

COSATU Submission:
Criminal Law (Forensic Procedures)
Amendment Bill

11 March 2022



COSATU

Submitted to:

Portfolio Committee:
Police

National Assembly
Parliament

Republic of South Africa

1. Introduction

The Congress of South African Trade Unions (COSATU) welcomes the tabling and supports the speedy passage of the Criminal Law (Forensic Procedures) Amendment Bill.

Its passage is long overdue and needed given South Africa's history and the severe forensic capacity challenges facing the South African Police Service (SAPS).

Whilst COSATU supports this progressive Bill, we believe two amendments are needed to further strengthen it in its provisions dealing with when and from whom buccal samples shall be taken.

The Bill will be a critical tool in combating building the SAPS' forensic capacities. However, if it is to have its maximum progressive effect, then the current provisions mandating when and from buccal samples are to be taken must be amended and strengthened.

2. COSATU Support for the Objectives of the Bill

COSATU supports the Bill in principle. It is a progressive Bill that seeks to strengthen the state's ability to investigate crimes and apprehend those responsible.

South Africa's existing forensic capacity is severely limited. This is due to insufficient buccal and other forensic data but also to being chronically underfunded. This has a dire impact on the capacity of the SAPS to determine and apprehend countless criminals.

Criminals who could have been apprehended and prevented from committing further offences, are not, frequently because SAPS lacks a database and the law does not currently empower them to collect such data.

3. COSATU Concerns with the Bill's Limitation on Collecting Buccal Samples

The Bill links and limits the collecting of buccal samples to persons convicted and imprisoned for Schedule 8 offences.

It separates the collecting of buccal samples from other forensic and intelligence gatherings that SAPS collects of persons accused of as well as convicted and sentenced for criminal offences.

SAPS takes the fingerprints, photographs and identity information of persons arrested for any offence. Physically identifying marks on such persons are also recorded, e.g. scars, tattoos as well as physical, gender and racial descriptions.

These are done to record an accurate description of the person. They are also done to build SAPS' forensic and intelligence database of persons who have been arrested for criminal offences.

They are done with the intention of capacitating SAPS and upon the well-established evidence that criminals are in most cases repeat offenders.

No distinction is made for the scheduled offence the person is accused of having committed. Again, this is based upon well established evidence that persons who commit one type of criminal offence are very likely to commit numerous other types.

It is also based upon the fact that some serious criminal offences are often very difficult to gather sufficient evidence, but that sufficient evidence could be more easily gathered for less serious crimes against the same accused. E.g. the infamous gang leader Al Capone was convicted of tax offences not murder.

The gathering of such forensic information is not linked to a person's criminal conviction, e.g. it is done upon arrest and being charged. This helps SAPS to ascertain the accused's innocence or guilt and if they are linked to other crimes.

The gathering of such forensic information is not a sanction. The judge does not include the collecting of fingerprints or physical descriptions as part of their sentencing.

The Bill however limits the collecting of buccal samples to persons convicted of and imprisoned for Schedule 8 offences.

This is a serious departure from the current practise of gathering similar information when charging suspects. It inadvertently limits such critical information gathering to a particular category of criminals and at a particular stage, post-trial.

It mistakenly establishes gathering buccal samples as a sanction and not as the gathering of forensic information.

4. COSATU Proposal:

The objectives of the Bill are correct and progressive. They have the potential of capacitating the SAPS, reducing crime and protecting the rights of ordinary citizens.

In fact, a fully functional forensic database will help prevent the conviction of innocent persons based upon circumstantial evidence. In the United States, countless persons, largely African American, have been found to be innocent many years later as forensic and specifically DNA evidence has become available. A well populated forensic database can help minimise such injustices.

COSATU Proposals:

- 1) The Bill needs to be amended to provide for buccal samples to be taken when persons are charged and their fingerprints, photos, physical descriptions and identity information is collected by SAPS.

- 2) The Bill needs to be amended to require SAPS to take buccal samples of all persons who are charged.

This must be irrespective of which Schedule Offence the person is accused of having committed. It must be delinked from whether a person has been convicted and sentenced to imprisonment.

5. Conclusion

COSATU supports the speedy passage of the Criminal Law (Forensic Procedures) Amendment Bill.

It will play a key role in empowering the state to tackle countless unsolved crimes and in protecting the rights of citizens.

It is in line with and gives expression to the Constitution and the Bill of Rights. It provides a fair balance with rights of all citizens.

COSATU believes the Bill needs to be strengthened to address the Bill's current irrational limitation on the power of the state to collect buccal samples only from persons convicted of and imprisoned for Schedule 8 offences.

COSATU believes that the collecting of buccal samples must be done when persons are arrested and charged for all criminal offences in line with how the taking of fingerprints, photos and other forensic information is done.

This must be applied to all persons, irrespective of the Scheduled Offence they are accused of.

It must be delinked from the Bill's severe limitation of it only to persons convicted of and imprisoned for Schedule 8 offences.


COSATU trust that the Portfolio Committee will take its proposed amendments into consideration during its deliberations and amend the Bill as proposed by COSATU. It is critical that every tool is given to the SAPS in the nation's fight against horrendous levels of criminal activities.

We should not be calling for a capacitated SAPS and yet deliberately tying their arms behind their back.

Thank you.



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