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**Office of the
National Director of Public
Prosecutions**



The National Prosecuting Authority of South Africa
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Mr J Michaels
Committee Secretary
Portfolio Committee on Police
PO Box 15
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Dear Mr Michaels

**SUBMISSIONS ON THE CRIMINAL LAW (FORENSIC PROCEDURES)
AMENDMENT BILL**

The National Prosecuting Authority (NPA) welcomes the introduction of this legislation that will enhance the ability of Government to deal with crime. In particular, the provisions relating to DNA will further advance the use of modern and more precise forensic methods of identifying perpetrators.

The use of DNA to exclude suspects, or positively link perpetrators to crimes, has been proven to be an accurate and reliable investigative tool. In the United Kingdom, the United States of America and South Africa there are innumerable examples where the use of DNA has solved 'cold' cases and in other instances even exonerated persons who were formerly convicted as perpetrators. Attached as **Annexure A** are a few examples from press reports where DNA has been crucial in solving crimes.

DNA is of particular value in serious and violent crimes, where there are no eye witnesses to the incident or where there is doubt regarding the identity of the perpetrator. DNA can be utilised to include and exclude suspects. As real

Justice in our society, so that people can live in freedom and security



evidence it is not tainted by memory loss, or influenced through intimidation or cross-examination. It is a particularly reliable form of evidence. A selection of cases where DNA provided the crucial evidence are attached as **Annexure B**.

The creation of a National DNA Database is, like the current fingerprint records, crucial to ensure the success of DNA matching. It will enhance the usefulness of DNA analysis - where there is a database of the DNA of known persons against which DNA found on crime scenes can be checked, the possibility of resolving the crime increases. Where there is no database greater reliance is placed on other evidence for the identification of suspects. Where there is little or no other evidence, the possibility of solving the crime is almost none.

The use of DNA for medical and other uses is rapidly increasing. It is no longer a mysterious field of which people need to be afraid. There are an increasing number of companies selling DNA tests to the public. The 2008 TIME Magazine invention of the year was a \$399 saliva DNA test that estimates the individual's predisposition to more than 90 traits and conditions (See **Annexure C**).

The proposals in the Bill listing the circumstances where a police official is obliged to take a non intimate sample may be overly broad particularly in the light of the provisions which require the DNA or information derived from the samples to be destroyed after 5 years if the person is not convicted by a court of law. The capacity of the SAPS to deal with the volume may also be a constraint. However, in the current environment where the level of crime is high an urgency is needed to establish the database and the infringement of the right to privacy would be minimal.

There are a few minor comments on technical issues relating to the Bill. These are attached as **Annexure D**.


Adv M S Mpshe

Acting National Director of Public Prosecutions

Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear favour or prejudice and by working with our partners and the public to solve and prevent crime

The Citizen

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It wasn't rape, says Jingxela

SANDRA LIEBERUM

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Mongezi Samuel Jingxela – allegedly one of South Africa's worst sex predators – said at his 261-count Johannesburg High Court trial yesterday that he frequently cheated on his customary union wife, and that it was because of jealousy that he was arrested for rape.

The father of two claimed to have had consensual sex with a handful of the 65 victims, some of whom were allegedly raped more than once, and claimed that the 50 people who had positively identified him as a rapist had "made a mistake".

Jingxela, 48, took to the witness stand yesterday to rebutt the evidence of 119 State witnesses, and claims by prosecutor Louisa Loots that he was a serial rapist linked to 42 victims by DNA, by a stolen cellphone, and by a crime-scene footprint.

Jingxela declined to take the oath yesterday "on religious grounds", but said he would tell the truth.

The trouble started, Jingxela claimed, when his wife, who lived elsewhere, came to visit while he was home with another woman (one of the complainants).

"They argued over me and almost came to blows," soon after which Jingxela was arrested for rape, he said.

The so-called "other woman" – witness 97, who was called to testify again 10 days ago – vehemently denied having met Jingxela before the day of the rape, denied ever having been at his home or having argued with his wife.

On November 7, 2006, Jingxela denied 261 counts including 64 of kidnapping, 62 of aggravated assault, 71 of rape and numerous counts of aggravated robbery.

The trial continues.



DNA links men to girls' rape, murder

Two men accused of the rape and murder of three Mamelodi schoolgirls were linked to the crimes through DNA samples, the Pretoria High Court heard on Monday.

A police forensic analyst, Superintendent Michelle Thomson, said swabs taken from the three girls and a semen sample found on one of the girls' socks were used to compare with blood samples taken from Ephraim Mkhali, 23, and Vusi Maphai, 35.

The matching DNA, according to Thomson, could only be disputed in a case of identical twins - as only one in several trillions of people would have the same result as those she found in the case of Mkhali and Maphai.

The two men are standing trial for the April 30, 2006 murder of Tsholofelo Aphane, Lindiwe Mbonane and Lerato Ndinisa.

They allegedly attacked the girls - all childhood friends who lived in the same street - while they were relaxing in the Mamelodi West park.

The girls were robbed of their cellphones, tied up and raped before they were strangled or smothered to death.

Apart from the evidence given by Thomson on Monday, the court also dealt with claims by both Mkhali and Maphai that they had been tortured into giving incriminating statements by police officers.

They claimed their confessions before a magistrate and police were not made voluntarily as the officers had assaulted them and told them what to say and point out.

The trial continues. - Sapa

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Old crimes solved after DNA blitz

Police have cracked 64 unsolved crimes following the DNA testing of prisoners and offenders with mental disorders.

A further 78 unsolved crimes are being revisited after an exercise to take samples from 3,772 prisoners and offenders not on a national database.

DNA matches have helped police take action over a 1997 murder in London and a 1994 rape in South Yorkshire.

The success of the exercise, launched in February, was announced on Monday by Home Office minister Hazel Blears.

The DNA samples were taken between January and September before being analysed and loaded into the national DNA database.

The database currently has more than two million DNA profiles.

Around 1,000 profiles are taken from crime scenes each week to try and match them with names on the database.

Story from BBC NEWS:
http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/3232744.stm

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