

.11- should existing databases be incorporated into the ones under new Forensic Procedures Bill  
CL-AB.11

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Date: 2009/10/22 03:29 PM  
Subject: Should existing databases be incorporated into the ones under  
new Forensic Procedures Bill?

SUBMISSION FROM: NATIONAL COUNCIL OF WOMEN OF SA

HOW RELIABLE ARE THE EXISTING DATABASES HELD BY THE SA AUTHORITIES TO BE  
USED FOR THE CRIMINAL PROCEDRES LEGISLATION?

The Criminal Law (Forensic Procedures) Amendment Bill has reached parliament and some questions may need to be asked about the impact this proposed legislation may have on 'innocent' individuals in our society. The Bill states that the databases that will be accessible will be those of ...'any department of state in the national, provincial or local sphere of government irrespective of whether the prints stored on these respective databases were collected before or after the coming into operation of this Act'.

EUROPEAN COURT OF HUMAN RIGHTS AND DATA OF INNOCENT PEOPLE

In December 2008, a European Court of Human Rights decision looked at two cases, from the many such cases, of individuals whose forensic evidence is retained in the UK after acquittal.

The judgement from the court concerned the retention of fingerprints, cellular samples and DNA profiles after criminal proceedings were terminated by an acquittal. The retention of such information was found to be a violation of Article 8 of the European Convention on Human Rights. One of the cases in the judgement concerned an eleven year old boy. In both cases the individuals had requested that their cellular samples and DNA profiles be removed from the databases and biological samples destroyed. The requests were denied, which is the reason the two cases went to the court in Strasbourg, France.

The court decided that the retention of both cellular samples and DNA profiles amounted to an interference with the applicants' right to respect for their private lives within the Convention. A recommendation was made that such material be kept for up to six years for lesser offences and twelve for serious offences.

SOUTH AFRICA: INCORRECT EXISTING DATA

Reading the proposed legislation for South Africa which seeks to include the

- 11- Should existing databases be incorporated into the ones under new Forensic Procedures Bill databases from Home Affairs (HANIS) and eNatis will mean that 'innocent' people will be on these databases. Anyone who has a passport, Identity Document or driver's licence, for example, will feature. And, there does not appear to be any provision for the amendment of already existing, but incorrectly loaded information, to be rectified.

It is common knowledge that Britain demands visas of South African passport holders visiting Britain since there are many fraudulently obtained passports. The media has also shown the public that ID documents are stolen and used in criminal activity.

Take the case of Mr Ebrahim Samsodien ('Durban man talks of ID number woes', Independent on Sunday 7-3-2009). Home Affairs is offering Mr Samsodien a new ID number as his seems to have also become that of another person either by fraud or error on the part of Home Affairs. This will mean that more than one individual will have the same set of fingerprints on record. Many ID thieves use stolen ID documents to commit crimes and this is a fear of Mr Samsodien. Mr Samsodien who has four children, and a fifth on the way, will have to change the birth certificates of his children, as well as his marriage certificate, which will affect his wife. All in all seven people will be affected by the change in ID number and it will affect at least two generations.

#### DRIVER'S LICENCES WITH "NO PRINT"

Further, driver's licences which show 'NO PRINT' in the space where a fingerprint should be must surely be of limited value to a fingerprint database? And, this writer knows of a score of people who hold such licences. Should such licences fall into the hands of criminals it would not be possible to catch the individuals on the basis of fingerprints.

The proposed legislation is expecting to use the inaccurate existing databases of people who may never in their lives have any contact of a criminal nature with the authorities but whose details may be those of an unknown criminal. Even Britain whose retention of data has been the subject of a European Court decision does not keep records for those under ten years of age.

#### POLICE EXISTING DATA BASES AND PAST METHODS OF CREATING DATABASES

NCWSA is of the view that the existing databases not be incorporated into those to be formed under the proposed legislation, since the police's existing databases may also be inaccurate.

The National Council of Women of SA is in receipt of a letter from the Divisional Commissioner in the Detective Service as recent as four years ago, which states that long distances and postage often cause delays for the delivery of exhibits to the FSL (Forensic Science Laboratory). Not only may such material never arrive, it may become degraded in transit. It may also be interfered with in transit. The proposed legislation seeks to address this with instructions on the correct handling of evidence and the 'chain of evidence' for the future, but what of the already existing information?

Contamination of evidence can also occur during storage. If evidence is stored carelessly such as that of the perpetrator being stored alongside that of the victim it becomes unreliable.

Even in well developed jurisdictions this can happen as was shown in May

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The French police thought they could be looking at a serial murderer when they found the same DNA at several crime scenes. The DNA turned out to be that of a lab. worker who was careless in preparing the crime kits used by the police.

Inaccuracy can creep in in unexpected ways so that the possibility for correction must be included in legislation.

However, the National Council of Women of SA endorses the proposal for establishing a National DNA Database, and has done so for many years. At a conference in 2004, in Johannesburg, a resolution calling for such a database was passed. At the same conference a seminar on the need for such a database was reported nationwide on the front page of the Sunday Independent newspaper as well as in the Cape Argus and Sunday Tribune.

However, the accuracy of the information already held is a concern.

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