



civilian secretariat for police service

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AN ANALYSIS OF MURDER DOCKETS ROOT CAUSES OF WITHDRAWALS OF CASES BY THE NPA

**A CONSOLIDATED REPORT WITH THE PROVINCIAL
SECRETARIATS**

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DEFINITION OF KEY CONCEPTS

"Attrition" refers to the filtering process by which cases drop out of the criminal justice system.

"Buccal sample" means a sample of cellular material taken from the inside of the person's mouth.

"Crime scene" SAPS Policy 2 of 2005 on Crime Scene Management defines crime scene as the place, including the surrounding area, where an alleged offence was committed or where items with potential evidential value may be collected.

"Inquest" is a judicial inquiry that seeks to determine the cause of a person's death.

"Forensic DNA Profile" The results obtained from forensic DNA analysis of bodily samples taken from a person or samples taken from a crime scene, providing a unique string of alpha numeric characters to provide identity reference: Provided this does not contain any information on the health or medical condition or mental characteristic of a person or the predisposition or physical information of the person other than the sex of that person.

"Post-mortem examination" This is an examination carried out by the medical doctor on a dead body to determine the cause of death and any other illnesses in the body to understand better the cause of death. Autopsy and necropsy has the same meaning as post-mortem examination, and are used interchangeably.

"Physical evidence" encompasses any and all objects that can establish that a crime has been committed or can provide a link between a crime and its victim or a crime and its perpetrator

"SAP 69" Criminal Record Information Management (CRIM) System enable the updating of the profile for previous convictions and the issuing of SAPS 69's forms.

"SAPS 5" refers to an *Investigation diary*, which is part of the docket file where key stakeholders communicate such as detective commanders in inspecting the docket file and providing supervision, or the prosecutor who provides the instructions in the investigation process. The investigators' document their activities, and manages information flow across a range of stakeholders.

ACRONYMS

ADR	: Alternative Dispute Resolution
CAS	: SAPS' Crime Administration System
CJS	: Criminal Justice System
COVID-19	: Coronavirus disease
DNA	: Deoxyribonucleic Acid
DHA	: Department of Home Affairs
DPME	: Department of Planning, Monitoring and Evaluation
FSL	: Forensic Science Laboratories
IO(s)	: Investigating officer(s)
LCRC	: Local Criminal Record Centre
NPA	: National Prosecuting Authority
PFMA	: Public Financial Management Act
SAPS	: South African Police Service

EXECUTIVE SUMMARY

The murder rate in South Africa has grown from 17 068 cases in 2013/14 to 21 325 cases in 2020/21.¹ Stakeholders in the Criminal Justice System (CJS) are symbiotically dependent on each other to ensure efficient and effective investigations, prosecutions, and convictions. A very small percentage of reported crimes are accepted by the National Prosecuting Authority (NPA) for prosecutions. A high proportion of those dockets accepted² by the NPA result in a conviction. The very low conviction rate as a percentage of reported crimes can be attributed to the result of the performance of the South African Police Service (SAPS). Determining whether SAPS performance gives rise to the low conviction rates can only be determined from an analysis of the dockets prepared by the SAPS and submitted to the NPA. As murder is the most reliable crime to measure, an analysis of murder dockets is the focus of this research study.

This study, through the value chain lens, delves into the investigation and prosecution processes and focuses on reasons for 'withdrawn' and 'undetected' murder cases; through the actual physical analysis of murder dockets to gain a full understanding of the factors influencing prosecutorial outcomes.

Literature shows that successful prosecutions and convictions are dependent on the effective performance and cooperation of the SAPS Detective Service and Forensic Science Service (FSS), the Department of Health Forensic Pathology Service (FPS), and the NPA. Literature further shows that the challenges hampering effective prosecutions are not new. Resource deficits, fragmentation, poor cooperation and coordination, backlogs, budget cuts, lengthy prosecution processes, poor working conditions, poor Information and Communications Technology (ICT) implementation, and overall weak management, remain the constant problems towards effective implementation.

The study findings of the actual docket analysis confirm the above challenges – in detail. Crime scene management, receipt of forensic reports, attendance of post-

¹ In 2020/21, the murder went down to 19 972 illustrating the effect of the disaster containment measures. The fourth quarter year on year murder statistics are still awaited. The decline in murder can only be sustained through addressing the drivers of murder such as illegal firearms, structural inequalities – poverty, unemployment, etc.

² The NPA only accept cases that have a high probability of a prosecution being secured.

mortems, witness cooperation, and statement taking, continue to hamper effective operations.

What is needed is for departments to change their mode of working to lessen the burden of administration and operations by adopting e-technology solutions to modernise the investigations process. Heads of Departments must collectively challenge the entities responsible for ICT technology to fast track implementation. Increasingly, the CJS must be held accountable for repeated failures and deal with leadership inadequacies and corruption that are contributing to an inefficient CJS. If this does not happen, South African citizens will continue to be denied justice.

1. INTRODUCTION

The Civilian Secretariat for Police Service (CSPS) plays an integral role in transforming the South African Police Service (SAPS). Part of this process is to ensure the SAPS executes their duties in the most effective and professional manner. When challenges become evident, it is important that these challenges are addressed to ensure citizens the best possible service.

Within the realm of investigations and servicing of victims, studies are showing that the SAPS is floundering.³ The SAPS measures itself by the extent to which investigations result in trial-ready dockets. The National Prosecuting Authority (NPA) measures itself by the extent to which cases they pursue result in convictions. There is a massive mismatch between cases and prosecutions. The primary cause for the mismatch seems to be the quality of dockets, with the NPA selecting only those dockets that are winnable to pursue. The mismatch between the objectives of these two entities calls for an assessment of the quality of dockets and establishing whether or not that it is this factor that limits prosecutions.

This study, through the value chain lens, delves into the investigation and prosecution processes and focuses on reasons for 'withdrawn' and 'undetected' murder cases; through the actual physical analysis of murder dockets to gain a full understanding of the factors influencing prosecutorial outcomes.

2. PROBLEM STATEMENT

The murder rate in South Africa has grown from 17 068 cases in 2013/14 to 21 325 cases in 2020/21.⁴ Stakeholders in the Criminal Justice System (CJS) are symbiotically dependent on each other to ensure efficient and effective investigations, prosecutions, and convictions. A very small percentage of reported crimes are accepted by the NPA for prosecutions. A high proportion of those dockets accepted⁵ by the NPA result in a conviction. The very low conviction rate as a percentage of reported crimes can be attributed to the result of the performance of the SAPS. Determining whether SAPS performance gives rise to the low conviction rates can only

³ Case Dockets. The Golden Thread Linking the SAPs and the NPA. A Case Study of Murder Dockets. 2021. Civilian Secretariat for Police Services.

⁴ In 2020/21, the murder went down to 1 9 972 illustrating the effect of the disaster containment measures. The fourth quarter year on year murder statistics are still awaited. The decline in murder can only be sustained through addressing the drivers of murder such as illegal firearms, structural inequalities – poverty, unemployment, etc.

⁵ The NPA only accept cases that have a high probability of a prosecution being secured.

be determined from an analysis of the dockets prepared by the SAPS and submitted to the NPA. As murder is the most reliable crime to measure, an analysis of murder dockets is the focus of this research study.

AIM AND OBJECTIVES OF THE STUDY

The main aim of the study is to analyse the SAPS murder dockets to identify the strengths and shortcomings of murder investigations and prosecution. The objective of the study is to identify the SAPS and NPA's requirements of successful investigations. The focus is as follows:

- Determine challenges contributing to attrition⁶ of murder cases within the value chain, with specific reference to withdrawn and undetected murder cases
- Identify reasons for withdrawn and undetected cases

The study responds to the following research questions:

- What are the strengths and shortcomings of murder investigations and prosecutions?
- What are the factors in the investigation process that contribute to attrition of murder cases?
- How do the stakeholders in the CJS contribute to attrition of murder cases?

3. METHODOLOGY AND RESEARCH DESIGN

Overall, this study adopted a mixed research approach which entails both qualitative and quantitative methods, using numeric data to summarise the trends in the murder dockets and using scenarios from the case dockets.⁷ The mixed research approach is relevant when considering the enormous scope of the project spanning two years: 2020/21 and 2021/22. The study encompasses three (3) phases”:

- Phase 1 included document reviews and analysis of the SAPS Detective Service murder dataset from 2013/14 to 2017/18. The analysis focused on the figures relating to murder cases, from reporting of a case to the police until convictions. This phase was finalised in 2020/21.

⁶ Attrition refers to withdrawn and undetected murder cases. It excludes murder cases of natural attrition

⁷ Merriam, S. B. 2009. *Qualitative Research: A Guide to Design and Implementation*. San Francisco, CA: John Wiley & Sons. Merriam draws from both paradigms informing qualitative and quantitative methodologies.

- Phase 2 entails conducting in-depth interviews with detectives and detective commanders from the SAPS. The interviews with prosecutors from the NPA were not conducted due to delays from the NPA in finalising access to senior prosecutors. This is a deliverable for the financial year 2021/22.
- Phase 3 focuses on analysing actual dockets at selected police stations in the nine (9) provinces. This is a deliverable for the financial year 2021/22. Phase 2 and 3 reports are consolidated into this national report.

Sampling

Attrition in this study is operationalised specifically to understand withdrawn and undetected murder cases. The sample for prosecutor-withdrawn murder cases was drawn from the SAPS Detective Service murder dataset for the financial years from 2013/14 to 2017/18, ensuring representation of each distinct sub-group in the selection of the sample - called strata. The dockets of interest were withdrawn murder cases, from the top three highest murder reporting stations for each province, which is primary stratification⁸ based on geography. A total of 163 samples were drawn from a population of 891 withdrawn dockets, also using the categories of withdrawal reasons.

Table 1: Samples of murder cases withdrawn by prosecutors

Province	Police Stations	Total number of cases withdrawn with reasons from 2013/14 to 2017/18	Sample	
			Total sample per police station	Total per province
Free State	Thabong	39	13	36
	Bloemspruit	64	14	
	Welkom	28	9	
KwaZulu-Natal	Inanda	163	22	65
	Umlazi	154	22	
	Plessislaer	165	21	
Western Cape	Nyanga	137	26	62
	Delft	95	23	
	Khayelitsha	46	13	
Total		891	163	163

Source: SAPS Detective Service Dataset

⁸ Stratification is the process of dividing members of the population into homogeneous subgroups before sampling. Stratification thrives on random sampling, where the sampling technique of stratum is applied with random sampling, it then become quota sampling.

The withdrawn murder dockets were further grouped according to the 'reasons for withdrawals', which formed a secondary strata,⁹ followed by conducting a proportional allocation¹⁰ of sample size on these groups. The selection within the groups were simple random sampling¹¹ with full selection when the population in the sub-group or stratum was less than ten to provide a sufficient sample in the stratum for in-depth analysis. The sampling did not draw from the cases that are in the judicial process or from completed cases with guilty and not guilty verdicts (See Annexure A). Given the high conviction rate, the study steers away from the court verdicts in order to have a focused analysis on the highly problematic areas of 'withdrawn' and 'undetected' murder cases.

The sample on withdrawn murder case dockets were identifiable through the Crime Administration System (CAS) number to assist the retrieval of specific dockets at police stations. Where the docket was not traceable at police stations, it was replaced with a similar docket focusing on withdrawn and undetected murder dockets. In the Free State, the third sampled docket for Alternative Dispute Resolution (ADR) was a duplicate docket, which reduced the sample to two case dockets.

The other dockets of interest were murder cases which were "undetected". These were also obtained from the top three highest murder reporting stations in each province, using the quota of disproportionate sampling.¹² The top three police stations are the primary stratification. The undetected murder dockets were grouped into secondary strata, totalling to a sample size of 57 cases for all nine provinces.

The sample for detectives and detective commanders in the top 27 police stations was drawn specifically focusing on those who have experience in murder investigations, using a non-probability sampling technique. Two detectives and one detective commander were selected per station.

⁹ Secondary stratification refers to allocation based on the categories of withdrawn data.

¹⁰ Proportional allocation refers to allocations that ensures representation of each stratum matches the size of the stratum in the population.

¹¹ Simple random sampling refers to a subset of a statistical population in which each member of the subset has an equal probability of being chosen.

¹² Quota disproportionate sampling refers to a selection technique that limits the number of allocations within a stratum, making the size of the stratum not equivalent to the population.

Data Collection and Analysis

The data collection method used for detectives and detective commanders were face to face interviews, and for the analysis of the murder dockets, researchers gathered information from the actual dockets. The detective and detective commanders served as the primary data sources and the murder dockets were the secondary data sources. The data collection instrument was a semi-structured interview guide. Both categorical data and numerical data were gathered.¹³ The earlier design entailed conducting in-depth interviews with the detectives and detective commanders from the SAPS using a semi-structured interview guide.

The research design for murder dockets involved directly gathering information from the murder dockets using a murder docket data gathering tool that focused on withdrawn and undetected murder cases in all the top three police stations in the nine provinces. Descriptive analysis, specifically frequency statistics was adopted in analysing the data, which depicts the count and/ or percentages of variables. Where applicable, tables and graphs are used to summarise the observations made from the sampled murder dockets into numeric data. Cross tabulations were conducted to compare the results by linking different variables to aid in deepening the understanding of the other variables.

The adopted mixed methodology enabled vignettes / quotes to be taken from the data to illustrate with richness the trends indicated in the findings. They were used intentionally to ensure that the reader grasps the rich data from the dockets. The chosen quotes also served as evidence or illustration of the trends. This is in line with a pragmatic approach adopted by Merriam who navigates different paradigms in parallel, in response to the demands of a research.¹⁴

Ongoing literature review was conducted to interpret the findings to observe whether the study findings confirms previous studies. Interpretation helps to make sense of the data, in other words to ensure contextual meaning of the findings. The process also assisted with the development of conclusions for the study.¹⁵

¹³ Categorical data refers to binary variables i.e. variables with a number of categories such as yes/no.

¹⁴ Merriam, S. B. 2009. *Qualitative Research: A Guide to Design and Implementation*. San Francisco, CA: John Wiley & Sons. Merriam draws from both paradigms informing qualitative and quantitative methodologies

¹⁵ Sage. 2012. Interpretation – SAGE Research Methods, 03 March 2022, Available at: <http://methods.sagepub.com/reference/sage-encyc-qualitative-research-methods/n232.xml>

Ethical Considerations

This study respects the confidentiality of victims, suspects and the convicted by not divulging the case numbers and names of suspects, witnesses, victims, prosecutors and detectives.

Limitations of the Study

The COVID-19 pandemic containment measures slowed the pace of the project implementation. Some police stations were affected with COVID-19 cases, which affected the interview scheduling. Not all the SAPS detectives responded to the collection instrument due to other deployment requirements. The unavailability of investigating officers at police stations during fieldwork deprived the researchers of the onsite validation mechanism necessary for docket analysis, especially considering that some dockets could not be deciphered or had missing documents.

The study focus was limited to the number of police stations due to time and capacity constraints. Nonetheless, it is critical that future research and monitoring endeavours consider the selected sample size which was too big for a small number of researchers in each of the provinces who are also confronted with other priorities. Where resource constraints are anticipated in any future work on murder dockets, the scope of the project must be limited. Not all provinces were able to provide their reports timeously to form part of this report. Therefore, the results cannot be generalised across all provinces or the country, but to each police station population with the exception of undetected dockets as the sample was not proportionate to the population in each respective police station. The results can nonetheless provide a snapshot into the process of investigating and prosecuting murder dockets in the country.

Some of the sampled dockets could not be found at police stations. In other instances, researchers were given duplicate docket files which lacked critical attachments. Some dockets given to researchers were not actual murder dockets, hence, where possible, these were replaced with other murder dockets. Some murder case dockets as guided by the sample were not provided by police stations due to the labour intensive process of locating case dockets. A number of challenges were experienced emanating from the manual filing of dockets, which made the sampled dockets inaccessible. It is unclear whether these dockets are still within the SAPS or not, and the question of

stations monitoring such cases is questionable. Police station spaces are limited and cannot accommodate oversight work, with the result, in some instances researchers sought accommodation at provincial offices.

4. LITERATURE REVIEW: THE VALUE CHAIN OF AN INVESTIGATION

This literature review is centered on the value chain of an investigation. The section draws from other literature to draw attention to the contribution of the critical stakeholders in the investigation process, which has an implication for successful prosecutions and convictions.

4.1 Process of Investigations

A successful prosecution of a crime relies on rigorous investigation by investigators for the SAPS Detective Service, and the management of a crime scene is done by Crime Scene Experts from the SAPS Forensic Science Service (FSS), who process the crime scenes for physical evidence. The primary crime scene is where the initial crime was committed, with the secondary crime scene being the site where physical evidence relating to the offence are to be found.¹⁶ The crime scene management process involves the protection of the location or place where the murder occurred, the collection and preservation of physical evidence in its original state, and the storage and analysis of evidence.

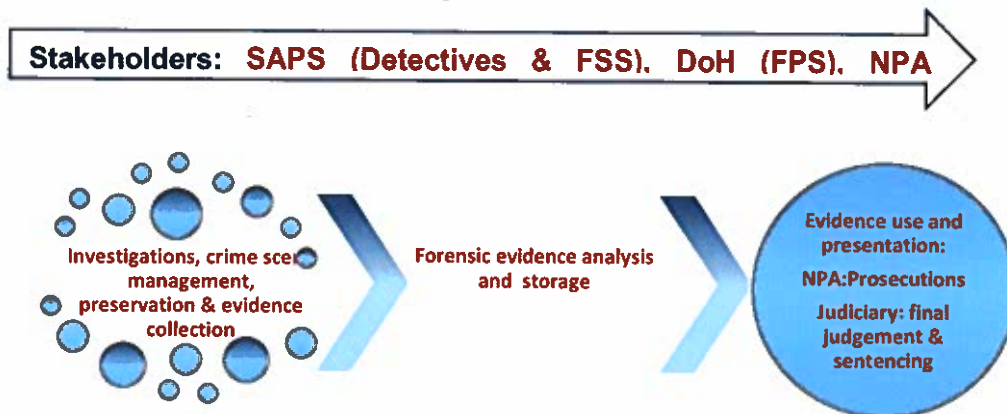
The Department of Health Forensic Pathology Service (FPS) is responsible for investigations of deaths suspected to be unnatural, murders, suicides and accidents, specifically ensuring collection of bodies and evidence at death scenes, storage of bodies and conducting post-mortems and autopsies, and report generation and expertise witnessing in court.¹⁷

The National Prosecuting Authority relies on the above role-players to effectively prosecute offenders based on informed decision making emanating from evidence presented to the courts. Figure 1 below outlines the value chain of a criminal investigation:

¹⁶ For example, the house where a child was murdered is the primary crime scene, while the motor vehicle in which the child's corpse was transported, would be investigated as the secondary crime scene

¹⁷ Gauteng Provincial Department. Undated. Request for Forensic Pathology Services. 21 February 2022, Available at: <https://www.gauteng.gov.za/Services/GetServices?serviceld=CPM-001459&taxonomyItemld=CPM-001006&isFromDepartment=true>

Figure 1: Value chain of an investigation



Source: Adapted by the CSPS

The value chain encompasses the different disciplines that converge and form part of the medico-legal¹⁸ death investigation process.

4.2 Role-players in an Investigation Process

SAPS Detective Service

Section 205 of the Constitution of the Republic of South African tasks the SAPS with the investigation of crimes. This mandate is realised through the SAPS Detectives Service, which aims to ensure effective and efficient investigations.¹⁹ The Detective Services Programme in the SAPS comprises the Division: Detective Service (Crime Investigations), the Division: Forensic Science Services (Criminal Record Centre and the Forensic Science Laboratory (FSL)) and the DPCI (Specialised Investigations).²⁰ The SAPS Crime Investigations sub-programme is composed of Crime Detection, Vehicle Theft Unit, Stock Theft Unit, Family Violence, Child Protection & Sexual Offences Units, and Murder, Robbery & Taxi Violence Units.²¹

One of the elements of an investigation of a crime entails interviewing witnesses.²² Witness statements provide critical information or leads that make a case successful. Witnesses provide statements and/or evidence of what they observed at a crime scene. They may have different locations and angles of observations with respect to the crime scene because of being directly or indirectly present at the crime scene. If

¹⁸ Medico legal investigation refers to the interface between science and law.

¹⁹ SAPS Annual Performance Plan, 2018/19.

²⁰ SAPS Annual Performance Plan, 2021/22.

²¹ Parliamentary Monitoring Group. 2018. SAPS 2018/19 Budget: Programme 3: Detectives and DPCI – Parliamentary; Programme 5 Protection and Security Services.

²² SAPS. 2020. Draft Detective Service Framework.

their statements show gaps or missing pieces, the investigator must attempt to piece this together to furnish the prosecutor with credible and corroborative statements. This means the investigator has to have critical thinking skills and attention to detail, such as the facts and timelines of events. This attention to detail helps the prosecutor during court proceedings and avoids spending unnecessary time on inadmissible evidence that has no reasonable prospect of a successful prosecution. The prosecutor is provided with a mechanism to consult with prospective witnesses to establish the credibility of the evidence. Investigators are also responsible for the identification and tracing of witnesses and remaining informed of their whereabouts.²³

Securing evidence can be done through the accomplice to the murder, where the accomplice provides information against other parties to the crime.²⁴ When this is done with honesty, the testifying accomplice can be discharged from the charges or the courts may charge the accomplice pending verification of the agreement entered into with the prosecutor. If the witness is not discharged from prosecution, the evidence becomes inadmissible at any trial pertaining to the offence.

Other commonly used methods of obtaining information from witnesses is through having witnesses identify suspects through identity kit construction, viewing suspects photographs, and attending identification parades. This process is sensitive because of the potential wrongful identification of a suspect that can lead to the conviction of an innocent person. For this reason, a prosecutor considers multiple evidence when testing the reliability of the witness' statement and in identifying potential suspects. Suspect identification through parades involves strict rules to safeguard the identification process from unfair practices, and must be subject to scrutiny when presented in court.²⁵

Critical to the investigation process, and also intimately interwoven to community relations, is the role of informers in providing information to assist investigators in cases. There are different types of informers; the occasional registered informer and the anonymous Crime Stop Informer. The Crime Stop informer is expected to be registered despite anonymity, and payments may be made to them when the

²³ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police. Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

²⁴ Section 204 of the Criminal Procedure Act, No.51 of 1977.

²⁵ Miller, Bosman, and Le Roux. 2019. How can we ensure fair identification parades? 03 February 2022, Available at: <https://www.mblh.co.za/NewsResources/NewsArticle.aspx?ArticleID=3047>

information they provide assists in resolving a crime. A Reward Evaluation Committee evaluates the information provided by an anonymous informant and determines the amount to be paid out as a reward.²⁶ Informers may know or not know a suspect and some are not free of bias as they may be reacting on the basis on being vengeful, irrespective of whether their information is correct or not.²⁷ Additional to the informer network, police officers registered for undercover operations are used in the investigation process to gather information.

SAPS Forensic Science Services

The SAPS FSL applies scientific principles, methods and techniques to aid the investigation and prosecution of cases.²⁸ The FSL encompasses the Ballistics, Scientific Analysis, Questioned Document, Biology, Chemistry and Explosives Units. The management of forensics in the SAPS is led by the main office in Pretoria, Gauteng. Decentralised offices are located in Cape Town, Port Elizabeth, and Durban.²⁹ The Western Cape regional FSL offers Ballistic, Biology, Chemistry, Victim Identification and Scientific Forensic Analysis. The KwaZulu-Natal regional FSL provides Ballistic, Biology (evidence recovery), Chemistry, Questioned Documents and Scientific Analysis Forensic Examination Functions. The KwaZulu-Natal regional FSL offers assistance to some parts of the Eastern Cape province.

Crime scene processing consists of an examination and evaluation of the scene for the express purpose of recovering physical evidence and documenting the scene's condition.³⁰ The manner in which evidence is processed will influence the role it is able to play in solving a particular crime. The validity of the evidence depends on the care taken by the specialist collecting it and the FSL in storing it, to protect it against contamination. Deoxyribonucleic Acid (DNA) can be collected at a crime scene, and can include body tissues or body fluids such as saliva, skin, semen and hair, to link a suspect to a crime, or prove the fact that a crime has been committed or not committed.

²⁶ SAPS. 2021. National Instruction 1 of 2021.

²⁷ Minaar. A. 2011. The Use of Informers: An Essential Tool in the Fight Against Crime? *Acta Criminologica* 24: 3. Southern African Journal of Criminology.

²⁸ SAPS. Undated. About the Forensic Science Laboratory, 23 December 2021, Available at: <https://www.saps.gov.za/faqdetail.php?fid=6#question>

²⁹ SAPS. Undated. About the Forensic Science Laboratory, 23 December 2021, Available at: <https://www.saps.gov.za/faqdetail.php?fid=6#question>

³⁰ Siniša Franjić. 2019. Blood in Murder Investigation. *Journal of Law and Judicial System*, Vol 2:3, pp. 18-22, 25 January 2022, Available at: <https://www.crime-scene-investigator.net/print/blood-in-murder-investigation.pdf>

DNA also serves as a back-up to the testimony of witnesses and links or de-links a suspect to a crime in question.³¹

The collection and analysis of forensic evidence is undertaken by crime scene specialists from the SAPS FSL. It is labour and resource intensive, and collection requires that the scientists be trained in taking and protecting the DNA evidence.³² Evidence is stored in the Criminal Record & Crime Scene Management: Exhibit Management System (EMS) to avoid loss and degradation to ensure a successful judicial process.

Scientists and medical professionals determine through analysis of evidence collected the cause and manner of death through medical and scientific methods used as evidence in a judicial processes. Medico-legal death investigations involve certification of the causes of an unnatural death. Ultimately, the forensic science results forms part of the SAPS murder docket and are used to prosecute and inform court judgements.

The Criminal Law (Forensic Procedures) Amendment Act introduced chapter 15F, which provides for the National Forensic DNA Database (NFDD) to facilitate and enable comparative³³ searches against the DNA profiles of suspects/ offenders. It assists to identify the suspect or exonerate the innocent persons before or during prosecution, and assists with the identification of missing persons or unidentified human remains.

Department of Health: Forensic Pathology Service

The National Health Laboratory Service Act³⁴ provides for the laboratory Services to the public health sector. The Forensic Chemistry Laboratories are responsible for ensuring the effective and efficient services in instances of unnatural deaths (toxicology analysis) to support the Criminal Justice System.³⁵ The Forensic Pathology Services ensures collection of bodies and evidence at death scenes, storage of the

³¹ Van der Walt, J and Luke, Rose. 2011. The Storage of Forensic Evidence at the Forensic Science Laboratory in Pretoria, South Africa. Journal of Transport and Supply Chain Management.

³² Van der Walt, J and Luke, Rose. 2011. The Storage of Forensic Evidence at the Forensic Science Laboratory in Pretoria, South Africa. Journal of Transport and Supply Chain Management.

³³ The Criminal Law (Forensic Procedures) Amendment Act of 2013 that was promulgated in 2014 enables comparison of fingerprints and photographs of suspects.

³⁴ Act, 37 of 2000

³⁵ Department of Health. 2021. Annual-Report-2020-2021. 19 February 2022, Available at: <https://www.health.gov.za/wp-content/uploads/2021/11/Annual-Report-2020-2021.pdf>

bodies and conducting post-mortems and autopsies and report generation and expertise witnessing in court.³⁶

The services of the Department of Health, through the forensic medical practitioner is to conduct the medico-legal post-mortem examinations³⁷ to determine the cause of a person's death. This examination does not require the next of kin's consent. The pathologist then releases the death certificate and releases the body for burial. The Inquest Act³⁸ makes provision to conduct a judicial inquiry to identify the deceased, and determine the cause of sudden, suspicious, medically unattended or unexplained death. An inquest is an inquiry about the death of a person. The prosecutor who receives the trial ready docket, may send the docket to the magistrate court in order to establish the cause of death, whether it is natural or unnatural. Otherwise, the courts may withdraw the case, and refer it to the inquest court. The inquest magistrate will consider the evidence and determine the manner of death.³⁹ The duration it takes an inquest to be completed varies from case to case. The investigator's information taken from the crime scene rather than the physical findings of the autopsy is critical in allowing the forensic pathologist to distinguish an accident from a homicide or suicide.⁴⁰

National Prosecuting Authority

The National Prosecuting Authority is mandated to institute and conduct criminal proceedings on behalf of the State and is accountable to Parliament. The prosecutors exercise discretion when carrying out their functions.⁴¹ The NPA requires independence and avoidance of undue influence to promote justice in society.⁴²

The NPA 2020 Strategic Plan acknowledge the need to rebuild the NPA that is trusted by the citizenry, which naturally calls for accountability and transparency. Thus, the

³⁶ Gauteng Provincial Department. Undated. Request for Forensic Pathology Services. 21 February 2022, Available at: <https://www.gauteng.gov.za/Services/GetServices?serviceld=CPM-001459&taxonomyItemld=CPM-001006&isFromDepartment=true>

³⁷ Medical forensic officer: who could be a qualified forensic pathologist, registrar (resident or forensic pathologist-in-training) or a medical officer.

³⁸ An inquest is not a trial but an 'inquiry'. The inquest magistrate examines the evidence, hears the testimony from all sides and then gives an objective ruling as to whether the matter should go for prosecution. Inquest Act of 1959.

³⁹ Dempers, J.J, Burger, E.H., Du Toit-Prinsloo, L., and Verster, J. 2012. Performance of autopsies in South Africa: Selected legal and ethical perspectives. Continuing Medical Education, Vol 30: 2, p. 53-55.

⁴⁰ Levy B. 2015. The Need for Informatics to Support Forensic Pathology and Death Investigation. Journal of Pathology Informatics, 6, 32, 02 February 2022, Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4485186/>

⁴¹ National Prosecuting Authority. 2003. Prosecution Policy, 25 August 2020; Available at: <https://www.npa.gov.za/sites/default/files/Library/Prosecution%20Policy%20%28Final%20as%20Revised%20in%20June%202013.%2027%20Nov%202014%29.pdf>

⁴² National Prosecuting Authority. Strategic Plan 2020 - 2025.

institution is faced with a need to do a balancing act between independence and accountability. The NPA noted its role to contributing in rebuilding the nation and addressing unacceptably high levels of murder.⁴³ This is also prioritised in the JCPS MTSF priorities, amongst others, the focus of reduction of crime, namely contact crime, which is inclusive of murder.

4.3 Challenges Experienced by Role-Players During the Investigation Process

Literature shows that one of the critical challenge facing investigators pertains to witness management. Murder dockets are withdrawn by prosecutors because of witnesses who are untraceable.⁴⁴ One study cited lack of resources such as lack of transport and telephones which reduces the responsiveness of the investigator towards witnesses, including their endeavour to locate and interview witnesses.⁴⁵ Another study cited the failure to access witnesses who were present at crime scenes, which requires investigators to acquire additional physical and circumstantial evidence to assist the court to reach its conclusions.⁴⁶ This could include evidence of vengeance, financial gain, conflict, access to the victim and weapons to commit a crime, spatial relationships between suspects, victims, timelines, and the criminal event. These spatial relationships can sometimes demonstrate that an accused person had a combination of intent, motive, opportunity, and/or the means to commit the offence.⁴⁷ Furthermore, witnesses are part of communities in which murders occur, and will not cooperate if they construe their efforts being fruitless, for instance, if they believe that the police will not arrest the suspect, or the perpetrator will be unjustifiably acquitted or released. Statistics show that communities perceive the courts as too lenient on criminals, citing lenient sentences for violent crime.⁴⁸ This means that mandatory and minimum sentencing laws have not changed communities' perception that sentencing is too lenient. Neither does the data show the courts as complying to the minimum

⁴³ National Prosecuting Authority. Strategic Plan, 2020/21 – 2024/25.

⁴⁴ SAPS Detectives dataset of 2013/14 to 2017/18.

⁴⁵ Bruce, D and Ntuli, S. 2001. Witnesses in the Criminal Justice System: A Report on Focus Groups With Detectives And Prosecutors At Moroka Police Station and Protea Magistrates Court in Soweto, Available at: 09 February 2022, <http://www.csvr.org.za/docs/policing/witnessinthecriminal.pdf>

⁴⁶ R Gehl .2017. Witness Management – Introduction to Criminal Investigation. Chapter 7: Witness Management 31 January 2022, Available at: <https://pressbooks.bccampus.ca/criminalinvestigation/chapter/chapter-7-witness-management/>

⁴⁷ R Gehl. 2017. Introduction to Criminal Investigation. Chapter 3: What You Need to Know About Evidence, 09 February 2022, Available at: <https://pressbooks.bccampus.ca/criminalinvestigation/chapter/chapter-3-what-you-need-to-know-about-evidence/>

⁴⁸ Statistics South Africa. 2019. Victims of Crime: Governance, Public Safety and Justice Survey (GPSJS), 2018/19.

sentence laws of 25 years for murder as evidenced by 75% of sentencing being between 1 to 20 years.⁴⁹

Witnesses also consider the consequences of their decision to cooperate with the police. Fear can influence witnesses to say as little as possible to avoid association with police and the potential harm to providing any information. The Witness Protection Act makes provision for concerns for witness safety by allowing self-referral of the witness to the investigating officer, station commander, social worker, Witness Protection Unit or the public protector when they have 'reason to believe' that their safety may be compromised.⁵⁰ The Act further provides for the investigating officer who believes that the witness is threatened to apply for protection for the witnesses. However, the uptake of the Programme is voluntary, which means it depends on whether the witness knew about it and/or were willing or unwilling to participate in it.

The Criminal Procedure Act requires that due diligence be paid into decisions to release an accused to avoid influence or intimidation of the witnesses. The United Nations proposes that police need to assure witnesses of their safety, which means finding innovative mechanisms such as installing security devices in the witness's home, providing patrols or escorts, and limiting witness' interactions with the police.⁵¹

Identity kit construction is conducted due to a lack of cooperation from witnesses, and inconclusive descriptions. Some dockets that were analysed simply did not make an indication of their usage or non-usage within the docket. This means that different issues are intertwined to complicate the investigation process, namely a lack of resources and uncooperative witnesses.

The SAPS have highlighted the ineffective use of the informer network by detectives.⁵² National Instruction 1 of 2021: Registration and Finances of Informers, acknowledges that '*informers are often an ignored or a neglected part of policing of crimes*'.⁵³ Yet

⁴⁹ CSPPS. 2021. Research on Criminal Case Dockets: The Golden Threat Linking the SAPS with the NPA.

⁵⁰ Witness Protection Act 112 of 1998.

⁵¹ The United Nations Office on Drugs and Crime. 2008. Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organised Crime. [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/Good_Practices_for_the_Protection_of_Witnesses_in_Criminal_Proceedings_Involving_Organized_Crime.pdf)

⁵² SAPS. Assessment And Evaluation of SAPS Operational Instructions, Procedures, Practices, Strategies and Systems that Undermine Effective and Efficient Policing Within a Constitutional Democracy, 10 February 2022. Available at: https://www.saps.gov.za/resource_centre/publications/lt_gen_iephta_saps_colloquium.pdf

⁵³ SAPS. National Instruction 1 of 2021: Registration and Finances of Informers.

they remain topical in the context of the reluctance of communities to provide information and trace suspects.

Existing studies document a number of resource deficits facing the Detective Service in its quest for rigorous investigations. The lack of training and development of detective officers adversely affected their ability to perform their daily duties.⁵⁴ A 2020 DPME report revealed gaps in continuous training for detectives in crime scene management in order to avoid contamination of evidence. Supervisory deficits were revealed by prosecutors; that commanders fail to mentor investigators, they were not effectively monitoring dockets which results in investigating officers submitting dockets with incomplete investigations to courts, they were not providing detailed instructions in the dockets and that court officials were providing more guidance, and there were more entries by the NPA. This often led to cases not being enrolled in court or cases were being prolonged in court.⁵⁵ The study also highlighted the issues of the working environment of detectives such as work pressure, heavy caseloads, inequitable distribution of vehicles, poor condition of vehicles, lack of incentives, and attractive packages in the private sector, which results in the attrition of skilled detectives. The study further found IT issues such as connectivity issues preventing detectives from accessing important emails and National Instructions updates.⁵⁶

A 2017 Public Service Commission report highlighted the insufficient number of detectives and vehicles in the country to deal with investigations at police stations. Natural attrition due to greying detectives, compounded by unclear recruitment methods for detective lead to capacity deficit.⁵⁷ The lack IT equipment and an integrated information system hinders detectives' performance, for instance, when tracking suspects, detectives often look for suspects only to discover they are already in custody for other crimes committed. Other times, detectives spend time and resources pursuing suspects, who they found have died.⁵⁸

⁵⁴ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police. Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

⁵⁵ DPME. 2020. Draft Full Report of the Implementation Evaluation of the Detective Services. Pretoria, South Africa: Department of Planning, Monitoring and Evaluation.

⁵⁶ DPME (2020) "Draft Full Report of the Implementation Evaluation of the Detective Services", Pretoria, South Africa: Department of Planning, Monitoring and Evaluation.

⁵⁷ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police. Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

⁵⁸ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police. Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

Other challenges include the lengthy prosecution process.⁵⁹ In some parts of the country, courts only meet periodically, which has a negative effect on the detective services and further increases the number of dockets a detective officer must handle at a given time. In this regards, cases are first heard at the lower court, following which further investigation are conducted, cases are then referred to the regional court, and a trial date is set only once a prosecutor, magistrate, interpreter, legal representative, and a physical court are available.

Poor integration is also evidenced by fragmentation in the detection and investigation fraternities, for example, there is no clear coherence between the intelligence, forensics, the detection services and other relevant stakeholders thereby affecting the overall workings of the criminal justice system.⁶⁰

The SAPS FSL has been facing numerous challenges pertaining to investigations. A Study assessing the SAPS FSL highlighted that forensic demands are not being met through the current decentralisation model of four regional FSLs as backlogs and delays continue.⁶¹ The Eastern Cape province has Ballistics, Biology (evidence recovery only), Chemistry, and Questioned Documents Units, whilst KwaZulu-Natal has all of the above Units and also conducts Scientific Analysis. The report by the FSL to the Portfolio Committee of Police illustrates that the backlogs were due to increased demands on forensic services, exacerbated by inadequate resources, unavailability of reagents, and equipment that was not serviced.⁶² The report further demonstrate that the efforts made to curb the backlog, led to eradication of 44 537 out of 210 864, between 01 April 2021 to 19 August 2021.

In 2021, the SAPS provided progress to Parliament on critical areas of concern with respect to the Biology Unit, amongst others, which included the use of Public-Private Partnerships (PPP) to reduce the DNA backlogs. The utilisation of PPP is still under discussion.⁶³ The SAPS also promised to re-invent the FSL with a model that is responsive to its operations and to COVID-19.⁶⁴

⁵⁹ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police. Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

⁶⁰ DPME. 2020. Draft Full Report of the Implementation Evaluation of the Detective Services. Pretoria, South Africa: Department of Planning, Monitoring and Evaluation.

⁶¹ CSPS. 2017. Monitoring and Evaluation report on assessment of Forensic Science Laboratory.

⁶² SAPS. 2021. Presentation to the Portfolio Committee of Police. Forensic Services.

⁶³ CSPS Civilian Oversight, Monitoring and Evaluation.

⁶⁴ African Criminal Justice Reform. 2021. DNA analysis backlog in the SAPS, 27 January 2022, Available at: <https://acjr.org.za/resource-centre/dna-analysis-backlog-in-the-saps.pdf>

Accommodation or building space is another major concern hampering the efficiency, effectiveness and functionality of some of the SAPS FSL laboratories.⁶⁵ Some of the laboratories were not commodious, with the result that there was insufficient space for scientists and equipment. The Nedbank building which was used by the Biology and Chemistry sections in KwaZulu-Natal experienced floods in 2016 and 2017 which led to the closure of the building and suspension of services at that time. These factors compromised the turnaround times for generating forensic reports needed by the courts for prosecutions.⁶⁶ The KwaZulu-Natal FSL is in the process of moving to a new building, however, the more sustainable approach which is in progress is the establishment of the DNA capacity to manage the entire DNA process, than to rely on Gauteng for further DNA analysis.⁶⁷

Budget cuts negatively impact the implementation of DNA Act and other analysis functions. The introduction of the DNA Act⁶⁸ increased the demand on the FSL services from 7 000 to 50 000 cases. Constraints on the hours that FSL members can work due to severe overtime budget cuts were also cited as one of the main contributors to the high backlogs. Funds were subsequently allocated to the FSL for overtime but under-spending was incurred in this regard.⁶⁹

Human resource capacity at the FSL has not increased in response to the growing service demands or needs. There is a lack of internal trainers for new analysts and poor retention strategies for experienced forensic examiners. Poor turnaround times for recruitment of personnel of three months affects productivity. There were also inadequate supervisors in regional FSLs and a need to standardise the ratio for allocation of supervisors; they lacked delegation of powers in terms of the PFMA to ensure procurement of goods and services for day to day operations of regional FSLs, and a need for training personnel in the Questioned Documents section.⁷⁰ In the 2021 FSL presentation to parliament, these long standing human resource issues were reiterated, specifically critical vacancies in the support and operational positions.

⁶⁵ The laboratory in Cape Town meets all the criteria.

⁶⁶ CSPS 2017. Monitoring and Evaluation report on assessment of Forensic Science Laboratory.

⁶⁷ KwaZulu-Natal: KZN only does evidence recovery which entails checking for the possible presence of body fluids (semen /blood), positive cases are sent to Pretoria for further DNA analysis. Brigadier Maluleke – KZN FSL.

⁶⁸ Criminal Law (Forensic Procedures) Amendment Act. 2013.

⁶⁹ According to the CSPA's assessment report on the SAPS budget and programme performance, "the SAPS has spent an average of R840.3 million on overtime over the past three financial years. These funds can be reprioritised to appoint more operational members within the SAPS who will close the gap if overtime is due to lack of human capacity".

⁷⁰ CSPA. 2017. Monitoring and Evaluation report on assessment of Forensic Science Laboratory.

The challenges with respect to Information Technology (IT) and Equipment, specifically the lack of data backup systems and effective support by the Division SAPS Technology Management services (TMS), is a serious risk factor which leads to backlogs, especially with reference to addressing the daily network downtime. Poor IT infrastructure negatively impacts the registration and allocation of cases and turnaround times of DNA reports.⁷¹ The presentation to Parliament showed that the FSLs are confronted with a lack of track and trace capabilities to manage cases and exhibits, which affects turnaround times. The FSL are further experiencing critical consumable shortages affecting the ability to manage risks and operations within the SAPS.⁷²

In terms of equipment, the FSL experienced unfavourable procurement processes, in particular for the Biology section. There is a consistent need for additional consumables due to high volume of cases received by the laboratories. But other FSL offices hinted this as a generic problem. The challenges of procurement have persisted over the years to such an extent that parliament requested the SAPS to address it. Subsequently, the 2021 SAPS presentation to parliament illustrated the prioritisation of a diversified FSL contract management to address stock deficits.⁷³

Inquests at the DOH were observed as taking overly long times. Incomplete investigations due mainly to the unavailability of witnesses alongside delayed responses from detectives with regard to the prosecutors' instructions about missing information in the docket were also cited as main contributors towards delayed inquests.

Post-mortem and inquest processes have a bearing on the finalisation of cases. In terms of the estimated turnaround times, the Western Cape Health Department's report⁷⁴ to parliament highlighted the average turnaround time from admission to examination as 3.9 days, with 55% of cases being examined within three days. Post-mortem reports are made available after 66 days. Interim reports would be available; however, the cause of death would not be known because the investigation would still be incomplete or the laboratory results would still be outstanding. In some cases, the

⁷¹ CSPS. 2017. Monitoring and Evaluation report on assessment of Forensic Science Laboratory.

⁷² SAPS. 2021. Presentation to the Portfolio Committee of Police. Forensic Services.

⁷³ African Criminal Justice Reform. 2021. DNA analysis backlog in the SAPS, 27 January 2022, Available at: <https://acjr.org.za/resource-centre/dna-analysis-backlog-in-the-saps.pdf>

⁷⁴ Parliamentary Monitoring Group. 2019. State of the Forensic Pathology and EMS in the Province: Department of Health Briefing, 17 January 2022, Available at: <https://pmg.org.za/committee-meeting/28692/>

pathologists may finish the post-mortems on time but had to wait for the toxicology⁷⁵ reports to confirm the findings. The toxicology reports can sometimes take ten (10) years to be released. In comparison with other reports, toxicology reports are often delayed due to the lengthy procedure involved.⁷⁶

Investigators failed to attend post-mortems⁷⁷ and were unable to provide background information based on the evidence found at the crime scene.⁷⁸ The forensic pathologist and forensic toxicologist spend considerable time conducting tests to try to determine the cause of death in the absence of crime scene information. This results in insufficient information and a delay in the completion of the forensic report.⁷⁹

The increased demands on the DoH Forensic Pathology in the Western Cape Province⁸⁰ negatively affected turnaround times. Turnaround times were also affected by the number of pathologists admitting those cases, as well as case prioritisation. As a result of the delays in these processes, detectives, prosecutors, and magistrates cannot conclude cases. This leads the court taking a decision to release suspects in custody since the court needs the post-mortem results to make a judgment.⁸¹

The root cause of delays in post-mortems are due to a shortage of forensic pathologists. The ratio of qualified forensic pathologists in South Africa is 1 pathologist to one million people, as opposed to 1 to 25 000 people in the US and UK.⁸² Due to the shortage of staff, forensic experts were working on a rotational basis, which caused further disruptions.⁸³ Since many countries are facing the shortage of forensic pathologies, pathologists may be susceptible to emigration to other countries.

⁷⁵ Toxicologists studies the nature and effects of chemicals in the body. Toxicology reports are said to be critical as they are a large percentage of forensic deaths.

⁷⁶ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police .Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>. Also see the DPME report which found that delays in the toxicology results, pathological test and drunk driving lab results led to cases not being finalised at a reasonable period of time.

⁷⁷The Inquest Act of 1959 also allows the police to be present at the inquest to carry out his/her duties, namely the investigation into the circumstances of the death or alleged death, and thereafter submit a report with all relevant statements, documents and information, to the public prosecutor, who may, if he deems it necessary, call for any additional information regarding the death.

⁷⁸ SAPS. 2020. Draft Detective Service Framework.

⁷⁹ SAPS. 2020. Draft Detective Service Framework.

⁸⁰ The relationship with SAPS and the impact of investigations was an ongoing challenge that the Department needed to manage. They were receiving support from the Department of Community Safety to try and assist in strengthening the relationship with SAPS. There were priority committees that could help in dealing with case backlogs and relationship issues.

⁸¹ Tshabalala, N. 2020. "The Factors That Lead to Delays in Inquests and Post-Mortems in Murder Cases in the Gauteng Province." International Journal of Humanities and Social Science Invention (IJHSSI), vol. 09(10), 2020, pp 18-25. Journal DOI-10.35629/7722.

⁸² Mudenda, V, Malyangu, E, Sayed, S and Fleming, K. 2020. Addressing the shortage of Pathologists in Africa: Creation of a MMED Programme in Pathology in Zambia. African Journal of Laboratory Medicine, Vol: 1.

⁸³ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police, Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

Retention of forensic pathologists amidst difficult working conditions is a concern. This includes overwork and underpayment.⁸⁴ An attrition of these workers means that there are few forensic pathologists to attend to an estimated 70 000 medico-legal autopsies on an annual basis in South Africa.⁸⁵ With this shortage, there is a possibility of using forensic pathologists with little or no formal training in autopsy pathology and technique. Poor facilities and the lack of other resources such as modern forensic toxicology services are other causes for concern. A study established that laboratories were using old and out-dated machinery with no specialised equipment. Even buildings which were being used were not suitable for providing forensic services or function as laboratories.⁸⁶

Another critical obstacle with respect to the Department of Health's Forensic Pathology Services is a lack of guidelines or standard operating procedures appropriate to facilitate seamless service delivery such as the standard to be followed by laboratories when applying their technical competence in carrying out specific tests.⁸⁷ The study found there was neither a standard nor a guideline in the Department of Health FPS for finalising analysis reports.⁸⁸

The engagement between the DoH Forensic Pathology is compromised by a lack of an enhanced system of communication and interface with the detectives. For example, to inform or remind SAPS detectives when a report has been completed. Effectiveness in operations are compromised by reliance on manual administration such as paper requests and paper reports. Toxicology / post-mortem results or reports do not have an automated or paperless⁸⁹ system for a seamless information flow.

Another deficit noted with respect to coordination between the SAPS FSLs and DoH is with respect of biological materials.⁹⁰ For instance, biological materials would be

⁸⁴ Tshabalala, N. 2020. The Factors that Lead to Delays in Inquests and Post-Mortems in Murder Cases in the Gauteng Province. *International Journal of Humanities and Social Science Invention (IJHSSI)*, Vol 9: 10, 18-25.

⁸⁵ Dempers, J.J, Burger, E.H., Du Toit-Prinsloo, L., and Verster, J. 2012. Performance of autopsies in South Africa: Selected legal and ethical perspectives. *Name of journal*, Vol 30: 2.

⁸⁶ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police, Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

⁸⁷ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police, Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

⁸⁸ Public Service Commission (PSC) report. 2011. Consolidated Report on Inspections of Detective Services: Department of Police, Available at: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

⁸⁹ "Recording or relaying information by electronic media rather than on paper". Mozayani, A and Samms, WC. A Functioning Paperless Laboratory, 09 February Available at: <https://www.asclid.org/wp-content/uploads/2013/05/Mozayani-Paperless-Lab.pdf>

⁹⁰ Forensic Pathology Services fell under the ambit of the South African Police Services (SAPS). A signed memorandum of understanding amongst the National Department of Health (NDoH), Department of Public Works and SAPS, in 2006, transferred the responsibility from SAPS to the Department of Health (DoH). Public Health and Social Development Sectoral Bargaining

sent separately to the DoH Forensic Pathology and exhibits would be sent to the SAPS FSL. Forensic experts believe that if the exhibits and biological material were forwarded to the same laboratory, they could run targeted tests instead of many tests and reduce the amount of time required for testing.⁹¹

Senior detectives indicated that collaboration between the SAPS and the NPA prosecutors could improve, even though they hold meeting with the NPA officials to identify gaps and jointly address challenges emanating from crime investigation. They perceived little cooperation and coordination between detectives and prosecutors at the investigation stage, which leads to unsuccessful verdicts.⁹²

The NPAs Directorate of Public Prosecution (DPP) uses discretion not to pursue certain cases such as those considered to be trivial and that have no prospects of successful convictions, and reasons why the NPA opts not to send an offender to prison but rather introduce alternative dispute resolution (ADR) in resolving cases resulting with suspects going back to the communities.⁹³ The discretionary powers require clarity as it has room for abuse.

Lack of resources and staff shortages are a concern at the NPA, as expressed in the 2020 Staff Survey⁹⁴ pointed to inadequate career growth, training and professional development for prosecutors. Some of the NPA staff were also affected by low staff morale, most likely linked to their poor career pathing, unreasonably high workloads and work-related stress. Other areas of concern includes concerns with the failure of the IJS to provide an integrated system for the sector, poor collaboration within the CJS, unavailability of dockets and witnesses in courts, reduction in the number of witnesses assisted within the courts, and good conviction rates do not translate into reduction of crime in the communities.⁹⁵

Council. 2018. Report On Forensic Pathology Services: 19 – 23 March 2018, 02 February 2022, Available at: <https://www.phsdsbc.org.za/category/blog/>

⁹¹ Public Service Commission (PSC). 2011. Consolidated Report on Inspections of Detective Services: Department of Police. Available at.: <http://www.psc.gov.za/documents/2012/Police%20Report%20Complete.pdf>

⁹² DPME. 2020. Draft Full Report of the Implementation Evaluation of the Detective Services. Pretoria, South Africa: Department of Planning, Monitoring and Evaluation.

⁹³ DPME. 2020. Draft Full Report of the Implementation Evaluation of the Detective Services. Pretoria, South Africa: Department of Planning, Monitoring and Evaluation. See also CSPA. 2017. Monitoring and Evaluation report on assessment of Forensic Science Laboratory.

⁹⁴ National Prosecuting Authority. 2020. NPA staff survey: Report of findings.

⁹⁵ National Prosecuting Authority. Strategic Plan 2020 – 2025.

5. FINDINGS OF THE STUDY: INVESTIGATIONS AND REASONS FOR THE ATTRITION OF CASES

The main aim of the study is to analyse the SAPS murder dockets to identify the strengths and shortcomings of murder investigations and prosecution. A docket is championed and managed by the SAPS from the time a crime is committed, throughout the investigation, until it reaches the courts. Multi-disciplinary experts intersect to ensure successful prosecutions and convictions. For this reason, a value chain analysis is adopted on the performance information of the investigation process and includes the following areas:

- Crime Scene Management
- Witness Management
- Informers, and
- Identity kits

5.1 Crime Scene Management

Crime scene management is the protection of the location where the crime occurred, including the collection and preservation of physical evidence, and the storage and analysis of the evidence. This section focuses on key activities undertaken at the crime scene, to the submission of physical evidence to the FSL, and the eventual receipt of the forensic reports from the FSL, as outlined below:

- Crime scene attendance by investigators
- Physical evidence collection and submission to FSL
- Receipt of forensic reports from the FSL
- Receipt of post-mortem reports by the SAPS

5.1.1 Crime Scene Attendance by Investigators

Police attending a crime scene is a part of ensuring the coordinated processing of physical evidence, obtaining information and particulars of witnesses, and attempting to trace and arrest suspects.⁹⁶ Dockets were analysed to determine whether investigators were attending crime scenes. Findings show that crime scenes were attended in the majority of cases as depicted in Table 2 below:

Table 2: Crime scene attendance

Province	Not attended	Attended	Total
Free State	8	29	37
Undetected	1	4	5
Withdrawn	7	25	32
KwaZulu-Natal	10	53	63
Undetected	2	14	16
Withdrawn	8	39	47
Western Cape	12	68	80
Withdrawn	12	68	80
Total⁹⁷	30	150	180

Source: CSPS Calculations from Murder Dockets

Out of 180 murder docket, SAPS detectives attended crime scenes in 150 cases (83%). In 30 of the cases, crime scenes were not attended - 12 in the Western Cape, 10 in KwaZulu-Natal, and 8 in Free State.

One of the reasons provided in docket for investigators failure to attend all of the crime scenes, was 'unknown location of the crime scene'. While this is a possibility, the fact that a crime was reported would naturally mean the location of the crime scene was provided. The high attendance rate at crime scenes reflects positively on the detective service, but as murders are serious crimes more effort needs to be put on locating all crime scenes. The possibility does exist that investigators are not recording their attendance at crime scenes in the investigation diaries.

Another issue that came up in the analysis, is that of investigators compliance with the instructions of their detective commanders. There were cases of non-compliance or no indication of actioning of detective commander's instructions despite the instructions being clear.

⁹⁶ SAPS Policy on Crime Scene Management.

⁹⁷ Data on crime scene was not collected in the Free State province.

Further analysis was conducted to understand the 'first information report' and the possible arrest of suspects. The first information report was taken in 110 out of the 150 instances where crime scenes were attended. Of the 150 crime scenes attended, arrests were made in 55 (37%) cases. There was no arrests in 66 of the 150 crime scenes attended. This is not a cause for concern as it is not possible to make arrests in the first instance in all cases.

Although not all arrests will translate into convictions, where there are arrests based on experienced investigators, proper management of the crime scenes, good investigative techniques, and adequate resources, these can result in increases clearance rates.⁹⁸ However, when crime scenes are not attended by investigators, these can contribute to attrition of cases. Therefore, it is vital that investigators make the effort to attend all crime scenes.

5.1.2 Physical Evidence Collection and Submission of Evidence to Forensic Services

A crime scene in all likelihood will have physical evidence which is important for linking suspects to murders, leading to arrests, and ultimately convictions. The dockets were checked to determine if physical evidence was collected. The following Table 3 depicts the summary of information gathered from the murder dockets:

Table 3: Collection of physical evidence

Province	Evidence not collected	Evidence Collected	Total
Free State	8	29	37
Undetected	1	4	5
Withdrawn	7	25	32
KwaZulu-Natal	30	33	63
Undetected	8	8	16
Withdrawn	22	25	47
Western Cape	9	71	80
Withdrawn	9	71	80
Total	47	133	180

Source: CSPS Calculations from the Murder Dockets

133 of the 180 murder dockets examined had physical evidence collected, with the highest proportion of physical evidence collected in the Western Cape (71 out of 80),

⁹⁸ Clearance rates™ (USA) is the proportion of reported crimes for which police arrest a person and refer them for prosecution. The murder clearance rate is determined by dividing the number of murder reported in a year by the number of arrests made for those homicides.

followed by Free State (29 out of 37), and KwaZulu-Natal (33 out of 63). Of the 133 cases where physical evidence was collected, arrests were made in 46 (35%) cases. There was no arrests in 58 of 133 cases where physical evidence was collected. This is to be expected as not all instances in which physical evidence is collected will result in arrests.

In 47 (26%) of cases, physical evidence was not collected, primarily in KwaZulu-Natal (30), Western Cape (9) and Free State (8). The data shows that evidence was not collected for the following reasons: unidentified location of the crime scenes, non-compliance of the investigators with the instructions of the detective commanders, and failure to get exhibits⁹⁹ at crime scenes. Furthermore, time lapses and public locations such as sidewalks make evidence more vulnerable to destruction or loss. The longer the time from when the crime was committed to the collection of the evidence, the less opportunity there is to get the best possible evidence. The following reasons were drawn from the data that explains why physical evidence was not collected:

- ✚ *“The scene of the crime was unknown as the deceased past on at the hospital. Moreover, the police couldn’t identify or find the individual that transported the deceased to the hospital”¹⁰⁰*
- ✚ *“The deceased was beaten, taken to hospital and died in the hospital eleven days later. Crime scene was unknown”*
- ✚ *“The suspect could not be traced or linked to the murder. There were no witnesses & suspects and the medical report from the hospital where the deceased was initially admitted”*

These scenarios illustrate the importance of the interface of investigators with hospitals in order to secure evidence and obtain information for successful prosecutions and eliminating instances of attrition.

Case dockets were then examined to analyse whether physical evidence was forwarded to the FSL as depicted in Table 4 below:

⁹⁹ Spent cartridges and bullet heads are collected from the scene, whereas guns and knives are rarely recovered.

¹⁰⁰ KwaZulu-Natal murder docket dataset.

Table 4: Forwarding of physical evidence to the FSL

Province	Not forwarded	Forwarded	Total
Free State	0	29	29
Undetected	0	4	4
Withdrawn	0	25	25
KwaZulu-Natal	5	28	33
Undetected	0	8	8
Withdrawn	5	20	25
Western Cape	1	70	71
Withdrawn	1	70	71
Total	6	127	133

Source: CSPS Calculations from Murder Dockets

The findings show 127 out of 133 (96%) collected evidence were submitted to the FSL. The data on the 4% physical evidence not submitted to the FSL had no responses on follow up questions, or the dockets were not clear about the reasons for non-submission. Importantly, a few murder weapons were found but many were noted as 'unknown'.

The study further analysed the experiences of investigators with respect to challenges they experienced when interfacing with the FSL after physical evidence was submitted to the FSL. Table 5 captures the key concerns experienced with the FSL that hampered the investigation process:

Table 5: Challenges experienced with FSL

Province	Delays in receiving FLS reports	None	Total
Free State	12	17	29
Undetected	2	2	4
Withdrawn	10	15	25
KwaZulu-Natal	8	20	28
Undetected	1	7	8
Withdrawn	7	13	20
Western Cape	24	45	69
Withdrawn	24	45	69
Total	44	82	126¹⁰¹

Source: CSPS Calculations from Murder Dockets

82 out of 126 dockets recorded no challenges experienced between the FSL and the SAPS investigators, suggesting that 65% of the engagements with the FSL do not

¹⁰¹ There was only one withdrawn docket that was sent to the FSL from the Western Cape with an administrative error or an incorrect case number.

pose a problem to the investigation process. There were delays in receiving 44 reports from the FSL as shown in Table 5 above.

Below is a list of extracts emanating from dockets demonstrating poor turnaround times or delays as challenges, which hampers the prosecutions of cases:

- ✚ “Blood test results delays from the FSL- took 7 months”¹⁰²
- ✚ “Blood test results delays from the FSL- took 1 year and 4 months”
- ✚ “FLS test results took about three years”
- ✚ “DNA result delays from the FSL - case was struck off the roll in order to obtain DNA results”
- ✚ “Ballistics from the firearm used in the murder was received at the FSL on 22/02/2018, whereas the murder happened on the 30/09/2017. It was returned from the FSL on 08/05/2018”

Some turnaround times spanned 3 months while another spanned 3 years. Poor turnaround times mean victims are denied justice as in many instances, cases are struck off the role. While the general challenges facing the FSS are extensively documented, the State has a responsibility to ensure justice is served.

5.1.3 Post-mortem Examinations and Reports

This section looks at whether post-mortems were conducted for the murders and whether the post-mortem results were made available to investigators. It also delves into the question as to whether investigators attend post-mortem examinations. Table 6 below summarises the post-mortem examinations that were conducted against the received post-mortem reports.

Table 6: Post-mortem examination status

Province	Conducted post-mortem	Received post-mortem report ¹⁰³
Free State	37	29
Undetected	5	5
Withdrawn	32	24
KwaZulu-Natal	63	63
Undetected	16	16
Withdrawn	47	47
Western Cape	80	65
Withdrawn	80	65
Total	180	157

Source: CSPS Calculations from Murder Dockets

¹⁰² The above extracts were taken from the investigation diary, comparing with other documents in the docket.
¹⁰³ Post-mortem variables confirm the variable on attached post-mortem report, hence they have same number.

Post-mortem examinations were conducted for all 180 murder docket (100%) with 80 in the Western Cape, 63 in KwaZulu-Natal, and 37 in the Free State. This means there was a body in each of the cases, and that each body was examined by the pathologist. The advantage of this for prosecutions is that the manner of death can be determined, the weapon used to kill the person can be identified, and there is a high possibility that evidence found on the body can be linked to a suspect. The likelihood of attrition of cases in these instances are eliminated.

The analysis unearthed that not all docket files had the post-mortem reports attached. Table 7 below represents the summary of the results:

Table 7: Post mortem report status in dockets

Province	Attached to the docket	Not attached on the docket	Unclear	Total
Free State	29	8	0	37
Undetected	5	0	0	5
Withdrawn	24	8	0	32
KwaZulu-Natal	63	0	0	63
Undetected	16	0	0	16
Withdrawn	47	0	0	47
Western Cape	65	13	2	80
Withdrawn	65	13	2	80
Total	157	21	2	180

Source: CSPA Calculations from Murder Dockets

In 87% (157 out of 180) of cases, post-mortem reports were attached. All (63) sampled murder dockets in KwaZulu-Natal had post-mortem reports attached. When analysing the data on the estimated time it takes the DOH to provide the post-mortem reports to the SAPS, it takes one (1) to five (5) months. There were fewer than 11 cases where the DOH were able to provide post-mortem reports in less than a week. Literature illustrates that post-mortem examinations can be completed in no less than five days, and an interim report - without the cause of death - can be provided in less than two months. The final post-mortem report depends on the completion of the toxicological analysis.¹⁰⁴

There were 21 dockets where post-mortem reports were not attached with the largest proportion of these dockets being in the Western Cape (13 out of 80), followed by Free

¹⁰⁴ Western Cape Department of Health.

State (8 out of 37). One of the reasons for unattached post-mortem reports is due to the delays from the DOH Forensic Pathology Services not submitting the post-mortem reports timeously. The prosecutors would then have to instruct investigators to get the post-mortem reports from the DOH. Detectives are fully dependant on the DoH to be fully compliant with this requirement. Literature shows that the root causes of delayed reports intersect with delays in finalising the DNA and toxicology analysis.¹⁰⁵ The lack of post-mortem reports can be dire for victims as cases can get postponed, 'struck off the roll', and suspects are likely to get released on bail until the next court appearance.

When enquiring further about the dockets that have missing original documents such as statements, post mortem reports, and others, one of the police stations¹⁰⁶ declared that "it is not customary to keep duplicates of documents in the murder docket once it is changed to an inquest". Nonetheless, this practice has dire consequences for external oversight, quality assurance, and increases the workload.¹⁰⁷

The study further analysed whether investigators attended post-mortem examinations.¹⁰⁸ The following Table 8 depicts the summary of findings:

Table 8: Attendance of the post-mortem

Province	Non-attendance	Attendance	Total
Free State	28	9	37
Undetected	4	1	5
Withdrawn	24	8	32
KwaZulu-Natal	57	6	63
Undetected	13	3	16
Withdrawn	44	3	47
Western Cape	56	24	80
Withdrawn	56	24	80
Total	141	39	180

Source: CSPS Calculations from Murder Dockets

The findings point to a very high rate of non-attendance of post-mortems by investigators at 141 out of 180 cases, with the highest non-attendance in KwaZulu-Natal (57), Western Cape (56) and the Free State (28). This could potentially be due to investigators not recording their attendance of post-mortems in the investigation diaries, which was noticeable in KwaZulu-Natal, in 57 out of 63 cases.

¹⁰⁵ Tshabalala, N. 2020. The Factors that Lead to Delays in Inquests and Post-Mortems in Murder Cases in the Gauteng Province. *International Journal of Humanities and Social Science Invention (IJHSSI)*, Vol 9: 10, 18-25.

¹⁰⁶ Free State detective commander.

¹⁰⁷ Free State report.

¹⁰⁸ National Instruction on Detective Services.

Investigators need to attend post-mortems. Their inputs of evidence found at crime scenes provide contextual information to pathologists to make conclusive findings. Investigators attending post-mortems further assist them to find out more details on the cause of death. This cooperation relationship can speed up investigations and reduce delays in submitting forensic reports. The low attendance of investigators at post-mortems can be due to the silence in the SAPS Standard Operating Procedures and National Instructions on investigators attendance at post-mortems.

In one docket a diary entry and a post-mortem report were contradictory. A forensic pathologist reports indicated that an investigator was not present at the autopsy, whilst the diary entry noted the investigators attendance of the post-mortem procedure. There was uncertainty as to whether the post-mortem report was simply not updated, incorrectly captured, or correct, but in a case such as this the integrity of the investigator is questionable, but instances such as this raises questions about the integrity of the investigator and can have negative implications for a case at trial.

Recommendations

Crime scene management is a critical phase in the investigation process. The findings reflect concerns in some areas and there is room for improvement. The following recommendations are made with a view to assisting the process but to ensure justice is served for victims:

- There is a need for automated systems to ensure crime scene attendance is picked up in real-time in police vehicles or other technological systems to strengthen the investigation process
- Surveillance cameras need to be assembled in crime hotspot areas in order to assist with investigations
- EMS personnel must be required to support police investigations by acknowledging a particular location as a crime scene in situations where violent actions occurred. They can assist by passing information on to investigators to reconstruct crime scenes
- The issues of the FSS must be addressed as a matter of priority as the turnaround times for forensic reports are critical towards successful prosecutions

- The DoH pathologists should be interviewed to clarify challenges with respect to investigators non-attendance of post-mortems and reasons for the delays in generating post-mortem reports with a view to addressing the challenges
- The low attendance of investigators at post-mortems is a concern. The SAPS Standard Operating Procedures and National Instructions on investigators attendance at post-mortems must be clear. More importantly, the exchange of information between investigators and pathologists is critical for speeding up investigations and strengthening the prosecutorial process.

5.2 Witness Management

Witness management is critical as it entails dealing with witnesses who may be afraid and are in shock but who have critical information about a crime. This information can result in the identification, arrest and prosecution of a suspect. The ensuing discussion presents the findings on whether witness statements were taken by investigators and whether corroboration was established with witness testimonies. It further delves into an analysis of witnesses' willingness to cooperate with law enforcement officers.

- Witness statement taking
- Witness cooperation with investigators

5.2.1 Witness Statement Taking

Table 9 provides the findings in terms of whether witness statements were taken.

Table 9: Taking of witness statements

Province	Not obtained	Obtained	Total
Free State	3	34	37
Undetected	1	4	5
Withdrawn	2	30	32
KwaZulu-Natal	17	46	63
Undetected	7	9	16
Withdrawn	10	37	47
Western Cape	17	63	80
Withdrawn	17	63	80
Total	37	143	180

Source: CSPA Calculations from Murder Dockets

Witness statements were taken in 143 out of 180 murder cases reviewed. There were 37 cases in which witness statements were not taken, with 17 cases in KwaZulu-Natal,

17 in the Western Cape, followed by 3 in the Free State. Gleaning from the data, there were high levels of compliance with the detective instructions and prosecutorial instructions to secure witness statements. Despite this it was not always possible to obtain witness statements as in many cases the witnesses were unknown, had become untraceable, refused to cooperate, or refused to be interviewed by the public prosecutor. In the Free State, murder dockets which were forwarded to inquest courts were missing witness statements. Missing documents in dockets compromises the outcome of cases. This is a serious matter and has negative implications on case outcomes as information in dockets are critical for successful prosecutions.

Court processes, particularly statements, require corroboration to check for validity to proceed with testimonies at the courts. Of the 143 of 180 murder cases where witness statements were taken, in 17 cases statements were not attached. There were 11 cases in the Western Cape, 4 in KwaZulu-Natal, and 2 in the Free State. In these cases corroboration could not be established.¹⁰⁹ 120 cases had corroborating statements, whereas 26 statements lacked corroboration.¹¹⁰ The Western Cape had the 17 statements that were not corroborated, followed by 8 in KwaZulu-Natal, and 4 in the Free State. The lack of corroboration with statements has dire consequences for cases as demonstrated in the extract below:

↓ *“Unless the witness can tender a reasonable and sustainable explanation for the discrepancy, the charges must be withdrawn against these two accused”*: prosecutor’s comment.¹¹¹

The Criminal Procedures Act requires credibility of statements, which can be refuted or supported by any party in a criminal proceeding. Hence, any additions or amendment to the initial statements, where it is incomplete or incorrect must be credible to stand the tests of the courts.¹¹² Further analysis shows that in one instance a witness recanted or changed a statement with the result a suspect could not be linked to the crime.

¹⁰⁹ A few cases without attached witness statements were identified in Western Cape (11), KwaZulu-Natal (4) and Free State had approximately (2) murder dockets. The question on corroboration and witness statements are separate questions and not a follow up, hence the numbers will not tally to the 143 cases where witness statement was taken.

¹¹⁰ Seven (7) cases had no eye witness 10 cases had one witness.

¹¹¹ Source: An extract of a prosecutor’s comments from a docket in KwaZulu-Natal also illustrates how a case was withdrawn due to discrepancy in information provided by the witness:

¹¹² Department of Justice and Constitutional Development. Undated. The Minimum Standards on Services for Victims of Crime.

Prosecutors can, in an attempt to ensure that cases are trial ready request further investigations to resolve discrepancies or clarify different witness statements that contradict each other, as depicted below:

“There was a discrepancy in the statement made by the deceased before he died, and the Protea Coin employee, regarding who transported the victim to the hospital. Some of the witness statements from Protea Coin Security personnel needed to be rectified or obtained and they could not be traced since they worked on a temporary basis. Their operational head made a statement to this effect. The public prosecutor had many queries about statements that needed to be rectified or that were not properly certified, the initial investigation was done by Protea Coin Security”: prosecutor comments.¹¹³

Beyond delaying with the prosecution process, issues such as the above can contribute to the cases not making it to court and eventual attrition.

5.2.2 Witness Cooperation

The study findings point to good cooperation with investigators, yet there remains room for improvement as demonstrated in the following Table 10:

Table 10: Cooperation of witnesses with investigators

Province	No	No data Captured	No eye witness	Willing to cooperate	Total
Free State	4	7	0	26	37
Undetected	1	2	0	2	5
Withdrawn	3	5	0	24	32
KwaZulu-Natal	12	9	3	39	63
Undetected	1	1	3	11	16
Withdrawn	11	8	0	28	47
Western Cape	7	9	5	59	80
Withdrawn	7	9	5	59	80
Total	23	25	8	124	180

Source: CSPS Calculations from Murder Dockets

Witnesses did cooperate with investigators in 124 out of 180 murder cases as noted in 59 cases in the Western Cape, 39 cases in KwaZulu-Natal, and 26 cases in the Free State. Witnesses were unwilling to cooperate with investigators in 23 cases. 10

¹¹³ Free State – Welkom – murder docket.

of the witnesses were untraceable. In one case, the original documents were sent to the inquest court indicating an initial willingness to cooperate, but the witness (girlfriend) either did not want to be interviewed at court or failed to attend court. Investigators diaries in the dockets reflect the following extracts on witnesses' unwillingness to cooperate:

- ↓ *"The witness partially cooperated with the police. He gave a full detailed statement...he was not available/ traceable to testify during the trial"*
- ↓ *"The only witness was untraceable and could not testify at the trial. This led to the withdrawal of the case by the prosecutor."*

The majority of cases were declined by the prosecutor and referred to the Inquest Court, specifically in cases where evidence was not available, were the suspects were unknown, were there were no witnesses or witnesses were untraceable, or were witnesses failed to cooperate. The extracts below provide some motivation as to why the prosecutor use the inquest court route:

- ↓ *"The prosecutor declined to prosecute two out of five suspects due to lack of evidence. Witnesses disappeared and nothing could link the suspect to the crime. The case was referred to the inquest court"*
- ↓ *"This case was withdrawn because the suspect was untraceable and witnesses could not be located after some time. The case was referred to inquest court"*
- ↓ *In the docket the SSP indicated that due to lack of evidence (only the bones of the deceased were found), there is no prospect for a successful prosecution, and the case was referred to the inquest court.¹¹⁴*

While the relationship with the investigators and prosecutors were good, challenges with information required in dockets compromises the prosecution process. Section 179 of the Criminal Procedure Act compels witnesses to appear in courts. This is realised through subpoenas¹¹⁵ to witnesses to provide evidence in court, whenever

¹¹⁴ All of the above extracts were extracted from the prosecutors' comments in the investigation diary.

¹¹⁵ Subpoena refers to a witness written order or summon compelling or commanding a witness to attend court in providing evidence.

their attendance is deemed critical by investigators. The findings however show that summons are not always successful in bringing witnesses to court.

The analysis showed there are various reasons for uncooperative and untraceable witnesses such as social pressure, intimidation, fear and immigration status as demonstrated by the extracts below:

- ↓ *“One witness did submit her statement, but afterwards she refused to testify, she no longer cooperated because she feared the community; she feared for her life and she relocated to an unknown place”*
- ↓ *“Not all witness statements were obtained, because one witness disappeared to Lesotho and his full name and surname was unknown, therefore, he could not be traced”*

Section 184 of the Criminal Procedure Act provides for warrants of arrest to be issued in cases of possible escape. Detectives feel that their petitions (to not grant bail to a Lesotho resident) are not been taken seriously by the courts; that fugitives are likely to return to South Africa, but by then the cases would already have been withdrawn or declared undetected.¹¹⁶

The lack of faith that victims and witnesses have in the criminal justice system is well documented, hence many witnesses will not cooperate with investigators. Witnesses may not also proceed as witnesses if their fear of reprisals may become real. The witness protection programme is a costly exercise and not available for every case. The high rate of murders does not make witness protection a feasible option for witnesses. Coupled to this, the effects of victimisation and testifying in court on witnesses is burdensome.

Recommendations

- The issue of missing documents clearly illustrates the critical need to fast-track the integrated and automated knowledge management system in the criminal justice system to ensure seamless access to information
- The relationship with South Africa and the neighbouring countries must be strengthened to ensure fugitives are extradited to be prosecuted

¹¹⁶ Free State report.

- The departments within the criminal justice system need to address the lack of trust communities have in the State. Training for officials in supporting victims and providing easy access to support structures must be realised. This will aid victims to willingly participate in investigations and giving testimony in court, without fear of reprisals.

5.3 Informers

Informers are critical in the investigative process. They provide investigators with information about criminals, criminal activities or planned criminal activities, for remuneration (money) or for other reasons.¹¹⁷ The study assessed whether informers were utilised during the investigation process to assist with information as per Table 11 below:¹¹⁸

Table 11: Utilisation of informers in cases

Province	Informers not utilised	Informers utilised in cases		
		Informers utilised	Informers did not provide useful information	Challenges regarding tasked informers
Free State	23	14	8	6
Undetected	3	2	2	0
Withdrawn	20	12	6	6
KwaZulu-Natal	32	31	18	13
Undetected	4	12	6	6
Withdrawn	28	19	12	7
Western Cape	59	21	2	19
Withdrawn	59	21	2	19
Total	114	66	28	38

Source: CSPS Calculations from Murder Dockets

Out of 180 murder dockets examined, 114 (63%) of the cases did not utilise informers, including the Western Cape (59), followed by KwaZulu-Natal (32), and the Free State (23). In cases where the suspects were known or turned themselves over to the police, informers were not required to trace suspects. It may be that informers were utilised, but that these were not appropriately documented in the diaries. Whatever the case, according to National Instruction 13, the diaries must show in detail whether use has

¹¹⁷ National Instruction 1 of 2021 on Registration and Finances of Informers.

¹¹⁸ National Instruction 1 of 2021 on Registration and Finances of Informers. Also see the SAPS. 2017. Assessment And Evaluation of SAPS Operational Instructions, Procedures, Practices, Strategies and Systems that Undermine Effective and Efficient Policing Within a Constitutional Democracy, 10 February 2022, Available at: https://www.saps.gov.za/resource_centre/publications/lt_gen_iephla_saps_colloquium.pdf

been made of informers, and what reports were produced by them.¹¹⁹ This is because informers are remunerated and it is important to verify the information against the payment. Another reason for the data reflecting informers were not being utilised is the possibility of there being no information from the informers to support the investigations.

There was a clear involvement of informers in 66 out of 180 murder cases. 38 of the 66 dockets did not show any challenges with the informers who were utilised. In 28 out of 66 cases, informers failed to provide information that could positively assist the investigations. The following extracts were provided by detectives on informer information:

- ⬇️ *"No information could be produced by the informers to help the police to have leads in the case. Please note the incident took place at night"*
- ⬇️ *"It was difficult for the informers to trace suspects"*
- ⬇️ *"They could not locate the suspect"*

Informers need to be tasked early on in the investigations to trace witnesses and suspects. At the same time, utilising informers is not a silver bullet and not all cases can be effectively resolved with informers. Neither can informers be romanticised as free from corruption.

5.4 Identity Kits

Identity kits are critical in the identification of suspects and ultimately contribute to the prosecution and conviction processes. The findings show a huge under-development of identity kits as depicted in the Table 12 below:

Table 12: Development of identity kits

Province	N/A	Identity kit not developed	No data captured	Identity kit developed	Total
Free State	1	5	29	2	37
Undetected	0	0	5	0	5
Withdrawn	1	5	24	2	32
KwaZulu-Natal	43	13	7	0	63
Undetected	14	2	0	0	16
Withdrawn	29	11	7	0	47
Western Cape	56	19	0	5	80
Withdrawn	56	19	0	5	80
Total	100	37	36	7	180

Source: CSPS Calculations from Murder Dockets

¹¹⁹ National Instruction No. 13 Of 2017 Case Docket Management.

The findings show that identity kits were developed for only seven (7) out of 180 murder docket. The cross tabulation shows three arrests for the five suspects where identity kits were developed.¹²⁰ In one case, the LCRC took photo identity kits of the suspects, especially their tattoos and gang affiliated markings, for future references since some of them could be linked to other cases. The development of identity kits were not applicable in 100 cases, whilst 36 murder docket did not have any recorded information on identity kits.

Identity kits were not developed in 37 cases; 19 from the Western Cape, 13 in KwaZulu-Natal, and 5 from the Free State. In 29 out of 37 (78%) cases. These were due to the suspect's identity being known to the police and where the suspects turned themselves in.¹²¹

CONCLUSION & RECOMMENDATIONS

This study, through the value chain lens, delved into the investigation and prosecution processes and focused on reasons for 'withdrawn' and 'undetected' murder cases. This was done through the actual physical analysis of murder docket to gain a full understanding of the factors influencing prosecutorial outcomes.

Literature shows that successful prosecutions and convictions are dependent on the effective performance and cooperation of the SAPS Detective Service and Forensic Science Service, the Department of Health Forensic Pathology Service, and the National Prosecuting Authority. Literature further shows that the challenges hampering effective prosecutions are not new. Resource deficits, fragmentation, poor cooperation and coordination, backlogs, budget cuts, lengthy prosecution processes, poor working conditions, poor ICT implementation, and overall weak management, remain constant problems and the actual docket analysis confirms the above challenges – in detail. Crime scene management, receipt of forensic reports, attendance of post-mortems, witness cooperation, and statement taking, continue to hamper effective operations.

What is needed is for departments to change their mode of working to lessen the burden of administration and operations by adopting e-technology solutions to modernise the investigations and prosecutions value chain. Heads of Departments must collectively challenge the entities responsible for ICT technology to fast track

¹²⁰ The linkage between identity kits and arrests must to be taken with caution as the number of cases (7) are too little.

¹²¹ The variable suspect identity was crosstab against the variable on identity kits not developed to understand further reasons for not using the identity kit.

implementation. Increasingly, the CJS must be held accountable for repeated failures and deal with leadership inadequacies and corruption that are contributing to an inefficient CJS. If this does not happen, South African citizens will continue to be denied justice.

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ANNEXURE A

SAMPLING PROCEDURES

Table 13: Samples of murder cases withdrawn by prosecutors (all provinces)

Provinces	Police Stations	Total number of cases withdrawn with reasons from 2013/14 to 2017/18	Sample	
			Total sample per police station	Total per province
Eastern Cape	Mthatha	72	16	53
	Bethelsdorp	54	13	
	Lusikisiki	172	24	
Free State	Thabong	39	13	36
	Bloemspuit	64	14	
	Welkom	28	9	
Gauteng	Jhb Central	33	10	29
	Hillbrow	22	11	
	Jeppe	21	8	
KwaZulu-Natal	Inanda	163	22	65
	Umlazi	154	22	
	Plessislaer	165	21	
Limpopo	Seshego	20	6	18
	Thohoyandou	24	7	
	Mankweng	20	5	
Mpumalanga	Embalenhle	33	10	24
	Witbank	21	7	
	Vosman	12	7	
North West	Boitekong	32	9	31
	Phokeng	41	16	
	Kanana	16	6	
Northern Cape	Galeshewe	8	8	14
	Mothibistad	2	1	
	Prieska	5	5	
Western Cape	Nyanga	137	26	62
	Delft	95	23	
	Khayelitsha	46	13	
Grand Total		1 499	332	332

Source: SAPS Detective Service Dataset