

Medico-Legal Death Investigation Systems – South Africa

Elizabeth S. Dinkele^{1*}, Gavin Kirk^{2,3}, Lorna J. Martin^{2,3}

¹*Division of Clinical Anatomy and Biological Anthropology, Department of Human Biology, Faculty of Health Sciences, University of Cape Town, Anzio Road, Observatory, 7925, Cape Town, South Africa*

²*Division of Forensic Medicine and Toxicology, Department of Pathology, Faculty of Health Sciences, University of Cape Town, South Africa*

³*Forensic Pathology Service, Western Cape Government Department of Health and Wellness, South Africa*

ABSTRACT

South Africa (SA) is a developing nation with a heavily burdened and under-resourced medico-legal death investigative system. The medico-legal death investigative system in SA resembles aspects of the medical examiner and coronial systems yet maintains characteristics unique to the South African environment and legal practice. In this article, we discuss the procedures followed in medico-legal death investigations in SA.

Keywords: Death investigation; developing nation; forensics; medico-legal; South Africa.

Corresponding Author: Elizabeth S. Dinkele
elizabeth.dinkele@uct.ac.za
ORCID iD: <https://orcid.org/0000-0001-5702-8926>

ARTICLE HISTORY

Received: 26.05.2022

Received in revised form: 13.09.2022

Available online: 30.09.2022



This article is licensed under the terms of the Creative Commons Attribution-Non Commercial 4.0 International License.

INTRODUCTION

Death investigation and criminal justice systems in Sub-Saharan Africa commonly resemble medico-legal systems of the three dominant colonial powers during the 19th Century – the French, British and Portuguese^{1,2}. Most of West Africa, East Africa and southern Africa have medico-legal investigative systems that resemble the British coronial systems that have shifted towards law enforcement led investigations in recent years¹. The medico-legal systems in most of central Africa, and parts of West Africa (for example Angola, Cape Verde, Guinea-Bissau and Mozambique) resemble Portuguese and French systems^{2,3}. In these systems, judicial police in conjunction with state prosecutors lead death investigations and request autopsies¹. The focus of this article will be medico-legal death investigations in South Africa (SA).

SA is a geographically and demographically diverse country that is situated at the southernmost tip of Africa. The country spans 1,219,602 km² and is home to more than 59 million people^{3,4}. SA is a developing nation burdened with high levels of unemployment,

poverty, inequality and violent crime. Between 2010-2018, unnatural (or non-natural) deaths constituted approximately 9-11.9% of the annual deaths registered in the country⁷. SA annually reports the highest murder rate in Africa, with the city of Cape Town most affected over the 2021/2022 period, with a murder rate of 63 per 100 000 people⁴. Unsurprisingly, this has led to a heavily burdened death investigative system that lacks sufficient resources, funding or qualified forensic experts needed to combat high caseloads^{5,6}.

THE HISTORICAL CONTEXT OF MEDICO-LEGAL DEATH INVESTIGATIONS IN SOUTH AFRICA

Understanding medico-legal death investigative processes in SA requires insight into the historical and socio-political developments in the country over the previous 100 years. The Cape Colony in SA was settled by the Dutch East India Company in 1652 and later in 1795 by Britain. This led to the establishment of the Roman-Dutch legal system, which became the basis of common law that is still practiced in SA⁴. During British colonial rule, all suspicious deaths were investigated within the framework of the British coroner system, although it is worth noting that the office of “coroner” was never formally established in SA. Instead, death investigations were conducted by “district surgeons” and medical doctors until the establishment of the Union of South Africa (1910). During this period, medico-legal death investigations were led by law enforcement officers with the help of district surgeons or forensic pathologists¹.

The rise of Apartheid (1948) saw the organisation of state mortuaries under the jurisdiction and management of the South African Police Services (SAPS). All staff working at state mortuaries (with the exception of medical doctors and forensic pathologists)

were in the employ of the SAPS⁴. While medical doctors and forensic pathologists were appointed by state health authorities, police officers were closely involved in medico-legal investigations and often facilitated at autopsies. This was particularly contentious in light of increasingly harsh policing in response to civil unrest in the 1970's-1980's and the associated rise of deaths of political activists in police detention⁶. The integrity and the objectivity of medico-legal death investigations in SA were called into question – especially in especially in cases where police actions or inactions were implicated in deaths^{4,6}.

By the early 1990's several forensic pathologists began to advocate for the re-organisation of the medico-legal system to enable independent, scientific and professional investigations of death⁴. Subsequent to the end of Apartheid (1993) a number of cases were identified where the state police were implicated in deaths of political activists and detainees. This led to recommendations that an independent Forensic Pathology Service (FPS) be established to enable a complementary, yet independent medico-legal investigative process.

In 2004, the *National Health Act* (Act 61 of 2003) came into effect - with provisions that provincial health departments were to assume responsibility for providing a Forensic Pathology Service (FPS). By 2006, all medico-legal death investigation services were transferred from the SAPS to provincial health authorities across all nine provinces in SA. Provincial Directorates or Divisions of Forensic Pathology Service were established to provide the physical infrastructure and resources needed to render medico-legal death investigations⁷. The involvement of SAPS in death investigations was limited to securing death scenes and conducting the criminal investigation including identification and collection of any physical evidence (not associated with the body).

THE CURRENT STATE OF MEDICO-LEGAL DEATH INVESTIGATION IN SOUTH AFRICA

Medico-legal investigations of death in SA involve three independent but unified arms: medical (FPS), criminal (SAPS) and judicial (Department of Justice). The *Inquests Act* 58 of 1959 (amended 1996)⁹ stipulates that all unnatural deaths are to be investigated by the SAPS under the auspices of the magistrate. Under this act, it is obligatory for every person who has reason to believe that another person has died of other than natural causes, to report this to the police, who in turn are obliged to investigate the circumstances of this death⁸. Unnatural deaths are defined in the Regulations Regarding the Rendering of Forensic Pathology Services (promulgated in 2008 in terms of the *National Health Act* of 2004)¹¹ and the *Health Professions Act* (Act 56 of

1974) to include: deaths that are the result of external or chemical influence(s); deaths due to conditions, which would otherwise constitute natural cause(s), but where acts of omission or commission may have caused or contributed to the death; sudden and unexpected (or unexplained) deaths where the cause thereof is not apparent; deaths during surgical/anaesthetic procedures or due to any complications related to diagnostic, therapeutic or palliative treatment.

If the body of a person who has allegedly died from unnatural causes is available, it shall be examined by a district surgeon or medical practitioner to establish the cause of death, as outlined in the *Inquests Act*⁸. The purpose of the inquest is to determine the cause of death; ascertain the date/time of death; determine whether the death was due to an act of omission or commission; and to establish the deceased's identity. In the investigation of unnatural deaths, consent from the next-of-kin is not required to conduct an autopsy or to retain any specimens that may aid in determining the cause of death⁴. While there are no official budgetary allocations per forensic case, limited operational budgets in each province and mortuary severely limit the resources that forensic medical practitioners are able to access.

The Regulations for the Rendering of Forensic Pathology Services (2008)¹¹ state that only specifically appointed medical practitioners may conduct post-mortem examinations. These medical practitioners may be qualified forensic pathologists, registrars (residents, or forensic pathologists-in-training), or medical officers (or contracted private practitioners). Forensic pathologists are authorised to attend death scenes to obtain any information that may be relevant to the circumstances surrounding a possible unnatural death – this is aligned with duties of a medical examiner. This may even include questioning any witnesses, taking photographs, taking a medical history, assuming custody of evidence found on or in the body (such as drug paraphernalia and/or medication). Forensic Officers are employed as forensic pathology assistants and they play a critical role in medico-legal investigations. Forensic Officers are mandated to collect remains and evidence at the death scene, take photographs, interview witnesses and assist forensic pathologists during autopsy. The Health Professionals Council of South Africa (HPCSA) is a regulatory body that regulates the registration of all medical professionals, ranging from emergency service personnel to psychiatrists and forensic pathologists. Currently, forensic officers are not required to register with a regulatory body. The absence of standardised criteria for training, registration or employment of Forensic Officers has hampered inter-provincial consistency in medico-legal death investigative procedures.

While the forensic medical practitioner is tasked with determining the cause of death, establishing the manner of death falls within the mandate of a presiding judicial officer or magistrate in the employ of the Department of Justice (DOJ)⁶. If requested by the magistrate, a medical practitioner may provide an opinion on the manner of death⁶. When the causes and/or circumstances surrounding death are unclear and where criminal actions are not immediately apparent, the National Prosecuting Authority (NPA) will present the docket (case) to the inquest magistrate for further consideration. This may culminate in a “paper inquest” (involving an administrative decision taken by the magistrate) or a “formal” inquest (comprising legal proceedings in an open court, providing all interested parties with an opportunity to be involved-with or without legal representation)⁴.

CONCLUSION

Medico-legal death investigations in SA have changed through time. Perhaps the most notable change has been the transfer of medico-legal death investigations from the control of the Department of Justice and the South African Police Services to the Department of Health. Despite this, the mandate of the forensic medical practitioner has remained consistent-determining the cause of death, mechanism of death, decedents identity (where possible) and time of death. The SAPS undertake criminal investigations of suspected unnatural deaths, and the court, on reviewing all the relevant information makes a finding as to the manner of death. One may argue that the statutory obligations of FPS as outlined in the Regulations for the Rendering of Forensic Pathology Services has led to the beginnings of a hybrid medico-legal system resembling both the coronial and medical examiner systems.

REFERENCES

1. Obenson K, Orock GE. An overview of the challenges facing death investigation systems in certain resource limited countries. *Journal of Forensic and Legal Medicine*. 2017 Aug 1;50: 58-62. <https://doi.org/10.1016/j.jflm.2017.05.011>.
2. Coldham S. Criminal justice policies in Commonwealth Africa: Trends and prospects. *Journal of African Law*. 2000;44(2): 218-38. <https://doi.org/10.1017/S0021855300012225>.
3. Adeyi OA. Pathology services in developing countries — the West African experience. *Archives of Pathology & Laboratory Medicine*. 2011;135(2): 183-6. <https://doi.org/10.5858/2008-0432-CCR.1>.
4. Saayman G. Death Investigation and Forensic Medicine in South Africa: Historical Perspectives, Status Quo, and Quo Vadis? *Academic Forensic Pathology*. 2020;10(3-4): 115-30. <https://doi.org/10.1177/1925362120986678>.
5. Reid KM, Martin LJ, Heathfield LJ. Evaluation of DNA profiles obtained from deceased individuals at Salt River Mortuary (South Africa). *Australian Journal of Forensic Sciences*. 2019;51(sup1): S48-S51. <https://doi.org/10.1080/00450618.2019.1569149>.
6. Dempers JJ, Burger EH, Du Toit-Prinsloo L, Verster J. A South African Perspective. In: Duncan JR, Byard RW. (eds.) *SIDS Sudden infant and early childhood death. The past, the present and the future*. University of Adelaide Press; 2018. 375-94.
7. Bernitz H, Kenyhercz M, Kloppers B, et al. *The history and current status of forensic science in South Africa*. West Sussex: John Wiley & Sons Inc; 2014.
8. South African Government. *Inquests Act 58 of 1959*. Available from: <https://www.gov.za/documents/inquests-act-3-jul-1959-0000> [Accessed 12th March 2022].
9. Births and Deaths registration Act 51 of 1992. Available from: https://www.hpcs.co.za/Uploads/Legal/legislation/health_professions_ct_56_1974.pdf [Accessed 12th March 2022].
10. South African Government. *National Health Act: Regulations: Rendering of forensic pathology service*. Available from: <https://www.gov.za/documents/national-health-act-regulations-rendering-forensic-pathology-service-23-mar-2018-0000> [Accessed 12th March 2022].