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REPORT ON A SYSTEMIC INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND LEGISLATIVE NON-COMPLIANCE BY THE KWAZULU-NATAL PROVINCIAL DEPARTMENT OF HEALTH IN RESPECT OF THE KWAZULU-NATAL MORTUARIES
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Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector Act, 1994.

(ii) The report deals with the outcome of an investigation into allegations of improper conduct and legislative non-compliance by the KwaZulu-Natal Provincial Department of Health (the Department) in respect of KwaZulu-Natal Government Mortuaries (Mortuaries) resulting in substandard service delivery at these Mortuaries.

(iii) The Complainants who lodged the complaint with my office on 08 May 2015 raised a diverse range of concerns related to the practice of Forensic Pathology at the Mortuaries. Upon receipt of the complaint, I engaged with the Complainants in order to clarify and define the complaints to be investigated. I identified and summarised the complaint as follows:

   a) There were human bodies which were not properly identified, piling up on mortuary floors, trolleys and trays outside the mortuary fridges;
   b) There was a high volume of decomposed and/or decomposing bodies in the Mortuaries;
   c) The Mortuary Managers did not possess the necessary and appropriate qualifications and experience to operate and manage the mortuaries, and there are labour related matters that may have an impact on the provision of services to the public;
   d) The Mortuaries do not comply with the provisions of applicable rules, laws and regulations governing the performance of forensic pathology in South Africa;
   e) The Mortuaries do not have the basic, necessary and relevant equipment and staff members to enable an effective public service delivery; and
   f) There might be other issues that affect effective public service delivery in the Mortuaries.
(iv) On analysis of the complaint, the following issues were identified to inform and focus the investigation:

(aa) Whether there is improper conduct by the Department of Health with regard to the management of human bodies at the KwaZulu-Natal Government Mortuaries;

(bb) Whether the Department of Health improperly failed to employ suitably qualified and experienced personnel such as Mortuary Facility Managers, Forensic Pathologists and Administrative staff at the KwaZulu-Natal Government Mortuaries;

(cc) Whether the Department of Health improperly failed to remedy the Forensic Pathology Officers’ labour related issues, thereby impacting on service delivery;

(dd) Whether the Department of Health improperly failed to provide sufficient quantities of the basic, necessary and relevant equipment at the KwaZulu-Natal Government Mortuaries to ensure effective and efficient service delivery;

(ee) Whether there are other issues that affect effective public service delivery in KwaZulu-Natal mortuaries, focusing on the following:

i. Whether there is a lack of cooperation between South African Police Services and Forensic Pathology Services which results in the delay of pauper burials; and

ii. Whether the Department of Health unduly delayed to issue outstanding post mortem reports;

(ff) Whether the Department of Health improperly failed to manage equipment maintenance contracts; and

(gg) Whether any person suffered prejudice as a result of the conduct of the Department.

(v) Key laws and policies taken into account to determine if there had been maladministration by the Department and prejudice to the Complainant
Having considered the evidence obtained during the investigation against the standard imposed by relevant regulatory framework, I make the following findings:

(a) Regarding whether there is improper conduct by the Department of Health with regard to the management of human bodies at the KwaZulu-Natal Government Mortuaries:

(aa) The allegation whether there is improper conduct by the Department of Health with regard to the management of human bodies at the KwaZulu-Natal Government Mortuaries is partially substantiated.

(bb) My findings reveal that there had been non-compliance by the Department with some of the standard requirements regulating the management of human bodies at the Mortuaries, such as recording the Mortuaries’ fridge temperatures (Regulation 9) and taking photographs and fingerprints of deceased persons (new Regulation 8). However, since the promulgation of the new Regulations [Government Notice no. R 359 dated 23 March 2018 of the National Health Act, 2003], there is proper management of human bodies at the Mortuaries, including the recording of fridge temperatures and taking photographs and fingerprints of deceased persons.

(cc) The allegation that there is a high number of decomposing human bodies piling up on Mortuary floors, trolleys and trays outside the mortuary fridges is unsubstantiated. My findings revealed that all bodies kept at Mortuaries are tagged in body bags and placed in trays in the fridges and/or freezers. The bodies are also kept in body bags with a number as per the mortuary registers.

(dd) The conduct of the Department in compliance with the Regulations of management of human bodies at Mortuaries constituted improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.
(b) Regarding whether the Department of Health improperly failed to employ properly qualified and experienced personnel such as Mortuary Facility Managers, Forensic Pathologists and Administrative staff at the KwaZulu-Natal Government Mortuary:

(aa) The allegation that the Department improperly failed to employ properly and experienced Forensic Pathologists is substantiated.

(bb) The lack of properly qualified Forensic Pathologists is due to the fact that the field is not regulated. The regularisation of Forensic Pathology services is a National competency. The matter was raised with Ministers Dlodlo and Motsoaledi, but they had not responded to my enquiry at the time of finalising the report.

(cc) The allegation that the Department failed to employ sufficient, properly qualified and experienced Mortuary Facility Managers is not substantiated.

(dd) There are no minimum required qualifications or professionally registered academic qualifications available for Medico Legal Mortuary Managers in South Africa, and the Department has ensured that all Mortuaries are placed under the control of a duly appointed Manager.

(ee) The allegation that the Department failed to employ sufficient Administrative staff is substantiated. The lack of sufficient data capturers is said to be one of the primary reasons for the alarmingly high backlog in respect of outstanding post mortem reports at the Gale Street Mortuary. The Department's Failure to employ sufficient Administrative staff is in violation of section 195 of the Constitution and section 48(2) of the National Health Act, 2003.
(c) Regarding whether the Department of Health improperly failed to remedy Forensic Pathology Officer’s labour issues thereby impacting on service delivery:

(aa) The allegation that the Department failed to remedy the labour related issues pertaining to Forensic Pathology Officers is substantiated.

(bb) The Department’s failure to remedy the labour related issues, specifically relating to the development of proper job descriptions and allocation of specific job functions and regularisation of the Forensic Pathology Services, constitutes an impropriety that impact on service delivery. Regularisation of the Forensic Pathology Services is the competency of the Departments of Public Service and Administration and Health.

(cc) The conduct of the Department constitutes improper conduct as envisaged in section 182(1) (a) of the Constitution and section 6 (4) (a) (ii) and (iii) of the Public Protector Act.

(d) Regarding whether the Department of Health improperly failed to provide sufficient quantities of basic, necessary and proper equipment at the KwaZulu-Natal Government Mortuaries to ensure effective and efficient service delivery:

(aa) The allegation that the Department failed to provide KwaZulu-Natal Mortuaries with sufficient quantities of the basic, necessary and relevant equipment to ensure effective and efficient service delivery is substantiated based on the admission made by the Department.

(bb) A finding is made that the Department’s failure to provide sufficient quantities of basic, necessary and relevant equipment constitutes an impropriety in terms of section 195 of the Constitution and section 25 (2) (p) of the National Health Act, 2003.
(cc) The Department conceded that there is insufficient equipment at the various Mortuaries due to, *inter alia*, lack of security measures to prevent the theft or disappearance of working tools or equipment at the Mortuaries. The disappearance of Mortuary equipment usually occurs during labour strikes as employees hide them.

(dd) Such failure constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4) (a)(ii) and (iii) of the Public Protector Act.

(e) Regarding whether there are any other issues that affect effective public service delivery in KwaZulu-Natal mortuaries:

(i) Regarding whether there is lack of cooperation between South African Police Service and Forensic Pathology Services which results in the delay of pauper burials:

(aa) The allegation that there is a lack of cooperation between the SAPS and Forensic Pathology Services with regard to pauper burials is substantiated.

(bb) There is a functional disconnect between the Forensic Pathology Services and the SAPS in respect of pauper burials/cremations. This mutual cooperation intended to expedite the identification and burial/cremation of unidentified human remains is not conducted optimally. The monthly meetings between the two organs of state to properly manage the cooperation have not been effective.

(cc) In terms of section 15A of the SAPS Act, 1995, as amended by section 6 of the Criminal Law (Forensic Procedures) Amendment Act, 2010, the SAPS has a legal duty to create and maintain a database of fingerprints, body prints and photographic images to be used for, *inter alia*, the purpose of identifying unidentified human remains, and the Forensic Pathology Services have a duty to work in conjunction with the SAPS in order to identify such unidentified human remains.
(dd) The lack of cooperation between Forensic Pathology Services and SAPS is in violation of the principles of cooperative governance provided for in Chapter 3 of the Constitution.

(ee) MEC Dhlomo also conceded during my meeting with him on 25 February 2019 that there are cooperation challenges between the two (2) state organs. Although meetings are held between these two organs of state, they have not been effective.

(ff) He conceded that the meetings should be effective in order to provide efficient service delivery at the Mortuaries. One of the measures proposed was the signing of a memorandum of understanding between the two organs of state to manage the cooperation in providing quality service at the Mortuaries.

(gg) There is a delay by the Department and SAPS to conduct paupers' burials due to lack of space in the KwaZulu-Natal Province. The responsibility to avail burial sites for pauper's burials is that of the Municipalities.

(hh) The conduct of the Department and SAPS not to cooperate with one another also constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.

(ii) **Regarding whether the Department of Health unduly delays to issue outstanding post mortem reports:**

(aa) The allegation that there is a delay in the issuing of post mortem reports is substantiated.

(bb) The investigation revealed that there was a delay in the issuing of post mortem reports.

(cc) The cause of delay to issue post mortem reports on time is caused in some cases by the resignation of Forensic Pathologists before finalising their post mortem reports. The Department has now put measures in place to manage this challenge.
Forensic Pathologists are expected to finalise all their outstanding post mortem reports within their notice period.

(dd) Another cause of delay is the centralisation of laboratories which process toxicology and blood alcohol tests. In some instances, circumstances force the SAPS investigators to take longer periods to trace families of unidentified bodies. My office had raised the matter with the National Commissioner of Police, Lt. Gen Sitone, who had not responded at the time of finalising the report.

(ee) The Department’s Circular Minute No. G113/2017 in terms of which clear timelines were established for the completion of post mortem reports was not being complied with.

(ff) The conduct of the Department in delaying timeously finalise the post mortem reports constitutes improper conduct as envisaged in section 182(1) (a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.

(iii) **Regarding whether the Department of Health improperly failed to manage Equipment Maintenance Contracts:**

(aa) The allegation that the Department failed to manage Equipment Maintenance Contracts is substantiated.

(bb) The investigation revealed that there was lack of infrastructure maintenance contracts for the refrigeration, air conditioning plants and air filtration systems at the Mortuaries.

(cc) The Department’s Provincial Head Office infrastructure has now taken over all infrastructure related business due to capacity constraints at the District Office Level. The Department has also employed an official responsible for Equipment Maintenance Contracts management.
(dd) The conduct of the Department, prior to improving its Equipment Maintenance Contracts management, constituted improper conduct as envisaged in section 182(1) (a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.

(f) Regarding whether any person suffered prejudice as a result of the conduct of the Department:

(aa) The allegation that the KwaZulu-Natal community, specifically members of bereaved families, suffered prejudice as a result of the conduct of the Department is substantiated.

(bb) The prejudice suffered by the bereaved families is the undue delay to release the bodies of their loved ones for burial.

(cc) Failure and/or an undue delay by the Department to address and/or improve on the working conditions of its employees, quality and capacity of its human resources and Mortuary equipment and cooperation with the SAPS, also impact on the quality of service provided to the KwaZulu-Natal community.

(dd) The conduct of the Department infringes on the community’s right to human dignity as envisaged in section 10 of the Constitution.

(vii) The appropriate remedial action that I am taking in pursuit of section 182 (1) (c) of the Constitution is the following:

(aa) The Head of the KwaZulu-Natal Provincial Department of Health must ensure that the Department’s Directorate responsible for Service Delivery Planning, Monitoring and Evaluation monitors, quarterly, compliance by the Mortuaries with all relevant legal prescripts which regulate them;

(bb) The Directors General of the Departments of Public Service and Administration and Health must, within 30 working days from the date of the final report, provide
my office with a full and detailed report on the process of regularisation of the Forensic Pathology Services, including the development of Forensic Pathologists’ proper job descriptions and allocation of specific job functions;

(cc) The Head of Department of KwaZulu-Natal Provincial Department of Health must, within 60 working days from the date of the final report, verify the number of vacant Administrators’ positions at all KwaZulu-Natal Provincial Government Mortuaries, and provide my office with a full and detailed report on the measures being put in place to capacitate these Mortuaries accordingly;

(dd) The Head of Department of KwaZulu-Natal Provincial Department of Health must, within 60 working days from the date of the final report, develop the Standard Operating Procedure for use and safe keeping of the Mortuaries equipment, including security measures to prevent the theft of equipment; and

(ee) The National Commissioner of Police and Director General of National Department of Health, including the Head of the Department of KwaZulu-Natal Provincial Department of Cooperative Governance and Traditional Affairs must, within 60 working days from the date of the final report, ensure that, in line with the constitutional spirit of cooperative governance as provided for in Chapter 3 of the Constitution, establish/sign a memorandum of understanding to regulate their cooperation in the proper management of all government Mortuaries, including provision of land and/or grave sites for pauper’s burials to be undertaken timeously, and, make an option of cremation available for the disposal of unclaimed human bodies.
REPORT ON A SYSTEMIC INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND LEGISLATIVE NON-COMPLIANCE BY THE KWAZULU-NATAL PROVINCIAL DEPARTMENT OF HEALTH IN RESPECT OF THE KWAZULU-NATAL MORTUARIES

1. INTRODUCTION

1.1 This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(2A)(a) of the Public Protector Act, 23 of 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8(3) of the Public Protector Act to the following persons to inform them of the outcome of the investigation and implementation of the remedial action:

1.2.1 Minister of Health, Dr Aaron Motsoaledi;
1.2.2 Minister of Public Service and Administration, Ms Ayanda Dlodlo;
1.2.3 National Commissioner of Police, Lt. Gen. Khehla Sitole;
1.2.4 Member of the Executive Council for Health in KwaZulu-Natal Provincial Government, Dr Sibongiseni Dhlomo;
1.2.5 Head of Department of Health, Ms Malebona Matsoso;
1.2.6 Director-General of the Department of Public Service and Administration; Professor Richard Levin;
1.2.7 Head of Department of KwaZulu-Natal Provincial Department of Cooperative Governance and Traditional Affairs, Mr Thando Tubane; and
1.2.8 Acting Head of the KwaZulu-Natal Provincial Department of Health, Dr Musa Gumede.
1.3 The report is also submitted to the Complainants, Dr S R Naidoo and Ms M de Haas, representing Medical Rights Advocacy Network, to inform them of the outcome of the investigation.

1.4 The report deals with the outcome of a systemic investigation into allegations of improper conduct and legislative non-compliance by the KwaZulu-Natal Provincial Department of Health (the Department) in respect of KwaZulu-Natal Government Mortuaries (Mortuaries).

2. THE COMPLAINT

2.1 On 08 May 2015, the complaint was lodged with my office by the Medical Rights Advocacy Network (MERAN/Complainants), a voluntary group composed of medical, legal and social-science professionals, alleging legislative non-compliance and improper conduct by the Department resulting in substandard service delivery in Mortuaries.

2.2 The Complainants raised a diverse range of concerns related to the practice of Forensic Pathology at the Mortuaries. Upon receipt of the complaint, my investigation team engaged with the Complainants in order to clarify and define the complaints to be investigated. In essence, the Complainants alleged as follows:

2.2.1 There were human bodies which were not properly identified, piling up on mortuary floors, trolleys and trays outside the mortuary fridges;

2.2.2 There was a high volume of decomposed and/or decomposing bodies in the Mortuaries;

2.2.3 The Mortuary Managers do not possess the necessary and appropriate qualifications and experience to operate and manage the Mortuaries, and there are labour related matters that may have an impact on the provision of services to the public;
2.2.4 The Mortuaries do not comply with the provisions of applicable rules, laws and regulations governing the performance of Forensic Pathology in South Africa;

2.2.5 The Mortuaries do not have the basic, necessary and relevant equipment and qualified staff members to ensure an effective service delivery to the communities; and

2.2.6 There might be other issues that affect effective public service delivery in the Mortuaries.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1. The Public Protector is an independent institution, established under section 181(1)(a) of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182(2) of the Constitution provides that:

"The Public Protector has the power as regulated by national legislation-

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
(b) to report on that conduct; and
(c) to take appropriate remedial action."

3.3. Section 182(2) of the Constitution states that the Public Protector has additional powers and functions prescribed by national legislation.

3.4. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given the powers to resolve disputes through
conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5. In *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11*, the Constitutional Court, per Mogoeng CJ, held that the remedial action taken by the Public Protector has a binding effect [at para 76]. The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."

3.6. In the above-mentioned matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others*, the Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:

3.6.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

3.6.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. (paragraph 67);

3.6.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);
3.6.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow. (paragraph 69);

3.6.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (paragraph 70);

3.6.6 The Public Protector’s power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);

3.6.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence; [paragraph 71(a)];

3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation [paragraph 71(d)];

3.6.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case [paragraph 71(e)];

3.6.10 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December
2017), the court held as follows, when confirming the powers of the Public Protector:

3.6.10.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (paragraph 71 of the judgment);

3.6.10.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question. (paragraph 82 of the judgment);

3.6.10.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (paragraphs 100 and 101 of the judgment):

a) Conduct an investigation;

b) Report on that conduct; and

c) To take remedial action.

3.6.10.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings. (paragraph 104 of the judgment);

3.6.10.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105 of the judgment). This was a finding in the EEF judgment as well;

3.6.10.6 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector form taking remedial action. The Public Protector’s observations constitute prima facie findings that point to serious misconduct (paragraphs 107 and 108 of the judgment); and
3.6.10.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment).

3.7 Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.8 The Department is an organ of state and its conduct and that of its officials constitutes conduct in state affairs, as a result this matter falls within the ambit of the Public Protector’s mandate.

3.9 The power and jurisdiction of the Public Protector to investigate and take appropriate remedial action were not disputed by any of the parties.

4. THE INVESTIGATION

4.1. Methodology

4.1.1 The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.2 The investigation process commenced with an exchange of correspondence with the Department, document requests, *inspections in loco*, analysis of relevant documentation, research, consideration and application of relevant laws and regulatory framework.

4.2. Approach to the investigation

4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
4.2.1.1. What happened?

4.2.1.2. What should have happened?

4.2.1.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

4.2.1.4. In the event of maladministration what would it take to remedy the wrong or to place the Complainants as close as possible to where they would have been, but for the maladministration or improper conduct?

4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standards that should have been met by the Department to prevent improper conduct and/or maladministration as well as prejudice.

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where the Complainants have suffered prejudice, the idea is to place them as close as possible to where they would have been had the state institution complied with the regulatory framework setting the applicable standards for good administration.

4.3 On analysis of the complaint, the following issues were identified to inform and focus the investigation:

4.3.1 Whether there is improper conduct by the Department of Health with regard to the management of human bodies at the KwaZulu-Natal Government Mortuaries;

4.3.2 Whether the Department of Health improperly failed to employ suitably qualified and experienced personnel such as Mortuary Facility Managers, Forensic Pathologists and Administrative staff at the KwaZulu-Natal Government Mortuaries;
4.3.3 Whether the Department of Health improperly failed to remedy the Forensic Pathology Officers' labour related issues, thereby impacting on service delivery;

4.3.4 Whether the Department of Health improperly failed to provide sufficient quantities of the basic, necessary and relevant equipment at the KwaZulu-Natal Government Mortuaries to ensure effective and efficient service delivery;

4.3.5 Whether there are other issues that affect effective public service delivery in KwaZulu-Natal mortuaries, focusing on the following:

4.3.5.1 Whether there is a lack of cooperation between the South African Police Services and Forensic Pathology Services which results in the delay of pauper burials; and

4.3.5.2 Whether the Department of Health unduly delayed to issue outstanding post mortem reports;

4.3.6 Whether the Department of Health improperly failed to manage Equipment Maintenance Contracts; and

4.3.7 Whether any person suffered prejudice as a result of the conduct of the Department.

4.4 Key sources of information

4.4.1 Documents

4.4.1.1 A copy of the complaint dated 08 May 2015;
4.4.1.2 A set of six (6) appendices substantiating the complaint dated 29 July 2015;
4.4.1.3 A report by Dr S M Aiyer, the Department’s Chief Director: Forensic Pathology dated 06 September 2016;
4.4.1.4 Statistical reports of the Pinetown Mortuary for the period May to September 2016;
4.4.1.5 Statistical reports of the Phoenix Mortuary for the period January to March 2017;

4.4.1.6 Statistical reports of the Pietermaritzburg Mortuary for the period February to April 2017;

4.4.1.7 Statistical reports of the Umgungundlovu District (New Hanover, Richmond, Mooi River and Howick) for the period February to April 2017;

4.4.1.8 Statistical reports of the Port Shepstone Mortuary for March 2017;

4.4.1.9 A report by Dr S B Akoojee, the former Head of Forensic Pathology Services in KwaZulu-Natal Province, dated 01 August 2017;

4.4.1.10 Statistical report of all admissions and post mortem records of all Mortuaries by the Department dated 08 August 2017;

4.4.1.11 Statistical reports of the Gale Street Mortuary for the period January to July 2017;


4.4.1.13 District of Columbia office of the Chief Medical Examiner: Standard Operating Procedures, 25 January 2010;


4.4.1.15 World Health Organisation: Medical Equipment Maintenance Programme Overview, 2011;

4.4.1.16 National Code of Guidelines for Forensic Pathology Practice in South Africa—issued by the Department dated 20 August 2007;


4.4.1.18 Department of Health IUSS Health Facility Guides: Hospital Mortuary Services, 30 June 2014;


4.4.1.20 Public Health and Social Development Sectoral Bargaining Council: Report on Forensic Pathology Services (19 - 23 March 2018); and
4.4.2 Interviews and/or Meetings

4.4.2.1 A meeting with Dr Aiyer on 07 July 2016 at Inkosi Albert Luthuli Central Hospital;
4.4.2.2 A meeting with Mr Bentley and Mr Mazibuko, the Area Managers of KwaZulu-Natal Forensic Pathology Services on 07 July 2016;
4.4.2.3 A meeting with Mrs Ndebele, the Mortuary Manager at the Pinetown Mortuary on 27 October 2016;
4.4.2.4 A meeting with Ms F Ahmed, the Acting Mortuary Manager and Mr X B Mtsheshane, the Forensic Pathology Officer at Phoenix Mortuary on 20 April 2017;
4.4.2.5 A meeting with Mrs S Sewpujun, the Umgungundlovu District Mortuary Manager at the Pietermaritzburg Mortuary, Fort Napier 25 May 2017;
4.4.2.6 A meeting with Mr MS Mdlalose, the Forensic Pathology Officer and acting Mortuary Manager, at the Port Shepstone Mortuary on 09 June 2017;
4.4.2.7 A meeting with Dr Akoojee on 01 August 2017;
4.4.2.8 A meeting with Lt/Col Moodley, the Police Liaison for the South African Police Service (SAPS) on 15 August 2017;
4.4.2.9 A meeting with Ms J Xulu, the Acting Mortuary Manager at the Gale Street Mortuary on 17 August 2017;
4.4.2.10 A telephonic interview with Lt/Col Pillay of the SAPS on 31 August 2017;
4.4.2.11 A meeting with Dr S Ntsele, the Acting Head Forensic Pathology Services: KwaZulu-Natal on 25 June 2018; and
4.4.2.12 A meeting with, Dr S Dhlomo ,MEC Dhlomo Member of the Executive Council (MEC) for Health in the KwaZulu-Natal Province on 25 February 2019.

4.4.3 Correspondence sent and received

4.4.3.1 Correspondence to the Head of Department, Dr Sifiso Mtshali dated 04 May 2016;
4.4.3.2 Correspondence from the Head of Department dated 16 May 2016;
4.4.3.3 A letter to Dr Aiyer dated 18 July 2016;
4.4.3.4 Correspondence dated 06 September 2016 from Dr Aiyer;
4.4.3.5 A letter from Dr Akoojee dated 31 July 2017, together with thirteen (13) pages annexure;
4.4.3.6 A copy of a letter from Dr Akoojee dated 31 July 2017, together with a two (2) pages annexure;
4.4.3.7 Correspondence to the SAPS’ Mortuary Liaison Officer confirming a meeting for 15 August 2017;
4.4.3.8 Correspondence to Dr Ntsele dated 28 May 2018 requesting further information;
4.4.3.9 Correspondence to Dr Ntsele dated 02 July 2018;
4.4.3.10 Correspondence to Dr M Gumede, the Acting Head of Department dated 24 August 2018; and
4.4.3.11 A letter and annexures received from Dr Gumede: Acting Head of Department dated 27 August 2018.

4.4.4 Inspection in loco

4.4.4.1 An Inspection in loco conducted at the Gale Street Mortuary on 07 July 2016;
4.4.4.2 An inspection in loco conducted at the Pinetown Mortuary on 27 October 2016;
4.4.4.3 An inspection in loco conducted at the Phoenix Mortuary on 20 April 2017;
4.4.4.4 An inspection in loco conducted at the Pietermaritzburg Mortuary on 25 May 2017;
4.4.4.5 An inspection in loco conducted at the Port Shepstone Mortuary on 09 June 2017; and
4.4.4.6 An inspection in loco conducted at the Gale Street Mortuary on 17 August 2017.

4.4.5 Websites consulted / electronic sources

4.4.5.1 http://www.sabinetlaw.co.za/GGD_2003;
4.4.5.2 http://www.hpcs.co.za//regulations_gnr995_2003;
4.4.5.3 www.rcpath.org;
Legislation and other prescripts

The Constitution;
The Public Protector Act;
National Health Act 61 of 2003;
The Human Tissue Act 65 of 1983;
The Inquest Act 58 of 1959;
The KwaZulu-Natal Health Act 1 of 2009;
The Health Professions Act 56 of 1974;
The Occupational Health and Safety Act 83 of 1993;
The Births and Death Registration Act 51 of 1992;
The Criminal Procedure Act 51 of 1977 (as amended);
The Regulations Relating to the registration of Medical Technicians in the category mortuary technique (government Notice no R. 995 of July 2003);
The Regulations promulgated, in terms of Section 90 (1) (i) of the National Health Act, in Regulation Gazette 636;
The Regulations regarding the rendering of Forensic Pathology Services (government Notice no. 41524 - R359 dated 23rd March 2018);
The Regulations regarding the registration of Forensic Pathology Officers (Government Notice No. 41524 – R360 dated 23rd March 2018);
The Criminal Law (Forensic Procedures) Amendment Act 6 of 2010
The KwaZulu-Natal Department of Health: Forensic Pathology Services: Standard Operating Procedures (1 February 2017);
The Chapter 5 Special Force Order (General) 5C of 1992;
The South African Police Service Act 68 of 1995;
The Public Finance Management Act 1 of 1999;
The KwaZulu-Natal Provincial Treasury Instruction Note No. 30 (effective 01 April 2013); and
5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether there is improper conduct by the Department of Health with regard to the management of human bodies at the KwaZulu-Natal Mortuaries:

Issues in dispute

5.1.1 The Complainants alleged that the Department failed to properly manage human bodies in that there were human bodies not properly identified that were piling up on mortuary floors, trolleys and trays and that there was a high volume of decomposed/decomposing bodies at the Mortuaries.

5.1.2 The Complainants alleged that there was insufficient space on body tray holders on the walls, and that, at intermittent times, bodies were deposited in heaps on the floor within cold rooms, without being placed in individual body bags.

5.1.3 They contended that the Mortuaries should ensure that human bodies were placed in fridges and that the fridge temperature must be recorded in the occurrence book. The fridge and shelf numbers should be documented in the Post Mortem docket diary, but these steps were allegedly not taken by the Mortuaries.

5.1.4 The Complainants further alleged, as per a letter dated 08 May 2015 addressed by Dr S R Naidoo and Ms M de Haas, who are also the Complainants, to my office that, “more bodies do decompose and accumulate in the fridges in the KwaZulu-Natal Forensic Pathology Services mortuaries because of poor refrigeration management at the facilities.”
5.1.5 My investigation team submitted a letter dated 18 July 2016 to the Department requesting information on, *inter alia*, the piling up of human bodies and the alleged high volume of decomposed/decomposing bodies at the Mortuaries.

5.1.6 The Department informed my office by a letter dated 06 September 2016, written by Dr Aiyer that “…The KZN FPS is complaint (sic) with the following:

The person in charge of a designated facility must ensure that a refrigerated facility, maintained at a set temperature, is used to store all bodies.

All bodies must be labelled with a registration number and each body must be enclosed in a bag made for that purpose.”

*Independently sourced evidence*

5.1.7 In order to objectively evaluate conditions at various Mortuaries, my investigative team made a number of unannounced site visits to the following Mortuaries between July 2016 and August 2017:

- (a) Gale Street Mortuary (two visits);
- (b) Pinetown Mortuary;
- (c) Phoenix Mortuary;
- (d) Pietermaritzburg Mortuary; and
- (e) Port Shepstone Mortuary.

5.1.8 My investigation team consulted with the Facility Managers/Acting Managers and Forensic Pathology Officers. They also conducted detailed physical inspections of the entire premises of each facility.

5.1.9 Upon inspection of the aforesaid randomly selected Mortuaries, no human bodies were found to be not properly identified or piling up on mortuary floors, trolleys and trays within the fridges. All bodies kept at these facilities were tagged in body bags
and placed in trays in the fridges and/or freezers. The bodies were kept in body bags with a number as per the mortuary registers.

5.1.10 The Department admitted, in its response referred to above, that it was non-compliant with the Regulations promulgated in terms of the National Health Act, 2003 as follows:

"1. The person in charge of a designated facility to which a body has been admitted in accordance with Regulation 9, must ensure that –

a) A photograph of the face of the deceased is taken; and

b) All fingerprints of the deceased are taken.

2. The person in charge of a designated facility must ensure that the temperature of each fridge that contains a body is recorded on a graph at least twice per day.

3. The person in charge of a designated facility must set up control measures to ensure that only authorised persons have access to bodies, areas related to post mortem examinations and to the storage facility in which bodies are kept.

4. A body that has not been identified must be moved to a freezer within 7 days of admission, and if such body remains unidentified for 30 days, the local municipality under whose jurisdiction the designated facility is, must provide for a pauper burial or cremation of such a body."

5.1.11 Pursuant to the written admission by the Department as per the letter dated 06 September 2016 that it was non-compliant with the requirement of recording fridge temperatures twice a day, my investigation team independently corroborated this during the Mortuary Facility inspections, by requesting records regarding the maintenance of fridge temperatures.

5.1.12 During the investigation, my team did not observe any unauthorised persons in prohibited areas related to body storage and areas related to post mortem
examinations, despite the fact that the Mortuaries to be inspected, were randomly selected, and the inspections were always unannounced.

5.1.13 However, despite these observations, cognisance is taken of the fact that the Department did concede, in writing, that it was non-compliant in this regard.

*The Honourable MEC Dhlomo’s response to my section 7(9)(a) notice:*

5.1.14 During my meeting with MEC Dhlomo and his team comprising Mr S Mkasi, the Department’s Chief Director: Legal Services; Dr S Ntsele, the Department’s Acting Director: Forensic Pathology Services; and Dr S Tshabalala, the Department’s Chief Director: Clinical Support Services, on 25 February 2019 to discuss his response to my section 7(9)(a) notice, he conceded that there had been non-compliance with some of the standard requirements regulating the management of human bodies at the Mortuaries, such as the recording of Mortuaries’ fridge temperatures twice a day and taking photographs and fingerprints of deceased persons. He confirmed that since the promulgation of the new Regulations, there has been a lot of improvement in the proper management of human bodies at the Mortuaries, including the recording of fridge temperatures and taking of photographs and fingerprints of deceased persons. He confirmed my team’s observation that all bodies kept at Mortuaries are tagged in body bags and placed in trays in the fridges and/or freezers. The bodies are also kept in body bags with a number as per the mortuary registers.

*Application of the relevant law*

5.1.15 In terms of section 90(1) of the National Health Act, 2003 “The Minister, after consultation with the National Health Council, may make regulations regarding—

(a) …

(i) The rendering of Forensic Pathology, Forensic Medicine and related laboratory services, including the provision of Medico-Legal Mortuaries and Medico-Legal Services”.

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5.1.16 The Regulations Regarding the Rendering of Forensic Pathology Services No 30075 of 2007 (old Regulations) were subsequently substituted by a new set of Regulations Regarding the Rendering of Forensic Pathology Service No 41525 of 2018 (new Regulations). For the purposes of clarity, all references to the Regulations herein refer to both sets of Regulations, as the bulk of the investigation was conducted whilst the old Regulations were still in operation.

5.1.17 In terms of the statutory stipulations contained in the old Regulation 10 , 10(a) and 10(b), the person in charge of a designated facility to which a body has been admitted in accordance with Regulation 9, must ensure that:

(a) “a photograph of the face of the deceased is taken; and
(b) all fingerprints of the deceased are taken.”

5.1.18 In the new Regulations, these aspects are dealt with in terms of Regulation 8(2) (a) and (b), Regulation 8(2) which stipulates as follows:

(a) “a clear photograph of the face of the deceased, or remains as may be appropriate, is taken; and

(b) All fingerprints (where it is possible) of unidentified deceased are taken within seven days.”

5.1.19 In terms of the statutory stipulations contained in the provisions of the old Regulations 11(a) and 11(b), “the person in charge of a designated facility must ensure that a refrigerated facility, maintained at a set temperature is used to store all bodies, and that all bodies are labelled with a registration number, and that each body is stored in a bag made for that purpose.”

5.1.20 The provisions of the old Regulation 11(a) have been substituted by the new Regulations 9(1) and 9(4).
5.1.21 The provisions of the old Regulation 11(b) have been substituted by the new Regulation 9(2) and 9(3).

5.1.22 In the new Regulations these aspects are dealt with in terms of new the Regulation 9 which stipulates as follows:

"9(1) the person in charge of a designated facility must ensure that a refrigerated facility, maintained at a set temperature, is used to store all bodies.

(2) a body must at the time of collection by the Service be in a closed sealable bag made for that purpose.

(3) the body must, upon admission to the Service Facility be labelled with a registration number.

(4) the person in charge of a designated facility must ensure that there is efficient refrigeration of bodies at all times."

5.1.23 Regarding the processes applicable to the issue of body numbering, it was noted that the Department's "Forensic Pathology Services Standard Operating Procedures" issued on 01 February 2017, incorporates a Circular Minute Number: G 136 / 2015, dated 18 September 2015 issued by Dr Aiyer to all Forensic Pathology staff, Forensic Facility Managers, Forensic Pathologists/Medical Officers/service providers and Forensic Operational Co-ordinators, in which a new numbering system was implemented for the numbering of all bodies admitted to medico-legal mortuaries.

5.1.24 The new system replaced the previous one in which the numbering system for admissions was the same in all mortuary facilities, with a new alpha-numeric system which distinguishes each separate mortuary by using a different prefix, an example of which is provided as follows in the above mentioned circular:

"The method for allocation of numbering to be implemented as follows:

For example the first case admitted at Gale Street Mortuary on the 1 January 2016 would be allocated the following number:
5.1.25 The new system was aimed at facilitating the identification of the source of any particular medico-legal case as each Mortuary in the province was allocated a specific and unique prefix.

5.1.26 In terms of the statutory stipulation contained in the provisions of the old Regulation 13 "the person in charge of a designated facility must set up control measures to ensure that only authorised persons have access to bodies, areas related to post mortem examinations and to the storage facility in which bodies are kept." The provisions of the old Regulation 13 have been substituted by the provisions of the new Regulation 9(5).

5.1.27 In terms of the statutory stipulation contained in the provisions of new Regulation 9(5) "the person in charge of a designated facility must set up control measures to ensure that only authorised persons have access to bodies, documents related to bodies, to areas where post mortem examinations are performed and to the storage unit in which bodies are kept."

5.1.28 The new Regulation 9(5) introduces an additional element in terms of which only authorised persons have access "to documents related to bodies."

5.1.29 In terms of the statutory stipulation contained in the provisions of the old Regulation 32 "A body that has not been identified must be moved to a freezer within seven days of admission, and if such body remains unidentified for 30 days, the local municipality under whose jurisdiction the designated facility is, must provide for a pauper burial or cremation of such body."
5.1.30 The old Regulation 32 has been substituted by the new Regulation 17(1) which provides that “a body that has not been identified must be moved to a freezer within 7 days of admission (after a set of fingerprints have been taken), and if such a body remains unidentified for 30 days and all prescribed steps to identify it have been followed, the local authority in which the body was found must provide for a pauper burial of such a body.”

5.1.31 The imperative contained in the old Regulation 32 (now Regulation 17(1)) is amplified in sections 460, 461, 462 and 463 of the “National Code of Guidelines for Forensic Pathology Practice in South Africa”. These sections, respectively, provide as follows:

“Section 460: If the identity of a body has not been established within seven (7) days copies of the form FPS 014 with the fingerprints that have been taken must be submitted with a covering letter to the SA Police Criminal Record Centre (CRC) and to Home Affairs. The fingerprint collection at the SAP Criminal Record Centre and Home Affairs will be examined in order to establish the deceased’s identity.

Section 461: On receipt of the fingerprint identification from the SA Police Criminal Record Centre (CRC) or Home Affairs the investigating officer is informed.

Section 462: If, after seven days in the designated facility, the body has not been identified, appropriate samples for comparative DNA analysis must be retained and the body should be moved to a freezer. In addition at the discretion of the authorised person, additional scientific methods may be utilised to facilitate identification.

Section 463: If, after 30 days in the designated facility, the body has still not been identified, the body is declared “unidentified and unclaimed” and the process starts for burial/cremation of the deceased as a pauper.”

5.1.32 Paragraph 7.2 of the Department’s Forensic Pathology Services Standard Operating Procedures provide that:
“7.2.1 – on arrival at the medico legal mortuary the human remains must be placed in the fridge and the temperature of the fridge must be recorded in the occurrence book;

7.2.3 - the particulars of the deceased must be recorded in the Death Register (SAPS183);

7.2.5 - a post mortem docket must be opened with a unique identifying alphanumerical number from the Death Register;

7.2.7 - the fridge number and shelf number where the body is placed must be documented in the Post mortem docket diary;”

5.1.33 In addition the Standard Operating Procedures document incorporates the provisions of the following Circular Minutes, that were issued by the Department to provide guidance and direction on certain matters set forth in the Circular Minutes:

“Circular Minute G 41 / 2009 (dated 1 September 2009) issued by Dr. S. B. Akoojee the (then) Chief Specialist: Forensic Pathology and Bioethics. This Circular Minute related to the referral of cases by health institutions for medico-legal post-mortem investigation.

Circular Minute G 42 / 2009 (dated 2 September 2009) issued by Dr S B. Akoojee the (then) Chief Specialist: Forensic Pathology and Bioethics. This Circular Minute related to the issue of call –out and transportation and included the call –out and Transportation Protocol which set out detailed guidelines for all aspects relating to call –out and transportation.

Circular Minute G 23 / 2012 (dated 26 March 2012) issued by Dr. S. M. Aiyer Acting Chief Specialist and Acting General Manager: Forensic Pathology Service. This Circular Minute related to obtaining of a South African Police
Services Case Administration System (CAS) number before carrying out of any post mortem examination.

Circular Minute G 136 / 2015 (dated 18 September 2015) issued by Dr. S. M. Aiyer Acting Chief Specialist and Acting General Manager: Forensic Pathology Service. This Circular Minute related to the implementation of a new numbering system for bodies admitted to medico-legal mortuaries."

Conclusion

5.1.34 The inspections revealed that the Department is in compliance with the provisions of the old Regulation 11(a) and 11(b).

5.1.35 The provisions of the old Regulation 11(a) and (b) have been substituted by the new Regulation 9(1), (2), (3), and (4). It is concluded that the Department was compliant with the provisions of Regulation 9(1), (2), (3) and (4).

5.1.36 The investigation revealed that the Mortuaries are non-compliant with the provisions of the following applicable rules, laws and regulations governing the performance of Forensic Pathology in South Africa:

(a) The Department failed to comply with the provisions of the old Regulations 10, 10(a) and 10(b) in that there was an admission, by the Department, that it was non-compliant with these specific provisions of the law; and

(b) The provisions of the old Regulation 10(a) and (b) have now been carried forward in Regulation 8(2)(a) and (b). It is accordingly concluded that the Department is non-compliant with the provisions of Regulation 8(2)(a) and (b).

5.1.37 During the investigation, the Mortuary facility inspection visits did not reveal any non-compliance with the old Regulation 13 as my investigation team did not observe any unauthorised persons in these specified areas, despite the fact that
the Mortuaries inspected, were randomly selected and the inspections were always unannounced.

5.1.38 However, despite these observations, cognisance is taken of the fact that the Department did concede, in writing, that it was non-compliant in this regard, and placing reliance on the veracity of this admission, it was concluded that the Department failed to comply with the provisions of the old Regulation 13. Consequently in terms of such admission it is concluded that the Department failed to comply with the provisions of the new Regulation 9(5), which replaced Regulation 13.

5.1.39 Based on a written admission made by the Department, the investigation concluded that the law, as enunciated in the old Regulation 32 relating to the proper storage of bodies within the specified seven (7) and thirty (30) day periods and the identification and pauper burial/cremation of unidentified bodies is not being complied with.

5.1.40 The provisions of the old Regulation 32 have now been carried forward in Regulation 17(1). It is accordingly concluded that the Department is non-compliant with the provisions of Regulation 17(1).

5.2 Whether the Department of Health improperly failed to employ suitably qualified and experienced personnel such as Mortuary Facility Managers, Forensic Pathologists and Administrative staff at the KwaZulu-Natal Government Mortuary:

   Common cause issues

5.2.1 There is no minimum legally prescribed qualification for Medico Legal Mortuary Managers in South Africa, nor is there any professionally registered academic qualification available.
5.2.2 In a letter to my office dated 8 May 2015, Dr Naidoo and Ms de Haas, stated “there is also a shortage of Specialist Forensic Pathologists in the province...”

5.2.3 In order to highlight the lack of a sufficient number of Forensic Pathologists within the Department, Dr Naidoo further stated in appendix 5 of a subsequent letter to my office dated 29 July 2015 that “the training of post graduate doctors to specialise in Forensic Pathology has, like the other medical specialities in medicine, been placed into suspension in KZN with a moratorium on appointments of new registrars/residents in training.”

5.2.4 In corroborating the Complainants’ submission regarding the freezing of posts, the Department stated, as per correspondence dated 06 September 2016 received from Dr Aiyer, that “The quality of medico legal autopsy is severely compromised by medical practitioners employed to work as service providers. As a remedial measure it would serve justice and the public better if the FPS employs full time Forensic Medical officers and Specialist Forensic Pathologists at the larger MLM’s, this however cannot be achieved because posts had been frozen due to budgetary constraints, and the lack of Specialist Pathologists in the country”.

*Independently obtained evidence*

5.2.5 The Department informed my office in a letter dated 06 September 2016, from Dr Aiyer, that it has nineteen (19) people employed in the capacity of Mortuary Facility Managers, managing a total complement of thirty five (35) Mortuaries within the KwaZulu-Natal Province.

5.2.6 The aforesaid letter further indicated that in a number of instances, the Mortuary Facility Managers were appointed to manage multiple Mortuaries located within the same district municipality.

5.2.7 My investigation revealed that due to the fact that there is no prescribed minimum required qualification for Mortuary Facility Managers, the Managers possess diverse assortment of qualifications.
5.2.8 As per correspondence received from the Department dated 06 September 2016 and also as per "Annexure I" attached to the correspondence received from the Department dated 27 August 2018, the Mortuary Facility Managers at various Mortuary facilities possess a range of qualifications including, but not limited to, Nursing, Environmental Health, Public Relations Management, Bachelor's Microbiology and Medical Science. The Department confirmed that "All managers do possess post matric qualifications."

5.2.9 On 28 May 2018, my office addressed a letter to Dr Ntsele requesting information relating to, amongst others, the number of posts for medically qualified Pathologists, Mortuary Facility Managers and Forensic Pathology Officers.

5.2.10 Dr M Gumede responded as per a letter dated 27 August 2018 that the following posts were vacant:

(a) Medical officer – 7;
(b) Medical Specialist – 1;
(c) Assistant director: Mortuary Manager – 2;
(d) Forensic Pathology Officer – Grade 1 – 4; and
(e) Forensic Pathology Officer – Grade 2 – 6.

5.2.11 My investigation revealed that the Department failed to employ a sufficient number of Administrative staff. This was specifically confirmed during consultation with various Mortuary Facility Managers, in particular Ms J Xulu, the Mortuary Facility Manager at Gale Street Mortuary, on 17 August 2017. She indicated that the lack of sufficient data capturers was one of the primary reasons for the alarmingly high backlog in respect of outstanding post mortem reports at the Gale Street Mortuary.
Dr Dhlomo, MEC for Health in KZN Government’s response to my section 7(9)(a) notice:

5.2.12 MEC Dhlomo, during my meeting with him on 25 February 2019, conceded to this adverse finding, particularly regularisation of the Forensic Pathology field. He indicated that he initiated a process of regularising this field due to lack of properly qualified Forensic Pathologists within the Department, the Ministers of Public Service and Administration and Health, Ms A Dlodlo and Dr A Motsoaledi, however, objected to his initiative as this regularisation is a National Department’s competency.

Application of the relevant law

5.2.13 In examining whether the Department’s failure to employ a sufficient number of properly qualified and experienced personnel such as Mortuary Facility Managers, Forensic Pathologists and Administrative staff, the conduct of the Department was benchmarked against the standard set out in section 195 of the Constitution which provides for basic values and principles governing public administration, more specifically subsections (1)(a), (b), (c), (h) and (4) which state as follows:

“1. Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.
(b) Efficient, economic and effective use of resources must be promoted.
(c) Public administration must be development-orientated
(h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

4. The appointment in Public Administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.”
5.2.14 A National Health Council is established in terms of section 22 (1) of the National Health Act, 2003.

5.2.15 In terms of section 48 (1) of the National Health Act, 2003, the aforesaid National Health Council is tasked with the responsibility of developing a policy and guidelines for, and "monitoring the provision, distribution, development, management and utilisation of, human resources within the national health system”.

5.2.16 In terms of section 48 (2) “The policy and guidelines contemplated in subsection (1) must amongst other things facilitate and advance:-

a) the adequate distribution of human resources;
b) the provision of appropriately trained staff at all levels of the national health system to meet the population's health care needs; and

c) the effective and efficient utilisation, functioning, management and support of human resources within the national health system.”

5.2.17 Failure by the Department to comply with these constitutional principles and values would render its conduct unconstitutional. Non-compliance with the National Health Act, 2003 will be improper.

Conclusion

5.2.18 The Department conceded that there was a shortage of Forensic Medical Officers, Specialist Forensic Pathologists and Administrative staff within the Department.
5.3 Regarding whether the Department improperly failed to remedy the Forensic Pathology Officer’s labour related issues, thereby impacting on service delivery:

Common cause issues

5.3.1 Based on written submissions made by the Complainants, and written admissions by the Department, it is common cause that labour related issues did impact negatively on the provision of quality Forensic Pathology Services to the public.

5.3.2 This was further reported in numerous articles in the print media relating to ongoing labour issues within the Forensic Pathology environment, an example of which was an article appearing in the Mercury newspaper of 27 March 2017 and titled “Union threatens mortuary strike.”

5.3.3 The Complainants stated in appendix 2 attached to a letter to my office dated 29 July 2015 that “The ineptitude of the (non-managerial) technical and clerical staff (the mortuary workers) in their day-to-day work is similarly attributable to the lack of (good) experience, lack of training and formal qualifications. This has translated into the dearth of technical expertise at assisting doctors with autopsies”.

5.3.4 The Complainants’ submission above was confirmed as common cause by correspondence received from the Department dated 06 September 2016, in which Dr Aiyer stated:

“In 2010 following negotiations with organized labour, technicians were translated to forensic pathology officers – grade 2, outside of the grade 2 salary scale (i.e. on personal notches). Subsequently, mortuary support officers were translated to Forensic Pathology officers – grade 2. Drivers were translated to forensic pathology officers – grade 1 and general orderlies were translated to mortuary services assistants. In 2014, the mortuary service assistants were translated to forensic pathology officers – grade 1. This process was embarked upon to ensure that KwaZulu-Natal complied with the national norms and
standards as dictated to by the Department of Public Service and Administration (DPSA).

This had a major impact as the mortuary service assistants did not meet the minimum criteria for appointment to the post of forensic pathology officer, as prescribed by the DPSA. Such requirements included the possession of a valid driver's licence and a Matric Senior Certificate.

The translation of Mortuary service assistants to Forensic Pathology officers resulted in the cleaning function being lost. This has had a major impact on the cleanliness of the medico-legal mortuaries."

5.3.5 The beginning of the ongoing labour related problems presently being experienced could be traced back to the national directive issued in 2000 in terms of which the medico-legal mortuaries were transferred from the SAPS to the national Department of Health (Cabinet Resolution of 1 May 2000). The transfer was subsequently devolved to the provinces for finalization in 2005.

*Independently obtained evidence*

5.3.6 During an interview held on 01 August 2017, Dr Akoojee stated the following:

"The Department of Health - National Project Team, developed a staff structure that was to be used in all provinces. Prior to the implementation, the posts were evaluated nationally through the Joint Job Evaluation Coordinating Committee. The following job titles were decided upon: Forensic Pathology Officer Grade 1 (level 5), Forensic Pathology Officer Grade 2 (level 6), Senior Forensic Pathology Officer (Level 7) and Chief Forensic Pathology Officer (level 8);

The Department requested consent to use its own job titles with the same levels and that was agreed to by the Joint Job Evaluation Committee. This was done to allow for the proper academic training for this category of staff in accordance with the requirements of the HPCSA Regulations relating to the Registration of Medical
Technicians in the category Mortuary Technique (Government Notice No R995 of July 2003). The job titles that KwaZulu-Natal was granted consent to use were: Mortuary Technician (level 5), Senior Mortuary Technician (Level 6) and Forensic Investigator (level 8);

The post for mortuary technicians at level 5 were advertised by the Department in 2006. Posts at level 7 were not advertised since there was no person who qualified for appointment at that level. The desired premise was to fill the level 7 posts once the appointed employees had completed their training and development at a tertiary institution;

In 2007 the employees that were not in possession of the required qualification were appointed on a permanent basis before they could sign the study contract. The employees discovered this later, and refused to sign the study contract as they had already been given letters informing them that they had been appointed on a permanent basis. It was therefore not possible to change their employment status to that of trainee mortuary technician on a contractual basis;

This impasse constituted one of the initial causes of the labour related dispute;

The dispute intensified when certain Forensic Pathology Officers had refused to perform the prescribed duties of a Forensic Pathology Officer, as per the job description of that post. These included, amongst other duties: dissections, administration and driving of mortuary services vehicles, as well as cleaning of mortuaries; and

These labour related issues resulted in a situation wherein there was no proper job description, or allocation of specific job functions. This has led to discord/confusion as to the specific function to be performed by a particular Forensic Pathology Officer at a particular point in time, as all these functions are interchangeable due to the all-embracing classification of Forensic Pathology Officer that applies to all such employees.”

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5.3.7 During the investigation, it was ascertained that a recognised qualification known as National Diploma: Forensic Pathology Support (SAQA Qualification ID 53183) has been registered by the South African Qualifications Authority (SAQA), although the registration of the qualification is the responsibility of SAQA, the accreditation of service providers to offer the course is the responsibility of the Safety and Security Sectoral Educational and Training Authority (SASSETA).

5.3.8 Research done during the investigation on the SASSETA website and enquiries made directly with SASSETA revealed that there are at present no service providers in South Africa that have been accredited to offer the course. Accordingly the investigation revealed that although an appropriate training course had been developed and registered, it is at present not offered to candidates who may wish to pursue such a course.

MEC Dhlomo's response to my section 7(9)(a) notice:

5.3.9 As indicated above, during my meeting with MEC Dhlomo on 25 February 2019, he also conceded to this challenge of lack of properly qualified Forensic Pathologists which has a serious impact on service delivery at Mortuaries. He indicated that he initiated a process of regularising the field of Forensic Pathology Services, but Ministers for Public Service and Administration and Health, Ms Dlodlo and Dr Motsoaledi did not approve the process citing reasons that this was a National Department's competency.

5.3.10 Based on the information from MEC Dhlomo, on 8 March 2019 I wrote to Ministers Dlodlo and Motsoaledi requesting them to provide the status on the regularisation of Forensic Pathologists, including measures being put in place to remedy the lack of properly qualified Forensic Pathologists. No response had been received at the time of finalising this report.
Application of the relevant law

5.3.11 The Health Professions Act, 1974 requires all Mortuary Technicians to be registered as Medical Technicians with the Health Professions Council of South Africa.

5.3.12 In terms of section 24 of the aforementioned Act, which deals with qualifications prescribed for registration, "The Minister may, on the recommendation of the council, prescribe the qualifications obtained by virtue of examinations conducted by an accredited university, or other educational institution or examining authority in the Republic, which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to registration in a registration category in terms of this Act if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be prescribed."

5.3.13 In order to give effect to the provisions of section 24, the Regulations relating to the Registration of Medical Technicians in the category Mortuary Technique (Government Notice No R995 of July 2003), were promulgated.

5.3.14 Specific requirements for registration as a Medical Technician as required in terms of section 2 (1) and (2) of the aforesaid regulations provide as follows:

"(1) The registrar may register as a medical technician in the category mortuary technique any person who holds an appropriate qualification in the category mortuary technique granted after examination by any institution or examining authority approved by the professional board which includes practical experience obtained under supervision of an appropriately qualified practitioner in an accredited training institution as prescribed for this purpose by the professional board. Provided that no qualification shall be accepted for the purpose of this regulation unless the training therefor has extended over a
minimum period of two years in a mortuary or other institution approved by the professional board.

(2) The registrar may register as a medical technician in the category technique any person who has passed an examination in the category mortuary technique conducted by the professional board in terms of section 15B (1) (b) of the Act.”

5.3.15 The registration of the Medical Technician qualification was done by SAQA in terms of the provisions of the powers conferred in section 13 of the National Qualifications Framework Act 67 of 2008.

5.3.16 However, the objective of ensuring that all Mortuary Technicians were registered as Medical Technicians could not be realised as there was no approved formal training or recognised qualification available for study that would enable Mortuary Technicians to comply with the requirements of the aforesaid regulation.

5.3.17 In order to redress the situation regarding registration of Mortuary Technicians, in March 2018, as per Government Notice no R 360, the Minister of Health gave notice of his intention, under section 61(1) of the Health Professions Act, 1974, to make regulations relating to the registration of Forensic Pathology Officers.

5.3.18 The amendments proposed in terms of sections 2 and 3 of the aforesaid Government Notice are as follows:

“2(a) any person who worked as forensic pathology officer for a minimum period of two years immediately prior to the date of the promulgation of these regulations; or

(b) Any person who was registered, worked, and trained as a student forensic pathology officer for a period of two years under supervision
3.(1) A person who worked as a forensic pathology officer for a minimum period of two years prior to the promulgation of these regulations must apply to the registrar within four months after the promulgation of these regulations and on a form supplied by the professional board,

(2) A person who was registered, worked, and trained as a student forensic pathology officer for a period of two years under supervision must apply to the registrar within four months after completing a period of two years of forensic pathology training and on a form supplied by the professional board.”

Conclusion

5.3.19 Based on the evidence gathered, it can be concluded that the Department’s failure to remedy the labour related issues pertaining to proper job descriptions and allocation of specific job functions did impact on service delivery.

5.4 Regarding whether the Department of Health improperly failed to provide sufficient quantities of basic, necessary and relevant equipment at the KwaZulu-Natal Government Mortuaries to ensure effective and efficient service delivery:

Common cause issues

5.4.1 With reference to whether the Mortuaries have the basic, necessary and relevant equipment to enable effective public service delivery, my investigation team adopted the submissions of the Complainants as a starting point in examining this aspect.

5.4.2 The Complainants submitted, as per appendix 4 of its set of supporting appendices received by my office on 29 July 2015 that, “In terms of adequacy of equipment and resources, the simple answer for the KZN mortuaries is in the negative.”
5.4.3 The Department, through a letter to my office dated 06 September 2016, conceded to a lack of certain basic equipment at the Mortuaries. As per the said correspondence it was stated that “…a number of mortuaries within the province lack the basic equipment needed to ensure that a complete post mortem examination is done, these included, inter alia, the following:

(a) functional body scales,
(b) functional organ scales,
(c) radiographic equipment,
(d) rulers for measuring height of the corpse,
(e) basic autopsy instruments for dissection,
(f) appropriate essential personal protective equipment. “

MEC Dhlomo’s response to my section 7(9)(a) notice:

5.4.4 MEC Dhlomo also conceded during my meeting with him on 25 February 2019 that there is insufficient equipment at the various Mortuaries. He indicated that there is lack of security measures to prevent the theft or disappearance of working tools or equipment at the Mortuaries.

5.4.5 He reported that the disappearance of Mortuary equipment usually occurs during labour strikes by employees as they hide them. Honourable MEC Dhlomo indicated that other ways of curbing this problem was to develop the Standard Operating Procedure on the use of and safe keeping of the Mortuaries equipment, including the security measures to prevent theft of the equipment.

Application of the relevant law

5.4.6 In examining the alleged Department’s failure to provide sufficient quantities of the basic, necessary and relevant equipment at the Mortuaries to ensure effective and efficient service delivery, the conduct of the Department was benchmarked against the standard set out in section 195 of the Constitution, which provides for basic
values and principles governing public administration, more specifically subsection (1)(b), which states as follows:

"s195(1)(b) - Efficient, economic and effective use of resources must be promoted".

5.4.7 In terms of section 25(2) of the National Health Act, 2003 "the head of a provincial department must, in accordance with National health policy and relevant provincial health policy, in respect of or within the relevant province –

... (p)Provide and maintain equipment, vehicles and health care facilities in the public sector."

5.4.8 In order to ensure compliance with the legally prescribed duties pertaining to, inter alia, the provision of sufficient quantities of equipment, the National Health Act, 2003 establishes a legal framework as follows, in terms of section 77:

"77. (1) the relevant member of the Executive Council must establish an inspectorate in his or her province to be known as the Inspectorate for Health Establishments.

(2) An Inspectorate for Health Establishments must-

(a) Monitor and evaluate compliance with this Act by health establishments and health agencies in the province for which it is established; and

(b) Submit a quarterly report on its activities and findings to the relevant member of the Executive Council;

(3) The relevant member of the Executive Council must submit an annual report to the Minister on the activities and findings of the Inspectorate for Health Establishments established in his or her province".

5.4.9 The following list of required equipment, although not legally binding in the South African context, is nevertheless helpful in that it provides a benchmark in terms of which international norms and best practices may be determined:
5.4.9.1 According to a document entitled "Minimum Standards for Forensic Medicine Practice in Africa" published in February 2015 by the African Society of Forensic Medicine (ASFM), the following instruments and equipment should be provided as a minimum:

a) Body trays/ trolleys;
b) Body scales/ rulers;
c) Organ weighing scales;
d) Dissection kits;
e) PPE (caps, masks, goggles, scrubs, gowns, double gloving, mid- calf waterproof, non- slip boots, and waterproof aprons);
f) Photographic equipment and body diagrams;
g) Body bags/ shrouds; and
h) Cleaning equipment.

5.4.9 According to a document entitled "Standard Operating Procedures" issued by the Office of the Chief Medical Examiner – District of Colombia in January 2010:

"Autopsy work stations should be basically set up with the following instruments and supplies, in certain cases it will be necessary to equip the autopsy work station with specialized instruments or additional supplies:

a) Dissecting board

b) Cutting instruments:
   * scalpel handle – short
   * scalpel handle – long
   * dissecting scissors
   * rib cutters/bone shears
   * dura strippers
   * sharp knife – long
   * sharp knife – short

c) Other supplies and sundries:
   * gray ruler with OCME case #
body ruler
forceps with teeth
forceps without teeth
2 hemostats
long metal pan
round metal pan
viscera bag
skull key
1-2 B bottle(s)
2 gray top tubes marked “heart blood”
2 gray top tubes marked “femoral blood”
1 red top tube marked “vitreous”
5 blue conical tubes (labelled appropriately after contents are entered
(gastric, liver, brain, bile, urine)
2 head blocks
sharps container
blue cloth towels
2 self adhesive plastic bags properly labelled
bucket of water w/ detergent and sponge"

Conclusion

5.4.10 Based on research into the minimum standards of equipment required, and in the
light of the admissions made by the Department, it can be concluded that the
Department did not provide sufficient quantities of basic, necessary and relevant
equipment in terms of section 195 of the Constitution and section 25 (2) (p) of the
National Health Act, 2003. Furthermore, the Department does not have measures
in place to safeguard the Mortuary equipment.
5.5 Regarding whether there are other issues that affect effective public service delivery in the KwaZulu-Natal Mortuaries:

5.5.1 Regarding whether there is a lack of cooperation between the South African Police Service and the Forensic Pathology Services which results in the delay of pauper burials:

*Independently obtained evidence*

5.5.1.1 Information obtained during consultation with the Mortuary Facility Managers indicated that there is a functional disconnect between the Forensic Pathology Services and the SAPS in respect of processes connected to pauper burial/cremations that require the mutual participation of both entities.

5.5.1.2 This information was obtained during unannounced Mortuary facility visits from the following Mortuary Facility Managers on the dates indicated below:

(a) Mrs P N Ndebele, the Mortuary Facility Manager at the Pinetown Mortuary on 27 October 2016;
(b) Ms F Ahmad, the Acting Mortuary Facility Manager/Forensic Pathology Officer at the Phoenix Mortuary on 20 April 2017;
(c) Mrs S Sewpujun, the Umgungundlovu District Mortuary Facility Manager at the Pietermaritzburg Mortuary on 25 May 2017;
(d) Mr MS Mdalalose, the Acting Mortuary Manager/Forensic Pathology Officer at the Port Shepstone Mortuary on 09 June 2017; and
(e) Ms J Xulu, the Acting Mortuary Manager at the Gale Street Mortuary on 17 August 2017.

5.5.1.3 The validity of this concern was corroborated during consultation with Lt/Col Moodley, the SAPS Liaison Officer stationed at the Gale Street Mortuary.

5.5.1.4 Information obtained during the aforesaid consultation with Lt/Col Moodley on 15 August 2017, indicated that concerns relating to the cooperation between
the Forensic Pathology Services and the SAPS had been raised at their joint monthly meetings, but thus far this does not appear to have resolved the problem.

5.5.1.5 In order to determine the precise responsibilities of SAPS and Forensic Pathology Service officials regarding the processes involved in dealing with unidentified bodies, my investigation team specifically interrogated the exact protocol that is presently applicable.

5.5.1.6 As per the information obtained on 31 August 2017 from Lt/Col Pillay of the Provincial Complaints Division at the KwaZulu-Natal SAPS Provincial Commissioners Office, the SAPS’ responsibilities in respect of unidentified bodies were detailed in Chapter 5 of the Special Force Order (General) 5C of 1992 which is discussed under the applicable legislation.

*MEC Dhlomo’s response to my section 7(9)(a) notice:*

5.5.1.7 MEC Dhlomo also conceded during my meeting with him on 25 February 2019 that there are cooperation challenges between the two (2) state organs. Although meetings are held between these two organs of state, they have not been effective.

5.5.1.8 He conceded that the meetings should be effective in order to provide efficient service delivery at the Mortuaries. One of the measures proposed was the signing of a Memorandum of Understanding between the two organs of state to manage the cooperation of providing quality service at the Mortuaries.

5.5.1.9 MEC Dhlomo further indicated that another delay to conduct pauper’s burials is due to a lack of space in the KwaZulu-Natal Province. The availability of space to conduct such burials is provided by the Municipalities. He was of the view that one way of addressing this challenge is to encourage cremation of the deceased and/or to negotiate with the Municipalities to provide land to conduct burials.
**Application of the relevant Law**

5.5.1.10 Chapter 3 of the Constitution regulates co-operation between all spheres of government. Section 40(2) provides that

"All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that this Chapter provides."

5.5.1.10 Section 41(1)(h) provides that "all spheres of government and all organs of state within each sphere must cooperate with one another in mutual trust and good faith by:

(i) fostering friendly relations;
(ii) assisting and supporting one another;
(iii) informing one another of, and consulting one another on, matters of common interest;
(iv) ...;
(v) adhering to agreed procedures…"

5.5.1.11 It is expected of the Department of Health and SAPS to foster mutual cooperation with one another to ensure the provision of quality service delivery at the Mortuaries. Failure to cooperate with one another would amount to a violation of this constitutional provision.

5.5.1.12 The SAPS, Departments of Local Government and Health must cooperate with one another in the spirit of Chapter 3 of the Constitution to address the challenge of timely burial of unknown human bodies.

5.5.1.13 The provisions of Chapter 5 of the Special Force Order (General) 5C of 1992 which were applicable prior to the migration of Forensic Pathology
responsibilities from the South African Police Services to the Department of Health provided as follows:

"42. If the identity of a body cannot be established within seven (7) days, two (2) sets of fingerprints must be taken by the Investigating officer as sent with a covering letter to the SA Police Criminal Record Centre (CRC). The fingerprint collection at the SAP Criminal record Centre as well as those at the Department of Interior will be examined in order to establish the deceased’s identity (sic).

43.1. If problems are experienced in identifying the body, the investigating officer must use the help of the broadcasting services (radio and TV). In the past, important information regarding the identity of a deceased or the history of the case was obtained through the service.

43.2. The investigating officer must take a very clear photograph (preferable a colour picture) of the face, of the body, or have it taken, and submit a full report."

5.5.1.14 In terms of section 6 of the Criminal Law (Forensic Procedures) Amendment Act No. 6 of 2010, Chapter 5A was inserted into the South African Police Services Act No. 68 of 1995 after section 15.

5.5.1.15 In terms of section 15A of the SAPS Act, 68 of 1995, as amended by the Criminal Law (Forensic Procedures) Amendment Act, 6 of 2010, the National Commissioner must ensure that fingerprints, body prints and photographic images that are taken must be stored, maintained, administered and readily available, whether in computerised or other form, and shall be used for, in addition to certain other specified purposes, the identification of unidentified human remains.
5.5.1.6  The legal responsibility of the Department of Health with regard to unidentified bodies at the present time is governed by the stipulations contained in the old regulation 32 in terms of Government Notice No. R636 dated 20 July 2007 and new regulation 17(1) in terms of Government Notice No. R359 dated 23 March 2018, promulgated in terms of the National Health Act, 2003, which have been referred to and discussed herein above, as well as the provisions contained in the KwaZulu-Natal Standard Operating Procedures which provide:

"7.6.1.  If the human remains is not identified within 7 days, the Assistant Director: Medical Legal mortuary will advise the SAPS investigating officer, who has the task of establishing the identity of the deceased.

a)  All unidentified or unclaimed corpses must be photographed and fingerprinted.

b)  In addition a DNA sample must be collected and forwarded to the SAPS Forensic Science laboratory to be filed for future reference and analysis.

c)  The fingerprints are taken by the investigating officer and submitted to the LCRC to establish the identity of the deceased through the database of SAPS. Criminal Record Centre will also liaise with Home Affairs.

d)  A photograph of the deceased is submitted to the SAP Missing Persons Bureau.

7.6.2.  if the investigating officer (IO) cannot find the family of the deceased within 30 days:-

a)  The IO will make a written declaration to that effect and thereafter permit the state burial of the deceased.

b)  Authority will be obtained from the Deputy Director: Forensic Pathology Services to bury the human remains as a pauper.

c)  The Assistant Director: Medico-Legal Mortuary will then submit an application letter for pauper burial to the responsible Municipality.
7.6.3. The following steps are to be followed where a body has not been claimed or identified:

a) The investigating officer to take a set of fingerprints and submit to LCRC;

b) Ensure that a photograph of face has been taken.

c) Ensure that DNA sample has been taken.

d) Transfer the corpse from the refrigerator to the freezer after seven (7) days have elapsed.

e) The details of the deceased must then be recorded in the unclaimed / unidentified register.

f) After 14 days make a written follow up with the Investigating officer concerned regarding the progress of the investigation. Keep a copy of the letter in the PM docket. The response of the IO should also be in writing.

g) Upon receiving the fingerprint result, when positive the investigating officer (IO) will trace the family of the deceased. When negative, the IO must give a written declaration to that effect and thereafter if the relatives could still not be traced, authorize the state burial of the deceased.

h) After SAPS has made a written declaration that the family cannot be traced, then the process of pauper burial is commenced.

i) Make formal submission to the Deputy Director: FPS with the standard pauper spread sheet, confirming that DNA and photograph were taken, the fingerprint results and an (sic) sworn statement from the investigating officer.

j) Upon receiving an approval from the Deputy Director: FPSs for pauper burial, the Facility Manager would then make a written application for pauper burial to the municipality whose jurisdiction the death occurred."
Conclusion

5.5.1.17 It can concluded that there is a lack of adequate cooperation between the SAPS and Forensic Pathology Services with regard to their respective responsibilities in respect of identification and burial/cremation of unidentified human bodies. This was made clear by persons who were interviewed during the investigation.

5.5.2 Regarding whether the Department of Health unduly delayed to issue outstanding post mortem reports:

*Independently sourced evidence*

5.5.2.1 The statistics relating to outstanding post mortem reports were obtained from the Mortuary Facility Managers during the unannounced Mortuary visits.

5.5.2.2 These indicated a trend suggesting that a number of outstanding post mortem reports in the Mortuaries was high.

5.5.2.3 In order to corroborate the information gleaned from the Mortuaries statistics, my investigation team obtained a comprehensive consolidated statistical information from the Department relating to outstanding post mortem reports at all the Mortuaries.

5.5.2.4 This information was provided by Mr J Mazibuko, the Area Manager: KZN Forensic Pathology Services on 07 August 2017 and appears in the table below.

5.5.2.5 As per the information obtained from the Department, the number of post mortem reports outstanding as at May 2017 stood at 3225.
## Outstanding Post Mortem Reports as at May 2017

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<th>NO. OF PM EXAM INATIONS CONDUCTED</th>
<th>NO. OF UNIDENTIFIED CORPSES</th>
<th>CUMULATIVE NO. UNIDENTIFIED CORPSES</th>
<th>NUMBER OF PAUPER BURIALS</th>
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5.5.2.6 The Department implemented initiatives to address the situation regarding outstanding post mortem reports, as evidenced in Circular Minute No. G113/2017 entitled “Turnaround time for Post Mortem Examination Reports” from Dr Aiyer dated 15 August 2017, which circular is more extensively dealt with herein below.

5.5.2.7 The aforesaid circular outlined the background as follows:

"Management of Forensic Pathology Services continues to receive numerous complaints from the National Prosecuting Authority, South African Police Services as well as members of the Legal fraternity involved in the finalization of deceased estates regarding the lengthy delays in production of reports following post mortem examinations performed by Forensic Medical
Practitioners employed by the Department of Health. It was therefore decided that time lines be set for the finalization of Post mortem reports by the medical practitioners involved with the medical legal investigations of death due to other than natural causes (sic).”

5.5.2.8 In a letter dated 27 August 2018 addressed to my office (after the implementation of Circular Minute No. G113/2017), the Head of Department submitted that “There has been a remarkable improvement in the finalisation of reports by Medical Doctors. With the filling of Medical Technologist posts that are responsible for histology tests and analysis, it is trusted that a large number of reports will be finalised”.

5.5.2.9 In the aforesaid letter, Dr Gumede further submitted that “…the perspective is for a first world country which has a few unnatural deaths as compared to a developing country like South Africa which has a remarkable (sic) high number of cases of unnatural deaths. The turnaround time for producing post mortem reports will differ, theirs will be shorter whilst ours will be longer. Forensic medical practitioners in KZN do in excess of six (6) and up to eighteen (18) post mortems per week in contrast to developed countries whereby a doctor does one or two post mortems per week.”

**MEC Dhlomo’s response to my section 7(9)(a) notice:**

5.5.2.10 MEC Dhlomo also conceded during my meeting with him on 25 February 2019 that the challenge of issuing post mortem reports promptly still exist within the Department. He mentioned two instances where there is an undue delay to issue post mortem reports on time. One instance is where a Forensic Pathologist resigns before finalising post mortem reports. He reported that the Department has now put measures in place to manage this challenge. Forensic Pathologists are expected to finalise all their outstanding post mortem reports within their notice period.
5.5.2.11 Secondly, he indicated that there was indeed a delay in the identification and burial/cremation of the unidentified bodies because of the centralisation of laboratories which process toxicology and blood alcohol tests. In some instances, circumstances force the SAPS investigators to take longer periods to trace families of unidentified bodies.

5.5.2.12 Based on this information, my office wrote to the National Commissioner of Police, Lt. Gen. K Sitole, as per a letter dated 08 March 2019, to advise on whether any measures were being put in place to remedy the centralisation of laboratories which impact on the timelines within which toxicology and blood alcohol results should be made available. No response had been received from Lt. Gen. Sitole’s office at the time of finalising this report.

Application of the relevant law

5.5.2.13 The Batho Pele Principles provide a legal framework in terms of which a standard is set that speaks to the undue delay in the issuing of outstanding post mortem reports. In particular, the principle relating to service standards is relevant. The community should be made aware of the level, and quality, of public services that it is entitled to receive.

5.5.2.14 The following, although not legally binding in the South African context, is nevertheless helpful in that it provides a benchmark in terms of which international norms and best practices, relating to the issuing of post mortem reports may be determined. “The Code of Practice and Performance Standards for Forensic Pathology in England, Wales and Northern Ireland” produced by the Home Office, The Forensic Science Regulator, Department of Justice and the Royal College of Pathologists, published in 2012, postulated, at page 26 thereof, that the time for submission of the post mortem report as follows:

“The report must be submitted to the Coroner and a statement made to the police as soon as is practically possible. In some instances, it is appropriate to submit a preliminary report, detailing as far as possible the expected timing of
pending interim and final report. If there is to be a significant hand-up, the
reasons for this should be given and explained. Normally, delays should only
be those occasioned by the need for time-consuming special investigations,
such as toxicology, neuropathology or cardiac pathology. Routine histology
should not be a reason for significant postponement of a final report. However,
it is preferable that the report should be as detailed and comprehensive a (sic)
possible, even if this does cause some delay in its completion. In most
instances, this would be more helpful to the user than the issue of multiple
supplementary reports or statements.”

5.5.2.15 In terms of Circular Minute No. G113/2017 of the Department, titled
“Turnaround time for Post Mortem Examination Reports” the prescribed time
lines were stipulated as follows:

1. “In cases where the cause of death is established at the autopsy and no
ancillary facts are required, the reports must be finalised within 7 working days
of the post mortem examination being conducted.

2. In cases where histology is required to assist in formulation of cause of
death the report must be finalised within 30 working days of the autopsy being
performed.

3. In cases where histology, toxicology and/or other ancillary tests are
required, the histological diagnosis must be made and the provisional post
mortem report must be generated for collection by the South African Police
Service within 30 days of the autopsy being done. The report must then be
finalised upon receipt of the test results and amended report be generated for
the case docket.

(a) In terms of Circular Minute No. G113/2017 the following instruction was issued:

“1. All outstanding reports must be finalized on or before the 31 December
2017.”
2. The Assistant Director of the Medico-Legal Mortuary is required to provide all the necessary administrative assistance, required for the typing and printing of the reports."

5.5.2.16 Circular Minute No. G113/2017 set forth the following possible consequences for failure to comply with the instructions, which would be deemed to be professional incompetence, and the Forensic Medical Practitioner may:

"1. At the discretion of the Detective Commander of the South African Police Service, face criminal charges for obstructing the course of justice.

2. Reported to the Health Professions Council of South Africa for professional incompetence at the discretion of either the Department of Justice or the National Prosecuting Authority.

3. As a full time forensic medical practitioner receiving commuted overtime, run the risk of losing their commuted overtime until such time that they comply with the above timelines, in addition to receiving a negative assessment in their performance assessment for notch and grade progression."

Conclusion

5.5.2.17 The earlier phase of the investigation revealed that there was a delay in the timeous completion of post mortem reports, and the consequent accumulation of incomplete post mortem reports did negatively affect the delivery of effective Forensic Pathology Services to the public.
5.6 Regarding whether the Department of Health failed to manage Equipment Maintenance Contracts:

*Independently obtained evidence*

5.6.1 As per paragraph 5 b of a letter received from the Department dated 06 September 2016, the Department admitted that "the following issues have been identified as contributing to the challenges faced by the Forensic Pathology Services with regards to service delivery:

   a) ...

   b) The lack of infrastructure maintenance contracts for the refrigeration, air condition plants, air filtration systems, etc..."

5.6.2 During the investigation, the inspections *in loco* were conducted at the following Mortuaries:

5.6.2.1 Gale Street Mortuary;
5.6.2.2 Pinetown Mortuary;
5.6.2.3 Phoenix Mortuary;
5.6.2.4 Pietermaritzburg Mortuary; and
5.6.2.5 Port Shepstone Mortuary.

5.6.3 Consultations were held with the Mortuary Facility Managers/acting Managers at the aforesaid Mortuaries during which they indicated that equipment maintenance and repair requirements were reported to the Department’s district offices for the necessary attention, but they did point out that delays were often experienced.

5.6.4 In order to corroborate the information received during the unannounced Mortuary site visits, my office addressed a letter to Dr Ntsele on 28 May 2018 requesting specific information in respect of, *inter alia*, equipment maintenance contracts.

5.6.5 In response thereto as per a letter dated 27 August 2018, Dr Gumede, in paragraph 3 on page 2 of the aforesaid letter, stated as follows:
“Provincial Head Office infrastructure has taken over all infrastructure related business in all MLM’s as of 1 of April 2018 due to capacity constraints at the District Office Level, response to attend to critical services such as fridges, air conditioners, water supply and sewerage or electrical and other faults. It was resolved to centralise such issues to head office Infrastructure.

Currently the Infrastructure unit is in the process of establishing the maintenance hubs in the regions in order to effectively and efficiently manage the maintenance needs of Medico-Legal Mortuaries amongst other projects.

There is a contract in place for the repairs and refurbishments. Currently infrastructure is getting handover documentation from the District offices which include existing service contracts. Contracts that are near expiring shall be replaced by three (3) year contract which are still yet to be procured. Infrastructure is ascertaining the completing of drafting of new contracts for procurement in August 2018. All this will facilitate the efficient and effective management of Forensic Pathology Service Medico-Legal Mortuaries”.

5.6.6 As per annexure “D” attached to the letter from Dr Gumede, a management meeting held on 05 February 2018, resolved “to move all Forensic Mortuaries from the district to the Infrastructure Development Head Office”.

5.6.7 The aforesaid Annexure “D” is a letter dated 12 February 2018 written by Mr B Gcaba, Chief Director: Infrastructure Development to Dr T Khanyile, the Acting Deputy Director-General: Specialised Services and Clinical Support, requesting him to inform all District Managers, District Engineers and Heads of Mortuaries of the migration of infrastructure maintenance and engineering responsibilities to the Head office with effect from 01 April 2018.
MEC Dhlomo's response to my section 7(9)(a) notice:

5.6.8 The matter was also discussed with MEC Dhlomo during my meeting with him on 25 February 2019. He conceded that there were indeed problems with Equipment Maintenance Contracts, but measures have since been put in place as confirmed by my investigation team. He further informed me that the Department has now employed an official responsible for management and monitoring of equipment maintenance contracts.

Application of the relevant law

5.6.9 The fundamental responsibility of ensuring that appropriate Equipment Maintenance Contracts are implemented lies with the Accounting Officer of the Department, and is set forth in section 38 of the Public Finance Management Act 1 of 1999 (PFMA), as amended.

5.6.10 In terms of section 38 (b) of the PFMA, the Accounting Officer “is responsible for the effective, efficient, economical and transparent use of the resources of the Department, trading entity or constitutional institution.”

5.6.11 Section 38(d) deals specifically with the maintenance of departmental assets and provides that the Accounting Officer “is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities of the department, trading entity or constitutional institution.”

5.6.12 The KwaZulu-Natal Provincial Treasury Instruction Note No. 30, dated 01 April 2013 provides in paragraph 2 that “The objective of this instruction note is to provide guidelines for the management and control of all movable assets in the province. This instruction note is primarily intended to assist asset managers to interpret and implement sound asset management principles in their departments.”
5.6.13 Paragraph 6.3 of the aforesaid Treasury Instruction Note stipulates that “Asset Managers need to identify assets per category of assets and decide whether the type of maintenance will be preventative or corrective. Preventative maintenance requires that an asset is serviced at regular intervals in keeping with its inherent nature and functionality and thereby preventing the asset from break down. Corrective maintenance will mean that maintenance will only be undertaken once the asset has broken down. Once this decision has been made, they would have to consider whether the maintenance will be in-house (performed by the Department) or whether it will be outsourced, (done by an external firm) for that asset category.”

5.6.14 In terms of section 25 (2) of the National Health Act, 2003 “the head of a provincial department must, in accordance with National health policy and relevant provincial health policy, in respect of or within the relevant province:-

(p) provide and maintain equipment, vehicles and health care facilities in the public sector”.

5.6.15 In terms of the provisions of the Occupational Health and Safety Act, 85 of 1993, the employer bears a general duty in respect of its employees as follows:

(a) In terms of section 8(1) of the said act “every employer shall provide and maintain as far as is reasonably practicable, a working environment that is safe and without risk to the health and safety of his employees;” and

(b) In terms of section 8(2) “without derogating from the generality of an employer’s duties under subsection (1), the matters to which those duties refer include in particular (a) provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health”.

5.6.16 These provisions of the Occupational Health and Safety Act, 1993 are relevant in respect of Equipment Maintenance Contracts that relate directly to the wellbeing
of employees in Mortuaries, specifically equipment relating to air conditioning, refrigeration and ventilation.

5.6.17 The following viewpoint, although not legally binding in the South African context, is nevertheless helpful in that it provides a benchmark in terms of which international norms and best practices, relating to medical equipment maintenance, may be determined. The "Medical Equipment Maintenance Programme overview" published by the World Health Organisation (WHO) in 2011 sets out, on page 10, the required standard in respect of equipment maintenance contracts:

"Medical equipment maintenance can be divided into two major categories: inspection and preventive maintenance (IPM), and corrective maintenance (CM). IPM includes all scheduled activities that ensure equipment functionality and prevent breakdowns or failures. Performance and safety inspections are straightforward procedures that verify proper functionality and safe use of a device. Preventative Maintenance (PM) refers to scheduled activities performed to extend a life of a device and prevent failure (i.e. by calibration, part replacement, lubrication, cleaning, etc.). Inspection can be conducted as a stand-alone activity and in conjunction with PM to ensure functionality; this is important as PM can be fairly invasive in that components are removed, cleaned or replaced.

It is essential for any health care facility, regardless of its size, to implement a maintenance programme for medical equipment. The complexity of the programme depends on the size and type of facility, its location, and the resources required. However, the principles of a good maintenance programme would be the same in an urban area in a high income country or a rural setting in a low to middle income country (sic)."

5.6.18 In terms of the ASFM publication referred to above, "regular servicing of equipment with documentation of servicing and dates in equipment registers" is listed as a minimum requirement for a properly functional mortuary.
Conclusion

5.6.19 The earlier phase of the investigation revealed that deficiencies / shortcomings did exist with regard to Equipment Maintenance Contracts, particularly when this issue falls within the functionality of the District offices.

5.6.20 Further investigation indicated that the Department has, out of its own accord, identified this particular shortcoming and has already implemented steps to address it.

5.7 **Regarding whether any person suffered prejudice as a result of the conduct of the Department:**

5.7.1 The essence of the complaint, when viewed in its totality, is that the Kwa-Zulu Natal community has been prejudiced by the lack of quality services being delivered by the Mortuaries and this contention is corroborated in the following direct quotation appearing on page 5 of a letter from the Complainants to my office dated 08 May 2015, in which they stated that “...service delivery quality to the public at the public-official interface at the mortuaries begs inquiry into…”

5.7.2 The actual prejudice suffered by members of the community manifests itself in the delayed release of bodies to bereaved families.

5.7.3 This is further indicated by a print media article that appeared in the *Mercury,* 27 March 2017 under the heading “Union threatens mortuary strike.” The first paragraph of the article articulated the risk of the specific prejudice to the community, in the following terms “Nehawu has threatened strike action which could delay the release of bodies to the bereaved families, should their demands for mortuary workers not be addressed by the Department of Health.”

5.7.4 Failure and/or an undue delay by the Department to address and/or improve on the working conditions of its employees, quality and capacity of its human
resources and Mortuary equipment and cooperation with the SAPS, will impact on the quality of services provided to the KwaZulu-Natal community.

Application of the relevant law

5.7.5 Bereaved families are constitutionally entitled to the protection of their human dignity as enshrined in section 10 of the Constitution of the Republic of South Africa, 1996 which provides that "Everyone has inherent dignity and the right to have their dignity respected and protected".

5.7.6 The minimum service standards that members of the community are entitled to from KwaZulu-Natal Forensic Pathology Services are the standards set forth in the Batho Pele principles. In particular the principle relating to service standards wherein the community should be made aware of the level, and quality, of public services that it is entitled to receive, and the principle relating to courtesy which requires that the community should be treated with the right attitude and with courteous consideration.

5.7.7 The Batho Pele principle relating to redress is also relevant as it envisages a system in terms of which disenfranchised members of the community are afforded a process in terms of which they can ventilate their concerns with the hope of obtaining appropriate redress.

6 FINDINGS

6.1 Regarding whether there is improper conduct by the Department of Health with regard to the management of human bodies at the KwaZulu-Natal Government Mortuaries:

6.1.1 The allegation whether there is improper conduct by the Department of Health with regard to the management of human bodies at the KwaZulu-Natal Government Mortuaries is partially substantiated.
6.1.2 My findings revealed that there had been non-compliance by the Department with some of the standard requirements regulating the management of human bodies at the Mortuaries, such as the recording of fridge temperatures (Regulation 9) and taking photographs and fingerprints of deceased persons (new Regulation 8). However, since the promulgation of the new Régulations [Government Notice no. R 359 dated 23 March 2018 of the National Health Act, 2003], there is proper management of human bodies at the Mortuaries, including the recording of fridge temperatures and taking photographs and fingerprints of deceased persons.

6.1.3 The allegation that there is a high number of decomposing human bodies piling up on Mortuary floors, trolleys and trays outside the mortuary fridges is unsubstantiated. My findings revealed that all bodies kept at Mortuaries are tagged in body bags and placed in trays in the fridges and/or freezers. The bodies are also kept in body bags with a number as per the mortuary registers.

6.1.4 The conduct of the Department in compliance with the Regulations of management of human bodies at Mortuaries constituted improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.

6.2 Regarding whether the Department of Health failed to employ properly qualified and experienced personnel such as Mortuary Facility Managers, Forensic Pathologists and Administrative staff at the KwaZulu-Natal Government Mortuary:

6.2.1 The allegation that the Department failed to employ properly and experienced Forensic Pathologists is substantiated.

6.2.2 The lack of properly qualified Forensic Pathologists is due to the fact that the field is not regularised. The regularisation of Forensic Pathology services is a National competency. The matter was raised with Ministers Dlodlo and Motsoaledi, but they had not responded to my enquiry at the time of finalising the report.
6.2.3 The allegation that the Department failed to employ sufficient, properly qualified and experienced Mortuary Facility Managers is not substantiated.

6.2.4 There are no minimum required qualifications or professionally registered academic qualifications available for Medico Legal Mortuary Managers in South Africa, and the Department has ensured that all Mortuaries have been placed under the control of a duly appointed Manager.

6.2.5 The allegation that the Department failed to employ sufficient Administrative staff is substantiated. The lack of sufficient data capturers is said to be one of the primary reasons for the alarmingly high backlog in respect of outstanding post mortem reports at the Gale Street Mortuary. Failure to employ sufficient Administrative staff is in violation of section 195 of the Constitution and section 48(2) of the National Health Act, 2003.

6.2.6 The conduct of the Department in delaying to regularise the Forensic Pathology Services and employ sufficient Administrative staff constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.

6.3 Regarding whether the Department of Health improperly failed to remedy Forensic Pathology Officer's labour issues thereby impacting on service delivery:

6.3.1 The allegation that the Department failed to remedy the labour related issues pertaining to Forensic Pathology Officers is substantiated.

6.3.2 The Department's failure to remedy the labour related issues, specifically relating to the development of proper job descriptions and allocation of specific job functions and regularisation of the Forensic Pathology Services, constitutes an impropriety that impacts on service delivery. Regularisation of the Forensic Pathology Services is a competency of the Departments of Public Service and Administration and Health.
6.3.3 The conduct of the Department constitutes improper conduct as envisaged in section 182(1) (a) of the Constitution and section 6 (4) (a) (ii) and (iii) of the Public Protector Act.

6.4 Regarding whether the Department of Health failed to provide sufficient quantities of basic, necessary and proper equipment at the KwaZulu-Natal Government Mortuaries to ensure effective and efficient service delivery:

6.4.1 The allegation that the Department failed to provide KwaZulu-Natal Mortuaries with sufficient quantities of basic, necessary and relevant equipment to ensure effective and efficient service delivery is substantiated based on the admission made by the Department.

6.4.2 A finding is made that the Department’s failure to provide sufficient quantities of basic, necessary and relevant equipment did constitute an impropriety in terms of section 195 of the Constitution and section 25 (2) (p) of the National Health Act, 2003.

6.4.3 The Department conceded that there is insufficient equipment at the various Mortuaries due to, inter alia, lack of security measures to prevent the theft or disappearance of working tools or equipment at the Mortuaries. The disappearance of Mortuaries equipment usually occurs during labour strikes by employees as they hide them.

6.4.4 Such failure constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4) (a)(ii) and (iii) of the Public Protector Act.
6.5 Regarding whether there are any other issues that affect effective public service delivery in KwaZulu-Natal mortuaries:

6.5.1 Regarding whether there is a lack of cooperation between South African Police Service and Forensic Pathology Services which results in the delay of pauper burials:

6.5.1.1 The allegation that there is a lack of cooperation between the SAPS and Forensic Pathology Services with regard to pauper burials is substantiated.

6.5.1.2 There is a functional disconnect between the Forensic Pathology Services and the SAPS in respect of pauper burials/cremations. The mutual cooperation intended to expedite the identification and burial/cremation of unidentified human remains is not conducted optimally. The monthly meetings between the two organs of state to properly manage the cooperation have not been effective.

6.5.1.3 In terms of section 15A of the SAPS Act, 1995, as amended by section 6 of the Criminal Law (Forensic Procedures) Amendment Act, 2010, the SAPS has a legal duty to create and maintain a database of fingerprints, body prints and photographic images to be used for, *inter alia*, the purpose of identifying unidentified human remains, and the Forensic Pathology Services have a duty to work in conjunction with the SAPS in order to identify such unidentified human remains.

6.5.1.4 The lack of cooperation between Forensic Pathology Services and SAPS is in violation of the principles of cooperative governance provided for in Chapter 3 of the Constitution.

6.5.1.5 MEC Dhlopo also conceded during my meeting with him on 25 February 2019 that there are cooperation challenges between the two (2) state organs.
Although meetings are held between the two organs of state, they have not been effective.

6.5.1.6 He conceded that the meetings should be effective in order to provide efficient service delivery at the Mortuaries. One of the measures proposed was the signing of a Memorandum of Understanding between the two to manage the cooperation of providing quality service at the Mortuaries.

6.5.1.7 There is a delay by the Department and SAPS to conduct pauper’s burials due to lack of space in the KwaZulu-Natal Province. The responsibility to avail burial sites for pauper’s burials is that of the Municipalities.

6.5.1.8 The conduct of the Department and SAPS not to cooperate with one another also constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.

6.5.2 Regarding whether the Department of Health unduly delays to issue outstanding post mortem reports:

6.5.2.1 The allegation that there is a delay in the issuing of post mortem reports is substantiated.

6.5.2.2 The investigation revealed that there was a delay in issuing of post mortem reports, as evidenced by the information provided.

6.5.2.3 The cause of delay to issue post mortem reports on time include cases where a Forensic Pathologist resigns before finalising their post mortem reports. The Department has now put measures in place to manage this challenge. Forensic Pathologists are expected to finalise all their outstanding post mortem reports within their notice period.

6.5.2.4 Another cause of delay is the centralisation of laboratories which process toxicology and blood alcohol tests. In some instances, circumstances force the
SAPS investigators to take longer periods to trace families of unidentified bodies. I have raised the matter with the National Commissioner of Police, Lt. Gen Sibulo, who has not responded at the time of finalising of the report.

6.5.2.5 The Department's Circular Minute No. G113/2017 in terms of which clear timelines were established for the completion of post mortem reports was not being complied with.

6.5.2.6 The conduct of the Department in delaying timeously finalise the post mortem reports constitutes improper conduct as envisaged in section 182(1) (a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.

6.5.3 Regarding whether the Department of Health improperly failed to manage Equipment Maintenance Contracts:

6.5.3.1 The allegation that the Department failed to manage Equipment Maintenance Contracts is substantiated.

6.5.3.2 The investigation revealed that there was lack of infrastructure maintenance contracts for the refrigeration, air conditioning plants and air filtration systems at Mortuaries.

6.5.3.3 The Department's Provincial Head Office infrastructure has now taken over all infrastructure related business due to capacity constraints at the District Office Level. The Department has also employed an official responsible for Equipment Maintenance Contracts management.

6.5.3.4 The conduct of the Department, prior to improving its Equipment Maintenance Contracts management, constituted improper conduct as envisaged in section 182(1) (a) of the Constitution and section 6(4)(a)(ii) and (iii) of the Public Protector Act.
6.6 Regarding whether any person suffered prejudice as a result of the conduct of the Department:

6.6.1 The allegation that the KwaZulu-Natal community, specifically members of bereaved families, suffered prejudice as result of the conduct of the Department is substantiated.

6.6.2 The prejudice suffered by the bereaved families is the undue delay to release the bodies of their loved ones for burial.

6.6.3 Failure and/or an undue delay by the Department to address and/or improve on the working conditions of its employees, quality and capacity of its human resources and Mortuary equipment and cooperation with the SAPS, also impacts on the quality of service provided to the KwaZulu-Natal community.

6.6.4 The conduct of the Department infringes on the community's right to human dignity as envisaged in section 10 of the Constitution.

7. REMEDIAL ACTION

7.1 The appropriate remedial action that I am taking in pursuit of section 182 (1) (c) of the Constitution is the following:

7.1.1 The Head of the KwaZulu-Natal Provincial Department of Health must ensure that the Department monitors the Mortuaries quarterly to ensure that they comply with all relevant legal prescripts which regulate them;

7.1.2 The Directors General of the Departments of Public Service and Administration and Health must, within 30 working days from the date of the final report, provide my office with a full and detailed report on the process of regularisation of the Forensic Pathology Services, including the development of Forensic Pathologists' proper job descriptions and allocation of specific job functions;
7.1.3 The Head of Department of KwaZulu-Natal Provincial Department of Health must, within 60 working days from the date of the final report, verify the number of vacant Administrators’ positions at all KwaZulu-Natal Provincial Government Mortuaries, and provide my office with a full and detailed report on the measures being put in place to capacitate these Mortuaries accordingly;

7.1.4 The Head of Department of KwaZulu-Natal Provincial Department of Health must, within 60 working days from the date of the final report, develop the Standard Operating Procedure for the use and safe keeping of the Mortuary equipment, including the security measures to prevent the theft of equipment; and

7.1.5 The National Commissioner of Police and Director General of National Department of Health, including the Head of the Department of KwaZulu-Natal Provincial Department of Cooperative Governance and Traditional Affairs must, within 60 working days from the date of the final report, ensure that, in line with the constitutional spirit of cooperative governance as provided for in Chapter 3 of the Constitution, establish/sign a Memorandum of Understanding to regulate their cooperation in the proper management of all government Mortuaries, including provision of land and/or grave sites for pauper’s burials to be undertaken timeously, and, make an option of cremation available for the disposal of unclaimed human bodies.

8. **MONITORING**

8.1 I will require all the Heads of the Departments mentioned in the findings referred to in paragraph 7 above to submit an Implementation Plan to my office within 15 working days from the date of this report indicating how the remedial action referred to in paragraph 7 above will be implemented.
8.2 The submission of the Implementation Plan and the implementation of my remedial actions shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.

ADV. BUBISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 28/03/2019