

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

MONDAY, 23 MARCH 2009

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1. The Minister of Finance

- (a) Government Notice No 110 published in Government Gazette No 31872 dated 6 February 2009: Stopping and reallocation of conditional allocations, in terms of the Division of Revenue Act, 2008 (Act No 2 of 2008).
- (b) Government Notice No R. 144 published in Government Gazette No 31892 dated 13 February 2009: Amendment of Schedule No 1 (No 1/1/1374) in terms of the Customs and Excise Act, 1964 (Act No 91 of 1964).
- (c) Government Notice No R. 145 published in Government Gazette No 31892 dated 13 February 2009: Amendment of Schedule No 2 (No 2/306) in terms of the Customs and Excise Act, 1964 (Act No 91 of 1964).

- (d) Government Notice No R. 146 published in Government Gazette No 31892 dated 13 February 2009: Amendment of Schedule No 2 (No 2/307) in terms of the Customs and Excise Act, 1964 (Act No 91 of 1964).
- (e) Government Notice No 289 published in Government Gazette No 32005 dated 11 March 2009: Notice in terms of paragraph 2C of the Second Schedule in terms of the Income Tax Act, 1962 (Act No 58 of 1962).
- (f) Government Notice No 290 published in Government Gazette No 32005 dated 11 March 2009: Notice in terms of paragraph (b) of the definition of "living annuity" in section 1 in terms of the Income Tax Act, 1962 (Act No 58 of 1962).
- (g) Report of the South African Reserve Bank of the annual general meeting of shareholders for 2008.

COMMITTEE REPORTS

National Assembly

1. Report of the Ad Hoc Committee on the *Criminal Law (Forensic Procedures) Amendment Bill* [B 2—2009] dated 23 March 2009:

The Ad Hoc Committee on the Criminal Law (Forensic Procedures) Amendment Bill having considered the subject of the Criminal Law Amendment Bill [B 2—2009], reports as follows:

1. Introduction

1.1. The Criminal Law (Forensic Procedures) Amendment Bill was referred to the Ad Hoc Committee on the Criminal Law (Forensic Procedures) Amendment Bill on 13 January 2009. The Committee was required to report to the National Assembly by 23 January 2009. The Committee held its first meeting on 20 January 2009 and subsequently requested an extension on the reporting date.

1.2 On 18 February 2009 the National Assembly passed a motion granting the Committee extension to report on the Bill by 10 March 2009.

2. Composition of Committee

2.1 The following members of the National Assembly were appointed to serve on the Committee:

Chohan-Khota, FI (ANC); Johnson, C (ANC); Madasa, ZL (ANC); Mahote, S (ANC); Maunye, MM (ANC); Ntuli, B (ANC); Sibanyoni, JB (ANC); Soty, MM (ANC); Van Wyk, A (ANC); Delpert, T (DA); Joubert, L (DA); Seaton, S (IFP); Rajbally, S (MF); Madikiza, GT (UDM). 2.2 Ms MM Soty was elected Chairperson.

3. Context of the Bill

3.1 The Criminal Law (Forensic Procedures) Amendment Bill seeks to:

- Address gaps in our current legislation dealing with the collection, storage and use of fingerprint and Deoxyribonucleic Acid (DNA) evidence.

- Provide for the establishment and administration of a National DNA database (NDDSA).
- 3.2 Currently, the Criminal Procedure Act, No 51 of 1977 only regulates the taking of blood samples in criminal cases and the ascertainment of other bodily features. The Bill is intended:
- To expand the powers of the police to collect and store DNA samples and fingerprints.
 - To establish and administer a National DNA database.
 - To give the police access to the electronic databases of the Department of Home Affairs which currently stores fingerprints of 31 million citizens and approximately 2,5 million foreigners, and the Department of Transport where 6 million thumbprints are stored. At present the police only have access to its own database which only stores fingerprints of a limited number of convicted persons.
- 3.3 The Memorandum on the Objects of the Bill states that access to a DNA database and an expanded fingerprint database will greatly enhance the capacity of the police in its fight against crime. In particular the following advantages are noted:
- It will help the police to solve more crimes and match suspects to crime scenes;
 - It will increase the likelihood of identifying unknown perpetrators and will also assist in linking perpetrators with multiple crime scenes;
 - More suspects will make use of plea bargain procedures where evidence has positively linked them to crime scenes;
 - DNA and fingerprint evidence can also be used to prove the innocence of an accused person;
 - It can be used in certain instances to identify missing persons or unidentified human remains.
- 4. Public Participation**
- 4.1 The Committee advertised in five national newspapers inviting interested parties to submit written comments on the Bill. Ten submissions were received of which six stakeholders participated in the public hearings held on 3 February 2009. Members of the Committee (in their individual capacity) received additional submissions after the closing date for submissions, which could not be considered due to time constraints.
- 4.2 The Department of Justice and Constitutional Affairs further presented 95 written submissions to the Committee. However, the majority of these submissions were from individuals merely expressing their support for the Bill.
- 5. Visit to the South African Police Service (SAPS) Criminal Record Centre and Forensic Science Laboratory**
- 5.1 The Committee visited the SAPS Criminal Record Centre and Forensic Science Laboratory in Pretoria in order to better understand the more practical aspects relating to the forensic capacity within the SAPS, such as the organizational structure, personnel strength, staff turnover and resources, training needs and budget allocations of these structures.

5.2 Members raised a number of concerns which are contained in documentation available from the Committee Section, which included:

- Concerns around the lack of information regarding the SAPS future plans to address capacity building, scarce skills and personnel shortages in order to achieve the objects of the Bill.
- Concerns were raised regarding the National roll-out strategy of the fully-automated, robotic analyzing processing machines/units currently only situated in Pretoria.
- The need for intensive increase in the capacity and training of police station members in the taking and safe-guarding of non-intimate blood samples.
- Concerns around the number of police stations each Forensic Science laboratory is capable of servicing and the laboratory's ability to handle the influx of large numbers of samples.
- Concerns around the need for safeguards to ensure the integrity of samples including the need to ensure independence of the forensic services from the SAPS, and adequate storage facilities.

Some of these concerns were addressed, while others are still outstanding.

6. Processing of the Bill

6.1 The Department of Justice and Constitutional Development briefed the Committee on the objectives of the Bill, followed by a briefing by the Research Unit of the Parliament of South Africa on their analysis of the Bill.

6.2 The Committee continued with the processing of the Bill by hosting public hearings which were followed by deliberations. A total of ten written submissions and six oral submissions were made to the Committee.

6.3 During the Committee deliberations, a number of issues emerged which, in the view of the Committee, required either further elucidation or re-consideration.

6.4 The amount of time allocated to the Committee to consider the Bill was extremely limited. The Committee also required an implementation plan from the South African Police Service, which was not made available to the Committee during the deliberations.

7. Findings

7.1 The process of the public hearings was limited due to the time constraints faced by the Committee. The public needs to be well informed about the contents and implications of this Bill as it is an integral part of the review of the criminal justice system. Therefore the Committee is of the view that the public should be afforded more time to participate in the process through public hearings.

- 7.2 The Committee found that the Bill is important in the fight against crime in South Africa, that it is a crucial element in the revamping of the criminal justice system and it is disappointed that it could not be finalised in time. However, time constraints hampered the Committee's progress on the Bill.
- 7.3 The research findings provided to the Committee (as well as that contained in some of the public submissions) in relation to the Bill have revealed a number of important issues that need thorough consideration. The use of DNA sampling has raised serious legal challenges in countries where this technology is fully operational. For example, many of the submissions made to the Committee raise serious constitutional questions, in particular relating to the right to privacy. A further serious legal concern relates to the powers of police officers to be able to take such bodily samples without first having to obtain a warrant from a court. Other concerns relate to the use of DNA sampling and the retention of samples and profiles in a DNA database, even if a person is not convicted by a court, which could be regarded as a violation of civil liberties and rights. During the deliberations Departmental officials (from Safety and Security and Justice and Constitutional Development) responded to some of these concerns and the Committee made proposals in order to address these concerns but could not take a final decision.

The view of the Committee is that South Africa must learn from these international experiences so that the possibility of legal challenges is avoided and that more information is needed before the Committee can proceed.

- 7.4 Other issues that need to be considered involve the management and control of DNA services and the actual database itself. In some countries such an exercise is outsourced to private laboratories, while in other countries it remains a state-owned function. Furthermore, some countries outsource this function to agencies outside of their police departments while others, like South Africa, retain it within the police. All these aspects have their own advantages and disadvantages that need to be taken into account when deliberating on the Bill. However, the Committee could not thoroughly investigate these advantages and disadvantages.
- 7.5 The Committee's concluding remark is that, generally, little is known about DNA sampling and profiling in South Africa and therefore more time should be given to the Committee in order to thoroughly attend to every aspect of the Bill, so that a piece of legislation, without any unforeseen and unintended consequences, can be passed.
- 7.6 The Committee members raised concerns around the general implementation of the legislation and, in particular, around the capacity of the SAPS to be able to implement the legislation effectively. Parliament has the responsibility to pass legislation which is implementable. Therefore the Committee has identified the need for intensive scrutiny of the implementation plan.

8. Recommendations

- 8.1 The importance of the Bill in the fight against crime cannot be overemphasised. The Committee is totally committed to the fight against crime and view it as an absolute priority.
- 8.2 The Committee recommends that the next Parliament consider this Bill as a matter of urgency.

Report to be considered.