

DNA Board on its 2015/16 Annual Report

23 November 2016

Chairperson: Mr F Beukman (ANC)

Meeting Summary

The Committee met with the National Forensic Oversight and Ethics Board (DNA Board), and its accounting officer, the Civilian Secretariat of Police (CSP), to be briefed on its Annual Report for the 2015/16 financial year. Before the briefing, the Committee Content Adviser prepped Members by providing an introductory presentation on the functions of the Board, procedure for handling complaints, composition of the Board, reporting requirements, issues reported to the Committee in its last engagement with the Board in March 2016 and possible questions for the Committee to consider.

The DNA Board then briefed the Committee on part one of its Annual Report for the period 1 April 2015 to 31 March 2016, namely, members of the Board, meetings of the Board for the period, governance and sub-committees and the budget of the Board for the 2015/ 16 financial year. The Report also looked at the Board's strategic objectives for 2015/16 and challenges encountered in achieving the stated objectives and strategic objectives of the Board for the 2016/17 financial year.

The Committee was concerned about the haphazard way in which funds to the Board were diverted by the CSP, as the accounting officer, and the impact this had on derailing the business plans of the Board – Members questioned how the Secretariat could use the funds set aside for the use of the Board and whether this necessitated the need for ring fencing of the funds of the DNA Board which would require Treasury approval and possible statutory amendment. Members asked if the Board communicated challenges experienced to the Minister and whether the CSP should allocate specific senior managers or directors to oversee bodies within the ambit of the Secretariat for liaising and addressing matters relating to budget, governance etc. The Committee wanted assurance that there would be an adequate budget for the Board moving forward. Other questions raised related to the Board's work on the national sex offender register, current status of the Family Violence, Child Protection and Sexual Offences environment, CODIS tender, inter-operability between databases for the seamless transfer of data within the Criminal Justice System/Integrated Justice System and the requirements of SA Police Service (SAPS) members to take buccal samples. Another area of discussion was the independence of the Board and the fact that the fulltime DNA secretariat to the Board had not yet been appointed.

The second part of the DNA Board's Annual Report covered progress made during April 2016 and 20 November 2016 in terms of appointment of the fulltime DNA secretariat to the Board, the convicted offender programme, namely, samples, collection, challenges, intervention and awareness and challenges and proposed action. The report also looked at performance of the Forensic Science Laboratory Biology (DNA) Unit in terms of the number of profiles held on and expunged from the National Forensic DNA Database (NFDD) and investigative leads identified through the NFDD and complaints and questions to the Board of interpretation of the Act.

The Committee wanted to know how the Board interacted with structures on the ground, conducting of awareness and the work of the Secretariat in ensuring there were programmes on the ground to inform communities and the practical application of familial searching. Members also questioned the rollover of funds and noted pleasure with the improvement in the taking of buccal samples and the amount of leads created in case investigations which lied at the heart of the establishment of the NFDD.

Overall, the Committee noted the clear progress made by the Board; it looked forward to the appointment of a fulltime DNA secretariat to the Board which would address many of the challenges currently existing and the good work done by the DNA Board as a vital institution for oversight. The Committee called for closer cooperation between the Board and the CSP and the Board and the Ministry of Police for good governance. The Committee would draft a formal report and recommendations to the House based on today's interaction with the DNA Board.

Meeting report

Committee Business: Committee Programme

The Chairperson noted that the focus today was on the Annual Report of the National Forensic Ethics and Oversight Board (DNA Board). Last week, the issue of adjustment estimates were raised and responses had since been received from the Independent Police Investigative Directorate (IPID) and the SA Police Service (SAPS) - the matter could perhaps be dealt with next Wednesday although he did not see any major issues with this. Next week Wednesday the Committee would also look at petitions. During the last week of the term, Tuesday and Wednesday, the Committee would need to meet to consider and adopt a number of outstanding minutes and outstanding reports.

On the Committee's agenda for 2017 was the study tour application which, if successful, would occur during the last week of January/beginning of February. The Committee would next week receive a draft programme for the first term of 2017. The Critical Infrastructure Bill was the only piece of legislation on the table for the Committee's consideration for the first term of 2017 at this stage.

Committee Research Presentation: DNA National Forensics Oversight and Ethics Board

Mr Irvin Kinnes, Content Adviser for the Committee, took the Committee through the preparatory presentation noting that the Criminal Law (Forensics Procedures) Amendment (Act 37 of 2013) came into effect on 31 January 2015. In terms of section 15 V (5) of the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No 37 of 2013), the Minister of Police must appoint a National Forensics Oversight and Ethics Board (DNA Board) and report to Parliament within 14 days of its appointment. The Minister of Police reported on the appointment of the Forensics Oversight Board on 27 February 2015. Main functions of the Board, as contained in section 15 Z of the Act, included:

- monitor the implementation of this Chapter
- make proposals to the Minister:
 - on the improvement of practices regarding the overall operations of the NFDD
 - the ethical, legal and social implications of the use of forensic DNA
 - on the training and the development of criteria for the use of familial searches
- provide oversight over the processes relating to:
 - the collection, retention, storage, destruction and disposal of DNA samples

- the retention and removal of forensic DNA profiles, as provided for in this Act
- familial searches
- any breach in respect of the taking, transporting, analysis, storing, use and communication of DNA samples and forensic DNA profiles, including security breaches
- security and quality management systems
- handle complaints by:
 - receiving and assessing complaints about alleged violations about the abuse of DNA samples and forensic DNA profiles and security breaches and reporting to complainants on this
 - gathering such information which will assist the Board in discharging its duties and carrying out its functions under this section
 - attempting to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation
 - referring complaints to relevant authorities where applicable
 - reporting to the Minister the outcome of every complaint
- consider all reports submitted to it in terms of this Chapter
- consider any other matter related to this

Additional functions included:

The Board may gather such information which will assist it in discharging its duties and carrying out its functions under this Chapter

A copy of the report contemplated in section 15 AC (5) must be submitted to the National Commissioner of Police to follow up and address the issues contained therein

The National Commissioner must report to the Board within 90 days of receipt of the report contemplated in section 15 AC (5) on the steps taken to rectify the issues contained therein

The Board may establish committees to deal with specific matters as and when required

The Board must submit a report on the execution of its functions to any authority established by law regulating the protection of personal information.

Mr Kinnes then outlined the procedure for handling complaints:

- The Board may, either as a result of a complaint lodged with it or of its own accord, consider a complaint
- The Board must refer a complaint contemplated in subsection (1) to a committee of the Board for assessment in the prescribed manner
- The committee must, after its assessment of the complaint, report to the Board on the outcome of such assessment including recommendations relating thereto
- In the case where a criminal act was alleged to have been committed by a person subject to an assessment, the Board must refer the matter to the relevant authorities for further action
- The Board must ensure that recommendations regarding disciplinary matters were referred to:
 - the National Commissioner
 - the Executive Director or
 - any other relevant authority
- The relevant authority referred to in subsections (4) and (5) must report the outcome of action to the Board

In terms of the composition of the Board:

Section 15 V (2) provided for the Minister to appoint a Board of not more than ten persons for a period of not more than five years on a part time basis and drawn from the following areas:

- Five persons outside the public sector with knowledge and experience in forensic science, human rights law or ethics relating to forensic science
- Four persons must be from the public sector on the level of at least Chief Director and must be made up of:
 - Secretary of Police or his or her representative
 - Representative of the Department of Health who had knowledge in the field of DNA
 - Representative of the Department of Justice and Constitutional Development who had a sound knowledge of constitutional law
 - A representative of the Department of Correctional Services
- The Minister must appoint a chairperson of the Board who was a retired judge or a senior advocate with knowledge and experience in the field of human rights and a deputy chairperson from the remaining members of the Board.

Reporting requirements of the Board included:

- Section 15 AC (1) (4) provided for the Board to report on its functions to Parliament annually
- Section 15 AC (2) provided for the Minister to provide a report not later than five years after the commencement of the Act to the National Assembly on whether any legislative amendments were required to improve the functioning of the National Forensics Database and the use of forensic DNA evidence in the combating of crime
- Section 15 AC (3) provided for after the initial five year period, the Minister must submit a report every three years to the National Assembly.

Mr Kinnes said with the National Commissioner's report, the National Commissioner must provide, as part of the Annual Report of the Service to the National Assembly in terms of section 55(d) of the Public Finance Management Act (PFMA), a report in respect of the performance of the NFDD relating to the use of forensic DNA evidence in the investigation of crime and relating to disciplinary proceedings concerning forensic DNA matters. With the Executive Director's report, the Executive Director must submit a report, as part of IPID's Annual Report, to the National Assembly in terms of section 55 (d) of the PFMA on the performance of the functions of the Directorate in terms of this chapter including disciplinary proceedings regarding DNA matters.

The Board itself submitted a progress report in March 2016 where key issues raised with the Committee included:

- Accommodation, staffing and operations
- Budget
- CODIS software contracting
- FSL tender for DNA kits
- National Forensics DNA Database (NFDD)
- Co-operation from Correctional Services on samples

Mr Kinnes outlined possible questions for the Committee to consider included:

- The DNA Board must provide a report on their operational arrangements, functioning and accommodation.
- The Committee must receive a report on the Budget of the DNA Board
- The DNA Board must provide a report on the co-operation with the Civilian Secretariat, SAPS and the Ministry of Police
- The Committee must receive a report on the development of the DNA Database
- The Committee must probe if the provisions of the Act were being complied with by the

DNA Board, SAPS and IPID

- The Committee must question the DNA Board in terms of any disciplinary recommendations made by the Board to the SAPS
- The Board should provide a status report on the CODIS tender

Annual Report of National Forensic Oversight and Ethics Board (NFOEB) for 1 April 2015 – 31 March 2016

Retired Judge Yvonne Mokgoro, Chairperson, National Forensic Oversight and Ethics Board, took Members through the presentation of the Annual Report beginning with the composition of the Board which consisted of civilian members, public service officials and DNA experts. The presentation also outlined the meetings held by the Board during the period under review and the side meetings of the Board i.e. the sub-committee meetings – the Board established eight sub-committees from members of the Board to deal with specific matters as and when required. Because there were only a certain amount of members on the Board, some members were part of more than one sub-committee and were thus very stretched considering that these members had fulltime occupations. Each sub-committee had at least three members – the committees reported and brought recommendations to the Board in respect of each of its areas of oversight. An agreement had been reached with the Forensic Science Services to create nodal contact persons within the Biology (DNA) Unit to liaise with each leader of the sub-committee to help fulfil their charters. The sub-committees included:

- Systems Reports and Gaps Analysis
- Public Relations
- Training
- Assessment Committee for Complaints
- Finance and Risk
- DNA Secretariat Appointments and Infrastructure
- Reports (Task)
- Transitional Arrangements (TAs) and General Operational Aspects

Members were then taken through the strategic objectives of the Board for 2015/16. While some of the objectives were met, there were also challenges, namely,
-a fulltime DNA Secretariat was not appointed by the Civilian Secretariat for Police (CSP) despite it being identified as a key component to assist the Board fulfilling its functions leading to members of the Board having to act in a fulltime capacity to facilitate the Board's decision making processes
-Until such time as the NFDD software solution was introduced by the FSL had developed the ability to run familial searches on the NFDD, the Board was unable to finalise any policy to oversee familial searches on the NFDD.

The Chairperson highlighted that the Board could not be the operative and oversee its own governance.

Ms Mokgoro agreed that the Board could not operate and monitor itself. Continuing with the presentation, operational challenges included:

- CSP allocated the Board's 2015/16 budget to other urgent matters resulting in the Board having no funding to facilitate its operation for the 2015/16 financial year
- the budget requested for 2016/17 was not possible to fulfil strategic objectives of the Board resulting in the Board having to agree on a lower budget to accommodate its stated objectives for the 2016/17 financial year
- members of the Board were not remunerated for out of pocket expenses nor time and

services provided to the Board during 2015 despite the fact that some members took the decision not to receive remuneration

-the Board had no independent office space and facilities with a separate identity for the Board was made available namely a telephone, furniture, logo, letterhead, website, email address and postal private bag despite the Act emphasising that the Board must be independent.

The presentation then covered the Board's strategic objectives for 2016/17 and the Board's budget for the 2015/16 financial year – it was noted that only R342 000 of the original budget was spent by the Board while the balance was used by the CSP for other spending pressures.

In conclusion, the purpose of the Board was to load as many known forensic DNA profiles onto the NFDD and to compare those profiles for criminal intelligence purposes against the forensic DNA profiles collected from crime scenes, unidentified human remains or missing persons. In those countries which had successfully introduced DNA legislation to effectively populate their national DNA databases, there had been an increased responsibility to monitor the administrations which were responsible for their DNA databases. The Board's first two years had not been without challenges, most notably, the lack of operational and financial support it had received to properly fulfil its functions. It was hoped that going into its third year of oversight, it will be given the infrastructure required to fully realise its charters through the work of its various subcommittees. Despite these challenges, the Board had managed to convene several meetings through the 2015/16 financial year wherein it was able to identify and formalise its strategic objectives and deliverables which had been clearly mapped onto the key processes along the value chain required to deliver the Board's vision and mission. Furthermore, the Board had established and maintained a good working relationship with the FSS upon which the expansion of the NFDD and its proper and ethical use rested.

Discussion

Mr Z Mbhele (DA) remained concerned that the bodies residing under the CSP were still being treated as the “poor step child” of the police portfolio especially in terms of the seemingly haphazard way in which funds were being diverted thus derailing business plans. He wanted to know if the Board had gained any insight into the national sex offender register environment. What was the current status of training in the Family Violence, Child Protection and Sexual Offences (FCS) environment?

Ms Mokgoro outlined that the sexual offenders register was required in terms of section 15A of the SAPS Act. Awareness was indeed very important in terms of, firstly, the need for training – training was required for taking samples, the use of DNA in investigative functions of SAPS members and that the Act required that only those who were trained could take buccal samples. Just yesterday she met a young lawyer who spoke to the ease in which his clients were acquitted because of challenges with DNA samples –this spoke directly to the importance of training.

Ms Vanessa Lynch, Deputy Chairperson, DNA Board, added that there was a sub-committee of the Board which worked with forensic science services to report on a gaps analysis. Currently challenges were experienced with the capturing of sex offender information as part of the oversight work of the Board. Capturing of the information between the responsible departments also seemed to be an issue. With awareness and training, the responsibility of the Board was not to provide training but to oversee it. The training of FCS was the

responsibility of the Department of Health – buccal sampling by SAPS members was the responsibility of SAPS and the Board was responsible for overseeing that this sampling was indeed taking place. The Board was also responsible for raising awareness around what it did and to ensure there was awareness of offenders and others as to why samples were being taken, functionality of the database and its specific management – the Board did not have a mandate to conduct any awareness training itself.

Brig. Joe Smit, SAPS Section Head: Forensic Database Management, added that with the training, the SAPS member needed to have a good understanding of the Act and supporting regulations, understand any health and safety issues, how to properly approach the person and take the sample in a non-aggressive and invasive manner. The chain of custody was crucial in terms of complete documentation, DNA reports, and outcome reports from doing the comparative search.

Mr Alvin Rapea, Acting Secretary of the Police, said that as a member of the Board itself, he wanted the Board to succeed. The bodies in the Secretariat were not treated as “step children”. There were processes and rules to follow in terms of budgeting – the Board was appointed in January 2015 when the budgeting cycle for 2014/15 had passed so there was no budget available for the Board. Funding provided to the Board during those months came from the Secretariat. Planning meetings of the Board took place after budgets had already been finalised for the 2015/16 financial year but an allocation from the Secretariat to the Board had been done. Budgeting for the Board required interaction with Treasury in terms of specific plans and strategic objectives. The Board provided him with the minutes of their strategic planning and he then requested that Treasury templates be used to be in line with requirements. Motivating Treasury for funding required proper planning and preparation and the Board, as established through statute, were not except from going through this process. Treasury had cut the compensation budget of the CSP for the MTEF period by about R3 million – this affected any bodies which received funding from the Secretariat. Ring fenced funding would be included in the Treasury schedule – Treasury itself determined the schedule.

Mr P Groenewald (FF+) was concerned that many projects of the Board could not be implemented because of the simple lack of funds – he asked the CSP why this was the situation.

Mr L Ramatlakane (ANC) wanted to know if submissions were made to the CSP as the Board was developing its strategic goals and plans for the year which would require a certain budget. If this was done, what was the response from the Secretariat? He wanted to know more about how the Secretariat could use the earmarked or set aside budget for the functioning of the Board for other more pressing areas. Some fees, like those for the Board members, would have been predetermined as part of the basic functioning of the Board and he did not know then how members were not paid for out of pocket expenses – if such issues were not ironed out it may result in failure to adhere to the Act. It was also important that the Board was seen and perceived to be independent in terms of proximity etc. – was there any development toward ensuring the Board had its own separate premises?

Ms Mokgoro noted that all members of the Board did partake in a strategy planning session together with the CSP. The Board was made aware that without a strategic plan, budgeting could not be done because the budget arose from the needs, role and function of the Board in terms of the strategic plan. The plan was submitted to the Secretariat but the budget provided

to the Board was not satisfactory. Part of the budget of the Board was then used to empower the police to function effectively in response to the xenophobic attacks last year.

Mr Rapea explained that the process of remunerating the Board took a bit longer but a response had since been received from the Minister of Finance and Board members who qualified were requested to submit their claims – he understood that of the members who qualified, only two submitted their forms for payment. Travel and catering of the Board was funded and if any members did pay out of pocket for travelling, the claim should be submitted.

Ms M Mmola (ANC) was concerned that the fulltime DNA secretariat had still not been appointed. She wanted to know how often the Board met and who attended the meetings apart from the members of the Board. Was the independent office space for the Board budgeted for or not? When was the last awareness programme conducted for police officials, convicted offenders and the public?

Ms Mokgoro explained that the CSP were part of meetings of the Board as the CSP was currently acting as the secretariat to the Board. A challenge was that different people from the CSP attended the meetings which meant that concerns of the Board would have to be regurgitated to the different CSP representatives.

Ms Dawn Bell, CSP Chief Director: Legislation, added that the Minister had finally approved the post for a DNA secretariat. HR had done a job evaluation and an advert was drafted – the advert would be placed by 4 December in newspapers and by the end of February 2017, after all processes had taken place, it was expected that the appointment would be made once the offer was accepted.

Ms A Molebatsi (ANC) sought more information on the CODIS tender. She then asked if any disciplinary recommendations were made to SAPS. What were the requirements for the SAPS members trained to take buccal swabs?

Ms Lynch outlined that the training of the buccal swabs was done through a very comprehensive two-day training course which included evidence handling and how to take the sample after which the members would be assessed and if successful would receive an authorisation number and then only those members would be authorised to take a buccal sample from certain categories of persons. So far there were no complaints of any unauthorised police members taking samples from any category of person in terms of the Act. With the Combined DNA Database Index System (CODIS), the previous Portfolio Committee spoke about utilising a DNA database management software solution and reference was made to CODIS as it was available and world-renowned. The Act did not state that use should be made of CODIS specifically but only that SAPS have a sufficiently capable DNA database software solution in place, which they currently did have, to ensure the indices were accounted for and for expungement and retention as envisioned by the Act. This area was under constant scrutiny of the systems report and gap analysis sub-committee of the Board but there was a sufficient software solution currently in place – this was not to say that CODIS could still be considered as an alternative system in the future.

Ms Molebatsi then asked if familial searches were included in CODIS.

Ms Lynch replied that no familial searching was included in any database software solution –

it was always separate to it because the parameters required for familial searching were very different to comparative searching. Comparative searches ran against all the indices whereas familial searches looked for similar profiles and familial relationships. Systems for familial searches were not “off the shelf” but had to be developed within specific parameters.

Brig. Smit added that the software for familial searching was very specialised and different to the normal comparative searches. Scientific algorithms would need to be run to get a list of possible matches – the list would need to be restricted to a very limited number (two or three) through configurations. The search was also not exact but indicated possible relations – further investigation would need to be done to further qualify and validate the search. The matter involved many sensitive ethical considerations as well. Familial searches were a new field in forensic science. The Act, correctly, did not prescribe what software solution was to be used. Integrity of the data was also paramount.

Ms Molebatsi questioned what the chances of contamination or tampering were.

Brig. Smit answered that the software was in the normal security guidelines and files of SITA and SAPS in terms of protective boundaries where tests were run. Only certain people had access to the database and those who had access had a certain functional role which determined the access. The actual database was on service of SITA and kept at an undisclosed site. There was biometric security and cameras while all members with access were vetted in terms of the Act in order to access the information.

The Chairperson outlined that, at the end of the day, the Board was appointed by the Minister of Police – if the situation had not changed for the past three years, should the Board not directly ask for engagement with the Minister – was there any such effort? From the side of the CSP, it might be best that specific senior managers or directors were tasked with liaising with the Boards, including the Office of the DPCI Judge, to ensure issues of budget, governance etc. were directly addressed. Many of the challenges raised since March 2016 by the Board could have been sorted out because they were not major issues such as the independent website. His sense was that there were gaps in the Secretariat and that there was not one senior individual to deal with the bodies on a day-to-day basis especially in terms of current challenges. The current model used was clearly not working.

Ms Mokgoro outlined that she was able to get an appointment with the Minister once or twice through the Secretariat but on both occasions the appointment was postponed indefinitely with the Minister – she hoped to still meet with the Minister and she would continue to make efforts to meet with him particularly on the Board’s budget and other challenges it experienced. It was important to raise awareness with the ministry on the importance of the Board.

Mr Rapea outlined that it was overwhelming for the Secretariat to deal with all the institutions and bodies within its ambit but the concerns of the Committee would be considered. It might be best to communicate the challenges of the Board with the Minister in writing.

Mr Ramatlakane noted that there was understanding of how the annual budget cycle worked – the fact of the matter was that the Board was established in terms of the Act and they would need a budget to function. It was the CSP, and not the Board, that would motivate Treasury for the funding for the Board. Could assurance be provided that there would be a budget for

the Board moving forward? Absolute clarity was required on this aspect.

Ms Mokgoro, to be fair to the Secretariat, outlined that the first budget cycle was indeed missed but funds were taken away from the Board by the CSP from the initial allocation made.

Ms Molebatsi asked if the use of the government letterhead compromised the independence of the Board.

Mr Maake understood that the budget of the DNA Board needed to be ring fenced in some way and that this needed to be done by Treasury – who was supposed to make the ring fencing proposal to Treasury? Was it possible for the CSP to informally ring fence the Board's budget within its own budget? He wanted to know what the Committee could do to further motivate Treasury for the ring fencing.

Mr Mbhele had some questions about the degree of importance of independence of the Board or how it was expressed – there was actually no statutory basis for ring fencing funding for the Board. While this might be a shortcoming in the statute, independence could be expressed in other structural ways. He highlighted that IPID also used government's logo but the key issues were that of basic resourcing and ensuring support systems were in place for the Board to carry out its function. He sought more information on the lack of inter-operability between databases with the seamless transfer of data and if this was rooted in longstanding delays with the Criminal Justice System/Integrated Justice System (CJS/IJS) revamp – one needed to quickly reach the point of data flowing easily between SAPS, Justice and Correctional Services aided by technology which existed to facilitate this.

Ms Mokgoro agreed that the Act did not prescribe that the funds of the Board be ring fenced and the Board did not have direct access to Treasury but operated through the Secretariat. The Board would really appreciate if its budget was ring fenced – the question was if the budget could be treated as such even if it was not formally ring fenced. This would also create certainty with the budget. The Board was serious and it had serious work to do in terms of its role and function – it was then important that the Board was given the necessary respect through the budget. With the logo, ideally one wanted the Board to be in a position where it was viewed as being as independent as possible. If the logo conveyed that the Board was part of SAPS, this would compromise the confidence the public had in the oversight work of the Board over SAPS structure. If the Board had its own logo, website and infrastructure which separated it from SAPS, this would boost public confidence. She hoped this could eventually be worked towards and achieved cognisant of the fact that it could not occur overnight. The clear objective was to have a Board which satisfactorily and effectively served the people of SA.

Mr Maake questioned if it was best to then amend the Act to ring fence the budget in the Act itself.

Ms Mokgoro did not know if this was necessary to be done or if the budget could not just be treated as such and respected once it was allocated. It also involved the state of mind of those who worked with the budget. A decent budget would ensure the Board was effective according to the Act. She trusted Mr Rapea when he said that as a member of the Board himself he wanted to see the Board succeed – the Board looked to him and the CSP for guidance on how to ensure there was an effective budget.

The Chairperson noted that Act prescribed that the Secretary of Police must ensure guidelines related to awareness programmes were developed and implemented, monitored and assessed – was this done? In terms of the budget, the Committee could make proposals if it was of the view that intervention was required in terms of the budget for the Secretariat next year – this was something for the Committee to consider. The Committee could make recommendations and table a report before the House to further strengthen the case and emphasise the importance of the Board in the CJS.

On the interfacing of systems, Brig. Smit outlined that interfaced systems optimised workflow, limited possible errors and supported data integrity. Within SAPS it was easy to share the data but there were more challenges sharing data within government because of differences in readiness between the different systems to be able to interface. This was perhaps a question best answered by the IJS Board. Interfacing would be particularly relevant to the sex offender register which was maintained by Justice.

Ms Mmola followed up on what happened when the Board was appointed in January 2015 – was there a fulltime DNA secretariat appointed then and if not, why not because this was a critical position?

Ms Mokgoro agreed the position was critical but the appointment was not made because of budgetary issues, missing the cycle and the minimal amount extended to the Board by the CSP for its operation. There was simply no budget to appoint a DNA secretariat for the Board.

Mr Ramatlakane noted that the Board did have funding so one could not say it did not have a budget because the CSP did make an allocation of R1.2 million. Of that amount, over R950 000 was taken back by the Secretariat to do other things. The emphasis was that the Board did have funds allocated although it was not sufficient and was subsequently taken away.

Ms Mokgoro agreed.

Mr Rapea outlined that the Accounting Officer was responsible for ensuring provisions were made in terms of allocated budget and this was done in the case of the Board. If there was no enabling legislation to ring fence the funds, the Accounting Officer was then responsible for the budget. Going forward, the CSP would have to consult more with the chairperson of the Board. The appointment of the fulltime DNA secretariat would also assist in ensuring the Board operated effectively.

Mr Hendrick Robertse, CSP, added that at no stage was the Board informed that there were no funds available for them to meet or travel to meetings. The CSP also did not utilise the R900 000 before the end of the financial year – the Secretariat waited until the last month of the financial year to utilise the funds for possible overspending. For the current financial year, 2016/17, a budget of just over R3 million was made available to the Board – based on its strategic plan, its budget was calculated at R3.5 million but the R500 000 less was mainly due to financial restrictions which all government departments faced by Treasury and Cabinet. For the current financial year, the Board had only spent R25 000 on their goods and services budget of almost R700 000. Even if all five members were paid, the expenditure would only go up to between R150 000 and R200 000 – essentially the Board had only spent about 40%

of its funds for the current financial year.

Ms Lynch clarified that the huge under-spending was due to the expectation that a fulltime DNA secretariat would be appointed. The Board prioritised a number of very fundamental items such as the secretariat, assistant to the secretariat, an office and a website so it would be contrary for the Board to use the budget for any other proposes other than those priorities. The Board was also tied to departmental, Treasury and CSP prescripts which did not enable it to use the funds as it wished – were there no limitations, the Board would already have had a website, secretariat, office and all other requirements. She emphasised that the under spending was not because the Board was not doing anything but because it anxiously awaited the appointment of a secretariat to do the things the Board required.

Part Two: Progress Report April 2016 – 20 November 2016

Ms Lynch then took the Committee through this section of the Report beginning by outlining the process of appointing the fulltime DNA secretariat. To a large extent, the process was outside the hands of the Board as it had to follow the process required by human resources of the CSP. The anticipation was that the appointment would be made at the end of February 2017. The post was a very high ranking one, which explained why the job description took time, was pitched high and the large budget allocated towards it, because the person would have to be of a high calibre, have drafting skills, statutory knowledge and the requisite experience for the large responsibility.

In terms of resources the Board was still making use of the government logo and offices of CSP. The independent website was still not up although it was vital for members of the Board to receive communication from the public – because the Board was a statutory body, the setting up of the website had to be done through the CSP.

With the convicted offender programme, significant progress was being made. In terms of awareness, SAPS would be submitting 300 000 pamphlets to convicted offenders. Challenges experienced included:

- availability at a few correctional facilities only allowing a small number of inmates to be swabbed daily

Ms Lynch outlined that proposed action would be:

- Additional national internal communiqué to be re-sent by both the Department of Correctional Services (DCS) and SAPS to address the gaps in the workflow and defining responsibilities
- SAPS coordinators must be instructed to approach heads of correctional facilities and to again provide copies of the detail lists of buccal samples taken with prisoners' information
- Bi-monthly stats to be provided
- IJS Bard must be requested to prioritise integration between SAPS CAS/ICDMS and DCS system to share the buccal sample

The systems report and gaps analysis dealt with the performance of the Forensic Science Laboratory (FSL) Biology (DNA) Unit to oversee the processes relating to collection, retention, storage and disposal of DNA samples and that timeframes were adhered to. There were currently 580 230 profiles on the DNA database. 7429 different cases had been identified, in terms of investigative leads identified through the NFDD from crime scene samples (unknown samples) to known persons – these were links which otherwise would never have been made. A total of 5 794 cases were linked which indicated that 2 375

unknown offenders still needed to be identified.

In terms of complaints and questions of interpretation of the Act directed to the Board, the Board received a complaint from an accused person to assist with expediting of the analysis of his reference sample as he claimed he should be excluded from the investigation. The Board requested the FSS Biology Unit expedite the matter and the Biology Unit confirmed the complainant was excluded. A medicinal officer also requested a legal opinion in respect of the taking of buccal samples by registered nurses and medical doctors. The interpretation of a section of the DNA Act required a minor amendment to avoid confusion to ensure the intention of the legislation was honoured insofar as it related to the taking of buccal samples by registered nurses and medical doctors. The Board will submit a recommendation to the Committee for an amendment in this regard in due course.

Discussion

Mr R Mavunda (ANC) wanted to know how the Board interacted with structures on the ground. He found that the CSP played a pivotal role in the effective functioning of the Board - perhaps if the Secretariat functioned well, all bodies within its ambit would function well. How was awareness conducted if there were no structures on the ground? Could those in rural areas then access the services of the Board?

Dr Karen Ehlers, member of the Board, replied that there were subcommittees of the Board and nodal points at the FSL where meetings were held and where data was received from those people working on the ground. The DNA secretariat would be responsible for getting all this information from the entities.

Ms Mokgoro added that the Board was a national one without provincial structures. Information was accessed from the police structures as part of the oversight work of the Board on DNA matters.

Ms Lynch said she would love for the Board to have provincial representation on the ground and grassroots level in order to gather information, oversee awareness and report it back to the Board. This was something which could take place in the future.

Ms Mokgoro said this was something to come back to later once there was clarity on how such structures would operate if they were established as an ideal. It might also require amendment to the Act – the view of the Board was that the Act was a work in progress informed by the operation of the Board and gaps identified in implementation of the Act. Proposals in this regard would be made to the Committee.

The Chairperson noted that in terms of section 15T of the DNA Act, the Secretariat was responsible for ensuring there were programmes to inform communities – the Committee needed to hear about this.

Mr Rapea admitted this was something the CSP had overlooked but the Secretariat would ensure the guidelines were done before the end of the financial year – it could then be presented to the Committee.

Ms Molebatsi wanted to know where the awareness was conducted – was it conducted amongst SAPS members, in prisons or in communities? A few days ago, a toddler drowned in the floods in Gauteng and this morning a body was retrieved that looked like the toddler's

– practically, this called for a familial search so how would it be done?

Ms Mokgoro said the CSP had the role and function of creating awareness while the Board was to oversee that the awareness programmes were indeed implemented. This awareness was not only amongst SAPS itself but among convicted persons and the public. It was therefore important that awareness was also linked with complaints coming to the Board – if complaints were not received, it might mean the public was not aware of the Board. Thus it was important to ensure the awareness programmes were designed and implemented. Once the website was set up, the Board would have direct communication with the public, offenders and convicted persons.

With familial searching, Ms Lynch explained this worked on a case by case basis to identify missing persons and unidentified human remains. Familial searching was a more advanced methodology for identifying persons reported missing. In the case of the toddler, the DNA of the parents would be used for identification. The DNA of the missing persons would be entered into the system and ran against the DNA sample of a family member and links could then be established which would provide the investigator with a lead. It was important that going forward with familial searching, policies were in place to ensure factitious searches were not being done and for general ethical principles to be respected.

Mr Mbhele acknowledged the improvement in the taking of buccal samples since the last report submitted to the Committee in March 2016 – the increase was a commendable surge and the improvement deserved credit. He was very pleased with the amount of leads created in cases which was at the heart of the establishment of the national DNA database – hopefully this would continue to improve.

Mr Ramatlakane, looking at the correspondence between the Acting National Commissioner of Police and the Board, asked if the Board was satisfied with the response. With applying for the rollover of funds, he reminded the Secretariat of the “use it or lose it” principle for non-capital expenditure – this would need to be considered moving forward with the budget. He asked if there was anything the Board required the assistance of the Committee with. He found it quite problematic that the Board members were communicating with the public through their personal email accounts because the website of the Board was not yet set up – a normal platform for communication should be established as a matter of urgency as any department had. What was stopping the Board from persuading the Secretariat to assist with this? The Committee would help where it could to support the Board because Members understood the value of the work of the Board. He was also pleased to see the increase in case linkages to come from the national DNA database which further emphasised that the functioning of the Board should be effective.

Ms Mokgoro highlighted the rollover of the budget was an important point of consideration of the Board. Once the DNA secretariat was appointed, a lot of the work would be done and the secretariat would absorb most of the Board’s budget. It was hoped that the secretariat would be appointed before the end of the current financial year. With a possible rollover, guidance was required from the CSP.

Mr Rapea added that there were rules in terms of rollover, for instance, compensation funding could not be rolled over and there was a maximum amount which could be rolled over. The CSP would make a presentation to the Board on how this process worked – the CSP would also have to ensure there was engagement with the chairperson of the Board when the budget

of the Board was under discussion to provide details and reasoning.

In closing, the Chairperson noted it was clear that progress was indeed made and the Committee looked forward to the appointment of the DNA secretariat which would address many of the challenges. The Committee called for closer cooperation between the CSP and the Board to ensure there was movement on logistical and budget considerations. In terms of good governance it was also important the Board meet with the Executive Authority and that the ministry was kept abreast of issues. The Committee also needed to engage SAPS and the Acting National Commissioner on the DNA environment and the work of the Board. It was important for the Committee to draft a formal report to raise concerns and make recommendations and suggestions to the House based on today's interaction. The Committee recognised the important work done by the DNA Board which was a vital institution for oversight.

The Committee would meet again on Wednesday at 09h00.

The meeting was adjourned.