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| **COSATU Submission:**  **Criminal Law (Forensic Procedures) Amendment Bill**  **15 July 2022** |
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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).

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 government must ensure that the South African Police Service (SAPS) and the Department of Correctional Services (DCS) are fully resourced to ensure its complete and immediate implementation.

1. **COSATU Support for the Bill**

COSATU supports the Bill. 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.

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

The collecting of buccal samples must become standard for all persons arrested, convicted and imprisoned by SAPS and DCS. This must be in line with existing procedures to collect 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 must be 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 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.

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.

1. **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 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.

In order to ensure the Bill can be implemented, government needs to ensure that the SAPS and DCS are provided with the necessary resources to collect buccal samples from all persons arrested, convicted or imprisoned for all offences.

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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