DAY ONE: PUBLIC HEARINGS: “DNA BILL” - Criminal Law (Forensic Procedure) Amendment Bill [B9-2013]
Date of Meeting:
10 Jun 2013
Chairperson:
Ms A Van Wyk (ANC)
Documents handed out:
Presentation On Status / Timeframes / Costs of IT Systems In Support of Criminal Law (Forensic Procedures) Amendment Bill
Strategic Investigations and Seminars (Pty) Ltd presentation
Southern African Society of Human Genetics presentation
Criminal Law (Forensic Procedures) Amendment Bill [B9-2013]

Audio recording of the meeting:
PC Police: Public Hearing on the Criminal Law (Forensic Procedure) Amendment Bill [B9-2013]

Summary:
The Committee held public hearings on the Criminal Law (Forensic Procedures) Amendment Bill, which was concerned with writing the new legislation on DNA profiling.

The first submission was made by Strategic Investigations and Seminars (with a sub-division of (Forensics4Africa), who essentially attended to training in the broad forensics fields, offering a number of qualifications and being accredited by two Sector Education and Training Authorities, for qualifications ranging from accredited short and online courses to higher NQF courses. It generally was in support of the Bill, particularly as it believed it would help with identification of serial offenders, and was impressed with the current wording, and the use of buccal swab samples. However, it was concerned whether it was proper to use samples taken from under the nails as non-intimate, because these samples could contain information that should be held in the crime scene database. Some comments were made on where buccal swab samples could be taken, and it was suggested that the wording relating to a suspect may need to be amended, to allow for a suspect who had not been arrested, or that suspects could be listed in the arrestee index. Questions were noted as to how the previous database information would be incorporated, the practicalities of requiring manufacturers of consumables to give samples for the elimination index, given that most were overseas companies, and suggestions as to changed time frames for destruction of samples. It was suggested that private service providers may be

able to assist with samples for buccal swabs. Forensics4Africa suggested that it would like to be considered to sit on the oversight board, in view of the expertise it could offer. Members asked questions of clarity, questioned the international best practice for suspect indexes, and wondered who comprised the members of Forensics4Africa. SAPS was asked to revert to the Committee with comments on the points raised, which was done, and it was conceded that perhaps further definitions could be considered for a "suitable" venue for taking of samples. The reasoning behind the nail samples was given. Some of the points raised related to details that should not be incorporated within the Bill, but be left to the implementation procedures. The Committee said that transitional provisions were needed.

The second submission, from Southern African Society of Human Genetics (SASHG), a non-profit organisation to advance the practice and science of human genetics in Southern Africa, also indicated its support for the Bill, saying that many of the concerns it had raised in 2009 had now been addressed. Because there would be various ethical, legal and social issues associated with the collection of biological samples and DNA analysis, SASHG felt that input from experts in the field of human genetics should be considered. It proposed that the Forensic Science Laboratories should be independent of both the police and prosecution services, and that data security and access policies must be clarified. The scope of the use of the data needed to be specified, and whether it might be permissible to use evolving technologies to identify human remains. Some concerns remained with accreditation of the laboratories, the need for adequate training of all key personnel, and the chain of custody and turnaround. It recommended adequate funding and also offered that it could offer substantial expertise on the Board. Members wanted more clarity on the proposals for independence of the laboratories, and said that whilst they were not proposing that private laboratories be used, they would be interested in hearing suggestions around securing integrity and the database. They asked if there were any solutions to the problems of identifying foreign immigrants or refugees, although SAPS later clarified that case numbers would be used as identifiers. The Chairperson suggested, and SASHG agreed that perhaps reviews were necessary every three years and the Board should be asked to comment whether there were matters needing to be addressed. The Chairperson also noted that the training needed to be extended to prosecutors, judicial officers and ideally to health professionals, with a holistic approach.

SAPS Technology Management Services, together with the Chairperson of the Integrated justice System Board and State Information Technology Agency (SITA) then outlined what they had done to work on the implementation aspects of the Bill. The very first comment, that the team had met only on the previous day, and

because of the presentation to Parliament, was not taken well by Members, and the gist of their criticisms to everything that the team outlined was that simply not enough had been done, that it seemed that money had been poured, without any tangible results, into a bottomless pit that was supposed to have resulted, in the first instance, in a workable e-docket solution, but not even that had been produced. Although the team attempted to set out the implications for each of the Departments of Police, SAPS, Correctional Services and the IJS, and the particular challenges that would have to be overcome before full implementation could occur, the Committee was still not satisfied. In general, they expressed utter frustration at the lack of progress, positive development and the fact that they still had not received the practical information they needed. They were particularly critical that although the needs assessment had been done some years ago, the tender target date was June 2014, and demanded what off-the-shelf solutions had been considered, what cost implications these might have, the comparative costing and a full analysis compared to what was being proposed. The Chairperson delivered scathing comments against the Chairperson of the IJS board and SAPS and said, in no uncertain terms, that they would be held fully responsible if the systems failed. She was critical of conflicting information given on the e-docket system by two presenters, and demanded that, on its return from constituency period, this Committee must get a corrected and fully informative presentation with all the missing information, in order to fulfil its responsibilities that when it passed legislation, it must be satisfied that the Bill was implementable.

The public hearings would continue on the following day.

Minutes:
Chairperson's opening remarks
The Chairperson welcomed everyone and asked for everyone to stand for a moment of silence to convey their sympathy to the former President Nelson Mandela and his family, at his hospitalisation for a serious illness.

She was glad to see the state law advisors in attendance. She noted that everyone who had made substantial submissions on the Criminal Law (Forensic Procedures) Amendment Bill (the Bill) had been invited to make oral presentations. Two groups could not make today's meeting, one being the Forensic DNA Consultation Forum, and the other was a group from the UK, but the Committee Researcher would take the Committee through this presentation. The public hearings would finish on the following day, and the Committee would begin to deliberate on the public hearings in the following week.

She noted that following the previous week's meetings into implementation plans, she had invited the State Information Technology Agency (SITA), the Board of the Integrated Justice System (IJS) project, as well as Technology Management Systems (TNS) to make a presentation today on the implementation plan that would be needed for the Bill to be put in operation. Experience in the past had shown that it was frequently at implementation phase where legislation failed, as seen in the Firearms Control legislation and the e-dockets. This was intensely frustrating to her and it was a disgrace and should be a source of embarrassment to those involved that hundreds of millions of rands had been spent on the e-dockets, only to find that it was not properly implemented. There were 79 stations, but the e-docket system was not up and running in all, and 32 courts were still not speaking to the 79 stations, which meant that they had basically failed the country. She said that she had put in a request to the Department of Performance Monitoring and Evaluation, for a specific and total Criminal Justice System (CJS) revamp, and study into exactly what had been achieved. One of the major challenges was the involvement of so many departments that accounted to numerous Parliamentary committees, but she felt it was time to get all those departments, together with all the committees, in one room to have a proper discussion and analysis of where they stood with the CJS.

Criminal Law (Forensic Procedures) Amendment Bill [B9-2013]: Public Hearings
Strategic Investigations and Seminars (Forensic4Africa) submission
Mr Nick Olivier, Managing Director, Strategic Investigations and Seminars, said he represented Forensics4Africa, which was part of the operational division of Strategic Investigation and Seminars (Pty) Ltd, and this company had a vision to be the preferred forensic service provider in South Africa. It was a registered and accredited service provider with the Safety and Security Sector Education and Training Authority (SASSETA) and the Finance, Accounting, Management Consulting and other Financial Services (FASSET).

Forensics4Africa offered qualifications in Resolving of Crime (at NQF level 5), Forensic Science (NQF level 5), Forensic Biology (NQF level 6) and Fraud Examination (NQF level 7). It also offered other accredited short courses and online courses.

Forensic4Africa generally supported the introduction of the Bill and its urgent promulgation into law, in order to help fight crime in South Africa. In particular, it believed it would help with the identification of serial offenders and of linking perpetrators to different crimes. An effective DNA database was dependent on proper legislation. It was impressed with the current wording of the Bill, and said that it also

supported the buccal swab sample, which it believed to be the best reference sample.

Mr Olivier discussed the particular issue of samples from nails, noting that the definition clause referred to a sample taken '…..from the nail or from under the nail of a person…..' However, he noted a concern that this be treated as a non-intimate sample, and felt that the sample should be taken by a trained person, as also the fact that the sample could contain evidence relevant to the Crime Index. He submitted that the Bill should make it clear that the sample taken from the nail or under the nail should not be used as a reference sample, but more as crime scene evidence.

He then moved on to the treatment of a buccal swab, pointing out that the Bill made reference to the taking of a buccal swab ".in a designated area deemed suitable for such purpose …. This was normally inside a building or outside a building, like at a roadblock. This added value to the DNA database as a person might be arrested for a driving offence, but, as a result of the comparative search done on the DNA database, this person could be linked to a serious offence. However, he noted that the designated area, as referred to in the new section 36A(5)(a) should be defined as a designated inside or outside area deemed suitable for such purpose.

Mr Olivier turned to the suspect index noting that clause 2 dealt with amendments to section 36D. However, he said that the problem with the wording at present was that a suspect could be a person not yet cleared by an ongoing investigation by the South African Police Service (SAPS) and that the Bill needed to make provision that a suspect did not always have to be an arrestee. Furthermore, a comparative forensic DNA search on the DNA database might not be allowed and illegal DNA matches may not reported. He submitted that there should be a Suspects Index or, alternatively, a Suspect to be listed within the Arrestee Index, to clarify that the reference to a suspect did not always mean that this person had to be arrested.

Looking at the pre-existing database, as mentioned in the new section 15G(7), Mr Olivier said that the establishment of a national forensic DNA database meant that SAPS implemented STR technology in 1998. The DNA database to be set up by this Bill contained DNA profiles derived from suspects, arrestees, volunteers, (victims and laboratory personnel) and crime scene samples. He suggested that DNA profiles on the existing DNA database should be incorporated into the new national forensic DNA database, as soon as it was ready.

In terms of the elimination index, the new section15L(1)(c) referred to the elimination index having to contain forensic DNA profiles from any person who was involved in the manufacturing of consumables. He highlighted that the majority of

DNA consumables were imported from overseas, and it was doubtful that the overseas suppliers would be willing to give the DNA profiles of the employees working on the consumables. He therefore made a submission that the words 'where possible' should be inserted into the new subsection (c).

Mr Pierre Joubert, Senior Lecturer, Strategic Investigations and Seminars, discussed the destroying of reference samples. The new section 15P(1) of the Bill required a bodily sample taken that did not relate to the crime scene sample to be destroyed within three months. The new section 15Q(a) said that DNA profiles in the Arrestee Index must be expunged within three years. He suggested that the DNA profiles in both the Suspect and the Arrestee Indexes must be destroyed within three months after SAPS had been notified of the results of the prosecution, and all DNA samples (DNA extract, quantified and amplified DNA) of such an individual must also be destroyed.

Mr Olivier then looked at private service providers. He urged that the Arrestee Index must be populated as soon as possible, and the capacity for the analysis of all arrestees should be looked at. He said private service providers could assist with up to 600 000 samples annually, but this was only for buccal swabs, and not crime scene samples. The same principles and procedures as SAPS would apply, and there should be re-typing done by SAPS after a DNA match.

In terms of the forensic oversight board, he pointed out that the new section 15Y(f) referred to 'A total of two representatives appointed by non-governmental organisations …' He said Forensics4Africa employed DNA experts who would be able to contribute substantially to the proceedings of the Board, and specifically requested that Forensics4Africa be considered to take up one of the two seats mentioned. Its lecturers had more than100 years combined experience in the field of forensic investigative sciences, and it also had qualified assessors and moderators. More than 600 enrolled students and more than 300 SAPS members had Recognition of Prior Learning. In terms of scientific expertise, it had two PhD students, and Mr Joubert himself had an Honours and more than 31 years experience in forensic biology.

Discussion

Ms D Kohler-Barnard (DA) wanted a run through of what Forensics4Africa found was currently acceptable in the Bill, for the Suspect Index. She asked what retention terms were suggested for samples in such a suspect index, pointing out that people could not be indefinitely considered as "suspects". She asked what was the international best practice, and asked if such an index was utilised elsewhere in the

world.

Mr Olivier said that it must be remembered, when speaking of the Suspect Index, that not everyone was arrested. For example, if a suspect were at a road block and a buccal swab was taken, but the person was not placed under arrest, that person could not later be found as there was no suspect database to cover this instance. The current version only made for suspects who were actually arrested. He thought consideration should be given to a broader definition of 'suspect'. He was not aware of any international uses of the suspect index, but personally thought it a good idea. However, if it was to be used, standard operating procedures needed to be worked out.

Ms M Molebatsi (ANC) asked if the members of Forensics4Africa were former SAPS members and, if so, why they had left SAPS.

Mr Olivier confirmed that most of those working at Forensics4Africa were retired policemen.

Mr M George (COPE) wanted an explanation why it was suggested that samples from under nails to be taken by trained persons, and why this should not be used as a reference sample.

Mr G Lekgetho (ANC) also questioned why samples from under nails should not be used as a reference sample.

Mr Olivier clarified that reference samples were collected from arrestees to get a DNA profile, while evidence was anything that could be used to link an individual to a specific crime scene. The problem with defining under the nail samples as 'a reference sample' was that it could in fact be evidence, and indeed was most likely to be so, in cases such as rape cases.

Mr V Ndlovu (IFP) questioned why specifically the period of three months had been suggested for arrestee samples to be destroyed, to get a background as to their thinking.

Mr Olivier responded that the three-month period referred back to the new section 15P, which spoke about bodily samples that must be destroyed, and this cited a period of three months. There was no other specific reasoning behind his suggestion for the three months here.

The Chairperson wanted a clear understanding of the 6 000 samples taken annually, and specifically asked if this was what private companies were doing, and under what circumstances this was being done. She was concerned that quality then became an issue. She asked how these people felt giving their samples to SAPS.

Mr Olivier explained that currently the capacity in South Africa indicated private service providers would be able to assist in 600 000 samples a year from buccal swabs and analysis to get a DNA profile. In this way, private service providers could help the police and quicken the process of creating a database. The figure did not actually refer to what these providers were currently doing. He said the same principles of quality and operating procedures used in the SAPS should be used by the private providers, if generating profile work were to be outsourced.

The Chairperson also asked that the Department of Police (SAPS) must give clarity on the Suspect and Arrestee index, provide a comment on the manufacturing of consumables, and the destroying of all samples.

Mr George asked Forensics4Africa to clarify what it had meant in relation to the seats on the oversight board.

Mr Olivier noted there were only two seats available and since Forensics4Africa felt that it had the necessary expertise to contribute, this was the reason why he had made that enquiry. However, if it should not be considered, it would not be so problematic. Forensics4Africa was in any event, through its daily work, contributing to forensic science and resolving crime through science, and this would be continued.

Ms Kohler-Barnard asked if the laboratories had international accreditation.

Mr Olivier said Forensics4Africa did not have a physical laboratory but made use of the laboratories of service providers in the practical training programmes for its own students, as it did not do actual operational work. It did have a plan to start its own labs, but that would take time and resources.

Ms Molebatsi questioned if the service providers referred to were only in South Africa.

Mr Olivier responded they were only in South Africa at the moment, from a training point of view, but they did consult with providers which gave them international reach.

The Chairperson asked how this was linked to the figure of 600 000 samples.

Mr Olivier said his company foresaw a capacity problem within SAPS and had suggested that the profiling of buccal swabs be outsourced to private service providers. This would only be profiling, not making the comparisons. These buccal swabs or reference samples could come from anyone. The Department of Correctional Services (DCS) could be involved and pick up any overflow that SAPS could not handle in terms of profiling. The emphasis was on assisting the police to get the database capacitated as soon as possible.

Maj-Gen. Adeline Shezi, SAPS, explained that the Bill made it clear that nail samples would not be used for reference samples, but that only a buccal swab would be used for a reference sample purposes.

Answering the concern about the environment within which samples must be taken, the legislation had referred to an environment "deemed suitable" and this could mean outside or inside, but she agreed that perhaps further clarity or an additional definition was needed as to what may be considered "suitable". Her own thinking was that it meant suitable for the level at which the legislation was pitched.

Maj-Gen Shezi confirmed that no other country defined a suspect index for database information. The Committee would have noted that when the Bill was under review on the last occasion. She pointed out that initially, a suspect index was included, but following the Committee's study tour, it was found that internationally, a suspect was considered to be anyone who was suspected of having committed an offence. The stance was taken, during deliberations, that with an arrestee, there were reasonable grounds to arrest.

Maj-Gen Shezi also responded to the point on the existing database, stating it was not within the determination of this Bill.

She answered the points made on the elimination index by saying that the Committee, during its study tour, had seen that the formation or the manufacturing of consumables was contained in the databases of other countries, but it was practical as the manufacturers resided in those countries. This did indeed pose more of a challenge in South Africa, since most consumables were imported, and SAPS would be dependent on getting outside Memorandums of Understanding. If manufacturers may not want to hand over the information, this could present an implementation challenge.

Maj-Gen Shezi then referred to the questions around disposal of genetic material, and said that essentially this meant that the sample would be destroyed. This was really a question that would be addressed in the operational issues and it was part of the finer detail and she did not think it appropriate to try to legislate for that point.

meant the sample would be destructed but this would be cascaded down to operational issues and was part of the nitty-gritty's which SAPS did not necessarily want to legislate for.

Gen Philip Jacobs, Head: Legal Support and Crime Operations, SAPS was sure the Committee would come back to the issue of the representation of the oversight board, as other submissions also referred to it.

The Chairperson felt there was not sufficient on transitional arrangements in the Bill, said it needed to be considered and proposals put forward, as this was a shortcoming.

Ms Kohler-Barnard understood the consumables were imported, but felt provision should be made for any locally made consumables in the future, and did believe those firms should be required to provide the relevant DNA.

Southern African Society of Human Genetics (SASHG) submission
Professor Louisa Warnich, representative of the Southern African Society of Human Genetics (SASHG) noted that this was a non-profit organisation for health care professionals involved and interested in human and medical genetics. Its mission was to advance the practice and science of human genetics in Southern Africa, to facilitate contact between persons engaged in clinical practice, science and research in human genetics and to maintain the highest ethical and professional standards in all its affairs and activities.

SASHG supported the Bill and the National Forensic DNA database (NFDD). Most of the concerns that had been expressed by SASHG in relation to the 2009 Bill had been addressed in the current version. These had, for example, included comments on the definition of "non-intimate sample", informed consent, the elimination index, potential outsourcing and quality assurance and regular review of the legislation, and it was satisfied that its concerns had now been answered.

SASHG's submission in 2012, following the Committee's oversight tour, supported the establishment of an ethics committee or an oversight body and it was glad to see that it had been implemented. The National Forensic Oversight Board (NFOB) was essential for monitoring ethical and privacy compliance, and discussing ethical, legal

and social implications which were bound to arise.

Ms Warnich said that various ethical, legal and social issues were associated with the collection of biological samples and DNA analysis, and SASHG felt that input from experts in the field of human genetics should be considered. SASHG proposed that the Forensic Science Laboratories should be independent of both the police and prosecution services. This would support the integrity of the criminal justice system, as was currently the case in the United Kingdom. The SASHG also recommended that data security and access policies be clarified. For example more clarity was needed on what information would be included on the database indices, alongside each profile, whether a unique identifier would be used for each sample, which would link to personal identification through a SA Identification (ID) number, and what would be used as the personal identification for illegal immigrants or refugees. The issues of ethical and privacy compliance with respect to data security and access should be monitored and discussed by the board.

Further recommendations were that the scope of the use of the data needed to be specified, due to rapidly evolving technologies and growth of knowledge in the field of human genetics. In the future, it may be possible to use DNA data to predict the appearance of a person, including, for example, eye, hair and skin colour, and the question arose whether it would be permissible to use such markers to identify unidentified human remains, such as in a mass disaster.

For quality management, the NFOB was tasked with proposing minimum quality standards and the National Commissioner would issue national instructions, ensure security of the database and ensure adequate training and regulations. However, SASHG had concerns around the National Forensic Laboratories certification/ accreditation, adequate training of all key personnel (crime scene, police, and lab) and chain of custody and turnaround times. It hoped more emphasis would be placed on these important points.

It also recommended adequate funding to ensure that activities proposed in this Bill could be fully implemented, as expensive technology would be used. SASHG could make substantial contributions. Because it would make sense for the NFOB to include an expert in the field f human genetics and it was felt that SASHG could, and would like to, play a role on the Board.

Discussion
The Chairperson noted that in the previous week, when the Parliamentary Researchers had taken Members through each clause of the bill, it was suggested that

the name of the Board be changed to include the word “ethics”, so that it should receive complaints and deal with abuses as well. This was not finalised, but was a suggestion.

Ms Kohler-Barnard was pleased that the SASHG was now more satisfied with the current version of the Bill, because it had strongly criticised some of the original proposals in 2009.

Mr George wanted an explanation for the suggestions on independence of the laboratories. He had thought the SAPS and prosecutors represented integrity in the criminal justice system.

Ms Kohler-Barnard understood where the SASHG was coming from in relation to the independence of laboratories, but felt it needed to consider the current situation of forensic science laboratories, as they were currently run by SAPS and were really quite well put together, were working, and at least people answered the phones – unlike the health laboratories. The non-functioning of the latter regrettably had an impact on SAPS, as much of what it did depended on the work of the Health laboratories, such as autopsies and blood analyses, for drugs or drunken driving. She cautioned that presenters should be careful what they wished for.

The Chairperson agreed with the comments of Mr George and Ms Kohler-Barnard and said that although at the moment there was definitely not consideration being given to privatising the laboratories, she would nonetheless like to hear suggestions as to what other measures could be put in place to secure integrity and use of the database, given the current circumstances and reality. The presenters were more than welcome to reply at a later stage in writing, but the realities had to be understood and borne in mind.

Ms Warnich said she was not questioning the integrity of the police currently, but felt there was no room for dabbling in each other’s affairs, if there were two bodies. She understood the current situation in South Africa and agreed that it needed to be considered what would be the ideal solution, but also to consider what was currently affordable. This was not to say that the ideal may not be able to be implemented in the future.

Ms Warnich agreed that privatising laboratories was not the best idea because of problems with quality management, and agreed with the views expressed by the Committee. She said that she would need to think more carefully before making submissions about integrity.

Mr George asked what the benefits and advantages would be, of having an independent laboratory as opposed to the current laboratory under the SAPS.

The Chairperson felt this was more of a philosophical debate.

Ms Warnich said that the reason for independence was so that the two bodies could not easily influence each other. She was not attempting to bring the integrity of the SAPS into question, as this was a philosophical statement, but there were huge financial implications. She repeated that there was a need to distinguish between "what it was nice to have" and "what was absolutely necessary".

Mr Ndlovu wanted elaboration on certain points in the presentation.

Mr George was not sure anybody had solutions to the problem of identifying foreign immigrants or refugees, and asked if the SASHG had any suggestions.

The Chairperson felt that SAPS needed to respond on how to deal with illegal immigrants and refugees.

Ms Warnich felt that in relation to refugees, there was no immediate solution that she could see. The SASHG saw this as a potential problem. There were currently many illegal immigrants and refugees in South Africa, and it would be a shame if the new technology could not be used broadly to help with crime. She suggested looking at what other countries did on this matter, which might even perhaps be matching profiles up with the databases in other countries. She agreed there should be no personal information on the database, but suggested that there should be some other number that could be linked to the specific individual, similar to an ID number.

Maj-Gen Shezi said matters such as identifiers would be discussed on an operational level. For the purposes of the Bill it was not possible to outline all specifics regarding identifiers, particularly given the problem of illegal refugees. Currently, and for the immediate future, the reference number accompanying all cases would be used as an identifier.

Gen Jacobs added that illegal immigrants were sometimes referred to as "undocumented nationals" and a portion of the Bill did make provision for internationalising, so follow-ups could be made with the country of origin.

The Chairperson noted that the Bill did make provision for review every five years,

and the point about the fast evolution of science was important. Perhaps the review should be every three years and there should be a role for the Board to play in this review, to give directions on areas where there was development, or at least to table a report to Parliament saying that there were no new developments, which in itself would have encouraged the Board to apply its mind to the situation. She asked for this to be noted, so that the issue could be further discussed.

Ms Warnich agreed that science moved fast, so there would need to be a continuous review.

The Chairperson referred to the points of quality management. She was concerned that not enough focus was being put on the training of prosecutors to be able to, and be capable of using the new evidence to argue their cases in court. This would also have an impact on judges, who would be making judgments based on new evidence. She stressed she was not criticising the judiciary, but was highlighting the realities and challenges. She noted that the State Law Advisers did not appear to be happy with this comment, but she felt that the training could not stop with SAPS.

Ms Kohler-Barnard highlighted a court case in the last month, where a suspect was jailed for a long time only because of the DNA evidence used that linked him to all the victims in a certain area. This proved that DNA profiling was an effective way to go. She agreed that training of prosecutors needed to be looked into, but they were making use of the new advancements already.

The Chairperson said the point was that the issue needed to be looked at holistically, that nothing should be taken for granted and that no loopholes should be created in the process. There would also be a need for the medical practitioners to understand their role in the chain of issues.

Maj-Gen Shezi commented that forensics training for the NPA and judges was continuous, and that the scoping of medical practitioners needed to be pursued, but they had been consulted.

The Chairperson asked Ms Warnich to submit suggestions to the Committee around the integrity issue by the end of the week.

The Chairperson thanked the presenters for their time and effort and said their suggestions would be taken into consideration. She said they were welcome to follow-up on the process of deliberation.

SAPS Technology Management Services Division, IJS & SITA briefings on implementation

Mr Sithembiso Freeman Nomvalo, Chief Executive Officer, State Information Technology Agency, noted that the most important task facing the Agency (SITA) was to carry out its work as government had envisaged. He had held a first meeting with General Ngubani and his team from SAPS, and had pledged to do everything possible to ensure that the work of this Committee in relation to the Bill would lead to successful implementation. He introduced the accompanying delegation from SITA and said that they had a much better grasp of the history of issues than he did, and would deal with questions as they arose.

Mr Godfrey Leseba, Chairman, Integrated Justice System (IJS) Board, noted that the IJS Board would be playing an important part in the integrated application of the Bill and supported it.

The Chairperson asked the presenters to get to the nitty-gritty of the system, and not to comment on any of the Bill's provisions, since the Committee probably knew more on the detail.

Maj-Gen Bonginkosi Ngubane: SAPS, said the teams had met yesterday to put together this presentation, with the impression that it was only due to be presented on Thursday.

He firstly wanted to outline the current status. The SAPS Forensic Science Laboratory (FSL) implemented a system called STRLab. The system was currently testing approximately 80 000 DNA samples per annum. He noted that the main impact of this Bill on the Justice, Crime Prevention and Security Cluster IT systems would be the need to expand the analysis capacity, from approximately 80 000 to 250 000 samples per annum, to attend to sample registration at the point of arrest, and integration into integrated booking and exhibit management, to deal with the exhibition of the registration of samples from crime scenes linked to their exhibit management. There needed to be the creation of a DNA database, migration of old DNA records from STRLab to the DNA database, and integration of the DNA database to the SAPS Legacy Systems like the Crime Administration System and the Case Administration System (CAS).

The implications for the Department of Justice and Constitutional Development (DOJ&CD) would be that this department's case postponement and outcome information must be integrated to SAPS, to enable administration and the expungement of records.

For the Department of Correctional Services (DCS) the Remand Offender Detainee System release notifications would have to be integrated to SAPS (IJS Person Tracking).

For the IJS, there would have to be integration for Person Identity information sharing once the departmental system readiness was achieved.

He then proceeded to outline the JCPS Cluster's IT systems readiness for Bill. From the SAPS viewpoint, there had been expansion of capacity for DNA testing, through the procured DNA analysis systems and the creation of the National DNA database (NFDD). The SAPS/SITA Tender was being prepared and there was a goal to award it by June 2014. Old STRLab records would have to be migrated to the NFDD once the system had been commissioned.

He noted that initially, manual processes were followed for the registration of arrestee samples but the automation of registration was under consideration in the integrated booking process, once the NFDD was established. Until then, the SAPS would continue to use the STRLab system. For crime scene samples, the electronic registration of crime scene samples was in development and should be ready by March 2014. The integration of NFDD to the SAPS Legacy Systems was to be started once the NFDD was implemented.

In terms of the DOJ&CD, case postponement and outcome information needed to be migrated to the DOJ&CD Integrated Case Management System, which was currently in the process of being developed with SITA, to provide for electronic capturing of case outcomes. Once completed, the information would be integrated via the IJS, to the SAPS systems.

For DCS, the Remand Offender Detainee System (RDOMS) project was on hold. Once this project was re-initiated, integration planning would commence.

For the IJS, the integration hub was established and had been integrated between SAPS and DOJ&CD but it was not yet integrated to the DCS (because of RDOMS dependency). Additional integrations were to be added once the underlying departmental systems were ready.

In terms of budget allocations, he explained that the most substantial item was the NFDD, and there had been adequate budgeting for this. In respect of the DNA analysis tools for CJS revamp, this was budgeted for, and similarly with the crime

scene sample registration and other internal integrations.

Discussion
Ms Molebatsi was very worried at the implication that the implementation teams had met only yesterday, and then only in order to prepare for this presentation. She asked when the DNA database was likely to be linked to the SAPS system.

Ms Kohler-Barnard said that she was particularly concerned about the implementation aspects. She asked whether any analysis had been done to look at an initial outsourcing of extra DNA to private laboratories that already had capacity. She quipped that the Committee felt it had about as much guarantee that this would happen, as it had that the e-docket system would happen. She wondered if the team had bothered to do a comparative analysis to establish full costing. She was distressed that the Committee still did not have the practical information that the Members needed.

Mr Ndlovu questioned what was the significance of the dates of March and June 2014, and what the idea of "on hold" meant. He said that there were known to be many problems in the DCS and he was worried that if the Bill was passed tomorrow, there would be no real integration. He wanted to know what was really happening, if this was a factual report or whether he was mistaken in his impression that not all issues had been addressed.

Mr George asked the team if it was aware that whether or not the Committee saw fit to pass this Bill was really dependent on what the implementation plans were. He appreciated that Maj-Gen Ngubani had conceded that the SAPS had a record of taking long to implement projects.

The Chairperson wanted to speak to the award of the tender in 2013. She expressed the view that if this whole system failed, the blame would rest squarely on him, and he could not rely on the defence of those sitting around him. She said that, in reality, there was no integration within the criminal justice system, and processes were still being carried out manually. SAPS was wasting hundreds of man hours looking for criminals only to find that they were already in prison, because there was no integration in the criminal justice system. Her understanding was that three years back, SAPS made its needs analysis known to SITA, but it was only now finalising the tender process, and this was unacceptable. She asked SAPS was looking at off-the-shelf solutions and the Combined DNA Index System (CODIS), instead of developing new systems.

She highlighted that the Firearms Control Act was passed in 2000, but by 2013 the system was still not working, despite having cost millions of rands to develop. There was no way in which anyone could convince her that it was working, as she was on the Task Team and saw for herself that it was not. She stressed that under her Chairmanship, the Bill would not be passed, without a paragraph in the Committee Report that said that the Committee did not believe the system could be implemented until the IT systems were sorted out. It was not at the stage of laboratories, SAPS or the courts where this would fail, but right here, with the IT systems. She was not surprised to hear mention of the CAS during the presentation, even though it was supposed to have been taken over by the e-docket system. The Committee was not pleased with the work being done until now, which included the IJS.

The Chairperson made the point that National Treasury was not a bottomless pit for funding the IJS. She was also unhappy that the Department of Home Affairs was not included as a role-player, for immigrants and refugees, and asked why these departments and systems were not talking to each other. She felt the SAPS was essentially asking the Committee for a blank cheque for the estimated R90 million.

The Chairperson demanded an explanation from SITA as to why the tender was still not finalised, three years after the needs assessment was conducted, and why it was not considering off-the-shelf solutions such as CODIS.

Maj-Gen Ngubane explained that the Task Team had only met yesterday because the invitation was received only last week. However, there had been management meetings.

The Chairperson interjected to say that Members needed to know how many meetings were held between SAPS, SITA and IJS, on this topic, with dates, and lists of those attending the meeting, from the time when the needs requirements were made known, three years ago, up to today. This must be given in writing by the end of the week.

Maj-Gen Ngubane said the PQM was still ongoing, but in development. The systems development was definitely on track and the portion related to the crime samples would be completed by March 2014. In terms of integration, he assured Members that all departments were ready to integrate. He deferred the question on the costing analysis of outsourcing as SAPS was only responsible for responding to the needs of the clients.

Maj-Gen Shezi said a full costing could still be provided, but in essence, the two

systems were ready to handle over 1.2 million samples over the given period of 12 months. The full and proper background could be provided to the Committee.

Maj-Gen Ngubane then noted that the 2014 time periods showed that there was not a good track record.

The Chairperson interjected that there was no track record.

Maj-Gen Ngubane conceded the point, but said that he had taken the new Chief Executive Officer of SITA into his confidence and the deadlines were set, that the tender must be awarded by or before June 2014. The SAPS was also looking at off the shelf solutions and this was definitely not off the cards yet. He put his head on the block that the March 2014 deadline would be met.

The Chairperson asked what part of the process was due to be completed, by March, and then by June 2014. She said the awarding of the tender was one thing, but then the process of implementation and building started. The e-docket tender went out in 2002, and eleven years later there was nothing to show for it but a bottomless pit where money had been thrown.

Maj-Gen Ngubane said that by March 2014 the Team would complete the development of the module under the PQM contract.

The Chairperson asked what this meant, and what practical benefit would be seen by the country.

Maj-Gen Ngubane said it meant samples could be obtained automatically from the crime scene on to the database. PQM was an exhibit, monitoring and tracking system, and that component was what would be completed by March 2014. He said that the June date applied to the complete database system. He highlighted until the NFDD was in place, the existing STRLab could be used, and assured Members that there was no crisis, as the system was currently working.

The Chairperson asked how long implementation would take, once the June 2014 tender was awarded.

Maj-Gen Ngubane responded that as soon as the tender was awarded, implementation would begin. The implementation would take eighteen months.

Mr Ndlovu asked if this was 18 months from June 2014.

Mr D Stubbe (DA) felt that perhaps there was a need to use a private company, to prevent money pouring into another pit. He personally did not have confidence in this system working, when the e-docket system was not even working.

The Chairperson quipped that if it were to be implemented in 18 months, it would be a miracle and she felt perfectly safe in offering to buy everyone dinner in Paris if this were to happen, as she believed it could not.

Maj-Gen Ngubane explained that the delay was due to the fact that the requirements had not been finalised, which was what the Team was currently working on. Once this was done, the procurement would be completed, after which the package solution would be implemented. He said the 18 months was a really strict target.

Mr Godfrey Leseba, Chairman of the IJS Board, accepted the criticism that the IJS programme had been in place for a while but was not moving at a good speed. He said a lot of work was done to change things around, including a review to change the programme, following which a report was then submitted to the Directors General of the JCPS Cluster. After that, a Cabinet proposal had been made, with clear recommendations on what needed to be done. There were structural changes, which were immediately decided on, and the reporting of the IJS board had been changed, so that it would have to report directly to the Directors General, to ensure that there was proper monitoring of performance on the ground. There was a need to ensure the best possible performance against the resources and number of projects.

He noted that there were five key areas on which all departments had to focus. There was some integration with the roll out of the case integration between the Departments of Justice and Police, with 99 police stations linked to 20 courts, and the SAPS was beginning to move the docket information electronically.

The Chairperson stopped him at this point, stating that a presentation on the e-docket had already been given to the Committee during the budget hearings. She would not allow Mr Leseba to tell the Committee that matters were working, when they were not. She commented that the figures given now did not even correlate with those given during the budget hearings, which mentioned 79 stations and 36 courts. SAPS told the Committee its members were not even trained on the e-docket system. She emphasised again that, a full decade later, there was nothing working, and nothing to show for the IJS. She commented that she had no reason to think that Maj-Gen Ngubani, who had given the e-docket presentation, would have any reason to lie, and he had noted that there was not electronic movement of dockets. All that was implicit

in what was being done at the moment was a simple scanning of dockets, and here there was not even quality assurance as red ink used on the docket would mean that the document was not readable, once scanned. This was the reality on the ground. If the SAPS was serious, she wanted a direct response to the suggestion of an off-the-shelf product.

Mr Ndlovu challenged Mr Leseba on his statement that things were working. If they were, then DCS would have known about RDOMS and that had not happened.

Mr George asked if it was possible to get the strategy document submitted to Cabinet, as he felt Mr Leseba was talking off the cuff.

The Chairperson said she would not ask for a Cabinet memorandum but would insist on getting in writing, the five agreed priorities, as it would be quite interesting to measure this.

Maj-Gen Ngubane said the CODIS was the internal system of the laboratories, which had been evaluated, and the Team was at the point where it was ready to decide between using CODIS or the internal in-house development (done by SITA). He pointed out that if CODIS was the option, it would still have to be customised, so there would be further costs.

The Chairperson wanted an indication of the difference in costs.

Maj-Gen Ngubane said he could not say, but an evaluation was being conducted.

The Chairperson explained that this Bill was first introduced in 2008. Five years later, the costing was still being done, and there was also still apparent indecision between using an off the shelf solution and an in-house system, whilst at the same time the Committee was told that the in-house system was being developed. She wanted some of the questions to be referred to SITA also.

Mr Leseba said that if he had come to this meeting days ago, he would possibly not have agreed to become Chairperson. From an institution point of view, it was difficult to suggest that the questions should not be responded to, but he was sure that the Committee understood his personal predicament. It was only possible to hold the meeting with Maj-Gen Ngubani on the previous day. here was no excuse for the lack of noticeable progress, between the time the needs assessment was done up to now, but he wanted the Committee to think about the extent to which each of the institutions was responsible for the problem. Government had a set of accountability

rules that required answers even if the mandates were not clear. The lingering question was why Members had not raised these matters before.

The Chairperson ordered Mr Leseba to stop at that point. He was treading on very dangerous ground. She suggested that he must go back, and check how many times, over the past ten years, in the budget votes and reports of this Committee, these questions had been asked.

The Chairperson felt that the Committee was now wasting its time. She ruled that the meeting would come to an end at this point. After the Committee returned from constituency period in July, the Committee had to get another presentation, to give the information on costs and a comparative study. She was insistent upon getting a "watertight presentation" and if there were still blocks, she would send the team back again. She wanted the client, or the end user, to critique the presentation also, to establish whether it was satisfied, and whilst she did not want to put Maj-Gen Shezi in a difficult spot, this critique would be necessary. She reiterated that this Committee could not be seen as a supporter of endless and bottomless funding for enriching some individuals, and she would personally put a stop to it on this project.

Ms Kohler-Barnard wanted to see an accounting of all the money that had already been spent. She expressed that this team was the weakest link, it had failed every time by not having things ready. She also wanted a full accounting for what was envisaged still to be spent, saying that money was disappearing. The alternative was to call for a forensic investigation.

The Chairperson said she had made this point under the total costing. She wanted to know whether CODIS was available for free, and readily available on the internet, and if so, then she questioned why a costing would be needed for it. She suggested that the Committee might wish to meet also with the policy development team.

The Chairperson said that this was not a satisfactory note to end a meeting. However, the Committee was responsible for ensuring that proper implementation measures were in place, before the legislation was passed, and she reiterated that this Committee would not be signing any more "blank cheques".

The meeting was adjourned and the public hearings would continue on the following day.