

**THE BODY OF A PERPETRATOR AS SOURCE OF PHYSICAL EVIDENCE
IN RAPE**

(A CASE STUDY IN BAHIR DAR/AMHARA REGION/ETHIOPIA)

by

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DECLARATION

I, **ADANE GENETU BAYIH** (student number 37041878), declare that **THE BODY OF A PERPETRATOR AS SOURCE OF PHYSICAL EVIDENCE IN RAPE (A CASE STUDY IN BAHIR DAR/AMHARA REGION/ETHIOPIA)** 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.

ADANE GENETU BAYIH

3 May 2010

Preface

The aim of this research is to determine what physical evidence can be found on the body of the perpetrator to link the suspect with the crime of rape. Regarding this, the researcher was trying to introduce a number of important concepts such as forensic investigation, chain of custody, evidence, information, identification, individualization, crime scene and the Locard Principle.

This research will explain the meaning of forensic investigation, the objective of criminal investigation, the difference between information and evidence and individualization and identification. An important principle which all investigators and prosecutors should know is the Locard Principle. It says: "Every contact leaves a trace". The principle further explains that, whenever two objects come into contact with one another, material from the first would be transferred to the second and material from the second would be transferred to the first. Although this principle is important for investigators as well as prosecutors, most of them do not know the principle.

The other important thing is the consideration of the body of the perpetrator as a crime scene to prove a crime. A crime scene is defined as an area where a criminal act has taken place. If we get evidence from the body of the perpetrator, we can then consider it as a crime scene. Lastly, regarding the legal rights to collect evidence on the body of the perpetrator, there should be specific laws in Ethiopia. However, there is no specific law. In addition to this, there is no DNA investigation in Ethiopia. Hence, this research will enhance the skills of investigators and prosecutors will benefit from what I have discovered through the research and I am very pleased to be the first Ethiopian in the introduction of the field of forensic investigation to the readers.

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CHAPTER ONE

GENERAL ORIENTATION

1.1 INTRODUCTION

This study is about the body of a perpetrator as a source of physical evidence in the investigation of rape. The research focuses on the body of a perpetrator because it will be important to get forensic evidence and link the perpetrator with the crime. If the perpetrator comes into contact with the victim, the contact may leave semen, hair, cloth, scratches, skin, blood, etc.

The crime rate of the Amhara National Regional State (Ethiopia) is very high when it is compared to other regions of Ethiopia. The Amhara Region ranks third in terms of the crime rate. For example, the Federal Police Commission report for 2006 shows that the total number of crimes in Addis Ababa city regional administration was 45,971 and its projected population was 2,973,000. In the Oromia Region, the total number of crimes was 54,944 with the total projected population of 30,076,000. In the Amhara Region 41,394 crimes were registered from its total projected population of 21,195,000 (Federal Police Commission report: 2006). Hence, the Amhara Region stands third in crime cases out of the nine regional governments of Ethiopia. Within the Amhara Region, the crime rate is more serious in Bahir Dar than the other towns because Bahir Dar is the capital of the region, where the population is large and there is a high degree of unemployment.

According to the municipality report of the city of Bahir Dar, the population of Bahir Dar is 180,835 (Bahir Dar city municipality report: 2006). According to the report of the city police office, the total number of committed crimes in the year 2006 was 2664 (Bahir Dar city Police report: 2006). Therefore, this indicates that Bahir Dar has the highest rate of crime than any of the eleven Zonal Capitals of the region.

Rape is a common type of crime in the Amhara Region, particularly in Bahir Dar town. The researcher had a talk during the pre-investigation to this report with the Bahir Dar City Police Commander, who informed the researcher that out of the total crimes committed during the period 2002-2004, about 9.8% ended in convictions in court. Most rape cases were not reported immediately at the time they were committed because the experience of the investigators to find technical evidence from the perpetrator was low. According to prosecutors, accused persons were not actually connected to the crime. One-way to connect the accused to the crime is by examining his body for physical evidence. The body of the victim is examined but that of the accused person is not. Based on the Locard principle, evidence should be sought on the bodies of both the accused and the victim. The reason might be that investigators do not regard the body of a perpetrator as a source of information/evidence.

To confirm that investigators do not have the bodies of the perpetrator examined for physical evidence the researcher, during the pre-investigation to this research, checked 10 cases in the 1st police station of Bahir Dar City prior to the research. Out of the 10 cases reported to the station, seven suspects were arrested. However, the investigators did not examine the bodies and clothes of any of the suspects.

The researcher also assessed the basic training curriculum to determine whether or not the curriculum in the field of the study takes the issue of the body as a source of information. The researcher found that the issue is not well addressed. The researcher thinks this lack of attention in training might have caused the investigators to relegate the importance of the body as a source of evidence.

1.2 AIMS

The aim of any research is to establish facts, to gather new data and to determine whether there are interesting patterns in the data (Mouton, 1996:103). In this research, the researcher had to collect new data due to the

fact that there is very little written on the topic: **The body of a perpetrator as source of physical evidence in rape.**

The aim of this research is to determine what physical evidence could be found on the body of the perpetrator to link the suspect with the crime of rape.

1.3 RESEARCH PURPOSE

This research has the following purposes:

1. To evaluate the current procedures investigators follow when arresting a suspect and connecting him with the crime, with the specific intention of determining strengths and weaknesses in order to see how it could be improved (Denscombe, 2002:27).
2. To explore international literature with the intention of discovering new information on how the body of the perpetrator can be used to find physical evidence to individualize and connect the perpetrator to the crime of rape (Denscombe, 2002:27).
3. From the strength in the current procedure and the new information that is found in literature, the researcher intends to suggest new procedures with the hope of developing good practice. The aim is to provide recommendations which if applied, can enhance the performance of those involved in the investigation of rape (Denscombe, 2002:27).

1.4 RESEARCH QUESTIONS

To address the problem and the aims of the research, the researcher decided to research the following questions, in order to give advance thoughts at the outset of the project, to the key themes that he wishes to address and has designed the project accordingly (Noak & Wincup, 2004:122):

- What evidence is needed to prove rape?
- What evidence can be found on the body of the perpetrator to connect him with the crime of rape?

1.5 KEY CONCEPTS

To understand the terminology that the researcher is going to use, the researcher will define the following concepts:

1.5.1 Investigation

Investigation refers to the process of legally gathering evidence of a crime that has been committed (Brown, 2001:3).

1.5.2 Forensic Investigation

This is the process of gathering evidence of an incident that has been committed and provides the evidence to a court of law (Crowther, 1995:462 and Brown, 2001:3).

1.5.3 Evidence

Evidence is the way in which an alleged fact, the truth of which is submitted to scrutiny, is established or disproved (O'Hara & O'Hara, 2003:671).

1.5.4 Rape

Rape is the legal term defining the crime of a person having sexual relations with another person under the following circumstances (1) against the person's will, (2) while the person is under the influence of alcohol or drugs, (3) with a person who is feeble- minded or insane and (4) with a child who is under the age of consent as fixed by statute (Swanson, Chamelin & Territo, 1996:375).

1.5.5 Physical Evidence

Physical evidence can be defined as any and all materials or items that may be identified as being associated with a crime scene, which, by scientific evaluation ultimately establishes the element of a crime and provides a link between the crime scene, the victim and assailant (Eckert & James, 1993:87).

1.5.6 Perpetrator

This refers to a person who commits a crime or offense (Garner, 1999:1161).

1.6 RESEARCH APPROACH AND DESIGN

A design consists of a clear statement of the research problem, as well as plans for gathering, processing and interpreting the observations intended to provide some solutions to the problem (Singleton & Straits, 1999:91). The researcher decided to use an empirical design. As a design to social research, the emphasis in empirical research tends to be on producing data based on real-world observations. The very notion of the research suggests that the researcher has involved an active attempt to go out and look for data to address the problem under investigation - 'straight from the horse's mouth'- as there is very little information. Therefore, this research will use interviews from investigators in practice. By doing this, the researcher ensured that the research will be purposeful and constructed (Denscombe, 1998:27). According to Mouton (2001:53), empirical research analyses existing data and addresses a real-life problem. This study also addresses real and existing problems.

The type of approach that the study employed is a qualitative one. According to Hagan (2003:19), qualitative research is viewed as sensitizing ideas or terms that enhance our understanding. A qualitative research method was selected because it describes events, persons and so forth scientifically without the use of numerical data (Van As & Van Schalkwyk, 2000:176). In this research, the researcher went to investigators and prosecutors to find information that will address the practical problem under investigation. Qualitative research further allows the respondents to tell their stories in their own words. The procedures used will also provide outsiders with maximum insight into the situation. Qualitative research refers to a series of research techniques, where the researcher has direct and sustained social interaction with participants in a particular setting (Taylor, 1994:208). The researcher regards this as very important to get to a real solution to the problem.

1.7 TARGET POPULATION AND SAMPLING

Population, according to Hall and Hall (1996:107), refers to the broad category of people about whom the research is concerned. The population of this study consists of all crime investigators and prosecutors of the Amhara Region. The total number of investigators in the Region is 576 and the number of prosecutors in the Region is 662. However, due to the large number of the population, the researcher decided to have a target population.

What is often referred to as the 'target population' is the set of cases that the researcher would ideally like to study (Kent, 2001:52). The target population of the study is the crime investigators and prosecutors in Bahir Dar, which is the capital city of the Amhara Region. There are 56 investigators investigating rape of which 25 were selected as a sample. In Bahir Dar there are 34 prosecutors prosecuting rape cases of which 10 were selected as part of the sample. The researcher regards the sample as representative of the target population because they were all recruited under the same selection criteria in their different departments. Further, they all received the same training and they all administer the same laws and follow the same principles in the fulfillment of their duties.

For the selection of the sample, the researcher made use of random sampling. In random sampling, each element has an equal chance of selection, independent of any other event in the selection process (Maxfield & Babbie, 2001:221). The specific technique for selection was systematic random sampling. Systematic random samples, according to Hagan (2003:133), are samples in which each element of the population has an equal probability of being selected.

To select the sample of 25 from the police, the researcher requested an alphabetic name list from all investigators of rape in Bahir Dar. The researcher divided the 56 names by 25 and got the number of 2. He then took two separate pieces of paper and wrote the numbers 1 and 2 on each, put them in a box, mixed them and by simple random sampling, selected one. The

number that was drawn was 1, so the researcher started at the first name on the list and thereafter every second name was selected. By using systematic random sampling, the researcher selected 25 names from the sample of police investigators and referred to this sample as sample 'A'.

To select 10 prosecutors as a sample from the 34, the systematic random sampling was also used. An alphabetic name list was obtained and numbered 1-34. The researcher divided the 34 names by 10 and got the number of 3. He then took three separate pieces of paper and wrote the numbers 1, 2 and 3 on each, put those in a box, mixed them and by simple random sampling selected one. The number that was drawn was 2, so the researcher started at the second name on the list and thereafter, every third name was selected. By using the systematic random sampling method, the researcher selected 10 names from the list to get the sample of prosecutors and referred to this sample as sample 'B'.

1.8 DATA COLLECTION

The researcher used literature, interviews and case studies as techniques to collect information. The use of a combination of methods to explore one set of research questions are referred to as 'triangulation'. Triangulation encourages the researcher to approach his research questions from different angles and to explore their intellectual puzzle in a rounded and multi-faceted way. This does enhance validity, in the sense that it suggests that social phenomena are a little more than one and that a study manages to grasp more than one of those dimensions (Mason, 1998:148).

1.8.1 Literature

The researcher tried his best to find literature related to the topic but failed in this endeavor. Therefore, the researcher developed concepts based on the topic of research and research questions. In an attempt to find relevant sources, the researcher broke the topic and research questions up into specific concepts and searched for sources covering these. The concepts are: physical evidence, rape, perpetrator, body, evidence, suspect, crime scene, Locard principle and forensic investigation.

The researcher used the research questions to guide him while working through the literature in order to find relevant information.

1.8.2 Interviews: The researcher used structured interviews. A structured interview has the advantage of being a situation where the researcher can build up greater empathy between himself and the interviewee. Data so obtained is more easily compared with less risk of bias occurring simply because different people are being asked rather different questions (Robson, 2000:90). The researcher compiled an interview schedule with open-ended questions based on the research questions for the interviews. First, the interviewer asked the interviewees for their consent. Then each question was put to the respondent. Thirdly, the respondents' answers were jotted down. The reason for using interviews is to get genuine information directly from the concerned persons. According to Van As and Van Schalkwyk (2000:110), one of the advantages of personal interviews, is that the interviewer has the opportunity to probe answers by asking the respondents to clarify or expand on a specific response.

The respondents were not willing to give their names and therefore, the researcher refers to them as respondent 1, respondent 2, etc. The researcher requested the respondents to respond freely and wrote down all responses to the questions. The researcher did not make use of a tape recorder. The researcher also got permission from each respondent as well as from his or her office.

To test the understandability of the interview schedule, the researcher translated the English version to Amharic, the language of the region from which the samples were selected. He handed the schedule to six of his colleagues and asked them to read it and to identify any difficulties they may have had regarding the understandability of the questions on the schedule. The researcher used the feedback to improve the questions on the schedule (Leedy & Ormrod, 2005:81).

The researcher has followed the suggestion of Leedy and Ormrod (2005:147) in conducting a productive interview. They state as follows:

1. Identify some questions in advance.

The researcher developed a set of questions in the form of an interview schedule based on the research questions which he used during the interview with each respondent. He did not mail it to the respondents before the time because of the poor postal service in the area.

2. Made sure his interviews are representative of the group.

The researcher justified his sample by using a simple random and systematic random sampling technique to get his respondents from the police sector and the prosecutors.

3. Find a suitable location.

The interviews with all respondents were conducted in private and in quiet offices.

4. Permission.

The researcher got permission from the Regional Police and Justice Bureaus to conduct the interviews. The researcher also, before each interview, explained the purpose of the interview and research with each respondent and asked for their consent to participate. All agreed to participate.

5. Establish and maintain interest.

The researcher, during interviews, showed genuine interest in what the interviewees were revealing in order to encourage them to open up.

6. Focused on the actual rather than on the abstract or hypothetical.

The researcher used the developed interview schedule during the interviews.

7. Avoid putting words in people's mouths.

As the interviews were conducted in the Amharic language, it was clear to each respondent. The respondents were given a chance to express their understanding without interruptions and the researcher clarified any point which was not clear. The researcher exercised his listening skill in order to allow the flow of information.

8. Recorded responses verbatim.

The researcher wrote the response of each respondent down on a schedule prepared for each respondent and kept that for record purposes.

9. Kept his reactions to himself.

The researcher did not show any surprise or disapproval to anything mentioned by the participants.

10. Remembering that the researcher was not necessarily getting the facts.

The researcher always treated their responses as perceptions and/or opinions rather than as facts.

1.8.3 Case studies

Case studies involve systematically gathering enough information about a particular event (Berg, 1989:212). A case study may be defined as an empirical inquiry that investigates a contemporary phenomenon with its real-life context, when the boundaries between the phenomenon and the context are not clearly evident. In case studies, multiple sources of evidence are used (Miller & Brewer, 2003:22). The researcher used case studies as a technique to detect areas not covered by literature and interviews and to collect more accurate information for a more complete study.

The researcher decided to take all rape cases reported for the year 2004 in Bahir Dar. The year 2004 was decided on because the possibility is that most of those cases will be filed. There were 210 cases reported of which the researcher decided to evaluate 50. The case numbers of these 210 cases were written down on a list and by using the systematic random sampling technique, 50 cases were selected, starting from the first number and thereafter every 4th number. To determine the starting point on the list, the researcher divided the 210 by 50 and got the number of 4. He then took four separate pieces of paper and wrote the numbers 1, 2, 3 and 4 on each, put them in a box, mixed them and by simple random sampling, selected one. The number that was drawn was 1, so the researcher started at the first name

of the list and thereafter every 4th number was selected. By using systematic random sampling the researcher selected 50 cases.

The selected cases were examined to get specific information to support the research questions. A guide for examining was compiled to ensure a standard for all cases. The following questions were in the guide:

- Was the body of the victim examined for physical evidence?
- Who examined the body of the victim for physical evidence?
- Which procedure was followed to examine the body of the victim for physical evidence?
- What evidence was found on the body of the victim to support the investigation of rape?
- Was the body of the perpetrator examined for physical evidence?
- Who examined the body of the perpetrator for physical evidence?
- Which procedure was followed to examine the body of the perpetrator for physical evidence?
- What evidence was found on the body of the perpetrator to support the investigation of rape?

1.9 METHODS OF DATA ANALYSIS

Data analysis takes place whenever theory and data are compared (Singleton & Straits, 1999:455). The researcher used the Tesch data analysis process to analyze the data (Tesch, 1990:142-145).

To get a sense of the whole, the researcher read through the transcriptions carefully and jotted down some ideas as they came to his mind. Then he picked one document, which was the most interesting and went through it, asking: "what is this all about?" By going through the document, the researcher underlined meanings and wrote thoughts down in the margin.

When this was completed, the researcher made a list of the topics that emerged and clustered those together under similar topics. The researcher then took this list and went back to the data. He abbreviated the topics as

codes and wrote the codes next to the appropriate segments of the text. He then tested this preliminary organizing scheme to see whether new categories and codes would emerge.

The researcher then found the most descriptive wording for the topics and turned them into categories. He looked at reducing the total list of categories by grouping topics that relate to each other. He then made a final decision on the abbreviation for each category and alphabetized these codes.

Following this, the researcher assembled the data belonging to each category in one place and performed a preliminary analysis.

1.10 MEASURES TAKEN TO ENSURE VALIDITY

Validity concerns the accuracy of the questions asked, the data collected and the explanation offered. Generally, it relates to the data and analysis used in the research (Denscombe, 2002:100). Validity, according to Van As and Van Schalkwyk (2000:177), means that the measurement represents what it is supposed to. A valid measure represents the relationship between things. In order to ensure validity of the study, the researcher took the following measures. Selecting 30 samples out of the study populations using an appropriate sampling method, the researcher used confidentiality, informed consent with the informants, gave freedom to withdraw at any time during the interview session, created favorable environments and explained each question briefly through reading, avoided leading questions while interviewing and others. In addition, the sample size is more than ten percent of the population, which is valid according to the opinion of the researcher. Validity is also ensured by identifying the target population, by doing sampling, by using each of the data collection techniques both during data collection and analysis.

The researcher used more than one data collection technique to ensure the validity of the data. This is called triangulation. Triangulation refers to the use of a combination of methods to explore one set of research questions. By doing that, the researcher ensured that the research questions were

approached from different angles. This enhances validity, in the sense that it suggests that social phenomena are a little more than one and that the study managed to grasp more than one of those dimensions (Mason, 1998:148).

1.11 MEASURES TO ENSURE RELIABILITY

Reliability is an instrument that measures a phenomenon consistency if applied repeatedly or by different persons (Bauer & Gaskell, 2000:363) and according to Van As and Van Schalkwyk (2000:179), it is consistent if supplying the same answer at different points in time. To ensure reliability in the study, the researcher took all the possible precautions to make the research finding free from unnecessary biases that may emanate from the interviewer. To this end, the informants were briefed about the purpose of the study and the repercussions that resulted from their responses to those questions in the schedule. The questions on the schedule were designed to answer the research questions. The schedule was sent to my supervisor and editor to assure that the questions are clear and that they addressed the research questions. Given such a conceptualized situation and environment, the researcher strongly believes that a researcher would reach the same research findings all the time. The data collection techniques were considered to be reliable because they focused on the potential and concerned persons in the population. With the use of the different data collection techniques (triangulation), he feels that the data collected was objective. An interview schedule was developed based on the research questions and the aims of the research.

1.12 ETHICAL CONSIDERATIONS

Ethical research, according to Van As and Van Schalkwyk (2000:179), involves getting the informed consent (also Leedy & Ormrod, 2005:101) of those you are going to interview, question, observe or take materials from. The researcher collected the responses from the informants as they were being interviewed. In addition, the informants in the study were informed about the procedures and risks involved in the research. The researcher ensured confidentiality and the informants participated in the study with informed consent to participate as respondents. Further to the above, the

researcher ensured that the respondents were protected from harm by keeping the information received from them confidential (Leedy & Ormrod, 2005:101) and by not putting their names on the interviews but by numbering each interview. The respondents were also assured that under no circumstances will their input, either oral or written, be presented in such a way that others become aware of how the respondent reacted to any question (Leedy & Ormrod, 2005:102). As this research was forms part of a government project and general permission were given, no specific permission was obtained.

All literature used in this research is accounted for in the list of references and all ideas from authors were recognized by giving reference to the author(s).

1.13 CHAPTER OUTLAY

To address the research questions and to ensure that the problem under investigation is properly discussed, the researcher decided to divide the report into the following chapters:

- Chapter two: Evidence needed to prove rape.

In this chapter rape as a crime will be discussed, as well as the evidence needed to prove rape.

- Chapter three: Finding evidence on the body of the perpetrator.

In this chapter a close look at the body of the perpetrator will be taken as a source of evidence. A comparison between a general crime scene and the body will be drawn based on the Locard Principle.

- Chapter four: Findings and Recommendations

CHAPTER TWO

EVIDENCE TO PROVE RAPE

2.1 INTRODUCTION

Investigation is important for a country to protect the rights of citizens. It is also important to determine whether a crime has been committed and to obtain information and evidence to identify the person who commits that crime. Investigation is important to charge the criminals and to secure law and order. In general, investigation is essential for the systematic search of evidence to identify the individual and to obtain sufficient evidence to prove in court that the suspect is guilty beyond a reasonable doubt.

This chapter deals with the meaning and definition of rape, the elements of rape, specific evidence to prove rape, the difference between evidence and information, the meaning of evidence and chain of custody in evidence, trace evidence, the Locard principle and crime scene consideration of the body of the perpetrator as a crime scene. Also, the difference and meanings of identification and individualization, as well as consideration and investigation of the body of the perpetrator as a source of evidence in rape

2.2 CRIMINAL INVESTIGATION

Criminal investigation is the process of discovering, collecting, preparing, identifying and presenting evidence to determine what happened and who was responsible for committing the crime (Bennett & Hess, 2001:3). Criminal investigation is the process of legally gathering evidence of a crime that has been or is being committed (Brown, 2001:3).

Criminal Investigation is a systematic search for truth with the primary purpose of finding a positive solution to the crime with the help of objective and subjective clues (Van der Westhuizen, 1996:1). Van Heerden (in van der Westhuizen, 1996:1) describes the objective clues as the factual proof and

objective explanation of these, that is, the so-called mute, indirect or circumstantial evidence. According to Gilbert (2004:37-38), criminal investigation is a logical, objective, legal inquiry involving a possible activity. The results of the inquiry, if successful, will answer the following questions:

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

Subjective clues, on the other hand, are defined by Van Heerden (in Van der Westhuizen, 1996:1) as the evidence offered by people, such as victims, complainants, eyewitnesses and culprits, who are directly or indirectly involved in the crime. Collecting evidence regarding a fact is, according to this definition, the fundamental character of a criminal investigation. Therefore, facts can be subjective (verbal evidence) or objective (physical clues).

According to the definitions of different authors mentioned above, the common theme between the definitions of Bennett and Hess, Brown, and Van der Westhuizen are collection, searching and the finding of evidence to prove the responsible person for that crime. Gilbert also said that criminal investigation is a legal enquiry involving a possible activity which means that enquiry will lead us to prove the responsible person. The researcher is much more attracted to the definition of Bennett and Hess because they defined it in a more descriptive manner, by starting from discovering to presenting of evidence to identifying the responsible person.

2.3 OBJECTIVES OF CRIMINAL INVESTIGATION

The objective of criminal investigation, to describe it more precisely, is a commitment which must be achieved within an appointed time and according

to a specified standard. Several authors including Dienstein (1970), Horgan (1979), Bennett and Hess (1981) and Van Heerden (in Van der Westhuizen, 1996:4), identified the following objectives of criminal investigation: Identification of crime, gathering of evidence, individualization of crime, arrest of the criminal, recovery of stolen property and involvement in the prosecution process.

2.3.1 Identification of the crime

This concerns situation identification, that is to say, the type of crime committed, if any and what kind of information or clues can possibly be collected. The crime situation must therefore be identified not only by means of a set of juridical elements but also by means of preliminary observations made at the scene of the crime. The information and facts gathered must therefore confirm that an act, judged by the set juridical elements of particular crimes, indeed amounts to unlawfulness and that a specific person or persons is/are responsible (Van der Westhuizen, 1996:4).

The same experience applies to Ethiopia. This means to know the responsible person for the specific crime, observing the crime scene and joining it to the suspects identified in that type of crime.

2.3.2 Gathering evidence

Evidence encompasses in its normal meaning all the information presented to a court in order to enable it to settle a factual dispute so that it includes the written and oral statements by witnesses, as well as objects submitted for inspection (Schmidt in Van der Westhuizen, 1996:4).

This important definition must always be borne in mind because gathering information commences at the scene of the crime and a definite distinction regarding the collection of information can be made between direct and indirect sources of information (Van der Westhuizen, 1996:4).

Observation of the crime scene will help the investigator to find evidence. This evidence will be collected from the information that is gathered from the scene. This evidence is important to identify the suspect and to detain him.

2.3.3 Individualization of the crime

According to van Heerden (in Van der Westhuizen, 1996:5), the emphasis here is on the involvement of the perpetrator or alleged criminal in the act committed and based on establishing probability, from the information and facts collected, that a specific person committed the crime.

In the case of Ethiopia, when the crime is committed, the investigator collects information from the people and the crime scene. Then he attempts to identify suspects from the gathered information. He will then obtain an arrest warrant, arrest the suspects and detain them for further investigation.

2.3.4 Arresting the criminal

Once all the relevant information and facts have been collected and the criminal has been identified, the criminal investigator can proceed to have him arrested, that is, to ensure that the criminal will be present at his trial (Marais in Van der Westhuizen, 1996:7).

2.3.5 Recovery of stolen property

This objective of a criminal investigation is of a two-fold nature:

- ❖ To restrict the victims loss to a minimum.
- ❖ To present the recovered property as evidential material at the trial.

In Ethiopia, it is the experience that individuals sometimes collude with the criminal by paying an amount of money to recover their stolen property. In this case, they prevent the criminal from being exposed. In Ethiopia, the experience of giving the stolen property to court creates difficulty for the investigators. Unless the prosecutor orders the police to give the recovered material to the victim, the investigator will not return the recovered stolen property. Therefore, in most cases, victims will communicate with the suspect

informally to recover their stolen property without informing the police. They do this due to the long process of the prosecution and the police departments.

2.3.6 Involvement in the prosecution process

This objective is to assist the public prosecutor in the prosecution process. Caldwell in Van der Westhuizen (1996:7) underlines the importance of this objective of criminal investigation and declares quite rightly: “The successful prosecution of criminals depends to a great extent upon the skill and efficiency of those who conduct the criminal investigation”.

The investigator’s involvement here lies mainly in the presentation of the information gathered and in making sure that everyone and everything is present in court on the trial date. Only with an eventual conviction can one talk of positive individualisation. This also underscores the fact that the individualisation as a process, begins at the scene of a crime and only ends after the presentation of evidence in court (Van der Westhuizen, 1996:7).

To realise these identified aims and objectives of criminal investigation, the present day criminal investigator has no choice but to turn to the specific methods of criminal investigation (Van der Westhuizen, 1996:7). The Ethiopian experience shows that when one crime is committed, the investigator starts from the crime scene and collects evidence from the scene. The exhibits are preserved in the police office and presented to court when required at the trial. The prosecutor prepares the charge in order to provide evidence to the court for the prosecution of criminals.

2.4 FORENSIC INVESTIGATION

According to Lambrechts and Theart (2001), and James and Nordby (2003) in Kruger (2006:12), Forensic Investigation means to observe intensely, to question systematically and to gather information. Horswell (2004) in Kruger (2006:12) says it is a searching inquiry in order to ascertain facts. Thus, it is believed that it will reveal the truth and ultimately lead to the reconstruction of the crime. Forensic investigation involves the combination of scientific and investigative methods and techniques to ensure a proper investigation and to

present the evidence in a court of law (Lambrechts (2001) & Fisher (2004) in Kruger 2006:14).

In general, forensic investigation is the process of collecting facts (namely evidence in relation to the crime that was committed) analyzing them and providing them to the court. From the discussions, it is clear that criminal investigation is gathering evidence to reach the fact but forensic investigation continues up to the conclusion of the trial. Therefore, forensic investigation is a new field of study and follows scientific methods and techniques

Of all the authors, the researcher is much more attracted to the definition of Lambrechts and Fisher, in Kruger, because forensic investigation is a new and more specialized field of study than criminal investigation. There is no special training in this field in Ethiopia. Therefore, more training should be given in this area.

2.5 CRIME

According to Reid (1998:15), a crime is the commission of an act prohibited by criminal law or the failure to act as required by criminal law. A crime is an act in violation of penal law and an offense against the state. Bennett and Hess (2001:3-4) state that the broader use of the term includes both felonies and misdemeanors. A crime is also a violation of a public right or law. It is an act or omission forbidden by law and punishable by a fine, imprisonment or even death (Bennett & Hess, 2001:3-4).

According to the Criminal Code of the Federal Democratic Republic of Ethiopia (2005:14-15), crime is classified under different sections. Article 23 of the Code reads:

1. A crime is an act, which is prohibited and made punishable by law. Under this code, an act consists of the commission of what is prohibited or the omission of what is prescribed by law.
2. A crime is only completed when all its legal, material and moral ingredients are present.

3. Notwithstanding the provision of sub article (2) of this article, a juridical person shall be criminally liable to punishment under the conditions laid down in Article 34 of this code.
4. A crime is punishable where the court has found the crime proven and deserving of punishment.

2.6 ELEMENTS OF CRIME

According to Article 23 of the Criminal Code of the Federal Democratic Republic of Ethiopia (2005: 37), the elements of crime are:

- ❖ A crime is an act or omission which is prohibited by law
- ❖ It is only completed when all its legal, material and moral elements are present and
- ❖ It is punishable where the court has found it proven and deserving of punishment.

2.7 RAPE

Different authors define rape differently. Some are presented below:

- Rape is generally defined as an act of sexual intercourse against a female by force or against her will (Gilbert, 2004:327)
- Van der Westhuizen (1996:151) defines rape as the carnal knowledge of a woman by force and against her will
- In some studies, rape has been defined as unwanted advances in which the male attempts to have sex but was rejected by the woman (Carney, 2004:112)
- Rape is usually defined as unlawful sexual intercourse with a female by force or against her will (Brown, 2001:208)
- Savino and Turvey (2005:1) define rape as non-consensual sexual penetration
- Rape is the act when a man puts his penis, finger, or any object into a woman's vagina, anus, or mouth without her consent (Burns, Lovich, Maxwell & Shapiro, 1997:327)

Even though there is no written Evidence Law in Ethiopia, the Criminal code of Ethiopia (No.414/2004: 361-362) says the following about Rape:

- Article 620: Rape
 - 1) Whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years.
 - 2) Where the crime is committed:
 - a) On a young woman between thirteen and eighteen years of age; or
 - b) On an inmate of an alms – house or asylum or any establishment of health, education, correction, detention or interment which is under the direction, supervision or authority of the accused person, or on any one who is under the supervision or control of or dependent upon him, or
 - c) On a woman incapable of understanding the nature or consequences of the act, or of resisting the act due to old-age, physical or mental illness, depression or any other reason; or
 - d) By a number of men acting in concert, or by subjecting the victim to act or by cruelty or sadism, the punishment shall be rigorous imprisonment from five years to twenty years.
 - 3) Where the rape has caused grave physical or mental injury or death, the punishment shall be life imprisonment.
 - 4) Where the rape is related to illegal restraint or abduction of the victim, or where a communicable disease has been transmitted to her, the relevant provisions of this code shall apply concurrently.
- Article 621: Compelling a man to sexual intercourse:

A woman, who compels a man to sexual intercourse with herself, is punishable with rigorous imprisonment not exceeding five years.
- Article 622: Sexual outrages accomplished by violence

Whoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of offering resistance, compels a person of the opposite sex, to perform or to submit to an act

corresponding to the sexual act, or any other indecent act, is punishable with simple imprisonment for not less than one year, or **rigorous** imprisonment not exceeding ten years.

- Article 623: Sexual outrages on unconscious or deluded persons, or on persons incapable of resisting:

Whoever, knowing of the victim's incapacity but without using violence or intimidation, performs sexual intercourse, or commits a like or any other indecent act with an idiot, with a feeble – minded or retarded, insane or unconscious person, or with a person who is for any other reasons incapable of understanding the nature or consequences of the act, Is punishable according to the circumstances of the cases, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years.

- Article 624: Sexual outrages on persons in hospital, internment or under detention. Whoever, by taking advantage of his position, office or state, has sexual intercourse or performs an act corresponding to the sexual act or any other indecent act with an inmate of the hospital, an alms-house or an asylum, or any establishment of education, correction, internment or detention, who is under his direction, supervision or authority, is punishable according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years.
- Article 625: Taking advantage of the distress or dependence of a woman. Whoever, apart from the cases specified in the preceding articles, procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or of the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master or employer, or by virtue of any other like relationship, is punishable, upon conviction, with simple imprisonment.

To the question: What is the meaning of rape? The respondents reacted as follows:

- ❖ 24 out of 35 defined rape as the act of sexual intercourse against a woman by force. These responses are similar to the views of Gilbert (2004:327), Van der Westhuizen (1996:151), Carney (2004:112), Brown (2001:208) and Burns et al (1997:327).
- ❖ 11 out of 35 said the act of sexual intercourse against a person but they did not mention that it was committed against a woman's will. These respondents responded similarly to Savino and Turvey (2005:1). However, whether or not they mentioned female, the act is sexual intercourse committed without the consent of the victim.

The respondents and the authors agree with the meaning of rape by saying an act of sexual intercourse without the consent of the victim (in other words, it was committed by force). The difference between the two groups of respondents is the matter of the difference of the victim's gender. Nevertheless, all agreed that it is sexual intercourse against any person without their consent. The researcher also agrees with the meanings of different writers as mentioned above. To summarize, the researcher suggests that the meaning of rape is: "Sexual intercourse against a female or male by force". Even though the investigators have not had special training with the investigation of rape, they have a good knowledge on defining rape.

2.7.1 The Elements of Rape

Elements of the crime of rape, according to Bennett and Hess (2001:271), commonly include:

- An act of sexual intercourse
- With a female
- Committed without the victim's consent
- Against the victim's will and by force

Palmiotto (2004:182) says in the Common Law, two basic elements are required to establish rape:

1. The sexual intercourse must be without the female's consent. There is no valid consent if she acts under duress, force, or threat or if she is under age, mentally incapacitated, intoxicated, or unconscious. Consent cannot be given if she was tricked into believing the male was her husband. Until recently, the law required reasonable resistance from the victim.
2. There must be carnal knowledge of the female. This means that the penis penetrates the vagina. The penetration can be ever so slight and ejaculation is not necessary.

To the question: "What are the elements of rape?" The respondents replied as follows:

- ❖ 25 out of 35 said lack of consent of the victim and that there must be an act of sexual intercourse.
- ❖ 9 out of 35 responded differently to the answers in the literature.
 - * Three of them said wounds and sores
 - * Two of them said medical certificate
 - * Four others said blood and/or hair. Thus, the majority of this group said that evidence found at the crime scene rather than the elements. The possible reason for these strange answers is that some of the respondents may have had training from the police training centers but some of them forgot after graduation.
- ❖ One of the respondents did not give an answer to the question.

As mentioned in the history profile, not all the investigators received special training in the investigation of rape and two of them did not even undergo basic criminal investigation training.

The majority of the respondents gave similar explanations to Palmiotto, Bennett and Hess. These authors have given similar ideas in explaining the elements of rape. The researcher also agrees with these writers and the explanation of the majority of the respondents. In knowing about the elements of rape, the majority of respondents have a good knowledge but there should

be additional training on the elements of rape, to make the remaining respondents fully competent.

2.7.2 Evidence needed to prove rape

According to O'Hara and O'Hara (2003:366-367), the types of evidence will include the following:

- 1) Any debris acquired during the assault
- 2) Dried secretions such as semen, blood and saliva which are collected with a moistened swab
- 3) Fingernail scrapings, which are collected to obtain traces of evidence such as blood, hair, skin and fibers, acquired while resisting the assailant
- 4) Pubic hair combings to obtain hairs or fibers left by the assailant
- 5) Pulled pubic hair and pulled head hairs for comparison with those found at the scene of the crime and on the assailant
- 6) Vaginal swabs and smears if vaginal assault occurred. The swab is used to collect semen evidence. A smear involves placing this evidence on a glass slide for microscopic examination.
- 7) Rectal swabs and smear if rectal assault occurred.
- 8) Oral swabs and smears if oral-genital contact occurred.
- 9) Blood samples for blood typing and DNA analysis, which will be compared with any biological evidence found at the crime scene or on the assailant.
- 10) Saliva samples to determine if the victim is a secretor.

Outdoor scenes have a good possibility of yielding soil-training evidence and shoe impressions of the offender regardless of rape locality – building, automobile, or outdoor scene. Certain types of evidence are likely to be encountered, as clothing from both the victim and the suspect may be scattered about. All undergarments, other clothing, bedding and other significant articles should be collected (Gilbert, 2004:337-338). Any type of evidence may be encountered in a sex crime. However, in many of them, semen will constitute the primary evidential item (Gilbert, 2004:353).

Events associated with a sexual assault frequently result in various kinds of personal evidence including body fluids, hairs and fibers which are deposited on various surfaces and objects (Hazelwood & Burgess, 1993:261).

The respondents were asked: "What specific evidence will you look for to prove rape?" In this regard their responses are as follows:

- ❖ Three from 35 say sores, scratches, clothes, semen, hair and blood
- ❖ Eight from 35 say eye- witness and technical evidence
- ❖ One of the 35 said sticks and other materials
- ❖ Five from 35 say blood, hair, semen and fluids
- ❖ Seven from 35 say eyewitnesses and medical results
- ❖ One of the 35 said hair and semen and what they all said, is partially similar to the literature
- ❖ Four from 35 say medical and circumstantial evidence
- ❖ One of the 35 said real and circumstantial evidence
- ❖ Five from 35 did not respond. The possible reason for this is that they, according to information supplied before the interviews, did not receive specialized training in the investigation of rape and their experience in crime investigation is limited.

The above authors describe specific evidence to prove rape. Some of the interviewees (about 9 out of 35) described some of the evidence that is found to prove rape, whilst others held different views. Some of them said eyewitnesses. Even if an eyewitness account is not explained in the literature, it should be included. Some of the respondents said medical results, circumstantial evidence and sticks but these things have no direct relationship. The researcher agrees that the consensus evidence of the authors will be important to prove rape. Since the respondents responded in different ways, this shows that they have no detailed knowledge required to prove a case of rape. It shows that investigators and prosecutors lack detail knowledge.

2.8 EVIDENCE

The literature has different viewpoints on what evidence is:

- According to Schmidt (in Van der Westhuizen, 1996:4), 'evidence' is defined as all the information presented to a court in order to enable it to settle a factual dispute. Thus, it includes the written and oral statements by witnesses, as well as objects submitted for inspection.
- Evidence may be in any form and which may be admissible during a trial. If an objection is raised, the judge may determine that it fails to meet the rules of evidence (Gilbert, 2004:59).
- Evidence is something legally submitted to a competent tribunal as a means of ascertaining the truth of any alleged matter of fact under investigation before it (Fisher, 2004:1).
- Evidence can be defined as anything that tends to prove or disprove a fact in contention. In any investigation, the evidence presents itself as either testimonial evidence or physical evidence. Each is important and each plays a role in helping the jury come to a decision on guilt or innocence (Gardner, 2005:7).
- Evidence is defined as any species of proof, or probative matter, legally presented at the trial of an issue, by the act of parties and through the medium of witnesses, records, documents, exhibits, concrete objects etc, for the purpose of inducing in the minds of the court or jury as to their contention (Black's Law dictionary in Brown, 2001:85).

Facts and findings are effective proof as the presentation of evidence convinces the presiding officer of the truth of an alleged fact. Evidence therefore fulfils the function of the medium through which proof is produced. In order to do this, the criminal investigator is under an obligation to collect all the facts, so that what actually happened can be revealed and to present these facts as evidence (Van der Westhuizen, 1996:15).

O'Hara and O'Hara (2003:672) classify evidence into three major types:

- Direct Evidence

Evidence which directly establishes the main fact of issue (elements of the crime) is called direct evidence. For example, an eyewitness account of a criminal act is direct evidence; the witness is here describing an event which he actually saw

- Circumstantial Evidence

Evidence which establishes a fact, or circumstances from which the court can infer another fact at issue, is called circumstantial evidence. Where direct evidence is the immediate experience on the part of a witness, the essence of circumstantial is evidence/inference.

- Real Evidence

This comprises tangible objects introduced at a trial to prove or disprove a fact in issue. The evidence speaks for itself. It requires no explanation, merely identification. Examples of real evidence are guns, fingerprints, and bloodstains. Real evidence may be direct or circumstantial.

Evidence that has individual characteristics can be used to identify a specific suspect and link that suspect to a particular crime (Brown, 2001:86). Relevant evidence is authentic information required to reconstruct the perpetrated crime reliably. The more relevant pieces discovered, the better the chance of completing the crime scene puzzle and addressing the facts to be proved conclusively (Van der Westhuizen, 1996:355).

In defining the term 'evidence', all the authors gave similar definitions. To the question: "What is the meaning of evidence?" the majority of the respondents gave answers similar to those in the literature. That means that they said the definition of evidence is anything to prove the commission of a crime. Thus, their responses comply with what Gilbert (2004:59) and Schmidt in Van der Westhuizen (1996:4) said. The respondents responded as follows:

- ❖ 26 out of 35 say evidence is anything to prove the commission of a crime
- ❖ Three out of 35 respondents say evidence is real and concrete things about the crime and which are used as proof in court

- ❖ One out of the 35 respondents says that it is evidence which answers questions such as by whom, which and what in order to prove the crime.
- ❖ Five from 35 give their definitions for the term evidence. They said 'evidence' refers to the results obtained from the collection of tactical and technical evidence.

Since the majority of the respondents' answered similarly to the literature, that means that most of the investigators and prosecutors know about the meaning of evidence.

2.9 PHYSICAL EVIDENCE

'Physical evidence' may be defined as articles and materials which are found in connection with an investigation and which aid in establishing the identity of the perpetrator or the circumstances under which the crime was committed or which, in general, assist in the discovery of the facts (O'Hara & O'Hara, 2003:80). 'Physical evidence', according to Savino and Turvey (2005:71), is defined as any object, material, or substance found in connection with an investigation that helps establish the identity of the offender, the circumstances of the crime, or any other fact determined to be important to the case. 'Physical evidence' can be any kind of object associated with the investigation but must be a physical, tangible item, unlike other forms of evidence that may result from sensory observations or inferences (Gilbert, 2004: 59).

To the question: "Explain the meaning of physical evidence?" The respondents responded as follows:

- 11 from 35 say 'physical evidence' is evidence taken from the victim or the suspect and includes hair, blood, semen, etc.
- Six from 35 say it is technical evidence, which shows us whether or not the crime was committed.
- Three from 35 respondents said it is evidence that can be found on the victim and the perpetrator such as scratches and bleeding. One

respondent said it is evidence which has a bearing on the crime being investigated such as hair, blood, fibres, etc.

- One of the 35 respondents said it refers to those things which are related to the crime and provided to the court. They include knives, weapons, bullets, bloodstains, photographs etc.
- Three from 35 say anything related to blood, hair, semen, etc.
- Two from 35 said blood, hair, clothes, knives, weapons, etc.
- One from 35 says human evidence
- Two from 35 said materials that can be found on the crime scene and which may have been used by the perpetrator to commit that crime e.g. knife, weapons, stick etc;
- One of the 35 says it means the victim raped by force
- Two from 35 say the results we get from the crime or the materials used for committing that crime
- Three from 35 did not give responses and it is because of insufficient training in specialized areas. This is because the respondents have limited experience and few of them have undergone basic investigation training.

The authors define physical evidence almost in similar way by saying physical evidence means articles, objects, materials and those substances in connection with investigations to establish the identity of perpetrators. The definitions of the respondents are not quite similar to those of the writers. The respondents, in one way or another, defined physical evidence by giving those examples. Therefore, the investigators and prosecutors should receive additional training on the meaning of physical evidence.

2.9.1 Trace Evidence

The basic premise behind the use of most evidence as an element of proof is that a person often leaves something at a crime scene and takes something away from it. In crimes of violence, this leads to the intensive search for very small pieces of evidence, generally referred to as trace evidence (Hazelwood & Burgess, 1993:67).

'Trace evidence', such as fibers, glass, hairs, paint or soil can provide very useful evidence (Pepper, 2005:39). The phrase 'trace evidence' can be defined as microscopic material recovered as evidence that is useful in solving criminal cases. Trace evidence, because of their minute nature, can be easily cross-transferred from one surface or substrate to another without detection by a criminal (Houck, 2004:1). The term 'trace evidence' is usually very loosely defined. However, it is most often applied to minute or microscopic bits of materials that are not immediately apparent to even a trained investigator (Gardner & Anderson, 2004:315).

To the question: "What do you understand under the term 'trace evidence'?" the respondents responded as follows:

- ❖ 19 from 35 define it as evidence found on the crime scenes and which identify the suspects
- ❖ 11 from 35 gave different examples such as bullets, cartridges, documents, signature and writings, as well as footprint, fingerprint, blood, hair, fluids, semen, ink, etc.
- ❖ Five of the subjects did not give responses. The reason is that some of the investigators have not even had basic investigation training, they have only a few years experience and most of the respondents are not police officials. None of the prosecutors among the respondents have had any investigation training (as indicated in the historical information part).

The definition of the above writers is similar. However, the definitions given by the respondents are different from the literature. For example, 19 out of 35 say evidence found on the crime scene that identifies the suspect. However, not all evidence is trace evidence because as mentioned in the literature, trace evidence is defined as microscopic material recovered as evidence that is useful in solving criminal cases. There should be an introduction of trace evidence either in training or through other ways of teaching.

2.10 INFORMATION

The word "information" is used to describe the knowledge which the investigator gathers from other persons. There are basically two kinds. The first type of information is acquired from regular sources, such as conscientious and public-spirited citizens, company records and the files of other agencies. The second type, which is of particular interest to the criminal investigator, is the knowledge gathered by experienced investigators from cultivated sources such as paid informants, bartenders, cab drivers, licensed owners and employees in general, former criminals, or acquaintances (O'Hara & O'Hara, 2003:7).

Information in accordance with the Locard principle, according to Marais and Van Rooyen (in Van der Westhuizen, 1996:20), is left behind by criminals at the scene of the crime in organic and/or inorganic form, which possesses definite classes and individual properties and presents usable potentialities for individualization.

The fact that the information is established and observed in no way reduces its dynamic and complex nature. Information in this regard implies the positive clarification of the perpetration situation on the basis of objective and subjective sources of information (Van Heerden in Van der Westhuizen, 1996:15). Objective sources relate to factual evidence and the objective explanation thereof, while subjective sources refer to the evidence of people who are directly or indirectly involved in the perpetration of a crime (Van Heerden in Van der Westhuizen, 1996:15). These objective and subjective sources of information are known as evidence and lead to proof (Van der Westhuizen, 1996:15).

All information gathered must be properly evaluated. This is essential, not only to determine whether it is relevant and conclusive but also whether it has any positive potential to reveal the whole truth of the event (Marais in Van der Westhuizen, 1996:3).

2.11 DIFFERENCE BETWEEN EVIDENCE AND INFORMATION

It is desirable to evaluate for instance the information furnished by eye witnesses on the basis of information already gathered, in order to determine its reliability. It must always be remembered that not all information collected during the investigation of a crime will necessarily be accepted or presented as evidence (Van Heerden in Van der Westhuizen, 1996: 3).

From the above explanation of authors, “evidence” will be drawn from information. But all information will not be evidence. 'Evidence' will lead to proof and induces the minds of the courts or juries. However, all information must be collected, evaluated and categorized before it can be utilized as evidence.

All authors agree that information is anything in relation to the crime or the situation but evidence may start from information but it leads to proof of the fact to court. It means information will be evidence if it is properly filtered and sorted.

To the question: “What is the difference between evidence and information?”

The respondents responded as follows:

- 15 from 35 said evidence is proving facts using technical and tactical things, while information is anything whether it is proved or not
- 12 from 35 said information means verbal ideas gathered from different directions, while evidence means proving the commission of a crime in a concrete manner
- Two from 35 said evidence means providing concrete and objective things to court for proving facts, while information means ideas collected about any act
- Four from 35 said that information is a source for any act while evidence is an eyewitness account or other objects to prove the crime objectively
- One from 35 says that 'evidence' is anything that any person saw, thought, recognized or discussed about the crime while

information means things such as hair, blood and semen which will be provided for technical investigation of all the subjects. This respondent did not answer because he has lack of training and he did not read materials to promote his knowledge on the subject

- One from 35 did not respond to the interview. The reason is lack of special training as mentioned in historical information. The other reason is that this respondent is one of those who are doing investigation without training

The majority of the respondents' responses are almost similar to those in the literature. In the literature, the writers' viewpoints are also similar. The respondents' responses are not all the same. The majority of the members (33 out of 35) attempted to show the difference by using their own words and expressions but they are still similar to those of the writers. One (out of 35) differs from the literature and another one (of the 35) did not give a response. To make a clear understanding on the difference, awareness and clarity should be given to the investigators and prosecutors. In my point of view, the respondents' responses are similar but they should know the detailed explanations of the writers.

2.12 CHAIN OF CUSTODY

Savino and Turvey (2005:75) define 'chain of custody' as a process. They say that it is the record of everyone who has controlled, taken custody of, or had contact with a particular item of evidence from the beginning of this process to the current day's activities. A similar definition is given in Garner (1999:222) where it is described as: "Chain of custody is the movement and location of real evidence from the time it is obtained to the time it is presented to court".

The concept of a "chain of custody" or "chain of evidence" is important to understand. A court will require proof that evidence collected during an investigation and the evidence ultimately submitted to the court are one and the same. To prove that the integrity of the physical evidence has been maintained, a chain of custody must be demonstrated. This chain shows who

had contact with the evidence, at what time, under what circumstances and what changes, if any, were made to the evidence (Fisher, 2004:10-11). The number of persons who handle evidence between the time of commission of the alleged offence and the ultimate disposition of the case should be receipted. It is the responsibility of each transferee to insure that the evidence is accounted for during the time that it is in his possession, that it is properly protected and that there is record of the names of the persons from whom he received it and to whom he delivered it, together with the time and date of such receipt and delivery (O'Hara & O'Hara, 2003:82-83).

The number of persons who handle evidence between the time of commission of the alleged offence and the ultimate disposition of the case should be kept at a minimum. Each transfer of the evidence should be receipted. It is the responsibility of each transferee to insure that the evidence is accounted for during the time that it is in his possession, that it is properly protected and that there is a record of the names of the persons from whom he received it and to whom he delivered it, together with the time and date of such receipt and delivery, together with the time and date of such receipt and delivery (Savino & Turvey, 2005:75). In practice, this means that each person handling an exhibit must give a sworn statement saying from whom he/she received the exhibit, what the condition was and to whom he/she handed the exhibit.

When evidence is found at the scene, the investigator must be able to account for it. Accounting responsibilities begin when the item is first located and do not end until the evidence reaches the courtroom. Being able to account for the location and possession of evidence is known as maintaining the chain of custody (Gilbert, 2004:105). A good principle to keep in the maintaining of the chain of evidence comes from O'Hara and O'Hara (2003:102) when they say that the chain should be kept short by:

- The same person or persons that recovered the evidence should initial, seal and send evidence if possible
- Secure it in a locked vault, cabinet, or room until shipped

- Send by air express, registered mail, registered air mail or personal delivery to the laboratory of identification division (there is no way to trace parcel post, certified mail or regular mail)

To the question: “What do you understand under the term ‘chain of custody of evidence’?” The respondents responded as follows:

- ❖ 18 from 35 said that it is the process of preserving and handling of evidence from the commission of crime up to the last process of the court
- ❖ One from 35 respondents said it is preserving evidence and crime in a proper way
- ❖ Two from 35 said it is telling about the process of the criminal act
- ❖ Four from 35 said it is the process of providing technical and tactical evidence about the crime directly and indirectly
- ❖ Two from 35 said that it is showing how the crime happened and the way it happened and
- ❖ Two from 35 said it is to prove whether one criminal act is factual or not
- ❖ However, six did not give responses

Nearly half of the respondents (18 out of 35) gave similar definitions to those in the literature. On the other hand, other respondents (11 from 35) gave definitions which are not similar to the literature. The rest of the respondents (6 out of 35) did not give any response. The reason for those respondents who did not give responses is that their knowledge of investigation and their experiences are limited (as mentioned in the historical information section). Investigators and prosecutors should get training in this area or they should read different books and materials to cope with those who know about chain of custody.

2.13 LOCARD PRINCIPLE

One of the most experienced criminalists in the world, who trained many criminalists, Locard, later gained fame with his theory called the Locard principle. According to this principle "Every contact leaves a trace" and should

be remembered by all criminal investigators (Gilbert, 2004:26-27). Locard believed that whenever two objects came into contact with one another, material from the first would be transferred to the second and material from the second would be transferred to the first (Gardner, 2005:25). When an individual comes into contact with a person or location, certain small and seemingly insignificant changes occur. Small items such as fibers, hairs and assorted microscopic debris may be left by the person or picked up from contact with the environment or another individual. In short, it is not possible to come into contact with an environment without changing it in some small way by adding to it or taking something away from it. This concept of transfer is the so-called Locard Exchange Principle and is the basis for finding evidence on any scene or trace evidence on any exhibit (Fisher, 2004:149).

Transfer evidence results whenever two surfaces come into contact with each other. In more practical terms, when a perpetrator enters a crime scene he leaves something, and when he exits the scene, he takes something with or on him. The challenge for investigators is to find the transferred materials (Lee, Palmbach, & Miller, 2003:115).

To the question: "Describe what you understand by the Locard Principle?" none of the respondents could give an answer to what the Locard Principle means. The obvious reason for them not knowing about this is their lack of experience and that the training they underwent did not cover the principle. This shows that this principle is not included in the curriculum of basic police training and investigation courses. Since this principle is essential, it should be included in the training curriculum.

2.14 CRIME SCENE

A 'crime scene' is defined as an area where a criminal act has taken place. It can also be an area where evidence pertinent to the investigation may be found. Any criminal offence can take place in not just one but several locations. This may create a situation where an investigator is confronted by multiple crime scenes that are related within a single offence. Perhaps this

will be readily evident at the outset of a case and perhaps not. The best way to determine whether this is the case, is by breaking down the scenes by virtue of what appears to have happened and where (Savino & Turvey, 2005:66). According to Marais and Van Rooyen (1990) in Van der Westhuizen (1996:20), the scene of a crime is defined as the locality of hidden clues which can lead to the clarification or detection of the crime. It also includes any other locality or place where physical clues concerning the crime can be found. For Gilbert (2004:91), a crime scene is also a location at which a suspected criminal offence has occurred.

According to Lee, Palmbach and Miller (2001:2-3), some of the common categories of crime scenes are:

a. Primary scene

The term primary scene is often used to refer to where the original or first criminal act occurred (Lee, Palmbach, & Miller, 2001:2). According to Horswell in Kruger (2006:48), a primary crime scene is an area or place where the incident occurred or where the majority or a high concentration of physical evidence proving the majority of elements of the crime will be found.

In this research, for example, the primary crime scene is the place where the rape was committed like the bed or inside of a vehicle.

b. Secondary scene

Any subsequent scene(s) is considered to be a secondary scene. For example, the body of the victim was deposited in the wood after she was murdered (Lee, Palmbach & Miller, 2001:3). According to Horswell in Kruger (2006:49), the secondary crime scene can be seen as a place or an area where physical evidence relating to the incident may be found. In this research, the victim may be raped and murdered, the perpetrator may commit the crime in a hotel but he took the dead person to the forest. That place where the dead person was found will be the secondary crime scene.

As was shown in the literature above, all authors agree on the definition of 'crime scene' as a place where a crime was committed. To the question: "What is a crime scene?" the respondents responded as follows:

- ❖ The majority of the respondents (33 of them) defined the term as 'a place where a crime was committed'. This concurs with the definition given by Savino and Turvey (2005:66), Van der Westhuizen (1996:20), Marais and Van Rooyen (1990:23) and Gilbert (2004:91).
- ❖ However, two of the subject did not give responses. The researcher discovered that some of the investigators did not even have basic investigation training and none of the respondents underwent special training on rape investigation.

2.15 THE BODY OF THE PERPETRATOR AS A CRIME SCENE

The suspect is a crime scene as much as the victim is, although the passage of time may reduce the likelihood of recovering evidence from that scene (Hazelwood & Burgess, 1993:280). It is obvious that a crime scene, according to Savino and Turvey (2005:66), is any area where evidence pertinent to the investigation may be found. If important evidence can be found on the body of the perpetrator, which is possible because of the Locard principle, it can be considered that the body of the perpetrator is a crime scene. Some of the victims' body, blood, semen, hair, fiber, etc. can be transferred to the body of the perpetrator based on the transfer theory during the rape.

Different types of evidence could be found on the body of the perpetrator. For example, in the crime of rape, we can find the body fluids of the victim, hair, fiber, blood and other evidence. All this evidence, if examined properly, will help investigators to identify the suspect of the crime or to link the suspect to the scene. According to the Locard transfer theory "all contact between two bodies leaves a trace" (Gilbert, 2004:26). At the time of the commission of the crime, the perpetrator made contact with the victim or if he touched something, the contact between him and any object will exchange evidence.

To the question: "Do you consider the body of the perpetrator in rape as a crime scene?" the respondents responded as follows:

- Nine said they would find physical evidence on the body of the perpetrator, for example, blood, hair, fluids, semen etc
- Two gave reasons that they would find different evidence on the body of the perpetrator
- Two said that the perpetrator would be considered as a crime scene if all evidence was collected
- Six said he considers the body as a source of evidence rather than as a crime scene
- Eight said they would not consider the body as a crime scene
- One said that the perpetrator would be considered as a body but not as a crime scene
- One said he did not consider the perpetrator's body as a place
- Six of the interviewees did not give any answers

There is no literature which shows the body of the perpetrator as crime scene directly. However, the literature shows a crime scene as a place where we could find evidence. If an investigator can find evidence on the body of the perpetrator (based on the Locard principle), then the body of the perpetrator could be classified as a crime scene. The respondents also show that they can consider the body of the perpetrator as a crime scene and show what evidence could be found on the body of the perpetrator (13 out of 35). Six out of 35 said that they could not consider the body of the perpetrator as a crime scene but they could consider as a source of physical evidence. The 10 respondents could not consider it as a crime scene. Six out of 35 did not respond because as is mentioned in the historical information, some of the respondents have not had basic investigation training and all respondents work experience is limited.

2.16 IDENTIFICATION

The word "Identify" means to recognize somebody or something as being a particular person or thing (Hornby, 1995:588). "Identification" means an act or the process of identifying somebody or something or of being identified (Hornby, 1995:588). Identification means that the items share a common

source. The items can be classified or placed into groups with all other items having the same properties (Fisher, 2004:5).

Essentially, identification is a classification scheme. We all use forms of classification in every day life. Identification involves sorting items based on similar general characteristics. The more characteristics two or more items have in common the more complex or discriminatory the identification. Within forensic science, comparing selected class characteristics of an unknown object with similar characteristics of a known standard is called identification (Lee, Palmbach & Miller, 2001:183-184).

Identification of suspects must occur very soon after the crime has been committed. If the suspect has fled but is apprehended within minutes, you can either return the suspect to the scene or take the witness to where the suspect was apprehended. It is usually preferable to take the witness to the suspect than to return the suspect to the crime scene. Whether the identification is made at or away from the scene, the victim or witness must identify the suspect as soon as possible after the crime was committed while details are still clear (Bennett & Hess, 2001:168).

Identification also refers to the type of crime that was committed, if any and what kind of information or clues can possibly be collected. The crime situation must therefore be identified not only by means of set juridical elements but also by means of preliminary observations made at the scene of the crime. The information and facts gathered must therefore confirm that an act, judged by the set juridical elements of particular crimes, indeed amounts to unlawfulness and that a specific person or persons are responsible (Van der Westhuizen, 1996:4).

Identification of evidence may be based on appearance, colour, physical properties (such as crystal structure) or chemical properties (such as composition) determined by analysis. A bloodstain on a shirt looks like a bloodstain. To the forensic serologist or DNA analyst, it is an unknown stain until it is specifically identified as blood. This requires more than simple

observation; it requires chemical testing (Van der Westhuizen, 1996:4). Further characterization is then effected through extensive analysis of the DNA in the blood (Hazelwood & Burgess, 1993:266).

To the question: “What do you understand by the term ‘identification’?” the respondents responded as follows:

- ❖ 26 from 35 gave similar responses to those suggested by the above writers. They said that the gathering of information and identifying evidence that range from simplest particles to the highest ones is vitally important to identify the suspects and to reach the truth.
- ❖ Five from 35 responded with different answers. Three of them say identifying by means of witnesses rather than by technical evidence. Two of them say it is identifying fear, worrying and shaking signs. The reason for them responding differently is due to lack of training and experience.
- ❖ The remaining four (from 35) did not give any response. The reason seems to be lack of basic and special investigation training.

2.17 CATEGORIES OF IDENTIFICATION

According to Van Heerden in Kruger (2006:32–33), the different categories of identification are:

- Situation identification
- Witness identification
- Victim identification
- Imprint identification
- Origin identification
- Action identification
- Culprit identification
- Cumulative identification

2.17.1 Situation identification

Situation identification is used to establish if a crime has been committed and if so, what type of crime [Van Heerden (1985) and Lee (2003) in Kruger, 2006:32]. The investigator should keep an open mind to ensure that he/she

does not make a mistake by being subjective. For example, uncertainty can sometimes arise about whether a building has burned down as a result of arson or whether it has been set alight accidentally [Marais (1992) in Kruger, 2006:33]. Horswell (2004) in (Kruger, 2006:33) says prior to attending the crime scene, it is important to obtain the best possible assessment of the circumstances relating to the incident. Adams (2004) in (Kruger, 2006:33) says that the forensic investigators should know the elements of each crime that they are going to investigate. Situation identification relates to the crime situation and individualizes the unlawful nature of the situation (Van der Westhuizen and Gardner in Kruger, 2006:33). Here, investigators should check whether a crime has been committed and what type it is based on the elements of the crime.

2.17.2 Witness identification

Witness identification individualizes the part played by the alleged perpetrator by means of the account of events that emerges from the statements of complaints and witnesses [Van Heerden (1986) in Meijer, 2006:24]. In the case of rape, the investigator could establish from the bar lady or the cashier of the hotel if the crime was committed in that hotel. The cashier or the bar lady of that hotel may have seen the perpetrator and the investigator may consider them as witnesses in the identification of the suspect.

2.17.3 Victim identification

According to Bennett and Hess (2001:169), victims can provide information about who has a motive for the crime, who has the knowledge required to commit it and who is not a likely suspect. Victim or eyewitness identification of a suspect should be corroborated by as much physical and circumstantial evidence as possible.

Victim identification in the particular crime means that the victim may identify the suspect and give a statement to the investigator. For example, the suspect may use a mask to commit the crime of rape and even though the victim did not recognize the suspect's face, she can give a description of the suspect like his voice, the clothes he wore, etc.

2.17.4 Imprint identification

The fundamental principle of imprint identification is that the distinctive characteristics of objects are transferred to the surface with which they come into contact [James & Nordby (2003) in Kruger, 2006:32-33]. An example would be the footprint of a criminal. These imprints should first be identified for what they are (e.g. the footmark in soil) and thereafter compared with those of a person or instrument [Brayer & Harries (2000) in Kruger, 2006:33]. In some cases, the connection of a person to a crime by means of an imprint is sufficient evidence that he/she is responsible for the identified crime [Lee & Harris (2000) in Kruger, 2006:34].

In the case of this research, the suspect may commit the crime of rape in a forest area. The investigator may find the footmark of the suspect or he may get a tire mark of the car which he used to commit that crime.

2.17.5 Origin identification

Origin identification is mainly concerned with the analysis of the matter that has a link with the perpetrator. For example, in the crime scene, the investigator may take a piece of cloth. To prove whether it is connected to the crime, he should know the origin of the cloth.

2.17.6 Action identification

Chisum and Turvey (2000) in Kruger (2006:34) explain that action identification refers to the identification of human acts directly related to the crime. Many involuntary habits creep into these human actions and eventually develop into personal characteristics unique to each individual [Palm (2000) and Lee (2003) in Kruger, 2006:34]. Consequently, characteristics are developed such as invariability, uniqueness, etc., making action identification a useful identification medium [Palm (2000) in Kruger, 2006:33-34]. Since action identification is the identification of human acts, it may help the investigators to identify the suspect by identifying the act, commonly known as

his modus operandi. For example, some serial killers may kill women after they were raped and the instrument may be similar.

2.17.7 Culprit identification

According to Marais (1992) in Meijer (2006:29-30), perpetrator identification refers to the positive identification of the person rather than to the identification of his unlawful participation in the crime being investigated. The determination of the identity of the perpetrator or suspected perpetrator of a criminal act is of decisive importance because the detection and by implication, clarification of the crime situation, is hardly possible without it. The direct method refers especially to perpetrator identification techniques such as personal description, sketches, identification parades, incidental identifications, photo identifications, voice identification and modus operandi [Owen (2000) in Meijer, 2006:30]. In the investigation of rape crimes, the perpetrator may be identified using his photographs, voice and other modus operandi that he used to commit the crime.

2.17.8 Cumulative identification

The individual value of every identification category can only become apparent if the forensic investigator utilises the relevant categories of identification properly during the investigation [Van Heerden (1986) and Lee (2003) in Kruger, 2006:35]. If the above-mentioned identification has been done, the forensic investigator can come to the conclusion that on a preponderance of probabilities, it is justified to summon a particular person to court [Callanan (1994) in Kruger, 2006:35]. This category also helps the investigators to know the relevant categories and analyse the crime to suggest the principal criminal.

2.18 INDIVIDUALIZATION

Individualization means that an item of evidence comes from a unique source. It can be shown to be directly associated with a specific individual source. A

broken piece of plastic, physically fitted to reconstruct an item, is an example of individualization. Other types of evidence including fingerprints, tool marks and fired bullets are examples of evidence that may be associated with a unique source (Fisher, 2004:5).

Following identification, forensic scientists will continue with their analysis to determine if a particular sample is unique, even among other members of the same class. This process is referred to as individualization. Not all evidence has sufficient measurable characteristics to obtain individualization (Lee, Palmbach, & Miller, 2003:184).

The emphasis on individualization is the involvement of the perpetrator or alleged criminal in the act committed and based on establishing probability, from the information and facts collected, that a specific person committed the crime [Van Heerden (1986) citing Van der Westhuizen, 1996:5-6]. The overall aim of individualization is to individualise the crime as the act of a particular person or persons.

To the question: “What do you understand by the term ‘individualization’?” the respondents responded as follows:

- ❖ 21 of the 35 interviewees agreed with the above writers of the literature. They said criminals could be identified and by conducting scientific examination, sorting the individuals who commit crimes, identifying the suspect using the evidence examinations such as, semen, hair, etc and using medical examination, such as DNA examination. They said the unique character of the criminal.
- ❖ 11 of the 35 gave different answers from those in the literature. These respondents said that it is the result given from the examination of evidence by the experts that would enable one to identify and individualize criminals. It includes the technical and tactical investigation, which is not similar to the literature.
- ❖ The other three subjects did not give responses. This is because of a shortage of special training, basic training in investigation and work experience.

The majority of the respondents (21 from 35) gave similar explanations to those in the literature. The remainder of the sample differs because of lack of experience and training.

2.19 DIFFERENCE BETWEEN INDIVIDUALIZATION AND IDENTIFICATION

The difference between individualization and identification can be a subtle one. Consider the following example: A blue-colored cotton fiber is found at the scene of a burglary. A suspect wearing a torn blue cotton shirt is apprehended. All the tests conducted at the crime laboratory on the evidence fiber and exemplar fibers from the shirt show them to be identical. It can therefore be concluded that the blue cotton fiber found at the scene definitely came from the torn blue cotton shirt worn by the suspect. The best that can be stated from this information is that the fiber could have come from the shirt in question or any other one manufactured with similar blue cotton fibers. No matter how much testing is done on that evidence, the conclusion will always be the same (Fisher, 2004: 5-6).

In contrast to fiber, one can take a fingerprint. When a fingerprint is identified, it can be placed into a group, e.g., a whorl or loop. In addition, fingerprint evidence can go well beyond identification; fingerprints can be shown to be unique. An examination can show that the latent print comes from only one person and no other. The print has been individualized (Fisher, 2004:6).

Most physical evidence cannot definitely connect a suspect to a crime as fingerprint or DNA evidence can. This should not diminish the usefulness of that evidence. Physical evidence that is identified can corroborate a testimony, place a subject at a scene and be useful in a variety of ways as an interrogation tool (Fisher, 2004:6).

Kirk (1974) in Van der Westhuizen (1996:6) discusses the important difference between 'identification' and 'individualization'. This distinction is of great importance to criminal investigation. Van Heerden (1985) in Van der

Westhuizen (1996:6) declares that the former is merely concerned with the identification of something or somebody belonging to a specific category. In other words: "A is simply A" and a hair is simply a hair. No comparisons are drawn. 'Individualization', on the other hand, involves comparison, usually of the disputed object found at the scene of the crime with one of known origin obtained (for example, from the suspected criminal). An example is a fingerprint found on a murder scene (print in dispute), which is compared with the fingerprints of a known criminal (finger prints of known origin).

A comparison is thus made to determine whether or not the print in dispute at the scene of the murder is that of a known criminal with previous convictions whose fingerprints are on record. A process of individualization takes place to determine individuality. It normally consists of a series of identifications and comparisons, which has a twofold aim (Van der Westhuizen, 1996:6):

- To individualize positively the various objects in dispute.
- To conclusively determine the criminal's involvement of the object or person providing the standard of comparison.

Based on the theory discussed, the researcher came up with the following difference between identification and individualization:

IDENTIFICATION	INDIVIDUALIZATION
<ul style="list-style-type: none"> • Similarity of the evidence 	<ul style="list-style-type: none"> • The unique character
<ul style="list-style-type: none"> • Identification of something or somebody belonging to a specific category. In other words: "A is simply A" and a hair is simply a hair. 	<ul style="list-style-type: none"> • Individualization involves comparison, usually of the disputed object found at the scene of the crime with one of known origin obtained; for example, from the suspected criminal.
<ul style="list-style-type: none"> • Similar finger prints 	<ul style="list-style-type: none"> • Latent finger prints

To the question: “What, according to your experience, is the difference between identification and individualization?” the respondents responded as follows:

- ❖ 15 out of 35 say identification is to identify using tactical investigation but individualization means to identify a person using scientific examinations.
- ❖ Three of the 35 say identification is selecting the criminal from different suspects, while individualization is identifying the specific criminal by using scientific examination.
- ❖ The remaining 17 did not respond to the question. The possible reason could be due to (as has been mentioned repeatedly), the investigators shortage of training, very low years of experience and lack of other special training which are essential to their duties.

2.20 SUMMARY

This chapter has dealt with the meaning of rape, the elements of rape, specific evidence to prove rape, the meaning of evidence and difference between evidence and information. The chapter also described the chain of custody in evidence and maintaining it. In addition to the above ones, it also described trace evidence, the Locard Principle, crime scene, the body of the perpetrator as a crime scene, identification and individualization. Most of the interviewees did not give answers similar to those in the literature. It was shown in the background information that none of the investigators and prosecutors had undergone special training in the investigating of crime and specifically of rape. Some of the investigators are working even without having basic investigation training in investigating crime.

CHAPTER THREE

THE BODY OF THE PERPETRATOR

3.1 INTRODUCTION

Identification of the person who had committed a crime requires the creative effort of investigators. Evidence can be found from different sources, for example the victim, the suspect and the crime scene. At the time of the commission of the crime, the perpetrator made contact with the victim or if he touched something, the contact between him and any object will exchange for evidence (Gilbert, 2004:26). The Body of the perpetrator is one source of evidence to prove rape. Therefore, investigators should focus to find evidence on the body of the perpetrator.

3.2 THE BODY OF THE PERPETRATOR

The word “body” is defined as a whole physical structure of the human being or an animal, tissues and body fat (Hornby, 1995:120). In accordance with the definition of the word “body” we can say that the perpetrators’ body is his/her whole physical structure. A structure of a person should include his clothing because we cannot consider the structure of a person without his clothes. It is true that a normal person will not go without wearing clothes. Therefore, the perpetrator’s body is the whole physical structure, including his/her clothes.

To the question: “What do you understand by the term ‘body of the perpetrator’?” respondents replied as follows:

- 20 from 35 say the whole body of the person who commits that crime. These respondents give similar definitions to that of the literature.
- Two of the 35 say it means the perpetrator’s sex organs.
- Two of the 35 say it means the examination on the body of the perpetrator.
- Two of the 35 say the person who has evidence on his sex organs, which includes evidence such as semen and bloodstains.

- Two others (from 35) said the materials used by the perpetrator.
- Three of the 35 said the perpetrator's clothes and hair.
- Four (from 35) did not give responses. The reason is that in the historical information, all respondents admitted that they did not have special training for the investigation of rape crimes. The majority of the respondents (26 from 35) have less than 10 years of investigation experience.

The majority of the respondents (20 from 35) give similar explanation with the literature. In addition, 3 from 35 said the perpetrator clothes and hair could be considered as part of his body. However, the remaining respondents did not give answers similar to the literature. Clothing is often included in descriptions given by victims or witnesses. Sometimes in rape cases an offender's clothing becomes torn, dirty, or stained in his struggle with the victim. Hats or other items of clothing are sometimes left behind or dropped in a hasty exit. Knowledgeable suspects will sometimes change clothing with other persons in an effort to avoid identification through a hat or jacket (Gardner & Anderson, 2004:240).

Description of clothing of a suspect is very important in the identification process. Since it is very important, the victim or witness should give a proper description of a suspect's clothing. To the question: "Do you consider the clothes of the perpetrator as part of his 'body'?" the respondents responded as follows:

- 20 from 35 said that it should be considered as part of his body
- 13 from 35 said that they did not consider it part of his body
- Two from 35 do not give an answer. It is due to a lack of experience

It is generally known that a person does not walk without his clothes. Therefore, we cannot consider his clothes to be apart from his body. The wearing of clothes started in the time of Adam. When they were in Eden they had no clothes but after their sin, their eyes were opened. At this time, they were afraid of their bodies and they covered themselves with fig leaves.

Hence, starting from this time, people started wearing clothes to cover their bodies. It has also become the culture of the people. For the sake of the norms of society, any person is compelled to wear clothes.

3.3 THE MEANING OF PERPETRATOR

Perpetrate means to commit or be responsible for something criminally or morally wrong (Microsoft Encarta, 2006:1). Perpetrator means culprit, criminal, wrong-doer, offender, committer or agent (Microsoft Encarta, 2006:1). Perpetrator also means the person who commits a crime or does something considered wrong (Hornby, 1995:862). The perpetrator is the robber, assailant, counterfeiter, etc. (i.e. the person who actually committed the crime). The distinction between the suspect and perpetrator recognizes that the suspect is not known to have committed the offense, while the perpetrator [who may not be a suspect yet] is the one who actually did. The suspect may be a different person from the perpetrator, or there may have been no actual crime, which would mean there is no perpetrator (Wikipedia, the free encyclopedia, 2009:1). In the case of rape, the person who commits rape will be a perpetrator of the crime of rape.

To the question: "What do you understand by the term 'perpetrator'?" the respondents replied as follows:

- 32 from 35 say the person who commits a crime or who is doing wrong actions. These respondents give similar definitions to that of the literature.
- One from 35 says the person who caused damage to the victim's body.
- Two from 35 did not give a response. The possible reason might be their lack of experience.

3.4 LEGAL RIGHTS TO EXAMINE THE BODY OF THE PERPETRATOR FOR EVIDENCE

Physical evidence could be obtained with lawful consent. It might be observed in plain view or it might be obtained during a lawful search by a law enforcement officer (Gardner & Anderson, 2004:250).

According to Pepper (2005:65), blood samples could be taken by a health care professional, such as a doctor. Normally, 5ml of blood is taken and placed in a container coated with a preservative called EDTA. This sample is frozen prior to transport to the forensic service provider. Secondly and by far the most common form of taking a sample of DNA, is by the use of a mouth swab sampling Kit. As a non-intimate sample, as defined by Pepper (2005:65), these samples may be taken by a police employee. Two swabs are scraped down the inside of the cheeks, buccal cells collected and these are then stored frozen. There are no similar acts and conditions in Ethiopia.

It may be necessary to obtain a search warrant before recovering some pieces of physical evidence, such as dental impressions and photographs of the suspect's teeth for bite mark comparisons. The investigator may also need samples of head and or pubic hair, as well as saliva samples for comparison with evidence recovered from the victim or the crime scene (Brown, 2001:215).

The Criminal Procedure of the Federal Democratic Republic of Ethiopia (1961:27) article 34 says the following on physical investigation of the suspect:

1. Notwithstanding the provisions of art. 20 of the Civil Code where an investigating police officers considers it necessary, having regard to the offence with which the accused is charged, that a physical examination of the accused should be made, he may require a registered medical practitioner to make such examination and require him to record in writing the results of such examination. Examination under this Article shall include the taking of a blood test.
2. An investigating police officer may, with the agreement of the victim of an offense or, where he is incapable, with the consent of the parent or guardian, require a registered medical practitioner to make such physical examination as the offence being inquired into would appear to require. He shall require the registered medical practitioner to record in writing the results of such examination.

The Civil Code of The Federal Democratic Republic of Ethiopia, Article 20 and Article 22 say the following:

Article 20 Medical examinations and treatment

1. A person may at any time refuse to submit himself to a medical or surgical examination or treatment.
2. Nothing in this article shall affect the provisions of laws or regulations providing for physical examinations of persons or their compulsory vaccination or other similar measures in the public interest.
3. Nothing in this article shall affect the power of a guardian of a minor or interdicted person to submit the incapacitated person of whom he is in charge to an examination or treatment beneficial to that person's health.

Article 22 Medical examinations

Where a person refuses to submit himself to a medical examination not involving any serious danger for the human body, the court may consider as established the fact which the examination had the object of ascertaining.

In the above articles, it is shown that the court orders the suspect to give that evidence for the matter of checking. None of the articles show a legal right of the investigators to collect evidence from the perpetrator. If the investigators do not have a legal order to collect physical evidence from the perpetrator, they will face possible prosecution.

Therefore, if investigators do not have legal support to collect physical evidence from the perpetrator, they should use other legal orders to collect evidence. If there is no specific order of the law, investigators can collect evidence by using a search warrant and the legal right that was given to the police members by the Criminal Procedure Code of Ethiopia (1961:26-27).

Some of these rights of the Criminal Procedure Code are:

Article 32 Search and seizure

“Any investigating police officer or member of the police may make searches or seizures in accordance with the provisions, which follow:

1. No arrested person shall be searched except where it is reasonably suspected that he has about his person any articles, which may be material evidence in respect of the offence with which he is accused or is suspected to have committed. A person of the same sex as the arrested person shall make a search.
2. No premises may be searched unless the police officer or member of the police is in possession of a search warrant in the form prescribed in the Third Schedule to this Code except where:
 - a. An offender is followed in hot pursuit and enters premises or disposes of articles the subject matter of an offence in such premises.
 - b. Information is given to an investigating police officer or member of the police that there is reasonable cause for suspecting that articles which may be material as evidence in respect of an offence in respect of which an accusation or complaint has been made under Art. 14 of this Code and the offence punishable with more than three years imprisonment are concealed or lodged in any place and he has good grounds for believing that by reason of the delay in obtaining a search warrant, such articles are likely to be removed.”

Article 33 Issue of Search Warrant

1. “Any court may issue a search warrant. No search warrant shall be issued unless the court is satisfied that the issue of such warrant will serve the purposes of justice of any inquiry, trial or other proceedings under this code.
2. Every search warrant issued shall specify the property to be searched for and seized and no interested police officer or member of the police may seize any property other than that specified in such warrant.
3. On seizing any property, such investigating police officer or member of the police shall make a list of property seized and where possible, shall have the list checked and signed by an independent person. Any property seized, which is required for the trial, shall be preserved in a safe place

until handed over to the court as an exhibit. Any property not so required may be returned to the person from whom it was taken and a receipt shall be issued.

4. In effecting a search the investigating police officer or member of the police may use such force as is necessary and may where access to premises is denied, use reasonable force to effect entry,
5. Unless otherwise expressly ordered by the court, searches shall be carried out only between the hours of 6am and 6pm.”

According to the above articles, the investigators will ask the court for the issuing of search warrants to examine the body of the perpetrator for evidence.

Article 26 of the Constitution of the Federal Democratic Republic of Ethiopia (1995:87) says:

Article 26: Right to Privacy

1. “Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession.
2. Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purposes shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others.”

Article 1 gives a right for any person, body and property not to be searched and article 3 emphasizes that there is no restrictions unless it has specific laws. Since Ethiopia does not have specific laws on taking physical evidence from any person who has committed a crime, any investigator will experience problems in taking physical evidence from the perpetrator.

In Ethiopia there is no forensic laboratory which examines DNA. The capacity of the Ethiopian police laboratories is not that strong in examining physical evidence such as hair, blood, fiber, etc. Therefore, as is shown in the interviewees' responses, in most cases the body of the perpetrator is not examined for physical evidence.

To the question: "What legal rights do you, as an investigator have, to have the body of the perpetrator examined for evidence?" .The respondents replied as follows:

- 17 from 35 say there is no law on the examination of the body of the perpetrator for evidence but traditionally, forensic examiners, tactic investigators or doctors collect physical evidence from the suspect.
- Three of the 35 say by an order of the court, investigators and doctors examine the body of the perpetrator.
- Four from 35 say the law supports it but investigators usually do not collect evidence from the suspects.
- Two from 35 say the evidence collected from the suspect will help to identify the principal criminal.
- Five from 35 say the criminal procedure article 34 of Ethiopia says the court can order the suspect to give blood for reconciliation of the evidence for medical examination; therefore, the investigators and medical practitioners can also collect physical evidence from the body of the perpetrator.
- One of the 35 says that there is no law which allows the collection of evidence from the suspect nor is there a law which disallows the collection of evidence.
- Three from 35 did not give a response. The possible reason for not responding might be the lack of experience and training.

In general, the majority of the respondents agreed that there is no specific law for the investigators to collect physical evidence but they collect by themselves and with the help of medical practitioners.

3.4.1 Authorization to examine the body of the perpetrator for evidence:

When criminal action is suspected, the tracing of the criminals' actions on the scene becomes a very important part of the investigation. In view of the professional skills which the investigator must possess for this investigation, it is solely his responsibility to observe marks which could have been caused by the offender's fingerprints and prints of feet and shoes (Svensson & Wendell, 1965:24-25). The investigator should take hair samples from the victim and the suspect. Samples should be taken from the head, eyebrows, armpits, legs and pubic areas of both parties. Blood samples should also be taken. Since it is only possible to positively identify a person from his or her DNA, blood, semen, or hair may prove to be the key evidence in cases of rape (Brown & Heinemann, 2001:212). Persons empowered to take evidence by means of examinations and samples are members of the police from different ranks, who in some jurisdictions, can apply for orders from courts to compel the taking of this evidence where the person has refused consent (Leaver, 1997:204).

When any criminal action is suspected, the tracing of the criminals' actions on the scene becomes a very important part of the investigation. The person responsible for these traces must always be a policeman. In view of the professional skill which he must possess for this investigation, it is solely his responsibility to observe marks which could have been caused by the offender such as fingerprints and prints of feet and shoes. It is likewise his responsibility to preserve and to analyze these personal clues. The participating physician can only be expected to be aware of the value of these observations, to know where marks of this type are likely to be found and to meticulously avoid disturbing or destroying such clues (Svensson & Wendell, 1965:25).

The officer must take reasonable steps to inform the practitioner of the request and to facilitate the examination by the chosen practitioner.

Some jurisdictions expressly provide that refusal to comply with requests and orders to provide evidence is in itself an offense, both initially during

investigation and upon conviction (Leaver, 1997:206). In Ethiopia, there is no specific jurisdiction to apply this to the suspect.

Regarding the physical examination of suspects, the criminal procedure of the Federal Democratic Republic of Ethiopia (1961:27) Article 34(1) says that if a physical examination of the accused should be made, he may require a registered medical practitioner to make such examination and require him to record in writing the results of such examination. Examination under this article shall include the taking of a blood test. The article is describing the taking of blood samples rather than evidence. It does not mean that investigators and medical examiners collect evidence from the suspect at the crime scene or from the crime scene. In this respect, the researcher can suggest that there is no act in Ethiopia that gives a specific right to a person to examine the body of the perpetrator.

To the question: “Who, according to law, should examine the body of the perpetrator for evidence?” respondents replied the following:

- Thirteen from 35 say criminal Investigators and medical experts.
- Seven from 35 say a forensic examiner.
- Eight from 35 say medical experts.
- Two from 35 say police, courts and prosecutors.
- Three from 35 say criminal investigators and prosecutors.
- Two from 35 did not respond.

The majority of the respondents (13 from 35) responded similarly to the literature. The rest of the respondents partially related to the literature.

3.4.2 The experience of investigators in examining the body of the perpetrator in rape

The investigator needs to recover evidence from the suspect as quickly as possible to prevent its loss or destruction. The suspects clothing, particularly his undergarments which he wore on the day when the crime was committed, should be seized for laboratory examination. In addition, his clothing can

provide the basis for the arrest because the suspect matched a description put out over the air after the assault. It may be necessary to obtain a search warrant before recovering some pieces of physical evidence, such as dental impressions and photographs of the suspect's teeth for bite mark comparisons. The investigator may also need samples of head and pubic hair, as well as saliva samples, for comparison with evidence recovered from the victim or the crime scene (Brown, 2001:215).

To the question: "Did you ever in your investigation history have the body of the perpetrator in rape examined for evidence?" respondents' responded as follows:

- The majority (27 from 35) say the body of the perpetrator is not examined for evidence. This shows that investigators do not focus on recovering physical evidence from the perpetrator rather they usually find it on the victim.
- Four from 35 say the body of the perpetrator is examined for evidence.
- Four from 35 did not respond.

In the case study of 50 cases, 38 of them were not examined. This shows that investigators do not consider that there could be any evidence on the body of the perpetrator.

3.4.3 The body of the perpetrator as source of evidence in rape:

An examination of the suspect by a physician, if conducted soon after the occurrence of the crime, may provide valuable evidence. In addition to medical evidence of recent sexual activity, the physician may discover traces that may link the suspect to the crime. A pubic hair combing may reveal foreign hair or fibers. Pulled pubic and head hairs are collected for comparison with any that may be discovered on the victim, or the crime scene. Similarly, blood and saliva samples are obtained to compare with any fluids or stains associated with the crime. Fingernail scrapings should be taken. In addition, the hands should be carefully examined for traces of

cosmetics, which may have been acquired by contact with the victim (O'Hara & O'Hara, 2003:367-368).

To the question: "Do you consider the body of the perpetrator an important source of evidence during the investigation of rape?" the respondents responded as follows:

- The majority of the respondents (22 from 35) said that they have considered the body of the perpetrator as an important source of evidence in the case of rape. They motivate their answer by saying that the evidence collected from the body of the perpetrator is essential for the consideration of the body of the perpetrator as a source and said that the investigator can collect evidence from the suspect. This is not according to the results from the case study where 38 of the 50 cases illustrate no evidence that the perpetrator was examined.
- Eight of the 35 said that they do not consider the body as a source of evidence. They motivate their answer by saying that since there is no examination of DNA and other evidence, we could not consider it as a source of evidence in rape.
- Five from 35 did not respond. This could be as result of low experience or lack in training.

3.4.4 Evidence likely to be found on the body of the perpetrator:

The body of a victim or suspect is indeed a scene that should be examined in a thorough and timely manner. All types of trace evidence, including hair, fibers, DNA, physiological fluids, latent prints, accelerants, gunshot residue, pollen, soil and debris, etc., are often located on a body associated with a crime. The body condition and position of the body, including color, rigor, lividity, pattern, shape and location of wounds also provide investigative information (Lee, Palmbach & Miller, 2003:22).

As is mentioned in chapter two, a 'crime scene' is an area where evidence pertinent to the investigation may be found (Savino & Turvey, 2005:66). It is also mentioned in chapter two that when the perpetrator enters a crime scene,

he leaves something behind and when he exits the crime scene he takes something with or on him, based on the Locard principle (Lee, Palmbach, & Miller, 2003:115). Therefore, based on this principle we can get evidence from the body of the perpetrator.

After the suspect carefully removes his clothes, his body should be examined for bite or scratch marks and his genital organs for blood and foreign pubic hair (Jones, 1959:200). As concerns the examination of suspects, the physician should be asked to assist in taking samples of blood, hair, saliva, urine etc and to search for hair, blood or sperm on the suspect's body or objects which he may have swallowed or otherwise hidden on his person (Svensson & Wendell, 1965:25). In the removal of the suspect's clothes, the investigator should be careful not to lose important evidence which can be found on the clothes.

To the question: "What evidence is likely to be found on the body of the perpetrator?" the respondents responded as follows:

- 14 from 35 say hair, blood, body fluid, scratches, sores etc.
- Five from 35 say blood, clothes, hair
- 12 from 35 say blood, semen, hair
- One from 35 say different types of fluids
- Three from 35 did not respond

In the case study, it is shown that in 38 of the 50 cases, suspects were not examined. However, from the examined cases, blood was collected in seven cases. Clothes, watches, photographs and scratches were found in four cases and in one case, an examination was conducted but no evidence was found.

3.4.5 Evidence is likely to be found on the clothes of the perpetrator

If information indicates a clothing change, a search warrant should be obtained to locate the clothing worn at the time of the rape or other items that can be traced to the scene. The close physical contact between offender and victim, including sexual intercourse, often results in the exchange of hair,

blood, or fiber evidence and accordingly, the offenders' garments and body may reveal the presence of such evidence (Gilbert, 2004:338-339).

The suspect's clothing should be examined systematically for adhering debris, tears, missing buttons, etc. The condition of the fly portion of the trousers and underwear should be noted and the area examined for blood and seminal stains (Jones, 1959:199). Clothing from both the victim and suspect may be scattered about. All undergarments, other clothing, bedding and other significant articles should be collected. This evidence will be examined to reveal the presence of semen, blood or hair (Gilbert, 2004:338).

The blood and other body fluids, such as semen and urine, can provide valuable information. Blood assists in establishing that a violent crime was committed in re-creating the movement of a suspect or evicting and in eliminating suspects. Body fluids can be found on a suspect or victim's clothing, on the floor or the walls, on furniture and on other objects (Bennett & Hess, 2001:122).

To the question: "What evidence is likely to be found on the clothes of the perpetrator?" the respondents responded as follows:

- Seven from 35 say blood, hair, pieces of clothes and buttons
- 17 from 35 say blood, semen and hair
- One of the 35 said fluid, hair, skin from possible scratches
- One of the 35 said hair, blood and saliva
- Three from 35 say hair and blood
- Three out of 35 said semen and blood
- Two from 35 say fibers
- One of the 35 said blood, hair, semen, fluids, fingerprints and saliva.

All the respondents except one mentioned the evidence found on the clothes of the perpetrator. The one exception mentioned some of the evidence but he added fingerprints, which is difficult to find on the clothes. Although the respondents mentioned the evidence that could be found on the clothing, very

few, according to the case analysis, had the body or clothes of the perpetrator examined.

3.4.6 Evidence, which has the potential to link the perpetrator to the crime scene

If someone is arrested for an offense where footwear impressions have been found at the scene by the crime scene investigator, then the shoes of the suspect could be seized as evidence and submitted with the crime scene footwear photography cast or lift the comparison by a footwear specialist. It is also possible to copy the footwear of those arrested for the purpose of intelligence. This can be done using a print scan, a commercial product that relies on vegetable extracts producing an inkless copy on a sheet of specially prepared paper, or alternatively, the soles of the footwear could be photocopied (Pepper, 2005:51).

Pepper (2005:51) clearly states that the footwear of the suspect can link the perpetrator to the crime scene if it is proved that the footwear belongs to the perpetrator after the examination. A sample of soil recovered from the crime scene can be compared against soil found on the footwear of a suspect or on the tires, underside and wheel arches of vehicles involved. Soil is made up of mixtures of minerals, organic matters, air and water and can be broadly divided into the three categories of sand, silt, and clay (Pepper, 2005:46). The soil type of the crime scene and the soil found on the footwear are similar and can be used for individualization. Therefore, the crime scene could be linked to the suspect because of the soil found on the suspect's footwear.

Linking the suspect to the scene, the victim or physical evidence associated with the investigation is vital in solving the case. Traditionally, police focused their efforts regarding a suspect on obtaining a confession or incriminating statements. Recent advances in behavioral science and criminology have made apparent the significance of determining a potential suspect's motives, opportunities and modus operandi (i.e. method of operation) and patterns (Lee, Palmbach & Miller, 2003:30).

Investigators need to recover evidence from the suspect as quickly as possible to prevent its loss or destruction. The suspect's clothing, particularly his undergarments, should be seized for laboratory examination. In addition, his clothing may have provided the basis for the arrest because the suspect matched a description put out over the air after the assault (Brown & Heinemann, 2001:214).

To the question: "Explain each element that has the potential to link the perpetrator to the crime scene?" the respondents responded as follows:

- 12 from 35 said that if the evidence which is found on the crime scene reconciles with those of the suspect, they can link the suspect with the crime scene. Therefore, the evidence found on the crime scene can be the element to link the perpetrator with the crime scene.
- Nine from 35 say that if some evidence such as clothes, blood, hair, semen, etc. is found on the crime scene and this evidence is similar to that of the suspect, they can link the suspect and the crime scene
- Three from 35 say evidence will link the perpetrator with the crime scene if the evidence is properly examined by the forensic investigator
- Two of the 35 say by identifying the crime scene we can link the perpetrator to it
- One of the 35 says we can link the perpetrator by the medical examination of evidence
- One of the 35 says by taking a statement from the victim, we can connect the perpetrator with the crime scene
- One of the 35 says we can connect him not with real evidence but with circumstantial evidence
- Six from 35 did not respond. The reason is that (as is mentioned in the historic information), some of the respondents have not had either basic or special training in investigation

The majority of respondents (28 from 35) gave answers which are not quite identical but gave similar responses. However, one of the respondents says

that he will make a link through circumstantial evidence rather than real evidence.

3.4.7 Procedures for the examination of the body of a perpetrator for physical evidence

The ability to recognize and gather valuable physical evidence must be supplemented by knowledge of the correct procedure in caring for evidence from the time of its initial discovery until its ultimate appearance at the trial. In order to introduce physical evidence in a trial, three important factors must be considered (O'Hara & O'Hara, 2003:82):

- a. The article must be properly identified
- b. Continuity or chain of custody must be proven
- c. Competency must be proved i.e. that the evidence is material and relevant

According to O'Hara and O'Hara (2003:82), the proof of identity implies that the investigator who first found the object can testify that the exhibit offered in evidence is the same as the object he discovered at the crime scene. He should further, under cross-examination, be able to say that another similar article could not have been submitted. Both of these objectives can be achieved by a systematic procedure, which would ordinarily consist of the following steps:

- Protection
- Preservation
- Collection
- Transmission
- Identification
- Disposition

To the question: "which procedures do you have to follow when you want the body of a perpetrator to be examined for physical evidence?" the respondents responded as follows:

- 17 from 35 say all essential evidence should first be identified and then the investigator should ask the suspect to hand over the evidence voluntarily. If he volunteers to give the evidence found on him, the suspect will be taken to the medical experts
- Three from 35 say they will take him to the medical experts
- Three from 35 say collecting by having the suspects on the crime scene
- One of the 35 says first collection of information from witnesses and then physical evidence to identify the suspect
- One of the 35 says arresting the suspect and collecting evidence from him/her
- One of the 35 says by applying Criminal Procedure Articles 34 and 56
- Nine from 35 did not give responses. This can be attributed to lack of training and limited investigation experience

The majority of the respondents did not describe the procedure to examine the body of the perpetrator correctly. There is no legal act to examine the body of the perpetrator in Ethiopia. The prosecutors were also unable to answer the question.

To clarify this, the researcher interviewed the Vice President of the Supreme Court (Tekeba, 2007) and The Head of the Justice Bureau of the Amhara Region, Ethiopia (Mulugeta, 2007). Both responded that there is no legal act for the examination of the body of a perpetrator in Ethiopia. They elaborate by explaining the following: In order to collect evidence, the experience of investigators of the Ethiopian police is by using search warrants. However, article 26(1) of the Constitution of Ethiopia as mentioned before, regarding the right to privacy by saying that everyone has the right to privacy and the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession. In this regard, it shows that nobody can force the suspect to have his body examined. However, the same article says no restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific

laws whose purposes shall be the safeguarding of the national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedom of others. To practice this, there should be specific laws but the problem is that there are no specific laws concerning the examination of the body of the suspect

3.5 SUMMARY

In the discussion on the body of the perpetrator, it was shown that the body of the perpetrator is an important source of evidence to identify suspects. The body of the perpetrator in the eyes of the respondents is also a very important source of evidence. However, finding evidence on the body is low because investigators are suspicious about the examination results of police laboratories. In Ethiopia, there are no DNA examination laboratories and it is also difficult to examine.

The Ethiopian laws do not prescribe any procedure on the collection of evidence from the perpetrator but traditionally, investigators collect physical evidence from the perpetrator. Generally, the body of the perpetrator is an important source of evidence in the identification of perpetrators.

CHAPTER FOUR

FINDINGS AND RECOMMENDATIONS

4.1 INTRODUCTION

This research is important for investigators to know the possible ways of finding physical evidence. The previous experience of investigators, especially in the case of Ethiopia, depended on finding physical evidence at the crime scene and the body of the victim. However, this research also shows that the body of the perpetrator is an important source of physical evidence but in order to exercise this, investigators experience real problems in Ethiopia. This is due to the lack of legal authority and procedures to find physical evidence on the body of the perpetrator.

To address the problems, the aim of this research is to determine what physical evidence could be found on the body of the perpetrator to link the suspect with the crime of rape. To address this aim, two research questions were asked, namely:

- ◆ What evidence is needed to prove rape?
- ◆ What evidence can be found on the body of the perpetrator to connect him with the crime of rape?

In an attempt to address this research question, the researcher gathered information from literature, interviews and case studies to obtain knowledge. By using these three data collection techniques, the researcher hoped to find information to enhance the validity of interpretation of the research.

4.2 FINDINGS

The following findings related to the research questions are made:

4.2.1 Research question one: What evidence is needed to prove rape?

In this research it was established that:

- Evidence that proves the elements of rape is needed to prove the crime, which particularly relates to penetration and permission
- Nine out of 35 respondents describe some of the evidence
- 26 out of 35 respondents could not describe the evidence
- The reason why some of the respondents could not answer the question is due to the lack of knowledge based on limited experience and lack of training.

4.2.2 Research question two: What evidence can be found on the body of the perpetrator to connect him with the crime of rape?

In this research, it was established that:

- According to the literature sourced, the following evidence could be found on the body of the perpetrator namely semen, blood, hair, fiber, garments, debris, tears, missing buttons, clothing, bedding and soil
- 31 from 35 respondents have the same viewpoint as the literature
- Four of the 35 could not answer the question

The reason for not answering the question is as result of limited experience and lack of knowledge.

4.2.3 Other findings related to the research questions:

The following findings were made in terms of certain other relevant points that the researcher came upon during the research:

4.2.3.1 Meaning of rape

- Rape is generally defined as an act of sexual intercourse against a female by force or against her will
- 24 out of 35 respondents defined rape as the act of sexual intercourse with a woman by force. The majority of the respondents understood the meaning of rape.

4.2.3.2 Elements of rape

- Elements of rape commonly include an act of sexual intercourse with a female committed without the victim's consent and against the victim's will and by force.
- 25 out of 35 respondents have knowledge in the understanding of the elements of rape.
- 9 out of 35 responded differently to the answers in the literature.
- 1 out of 35 did not give an answer to the questions.

4.2.3.3 Evidence

- Evidence is anything that can be used to prove the commission of crime
- The majority of the respondents have good knowledge on the meaning of evidence.

4.2.3.4 Physical evidence

- Physical evidence means articles, objects, materials and substances in connection with an investigation to establish the identity of the perpetrator.
- The respondents could not define physical evidence

4.2.3.5 Trace evidence

- In the literature it is shown that trace evidence means microscopic material recovered as evidence that is useful in solving criminal cases.
- The respondents were not in agreement with the literature. That means they have not enough understanding on the meaning of trace evidence

4.2.3.6 Difference between evidence and information

The writer's viewpoint on explaining the difference between evidence and information is almost similar. One of the writers for instance said it is desirable to evaluate the information furnished by eyewitnesses on the basis of

information already gathered, in order to determine its reliability. It must always be remembered that not all information collected during the investigation of a crime will necessarily be accepted or presented as evidence [Van Heerden (1985) in Van der Westhuizen, 1996:3]:

- 33 out of 35 respondents are in agreement in explaining the difference between evidence and information where as 2 out of 35 didn't agree.

4.2.3.7 Chain of Custody

In this research it was established that:

- The chain of custody is the movement and location of real evidence from the time it is obtained to the time it is presented to court
- 18 from 35 respondents have the same understanding of the meaning of the chain of evidence as the literature
- 11 from 35 respondents did not know the meaning of the concept.
- Six from 35 did not respond.

4.2.3.8 Locard principle

In this research it was establish that:

- The meaning of the Locard Principle is that whenever two objects come into contact with one another, material from the first would be transferred to the second and from the second to the first
- All the respondents did not know the meaning of the concept.

4.2.3.9 Crime Scene

In this research it was establish that:

- A crime scene is a place where a crime was committed
- 33 (from 35) respondents have a good understanding of what the crime scene is.
- 2 (from 35) did not give responses.

4.2.3.10 Body of the perpetrator as a crime scene

- The literature shows that the body of the perpetrator could be regarded as a crime scene based on the Locard principle
- The majority of respondents did not consider the body of the perpetrator as a crime scene.

4.2.3.11 Identification

- Authors explain identification by saying that the items share a common source. The items can be classified or placed into groups with all other items having the same properties. To the question: “What do you understand by the term ‘identification’?” The respondents responded as follows:
 - 26 out of 35 respondents gave similar responses to that in the literature. They said that the gathering of information and identifying evidence range from the simplest particles to the highest ones and this is vitally important to identify the suspects and to reach the truth while 5 from 35 responded with different answers and the remaining 4 out of 35 did not give any responses.
 - Therefore, the majority of the respondents (26 out of 35) have a good understanding of what identification means.

4.2.3.12 Individualization

- Individualization means that an item of evidence comes from a unique source.
- 21 from 35 respondents know what the meaning of individualization is.
- 11 out of 35 gave different answers from those in the literature.
- The remaining 3 did not give responses.

4.2.3.13 Difference between individualization and identification

- In this research, it has been established that the difference between individualization and identification is that there is a similarity of the evidence. It is the identification of something or somebody belonging to a specific category. In other words: “A is simply A” and a hair is simply a hair, whilst in the case of fingerprints, it emphasizes similar fingerprints. In individualization there is a unique character, as individualization involves comparison, usually of the disputed object found at the scene of the crime with one of known origin obtained (for example, from the suspected criminal). In the case of fingerprints, it emphasizes latent fingerprints.
- All the respondents do not know what the difference between identification and individualization is.

4.2.3.14 Body of the perpetrator as an important source of evidence in rape.

: In this research it was established that:

- The body of the perpetrator can be considered as an important source of evidence
- The majority (20 out of 35) if the respondents considered the body of the perpetrator as an important source of evidence in the case of rape.
- 11 out of 35 responded different answers than the literature.
- 4 from 35 did not give responses.

4.2.3.15 Evidence likely to be found on the body of the perpetrator.

In this research it was established that:

- Evidence such as hair, fiber, DNA, physiological fluids, latent prints, accelerants, gunshot residue, pollen, soil, debris, clothes, blood, hair, saliva, urine and sperm likely to be found on the body of the perpetrator
- Only 38 of the 50 cases analyzed were examined for evidence.

The reason that others did not analyzed is that the capacity of forensic laboratories in Ethiopia are not strong enough. For example, there is no DNA examination in the country. Therefore, investigators are not interested in finding physical evidence.

4.2.3.16 Evidence likely to be found on the clothes of the perpetrator.

In this research it was established that:

- The clothes of the perpetrator may have evidence such as semen, blood, hair and body fluids, as was indicated in the literature.
- 34 from 35 of the respondents mentioned the evidence found on the clothes of the perpetrator.
- Only one out of 35 did not respond correctly.

4.2.3.17 Evidence which has the potential to link a perpetrator to the crime scene

In this research it was established that:

- The footwear of the suspect, the soil taken from the footwear, the clothing and other evidence such as hair, fiber, DNA, physiological fluids, latent prints, accelerants, gunshot residue, pollen, soil, debris, clothes, blood, hair, saliva, urine and sperm found on the body and clothes of the suspect has the potential to link the perpetrator with the crime scene.
- The majority of the respondents 29 out of 35 could not answer the question.
- Six from 35 did not give responses.

4.2.3.18 Procedures required for examining the body of a perpetrator for physical evidence.

In this research it was established that:

The procedures according to O'Hara and O'Hara (2003:82), is the proof of identity, that the investigator who first found the object can testify that the exhibit offered in evidence is the same as the object

he discovered at the crime scene. He should further, under cross-examination, be able to say that another similar article could not have been submitted. Both of these objectives can be achieved by a systematic procedure, which would ordinarily consist of the following steps:

- Protection
- Preservation
- Collection
- Transmission
- Identification
- Disposition.
- In Ethiopia, the researcher discovered from the interviews with samples A and B as well as the interviews with Mr. Mulugeta and Mr. Tekeba, that there are no legal procedures to follow when having the body of the perpetrator examined. Even the high officials who were interviewed were also mentioned.
- Investigators do not know the procedure for the examination of the body of the perpetrator for physical evidence.

4.3 RECOMMENDATIONS

In this research a variety of concepts based on the research questions and the aims were discussed. Some of the concepts, especially the field of study, are new to Ethiopia. There is a shortage of literature which means there is a lack of knowledge under investigators and prosecutors. This implies that there are serious problems in the process of investigation.

Therefore, it is recommended that more research is needed on the following:

- Forensic investigation - its purpose and objectives
- Physical evidence found on the body of the perpetrator to prove rape.
- Chain of Custody
- Difference between identification and individualization.

To promote investigation skills and improve the knowledge of investigators and prosecutors regarding the investigation process, it is recommended that the training curriculum for investigators should address the following:

- The concept of forensic Investigation and its techniques.
- Difference between evidence and Information.
- Evidence to prove rape.
- Chain of Custody
- Trace Evidence
- Identification and Individualization
- Perpetrator
- Locard principle
- Consideration of the body of the perpetrator as source of physical evidence in rape.
- The procedures and legal rights for investigators to examine the body of the perpetrator for evidence.
- Consideration of the clothes of the perpetrator as part of his body.

It is also recommended that the criminal procedure should be amended to set out the legal rights of investigators to collect evidence on the body and clothes of the perpetrators to prove any crime.

It is strongly recommended that the Ethiopian Police create a facility in the Forensic Laboratories to test for DNA.

4.4 CONCLUSION

The aim of this research was to determine what physical evidence could be found on the body of the perpetrator to link the suspect with the crime of rape. In knowing about evidence found on the body of the perpetrator, investigators and prosecutors have sufficient knowledge. However, they have little knowledge on chain of custody in evidence, the Locard principle, identification and individualization.

The investigators and prosecutors know about the importance of evidence found on the body of the perpetrator to prove rape but they have no experience in the collection of physical evidence. This may be because of the absence of forensic laboratories, which examine DNA and leads investigators to final physical evidence.

As it is shown in chapter three, some countries of the world have their specific laws in collecting evidence from the body of the perpetrator. However, in Ethiopia there is no specific law that allows investigators to find evidence on the body of the perpetrator. That is why the concern of investigators in finding evidence from the perpetrator and even from the victim is low.

Therefore, forensic investigation is an important field of study for Ethiopia. The concerned officials should think about its importance after knowing its specific laws, or the criminal procedure should include the right of investigators to find evidence on the body of the perpetrator. Researchers should also look into this field of study to bring a dynamic change in the promotion of investigation to secure law and order in Ethiopia.

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ANNEXURE A

INTERVIEW SCHEDULE

A. Historic Information

1. Are you a police official?
2. Are you involved in the investigation of crime?
3. For how many years have you been involved in the investigation of rape?
4. Did you receive basic investigation training?
5. Did you receive special training on the investigation of rape cases?

B. PROVING RAPE (What evidence is needed to prove rape?)

1. How do you define rape?
2. What are the elements of rape?
3. What specific evidence will you look for to prove rape?
4. What is evidence?
5. What is the difference between evidence and information?
6. Explain the meaning of physical evidence?
7. What do you understand under the term “chain of custody in evidence”?
8. How will you, as an investigator, maintain the chain of custody in evidence?
9. What do you understand under the term “trace evidence”?
10. Describe what you understand by the Locard principle?
11. What is a crime scene?
12. Do you consider the body of the perpetrator in rape as a crime scene?
13. Please explain the answer to question 12?
14. What do you understand by the term “identification”?
15. What do you understand by the term “individualization”?
16. What, according to your experience, is the difference between individualization and identification??

C. THE BODY OF THE PERPETRATOR (What evidence can be found on the body of the perpetrator to connect him with the crime of rape)

1. What do you understand by the term “body of the perpetrator”?
2. What do you understand by the term “perpetrator”?
3. What legal rights do you as investigator have to have the body of the perpetrator examined for evidence?
4. Who, according to law, should examine the body of the perpetrator for evidence?
5. Have you ever, in your investigation history, had the body of the perpetrator in rape examined for evidence?
6. Do you consider the body of the perpetrator as an important source of evidence during the investigation of rape?
7. Please motivate your answers given in the two questions above.
8. What evidence is likely to be found on the body of the perpetrator that might prove rape?
9. Do you consider the clothes of the perpetrator as part of his “body”?
10. What evidence is likely to be found on the clothes of the perpetrator?
11. Explain each element that has the potential to link the perpetrator to the crime scene?
12. Which procedures do you have to follow when you want the body of a perpetrator to be examined for physical evidence?