

# At last! The DNA Act becomes a reality



Compiled by Annalise Kempen  
Additional information provided by Vanessa Lynch, DNA Project

In the case of *S v Nyembe*, the State relied, in essence, on results obtained from DNA analysis, to prove that the accused was a serial rapist. The DNA evidence was the only evidence implicating the accused in the commission of the crimes and in future, there will hopefully be many more such cases, in which DNA will be used to convict criminals.

into operation on 31 January 2015. This has taken quite some time, considering that the President assented to it on 27 January 2014 (see *Government Gazette* No 37268 of the same date).

## DNA is used more extensively

In the past couple of years, we have become much more aware of types of evidence other than the traditional ones, such as fingerprints, ie DNA (deoxyribonucleic acid) which can be used to link criminals to crime scenes. However, the use of DNA has advantages in addition to allowing the identification of criminals with incredible accuracy when biological evidence exists. It can also be used to clear suspects and to exonerate persons who have mistakenly been accused or convicted of crimes. Thus, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system.

Generally speaking, DNA can be used to solve crimes in a number of ways. In cases where a suspect has been identified, a sample of that person's DNA can be compared to evidence from the crime scene. The results of this comparison may help to establish whether the suspect committed the crime by linking them to the crime scene. In addition, DNA can also be used to identify a suspect, as was done in the Groblersdal series (see related article on p 16) and other cases. In cases where a suspect has not yet been identified, biological evidence from the crime scene can be analysed and compared to offender profiles kept in DNA databases to help to identify the perpetrator. Crime scene evidence can also be linked to other crime scenes through the use of DNA databases. South Africa has never had an optimally functioning DNA database, but this situation will change in future, thanks to the fact that the DNA Act has finally become operational in South Africa, after it took many years to finalise.

Let's use an example to illustrate the point: Assume that a man was convicted of sexual assault. At the time of his conviction, he was required to provide a sample of his DNA, and the resulting DNA profile was entered onto a DNA database. Several years later, another sexual assault is committed. A forensic nurse who examines the victim is able to obtain biological evidence of the rape. After analysis, the resulting profile is run against a DNA database, and a match is made to the man's DNA profile. He is located, arrested, tried and sentenced for his second crime. In this hypothetical case, he is also prevented



This is set to become easier, as the Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 (commonly and hereinafter referred to as the DNA Act) has finally come

from potentially committing further crimes during the period of his incarceration.

As the Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 is such an important new piece of legislation, which will play a huge role in policing and future forensic investigations, **SERVAMUS** thought it wise to highlight some of the key issues pertaining to Act 37 of 2013 (the DNA Act).

## The purpose of the DNA Act

The purpose of this Act is to amend sections 36A, 212 and 225 of the Criminal Procedure Act (CPA) 51 of 1977, in order to provide for the **taking of specified bodily samples from certain categories of persons** for the purposes of forensic DNA analysis.

The **offences** for which **DNA samples must be taken** are listed in **Schedule 8**, which has been added to the CPA, and are as follows:

- Treason
- Sedition
- Public violence
- Murder
- Any offence referred to in Part I and II of Schedule I to the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002
- Culpable homicide
- Rape or compelled rape as contemplated in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 respectively
- Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in sections 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 respectively
- Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 respectively
- Robbery
- Kidnapping
- Child stealing
- Assault, when a dangerous wound is inflicted
- Arson
- Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit a crime
- Theft, whether under the common law or a statutory provision
- Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in Schedule I [of the CPA] or is in such custody in respect of the offence of escaping from lawful custody
- Any -
  - (a) offence under the Firearms Control Act 60 of 2000, which is punishable with incarceration for a period of five years or longer in terms of the said Act;

- (b) offence under the Explosives Act 15 of 2003, which is punishable with incarceration for a period of five years or longer in terms of the said Act;
- (c) convention offence or specified offence as defined in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004;
- (d) offence of trafficking in persons as defined in section 1 of the Prevention and Combating of Trafficking in Persons Act 7 of 2013; or
- (e) offence of torture as defined in the Prevention and Combating of Torture of Persons Act 13 of 2013.

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule [8].

In addition to amending the CPA, the DNA Act also does the following:

- It establishes and regulates the administration and maintenance of the **National Forensic DNA Database of South Africa (the “NFDD”)** by amending the South African Police Service Act 68 of 1995.
- It provides for the use of forensic DNA profiles in the **investigation of crime and the use of such profiles in proving the innocence or guilt of persons before or during a prosecution or the exoneration of convicted persons**. In addition, it will assist in the **identification of missing persons and unidentified human remains**.
- It provides for the conditions under which DNA samples, or forensic DNA profiles derived from the samples, may be **retained and the periods within which they must be destroyed**.
- It provides in particular for the protection of the **rights of women and children** in the taking of DNA samples and in the retention and removal of the forensic DNA profiles of children from the NFDD.
- It provides for **oversight over the NFDD** and the handling of complaints relating to the taking, retention and use of DNA samples and forensic DNA profiles.
- It provides for **transitional provisions** in respect of the current repository of DNA profiles held by the Forensic Science Laboratory (FSL).
- It stipulates **Regulations** that the Minister of Police must make in order to achieve the provisions of this Act.
- It repeals **certain provisions** of the Firearms Control Act 60 of 2000, and the **Explosives Act 15 of 2003**, which overlap with powers provided for in the CPA, and it regulates the powers in respect of the taking of fingerprints and bodily samples for investigation purposes.
- It further **regulates proof** of certain facts by **affidavit or certificate**.

## Definitions

The Act clarifies various definitions including the different types of samples referred to, ie bodily, buccal, intimate and crime scene samples and those who are authorised to collect these. It further defines the meaning of “forensic DNA profile”, a key factor in the discussion of

this Act, which refers to “the results obtained from forensic DNA analysis of bodily samples taken from a person or samples taken from a crime scene, providing a unique string of alpha numeric characters to provide identity reference: provided this does not contain any information on the health or medical condition or mental characteristic of a person or the predisposition or physical information of the person other than the sex of that person”.

Another important concept to understand is the significance of the NFDD (the National Forensic DNA Database of South Africa), which consists of forensic DNA profiles categorised into six indices (see *infra*) and which has been established in terms of section 15G of the SAPS Act.

## Who is allowed to take DNA samples and from whom?

The DNA Act differentiates between different types of DNA samples and it stipulates who can take certain types of samples from different categories of people. Medical practitioners and registered nurses will continue to play a role with respect to the taking of DNA samples, but the DNA Act allows the taking of buccal samples from convicted offenders and arrestees to be performed by or under the supervision of "authorised persons" ie SAPS and IPID officials who have undergone special training. The SAPS will carry the cost of all the training as well as the cost of the buccal and bodily sample kits.

Type of sample	Who can take it?	From whom the sample is taken?
<b>BUCCAL SAMPLE</b> (A sample of cellular material taken from the inside of a person's mouth)	An “authorised person”, namely any police official or member of the Independent Police Investigative Directorate (IPID) who is <b>not</b> the crime scene examiner of the particular case, but who has <b>successfully undergone training</b> in respect of the taking of a buccal sample. These trained police officials or “authorised persons” will be required to carry <b>identification</b> with them to show that they have undergone this form of training. The person taking the sample must be of the <b>same gender</b> as the person from whom the sample is being taken.	Arrestees and convicted offenders of Schedule 8 offences; volunteers for investigative or elimination purposes.
<b>SELF-TAKING OF A BUCCAL SAMPLE</b>	If someone requests to take the buccal sample by him-/herself, this is allowed under the provisions of the DNA Act. In that case, the "authorised person" must supervise the taking of a buccal sample from the person who is required to submit such sample and who requests to take it him-/herself. This will be covered in the training of the authorised persons in the taking of buccal samples from persons.	Any person required to submit a DNA sample in terms of the provisions of the DNA Act may request the self-taking of a buccal sample under supervision.
<b>BODILY SAMPLE</b> (Intimate or buccal samples taken from a person which may be a crime scene sample)	In most cases, a <b>registered nurse or medical practitioner</b> may take bodily samples, from victims. It should be noted that the DNA Act does not preclude a registered nurse or medical practitioner from taking buccal samples from arrestees and convicted offenders, should they, in certain circumstances, be called upon to do so. Also, during the transitional phases and whilst the police officials and members of the IPID are being trained, this function may need to be carried out by medical practitioners and registered nurses where necessary.	In most cases, these samples may be taken from victims of crime, but it may also be taken from arrestees where the victim's DNA may be present on the suspect, such as if the victim had bitten the perpetrator, or the victim had scratched the suspect.
<b>INTIMATE SAMPLE</b> (A sample of blood or pubic hair or a sample taken from the genitals or anal orifice area of the body of a person)	Intimate samples may <b>only be taken by a medical practitioner or registered nurse</b> . The DNA Act is silent on the issue of gender for the taking of intimate samples.	In most cases, these may be taken from victims of crime, but they may also be taken from arrestees where, for example, the victim's DNA may be present on the suspect or where a sample of blood is required to be taken from the suspect or convicted offender.

As the collection of some types of DNA samples forms such a vital part of the success of the implementation of this Act, it is summarised in a user-friendly format (see column on previous page):

## The National Forensic DNA Database (NFDD)

The objective of establishing and maintaining the NFDD is to perform comparative searches in order to:

- Use the NFDD as a criminal investigative tool in the fight against crime;
- identify persons who might have been involved in the commission of offences, including those committed before the passing of the DNA Act;

- prove the innocence/guilt of an accused person in the defence or prosecution of that person;
- exonerate a person who has been incorrectly convicted of an offence; or
- assist with the identification of missing persons or unidentified human remains.

The NFDD will consist of the following indices which contain forensic DNA profiles:

- Crime Scene Index
- Arrestee Index
- Convicted Offender Index

In the *S v Nyembe* case, which was referred to in the introduction, crucial evidence presented by the State concerned the DNA testing, analysis and the results obtained therefrom. A forensic expert at the SAPS's Forensic Science Laboratory (FSL), namely Lt Van der Merwe, testified on these aspects. As a point of departure, she testified that no two persons have the same DNA profile, except for identical twins. She described and explained the nature and composition of DNA and the scientific process of the STR-DNA analysis system. The conclusion at which she arrived was that the accused's DNA result, obtained from a blood sample taken by Dr Mabaso on 14 March 2012, in all nine STR-LOCI, matched the DNA analysis results of the DNA obtained from all three of the complainants.

The possibility of a similar occurrence in the DNA analysis from the same samples, she added, can conservatively be limited to one in 350 billion people. Her evidence was not challenged, neither was the chain of the DNA evidence challenged (see *S v Maqhina* 2001 (1) SACR 241 (T)). The nett result hereof is that it remains undisputed that, after collection of the genital specimen swabs from the bodies of the complainants, they were properly sealed, referenced, transported and received by the FSL and that a proper analysis was conducted and compared with the control blood sample that had been obtained from the accused in prison, without any contamination or the occurrence of any irregularity. This body of evidence was met by a bare denial by the accused.

In May 2013, Judge van Oosten found the accused guilty on 14 charges, including six of rape, in the South Gauteng High Court.

This is but one of the cases which show how important the use of DNA as evidence has become.



- Investigative Index
- Elimination Index
- Missing Persons and Unidentified Human Remains Index

These indices must **not** contain the following information:

- the appearance of the person, other than indicating the sex of that person;
- medical information of the person;
- historical information relating to the person; and/or
- behavioural information about the person.

## Time frames

The DNA Act further specifies various time frames, including the time periods for the retention of samples from different groups of people eg the victim and arrestees; the delivery of samples to the FSL; the analysis and loading of the samples onto the NFDD; the destruction and disposal of certain bodily samples; and the appointment of the National Forensic Oversight and Ethics Board and submission of reports to the National Assembly.

Police must, no later than five years after the commencement of the DNA Act, submit a report to the National Assembly on whether or not any legislative amendments are required to improve the

## IMPORTANCE OF TRAINING

The management of the DNA Project believes that in order for the National Forensic DNA Database to be effective, the quality and quantity of DNA samples delivered to the FSL for analysis must be optimised. To this end, it is believed that rigorous training needs to be implemented among key sectors of the SAPS and the community, namely lower level police members, emergency services and security services, as well as the general public. All of these sectors need to be able to assist in containing, as opposed to contaminating, a crime scene and thereby enabling trained forensic personnel to collect and retain usable DNA evidence for profiling and subsequent prosecution.

In South Africa, it is of great concern that the first people to arrive at a crime scene are often not qualified to investigate the crime scene. The DNA Project accordingly advocates that the members of the South African public should familiarise themselves with the proper procedure when securing a crime scene in order to ensure proper identification, preservation, and collection of biological evidence that could render a criminal's DNA profile. An investigating officer only has one chance to collect proper evidence at a crime scene, and this job is regularly thwarted by the destruction of a crime scene due to the negligence and/or ignorance of some of the members of the public, emergency services, private security officers and police members, who arrive at the crime scene before the investigating officer has had a chance to collect vital evidence.



functioning of the NFDD and the use of forensic DNA evidence in the combating of crime. After the initial period of five years, the Minister must submit a report to the National Assembly every three years. This report must provide details in respect of the performance of the NFDD, any disciplinary hearings concerning forensic DNA matter and matters relating to the use of forensic DNA evidence in the investigation of crime.

The Act further provides for penalties in terms of which any person who uses or allows the use of a bodily sample, crime scene sample or any forensic DNA profile derived from such sample for any purpose other than as contemplated in the DNA Act is guilty of an offence and liable, in the case of a natural person, to incarceration for a period not exceeding 15 years, and in the case of a juristic person, to a fine.

### Transitional arrangements

The following transitional arrangements apply from 31 January 2015 (the operational date of the DNA Act) and until such time as the necessary new arrangements have been put in place as determined by the provisions of the DNA Act.

- Current repository of DNA profiles held by the FSL

Comparative searches between forensic DNA profiles may be conducted using the current repository of DNA profiles held by the Forensic Science Laboratory (FSL) which have been categorised into a Casework Index and a Reference Index. The Casework Index is the index containing the forensic DNA profiles derived from crime scene samples collected before the commencement of the DNA Act. The Reference Index is the index containing the forensic DNA profiles derived from bodily samples of victims, suspects, convicted offenders, volunteers, contractors or suppliers of re-agents or equipment to the forensic DNA laboratory, personnel employed at the forensic DNA laboratory and visitors to the forensic DNA laboratory. Currently, the DNA repository held by the FSL consists of only these two indices.

The forensic DNA profiles contained in the Casework Index and the Reference Index must be transferred to the NFDD within three months of the system solution becoming operational, which must be within four years from the date of the DNA Act coming into operation. Until such time as this migration has occurred, these forensic DNA profiles must be maintained by the authorised officer until the system solution to support the NFDD is operational. The removal of the forensic DNA profiles from the Casework Index and Reference Index must be performed within one year after the system solution to support the operation of the NFDD has been established. (The period of four years referred to *supra* may be extended by the Minister, either on the request of the National Commissioner of the SAPS or of his/her own accord and after approval by the National Assembly.)

### Retrospective taking of samples

The National Commissioner of Correctional Services has to assist the SAPS in terms of ensuring that buccal samples are taken from convicted offenders serving a sentence of imprisonment in respect of Schedule 8 offences. This also relates to suspects who are in custody in respect of Schedule 8 offences, but whose DNA samples were not taken upon arrest, once the DNA Act comes into operation.

### Regulations

The Minister of Police has to publish Regulations, as provided for in section 15AD of the DNA Act, in order to achieve the objectives of the DNA Act. These must be adhered to by all police officials or members of the IPID. These regulations must be tabled in Parliament for notification within six months after the commencement of the DNA Act.

### List of references

**S v Nyembe 2014 (1) SACR 105 (GSJ)**

[www.dnaproject.co.za](http://www.dnaproject.co.za)

[www.justice.gov/ag/advancing-justice-through-dna-technology-using-dna-solve-crimes](http://www.justice.gov/ag/advancing-justice-through-dna-technology-using-dna-solve-crimes)

### Editor's note:

A comprehensive legal discussion of Act 37 of 2013 was published in **SERVAMUS**: April 2014.

A special word of thanks to **Vanessa Lynch from the DNA Project** for granting permission to **SERVAMUS** to utilise information she had compiled about the "DNA Act", and her assistance with the article.





# DNA used to convict a serial killer ... and to ID victims

Groblersdal is a picturesque farming town in the Sekhukhune District of Limpopo. The town is South Africa's second largest irrigation settlement and is located below Loskop Dam, between Marble Hall and Middelburg. The combination of water supply and good soil conditions has made this one of the most fertile agricultural regions in the country. The main crops produced in this man-made flood-plain are cotton, citrus fruit, table grapes, maize, wheat, vegetables, sunflower seeds, peanuts, lucerne, tobacco and peaches. The development of this fertile land has therefore created ample opportunities for permanent and migrant job seekers.

Compiled by Kotie Geldenhuys

Information supplied by Capt Elmarie Myburgh and taken from case dockets

During 2012, the Groblersdal community was haunted by a serial killer. Women lived in fear as the media reported on the number of female bodies that had been found in open fields around Groblersdal since April 2012. The community and police had every reason to believe that a serial killer was on the loose in Groblersdal. Their suspicions were strengthened by the fact

that the modus operandi in all the killings was basically the same.

In most instances the bodies that were found in the Groblersdal area were in advanced stages of decomposition which made identification of the victims difficult. For this reason, DNA samples were collected to determine the identity of the victims. DNA samples collected from the teeth, femur bones, chest bones and fingernail cuttings of the victims were obtained and sent to the Forensic Science Laboratory (FSL), where these were compared to reference DNA samples collected from the victims' biological parents and/or children. In all the cases where these comparisons were done, the results were positive and the identities of the victims confirmed.

## The victims

On 8 April 2012, a person who was collecting firewood, found the decomposed body of a woman hidden under some shrubs on a farm. The victim had left her home on 29 March 2012 to buy groceries in Groblersdal, where she met a man who had promised her work. She sent the groceries home with a friend and accompanied this man - never to return home again.

More than two months later, on 16 June 2012, the body of another woman was found in the same area, but on another farm. This victim had apparently left her home eight days earlier on 8 June 2012 to go away for the weekend. Since she left her home, nobody had ever heard from her again. When her body was found, her lower body was naked and it was clear that she had been strangled with a piece of cloth.

The burnt body of a 22-year-old female was discovered in a field on 19 July 2012. The only clothing left on her body were remnants of her shirt, and she had a piece of a leather belt tightened around her neck. She was naked from the waist down. After DNA comparison, the victim

was identified as a woman who was last seen on 7 July 2012 when she left her baby son in the care of her mother.

On 2 September 2012, the decomposed body of another female was discovered by two women who were collecting firewood. The body, which was covered by tall branches, was naked from the waist down. A rope had been continuously tied around her neck, wrists and ankles. The victim had left her house a week earlier to go to work in Groblersdal, but her family never heard from her again.

A week after the media had begun reporting on the possibility of a serial killer in Groblersdal, on 13 September 2012, the semi-naked body of a two-year-old girl was found in a wheat field on a farm near Groblersdal. She had been strangled with her own shirt and had been lying in the open for two weeks before she was discovered by one of the farm workers. A women's shoe was found nearby and it was thought to belong to her missing mother.

### Task team established to investigate murders

On 13 September 2012, a task team was formed to investigate the series of murders. The team met at Groblersdal SAPS and started analysing the docket, whereafter they contacted the Forensic Science Laboratory (FSL) to follow up on exhibits. The task team searched for more docket and also approached neighbouring police stations to look for docket that showed similar modus operandi. The members of the team then visited the crime scenes and the local mortuary, where the most recent bodies that had been discovered were kept. That same afternoon, they received information from the FSL that suggested that a good sample of DNA was found on the

exhibits from the only body that was not in a latter stage of decomposition.

### Tracking down the murderer

One of the docket that formed part of the investigation was one that concerned a woman who went missing during May 2012. When members of the task team phoned her cell-phone number, a woman answered and told them that her boyfriend, Petrus Madiba, had given her the phone. She provided them with information about his whereabouts. When the investigating officers went to his workplace, they learned that he was a migrant worker, but that he had already left the farm for another workplace. Fortunately for them, some of his payments were still outstanding and, with the help of the administrative personnel from the farm, the team arranged for him to be called to collect the money that was owed to him. The members of the investigating team waited for him and, upon his arrival, Petrus Pankgolo Madiba was arrested.

### Pointing out more bodies

Following his arrest, Petrus Madiba admitted to murdering eight women and a baby and agreed to point out the crime scenes. In the process, he pointed out four more bodies that had not yet been discovered. The first was that of the baby victim's mother. Her body was in an advanced stage of decomposition and covered with grass. She had been strangled to death. This victim was last seen alive on 25 August 2012, when she had left home with her baby on her back.

On that same day, the suspect also pointed out a skeleton which was lying in an open field. The piece of clothing with which the victim had been

strangled was around her neck. She was last seen alive on 5 May 2012, when she had left home together with a man who had promised her work.

Five days later, the suspect pointed out another naked and decomposed body of a woman, hidden in dense grass and shrubs. It was clear that she had been strangled to death. The victim worked on the same farm as her murderer and was last seen when she had gone to the town of Groblersdal. She, however, never returned from this outing.

Two days later, Petrus Madiba pointed out the last body in the spot where he had hidden it under some grass and reeds. The body was decomposed, but the blue rope that was tied around her neck, wrists and feet were still in place and clearly visible. She had also been strangled to death.

### Linking Petrus Madiba to the victims

The evidence against Petrus Madiba was adding up. Apart from having pointed out the crime scenes and bodies, the cellphones of two of the victims were found in his possession. One of the cellphones had been given to his girlfriend, along with clothing belonging to two of the deceased. The DNA that was obtained from the only body that was not in the latter stages of decomposition was confirmed to be that of Petrus Madiba.

### Why did Petrus kill these women?

Serial murderer Petrus Madiba had apparently lured his financially desperate victims with the promise of work. According to him, he led most of the victims to the bushes, where he tried to have sex with them. When they refused, he murdered them and left their bodies there.

During the trial, he claimed that all but two of his victims were his girlfriends, and he accused the young women of cheating on him or stealing his money. Despite Petrus Madiba claiming that he was sorry for what he did, he still laid the blame at the feet of each of his victims for provoking his rage, which led him to commit the atrocities - not even the baby escaped blame!







According to newspaper reports, Petrus had apparently said: "I knew the ninth victim, we had fallen in love but she humiliated and lied to me. I killed her and left her naked. I knew the eighth victim, we had a bad breakup and she burnt my clothes. She denied burning my clothes. I killed her. The seventh victim borrowed money from me but wouldn't pay me back, we got into a fight and I strangled her. I professed love to my sixth victim, she rejected me and sent people to steal my things. I got angry and I killed her. I believed that the baby I killed was mine, but found out on the day of the murder that she wasn't, so I killed it. My fourth victim was my girlfriend and I thought her child was mine. On the day of the murder I found out it wasn't. I knew my third victim. I bought her a phone. A man called that phone and swore at me, we fought and I killed her. I knew my second victim, she was my girlfriend, she cheated on me and stole my money. I killed her. I knew my first victim. We were in a relationship. We argued, I raped and strangled her."

Families of the victims, however, said that Petrus Madiba was lying about his romantic involvement with the women.

As far as could be gathered from the statements in the dockets, the majority of Madiba's victims did not know him at all and had met him for the first time when he offered them a job and accompanied them into the field. This was where he "proposed love" to them and when they rejected his advances, he killed them. The only two victims who might have known Madiba were the last two, as they had worked on the same farm. However, as there are many migrant workers on such a farm who work as seasonal workers, it couldn't be ascertained whether or not the victims knew the perpetrator personally.

### Another serious case against the serial murderer

Further investigations revealed that Petrus Pankgolo Madiba had a prior conviction for assault GBH and that he had been sentenced to imprisonment for this crime in 2003. In November 2011, he was released on bail, facing charges of murder and rape related to acts that were committed in Lebowakgomo.

After his arrest and before the serial murder case went on trial, the Lebowakgomo case was finalised and he was sentenced to 35 years' incarceration.

In the serial murder case, Petrus Madiba was charged with nine counts of murder, seven of aggravated robbery, one of rape and one of kidnapping. He pleaded guilty to all the charges against him. Judge Prinsloo questioned Petrus Madiba's motive for the confession, saying that it was probable that he had pleaded guilty because the case against him was overwhelming.

### Sentencing a serial murderer

Shortly before he was sentenced, Petrus Madiba told the court that he was sorry for the killings, but once again, he added that his victims had provoked him to rage, causing him to kill them.

On 18 October 2013, Petrus Madiba was sentenced to ten life sentences and an additional 105 years' incarceration. While sentencing the serial murderer, Judge Bill Prinsloo told the Middelburg Circuit Court that the accused would remain a threat to society for as long as he lives. He therefore ordered that the life sentence should run subsequently to the 35 years which Petrus Madiba is already serving. Whilst listening to his sentence being handed down, Petrus Madiba began sobbing. He apologised to the families of the victims, saying that he was sorry he had taken their loved ones away.

\* \* \*

It is clear from this case that DNA has been notably important to the field of forensic science. Not only can it prove the guilt or innocence of a person who is being investigated for a crime, it is also important in the identification of victims, particularly in cases where the victim is not recognisable to family or friends due to advance stages of decomposition.

### Additional reference

[www.enca.com](http://www.enca.com) - Accessed on 15 January 2015.  
[www.times.co.sz/features/92412-some-rapists-are-nice-guys.html](http://www.times.co.sz/features/92412-some-rapists-are-nice-guys.html) - Accessed on 15 January 2015.

# COMMUNITY SAFETY

## - What to do or what not to do on a crime scene?

With South Africa's high crime rate, chances are good that many of us will be confronted with a situation in our lives where we find ourselves on a crime scene - either as a victim or as a witness. We also know that the reality is that it is unlikely that a police official, investigating officer or a member from the SAPS's Local Criminal Record Centre (LCRC), who has to collect the physical evidence, will arrive at the crime scene immediately after such an incident occurs.



Compiled by Annalise Kempen

Members of the public and of community safety initiatives, or employees of agencies such as in the private security industry or emergency services, who are often the first to arrive at a crime scene and who then need to assist the police in preserving such a scene until the authorities arrive, need to take note of a few very important issues.

### A CRIME SCENE

In simple terms, a crime scene is any place where an offence has been committed and forensic evidence may be gathered. Marais and Van Rooyen (1990) define a crime scene as "the locality of hidden clues

which can lead to the clarification or detection of the crime. It includes any other locality or place where physical clues concerning the crime can be found". This emphasises the importance of protecting not only the immediate area where the crime has occurred, but also the surrounding area.

In order to collect evidence, forensic services rely heavily on the Locard principle, which states that "every contact leaves a trace". In other words, the perpetrator will always bring something onto the scene (eg footprints or soil under his/her shoes) and leave with something from the scene (eg bodily fluid from the victim).

In cases of contact crimes, such as murder, attempted murder, sexual crimes (rape) and assault, there is physical contact between the perpetrator and the victim and therefore the victim's body can also be regarded as a "separate" crime scene. This is in addition to the area surrounding the body, where the crime took place, eg a bedroom.

Crime scenes are considered either primary or secondary. The primary crime scene is the area/place where the crime actually occurred. A secondary crime scene is an area/place that is in some way related to the crime, but is not where the actual crime took place.

For example, in a bank robbery, the bank is the primary scene, but the get-away car and the place where the robbers stash the money can be considered secondary scenes. In a murder case, where the body is transported, the place where the murder took place will be the primary scene, but the perpetrator's vehicle and the place where the body is dumped are considered secondary crime scenes.

### SECURING A CRIME SCENE

It is important that a crime scene be properly safeguarded to avoid contamination from any outside sources, including yourself. In cases where emergency services personnel have to enter a scene for medical treatment purposes (which takes priority), they should be familiar with the basic steps for protecting such a scene. This includes the principle that all emergency workers should use only one entry/exit path to reach the victim/s, so as to minimise contamination or disturbance within the crime scene.

One of the most important things to remember is not to touch or move anything on or from a crime scene. The crime scene must be cordoned off, in order to control movement on the crime scene, and this is usually done by the first police member who arrives.

Once a police member arrives, vital information must be

# COMMUNITY SAFETY

## - What to do or what not to do on a crime scene?

provided with regard to what has happened, if such information is available to you (either as a direct victim or as an eyewitness).

1. Where did the perpetrator come from (direction) and in which direction did s/he leave?
2. What mode of transport did s/he use? Was s/he walking (which could have left shoe- or footprints), or driving (which could have left tyre marks)?
3. Did s/he touch anything on their way to the crime scene (this could help to locate fingerprints or other evidence, such as epithelial cells, with a Dacron Swab for DNA analysis)?
4. What did the perpetrator do before, during and/or after the attack? Was s/he smoking, eating, drinking?
5. Was s/he using any eating utensils, eg a spoon, fork, glass or bottle? Has s/he left any half-eaten food/drink at the crime scene?
6. Did the attacker ejaculate on any surface on the crime scene?
7. Did the attacker wipe himself? If so, what did he use, and where is it?

This type of information is invaluable in assisting the crime scene investigator with the identification, documentation, collection and preservation of physical evidence with real evidential value. It is better to volunteer too much information than to keep it

to yourself, thinking that the information is insignificant - let the investigator decide.

This information has to be thoroughly documented in the form of a sworn statement and will be used as part of the evidence during the prosecution. Remember that the physical evidence which is collected by the members of the LCRC or other members of the SAPS's Forensic Services Division will help to prove your account of the events during the attack and link the suspect to the crime or crime scene.

### WHAT SHOULD VICTIMS DO?

If you have been a victim of a contact crime, it is vital that you safeguard your body against contamination and the possible loss of evidence, such as hair, semen, or skin cells from the perpetrator, by following these guidelines:

- do not bath or shower
- do not change clothing
- do not eat or drink (in the case of rape)
- do not brush your teeth or comb your hair (in the case of rape)
- do not urinate and, if this is impossible, urinate inside a closed container (in the case of rape).

Rape survivors should get to a health facility/medical doctor as quickly as possible to:

- obtain medical care, treatment and advice;

- collect evidence to support your legal case
- report the incident to the police (the health care facility will usually assist with this, as a sexual assault kit has to be collected by the SAPS).

### LIST OF REFERENCES

<http://dnaproject.co.za/crime-scenes/crime-scene-preservation>

Lyle, D P. "Forensics: Assessing the scene of the crime." - Accessed at [www.dummies.com/how-to/content/forensics-assessing-the-scene-of-the-crime.html](http://www.dummies.com/how-to/content/forensics-assessing-the-scene-of-the-crime.html) on 13 January 2015.

Marais, C W and Van Rooyen, H J N. 1990. *Misdaadondersoek*. Silverton: Promedia. In Coetzee, T. 2008. "The evidential value of crime scene investigation in child rape cases." MTech dissertation. Unisa.

### EDITOR'S NOTE:

Neither the role of the first police member to arrive on the scene, nor that of the LCRC or investigator, is discussed in this article, as SAPS members have to abide by specific protocol which governs their actions. Also see related article in *SERVAMUS*: October 2013.

### TRAINING

The DNA Project provides FREE workshops to interested groups, organisations and companies on a regular basis and has dedicated trainers in Gauteng, KwaZulu-Natal, the Western Cape and the Eastern Cape as part of its DNA awareness campaign. This latter campaign aims to provide key sectors of the South African public with a basic understanding of how DNA profiling is being used to assist in criminal investigations in South Africa and the importance of preserving valuable DNA evidence found at a crime scene.

### WHY SHOULD I ATTEND ONE OF THESE WORKSHOPS?

To learn how important DNA and forensic evidence is to an investigation and how to secure a crime scene.

### WHO SHOULD ATTEND?

First-on-crime-scene responders, community members, members of CPFs and community safety initiatives, paramedics, SAPS members and security officers.

### HOW DO I BOOK A WORKSHOP?

For more information, or to make a booking, please contact Maya Moodley (National DNA Awareness Workshop Coordinator) at tel: (021) 418 0647 or via e-mail at: [maya@dnaproject.co.za](mailto:maya@dnaproject.co.za).