and timeframes for accumulating evidence. This plan, once completed, is affixed to the case docket, forming a point of reference and accountability.
- The investigator then completes the investigation, reporting to his/her commanding officer. In addition, the investigator and prosecutor may meet to follow-up on the progress in the investigation of the case, particularly in complex matters or where new information comes to light that necessitates a reformulation of either the charges or the investigation plan.
- Upon completion of the investigation, the investigator will either arrest the suspect or summons him or her to appear in court. Ordinary trial procedures follow. One final requirement of SCCU's policy, however, is that prior to the trial, the investigation/prosecution team is required to meet defence counsel and other relevant role-players in order to ensure that there are no unnecessary delays during the trial. In particular, the meeting must ensure that the defence will be ready to proceed on the date on which the trial is scheduled to begin.

The participants in Sample B were asked: "Do you follow the prosecution-led investigation model in commercial crimes?" This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. In response to the question, all participants confirmed that they follow the prosecution-led investigation model in commercial

crimes. The responses of the participants correspond to the opinions in the literature. In the SCCU, prosecutors are guided by the prosecution-led investigation model when executing their duties. In this regard, Altbeker (2003:37-38) provides a process that is followed in the CCU-SCCU set-up.

One key point that must be emphasised is that when the complaint is laid, it must be registered in the CAS, which in turn generates an official case number. Without a case number, the matter will not be considered by either the CCU or the SCCU. Any subsequent interaction between the investigator and prosecutor is guided by the case number in the case docket. In line with the views expressed by Altbeker (2003:37-38) and Schönteich (2005:1) describes the process followed by the CCU and the SCCU in the prosecution-led investigation as follows:

- Prosecutors guide the strategy and tactics of police investigations, focusing on the collection of admissible evidence and ensuring that investigations are court-directed.
- Prosecutors meet face-to-face with investigators from the beginning of the case.
- Prosecutors are responsible for good cooperation of the witnesses.
- Prosecutors become leaders of multi-agency solutions to crime problems.

The participants in Sample B were asked: “How are commercial crime cases reported to SCCU?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. In response to the question, all participants indicated that the commercial crime cases are reported to SCCU by the SAPS. The responses of the participants are, therefore, consistent with the literature. In order for the case to be processed, it has to be registered at the police station. When it falls within the mandate of CCU, it will be transferred to that unit and registered by the workflow administrator of the SCCU. Altbeker (2003:37-38) confirms that a complaint falling within the remit of the SCCU is laid at a police station by the complainant or may be lodged directly at the SCCU or the CCU. However, lodging the complaint directly at the SCCU may delay the process, as the SCCU will have to refer the case back to the police station for registration in the CAS.

McDevitt (2012:102) argues that a mandatory investigation plan forces personnel to think logically and in detail - often in a chronological manner – about the steps to be taken. Stressing the importance of developing and implementing the investigation plan, Brammertz (2016:8) opines that the investigation plan allows the prosecutor to have insight into the evidence already gathered. The evidence gathered has to be continuously analysed in terms of what is necessary to prove the elements of the legal theory, so that further evidence-gathering is focused on obtaining additional evidence to fill gaps or weaknesses in the case (Brammertz, 2016:8). This author goes further to state that prosecutors have to provide investigators with feedback as to whether the evidence gathered is sufficient, what other issues they should investigate and whether the evidence is trial-ready.

According to the American Bar Association (ABA) (2014:9), before and throughout the course of complex investigations, the prosecutor should work with the investigator and develop an investigative plan that analyses:

- the investigative predicate or information concerning the matter that is known;
- the goals of the investigation;
- the potential investigative techniques and the advantages of each, singularly and in combination, for producing relevant information and admissible evidence; and
- the legal issues likely to arise during the investigation.

In addition to the submission by ABA (2014:9) above, the researcher contends that the investigation plan could be a useful tool to the investigator and prosecutor, with specific reference to determining the appropriate time for arresting the suspect. In making a tactical decision of whether, when or where to arrest a suspect during a continuing investigation, the investigator and prosecutor should consider the potential benefits of the arrest, including:

- protecting the public from a person known to present an imminent danger;
- reducing the likelihood of flight;
- preventing the destruction of evidence and providing an opportunity to obtain evidence of a crime;
- stopping or deterring the harassment or coercion of witnesses or other acts of obstruction of justice;

- creating an opportunity to ask questions about an unrelated crime;
- encouraging other culpable individuals or witnesses to surrender to law enforcement and cooperate with the investigation; and
- inducing relevant conversation or other communication likely to be intercepted by law enforcement (ABA, 2014:24).

The participants in Sample B were asked: “How are these cases assigned to the SCCU prosecutors?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. In response to the question, all participants stated that the Head of the SCCU assesses and allocates the cases to the SCCU prosecutors. These responses correspond to the literature, as highlighted by Altbeker (2003:37-38) and NPA (2014:67), that the workflow administrator or the Head of SCCU is responsible for the allocation of the cases to the appropriate prosecutors.

It is significant to note that the tactical decision mentioned by ABA (2014:24) above can only be made once the investigation plan has been drafted and agreed to by both the investigator and prosecutor. It is also significant to note that the early arrest of a suspect while the investigation is ongoing is not something unknown; however, it does not often take place. When the investigator foresees the likelihood that the suspect is a flight risk, or is on the verge of fleeing, such information should be conveyed to the prosecutor so that reasonable steps such as effecting the arrest can be taken. It should be pointed out that arresting the suspect is not a form of punishment but is one of the methods used to secure the attendance of the accused at a trial. For that reason, arresting the suspect while the investigation is continuing, as mentioned by ABA (2014:24), is beneficial in commercial cases.

The participants in Sample B were asked: “Do you meet the SAPS investigator to discuss the case under investigation?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. All participants indicated that they meet with the SAPS investigators to discuss the cases under investigation.

The responses of the participants correspond to the literature with regard to the meetings between the investigator and prosecutor. According to Schönreich

(2005:1), prosecutors meet face-to-face with the investigators from the beginning of the cases. Altbeker (2003:37-38) states that once the prosecutor has received the case docket, he/she is required to meet with the investigator within 14 days in order to review the information already at hand and draft the investigation plan that stipulates the responsibilities and timeframes for accumulating evidence.

ABA (2014:24) highlights the benefits of arresting the suspect during the investigation phase; however, there are risks that must be considered. These risks include:

- limiting the criminal investigation process by alerting other suspects involved in criminal activity;
- restricting the use of some investigative techniques;
- triggering speedy charge and trial rules;
- triggering disclosure obligations that have been subject to delayed notice;
- appearing to be illegitimate thus adversely affecting community support for police and prosecution efforts; and
- causing significant shame, embarrassment or prejudice to the arrestee or innocent third parties, and unintended and unfair financial impact (ABA, 2014:24-25).

The submission by ABA (2014:9) above, clearly shows the importance of the investigation plan, which should be drafted by the investigator in conjunction with the prosecutor. Most importantly, the role of the prosecutor relating to addressing legal issues during an investigation cannot be overemphasised. ABA (2014:66-67) identifies the following advantages of producing a written investigation plan:

- Clarity about the approach to the investigation among all those involved, by issuing a document that can be shared with others who are or might become involved in the investigation;
- A clear statement of the methods and means of the investigating; and
- An agreement to regularly evaluate the status of the investigation.

The participants in Sample B were asked: "If the answer is 'yes' to the above, how often do you meet the investigator with regard to a specific investigation in the

prosecution-led investigation model?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.12 below:

**Table 4.12: Participants’ responses pertaining to the frequency of meetings between the investigator and prosecutor regarding a specific investigation in the prosecution-led investigation model**

| Sample B   |
|--|
| <ul style="list-style-type: none"> <li>• Investigator and prosecutor agree on the timeframe (three).</li> <li>• Depends on the nature and complexity of the case (three).</li> <li>• Consider the involvement of the complainant (one).</li> </ul> |

(Source: Feedback from participants)

Looking at the responses of the participants, it is clear that all participants agreed that the timeframe should be decided on by both the investigator and prosecutor. The nature and complexity of the case in terms of the timeframe play a significant role. These responses are consistent with the literature, as highlighted by Altbeker (2003:37-3), ABA (2014:9) and (IAP, 2014:54). However, the response relating to the involvement of the complainant was not supported by the literature. The investigator and prosecutor may meet to follow up progress in the investigation of the case; particularly in complex matters or where new information comes to light that necessitates a reformulation of either the charges or the investigation plan.

There is a clear difference between the approach that was used by the DSO and the one that is currently used by SCCU. Significantly, both approaches fall within the scope of the prosecution-led investigation model and indicate high conviction rates, which is an indication of success. With regard to the SCCU’s approach it is noted that the responsibility for investigations lies exclusively in the hands of the CCU, while the decision whether a case should be brought before a court – whether to prosecute or not – is undoubtedly the central function of the SCCU.

The participants in Sample B were asked: “In your opinion, do you believe/not believe that the prosecution-led investigation model could work in murder cases?”

Please elaborate.” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Their respective responses are indicated in brackets and presented in Table 4.13 below:

**Table 4.13: Participants’ views relating to the use of the prosecution-led investigation model in murder cases**

| Sample B  |
|---|
| <ul style="list-style-type: none"> <li>• Yes, it could work, provided that it is properly implemented and supported by NPA and SAPS (one).</li> <li>• Yes, only in respect of the technical evidence such as cell phone and ballistics analysis (one).</li> <li>• Yes, it could be effective, although a lot of work takes place at the crime scene (one).</li> </ul> |

(Source: Feedback from participants)

Table 4.13 above demonstrates the views of the participants in respect of the use of the prosecution-led investigation model in murder cases. It is evident from the responses of the participants that they support the use of this model but subject to meeting certain requirements. One of the requirements pointed out by one of the participants was that for this model to be effective in murder cases it has to be supported by both the NPA and SAPS. Since this model has not been implemented in any crimes other than commercial crimes in South Africa, there was no literature available to be compared to the responses of the participants. In a review of the submissions of BJA (2001:9); Brammertz (2016:7), IAP (2014:54) and Little (1999:728-729) the prosecution-led investigation can be defined as a model whereby the investigator constantly works in a coordinated function with the prosecutor, from the start until the end of the investigation process. In essence, the prosecutor’s monitoring generally starts after the preliminary police investigations. The role of the prosecutor in the approach used by the SCCU, which is to guide the investigation as opposed to leading the investigation, is clearly well-defined.

The participants in Sample B were asked: “Are there any specific policies/guidelines/operating model that you, as a prosecutor, have to follow when a commercial case has been assigned to you? If yes, please specify.” This was an open-ended question and the participants could provide their own answers to the

question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.14 below:

**Table 4.14: Participants’ responses relating to specific policies/guidelines/operating model that the prosecutor has to follow upon being assigned a commercial crime case**

| <b>Sample B</b>  |
|--|
| <ul style="list-style-type: none"> <li>• Investigator and prosecutor work together (three).</li> <li>• Scheduling of case planning with investigator (two).</li> <li>• Investigation and prosecution plan (two).</li> <li>• Determine whether sufficient evidence exists (two).</li> <li>• Monitor and guide investigation (one).</li> <li>• Ad hoc meetings include other parties (one).</li> <li>• 14 days to schedule a meeting (one).</li> </ul> |

(Source: Feedback from participants)

Table 4.14 depicts participants’ responses relating to specific policies/guidelines/operating model that the prosecutor has to follow upon being assigned a commercial crime case. The general view shared by all the participants is that the investigator and prosecutor work together during this process, as stated by ABA (2014:9). It is noted that the majority of the participants agreed that the investigation and prosecution plan would have to be in place and that the investigator and prosecutor together determine whether sufficient evidence exists. It is significant that one participant stated that the meeting between the investigator and prosecutor has to take place within 14 days. A similar view was expressed by Altbeker (2003:37-38) in that the prosecutor must ensure that such meeting takes place within 14 days after receipt of the case docket. The following discussion examines the advantages and disadvantages of the prosecution-led investigation model.

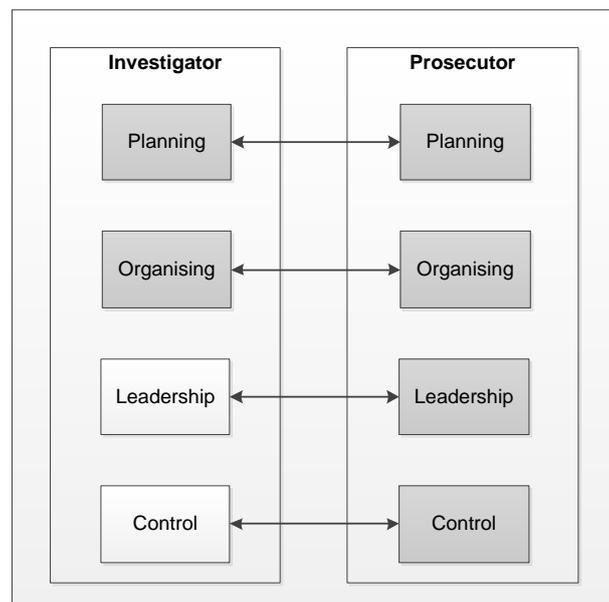
#### **4.7 ADVANTAGES OF THE PROSECUTION-LED INVESTIGATION MODEL**

In this study, the advantages and disadvantages of the prosecution-led investigation model are discussed in the context of two government agencies, namely the CCU of the DPCI and the SCCU of the NPA, working in a coordinated function in the

investigation and prosecution of criminal cases. For this reason, the approach used by the DSO is excluded. The advantages of the prosecution-led investigation model are discussed below:

#### 4.7.1 Cooperation between the Commercial Crime Unit and the Specialised Commercial Crime Unit

The cooperation between the CCU and SCCU is important to quickly uncover criminal acts in a systematic and effective manner in line with the law. This opinion can be found in IAP (2014:19), where it is stated that in other crimes, the special skills and a multidisciplinary approach may be required in order to achieve the most effective prosecution and best outcomes for those involved. To Navickienė (2010:342), capability to cooperate is the most important aspect in order to get and maintain the best result at work. The investigator and prosecutor cooperation during investigation is highlighted by Navickienė (2010:343), as illustrated in Figure 4.8 below:



**Figure 4.8: Investigator and prosecutor cooperation during investigation**  
(Source: Navickienė, 2010:343)

Looking at Figure 4.8 above, the following is apparent:

- The functions of planning and organising of work are equally coordinated by both the investigator and prosecutor.

- The prosecutor takes leadership and control functions to ensure that the evidence gathered meets the requirement of the law.

Navickienė (2010:343) identifies the following characteristics of cooperation between the investigator and prosecutor:

- It is a legitimate process justified by law.
- It is a process combined by the subjects' interrelations.
- It is a process comprising the correct methods and forms of work.

In theory, it is clear that cooperation between the investigator and prosecutor, as described by Navickienė (2010:343), is advantageous in the criminal investigation process. It is, however, not possible in the South African environment with regard to leadership and control. This is because the roles of the investigator and prosecutor are completely separate, therefore it would not be permissible for the prosecutor to lead and control the investigation.

While Navickienė (2010:343) identifies certain advantages to cooperation between the investigator and prosecutor in the prosecution-led investigation model, IAP (2014:62) adds the following advantages:

- It allows for proper marshalling and vetting of evidence prior to trial.
- It minimises the disposal of cases that do not meet the prosecution standard or can be dealt with by another method.
- It helps to ensure that only those who were properly investigated and charged with a criminal offence go to trial.
- It helps to prevent trivial or vexatious cases from going before the courts.
- It helps to resolve the issue of prison overcrowding.

The researcher agrees with the opinions expressed by IAP (2014:62). Indeed, the early involvement of the prosecution resolves the issue of prison overcrowding by not enrolling the minor cases that can be easily resolved by other means such as Alternative Dispute Resolutions.

Nonetheless, the researcher is of the view that meaningful interaction in the form of face-to-face meetings between the investigator and prosecutor to plan the

investigation should be obligatory in serious matters that are under investigation. Raising similar sentiments, BJA (2001:16) opines that personal interaction between the investigators and prosecutors replaces the system in which police and prosecutors communicate by means of written instructions in the case docket. This form of communication is found in the investigation diary of the case docket. Besides the fact that personal interaction between the investigator and prosecutor mentioned by BJA (2001:16) improves the communication levels, it also assists in building the investigative and legal expertise as discussed below:

#### **4.7.2 Immediate availability of investigative and legal expertise**

Identifying mutual priorities for police and prosecution is another step in improving investigative quality (Palmiotto, 2013:251). It is a well-known fact that the majority of the SAPS investigators do not possess legal qualifications, precisely because they are not trained to be lawyers. As a result, the ever-increasing complexities of substantive and procedural law make police investigators more reliant on the prosecutors for legal advice. According to Navickienė (2010:345), the role of a prosecutor in pre-trial investigation has changed and it has become equally important to him/her to be able to effectively cooperate with investigators. To McDevitt (2012:106), the lines of communication between the investigators and prosecutors ensure compliance with legal procedures. If these lines are not observed, that could seriously hamper prosecution. The talent and skills of both elements are critical to reaching the ultimate goal, which is the successful prosecution of guilty offenders (McDevitt, 2012:106).

The SCCU prosecutors are, in general, experienced and highly skilled in the area of commercial crimes, due to the principle of dedication to commercial crime (NPA, 2016:22). Prosecutors who are dedicated to a specific prosecution section can build the necessary relationships and share expertise with other participants in the investigation, thereby providing much-needed continuity of advice and knowledge of the file in order for the investigation and prosecution to be successful (IAP, 2014:27). The following discussion highlights the factors contributing to the success of the prosecution-led investigation model as applied in SCCU.

#### **4.7.3 Factors contributing to the success of the prosecution-led investigation model**

The SCCU's methodology of prosecutor-guided investigation greatly contributes to the high conviction rate, in that the SAPS and the prosecution work as a team to ensure effective and efficient investigation and prosecution of cases (NPA, 2016:22). Altbeker (2003:5-6) describes the following factors as reasons for the success of the SCCU:

- The involvement of prosecutors in the investigation phase means that the investigation tended, on average, to be both more effectively and more efficiently completed, making it that much easier to complete the charge sheet and present an effective case.
- Prosecutors, having been involved in the investigation, are much more attuned to, and familiar with, the specific facts of the case, making their presentation more effective.
- The high level of preparedness makes it that much more likely that the defence counsel would advise their client to plead guilty.
- The co-location of investigators and prosecutors contributes to the cooperation with the police.
- The inevitable tensions that arise whenever two distinct organisations begin to work together have been handled with grace, professionalism and competence by the management staff.

Adding to the discussion, ABA (2014:1), BJA (2001:10) and NPA (2009:24-25) highlight the following advantages of the prosecution-led investigation model that positively contribute to the CJS as a whole:

- A skilled workforce of investigators and prosecutors;
- Fewer remands for further investigations;
- Shortened investigation periods;
- Reduction of awaiting-trial population;
- Cost benefit to Correctional Services for awaiting-trial population;
- Reduced frustration between the investigators and prosecutors;
- Increase in the average duration of cases on the court roll;

- Decrease in case withdrawals;
- Decrease in case-loads per prosecutor;
- Compensation for loss to the victims of crime, where appropriate;
- Investigations are conducted in a manner consistent with applicable legal rules so that evidence obtained is legally admissible;
- The administration of justice is fair and impartial; and
- The evidence will be sufficient to obtain and sustain a conviction.

In line with the submissions of ABA (2014:1), BJA (2001:10) and NPA (2009:24-25) it can be added that the application of the prosecution-led investigation model enhances the relationship between the investigators and the prosecutors, due to the clearly defined responsibilities during the process of investigation and prosecution. Successful investigation and prosecution of criminal offences is a team effort (McDevitt, 2012:20). The researcher fully agrees with the assertion of Suter (2014:41) that the involvement of the prosecution in the early stages of investigation ensures that a sound prosecution strategy is developed, resources are closely managed and if needs be, a prosecution team is efficiently and effectively deployed.

Looking at the submissions above, the following inferences can be made:

- That the investigator and prosecutor work as a team throughout the investigation of the case;
- That the prosecutor guides the investigation;
- That the investigator and prosecutor maintain their independency; and
- That the prosecutor does not literally get involved in the investigation of the case.

Furthermore, this model ensures the integrity of an ongoing investigation in terms of the manner in which evidence is gathered and avoids a possible negative impact on the prosecution of the case.

The participants in Sample A and Sample B were asked: "What are the advantages of the prosecution-led investigation model?" This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more

than one answer and their respective responses are indicated in brackets and presented in Table 4.15 below:

**Table 4.15: Participants' views of the advantages of the prosecution-led investigation model**

| Sample A  | Sample B   |
|---|--|
| <ul style="list-style-type: none"> <li>• Only evidence gathered for prosecution (eight).</li> <li>• Increased chances of successful prosecution (six).</li> <li>• Promotes teamwork (four).</li> <li>• Speedy investigation and prosecution (three).</li> <li>• Promotes faith in CJS (three).</li> </ul> | <ul style="list-style-type: none"> <li>• Promotes teamwork (three).</li> <li>• Ensures that evidence gathered is admissible (three).</li> <li>• Evidence is relevant to the specific charges envisaged (two).</li> <li>• Increased chances of successful prosecution (two).</li> <li>• Benefits both the investigator and prosecutor, due to their experience (one).</li> <li>• Ensures lawful, fair and thorough investigation (one).</li> <li>• Promotes faith in CJS (one).</li> <li>• Prosecutor directs investigation (one).</li> </ul> |

(Source: Feedback from participants)

The majority of the participants in Sample A indicated that the prosecution-led investigation model ensures that the evidence gathered is for the prosecution process. Their views were supported by the participants in Sample B who stated that this model ensures that evidence gathered is admissible and relevant to the specific charges envisaged. It is further noted from the responses of some of the participants in Sample A and all participants in Sample B that this model promotes teamwork, resulting in successful prosecution. In this regard, three participants in Sample A added that the CJS is thus promoted, a view that was supported by one participant in Sample B. Equally significant is the response of one participant in Sample B, who stated that this model benefits both the investigator and prosecutor as a result of their experience. This response is in agreement with the literature review, as specifically highlighted by ABA (2014:1), IAP (2014:27) and McDevitt (2012:106).

While there are a number of advantages in the prosecution-led investigation model; one should appreciate the fact that there are also disadvantages in this model. The following discussion relates to the disadvantages of the prosecution-led investigation model.

#### **4.8 DISADVANTAGES OF THE PROSECUTION-LED INVESTIGATION MODEL**

When the new concept emerges, possible disadvantageous challenges are normally experienced. Thus, this expectation cannot be ruled out from the prosecution-led investigation model. The following disadvantages are associated with the prosecution-led investigation model.

##### **4.8.1 Lack of legislation**

According to Navickienė (2010:345), in other countries, the guidelines for cooperation between the investigator and prosecutor are specified not only by the law of criminal procedure but also by other laws or bylaws. This author goes further to refer to Slovenia where the question of cooperation between the investigator and prosecutor is discussed not only in the Code of Criminal Procedure, but also in the Prosecutor Law and the Police Law. Although this understanding refers to the cooperation between the investigation and prosecutor in general, it is also true of and exists in the prosecution-led investigation model. South Africa is one of the countries in which there is no provision in law that guides the cooperation between the investigators and the prosecutors during the investigation of crime.

As shown in paragraph 3.4 of Chapter 3 and paragraph 4.2 of this Chapter 4, the cooperation between the investigator and prosecutor during the investigation and prosecution phases is not governed by any legislation. In other words, the interaction between the SAPS and NPA during criminal investigation is not a legislated mandate. Expressing the same sentiment, Navickienė (2010:341) points out that it is paradoxical that procedural norms do not provide for the compatibility of the subjects on the basis of law, while cooperation is one of the most efficient ways of helping to uncover and investigate crimes. According to ABA (2014:1), the early involvement of the prosecutor, however, also creates the risk that the prosecutor's investment of time and resources in an investigation would lead to premature or inaccurate conclusions as to guilt or innocence. However, this view

can be countered by the fact that prosecutors should be guided by their professional conduct, irrespective of the resources and time they have invested during the investigation. In addition, ABA (2014:8) points out that the prosecutor should be aware of and comply with the ethical rules and other legal standards applicable to the prosecutor's conduct during an investigation. In the following discussion, the researcher examines the personal relationship between the investigator and prosecutor.

#### **4.8.2 Personal relationship between the investigator and prosecutor**

While a sound relationship between the investigator and prosecutor should be encouraged, it is, however, indefensible when such relationship becomes personal. According to IAP (2014:28), a disadvantage arises in the prosecution-led investigation model when the objectivity and impartiality are compromised owing to a close and ongoing personal relationship between the investigator and prosecutor. The researcher contends that the personal relationship referred to in IAP (2014:28) is the private relationship that does not emanate from the professional activities. However, it is important to note that the prosecutor has a duty to display the highest degree of fairness and justice to an accused person, as stated by Christou (2005:1321).

In direct contrast with the opinion of IAP (2014:28), BJA (2001:11) points out that police investigators generally have the perception that prosecutors want to dictate how they should investigate, and the prosecutors' perceptions are that police investigators produce shoddy investigations, which result in many withdrawals at court. This view is indeed a disadvantage if it is not addressed by the management of the SAPS and NPA collectively. ABA (2014:64) stresses that prosecutors should respect the experience and expertise of investigators, while maintaining and providing independent judgement, and should appreciate the fact that investigators are supervised by their own department and not by the prosecutors. The lack of clarity about the delineation of powers may give rise to friction between the investigators and the prosecutors. To manage the situation, it is important to engage the parties concerned by following the advice provided by Technikon Pretoria (2003:200-201), as described in paragraph 4.4 in this chapter. However, it should

be noted that the lack of resources may also be disadvantageous to the prosecution-led investigation model.

#### **4.8.3 Lack of resources**

To successfully execute the prosecution-led investigation model, both the CCU and the SCCU must be adequately resourced. The resources referred to include a sufficient number of trained and experienced investigators and prosecutors, equipment such as motor vehicles, offices and computer systems. PSC (2001:45-46) lists the following factors that are disadvantageous in the prosecution-led investigation model:

- Lack of experienced SAPS investigators due to high turnover;
- The complexity of the cases means that cases are taking long to finalise;
- The new cases are received by the investigators, thereby increasing their workload and causing backlog;
- Lack of forensic accounting investigators within the SAPS means this function is conducted by external accountants, which is time-consuming; and
- A lack of information technology and software programs to assist investigators.

A significant portion of the concerns above was also raised in the Annual Report of the NPA 2008/09, specifically with the serious staff and capability shortages within the CCU and SCCU to conduct complex commercial crime investigations and prosecution (NPA, 2009:25). In this Annual Report, it was further stated that the accessibility of the SCCU in areas where it does not have offices negatively impacted as a result of the budgetary constraints, and because of this, prosecutors were unable to assist outside courts with complex commercial crime prosecutions (NPA, 2009:25).

The above factors listed by PSC (2001:45-46) raised a serious issue that led to the exodus of the CCU investigators to the private sector. As a former member of the CCU, the researcher can attest to the fact that with regard to the retention of the investigators, the Government did not do enough to properly manage the amalgamation of the DSO and SAPS Commercial Branch to form the DPCI. There was no clear directive in terms of promotions and allocation of the resources during the amalgamation. When the DSO investigators moved in, they were given higher

ranks such as Colonels, to the detriment of the then SAPS Commercial Branch investigators. As a result, the seasoned SAPS Commercial Branch investigators felt aggrieved and decided to leave in their numbers, mostly head-hunted by the private sector. This high turnover contributed immensely to the workload and backlog of commercial crime cases which, at the time of amalgamation, were under investigation.

The participants in Sample A and B were asked: “What are the disadvantages of the prosecution-led investigation model?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Some of the participants provided more than one answer and their respective responses are indicated in brackets and presented in Table 4.16 below:

**Table 4.16: Participants’ views of the disadvantages of prosecution-led investigation model**

| Sample A   | Sample B  |
|--|---|
| <ul style="list-style-type: none"> <li>• Time-consuming (three).</li> <li>• No disadvantages (two).</li> <li>• Limited resources (two).</li> <li>• Lack of proper direction from prosecutors (two).</li> <li>• Failure by the investigators to attend to the investigation (one).</li> </ul> | <ul style="list-style-type: none"> <li>• Lack of competence of the SAPS (one).</li> <li>• Failure of investigators to conduct investigation (one).</li> <li>• Lack of accountability by both the SAPS and NPA when the case is unsuccessful (one).</li> <li>• Level of involvement of the prosecutor in the investigation (one).</li> </ul> |

(Source: Feedback from participants)

There were three participants in Sample A who indicated that the disadvantage of this model is that it is time-consuming. The rest of the participants in Sample A provided various responses, ranging from no disadvantages to limited resources and lack of proper direction from the prosecutors. Significantly, one participant in Sample A mentioned the failure of the investigators to attend to the investigation, in agreement with one participant in Sample B. Equally important is the fact that the participants in Sample B also provided various responses, which included lack of competence of the SAPS, lack of accountability when the case is unsuccessful, and level of involvement of the prosecutor in the investigation.

There was no majority in the responses of participants in both Sample A and Sample B from which an inference could be drawn. One of the main reasons is that the participants in Sample A are not exposed to the prosecution-led investigation model, therefore their views cannot be construed as something that they experience in their professional field as the Detective Branch Commanders. However, with regard to Sample B, the participants had various responses. Remarkably, it was pointed out by one participant that the level of involvement of the prosecutor in the investigation is disadvantageous, in that a suspect can be prematurely pronounced guilty, a sentiment that is in agreement with that of ABA (2014:1). In addition, another participant in Sample B pointed out the incompetency of the SAPS as being disadvantageous to this model. This response should be understood in the context of the high turnover experienced by the SAPS investigators, as stated by PSC (2001:45-46). It is important to note that none of the participants mentioned the lack of legislation, as highlighted by Navickienė (2010:345), to be disadvantageous to the prosecution-led investigation model.

The participants in Sample B were further asked: “Do you think that the use of the prosecution-led investigation will improve the rate of success in murder cases?” This was an open-ended question and the participants could provide their own answers to the question. No choices were provided from which they could choose. Their respective responses are indicated in brackets and presented in Table 4.17 below:

**Table 4.17: Participants’ views on the use of the prosecution-led model to improve the success rate in murder cases**

| Sample B   |
|--|
| <ul style="list-style-type: none"> <li>• No, it would be better to improve competency in the processing of the crime scenes (one).</li> <li>• Yes, constant consultation between the investigator and prosecutor will improve success in any investigation (one).</li> <li>• Yes, at an appropriate stage when evidence has already been gathered at the preliminary investigation (one).</li> </ul> |

(Source: Feedback from participants)

In view of Table 4.17 above it is evident that one of the participants did not agree with the other participants in respect of whether the use of the prosecution-led investigation model would improve the success in murder cases. She was of the view that the SAPS should focus more on improving the competency of the investigators in respect of the processing of the crime scenes. However, the majority of the participants did not hold a similar view. One participant stated that the constant consultation between the investigator and prosecutor would improve success in any investigation, while the other participant stated that the prosecutor should be involved after the preliminary investigation has been conducted. Since this model has not been implemented in any crimes other than commercial crimes in South Africa, there was no literature available to be compared to the responses of the participants. In the following discussion, the researcher examines the prosecution-led investigation model in murder cases as a concept that could be considered and adopted by the SAPS in the fight against the crime of murder.

#### **4.9 PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES**

There is no doubt that investigators and prosecutors have different mandates provided for specifically in the Constitution of South Africa, to fight crime through the CJS. As clearly shown in Chapter 3 and this Chapter 4, there is no legislative framework that compels investigators and prosecutors to interact while the criminal investigation is underway. According to Palmiotto (2013:247), investigators should be able to obtain legal assistance from the prosecution in complicated cases. By the same token, the investigators and prosecutors are not prohibited from interacting during the criminal investigation process. In the absence of a legal directive or policy, it is evident that in serious cases such as murder, a conceptual model should be developed and implemented. The final development and implementation of such a model should consist of drafting the relevant legislation/policy that will incorporate inputs from both the SAPS and NPA.

Based on the literature review and the responses of the participants in Sample A and Sample B, the researcher developed the following investigation model, illustrating the operational steps of the prosecution-led investigation model in murder cases, as presented in Table 4.18 below:

**Table 4.18: Operational steps in the prosecution-led investigation model for murder cases**

|   |
|---|
| <p><b>Step 1: Reporting of murder incident</b></p> <ul style="list-style-type: none"><li>• A report of a murder incident is made to the police station.</li><li>• Upon confirmation of the complaint, the case docket is immediately opened and the crime scene is attended and secured by the first officer.</li></ul>   |
| <p><b>Step 2: Preliminary investigation phase</b></p> <ul style="list-style-type: none"><li>• The investigator from the Violent Crimes Group is notified to attend the crime scene and immediately conducts the preliminary investigation.</li><li>• Preliminary investigation includes identification of the victim, identification and interviewing of witnesses, crime scene searching and processing, and summoning the relevant experts.</li></ul>   |
| <p><b>Step 3: Case docket inspection and allocation</b></p> <ul style="list-style-type: none"><li>• Within 24 hours, the Detective Branch Commander conducts inspection of the case docket and allocates it to the investigator for further investigation.</li><li>• The investigator liaises with the previous investigator who conducted the preliminary investigation to determine the status of the investigation conducted.</li><li>• Within five days, after liaising with the previous investigator, the investigator dispatches the case docket to the Detective Branch Commander for a court certificate for allocation to the prosecutor.</li></ul> |
| <p><b>Step 4: Drafting of the investigation plan</b></p> <ul style="list-style-type: none"><li>• Once the prosecutor has received and studied the case docket, he/she meets with the investigator within ten days to review the information already in hand and draft the investigation plan, which sets out responsibilities and timeframes for accumulating evidence. This plan, once completed, is affixed to the case docket, forming a point of reference and accountability.</li></ul>  |
| <p><b>Step 5: Further investigation phase</b></p> <ul style="list-style-type: none"><li>• The investigator conducts the investigation as per agreed investigation plan, reporting to his/her Detective Branch Commander.</li></ul>  |
| <p><b>Step 6: Progress of the investigation</b></p> <ul style="list-style-type: none"><li>• The investigator and prosecutor continuously meet to follow up progress in the investigation of the case, particularly in complex murder cases or where new information comes to light that necessitates a reformulation of either the charges or the investigation plan.</li></ul>   |
| <p><b>Step 7: Arrest of the suspect</b></p> <ul style="list-style-type: none"><li>• The suspect is arrested only in agreement with the prosecutor and the normal trial procedures follow.</li></ul>   |

- Where sufficient information exists that the suspect is about to evade the arrest, the prosecutor is immediately notified of such information.
- To speed up the arrest of the suspect, the Crime Intelligence component is notified and included in the operation.
- In the circumstances, where the suspect is arrested during the preliminary investigation phase, the prosecutor is informed as soon as reasonably possible and the case docket is brought to him/her as early as possible. Steps 4, 5 and 6 should be followed as indicated.

**Step 8: Judicial and rounding-off phase**

- The investigator makes him-/herself available for bail application and trial proceedings. This includes ensuring that witnesses and exhibits are available and ready for court proceedings.
- Upon conclusion of the judicial phase, the investigator ensures that the exhibits and case docket are closed as per SOs.

(Source: Concept developed by researcher)

The operational steps of the prosecution-led investigation model in murder cases above cover the reporting of murder incident, preliminary investigation phase, case docket inspection and allocation, drafting of the investigation plan, further investigation phase, progress of the investigation, arrest of the suspect and judicial and rounding-off phase.

**4.10 SUMMARY**

In South Africa, the high level of violent crime is a reality that everyone has to deal with, directly or indirectly. It has become a matter of practical urgency that affects everyone, irrespective of race, gender, age and class. The perception held by the ordinary South African citizens is that criminals are easily evading the CJS without being successfully prosecuted. To a certain extent, the South African citizens appear to have accepted the fact that murder incidents have become part of their lives. However, besides the perceptions, one cannot ignore the fact that the SAPS and NPA have made efforts in crime combating, usually by means of investigation, arrest and prosecution of the offenders. In practice the roles and functions of SAPS and the NPA differ but in the administration of justice, they rely on each other to succeed in crime-combating efforts. Despite their efforts, certain factors such as the criminal investigation model tend to undermine their capability and effectiveness.

Criminal investigation is essential to the pursuit of justice. The general principle in the criminal investigation process is that it is the sole responsibility of the police investigators to conduct an investigation. However, it is not unusual that in some CJS agencies across the world, this responsibility lies with the prosecutors. Significantly, in some countries the criminal investigation process is not the exclusive domain of the police investigators but includes other role-players in the CJS to fight crimes that are considered to be of national priority or more serious and complex in nature.

In Chapter 5, the researcher explores the criminal investigation and prosecution procedures of the following countries: Tanzania; USA; Malawi and France. Tanzania and the USA are included in this study as part of the literature review, while Malawi and France are compared to South Africa.

## CHAPTER 5

### CRIMINAL INVESTIGATION AND PROSECUTION PROCEDURES: AN INTERNATIONAL COMPARISON

#### 5.1 INTRODUCTION

Criminal justice systems from various countries should be compared for the purpose of benchmarking. According to Kelly (2001:1), benchmarking is an analytical method of comparing organisational performances against other organisations or organisational components in respect of achieving certain goals of improvement. Echoing the same sentiment, Saul (2004:1) argues that benchmarking is a form of continuously analysing the performance of a certain organisation against the performances of its associated industry peers for the purpose of taking actions to better its various performances. Across diverse legal traditions, the search for truth is a basic function of the criminal investigation process (Turner (in Ross & Thaman, 2016:35)). As a result, benchmarking in the context of CJSs represents a tool with which police and prosecuting services may improve their efficiency and effectiveness.

Comparative studies are instrumental in broadening our understanding of other countries' systems because, as globalisation occurs, we are more likely to fall prey to the problem of ethnocentrism – i.e. the belief that one's own country or culture does things 'right' and all other ways are 'wrong' or 'foreign' (Fairchild & Dammer, 2001:8). In the same line of thought, Cronin, Murphy, Spahr, Toliver and Weger (2007:3) contend that internationally the criminal investigative function has always been viewed as the most challenging of all police work and it has since become more complex than ever.

In Chapters 1 and 4 it has been shown that the number of murder incidents in South Africa rises year after year. More specifically in paragraph 1.2 of Chapter 1, it was stated that the suspects are detected in only 29,6% of murder cases reported to and by the police. Therefore, the researcher contends that the low detection rate has a direct impact on murder incidents. Taking this view into account, it is imperative that the criminal investigation and prosecution procedures in South Africa be compared

to other countries so as to broaden our understanding of other countries' CJSs, and to capacitate both the SAPS and NPA.

In answering the sub-research question: "What are the international experiences in terms of criminal investigation and prosecution procedures?" (In paragraph 1.6 of Chapter 1), the researcher explores the criminal investigation and prosecution procedures of the following countries: Tanzania; USA; Malawi and France. Tanzania and USA are included in this study as part of the literature review, while Malawi and France are compared to South Africa. The first country to be discussed is Tanzania.

## **5.2 UNITED REPUBLIC OF TANZANIA**

Tanzania comprises Tanganyika, on the African mainland, and the islands of Zanzibar and Pemba (Adams & Adams, 2012:567). It is one of the African countries that were colonised by Britain. As a result, Tanzania's legal system is based on the English common-law system. This means that offences such as murder are recognised and prosecuted under common law. According to the Commonwealth Human Rights Initiative (CHRI) (2014:36), the British established the Tanganyika Police Force and Prisons Service in 1919, to protect the ruling British regime. During this period, police operations were confined mainly to urban neighbourhoods, unless a rural area had a high colonial settler population (CHRI, 2014:36).

According to Tanzanian Police Force (TPF) (2016:1), the amalgamation of Tanganyika and Zanzibar on 26 April 1964 resulted in the establishment of what is known today as the Republic of Tanzania. After the formation of the government of Tanzania, laws were drafted to form, among other things, one police force that would serve the people. The following is an overview of the Tanzania Police Force.

### **5.2.1 Overview of the Tanzanian Police Force**

According to TPF (2017), the hierarchical structure consists of the Inspector-General of Police (IGP) as the head of police. The African Police Oversight Forum (APOF) (2008:69) states that the police previously resided under the Ministry of Home Affairs and were overseen by a Police Force and Prison Services Commission, but currently they fall under the Ministry of Public Security and Safety. By implication, the IGP, as the head of police, is accountable to the Minister of Public

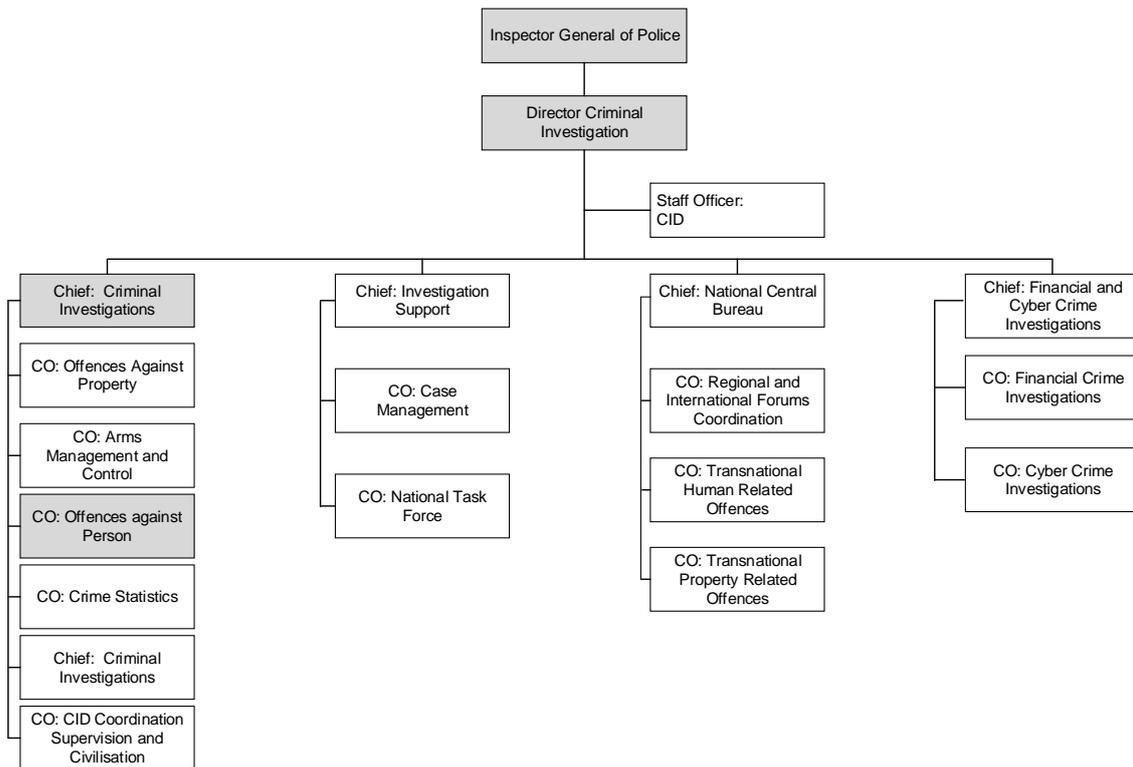
Security and Safety. Under the IGP, the command hierarchical structure is as follows:

- Commissioner of Police - Administration and Personnel.
- Commissioner of Police - Finance and Logistics.
- Commissioner of Police - Operations and Training.
- Director of Criminal Investigations.
- Commissioner of Police - Criminal Intelligence.
- Commissioner of Police - Forensic Science Investigations.
- Commissioner of Police - Community Policing (TPF, 2017).

Looking at the hierarchical structure above, it is significant that the Criminal Investigation Department (CID) is headed by the Director and not the Commissioner of Police, as other divisions are referred to. The CID is generally responsible for the following functions:

- to prevent crime, efficiently investigate and detect serious crimes and incidents;
- to collect and collate all information regarding crime in the country so that the IGP and the government may be kept informed of all matters of criminal interest;
- to maintain close and effective liaison with all branches of the force and in particular with the General Duties Branch;
- to maintain criminal records and statistics; and
- to provide advice and assistance in all investigations that give rise to difficulty or doubt, and the legal advice sought as may be necessary (Sokoine, 2016:527).

The following Figure 5.1 illustrates the organisation chart of the TPF CID:



**Figure 5.1: Structure of TPF Criminal investigation department**

(Source: TPF, 2017)

Figure 5.1 above indicates that there are four substructures within TPF CID. These substructures are headed by the Chiefs. Significantly, one of the substructures is called “Criminal Investigations.” Along with the Criminal Investigations are Financial and Cyber Crime Investigations, National Central Bureau and Investigation Support substructures. It is pertinent to note that these substructures are further divided to form units headed by the Commanding Officers (COs). Among the units that fall within the Criminal Investigations substructure, is the “Offences Against Person” unit.

In the Crime and Traffic Incidents Statistics Report for January-December 2015, prepared by TPF (2016:7), the following categories of crimes are classified as offences against person:

- Murder;
- Rape;
- Unnatural offence;
- Child stealing;

- Child desertion;
- Defilement; and
- Human trafficking.

In the same Crime and Traffic Incidents Statistics Report for January-December 2015, it is noted that murder is reportedly the second highest offence in the category of “Offences against Person” (TPF, 2016:7). Remarkably, this report further shows that there were 3 560 murders in 2015, as compared to 3 775 murders in 2014. This equals a reduction of 215 murders or 5.7% reduction (TPF, 2016:7). It should be pointed out that these murder figures are comparable to the population of Tanzania which, according to the National Bureau of Statistics, stood at 48,8 million people in 2015 (National Bureau of Statistics, 2016:16). The following discussion highlights the legislation and guidelines relating to criminal investigation and prosecution.

### **5.2.2 Legislation and guidelines relating to criminal investigation and prosecution**

As in many other countries that take part in the practice of common law, the first step in the flow of criminal justice in Tanzania normally starts when a crime has been committed and either discovered by the police or a complaint has been lodged with the police. A case in Tanzania normally goes through four main stages and each is characterised by a number of activities, as follows:

- Reporting by the victim of the crime;
- Gathering of evidence by the investigators;
- The reading or studying of the case file; and
- Making of the decision to prosecute (Sokoine, 2016:531).

Although not clearly indicated in the submission of Sokoine (2016:531) above, it would appear that the police, after reading the case file, decide to prosecute and then forward the case file to institute prosecution. Another interpretation of the submission of Sokoine (2016:531) can be that the police, subject to having sufficient evidence against the suspected offender, forward the case file to the prosecutor for him/her to decide whether to proceed with the prosecution.

There are a number of regulations that empower the TPF and the National Prosecutions Service to conduct criminal investigation and prosecution on behalf of the government. In the following discussion, the researcher peruses the Constitution of the United Republic of Tanzania of 1977, the Police Force and Auxiliary Services Act of 1939, the Criminal Procedure Act No. 9 of 1985 and the National Prosecutions Service Act No. 27 of 2008.

#### **5.2.2.1 Constitution of the United Republic of Tanzania of 1977**

The Constitution of the United Republic of Tanzania of 1977 (Constitution of Tanzania) came into operation on 26 April 1977 (Tanzania, 1977). From the onset, it must be stated that the Constitution of Tanzania is silent on the police; however, the same cannot be said with regard to the prosecution or the appointment of the DPP. According to Chapter 9 of the Constitution of Tanzania, reference is made to the armed forces. Section 147(4) of the Constitution of Tanzania states that a member of the defence and security forces means a member in the service of the Defence Forces, the Police Force, the Prisons Service or the National Service, whether on temporary or permanent terms. For that reason, the responsibilities of the TPF are not a constitutional mandate, even though Chapter 1 of Part III of the Constitution of Tanzania highlights the basic human rights, which in other countries are enforced by the police. For ease of reference, the Force shall mean the police or TPF.

Sections 12 to 30 of the Constitution of Tanzania specifically refer to the basic human rights. Notably, section 30(3) of the Constitution of Tanzania states that any person claiming that any provision of the human rights or any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in Tanzania, may institute proceedings for redress in the High Court. The effect of section 30(3) of the Constitution of Tanzania is that only the High Court should redress the alleged violation of human rights.

Regarding the prosecutions service, section 59B(1) of the Constitution of Tanzania states that there shall be a DPP, who shall be appointed by the President from among persons with qualifications specified in sub-article (2) of Article 59 and who has continuously held those qualifications for a period of not less than ten years.

Significantly, section 59B(2) of the Constitution of Tanzania provides that the DPP shall have powers to institute, prosecute and supervise all criminal prosecutions in the country. Furthermore, section 59B(3) of the Constitution of Tanzania states that the powers of the DPP under sub-article (2) may be exercised by him in person or on his directions, by officers under him, or any other officers who discharge these duties under his instructions. It is remarkable that the Constitution of Tanzania does not specify the role and the function of the prosecution service, except that section 59B(5) provides that the DPP shall exercise his powers as may be prescribed by any law enacted or to be enacted by Parliament.

#### **5.2.2.2 Police force and auxiliary services act of 1939**

The Police Force and Auxiliary Services Act of 1939 (Police Force Act) provides for the organisation, discipline, powers and duties of the Police Force, a Police Reserve and an Auxiliary Police Force and related matters. According to section 3 of the Police Force Act, the TPF shall be established and constituted in accordance with this Act and shall be headed by the IGP, as provided in terms of section 4 of the Police Force Act. Notably, section 5(1) of the Police Force Act states that the TPF shall be employed in and throughout the United Republic for the preservation of the peace, the maintenance of law and order, the prevention and detection of crime, the apprehension and guarding of offenders, and the protection of property, and for the performance of all such duties, and shall be entitled to carry arms (Tanzania, 1939). In this context, the maintenance of law and order and detection of crime can be interpreted as meaning conducting criminal investigation.

In section 7(1) of the Police Force Act it is stated that the IGP shall, subject to any orders or directions by the Minister regarding the operational control of the TPF, have the command, superintendence and direction of the TPF. In the subsequent section 8(2) of the Police Force Act, it is stated that a Commissioner may be appointed for any part of the United Republic, or for any function of the Force. It is also stated that a Commissioner shall be the deputy of the IGP and for that part or for the purpose of that function, have the powers, functions and duties of the IGP. Section 8(2) of the Police Force Act further provides that where a Commissioner is appointed for any such part, the subordinate commanders for such part shall be accountable to both the IGP and the Commissioner for their respective commands.

In the subsequent section 9 of the Police Force Act it is stated that the Commissioner with the consent of the Minister, delegates any of his/her powers under Parts I to XIV of the Police Force Act so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or defined in the instrument of delegation. It is therefore evident that the investigation powers of the TPF bestowed to the TPF investigators in terms of section 5(1) of the Police Force Act are delegated to them in terms of section 9 of the Police Force Act.

As discussed in paragraph 5.2.2.1 of this chapter, the Constitution of Tanzania does not refer to the police per se but to the armed forces. Equally, there is no mention of the Constitution of Tanzania in the Police Force Act. The lack of relationship between the Constitution of Tanzania and the Police Force Act should be construed as confirmation of independence from each other.

### **5.2.2.3 Criminal Procedure Act No. 9 of 1985**

The Criminal Procedure Act No. 9 of 1985 (Criminal Procedure Act) was assented on 15 August 1985 by the then President of Tanzania (Tanzania, 1985). Its purpose is to provide for the procedure to be followed in the investigation of crimes, the conduct of criminal trials, and for other related purposes (Tanzania, 1985). Part II of the Criminal Procedure Act provides procedures relating to criminal investigations. These sections range from sections 5 to 69 of the Criminal Procedure Act. The following sections of Part II of the Criminal Procedure Act are significant to note:

- Section 10(1) of the Criminal Procedure Act states that if from the information received or in any other way a police officer has reason to suspect the commission of an offence or to apprehend a breach of the peace he shall, where necessary, proceed in person to the place to investigate the facts and circumstances of the case and to take such measures as may be necessary for the discovery and arrest of the offender where the offence is one for which he may arrest without warrant.
- Section 11(1) of the Criminal Procedure Act states that in making an arrest the police officer or other person making the arrest shall actually touch or confine the body of the person.

- Section 11(2) of the Criminal Procedure Act states that if the person to be arrested forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the police officer or other person may use all means necessary to execute the arrest.
- Sections 13 and 14 of the Criminal Procedure Act relate to the arrest with a warrant and without a warrant respectively.
- Section 30 of the Criminal Procedure Act states that a police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a court having jurisdiction in the area of the police station.

Most notably, section 33 of the Criminal Procedure Act provides that an officer in charge of a police station shall report to the nearest magistrate within twenty-four hours or as soon as practicable, the cases of all persons arrested without a warrant within the limits of his/her station, whether or not such persons have been granted bail. What is more remarkable about this section is that regardless of the offence allegedly committed, the detention of the suspect has to be reported to the nearest magistrate. The prompt appearance of the suspect before court implies that the TPF investigators have to complete the investigation and forward the case file to the prosecutor in a timely manner. In turn, the prosecutor would have to read the case file and draft charges in preparation for court.

The researcher argues that the provision of section 33 of the Criminal Procedure Act appears to bestow certain powers on the magistrate to ensure that the TPF does not deliberately detain people without a good cause, or outside the ambit of the law. In other words, this section can be viewed as an attempt to ensure that the basic human rights of the people are not violated by the TPF, as provided in terms of section 15(1) and (2) of the Constitution of Tanzania. Otherwise, there is no clear reason given under the Criminal Procedure Act as to why a report regarding the arrest of people without a warrant should be made to the magistrate within twenty-four hours. This researcher's suspicion is confirmed by CHRI (2006:14), who reports that the Legal and Human Rights Centre had raised concerns about illegal arrest and detention in unauthorised places in a number of its annual reports.

With regard to the prosecution services, Parts IV and V of the Criminal Procedure Act provide for the appointment of the DPP and how criminal proceedings should be instituted. The following sections relate to the appointment of the DPP and his or her authority:

- Section 89 (1) of the Criminal Procedure Act states that there shall be a DPP for the United Republic who shall be a public officer in the government of the United Republic, and who shall be appointed by the President.
- Section 89 (2) of the Criminal Procedure Act states that a person shall not be qualified for appointment to hold or to act in the office of DPP unless he is qualified to practice as an advocate of the High Court of the United Republic and has been so qualified for not less than five years.
- Section 90 (1) of the Criminal Procedure Act states that the DPP shall have powers in any case in which he considers it desirable so to-
  - (a) institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
  - (b) take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
  - (c) discontinue any such criminal proceedings instituted or undertaken by him or any other authority or person.

In the subsequent section 90(2) of the Criminal Procedure Act, it is stated that the powers of the DPP under sub-section (1) of this section may be exercised by him in person or through officers of his department acting in accordance with his general or special instruction. It is further stated in section 90(3) of the Criminal Procedure Act that the powers conferred on the DPP by paragraphs (a) and (b) of sub-section (1) shall be vested in him to the exclusion of any other person or authority, save that where any other person or authority has instituted criminal proceedings, nothing in this sub-section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the Court. It is further noted that the DPP has the power to enter a *nolle prosequi* before the verdict or the judgement is passed by the court as provided by section 91(1) of the Criminal Procedure Act.

What appears to be peculiar about the powers of the DPP is the provision of section 90(5) of the Criminal Procedure Act, which states that in the exercise of the powers conferred on him/her by this section, the DPP shall have and exercise his/her own discretion and shall not be subject to the directions or control of any person except the President. It would appear that this section limits the discretionary powers of the DPP to the extent that the President may interfere if he/she so wishes in the functions of the DPP. It can therefore be argued that the lack of protection of powers of the DPP by the Constitution of Tanzania may give rise to interference in his/her duties by the President. Regarding the appointment of prosecutors, it is noted that the appointment powers rest with the DPP, as provided for in section 95 of the Criminal Procedure Act as well as section 59B(3) of the Constitution of Tanzania.

Concerning instituting of criminal proceedings in court, the Criminal Procedure Act provides various sections in which the accused's attendance may be secured. The following sections of the Criminal Procedure Act are pertinent:

- Sections 100 to 109 of the Criminal Procedure Act relate to the summons and the manner in which it is supposed to be served on the suspected persons.
- Sections 110 to 123 of the Criminal Procedure Act relate to the warrants of arrest and the manner in which they are supposed to be executed.

#### **5.2.2.4 National Prosecutions Service Act No. 27 of 2008**

The National Prosecutions Service Act No. 27 of 2008 (National Prosecutions Service Act) was assented by the President on 4 April 2008 to make provision for the establishment of the National Prosecutions Service (NPS), in order to provide for the organisation, management, monitoring, supervision of prosecution and coordination of investigation with a view to promoting and enhancing the dispensation of criminal justice, and to provide for related matters (Tanzania, 2008).

The establishment of the NPS and the appointment of its staff are provided for in section 4(1) and (2) of the National Prosecutions Service Act, in line with section 95 of the Criminal Procedure Act and section 59B(3) of the Constitution of Tanzania. With regard to criminal investigation, the following sections of the National Prosecutions Service Act are important to note:

- Section (4)3 of the National Prosecutions Service Act states that the DPP shall be the head of operations in the NPS in relation to prosecutions and coordination of investigation duties conducted by the investigative organs.
- Section 9(1) of the National Prosecutions Service Act states that notwithstanding the provisions of any other law, the functions of the DPP shall be to-
  - (a) decide to prosecute or not to prosecute in relation to an offence;
  - (b) institute, conduct and control prosecutions for any offence other than a court martial;
  - (c) take over and continue prosecution of any criminal case instituted by another person or authority;
  - (d) discontinue at any stage before judgement is delivered any criminal proceeding brought to the court by another person or authority; and
  - (e) direct the police and other investigative organs to investigate any information of a criminal nature and to report expeditiously.
- Section 9(4) of the National Prosecutions Service Act states that the Police Officer or the Officer of any other investigative organ in-charge of any area or authority to be specified by the DPP shall, in respect of offences alleged to have been committed within that area, report to the DPP any-
  - (a) offence punishable with death;
  - (b) offence in respect of which a prosecution is by law required to be instituted with the consent of the DPP;
  - (c) case in which a request for information is made by the DPP;
  - (d) case in which it appears to such Police Officer or the Officer of any other investigative organ that the advice or assistance of the DPP is desirable; or
  - (e) other offence specified by the DPP to be an offence in respect of which a report under this section is necessary.
- Section 16(2) of the National Prosecutions Service Act states that the DPP may require any authority mandated with investigative functions to investigate any criminal allegations that have come to the DPP's knowledge and furnish him with a report on the result of such investigations and that the DPP shall have the power to order that an investigation be conducted by an investigative organ named in the order.

Subsequent to these sections, section 17(4) of the National Prosecutions Service Act states that an official who wilfully refuses or neglects to comply with the directives issued by the DPP, commits an offence. Effectively, this would mean that the criminal investigation process, although it is a function that falls within the TPF, is supervised and coordinated by the DPP. A significant point of concern, though, is the powers of the IGP that appear to be limited in terms of operational control of the police, as such responsibility lies with the Minister in charge of the police. What is also not clear in the National Prosecutions Service Act is the fact that section 9(1) does not go further than mentioning the role of deciding to prosecute or not to prosecute in relation to an offence. One would expect that the issue of the prosecutor having to address the court and adduce evidence would be highlighted, since under normal circumstances, that is how the prosecution of a case is conducted. The following discussion relates to the role of the prosecutor in criminal investigation.

### **5.2.3 Role of the prosecutor in criminal investigation**

Similar to most democratic countries, the function of prosecuting persons who are suspected of having violated the law rests with the DPP on behalf of the State. The role of the DPP is well documented in the Constitution of Tanzania, the Police Force Act and the National Prosecutions Service Act. Apart from the responsibility to dispose criminal cases for prosecution, prosecutors in Tanzania do not investigate but lead the investigation process by giving advice, opinion, guidance, instruction and supervision to the police investigators for them to carry out investigation in a certain direction (Sokoine, 2016:530). However, looking at sections 4(3), 9(1) (e), 9(4) and 16(2) of the National Prosecutions Service Act, it would appear that the DPP is not only responsible for prosecution service but also for the criminal investigation. This is besides the fact that criminal investigation is the function of the TPF. According to Chipeta (2009:235), the evidence a prosecutor will need at the trial is in the police case file. The said case file is the prosecutor's first contact with the minds of the witnesses, the accused and the nature of the terrain. Chipeta (2009:235) implies that police investigators conduct investigation without any undue influence from the prosecution.

It is not in dispute that in Tanzania, the role of combating crime is vested with the TPF for all crimes. The TPF conducts investigation in all matters pertaining to criminal cases, as mandated in the Police Force Act. It appears from the sections of the National Prosecutions Service Act that the DPP has significant powers, cutting across prosecution and criminal investigation functions. This is in sharp contrast to the opinion of Chipeta (2009:3), who believes that a prosecutor, as an officer of the court, is charged with the very important duty of assisting the court in discovering the truth or otherwise of allegations against accused persons. Such enormous powers of the DPP can be viewed as instructing the other organ of the State, in this case the police, to conduct its business in a specific manner, taking into consideration that failure to comply is subject to the provision of section 17(4) of the National Prosecutions Service Act. In the following discussion, the researcher considers the situation in respect of criminal investigation and prosecution procedures in the United States of America.

### **5.3 UNITED STATES OF AMERICA**

According to Remini (2008:5), the USA was inadvertently discovered in 1492 by Christopher Columbus, an Italian navigator who mistakenly believed that he had reached the East for trading with gold, silver and spices. He returned home to a hero's welcome and made three further trips back to this "New World," but he never found the treasures and spices he desired, and he died still convinced that he had reached Asia (Remini, 2008:5).

The search for a route to the East, and the treasure that adventurers believed they would find, continued into the next century. Various European explorers and settlers came to this new land for gold, adventure and freedom. In this regard, Remini (2008:6) states that another Italian explorer, Amerigo Vespucci, made several trips along the southern coast of the western hemisphere and wrote vivid descriptions of what he called the "New World," which caught the attention of mapmakers and geographers. In 1507, a German mapmaker, Martin Waldseemuller, who published Amerigo Vespucci's accounts, suggested that this New World be called "America" in his honour (Remini, 2008:6). From this account of events, it is clear that America originated from the person's name, which was Amerigo Vespucci.

Kustron (2013:12) states that the first settlers who came to the USA from England brought their legal system with them. According to Johnson (1997:108), Thomas Paine is one of the self-educated Englishmen who came to America in 1774. Subsequent to the arrival of Thomas Paine, America was formed by 'The Unanimous Declaration of the 13 United States of America' (Johnson, 1997:111). According to Kustron (2013:13), the original 13 States consisted of Massachusetts, New Hampshire, Delaware, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina and Georgia. Johnson (1997:111) claims that these States were renamed by Thomas Paine to be the "United States of America." However, the other colonies believed that the British government was imposing its laws on them that were intolerable, and as a result they created the First Continental Congress, signalling the USA break from Britain control in 1776 (Kustron, 2013:13). The American Revolution and the war for independence from Britain began with a small fight between British troops and colonists on 19 April 1775 (Bureau of International Information Programs, 2010:17).

Since the ratification of the constitution of the USA by the original 13 states, the USA has grown to encompass 50 states, varying widely in population and geographic size (Arnold, 2004:21). One of the states referred to above that forms part of this study is California. In addition to the 50 states, Arnold (2004:21) reports that there is a federal district - the District of Columbia - which is the national capital and not part of any state. The following discussion focuses on the Constitution of the United States of America of 1787 (Constitution of USA).

### **5.3.1 Constitution of the United States of America of 1787**

Arnold (2004:4) claims that the Constitution of USA was ratified in 1788 and is the blue print for the American system of government. This constitution is made up of Articles, of which some consist of sections. Its supremacy is found in Article VI, which states, *inter alia*, the following:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding (USA, 1787).

The Constitution of the USA has been modified by various Amendments, as provided for in Article V (USA, 1787). In this regard, the first 10 Amendments, which were ratified on 15 December 1791, are collectively known as the Bill of Rights (USA, 1787). Significant to this study is Amendment 5, which provides that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation (USA, 1787).

Equally relevant to this study is Amendment 6, which states that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the Assistance of Counsel for his defence (USA, 1787).

With regard to criminal trials, section 2 of Article III of the Constitution of the USA states, *inter alia*, that the trial of all crimes shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed (USA, 1787). Linked to section 2 of Article III of the Constitution of the USA is section 1 of Article IV, which provides, *inter alia*, that full faith and credit shall be given in each state to the public Acts, records, and judicial proceedings of every other state (USA, 1787). It is further stated that the Congress may, by general laws, prescribe the manner in which such Acts, records and proceedings shall be proved, and the effect thereof.

Significantly, the Constitution of the USA has the first 10 Amendments prescribing the Bill of Rights; however, it does not prescribe laws to the states. As pointed out by Arnold (2004:21), state governments are not sub-units of the federal government and each state is sovereign. The state legislature is permitted to define criminal offences in any way it chooses, as long as the law is not arbitrary and does not violate the state or federal Constitution (Pollock, 2012:171). In line with the

sentiments expressed by Arnold (2004:21) and Pollock (2012:171), the following discussion focuses on an overview of law enforcement in the USA.

### 5.3.2 Overview of law enforcement in the United States of America

Pollock (2012:8) contends that the USA legal system comes from English common law. Kustron (2013:12) echoed this sentiment in paragraph 5.5 of this chapter, namely that the first settlers from England brought their legal system to the USA. In this regard, Pollock (2012:9) adds that state legislatures have the power to create criminal laws and law enforcement at the state and local levels to enforce the laws.

To put the discussion into perspective, Pollock (2012:13) affirms that the CJS is typically divided into three subsystems, namely: police, courts and corrections. She further describes the responsibilities of these subsystems as follows:

- **Police:** Investigate crimes, arrest the suspect and gather evidence.
- **Courts:** Are involved in the process of adjudication that determines guilt and innocence, and sets the amount of punishment for the guilty.
- **Corrections:** Take over after sentencing and include incarceration of the offender.

According to Conklin (1995:402), in the USA, law enforcement organisations are established on four levels, namely:

- FBI;
- Municipal police departments;
- County sheriff departments; and
- State police departments.

The FBI is an intelligence-driven and threat-focused national security organisation, with both intelligence and law enforcement responsibilities (FBI, 2015:10). The FBI does not prosecute cases but gathers facts and evidence and then presents the results to the Department of Justice, which is responsible for deciding whether an individual will be brought to trial and if so, conducts the prosecution of the case (FBI, 2015:11). Dempsey and Forst (2012:68-74) argue that law enforcement departments are responsible for, among other things, criminal investigation, which

includes search and seizures, arresting of suspects, and maintaining the chain of evidence for court purposes. Pollock (2012:9) claims that various layers of courts are found in the municipal, the county and the State, to hear the city ordinances and the United States Code violations.

The Bureau of International Information Programs (BIIP) (2004:58) reports that criminal cases commence when the local United States (US) Attorneys have reason to believe that a violation of the US Penal Code has occurred. In this regard, Boyne (in Ross & Thaman, 2016:236) claims that in complex cases, the nature of the investigation and the complexity of the law, mandate the prosecutorial involvement. For the purpose of this study, USA and US shall mean United States of America. The early involvement of the prosecutors is typically found in serious and complex cases such as murder, whereby prosecutors routinely work hand in hand with the police. In defining the role of prosecutors, BIIP (2004:78) states that the District Attorneys are responsible for prosecution of those persons accused of violating State criminal statutes. However, Arnold (2004:22) asserts that the executive branch of each State is responsible for administering the day-to-day operations of government, providing services and enforcing the law, including the appointment of the Attorney-General.

In describing the relationship between the investigation and the prosecution, Spohn and Tellis (2014:5) assert that the process begins with the police, who decide whether a crime has occurred, the amount of investigative resources to devote to identifying the suspect, whether to make an arrest of an identified suspect and, if so, the charges to file, and whether to refer the case to the prosecutor. Looking at the sentiments of BIIP (2004:58) and Spohn and Tellis (2014:5), it can be argued that police are responsible for detecting and investigating crime, while the decision to prosecute rests with the local office of the District Attorney. In support of this sentiment, Wen and Leipold (in Ross & Thaman, 2016:162) argue that criminal charges may be filed by federal prosecutors or by state prosecutors, who have independent but overlapping jurisdictions. According to Vogler and Fouladvand (in Ross & Thaman, 2016:191), arrest and pre-trial detention represent two of the most dangerous and widely abused aspects of the criminal justice process. Once again, based on argument made by Wen and Leipold (in Ross & Thaman, 2016:162) and

Vogler and Fouladvand (in Ross & Thaman, 2016:191), one may safely conclude that the arrest should be executed on the basis of sufficient evidence against the suspected person and not as a tool to abuse the criminal justice process.

It is evident that after the criminal investigation is completed, the prosecutor will have to decide whether to proceed with prosecution or not. For the prosecution to proceed, the accused would have to appear before the court. The initial appearance of the arrested person before a judicial officer presumptively occurs within 48 hours of the arrest (Wen & Leipold (in Ross & Thaman, 2016:166). Notably, the appearance of the arrested person before a judicial officer within 48 hours is a norm in most democratic countries. What appears to be anomalous are the submissions of Worrall (in Worrall & Nugent-Borakove, 2008:15) and Arnold (2004:22), that while the Attorney-General is an appointee, the District Attorneys are elected by their constituencies to serve as prosecutors.

Regarding the verdicts, Cohen (in Ross & Thaman, 2016:422) claims that in the US, the jurors return general verdicts that are mere declarations of whether the accused is 'guilty' or 'not guilty,' without giving reasons. Although the jury's job is to weigh and assess the facts of the case, the judge must instruct the jurors about the meaning of the law and how the law is to be applied (BIIP, 2004:112). Strangely, BIIP (2004:112) further reports that before passing their verdict, jurors may request clarification of legal questions from the judge and may look at items of evidence or selected segments of the case transcript; however, they are prohibited from consulting law dictionaries, legal writings and opinions from experts. Once the verdict has been passed by the foreman of the jurors, and if the accused is found guilty, the sentencing procedure follows. At the federal level and in most states, sentences are imposed by the judge only (BIIP, 2004:114). It is also noted in the submission of Grande (in Ross & Thaman, 2016:375) that in most US jurisdictions, judges are not permitted to comment on the evidence, even when their intervention in proof taking is permitted. The following discussion focuses on the legislation and guidelines relating to criminal investigation and prosecution.

### **5.3.3 Legislation and guidelines relating to criminal investigation and prosecution**

Kustron (2013:15) argues that the Constitution of the USA was created eleven years after receiving independence from Britain and replaced the British legal system. According to Levine (in Worrall & Nugent-Borakove, 2008:31) and Newton, Johnson and Mulcahy (2006:5), the Constitution of the USA left the prerogative of determining what conduct should be considered criminal and what should not, to the individual states.

There are two distinct judicial systems: firstly, the federal judicial system that enforces federal laws, rules and regulations, and provides interpretations of the Constitution of USA, and secondly the various state and local judicial systems that enforce state laws, rules and regulations, and interprets the state constitution (Newton, et al., 2006:5). As sovereign entities within the framework of the US federal system, each state has its own constitution, elected officials and organisations (Arnold, 2004:22). As put by Klinoff (2012:349), the state laws must be within the bounds of enforcement, may be crafted to embellish federal legislation, and must not diminish federal law. In this regard, all homicides occurring within the 50 US are subject to state criminal laws that are consistent with federal law (Newton, et al., 2006:6). For ease of reference, in this study, the term “homicide” shall also mean “murder.”

Along with law enforcement, the prosecutors are the gatekeepers of the CJS, deciding whether a person should be criminally charged or not (Wen & Leipold (in Ross & Thaman, 2016:161)). According to Worrall (in Worrall & Nugent-Borakove, 2008:4), American prosecutors perform a number of different functions but the most obvious role is representing the government in court, executing the law, and upholding the federal and state constitutions.

It appears from the submissions of Newton et al. (2006:5), and Klinoff (2012:349) that whenever the national interest is at stake, the federal government is responsible to make and enforce the specific laws. Effectively, this means that there are two parallel judicial systems that exist side by side in the USA, that is, the federal judicial system and the individual state’s judicial system. In matters that are within the powers of federal government, the state governments have no jurisdiction. It can

therefore be concluded that federalism is the system that allows the sharing of power between the national government (mainly focusing on the interests of the nation), and the state governments (concentrating on their states). Considering the submissions made by Newton et al. (2006:5), and Klinoff (2012:349), the following discussion examines the United States Code, which is the main legislation in criminal law that defines the content and scope of criminal offences and criminal procedure.

### **5.3.3.1 United States Code of 1948**

The United States Code Title 18 (USC), titled 'Crimes and Criminal Procedure,' was enacted in 1948 and is made up of Parts I to V that are considered to be crimes (USA, 1948). Part I concentrates on crimes, while Part II focuses on criminal procedures. Each Part is divided into chapters that are further divided into sections. With regard to Part I, Chapter 51 depicts the following sections, which are crimes that fall under homicide:

- Section 1111 of the USC: Murder;
- Section 1112 of the USC: Manslaughter;
- Section 1113 of the USC: Attempt to commit murder or manslaughter;
- Section 1114 of the USC: Protection of officers and employees of the United States;
- Section 1115 of the USC: Misconduct or neglect of ship officers;
- Section 1116 of the USC. Murder or manslaughter of foreign officials, official guests, or internationally protected persons;
- Section 1117 of the USC: Conspiracy to murder;
- Section 1118 of the USC: Murder by a Federal prisoner;
- Section 1119 of the USC: Foreign murder of United States nationals;
- Section 1120 of the USC: Murder by escaped prisoners;
- Section 1121 of the USC: Killing persons aiding Federal investigations or state correctional officers; and
- Section 1122 of the USC: Protection against the human immunodeficiency virus.

The definition of murder is provided for in section 1111(a) of the USC as the unlawful killing of a human being with malice aforethought. Section 1111(b) of the USC states

that whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life. In this case, Johnson (in Roos & Thaman, 2016:409) argues that the USA is one of only two developed democracies in the world that retain capital punishment and continue to carry out executions on a regular basis. In the majority of the states, a felony is any offence for which the penalty may be death (in states that allow it), or imprisonment in the penitentiary (a federal or state prison) (BIIP, 2004:92). It would appear that not all states allow the capital punishment as sentence in their jurisdictions.

With regard to Criminal Procedure, Chapter 203 of Part II of the USC provides a wide range of procedures that must be followed by various authorities in the execution of their duties for law enforcement purposes. Section 3041 of the USC provides that:

For any offence against the United States, the offender may, by any justice or judge of the United States, or by any United States magistrate judge, or by any chancellor, judge of a supreme or superior court, chief or first judge of the common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where the offender may be found, and at the expense of the United States, be arrested and imprisoned or released as provided in Chapter 207 of this title, as the case may be, for trial before such court of the United States as by law has cognizance of the offence (USA, 1948).

For completion, Chapter 207 of the USC provides for release and detention, pending judicial proceedings.

It is important to note that section 3041 of the USC provides, *inter alia*, mayors of the cities the power to arrest the offenders in their jurisdictions and detain such offenders, subject to the requirements of Chapter 207 of the USC. The power to arrest offenders by the mayors should be understood in the context of the delegation of such powers to the law enforcement agencies or officers in the cities. In this regard, section 232 of Chapter 12 of the USC defines the term “law enforcement officer” as, among other things, any officer or employee of the US, any state, any political subdivision of a state, or the District of Columbia, while engaged in the enforcement or prosecution of any of the criminal laws of the US, a state, any political subdivision of a state, or the District of Columbia. Taking into consideration the Constitution of the USA, the overview of law enforcement in the USA and the

United States Code of 1948, the following discussion relates to the state of California.

### 5.3.4 State of California

According to Johnson (1997:256), the State of California (California) was part of Mexico but was proclaimed by the US, after the war between the two countries in 1846. California has long been regarded as a trendsetter in the criminal justice arena, and its economy and justice system are among the largest in the nation (Levine (in Worrall & Nugent-Borakove, 2008:32)). Gardiner (2015:6) asserts that there are 394 local police agencies in California. Law enforcement is a local responsibility in California, with funding typically provided by cities and counties (Hill, 2007:9). Hill (2007:9) further asserts that at the state level, the Attorney-General provides some assistance and expertise to local law enforcement in the investigation of crimes. To illustrate California's CJS, with specific reference to criminal investigation and prosecution, Hill (2007:10) provides the following summary in Table 5.1 below:

**Table 5.1: California's criminal justice system with specific reference to criminal investigation and prosecution**

| <b>Criminal Justice Officials</b>  | <b>Areas of Responsibility</b>                                      | <b>Roles and Responsibilities</b>  |
|--|---|--|
| <ul style="list-style-type: none"> <li>• Police/Sheriffs</li> </ul>                  | <ul style="list-style-type: none"> <li>• Cities/Counties</li> </ul> | <ul style="list-style-type: none"> <li>• Enforce laws.</li> <li>• Investigate crimes.</li> <li>• Search people and premises.</li> <li>• Arrest or detain people.</li> <li>• Supervise offenders in local correctional facilities (primarily county sheriffs).</li> </ul> |
| <ul style="list-style-type: none"> <li>• District Attorneys (prosecutors)</li> </ul> | <ul style="list-style-type: none"> <li>• Counties</li> </ul>        | <ul style="list-style-type: none"> <li>• File charges.</li> <li>• Prosecute the accused.</li> <li>• Reduce, modify or drop charges.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Judges</li> </ul>                           | <ul style="list-style-type: none"> <li>• State</li> </ul>           | <ul style="list-style-type: none"> <li>• Set bail or conditions for release.</li> <li>• Accept pleas.</li> <li>• Determine delinquency for juveniles.</li> <li>• Dismiss charges.</li> <li>• Impose sentences.</li> <li>• Revoke probation.</li> </ul>                   |

(Source: Hill, 2007:10)

Table 5.1 above depicts how various departments in the criminal justice interact in the criminal investigation and prosecution procedures. It must be noted that the process starts with the police. In other words, the prosecution and the judgement procedures would not be possible without the role of the police. Needless to say, all law enforcement agencies in California are required to comply with the Constitution of the USA, the Constitution of the State of California of 1879, and other laws of the country relating to criminal investigation and prosecution. Consequently, the Constitution of the State of California of 1879, the Penal Code of the State of California of 1872, and an overview of the LAPD are discussed below.

#### **5.3.4.1 Constitution of the State of California of 1879**

The Constitution of the State of California (Constitution of California) was adopted and ratified at a convention in Sacramento on 3 March 1879 (California, 1879). As previously stated, Arnold (2004:25) asserts that each state constitution provides for the establishment of local governmental entities and in all states, these local entities include, among other things, counties and cities. Compatible with Arnold (2004:25), Newton et al. (2006:5), assert that the states have a right to enact their own laws and the constitutions, subject to compliance with the federal constitution. In this regard, the Constitution of California is made up of Articles that consist of sections.

The distribution of powers is found in section I of Article III of the Constitution of California, which states that the powers of the government of California shall be divided into three separate departments, namely the legislative, executive, and judicial, and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted.

Article I of the Constitution of California guarantees the human rights that the inhabitants of California enjoy. Central to this study are the following sections:

- Section 1 of the Constitution of California: All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

- Section 3 of the Constitution of California: The State of California is an inseparable part of the American Union, and the Constitution of the USA is the supreme law of the land.
- Section 6 of the Constitution of California: All persons shall be able to pay bail by means of sufficient sureties, unless for capital offenses, when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained nor confined in any room where criminals are actually imprisoned.
- Section 8 of the Constitution of California: Offences heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a Magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.
- Section 9 of the Constitution of California: Every citizen may freely speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or information laid, for publications in newspapers shall be tried in the county where such newspapers have their publication office or in the county where the party alleged to be libelled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.
- Section 13 of the Constitution of California: In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in their behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against themselves; nor be deprived of life, liberty, or property without due process of law. The Legislature shall have power to provide

for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

With regard to the police, section 11 of Article XI of the Constitution of California states that any county, city, town, or township, may make and enforce, all such local, police, sanitary, and other regulations within its limits, provided that they are not in conflict with the general laws.

#### **5.3.4.2 Penal code of the State of California of 1872**

As argued by Klinoff (2012:349) and Newton et al. (2006:5), state laws must be within the bounds of enforcement and must not diminish federal law. Accordingly, the Penal Code of the State of California (Penal Code of California) was ratified in 1872, and is divided into the following parts:

- Part I of Penal Code of California: Crimes and Punishments.
- Part II of Penal Code of California: Criminal Procedure.
- Part III of Penal Code of California: State Prison and County Jails.
- Part IV of Penal Code of California: Prevention of Crimes and Apprehension of Criminals (California, 1872).

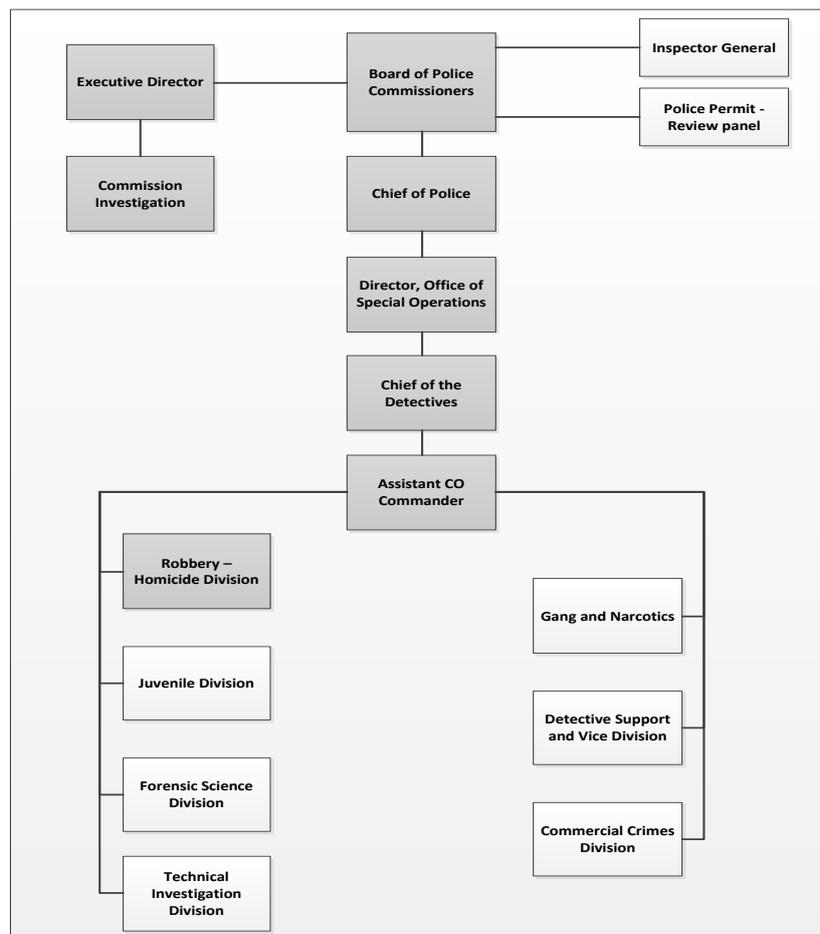
Similarities are found in the USC when compared to the Penal Code of California regarding Crimes and Punishments, and Criminal Procedure. For instance, in the Penal Code of California, the definition of murder is found in section 187, Chapter 1, Article 8 of Part I, whereas in the USC such definition is provided for in section 1111, Chapter 51, Article 18 of Part I. Noting that the Penal Code of California is consistent with the federal laws, as argued by Klinoff (2012:349) and Newton et al. (2006:5), the discussion relating to murder investigation and prosecution procedures will not be repeated.

#### **5.3.4.3 Overview of Los Angeles Police Department**

Police Foundation (2016:89) asserts that the LAPD is one of the law enforcement agencies in California, the third largest in the USA, with more than 10 000 employees, serving 3.8 million people. According to LAPD (2018), the LAPD is one

of the largest and most innovative law enforcement agencies in the world. The Office of the Independent Monitor of Los Angeles Police Department (2009:4) reports that the Board of Police Commissioners, which consists of five civilian members appointed by the Mayor, serves as the Head of the LAPD. This submission is consistent with the provision of section 3041, Chapter 203 of Part II of USC.

According to Stone, Foglesong and Cole (2009:54), the Board of Police Commissioners has formal authority to hire the Chief of Police for a five-year term, which is renewable once, to set broad policy for the LAPD. Stone et al. (2009:55), further submit that the Board of Police Commissioners appoints the Inspector-General, whose office audits, investigates, and oversees the handling of complaints of misconduct by LAPD employees, and conducts other investigations as directed by the Board of Police Commissioners. Figure 5.2 depicts the LAPD organisation chart with reference to the CID:



**Figure 5.2: LAPD organisation chart with reference to the CID**  
 (Source: LAPD, 2018)

As indicated in Figure 5.2, the CID consists of several divisions, of which one is the Robbery-Homicide Division. This division is responsible for murder investigations. The submission of Office of the Independent Monitor of Los Angeles Police Department (2009:4), namely that the operations of the LAPD are overseen by the Board of Police Commissioners, is confirmed in Figure 5.2. Considering the involvement of the Board of Police Commissioners, it would appear that the LAPD mirrors the corporate style of administration. Various authors (Arnold, 2004:25; Hill, 2007:9; Klinoff, 2012:349 and Newton et al., 2006:5) cited in this chapter, argue that the investigation of crime and prosecution largely follows the precepts of the Constitution of the USA as well as the USC. The states in the USA are prohibited from enacting laws that are inconsistent with the Constitution of the USA and the federal laws. In this regard, the LAPD is governed by the Constitution of California and the Penal Code of California. Thus, the submissions of BIIP (2004:78), Conklin (1995:402), Dempsey and Forst (2012:68-74), Pollock (2012:13), Spohn and Tellis (2014:5) and Wen and Leipold (in Ross & Thaman, 2016:162) are consistent with the LAPD operations.

In the following discussion, the researcher pays attention to the Republic of Malawi and Republic of France for the purpose of comparison with the Republic of South Africa.

#### **5.4 REPUBLIC OF MALAWI**

Malawi is a landlocked country with 15.4 million people in the south-western region of Central Africa, with Zambia to the west, Tanzania to the north and east, and Mozambique to the south and east (Adams & Adams, 2012: 301). According to Hara (2007:9), Malawi was proclaimed a British Protectorate by the Colonial Office in London on 14 May 1891. Malawi was called Nyasaland before its independence (Luhanga, 2001:5). Consequently, Malawi's legal system, especially criminal law, has all the hallmarks of the English common-law system (Kayira, 2006:9). After decolonisation in 1964, the country had one of the most rigid and internationally isolated dictatorships in Africa (Chirwa, 2014:3). This writer goes further to state that for more than three decades, Malawi was a single- political -party state; however, due to international pressure and revolt within the country, this resulted in a referendum for a multi-party democracy. The vote was taken on 15 June 1993, and

63% were in favour of an end to dictatorship and favoured the reintroduction of a multi-party system (Chirwa, 2014:3).

Malawi's transition from one-party state to plural politics came with the expectation of a new political dispensation, based on the rule of law, respect for human rights, democracy, good governance, and transparency and accountability (Malawi Law Commission (MLC), 2006:4). Eventually, the Constitution of the Republic of Malawi, Act No. 20 of 1994 (Constitution of Malawi) was passed by the Parliament in 1995 (Open Society Initiative for Southern Africa (OSISA), 2011:22)).

The concepts of constitutionalism and governance based on the rule of law made inroads into the Malawi psyche, with the country being described as one of the emergent African democracies (Kayira, 2006:3). In order to support the rule of law and to enhance good governance, the new Malawian government put into place a reformed Malawian CJS and constitution. The Constitution of Malawi includes a comprehensive Bill of Rights and restricts police powers in a number of respects (APOF, 2008:42).

Describing the Malawian CJS, Bande (2012:30) argues that it is based on a complete separation of substantive criminal law and procedural and evidentiary law. This author further argues that criminal law consists of rules and principles that, firstly, prescribe certain conduct and forms of behaviour as criminal offences; secondly, provide for the punishment of those individuals who are found criminally liable, and thirdly, outline the rules and principles for the establishment of criminal liability. However, Irish Rule of Law International (IRLI) (2013:6) opines that the Malawian CJS is beset by a host of systemic problems, including a lack of access to legal representation, insufficient funding for trials, an insufficient number of prisons and not enough judges being available to hear applications and to preside over trials. Looking at the submissions of Amnesty International (2016:490), it is evident that a host of systemic problems described by IRLI (2013:6) has a negative effect on the administration of the CJS. To understand the role of the investigators in the CJS of Malawi, the following discussion is an overview of the Malawi Police Service.

#### **5.4.1 Overview of the Malawi Police Service**

The Malawi Police Service (MPS) has responsibility for internal security in Malawi and for enforcing the law throughout the country (Home Office, 2017:5). Waterland, Vaughan, Lyman and Jurisic (2015:85) assert that the MPS is located under the Ministry of Internal Affairs and Public Security and operates primarily under the Constitution of Malawi and the Police Act, No. 26 of 1946. The MPS is headed by the President of the Republic of Malawi and is commanded by IGP, assisted by two Deputy Inspectors-General in charge of Administration and Operations, respectively (African Policing Civilian Oversight Forum (APCOF), 2018). According to MLC (2006:20), the appointment to this office is by the President on confirmation by the National Assembly by a majority of the members present and voting. It appears that the President cannot hand-pick his/her preferred candidate to occupy this office without input by the National Assembly. In this way, political interference in the affairs of the MPS is thus minimal, even though the IGP reports directly to the Ministry of Internal Affairs and Public Security. According to International Criminal Police Organizations (2018), the operational responsibilities of the MPS are as follows:

- Airport Security;
- Community Policing;
- Criminal Investigation;
- Explosives, Firearms and Ballistics;
- Marine Corps;
- Radio Communication;
- Police Mobile Service;
- Prosecution Service; and
- Traffic and Transport.

The following discussion focuses on legislation and guidelines relating to criminal investigation and prosecution.

#### **5.4.2 Legislation and guidelines relating to criminal investigation and prosecution**

According to the Eastern and Southern Africa Anti-money Laundering Group (2008:18), the MPS members are deployed nationally to execute certain responsibilities and duties that include the following:

- Prevention and detection of crime;
- Apprehension of offenders;
- Preservation of law and order;
- Protection of property; and
- Enforcement of all laws and regulations with which they are generally charged under the Police Act, No. 26 of 1946.

In executing these functions and duties, the MPS derives its powers from the Penal Code, Act No. 22 of 1929; Police Act, No. 26 of 1946; Criminal Procedure and Evidence Code, Act No. 36 of 1967, and the Constitution of Malawi. In the following discussion, the researcher explores the Penal Code, Act No. 22 of 1929, focusing on murder, Police Act, No. 26 of 1946, and completes the discussion with the Criminal Procedure and Evidence Code, Act No. 36 of 1967 and the Constitution of Malawi.

##### **5.4.2.1 Penal Code, Act No. 22 of 1929**

According to Kayira (2006:19), the Penal Code, Act No. 22 of 1929 (PCA) as amended, is the main piece of legislation in criminal law, defining the content and scope of criminal offences. The PCA further describes the type of punishment that should be imposed after the conviction of the offender (Malawi, 1929). For instance, section 209 of the PCA states that any person who with malice aforethought causes the death of another person by an unlawful act or omission shall be guilty of murder. Following the conviction of murder as described in section 209 of the PCA, section 210 of the PCA states that any person convicted of murder shall be sentenced to death. Defining the circumstances under which murder is committed with malice aforethought, section 212 of the PCA provides that malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- (a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;
- (b) knowledge that the act or omission will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony; and
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

The participant in Sample C was asked “How would you define murder?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. In answering the question, the participant stated the following: “It is the killing of human being with malice aforethought by unlawful act or omission.”

The response obtained from the participant indicated that in Malawi, one can be found guilty of murder by omission. The other characteristics of the definition such as malice aforethought, unlawful, killing of another person, were noted. “Malice aforethought” could be understood to mean “intention.” The response of the participant is, therefore, consistent with the definition provided in section 209 of the CPA.

The participant in Sample C was further asked “What is your understanding of the elements of murder?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. In answering the question, the participant stated the following elements: “A person must have malice aforethought, killing of the person, and the act must be unlawful.”

The response of the participant corresponds to the definition provided in section 209 of the CPA.

According to Bande (2012:33), the police, as part of the CJS, play a significant role to ensure that the prohibited conducts are identified and those responsible are

correctly punished within the ambit of the law. The conduct and practices of police have a bearing not only on matters of law and order but also on the enjoyment of all the human rights and freedoms for most Malawians (Bande, 2012:33). Kayira (2006:60-61) states that the MPS is the first institution in the CJS that triggers the chain process of criminal proceedings. According to Kainja (2010), the MPS has the following strategic objectives:

- To reduce the level of crime through enhanced professionalism and efficiency in the prevention, investigation of crime, and prosecution of offenders;
- To promote community safety and security through enhanced partnership with the community and all stakeholders;
- To promote public order and safety in the communities, reduce the fear of crime, provide proper management of disasters, emergencies and other critical incidents;
- To provide an improved, efficient, proactive traffic management system, which will assist in reducing road accidents and congestions to ensure safety for all road users; and
- To develop a human resource management and development system that focuses on selection.

The following are the branches of MPS at police station level and their responsibilities, as highlighted by Kainja (2010):

- **Administration Branch**
  - Deals with administration of the police station, including the general welfare of the police station, issuing of leave grants, preparation of salaries and government allowances.
- **Prosecution Branch**
  - Responsible for prosecution of cases that have been investigated and take such cases to courts to prosecute the offenders for proper justice administration.
- **Investigation Branch**
  - Responsible for detecting and investigating simple crimes reported at the police station.

- **Traffic Branch**
  - Responsible for control of traffic on roads, investigation of traffic offences and road accidents.
- **Criminal Investigation Department**
  - Responsible for investigating serious crimes.
- **General Duties Branch**
  - Responsible for occurrence book duties, rural patrols and escorting of accused persons.
- **Record Section**
  - Responsible for crime records for the police station.

The submission of Kainja (2010) indicates that the General Duties Branch is responsible for, among other things, duties at the charge office that include attending to complaints and registering criminal cases such as murder. These duties are referred to by Kainja (2010) as occurrence book duties.

The participant in Sample C was asked: “How are murder cases reported in the Malawi Police Service?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. In response to the question, the participant stated as follows: “The relatives of the deceased, members of public to the community forums and chiefs, and telephone or anonymous letters to the police.”

The response provided by the participant indicates that there are various mechanisms by means of which murder cases can be reported. Of significance is the use of community forums and chiefs where such reports can be made. These community forums and chiefs have a duty to report to the police, any complaints made to them by the community members. The General Duties Branch is responsible to attend to such complaints and register the criminal cases that are investigated by the CID. Accordingly, the response of the participant is consistent with the submissions of Bande (2012:33), Kainja (2010) and Kayira (2006:60-61).

According to Home Office (2017:12), the capabilities of the MPS are growing, but its abilities to deter and investigate crimes, assist victims, and apprehend criminals are extremely limited. Amnesty International (2016:49) states that there is a

significant gap in the capacity of the MPS with regard to crime detection, investigation and prosecution of perpetrators, which gives rise to a prolonged investigation process. The significant gap identified by Amnesty International (2016:49) implies that the administration of justice system might be negatively affected if it is not immediately attended.

The participant in Sample C was asked: "Following from the above question, how are these murder cases assigned to the police investigators?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: "The cases are assigned to the competent and experienced detectives by the commanders."

The response of the participant indicates that these cases are assigned to competent investigators by the commanders. There was no literature available that could be compared to the response of the participant in respect of how these cases are assigned to the investigators for investigation.

Although the MPS is the first point of contact for the criminal proceedings to take place, it would appear that there are challenges relating to capacity, resulting in the functions such as investigation and arrests being hampered. In this regard, Kanyongolo (2006:105) states that it is in specialised areas that the training levels in the police remain low, leading to critical shortages in the capacity of the service.

The participant was asked: "Do you have task teams or specialised units in the Malawi Police Service that investigate murders cases? If any, please elaborate." This was an open-ended question where the participant could provide his own answers to the question and no choices were provided from which he could choose. The participant stated the following: "The Homicide Sections which are allocated at the National Headquarters, regional and station levels."

Looking at the response of the participant, it is evident that there are task teams or specialised units in the Malawi Police Service that investigate murder cases. This response is consistent with the submission of Kainja (2010). However, it would

appear that these task teams or specialised units exist only on paper, as alluded to by Amnesty International (2016:49) and Home Office (2017:12).

#### **5.4.2.2 Police Act, No. 26 of 1946**

Part II of the Police Act, No. 26 of 1946 (Police Act) provides, *inter alia*, for the organisation, administration and general powers, duties and functions of the MPS and for the recruitment, appointment, promotion and discipline of police officers (Malawi, 1946). It is noted that the Police Act has been amended frequently, with the last amendment dated 1 August 2010. The following sections of the Police Act are relevant to this study:

- Section 3 of the Police Act states that the Police Service established under Chapter XV of the Constitution of Malawi shall operate and function in accordance with the provisions of this Act.
- Section 4(1) of the Police Act provides that the general functions of the Police Service are-
  - (a) the prevention, investigation and detection of crime;
  - (b) the apprehension and prosecution of offenders;
  - (c) the preservation of law and order;
  - (d) the protection of life, property, fundamental freedoms and rights of individuals;
  - (e) the due enforcement of all laws with which the Police are directly charged; and
  - (f) the exercise or performance of such other powers, functions and duties are conferred on the Police by or under this Act or any other written law, be exercised, performed or otherwise discharged by the Police.

Considering that the investigation of crime is a legislated mandate, as provided for in terms of section 4(1) (a) of the Police Act, it is expected that the members of the MPS charged with criminal investigation duties, are fully trained in the criminal investigation field to ensure successful prosecution of cases. According to Kanyongolo (2006:104), the MPS has three main training centres: Police Training School in Blantyre for the basic training of recruits; Police Training College in Zomba for in-service training of cadet officers, and Mtakatika Police College wing for

specialist training. However, Amnesty International (2016:46) states that the MPS has inadequate training, particularly in the area of crime management and investigation.

The participant in Sample C was asked: “Is there any specific training that the police investigator has to undergo before being assigned to investigate murder cases?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant mentioned the following courses: “Criminal investigation course; and homicide training course.”

The response of the participant indicates that there is specific training that the police investigator has to undergo before being assigned to investigate murder cases. Firstly, the investigator must undergo the criminal investigation course before undergoing the homicide training course. While the response of the participant corresponds reasonably well to the literature, as highlighted by Kanyongolo (2006:104), it is clear that such training is inadequate.

OSISA (2011:23-24) submits that the apprehension of offenders is led largely by the CID, and once a suspect is apprehended, this department prepares a case docket, which is then forwarded to the Prosecution Branch for court proceedings. According to Petersen (2016:23), an accused must either be charged or brought before a court and informed of the reason for his further detention, within 48 hours of his/her arrest and in the event that it is not done, the individual must be released. The institution of criminal proceedings by the DPP often follows investigations, arrests and recommendations by competent investigative institutions such as the police (OSISA, 2011:26). This means that whenever a suspect is arrested, an investigation must be conducted and finalised promptly by the investigator. OSISA (2011:24) explains that upon finalisation of the investigation in murder cases, a case docket cannot be sent directly to the DPP’s office without first being channelled through the police’s regional prosecutions office.

The participant in Sample C was asked: “What are the specific procedures that have to be followed by the police investigator upon receiving a new murder case?” This was an open-ended question and the participant could provide his own answers to

the question. No choices were provided from which he could choose. The participant stated the following:

- The investigator attends the crime scene to gather evidence.
- The investigator writes the First Serious Crime Report to the Director of CID through Regional Criminal Investigation Officer.
- After ten days progress report is provided by the investigator through the chain of command.
- Normal gathering of evidence continues until the arrest is made and case presented to court.

The response of the participant indicates that there are specific procedures that the investigator has to follow upon receiving a new murder case. Once the General Duties Branch has determined that a murder has occurred, they inform the CID to attend to the crime scene to gather evidence. Reporting of the incident to the Director of CID is mandatory. While the investigation continues, a progress report should be forwarded to the office of the Director of CID, after the initial report was made. Accordingly, the response of the participant could not be supported by the available literature.

Among the police's strategic objectives highlighted by Kainja (2010) is the reduction of the level of crime by means of enhanced professionalism and efficiency in the detection and investigation of crime and the prosecution of offenders. As pointed out by Kainja (2010), the CID is responsible for investigating serious crimes. In cases of serious offences that can be tried only by the High Court – such as murder and treason – the case docket is sent to the DPP to decide whether to institute proceedings or not, or for further directions to the police (OSISA, 2011:26). In most cases, the suspect would have already been detained when the case is referred to the DPP.

The participant in Sample C was asked: "What investigation model is used in the Malawi Police Service when investigating murder cases?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: "Prosecution-led investigation."

When looking at the response of the participant, it is evident that the participant did not understand the meaning of "prosecution-led investigation." The fact that the

prosecutor may request further investigation as alluded to by OSISA (2011:26) cannot be interpreted as a prosecution-led investigation model. The reasonable inference that can be made about this response is that the participant saw the research title in the research schedule referring to “prosecution-led investigation.” There was no literature available that could support the response of the participant or reveal a particular investigation model.

According to Home Office (2017:17), the DPP in the Ministry of Justice customarily tried high-profile cases and those involving the most serious offences. Waterland et al. (2015:117), mention that the DPP has the power to direct police to conduct investigations into criminal matters and to institute criminal proceedings in a competent court. This submission should be understood in the context of the DPP advising the police investigators with regard to the required evidence to prove the case at court. It remains the responsibility of the police investigators to conduct the investigation.

The participant in Sample C was asked “What are the advantages of this murder investigation model used by the Malawi Police Service?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: “Helps an investigator to have elements proving the case. Build trust to one another/have faith. Chances of losing the case are minimal.”

Considering the response of the participant, it is evident that the participant is fully aware and appreciates the advantages of team work between the police investigator and prosecutor. However, there was no literature that could be found to be compared to the response of the participant in respect of the advantages of the murder investigation model used by the MPS.

Kayira (2006:19) notes that the police prosecutors handle the bulk of criminal prosecutions in subordinate courts, while the prosecutors in the office of the DPP are responsible for serious cases across the country. In other words, although the police prosecutors fall within the MPS, they are neither allowed to prosecute serious cases nor to investigate them.

The participant in Sample C was asked: “Does the prosecuting authority that prosecutes murder cases form part of the Malawi Police Service?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. In response to the question, the participant stated the following: “The DPP office falls under the Ministry of Justice.”

The response of the participant shows that the prosecuting authority officials responsible for prosecution of murder cases do not form part of the MPS. This response is therefore, consistent with Home Office (2017:17), Waterland et al. (2015:85), and Kainja (2010).

#### **5.4.2.3 Criminal Procedure and Evidence Code, Act No. 36 of 1967**

The Criminal Procedure and Evidence Code, Act No. 36 of 1967 (CPEC), dated 1 February 1968, is an Act to amend and consolidate the laws relating to procedure and evidence in criminal proceedings, and matters incidental thereto (Malawi, 1967). For instance, sections 20-65 of Part III of the CPEC relate to how the investigation of crime should be conducted by the MPS. However, with regard to murder investigations, OSISA (2011:33) states that while the Malawian CJS faces a host of serious challenges, there are a number of good initiatives and potential legislation that could markedly improve the system. The Homicide Working Group has helped to come up with best practices for the conduct of homicide cases, which have significantly reduced the backlog of these cases (OSISA, 2011:33).

Of significance is section 36 of the CPEC, which states that police officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective areas, whether such persons have been admitted to bail or otherwise. Section 37 of the CPEC states that when any offence is committed in the presence of a magistrate, he/she may him-/herself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained with regard to bail, commit the offender to custody. In subsequent section 38 of the CPEC, it is stated that any magistrate may at any time arrest or direct the arrest in his/her presence of any person for

whose arrest he/she is competent at the time and in the circumstances to issue a warrant.

It seems that section 36 of the CPEC provides some form of protection from unlawful arrests of people by the police officers. If the provision of section 36 of the CPEC is to protect the rights of innocent people, its application is therefore questionable under sections 37 and 38 of the CPEC. For instance, if the magistrate involved in the arrest of a person is the nearest magistrate to which the police officer in charge of a police station is supposed to report the case of the arrested person without a warrant, it then follows that the same magistrate may abuse his/her powers of arrest, knowing that the same case will be reported to him/her.

There is nothing in the CPEC that deals with the arrests made by the magistrates in terms of sections 37 and 38 of the CPEC to avoid the abuse of power. In any event, magistrates should be impartial in the execution of their duties as Judiciary Officers and should not be involved in the arrest of the suspected offenders that under normal circumstances falls in the domain of the police officers. In the context of South Africa, the duties of the magistrates are confined to the courtrooms or during the execution of court duties.

#### **5.4.2.4 Constitution of the Republic of Malawi, Act No. 20 of 1994**

The Constitution of Malawi is the supreme law of the country (International Bar Association's Human Right Institute (IBAHRI), 2012:13). Section 152 of the Constitution of Malawi states that there shall be a Malawi Police Force that shall be constituted by an Act of Parliament that shall specify the various divisions and functions of the Malawi Police Force. As a result, section 153(1) of the Constitution of Malawi states that the MPS shall be an independent organ of the executive, which shall be there to provide for the protection of public safety and the rights of persons in Malawi according to the prescriptions of the constitution and any other law. It is further noted that the appointment of the IGP by the President and confirmed by the National Assembly by a majority of the members present and voting, is constitutionalised in terms of section 154 of the Constitution of Malawi.

In ensuring that the MPS is indeed independent, section 158(1) of the Constitution of Malawi provides that members of the MPS shall ensure that they exercise their

functions, powers and duties as impartial servants of the general public and the government of the day. This implies that in providing such protection to the public, the MPS members are compelled to investigate criminal acts, thereby safeguarding the rights of persons. In this regard, Amnesty International (2016:30) confirms that the duty to protect people against crime is a fundamental police requirement. There appears to be a discrepancy between the naming of the “Police Force/Police Service” in Malawi. The Constitution of Malawi refers to the Malawi Police Force, while the Police Act refers to the Police Service or Police. Nonetheless, reference to these titles shall mean the MPS.

With regard to the prosecution service, section 99(1) of the Constitution of Malawi provides for the establishment of the office of the DPP. Section 99(2) of the Constitution of Malawi states that the DPP shall have power in any criminal case in which he or she considers it desirable to-

- (a) institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
- (b) take over and continue any criminal proceedings which have been instituted or undertaken by any other person or authority; and
- (c) discontinue at any stage before judgement is delivered any criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

OSISA (2011:23) asserts that most arrests in Malawi are carried out by the police, either on their own initiative or on the directives of other agencies such as the DPP. Besides the significant role played by the DPP in the arrests, OSISA (2011:23) goes further to state that police play a crucial role not only in the decision to arrest suspects but also in the decision about what happens immediately after the arrest – such as detaining the suspect until first appearance or granting bail. According to OSISA (2011:32), the decision to prosecute a suspect is made at the discretion of the prosecutor. However, such a decision has to be made objectively, based on available evidence gathered by the police and a solid legal basis (OSISA, 2011:32).

The participant in Sample C was asked: “How do the police investigators interact with the prosecuting authority while murder cases are still under investigation?” This

was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: “We interact at the stage when the accused is brought before court for committal or further investigation.”

The response of the participant indicates that the investigators do interact with prosecutors at a later stage of the investigation. This is evident when the accused has been charged and brought before the court. At this stage the prosecutor will have to peruse the case docket to ensure that there is sufficient evidence for a successful prosecution. Should the prosecutor identify gaps in the investigation, he/she would have to instruct the investigator to conduct further investigation. The response of the participant is therefore consistent with the submission of OSISA (2011:32) and section 99(2) of the Constitution of Malawi.

From the submissions of OSISA (2011:23) and OSISA (2011:32) it is clear that the roles of the investigator and prosecutor are different. It is evident that the role of the investigator is to investigate the case and forward it to the prosecutor, who in turn decides whether to prosecute or not. In turn, the prosecutor may direct the investigator to gather more evidence before the case is placed on the court roll.

The participant in Sample C was asked: “What is the role (duties and functions) of the police investigator in the investigation of murder cases?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. To answer the question, the participant stated as follows: “To uncover hidden things relating to the case he/she is investigating including to establish the motive behind it thereafter compile all evidence.”

The response of the participant clearly shows that the role of the investigator is to gather evidence that can be used in the court of law to prosecute the offender. The investigation of crime by the police is therefore a legislated function, as provided for in section 4(1) (a) of the Police Act and confirmed by OSISA (2011:32). Accordingly, the response of the participant corresponds to the literature.

The participant in Sample C was asked: “What is the role of the police investigator in the prosecution process of murder cases?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: “Giving evidence in court, tendering exhibits and identifying exhibits and accused before court.”

The response of the participant indicated that the police investigator’s role in the prosecution process of murder cases is that of being a witness. It is evident that the police investigator, during the investigation of the case, would have gathered evidence linking the accused to the case. The evidence gathered might be exhibits seized from a different location and handed over to the Prosecution Branch of the MPS for safe-keeping. The police investigator may at a later stage be required to identify the exhibits during the trial of the case. The response of the participant is therefore consistent with section 4(1) (a) of the Police Act and confirmed by OSISA (2011:32).

While the DPP can institute criminal proceedings on his/her own motion, the office does not have investigative powers (OSISA, 2011:26). In this regard, the MPS, specifically the CID, is constitutionally mandated to investigate crime such as murder, therefore any prosecution follows the investigation and arrests of the suspect.

The participant in Sample C was asked: “What are the disadvantages of this murder investigation model used by the Malawi Police Service?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant mentioned the following: “Lack of trust of evidence in custody. Safety of exhibits - it’s easy to destroy the case.”

Explaining his response, the participant stated that the police prosecutors are responsible for keeping the exhibits and to forward same to court for trial. According to him, loss or destruction of the exhibits by police prosecutors may jeopardise the case, thereby risking the good relationship between the investigator and prosecutor.

The response of the participant suggests that the role of the police prosecutors as custodians of the exhibits may have a negative effect in the relationship between the investigator and prosecutor. It would appear from the response of the participant that in some instances, the exhibits are tampered with or destroyed without the knowledge of the investigators. It is evident that the police prosecutors are not only responsible for prosecuting the minor cases, they are also the custodians of the exhibits. Hara (2007:23) states that the police prosecutors, as part of the MPS structure, may even be assigned other duties in the Police Service. Thus, keeping the exhibits in custody is one of other duties assigned to the police prosecutors. The response of the participant is therefore, supported by the literature.

Most criminal cases handled by the High Court are referred to the court through a process known as a 'summary committal procedure' (OSISA, 2011:29). In describing a summary committal procedure, OSISA (2011:29) states that it is a process that takes place during the inquiry; the subordinate court records witness statements under oath and when it is satisfied that there is enough evidence to warrant a trial, the court will commit the accused to the High Court, having either granted him bail or remanded him in prison pending the trial. According to Petersen (2016:28), in Malawi there are several established time periods for which an accused may be held lawfully in custody before commencement of trial and if those periods expire and trial has not commenced, the accused must be released. The release of the accused from lawful custody before commencement of the trial should be understood in the context of the failure of the investigator to complete the investigation on time.

The participant in Sample C was asked: "What is the role fulfilled by the prosecutor in a murder investigation?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. In response to the question, the participant stated the following: "Taking the suspects before a magistrate for committal."

The response of the participant shows that the role of the prosecutor in murder investigation is to ensure that there is sufficient evidence to prosecute the suspect and refer the case to High Court through a summary committal procedure. The response of the participant corresponds to the literature regarding the role fulfilled

by the prosecutor in a murder investigation, as confirmed by OSISA (2011:26) and Petersen (2016:28).

Section 100 of the Constitution of Malawi provides for the delegation of powers of the DPP to be exercised by the person appointed to that office or such other persons in the public service acting as his/her subordinates and in accordance with his/her general and specific instructions, in accordance with an Act of Parliament. According to section 100(1) of the Constitution of Malawi, such powers as vested in the office of the DPP may be exercised by the person appointed to that office or such other persons in the public service acting as his/her subordinates and in accordance with his/her general and specific instructions in accordance with an Act of Parliament. It is stated in section 100(2) of the Constitution of Malawi that the person appointed to the office of DPP shall be accountable to the Legal Affairs Committee of Parliament for the exercise of such powers in his/her own behalf and those powers exercised on his/her behalf by subordinates in accordance with section 100(1) of the Constitution of Malawi.

In respect of the appointment of the DPP, section 101(1) of the Constitution of Malawi provides that the appointment shall be made by the President and confirmed by the Public Appointments Committee, subject to satisfying requirements as to the competence of the person so appointed to perform the duties of that office and as to the capacity of a person so appointed, to pursue prosecutions independently. However, section 101(2) of the Constitution of Malawi states that in the exercise of the powers conferred on him/her by the Constitution of Malawi or any other law, the DPP shall be subject only to the general or special directions of the Attorney-General but shall otherwise act independent of the direction or control of any other authority or person and in strict accordance with the law. For ease of reference, the office of Attorney-General is the principal legal adviser to the government, according to section 98(1) of the Constitution of Malawi. Hara (2007:1) states that the decision to prosecute or not involves exercising discretion, and it is in the interest of justice that prosecuting authorities exercise that discretion freely, impartially and independently of any influence or interference. Considering section 99(2) of the Constitution of Malawi and section 4(1) of the Police Act, it is evident that the DPP and MPS are two separate institutions that are independent from each other.

The participant in Sample C was asked: “Are there any specific Standing Orders/Standard Operating Procedures/legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation? Please explain.” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. In response to the question, the participant stated the following: “Not to my knowledge, but I feel that there is a need to cooperate with prosecutors.”

The response of the participant indicates that there is no specific Standing Orders/Standard Operating Procedures/legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation. There was no literature that could be found indicating the existence of Standing Orders/Standard Operating Procedures/legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation.

It would appear that the MPS is empowered to prosecute cases subject to the provision of section 100 of the Constitution of Malawi. Accordingly, the MPS function of prosecuting the offenders in terms of section 4(1) (b) of the Police Act is consistent with the Constitution of Malawi. Understandably, such delegation to the police is to ease the overwhelming workload experienced by the prosecutors, as pointed out by APOF (2008:44) that the Malawian judicial system is generally inefficient and suffer from problems that include, among others, the shortage of trained personnel and the heavy caseloads. However, OSISA (2011:2) states that the DPP lacks the capacity to effectively supervise police prosecutors. Even if the delegation of prosecution to police is justifiable under the circumstances mentioned above, the independence of prosecuting authorities at the police level is quite vulnerable to manipulation by possible superior orders. This compromises the independence of the prosecuting authority in that the prosecutorial discretion is exercised by the same persons (the Police Service) who are responsible for investigating the crime and arresting the alleged offender (Hara, 2007:24). For these reasons, the inclusion of prosecution function in the MPS, as provided for in terms of section 4(1) (b) of the Police Act, read with section 100 of the Constitution of Malawi, renders the investigation and the prosecution functions to be suspected of

manipulation, thereby compromising the institutional functional responsibilities of the investigators and prosecutors.

Although the participant had previously responded that the MPS used “the prosecution-led investigation” when investigating murder cases, the researcher did not find evidence that the prosecution-led investigation had indeed been used in murder cases. Nonetheless, the participant was asked: What is your understanding of the prosecution-led investigation?” This was an open-ended question where the participant could provide his own answers to the question and no choices were provided from which he could choose. In response to the question, the participant stated the following: “It is where a prosecutor is incorporated into the investigation team in order to have a good case at the end of investigation to ensure the successful prosecution.”

Although the response of the participant was generic and broad in nature, it nonetheless clearly shows that there is a requirement for cooperation between the investigator and prosecutor during the investigation and that such cooperation is key to the successful prosecution of the cases. No literature could be found to be compared to the response of the participant in respect of the prosecution-led investigation model in the context of Malawi. In the following section, the Republic of France is discussed.

## **5.5 REPUBLIC OF FRANCE**

Modern French history has been riven by deep and often murderous political conflict in which Frenchmen killed Frenchmen and régimes were toppled by means of protest from the street, defeat in war, or both (Knapp & Wright, 2006:1). Hodgson (2005:150) asserts that under the pre-revolutionary *Ancien Régime*, the monarchy, the Church and the nobility provided the institutional foundations of society, and the administration of justice was characterised by inequality, authoritarianism and feudalism. The result of the instability saw France being ruled by a dozen régimes since 1789, until a clear transition in 1958 gave birth to the Fifth Republic, consisting of the President, the Prime Minister, the government and the National Assembly (Knapp & Wright, 2006:3). As expressed by Troper (in Bermann & Picard, 2008:21),

the Fifth Republic was born as a reaction to the failures of the parliamentary system of the Third and Fourth Republics.

Marguery (2008:58) argues that constitutional and legal provisions modified the criminal judicial system over the years and today regulate the current French Public Ministry. Marguery (2008:60) goes further to assert that from the Napoleonic era, and for almost a century and a half, the organisation of the Judiciary in France remained more or less the same. As in many other democratic and constitutional countries, the Judiciary is independent from the executive and the legislative powers. However, Hodgson (2005:68) states that historically, the judicial functions have been State-centred and has included both prosecution and investigative roles, as well as one of adjudication, until the emergence of democracy, when these functions were separated. According to Bryett and Osborne (2000:40), the justice system in France is generally organised on national lines. In this regard, the French Ministry of Foreign Affairs (2007:1) reports that the justice system is the third pillar of the State and is independent from the other pillars, which are the government and the National Assembly.

France has a legal system stemming from Roman law and based upon codified laws (French Ministry of Justice, 2012:4). According to O'Connor (2012:10), France's codes were drafted in a way so as to be accessible to ordinary citizens, an ideal replicated today in many civil-law countries. In describing the first codified law, Heuni (2001:6) mentions the Napoleonic Penal Code, which dates back to 1810, but has been partially updated by a series of laws, and was subsequently replaced by a New Penal Code in March 1994. A French Code of Criminal Procedure (*Nouveau Code de Procédure Pénale*) was, according to Marguery (2008:61), adopted in 1957, followed by a new code in 1992 that came into force only in 1994. Marguery (2008:62-63) further states that in 2004, an amendment to the French Code of Criminal Procedure reinforced the position of the government, in respect of the criminal policy that was implemented by the prosecution services. In this regard, Pradel (in Bermann & Piccard, 2008:111) asserts that codification of French criminal procedure is important because it sets out the necessary elements of crime. To put the discussion into perspective, the researcher begins by highlighting the overview of the French police.

### 5.5.1 Overview of French Police

Since the French Revolution, the principle of legality has been the basic rule in French criminal law (Heuni, 2001:20). As pointed out in Chapter 3, Eugene Francois Vidocq, a former convict, is one of the people who were instrumental in shaping the policing and criminal investigation to be what it is today. The Security Police (*Police de Sûreté*), France's first police detective bureau, was created in Paris in 1817 under Eugene Francois Vidocq's leadership. Since then, the French police department has undergone transformation. According to Heuni (2001:15), France has two main police bodies, namely:

- **The *Gendarmerie Nationale* (Military Police):** A military body consisting of 93 000 uniformed members under the authority of the Defence Ministry and operating in small towns and the country.
- **The *Police Nationale* (National Police):** A civilian organisation under the statutory authority of the Ministry of Interior, operating in the cities.

According to Hierarchy Structure (2017), at the top of the National Police hierarchy is the Director General, who oversees seven departments. These specialised departments, including their responsibilities, are as follows:

- **Directorate of Resources and Competences of the National Police**
  - This department is a combination of the directorate of training of the national police and the directorate of administration of the national police.
- **Central Directorate of the Judicial Police (*Officiers de la Police Judiciaire*)**
  - This department is charged with all criminal investigations and is divided into the following sub-categories:
    - Anti-terrorism: responsible for counter-terrorism.
    - Organised crime and financial delinquency: specialised investigation offices in that field.
    - Forensic and crime scene investigations: responsible for forensics and crime scenes.
    - Computer and internet crime: responsible for computer and internet crimes.

- **Central Directorate of Public Security**
  - For patrols, response and emergencies.
- **Intervention Groups of the National Police**
  - Comprising the nine regional SWAT teams.
- **Central Directorate of Border Police**
  - Performs identity checks.
- **Central Directorate of the Republican Security Companies**
  - Riot, motorway and mountain rescue police.
  - Technical International Police Cooperation Service.
- **Important Persons Protection Service**
  - Responsible for the protection of the President of the French Republic and foreign diplomats.

As shown in the National Police structure above, the Central Directorate of the Judicial Police is responsible for all criminal investigations. Only qualified police officials (“*officiers de police judiciaire*”) can undertake investigations (Heuni, 2001:19). According to Harris (2013:329), in France a suspicious death is investigated by the Police Judiciare (PJ), an accreditation giving holders specific rights in relation to criminal investigation such as arrest and search, initially under supervision of the prosecutor and later of a judge of instruction. Harris (2008:61) states that some large cities, where the murder rate is sufficiently high, host specialist squads of murder detectives. The above submissions indicate that all priority and violent crime cases are investigated by the Central Directorate of the Judicial Police.

The participant in Sample D was asked: “Do you have task teams or specialised units in the French National Police that investigate murder cases? If any please elaborate.” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. To answer this question, the participant stated the following: “The Central Directorate of the Judicial Police is responsible for murder investigation.”

The response of the participant is consistent with the submissions of Harris (2008:61), Harris (2013:329), Heuni (2001:15) and Hierarchy Structure (2017).

According to O'Connor (2012:31), police officers are usually trained in a Police Academy under a general curriculum, and later on may receive specialised training, depending on their assignment. In this regard, Harris (2008:57-58) states that the French National Police has the detective training course available to the police officers responsible for criminal investigation.

The participant in Sample D was further asked: "Is there any specific training that the police investigator has to undergo before being assigned to investigate murder cases?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. To answer this question, the participant stated as follows: "The six months basic Investigators Training Course. Upon completion of the training course, the police investigator is subjected to coaching by an experienced police investigator."

The response of the participant indicates that there is specific training that the police investigator has to undergo before being assigned to investigate murder cases. This response is consistent with the literature, as per the submissions of Harris (2008:57-58) and O'Connor (2012:31). The following discussion focuses on legislation and guidelines relating to criminal investigation and prosecution.

### **5.5.2 Legislation and guidelines relating to criminal investigation and prosecution**

From the onset, it should be stated that in France, the CJS is based on inquisitorial principles (Hodgson, 2005:26). Seen through this lens, scholars categorised most of the world's CJSs as adversarial, inquisitorial, or mixed systems (Boyne (in Ross & Thaman, 2016:219)). Whether the system is adversarial, inquisitorial, or mixed, the first phase of the criminal process is, in general, the discovery of and research into the criminal facts by the police (Marguery, 2008:82). With this background, the researcher discusses the Penal Code of 1992, Code of Criminal Procedure of 1957 and Constitution of the Republic of France of 1958.

#### **5.5.2.1 Penal Code of 1992**

The criminal law has as its object the crime or behaviour that is described in a legal text and is punishable by the criminal judge (Pradel (in Bermann & Picard, 2008:103)). Heuni (2001:6) asserts that the Penal Code of 1992 (Penal Code) is an

orderly and articulate summary of the basic rules of the French criminal law (e.g. principle of legality, rule of personal responsibility, the division of offences and the rule of criminal intent). It consists of five books that are divided as follows:

- **Book I: General provisions**
  - Title I: Criminal law.
  - Title II: Criminal responsibility.
  - Title III: Penalties.
- **Book II: Crimes against persons**
  - Title I: Crimes against humanity and against persons.
  - Title II: Offences against human person.
- **Book III: Offences against property**
  - Title I: Fraudulent appropriations.
  - Title II: Other offences against property.
- **Book IV: Offences against the nation, the state and public peace**
  - Title I: Violations of the fundamental interests of the nation.
  - Title II: Acts of terrorism.
  - Title III: Violation of the authority of the State.
  - Title IV: Undermining public trust.
  - Title V: Participation in a criminal association.
- **Book V: Other offences**
  - Title I: Offences against public health.
  - Title II: Other provisions (serious maltreatment or acts of cruelty towards animals) (France, 1992).

The titles mentioned in the books above are further divided into Chapters, Sections and Articles. For the purpose of this study, the discussion to follow will be confined to Book II (Crimes against persons) with specific focus to murder.

Article 221-1 of the Penal Code describes murder as the wilful causing of the death of another person that is punishable with thirty years' criminal imprisonment (France, 1992). Article 221-3 of the Penal Code states that murder committed with premeditation is assassination, which is punished by criminal imprisonment for life (France, 1992). Besides the assassination referred to above, according to

Article 221-4 of the Penal Code, the perpetrator can be punished to life imprisonment if murder is committed against, apart from the others, the following individuals:

- A minor under the age of fifteen years of age;
- A natural or legitimate ascendant or the adoptive father or mother;
- A person whose particular vulnerability, due to age, sickness or infirmity, or to any physical or psychological disability or to pregnancy, is apparent or known to the perpetrator;
- A judge or prosecutor, a juror, an advocate, a legal professional officer or a public officer, a member of the Gendarmerie, a civil servant of the national police, customs, the penitentiary administration or against any other person holding public authority or discharging a public service mission; and
- A witness, a victim or civil party, either to prevent him from denouncing the action, filing a complaint or making a statement before a court, or because of his report, complaint or statement.

The participant in Sample D was asked: “How would you define murder?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. To answer this question, the participant stated as follows: “The wilful causing of the death is murder. It is punished with thirty years’ criminal imprisonment.”

Looking at the definition of murder provided by the participant and the literature, it is clear that in France, a minimum sentence that can be imposed on the offender convicted of murder is thirty years’ imprisonment. However, the sentence may be increased to life imprisonment, should it be found that the act was premeditated or was against certain individuals. It is interesting to note that the definition of murder in France includes the minimum sentence. The response of the participant is, therefore, consistent with Article 221-1 of the Penal Code.

The volume of material gathered during the initial response phase of the investigation and the unique circumstances of the case will determine the individual elements that are required in each case (National Centre for Policing Excellence, 2006:56). According to Article 113-2 of the Penal Code, an offence is deemed to

have been committed within the territory of the French where one of the offence's constituent elements was committed within that territory. French Ministry of Justice (2012:12) states that the public prosecutor must produce evidence that the offence was committed and the person being prosecuted was involved, and that the prosecutor must collect elements of proof both in favour of the prosecution and in favour of the defence.

The participant in Sample D was asked: "What is your understanding of the elements of murder?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. To answer this question, the participant mentioned the following: "Causing of death of another person - wilful."

According to the participant there are only three elements of murder that he is aware of. This response corresponds to the definition of murder as provided for in Article 221-1 of the Penal Code.

#### **5.5.2.2 Code of Criminal Procedure of 1957**

French Ministry of Justice (2012:10) states that the powers to investigate and prosecute cases are provided for in the Code of Criminal Procedure of 1957 (CCP). All types of evidence – written, oral testimony, confessions, and scientific examinations – are admissible if they have been collected and produced in compliance with the French CCP (French Ministry of Justice, 2012:10). In order for the investigation to be conducted, certain information regarding the alleged offence has to have come to the attention of the police. In this regard, Marguery (2008:82) states that the first phase of the criminal process is, in general, the discovery of and research into the criminal facts by the police. Marguery (2008:82-83) further states that in addition to the facts discovered by the police, anyone with knowledge concerning a criminal offence may complain to:

- A public prosecutor;
- The judicial police (*police judiciaire*);
- An investigating judge (judge of instruction); and
- A criminal court.

From the submission of Marguery (2008:82-83), it appears that in France there are various platforms on which a criminal complaint may be lodged. Article 12 of the CCP provides that the operations of the *Officiers Police Judiciare* (OPJ) are carried under the direction of the prosecutor (France, 1957).

The participant in Sample D was asked: “How are murder cases reported in the French National Police?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: “Reports by the community members to police stations and reports by the police officers.”

Although the response of the participant relates to the reports made by the community members and the police officers, the literature confirms that the reports can also be made to the prosecutor, an investigating judge and criminal court, therefore, the response of the participant should be understood in the context of a general practice of reporting. In any event, it is ultimately the responsibility of the police to attend to murder complaints with a view to conduct investigation. The response of the participant corresponds to the submission of Marguery (2008:82).

According to the French Ministry of Justice (2012:10), when someone has committed an offence it will result in an investigation (preliminary investigation or investigation of flagrancy) conducted by various police departments. In terms of Article 14 of the CCP, the PJ is charged with the task of discovering violations of the criminal law, gathering evidence of such violations, and identifying the perpetrators, unless or until a judicial investigation has been initiated. It is further stated in Article 14 of the CCP that where a judicial investigation is initiated, the PJ carries out the duties delegated to them by the judicial investigation authorities and defer to their orders. In terms of Article 16 of the CCP and subject to certain conditions, the PJ includes, among others, the mayors, officers and non-commissioned officers of the Gendarmerie, inspectors-general and certain civil servants to form teams in the OPJ. In this regard, Pradel (in Bermann & Picard, 2008:133) states that in the National Police and Gendarmerie, one finds both officers and agents of the OPJ. These teams do not, in general, investigate ‘simple’ homicides, i.e. those in which the suspect is immediately evident, unless the case is for some reason sensitive, which in France would often mean political (Harris,

2013:330). The submissions above indicate that murder cases are allocated to the investigators attached to the OPJ for investigation. It is evident that such cases are not investigated at station level.

The participant in Sample D was asked: "Following from the above question, how are these murder cases assigned to the police investigators?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. To answer this question, the participant responded as follows: "The police station informs the PJ who in turn inform the district prosecutor, goes forthwith to the crime scene and records any appropriate findings."

The response provided by the participant is consistent with the literature in respect of the assignment of murder cases to the PJ, as highlighted by the French Ministry of Justice (2012:10) and Harris (2013:330). The prosecutor in the French CJS becomes actively involved in criminal cases at an earlier stage than in the adversarial system (Harris, 2013:329). The early involvement of the prosecutors in the operations, which are generally known as the functions of the police, is in line with Article 31 of the CCP, which states that the prosecutor exercises the public action and formally requests the law to be enforced.

The participant in Sample D was asked: "What investigation model is used in the French National Police when investigating murder cases?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated as follows: "No specific model."

When comparing the response of the participant with the literature as highlighted by Harris (2013:329), it is clear that in France, the term "prosecution-led investigation" is not broadly use in the investigation and prosecution fraternities. However, in practice, it is evident that serious crimes such as murder are investigated under the direction of the prosecutor, thus the prosecution-led investigation.

Article 55 of the CCP provides that any non-accredited person on the scene of a crime is forbidden to modify the state of the premises before the first judicial inquiry

operations or to take any samples, under penalty of the fine set out for petty offences of the fourth class, without being authorised by the prosecutor. In this regard, Article 55 of the CCP appears to criminalise unauthorised interference with the crime scene, which may lead to evidence being modified.

The participant in Sample D was asked: “How do the police investigators interact with the prosecuting authority while murder cases are still under investigation?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: “The PJ interact with the prosecuting authority by means of reports.”

As indicated earlier, the operations of the PJ are supervised by the prosecutors in terms of Article 12 of the CCP, therefore it would make sense to have an official communication between the OPJ and the prosecuting authority. However, the researcher could not find any literature that could be compared to the response of the participants in respect of the reports as a means of communication.

Harris (2013:329) explains that the prosecutor is unlike the usual prosecutor in the countries that are traditionally linked to the Anglo-American common-law system. Pradel (in Bermann & Picard, 2008:136) states that the prosecutor must, at least according to law, be informed of the progress of any inquiry into a crime from the outset and may, at any point, join the investigators and take the investigation into his own hands. This means that the police are required to report to prosecutors all complaints known to them and seek instructions as to the line of investigation. Article 54 of the CCP states the following with regard to the duties and functions of the PJ in respect of murder investigation:

- The PJ who is told of the crime immediately informs the district prosecutor.
- The PJ goes to the scene of the crime forthwith and records any appropriate findings.
- The PJ ensures the conservation of any clues liable to disappear, and of any item that may be of use in the discovery of the truth.

- The PJ seizes the weapons and instruments that were used to commit the crime or were designed or intended for its commission, as well as any item that appears to have been the product of this crime.
- The PJ presents for recognition any articles seized to any persons who appear to have been involved in the crime, if they are present.

The participant in Sample D was asked: “What is the role (duties and functions) of the police investigator in the investigation of murder cases?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated as follows:

- Secures the crime scene.
- Conducts search and seizure.
- Supervises the taking of non-intimate samples from anyone.
- Interviews witnesses.
- Orders anyone in possession of relevant evidence to make it available.
- Detains the suspect.

The participant’s response with regard to the role (duties and functions) of the police investigator in the investigation of murder cases corresponds to Article 14 of the CCP, Pradel (in Bermann & Picard, 2008:136), Article 54 of the CCP and Harris (2013:330). It is evident from this response that the police investigator is required to conduct fieldwork in the form of gathering evidence for court purpose.

According to Article 74 of the CCP, where a corpse has been discovered, whether having died by violence or otherwise, and the cause of death is unknown or suspicious, the PJ should immediately inform the prosecutor, and proceed to the scene to make initial findings. Article 74 of the CCP further provides that there is nothing that stops the prosecutor from proceeding to the scene to appraise him-/herself about the nature of the circumstances of the death. In effect it means that in France, prosecutors are allowed to attend to the crime scenes. Marguery (2008:83) states that once informed, the prosecutor orders the police to carry out an investigation of a crime for eight days and may extend this period, subject to certain conditions. The statement made by Pradel (in Bermann & Picard, 2008:136) referring to the prosecutor taking the investigation into his own hands should be

understood in the context of directing the investigation and not literally conducting it.

The participant in Sample D was asked: “What are the specific procedures that have to be followed by the police investigator upon receiving a new murder case?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: “Police inform the district prosecutor about murder incident. Police attend the murder crime scene. District prosecutor may attend the murder crime scene if he considers it necessary.”

The responses of the participant indicate that the investigator or police have to immediately inform the prosecutor about the incident of murder. It is up to the prosecutor to decide whether to attend the crime scene. However, the police are compelled to be in attendance to ensure that the scene is secured for the purpose of further investigation. The response of the participant is consistent with the submissions of Pradel (in Bermann & Picard, 2008:136), Article 74 of the CCP and Marguery (2008:83).

Explaining the responsibilities of the prosecutor in a murder investigation, Marguery (2008:84-85) states that upon receiving a case docket, the prosecutor will first check whether a prosecution is admissible and opportune. Marguery (2008:84-85) further states that the prosecutor has to undertake, among other things, the following verifications:

- That the prosecution is not inadmissible (in terms of Article 6 of the CPC);
- The death of the suspect;
- Expiry of the limitation period;
- Amnesty;
- Repeal of the criminal law;
- The case has been settled by way of a transaction, where provided by the law;
- Conditional suspension of prosecution;
- The criminal qualification of the facts;
- The capacity in which the suspect is involved in the facts (suspect, accomplice);

- The existence of pleas such as self-defence;
- The existence of reasons to exempt the suspect from criminal responsibility (e.g. insanity);
- The appropriate jurisdiction for the prosecution; and
- The opportunity for prosecution.

For the purpose of this study, reference to Article 6 of the CCP by Marguery (2008:84-85) above relates to the repeal of the criminal law.

The participant in Sample D was asked: “Are there any specific Standing Orders/Standard Operating Procedures/Legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation? Please explain?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated as follows: “Yes, the prosecutor leads the investigation as provided for in the CCP.”

The response of the participant indicates that in France, the investigators are obligated to meet with the prosecutors to discuss cases that are under investigation. It is evident that when executing their duties, investigators are required to comply with Article 12 of the CCP and Article 74 of the CCP.

In addition to directing the investigation, the prosecutor may refer the investigation to the judge of instruction if he/she deems it necessary to do so. French Ministry of Justice (2012:10) states that the referral to the judge of instruction is compulsory only in the serious and complex cases, such as murder. The judge of instruction has the power to detain people during the investigation (Bullier, 2001:49). It appears that the main responsibility of the judge of instruction is to establish the facts and determine whether the prosecution is well founded, mainly in serious and complex cases. At the finalisation of the investigation, the judge of instruction may decide to refer the accused to stand trial in court or not. Instead of adjudicating cases, such as a common-law judge would, the judge of instruction is responsible for leading the criminal investigation, which includes interviewing the accused, the victim, and witnesses; and preparing the case file to be passed on to the sitting judge(s) for adjudication (O’Connor, 2012:17-18). It would appear that the accused person is

compelled to answer questions posed by the judge of instruction during the investigation. In this regard, Bryett and Osborne (2000:40) state that the record of the judge of instruction becomes the basis of the case against the accused. This sentiment is in line with Article 49 of the CCP, which prohibits the judges of instruction to take part in the trial of the criminal cases they dealt with in their capacity as judges of instruction. With regard to the subsequent proceedings, Pradel (in Bermann & Picard, 2013:143) states that a sitting judge is required to convict the accused person if certain proof is presented to him/her.

As evident in the discussion above, in France, the complaints of crime are reported to the police stations and serious incidents of crime are investigated by the OPJ. Any complaint filed is recorded in an official report, for which a receipt is immediately issued to the victim and if the victim so requests, a copy of the official report is immediately given to him or her in terms of Article 15 of the CCP. Article 15 of the CCP further provides that where the complaint filed is in respect of a person whose identity is unknown, the victim is informed that he/she will be told of the outcome of his or her complaint by the district prosecutor only if the perpetrator of the offence is identified.

The participant in Sample D was asked: "What is the role fulfilled by the prosecutor in a murder investigation?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: "The prosecutor supervises the investigation. The prosecutor ensures that relevant evidence is gathered within the ambit of the law."

The prosecutor's role in a murder investigation is to supervise the investigation and, where necessary, refer the case to the judge of instruction for further investigation. This role is legislated in terms of Article 74 of the CCP. The response of the participant corresponds to the opinion of Marguery (2008:84-85) and to Article 74 of the CCP.

### **5.5.2.3 Constitution of the Republic of France of 1958**

France is a constitutional democracy (Bryett & Osborne, 2000:40). According to the French Ministry of Justice (2012:3), the Fifth Constitution of the Republic of France

of 1958 (Constitution of France) was promulgated on 4 October, 1958 and is the highest norm in the internal hierarchy. Marguery (2008:60) asserts that the Constitution of France has been amended many times since 1958 and today provides that:

- the President of the Republic is the guarantor of the independence of the Judiciary;
- the President of the Republic is assisted in this task by the High Council of the Judiciary consisting of two sections, namely: a section with jurisdiction over judges (*magistrats du siège*) and a section with jurisdiction over public prosecutors (*magistrats du parquet*);
- a separate act determines the status of the members of the Judiciary;
- judges may not be removed from the office; and
- the Judiciary, guardian of individual liberty, enforces this principle under the conditions stipulated by legislation.

Troper (in Bermann & Picard, 2008:1) submits that the current Constitution of France is the latest in a list of 15 constitutions and is divided into sections termed “*Titles*” and each Title is further divided into “*Articles*.” France considers the rights of its citizens to be the most vital and these rights are guaranteed in the Constitution of France.

In the preamble to the Constitution of France, it is stated that:

... the French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004 (France, 1958).

Article I, which is not attached to any Title, states that France shall be an indivisible, secular, democratic and social Republic. It is further stated that France shall ensure the equality of all citizens before the law, without distinction of origin, race or religion.

The Constitution of France does not refer to the police or police force but rather to the armed forces. According to Article 30 of Title III of the Constitution of France, the government shall have at its disposal the civil service and the armed forces. As indicated by Heuni (2001:15), the French police are divided into two main bodies,

namely: The Gendarmerie, who fall within the Defence Ministry, and the National Police, who are under the Ministry of Interior. However, with regard to the prosecution service, Article 64 of Title VIII of the Constitution of France states that the President of the Republic shall be the guarantor of the independence of the Judicial Authority and shall be assisted by the High Council of the Judiciary. In the subsequent Article 65 of Article VIII of the Constitution of France, it is stated, *inter alia*, that the High Council of the Judiciary shall consist of two sections - one with jurisdiction over judges, and the other over prosecutors. The section with jurisdiction over prosecutors shall comprise, among others, the President of the Republic, the Minister of Justice, five prosecutors and one judge.

According to the French Ministry of Justice (2008:26), the role of the prosecutors is to receive complaints, decide what action to take when an offence is committed, and oversee the police investigation. Article 34 of Title V of the Constitution of France provides for the determination of the rules concerning, *inter alia*, the determination of serious crimes and the penalties and criminal procedure. Notably, Article 66 of Title VIII of the Constitution of France states that no one shall be arbitrarily detained and that the Judicial Authority shall ensure compliance with this principle in the conditions laid down by statute. In the subsequent Article 66(1) of Title VIII of the Constitution of France, it is stated that no one shall be sentenced to death.

The location of the prosecutors in terms of the Constitution of France falls within the Judicial Authority. In this regard, Marguery (2008:60) asserts that the prosecutors and judges are members of the same professional corps, i.e. *the magistrature*, which is supervised by the High Council of the Judiciary; however, the ultimate responsibility rests with the Minister of Justice. In accordance with the thoughts expressed by Marguery (2008:60), Robert (in Ruggiero & Ryan, 2013:124) states that French prosecutors belong to the same body of judges, a status that grants them quasi-judicial powers beyond the limitation of criminal proceedings. This ambiguity concerning the status of the prosecutors impacts upon the entire justice system (Robert (in Ruggiero & Ryan, 2013:124)). For that reason, the criminal investigation and prosecution process in France is, to a certain extent, under the control of the prosecutor and judge of instruction, especially in serious offences.

The participant in Sample D was asked: “Does the prosecuting authority that prosecutes murder cases form part of the French National Police?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. In response to the question, the participant stated as follows: “The prosecuting authority falls within the Judicial Authority.”

The response of the participant is, therefore, consistent with the opinions of Marguery (2008:60) and Robert (in Ruggiero & Ryan, 2013:124), namely that the prosecuting authority does not form part of the French National Police but the Judicial Authority. It is clear that in France, the investigators and prosecutors belong to separate bodies or institutions. However, of concern is the minimum role played by the investigators in the investigation phase, as it is evident that the prosecutors wield enormous powers during this phase, as alluded to by Marguery (2008:83). Nonetheless, at the end of the investigation phase, the prosecutor has the discretion to prosecute or decline the prosecution. The prosecutor holds the power to initiate a prosecution and to determine the nature of any charge (Bryett & Osborne, 2000:41). If the prosecutor decides to prosecute, he/she would have to rely on the evidence of witnesses such as the investigator of the case and the objective evidence in the form of exhibits to present his/her case before the presiding officer.

The participant in Sample D was asked: “What is the role of the police investigator in the prosecution process of murder cases?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant responded as follows:

The investigator will have to present the evidence he or she gathered during the investigation of case. It is not the responsibility of the investigator to ensure that the witnesses are present at court. The court officials are responsible for serving of subpoenas to the witnesses.

When looking at the response of the participant, it is evident that the sole responsibility of the police investigator in the prosecution process of a murder case is to be a witness at court. This response corresponds to the submissions of Marguery (2008:84-85) and Pradel (in Bermann & Picard, 2013:143).

The CCP makes it clear that the prosecutor supervises the investigators during investigation. However, upon finalisation of the first stage of investigation, he/she may refer the case for further investigation to the judge of instruction. While the second stage of investigation, conducted by the judge of instruction, should be understood and appreciated in the context of ensuring that the correct perpetrator goes to trial, it appears to be undermining the authority of the prosecutor. This is so because it is the prerogative of the prosecutor to decide whether to prosecute or not. According to Bryett and Osborne (2000:43), there are aspects of the French CJS that are helpful in order to achieve efficiency and effectiveness. These authors identify the early involvement of the prosecutor in the investigation, as one of the aspects. They argue that the early involvement of the prosecutor is helpful in matters that are not worthy of the courts. This means that the prosecutor may decide against charging the suspect and enrolling the case if it is not court-ready.

The participant in Sample D was asked: "What are the advantages of this murder investigation model used by the French National Police?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant did not respond to this question, on the basis that he had said there was no specific model used in the French National Police when investigating murder cases. However, as described above by Bryett and Osborne (2000:43), the early involvement of the prosecutor in the investigation is advantageous. According to Bryett and Osborne (2000:44), whilst the early involvement of the prosecutor is accepted in France, it is unlikely to be regarded as suitable in an environment where a clear separation of the investigative and prosecution roles is regarded as necessary for the credibility of the system overall.

The participant in Sample D was asked: "What are the disadvantages of this murder investigation model used by the French National Police?" This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant did not respond to this question on the basis that he had said there was no specific model used in the French National Police when investigating murder cases. However, Bryett and Osborne (2000:44) are of the view that the early involvement of the prosecutor in

the investigation is undesirable in an environment where a clear separation of the investigative and prosecution roles is regarded as necessary for the credibility of the system overall.

Various authors French Ministry of Justice (2008:26), Harris (2013:329), (Marguery (2008:83) and Pradel (in Bermann & Picard, 2008:136)) cited in this paragraph indicate that in the French CJS, the involvement of the prosecutor in the early stages of the criminal investigation is a mandated requirement. The role of the prosecutor is to lead and direct the investigation and if sufficient evidence exists, prosecute the case. In addition, in terms of Article 12 and Article 14 of the CCP, the PJ are charged with the task of discovering violations of criminal law, gathering evidence of such violations, and identifying the perpetrators under the direction of the prosecutor.

The participant in Sample D was asked: “What is your understanding of the prosecution-led investigation?” This was an open-ended question and the participant could provide his own answers to the question. No choices were provided from which he could choose. The participant stated the following: “In France, it is more an under-prosecution control police investigation.”

It is clear from the response of the participant that he was not aware of the term “prosecution-led investigation” and sought to explain it in the context of France. It is evident that in France, the prosecutors do not only guide the investigators but are deeply involved in the criminal investigations. Accordingly, the response of the participant should be understood in the context of France, which is consistent with the literature. In the following discussion, the researcher compares the criminal investigation and prosecution procedures of Malawi, France and South Africa.

## **5.6 SYNOPSIS OF THE COMPARISON OF CRIMINAL INVESTIGATION AND PROSECUTION PROCEDURES IN MALAWI, FRANCE AND SOUTH AFRICA**

Interest in learning more about different systems of criminal justice can be shaped by a variety of goals of exploration, understanding and reform (Nelken (in Maguire et al., 2002:176)). According to Turner (in Ross & Thaman, 2016:35), different jurisdictions around the world have different preferences in respect of criminal investigation and prosecution procedures. Derived from the interpretation of various

sources in this chapter and other chapters, Table 5.2 provides a synopsis of the comparison of criminal investigation and prosecution procedures in Malawi, France and South Africa:

**Table 5.2: Synopsis of the comparison of criminal investigation and prosecution procedures in Malawi, France and South Africa**

| <p>In all three countries, the criminal investigation typically begins when the police become aware of the crime, either reported by the witnesses, victims or self-initiated by the police. Similarly, once the case has been registered, it is allocated to the Criminal Investigation Department for further attention.</p> |  |   |
|--|--|---|
| <b>Malawi</b>  | <b>France</b>  | <b>South Africa</b>   |
| Case allocation to the investigator.   | Notification of the offence to the prosecutor.   | Case allocation to the investigator.  |
| Criminal investigation takes place.  | Case allocation to the investigator.   | Criminal investigation takes place.   |
| Legal guidance and may be provided by the prosecutor as and when requested by the investigator.  | Criminal investigation is strictly conducted under the supervision and direction of the prosecutor.  | Legal guidance may be provided by the prosecutor as and when requested by the investigator.   |
| Upon finalising investigation, the decision to prosecute or not is taken by the prosecutor.  | Case may be referred to the judge of instruction by the prosecutor for further investigation. If the evidence is sufficient, the prosecutor may proceed with prosecution without referring the case to the judge of instruction. | Upon finalising investigation, the decision to prosecute or not is taken by the prosecutor.   |
| <p>If the prosecutor decides to prosecute, case is brought before the criminal court for trial.</p> <p>The prosecutor may refer the case back to the investigator if further investigation is required or decline to prosecute.</p>  | <p>Further investigation is conducted by the judge of instruction and may be assisted by the investigator/s.</p>   | <p>If the prosecutor decides to prosecute, case is brought before the criminal court for trial.</p> <p>The prosecutor may refer the case back to the investigator if further investigation is required or decline to prosecute.</p> |
| The prosecution process takes place.   | Once the judge of instruction is satisfied with the evidence gathered, the case is referred  | The prosecution process takes place and the prosecutor may not  |

| In all three countries, the criminal investigation typically begins when the police become aware of the crime, either reported by the witnesses, victims or self-initiated by the police. Similarly, once the case has been registered, it is allocated to the Criminal Investigation Department for further attention. |   |   |
|---|---|---|
| <b>Malawi</b>   | <b>France</b>   | <b>South Africa</b>   |
|   | back to the prosecutor to institute criminal proceedings.<br><br>A different judge presides over the trial in the criminal court. | discontinue after the trial has started.                          |
| The prosecutor may discontinue the prosecution at any stage before judgement is delivered.  | Prosecution takes place, led by the prosecutor.   | The presiding officer passes the verdict of guilty or not guilty. |
| The presiding officer passes the verdict of guilty or not guilty.   | The judge passes the verdict of guilty or not guilty.   | If the accused is found guilty, the sentencing process begins.    |
| If the accused is found guilty, the sentencing process begins.  | If the accused is found guilty, the sentencing process begins.  | The presiding officer imposes the appropriate sentence.           |
| The presiding officer imposes the appropriate sentence.   | The presiding officer imposes the appropriate sentence.   |   |

(Source: Compiled by researcher)

Table 5.2 above indicates the criminal investigation and prosecution procedures applied in Malawi, France and South Africa. It is assumed that during the criminal investigation phase, the suspected offender would have been arrested before the case is brought to court for the prosecution phase to begin.

Of utmost importance to note, an aspect that forms the basis of this study, is the early involvement of the French prosecutors during the investigation phase. It is clear that in France, prosecutors do not only supervise the criminal investigation but also control and direct this phase. In addition, the relationship between the prosecutors and judges is noted in the criminal investigation and prosecution procedures, as highlighted by Bullier (2001:49), Harris (2013:329) and Marguery (2008:60).

The CJSs of Malawi, France and South Africa share the following features with regard to the criminal investigation phase:

- It is the responsibility and the function of the police investigators to conduct criminal investigation; however, in France the police investigators are supervised by the prosecutors.
- In Malawi and South Africa, once the case is allocated to the police investigator, he/she is expected to independently conduct and finalise the investigation.
- In Malawi and South Africa, referral of a criminal case to the prosecution service during the investigation phase is not a legislated requirement.
- In Malawi and South Africa, police investigators may seek legal guidance and direction from the prosecutor during the investigation phase.

When analysing these similarities, the reasonable inference that gives rise to these resemblances could be that Malawi and South Africa were previously colonised by Britain, hence largely follow the English common law and its procedures, which are adversarial in nature, unlike France, which uses an inquisitorial criminal justice procedure. It is important to note that in France, the police are required by legislation to report the incidents of crime to the prosecution service. In turn, French prosecutors get actively involved in the criminal investigation process.

Besides the similarities mentioned above, it is important to highlight the following differences in the prosecution phase in Malawi, France and South Africa:

- In Malawi, a prosecutor may use his/her discretion to discontinue the prosecution of the accused person after the said accused person has pleaded.
- In France and South Africa, prosecutors are required to proceed with prosecution once the accused person has pleaded. The trial would have to continue until its finality with a finding of guilty or not guilty by the presiding officer.
- In Malawi and South Africa, prosecutors enjoy a degree of independency from the Judicial Authority, while in France, both the judges and the prosecutors belong to the same body of authority.

- In Malawi and South Africa, judges of instruction do not exist, while in France the judges of instruction conduct further investigations on behalf of the prosecutors.

When perusing the CJSs of Malawi and France, it is evident that the South African CJS is similar to that of Malawi with regard to discontinuing the prosecution phase. One might argue that such similarities are based on the geographical locations of these countries, in addition to their historical background.

## **5.7 SUMMARY**

The aim of this Chapter 5 was to explore the criminal investigation and prosecution procedures of the following countries: Tanzania, the USA, Malawi and France. Tanzania and the USA were included in this study as part of the literature review, while Malawi and France were compared to South Africa.

As shown in this chapter, the criminal investigation and prosecution procedures of Malawi, France and South Africa are characterised by contrasts and similarities. There are various significant reasons that give rise to these contrasts and similarities that can easily be identified, namely: the nature of the CJS in each country that is either inquisitorial or adversarial in nature; legal framework of each country, their historical backgrounds and geographical locations. In Chapter 6, the researcher discusses the research findings, recommendations and conclusion.

## **CHAPTER 6**

### **RESEARCH FINDING, RECOMMENDATIONS AND CONCLUSION**

#### **6.1 INTRODUCTION**

Chapter 6 presents the findings, recommendations and conclusion relating to the research problem, research aims, purpose of the research, research objectives, and research questions, as discussed in Chapter 1. This research was driven by the constant increase in murder cases, as evident in the crime statistics of the SAPS from 2013/14 to 2017/18. On the other hand, the researcher established that the prosecution-led investigation model is successful in commercial crime cases, judging by the average conviction rate of 93.9% that was recorded by the NPA from 2002/03 to 2016/17.

The methodological framework of this study, as articulated in Chapter 2, was based on a qualitative approach. In this study, the research methodology consisted of literature reviews and conducting interviews with the relevant selected participants as a means of data collection in order to discern the opinions of the participants regarding the problem researched. The interview meetings with the relevant research participants were used to explore their experiences with regard to criminal investigation and prosecution procedures, with specific reference to murder cases. The findings were analysed by the researcher, following the Tesch's data-analysis method by means of the interpretations.

In Chapters 3, 4 and 5, an analysis of the applicable literature was conducted, both national and international, to gain an understanding of the relevant international legislation and guidelines. The South African legal framework with regard to criminal investigation and prosecution procedures was explored in order to explain the current murder investigation model. International experiences in terms of criminal investigation and prosecution procedures were compared to the South African model to address the similarities and differences. The researcher explored the models from the selected countries, and the interviews conducted were used as a foundation to describe and explain the future application of the findings emanating from this research.

## 6.2 RESEARCH AIMS

The aim of this study was to analyse the prosecution-led investigation model in the investigation of murder cases, to discover new facts and their correct interpretations, to revise accepted conclusions, theories, or laws in the light of newly discovered facts, or the practical application of such a conclusion. By analysing the prosecution-led investigation model in the investigation of murder cases, the purpose of the research was to gain a better understanding of this model by way of steps that were explorative, descriptive and explanatory so as to establish, develop and provide practical guidelines, procedures and recommendations to the management of the SAPS.

In order to achieve the aim of this research, the following objectives were formulated:

- To compare the current investigation model used by the SAPS in murder cases to the intelligence-led investigation model.
- To explore and describe the meaning of the prosecution-led investigation model.
- To identify international experiences in terms of criminal investigation and prosecution procedures.
- To develop practical guidelines, procedures and recommendations for the SAPS to successfully investigate murder cases.

This study offered an original contribution to the prosecution-led investigation model in murder cases. This, in turn, contributes to the body of knowledge, with the intention to influence the SAPS' legal framework of investigation of serious and violent crimes such as murder.

## 6.3 RESEARCH QUESTIONS

This study sought to answer the following research question: **What is the significance of the prosecution-led investigation as a model to investigate murder cases?** In order to provide direction and structure to the study, to understand the research problem, to enable the researcher to contribute to the solution thereof, and to achieve the objectives of this study, the following sub-research questions were formulated and answered in this study:

- How does the current investigation model used by the SAPS in murder cases compare to the intelligence-led investigation model?
- What is the prosecution-led investigation model?
- What are the international experiences in terms of criminal investigation and prosecution procedures?
- What practical guidelines, procedures and recommendations can be offered to SAPS to successfully investigate murder cases?

## **6.4 FINDINGS**

The research findings, which are based on the information obtained from both international and local sources, as well as from the responses of study participants, are reported on to answer each of the specific sub-research questions, as follows:

### **6.4.1 Current investigation model used by the SAPS in murder cases versus the intelligence-led investigation model**

The first sub-research question relates to how the current investigation model used by the SAPS in murder cases compares with the intelligence-led investigation model. The data collected and responses from interviews answered this question in terms of the following:

#### **6.4.1.1 Definition of criminal investigation**

The literature review revealed that criminal investigation is a systematic search for the truth, with the primary purpose of finding a positive solution to the crime with the help of objective and subjective clues. It involves the following process:

- Discovering.
- Collecting.
- Identifying.
- Preparing.
- Analysing.
- Preserving evidence.

The data collected from the SAPS participants interviewed revealed that the majority of the participants agreed with the definition derived from the literature review. The majority of the responses of the participants included the systematic

search for the truth to prove the guilt or not of the offender in their definition of criminal investigation. Although not precisely provided for in the definition, all responses of the participants were to some extent indirectly relevant to the definition of criminal investigation. Responses such as identification and individualisation of evidence, identification of witnesses, and arrest and prosecution of the suspect were frequently mentioned and are relevant to criminal investigation.

#### **6.4.1.2 Objectives of criminal investigation**

The literature review revealed that the objectives of criminal investigation are as follows:

- Detecting crime.
- Identifying crime.
- Locating and identifying suspects.
- Locating, recording and processing evidence.
- Gathering objective and subjective evidence.
- Recovering property.
- Discovering certain facts about the crime.
- Arresting the perpetrator.
- Preparing for trial.
- Getting the accused convicted.

The data collected from the SAPS participants interviewed revealed that the majority of the participants included the key elements of the objectives of criminal investigation as contained in the literature. Their responses were that the objectives of criminal investigation are to gather evidence that will be presented in court, and to identify the perpetrator and secure a conviction. However, the participants neglected to include recovering property, detecting crime, and preparing for trial, as some of the objectives identified in the literature.

#### **6.4.1.3 Definition of murder**

The literature review defined murder in the context of South Africa as the unlawful and intentional killing or causing the death of another person. The data collected from the SAPS participants interviewed revealed that the majority of the participants

agreed with the definition in the context of South Africa as provided by the literature. However, one participant stated that murder is the killing of another person. This response cannot be comprehensively aligned with other responses as well as with the literature.

The literature review defined murder in the context of Malawi as the killing of human being with malice aforethought by unlawful act or omission. The data collected from the MPS participant interviewed revealed that murder, in the context of Malawi, is the killing of a human being with malice aforethought by unlawful act or omission. This response was consistent with the definition provided for in literature.

The literature review defined murder in the context of France as the wilful causing of the death of another person, which is punishable with thirty years' criminal imprisonment. The data collected from the FNP participant interviewed revealed that murder, in the context of France, is the wilful causing of the death of another person, which is punishable with thirty years' criminal imprisonment. This response was consistent with the definition provided in the literature.

The literature review and the data collected from the participants of the SAPS, the participant of the MPS and the participant of the FNP revealed that South Africa, Malawi and France have different definitions for murder. In this regard, it is understood that the legal requirements of each country relating to murder are the root cause that give rise to the differences in murder definitions.

#### **6.4.1.4 Elements of murder**

The literature review described the elements of murder in the context of South Africa to entail:

- Unlawfulness.
- Killing.
- Another person.
- Intention.

The data collected from the SAPS participants interviewed revealed that the majority of the participants included the key elements of murder as contained in the

literature. One participant mentioned only “unlawful” and “intention” as elements of murder. With regard to “culpability,” the literature illustrated two requirements that have to be met, i.e. the intention, and the mental state of the accused person. In this regard, only one participant was able to mention culpability as contained in the literature.

The data collected from the literature review and participant of the MPS interviewed, revealed that the elements of murder in the context of Malawi are:

- A person must have demonstrated malice aforethought.
- Killing.
- Of the person.
- The act must be unlawful.

The data collected from the literature review and the participant of the FNP interviewed, revealed that the elements of murder in the context of France are:

- Causing death.
- Of another person.
- Wilful.

From the literature review and the data collected from the participants of the SAPS, the participant of the MPS and the participant of the FNP, it is evident that South Africa and Malawi share similar views with regard to the elements of murder. In both countries, these elements are:

- Unlawful.
- Intention (malice aforethought).
- Killing.
- Of a person.

With regard to France, this country differs from both South Africa and Malawi in that the element “unlawful” does not feature in the literature and was not mentioned by the participant. Nonetheless, it is evident that in all three countries (South Africa, Malawi and France), the intentional killing of a person constitute murder.

#### **6.4.1.5 Reporting of murder cases**

The literature review indicated that there are various mechanisms in which murder cases can be reported to the police in South Africa, Malawi and France. These include reports made by the witnesses, members of the communities and any other persons who get to know about the murder incidents. Reports can be made personally at the police stations, to members of the police, and by telephonic contact with police stations. In addition to these reporting mechanisms, in France any person with knowledge of a criminal offence may report it to:

- A public prosecutor.
- The judicial police.
- A judge of instruction.
- A criminal court.

The data collected from the SAPS participants, the participant of the MPS and the participant of the FNP interviewed, revealed that the mechanisms of reporting murder cases to the police identified in the literature are similar in all three countries (South Africa, Malawi and France). The only exception that can be identified is found in the literature relating to a public prosecutor, the judicial police, a judge of instruction and a criminal court, in the context of France. In Malawi, the participant of the MPS mentioned the reports made by members of the public to the community forums and chiefs. Although there was no literature to support this response, it is clear that this is one of the mechanisms of reporting of murder cases in Malawi.

#### **6.4.1.6 Assigning of murder cases to the police investigators**

The literature review and data obtained from the participants of the SAPS interviewed indicated that in the context of South Africa, once the preliminary investigation has been conducted by the police investigator on standby, the case docket is handed over to the Detective Branch Commander, who in turn assigns it to the new police investigator or to the same police investigator who conducted the preliminary investigation, for further investigation. The police investigator assigned to the case must be skilled, experienced, have specialist knowledge and must be attached to the Violent Crime Group.

The data obtained from the participant of the MPS interviewed revealed that in the context of Malawi, murder cases are allocated by the commanders to the police investigators. There was no literature available to be compared with the response of the participant.

The data obtained from the FNP participant interviewed and the literature review revealed that in the context of France, once the case has been registered, the police station informs the Central Directorate of the Judicial Police, who in turn informs the district prosecutor, goes forthwith to the crime scene and records any appropriate findings. The district prosecutor effectively directs and leads the investigation process.

#### **6.4.1.7 Specific training that the police investigator has to undergo before being assigned to investigate murder cases**

The literature review and data collected from the interviews with the participants of the SAPS indicated that in the context of South Africa, the SAPS has the Detective Learning Programme as one of the interventions that seek to assist new police investigators to develop the skills required to be competent in murder cases. The Detective Learning Programme includes the methods and applicable laws relating to the investigation of murder cases.

The data collected from the MPS participant and the literature review indicated that in the context of Malawi, the new police investigator must undergo the Criminal Investigation Course and the Homicide Training Course before being assigned to investigate murder cases.

The data collected from the FNP participant revealed that in the context of France, the new police investigator has to undergo the six months basic Investigators Training Course before being assigned to investigate murder cases. Once the course has been successfully completed, the new police investigator is further subjected to coaching by an experienced police investigator.

#### **6.4.1.8 Role (duties and functions) of the police investigator in the investigation of murder cases**

The literature review identified the roles (duties and functions) of the police investigator in the investigation of murder cases in respect of the following:

- **Preliminary investigation**

- Receive the case docket as soon as possible.
- Analyse the information in the case docket to identify the elements of murder.
- Visit the crime scene as soon as possible.
- Preserve and record the crime scene.
- Establish what happened by observing the crime scene.
- Identify the victim.
- Identify and interview the witnesses.
- Search the crime scene.
- Identify, collect and preserve evidence.
- Where required, summon experts to the crime scene.
- Where possible, arrest the suspect.

- **Further investigation**

- Obtain statements from witnesses.
- Obtain reports from the experts.
- Trace the suspect through intelligence-led investigation.
- Conduct further investigation after the arrest of the suspect.
- Gather the facts and evidence for court purpose.

The data collected from the SAPS participants interviewed revealed that in the context of South Africa, there are various duties and functions that the police investigator should carry out in the investigation of murder cases. These include attendance of the crime scene, collection of evidence, identification and arrest of the suspect. Some participants individually mentioned the preservation of the crime scene, identification of the victim, opposing bail application, searching the crime scene and securing conviction. Furthermore, the roles such as interviewing the suspects and witnesses, attending the autopsy, securing the exhibits, tasking the informers and intelligence service, obtaining reports from the experts, conducting further investigation, and presenting the case to court were also mentioned by the participants of the SAPS.

The data obtained from the participant of the MPS interviewed revealed that in the context of Malawi, the role (duties and functions) of the police investigator is to gather evidence that can be used in the court of law to prosecute the offender.

The data obtained from the participant of the FNP interviewed revealed that in the context of France, the FNP participant expressed similar views as those of the participants of the SAPS and participant of the MPS in respect of the roles (duties and functions) of the police investigator in agreement with the literature. However, the FNP participant added that the police investigator must immediately inform the public prosecutor about the murder incident.

The literature review and the data obtained from the participants of the SAPS, the participant of the MPS and the participant of the NFP interviewed, revealed that these countries (South Africa, Malawi and France) share the generic roles (duties and functions) of the police investigator in the investigation of murder cases, as highlighted in the literature. However, in South Africa and Malawi, the duty to inform the public prosecutor about the murder incident is not a requirement.

#### **6.4.1.9 Role fulfilled by the prosecutor in a murder investigation**

The data obtained from the literature review indicated that the role fulfilled by the prosecutor in a murder investigation in the context of South Africa is to ensure that the evidence gathered is sound and can be presented before the court. The literature further showed the following generic role in respect of the investigations:

- Prosecutors should give due attention, or shall make every effort to withdraw the prosecution, when an impartial investigation shows the charge to be unfounded.
- In accordance with national law, prosecutors shall consider waiving prosecution, discontinuing proceedings, or diverting a criminal case from the formal CJS, with the utmost respect for the rights of the suspects and victims.

The data obtained from the participants of the SAPS indicated that the majority of the participants were of the view that the role fulfilled by the prosecutor in a murder investigation is to guide the investigation. One participant mentioned the bail application as the role fulfilled by the prosecutor in a murder investigation. This response was not supported by the literature.

The data obtained from the literature review indicated that in the context of Malawi, the role of the prosecutor in a murder investigation is to ensure that sufficient evidence has been gathered by the police investigators before referring the case to

the High Court by using a process known as a “summary committal procedure.” The data obtained from the participant of the MPS expressed similar views as found in the literature in respect of the role fulfilled by the prosecutor in a murder investigation.

The data obtained from the literature review indicated that the role fulfilled by the prosecutor in the context of France is to direct and lead the investigation conducted by the police. The data obtained from the participant of the FNP expressed similar views as found in the literature in respect of the role fulfilled by the prosecutor in a murder investigation.

#### **6.4.1.10 Role of the police investigator in the prosecution process of murder cases**

The literature review presented the role of the police investigator in the prosecution process of murder cases to:

- ensure that the necessary certificate in the case docket has been completed by the Detective Branch Commander that the investigation has been finalised and the matter is ready for trial;
- ensure that the case docket is forwarded to the prosecutor at least three days before the trial date, enabling him/her to prepare;
- ensure that all witnesses have been properly subpoenaed to attend and be available for consultation with the prosecutor if necessary;
- ensure that all exhibits handed in are available for court;
- attend court on the trial date and remain present, unless otherwise arranged with the prosecutor;
- comply with requests for an outstanding investigation to be done;
- remain present and support the prosecutor during the trial.

The data obtained from the SAPS participants interviewed revealed that the majority of participants agree with some of the key points contained in the literature. They stated that the investigator should ensure that witnesses and exhibits are present in court and that he/she is present at court and give evidence where necessary. Only one participant stated that it is the responsibility of the investigator to ensure that the accused is present at court, a view that is not supported by literature.

#### **6.4.1.11 Specific standing orders/Standard operating procedures/legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation**

The data obtained from the interviews with the SAPS participants and participant from MPS as well as the literature review indicated that there are no specific Standing Orders/Standard Operating Procedures/legislation that compel police investigators to meet with prosecutors and discuss cases that are under investigation. One participant stated that it is common practice for the police investigators to meet with prosecutors.

Data obtained from the participant of the NFP interviewed and the literature revealed that the prosecutor leads the investigation, as provided for the legislation.

#### **6.4.1.12 Specific procedures that have to be followed by the police investigator upon receiving a new murder case**

The literature review indicated that there are various specific procedures that have to be followed by the police investigator upon receiving a new murder case. These procedures include the following:

- Visiting the crime scene as soon as possible.
- Validating the preliminary investigation conducted by the first officer.
- Identifying the evidence.
- Interviewing witnesses.
- Identifying the perpetrator.
- Searching the crime scene.
- Connecting the perpetrator with the crime scene.
- Proving an element of a crime.
- Arresting the perpetrator.
- Confirming or refuting the veracity of statements made by witnesses.

The majority of the participants of the SAPS agree with the literature that the police investigator should obtain the case docket and attend the crime scene as soon as possible, to verify the preliminary investigation conducted by the first officer. Seven of the participants mentioned interviewing the witnesses. These responses should be understood in the context of specific procedures that have to be carried out

during the preliminary investigation and to ensure the accuracy of such statements. Similarly, summoning of the experts to the crime scene, as mentioned by five participants, forms part of the preliminary investigation. What is not supported by the literature is the response of one participant who stated that the police investigation has to comply with the instructions of the Detective Branch Commander. The Detective Branch Commander would have insight into the case docket after the preliminary investigation has been conducted and the docket brought for 24-hour inspection. Accordingly, the instructions of the Detective Branch Commander can be followed only during the further investigation phase.

The data obtained from the participant of the MPS revealed some similar views expressed by the participants of the SAPS in respect of attending the crime scene and conducting the investigation. However, this participant added that the police investigator has to write the First Serious Crime Report to the Director of CID through the Regional Criminal Investigation Officer, and provide a progress report after ten days via the chain of command.

The data obtained from the participant of the FNP revealed some similar views as those expressed by the participants of the SAPS and the participant of MPS in respect of attending the crime scene and conducting the investigation. This participant added that the police investigator has to inform the district prosecutor about murder incident.

The data obtained from the literature review and the participants of the SAPS, the participant of the MPS and the participant of the NFP interviewed, revealed that these countries (South Africa, Malawi and France) share the generic, specific procedures that must be followed by the police investigator upon receiving a new murder case, as highlighted in the literature. Most importantly, it is evident that the police investigator must attend the crime scene and gather evidence.

#### **6.4.1.13 Existence of task teams or specialised units investigating murder cases at station level**

The data collected from the SAPS participants interviewed, revealed that at station level there are Violent Crime Groups in the Detective Service that are responsible

for investigating violent crimes, including murder. These Violent Crime Groups reports directly to the Detective Branch Commanders.

#### **6.4.1.14 Existence of task teams or specialised units investigating murder cases in Malawi Police Service**

The data obtained from the interviewed participant of the MPS and the literature review indicated that the MPS has Homicides Sections responsible for murder cases. These Homicides Sections are allocated at the National Headquarters, regional and station levels.

#### **6.4.1.15 Existence of task teams or specialised units investigating murder cases in French National Police**

The data obtained from the interviewed participant of the FNP and the literature review revealed that the Central Directorate of the Judicial Police is responsible for murder investigation. This department is divided into the following sub-categories:

- Anti-terrorism: responsible for counter-terrorism.
- Organised crime and financial delinquency: specialised investigation offices in that field.
- Forensic and crime scene investigations: responsible for forensics and crime scenes.
- Computer and internet crime: responsible for computer and internet crimes.

#### **6.4.1.16 Police investigators' interaction with the prosecuting authority while murder cases are still under investigation**

The data obtained from the literature review revealed that the police investigators, in the context of South Africa, interact with the prosecuting authority by means of instructions in the investigation diary only when the suspect has been arrested and processed for the first court appearance. The other interaction is noted when the case docket is submitted to the Senior Public Prosecutor for a decision. It is evident from the literature review that such interaction takes place mainly by means of instructions in the investigation diary of the case docket. Another rare face-to-face interaction situation is when the police investigator wants to execute the search or arrest warrant for the suspect.

The data obtained from the participants of the SAPS revealed that the majority of the participants support the literature review that the interaction between the police investigators and prosecuting authority while murder cases are still under investigation takes place mainly by means of instructions in the investigation diary. There were four participants who indicated that the police investigators visit the prosecutors in their offices before an arrest can be made. This response, too, is well supported by the literature because when the police investigator wants to apply for the search or arrest warrant, the prosecutor will have to personally understand the background of the case by means of face-to-face interaction with the police investigator before such a warrant can be signed.

The data obtained from the participant of the MPS indicated that in Malawi, the police investigators do interact with prosecutors at a later stage of the investigation. This is evident when the accused has been charged and brought before the court. At this stage the prosecutor will have to peruse the case docket to ensure that there is sufficient evidence for a successful prosecution. Should the prosecutor identify gaps in the investigation, he/she would have to instruct the investigator to conduct further investigation and further detain the accused. Further detention of the accused is referred to as "*committal*."

The data obtained from the participant of the FNP and literature review indicated that, in France, the operations of the Central Directorate of the Judicial Police are supervised by the prosecutors. Effectively, the police investigators take orders from the prosecuting authority.

The data obtained from the literature review, as well as the participants of the SAPS, MPS and FNP interviewed indicated that South Africa and Malawi have generic procedures that are followed to interact with the prosecuting authority. This is due to the separation of powers that exist between the police and prosecution authorities in these countries. Similar views cannot be expressed in respect of France as the prosecuting authority in that country leads and directs the criminal investigation.

#### **6.4.1.17 Definition of the intelligence-led investigation model**

The literature review defined the intelligence-led investigation model as the process of collecting information about the illegal activities. The literature showed that there

are four main phases in the intelligence cycle, namely: Planning and Direction, Collection, Analysis and Dissemination.

The data collected from the SAPS participants interviewed, revealed that the participants did not fully understand the meaning of an intelligence-led investigation model. The participants provided various responses, ranging from collection of evidence, and acting on the information provided by Crime Intelligence. The researcher's analysis of the responses of the participants shows that the participants do not have a common, definitive understanding of the meaning of the intelligence-led investigation model in accordance with the literature but only a broad or generic understanding.

#### **6.4.1.18 Importance and relevance of intelligence in murder investigation**

The literature review identified the following important and relevant aspects of intelligence in a murder investigation:

- Crime-pattern detection.
- Crime-suspect correlations.
- Target profiles.
- Crime forecasting.
- Exception reports.
- Crime trend forecasting.
- Resource allocation.
  - Guidelines and specifically assigned responsibility for determining the kind of information that shall be kept in the files.
  - The method of reviewing the material for continued usefulness and relevance.
  - A systematic flow of pertinent and reliable information.
  - A uniform procedure for evaluating, cross-indexing and storing information.
  - A system for proper analysis of information.
  - A system capable of rapid and efficient retrieval of all information.
  - Explicit guidelines for disseminating information from the files.
  - Security procedures.

The data collected from the SAPS participants interviewed, revealed that the majority of the participants were aware of the importance and relevance of the intelligence in murder cases. A general response shared by the majority of the participants was that intelligence could lead to the arrest of the suspect, even if little information is known about him/her.

#### **6.4.1.19 Difference between the current investigation model used by SAPS in murder cases and the intelligence-led investigation model**

The literature review revealed that the difference between the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model is as follows:

- The success of the intelligence-led investigation model is measured by the quality of the intelligence report that leads to the arrest of the suspect, while in the current murder investigation model, the conviction of the suspect is always judged as a success.
- In the intelligence-led investigation model, the focus is more on the identification of the suspect, while in the current murder investigation, the attention is on gathering the evidence linking the suspect with murder.
- The application and use of the investigation methods and techniques in the intelligence-led investigation model are not subject to court scrutiny, while in the current murder investigation model, the investigator is normally called upon to testify about how he/she obtained the evidence.
- In the intelligence-led investigation model, crime intelligence operatives work undercover to gather intelligence and it is usually not known that they are SAPS members, while in the current murder investigation, the investigator is the “face” of the case and is therefore usually known by all stakeholders, including the public.

The data gleaned from the SAPS participants interviewed, revealed that the majority of participants did not have a clear understanding of the difference between the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model. It was clear that they understood the intelligence-led investigation model as something to do with Crime Intelligence, however, they were unable to link the two.

#### **6.4.1.20 Problems faced by police investigators when investigating murder cases**

The literature review identified the preliminary investigation conducted by the first officer as the main problem that police investigators face when investigating murder cases. According to the literature review, the crime scene should be attended to as soon as possible. The benefits of immediately attending to the crime scene include the following:

- Further contamination of the crime scene by the onlookers can be avoided.
- Injured persons may need emergency assistance.
- A dying person may provide crucial information regarding the crime.
- The suspect may still be in the vicinity of the crime scene.
- Witnesses may still be in the vicinity of the crime scene.
- Destruction of evidence by weather conditions may be avoided.

The data obtained from the participants of the SAPS indicated that the majority of them did not agree with the problems that police investigators face when investigating murder cases identified in the literature. Instead, these participants mentioned the reluctance of witnesses to testify against the accused person as the main problem that police investigators face when investigating murder cases. However, four participants mentioned cordoning off the crime scene as one of the problems that police investigators face when investigating murder cases. The cordoning off of the crime scene is conducted mainly during the preliminary investigation by the first officer attending the crime scene. In this regard, some participants agree with the literature. Another problem facing police investigators that was identified by three participants, relates to the delay in the arrival of experts to the crime scene. In addition, the participants individually mentioned the delay in identification of the suspect, delay in obtaining evidence from section 205 application, and the lack of eyewitnesses.

#### **6.4.2 Meaning of the prosecution-led investigation model**

The second sub-question of the research relates to the meaning of the prosecution-led investigation model. The data collected and responses from interviews answered this question in terms of the following:

#### **6.4.2.1 Objectives of prosecution**

The literature review revealed that the objectives of prosecution are as follows:

- Discovering the truth.
- Utilising an adversarial process of adjudication.
- Utilising an accusatorial system of proof.
- Minimising erroneous convictions.
- Minimising the burdens of accusations and litigation.
- Providing for lay participation.
- Representing the dignity of the individual.
- Maintaining fairness.

The data obtained from the NPA participants interviewed, revealed that they agree with the literature with regard to fairness. Furthermore, the participants added “prosecution without fear or favour” as part of the objectives of prosecution. However, the participants individually stated that the objectives of prosecution included reduction of crime, safer communities, securing convictions and appropriate sentences, compliance with the Constitution of South Africa, and dealing with crime effectively. These submissions do not differ much from the literature.

#### **6.4.2.2 Definition of the prosecution-led investigation model**

The literature study offered the definition of the prosecution-led investigation model as the process whereby the investigator constantly works in a coordinated function with the prosecutor from the start until the end of the investigation process. The intention of the prosecution-led investigation model is to ensure that the evidence gathered is relevant and legally sound for successful prosecution.

The data obtained from the SAPS participants interviewed, revealed that the majority of the participants did not understand the meaning of a prosecution-led investigation model. Their view was that the investigator and prosecutor interact about the case, while three participants stated that the prosecutor guides the investigation. Two participants indicated that the prosecutor gets involved in the early stages of the investigation. These are the only two participants who came

close to the definition as contained in the literature. In confirmation of the total lack of understanding, some participants provided responses such as:

The prosecutor leads witness at court during the trial, Prosecutor advises the investigator which crimes to investigate, Prosecutor reads the case docket and makes entries highlighting the outstanding evidence, Prosecutor gets involved after the arrest of the suspect and request certain evidence, Prosecutor may visit the crime scene.

These responses clearly show that the participants had not been exposed to this model, therefore such responses proved that the term “prosecution-led investigation model” is pretty new to them. It should be noted that the prosecution-led investigation model is found only in the SCCU-CCU set-up.

#### **6.4.2.3 Prosecution-led investigation model followed in commercial crimes**

The data obtained from the literature review confirmed that the SCCU-CCU is using the prosecution-led investigation model in commercial crimes assigned to them. The prosecution-led investigation model was adopted to ensure that commercial crime cases were effectively and efficiently investigated for successful prosecution.

The data gleaned from the participants of the NPA interviewed, indicated that all the participants agreed with the literature review and that the SCCU-CCU follows the prosecution-led investigation model. The NPA participants are seasoned prosecutors who have been in the SCCU for a considerable time.

#### **6.4.2.4 Difference between the intelligence-led investigation model and the prosecution-led investigation model**

The data obtained from the literature review revealed that the difference between the intelligence-led and prosecution-led investigation models is that the intelligence-led model involves the intelligence and criminal investigation components of the SAPS to gather information about the criminal activities that could lead to the arrest of the criminals. On the other hand, the prosecution-led investigation model relates to the police investigator working with the prosecutor in the guiding role, from the inception of the criminal investigation to its conclusion.

The data obtained from the participants of the SAPS indicated that the majority of the participants’ opinion was that in the intelligence-led investigation model, the information is shared to link the suspect with the crime, while in the prosecution-led

investigation model, the prosecutor guides the investigation. The researcher's analysis shows that the majority of the participants do not have a comprehensive understanding of the difference between the intelligence-led and prosecution-led investigation models in accordance with the literature but only a broad or generic understanding.

#### **6.4.2.5 Importance of the relationship between the investigator and prosecutor**

The literature study revealed the importance of the relationship between the investigator and prosecutor to include the following:

- Increased mutual trust and confidence in order to prosecute the case successfully;
- Shared understanding of the goal of investigation and prosecution;
- Improved line of communication;
- Cultural differences are understood;
- Minimised competition;
- Improved respect;
- Improved cooperation;
- Ability to accommodate one another;
- Conflict is addressed; and
- Perceptions about each other are addressed.

The data collected from the SAPS participants interviewed, indicated that all of them were of the view that the relationship between the investigator and prosecutor is important. This view is relevant to the key points contained in the literature. Almost half of the participants mentioned the mutual goal was to present the true facts of the crime. In line with literature, two participants stated "improved communication and cooperation" while one participant stated that the objectives of investigation and prosecution are understood. However, three participants stated that the evidence presented in court is the product of the investigator, therefore good communication is important.

#### **6.4.2.6 Role of the police investigator in the prosecution-led investigation model**

The data obtained from the literature review revealed that the role of the police investigator in the prosecution-led investigation model is to gather the relevant evidence, guided by the prosecutor. The guidance referred to herein requires that the investigator and prosecutor meet constantly to discuss the progress of the investigation and to determine strategies.

The data gleaned from the participants of the SAPS revealed that the majority of the participants were of the view that the role of the police investigator is to gather all possible evidence, as requested by the prosecutor. None of the participants mentioned the constant meetings between the investigator and prosecutor to discuss the investigation in progress, as indicated in the literature. Two participants added that the police investigator must prepare witnesses for trial. Another two participants indicated that the police investigator must meet with the prosecutor for an update on the progress of the case. Other responses such as that the police investigator leads the preliminary investigation, testifies in court, receives further guidance from the prosecutor, and arranges a pre-trial interview with a prosecutor, were also noted. The researcher's analysis shows that the majority of the participants do not have an in-depth understanding of the role of the police investigator in the prosecution-led investigation model in accordance with the literature but only a broad or generic understanding.

#### **6.4.2.7 Reporting of commercial crime cases to SCCU**

The data obtained from the literature review indicated that commercial crime cases are reported at the police stations and registered on CAS. When the cases fall within the mandate of the SCCU-CCU, the police station involved will transfer the case docket to CCU to be entered into their workflow, which involves the SCCU. On receipt of the case by the CCU, it is booked out to an investigator for preliminary investigation, to be completed within 14 days. This investigation consists of making sure that the offence falls within the mandate of the CCU and obtaining whatever evidence already exists, and possibly re-taking the complainant's statement. In addition, the investigator completes a draft investigation plan, setting out what evidence must be collected and the timeframes within which this will be done.

The data gleaned from the participants of the NPA interviewed, revealed that all the participants expressed views similar to those found in the literature review in respect of reporting commercial crime cases to SCCU. The reporting of commercial crime cases is done at police stations.

#### **6.4.2.8 Assigning commercial crime cases to the SCCU prosecutors**

The data obtained from the literature review indicated that commercial crime cases are assigned to the SCCU prosecutors by the Head of the SCCU. The commanding officer of the CCU reviews the case docket and investigation plan with the investigator within 14 days, and passes it on to the workflow administrator of the SCCU, who will allocate the work to the appropriate prosecutor.

The data gleaned from the participants of the NPA interviewed, revealed that all the participants expressed views similar to those found in the literature review in respect of assigning commercial crime cases to the SCCU prosecutors. Assigning cases to the prosecutors is the responsibility of the Head of SCCU.

#### **6.4.2.9 Specific policies/guidelines/operating model that the prosecutor has to follow upon being assigned a commercial crime case**

The literature study revealed that the specific policies/guidelines/operating model that the prosecutor must follow when being assigned a commercial crime case includes the following:

- Upon receiving the case docket, the prosecutor meets with the investigator within 14 days in order to review the information already in hand and the draft investigation plan, which sets out responsibilities and timeframes for accumulating evidence. This plan, once completed, is affixed to the case docket, forming a point of reference and accountability.
- The investigator and prosecutor may meet to follow up on progress in the investigation of the case; particularly in complex matters or where new information comes to light that necessitates a reformulation of either the charges or the investigation plan.
- Upon completion of the investigation the investigator will either arrest the suspect or summons him/her to appear in court on instruction from the prosecutor.

- Prior to the trial, the investigation/prosecution team is required to meet defence counsel and other relevant role-players in order to ensure that there are no unnecessary delays during the trial. In particular, the meeting must ensure that the defence will be ready to proceed on the date on which the trial is scheduled to begin.

The data gathered from the interviews with the NPA participants showed that all participants agreed that the investigator and prosecutor work together. The majority of participants put more emphasis on the scheduling of the case planning with the investigator and drafting of the investigation plan, as indicated in the literature. However, only one participant mentioned that the prosecutor has to schedule the meeting with the investigator within 14 days. It was further pointed out by the majority of the participants that the prosecutor must ensure that there is enough evidence in the case docket. This is done by monitoring and guiding the investigation.

#### **6.4.2.10 Meeting with the SAPS investigator to discuss the case under investigation**

The data obtained from the literature review indicated that the prosecutor meets with the SAPS investigator to discuss the case under investigation. Once the prosecutor has received the case docket, he/she is required to meet with the investigator within 14 days to review the information already at hand and draft the investigation plan that sets out the responsibilities and timeframes for accumulating evidence. This methodology is called the prosecution-led investigation and it has the following characteristics:

- Prosecutors guide the strategy and tactics of police investigations, focusing on the collection of admissible evidence and ensuring that investigations are court-directed.
- Prosecutors meet face-to-face with investigators from the beginning of the case.
- Prosecutors are responsible for cooperation of witnesses.
- Prosecutors become leaders of multi-agency solutions to crime problems.

The data obtained from the participants of the NPA interviewed, revealed that all the participants expressed views similar to those found in the literature review in

respect of the meeting with the SAPS investigator to discuss the case under investigation. The meeting between the investigator and prosecutor should take place within 14 days after the case has been received by the prosecutor.

#### **6.4.2.11 Frequency of meetings between the investigator and prosecutor with regard to a specific investigation in the prosecution-led investigation model**

The data obtained from the literature review indicated that the investigator and prosecutor should agree on the timeframe of meetings, depending on the nature and complexity of the case. The investigation plan is a living document in which the agreed timeframes are documented.

The data gleaned from the participants of the NPA interviewed, revealed that all the participants expressed views similar to those found in the literature review in respect of the timeframes of the meetings between the investigator and prosecutor with regard to a specific investigation in the prosecution-led investigation model. The investigator and prosecutor should agree on the timeframe for the investigation, depending on the nature and complexity of the case.

#### **6.4.2.12 Advantages of the prosecution-led investigation model**

The literature review presented the following advantages of the prosecution-led investigation model:

- Sharing of different skills and multidisciplinary approach of investigative and legal expertise.
- Sharing of planning and organising of work.
- Legitimate process justified by law.
- Proper marshalling and vetting of evidence prior to trial.
- Disposal of cases that do not meet the prosecution standard are dealt with by another method.
- Ensuring that only properly investigated cases and charged with a criminal offence go to trial.
- Avoiding trivial or vexatious cases going before the courts.
- Fewer remands for further investigations.
- Shortened investigation periods.

- Reduction of awaiting-trial population.
- Cost benefit to Correctional Services with regard to awaiting-trial population.
- Reduced frustration between the investigators and prosecutors.
- Increase in the average duration of cases on the court roll.
- Decrease of the case withdrawals.
- Decrease of caseloads per prosecutor.
- Compensation for their loss to the victims of crime, where appropriate.
- The administration of justice is fair and impartial.

The data gathered from the interviews with the SAPS and NPA participants, revealed that the majority of the SAPS participants agree that the evidence gathered is primarily intended for the prosecution, a point that all the NPA participants concurred with and that was confirmed in the literature. It was further stated by the majority of the SAPS and NPA participants that the prosecution-led investigation model increases the chances of successful prosecution of the case. Equally important is the response that relates to the promotion of teamwork that the majority of the SAPS participants and all NPA participants alluded to. From the responses of the SAPS participants and NPA participants with regard to the advantages of the prosecution-led investigation model, it is clear that they fully support this model even though the SAPS participants were not all knowledgeable about this model. These responses clearly show that the SAPS participants were not exposed to this model, therefore such responses proved that the term “prosecution-led investigation model” is fairly new to them.

#### **6.4.2.13 Disadvantages of the prosecution-led investigation model**

The literature review presented the following disadvantages of the prosecution-led investigation model:

- Lack of legislation.
- Personal relationship between the investigator and prosecutor.
- Lack of experienced SAPS investigators due to high turnover.
- The complexity of the cases means they take long to finalise.
- Lack of forensic accounting investigators in the SAPS means this function is conducted by external accountants, which is time-consuming.

- Lack of information technology and software programs to assist the investigators.

The data gathered from the interviews with the SAPS and NPA participants, revealed a number of disadvantages of the prosecution-led investigation model, as articulated by the participants. There were three participants from the SAPS who mentioned it is time-consuming. Two SAPS participants indicated that they were not aware of any disadvantages, while the other two identified the lack of direction from the prosecutors. These responses confirmed that some of the SAPS participants did not fully understand this model, hence would not be aware of the disadvantages. The other two SAPS participants identified the limited resources. There was one SAPS participant who blamed the investigators for not attending to the crime scene at all. Similarly, two NPA participants blamed the SAPS investigators for lack of competence and their resulting failure to conduct an investigation. Significantly, one NPA participant raised concern with regard to the level of involvement of the prosecutor in the investigation.

#### **6.4.2.14 Effectiveness of prosecution-led investigation model in cases other than commercial crimes**

The data gleaned from the literature review did not reveal the effectiveness of the prosecution-led investigation model in cases other than commercial crimes. This is so because in South Africa, the prosecution-led investigation model is utilised only in the SCCU-CCU in the fight against commercial crimes.

The data obtained from the participants of the NPA indicated that all the participants agreed that the prosecution-led investigation-led model could be effective in crimes other than commercial crimes. Two of the participants elaborated on their answers by stating that it could be effective only if it received the full support and active participation by the management of the SAPS and NPA, and that the prosecutor should guard against getting too involved in the investigation process. In this regard, when the prosecutor gets too involved it may result in a situation where he/she becomes a witness in his/her own case.

#### **6.4.2.15 Use of the prosecution-led investigation model in murder cases**

The data obtained from the NPA participants interviewed, revealed that the participants support the use of the prosecution-led investigation model in murder cases, subject to it meeting certain requirements. One of the requirements pointed out was that for this model to be effective in murder cases, it has to be supported by both the NPA and SAPS. Since this model has not been implemented in any crimes other than commercial crimes in South Africa, there was no literature available to be compared to the responses of the participants.

#### **6.4.2.16 Use of prosecution-led investigation to improve the success in murder cases**

The data obtained from the NPA participants interviewed, indicated that not all participants agreed that the use of the prosecution-led investigation model would improve the success in murder cases. One, out of three participants was of the view that the SAPS should focus more on improving the competency of investigators in the processing of crime scenes. However, the majority of the participants (two) did not hold the same view. One participant stated that the constant consultation between the investigator and prosecutor would improve the success rate in any investigation, while the other participant stated that the prosecutor should be involved after the preliminary investigation has been conducted. Since this model has not been implemented in any crimes other than commercial crimes in South Africa, there was no literature available to be compared to the responses of the participants.

### **6.4.3 International experiences in terms of criminal investigation and prosecution procedures**

The third sub-question of the research relates to international experiences in terms of criminal investigation and prosecution procedures. The data collected and responses from interviews answered this question in terms of the following:

#### **6.4.3.1 Location of prosecuting authority that prosecutes murder cases in Malawi**

The data obtained from the literature review and interview with the participant of the MPS revealed that the office of the DPP falls under the Ministry of Justice and is responsible for prosecution of serious offences such as murder. The MPS has a

Prosecution Branch that prosecutes minor offences on behalf of the office of the DPP.

#### **6.4.3.2 Location of prosecuting authority that prosecutes murder cases in France**

The data obtained from the literature review and interview with participant of the FNP revealed that the prosecuting authority falls under the Judicial Authority of the Minister of Justice. The Judicial Authority is empowered by Article 66 of Title VIII of the Constitution of France, to ensure that the prosecuting authority executes its responsibilities in compliance with the conditions laid down by statute.

#### **6.4.3.3 Investigation model used in Malawi Police Service when investigating murder cases**

The data obtained from the interview with the participant of the MPS revealed that the MPS uses the prosecution-led investigation model when investigating murder cases. However, there was no literature to support this view. The reasonable inference that can be drawn from this response is that no specific investigation model is used in the MPS, but rather a generic investigation that is ordinarily conducted by the police who submit the case docket to the prosecuting authority for prosecution. Where necessary, the prosecutor requests further investigation.

#### **6.4.3.4 Advantages of murder investigation model used by Malawi Police Service**

The data obtained from the interview with the participant of the MPS revealed the following advantages of the murder investigation model used by the MPS:

- Helps an investigator to discover elements that prove the case.
- Builds trust among all who work together.
- Chances of losing the case are minimal.

There was no literature available that could be compared against the response of the participant.

#### **6.4.3.5 Disadvantages of murder investigation model used by Malawi Police Service**

The data obtained from the interview with the participant of the MPS revealed that the lack of trust between the investigators and prosecutors is caused mainly by the involvement of the Prosecution Branch of the MPS who are the custodians of the exhibits. The participant stated that if the exhibits are lost or damaged before the trial, this might jeopardise the good relationship between the investigator and prosecutor. There was no literature available that could be compared against the response of the participant.

#### **6.4.3.6 Understanding the prosecution-led investigation by the MPS participant**

The data obtained from the interview with the participant of the MPS indicates that the participant understood the prosecution-led investigation as: “Where a prosecutor is incorporated into the investigation team in order to have a good case at the end of the investigation to ensure successful prosecution.” The researcher’s analysis shows that the participant does not have a comprehensive understanding of the prosecution-led investigation but only a broad or generic understanding.

#### **6.4.3.7 Investigation model used in French National Police when investigating murder cases**

The data gleaned from the interview with the participant of the FNP and the literature review indicated that the prosecuting authority leads and directs murder investigations conducted by the police, and this is a legislated requirement. However, this legislated arrangement is not given a specific term. In South Africa, this arrangement could easily be termed as a “prosecution-led investigation model.”

#### **6.4.3.8 Advantages of murder investigation model used by French National Police**

The participant did not respond to this question on the basis that he had said there was no specific model used in the French National Police when investigating murder cases. The data obtained from the literature review revealed that early involvement of the prosecutor in the investigation process in the French CJS helps achieve efficiency and effectiveness.

#### **6.4.3.9 Disadvantages of murder investigation model used by French National Police**

The participant did not respond to this question on the basis that he had said there was no specific model used in the French National Police when investigating murder cases. No literature that could be found addressed the disadvantages of the early involvement of the prosecution in France. However, the data obtained from the literature review showed that the early involvement of the prosecutor in the investigation is undesirable in an environment where a clear separation of the investigative and prosecution roles is regarded as necessary to enhance credibility of the system overall.

#### **6.4.3.10 Understanding prosecution-led investigation by FNP participant**

The participant of the FNP interviewed indicated that “It is more an under-prosecution control police investigation.” The reasonable inference that can be made about the response of the participant is that he did not understand the term “prosecution-led investigation.”

#### **6.4.3.11 Comparison of criminal investigation and prosecution procedures in Malawi, France and South Africa**

The data gleaned from the literature review and interviews with the participants of the SAPS, MPS and FNP interviewed revealed the following:

- In South Africa, Malawi and France, the criminal investigation phase typically begins when the police become aware of the crime that is either reported by the witnesses or victims, or self-initiated by the police.
- Once the case has been registered, it is allocated to the Criminal Investigation Department for further attention.

The CJSs of Malawi and South Africa share the following features with regard to the criminal investigation phase:

- It is the responsibility and the function of the police investigator to conduct criminal investigation.
- Once the case is allocated to the police investigator, he/she is expected to independently begin, conduct and finalise the investigation.

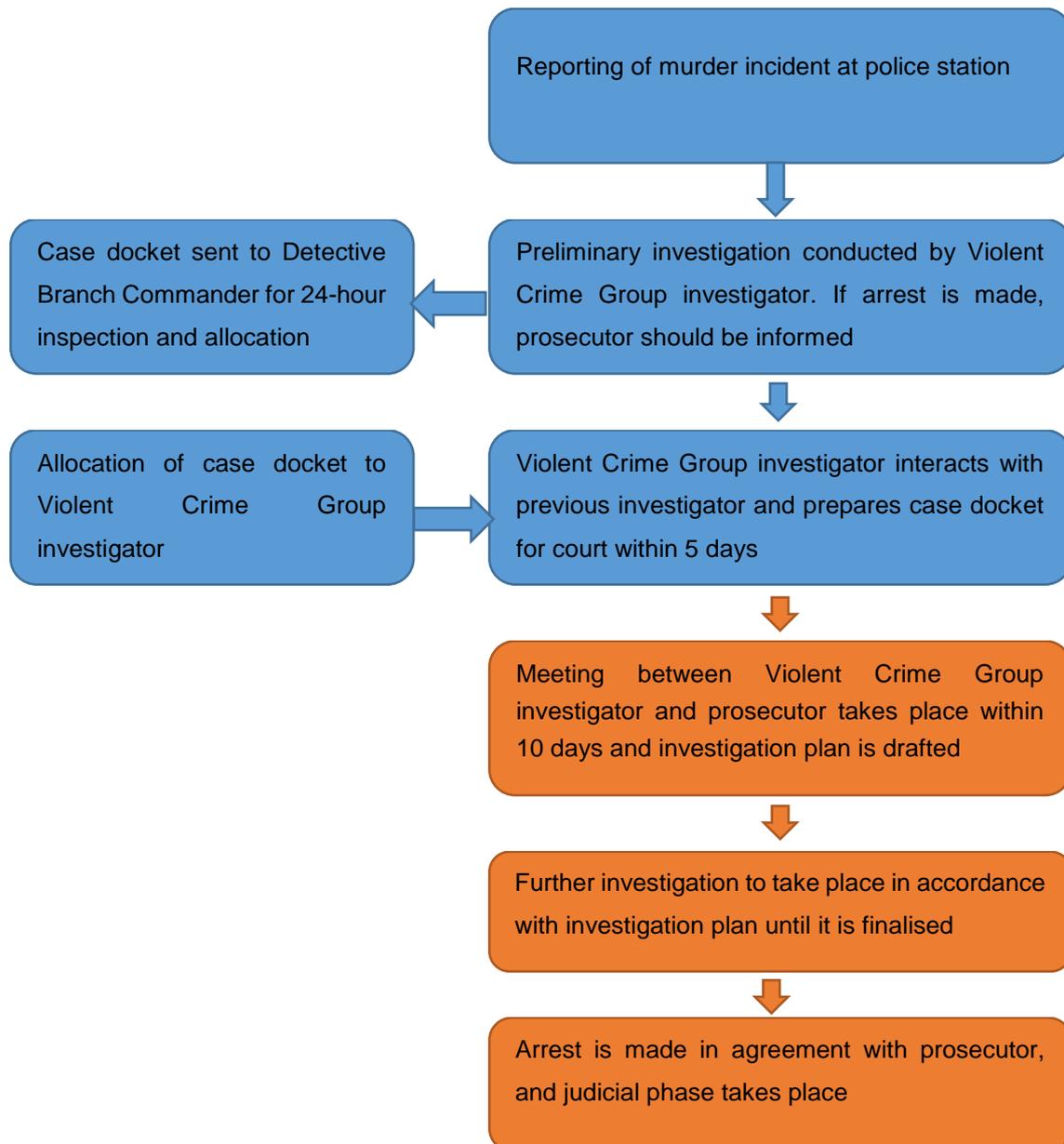
- Referral of a criminal case to the prosecution service during the investigation phase is not a legislated requirement.
- The police investigator may seek legal guidance and direction from the prosecutor during the investigation phase.

The CJSs in Malawi, South Africa and France show the following differences with regard to the prosecution phase:

- Prosecutors in Malawi may use their discretion to discontinue prosecution of the accused person after he/she has pleaded.
- In France and South Africa, the prosecutors are required to proceed with the trial until the presiding officer passes the verdict.
- In France, prosecutors may decide to refer the serious cases to judges of instruction for further investigation.
- Malawi and South Africa do not have judges of instruction in their CJSs.

#### **6.4.4 Practical guidelines, procedures and recommendations that can be offered to SAPS to successfully investigate murder cases**

The fourth sub-question of the research relates to the practical guidelines, procedures and recommendations that can be offered to SAPS to successfully investigate murder cases. The data obtained from the participants of the SAPS, NPA, MPS and NFP that were interviewed as well as the literature review contributed to the development of the following investigation model by the researcher, illustrating the operational steps of the prosecution-led investigation model in murder cases as presented in Table 4.18 and in Figure 6.1 below:



**Figure 6.1: Proposed prosecution-led investigation model in murder cases**

(Source: Concept developed by researcher)

## 6.5 RECOMMENDATIONS

According to Rao (2008:301), the verifiable findings and conclusions must be followed by the recommendations, which is a practical and implementable step. In paragraph 6.4 above, the researcher discussed the findings emanating from the literature review as well as the responses of the participants. Therefore, the following recommendations emanated from the research findings:

### **6.5.1 Current investigation model used by the SAPS in murder cases versus the intelligence-led investigation model**

Based on the data collected from the literature review and interviews with the SAPS participants, it was established that the participants lacked understanding of the meaning of an intelligence-led investigation model. Training is the acquisition of knowledge, skills and competencies as a result of the teaching of vocational or practical skills that relate to specific competencies (Farell, Bowers, Johnson & Townsley, 2007:59). Consequently, it is recommended that the SAPS should consider incorporating the following topics in their training curriculum to enhance the knowledge of the police investigators and Detective Branch Commanders:

- The intelligence-led investigation model.
- Difference between the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model.

### **6.5.2 Meaning of the prosecution-led investigation model**

Based on the data collected from the literature review and the interviews with the SAPS participants, it was established that there is a general lack of understanding of the meaning of the prosecution-led investigation model. Effective and efficient crime investigation depends on a workforce with sufficient knowledge and expertise in this field. As such, it is recommended that the SAPS should consider including the following topics in their training curriculum to enhance the knowledge of police investigators and Detective Branch Commanders:

- Meaning of the prosecution-led investigation model.
- Difference between the intelligence-led investigation model and prosecution-led investigation model.
- Advantages of the prosecution-led investigation model.
- Disadvantages of the prosecution-led investigation model.

### **6.5.3 International experience in terms of criminal investigation and prosecution procedure**

Based on the data obtained from the literature review and interviews with international participants, it is recommended that the proposed prosecution-led investigation model in murder cases, illustrated in Figure 6.1, be adopted and

implemented in South Africa by means of the development and application of the relevant policy that would include the involvement of the SAPS and NPA.

As shown in paragraph 5.5 of this study, the involvement of the prosecution service in the investigation of murder cases is a legislated requirement in France. It follows that to ensure collective accountability by the SAPS and NPA, the development and application of such policy might not be enough. It is therefore further recommended that the amendment of the legislation relating to the SAPS and NPA should be considered.

#### **6.5.4 Additional research**

The researcher recognises the fact that there is a shortage of research conducted by South African researchers with regard to the prosecution-led investigation model. Even after answering the main research question via sub-questions in this study, there are still knowledge gaps that will have to be closed by conducting further research. As a result, the researcher recommends the following:

- The literature review and interviews conducted with the NPA participants showed that there was uncertainty about the extent of the involvement of the prosecutor in the criminal investigation, due to the lack of legislation. In other words, there is no provision in the law relating to the interaction between the investigator and prosecutor during the criminal investigation process.
- It is, therefore, strongly recommended that additional research should be conducted to address the amendment of legislation.

#### **6.6 CONCLUSION**

The rights of all South Africans are protected in the Constitution of South Africa in terms of the Bill of Rights. It is the duty of the Government of South Africa to ensure that these rights, including the right to life, are protected. There are various instruments and institutions that are available to the Government to ensure that these rights are indeed sufficiently protected. Some of these institutions are the SAPS and NPA. In this regard, the Constitution of South Africa lists the objectives of the SAPS as:

- to prevent, combat and investigate crime;

- to maintain public order;
- to protect and secure the inhabitants of South Africa and their property; and
- to uphold and enforce the law.

Ironically, the South African crime statistics reported by the SAPS indicated that in 2012/13 there were 16 259 murder incidents reported. In 2017/18, the SAPS recorded 20 336 murder incidents. Clearly, these reports indicate that murder incidents are on the increase. Unfortunately, whenever these crime statistics are reported to the public, the high-ranking government officials appear to be gravely concerned, and often come up with more assurances that the Government is engaged in strategizing to curb these violent incidents. There is no guarantee that similar statistics will not be reported in the coming years. In light of these murder incidents, there is no evidence that the Government has moved to make sure that murder cases are properly investigated to ensure that the perpetrators are arrested and successfully prosecuted, thus ensuring that the citizens of the country are protected from further harm, as guaranteed in the Bill of Rights.

This study was conducted with the aim of analysing the prosecution-led investigation model in the investigation of murder cases, to discover new facts and their correct interpretations, to revise accepted conclusions, theories, or laws in light of newly discovered facts or the practical application of such a conclusion. In this regard, the researcher proposed a prosecution-led investigation model to be used in murder cases, presented in Figure 6.1.

In this study, the researcher conducted a literature review of both international and national works, to gain an understanding of the problem being researched. The researcher established the meaning of prosecution-led investigation model as understood from an international and South African perspective. The South African legislation, literature and policy frameworks that guide the current investigation model used by the SAPS in murder cases were reviewed. This was done in comparison with the intelligence-led investigation model. The researcher further conducted a literature review to determine international experiences in terms of criminal investigation and prosecution procedures, and whether such procedures could be implemented in South Africa. The researcher had to establish the

possibility of implementing a practical guideline, procedures and recommendations for the SAPS to successfully investigate murder cases within the existing legal frameworks of both the SAPS and NPA. Accordingly, the operational steps of the prosecution-led investigation model in murder cases, as presented in Table 4.18, were developed.

While the researcher mainly used the qualitative exploratory research approach, it was supplemented by both the descriptive research approach and explanatory research approach to allow 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 the prosecution-led investigation model. The use of various data collection strategies added to the methodological benefit of the ability to triangulate between the respective sources to establish the themes.

Data were gathered from the participants, who are officials attached to the institutions responsible for the investigation and prosecution of criminal cases, namely the SAPS Detective Branch Commanders (Sample A) in the accounting police stations in KZN; the Senior State Advocates (Sample B) attached to the SCCU of the NPA responsible for prosecuting commercial cases, using the prosecution-led investigation model; the police representative of the MPS (Sample C) and the police representative of FNP (Sample D).

The research aim was accomplished by responding to the following research sub-questions:

- How does the current investigation model used by the SAPS in murder cases compare to the intelligence-led investigation model?
- What is the prosecution-led investigation model?
- What are the international experiences in terms of criminal investigation and prosecution procedures?
- What practical guidelines, procedures and recommendations can be offered to SAPS to successfully investigate murder cases?

The SAPS is the cornerstone of the CJS in South Africa. The SAPS members are the first contact with the members of society, especially when it comes to the

reporting of criminal incidents. They are constitutionally mandated to investigate crime reported to them and arrest those who are implicated. Considering that the criminals are advanced in terms of how they operate and cover their tracks, it is prudent of the SAPS investigators to be more advanced when they conduct their investigation, including the operations of various components within and outside the SAPS aligned to the criminal investigation. It is, therefore, imperative for all SAPS investigators to gain a deeper understanding of how the Criminal Intelligence component and the NPA prosecutors could be of assistance in the criminal investigation. This includes enhanced understanding of terms such as the “intelligence-led investigation model” and “prosecution-led investigation model.”

The discovery in this research of the operational steps of the prosecution-led investigation model in murder cases provides a yardstick according to which murder cases can be dealt with effectively and efficiently. Considering the role of the SAPS and NPA in the CJS of South Africa, the implementation of a successful prosecution-led investigation model in murder cases will most likely depend on the development of a policy framework and possible legislation to include inputs from these institutions. The researcher is of the opinion that this study, an analysis of the prosecution-led investigation model in murder cases, offers an important contribution to the understanding of the prosecution-led investigation model, and subsequently presents practical guidelines that can be used during the investigation of murder cases in South Africa.

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## **8. ATTACHMENTS**

### **8.1 ATTACHMENT A: INTERVIEW SCHEDULE FOR SAMPLE A**

#### **SOUTH AFRICAN POLICE SERVICE**

#### **INTERVIEW SCHEDULE**

**DOCTOR OF PHILOSOPHY THESIS  
INTERVIEW SCHEDULE FORM  
UNIVERSITY OF SOUTH AFRICA (UNISA)**

**RESEARCH TITLE: AN ANALYSIS OF THE PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES**

#### **1. INTRODUCTION**

I am a registered student of UNISA, studying for a Doctor of Philosophy: Criminal Justice degree. As part of this qualification, I am required to conduct research analysis of a specific title. The interview schedule forms part of my research thesis to understand the role of the prosecution-led investigation model in murder cases. Authorisation for the research has been granted by the National Commissioner of the SAPS in terms of National Instruction 1/2006.

#### **2. OBJECTIVE OF THE STUDY**

The objective of this research is to determine the significance of the prosecution-led investigation model in murder cases.

#### **3. INSTRUCTIONS**

- Please note that participation in this study is voluntary.
- Your name and identity are not required and all information will be treated confidentially.
- It should take approximately one hour to answer the questions in the schedule.
- Kindly provide answers to the questions as comprehensively as you can, and to the best of your knowledge.
- When answering the questions, it is important to give your own opinion.
- Additional questions to clarify answers will be used where applicable.

- Further note that you have a right to refuse answering a question if you are not comfortable with it.
- Your contribution will be of significant value and highly appreciated.

**SECTION A**

**1. BIOGRAPHICAL INFORMATION**

1.1 What is your rank?

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1.2 How many years of service do you have in the SAPS?

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1.3 How many years of service do you have as a detective branch commander?

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1.4 Do you have any qualification? If yes, please elaborate.

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1.5 Have you received internal training or attended seminars relating to criminal investigations? If yes, please elaborate.

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**SECTION B**

**2. MURDER INVESTIGATIONS**

2.1 How would you define criminal investigation?

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2.2 What are the objectives of criminal investigation?

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2.3 How would you define murder?

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2.4 What is your understanding of the elements of murder?

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2.5 How are murder cases reported at your station?

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2.6 Following from the above question, how are these murder cases assigned to the police investigators?

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2.7 What is the role (duties and functions) of the police investigator in the investigation of murder cases?

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2.8 Is there any specific training that the police investigator has to undergo before being assigned to investigate murder cases?

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2.9 What are the specific procedures that have to be followed by the police investigator upon receiving a new murder case?

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2.10 How would you define the intelligence-led investigation model?

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2.11 What is the difference between the current investigation model used by the SAPS in murder cases and the intelligence-led investigation model?

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2.12 Do you have task teams or specialised units in your station that investigate murder cases? If any, please elaborate.

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2.13 Are there any specific Standing Orders/Standard Operating Procedures/legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation? Please explain.

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2.14 How do the police investigators interact with the prosecuting authority while murder cases are still under investigation?

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2.15 What is the role fulfilled by the prosecutor in a murder investigation?

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2.16 What is the role of the police investigator in the prosecution process of murder cases?

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2.17 What are the problems that the police investigators face when investigating murder cases?

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**3. THE PROSECUTION-LED INVESTIGATION MODEL**

3.1 How would you define the prosecution-led investigation model?

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3.2 What is the difference between the intelligence-led investigation model and the prosecution-led investigation model?

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3.3 What is the role of the police investigator in the prosecution-led investigation model?

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3.4 In your understanding, is the relationship between the investigator and prosecutor important? Please explain.

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3.5 What are the advantages of the prosecution-led investigation model?

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## 8.2 ATTACHMENT B: NATIONAL PROSECUTING AUTHORITY

### INTERVIEW SCHEDULE

**DOCTOR OF PHILOSOPHY THESIS  
INTERVIEW SCHEDULE FORM  
UNIVERSITY OF SOUTH AFRICA (UNISA)**

**RESEARCH TITLE: AN ANALYSIS OF THE PROSECUTION-LED  
INVESTIGATION MODEL IN MURDER CASES**

#### 1. INTRODUCTION

I am a registered student of UNISA, studying for a Doctor of Philosophy: Criminal Justice degree. As part of this qualification, I am required to conduct research analysis of a specific title. The interview schedule forms part of my research thesis to understand the role of the prosecution-led investigation model.

#### 2. OBJECTIVE OF THE STUDY

The objective of this research is to determine the significance of the prosecution-led investigation model.

#### 3. INSTRUCTIONS

- Please note that participation in this study is voluntary.
- Your name and identity are not required and all information will be treated confidentially.
- It should take approximately one hour to answer the questions in the schedule.
- Kindly provide answers to the questions as comprehensively as you can and to the best of your knowledge.
- When answering the questions, it is important to give your own opinion.
- Additional questions to clarify answers will be used where applicable.
- Further note that you have a right to refuse answering a question if you are not comfortable with it.
- Your contribution will be of significant value and highly appreciated.



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2.2 How are these cases assigned to the SCCU prosecutors?  
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2.3 Are there any specific policies/guidelines/operating model that you, as a prosecutor, have to follow when a commercial case has been assigned to you? If yes, please specify.  
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2.4 Do you meet the SAPS investigator to discuss the case under investigation?  
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2.5 If the answer is 'yes' to the above, how often do you meet the investigator with regard to a specific investigation in the prosecution-led investigation model?  
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2.6 Do you follow the prosecution-led investigation model in commercial crimes?  
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### **8.3. ATTACHMENT C: MALAWI POLICE SERVICE**

#### **INTERVIEW SCHEDULE**

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| <p style="text-align: center;"><b>DOCTOR OF PHILOSOPHY THESIS</b><br/><b>INTERVIEW SCHEDULE FORM</b><br/><b>UNIVERSITY OF SOUTH AFRICA (UNISA)</b></p> |
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| <p><b>RESEARCH TITLE: AN ANALYSIS OF THE PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES</b></p> |
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#### **1. INTRODUCTION**

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#### **3. INSTRUCTIONS**

- Please note that participation in this study is voluntary.
- Your name and identity are not required and all information will be treated confidentially.
- It should take approximately one hour to answer the questions in the schedule.
- Kindly provide answers to the questions as comprehensively as you can and to the best of your knowledge.
- When answering the questions, it is important to give your own opinion.
- Additional questions to clarify answers will be used where applicable.
- Further note that you have the right to refuse answering a question if you are not comfortable with it.
- Your contribution will be of significant value and highly appreciated.

**SECTION A**

**1. BIOGRAPHICAL INFORMATION**

1.1 What is your rank in the Malawi Police Service?

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1.2 What is your position in the Malawi Police Service?

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1.3 How many years of service do you have in the criminal investigation department?

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1.4 Do you have any qualification? If yes, please elaborate.

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1.5 Have you received internal training or attended seminars relating to criminal investigations? If yes, please elaborate.

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**SECTION B**

**2. MURDER INVESTIGATIONS**

2.1 How would you define murder?

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2.2 What is your understanding of the elements of murder?

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2.3 How are murder cases reported in the Malawi Police Service?

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2.4 Following from the above question, how are these murder cases assigned to the police investigators?

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2.5 What is the role (duties and functions) of the police investigator in the investigation of murder cases?

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2.6 Is there any specific training that the police investigator has to undergo before being assigned to investigate murder cases?

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2.7 What are the specific procedures that have to be followed by the police investigator upon receiving a new murder case?

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2.8 Do you have task teams or specialised units in the Malawi Police Service that investigate murder cases? If any, please elaborate.

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2.9 Are there any specific Standing Orders/Standard Operating Procedures/legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation? Please explain.

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2.10 Does the prosecuting authority that prosecutes murder cases form part of the Malawi Police Service?

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2.11 How do the police investigators interact with the prosecuting authority while murder cases are still under investigation?

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2.12 What is the role fulfilled by the prosecutor in a murder investigation?

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2.13 What is the role of the police investigator in the prosecution process of murder cases?

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2.14 What investigation model is used in the Malawi Police Service when investigating murder cases?

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2.15 What are the advantages of this murder investigation model used by the Malawi Police Service?

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2.16 What are the disadvantages of this murder investigation model used by the Malawi Police Service?

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2.17 What is your understanding of the prosecution-led investigation?

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## 8.4 ATTACHMENT D: FRENCH NATIONAL POLICE

### INTERVIEW SCHEDULE

**DOCTOR OF PHILOSOPHY THESIS  
INTERVIEW SCHEDULE FORM  
UNIVERSITY OF SOUTH AFRICA (UNISA)**

**RESEARCH TITLE: AN ANALYSIS OF THE PROSECUTION-LED  
INVESTIGATION MODEL IN MURDER CASES**

#### 1. INTRODUCTION

I am a registered student of UNISA, studying for a Doctor of Philosophy: Criminal Justice degree. As part of this qualification, I am required to conduct research analysis of a specific title. The interview schedule forms part of my research thesis to understand the role of the prosecution-led investigation model in murder cases. Authorisation for the research has been granted by the National Commissioner of the SAPS in terms of National Instruction 1/2006.

#### 2. OBJECTIVE OF THE STUDY

The objective of this research is to determine the significance of the prosecution-led investigation model in murder cases.

#### 3. INSTRUCTIONS

- Please note that participation in this study is voluntary.
- Your name and identity are not required and all information will be treated confidentially.
- It should take approximately one hour to answer the questions in the schedule.
- Kindly provide answers to the questions as comprehensively as you can and to the best of your knowledge.
- When answering the questions, it is important to give your own opinion.
- Additional questions to clarify answers will be used where applicable.
- Further note that you have the right to refuse answering a question if you are not comfortable with it.
- Your contribution will be of significant value and highly appreciated.

**SECTION A**

**1. BIOGRAPHICAL INFORMATION**

1.1 What is your rank in the French National Police?

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1.2 What is your position in the French National Police?

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1.3 How many years of service do you have in the criminal investigation department?

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1.4 Do you have any qualification? If yes, please elaborate.

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1.5 Have you received internal training or attended seminars relating to criminal investigations? If yes, please elaborate.

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**SECTION B**

**2. MURDER INVESTIGATIONS**

2.1 How would you define murder?

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2.2 What is your understanding of the elements of murder?

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2.3 How are murder cases reported in the French National Police?

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2.4 Following from the above question, how are these murder cases assigned to the police investigators?

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2.5 What is the role (duties and functions) of the police investigator in the investigation of murder cases?

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2.6 Is there any specific training that the police investigator has to undergo before being assigned to investigate murder cases?

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2.7 What are the specific procedures that have to be followed by the police investigator upon receiving a new murder case?

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2.8 Do you have task teams or specialised units in the French National Police that investigate murder cases? If any, please elaborate.

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2.9 Are there any specific Standing Orders/Standard Operating Procedures/legislation that compel investigators to meet with prosecutors and discuss cases that are under investigation? Please explain.

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2.10 Does the prosecuting authority that prosecutes murder cases form part of the French National Police?

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2.11 How do the police investigators interact with the prosecuting authority while murder cases are still under investigation?

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2.12 What is the role fulfilled by the prosecutor in a murder investigation?

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2.13 What is the role of the police investigator in the prosecution process of murder cases?

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2.14 What investigation model is used in the French National Police when investigating murder cases?

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2.15 What are the advantages of this murder investigation model used by the French National Police?

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## 9. ANNEXURES

### 9.1 ANNEXURE A: PERMISSION TO CONDUCT RESEARCH IN SAPS



Privaatsak/Private Bag X 94

|                      |                                       |
|----------------------|---------------------------------------|
| Verwysing/Reference: | 3/34/2                                |
| Navrae/Enquiries:    | Lt Col Joubert<br>Intern Mahamba      |
| Telefoon/Telephone:  | (012) 393 3118<br>(012) 393 2423/4370 |

DIVISION: RESEARCH  
SOUTH AFRICAN POLICE SERVICE  
PRETORIA  
0001

- A. The Provincial Commissioner  
**KWAZULU-NATAL**
- B. The Divisional Commissioner  
**DETECTIVE SERVICE**

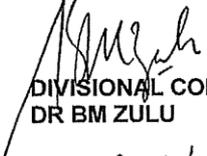
**PERMISSION TO CONDUCT RESEARCH IN SAPS: AN ANALYSIS OF PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES; DOCTOR OF PHILOSOPHY: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: NW MYEZA**

- A-B
1. The above subject matter refers.
  2. The researcher, Mr NW Myeza, is conducting a research study with the aim to ***analyse the prosecution-led investigation model in the investigation of murder cases.***
  3. The researcher is requesting permission to conduct interviews with ten detective commanders at Cluster Stations in KwaZulu-Natal. The sampled cluster stations are Umlazi, Durban Central, Brighton Beach, Eshowe, Newcastle, Ladysmith, Vryheid, Plessislaer, Ulundi and Empangeni.
  4. The proposal was perused according to National Instruction 1 of 2006. This office recommends that permission be granted for the research study, subject to the final approval and further arrangements by the offices of the Provincial Commissioner: KwaZulu-Natal and the Divisional Commissioner: Detective Service.
  5. We hereby request the final approval by your office if you concur with our recommendation. Your office is also at liberty to set terms and conditions to the researcher to ensure that compliance standards are adhered to during the research process and that research has impact to the organisation.
  6. If approval granted by your office, this office will obtain a signed undertaking from researcher prior to the commencement of the research

**PERMISSION TO CONDUCT RESEARCH IN SAPS: AN ANALYSIS OF PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES; DOCTOR OF PHILOSOPHY: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: N MYEZA**

which will include your terms and conditions if there are any and the following:

- 6.1. The research will be conducted at his/her exclusive cost.
- 6.2. The researcher will conduct the research without the disruption of the duties of members of the Service and where it is necessary for the research goals, research procedures or research instruments to disrupt the duties of a member, prior arrangements must be made with the commander of such member.
- 6.3. The researcher should bear in mind that participation in the interviews must be on a voluntary basis.
- 6.4. The information will at all times be treated as strictly confidential.
- 6.5. The researcher will provide an annotated copy of the research work to the Service.
7. If approval granted by your office, for smooth coordination of research process between your office and the researcher, the following information is kindly requested to be forwarded to our office:
  - **Contact person:** Rank, Initials and Surname.
  - **Contact details:** Office telephone number and email address.
8. A copy of the approval (if granted) and signed undertaking as per paragraph 6 supra to be provided to this office within 21 days after receipt of this letter.
9. Your cooperation will be highly appreciated.

  
LIEUTENANT GENERAL  
DIVISIONAL COMMISSIONER: RESEARCH  
DR BM ZULU

DATE: 2016/09/29

SUID-AFRIKAANSE POLISIEDIENS  SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bagg X 94

|                      |                |
|----------------------|----------------|
| Verwysing/Reference: | 3/34/2         |
| Navrae/Enquiries:    | Lt Col Joubert |
| Telefoon/Telephone:  | (012) 393 3118 |

DIVISION: RESEARCH  
SOUTH AFRICAN POLICE SERVICE  
PRETORIA  
0001

The Provincial Commissioner  
**KWAZULU-NATAL**

(Att: Col Van der Linde/ Capt Moodley)

**PERMISSION TO CONDUCT RESEARCH IN SAPS: AN ANALYSIS OF PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES; DOCTOR OF PHILOSOPHY: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: NW MYEZA**

1. The above subject matter refers.
2. Approval was granted by the Divisional Commissioner: Research for the mentioned research study of Mr NW Myeza on 2016-11-25 (*Approval letter attached*).
3. It is hereby confirmed that the approval is still valid and the researcher may be allowed to finalise the interviews at the relevant Police Stations in Kwazulu-Natal.

Kind Regards,

  
LIEUTENANT COLONEL  
DIVISION RESEARCH  
GJ JOUBERT

DATE: 2018-04-04

9.2 ANNEXURE B: PERMISSION TO CONDUCT RESEARCH SAPS  
KWAZULU NATAL

South African Police  
Service



Suid-Afrikaanse  
Polisiediens

Umbutho Wamaphoyisa Aseningizimu-Afrika

Our Reference / U Verwysing / Inkomba Yakho

My Reference / My Verwysing / Inkomba Yami

Enquiries / Navrae / Buza

Telephone / Telefoon / Ucingo

Fax No / Faks No

3/34/2(12)

Brigadier N.G. Govender /

Colonel A.D. van der Linde

031 – 325 4946 / 4841

031 – 325 6022

THE PROVINCIAL COMMISSIONER

KWAZULU-NATAL

P O BOX 1965

DURBAN

4000

The National Commissioner  
South African Police Service  
**PRETORIA**  
0001

Attention: Lieutenant Colonel Joubert

**PERMISSION TO CONDUCT RESEARCH IN SAPS: AN ANALYSIS OF PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES: DOCTOR OF PHILOSOPHY: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: NW MYEZA**

1. Your minute 3/34/2 dated 2016-09-29 regarding permission to conduct the above-mentioned research has bearing on this matter.
2. In respect of Paragraph 4 of your minute, Division: Research has perused the research proposal and found it to be compliant with National Instruction 1 of 2006.
3. Paragraph 5 of the said minute requests the Provincial Commissioner: KwaZulu-Natal to grant permission for the researcher to conduct interviews with ten Detective Commanders from stations, namely, SAPS Umlazi, Durban Central, Brighton Beach, Eshowe, Newcastle, Ladysmith, Vryheid, Plessislaer, Ulundi and Empangeni.

**PERMISSION TO CONDUCT RESEARCH IN SAPS: AN ANALYSIS OF PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES: DOCTOR OF PHILOSOPHY: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: NW MYEZA**

4. The Provincial Commissioner: KwaZulu-Natal agrees with the terms of the research as stated in Paragraph 6 and further requests that the researcher also provides this office with an annotated copy of the research on completion.
5. If all the conditions stipulated are adhered too, the Provincial Commissioner: KwaZulu-Natal has no objection against the Division: Research granting permission for the research to be conducted.
6. For any queries, please contact Colonel A.D. van der Linde on the following numbers:  
  
Office: 031 325 4841  
Cell: 082 496 1142  
Email: [vanderLinde@saps.gov.za](mailto:vanderLinde@saps.gov.za)
7. Thank you.

  
..... MAJOR GENERAL  
ACTING PROVINCIAL COMMISSIONER: KWAZULU-NATAL  
D.J. CHILIZA

DATE: 2016/11/18 .....



Privaatsak/Private Bag X 94

|                             |                                       |
|-----------------------------|---------------------------------------|
| <b>Verwysing/Reference:</b> | 3/34/2                                |
| <b>Navrae/Enquiries:</b>    | Lt Col Joubert<br>Intern Mahamba      |
| <b>Telefoon/Telephone:</b>  | (012) 393 3118<br>(012) 393 2423/4370 |

**DIVISION: RESEARCH  
SOUTH AFRICAN POLICE SERVICE  
PRETORIA  
0001**

NW Myeza  
**UNIVERSITY OF SOUTH AFRICA**

**RE: PERMISSION TO CONDUCT RESEARCH IN SAPS: AN ANALYSIS OF PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES: DOCTOR OF PHILOSOPHY: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: NW MYEZA**

1. The above subject matter refers.
2. You are hereby granted approval for your research study on the above mentioned topic in terms of National Instruction 1 of 2006.
3. Further arrangements regarding the research study may be made with the following offices:
  - 3.1. Provincial Commissioner: KwaZulu-Natal:
    - **Contact Person:** Col van der Linde
    - **Contact Details:** (031) 325 4841
  - 3.2. Divisional Commissioner: Detective Service:
    - **Contact Person:** Capt McMaster
    - **Contact Details:** (012) 393 1831
4. Kindly adhere to par 6 of our letter signed on the **2016/09/29** with the same above reference number.

  
**LIEUTENANT GENERAL  
DIVISIONAL COMMISSIONER: RESEARCH  
DR BM ZULU**

**DATE:** 2016/11/25

## ANNEXURE C: PERMISSION TO CONDUCT RESEARCH NATIONAL PROSECUTING AUTHORITY

### Administration



Tel: +27 12 845 6000

Victoria & Griffiths  
Mxenge Building  
123 Westlake Avenue  
Weavind Park  
Silverton  
Pretoria

P/Bag X752  
Pretoria  
0001  
South Africa

[www.npa.gov.za](http://www.npa.gov.za)

**TO :** ADV. THOKOZILE. J. MAJOKWENI  
ACTING DEPUTY NATIONAL DIRECTOR OF PUBLIC  
PROSECUTIONS AND HEAD OF THE NATIONAL  
PROSECUTION SERVICE

ADV. MALINI GOVENDER  
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS:  
SPECIALISED COMMERCIAL CRIMES UNIT

DR. SILAS RAMAITE SC  
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS:  
ADMINISTRATION AND OWP

MS. SALOME BALOYI  
ACTING CHIEF DIRECTOR FOR STRATEGIC MANAGEMENT  
OFFICE

**FROM :** MS. M. DU PLESSIS  
DIRECTOR OF RESEARCH MANAGEMENT

**DATE :** 27 OCTOBER 2016

**SUBJECT:** REQUEST TO CONDUCT ACADEMIC RESEARCH IN THE  
KWAZULU-NATAL SPECIALISED COMMERCIAL CRIMES  
UNIT (SCCU).

#### PURPOSE

The purpose of this memorandum is to request the Acting DNDPP and Head of Prosecution to approve a request to conduct research in the SCCU in KwaZulu-Natal, for the Chief Director for SMO to support the request and the Deputy National Director of Public Prosecutions to approve the request.

#### BACKGROUND

The PhD candidate aims to collect information on Prosecutor Guided Investigations (PGI) in murder cases from literature sources in the UNISA library and Durban Metropolitan libraries. He then wishes to investigate if there are lessons to be learnt from the SCCU's PGI methodology in KwaZulu-Natal that may improve PGI in murder cases.

To this end the candidate has submitted a request to the NPA to be allowed to conduct focussed interviews with five (5) experienced SCCU prosecutors in the KwaZulu-Natal region.

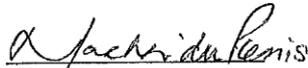
Accompanying this document are two memos:

1. An internal memo for the Acting DNDPP and Head of Prosecution to approve the request to conduct research in the National Prosecution Service and the Chief Director for SMO to support the request.
2. An external memo for Deputy National Director of Public Prosecutions: Administration and OWP to approve the request.

#### RECOMMENDATION

It is recommended that the Acting Chief Director for SMO support this research request, for the Acting Deputy National Director of Public Prosecutions and Head of the National Prosecutions Service, to grant permission and the Deputy National Director of Public Prosecutions: Administration and OWP to grant approval.

Recommended/~~Not Recommended~~



Ms. Marthi Du Plessis  
Director of Research Management  
Date: 31/10/16

COVER MEMO FROM RESEARCH DIRECTORATE TO THE ACTING CHIEF DIRECTOR: SMO, REQUEST TO CONDUCT ACADEMIC RESEARCH IN THE KWAZULU-NATAL SPECIALISED COMMERCIAL CRIMES UNIT (SCCU)

## Administration



### EXTERNAL MEMORANDUM

Tel: +27 12 845 6000

Victoria & Griffiths  
Mxenge Building  
123 Westlake Avenue  
Weavind Park  
Pretoria

P/Bag X752  
Pretoria  
0001

**TO :** MR. NW MYEZA.

**FROM :** DR. SILAS RAMAITE SC  
DEPUTY NATIONAL DIRECTOR OF PUBLIC  
PROSECUTIONS: ADMINISTRATION AND OWP

**DATE :** 27 OCTOBER 2016

**SUBJECT :** RE: APPROVAL OF A REQUEST TO CONDUCT  
RESEARCH IN THE NPA (SCCU).

Dear Mr. Myeza,

The purpose of this memorandum is to inform you that your request to conduct research within the Specialised Commercial Crimes Unit (SCCU) in KwaZulu-Natal has been approved. Thank you for showing interest in conducting research in the NPA.

The NPA appreciates that the topic has been approved by the UNISA College of Law, Research Ethics Review Committee. Please consider and/or adhere to (whichever is applicable) to the below-mentioned in support of your research:

1. The request is supported by the Specialised Commercial Crimes Unit (SCCU) and it should be noted and understood that information about the work can only be utilized with the NPA's explicit written approval and permission.
2. The research request focuses on "An analysis of Prosecution-led Investigation Model in Murder Cases" and therefore the policies and acts that govern them.

#### Corporate Service Centres:

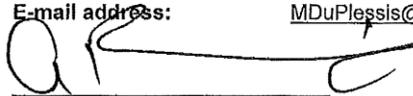
- Finance & Procurement
- Human Resources
- Development & Management
- Information Management
- Research & Policy Information
- Risk & Security

3. Permission to conduct research is only limited to interviews with five SCCU prosecutors in KwaZulu-Natal based on the questions indicated in your interview schedule.
4. This research intends to analyse and compare the way the SCCU in this province implements PGI with the implementation of PGI in murder cases in general.
5. Upon completion of the research project, it is suggested that a copy of the report be sent to the NPA for perusal and approval. This is specifically to prevent the inappropriate interpretation and publication of the latter mentioned information.
6. It is also suggested that in the event of the author publishing an article on research which contains NPA information, it be approved by the NPA.
7. Please inform the Head of the SCCU in the province of your intent to conduct research with the prosecutors before approaching them.

In your case there will be no need to complete FORM A, which is the request for access to records of a Public Body, Section 18(1) of the Promotion of Access to Information Act, 2000, since your research study involves interviews with participants.

Kindly keep the NPA informed about further developments on this research and please send your response to the NPA Researcher on the following details:

**Name:** Ms Marthi Du Plessis  
**Telephone number:** 012 845 6275  
**E-mail address:** [MDuPlessis@npa.gov.za](mailto:MDuPlessis@npa.gov.za)



**Dr. Silas Ramaite SC**

**Deputy National Director of Public Prosecutions: Administration and OWP**

**Date:** 10/11/2016

RE: APPROVAL OF A REQUEST TO CONDUCT RESEARCH STUDY:  
MR M.W. MYEZA (05/10/2016)

## 9.4 ANNEXURE D: CONSENT FORM

### CONSENT FORM

#### AN ANALYSIS OF THE PROSECUTION-LED INVESTIGATION MODEL IN MURDER CASES

Researcher: NW Myeza

Unisa PhD candidate

#### **Aim of the study**

The aim of this study is to analyse the prosecution-led investigation model in murder cases in order to develop practical guidelines for effective and efficient investigation of murder cases in South Africa.

#### **Methodology**

The researcher will conduct one-on-one interviews and email interviews with the participants. The interviews will not be longer than two hours, depending on the circumstances.

#### **Rights of the participants**

Please note that your participation in this study is voluntary and you may withdraw at any time should you decide to do so. Your name and identity are not required and all information will be treated confidentially. To ensure the confidentiality of the interviews, the researcher is the only individual who will have access to raw data. When answering the questions, it is important to give your own opinion. Additional questions to clarify answers may be used where applicable. Further note that you have a right to refuse answering a question if you are not comfortable with it. Should you wish to contact the researcher after the interviews, you are free to make use of the email address given to you by the researcher.

Your participation in this study is much appreciated.

I, the undersigned, understand that my participation in this study is voluntary and that I have a right to discontinue at any time.

.....  
Signature of the participant

.....  
Date

## 9.5 ANNEXURE E: ETHICAL CLEARANCE UNISA



### COLLEGE OF LAW RESEARCH ETHICS REVIEW COMMITTEE

Date: 2016-08-29

Reference:  
43740812/57/2016  
Applicant: NW Myeza

Dear NW Myeza

#### DECISION: ETHICS APPROVAL

|               |  |
|---------------|--|
| Name          | NW Myeza   |
| Proposal      | An analysis of a prosecution-led investigation model in murder cases |
| Qualification | PhD (Criminal Justice)   |

Thank you for the application for research ethics clearance by the College of Law Research Ethics Review Committee for the above mentioned research. **Final approval is granted.**

The application was reviewed in compliance with the Unisa Policy on Research Ethics.

The proposed research may now commence with the proviso that:

1. The researcher will ensure that the research project adheres to the values and principles expressed in the Unisa Policy on Research Ethics which can be found at the following website:

[http://www.unisa.ac.za/cmsys/staff/contents/departments/res\\_policies/docs/Policy\\_Research%20Ethics\\_rev%20app%20Council\\_22.06.2012.pdf](http://www.unisa.ac.za/cmsys/staff/contents/departments/res_policies/docs/Policy_Research%20Ethics_rev%20app%20Council_22.06.2012.pdf)

2. *Any adverse circumstances arising in the undertaking of the research project that is relevant to the ethicality of the study, as well as changes in the methodology, should be communicated in writing to the College of Law Ethical Review Committee.*

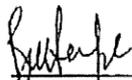
*An amended application could be requested if there are substantial changes from the existing proposal, especially if those changes affect any of the study-related risks for the research participants*

3. *The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study.*

**Note:**

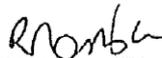
*The reference number (top right corner of this communique) should be clearly indicated on all forms of communication (e.g. Webmail, E-mail messages, letters) with the intended research participants, as well as with the URERC.*

Kind regards



---

**DR B HÄFELE**  
**CHAIR PERSON: RESEARCH ETHICS**  
**REVIEW COMMITTEE**  
**COLLEGE OF LAW**



---

**PROF R SONGCA**  
**EXECUTIVE DEAN:**  
**COLLEGE OF LAW**



University of South Africa  
Pretorius Street, Midrand Road, City of Johannesburg  
PO Box 392 UNISA 0003 South Africa  
Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150  
[www.unisa.ac.za](http://www.unisa.ac.za)

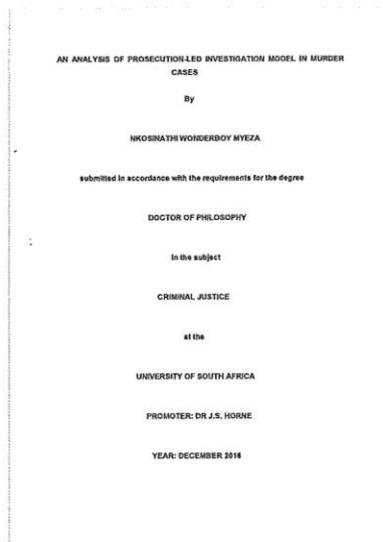


## Digital Receipt

This receipt acknowledges that Turnitin received your paper. Below you will find the receipt information regarding your submission.

The first page of your submissions is displayed below.

Submission author: Nw Myeza  
Assignment title: Chapter 7  
Submission title: Thesis  
File name: THESIS\_FOR\_SUBMISSION\_1.docx  
File size: 1.39M  
Page count: 398  
Word count: 110,588  
Character count: 634,251  
Submission date: 24-Oct-2018 12:08PM (UTC+0200)  
Submission ID: 1025882922



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