

BLUE BOOK - BOTSWANA
FORENSIC PROCEDURES ACT, 2014

No. 31



of 2014

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An Act to provide for the procedures for obtaining forensic material; the retention, storage and disposal of forensic material and the use of forensic material for scientific analysis during criminal or other investigations; the establishment of National DNA database system and National DNA database Advisory Board and connected matters.

Date of Assent: 27.08.2014

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — Preliminary

1. This Act may be cited as the Forensic Procedures Act, 2014 and shall come into operation on such date as the Minister may, by Order appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —
“authorised applicant” means —

Interpretation

- (a) the police officer in charge of a police station;
- (b) the police officer investigating the crime in relation to which the forensic procedure is required; or
- (c) the Director of Public Prosecutions;

“authorised person” means —

- (a) a person registered as a medical practitioner or health care professional under the Botswana Health Professions Act;
- (b) scene of crime officer;
- (c) forensic officer;
- (d) wildlife expert; or
- (e) any other expert who collects forensic material;

Cap. 61:02

“Board” means the National DNA Database Advisory Board of Botswana established under section 23;

“Commissioner” means the Commissioner of Police;

“consent” means informed consent;

“child” means a person under the age of 18 years;

“DNA” means Deoxyribonucleic acid;

“forensic material” means —

- (a) a sample taken from —
 - (i) a person’s body,
 - (ii) a crime scene,
 - (iii) items linked to a crime, or
 - (iv) a scene or items linked to a scene;

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- (b) a handprint, fingerprint, footprint or toe-print taken of a person from a crime scene or items linked to the crime or any other place linked to the matter under investigation;
 - (c) a photograph or video recording of —
 - (i) a person at a crime scene or any other scene,
 - (ii) a crime scene or any other scene,
 - (iii) items linked to the crime or any matter under investigation,or
 - (iv) items linked to the crime scene or any other scene;
 - (d) an audio recording; or
 - (e) a cast or impression taken from a person;
- “forensic procedure” means any process or action necessary for, and related to the collection of forensic material;
- “intimate forensic procedure” means —
- (a) an external examination of the —
 - (i) genital area,
 - (ii) anal area,
 - (iii) buttocks, or
 - (iv) breasts, in the case of a female;
 - (b) the internal examination of any part of the body;
 - (c) the taking of a sample of blood or urine;
 - (d) the taking of a sample of pubic hair;
 - (e) the taking from a corpse a sample of —
 - (i) tissue,
 - (ii) the liver,
 - (iii) the kidney,
 - (iv) the heart,
 - (v) the lungs,
 - (vi) the brain, or
 - (vii) any other internal organ;
 - (f) the taking of a sample by swab or washing from the —
 - (i) genital area,
 - (ii) anal area, or
 - (iii) buttocks;
 - (g) the taking of a sample by —
 - (i) vacuum suction,
 - (ii) scraping, or
 - (iii) lifting by tape,from the genital area, anal area or buttocks;

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- (h) the taking of a dental impression; or
- (i) the taking of a photograph of, or an impression or cast of, a wound from —
 - (i) the genital area,
 - (ii) the anal area,
 - (iii) the buttocks, or
 - (iv) the breasts, in the case of a female;

“incapable person” means a person who is unable to give consent for the performance of a forensic procedure on his or her body because of immaturity or unsoundness of mind;

“investigating officer” means the police officer in charge of an investigation into the commission of an offence in relation to which a forensic procedure is carried out or proposed to be carried out;

“member” means member of the Board appointed in accordance with section 30;

“non-intimate forensic procedure” means —

- (a) an examination of any part of the body, other than —
 - (i) the genital area,
 - (ii) the anal area,
 - (iii) the buttocks, or
 - (iv) the breasts, in the case of a female,

that requires touching of the body or the removal of clothing;

- (b) the taking of fingerprints;
- (c) the taking of a sample —
 - (i) of hair other than pubic hair,
 - (ii) from a nail or under a nail,
 - (iii) of saliva or a sample by buccal swab,
 - (iv) by vacuum suction,
 - (v) by scraping or by lifting by tape from any external part of the body, other than the genital or anal areas, the buttocks or, the breasts, in the case of a female; or
 - (vi) by swab or washing from any external part of the body, other than the genital area, the anal area, the buttocks, or the breasts, in the case of a female; or

- (d) the taking of a photograph of, or an impression or cast of a wound from, any part of the body other than —
 - (i) the genital area,
 - (ii) the anal area,
 - (iii) the buttocks, or
 - (iv) the breasts, in the case of a female;

“serious offender” means a person who is charged with an offence which is punishable by —

- (a) a term of imprisonment of three or more years;
- (b) imprisonment for life; or
- (b) death;

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“suspect” means —

- (a) a person who is charged with an offence;
- (b) a child or incapable person charged with an offence;
- (c) a person who is summoned to appear before a court for an offence under this Act; or
- (d) a person who is believed on reasonable grounds to have committed an offence; and

“volunteer” means —

- (a) a person who volunteers to a police officer to undergo a forensic procedure; or
- (b) a suspect who is a child or incapable person whose parent or guardian volunteers to a police officer on the child or incapable person’s behalf, to undergo a forensic procedure.

PART II — *Procedure for the ordering and carrying out of forensic procedures*

Ordering
of forensic
procedure

3. (1) An investigating officer may order, in writing,

- (a) the performance of an intimate forensic procedure on a suspect;
 - (b) the performance of a non-intimate forensic procedure on a suspect;
- or
- (c) the collection of forensic material of the nature of a photograph, video recording, audio recording or by other legal means, of a suspect, crime scene or items linked to a crime.

(2) An investigating officer who orders the performance of a non-intimate forensic procedure or the collection of forensic material on a suspect under subsection (1), shall —

- (a) record —
 - (i) the date and time the order was made, and
 - (ii) the reasons for making the order;
- (b) sign the record made under paragraph (a); and
- (c) make or cause to be made available a copy of the record made under paragraph (a) to the suspect before the forensic procedure is carried out.

Consent of
suspect to
forensic
procedure

4. (1) On receipt of a record made under section 3, a suspect may consent to the carrying out of a forensic procedure on his or her body.

(2) Where consent is given in accordance with subsection (1) an authorised person carrying out a forensic procedure shall, where practicable, record or cause to be recorded by audiotape, videotape, electronic or other legal means, the giving of information about a proposed forensic procedure to a suspect and the suspect’s response.

(3) Where the procedure set out in subsection (2) is not practicable, the authorised person shall —

- (a) make or cause to be made a written record of such giving of information and the suspect’s response to it; and
- (b) make or cause to be made available a copy of the record to the suspect.

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(4) Notwithstanding subsection (1), a suspect may refuse to consent to the carrying out of a forensic procedure on his or her body.

(5) Where consent is refused in accordance with subsection (4), the authorised person shall —

- (a) record the refusal of the consent; and
- (b) proceed with the matter in accordance with section 8.

5. (1) An investigating officer shall explain to a suspect and the suspect shall be considered to have given his or her consent to a forensic procedure being carried out on him or her, after the investigating officer explains to the suspect —

- (a) the purpose for which the forensic procedure is required;
- (b) the offence in relation to which the forensic procedure is to be performed;
- (c) the manner in which the forensic procedure is to be performed;
- (d) that the forensic procedure shall only be performed by an authorised person;
- (e) that the giving of consent by the suspect and the giving of information under this section, shall be recorded in writing, and that the suspect has a right to a copy of the record;
- (f) that the information obtained from an analysis of the forensic material may be placed on the National DNA Database system;
- (g) that forensic material may be placed on the DNA Database system;
- (h) that the rules shall apply to protect illegal disclosure and use of the information obtained in terms of this section;
- (i) that where the suspect withholds his or her consent to the forensic procedure, then an urgent application may be made to a court in accordance with section 8 for an order authorising the carrying out of the forensic procedure; and
- (j) the effect of the suspect's withdrawal of consent in terms of this Act.

(2) Where practicable —

- (a) an intimate forensic procedure, other than the taking of a blood sample or a dental impression; or
- (b) a non-intimate forensic procedure for which a suspect is required to remove his or her clothes, other than his or her overcoat, jacket, gloves, socks, shoes or hat,

may be carried out by a person of the same sex as the suspect.

(3) An authorised person may request any number of persons to assist during the carrying out a forensic procedure.

6. (1) A suspect may withdraw his or her consent to the carrying out of a forensic procedure on himself or herself, before or during the procedure.

(2) Where a suspect withdraws his or her consent as set out in subsection (1), the investigating officer —

- (a) shall record such withdrawal in a form to be prescribed; and
- (b) may make an urgent application to a court to authorise the carrying out of a forensic procedure on the suspect.

Procedure for giving of consent to forensic procedure

Withdrawal of consent to forensic procedure

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Regulations
on medical
standards

(3) The investigating officer shall cause a copy of the record to be made available to the suspect as soon as is practicable after it is made.

7. (1) The Minister may, in consultation with the Minister responsible for health prescribe medical standards on the carrying out of forensic procedures.

(2) An authorised person shall carry out a forensic procedure, in a manner consistent with such medical standards as may be prescribed.

Court order
for forensic
procedure

8. (1) An authorised applicant may make an application to the court for an order for the carrying out of a forensic procedure on a suspect that has refused to consent to the performance of a forensic procedure on his or her body or that has withdrawn consent.

(2) Where the court grants an order authorising the carrying out of a forensic procedure on a suspect referred to in subsection (1), an authorised applicant may use reasonable force to —

- (a) enable a forensic procedure to be carried out; and
- (b) prevent the loss, destruction or contamination of any sample obtained through the procedure.

Forensic
procedure
on child or
incapable
person

9. (1) An authorised person shall not carry out a forensic procedure on a suspect who is a child or an incapable person, without the consent of the suspect's parent or guardian.

(2) Subject to subsection (3), an authorised person shall not carry out a forensic procedure referred to under subsection (1) unless the suspect is accompanied by —

- (a) a parent;
- (b) a guardian; or
- (c) where none of the persons referred to in paragraphs (a) or (b) are available, a person chosen by an authorised person, which person shall not be —
 - (i) a police officer, or
 - (ii) in any way involved in the investigation of the alleged offence.

(3) Where the person accompanying a child or incapable person unreasonably interferes with, or obstructs the carrying out of a forensic procedure on the suspect, an authorised person may remove or cause that person to be removed from the place where the forensic procedure is being carried out.

(4) The provisions of sections 4, 5 and 6 relating to the giving of consent or its withdrawal thereto, shall apply to this section, with necessary modifications.

Forensic
procedure
on serious
offender

10. (1) An authorised person may only carry out a forensic procedure on a serious offender by an order of a court.

(2) An investigating officer in charge of the investigation in relation to which a forensic procedure is to be carried out shall apply for a court order referred to in subsection (1).

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11. (1) An authorised person may carry out a forensic procedure on a volunteer who is a child or incapable person, with the consent of the parent or guardian of the volunteer.

Forensic procedure on volunteer

(2) The provisions of sections 4, 5 and 6 relating to the giving of consent, or its withdrawal thereto, shall apply to this section, with necessary modifications.

12. (1) Notwithstanding section 9 (1), an authorised person may carry out an intimate forensic procedure on a serious offender who is a child or incapable person, only by order of a court.

Intimate forensic procedure on child or incapable person

(2) The provisions of section 5 and 8 relating to the giving of consent shall apply to this section with necessary modifications.

13. An authorised person may, subject to section 6, during the carrying out of a forensic procedure, allow the presence of such number of persons as is reasonably necessary to ensure that a forensic procedure is carried out effectively.

Assistance during forensic procedure

PART III — *Handling of Forensic Material After Forensic Procedure*

14. Where a sample of forensic material extracted from a suspect's body is sufficient for analysis, the investigating officer shall ensure that —

Availability of forensic material to suspect

- (a) a sample sufficient for analysis, is made available to the suspect as soon as is practicable after the material is obtained;
- (b) reasonable care is taken to protect and preserve the forensic material until the suspect or parent or guardian of a child or incapable person receives it; and
- (c) reasonable assistance is given to the suspect to ensure that the sample of forensic material is preserved until it is analysed.

15. An investigating officer shall, as soon as is practicable —

Results of forensic procedure

- (a) after the results of an analysis of forensic material is obtained; or
- (b) after the taking of a photograph of a part of the suspect's body, give or cause to be given a copy of the results to the suspect or in the case of a child, to the parent or guardian.

16. (1) The Commissioner shall retain forensic material obtained through a forensic procedure for which a suspect has consented.

Retention and storage of forensic material or information

(2) A court may, upon application by an authorised applicant, order that forensic material or information obtained from the carrying out of a forensic procedure for which a suspect consents, be retained if the court is satisfied that —

- (a) during an investigation into the commission of a serious offence, forensic material reasonably believed to be from the body of the suspect had been found —
 - (i) at the scene of the serious offence,
 - (ii) on the victim of the serious offence or anything reasonably believed to have been worn, carried by the victim or in any way linked to the crime when the serious offence was committed,

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- (iii) on the volunteer or anything reasonably believed to have been worn or carried by the volunteer at the scene of the serious offence or in any way linked to the crime when the serious offence was committed, or
 - (iv) on a thing or person reasonably believed to be associated or in any way linked to the crime or with the commission of the serious offence;
- (b) there are reasonable grounds to believe that information obtained from analysis of the forensic material taken from the volunteer is likely to produce evidence of probative value in relation to the serious offence; and
- (c) retaining the forensic material taken from the volunteer is justified in the circumstances.
- (3) A court order granted under this section may state the period for which the forensic material obtained from the procedure may be retained.

Management
of forensic
material

17. The Commissioner shall, within six months of the commencement of this Act, issue guidelines for the management of forensic material.

Retention of
electronic
record

18. (1) Any recording made on audiotape, videotape or other electronic or other means by a police officer or investigating officer acting in terms of this Act, that is not required for investigative or evidentiary purposes, may be retained for such purpose and period as the Commissioner may direct.

(2) The Commissioner shall, within six months of the commencement of this Act, issue guidelines on the manner and time frame for the retention of the matter referred to in subsection (1).

PART IV — *Admissibility of evidence*

Forensic
evidence
obtained
properly

19. (1) Any forensic material obtained through a forensic procedure carried out in accordance with this Act shall be admissible as evidence in a court of law.

(2) The court may consider the following in deciding whether to admit forensic material referred to in subsection (1), as evidence —

- (a) the probative value of the evidence, including whether evidence of equivalent probative value could have been obtained by other means; or
- (b) all relevant factors which, in the opinion of the court, are necessary for arriving at a just decision.

Inadmissibility
of material due
to be destroyed

20. The results of an analysis and other evidence relating to forensic materials which are to be destroyed in accordance with the guidelines issued under section 17 of this Act shall not be admissible as evidence in court.

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21. The evidence of a suspect’s withdrawal of consent to a forensic procedure is admissible as evidence in proceedings against the suspect only for purposes of establishing or rebutting an allegation that the investigating officer acted contrary to this Act or any written law in carrying out the investigation.

Evidence relating to consent

22. Evidence of how a forensic procedure was carried out is admissible in court —

Evidence relating to carrying out forensic procedure

- (a) to establish or rebut an allegation that unreasonable force was used during the carrying out of the forensic procedure;
- (b) to decide the admissibility of a confession or admission or other evidence adverse to the suspect if the suspect alleges that the evidence was induced or obtained by the use of unreasonable force; or
- (c) to establish or rebut an allegation that the forensic procedure was not carried out in accordance with this Act.

PART V — *Access To and Use of Information On DNA Database System*

23. (1) There is hereby established a national DNA Database system within the Botswana Police Service to be known as the National DNA Database system (herein after referred to as “NDD”).

Establishment of DNA Database

(2) The NDD shall be administered and maintained by the Commissioner or his or her delegate.

24. (1) Subject to subsection (2), any person who is authorised to have access to the NDD may only access or use information stored on the NDD for purposes of —

Accessing NDD

- (a) forensic comparison;
- (b) making the information available, in the prescribed manner, to the person to whom the information relates;
- (c) administering the database system;
- (d) satisfying a request made in accordance with any agreement entered into between Botswana and the Commonwealth or any State, for the provision of access to information contained in the NDD by law enforcement officers or by anyone else prescribed under regulations;
- (e) an inquest; or
- (f) an investigation of a complaint by any person who has statutory functions of carrying out the investigation.

(2) This section shall not apply to the accessing of information which cannot be used to determine the identity of the person to whom the information accessed relates.

(3) In this section, “information” means information delivered by sequencing the DNA that the sample contains but does not extend to a genetic sample.

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Appointment
of authorised
officers

25. The Commissioner shall appoint, in writing, such persons as the Commissioner considers appropriate (hereinafter referred to as “authorised officers”), to administer the NDD.

Removal of
information
from NDD

26. (1) An authorised officer, in consultation with the Commissioner shall, in carrying out his or her duties in relation to the NDD, ensure that —

- (a) any identifying information relating to a volunteer from whose forensic material a DNA profile was derived, is removed from the NDD as soon as it no longer serves the purpose for which it was obtained;
- (b) where a volunteer withdraws his or her consent to having his or her DNA profile kept on the NDD, the DNA profile of that volunteer is removed; or
- (c) where a serious offender is acquitted of the serious offence concerned, or the serious offender’s conviction in relation to the offence is quashed, the DNA profile of the serious offender is removed from the NDD as soon as is practicable after becoming aware of the acquittal, or the quashing of the conviction.

(2) In this section, “identifying information ” means, any information that may be used —

- (a) to discover the identity of a person from whose forensic material the DNA profile was derived; or
- (b) to obtain information about an identifiable person.

Matching of
profiles

27. (1) An authorised officer shall not —

- (a) match any DNA profile on an index of the NDD, with a DNA profile on the same or another index of the NDD, unless the matching is for the purpose of administering the NDD; or
- (b) match any DNA profile on the volunteers’ index with any DNA profile on another index, except for the purpose for which it was originally obtained.

(2) In this section “index” means any of the following indices —

- (a) “convicted offenders” index;
- (b) “crime scene index” which is an index of DNA profiles derived from forensic material found —
 - (i) at any place, whether in or outside Botswana, where a serious offence was, or is reasonably suspected of having been committed,
 - (ii) on or within the body of the victim of a serious offence, or
 - (iii) on anything that was worn or carried by the victim of the serious offence or in any way linked to the crime;
- (c) “prohibited immigrant index” which is an index of DNA profiles derived from forensic material obtained from persons declared prohibited immigrants under the Immigration Act;
- (d) “missing person’s index” which is an index of DNA profiles derived from the forensic material obtained from missing persons and volunteers who are blood relatives of missing persons;

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- (e) “serious offenders index” which is an index of DNA profiles derived from forensic material obtained from persons convicted of a serious offence;
 - (f) “suspects’ index” which is an index of DNA profiles derived from forensic material obtained from suspects;
 - (g) “unknown deceased persons’ index” which is an index of DNA profiles derived from the forensic material obtained from deceased persons whose identities are unknown; and
 - (h) “volunteers’ index” which is an index of DNA profiles derived from the forensic material obtained from volunteers.
- (3) Information pertaining to a suspect shall be deleted from the NDD upon the acquittal of the suspect.

PART VI — *Establishment of National DNA Database Advisory Board*

28. There is established a Board to be known as the National DNA Database Advisory Board of Botswana (hereinafter referred to as “the Board”).

Establishment
of Board

29. (1) The Board shall be responsible for the general control of the NDD and of the performance and undertakings of the members of the Board.

Functions and
powers of
Board

(2) Without derogating from the generality of subsection (1), the Board shall —

- (a) supervise and monitor the administration and management of the NDD;
- (b) advise on and monitor the laboratories to be accredited under this Act;
- (c) advise on the standard forensic laboratory practice for the effective operation of the NDD;
- (d) advise the Minister on issues of policy and matters pertaining to this Act;
- (e) advise on —
 - (i) the appropriate storage of forensic materials and information derived there from; and
 - (ii) regulations on the procedure for destruction of forensic material;
- (f) advise on the storage of any photograph, fingerprints or anything obtained under this Act;
- (g) in consultation with the Commissioner, advise the Minister on all matters which are reasonably necessary or expedient to be provided for under this Act; and
- (h) perform such other functions as the Minister may direct.

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Membership
of Board

30. (1) The Board shall consist of the following members appointed by the Minister in writing, and acting on the recommendations of the Commissioner —

- (a) a representative of the Commissioner who shall be *ex-officio*;
- (b) a representative of the Director of Public Prosecutions;
- (c) a representative of the Ministry of Defence, Justice and Security;
- (d) an independent DNA or genetics scientist;
- (e) a representative of the non-governmental organisation umbrella body;
- (f) the Director of Forensic Science Services or his or her delegate; and
- (g) a member of the public knowledgeable in forensic matters.

(2) The Minister shall appoint the Chairperson of the Board from its members, not later than six months of the coming into force of this Act.

(3) The Vice Chairperson of the Board shall be elected by the members from amongst themselves.

(4) A member shall hold office for three years and shall be eligible for re-appointment for two consecutive terms.

(5) The appointment of members of the Board shall be staggered to ensure continuity of the business of the Board.

Disqualification
of member

31. A person shall not be appointed a member or shall not continue to hold office, if he or she has —

- (a) in terms of a law in force in any country —
 - (i) adjudged or otherwise declared bankrupt and is not discharged, or
 - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
- (b) within a period of 10 years immediately preceding the date of his or her appointment, been convicted of a criminal offence for which he or she has not received a free pardon and notwithstanding that the sentence is suspended, which, if committed in or outside Botswana, would have resulted in a criminal offence, the penalty for which would be at least six months imprisonment without the option of a fine.

Removal and
resignation
of member

32. (1) The Minister may, after consultation with the Board, remove a member from office where the member —

- (a) is absent, without reasonable cause, from three consecutive meetings of the Board of which he or she has had notice;
- (b) is inefficient;
- (c) is found to be physically or mentally incapable of performing his or her duties efficiently, and the member's medical doctor has issued a certificate to that effect;
- (d) becomes a member of the National Assembly, *Ntlo ya Dikgosi* or a councillor of a local authority; or
- (e) contravenes this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board.

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(2) A member may resign from the Board by giving 30 days notice, in writing, to the Minister.

(3) The office of a member shall become vacant where the member —

- (a) becomes subject to disqualification referred to under section 31 or any other section;
- (b) appeals, and a period of 30 days elapses from the date a ruling against him or her is made on appeal in respect of a conviction against the member under this Act;
- (c) does not appeal, 30 days after the member was convicted of an offence referred to under paragraph (b);
- (d) resigns in terms of subsection (2);
- (e) is given notice in writing by the Minister to vacate office and a period of 30 days elapses before a member appeals; or
- (f) is removed by the Minister on the grounds of misconduct in terms of subsection 31 (1) (e).

(4) The Chairperson shall notify the Minister in writing as soon as possible after a vacancy occurs in the membership of the Board.

(5) Where a vacancy exists in the membership of the Board, the Minister shall, within three months of receiving the notice under subsection (4), appoint another person to fill that vacancy.

33. (1) The Board shall regulate its own proceedings.

(2) The Board shall meet at least every three months, or as often as is necessary for the transaction of its business.

(3) A meeting of the Board shall be held at such place and time as the Board may determine and shall be convened by the Chairperson of the Board.

(4) The Chairperson shall convene the first meeting of the Board, not later than two months after his or her appointment by the Minister.

(5) The Chairperson shall preside at any meeting of the Board, in his or her absence, the Vice Chairperson.

(6) Where both the Chairperson and the Vice Chairperson are absent, members present and constituting a quorum shall elect from amongst them a chairperson for the purpose of that meeting.

(7) A decision of the Board on any matter shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(8) At any meeting of the Board, a quorum shall be constituted by not less than one half of the members of the Board.

(9) The Chairperson of the Board shall cause proper minutes of the meetings of the Board to be taken and recorded.

(10) The Board may co-opt any number of persons qualified or able to assist it in its functions, to attend any of its meetings, but such persons shall not vote.

Meetings of
Board

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(11) The Botswana Police Service shall be the Secretariat for the Board.

(12) The Chairperson shall in writing, give a member at least 10 days notice of a meeting of the Board stating the place of the meeting and attaching the agenda.

Remuneration

34. A member or any person co-opted to assist the Board, attending a meeting shall be paid such allowances as the Minister may determine.

Disclosure of interest

35. (1) If at any meeting of the Board a member of the Board is aware or becomes aware that a matter which beneficially affects him or her directly or indirectly is to be discussed, he or she shall forthwith declare, to the Board, his or her interest in the matter and the Board may, if it considers it appropriate, require him or her to recuse himself or herself from the discussion on the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a member of the Board fails to disclose his or her interest in accordance with subsection (1), and a decision by the Board is made benefitting such member, such decision shall be null and void to the extent that it benefits such member.

(4) A member of the Board who fails to comply with the provisions of this section commits an offence and shall be liable to removal from the Board.

Confidentiality

36. (1) A member of the Board shall observe and preserve the confidentiality of all matters coming before the Board, and such confidentiality shall subsist even after the termination of the term of office or the mandate of the member.

(2) A member of the Board to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) A member of the Board who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P5 000, or imprisonment for a term not exceeding six months, or to both.

PART VII — *General*

Designation of laboratories, etc.

37. (1) The Minister may, by Order published in the *Gazette* —

(a) designate forensic laboratories to carry out forensic analysis under this Act; and

(b) set out qualifications of private analysts who may carry out forensic procedures under this Act.

(2) The Minister shall consult the Board before making an Order under subsection (1).

38. (1) A police officer, authorised officer or other person who has access to —

- (a) information stored on the NDD;
- (b) any information obtained in the forensic material; or
- (c) any other information revealed by a forensic procedure carried under this Act,

shall not disclose that information except in accordance with the provisions of this section.

(2) A police officer, authorised person or other person who has access to the NDD shall not disclose information stored on the system, except for purposes of —

- (a) forensic comparison in the course of a criminal or other investigation by the police officer or by other person prescribed under regulations;
- (b) making the information available in accordance with this Act, to the person to whom the information relates;
- (c) administering the NDD;
- (d) an inquest or inquiry;
- (e) the investigation of a complaint, by a person who has statutory functions of carrying out such investigation; or
- (f) any other purpose set out under this Act.

(3) A person who has access to information obtained from the carrying out of a forensic procedure or any information under this Act, shall not disclose the information, except —

- (a) for the purpose of the investigation of an offence by a person who has statutory functions of carrying out such investigations;
- (b) for the purpose of civil proceedings, including a disciplinary proceeding, relating to the carrying out of the forensic procedure;
- (c) for the purpose of criminal proceedings;
- (d) for the purpose of a suspect's medical treatment;
- (e) for the purpose of an inquest or inquiry;
- (f) for the purpose of assisting in making a decision on whether to institute proceedings for an offence;
- (g) for the purpose of the medical treatment of a victim of an offence, where there are reasonable grounds to believe that the offence was committed by the person on whom the forensic procedure was carried out; or
- (h) if the suspect, serious offender, or volunteer consents, in writing, to the disclosure.

(4) Any person who contravenes this section commits an offence and is liable to a fine not exceeding P40 000 or to imprisonment for a term not exceeding four years, or to both.

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Liability
for forensic
procedures

39. A person acting in terms of this Act, shall not incur any liability for anything done in the carrying out, or helping to carry out a forensic procedure if —

- (a) the person believed on reasonable grounds that consent had been given to the carrying out of the forensic procedure;
- (b) a court granted an order for the carrying out of the forensic procedure; or
- (c) the act was reasonable under the circumstances.

Offences and
penalties

40. Any person authorised to act under this Act who —

- (a) carries out a forensic procedure otherwise than in accordance with this Act;
- (b) discloses information on the NDD or information obtained from the carrying out of a forensic procedure, otherwise than in accordance with this Act;
- (c) without authority, uses or discloses stored samples obtained under this Act;
- (d) matches or causes the matching of any DNA profiles other than in accordance with this Act;
- (e) fails to destroy any forensic material and information under this Act;
- (f) unreasonably interferes with, or obstructs the carrying out of a forensic procedure on a suspect;
- (g) obstructs or hinders the carrying out of a forensic procedure authorised by order of court; or
- (h) contravenes this Act in any other manner,

commits an offence and is liable to a fine not exceeding P40 000 or to imprisonment for a term not exceeding four years, or to both.

Access with
intent to
commit an
offence

41. A person who, with intent to commit an offence under this Act, causes a computer or computer system to perform any function for the purpose of securing access to any programme or data held in a computer or computer system, a computer service, commits an offence and is liable to a fine not exceeding P40 000, or to imprisonment for a term not exceeding four years, or to both.

Unauthorised
interference
with data

42. (1) A person who intentionally, without lawful excuse or justification, does any of the following acts —

- (a) destroys, deletes, suppresses, alters or modifies data in the NDD;
- (b) renders data in the NDD meaningless, useless or ineffective;
- (c) obstructs, interrupts or interferes —
 - (i) with the lawful use of NDD data, or
 - (ii) any person in the lawful use of NDD data; or
- (d) denies access to NDD data to any person entitled to it,

commits an offence and is liable to a fine not exceeding P40 000 or to imprisonment for a term not exceeding four years, or to both.

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(2) Where, as a result of the commission of an offence under subsection (1), the following is impaired, suppressed, altered or modified —

- (a) the operation of the computer or computer system;
- (b) access to any programme or NDD data held in any computer or computer system; or

(c) the operation of any programme or the reliability of any NDD data, a person is liable to a fine not exceeding P20 000, or to imprisonment for a term not exceeding two years, or to both.

(3) A person is not liable under this section where the person is acting in reliance of any statutory power arising under any enactment for the purpose of —

- (a) obtaining information; or
- (b) possession of any document or other property.

(4) For the purposes of subsections (1) or (2), it is immaterial whether an unauthorised interference, or any intended effect of it, is temporary or permanent.

43. (1) A person who intentionally, without lawful excuse or justification —

- (a) hinders or interferes with the functioning of a computer or computer system; or
- (b) hinders or interferes with a person who is lawfully using or operating a computer or computer system,

commits an offence and is liable to a fine not exceeding P20 000, or to imprisonment for a term not exceeding two years, or to both.

(2) For the purposes of subsection (1) “hinder”, in relation to a computer or computer system, includes —

- (a) cutting the electricity supply to a computer or computer system;
- (b) causing electromagnetic interference to a computer or computer system;
- (c) corrupting a computer or computer system by any means;
- (d) inputting, deleting, altering or modifying NDD data; and
- (e) impairing, by any means, the connectivity, infrastructure or support of a computer or computer system.

(3) A person who intentionally, without lawful excuse or justification, commits an act which causes, directly or indirectly —

- (a) a denial, including a partial denial, of access to a computer or computer system; or
- (b) an impairment of any programme or NDD data stored in a computer or computer system,

commits an offence and is liable to a fine not exceeding P40 000, or to imprisonment for a term not exceeding four years, or to both.

Unauthorised
interference
with computer
or computer
system

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Unlawful interception of data

44. A person who intentionally and by technical means, without lawful excuse or justification, intercepts —

- (a) any non-public transmission to, from or within a computer or computer system; or
- (b) electromagnetic emissions that are carrying data, from a computer or computer system,

commits an offence and is liable to a fine not exceeding P40 000 or to imprisonment for a term not exceeding four years, or to both.

Sharing of information by Minister

45. The Minister may enter into arrangements with participating jurisdictions for the sharing of information from the NDD.

Regulations

46. The Minister may make regulations for the better carrying out of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for —

- (a) the procedure for the designation of laboratories;
- (b) the procedure for the destruction of forensic materials obtained under this Act;
- (c) registers to be kept under this Act;
- (d) information to be contained in indices under this Act; and
- (e) any matter to be prescribed under this Act.

Transitional provisions

47. (1) Forensic material, or information obtained from the forensic material, obtained before the commencement of this Act, may be retained or used for —

- (a) investigative purposes;
- (b) evidentiary purposes;
- (c) statistical purposes; or
- (d) any other legal purposes,

even if the retention or use of the forensic material or information obtained from it, would, if it had been obtained after the commencement of this Act, constitute a breach of this Act, relating to the carrying out of forensic procedures.

(2) Any DNA profiles, records or other forensic material or otherwise stored or maintained and administered by the Botswana Police Forensic Science Services prior to the commencement of this Act, shall be retained or used as if obtained under this Act.

(3) Any lawful act done before the commencement of this Act, that properly falls within this Act shall, in so far as it is not inconsistent with this Act, continue to be applicable as if done under this Act.

PASSED by the National Assembly this 15th day of July, 2014.

BARBARA N. DITHAPO,
Clerk of the National Assembly.