



The Secretary of Parliament
Attention: Mr Jeremy Michaels (jmichaels@parliament.gov.za)
Portfolio Committee on Police
PO Box 15
Cape Town
8000

23 October 2009

**Submission on: Criminal Law (Forensic Procedures) Amendment Bill
[B2 – 2009]**

From: Southern African Society for Human Genetics (SASHG)

General Comments:

Our comments are confined to the Proposed Chapter 5B "ESTABLISHMENT, ADMINISTRATION AND MAINTENANCE OF NATIONAL DNA DATABASE OF SOUTH AFRICA" Sections 15D to 15S

Firstly we would like to commend the team for the drafting of this section of the Bill with appropriate safeguards to protect the public, to expedite criminal investigations and to aid the investigation of missing persons or unidentified human remains.

We are in full agreement for the need of a National DNA Database of South Africa (NDDSA) for the purposes stated in the Bill.

Our concerns relate mainly to the following:

- Protection of minors and the innocent
 - Ensuring correct identification of samples
- Quality Management, including:
 - Choice of tests for profiling
 - Accuracy of supplementary information (e.g. race/ethnicity)
 - Assessment of proficiency of testing laboratories
 - Certification of testing laboratories
 - Training of personnel
 - Chain of custody when outsourcing work to private laboratories
 - Turn around times
- Ownership of sample (may not be used for any other purpose)

We understand that some of our concerns may be adequately addressed by Regulations that relate to the Bill, and the SASHG would appreciate an opportunity of commenting on the Regulations.

3.6 National Diploma: Bomb Disposal

SAQA ID: 63229
Originator: SGB Bomb Disposal and Explosives
Quality Assuring ETQA: SAS SETA - Safety and Security SETA
NQF Level: 5
Registration start date: 2008-09-17
Registration end date: 2011-09-17
Last date for enrolment: 2012-09-17

this type of testing. There should also be a process for handling errors and effecting corrective action.

Retention, storage and destruction of samples and DNA profiles

The secure storage of samples and the databases, as well as controlled and appropriate access to the databases, are extremely important issues that are not fully addressed in the Bill.

For example:

Section 150.(1)(d) ".....and such register must be submitted to the Minister and National Commissioner on a monthly basis." The databases should not be duplicated (other than appropriate back-up) and should have limited and appropriate access, through specified protective measures. A report with statistical information may be more appropriate than submitting a register.

Section 36C.(1) relates to whose sample may be taken (could be innocent bystanders).

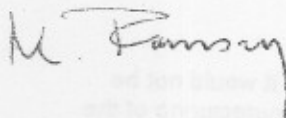
It is also not clear what the retention policy will be for samples and data. Section 150.(4) Is the intention that the DNA sample is destroyed if the person is not convicted? Either way, processes will need to be put in place to ensure that this can reasonably be acted on. Is the intention that the result remains in the database even if the sample is destroyed?

The Committee of the SASHG requests the opportunity to make a verbal submission to the Portfolio Committee addressing some of the issues raised in this submission.

It may be useful to hold a workshop including the various stakeholders (the police, scientists [especially geneticists], the human rights commission and the DNA project) to iron out some of the concerns before proceeding.

Please do not hesitate to contact the SASHG for further information or clarity.

Kind regards,



Michèle Ramsay

Chair: Michèle Ramsay
michele.ramsay@nhls.ac.za

Secretary: Zané Lombard
zane.lombard@nhls.ac.za

Division of Human Genetics, NHLS & University of the Witwatersrand, PO Box 1038,
Johannesburg, 2000, South Africa

Specific comments:

Section 15D Interpretation

(i) 'intimate sample' – the definition needs to include any sample that is not non-intimate (e.g. pubic hair, semen from rape victim, tissue etc.)

No tests of potential medical relevance should be performed as part of the DNA profile. However, in future it may be possible to use DNA data to predict a person's eye, hair and skin colour, for example – would this be permissible in the case of 'unidentified human remains'?

Each sample will need a unique identifier and when prospectively taken should have personal identification. When this is an SA citizen, the RSA ID number can be used, but what will be done in terms of illegal immigrants or refugees?

Has it been considered what information would be relevant on the database? From a population perspective, genetic markers often have different frequencies in different populations and the estimations of probability should be informed by such data. We suggest that a population geneticist be consulted.

The issue of what need to be stored in the NDDSA should be considered and specified in Section 36C.(3)(d) in the section "...which shall include, but not be limited to, the DNA profiles derived from such samples..."

Request for clarity:

Volunteer Index

Section 15J.(1)(a) Is the intention that informed consent should be "in writing" and is it necessary to define informed consent? The regulations may suggest a written form or signature, highlighting the specific risks. For example, (2)(d) why can consent, once given by a volunteer, not be withdrawn?

Section 15J.(1)(c)... 'an intimate sample may only be taken by a registered medical practitioner or a registered nurse' – consider "appropriately registered health professional, phlebotomist or ...". This would include dental practitioners and trained phlebotomists who may not be HPCSA registered.

Section 15J.(5) May a volunteer refuse re-taking of a sample? Consider whether previous informed consent should be endorsed before a repeat sample is taken

Personnel, Contractor and Supplier Elimination Index

Section 15K. Suggest reconsidering revision of this section as it would not be feasible (or necessary) to have everyone involved with the manufacturing of the equipment or consumables tested and their profiles placed in the database

15K.(1) it is important, however, to include that the person who is performing the test may inadvertently contaminate the sample. Suggest adding (e) **any person extracting the DNA or performing the profiling test**

What provision is made should one of the persons described in (1) refuse to provide a sample. Would this preclude them from performing the job?

Compliance with Quality management System

it is important that Regulations be developed to ensure that the integrity of the process is maintained. There could be formal certification of laboratories that will do