

SUBMISSIONS OF THE CYBERCRIMES AND CYBERSECURITY BILL

At the outset I would like to express my appreciation for the opportunity to make submissions on the Cybercrimes and Cybersecurity Bill 2015 as an individual and an ordinary citizen of South Africa.

Due to time constraints a brief overview of concerns I have regarding the Cybercrimes and Cybersecurity Bill 2015 in relation to the use and implementation of biometrics technology when combating cybercrime that may have an impact on ensuring that the national interests of our country is not being compromised by the use thereof as a cybersecurity tool.

To understand the concerns of these submissions, I would like to give a brief background of this research.

Biometrics refer to the ability to measure the unique and distinctive characteristics necessary to confirm the identity of an individual's physical, biological and behavioral traits.¹ Biological characteristics are fingerprints, voice, handprints, facial features, iris or retina patterns, DNA, etc. Physiological characteristics are gait, keystrokes, etc.

It is stated that:

*"He who by nature and not by mere accident
is without a State, is either a bad man
or above humanity..."²*

Biometrics refer to the ability to measure the unique and distinctive characteristics necessary to confirm the identity of an individual's physical, biological and behavioral traits.³ Biological characteristics are fingerprints, voice, handprints, facial features, iris or retina patterns, DNA⁴, etc. Physiological characteristics are gait, keystrokes, etc.

¹ .National Science and Technology Council (NTSC), Committee on Technology, Privacy & Biometrics: Building a Conceptual Foundation 4 (2006), available at <http://www.biometrics.gov/docs/privacy.pdf> [hereinafter NTSC Report];

² Aristotle, Politics, Book 1, Part 11, Mark 1253a: See Aristotle, Politics, trans. Benjamin Jowett (Ny. Dover Publications, 2000) or online version. Article: The State of Israel and the Biometric Database Law: Political Centrism and the Post Democratic State – [Http://en.idi.org.il/analysis/articles/the-state-of-israel-and-the-biometric-database-law-political-centrism-and-the-post-democratic-state](http://en.idi.org.il/analysis/articles/the-state-of-israel-and-the-biometric-database-law-political-centrism-and-the-post-democratic-state)

³ .National Science and Technology Council (NTSC), Committee on Technology, Privacy & Biometrics: Building a Conceptual Foundation 4 (2006), available at <http://www.biometrics.gov/docs/privacy.pdf> [hereinafter NTSC Report];

⁴ deoxyribonucleic acid

Biometric identification is not a foreign phenomenon to South Africans. It is intrinsically embedded in the Verwoedean Apartheid Regime, where body characteristics⁵ were used to classify its citizens into segregated racial groups. It is ironic that it is the very same principles of biometric identification that has been the cornerstone for the creation and legitimization of the Apartheid State has now been the cause of revolutionary innovation, progress and prosperity in developed and developing countries.

South Africans still suffer from the aftermath of the historic implementation of biometric identification principles that was key to the creation of discriminatory and oppressive laws⁶, segregation, heartache⁷ and turmoil⁸ during the Apartheid Regime. Even though we are more than 20 years into our new democracy the South African government is still taking corrective measures to undo the damage created by the past regime and cope with the ever-changing and dynamic environment of e-government and e-commerce. Security through biology is a key driver behind the use of biometric technology in this era. Its systems and programs secure the cyberspace of South Africa whereby its infrastructure reduces cyber threats and vulnerabilities. South African government expenditure on biometric programs and systems at present, forecasts the coordinated approach to dealing holistically with matters relating to cyber security, thereby ensuring confidence and trust in e-commerce and e-government.⁹ The need to strengthen and improve the integrity and reliability of its identification and information systems has culminated in South Africa government embarking on a coordinated multi-agency and inter-departmental approach by initiating the National Cybersecurity Policy Framework¹⁰ to provide for Information Security for our country. The Cybercrimes and Cybersecurity Bill is one of the spin-offs of the NCPF.

The motivation for the use of biometric technology are crimes such as identity theft¹¹, fraud¹², espionage¹³, terrorism¹⁴ and the vulnerability of computer

⁵ In the Apartheid regime a persons right and privileges were determined by the color of one's skin, the straightness of ones hair, etc. The Pencil Test were vigorously implemented where there were uncertainty in regard to color (pigmentation) of one's skin, the texture and straightness of a persons hair would determine the rights and privileges that person would enjoy as White, Colored, Asian or Black.

⁶ Prohibition of Mixed Marriages Act No.55 of 1949, Immorality Amendment Act No.21 of 1950, The Population Registration Act No.30 of 1950, the Group Areas Act No 41 of 1950, the Natives Abolition of Passes and Co-ordination of Documents Act of 1952, The Pass Laws Act of 1952, etc.

⁷ The Truth and Reconciliation Commission was a negotiated sunshine clause in the Constitution of South Africa to try and heal the heartache that the Apartheid Regime has caused on South Africans.

⁸ The TRC investigations and hearings dealt with vigilante groups such as the Amasolomzi, Isolomzi, Witdoeke, Phakamisa were deployed by the Apartheid government to root out resistance to the Apartheid government ideologies.

⁹ Examples are South African Social Security Agency contract with Cash Paymaster Service (subsidiary company of NET1), Department of Home Affairs HANIS program, Visas, Passports, etc

¹⁰ Cyber Security Policy Framework- Government Gazette No 32963 – 19 February 2010

¹¹ "Cosatu condemns grant distribution scams" Allegations of a scheme called Umoya Manje to market airtime to social grant beneficiaries. <http://www.cosatu.org.za/show.php?ID-8002>

systems and networks¹⁵ to cyber attacks, etc.¹⁶ Biometric technology is also of imperative importance in the operations of the National Communications that incorporates the National Communication Centre (NCC), the Office of Interception Centres (OIC), COMSEC. It is supposed to ensure safe and secure transactions in electronic communications and transactions.

Both fields of privacy and biometrics are discrete and dynamic, yet the ever-changing nature of both disciplines has a profound impact on people and societies. The right to privacy entrenched in our Bill of Rights is a cornerstone of our new democracy. It is a fundamental human right that is safeguarded in our Constitution and international human rights treaties.

Concerns that is raised

1. Does this Bill allow for the prosecution and legal sanctions of crimes involving biometric technology?
2. Does the Bill adequately deal with protection of biometric servers and databases as critical information infrastructures?
3. How does the Bill deal with oversight by the State Security Agency in the implementation of information security standards by the private and public sector to ensure the protection of biometrics in the national critical information infrastructures? eg (SASSA)
4. Does the Bill ensure that government is enabled to adequately deal with biometrics (security through biology) as an identity management tool? (The mismanagement of this discipline leads to the creation of fertile soil for breeding corruption and organized crime that may impact on the national security of our country.)

¹² "R68m lost in fraudulent claims" [http://www.iol.co.za/news/crime-courts/r68million-lost-in-fraudulent-grant-claims-1.1671224\(hash\).Uz6AcyfMuW9](http://www.iol.co.za/news/crime-courts/r68million-lost-in-fraudulent-grant-claims-1.1671224(hash).Uz6AcyfMuW9)

¹³ Allegations of SARS rogue intelligence units, Eric Snowden wikileaks, spy cables, alleged Zuma spy, etc

¹⁴

¹⁵ In June 2013 a group calling itself Anonymous Africa attacked various websites in South Africa and Zimbabwe in protest against claimed abuses of human rights in Zimbabwe.

¹⁶ In December 2012, a number of South African government websites were attacked and replaced with a message. This was apparently perpetrated by a foreigner protesting the South African government's stance on political issues in Morocco.

18 CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA NO. 108 OF 1996

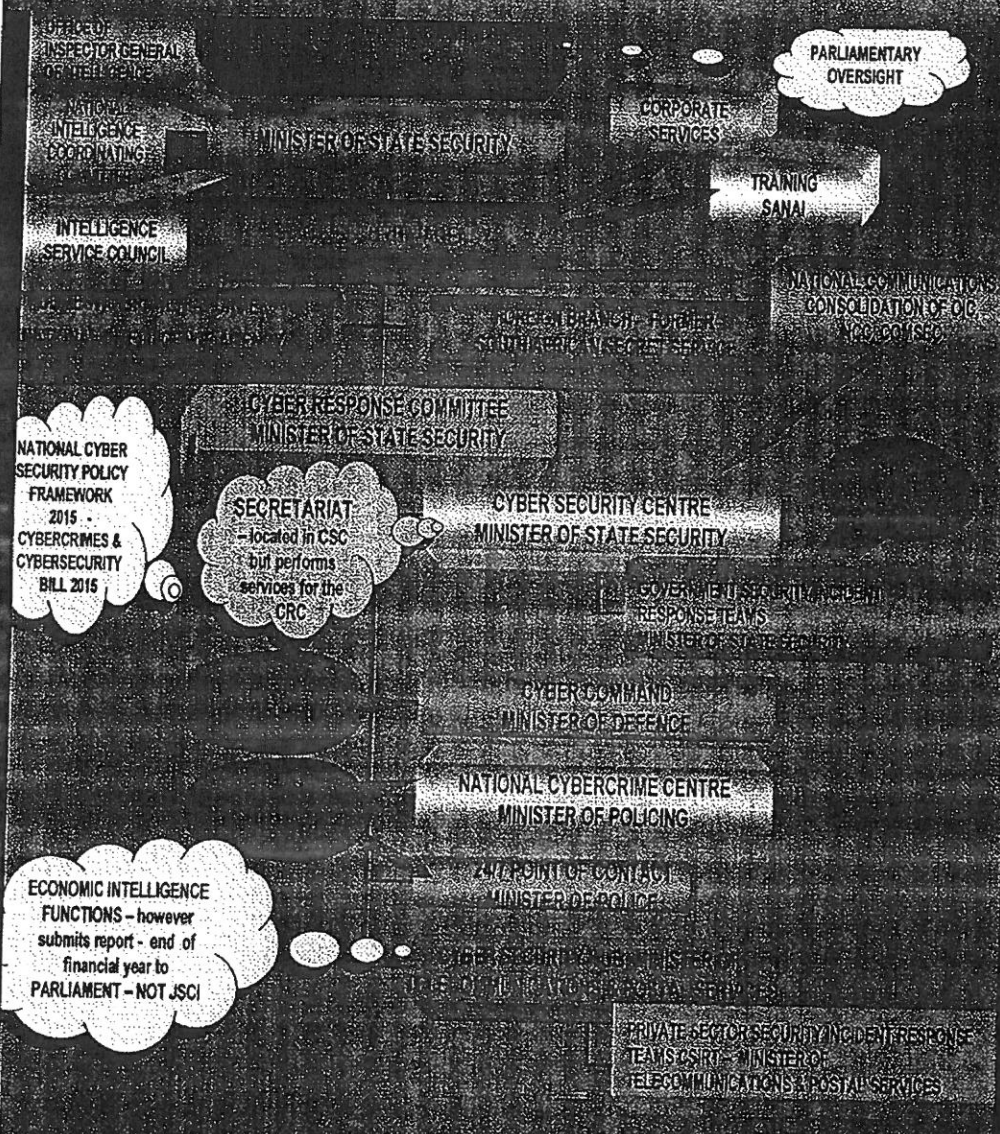
19 Universal Declaration of Human Rights (art. 12), the International Covenant on Civil and Political Rights (ICCPR, art. 17), the Convention on the Rights of the Child (art. 16), and the International Article 10 of the African Charter on the Rights and Welfare of the Child, Article 11 of the American Convention on Human Rights, and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The organigram below reflects the New State Security/Cybersecurity Structure as reflected in the Bill. Biometrics as a cybersecurity tool has to operate within this structure. Due to time constraints I am unable to be more detailed in my submissions. However, should I be invited to the oral hearings I would be able to do a presentation to elaborate more in detail. (Please see organigram that follows)

Thanking you.

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NEW STATE SECURITY AGENCY STRUCTURE



NATIONAL CYBER SECURITY POLICY FRAMEWORK 2015 - CYBERCRIMES & CYBERSECURITY BILL 2015

SECRETARIAT - located in CSC but performs services for the CRC

ECONOMIC INTELLIGENCE FUNCTIONS - however submits report - end of financial year to PARLIAMENT - NOT JSCI

PRIVATE SECTOR SECURITY INCIDENT RESPONSE TEAMS (PSIRT) - MINISTER OF TELECOMMUNICATIONS & POSTAL SERVICES