

**ADDRESSING HERITAGE CRIME IN GAUTENG, SOUTH AFRICA:  
AN INTEGRATIVE EXPOSITION**

by

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## DECLARATION

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I declare that the study titled “Addressing heritage crime in Gauteng, South Africa: an integrative exposition” is my own work. I have acknowledged all the sources that I have used or quoted from in this study with complete references. I also declare that this study has not been submitted before for any degree or examination in any other university.



SIGNATURE

MRS B C BENSON

2013-05-03

DATE

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**Title: Addressing heritage crime in Gauteng, South Africa: an integrative exposition**

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**SUMMARY**

This research explored, described and explained the nature and the extent of heritage crime as it manifested in the Gauteng Province of South Africa for the period 2006-2010. Gauteng was selected since it is deemed to be the hub of the legal trade. An operational definition of heritage objects was drafted for this study as ‘objects of artistic, cultural, historic or archaeological value regardless of age, housed in or curated by museums or galleries within Gauteng, and which are both tangible and moveable.’ Heritage crime for the purpose of this study was the illegal removal of any heritage object from a museum or gallery.

The annual crime statistics released by the South African Police Services (SAPS) contain no reference to heritage crime of any sort. Therefore this research attempted to quantify the incidents of thefts experienced by museums and galleries in Gauteng for the period 2006-2010. Using a mixed method approach, data were gathered by qualitative and quantitative surveys. A total of 28 qualitative interviews were conducted. These data were integrated with the quantitative data which permitted the achievement of the strategic aims set out for this research. The following aims were achieved:

- The roles and responsibilities of the custodians of the national estate were clarified;
- International conventions designed to assist in combating crime perpetrated against cultural property were discussed;
- The national legislation which guides the management, preservation and protection of heritage objects as well as the trade therein within South Africa was examined;
- Policing agencies at the forefront of combating heritage crime were interviewed and international best practices were identified and compared with that which the SAPS

are doing to address crime of this nature. These police agencies are situated in Italy, the United Kingdom, the USA and Germany;

- The dynamics of the reported incidents of loss/theft were examined. Several anomalies were identified. Among these are the identification of the typologies of items being targeted and the possible identification of the type of thief perpetrating these crimes.
- Through analysis of incidents it was also possible to highlight that the majority of thefts occur during the time when museums and galleries are open and that the items stolen are usually on open display (not affixed to the surface and not behind a barrier of any sort).

Through the analysis of the data for legal trade and the theft incidents it was possible to design a Framework depicting the interface between the legal and illegal markets for trade in heritage objects. The research also provides law enforcement with minimum guidelines to ensure that crimes of this nature are addressed more effectively.

**KEY TERMS:**

Cultural property; cultural heritage; heritage crime; cultural objects; theft of heritage objects; museum crime; theft from galleries; types of items stolen during museum heists; legal trade; illegal trade; Routine Activities Theory.

## **ABBREVIATIONS AND ACRONYMS**

CAME	Conference of the Allied Ministers of Education
CAS	Crime Administration System
CCTV	Closed Circuit Television
DAC	Department of Arts and Culture
DPCI	Directorate for Priority Crimes Investigation
ESPU	Endangered Species Protection Unit
ESD	Endangered Species Desk
EFT	Electronic Financial Transaction
ICOM	International Council of Museums
ICOM:SA	International Council of Museums (South African Chapter)
ICMS	International Committee on Museums Security
INTERPOL	International Criminal Police Organisation
NALEH	National Forum for the Law Enforcement of Heritage Related Matters
NHC	National Heritage Council
NHCA	National Heritage Council Act
NHRA	National Heritage Resources Act
NIU	National Inventory Unit
RAT	Routine Activities Theory
SAADA	South African Antique Dealers Association
SAIA	South African Institute for Auctioneers
SAHRA	South African Heritage Resources Agency
SAMA	South African Museums Association
SAPS	South African Police Services
SHGA	Second-Hand Goods Act
UK	United Kingdom
UN	United Nations

UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNIDROIT	Institute for the Unification of Private Law
USA	United States of America

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## **CHAPTER 1**

### **GENERAL ORIENTATION TO HERITAGE CRIME IN SOUTH AFRICA**

#### **1.1 INTRODUCTION**

This chapter explains the rationale for research pertaining to the number of thefts from museums and galleries in the Gauteng Province (South Africa) and understanding how this crime manifests. This discussion is done in the context of law enforcement (policing) within which this crime is to be addressed.

Not much is known of the scope or the manifestation of heritage crime in South Africa (Benson, 2010:140; Ludski, 1999:5; Pretoria News, 1998:9) – not among the general populace or among law enforcers and much less among decision makers in the relevant government departments (Potgieter, 1998:9).

The researcher is of the opinion that the lack of knowledge about heritage crime is contributing to the exacerbation of the crime. At present it is not known how many South African heritage objects are unaccounted for. The objects have either been ‘lost’ or stolen or have merely been allowed to disintegrate into mottled pieces of wood and cloth in damp, musty basements (Blatch, 2005b:3; Du Plooy, 2008:4; Du Plooy, 2009:8; Granelli, 1999:5; Smith, 2002:1; Sunday Times, 2006:20). If this situation were permitted to continue without a concerted effort by the custodians of South African heritage to preserve the objects entrusted to their care, the future maintenance of all South African national treasures and other works of art would be uncertain.

#### **1.2 OPERATIONALISATION OF HERITAGE CRIME**

Since there is no specific crime category in the Crime Administration System (CAS) for heritage crime as defined for this study, there is no specific reference in the crime statistics released by the South African Police Service (SAPS) from 2007 to 2011 to incidents of heritage crime (Crime research and statistics, S.a.; Crime Statistics, S.a.). Statistics about the theft of heritage objects and works of art, released to INTERPOL annually by the SAPS, will not reflect an accurate picture of heritage crime, such as the theft of heritage objects from museums and art galleries (Benson, 2010:83). This is largely because of the lack of a crime category for reported ‘heritage crime’ within the statistical data released annually by the

SAPS. The incidents of heritage crime are reported under other common law crimes such as theft-general, and house breaking or robbery at business premises. For the purpose of this study the operational definition for a cultural heritage object is provided in paragraph 1.10.2 below.

In the researcher's opinion, the theft of valuable works of art and other heritage objects does not appear on the list of priorities of the national police service. One possible reason for this is the general lack of statistics to prove that this crime phenomenon exists and furthermore that the extent thereof is serious (Benson, 2006; Benson, 2010:150). Yet there are many reports in the media about incidents of thefts, losses and other crimes against the art and heritage of South Africa (Blatch, 2005a:4; Blatch, 2005b:3; Granelli, 1999:5; Smith, 2002:1; Sunday Times, 2006:20).

Mindful of the level of violent crime in South Africa, the question might arise as to the necessity to investigate the theft of insured articles which can be replaced. This attitude was found to be prevalent among law enforcement members in relation to the theft of cultural property in South Africa (Benson, 2011a:89-90). However, these items are not everyday items which can be replaced with insurance money. Heritage items are often one of a kind items - so while they can be replaced with another heritage item, the one of a kind item is gone.

For the purpose of this study heritage objects are only those items that are housed in museums or galleries in Gauteng and are both moveable and tangible. This excludes oral heritage, shipwrecks, as well as monuments and sites. In this study reference to heritage crime will mean the theft (illegal removal) of heritage objects from museums or art galleries in Gauteng. While theft is used primarily as the descriptor, some of the incidents which will be discussed include the crimes of housebreaking and robbery. This narrow focus on theft from museums and galleries implies the exclusion of other serious offences such as thefts from various archives, looting of archaeological sites and the counterfeiting of works of art, all of which are not sufficiently subjected to study in South Africa. This narrow focus was selected because the researcher in her experience as a police officer dealt primarily with incidents of theft from museums and galleries.

In terms of South African legislation, with relevance to incidents where heritage items are stolen, the law makes provision for a variety of crimes. Depending upon the circumstances

of each incident, common law crimes such as robbery, house breaking and theft may have been perpetrated. In addition to these is the offence of knowingly receiving stolen property as defined under Section 164(1) the Criminal Procedure Act 51 of 1977 (Joubert, 2010:141).

Similarly, Joubert explains that both Sections 36 and 37 of the General Law Amendment Act 62 of 1955 (South Africa, 1955) deal with both the possession and receipt of stolen property and Section 1(1) of the General Law Amendment Act 50 of 1956 (South Africa, 1956) deals with the unauthorised borrowing of another person's property (Joubert, 2010: 143-149). In terms of heritage crime, the primary offences would thus be theft and possession and/or receipt of stolen (suspected stolen) property (Joubert, 2010:143-149).

### **1.3 RATIONALE OF THIS STUDY**

Since there are no police statistics to quantify the theft of heritage objects from museums and galleries in South Africa and more specifically in Gauteng, it is surmised that either there are no such incidents or that the extent of the incidents are low. Considering the terms 'art theft' or 'heritage crime' almost unwittingly Hollywood movies comes to mind, wherein this crime is so romanticised that it seems almost harmless. While these crimes evoke images of black clad figures scaling the walls of museums and entering with ropes lowered from the ceiling after which the harmless thief steals into the night with his carefully concealed cache, their effects are far more disturbing.

Internationally there is very little empirical evidence to prove the extent to which these crimes exist and very little is known of how they manifest (Aarons, 2001:18; Brodie, Doole & Watson, 2000:23; Charney, 2009:xxiii; Naylor, 2008:289). What is known is based to a very large degree on anecdotal information. This is true also in South Africa where neither the nature nor the extent of the crime problem is fully understood (Benson, 2010:140). Bator (1982:290) who is considered to be one of the seminal authors in the field of heritage and art crime, argued this issue three decades ago. He remarked that while the majority of the data describing this type of crime is '... unscientific and impressionistic ...' this '... should not fool us into thinking that it is valueless, that it cannot form a basis for making judgements about the problem or solution'.

Heritage crime, and more specifically the theft of heritage objects out of museums and galleries and the subsequent illegal trade, exist (Benson, 2010:145-146). Moreover, it is

believed that there are various factors that must be considered when addressing this phenomenon. These factors are discussed in chapter 3, which deals with the international legislative framework and associated role players, chapter 5 that addresses the extent of the problem as it manifests in Gauteng, as well as chapter 6 where the law enforcement response to incidents of heritage crime is discussed. But before the problem is considered, it is necessary to understand why heritage crime and more specifically the theft of heritage resources need to be addressed.

Heritage has the potential to unite and unify South Africa while the value that heritage has as a commodity within the ecotourism industry should also not be overlooked. The rationale for this study is based on three aspects:

- Heritage crime is not the same as violent crime;
- The resonance of the real; and
- The value of heritage in ecotourism.

### **1.3.1 Heritage crime is not the same as violent crime**

In terms of policing, the allocation of resources to investigate the theft from a museum or gallery cannot be equated with resources necessary for the investigation of murder and rape. Crimes against people must always outweigh property crime in terms of consequence. Theft of heritage objects from museums and galleries (or any other repository for that matter) also exhibits consequences. These consequences manifest at various levels of the economy which can impact on the livelihoods of people, and therefore also need to be taken into consideration.

The theft of heritage objects and other works of art has been linked internationally to organised crime syndicates and the drug trade. While being very difficult to accurately quantify, the scope of the problem internationally is calculated to amount to anything between \$2 and \$7 billion dollars annually (Brodie et al., 2000:16; Calvani, 2008:5-7; Nafziger, Paterson & Renteln, 2010:226; Tijhuis, 2009:43-44). Beckert and Wehinger (2011:1) estimate from existing illegal markets, which net approximately one trillion dollars per annum, the revenue from trade in stolen and counterfeit art would amount to about 20 per cent of the total trade. These figures are only in terms of the value of the direct monetary loss. The total resultant loss of an individual item of value such as a heritage object or work

of art has a ripple effect into the market place affecting related industries such as the museums, the insurance industry and the market itself.

The insurance industry is affected as the loss impacts on monthly instalments, and the market is affected because buyers and collectors may be hesitant to invest in the type/class of works being targeted (Nelson, 2009:198). In addition, museums and galleries exhibiting such items may have to take further security precautions to safeguard their collections against such incidents of theft or they might remove the items from display entirely, depriving them of revenue generated by tourism (Ahern & Amore, 2009:131). The latter has happened with the Van Tilburg ceramics collection of the University of Pretoria. The entire collection was removed from display in 2012 as a result of attempted theft incidents aimed at different pieces within the collection. According to the Chief Curator of collections at the University of Pretoria, this exhibition alone drew approximately 80 000 visitors per annum (Dekamper, 2012). Since the removal of the collection from display the number of visitors has decreased. These measures impact on the lives of people who may lose their jobs, which then has a further ripple effect on the economy.

The second issue that contributes to the value of the research can be found in the ‘presence’ of the object; or its resonance.

### **1.3.2 The resonance of the real**

In 2012, the artist Brett Murray, created a series of satirical art works for an exhibition titled ‘Hail to the Thief II’ held at the Goodman Gallery in Johannesburg, South Africa. One of the works, a painting titled ‘The Spear’ depicted the President of the country, President Jacob Zuma in the stance of Lenin, face defiant but with his private parts exposed (Hlangane, 2012; Mosomane & Sapa, 2012; Myeni & Mosomane, 2012).

This painting caused a nationwide uproar in South Africa. Protestors became violent when demanding that the painting be removed and the parties ended up in a legal battle. The situation became so volatile that a guard in a bullet proof vest was posted at the door of the Goodman Gallery. The painting was not afforded the same protection and it was subsequently defaced by two men who smeared it with paint; each ostensibly acting on his own accord (Mosomane & Sapa, 2012; Boshomane, 2012).



The last aspect which contributes to the importance of this research is found in the economic sector.

### **1.3.3 The value of heritage in ecotourism**

According to Bator (1982:303) the national patrimony of a country is part of the national capital of that country. Objects that are part of the cultural heritage of a country generate an annual income primarily because they attract tourists. This is clear from the number of tourists that annually visit the Voortrekker Monument and subsequently its neighbour, Freedom Park, on Salvokop. Approximately 200 000 tourists visit these sites per year (Freedom Park, 2012; Voortrekker Monument, 2012). The Mapungubwe collection as well as the Van Tilburg collection curated at the University of Pretoria in Hillcrest Pretoria, also attract close to 100 000 visitors per year. While both the Mapungubwe collection and the Eduardo Villa Museum still attract visitors, since the closure of the Van Tilburg ceramics collection in 2012 it has not yet been possible to quantify the number of visitors per annum (Mapungubwe collection, 2012; Tiley-Nel, 2010).

When an item that has been stolen is considered part of the national patrimony, the loss is deemed greater. The patrimony of a country entails those objects which have such intrinsic value to the nation that they are inalienable from that country. Thus in terms of patrimonial loss, the loss is permanent for as long as the item is gone (which occurs in most cases); it can never be replaced. Unless the item is found and returned undamaged to the country of origin, which according to international statistics is less than 10 per cent and in terms of South African estimates less than five per cent, this loss is never rectified (Massie, 2012). The loss of the painting by Pierneef stolen from the office block which houses the South African Broadcasting Commission (SABC) in 2008 is a loss suffered by all South Africans. The painting was destroyed by the thief in an attempt to hide its illegal origin, and in so doing it was lost to South Africa forever (Bendeman, 2012).

In 2007 the South African Minister of Arts and Culture highlighted in the budget debate in parliament that the decision to invest in culture was motivated by the rationale that culture is a resource than can be used to eradicate poverty (Jordan, 2007). Internationally the financial turnover of all the cultural industries, of which cultural heritage and cultural tourism form part, makes them the fifth largest economic sector (Jordan, 2007). Thus cultural heritage has the potential to impact the economy of a country at local, regional and national levels. The

impact of the tourist trade is not only evident at the macro-economic level. Its positive effect can be practically experienced at local level in terms of job creation and foreign revenue being spent within communities (Du Toit, 2010:76).

The South African Minister of Arts and Culture, in delivering the 2011/2012 budget speech in Parliament, reported that ecotourism contributed R21 billion to the economy and the craft and visual arts sectors contributed about R2.1 billion for the year while providing employment to approximately 55 000 people (Mashatile, 2011).

The same theme was repeated when the President of the Republic of South Africa, Jacob Zuma, in his State of the Nation address in 2011, highlighted that the cultural industries contribute approximately R2 billion to the Gross Domestic Product (GDP) of South Africa annually and are therefore a vital source of income for many South Africans (Zuma, 2011).

In view of the economic value that the cultural heritage of South Africa provides in the form of tourism, it is important that the cultural heritage of South Africa is preserved, protected and managed effectively.

#### **1.3.4 A comprehensive understanding of the phenomenon**

Since the scope of the study is so specific and because there has been no previous research in a South African context to quantify the theft of heritage objects or to analyse the causative factors, it is very important to study the phenomenon comprehensively. Therefore the data gathering methods used in this study are based on three separate international research projects undertaken between 1978 and 2006.

The first project which influenced the overall design of this study (figure 1 on page 18) and the development of the quantitative questionnaire (questionnaire one) used during phase one of this research, are based on a research project undertaken in the Scandinavian countries of Norway, Sweden and Denmark. This study reflects the extent of heritage crime in these countries (Korsell, Hedlund, Elwér, Vesterhav & Huber, 2006). Two additional international studies also informed this study, but to a lesser degree. The first was a study done by Burnham in 1978 to establish the viability of creating a central repository for information relating to the theft of stolen art, which informed questionnaire two developed for phase three (Burnham, 1978). The last study that informed this research was done by Mackenzie in 2005.

His study focused on the efficacy of using legislation to manage the illegal trade of antiquities. The data gathering portion of his study informed the development of the interview guides used for samples B1 and B2 during phase two (Mackenzie, 2005). The various phases and samples within each of the phases will be explained further along in this chapter in relation to figure 1 on page 18.

These three international studies were selected since they were the only studies found (from an international perspective) which addressed the same/similar aspects as being studied within this research project. Within a South African context no study could be found which quantified the incidents of heritage crime experienced by museums or galleries or examined possible causes of such incidents. The context of this study is from a law enforcement perspective, therefore it is important to consider the Constitutional foundation of policing within South Africa.

#### **1.4 CONSTITUTIONAL FOUNDATION OF POLICING IN SOUTH AFRICA**

There are many citizens whose conduct does not require policing, but there are also elements in society who are not able to conform their conduct to that required by the law and thus require policing. Policing is therefore necessary, as society is not able to police itself and requires an external mechanism for social control. The police are for that reason the primary stakeholder responsible for social control and as a result more responsible to guide the conduct and activities of the citizenry than any other government department (Lyman, 1999:31, 33).

The Constitution of the Republic of South Africa, Act 108 of 1996 (South Africa, 1996) hereinafter referred to as the Constitution, is the supreme law of the country. Section 1 of the Constitution confirms the importance of the law as legal order by emphasising the supremacy of the Constitution and the rule of law (South Africa, 1996). This implies that if any law or Section/Subsection of the law is found to be in conflict with the Constitution, that law or Section/Subsection would be deemed invalid. In addition the term 'rule of law' simply means that nobody is above the law and every person is equal before the law (Nel & Joubert, 2004:26).

Section 205 of the Constitution provides for the establishment of the South African Police Service (SAPS) as the only national police service which would be responsible to uphold and

enforce the law in South Africa (Smit & Schnetler, 2004:12; South Africa, 1996). Section 205(3) of the Constitution states that the objectives of the national police service are to:

- Prevent, combat and investigate crime;
- Maintain public order;
- Protect and secure the inhabitants of the Republic and their property; and
- Uphold and enforce the law (Nel & Joubert, 2004:27; South Africa, 1996).

The responsibility of crime investigation is a constitutional one and police detectives who undertake this task are to do so in terms of the framework of the Constitution (Nel & Joubert, 2004:26).

## **1.5 THE INVESTIGATION OF HERITAGE CRIME BY THE SAPS**

As one of the core functions of the SAPS, the effective investigation of crime is viewed by many as playing a crucial role in the combating of crime (Burger, 2007:64, 82; Strategic Plan 2010/2014:9, 14). Effective crime investigation would by implication mean that a perpetrator is apprehended after committing a crime, is processed successfully through the court system and receives a sentence suited to the crime and other relevant factors. However, when the police detective who is tasked with the investigation of heritage crime is unfamiliar with the manifestations of the crime, the likelihood of success is minimal.

Since the start of this research there have been a number of changes in terms of the structure of the SAPS (Structure of the SAPS, 2012). Due to these changes and possible ongoing changes a decision was taken to discuss the SAPS and its investigative structure and the subsequent placement of staff as it stood at the end of June 2012. Police officials interviewed during this time were also not altogether certain of the state of the structure within which they were functioning (Bendeman, 2012; Jooste, 2012; Swart, 2012). It is clear that this uncertainty was having a detrimental impact on the degree of success they were able to achieve (Jooste, 2012; Swart, 2012). Any changes that occurred after June 2012 will not be reflected in this study. This is addressed further in chapter 6.

Within the SAPS, there are three components responsible for the investigation of crime; the general detectives resorting under Detective Service, and Priority Crime Investigations resorting under the Directorate for Priority Crime Investigations (DPCI). The third section

focuses primarily on commercial and commercial related crime and does not fit into the scope of this study.

### **1.5.1 General detectives**

The structure of the (non-specialised) detective service commences with Detective Service at the National Head Office in Pretoria; represented in each of the nine provinces by its own Provincial Detective Head. These provinces are in alphabetical order: Eastern Cape, Free State, Gauteng, Kwa-Zulu Natal, Limpopo, Mpumalanga, North West Province, Northern Cape, and Western Cape. At each police station, resorting under the Station Commissioner is a Detective unit responsible for the investigation of all the reported crime committed within the stations' jurisdiction (Bruce, Newham & Masuku, 2007:24-25). The detective units at the police stations each have their own Detective Unit Commander who is responsible for command and control of the unit (Bendeman, 2012).

Should a theft occur at a museum or gallery and provided the crime is reported to the police, the Unit Commander will decide who to allocate the case to (Bendeman, 2012). These crimes are more often than not reported as 'Theft-general' or if they occur after the museums or gallery had closed for the night they are reported as 'Burglary-business premises' (Bendeman, 2012). There have been single instances of 'Armed robbery – business premises' perpetrated at museums (see table 9 p. 167); one such incident was when celestial maps were stolen from a museum in Johannesburg (albeit outside the date parameters of the study) and another incident where museum guards at a Pretoria museum were overpowered by armed robbers during such a robbery. The difficulties associated with the extraction of statistics from the system (due to the reporting procedure) are elaborated on in chapter 5.

While the number of incidents of thefts from galleries and museums is not as voluminous as other crimes, it is understandable that the capacity to investigate these cases does not exist among general detectives. While it is the preferred strategy to apply specialised capacity to conduct these investigations, it is an option to cluster such cases within a specific sector or unit with specialised capacity (see paragraph 6.3.5. on page 214). One such option lies within the sphere of the Directorate for Priority Crime Investigations (DPCI) (Jooste, 2012; Swart, 2012).

*...it is a field of expertise and we need experts, it is what Charmaine has also said one need[s] to have a feeling for it and a special interest ... although it is a crime, a simple crime of the theft of an object, but to know and understand why it is and the reason and the driving force... (Jooste, 2012).*

*On the basis of our experience in this specific field, we can say that a specialised police unit for combating crimes against cultural property at national and international level, included illegal trafficking of artworks is important (Panone, 2011).*

### **1.5.2 Organised crime and the Directorate for Priority Crime Investigations (DPCI)**

Prior to 2003 there were several specialised fields of investigation within the SAPS supported in the provinces by specialised units, all of which investigated offences in relation to their specific area of specialisation. The initial restructuring of the detective service commenced in early 2000 when the almost 503 specialised investigative units of the SAPS were amalgamated into two separate structures, namely the Organised Crime Units (OCU) and Serious and Violent Crime (SVC) units. The SVC units and the Family Violence, Child Protection and Sexual Offences closed down in 2006 and their specialised investigators were transferred to police stations (Omar, 2007:27; Redpath, 2002:25).

This was done since it was reasoned that organised crime syndicates often engage in multi-faceted crimes (committing several different types of crimes together). Thus in theory this implied that detectives from the various specialised units now placed at the organised crime units would investigate the syndicates involved in organised crime in terms of a multi-disciplinary approach (Redpath, 2002:25).

The Directorate of Priority Crime Investigations (DPCI) was established within the SAPS in terms of the South African Police Service Amendment Act, Act 57 of 2008 (South Africa, 2008a) with its primary objective the investigation of crimes in relation to corruption specifically within government departments, serious economic offences and organised crime (South African Police Service, 2010:9).

Thus one of the primary functions of the DPCI is the investigation of serious crime, especially in relation to crime considered a national priority. Prior to the decentralisation in 2003 of the Endangered Species Protection Unit (ESPU) its mandate included the

investigation of cultural heritage crimes. In 2012 the Endangered Species Unit (ESU) was re-opened and the current mandate of the ESU includes the investigation of cultural heritage crimes (Jooste, 2012). In addition, since the recent restructuring of the organised crime mandates resulted in endangered species related cases also being dealt with by the provincial Stock Theft Units (Jooste, 2012).

*... when stock theft was obviously a national and a provincial unit ... and what they did was they just add on Endangered Species ...so you've got now Stock Theft/Endangered Species. So the people of Stock Theft must investigate also Endangered Species. [Interviewer BB] – and they are aware that this forms part of their mandate? [Interviewee JJ] – I do not think so because at this stage it is a new thing, I think that Brigadier was appointed what 2 or 3 months ago, and they are still busy working out what their mandate will be, but obviously a decision will have to be made whether it is going to be solely lying with us or with them, but for now the best to say is that it is with our office (Jooste, 2012).*

This situation implies that heritage crime may very well be the mandate of the ESU as well as that of the Stock Theft and Endangered Species Unit (STESU) also, without them (STESU) being aware of it (Jooste, 2012).

## **1.6 RESEARCH AIMS**

In terms of understanding what a research aim is, Bak (2004:15-16) highlights that at the outset it is crucial for any research project to be aligned with an aim. Bak (2004:16) draws a distinction between two types of aims; academic and strategic. While the academic aim is central to the study the strategic aim is more often what the industry being studied, will gain from the study.

### **1.6.1 Academic aim**

The academic aim of this study is to study heritage crime in Gauteng and to consider its influence on the legal market in Gauteng. The purpose of this study is further elaborated on in paragraph 1.7 below. As far as could be established, no previous research about the topic has been done in South Africa.

## **1.6.2 Strategic aims**

This research has several strategic aims. These are to:

- Establish the roles and responsibilities of stakeholders who are responsible for the conservation and protection of South Africa's heritage objects and works of art.
- Determine which international conventions have been designed for the protection of moveable and tangible heritage objects.
- Determine which legislation informs the management, preservation and protection of heritage objects (as defined for this study) in South Africa, as well as the crimes that are perpetrated when these objects are stolen.
- Determine which legislation informs and regulates the trade in heritage objects within the legal trade and the extent of the knowledge of the legislation among dealers in heritage objects.
- Consider international best practices employed by Italy, the United Kingdom (UK), the United States of America (USA) and Germany, pertaining to the handling of heritage crime and to compare the findings with what South African authorities are doing to address this crime.
- Examine the dynamics of reported incidents of loss/theft to determine whether there were similarities between the incidents. The identification of such similarities will enable curators and museum/gallery directors to better protect the cultural heritage entrusted to their care through recommendations regarding matters of security and risk management.
- Empower stakeholders and policymakers who are the custodians of the national estate with information on the extent of the problem in Gauteng as well as factors which contribute to the existence of the problem.

For these reasons, it is believed that this research will facilitate an original contribution to the fields of heritage management and crime investigation (in relation to heritage crime) and may influence international, regional and local knowledge and practices.

## **1.7 RESEARCH PURPOSE**

The question that needs to be addressed is: Why is this research being done? Mason (1998:18) highlights that researchers should ask themselves what their research is for, and in



answering the question to be aware that there may be divergent answers. Maxfield and Babbie (2005:19-20) explain that while research in the criminal justice discipline (in which this study resorts) serves different purposes, it would encompass the exploration, description and explanation of the problem under study.

This study will focus on exploring, describing and explaining the phenomenon of heritage crime in Gauteng and will seek to determine how much of this crime is being perpetrated, how and where these crimes are being perpetrated and also to determine how this crime can be addressed more effectively. In addition, this study will also explore the legal trade in heritage objects and describe how the legal trade and the illegal trade overlap.

### **1.7.1 Exploration**

Babbie and Mouton (2001:79) explain that much of what is done in social research is exploratory in nature; which is a typical approach when a new interest is being studied. Besides this they explain that exploratory research may be conducted in three ways, one of which is to survey the people who have experienced the phenomenon under study. In this study a survey was used as one of the data gathering strategies of the research and it is believed that the results yield insight into the phenomenon of heritage crime and periphery issues (Babbie & Mouton, 2001:80). Since very little is known of the nature of heritage crime as it manifests in Gauteng, this research explored the manifestation of thefts of heritage objects from museums and galleries in order to understand how and why they were occurring (these two aspects are addressed below in paragraph 1.7.2 and 1.7.3). This research also explored the legal trade in heritage objects since the illegal trade cannot function without it.

In addition the research also explored how Italy, the USA, Germany and the UK have addressed the problem and what steps the SAPS might consider specifically in Gauteng when dealing with this crime phenomenon. The reason why these international countries were selected is primarily because each of them has some form of specialised capacity that is tasked with addressing heritage crime, of which the theft from museums and galleries is but a portion of their mandate.

Research conducted by the researcher in 2009 showed that Gauteng (along with the Western Cape) is the primary hub of the legal trade in heritage objects (and thus also the illegal trade), but Gauteng is also considered a conduit for other stolen or illegally trafficked items from outside the borders of South Africa (Benson, 2010:146). Therefore, whatever steps the SAPS

develop in relation to heritage crime, they are likely to impact not only at a local level, but possibly at regional and international level also.

### **1.7.2 Description**

As mentioned previously there is very little statistical indication that heritage crime is taking place in Gauteng. For this reason the scope or the extent of the problem will be described along with the procedures followed by law enforcement (SAPS) and the heritage sector (the Department of Arts and Culture, the South African Heritage Resources Agency, the National Heritage Council, the International Council of Museums: SA, the South African Museums Association and the National Forum for the Law Enforcement of Heritage related matters) to address heritage crime. Babbie and Mouton (2001:81) highlight the value of descriptive studies and explain that it includes various kinds of research. Moreover, the value of a descriptive study lies not only in explaining a phenomenon using various methods, but also going further – explaining why the phenomenon exists and drawing inferences from that (Babbie & Mouton, 2001:81). Thus the research will not only attempt to describe how heritage crime is manifesting itself and how illegal objects are being absorbed into the legal market, but it will also consider some reasons why these things are happening in this way.

The researcher believes that by exploring and ultimately describing the manifestation of this crime phenomenon that further research into the manifestation of heritage crime in South Africa will be initiated. It is believed that this research will facilitate a modest original contribution to the fields of heritage management and crime investigation (in relation to heritage crime) and may influence international, regional and local knowledge and practices.

### **1.7.3 Explanatory**

Mouton and Babbie (2001:81) explain that another possible purpose of doing research is to explain things. Thus, it is not sufficient to explain how the phenomenon manifests, it is further attempted to explain why the phenomenon manifests the way it does. The last purpose of the study will be to explain the possible reasons why the crime manifests where it does and why it manifests in that manner. Further the research will also consider the relevant international conventions and explain how these conventions along with national South African legislation (which addresses the management and preservation of heritage objects and the legal trade in these items) function within the South African context.

In order to achieve these purposes, specific questions were posed and answered within this study.

## **1.8 RESEARCH QUESTIONS**

The development of a research question or set of research questions is guided by the themes being addressed. Noaks and Wincup (2004:122) highlight that the design and approaches subsequently used will be influenced by the type of questions asked; which are aimed at addressing specific themes in the research area.

The research questions were asked and therefore answered from within a South African context, based on research undertaken within Gauteng. Additional data was sourced through qualitative inquiry from international sources and some of the role players who were interviewed are based in Cape Town and not Gauteng. The following research questions were designed for this study:

1. What is the nature and extent of the crime phenomenon in Gauteng?
2. What is the nature and extent of the legal market for heritage objects in Gauteng?
3. What is the nature and extent of the illegal market for heritage objects in Gauteng?
4. What are the international best practices to address heritage crime?
5. Based on international best practices, what aspects might the SAPS implement to address the problem in Gauteng?

## **1.9 EXPLICATION OF THE STUDY**

### **1.9.1 National (provincial) focus**

Geographically the focus of the South African portion of the study was the Gauteng province. Research undertaken by the researcher in 2009 indicated that apart from Cape Town, Gauteng is considered to be the nucleus for the legal trade in art and other heritage objects (Benson, 2010:146). The prevalence of the primary auction houses is also focused in Gauteng and they were a main data source for understanding the legal trade.

In terms of the participants for the quantitative phase (phases one and three – see figure 1 on page 18 below), all the national, provincial, local and private museums and art galleries within Gauteng that were willing to participate in the research, were included. This was

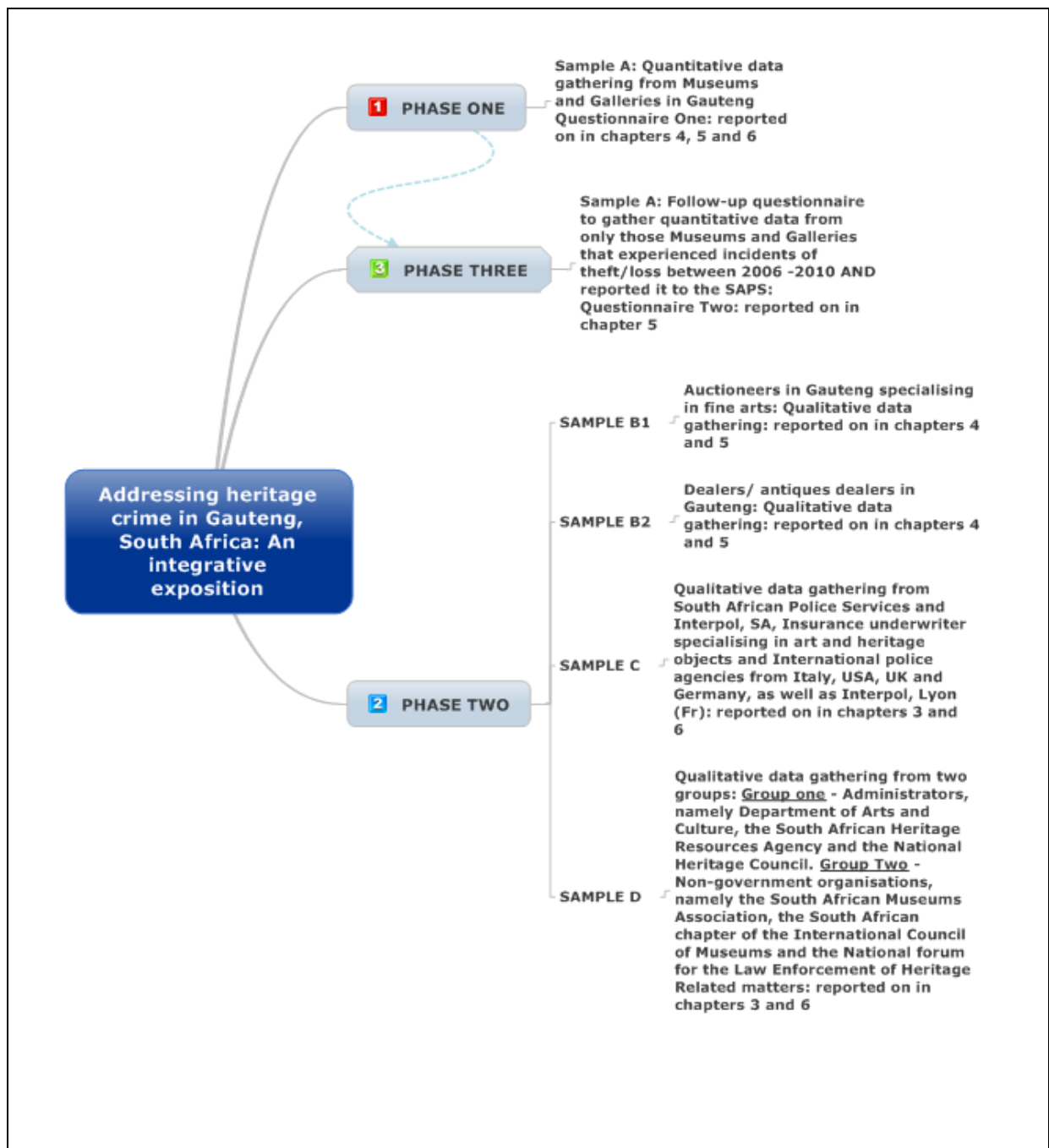
facilitated with the assistance and endorsement of the Gauteng North chapter of the South African Museums Association (SAMA). See annexure S in this regard. Feedback on data gathered during phase one is reflected in chapters 4, 5 and 6 respectively.

For the quantitative data gathering of phase three, the selection of participants was limited to just those institutions which had suffered a theft/loss from 1 January 2006 to 31 December 2010. It was only possible to draw data for analysis from eight case dockets which had been opened by the South African Police following incidents of thefts from museums and galleries during the reporting period; the findings of which are reported on in chapter 5.

Phase two of the research commenced shortly after the quantitative data from phase one were analysed. During phase two, qualitative interviews were conducted with stakeholders in the following categories:

- Sample B1: Auction houses;
- Sample B2: Antiques dealers/dealers;
- Sample C: Law enforcement and loss adjustors; and
- Sample D: Administrators.

These are further expanded upon in chapter 2 when population and sampling are discussed. Auctioneers and antiques dealers (samples B1 and B2) were selected since they were in the best position to provide an exposition of how the legal market in heritage objects functions. Data obtained from sample C highlighted the manner in which these kinds of investigations are dealt with and sample D addresses the roles and responsibilities of the government departments and non-government agencies that are focused on the protection of the cultural heritage of South Africa. Two participants from sample D are based in Cape Town and therefore the parameters of Gauteng had to be broadened for just this portion of the study.



**Figure 1: Schema of the study**

### 1.9.2 International focus

Since the research also aims at recommending a South African response that is founded on international best practices, interviews were conducted with representatives from four policing agencies considered to be at the front line of addressing this type of crime. These international law enforcement agencies based in Europe, the USA and the UK include the *Comando Carabinieri Tutela Patrimonio Culturale (TPC)* from Italy or as it is named in

English the Carabinieri Department for the Protection of Cultural Heritage, the Art Theft Program of the Federal Bureau of Investigation (FBI) of the USA, the Works of Art Unit from the Federal Criminal Police in Germany, and within the Metropolitan Police from the UK, the Art and Antiques Unit of New Scotland Yard. These interviews are reported on in chapter 6. An additional interview addressing the role of INTERPOL at an international level is reported on in chapter 3 when international instruments and role players are discussed.

### **1.9.3 Time focus**

In terms of the time frame of the study, the delimitation is 1 January 2006 to 31 December 2010 during which the thefts/losses took place. The theft figures for 2011 were considered but only to verify whether the apparent escalation identified in 2010, followed on into the next year. These figures were sourced through the National Forum for the Law Enforcement of Heritage Related Matters (NALEH). Qualitative data (gathered from samples B1, B2, C and D) was, however, not restricted to these date parameters.

## **1.10 KEY THEORETICAL CONCEPTS**

Leedy and Ormrod (2013:43-44) explain that the value of defining the key terms which are used in a research project, can be found in a text that is read with understanding. Thus whoever reads the research will not only understand what the researcher means by the terms defined, but will also understand the research and subsequently conduct an appropriate evaluation. The following definitions explain the key concepts of the research.

### **1.10.1 Cultural heritage object**

Based on Article 2 in the International Institute for the Unification of Private Law (UNIDROIT) Convention, Korsell et al. (2006:17) included the following to define a cultural object for the purpose of their study and an adapted version of their definition will be used for this study. Their definition reads: ‘... objects of artistic, historic or archaeological value regardless of age. Examples of such objects are paintings, books, furniture, archive objects, archaeological objects, textiles, coins, glass, ceramics and objects from churches.’ For the purpose of this research the looting of objects from archaeological, paleontological and meteorological sites, including underwater heritage sites, will be excluded primarily because of the difficulty of proving ownership. However, if these objects were illegally removed

from a facility of either a museum or gallery (museum/storage) they meet the required scope of this study.

### **1.10.2 Operational definition: cultural heritage object**

In addition, for the purposes of this study a cultural heritage object will be taken to mean objects of artistic, cultural, historic or archaeological value regardless of age, housed in or curated by museums or galleries within Gauteng, and which are both tangible and moveable.

### **1.10.3 Provenance**

Mackenzie (2005:5) describes provenance to mean the past history of ownership of an object.

### **1.10.4 Museum**

Ambrose and Paine (1995:8) make use of the definition of a museum as provided by the International Council of Museums (ICOM). A museum is defined as a permanent institution; open to the public it serves which aids in the development of that society. It is an institution which not only obtains and protects evidence of man and his interaction with the world but also for educational, studious and enjoyment reasons studies this interaction and communicates and exhibits the findings to the public. The majority of museums, while perhaps charging a nominal entrance fee, are non-profit by nature.

South Africa being a member of ICOM, subscribes to the definition of a museum as put forth above. The South African Museums Association (SAMA) has, however, provided an additional definition and defines a museum as:

*...dynamic and accountable institutions which both shape and manifest the consciousness, identities and understanding of communities and individuals in relation to their natural, historical and cultural environments, through collection, documentation, conservation, research and education programmes that are responsive to the needs of society (SAMA, 2012).*

### **1.10.5 Art gallery**

Since no definition for a gallery or art gallery has been provided by either ICOM or SAMA, it was decided to consider the term as defined by Conklin (1994:268). Conklin (1994:268),

who is regarded as one of the primary authors in the field of research which addresses art theft and art crime, defined an art gallery as a store, run by a pragmatic businessman who has the primary purpose of making a profit by selling art. However, in this study there were corporate galleries and provincial galleries, none of which are in the business to make profit, but aim rather to collect, curate and educate visitors on that which is exhibited.

Thus for the purpose of this study an art gallery will include both a commercial store which displays, buys and sells all forms of art as well as those institutions which collect and curate all forms of art for the purposes of education, preservation and display.

#### **1.10.6 Curator/Director**

A curator or director is usually a museum manager (sometimes called a director or museum curator) with the overall responsibility for the museum's day-to-day operation and who reports to the museum's governing body (Ambrose & Paine 1995:5). Merryman, Elsen and Urice (2007:1257) elaborate on this position and explain that not only is the museum director responsible for the administration of the institution (which is to be aligned with policy), but the director also needs to be able to function with connoisseurship, discernment and the required level of experience to manage a complex institution that is the museum.

#### **1.10.7 Heritage arena**

As there is no definition per se for the term 'heritage arena', the following operational definition is provided by the researcher as developed from Korsell et al. (2006:23) who describe a cultural field as a field within a broader social field. A social field consists of an arrangement of associations between various positions which are held by either people or institutions who then struggle for something in common. Thus a social field is a distinctive and self-regulating world or arena with its own standards and regulations.

A cultural field (or in this case the heritage arena) is then a specific social field which is populated by institutions such as the relevant government departments, museums, galleries, corporate collectors and universities as well as individuals such as artists, gallery owners/directors, antique dealers, collectors, auctioneers, thieves, fences, and where applicable, police officials.



### **1.10.8 Due diligence**

Since South Africa is a member of ICOM, the definition of due diligence as defined by ICOM was used for this study. The Code of Ethics of the International Council of Museums (ICOM) defines 'due diligence' as: 'The requirement that every endeavour is made to establish the facts of a case before deciding on a course of action, particularly in identifying the source and history of an item offered before acquiring it' (ICOM: Code of Ethics, 2006:13).

### **1.10.9 Criminal investigation**

Criminal investigation is defined by Osterburg and Ward (2010:5) as encompassing the '...collection of information and evidence for identifying, apprehending and convicting suspected offenders'. Therefore the investigator has certain responsibilities which would include the following:

- *Determine whether a crime has been committed;*
- *Discover all the facts pertaining to the complaint;*
  - *Gather and preserve physical evidence;*
  - *Develop and follow up clues;*
- *Recover stolen property;*
- *Identify the perpetrator or eliminate a suspect as the perpetrator;*
- *Locate and apprehend the perpetrator;*
- *Aid in the prosecution of the offender by providing evidence of guilt that is admissible in court; and*
- *Testify effectively as a witness in court (Osterburg & Ward, 2010:5-6).*

## **1.11 DIVISION OF CHAPTERS**

1.11.1 Chapter 1: General orientation to heritage crime in South Africa.

1.11.2 Chapter 2: Methodological framework of the study.

1.11.3 Chapter 3: An overview of the international instruments and organisations designed to address the protection of cultural property.

1.11.4 Chapter 4: The legal trade in heritage objects:

Part I: The legislative framework.

Part II: The manifestation of the legal trade 2006 – 2010.

1.11.5 Chapter 5: The extent of heritage crime in Gauteng: 2006 – 2010.

1.11.6 Chapter 6: The interface between the legal and illegal markets and the South African law enforcement response.

1.11.7 Chapter 7: Findings and recommendations.

## CHAPTER 2

### METHODOLOGICAL FRAMEWORK OF THE STUDY

#### 2.1 INTRODUCTION

In chapter 1 the general orientation for this research was described. In the same chapter the rationale for the research was also argued. Since it was stated in chapter 1 that the purpose of this research is exploratory, descriptive and explanatory, various methods had to be used to gather the data with which to explore, describe and explain the phenomenon.

While working from the premise that research is a ‘... systematic process of collecting, analysing, and interpreting information – *data* – in order to increase our understanding of a phenomenon about which we are interested or concerned’ (Leedy & Ormrod, 2013:2), the systematic processes used for the collection, analysis and interpretation of this data will be explained in this chapter.

#### 2.2 RESEARCH APPROACH AND DESIGN

Before deciding on how to undertake a research project, it is important to first understand what is being researched. In this research a specific topic was identified which is to study heritage crime in Gauteng and its influence on the legal trade. To ensure a comprehensive study of this topic and the problem identified in relation to the topic, several research purposes and research aims were drafted.

As far as could be established, no previous research about the topic had been done in South Africa. The aspects of the inquiry informed the design of the research questions to be answered in the study. The theft of heritage objects is a multi-dimensional problem that requires a multi-dimensional approach of inquiry. The same will hold true for the theoretical framework and methodology. The theoretical framework of the study will first be described after which the methodology will be discussed.

##### 2.2.1 Theoretical framework

The theoretical framework, also known as the epistemological approach, is the ‘philosophy of knowledge or how we come to know’ (Henning, Van Rensburg & Smit, 2004:15). For this

research an integrated/pluralistic approach with post-positivistic, interpretative and constructivist (phenomenological and symbolic interactionist) undertones can be identified.

### **2.2.1.1 Post-positivistic approach**

Henning et al. (2004:17) explain that positivism is broadly about determining the truth and being able to prove it empirically. In addition, positivists believe that reality can be fully captured and understood (De Vos, Strydom, Fouché & Delpont, 2011:7). Post-positivists will, however, argue that it is not possible to capture the reality in its entirety, since reality can only be estimated (De Vos et al., 2011:7; Henning et al., 2004:17). The argument for post-positivist research is the use of data content to explain reality, recognising that this reality is not necessarily 'measured'.

The post-positivistic approach is well suited to this study because it enables the researcher to make use of a variety of methods to gather as much about the 'reality' being studied as possible (De Vos et al., 2011:7). This approach also permits the use of smaller samples from which to gather data, which is an ideal approach for this study as the number of people who have the required knowledge and experience in this field is relatively small (De Vos et al., 2011:7).

### **2.2.1.2 Interpretivist /phenomenological approach**

De Vos et al. (2011:8) explain that the interpretivist approach (also known as the phenomenological approach) is based on the human sciences approach of understanding or *Verstehen*, thus to understand the 'everyday lived experiences of people'. This is based on the premise that human beings are daily involved in various processes of interaction within their environment. Within these interactions they will continuously interpret, define, understand, create, rationalise and justify actions and possibly reactions; thereby finding meaning within these interactions (De Vos et al., 2011:8; Babbie & Mouton, 2001:28).

Denscombe (2005:97) further explains that phenomenology is primarily concerned with those things experienced by humans. This denotes the understanding of something which is experienced and which needs explaining. Phenomenology also aims to 'see through the eyes of others'. Therefore that which is being studied is to be presented in a manner as close as possible to the way in which it was experienced by those under study. Similarly this

approach is concerned with the 'social construction of reality' which is based on the understanding that humans do not slavishly follow the rules of society, rather they interpret and make meaning of these guidelines and need to share these interpretations and meanings with others to give meaning to their experiences (Denscombe, 2005:98-99).

The phenomenological approach assisted the researcher to explain the current situation by making use of the experience of others (Denscombe, 2005:99). To a very large extent this is true for the qualitative portion of this study. Here-in specifically selected research participants were interviewed in order to obtain their first hand knowledge and experience in relation to specifically defined aspects under study.

In addition, the symbolic interactionist perspective is important because of the focus of the study, i.e. cultural heritage objects. Noaks and Wincup (2004:8) explain symbolic interactionism at the hand of humans' interaction with their environment and how their interpretation of their social world impacts on what they say or do. Evidence of this is provided in paragraph 1.2.2 of chapter 1.

### **2.2.1.3 Constructivist approach**

The constructivist approach according to Bachman and Schutt (2012:71) is an extension of the interpretivist approach. In this paradigm there was active collaboration between the researcher and the persons who were interviewed, since the research participants brought valid insight and assisted in the development of unique conclusions. This paradigm lends itself towards interviewing which is open and the analysis of the resultant data which will enable the researcher to reflect the perspective and specialist insight of the 'insider' (Henning et al., 2004:20).

In terms of the both the interpretivist/constructivist paradigm, the research participants were actively involved in the planning and data verification of specific phases. They are considered partners in this whole endeavour, because without their cooperation and continuous interaction, the research would not have been possible (De Vos et al., 2011:7; Henning et al., 2004:24).

Considering the abovementioned discussion, it was considered preferable that methodologically the study would not be viable if approached from just one paradigm.

The abovementioned interpretations of social science and research traditions differ with regard to the nature of the ‘interconnections’ to form a network of propositions (Mouton 1998:14, 16). Mouton (1998:16) concludes that ‘scientific knowledge is more generally accepted as a loosely knit web or “fabric” where some statements (propositions) are more closely or logically connected and others are perhaps only indirectly linked or related’. The operational significance of this is directed by the nature of the research problem; several social scientists are identifying with ‘compatibilism’ or a range of seemingly conflicting assumptions about the social world (Mouton, 1998:39, 40).

In addition, criminologists do not apply research methods in the ‘pure’ sense but as and how they can be used in the applied field of criminology (Davis, 2012).

In the next section the methodological approach followed in the study is addressed.

### **2.2.2 Methodology**

While epistemology is the philosophy of how we come to know something, methodology is about how to obtain that which is needed so that something can be known (Henning et al., 2004:15). Mouton (1998: 40) confirms that at the methodological level, quantitative and qualitative methods are compatible and that the choice for their application is determined by the specific research problem at hand. While structuring the research questions and aims; it became clear that not just one of the two methodologies would have been sufficient to address and answer the research questions. In this research mixed methods will be used to gather data (Leedy & Ormrod, 2013:258).

There are several reasons why a mixed methods approach was adopted. Primarily this approach was selected because of the nature of the data that were required to answer the research questions. This approach according to Leedy and Ormrod (2013:259) is far more strenuous than just a quantitative or a qualitative study. However this type of study is beneficial for the following reasons:

- The research problem is being addressed in a comprehensive manner (from multi-dimensional perspectives) through the use of quantitative and qualitative data;
- The weaknesses in some aspects of the qualitative data gathering sections is compensated for through the use of quantitative data; and

- The collection and analysis of the quantitative data guided and informed the processes followed during the qualitative sections (Leedy & Ormrod, 2013:259).

There are a variety of ways that qualitative and quantitative research methods may be combined. Leedy and Ormrod (2013:260) discuss four of the most prominent ways. Of the various methods discussed, the embedded design was considered the most suitable design for the reasons mentioned below.

### **2.2.2.1 Embedded design**

Leedy and Ormrod (2013:260) explain that an embedded design calls for the collection of quantitative and qualitative data at the same time or at least within the same time frame. This research was conducted in three phases. As set out in figure 1 on page 18, phase one was a quantitative approach aimed at obtaining data from all the museums and galleries in Gauteng. Phase two commenced shortly after phase one and was a qualitative approach aimed at obtaining data from the primary role players in the heritage arena, both locally and in some cases internationally. Once all the data from phase one had been analysed, the third phase was activated which consisted of a second round of quantitative inquiry aimed at just a select few museums and galleries.

Leedy and Ormrod (2013:260) proceed to comment that when this approach is used, the one methodological method is usually dominant over the other and the two sets of data are collected to answer different but related research questions. For this study this is debatable as there is the probability that the proportion of quantitative versus qualitative data gathering was about the same. What is, however, not debatable is the complementary manner in which the quantitative and qualitative data came together.

## **2.3 DATA GATHERING SOURCES**

In chapter 1 a schematic representation of the study was presented as figure 1 on page 18. This figure will compliment the discussion on sampling, data gathering and analysis. Data that were required to address the research questions and meet the aims and purposes of this research were sourced from four classifications or groups of role players in the heritage sector. These four groups are:

- Sample A: Conservators (museums and galleries);
- Sample B1: Auctioneers;
- Sample B2: Traders (dealers and antique dealers);
- Sample C: Law enforcement (the SAPS, South African INTERPOL officer, SA Art insurance underwriter, international police agencies and the officer from the General Secretariat of INTERPOL, Lyon); and
- Sample D: Administrators (Department of Arts and Culture, the South African Heritage Resources Agency, the National Heritage Council, the South African Museums Association, the International Council of Museums: SA chapter and the National forum for the Law Enforcement of Heritage related matters).

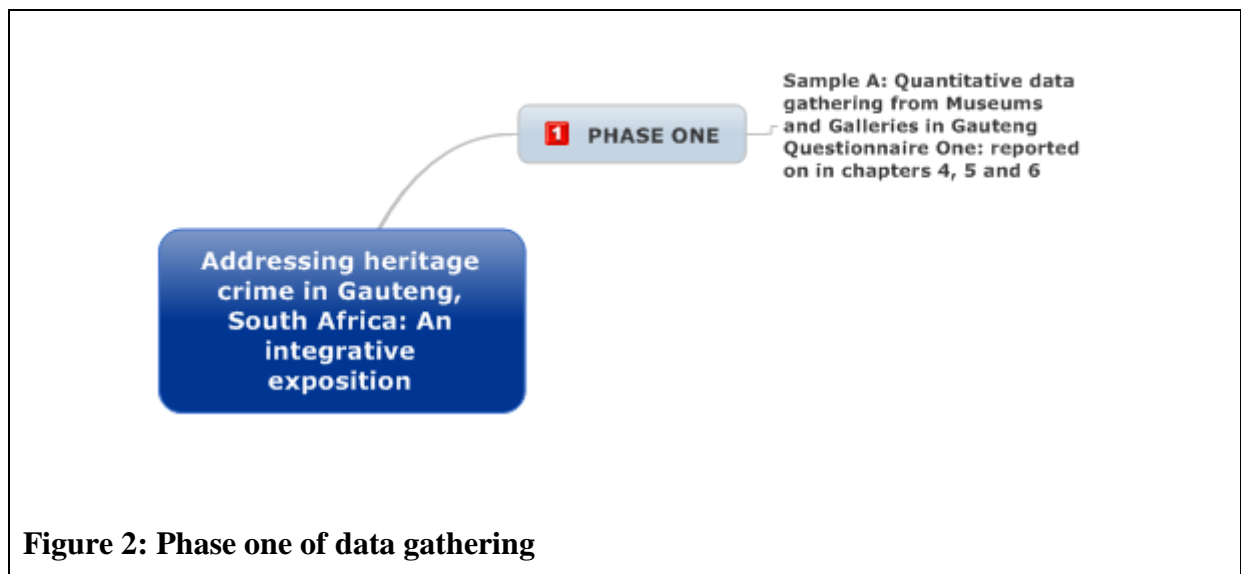
The approach is similar to that followed by Korsell et al. (2006) who focused their inquiry also on these and several more groups within the heritage field. Since the scope of this study was not as broad as the Norwegian study, provision was only made for these four sample groups. The data gathering process as depicted in figure 1 was followed, as it allowed for the selection of specific participants who have access to the specialist information required for the research (Bachman & Schutt, 2012:121). It was decided to focus only on the museums and galleries (as conservators) since in the experience of the researcher whilst a police officer, theft incidents against these two institutions were prolific.

To facilitate the explanation of the population and sampling methods used within each of the phases, as well as the gathering and analysis of data and aspects relating to the validity, reliability and ethics of each of these phases, the discussion addressing these matters will be done phase by phase. Thus phase one will be dealt with in its entirety, thereafter phase two and finally phase three. The discussion of each of these phases will be supplemented with a diagram illustrating the phase under discussion.

### **2.3.1 Phase one: quantitative data gathering from Gauteng museums and galleries**

In order to answer the first research question, as to what the nature and extent of heritage crime is (theft out of museums and galleries) for the period 2006-2010, museums and galleries in Gauteng were surveyed. Figure 2 below illustrates this phase.





**Figure 2: Phase one of data gathering**

### 2.3.1.1 Population and sampling

De Vos et al. (2011:223) define a population as the ‘totality of persons, events... with which the research problem is concerned’. Neuman (2006:219) highlights that the primary purpose of sampling within the quantitative paradigm is to withdraw a representative sample from the population, to allow for generalisations to be made about the population from such a sample. Sampling methods in a quantitative design are based on the mathematical theory of probability, thus called probability sampling (Neuman, 2006:219). According to Neuman (2006) two very practical reasons motivate researchers to make use of probability sampling, namely ‘time and cost’, as well as ‘accuracy’. It is less costly and will take less time to conduct research among a representative sample of a population than it would to conduct research among the entire population. There is a great probability that results obtained thus will be very accurate (Neuman, 2006:219).

The researcher decided not to sample the museums and galleries but to try and survey all the museums and galleries situated in Gauteng, therefore the entire Gauteng population. The reason for the focus on Gauteng was explained in chapter 1. The findings made in relation to phase one of this research will only be reflected back to the Gauteng population.

The researcher attempted to source a list of all the museums and galleries in Gauteng. There was no such comprehensive list. A list of what should have contained the names and contact details of all the museums and galleries in Gauteng was sourced from the National Heritage Council (NHC). The data on this list were supplemented with information from commercial

websites. The purpose of this process was to establish a list as comprehensive as possible which contained all the elements in the population for the Gauteng province.

The next step was to determine which of the museums and galleries could be contacted, and which of them had collections relevant to the scope of this study. In order to determine who would ultimately be able to take part in the study, the following procedure explained by Neuman (2006:297) was used. This procedure entailed clarifying the following elements:

- Location rate – how many of the museums and galleries could be located?
- Contact rate – with how many of the aforementioned museums and galleries was contact established?
- Eligibility rate – how many of those contacted were eligible to take part in the study based on the scope of the study?
- Cooperation rate – how many of the contacted and eligible museums and galleries agreed to participate?
- Completion rate – how many of the aforementioned museums and galleries completed and returned the survey?

The museums and galleries were all contacted at three separate occasions in three separate ways. The first contact was the initial electronic mail (e-mail) with the survey attached, the second was by telephone to explain the purpose of the research if no feedback had been received after one calendar month and the final contact was a follow-up electronic mail. Thereafter no further attempt was made to establish contact with museums and galleries that did not respond, thereby respecting their choice to not take part in the survey.

This population was selected to address the first research question, as to the extent and nature of heritage crime in Gauteng. Kumar (in De Vos et al., 2011:64) highlights that when the extent of a problem or phenomenon needs to be determined, the quantitative approach is suitable. By surveying this population it was possible to achieve the purposes of exploration of the extent of the problem, a description of the manifestation of the problem and possible explanations why the problem was manifesting in the manner identified. Babbie and Mouton (2001:232) highlight the efficacy of surveys for exploratory, explanatory and descriptive research. The museums and galleries also provided valuable insight into addressing the second research question relating to the nature and extent of the legal trade in heritage objects in Gauteng. Sampling is elaborated on in paragraph v below.

### **2.3.1.2 Data gathering**

#### **i The structured questionnaire**

Bachman and Schutt (2012:164) explain that survey research is when information is collected through questions or statements posed to individuals who form part of a sample. De Vos et al. (2011:186) explain that although the name of the method (questionnaire) would suggest that the instrument contains just questions, it is possible that the instrument could contain just as many statements as actual questions. The main purpose of a questionnaire is to obtain either facts or opinions about something from people who are knowledgeable about that which is being studied (De Vos et al., 2011:186). All the questions/statements in the questionnaire for phase one of this study were closed-ended, or fixed questions, where-in possible responses were provided for the respondents to select (Bachman & Schutt, 2012:168-169).

Since two separate quantitative questionnaires were used in this study, it was necessary to label the questionnaires used during each of the phases. The questionnaire used during phase one was labelled as questionnaire one. This questionnaire is based on the structured questionnaire used in the Norwegian study (Korsell et al., 2006). It was amended with permission from the Norwegian drafters. Permission is attached as per annexure A. De Vos et al. (2011:190) explain that new questionnaires should only be developed if there is merit for this. Researchers should consider using questionnaires designed for previous research once their efficacy and viability have been considered (Bachman & Schutt, 2012:166). This was done through a two step pilot study discussed below.

#### **ii Sections contained in questionnaire one**

Questionnaire one consists of four sections which have only closed-ended questions/statements and a fifth section which is an open section for any additional information which the participant wished to provide. In total there are 38 questions/statements in the questionnaire. The aim here was to learn about the manifestation of the crime problem from the population through the posing of very specific questions or statements and tabulating the answers (Leedy & Ormrod, 2013:183). Due to the sensitive nature of some of the questions anonymity was guaranteed to this sample in terms of the reporting within the thesis. This aspect will be discussed under paragraph 2.3.1.5 below.

The different sections of questionnaire one are labelled as follows:

- Section A: Cultural objects that have been stolen or have disappeared
- Section B: Security
- Section C: Legal trade
- Section D: Trade in stolen cultural objects
- Section E: Any other comments.

In section A the primary aim was to learn about (and quantify) the extent of incidents of thefts within the target population of the museums and galleries in Gauteng for the period of 2006 to 2010. Through section B it was possible to determine the level of the security measures deployed at each museum or gallery. From this section it was possible to determine if poor/ineffective security was a contributing factor to the incidents of theft experienced and if very good/effective security was a contributing factor to no incidents of theft being experienced. See paragraph 5.2.3.1 on page 182 for this discussion.

The data obtained from section C enabled the researcher to develop a framework that illustrated the flow of heritage items through the legal trade (figure 9 on page 146). This framework was then used to make meaning of the data obtained from section D pertaining to the trade in stolen cultural objects. The framework was also used to analyse the incidents of theft reflected in this study and to illustrate how these items are laundered back into the legal market (figure 18 on page 200).

### **iii Pilot study**

Although this questionnaire had already been applied successfully, albeit in an international context, since it was adapted to a South African context it needed to be tested. A pilot study was done. First, the questionnaire was adapted to a South African context and the focus of the study, with South African examples and South African terminology. Second, the altered questionnaire was forwarded to suitable participants who were predominantly from the museum environment for completion and comments. See annexure B for a copy of the original questionnaire and annexure C for the amended version.

The suggestions and comments were considered and where relevant inclusions and amendments were made to the questionnaire. The final questionnaire was approved for circulation to the museums and galleries by the supervisors.

#### **iv      Distribution**

As a form of mailed survey this kind of research is reasonable in terms of cost, time and effort, it eliminates researcher bias and affords the respondent greater privacy for completion (Hagan, 1997:149). Web-based surveys make use of electronic media and the internet to produce an attractive and persuasive survey which may be more inviting to respondents than the mail distributed questionnaires and therefore may possibly impact positively on the response rate (Sheehan & Hoy, 2004:105-106).

This method has several disadvantages. The main disadvantage a researcher may experience is that of non-response. Other disadvantages include costs which escalate when follow-ups have to be made for non-responses, slowness in return of questionnaires and the misinterpretation of questions by some respondents (Hagan, 1997:150). Due to the internet and more specifically the electronic mailing system (e-mails) being used to a great extent by criminal networks and syndicates for phishing and other fraudulent means of obtaining information from e-mail users, the South African Museums Association (SAMA-Gauteng North) was approached and asked to endorse the research. This step was taken primarily to ensure that the participants viewed the questionnaire as authentic and not a fraudulent phishing scheme or SPAM (electronic junk mail).

SAMA was selected for an endorsement as they have no authoritative position over any of the museums/galleries and thus their endorsement could place no undue influence on participants to take part in the study which would be deemed inappropriate. The endorsement from SAMA merely showed their support of the project and highlighted the legitimacy of the inquiry. Another consideration why an endorsement was sought was to keep the non-response figure to a minimum (Hagan, 1997:151).

In terms of non-response, one telephonic follow-up was made and thereafter one final e-mail reminder. The last-mentioned e-mail reminder contained the final due date for submission and a gentle reminder to the respondent of the value of the research.

## **v      Response rate**

Of the 88 listed museums 48 were eligible to take part in this study and of the 42 art galleries 20 were eligible to take part in this study based primarily on their collections. These museums and galleries are thus considered the sampling frame or the target population (Babbie & Mouton, 2001:174). Of the 48 museums that were contacted 21 cooperated and returned their completed surveys, which indicates a response rate of 44 per cent. Similarly, 9 of the 20 galleries that were surveyed responded, which indicates a 45 per cent response rate. Denscombe (2005:8) highlights that if a social researcher has a 20 per cent response rate on a mailed questionnaire, he may consider himself fortunate.

The majority of the galleries that opted to not take part in the research were of the opinion that the scope of the study (theft of cultural heritage objects) was not relevant to their core business.

### **2.3.1.3      Analysis of data obtained from museums and galleries during phase one**

The Microsoft Excel program was used to analyse the captured data of sample A by using the numerical analysis feature of the software program. The data were tabulated into a variety of formats which include tables, graphs and pie charts, which facilitated a clearer view of the data and also a better understanding of the implications when the data were analysed and explained. It was possible to draw several conclusions based on the gathered data (Leedy & Ormrod, 2013:19).

The data were merged with the literature sources where relevant and compared with similar research conducted internationally and several findings were forthcoming. These were reported on it-text. The data also permitted the design of a framework of the legal market depicting the flow of heritage objects between the market and the museums and galleries. This framework enabled the researcher to address the second research question as well as an exploration of the legal trade in heritage objects. It is only through an understanding of how the legal trade functions that it becomes possible to understand the illegal trade, since the illegal trade cannot function without the legal trade. This framework is addressed further under the qualitative analysis below.

### **2.3.1.4 Validity and reliability in quantitative research**

Neuman (2006:188) explains that while it is virtually impossible to achieve perfect validity and reliability all researchers want their measuring instruments to be considered both valid and reliable.

#### **i Validity of the measuring instrument in phase one**

Leedy and Ormrod (2013:89) explain that the validity of a measuring instrument is the extent to which the instrument measures what it is supposed to measure. The validity of an instrument can take on several forms, each of which is of importance in different settings, such as face validity, content validity, criterion validity and construct validity.

In this research construct validity is relevant. Construct validity is the degree to which a specific instrument (such as a structured questionnaire) measures something which cannot be seen or observed (Leedy & Ormrod, 2013:89-90).

The researcher made use of an adapted version of an international questionnaire. Making use of an instrument which has proven valid in a previous study does not automatically make it valid for its current use; therefore the questionnaire was tested beforehand through a pilot study. A pilot study is a strategy used by researchers to enhance the validity of a measuring instrument and since this was done, the researcher believes that the construct validity of questionnaire one is high (Leedy & Ormrod, 2013:92).

#### **ii Reliability of the measuring instrument in phase one**

Bachman and Schutt (2012:95) explain that the reliability of an instrument means that the instrument measuring a phenomenon will present constant scores for as long as that phenomenon is not altered. Similar to validity, reliability may be measured in four possible ways which are test-retest reliability, inter-item reliability, alternate-forms reliability and intra-observer and inter-observer reliability (Bachman & Schutt, 2012:96).

Reliability is a prerequisite before validity can be established; by increasing the reliability of an instrument one may be increasing its validity also (Bachman & Schutt, 2012:95; Leedy & Ormrod, 2013:92). Thus a good strategy is to use an instrument in terms of which reliability and validity have been established (Korsell et al., 2006).

This does not mean that the researcher is exempt from testing or ensuring reliability and/or validity of the instrument. In such an instance the use of multiple measures to study the same phenomenon may establish the reliability of an instrument.

In 2008, the researcher presented her research proposal at the 72<sup>nd</sup> Annual National SAMA conference in the Western Cape. At this conference all the SAMA members from across Southern Africa were present and invited to contribute ideas, critique and comments to the proposal. In this way the researcher subjected the methodology proposed for the study to her peers for inspection (Benson, 2008a). In addition, the same questionnaire was distributed in the same manner to all the research participants identified as the sample. None of the participants were assisted in completion of the instrument and none were provided with additional guidelines; thus ensuring that there was not an error in the manner in which the instrument was used (Leedy & Ormrod, 2013:92).

The researcher is of the opinion that adherence to these guidelines contribute to the reliability of questionnaire one.

### **2.3.1.5 Ethical considerations in surveys**

Permission to conduct this research was obtained from the Research Committee of the Department of Criminology. Research at the University of South Africa (UNISA) is guided by various policies. Ethical research is guided by the Ethics in Research Policy. This Policy is relevant to all endeavours of research during which data or information are gathered, analysed and interpreted and presented in any manner. This includes surveys and interviews, both of which were utilised within this study. The researcher has read and taken note of the content of the Ethics in Research Policy and all efforts have been made to abide by the elements contained there-in. These elements relate to aspects such as informed consent, privacy and confidentiality.

#### **i Privacy**

Neuman (2006:313) and Leedy and Ormrod (2013:107) highlight that the invasion of a person's privacy is one of the key ethical issues in survey research. People who choose to respond to a survey choose to reveal specific information within that survey. These respondents will more than likely respond honestly when they believe that the issue which is



being surveyed is a serious one and when data are asked for in a non-invasive manner (Neuman, 2006:313). Thus the primary list containing the names and e-mail addresses of the sample frame was numbered from M1 to M48 (M denotes a museum respondent) and G1 to G20 (G denotes a gallery respondent). When surveys were received via e-mail or the standard postal system, they were electronically filed under either the M number or the G number that corresponded with the entry on the primary list.

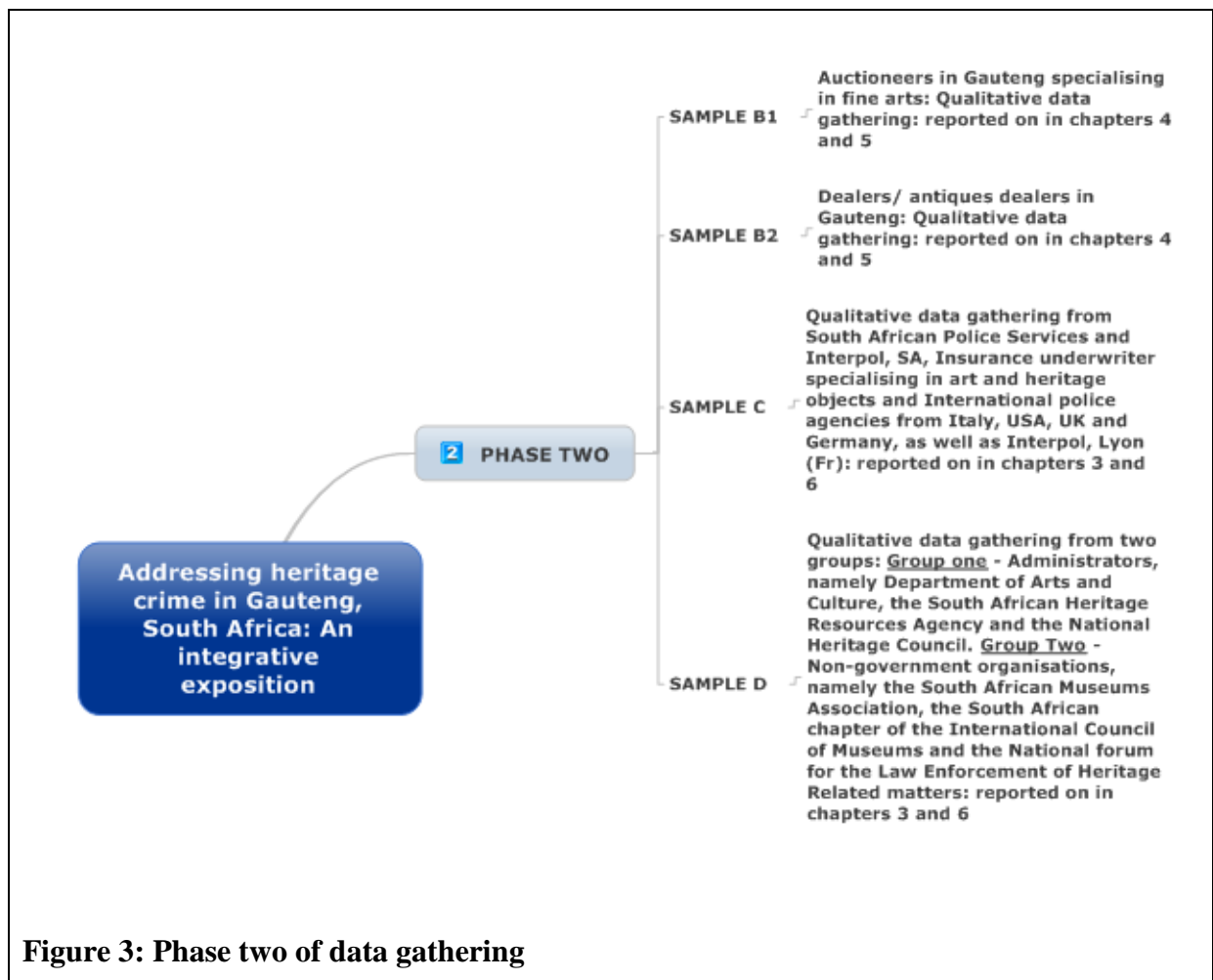
Leedy and Ormrod (2013:108) warn against posting raw data in such a manner which makes it accessible to hackers. No raw data were posted or shared in such a manner to make it accessible or vulnerable to computers hackers.

## **ii Voluntary participation and informed consent**

Voluntary participation is another key determinant in survey research (Neuman, 2006:313). Researchers rely on the voluntary cooperation of participants and it is therefore crucial that the feedback from such voluntary participants is treated with confidentiality and the required level of sensitivity. Those responding to an e-mailed survey also give informed consent since they have the ‘power’ to simply withdraw from the research at any time (Neuman, 2006:313).

### **2.3.2 Phase two: qualitative data gathering**

During phase two qualitative data were gathered from four different samples (figure 3 below).



### 2.3.2.1 Population and sampling

The samples that data were gathered from during phase two are as follows:

- Sample B1: Auctioneers based in Gauteng specialising in fine arts;
- Sample B2: Dealers and antiques dealers in Gauteng;
- Sample C: Representatives from the SAPS, and INTERPOL SA and Lyon, as well as an insurance underwriter specialising in art and other heritage objects and representatives from international policing agencies from Italy, Germany, the UK and the USA that specialise in the investigation of art and heritage crimes; and
- Sample D: the legislative administrators responsible for the management and preservation of heritage resources within South Africa from the Department of Arts and Culture (DAC), the South African Heritage Resources Agency (SAHRA), and the National Heritage Council (NHC), along with representatives from the primary non-governmental organisations which are the South African Museums Association

(SAMA), the South African chapter of the International Council of Museums (ICOM:SA) and the National Forum for the Law Enforcement of Heritage Related Matters (NALEH).

Janesick (2003:66) posits that unlike quantitative research where the focus is on how many of an element is studied, qualitative research is more concerned with the aspect of which interview should be conducted and with which participant would it make the most sense to conduct the interview. Qualitative inquiry enables researchers to focus less on representivity and more on how relevant to the research topic the participant (and thus the data gathered from him) should be (Neuman, 2006:219). McRoy and Babbie as well as Mouton (in De Vos et al., 2011:65) reiterate that qualitative inquiry, stemming from the interpretivist paradigm, is about understanding (*verstehen*) a phenomenon. This form of inquiry makes use of small samples which are often selected purposively. In qualitative research a variety of materials are used with which data are gathered such as case studies, interviews, artefacts and visual texts (Denzin & Lincoln, 2003:5). In the qualitative portion of this study extensive use was made of face-to-face interviews.

Based on the nature of the inquiry, during qualitative designs researchers more often than not make use of non-probability sampling methods. During non-probability sampling, it is not possible to determine the likelihood of selecting any specific research participant since the size of the population is not known (De Vos et al., 2011:231) This implies that the probability of an individual being included in a sample is not known (Bachman & Schutt, 2012:118; Neuman, 2006:220). Researchers use this form of sampling for several reasons, such as when the entire population parameters are not known or when the study being done is an exploratory one. In this phase of the study non-probability sampling was done.

#### **i Sampling of auctioneers specialising in fine arts - Sample B1**

Sample B1 was selected since the participants would inform the research about the manifestations of the legal trade in heritage objects in Gauteng, thereby contributing to answering the second research question.

For this sample only the auctioneers that specialise in the auctioneering of fine arts and antiques and who are based in Gauteng, were interviewed. The content of the interviews, as well as interviewing methods used, is addressed under data gathering techniques below.

## **ii Identification of the sample frame**

From literature on fine arts and the antiques market as well as news paper reports on fine art auctions, six primary auction houses that specialise in fine arts and antiques were sourced. These auction houses are in random order, Stephan Welz and Co (SWELCO), Strauss and Company, 5<sup>th</sup> Avenue Auctioneers, Bernardi auctioneers, Russel Kaplan auctioneers, and Westgate Walding auctioneers. All of these auctioneers conduct their business in Gauteng. Bernardi's auctioneer is the only auctioneer of this kind situated in Pretoria; the remainder conducts their business in the Johannesburg, Rosebank and Sandton regions of Gauteng.

## **iii Use of purposive and snowball sampling to select sample B1**

All of the aforementioned auctioneers were contacted via electronic mail, and informed of the study and the purpose of the study. They were then invited to take part in an interview and a copy of the interview guide was e-mailed to them for perusal. The participants that did not respond to the e-mailed invitation were contacted telephonically and the purpose of the study was again explained to them. Only three of the total group agreed to take part in the study, and while none of them requested anonymity, it was decided to report on the interviews anonymously.

Each of the auctioneers that were interviewed was asked to provide the names of other auctioneers who may be contacted for an interview. Through the aforementioned method it was attempted to find other auctioneers that specialise in fine arts and antiques in Gauteng. None could be found. It was concluded that auctioneers who specialise in fine arts and antiques are a very small group.

In terms of sample B1, two non-probability sampling methods were used. The first method that was used is purposive sampling, sometimes also termed judgemental sampling (De Vos et al., 2011:392; Bachman & Schutt, 2012:121). In this sampling method the parameters of the population are carefully considered and then the sample is purposefully selected to meet these parameters. The parameters in this instance were that the auctioneers had to specialise in fine arts and antiques, and that they had to conduct their business in Gauteng.

As a means of ensuring that all the auction houses which met the population parameters had been selected, the snowball sampling method was also used. This implies that in a population

that is either difficult to identify or reach, only one person is selected and then interviewed. At the conclusion of the interview this person is asked to identify another person who meets the parameters of the population being sought. This method is repeated after each interview, and similar to a snowball increasing in size as it rolls downhill, the sample increases in size as more interviews are conducted (Bachman & Schutt, 2012:121).

In non-probability sampling the aspect of representivity is not that crucial since the focus is different, making this type of research less mathematically precise and more about understanding what is going on (Neuman, 2006:219-220).

#### **v Sampling of dealers/antiques dealers – sample B2**

This reason for selecting this sample was twofold; to address the second research question pertaining to the functioning of the legal trade in heritage objects and also to address the strategic aim of determining which legislation regulates this trade and how well the legislation is understood. With sample B2, a similar situation arose in terms of defining the sampling frame as was experienced with the auctioneers in sample B1. There is no central registry that contains a list of all the dealers/antiques dealers who trade in heritage objects in Gauteng.

#### **vi Identifying the sample frame**

In the antiques trade there are three main antiques fairs that occur in a calendar year. One is at the Johannesburg Country Club, the other in Cape Town and the third one at the Voortrekker Monument in Pretoria. These three are considered to be the fairs at which the majority of the dealers in the trade exhibit their goods. Due to the time frame of the research, only the antiques fair at the Voortrekker Monument was visited. The contact details of all the exhibitors at this antique fair (who met the parameters of the sample frame in terms of trading in Gauteng and trading in heritage objects) were captured on a spread sheet. For the purpose of this study, this list is considered the target population for Gauteng. Each entry on the spread sheet was given a number; there were 38 entries.

#### **vii Use of sequential sampling to select sample B2**

Mindful that the ultimate purpose of this part of the research was **not** to generalise findings back to the entire target population, but rather to understand the functioning of the antiques

trade, the main aim for the use of a specific sampling method was not to obtain a representative sample, but merely to systematically select participants who would be interviewed until data saturation was reached. For this reason sequential sampling was used to sample participants from the target population.

In sequential sampling, the sampling is of a non-probable nature, since the odds of selecting any specific person for the sample is not known (De Vos et al., 2011:234). Bachman and Schutt (2012:118) explain that in non-probability sampling there is no way of knowing the probability of selection of each element of the target population. This approach is especially useful when there is no population list to select from.

Commencing at the top of the list of 38 names (paragraph vi above) and moving down the list, the researcher made telephonic contact with the participants one by one and invited them to participate in this study. Not all of the target population units agreed to participate. A copy of the interview schedule was provided to those who agreed to participate. Data were gathered anonymously and continuously analysed until saturation was reached and then the interviews were stopped. Mason (1998:100) highlights a vital aspect when pointing out that the qualitative researcher must not only know when to commence sampling, but also when to stop.

#### **viii Use of key informant sampling to select sample C**

In this group the population from which to sample participants, is not openly known. As a result, key informant sampling was used. De Vos et al. (2011:394) explain that in the key informant sampling method, non-probability is a central feature and 'key individuals' are selected who are considered to be the experts and therefore well informed in each of the relevant fields. Bachman and Schutt (2012:121) explain that a key informant survey, where only those participants are selected which have an intimate knowledge and experience about the issue being studied, may also be considered a purposive sample. Leedy and Ormrod (2013:145) explain that the typical sample size may be anything between five and 25 participants, all of whom must be familiar with the phenomenon being studied.

Permission was obtained from the SAPS to interview detectives who work within the Directorate of Priority Crime Investigations (DPCI) and the general detective environments,

and who are acquainted with art and heritage type investigations. Permission letters are attached as per annexures M, N, O and P.

The participants interviewed are the commander of the Endangered Species Unit (ESU) of the DPCI, whose mandate it is to investigate incidents of heritage theft, and one of the investigators attached to the ESU who has experience in this type of investigation. The commander of the detective unit at the Rosebank police station was also interviewed as his involvement and experience in these investigations was known to the researcher. In addition, the INTERPOL liaison officer who is based at the National Central Bureau (NCB) in Pretoria, South Africa and who is responsible for the reporting of this type of crime to INTERPOL Lyon was interviewed. A total of four interviews were conducted.

**ix Use of key informant sampling to select participants from international law enforcement agencies for sample C**

Data gathered from the members of the SAPS were supplemented with data gathered through interviews conducted with representatives from various international policing agencies that specialise in the investigation of art and heritage crime. In 2011 while attending an INTERPOL Conference on the theft and illegal trade in art and cultural property in Lyon, France, at which the researcher was also present, representatives from various international police agencies were approached for interviews using a combination of key informant sampling and purposive/judgemental sampling as described above. These law enforcement agencies are the Italian *Carabinieri* Department for the Protection of Cultural Heritage (TPC), the Art Crime Team (ACT) of the Federal Bureau of Investigation (FBI) of the United States of America (USA), the Works of Art Unit from the Federal Criminal Police in Germany, the French Art Unit and within the Metropolitan Police from the UK, the Art and Antiques Squad of New Scotland Yard.

An interview was also done with the Managing Director of *Art Insure*, the only South African insurance company that specialises in the insurance of works of art and other heritage objects against theft, loss and damage. Thus for sample C, a total of five local participants and five international participants were selected. The data gathering methods and interview schedules are discussed under data gathering techniques below.

This sample was required for several reasons. As part of the strategic aims set in chapter 1, it was necessary to explore the roles and responsibilities of those stakeholders responsible to investigate heritage crime in South Africa. The research also explored how this problem is addressed internationally and what the local police in South Africa are doing to address the problem. In so doing the last two research questions can be answered regarding the best practices to address heritage crime at an international level and how the police in Gauteng might address this problem based on international best practices.

#### **x Use of key informant and purposive sampling to select sample D**

In selecting participants for sample D, the researcher made use of a combination of key informant sampling and purposive sample through the purposive identification and selection of specific participants who have access to the specialist information required for the research (Bachman & Schutt, 2012:121)

The most relevant person in each of the government institutions was identified, consisting of one key role player within the administrators group from the Department of Arts and Culture (DAC), the South African Heritage Resources Agency (SAHRA), the National Heritage Council (NHC), the South African Museums Association (SAMA), the International Council of Museums: South Africa (ICOM:SA), and the National Forum for the Law Enforcement of Heritage Related Matters (NALEH). This was determined by the portfolio of that person which was to be directly relevant to the scope of the study as it pertained to the management of moveable and tangible heritage in South Africa.

Those entities selected could be viewed as a South African counterpart for each of the most primary international non-governmental organisations (NGOs) (addressed in chapter 3) who are involved in this arena, and more specifically in relation to the theft of heritage objects. The international organisations identified are the International Council of Museums and the International Committee on Museums Security.

In terms of their South African counterparts, the NGOs identified are the South African Museums Association (SAMA), the South African chapter of the International Council of Museums: South Africa (ICOM:SA), and the National Forum for the Law Enforcement of Heritage Related Matters (NALEH). The president/chairperson of each of the mentioned organisations was interviewed. As the researcher is one of the key role players who



established NALEH and was the chairperson at the time, the co-chair for NALEH was interviewed.

The purpose of this selection was not to generalise the findings back to the population, but rather to explain the phenomenon of administering and managing the moveable and tangible heritage of South Africa as defined by the scope and delimitation of this study. Sampling was therefore applied as a contextual strategy in this regard to study phenomena as a result of their intrinsic and immediate contextual significance (Mouton, 1998:133).

### **2.3.2.2 Data gathering from samples B1, B2, C and D during phase two**

#### **i Data gathering in qualitative research**

De Vos et al. (2011:342) state that in qualitative research, the interview is the principal data gathering technique. The qualitative portion of this research was conducted based on the phenomenological approach as discussed earlier in this chapter, it was important for this research that multiple perspectives of the equivalent situations be obtained that would permit for deductions to be made about what the situation is like ‘from an insider’s perspective’ (Leedy & Ormrod, 2013:145).

#### **ii Use of semi-structured interviews to gather data from samples B1, B2, C and D**

Leedy and Ormrod (2013:145) state that in order for a researcher to arrive at ‘... the heart of the matter’, it will be necessary to conduct lengthy interviews with participants who are carefully selected. For this study it was decided to conduct face-to-face interviews.

All the interviews conducted in phase two of this research were semi-structured interviews. These interviews are useful when the researcher is interested in either the complexity of something or the processes being followed (De Vos et al., 2011:352). As highlighted above (paragraph 2.2.1.2) interviewing and the analysis of the resultant data enable the researcher to reflect the specialist insight of the ‘insider’ which is well-suited to the interpretivist paradigm (Henning et al., 2004:20).

### **iii Trade data required from samples B1 and B2**

Based on the nature of the data required from the traders in samples B1 and B2, it was decided to use a semi-structured interview schedule as this would afford more flexibility during the interviews. This would also ensure that aspects not covered may be probed and issues not clear may be clarified. Both sample B1 and B2 were surveyed using an interview schedule, the content of which was informed by the schedule used by Mackenzie (2005:265-266).

A separate schedule was designed for sample B1 (the auctioneers) and for sample B2 (the dealers/antiques dealers). See annexure E for the interview schedule for sample B1 (auctioneers) and annexure F for the interview schedule for sample B2 (dealers/antiques dealers). The interview schedules were e-mailed to the participants before the interviews.

### **iv Heritage crime data required from sample C**

Each of the participants received the interview schedule before the time to permit them to peruse the document and familiarise themselves with the content. No objections were voiced about any of the questions posed. Annexures G-J reflect the interview schedules used for this sample.

International interviews were conducted using various media. A written interview was conducted with the German participant. The list of questions was supplied to the participant, and the questions were answered and returned in document form. A face-to-face interview was conducted with the representative from the FBI. Due to time constraints the interviews with the Italian *Carabinieri*, the UK Art and Antiques Unit and the INTERPOL Art Crimes Desk had to be reverted to questionnaires sent via the electronic mail system. The questionnaires were e-mailed to Mr Panone of the Art Crimes Unit under the sub-directorate of Criminal Organisations and Drugs with the General Secretariat of INTERPOL in Lyon, France, and he distributed them to the Italian, British and French police units, with a cut-off date for a return.

Replies were received from the British and the Italian units. The French unit did not reply, despite attempts made to remedy this. A copy of the interview schedules for the various

specialised units are attached as per annexure K and the one used for the INTERPOL Art Crime Unit is as per annexure L.

While De Vos et al. (2011:355) list several disadvantages to e-mail interviews or questionnaires, it would appear that only the aspects in terms of it being impersonal and the missing of non-verbal clues are perhaps relevant. These aspects in no means denigrate the quality of the data gathered. Reporting was not anonymous and the participants gave informed consent to this effect.

#### **v Heritage management data required from sample D**

Each of the key individuals from the Department of Arts and Culture (DAC), the South African Heritage Resources Agency (SAHRA), the National Heritage Council (NHC), the South African Museums Association (SAMA), the International Council of Museums: South Africa (ICOM:SA), and the National Forum for the Law Enforcement of Heritage Related Matters (NALEH) were approached about being interviewed for this study.

The semi-structured interview schedule was forwarded to each of the participants before the time, which ensured that they were aware of the questions that were going to be asked and could prepare for the interview.

This also ensured that participants had time to consider their responses to the questions which added to the depth of the data obtained. All the participants in this sample were asked the same two questions, albeit not in exactly the same manner, but primarily addressing the role/function/mandate of the specific organisation or NGO in heritage and/or heritage crime and what the participant felt that cultural heritage is/heritage objects could be.

This approach is typical when a new interest is being examined or the subject being studied is a relatively new one (Babbie & Mouton, 2001:79). This is true for this study, while the topic is not a new one internationally, within the South African context it is unresearched. Using this approach best suited the study as it is constrained to a specific situation, the theory and data are fused, few cases/subjects are analysed and the researcher is involved (Neuman, 2006:151).

Since key persons were interviewed, the reporting for this section was not anonymous. The participants were comfortable with this.

### **2.3.2.3 Analysis of qualitative data from samples B1, B2, C and D**

All the interviews conducted for this research in South Africa were recorded with informed consent of the participants (De Vos et al., 2011:359). This is relevant to the face-to-face interviews conducted with participants in samples B1, B2, C and D.

Recordings were supplemented with field notes which were captured by the researcher during the interviews. All recordings were transcribed verbatim and sent to each of the participants for verification. The coding and data analysis phase only commenced after verification had been received from the participant that the content captured is a true reflection of the content of the interview. No transcribers or coders were used for this study.

Once the transcribed interviews were verified by each participant, the qualitative data were coded and analysed. This process did not occur once all the research was done, but was an ongoing process throughout the life span of the research. This method allowed for a better and more intimate grasp on what the data showed, which informed how the overall study developed into this written report. The software program ATLAS.ti was used to do the analysis of the data, in terms of coding and analysis, thereby adding to the reliability of the data. When making use of the ATLAS.ti program, the steps described below were followed within each of the samples.

After reading through the transcriptions of all the interviews for the sample, the researcher made notes in the margin. Thereafter open coding (level 1 coding) was done as the researcher again went through each of the transcribed interviews. This process was followed with a more focused read-through during which time meaning was attached to each of the open codes to understand what it is that each participant is saying. Then the transcriptions were again worked through and categories or families were created from the various codes already identified and allocated. These categories were then clustered into themes which were exported into a network in a Word document. This enabled a visualisation of the coded data from each interview from which it was possible to make meaning of the data as a whole. This form of analysis is fitting for the phenomenological approach since the various parts only have meaning when they are related to the whole (Trotskie-De Bruin, 2011:4). These data were then merged with the primary literature sourced for this study as well as quantitative data (where relevant) and integrated into the content chapters of the study.

This manner of analysis served two purposes. Firstly it enabled the quantification of the extent of the crime (the actual number of incidents) that had occurred in Gauteng for the reporting period. Secondly it also enabled the development of a framework which illustrated the manifestation of the legal trade (based on qualitative data) in heritage objects. To the framework of the legal trade the data of the theft incidents (quantitative data) were added as well as data of other theft incidents which were sourced from either literature or qualitative interviews. These two processes, when combined, resulted in the development of an Interface Framework showing the interface between the trade in stolen heritage objects (the black market) and the legal trade in heritage objects reported on in chapter 6.

#### **2.3.2.4 Objectivity in qualitative research**

The notions of validity and reliability in quantitative research are clarified within the qualitative research paradigm as trustworthiness (Creswell, 2013:246; Guba & Lincoln in Babbie & Mouton, 2001:276). Similar to the situation in the quantitative paradigm where a study cannot be valid unless it is reliable, a 'qualitative study cannot be transferable unless it is credible, and it cannot be deemed credible unless it is dependable' (Babbie & Mouton, 2001:277). The credibility, transferability and dependability of the findings made from the data gathered during the qualitative section of this study, will subsequently be discussed.

##### **i Credibility**

Babbie and Mouton (2001:277) as well as Leedy and Ormrod (2013:104) explain that there are several ways in which the credibility of the data may be ensured. These are prolonged engagement, persistent observation, triangulation, referential adequacy, peer debriefing and member checks. Of these strategies, prolonged engagement, triangulation (through the use of a multi-methods approach) and member checks were used in this study, thereby adding to the credibility of the data gathered and presented in the study.

##### **ii Transferability**

In qualitative research while the obligation to demonstrate transferability does not lie with the researcher, there are strategies to ensure transferability such as thick descriptions and purposive sampling (Babbie & Mouton, 2001:277; Leedy & Ormrod, 2013:104). By collecting detailed narratives on the phenomenon and producing detailed discussions in the

text, the researcher permits the reader to make a judgment about transferability (Babbie & Mouton, 2001:277).

### **iii Dependability**

The last aspect required for objectivity in the qualitative approach is the notion of dependability. Similar to reliability in a quantitative design, dependability ensures the reader that if the research were repeated with similar people in a similar situation then the findings would be similar (Babbie & Mouton, 2001:278).

Dependability was ensured by asking each participant within each separate sample the same questions, albeit not in exactly the same format, since the nature of a semi-structured interview schedule permits reformatting of the sequence. Moreover, the interview schedule designed for each sample was focused on answering the research questions and addressing several of the research purposes. Within the phenomenological paradigm the researcher's own experiences were bracketed to ensure that only the experience of the participant is captured. In addition, in-depth interviews were conducted with small samples (Leedy & Ormrod, 2013:145-146).

In 2008 the proposal for this research was presented to the SAMA members in attendance at the 72<sup>nd</sup> Annual National SAMA conference in the Cape and they were invited to contribute ideas, critique and comments to the proposal. The researcher subjected the methodology proposed for the study to her peers for inspection enhancing the dependability of the processes used (Benson, 2008a).

Leedy and Ormrod (2013:154-157) provide some guidelines for conducting interviews which were noted and followed by the researcher. Some of these aspects are in relation to identifying questions in advance, using a suitable location, obtaining written permission (just for SAPS members of sample C), record answers verbatim and establish and maintain rapport with participant.

In 2011 and 2012 the quantitative findings of this research were presented to law enforcement specialists at an international symposium on cultural property crime and to cultural heritage experts in South Africa. The findings made in relation to underreporting of these crimes at those forums were supported by the experts in attendance (Benson, 2011b; Benson, 2012b).

It is believed that the aforementioned endeavours contribute to the dependability of the study.

### **2.3.2.5 Ethics in qualitative research**

#### **i Informed consent and voluntary participation**

Informed consent does not only refer to the data collection phase but is applicable from the initialisation of the research; when the researcher is honest about the reason for the study (Creswell, 2013:174). In this research all the participants from samples B1, B2, C and D were approached and informed of the nature of the study and invited to take part in the study. These participants were all supplied with a copy of the interview schedule and informed that participation was voluntary and that they were entitled to withdraw from the process at any time before or even during the process. This approach is supported by Bachman and Schutt (2012:61) as well as De Vos et al. (2011:117). There were no objections to the use of a digital recorder to record the interviews as supplementary to the field notes. The interviews were transcribed and sent for verification to each research participant before coding commenced (De Vos et al., 2011:118).

De Vos et al. (2011:116,117) emphasise that no participant should be forced or coerced to take part in the research. In this research none of the participants were coerced to take part and those who participated did so voluntarily.

#### **ii Anonymity and confidentiality**

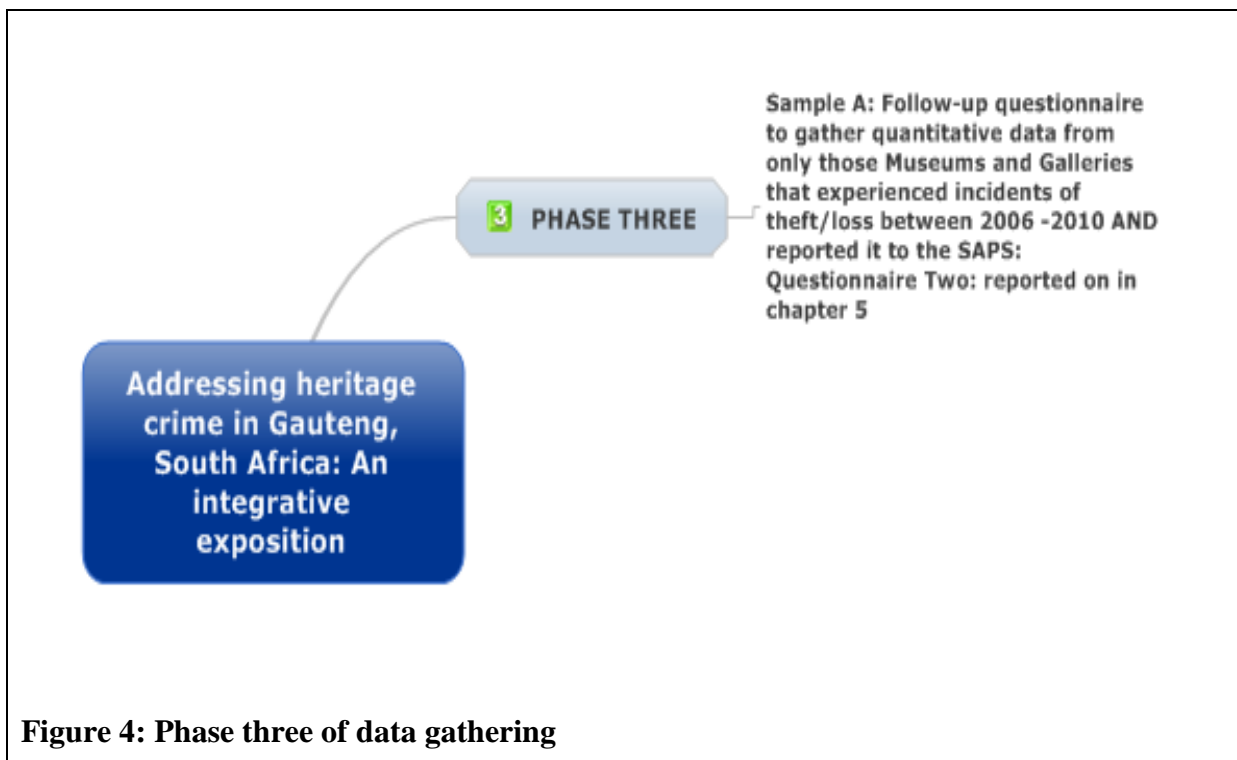
Since the participants for samples C and D were selected because they are considered to be the most knowledgeable about the aspect under investigation, anonymity and confidentiality were not an issue. None of the participants asked to remain anonymous since they were each interviewed in their official capacity and therefore represented their respective organisations or institutions. Anonymity and confidentiality are not synonymous. Anonymity implies that nobody knows who the participants are (not even the researcher) whereas confidentiality implies that only the researcher knows who the participants are.

It was decided to report on the findings from samples B1 and B2 anonymously (not the same as anonymity) since not all of the participants were comfortable with their details being reported on in the study. These participants were given participant numbers and are referred to by that number in the study (De Vos et al., 2011:119). Reporting will be done using the

alphabetic letters ‘A’ to indicate the participant is an auctioneer and ‘D’ to indicate the participant is a dealer (inclusive of antiques dealers also). Anonymity was not relevant since the researcher knew which participant corresponded with each alpha-numeric symbol. Confidentiality was guaranteed to the participants of samples B1 and B2. This implies that only the researcher is aware of the identity of the participants (De Vos et al., 2011:120).

### 2.3.3 Phase three: quantitative data gathering from sample A

The final phase of data gathering was an outflow from phase one. During this phase, only those museums and galleries that reported the loss of heritage objects for 2006 to 2010 and who reported these cases to the police were asked to give feedback on the relevant cases.



**Figure 4: Phase three of data gathering**

#### 2.3.3.1 Sampling for phase three

The Crime Administration Number (CAS) number assigned to the case of theft reported to the SAPS was required for each of the reported losses during phase one, and specific questions were asked about these cases during phase three. Therefore by default, the four institutions and one gallery that reported losses and provided CAS numbers during phase one, became the sample from which additional data were gathered in phase three.



### **2.3.3.2 Data gathering for phase three**

Data were gathered from sample A about the specific incidents of theft reported on in phase one through the use of a structured questionnaire. To differentiate the questionnaire used in this phase from the questionnaire used in phase one, this questionnaire was labelled questionnaire two.

Questionnaire two was designed along the lines of a survey done by Burnham in 1978 for the *International Foundation for Art Research* (Burnham, 1978:118-121). A copy of the South African questionnaire (questionnaire two) is reflected as per annexure D.

Analysis of phase one showed that there were 11 reported cases, of which one case was not relevant to the scope of the study (theft of a video cassette recorder). A further two cases could not be sourced due to either faulty case numbers or station data. Therefore, only those eight incidents for which full information could be sourced were utilised for analysis purposes. Permission was obtained from the SAPS to access data contained in closed case dockets relating to the theft of heritage objects from museums and galleries.

Questionnaire two was e-mailed to the sample identified in paragraph 2.3.3.1 (four museums and one gallery) and data were gathered pertaining to these eight cases only. A return rate of 100 per cent was received. The SAPS permitted access to the closed case dockets of the eight cases for which station names and case numbers could be provided.

### **2.3.3.3 Data analysis for phase three**

The Microsoft Excel program was used to analyse the captured data of questionnaire two and the criminal case dockets by using the numerical analysis feature of the software program. The data were tabulated into a variety of formats which enabled the researcher to draw several conclusions which are reported on in chapter 6.

The analysis of the eight criminal case dockets was done in relation to the following issues: to determine the nature of the crime reported, the description of the item/s stolen, the time frame that the docket remained open for investigation and the manner of closure.

#### **2.3.3.4 Validity and reliability of instrument for phase three**

Since this aspect has been dealt with in paragraph 2.3.1.4 above, only those aspects relevant to phase three of this study will be explained.

##### **i Validity of the measuring instrument in phase three**

The validity of a measuring instrument according to Leedy and Ormrod (2013:89) is the extent to which the instrument measures what it is supposed to measure. In this final phase of the research construct validity is once again relevant. Leedy and Ormrod (2013:89-90) describe construct validity as the degree to which a specific phenomenon is measured by a specific instrument (such as a structured questionnaire).

The researcher believes that the structured questionnaire used in phase three is valid in terms of the construct that was measured since it was an adaptation of a small portion of an already existing questionnaire. Construct validity was ensured by focusing on only those issues that emanated from the analyses of the phase one questionnaire, which were the manifestations of each theft incident (date, time, modus operandi), possible reasons for the theft, factors contributing to the theft, resolving of the crime, opinion about effectiveness of the police detective investigating the incident and reporting procedures. Due to the limited number in the sample and the narrow focus of the questionnaire, it was decided not to do a pilot test of the questionnaire. This did not detract from the efficacy of the data gathered.

Since the questionnaire was designed to focus on aspects specifically related to the study (forthcoming from the analyses of questionnaire one in phase one), it is believed that the construct validity of questionnaire two is high.

##### **ii Reliability of the measuring instrument in phase three**

The reliability of a measuring instrument simply implies that the instrument that measures a phenomenon will deliver the same results provided that the phenomenon being measured is not altered (Bachman & Schutt, 2012:95). This questionnaire was used to measure specific aspects in relation to the manifestation of crime incidents as reported on in phase one.

A means of enhancing the reliability is to make use of multiple measures of data gathering to study the same phenomenon. In this study, both qualitative and quantitative data were

gathered from museums, galleries, and five different sample groups. Data were also gathered from South African and international pieces of legislation (see discussion of these in chapters 3 and part I of chapter 4). Data obtained through questionnaire two in phase three was confirmed through interviews and literature sources (see discussion in chapters 5 and 6).

#### **2.3.3.5 Ethics in survey research**

Phase three was an extension of phase one, and therefore the same ethical principles in relation to privacy, informed consent and confidentiality as discussed in paragraph 2.3.1.5 are relevant here and will not be repeated.

### **2.4 PROBLEMS ENCOUNTERED**

Several problems were encountered during the course of this research project. The first challenge occurred in relation to the response rates from the museums and galleries, which resulted in a response rate that is less than 50 per cent. It is, however, also a consideration that this response rate may be ascribed to other factors which lie outside the control of the researcher.

When questionnaire one was designed for sample A (the museums and galleries described in paragraph 2.3.1.1 above) it was assumed that the environments of museums and galleries would be similar enough to warrant only one questionnaire for both groups. This proved not to be the case, since approximately eight galleries chose not to take part in the study primarily due to the scope 'not being relevant to them'.

It emerged that the use of the term 'heritage object' was perhaps so far removed from what the majority of the art gallery participants considered contemporary art and statuary objects to be, that they decided that they did not trade in such commodities and that the study was not relevant to them.

While not impacting on the data gathering process per se, the changes that took place within the top management structure of the South African Police Service from 2010 to 2012 complicated the writing of the section that explains the context of crime investigation in South Africa.

## **CHAPTER 3**

### **AN OVERVIEW OF THE INTERNATIONAL INSTRUMENTS AND ORGANISATIONS DESIGNED TO ADDRESS THE PROTECTION OF CULTURAL PROPERTY**

#### **3.1 INTRODUCTION**

International conventions are the primary instruments used by countries to address issues of an international nature. In this chapter an overview will be provided of the international instruments that have been put into operation during the past century, to deal with the protection of heritage and cultural objects during times of war and peace.

To answer research question four (paragraph 1.8: how the illegal trade in heritage objects is being addressed at an international level), it is necessary to understand the international instruments that are in operation for this purpose. By understanding these conventions and the functioning of the relevant international bodies, a more thorough understanding of the legislation that governs heritage in South Africa and the bodies that assist in this mandate (discussed in chapter 4) is developed.

Two international organisations played an important role in the drafting of the international conventions discussed in this chapter. They are the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the Institute for the Unification of Private Law (UNIDROIT). As backdrop to the discussion of UNESCO and UNIDROIT, a brief outline of how the United Nations (UN) came into existence as well as the primary aims of the UN will be provided. A discussion of the development of UNESCO and its relationship to the UN is also necessary as UNESCO is the only organisation that at universal level has a mandate for law-making pertaining to cultural heritage (Prott, 2009:276). Following the discussion on the UN and UNESCO, a brief overview will be given of UNIDROIT and its role in the drafting of international instruments.

This is followed by a discussion of the major conventions drafted in the last century to address culture and heritage issues and the functioning of the international bodies and organisations that combine their resources to combat the trade in stolen and illegally exported heritage objects. As the scope of this study is on moveable and tangible heritage being stolen

and smuggled in times of peace only the two primary international conventions as they relate to the scope of this study, will be discussed. The remainder of the instruments will briefly be mentioned.

The primary conventions relevant to this study are the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 2011) and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, (UNESCO and UNIDROIT, 2005). The complementary nature of these two conventions will be explained.

As conventions and police agencies can only do so much to ensure the safekeeping of heritage objects across the globe, there is a need for the involvement of non-governmental bodies and organisations. The role and functioning of the major non-governmental bodies, involved in combating the illegal traffic in stolen works of art and/or illegally exported cultural property, that operate internationally and who have a dedicated counterpart (or equivalent) in South Africa, will be discussed. These bodies are the International Criminal Police Organisation (INTERPOL), the International Council of Museums (ICOM) and the International Committee on Museums Security (ICMS).

A brief description of the development of INTERPOL will provide an overview of this international body and also permit an understanding and appreciation of the enormity of the task to function and operate globally. The discussion is supplemented with an explanation of the functions of the Art Crime Desk of INTERPOL.

A synopsis of ICOM will follow. The value of ICOM and the significance of it as an organisation, at the forefront of combating the illegal trade in stolen works of art and cultural property, will be explained. As evidence of this, some of the documents developed by ICOM as an organisation and in partnership with other role players to combat heritage crime, will be mentioned. Several international committees resort under the ICOM structure. Each of these committees covers different aspects in relation to museums, such as Collections Management, the International Committee on Museum Security (ICMS) and the ICOM Ethics Committee. The function of ICMS will be discussed, as security is one of the primary issues relevant to thefts from museums.

### 3.2 THE UNITED NATIONS

In 1919 the League of Nations was established under the Treaty of Versailles to promote international cooperation and to achieve peace and security. The League failed to prevent the Second World War in 1939 and ceased their activities. It was during the Second World War (1 January 1942), that the President of the United States of America, President Franklin D. Roosevelt coined the phrase 'United Nations' when, he together with the governments of 26 nations pledged to remain united as the Allied forces against the Axis powers of Germany, Italy and Japan. In 1945 at the United Nations Conference on International Organisation which was held in San Francisco, the United Nations Charter was drawn up between the representatives of 50 countries. The Charter was signed on 26 June 1945 and the United Nations came into existence on 24 October of that same year (History of the United Nations, S.a.).

The United Nations is constituted of the General Assembly with 193 member states, the Security Council that has five permanent members and ten non-permanent members. There is also an International Court of Justice with 15 Judges and the Economic and Social Council that has 54 members (Main bodies, S.a.).

The four main purposes of the United Nations are:

- To keep peace throughout the world;
- To develop friendly relations among nations;
- To help work together to improve the lives of poor people, to conquer hunger, disease and illiteracy, and to encourage respect for each other's rights and freedoms; and
- To be a centre for harmonising the actions of nations to achieve these goals (United Nations at a glance, S.a.).

The second and third purposes are where culture and heritage are of relevance, since it is by understanding the culture and heritage of another nation that peaceful relations are fostered. Similarly, culture and heritage and the role they play in everyday society contribute to the entrenching of respect for the rights and freedoms of others.

The UN does not attempt to achieve these purposes on its own. They established several organisations, each with a different yet complimentary mandate, aimed at assisting them to achieve the abovementioned purposes. Resorting under the Economic and Social Council as one of four Specialised Agencies, the United Nations Educational, Scientific and Cultural Organisation (UNESCO), is one such organisation.

### **3.3 THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION (UNESCO)**

Three years before the end of the Second World War in April 1945, the Ministers of Education of the Allied forces met in the UK at the Conference of the Allied Ministers of Education (CAME) to develop strategies through which they would be able to restore their education systems once the war had ended. The initiative gained momentum and several new governments joined, including the USA. CAME proposed that a United Nations Conference be established that would focus on education and culture (UNESCO - the organization's history, 2011).

Such a conference took place in London from 1-16 November 1945. A contingency of 44 countries gathered at this conference and collectively decided to create an organisation which would establish 'intellectual and moral solidarity of mankind', thereby preventing another great war. It was at the conclusion of this conference that the United Nations Educational, Scientific and Cultural Organisation (UNESCO) was founded by 37 of the attending countries. South Africa as one of the original signatories withdrew between 1957 and 1994, but has since re-joined UNESCO (UNESCO - the organization's history, 2011).

Among the main purposes of the UN is to keep peace throughout the world, to help nations work together and to encourage respect for each other's rights and freedoms. The mission and several of the overarching aims of UNESCO fit into this. The mission of UNESCO is to contribute to building peace and intercultural dialogue. In so doing the UN's purpose of assisting nations to develop friendly relations can also be achieved (Introducing UNESCO, 2011; United Nations at a glance, S.a.).

These objectives and aims permit a clearer understanding of the priorities of UNESCO in the field of culture. These priorities are to promote cultural diversity and to place specific emphasis on both the tangible and intangible, to promote intercultural and interfaith dialogue

and the understanding which informs the development of the cultural policies and to focus on cultural industries as well as artistic expression (UNESCO, 2009). While UNESCO treaties dominate in the field of cultural heritage, the assistance of the International Institute for the Unification of Private Law (UNIDROIT) was requested when shortcomings were identified in the 1970 UNESCO Convention (Nafziger et al., 2010:249; Toman, 2005:11). For this purpose the role of UNIDROIT as an independent intergovernmental body is considered.

### **3.4 THE INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)**

UNIDROIT was originally established as a supporting organ of the League of Nations but with the demise of the League in 1919, UNIDROIT also fell into disuse. It was in 1940 that UNIDROIT was re-established based on the principles of the UNIDROIT statute. This statute is based on multi-lateral agreements and only those countries willing to accede and abide by the UNIDROIT statute were permitted membership (UNIDROIT, 2011; UNIDROIT: An overview, S.a.).

UNIDROIT is an independent intergovernmental body seated in Rome and has a three-tiered structure consisting of the Secretariat, a Governing Council and a General Assembly. This independent status enables UNIDROIT to perform its intended purpose from a non-political stance as UNIDROIT is not a political body. The purpose of UNIDROIT is to:

*... study needs and methods for modernizing, harmonizing and co-coordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve these objectives* (UNESCO, 2011; UNIDROIT: An overview, S.a.).

These law instruments, principles and rules are to be understood in the broadest terms and they are generally taken up in the form of international conventions (UNIDROIT: An overview, S.a.). The 1995 UNIDROIT Convention is an example of such an international instrument, amid quite a number of international instruments designed to assist state parties in their quest to protect and where necessary reconstitute cultural property that had been illegally exported. Attention will at this juncture be given to a variety of international conventions pertaining to cultural heritage.



### **3.5 INTERNATIONAL CONVENTIONS: THE FOUNDATION**

During the past century several legal instruments and conventions were created to strengthen the fight against crimes targeting cultural heritage and heritage objects across the globe. There are seven primary conventions that address cultural heritage values and cultural heritage issues which will be reflected on and briefly discussed below (Nafziger et al., 2010:249, 288). An additional instrument (Protocol to the 1954 Hague Convention) will also be addressed.

#### **3.5.1 The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 (Hague 1954).**

To understand the scope of the 1954 Hague Convention, the preceding conventions and their ramifications need to be highlighted. The Hague Convention with Respect to the Laws and Customs of War on Land, 1899 and the Hague Convention IV on the Laws and Customs of War on Land, 1907 (also known as the Convention Respecting the Laws and Customs of War on Land, 1907) are the forerunners to the 1954 Hague Convention. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) also has bearing and will be referred to.

The 1899 and 1907 conventions were designed specifically for times of war. Their content prohibits the pillage, destruction and seizure of enemy property during a time of war, unless 'imperatively demanded by the necessity of war' (Nafziger et al., 2010:347). These conventions explicitly prohibit the confiscation of private property as well as prohibiting the attack and bombing of unprotected cultural targets and buildings (Nafziger et al., 2010:347; Prott, 2009:258; Toman, 2005:10).

Neither of these conventions was able to prevent the extensive damage and destruction of cultural property during the First World War. The Hague Rules of Air Warfare (1922-23) also emphasised that historical and cultural buildings and monuments should not be targeted during hostile aerial bombing; but it was never formally adopted (Nafziger et al., 2010:348; Toman, 2005:10).

The Geneva Convention IV of 1949 and Protocol I to the Convention are two instruments that specifically prohibit the destruction of personal property (publically or privately owned).

Protocol I makes special provision for the prohibition of hostile acts aimed specifically at historic buildings and monuments and works of art. Both of these conventions declare the destruction of 'clearly recognized and specially protected historic monuments, works of art, or places of worship' a 'grave breach' which in turn constitutes a war crime making it an 'international crime subject to universal jurisdiction' (Nafziger et al., 2010:348-349).

In spite of these efforts, there still seemed to be something amiss. On the international arena there was immense pressure for an instrument aimed specifically at protecting cultural property during times of armed conflict (which did not constitute war). The designers of these conventions sought to build on the foundations of the 1899 and 1907 Hague Conventions, the Nuremburg and Tokyo prosecutions of war criminals, and the 1949 Geneva Convention as well as taking into consideration actions that took place during the First and Second World Wars (Nafziger et al., 2010:289). The resultant convention, the 1954 Hague Convention, addresses the protection of the 'cultural heritage of mankind' whether moveable or immovable and makes provision for this protection during times of hostilities, whether it is of a national (civil unrest) or international nature. The Hague Convention was signed on 14 May 1954 (Nafziger et al., 2010:249,349; Prott, 2006:28; Toman, 2005:11-12).

Nafziger et al. (2010:349) explain further how Protocol I of The Hague Convention places an even greater obligation on the occupying nation in terms of the cultural property of the nation they have occupied. These obligations are among others that the occupying nation must:

- Seize any cultural property originating from an occupied nation, that has been imported into its own territory;
- Prevent the export of cultural property from the occupied nation; and
- At the close of hostilities all cultural property of the occupied nation must be returned to that nation and pay indemnity to good faith holders of such property (Nafziger et al., 2010:349).

The true value of the 1954 Hague Convention, however, came to the fore during the 1991 Persian Gulf War. There was agreement between both signatories to this convention and non-signatories (USA and the UK) to create 'no-fire target lists' as pertaining to areas known for the existence of cultural property (Borodkin, 1995:388; Nafziger et al., 2010:350; Prott, 2006:28). The bombings during the breakup of the former Yugoslavia, of Dubrovnik, Croatia, and Mostar, Bosnia and Herzegovina were not prevented by the convention. These

attacks led to a call for greater state and individual accountability and an amendment to the 1954 Hague Convention, which resulted in the development of the Second Protocol to the Convention, which was signed in 1999 (Nafziger et al., 2010:350; Prott, 2009:259; Toman, 2005:20).

### **3.5.1.1 The second Protocol to the 1954 Hague Convention, 1999 (Second Protocol)**

Several authors explain how the second protocol made provision for additional protection of cultural property by the inclusion of a provision where property may be defined as being under ‘enhanced protection’ (Nafziger et al., 2010:350; Prott, 2006:26-27; Toman, 2005:24-25). This declaration is, however, conditional as member states must prove that such property meets the following conditions:

- It must be of the greatest interest to humanity, such as designated World Heritage sites;
- It must be protected with adequate domestic legal and administrative measures, including the existing UNESCO protection, recognising its exceptional cultural and historic value; and
- It must not be used for military purposes to shield military sites, and a declaration must have been made by the state that has control over the property that it will not be so used.

The second protocol provides a greater means for the prosecution and extradition of those not conforming to the principles of the 1954 Hague Convention. To this extent, it led to the prosecution and incarceration of two senior officers found to be responsible for the damage to Dubrovnik (Prott, 2009:261).

During the 1960s, from within the UN, demands began to emerge from states being released from colonial ties to have their cultural property returned. UNESCO’s response to address the matter of colonialism and the resultant return of dispossessed items of cultural heritage had so far proven to be far more arduous. In spite of repeated calls for such measures, states holding such dispossessed items never agreed to meet the demands (Prott, 2009:263-264).

While UNESCO did not respond with the same vigour to colonialism issues as they did to conflict issues, they did react due to the growing criminal activity in the heritage arena. Largely due to this, UNESCO commenced with the development of a convention aimed specifically at the illegal trade in cultural property and heritage objects during times of peace. In addition, the convention also drew attention to the problem of dispossessed cultural property from territories under foreign rule (Prott, 2009:262, 265-266).

The first of the conventions designed for times of peace is the 1970 UNESCO Convention.

### **3.5.2 The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the 1970 Convention)**

The 1970 UNESCO Convention is considered both a cornerstone of cultural heritage law and a watershed date for provenance assessments. It was adopted by the General Conference of UNESCO on November 14, 1970 (Nafziger et al., 2010:289; Papa Sokal, 2006:37; Prott, 2009:262, 265-266). The 1970 UNESCO Convention set out a clear definition of not only what it understands cultural property to be but also provides classifications of the types of objects. It was considered a radical document for its time; its content has since been open to conflicting interpretations (Prott, 2009:265).

Nafziger et al. (2010:290) are of the opinion that the most important features of the 1970 UNESCO Convention are:

- A system of export certification;
- An emergency measure permitting signatories to call on one another to help control the flow of jeopardised property of special significance;
- A requirement that parties return property within their jurisdiction stolen from museums, monuments and other institutions;
- A requirement that, 'consistent with national legislation' parties prevent museums and similar institutions from acquiring property illegally exported from other states;
- A commitment that parties impose penalties or other administrative sanctions for stipulated infringements; and

- A provision for international cooperation in identifying cultural property and developing national inventories.

Argentina and Italy considered victim states (source markets) where such heritage objects are smuggled from became party to the 1970 UNESCO Convention in 1973 and 1978 respectively. Canada considered both a source state and market state became party in 1978, while other market states (art-importing countries) like the USA only became party in 1983 (having signed in 1972 they enacted legislation to this effect in 1983).

The USA was the first of the major art importing countries (market state) to sign this convention. Other art trading nations to follow suit are France in 1997, the United Kingdom and Japan in 2002, Switzerland, Sweden and Denmark in 2003 and Germany in 2007 (Borodkin, 1995:339; Merryman et al., 2007:186; Nafziger et al., 2010:290). The majority of the states party to this convention are art exporting nations. South Africa, as primarily a source nation but also considered a market nation, ratified the convention in 2003.

In spite of it being a watershed convention and a cornerstone to cultural heritage law, there was much room for improvement in terms of the scope of the convention. The aspects that required attention in terms of the scope of the convention will be discussed when the 1995 UNIDROIT Convention is addressed (Borodkin, 1995:390).

### **3.5.3 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, 1972 (World Heritage Convention)**

Prott (2009:268) explains that the text of the 1972 World Heritage Convention is derived from a consolidation of two other texts. The first was a text developed by the International Council of Sites and Monuments (ICOMOS) following the spirit of the 1968 UNESCO Recommendation for the Preservation of Cultural Property Endangered by Public or Private Works. The other text was developed on initiative of the USA in celebration of the 100<sup>th</sup> anniversary of the Yellowstone National Park, by the International Union for the Conservation of Nature (IUCN). While the latter was initially only aimed at natural heritage, the joining of the two (natural and cultural heritage) highlighted the mutual dependence of the cultural and natural heritage sites. It may have also led to much confusion about the actual aim of the convention (Prott, 2009:268).

Prott (2009:269) explains further that the broad terminology of some of the articles in the text allow for subjective judgements that are far too wide. Prott (2009) further notes that it might be as a result of the 'too fluid text' of this convention that not many scholars have written about it. The first detailed commentary on this convention only appeared in 2008, some 36 years after the convention was signed.

Nafziger et al. (2010:290) explain that under this convention an evolving World Heritage List was established and it contains to date some 800 different sites designated to possess properties of 'outstanding universal value'. However, with this designation there comes much responsibility on the state declaring the site. The responsibilities of state parties who make such declarations include the implementation of effective site management; the submission of periodic reports of the status of the site in terms of the responsibilities of the state; and the preparation of management plans on how sustainable tourism is going to be implemented and managed. What these responsibilities imply in terms of practicalities is that the state party undertakes to conserve and preserve these sites for future generations (Nafziger et al., 2010:290).

The practical difficulties of implementation of conventions were not the only aspect being debated by international parties. As mentioned above, there was much deliberation in the international arena around the issue of the return of heritage objects dispossessed during times of colonialisation. While nothing concrete in terms of an international instrument was designed to this effect, UNESCO did issue a formal 'Plea' for the return of these items. In 1979, through the office of the Managing Director of UNESCO, a global plea was issued for the return of cultural heritage to its creators. This is the 1978 Plea for the Return of an Irreplaceable Cultural Heritage to those who Created it. In this plea countries were also encouraged to not only ratify but also to rigorously enforce the 1970 UNESCO Convention (Merryman et al., 2007:341; Prott, 2009:263).

In 1978 the UNESCO Committee that would assist in hearing cases for the application of restitution or return of illegally appropriated cultural property, was established. The Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation was established on advice from the International Council of Museums (ICOM). In spite of the potential this committee has not been called upon very much to decide cases (Merryman et al., 2007:342; Prott, 2009:263; Shyllon, 1999:222).

### **3.5.4 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995 (UNIDROIT Convention)**

In 1986, UNESCO requested the Institute for the Unification of Private Law (UNIDROIT) to prepare a convention that would supplement and not replace the 1970 UNESCO Convention. This move came about primarily because of the gaps in the 1970 UNESCO Convention and the very limited number of market nations that had ratified it.

Although not as widely adopted as the 1970 UNESCO Convention, the resultant 1995 UNIDROIT Convention has had significant impact on the legislation in the states that eventually became a party to it (Renfrew, 2006:246). Due to its rigorous wording the possibility of misinterpretations is limited (Merryman et al., 2007:215; Nafziger et al., 2010:410; Prott, 2009:266-267). A comparison of this convention and the 1970 UNESCO Convention is done under paragraph 3.6 below.

### **3.5.5 The 2001 Convention on the Protection of Underwater Cultural Heritage, 2001**

Nafziger et al. (2010:291-292) explain that the 2001 Convention was designed to not only protect shipwrecks and materials related therewith, but also to regulate salvage operations beyond territorial waters. Parties to this convention are required to enforce upon salvaging companies who operate within their areas of jurisdiction a set of standards and requirements. In addition to this, parties are required to engage in sharing of information and decision making pertaining to international discoveries and protective measures. Parties are also expected to respond when excavations and the importation of underwater cultural heritage violate the requirements and standards set for this convention (Nafziger et al., 2010:292).

The preceding UNESCO Conventions and their related Protocols dealt with tangible cultural property. The following two conventions deal exclusively with cultural heritage of purely intangible nature. While the classification of 'intangible heritage' has been excluded from the scope of the study, the conventions will be considered as they reflect a distinct era (of stating shared policy) in convention drafting.

### **3.5.6 The Convention for the Safeguarding of the Intangible Cultural Heritage, 2003**

Prott (2009:271) regards this convention as basically a copy of the 1972 World Heritage Convention and argues that in spite of having three decades of experience to draw upon to

improve, especially the language of the convention, the drafters did not do so (Prott, 2009:271).

It seemed that the primary purpose of this convention was to provide international recognition to those states whose cultural histories are read not so much from the artefacts as they are from their oral traditions. While this convention was designed to complement the 1972 Convention, it does not do this in its entirety (Nafziger et al., 2010:292).

Prott (2009) believes that this convention was not really necessary as there was already in place a Proclamation on Masterpieces of the Oral and Intangible Heritage which had been established in 1997, through which states could list and publicise their intangible heritage. There are no enforcement provisions in the convention and there are no formal obligations to contribute assistance funding. This may create the impression that the purpose for the creation of the 2003 convention was to avoid the creation of inter-state obligations while endorsing national policy (Prott, 2009:271). Prott has a similar opinion about the 2005 convention that follows.

### **3.5.7 The Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005**

In an arena where the USA sought to delete the ‘cultural expression’ from international trade law, France and Canada sought to protect it. The 2005 Convention was as a result of the belief by some states that ‘artistic expression’ which had in the meantime been translated to ‘cultural expression’ must be exempt from certain international trade law. Similar to the 2003 Convention, the 2005 Convention does little more than state a shared policy. This convention did spark lively diplomatic debate between opposing sides (Nafziger et al., 2010:292).

Another critique of this convention is that there are no inter-state obligations created that have real meaning as the text contained non-binding declarations and recommendations (Nafziger et al., 2010:292; Prott, 2009:272). When considering the length of time taken to draft some of the earlier conventions, the speed at which both the 2003 and the 2005 Conventions were drafted from first draft to adoption, does seem very fast. This is to be viewed together with the rapid rate at which these conventions have been ratified, which is an indication that ratifying states may not have had to change legislation or even develop



legislation and that the text was undemanding and required very little study or interpretation (Prott, 2009:272).

This discussion concludes the overview of the primary conventions that focus on the protection of cultural heritage. The focus of further discussion, due to the scope of the study, now shifts to the two primary conventions identified at the beginning of this chapter, namely the 1970 UNESCO Convention and the 1995 UNIDROIT Convention.

The reasoning behind this focus is not only because these conventions centre on the theft and illegal trade in stolen cultural property and art but also because these two conventions are viewed internationally by governments, law enforcement role players and other stakeholders in the heritage and art sectors as the most important of the conventions in the fight against the illegal export and trade in cultural property and art (Calvani, 2008; Doyal, 2001; Haunton, 2001; Lowenthal, 1997; Schneider, 2001; Torsen, 2005).

### **3.6 THE 1970 UNESCO CONVENTION AND THE 1995 UNIDROIT CONVENTION: A COMPARISON**

The conventions will be considered individually as relating specifically to their adoption, extent of ratification, and key principles. A comparative discussion highlighting the complementary nature of these two conventions will follow.

#### **3.6.1 The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Objects (1970 UNESCO Convention)**

The 1970 UNESCO Convention moved the issue of cultural property into the foreground. This convention was the first to ensure that cultural objects receive specific protection. It is the first international instrument of its kind developed specifically to strengthen the efforts to combat the illegal traffic of cultural property in a time of peace. Since its adoption it has been ratified by 120 countries (Borodkin, 1995:388; Schneider, 2001:478; UNESCO, 2011:9).

The operational scope of this convention is not retroactive and it only applies between states party to the convention. The definitional scope was designed very broadly. Covered in Articles 1 and 4, the convention states that for property to be protected it must be declared by

that state as being important for its literature, science, art, archaeology, history or prehistory. The UNESCO Convention provides for both the prevention of illegal traffic as well as the recovery phase after such an incident occurs (UNESCO, 2011:9; UNESCO and UNIDROIT, 2005).

Articles 5-9 deal specifically with protection measures that state parties must adopt after ratification to provide for controlling the movement of cultural property and the return of stolen cultural property. In terms of Article 5 of the convention, state parties must adopt protection measures and it requires state parties, to amongst others address the following:

- Draft appropriate and detailed national legislation;
- Institute national services with the mandate to protect cultural heritage;
- Establish a national inventory and keep it updated;
- Promote the establishment of scientific and technological institutions such as libraries, archives and museums that will be responsible for preserving and presenting cultural heritage;
- Develop and set forth ethical guidelines aimed at providing a roadmap for the ethical conduct of dealers in cultural property;
- Develop and implement educational measures designed to enhance respect for cultural heritage of all states; and
- In the event when cultural property is stolen, see to it that the necessary level of media coverage is afforded (Borodkin, 1995:390; Merryman et al., 2007:180; Papa Sokal, 2006:47-48; UNESCO, 2011:9).

Articles 6 to 9 address the movement of cultural property. These articles oblige state parties to undertake the following steps:

- Ensure the introduction of a system of export certificates;
- Unless accompanied by an export certificate, ban the export of cultural property;
- Prohibit museums from purchasing cultural objects exported from another state party when it is not accompanied by an export permit;
- Proscribe the import of objects which have been plundered from public monuments, museums and religious institutions;

- Impose penal sanctions against persons who contravene the requirements of the convention;
- Make it a requirement that dealers in cultural property keep a register of the origin of every object of cultural property they purchase and to inform purchasers of cultural objects of the export prohibition that the item may be subject to; and
- Adopt emergency import bans on specific items or collections of items, especially during times of intense unrest and looting of archaeological and ethnological artefacts (Merryman et al, 2007:181-182, Papa Sokal, 2006:48; UNESCO, 2011:9; UNESCO and UNIDROIT, 2005).

Once an item has been stolen or removed from the territory of another state party, then Article 7 of the convention applies. This Article stipulates that a pre-determined procedure is to be followed in terms of the return of stolen cultural property:

- The state party in whose territory the stolen cultural object is, will seize the object and return it to the state party from whom it was stolen;
- The seizure and return of the stolen object will only occur at the request of the aggrieved state party, which must be made through diplomatic channels;
- The item must have been stolen from a museum, public monument or religious institution and such item must have been recorded in the inventory of that institution;
- The state that requests the return of the item is to pay just compensation to the good faith purchaser of the item or the person who holds valid title under the national legislation; and
- The state requesting return needs to furnish the relevant evidence in support of the claim (Merryman et al., 2007:181, Papa Sokal, 2006:39; UNESCO, 2011:9; UNESCO and UNIDROIT, 2005).

South Africa accepted the UNESCO Convention in 2003 (Legal instruments S.a.; Stander, 2012). According to Stander (2012) all the states that were party to the initial development and design of the convention and were listed as a party during the first sitting for this convention, will upon the convention coming into force, ratify the convention. South Africa on accepting the UNESCO Convention, is bound to the requirements of the convention.

While the UNESCO Convention was progressive in terms of protecting cultural property, there were some areas that the convention did not address (Doyal, 2001:665-667; Haunton,

2001:222; Nafziger et al., 2010:410; Schneider, 2001:478, 480). It was for these reasons that UNESCO approached UNIDROIT in 1983 and requested that they investigate how the identified shortcomings might be addressed (Doyal, 2001:666; Hauton, 2001:222; Schneider, 2001:480).

### **3.6.2 The 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects - UNIDROIT**

UNIDROIT had previously been involved in the development of draft 'Uniform Law on the Acquisition of Good Faith Corporeal Movable of 1974 (LUAB)' (Schneider, 2001:480) and although the draft was never accepted as a convention, experience gained added great value to their repertoire.

In the mid 1980s UNESCO requested UNIDROIT to prepare rules of private law which would address the illegal trade in cultural objects and which would be complementary to the 1970 UNESCO Convention. To achieve this UNIDROIT formed an Expert Study Group comprising of international experts based in countries that focused both on importing cultural objects as well as exporting cultural objects. UNIDROIT also included experts with special experience in the licit and the illegal traffic of cultural property as well as two UNESCO consultants (Prott, 1996:60).

Planning meetings of the Expert Study Group were held in 1988, 1989 and 1990 during which time a preliminary draft text was prepared. During four separate sessions held from May 1991 to September/October 1993 the text was rigorously studied by experts from the governments represented in the Expert Study Group. The final text was adopted in Italy in June 1995. UNESCO acted as observer during this process. UNESCO advises member states to ratify both the 1970 UNESCO Convention and the 1995 UNIDROIT convention (UNESCO and UNIDROIT, 2005).

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was adopted in Rome on 24 June 1995. As at March 2011, there are 31 states party to this convention. An addition 11 states have signed but not yet ratified the convention (UNESCO, 2011). As with the 1970 UNESCO Convention, the provisions of the 1995 UNIDROIT Convention are also not retroactive. In terms of defining a cultural object, the 1995 UNIDROIT Convention maintains the one used for the 1970 UNESCO Convention with the

exclusion of the terminology 'specifically designated by each State'. Therefore the item does not have to be specifically designated to be afforded protection under the 1995 UNIDROIT Convention (Merryman et al., 2007:206; Prott, 1996:61). This implies that a greater number of heritage objects are afforded protection than under the 1970 Convention.

The main purpose of the 1995 UNIDROIT Convention is to provide for the restitution of stolen cultural objects (Articles 3 and 4) and the return of cultural objects that have been illegally exported from a state party (Articles 5 to 7). Fundamental to this convention is the premise set out clearly in Article 3(1) that a person who is in possession of a cultural object that has been stolen, shall return it. Objects that were excavated in a clandestine manner are considered to be stolen (Merryman et al., 2007:206; UNESCO, 2011; UNESCO and UNIDROIT, 2005). In this convention provision is made for fair and reasonable compensation to be paid to a good faith purchaser or possessor of such a stolen cultural object, provided the good faith purchaser did not know neither could reasonably have been expected to know that the item was stolen (UNIDROIT, 2011; UNESCO and UNIDROIT, 2005).

The possessor will only be duly compensated if he can prove that due diligence was taken before the purchase. A decision on due diligence will be made based on specific factors as set out in the convention, such as the circumstances of the purchase, the character of the parties involved, and the price paid for the item. Due diligence can further be proven if the possessor consulted any 'reasonably accessible register on stolen cultural objects' along with any addition and relevant documentation he may have been able to obtain. The steps taken by the purchaser need to be that which one may expect of a reasonable man in his position to do (UNESCO and UNIDROIT, 2005).

The convention makes provision for the possible payment of fair and reasonable compensation by the requesting state when a cultural object has been exported illegally. This aspect will be explored only if the possessor can prove that he took reasonable care to ensure that he was not purchasing illegally exported cultural objects. Other factors that will be considered are the circumstances surrounding the purchase of the object as well as the absence of an export licence as required by the requesting state (Merryman et al., 2007:209; UNIDROIT, 2011; UNESCO and UNIDROIT, 2005). Claims may be brought before the court in the country where the object is located, either by a private individual or a state party. This must be done within a specific timeframe. The time limits as prescribed by the

convention is generally within 50 years after the item went missing or within three years after the identity of the possessor and the location of the object became known (UNESCO, 2011).

In the preceding discussion both the definitional scope as well as the operational scope of the two conventions was addressed. The primary differences between these two conventions, making them both compatible and complementary, will now be highlighted.

### **3.6.3 The 1970 UNESCO Convention and the 1995 UNIDROIT Convention: different but the same?**

The 1970 UNESCO Convention and the 1995 UNIDROIT Convention are compatible and complementary. Using a format similar to that used by Prott (1996:61-66) the primary elements of these two conventions will now be discussed. The primary elements are:

- Defining a cultural object;
- Operational scope of the convention;
- Procedures for claims;
- Limitation periods; and
- Compensation and diligence.

#### **3.6.3.1 Defining cultural objects**

Both of the conventions make use of the same broad definition for cultural objects, with the exception that in the 1995 UNIDROIT Convention the terms ‘specifically designated by each State’ is excluded from the text (UNESCO and UNIDROIT, 2005). This implies that the scope of the 1995 UNIDROIT Convention is broader than the 1970 UNESCO Convention, thereby including a wider range of cultural property afforded protection under the convention. This is perhaps a factor contributing to the low number of market nations and the high number of source nations that have ratified this convention.

#### **3.6.3.2 Operational scope of the Convention**

The 1970 UNESCO Convention covers both the prevention as well as the recovery phases of illegally trafficked cultural objects, provided the objects belonged to ‘a religious or secular public monument or similar institution’ and they were ‘documented as appertaining to the inventory of that institution’ (Brodie et al., 2000:40; Prott, 1996:61-62). Only those items

listed in an inventory of specifically mentioned institutions were protected by the convention, thereby leaving private collectors largely without recourse.

The 1995 UNIDROIT Convention on the other hand addresses only the return and restitution of stolen or illegally exported cultural objects. Since the implementation of the 1970 UNESCO Convention much has occurred to change the attitudes of the art importing nations to consider more drastic steps regarding the return of stolen cultural objects. Article 3(1) of the 1995 Convention makes it clear that those who are in possession of stolen cultural property must return it (Merryman et al., 2007:206). There are no restrictions that items were to have been stolen from specific institutions or museums, thereby including the interests of private collectors and those falling outside the scope of state museums or inventoried galleries.

### **3.6.3.3 Procedure for claims**

Prott (1996:64) explains that while the UNESCO Convention is founded on the philosophy of state action, therefore only the state may through diplomatic channels claim its cultural property back, the same is not true under the UNIDROIT Convention. The UNIDROIT Convention enables a private owner to claim restitution of stolen or illegally exported cultural property, directly through the courts or other competent tribunal (Brodie et al., 2000:40).

### **3.6.3.4 Limitation periods**

The UNESCO Convention has no specific time limitation periods set for claims. The national legislation of each state party, where applicable, will provide for this aspect. The UNIDROIT Convention has set very specific time limitation periods of three and 50 years respectively. A dispossessed owner has a period of three years from the time he became aware of the particulars of the possessor of his stolen property and the location of such, in which to claim the return of his property. The 50 year period implies that if an item has been out of the possession of its lawful owner for a period longer than 50 years, then the lawful owner no longer has a claim for its return (UNESCO and UNIDROIT, 2005).

### **3.6.3.5 Compensation and due diligence**

A major problem in the international arena, creating an 'international loophole' especially in countries where the rights of a 'good faith purchaser' are protected, is that illegally acquired

items may become legal under these conditions (Brodie et al., 2000:40). Haunton (2001:222) explains a good faith purchaser or bona fide purchaser as a person who buys an object, not knowing that it is stolen. In a country that operates under a common law system, if the owner were to claim back the stolen property, then the bona fide purchaser has to return it, often without compensation. While in a civil law country, the bona fide purchaser gets good title after a certain period of time (varies between countries) (Haunton, 2001:222).

The UNESCO Convention is based on the common law system – which leaves dispossessed private owners of stolen works of art or cultural property no recourse through the convention when their stolen works of art are sold in a foreign country (Haunton, 2001:222). In terms of the UNESCO Convention good faith is presumed unless the contrary can be proven. In addition the UNESCO Convention makes provision for the payment of ‘just compensation to an innocent purchaser or to a person who has valid title’ (Haunton, 2001:222).

The UNIDROIT Convention addresses the shortcomings of the UNESCO Convention highlighted above in that individuals are now able to claim restitution for their stolen/illegally exported items. In such an instance just compensation would only be paid if due diligence is proven on the part of the possessor. There are also specific requirements set out in the convention as to what constitutes due diligence and which factors will be taken into consideration when deciding upon due diligence. This convention makes the ‘shroud of secrecy’ that usually hangs over items with dubious provenance disappear; because good faith buyers need to ask a lot more pertinent questions (Brodie et al., 2000:40; Haunton, 2001:223; Prott, 1996:65-66).

South Africa acceded to the 1970 UNESCO Convention in 2003. South Africa has not become party to the UNIDROIT Convention (Legal instruments, S.a.). The Directorate of Policy and Research Development at the Department of Arts and Culture (DAC) has been lobbying for the acceptance of the UNIDROIT Convention since 2009 (Stander, 2012). Although the Cabinet has approved this, South African Parliament has yet to do the same.

The role players identified in the introduction to this chapter will now be discussed in terms of their origin as well as the roles they play in combating the illegal trade in art and cultural property in the furtherance of the ideals established by the two conventions.



### **3.7 THE INTERNATIONAL CRIMINAL POLICE ORGANISATION (INTERPOL)**

In 1914, police officers, magistrates and lawyers from 14 countries met in Monaco at the First International Police Congress to discuss mutual issues of arrest procedures, techniques used for identification, procedures for extradition and the centralisation of the criminal records of international criminals. This forum evolved until 1923 when the International Criminal Police Commission (ICPC) was created, with its headquarters in Vienna, Austria. In 1927 the ICPC resolved to establish National Central Bureaus (NCB) in each of the member countries as a central contact point within the police structure of each member country (History INTERPOL, 2012).

Between 1938 and 1945 the ICPC was completely under German control and it basically ceased to function in its original format. It was only in 1946 after the end of the Second World War that Belgium led the move to re-establish the organisation and in 1949 the organisation was granted consultative status by the United Nations as a non-governmental organisation. In 1956 after adopting a modern constitution, the ICPC effectively became the International Criminal Police Organisation (INTERPOL). INTERPOL functions autonomously and relies mainly on investments and membership fees as their source of income (History INTERPOL, 2012).

Being by far the largest international police agency, INTERPOL with close to 190 member countries, functions from its offices in Lyon, France. The vision of INTERPOL is 'Connecting police for a safer world' and the mission is 'Preventing and fighting crime through enhanced international police cooperation' (Overview INTERPOL, 2012). This is done using a high-tech communications system, I-24/7 which provides data on crime and criminal networks known to INTERPOL, 24 hours a day, 7 days a week. INTERPOL strives to ensure that police officials across the globe have the necessary tools and supporting services that will assist them to do their work. INTERPOL provides specialist training to member countries, along with expert investigative support, all of which assist them to create a safer world (Overview INTERPOL, 2012).

To enable INTERPOL to achieve the aforementioned, they operate 24 hours a day, 365 days a year. They make extensive use of their seven regional offices and also have representation in both the United Nations and the European Union. They work very closely with the

National Central Bureaus (NCBs) in the more than 190 member countries, which are staffed with specially trained police officials from the police agency of that specific country (Overview INTERPOL, 2012). INTERPOL also assists in facilitating cooperation between the police agencies of countries where no diplomatic relations exist. Bearing this in mind, INTERPOL may not become involved in matters of racial, religious, political and military nature (Overview INTERPOL, 2012).

INTERPOL is made up of the General Assembly which together with the Executive Committee forms the governance of the organisation (About INTERPOL, 2009). The General Secretariat, which is seated in Lyon, France, is staffed by police officials from over 80 countries who work together to ensure that crime is addressed at all four corners of the globe. The structure of INTERPOL is rounded off with the section of Advisors and the Commission for the Control of INTERPOL's files (CCF) (About INTERPOL, 2009).

From this perspective, it is worth mentioning that INTERPOL is the only international law enforcement body that coordinates activities aimed at fighting the theft and illegal traffic in cultural objects at an international level. They operate globally to assist member countries to take action (in compliance with the primary conventions) when their works of art or cultural property have been stolen and removed in contravention of their national legislation (ICOM Partners, 2010; International partners, 2012).

While INTERPOL deals with a variety of crimes, based on the scope of this research the discussion will only focus on the Database for Stolen Works of Art (INTERPOL, 2008; Works of Art INTERPOL, 2012).

### **3.7.1 Stolen Works of Art Database**

INTERPOL established the capacity to address the theft of works of art and cultural property and in 1947 they issued the first notice for stolen works of art (Works of Art INTERPOL, 2012). Technology and development has since then made it easier to circulate notices and alerts on the theft of works of art and cultural property to member countries (Works of Art INTERPOL, 2012). Annually INTERPOL sold an electronic compact disk (CD) containing the entire database of 'Stolen Works of Art' to law enforcement and other parties in its member countries as it was updated that year. This was a very costly exercise for the purchasing country since the price was in the currency of the European Union.

On 17 November 2005, the General Secretariat launched the Works of Art Database as a new e-ASF (electronic Automated Search Facility) application. All National Central Bureaus (NCBs) were able to access the database through the I-24/7 Dashboard in English, French and Spanish. Since 17 August 2009 INTERPOL established direct access to the database for authorised users via its secure website. Online access is open to all interested parties who apply for access to the database and is no longer limited to the law enforcement community. By opening up the database to users outside of law enforcement agencies the principles of due diligence enshrined in both the UNESCO and UNIDROIT Conventions may be adhered to. Art galleries, foundations and dealers will no longer be able to claim that they were not able to search whether an item being offered for sale was stolen or not, since this database has now become more than the required 'reasonably accessible' (INTERPOL, 2009).

On the website the following information can also be found:

- The most recent stolen works of art reported to INTERPOL;
- Works of art recovered by the police during their enquiries and for which owners have not been identified;
- Works of art recorded in the INTERPOL database and CD which have been recovered;
- The latest INTERPOL posters showing the most sought after stolen works of art.

INTERPOL works in close cooperation with other international organisations that are at the forefront of fighting the illegal traffic in stolen works of art and cultural property. The International Council of Museums (ICOM) is one such organisation (International partners, 2012; Works of Art INTERPOL, 2012).

### **3.8 THE INTERNATIONAL COUNCIL OF MUSEUMS (ICOM)**

ICOM is an international non-governmental organisation consisting of '...museums and museum professionals ... committed to the conservation, continuation and communication to society of the world's natural and cultural heritage, present and future, tangible and intangible' (Hekman, 2010:3; ICOM Mission, 2009). ICOM came into existence shortly after the end of the Second World War in 1946. From 1947 to 1996 the structure and functioning were developed and grew more professional by the year. ICOM has shown itself

a force to be reckoned with, being at the forefront of combating the illegal traffic of cultural property (History ICOM, 2012; ICOM Network, 2012).

From 1996 onward, ICOM developed and published several extremely valuable pieces of literature. Among these the Red Lists and One Hundred Missing Objects series drew tremendous attention. The Red Lists facilitated the awareness creation around the issue of classes or categories of items being targeted for looting and pillage. The One Hundred Missing Objects alerted the public to objects already missing, possibly illegally removed and exported and which are being sought for return to the country of origin (UNESCO, 2006:16).

The activities of ICOM focus on museum professionals who either experience demanding situations or who have specific needs which fall within the following categories:

- Professional exchange and cooperation;
- Creation of public awareness about museums and the distribution of knowledge;
- Personnel training;
- To ensure that professional standards are promoted;
- Clarify and advance professional ethics;
- To actively combat the illegal traffic in all cultural property; and
- The protection and preservation of heritage (ICOM Mission, 2009).

ICOM's network consists of approximately 2000 museums, 30,000 museum professionals, 31 international committees and 117 national committees across the globe. Globally, it is also the only one of its kind that represents museums and museum professionals at such an international level (Hekman, 2010:3; ICOM Network, 2012).

Of the 31 international committees that resort under ICOM, specific focus will be given to the International Committee on Museum Security (ICMS). The ICMS is discussed primarily because it is possible that security within museums (or lack thereof) contributes to a certain extent to the thefts out of museums.

ICOM maintains an official working relationship with UNESCO and has a consultative status at the Economic and Social Council of the United Nations, a diplomatic forum which comprises of representatives from 137 countries and territories. ICOM is headquartered in Paris, France (History ICOM, 2012; ICOM network, 2012).

### **3.8.1 The International Committee on Museum Security (ICMS)**

Resorting under ICOM, the ICMS was established in 1974 with the following aims (Hekman, 2010:4):

- To support the aims and objectives of ICOM, in particular with the reference to museum security;
- To formulate and carry out a programme of activities related to museum security;
- To provide a forum for the communication, cooperation and information exchange between museums, professional museums workers and others concerned with museum security;
- To provide advice to ICOM on museum security and be a source of professional expertise to assist in the implementation of ICOM'S programme; and
- To present the interests of museum security within ICOM and to cooperate with the national committees and affiliated organisations in matters related to the Committee's specific mandate and to the broader interests of ICOM.

The ICMS in collaboration with ICOM have made available the Handbook on Emergency Procedures to be used by museums and museum professionals. This handbook can be used to develop strategies to address issues of vandalism, theft, fire, floods, chemical spills, earthquakes and terrorism (Hekman, 2010:5-50). By pooling resources these two bodies have shown what can be done when collective brainpower is fully utilised; benefiting museums at both local and international level.

From the preceding discussion it is clear that collectively the role players are capable of achieving far more than if they were to function in isolation. All of these institutions and organisations would be meaningless if there were no law enforcement agency that initiated the investigations and followed through until the suspects were brought to justice and the stolen items were returned to their rightful owners. The role and functioning of four specialised law enforcement agencies that focus on the theft of works of art and the illegal trade in cultural property will be discussed in chapter 6.

### 3.9 SUMMARY

In this chapter consideration was given to the UN and UNESCO as the primary bodies overarching the existing international conventions that afford protection to the heritage of nations. This discussion centred on the existing international instruments designed to afford protection to the cultural property of member states for times of peace. Central to the discussion was the 1970 UNESCO and 1995 UNIDROIT Conventions as they are the most relevant to the scope of this study. The value of these two conventions was considered based on their differences as well as the complementary nature in which they may function. Once a country ratifies an international convention they are obliged to develop and implement national legislation to put into effect the obligations and principles of that convention. The national legislation so designed impacts on the management, preservation and protection of the commodity identified in the legislation and has an impact on the law enforcement agencies responsible for the combating of crime within that country.

INTERPOL as the primary forum through which law enforcement role players and the role players external to law enforcement may collaborate, has an impact worldwide. The active participation of the INTERPOL network Art Crime Unit is invaluable in this fight to protect the art and cultural property of the nations. The availability of the INTERPOL Stolen Works of Art Database to stakeholders outside of the law enforcement environment is proof that INTERPOL is committed to combating the problem of heritage crime within all sectors.

The existence and active participation in the international arena by the non-governmental role players discussed in this chapter, add impetus to the cause. The role of ICOM should not be underestimated. The value of the tools that they and the ICMS have put at the disposal of museums professionals, collectors and law enforcement officials cannot be calculated in monetary value. Through the development and dissemination of literature that highlights the objects most vulnerable to trafficking, objects already stolen as well as training materials on museums security and related issues, they ensure that museum professionals are kept informed of developments in the field of heritage management and protection.

In chapter 4 domestic legislation will be discussed based on the National Heritage Resources Act 25 of 1999 (South Africa, 1999b) and how various government agencies and local NGOs work together to address this phenomenon. Aspects such as the legal trade in heritage objects and the legislative framework within which this trade is to function, will also be discussed.

## **CHAPTER 4**

### **THE SOUTH AFRICAN LEGAL TRADE IN HERITAGE OBJECTS:**

#### **PART 1: LEGISLATIVE FRAMEWORK**

##### **4.1 INTRODUCTION**

In chapter 3 the conventions and primary role players within the international arena that are involved in combating the theft of works of art and the illegal traffic in cultural property, were discussed. In this chapter the main focus will be on the legislative framework that provides for the management and preservation of heritage objects (as defined by national legislation in South Africa as well as for the scope of this study) and which regulates the legal trade of such heritage objects.

The primary purpose of this chapter is to answer the second research question, as to how the legal market in relation to the trade in heritage objects (as defined for this study) functions. The functioning of a robust and active legal trade makes it possible for the trade in stolen heritage objects to coexist. By understanding how the legal market operates and functions it is possible to understand how the illegal market can exist in a parallel and overlapping manner. The extent of heritage crime will be addressed in chapter 5 and the manifestation of the illegal trade in stolen heritage items will be addressed in chapter 6.

This chapter is divided into two parts. In part I the legislative framework that provides for the management and preservation of the heritage objects (heritage resources) as contained in the National Heritage Resources Act 25 of 1999 (South Africa, 1999b) (hereafter named the NHRA) will be addressed. The primary role players (government and non-government) involved in the management and preservation of heritage objects are also discussed. In part II of this chapter the legal trade in heritage objects (as defined for the scope of this study) within the framework of the Second-Hand Goods Act 6 of 2009 (South Africa, 2009) (hereafter named the SHGA) will be addressed.

The focus is not only on the NHRA but also on the role players within the South African heritage environment that are tasked with the management, preservation and protection of the national estate. The discussion will address their roles and functions in terms of the legislation and their contribution to combating the theft of works of art and other cultural

property from museums and galleries where these items are curated. The primary role players in government are the Department of Arts and Culture (DAC), the South African Heritage Resources Agency (SAHRA) and the National Heritage Council (NHC).

The role of the most prominent non-governmental organisations (NGOs) in the heritage arena in South Africa, the counterpart (or equivalent) of which was dealt with in chapter 3, will then be addressed. The NGOs being discussed are the International Council of Museums (ICOM:SA), the South African Museums Association (SAMA) and the National Forum for the Law Enforcement of Heritage Related Matters (NALEH).

To inform the discussions about the legislative framework, interviews were conducted with the mentioned key role players. Empirical data will supplement the literary discussion and will consist of input from the Department of Arts and Culture (DAC), the National Heritage Objects Manager from the South African Heritage Resources Agency (SAHRA), and the General Manager: Heritage from the National Heritage Council (NHC). These participants were all asked to explain the role of their department/division/institution in relation to heritage and heritage crime in South Africa.

The interview guides and methodological matters relating to the interviews were dealt with comprehensively in chapter 2 and will not be discussed again in this chapter. This will conclude the section dealing with the legal framework.

To commence with part I of this chapter, the custodians of the national estate will be discussed after which the legislative framework for the management and preservation of the tangible and moveable heritage resources will be addressed. Within each section where relevant, the literature will be supplemented with empirical data from research participants.

## **4.2 CUSTODIANS OF THE NATIONAL ESTATE**

South Africa as a party to the 1970 UNESCO Convention is obliged in terms of Article 5 of the convention to ensure the following aspects receive attention:

*To ensure the protection of their cultural property against illicit import; export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a*



*qualified staff sufficient in number for the effective carrying out of the following functions:*

*(a) contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;*

*(b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;*

*(c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops) required to ensure the preservation and presentation of cultural property;*

*(d) organizing the supervision of archaeological excavations, ensuring the preservation “in situation” of certain cultural property, and protecting certain areas reserved for future archaeological research;*

*(e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;*

*(f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;*

*(g) seeing that appropriate publicity is given to the disappearance of any items of cultural property (UNESCO, 2006:37).*

The NHRA is the legislation that the 1970 convention calls for. The Department of Arts and Culture (DAC) has the responsibility to put into operation the Constitutional and legislative mandates of the department as well as the aspects prescribed by the 1970 UNESCO Convention. One of these mandates is acting as the primary custodian of the national estate of South Africa.

#### **4.2.1 The Department of Arts and Culture (DAC)**

Section 30 of the Constitution enshrines the right to culture. As a result of Section 30 as well as the White Paper on Arts and Culture, it was necessary to develop legislation in order to create institutions that would ensure that the constitutional mandate of the DAC is achieved (Arts and culture, 2006b). The NHRA (South Africa, 1999) was developed to achieve this and it is also the body of legislation most applicable to the scope of this research. The legislation will be discussed more fully once the role players (relevant to the scope of this study) involved with the implementation of the NHRA have been addressed.

Resorting within the DAC are various branches, each with their own responsibilities in relation to executing the mandate of the department. There is no specific section within DAC tasked with addressing heritage crime. The Branch for Cultural Heritage and Preservation is responsible to ‘[d]evelop and monitor the implementation of policy, legislation and strategic programmes for the identification, conservation and promotion of cultural heritage ...’ and it was found of all the different sections that they fit the scope of the study best. Resorting under this branch is the Directorate: Heritage Research, Policy and Legislation (Arts and culture, 2006a). The Deputy Director for International Conventions and Legislation, Ms Reinette Stander, who is part of the Research Directorate, was interviewed for this study.

The Ministry and therefore in his capacity the Minister of Arts and Culture remains responsible for the protection of arts, culture and heritage in South Africa (Standar, 2012). The department (DAC) is the executive arm of the Minister and therefore has the responsibility to ensure the preservation of arts, culture and heritage but also at the same time to ensure that arts, culture and heritage are accessible to the public and that people have access to their own legacy and their own heritage. It is also important that people are educated and aware of the role that arts and culture fulfils in the daily lives of South Africans (Standar, 2012). This perspective has been emphasised in the White Paper on Arts, Culture and Heritage (Department of Arts and Culture, 2006).

The role of the DAC in terms of the management of heritage resources and how heritage crime is dealt with, was elaborated on. The Department of Arts and Culture plays an overseeing role in managing heritage resources and addressing heritage crime because the Department has its own executive arm which is the South African Heritage Resources Agency (SAHRA). The NHRA provides that the various professionals appointed under

SAHRA go out into the field and these professionals are responsible for heritage management such as the issuing of permits and similar related issues. SAHRA staff also assists the police when investigations need to be done when heritage objects are stolen (Stander, 2012).

To this effect, the Minister of Arts and Culture noted that South Africa, like many other countries, was also facing the international scourge of art theft and the illegal traffic in cultural property. The South African government became a signatory to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and was at that time in the process of becoming a signatory to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Jordan, 2007). Both of these conventions were discussed at length in chapter 3 and will therefore not be dealt with again.

It is within Section 4(d) of the NHRA that SAHRA was established as the executive arm of the Department of Arts and Culture and therefore attention will be given to this body as being the statutory body responsible for the management of heritage resources of South Africa.

#### **4.2.2 The South African Heritage Resources Agency (SAHRA)**

The South African Heritage Resources Agency (SAHRA) established under the National Heritage Resources Act 25 of 1999 (South Africa, 1999b) is a statutory organisation and is responsible for the protection of the cultural heritage of South Africa (South African Heritage Resources Agency, 2007).

The mission of SAHRA, as custodians of the national estate of South Africa is:

- To coordinate and monitor the identification of the national heritage resources;
- To set norms and standards and maintain the management of heritage resources nationally;
- To encourage cooperative conservation of the national estate;
- To enable and facilitate the development of provincial structures;
- To control export and import of nationally significant heritage resources;
- To develop policy initiatives on the promotion and management of the heritage;
- To nurture a holistic celebration of the history;

- To set national policy for heritage resources management, i.e. formal protection, general protection and management; and
- To develop an integrative and interactive system for the management of national heritage resources (South African Heritage Resources Agency, 2007).

Focusing on the scope of the study and the specific research questions asked, the inquiry directed at SAHRA was only relevant to moveable and tangible heritage objects and matters relating thereto. The Manager of the Heritage Objects Unit of SAHRA, Ms Regina Isaacs, was interviewed. Together with a staff compliment of two other people they are responsible for the management of all the declared heritage objects from a national perspective.

Section 51 of the NHRA contains the legal framework with which to address heritage-related crimes. The Act makes provision for several offences that may be perpetrated against the heritage, none of which form part of this study. The theft of heritage objects (per se) in South Africa is not specifically addressed in the NHRA, but it is problematic and thus requires specific focus (Isaacs, 2011).

*... the act has a legal framework with which to deal with heritage related crime ... in relation to regulation of the movement but obviously there is also theft of heritage objects ... which is the big one* (Isaacs, 2011).

The same aspect was addressed in 2006 by the Minister of Arts and Culture who emphasised the importance of international conventions in relation to combating art crime and the illegal traffic of cultural property (Arts and Culture, 2006a). South Africa accepted the 1970 UNESCO Convention on 18 December 2003. By 2013 ratification of the 1995 UNIDROIT Convention, although underway, was not completed yet.

It was highlighted during the interview that in terms of the theft of heritage objects the NHRA stipulates that all members of the SAPS and Customs and Excise officials are deemed heritage inspectors. While this meant that they are to work closely with SAHRA and that there should be cooperative governance between these institutions, this is often not the case because the mechanisms to do this are not in place. SAHRA have attempted to establish such a working relationship on several occasions; without notable success. In her opinion these

people receive training to undertake all the aspects that their work environment called for so they (the SAPS and the Customs officers) should address these crimes (Isaacs, 2011).

From the interview data it became clear that while there is adequate legislation, the impact of the legislation fell short in relation to implementation especially in respect of the theft of heritage objects. Some success had been experienced with the cooperation of SAHRA as part of the NALEH structure established by the SAPS but the cooperation with Customs was less successful. There were a few customs officials that alerted SAHRA from time to time when they suspected that items were being illegally exported from the country but the relationship was not being sustained (Isaacs, 2011).

The size of the Heritage Objects Unit was discussed and Ms Isaacs explained that since the financial implications of the legislation were never fully calculated it had a negative impact on the ability of SAHRA to function fully in terms of its legislated mandate (Isaacs, 2011). One such mandate not complied with, is in terms of Section 32(14) of the legislation to 'make regulations relating to the registration of dealers in heritage objects and the control of trade in heritage objects'. This aspect is important as it is one of the obligations which the South African legislature is to comply with in terms of the 1970 UNESCO Convention (discussed in paragraph 3.6.1 chapter 3) (Isaacs, 2012b).

The NHRA provides for the compilation and maintenance of an inventory of the national estate in Section 39(1) (South Africa, 1999:66). While SAHRA did commence with this process in early 2000s, it was not completed. Over 6000 heritage resources were digitally photographed, identified and described during the first phase of the initial project and these include the collections housed at Tuynhuys, Parliament, Groote Schuur Estate, Bryntirion Estate and the Union Buildings (Jordan, 2007). In a criminal case (such as theft) the onus is on the state is to prove beyond reasonable doubt that an accused (such as a thief) is criminally liable for the commission of an offence (such as stealing a painting from a museum) (Joubert, 2010:33). For the museum to prove ownership they will have to provide the same level of proof and one of the best ways to do this is by having a well documented and up to date inventory of their collections, which must include a good quality photograph of the item/s in question.

The theft of approximately R50 million ceramics and other heritage items from the Groot Constantia Manor House in 2012 highlights this (Iziko Museums of South Africa, 2012). The

circulation of the stolen items is not problematic since photographic images of all the missing pieces are available (Iziko Museums of South Africa, 2012). It is therefore possible to circulate an alert about the theft through INTERPOL who will send out an alert to its almost 190 member countries across the globe. This system of notification will make the re-sale of these items more difficult for the perpetrators (Bendeman, 2012).

An aspect not directly applicable to the scope of this study but relevant if the stolen heritage object is taken across international borders, is the issue of repatriation. SAHRA is responsible in terms of Section 13(2) (iv) to investigate ‘the repatriation of heritage resources which have been removed from South Africa and which SAHRA considers to be significant as part of the national estate...’ (South Africa, 1999b:26). This aspect is causing tension between SAHRA and the NHC. The NHRA makes it clear that it is the role of SAHRA to address issues of repatriation, but it has become a grey area because the National Heritage Council Act 11 of 1999 (South Africa, 1999a) also makes provision for repatriation. For clarity, restitution is the return of heritage objects to a South African community which are held by a custodian in South Africa, while repatriation is the return of heritage objects from outside the borders of the country.

*[R]egarding repatriation, now that is a little bit of a grey area because the National Heritage Council Act also makes provision for repatriation and in the SAHRA act there is reference made to it as well (Isaacs, 2012).*

Several examples were cited where SAHRA, together with the police and INTERPOL, cooperated at an international level to ensure the return of items that had been stolen and taken abroad for resale (Isaacs, 2011). This, however, occurred in a legislative vacuum pertaining to repatriation before the NHRA was promulgated. Ms Isaacs pointed out that a legislative review was underway and that it is believed that this review would address some of the ambiguities and overlaps being experienced in the legislation (Isaacs, 2011; Isaacs, 2012b).

Since there is some uncertainty about the role of the National Heritage Council (NHC) as ‘overseer’ of all the heritage institutions, this aspect was also addressed in the interview as it was clearly impacting on the heritage management arena. The understanding of the role of the NHC is that they were supposed to be an umbrella body for all heritage-related institutions and the chairpersons of each of these institutions would represent their institutions

on the council of the NHC. The NHC annually receives a large budget and then those institutions that have seats on the NHC have to compete for those financial resources. This creates tension within the heritage ranks (Isaacs, 2011).

To gain further clarity of the role of the NHC and whether they address the issue of heritage crimes as defined for the scope of the study, an interview was conducted with the Heritage Manager of the NHC.

#### **4.2.3 The National Heritage Council (NHC)**

The interview with the General Manager: Heritage Management, Adv Thendo Ramagoma, focused on functions of the NHC as this spoke directly to how and where the NHC may make an impact (Ramagoma, 2011). The NHC is one of 29 institutions or public entities under the DAC and their key mandate is derived from Section 4 of the National Heritage Council Act 11 of 1999 (South Africa, 1999a) and the functions of the NHC are derived from Section 11 of the same Act (Ramagoma, 2011).

The NHC have mandates in a number of areas. The first mandate that sets them apart from SAHRA is that they advise the Minister of Arts and Culture on policy issues. The second area is funding of heritage initiatives, and the third area is to create awareness and to educate the public on heritage. Area number four is to promote research focusing particularly on Indigenous Knowledge Systems (IKS) and the fifth area relates to core funding of the heritage sector. He opined that this area is the most difficult to implement because the NHC has to advise the Minister on determining core funding for sister organisations like SAHRA. There are bound to be hostilities because of this aspect (Ramagoma, 2011). The aspect of hostilities was also raised by the SAHRA participant. The sixth area of their mandate focuses on determining ways of effecting the restitution (*repatriation – BB*) of heritage resources that are abroad, those that are either in private hands or are being held by foreign states or governments beyond the borders of South Africa (Ramagoma, 2011).

The focus of the NHC is mainly on knowledge production within these mandated areas. The NHC situate the policy documents and position papers forwarded to the Minister of Arts and Culture on research that has been done on a given issue (Ramagoma, 2011).

In terms of the repatriation of heritage resources, SAHRA is in terms of the NHRA mandated to take custodianship of tangible heritage objects that are abroad and to repatriate them to South Africa. The mandate of the NHC in this regard is the provision of a policy framework. The remains of Sarah Baartman were repatriated to South Africa for reburial, in the absence of a policy. Other items were also brought back to South Africa, all of which left the country illegally; but in these instances South Africa had to purchase the items at very exorbitant prices. The NHC are in the process of developing a policy to address repatriation of heritage objects that are abroad (Ramagoma, 2011). This aspect may be simpler to address, were South Africa to ratify the 1995 UNIDROIT Convention.

Ramagoma (2011) addressed the issue of stolen heritage objects that find their way through illegal means across the borders of South Africa. The ports of entry and exit from South Africa have no people who inspect what leaves; nobody has been sanctioned to do this specifically, and then to issue a permit to take heritage objects out of the country. These objects leave the country and are lost to South Africa. When they are found, often South Africa must buy them back at exorbitant prices (Ramagoma, 2011). While the NHRA makes provision for customs officials to be heritage inspectors (primarily for this purpose) this part of the legislation has not been implemented to any extent (Isaacs, 2011).

In relation to heritage crime per se, Mr Ramagoma opined that this is a gap in their (NHC) strategic focus in terms of addressing criminal activities in the area of heritage objects and management. While the National Heritage Council Act 11 of 1999 (South Africa, 1999a) (NHCA) does address the repatriation it is silent on crime (theft of heritage items). It just says that the NHC is to advise the Minister on repatriation, but it does not say how they are to do it. The NHRA, however, tells SAHRA to effect repatriation, but it does not say how or with whom to liaise to do this (Ramagoma, 2011).

In terms of the NHCA, the NHC is the overarching body for the declared cultural institutions such as SAHRA. The NHCA directs that every chairperson of declared cultural institutions (such as SAHRA) is a member of the Council of the NHC. By implication the chairpersons of the declared heritage institutions are therefore subordinate to the Chairperson of the NHC. This situation is compounded since the legislation prescribes that the NHC must coordinate all the entities that are involved in heritage management (represented by their Chairperson on the Council). The legislation is phrased in such a manner that conflict is being proliferated because of competition (Ramagoma, 2011).



If the history of heritage legislation and management is studied, when the White Paper on Arts and Culture was developed in 1996, the drafters advocated for the creation of the NHC as a super overarching body under which all the other entities would resort in some way. In the resultant legislation (NHCA) this direct reference was not made and as a result the NHC is seen by the members of Council as an equal entity. Entities like SAHRA thus became a sister organisation, under no obligation to report to the NHC as they report to the Minister (Ramagoma, 2011).

From the preceding discussions the tension between SAHRA and the NHC are clear. The most prominent issues relate to the mandate of repatriation, developing policy around repatriation, the allocation of funding and the coordinating /overseeing role of the NHC. It is believed that the revised NHRA will address these issues.

SAHRA is mandated by the NHRA to manage and protect the heritage resources of South Africa. They cannot address all of the relevant issues. Several non-governmental bodies (NGOs) became actively involved in the heritage sector. Some have existed before the establishment of SAHRA. Each one of these entities is working in its own manner to assist SAHRA to realise its mission, either directly or indirectly.

#### **4.3 NON-GOVERNMENTAL ORGANISATIONS ADDRESSING HERITAGE CRIME ISSUES**

The NGOs that are relevant to the scope of this study and will therefore be discussed in this chapter, are: the South African Chapter of the International Council of Museums (ICOM:SA); the South African Museums Association (SAMA); and the National Forum for the Law Enforcement of Heritage Related Matters (NALEH). The presidents of ICOM:SA and SAMA and the co-chair of NALEH were interviewed about the role of their organisation in addressing heritage crime in South Africa. Empirical data obtained during these interviews will therefore supplement the literary data presented.

##### **4.3.1 The International Council of Museums: South Africa (ICOM:SA)**

As highlighted in chapter 3, the International Council of Museums (ICOM) is considered to be one of the key stakeholders in the international arena in addressing the theft of works of art and the illegal traffic in cultural property (Hekman, 2010:3; ICOM Network, 2012). The

South African chapter of ICOM is under the presidential leadership of Ms Rooksana Omar, who is also the Director of the Iziko Museums of South Africa in Cape Town.

An interview was conducted with Ms Omar about the role of ICOM:SA in combating heritage crime in South Africa. She explained that ICOM:SA merely acts as a conduit to inform ICOM Paris if there were to be a spate of thefts taking place in South Africa. Since ICOM:SA is dependent on their institutional representatives to inform them of such incidents, it happens that these institutional members do not inform ICOM:SA of incidents in a formal way. This is a problematic practice because ICOM:SA is then unable to inform ICOM Paris about an incident, since the information was shared in confidence.

The institutions that have suffered loss do not want to tell the press and they do not want anybody to know that things were stolen from their institutions. These institutions will sometimes not even specify whether it is a piece of art or the type of object and they do not want to tell the artist. Thus ICOM:SA has no choice but to respect their privacy as well as their right not to inform others. Therefore if they do not inform ICOM:SA, then ICOM:SA cannot inform ICOM Paris and INTERPOL cannot be informed via ICOM Paris either (Omar, 2011). In the event that they were informed of an incident of theft, the information would be passed on to ICOM Paris. To her knowledge such information had never been received by ICOM:SA.

In 2011, participants to an international ICOM event were sensitised to the existence of the ICOM Red Lists and also about the existence of a core group of people (lawyers) at ICOM Paris who facilitate and negotiate the repatriation of objects to the countries of origin. Representatives were made aware that these resources were at the disposal of ICOM member countries (Omar, 2011). South Africa has to the knowledge of the researcher never made use of this avenue to effect repatriation of objects.

There are no mechanisms on the ICOM:SA website on which to post alerts of stolen heritage items or related issues, largely due to budgetary constraints. They also do not undertake any form of training on security issues or other issues relating to the theft of heritage items from museums or collections. Addressing these issues would in future become a matter of priority for ICOM:SA (Omar, 2011). This concluded the interview with ICOM:SA.

Another NGO that has been active in the arena of museums in Southern Africa and is one of the oldest associations in the country is the South African Museums Association (SAMA).

#### **4.3.2 The South African Museums Association (SAMA)**

In 1923 the Museums Association of the United Kingdom supported by the Carnegie Trust surveyed the status of commonwealth museums in Africa. The report noted that while there were various examples of superb museums, these museums were too isolated to benefit some of the less superb museums. The report suggested that a museums association be created. This led to the creation of a standing committee on state-aided institutions who failed at their first attempt to hold a meeting of museum representatives. The second attempt, which was not only prompted by the Union Government of South Africa and also received sponsorship from the Carnegie Trust, took place in Kimberley on 23 April 1936. There were 22 delegates representing 19 different institutions in Southern Africa (SAMA, 2011).

The South African Museum Association (SAMA) developed over the years and has established branches in Western Cape, SAMA North (Gauteng, North West and Limpopo Province), Eastern Cape and KZN. SAMA developed and published several literary resources aimed at improving the museum services, including *SAMA Code of Ethics* (1979), *Documentation Data Standard* (1987), *Professional Standards: Accreditation handbook for Southern African Museums Education and Communication: guidelines for policy and practices* (1998) and *SAMA Professional Standards and Transformation Indicators* (2006) (SAMA, 2011).

An interview was conducted with the outgoing President of SAMA: National, Mr Ishmael Mbhokodo. Mr Mbhokodo is the Deputy Director: Heritage Management for the city of Tshwane. He described the role of SAMA in combating the theft of heritage objects from museums as an institutional body representing the interests of heritage and museum professionals in South Africa. SAMA plays a significant role in terms of mobilising information and distributing it amongst its members through the SAMA network. Through this network SAMA members are informed of current crime trends of illegal trafficking and also receive information with regard to measures that could be applied to enhance museum security. In 2011 SAMA North held a workshop that addressed this matter and the interest was so overwhelming that the other SAMA regions have asked that the workshop be repeated in their regions (Mbhokodo, 2012).

Museums are regarded as a non-key element of the service delivery sector of the country and only a marginal portion of the provincial budget is allocated to them. Their resources are often limited in terms of what they as museums are able to do. By collaborating through a forum like SAMA they are able to share ideas on enhancing limited resources and providing security for the precious heritage resources that museums are the custodians of (Mbhokodo, 2012).

When asked about the issue of museum security, the participant related that in most cases museums are allocated to unused old government buildings that have not been utilised for some time and then the decision makers decide that it can be a museum, which is not always suitable and as such security measures need to be developed around an existing structure, which is not conducive to sound security practices (Mbhokodo, 2012).

The third and last NGO to be discussed is the National Forum for the Law Enforcement of Heritage Related Matters (NALEH).

#### **4.3.3 The National Forum for the Law Enforcement of Heritage Related Matters (NALEH)**

It was while the researcher was the commander of the Endangered Species Desk of the SAPS that together with several other role players, NALEH was established. NALEH is not a registered NGO but a forum where role players meet to share ideas, experiences and information.

NALEH is viewed as the South African counterpart of the International Committee on Museums Security (ICMS) which operates under ICOM as an international committee. The ICMS was discussed at length in chapter 3 (see paragraph 3.8.1). NALEH was selected primarily because of the role it fulfils in the heritage sector, especially in relation to the identification of crime trends, its focus on security issues, awareness creation of heritage crime and its coordinating function among museums.

The Endangered Species Desk (ESD) of the South African Police Service (SAPS) initiated the National Forum for the Law Enforcement of Heritage Related Matters (NALEH) in 2004. Important stakeholders in NALEH include the Directorate for Priority Crime Investigations (DPCI) of the SAPS (formerly the ESD), the Department of Arts and Culture (DAC),

INTERPOL, National Central Bureau, Pretoria, the South African Heritage Resources Agency (SAHRA), and the South African Museums Association (SAMA). The National Heritage Council (NHC) and the South African chapter of the International Council of Museums (ICOM-SA) joined NALEH in 2011. An interview was done with Mr Dekamper, who is the co-chairperson of this forum.

This forum facilitates discussions and initiatives regarding the fight against theft and illegal trafficking in moveable and tangible South African cultural objects. It also serves as a platform for heritage and law enforcement officials to share information and enhances cooperative governance between role players in the sector. NALEH creates a platform whereby those stakeholders responsible for the preservation of the heritage resources of South Africa (tangible and moveable) and those responsible for investigating incidents of losses/thefts can share open dialogue on related matters. NALEH has no secretariat and depends on the support of the constitutive organisations (Benson, 2012a:2; Dekamper, 2011).

The objectives of NALEH are to:

- Facilitate cooperation between the arts and culture and law enforcements sectors, whether public or private, to fight cultural crime;
- Create awareness of the international conventions and agreements as well as national legislation and policies pertaining to cultural crime;
- Make policy recommendations to government on behalf of the stakeholders regarding cultural crime;
- Gather and disseminate information regarding stolen objects, including the identification of crime trends in the discipline;
- Develop information sources and guidelines for interested and affected parties to fight cultural crime; and
- Provide training to the art and culture sector, the law enforcement sector as well as customs officials to identify and fight cultural crime (Vollgraaff, 2012:2-3).

NALEH, having no formal repository, is in danger of becoming defunct. It will be in the interest of heritage conservation that either the SAPS or SAHRA agree to chair the forum and to make it a part of their structure, albeit in an NGO format.

The DAC, NHC and SAHRA are the government bodies responsible for the management and preservation of cultural heritage and are responsible as the custodians of the heritage of South Africa. They are assisted in this by NGOs such as ICOM:SA, SAMA and NALEH. These bodies undertake their activities within a specific legal framework without which their efforts (collectively or individually) have no legal foundation. The primary South African legislation drafted to protect the heritage resources of South Africa is the National Heritage Resources Act 25 of 1999 (South Africa, 1999b). This legislation will be discussed next.

#### **4.4 THE NATIONAL HERITAGE RESOURCES ACT 25 OF 1999**

Before discussion the National Heritage Resources Act 25 of 1999 (South Africa, 1999b), it is helpful to understand that there are predominantly two opposing views within the cultural property debate which have an impact on the view perpetuated in the legislation developed by any given country (Gillman citing Merryman, 2010:41). These are the views of cultural nationalism (particularism/retentionism) and cultural internationalism (cultural cosmopolitanism/cosmopolitanism) as indicated by Gillman citing Merryman (2010:41) and Nafziger et al. (2010:66).

There is a third view which is the object/context view, which is predominantly the view of archaeologists and ethnographers who argue for the total preservation of sites and objects, as there is great value in studying them *in situ* (Merryman et al., 2007:114). For the purposes of this discussion, which is based on the scope of this study, consideration will only be given to the two opposing views offered by Merryman in Gillman (2010:41) as they both impact on the status of heritage crime in the context of this study.

Gillman (2010:41-42) argues that fundamental to any other discussion pertaining to cultural heritage, the two opposing positions which are found in the debate on cultural property need to be considered. Gillman focuses much of his debate on the scholarly writings by Merryman, an Emeritus Professor at the Stanford Law School who through his research and writing over the past two decades, has shaped the environment where art and the law meet (Borodkin, 1995:408; Gillman, 2010:41-42; Mackenzie, 2005:8; Stanford University, S.a.). The opposing viewpoints of cultural internationalism and cultural nationalism are seen by Merryman as originating from the texts of two important conventions, both drafted by UNESCO, albeit at different intersections in history (Gillman, 2010:41-42).

#### 4.4.1 Cultural internationalism

The first view is that of cultural internationalism or cosmopolitanism. The foundation for this view can be found in the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, known as the Hague Convention (Merryman et al., 2007:114). According to Gillman the Preamble to the 1954 Convention advocates the view of cultural internationalism by the wording contained therein (Gillman citing Merryman, 2010:42, Merryman et al., 2007:65, 114):

*Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;*

*Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection [own emphasis].*

Gillman (2010:42) explains by citing Merryman that the 1954 Convention, in using terms like ‘cultural heritage of mankind’ and ‘culture of the world’ embodies the spirit of cosmopolitanism or cultural internationalism. In so doing, the convention thus provides for a more global interest in cultural property in lieu of a more narrowly focused national interest in relation to the same cultural property. Cultural internationalism or cosmopolitanism endorses the sharing of cultural heritage further afield than the country of origin (Borodkin, 1995:408; Gillman, 2010:42; Nafziger et al., 2010:393-394). Cultural internationalists also believe that such objects act as ambassadors of the country of origin, contributing to the breakdown of prejudice and national parochialism (Bator, 1982:306-308; Borodkin, 1995:408). This view is often found to be the dominant view among market nations.

Nafziger et al. (2010:393) maintain that cultural internationalism actually abuses the term ‘internationalism’ to condone practices which are in contrast with the cooperative and collaborative spirit enshrined in the term ‘internationalism’. They argue that the actual rationale behind this viewpoint is a commercial one.

The second and thus opposing view to cultural internationalism or cosmopolitanism is that of cultural nationalism or cultural particularism.

#### 4.4.2 Cultural nationalism

On the opposing side, cultural nationalism or cultural particularism (retentionism) supports the view that the cultural objects of a nation are to be retained by that nation and therefore this position strongly supports the repatriation of cultural property (Bator, 1982:303; Borodkin, 1995:408; Gillman, 2010:42; Lowenthal, 1997:41; Torsen, 2005:90). Merryman views the content of the Preamble to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property as supporting this stance (Merryman et al., 2007:178). Gillman (2010:43) highlights this by citing one of the eight propositions in the Preamble;

*Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting.*

Bator (1982:303) poses the question whether cultural nationalism might be nothing other than a selfish claim to ensure that the wealth of a country is not dispersed? The same author justifies the stance of cultural nationalism when he argues that claims for preserving the national patrimony of a country are more than just about the monetary value of the item. He says that the ideology for retention goes much deeper than the monetary value because the item has the potential to inspire the creation of similar items; because the item resonates to the soul of the society from which it came and because it helps to foster a sense of belonging (Bator, 1982:305-306). This view is often found among source nations. The relevance of these two opposing positions becomes clear when the national legislation is discussed.

The National Heritage Resources Act 25 of 1999 (South Africa, 1999b) was tabled in Parliament in 1997 as the National Heritage Bill and was accepted as national legislation in March 1999. The NHRA is informed by international legislation and international best practices, more specifically the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the 1970 UNESCO Convention) (Isaacs, 2012a).

Although the NHRA is in the process of being reviewed, the legislation as it stands is considered and discussed (Isaacs, 2012b). Areas which are considered problematic to interpret or ambiguous will be highlighted in the discussion. The NHRA was created with



the intent to develop an integrated framework which would not only facilitate the management, development, participation of and access to the national heritage resources of South Africa, but also to establish the South African Heritage Resources Agency (SAHRA), which along with its Council, would synchronise and advance the management of heritage resources at a national level (South Africa, 1999b). Through the setting of essential national standards SAHRA would ensure the protection of heritage resources of national significance and also control the export of heritage objects which are considered to be of national significance (South Africa, 1999b:2). It is important to note that in terms of protection and the control of movement across national borders, the NHRA is only applicable to items that are deemed part of the national estate and which have been declared as such by SAHRA.

This legislation is divided into three chapters, each of the chapters are made up of different parts which address different aspects in relation to the management of heritage resources in South Africa. A brief overview of the legislation will be provided addressing only those aspects within the legislation that are relevant to the scope of this study or warrant special mention due to their relevance to this study.

#### **4.4.3 Chapter I of the NHRA: System for management of national heritage resources**

Chapter I of the Act is divided into two parts. In part 1 the general principles of the legislation are addressed (Sections 3-10) and in part 2 the constitution, functions, powers and duties of heritage authorities are dealt with (Sections 11-26).

##### **4.4.3.1 Part 1: General principles**

The value of part 1 lies in the comprehensive explanation of the national estate as consisting of heritage resources of South Africa that have ‘cultural significance or other special value for the present community and for future generations’. Section 3(2)(a)-(h) addresses the criteria applicable to immovable heritage such as sites, buildings, structures, settlements, graves and places considered part of the national estate while Section 3(2)(i)(i)-(vii) addresses moveable objects. The legislator provides seven broadly defined categories of heritage resources which might be deemed part of the national estate provided they meet the criteria set out in Section 3(3)(a)-(i) of the Act (South Africa, 1999b:12-14). This is of importance to the scope of this study because items that form part of the national estate are

afforded special protection and are considered inalienable from South African soil (Isaacs, 2012c).

The Act provides another set of categories of heritage objects and provides for the declaration of specific lists or types of objects in Section 32. At first glance these categories are confusing. To facilitate a comprehensive understanding and to inform the discussion in this text, the categories of objects listed in Sections 3(2)(i)(i)-(vii) and 32(1)(a)-(i) of the NHRA as well as the Types of Heritage Objects declared in Government Gazette No 1512 of 6 December 2002 issued in terms of Section 32(5)(b)(i) of the NHRA, were tabulated. The tabulated version provides an overview of objects highlighted for possible protection in terms of the Act (see table 1 on page 106 below). The gazette declaration is done based on the criteria of either age or association to the country (Isaacs, 2012b).

The classifications in the Act were done in this format to ensure that not only specific types of objects were afforded protection but also to ensure that individual objects or collections could be named and then be specifically declared as protected in order to receive an enhanced status of protection. The Mapungubwe collection of artefacts curated at the University of Pretoria is an example of such a collection of objects which enjoy an enhanced status of protection (Isaacs, 2012b). When considering the discussion presented in paragraphs 4.4.1 and 4.4.2 *supra* pertaining to cultural internationalism and cultural nationalism, these specific declarations of protection highlight the cultural nationalistic character of the Act.

In the remainder of part 1, the South Africa Heritage Resources Agency (SAHRA) is established and provision is made for the grading of heritage resources into at least three different levels or three tiers which are Grade I, Grade II and Grade III (South Africa, 1999b:16). The three tier system follows on the example of governance provided for in the Constitution. The Constitution makes provision for three levels of government, which are national, provincial and local government. In the same manner the legislator makes provision for a three tier management of heritage resources namely national, provincial and local.

A Grade I heritage resource is considered to be of special national significance because of its exceptional qualities. SAHRA is responsible for the management of Grade I heritage resources and therefore these objects are managed from a national level. Grade II heritage resources are those resources which are only significant in terms of the province or region from which/in which they are found; they are to be managed by the provincial heritage

agencies. Grade III heritage resources are listed as other resources worth conserving, and their conservation is the responsibility of the local authorities (South Africa, 1999b:18, 20).

#### **4.4.3.2 Part 2: Constitution, functions, powers and duties of heritage authorities**

Part 2 of chapter I of the NHRA addresses the constitution, functions, powers and duties of heritage authorities, how SAHRA is to function, the composition and functioning of the SAHRA Council and the establishment, functioning, powers and duties of the Provincial Heritage Resources Agencies (PHRA) (South Africa, 1999b:26-40). Since the administrative functioning of SAHRA and the council are not relevant to the scope of this study, neither will be discussed.

This concludes the discussion pertaining to chapter one. The discussion will now focus on chapter two of the NHRA, which is also the most important part of the legislation with reference to the scope of this study.

#### **4.4.4 Chapter II: Protection and management of heritage resources**

Chapter II of the NHRA consists of three parts. Part 1 addresses formal protections (Sections 27-32), part 2 addresses general protections (Sections 33-38) and part 3 deals with management issues (Sections 39-47). This is one of the most important parts of the legislation in relation to the scope of this study because it addresses the legal trade in heritage objects.

##### **4.4.4.1 Part 1: Formal protections**

Part 1 of chapter II of the NHRA addresses the formal protection of specifically named heritage resources such as national and provincial heritage sites, protected areas, the heritage registers in which these sites and areas are listed and the protection (and provisional protection) of these heritage resources. In Section 32, which is the latter section of part 1, the legislature explains which items or objects may be declared as heritage objects and then addresses aspects related thereto. As heritage objects are an integral part of this study, it is important to consider how the legislation addresses it.

The scope of Section 32(1)(a)-(i) is relevant to individual objects, collections of objects or a type of object or list of objects. These objects have been expanded from the categories

provided for in Section 3(2)(i)(i)-(vii) and the export of which SAHRA thinks it essential to control (see paragraph 4.4.3.1). SAHRA may in terms of the legislation declare ‘an object, a collection thereof, or a type of object or a list of objects, whether specific or generic’ as a heritage object by notice in the *Gazette* (South Africa, 1999b:52). This was done when Government Gazette, Notice No 1512, was promulgated on 6 December 2002. Therein specific categories of objects were declared which then came under the protection of the NHRA. The removal of these objects from South Africa without an export permit issued by SAHRA is unlawful (Declared heritage objects, 2002).

SAHRA maintains a register in which all declared heritage objects are listed under different parts. In part I of the heritage register different types of heritage objects such as ‘original fabric removed from South African buildings’, are listed. SAHRA may also declare certain types of heritage objects which they consider unique or possibly under threat as specifically declared heritage objects. These will be listed in part II of the heritage register. These items also receive an enhanced status with additional protection in terms of the legislation. This list is available from the offices of SAHRA upon request. In part II of the register specific heritage objects that are listed in the inventory of a South African public museum (or otherwise kept in a secure condition or displayed) are listed and part II B contains a list of other specific heritage objects (South Africa, 1999b:52).

To facilitate a collective understanding of the different categories mentioned in the legislation, Sections 3(2)(i)-(vii) and 32(1)(a)-(i), as well as those items listed in Government Gazette No 1512 dated 6 December 2002, a presentation is provided in table 1 below.

**Table 1 Categories of heritage resources and heritage objects**

Column 1: Section 3(2)(i)(i) – (vii) – national estate	Column 2: Section 32(1)(a) – (i) – heritage objects	Column 3: Government Gazette No 1512 of 6 December 2002
Heritage resources of SA which are of cultural significance (or other special value) to the present community and for future generations MUST be considered part of the National Estate. Moveable objects including:	An object or collection of objects, or a type of object or list of objects, whether specific or generic, that is part of the National Estate and the export of which SAHRA deems it necessary to control, MAY be declared a heritage object, including:	In terms of Section 32(5)(b)(i) of the NHRA (South Africa, 1999b) and its definition in Section 2, the SAHRA hereby declares the list of heritage objects, as fully described below, to be types of heritage objects that are deemed protected in terms of the NHRA and for which a permit in terms of the said Act is required for export from the country. Types of Heritage Objects:
1. Objects recovered from the soil or waters of SA, including archaeological and paleontological objects and material, meteorites and rare geological specimens.	1. Objects recovered from the soil or waters of SA, including archaeological and paleontological objects and meteorites and rare geological specimens.	1. Any archaeological artefact, paleontological and rare geological specimens and meteorites found in SA and its territorial waters and maritime cultural zone; 1.1 SA zoological, botanical and geological specimens that have been <b>in SA for more than 100 years</b> ; 1.2 Antiquities such as coins, utensils, pottery, jewellery, seals, weapons (including firearms) tools and inscriptions that have been <b>in SA for more than 100 years</b> .
2. Objects to which oral traditions are attached or which are associated with living heritage.	2. Objects to which oral traditions are attached and which are associated with living heritage.	2. See 5(f) below.
3. Ethnographic art and objects.	3. See nr 9 below.	3. SA ethnographic art and objects.
4. Military objects	4. Military objects	4. See 1.2 above and 8 and 9 below.
5. Objects of decorative or fine art.	5. Visual art objects.	5. SA items of artistic interest that have been in SA for 50 years or more, including: a) Paintings and drawings produced by hand and in any material; b) Original prints, posters and photographs, as the media for creative activity; c) Original artistic assemblages and montages in any material; d) Works of statuary art and sculpture in general; e) Works of applied art in such materials as glass, ceramics, metal and wood; f) Objects of ritualistic and symbolic significance and personal adornment such as beads, leather or metalwork.
6. Objects of scientific or technological interest.	6. Objects of scientific or technological interest.	6. See nr 9 below.
7. Books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in Section 1(xiv) of the National Archives of South Africa Act 43 of 1996.	7. Books, records, documents, photographic positives and negatives, graphic, film or video or sound recordings, excluding those that are public records as defined in Section 1(xiv) of the National Archives of South Africa Act 43 of 1996, or in provincial law pertaining to records or archives.	7. Manuscripts, books, documents or publications of special interest to SA history and culture that have been in SA for 50 years or more, or that are otherwise deemed of special interest and importance to SA heritage as recommended by the National Archives Advisory Council. 7.1 SA archives, including written records, maps and other cartographic materials, prints, photographs, cinematographic films, sound recordings and machine-readable records that have been in SA for more than 50 years; or that are listed in the national registers of manuscripts, photographs, audio-visual material and oral sources.
-	8. Numismatic objects .	8. SA items of numismatic (medals and coins) and philatelic (stamps and cancellations) interest that have been <b>in SA for more than 100 years</b> .
-	9. Objects of cultural or historical significance.	9. Items relating to South African history, including the history of science and technology, military and social history, as well as to the life of peoples and national leaders, thinkers, scientists and artists to events of national importance.
-	10. Any other prescribed category.	10. Original fabric removed from South African historical buildings
-	-	11. SA furniture, tapestries, carpets, items of dress and musical instruments <b>older than 100 years</b> .
-	-	12. The above exclude any object made by any living person.

From the table it is clear that the descriptions afforded the categories of objects mentioned in column 3 is more specific than those for the objects listed in columns 1 and 2. The description is more specific in terms of general origin, age and geographic origin. In terms of geographical origin, the objects listed in column 3 must either be South African items of specific classification, or have originated from within South Africa or be related to South Africa or be from the territorial waters and maritime cultural zone of South Africa.

In addition, the items must have been in South Africa for periods extending from either 50 years or more or for more than 100 years respectively (column 3 rows 1, 5, 7 and 8). Only one category of item is listed as protected when it is 100 years or older with no prerequisite that it had to have been within South Africa for this period (column 3 row 11). The only prerequisite is that this category has to be South African in design. The inclusion of the time frames ensures that annually heritage is potentially being added to the national estate; making the estate not only dynamic but also an inclusive, self perpetuating system. The register in terms of Section 32(7)(a)(i)-(iii) has been drafted in hard copy format, however it is in the process of being captured electronically (Isaacs, 2012b).

In relation to the legal trade in South Africa, it is only Section 32(14) of the NHRA that provides for regulation in terms of the registration of dealers in heritage objects and the control of the trade in heritage objects may be made by SAHRA. This registration has not been done (Isaacs, 2012b).

The only other legislative requirements pertaining to the trade in heritage objects that was sourced is contained in the Second-Hand Goods Act 6 of 2009 (South Africa, 2009) which will be discussed in the second part of this chapter. This aspect is one of the obligations which South Africa needs to meet in accordance with the terms of the 1970 UNESCO Convention.

Several offences have been created within this part of the legislation. These offences relate specifically to moveable heritage objects. These offences are:

- Section 32(13): No person may destroy, damage, disfigure or alter any heritage object, or disperse any collection which is listed in part II of the register, without a permit issued by SAHRA;
- Section 32(15): It is the responsibility of the owner or custodian of a heritage object listed in part II of the register of heritage objects, to keep the heritage object in good condition and in a secure place;
- Section 32(16): The owner or custodian of a heritage object, listed in part II of the register of heritage objects, must immediately report to SAHRA the loss of or damage to such a heritage object or any part thereof upon discovery of such loss or damage;
- Section 32(17): No person may carry out any work of restoration or repair of a heritage object in part II of the register of heritage objects, without a permit issued by a duly authorised representative of SAHRA;
- Section 32(19): No person may export or attempt to export from South Africa any heritage objects without a permit issued by SAHRA;
- Section 32(20): No heritage object may be removed from South Africa other than through a customs port of entry, and the relevant export permit issued under Subsection (19) or certificate of exemption issued under Subsection (32) must be produced to a custom officer before removal from South Africa is effected or allowed.

The penalties which may be imposed for these offences are listed in Section 51 (South Africa, 1999b:78). None of these contraventions refer specifically to the theft of heritage objects from museums/galleries or any other repository. The only mention relating to theft is that the owner or custodian of a heritage object (listed in part II of the register) must inform SAHRA if the item is lost or stolen. Failure by museums to make such a report to SAHRA constitutes an offence in terms of the NHRA.

The researcher was not able to source any criminal cases that had been filed against perpetrators for contravention of the aforementioned unlawful actions.

#### **4.4.4.2 Part 2: General protections**

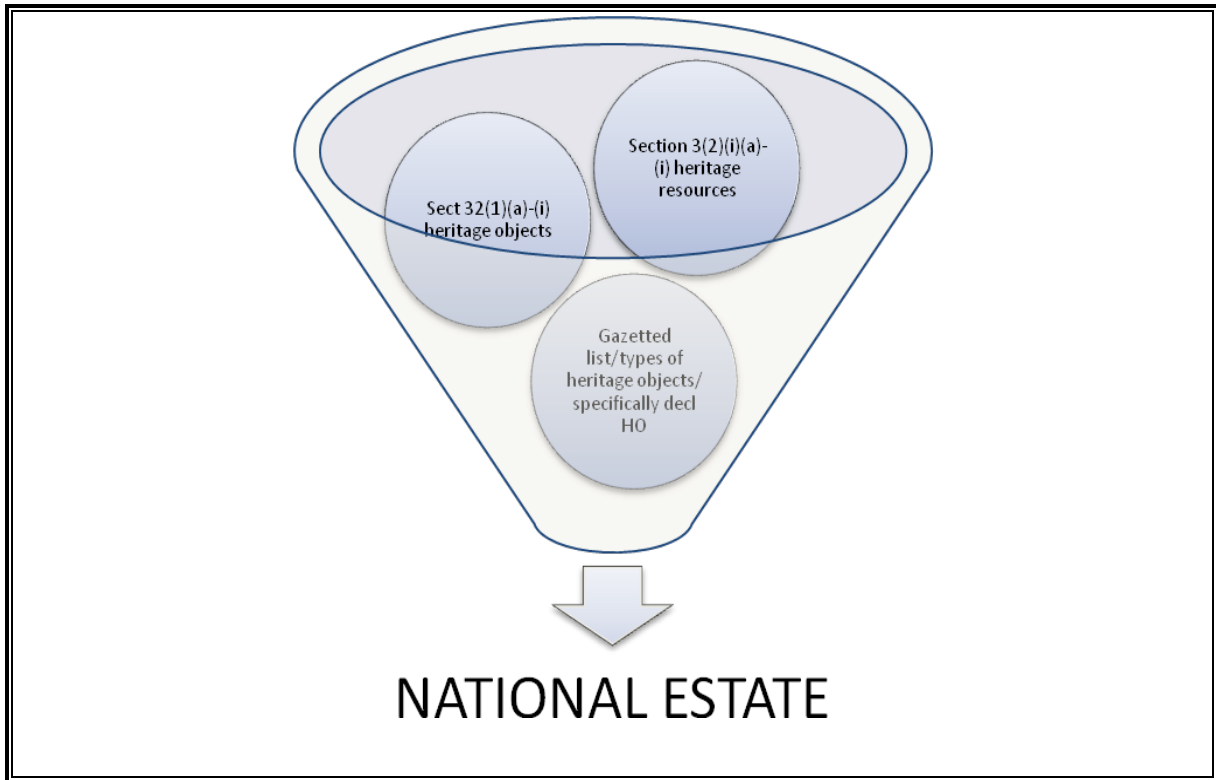
The next section of the NHRA is part 2 of chapter II and it deals with general protections of various classifications of items. These include the general protection of foreign cultural objects being imported into South Africa, the protection of structures, archaeology, palaeontology and meteorites, burial grounds and graves, and public monuments and memorials. Part 2 concludes with the Section addressing heritage resources management. Within part 2, only Section 35 that deals with archaeology, palaeontology and meteorites may be relevant to the scope of the study, provided the items are within catalogued collections in museums.

#### **4.4.4.3 Part 3: Management**

Part 3 of chapter II addresses the management of the national estate. Before it is possible to manage something, it is important to know what is being managed and where it is located. In terms of Article 5(b) of the 1970 UNESCO Convention, South Africa is called upon to draw up and keep up to date ‘...on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage’ (UNESCO, 2006:37).

From the discussion above it is possible to explain that the national estate consists of those items listed in the mentioned parts of the legislation that meet the criteria set out in Section 32(24)(a)-(b). These items must be of outstanding significance because of their close association with South African history or culture, their aesthetic qualities or their value in the study of the arts or sciences. In addition these items are of national importance to such a degree that their loss would greatly diminish the national heritage. This process is illustrated in figure 6 below. This once again demonstrates the cultural nationalistic paradigm of the NHRA.





**Figure 5: Objects that are part of the national estate**

Progress was made at the beginning of the project but nothing was forthcoming from the NIU on the SAHRA website pertaining to specific progress in this endeavour. The only ‘inventory’ listed on the SAHRA website is a ‘List of Heritage Sites’ (SAHRA, S.a.). The inventory has not been completed yet.

This amounts to non-compliance with the terms of the 1970 UNESCO Convention. In terms of the law enforcement perspective, it frustrates the issue from two fronts. In terms of crime prevention, when heritage items are stolen their details are published in media reports and also on several websites such as Art Insure and the INTERPOL Stolen Works of Art website. This will not be possible if the items have not been properly recorded in an inventory, and if there is no photographic image available, which must be accompanied by a description of the item. In terms of criminal prosecuting, the curator or owner of a stolen heritage object must be able to prove ownership (‘beyond reasonable doubt’) of the item in question, which would be simple if there was an up-to-date inventory that contained a comprehensive description of the items together with photographic images. Without an up-to-date inventory, proof of ownership is greatly hampered. To empower SAHRA in this endeavour, the South African Heritage Resources Information System (SAHRIS) was launched in early 2013. The system

is being rolled out in phases and is primarily aimed at ensuring the management of heritage resources in South Africa (SAHRIS, 2013). There are several individual institutions that have progressed in capturing a relevant and up-to-date inventory of their collections. SAHRA, through SAHRIS, will in future be able to coordinate and prescribe national standards for inventories.

It is possible that the failure to cost the NHRA has resulted in a deficiency within SAHRA to effectively undertake all the responsibilities assigned to them in terms of the legislation; all of which is detrimental to the effective management of the national estate of the country. The remainder of part 3 deals with aspects not directly relevant to the scope of this study and will not be addressed.

#### **4.4.5 Chapter III: General provisions**

Chapter III of the NHRA is the last chapter in the legislation and consists of two parts. Part 1 deals with enforcement, appeals, offences and penalties (Sections 48-51) and part 2 addresses miscellaneous aspects not already covered in the preceding text (Sections 52-61). The legislation concludes with the schedule of offences created by Section 52 of the NHRA.

##### **4.4.5.1 Part I: Enforcement, appeals, offences and penalties**

Part 1 of chapter III addresses permits, appeals, appointment of heritage inspectors and offences and penalties. Only Sections 50 and 51 will be discussed. Section 50 deals with the appointment and powers of heritage inspectors.

In terms of Section 50(2) every member of the SAPS and all Customs and Excise officers are deemed to be heritage inspectors. This Section and further Subsections (7)-(11) afford certain powers upon heritage inspectors, which are similar to those granted to SAPS officials in terms of the Criminal Procedure Act 51 of 1977 (South Africa, 1977; Joubert, 2010:295). These powers include the power to enter property and to inspect sites, buildings and objects protected in terms of this legislation. A heritage inspector may also stop and search any vehicle or vessel if they have reasonable grounds to believe that an offence has been committed in terms of this Act (NHRA) and confiscate and detain any heritage resource pending further investigation as well as to stop any work being done under a permit issued in terms of the legislation (South Africa, 1999b:76-78). From interviews done with role players

in sample C and D, no police official or customs and excise officer had made use of this part of the legislation.

Section 51 deals primarily with the offences listed throughout the legislation and the penalties for those offences. Offences relevant to the scope of this study were dealt with in paragraph 4.4.4.1 (i) on page 104. Penalties issued in terms of this legislation depend on the monetary value of the item/s involved and therefore range from a fine (unspecified amount) or a three month prison sentence or both of these or up to a fine (unspecified amount) or a five year prison sentence or both.

Section 51(8)(a)-(b) contains restorative principles which empower the court to impose an order on the person found guilty of an offence under the NHRA to compensate for the loss/damage caused. This is not always feasible as some damage is so irreversible that no amount of money can repair it. This is often the case when bronzes are stolen from museums and galleries; they are destroyed because of the value of the metal and the item can never be recovered.

The last part of the legislation deals with miscellaneous issues.

The preceding discussion addressed the most important aspects pertaining to moveable heritage (which includes those as defined for the scope of this study). This discussion is only in relation to the sound management, effective preservation and the export of these items. When these items are traded (bought and sold) within the borders of South Africa the legislative requirements as set out in the Second-Hand Goods Act 6 of 2009 (South Africa, 2009) apply.

The focus of the discussion for part II of this chapter will be on the commercial aspect of the legal trade along with the Second-Hand Goods Act 6 of 2009.

## **PART II: THE LEGAL TRADE IN HERITAGE OBJECTS:**

### **THE MANIFESTATION OF THE LEGAL TRADE 2006-2010**

Part II of this chapter will address the legislative framework designed to regulate the legal trade in heritage objects as permitted in terms of the Second-Hand Goods Act 6 of 2009 (South Africa, 2009) (hereafter referred to as the SHGA). Heritage objects as defined for the scope of this study will be considered synonymous with second-hand goods, as will be seen from the in-text discussion and definitions provided. In addition the manifestation of the legal trade in Gauteng for the period 2006-2010 pertaining to the extent and nature of the trade in heritage objects, will be presented using quantitative data obtained from participating museums and galleries in Gauteng. Qualitative data obtained from participating auction houses and antique dealers who conduct their business in Gauteng will add insight to the discussion. This perspective will permit the focus to be on what types of objects are being traded and between whom the trade is taking place. The methodological aspects relating to the interviews and data gathering were addressed comprehensively in chapter 2 and will therefore not be discussed again.

Using the Market System Approach as described and applied by Aarons (2001) and Korsell et al. (2006), a framework was designed which illustrates this trade. Based on research by Beckert and Wehinger (2011) a brief synopsis will be provided that explains the differences and similarities between legal and illegal markets. The framework designed in this chapter will be expanded on in chapter 6 which will highlight the interface between the legal and illegal markets.

The auction houses and antiques dealers were selected as a source of understanding how the legal trade functions. This discussion also provides a snapshot view of the level of knowledge relating to the legislative framework (the previous and newly promulgated SHGA) designed to regulate and manage the trade in second-hand goods (heritage objects). When read together, not only does the data give insight into the extent of the knowledge of the legal parameters of the trade, but also the flow of objects from a variety of role players in the commercial field to museums and galleries, and then back into the field.

#### 4.5 THE SECOND-HAND GOODS ACT 6 OF 2009

*Any person who buys stolen goods is as guilty as the person who stole the goods; and harsher sentences will apply to both buyer and thief* (Minister of Police, N Mthethwa, in Fouchè, 2012).

While the Second-Hand Goods Act 6 of 2009 (South Africa, 2009) was assented to by the President of South Africa in March 2009, it was not implemented in its entirety. The Minister of Police highlighted this phased implementation strategy and said ‘[a]s part of the first phase of implementation, certain Sections of the Second-Hand Goods Act, have been put into operation as from 10 December 2011 and 16 January 2012’ (Mthethwa, 2012).

The Act in its entirety became fully operational as from 30 April 2012 in terms of presidential proclamation 28 of Government Gazette 35270 dated 20 April 2012 (Sabinet law 2012). The government took almost a decade to draft this new legislation as the old legislation did not meet the demands of a society that was modern and greatly advanced especially within the technological field (Fouchè, 2012).

At the time of the research ‘old’ legislation, the Second-Hand Goods Act 23 of 1955, was still in force. The 1955 legislation was NOT applicable to auctioneers who were duly licensed but it was applicable to dealers and antique dealers (South African Police Service, 2011). Auctioneers were exempt under the 1955 Act, but they had to be ‘duly licensed auctioneers’. The Act does not elaborate on application for such a licence.

Participant A2 explained that this licence was obtained by the placement of the applicant’s name in a Government Gazette to indicate that the individual is of mind to open an auction business within a specific area. If no objections were lodged based on the moral character of the applicant within a prescribed time, a licence was issued to that person to establish an auction house within that specific geographic area (A2, 2011). When the auctioneers were asked about legislative requirements before they were able to function as an auctioneer, only one of them made mention of being ‘duly licensed’ (A1, 2011; A2, 2011; A3, 2011). This means that at the time of this research (2011/12) not one of these auction houses were ‘duly licensed auctioneers’ and therefore exempt from the provisions of the 1995 Act. It is therefore possible that they were unlicensed traders and therefore trading illegally. It is also

possible that the 'duly licensed' provision under the old Act became obsolete when the need for auctioneers to obtain a licence simply 'fell into disuse' in the early 90s.

One of the auctioneers did highlight that the 1955 Second-Hand Goods Act stipulated certain provisions about making a copy of the identity book of the seller and taking down the particulars of that person (A2, 2011). In the opinion of this participant, even though the 1955 legislation was not relevant to him he did comply with the requirements as listed. This same auctioneer opined that the quality of the auctioneering business had deteriorated in the past decade since any person is able to set up an auction in a shopping mall and auction items off, often with false stories of provenance attached and naive purchasers are swindled out of large amounts of money (A2, 2011).

Primarily the auctioneers felt that the only legislation that informed their business operations is the Consumer Protection Act 68 of 2008 (South Africa, 2008b). The Consumer Protection Act 68 of 2008 does not meet the requirements for the scope of this study as it was not designed specifically with dealers and traders of second-hand goods in mind. It is therefore not addressed.

The commencement of the new SHGA took place in relation to specifically listed Sections promulgated in various Gazettes and this added to the prevalent confusion. In terms of Proclamation 68 of 2011, Sections 15-20, 22(1), 25(4)(b) and (c), 32(1)(l), 32(1)(b) and 32(2) and (3), Schedule 2 and the definition of 'controlled metal' came into operation on 10 December 2011. In addition the maximum penalties provided for in Section 22(1) and 25(4) of the Act came into operation on 16 January 2012. The Act in its entirety (which includes Sections not operational yet) came into effect on 30 April 2012 (Proclamation 28, 2012; Sabinet law, 2012).

Only two antiques dealers were interviewed after Proclamation 68 of 2011 on 10 December 2011 and therefore the Sections promulgated on this date and thereafter would have been applicable to them only. No participants from sample B1 (auctioneers) or B2 (dealers/antique dealers) were interviewed after the Act in its entirety came into effect at the end of April 2012. It may therefore seem superfluous to have conducted the interviews with the participants since the legislation was not applicable to the majority of them. This aspect was addressed with the purpose of determining to what extent the traders, dealers and auctioneers were abreast of developments in relation to legislative changes in their field of trade.

This research was thus done at a time of extensive legislative development in the field of second-hand trading. The legislator had been requesting public comment on the legislation from October 2009 and therefore the ignorance in terms of the scope and application of the new legislation, forthcoming from the majority of participants is disconcerting.

The new legislation provides an effective tool for law enforcement to prevent and possibly reduce property crimes such as theft and the receipt of stolen goods; provided it is communicated effectively to dealers and traders. Based on the premise that thieves steal items/objects to resell later on for money, the legislation is focused on the second-hand goods market which acts as the receivers of the stolen and tainted goods. It did appear as if the majority of dealers in the second-hand goods market are probably legitimate, with a few exceptions. Therefore the SHGA was developed to ensure that the manner in which the dealers and recyclers ply their trade is regulated (Interim operations manual, 2012). This supposedly protects not only the dealer but also the bona-fide purchaser.

Kempen (2009:29) explains that the new legislation does not only aim to limit the trade in stolen goods but also to promote ethical standards of commerce among those who trade in second-hand goods. UNESCO had developed the International Code of Ethics for Dealers in Cultural Property in 1999, aimed at promoting minimum ethical standards for dealers in cultural property (UNESCO, 2006:23; UNESCO, 2011:15-16, 43). The spirit of the code is very similar to that which is found in the aims of the SHGA.

#### **4.5.1 Scope of the Second-Hand Goods Act 6 of 2009**

The SHGA is divided into nine different chapters, each addressing a different aspect of the legislation. Chapter one deals with definitions relevant to the legislation, chapter two with the obligation on traders to register and chapter three addresses the functioning of accredited dealers' associations. Chapter four addresses dealers and chapters five through to seven address various classifications of goods that may be traded; these are motor vehicles, controlled metals and communication equipment (South Africa, 2009:2-4). Chapter eight of the legislation addresses the powers of police officials in terms of the legislation and chapter nine covers the general provisions of the act. Schedules 1-4 referred to in the legislation are listed after chapter nine (South Africa, 2009:4-6).

Only those Sections that are relevant to the scope of the study and are thus directly applicable to the legal trade in heritage objects (as defined for this study) will be discussed.

#### **4.5.1.1 Registration of traders and dealers**

Sections 2(1) and 2(2) of the SHGA indicate that any individual or natural person who runs a business of buying and selling second-hand goods must register as a dealer. In the event of a natural person owning such a business, the enterprise must be managed by a person who is not for any reason disqualified from acting as such a manager (Interim operations manual, 2012; South Africa, 2009:8-10). Examples provided for such dealers include but are not limited to those who deal in scrap metal and jewellery as well as auctioneers (Interim operations manual, 2012). Based on these guidelines art galleries, antique dealers, auction houses and dealers in collectables and vintage items must register as a dealer in second-hand goods. For those who are thus registered, there are specific legislative requirements which they will have to comply with. These requirements are discussed below in paragraph 4.5.1.6. The NHRA provides that SAHRA must register those dealers who trade in heritage objects, creating the possibility for synergy between these two pieces of legislation.

The dealers who recycle scrap metal and related materials were not interviewed for this study since they do not trade in heritage objects per se but merely act as receiver of heritage objects made from metal and which are often stolen goods brought in by runners or thieves.

This argument highlights a situation pertaining to traders which is not specifically addressed in the legislation. In the second-hand goods trade there are two primary groups of dealers. Those that trade from fixed business premises which meet the requirements set by the SHGA and are addressed in the legislation and those who don't trade from such a premises. The latter group trade from their homes, or from their vehicles often frequenting 'antique markets' in small towns under giant marquee tents. These are the so-called 'combi-smouse'.<sup>1</sup> There is a third group of people who provides both the aforementioned groups with goods and they are called 'runners' (Benson, 2010:145; D4, 2011). While the 'combi-smouse' and the runners are clearly running a 'business of buying and selling second-hand goods', the Act is

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<sup>1</sup> The term 'combi' or 'kombi' refers to the old Volkswagen combi-mini-bus type of vehicle. 'Smous' is an Afrikaans term describing vendors/hawkers who sell their wares in remote/rural areas from the back of a vehicle similar to a panel van, hence the name 'combi-smouse' (Benson, 2010:145).



silent about the registration of this type of dealer. It remains to be seen how this group will be regulated since there are no premises from which they trade and their movements will facilitate the sourcing of stolen items in one area and the selling of the same in another area. Moreover, it is unlikely that they maintain records of purchases and sales of any sort required in terms of the SHGA.

In chapter 10 of the SHGA the legislator provides that any registered second-hand goods trader who at the commencement of the act was trading will have three months to apply for re-registration under the new Act.

In terms of the 1955 Act, dealers had to apply for registration every year. The new SHGA (South Africa, 2009) provides that registration is done every five years and that re-registration must be done between three to six months before the expiration of the current registration. This time frame may be problematic in some instances where expiration (under the old Act) is less than three months away. But it is assumed that the principles of fair administrative action will be duly applied in such situations and dealers will not unnecessarily be prejudiced (Interim operations manual, 2012).

When considering the definition of goods and second-hand goods in terms of the SHGA (see discussion in paragraph 4.5.1.2 below) it is clear that objects being traded by auction houses, art galleries, museums and antique dealers/dealers fit this description and these institutions/dealers will have to register. The Act is silent in terms of galleries and museums. Museums do not trade in the strict sense of the definition prescribed in the SHGA as 'carrying on a business of buying or selling'. When museums purchase or acquire heritage objects it is not done with the purpose to sell the items/s but rather to conserve, preserve and educate (paragraph 4.6.1.2). The assumption is made that museums will be exempt from the Act in terms of registration as a dealer.

The trade figures for museums and galleries were quantified for the period 2006-2010 (see paragraph 4.7.1) and the auction houses and antique dealers were asked about trading practices such as who they buy from and to whom they sell. From the data gathered it is clear that auction houses, antique dealers and galleries are 'carrying on a business of buying and selling' and will have to register in terms of the Act.

The SHGA also specifies that dealers may only sell to other registered dealers. This results in an interesting situation presenting itself as trade in heritage objects takes place between auction houses and galleries, as well as with museums. This is elaborated upon in the discussion below on the legal trade. Thus while auction houses will have to be registered in terms of the Act, they may only trade with other registered dealers. It remains to be seen how this will impact the trade with museums, commercial galleries and possibly runners?

Galleries trade primarily in new goods but they also trade in second-hand items and must register in terms of the Act. The Act does not mention this specific type of trader; it is believed that considering the definition given by the Act for dealers and goods, galleries are also affected. It is an important aspect to address and resolve as it impacts on who registered dealers may and may not trade with.

Having established who must (should) register to trade, consideration will be given to what the SHGA deems as second-hand goods and may therefore be traded.

#### **4.5.1.2 What can be classified as second-hand goods?**

As foundational to the discussion on second-hand goods, the definitions offered for this category in the SHGA were compared with the following categories of items relevant in this study:

- Items listed in the definitional scope of this study (paragraph 1.10.1 and 1.10.2);
- Items listed as stolen by the participating museums and galleries (paragraph A, B and 5.2.1.3 on pages 161-162); and
- The legislative definition ascribed by the NHRA to ‘types of heritage objects’ (in table 1 on page 106).

Correlation was found between these categories and the following definitions addressed in the legislation: ‘antique’; ‘controlled metal’; ‘goods’; ‘household equipment’; ‘precious metals’; ‘second-hand goods’; ‘scrap metal’; and ‘valuables’ (South Africa, 2009:6-8).

While the definitions are mostly well structured, some of them are unclear. Discussion in the next section will be complemented by qualitative data gathered from antique dealers and auctioneers as well as literature.

## **A: Antique**

The Act describes antiques as ‘...goods representing a previous era in human society and which are collected or desirable because of age, rarity, condition, utility or other unique features’ (South Africa, 2009:6).

The international norm for an antique is an item older than 100 years (A1, 2011; A2, 2011; A3, 2011; D2, 2011). The Gazetted list of ‘Declared Types of Heritage Objects’ in terms of the NHRA specifies that antiquities are to have been in South Africa for longer than 100 years making them by default older than 100 years. Such items may be coins, utensils, pottery and jewellery among other things (Declared heritage objects, 2002). The definition stated in the SHGA is a contradiction of that which is stated in the NHRA as well as what is an internationally accepted standard. It is possible that the application thereof could have a negative impact on the antiques market in South Africa.

Lambrechts is of the opinion that the definition is subjective and might lead to problematic situations when the issue of whether an item is an antique or not is of relevance (Lambrechts, 2009:58). Participants A1 and D2 who have been in the auctioneering and the antiques trade for close to seven decades collectively concur (A1, 2011; D2, 2011). This viewpoint is supported by participants A3, D1, D3 and D4 (A3, 2011; D1, 2011; D2, 2011; D3, 2012; D4, 2011). This aspect will again be discussed when accredited dealers’ associations are discussed.

## **B: Controlled metal and**

## **C: Precious metals**

The Act defines controlled metal as ‘...any metal contemplated in Schedule 2’. In the SHGA Schedule 2 refers to controlled metals as ‘[c]opper, aluminium, zinc, chrome, lead, white metal, nickel, tungsten, tin, ferrovandium, ferrosilicon, ferrochrome, brass, bronze, cobalt and precious metals as defined by the Precious Metals Act, Act 27 of 2005 or any article consisting wholly or principally of any of those metals’ (South Africa, 2005; South Africa, 2009:6, 38).

Lambrechts (2009:59) highlights this section as having further potential to create confusion, because all of the listed metals (Schedule 2 metals) are already covered in the definition for ‘goods’. The legislation therefore addresses these metals on two separate sections, in two different definitions. The reference to ‘precious metals as defined in the Precious Metals

Act' should perhaps have read 'wrought precious metals' (worked precious metals) because this is followed by the phrase 'including any article consisting wholly or principally of any of those metals'. This implies that the metal has been fashioned into something and it is not possible to fashion unwrought metal into something such as jewellery. This confusion is compounded when considering the portion of Schedule 1 that refers to 'jewellery, including any unwrought precious metal...'.

Lambrechts' (2009:59) concerns about this specific definition do not end here. In Schedules 1 and 2 of the SHGA reference is made to the Precious Metals Act as being Act 27 of 2005. This is incorrect since the Precious Metals Act is actually Act 37 of 2005. The SHGA does however refer to the correct version of the Precious Metals Act in Section 25(4)(a)(ii) (South Africa, 2009:24, 38).

International research as well as local research has shown that the primary rationale why sculptures are targeted is because of the value of the metal, be it brass, copper or bronze. It is very seldom that a metal item such as a sculpture is stolen because of who the sculptor is (was) (A1, 2011; Benson, 2010:146; Charney, 2009:109, Conklin, 1994:142; D2, 2011). The same can be said for jewellery which is targeted for the precious metal and stones.

The theft of the Mendelssohn diamond ring from Parliament in Cape Town illustrates this. The researcher was the investigating officer in the case in 1999. The original thief (a cleaner who worked in the building that housed the Mendelssohn collection) stole the ring but did not have a ready buyer (fence). The diamond had a distinctive engraving of 'S' and 'M' engraved into it, making it easily recognisable and therefore very difficult to sell. The thief sold the entire ring to a second-hand dealer in the Cape for a small amount of money. From there the diamond passed through close to eleven sets of hands before an arrest was made and the diamond was seized in Gauteng during an undercover police operation. Only the diamond was recovered; the gold had been sold to a dealer in Cape Town and the diamond had been brought to Gauteng in the hopes of finding a buyer (Van Tonder, 2000; Leviev-sawyer, 2000). In this instance the ring was stolen because of the value of the metal and the diamond.

#### **D: Goods**

Goods are defined in terms of the SHGA (South Africa, 2009:6) as '... any of the goods specified in Schedule 1, but does not include firearms or ammunition as defined in the

Firearms Control Act 60 of 2000 or clothing' [own emphasis]. Schedule 1 goods as defined by the SHGA includes 'Jewellery, including unwrought precious metal as defined in the Precious Metals Act, 2005 (Act No. 27 of 2005) [*should read Act No. 37 – BB*], ... Household and office equipment; ... Any controlled metals, or wrought article, or any article or substance consisting wholly or principally of one or more of such metals; ...Antique goods; ... Valuables; ...Books' (South Africa, 2009:38).

In this portion of the SHGA, the confusion is around the exclusion of clothing in the original definition of 'Goods', and then again the inclusion of clothing because it forms part of the definition of 'household and office equipment'. Hence it is not clear whether clothing is included or actually excluded. In addition while reading the definition of the term 'Goods' it is important that this is read together with Schedule 1 and the items listed in Schedule 1 for which definitions are supplied in section 1(1) of the Act (Lambrechts, 2009:59).

#### **E: Household and office equipment**

The SHGA provides that household and office equipment includes '... communication equipment, electric and electronic equipment and appliances, electronic software, furniture, gardening equipment, tools, books, valuables, clothing and works of art' (South Africa, 2009:6). As mentioned in paragraph D above, and now contextualised at the hand of the definition, it is strange that clothing is mentioned in the definition of 'Goods' (in terms of its exclusion) but is mentioned again as a sub-category of goods in terms of its inclusion. Does this mean the SHGA is relevant to military uniforms from World War I, stolen from a museum exhibition or not?

The understanding of works of art is self explanatory. This is an important inclusion in the new Act since 'household and office equipment' was excluded from the definition of 'Goods' in the previous Second-Hand Goods Act, causing that Act to lose much of its sting (Lambrechts, 2009:60).

#### **F: Second-hand goods**

The legislator defined second-hand goods as '... goods which have been in use by a person other than the manufacturer or producer thereof or a person dealing therewith for such manufacturer or producer in the course of business, but does not include goods with a value

of less than R100'. The definition is straightforward but it must be read together with the definition for the term 'Goods' in the SHGA (South Africa, 2009:8; Lambrechts, 2009:61).

#### **G: Scrap metal**

Parts of bronze statues and monuments are sometimes broken off and the pieces sold to scrap metal dealers. Scrap metal in the SHGA is defined as '... any used, broken, worn out, defaced or partly manufactured goods made wholly or partly of non-ferrous or ferrous metal, lead, or zinc or any substance of metallic waste or dye made of any of the materials commonly known as hard metals or of cemented or sintered metallic carbides' (South Africa, 2009:8). It is difficult for dealers to determine the origin of pieces of scrap metal which are used, broken or worn out and they may end up purchasing parts broken off monuments and statues.

#### **H: Valuables**

This term is defined in the SHGA as '... personal possessions that have a significant monetary value' (South Africa, 2009:8). What may cause confusion is the phrase 'significant monetary value' as it is subjective. Lambrechts posed the questions of whether the rugby ball used in the final match of the 1995 Rugby World Cup Tournament, which has been autographed by all the players in the Springbok squad as well as Nelson Mandela, may be considered to have significant monetary value (Lambrechts, 2009:61). It has never been sold, so how will this value then be calculated? Often the value of an item can only be determined at the hand of what the market is willing to pay for it at a given time. The legislature is also not clear on the meaning of the term 'significant' in terms of monetary value. Who will decide the scope of the term significance? These questions highlight the problematic nature of determining who gets to decide the importance or significance of something.

The commotion caused by the 'Hail to the Thief II' exhibition in South Africa in 2012 is a case in point. Who gets to decide what is significant and what not, remains to be an issue (Hlangane, 2012; Mosomane & Sapa, 2012; Myeni & Mosomane, 2012; Smith & Bega, 2012).

#### **4.5.1.3 Licence renewals**

Knowing who must register and what articles are deemed as second-hand goods contributes to the overall understanding of the SHGA. The Act further describes how registration takes

place and matters related to registration such as the termination thereof and renewal. Under the old legislation, second-hand dealers had to renew their licences annually, which caused a major administrative burden on the police and resulted in a backlog and many traders having to wait for long periods for their renewal to pass through the system. In the waiting period, such traders were not permitted to conduct business (Kempen, 2009:28).

The new Act provides for re-registration every five years and sets a timeframe for the renewal of applications to be made. The dealer will have to prove that he complied with the provisions of the Act and if the application is made at least 90 days before the current licence expires, then the dealer may trade until the application has been decided (Interim operations manual, 2012). This amendment is an improvement on the old system.

#### **4.5.1.4 Disqualification from registration**

An important part of the legislation is contained in Section 14(1)(a)–(f) and 14(2)(a)-(c). This deals with the circumstances under which persons or natural persons may be disqualified from registering as a dealer. This issue was highlighted by participants A1 and A2 when they mentioned that any person can conduct business as an auctioneer, there were no prescriptions in this regard, while in the early 1990s a person wanting to be an auctioneer had to be duly licensed to do so. The public were invited to list objections if there was proof that the person applying for a licence was not an honest and sound person. If the applicant was an unscrupulous individual he would not be awarded a licence to be an auctioneer (A1, 2011; A2, 2011).

The licence was also only for a specific area. Today any person can pitch a tent and auction off paintings and carpets and say about the provenance of the items whatever they like. Tomorrow they can do the same in Durban and the next day in Cape Town. This often results in nefarious activities taking place. The participating auctioneers felt that this situation was untenable and that it should be rectified and then better regulated (A1, 2011; A2, 2011). It is believed that the SHGA is a step in the right direction to achieving this. It will be interesting to note how the police in the various station areas (precincts) are going to address this phenomenon, in light of the new Second-Hand Goods Act.

#### **4.5.1.5            Functioning of accredited dealers' association**

The SHGA provides that where professional dealers' associations are in existence, such as the South African Antiques Dealers' Association (SAADA) and the South African Institute of Auctioneers (SAIA), they do the compliance monitoring of dealers who are registered members of their respective associations. Such an association will have to apply for accreditation and this will only be given subject to certain criteria. Such criteria may relate to aspects in relation to 'trustworthiness and integrity, capacity to perform functions in terms of Sections 16-20 of the Act and capacity to advance the purposes of the Act' (Interim operations manual, 2012; Kempen, 2009:29). When a dealer is a member of an accredited dealers' association, that dealer will be exempt from certain provisions in the Act as published in a Government Gazette. The dealer must have a copy of this exemption in terms of Section 5(2) of the Act (Interim operations manual, 2012).

None of the participants from sample B1 are members of an association relevant to their trade. The auctioneers interviewed opined that the SAIA did not meet their requirements since they consider themselves a niche group specialising in fine arts. In addition, participant A2 was of the opinion that because just anybody can join the SAIA, it downgraded him as a business because he would be listed in the directory next to an unscrupulous auctioneer and be painted with the same brush (A1, 2011; A2, 2011; A3, 2011).

From the group of antiques dealers only one was a member of SAADA, which is a very closely defined association and dealers joining must meet certain select criteria such as only dealing in antiques; objects older than 100 years. It will be interesting to see if the definition of an antique provided in the SHGA will have an impact on how SAADA run their association and who they permit to join. The majority of the antiques dealers said that they were not members of SAADA because of its focus being too narrow and the items traded too high end (D1, 2011; D3, 2012; D4, 2011; D5, 2012). This will possibly be the first problematic situation caused based on the definition of an antique as stipulated by the Act or it may result in the establishment of another association for dealers.



#### 4.5.1.6 Record keeping

Similar to the previous Act, under the new SHGA dealers must keep a record of all their transactions which includes all acquisitions and disposals. Section 21(1)-(7) sets out how such a register is to be drafted and how it should function.

While the Act does not specify exactly what information must be captured in the register, it does provide a minimum requirement. The register must capture at least the following:

- Details pertaining to the identity of the person from whom the goods are being purchased, which must include;
  - Full name/s, contact telephone number/s and physical address;
  - How the identity of the person was verified (identity book/drivers licence);
  - The identity number of the person.
- A description of the goods being purchased which must include some distinguishing mark/s or serial number;
- Price the dealer paid for the item;
- The number affixed to the item must correspond with the register;
- Name and signature of the person who purchased the item on behalf of the dealership; and
- Other details of the purchase transaction and particulars of the sale or other manner of disposal of the item (particulars to include date and time and in the event of sale the particulars of the purchaser) (South Africa, 2009:20).

The Act also makes provisions for a dealer to either have only one register into which all purchases and sales must be entered or the keeping of two separate registers, one for sales and another for acquisitions (South Africa, 2009:20). A very important aspect in relation to the register is that a copy must be made of the identity document of the person selling the item (in whatever form the identity document is presented). This will imply that the owner of the business must have the electronic means to make such a copy and a filing system in which to store such a copy. There must also be an administrative system that links each such copy made to an individual entry in the register. The administrative impact on the dealers has the potential to cause discontent and frustration because it implies that every item that is purchased must be entered into the register, a copy of the seller's identity document must be filed and the item must be given the corresponding number as reflected in the register (**D2**,

2011; **D3**, 2012; **D5**, 2012). When this item is sold, then the sale must either be reflected in this register or the sales register (whichever one is applicable).

For purchases made where a small amount of items are bought by the dealer, this may not be a problem but when a thousand pieces of silver cutlery is purchased from a deceased estate or a rare collection of hundreds of books is acquired then things begin to take on another perspective. In terms of the SHGA each item has to be marked with the number that corresponds to the entry in the acquisitions register. It is not clear how the items are to be marked. Must stickers be used or a marking pen?

The principle is sound but it might not be practical to implement. D4 highlighted this aspect when she said ‘...there is no way you can list all your smalls’. D2 also mentioned how problematic the legislation will be for book dealers; having to list every item will have financial implications as an extra person will have to do this because it has the potential to become a fulltime job (**D2**, 2011; **D4**, 2011). These records then need to be kept for a period of five years.

#### **4.5.1.7 False information and stolen goods**

One of the primary purposes of the Act is to combat the trade in stolen goods. Dealers are required to immediately report suspicious persons and the suspicion of stolen goods to a police official on duty at the police station in which jurisdiction his business falls according to Section 22(1)(a)-(4) of the SHGA (South Africa, 2009:20). An official report will be registered by the police official and the dealer will be provided with a reference number, which should be the Occurrence Book number (OB). According to Regulation 10 of the Act, the dealer is required to capture photographic or other evidence of the person who provides the false information or has brought the suspected stolen goods in (Interim operations manual, 2012).

All the dealers and auctioneers who were interviewed had experienced being offered something they were not entirely comfortable with. In general they informed the seller that they were not interested in the item at that time. None of the participants said that they would capture the details of the person and then inform the police of the situation (**A1**, 2011; **A2**, 2011; **A3**, 2011; **D2**, 2011; **D3**, 2012; **D4**, 2011; **D5**, 2012). In the absence of CCTV on the premises, how will the dealer clarify trying to take a photograph of the person and/or the

item? This may be an aspect of the legislation where gaining cooperation from the dealers will prove to be problematic.

Four of the dealers and two of the auctioneers mentioned that they had had an interaction with police in terms of stolen items. Only one of the dealers said that the local police would periodically visit his shop and show him photographs of stolen items and ask him to be on the lookout for them. This dealer spoke very highly of the police.

The remainder of the participants did not say the same. The one participant tried unsuccessfully to find out about the provisions of the previous Second-Hand Goods Act and another tried unsuccessfully to report suspected stolen items. According to the majority of the dealers and all the auctioneers, the police in their area were not well informed in relation to the previous Act and were also not helpful pertaining to the provisions of the new one.

With the promulgation of the new SAGA (South Africa, 2009) in early 2012, the Minister of Police said that the training of designated police officials who will deal with the legislative aspect of the Act would commence after the regulations for the dealers and recyclers had been promulgated (Mthethwa, 2012). The training aspect was addressed by the SAPS and a document titled 'Interim Operations Manual for designated second-hand goods officers' was sourced off the SAPS website from [http://www.saps.gov.za/crime\\_prevention/shg.htm](http://www.saps.gov.za/crime_prevention/shg.htm). Aimed at guiding the designated police official through the provisions of the Act, it is a comprehensive guide which is easy to understand and follow. While all the police officials interviewed had heard of the new SHGA, only one was familiar with provisions of the act (Bendeman, 2012).

There are additional legislative restrictions which are applicable to dealers and traders and these are found in Section 23 of the SHGA. These restrictions apply only under specific circumstances when dealers purchase items/goods. One such restriction is no items/goods may be purchased from persons under the age of 18 years. This aspect was highlighted by only one of the dealers (D5, 2012). Furthermore, goods received may not be altered or modified for a period of seven days from the date the dealer purchased them (South Africa, 2009:22).

The success or failure of the SHGA will depend largely on the police obtaining voluntary cooperation from the dealers and traders in their policing areas. For this to happen, the police

will need to engage the dealers in their respective areas in a far more pro-active manner than is currently the situation.

#### **4.5.1.8           Controlled metals**

As mentioned above, one of the primary reasons that sculptures and bronzes are stolen, is for their scrap metal value. It is therefore very important that dealers who engage in the business of scrap metal dealing and/or recycling are aware of the provisions of Section 25(1)-(5). In terms of the scope of this study, the most important provision pertaining to scrap metal dealers is contained in Section 25(4) where dealers/recyclers who suspect or should suspect that the scrap metal being offered had been altered to disguise its origin (such as being from a sculpture or a monument) are legally required to report such to the police as highlighted in Section 22(1)(c) of the SHGA (South Africa, 2009:22-24). The record for the recovery of stolen bronzes/sculptures shows that recyclers are either not reporting such suspicions or these items are not being stolen for their scrap metal value but for their artistic value. While the latter portion of the explanation is possible, it is improbable as it would appear from reports by participants and SAPS members interviewed that the recyclers are not reporting suspicions. This is highlighted in phase one by participants who reported incidents in this research where bronzes/sculptures were recovered from scrap metal dealers/recyclers because they went and searched at the premises of dealers and not because the dealers reported the suspicion. These cases are then NOT reported to the SAPS, since the curator is simply relieved the item has been returned.

The remainder of the legislation deals with the trade in communication equipment, policing powers, inspections and searches and general provisions pertaining to offences and penalties, appeals and applications. Chapter ten deals with the transitional provisions and this is followed by the schedules of goods referred to in the SHGA, sentencing and Acts which are replaced (South Africa, 2009:24-40).

By understanding the implications of the new SHGA it is possible to determine (to some extent) what may be traded and who may trade. Such a determination was done. The trade data gathered during phase one was examined and analysed to determine who was trading and what was being traded for the period 2006-2010. The analysed data informed the development of a framework (see figure 9 on page 146) that illustrates the legal trade in heritage objects for the reporting period. The possible implications of these data were then

considered in the context of the SHGA. The methodological aspects relating to the source of this data were addressed comprehensively in chapter 2 and will therefore not be discussed here.

#### **4.6 THE LEGAL TRADE 2006-2010**

The data being reported on in this section were extracted from section C of questionnaire one that the participating museums and galleries completed. Section C (questions 18-34) dealt with the legal trade undertaken by the museums and galleries between 2006 and 2010. The remainder of the data pertaining to the other sections of questionnaire one (A, B, D and E) are reported on in chapter 5 which deals with the nature and extent of heritage crime as it manifested between 2006 and 2010.

The data presented reflect 44 per cent of the target population for the museums and 45 per cent for the galleries respectively. Thus the trade is possibly far more substantial than that being reported here.

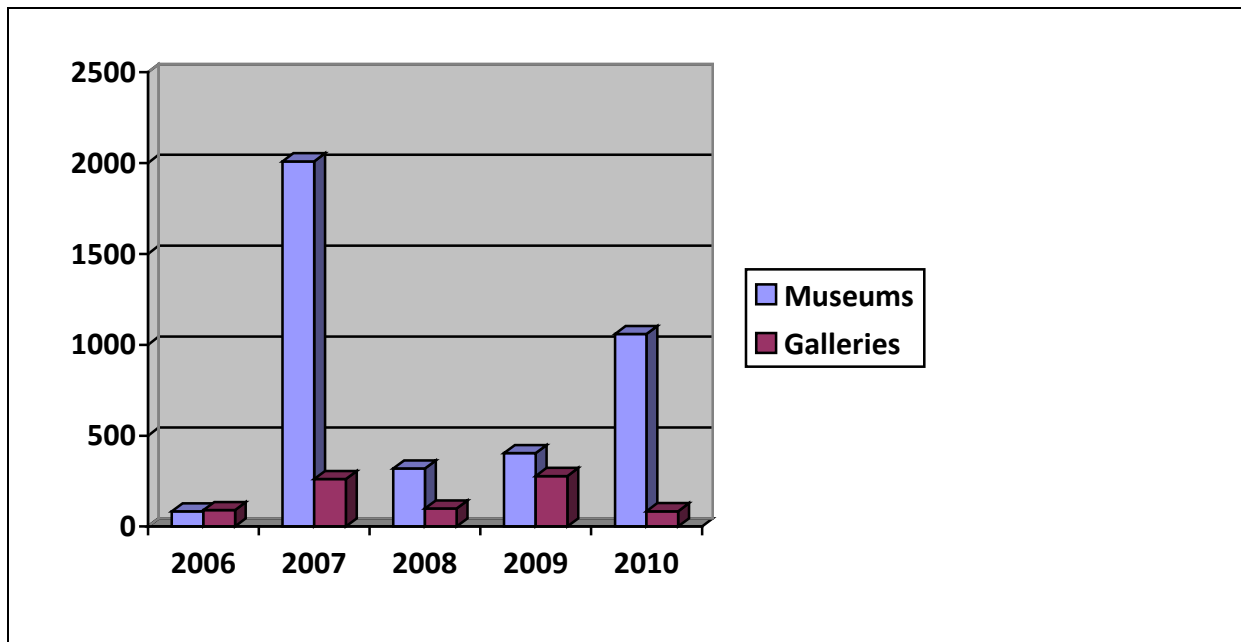
##### **4.6.1 Items purchased between 2006-2010 by participating museums and galleries**

The first question (question 18) in section C was a filter question. Nineteen (63%) of the 30 participants indicated that they conducted trade. This figure comprises of 12 museums (57% of the museums) and seven galleries (78% of the galleries). Two galleries and nine museums did not purchase/acquire any items for the reporting period and therefore proceeded to question 26 as highlighted in the filter question. Question 19 addressed the volume of trade per year. Below is a table containing the numeric data presenting the approximate number of items purchased/acquired by the reporting museums and galleries for the reporting period.

**Table 2 Approximate figures of purchases/acquisitions by participants**

LEGAL TRADE 2006-2010						
	2006	2007	2008	2009	2010	TOTALS
Museums (n-12[7]) <sup>2</sup>	83	2009	319	404	1039	3854
Galleries (n - 7)	+/-90	+/- 261	+/- 99	+/- 278	+/- 84	+/- 812
<b>TOTAL</b>	<b>+/- 173</b>	<b>+/- 2270</b>	<b>+/- 418</b>	<b>+/- 682</b>	<b>+/- 1123</b>	<b>4666</b>

These figures are presented in a bar graph below, illustrating the ebb and flow in the trade.



**Figure 6: Approximate trade figures for museums and galleries from 2006-2010**

The tendency to not supply trade data was also prevalent among the majority of the dealers. Some of the museums did provide reasons for not providing figures while others provided none. Ineffective recordkeeping by predecessors within the museums seemed to contribute to this problem. The trade data should therefore be higher than the data reflected. All the galleries that reported trade were able to provide figures.

<sup>2</sup> To understand the implication of these figures it is important to understand the context. Of the 12 museums who reported trade, only seven provided figures. Numerous attempts were made to rectify this; all were unsuccessful.

Having no baseline data with which to compare this data, it is not possible to determine whether the trade as reflected above is healthy or not. What is clear is that some years are better (in terms of volume traded) than others, considering that the time frame for data gathering included a major international recession which subsequently had an impact on the financial markets in South Africa in 2010/2011, resulting in a national recession. It was noted when the final list of galleries to be surveyed was drafted, that there were quite a number of galleries that simply did not exist anymore. Ostensibly, they went out of business either during or as a result of the recession.

It must also be borne in mind that trade data supplied by the museums do not necessarily mean purchases which translate into sales for dealers. These data reflect acquisitions, which will include purchases made as well as possible donations and inheritance from deceased estates.

Nine museums and two galleries reported no trade (acquisitions/purchases) for this period. While this is an understandable situation for museums (some of their collections have been closed to further acquisitions) it is unusual for galleries; who are commercial entities that need to buy and sell to remain financially viable. The recession may have forced these businesses into a situation where they were purchasing no new stock while attempting to sell the existing stock. There were also provincial and corporate galleries within the group and the primary purpose of these galleries is not to trade but to collect, curate and exhibit.

The trade figures were further translated into items traded per year/per museum or gallery. Seven museums acquired 3854 items; which implies that 770.8 items were acquired. Hence 110.1 items were acquired per museum per year. Similarly, the figures for the galleries translate into 812 items being acquired, which is approximately 162.4 items per year and it implies that 23.2 items were acquired per gallery per year. Since the SHGA requires each item to be comprehensively explained in a register, with set out criteria explaining the items and the origin thereof, it is unlikely that these acquisitions will result in the huge administrative burden feared by the participants.

The SHGA determines that registered dealers may only conduct business with other registered dealers. Thus participants were asked to indicate the origin of the items acquired as this permits a more intimate understanding of the flow of the legal trade. Questions 20-27 dealt with questions on the source of the acquisitions, conditions imposed and aspect of

provenance or ownership. In this section the possible impact of the SHGA will further be considered.

#### **4.6.1.1 Origin of items purchased**

The origin of purchases/acquisitions is presented in tabulated form below. The origin of the trade is reflected in the first vertical column, which due to space restrictions is reflected in an abbreviated format as follows:

- PI – indicates a **P**riate **I**ndividual;
- F – is a **F**oundation;
- DE – is a **D**eceased **E**state;
- D – is a **D**ealer (this includes antique dealers);
- BA – is a **B**ook **A**ntiquarian;
- S – is a **S**hop (includes specialty shops dealing in vintage and collectable items);
- R – is a **R**unner (a person who acts as agent to buy/sell items);
- F – is a **F**air (usually an Antiques Fair);
- IA - is an **I**nternet **A**dvertisement;
- AH – is an **A**uction **H**ouse;
- O – is **O**ther (in all the instances the other was the artist of the works);
- N – indicates **N**one Traded and
- DNK – indicates **D**o **N**ot **K**now.

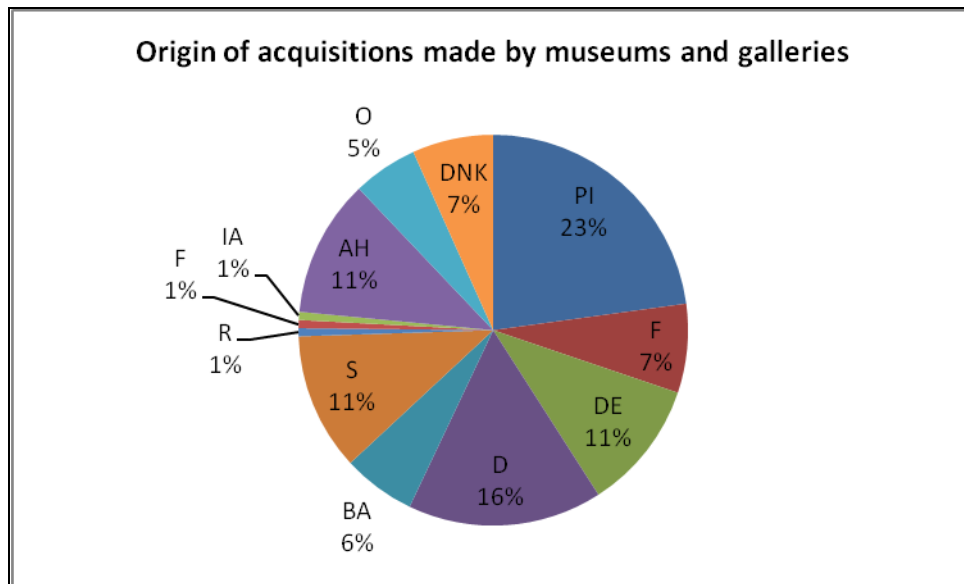
The third horizontal row indicates to whom the item went; either **M**-museum or **G**-gallery. The column on the far right reflects the totals per source category for the entire period. The row at the bottom of the column reflects the total purchases/acquisitions per **M** or **G** per year.



**Table 3 Origin of acquisitions by museums/galleries from 2006-2010**

	2006		2007		2008		2009		2010		TOT
	M	G	M	G	M	G	M	G	M	G	
PI	3	3	3	3	4	3	4	3	5	3	34
F	1	1	2	1	1	0	2	1	1	1	11
DE	1	1	3	1	2	1	2	2	2	1	16
D	3	3	2	3	2	3	2	3	2	1	24
BA	2	1	2	0	1	0	1	0	2	0	9
S	2	2	2	2	1	2	2	2	1	1	17
R	0	0	0	0	1	0	0	0	0	0	1
F	0	0	0	0	1	0	0	0	0	0	1
IA	0	0	0	0	0	0	0	0	1	0	1
AH	0	4	0	3	0	3	0	3	1	3	17
O	2	0	1	2	1	1	0	0	1	0	8
*N	4	3	5	3	4	3	4	3	4	3	36
*DNK	1	1	1	1	1	1	1	1	1	1	10
TOT	14	15	15	15	14	13	13	14	16	10	

\*Calculations to determine the total per M/G category per year must exclude the figures in the shaded rows since these figures indicate that either no trade took place or the respondent did not know of trade. When calculating the individual incidents of trade, the galleries traded more often than the museums, which is to be expected since they are most inclined to be commercial entities. Again these figures do not necessarily mean purchased acquisitions, as they could be donations made to museums. The data from the table above are presented below in a chart format to inform the discussion and to facilitate an overall view.



**Figure 7: Origin of acquisitions made by museums/galleries from 2006-2010**

In figure 7 above the source of the legal trade is visually represented in percentages. The largest majority of the trade originates from **Private Individuals** (23%), who for whatever reason are doing away with their heritage objects. Again these are not necessarily all purchases made by the museums or galleries; since they might include donations. Since the SHGA is clear that only registered traders may deal with other registered traders, it is within this arena where the legislation will have a direct impact. The Act is clear on what it considers a trader to be. The **Private Individual**, the **Deceased Estate** and **Foundations** will be excluded from the requirement of being registered to trade; since their trade is a once off and not a commercial enterprise. In terms of the above representation, at least 41 per cent of the source market will not have to be registered in terms of the legislation. It is possible that **Deceased Estates** would donate items to museums but it is also possible that items were purchased from such estates.

Acquisitions from **Dealers**, which include **Antiques Dealers** accounted for 16 per cent of the trade. It is assumed that because **Dealers** are commercial traders that these acquisitions were more than likely purchases made. Eleven per cent of the acquisitions are sourced from **Auction Houses** and **Shops**. It is surmised that since both **Auction Houses** and **Shops** are commercial enterprises they would not donate items but that items were purchased from them. In terms of the legislation all the enterprises that carry on a commercial trade in second-hand goods will have to be registered and this will therefore impact on the **Dealers**, **Book Antiquarians**, **Shops**, **Runners** and **Auction Houses**. These traders amount to 37 per

cent of the source market. While the entities with designated business premises are relatively simple to monitor, the challenge will be to monitor the runners. They account for one per cent of the reported trade.

While it is clear that the **Auction Houses** in and around Pretoria and Johannesburg that were interviewed are legitimate in their dealings, there are however the so called ‘fly-by-nights’ that operate from temporary premises for short periods of time. Legitimate buyers would do well to avoid them.

The three auctioneers interviewed collectively have been in the auctioneering business for close to seven decades. They opined that the majority of the items brought to them for auction originate from **Private Individuals**. Auctioneer A1 called it the theory of the four ‘D’s’ namely; death, divorce, debt and decreased living space (**A1**, 2011; **A2**, 2011; **A3**, 2011). It was also reported that the general life span of an item to re-enter the market once it has been purchased by an individual is approximately 30 years (**A1**, 2011).

**Auction Houses** do not buy or sell merchandise; they are a conduit through which **Private Individuals** can sell their objects to the highest bidder. This means it is highly probable that the majority of the acquisitions made by museums and galleries originate from **Private Individuals** (via other routes such as a **Deceased Estate** or a **Foundation**), with **Auction Houses** merely acting as facilitator to the sale. This raises an interesting argument. If **Auctions Houses** do not ‘run a business of buying and selling second-hand goods’ (as provided for in the SHGA), must they be registered in terms of the new Act? If they do not have to be registered, may other registered dealers trade with them?

Seven per cent of the participants did not know what the origin of their acquisitions were, which is healthy when considering that origin usually speaks to legal ownership, provenance and the like. Ignorance pertaining to origin does not necessarily indicate some form of criminality; it might just indicate ineffective/poor record keeping on the part of the museum or gallery. Seven per cent of the items originated from **Foundations**, six per cent from **Book Antiquarians** and five per cent from **Other**, which for this research was explained by the participants as primarily the artists themselves. When considering the legislative prescriptions of the SHGA the galleries may experience legal difficulties if they are not able to substantiate the origin of an item (especially a second-hand item). Artists deal in mostly new items and thus their trade does not fall within the ambit of the Act.

Three per cent of the objects traded came from **Internet Advertisement**, **Fairs** and **Runners**. This is a positive aspect as it implies that only three per cent of purchases/acquisitions made originate from sources that are not always deemed reliable as there might not be a paper trail adding legitimacy to the stated provenance of the items. Traders and dealers at **Fairs** are usually legitimate dealers who merely exhibit the wares of their shops at an outdoor event. **Runners** are not as simple to address. **Internet Advertisements** is probably the most risky of these options and traders dealing in this manner will have to ensure that their record keeping is without fault to prove their own bona fides with such acquisitions.

As far as the legislative prescriptions are concerned, it would appear that both **Runners** and people trading at **Fairs** would have to register, but only if they do this as a commercial trade and not a once-off. It is not clear how this part of the market will be regulated, but perhaps a professional body for 'Informal Traders' will be able to address this aspect.

#### **4.6.1.2 Reasons for purchase/acquisition**

This discussion deals with data received from participants for question 25. Since question 18 was a filter question which required participants to proceed to question 26 if they did not undertake any purchases/acquisitions for 2006-2010, question 25 will thus only reflect the data from those participants who purchased or acquired items during this period.

The first issue being addressed is the reason supplied by the museum/gallery why an item was purchased or acquired. The participants were asked to mark all the options that applied to them. Of the responding museums 10 indicated that it was to add to the collection, two said it was to restore or preserve and two indicated that it was for research purposes, while there was one participant that did not know the reason for the acquisition. Of the galleries, two said it was to sell the items, three said to add to the collection, one said it was to be made part of the business and another one indicated it was to restore. Having spoken with several of the gallery owners it is clear that the 'life span' of an item to be on the floor (being for sale) is approximately three months and then the item becomes a burden because it is taking up space and does not bring in revenue.

From this understanding it may be concluded that in terms of the galleries, it is probable that the majority of the items are purchased for eventual resale and 'being part of the business' will contribute to sales, while the reasons provided as 'adding to the collection' may indicate

that the item becomes part of the collection of a provincial gallery. This is in direct contrast with the museums that are not in the commercial trade – their primary focus is to collect, restore and research and educate and therefore their response come as no surprise. Consequently the moment an item enters a museum, it is basically lost to the market; unless it is stolen and put back into circulation through devious means.

The only possible aspect of the SHGA that might be relevant here is the time period an item is to be left unaltered, after purchase. The Act stipulates that any second-hand item purchased may not be altered for a period of seven days, therefore those institutions restoring the item must wait for seven days before restoration commences. It is not foreseen that this provision will be problematic, since museums are exempt from the Act as they are not commercial traders. In cases where items are in a very bad state of repair and immediate restoration is called for this stipulation may be problematic.

#### **4.6.1.3 Conditions imposed on purchase/acquisition**

When an institution or museum purchases or acquires an item from a third party, they often impose conditions on such purchase/acquisition. Question 26 addressed this issue, because it speaks to the legality of the transaction. Participants had to mark all the options that applied to them. Of all the participating museums 13 said that they did impose conditions on the acquisition, two said they did not, two indicated that they did not partake in such trade while one said this issue was unknown and three replies were incomplete in this regard.

Replies from the galleries indicate that six galleries impose conditions, one gallery did not impose conditions and another gallery did not know. The reply from one gallery in this regard was incomplete.

Museums were asked to mark all the conditions being imposed on such purchases or acquisitions. Five museums said they asked for the ID document of the donator/seller, and 10 indicated other conditions. Among these other conditions were that the owner would donate the item without imposing conditions, that full ownership be relinquished, the person making the donation must be a reputable person and the person donating signs a waver document in which all rights of ownership are ceded to the museum. Clearly the issue of ownership is central to this entire situation and is one of the primary reasons why the SHGA was developed; to assist in combating the trade in stolen property. The SHGA requires that the

personal data of the seller must be recorded and that items may not be purchased from a person younger than 18 years of age, which to a limited extent was being done by both the museums and galleries.

To explore the issue of legitimate ownership, the next question is of importance.

#### **4.6.1.4 Provenance of purchased items**

Question 27 deals with the aspect of clarifying the ownership/provenance of an item before it is purchased/acquired. Once again participants had to mark all the options that applied to them. Of the participating museums 12 indicated that provenance was checked, one said it was not checked, three indicated that this aspect was not applicable because they were not open to acquisitions, one did not know and four replies were incomplete. Of the 12 museums that did inspect provenance, four indicated that this was done against the police register of stolen goods, four said the items were checked against the INTERPOL Stolen Works of Art Database, nine said the provenance (background) of each item brought in was checked (without mentioning how) and six indicated 'other'. The 'other' was elaborated on by highlighting that they inspected ownership/provenance by taking down the details of the person bringing the item in or the having the donor complete a donor form in this regard, in which he states ownership of the item and therefore the right to donate/sell the item in question.

Of the participating galleries six indicated that they do check provenance while three said they did not. Of the six that said they did, two said they checked against the stolen items register of the police, one against the INTERPOL database, four indicated that specifically provenance was checked and four said other. Of the other actions taken some of the explanations offered included that they knew the artist and his work and therefore the provenance was sure, they trusted that the institutions from whom the items came had already checked the provenance, they had their own internal checking procedure and finally they know who they are dealing with and therefore trust them.

It was confusing to read the return from the museums that indicated they checked items against the police's list of stolen goods as it is uncertain which list they were referring to. It might be that the participants were referring to the poster of Stolen Heritage Objects that the police had circulated in 2006. If this were the case they would be checking against six listed

items – which is insufficient to prove due diligence. There were replies from the museums and galleries which indicated they checked the items against the INTERPOL database. This was also a concern. The INTERPOL database was opened up to stakeholders outside law enforcement in mid 2009s. By the time this research was being conducted none of the participants were aware that they could apply for access to it. So it is uncertain how they were doing checks against this database, unless they had access to the CD of Stolen Works of Art, which although very costly, was possible.

From the foregoing it is clear that central to this entire procedure of acquisition/purchase is the issue of ‘trust’ and ‘reputation’. If a dealer or runner has been in the trade for a number of years and has developed a relationship of trust, then trade is made easier. This mode of operation is manifest internationally too, where often very valuable items are traded with nothing other than a handshake to seal the transaction (Conklin, 1994:195; Naylor, 2008:282). In this business ‘your word is your honour’ (D2, 2011). This may have to change since the requirement of the SHGA does not cater for this category, by imposing a strict set of requirements that needs to be met. Failure to adhere to the legislative prescription may have a harmful effect on the dealer and could result in the refusal of the Police to re-issue his trading licence when it comes up for renewal. So there are far reaching consequences for non-compliance. Only time will tell how effective the legislation will be in this regard.

Regarding provenance, Bator noted in 1983:

*No dealer or auction house will normally reveal the provenance of an object offered for sale; it is assumed that buyers and the public have no business knowing where and when and for how much the object was acquired. Museums (and, of course, private collectors) will also disclose such information rarely... Indeed, the tradition is that such information is rarely sought...too much information may spoil the acquisition of a stunning and desirable treasure (Bator in Bull, 2009:36).*

#### **4.6.2 Heritage objects sold during the period 2006-2010**

The last portion of section C dealt with the aspect of who the cultural objects were sold to for the reporting period. Again the first question (question 28) was a filter question designed to separate the participants who did sell from those who did not sell during the reporting period.

Of the 21 participating museums, only one reported to selling an item during the period 2006 – 2010. This is a university museum and therefore selling off an item is not as difficult as it would be for a government funded museum. De-accessioning items (for whatever reason) within the museum environment is notoriously difficult, if not impossible.

The galleries on the other hand are commercially inclined and therefore sell items. Of the nine participating galleries, four reported selling items, four indicated that they did not and one return was incomplete in this matter. Table 4 below reflects the annual sales as reported by the galleries in answer to questions 28 and 29 of the questionnaire.

**Table 4        Items sold by galleries for the period 2006-2010**

<b>ITEMS SOLD BY GALLERIES FOR THE PERIOD 2006 – 2010</b>	
<b>YEAR OF SALE</b>	<b>NUMBER OF ITEMS SOLD</b>
2006	Approximately 596
2007	Approximately 666
2008	Approximately 656
2009	Approximately 686
2010	Approximately 646
<b>TOTAL</b>	<b>Approximately 3250</b>

The abovementioned figures indicate that approximately 3250 items were sold over a five year period by only four galleries. This amounts to approximately 812.5 items being sold by each of the galleries at approximately 162.5 items for each of the five years and approximately 13.5 items per month. Depending on the size and value of the items sold by the four galleries, trade appears good. Considering the prescriptions of the SHGA to document sales, it is not likely that the documentation of these sales was such an administrative burden and thus compliance would not have been problematic.

It is perplexing that four galleries reportedly did not sell anything, however when analysing the data further plausible reasons are revealed. One of the four non-trading galleries is a government owned gallery and therefore subsidised, and not reliant on trading to survive. Of the remaining three galleries that did not trade, one is a corporate collection gallery and one is a university gallery. The last gallery did not provide full information for this section.



In table 2 above it is reflected that seven of the galleries purchased approximately 812 items and in table 4, approximately 3250 items were sold by only four galleries. While this seems unlikely, it is important to remember that not all galleries purchase the items that are offered for sale within the business. More often than not the galleries take on items by consignment, meaning that they sell the item on behalf of a client/artist and the client/artist only gets the money once the item is sold, not when it is placed in the gallery.

It is therefore quite possible that the figures reported for actual sales are indicative of a healthy legal trade and not necessarily the figures of the purchases, even though they do contribute to the overall trade figures. Thus in terms of the total commercial trade which includes buying (see discussion for paragraph 4.7.1) and selling of cultural objects, it is reasonable to conclude that there is a healthy legal trade in Gauteng; considering that the reporting participants represent only 44 and 45 per cent of the target population for the province.

#### **4.6.2.1 Destination of sale**

From questions 30-34 in questionnaire one the participants were asked to indicate to whom the items had been sold in the reporting period. The understanding is that museums do not sell items, however, there was a respondent within the museums cluster that did; this was a university museum and their policy permits the sale of redundant/over stocked items.

The destination of sales are therefore only applicable to items sold by five galleries and one museum and are reflected in table 5 below, after which it is reflected as a pie chart to simplify understanding.

**Table 5 Destination of sales by participants 2006-2010**

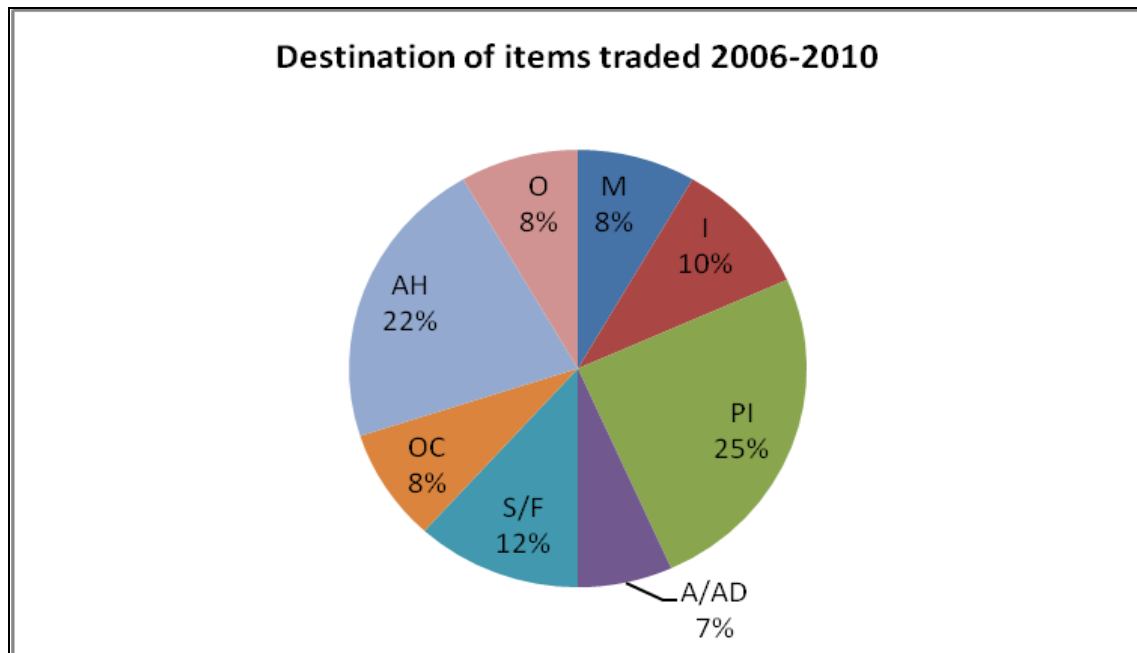
<b>DESTINATION OF SALES BY GALLERIES AND MUSEUMS FOR 2006-2010</b>											
	<b>2006</b>		<b>2007</b>		<b>2008</b>		<b>2009</b>		<b>2010</b>		<b>TOT</b>
	<b>M</b>	<b>G</b>	<b>M</b>	<b>G</b>	<b>M</b>	<b>G</b>	<b>M</b>	<b>G</b>	<b>M</b>	<b>G</b>	
M		1		1		1		1		1	5
I		1		1		1		1		2	6
PI		3		3		3		3		3	15
A/AD		1		1		1		1			4
S/F		1		1		1		3		1	7
OC	1		1		1		1		1		5
AH	1	1	1	1	1	1	1	3	1	2	13
O		1		1		1		1		1	5
NT <sup>3</sup>		5		5		5		4		5	
TOT	2	9	2	10	2	9	2	13	2	10	

The abbreviations allocated are as follows:

- M – Museum,
- I – Institution,
- PI – Private Individual,
- A/AD – Art/Antique Dealer,
- S/F – Shop/Fairs,
- OC – Other Company,
- AH – Auction House,
- O – Other and
- N – None.

The **Other** in this instance accounts for government departments that purchased items from the gallery sector.

<sup>3</sup> Trade data are calculated excluding this category since it indicates no trade. Once again due to size limitation abbreviations were used in the table and chart.



**Figure 8: Destination of items traded 2006 – 2010**

As depicted in the pie chart (figure 8) the majority of items (25%) were sold to **Private Individuals** and 22 per cent to (but actually through) **Auction Houses**, as technically **Auction Houses** do not buy items but sell on behalf of the clients. The remainder of the items went to **Museums** (8%), **Institutions** (10%), **Art/Antique Dealers** (7%), **Shops/Fairs** (12%), **Other Companies** (8%) and **Other** (8%). Based on the four D's, one may surmise that 47 per cent of the items went to **Private Individuals** as they are the predominant clients of **Auction Houses** as highlighted above, while 46 per cent in effect went back into the trade, since the traders acquiring them are commercial entities. It is possible that some of the items were purchases by traders who are collectors themselves, and although possible it is unlikely that this amount is very large. One of the antique dealers reported that he often frequented auction houses and at times purchased items for his own collection (**D2**, 2011).

While it is insightful to schematically view the ebb and flow of the legal trade in Gauteng, it does not fully explain what the schema of the trade is. By describing the legal market as a market, a more comprehensive understanding of the trade is possible.

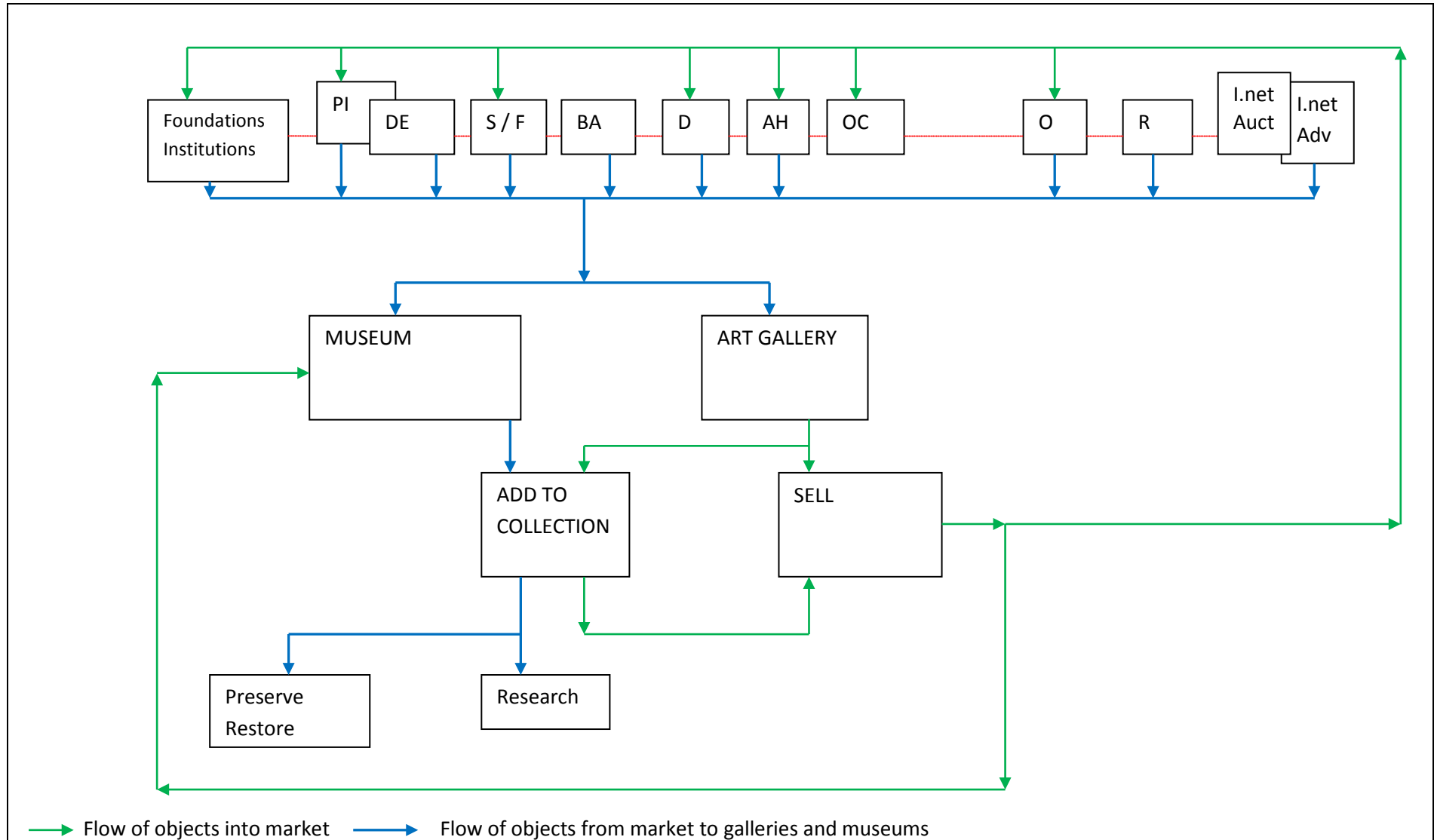
#### **4.7 THE TRADE AS A LEGAL MARKET**

Beckert and Wehinger (2011:2) explain that a market is a place where goods or services are exchanged for money regularly and voluntarily under specific conditions of competition. Such a market can only come into existence when there is supply of and demand for goods. The trade in heritage objects (as defined for the purpose of this study) is a legitimate trade and it functions on the basis of supply and demand. Supply and demand are also features that drive the trade in the illegitimate art markets (Beckert & Wehinger, 2011:3). Based on this premise, Aarons (2001), Alder and Polk (2001) and Korsell et al. (2006) used the 'Market System' to describe the interaction between legitimate and illegitimate markets.

The same approach was used for this study. Using the quantitative data obtained from section C of questionnaire one, a framework was developed to illustrate the flow of the trade between the suppliers (private individuals, auction houses, antiques dealers and other mentioned traders) and the destination (museums and galleries). In this study the galleries and one museum is also depicted as suppliers to the market (antiques dealers, auctions houses and other traders), in effect playing a dual role in the market.

The framework presented below is titled the 'Framework of Legal Trade'. The same framework will be used in chapter 6 when the interface between the legal and the illegal market is illustrated, since the illegal trade in heritage objects requires the existence of a legal trade (Aarons, Chappell & Polk, 1998; Beckert & Wehinger, 2011:3).

**Figure 9: Legal Trade Framework: depicting the flow of heritage objects through the legal market**



The green lines show the flow of trade from the museums and galleries into the field that the traders occupy. The blue lines indicate the source of the items acquired by the museums and galleries between 2006 and 2010. Museums as a rule may not sell their collections. One of the museums reporting trade is a university museum and is therefore permitted to sell excess items. The red dotted lines between the different entities in the trading section indicate that trade takes place between these role players also. While this type of trade was not addressed in the study it is supported by empirical data obtained during the interviews with the dealers and the auction houses. The green lines indicate the museums and galleries as source to the commercial market. The data show that the museums reported a higher volume of trade and more incidents of trade.

The trade flow highlighted in blue will first be addressed. This trade illustrates that the museums and art galleries obtain the majority of their items from sources which can be divided into two groups. The group on the left consists of foundations/institutions who account for seven per cent of the source of trade to museums and galleries, private individuals and deceased estates who account for 23 per cent and 11 per cent respectively. The shops, fairs and book antiquarians accounted for 18 per cent of the trade. Dealers (consisting of art and antique dealers) were clustered together in this group under the heading of dealers and accounted for 16 per cent of the trade while auction houses and other companies account for 11 per cent and five per cent of the trade respectively. This group is clustered more to the left hand side of the framework and comprise the role players who make up the majority of the source market in terms of where museums and galleries obtain their items. While no trade was forthcoming from other companies, they become relevant when the destination of the trade from museums and galleries into the legal market is discussed at the conclusion of the blue section. Seven per cent of the trade came from an unknown origin.

On the right side of the model are listed sources under the labels of other (such as the artist themselves that supply the galleries), runners, internet auctions and internet advertisements. While no trade is forthcoming from internet auctions to the museums or galleries they did report to having sourced items from internet advertisements (1%) and runners (1%). Since stolen items surfaced through an internet auction, provision was made for it in the framework. At the centre of the diagram are the museums and galleries, and according to the data galleries have also sold a number of items to museums.

The museums highlighted that the primary reason they purchase/acquire items is to add to the collection, to preserve and to restore. Research was also mentioned as a reason for purchase.

The art galleries indicate that they purchase items primarily to add to the collection and to sell. The lifetime of an item in a gallery is approximately three months.

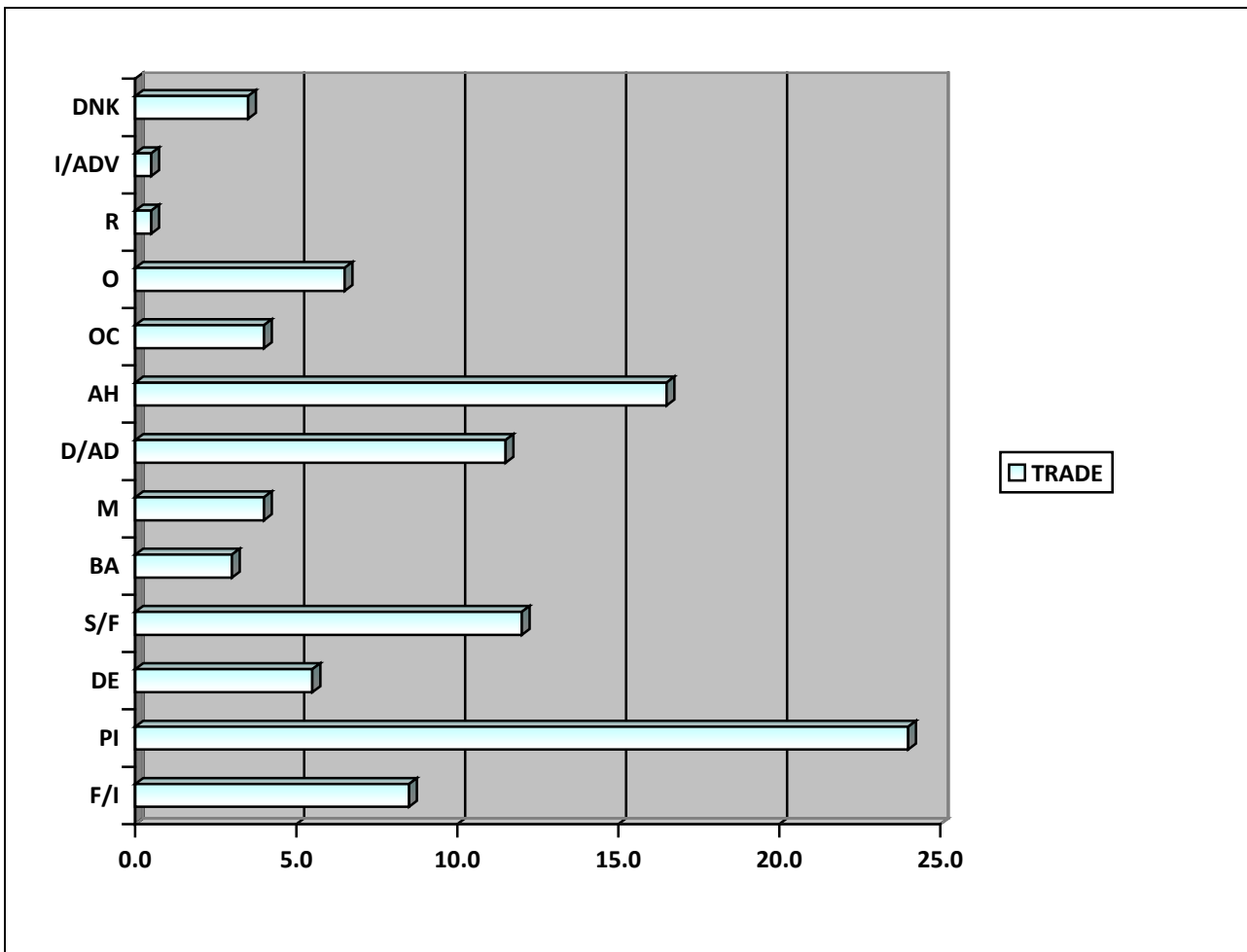
The green portion of the model indicates the destination of the items forthcoming from the one museum and the four commercial galleries. The items being sold by the museum were only in relation to the university museum. None of the other museums take part in the trade at this side of the spectrum. Thus once an item enters a museum, the only way it leaves is if it is stolen or de-accessioned (due to the item being in disrepair). In reality the item is then lost to the legal trade once it enters a museum. Museums might therefore morbidly be regarded as the ‘Black Hole’ of the heritage market.

The trade data obtained from the one museum and four galleries that reported sales indicate that the majority of the items went to private individuals (25%) and auction houses (22%). Based on the understanding that auction houses do not purchase items but rather act as intermediary, the researcher believes that the figures for these two categories could be clustered together and will account for 47 per cent of the destination of traded items. Based on qualitative data obtained from the auction houses, the majority of the items are purchased by private individuals. The remaining data show that shops and fairs purchased 12 per cent of the items, institutions purchased 10 per cent and eight per cent each went to museums, other companies and other (government departments). The remaining seven per cent went to dealers/antique dealers.

#### **4.7.1 Scope of the legal trade**

The numeric data for the buyers and sellers were collated to allow for a combined view of the primary actors in the legal market. The data combined reflect as shown in figure 10. The role players are from top to bottom as follows:

**DNK** – Do not know, **I/ADV** – Internet advertisement, **R** – Runner, **O** – Other, **OC** – Other company, **AH** – Auction House, **D/AD** – Dealer /Antique Dealer, **M** – Museums, **BA** – Book antiquarian, **S/F** – Shop/Fair, **DE** – Deceased Estate, **PI** – Private Individual, and **F/I** – Foundation or Institute.



**Figure 10: Combined trade data for the legal trade**

In the legal market **Foundations and Institutions** account for 8.5 per cent, **Private Individuals** account for 24 per cent and **Deceased Estates** account for 5.5 per cent of the known trade. **Shops/Fairs** account for 12 per cent, **Book Antiquarians** for three per cent and **Museums** for four per cent of the known trade. **Dealers/Antique Dealers** account for 11.5 per cent, **Auction Houses** for 16.5 per cent while **Other Companies** account for four per cent of the legal trade. The last group of role players is the **Other** which accounts for 6.5 per cent, **Runners** and **Internet Advertisements** who account for .5 per cent each and an unknown portion which accounts for 3.5 per cent of the legal trade.

When using the analogy that the auction houses are conduits of trade for their primary clients (private individual), it is not surprising to note that **Private Individuals**, **Deceased Estates** and **Auction Houses** contribute to 46 per cent of the trade (buying and selling) within the legal market. Another analogy to argue is that formal commercial enterprises (**Shops/Fairs**, **Book Antiquarians**, **Dealers/Antique Dealers**, **Auction Houses** and **Other Companies**) account for 47



per cent of the legal trade and non-commercial enterprises (Foundations/Institutions, Private Individuals together with Deceased Estates and Museums) account for 42 per cent of the legal trade. It is possible to reason that less than 50 per cent of the role players in the market are commercial enterprises and almost 50 per cent of the role players are non-commercial. A formal commercial enterprise in terms of this study would be those enterprises that would have to register as second-hand dealers under the SHGA. Interestingly enough, the SHGA will not be applicable to almost 50 per cent of the role players in the market.

This concludes the discussion on the legislation and the legal trade in heritage objects.

#### **4.8 SUMMARY**

Chapter 4 dealt with the National Heritage Resources Act 25 of 1999 (NHRA) (South Africa, 1999b). This legislation regulates the management and preservation of the cultural property of South Africa. The chapter also dealt with the Second-Hand Goods Act 6 of 2009 (SHGA) (South Africa, 2009) which regulates the trade in items which may be traded in terms of the NHRA. These pieces of legislation are clustered together due to their underlying interactive relevance to heritage crime.

The first part of chapter 4 provides an overview of the legislative framework that is applicable to the protection, management and preservation of South African heritage objects. The NHRA, while being based on international best practices, is perhaps not utilised to its full extent due to overlapping mandates between role players.

The 1970 UNESCO Convention provides that member countries establish a properly resourced and sufficiently funded body that is to be responsible for the management of the heritage resources of the country. The South African Heritage Resources Agency (SAHRA) as the primary legislated custodian of the national estate has not been resourced adequately since the inception of the legislation in 1999. It would appear that the cost implication of the legislation was not done before implementation. The heritage objects unit which is responsible for the management and preservation of all heritage objects of South Africa from a national perspective is not adequately resourced and there are several aspects contained in the legislation that this unit has not been able to address.

The NHRA has been operational for almost 14 years and the inventory of the national estate has not been finalised. Having a national inventory of protected objects is a requirement of the 1970 UNESCO Convention, to which South Africa became a signatory in 2003.

It is possible that the focus of the DAC is too much on the repatriation of heritage objects instead of the effective protection of those objects that are still in the country. The budgetary constraints were mentioned by several of the role players and this has a negative impact on the way in which the heritage resources are being protected. The provincial structures provided for in the legislation have only been established in two of the nine provinces, which also has a negative impact on the management and preservation of provincial and local heritage resources within the respective provinces.

The duplication of mandates and ambiguous legislative guidelines impact in a negative manner on the effective functioning of SAHRA. Ambiguities have been identified in relation to the role and responsibility of SAHRA pertaining to restitution, repatriation and the development of policy. The NHC as role player within the heritage sector is in the environment primarily to advise the Minister of Arts and Culture on policy issues, yet is also in terms of its legislative mandate able to address aspects of repatriation. This ambiguity is causing tension between SAHRA and the NHC, which is being felt by individuals in these organisations. The legislative review should address these ambiguities and facilitate closer cooperation between the interested stakeholders.

The NGOs who have involved themselves in the protection of the heritage resources of South Africa bring a vast amount of expertise to the sector. ICOM:SA seems to be nothing more than a conduit for passing information along to the mother-body which is based in France. The South African Museums Association (SAMA) is more proactive in its role. SAMA holds annual national conferences where speakers from different arenas are invited to present papers focused on different themes. The various provinces also have their own SAMA structures which enable them to work together as regions or clusters. In 2010 the SAMA North branch held a workshop on museum security which was attended by not only its own cluster members of North West, Gauteng, Mpumalanga and Limpopo, but participants from Western Cape and Eastern Cape also. There has been an invitation to roll this workshop out into the other regions.

The National Forum for the Law Enforcement of Heritage Related Matters (NALEH) has the potential to unite all the role players (Government and NGOs) in its endeavours to address the

management, protection and preservation of the heritage resources of South Africa, provided it can find a permanent organisational affiliation in either the SAPS or SAHRA.

In part II of chapter 4 the trade in heritage objects was discussed in terms of the Second-Hands Goods Act 6 of 2009. The trade in heritage objects (as defined for this study) is active. There is a fair amount of trade taking place between the museums and galleries as source for the legal market. Data provided by 44 per cent of the museums and 45 per cent of the galleries show the flow of items into the open market from one museum and four of the participating galleries and then also the flow of items from the market into the museums and galleries. Galleries are for the most part a conduit for objects to pass into and out of the market. Museums are a destination of no return. When an item enters a museum, it is lost to the legal market forever. The only way an item leaves the confines of the museum and enters the trade arena is if it is stolen or in the unlikely event that the museum policy permits de-accessioning. This latter practice is only applicable to one of the participating museums. Internationally it is not museum policy to de-accession collections to reintroduce them into the market. This attitude is perhaps parochial and should be revisited.

The figures depicting trade, function as a baseline, as there are no earlier figures against which to measure them. It is in the opinion of the researcher an indication of a healthy legal trade, which is a prerequisite for the functioning of an illegal trade. Using the trade figures, a 'Legal Market Framework' was designed to illustrate the flow of items through the market. The items being bought and sold have their origin primarily in the hands of private individuals and the trade is being conducted mostly through auction houses. Noteworthy is that museums are both the source of acquisitions (only one museum) and the destination of sales.

The introduction of the new SHGA in 2012, commencing in late 2011 seems to have caused some confusion in the market. Traders and dealers were not certain about registration and police officials were also not certain about these issues. In addition with the promulgation of the new Act in different time phases, it was also unclear whether the old Act was operational during these phases.

Much of this has been resolved with the full implementation of the SHGA in April 2012. While it is clearly an Act that has been a long time overdue, there are some aspects which might be problematic to implement or cause difficulties when implemented. The definitional scope of the Act, as highlighted, may cause problems, and just the definition of the term antique is going to

impact on the involvement or not of the South African Antique Dealers' Association, an association that has been functioning in South Africa for over four decades and which has much to contribute.

The criteria of a dealer in second-hand goods is clearly defined but will have far reaching consequences for auctioneers and quite possibly art dealers, because as the figures show they deal primarily in second-hand goods. However, as was seen from the discussion auction houses do not 'trade in second-hand goods' in the strict sense of the word. The Minister of Police emphasised that specific police officers will be trained to coordinate the implementation of the Act in the various clusters. It is hoped that this will be done as a matter of urgency since those businesses not registered have only three months from the implementation date of the new Act to do so.

When considering that the one of the primary reasons why the SHGA was promulgated was to curb the trade in stolen property, the police will rely to a large extent on traders and dealers to report suspicions. While such incidents did manifest before the implementation of the new Act, the participants either did not report these incidents or their interaction with the police was less than positive. The police will have to undertake some efforts towards public relations among traders and dealers to win their support; as it stands now several of the dealers mentioned not being very supportive of their local police.

When measuring the trade figures against what the Act defines as dealers and second-hand goods it is clear that the Act will have far reaching consequences on those areas in the trade that have as yet been untouched, due to exclusion under the old Act. In addition, the flow of the trade as highlighted in the 'Legal Market Framework' shows how dealers and traders interact and what volumes are involved. These data will serve as a baseline for future studies in Gauteng and possibly further afield. It appears from the data that various findings can be made in relation to the primary role players in the legal trade, as being closely matched between formal commercial enterprises and non-commercial enterprises. The framework developed in this chapter will be used in chapter 6 to describe the interface between the legal and illegal trade.

## CHAPTER 5

### THE EXTENT OF HERITAGE CRIME IN GAUTENG: 2006-2010

#### 5.1 INTRODUCTION

The theft of heritage objects and works of art is not a new trend (Aarons, 2001:17; *Fighting the illicit*, 2007:1; Lowenthal, 1997:39). International reports indicate that there has been a significant rise in the incidents of art theft, theft from museums and the illegal trade in antiquities over the past two decades (Aarons, 2001:17; Charney, 2009:xviii; Gerstenblith, 2007:148; Cultural heritage organisations, 2007:1). This rise may be attributed to several factors such as the maturing of the art market into an active player in the economic sector and a growing demand that is exerting unsustainable pressure upon a shrinking supply (Alder & Polk, 2001:36; Borodkin, 1995:407-408; *Fighting the illicit*, 2007:2; Roodt, 1994:314).

The purpose of this chapter is to address the first research question, namely the nature and extent of heritage crime as it manifests in Gauteng. The chapter will thus explore the extent of heritage crime (theft out of museums and galleries) in Gauteng for the period 2006-2010 and specific aspects in relation to these incidents will be discussed as well as the reporting of these incidents to the SAPS, relevant security authorities and insurance companies where relevant. In addition, issues relating to day and night time security measures are also discussed and possible connections are considered between the level of security and the number of incidents of crime at either the museum or gallery. Making use of the Routine Activities Theory, the nature (manifestation) of the specifically identified crime incidents as reported by the participants will be elaborated on.

By using the quantitative data obtained from the two questionnaires (questionnaire one and two) distributed to the museums and galleries as well as follow-up qualitative interviews with participants from auction houses and dealers/antique dealers and a primary art insurance company (Art Insure), a framework was created to illustrate the manifestation of the illegal trade in Gauteng. In isolation this framework does not reveal much, but when merged with the Legal Trade Framework (from chapter 4) it is possible to develop a clearer picture of the illegal trade.

The result is an interface between the legal and illegal markets at which time the illicit items are 'laundered' in an attempt to obtain 'legal title' for the stolen item and to create a credible

provenance. While the nature and extent of the illegal trade will be done in this chapter, a further discussion of the interface will be done in chapter 6.

South African cultural property is highly sought after on the legal markets, both locally and abroad (De Bruin, 2009; Myburg, 2007; SA kuns, 2009; Van Bart, 2010a). For this reason there are individuals who have in the past employed less than ethical means to secure such property (Bendeman, 2012; Ferreira & Sapa, 2011a; Ferreira & Sapa, 2011b). Crime statistics as supplied by the SAPS will not readily support the notion that museums and art galleries are suffering losses due to theft, robberies and other illegal conduct (Benson, 2008a). The following section will focus on the results obtained from questionnaires one and two circulated to museums and galleries in Gauteng.

## **5.2 THE EXTENT OF HERITAGE CRIME IN GAUTENG: 2006-2010**

In order to determine the extent of heritage crime in Gauteng from 2006-2010, two separate quantitative questionnaires were designed for the museums and galleries located in Gauteng. This section contains the analysis of both of these questionnaires, named questionnaire one and questionnaire two.

### **5.2.1 Questionnaire one**

While questionnaire one was completed by all the participating museums and galleries, questionnaire two was only completed by the museums/galleries that reported incidents of theft from 2006-2010, the data of which was gathered from questionnaire one. This section of the research, as already mentioned in chapter 2, is applicable to sample A only.

Reporting within this chapter will follow the same format as did the original questionnaires, with the exception of section C which depicts the legal trade. The data obtained from this section was reported on in chapter 4. The reporting procedure for questionnaire one will therefore only address each of the following sections of the questionnaire:

- Section A: Cultural objects that have been stolen or disappeared;
- Section B: Security; and
- Section D: Trade in stolen cultural objects.

The feedback received within section E: General was not directly relevant to the scope of this study and is not used. As feedback is discussed for each section the questions that are being addressed will be mentioned. The conclusions drawn in the dialogue below will only be relevant to the responding museums and galleries and will not (necessarily) be relevant to those museums and galleries that did not respond. While it is possible to draw inferences about the reasons why museums and galleries decided not to respond, this will not be purely scientific and would amount to mere speculation. During the course of this chapter, reference will be made to similarities between findings of this research and research undertaken in 2001 in Australia on the illegitimate art market, which regardless of the differences in terms of the time frames and geographical scope of the studies, remain informative.

The first aspect of the questionnaire under discussion is the demographics of the participating museums and galleries.

#### **5.2.1.1 Background**

##### **A) Museums**

Forty-four per cent of the museums responded to questionnaire one. Within the responding sample there are seven national museums, two local museums, seven university museums, one private museum, one church museum and three other.

##### **B) Galleries**

Forty-five per cent of the galleries responded to questionnaire one. Within the responding sample there are two corporate collection galleries, one university gallery, one state subsidised gallery and five privately funded or commercial galleries.

The following section in the questionnaire deals with the items that were stolen or disappeared from these institutions for the reporting period 2006-2010.

#### **5.2.1.2 Section A: Cultural objects that have been stolen or disappeared: Incidents of thefts/losses: 2006-2010**

The first portion of the discussion will address the input received for section A: Cultural Objects that have been stolen or disappeared. This was addressed in questions 2-6. This section deals

primarily with incidents of thefts/losses experienced by museums and galleries in Gauteng for the period 2006-2010, unless otherwise indicated. The terms theft/losses were used since these institutions are not always willing to admit when something is stolen, but would rather use the softer terminology of it being lost or having disappeared. Table 6 below illustrates the target populations and samples of the museums and galleries experiencing incidents for the period 2006-2010 as well as longer than five years ago. Provision is also made for those who did not experience any incidents for these periods.

**Table 6 Incidents of thefts/losses from museums and galleries: 2006-2010**

<b>Museums N-48 n-21 Galleries N-20 n-9</b>	<b>Past 5 years (2006-2010)</b>	<b>Longer than 5 years ago</b>	<b>No incidents</b>
Museums (7-33%)	7	7	11
Galleries (2-22%)	2	3	4
<b>TOTAL</b>	<b>9</b>	<b>9</b>	<b>14</b>

Of the 21 responding museums, seven museums reported that they experienced incidents of theft in the preceding five years. The museums were also asked to report on incidents of theft longer than five years ago and seven of the museums reported such incidents. Of these seven museums, there were three that also experienced losses for 2006-2010 while a total of 11 museums reported that they did not have any incidents to report at all.

Of the nine responding galleries only two reported that they experienced incidents in the preceding five years. For the period longer than five years, three reported incidents. Four galleries reported that they did not experience any incidents at all. There was one gallery that reportedly did not know; this has not been reflected in the table above.

Collectively these figures mean that out of a total of 30 participants only nine (30%) experienced incidents of theft for the reporting period. This translates into 33 per cent of the reporting museums and 22 per cent of the reporting galleries experiencing incidents of theft between 2006 and 2010. These totals might seem insignificant when viewed in isolation, it remains important to remember that the reported results reflect only 44 per cent (museums) and 45 per cent (galleries) of the total target population in Gauteng respectively. Therefore if 33 per cent of the reporting museums experienced thefts, it might be reasonable to argue that this figure should be considered a minimum measure for this category.



Table 7 below shows the numeric incidents of theft from museums and galleries per annum and in the bottom half of the table the amount of items lost for each reporting year.

**Table 7 Incidents of theft and total items lost: 2006-2010**

	2006	2007	2008	2009	2010	TOTAL
<b>INCIDENTS 2006-2010</b>						
Museums (7-33%)	3	2	3	0	7	15
Galleries (2-22%)	2	1	0	0	3	6
<b>NUMBER OF ITEMS LOST 2006-2010</b>						
Museums	Approx 12	Approx 6	2613	0	29	Approx 2660
Galleries	2	2	0	0	5	9

The 2006 period shows five separate incidents and 2007 and 2008 reflect three incidents per year respectively. Neither the museums nor the galleries experienced incidents of theft for 2009. 2010 showed a sharp increase in the number of incidents experienced. The museums reported seven incidents of theft and the galleries reported three.

The numeric losses experienced for the period are reflected in the lower half of table 7. The museums lost approximately 2660 items. The reason for the approximation is because the figure for losses for the 2006 and 2007 period are not accurate, but approximations. There was a huge loss in 2008 when 2613 individual items were stolen from one specific museum. In 2009 no losses were reported. The period 2010 showed a total of 29 losses.

The galleries lost in total nine individual items. The period 2006 and 2007 respectively saw two losses per year. In the period 2008 and 2009 no losses were experienced while 2010 shows five losses. Among the galleries also the 2010 figures show a rise in the number of theft incidents. This aspect will be discussed further along in this chapter.

The seven museums that experienced theft, reported a total number of 15 separate incidents, which translates into three incidents per year, and the six separate incidents of the two galleries into 1.2 incidents per year. If the items being stolen were standard items such as cellular phones or laptop computers, then these figures are negligible, as the items are easy to replace. Since these are not standard everyday items, replacing them is not all that simple.

The research undertaken within the Australian art market by Aarons for the period 1970 to 1989 revealed a similar perspective in terms of numeric incidents. Her research covered a period of 28 years and addressed incidents of thefts reported at the police stations in Victoria. She found that for this period (28 years) only 57 incidents of art theft were reported, which amounts to approximately two incidents per year (Aarons, 2001:22). The South African figures, when divided into years, reveal that there are three incidents per year for museums and 1.2 incidents per year for galleries. These figures place the Australian figures somewhat in the middle regarding figures mentioned by the South African participants in this research. This analogy is done considering that the Australian research was over a period of 28 years and the South African research only covered five years. The incidents in South Africa are possibly more prevalent than the reported numbers would have one believe.

In terms of volume, the manifestation of this crime is relatively minor, which could also hint at an 'exclusive' market. Aarons argues that there is a definite tendency to underreport this type of crime (Aarons, 2001:18, 22). This too might be the same for South Africa. This aspect will be discussed further in paragraph 5.2.1.5.

During the qualitative interview done with the Managing Director for Art Insure, Mr G Massie (sample C), he remarked that the figures presented for this research are but a portion of what was stolen for this period, albeit from a wider scope of victims. While he was not at liberty to provide specific details, he did suggest that the Art Insure website be visited to tabulate the list of stolen works of art and other objects listed there and to compare that with the findings made for this research. The website address is [www.artinsure.co.za](http://www.artinsure.co.za).

Since the website is dynamic, it is relevant to mention that the figures discussed below reflect what was found on the website as on 20 May 2012. There were a total of 63 entries on the website which fell both inside and outside the date parameters (2006-2010), geographical parameters (Gauteng) and institutional parameters (museums and galleries) of this study. None of these entries could be added to the data set for this study (Art theft register, 2012). This corroborates the earlier speculation that the actual figures for thefts and losses are higher than the reports would indicate (Massie, 2012).

This research argues that the items that are stolen are mostly irreplaceable, thereby compounding the severity of the losses. To this end the stolen items were listed and thereafter classified into

different typologies to facilitate the discussion of what kind/types of items are being stolen. Below is a representation of these typologies.

**A) MUSEUMS 2006-2010**

- Typology one: Militaria
  - 20<sup>th</sup> Century medals, 20<sup>th</sup> Century uniforms, Bronze Imperial Crest, a collection of RAF/SAF badges, 1 amphigareous badge and 9 medals, a collection of ancient coins and medals (1181 medals and 1431 coins);
- Typology two: Statuary art
  - A bronze sculpture, two plaster of Paris sculptures (from which moulds can be drawn and new sculptures cast);
- Typology three: Ceramics/ porcelain:
  - A collection of Chinese ceramics;
- Typology four: Paintings
  - A painting signed by President Paul Kruger;
- Typology five: Miscellaneous
  - A mortar and pestle set, shaving brush and an ivory and wooden gong set; and
  - A laptop and camera that formed part of a display.

**B) GALLERIES 2006-2010**

- Typology one: Paintings
  - A water colour by the artist George Pemba;
  - A still life by the artist Wim Blom; and
  - Landscapes by the artists Hugo Naude, Adolph Jentsh and Francois Kock;
  - An oil painting – artist unknown;
- Typology two: Other works on paper
  - A work on paper – artist unknown;
- Typology three: Miscellaneous
  - An unknown item;
  - A tapestry by the artist Tshabalala.

When viewing the identified typologies for museums and galleries it is possible to cluster them. The museums lost very valuable and irreplaceable items in the military history category, coins

and medals, ceramics and bronzes. In an article published in 2010 by the researcher it was argued that items from the military history category are a favourite among thieves who target specific museums and literally pick and choose what they want (Benson 2010:145). The museums reported quite a number of losses in this category. It is suspected that these items were stolen with a specific and possibly and 'exclusive' market in mind. These losses become more prolific when the anniversaries of the different wars and battles are commemorated.

The galleries lost predominantly paintings, with only one tapestry being stolen. A Tshabalala tapestry is a sought after item and as such could be laundered back into the legal market. Works in bronze are rarely stolen for their artistic value. They are more often than not stolen for the value of their metal. This appears to be the norm internationally also (Benson 2010:146; Charney, 2008; Charney, 2009:109). As reported in chapter 4, the dealers and auctioneers confirmed this tendency.

The smaller items (mortar and pestle set, ivory and wooden gong set) were stolen it is suspected because they are small enough to pick up and carry out and seem fairly simple to sell at a local Pawn shop for a very small amount of money. Within the miscellaneous category of the museums a camera and laptop were listed, neither in a working condition – they were both stolen off display; ostensibly for their resale value at a pawn shop. If the perpetrators knew that these items were not in a working condition, it is possibly unlikely that they would have been stolen.

To validate the assumption that incidents began to escalate during 2010 the data for incidents of theft for 2011 were sourced to inform the discussion. This period was not included as part of the data gathering timeframe for the museums and galleries but it is considered to be informative and may prove insightful to reflect on. The incidents that were sourced are discussed below.

### **5.2.1.3 Thefts reported for 2011**

The figures reflected below were obtained from reports in the media and through reports made by role players in the discipline. It is not suggested that this is the total for this period, only that the mentioned incidents are the only ones that could be sourced (Swart, 2012). The data also only reflect the first nine months of 2011 and show six separate incidents only in Gauteng. These incidents are:

- January: theft of a bronze from a museum;

- February: four Kentridge works stolen from a gallery;
- May: 25 porcelain pieces stolen from a house museum;
- June: five pieces of porcelain and one bronze stolen from a house museum;
- July: porcelain vase stolen from a national museum; and
- September: three bronzes stolen from a gallery.

Of the six separate incidents, four targeted museums and only two galleries. Once again the common denominators are clearly visible; the thieves targeted works in bronze and porcelain (in this event Oriental and Colonial porcelain). In the region of 40 items were stolen during these six incidents over a period of nine months in one province. Statistically this shows while the number of incidents did not necessarily increase, the number of items stolen did. It might indicate that the thieves were more selective in their targets and would opt to target fewer places that would net a great amount of items. If this were the case, it indicates a development in the modus operandi of the perpetrators and the involvement of a more professional type of thief.

The Managing Director of Art Insure, Mr Gordon Massie, was interviewed to inform the discussion on the possible escalation of incidents. The qualitative data obtained during the interview, as well as the quantitative data obtained from the Art theft register of Art Insure, were compared to the data sourced from the participants of sample A. A discussion on these different sets of data follows.

#### **5.2.1.4 Additional data**

The data from the Art Insure website cover national and international thefts from Art Insure clients as well as people who are not clients, and the periods reflected on the website also fall outside the scope of this study. The Art Insure website lists 63 individual items which represent 39 separate incidents, 36 incidents occurred within South African borders and three incidents took place outside the borders (Art theft register, 2012). The reports only represents those items that clients agreed to list as there are several clients who did not wish to list their stolen items for various reasons (Massie, 2012).

After a thorough perusal of the reports, no entries could be found that matched the geographical parameters, theft locale and date parameters of this study. There are, however, for the 2011 period a small number of items which were reported on in this research and that are listed on the

website. This implies that the theft incidents reflected above for 2011 are higher than those reported on the Art Insure website (Massie, 2012).

To clarify the situation, for Gauteng there were 16 separate reported incidents from 2001 to 2012. In 2012 there was one incident, in 2011 there were nine incidents while there was only one incident per annum for 2010, 2009, 2006 2002 and 2001. There is one incident that has no specific date (Art theft register, 2012). The escalation in incidents alluded to in paragraph 5.2.1.3 manifests in the figures for 2011 seen here.

Of the 16 incidents, eight were from galleries, four were from private collections (including a collection housed at a school) while one incident occurred in-transit and another incident was a theft from an auction house. Two incidents occurred from business premises (one being a prominent antiques dealer (Art theft register, 2012). The Gauteng statistics show no incidents of theft from museums. The data for the remainder of the country does, however, indicate that three museums did suffer loss due to thefts (Art theft register, 2012).

The items targeted are primarily paintings/works on paper which include oil on canvas and water colours as well as lithographs and works on paper in media such as in sugar lift, aqua tint and drypoint. These works account for 12 of the incidents (Art theft register, 2012). Bronzes (bronze sculptures) account for three of the incidents. The data correlate with the data provided for thefts in paragraph 5.2.1.2 (A and B). While the museums lost primarily works in bronze, galleries lost primarily paintings and other works on paper. The data pertaining to the loss of paintings from galleries and works in bronze from museums are also similar to those reported by Aarons (2001:24). While her study only focused on galleries, it showed that the majority of items stolen from galleries are paintings, followed by works in bronze and then ceramics/glass sculptures (Aarons, 2001:24).

While the scope of the data (for this study and the art theft register website) is not the same, the findings are similar from which some deductions are possible. The incidents for Gauteng are escalating in number. Numerically, the Western Cape has experienced as many incidents as has Gauteng. This finding supports the finding made by the researcher in 2010, when she found that the hub of the legal art and heritage trade was in Gauteng and Cape Town (Benson, 2010:143). Of the 36 national incidents (listed on the art theft register), 16 were from galleries and only three were from museums outside Gauteng (Art theft register, 2012). If these totals (G-16 incidents, M-3 incidents) were added to the data gathered for this research and reflected in table

7 (G-6 incidents and M-15 incidents) the galleries (22 incidents) are the most vulnerable in terms of theft. This calculation shows 36 incidents reported on the website and 21 reported in this study. It amounts to 57 separate incidents of thefts from museums and galleries. Thefts from galleries amount to 22 incidents (39%) whereas thefts from museums amount to 18 incidents (32%) out of a total of 57 known incidents (Art theft register, 2012).

These findings were compared to findings presented in Conklin (1994:121). In the USA for a three year period (1983-1986) thefts from galleries made up 37 per cent of the total known thefts while thefts from museums constituted 11 per cent of the total thefts. While the scope and time frames are not the same it is significant to note the similarities in terms of volume for thefts from museums and galleries. There were no data on what was stolen during these incidents so further comparison was not possible.

Mindful of the number of known incidents, it is also insightful to consider the proportion of these incidents that have been reported to the police. Various seminal authors have found that these incidents are often either not reported to the police or if they were reported the cases do not receive serious attention, since the items are insured and therefore the loss supposedly recoverable (Aarons, 2001:18, 22; Best, 2009:113; Calvani, 2008:2; Naylor, 2008:288-289; Torsen, 2005:95).

#### **5.2.1.5 Reporting of incidents**

One of the primary complaints levelled against the targeted institutions is that they do not readily report incidents of theft/losses to the police when they are discovered. The failure to report incidents of theft is one of the main reasons why the statistics to highlight the extent of the problem is lacking. This is not just a South African phenomenon; it occurs within the international environment as well (Aarons, 2001:18, 22; Benson, 2006; Benson 2009; Benson, 2010:140, 141-142, 154; Best, 2009:113; Charney, 2009:xviii; Naylor, 2008:289).

The last question of section B in questionnaire one dealt with the issue of the reporting of the mentioned incidents (question 6). It was attempted to determine how often incidents of theft are reported and who they are reported to. Of the seven museums who suffered 15 separate incidents, only four museums said that they had reported these incidents to the police, while six said they had reported the incidents to their own security authorities and five to their insurance. Various reasons were cited for non-reporting by both museums and galleries. The reasons they

provided for non-reporting to the police were among others: the artist from whom the items had been stolen was not *compus mentis* (in his right mind) at the time of the incident; the item had been recovered; the person who had tried to steal the item was caught red-handed; or they simply hoped the items turn up.

Reasons cited by the museums and galleries for non-reporting to their own security authority were: they felt they would rather report the incident to the Trust overseeing the collection; it was only an attempt so no harm was suffered; and it was a just a fraudulent transaction so the gallery took a loss. In addition, reasons cited for non-reporting to the insurance (which seemed to make the most sense) were: it was only an attempt; they hoped the items would turn up; they did report it to the lawyers; and it was a fraudulent transaction. The figures are represented in table 8 below.

**Table 8 Reporting of theft incidents to police/security authority/insurance company by museums and galleries**

M-7 G-2	POLICE	SECURITY AUTHORITY	INSURANCE COMPANY
YES	M – 4 of the 15 incidents G – 1 of the 6 incidents	M – 6 of the 15 incidents G – 1 of the 6 incidents	M – 5 of the 15 incidents G – none of the 6 incidents
NO	M – 4 G – 1	M – 2 G – 1	M – 3 G – 2
REASON	Artist not <i>compus mentis</i> , recovered item, attempt only, hope they turn up	Reported to Trust Attempt only Fraudulent EFT	*Attempt only Hope they turn up Report to lawyers Fraudulent EFT

The institution that reported the ‘\*attempt’ where the perpetrator was caught ‘red handed’ was after this incident targeted on two separate occasions and their entire collection of Oriental porcelain was subsequently stolen. These incidents did not fall within the reporting period. Had they turned this person in to the authorities, it is possible that the later incidents might not have taken place. The data for tables 7 and 8 were analysed further and presented in tables 9 and 10 below. The criminal case number is indicated as a CAS number, which consists of the number of the case/the month it was reported in/the year of reporting.

Table 9 illustrates the incidents of thefts reported by the museums and table 10 the incidents of theft reported by the galleries. Table 9 will be discussed first. The museums, for 2006, show



three incidents of which only one was reported to the police and was registered as CAS 222/07/2006. 2007 shows two incidents and only one being reported to the police and is listed as CAS 1591/07/2007. In 2008 there were three incidents and two were reported to the police; CAS 1699/06/2008 and CAS 1431/08/2008. There were seven incidents in 2010 of which six were reported to the police; CAS 1209/05/2010, 74/07/2010, 230/11/2010, 609/06/2010, 301/07/2010 and 555/09/2010. The total for the entire period for the museums is 15 incidents experienced by seven museums. Ten of these incidents were reported to the police by four of the museums. This amounts to 67 per cent of the incidents of theft experienced by the museums being reported to the police. Thus 33 per cent of the incidents experienced by the museums go unreported. The reasons for non-reporting were provided above. The top half of the table reflects incidents per museum per year while the lower half shows incidents reported to the various structures per year.

**Table 9 Reporting of theft incidents to police/security authority/insurance company by museums**

YEAR	MUSEUM PARTICIPANTS WITH INCIDENTS								
PARTICIPANT	2	17	24	29	32	36	44	Inc	Report
2006	1	-		1 222/7/06	-	1	-	3	1
2007	1	-	1 1591/07/07	-	-	-	-	2	1
2008		-	2 1699/06/08	-	1 1431/08/08	-	-	3	2
2009	<b>NO INCIDENTS</b>								
2010		1	1 1209/5/10	2 74/7/10 230/11/10	2 609/06/10 301/07/10	-	1 555/09/10	7	6
	2(0)	1(0)	4(3)	3(3)	3(3)	1(0)	1(1)	15	10
<b>INCIDENTS REPORTED TO POLICE/SECURITY/INSURANCE</b>								<b>Y</b>	<b>N</b>
Police	N	N	Y	Y	Y	N	Y	4	N
Security	Y	N	Y	Y	Y	Y	Y	6	1
Insurance	N	N	Y	Y	Y	Y	Y	5	2

The incidents experienced and reported represent 4 of the participating museums. A similar table was drawn up for the galleries and their reporting ratio is not much better.

**Table 10 Reporting of theft incidents to police/security authority/insurance company by galleries**

YEAR		GALLERY PARTICIPANTS WITH INCIDENTS		
PARTICIPANT	14	18	Incidents	Reports
2006	-	2	2	-
2007	1 (791/04/2007)	-	1	1
2008	-	-	-	-
2009	-	-	-	-
2010	-	3	3	-
	<b>TOTAL</b>		<b>6</b>	<b>1</b>
<b>INCIDENTS REPORTED TO POLICE/SECURITY/INSURANCE</b>			<b>Y</b>	<b>N</b>
Police	Y	'n	1	1
Security	'n	'n	-	2
Insurance	'n	Y	1	1

In 2006 there were two incidents, neither of which was reported to the police. In 2007 there was one incident reported to the police: CAS 791/04/2007. There were no incidents in 2008 and 2009. While three separate incidents were experienced by the galleries in 2010, none were reported to the police.

Although fewer incidents, the ratio of reporting these incidents to the police is poor. Of the total of six incidents experienced by the galleries, only one was reported to the police. This reflects a 16 per cent reporting rate for the galleries. Once again, the top half of the table is done per incident per year, while the lower half is done per gallery per year. Neither of the galleries reported the incidents to the security and while one gallery reported to the insurance, the other did not. When combined, the figure for reporting of incidents to the police for the museums and galleries is 52 per cent.

When the data in tables 9 and 10 are viewed collectively it shows that the museums and galleries will more readily report incidents to their internal structures than they would to the police. This emphasises what has been reported on from literature since 2006 and has been proven with qualitative inquiry in 2009 (Benson, 2006; Benson, 2008b; Benson, 2009; Benson, 2010:140, 154; Benson, 2011a:83). By following this approach museums and galleries are contributing to the 'shroud of secrecy' surrounding incidents of thefts and may actually be exacerbating the problem. Gerstenblith (2007:152) highlights this when pointing out that hard data and empirical studies are required before change is brought about through policy or legislation. This research has shown that obtaining hard data is not always that simple.

Aarons made the same finding in her study (Aarons, 2001:22). It is only when incidents of theft are reported that the true extent of the problem becomes clear. This highlights the 'dark figure of crime', which represents the unreported portion of crime. This uncertainty makes the true extent of this crime virtually impossible to gauge, much less address.

This concludes the discussion on data for section A of questionnaire one. Based on the acquired data, questionnaire two was designed and distributed for completion by those museums and one gallery who reported their theft incidents to the police. In total there were 11 cases reported to the police.

### **5.2.2 Questionnaire two: Museums and galleries with reported incidents**

The purpose of questionnaire two was to gather data on the 11 reported cases (figure 6 on page 131). The four museums and one gallery were asked specific questions relating to each incident. Of these 11 reported cases, it was only possible to get data from the institutions on 10 of the incidents and data from official police records in eight of the incidents. The data were collated and analysed. The discussion in paragraphs 5.2.2 to 5.2.2.9 deals with only **10** of the 11 reported incidents. The reason for the incorrect data capturing is not known.

Similarly, using the CAS numbers supplied by the museums and gallery, additional analysis was done based on data withdrawn from the CAS system, pertaining to the duration that the case was active as well as the data captured when the initial reporting was done. Data from eight incidents could be drawn for this analysis due to either faulty CAS numbers or station particulars provided by the affected institutions. These aspects are discussed under paragraph i and ii under paragraph 5.2.2.6.

Questionnaire two was discussed at length in chapter 2 and therefore it will not be discussed again except to highlight the different sections covered. The questionnaire was divided into three sections namely, size of the collection of museums/gallery (paragraph 5.2.2.1), analysis of incidents of theft (paragraphs 5.2.2.2 to 5.2.2.5) and museum/gallery guidelines (paragraphs 5.2.2.6 to 5.2.2.8). The museums and gallery will be dealt with separately and then collectively during the next phase of reporting and discussion.

### **5.2.2.1 Size of the collection**

Two of the museums have a collection larger than 300 000 items, one has a collection of between 20 001 and 35 000 items and the last museum has a collection of between 3 000-10 000 items. The gallery has the smallest collection of between one to 50 items in the collection at any given time.

Each of the museums experienced three separate incidents of thefts each at three different times. One museum actually experienced five incidents of theft; one of which they did not report as they deemed it too insignificant and the item stolen during the second incident is not relevant to the scope of the study. The incident at the gallery appeared to be a once off; however the gallery staff indicated that other galleries in the same vicinity suffered a similar type of loss through a similar fraudulent scheme perpetrated by the suspects who were never apprehended.

### **5.2.2.2 Date and time of incident and suspects involved**

In total there were 11 incidents (for museums and the gallery) that were reported to the police involving five different institutions. Three of the museums are located in Pretoria and the remaining museum and one gallery are located in the Johannesburg area. Since one of the incidents was not relevant to the scope of this study, this section will address data obtained relevant to only 10 of the reported 11 incidents.

Obtaining the exact dates/times of the incidents proved more problematic than anticipated. While only one of the museums could provide an exact time of incident, the other three were able to either give merely an approximation or just a date without time. Eight of the 10 incidents reported by the museums occurred during the autumn/winter months of May, June, July and August. An interesting feature of two incidents that are not being used for analysis purposes (one was not reported, the other incident is not relevant to scope of the study) is that these incidents also took place in August.

The incident reported by the gallery occurred on 17 April 2007. The gallery was able to provide details as this incident occurred using a fraudulent EFT (electronic financial transaction) as modus operandi. The gallery reported that several other galleries were also targeted in Johannesburg at the same time they were targeted. This gallery and only one museum were able to accurately say how many suspects were involved.

The gallery reported that two men, apparently very good con-artists employing a similar modus operandi, purchased art and produced fraudulent proof of payment to them and several other galleries (who did not take part in the study). It is suspected that due to the similarity in modus operandi it might be the same two suspects; but this is not a given.

The one museum managed to capture the suspects on CCTV cameras. The CCTV footage of the museum shows the suspects (one female and two males). No arrests were made. The footage shows how the female keeps looking at what appears to be a photograph in her hand, while searching the displays for the item in question. Her two accomplices tried to keep the security guard busy in another section of the display. Once he suspected something was wrong he left the two males and returned to the display section where the female suspect was. Having been warned by her accomplices, she grabbed an Oriental vase off an open display and hid it in her large handbag and escaped from the museum. The men were apprehended but due to a lack of conclusive evidence linking them to the female, they were released after providing the police with names and addresses that turned out to be false.

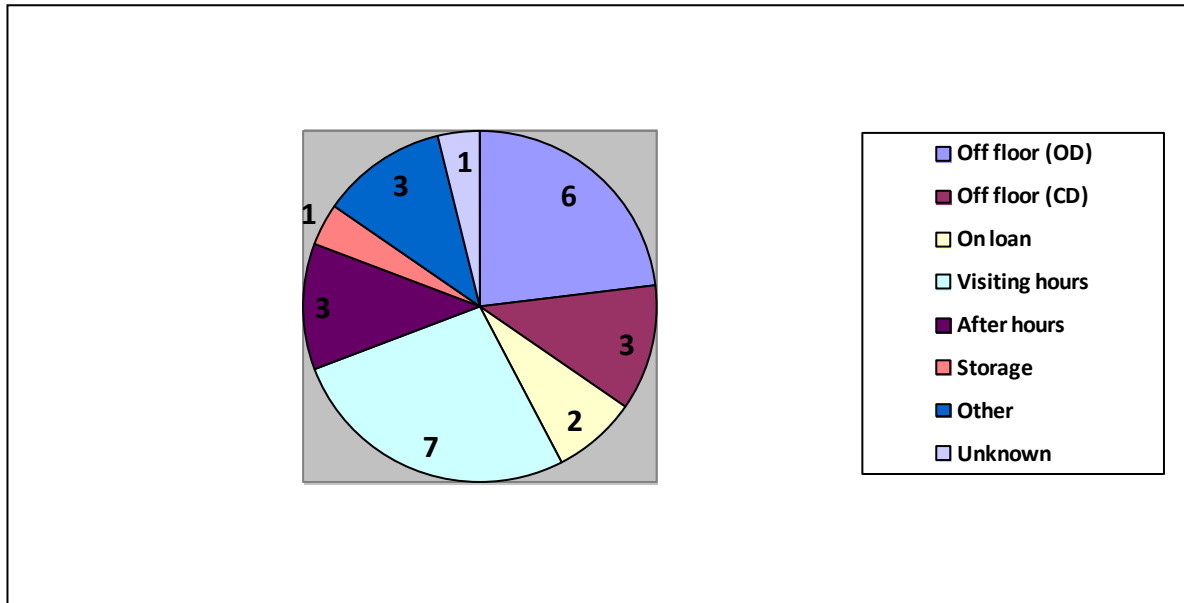
In the remaining incidents at the museums, while there were suspects, it is not known how many there were and whether they are male or female. Therefore it is not clear at all how to describe such a suspect/s, adding to the difficulty of investigating this type of crime and the improbability of being able to accurately profile such a perpetrator.

### **5.2.2.3 Circumstances under which theft occurred**

The participants were asked to indicate all the possible circumstances under which the theft occurred. A list of circumstances was provided. During nine of the incidents reported by the museums, the items were taken off the floor (on exhibition), in six of the incidents they were from an open display (OD), and three of them from a closed display (CD), while there was one incident where the item was stolen from storage.

In two incidents the thief/thieves had time to steal the items because both incidents involved items being removed from a wall or a showcase in which event the locks on the showcase had to be dismantled to access the items in question. In two of the other incidents, the items were stolen while on loan to another museum.

The museums and the gallery reported that eight of the incidents took place during visiting hours while only three took place after hours where visible signs of forced entry were reported by the museums. Thus from the abovementioned data what does become clear is that items are most vulnerable while on open display during visiting hours. The relevant data are presented in a pie chart in figure 11 below.



**Figure 11: Area where theft occurred from**

This feature in thefts from museums is confirmed by Conklin (1994:124-125) and Burnham (1975:74) as well as Aarons (2001:23), albeit that her study focused primarily on commercial galleries.

While Ahern and Amore (2009:134) suggest securing items in place to prevent the ‘blitz type attach’; this type of protection will work just as well to protect items on open display in a room which might not be well monitored. Ahern and Amore (2009:134) argue that if the curator or a colleague can remove the item from the wall or display, then so too can the thief.

#### **5.2.2.4 Rationale for thefts**

Participants were asked to give an opinion why they thought the item/s had been stolen, i.e. what the motive was. Four replied that the item/s had been stolen because they were small enough to put into a pocket or a bag, while three of the participants felt that the item/s had been stolen because they were put into an open display case. Once more Aarons (2001:24) and Burnham (1975:74) found that often items are stolen because they are small and easy to remove from display. One of the incidents occurred possibly because the item is well known, or easily recognisable. This is a bronze by the sculptor Anton van Wouw and could possibly be one of the rare occasions where a bronze is stolen due to the name of the artist and not for its metal value.

Additional reasons were provided for the thefts, such as; the item is highly collectable; easy to sell on black market; rare and highly collectable; made from copper and therefore can be converted to quick cash. All of these reasons are also cited by Aarons (2001:23-24), Burnham (1975:74-74) and Conklin (1994:124-126).

Participants were asked to provide an opinion as to what contributed to the theft. Once again they were requested to mark all the possibilities that in their opinion applied. In six of the incidents the participants felt that the theft was due to a lack of mechanical security (such as electronic barriers, alarms and locks). In one incident the guards were overpowered and in another incident the theft was possibly due to the mechanical security not being linked to the police. In two incidents the opinion was that insider information had led to the thefts, and in five of the incidents a variety of reasons was provided which all relate back to security issues. Additional reasons provided was that the staff members were inexperienced in dealing with 'con-artists' and that the security guard was distracted while the accomplice stole the item.

In the opinion of the participants it was poor or ineffective physical security which contributed in the majority of the instances to the incidents occurring. Research by Aarons (2001:25) and Conklin (1994:255-256) supports this. There was one participant who responded to not knowing what may have contributed to the incident. The aspect of security will be addressed in this chapter in paragraph 5.2.3 when the data from section B of questionnaire one are compared with this section.

While 10 cases cannot be used conclusively to determine cause and effect, it is argued that it may be possible to reach some conclusions on analysis of the data. Based on the data discussed

there appeared at face value to be no link between the 10 incidents that would hint at reasons why they were targeted, such as work/s by the same artists being targeted or a specific day of the week or time period. It is possible that the link could be found on considering aspects external to the event but focused on the geo-spatial characteristics or the geographic location of the museums and gallery. This was done and the resultant discussion is therefore not based on data obtained from questionnaire two, but on data relevant to the geographic locations of the affected museums and gallery.

Geographically, two of the museums are situated in/near the city centre of Pretoria, an area known for a higher than average crime rate. The remaining two museums (one in Pretoria and the other one near Johannesburg) are not located in high crime areas. The Pretoria museum is situated on the campus of a major university, where there is supposedly stringent access control. The Johannesburg museum, which also experienced three separate incidents, is situated in a peaceful, affluent neighbourhood in a suburban area that is not known for its high crime rate. The possible reasons for the targeting of these two museums will be discussed after the geographic discussion.

#### **5.2.2.5 Routine Activities Theory**

The researcher will argue that one of the factors that contributed to the two Pretoria museums experiencing thefts is because they are situated in 'hot spot' crime areas. By utilising the Routine Activities Theory (RAT) originally explained by Lawrence Cohen and Marcus Felson, the occurrence of the incidents at the two Pretoria museums will be explained (Siegel, 2004:92). Cohen and Felson drew the conclusion that the amount and division of predatory crime is very closely related to the presence and subsequent overlapping of three variables. Felson (1998:132) and Siegel (2004:92) describe these variables as:

- Accessibility of an appropriate target;
- Absence of a competent protector or custodian; and
- Presence of an offender that is motivated.

The level or degree to which each of these variables is present at a specific moment in time in a specific area, increases the likelihood of a predatory crime occurring. A predatory crime in this instance is when a perpetrator steals an object. Using this theory it may be explained that the museums (especially those in the high-crime areas) as well as the items that are on display may



be considered as suitable targets. Additionally the security guards who are not specifically trained for the museum environment and may thus not really be efficient in what they do, or may be too few in number to cover the entire museum floor, may be equated with the absence of a capable custodian. Being aware of the geographic location of the museums, there is apt to be the presence of motivated offenders. In addition Siegel (2004:93) explains that in hot spot crime areas there is a significant chance of becoming a victim of crime. This reasoning was applied to the geographic location of the four museums and the one gallery and some deductions were possible. The possible reasons for these incidents are discussed below as scenario one, two and three.

The SAPS display crime hot spot areas for only certain crimes such as murder, attempted murder and burglary at non-residential premises. Six of the cases in this study were reported as 'Theft-General' and the remaining two cases were reported as 'Burglary: non-residential premises' and 'Robbery: non-residential premises' respectively. The data on the remaining three cases could not be drawn due to faulty data that could not be clarified.

In scenario one there were two Pretoria museums which on several occasions fell victim to thefts, burglary at non-residential premises and armed robbery at non-residential premises. The geographic location of these two museums proved to be of importance. These two museums are located in such a 'hot spot' area. This area has been highlighted by the SAPS as a hot-spot in relation to burglary at non-residential premises, being in the top 20 per cent of the 30 contributing stations for this category in the Province. In addition this station area is also among the 51 stations that fall in the second highest grouping for robbery at non-residential premises (Gauteng: burglary, 2012; Gauteng: robbery, 2012). One of the two museums in the crime 'hot spot' area was victim to an 'armed robbery-non residential premises' as well as 'Burglary at non-residential premises'.

Since only two of the cases reported were 'Burglary at non-residential premises' and 'Robbery-non-residential premises' respectively, and the criminal complains for the remaining incidents at these two museums were 'Theft – General', additional crime data was sought to verify the 'crime hot spot' argument.

Of all 127 station areas listed for the Pretoria area, the specific area in which these two museums are located shows among the highest incidents of the theft category. On the SAPS crime statistics this category is relevant to 'All theft not mentioned elsewhere'. It is therefore

reasonable to argue, based on the statistical data from the SAPS website, that the geographic location where these two museums are situated is contributing to the incidents of thefts occurring at these museums. In such crime 'hot spot' areas it is probable that there will be motivated offenders present, who will target the items on open display while security guards are elsewhere or not observing. This classification of incident is also the most prolific of those discussed in this research.

The second scenario relates to the museum located in the Johannesburg area. This museum is not situated in a crime 'hot spot' area, thus other considerations were made. The incidents at this museum indicate that the possibility that the motivation for the thefts is either due to the items (the museum specialised in militaria) or due to the metal (bronze, brass and copper). All of the items stolen from the Johannesburg museum can be converted into cash fairly quickly and with the minimum amount of effort; provided one knows where to sell 'scrap metal' and how to advertise on e-Bay. One of the items was subsequently found and a potential perpetrator traced when the stolen goods were advertised on e-Bay. Items made of bronze, copper or brass seldom make it back into the open legal market as these items are often sold as 'scrap metal' and are destroyed.

The third scenario is relevant to the third Pretoria museum which happened to be a targeted theft. This university museum houses a major ceramic collection which has been targeted on several occasions in different ways. They have employed different means of securing the collection. After the last attempted theft the entire collection was removed from display. It is argued in this research that the majority of the theft attempts perpetrated against this museum were target specific, albeit by non-professional thieves. This hints at an 'order' being placed for the items and therefore a ready market/buyer.

This section addressed what participants viewed as contributing to the thefts, external factors that may have contributed to the thefts and possible motives for the thefts. In paragraph 6.2.2.1 the aspect of motives are further discussed and the aforementioned three situations may then be allocated to a specific motive.

### 5.2.2.6 Police response

In four of the 10 incidents, the local police were called to the scene. The participants reported that in three of the cases they were satisfied with the initial response of the police to the scene. Only one of the participants was not satisfied with the response of the police to the initial scene and explained that there was bad 'follow-up'. In the remaining six incidents the curator or a colleague went to the local police station and reported the crime there.

The majority of the participants were not satisfied with how the investigating officer handled the case. The general complaints were: no follow-up; no feedback; no communication; no finality; and no urgency in feedback. Participants indicated their satisfaction with the manner in which the detectives handled the different cases in only two of the incidents. In both of these cases there were clear suspects who were apprehended within hours of the incident. Conklin (1994:279) notes that most of the police departments do not have detectives trained in or having specialised knowledge in art crimes; despite the fact that it is often high value items being stolen, it is seen as just another property crime. The same is true for the South African situation where it is extremely unlikely that a general detective at station level has specialised knowledge or experience in this type of crime (Bendeman, 2012; Jooste, 2012). Therefore, when cases like these are received for further investigation at the detective unit of any station, then more likely a detective with no previous experience in this discipline will handle the case. This is not the best practice (Magness-Gardiner, 2011; Panone, 2011).

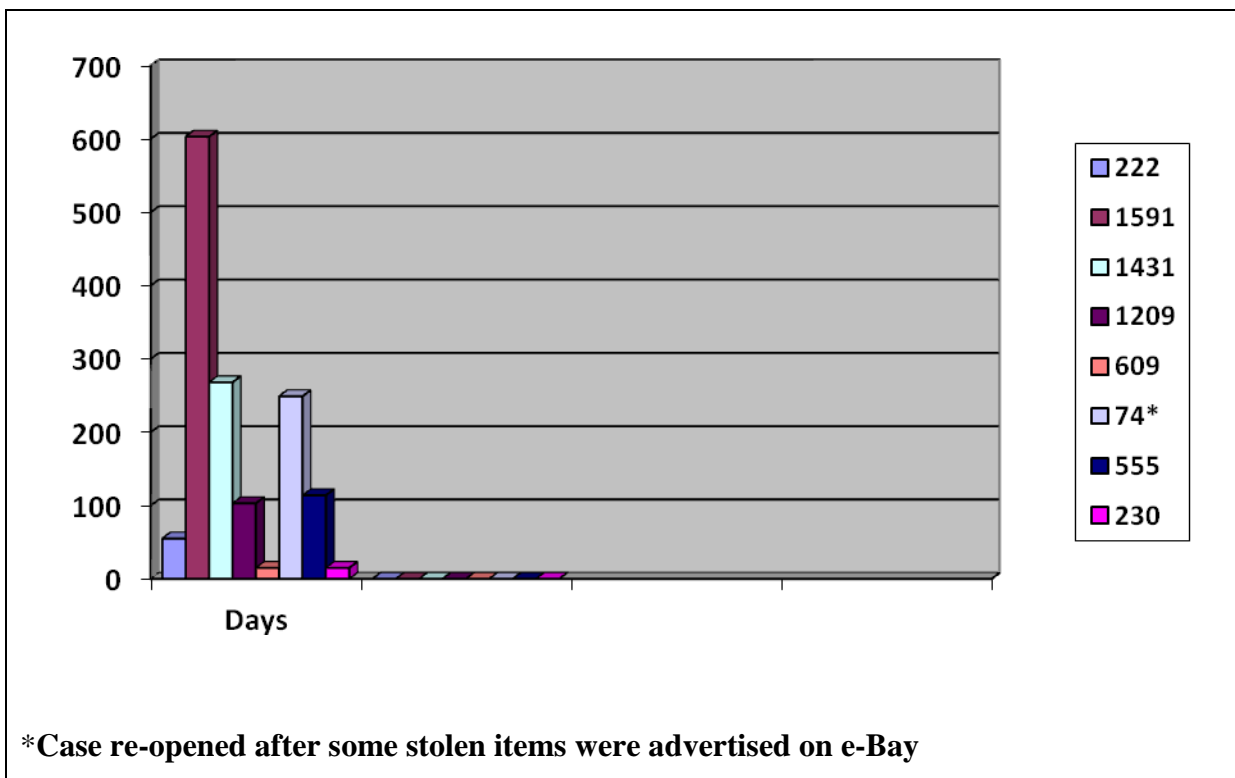
Further analysis done was on the time duration that each of the reported cases remained active (open); from the time the criminal case was received at the police station and assigned to an investigating officer until it was closed off, for whatever reason.

#### i Time frame that case was active

Data for only eight of the 10 cases were available (could be sourced) and were thus analysed. Cases remained open on average between five and six months. The case that was active for the shortest period was active for two weeks and one day and the case that remained active the longest was open for almost two years. The latter was most probably because it was an armed robbery case.

Middelmas (1975:170) reflected on this phenomenon and reported that even when police are over-worked and understaffed, they cannot ignore a crime when it does occur. When the chances of successfully recovering a stolen item are miniscule, it might not seem worthwhile to even extend the effort to begin looking for it (Tijhuis, 2009:41). This the police will never admit to (Middelmas, 1975:170). In one of the cases analysed, the case docket passed through the hands of six different detectives before being closed off as ‘undetected’ 15 days later with an unmentioned ‘Bring Forward’ date. In another case the docket was passed between four different detectives in 13 days. It is not clear how much concerted attention these two cases specifically received while being passed along in this manner.

These figures correlate with Magness-Gardiner (2011) who highlighted that if the detective at the local police station does not solve the crime within one to two months, the case usually receives no further attention and will not be solved due to other more current investigations. One of the cases was re-opened in November 2011 when some of the stolen goods were advertised on e-Bay. The case is still open. None of the cases analysed were resolved successfully and no successful prosecution instituted in spite of there being suspects apprehended.



**Figure 12: Time frame that cases remained open for investigation**

Aarons (2001:18) argues that empirical studies of art crimes may very well impact on law enforcement deployment and Gerstenblith (2007:152) adds to this argument that empirical proof is needed to convince decision makers to act.

One of the primary problems in this discipline is the lack of statistical data to confirm the existence or the extent of the problem. Therefore data was drawn from the CAS system of the SAPS to determine the manner in which these eight incidents were captured and how straightforward it would thus be to draw statistical data in relation to these incidents.

It was found that not only was there NOT a specific crime code for an incident relating to heritage theft, since the majority of incidents are merely reported as 'Theft-general', thereby ensuring that the incident disappears into the masses, but the provision made for describing the type of property lends itself to various other problems. Primarily when reporting the type of property that was stolen, there is a 'drop-down' menu which the reporting officer must use to describe the goods. All of these goods are also registered as 'sundry goods' and are then listed. Of the eight cases sourced, four instances were found where the property description provided was relevant to the items stolen, namely statue, coins and medals and painting. However in the four remaining incidents it proved less so. The property description for the Brass Plaque was listed as 'Medical Instruments', the very rare cap pins were listed as 'Body Armour', the mortar and pestle were listed as a grinding machine under 'Electrical Appliances' and the Chinese ceramics listed as 'Pots'. If an attempt was made to draw the statistics of the eight cases addressed in this research using standard museological criteria (such as coin, medal, painting and statue) close to 50 per cent of the incidents will not be found.

It is therefore possible that the statistical data to verify the existence of heritage crime is on the police CAS system, but it is lost among all the other hundreds of thousands of general theft cases that deal with millions of other sundry items.

#### **5.2.2.7 Outcome of case and recovery of the item**

In six of the incidents the perpetrator/s was not caught, while in three of the incidents a suspect was apprehended but the participants do not know what happened after that. In one incident the participant reported not knowing what happened in the case. Had the police communicated with the participants where suspects were apprehended and informed them of the outcome of the

cases, then the overall attitude to the follow-up of the investigator might not have been as poor as was reported on in paragraph 5.2.2.6 above.

In four of the incidents, the items (in one case only some of the items) were recovered. One participant reported that the items were intact and in another incident the item was damaged and 'discovered' in an open field near the scene by a security guard who worked at the museum, who allegedly confessed the crime to his supervisor. In six of the incidents, the items were not found. Stolen items from two of the incidents later surfaced in the legal trade. One was advertised on e-Bay and then recovered from a specialty shop in Rosebank. This case has subsequently been reopened. In another incident a dealer in coins and medals purchased the stolen items from a seller (runner) knowing that they were the items that were stolen, just to get them back for the museum and immediately notified the museum of this. This dealer lost close to R20 000 as a result of this as the seller (from whom he bought the items) had provided false information and could not be traced. In one incident the participant reported to not knowing whether the item was recovered or not. The study done by Aarons (2001:28) also found that legitimate businesses played an important role in the distribution of items stolen from galleries. It has also been experienced by the researcher (whilst a police officer) that stolen items are often re-introduced into the legal trade, either in a different city or even on a different continent. The aspect of due diligence then becomes relevant.

Brodie et al. (2000:49) highlight the issue of due diligence when they consider the interpretation thereof by a potential buyer. Due diligence describes to what extent the potential buyer made an effort to verify the pedigree of the item/s being purchased. One aspect that must be considered in this instance is whether the item is on the market legally or not and this speaks to provenance (the genealogy of the item).

Since much of what happens in the market is masked in a 'shroud of secrecy' and thousands of rands may exchange hands with merely a handshake and very few questions asked, the re-introduction of the stolen goods into the open market is thus facilitated (Borodkin, 1995:386). Explanations requested as to provenance are often met with vague answers of something in the line of 'from the estate of a distinguished gentleman experiencing financial hardship' thereby merely masking what could possibly be an illegal sale to an unwitting client. This tendency, whilst important to protect the legal interests of a legitimate client, is abused within the market to often defraud other legitimate clients.

South Africa is a common law country and the rights of the legitimate owner weigh the heaviest. Thus if a stolen item were to be purchased by Mr X and it turns out that it was stolen from Mr Y then Mr Y has the right to claim the item back and he does not have to reimburse Mr X for any loss suffered. Mr X will have to try and recover his losses from the person that he purchased the item from; and if it was a runner or a temporary auction, then he has in all likelihood lost his money.

For this reason there are strict guidelines through which due diligence may be proven in the ICOM Code of Ethics for museums. These guidelines are, however, not enforceable and museums need to often use sound judgment when deciding on purchases/acquisitions. Similarly sound management practices make the provision of policy, guiding losses within museums and galleries, a prerequisite.

#### **5.2.2.8 Museum guidelines for losses and thefts**

Two museums reported to having an official policy that dealt with losses and also that it was compulsory to report thefts to the police while the remaining two were not certain. The uncertainty of these two museums on reporting is probably due to a lack of communication since they resort within the structure of a National museum which has a very clear policy. The gallery was not asked this question, only whether they report losses to the police, to which they replied that although not compulsory, it is advised.

#### **5.2.2.9 Publicising incidents of theft**

The participants were asked what they thought would happen if the thefts of museums objects were publicised. One participant felt that it would lead to more thefts, while another participant felt that it would lead to the recovery of items. Both of these experienced the recovery of their stolen goods after the thefts were publicised. However, it depends on where the thefts are publicised. In these cases, because the items that were stolen would only be valuable to a collector/dealer, the thefts were publicised mainly among dealers and traders in these items. The remaining two participants are of the opinion that it makes no difference if the thefts are publicised or not. The gallery is of the opinion that items will be recovered if thefts are publicised.

Interviews done with SAPS officials highlighted this as an effective method of ‘closing the market’ for the thief to offload his stolen goods. Both Bendeman and Swart advise using the media to broadcast the thefts as widely as possible (Bendeman, 2012; Swart, 2012).

Conklin (1994: 261-262) listed the advantages and disadvantages of publicising theft. Such publication is of course dependent on whether the museum has a detailed inventory of the items that are gone, which is not always the case. The website of Art Insure has a register of stolen items where owners of lost/stolen items may list their items free of charge. The majority of the items on the website depict a good photographic image which should assist any would-be purchaser to identify an item being offered that might also be listed there. The lack of one central repository for South African items (art works or other cultural property) which have been stolen/ lost is unfortunate and detrimental to the recovery thereof, since due diligence checks must now be made against several sites, none of which are sufficiently comprehensive.

When considering the preceding discussion, in spite of the small numbers from which to draw conclusions, when the data are viewed holistically there are a number of valuable issues raised, several of which are supported by international literature. The majority of the items are stolen off display from both open and closed displays, during hours when the museums are open. The items that were stolen are mostly small, easy to pick up and put into a bag. Some are metal and therefore have a quick cash value. Lack of effective security and staff shortage contributed greatly to the incidents (Charney, 2009:109; Straus, 2009:89).

While the participants were satisfied with the initial police response, they were less so with the follow-up investigation by the detectives. While perpetrators were apprehended in some of the incidents it was hardly due to good police work. The one suspect confessed his involvement to his security manager and in another case it was suspected that one of the ‘overpowered’ guards actually let the perpetrators in. In six of the incidents there were no recoveries made. Of the recoveries made, two were as a result of the museums publicising the thefts (especially among dealers and traders in the commodity) and another item was found ‘in an open field’ by the security guard, who turned out to be the alleged perpetrator. These items were not found as a result of effective detective work. These findings are similar to that reported by Magness-Gardiner (2011).

When the police are not familiar with the commodity being stolen, they will also not be familiar with the possible routes that the thief will follow to off-load the stolen goods. The aspect of



receivers (of stolen goods) will be addressed in chapter 6 when the investigation of these incidents are addressed from both a South African and international perspective.

The next section that the questionnaire dealt with was section B: Security.

### **5.2.3 Section B: Security**

#### **5.2.3.1 Security measures – galleries and museums**

Section B: Security deals with aspects in relation to security, inventories, insurance and procedures for reporting thefts/losses. These aspects are addressed in questions 7 through to 17. The data obtained from this section will now be discussed.

The participants were asked to indicate whether they had security at their premises and if so, to indicate all that apply. This was to be done for day-time security as well as night-time security. A separate table will be used to reflect day and night-time security measures implemented at the reporting galleries and a separate table will be used for museums. The first section will deal with galleries.

There were several of the respondents within the gallery sector who for obvious reasons did not feel comfortable reporting on their security measures (and therefore did not) hence the numerical calculation for these institutions will not tally. This was possibly the one section that resulted in the non-participation of some of the gallery participants. Many of the respondents who declined to participate due to this section were phoned and the confidentiality aspect of the questionnaire was explained, but to no avail. They simply declined to participate as in their opinion, the risk was too great.

**Table 11 Day and night security measures at galleries**

Galleries (9 returns)	NIGHT(2 returns incomplete)	DAY(1 return incomplete)
YES: HAVE SECURITY	8	8
LOCKS	7	8
ALARMS	7	8
SECURITY GUARD	4	4
CCTV	4	3
OTHER	3	3
ADDITIONAL SECURITY	Yes 4	No 4

Of the nine reporting galleries, there were two incomplete returns in relation to the security questions. Eight galleries reported to having security measures at night. Seven reported that they made use of locks and alarms at night. Four galleries reportedly had a security guard and Closed Circuit Television (CCTV) and three galleries indicated that they had other security measures at night without naming them. A follow-up question was asked in terms of items that were protected with additional security and four of the galleries reported that they had additional security (not defined for day or night specifically) and four reportedly had no additional security.

Similarly, eight of the galleries reported to having day-time security and this included the use of locks and alarms during the day. In addition, four of the galleries had security guards, while only three made use of a CCTV system during the day and reportedly had other security (without mentioning what this comprised).

Analysis was done with the view to identifying the possible existence of a common denominator between the galleries that had had incidents of theft and the level of security at that gallery and *vice versa*. No clear denominator could be found. Wide-ranging security measures do not necessarily mean that the gallery will not be a target for a theft and similarly nominal security did not mean that the gallery will be a target. It is noted that two of the four galleries that reported to having additional security, had experienced incidents of theft.

The next section addresses the returns from the participating museums.

**Table 12 Day and night security measures at museums**

Museums (21 returns)	NIGHT	DAY
YES	21	21
LOCKS	21	18
ALARMS	14	11
SECURITY GUARD	17	18
CCTV	10	10
OTHER	6	6
ADDITIONAL SECURITY	YES 13	NO 8

Within the museums group a total of 21 returns were received. Of the 21 returns seven museums had experienced incidents of theft. Within this group all 21 reporting museums indicated that they have both day and night-time security measures. For night-time security measures 21 museums indicated that they made use of locks, 14 used alarms, 17 had security guards, 10 had CCTV while six had other security measures (without mentioning what). During the day there is a slight difference. Eighteen museums use locks, 11 utilise alarms, 18 employ the services of security guards, 10 have CCTV and six use other (without naming them).

Thirteen museums indicated that there were items that were protected with additional security, whereas eight reported that no additional security measures were employed. Of these 13 only three had experienced incidents of theft and of the eight that had no additional security, four had experienced thefts. Once again, a good level of security and additional security do not really deter would-be thieves from perpetrating their crime.

In order to assess the level of security at each of the participating institutions, the researcher awarded points out of a maximum of 10 for security (day and night calculated together), affording each item of security the same value. Thus for day-time security the maximum a gallery or museum could score is five out of five, one point each for locks, alarm, security guard, CCTV and other (additional security was clustered together with other). These numeric values are then calculated and reflected as a percentage with scores between 100 per cent and 60 per cent being very good/good and anything below that (50% and lower) considered inadequate. This method was used mindful that the presence of an alarm or even a security guard was not necessarily a deterrent, since very few (if any) security guards employed within this sector are specifically trained for the sector. The same holds true for alarms and the reaction to them by the companies they are linked too.

Below is a table with a breakdown of the security points scored coupled with the amount of incidents of theft experienced by each institution. This is followed by a bulleted summary of tables 11, 12 and 13 to facilitate an understanding of the collective data. There were two participants who did not complete this section of the questionnaire, therefore the totals below will not add up to 30.

**Table 13 Breakdown of level of security for museums and galleries**

	10/100%	9/90%	8/80%	7/70%	6/60%	5/50%	4/40%
<b>INCIDENTS OF THEFT EXPERIENCED</b>							
Museums (*7)	1	-	1	-	4	-	1
Galleries (*2)	1	-	1	-	-	-	-
<b>TOTAL</b>	<b>2</b>	<b>-</b>	<b>2</b>	<b>-</b>	<b>4</b>	<b>-</b>	<b>1</b>
<b>NO INCIDENTS OF THEFT EXPERIENCED</b>							
Museums	2	-	1	-	7	-	4
Galleries (2 incomplete)	1	-	-	1	-	1	2
<b>TOTAL</b>	<b>3</b>	<b>-</b>	<b>1</b>	<b>1</b>	<b>7</b>	<b>1</b>	<b>6</b>

The security scores for the nine institutions (\*seven museums and two galleries) that had experienced incidents of theft ranged from 100 per cent for one museum and one gallery each and 80 per cent also for one museum and one gallery each. A total of four museums scored 60 per cent and one museum scored 40 per cent. For the museums and galleries that had experienced no incidents during the reporting period, three scored 100 per cent for security, one scored 80 per cent and one scored 70 per cent. A similarly high number (seven) scored 60 per cent. Only one participant scored 50 per cent and six participants scored 40 per cent. As mentioned at the outset, some of the gallery participants did not divulge all the details requested and therefore the number of responses will not equate to the number of participants.

After studying the aforementioned table, it is significant to highlight the following:

### **MUSEUMS AND GALLERIES WITH INCIDENTS**

- Nine (30%) of the 30 participants had experienced incidents of theft.
- All nine participants had a security score that varied from good to very good.
- Only one participant (10%) of the total 30 had a security score of inadequate.
- More than half (17) of all 30 participants had additional security (57%) – yet five of the 17 (29%) with additional security, still experienced thefts.
- Data from paragraph 5.2.2.3 show that the majority of the incidents occurred whilst the museums/gallery were open to the public and the item/s were being exhibited on open display.

### **A) MUSEUMS AND GALLERIES WITHOUT INCIDENTS**

- Twenty one (70%) of the 30 participants had not experienced any incidents of theft.
- Eight (27%) of the 17 participants that had additional security, had not experienced any incidents of theft.
- *Two participants out of the 21 participants who had not experienced thefts, did not want to divulge any security information whatsoever, thus the following calculation is made out of 19 participants and not 21.*
- 12 of the 19 participants (63%) had security ranging between good to very good.
- Seven (37%) of the participants had a security score of inadequate.

Two of the nine participating galleries had experienced incidents of thefts. Both of these galleries had very good security and both had additional security. In addition, of the nine that took part, four had additional security and of these four galleries, two had experienced incidents of theft (referred to above) and two had experienced no such incidents. While of the remaining seven not experiencing theft, four had no additional security measures. Thus both galleries with very good security and additional security had experienced incidents of theft, while galleries with security ranging from inadequate to very good had not been victims of theft. It is deduced from this that the level of security within a gallery is not necessarily an indicator of the likelihood that the gallery will be targeted for a theft, since both incidents occurred whilst the gallery was open to the public. The question to be asked is rather what did the two galleries that had experienced thefts, have that the other seven did not have.

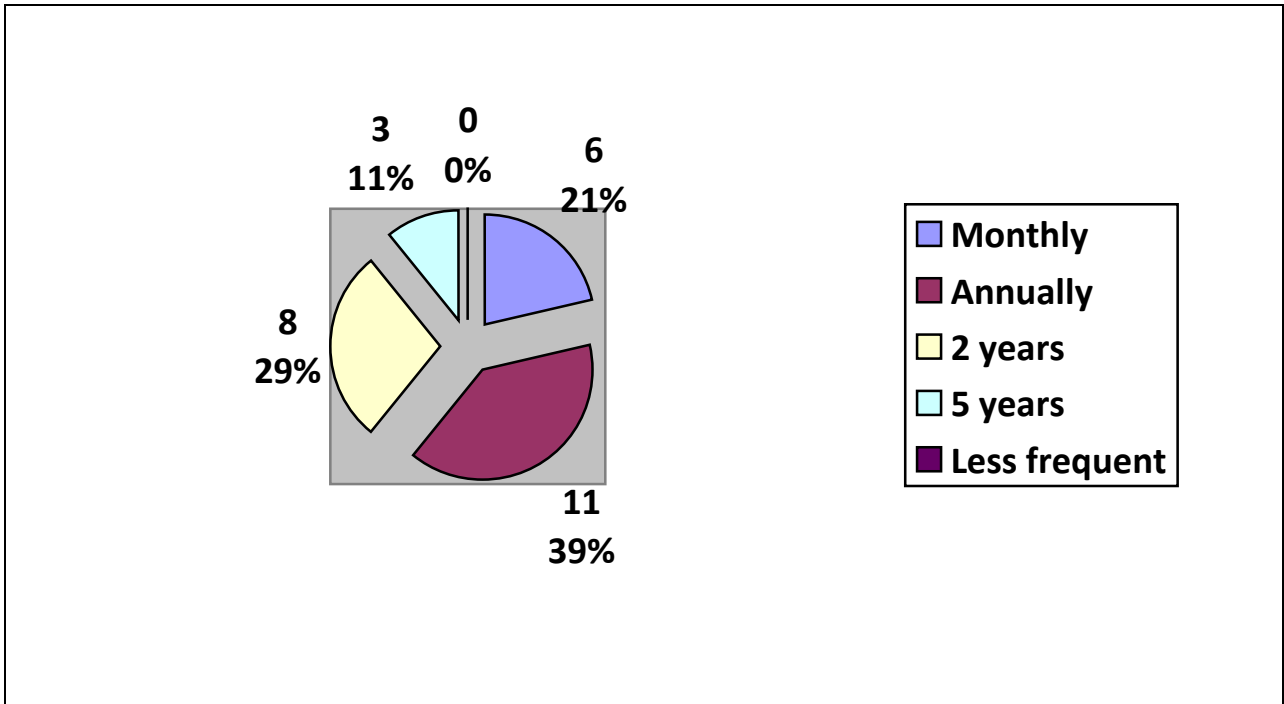
A similar picture presents itself for the museums. Of the total participating museums, seven had experienced incidents of theft and of these, two had very good security and five had good security. Three of the seven had additional security. This while of the 13 museums that had not experienced thefts, six have inadequate security and eight do not make use of additional security. One may deduce that the incidents of theft are not aimed at museums with inadequate security. There are other factors involved that make a museum a target, such as geographic location and accessibility of the target, and motive of offender. These factors were addressed during the discussion of the Routine Activities Theory (paragraph 5.2.2.5). Motivation for thefts will be discussed under paragraph 6.2.2.1.

The discussion will now address the aspect of inventories kept by museums and galleries, the use of photographs in the inventories and the issue of insuring the content of the museum or gallery. These aspects were addressed in questions 9-17.

#### **5.2.3.2 Inventories, photographs and insurance**

For this section, no distinction will be made between replies from the museums and galleries but they will be reported on collectively. The first question (question 9) asked whether the museum or gallery had an up-to-date inventory (register) of all the objects they kept. Of the 30 participants, only 29 gave full information on the existence of up-to-date inventories. One participant opted to refrain from answering this question. The reason for this is unknown. Twenty-four participants indicated that their institutions kept an up-to-date inventory (register) of all their cultural objects, while four indicated that this was true for some of their objects. Only one participant indicated that there was no such inventory/register.

Following from the existence of an inventory, participants were also asked (in question 15) whether inventory inspections were carried out and if so how often. Only 28 participants provided full information. Two of the responding institutions did not provide feedback while another reported on the same matter in two different timeframes with a footnote that some items were checked every month and some every year. Therefore the totals for this piece will not tally to the 28 who reportedly did inventory inspections.

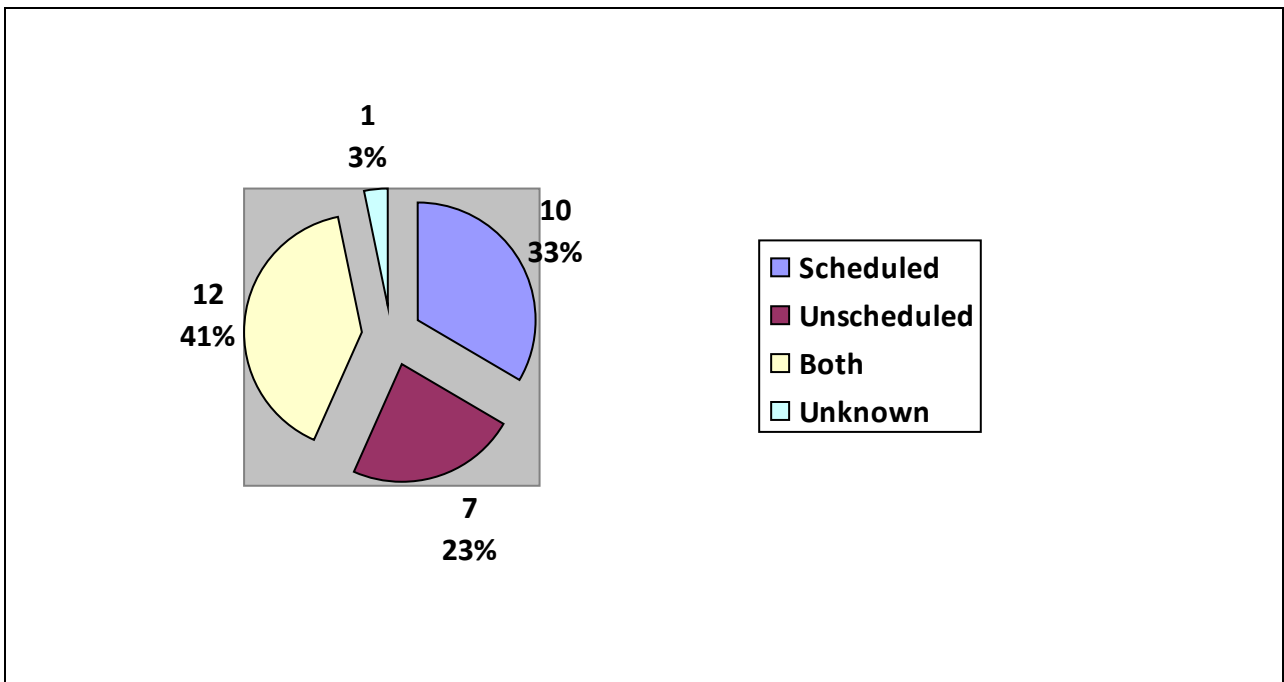


**Figure 13: Frequency of inventory inspections**

Of the 28 participants, one indicated that no such inventory checks or inspections were carried out, while 27 participants reported to doing such inventory checks/inspections. When viewing figure 13, monthly inspections were reportedly done by six (21%) of the participants and annual inspections were done by 11 (39%) of the participants. Eight (29%) of the participants reported to inspections being done every two years and only three (11%) reported that inspections were carried out once every five years. There were no reports of inspections being done less frequently. On analysis a total of 68 per cent of the participants undertake their inventory inspections anywhere between annually and every two years. This time frame is an acceptable standard for inventory inspections and it is a positive point being identified as the norm for this group (Liston, 1993:97).

Question 16 asked whether inspections were scheduled, unscheduled or both, with an unknown factor included. In figure 14 below, the manner in which these inspections were carried out is illustrated, being divided into scheduled inspections, unscheduled inspections, both and unknown. Ten (33%) were reportedly scheduled inspections, thus where the curator or manager of the collection would know when the inventory of a collection would be inspected. Seven (23%) of the participants indicated that inspections were unscheduled, which means that the curator or manager of the collection would not know when inspections were to take place and 12

(41%) of the participants reported that the inspections were both scheduled and unscheduled. There was only one participant who did not answer this question.

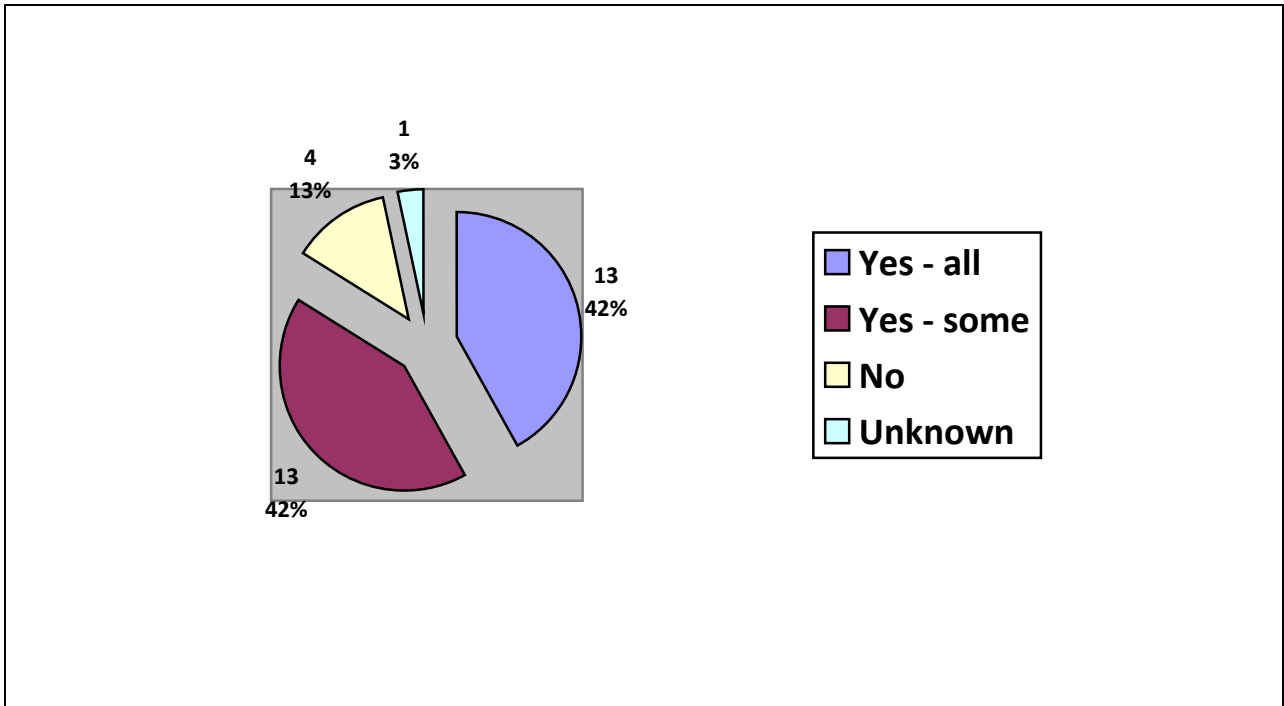


**Figure 14: Frequency of scheduled/unscheduled inspections**

The data show that museums and galleries undertake a number of inventory checks/inspections and these consist of both scheduled and unscheduled inventory checks. A combination of the scheduled and unscheduled (41%) is the preferred norm, followed closely by scheduled inspections (33%).

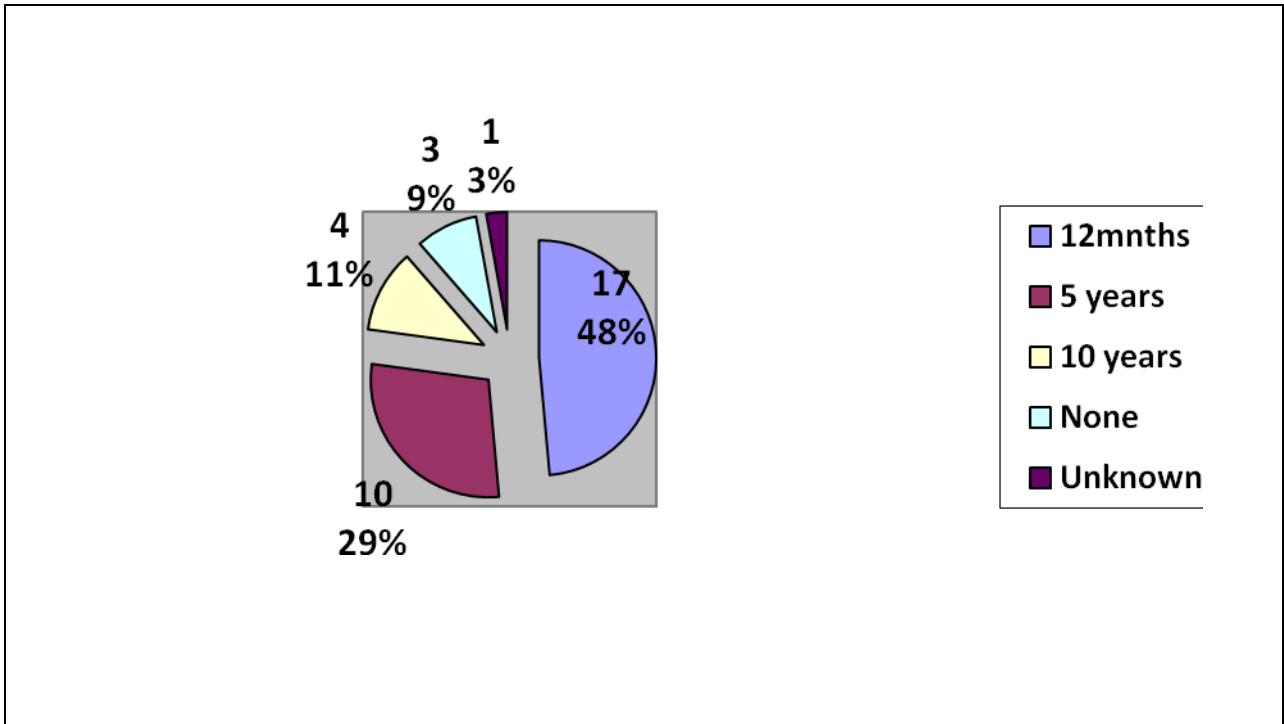
Fundamental to any comprehensive inventory is a good quality photograph of the item being described. Questions 10 and 11 addressed this issue. The participants were asked about the existence of photographs of the heritage objects in their collections. This was supplemented with a question about when the photographs were updated. Figures 15 and 16 respectively reflect the data obtained for these two questions.





**Figure 15: Number of institutions with photographs of inventoried heritage objects**

An equal number of participants reported to having photographs of ‘all the objects’ and ‘some of the objects’ in their collections. The exact value of the term ‘some’ was not defined, and therefore it could mean anything from one item to 99 per cent of the collection. Almost 50 per cent of the reporting group has photographs of their entire collection. The unknown figure represents a participant who did not give information about this question but may for all intents and purposes have photographs, thus it could affect the percentages of the other categories to some minor extent but not significantly so. More than 80 per cent of the reporting participants have photographs of either all or some of their collections. Photographs are valuable in the event of a theft to circulate stolen items and also to positively identify items which have been stolen for return to the museum (Liston, 1993:96).



**Figure 16: Timeframe for updating photographs**

A total of 17 (48%) participants reported to updating their photographs within the last 12 months, with two of the participants indicating that their photographs are updated almost daily, or as new items are added to the collection/stock. What is problematic is that nine per cent of the participants have no photographs at all. The quality of inventory inspections being done at these institutions is therefore questionable. Experience has taught that recovering a stolen item for which one has no photographic image, is close to impossible and if it is found, proving ownership is made more difficult (Bendeman, 2012). This is one specific aspect of sound museum management that both INTERPOL and ICOM take very seriously (Liston, 1993:96). They strongly support the use of the Object ID standard to facilitate the ease of compiling inventories and disseminating information when items are stolen (Yasaitis, 2005:30).

Questions 13 and 14 addressed the issue of insurance. Twenty-eight participants indicated that their objects are insured for either replacement value or recovery value. Thirteen participants elaborated that the insurance was for replacement value, and two indicated that it was for recovery value. The remainder did not elaborate on the specific reason for insurance. Several of the participants mentioned the difficulty in insuring something that is irreplaceable such as a fossil and also the difficulty attaching a value to such an item. One participant indicated that

their collection was not insured as they had a paper/archival collection while another participant did not report within this section.

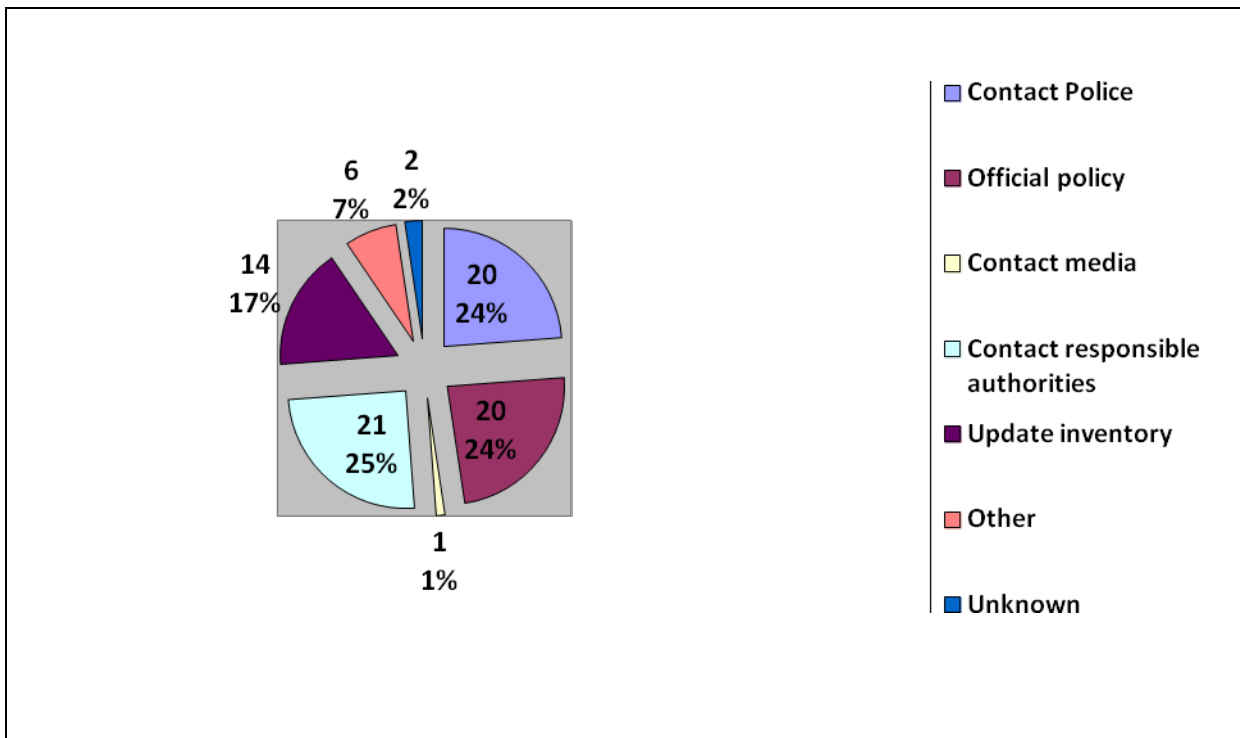
Following on this question was how adequate the insurance cover was. A total of 13 participants (43%) felt that their insurance value was adequate to cover/meet the cost of loss, while 15 (50%) felt it was not adequate. Two participants did not complete an option for this question. It is worth remembering that before the loss of an item can be claimed from the insurance company, the item is to be reported as stolen to the police and the reporting institution is to provide proof of such to the insurance company. In South Africa a Crime Administration Number (CAS) is provided when a crime is reported to the police and this will be one of the first numbers the insurance company requires.

The different institutions have different sets of norms when it comes to reporting of incidents. Question 17 asked the participants about the procedures in place in the event when such an incident of theft occurs. The next section will address this matter.

### **5.2.3.3 Procedures to report stolen/missing objects**

In this section museums and galleries are reported on collectively. Participants were asked about the procedures that were in place in the event of a theft/loss. Three of the participants from the 30 responding institutions did not answer this question. It might indicate that they have no such procedures, or even that they do not know whether there are such procedures in place. It might also be that they missed the question.

Of the 27 respondents, 25 (83%) reported that they had specific guidelines in place in the event of a theft/loss, while three indicated that they had no such procedures in place. The participants were asked to elaborate on these procedures and only 25 participants did so. Since they were asked to select all the options that applied, the total will not be 27 (as three participants did not answer this section).



**Figure 17: Procedure for reporting missing objects**

Under the ‘other’ option the participants included comments such as: report the incident to the relevant board of control; list the items with specific websites; circulating information of the stolen item/s with auction houses and galleries; and well as to inform the insurance company. It is with some concern that the websites being referred to are just the Art Loss Register and Art Insure, both commercial websites designed to assist owners list and circulate their stolen property. None of the participants mention the use of the Stolen Works of Art Database of INTERPOL. It is possible that by referring to the ‘Contact the police’ this could be understood to include INTERPOL also. Could it be that they are of the opinion that the police to whom they report the incident will know to inform INTERPOL? However, this is not conclusive and the finding remains problematic.

This concludes the discussion for the second section of questionnaire one, namely Security.

The data gathered in section D: The trade in stolen cultural objects for the period 2006-2010 will now be discussed.

#### **5.2.4 Section D: Trade in stolen cultural objects**

The last quantitative section of questionnaire one dealt with the trade in stolen heritage objects. In question 35 participants were asked if their organisations had been offered cultural objects (in the past five years) that they know were stolen. The participants had to indicate numeric instances for the reporting period and were asked to complete all the criteria of objects that apply.

Eight galleries reportedly had not been offered anything. One of these galleries highlighted that although the items offered were not stolen, she was aware of being offered fakes on several occasions. The return from the ninth participant was not complete and omitted this information. In terms of the museums, 19 said their organisations had not been offered stolen items (for the reporting period) and two participants did not answer this question.

This is strange since there is a distinct impression of a flourishing illegal trade in cultural objects, supposedly stolen from South African museums. What is not strange is that this 'lack of knowledge' is an international trend and most of what is known is due to 'anecdotal quotes', which in itself is not scientific and verifiable data, but it is useful nonetheless (Aarons, 2001:18; Bator, 1982:289-290). It is also possible that these museums and galleries are not approached to purchase stolen items because there is the impression that they speak to one another and will therefore know if an item is stolen. If this were true, it means that the majority of items stolen locally are either taken elsewhere in the country where they are re-introduced into the legal market or they may even be taken out of the country and sold abroad.

The final question (question 36) dealt with the knowledge the participants had of stolen cultural objects being sold in their operational sector (among other museums/galleries). Of the museums 15 said they were not aware while three participants left this question unanswered and three participants indicated that they were aware of such incidents.

The three participants who answered in the affirmative mentioned that the items in question were archaeological objects, sculptures, antique furniture and ethnographic objects. The galleries had a similar response. Although six of the participants had no awareness of such incidents, two reported that they did. The illegal trade was in terms of works of art, sculptures, ethnographic objects and maps. One gallery refrained from answering.

Therefore, while their own institutions were not offered stolen items, five of the participants were aware of stolen items being sold/purchased. The categories of items sold/purchased are similar to the categories of items identified in the discussion in paragraphs A and B of paragraph 5.2.1.2 as well as paragraph 5.2.1.3 above.

The dissonance between the responses from question 35 and 36 has two possible explanations. Either the museums that purchased/acquired the stolen items are not part of the sample that took part in this study or they are unaware of the illicit origin of the items.

The data gathered from the last section of the questionnaire (section E, a qualitative open-ended section) fell primarily outside the parameters of this study and was therefore excluded.

### **5.3 SUMMARY**

In summary, it is deemed pertinent to the aims of this research to make some observations. These observations are going to follow the same theme as was found in the questionnaire.

A total of 33 per cent of the participants in this research reported experiencing incidents of theft/losses during the reporting period. The items that were stolen during this period are classified into the themes of military history, coins and medals, ceramics, works in bronze and various paintings by semi-well know artists (obscure enough to make them sellable). Although not forming part of the reporting period, losses for 2011 show an increase in the number of incidents of thefts in Gauteng alone. The numeric losses for this period seem insignificant; it represents 44 per cent and 45 per cent of the total target population for museums and galleries respectively. This implies that while it is not scientifically correct, the figure of 33 per cent may be significantly higher to account for the participants who elected not to participate in the study.

When considering that the types of items which are stolen are not simple to replace, it puts the gravity of the situation into a different context. Heritage objects in this sense are NOT a renewable resource. When stolen or destroyed, they remain irreplaceable. Once incidents of theft are experienced; neither the museums nor the galleries readily report the incidents to the police, for various reasons. This contributes to the belief that the actual number of incidents of thefts is greater than the number that is known and far greater than that which is reported to the authorities.

On analysis of the security at the museums and galleries very good security did not ensure that the museum/gallery is safe from a theft. The converse is also true; ineffective security did not mean that incidents of theft would occur. There are other elements that determine whether a museum or gallery may fall victim to a theft. By applying the principles in the Routine Activities Theory it was reasoned that the geographic location of the museum/gallery could be contributing to their vulnerability to theft. In addition to this is the type/s of cultural objects that the museum/gallery houses. If the item is something that has been specifically identified by the thief, then security could either be very good or very poor, it will make no difference. The motivated thief will make a plan to either break in and steal the item or simply send in thieves to perpetrate the crime during open hours. In terms of inventories and photographs of items recorded on the inventories, what has been reported may at first glance seem very positive. The majority of the participants reportedly have an up-to-date inventory and undertakes both scheduled and unscheduled inventory inspections. These are carried out either annually or every two years. About 84 per cent of the participants have photographs of some/all of their items. As indicated in text, the word 'some' is misleading and does not give a specific indication of quantity. Thus the issue of up to date photographs might be problematic. It just depends on the interpretation of 'some'. A cause for concern is the 13 per cent of the participants who have no photographic record of their heritage objects.

For there to be an illegal market there needs to be a healthy legal trade. In this instance from the discussions in chapter 4, the legal trade exists and seems to be healthy. Participants indicated that their institutions had not been approached to purchase stolen items per se, but rather that some of them were aware of stolen items being purchased/sold in their areas of expertise. Five of the total group of participants reported to knowing of stolen items being traded. These items are among other archaeological items, sculptures, antique furniture, ethnographic items, works of art and maps. These items are in line with what has reportedly been targeted from institutions for the reporting period as well as those items that can be found listed on the Art Insure website as stolen.

This concludes the discussion of the situation as far as the extent of heritage crime in Gauteng is concerned. Chapter 6 will deal with the interface between the legal and illegal markets and the action taken in terms of local law enforcement. This is preceded with a discussion on the manner in which this crime is addressed by four international police agencies that specialise in art and heritage crime.

## CHAPTER 6

### THE INTERFACE BETWEEN THE LEGAL AND ILLEGAL MARKETS AND THE SOUTH AFRICAN LAW ENFORCEMENT RESPONSE

#### 6.1 INTRODUCTION

The primary objective of this chapter is to explore the interface between the legal and illegal market in heritage objects and how the theft of heritage objects might be addressed through crime investigation within the South African context, based on international best practices. This chapter will focus on answering the fourth and fifth research questions posed in chapter 1, namely how heritage crime is addressed in the international arena and how it might be addressed in South Africa based on international best practices.

This will be achieved by first explaining the interface between the legal and illegal markets identified in chapter 4 and 5 and discussing the resultant networks into which the illegal markets possibly feed. Property crimes, stealers, receivers and fences will be addressed in the context of heritage crime as it manifested in chapter 5.

Countries across the globe have acknowledged the urgency of addressing crimes of this nature but the response in the form of committed and mobilised human and financial resources has failed to even remotely address the escalating problem (Schneider, 2001:476). The same is evident in South Africa. Within the international arena, there are a few policing agencies equipped to address this type of crime (Torsen, 2005:94).

An exposition will be offered of a select number of international police agencies that have specialised capacity to address this type of crime. These law enforcement agencies are based in Europe, the USA and the UK, and they are considered to be at the vanguard of addressing this type of crime. The law enforcement agencies which will be discussed are the Italian Carabinieri Department for the Protection of Cultural Heritage (TPC), the Art Theft Program of the Federal Bureau of Investigation (FBI) of the USA, the Works of Art Unit from the Federal Criminal Police in Germany, and within the Metropolitan Police from the UK, the Art and Antiques Unit of New Scotland Yard. The discussions will be supplemented with empirical data obtained from interviews done with representatives from each of these agencies.



This will be followed by a discussion of the South African response to this crime through crime investigation by the SAPS, based on empirical data obtained through interviews with several detectives with experience in this field. The context of policing was discussed in chapter 1 and will not be dealt with here again, except for specific mention of the role and function of the DPCI in the investigation of heritage crime.

## **6.2 THE INTERFACE BETWEEN THE LEGAL AND ILLEGAL MARKETS**

Before discussing the interface that manifested in this research between the legal and illegal market, it is useful to first consider what an illegal market is. Beckert and Wehinger (2011:2-3) provide a succinct and clear description of this. They explain that a market is illegal when there is a violation of legal stipulations (such as legislation) in terms of the product itself, its exchange or the manner in which it is manufactured or sold. Therefore in such a market system there is no protection of property rights by the state, there is no defined or enforceable quality standards and those involved in the market can be prosecuted. Legislation defines what is legal and what not; illegal markets will therefore differ from country to country and may even differ over time (Beckert & Wehinger, 2011:2).

### **6.2.1 Supply and demand: a central feature of legal and illegal markets**

Since a central feature of the existence of the illegal market is based on supply and demand, it implies that on the demand side there is either no legal market or that the items are less costly when purchased on the illegal market. The latter implies that the buyer is willing to turn a blind eye to the illegal nature of the item and the moral cost is negligible. Likewise on the supply side of the illegal market, the supplier is not only influenced by the profitability of the endeavour, but also on the ability to evade the authorities whilst distributing the illegal goods (Beckert & Wehinger, 2011:3).

Much of the illegal activities within the affected markets actually occur within the margins of the legal markets. Beckert and Wehinger (2011:3) explain the differences between the various forms that the illegal markets manifest in. They present a typology which differentiates the markets in terms of four different dimensions, such as:

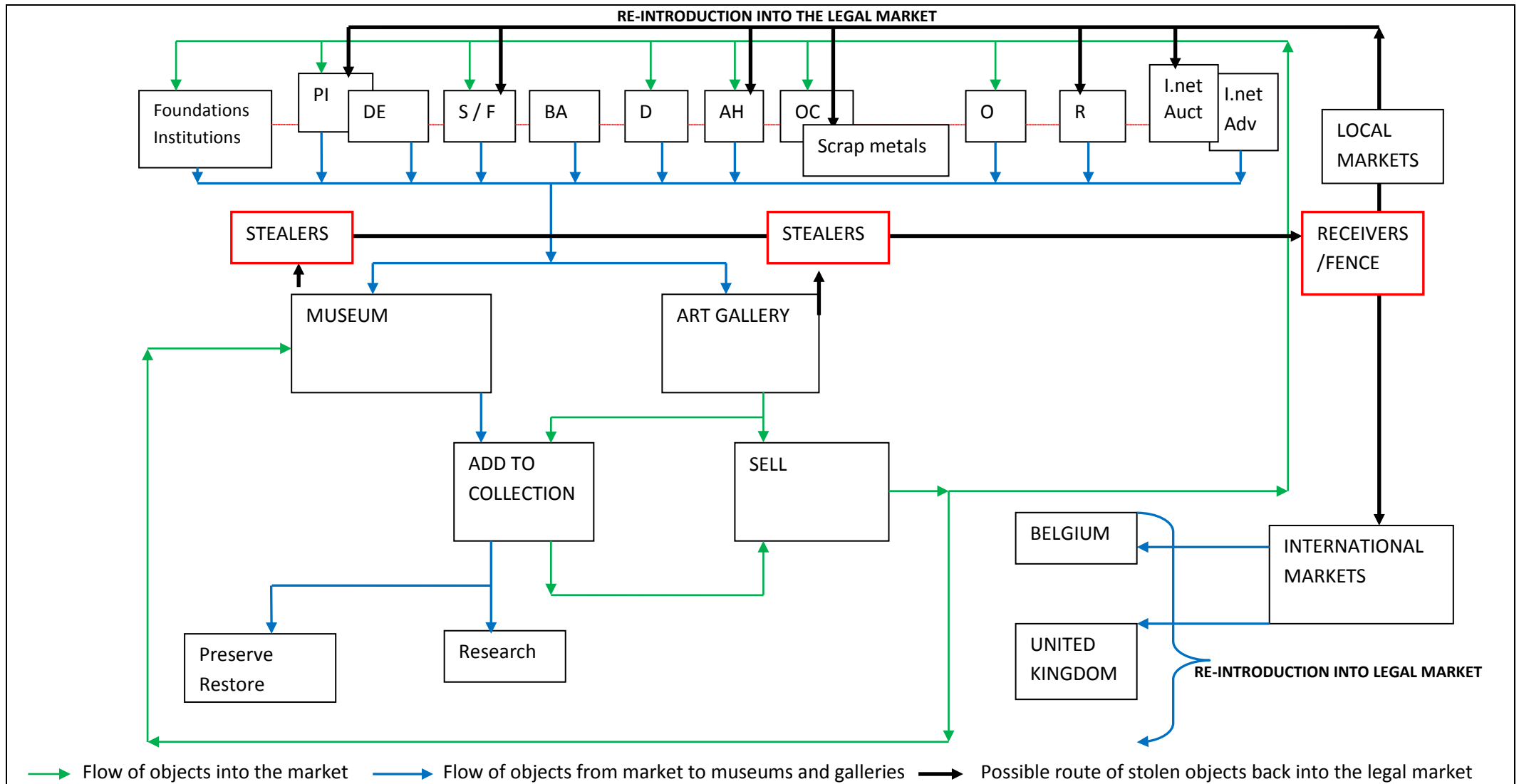
- The market is illegal because the product being produced or provided is illegal;
  - Such as would be found in markets that deal in drugs, child prostitution, and human trafficking;
- The market (or rather services) is legal in specifically defined and highly regulated parameters, but when the exchanges occurs outside these parameters then it becomes illegal;
  - Such as would be found in the illegal trade in human organs;
- The market is illegal because the product offered is either a forgery or has been stolen;
  - Such as manifests when heritage objects are stolen and then re-introduced into the market; and
- The market is illegal because the processes involved in the production of the products are in violation of legislative prescriptions;
  - Such as manifests with employment of illegal immigrants or the illegal disposal of toxic or other waste.

Within the mentioned typologies, the illegal market for heritage items manifests more often than not when a stolen item is re-introduced into the legal trade through the legitimate market. Since the scope of this research does not address fakes and forgeries, this aspect will be excluded from the discussion.

Given that the legal market (auction houses, antiques dealers and internet auction sites) is often used to ‘launder’ the stolen items, the Framework of Legal Trade developed in chapter 4 (figure 9 on page 146) will be used as baseline. The data explaining the manifestation of the theft of heritage objects gathered from chapter 5 will be added to figure 4 to explain the interface between the two markets and the resultant manifestation of the illegal trade.

This figure is labelled the Interface Framework between the legal and illegal market in heritage objects.

**Figure 18: Interface Framework between the legal and illegal markets in heritage objects**



## **6.2.2 The interface between the legal and the illegal markets in heritage objects**

The Second-Hand Goods Act 6 of 2009 (SHGA) (South Africa, 2009) provides for the regulation of the trade in second-hand objects. Heritage objects fit this description. In paragraph 4.7 (chapter 4) the legal trade as it manifests in Gauteng was discussed and a framework developed.

The illegal trade in heritage objects interfaces with the legal trade since the illegal trade cannot function without the legal one. The BOLD BLACK line on the framework in figure 18 indicates the routes that the stolen items take to reach the legal market. The heritage objects are stolen from either museums or galleries (paragraph 5.2.1.2 and 5.2.1.3), by various forms of thieves or stealers (Mackenzie, 2005:242). The different types of thieves are discussed in paragraph 6.2.2.3. These stealers have two primary motives for doing what they do.

International studies have shown that primarily the motives for such thefts are monetary; financial gain is what the thief demands from the receiver, buyer or insurance for the return/hand over of the stolen item (Bendeman, 2012; Massie, 2012; Swart, 2012). The route that such a stolen heritage object takes will not only depend on the motive of the thief, but it will be dependant on several other factors such as the type of crime committed, the type of criminal involved, the fence used and the connection between the fence and the legal market. The varying motives and the influence they have on the direction the stolen item takes into the market are discussed in paragraph 6.2.2.1 below.

The thieves pass the stolen goods on to receivers/fences. The primary distinction is between the professional fence and the non-professional fence. These are discussed in paragraph 6.2.2.4 and 6.2.2.5 below. The SHGA was established primarily to ensure that the stolen goods do not re-enter the legal market. Research has shown that this has happened and stolen items have passed through the local market and have been found on internet auction sites (e-Bay), at auction houses, scrap metal dealers, specialty stores and even private individuals.

A full discussion on these aspects now follows.

### **6.2.2.1 Motive**

Massie (2012) argues that the primary driving factor behind the majority of incidents seem to be financial. Tjihuis (2009:41-49) explains different motives ranging from art napping, internal thefts, common theft and organised crime and drug trade. He posits that there is a lack of available concrete verifiable data from which to make conclusive findings, but adds that additional research in collaboration with police agencies will permit a better understanding of the crime phenomenon and the modus operandi of those involved. Bendeman (2012) a police officer with more than a decade's experience investigating art and heritage crime in Johannesburg narrowed the motives down to two possibilities; order or opportunity. Massie (2012) agrees that the motives are either order or opportunistic, but has added a third possibility which is that of accidental.

It is possible that accidental could very simply be clarified as an opportunistic crime, since it is not legally possible to accidentally steal something intentionally. In chapter 5 under paragraph 5.2.2.5 (pages 173-175) three scenarios were explained based on the data gathered from questionnaire two. Possible reasons for the thefts were considered for each of the scenarios. When considering the viewpoints of Bendeman and Massie, it is possible that the incidents in the first scenario were perpetrated primarily as a result of opportunity and as mentioned these incidents of 'common theft' account for the majority of the incidents perpetrated (Tjihuis, 2009:48). Scenario two may have been driven by a demand in the market or even just as a result of the metal the items were made from which is not just a South African norm (Charney, 2009:109). In scenario three it is very likely that the item targeted was ordered by a collector (or a dealer) and possibly also market driven. Tjihuis (2009:49) reports that while thefts to order are rare, they do occur.

Bendeman emphasises that the follow-up investigation is of great importance when trying to determine what the motive is. If it was stolen on order then there is a ready receiver waiting for the item. However, if it was an opportunistic crime, then the scope of the investigation opens up. Vital to success in this field is an effective informer network. Having confidential informers within the second-hand goods trade in heritage objects can greatly assist the investigator to track down and recover stolen heritage items (Bendeman, 2012).

Conklin (1994:119-130) discusses the various motives of offenders and highlights that these crimes occur when three factors converge; namely objects suitable for stealing, the absence of

effective security measures to protect the items and the presence of a motivated offender. His argument closely resembles that of the Routine Activities Theory discussed in chapter 5. Bendeman (2012) confirms this theory when describing how the theft of the Pierneef painting from the SABC building in 2008 transpired as well as several other cases of thefts from museums which he investigated. This was also confirmed through various examples provided by Massey, one of which included the theft of a painting to the value of approximately two million rand when it was left temporarily unattended on the back seat of a vehicle (Massie, 2012).

Much has been written by renowned and respected scholars on the link between this type of crime and other crimes such as the drug trade and money laundering as well as links with more sinister entities like the Mafia, or organised crime (Brodie et al., 2000:16-17; Calvani, 2008:6; Gerstenblith, 2007:148; James, 2000:4; Naylor, 2008:288-289). To date, in South Africa no such positive links have been established with empirical proof. Jooste (2012) does draw the distinction of considering the type of items being stolen, more especially the rarer high end goods; one will not commence looking for it at the local pawn shop (Second-hand goods business). In his opinion, these objects are fed into the organised crime system since people will not steal artefacts or rare heritage items unless they already have a ready buyer or a network into which these items go. This is the ideal type of market for money laundering (Jooste, 2012). These stolen artefacts are then traded for illicit goods such as narcotics or weapons (Dobovšek, 2009:67; Tijhuis, 2009:43). Dobovšek (2009:70-71) also posits that the involvement of organised crime is characterised by several aspects. One of these characteristics is if the crime that has been committed is done as one of several in the same pattern. This is true of the spate of thefts perpetrated against museums curating ceramics and porcelain collection from 2011-2012.

Thus motive, whether opportunistic or order, will determine where the thief takes the stolen item next. According to Massey the stolen items pass through several pairs of hands before they are put into the legal market (Massey, 2012). The researcher also experienced this during service as a detective in the police (Leviéw-sawyer, 2000; Van Tonder, 2000). These 'hands' are either receivers or fences. Before elaborating on the receiver and the fence, it is important to consider the type of crime that is being dealt with.

### **6.2.2.2 Property or economic crimes**

Siegel (2004:372) understands property crime to mean an economic crime in which the offender obtains a financial reward. He explains that for some or another reason property crime (or economic crime), especially in relation to non-violent crime, is viewed with more tolerance by society than other crimes supposedly because nobody got hurt, injured or killed. There is the attitude that the loss suffered by the victim is usually covered by insurance and so the loss is supposedly recovered. As a result of this type of thinking offenders convicted usually receive a light punishment, such as probation or a suspended sentence (Hagan, 2011:261). In South African law theft is considered a property crime (Joubert, 2010:134).

### **6.2.2.3 Types of criminals: professional and occasional**

Both Hagan and Siegel explain that property crimes are usually perpetrated by either the occasional criminal or by the skilled professional criminal. Criminologists suspect that the occasional criminal is responsible for the bulk of both reported and unreported property crimes (Hagan, 2011:248; Siegel, 2004:374). The large majority of property crimes perpetrated by the occasional criminal fall into two broad categories, which are those that are committed by amateur criminals who act impulsively and uncoordinated and those committed daily by people who shoplift, pilfer and who cheat on their tax returns. The occasional criminal does not plan his day around a criminal activity, nor does he rely on any specific skill or knowledge to commit the crime and he does not have a group that supports his criminal activities. These criminals view their own criminal actions as being ‘out of character’ and try to explain their conduct with the excuses of ‘borrowing the item they were caught with’ or ‘that everyone is doing it’ (Siegel, 2004:374). Henry and Einstadter (1998:245) describe this conduct at the hand of the criminological theory of neutralisation – where the deviant behaviour of the offender is explained away or neutralised by an excuse or a justification for the behaviour. It will, however, not be discussed as part of this study. When considering the scenarios in chapter 5 it is possible that the majority of the crimes perpetrated at the two Pretoria museums (contained in scenario one) were perpetrated by this class of criminal.

The second group of offenders in the economic crime category is that of the professionally skilled criminal (Hagan, 2011:264; Siegel, 2004:374-375). These criminals employ a high level of skill and wit for monetary gain without attempting to neutralise their conduct in any

way and a substantial part of their income is as a result of their criminal activities. In contrast with the occasional criminal, the consequences of their actions, although undertaken in numerically smaller amounts, result in significantly higher losses suffered by society/individuals than the loss caused by the occasional criminals. On considering the scenarios in chapter 5 the researcher is of the opinion that a more professionally skilled criminal was involved with the thefts at the Johannesburg museum. It is possible that a skilled professional hired amateur thieves to target the university museum since they were not successful in their endeavour.

There is debate among criminologists about defining a professional criminal; however that debate will not be addressed at this stage. What will be mentioned is that for the purpose of this discussion a professional criminal will be equated to a professional thief in that he conducts his illegal activities to generate his income in a non-violent manner, using his skill and wit (Siegel, 2004:375).

Both the occasional and the professional thief need a buyer for their stolen merchandise. Where they go to will depend largely on the type of criminal they are (occasional or professional) and the type of merchandise they need to get rid of. This is where the fence enters the picture. Hagan describes a fence as a receiver of stolen goods (Hagan, 2011:249).

Based on an overview of the Interface Framework and considering the markets in which some of the stolen items surfaced, one might conclude (from those that surfaced in the legal market) that they went to receivers or fences who either had an outlet for such items (works in bronze go to scrap metal dealers) or were sold to unsuspecting willing buyers who did not ask enough questions of the provenance of the item. These stolen items often pass through several sets of hands before ending up on the legal market. It is important to remember that where the stolen item ends up, depends to a large degree on who stole the item in the first place. This issue highlights the role of the fence or the receiver of the stolen goods.

#### **6.2.2.4 The fence**

A fence is a person who makes a living (partly or exclusively) from buying and then selling stolen goods (Hagan, 2011:280). Siegel (2004:376-377) distinguishes between two different types of fences, namely the professional and the non-professional fence. Hagan citing Hall refers to three categories of fences, namely the 'lay receiver (the customer), the occasional



receiver (a rare buyer) and the professional receiver (a specialist in stolen property)' (Hagan, 2011:249, 280).

According to Siegel (2004:376-377) the professional fence is the person who is exclusively involved in dealing in stolen goods (buying and selling). The professional fence is thus capable of handling any type of stolen goods and often uses legitimate markets for trade.

The non-professional fence on the other hand consists of various classes of fences, namely the part-timer, the associational fence, the neighbourhood hustler and the amateur receiver. The part-timer is the fence who will mix stolen goods with legitimate goods to boost profit, even though he has a legitimate source of income. The associational fence barter stolen goods for services and the neighbourhood hustler deals in the proceeds of burglaries within neighbourhoods. Finally, the amateur fence is any person who is approached at random on the street as the 'unsuspecting buyer' to buy a 'bargain'. It is likely that the goods stolen supposedly by the amateur thieves (in scenario one) ended up at a part-timer or even associational fence while the items stolen in scenario two and three ended up with either the professional fence, or a ready buyer, or the part-time fence (scrap metal dealer).

From the aforementioned, there are two broad categories of fences, namely the professional and the non-professional and within each category there are different classes. Both professional and non-professional fences as well as professional and amateur thieves have their place in the criminal world. By understanding this, detectives investigating these crimes can achieve a greater measure of success by tracing and retrieving the stolen property. The utilisation of an effective informer network will assist in the identification of the various fences in operation in any given policing area.

#### **6.2.2.5 The fence and the legal market**

Beckert and Wehinger (2011:4) and Tjihuis (2006:163) explain that auction houses and even galleries, both of which deal in authentic art works and legitimate heritage objects, are used through which stolen art and other heritage objects are sold (Best, 2009:112). This same pattern emerged within the Interface Framework. Heritage objects that were stolen from museums and galleries surfaced in the legal market in South Africa at scrap metal dealers, specialist shops, auction houses, in the possession of private individuals and on e-Bay (the internet auction site).

This pattern was confirmed by Massie (2012). He claims that often second tier auction houses are used to re-introduce the stolen items into the legal market. A first tier auction house in his opinion is a place that invests in specialists to investigate the provenance and the history of the items they are going to sell. Thus the likelihood that such an auctioneer would determine that the item was stolen is greater than would be at a second tier auctioneer, who does not readily invest in experts to investigate the provenance of the items they receive.

International markets have not been immune to stolen South African heritage objects. Such items have surfaced in the UK where they were offered on auction and also in Belgium at the premises of an antiques dealer (Bryson, 2011; Herman, 2005).

Due to differences in legislation not all the items could be repatriated. Belgian legislation is based on civil law which implies that the rights of the good faith purchaser are protected. Cape silver that was stolen from South African museum was found in Belgium. If South Africa wants the Cape silver returned they will have to purchase it from the Belgian antiques dealer. In light of this South Africa is wary of doing this since they will in effect be purchasing stolen property (Herman, 2005).

It is only by developing a collective understanding of the roles fulfilled by the thieves (professional or occasional) and the receivers or fences that the illegal trade can be understood to a greater extent. This understanding when coupled with an appreciation for the field within which these crimes manifest, may contribute to a greater level of success during such investigations.

Several specialised investigation units were approached within the international arena and data gathered from them to develop an understanding of the best practices being used and how the South African authorities may benefit from their experience and expertise.

### **6.3 AN INTERNATIONAL LAW ENFORCEMENT RESPONSE**

The functioning of police agencies responsible for the protection and/or the investigation of stolen works of art and/or the trade in illegally exported cultural property in the international arena, will now be discussed. The participants were asked a series of questions. This questionnaire/interview schedule is attached as per annexure K.

In this reporting phase, the feedback received from the country representatives will be collated under the respective question. The countries involved are Italy, Germany, USA and the UK.

### **6.3.1 The existence of a specialised police unit to investigate art and heritage crime: organisational placement and structure**

*The first question addressed whether the respective countries had a specialised unit that dealt with art and heritage crime (such as thefts from museums or galleries) and if so what the structure and organisational placement of the unit is.*

The Italian Carabinieri and the Art and Antique Unit of New Scotland Yard are the only two countries interviewed who have a single (or multiple) specialised unit, dedicated specifically to the investigation of stolen art and crimes against the cultural heritage of the country (Hutcheon, 2011; Quagliarella, 2011). In Italy the unit is the *Comando Carabinieri Tutela Patrimonio Culturale (TPC)* or as it is named in English the Carabinieri Department for the Protection of Cultural Heritage. The Italian Carabinieri address all crimes pertaining to art and cultural heritage and they have the required staff compliment to do so (Quagliarella, 2011). The Art and Antiques Unit of the UK are mainly involved in thefts from London museum exhibits and the handling of fakes and forgeries which may significantly impact on the London art market. While they do deal with both national and international investigations, there have been instances where they have been tasked with specific investigations that do not meet their protocols. This occurs only on a case-by-case basis (Hutcheon, 2011).

In Italy, when incidents of theft occur, the incident must be reported to the local police and then the police unit must inform the TPC. The Italian database of stolen works of art “Leonardo” must be updated by the office to which the initial report is made (Quagliarella, 2011).

The Art and Antiques Unit of the UK is a component of the Metropolitan Police. The unit is based in London as approximately 98 per cent of the art market in the UK is based in London. It does happen that they get involved in national and international investigations (Hutcheon, 2011). The Art and Antiques Unit have two full time investigators with support staff and volunteers who assist on an ad hoc basis. In the UK there are various

scenarios that might occur when there is an incident of theft. If the theft takes place from out of a museum, then the local police borough are informed and would attend to the scene. If, however, the theft occurs outside normal working hours (once the museum is closed for the day) then the duty desk of the Specialised Crime Directorate should be contacted who then in turn should contact the on-call Detective Inspector (of the Art and Antiques Unit) who will decide upon the relevant response. In other instances, they might be contacted by the control desk of the local police borough. Even though there are set protocols for reporting, this does not always happen. It has happened that the Art and Antiques Unit is only alerted of a crime when the museum itself or the museum security informs them or when they see it listed on the crime database (Hutcheon, 2011). When items are stolen from either galleries or private collections, the Art and Antiques Unit will only get involved if the local police specifically ask them to assist or take over the case. If the item is a very important piece (in terms of the London market) then the unit may also be required to take the case. Elsewhere in all other England and Wales policing areas, the Criminal Investigation Department (CID) of these police forces will undertake the investigation (Hutcheon, 2011).

Both Germany and the FBI, while having a centralised capacity to deal with this type of offence, will only get involved in the physical investigation within certain parameters. Both are federal agencies, therefore they only get involved when items cross state or international boundaries (Karfeld, 2011; Magness-Gardiner, 2011). The FBI has additional parameters of age and value. The case only becomes federal (thus their jurisdiction) when the item is valued at \$5000 US and is older than 100 years or if the item is not older than 100 years but is valued at \$100 000 US (Magness-Gardiner, 2011).

The head quarters of the Art Crime Team (ACT) are in Washington DC. They form part of the Transnational Organised Crime section. In this section they deal with *La Cosa Nostra*, Asian Organised crime and East European Organised Crime. This resorts under the Crime Investigation Division (CID) which is equivalent to the Federal Police – they are the investigative arm of the prosecutorial section within the Justice Department (Magness-Gardiner, 2011).

There are 13 special agents in the field who have the training to investigate art thefts and are known as the Art Crime Team (ACT). They are assigned to various FBI field offices. There are 56 FBI field offices, one in every state. The programme manager assigns and places

agents where there is an art theft/crime problem. The 13 FBI agents are placed at the following field offices; Washington, DC; New York City; Philadelphia; St Louis; Miami; Chicago; Santa Fe; La Crosse, WI; Portland, OR; and Los Angeles (Magness-Gardiner, 2011).

In the USA, when such an incident occurs, it is not a given that a suitably qualified/trained FBI agent will be tasked with the investigation. The victim must begin by reporting the incident to the local police station. If the victim is aware of the ACT, then he may ask that they be informed. The local detectives will have to investigate the matter if the item does not fit the criteria set in terms of age and value and if the item does not/has not crossed state/international boundaries. The local detectives are neither specially trained nor particularly interested in these cases and only about two to five per cent of these cases get solved. Experience has shown that if the case is not solved within the first two months – the investigation loses momentum as the detective gets side-tracked to other more pressing cases (Magness-Gardiner, 2011). The ACT agents work on whatever has been identified as a priority within their squad. The ACT agents do not do this full time. They are assigned to the violent crime and organised crime squads and therefore their first priority is to deal with organised and violent crime. In the event when an incident occurs in their jurisdiction in terms of art/heritage then that office has the specialised capacity to deal with it. Even then it is not a given that those agents will be released to handle those incidents. The programme manager sends an incident report to the commander at the field office with a request for them to look into the incident.

Art theft and cultural property crimes are addressed only after the primary priority cases have received attention. There is one full time agent specialising in art theft/crime. He is based in New York City (Magness-Gardiner, 2011).

Germany is also a federal country. Police work is therefore a matter of the 16 federal states. Investigations are led at either state or federal level. There are three state police offices, each with their own small force in the federal states; these are Bavaria (Munich), Baden-Württemberg (Stuttgart) and Berlin. The Federal Criminal Office (BKA) is also the INTERPOL National Central Bureau (NCB) and it has a small sub-unit committed to art crime with tasks such as control of the database; co-ordination between local officers and foreign countries; participation in law development; contacts with museums and experts; and participation in symposia (Karfeld, 2011).

This unit has a range of responsibilities. They are responsible for the evaluation of art or cultural objects offered under dubious circumstances or via an undercover agent or informant and the checking of items offered or seized in undercover operations or in foreign countries against their national database, the Stolen Works of Art Database of INTERPOL and [www.lostart.de](http://www.lostart.de) (the National German database for war losses [1939-1945] and Jewish losses [1933-1945]). While it does happen that the state police officers (across the country) run checks on items themselves in the database, many contact the BKA and ask for advice on different aspects in relation to art and cultural property crimes or cultural administration in the handling of cases. The BKA supports the investigators in the state police who investigate crimes in relation to heritage objects and art and do not undertake these investigations themselves (Karfeld, 2011).

Incidents of theft must be reported at the local police station. This report must then be filtered up to the central police office of that federal state. This does not always happen. The federal office must then enter this information into the national German database. When items are particularly valuable, the information must be reported to the Works of Art Database of INTERPOL, via the Federal Criminal Office (BKA) as well as be published on the online police bulletin (Karfeld, 2011).

### **6.3.2 Selection of investigators, skills required, training received and activation of the unit**

*The second question probed the staffing of the specialised unit addressed in question 1. The participants were asked how investigators were selected for placement; what is regarded as the preferred skills set of such a person; whether these investigators then receive specialised training after placement; and how the unit is alerted of an incident in relation to a stolen work of art or heritage object.*

Although the participants have different selection/recruitment strategies, there are some similarities. The Italians only require the individual to be cognisant of the standard policing procedures – they will provide the required training after the person is placed within the division. Were the person to have academic qualifications/expert knowledge in any of the fields of art, art history, archaeology, antiquities, it would be considered a bonus (Quagliarella, 2011). The FBI recruits agents specifically for these positions, although it is not a permanent position per se – but an add-on to the duties which the agent already has.

The applicants are shortlisted (based on set criteria) after which they are interviewed by a selection panel from the FBI Head Quarters in Washington. There are, however, set requirements that an agent needs to meet; such as five years experience within the FBI, and preferably experience in the field of serious property crime/theft. If the person has some form of interest in art then this is a bonus. In addition to this, the agent should have some knowledge of foreign languages and an undercover certification (be certified by the FBI to do undercover work). The applicant is shortlisted even if he does not meet the last two criteria (Magness- Gardiner, 2011).

The German unit will select any person, whether they show specific interest or not. However, the further development of the person is left entirely up to that individual (Karfeld, 2011). The UK does not have a specific approach yet as the current commander has only been in the position for less than a year and has yet to develop a strategy in this regard. She would, however, like to recruit at least another person in the near future and she is in the process of putting together a training package for this eventuality (Hutcheon, 2011).

### **6.3.3 How incidents are dealt with where no specialised unit exists**

*The third question sought information on the handling of theft cases out of museums/galleries or private residences in the absence of a specialised unit.*

This question was not applicable to the Italian situation and was not addressed. In Germany, the UK and the USA it is absolutely required that the theft first be reported to the local police station. All three countries highlight that this does not always happen.

In Germany once the theft has been reported to the local police station, then that police station must update the national database with the case number and the object. When the stolen item is a particularly valuable object, the details of the theft is transmitted to the Stolen Works of Art Database at INTERPOL, via the BKA (Federal Criminal Office) and a publication thereof is placed on the online police bulletin. The local police undertake the investigation. The BKA only gets involved with major cases and cases that cross international borders (Karfeld. 2011).

In the USA, if the item does not cross state lines then it is not under federal jurisdiction and the ACT cannot get involved. It is a local investigation managed by the local police

detective. Usually when conducted locally these cases do not readily get solved. Only about two to five per cent of the cases reported and dealt with by local detectives, get solved. If the detective has not been able to identify possible suspects within the first one to two months, the case receives no further attention (Magness-Gardiner, 2011).

The local detectives will do the basic investigation but they are not equipped or trained to handle these cases in terms of specialised knowledge or contacts within the art and culture field. In New York and Los Angeles there are two specialised investigators (not with the FBI) who are regular detectives who handle this type of investigation for their local police forces (Magness-Gardiner, 2011).

In the UK these cases are dealt with by the Criminal Investigation Departments (CID) in all of the other England and Wales Police forces. These CIDs are divided into groups for local crime and serious crime (Hutcheon, 2011).

#### **6.3.4 Similarity between heritage crime and general theft investigation**

*The forth question inquired of the participants whether in their opinion this type of investigation differed significantly to a normal theft investigation. They were asked to elaborate on their viewpoints.*

The participants were in agreement that while there may be some difference between heritage theft and other incidents of theft, the difference is only pertaining to the specific social field in which the investigation takes place (Hutcheon, 2011; Karfeld, 2011; Magness-Gardiner, 2011; Quagliarella, 2011).

They voiced the opinion that the investigator needs to have knowledge about art, fakes, forgeries, sculptures, archaeology and the like. He also needs to know how provenance is ascertained, how museums accession their objects, how due diligence checks are done, who the major players are and what the rules of engagement are. It is essential that the investigator has intimate knowledge of these issues, otherwise he will not be successful in his investigation. There are also international conventions, role players, networks and databases that he can activate to be of assistance (Hutcheon, 2011; Karfeld, 2011; Magness-Gardiner, 2011; Quagliarella, 2011).



### **6.3.5 Development of a specialised unit**

*Question five asked the participants to provide advice to South Africa for the development of a specialised art theft unit.*

The Italian representative advised that recruiters select police officers with a specific background. They will be able to relate to museums and galleries, the objects at risk and the problems in relation to security. They must be trained and familiar with the INTERPOL procedures and activities of the Stolen Works of Art Unit (of INTERPOL) and have access to and be conversant with the INTERPOL Stolen Works of Art Database (Quagliarella, 2011).

The Italian TPC uses an interactive computer program that assists in training its detectives. This system provides training in specific activities aimed at preparing the police officers involved with these investigations by:

- An interactive e-learning platform which will provide users with multimedia tools, accessible to all member countries inside and outside the European Union; and
- A handbook related to the Protection of International Cultural Heritage (national and international law, information exchange, international cooperation, case studies, to name but a few) (Quagliarella, 2011).

The German and USA participants suggested a combination of resources, albeit in a different manner (Karfeld, 2011; Magness-Gardiner, 2011). Karfeld (2011) suggested that police officers and a broad range of art experts establish a national database compatible with the INTERPOL Stolen Works of Art Database for direct communication between the two systems.

A national database of stolen works of art or heritage objects will assist in raising the awareness among the police populace. It is important that decision makers within law enforcement are informed of the existence and manifestation of this crime and also the possible repercussions if permitted to continue unhindered (Magness-Gardiner, 2011).

Magness-Gardiner (2011) also suggested that specifically selected investigators be trained in this field so that when it is required, they may be in a position to undertake investigations of this nature. These duties are an add-on to their already existing duties.

Detectives must have the opportunity to visit auction houses and art dealers where they gain valuable experience. They must also establish contact with neutral experts from museums (not art dealers) and have limited co-operation with private institutions such as the Art Loss Register (Karfeld, 2011).

When success has been achieved, alert the media. When an object is repatriated, it is good not only for public relations but it also helps to focus the attention on this issue and that is beneficial to future investigations. The issue of heritage crime must be spoken about and get attention in the media. It also helps if there are public education and awareness programmes being run in the country (Magness-Gardiner, 2011).

South African detectives must establish contact with other police forces worldwide to find out where their stolen objects might end up (Karfeld, 2011). Magness-Gardiner (2011) suggests that the investigators in this field need access to a core group of specialists or somebody who knows the experts and where/how to reach them. This group must contain persons with knowledge of international works of art and heritage.

Hutcheon (2011) affirms that a security network is invaluable. Through such a network, the police may send out alerts and prevent crimes. Such a network permits healthy working relations between all the stakeholders involved. Through such a network officers have access to experts through museums and other security group partners. The unit must have a clearly defined mandate on what they do and do not deal with (Hutcheon, 2011).

### **6.3.6 Organised forum facilitating cooperation between industry and authorities**

*The last question asked was about the functioning of an organisation/forum in their country which enables law enforcement and the museums/galleries to meet and discuss problems and develop solutions. If such a body did exist, they were asked how it functioned and where it was organisationally situated.*

In Italy, the placement of the TPC with direct access to the Department of Culture ensures that there is sufficient cooperation and coordination between the relevant stakeholders. This also ensures that this crime phenomenon receives the priority attention required by Italian law (Quagliarella, 2011). In the UK there are two separate forums. The first is the Museum Security Forum. This forum meets four times a year and discusses and shares intelligence

around common problems encountered by museums. Smaller museums are exposed to the security experts who work at the larger museums and so benefit from their knowledge and expertise. They make use of an e-mail system through which to circulate information about trends, suspicious persons and other security related matters. There is also an alliance between the Association of Chief Police Officers (ACPO), English Heritage and the Crown Prosecution Services. They have aligned to work together in partnership to tackle crime against the heritage of the country. The Art Market Security Forum is the third forum which consists of security and legal staff from the London auction houses. There is representation from disciplines such as professional associations, dealers' associations and the numismatic society. They meet twice a year and also make use of e-mails for alerts on stolen object and the reporting of suspicious persons (Hutcheon, 2011). The FBI is involved with the Association of Museum Security Directors which invites the FBI to their meetings (Magness-Gardiner, 2011). There was no such specific centralised format in Germany (Karfeld, 2011).

The aforementioned summary highlights how each country, within its own situation, has developed mechanisms to ensure that their police officials are equipped and resourced to tackle the task at hand.

This concludes the discussion of the empirical data obtained from the international law enforcement participants. The input from these role players about the establishment of a specialised unit and what advice they would offer to the South African Authorities in this regard, will be dealt with further along in this chapter when local South African law enforcement and their reaction to these crimes are addressed.

#### **6.4 HERITAGE CRIME AND THE SOUTH AFRICAN RESPONSE**

South Africa as a constitutional democracy is governed by the Constitution, Act 108 of 1996 (South Africa, 1996) as the supreme law of the country. The objectives of the constitutionally mandated national police service (SAPS) are found in Section 205(3) of the Constitution, and these are to:

- Prevent, combat and investigate crime;
- Maintain public order;
- Protect and secure the inhabitants of the Republic and their property; and
- Uphold and enforce the law (Nel & Joubert, 2004:27).

Thus crime investigation is a constitutional responsibility (Nel & Joubert, 2004:26).

One of the key priorities in the Strategic Plan (2010/2014) of the SAPS impacts directly on the Criminal Justice System (CJS). This priority which is to 'intensify the fight against crime and corruption' will have a direct impact on how the SAPS formulate their strategy for the years ahead (Strategic Plan 2010/2014:4). Within the Strategic Plan of the SAPS for 2010/2014 national priority crimes are highlighted as an area which the DPCI will focus on. One of these areas is the investigation of endangered species crimes.

The White Paper of Arts and Culture describes the heritage of South Africa as that which constitutes both the natural and cultural heritage sectors. It was sound reasoning that saw the establishment of cultural heritage investigations incorporated into the mandate of the ESPU in 1998. Thus the mandate of the ESPU included both the natural as well as the cultural heritage of South Africa. The ESPU consisted of approximately 54 experienced and specially trained investigators and conducted their investigations from a national level. This unit was decentralised in 2003.

In 2009 the Endangered Species Unit (ESU) was re-opened at a national level, albeit with far fewer investigators. The question is now raised; should the investigation of heritage related crime resort within the investigative mandate of the Endangered Species Unit of the DPCI or does it belong elsewhere?

To address this aspect, the deliberation will follow a similar route as did the feedback from the international interviews, thus the following aspects will be discussed from a South African perspective:

- The existence and/or development of a specialised unit to investigate heritage crime and the placement of the unit;
- The activation of the unit when an incident occurs/in the absence of the existence of such a unit how heritage crime is dealt with;
- The selection of investigators, the skills required, and training received; and
- Organised forum to facilitate cooperation between industry and authorities.

#### **6.4.1 Investigative capacity: the inadequacy of the response**

At the time of this study the DPCI as an investigative directorate was in an indeterminate state because of a court case which challenged the constitutionality of the closure of the DSO (the Directorate of Special Operations also called the Scorpions) and the existence of the DPCI (the Hawks). Legislation was subsequently developed but this was challenged and the Bill sent for legislative review (Jooste, 2012). All of these ministrations have had a detrimental impact on the manner in which the DPCI is able to address heritage crime.

#### **6.4.2 The present situation: a specialised unit or several units?**

Due to the legislative review (called the Glenister trial), which is challenging the closure of the DSO, the DCPI is under a recruitment moratorium and the Endangered Species Unit (ESU) may not actively recruit members (Jooste, 2012). The unit consists of four operational members; two colonels and two captains, with the support of an administrative clerk. The restructuring in the DPCI has meant that another division has also been tasked with endangered species related investigations. The detectives from the Endangered Species and Stock Theft Unit (previously just the Stock Theft Unit) are now also responsible for endangered species related investigations, but they may be unaware since the restructuring took place recently (Jooste, 2012). The detective who was the primary national coordinator of heritage related crimes at the ESU left the employment of the SAPS not long after this interview was completed. The position remains vacant.

At present the ESU will investigate those cases where it is clear that organised crime structures or money laundering aspects are involved with the *ad hoc* cases being dealt with by the provincial units of Endangered Species and Stock Theft. A decision will have to be made since two units seem to be addressing the same crime, but with neither of them having the actual mandate mentioned as it is implied. However, Jooste is of the opinion that the mandate lies with his office (ESU) for now (Jooste, 2012).

This approach is similar to that followed by law enforcement in Germany and the USA. They will also only get involved with cases if the cases meet specific requirements. In the South African situation proving the involvement of organised crime and/or money laundering might not be as simple as it sounds, as this kind of investigation requires specialised skills and expertise to undertake. Skills and expertise which the provincial commanders will much

rather utilise to address violent crime or drug-related crimes. It is perhaps wise to set protocols as suggested by the UK and the US which will determine which level (of investigative capacity) gets involved with which types of crimes.

### **6.4.3 Activation of the Endangered Species Unit (ESU)**

Since the investigative capacity of the ESU is negligible, and its mandate is to operate nationally, it is sensible to rely on information from their provincial structures to alert them to incidents of thefts from museums or galleries. Since August 2009 when the ESU became operational, the existence and information sharing that took place at the NALEH forum alleviated the information sharing issue to a large extent (Swart, 2012). The ESU is situated in Gauteng, which is where the hub of the legal trade in South Africa is, apart from Cape Town. This situation is similar to the one in the USA, where the only FBI agent who works on art-related crime full time is situated in New York, which is considered apart from London to be the hub of the art market (Magness-Gardiner, 2011).

When an art theft or heritage related incident occurs in any of the nine South African provinces, it is the responsibility of the provincial coordinator in that province to notify the organised crime office closest to the incident. An investigator is assigned to the case and feedback is given to the office of the ESU (Col Jooste) who will decide whether the investigation remains at the provincial organised crime unit or whether his office needs to be more actively involved than just providing guidance and assistance (Jooste, 2012; Swart, 2012). Similar to the USA, UK and Germany, this situation does not always prove successful as the police station at which the crime is reported seldom gives the information through to the ESU as they are supposed to do (Hutcheon, 2011; Karfeld, 2011; Magness-Gardiner, 2011).

### **6.4.4 The involvement of general detectives**

Thus from the aforementioned there are several entities supposedly addressing heritage crime in South Africa: detectives at the provincial organised crime office; the Endangered Species and Stock Theft Units; and the office of the ESU. General detectives at local police station level are also investigating these incidents (Bendeman, 2012). Of the ten cases sourced for analysis in chapter 6, not one of them was being handled by a specialised investigator of the

provincial organised crime, or the Endangered Species and Stock Theft Unit or the Endangered Species Unit.

The mandate has not been defined clearly and this results in heritage crime being addressed in a disjointed and fragmented approach. Bendeman is clear on this issue when he simply states that once the case of theft from a museum, gallery or wherever is reported at the police station, then he as the Detective Commander will decide who of his general detectives will handle the investigation. He is not aware of the existence of any other investigative capacity whose mandate this is (Bendeman, 2012).

#### **6.4.5 The specialised investigator: skills, training and deportment**

All of the participants in sample C are of the opinion that the investigation of heritage related crimes requires specialist knowledge, skills and access to people in the heritage environment who are knowledgeable and willing to assist with the investigation (Bendeman, 2012; Jooste, 2012; Swart, 2012).

Jooste, Bendeman and Swart agree that this type of crime differs to a great degree from normal theft crimes since one must know the commodity, the possible motives involved and therefore the possible fences to approach. In addition, such an investigator needs to be familiar with the various pieces of legislation that will be applicable to the work environment such as the Prevention of Organised Crime Act 121 of 1998 (South Africa, 1998) and aspects related to money laundering and proceeds of crime; the Prevention and Combating of Corrupt Activities Act 12 of 2004 (South Africa, 2004); the National Heritage Resources Act 25 of 1999 (South Africa, 1999b); and the Second-Hand Goods Act 6 of 2009 (South Africa, 2009). Notwithstanding, the moment an object crosses international borders the various international conventions become applicable and therefore knowledge on these are also vital (Bendeman, 2012; Jooste, 2012; Swart, 2012). This is in line with that written by the seminal authors and discussed in paragraph 6.3.2.

#### **6.4.6 An organised forum for role payers to share information**

This aspect was discussed at length in chapter 4, and in the South African context there is such a forum, namely the National Forum for the Law Enforcement of Heritage Related Matters (NALEH). Whilst NALEH has been criticised for various reasons, it has in effect

accomplished a great deal since its inception in 2004 (Benson, 2010). NALEH is the only platform in South Africa that shares information about heritage crimes both locally and abroad with all relevant stakeholders. It has also managed to generate communication between the various entities within the heritage environment which was lacking.

NALEH will also assist any future specialised unit of the SAPS to receive the relevant training required in the heritage environment as well as facilitate meetings between the SAPS and museum directors, curators and auctioneers as well as security specialists to discuss matters of common interest. But until the restructuring within the SAPS has not been concluded and the moratorium lifted which is preventing placement of staff at the DPCI, the theft of heritage objects from museums and art galleries in Gauteng and South Africa will continue to receive the minimum of specialised attention.

## **6.5 HOW SHOULD THE SAPS REACT TO HERITAGE CRIME?**

Noting the advice offered by the four specialised international policing agencies, the following suggestions are made for the SAPS to address these crimes more effectively on the local front:

- Develop a protocol for the handling of incidents perpetrated against cultural property in South Africa;
  - Set either monetary or age specific limits to distinguish when local detectives investigate incidents, when organised crime detectives get involved and when the designated heritage inspectors are called upon to investigate;
- Recruit and train specifically designated heritage inspectors in collaboration with SAHRA and other interested role players;
- Establish a South African database of stolen heritage objects for due diligence checks in terms of the SHGA which will be complementary to the INTERPOL Stolen Works of Art Database;
- Develop a central repository which will collate and analyse crime information to enable the early identification of crime trends and the necessary dissemination of information to the role players involved;
- Establish a security network for the investigators consisting of insurance underwriters, security managers at museums and galleries and security specialists in the field to collaborate with;



- Establish formal contact with discipline specific experts in the heritage field to assist investigators in technical and specialised areas of investigation;
- Assist investigators to develop and maintain a network of confidential informers within this field;
- Alert the media when successes are achieved and highlight the importance of the protection of South African cultural property;
- Establish contact with similar role players on the continent and further afield to permit the exchange of ideas and networking. And
- Together with tertiary institutions promote further research into this crime phenomenon.

Addressing this form of crime in a more effective manner will not occur overnight. It will take a concerted effort by all the role players to move policy and legislation in the right direction.

## **6.6 SUMMARY**

In this chapter a distinction is drawn between the legal and the illegal markets. Specific attention is afforded the illegal market and the impact which supply and demand have on this market. The interface between the legal and the illegal markets (which trade in heritage items) was discussed. This discussion was illustrated with the Interface Framework. Data from chapters 5 and 6 were combined into a single framework which illustrates this interface and contributes to a comprehensive understanding of the manifestation of this phenomenon.

Motivation as driving force for the commission of these offences was briefly considered and specific focus was given to the type of crime category in which heritage crime fits. This type of crime is viewed as a property or economic crime which is not punished heavily by the courts. The perpetrators of property crimes were considered and it was found that these range on a continuum of an occasional thief to a professional thief. By using the crime scenarios sketched in chapter 6 from the criminal cases analysed, consideration was given to what motivated the perpetration of each of these incidents.

This was followed by a discussion of the receivers of stolen goods or fences. Distinction is made between a professional and a non-professional fence. It was found that fences deal in a

number of both stolen and legal goods. A detective who wants to be successful in tracing stolen goods must develop a network of confidential informers in this field.

Data from interviews with international law enforcement agencies from Italy, the USA, the UK and Germany that have specialised experience in addressing art and heritage-related crime, were reported on under different sections. These sections were repeated in the discussion on the way in which South African law enforcement authorities are addressing this phenomenon. While there were some similarities between what the international law enforcement agencies were doing, on the whole it was found that the response from law enforcement in South Africa was lacking.

Being able to inquire into the operations of law enforcement agencies the likes of world leaders such as the Italian TPC, the FBI Art Crime Team, the German Federal Criminal Office and the Art and Antiques Unit of New Scotland Yard, has contributed to an understanding of best practices. It illustrates that there is not a one size fits all answer to the problem of art and heritage crime. Countries need to engage and deliberately interrogate the issue and find the solutions that work for them. It is possible to learn from those that have gone before and to take the best from what is seen, to design the most fitting plan for the South African situation. However, until a decision is made pertaining to whose mandate it is to investigate these crimes and this information is communicated to all the relevant role players both inside and outside the SAPS, the investigation of heritage crime will continue to receive inadequate and fragmented attention.

The discussion that follows in the final chapter will deal with the findings made during this research. This is followed by recommendations to address matters of importance that need to be addressed and finally a conclusion will bring the discussion to an end.

## **CHAPTER 7**

### **FINDINGS AND RECOMMENDATIONS**

#### **7.1 INTRODUCTION**

The discussion in this chapter will focus on the research findings and the recommendations forthcoming from those findings. In chapter 1 the aims and purpose of this study was articulated (see paragraph 1.5. and 1.6). These will be mentioned again but only as a reminder of the starting point of this study.

#### **7.2 RESEARCH AIMS**

This study had a primary academic aim and several strategic aims. The primary academic aim was to study the extent and manifestation of heritage crime in Gauteng. Based on this data the manifestation of the illegal trade on the legal market in Gauteng was explored. The discussion addressing the academic aim is found in chapters 3-6. The various strategic aims will be mentioned briefly.

The strategic aims of this study are divided into five different categories, which are:

- International conventions, legislation and custodianship of heritage objects;
- Legislation and the trade in heritage objects;
- Analysis of reported incidents of heritage crime;
- International best practice to address heritage crime;
- Promotion/identification of further areas of research.

##### **7.2.1 International conventions, legislation and custodianship of heritage objects**

The primary international conventions which address the protection of cultural heritage at an international level constituted the starting point to examine the origin of the national legislation governing the management and protection of heritage objects in South Africa. Thereafter the roles and responsibilities of the role players mandated by the legislation were discussed.

### **7.2.2 Legislation and the legal trade in heritage objects**

Legislation regulating the trade in heritage objects in South Africa and the influence thereof on the legal trade were examined. The influence of heritage crime on the legal trade in heritage objects in Gauteng was also examined.

### **7.2.3 Analysis of reported incidents of heritage crime**

Incidents of heritage crime reported to the SAPS were analysed and factors contributing to the commission of these crimes were considered.

### **7.2.4 International best practice to address heritage crime**

The research considered the functioning of four of the world leaders in law enforcement which address heritage crime; the USA, UK, Italy and Germany. These results were compared to the South African situation to identify areas where corrective action may be required.

### **7.2.5 Identification of further areas of research**

Through the research, several areas requiring further research were identified.

## **7.3 RESEARCH QUESTIONS**

To achieve the aims and purposes identified in the text, specific questions were posed and answered. This research answered the following research questions:

1. What is the nature and extent of the crime phenomenon in Gauteng?
2. What is the nature and extent of the legal market for heritage objects in Gauteng?
3. What is the nature and extent of the illegal market for heritage objects in Gauteng?
4. What are the international best practices to address heritage crime?
5. Based on international best practices, what aspects might the SAPS implement to address the problem in Gauteng?

## **7.4 PRIMARY FINDINGS**

Each research question asked will be answered with findings reported on in the text.

### **7.4.1 The nature and extent of heritage crime in Gauteng**

The first research question asked what the nature and extent of heritage crime is in Gauteng. This research question was answered primarily in chapter 5.

Questionnaires one and two were used to gather data to answer this question. These data were reported on in text in relation to the specific questionnaire which posed the questions. In this section, that distinction will not be made. The findings will be collated and discussed per category. The first aspect that will be addressed is the extent (numeric incidents) of heritage crime in Gauteng and factors related to these incidents. These factors are:

- Numeric incidents of heritage crime;
- Typologies targeted;
- The reporting of the incidents;
- The police response to these incidents;
- Manner of case registration by police; and
- Outcome of the cases/recovery of items.

#### **7.4.1.1 Numeric incidents of heritage crime in Gauteng**

The research showed that seven (33%) of the reporting museums and two (22%) of the galleries experienced thefts/losses for the period 2006-2010. The seven museums collectively experienced 15 separate incidents and the two galleries six incidents. This results in three incidents per annum for museums and 1.2 per annum for galleries. In terms of volume these figures appear negligible, but this is surmising that the items being stolen are contemporary and easy to replace.

These data were compared with the reports of stolen heritage objects on the Art Insure website to determine whether items reported on in this study also appeared on the website of stolen art. No matches were found. This confirms the assumption that the extent of the thefts is certainly higher in number than that which is known of by individuals and reported to the authorities. The reported figures do not reflect the full scope of the problem. It is posited

that the figures are a misrepresentation of the problem primarily due to underreporting to both law enforcement and other authorities.

Further analysis was done to determine whether specific items/classes of items were being targeted during such thefts. This was found to be so and it was possible to differentiate between typologies of stolen items. The findings show that collectively the role players in the market know of more incidents that they know of individually.

#### **7.4.1.2 Typology of items stolen**

The data revealed that specific items of heritage were primary targets. The typology of the items stolen for the period 2006-2010 and 2011 are as follows:

- Militaria;
- Statuary art (works in bronze);
- Ceramics/porcelain;
- Paintings;
- Other works on paper.

These findings support the findings made by the researcher in 2010. These findings also compare favourably with research in Australia which found that paintings, works in bronze and ceramics were among the favourites being targeted by thieves.

#### **7.4.1.3 Reporting of incidents to law enforcement**

One of the primary complaints levelled against the SAPS is that they are not able to readily provide data on the number of incidents of heritage crime being perpetrated. Similarly, one of the primary complaints levelled against museums and galleries is that they do not report incidents of theft to the police when they do occur.

Specific data was gathered to determine whether museums and galleries were reporting incidents of theft and to what extent these incidents were being reported. This research found that of the 15 incidents experienced by the museums, 10 incidents were reported to the SAPS, six incidents were reported to their security authority and five to the insurance company. The data showed that 67 per cent of the incidents were reported to the SAPS.

Similar data gathered from the galleries showed that one incident was reported to the SAPS, one to the security authority and no report was made to the insurance. A total of 16 per cent of the incidents experienced by the galleries were reported to the police. Collectively of the 21 incidents experienced 52 per cent (11 incidents) were reported to the SAPS. Of the 11 incidents only 10 were relevant to the scope of this study.

These findings correspond with the findings made during the Australian research. These findings also confirm the belief that the incidents being experienced by the heritage sector (museums and galleries) are higher than that which is reported to the SAPS.

The findings show that failure on the part of either museums or galleries to report the theft/loss of a heritage object (relevant to part II of the Heritage Register) to SAHRA will constitute an offence in terms of the NHRA.

#### **7.4.1.4 Police response**

The majority of the participants were not satisfied with the manner in which the police handled the investigation of the cases. The primary complaint was that there was no follow-up, feedback or communication in relation to the investigation. The detectives that were assigned to the cases had no previous experience in the investigation of this type of case.

The cases remained open for an average of between five to six months. In two of the cases, the investigation file (case docket) moved between four and six sets of hands in a two week period respectively. In the researcher's experience, this usually happens when detectives do not know how to handle the investigation or how to proceed. This type of handling is indicative of poor/ineffective management since the branch commander of that detective unit should be in a position to either give guidance if the detective assigned to the case is unable to proceed, or to reassign the case to a more experienced detective.

One of the cases was reopened as some of the stolen goods were advertised on e-Bay. None of the cases were resolved successfully, in spite of there being suspects identified and apprehended.

#### **7.4.1.5 The manner of case registration by law enforcement**

Since statistical data are valuable when arguing that the number of incidents in a particular crime is on the increase, the data in relation to the manner in which the cases were reported, were analysed. The theft of heritage objects does not have a separate crime code on the CAS system of the SAPS. All such incidents (of theft) are reported as theft-general. The other incidents of robbery or house breaking will resort within those crime codes of robbery non-residential premises and housebreaking non-residential premises.

The theft incidents were analysed to determine how they were captured in relation to the crime category and the description of the items stolen. It was found that the majority of the cases were reported as theft-general but the description of the items in questions was more problematic. It was also found that the description of the stolen property of four cases was sufficient to permit the extraction of data using acceptable museological criteria such as coins, medals, paintings and statues. The research showed in the remaining four cases the description of the items stolen was captured as ‘body armour, pots, electrical appliances and medical instruments’. Clearly these items will not be flagged were a search to be done using museological criteria.

These findings show how important it is to capture the correct and accurate data of the items stolen which will permit the extraction of data from the system to prove that thefts from museums and galleries do occur and to what extent they occur.

#### **7.4.1.6 Outcome of the case and recovery of items**

In four of the incidents the items (or some of them) were recovered, but not as a result of effective police investigation. In six of the cases the items were not recovered. The items that were recovered surfaced on the legal market (e-Bay) and at a specialty store in Rosebank. This illustrates the interface of the legal market with stolen goods.

There is an international code of ethics for traders, dealers and collectors of heritage objects which was developed by the International Council of Museums but it is only applicable to members of ICOM. Other than the trade guidelines in the SHGA, there is no code of conduct for traders and dealers in heritage objects in South Africa.



In terms of the 1970 UNESCO Convention, the heritage agency of a country must ensure that the thefts of heritage items are published well enough to aid in their recovery. In South Africa the managers at museums and galleries will decide whether this happens. While police officials are convinced that the publication of thefts in popular media will be effective in closing the market off to the re-sale of the stolen items, the participants are less so. They are of the opinion that reporting the thefts will lead to more incidents, or even have no impact on the recovery of the item. Some of the participants who had experienced recoveries are of the opinion that the publication of the thefts had led to the recovery.

The second half of this research question was in relation to how this crime phenomenon manifests. The findings made in relation to this part of the question will be reported on under the following categories:

- The source of the theft;
- Date and time of incident and suspects involved;
- Circumstances contributing to the thefts;
- Security and other factors contributing to the incident; and
- Routine Activities Theory (RAT).

#### **7.4.1.7 Source of the theft**

This research found that 39 per cent of the items listed on the Art Insure website had been stolen from galleries and 32 per cent from museums. The data compare well with research done by Conklin for the period 1983-1986. He also found that of the known thefts, 37 per cent were perpetrated against galleries and 11 per cent against museums. These findings correlate with the scope set for this study; the majority of incidents are perpetrated against museums and galleries.

The research also found that in terms of geographic location, the incidents of theft were as prolific in Gauteng as they were in the Western Cape. This confirms the finding made by the researcher in 2010 that the hub of the legal trade is in both the Western Cape as well as in Gauteng.

#### **7.4.1.8 Date and time of incidents and suspects involved**

The findings show that the majority of the theft incidents occurred between the months of May, June, July and August. These months are autumn and winter months in South Africa and the wearing of heavy coats is normal, even indoors. Small items stolen off display can easily be concealed in bulky winter clothing. It was only possible to determine the number and gender of the suspects in two cases.

#### **7.4.1.9 Circumstances under which incidents occurred**

Findings show that the majority of the items were stolen off open display during visiting hours when the museums were open to the public. One item was stolen from storage and three items were stolen from a closed display case which the thief had to open first to gain access.

#### **7.4.1.10 Security and other factors contributing to the incidents**

The research shows that a lack of mechanical security (beams and sensors) as well as poor or ineffective physical security contributed to the thefts being perpetrated. The findings also show that theft incidents occur in spite of museums/galleries having very good/good security, as well as physical and additional security.

However, 'very good security' should not be confused with effective security, since physical security (security guards) employed by predominantly museums are obtained by tender. These security guards are not trained specifically for a museum environment.

The findings show that there are other factors that determine whether a museum or gallery will become the target; geographic location and typology of the items curated are two of these factors.

#### **7.4.1.11 Routine Activities Theory**

Using the Routine Activities Theory (RAT), the research showed that based on the geographic location of two of the museums it is possible to argue that they were victims of theft since they are both located in areas that are considered by the SAPS as high crime areas in relation to thefts and housebreaking at non-residential premises.

It was found that the remaining museums were targeted primarily due to the items they curate. This research shows that a combination of the geographic location and the type of collections curated has an influence on whether a museum or gallery will experience thefts or not.

#### **7.4.2 The nature and extent of the legal trade in heritage objects in Gauteng**

The second research question relates to the nature and extent of the legal market for heritage objects in Gauteng. To develop a better understanding of the illegal trade in heritage objects it is important to first understand how the legal market functions. The illegal trade cannot function without the legal market and therefore the two overlap in some areas.

To answer the question about the legal trade participants from the museums and galleries were asked questions about the trade in terms of the volume and the market (with whom they trade). Data were also gathered from auction houses and dealer/antiques dealers who trade in heritage objects.

The trade data were considered within the context of the Second-Hand Goods Act 6 of 2009 (South Africa, 2009) which became fully operational at the end of April 2012.

##### **7.4.2.1 Volume of acquisitions by museums and galleries 2006-2010**

The data reported on in this research represents 44 and 45 per cent respectively of the total number of museums and galleries approached for participation in this study.

The findings show that 12 museums and 7 galleries reported that they had purchased or acquired heritage objects during the reporting period. Of these, seven museums and seven galleries provided data. The data showed that the volume of acquisitions varied between the period 2006 to 2010.

In terms of volume, 2007 and 2010 proved the years when the most items were acquired/purchased, followed by 2009, 2008 and 2006. This translates into the museums acquiring 110.1 items per annum and the galleries 23.2 items per annum. There is no baseline data with which to compare these data to determine whether trade is healthy or not. The research found that recording the data of these acquisitions, in terms of the SHGA, should not prove as laborious a task as alluded to by the dealers.

#### **7.4.2.2 Origin of acquisitions by museum and galleries**

The data showed that the majority of the items purchased by the museums and galleries originated from private individuals (23%), and 16 per cent came from dealers/antiques dealers.

Deceased estates, specialty shops and auction houses each represent 11 per cent of the acquisitions. Seven per cent of the items originated from foundations, and six per cent from book antiquarians, while one per cent each came from runners, fairs and internet advertisements. Seven per cent of the acquisitions came from an unknown source.

Auctioneers reported that the majority of the items sold by them originate from private individuals who as a result of the 'four Ds.' sell their heritage objects - the four Ds being death, divorce, debt and decreased living space.

Based on this reasoning it is posited that 45 per cent of the items acquired by museums and galleries originate from private individuals (23%) which includes deceased estates (11%) and auction houses (11%).

#### **7.4.2.3 Reasons for acquisitions, conditions imposed on sellers and provenance**

The museums and galleries were asked about the reasons why items were acquired. This is important for the market since items that are purchased by galleries re-enter the trade, whereas items purchased by museums are permanently removed from the trade.

The research shows that the galleries acquired items to sell, add to the collection, and become part of the business or to restore. The corporate galleries and a provincial gallery (neither are commercial galleries), will purchase items to make them part of the collection.

The findings show that museums acquired items for restoration, to add to the collection and for research purposes. These items are thus lost to the trade, unless illegally removed and re-introduce into the trade.

The museums and galleries all imposed conditions on their purchases which ranged from asking for identification of the seller, that the seller relinquish full ownership of the items or

the seller would sign a legal document that cedes ownership of the item/s being sold to the museum/gallery.

Twelve of the museums and six of the galleries indicated that they verified provenance. The verification of provenance is not a simple exercise. The participants reported that they verified items against the stolen database of the police database, which poses an uncertainty since the SAPS do not have a database for stolen heritage objects.

The findings show that provenance may indicate that the item is of dubious origin and the auction house may decline to sell the item or it may reveal valuable information which adds financial value to the item.

Findings further show that the network of dealers, traders and collectors who deal in very expensive and very rare items is small. The people in this network know each other and trust is fundamental to remaining in this network. The reputation of dealers and traders is paramount.

#### **7.4.2.4 The sale of heritage objects**

Data from the museums and galleries showed that only one museum sold items during the reporting period and only four galleries reported sales for this period. The museum that reported sales is a university museum for which de-accessioning is much simpler than for a state museum. The sales figures for the galleries show that four galleries sold approximately 3250 items.

The findings show that the commercial galleries each sold approximately 13.5 items per month. If the record-keeping provision of the SHGA is considered, it is unlikely that recording this volume of sales would prove to be as problematic as the dealers expect.

#### **7.4.2.5 Destination of sales**

The findings show that the majority of the items sold by the participants were sold to private individuals (25%) and to (through) auction houses (22%). Shops and fairs accounted for 12 per cent of the destination of the trade while institutions accounted for 10 per cent. Museums, other companies and other (government departments) accounted for eight per cent each and dealers/antiques dealers seven per cent.

#### **7.4.2.6 The flow of the legal market**

The research shows that the legal trade framework designed in chapter 4 highlights the direction and flow of heritage objects from the market place (traders/dealers) to the museums and galleries and from the galleries and one museum back into the market.

Findings also show that items that enter a state museum never re-enter the market, unless it is through dubious circumstances. The majority of the trade is circular (except for the museums) and it feeds back into itself when traders and dealers trade among each other.

Further analysis showed that the almost 50 per cent of the primary role players in the legal market are non-commercial entities while close to 50 per cent of the role players are registered commercial enterprises who will be required to register as traders under the SHGA. This has the implication that the SHGA will only be able to monitor less than 50 per cent of the trade and it may have an implication on the efficacy of the impact of the legislation on the trade in stolen goods.

#### **7.4.2.7 Impact of the Second-Hand Goods Act on the legal trade**

The Second-Hand Goods Act 6 of 2009 (South Africa, 2009) was fully implemented as of 30 April 2012. Qualitative data were gathered from auctioneers and dealers/antiques dealers before the new legislation came into effect. Findings made in relation to the Second-Hand Goods Act 6 of 2009 are derived primarily from the legislation and literature issued by the SAPS to supplement the implementation of the legislation.

The findings show that in spite of the legislator inviting comments and recommendations towards the development of the SHGA, the ignorance among traders and dealers pertaining to this legislation, was unusual.

##### **A Registration of traders/dealers**

This research found that in terms of the SHGA (South Africa, 2009) any person who runs a business of buying and selling second-hand goods must register as a dealer. Under the provision of the previous Second-Hand Goods Act 23 of 1955 auctioneers who conducted public auctions and who were duly licensed did not have to register.

This research found that none of the auctioneers interviewed were registered as second-hand dealers and also that none of them were 'duly licensed'. They reported that there were no legislative prescriptions to them trading as auctioneers. Under the new legislation auctioneers will have to register as a second-hand dealer.

The SHGA is focused on the receivers of tainted goods and aims to promote ethical standards among second-hand goods dealers. The findings show that all natural persons who undertake a business of buying and selling second-hand goods must register as a second-hand goods trader. In terms of this research it implies that entities such as commercial galleries, auction houses, antique dealers, book antiquarians and specialty shops will have to register.

The research also found that there are three different kinds of traders/dealers in the second-hand goods market. The primary dealer is the individual who has a business which is run from business premises and who buys and sells second-hand goods. There are also traders who move around between country markets and fairs and sell their wares from their vehicles. The third type of dealer is the runner; the person who buys wares from all over and sells them to the primary dealer. The legislation does not make provision for the latter two kinds of dealers and will therefore not be in a position to monitor their business conduct.

The research also found that registered dealers may only trade with other registered dealers. This will have an impact on how the latter two types of dealers trade and how the primary dealer records his dealings from these traders.

The research also found that according to the SHGA dealers will be licensed for a period of five years instead of the annual registration that was relevant under the old legislation.

The research found that since both the SHGA and the NHRA called for the registration of dealers who trade in second-hand goods (SHGA) and those who trade in heritage objects (NHRA), there was an opportunity for synergy between these two pieces of legislation.

## **B Classification of second-hand goods**

The findings reflect that the definitions afforded to specific goods in the new legislation may be problematic. These definitions relate to an antique, controlled and precious metals, goods and valuables. Internationally and among antique dealers in South Africa an antique object is an item that is 100 years or older. The Act does not specify that an antique is 100 years or

older. This may become problematic when the issue being argued is whether an item is an antique or not; and in terms of which legislation it is so declared.

Pertaining to controlled and precious metals the research found that the schedule 2 list of metals is referred to twice in the same legislation but under different names and the metals are being referred to as wrought and unwrought precious metals without further clarification. This has the potential to cause confusion. The research also found that the Act contains the incorrect reference to the Precious Metals Act as Act 27 of 2005 instead of Act 37 of 2005.

The findings also show that the definition for the term 'goods' explicitly excludes clothing; but later includes clothing since it forms part of the definition for household and office equipment. The question remains; is clothing included or not.

The last aspect which the research found to have the potential to create confusion is the definition for the term valuables. The application of the definition is very subjective and prone to misinterpretation.

### **C Accredited dealers' associations**

The research found that the SHGA makes provision for the registration of accredited dealers' associations which will assist the police to handle administrative aspects of dealers who register under the legislation, since they will be excluded from certain aspects of the legislation if they are members of such an association. The research found that only one of the traders was a member of the South African Antique Dealers' Association (SAADA). None of the auctioneers or remaining dealers/traders were members of any such professional association.

The findings revealed that there is no accredited association for auctioneers who deal in fine art and other heritage objects and there is also no dealers' association for dealers who trade in heritage objects that do not qualify to be antiques in terms of their age.

### **D Record keeping**

The findings show that the SHGA sets minimum standards for record keeping by dealers in terms of purchases and sales. Were dealers to engage in a high volume of trade, compliance with this aspect of the legislation may be problematic. The findings also showed that none of



the dealers interviewed saw how compliance with this issue was practically possible. From trade figures collected from museums and galleries, it was found that such record keeping would be possible.

## **E Providing the police with information on stolen goods**

The findings show that while some of the dealers/auctioneers had experienced incidents where persons attempted to sell them items of dubious origin, their interaction with their local law enforcement was less than satisfactory. The research also found that none of the participants were familiar with the provisions of the new Act and only one trader reported that police officials from his local police station would visit him regularly to notify him about stolen goods to be on the look-out for. None of the other participants had similar positive interaction with the police officials from their local police stations.

The third research question considered the nature and extent of the illegal market for heritage objects in Gauteng. The following discussion reflects the findings made in relation to this question.

### **7.4.3 The nature and extent of the illegal market for heritage objects in Gauteng**

This section of the research resulted in several findings. These findings are in relation to the types of illegal markets, the role players within these markets, the type of crime and the motives involved, and known incidents of stolen items being reintroduced into the market.

#### **7.4.3.1 Types of illegal markets**

The research found that there are various forms of illegal markets. The market within which heritage crime manifests is legal, but there is an interface with the legal market which is not legal; this occurs when the product being introduced into the market is either a forgery or it is stolen property. It was found that supply and demand are the primary drivers in both the legal and illegal markets. Within the legal market the buyer pays market-related prices for the item in demand, whereas in the illegal market the buyer does not pay market-related prices and is willing to turn a blind eye to the illegal origin of the item.

#### **7.4.3.2 Type of crime and motives involved**

It was found that literature described this type of crime as an economic crime; viewed by society with more tolerance than other crimes. It is also posited by the researcher that this view is probably shared in general by the police who need to investigate these thefts; who may argue that since the item is insured it can be replaced and therefore it seldom happens that an extreme amount of effort is expended investigating such cases. This tendency was found in this research where two of the theft cases analysed remained open for approximately two weeks, and passed through six and four different set of hands respectively during that time. The more serious crime (armed robbery) remained open for over a year before being closed off as unsolved. This view is echoed within international literature.

The literature also showed that there are two possibilities which give rise to these crimes; the item that is stolen is either ordered or the opportunity presents itself to the thief who then steals the object. The findings show that the primary motivation behind the commission of this crime is financial. These findings correlate well with international studies.

#### **7.4.3.3 Role players in the second-hand goods market**

The literature showed that there are two primary sets of role players in the illegal market; the stealers (thieves) and the receivers (fences). The stealers or thieves are either professional or occasional. The professional thief is adept at his craft and makes a lucrative living from it. The occasional thief does not necessarily make a living from stealing, but steals as and when he needs to for whatever reason. The occasional thief is also the one who will often try to explain his way out of the situation saying he was merely borrowing the item.

Both the professional and the occasional thief need a market for their stolen merchandise. The literature explains this avenue as the fence or the receiver. The literature also explains that the stolen items sometimes pass through several sets of hands before ending up in the legal market. The findings in relation to the qualitative data gathered from interviews also highlighted this aspect. The research showed that one of the primary reasons why the Second-Hand Goods Act was developed, was to close the market to the receipt of stolen goods.

Since the research found that the primary role players in the market are split almost 50-50 between commercial enterprises (who are subject to the SHGA) and non-commercial entities (who are not subject to the SHGA), the efficacy of the SHGA to close the market off to stolen goods may not be a certainty.

Similar to the professional and occasional thief, the receivers/fences can also be classified as either the professional or the non-professional fence. The non-professional fence is the person who mixes stolen and legitimate goods and the professional fence deals only in stolen goods.

The data showed that while none of the museums or galleries had been offered stolen items, they were aware of stolen items being traded within their business sector. These items are listed as archaeological artefacts, works of art, sculptures, antique furniture, maps and ethnographic objects. None of the participants were willing to divulge further information about this aspect. This too is a tendency which has been highlighted in international literature.

The findings show that the auction houses were more prone to being offered items of dubious origin. They simply refuse the item as not ready for the market. While fakes and forgeries do not form part of the scope of the study, this issue kept surfacing. The research found that the auctioneers felt disempowered to remove fake paintings from the market when offered obvious fakes.

The qualitative data showed that detectives who investigate heritage crime must be aware of the motive for the theft (order or opportunity) which will enable him to more accurately identify the probable fence to which the stolen goods will go. The use of an effective informer network was found to be invaluable to the investigation of this type of crime.

#### **7.4.3.4 The interface between the legal and illegal markets**

The framework of the legal trade developed in chapter 4 was foundational to the development of the Interface Framework developed in chapter 6. The data on heritage crime were merged with the data on the legal trade and data obtained from literature pertaining to stealers and receivers. The framework illustrates how the stolen items are re-introduced into the legal market through legitimate business, both locally and abroad.

The findings show that primarily scrap metal dealers, specialty shops and the internet are used through which to dispose of stolen items. It is not clear how the SHGA will address the aspect of e-Bay since it is an auctioneer but without a physical business premises, and the checks and balances prescribed by the law may not necessarily be possible.

On analysis of the three scenarios described in chapter 5 (based on the actual reported incidents) the research concluded that the majority of the incidents (scenario one) were common theft committed for money primarily due to opportunity. These incidents were more than likely committed by occasional or amateur thieves who would manifest the Criminological Theory of Neutralisation to try and justify their actions if caught. The research found that it is quite likely that these items went to non-professional fences who mix legitimate and illegal goods.

The research found that it is likely that the incidents perpetrated in scenario two may have been by a professional thief with wit and skill and the incidents in scenario three were probably perpetrated by amateur thieves but operating on instruction of another person (buyer or fence). The findings show that the items for scenario two probably went to either a professional fence (specialising in militaria) or a non-professional fence (such as a scrap metal dealer). The findings show that it is very likely that the items targeted in scenario three were destined for a specific market by either a professional fence, or the items had a ready buyer.

#### **7.4.4 International best practices to address heritage crime**

The fourth research question inquired about the international best practices to address heritage crime. This relates not only to the conventions designed to protect cultural property, but also the international bodies and law enforcement that combat illegal activities in relation to cultural property. This set of findings is based on data gathered primarily from literature, but supplemented with qualitative data obtained during interviews with police officials from Italy, the USA, the UK and Germany.

These findings are made in relation to legislative aspects that prescribe the minimum legislative standards and govern the management, custodianship and trade in heritage objects in South Africa as well as the bodies/organisations involved in addressing heritage crime at

an international level. These findings contribute to answering the second and fourth research questions.

#### **7.4.4.1 International instruments to address crime in relation to cultural property and their impact on South African legislation**

This research found that the international best practices with which heritage crimes are addressed commence with international instruments. These instruments are known as conventions and they prescribe the minimum standards which must be encapsulated into the national legislation of states party to the convention. The United Nations Educational, Scientific and Cultural Organisation (UNESCO), established by the United Nations (UN), is the only organisation mandated at a universal level to develop laws pertaining to cultural heritage.

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the 1970 Convention) and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the 1995 UNIDROIT Convention) are considered the two primary conventions that address the illegal traffic and theft of heritage objects in times of peace.

South Africa is party to the 1970 UNESCO Convention but has yet to become party to the 1995 UNIDROIT Convention. In terms of Article 5 of the 1970 UNESCO Convention South Africa is obliged to undertake specific actions towards the protection of its cultural property.

These steps include the establishment of one or more national bodies which will focus on the protection of the cultural heritage of the country. This research found that while SAHRA has been established in terms of the legislation, it is not adequately staffed or funded to undertake the full scope of its legislated mandate. Moreover, the research also found that the registration of dealers in heritage objects had not been done and the capturing of the national inventory, although commenced, had not been completed.

The research showed that the SHGA required all dealers and traders in second-hand goods to register before they were licensed to trade. It is perhaps providential for SAHRA who could now simply provide registration status to those dealers registered under the SHGA and those not so registered will have to register under both the NHRA and the SHGA.

The research shows that due to legislative duplication between the NHRA and the legislation of the NHC, there was strain between these two organisations which led to unhealthy competition.

The research also found that legislative design and the constitution of the National Heritage Council (NHC) caused confusion, unhealthy competition for scarce resources and conflict between the NHC and other organisations such as SAHRA.

Findings in the research showed that the 1970 Convention is deemed to be the foundation upon which law pertaining to cultural heritage is based. It was the first convention to provide explicit protection to cultural objects. South African legislation for the protection and management of its cultural heritage is founded on the 1970 UNESCO Convention. The 1970 UNESCO Convention requires that an object must be declared by the state as being of importance due to its value in the fields of literature, science, art, archaeology, history or prehistory before the objects are afforded protection. This convention affords protection to only those items illegally removed from ‘a religious or secular public monument or similar institution’ and which were ‘documented as appertaining to the inventory of that institution’.

The findings showed that the specific declaration of protection within the 1970 UNESCO Convention thereby excludes the protection of cultural objects housed in repositories which fall outside the stated distinction, as well as any illegally excavated archaeological items which are exported from South Africa.

It was found that South African legislation (NHRA) makes provision for this declaration and lists specific tangible and intangible heritage resources of importance to the country. It was also found that the interpretation of this part of South African legislation (NHRA), pertaining to cultural property which is protected in terms of the legislation, is confusing. Not all of the criteria explaining which objects are protected are clear and much room is left for subjective interpretation. This means that the legislation does not necessarily protect everything curated in South African museums and other cultural institutions. Clarification of this protection will only become relevant if the item is stolen or is exported without a permit. The research found that the cultural nationalistic spirit of the South African legislation is revealed in the specific declaration of items which are considered inalienable from the country.

The research found that trade in South African items of archaeology, palaeontology and rare geological specimen within the borders of the country is not permitted, but that the trade in items not indigenous to South Africa is legal. The findings also show that the differentiation between these two classifications is virtually impossible, thereby frustrating any policing initiatives in this arena.

On the positive side, the research found that the time frames attached to specific types of heritage objects before their inclusion into the national estate was considered insightful, since it ensures that annually heritage objects may potentially be added to the national estate of the country.

The research also found that the 1970 UNESCO Convention provides that only the state (the government) may claim the return of its cultural property through diplomatic channels. This provision implies that only the South African government may claim the return of stolen or illegally exported heritage items through diplomatic channels. Private owners or collectors have no recourse if their stolen property has been exported abroad.

The research findings show that countries who are ICOM members may approach ICOM Paris for assistance in repatriation matters.

When the return of stolen or illegally exported items is claimed, the good faith of the buyer becomes very important. In a common law country the rights of the dispossessed owner are protected, whereas in a civil law country the rights of the good faith buyer are protected.

The legal system in South Africa is a common law system. Thus the rights of the legal owner weigh heavier than the rights of the good faith buyer. Since South Africa has only acceded to the 1970 UNESCO Convention, the rights of the dispossessed private owner are not protected when the stolen item is exported from South Africa. If the stolen item originated from an inventoried museum and it is found abroad, then the convention applies, but only if the country in which it is found is also a common law country. If the country were a civil law country, South Africa would have to pay reasonable compensation to the good faith buyer. Were South Africa to accede to the 1995 UNIDROIT Convention, then the civil law country would have to return the item (provided they too are a party to the convention).

Under the 1970 UNESCO Convention the national legislation of each state party will determine what the limitation period is for the return of stolen or illegally exported cultural property. South African legislation governing the management and protection of South African heritage resources is silent on this issue.

#### **7.4.4.2 International organisations involved in combating heritage crime**

The research found, primarily from literature, that there are several international organisations that are involved in combating heritage crime. Only the organisations which fit the scope of this study were selected for discussion. These organisations are the International Council of Museums (ICOM) and the International Committee on Museum Security (ICMS).

The findings show that ICOM have a consultative status at the Economic and Social Council of the United Nations and are at the forefront of developing tools and guidelines to assist countries on how to address crimes against cultural property. Similarly the ICMS focuses primarily on security aspects within museums and assists museums to develop best practices by creating fora where information sharing is encouraged.

#### **7.4.4.3 INTERPOL**

The research found that the largest international police agency, INTERPOL is a primary role player in combating cultural heritage crime. INTERPOL established a Database for Stolen Works of Art and other heritage objects which collates images and descriptions of all the reported crimes worldwide. INTERPOL has also made it possible for other role players such as traders, dealers, collectors and curators to gain access to this database.

#### **7.4.4.4 International police agencies involved in combating heritage crime**

The research found that there was a limited specialised capacity to address heritage crime at an international level. Police officials from four countries were interviewed. It was found that only Italy and the UK have a centralised capacity that specialises in only heritage crime. The USA was found to have capacity in its Art Crime Team, but it is not centralised nor is it dedicated to just this type of crime. In Germany the general detectives handle these cases and the central desk only gets involved when assistance is requested or when the investigation crosses international borders.



Only Italy provides specific training to their investigators. The USA provides an annual refresher course for their field agents who have nominated to be trained in this field of specialisation. Neither Germany nor the UK has specific training interventions for the investigators.

The research found that in these countries all crimes against heritage must be reported at the local police station. From there, depending on the country and the value/age of the stolen items, either the local detectives handle the investigation or it is escalated to a specialised unit (Italy and the UK). The research found that the theft of cultural property does not differ significantly from other cases of theft. What was found is that the role players (thieves and fences) are more specialised and so too the commodity. Investigators need to be trained in the recognition of heritage objects and if not specifically trained they need access to specialists who would be able to assist them with their investigations.

The research also found that in Italy, the UK and the USA there are specific organisations which work with law enforcement to address heritage crimes and who provide investigators with advice in relation to investigations.

#### **7.4.4.5 South African role players**

This research found that SAHRA and the NHC are the two primary legislative bodies mandated to address the protection, management and preservation of the cultural property of South Africa. It was also found that in the NGO sectors, the South African chapters of ICOM, SAMA and NALEH are involved in combating heritage crime and assisting SAHRA achieve its objectives of protecting the cultural property of the country.

The research found that the South African chapter of ICOM is nothing other than a post office which passes messages on to its primary office in France. It renders no function similar to its international counterpart. The NALEH forum which is similar to the ICMS has managed to bring together role players from law enforcement and the heritage sector. Security training workshops and briefings have been held and South Africa was the first country to publish a Stolen Works of Art poster, similar to the international publication issued by INTERPOL every quarter. The second poster was published in May 2013.

#### **7.4.5 The response of the SAPS to this crime phenomenon and other possible strategies based on best practices**

The last research question asked what the SAPS may do to address this type of crime based on international best practices.

##### **7.4.5.1 Response of the SAPS to incidents of theft of heritage objects**

The research found that the theft incidents relating to heritage objects were more often than not investigated by a detective from the police station at which the criminal case was reported (within the jurisdiction in which the crime was committed). The detective investigating the case had no specialised knowledge or training in heritage crime. Cases remained open on average between five to six months and in several instances these cases were passed between several detectives before the case was closed off as unsolved.

The findings also showed that the majority of complainants were not satisfied with the manner in which the SAPS handled the investigation since no communication or feedback in relation to the case was forthcoming.

The findings show that while there is a centralised office at which these crimes may be recorded, this is not happening. There is no clarity where the mandate lies to investigate these crimes; whether it is with the local police station, the provincial organised crime office, the ESU or the Stock Theft and Endangered Species Unit. As a result of this situation there is no centralised collation of data pertaining to these crimes which permits the early identification of crime trends. The ESU will only get involved with an investigation if the involvement of either money laundering or organised crime is clear.

The research found that when an incident of heritage theft occurs within the borders of South Africa, the provincial coordinator for this type of crime is to notify the organised crime office nearest to the incident. An organised crime investigator is assigned to the case and he has to inform the ESU. Based on the merits of the case a decision will be made where the investigation is to be based. This is not happening, and many investigations are simply dealt with at station level.

Findings also show that incidents reported at local level are not filtered up to the office of the Endangered Species Unit.

#### **7.4.5.2 Specialised investigative capacity and skills**

The findings from the qualitative interviews showed that while this crime is not significantly different to general theft cases, investigators who undertake these investigations are more likely to achieve success if they have received specialised training in this field. It was also found that such investigators benefit a great deal if they have access to specialists in the heritage environment. The investigators are also to be familiar with legislation dealing with cultural property, organised crime, money laundering, corruption, trading in second-hand goods as well as the international conventions that are applicable.

The findings showed that the NALEH forum has been effective as a forum at which role players in both law enforcement and heritage can share information on theft incidents and security issues. This forum has been fundamental in ensuring that detectives who are trained in the investigation of organised crime are exposed to the aspect of heritage crime. The research also found that the detective at the Endangered Species Unit who previously coordinated this training, had resigned from the SAPS.

The findings show that the moratorium on the placement of detectives at the Endangered Species Unit, as well as the apparent inner turmoil within the SAPS, is having a detrimental effect on the manner in which these crimes are addressed.

#### **7.4.5.3 How the SAPS could respond based on best practices**

The findings show that of the international best practices studied, the approach best suited to the South African situation is the one followed by the Art Crime Team of the FBI. Based on this approach each province would have trained specialised investigative capacity that would either conduct the investigation of such cases or could provide advice and support to local detectives who undertake the investigation of *ad hoc* cases.

Data on all investigations should be centralised, collated and analysed to inform role players of possible crime trends or organised crime involvement. Cases in which the involvement of either organised crime or aspects of money laundering have been identified can then be managed from the national office while being investigated at a provincial level.

The apparent turmoil within the SAPS is having a marked impact on the effective functioning of the police service. It does not create an ideal environment for the SAPS in which to

effectively undertake the duties conferred on them by the Constitution in terms of addressing issues of crime. This aspect also compounds the context in which crime in general needs to be addressed in South Africa as it has a negative impact on the overall morale of the workforce.

#### **7.4.6 Methodological findings**

The research found that the post/positivist and phenomenological approaches suited this study since it permitted the study of the different perspectives of the phenomenon held by the role players in the cultural field (heritage arena). The research also found that the lived experienced of these role players (participants) added much value to the quantitative data.

The findings also show that the constructivist approach permitted the continuous interaction with the research participants, which added value and insight to the research. Without these interactions this research would not have been possible.

The findings show that the quantitative data gathering technique permitted the researcher to study the various aspects operational within the cultural field of the phenomenon. This permitted the researcher to draw conclusions about the possible influence exerted on the research phenomenon. The data were complemented by qualitative inquiry which highlighted, supported and verified findings made through the quantitative data.

The findings show that the qualitative data also contributed to a more comprehensive understanding of the phenomenon under study.

The use of the embedded approach proved, in the opinion of the researcher, to be the most suitable approach for this study.

### **7.5 RECOMMENDATIONS**

After considering the findings made in this study, the following recommendations are proposed:

#### **7.5.1 Conventions and legislative recommendations**

As highlighted in the text, there is duplication between the legislated mandates of the NHC and SAHRA. It is recommended that during the legislative review planned by the DAC,

serious consideration is given to the streamlining of these two pieces of legislation, to do away with duplication and to ensure that these two bodies are able to work together to the benefit of cultural property in South Africa. It is also recommended that the current hierarchical dissonance in existence (especially between SAHRA and the NHC) be clarified through the drafting of clear and unambiguous legislation when the legislative review is undertaken.

It is recommended that South Africa finalises the ratification of the 1995 UNIDROIT Convention. This will ensure greater protection for South African patrimony at risk of alienation from South Africa, but it will also empower private collectors and institutions not affiliated with the state, to be in a position to claim the return of illegally exported cultural property. This convention also has a limitation clause which will of necessity have to be included in the National Heritage Resources Act. It is recommended that the legislator notes the time duration that an item is removed from the market when a collector purchases it, when the limitation periods are decided upon. This time duration is 30 years. It is then also recommended that the international standard of between 30 and 50 years be used as a guideline.

It is recommended that SAHRA undertakes the development of a code of conduct for traders and dealers in second-hand goods and legislates registration of these dealers complementary to the legislated registration mandated by the SHGA. It is recommended that SAHRA, through stakeholder consultation, obtains the buy-in of these dealers and considers awarding SAHRA registration status to those dealers and traders (in heritage objects) who have already registered under the SHGA, without requiring them to re-register under SAHRA.

It is recommended that the DAC promotes the value of preserving and protecting the cultural heritage of all South Africans through education and awareness programmes. By actively engaging with these issues there is the distinct probability that a greater respect will be developed for the heritage of the nation.

### **7.5.2 Security**

It is recommended that the issue of heritage management in South Africa receives concerted attention and prominence in budgetary discussions and that museums are empowered with adequate financial resources to secure the objects curated in their collections. It is also

recommended that a national inventory is completed before further decisions are made about the repatriation of South African cultural property. By effectively protecting the valuable cultural property still within South African curatorship, a situation is created that will ensure that future repatriated cultural property will be properly curated and secured.

This research also recommends that security officials who are deployed at museums and galleries are trained in site specific measures. This will include not only aspects relating to handling thefts but also evacuation procedures during natural disasters, building collapses and even fires.

It is recommended that a museum policy is developed by museum practitioners from South African museums in consultation with security experts, which will ensure a minimum standard of adherence in terms of security aspects at museums. This policy must address the training of all staff employed at museums in aspects pertaining to security and disaster management (such as burst water pipes or structural damage).

It is recommended that security directors at museums should develop a network of consultation and information sharing with counterparts in other parts of the country as well as law enforcement personnel within the policing area of their museums.

It is recommended that creative ways are found (in the interim) for cash strapped museums and galleries to secure their items. Consideration can be given to the use of high-tensile fishing line and good screws because if the curator can remove an item from the wall or display, then so too can a thief. Furthermore, glass marbles can be placed behind artworks hanging at an angle on the wall, the moment the work is tampered with the marbles fall to the ground and create noise which must attract the attention of the security guard on duty.

The lack of one central repository for South African items (art works or other cultural property) which have been stolen/ lost is unfortunate and detrimental to the recovery thereof, since due diligence checks must now be made against several sites, none of which are sufficiently comprehensive. It is recommended that one central repository for stolen South African heritage objects should be developed and kept updated by the SAHRA.

It is recommended that SAMA collaborates with the security companies who are awarded tenders at South African museums for on-site protection and that SAMA helps to develop an

understanding among security companies of what cultural resources are and - when responding to alarm situations - how to react within a museum environment.

### **7.5.3 Policing and investigation of crime**

It is strongly recommended that the SAPS gives clarity to the mandated units/offices that are to investigate heritage related crimes. It is also recommended that the SAPS should issue a directive to all the police stations to ensure that all categories of heritage objects reported as stolen, are circulated to INTERPOL, NCB, Pretoria.

The NHRA provides that all customs and SAPS officials are considered heritage inspectors and therefore it is recommended that the SAPS together with SAHRA should appoint at least five dedicated heritage inspectors within each province. These heritage inspectors could act as liaison between SAHRA and the SAPS for heritage-related matters such as investigations, destruction of fire-arms possibly under protection of the NHRA, and permit violations. They should also be trained to undertake investigations against cultural property within the province and be available to assist station detectives in the local investigation of theft incidents where cultural objects are involved.

It is also recommended that a central repository unit (possibly attached to the Endangered Species Unit) is established to capture all heritage-related crime incidents to permit the early identification of crime trends and the drafting of the required reports for INTERPOL.

It is recommended that NALEH is headed by either the SAPS Central Repository Unit or SAHRA and that this forum conducts its activities from this position.

The following guidelines are recommended to the SAPS as a way forward:

- Develop a protocol for the handling of incidents perpetrated against cultural property in South Africa;
  - Set either monetary or age specific limits to distinguish when local detectives investigate incidents, when organised crime detectives get involved and when the designated heritage inspectors are called upon to investigate.
- Recruit and train specifically designated heritage inspectors in collaboration with SAHRA and other interested role players;

- Establish a South African database of stolen heritage objects for due diligence checks in terms of the SHGA which will be complementary to the INTERPOL Stolen Works of Art Database;
- Develop a central repository which will collate and analyse crime information to enable the early identification of crime trends and the necessary dissemination of the information to the role players involved;
- Establish a security network for the investigators consisting of insurance underwriters, security managers at museums and galleries and security specialists in the field to collaborate with;
- Establish formal contact with discipline specific experts in the heritage field to assist investigators in technical and specialised areas of investigation;
- Develop and maintain a network of confidential informers within this field;
- Alert the media when successes are achieved and highlight the importance of the protection of South African cultural property; and
- Establish contact with similar role players on the continent and further afield to permit the exchange of ideas and networking.

#### **7.5.4 Additional research**

This research recommends that further research is conducted in the field of fakes and forgeries in the South African art market as well as illegal traffic in looted antiquities and looted underwater heritage from a South African perspective. Research to assess the scope of the legal trade in the remaining provinces will also be beneficial to combat heritage crime and the illegal trade in cultural property.

#### **7.6 CONCLUSIONS**

This research sought to explore the level and the character of heritage crime in Gauteng. The focus of the study was on the theft of heritage items from museums and galleries in the Gauteng province of South Africa. Through this inquiry the research also sought to examine the functioning of the legal trade in heritage objects and in what manner the illegal trade was influencing the legal market. The context of the inquiry was positioned within law enforcement.



An integrated approach was selected for this study since the scope of the inquiry did not meet the parameters of just one paradigm. The embedded design was selected which enabled the researcher to gather both qualitative and quantitative data almost simultaneously. The research was focused in Gauteng since the hub of the trade occurs there, and that is also where the primary auctions houses (integral to this study) are found. Moreover, the data pertaining to thefts were gathered from museums and galleries since experience proved that these institutions are the primary targets when heritage items are stolen.

As the research had a multi-focal perspective, data were gathered from traders and dealers in heritage objects, law enforcement officials with experience in addressing heritage crime in South Africa, Italy, Germany, the USA and the UK. Data were also gathered from INTERPOL, Lyon and the NCB in Pretoria as well as an insurance underwriter in South Africa specialising in the insurance of art and other heritage objects. Data were gathered from the administrators and custodians of South African cultural property, as well as NGOs that assist these custodians to combat crimes perpetrated against cultural property in South Africa.

Through this inquiry answers were sought to the questions drafted at the inception of this research pertaining to heritage crime in Gauteng. The questions asked and answered focused on describing the nature and extent of heritage crime as well as an investigation into both the legal and illegal markets for heritage objects in Gauteng. The inquiry also purposed to determine what the international best practices are for addressing heritage crime and what the SAPS might consider doing (based on best practices) to address the problem in Gauteng.

The study answered all the research questions and achieved the aims.

The inquiry discovered that thefts are perpetrated against the museums and galleries in Gauteng in a variety of ways. Primarily the common law crime of theft was the most prolific and these incidents were rife in autumn and winter months. Based on actual crime incidents it was possible to postulate which crimes were perpetrated by professional thieves and which by occasional thieves. It was also possible to theorise about the motives for each incident based on the items stolen and the geo-spatial positioning of the institution. A typological list was drafted depicting the categories of items that fall prey to thieves.

The research highlights that it is erroneous to focus on just the numeric incidents uncovered by this inquiry when investigating the extent of the crime. The numeric reflection (which appears to be negligible) proves unreliable since it is not a true indication of the magnitude of the problem. The research proved, from multiple perspectives, that within a South African context this crime is underreported. The attitude that numbers are of primary importance in heritage crime and therefore statistical evidence is sought to prove the existence of this crime, is parochial. It is ill-informed to compare the theft of heritage objects with other general thefts. It is similarly ill-advised to attempt to investigate the theft of heritage objects in like fashion; this approach has proven unsuccessful in bringing heritage crime cases to a successful conclusion. While the attempts made to investigate the reported incidents and recover the stolen property are laudable, they were destined for failure. The investigators tasked with these investigations require a skill set which the average general detective unfortunately does not possess, through no fault of their own. Crime of this nature requires specialised skills, specialised knowledge and specialised insight, coupled with expert advice and insider knowledge. To this end, the availability of experts in the market as well as informers in the field has proven to be of inestimable value at global level.

Security at museums and galleries is present but appears as inactive as the objects they are supposed to protect. Security needs to be viewed as part of the holistic approach to the effective management of a state funded institution. Persisting with dated approaches to technology and security and failing to supply institutions with sufficient funds to perform their custodian duties responsibly, is akin to leaving the gate open. Collaboration may provide a way of protecting the national heritage even when the 'gate is open'. The role players in the cultural field are collectively stronger than they are as individual institutions. Collaboration and cooperation must be sought to ensure that scarce resources are used wisely in the interest of the common goal, which is the protection and preservation of the cultural property of South Africa.

Traders, dealers and consumers of cultural objects must endeavour to keep the market legal, to ensure that items traded have legitimate provenance and that records reflect accurate figures. Similarly, collectors of heritage must also ensure that their conduct in relation to the trade remains exemplary and that items of dubious origin are refused.

The influence of the 1970 UNESCO Convention on South African heritage legislation is clearly visible in the cultural nationalistic perspective espoused by the South African national

legislation. Failure by South Africa to ratify the 1995 UNIDROIT Convention has resulted in restitutions being negotiated with the 1970 UNESCO Convention the only legal platform. South Africa is poorer for this.

Ambiguities in the national legislation designed for the protection, management and preservation of the cultural property of South Africa are not conducive to sound heritage management. Effective staffing and the empowerment of those responsible to manage and preserve the national estate, are lacking. Serious consideration should be given to the patrimonial value of the national estate followed by serious action to address identified inefficiencies. Heritage crime is a multi-dimensional problem requiring a multi-dimensional approach - if any measure of success is to be achieved.

The researcher is of the opinion that this study represents a significant contribution to understanding and addressing heritage crime in Gauteng, South Africa.

## REFERENCE LIST

- A1. 2011. Sample B1: Auction House. Statement made to researcher, 10 August 2011. Gauteng. (Electronic recording and transcription in possession of researcher.)
- A2. 2011. Sample B1: Auction House. Statement made to researcher, 5 August 2011. Gauteng. (Electronic recording and transcription in possession of researcher.)
- A3. 2011. Sample B1: Auction House. Statement made to researcher, 6 October 2011. Gauteng. (Electronic recording and transcription in possession of researcher.)
- Aarons, L. 2001. Art theft: an exploratory study of the illegitimate art market in Australia. *Australian and New Zealand Journal of Criminology*, 34(1):17-37.
- Aarons, L., Chappell, D. & Polk, K. 1998. Art crime in Australia: a market analysis. Paper delivered at the Annual Australian and New Zealand Society of Criminology Conference (1998, Gold Coast, Queensland). From: <http://www.anzsoc.org/conferences/1998/aarons.pdf> (Accessed: 3 August 2012).
- About INTERPOL. 2009. Interpol. From: <http://www.interpol.int/public/icpo/default.asp> (Accessed: 17 August 2010).
- Ahern, D. & Amore, A. 2009. Q&A with two innovative security directors. In Charney, N. (ed.). *Art and crime: exploring the dark side of the underworld*. Santa Barbara: Preager.
- Alder, C. & Polk, K. 2001. The illicit traffic in Asian Antiquities. Paper delivered at the Australian Registrars Committee Conference, 9 October 2001, St Kilda, Melbourne.
- Ambrose, T. & Paine, C. 1995. *Museum basics*. London: Routledge.
- Arts and culture. 2006a. Branch: Cultural Heritage and Preservation. From: <http://www.dac.gov.za/functions/CulturalHeritagePreservation.html> (Accessed: 21 May 2012).
- Arts and culture. 2006b. Departmental vision and mission. From: [http://www.dac.gov.za/vision\\_mission.htm](http://www.dac.gov.za/vision_mission.htm) (Accessed: 21 May 2012).

- Art theft register. 2012. Art Insure: Search for stolen art. From: <http://artinsure.co.za/art-theft-register> (Accessed: 20 May 2012).
- Babbie, E. & Mouton, J. 2001. *The practice of social research*. Cape Town: Oxford University Press.
- Bachman, R. & Schutt, R.K. 2012. *Fundamentals of research in criminology and criminal Justice*. 2<sup>nd</sup> ed. Los Angeles: Sage.
- Bak, N. 2004. *Completing your thesis: a practical guide*. Pretoria: Van Schaik.
- Bator, P. 1982. An essay on the international art market. *Stanford Law Review*, 34(2):275-384.
- Beckert, J. & Wehinger, F. 2011. In the shadow: Illegal markets and economic sociology. MPiFG: Discussion paper 11/9. From: [http://www.mpifg.de/pu/mpifg\\_dp/dp11-9.pdf](http://www.mpifg.de/pu/mpifg_dp/dp11-9.pdf) (Accessed: 2 August 2012).
- Bendeman, H. 2012. Sample C. Police officer. Statement made to researcher, 17 July 2012. Gauteng. (Electronic recording and transcription in possession of researcher.)
- Benson, B.C. 2006. The role of the South African Police Service in the combating and investigation of heritage crime. Paper delivered at the INTERPOL 6<sup>th</sup> Symposium on the illicit trade in cultural and heritage objects. (2006: Lyon, France).
- Benson, B.C. 2008a. Cultural heritage crime in South Africa: an investigative analysis. Paper delivered at the 72<sup>nd</sup> South African Museums Association conference, 24 June 2008, Cape Town, South Africa.
- Benson, B.C. 2008b. He who alleges must prove: the importance of effective collections management. Paper delivered at the International Council of Museums (ICOM) Regional workshop on the illicit trade in heritage objects, 1 November, Pretoria, South Africa.
- Benson, B.C. 2009. The illicit trade in heritage objects: fact or fiction? Paper delivered at the ARCA Conference, 1 July, Amelia, Italy.

- Benson, B.C. 2010. The illicit trade in heritage objects: fact or fiction. *ACTA Criminologia: South African Journal of Criminology*, Special conference edition No 1:140-158.
- Benson, B.C. 2011a. Heritage crime as the illegitimate sibling of the South African crime family. *ACTA Criminologia: South African Journal of Criminology*, 24(1):83-95.
- Benson, B.C. 2011b. Quantifying heritage crime in Gauteng: Mission [im]possible? Paper delivered at the 8<sup>th</sup> International Symposium on the Illicit Traffic in Works of Art, Cultural Property and Antiques, 18 October, Lyon, France.
- Benson, B. 2012a. Minutes of the NALEH meeting held on 7 March 2012; agenda item 3.4. Unpublished document. (Copy available from researcher.)
- Benson, B.C. 2012b. Quantifying heritage crime in Gauteng: Mission [im]possible? Paper presented at the crime seminar titled South African Heritage under Attack, 18 April, Pretoria, South Africa.
- Best, J. 2009. Trepidations of a private art collector. In Charney, N.C. (ed.). *Art and crime: exploring the dark side of the art world*. California: Praeger.
- Blatch, N. 2005a. Copies of Pemba art now on view. *The EP Herald*, 10 October: 4.
- Blatch, N. 2005b. Pemba may not be the first art work lost to fort Hare. *The EP Herald*, 7 October: 3.
- Borodkin, L.J. 1995. The economics of antiquities looting and a proposed legal alternative. *Columbia Law Review*, 95(2):337-417.
- Boshomane, L. 2012. Brett Murray spear painting defaced. *The New Age*, 22 May. From: [http://www.thenewage.co.za/printstroy.aspx?news\\_id=51412&mid=53](http://www.thenewage.co.za/printstroy.aspx?news_id=51412&mid=53) (Accessed: 29 May 2012).
- Brodie, N., Doole, J. & Watson, P. 2000. *Stealing history: The illicit trade in cultural material*. Cambridge: The McDonald Institute for Archaeological Research.

- Bruce, D., Newham, G. & Masuku, T. 2007. *In service of the people's democracy: An assessment of the South African Police Service*. Braamfontein: Centre for the Study of Violence and Reconciliation.
- Bryson, D. 2011. Copper thieves stealing SA's bronze art. From: <http://www.sowetanlive.co.za/news/2011/10/26/copper-thieves-stealing-sa-s-bronze-art> (Accessed: 21 March 2013).
- Bull, T. 2009. Lack of due diligence and unregulated markets. In Charney, N.C. (ed.). *Art and crime: exploring the dark side of the art world*. California: Praeger.
- Burger, J. 2007. *Strategic perspectives on crime and policing in South Africa*. Pretoria: Van Schaik.
- Burnham, B. 1975. *The art crisis*. London: Collins.
- Burnham, B. 1978. *Art theft: its scope, its impact and its control*. NYC: Publishing centre for cultural studies.
- Calvani, S. 2008. Frequency and figures of organised crime in art and antiquities. In ISPAC International Conference, 12 December 2008.
- Charney, N.C. 2008. Buyer beware. Art info. From: <http://www.artinfo.com/news/story/28263/buyer-beware.html> (Accessed: 3 April 2009).
- Charney, N.C. 2009. Art crime in context. In Charney, N.C. (ed.). *Art and crime: exploring the dark side of the art world*. California: Praeger.
- Conklin, J.E. 1994. *Art crime*. Westport, Conn.: Praeger.
- Constitution. See South Africa. 1996.
- Creswell, J.W. 2013. *Qualitative inquiry and research design: Choosing among five approaches*. 3<sup>rd</sup> edition. Los Angeles: Sage.

Crime research and statistics. S.a. From:

<http://www.saps.gov.za/statistics/reports/crimestats/2011/maps/index.html> (Accessed: 27 May 2012).

Crime statistics. S.a. From: <http://www.saps.gov.za/statistics/reports/crimestats/2008/crimestats2008.htm> (Accessed: 6 July 2009).

Cultural heritage organisations. 2007. Object-id. From: <http://www.object-id.com/final/06-cultural.html> (Accessed: 24 May 2007).

D1. 2011. Sample B2. Antique dealer. Statement made to researcher (telephonically), 30 August 2011. Gauteng. (Telephone interview, transcription in possession of researcher.)

D2. 2011. Sample B2. Antique dealer. Statement made to researcher, 12 May 2011. Gauteng. (Electronic recording and transcription in possession of researcher.)

D3. 2012. Sample B2. Antique dealer. Statement made to researcher, 21 February 2012. Gauteng. (Electronic recording and transcription in possession of researcher.)

D4. 2011. Sample B2. Antique dealer/collector. Statement made to researcher, 30 July 2011. Gauteng. (Electronic recording and transcription in possession of researcher.)

D5. 2012. Sample B2. Antique dealer. Statement made to researcher, 24 January 2012. Gauteng. (Electronic recording and transcription in possession of researcher.)

Davis, P. 2012. The use of secondary data for teaching research methods. 8th International Conference on Social Science Methodology, 11 July 2012, Sydney, Australia.

De Bruin, P. 2009. Kunsbelegging groei vanaf R38 000 tot by R3 miljoen. *Beeld Sake* 24, 8 Oktober: 2.

Declared heritage objects. *See* South Africa. Department of Arts, Culture, Science and Technology. 2002.

Dekamper, G. 2011. Co-chair: NALEH. Statement made to researcher, 2 August 2011. (Electronic recording and transcription in possession of researcher.)



- Dekamper, G. 2012. Chief Curator: collections: University of Pretoria. Statement made to researcher, 6 March 2012.
- Denscombe, M. 2005. *The good research guide for small scale research*. 2<sup>nd</sup> ed. Philadelphia: Open University Press.
- Denzin, N.K. & Lincoln, Y.S. 2003. Introduction: The discipline and practice of qualitative research. In Denzin, N.K. & Lincoln, Y.S. (eds). *Strategies of qualitative inquiry*. 2<sup>nd</sup> edition. Thousand Oaks: Sage.
- Department of Arts and Culture. 2006. White Paper on Arts, Culture and Heritage: All our legacies, our common future. From: [http://www.dac.gov.za/white\\_paper.htm](http://www.dac.gov.za/white_paper.htm) (Accessed: 20 April 2012).
- De Vos, A.S., Strydom, H., Fouchè, C.B. & Delpont, C.S.L. 2011. *Research at grass roots: for the social sciences and human serviced professions*. 4<sup>th</sup> edition. Pretoria: Van Schaik.
- Dobovšek, B. 2009. Art, terrorism, and organised crime. In Charney, N.C. (ed.). *Art and crime: exploring the dark side of the art world*. California: Praeger.
- Doyal, S. 2001. Implementing the UNIDROIT Convention on cultural property into domestic law: the case of Italy. *Columbia Journal of transnational law*, 39(3):657-700.
- Du Plooy, D. 2008. Water beskadig Pierneef-werk in hof en niemand doen iets. *Beeld*, 12 September: 4.
- Du Plooy, D. 2009. Beskadigde Pierneef hang nog net daar. *Beeld*, 5 Maart: 8.
- Du Toit, J. 2010. An eye on the game: focus on the future. In *Sawubona*, September:72-79.
- Felson, M. 1998. Routine activities and crime prevention in the developing metropolis. In Henry, S. & Einstadter (eds). *The criminological theory reader*. New York University.
- Ferreira, L. & Sapa. 2011a. Kentridge-drukke uit galery gesteel. *Beeld*, 10 Februarie: 2.
- Ferreira, L. & Sapa. 2011b. 2 vas na Kentridge-werk verdwyn. *Beeld*, 15 Februarie: 4.

- Fighting the illicit traffic of cultural property. 2007. ICOM. From:  
<http://www.icom.museophile.sbu.ac.uk/traffic.html> (Accessed: 24 May 2007.)
- Fouche, L. 2012. New second-hand goods Act due in April. From:  
<http://www.bloemfonteinjournal.co.za/Community-News/new-second-hand-goods-act-due-in-april.html> (Accessed: 20 April 2012).
- Freedom Park. 2012. Gauteng attractions. From:  
[http://www.gauteng.net/attractions/entry/freedom\\_park/](http://www.gauteng.net/attractions/entry/freedom_park/) (Accessed: 3 September 2012).
- Gauteng, burglary at non-residential premises. 2012. From:  
[http://www.saps.gov.za/statistics/reports/crimestats/2011/maps/images/Gauteng/burglary\\_non\\_residential\\_gaut.jpg](http://www.saps.gov.za/statistics/reports/crimestats/2011/maps/images/Gauteng/burglary_non_residential_gaut.jpg) (Accessed: 18 June 2012).
- Gauteng, robbery at non-residential premises. 2012. From:  
[http://www.saps.gov.za/statistics/reports/crimestats/2011/maps/images/Gauteng/robbery\\_non\\_residential\\_gaut.jpg](http://www.saps.gov.za/statistics/reports/crimestats/2011/maps/images/Gauteng/robbery_non_residential_gaut.jpg) (Accessed: 18 June 2012).
- Gerstenblith, P. 2007. The licit and illicit trade in antiquities. In Passas, N. & Goodwin, E. (eds). *It's legal but it ain't right: harmful social consequences of legal industries*. s.l.: University of Michigan Press.
- Gillman, D. 2010. *The idea of cultural heritage*. Revised edition. Cambridge: Cambridge University Press.
- Government Gazette. 2012. *Proclamation by the President of the Republic of South Africa: Commencement of the Second-Hand Goods Act, 2009 (Act No. 6 of 2009)*, Gazette number 35270 (28)2012. Pretoria: Government Printing Works.
- Government Gazette* of 6 December 2002. See South Africa. Department of Arts, Culture, Science and Technology. 2002.
- Granelli, M. 1999. Custodians of SA's art heritage get roasting. *The Star*, 11 February: 5.
- Hagan, F.E. 1997. *Research methods in criminal justice and criminology*. 4<sup>th</sup> edition. Boston: Allyn & Bacon.

- Hagan, F.E. 2011. *Introduction to criminology: theories, methods and criminal behavior*. 7<sup>th</sup> edition. Los Angeles: Sage.
- Haunton, M. 2001. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and Highlights of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. In Royé, I. & Blazeby, L.J. (eds). *ICRC-UNESCO Regional seminar for SADC States and Madagascar on Implementation of International Humanitarian Law and Cultural Heritage Law*, 19-21 June 2001, Pretoria, South Africa. s.l.:s.n.
- Hekman, W. (ed.) 2010. Handbook on emergency procedures. From: <http://www.icom-icms.org/doc/English.pdf> (Accessed: 9 March 2012).
- Henning, E., Van Rensburg, W. & Smit, B. 2004. *Finding your way in qualitative research*. Pretoria: Van Schaik.
- Henry, S. & Einstadter, W. 1998. Neutralization and social control theory: introduction. In Henry, S. & Einstadter, W. (eds). *The criminological theory reader*. New York University Press.
- Herman, D. 2005. MSN: South Africa: buyer of stolen Cape silver awaits offer. From: <http://www.museumsbeveiliging.com/msn/2005-December/004079.html> (Accessed: 21 March 2013).
- History INTERPOL. 2012. From: <http://www.interpol.int/About-INTERPOL/history> (Accessed: 9 March 2012).
- History ICOM. 2012. ICOM. From: <http://icom.museum/who-we-are/the-organisation/history/print/1.html> (Accessed: 9 March 2012).
- History of the United Nations. S.a. United Nations. From: <http://www.un.org/en/aboutun/history/index.shtml> (Accessed: 6 March 2012).
- Hlangane, S. 2012. Spear belongs to the museum of Shame: Nzimande. *The New Age*, 29 May. From: [http://www.thenewage.co.za/52108-1007-53-Spear\\_belongs\\_to\\_the\\_museum\\_of\\_shame](http://www.thenewage.co.za/52108-1007-53-Spear_belongs_to_the_museum_of_shame) (Accessed: 29 May 2012).

Hutcheon, C. 2011. ([Claire.Hutcheon@met.police.uk](mailto:Claire.Hutcheon@met.police.uk)). E-mail reply to questionnaire forwarded via INTERPOL, SG, Lyon. Private e-mail to researcher (25 October 2011).

ICOM: Code of ethics for museums. 2006. International Council of Museums. From: <http://icom.museum/codeofethicsformuseums.html> (Accessed: 26 September 2007).

ICOM Mission. 2009. International Council of Museums. From: <http://icom.museum/mission.html> (Accessed: 10 September 2009).

ICOM Network. 2012. ICOM. From: <http://icom.museum/where-we-work/icom-network/print/1.html> (Accessed: 9 March 2012).

ICOM Partners. 2010. ICOM. From: <http://icom.museum/who-we-are/the-organisation/partners/print/1.html> (Accessed: 9 March 2012).

INTERPOL. 2008. Philippines authorities honour work of INTERPOL team in aftermath of ferry tragedy. INTERPOL. From: <http://www.interpol.int/> (Accessed: 13 August 2008).

Interim operations manual for designated second-hand goods officers. 2012. From: [http://www.saps.gov.za/crime\\_prevention/shg.htm](http://www.saps.gov.za/crime_prevention/shg.htm) (Accessed: 22 May 2012).

International partners. 2012. INTERPOL. From: <http://www.interpol.int/en/layout/set/print/About-INTERPOL/International-partners> (Accessed: 9 March 2012).

Introducing UNESCO: what we are. 2011. UNESCO. From: <http://www.unesco.org/new/en/unesco/about-us/who-we-are/introducing-unesco> (Accessed: 8 April 2012).

Isaacs, R. 2005. Managing heritage objects that form part of the national estate. Paper delivered at the SAPCON Conference, 15-16 July 2005, East London, South Africa).

Isaacs, R. 2011. Manager: Heritage Objects Unit: South African Heritage Resources Agency. Statement made to researcher, 5 July 2011. Cape Town. (Electronic recording and transcription in possession of researcher.)

- Isaacs, R. 2012a. Manager: Heritage Objects Unit: South African Heritage Resource Agency. Statement made to researcher, 7 March 2012. Pretoria.
- Isaacs, R. 2012b. Manager: Heritage Objects: South African Heritage Resource Agency. Statement made to researcher (telephonically), 22 May 2012. Cape Town.
- Isaacs, R. ([reginaisaacs@sahra.org.za](mailto:reginaisaacs@sahra.org.za)). 2012c. Response from Regina: International convention. E-mail message to B. Benson (17 May 2012).
- Iziko Museums of South Africa. 2012. Ceramics stolen from Groot Constantia Manor house. From: <http://www.iziko.org.za/news/ceramics-stolen-from-groot-constantia-manor-house> (Accessed: 3 April 2013).
- James, M.2000. Art crime. *In Australian Institute of Criminology: Trends and issues in crime and criminal justice*. 170, October: 1-6.
- Janesick, V.J. 2003. The choreography of qualitative research design: minuets, improvisations and crystallization. In Denzin, N.K. & Lincoln, Y.S. (eds). *Strategies of qualitative inquiry*. 2<sup>nd</sup> edition. Thousand Oaks: Sage.
- Jooste, J. 2012. Sample C. Commander: Endangered Species Unit: DPCI. Statement made to researcher, 30 July 2012. Gauteng. (Electronic recording and transcription in possession of researcher.)
- Jordan, Z. 2007. Minister of Arts and Culture, Dr Z Jordan, Budget debate. From: <http://www.dac.gov.za/speeches/minister/Speech08June07.html> (Accessed: 17 August 2010).
- Joubert, C. 2010. *Applied law for police officials*. 3<sup>rd</sup> edition. Claremont: JUTA Law.
- Karfeld. S. 2011. Bundeskriminalamt/Interpol Wiesbaden: Art crime unit. Statement made to researcher, 19 October 2011. Lyon, France.
- Kempen, A. 2009. Second-hand Goods Act 6 of 2009. *Servamus*, 102(7), July:28-30.
- Korsell, L., Hedlund, G., Elwér, S., Vesterhav, D., & Huber, A. 2006. *Cultural heritage crime: a Nordic dimension*. Stockholm: Edita Norstedts Tryckeri AB.

- Lambrechts, D. 2009. New legislation: Second-hand Goods Act 6 of 2009. *Servamus*, 102(7), July:58-66.
- Leedy, P.D. & Ormrod, J.E. 2013. *Practical research: planning and design*. 10<sup>th</sup> edition. Upper Saddle River, New Jersey: Pearson: Prentice Hall.
- Legal instruments. S.a. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, 14 November 1970. United Nations Educational, Scientific and Cultural Organisation. From: <http://www.unesco.org/eri/la/conventions/asp?KO=13039&lanuage=E> (Accessed: 5 March 2012).
- Leviev-sawyer, C. 2000. Stolen diamond snug in parliament home. From: <http://www.thepost.co.za/stolen-diamond-snug-in-parliament-home-1.30381> (Accessed: 16 March 2013).
- Liston, D. 1993. *Protection, security, and conservation of collections*. London: Routledge. (Museum security and protection: A handbook for cultural heritage institutions: ICOM and the International Committee on Museum Security).
- Lowenthal, C. 1997. Art theft and its control: art theft since World War II. *Journal of Financial Crime*, 5(1):39-44.
- Ludski, H. 1999. Our vanishing art heritage. *Sunday Times*, 11 July: 5.
- Lyman, M.D. 1999. *The police: an introduction*. Upper Saddle River: Prentice Hall.
- Mackenzie, S.R.M. 2005. *Going, going, gone: Regulating the market in illicit antiquities*. Leicester: Institute of Art and Law.
- Magness-Gardiner, B. 2011. Sample C. Program manager: Act Crime Team: FBI: USA. Statement made to researcher, 20 October 2011. Lyon, France. (Electronic recording and transcription in possession of researcher.)
- Main bodies. S.a. United Nations. From: <http://www.un.org/en/mainbodies> (Accessed: 5 March 2012).

- Mapungubwe collection. 2012. University of Pretoria collections. From:  
<http://web.up.ac.za/default.asp?ipkCategoryID=14724&language=0> (Accessed: 3 September 2012).
- Mashatile, P. 2011. Minister of Arts and Culture, Paul Mashatile delivers budget vote speech to National Assembly. From:  
[http://www.archivalplatform.org/news/entry/minister\\_of\\_arts\\_and\\_culture/](http://www.archivalplatform.org/news/entry/minister_of_arts_and_culture/) (Accessed: 24 June 2011).
- Mason, J. 1998. *Qualitative researching*. London: Sage Publications.
- Massie, G. 2012. Sample C. Managing Director: Art Insure. Statement made to researcher, 10 May 2012. Gauteng. (Electronic recording and transcription in possession of researcher.)
- Maxfield, M.G. & Babbie, E. 2005. *Research methods for criminal justice and criminology*. 4<sup>th</sup> edition. Victoria: Thomson Wadsworth.
- Mbhokodo, I. 2012. President: SAMA. Statement made to researcher, 7 February 2012. Pretoria. (Electronic recording and transcription in possession of researcher.)
- Merryman, J.H., Elsen, A.E. & Urice, S.K. 2007. *Law, ethics and the visual arts*. 5<sup>th</sup> edition. Alphen aan den Rijn: Kluwer Law International.
- Middelmas, K. 1975. *The double market*. England: Saxon House.
- Mosomane, P. & Sapa. 2012. Zuma painting against Ubuntu, African morality, culture. *The New Age*, 19 May. From:  
[http://www.thenewage.co.za/printstroy.aspx?news\\_id=51152&mid=53](http://www.thenewage.co.za/printstroy.aspx?news_id=51152&mid=53) (Accessed: 29 May 2012).
- Mouton, J. 1998. *Understanding social science*. Pretoria: J L van Schaik.
- Mthethwa. *See* South African Government Information. 2012.
- Myburg, J. 2007. SA kuns maak stem dik in Afrika. *Beeld*. 27 Desember.

- Myeni, G. & Mosomane, P. 2012. Gallery to remove the painting from website. *The New Age*, 29 May. From: [http://www.thenewage.co.za/printstroy.aspx?news\\_id=52113&mid=53](http://www.thenewage.co.za/printstroy.aspx?news_id=52113&mid=53) (Accessed: 29 May 2012).
- NHRA. *See* South Africa. 1999.
- Nafziger, J.A.R., Paterson, R.K. & Renteln, A.D. 2010. *Cultural law: international, comparative and indigenous*. Cambridge University Press.
- Naylor, R.T. 2008. The underworld of art. In *Crime Law and Social change*, 50(4-5):263-291.
- Nel, F. & Joubert, C. 2004. Legal aspects. In Smit, J., Minnaar, A. & Schnetler, J. (eds). *Smart policing for law enforcement officials*. Claremont: New Africa Education.
- Nelson, D. 2009. Economic woe, art theft, and money laundering: a perfect recipe. In Charney, N.C. (ed.). *Art and crime: exploring the dark side of the art world*. California: Praeger.
- Neuman, W.L. 2006. *Social research methods: qualitative and quantitative approaches*. 6<sup>th</sup> edition. Boston: Pearson, Allyn & Bacon.
- Noaks, L. & Wincup, E. 2004. *Criminological research: understanding qualitative methods*. London: Sage publications.
- Omar, B. 2007. *SAPS's costly restructuring: a review of public order policing capacity*. In ISS Monograph series, 138, Oct 2007.
- Omar, R. 2011. President: ICOM:SA. Statement made to researcher, 5 July 2011. Cape Town. (Electronic recording and transcription in possession of researcher.)
- Osterburg, J.W. & Ward, R.H. 2010. *Criminal investigation: a method for reconstructing the past*. 6<sup>th</sup> edition. New Providence, NJ: Lexis Nexis.
- Overview INTERPOL. 2012. From: <http://www.interpol.int/en/About-INTERPOL/Overview> (Accessed: 9 March 2012).



- Panone, F. 2011. Sample C. ([F.PANONE@interpol.int](mailto:F.PANONE@interpol.int)). E-mail reply to questionnaire. Private e-mail message to researcher, 15 November 2011.
- Papa Sokal, M. 2006. The US legal response to the protection of the world cultural heritage. In Brodie, N., Kersel, M.M., Luke, C. & Walker Tubb, K. (eds). *Archaeology, cultural heritage and the antiquities trade*. Gainesville, Florida: University Press Florida.
- Police Act. *See* South Africa. 1995.
- Potgieter, D. 1998. Sindikate steel die land leeg. *Rapport*, 6 Desember: 9.
- Pretoria News. 1998. Dishonest collectors to face stiff fines: Bill to curb theft from museums. *Pretoria News*, 20 January: 9.
- Proclamation 28. *See* Government Gazette. 2012.
- Prott, L.V. 1996. UNESCO and UNIDROIT: a partnership against trafficking in cultural objects. UNESCO. From: <http://unesdoc.unesco.org/images/0019/001918/191880e.pdf> (Accessed: 9 March 2012).
- Prott, L.V. 2006. Protecting cultural heritage in conflict. In Brodie, N., Kersel, M.M., Luke, C. & Walker Tubb, K. (eds). *Archaeology, cultural heritage and the antiquities trade*. Gainesville, Florida: University Press Florida.
- Prott, L.V. 2009. UNESCO International Framework for the protection of cultural heritage. In Nafziger, J.A.R. & Nicgorski, A.M. (eds). *Cultural heritage issues: the legacy of conquest, colonisation, and commerce*. Leiden: Martinus Nijhoff Publishers.
- Quagliarella, M. 2011. Sample C. ([F.PANONE@interpol.int](mailto:F.PANONE@interpol.int)). E-mail reply to questionnaire forwarded via INTERPOL, SG, Lyon. Private email message to researcher (15 November 2011).
- Ramagoma, T. 2011. General Manager: Heritage Management: National Heritage Council. Statement made to researcher, 20 May 2011. Pretoria. (Electronic recording and transcription in possession of researcher.)

- Redpath, J. 2002. *Leaner and meaner: restructuring the detective service*. In ISS Monograph 73, May 2002.
- Renfrew, C. 2006. Museum acquisitions and the illicit traffic in antiquities. In Brodie, N., Kersel, M.M., Luke, C. & Walker Tubb, K. (eds). *Archaeology, cultural heritage and the antiquities trade*. Gainesville, Florida: University Press Florida.
- Roodt, C. 1994. Keeping cultural objects 'in the picture': traditional legal strategies. *Comparative and International Law Journal of Southern Africa*, 27(3):314-339.
- SA kuns haal enorme pryse in Londen. 2009. *Beeld*, 16 Oktober:9.
- SAHRA. S.a. Inventory of national estate. From: <http://www.sahra.org.za/inventory.htm> (Accessed: 10 May 2012).
- SAHRIS. 2013. SAHRIS/SAHRA. From: <http://www.sahra.org.za/sahris> (Accessed: 3 April 2013).
- SAMA. *See* South African Museums Association. 2011.
- SAMA. *See* South African Museums Association. 2012.
- SHGA. *See* South Africa. 2009.
- Sabinet law. 2012. Second-Hand Goods Act: All sections fully operational from 30 April 2012. From: <http://www.sabinetlaw.co.za/economic-affairs/articles/second-hand-goods-act-all-sections-fully-operational-30-april-2012> (Accessed: 16 May 2012).
- Schneider, M. 2001. UNIDROIT activities: UNIDROIT Convention on stolen or illegally exported cultural objects: explanatory report. s.l.:Unidroit secretariat.
- Sheehan, K. & Hoy, M. 2004. Online surveys. In Seal, C. (ed.). *Social research methods: a reader*. New York: Routledge.
- Shyllon, F. 1999. The recovery of cultural objects by African states through the UNESCO and UNIDROIT Conventions and the role of arbitration. From:

[http://portal.unesco.org/en/ev.php-url ID=13039&URL DO=DO TOPIC&URL SECTION=201.html](http://portal.unesco.org/en/ev.php-url_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html) (Accessed: 9 March 2012).

Siegel, L.J. 2004. *Criminology: theories, patterns & typologies*. 8<sup>th</sup> edition. Victoria: Thomson Wadsworth.

Smit, J. & Schnetler, J. 2004. Policies guiding the police and policing. In Smit, J., Minnaar, A. & Schnetler, J. (eds). *Smart policing for law enforcement officials*. Claremont: New Africa Education.

Smith, D. 2002. Historic clocks, furnishings and art works have disappeared: Joburg legacy ransacked. *Saturday Star*, 28 September: 1.

Smith, J. & Bega, S. 2012. The Spear pierces art world's shield. From: [http://www.iol.co.za/saturday\\_star/the-spear-pierces-art-world-s-shield-1.1036386](http://www.iol.co.za/saturday_star/the-spear-pierces-art-world-s-shield-1.1036386) (Accessed: 29 May 2012).

South Africa. 1955. *The General Law Amendment Act 62 of 1955*. Pretoria: Government Printer.

South Africa. 1956. *The General Law Amendment Act 50 of 1956*. Pretoria: Government Printer.

South Africa. 1977. *The Criminal Procedure Act 51 of 1977*. Pretoria: Government Printer.

South Africa. 1995. *South African Police Service Act 68 of 1995*. Pretoria: Government Printer.

South Africa. 1996. *The Constitution of the Republic of South Africa Act 108 of 1996*. Pretoria: Government Printer.

South Africa. 1998. *Prevention of Organised Crime Act 121 of 1998*. Pretoria: Government Printer.

South Africa. 1999a. *National Heritage Council Act 11 of 1999*. Pretoria: Government Printer.

South Africa. 1999b. *National Heritage Resources Act 25 of 1999*. Pretoria: Government Printer.

South Africa. 2004. *The Prevention and Combating of Corrupt Activities Act 12 of 2004*. Pretoria: Government Printer.

South Africa. 2005. *Precious Metals Act 27 of 2005*. Pretoria: Government Printer.

South Africa. 2008a. *The South African Police Service Amendment Act 57 of 2008*. Pretoria: Government Printer.

South Africa. 2008b. *Consumer Protection Act 68 of 2008*. Pretoria: Government Printer.

South Africa. 2009. *Second-Hand Goods Act 6 of 2009*. Pretoria: Government Printer.

South Africa. Department of Arts, Culture, Science and Technology. 2002. Declaration of types of heritage objects (Government Notice 1512 of 1999). *Government Gazette*, 450(24116), 6 December 2002.

South African Government Information. 2012. Minister Mthethwa wants Second-Hand Goods Act implemented from April this year. From:  
<http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=25756&tid=59799>  
(Accessed: 16 May 2012).

South African Heritage Resources Agency. 2007. Introduction: SAHRA. From:  
[www.sahra.org.za/intro.htm](http://www.sahra.org.za/intro.htm) (Accessed: 26 September 2007).

South African Museums Association. 2011. A brief history of the South African Museums Association. From:  
[http://www.sama.za.net/index.php?option=com\\_content&view=article&id=46&Itemid=64](http://www.sama.za.net/index.php?option=com_content&view=article&id=46&Itemid=64)  
(Accessed: 30 May 2012).

South African Museums Association. 2012. What is a museum? From:  
[http://www.sama.za.net/index.php?option=com\\_content&view=article&id=46&Itemid=64](http://www.sama.za.net/index.php?option=com_content&view=article&id=46&Itemid=64)  
(Accessed: 3 September 2012).

- South African Police Service. 2010. The Strategic Plan for the South African Police Service 2010/2011. From:  
[http://www.saps.gov.za/saps\\_profile/strategic\\_framework/strategic\\_plan/2010\\_2014/strategic\\_plan\\_2010\\_2014.pdf](http://www.saps.gov.za/saps_profile/strategic_framework/strategic_plan/2010_2014/strategic_plan_2010_2014.pdf) (Accessed: 22 June 2010).
- South African Police Service. 2011. Instruction 2/2011: Application/enforcement of Second-Hand Goods Act 23 of 1955. Pretoria: Divisional Commissioner: Visible Policing.
- Stander, R. 2012. Deputy Director: Heritage Policy Research and Development, Department of Arts and Culture. Statement made to researcher, 5 March 2012. Pretoria. (Electronic recording and transcription in possession of researcher.)
- Stanford University. S.a. Buying, selling and owning the past. From:  
<http://multi.stanford.edu/features/heritage> (Accessed: 20 April 2012).
- Stealing beauty. 2006. *Sunday Times*, 8 October: 20.
- Strategic Plan 2010/2014. *See* South African Police Service. 2010.
- Straus, D. 2009. Implications of art theft in the fine art insurance industry. In Charney, N.C. (ed.). *Art and crime: exploring the dark side of the art world*. California: Praeger.
- Structure of the SAPS. 2012. From:  
<http://www.saps.gov.za/dynamicModules/internetsite/OPbuildBP3.asp?myURL=132>  
(Accessed: 18 June 2012).
- Sunday Times. *See* Stealing beauty. 2006.
- Swart, C. 2012. Sample C. Detective Captain: Endangered Species Unit: DPCI. Statement made to researcher, 30 July 2012. Gauteng. (Electronic recording and transcription in possession of researcher.)
- The organisation's history. 2011. The United Nations Educational, Scientific and Cultural Organisation. From: <http://www.unesco.org/new/en/unesco/about-us/who-we-are/history/> (Accessed: 6 March 2012).

- Tijhuis, A.J.G. 2006. *Transnational crime and the interface between legal and illegal actors: the case of the illicit art and antiquities trade*. s.l.:Wolf Legal Publishers.
- Tijhuis, A.J.G. 2009. Who is stealing all those paintings? In Charney, N.C. (ed.). *Art and crime: exploring the dark side of the art world*. California: Praeger.
- Tiley-Nel, S. 2010. Chief curator: Mapungubwe collection: University of Pretoria. Statement made to researcher, 9 June 2010. Pretoria.
- Toman, J. 2005. The Hague Convention: a decisive step taken by the international community. *Museum International*, 57(228):7-31.
- Torsen, M.A. 2005. Fine art in dark corners: goals and realities of international cultural property protection. *Journal of Arts Management, Law and Society*, 35(2):89-107.
- Trotskie-De Bruin, C. 2011. Outcomes Unit 2: Data collection. In Qualitative research: requirements for post-graduate study projects. Workshop held at Stellenbosch Lodge, Stellenbosch, 30 May-1 June 2011.
- UNESCO. 2006. Legal and practical measures against the illicit trafficking in cultural property: UNESCO Handbook. UNESCO: International standards section division of cultural heritage.
- UNESCO. 2009. Major fields of action and priorities. UNESCO. From: <http://news.egypt.com/en/major-fields-of-action-and-priorities.html> (Accessed: 13 March 2012).
- UNESCO. 2011. The fight against the illicit trafficking of cultural objects; the 1970 Convention: Past and future: information kit. 2011. 40<sup>th</sup> anniversary of the 1970 Convention, 15-16 March 2011, UNESCO Headquarters, Paris.
- UNESCO and UNIDROIT. 2005. Cooperation in the fight against illicit traffic in cultural property. Conference celebrating the 10<sup>th</sup> anniversary of the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects, 24 June 2005, UNESCO Headquarters, Paris.

UNIDROIT: An overview. S.a. International Institute for the Unification of Private Law.

From: <http://www.unidroit.org.dynasite.cfm?dsmid=103284> (Accessed: 6 March 2012).

UNIDROIT. 2011. UNIDROIT and its action in the fight against illicit trafficking in cultural property. Paper delivered at the Conference on Proceedings of Prevention and fight against the illicit traffic in cultural goods in Southern Africa, 14-15 September 2011, Namibia. From:

[http://portal.unesco.org/en/files/48669/13173103901UNIDROIT\\_and\\_the\\_protection\\_of\\_cultural\\_objects.pdf/UNIDROIT%2Band%2Bthe%2Bprotection%2Bof%2Bcultural%2BObjects.pdf](http://portal.unesco.org/en/files/48669/13173103901UNIDROIT_and_the_protection_of_cultural_objects.pdf/UNIDROIT%2Band%2Bthe%2Bprotection%2Bof%2Bcultural%2BObjects.pdf) (Accessed: 6 March 2012).

United Nations at a glance. S.a. The United Nations. From:

<http://www.un.org/en/aboutun/index.shtml> (Accessed: 6 March 2012).

Van Bart, M. 2010a. Irma Stern-skildery van 1934 behaal wêreldrekordprys. *Die Burger*, 26 Mei: 3.

Van Bart, M. 2010b. Wat is kuns en wat is kitsch? *Beeld By*, 21 Augustus:4.

Van Tonder, N. 2000. Mendelssohn-diefstal uit parlement nes 'draaiboek'. From:

<http://152.111.1.88/argief/berigte/beeld/200/03/09/14/4.html> (Accessed: 16 March 2013).

Voortrekker monument. 2012. Gauteng attractions. From:

[http://www.gauteng.net/attractions/entry/voortrekker\\_monument/](http://www.gauteng.net/attractions/entry/voortrekker_monument/) (Accessed: 3 September 2012).

Vollgraaff, H. 2012. Minutes of the NALEH meeting held on 7 March 2012; agenda item 2.2. Unpublished document (copy available from researcher).

Works of art. 2012. INTERPOL. From: <http://www.interpol.int/layout/set/print/Crime-areas/Works-of-art/Works-of-art> (Accessed: 9 March 2012).

Yasaitis, K.E. 2005. Object ID: a model of global collaboration. *Museum management and curatorship*, 20 (2005):21-39.

Zuma, J. 2011. State of the nation address by his Excellency Jacob Zuma, President of the Republic of South Africa. From:

<http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=16154&tid=27985>

(Accessed: 30 August 2011).



Dear Bernadine, I'm pleased to hear that you are working in the important field of cultural heritage crime and we are happy if you can use some part of our questionnaire in your work. You are free to use the questionnaire but it is fine if you make a reference to it. Please let us know your progress in your work.

Best regards

Lars Korsell

Lars Korsell jur. dr  
Verksjurist

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>>> "Benson, Bernadine" <[Bensobc@unisa.ac.za](mailto:Bensobc@unisa.ac.za)> 2009-03-09 16:49 >>>

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Dear Sir/ Madam

I am a Phd student with the University of South Africa (UNISA) and would like to contact the author/s of the work " Cultural Heritage Crime: The Nordic Dimension". I am planning on doing a similar study within South Africa and would like to amend the Questionnaire to fit the South African environment, but would like the permission of the author/s to use their questionnaire as basis for my study.

I will appreciate it if you can direct my communication to the relevant person/s

Best regards

**Mrs Bernadine Benson**  
**Forensic Investigation**  
**Dept of Police Practice**  
**College Of Law**  
**UNISA**

## Background

1) What area do you work in? (Mark one only)

- Museum
  - Church
  - Library
  - Archive
  - Local History Museum Association
  - Auction Company
  - Antique Dealing / Art dealing
  - Books
  - Pawnbroker
  - Restorer
  - Transport
  - Archaeology
  - University / College
  - Other, please state
- .....

## Cultural objects that have been stolen or have disappeared

**The answers in this section concern cultural objects that were stolen or otherwise disappeared from your organisation.**

Cultural object refers to objects of artistic, historic or archaeological value irrespective of age. Examples of cultural objects are art, books, furniture, archive documents, archaeological finds, textiles, coins, stamps, glass, silver, ceramics and sacred objects.

2) Have cultural objects disappeared from your organisation?

- Yes, during the last three years
- Yes, more than three years ago
- No → go to question 15.
- Do not know → go to question 15.

3) On how many occasions have cultural objects disappeared?

2002 .....times

2003 .....times

2004 .....times

4) How many cultural objects have disappeared from your place or work?

2002 .....

2003 .....

2004 .....

5) What types of cultural object have disappeared from your organisation?

(Please mark all that apply.)

A.  Art → Specify type and period:.....

.....

B.  Archaeological find → Specify type and period.....

.....

C.  Sculpture → Specify type and period:.....

.....

D.  Book / Archive documents / Documents → Specify type

and period:.....

.....

E.  Furniture / Mirrors / Boxes → Specify type and period:.....

.....

F.  Silver / Precious metals → Specify type and period:.....

.....  
G.  Church inventories → Specify type and period:.....

.....  
H.  Other, please state.....→ Specify type and period:.....  
.....

6) Do the cultural objects that have disappeared have any features in common?

- No
- Yes → Please state. Please mark all that apply.
- High financial value
- High cultural heritage value
- Easy to steal
- Easy to sell
- Collector's item
- Other, please state

.....  
7) Under what circumstances have cultural objects disappeared? (Please mark all that apply)

- Burglary
- Robbery
- Theft
- Looting (from ancient site/archaeological study)
- Circumstances unclear
- Other, please state

.....  
 Do not know

8) Where did the cultural objects disappear from? (Please mark all that apply)

- Exhibition / Viewing area / Research room
- Store room / Storage / Warehouse
- Ancient monument
- Shop
- Transport
- Church/ Vestry
- Other, please state

.....  
 Do not know

9) Please state when the cultural objects disappeared.

A. What time? (Please mark all that apply)

- During the day
- At night
- Do not know

B. What time of the week? (Please mark all that apply)

- Weekday
- Weekend
- Do not know

C. When in relation to opening hours/staff on duty? (Please mark all that apply)

- Staffed hours
- Unattended
- Do not know

10) How were the disappearances of cultural objects discovered? (Please mark all that apply)

- By an employee
- By a visitor
- By a security guard
- When stocktaking
- When making a sale
- Other, please state.....
- Do not know

11) Has the disappearance been reported?

A. To the police?

- Yes
- No → Why not?.....

B. To your insurance company?

- Yes
- No → Why not? .....

12) Have you any idea where any/some of the disappeared/stolen cultural objects went?

- No
- Yes → State country and context:.....  
.....

13) Who was responsible for the theft/disappearance of cultural objects from your business? (Please mark all that apply)

- Employee
- Visitor
- Burglar
- Organised gang
- Other, please state  
.....
- Do not know

14) What motive was behind the theft/disappearance of cultural objects?

- Financial gain
- Completing a collection
- Souvenir
- Blackmail
- Other, please state  
.....
- Do not know

## Security

**This section features questions about security routines at your organisation.**

15) Does your organisation have some form of night security system?

- No
- Yes → What? (Please mark all that apply)
- Locks
- Alarm
- Security guard
- CCTV
- Other, please state  
.....

16) Does your organisation have some form of daytime security system?

- No
- Yes → What? (Please mark all that apply)
- Locks
- Alarm
- Security guard
- CCTV
- Other, please state  
.....

17) Do you keep an up-to-date register of the cultural objects kept by your organisation?

- Yes, for all objects
- Yes, for some objects
- No

18) Do you have pictures of the cultural objects kept by your organisation?

- Yes, of all items
- Yes, of some objects
- No

19) Are any of the cultural objects kept by your organisation protected by additional security, for example some form of immobilising or lock arrangement?

- Yes
- No

20) Are any of the cultural objects insured?

- Yes
- No

21) Are any checks or inventories made of cultural objects?

- No
- Yes → How often?
- Each month
- Each year
- Every 2 years
- Every 5 years
- Less frequently

22) Do you have procedures in the event that cultural objects are discovered missing?

- No
- Yes → What? Please state all that apply
- Contact the police
- Contact the media
- Contact the responsible authority
- Update objects register/inventory list
- Other, please state.....

23) Does your organisation work with archaeological assignments?

- No → go to question 26.
- Yes

24) Is a security system used to prevent the illicit removal of archaeological materials from the excavation site?

- No
- Yes → What? Please state all that apply
- Information signs
- Area closed-off
- Security guards
- Other, please state
- .....

25) When are newly discovered archaeological finds registered?

- Same day
- At the end of the excavation
- Other, please state
- .....

## Legal trade

This section features questions about legal trade in cultural objects.

26) Did your organisation purchase/acquire cultural objects during 2004?

- Yes
- No → go to question 33.

27) Approximately how many objects were purchased/acquired during 2004?

Number.....

28) From whom were the cultural objects acquired? (Please mark all that apply)

- Private individual
- Foundations, institutions
- Estate of deceased
- Dealer (antique / art / antiquarian)
- Runner
- Other, please state.....
- Do not know

29) Where were the cultural objects acquired? (Please mark all that apply)

- Shops
- Fairs
- Auction houses
- Internet auctions
- Newspaper ad
- Internet ad
- Direct contact with private individual / estate of deceased
- Contact with runner
- Other, please state.....
- Do not know

30) Why were the cultural objects acquired? (Please mark all that apply)

- To sell
- To add to a collection
- To be part of the business
- To preserve/restore
- Other, please state.....
- Do not know

31) Does your organisation impose any conditions on the seller/donor when buying/acquiring cultural objects?

(Please mark all that apply)

- Yes → What?
- Proof of identity
- Other, please state.....
- No
- Do not know

32) Is the background of cultural objects checked before they are purchased/acquired?

- Yes → How? (Please mark all that apply)
- Check police register of stolen goods
- Check against Interpol image database
- Check provenance of object
- Other, please state.....
- No
- Do not know

33) Has your organisation sold any cultural objects during the past year?

- Yes
- No → go to question 37.

34) How many cultural objects has your organisation sold in 2004?

Number.....

35) To whom have the cultural objects been sold? (Please mark all that apply)

- Museums
- Institutions
- Private individuals
- Antique/Art dealers
- Other company
- Other, please state.....

36) Where have cultural objects been sold? (Please mark all that apply)

- Shops / Fairs
- Auction houses
- Internet auctions
- Newspaper ads
- Internet ads
- Direct contact with private individual
- Contact with runner
- Other, please state.....
- Do not know

## Trade in stolen cultural objects

The section features questions on trade in stolen cultural objects.

37) Has your organisation been offered cultural objects that you know are stolen?

- Yes
- No
- Do not know

38) Are you aware of one or more cases where a stolen cultural object has been purchased or sold in your operational/business sector?

- No → go to question 41.
- Yes → What type of cultural objects? (Please mark all that apply)
- Art
- Archaeological finds
- Sculptures
- Books / Archive documents / Documents
- Furniture
- Textiles / Mats
- Silver / Precious metals
- Church objects
- Other, please state.....

39) Where did these stolen goods come from?

A. From which region? (Please mark all that apply)

- Sweden
- Europe
- Rest of the world
- Do not know

B. From which area? (Please mark all that apply)

- Museum
- Church
- Antique dealer / Art dealer
- Library / Archive

- Company
- Private individual
- Other, please state.....
- Do not know

40) Where are these stolen cultural objects sold?

A. In which region? (Please mark all that apply)

- Sweden
- Europe
- Rest of the world
- Do not know

B. In which business sector? (Please mark all that apply)

- Auction house
- Antique dealer / Art dealer
- Antiquarian
- Pawnbroker
- Fair
- Other, please state.....
- Do not know

41) Do you know anyone who buys or sells stolen cultural objects?

- No → Go to question 43.
- Yes → What group category does this person(s) belong to?

(Please mark all that apply)

- Auction house
- Antique dealer / Art dealer
- Antiquarian
- Pawnbroker
- Museum / Library / Archive
- Private individual
- Other, please state.....
- Do not know

42) How is contact made between the buyers and sellers of these cultural objects?

- Via runner
- Person to person
- Internet
- Adverts
- Other, please state.....
- Do not know

## Removal and export

**This section features questions on cultural objects that are removed from the country.**

43) Do you know that in some cases, it is illegal to remove cultural objects from the country?

- Yes
- No

44) Do you know how to apply for a permit for removing or exporting cultural objects?

- Yes
- No

45) Does your organisation do anything to prevent the illegal removal of cultural objects from the country?

- No
- Yes → What? (Please mark all that apply)
- Information on removal and export permits
- Other, please state.....



46) Has your organisation exported cultural objects to an EU country during 2004?

- No
- Yes → What types of object do you export most? .....
- .....

47) Has your organisation exported cultural objects to a country outside the EU during 2004?

- No
- Yes → What types of object do you export most? .....
- .....

48) Has your organisation applied for a permit to remove/export cultural objects during 2004?

- No
- Yes → How many objects have you applied for a permit for? .....

49) Do you know of one or more cultural objects that have been illicitly removed from the country?

- No → go to question 51.
- Yes → In what way was the removal illicit?  
(Please mark all that apply)
- Permit never applied for
- Object was subject to a removal prohibition
- Other.....

50) Please tell us more about the cultural objects you know that people/organisations in your sector have removed from the country illicitly.

(Please mark all that apply)

A.  Archaeological find →  
Number .....

B.  Pictorial art (Pictures / Paintings / Drawings / Graphics) →

Were any of these objects more than 100 years old?

- No
- Yes → Was any object valued at more than SEK 50,000?
- No
- Yes → Number .....

C.  Sculptures / Statues / Objects →

Were any of these objects more than 100 years old?

- No
- Yes → Was any object valued at over SEK 50,000?
- No
- Yes → Number.....

E.  Books / Archive documents / Documents →

Were any of these objects more than 100 years old?

- No
- Yes → Was any object valued at more than SEK 10,000?
- No
- Yes → Number.....

G.  Furniture / Mirrors / Boxes →

Were any of these objects produced before 1860?

- No
- Yes → Number .....

I.  Firearms / Edged weapons / Armour

Were any of these objects more than 100 years old?

- No
- Yes → Number .....

J.  Other antiquities / cultural objects, please state → .....



## **Addressing Heritage crime in Gauteng, South Africa: An integrative exposition.**

### **Threat to cultural heritage**

Over the past few decades many valuable cultural objects have been stolen or lost from South African museums, art galleries, archives and private residences. Many of these objects are not only incredibly valuable as far as their monetary value is concerned but are in terms of cultural heritage irreplaceable. Primarily the overarching aim of this research is to understand the nature and extent of the illicit trade in cultural heritage objects in South Africa. As far as can be established no previous study has been done on the topic. Research into the nature and extent of such crime in South Africa will place the problem under the spotlight and initiate debate on the issue which may lead to solutions and the stimulation of further research. This research will also assist in developing a national database for stolen/lost South African heritage objects as well as the development of prevention measures to prevent further such incidents aim at our nation's heritage.

This questionnaire is the first part of a two phase research project designed to explore the nature and extent of cultural heritage crimes in South Africa. It is supported by the South African Museums Association (SAMA). To combat criminality it is important to understand how the exchange of cultural objects works, even on the legal market. This questionnaire is being sent to organisations involved in the preservation of cultural objects and addresses issues such as thefts, security procedures, legal and illegal trading. Your participation is significant for ongoing crime prevention efforts. Kindly refer to the last page for the glossary as guidance on some technical terms used.

### **All replies will be strictly confidential**

Participation in this study is voluntary and the questionnaire is completed anonymously. No one working on the study will know who answered what. Returned questionnaires will be recorded and entered into a statistics program, after which the questionnaires will be kept preserved safely for a period of 3 years as required by the University rules. Thereafter the questionnaires will be destroyed.

Only information pertaining to lost or stolen items will be made known to the South African Heritage Resources Agency (SAHRA) to assist them to circulate to Interpol and to log the items in a database for future use. Interpol is the International Police Organisation and their Headquarters are in Lyon, France. Interpol has an international membership of 188 countries and assists member countries to circulate information about art and heritage objects which have been stolen. The Interpol database for stolen art and heritage objects is now an open site for registered users which will enable auction houses and other traders/dealers to do a thorough due diligence investigation relating to objects they receive for sale.

The original questionnaire was produced in consultation with the Swedish National Heritage Board and other licensing authorities and has been adapted for the South African research by the author, with the necessary reference to and permission of the original authors.

If you have any questions about this questionnaire, please contact Mrs Bernadine Benson at 011 471 2119 or [artcrimes2011@gmail.com](mailto:artcrimes2011@gmail.com)

Thank you for your cooperation

Mrs Bernadine Benson

Phd student - UNISA

## **GLOSSARY OF TERMS USED**

**To aid the understanding of discipline specific terms used in-text kindly refer to the glossary listed below:**

ANTIQUARIAN BOOKSHOP – a bookstore that sells old books

HOUSEBREAKING/BURGLARY – a criminal breaks into premises (breaks open a door/window/roof to gain entry) to commit a crime

CAS – the official police case number for the reported incident

DEALER (WHETHER ART/ANTIQUES etc) – a person who buys or sells a specific (usually expensive) commodity

DUE DILIGENCE – checking whether an item being offered for sale is legitimate/not stolen

PROVENANCE – a record of the ownership of an item

ROBBERY – a criminal uses violence or threats of violence to steal from someone

RUNNER – an intermediary who sells/buys/deals on behalf of someone else

THEFT – a criminal takes property belonging to somebody else with the intention of permanently depriving the lawful owner possession thereof

## **QUESTIONNAIRE: PHASE ONE**

### Background

1) Which area do you work in primarily? (Mark one only)

- National Museum
- Provincial Museum
- Local Museum
- Corporate collector
- University Museum/Archive/Gallery
- Private Museum
- Church
- Library
- Archive
- Auction company
- Antique dealing
- Art dealing
- State subsidised Art Gallery
- Privately funded/commercial Art Gallery
- Books
- Pawnbroker
- Restorer
- Transport
- Other, please state .....

### **SECTION A**

#### **Cultural objects that have been stolen or have disappeared**

The answers in this section concern cultural objects that were stolen or have otherwise disappeared under suspicious circumstances from your organisation.

Cultural object refers to objects of artistic, historic or archaeological value irrespective of age. Examples of cultural objects are: art, books, furniture, archive documents, ethnographic objects, archaeological/geological/paleontological/meteorological finds, textiles, jewellery, coins, medals, stamps, glass, silver, ceramics and sacred objects.

2) Have cultural objects disappeared from your organisation?

- Yes, during the last five years
- Yes, more than five years ago
- No → go to question 7.
- Do not know → go to question 7.

3) On how many occasions have cultural objects disappeared?

2006 .....times  
2007 .....times  
2008 .....times  
2009 .....times  
2010 .....times

4) How many cultural objects have disappeared from your place or work?

2006 .....objects  
2007 .....objects  
2008 .....objects  
2009 .....objects  
2010 .....objects

5) What types of cultural object have disappeared from your organization in the relevant year?  
(Please mark all that apply.)

**5.1 2006**

- A.  Art → Specify type and period:.....
- B.  Archaeological/geological/paleontological/meteorological finds → Specify type and period:.....
- C.  Sculpture→ Specify type and period:.....
- D.  Book / Archive documents / Documents → Specify type and period:.....
- E.  Furniture / Mirrors / Boxes → Specify type and period:.....
- F.  Silver / Precious metals → Specify type and period:.....
- G.  Church inventories → Specify type and period:.....
- H.  Other, please state.....→ Specify type and period:.....

**5.2 2007**

- A.  Art → Specify type and period:.....
- B.  Archaeological/geological/paleontological/meteorological finds → Specify type and period:.....
- C.  Sculpture→ Specify type and period:.....
- D.  Book / Archive documents / Documents → Specify type and period:.....
- E.  Furniture / Mirrors / Boxes → Specify type and period:.....
- F.  Silver / Precious metals → Specify type and period:.....
- G.  Church inventories → Specify type and period:.....
- H.  Other, please state.....→ Specify type and period:.....

**5.3 2008**

- A.  Art → Specify type and period:.....
- B.  Archaeological/geological/paleontological/meteorological finds → Specify type and period:.....
- C.  Sculpture→ Specify type and period:.....
- D.  Book / Archive documents / Documents → Specify type and period:.....
- E.  Furniture / Mirrors / Boxes → Specify type and period:.....

- F.  Silver / Precious metals → Specify type and period:.....
- G.  Church inventories → Specify type and period:.....
- H.  Other, please state.....→ Specify type and period:.....

**5.4 2009**

- A.  Art → Specify type and period:.....
- B.  Archaeological/geological/paleontological/meteorological finds → Specify type and period.....
- C.  Sculpture→ Specify type and period:.....
- D.  Book / Archive documents / Documents → Specify type and Period:.....
- E.  Furniture / Mirrors / Boxes → Specify type and period:.....
- F.  Silver / Precious metals → Specify type and period:.....
- G.  Church inventories → Specify type and period:.....
- H.  Other, please state.....→ Specify type and period:.....

**5.5 2010**

- A.  Art → Specify type and period:.....
- B.  Archaeological/geological/paleontological/meteorological finds → Specify type and period.....
- C.  Sculpture→ Specify type and period:.....
- D.  Book / Archive documents / Documents → Specify type and period:.....
- E.  Furniture / Mirrors / Boxes → Specify type and period:.....
- F.  Silver / Precious metals → Specify type and period:.....
- G.  Church inventories → Specify type and period:.....
- H.  Other, please state.....→ Specify type and period:.....

6) Has the disappearance been reported? (Please mark all that apply)

- A. To the police?
  - Yes→ What is the case number? ...CAS.....
  - No → Why not?.....

B. To the relevant security authority?

- Yes
- No → Why not?.....

C. To your insurance company?

- Yes
- No → Why not? .....

<b>SECTION B: Security</b>
--------------------------------

This section features questions about security routines at your organisation.

7) Does your organisation have some form of night security system?

- No
- Yes → What? (Please mark all that apply)
- Locks
- Alarm
- Security guard
- CCTV
- Other, please state.....

8) Does your organisation have some form of daytime security system?

- No
- Yes → What? (Please mark all that apply)
- Locks
- Alarm
- Security guard
- CCTV
- Other, please state.....

9) Do you keep an up-to-date register (inventory) of the cultural objects kept by your organisation?

- Yes, for all objects
- Yes, for some objects
- No

10) Do you have photographs of the cultural objects kept by your organisation?

- Yes, of all items
- Yes, of some objects
- No

11) How recently were the photographs updated?

- Within the last 12 months
- Within the last 5 years
- Within the last 10 years
- No photographs

12) Are any of the cultural objects kept by your organisation protected by additional security, for example some form of immobilising or lock arrangement?

- Yes
- No



- 13) Are any of the cultural objects insured?  
 Yes reason: replacement value/ recovery value/other.....  
 No why not?.....

- 14) In your opinion, is the insured value (relating to question 13) adequate?  
 Yes  
 No

- 15) Are any checks or inventory inspections made of cultural objects?  
 No  
 Yes → How often?  
 Each month  
 Each year  
 Every 2 years  
 Every 5 years  
 Less frequently

- 16) Were the inspections/ checks referred to in the previous question scheduled or unscheduled checks/ inspection?  
 Scheduled  
 Unscheduled  
 Both

- 17) Do you have procedures in the event that cultural objects are discovered missing?  
 No  
 Yes → What? Please state all that apply  
 Contact the police  
 Official policy with guidelines in place  
 Contact the media  
 Contact the responsible authority  
 Update objects register/inventory list  
 Other, please state.....

**SECTION C:  
 Legal trade**

This section features questions about the legal trade in cultural objects.

- 18) Did your organisation purchase/acquire cultural objects during the past 5 years?  
 Yes  
 No → proceed to question 26.

- 19) Approximately how many objects were purchased/acquired during  
 a. 2006 .....  
 b. 2007 .....  
 c. 2008 .....  
 d. 2009 .....  
 e. 2010 .....

- 20) From whom/where were the cultural objects purchased/acquired in 2006? (Please mark all that apply)  
 Private individual  
 Foundations, institutions  
 Estate of deceased

- Dealer (antique / art)
- Book Antiquarian
- Runner
- Shops (name type/shop).....
- Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ad
- Internet ad
- Contact with runner
- Other, please state.....
- None purchased/acquired
- Do not know

21) From whom/where were the cultural objects purchased/acquired in 2007? (Please mark all that apply)

- Private individual
- Foundations, institutions
- Estate of deceased
- Dealer (antique / art)
- Book Antiquarian
- Runner
- Shops (name type/shop).....
- Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ad
- Internet ad
- Contact with runner
- Other, please state.....
- None purchased/acquired
- Do not know

22) From whom/where were the cultural objects purchased/acquired in 2008? (Please mark all that apply)

- Private individual
- Foundations, institutions
- Estate of deceased
- Dealer (antique / art)
- Book Antiquarian
- Runner
- Shops (name type/shop).....
- Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ad
- Internet ad
- Contact with runner
- Other, please state.....
- None purchased/acquired
- Do not know

23) From whom/where were the cultural objects purchased/acquired in 2009? (Please mark all that apply)

- Private individual
- Foundations, institutions
- Estate of deceased
- Dealer (antique / art)
- Book Antiquarian
- Runner
- Shops (name type/shop).....
- Fairs
- Auction houses
- Internet auctions
- Newspaper ad
- Internet ad (name site).....
- Contact with runner
- Other, please state.....
- None purchased/acquired
- Do not know

24) From whom/where were the cultural objects purchased/acquired in 2010? (Please mark all that apply)

- Private individual
- Foundations, institutions
- Estate of deceased
- Dealer (antique / art)
- Book Antiquarian
- Runner
- Shops (name type/shop).....
- Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ad
- Internet ad
- Contact with runner
- Other, please state.....
- None purchased/acquired
- Do not know

25) Why were the cultural objects purchased/acquired? (Please mark all that apply)

- To sell
- To add to a collection
- To be part of the business
- To preserve/restore
- Other, please state.....
- Do not know

26) Does your organisation impose any conditions on the seller/donor when buying/acquiring cultural objects? (Please mark all that apply)

- Yes → What?
- Proof of identity
- Other, please state.....
- No
- Do not know

27) Is the background/provenance/authenticity of cultural objects checked before they are purchased/acquired?

- Yes → How? (Please mark all that apply)
- Check police register of stolen goods
- Check against Interpol image database
- Check provenance of object
- Other, please state.....
- No
- Do not know

28) Has your organisation sold any cultural objects during the past year 5 years?

- Yes
- No → go to question 35.

29) How many cultural objects did your organisation sell in:

- a. 2006 .....
- b. 2007 .....
- c. 2008 .....
- d. 2009 .....
- e. 2010 .....

30) To whom/where were they sold in 2006? (Please mark all that apply)

- Museums
- Institutions
- Private individuals
- Antique/Art dealers
- Other company
- Shops / Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ads
- Internet ads
- Direct contact with private individual
- Contact with runner
- Other, please state.....
- None sold
- Do not know

31) To whom/where were they sold in 2007? (Please mark all that apply)

- Museums
- Institutions
- Private individuals
- Antique/Art dealers
- Other company
- Shops / Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ads
- Internet ads
- Direct contact with private individual
- Contact with runner
- Other, please state.....
- None sold
- Do not know

32) To whom/where were they sold in 2008? (Please mark all that apply)

- Museums
- Institutions
- Private individuals
- Antique/Art dealers
- Other company
- Shops / Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ads
- Internet ads
- Direct contact with private individual
- Contact with runner
- Other, please state.....
- None sold
- Do not know

33) To whom/where were they sold in 2009? (Please mark all that apply)

- Museums
- Institutions
- Private individuals
- Antique/Art dealers
- Other company
- Shops / Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ads
- Internet ads
- Direct contact with private individual
- Contact with runner
- Other, please state.....
- None sold
- Do not know

34) To whom/where were they sold in 2010? (Please mark all that apply)

- Museums
- Institutions
- Private individuals
- Antique/Art dealers
- Other company
- Shops / Fairs
- Auction houses
- Internet auctions (name site).....
- Newspaper ads
- Internet ads
- Direct contact with private individual
- Contact with runner
- Other, please state.....
- None sold
- Do not know

**SECTION D**  
**Trade in stolen cultural objects**

The section features questions on trade in stolen cultural objects.

35) Has your organisation been offered cultural objects that you know are stolen in the past 5 years?  
(Please mark all that apply)

- Yes, How many in 2006.....
- 2007.....
- 2008.....
- 2009.....
- 2010.....
- No
- Do not know

36) Are you aware of one or more cases where a stolen cultural object has been purchased or sold in your operational/business sector?

- No → go to question 37.
- Yes → What type of cultural objects? (Please mark all that apply)
- Art/artworks
- Ceramics
- Archaeological/geological/paleontological/meteorological finds
- Sculptures
- Coins/Medals/Military objects
- Books/Archive documents/Documents/Photographs
- Furniture
- Textiles/Mats
- Silver/Precious metals/Copper/Iron/Gold
- Religious significant objects
- Ethnographic objects (Please indicate the type/s of object).....
- .....
- Other, please state.....

**SECTION E:**  
**General**

37) What do you understand by the term Cultural Heritage? (If the space is not sufficient kindly extend).

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**Any other comments**

38) If you have any other comments on the subject area, or views on this study or the questions, please write them below. (If the space is not sufficient kindly extend).

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Thank you for your valuable contribution.

Phase Two of the research will comprise of interviews with selected respondents within the heritage sector. The outcome of these interviews will be reported on anonymously. If however you are interested in taking part, please contact the researcher Mrs BC Benson at 011 471 2119 or at email [artcrimes2011@gmail.com](mailto:artcrimes2011@gmail.com)

**THIS BOX FOR USE BY RESEARCHER ONLY**

**PARTICIPANT NR:**

**AMOUNT OF INCIDENTS:**

**CAS NUMBERS APPLICABLE TO THESE INCIDENTS:**

*THE INFORMATION IN THIS QUESTIONNAIRE WILL BE REPORTED ON ANONYMOUSLY. KINDLY CHECK THE RELEVANT BOX UNDER EACH STATEMENT AND WHERE RELEVANT CHECK ALL THAT APPLY.*

**MUSEUM COLLECTION**

**1. WHAT IS THE SIZE OF THE ENTIRE COLLECTION?**

- Less than 3000 objects
- 3 000 to 10 000 objects
- 10 001 to 20 000 objects
- 20 001 – 35 000 objects
- 35 001 to 300 000 objects
- Over 300 000 objects
- Uncertain/ I do not know

**INCIDENTS OF THEFT**

**2. INCIDENT 1 – CAS NR.....**

**DATE AND TIME OF INCIDENT:.....**

**HOW MANY SUSPECTS WERE THERE?.....**

**HOW MANY WERE**

- ..... male
- .....female
- I do not know/ uncertain



**2.1 AS FAR AS CAN BE DETERMINED THEFT OCCURED UNDER THE FOLLOWING CIRCUMSTANCE**

**(Please check all that apply)**

- The object was stolen off the museum floor (from open display)
- The object was stolen off the museum floor (from a closed display)
- The object was stolen while on loan to another museum
- The object was stolen while on loan at an official residence/embassy
- The object was stolen while on exhibition in a public place (off site)
- The object was stolen during visiting hours
- The object was stolen by persons who broke in after hours
- The object was stolen from the museums storage facility (store room)
- The object was stolen in-transit
- The object was stolen while off site at restorer's premises
- Other: Please specify.....
- I do not know/ uncertain

**2.2 IN MY OPINION THE OBJECT WAS STOLEN BECAUSE: (Please check all that apply)**

- It is a small item, easy to place in pocket or handbag
- It was placed in an open display case
- It is well known, easily recognised work
- It is marked with the museums accession number
- It is not marked with accession number or other mark linking it to the museum
- Other.....
- I do not know

**2.3 IN MY OPINION THE THEFT WAS DUE TO: (Please check all the apply)**

- Lack of mechanical security (electronic barriers, alarms, locks, safe combinations etc)
- Failure of the mechanical security
- Mechanical security was not connected to the police
- Incompetent guardianship (safe left open, cases left unlocked)
- Mechanical security functioning but overridden
- Guards overpowered
- Inside information/involvement
- Other – please specify.....
- I do not know/ uncertain

**2.4 HOW WERE THE POLICE NOTIFIED OF THE INCIDENT?**

- They were phoned and asked to come to the scene
  - I am satisfied with the reaction of the police to the initial incident
  - Give reason/s.....
  - I am not satisfied with the reaction of the police to the initial incident
  - Give reason/s.....
  
- I reported the incident at the local police station

**2.5 DETECTIVE FOLLOW-UP**

- I am satisfied with how the detective handled the case
  - Give reason/s.....
- I am not satisfied with how the detective handled the case
  - Give reason/s.....

**2.6 OUTCOME OF THE CASE**

- The thief was caught
- Caught but I do not know what happened after that
- Caught and prosecuted
- Sentence received
- Not caught
- I do not know

**2.7 RECOVERY OF OBJECT – THE OBJECT WAS RECOVERED**

- Yes
  - Intact
  - Damaged
  - Severely damaged
  - Please tell me, if you know, where the item was recovered:  
.....
  
- No
  
- I do not know/ uncertain

**3. INCIDENT 2: CAS NR .....**

**DATE AND TIME OF INCIDENT:.....**

**HOW MANY SUSPECTS WERE THERE?.....**

**HOW MANY WERE**

- ..... male
- .....female
- I do not know/ uncertain

**3.1 AS FAR AS CAN BE DETERMINED THEFT OCCURED UNDER THE FOLLOWING CIRCUMSTANCE**

**(Please check all that apply)**

- The object was stolen off the museum floor (from open display)
- The object was stolen off the museum floor (from a closed display)
- The object was stolen while on loan to another museum
- The object was stolen while on loan at an official residence/embassy
- The object was stolen while on exhibition in a public place (off site)
- The object was stolen during visiting hours
- The object was stolen by persons who broke in after hours
- The object was stolen from the museums storage facility (store room)
- The object was stolen in-transit
- The object was stolen while off site at restorer's premises
- Other: Please specify.....
- I do not know/ uncertain

**3.2 IN MY OPINION THE OBJECT WAS STOLEN BECAUSE: (Please check all that apply)**

- It is a small item, easy to place in pocket or handbag
- It was placed in an open display case
- It is well known, easily recognised work
- It is marked with the museums accession number
- It is not marked with accession number or other mark linking it to the museum
- Other.....
- I do not know

**3.3 IN MY OPINION THE THEFT WAS DUE TO: (Please check all the apply)**

- Lack of mechanical security (electronic barriers, alarms, locks, safe combinations etc)
- Failure of the mechanical security
- Mechanical security was not connected to the police
- Incompetent guardianship (safe left open, cases left unlocked)
- Mechanical security functioning but overridden
- Guards overpowered
- Inside information/involvement
- Other – please specify.....
- I do not know/ uncertain

**3.4 HOW WERE THE POLICE NOTIFIED OF THE INCIDENT?**

- They were phoned and asked to come to the scene
  - I am satisfied with the reaction of the police to the initial incident
  - Give reason/s.....
  - I am not satisfied with the reaction of the police to the initial incident
  - Give reason/s.....
- I reported the incident at the local police station

**3.5 DETECTIVE FOLLOW-UP**

- I am satisfied with how the detective handled the case
  - Give reason/s.....
- I am not satisfied with how the detective handled the case
  - Give reason/s.....

**3.6 OUTCOME OF THE CASE**

- The thief was caught
- Caught but I do not know what happened after that
- Caught and prosecuted
- Sentence received
- Not caught
- I do not know

**3.7 RECOVERY OF OBJECT – THE OBJECT WAS RECOVERED**

Yes

Intact

Damaged

Severely damaged

Please tell me, if you know, where the item was recovered:

.....

No

I do not know/ uncertain

**4. INCIDENT 3: CAS NR.....**

**DATE AND TIME OF INCIDENT:.....**

**HOW MANY SUSPECTS WERE THERE?.....**

**HOW MANY WERE**

..... male

.....female

I do not know/ uncertain

**4.1 AS FAR AS CAN BE DETERMINED THEFT OCCURED UNDER THE FOLLOWING CIRCUMSTANCE**

**(Please check all that apply)**

The object was stolen off the museum floor (from open display)

The object was stolen off the museum floor (from a closed display)

The object was stolen while on loan to another museum

The object was stolen while on loan at an official residence/embassy

The object was stolen while on exhibition in a public place (off site)

The object was stolen during visiting hours

The object was stolen by persons who broke in after hours

The object was stolen from the museums storage facility (store room)

The object was stolen in-transit

The object was stolen while off site at restorer's premises

Other: Please specify.....

I do not know/ uncertain

**4.2 IN MY OPINION THE OBJECT WAS STOLEN BECAUSE: (Please check all that apply)**

- It is a small item, easy to place in pocket or handbag
- It was placed in an open display case
- It is well known, easily recognised work
- It is marked with the museums accession number
- It is not marked with accession number or other mark linking it to the museum
- Other.....
- I do not know

**4.3 IN MY OPINION THE THEFT WAS DUE TO: (Please check all the apply)**

- Lack of mechanical security (electronic barriers, alarms, locks, safe combinations etc)
- Failure of the mechanical security
- Mechanical security was not connected to the police
- Incompetent guardianship (safe left open, cases left unlocked)
- Mechanical security functioning but overridden
- Guards overpowered
- Inside information/involvement
- Other – please specify.....
- I do not know/ uncertain

**4.4 HOW WERE THE POLICE NOTIFIED OF THE INCIDENT?**

- They were phoned and asked to come to the scene
  - I am satisfied with the reaction of the police to the initial incident
  - Give reason/s.....
  - I am not satisfied with the reaction of the police to the initial incident
  - Give reason/s.....
- I reported the incident at the local police station

**4.5 DETECTIVE FOLLOW-UP**

- I am satisfied with how the detective handled the case
  - Give reason/s.....
- I am not satisfied with how the detective handled the case
  - Give reason/s.....

**4.6 OUTCOME OF THE CASE**

- The thief was caught
- Caught but I do not know what happened after that
- Caught and prosecuted
- Sentence received
- Not caught
- I do not know

**4.7 RECOVERY OF OBJECT – THE OBJECT WAS RECOVERED**

- Yes
  - Intact
  - Damaged
  - Severely damaged
  - Please tell me, if you know, where the item was recovered:  
.....
- No
- I do not know/ uncertain

**MUSEUM GUIDELINES**

**5 THERE IS AN OFFICIAL POLICY FOR LOSSES AT MY MUSEUM**

- Yes
  - But it is outdated
  - But it is not applied
- No
- Other
- I do not know/ uncertain

**5.1 ACCORDING TO THIS POLICY, IT IS COMPULSORY TO REPORT ALL INCIDENTS OF THEFT TO THE POLICE**

- Yes it is compulsory
  - But it is outdated

- But it is not applied
- No it is not compulsory – it is merely advised/suggested
- There is no such policy
- I do not know/ uncertain about the finer details of the policy

**6 MY MUSEUMS HAS AN OFFICIAL ACQUISITIONS POLICY**

- Yes
  - But it is outdated
  - But it is not applied
- No
- Other
- I do not know/ uncertain

**7. IT HAS BEEN MY EXPERIENCE THAT PUBLICISING THEFTS LEAD TO**

- More incidents
- Recovery of stolen items
- A drop in donations
- Makes no difference
- Other:.....

**8. ANY OTHER COMMENTS PERTAINING TO THIS RESEARCH THAT YOU WOULD LIKE TO ADD:**

.....

.....

.....

.....

**THANK YOU FOR TAKING THE TIME TO COMPLETE THIS QUESTIONNAIRE – YOUR INPUT IS APPRECIATED.**

**REGARDS**

**MRS B BENSON**



## **SAMPLE B1 – AUCTIONEERS**

### **Phd research: Mrs Bernadine Benson**

**Participation is voluntary and you may withdraw at any time. All reporting will be done anonymously.**

Biographical data: Age, gender, qualifications, years experience in this business? Member of a professional body? Which one – how long?

### **UNDERSTANDING THE COMMODITY: Cultural Heritage Objects (CHO)**

What is your understanding of a CHO? What would you regard as a CHO? Do you trade in them? Who do you buy from? Who are the major suppliers of CHO in Gauteng?

### **THE TRADE**

How does one become an auctioneer? Are there specific legal prescripts/ specific qualifications you need?

Is there a legal framework that you as an auctioneer must comply with in this trade? What are the requirements? Is the legislation easy to understand and easy to comply with? Can legislation in this regard be circumvented? If so, what would be necessary to close such loopholes?

### **BUYING AND SELLING**

In terms of a purchase: take me through the process if I as a seller come to your place of business and I want to sell something. In terms of ownership – do you verify whether a person is the owner? If so, how? Is it possible to verify this and how long does it normally take? In terms of authentication – how do you authenticate my story? Is provenance important to you? How do you verify provenance? What questions do you ask? What proof do you require? Do you capture information of buyers? Why/why not?

### **ILLICIT TRADE**

Do you think there is an illegal trade in heritage objects in Gauteng? If so what type of objects are prevalent and create a market? What factors do you think may be contributing to the illegal trade? How serious do you think this type of offense is? Have you ever been offered anything that you were not comfortable with accepting? What did you do?

Are the police doing enough? If not what do you think they should be doing? Are the role players/ stakeholders doing enough to prevent it/ to create awareness of the importance of protection? If not what do you think they should be doing?

Is there anything that you want to add which I have not covered that you feel is relevant? Who else would you suggest that I speak with?

### **CLOSURE**

**SAMPLE B2 – DEALER/ ANTIQUES DEALER**

**Phd research: Mrs Bernadine Benson**

**Participation is voluntary and you may withdraw at any time. All reporting will be done anonymously.**

Biographical data: Age, gender, qualifications, years experience in this business? Member of a professional body? Which one – how long?

**UNDERSTANDING THE COMMODITY: Cultural Heritage Objects (CHO) and antiques**

What is your understanding of a CHO and what would you regard as a CHO? Do you trade in them? Who do you buy from? Who are the major suppliers of CHO in Gauteng? What in your opinion is an antique? Who, in your opinion are the major suppliers of antiques in Gauteng? Who supplies internationally? Who do you purchase your antiques from? When is something vintage and when is it antique?

**THE TRADE**

How does one become an antiques dealer? Are there specific legal prescripts/ specific qualifications you need? Is there a legal framework that you as an antique dealer must comply with in this trade? What are the requirements? Is the legislation easy to understand and easy to comply with? Can legislation in this regard be circumvented? If so what steps do you think are necessary to close the loopholes in this regard?

**BUYING AND SELLING**

In terms of a purchase: take me through the process if I as a seller come to your place of business and want to sell something. In terms of ownership – do you verify whether a person is the owner? If so, how? Is it possible to verify this and how long would such verification take? In terms of authentication – how do you authenticate my story? Is provenance important to you? How do you verify provenance? What questions do you ask? What proof do you require? Do you capture information of buyers? Why/why not?

**ILLCIT TRADE**

Do you think there is an illegal trade in antiques/heritage objects in Gauteng? If so what objects? What factors do you think may be contributing to the illegal trade? How serious do you think this type of offense is? Have you ever been offered anything that you were not comfortable with accepting? What did you do? Are the police doing anything to discourage the illicit trade? If not what do you think they should be doing? Are the role players/ stakeholders doing enough to prevent it/ to create awareness of the importance of protection? If not what do you think they should be doing?

Is there anything that you want to add which I have not covered that you feel is relevant? Who else would you suggest that I speak with?

**CLOSURE**

**Phd research: Mrs Bernadine Benson**

**Unless participants indicate another preference,, it will add great value to the study if the title, name and department from which the participant comes may be mentioned.**

**TITLE OF THE RESEARCH: Addressing Heritage crime in Gauteng, South Africa: An integrative exposition.**

**Biographical data – qualifications/ years experience in SAPS – this field**

**QUESTION 1:**

- (i)It there a specialised unit that deals with art and heritage crimes (thefts out of museums and art galleries)?
- (ii)What is the structure of this art crime unit - do they resort under the local police structures or perhaps under a national structure?

**QUESTION 2:**

- (i)How are investigators selected for placement at such a unit – in other words does one need to have specialised/ specific skills or experience to be able to work at such a unit?
- (ii)If so what type of experience/skills?
- (iii)Are they then after placement given further specialised training by the police and if so what type of training?
- (iv)When an incident of theft occurs at a museum/gallery/private residence, how is the special unit alerted?

**QUESTION 3:**

If there is not such a specialised unit – how are incidents of theft from museums/ galleries/ private residences handled and by whom?

**QUESTION 4:**

In your opinion, does this type of investigation differ significantly to a normal theft investigation? Please elaborate your answer.

**QUESTION 5: (Answer only if relevant)**

Does South Africa need to develop such a unit? Why? / Why not?

**QUESTION 6:**

What is your understanding of a cultural heritage object?

**Phd research: Mrs Bernadine Benson****TITLE OF THE RESEARCH: Addressing Heritage crime in Gauteng, South Africa:  
An integrative exposition.**

I am doing research on the nature and extent of heritage crime in Gauteng. The primary focus of the study is on thefts out of museums and galleries. Having been referred to you by several people, I would like to interview you on the process of such an investigation.

The idea behind this is that other detectives may learn from your experience. Therefore I would like to ask you the following questions:

**QUESTIONS:**

1. Once an incident of theft from a museum or gallery is reported at the station, who decides which detective gets to investigate it? What factors influence this decision (experience, current work load etc)
2. What is the charge in such an event? (Just theft or additional charges?)
3. Where does such an investigation begin after a visit to the primary crime scene?
4. Are informers important in this field? Why/why not?
5. In your experience, what are the primary reasons for such thefts? Where do the goods end up? Are there specific fences in your area/province to who these goods are sent/sold too?
6. In your experience what commodity is being targeted mostly? Why?
7. In your opinion, will the new Second Hand Goods act make a difference to the amount of stolen goods being bought and sold daily? Why/why not?
8. Do you think there should be a specialised capacity that focuses on these crimes or should every detective be able to do such an investigation?
9. What is your understanding of the terms 'cultural heritage/ cultural heritage object'?

**INTERVIEW SCHEDULE FOR INTERVIEW WITH Capt Ben JANSE VAN RENSBURG INTERPOL NATIONAL CENTRAL BUREAU IN PTA, HEAD OF THE CULTURAL HERITAGE AND ENVIRONMENTAL CRIME DESK on 2011-08-01**

Q 1: WHAT IS THE ROLE ON INTERPOL IN SA AND GLOBALLY IN TERMS OF HERITAGE RELATED CRIMES?

Q2: WHO DEALS WITH THESE CRIMES IN SA? HOW WELL ARE THEY DOING IN YOUR OPINION?

Q3: WHAT ADVICE WOULD YOU OFFER TO DAC, SAHRA, SAMA TO ADDRESS HERITAGE CRIME?

Q4: HOW EFFECTIVE IS THE NALEH AND IS THERE A PLACE FOR IT IN THE FUTURE?

Q5: WOULD YOU EQUATE THIS TYPE OF CRIME WITH A NORMAL THEFT? (WHY/WHY NOT?)

Q6: ANYTHING ELSE YOU WOULD LIKE TO ADD?

**INTERVIEW GUIDE: ART INSURE**

Themes for our discussion on 10 May from 10:30 – 12:30

EXISTENCE OF AN ILLICIT MARKET IN ART AND OTHER HERITAGE OBJECTS

WHAT CONTRIBUTES TO THE MARKET?

WHAT ITEMS ARE TARGETED? – WHY?

DESTINATION OF STOLEN ITEMS? (LOCAL/ABROAD) – WHY?

WHAT IS BEING DONE BY SA AUTHORITIES? IS IT ENOUGH? WHY/WHY NOT?

ADVICE FOR COLLECTORS – ITO PROTECTION?

ADVICE FOR CURATORS – ITO PROTECTION?

STATISTICS?

POLICE OFFICIALS THAT DO INVESTIGATIONS?

such as crime tendencies,  
modus operandi that is surfacing,  
items targeted,  
rate of recovery,  
estimates financial loss per year,  
stats in terms of items and value gone over the past approx 5 years.

**Phd research: Mrs Bernadine Benson**

**Unless participants indicate another preference, all reporting within the study will be done per country. In addition, it will add great value to the study if the title, name and department from which the participant comes may be mentioned. However, if participants wish to remain anonymous (in terms of title, name and department), they must please inform the researcher of this personally by email. The report in terms of those participants will then be under the name of the country only.**

**TITLE OF THE RESEARCH: Addressing Heritage crime in Gauteng, South Africa: An integrative exposition.**

**QUESTION 1:**

- (i) Does your country have a specialised unit that deals with art and heritage crimes (thefts out of museums and art galleries)?
- (ii) What is the structure of this art crime unit - do they resort under the local police structures or perhaps under a regional/national structure?

**QUESTION 2:**

- (i) How are investigators selected for placement at such a unit – in other words does one need to have specialised/ specific skills or experience to be able to work at such a unit?
- (ii) If so what type of experience/skills?
- (iii) Are they then after placement given further specialised training by the police and if so what type of training?
- (iv) When an incident of theft occurs at a museum/gallery/private residence, how is the special unit alerted?

**QUESTION 3:**

If your country does not have such a specialised unit – how are incidents of theft from museums/ galleries/ private residences handled and by whom?

**QUESTION 4:**

In your opinion, does this type of investigation differ significantly to a normal theft investigation? Please elaborate your answer.

**QUESTION 5:**

If a country like South Africa were to develop such a unit, what advice would you offer them?

**QUESTION 6:**

Does your country have an organisation/forum which enables law enforcement and the museums/galleries to meet and discuss problems and develop solutions? If so how does it function and where is it placed (within law enforcement, or government or neither)?

**QUESTIONS FOR PHD: MRS BERNADINE BENSON: UNIVERSITY OF SOUTH AFRICA**

**QUESTIONS FOR INTERPOL GENERAL SECRETARIAT – ART CRIME TEAM**

**QUESTION 1:** What is the size of the Interpol art crime unit and what is their primary role and function?

**QUESTION 2:**

If a country like South Africa were to develop a specialised art unit, what advice would you offer them?





G.P.S. 002-0222

SAP 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X301, PRETORIA, 0001  
Posbus/Post Office Box

Verwysing Reference	BC Benson
Navraag Enquiries	Col Naidoo
Telefoon Telephone	012 407 0439/012 407 0404
Faksnommer Fax Number	012 407 0405/6

CORPORATE COMMUNICATION  
INTERPOL  
HEAD OFFICE  
PRIVATE BAG X94  
PRETORIA  
0001

2011-09-12

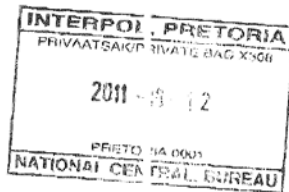
The Head  
National Strategic Management  
Head Office

**RESEARCH: BC BENSON**

1. This office hereby acknowledges your request on the above mentioned matter.
2. This office has no objection in assisting the researcher to meet his/her objectives of the research proposal.
3. I trust that this office will be given sufficient time prior to the date given for the interactive discussion with research.

COLONEL  
ACTING SECTION HEAD: INTERPOL NCB PRETORIA  
CORPORATE COMMUNICATION: HEAD OFFICE  
A NAIDOO

Date:





Ref: 26/57/3

**INFORMATION NOTE**

The Head  
Directorate for Priority Crime Investigation  
S A Police Service

**APPLICATION TO CONDUCT RESEARCH IN THE DIRECTORATE FOR  
PRIORITY CRIME INVESTIGATION (DPCI) ENVIRONMENT: BERNADINE  
CAROL BENSON**

1. Bernadine Carol Benson is a registered student of the University of South Africa studying for the qualification **DLITT ET PHIL (POLICE SC)** and is conducting research on the extent of heritage crime in Gauteng. Research application attached for easy reference.
2. The research focusses on exploring, describing and explaining the phenomenon of heritage crime in Gauteng and to explain the possible reasons why little is known of this phenomenon, and why it seems that the response to this phenomenon is inadequate.
3. The research questions include, inter alia
  - What is the nature and extent of the crime phenomenon?
  - How does the legal market/ trade in heritage objects function?
  - How does the illegal market/ trade in heritage objects function?
  - How is the illicit trade being addressed by South African law enforcement?
  - How is the problem addressed on the international arena?
4. Kindly confirm your decision on the applicant's request to conduct research in this environment.

**RECOMMENDED/NOT RECOMMENDED**

*[Signature]*  
 BRIGADIER  
 F/HEAD: ORGANISED CRIME  
 DIRECTORATE FOR PRIORITY CRIME  
 INVESTIGATION  
 E KADWA

BRIGADIER  
 E KADWA

SOUTH AFRICAN POLICE SERVICE	
SECTION HEAD OPERATIONS	
2011-07-19	
PRIVATE BAG X 1500 SILVERTON 0127	
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION	



SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X94

Reference Nr Verwysing	3/34/2
Navrae Enquiries	Col J Schnetler / SAC D Mataboge
Telefoon Telephone	012-393 3177 / 4525
Faksnommer Fax number	012-393 3178

STRATEGIC MANAGEMENT COMPONENT  
HEAD OFFICE  
PRETORIA

2011-07-11

A. The Deputy National Commissioner  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

For att: Brig R Vermaak

B. The Divisional Commissioner  
DETECTIVE SERVICES

For att: Col A Pienaar

C. Acting Section Head  
INTERPOL


For att: Col Naidoo

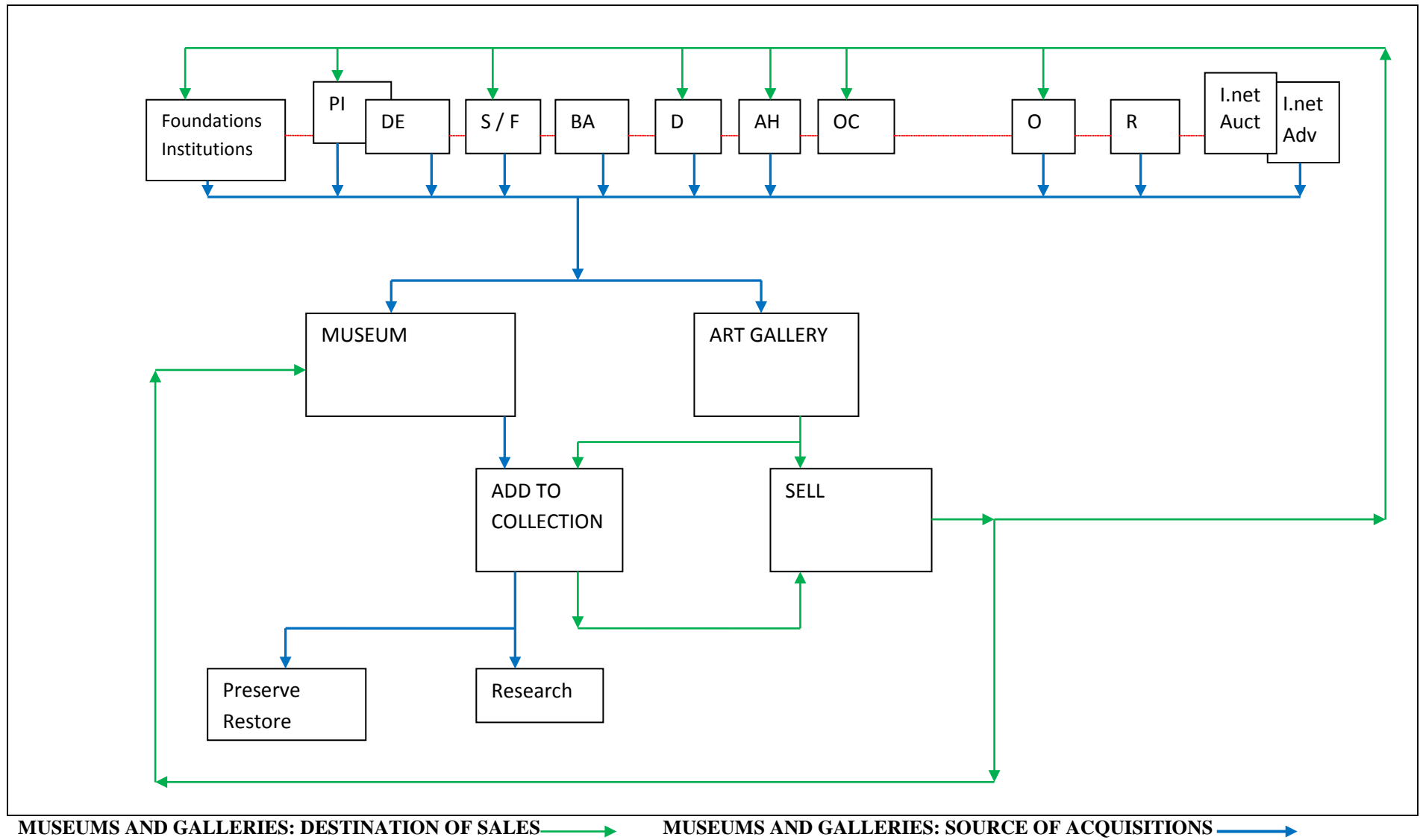
**RE: RESEARCH PROPOSAL: THE EXTENT OF HERITAGE CRIME IN GAUTENG**

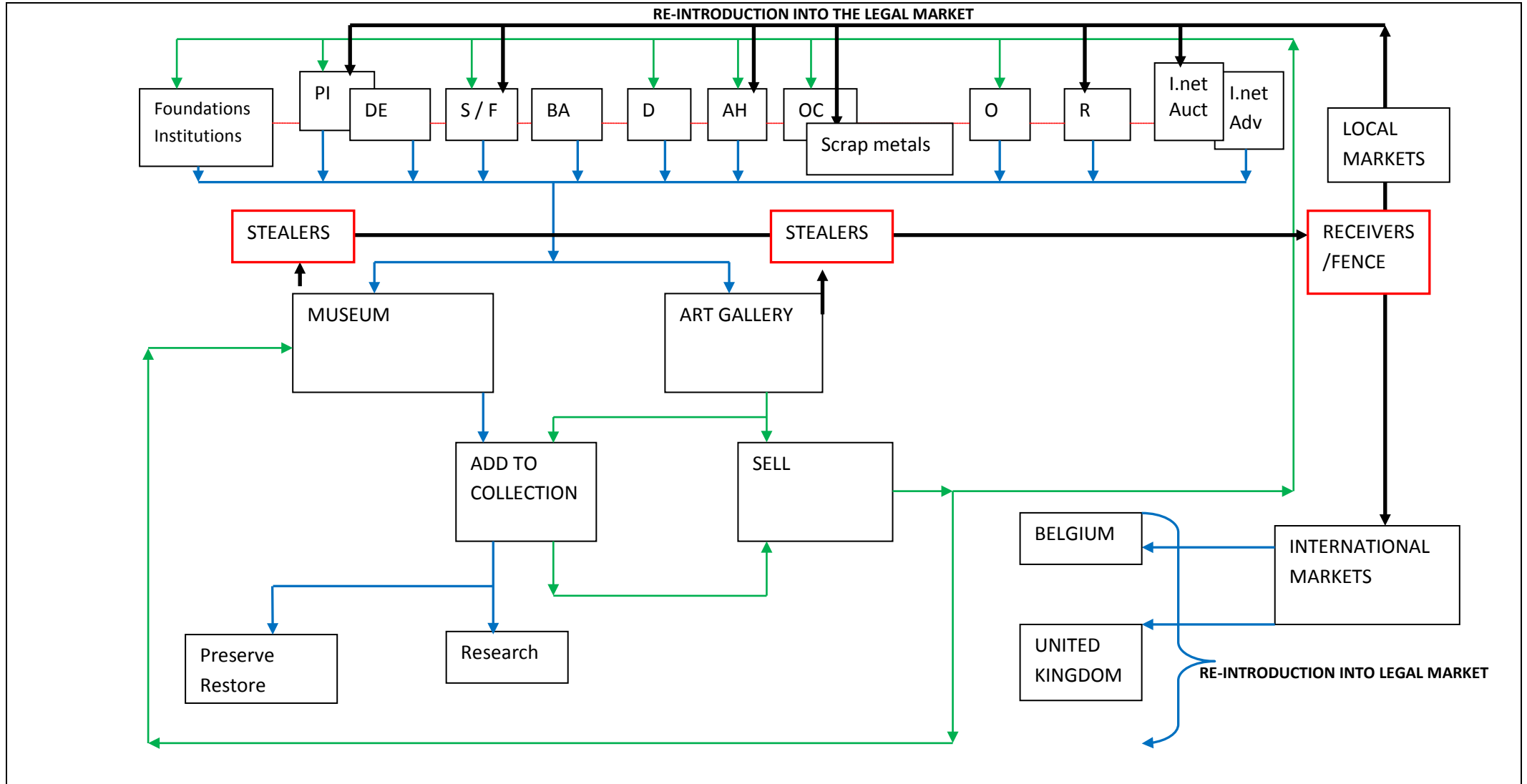
- A-C
1. The research proposal received from B Benson pertaining to the above mentioned topic, refers.
  2. The aim of the research is to investigate the nature and extent of the illicit trade in cultural heritage objects in Gauteng.
  3. The researcher will conduct her research as follows:
    - 3.1 Interview detectives who work within the DPCI units in Gauteng and who are acquainted with art and heritage type investigations.
    - 3.2 Access case docket of all the cases provided to the researcher within the quantitative section by the museum and galleries. Access to case docket will be limited to closed docket only.
    - 3.3 The researcher will also request permission to interview the detectives who are involved with these cases specifically.
    - 3.4 To interview/ Interpol liaison officer responsible for the reporting of this type of crime to Interpol Lyon.

4. In accordance with National Instruction 1/2006: Research in the Service, this office has perused the proposal and recommends it, subject to the final approval of the Deputy National Commissioner: DPCI, the Divisional Commissioner: Detective Services and Acting Section Head: Interpol . If the study is approved, the researcher must ensure that this office receives a copy of the final research report.

With kind regards

  
MAJOR GENERAL  
HEAD : STRATEGIC MANAGEMENT  
GE MOORCROFT






Museums and galleries: destination of sales    Museums and galleries: source of acquisitions    Possible routes of stolen heritage objects





	<p style="text-align: center;"><b>South African Museums Association</b></p> <p style="text-align: center;"><b>SAMA North Branch</b></p> <p style="text-align: center;">Chairperson: Talita Fourie Vice-Chair: Sandile Keswa Secretary: Nikki Haw Tel: 012 326 9172 Email: <a href="mailto:nikki@mitsong.org.za">nikki@mitsong.org.za</a></p>
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SAMA Gauteng North supports the initiative of Mrs B C Benson in her research of heritage crime. All museums/galleries are kindly requested to complete the questionnaires in the interest of understanding the phenomenon better.

Talita Fourie  
SAMA North - Chairperson