

**AN ANALYSIS OF PROCEDURAL CHALLENGES IN ASSET FORFEITURE
INVESTIGATION**

By

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Submitted in accordance with the requirements for

the degree of

MASTER OF ARTS

In the subject

CRIMINAL JUSTICE

at the

UNIVERSITY OF SOUTH AFRICA

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February 2022

DECLARATION

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I declare that the above dissertation is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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

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



Phumeza Theodora Klaas

February 2022

Date

DEDICATION

This dissertation is dedicated to my husband, Athian Tembaletu Klaas, my children Pum-Letu and Lucky Junior Klaas, and to my twin sister Phumza Leonora Gxasheka who have been the driving force and source of inspiration throughout my studies. This dissertation would not have been completed without their encouragement under extremely difficult circumstances.

The study is also dedicated posthumously to my late father, Sphetho Mzwandile Captain Gxasheka and mother, Irene Tenjiwe Gxasheka nee Bongco. Thank you for paving the way for my educational dreams and encouraging me at all times. *Ndinombulelo ongazenzisisiyo kubo bobabini ingakumbi umama wam, owayehlala esixelela ukuba 'Imfundo sisitshixo sobomi'. Ndakuhlala ndinikhumbula Tata no Mama.*

“TO GOD BE THE GLORY”

ACKNOWLEDGEMENTS

I thank my Lord and Saviour, Jesus Christ for the strength, courage and wisdom He has given me throughout and enabled me to complete my dissertation.

Various people also contributed exceedingly to the completion of this dissertation. I greatly appreciate everything they have done and thank them amply. I extend my gratitude to the following in particular:

- My late supervisor, Dr Nick Olivier for the full support, guidance and encouragement that he gave me in the initial stage of the project, which succeeded eventually because of his guidance and commitment.
- My current supervisor, Dr Avhashoni Cynthia Madzivhandila for her guidance and support during this journey of many destinations.
- The University of South Africa, for allowing me to eventually finalise my dissertation after a temporary break during one of the difficult moments of this memorable research experience.
- The South African Police Service's Directorate for Priority Crime Investigation, for granting me permission to access the necessary information from their employees for this research.
- The participants who were willing to grant me the opportunity to interview them.
- Last but not least, my father-in-law, William Sizi Mlungwana Klaas and my late mother-in-law Nothembani Nomangesi Eunice Klaas for their support and unconditional love while working on this study.

ABSTRACT

The study explored the impact of procedural challenges in asset forfeiture investigation. The study revealed that challenges are being experienced by the investigators during asset forfeiture investigation. The challenges for successful asset forfeiture investigations depend on the systems or procedures in place to trace, identify and verify assets used or bought with the funds derived from crime, as well as covering the financial benefits from criminal activities.

The research study was conducted with the asset forfeiture investigators of the Directorate for Priority Crime Investigation (DPCI) who are responsible for tracing, identification and verification of assets used or bought with the funds derived from criminal activities.

A qualitative research design approach was adopted in this research study. National and international sources of literature were consulted, in conjunction with semi-structured interviews conducted with the asset forfeiture investigators from the Directorate for Priority Crime Investigation (DPCI). A small representative sample of 11 members was used for data collection using the random sampling method.

The findings arising from the research pointed to the importance of capacitation, empowerment of the asset forfeiture investigation environment with enough resources to trace, identify and verify assets linked to criminal activities in order to secure successful forfeiture and confiscation orders. It became evident that participants experience a number of challenges during asset forfeiture investigation. Several recommendations are made as to what could be done to ensure that assets involved in criminal activities are seized and forfeited to the State. This will help to achieve objectives set out by the organisation's strategy.

The study makes recommendations on what could be done to ensure that asset forfeiture investigators are equipped with resources, and enhanced with skills and knowledge to effectively investigate asset forfeiture cases successfully.

Key Terms: *analysis, investigation, asset forfeiture, procedure, proceeds of crime, instrumentalities of crime, benefit of crime*

LIST OF ABBREVIATIONS AND ACRONYMS

AFI	Asset Forfeiture Investigation
AFU	Asset Forfeiture Unit
ARINSA	Asset Recovery Network of Southern Africa
BCA	Bank Secrecy Act
CARA	Criminal Asset Recovery Account
CARIN	Camden Asset recovery Inter-Agency Network
CI	Crime Intelligence
CIPC	Companies Intellectual Property Commission
CPA	Criminal Procedure Act 51 of 1977
CTR	Cash Transaction Report
DHA	Department of Home Affairs
DPCI	Directorate for Priority Crime Investigation
DoT	Department of Transport
eNatis	Electronic National Administration Traffic Information System
FAFI	Financial and Asset Forfeiture Investigation
FBI	Federal Bureau of Investigation
FIC	Financial Intelligence Centre
FICA	Financial Intelligence Act 11 of 2008
FIU	Financial Intelligence Unit
ICCMA	International Co-operation in Criminal Matters Act 75 of 1996
MLA	Mutual Legal assistance
ML	Money Laundering
NPA	National Prosecuting Authority
PCSI	Priority Crime Specialised Investigation
PoCA	Proceeds of Crime Act
POCA	Prevention of Organised Crime Act 121 of 1998
PRECCA	Prevention and Combating of Corrupt Activities Act 12 of 2004
SABRIC	South African Banking Risk Information Centre
SAPS	South African Police Service
SARB	South African Reserve Bank
SARS	South African Revenue Services
STR	Suspicious Transaction Report

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CHAPTER ONE

GENERAL ORIENTATION

1.1 INTRODUCTION

The Financial and Asset Forfeiture Investigation (FAFI) is a component within the Directorate for Priority Crime Investigation (DPCI) of the South African Police Services (SAPS). The roles and responsibilities of the component: Financial and Asset Forfeiture Investigation is to investigate all in-flows and out-flows on accounts of suspects in order to follow the money generated or involved in criminal activities, identify the beneficiaries of criminal acts in order to recover the loss, trace and identify assets bought with the proceeds of crime, identify asset used to commit crime that is instrumentalities and trace assets that are concealed or hidden by the suspects to family members and associates. These criminal proceeds could be generated through organised means, such as corruption, drug and human trafficking or smuggling, fraud, robberies, embezzlement, tax evasion, abuse of company structures or insider trading.

Over and above that, it becomes challenging for the investigators when it comes to the tracing of suspects' assets, as in most times, assets are not registered in their names but sometimes hidden through extended families or companies. It is against this background that the researcher looked at the problem of this research which is pertinent to establishing the loopholes that exist in the procedures of the asset forfeiture investigation. The study starts by explaining the research problem which led to this intended research, followed by the research aim, research approach and design, target population and sampling.

1.2 PROBLEM STATEMENT

Kumar (2014:38) states that the formulation of a research problem is the foremost important step of the research process. Leedy and Ormrod (2015:45) inadvertent that the research problem is the axis of the research and the heart of every research problem. As a factor of both her work experience and professional background, the researcher has in several instances faced challenges concerning procedures followed during asset forfeiture investigation.

Leedy and Ormrod (2015:49) mention that resolving the research problem and focusing on efforts towards achieving the ultimate purpose for gathering the required information, is incumbent on the researcher asking himself or herself throughout the research process what she is doing and for what purpose. As a Section Commander for the Section: Asset

Forfeiture Investigation (AFI), DPCI and responsible for evaluation and allocation of all case referrals referred to the Section, the researcher has established that assets identified were not fully confiscated or forfeited to the State. The main reasons was that, the referring SAPS Divisions and DPCI Components tend to refer cases which are already at an advanced stage of investigation; where identified suspects had already been arrested or are out on bail.

This ordinarily afforded the suspects the opportunity to hide or dispose of the assets. This also hinders and delays asset forfeiture investigation processes in most instances. The main problem in this research is that, although there is legislation which empowers the Asset Forfeiture Unit (AFU) of the National Prosecuting Authority of South Africa (NPA) and law enforcement agencies to trace, confiscate or forfeit the proceeds of crime / instrumentalities of crime / benefits of crime, there are procedures and steps to be followed, which are problematic and often delay the processes of asset forfeiture. The problem identified by the researcher is that these procedural challenges may have negative results in asset forfeiture investigation processes and in resolving of crime generally.

The researcher has first-hand experience on the subject at hand and has witnessed the shortcomings of the systems described above. Criminals are able to transfer funds, hide illicit proceeds, incorporate trust structures and transfer monies to their families / associates and are often several steps ahead of law enforcement's intelligence. The investigators have an array of legislated powers to deal with asset forfeiture investigations in order to identify the proceeds of crime, to trace illicit funds and to enforce asset forfeiture.

These powers are included in the Criminal Procedure Act (No. 51 of 1977), the Prevention of Organised Crime Act (No.121 of 1998), the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004), the International Co-operation in Criminal Matters Act (No. 75 of 1996), the Financial Intelligence Act (No. 33 of 2001), Protection of Constitutional Democracy against Terrorist and Related Activities Act, (Act 33 of 2004) as well as in co-operation with other authorities which includes South African Reserve Bank (SARB), South African Revenue Services (SARS), Crime Intelligence (CI), National Prosecuting Authority (NPA) and others. Orthmann and Hess (2012:573) state that asset forfeiture regulations provide for the confiscation of cash and other material possessions of a drug dealer at the time of effecting the arrest. Although these authors were focusing on drugs

alone, it is the submission of the researcher that the same is also true in a variety of cases that involve proceeds or instrumentalities or benefits of crime in general.

According to Orthmann and Hess (2012:572) asset forfeiture is instrumental in agencies' investigation of various criminal deeds, including drug trafficking and seizure of items acquired through, or used in committing crime. If assets are not fully confiscated or forfeited to the state, the suspects will continue to live and enjoy the proceeds of crime. It is then important that, asset forfeiture investigators should understand that procedural challenges in asset forfeiture investigation must be analysed in order to improve and increase the rate of asset forfeiture. If this is achieved, many asset forfeiture investigations will be resolved and the crime proceeds will be taken out of the hands of criminals and forfeited to the State. Having established both the research problem, the next section concomitantly outlines the aim of this research.

1.3 RESEARCH AIM

The research aim is situated in the researcher's intended purpose of achievement at the end of the study (Maxfield & Babbie, 2014:12-14). A research aim is then described as a general statement of what the research intends to achieve (Wilson, 2014:43). Accordingly, the aim of this research is to effectively analyse the procedural challenges experienced by the investigators during tracing of assets and collection of evidence during asset forfeiture investigations, so as to be able to assist the investigators to reach a desired outcome.

This will then improve the low success rate on cases investigated. The next section outlines the research objectives. In this regard, the specific and general contexts of the research objectives are explicated.

1.4 RESEARCH OBJECTIVES

The objective of the research is to discover previously unknown facts about something. Research cannot be adequately designed unless the research objective is carefully thought out and well stated (Wilson, 2014:43). Criminal Justice research serves many objectives. These purposes include exploration, description, explanation and application (Maxfield & Babbie, 2014:12-14). There are various objectives for conducting research, one of which is to solve an existing problem and improving on procedures. The objectives of this research are the following:

- To evaluate the procedural challenges in asset forfeiture investigation.

- To explore both national and international literature in order to determine how procedural challenges in asset forfeiture investigation are addressed.
- To improve the current procedures in place by developing best practices that will enhance the investigators to perform better.

In addition, this study will be of benefit to the asset forfeiture investigators and commanders in the DPCI and SAPS. The researcher outlined different pieces of legislation that are relevant to asset forfeiture and identified loopholes that may bring about challenges to the asset forfeiture process and explained the impact of procedural challenges in asset forfeiture investigation and general resolving of crime.

1.5 RESEARCH QUESTION

Creswell (2013:139) propounds that research questions reduce the statements of objectives to predictions about what is intended to be learnt, or questions to be answered in the study. The research question premises generally on the research topic and aim. The researcher formulated the research question based on the research topic and aim in order to elicit responses from the participants. In this study, the following research question is considered:

- What are the procedural challenges in asset forfeiture investigation?

The following section addresses the definition of key concepts in the study. To a larger extent, these definitions form a linkage with the broader parameters of the problem of the study and its attendant aim, objective and question.

1.6 DEFINITION OF KEY CONCEPTS

Leedy and Ormrod (2010:119) submit that the key concepts are defined in order to obviate any possible misunderstanding of meanings. In particular, terms selected from either everyday speech or in scientific disciplines ought to be defined for avoiding vagueness and ambiguity. Most importantly, the key concepts below depict a degree of thematic affinity and symmetry with the core subject matter of the study, namely: procedural challenges in asset forfeiture investigation.

1.6.1 Analysis

Analysis means the skilled application of methodical processes for individuals to ultimately interpret data and information and produce insightful intelligent findings and actionable recommendations for decision makers (Fleisher & Bensoussan, 2015:7).

1.6.2 Investigation

According to Hirsch Ballin (2012:122), investigation is to gather information and evidence which is relevant for truth-finding regarding criminal offences.

1.6.3 Asset

An asset is a tangible or intangible economic resource, capable of being controlled or owned to produce a positive economic value (Mehta & Reddy, 2014:479).

1.6.4 Forfeit

'Forfeit' relates to a right loss as a penalty of crime, neglect, and so on. Forfeit deals with taking away a valid grant such as taking away the rights conferred because of failure to work the intervention (Malbon, Lawson & Davison, 2014:519).

1.6.5 Procedure

A fixed, step-by-step sequence of activities or course of action with a definite beginning and end points to be followed in a specific order to correctly perform a task or specified activity (Dictionary of Business Continuity Management, 2010:37).

1.6.6 Proceeds of Crime

Proceeds of crime means critically acquired property and financial resource which is used in the Criminal Procedure Law. Pursuant to the criminal law processes, the property is recognized as criminally acquired, provided such property indirectly or directly came into the possession of a person as an accrual of criminal offence (Byrnes & Munro, 2013:52).

1.7 RESEARCH METHODOLOGY

Creswell (2013:3) and Maneli (2018:5) posit that the study's methodology is a systematic process encompassing the rationality of the various steps and procedures undertaken by the researcher to allocate a context for resolving the investigated problem and attain the study aim in conjunction with applicable data collection and analysis approaches.

In the quest to achieve the stated aim of this research, the researcher conducted a literature study of published and unpublished studies, articles and texts related to procedural challenges in asset forfeiture investigation. Reviewing the literature familiarizes the researcher with methodologies used by others to find answers to research questions similar to those currently investigated (Kumar, 2015:52).

The third main aspect in the methodological framework premises on the specific research methods that involve the forms of data collection, analysis, and interpretation that researchers propose for their studies (Creswell, 2014:45).

1.7.1 Research Design

Leedy and Ormrod (2013:74) close that a research design shapes the general formation of the researcher's plan of action, her/ his data collection, and her/ his data analysis. "A good design, one in which the components work harmoniously together, promotes efficient and successful functioning; a flawed design leads to poor operation or failure. However, most works dealing with research design use a different conception of design; 'a plan or protocol for carrying out or accomplishing something especially a scientific experiment'" (Maxwell, 2013:2).

The researcher opted for an empirical research design because of the limitations imposed by scarcity of literature on the topic under review, namely: 'analysis of procedural challenges in asset forfeiture investigation'. For this reason, the empirical research provide knowledge to the researcher through direct and indirect observations and experience of the participants in the study (Verma, 2015:1). According to Vogt, Gardner and Haeffele (2012:36), most empirical evidence about the importance of question content and the context of the interaction between the researcher and the participants has been done for survey research, but it is likely to be even more important in interview research and assists in establishing a rapport with the research participants.

In the context of this study, participants from the Section: AFI of the DPCI are considered to be the "cases" or reference points that are investigated to gain an incisive understanding of the format for obtaining procedural challenges in asset forfeiture investigation. Accordingly, the participants from the Section: AFI of the DPCI serve as "cases" for the *post facto* scenario tracing and locating assets which are proceeds or instrumentalities of crime and financial benefit of criminal activities (in addition to investigating the crime and locate assets) with the aim of confiscating and forfeit assets involved or linked to crime and to ensure that suspects do not live on proceeds, during, or after the crime (Benson Horne and Jones, 2015:19; Osterburg & Ward, 2012:112).

1.7.2 Research Approach

The qualitative research approach was adopted due to its focus on phenomena occurring in natural settings and the non-statistical data analysis (Jackson, 2015:82). Maxwell (2013:82) states further that the qualitative research approach is the process by which phenomena occurs. In qualitative research, it could be risky to frame research questions by solely focusing on explanations and differences (Maxwell, 2013:82).

The most frequently adopted research approaches by researchers include the quantitative, qualitative or mixed-methods approaches which is the combination of both. However in this study, the researcher opted for the qualitative method because it allows the participants to tell their stories in their own words and according to their own experiences (Seidman, 2013:122). Moreover, qualitative research enables participants' reconstruction of their undiluted life stories in their own natural environments, which authentically reflects and records their' statements and not the researcher's own preferences and predilections (Creswell, 2013:4). In addition, qualitative processes and procedures enable outsiders' maximum understanding of a problematic situation whose resolution is regarded as very important to the researcher.

1.8 STUDY POPULATION

The study population is a group of units, people or objects from which/ whom the researcher wants to draw conclusion (Maxfield & Babbie, 2017:18). De Vos, Strydom, Fouche and Delpont (2011:222) and Maxfield and Babbie (2017:18) refer to the study population as individuals in the universe possessing particular attributes. De Vos *et al.* (2011:222) further state that a study population is the totality of events, persons, case records, organisational units, or other sampling units that are of concern to the research problem.

In this research, the researcher engaged with participants from the Section: AFI of the DPCI. These participants are involved in asset forfeiture investigations and provided useful information of real-life that addresses the practical problem under investigation. Leedy and Ormrod (2013:139) posit that qualitative research involves focusing on expressing and studying the complexity of the event that occurs in the natural setting of the "real world". The current study is firmly located within the challenges in asset forfeiture investigation. In this regard, the study population encompasses all investigators involved in the tracing and identifying of proceeds and instrumentalities of crime assets owned by the suspects under investigation which are involved or linked to criminal activities.

Accordingly, the broader study population in this regard includes: asset forfeiture investigators of the DPCI, this delays the asset forfeiture proceedings.

Interpreting qualitative data is a complex process, which entails reflecting on the literature, note-taking, thinking, writing, talking, and filled with reading the data (Tracy, 2013:207). Although qualitative analysis of data reflects pragmatic best practices, every study has its own population of interest. However, some practical circumstances and resource limitations makes it impossible to access the whole population, in which case the researcher then opts for a target population (Remler & Van Ryzin, 2011:141). The next section addresses the target population.

1.8.1 Target Population

The target population are the investigators, who possess the information required by the researcher and about which an inference is made (Bajpai, 2011:96). This is supported by Whitley and Kite (2012:485), who state that the people who met operational definition of the target population constitute the study population.

Therefore, the target population in this study consisted of thirty five (35) investigators of the Section: AFI of the DPCI stationed at both Head Office and Provincial offices. The representative sample is directly involved in the asset forfeiture investigation cases. The breakdown of the target population is as follows: 4 (four) investigators from Head Office, 3 (three) investigators from Kwa-Zulu Natal, 4 (four) investigators from Eastern Cape, 4 (four) investigators from Western Cape, 5 (five) investigators from Gauteng, 3 (three) investigators from Free State, 3 (three) investigators from Northern Cape, 2 (two) investigators from Mpumalanga, 3 (three) investigators from North West and 4 (four) investigators from Limpopo.

It was virtually impossible to include all of the above-cited investigators because asset forfeiture Investigators are based in different provinces around South Africa. Therefore, because of Covid-19 restrictions and high expense to travel to other provinces, the researcher opted for a sample of 11 asset forfeiture Investigators who would answer interview-based questions. The researcher used the simple random sampling method for the asset forfeiture investigators.

1.9 SAMPLING

Sampling is basically the process of methodically selecting individuals who will ultimately participate in a research study (Gravetter & Forzano, 2015:139). The researcher ought to

decide about the exact group of units, objects or people (sample) to be studied for obtaining the information required (Guthrie, 2010:53).

There exists an important differentiation between the sample size in the context of the actual number of individuals initially contacted, as well as sample size in the sense of the eventual number who responded. However, it is worth noting that population size is important where there are smaller numbers (Denscombe, 2014:47). There are basically two distinct categories of sampling, namely: probability and non-probability sampling (Babbie, 2011:191; Leedy & Ormrod, 2015:177). For this study, random probability sampling was applied.

1.9.1 Probability Sampling

Probability sampling premises on the randomisation of the equal chance each person or sampled unit has for selection as a prospective participant in the study (Durrheim, 2014:49; Leedy & Ormrod, 2015:177). Meanwhile, Suter (2012:472) states that random sampling ensures that any population member has an independent and equal chance of being included in a sample.

The researcher wrote all the 35 asset forfeiture investigators names on a separate pieces of paper and put the names in a bowl, from which eleven were drawn to constitute a sample. This was to ensure that each investigator was afforded an equal chance for selection and that their names will or are not compromised. Accordingly, the researcher views the sample as representative of the population, because the random sampling method ensured a fair selection of suitable participants who were sufficiently knowledgeable to respond to aspects of the problem being researched objectively.

1.10 DATA COLLECTION

Data collection is the systematic acquisition of required information from primary and/ or secondary sources (De Vos *et al.*, 2011:377). Primary (e.g. interviews) data relates to the original written material of the researcher's own experiences and observations, while secondary data (e.g. literature review) is derived from someone else as the original data (De Vos *et al.*, 2011:377). Although the researcher is aware of the fact that primary data is more reliable than secondary data, both methods were used due to the fact that secondary data was the interpretation of primary data (Leedy & Ormrod, 2010:99).

Johnson (2012:66) ascertains that data (plural) are any form of facts, observations or information that are collected or recorded. Johnson (2012:93) further states that data

triangulation is accomplished by collecting different types of data and sources at different times, and involving other practitioners in the final review of the data to check for the findings' accuracy. Triangulation is used by the researcher to ensure that all sides of the story are covered. The following data collection techniques are used during the research process:

1.10.1 Literature Sources

The review of literature is fundamentally premised on the researcher's consultation of a written summary of journal articles, books and other documents that describe the past and current state of information on the research topic (Creswell, 2012:80). During literature review, the researcher searched the internet, journals, articles, books and other documents, but could not find any literature with the same topic as this study. However, different sources were consulted to locate information that addresses the procedural challenges in asset forfeiture investigation, but no books could be found.

According to Kumar (2011:34), an effective literature search in a field of enquiry, necessitates that the researcher should at least have some basic perception of the broad subject area and the problem to be investigated, in order to delineate or demarcate the search parameters. The sources were tested against the aim and research question. The next section details the interviews as the main data acquisition method applied in this study. Whereas the literature review does not actually involve human subjects, the interviews were the only means of the study's data collection tools that involved human interaction and engagement with the researcher.

1.10.2 Interviews

Research interviews are data acquisition methods in which people's answers are relied on as the researcher's source of data (Denscombe 2014:184). Guthrie (2010:118) adds by mentioning that interviewing is the most common data collection technique in social science. Researchers and theorists define interview in many ways that create implications for interviewers' roles, and for communication and questioning styles.

These styles range from unstructured to highly structured interviews. Many researchers choose the semi structured approach that allows for consistency between interviews, as well as flexibility to follow-up, based on responses (Salmons, 2014:205). The researcher made use of the structured interview because the questions asked were fixed, predetermined and similar for every participant; while the questions were derived from

the research question and the aim of the study. The interview schedule of questions was eventually compiled in this regard (see Annexure D).

The interview schedule was for the sampled asset forfeiture investigators. The initial interview arrangements (prepared before the advent of COVID-19) was changed in the light of the current COVID-19 circumstances. The researcher made use of online interviews, conducted on the computer-based Microsoft Teams since the participants are working remotely to minimise contact and increase in COVID-19 infections. According to Rasmussen (2010:89), the interview has a number of advantages, such as adaptability, interactivity and the direct responses that can be elicited from the informants. Consent and confidentiality of the interview together with the information received was prioritized.

Interview was conducted at the interviewee's place of comfort and the interview was structured and allowed the participants to express their feelings without fear of being out of scope. The researcher outlined the following procedures proposed by Leedy and Ormrod (2013:154-157) in conducting the final Sample of interview:

- Prepare interview and follow-up questions ahead of the interviews to ascertain that all questions are asked during the interview;
- Consider the cultural contexts of participants' which may influence their responses;
- Ascertain that the participants are part of the focus group that will give relevant answers to address the research question, by focusing on investigators that deals specifically with asset forfeiture investigation case and have knowledge of procedural challenges encountered during such investigations;
- Found a suitable location to conduct the interview, which was without destruction to the participants;
- Obtain a written permission from the participants employers before an interview was conducted;
- Being respectful and courteous to participants at all times to establish rapport;
- Focus on the facts and allowed the participants to give their views on challenges they faced during asset forfeiture investigation;
- Ensure that she did not put words in the participants mouth during the interview, by allowing them to apply their chosen preference for expressing their thoughts;
- Kept her reactions to herself and never shows agreement or disapproval of the participant responses.

1.11 PILOTING OF THE INTERVIEW SCHEDULE

Leedy and Ormrod (2013:112), states that a researcher could initiate a pilot study to briefly explore a study's applicability/ feasibility and analytic methods that could possibly be suitable for the particular data collected. A pilot study is also useful for identifying possible weaknesses in the various questions before the study is finally conducted. Most importantly, the pilot study exposes the researcher to innovative ways and approaches for resolving the study's investigated problem (Leedy & Ormrod, 2013:112).

The researcher conducted pilot interviews with three asset forfeiture investigators from Gauteng Province, who did not take part in the research, just to test whether the interview questions might be misleading or ambiguous. The outcome received from the pilot test participants was, that the feedback truly measure what it is intended to measure, that every question is essential to address the research problem, that answers given were very close to each other, that questions were understood clearly during pilot test and no extra explanation of the questions were required by the participants (Leedy & Ormrod, 2013:199).

1.12 DATA ANALYSIS

The purpose of data analysis is to allocate sense and meaning to a text by disassembling and re-assembling the self-same data in order to segment or partition it according to its relevant thematic codes (Creswell, 2014:195). Muratovski (2015:148) intimate that there are various ways in which researchers approach the process of data analysis, and experts are also at variance regarding the best approach in that regard. In this study, the researcher utilised the spiral method propounded by Leedy and Ormrod (2010:143) as follows:

- Capturing raw data and categorising it in accordance with its similarities;
- Perusing and comparing information after the primary interpretation of data was done;
- Grouping large data amounts and information and reducing it into manageable categories for meaning-making;
- Grouping data into categories that are similar for preliminary analysis and interpretation, after which the findings were then integrated into the research report.

The researcher collected two or more different kinds of data related to any particular phenomenon, consulted various sources to research every heading and sub-heading, went all-out to look for evidence that challenges the theory, and in the final report

acknowledged any prejudices he had so that the readers would be aware of them when reading the final report (Leedy & Ormrod, 2013:159).

1.12.1 Participants' Background Information

Based on the selected sample (Section: Asset Forfeiture Investigation) interviews, the background information gathered from the eleven participants shows that 2 (two) participants were Group Commanders, 8 (eight) were Investigators and 1 (one) a Section Commander at the Section: Asset Forfeiture Investigation (AFI).

The 2 (two) Group Commanders have been in their current positions for a period of 5 (five) to 10 years, while the 8 (eight) Asset Forfeiture Investigators have been in their current positions for 10-15 years. Meanwhile, the 1 (one) Section Commander was in the current position for more than 15 years. When asked about the extent of their involvement in asset forfeiture investigations all participants responded boldly, "yes". They confirmed that they had undergone training on asset forfeiture investigation.

1.13 METHODS TO ENSURE TRUSTWORTHINESS

Trustworthiness is underpinned by the study's overall validity insofar as others perceive the self-same study to be generally credible and convincing to the point of being taken seriously (Leedy & Ormrod, 2015:336). Additionally, Bless, Higson-Smith and Sithole (2013:226) uphold that the aspect of trustworthiness also underpins the extent of the self-same study's quality as measured or tested through the criteria of credibility, transferability, dependability and conformability.

Bless *et al.* (2013:238) intimate further that the higher the quality of the four above-mentioned criteria, the higher and more likely the degree of trustworthiness of the study and its processes of acquiring and analysing data. It is also of further noting that credibility and transferability were closer to validity, while dependability and conformability were closer to reliability (Bless *et al.*, 2013:238).

1.13.1 Credibility

Credibility is associated with internal validity in quantitative research (Bless *et al.*, 2013:236; De Vos *et al.*, 2011:4). Furthermore, credibility demonstrates and ensures the accurate representation of the participants' views, rather than the researcher's own predilections. Credibility in this study was assured through prolonged engagement and protracted on-site observations and triangulating sources and methods of qualitative data gathering.

Accordingly, the researcher implemented one-on-one in-depth interviews for empirical data, in addition to the theoretical literature-based data in order to optimise the findings. The researcher further interacted with the participants informally outside of the interviews in order to obtain more insight and better understanding of their experiences and what informed those views.

1.13.2 Transferability

According to Bless *et al.* (2013:237), transferability is not easily attainable, but requires detailed and accurate contextualisation and descriptions of the environment in which data was collected, about the researcher herself, as well as her association with the participants. The researcher applied an audit trail to describe and provide very clear details concerning all the stages and processes of the study, from its conceptualisation to execution/ implementation and compiling the final research report. This was to ensure that interested researchers could understand how they could apply these processes in their own studies elsewhere.

1.13.3 Dependability

Bless *et al.* (2013:237) illuminate that 'dependability' is synonymous with 'reliability' in quantitative studies. Trochim and Donnelly (2007:149) allude that dependability is basically about the repeatability, consistency or replication of research results if study is conducted more than once with the same participants. Bless *et al.* (2013:237) submit further that the researcher ought to demonstrate that all steps or research processes have been carefully and thoroughly completed.

The researcher audio-recorded the interviews with her participants to ensure their original responses were captured accurately. As proposed by Bless *et al.* (2013:237), the researcher also detailed the literature review strategies, as well as provided thorough explanations concerning the sampling of participants, questions to which they were responding, the interview administration processes and proceedings, as well as the data analysis procedures in order to justify the development of the findings (Trochim & Donnelly, 2007:149).

In addition, the researcher ensured that she asked the same questions to the participants for both dependability and uniformity purposes. In this regard, no participants or interviewees could be seen as being favoured above others. Therefore, the research

instrument could be trusted and depended on since it was not applied without any external factors influencing its outcomes.

1.13.4 Confirmability

The term, 'confirmability' relates to the extent of the results' independent corroboration by external parties who did not have a direct interest or influence in the study throughout its implementation (Kumar, 2011:185). Therefore, a study and its research outcomes are declared confirmable by others, and not the researcher himself/ herself, which is in itself a mechanism to eliminate the researcher's own bias in declaring a study successful without verification by other experts in the field of study being investigated.

The researcher regularly consulted with her academic supervisor to ascertain the appropriateness of the main data collection instrument (interview guide) and the findings, as well as testing the compatibility and synergy between all the components of research. Also, the researcher engaged with other investigators who were not part of the study to test the extent to which they could either confirm or refute the findings based on their professional experience.

The next section addresses the ethical considerations of the study. To some degree, these considerations could also be viewed as enhancing the essential aspect of trust worthiness in the quality of the research process and its outcomes.

1.14 ETHICAL CONSIDERATIONS

Leedy and Ormrod (2013:104) argue that the involvement of human beings as the focus of investigation, necessitates that researchers should consider the ethical implications of such involvement. In this regard, the researcher will adhere to the ethical regulations of both UNISA and SAPS, as well as the ethical protocols for her expected professional and moral conduct during her interaction with the sampled participants. The UNISA ethical guidelines are binding, and the study could not have proceeded without the relevant ethical clearance certificate (see Annexure A). Similarly, no SAPS personnel could be interviewed without the properly sanctioned request and approval (See Annexures B and C).

1.14.1 UNISA Code of Ethics for Conducting Research

The UNISA ethical guidelines (2016:11-18) refer to the following ethical protocols or principles, which are not necessarily ranked in any particular order of priority or preference.

1.14.1.1 Basic principles for research

UNISA (2016:11) promotes the following internationally recognized ethical principles and standards:

- Autonomy: the rights, dignity and independent decision-making of the participants should be respected;
- Research ought to contribute positively towards people's welfare;
- Research ought not cause any harm or pose any risk research subjects; and
- The risk benefits of research should not apply to only some parties in the research equation.

UNISA (2016:11) outlines the following ten general ethical principles that the researcher adhered to:

- Relevant and essential;
- Optimising interest of the public and social justice;
- Competence, commitment and ability to research;
- Respecting and protecting participants' and institutions' interests and rights;
- Consent that is informed and non-coerced;
- Respecting cultural differences;
- Objectivity, justice and fairness;
- Accountability, integrity and transparency;
- Minimizing risk; and
- Non-exploitation.

During the course of this study, the researcher adhered to the following ethical protocols:

1.14.1.2 Protection from harm

UNISA (2016:13) declares that the researcher's relationship with the participants should be characterised by an ethos of partnership and goodwill. If harm, injury or loss of opportunity occurs, relevant policies should be invoked to address such a development. In addition, if any harm occurs to participants during the course of the research, such harm should be immediately reported to the University ERC and relevant unit for appropriate action. As such, all possible steps were taken to ensure no physical, emotional or spiritual and psychological harm and loss of opportunity were experienced by participants.

Therefore, the researcher ensured that the interviews were held in safe environments during pre-scheduled times. The letters of request were written in time to the SAPS authorities to ensure that no sampled investigator was exposed to undue threats by those who may have been negatively predisposed about the study or interviews. The participants were also informed about the existence of the UNISA Policy on Research Ethics and provided with details of the Ethics Review Committee to report any of their concerns or misgivings.

1.14.1.3 Informed consent

UNISA (2016:14) further indicates that participants' consent should be premised on their uncoerced freewill, and their personal information should be obtained by adhering to the Protection of Personal Information Act/ POPIA (No. 4 of 2013). Participants should give their consent in writing and supported by their signature. For research associated with Unisa and conducted in a foreign jurisdiction, the applicable standards and prescripts of the UNISA Research Ethical/ URE Policy will apply.

Therefore, disclosure of all pertinent information for research participation should comply with both the URE Policy and POPIA freely provided before the research commences. Similarly, the researcher should take note of the non-disclosure of all information and consent involving gatekeepers or organizational structures, as well as uphold the interests and rights of those participants who are vulnerable.

1.14.1.4 Right to privacy

UNISA (2016:16) emphasizes that privacy, anonymity and confidentiality are very important to the degree allowed in law, or as directed by legal framework. Privacy entails autonomy above personal information, confidentiality and anonymity, especially when possible stigmatization is a likely outcome in the research, and sensitive, confidential or potentially damaging issues may surface. In such instances and eventualities, the perspectives of the participants concerning these issues should not be undermined.

All records and personal information indirectly or directly provided by participants during the research ought to be kept confidential without revealing the identity of its source or provider. In this regard, the researcher is obligated to maintain the anonymity, privacy and confidentiality when creating, collecting, obtaining, transferring, preserving or disposing of all personal information and records of the participants that they have, for at least five years after the submission of the research report.

Furthermore, researchers are urged to take reasonable operational and technical precautions for ensuring safe storage of hard copy and digital research records and documents for the continued protection, confidentiality and anonymity of participants. Identifying codes ought to be used to disconnect obvious associations between the data and its source or provider. In addition, the researcher should expend means to ascertain that published or publicly available information is not traceable back to any specific participant.

1.14.1.5 Honesty with professional colleagues

UNISA (2016:17) explains that the need for, and benefit of both local and international collaborative research should be clearly justified with host institutions. Accordingly, research undertaken with human participants ought to be ethically approved prior to its commencement by the collaborating institutions' Ethical Review Committees, who may disclaim this requirement only in certain circumstances. Research may not be undertaken until the informed consent of participants and/ or communities and institutions/ organizations have been properly obtained in order to obviate any perceived exploitation. Moreover, researchers and their institutions should contribute in the protection of the resources and knowledge of indigenous societies and traditional communities, and also respect the sacred and secret aspects of their traditions.

Researchers participating in international collaborative work should understand and accommodate the political, social and economic contexts of their research, which alerts them to the sensitivities of the indigent or underprivileged research participants.

The next section outlines the research structure in terms of the three chapters in this study. The sequence of chapters is most notable for its centralisation in asset forfeiture investigation.

1.14.2 The South African Police Service Code of Ethics in Conducting Research

The South African Police Service (SAPS) is a safety, law-abidance structure in the country's system of governance. As such, the SAPS is enjoined to adhere to the prescribed/ promulgated legislation, regulations and official policy-focused directives. SAPS ([s.a]) alludes to the National Instruction 1/2006 as the primary guide to all research related processes and activities. Therefore, any aspirant researcher should first apply for approval and permission, after which the research could then proceed provided that such application was approved in writing. However, the researcher should sign a compliance

undertaking (of which a copy must be attached to the approval letter) with the conditions pertaining to the approval of the research application. When approval is granted, researchers are then cordially requested to adhere to the organizational protocols and governance, as well as to the sensitivity of the information provided to them treated. Following all these due processes, the researcher was subsequently granted approval to conduct the research with the SAPS investigators. The attached Appendix B and Appendix C bear testimony to both the researcher's request for permission and the SAPS's granting of approval for the study.

1.15 RESEARCH STRUCTURE

This research is structured into three chapters as indicated below:

Chapter 1: General Orientation

The purpose of this chapter is to provide a general orientation to the reader, and includes the problem statement, research aim, objectives and questions, followed by the definition of key terms, the research design and methodology, sampling, data collection and analysis, trustworthiness and ethical issues.

Chapter 2: The Procedural Challenges in Asset Forfeiture Investigation

The chapter deals with the procedural challenges in asset forfeiture investigation. The chapter further explores the possible challenges and suggested ways in which investigators could mitigate such challenges.

Chapter 3: Findings, Recommendations and Conclusions

The chapter discusses the findings and recommendations of the research, which accrue from the interviews and complemented with the reviewed literature. The chapter then concludes the study with some remarks by the researcher based on some crucial aspect of the research.

CHAPTER TWO
LITERATURE REVIEW ON THE PROCEDURAL CHALLENGES
IN ASSET FORFEITURE INVESTIGATION

2.1 INTRODUCTION

Whereas the preceding chapter presented a general overview of the study, the present chapter focuses entirely on analysis of procedural challenges in asset forfeiture investigation. Furthermore, the current chapter is segmented into three focal areas for purposes of thematic coherence and logical integration. Some criminals could take solace and be content with serving a prison term, comforted by the knowledge that their ill-gotten assets will still be there when they are released, or that their families are continuing to live off the proceeds of these criminal assets. It is in this regard that confiscation of assets constitutes a valuable approach to preventing and combating organized crime. Asset confiscation is also equally important in preventing the infiltration of organized crime in the legal and formalised economy.

In other jurisdictions, confiscation is also referred to as forfeiture. Therefore, these two terms are used interchangeably in this study. Confiscating property or assets is intended to permanently deprive the perpetrators of their illicit property by means of administrative processes or order of a court, by transferring ownership of such criminally obtained property or assets to the State. In that regard, the entities or persons claiming ownership of these (im)movable assets at the time they were confiscated or forfeited, automatically lose all rights to such assets (FATF, 2017; McCaw, 2011; Ramaswamy, 2013).

2.2 CRIMINAL INVESTIGATION

Criminal investigation is premised on a methodical process of discovering, collecting, preparing, identifying and presenting evidence for the purpose of answering the *what, who, why, how* and *when* questions of a committed crime (Hess & Orthmann. 2010:6). According to Lee and Pagliaro (2013:1), crime scene investigation (an aspect of criminal investigation) premises on the scientific methods and principles of systematic, methodical, evidence-based and logical reasoning and conclusions. Osterburg and Ward (2014:5) support the latter perspective, and mention further that investigating crime entails appropriate processes for collecting information and evidence with the intention to identify, apprehend and convict the suspected transgressors.

Furthermore, Benson, Horne and Jones (2015:19) describe a criminal investigation as systematic and organized thinking that entails reasoning in the examination and analytic

processes in search of the truth, during which a thorough inquiry is conducted pertaining to all forms of crime or unlawful deeds.

During the interviews, in response to the statement: “Describe criminal investigation”, the participants’ views reflected the following:

- Three participants mentioned that criminal investigation is the collection of documentary and oral evidence taken from witnesses to prove a case beyond reasonable doubt concerning the guilt or otherwise of an accused person.
- Four participants mentioned that criminal investigation is the collection of evidence by searching or interviewing.
- Three participants submitted that criminal investigation is the investigation of a criminal case in order to obtain evidence to be presented in the criminal court during the trial.
- One participant concluded by stating that criminal investigation is an investigation conducted to determine whether there is evidence that links the accused person to the offence or not, in order to search or establish the truth about whether the person suspected has committed an offence or not.

All the participants understood the question and they have answered in a way that shows that they have an understanding of criminal investigation. Answers of all participants are in line with the literature consulted.

Every forensic investigation is reliant on the investigator laboriously identifying, recognizing and individualizing any physical evidence, which enables the Forensic Examiner to provide her/ his expert view concerning the type and material relevance of the presented evidence (Karagiozis & Sgaglio, 2005:6). Forensic investigation addresses case-related questions about the evidence, and then meets the challenge of courtroom presentation (Turner & Crowder, 2017:3).

The term, ‘forensic’ relates to any technology or scientific process used in the context of the legal system for both civil and criminal law (Indeed Editorial Team, 2021:np). Therefore, criminal investigators are to a large extent, dependent on forensic science to enable them to discover the unfolding of the crime scenes (Indeed Editorial Team, 2021:np).

During the interviews, in response to the statement: “Describe forensic investigation”, participants answered thus:

- Two participants mentioned that forensic investigation is the collection of documentary evidence (data) to prove the manner in which a crime has been committed;
- Three participants replied that forensic investigation is the gathering and analysis of all crime-related physical evidence in order to make certain conclusions about a suspect;
- Four participants submitted that forensic investigation is the utilization of science to establish facts or evidence that can be used in court proceedings; and
- Two participants answered that forensic investigation is a financial investigation conducted with the aim of presenting cases such as cooperate, theft and money laundering cases in court.

All the participants answered in a way that showed that they have an understanding of forensic investigation as constructed in the literature that the researcher consulted.

2.3 FORENSIC INVESTIGATION

Every forensic investigation is reliant on the investigator laboriously identifying, recognizing and individualizing any physical evidence, which enables the Forensic Examiner to provide her/ his expert view concerning the type and material relevance of the presented evidence (Karagiozis & Sgaglio, 2005:6). Forensic investigation addresses case-related questions about the evidence, and then meets the challenge of courtroom presentation (Turner & Crowder, 2017:3).

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- Two participants answered that forensic investigation is a financial investigation conducted with the aim of presenting cases such as cooperate, theft and money laundering cases in court.

All the participants answered in a way that showed that they have an understanding of forensic investigation as constructed in the literature that the researcher consulted.

2.4 THE OBJECTIVES OF FORENSIC AND CRIMINAL INVESTIGATION

According to Rubtcova, Pavenkov, and Pavenkov (2017:np), the objectives of criminal investigation relate to the reconstruction of a crime incident and its attendant events in their reconstructed sequence; determining the method by which the crime was committed; disclosing the crime motive; revealing or predicting possible future actions of the transgressor being suspected; and obtaining the real evidence of the crime.

When asked the question: **“What are the objectives of criminal and forensic investigation, in your opinion?”** participants replied as follows:

- Three participants answered that the objectives of criminal and forensic investigation are to ensure that South African citizens live in a crime-free country and ensure that the perpetrators are brought to justice and pay for their wrong doings;
- Three participants replied that the objectives of criminal and forensic investigation are to gather facts which will be used to determine if the facts are founded or unfounded, and also to establish that a crime was indeed committed;
- Two participants reflected that the objectives of criminal and forensic investigation are to establish if a crime has been committed. Secondly, to identify the person who is responsible for committing the crime, arresting him/ her to ensure that he/ she appears in court, and to supply enough evidence to ensure conviction once the person has appeared in court.
- Three participants indicated that the objectives of criminal Investigation are to prove beyond reasonable doubt the guilt or innocence of an accused, and proving the manner in which the crime was committed.

Participants’ answers cohere with the literature consulted and shows that participants have knowledge of the objectives of forensic and criminal investigation.

Table 2. 1: Forensic investigation vs criminal investigation

After thoroughly analysing the meaning of forensic investigation and criminal investigation, from literature and from the twenty-seven participants' points of view, the researcher came up with the following differences between the two concepts:

The differences between forensic and criminal investigation

Forensic investigation	Criminal investigation
It is more in the form of auditing, and figures are used to solve the angles related to specific irregularities.	This is an art, originally, where the pieces of evidence were put together to arrive at an appropriate decision.
Mathematics and science have a maximum influence in forensic investigation.	It focuses mainly both on criminal and civil matters, but, more specifically, criminal activities are the domain.
Gather information and evidence to build a chain of events and evidence that will prove or disprove the dispute.	It does apply modern methods of investigation, but relies mostly on traditional ways of investigation.
To discover the accountable individual by applying forensic analysis.	This is the custodian of state departments in most of the cases.
Give clarity about uncertain matters before the court.	Does not include more sophisticated techniques and methods of enquiry.
Provide the solution to the 'how', 'who', 'why', 'which' and 'what', by applying accurate, analytical, scientific approaches.	Basically, it entails criminal-orientated investigation.

Sources: Gardner (2005:2); Marais and Van Rooyen (1990:17); Bennett and Hess (2004:4-5); Horswell (2004:3-4).

2.5 DEFINING AN ASSET

According to Financial Accounting (2014:np), an asset relates to a resource or property with a monetary or economic value and in the possession of an individual or entity, which can potentially generate a future economic benefit. In addition, May (2016:np) supports this view, and states further that an asset is property, an item or something that is either intrinsically or externally valuable. The above-cited author mentions further that assets could be land, cash, cars, real estate, buildings or homes (May, 2016:np). Furthermore, Jan (2019:np) adds that assets comprise economic resources owned or controlled by a business and could potentially benefit its operations or converted to cash.

During the interviews, in response to the statement: “In your own words, define an asset” participants answered as follows:

- Five participants said an asset is anything of financial value such as cash, movable properties, immovable properties, shares, jewellery, paintings furniture and stock.
- Six participants answered that an asset is anything owned by an individual or a company, which can produce value.

All the participants understood the question and they have answered in a way that shows that they have an understanding of asset. Answers of all participants are in line with the literature consulted.

2.6 ASSET FORFEITURE

Ryder (2013:3) contends that asset confiscation or forfeiture constitutes the most dominant mechanisms to deny criminals of the financial benefit of their illicit activities and material gains. In addition, Misoski (2015:357) submits that the importance of the confiscation can be seen in several closely related principles, one of which that confiscation satisfies the retributive notion that crime does not pay, and that nobody should be permitted to profit from any form of illicit activity. However, Basdeo (2014:1049) is of the opinion that criminal asset forfeiture raises a contentious matter of public interest on the one hand, and constitutional rights on the other. Meanwhile, the Federal Bureau of Investigation (FBI) ([Sa]:np) asserts the powerful nature of asset forfeiture as an instrument or intervention applied by law enforcement agencies to thwart criminals and criminal organisations, thus, depriving them of their illicit gains by seizing the very assets. Equally important, May (2016:np) submits that asset forfeiture involves a legal process in terms of which individuals are detached from asset ownership because they received,

derived or used such an asset illegally, or employed it to advance or perpetuate the interests of a crime. Similarly, Kaniki (2018:1) emphasises that forfeiture of criminally acquired property (commonly known as asset recovery) is an effective means to address organised and serious international and national crimes.

During the interviews, in response to the statement: “In your own words, define asset forfeiture”, participants answered as follows:

- Four participants answered that it relates to forfeiting and confiscating assets that are bought or involved in criminal activities to the State;
- Five participants replied that it is the forfeiture of any asset involved in the commission of an offence and forfeiture of the proceed of crime;
- One participant indicated that it is whereby assets obtained from illegal activities are taken away from the criminals through Chapter 5 and Chapter 6 of POCA to ensure that victims are reimbursed and where there is no victim, money is deposited into Criminal Asset Recovery Account (CARA).
- One participant concluded that it is the confiscation of any tangible object that value can be ascertained of, which has been obtained through illicit gains, after the state applied for an order through the High Court.

All the participants understood the question and they have answered in a way that shows that they have an understanding of asset forfeiture. In this regard, the answers of all participants cohere with the literature consulted.

2.7 CATEGORIES OR TYPES OF ASSETS THAT CAN BE SEIZED OR FORFEITED TO THE STATE

According to Phillippo (2015:2), the assets which can be forfeited to the State are the proceeds and instrumentalities of crime. The author posits further that crime proceeds refer to property accruing from a crime-related activity, while instrumentalities of crime specifically relate to property used in committing a crime (Phillippo, 2015:2). The types of assets which can be forfeited to the State include:

- Cash in bank accounts, savings accounts, money markets, certificates of deposit (cash deposit), and even offshore accounts;
- Personal property such as automobiles, jewellery and art;
- Contents of safety deposit boxes;
- Investments (e.g. mutual funds, stocks, bonds);

- Residential and commercial real estate;
- Insurance policies with cash value;
- Cash and cash equivalents;
- Fixed assets such as buildings, furniture, and office equipment;
- Land;
- Inventory;
- Vehicles, watercraft, aircraft;
- Intellectual property;
- Patents and trademarks (Kissiah, 2021:np).

During the interviews, the researcher requested each participant to explain his/her understanding of the question: “give categories or types of assets that can be seized or forfeited to the state”. Participants responded as follows:

- Four participants responded that it is instrument used to commit crime;
- Two participants answered that it is tainted assets, corporeal and incorporeal assets, movable and immovable assets and cash;
- Two participants replied that it is vehicles, houses and money;
- Two participants said it is land and building, Motor vehicle and money.
- One participant concluded by saying it is tangible assets such as houses and cars and intangible assets such as shares as well as items that have sentimental value such as rights, patents or logos.

All participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of categories or types of assets that can be seized or forfeited to the State.

2.8 THE ACT THAT GUIDES ASSET FORFEITURE INVESTIGATION AND ITS PROCESSES

Kaniki (2018:18) is of the view that the recovery of illegally acquired public assets has not been easy because of the powerful networks of such individuals (criminals). Therefore, recovering such assets necessitates the existence of adequate legal and institutional frameworks. Chapters 5 and 6 of the Prevention of Organised Crime Act/ POCA (No.121 of 1998), stipulates that proceedings on application for a confiscation order or a restraint order are civil proceedings, and are not criminal proceedings.

During the interviews, the researcher requested each participant to explain his/her understanding of the question: “what is the act that guides asset forfeiture investigation and its processes?” Participants responded as follows:

- Ten participants answered by saying it is through Chapters 5 and 6 of the POCA and money laundering is proven in terms of Section 4, 5 and 6 of the POCA which assist to identify hidden assets or affected gifts and to investigate benefit, proceeds and instrumentality.
- One participant replied by saying when you receive the case you investigate and after finalising the investigation you refer the case to Asset Forfeiture Unit (AFU) advocate, you then assist the advocate to draft an affidavit for application of an order, the advocate then present the application to court for chapter 5 or 6 orders, it is therefore Chapters 5 and 6 of Prevention of Organised Crime Act/ POCA (No.121 of 1998), that guides asset forfeiture investigation.

All participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of the act that guides asset forfeiture investigation and its processes.

2.9 THE PROCEDURES TO SEIZE AND FORFEIT ASSETS

Sebola, Tsheola, Phago and Balkaran (2013:146) are of the opinion that in South Africa, the success of a forfeiture order, resides in the burden of proof to be demonstrated by the State, and the probabilities balance that the illicit property was definitely the proceeds of or an instrumentality of crime. In the United States, however, the State automatically seizes the property at the first stage, with the burden of proof residing on the owner to prove the contrary; namely, that the property was not the proceeds of, or an instrumentality of crime.

During the interviews, the researcher requested each participant to explain his/ her understanding of the question: “What are the procedures that you have in place to seize and forfeit assets?” Participants responded as follows:

- Four participants intimated that after the finalisation of an asset investigation, an application for the forfeiture must be made at a High Court before a judge by presenting all evidence gathered during the investigation. An order must then be issued and signed by a Judge before any property can be forfeited. Firstly, there must be a

Preservation or Confiscation Order which is issued by the High Court and served to the owner of the property who will be given time to respond to the order before final forfeiture is issued.

- Four participants answered by saying the procedure consist of applying Chapter 5 of POCA which consists of three court orders Restraint Order which is Section 26, Confiscation Order which is Section 18 and Realisation Order which is Section 30 of POCA. The asset forfeiture investigator will further apply Chapter 6 of POCA which is Preservation Order which is Section 38 and Forfeiture Order which is Section 48 of POCA. These orders are granted by High Court through exparte applications (without the knowledge of a person).
- One participant replied by saying in terms of Chapter 6 of the POCA, in civil forfeiture any instrument that was used in the commission of the crime can and will forfeited to the state. The participant further said in terms of Chapter 5 of the POCA, if the state believes they have a strong case against the subject a Restraint order can be applied for and served to the subjects where an order will force him not to sell any of his property until the case is finalised and finally Confiscation order whereby an enquiry can be opened in terms of section 18 whereby after the conviction a confiscation order can be enforced.
- One participant indicated that assets can be seized once a court order either preservation or restraint order has been obtained. He further said the investigator will go with the AFU advocate to the scene of crime in order for the goods to be seized, then the goods are preserved until the final order which is forfeiture order or confiscation is obtained. If it's a forfeit of a vehicle then we arrange for the vehicle to be sold and the money is deposited to CARA and if there is a victim, the money must be paid to the victim.
- One participant alluded that in terms of Chapter 5 of Prevention of Organised Crime Act (No.121 of 1998), there must be a criminal case being investigated, a guilty verdict is necessary to be successful in the criminal case, to prove beyond reasonable doubt, whereas in terms of Chapter 6 of the same Act a guilty verdict not necessary in order for the forfeiture to take place.

All participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in a way that

shows that they have an understanding of the procedures that are in place to seize and forfeit assets.

2.9.1 CRIMINAL FORFEITURE

According to the FBI ([Sa]:np), criminal forfeiture serves as part of a criminal prosecution of a defendant. In addition, Ryder (2013:13) argues that the use of criminal forfeiture is dependent on convicting the defendant, and is simultaneously imposed as a custodial sentence. In that regard, criminal forfeiture constitutes a core aspect of a criminal case and is imposed on the defendant by a Court on conviction (Ryder, 2013:13). Furthermore, Phillip (2015:3) describes criminal forfeiture as an order against an individual who is convicted of a criminal offence and directs a convict to surrender to the State either the proceeds of a particular crime or the instrumentalities for the commission of the crime.

2.9.2 CIVIL FORFEITURE

Civil forfeiture relates to a judicial process not requiring criminal conviction, and is a legal tool permitting law enforcement to seize property involved in the commission of a crime (FBI, [Sa]:np). Ryder (2013:16) adds to this by describing civil forfeiture as an un-convictable regime used in the event of the government regarding a matter as civil, rather than criminal. Furthermore, civil forfeiture proceedings require a lower burden of proof than criminal proceedings, often on the probabilities balance (Ryder, 2013:17).

Similarly, Phillip (2015:4) indicates that civil forfeiture pertains to a permanent denial of illicit property through an order made by a civil court or any other competent authority, with no need for the offender's conviction. In addition, King (2016:2) emphasises that civil forfeiture permits the seizure of property by, and forfeited to, the State even without criminal conviction against the person who possesses the property.

Table 2. 2: Criminal Forfeiture vs Civil Forfeiture in terms of the Prevention of Organised Crime Act (No. 121 of 1998)

CRIMINAL FORFEITURE (CHAPTER 5 OF POCA)	CIVIL FORFEITURE (CHAPTER 6 OF POCA)
Conviction based forfeiture.	Non conviction based forfeiture.
Follows a criminal conviction of the property owner.	Takes place without the need for a conviction of the person holding an interest in the property concerned.
After the finding of guilt, the court considers which of the properties identified in the indictments is subject to forfeiture according to the rule of criminal procedure.	Proceedings are against the property and not the person concerned.
It has to be shown that the accused benefited from his or her offence.	Instrumentalities and proceeds of crime.
Court considers the benefit that the convicted person derived from the crime.	The location of the property determines the court jurisdiction.
Court makes a value based forfeiture order under POCA according to the rule of civil procedure.	Enforcement of a judgement is upon a property and does not follow a person.

(Source: Researcher's own compilation)

2.10 THE MANDATE OF THE SECTION: ASSET FORFEITURE INVESTIGATION

According to the National Prosecuting Authority (2020:11), the asset forfeiture unit's mandate is to take the profit out of crime by using Chapters 5 and 6 of the Prevention of Organised Crime Act/ POCA (No. 121 of 1998) and to contribute in making South Africa a safer place. During the interviews, in response to the request: "In your own words, what is the mandate of the Section: Asset Forfeiture Investigation?" participants answered as follows:

- Three participants answered that is to ensure that proceeds of crime are not enjoyed by the criminals to shows that crime does not pay and to ensure that criminals do not see any reason to commit crime again.

- Two participants replied that is to investigate cases with asset forfeiture potential, support criminal investigators in identifying the money laundering charges in a criminal matter, conduct life style analysis on the subjects and to assist the AFU Advocate by compiling comprehensive affidavit on financial investigations conducted in identifying proceeds of crime to be forfeited to the State or to the victim.
- Four participants said it is investigation, tracing of assets and recovering of hidden asset through specialised techniques.
- Two participants indicated that it is to investigate the proceeds of crime or the instrumentalities linked to the crime which will be forfeited to the state or paid back to the victim.

The answers of all participants are unanimous, and are in tandem with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of the mandate of the Section: Asset Forfeiture Investigation.

2.11 ASSET FORFEITURE INVESTIGATION

Sebola *et al.* (2013:142) argue that the role of the asset forfeiture unit is to confiscate or seize instrumentalities and proceeds of crime in order to use the money for criminal justice projects. In addition, this was supported by Directorate for Priority Crime Investigation (2020:3) who argued that asset forfeiture investigation is an investigative methodology with a definite outcome and a precise impact. It is the application of normal investigative techniques (methods) with a specific focus on property that is subject to asset forfeiture.

During the interviews, the researcher requested each participant to explain his/her understanding of the question: "In your own words, describe asset forfeiture investigation". Participants responded as follows:

- Five participants answered that it is the process where you receive a referral in terms of the copies of the criminal case docket from the criminal investigator and you evaluate the docket to check if it has any Asset Forfeiture potential, profile the targets, find and identify the asset, subpoena the banks , analyse the bank statements and follow the money identify who deposited the money where was the money deposited how was money was utilised which asset where bought who got gifts from the proceeds, draft request to other stake holders.

- Three participants replied that it is to conduct investigation on the instrument used to commit the offence and investigate its originality and how was it obtained and to investigate and identify the proceeds of crime.
- One participant intimated that it is profiling of subjects to identify benefits of crime by tracing all assets purchased or acquired through criminal gain or activities and it ensures that ownership of all those assets is thoroughly investigated to link it to the crime.
- One participant implied that it is addressing unlawful activities through conducting asset forfeiture investigation;
- One participant suggested that it is the investigation of a civil case where it is alleged that a subject has obtained assets through the means of crime, dealing in drugs, fraud, etc.

All participants showed through their answers that they have an understanding of asset forfeiture investigation and their answers are in line with the literature consulted.

2.12 THE OBJECTIVES OF ASSET FORFEITURE INVESTIGATION

According to Sebola *et al.* (2013:152), the main objectives of asset forfeiture investigation include removing profit out of crime and removing property which is an instrumentality of crime. In other words, the main aim of asset forfeiture investigation is to ensure that crime does not pay so that people who benefit from crime will not have a reason to commit crime.

The property that was used to commit crime will also be forfeited to the state so that people will not let their property be used as proceeds of crime (Sebola *et al.*, 2013:152-153). In addition, the National Prosecuting Authority (NPA)(2014:np) and National Prosecuting Authority (NPA)(2020:12) shows that the Asset Forfeiture Unit has set itself a number of key strategic objectives, which are:

- to advance the law by taking test cases to court and creating the legal precedents that are necessary for the effective use of the law;
- to build the required capacity in ensuring that asset forfeiture is widely used for making a decisive impact in the fight against crime;
- to impact on selected categories of priority crimes;
- to establish a national presence; and
- to establish strategic relationships with key partners.

During the interviews, the researcher requested each participant to explain his/ her understanding of the question: “What are the objectives of asset forfeiture investigation?”

Participants responded as follows:

- Three participants answered that is to assist the state to recover any assets obtained through criminal activities and to identify assets that are hidden in order to conceal its originality.
- Two participants mentioned it is to take proceeds out of the hands of the criminals including those that ought to have known that those assets are derived from criminal activities.
- Two participants suggested that it is to ensure that criminals do not enrich themselves and do not expand illegal activities.
- One participant averred that it is to identify proceeds of crime.
- One participant answered that it is to remove the property which is an instrument of an offence or the proceeds of crime as well as the benefit of crime, taking the profit out of crime.
- Two participants replied that it is addressing unlawful activities through conducting asset forfeiture investigation.

The answers of participants are unanimous, and aligned to the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of the objectives of asset forfeiture investigation.

2.13 HIDDEN OR CONCEALED ASSETS

Sebola *et al.* (2013:146) assert that illicit assets could be hidden either at home or offshore. Moreover, the cross-border component of public assets stolen from developing countries are usually concealed or laundered in banks in the developed countries' financial centres and markets. Money laundering aims at lowering the chances of detecting illicit funds, as well as breaking the direct connections between the kleptocrats or politically exposed persons and the stolen assets with the disguise of ownership. It is a complex activity ranging from simple wire transactions to sophisticated strategies that utilise shell banks, undisclosed trusts and hedge funds often instituted by advisers from developed economies (Sebola *et al.*, 2013:147).

In addition, Levi (2015:11) submits that laundering or concealment is achievable by transferring value by whichever means, including mis-pricing and mis-description of

goods being exported. Furthermore, Kaniki (2018:2) emphasises that criminals often conceal their ill-gained profits by channelling the illegal assets into the local financial system or in foreign jurisdictions. Kaniki (2018:2) further states that such concealment has enabled voluminous cross-border flows of capital globally, thereby endangering the socio-economic recovery of citizens, while posing serious threats to the stability and security of many developing and transition countries.

Similarly, Kranacher and Riley (2020:302) corroborate further that assets could be hidden through methods such as concealed bank accounts whose detection is rendered difficult. Also, real estate and business ownership are hidden by transferring these assets to other parties but retaining some form of control of the very concealed assets (Kranacher & Riley, 2020:302).

During the interviews, the researcher requested each participant to explain his/ her understanding of the question: “In your words, what are hidden or concealed assets?” The participants responded as follows:

- Four participants answered that it is assets that are registered in the family members, girl friends or boyfriends or friends’ names it includes assets that are purchased with proceeds of crime abroad or registered in trusts and businesses or buying of Shares in the name of companies.
- Four participants replied that hidden or concealed assets are assets which are registered in the names of another person other than the owner it can be the child or relative of the legal owner of the property.
- Two participants mentioned it is assets which has been transferred in another person’s name but still used by suspect.
- One participant reported that it is assets which cannot be identified without using high level of investigation method to identify them.

Answers of all participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of hidden or concealed assets.

2.14 DIFFERENT WAYS USED BY INVESTIGATORS TO TRACE HIDDEN OR CONCEALED ASSETS

According to Sebola *et al.* (2013:147-148), evidence is gathered and assets are traced by law enforcement officers under the supervision of, or in close cooperation with

prosecutors, investigating magistrates, private investigators or other interested civil actions. In addition to obtaining publicly available information and intelligence from law enforcement agencies or their databases, law enforcement could employ special investigative techniques such as, electronic surveillance, search and seizure orders, production orders, or account monitoring orders, physical surveillance, information from public sources and witness interviews (Sebola *et al.*, 2013:148).

In addition, National Prosecuting Authority (2020:306) shows that the process of tracing and recovering assets comprises the following steps; (i) investigation into allegations or suspicions, (ii) gathering evidence to prove or disprove the allegations or suspicions, (iii) tracing the proceeds of unlawful activities, and (iv) recovery and forfeiture of such proceeds or assets. During the interviews, in response to the question: “What are the different ways used by investigators to trace hidden or concealed assets?” participants answered as follows:

- Four participants answered and said by checking with Home Affairs by conducting family trees check if there are no family members who might have been used to register some of the properties, by checking trash in the rubbish bin to check any documents or receipts of the payments done, by conducting search and seizure operations for seizure of relevant documents in the operations, and do bank Statements analysis.
- Three participants replied that it can be through investigation of family trees and other people close to the subjects such as girlfriend or boyfriend, FIC also assist in tracing the property and deeds information.
- Three participants averred that in the case of a vehicle, investigators visit the dealership to identify who paid the vehicle and how, obtain the statement and the documents for the vehicle, draft and serve Section 205 subpoena of CPA to the banks in respect of the assets in question. If registered in a trust you go to Master of the High Court and get the details of the trustees and what properties registered in the trustees as well as if assets are registered in the company names. Identify the directors of the company.
- One participant concluded by saying by getting information from CI, Social Networks, from friends, relatives or business partners.

Answers of all participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in

a way that shows that they have an understanding of the different ways used by investigators to trace hidden or concealed assets.

2.15 THE RESPONSIBILITIES OF AN ASSET FORFEITURE INVESTIGATOR DURING ASSET FORFEITURE INVESTIGATION

National Prosecuting Authority (2020:11) asserts that financial investigators are responsible for conducting financial related investigations such as asset tracing, and analysis of cash flows. In addition, Kissiah (2021:np) shows that the responsibilities of an asset forfeiture investigator include the identification of the tangible and intangible assets owned by an individual or a business.

However, Directorate for Priority Crime Investigative (2020:3) postulates that the asset forfeiture investigator is responsible for the tracing and locating of property or assets that can be subjected to asset forfeiture, thereby removing the benefit from criminal activities.

During the interviews, in response to the statement: “In your own words, what are the responsibilities of an asset forfeiture investigator during asset forfeiture investigation?” participants answered as follows:

- Four participants replied that it is to trace assets linked to suspect, acting as a link between the AFU Advocate and the criminal investigator, attend crime scenes during search and seizures with criminal investigator and monitor criminal proceedings.
- Three participants answered that it is to profile and investigate all assets that could be the benefit, instrumentality and proceeds of crime and also to conduct financial analysis to prove money laundering. When all is done investigator submit the report in terms of his or her findings and assist during the takedown operation.
- Three participants showed that it is to conduct Basic asset check of the property involved in the commission of an offence.
- One participant suggested that it is tracing assets, links, establish how assets are concealed, obtain affidavits, peruse and analyse bank statements, use of intelligence, SARS for tax compliance.

Answers of all participants are in agreement with each other and align with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of the responsibilities of an asset forfeiture investigator during asset forfeiture investigation.

2.16 SOURCES OF INFORMATION, TYPE OF INFORMATION THAT YOU CAN GET FROM THE SOURCE AND THE WAY IT WILL ASSIST YOU DURING ASSET INVESTIGATION

According to the National Prosecuting Authority (2020:305-306) and Leff (2013:9), information that is useful to the financial investigator is sourced from the following sources:

- Bail affidavits: details of assets may be disclosed here as well as family members who may also be investigated as possibly holding assets;
- Informers: to trace assets that may not be on a person's name but concealed on other persons' names who are unknown to investigators;
- Credit checks;
- Gambling records;
- Company searches;
- Deeds Office in relation to immovable property;
- Master of Deceased Estates in respect of tracing trusts;
- Banks: bank account records/safety deposit boxes/accounts held;
- Dumpster Diving or garbage searches: documents that are thrown away may be valuable sources of information;
- South African Reserve Bank: to check cross border movements of funds, to obtain an indication of possible interests outside of the country, or to verify versions that relate to cash seizures concerning funds that were allegedly brought into the country;
- SAPS: For criminal records and case dockets: additional case dockets assist in proving sufficiently related criminal activities and a lifestyle audit, may reveal further assets, and be used to compare allegations of employment/sources of income;
- Department of Home Affairs (DHA): to check the marital status of persons of interest which may have an impact on the extent of property that can be seized, as well as to identify family members who may be investigated as holding property on behalf of a defendant or who received affected gifts such as children; border control movement records may also be obtained that help trace persons for purposes of service or to identify any suspicious travel activities such as short "turn-around times" that may suggest that a person may be a drug or cash mule;
- Department of Transport (DoT): to check for vehicles held by a person of interest;

- Financial Intelligence Centre (FIC): obtaining intelligence regarding details of accounts and Suspicious Transactions Reports (STR), or to secure evidence of such through an FIC warrant;
- SARS including Customs: to ascertain what income was declared (using the provision of section 71 of POCA) and compare that to assets held in a lifestyle analysis for the purposes of applying a presumption, or to challenge versions given in respect of income and the source of funds used to purchase assets;
- South African Insurance Crime Bureau (SAICB) for evidence of any insurance policies;
- South African Banking Risk Information Centre (SABRIC): for intelligence regarding accounts held;
- Cadem Asset Recovery Inter-Agency Network (CARIN) and Asset Recovery Inter-Agency network of Southern Africa (ARINSA) networks for intelligence regarding assets outside of South Africa; and
- Police-to-police (Multilateral and Bilateral Agreements) requests for intelligence regarding assets outside of South Africa or verifying versions.

During the interviews, in response to the question: “Mention the sources of information (evidence), what type of information (evidence) that you can get from the source and how will it assist you during asset investigation?” To that effect, participants answered as follows:

- Eight participants answered that Company and Intellectual Property Commission (CIPC) gives information of the directors and accountants of the company it helps to prove ownership of the company and to identify the owners of assets in the case where assets are registered in the company. WinDeed gives information about the owners of immovable properties, conveyancers who did the transfer, account details and amounts for payment and it helps to prove if there is equity in the property, if it is still owed to the bank. Electronic National Administration Traffic Information System (eNatis) give us ownership and title holders of the vehicle, airplane, boats and trailers and it assists to secure a successful confiscation or asset forfeiture orders and dispute the innocent owner defence. Google search assist with the current value of the assets and it will assist us with having a value in our applications. DHA will provide family tree of the targets which will help to trace hidden assets.
- Three participants replied that eNatis helps to identify movable assets. DHA helps to trace a family tree. SAICB helps to obtain insurance information. Deeds helps with

information on immovable assets. SABRIC helps with banking information i.e. bank accounts. Data Search helps with consumer credit information.

Answers of all participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of the sources of information (evidence), what type of information (evidence) that you can get from the source and how will it assist you during asset investigation.

2.17 INVESTIGATIVE TECHNIQUES DURING ASSET FORFEITURE INVESTIGATION

Leff (2013:9) outlines the following list of investigative techniques for effective asset forfeiture cases:

- Bank Secrecy Act (BSA) reports: currency transaction reports, suspicious activity reports, foreign bank account report and similar documents required for filing with the financial crimes enforcement network by financial institutions, including casinos and some merchants, and can help investigators to link laundered or concealed assets;
- Egmont: this network consists of the Financial Intelligence Units (FIU) of more than 130 countries, and permits law enforcement to request data in support of a significant Money Laundering (ML) order.
- Mutual Legal Assistance (MLA) Treaties: a formal request for records or enforcement action by a foreign jurisdiction is made through the department's office of international affairs.
- Mail covers: a request through the postal inspection service will reveal the information on the outside of envelopes sent to the requested address. This information will often identify financial institutions with whom the subjects of the investigation are dealing, as well as shell corporations, virtual offices, and phone companies.
- Tax returns: through a court order, the investigator can examine relevant tax returns, which will often yield the location of accounts as well as front companies and shell corporations through which the subject is laundering money.

In addition, the National Prosecuting Authority (2020:303) shows that normal investigation techniques such as observation, surveillance, deduction/analysis, interview and evidence collection all apply to a financial investigation in the asset forfeiture environment.

During the interviews, in response to the question: “What investigative techniques that you use during asset forfeiture investigation, in your opinion?” participants answered as follows:

- Six participants answered that the investigative techniques includes the use of MLA in terms of tracing assets outside the country, FIC to give information on banking information including STR and Cash Transaction Reports (CTR), SARS Section 71 to check if the subject has declared the income, Profiling of the targets to identify assets owned, enquiries from banks for bank statements and balances in the accounts, analysis of bank statements for red flags, surveillance of the targets by CI and Interpol through Police to Police.
- Two participants mentioned that it includes utilising of systems and other agency that can provide information regarding the property, e.g. banks, data search, CIPC, FIC, Deeds and Municipality offices.
- One participant indicated that SARS can be used to check how much money is declared by the subject, Interpol to assist through Police to Police to check if the suspect has assets in another country and DHA to check the movement control of the subject.
- Two participants replied that Deeds office is used to see how property was purchase, trace conveyance attorneys, visit address of subject, see alterations obtain photos of property, bank statements to see places he is frequenting, surveillance to identify vehicles he is using and identify if he is gambler or not.

All participant answers are in unanimity, and congruent with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of investigative techniques that is used during asset forfeiture investigation.

2.18 REQUIRED RESOURCES TO EFFICIENTLY CONDUCT ASSET FORFEITURE INVESTIGATION

During the interviews, in response to the question: “What are the required resources to efficiently conduct asset forfeiture investigation, please motivate your answer?” participants answered as follows:

- Three participants replied and said Internet to access to all databases used to profile the targets, Software licenses e.g. Able to Extract: to convert bank statements for analysis and help to convert bank statement for analysis and physical resources like vehicles, laptops, 3G or Wi-Fi modem.
- Six participants mentioned that is vehicles to visit properties, to collect bank statements, to visit SAPS13 Stores or vehicle Safeguarding Services (vehicle pound) to take photos of the vehicle. Access to databases to be able to financial profile your subjects and access to internet for Google search and to have access to social media platforms.
- One participant indicated that it is databases such as WinDeed, eNatis, TransUnion, DHA, CIPC in order to identify the suspect, to check what assets the suspects owned and how the subjects’ financial profile is.
- One participant mentioned search engines and various stake holders such as the Department of Home Affairs, municipalities, traffic department, media and social media.

The responses of all participants are in agreement with each other. All participants understood the question and they have answered in a way that shows that they have an understanding of the required resources to efficiently conduct asset forfeiture investigation.

2.19 THE PROCEEDS OF CRIME

Ryder (2013:2) asserts that confiscating crime proceeds has become a core aspect of the battling drug cartels, white collar criminals, terrorists, and organised criminals. This is supported by Levi (2015:2), who contends that attacking the proceeds of crime reduces both the means and the motivation to finance future crimes. In addition, Diwa (2016:1) argues that the management of the proceeds of crime encompasses their preservation and confiscation.

Furthermore, the Commonwealth Secretariat (2016:10) alludes that crime proceeds relates to any funds or property accrued indirectly or directly from, or obtained, as a result of the commission of a criminal offence. However, Kostyuchenko, Starinskyi, Tiutiunyk and Kobushko (2018:41) emphasise that the availability of an effective tool for estimating the volume of hiding proceeds of crime creates favourable conditions for increasing the investment attractiveness of the country and increasing its financial potential.

Similarly, Dyer, Green and Irving (2020: np) stress that the Proceeds of Crime Act is a particularly complex legislative regime and it seeks to confiscate assets which are obtained during the commission of a criminal offense. From the above literature, it is clear that all the above authors are in agreement that the proceeds of crime mean any property that is derived from crime. It is also clear that the authors acknowledge that policing the proceeds of crime is not an easy task. During the interviews, in response to the request: "In your own words, define proceeds of crime" participants answered as follows:

- Three participants answered and said anything that is derived from any criminal activities in a form of movable or immovable properties and cash.
- Four participants alluded that it is the property that derived from unlawful activities.
- Two participants replied and said it is assets which are directly linked or purchased with the funds from the crime e.g. vehicle bought with money from criminal activities.
- One participant indicated that it is property obtained through criminal activities e.g. house bought with a money obtained from heist.
- One participant concluded that it is any tangible object that value can be ascertained of, which has been obtained through illicit gains.

Answers of all participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of the proceeds of crime.

2.20 INSTRUMENTALITIES OF CRIME

According to Phillipou (2015:95), international legal interventions allow for the forfeiture of instrumentalities of crime, which refers to property used, as well as property intended to be used in committing a crime (Phillipou, 2015:95). In addition, Misoski (2015:361) supports this by stating that the instrumentalities of crime mean movable or immovable items, which are fully or partially used or intended to be used or resulted from committing a crime.

Section 1 of the Prevention of Organised Crime Act/ POCA (No.121 of 1998), stipulates that instrumentality of an offence relates to any property which is involved in the committed or suspected commission of an offence at any time before or after the commencement of this Act, whether committed within the Republic or elsewhere. During the interviews, in response to the statement: “In your own words, define instrumentalities of crime” participants answered as follows:

- Four participants answered that it is property used during the commission of an offence, e.g. vehicle used to carry stolen goods.
- Three participants replied that it is anything that is used in a commission of a crime be it a Movable or immovable and that include cash.
- Two participants alluded it is property used to conceal a crime and assisting in the commission of an offence.
- One participant mentioned it is any property that is movable or immovable that has been used in the commission of an offence.
- One participant submitted that it is the transport found in possession of transporting or carried illegal property.

Answers of all participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of the instrumentalities of crime.

2.21 DIFFERENCES BETWEEN PROCEEDS OF CRIME AND INSTRUMENTALITIES OF CRIME

Crime proceeds relate to property accrued from criminal activity, while crime instrumentalities refers to property used for committing crime (Phillipo, 2015:2). In addition, the difference between these two legal nuances are shown in Section 1 of the Prevention of Organised Crime Act/ POCA (No.121 of 1998), which stipulates that the proceeds of unlawful activities means any service or property, benefit, advantage or reward derived, received or retained, directly or indirectly, in the Republic of South Africa or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived, and instrumentality of an offence means any property which is concerned in the commission or suspected commission of an offence

at any time before or after the commencement of this Act, whether committed within the Republic or elsewhere.

During the interviews, in response to the statement: “In your own words, explain the differences between proceeds of crime and instrumentalities of crime”, participants answered as follows:

- Five participants intimated that the proceeds of the crime are properties, such as money, shares and goods that have been obtained through criminal conduct and the Instrumentality means any property used or intended to be used in the commission of any criminal offence.
- Four participants alluded that the proceeds of crime are those assets purchased directly with the stolen money whereas instrumentality is the property that was used in the commission of an offence immaterial of how it was purchased.
- One participant replied that the proceeds are money/ assets benefitted from the commission of offence and Instrumentality is a property or vehicle used in the commission of crime.
- One participant concluded that proceeds of crime are benefits from crime and instrumentalities are properties used to commit crime.

Answers of all participants are in agreement with each other and are in line with the literature consulted. All participants understood the question and they have answered in a way that shows that they have an understanding of the differences between proceeds of crime and instrumentalities of crime.

2.22 CHALLENGES DURING ASSET FORFEITURE INVESTIGATION AND HOW THEY AFFECT ASSET FORFEITURE INVESTIGATION

During the interviews, in response to the question: “What are the different challenges experienced during asset forfeiture investigation and how do they affect your asset forfeiture investigation?” participants answered as follows:

- Five participants replied that the challenges include access to Database to profile our subjects, not being in the same building with AFU Advocate for consultations and no resources to go to SAPS pounds to check sized assets.
- Four participants answered that it is the lack of cooperation by the criminal investigators taking long time to provide information regarding the subject.

- One participant replied that the challenges include the person owning vehicles but living in a block of flats, no database that will assist you to obtain a source document and to rely on certain institution that must serve other clients and this delay the investigation.
- One participant concluded by saying search engines, manpower, experienced/specialised investigators and it takes longer to obtain orders.

The answers of all participants are in agreement with each other. All participants understood the question and answered in a way that shows understanding of different challenges experienced during asset forfeiture investigation and how do they affect the asset forfeiture investigation.

2.23 SUMMARY

Prosecuting organized crime cases has progressed significantly in recent years. Significant numbers of noteworthy convictions have resulted from the successful application of the prosecutorial instruments described in this Module. Interventions such as law enforcement cooperation, punishment, mitigating, as well as witness immunity and protection, have registered remarkable successes in the prosecution of both organized criminal networks and their affiliates. The proper use and implementation of these prosecutorial methods will ensure the success of future efforts to control and subdue organized crime.

The process of conducting asset forfeiture investigation has been articulated as focusing on collecting, collating and analysing available data and information for the purpose of aiding AFU advocates with potent asset forfeiture tools for taking away the profit of crime, the criminals that crime does not pay, by removing the benefit from crime and by removing the instrumentalities and proceeds of crime. Chapter 5 and Chapter 6 of Prevention of Organised Crime Act/ POCA (No.121 of 1998), addresses the current study results and subsequent recommendations accruing from these findings.

CHAPTER THREE

FINDINGS AND RECOMMENDATIONS

3.1 INTRODUCTION

This chapter concludes the rest of the study by focusing principally on the findings derived from the researcher's interview-based interactions with the sampled participants (Anderson & Roos, 2012:11). Additionally, the researcher's own recommendations are provided in this chapter, which are indicative of her own conclusions derived from the self-same findings (Hammond & Wellington, 2013:89).

The researcher undertook this study in order to enhance knowledge on the challenges in asset forfeiture investigation. In that regard, the aim of this research was to effectively analyse the procedural challenges experienced by the investigators during tracing of assets and collection of evidence during asset forfeiture investigation, so as to be able to assist the investigators to reach a desired outcome. One research question was developed as the fundamental framework to achieve the aim of the research as listed below:

- What are the procedural challenges in asset forfeiture investigation?

Based on the above-mentioned question, this chapter focuses on the findings accruing from the interviews with the participants. Necessarily, these findings relate to the critical research units of analysis, namely, the research problem, the aim of the study as well as the attendant research question (Hammond & Wellington, 2013:89). It is worth noting that these empirical findings were complemented with a protracted literature review, document-based sources; as well as the researcher's personal and professional experiences linked to the research topic.

3.2 FINDINGS

In addressing the research question pertinent to the research topic: "Analysis of procedural challenges in asset forfeiture investigation", and as mentioned above, the findings in this study are reflective of the collective strategies of data gathered from international and local South African literature, credible document-based sources, and empirically generated evidence from the interviews. All the findings were derived from the data obtained from the literature study and the one-on-one interviews held with participants.

3.2.1 Findings Regarding Research Question: What are The Procedural Challenges in Asset Forfeiture Investigation?

3.2.1.1 Criminal investigation

- The literature consulted reveals that criminal investigation pertains to a systematic and logical reasoning, examination and analysis of truth-seeking process, in terms of which inquiries and thorough analyses are conducted in relation to all crime typologies or unlawful acts (Benson, *et al.*, 2015:19).
- All participants had perspectives which demonstrated their reasonable understanding of criminal investigation, and their answers were in line with the literature consulted, although their answers were not exactly the same. Six participants indicated that criminal investigation consists of the collection of evidence. Three participants showed that criminal investigation is conducted to prove a case beyond reasonable doubt that the accused is guilty of an offence. Three participants showed criminal investigation is conducted in order to get evidence to be presented the criminal court during the trial.

3.2.1.2 Forensic investigation

- The literature consulted reveals that forensic investigation entails the laborious recognition, identification and individualization of physical evidence, to enable the Forensic Examiner's expert opinion concerning the type and appropriateness of the evidence at hand (Karagiozis & Sgaglio, 2005:6). All participants from all samples generally demonstrated that they had a certain amount of knowledge about forensic investigation, although their answers were not completely in line with the literature consulted. Four participants submitted that forensic investigation is the utilization of science to establish facts pertinent to evidence that is usable in court proceedings.

3.2.1.3 The objectives of forensic and criminal investigation

- The reviewed literature reveals that the objectives of criminal investigation are premised on the reconstruction of the crime incident; determination the methods used and events in their sequence; determining the motive; predicting possible future actions of the suspected transgressor; and finding the real evidence of the crime (Rubtcova, *et al.*, 2017:np).
- Answers from all the participants were not exactly the same, but demonstrated that the participants had a general understanding of the objectives of forensic and criminal investigation. Four participants answered that the objectives of criminal and forensic

investigation are to ensure that South African citizens live in a free crime country and ensure that the perpetrators are brought to justice and pay for their wrong doings.

3.2.1.4 *Defining an asset*

- The literature consulted reveals that an asset is a resource or property that has some pecuniary or economic value to the individual or entity, which is capable of raising some future economic benefit (Financial Accounting, 2014:np).
- Answers from all participants demonstrated that they all generally understood the definition of an asset and their answers concurred with the consulted literature.

3.2.1.5 *Asset forfeiture*

- The literature consulted reveals that asset forfeiture entails a legal process in terms of which the ownership of an asset is detached from individuals because they used, received or derived it from illicit activity, or employed it to facilitate a crime (May, 2016:np).
- All participants answered in a manner that demonstrated that they had a general understanding of asset forfeiture. Four participants answered that it is to forfeit and confiscate assets that are bought or involved in criminal activities to the state, Five participants replied that it is the forfeiture of any asset involved in the commission of an offence and forfeiture of proceed of crime, One participant indicated that it is whereby assets obtained from illegal activities are taken away from the criminals through Chapter 5 & 6 of POCA to ensure that victims are reimbursed and where there is no victim, money is deposited into CARA account and One participant concluded that it is the confiscation of any tangible object that value can be ascertained of, which has been obtained through illicit gains, after the state applied for an order through the High Court.

3.2.1.6 *Categories or types of assets that can be seized or forfeited to the state*

- The literature consulted reveals that the assets which can be forfeited to the state are the proceeds and the instrumentalities of crime (Phillipo, 2015:2).
- Answers from all participants showed that generally, they were familiar with the categories or types of assets that could be seized or forfeited to the State and their answers agreed with the literature consulted.

3.2.1.7 *The Act that guides asset forfeiture investigation and its processes*

- The literature consulted reveals that Chapters 5 and 6 of the POCA stipulates that proceedings on application for a confiscation order or a restraint order are civil proceedings, and are not criminal proceedings. This shows that Chapter 5 and 6 of the POCA is the Act that guides asset forfeiture investigation and its processes.
- Answers of all the participants demonstrated their understanding of the act that guides asset forfeiture investigation and its processes, and their answers generally corroborated the literature consulted. Ten participants showed that it is through Chapter 5 and 6 of the POCA and money laundering is proven in terms of Section 4, 5 and 6 of the POCA which assist to identify hidden assets or affected gifts and to investigate benefit, proceeds and instrumentality, which is in much agreement with one participant who indicated that it is Chapter 5 and 6 of POCA that guides asset forfeiture investigation.

3.2.1.8 *The procedures to seize and forfeit assets*

- The literature consulted revealed that in South Africa, the success of a forfeiture order rest on the burden of proof by the State to demonstrate, on a probabilities balance, that the property is in fact, the proceeds of or an instrumentality of crime (Sebola, *et al.*, 2013:146).
- Answers from all participants showed that generally they were familiar with the procedures to seize and forfeit assets and their answers agreed with the literature consulted.

3.2.1.9 *The mandate of the Section: Asset Forfeiture Investigation*

- The literature consulted revealed that the asset forfeiture unit is mandated to take the profit out of crime by using chapter 5 and 6 of the POCA and to contribute in making South Africa a safer place (National Prosecuting Authority, 2020:11).
- Answers from all the participants demonstrated that they all understood the mandate of the section: asset forfeiture investigation and although their answers were not exactly the same, they demonstrated that they all have an understanding on the subject.

3.2.1.10 *Asset forfeiture investigation*

- The literature consulted shows that asset forfeiture investigation is an investigative methodology with a definite outcome and a precise impact. It also shows that asset

forfeiture investigation is the application of normal investigative techniques (methods) with a specific focus on property that is subject to asset forfeiture (Directorate for Priority Crime Investigation, 2020:3).

- Five participants answered that it is the process where you receive a referral in terms of the copies of the criminal case docket from the criminal investigator and you evaluate the docket to check if it has any asset forfeiture potential, profile the targets, find and identify the asset, subpoena the banks, analyse the bank statements and follow the money identify who deposited the money where was the money deposited how was money was utilised which asset where bought who got gifts from the proceeds, draft request to other stake holders, three participants replied that it is to conduct investigation on the instrument used to commit the offence and investigate its originality and how was it obtained and to investigate and identify the proceeds of crime, one participant said it is profiling of subjects to identify benefits of crime by tracing all assets purchased or acquired through criminal gain or activities and it ensures that ownership of all those assets is thoroughly investigated to link it to the crime, one participant implied that it is addressing unlawful activities through conducting asset forfeiture investigation, and one participant concluded that it is the investigation of a civil case where it is alleged that a subject has obtained assets through the means of crime, dealing in drugs, fraud, etc.

3.2.1.11 Objectives of asset forfeiture investigation

- The literature consulted reveals that the main objectives of asset forfeiture investigation include removing profit out of crime and removing property which is an instrumentality of crime (Sebola *et al*, 2013:152).
- All participants demonstrated through their answers that they generally had knowledge of the objectives of asset forfeiture investigation and although their answers are not exactly the same their understanding is in very much agreement with each other.

3.2.1.12 Hidden or concealed assets

- The literature consulted reveals that assets could be concealed in several ways, such as concealed bank accounts that render detection very difficult. The most common means of concealing illicit real estate and business ownership include the transfer of such assets to a third party without losing some control or influence over the asset/s (Kranacher & Riley, 2020:302).

- All participants demonstrated through their answers that they generally had knowledge of the hidden or concealed assets. Four participants answered that it is assets that are registered in the family members, girl friends or boyfriends or friends' names it includes assets that are purchased with proceeds of crime abroad or registered in trusts and businesses or buying of Shares in the name of companies, four participants replied that hidden or concealed assets are assets which are registered in the names of another person other than the owner it can be the child or relative of the legal owner of the property, two participants said it is assets which has been transferred in another person's name but still used by suspect and one participant concluded that it is assets which cannot be identified without using high level of investigation method to identify them.

3.2.1.13 Different ways used by investigators to trace hidden or concealed assets

- The literature consulted shows that the process of tracing and recovering assets comprises the following steps; (i) investigation into allegations or suspicions, (ii) gathering evidence to prove or disprove the allegations or suspicions, (iii) tracing the proceeds of unlawful activities, and (iv) recovery and forfeiture of such proceeds or assets (National Prosecuting Authority, 2020:306).
- All participants demonstrated through their answers that they generally had knowledge of the different ways used by investigators to trace hidden or concealed assets and although their answers are not exactly the same their understanding is in very much agreement with each other.

3.2.1.14 Responsibilities of an asset forfeiture investigator during asset forfeiture investigation

- The literature consulted shows that the asset forfeiture investigator is responsible for the tracing and locating of property or assets that can be subjected to asset forfeiture, thereby removing the benefit from criminal activities (Directorate for Priority Crime Investigative, 2020:3).
- Four participants replied that it is to trace assets linked to suspect, acting as a link between the AFU Advocate and the criminal investigator, attend crime scenes during search and seizures with criminal investigator and monitor criminal proceedings, three participants answered that it is to profile and investigate all assets that could be the benefit, instrumentality and proceeds of crime and also to conduct financial analysis to

prove money laundering. When all is done investigator submit the report in terms of his or her findings and assist during the takedown operation, three participants showed that it is to conduct Basic asset check of the property involved in the commission of an offence, and one participant concluded that it is tracing assets, links, establish how assets are concealed, obtain affidavits, peruse and analyse bank statements, use of intelligence, SARS for tax compliance.

3.2.1.15 Sources of information, the type of information that you can get from the source and the way it will assist you during asset forfeiture investigation

- The literature consulted discloses that the information that can be useful to the financial investigator can be sourced from the following sources:
- bail affidavits: details of assets may be disclosed here as well as family members who may also be investigated as possibly holding assets, Informers: to trace assets that may not be on a person's name but concealed on other persons' names who are unknown to investigators, credit checks, gambling records, company searches, deeds Office in relation to immovable property, master of Deceased Estates in respect of tracing trusts, banks: bank account records/safety deposit boxes/accounts held,
- Dumpster Diving or garbage searches: documents that are thrown away may be valuable sources of information, SARB: to check cross border movements of funds, to obtain an indication of possible interests outside of the country, or to verify versions that relate to cash seizures concerning funds that were allegedly brought into the country,
- SAPS: criminal records and dockets: additional dockets assist in proving sufficiently related criminal activities and a criminal lifestyle, may reveal further assets, and be used to compare allegations of employment/sources of income,
- DHA: to check the marital status of persons of interest which may have an impact on the extent of property that can be seized, as well as to identify family members who may be investigated as holding property on behalf of a defendant or who received affected gifts such as children; border control movement records may also be obtained that help trace persons for purposes of service or to identify any suspicious travel activities such as short "turn-around times" that may suggest that a person may be a drug or cash mule,

- DoT: to check for vehicles held by a person of interest, FIC: obtaining intelligence regarding details of accounts and STR, or to secure evidence of such through an FIC warrant, SARS including Customs: to ascertain what income was declared (using the provision of section 71 of POCA) and compare that to assets held in a lifestyle analysis for the purposes of applying a presumption, or to challenge versions given in respect of income and the source of funds used to purchase assets. SAICB for evidence of any insurance policies,
- SABRIC: South African Banking Risk Identification Centre: for information regarding accounts held in the name of the identified targets,
- CARIN and ARINSA networks for intelligence regarding assets outside the country. SAPS requests for intelligence regarding assets outside of South Africa or verifying versions (National Prosecuting Authority, 2020:305-306; Leff, 2013:9).
- All participants demonstrated through their answers that they generally had knowledge of the sources of information, the type of information that you can get from the source and the way it will assist you during asset forfeiture investigation.

Eight participants answered that CIPC gives information of the directors and accountants of the company it helps to prove ownership of the company and to identify the owners of assets in the case where assets are registered in the company. WinDeed gives information about the owners of immovable properties, conveyancers who did the transfer, account details and amounts for payment and it helps to prove if there is equity in the property, if it is still owed to the bank. eNatis give us ownership and title holders of the vehicle, airplane, boats and trailers and it assists to secure a successful confiscation or asset forfeiture orders and dispute the innocent owner defence.

Google assist with the current value of the assets and it will assist us with having a value in our applications. DHA will provide family tree of the targets which will help to trace hidden assets and three participants replied that eNatis helps to identify movable assets. DHA helps to trace a family tree. SAICB helps to obtain insurance information. Deeds helps with information on immovable assets. SABRIC helps with banking information i.e. bank accounts. Data Search helps with consumer credit information.

3.2.1.16 Investigative techniques during asset forfeiture investigation

The literature consulted reveals that some of the investigative strategies used with maximum effect in investigating asset forfeiture cases include:

- BSA reports: currency transaction reports, suspicious activity reports, foreign bank account report and similar documents are required to be filed with the financial crimes enforcement network by financial institutions, including casinos and some merchants, and can help investigators connect the dots on laundered money or concealed assets,
- Egmont: this network consists of the FIUs over 130 countries and permits law enforcement to request data in support of a significant money laundering and asset tracing,
- MLA Treaties: a formal request for records or enforcement action by a foreign country is made through the department's office of international affairs,
- Mail covers: a request through the postal inspection service will reveal the information on the outside of envelopes sent to the requested address. This information will often identify financial institutions with whom the subjects of the investigation are dealing, as well as shell corporations, virtual offices, and phone companies,
- Tax returns: through a court order, the investigator can examine relevant tax returns, which will often yield the location of accounts as well as front companies and shell corporations through which the subject is laundering money (Leff, 2013:9).

All participants demonstrated through their answers that they generally had knowledge of the investigative techniques during asset forfeiture investigation and although their answers are not exactly the same their understanding is in very much agreement with each other.

3.2.1.17 Resources required to efficiently conduct asset forfeiture investigation

- Answers from all the participants were not exactly similar, but demonstrated a general understanding of the required resources to efficiently conduct asset forfeiture investigation. Three participants replied and said Internet to access to all databases used to profile the targets, Software licenses e.g. Able to Extract to convert bank statements for analysis and help us to convert bank statement for analysis and physical resources like vehicles, laptops, 3G or Wi-Fi modem, six participants said it is vehicles to visit properties, to collect bank statements, to visit SAPS13 Stores and to visit Vehicle Safeguarding Services (vehicle pound) to take photos of the vehicles seized.
- Access to data bases to be able to financial profile your subjects and access to Internet to Google search and to have access to social media platforms, one participant indicated that it is Databases like WinDeed, eNatis, TransUnion, DHA, CIPC in order to identify the suspect, to check what assets the suspects owned and how is the

subjects' financial profile and one participant concluded by saying that search engines and various stake holders like DHA, Municipalities, Traffic Department, media and social media.

The researcher noted that there is a thin line between the investigative techniques during asset forfeiture investigation and the resources required to efficiently conduct asset forfeiture investigation. However it is important to discuss the two concepts to indicate its relevancy to the study.

3.2.1.18 *Proceeds of crime*

- The literature consulted shows that crime proceeds relate to any funds or property derived from or obtained, directly or indirectly, as a result of the commission of a criminal offense (Commonwealth Secretariat, 2016:10).
- Answers from all participants demonstrated that they all generally understood the proceeds of crime and their answers concurred with the consulted literature, three participants answered and said anything that is derived from any criminal activities in a form of movable or immovable properties and cash, four participants said it is the property that derived from unlawful activities, two participants replied and said it is assets which are directly linked or purchased with the funds from the crime e.g. vehicle bought with money from criminal activities, one participant indicated that it is property obtained through criminal activities e.g. house bought with money obtained from heist, and one participant concluded that it is any tangible object that value can be ascertained of, which has been obtained through illicit gains.

3.2.1.19 *Instrumentalities of crime*

- The literature consulted shows that international legal instruments provide for the forfeiture of crime instrumentalities, property used, as well as property intended to be used in the commission of a crime (Phillipo, 2015:95).
- All participants demonstrated through their answers that they generally had knowledge of the instrumentalities of crime and although their answers are not exactly the same their understanding is in very much agreement with each other.

3.2.1.20 Difference between proceeds of crime and instrumentalities of crime

- The literature consulted reveals that crime proceeds relates to property accruing from a criminal activity, while crime instrumentalities refer to property that is used in the commission of crime (Phillipo, 2015:2).
- All participants answered in a manner that demonstrated that they had a general understanding of the differences between proceeds of crime and instrumentalities of crime.

3.2.1.21 Challenges during asset forfeiture investigation and how they affect asset forfeiture investigation

- When asked about different challenges during asset forfeiture investigation and how they affect asset forfeiture investigation, investigators expressed themselves in manner that demonstrated that they are fully aware of the subject and although their answers are not exactly the same they much related to each other. Five participants replied that the challenges include access to Data bases to profile our subjects, not being in the same building with AFU Advocate for consultations and no resources to go to SAPS pounds to check sized assets, four participants answered that it is the lack of cooperation by the criminal investigators taking long time to provide information regarding the subject, one participant said the challenges include the person owning vehicles but living in a block of flats, no database that will assist you to obtain a source document and to rely on certain institution that must serve other clients and this delay the investigation, and one participant concluded by saying search engines, manpower, experienced/specialised investigators and it takes longer to obtain orders.

3.3 RECOMMENDATIONS

As outlined in Chapter 1 of this study, the research aim is to effectively analyse the procedural challenges experienced by the investigators during tracing of assets and gathering of evidence during asset forfeiture investigation, so as to be able to assist the investigators to reach a desired outcome.

The findings and recommendations developed from the literature consulted and the interviews conducted will improve the low success rate on cases investigated and will increase the submission rate to the AFU for application of POCA orders to the High Court. The results of the literature review, document-based sources, and participants' views

have been reported in the preceding section. Based on these findings the following recommendations are made.

- Recommendation on the different ways used by asset forfeiture investigators to trace hidden or concealed assets: it is therefore recommended that there must be the best practices in a form of Standard Operational Procedures prescribed for all asset forfeiture investigators in order to promote uniformity and professionalism.
- Recommendation on the challenges encountered during asset forfeiture investigation and how they affect asset forfeiture investigation: it is recommended that regular training be held with the management in order to enable them to manage the available resources and distribute the resources in a more effective and productive manner. It is recommended that relevant training to asset forfeiture investigation be presented to the investigators and evaluation process be implemented to ensure that there is progress on the current asset forfeiture investigations.
- It is further recommended that investigative techniques during asset forfeiture investigation be clearly defined and outlined together with the processes to be followed to utilise such national and international platforms in order to promote successful investigations and investigator professionalism.

3.4 CONCLUSION

This study was undertaken with the aim of analysing the procedural challenges experienced by the investigators during tracing of assets and collection of evidence during asset forfeiture investigation, to assist the investigators to reach a desired outcome and to improve the low success rate on cases investigated.

The qualitative research approach enabled the involvement of human subjects who provided the actual lived experiences attendant to the challenges experienced during asset forfeiture investigation. Other data was gathered from the participants, who are asset forfeiture investigators from the Section: AFI of the DPCI.

The research aim was achieved in the context of the following research question:

- What are the procedural challenges in asset forfeiture investigation?

The investigation of illicit proceeds and instrumentalities of crime requires specialised investigator skills, knowledge and experience pertinent to these forms of unlawful acts. In that regard, investigators should apply an assortment of investigative for effective asset

forfeiture investigation. The asset forfeiture investigators are the ones who should be tracing and locating the assets by utilizing the available database, systems and sources of information. In doing so, they bring sufficient evidence to ensure that tainted assets, proceeds or instrumentalities of crime are seized and forfeited to the State, and that victims are reimbursed or compensated for their losses due to criminal activities.

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ANNEXURE A: UNISA ETHICAL CLEARANCE CERTIFICATE



UNISA 2021 ETHICS REVIEW COMMITTEE

Date: 2021:09:17

ERC Reference No.: ST62

Name: PT Klaas

Dear Mrs Phumeza Theodora Klaas

**Decision: Ethics Approval from
2021:09:17 to 2024:09:17**

Researcher: Mrs Phumeza Theodora Klaas

Supervisor: Dr AV Madzivhandila

Analysis of procedural challenges in asset forfeiture investigation

Qualification: MA in Criminal Justice

Thank you for the application for research ethics clearance by the Unisa 2021 Ethics Review Committee for the above mentioned research. Ethics approval is granted for 3 years.

The low risk application was reviewed by the CLAW Ethics Review Committee on 17 September 2021 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment.

The proposed research may now commence with the provisions that:

- 1. The researcher will ensure that the research project adheres to the relevant guidelines set out in the Unisa Covid-19 position statement on research ethics attached.**
2. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.



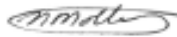
University of South Africa
Pretorius Street, Muckleneuk Ridge, City of Tshwane
PO Box 392 UNISA, 0003 South Africa
Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150
www.unisa.ac.za

3. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the CLAW Committee.
4. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
5. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing, accompanied by a progress report.
6. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no 4 of 2013; Children's act no 38 of 2005 and the National Health Act, no 61 of 2003.
7. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data requires additional ethics clearance.
8. No field work activities may continue after the expiry date **2024:09:17**. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.

Note:

The reference number ST62-2021 should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.

Yours sincerely,



Prof N Mollema
Acting Chair of CLAW ERC
E-mail: mollen@unisa.ac.za
Tel: (012) 429-8384



Prof OJ Kole
Acting Executive Dean: CLAW
E-mail: koleoj@unisa.ac.za
Tel: (012) 429-8305



URERC 16.04.29 - Decision template (V2) - Approve

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ANNEXURE B: APPLICATION FOR PERMISSION TO CONDUCT RESEARCH IN SOUTH AFRICAN POLICE SERVICE

SUID-AFRIKAANSE POLISIEDIENS  SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X 94

Verwysing/Reference:	3/34/2
Navrae/Enquiries:	Lt Col Joubert AC Thenga
Telefoon/Telephone:	(012) 393 3118
Email Address:	JoubertG@saps.gov.za

**THE HEAD: RESEARCH
SOUTH AFRICAN POLICE SERVICE
PRETORIA
0001**

The National Head
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

PERMISSION TO CONDUCT RESEARCH IN SAPS: ANALYSIS OF PROCEDURAL CHALLENGES IN ASSET FORFEITURE INVESTIGATION: UNIVERSITY OF SOUTH AFRICA: MASTERS DEGREE: RESEARCHER: PT KLAAS

1. The above subject matter refers.
2. The researcher, PT Klaas, is conducting a study with the title: Analysis of procedural challenges in asset forfeiture investigation, with the aim *to effectively analyse the procedural challenges experienced by the investigators during tracing of assets and collection of evidence during asset forfeiture investigation.*
3. The researcher is requesting permission to interview eleven (11) Asset Forfeiture Investigators within the Directorate for Priority Crime Investigation based in the different provinces in South Africa.
4. The proposal was perused according to National Instruction 1 of 2006. This office recommends that permission be granted for the research study, subject to the final approval and further arrangements by the office of the National Head: Directorate for Priority Crime Investigation.
5. We hereby request the final approval by your office if you concur with our recommendation. Your office is also at liberty to set terms and conditions to the researcher to ensure that compliance standards are adhered to during the research process and that research has impact to the organisation.
6. If approval is granted by your office, this office will obtain a signed undertaking from researcher prior to the commencement of the research which will include your terms and conditions if there are any and the following:
 - 6.1. The research will be conducted at his/her exclusive cost.

PERMISSION TO CONDUCT RESEARCH IN SAPS: ANALYSIS OF PROCEDURAL CHALLENGES IN ASSET FORFEITURE INVESTIGATION: UNIVERSITY OF SOUTH AFRICA: MASTERS DEGREE: RESEARCHER: PT KLAAS

- 6.2 The researcher will conduct the research without the disruption of the duties of members of the Service and where it is necessary for the research goals, research procedures or research instruments to disrupt the duties of a member, prior arrangements must be made with the commander of such member.
- 6.3 The researcher should bear in mind that participation in the interviews must be on a voluntary basis.
- 6.4 The information will at all times be treated as strictly confidential.
- 6.5 The researcher will provide an annotated copy of the research work to the Service.
- 6.6 The researcher will ensure that research report / publication complies with all conditions for the approval of research.
7. If approval is granted by your office, for smooth coordination of research process between your office and the researcher, the following information is kindly requested to be forwarded to our office:
 - **Contact person:** Rank, Initials and Surname.
 - **Contact details:** Office telephone number and email address.
8. A copy of the approval (if granted) and signed undertaking as per paragraph 6 supra to be provided to this office within 21 days after receipt of this letter.
9. Your cooperation will be highly appreciated.



MAJOR GENERAL
THE HEAD: RESEARCH
DR PR VUMA

DATE: 2020-06-03

ANNEXURE C: LETTER OF APPROVAL TO CONDUCT RESEARCH IN SOUTH AFRICAN POLICE SERVICE

South African Police Service



Suid-Afrikaanse Polisie

Privaatsak Private Bag X94	Pretoria 0001	Faks No. Fax No.	(012) 334 3518
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Your reference/U verwysing:

My reference/My verwysing: **3/34/2**

THE HEAD: RESEARCH
SOUTH AFRICAN POLICE SERVICE
PRETORIA
0001

Enquiries/Navrae: **Lt Col Joubert
AC Thenga
(012) 393 3118
JoubertG@saps.gov.za**

Ms PT Klaas
UNIVERSITY OF SOUTH AFRICA

RE: PERMISSION TO CONDUCT RESEARCH IN SAPS: ANALYSIS OF PROCEDURAL CHALLENGES IN ASSET FORFEITURE INVESTIGATION: UNIVERSITY OF SOUTH AFRICA: MASTERS DEGREE: RESEARCHER: PT KLAAS

The above subject matter refers.

You are hereby granted approval for your research study on the above mentioned topic in terms of National Instruction 1 of 2006.

Further arrangements regarding the research study may be made with the following office:

The National Head: Directorate for Priority Crime Investigation:

- **Contact Person:** Maj Gen Nkosi
- **Contact Details:** 012 336 0773
- **Email Address:** NkosiST@saps.gov.za

Kindly adhere to paragraph 6 of our attached letter signed on the **2020-06-03** with the same above reference number.

**MAJOR GENERAL
THE HEAD: RESEARCH
DR PR VUMA**

DATE: 2020-12-01

ANNEXURE D: INTERVIEW SCHEDULE

PARTICIPANT NUMBER _____

TOPIC: ANALYSIS OF PROCEDURAL CHALLENGES IN ASSET FORFEITURE INVESTIGATION

I am Phumeza Theodora Klaas a post graduate student that is currently busy conducting research for the degree “Master of Arts in Criminal Justice” at the University of South Africa. My supervisor is Dr Avhashoni Cynthia Madzivhandila and can be contacted on 067 810 7323 with regards to any matters pertaining to my research.

The aim of this research is to effectively analyse the procedural challenges experienced by the investigators during tracing of assets and collection of evidence during asset forfeiture investigation, so as to be able to assist the investigators to reach a desired outcome.

The following research question will be answered in this study:

What are the procedural challenges in asset forfeiture investigation?

You are kindly requested to answer the following questions in this interview schedule, for the researcher. The questions, responses and the results will be revealed. Privacy will be maintained throughout the study, the researcher will ensure that participants are treated equally regardless of their socio-economic status. The information given will be treated with confidentiality and no other person will have access to interview data. The participants to the research will remain unanimous.

The information you provide will be used only in a research project for a Master of Arts in Criminal Justice degree registered with the College of Law at the University of South Africa. The analysed and processed data will be published in a research report. Your answers will be noted by the interviewer herself, on paper and by Dictaphone. Should any question be unclear, please ask the researcher for clarification.

When answering the questions, it is very important to give your own opinion. Written permission has been obtained from the South African Police Service in advance, for the interview to be conducted.

If you have any queries about this interview schedule, please contact Phumeza Klaas on 079 888 0962 and via email at 50465538@mylife.unisa.ac.za

Thank you for your cooperation.

Phumeza Theodora Klaas: student

UNISA

Signature of participant

Place

Date

PARTICIPANT

I hereby give permission to be interviewed and that information supplied by me can be used in this research.

YES / NO

SECTION A: BACKGROUND INFORMATION

1 To which investigative directorate are you attached?

2 What is your rank?

3 What are your duties?

4 How long have you been in a place of employment?

1 – 5 yrs	5yrs – 10 yrs	10yrs and above
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5 Are you currently investigating asset forfeiture cases?

YES	NO
-----	----

6. For how many years have you been involved with asset forfeiture investigation cases?

7 Did you undergo any training on asset forfeiture investigation?

YES	NO
-----	----

SECTION B: Investigation

8. Describe criminal investigation?

9. Describe forensic investigation?

10. What are the objectives of criminal and forensic investigation, in your opinion?

SECTION C: Asset Forfeiture

11. In your own words define an asset?

12. In your own words, define asset forfeiture?

13. Give categories or types of assets that can be seized or forfeited to the state?

SECTION D: What are the procedural challenges in asset forfeiture investigation?

14. What is the act that guides asset forfeiture investigation and its processes?

15. What are the procedures that you have in place to seize and forfeit assets?

16. In your own words, what is the mandate of the Section: Asset Forfeiture Investigation?

17. In your own words, describe asset forfeiture investigation?

18. What are the objectives of asset forfeiture investigation?

SECTION E: Hidden or Concealed Assets

19. In your words, what are hidden or concealed assets?

20. What are the different ways used by investigators to trace hidden or concealed assets?

21. In your own words, what are the responsibilities of an asset forfeiture investigator during asset forfeiture investigation?

22. Mention the sources of information (evidence), what type of information (evidence) that you can get from the source and how will it assist you during asset investigation?

23. What investigative techniques that you use during asset forfeiture investigation, in your opinion?

24. What are the required resources to efficiently conduct asset forfeiture investigation, please motivate your answer?

SECTION F: Proceeds of Crime versus Instrumentalities of Crime

25. In your own words, define proceeds of crime?

26. In your own words, define instrumentalities of crime?

27. In your own words, explain the differences between proceeds of crime and instrumentalities of crime?

SECTION G: Challenges and Shortcomings

28. What are the different challenges experienced during asset forfeiture investigation and how do they affect your asset forfeiture investigation?

ANNEXURE E: EDITOR'S LETTER

EDITOR'S DECLARATION

I, the undersigned, hereby confirm my involvement in the academic editing, language control, text redaction and technical compliance for the **Master's dissertation** manuscript of **Ms Phumeza Theodora Klaas (Student Number: 50465538)** submitted to me for the above-cited service in respect of her fulfilment of the requirements for the Master of Arts (MA) in Criminal Justice degree registered with the University of South Africa (UNISA), and entitled:

Analysis of procedural challenges in asset forfeiture investigation

As an independent academic editor, I attest that all possible means have been expended to ensure the final draft of **Ms P.T. Klaas's** dissertation manuscript reflects both acceptable research methodology practices and language control standards expected of postgraduate research studies at this academic level.

In compliance with expected ethical requirements in research, I have further undertaken to keep all aspects of **Ms P.T. Klaas's** study confidential, and as her own individual initiative.

Sincerely.

TJ Mkhonto

BA Ed: North-West University, Mafikeng (1985)

MEd: School Administration; University of Massachusetts-at-Boston, USA, Harbor Campus (1987)

DTech: Higher Education Curriculum Policy Reform, Design & Management; University of Johannesburg, (2008)

All enquiries:

Email: mkhonto9039@gmail.com

Cell: +27(0)60 401 8279

Signed:  _____

Date: 02 February 2022

Dr TJ Mkhonto

dd/mm/yyyy

Independent Academic Editor

Professional
EDITORS
Guild

Themba J Mkhonto
Associate Member

Membership number: MKH001
Membership year: February 2021 to March 2022

ANNEXURE F: TURNITIN ORIGINALITY REPORT

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