



An Analysis of the South African State's Capacity to Respond to Human Trafficking Within Its Borders

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This thesis is submitted in fulfilment of the requirements for
the degree of Master of Social Science in Public Policy,
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2023

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Signed

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Acknowledgements

I would like to express my gratitude to God for giving me the strength to go through this journey. I am also truly grateful for the support and guidance that my supervisor, Dr. Nadvi has provided me with. Your supervision has empowered me with so much knowledge that I have used on this project and it will go a long way. I am thankful to the International & Public Affairs cluster and its leaders for affording me an opportunity to pursue my studies under their cluster. The knowledge and experience that I have accumulated is that which I will continue to safeguard and cherish.

I dedicate this thesis to my family, especially my mother, Tina Nokuthula Muthwa. There are no words that can explain the gratitude towards you. Throughout my schooling years, you have been a pillar of strength and you have sheltered me under your wings of love. Even though this journey, you have been on my side, providing me with all necessary support there could be. I would also like to dedicate this to my cousin, Snenhlanhla Muthwa who was abducted in the year 1993. Since then, we as the family have longed to see the day of reunion with her and have not given up on the efforts of realizing this day.

Abstract

The dissertation looks at the South African State's capacity to respond to human trafficking (also referred to Trafficking in Persons) within its borders. Human trafficking is a criminal activity which uses a human being as a commodity. The definition of the crime found in Article 3 of the Protocol to Prevent, Suppress, Punish Trafficking in Persons, Especially Women and Children 2000 outlines the criminal activities which constitute human trafficking. They include domestic servitude, sexual exploitation, forced marriage etc. The need to pursue the study comes from the concerns of the country being among those where the phenomenon is prevalent.

The research has 5 objectives that it intends to achieve: This is i) to establish the legal and policy tools which South Africa uses to deal with human trafficking; ii) look at how it handles different types of human trafficking; iii) the country's ability to respond to different kinds of human trafficking; iv) the social factors that contribute towards the prevalence of human trafficking; and v) how reported cases are handled.

The study is a desktop research project which entails collecting secondary data to generate new findings. The study adopted the interpretivist paradigm. The paradigm holds a view that reality is socially constructed and therefore seeks to "understand the subject of world of human experience" (Guba & Lincoln 1989 cited by Kivunja & Kuyini 2017: 8). Data takes different form of dynamics as it reflects human behaviour (Schwartz-Sea & Yanow 2012).

Key Words : South Africa, State, Human Trafficking, Borders, Public Policy

Chapter 1: Introduction

1.1 Background

Human trafficking is a multifaceted phenomenon. It comprises of different crimes and it occurs over a period of time or a criminal process (Yesuf, 2020). While the most prevalent reason is the sexual exploitation of women and children, there are other reasons for it which includes; forced labour, slavery, servitude and the trading of organs. The contemporary international community condemns any form of trafficking in persons (United Nations, 2014).

Human trafficking predates the years of slavery and as MacInnisa (2013) further outlined, it has remerged differently in modern times. The globalization era demands for cheap labour and some of the means of profit maximisation may lead to the exploitation; as well as conditions that are similar to slavery (Clark 2018). What is commonly referred to as 'modern slavery' stems from the chattel slavery. It has attributes of coercion, kidnapping as well as the moving from one place to another. It is in the late 1990s and early 2000s that the global community in the form of the United Nations initiated mechanisms through establishing Protocols and Conventions (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000) to arrest the prevalence of trafficking. Human trafficking is one of the most lucrative forms of a Transnational Criminal Network because of its multifaceted nature. Secondly, the profits earned from trafficking are high, as is the price paid by victims.

South Africa as a member state of the United Nations has seen a steady rise in the incidences and prevalence of human trafficking within its borders and in the surrounding region. It has therefore had to come up with various strategies and legislation to respond to and curb the prevalence of human trafficking within its territory. This study is therefore concerned with interrogating the capacity of the South African state to respond to the phenomenon of human trafficking with its borders. It does this by identifying and locating the South African State as an institution which has developed policies and tools in order for it to respond to human trafficking.

The study looks at human trafficking as being a problem which emanates from transnational organized crime. Emser (2013) explains that similarly to other TOCs, human trafficking is perceived to undermine the sovereignty and the security of the state. It seeks to pose a threat

on the law. Thus, South Africa is considered as a destination for human trafficking (Yusuf, 2020), which has also raised the concern and need to pursue it. It is further stated that the syndicate's web includes persons from South Africa, Nigeria and China. Depending on the area, different kinds of human trafficking is practised, like in Cape Town where Russians and Bulgarian criminal syndicates operate a sex trade.

This study adopts a state - centred approach as it considers the state as the custodian of all human rights. This position is supported by chapter two of the Republic of South Africa's Constitution which enshrines the Bill of Rights. For instance, subsection 7 (1–3) speaks of the Bill of Rights as being the foundation of the country's democracy. It further outlines that the state is to "respect, protect, promote and fulfil the rights in the Bill of Rights" (The Constitution of the Republic of South Africa, 1996: 5). Section 13 of the Constitution speaks against any persons being subjected to slavery, servitude or forced labour. It touches on some of the aspects of human trafficking as defined in Article 3 of the Palermo Protocol. The Constitution's clause amplifies the United Nations Universal Declaration of Human Rights 1948 as Article 23 outlines the kind of conditions which one should work under (United Nations 1949).

The abovementioned goes in line with some of the calls for a human rights-based approach when one engages with human trafficking. The approach serves as a framework which is a normative that stems from the international human rights standard, which further endorses and protects them (United Nations Office the Human Commissioner, 2014). The approach considers some of the attributes and aspects of human trafficking like forced labour; slavery; sex exploitation and forced marriage etc. (UNODC et al 2011).

Human trafficking has a detrimental impact not only on the victims but also on the society. The United Nations Office on Drugs and Crime (2008: 83) states that it is a phenomenon which affects everyone regardless of gender and age. It is stated that it tends to undermine the fundamental human rights, particularly those that pertain to freedom. Trafficking further disrupts the broader socioeconomic landscape, whereby in some instances there would be a need for some assistance designated for the migrants to be redirected to the victims of trafficking.

In the year 2020 the UNODC published the Sub-Saharan statistics for the period of April 2018 and March 2019. The report shows the percentages of investigations (48%), prosecution (26%)

and convictions (8%). Most of the victims were subjected to 61,64%; those of labour exploitation were 26,27%; while other types of human trafficking were 9,9%.

1.2 Objectives of the Study

This research project sets out to work towards and accomplish the following objectives;

- a. Establish the policy tools used to empower institutions to respond to and handle human trafficking
- b. Establish the ability of the institution to handle different kinds of human trafficking
- c. Establish the capacity of the South African state to respond to human trafficking within its borders
- d. Establish the social factors that impedes South Africa from combating human trafficking
- e. Establish the ability of the institution to keep up with the reported cases of human trafficking

1.3 Key Questions to be Asked

The key questions that this study poses are;

- a. How are the relevant institutions (South African State) capacitated to handle human trafficking?
- b. What are the social factors in South Africa that contribute towards the prevalence of human trafficking?
- c. Which group of persons is the most vulnerable to human trafficking?
- d. How does the institution ensure that it can handle most forms of human trafficking?
- e. How often is human trafficking reported and what measures are in place to ensure that all reports are attended to?

1.4 Research Methodology & Methods

The study is going to be pursued through a desktop research process. This means that a collection of secondary data such as published research on the subject in question, internet

materials and any form of data which has been collected, will be analyzed in the interests of serving a purpose related to the study (Gounder. 2012). For data analysis the study is going to use the grounded theory approach which Noble and Mitchell (2016) described as a theory based on ‘grounded’ in data systematic collection and analyzed data. Jones and Alony (2011) justified its use by explaining that it is beneficiary for addressing issues that are complex, especially those that are socially orientated.

The Chapter breakdown will be as follows:

- **Introduction** (general problem area, definition of research question, explanation of why the topic is important, research approach of dissertation, limitations and key assumptions, contribution to be made by research);
- **Literature review** (comprehensive survey of prior research; could be combined with Introduction; provides background/ context to research; documents value of research);
- **Theoretical framework**
- **Description of research methodology**
- **Research results** (results reported, data presented, conceptual framework described, historical analysis defined, or comparative studies explained);
- **Analysis of results** (could be included with previous chapters; key section explaining the conclusions drawn from data and implications of a theory);
- **Summary and conclusions** (dissertation summarised with emphasis on results obtained, contribution made by results, recommendations and suggestions for further research).

Chapter 2 : Literature Review & Theoretical Framework

2.1 Introduction

The chapter is going to present some of the literature that speaks on the subject of the study. This will include existing international and local scholarship on the concepts of the State and Human Trafficking. Its point of departure will be to break down the notion of state capacity in accordance to the development and conceptualization of each term: for instance, for one to understand the concept of a state, one will have to look at its genesis in the sixteenth century as per the Treaty of Westphalia. The philosophical contributions of Plato, Thomas Hobbes etc. facilitated in unpacking the early ideals of a state. Other figures like John Locke and JJ Rousseau gave birth to the idea of the modern state, especially in relation to the location of state authority, how it is acquired and the relationship it has with its people.

The notion of capacity will be looked into where the common thread of the description speaks to the ability to do something. This chapter will also engage on the merits of state capacity. The most dominant approaches in this regard are the functionalist and the generalist approach, where the former looks at the existing capabilities of the state and the latter approach looks at the state's ability to implement political and policy decisions.

The chapter will also look at some of the conditions that lead to the prevalence of human trafficking. This will include discussing matters like poverty, the demand for cheap labour, the high profits that are generated from human trafficking, as well as the difficulties of tracing trafficking cases. There will be a discussion on the population that is most likely to be vulnerable to human trafficking and how cases of trafficking are managed and adjudicated.

2.2 State Capacity

2.2.1 The State

The state continues to be a contested and complex concept. It has gone through a series of commentary over the past political epochs. As is outlined by Pierson (2004) who argues, that despite having diverse commentaries on the state and what it entails, uncertainties continue to prevail on the phenomenon. The scholar further writes that debates are dominantly based on

the normative and empirical; societal development on the domestic and international sphere; the methodologies of perceiving the public and individual.

Heywood (2011) speaks of the state as a historical institution which predates to the fifteenth as well as sixteenth centuries in Europe in the interest of centralizing a governance over the subordinated institutions. It is further mentioned that the Treaty of Westphalia of 1648 triggered the notion of the contemporary state, which has attributes such as sovereignty and a legal standing to engage in international politics. The Westphalia Treaty of 1648 is the foundation of the modern state. Brown (1992 cited by Osaider, 2001: 11) outlined the 2 principles which the Treaty was based on: the first is the notion of each government being sovereign within its respective countries. the second principle is that of no interference by the countries in their respective public affairs.

Deliberations that shaped the state as a concept were prevalent in the early 1960s, (Carroll 2009) and the second was in the late 1960s. It is further outlined that the second wave was encompassed by an advocacy of comparative techniques, an analysis of political economy as well as determinism and structuralism. The third wave is said to have emerged in the early 1990s which focused on “case studies, cultural analysis, contingency, and agency” (Carroll 2009: 4).

2.2.2 Definition

In unpacking the concept of the state, the study will first outline some of the descriptions that have been attributed to it and look at its conceptual development. The English dictionary provides multiple descriptions on political entities. It includes: territory that is presided by someone who is the administrator of a nation. The second one entails a population that has a government of a sovereign state. The third description says that a state is people that are politically organized; people that have a government.

The scholarly definitions of a state are also equivalently diverse. Heywood (2011) regarded it as a political entity which establishes a lawful sovereignty over a territory. It is further mentioned that in political theory, a state is described in comparison to a civil society as the phenomenon covers public institutions that are charged with executing the general will. Jossop

(2009) argued that a state is a group of institutions that are collaborating at the behest of the public to establish and implement the decisions of the consensus and their interests.

The genesis of the states predates to the notion of a city-state as it comprised of walls, towers as well as the streets. Lyttkens (2006) outlines that the city-state also had features like the assembly, council, and a codified law. The primitive years were dominantly founded by philosophers such as Socrates, Plato, and Aristotle as they coined the notion of the ‘state of nature’. It is an era that was preoccupied with the existence of the human cradle and the ideal way of governing people. Then there is the introduction of the social contract, a concept which political philosophers Hobbes, Locke and Rousseau advanced intellectually and theoretically. As will be outlined later, the writings of this period are regarded to have conceived the modern state.

With regards to the how the state is to be evaluated there is a particular interest in political aspects like sovereignty as well as the ethos of the moral principles of legitimacy (Neidleman 2012). The following discussion unpacks the characteristics of the ‘modern state’ and its role and function in the contemporary era. As outlined by Pierson (2004), the merits of a state in its true form has to be unpacked . It will be later outlined that the deliberations were based on the ideals of what ought to be; up against the real complexities that the state endures.

According to one of the founding figures of the concept, Plato, a state is the ultimate form of the human aspect (Bluntschi 2000: 39). It is further explained that the state is to be led by the intellectually capacitated and those that are physically fit would protect the community and the rule of law is to be observed by all social classes. Strauss (2006) outlines that this was based on the three aspects of the human cradle which are the rationale, the spirit as well as the appetite.

The harmony of the basic virtues is regarded as justice in the ideal state as explained by the author. On the contrary, Aristotle introduced the aspirations of a constitutional government, as outlined by Ananyan (2021: 3) which has become the basis of democratic and oligarchy regimes. He regarded the state as the ultimate form of stability as Mijuskovic (Aristotle Book 1, 2017: 3) quoted him stating that: “Every state is a community of some kind, and every community is established with a view to some good; for mankind always acts in order to obtain that which they think is good.”

In accordance with the abovementioned, Aristotle had envisioned a society that is equipped with high ethical standards in the interests of the common good. When Abbete (2016) looked into one of the philosopher's famous quotes; 'political animal', it is revealed that the concept was coined to express the interdependency of people. It is further mentioned that humans can establish a community and be able to reason with each other, which are the two distinctive characteristics of the human cradle.

The overview subsection of the chapter speaks of two centuries where the notion of a state began to take the form of what they are currently known as. This is the epoch where the concept of a 'social contract' came into play as it tended to provide a transition from the state of nature to a 'civil' society. Very simply, a social contract is based on freedom and equality (Neidleman 2012), as it proposes an alternative of attaining dominion and political legitimacy.

Whereas in the state of nature, power was attained through human attributes such as intelligence, a social contract enshrines the right to life, limited freedom as well as the right to property (Lasker 2013). It is further mentioned that the locus of authority is determined through a consensus of a society as the state becomes the custodian of the individual rights. Pioneers of the social contract varied on how it was pursued, and each was based on the envisioned state of nature. For instance, as documented by Lasker (2013), Thomas Hobbes envisioned a state of nature that is chaotic as every man's life is of fear and selfishness. It is a place of self-interests and individualism where they were pursued through rational calculations. In escaping the insecurities, Hobbes proposed a social contract where people would collectively subject their rights of self-preservation, protection and freedom to a single authority, thereby forming a state. The state would subsequently become the custodian of all rights and vested with uncontested sovereignty.

On the contrary to the abovementioned, John Locke and JJ Rousseau shared a view that the state of nature is that of people living in harmony (Lasket, 2013). On the one hand, the Lockean theory had its concerns on the protection and distribution of property. Although equality prevailed across all social aspects however what was lacking is: a formal legal system, judgement with impartiality, and the supreme authority to enforce natural law. On the other hand, although Rousseau's theory had initially envisioned a peaceful society, however as the society evolved through population increase, this led to the establishment of community and

family units. Furthermore, as the divisions of labour emerged it led to the contestation among the people across all boards.

As was the case with John Locke, the question of property also played a pivotal role in Rousseau's proposal of entering a social contract. As a result, these political philosophers contended that the state governors be formed through a consensus, and this would be the custodian of all basic rights. Another distinctive feature that they speak of is that the locus of authority is not vested on an individual, but it is bestowed on a group of governors. Rousseau stressed that should the government fail to uphold its mandate it could be removed at the behest of the general will (Barnett, 2017).

As has been previously mentioned, the political philosophical commentaries that introduced the concept of a social contract are said to have introduced the notion of a modern state. In his 2004 book titled '*The Modern State*', Pierson looked at the manner in which studies on the state are pursued. This led him to the position that many 'authoritative' approaches stem from the work of Max Weber in the dawn of the twentieth century. Weber is said to have given the idea of a statehood critical characteristics. His definition of the state is being a community of humans that asserts the monopoly of lawful physical force over a territory (Mitropolitski 2011). Hameiri (2007; Lemay-Hébert 2013 cited by Lottholz and Lemay-Hébert 2016) outlines that Weber's articulation on the state continues to be influential in the literature on modern state-building. It is further mentioned that when pursuing studies on state-building, scholars tend to use Weber's perspectives on the state and its legitimacy through selectivity as well as de-contextualizing the explanation of his work.

For Weber (Pierson 2004: 6), a modern state has an administrative and a locus standi to change the legislation based on constitutionality. This means that even the administrators and state institutions are also subjects of the law as opposed to authority being vested in a person. With such being said, the following characteristics of the state were regarded by Weber as being crucial. The features are said to be drawn from the school of economics as they include:

2.2.2.1 Monopoly on control of violence

The use of violence that Weber referred to speaks on the means that the state uses to instil order as opposed to the physical violence. In essence, as in accordance with Hobbes of authority being vested in the state, the state then uses its power to execute the will of the public through a civil manner. It entails having laws with repercussions for those that violate them or consensus around acts such as drinking and driving. While the aforementioned can be regarded as a ‘minor’ matter with proportional penalty, however excessive violence would be used in instances where the state is vulnerable to threats such as those of transnational organizational crimes (TOCs).

It is mentioned that the commentators of the contemporary epoch have proposed that the prevalence of TOCs may jeopardize a total attainment of monopoly of violence as envisioned by Weber. As organized crime and domestic violence are predominant in the society and subsequently making it difficult state to exert effective control, scholars caution that the state’s mechanisms on physical violence may be set apart from other institutions, depending on the extent to which violence is exerted. Above all, there is a further emphasis on the centralization of power to a single entity.

2.2.2.2 Territory

Territoriality is one of the prominent features of a modern state. It refers to the geographical landscape that a state occupies and commands authority over. Most of the commentaries on the state have cited this aspect as it distinguishes the modern state from that of the primitive years where it was ruled by empires. Empires occupied places that were not clearly established with proper demarcated borders and all authority was concentrated on them. The emergence of the well-defined territories facilitated conducive administration and further allowed local governance.

Modern states are said to be sensitive on the integrity of their territory, to an extent that they are willing to engage in a war over a region. The territorial jurisdiction is further proclaimed over minerals that may lie beneath the land, the coastal area, as well as the airspace. Thus, the

contemporary statehood covers almost the entirety of the planet and there are very few spheres that are not subjected to a jurisdiction.

With such being said, there are further aspects that may be critical to appreciate in unpacking the modern states: states are abstract entities as they form part of a global political system. This means that borders play an important role in defining and dividing territories that states preside over. The competitiveness of the nation-states as well the prevalence of the international politics allows them to command power dominance over their territories. Secondly, states may not take a permanent shape and are subject to evolve from time to time. This was the case with Europe in the 1980s towards the early ‘90s and further states emerged at the dawn of the millennium. The third aspect entails the identification of nation-states by the international politics.

2.2.2.3 Sovereignty

Most of the discussions on sovereignty derives from Hinsley (1986: 26 cited by Pierson 2004: 11), as it entails an absolute and final authority in a ‘political community’. This does not mean that those that are in power can do as they please however, the power ought to be exercised within the confined jurisdiction. The modern state’s ideal of sovereignty is influenced by philosophers such as Jean Bodin and Thomas Hobbes which entails the public investing their will into the public space. It is proposed that since it is a mutual agreement between the sovereign authority as well as the public, thus, there should be no breach or anyone that contravenes the law.

In accordance with the abovementioned, there are three dominant deliberations that have emanated from the aspect of sovereignty which took three different paths. The first had its emphasis and advocacy on power being vested on the public. Scholars such as John Locke and JJ Rousseau instilled the notion of a democracy, the state is governed in accordance with the will of the people as the sovereignty lies in them. The second direction entails authority being separated into different governmental institutions. This is said to be the purest form of constitutionality because the state can perform its mandate in a convenient way. The third path is regarded to be a counterargument to the notion of sovereignty as it is an introduction of non-state actors and imposing restrictions upon the government’s exercise of authority. This stance

was proposed against the background of fearing that an investment of absolute authority may be abused by the state. It places an emphasis on the notion of popular sovereignty or direct democracy as the ideological camps like the liberals and conservatives endorsed it.

The new ways of administration, gatekeeping as well as the development of technologies has facilitated in the effectiveness of territories and sovereignties of the modern states. This was expressed by Giddens (1984 cited by Pierson 2004: 13), as the scholar mentions that the existence of the abovementioned aspects helped in improving the scrutiny and control of the modern states.

2.2.2.4 Constitutionality

The constitution is the cornerstone for most of the modern states because it outlines the political set-up of the states. While in some states constitutions are codified into a single document, in other states it is found in different sources. A constitution sets out a framework on how law is made and enforced by the state institutions and it preserves the existence of the state. It further prescribes the day-to-day administrative processes of the state.

Commentators of diverse areas have cast doubts on the notion of the constitution as providing guidelines on how the state functions. It is rather regarded as an imposition of the minorities onto the public through the state and authority. One of the realist thinkers from the international relation's schools of thought, contended that constitutionality is a diversion from contestation of power as well as interests (Pierson 2004: 14).

Nevertheless, the constitution continues to be a prominent feature of the modern states as it amplifies what Weber envisioned of a state being the administrative and legal set-up that may lead to change in legislation. These distinctive features are seen to enhance the modern states as opposed to the traditional states where everything was characterized by absolutism and dynastic rule. Constitutionality further brings other aspects of the modern states like the economy and society into focus as well as decentralized authority and the existence of a bureaucratic system.

2.2.2.5 The Rule of Law & Impersonal Power

In lay man's terms, the 'rule of law' speaks of the law being the highest and utmost authority in a state (Pierson 2004: 14). It is in accordance with and amplifies the aspect of constitutionality as it dislocates total authority from the state actors. Once again, the notion of the general will come into play, 'public law' as a concept signifying two prospects: on the one hand, public law may mean that the consensus, where the people decide on the law which they live under. On the other hand, the term may indicate that all are subjects of the law, including those that govern the state. The latter part further entails protecting persons and corporate institutions from being violated by the government.

2.2.2.6 Public Bureaucracy

Public bureaucracy received a high regard from Weber (Pierson 2004: 14), as he saw it as a prominent feature of the modern state. He contended that it allowed states to administrate large quantities of system information like that of a military as well as the corporation entities. It provided the modern states with convenient ways of administrating as opposed to the previous epochs. The essence of the public bureaucracy lies upon features such as: an administration that is well-established in accordance with the regulation and a hierarchy as well as the defined responsibilities. Secondly, the proficiency of the system is enhanced through the necessary skills and knowledge and thus, this is accumulated by employing persons that are fit to execute the job. Thirdly, as work is carried in accordance with prescribed procedures, there are certain instances where they are waived and lastly, the civil servants become the custodian of state as they act on its behalf.

Despite the traditional states having their own form of public bureaucracy, Weber continued to endorse that of the modern state as he regarded it as the most sufficient way of exerting authority over people. He further stated that it was conducive for democracies that were emerging during his time and that their progress was based on bureaucracy. Similarly, there are certain concerns that Weber had which particularly focused on overlooking the prescribed procedures on the matter. This could lead to civil servants taking the law into their own hands. Further to this, many contemporary states have shown a decay in their bureaucracies due to ill-administration, inefficiency and monopolized to serve the interests of particular individuals

2.2.2.7 Authority & Legitimacy

Authority and legitimacy are the central aspects of the modern state because its sustenance depends on them. In lay man's terms, legitimate authority entails the public accepting and abiding to the authority that is exerted by the state (Pierson 2004). It is further contended that a resistance of the constituency may jeopardize the integrity of the state. During the medieval era legitimate authority was acquired through the notion of naturally ordained authority and charismatic persons. Thus, apart from the independent bureaucratic and judicial systems, the modern states are also celebrated for endorsing the will of the people. This is due to Weber's advocacy which contends that legitimate authority is dependent on the prescribed laws and those that are vested with the power to govern through consensus. It means that the public has a contribution that it makes towards the legal system which they live under.

Some of the dominant concerns that have emanated in the pursuit of legitimate authority includes questioning the merits that justifies the use of authority by the state. The modern states tend to be content with legal rationality being the foundation as opposed to religious doctrines that were the basis in the traditional states. Nevertheless, it would be advantageous for the state that most of its population adheres to its authority rather than to delegitimize its government.

In correlation with the abovementioned, Held (1989a: 101 cited by Pierson 2004: 20) outlined some of the reasons that people adhere to the state's authority: it is mandatory for the public to adhere to the laws and there is no alternative that has been proposed. Further to this, there is mutual tolerance among the people; and between the people and the state, regardless of the indifferences that may arise. This is done in the interest of what may be deemed to be 'right' and 'just' and that of what the public have agreed upon.

On the contrary to the abovementioned argument, there are scepticisms regarding the notion of how legitimate authority is acquired. For instance, the democratic elite theorists contend that the (modern) states are governed by elites as the electorate votes for them. This is pursued through the constitution as it allows the elite to persuade the mind of the public. They further argue that it is the most achievable form of democracy in instances where there is a scale of population.

2.2.2.8 Citizenship

Citizenship is regarded as one of the earliest forms of a political interaction. Being a citizen means that an individual is eligible to engage in the political community and there are diverse rights attached to it. As was the case with the city-states in the ancient era, citizenship once again took the centre stage in the modern states because of events like the French Revolution. One of the things that emanated from these developments was citizenship being universal; it is also linked to the notion of democratization as well as the nation-state.

The citizenship status is acquired through being given birth in a particular place. However, it needs to be well-cautioned and outlined that citizenship is not a natural right, in the context that it ought to be applicable across all circumstances. Hence, it is enjoyed within a state. There are debates on granting and depriving citizenship status in the political space as the discretion of granting a citizenship is bestowed within the state and the status is subject to interpretation and withdrawal as per the state.

Deprivation in a formal way pertains to being unable to participate in social contract activities like voting. In instances of receiving welfare goods and services, it is subject to certain criterion, especially on a population of immigrants, political refugees, and migrant workers. On the other hand, citizenship status encompasses provisions such as protection on labour matters, childcare and so on. Nevertheless, the way citizenship is administered becomes a crucial aspect as it strengthens the authority of the state. The resources are invested in the state so that it can see to the needs of its citizens on a large scale.

2.3 Capacity: Definition & Overview

The concept of capacity has diverse meanings attached to it. The online UK dictionary provides two meanings: the first one entails the highest ability to encompass something, be it a space or area. The second meaning entails ability to do something. The third meaning refers to a position or a role. The United Nations Development Programme (UNDP) defines capacity as an ability of an entity to do certain tasks, resolve problems, establish and achieve goals. (United Nations Development Programme 2009). On the contrary to the broad definition, Schulz and colleagues adopted a narrow description as in of a circumstance that is conducive for knowledge, competency as well as the development of organizational and institutional frameworks.

The concept has gone through a series of reviews. Isaza and colleagues (2015) investigated some of the literature on capacity: for instance, Christersen and Gazley (2008) outlined that the term is developed conceptually and empirically as it speaks to the multidisciplinary as well as the sensitive context. Scholars such as Elias (Mann 1993) and Cohen (1993) conceptualized the term within the political terms as they regarded capacity as the ability to enforce control of a territory and over a population. It resonates with the notion of capacity being power and the rule of law as is determined by one's ability to influence.

Brinkerhof (2010) argued that capacity refers to the extent to which an organization or a network of systems progresses and integrates its abilities, with the intention to achieve its goals. One of the implications that the scholar outlines is that capacity turns out to be the quality as well as the occurrence of capabilities and is dependent on how actors utilize them in achieving goals. This sets a stumbling block and confusion in understanding how the end-means are pursued. When looking at capacity development, Bester (2015) pointed out that the concept has broadened its scope from human capital towards a standpoint that captures persons, organizations as well as the society at large.

2.3.1 State Capacity: Development & Overview

This subsection will unpack the concept of state capacity. This will be pursued with great diligence as it is a complex concept. This includes safeguarding against some of the misfortunes that have been omitted in the literature of state capacity and will be outlined below. As a point of departure, the notion of state capacity predates the introduction of modern states in the literature (Gomide et al. 2018). It is further mentioned that state-centred approaches emerged with the intention of explaining the economic transformation that took place in the post-war era.

Although there are diverse perceptions on the concept, some scholars commonly regard state capacity as the degree of a state to exert and implement policies (Skocpol 1985; Fukuyama 2004; Dinecco 2017 cited by Vaccaro 2020). In this instance, aspects of impartiality, efficiency as well as the absence of corruption are key to the aforementioned definition as outlined by Rosthein and Teorell (2008 cited by D'Arcy & Nistotskaya 2020). This is to ensure that service delivery is not jeopardized as well as in the implementation of policies. It resonates with the

sentiments of Evans (1995 cited by Gomide et al 2018: 5) which entails that state capacity goes to the extent of the relations between the state and societal structures.

There are two dominant approaches that are used to pursue the studies of state capacity as outlined by D'Arcy and Nistotskaya (2020): The first approach is the functional approach which sees state capacity as the form and the functioning of the existing capabilities. Domestically, this would entail the ability to collect tax revenue and also enforce into legal agreements as it is seen as being state capacitated. On the other hand, in the international arena state capacity would mean the ability of the state to engage in international relations in pursuit of peace and conflict, the monopoly of violence being a fundamental figure in this aspect.

Considering what is mentioned above, there are propensities of widening the scope of state capacity in pursuing other key responsibilities of the state. This includes the contentions of Hanson and Sigman (2013 cited by D'Arcy and Nistotskaya 2020: 9) which stress that extraction, coercion, administration are the key functions of the modern states. Depending on the perspective of the study, there are diverse opinions on the scope and functions of the state. The function approach conceptualizes state capacity through the lenses of policy inputs and outputs. However, D'Arcy and Nistotskaya caution that such perspective may bring difficulties of separating impartiality of policy implementation as well as the policy content.

The generalist approach is the second approach that is used to study state capacity. From this approach, state capacity is the ability to execute political and policy decisions as well as investing interest in what is needed to achieve these decisions. The generalist approach theorises state capacity in relations with the bureaucratic quality, whereby the term 'quality' is understood to be the competence which includes the permanent structures, personnel with the relevant knowledge and experiences. A second aspect which is said to enhance proficient bureaucracy is autonomy. Autonomy speaks on a certain degree of relief from the external forces like interest groups, society, and political interference in the way the state pursues its mandate. Furthermore, the absence of corruption is said to enhance the proficiency of bureaucracy.

There are several commentaries like that of Evans (2011 cited by Gomide et al. 2018: 5) that are cited speaking on autonomy and the embedment of the state bureaucracy, subsequently suggesting a state-society set-up. It would establish a relation between the state and business and the civil society. Gomide and colleagues also considers the commentaries of Wu, Ramesh

and Howlett (2015, Gomide 2018:6) as they speak of three aspects of competence that deems the state to be competent: firstly, analytical competence safeguards the intactness of the policies. Secondly, it would be operational competence because it speaks on supporting the political decisions with the needed resources. Thirdly, political competence develops the acquiring and maintenance of political encouragement for the government.

In the pursuit of state capacity studies, there are certain loopholes that one needs to caution against. Lindvall and Teorell (2016) outlined the three errors that are committed in the literature of state capacity: firstly, it is the use of Western centralized perceptions of the state and its developments in the sixteenth century. The scholars proposed that studies on state capacity should be based on what it entails and its characteristics rather than using the western perception as a benchmark. The second error pertains to the interest of how certain states are successful in economic, social as well as political outcomes through performing specific functions.

As different studies focus on specific outcomes there is a tendency to focus on specific tasks of the state. A further development of state capacity is impeded by a single-sided perspective as it is based on specific outcomes. The third error pertains to the inability to differentiate the state capacity from other functions. Lindvall and Teorell explain that despite the World Bank's attempts to table the aspect of state capacity on the agenda, there was a failure in conceptualizing it as it was equated to a low, corrupt bureaucracy.

2.4 Conditions that Harbour Human Trafficking

2.4.1 Overview

This subsection will look at some of the social factors that contribute towards the prevalence of human trafficking. It will include unpacking the preconditions in which human trafficking prevails. It will also help to exemplify what is outlined by Niewiaroska (2015) that human trafficking is a complex phenomenon as it is a worldwide one and difficult to combat. Anti-Slavery International (2002) outlines that trafficking often occurs in places where there is violation of human rights and further mentions that it is mostly women and children that are subjected to the crime. Niewiaroska highlights that the other forms of trafficking apart from sexual exploitation, which are construction and domestic work are also prevalent.

The aforementioned speaks on how human trafficking manifests itself in the sphere of global economy. Gallafher and Holnes (2008 cited by M'Comack 2011: 5) explain that as the global economy entails the movement of goods and services, human trafficking becomes “a sub-category of human smuggling which in turn is a special case of illegal immigration”. It is further explained that the increase on illegal migration fuels the rapid prevalence of human trafficking, and it cannot be divorced from other dynamics of the global economy. As will be discussed in detail in the next subsection, the manifestation of human trafficking is a result of diverse consequences from one country to another (Punam 2018). It is further outlined that trafficking prevails because of cultural, social and economic factors.

2.4.2 Factors that Lead to Human Trafficking

2.4.2.1 Poverty, Natural and a Search for a Better Life

Poverty is a condition that tends to undermine a person's human status. The United Nations Global Initiative to Fight Human Trafficking (UN. GIFT) (2008) describes poverty as a phenomenon which pertains to conditions such as the shortage of resources like food, health facilities and any other basic services. It also includes social illnesses such as the exclusion from political and economic participation and it is further mentioned that if one generalizes the term, they may be unable to arrive at possible solutions.

Poverty is said to be a dominant factor in the prevalence of different kinds of human trafficking as outlined by Aronowitz (2015). The Department for Global Development (2003) mentions that as resources are scarce and distributed unequally, people become more vulnerable to human trafficking. It is also mentioned that the poverty conditions compelled mostly women and children to fend for themselves and play a role in putting food on the table. Instances of such nature led to the conceptualization of feminization of poverty (Russel 2008). This refers to the women's presence in the workforce as they become the head of households. These are some of the reasons that lead to female migration and discovering that women become remittance senders.

Matters of inequality among the societies predates to the primitive years of civilization (Barner et al 2014), as the fortunate oppressed the poor through the practice of slavery. It is also worth

noting that this is done at the behest of political elites in the pursuit of maintaining and exerting authority over the poor. It is in such circumstances where traffickers become opportunists by deceiving individuals through promising them jobs and greener pastures (Punam 2018).

2.4.2.2 Demand for Cheap Labour

In the global village that one finds themselves in, there is a high quest for cheap labour and it will be explained how this is the case through the contemporary global economy. It is in clause 189 of the UN's Convention that the concept 'labour exploitation' began to be conceptualized (Bijken 2011). Even with such being said, it is further explained that there is a difficulty in clarifying a distinction between the violation of employment rights and human trafficking or labour exploitation. The International Labour Organization (2009) provided indicators that are to be used to discern elements of human trafficking and they are categorized in accordance with the purpose of each trafficking. For labour exploitation purposes, Bijken states that it includes no payments of wages, deception, debt bondage, intimidation of being deported etc.

The concept of agency sparked a debate among the scholars on how it should be interpreted in the context of human trafficking (Wheaton et al. 2010). It is regarded as the restriction of a person when they are trafficked and the Palermo Protocol see it as "consent of a person having control over another person" (UN Protocol 2000: 2). Wheaton and colleagues further proposed that state agencies such as those handling migration matters act to filter the gap. The trafficked are mostly subjected into working in places like the restaurants and agricultural sector as explained by Punam (2018). The scholar further details that in the aftermath of promises, the trafficked are paid less and over worked as there are no places where they can voice out their grievances.

Globalization has ushered the interdependence of countries for economic transactions and trade and it is in such a platform that exploitation of persons in the form of labour takes place (Brewer 2008). The scholar further explains that in developing countries, people are subjected to almost a lifetime experience of labour exploitation because of socio- economic conditions they live under. Therefore, coercion into the exploitative labour condition is a gradual process, especially for migrant workers as they have minimal or no alternative means of making ends meet.

2.4.2.3 High Earnings from Trafficking

At the helm of any form of trafficking lies the prominent potential of generating favourable potential profits. The International Labour Organization (2014: 3) defines profits as “the difference between the average economic value added and the sum of expenditures on wage payments and intermediate consumption”. Having such borne in mind, human trafficking is said to be a high-profit enterprise due to the supply demand element as well as the growth of the demand (Social Development Notes 2009).

The International Organization for Migration (2018) explains that the notion of trading humans has been on the international arena’s table as treaties, conventions and protocols initiated to safeguard people’s human rights. An example of this would be child sexual exploitation and abuse (Department of the State 2020). It is outlined that this form of trafficking has evolved as it now takes place at an international arena because of the demand it has attracted as it is easily accessible and cheap. Further to this, international social platforms are used to conduct child sexual exploitation including livestreams and payments being made through electronic means.

2.4.2.4 Difficulties of Tracing Human Trafficking Cases

As human trafficking is a multifaceted crime, there are difficulties that impede the process of adjudication. This includes the process of investigating and prosecuting as it has to do with indefinable perpetrators as well as the vulnerable victims (Newton et al. 2009). For instance, a case involving a child may be difficult to handle due to the difficulties encountered in the process of tracing and contacting their country of origin (Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2018).

Although countries that are in the East African Region have initiated and legislated laws that criminalizes human trafficking, they continue to struggle in setting a precedent that could be followed when handling the victims of trafficking (Odera & Malinowski 2011). The criminal justice system is one of the spaces that falls short when it comes to human trafficking (Farrel et al. 2012).

Apart from the legal detriments, the cited scholars further looked at the institutional aspect to explain the inability to handle cases of human trafficking. On the one hand, institutional failures stem from the lack of enforcement of laws, there is scarcity of research done in relation to how the criminal justice system is constructed to handle human trafficking. Further to this, the

enforcement agencies become reluctant to adapt and adhere to the relevant regulations because they regard it as political impulses.

2.5 Victims of Human Trafficking

2.5.1 Overview

This subsection will look into the kind of persons that are most likely to be subjected to human trafficking. They come from different parts of the world, especially the periphery (Martinez et al 2005). There is a further explanation of the demographics as they range in sex to age, whereby most of the women are victims between the ages of 20 and 40; there are also men as well as homosexuals. The importance of looking into this aspect comes from the magnitude of impact that human trafficking has on its victims (United Nations 2008). One of its distinctive features is that human trafficking is a lengthy process of crime encompassed with the experience of trauma, depression, alienation etc. As will be outlined in the subsection to follow, risk profiling is conducted through examination of risk and resilience factors (European Union 2015).

2.5.2 Profiling Victims of Human Trafficking

The process of profiling victims of trafficking will be made through an outline of persons that are most likely to be victimized. For instance, in the U.S. Department of Education's 2015 report (2021), some of the young persons that are likely to be victims are: those that run away from home, the homeless, as well as students that drop out of school. Further to this cohort, there are students that drop out of school; as well as those that have been in the welfare system.

The European Union (2015) has analyzed and categorized children that are likely to be trafficked. They include: children that come from abusive, violent families that have neglected them; children that are subjected to migration arrangements; those that are in places of war. There are also those that engage in risky behavior as well as children from marginalized societies. As has been mentioned in the previous subsection, in most instances women and children are subjected to trafficking for sexual industries (Brewer 2008).

The International Organization for Migration (2018) distinguished the types of labour that a child may be subjected to: the first type pertains to doing house chores and it has less or no harm. The second type of labour has dangerous work that may jeopardize the child's safety and its development process. The third labour pertains to trafficking of a child through the means of recruitment, transportation, etc. with the intention of exploiting.

Migrant workers are among the population that are often subjected to exploitation. They are vulnerable to abuse throughout the process of migration employment (International Organization for Migration 20015). It is further outlined that the initial recruitment process is pursued through the means of deception, and misinformation of the job from the broker or the employer. The European Union Agency for Fundamental Rights (2019) speaks of how social networks platforms are used to advertise appetizing vacancies only to find out later that the working conditions are deplorable. The undocumented migrants are often coerced into labour exploitations by the traffickers through threats of reporting them to the Home Affairs (Focus on Labour Exploitation 2017).

2.6 Handling Cases of Trafficking

2.6.1 Overview

This subsection will look at how most prevalent cases of human trafficking are handled. Its starting point will be outlining and discussing key areas that states need to adopt in criminalizing trafficking. It will further look at some of the types of trafficking that are common and how they have been handled. The Health, Wellbeing & Cities Strategy (2009) noted that identifying human trafficking could be difficult because it is an invisible phenomenon to an extent that a victim may be attended to without recognizing it. As will be outlined in the subsection to follow, sexual exploitation is at 53%, whilst forced labour being at 40% are seen to be the most common kinds of trafficking (United Nations on Drugs and Crime 2014 cited by Bejinariu 2019).

In unpacking how cases of trafficking are pursued, there is a need to look at the obligations used to handling the cases. In the United Nation's (2014) '*Human Rights and Human Trafficking*' document, the following are provided as guidelines that the state could use to criminalize trafficking. Firstly, there is a need to have a domestic legislation that criminalizes

any form of transnational offences and being involved in the organized criminal groups. Secondly, it pertains to the standardized definition for trafficking in persons. It is advised that the domestic definition and application needs to be consistent with that found in the international arena like acknowledging that all persons can be trafficked.

The third obligation speaks on the aspect of trafficking offenders being complicit and taking responsibility of the offence. This includes partaking in activities like organizing, as well as being accomplice to the offence. The discretion of a legal standing applies to both natural legal and jurisdictional persons such as the companies found in the tourism sector. The fourth obligation stresses an emphasis of criminalizing all aspects as well as other related acts of trafficking. This pertains to trafficking offences that violates human rights such as child labour, slavery and forced marriage. It further touches on more critical issues like rape, sexual and physical assault, money laundering as well as corruption.

The fifth obligation stipulates that a service beneficiary from a victim of trafficking should be criminalized. The sixth obligation speaks on the criminal jurisdiction of the state. It mainly focuses on the state's ability to attend to cases that are found in the international and regional arena. This enables states to prevent and combat trafficking at all spheres of the society. There are two circumstances in which a state would engage in such spheres. The first instance is when trafficking occurs within their territory or it is committed under the banner of a state's identity through a flag or aircraft that is registered under its name. The second instance is when the trafficker is within their territory and they are going to be extradited.

2.6.2 Forms of Trafficking

2.6.2.1 Sexual Exploitation

Cases of sexual exploitation are handled against the back drop of many detriments. For one to appreciate the difficulties, one has to first understand how cases of such a nature need to be handled as prescribed by the United Nations International Children's Emergency Fund (2019: 5). The UNICEF has ensured that its personnel dealing with sexual exploitation situations are well trained. This is done in the interest of instilling trust and confidence in victims and the community at large. Secondly, the means of reporting of sexual exploitation should be

conducive to be pursued in terms of being safe, gender sensitive and considerate of the context. This is done in consultation with the affected community, especially those that are vulnerable because it assists in determining their needs and how they should be served.

Further to the abovementioned, the third prescription is for UNICEF to set standards in accordance with the CEB Model Policy on Sexual Harassment and it must be in line with the Duty of Care to its personnel. Finally, the confidentiality of the victims and survivors is highly considered in all cases. Anonymous identity is used across all sectors of the case and there is no deadline imposed. Protection from any retaliation is also offered whilst the victim is constantly updated on the progress of the case.

Having such instruments in place is confronted with challenges that impede their efficiency. Among the many is the difficulty of identifying the offender (the Police Officer Standards and Training Council 1998). Investigations try at their level best to get hold of the offender in accordance to the described features such as clothing, facial features, distinctive marks etc. In some instances, to have a successful legal prosecution on a sexual assault case there must be DNA as evidence (Witke et al 2018). Apart from this, victims may end up being reluctant to continue with the case for different reasons like concerns of safety, and being not believed by the court (International Association of Chiefs of Police 2018).

2.6.2.2 Domestic Servitude

Domestic servitude is a phenomenon which is rarely found in the public discourse. It is almost invisible as it takes place within private spaces (Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2010). It is further explained that this type of trafficking is usually feminized because most of the victims are women. However, arresting the matter tends to be a huge setback for a number of reasons.

The Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2010) outlines some of the difficulties that lead to the inability to handle them. The major shortfall is that of the industries not being professionalized and disregarded as employment. The lack of recognition of the industry leads to domestic workers subjected to deplorable conditions such as being unpaid, social insecurity and enduring long hours of work. Subsequently to this detriment follows the violation of the worker's rights and the inability to enforce regulations related to domestic workers and exerting authority over the area.

The greyness in the law enforcement also has an impact on prosecuting cases of domestic servitude (Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2010). The cited multi-cooperation also mentions that this compromises the state's ability to provide appropriate assistance to the victims during the course of the legal proceedings.

2.7 Adjudicating Cases of Trafficking

The subsection looks into how cases of human trafficking are being handled and the means put in place to ensure that they are attended to. In the United Nations Office On Drugs and Crime (2020) there is a percentage of the most prevalent cases of trafficking to the least prevalent. According to the report sexual exploitation is the highest at 50%, forced labour at 38% and other related crimes is 6%. The figures prompt concerns on how to go about combating human trafficking in the global arena as well as the drive towards an anti-trafficking society (Department of States 2019). For an example, the Canadian government's action plan speaks on training and educating the prosecutors and law enforcers; form an investigative unit that will specifically focus on human trafficking; and it intends to improve the intelligence work (Her Majesty the Queen in Right of Canada 2012).

One of the setbacks of human trafficking cases is identifying them in the communities. In the context of trafficking, identification entails the manner in which human trafficking appears to the law enforcers (Farrell et al 2012). There are different means through which information of this nature is acquired. Among these is the call centre that is used to report human trafficking (Human Trafficking Around the World: Hidden in Plain Sight Conversation with My Daughter About Women's Roles and Statuses the World Over 2016). It is further outlined that the centre receives more than 100 calls a day from victims, affected friends and family, as well as the survivors of trafficking.

Another credible source of getting information is that of intelligence. The International Organization for Migration (2018) advised that an effective investigation on trafficking has to include strategic and tactical intelligence. Further to this, this type of intelligence collects information of particular crimes and criminal groups. The IOM mentions the three phases of presenting and prosecuting human trafficking in courts: the first two of the phases takes place

in the pre-trial stage, where there is interrogation of the witnesses and looking at the exhibits for strategizing for the trial.

The second phase is meant to confirm that the witnesses are available to take the stand, organising all legal stakeholders to submit and prepare responses as well as the closing remarks prior to the beginning of the proceedings. The third phase takes place after the trial where submissions on restitution are prepared and this is dependent on the jurisdiction of where the matter is heard. The submission should include the type of trafficking on the case and provide the kind of support that will be in accordance with the type of trafficking.

2.8.1 Introduction on the Theoretical Framework

The subsection will discuss the theoretical lens that the study is going to use. It will do so by providing a discussion of what public policies entail and its purpose. The study will unpack the concepts of policy design as well as policy tools. A discussion and conceptualization of these concepts will inform how the study will use the policies and all legislative measures on human trafficking (trafficking in persons), both at an international and domestic level. This will involve looking at transnational organized crimes as well as the regulations used to prevent and combat it.

Some of the United Nations prominent documents like the ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially of Women and Children 2000 will be engaged throughout the chapter. It will also be important to examine how SADC as a region has positioned itself to arrest human trafficking and what it will entail for Member States. This includes the processes of ratifying of international legal instruments into the domestic arena. Institutionalism serves as a heartbeat of the study as new institutionalism will be supplemented with policy and legal instruments, to test the ability of South Africa to prevent and combat human trafficking.

2.8.2 The purpose of Public Policies

The purpose of a public policy can be appreciated through the countless definitions that are prescribed to it. Cochran and Malone (2014: 8) looked at the term ‘policy’ which they

described as intended courses of actions that are designed to address a certain problem, which in a public context would be a government's decisions as well as actions to deal with the public concern. Mackay and Shanton (2011) described public policy as a government's decision to act or not for a problem to be solved. Pinteric (2014) outlines two distinctive features of a public policy with the first being that it is intended to address a matter that is of public interest, meaning that it concerns itself with the broader societal space. The second feature is that it is achieved through the means of the public sector rather than the private. This entails the government taking meaningful and decisive measures to implement policies.

Mthethwa (2014) described public policy as guidelines and goals which are to be translated into actions that will address the needs of "the intended beneficiaries". Roux (2002) further mentions that policies also outlines how they are going to be achieved as well as the resources and capital that is needed to achieve the objectives of the policy. A definition provided by the QC Researcher (2019: 2) entails that "...public policy is the sum of government activities, whether pursued directly or through agents, as those activities have an influence on the lives of citizens."

The abovementioned definition acknowledges that policy can be pursued directly either by the government's institutions or through agents. It also recognizes the complexities of policies which at times would require an interrogational setup. For instance, when it comes to the governance of human trafficking, treaties like the Palermo Protocol are a primary source that states must oblige to if they are a part of it (United Nations 2014). In the document compiled by the United Nations Office on Crimes & Drugs (Kangaspunta et al 2008: 65) there is an outline on what states are recommended to do regarding human trafficking. It entails that:

"States are to initiate policies that will prevent and combat human trafficking; protect victims of the crime, especially women and children. They are to instigate measures such as research, information, mobilize on media campaigns as well as socio-economic initiatives that will prevent and combat human trafficking; policies and other measures must be initiated in accordance with article 9 of the Palermo Protocol. States are further obligated to toughen their measures that pertain to their relationships with other states, so it can avert factors that lead to trafficking, especially women and children."

Lastly, the article entails that states also investigate strengthening legislative mechanisms and other measures that investigate social, cultural and educational frameworks that seek to promote exploitation of persons. It is argued that it could be difficult to charge the states with responsibility for the recommendations as mentioned above (United Nations 2014: 12), however they have a responsibility to initiate their own legislation and negate those that are contrary to international law. Due to its multifaceted dimension, human trafficking requires several State institutions to be cooperating in combating it. As Van de Watt (2019: 12) looked at human trafficking in South Africa's context, he contends that for the phenomenon to be addressed there has to be an understanding of its complexity which results from the country's "structural inequalities, ambition-driven social insentience, greed, power- and gender disparities."

The institutional theory serves as a compass of understanding the relation between the public institutions and the people. Mahmud (2022) speaks of institutionalism as a theory which brings to attention the institution's role to empower and constrain how people behave. Reich (2000) suggests that there are four forms of new institutionalism as it recognizes that institutions function within a society which is made up of different institutions.

The National Policy Framework on Trafficking in Persons is made up of two levels with the first one being strategic. It recognizes the priorities that must be pursued where the first quarter would be for strategy and the next five years would be for the updates to guide the implementation of Prevention and Combating of Trafficking in Persons, 2013 (Act No. 7 of 2013). In addition, it outlines what must be achieved through the policy framework. The second level is operational, the Anti-Trafficking Action Plan provides the details of the goals and objectives that are found in the strategy and specifies the "activities, responsibilities, timeframes and resources." (National Policy Framework on Trafficking in Persons 2019:12).

2.8.3 Research Policy Design: Policy Instruments & The Palermo Protocol

This section provides an overview of what is meant when one explores policy design. Bobrow and Dryzek (1987 cited by Piteric 2014: 19) defined it as a comprehensive plan to attain

outcomes through different circumstances. In appreciating this description, Piteric thus contended that it has an insinuation that policy design illustrates an ability of control over a situation. As the study endorses the proclamation, it also considers what is proposed by the social constructionists outlined by Hwang (2014) which looks at how the population that the policy is directed at is defined. The stance stems from Schender and Ingram 1970's description of policy design referring to it as "the content or substance of public policy- the blueprints, architecture, discourses, and aesthetics of policy in both its instrumental and symbolic forms" (Hwang 2014: 3).

The contention resonates with some of the commentaries that have been made in contemporary studies of policy design. Capano and Howlett (2015) provided an insight on some of these arguments which includes the resurrection of an emphasis on the role on the government in all political spheres. It has been based upon the appreciation of the negative impact that governance being decentralized has had on the policy design. Other recent studies mentioned by the authors reveal their interest in aspects of governance by stressing the role of the government. They reveal that in the space of social policy which pertains to matters like health, the government continues to have a crucial role as they govern by making decisions on the governing practices as well as on the content of the policy.

The concept of policy design is highly deliberated on within the discipline of public policy. In unpacking what policy design entails, Howlett (2014: 6) regards it as a process of finding suitable "policy alternatives". The alternatives consist of different elements such as policy goals; aims and objectives as well as the policy tools. He further cited Linder and Peter as they stressed the importance of policy tools, explaining that they play a significant role in the process as they are the mechanism through which a state's goals are achieved.

Understanding the concept of policy tools or instruments is among the key features of the study. It will inform one about which as well as how international and domestic legal instruments are being used in the fight against human trafficking. Policy tools is a complex phenomenon as different scholarships have contributed diverse inputs in its conceptualization. However, Cairney (2015) provided a much-simplified description which regards policy instruments as the government's tools used to fulfill the intended goals and objectives. With such an understanding borne in mind, legal instruments are said to provide a standard for exerting

authority as well as for “decision-making procedures...” (Richardson & Wood cited by Mees et al 2014).

Legal instruments can also be part of an international community where they predominantly govern the arena. Their existentiality is determined by and through a written agreement between two or more sovereign or legal entities like the States and “international organizations” as described by de Matons (2014: 17). It is further stated that the primary purpose of these legal instruments is to establish rights as well as obligations between Parties and it is governed by the international law. In the ‘*Chapter 2 The major universal human rights instruments and the mechanisms for their implementation*’ it is mentioned that article 2 of the International Covenant on Civil and Political Rights entails that State Parties are to respect and safeguard the rights of all individuals that are within their territory as in accordance with the accepted rights.

The preamble of the Palermo Protocol is an overview of what the treaty intends to achieve. It outlines the determination to arrest the trafficking in persons by preventing and combating it (Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000). An emphasis is placed on women and children as they are the ones who are most vulnerable to trafficking and the absence of any legislative measure on this area will expose the persons in question to trafficking. It acknowledges that there is no single existence of an instrument which can be used to tackle trafficking in persons, although there are a variety of policy and legislative instruments that safeguard against the exploitation of any person.

2.8.4 Overview on Theoretical Approaches to Public Policy

Political institutions and the public policy arena are a highly contested sphere with the intention to influence or gain control over them. In the academic space there has been a development of many theoretical prospects that seek to explain how these arenas are controlled and by which persons in society. One of the theoretical approaches, the institutional theory will be discussed more in depth in the next section as it will assist in explaining the lenses of the study. The discussion of these approaches is from an objective perspective with no intention to be selective or suggest any preference among them.

2.8.4.1 Elite Theory

The elite theory holds a position that the society is led and controlled by a small group of people (Lopez 2013) and the theory concerns itself with structures where power resides. For this reason, Anyebe (2019) argues that the public policies are a reflection of the elite's interests as the group has the ability to affirm and negate what is on the table in accordance with their social stances. For Pokharel (2019) the policy-making process becomes a platform where the interests of the elite are advanced. Therefore, the policies would be elite oriented rather than being revolutionary and working class oriented in nature.

The reasons that justify elitism accounts to three propositions (Cerovac 2017). The first is that there are political decisions that could be made correctly or otherwise. Secondly, there are certain individuals that can make coherent decisions and thirdly, those individuals should ascend to the chambers of decision-making. This then concludes what is asserted by Anyebe which is that the demand and needs of the poor masses are not represented in public policy.

2.8.4.2 Group Theory

The theory is said to depict a good reflection of what occurs in the political terrain as it speaks on the contestation among groups to attain hegemony over public policy. Under this banner, public policies are a result and reflection of a group that is able to gain dominance over other groups as argued by Anyebe. The implications that stem from this includes the societal resources being concentrated on the group that has steered its interests on the public policy table. Through the lenses of this theory, it can also be assumed that public policies may change every now and then depending on the dominating groups.

The attainment of hegemony may come at a high price as it entails groups to engage in activities such as lobbying (Mthethwa 2014: 24). It also mentioned that wealth plays a role in the bargaining process. It also requires being well organized and having an ability to lead. The theory further maintains that these kinds of developments may be advantageous for policy processing as it matures through the diversity of deliberations.

2.8.4.3 Systems Theory

The system theory focuses on the most appropriate ways to deal with the diverse issues of the society (Rasmussen 1997 cited by Caffrey & Munro 2018). Theory is a product of different schools of thought which have a common interest to decipher how different dynamics link to each other. This is further attested to by Kasiniuk (2015) by stating that the contemporary issues have become multifaceted and thus it is quite difficult to tackle them from a single dimension.

Through these lenses political entities are regarded as political systems whereby it is a space of the interaction of a society, an institution where “authoritative allocations are made and implemented in the form of policies and decisions” (Anyebe 2018: 5). The scholar further refers to Easton’s description that considers public policies being a response to societal issues from the political system.

Social issues are also referred to as an environment or the inputs into the political system. Anyebe explains that the environment comprises of two components, the first being the demands. Demands refers to the values as well as interests of the society which political entities have to act upon. Secondly, there is support that is manifested through election results, the payment of taxes and abiding to laws. With the same token, the outputs of the political system entails the legislation of laws, distribution of resources, judgements made by the judicial etc. The perceptions that the society has on the outputs help to determine the effectiveness of the policy and further reveal new demands from the environment.

2.8.4.4 Incremental Theory

Scholars like Lindom (Anyebe 2019; Degaan 2017) who advocate for this approach consider situations where it would be difficult to convene a policy consultation due to the large size of the population and the diverse opinions. In such circumstances incrementing comes as a preference as it entails adding to what is already in existence. Anyebe contends that since decisions that are taken on the political table on policy resolutions are a result of an agreement among many stakeholders, the approach expedites the process. This would occur especially in instances when there is a need to make a few changes that need to be made on current policies and programmes.

The abovementioned resonates with some of the reasons which are provided by Cloete (Mthethwa 2014: 32) which includes minimal possibility of contestation among policymakers, which would take into consideration the limited availability of options. On the contrary, Degaan (2017: 4) cited one of Lindblom's arguments which states that incrementing can also be applicable in big changes depending on the essentiality of the change.

2.8.4.5 Rational Theory

The theory is mostly used to explain decisions that are taken at the micro-level by individuals. For Downs, (Anyebe 2019: 8), decisions which are taken by the electorate and political parties stem from the rationality of intending to make the most of their personal preferences. Mthethwa (2014: 38) elaborates on this by stating that the national interests are abandoned in the pursuit of the self-interests. This is done through a contemplation of what could be the possible outcomes should certain policies be pursued and what alternatives may be taken to avert the unwanted results.

2.8.5 State - centered Approach

The study has adopted a state-centered approach because of its meaningful contribution towards understanding the relevance of the state in the contemporary society. The approach places an emphasis on the state being the dominant and the key player in the global governance in terms of sovereignty as well as the ability to “exploit hierarchical authority in order to mobilize and maneuver their respective states, and even groups of states, in the pursuit of collective goals” (Bell & Hindmoor 2009: 1). Joao (2013: 35) outlined that the approach stems from understanding the security of the state as it was initially during World War II. The author further mentions that the approach concerns itself with two aspects; the first one is the appropriate security policy and it is also about the suitable measures that can be put in place to safeguard against threats.

One of the critical points that can be drawn from Bell and Hindmoor's discussions, is the state's ability to be influential in domestic and international arenas. These two arenas will be discussed

further below and contextualized into South Africa's and the SADC's approach to human trafficking.

2.8.5.1 The Governance of Transnational Organized Crimes

2.8.5.1.1 Overview & Definition

This subsection intends to provide an overview on Transnational Organized Crimes. An introspection into this area will help to further strengthen an understanding of how human trafficking and other related crimes could possibly be arrested. As a point of departure, one looks at how Transnational Organized Crimes (TOCs) has been conceptualized as it is contested and misunderstood as alluded by Gastrow (2013). There are diverse articulations on what organized crime means whereby on the one hand, Block and Chambilss (1981 cited by Miraglia et al. 2012: 8) regarded organized crime as a “set of activities” like the illegal transportation of goods. On the other hand, some scholars looked at the structural feature as they focus on the logistics as well as hierarchy of criminal groups. The most credible source for defining and understanding what TOC entails is the United Nations Convention Against Transnational Organized Crime and The Protocols Thereto. Subparagraph *a* of Article 2 states that:

“Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit (United Nations Convention Against Transnational Organized Crime and The Protocols Thereto 2004: 13).

The remainder of the article supplements and elaborates on some of the terms found in the abovementioned subparagraph. For instance, subparagraph *c* speaks to the meaning of “Structured group” whereby it describes it as a group that is deliberately established for long term purposes to commit an offence. It also states that the group does not necessarily have a properly prescribed function for its members or a developed structure.

Against the background of the above discussion it also needs to be acknowledged that TOCs are multifaceted. In the fact sheet of the United Nations Office on Drugs and Crime (UNODC) (2015) it is attested that TOCs do not have a single posture and are constantly changing in order for it to be compatible with the markets. The document further provides and briefly discusses different types of the most prevalent TOCs which includes drug and human trafficking; the smuggling of migrants; illicit trading; trafficking in natural resources; the illegal trade of wildlife as well as cybercrime.

All these crimes impose different threats and challenges. One of the attributes of this is the constant evolving of the TOCs as explained by Wall (2017). They have emerged into online spaces and other social network platforms. This triggers a need to question how these platforms can be used to arrest TOCs like human trafficking, especially within the contemporary society. Vermaaten (2017) outlines some of the characteristics that criminals in this arena display which include perpetrating acts of violence or intimidation. They prey on different countries in the pursuit of their objectives, strengthening their dominance without being brought to book. Their primary aim is to profit from the illicit activities and business investments. The International Peace Institute (2009) outlined a range of actors that are operating in the TOC which includes several armed personnel, terrorists, politicians that are corrupt, warlords, as well as roguish governments. The emergence of a global village has eased the partnerships between transitional criminal networks (TCNs) and the actors that are in the fields of armed struggle as well as weak governments.

2.8.5.1.2 Transnational Organized Crimes Models on Fragile States

This subsection engages on how TCNs take advantage of fragile states as well as the impact of TOCs on these states. In simple terms the World Bank identifies a fragile state according to its incapacity to provide “basic services to the poor, either as a result of a lack of political will, weak capacity, or both.” (Menocal & Othieno 2008: 1). It is contended that an inability to tackle TOCs by the states is a result of these preconditions Varath (2015), and under these conditions it can be difficult to detect TNCs. Further to this, criminal networks can either operate at a par with the state or its replacement. Locke (2012) explains that the prevalence of TOCs impedes efforts to address conflicts as well as the enhancement of peace in the fragile states.

Different models have been used to infer and unpack TOCs, especially on how they occur on fragile states. Some of the models are listed and briefly explained by Ochoa (2012): the first one looks at the local organizations that have an interest on local crimes. The model explores countries that may have TCNs that operate within domestic parameters as they exploit the “traditional logic of property and market protection in the absence of a functioning state or in connivance with the state” (Ochoa 2012: 10).

The second model looks at the domestic TCNs that are interested in operating at an international sphere, interested in the production of illicit goods and services. The third is the transnational logistical networks which investigates the movement of illicit goods and services between and within countries. The last model looks at fragile states being the transit points for TOCs.

2.8.5.2 The Palermo Protocol on Transnational Organized Crimes

Article 1 of the Palermo protocol recognizes itself as a supplement of the United Nations Convention against Transnational Organized Crime. It advises that the protocol be interpreted alongside with the Convention. This means that the provisions of the Convention are to be applicable to the protocol. A further implication is that the offences determined in Article 5 of the Protocol are to be established as according to the Convention.

2.8.6 Feminists on Human Trafficking

One of the prominent interest groups that have a stake in responding to human trafficking are feminists and feminist scholars. Within the scholarship there are diverse stances on how trafficking manifests itself as well as how it is perceived. For instance, Lobasz (2009) furnishes one with the feminists’ position on human trafficking which rejects the traditional way of looking at the phenomenon as solely being the issue of state security. Rather, they contend that human trafficking is a violation of human rights and therefore those who are victimized should have a dominant influence on how the crime is addressed.

Kingshott (2016) speaks of feminization of poverty and migration, which magnifies and stigmatizes women as being the major subjects of poverty. This perspective is regarded to

be among the contributors of a narrative that is gender-orientated when it comes to articulation of human trafficking. As the author continues, the feminization of poverty and migration stresses on matters like women being the dominant percentage of unemployment, being underpaid and subjected to unsuitable labour conditions.

In Valadier's (2018) discussion on the two rivalries one notes that on the one hand, the liberal feminists advocate for women's freedom over their bodies and the regulation of prostitution. On the other hand, the radical or abolitionist feminists hold a strong view that sex occupation can be equated to sex slavery as well as sex trafficking. They further stress that such conducts are a violation of women's human rights. The author speaks of postcolonial feminism which outlines the role of race, colonialism and neo-colonialism which continues to disenfranchise women. It also claims to deconstruct the perceptions of the western feminism which depicts a pessimistic view of women from the developing countries as being vulnerable to trafficking.

Within the South African context, Frenkel (2008: 4) outlines two challenges that the feminists have encountered. The first challenge must do away with the racial stereotypes which places black women in an inferior position as compared to white women under the banner of women empowerment. The second challenge has been the inability to enter the traditional and indigenous' terrain where prospects of patriarchy are institutionalized.

2.8.7 An Overview on Institutional Theory

The study has adopted the new institutional theory which places an emphasis on the government's ability to exercise authority over an environment rather than adapting to it (Theong 2011). The adoption of the theory takes into consideration that there are a number of stances that tend to articulate on institutions. Based on the school of thought, theories commonly intend to unpack and understand aspects such as the nature and the degree of influence which the institutions have on the society. Amenta and Ramsey (2009) outlines that arguments on institutions tend to place an emphasis on institutions being the highest form of authority that exerts power by monopolizing the interests and political participation.

Some of the most recent definitions prescribed to institutional theory come from Berthod (2017: 1) who describes it as “understood as taken-for-granted beliefs, rules, and norms, shape the creation and spreading of organizational forms, design features, and practices.” It is further elaborated that a sphere where there is legitimacy, low levels of uncertainty and productivity in terms of actions and activities can be considered as institutional compliance. With regards to political institutions, March and Oslen (2011: 1) regards institutions as structures that provide meaning and direction towards behavior and further “explain, justify and legitimate behavioral code.” They also mention that institutions can vest and constrict actors in different ways so that they are capacitated to function accordingly.

Pinterič (2014) outlines that the institutional theory intends to understand the policy-making process by focusing on the institutional activities and its relatives. This is based on the notion that public policies are a result of what takes place in the institution. Therefore, the institutional approach has predominantly focused unpacking the formality as well as the legitimacy of the government institutions (Anyebe 2019: 6). This would entail looking at aspects such as legal powers, the formal structures, procedural guidelines, and the functions of the institutions. However, Anyebe explains that the focus has shifted to looking at the dynamics that shape the institutions and its functioning.

In the Swedish International Development (SIDA) (2003: 7) agency’s report it is contended that political institutions can have a positive impact by ensuring a sturdy democracy by operating in accordance with “rules and norms of democracy.” The report further mentions that the development of concrete political institutions can be realized in a space where the political culture is conducive. This would entail tolerance, the willingness to find the middle ground and opening an avenue for participation.

The institutional theory in the study helps with the understanding and unpacking of a state capacity. Some of the early writings such as that of Skopol (1979 cited by Cingolani 2013) provides the link as it concedes that the interconnectivity of the ruling class, state apparatus, as well as the state administrators determines the autonomic power of the state. The generalist approach to institutionalism further enhances the position of the study. The approach considers state capacity as an ability to "implement any political decision and

focuses on the endowments needed for successful implementation of a broad range of political decisions" (Nistotskaya & D'Arcy 2020: 8).

2.8.7.1 Neo-Institutional Theory

2.8.7.1.1 Introduction of the Theory

As the phenomenon of human trafficking is complex it means that there are several aspects that need to be looked at. It can also be expected for state institutions to be in a position whereby it galvanizes itself to be compatible enough to tackle all sides of the phenomenon. In addition to this, it is also worth noting that tactics of perpetrating human trafficking may be advanced and even changed from time to time. For instances, what could have been the most appropriate way of addressing human trafficking in the 1990's may not be feasible and applicable in the contemporary era.

The abovementioned entails that institutions that are tasked with addressing human trafficking must maintain their sovereignty over the phenomenon. This attests to some of the reasons for adopting the new institutional theory which is also amplified by Lang (2018) who mentions that "structuring forces need to be maintained over time to preserve relevance." It speaks to the prospect of reproducing institutions which the study considers through the lenses of the path-dependency. As Campbell (2010: 91) describes it, the concept refers to:

"a process where contingent events or decisions result in institutions being established that tend to persist over long periods of time and constrain the range of options available to actors in the future, including those that may be more efficient or effective in the long run."

Through these lenses' institutions are considered as rigid entities (Lindegård 2013) that can sustain their relevance which Lang sees as an essential institutional reproduction. Lindegård further furnishes us with the four dominant reasons that justifies the usage of dependency-path which are mostly advocated by political scientists. It is firstly contended that establishing political institutions can be costly. Secondly, it is regarded as a deliberate intention by politicians to have institutions as they are difficult to change. The third reason

is that once institutional actors have gained knowledge on processes, they tend to be resistant to pursue more or new options. Fourthly, those who benefit from the institution continue to invest their support.

In the context of policy-making and public institutions, Theong (2018) considers three aspects that are crucial. These are i) how goals are attained by different structures/departments; ii) an environment where policy implementation can occur; and iii) initiating ways to resolve problems.

In correlation with the abovementioned, in ‘An Introduction to Human Trafficking: Vulnerability, Impact and Action’ it is outlined that the ratification of the Palermo Protocol is encompassed with the task of establishing institutions which will have the responsibility to handle issues on human trafficking. Institutions referred to include;

“rapporteurs (on trafficking), inter-ministerial or inter-agency coordination bodies or mechanisms, bodies to coordinate the provision of services to individuals who have been trafficked (sometimes called national referral mechanisms) and special law enforcement units, as well as specialized prosecutors to detect and prosecute traffickers.” (Vienna 2014: 105).

2.8.8 Measuring Guidelines of the Study

The study is going to make use of measures that were prescribed by Huntington (Peters 2000). It will be supplemented with Articles 9 of the Palermo Protocol; the Prevention and Trafficking in Persons (TIP) Act 7 of 2013; as well as the ‘An Introduction to Human Trafficking: Vulnerability, Impact and Action’ which was prepared by the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT). The first two measures of autonomy and adaptability will be used to look at how South Africa has positioned itself to prevent and combat human trafficking. Measures of complexity and coherence will be used to infer how the country attends to the victims of trafficking.

2.8.8.1 Autonomy

This refers to the matter of an institution being capacitated with the ability to make and enforce its decisions as well as the level of independence from other institutions. Subparagraph 1 of Article 9 vests power to the States to institute meaningful policies as well as other prominent measures and programs. The primary aim will be to prevent and combat trafficking in persons; and to protect victims of trafficking in persons, especially women and children from being revictimized.

The abovementioned would include the pursuit of the provisions found in Article 4 that speaks to that scope and application of the Protocol. It entails that the Protocol should be applied in the prevention, investigation and prosecution of offences that are in accordance with Article 5 of the Protocol. The study will reveal statistics of criminal cases that have been pursued and infer some of the challenges that arise in the process.

In exploring preventative measures that South Africa has in place, the study will also look at measures it has in place in relation to national borders. This would be in accordance with Article 11 of the Palermo Protocol. It outlines that travel and identity documents are to be obtained in a legitimate way without being duplicated.

2.8.8.2 Adaptability

An institution must be in a position whereby it can adapt to changes that occur in an environment and be able to influence the change. In addition to this, institutions must be consistent in providing the necessary resources regardless of the changes in the given environment. In line with subparagraph 2 of article 9, it is recommended for the States to implement measures like conducting research, using social and economic means and initiatives to prevent and combat trafficking in persons (UN.GIFT 2008).

2.8.8.2.1 Policy Compliance: Responsive Regulation

The study will use the policy compliance theory to determine South Africa's ability to comply with all respective policy instruments in place to prevent trafficking in persons. In

defining compliance, Weaves (2009: 3) adopted the Oxford English Dictionary's description which regards it as acting in accordance with the agreement to "behave in this way: grudging compliance is still compliance.". There are diverse perspectives and applications of the concept as in accordance with different disciplines. For instance, the Organization for Economic Co-operation and Development (2000) looked at how the term 'regulation' is understood into three categories: in economics, regulation means an intervention in the market that includes pricing, competitiveness and an entry into the market. Social regulation entails the protection of public interests like health, safety as well as the environment and social cohesion. Administrative regulation entails formalities and paperwork whereby the government gathers information and intercedes on economic decisions.

Some of the theories that are used to explore policy compliance studies is the responsive regulation. Short (ciited Baldwin & Black 2008, 2010; 2019: 6) outlines that responsive regulation stresses on the regulators focusing on the "broader institutional environment in which they are operating, including the constraints and opportunities presented by political conditions."

Nielson and Parker (Shover & Hochstetler 2006, Simpson 2002, Grasmick & Bursik 1990; 2009: 3) explains that the responsive regulation theory merges the plural theories on compliance and enforcement; it entails that "people comply only where they calculate it is in their self-interests to do so..." It further entails that people comply as according to their social and normative reasons. This is attested by Hong and You (2018) when they look at the theory in a democratic context. They outline that responsiveness and accountability make up the process of democratic representation. It means the political agencies and actors will act in accordance with the public interests so that they gain its support for future elections. Choosing this theory is a result of its usefulness in unpacking public and private governance over issues like crime as exhibited by Braithwaite (2011).

2.8.8.4 Complexity

It serves as an illustration that the institution is capacitated to galvanize its internal structures to attain its goals and further keep up with the surroundings. The measurement will be used to question how South Africa attends to the needs of those that are victimized

from trafficking. This would be in accordance with Articles 6, 7 and 8 of the Palermo Protocol as they focus on the protection of victims. The dynamics revolving the subject of victims vary from the discretion of gender, age, the reason for being trafficked and exposure to vulnerability.

The study will also explore the implication and application of the Domestic Violence Act [No. 116 of 1998]. It will be come as an assistive instrument to unpack how trafficking is being attended to by South Africa. The intersection of trafficking and domestic violence transpires through different circumstances as stated in the Human Trafficking and Domestic Violence document (2015: 1). It is further mentioned that a categorization of the victims into these two categories may jeopardize their chances of receiving social and legal resolutions.

The study will also use complexity to explore how the migrant workers are being safeguarded against exploitation. The South African Constitution serves as a cornerstone of the country's jurisprudence in which the civil rights are entrenched. They are applicable to all persons regardless of their nationality. For instance, section 27 (1) of the Constitution enshrines a right to have access to services such as health care; adequate food and water; and social security. It further includes the provision of appropriate social assistance, even when a person is unable to support themselves.

Subsection 27 (2) bestows a responsibility to the State to take up reasonable measures such as legislative means and resources in making these rights a reality. For permanent residents, the discretion of nationality is waived as affirmed by Badenhorst (2016). However, it is further outlined that for temporary residents some of the Bill of Rights are limited to matters such as employment injuries, protection from diseases and occupational health benefits. Through the consultations of civil society, national and international academic actors (SIHMA 2014), the Refugees Act of 1998 was brought into effect in 2000. The progression of the Act emanated from the normative approaches which stem from the international and domestic arena. This attests to the utterances of Crush and colleagues (2005) as they mention diverse dynamics of migration that the governors from all political spheres need to be considering. They further outlined that one of the policy confrontations include the ability to harmonize and install consistency of policies and good governance at a SADC regional level.

As the scope of human trafficking is diverse, May and Mudarikwa (2011) provided a list of policy instruments that are being domestically used to combat human trafficking. The instruments are as follows:

2.8.8.4.1 The Children's Act 38 of 2005

The 18th Chapter is concentrated on the aspect of trafficking of children. The intention of the Chapter is to provide effect to the obligations found in the Palermo Protocol and combat trafficking of children. There are critical subsections of the Act like subsection 284 which speaks to the prohibition of child trafficking or a permit for a child to be trafficked. It further waives the consent of a child into being trafficked. Subsection 285 of the Act speaks on the prohibition of any persons on legal standings or agreements on the services of leasing and subleasing property (room, house or building) in the interest of harbouring a child that is a victim of trafficking. The section also speaks against the publication through any medium, of information relating to child trafficking.

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

Different components of the Amendment Act speak to the trafficking in persons. Prior to the enactment of Palermo Protocol, Section 70(1) which is on Part 6 of the Act served as an interim measure for the country to comply with the international prerequisites regarding the trafficking in persons for sexual purposes. This was in accordance with Article 5 of the Palermo Protocol. Subparagraph 1 empowers State Parties to adopt and initiate legislative measures as well as other prominent measures to establish criminal offences. It further states that criminal offences must be in accordance with Article 3 of the Palermo Protocol.

Section 71(1) states that any persons that traffics another with no consent will be deemed guilty of involvement in trafficking in persons as an offence. A victim of trafficking will not be held with any offence including those that are related to immigration.

2.8.8.4.3 Basic Conditions of Employment Act 75 of 1997

Some of the aspects that are dealt with in the Employment Act are child labour as well as forced labour. Section 43 touches on the prohibition of an employment of a person that is below the age of 18 or is too young to leave school. It is also outlined that an employment of a child jeopardizes its education, mental and physical well-being, morality, spiritual social development. Section 48 speaks on the prohibition of forced labour. It stresses that no one may impose, or demand forced labour on a person for their own or someone else's benefit.

2.8.8.4.4 Intimidation Act 72 of 1982

Section 1 of the Act 7 speaks on the prohibition on unlawful and intentional forceful or inclusion of any person from doing acts or to take on or abandon a certain perspective. In addition, it speaks against assaulting, injuring, and causing damage to any person. It also includes any way of intimidation to kill, impose injury, intending to prompt someone to perform any act that is against their will.

2.8.8.5 Coherence

An institution must be in a position whereby it can handle the amount of work that it must deal with and advance procedures that assist in completing the job within a reasonable timeframe. It also has to do with the ability of an institution to prioritize its fundamental responsibilities, beliefs, and outcast those that do not fall within the ambit. The study will use the monitoring and evaluation spectrum to detect how South Africa has gone about implementing policies and related policy instruments of trafficking in persons.

2.8.8.5.1 Monitoring & Evaluation (M&E)

The concept of monitoring and evaluation is best defined and understood by looking at each term. The 'A step by step guide to Monitoring and Evaluation' (2014) document defined monitoring as a processing of collecting and analyzing information on an organization or a programme while its implementation is taking place. On the other hand, evaluation entails a retrospection of an organization or programme through internal or

external independent inspectors. The Public Service Commission (2008) also weighed in on the conceptualization of the terms. It regarded monitoring as a continuous function that makes use of collected data through indicators as information is provided to managers and relevant stakeholders. The information shows the progress and the extent to which the objectives have been achieved as well as how financial resources have been used.

It is further explained that evaluation entails weighing the relevance of the policy or programme. The assessment is set to be as objective and systematic as possible and it is planned, on-going development intervention. Kabonga (2019) commented on the implementation of the terms where monitoring shows the progress of the policy or programme. On the other hand, evaluation provides reasons behind the progress like why the policy is failing.

2.8.8.5.2 The Importance of Monitoring & Evaluation and The Guiding Principles

Monitoring and evaluation plays a vital role in determining a State's ability to perform and rise to its expectations. It facilitates in measuring and showing effectiveness in achieving policy objectives; it enhances the domestic learning and decision making on policy, how the State functions and its implementation (The Public Service Commission 2008). Furthermore, monitoring and evaluation is said to empower State actors whilst ensuring accountability to the public.

With the abovementioned borne in mind, monitoring and evaluation will assist the study by consolidating diverse sources of information on the policy on trafficking in persons with its progress. It will allow the researcher to explore the experiences and build on knowledge; enhance transparency and accountability on State and security studies. The loopholes will be revealed, and policy patching will be advised where it is needed. A link between policy implementers, the public as well as the decision makers will be made as it will be assessed (Monitoring and Evaluation Framework 2012).

2.9 Conclusion

In conclusion, In conclusion, the literature review intended to unpack the key aspects of the study. This entailed decoding the phenomenon of state capacity, where the essence of it speaks to the state's ability to do a particular exercise. There was an outline of the transition from the medieval state towards the modern state, where its authority is vested in the society and subsequently choosing their leaders. While constitutionality ensures accountability on the custodians of the state, other distinctive features of the modern state are the rule of law – where law prevails above subjects of the state, and the people determining the law under which they live.

The public bureaucratic feature will serve as a prominent character which will assist the study in unpacking how South Africa engages social issues like poverty, the quest for cheap labour and inability to trace human trafficking as they fuel the prevalence of trafficking. It will also assist in finding out the measures which ensure that women and children are safeguarded against human trafficking as they are the most vulnerable, how they curb the prevalence of the dominant trafficking and how the cases are adjudicated.

The theoretical framework subsection looked at the approach that the study will use in questioning the ability of the State to prevent and combat human trafficking. The international institutions like the U.N. have provided its Member States with policy instruments, treaties and protocols as blueprints and guidelines that States can utilize to confront human trafficking in all political spheres. The ratification of the Palermo Protocol into South Africa's legal framework and the enactment of Trafficking In Persons Act 7 of 2013, served as a milestone towards the realization of having a trafficking free country. However, this can hardly be achieved in isolation and would hence require regional cooperation in strengthening security measures by all Member States of the SADC. The New Institutionalism will be supplemented with policy and legislative measures to infer the extent to which South Africa is capacitated to handle human trafficking.

Chapter 3 : Research Methodology & Research Findings

3.1 Introduction

The chapter will provide a discussion of methodologies and methods that the study used to pursue its investigation. A desktop research approach was used to question South Africa's ability to combat human trafficking. The investigation had four objectives which are to: i) establish the policy tools used to empower institutions to handle human trafficking; ii) establish the social factors that impedes South Africa from combating human trafficking; iii) establish the ability of the institution to handle different kinds of human trafficking; and iv) establish the ability of the institution to keep up with the reported cases of human trafficking.

The abovementioned objectives were used to develop key questions that would facilitate the research. The questions included questioning i) how are the relevant institutions capacitated to handle human trafficking; ii) what are South Africa's social factors that contribute towards the prevalence of human trafficking; iii) which group of persons is the most vulnerable to human trafficking; iv) how does the institution ensure that it can handle most forms of human trafficking. Lastly, it also investigated v) how often human trafficking is reported and what measures are in place to ensure that all reports are attended to.

As has been alluded to previously, the study was a desktop-based research. It entailed an analysis of data that had been collected by a different researcher for another primary intention (Jonston 2014). Data refers to documents and database from credible information and statistics as they are identified, extracted, and compiled to produce different conclusions (Co-operative Innovation Project 2016). The data collected is used to respond to questions that may be different from the primary study to serve a different purpose (Boslaugh 2007), therefore it is referred to as secondary data.

Desktop-based research seeks to serve several purposes. Among the many, the World Food Programme (WFP) and the Food Security Analysis Service (2009) provided some reasons: it provides clarity on the context of the primary data as it unpacks its magnitude through research questions and apparatuses. The relevant socio-economic groups as well as their livelihoods can be easily identified and what predominates the phenomenon in question. In this instance it was

human trafficking. It is further mentioned that desktop-based research helps in validating information that ceased its relevance and precision on the subject; it can provide guidelines on primary data processes that were uncovered in the preceding studies.

The usage of secondary data is encompassed by several advantages. Long-Sutehall and colleagues (2010) drew on some of the predominant reasons for using secondary data which included contributing stronger knowledge towards the social expertise. They further outlined that it provides a new prospect and conceptual focus in the investigated issues. This means that there would be a synthesis of historical and contemporary aspects as well as behaviour of individuals, societies, group, and organizations (Corti & Thompson, 1995 cited by Long-Sutehall et al 2010: 2). Greenhoot (2012) outlined that the secondary data empowers and provides an avenue to investigate without being geographically restricted and can subsequently broaden the scope of the research. In addition, it allows for large-sampling and the researcher can investigate elusive populations.

Secondary data analysis has some certain loopholes that may disadvantage the progress of the study. Boslaugh (2007: 6) speaks of two major detriments: firstly, certain information may be missing as it might not have been part of the initial research and may not respond to the secondary study, or phrased into a different category. The second detriment is on the absence of the secondary analyst in the process of the data collection and this impedes an understanding of procedures and technical information required. Perez-Sindin (2017) further provided some of the disadvantages which speaks on lack of validity as well as the inability to have control over the quality of the data.

3.2 Research Approach

This section will provide an extensive discussion on how the research was pursued. This will be done through synthesizing the goals and objectives of the study, the research methodology and methods used to pursue each objective. For instance, the first objective will be introduced in line with the methodology and the methods that were needed to respond to it.

The broader perspective of the study was broken into four subjects. Each objective looks at an aspect that resonates with questioning South Africa's ability to combat human trafficking. Broader questions were developed to assist the investigation as they were formed in accordance

with the objectives. They will be outlined as per discussion of each objective. In addition to this, the objectives were outlined in accordance with the theoretical framework's measurements. This was done in the interest of producing logical and comprehensive conclusions.

3.3 Methodology

This section provides an outline of the methodology used in the pursuit of the study. By methodology, one refers to the manner in which a research design is implemented (Symeou & Lamprianou 2008). It requires a logical, systematic process as well as decisions that are consistent so that it can endure criticisms in producing credible conclusions. This is concurred by Kumar (2011) stating that there must be an outline of measurement procedures, a strategy of sampling, a framework for analysis and a timeframe.

The study was pursued through an interpretive paradigm. The paradigm takes a view that knowledge and truth is subjunctive (Ryan 2018). As the ontology of the paradigm entails that there is no single truth or reality, the epistemology provides a space for the interpretation of the participants' reality (Kivunja & Kuyini 2017). It is further outlined that the epistemology of the paradigm speaks of meaning or knowledge is socially constructed as opposed to being discovered.

Klein and Myers (1999: 79 cited by Miskon et al 2015: 2) provided seven principles of how the interpretivist paradigm is pursued. They include: the manner which the data is constructed; how the theories and concepts are abstracted as well as how they are generated; the researcher's intellectual background; the different story that the researcher brings out; and how the researcher critically engages the "presented reality".

3.3.1 Qualitative Approach

A qualitative research is pursued to explore human conduct as explained by Islam and Farnuque (2016: 3), as it is intended to study people's perception and their experience. Although Strauss and Corbin (1990: 11 cited by Rahman 2017: 2) described it as a research which does not produce statistical and quantitative findings; Rahman cites comments made by Ritchie and

colleagues on the difficulties on defining the approach. The reasons mount to the diverse methods used in this approach and not having a precise theory. This is further justified by the paradigms that follow below.

The qualitative approach is advocated in the interpretive research. Researchers within the paradigm hold an ontological view that a phenomenon is made up of diverse dynamics and thus an ultimate reality cannot be pursued through means of measurement (Pham 2018). With this borne in mind, it is further stated that interpretivists get an in-depth understanding of the phenomenon in question. This supports Mutch's sentiment (2005 cited by Tuli 2010) on the interpretivist's view of reality being a product of human interaction or a social construct.

The epistemology of the paradigm draws its aspiration from the ontology that reality can only be accessed through a human being's mind (Sale et al 2002 cited by Slevitch 2011: 6). In sum, the author expresses that the researcher and the subject are interdependent and outlines the paradigm's emphasis on the people's perspectives, interests as well as their intents.

Whereas the quantitative approach received high remarks in the desktop research, there are some sceptics when it comes to the use of a qualitative approach. There are great concerns on the aspect of data being rigorous as regards the issue of ethics (Ruggriano & Perry 2017). The scholars mention that interpreting and analyzing strategies used in the secondary data analysis may not be appropriate in the pursuit of understanding different dynamics like social and political norms. This includes the researcher being objective when unpacking the data and excluding themselves from the data.

Further to this, research ethics becomes another critical aspect that is looked at in desktop research. Concerns revolve around the issues on informed consent, anonymity when data is collected (Morrow et al 2004 cited by Ruggriano & Perry 2017: 4). It also raises questions on legal aspects as it tends to undermine the respondent's rights on the data.

3.4 Grounded Theory

The first stage of data process and analysis was mainly for the purposes of gathering the information. The study further pursued a grounded theory approach to provide an in-depth analysis. The theory entails producing a theory based on the data that is systemically collected

and analyzed as explained by Pulla (2016). Mitchell and Noble (2016) attested that it is an assistive device when it comes to ascertaining social related matters like groups and processes. Other advantages are mentioned by Alony (2011: 2) which is providing a “detailed, rigorous, and systematic method of analysis.”

The distinctive features of the grounded theory are that the collection of the data as well as its analysis takes place at the same time. The categorization and analytic coding of the data is done prior to the engagement with the pre-existing literature. Theoretical sampling is used to enhance categories; abstract categories are done inductively; the data is used to uncover social processes. Analytical memos are used between coding and writing. Lastly, each category is incorporated into a theoretical framework (Mitchell & Noble 2016). Some of these features will reemerge as subheadings in the chapter as the discussion progresses.

3.4.1 Theoretical Sensitivity

Theoretical sensitivity entails the researcher having an in-depth knowledge on the subject in question. This means that the researcher is able to provide meaning to the data in relation to what it encompasses and distinguish relevant information from that which is not. Further to this, to be theoretically sensitive and having vast knowledge one is able to develop a theory that is “grounded, theoretically dense, and cohesive” (Mitchell & Noble 2016: 2). The founders of the theory, Glasser and Strauss (1967 cited by Jones and Alony 2011: 9) were cited placing an emphasis on theoretical sensitivity being crucial for grounded theory.

3.4.2 Theoretical Sampling

The theoretical sampling is regarded as the trademark of the grounded theory (Davoudi et al. 2016). As per Charmaz’s (2006: 192 cited by Quresh 208: 1) definition, theoretical sampling is “seeking and collecting pertinent data to elaborate and refine categories in your emerging theory.” It is further explained that theoretical sampling concerns itself with what comes out of sampling rather than the sample. In secondary data analysis, the researcher has to be particular on the aspects that need to be further explored.

3.4.3 Qualitative Methods

The qualitative research approach has an interest on people's interactions as well as their experiences amongst others. In this regard, researchers that take this approach stress more on concepts and anything related to it (Davoudi et al. 2016). They further argue that their work comes as a reflection of a societal phenomenon as they are interested in individuals, experiences that contain in-depth information. The sampling in the qualitative research is intended to provide specific information rather than representing a population distribution.

3.5 The Process of Analysis in the Grounded Theory

The study adopted a process of analyzing data in a grounded theory that is advised by Noble and Mitchell (2016: 2). The preference came after an exploration of other advised prescriptions from scholars like Ward, Gott and Hoare (2017) as well as Roman, Osinski and Erdmann (2017). These prescriptions are most appropriate for a primary data analysis whereas the study pursued secondary data. The adopted process comprised of three stages which are as follows:

3.5.1 Open Coding

The researcher had to look at distinctive concepts as well as key phrases. They are then converted into codes, subcategories and categories. For instance, some of the concepts that define human trafficking in the Article 3 of the Palermo Protocol were key factors when it came to unpacking the diverse dynamics of the phenomenon. Its elements like sex exploitation, marriage servitudes as well as labour exploitation are significant. This helped in breaking down the data into different aspects and one was able to engage with the reading material and further make sense out of it.

3.5.2 Axial Coding

The data that is related was identified from the categories and the connections were made. As explained by Theron (2015) while the main categories outline the main elements of the phenomenon in question, the “causal” categories focuses on the situations that constitute the

phenomenon. In other words, this would be the social and political factors that leads to the prevalence of human trafficking.

The abovementioned includes the marginalization of women which can lead them to being vulnerable to human trafficking crimes like sexual and labour exploitation. Subsequently, the state should be capacitated to tackle the phenomenon not only in terms of criminalizing and prosecuting the offenders, but also creating an environment that will assist and avert any further victims of trafficking.

3.5.3 Selective Coding

This stage entails identifying the main category then connecting it systematically to the categories. The connection between these categories are substantiated and enhanced. They are then integrated into analytical memos. It is further explained as “the process of choosing the core category and relating it with the other categories from axial coding” (Rezzat 2019: 90). Figure 1 below shows an outline of these three stages of analysis.

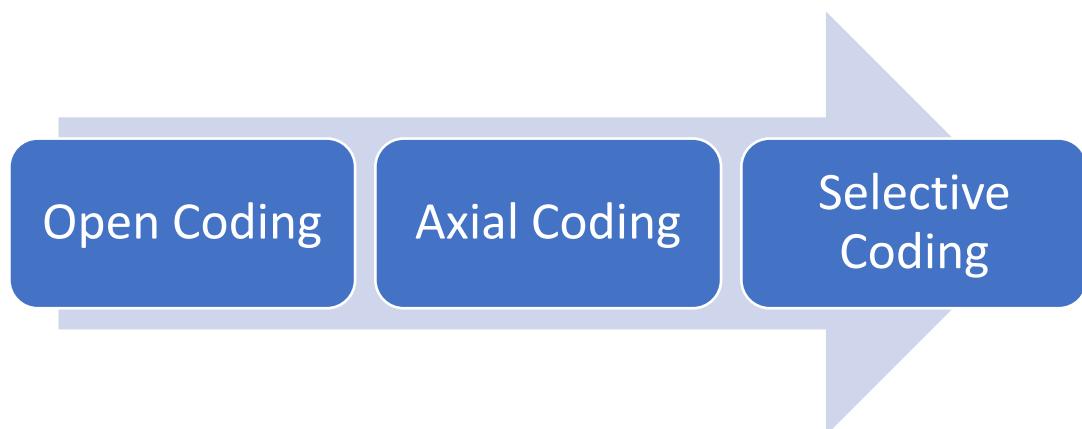


Figure 1: Selective Coding Stages

3.5.4 Memos & Diagrams

One of the core prerequisites of the grounded theory is to keep memos and drawing diagrams as the study progresses (Berthelsen et al 2018). It entails keeping records of ideas of different concepts as well as their relationships. Whereas in field work one would take notes during observation and interview sessions, in grounded theory the same procedure is taken however it happens alongside with the data collection and analysis process. Apart from describing the

phenomenon, they further assist the researcher in monitoring the progress of the analysis (Razat 2019).

3.6 Limitations of Grounded Theory

The study used the grounded theory having borne in mind its limitations and disadvantages it encompassed. An insight of these limitations as provided by Hussein and colleagues (2014) included: an exhausting process – the coding process takes a lot of time and energy. The abstraction of concepts is not an easy task to embark on and as a researcher one may be hooked up on this process, without discovering themes that come from the data. In addition, the grounded theory tends to produce minimal theories which leads to further complications. One had to continuously consult with their supervisor for guidance.

The second challenge is the high chances for methodological error. One of the errors outlined by Charmaz (1989 cited by Hussein et al 2014: 8) is that of choosing purposeful sampling rather than theoretical sampling. The scholar mentioned that this can result in not having an in-depth understanding of the concept. It is further pointed out that the misuse of qualitative methods like impulsive closure can lead to further limitations. The reluctance of researchers to use the grounded theory is due to the third limitation which is the review of literature with no assumption. This amounts to the continuous debates on how to use the theory in a suitable manner. It is contended by some scholars that there is no need to engage with the literature prior to a study as there will ultimately be new knowledge to be discovered.

In contrast to the abovementioned sentiment, some scholars have contended that a literature review equips the researcher to be theoretically sensitive. This means that the researcher is able to have an insight on the phenomenon as it helps them to understand and interpret the data. It further provides one with matters such as the needed methodology for the study. The fourth limitation amounts to the use of more than one approach to the grounded theory. It comes as a result of different positions that were taken by the founders of the theory. On the one hand, Glasser subscribed to a quantitative positivists paradigm whilst Strauss believed in a qualitative interpretive (Annells 1997 cited by Hussein 2014: 8). This led to an uncertainty as to which method to use in the grounded theory.

Another aspect that the scholars differed on is verifying the data. Glaser maintained that theory stems from a temporary developing product. On the other hand, Strauss contended that theory can be pursued without being verified because verification takes place in the data during the process of generation. The last limitation is on limited generalizability as it is not a prominent feature in a qualitative paradigm. Rather it is regarded as being complex and contentious as the main purpose of a qualitative study is to provide an in-depth understanding of human experience. Whereas the grounded theory offers an opportunity to infer conclusions that provides more clarification on the experiences. It further has an ability to expose high quality concepts and theories that are not attached to an individual nor a particular situation. However, some scholars contend that this is similar to generalizing irrespective of the chosen diction to describe the data.

3.7 Data Collection & Analysis Process

The subsection will provide an overview on how data analysis was pursued by the study. There will be an outline of each process as it was adopted from Boslaugh (2007: 6) '*An Introduction to Secondary Data Analysis*' which advises five steps for analysis. They were further supplemented with the process of analysis prescribed by Johnston (2014: 2) as it was pointed out that there is scarcity of literature on the subject in question.

3.7.1 Development of Key Questions

The objectives of the project were constructed in line with the conceptual and theoretical framework of the study. This was the initial and a crucial step as one needed it for the purposes of analyzing secondary data. It also involved having key research questions that assisted in unpacking and achieving each objective of the study as they will be summarized in the discussion to come.

Objective 1: Establish the policy tools used to empower institutions to handle human trafficking

Questioning how the relevant institutions are capacitated to handle human trafficking was key in achieving this objective. This entailed looking at policy tools that speak to the aspect of

preventing and combating human trafficking. The lenses that facilitated the response to the objective is found in 3.10.1 : Autonomy, in the theoretical framework chapter. It entailed that those institutions need to be given the ability as well as independence to instigate prominent policy and legislative measures.

In addressing human trafficking there are several articles in the Palermo Protocol which vest powers on the State in accordance with the measurement. For instance, article 9 enables the Member States that have adopted the Protocol to initiate policies and other prominent measures to prevent and combat human trafficking; and protect victims of the crime, especially women and children. Article 4 outlines the scope and application of the Protocol as they are vested upon the State and article 5 bestows State autonomy to put measures that will criminalize and prosecute cases of human trafficking.

Objective 2: Establish the social factors that impedes South Africa from combating human trafficking

The objective had focused on two aspects. Firstly, the study intended to look at the South African State's status quo that contributes towards the prevalence of human trafficking. As it will be revealed in subsection 3.2 of this chapter, a literature review played a critical role in understanding how matters like unemployment, poverty, gender-based violence (GBV), child abuse as well as conquest for cheap labour had fueled trafficking in persons. Further to this, it was also important to establish different groups that are the most vulnerable to the crime in question. It facilitated in questioning the most appropriate measures to be taken in attending to the needs of the victims and this was explored extensively in the third objective.

The second aspect the objective looked at was South Africa's ability to comply with all policy instruments in place used to prevent and combat human trafficking. The theoretical lenses found in 3.10.2 : Adaptability in the Theoretical Framework chapter shaped how this aspect was pursued. Any degree of policy compliance attests to the institution's progress in achieving its goals and purpose. Secondary data such as annual reports from state institutions like Department of Home Affairs were some of the credible sources that the study looked into. International as well as domestic policy and legal instruments were a yardstick used to measure the progress.

The study also adopted the responsive regulatory theory. It is one of the mechanisms used to ensure responsiveness and accountability in a democratic dispensation. The theory claims that political actors will ensure service delivery in the interest of gaining the electorate's confidence for future elections. It assisted the study in determining the extent to which South Africa has gone in ensuring that all measures in place against trafficking in persons are effective. This was one of the critical aspects to investigate as TOCs are enabled to prevail through illicit means like having political actors in the payroll.

Objective 3: Establish the ability of the institution to handle different kinds of human trafficking

The third objective of the study was to question South Africa's ability to withstand diverse forms of human trafficking. As the complexity of the phenomenon in question ranges from sexual to labour exploitation, a State should have relevant policy tools as well as State institutions that will attend to all forms of trafficking in persons. In this regard, the study had its focus on the victims of the crime. This entailed looking at legislation like the Domestic Violence Act 16 of 1998 and its role on prevention and combating. This was a significant aspect to look into as it was argued in the theoretical framework chapter that it would be disingenuous to isolate domestic violence from TIP.

The study also looked into the illicit labour and exploitation of migrants matters as it falls under the TIP scope. The State ought to be the custodian of the rights of the cohorts in question as stipulated in the subsections 27(1) and (2) of the Constitution. This includes providing employment protection from injuries and health related issues. Most of South Africa's legislative means like the Refugees Act of 1998 are an aspiration drawn from the international arena, especially from the SADC region.

There are other legal instruments that were explored by the study. It included: the 18th chapter of the Children's Act which prohibits the trafficking of a child regardless of consent from anyone. Under subsection 285 the Act speaks against the leasing of property with an interest of sheltering a child that is subjected into trafficking; it also prohibits publishing any information pertaining to the child. Then it was the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 where it has measures such as the interim means that were used to address TIP prior to the enactment of the Trafficking in Persons Act 7 of 2013. It

further enables the State to take legislative measures that will incriminate all activities related to TIP.

The study also looked into the Basic Conditions of Employment Act 75 of 1997. It touches on employment issues, prohibiting persons below 18 from being employed. It further speaks against forced labour. The Intimidation Act 72 of 1982 was another piece of legislation that was consulted. It touches on unlawful and intentional force on any persons to act on or deviate from a certain perspective. It outlines that intimidation can be to kill, injure or to force someone do something against their will.

Objective 4: Establish the ability of the institution to keep up with the reported cases of human trafficking

The last objective of the study was to look at how South Africa has ensured it adheres and fulfills its obligations on preventing and combating human trafficking. This entailed an introspection on all means in place and their effectiveness. Although the study once more had its focus on the victims of TIP, it also had its eye on other aspects like reported cases as well as successful convictions. In addition, the processes of repatriating victims in and out of the country were under scrutiny.

The monitoring and evaluation spectrum became a foundation for this area of the study. It seeks to analyze the information of a policy or programme as it is being implemented; whilst at the same time having a retrospection on the policy or institution. These measures provide a picture on the progress of achieving the goals of the institution. Monitoring and evaluation serves as a tool for ensuring accountability from the State actors and provides researchers exposure to experience as well as knowledge.

3.7.2 Identifying the Dataset

Prior to the investigation the study had to conduct a literature review on the phenomenon in question as advised by Creswell (2009 cited by Johnston 2014: 3). This entailed engaging with the literature that supports the study as well as the data which has been collected on the subject. The information was used to respond to the question of the study.

Further to the abovementioned, one had to create a data set that was related to the research questions. It was meant to see its relevance in relation to the year of collection as well as the age range. The literature was conducted and divided in accordance with the different aspects of the study. For instance, there was an extensive review on what State capacity means and how it is measured. It was learnt that the conceptualization of state capacity has gone through a series of developments. Gomide and colleagues (2018) speaks of two phases with the initial one focused on centralizing administration as well as the legal monopoly of state power. It was in relation to the state's capacity to be a 'racket' against conflicts and mine resources. The second phase intended to expand the scope by looking into the state's role on the structural changes in the economy.

Jessop (2011 cited by Cingolani 2013) outlined two eras that prompt the interest on state literature. The first wave was moved by Marxist's stance on the state which entails that elites monopolizes state power to instill a capitalist system. It meant that policies on economic redistribution were designed in the advancement and interests of the establishment. The second wave deviated from the former as it focused on state-centrism. As it was influenced by the Weberian view on the modern state, it emphasized on centralizing administration as well as establishing a conducive environment for civil servants.

The conceptualization of state capacity of the study is persuaded by the writings of Lindvall and Teorell (2016). Capacity is wholly referred to as the ability to do something . The ability is detected through state agencies as they ought to assert sovereignty over an area, and in this instance, it would be human trafficking. It is further explained that state power is that which is equated to that of the public, with the latter having an upper hand.

The abovementioned authors' contentions are emanating from Dahl's use of a causal theory between public policies and political outcomes. It is also regarded as "counterfactual theory of causality" (Collins et al. 2004, Woodward 2003 cited by Lindevall & Teorell 2016: 7). However, in the '*Public Discourse on Human Trafficking in International Issues Arenas*' Merilainen and Vos (2014) argued that Dahl's scenario does not often transpire as envisioned due to disputes that may arise. To illustrate this, the scholars outlined two circumstances of power which first rests on decision-making. Those that have an upper hand can make decisions which political actors may not be on familiar terms with. The second circumstance is on non-decision-making where certain political disputes are abandoned.

In addressing human trafficking, Member States of the Palermo Protocol are held with the responsibility to fulfill three objectives (Sun-Seun 2017). The first objective entails preventing human trafficking through the means of raising awareness, the reinforcement of labour law and establishing strong coordination between government, law enforcers as well as the civil society organizations.

The second objective is providing protection for those that are vulnerable to be subjected into human trafficking. This entails attending the victim's needs such as psychological and legal assistance as well as basic needs like food. In addition, there has to be cooperation between States in circumstances of repatriating victims to the county of origin. The third objective is to prosecute the perpetrators of human trafficking. This implies that legal statutes against trafficking must be pursued and those involved in the process must be well-equipped to handle cases of this nature.

3.7.3 Evaluating the Dataset

This stage evaluated the dataset in ensuring that it was appropriate for the study as outlined by Johnston (2014). The scholar further stressed the advantage of desktop research as the data is already collected and can be evaluated for aptness as well as the quality in its usage. Having said this, the following steps were pursued:

Establishing the Purpose of the Study

It served as a critical aspect to know the intentions of the original study that had the data because it may have had influence on the current study. Factors like the study population, the chosen sample, the construction of the survey questions, as well as overall context of the study (Doolan & Froelicher, 2009; Magee et al., 2006 cited by Johnston 2014: 4) were important. Further to this, it was also crucial to know the partaker's research goals and those of the researcher that was collating the secondary data.

Establishing the Partakers in the Collection of the Information

As has been alluded to above, one needed to know the persons that did the collection of the data. The study engaged with documents that were prepared by institutions including the

United Nations, different government departments that fall within the security cluster, and the research institutes.

Establishing the Authenticity & Time of Collection of the Information Collected

In the interest of the credibility of the study, one had to trace the authenticity of the primary data. This entailed accessing measures such as the protocols and procedures that the original study needed to adhere to for it to collect data (Clarke & Cossette, 2000; Dale et al., 1988; Smith, 2008; Smith et al., 2011; Stewart & Kamins, 1993 cited by Johnston 2014: 5). The partakers of the primary data needed to keep the data for a stipulated period as it may be needed for circumstances such as for verification purposes. In addition, it was also important to establish the timeframe within which the primary data was collected.

Establishing a List of Datasets

There was a creation of a list of datasets that related to the project and they were scrutinized to check whether they were in line with the prerequisites of the study (Boslaugh 2007). The process provided an insight on whether some of the research questions needed to be reconstructed to accommodate the dataset at hand.

Examining the Variables of the Study

This stage intended to investigate the loopholes that arise during the study. This included data that may have been missing. It further explored all possible information related to the data collection, cleaning procedures as well as sufficiency of the data quality.

In conclusion, the study on South Africa's capacity to combat human trafficking was pursued through the means of a desktop analysis. This entailed using data that has already been collected and analyzed for a different purpose, to respond to the four objectives of the study. This form of research helped the study to engage with the critical aspects of the phenomenon like the elusive groups that would have been difficult to reach. It helped in understanding their socio-economic conditions that leads to the prevalence of human trafficking. Both quantitative and qualitative methodologies were used with the intention to get a balance between numeric and qualitative information.

The grounded theory methods were used to analyze the data. The study had to be theoretically sensitive as its interest was on what came out of the samples like South Africa and SADC's statistics on human trafficking, and to what extent has the policy tools in addressing the needs of the victims of trafficking been developed. The process of analyzing the data included an open, axial and selective coding of the data; further keeping memos and diagrams in the process. In authenticating the data, the study had to determine the purpose of the original study; the partakers in the collection of the data; the time of the collection; a list of datasets; and questioning the variables of the study.

3.8 Research Findings

The data analysis section is going to provide the findings of the research. This will be pursued using the neo - institutional theory which consists of four measuring guidelines: autonomy adaptability, complexity and coherence. As will be outlined in the subsections to follow, each framework/measure was supplemented with other theoretical lenses which stem from the policy context and legislation that are related to trafficking activities. The objectives of the study were designed in accordance with the theoretical measures of the project so that there could be logic. Key questions were developed to assist in achieving the objectives of the study. Desktop research was used entailed collecting secondary data. A qualitative research methodology was used to get a balanced understanding of the phenomenon in question.

Grounded theory will be used as a method to analyse the data and it entails: theoretical sensitivity and theoretical sampling. The theory further consists of the process of open coding, axial coding and selective coding. A discussion of these methods is found in the methodology chapter. They will also be briefly discussed at the first instance of application during the progression of the analysis chapter.

The pursuit of the study was confronted by limitations. This includes evaluating the data which the study used for its analysis like establishing the protocols and procedures used in the primary study. Although in most instances the purpose of the primary studies and papers were well established however aspects like methods used remained unclear.

3.8.1 Theoretical Sampling

Theoretical sampling serves as a cornerstone of the grounded theory. It is a process of gathering relevant data as well as refining data and rearranging categories in the theory (see the methodology chapter, subsection 4.2.2). The type of data which was needed for the study included treaties from the United Nations, the Southern African Developmental Community (SADC), as well as South Africa's legislation on trafficking in persons and other related offences.

These legislative measures would serve as qualitative data which provides an in-depth knowledge on matters like how South Africa is legislatively capacitated to handle trafficking. Further to this, the study would be in a position to respond to objectives of the study including the social illnesses that contributes towards the prevalence of human trafficking. On the other hand, quantitative data would provide the study with the numeric perspective on some of the aspects of the study like establishing persons that are most likely to be trafficked. The subsections to follow will be labelled in accordance with the objectives of the study. Each subsection will be encompassed with the grounded theory process analysis.

3.8.2.1 The policy tools used to empower institutions to handle human trafficking

Open Coding

The trafficking in persons is regarded and governed as a transnational organizational crime. Thus, the treaty being the Palermo Protocol that sees to the phenomenon within the context of TOCs. Subsection 5.1.1 of the theoretical framework chapter provides an overview on what TOCs entails. Some of the key elements are found in the subparagraph 5 of Article 2 of the United Nations Convention Against Transnational Organized Crime and The Protocols Thereto (2004: 13).

The features include a group of persons intending to engage on serious criminal activities which are established in the Convention, for financial and material purposes. This broad perspective is applied to the merits of what trafficking entails in subparagraph *a* of Article 3, where the illicit activities like recruiting, transporting and harbouring of persons through coercion,

abduction, fraud and/or deception. Other features pertain to benefiting or transference of payment and taking advantage of the vulnerable persons.

Against this background, any legislative measures which stem from the United Nations Convention Against Transnational Organized Crime and The Protocols Thereto as well as the Palermo Protocol are to consider the features which have been outlined above and others. Apart from these documents there are other measures that are in place which facilitates in strengthening South Africa to combat trafficking in persons.

The Ratification of the Palermo Protocol

This subsection looks at the ratification of the Palermo Protocol into the South Africa's legislation. Ratification is a process of integrating a treaty into a domestic law into the State Parties, as in accordance with its constitutional ambit (de Matons 2014). The process is executed by the executive branch of government or by the legislation in the instances where the treaty or convention is considered as binding.

Article 16 of the Palermo Protocol speaks on the Protocol being subject for ratification, signature, acceptance, approval, and accession. This can be done at a State and regional level. At a regional level there must be at least one Member State that is a Party to the Protocol. Subparagraph 3 and 4 stipulate that States must submit their respective ratification instruments to the Secretary General of the U.N. for approval.

The processes of ratifying the Palermo Protocol into the South African law were immediately initiated post the conclusions of the Palermo Protocol in 2000, subsequently ratified in 2004 (Palmary & de Gruchy 2016). The cited authors mentioned some of the reasons for ratifying the Protocol including the anticipation of the 2010's FIFA World Cup which would implode a rapid increase of the trafficking in persons. Subsequently to this, Nejay (2010) outlined how the Prevention and Combating of Trafficking in Persons Bill by the South African Law Reform Commission (SALRC) submitted to the Ministry of Justice and Constitutional Development (DoJCD). The country's initial legislation had to be formed in accordance with the standards of the Palermo Protocol. It was published for public commentary in 2009 by the former Minister of DoJCD, Jeffery Radebe in 2010.

One of them is the policy framework which serves as the “technical assistance tool that assists United Nations Member States in the effective implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” (United Nations 2009: 3). The policy framework is based on three objectives of the UN on TIP which are to prevent, protect and prosecute; also referred to as the 3Ps. This is envisioned to be achieved through corporation at the national, regional and international sphere. Primary aim of the framework is to support the Member States in initiating and implementing measures that will be aligned with the international requirements.

In the ‘*An Introduction to Human Trafficking: Vulnerability, Impact and Action*’ of the United Nations Office On Drugs and Crime (2008: 62) there is an outline of what preventive measures entails. The first aspect speaks on public awareness and education, as it places an emphasis on the need to have the public being informed, especially those that are vulnerable. The second aspect entails collecting data and producing research on trafficking as per country. Thirdly, there is a need to develop social and economic interventions on handling trafficking.

At the regional arena, the SADC developed a Community Strategic Plan On Combating Trafficking in Persons (2009 – 2019), also referred to as the 10 Year SPA. The program was initiated to help the region in protecting women and children’s human rights. The focus of the program is on the areas of:

- Legislation & Policy Measures;
- Training for Skills Enhancement and Capacity Building;
- Preventing and Public Awareness Raising;
- Victim Support and Witness Protection;
- Coordination and Regional Cooperation;
- Research and Information Sharing;
- Resource Mobilizing; and lastly
- Monitoring and Evaluation

(Trafficking in Persons in the SADC Region: A Statistical Report 2014 – 2016; Trafficking in Persons in the SADC Region Policy Brief, August 2016). A further brief discussion of each of these areas can be found in the Theoretical Framework Chapter.

In terms of South Africa's domestic law there is the Trafficking In Persons Act 7 2013. The purpose of the Act serves to provide effect to the country's obligation pertaining to human trafficking as in accordance with the international treaties. It entails criminalizing human trafficking and any other related activities and establish punishments to be imposed against the offence. It further intends to assist and protect victims of human trafficking and provide a coordination in relation to the implementation, administration as well as the application of the Act.

South Africa also initiated the Prevention and Combating of Trafficking in Persons National Policy Framework also referred to as the NFP. The framework was established in accordance with subsection 40(1)(b)(c) which entails that there should be a national policy framework that will ensure that there is "a uniform, coordinated and cooperative approach by all government departments, organs of state and institutions in dealing with matters relating to the trafficking of persons; guide the implementation and administration of this Act; and review the policy framework within three years after its publication in the *Gazette* every five years thereafter" (Trafficking in Persons Act 7 2013: 23).

The abovementioned is said to be done in consultation with the "Minister in the Presidency responsible for performance, monitoring and evaluation, Finance, Home Affairs, Health, International Relations and Cooperation, Labour, Police, Social Development, State Security and Women as well as the National Director of Public Prosecutions" (Prevention and Combating of Trafficking in Persons National Policy Framework 2019: 10). This is in accordance with subsection 41(1)(a) of the Act.

The purpose of the NFP is to make sure that there is uniformity, coordination and cooperation in terms of approach among the government departments, state organs and institutions that are outlined in subsection 41(1)(a). It also meant to provide guidance on implementing, enforcing, and administering the Act; and improve service delivery as in accordance with the Act by initiating a plan within the available resources.

The NFP acknowledges that TIP is a multifaceted phenomenon and it requires an interdisciplinary approach. The coordination takes place within and among structures which are found at the national and provincial government entities, as well as the non-governmental

organizations (NGOs). Subsection 2.2.2 speaks on the establishment of the National Inter-Sectoral Committee on Trafficking in Persons (NICTIP), where the Minister of Department of Justice & Constitutional Development (DoJCD). It further outlines that the DoJCD has the responsibility of establishing and being the head of the NCTIP. The composition of the NCITIP will be outlined in an organogram in the next subsection (Prevention and Combating of Trafficking in Persons National Policy Framework 2019).

Axial & Selective Coding

As has been previously mentioned above, the policy framework is based on three dimensions which are to prevent, protect and prosecute. This means that every policy and legislative measures has to be constructed in accordance with these aspects. With such in mind, the study looked at the South Africa's TIP Act 7 of 2013 in search of these three aspects. In no particular order, it was discovered that there are chapters of the Act that deal with these aspects. For instance, chapter 2 of the Act deals with the offences, penalties extra-territorial jurisdiction. While chapter 4 deals with the identification and protection of victims of trafficking, chapter 3 specifically looks into the foreign victims in terms of assisting them with the investigation and prosecution. Chapter 9 of the act speaks on the administration of it.

The diagram below will outline this discussion.

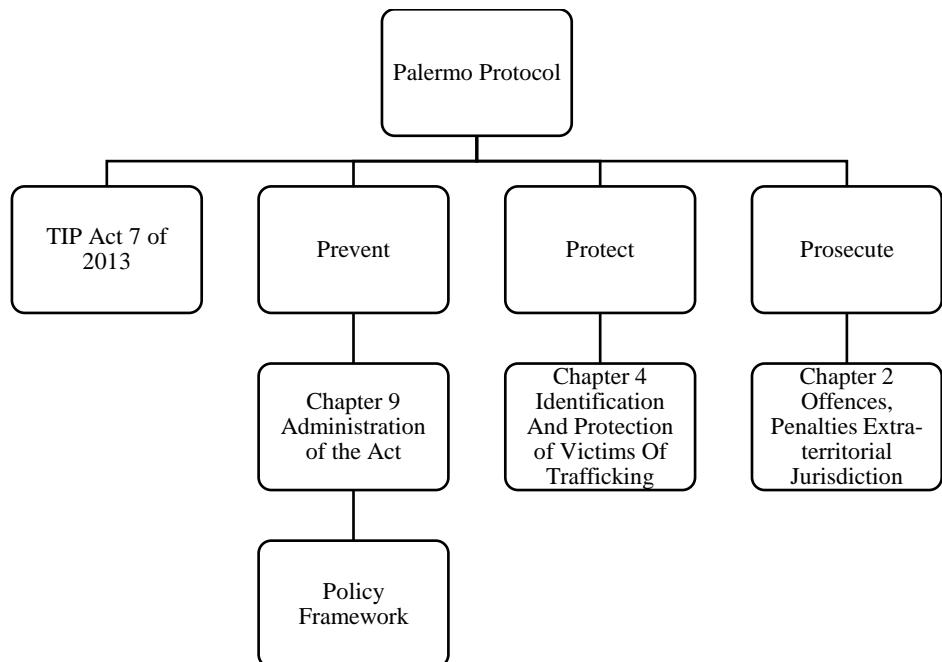


Figure 2: South Africa's Policy Instruments on Trafficking in Persons

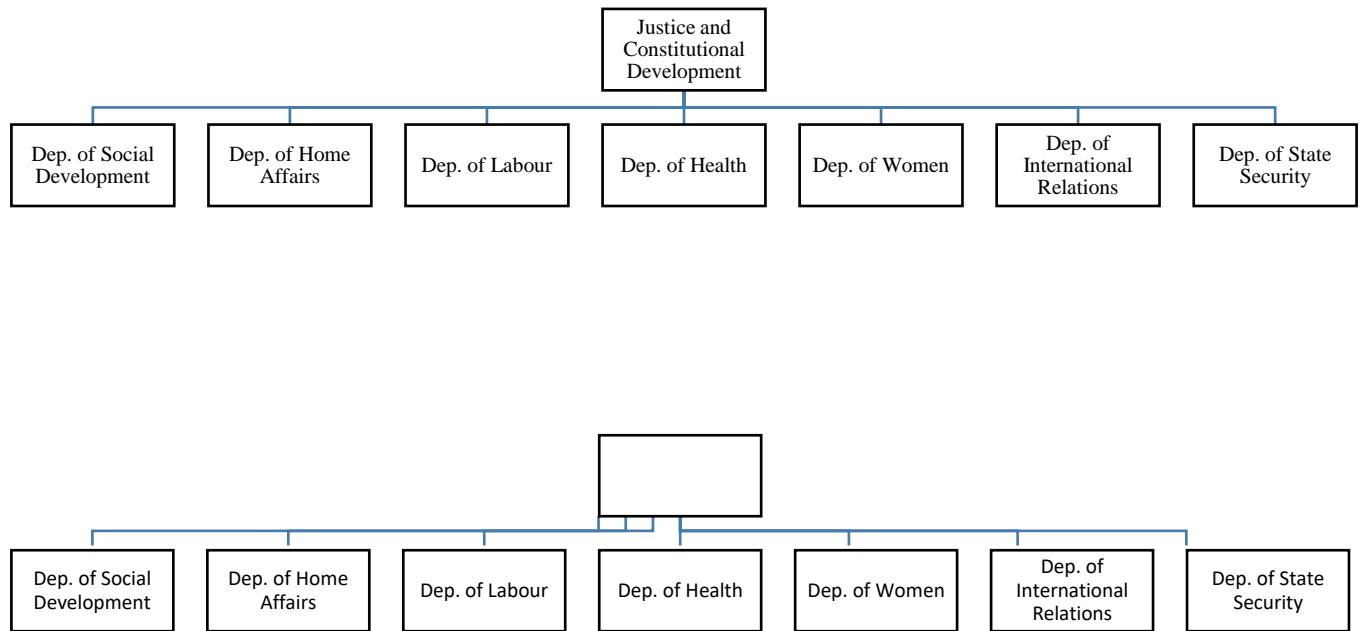


Figure 3: National Inter-Sectoral Committee on Trafficking in Persons (NICTIP)

Purpose

- Proposing improvements to anti-trafficking legislation if/as needed and finalise the NPF;
- o Providing all necessary information on behalf of departments to the NC and the NICTIP members to facilitate coordination of responsibilities, duties, and functions for effective implementation of the national policy framework and the Act;
- o Facilitating and supporting the implementation of the NPF activities of the participating Departments, including, inter alia, research, public awareness campaigns, uniform trainings, and outreaches;
- o Ensuring the accountability of the participating Departments;
- o Facilitating communication between national and provincial structures;
- o Facilitating the development of an integrated information and reporting system to ensure a continuous overview of all work carried out by the NICTIP members and to facilitate the effective monitoring and implementation of the NPF;
- o Supporting the Provincial Task Teams (PTTs) to allow them to carry out their work effectively and in a coordinated fashion;
- o Facilitating the submission of the reports by coordinating the annual provincial reports inputs;
- o Promoting common communication strategies;
- o Mobilising sufficient resources in terms of skills and funds needed to implement the NAP.
- o Supporting the monitoring and assessment of the overall effectiveness of counter-trafficking responses through the active involvement of the Department involved.

Figure 4: Purpose of the NCTIP

3.8.2.2 The social factors that impedes South Africa from combating human trafficking

Open Coding

The second objective of the study was to establish the social factors that impedes South Africa from combating human trafficking. The pursuit of this objective was in accordance with what came out of the literature review and other related findings. The guiding theoretical principles were used in pursuing the objectives found in the subsection of the Theoretical Framework Chapter, which looks at Adaptability. The principle looks at an institution's ability to keep up with what takes place within an environment which it operates in. The contextualization of the principle into human trafficking was made in accordance with Article 9, where subparagraph 2 entails that states to do research as well as other socio-economic means to prevent human trafficking.

- South Africa as the SADC's Economic Hub
 - Overview & Illicit Migrant Labour

Some of the domestic confrontations that South Africa has encountered has been the prevalence of migrants coming into the country. This can hardly be regarded as a contemporary issue as it can be traced back as far as in the 19th century whereby persons from the southern African countries like Mozambique, Lesotho, Mozambique and Botswana (Nshimbi & Fioramonti cited in Nshimbi and Moyo 2016). It is mentioned that migrants were attracted to come and work in the diamond fields in Kimberly then later it was gold on the Witwatersrand. The emergence of the democratic dispensation was encompassed by the rapid increase of migrants into the country (Segatti & Landau 2011). The authors further outline that migrants have regarded South Africa as one of the preferred places in comparison to areas like Central and East Africa. Even though at times South Africa is used as a pathway to places like North America, however for some it ends up being a permanent dwelling place.

It will be important for the study to look at some of the prospects on human mobility that are found in the migration literature and policy documents. As will it be revealed, some of the human trafficking stems from migration as the international sphere evolves to a global village. This is attested to by the writings of Allais (2006) which entail that the chain of human trafficking is boosted by the process of globalizing. This has to do with the expansion of cross-borders, logistical improvement as well as the implosion of migration. It leads to a situation whereby states like South Africa and Namibia with the burden of having a large number as they are regarded as migrant-receiving states (Crush & Williams 2005).

Migration has been one of the critical points in the agenda on international platforms. Firstly, it was the 1948 Universal Declaration of Human Rights that recognized and regarded the freedom of movement as everyone's basic right (Maunganize & Formica 2018). It initially became one the SADC's core objectives as it was enshrined in article 13, of the 1992 Treaty. Under the banner of 'Harmonization of Current Immigration Practices' the article addresses matters that pertains to Member States legislating laws that are conducive for citizens from other State Parties to enter. It also includes having bilateral treaties on establishing the border entries, having similar requirements for permits etc.

Prior to the democratic dispensation, South Africa is said to have been well capacitated in monitoring its borders in comparison to other neighbouring countries (OECD 2018). It served as a ‘racket’ against the rapid relocations which were a result of civil wars that prevailed across the region at the dawn of independence.

The Policy Compliance: Responsive Regulation, in subsection 3.10.3 of the Theoretical Framework Chapter was used as a yardstick to infer how the country responds to the socio-economic factors. Attending to these would expedite the means of preventing and reducing the prevalence of TIP. What will follow below is a brief discussion of each factor, then there will be an overview of a policy in place to address each factor.

Poverty is among the factors that traffickers use to prey on the less fortunate as outlined by Punam (2018). In the South African landscape, poverty coexists with the aspect of inequality. This is outlined by Liebbrant, Finn and Woolard (Cheteni et al 2019: 2) as they explained that inequality and poverty are fuelled by the labour market income as well as the prevalence of unemployment.

Inequality and poverty leave a devastating impact on the society as it persists in the society (Statistics South Africa 2019). The era of COVID-19 has further exacerbated the phenomenon as a large portion of the population lost its jobs due to the pandemic (Maluleke 2020). It is reported that 70% of the 2,688 population of a survey lost their jobs as the businesses were closed due to the national lockdown, between April and May 2020.

The urban areas of South Africa have been confronted with a massive migration from the society. Rural-urbanization is quite common in South Africa and it predates to the late nineteenth century due to the eruption of mining minerals (Boure 2001 cited by Dumba & Chrisa 2010). Ntshidi (2017) outlined some of the socio-economic factors that drives urban migration: education, income status, employment opportunities, demographic setups, gender, age, race and disability status.

A distinctive factor standing out from the abovementioned is unemployment because in the quest for unemployment they may find themselves in circumstances such as debt bondage, being deceived with job opportunities and only to be subjected to deplorable trafficking

conditions. The overall criminality in the urban areas tends to be a high prevalence of crime (Mlambo 2018), and as there is scarcity of jobs, people turn to crime activities for survival.

The issue of illegal migration is one of the aspects that temper the efforts to combat human trafficking. Hiropoulos (2017) outlines that South Africa is a destination for foreign nationals as they enter through legal and illicit means. It is further mentioned that there is an estimation of about three million foreign nationals that are currently in South Africa. The three million is made up of both documented and undocumented migrants, refugees and asylum seekers.

The International Organization for Migration (2020) explains that most of the African migrants use the land to cross the borders; while the African migration is made up of 94% migration which is through the sea. It is further outlined that African migrants form 14% of the international migration.

South Africa is confronted by security threats. This is regardless of the country being among those that have transitioned from authoritarian to the democratic epoch (Adetiba 2017). It is a signatory to the UN Charter, whereby Article 51 bestows the right upon the Member States to initiate measures of self-defence, including aspects like sovereign equality. One of the critical issues in the contemporary society is cyber security and all states have had to focus on it (Sutherland 2017). This is vastly due to the internet being easily accessible and this leads to the government inability to initiate measures that will safeguard against cybersecurity threats at government spheres.

The study looked at some of South Africa's policy initiatives which it has taken to address these social issues. In addressing matters of poverty, inequality and unemployment there are policies like Local Economic Development (LED), which is intended to eradicate poverty (Mlambo et al 2019). A conducted study found that the challenges encountered by the LED are a result of an inability to conceptualize the policy as well as its application. There was also an initiation of a tax incentive for large firms which absorb the youth through leadership programs (African Reserve Bank 2016).

Just like in most parts of the global village, South Africa was confronted by the corona virus disease or COVID-19 in March 2020. The rapid spread of the virus led to the country going

through different levels of lockdown and this further jeopardized the already unstable economy. Into the first quarter of the pandemic, the government initiated the South African Reconstruction and Recovery Plan 2020. The plan prioritizes 9 areas for intervention: Aggressive infrastructure investment; Employment orientated strategic localization, reindustrialization and export promotion; Energy security; Support for tourism recovery and growth; Gender equality and economic inclusion of women and youth; Green economy interventions; Mass public employment interventions; Strengthening food security; and Macroeconomic interventions (South African Reconstruction and Recovery Plan 2020: 3).

In achieving the abovementioned, there are further structural reforms which were meant to be implemented. These reforms include:

- Modernizing and reforming network industries and associated state owned enterprises;
- Re-orienting trade policies and pursuing greater regional integration to boost exports, employment and innovation;
- Lowering barriers to entry to make it easier for businesses to start, grow, and compete;
- Supporting labour-intensive sectors such as tourism and agriculture to achieve more inclusive growth;
- Creating greater levels of economic inclusion, including through addressing high levels of economic concentration;
- Addressing the weak job-creating capacity of the economy;
- Boosting education and skills development;
- Promoting greater beneficiation of raw materials; and
- Addressing racial, gender and geographical inequalities which hamper deeper economic growth and development (South African Reconstruction and Recovery Plan 2020: 4).

In addressing the issue of urban migration, it is outlined that prior to COVID-19, the GDP had declined by 7.5% in 2020 because of the economic recession (The Coalition for Urban Transitions 2021). Thus, there are six aspects which the South African government has to make sure are implemented so that there is a social and robust transformation in the urban areas. They are:

- Accelerate policy reforms to enable municipalities to procure their own clean energy and use renewables to improve electricity access;
- Put pro-poor urban measures at the heart of plans to implement the SA-LEDS and achieve a just transition; Prioritise improved mobility for lower-income urban residents;
- Revamp housing strategies to prioritise smaller-scale projects that can be built in city sub-centres and on providing well-connected, serviced sites for construction;
- Provide targeted support for cities of different sizes and economic structures, helping them to overcome capacity and resource gaps and fostering mutual learning;
- Protect and restore ecosystems in and around cities and invest in greening the urban landscape

(The Coalition for Urban Transitions 2021: 22).

Many of the commentaries had thought international movement would decrease because of the COVID-19 Lockdown restrictions. However, the era has seen a rapid increase in international migration which was encompassed by costly and risky means of smuggling (UNDOC 2020 cited by Ardittis & Laczko 2021). It is further stated that the pursuit of avoiding COVID-19 restrictions like the cross-border ban, led to people to being vulnerable to exploitation activities such as trafficking. Despite having the White Paper on International Migration for South Africa, there are loopholes which continue to exist pertaining to matters of asylum and refugee governance like migration risks, criminalizing as well as the securitisation of it.

Axial & Selective Coding

Contributing Factors



Figure 5: Contributing Factors of Trafficking in Persons

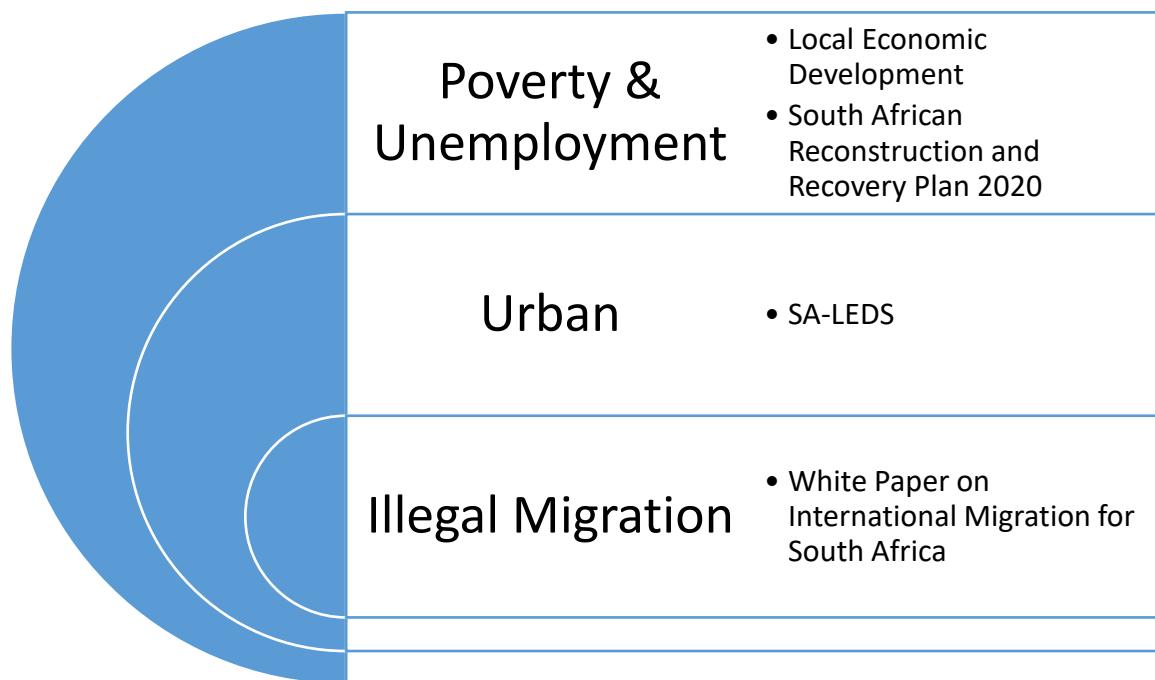


Figure 6: Policies on Addressing issues related to Trafficking in Persons

3.8.2.3 The ability of the institution to handle different kinds of human trafficking

Open Coding

In unpacking this objective, the approach was to first infer which group of persons is the most vulnerable to human trafficking. This subsequently led to the type of trafficking which they are subjected to. Despite SADC's member states being a signatory to treaties like Palermo Protocol and having the 10 Year SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2009-2019), the region continues to be confronted with the prevalence of human trafficking (Vhumbunu 2020).

Subsequently to the abovementioned, the SADC reviewed its 10 Year SPA (the initial guiding principles are detailed in the subsection 5.2.1 of the Theoretical Framework Chapter). The SADC Ministerial Committee of the Organ on Politics, Defence, and Security Cooperation initiated the Revised Strategic Plan of Action on Combating Trafficking in Persons, Women and Children (2016-2019) to reprioritize certain areas in the last quarter of the 10 Year SPA. The revised Strategic Plan looked at "encompassing capacity building and training, public education and awareness raising, victim support and witness protection, research and information sharing, coordination and regional cooperation, and harmonization and operationalization of law" (SADC 2017: 5-6).

The Literature Review Chapter revealed that sexual exploitation as well as domestic servitude are the most prevalent forms of human trafficking. Shaka (2020) explained that children are recruited within the country, particularly from the rural areas to the urban such as Durban, Johannesburg and Cape Town. It is further explained that children are subjected to domestic servitude like boys are forced into street vending, food services as well as the criminal activities. As girls are forced into sexual exploitation, it is also mentioned that Hillbrow has become a hub for sexual commercialism which is facilitated by Nigerians. The scholar also looked into the space of 'Ukuthwala', where young girls are coerced into marrying adult men.

In responding to such matters, there seems to be lack of a concrete plan and ability to implement policies of combating human trafficking on the part of the law enforcement agencies. For instance, in a study it was revealed that some of the loopholes relate to operations, whereby

some police officers do not understand what human trafficking entails (Ballo et al 2017). It is further detailed that the special units, which are established within the Departments like the NPA and Home Affairs to deal with human trafficking, are not effective. In avoiding this and ensuring that all measures put in place are effective, there are suggestions that there needs to be an establishment of a database of information on human trafficking which would be shared at a global sphere (Paul et al 2017).

The abovementioned challenges lead to issues of credibility of the country's human trafficking data. As outlined by Bello and Olutola (2022), South Africa's data on human trafficking is congested and at times it is infused with other types of crime such as the sexual assaults, illegal migration.

The year 2014 landmarked some of the continuous interests of the church community on the government's role in contemporary slavery/trafficking (Dube 2021). This included the adoption of the interfaith declaration against human trafficking by a forum of high profile religious leaders, which was organized through the support of the UN.GIFT as well as the UNODC. The initiative committed to a plan of action that is logical, integrative, holistic and right-based.

Sexual exploitation is another form of trafficking that continues to prevail with South Africa's landscape. It is exacerbated by different factors such as gender inequality and other socio-cultural norms pertaining to violence (Naidoo & Van Hou 2021). This includes the ongoing crucial aspect of violence against women and children as it is said to be structurally institutionalized. The prevalence of sexual abuse and exploitation of children also occurs within the SADC level where it has raised concerns pertaining to their health status (Franziska et al. 2016).

The Optimus Study South Africa conducted a study to infer the prevalence of child sexual abuse in South Africa (Leooschut & Kassanjee 2018). The population of the study constituted of 9 717 adolescents, between the ages of 15 to 17 and they were sampled from the 4 086 public schools; as well as 5 631 households. It was conducted against the broad context of sexual abuse which considers the sexual offences established by the Sexual Offences Act as well as those deemed to be offensive, threatening and abusive for children and adolescences. Against

this background, the study revealed that 36.4% of boys were reported to be sexually abused while the girls' tally was at 33.9%. This means that 1 in every 3 adolescent is a victim of sexual abuse/exploitation. The figures are summed up in a chart below.

The abovementioned statistics suggests an unpleasant picture of the country's ability to handle some of the trafficking activities. Gouws (2021) provided an overview on some of the reasons South Africa does not take a decisive action against sexual exploitation: the cases which see a successful conviction are those that are reported by the media. Other saddening reasons includes members of the South African Police Services (SAPS) secondarily victimizing victims of sexual exploitation. This goes as far as Officials refusing to take statements from rape victims and coercing sex workers into sleeping with them.

- South Africa's Responses to Migration

Due to the rapid increase of migration in South Africa there have been several attempts that have been tried with the intention to manage it. For instance, the first decade of democracy was encompassed with an extensive consultation leading up to the legislation of the Immigration Act of 2002 and the Amendment of the Immigration Act 2004 (OECD 2018). These laws were a cornerstone in shaping the country's stance on migration and organizing networks on the matter.

The political contentions were high on the aspect of managing migration which led to prospects like shifting the state's responsibility of administering to subcontractors and private entities. This meant that incentives would be given to those who are well skilled in terms of labour and it would hasten policy reform by simplifying the governmental procedures. Interest groups such as the African National Congress (ANC) and the Congress of South African Trade Unions (COSATU) advocated for the adoption of an interventionist approach that was in accordance with the capacity of the state to be flexible, reactive and transparent. The endorsement also made calls for transforming of policies and a push from a regional sphere. As in accordance with the national interests, most of the ANC members were in favour of an agenda that centralized on security and sovereign (OCED 2018: 5).

Axial & Selective Coding

- Most Type of Trafficking
- Domestic Servitude
 - Sexual Exploitation

Figure 6: Most Type of Trafficking

- 10 Year Strategic Plan of Action
- Encompassing Capacity Building & Training
 - Public Education & Awareness Raising
 - Victim Support & Witness Protection
 - Research & Information Sharing,
 - Coordination & Regional Cooperation
 - Harmonization & Operationalization of Law

Figure 7: 10 Year Strategic Plan of Action

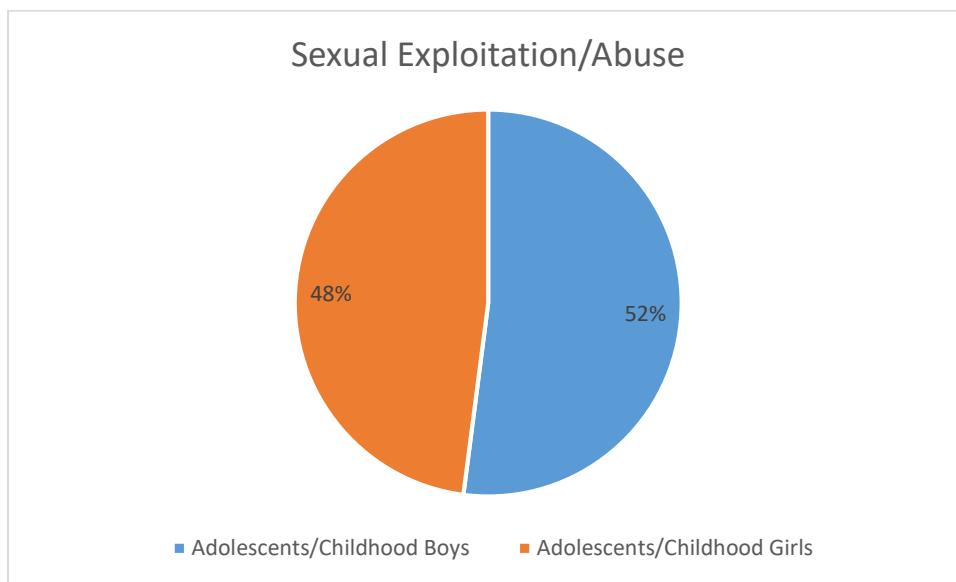


Figure 8: Sexual Exploitation/Abuse in South Africa

3.8.2.4 The ability of the institution to keep up with the reported cases of human trafficking

Open Coding

The fourth objective of the study was to see whether South Africa can keep track of the reported cases. Subsection 3.10 of the Theoretical Framework Chapter was used in investigating this area. Coherence was used as a measurement to determine whether an institution is able to keep up with the workload it has to deal with. It was supplemented with the monitoring & evaluation theme as in determining the extent to which a state can fulfil their expected role. It also coincided with the subsection 3.1.4 of the National Policy Framework on anti-trafficking strategy which speaks on monitoring, evaluating, and reviewing efforts to combat human trafficking.

The NPF outlines 4 goals of monitoring, evaluating and reviewing the strategy: i) to improve regular anti-trafficking responses adjusting them as needed in time; ii) to ensure systematic data gathering and analysis of all relevant information and data at strategic and operational level; iii) to ensure regular evaluation of all activities and measures undertaken within the NPF; iv) to ensure the annual review of the NPF (The Department of Constitutional & Justice of Republic of South Africa: 36).

The three aspects are decoded to synchronize and amplify the objectives. Monitoring is for collecting data regularly from all stakeholders or policy implementers of the anti-trafficking policy. The data is collected in accordance with prescribed monitoring measures and it must be stored in a manner in which it is easily accessible. Evaluation entails systematically collecting and analysing prescribed information to make judgement, improve the effectiveness of programmes and provide information that will assist making informative decisions and policies. Reviewing looks at the degree to which the envisioned goals of the anti-trafficking means have been realized at both at the strategic and operational level.

In responding to the objective, the study pursued the Office to Monitor and Combat Trafficking in Persons' 2021 report which looked at South Africa's progress on combating. The report

revealed that although South Africa does not meet the full standards in combating trafficking in persons, it is however currently making steady progress to meet them. It includes efforts such as prosecuting, convicting, and sentencing traffickers; investigating officials that are complicit in the prevalence of trafficking.

Despite the government implementing the training officials according to the standard of procedures (SOPs) when referring victims, it has however not shown any prominent efforts in comparison to the previous years, and this includes enforcing all laws related to TIP. Among them is the promulgation of section 15, 16, and 31(2)(ii) which remained inactive.

In terms of TIP cases, the report records that there was a collaboration between Directorate of Priority Crime Investigation (DPCI) or the Hawks and National Prosecuting Authority (NPA) increasing their tally of investigating cases by 31 in comparison to the 24 cases of the previous annual reporting period. The alleged traffickers are nationals from Nigeria, China and Bangladesh and the state has prosecuted 31 trafficking cases before the annual report of which 14 of them were being prosecuted from the previous period. The graphs below show a summary of the statistics.

One of the critical aspects which the study investigated was the capacity-building. In the '*International Framework for Action to Implement the Trafficking in Persons Protocol*' compiled by UNDOC (2009) capacity-building is said to be important because it would assist the Member States in meeting the international standards of addressing TIP, particularly through preventing, protecting, prosecuting, co-operating, and coordinating.

Through the Office to Monitor and Combat Trafficking in Persons' 2021 report, the study found that South Africa's overall capacity to handle human trafficking is poor. For instance, the SAPS did not have enough resources to see to all reported trafficking cases like the child trafficking leads. The civil society spoke on the law enforcement agencies not being responsive in attending the cases of trafficking regardless of the discretion of having sufficient resources.

The Vice Squad which operates within the law enforcements of Western Cape and Cape Town was commended for its ability to identify sex trafficking in the sex commercial industries. There was also an expression of positive experience with the unit while some were dissatisfied,

stating that the unit was at times reactive and reluctant in investigating cases. The prevalence of COVID-19 is said to have jeopardized the government's efforts to look into the labour trafficking which takes place in the mining, agriculture, fishing sector as well as in construction.

The Office to Monitor and Combat Trafficking in Persons further reported on the failed efforts of the government to capacitate the relevant personnel on how to handle TIP cases due to the pandemic. However, alternatives were made where it worked together with the international organizations on the anti-trafficking trainings. About 12 sessions took place physically and virtually which included labour officials, police and the social services and this was a decrease from the 24 interdisciplinary trainings.

Axial & Selective Coding

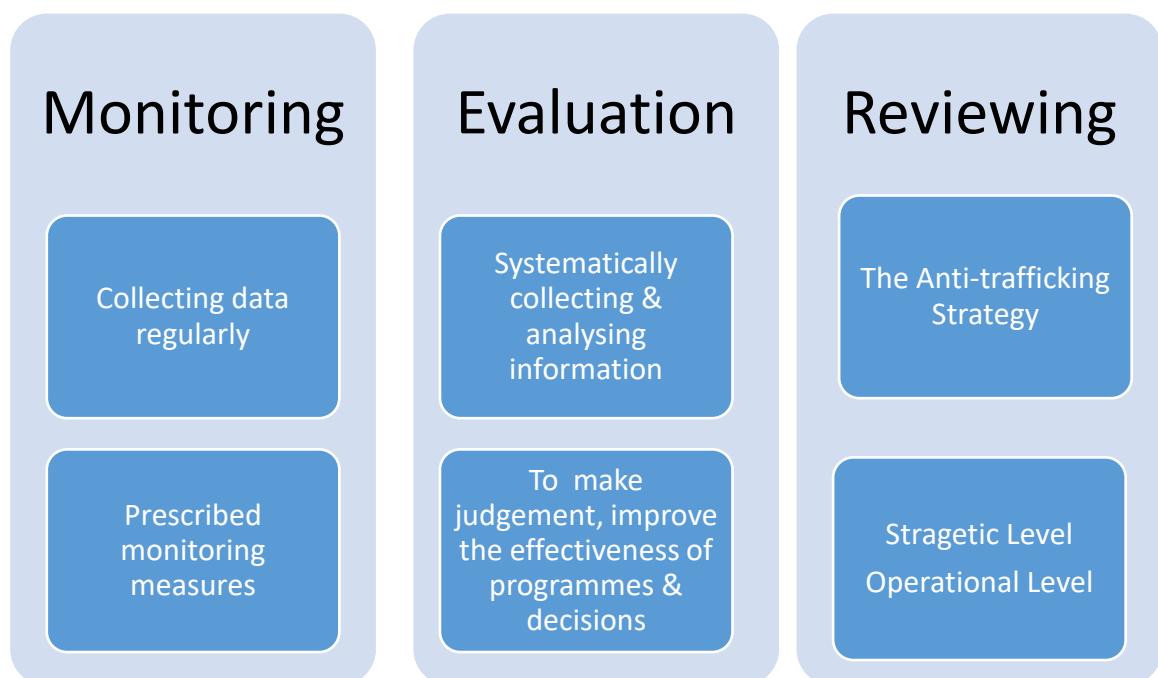


Figure 9: Monitoring & Evaluating Policies on Trafficking in Persons

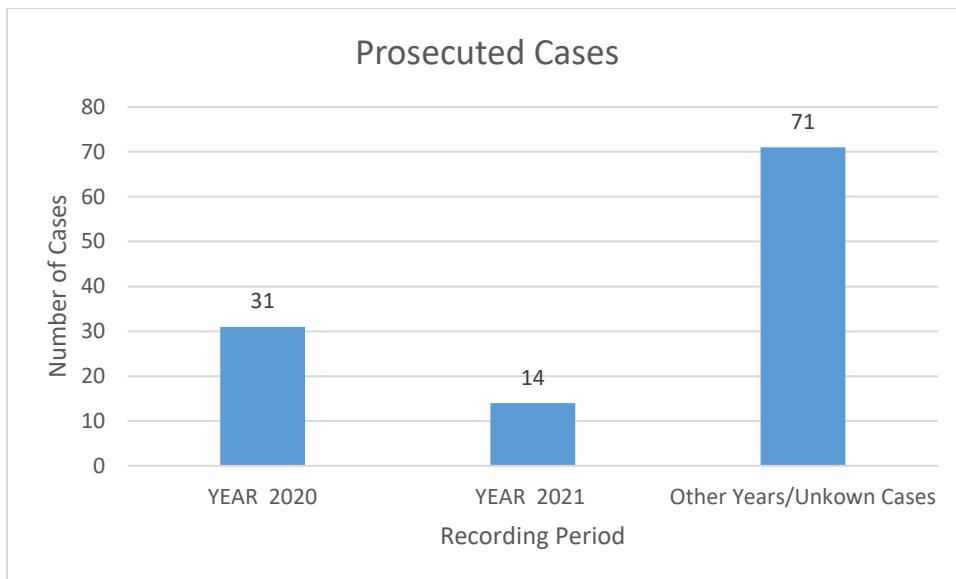


Figure 10: Number of Prosecuted Cases

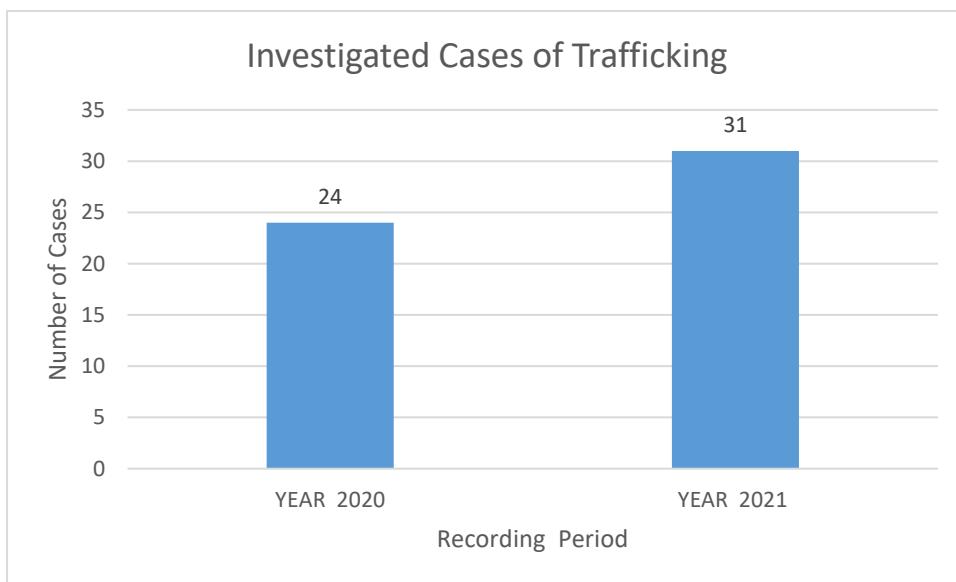


Figure 11: Investigated Cases of Trafficking

3.9 Conclusion

In conclusion, the analysis chapter used the neo-institutional theoretical framework and supplemented it with other theoretical perspectives to analyse South Africa's capacity to combat human trafficking. The study established some of the prominent policy and legal instruments which South Africa has at its disposal to handle human trafficking. This includes the ratified Palermo Protocol; the Trafficking in Persons Act 7 of 2013; the Prevention and

Combating of Trafficking in Persons National Policy Framework; as well as other ratified international instruments and domestic laws. There is also the National Inter-Sectoral Committee on Trafficking in Persons where some of its tasks includes improving the anti-trafficking legislation.

The prevalence of trafficking tends to be exacerbated by the socio-economic factors like unemployment, inequality and poverty. Other contributing factors included illegal migration and the constant increase of urban migration as the country continues to be considered as an economic hub. Some of the policy initiatives intended to address these issues are the White Paper on International Migration for South Africa as well as the Local Economic Development framework.

The SADC's recent revision of the 10 Year SPA speaks on its inability to grasp the magnitude of human trafficking. This is due to the sexual exploitation and domestic servitude being the most prevalent types of human trafficking, whereby females and young children are vulnerable to the crime. Although there are prominent measures which should be used to keep track on the progress of combating, however the recent reports indicated a reluctance on the relevant structures path to implement them.

Chapter 4: Conclusions and Recommendations

4.1 Overview

The chapter is going to provide conclusions and recommendations on the study. It will do so by first doing an overview of the content of the project. It will entail looking at some of the key aspects of each chapter, including the findings of the project. The second aspect of the chapter will provide recommendations on how the state can be improved in its capacity to handle and combat human trafficking.

The initial subsection of the introduction chapter gives contextual background of the phenomenon in question, human trafficking. It gives an insight into the magnitude of the phenomenon like citing the ethos of it, which was rooted in slavery. It remained a grey area until the late 1990s where the international community through the United Nations initiated a means to govern it. The efforts led to the establishment of the Protocol to Prevent, Suppress and Punish Trafficking in Persons also referred to as the Palermo Protocol.

There is also an insight on the complexity and multifaceted nature of the crime. There is an explanation of sexual exploitation being the dominant form of TIP, whilst there seems to be insufficient efforts to understand and appreciate the magnitude of domestic servitude and related matters.

The study adopted a state-centered approach where it considered the state as the custodian of all human rights as entrenched in the Constitution. Thus, the question of the state's capacity to combat human trafficking was pursued through key questions. The broad questions of the study were: i) how are the relevant institutions capacitated to handle human trafficking ?; ii) what are South Africa's social factors that contribute towards the prevalence of human trafficking ?; iii) which group of persons is the most vulnerable to human trafficking ?; iv) how does the institution ensure that it can handle most forms of human trafficking ?; and v) how often is human trafficking reported and what measures are in place to ensure that all reports are attended to ?

The key questions emanated from the objectives that the study intended to achieve. The objectives were to: i) establish the policy tools used to empower institutions to handle human trafficking; ii) establish the social factors that impedes South Africa from combating human trafficking; iii) establish the ability of the institution to handle different kinds of human trafficking; iv) establish the ability of the institution to keep up with the reported cases of human trafficking,

The theoretical framework chapter provided the lenses which the study used for its analysis, the neo-institutional theory. The theory further enhanced the project's state-centered approach as it investigates an institution's ability to exert its existence despite the developments that may occur. In the context of the study, the institution referred to is that of the State, which is South Africa. In conjunction with the theory, the study used Huntington's measurements of determining whether South Africa is in a solid position to combat human trafficking.

The abovementioned measurements entailed: autonomy, adaptability, complexity, and coherence. Each of these aspects were supplemented by legislative documents and policy themes [please see subsection 9 of the theoretical framework chapter].

Prior to the outline of the neo-institutional theory in the chapter, there was an extensive discussion of what informs the governance of human trafficking. This was done in the context of public policy hence, the various subsections engaged different areas of the discipline. Among these is the aspect of policy design which precisely refers to how policies are initiated and pursued by the government. Its diverse literature of contestations assisted an understanding of the treaties and other legislative documents that seek to arrest the prevalence of human trafficking.

Having the abovementioned borne in mind and having to provide an extensive discussion on the state approach, the study looked at the governance of transnational crimes such as those of human trafficking. Some of the aspirations drawn from the discussion are the key features of the organized crime. This includes the knowledge of such crimes being perpetuated by well-established criminal groups of people with an intention of committing one or multiple crimes and benefiting directly or indirectly from the act.

It was further expanded that TCNS are not static as they are able to adapt into different dynamics and eras in the pursuit of their motives. Secondly, it was also outlined that such networks prey and take an advantage of fragile states as they are predominantly characterized by lawlessness, deplorable living conditions and a political space which incapacitates the state to handle them.

The Palermo Protocol is regarded as a supplement to the Nations Convention against Transnational Organized Crime. This entails that the provisions of the Convention and the offences found in Article 5 of the Palermo Protocol must be in line with the Convention.

The chapter also reflected on the SADC response to human trafficking. There is an outline of its 10 Year SPA which entails: legislation & policy measures; training for skills enhancement and capacity building; preventing and public awareness raising; coordination and regional cooperation research and information sharing; resource mobilization; monitoring and evaluation. [See 5.2.1].

Subsection 3.7 of the theoretical framework chapter looked at the matters of illegal migration and the quest for cheap labour. Subsection 3.8 deals with the ratification of the Palermo Protocol into South Africa's legislation. Subsequently, the Protocol was enacted by the government, the Trafficking in Persons Act 7 of 2013. The Act covers a variety areas such as the criminalisation of any activities related to trafficking; the protection of the victims, as well as the administration of the Act.

The literature review chapter looked at some of the key concepts and areas of the study. In subsection 2 of the chapter, there is an extensive build up to the notion of state capacity. The terms state and capacity are singularly unpacked, where the state is generally considered as a legal entity that is characterized by the monopoly control of violence; a territory; sovereignty; constitutionality; the rule of law; public bureaucracy; authority and legitimacy; citizenship. On the other hand, capacity is deemed to be the ability to do something. This then led to the establishment of what state capacity entails. The term refers to the extent to which a state is able to implement its policies. The study of state capacity is dominated by the functionalist and the generalist approach. The first approach looks at existing functions of the state as collecting

tax and other key responsibilities of the modern states. The second approach looks at the state's ability to gather all resources needed to implement policy and political decisions.

Subsection 2.4 of the chapter looked at the social conditions which human trafficking is prevalent under. The most dominant factors were poverty; cheap labour; high profits from human trafficking; and the difficulties of detecting human trafficking cases. Subsection 2.5 of the chapter profiled persons that are most likely to be victims of human trafficking. The literature suggests that children and migrants are the ones that are most likely to be the victims. It is the children that come from the marginalized communities and at times, their oppression is fuelled by cultural beliefs.

On the other hand, migrants become vulnerable because of their illegal status, being in need of employment and therefore those who are in quest for cheap labour take advantage of them. Subsections 2.6 and 2.7 focused on matters related to the cases of human trafficking, ranging from how they are handled to their adjudication in the courts.

4.2 Findings & Conclusions

The general findings of the study will be presented under this section. As per discussion in the methodology chapter, the study was pursued through desktop research. It entailed using published information for secondary analysis. The process included theoretical sampling where the collected data was refined in accordance with the themes and categories of the study. As the study opted for a grounded theory as its methodology, the methods used were open, axial and selective coding. This was applied for each objective of the study.

The results that came out of the data analysis largely echo the concerns on the lack of policy implementation within the South African political space. The sentiment is shared by the country's policy scholars and commentators. It resonates with the findings of the study because it was learnt that the policy instruments such as the Palermo Protocol, the TIP Act 7 of 2013 as well as other regional treaties at the government's disposal which could be used to combat human trafficking, are not being effectively implemented.XXX OBJECTIVE 1

Further to the abovementioned, there is also a policy framework specifically for the phenomenon in question however there seems to be no political will to heed and make use of

these measures. Even on the aspect of social conditions which enables human trafficking, there are concrete policies in place that speak to developing urban areas and improving socio-economic conditions. However, it raises concerns that these conditions continue to exist and these are what traffickers take advantage of.

The study concludes that South Africa lacks the capacity to combat human trafficking. It lacks the ability to prevent, protect and prosecute cases as advised in the UN's policy framework and in its national framework. There seems to be high complicity on the part of those who govern the state. As has been previously mentioned, the aspect of implementing policies continues to be a challenge in most state institutions and dealing with human trafficking tends to be no exception.

4.3 Recommendations

The study is going to propose recommendations that may be used to combat the prevalence of human trafficking in South Africa. The recommendations consider the different dynamics that make up the governance of the phenomenon. This includes the scope of application as outlined in the Convention, where it speaks on the crime of participating in an organized criminal group (Article 5).

Furthermore, Article 6 covers the assistance and protection of victims of human trafficking, Article 8 outlines the repatriation of victims. As the study revealed, sexual exploitation and domestic servitude are the most prevalent forms of human trafficking. The abovementioned articles are going to be consolidated with other relevant policy instruments as per crime. XXX
OBJECTIVE 5

Sexual exploitation is among the inhuman acts which has received a great amount of attention. It is due to its prevalence in many societal corners and it usually is an accomplice of other forms of abuse. As a result, some of the policies and legal instruments on the matter tend to cover it on a broader perspective. For instance, the British Red Cross and Red Crescent designed a manual on preventing and responding to sexual exploitation and abuse (PSEA) (Boughen 2020). The manual is meant to provide an understanding on the importance of

preventing and responding to the phenomenon. It does so by outlining the practical and minimum means that can be put into place.

Given the abovementioned, the PSEA is made up of the following policy measures which the study further endorses:

- Monitoring and oversight of the PSEA action plan.
- Working in coordination with a PSEA network and other stakeholders.
- Co-leading the development and reviewing of a PSEA policy.
- Holding Code of conduct briefings which emphasizes the PSEA.
- Being the internal focal point for SEA complaints and concerns.
- Contributing to developing and updating a guide on referrals to health and other services that SEA survivors may need, in cooperation with the gender-based violence and legal expertise.
- Helping to ensure that PSEA is included in every plan, program activity, and donor cooperation agreement.
- Serving as liaison between the organisation and donors on PSEA.

The United Nations Children's Fund (UNICEF) established its Strategy to Prevent and Respond to Sexual and Abuse Sexual Harassment. Its vision is to ensure that its clientele enjoys the assistance and protection from sexual exploitation and abuse. This is intended to be realised through the following goals:

- An organizational culture of zero tolerance.
- Reporting mechanisms that are safe and trusted, swift and credible investigation and sanctions.
- survivor-centred response.
- engaging partners in the fight against SEA and SH (Boughen et al 2020: 4).

The prosecution of sexual exploitation offenders is another area which needs to be further examined. There are a number of legal instruments at the state's disposal which it can use to pursue prosecution of sexual exploitation and related offences. Among them is the Criminal Law (Sexual Offences And Related Matters) Act 7 of 2007 (2007: 11), where section 6 and 7

looks at compelled sexual assault. These sections resonate with some of the lines found in Article 3 of the Palermo Protocol. For instance, section 6 of the Act outlines that,

" A person ("A") who unlawfully and intentionally compels a third person ("C"), without the consent of C, to commit an act of sexual violation with a complainant ("B"), without the consent of B, is guilty of the offence of compelled sexual assault. "

In ensuring that the legal instruments are pursued and applied in an efficient way, legal practitioners and jurists would have to go through training sessions on how to handle matters of sexual exploitation. There are Conventions such as the Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography (United Nations Human Rights Commission 2000: 5), whereby Article 8 Paragraph 4 stipulates that State Parties are to initiate measures which will ensure appropriate training, legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol. Paragraph 2 of Article 10 in Palermo Protocol further stipulates that:

"State Parties shall provide or strengthen training for law enforcement, immigration, and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing as such trafficking, prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also consider the need to consider human rights, child-sensitive and gender-sensitive issues, and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society" (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: 11). The UNDC Regional Officer for South Asia and the Pacific (2017) initiated programs that seek to empower prosecutors and judges on how to handle cases of sexual exploitation. The objectives of the programs are:

- "Achieve larger awareness and sensitization on the issue of crimes of child sexual exploitation, specifically offences committed by travelling child sex offenders;
- strengthen the technical capacities of prosecutors and judges towards prosecution and adjudication of crimes of child sexual exploitation;
- apply a rights-oriented, gender-sensitive, victim-centric approach in the entire prosecution and adjudication process;

- support sharing information and promoting good practices” (United Nations Office On Drugs And Crime Regional Office for Southeast Asia and the Pacific 2017: 13).

The training should be extended to other professionals and stakeholders which are part of human trafficking governance. It would include social workers, psychologists who deal with the victims and offenders. As South Africa seeks to rehabilitate criminal offenders rather than to be punished, it should be considered that the traffickers also need to be rehabilitated. One may find that their participation in the trafficking activity is a result of them having been victimized and ended up being co-opted into the syndicate.

State officials and every public servant who works in the institutions charged with the responsibility of handling human trafficking should also undergo training sessions. Just like the cohort outlined above, state administrators need to have a good understanding of what they are dealing with. These sessions should occur on a regular basis and can be extended to the parliamentary oversight committees. The School of Governance, which trains all public servants and state officials, can design a curriculum which they can offer to all public servants. This will not only enhance their efficiency but will also keep them on alert around where they live.

Domestic servitude is a multifaceted type of trafficking which involves diverse criminal activities. This acknowledgement helps to develop a holistic approach of preventing the crime and its related activities. For instance, the aspirations found in the NCTIP would have to be coordinated by departments like Department of Labour; International Relations; the State Security etc. Some aspects which would need emphasis would be the mobilization of resources; a proper facilitation oversight across all relevant departments at both the national and provincial spheres.

Further to this, some of the most tangible efforts would be strengthening the border controls, from land to air space as well as on the coast. Personnel should be capacitated to determine and detect illicit activities. Labour inspection should be conducted regularly. A special focus should be given to areas/industries such as in agriculture and the restaurant industry. The inspection should include determining the eligibility of employees and the working conditions which they are subjected to.

The study recommends that the South African government must show eagerness in combating human trafficking through the following measures: Advance all avenues of getting knowledge and research. This would entail accumulating the necessary information on the phenomenon through the academic spaces, research institutes, and the information which state agencies acquire in their evidence-based systems. There should be supporting structures in place that will enable consistent research in the area. The research and knowledge should be diversified to appreciate all dynamics of human trafficking. This should go as far as understanding the methods used to convince or coerce people into domestic servitude.

There needs to be a well-established system of monitoring and evaluating the state agencies on their performance. Apart from keeping track of data for analysis, other key institutions such as the Human Rights Commission should have a role in ensuring that other stakeholders execute their responsibility sufficiently.

The mandate of the Prevention and Combating of Trafficking in Persons National Policy Framework should be included in the Annual Performance Agreement (APA) of each personnel that will be part of the NCIP. This will ensure accountability and further make the officials aware of what is expected of them.

The Department of Higher Education and Training should be tasked with the responsibility of ensuring that research on human trafficking is enhanced. This will entail mainstreaming the phenomenon into different disciplines within the Schools of Social Sciences as well as the Schools of Applied Sciences. For an example, there would be a need to unpack the contradictions related to cultural practices related to marriage and that which constitutes forced marriage.

The Department should further provide instructions of higher learning with all required resources, ranging from financial aid to equipment needed when research is conducted. For institutions of higher education and learning to acquire and produce as much information as possible would make it easier for public awareness, through engagement with different communities.

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