

## The Factors That Lead To Delays in Inquests and Post-Mortems in Murder Cases in the Gauteng Province

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**ABSTRACT:** Most cases of murder are often postponed or struck off the roll because of the delayed release of post-mortem results by the pathologists. The delays or withdrawal of these cases by the state results in suspects being released or released on bail to commit further crime. The aim of this article is to present the findings of the delays in post-mortems and inquest reports in murder cases in the Gauteng province. The Gauteng Department of Community Safety (GDSCS) realised that it is crucial to investigate the causes of delays in post-mortems and inquests in the province. The investigation assisted to identify the challenges and suggested measures such as employment of additional forensic pathologists to conduct post-mortems, building of more forensic pathology mortuaries and laboratories as well as developing standard operating procedures between the Department of Health and South African Police Service to specify the turnaround time of releasing post-mortem results that can be implemented to address the issue. The qualitative **method** approach was used for the research. The data was collected through semi-structured interviews. The sample size for the qualitative research was 25 respondents which consisted of the South African Police Service Detectives, Prosecutors, Magistrates and Forensic Pathologists. The study sought to identify the factors that cause delays in post-mortems and inquests. The respondents mentioned the shortage of Forensic pathologists which is attributed to the resignation of doctors since they are underpaid. Additionally, the respondents stated the delays are caused by outstanding toxicology reports which take between five to ten years for the results to be released. Furthermore, the shortage of typists to type the post-mortem reports was also cited as another factor that led to the delays. The delayed post-mortems and inquests have an impact on the finalisation of cases. Finally, suggested measures to address the issue of delayed post-mortem results included capacitation of forensic services with more staff, increasing salaries of Forensic Pathologists, removal of Forensic Pathology Service from the Department of Health as the department gives priority to procurement of equipment to save lives and not procuring adequate equipment for conducting post-mortems. In addition, suggested measures to address the issue of delayed inquests entails a need to have a system where they have control over the dockets so that they are aware of how many inquest matters have been opened and check progress daily. Furthermore, prosecutors mentioned that inquests should be delayed only if the case is going to bring a positive outcome.

**KEYWORDS:** Delays, Detectives, Forensic Pathologists, Post-mortem, Inquest, Magistrates, Prosecutors

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### I. INTRODUCTION

South Africa has extremely high per capita rates for murder and most other violent crimes (Altbeker, 2008). However, it is not true that everyone is uniformly likely to be murdered (Altbeker, 2008). It also appears that Limpopo, North West, Mpumalanga and Free State are less violent than the national average, but it is not clear whether the difference is a straightforward matter of urbanization (Altbeker, 2008). Finally, large settlements in these provinces have low per capita murder rates, while small rural areas in some provinces seem to have extraordinarily high murder rates (Altbeker, 2008).

Murder in South Africa seems to have increased over the years (SAPS, 2018). South Africa has seen a 1320 increase in murders, from 19 016 in 2016/2017 to 20 336 in 2017/2018. An average of 57% of people are killed daily in the country, 46 of whom are men, eight women, and two children (SAPS, 2018). This shows an increase from the average of 52 murder deaths a day in 2016/2017 (SAPS, 2018). The murder rate was up by 6.9% in 2017/2018. The murders of women and children have also seen a notable increase, up by 146 reported cases. A total of 291 more women have been murdered in this period in 2017/2018, 291 more than last year, with 117 boys and 29 girls killed (SAPS, 2018). Cases of murder are often postponed because of the delayed release of post-mortem results by the pathologists. Some cases are even struck off the court roll and the suspects are released on bail until the next court appearance. It was therefore, crucial to investigate the causes of delays in post-mortems and inquests in Gauteng province. The investigation assisted to identify the challenges and

suggest measures that can be implemented to address the issue. The delays in post-mortems and inquests will be discussed in the article.

### **1.1 Aims of the Article**

The aim of this article is to present the findings of the factors that led to delays in post-mortems and inquests in murder cases. This aim was achieved by discovering the factors that lead to delays of inquests and post-mortems.

### **1.2 Research Questions**

The study sought to answer the following research questions:

- What are the factors that lead to delays in the post-mortems and inquests in murder cases?
- What are the implications of postponed murder cases on the Criminal Justice System?
- What are the implications of the delayed post-mortems in murder cases?
- What measures can be put in place to improve or speed up the process of releasing post-mortem results?

## **II. LITERATURE REVIEW**

The literature review contains information that was extrapolated from various sources that were taken from the internet. The summary of the literature review is aligned to the research objectives as discussed above.

### **2.1 The causes of delays in post-mortems and inquests**

#### **2.1.1 Shortage of Forensic Pathologists**

Forensic pathologists are licensed physicians who have completed additional training in anatomical and/or clinical pathology, along with a fellowship in forensic pathology (AsthoBrief, 2019). These professionals typically operate within medical examiners' or coroners' offices, or servicing autopsy centres (AsthoBrief, 2019). Forensic pathologists investigate deaths, perform forensic medical autopsies, and determine the cause and manner of deaths (AsthoBrief, 2019). The standards adopted by the National Association of Medical Examiners (NAME) require autopsies when drug intoxication is presumed, and particularly when investigating and certifying opioid-related deaths (AsthoBrief, 2019).

The recent rise in drug overdoses and other traumatic deaths (e.g. suicides and deaths resulting from motor vehicle crashes) has led to an increase in the number of deaths that need to be investigated and autopsied (AsthoBrief, 2019). There is a serious shortage of forensic pathologists and the limited resources available, this jeopardises accreditation and certification efforts and threatens the health of the individuals working in the medico-legal death investigation community (AsthoBrief, 2019). The forensic pathologists perform no more than 250 autopsies each year, with the maximum burden never to exceed 325 (AsthoBrief, 2019). Exceeding the limit seriously impacts the work or adversely affects the health and safety of the public or agency staff, resulting in the loss of full accreditation (AsthoBrief, 2019). As more people die from drug overdoses, more deaths need to be investigated and autopsied and state and local jurisdictions need more qualified professionals to fill this void (AsthoBrief, 2019).

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According to Koehler & Wecht, (2006) shortage of forensic pathologists is attributed to a few forensic pathologists entering the field despite the current popular interest in it. Commentators typically cite the low salary received relative to the cost and length of time needed to complete the training programs, the intense public and legal scrutiny of one's work, and the emotionally demanding work environments (Koehler & Wecht, 2006). Moreover, forensic pathology is not advancing as a science or a medical profession partly because it operates under government-imposed regulatory constraints that undermine the need to develop, challenge, or move beyond traditional approaches (Koehler & Wecht, 2006). The autopsy, as a technique, has essentially not changed for decades, and appropriate innovative research is not being done or funded (Koehler & Wecht, 2006). Thus, there is an insufficient number of professionals to meet the day-to-day workload demands (Koehler & Wecht, 2006).

### **2.1.2 Delays of DNA results**

The Biology Unit of the Forensic Science Laboratory of SAPS has a personnel strength of 200 members countrywide (SAPS, 2018). Of these members, 121 are directly involved in the process of gathering evidential material and DNA analysis (SAPS, 2018). The other members are involved in biology-related functions such as attending scenes of crime (SAPS, 2018). It takes some time from receiving samples to analysing such samples to the eventual conclusive results (SAPS, 2018). In some cases, the samples are intact, and the analysis can be commenced with immediately; in others, there are hampering factors such as exposure to weather conditions which will necessarily cause a delay (SAPS, 2018). It must also be noted that the nature of samples and the analysis to be done differs from case to case (SAPS, 2018).

### **2.1.3 Delay of toxicology results**

Getting a complete and accurate forensic toxicology test result can be a lengthy process for a variety of reasons (Doheny, n.d). For example, there may be a lot of specimens that need to be tested, which means more testing time (Doheny, n.d). Also, as an investigation proceeds, information about the possibility of another drug being involved may surface, so even more testing may be needed (Doheny, n.d). When the first round of positive tests should be confirmed by the more sophisticated method, this may require sending out the specimens to more specialized laboratories and that adds to the delay (Doheny, n.d).

The Sunday Times newspaper of 16 June 2019 quoted the Chief Forensic Pathology specialist at the University of Cape Town's Department of Forensics and Pathology who said that the average waiting period for toxicology results is about five years. It has been that way for the past twenty years. The lab should run a toxicology screen overnight and a targeted screen should take a week and the results should be released within thirty days (Sunday Times, 2009). Sunday Times also cited the Gauteng Chief Specialist in Forensic Pathology who indicated that there are only four forensic laboratories in the country based in Cape Town, Durban, Pretoria and Johannesburg. It was also mentioned that there was a national backlog of about 60,000 medico legal death investigations. The Johannesburg Forensic Chemistry Laboratory had a backlog of about 13,500 samples (Sunday Times, 2009). Gauteng Department of Health spokesperson Popo Maja also stated that the waiting times for results vary due to the complexity of the tests being performed. At times equipment break downs can also delay the finalisation of cases (Sunday Times, 2009).

### **2.1.4 Delays in carbon monoxide (CO) reports**

The low return of CO reports is reported to be due largely to a broken instrument in the laboratory, as there has been a delay in fixing it (De Jong, 2017). However, this does highlight the lack of a secondary method for testing such samples in case of breakages (De Jong, 2017). This also highlights issues in procurement and service maintenance, which is a challenge within the government system (De Jong, 2017). It is evident that service on the instrument was significantly delayed, and that a system of sending specimens to another laboratory is not always available at the time as there are only four Forensic Chemistry Laboratories (FCLs) within the country (De Jong, 2017).

## **2.2 Delays in post-mortem results and its impact on murder cases**

As noted in the problem statement, there are delays in post-mortem results which then cause delays in the finalisation of murder cases. Below are the examples of delayed post-mortem results. The Sowetan Live Newspaper (2018) reported that a 29-year-old man Siyabuyela Ngqeme made his third appearance in the Benoni Regional Court on Tuesday the 21st of August 2018 for the murder of his ex-girlfriend on 30 July 2018 (Sowetan Live, 2018). The matter was postponed because of delayed post-mortem results from the state pathologist. The Sandton Chronicle reported that on July 13, 2016, the Alexandra Magistrates' Court reopened a 2012 murder case that had been struck off the roll after a delay in the release of post-mortem results. The suspect was initially released on bail, however, due to the delay of post-mortem results was ordered to reappear in court on a date which was to be announced (Sandton Chronicle, 2016).

IOL News (2019) reported that the sister of a Phoenix area resident in Kwa Zulu Natal, Christopher Padayachee, 33, who was beaten to death with a baseball bat on November 5 2018, hopes justice will prevail and she will get the answers needed to find closure. The case was postponed on the 29th of January 2019 because the DNA and post-mortem results were outstanding. The suspect was released on R2 000 bail and had to wait until the end of March for his next appearance in the Verulam Magistrate's Court (IOL News, 2019).

In Cape Town, there was another case of post-mortem delays where cases of gunshot deaths examined at Cape Town's Forensic Pathology Services have increased by more than 56% over the last year (Postman, 2017). It was reported that post-mortem caseloads for gunshot deaths examined at the Salt River and Tygerberg Forensic Pathology Services had increased by 12% a month on average in the last three months, from 140 cases in July to 163 cases in August 2017 and 176 cases in September 2017 (Postman, 2017). Members of the Muslim community complained that a backlog of autopsies was delaying their burials. A while ago in 2017, a group of Muslim undertakers, family members of the deceased and others protested outside the Salt River Forensic Pathology Service against a decision by the Western Cape Department of Health to perform autopsies and release bodies in chronological order, instead of prioritising autopsies on Muslims (Postman, 2017). Therefore, after a meeting with the Muslim Judicial Council (MJC) was held, the department agreed to prioritize autopsies of Muslim bodies acknowledging the Islamic law (Postman, 2017). However, the practice of prioritisation had come under pressure due to the extremely high caseload of unnatural deaths in the Western Cape (Postman, 2017). Although more staff had been appointed, the department was not able to maintain the expected 24-hour release period for Muslim bodies (Postman, 2017). The department alerted that the current average period for the release of bodies is six to seven days (Postman, 2017).

The MJC was still not pleased with this period and they asked for it to be shortened. The department committed to an internal review of its procedures to try and shorten the current average period for the release of bodies, with weekly communication updates to the MJC (Postman, 2017). It had also promised to stay in touch with families (Postman, 2017). However, Igsaan Isaacs a member of the newly formed Western Cape Muslim Undertakers' Forum said that in the Muslim religion, the body of the deceased must be buried before sunset on the day of the death and if that could not be possible, then the burial needs to be done as soon as possible (Postman, 2017). He further said the Department of Health had a longstanding agreement with the Muslim community that autopsies on Muslims would be prioritised (Postman, 2017). However, the mortuary performs 15 autopsies a week and when they released the most recent list of autopsies, Muslim bodies were not on that list (Postman, 2017).

### **III. METHODOLOGY**

The study utilized a qualitative approach to collect information and to achieve the purpose of the research. The researcher used semi-structured interviews to source information from the respondents. Purposive sampling was used to select 25 participants i.e. Detectives of the SAPS, Prosecutors and Magistrates from the Department of Justice and Constitutional Development and the Forensic Pathologists from the Department of Health.

#### **Data collection**

The interviews involved asking each of the participants their opinions on the causes of delays of Inquests and Post-mortems. Probing and follow-up questions were also used to clarify issues and to acquire more information from them. Probing was also used to encourage participants to talk more about their views. Some notes were taken by the first author during and immediately after each interview. Each interview lasted an average of 60 minutes.

#### **Data analysis**

Thematic analysis and categorisation was applied for the analysis of data. After the categorisation of data, thematic analysis was done. This is the process of grouping evidence and labelling ideas so that they gradually show a broader viewpoint. Finally, data was presented in a discussion.

### **IV. RESULTS**

The themes were identified according to the objectives of the study and they were 1) Factors that lead to delays in the post-mortems and inquests in murder cases and 2) Implications of the delayed post-mortems and inquests in murder cases. Sub-themes were developed from the two main themes.

#### **4.1 Factors that lead to delays in the post-mortems and inquests in murder cases**

- **Shortage of human resources**

All the Prosecutors interviewed mentioned that the delays in obtaining post-mortem results are caused by a shortage of staff in the Pathology department which in turn leads to backlogs. The respondents further highlighted that cases which need toxicology reports take a lot of time. The participants stated that most of the time the pathologists finish the post-mortems on time but wait for the toxicology report to confirm his/her findings.

Additionally, Forensic Pathologists interviewed revealed that a shortage of support staff to type post-mortem reports, lack of proper equipment and inadequate facilities leads to delays. Furthermore, Forensic Pathologists stated that sixteen (16) autopsies are conducted at once in one big room. Therefore, there is a need for someone to be present to write what the Doctors are finding when the autopsy is performed.

The majority of the detectives interviewed mentioned that the delays are caused by understaffed Forensic Pathology Services as doctors are resigning since they are underpaid. This then leads to detectives being told that post-mortem results are not ready when they go and collect them at the mortuary.

The respondents further stated that sometimes doctors type the post-mortem reports but do not sign them thus delaying the process. In one of the police stations, respondents highlighted that some of the post-mortems reports that are delayed are due to a doctor who is no longer working as a result of a bipolar disorder. Other doctors are unable to sign those post-mortem reports hence the delay.

- **Delayed Toxicology, Histology, DNA and Carbon monoxide results**

A toxicology test is performed after a person's death is also known as forensic toxicology testing or post-mortem drug testing. The toxicology report that is eventually issued in forensic toxicology testing is the result of laboratory procedures identifying and quantifying potential toxins, which includes prescription medication and drugs of abuse as well as interpretations of the findings (Doheny, n.d). Furthermore, toxicology testing is part of the autopsy report and a complete autopsy should have some level of toxicology (Doheny, n.d).

Finally, the pathologists highlighted that delays are also caused by the type of request that is made. For example, waiting for a Toxicology report can take up to ten years because there are only four Toxicology laboratories in the country and a total of 72 000 cases are processed in these laboratories annually. Toxicology is a medical inspection of an individual who is or is suspected of being poisoned (Doheny, n.d). In addition, respondents stated that toxicology reports can even take up to twenty years and they have never seen any such reports ever since they became police officers. They furthermore, highlighted that there are toxicology reports which have been outstanding from 2003.

Additionally, respondents said cases awaiting Histology and Carbon monoxide results are also delayed and take up to two years to be finalized. A Histology test checks bodily functions, for instance, if the person has died because of a heart attack or epilepsy. Carbon monoxide is a test that is conducted to determine if the person was alive before being burned by fire and if the person did not inhale smoke which might have caused the death of that individual. Most of the respondents also cited that some mortuaries lack leadership especially Germiston mortuary. The respondents said that the managers at this mortuary do not ensure that Forensic Pathologists release post-mortem results on time. Literature reveals that carbon monoxide poisoning is caused by inhaling combustion fumes. When too much carbon monoxide is in the air that one is breathing, the body replaces the oxygen in the red blood cells with carbon monoxide ([www.mayoclinic.org](http://www.mayoclinic.org)). This prevents oxygen from reaching your tissues and organs ([www.mayoclinic.org](http://www.mayoclinic.org)).

#### **4.2 Factors that cause delays in the finalization of an inquest**

All participants (Detectives, Magistrates, Prosecutors and Forensic Pathologists) interviewed mentioned that there are delays in the finalization of an inquest. The respondents further stated that the delay is caused by toxicology results which take a long time to come back. In addition, respondents revealed that delays are also caused by incomplete investigations which are due to the unavailability of witnesses. Furthermore, prosecutors revealed that the delay is sometimes caused by the investigators because they do not give them the dockets and do not have records of how many inquest matters were opened within a month. They further mentioned that sometimes the delay is caused by the investigators, for example, if prosecutors notice a missing document or an error they notify the police, but it takes the police a very long time to fix the error or get the outstanding document. Often this is something that can be done within a day or a week however, the police will take three months to fix it. The respondents further cited that there are no prosecutors who specifically deal with inquests full time and that priority is given to criminal cases over inquest cases hence the delays in the finalization of inquests.



#### **4.3 Implications of the delayed post-mortems and inquests in murder cases**

**Detectives** - All the detectives interviewed mentioned that delayed post-mortem results have an impact on the finalization of cases. As a result, suspects who are in custody are released because the courts need post-mortem results to make a judgement. The respondents further stated that it is even more difficult because the courts use the information received from detectives to make a judgment on the case. In addition, respondents averred that the workload becomes too much, which has an impact on them psychologically since families of the victims think that the police are conniving with the suspects when the post-mortem results are delayed.

**Prosecutors** - The majority of prosecutors interviewed stated that delays in post-mortem results cause a delay in the finalization of cases and it is a problem if the suspects that are in custody do not get bail. Participants further added that delayed post-mortem results lead to withdrawal of cases because some suspects, especially foreigners return to their country of birth and are untraceable. Finally, they mentioned that delayed post-mortem results cause a backlog of cases. In a district court, once a case has been on the roll for more than six months, it is considered a backlog.

**Families** - The majority of detectives interviewed mentioned that they do not work directly with families so they are not aware of the impact that delayed post-mortem results have on the families of victims. However, one detective stated that detectives assist families of victims to complete insurance forms. If post-mortem results are not available, the insurance does not pay out which leaves the families frustrated. Other participants further highlighted that delayed results hinder the families' ability to find closure and insurance payouts are not made until the cause of death is established. In addition, respondents cited that the families lose trust in the police and accuse them of being corrupt when post-mortem results are delayed. The families also do not understand that the delays are not on the part of police but the Department of Health which conducts and compiles post-mortem reports.

#### **4.4 Suggested measures to address the issue of delayed post-mortem results**

The majority of participants interviewed mentioned that the Forensic Pathology Service must be capacitated with more staff and paid market related salaries to attract more new forensic pathologists. Forensic Pathologists further added that they need proper facilities and a safe environment because they are reaching a stage where it is difficult to work on weekends. They added that members of the public go to the mortuary to demand the release of bodies of their loved ones and threaten the doctors with violence. Therefore, the environment is no longer conducive or safe for doctors. Furthermore, one pathologist clearly stated the Forensic Pathology Service must be removed from the Department of Health because preference is given to financing the procurement of equipment to save lives. Additionally, another detective highlighted that Germiston mortuary must emulate the Heidelberg mortuary and change their method of work whilst another suggested that the government should procure more toxicology machines.

#### **4.5 Suggested measures to address the issue of delayed inquests**

The prosecutors interviewed mentioned that they need to have a system where they have control over the dockets so that they are aware of how many inquest matters have been opened and check progress daily. Furthermore, prosecutors mentioned that inquests should be delayed only if the case is going to bring a positive outcome. However, the participants also stated that cases of death due to natural causes should be dealt with speedily.

### **V. RECOMMENDATIONS**

The following recommendations have been suggested to deal with the delays of inquests and post-mortems in Gauteng province.

#### **5.1 The Department of Health should consider the following:**

The Department of Health should employ additional forensic pathologists to conduct post-mortems. The department should provide resources that will enable forensic pathologists to conduct post-mortems speedily. This can be done by approaching the mortuaries to determine what resources they require to speed up the process of conducting post-mortems. Procurement of extra equipment such as toxicology, histology and carbon monoxide testing machines for each province should also be a priority as the study has revealed that there is only one toxicology machine that processes the samples received from all nine provinces in the country. Administrative staff should be hired to take notes while forensic pathologists are conducting post-mortems. The administrative staff can also be utilised to type post-mortem reports so that the forensic pathologists can sign them as soon as they are ready.

## **5.2 Building of additional forensic pathology mortuaries and laboratories**

The issue of building more forensic pathology mortuaries should be explored and embarked on by the Department of Health so that the delay in post-mortems can be addressed. Increasing the salaries and benefits of Forensic Pathologists should also be considered so that the pathologists remain in their posts. Perhaps that will assist in terms of increasing capacity in the Forensic Pathology Services which would speed up the finalization of post-mortem results. In addition, the government should also build forensic laboratories in all nine provinces as there are only four laboratories in the country in the Western Cape (Cape Town), Kwa-Zulu Natal (Durban) and Gauteng (Pretoria and Johannesburg). This will assist in terms of reducing the backlog of toxicology and DNA samples that should be tested.

## **5.3 Standard Operating Procedure in place between Forensic Pathology and SAPS**

There should be a clearly defined standard operating system in place between Forensic Pathology Services and SAPS. The standard operating procedures should specify the turnaround time of releasing post-mortem results. The procedure should also outline the processes that the detectives must follow when collecting post-mortem results at all government mortuaries. The days of the week on which the detectives should go the mortuary to check or collect the results must also be specified in the standard operating procedure.

## **VI. CONCLUSION**

The study has confirmed that there are delays in post-mortems and inquests in Gauteng province. With regard to the factors that cause delays in post-mortems the Forensic pathologists interviewed pointed to the shortage of Forensic pathologists. This shortage of forensic pathologists is attributed to the resignation of doctors since they are underpaid. The respondents also highlighted that in some instances the delays are caused by outstanding toxicology reports which take between five to ten years for the results to be released. This raised concerns as some detectives have indicated that they have never seen a toxicology report ever since they became investigating officers.

The study also discovered that the delay in post-mortem results are also caused by the delay in the finalization of the following reports namely: carbon monoxide, histology and DNA results as these require tests to be conducted for a detailed report on the cause of death. The shortage of typists to type the post-mortem reports was also cited as another factor that led to the delays.

The delayed post-mortems and inquests have an impact on the finalization of cases. The delays impact negatively on the work of detectives, prosecutors and magistrates as the cases cannot be finalized. Thus, it creates a huge backlog and negative impression of the Criminal Justice System by the public. This further leads the court to decide to release the suspects who are in custody since the court needs the post-mortem results to make a judgement.

On the process of inquests and their duration, the study revealed that an inquest is an inquiry about the death of a person. The purpose of the inquest is to find the true cause of death as well as to estimate the time and day of death. It was also indicated that the duration of the inquest varies from case to case. The respondents raised concerns about the process of inquests that it has abnormal delays. The respondents interviewed also averred that the detectives are not given medication and protective clothing to prevent them from getting infections in instances where they should attend post-mortems.

It is worth noting that all the participants interviewed mentioned that they are not aware of any best practices in both post mortems and inquests. The respondents also revealed that there is no Standard Operating Procedure (SOP) between SAPS and the Department of Health in terms of when post-mortem results should be released.

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*The Factors That Lead To Delays in Inquests and Post-Mortems in Murder Cases In..*

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