

Medico-Legal Death Investigation Systems – Brazil

Lidiane A. P. Santana^{1*}, Rafael Venson²

¹Scientific Police of Goiás, Goiânia, Brazil

²School of Medicine, Dentistry and Nursing, University of Glasgow, United Kingdom

ABSTRACT

Investigation of death differs between countries and whether deaths are natural or unnatural. This article aims to describe the investigation of both natural and unnatural deaths in Brazil, a federation formed by 26 states plus the federal district. Although the Brazilian states are self-governing, death investigation follows some standardised processes throughout the country. Some deaths require little to no investigation, such as natural deaths that occur under the supervision of a medical doctor; in these cases, the body can be released directly to the funeral services. Other deaths are investigated more thoroughly, such as suspicious deaths and unidentified bodies. Such cases usually involve more parties, such as the Military Police, the Judicial Police, Forensic Experts, Prosecutors, and a Judge. Reports from forensic experts, such as forensic pathologists, forensic toxicologists, and crime scene investigators, are compiled together with other documents within the inquiry process and are critical to the success of the investigation. The forensic experts normally work in the medico-legal institutes or in the criminalistics institutes and they may or may not be part of the judicial police force, depending on the state; in some states, they are part of another institution called the Scientific Police. A crucial step in the process of death investigation is the chain of custody, which has evolved greatly in Brazil in the past few years. However, the investigation process may still take years to be completed due to the lack of resources and investment in the involved parties, especially the police forces.

Keywords: Brazil; Death investigation; Forensic experts; Forensic Pathologist; Legal Medicine

Corresponding Author: Lidiane A. P. Santana
santana.lidianeap@gmail.com
ORCID iD: <https://orcid.org/0000-0001-7876-8181>

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INTRODUCTION

Brazil, which is the 5th largest country in the world, is located in the South American continent. It is a federation consisting of 26 states plus the federal district, where its capital, Brasília, is located. Each of the 26 states are self-governing and have their own laws, but they must comply with specific laws established by the federal government, especially the constitution. For this reason, even though death investigation follows some standard processes throughout the country, some procedures may differ in different states, as well as the organisational structure of the entities involved in the

investigation. This article aims to describe the investigation of natural and unnatural deaths in Brazil.

GENERAL ASPECTS OF NATURAL DEATH INVESTIGATION

Brazil's population is estimated to be over 214 million. Between 2016 and 2019, the average death rate in the country was almost 1,350,000 per year, of which, around 970,000 died in health institutions, such as hospitals¹. Whenever there is a confirmed death, it is mandatory that a death certificate (DC) is issued by a physician; each DC has a unique identifying number and can only be obtained from the Federal Ministry of Health. If the death occurs in provinces/regions with no physician available, the DC may be issued by a notary in the presence of two people that witnessed or ratified the death^{2,3}.

In case death occurred under the supervision of a physician, with the patient either in a health institution or at home, the body must be released directly to the funeral services⁴. In a second scenario, death may happen in the absence of a physician and with no signs of violence. In this case, the Ministry of Health, through the Death Verification Service (DVS), must confirm the death. The body may either be released directly to the DVS or the service may come to where the body is; after

death is confirmed, the DC is expedited and the body is then sent to the funeral services. The DVS may conduct either an external examination or autopsy, and they may be assisted by complementary laboratory investigations. Not all municipalities in Brazil have DVS, and in circumstances where there is no DVS at the location of death, the nearest physician, preferably from the Brazilian National Health System, would be responsible for verifying the death; exceptionally, a physician nominated by the Secretary/Ministry of Health or any other physician may confirm the death⁴.

In any circumstance, the body can only be buried or cremated after the DC is finalised and sent to all relevant parties (such as notaries and relevant Secretaries/Ministries)^{2,3}.

UNNATURAL OR VIOLENT DEATH INVESTIGATION

Different types of institutions are involved in investigation of unnatural deaths (a.k.a violent deaths) in Brazil (Fig. 1). The process starts with the Military Police, who often visit the scene; they are important especially in the preservation of the scene and keeping the crime scene investigators safe whenever they arrive. This can also be done by the Judicial Police⁵.

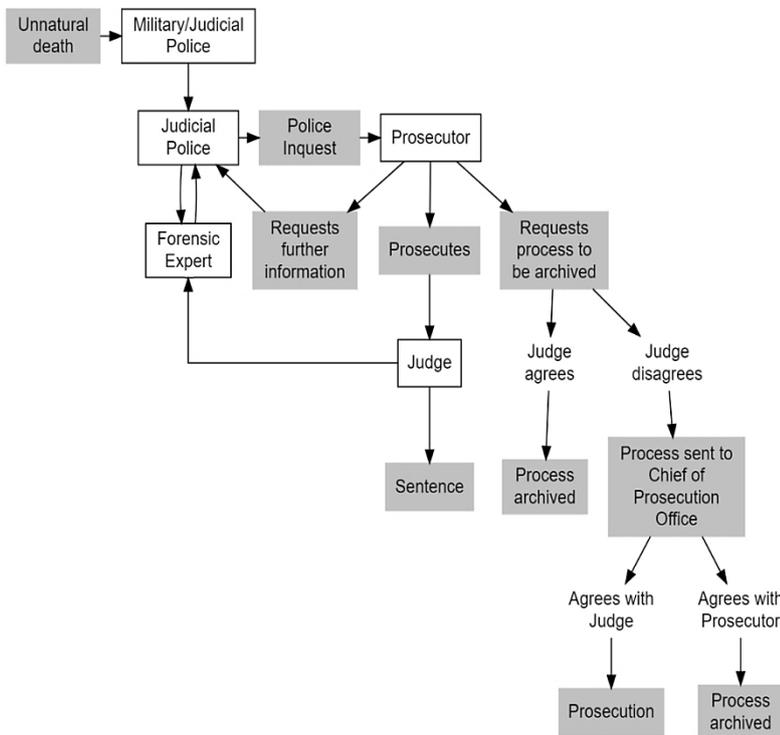


Figure 1: Simplified representation of unnatural death investigation in Brazil

Alongside, the Chief of Judicial Police triggers a process called “Police Inquest”, which aims to identify suspects, enquire witnesses, collect evidence, and request forensic reports. At the end of this stage, the Chief of Judicial Police must produce a document, which includes every report produced from evidence and interviews. This document also contains the verdict of the Chief of Judicial Police with regards to the death and its circumstances (e.g., cause and authorship). This document must be completed within 30 days, unless the suspect is kept in custody during the course of investigation, in which case the Police Inquest must be completed sooner^{5,6}. Although this time limit is established by law, in reality, it is rare for the Police Inquest to finish within this deadline due to the high workload and lack of resources.

For all cases of unnatural deaths or in case the body is in a state of decomposition, the deceased should be sent to the Medico-Legal Institute (MLI) or similar institution for autopsy by a Forensic Pathologist who, in Brazil, is part of a team called “Forensic Experts”. All unnatural deaths need to be investigated in the MLIs because these are all potentially suspicious violent deaths, considering the fact that signs of violence are not always clear (for example, in cases of poisoning). Deaths from natural causes may also be sent to the MLI in cases where the decedent needs to be identified (by fingerprinting or DNA, for example). In instances where the municipality does not have an MLI, the cause of death may be investigated by a local physician or any other professional nominated by a Judge or Chief of Judicial Police⁴.

The Chief of Judicial Police is responsible for requesting the post-mortem examination in addition to any other forensic examinations needed. The MLI, where post-mortem examinations are undertaken, are most often managed by the secretaries of public safety of each federative state. These states are free to structure and organise the MLIs. Consequently, in some states, the MLI is part of the Judicial Police, whilst in other states they are directly under the Department of Public Safety of that state. In this last scenario, the MLI may be part of another type of police called Scientific Police, which is completely independent from the Judicial Police, although they work together⁷. Figure 2 shows how the forensic institutions are organised in each state.



Figure 2: Organisation of Institutes involved in investigation of violent deaths in each Brazilian Federative State and the Federal District.

If the external lesions are adequate for the determination of the cause of death by the MLI, or if there is no crime to be investigated, the external post-mortem examination alone may suffice for unnatural deaths. However, in general, full post-mortem examinations are undertaken. Post-mortem examinations can only be done after 6 hours of death, unless Forensic Experts are confident that it may be done earlier⁶.

Complementary examinations may be requested by the Forensic Pathologist, by the Chief of Judicial Police, or by the Judge in the course of investigation or after the Police Inquest is over. These may be produced by specific laboratories which may or may not be part of the MLI. Due to the size of the country and its federative structure, the MLI and associated institutions may be organised in different ways (Fig. 2). In numerous states, the MLIs are structured in two sub-sections, the imaging section and the pathology and histology Section, whilst other states include a toxicology laboratory within the MLI's organogram. Most of the other departments from where reports may be requested during the investigation process are part of the criminalistics institutes (CI), and all states have one or more of them. The CIs are where other Forensic Experts work and are responsible for assisting in the investigation; examples of these departments are ballistics, fingerprinting, and chemistry⁷. Some examinations are more often requested, such as blood alcohol concentration and drug analyses in biological samples, DNA, and fingerprinting; others are less often

performed, such as carbon monoxide determination in blood and gunshot residue analyses.

Once the Police Inquest is complete, it is sent to the Prosecutor, who has three options: (a) to ask the Chief of Judicial Police for more information; (b) to prosecute the suspect; or (c) to ask for the process to be archived⁸. Archiving the Police Inquest may happen due to different reasons, such as lack of evidence that could justify triggering the prosecution. In case the prosecution chooses to archive the process, the Judge must ratify the decision. If they disagree with process discontinuation, the Chief of Prosecution Office must evaluate the case and either order the suspect's prosecution or archive the process (and, in this case, the Judge must comply)⁸. If the suspect is prosecuted, the process continues until the trial, where the verdict is established either by the Judge or by a Jury; the latter happens only if someone intentionally caused the death⁸.

Just like for natural deaths, the body can only be buried or cremated after the DC is issued and sent to all relevant parties (such as notaries and relevant Secretaries/Ministries). Additionally, in cases where the body is examined by the MLI, cremation is only possible after authorisation by a Judge^{2,3}.

This overall procedure of unnatural death investigation may be conducted at state or federal levels. Each state has their own Judicial Police and Brazil has its own Judicial Police for federal crimes, called Federal Police (FP). This is an institution that is similar to the Federal Bureau of Investigation (FBI) in the USA. The FP is completely separated and independent from the Judicial Police for each state, which are also independent from each other. The Judicial Police in each state is responsible for investigating deaths in general, whilst the FP is responsible for dealing with specific deaths, such as cases (a) involving native Brazilians, (b) committed in Brazil's territorial sea, in the air, on borders, or within federal assets, (c) committed against or by specific people and under specific circumstances, such as federal civil servants during work⁹. Federal Forensic Experts, including Pathologists are placed within the organogram of the FP, therefore, just like for Forensic Experts in some states, they are part of the police force. The judicial system in Brazil is also distributed across different states and the federation, each one with their own personnel that deal with specific cases, similar to the police.

In order to improve effectiveness, it is common for police departments to be specialised in larger urban areas; in these areas, unnatural deaths may be investigated by the so-called “Homicide Police Department” or other specific Police Departments, such as “Traffic Police Department”, if death occurred as consequence of a traffic event. The same occurs with judges, who may be specialised in judging specific crimes. In small areas, police departments and judges are normally not specialised.

FORENSIC PROFESSIONALS AND CHAIN OF CUSTODY IN BRAZIL

In Brazil, forensic professionals are, in most states, called “Forensic Experts”. They are generally hired as “Forensic Experts” to then be trained and allocated to specific departments, depending on the Institution’s needs and the professional’s background and skills. For instance, if a chemist applies for a Forensic Expert position, they may be assigned to the forensic chemistry laboratory or in a department where they can be trained to develop new compatible skills, such as CSI or fingerprinting. In general, anyone with any higher education degree can apply for a crime expert position, as long as they are a Brazilian citizen and after they pass a number of exams testing specific knowledge and pass physical and psychological tests; in many cases, the curriculum vitae of the candidate is also taken into consideration. Only candidates who are best ranked are hired. Forensic Pathologists need to go through the same process; however, a degree in medicine is required.

Forensic Experts from different departments may be involved in death investigation, such as ballistics, fingerprinting, toxicology, DNA, CSI, document examination, etc. Whenever an examination is requested from an expert, a final report must be issued within 10 days, unless an extension is requested under exceptional circumstances⁶. Similarly in Police Inquest, it is common for this deadline to be extended due to lack of resources, especially personnel. Data from 2013 show that Brazil has 7,429 Forensic Experts and Forensic Pathologists, a number 5-fold lower than what the Brazilian forensic institutions agree would be ideal for the country⁷.

Despite the low number of Forensic Experts, Brazil has developed much in death investigation in the past years. One of the reasons could be the regulation of the chain of custody, established by the Law number 13,964/2019¹⁰. This law created the Custody Centre, where all evidence must be stored and monitored. It also established steps of the chain of custody that must be maintained by all forensic institutes, from identification of evidence to their disposal. This is still in

the implementation phase with different states being in different stages.

CONCLUSION

This paper discusses the process of natural and unnatural death investigation in Brazil. It is a complex process that involves different parties, including the Secretaries/Ministry of Health, Secretaries/Ministry of Public Safety, and the Judicial System. The Secretaries/Ministry of Health are responsible for the inspection, regulation, and notification of deaths; the Secretaries/Ministry of Public Safety are responsible for making sure evidence is collected and analysed, and that suspects are sent to court to ensure justice. The process of death investigation has evolved recently with new legislation. However, in many cases the investigation may take years to be completed, resulting in a sense of impunity for wrongdoers.

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