

DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION BILL, 2016

ARRANGEMENT OF CLAUSES

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A BILL

FOR

AN ACT TO ESTABLISH THE FORENSIC DNA DATABANK IN NIGERIA CHARGED WITH THE RESPONSIBILITY FOR THE COLLECTION OF DNA SAMPLES, MAKING FORENSIC DNA ANALYSIS, USE OF DNA PROFILES AND INFORMATION TARGETED AT ADDRESSING DOUBTS IN CRIMINAL AND DNA RELATED ISSUES; AND FOR RELATED MATTERS

Sponsored by Hon. Patrick Asadu

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

PART I - FORENSIC DNA DATABANK NIGERIA

1. There is established the Forensic DNA Databank of Nigeria (in this Bill referred to as "the DNA Databank").

Establishment
Forensic DNA
Databank Nigeria

2. The DNA Databank containing DNA profiles and any information derived from an intimate or non-intimate sample shall consist of-

- (a) crime scene index with such sample found on-
 - (i) any thing or at any place where an offence was committed,
 - (ii) or within the body of a victim of an offence,
 - (iii) anything worn or carried by the victim of an offence at the time when the offence was committed, or
 - (iv) within the body of any person reasonably suspected of having committed an offence;
- (b) suspected person's index with such sample taken from a person reasonably suspected of having committed an offence and includes suspects who have not been charged in any court for any offence;
- (c) convicted offender's index with such sample taken from a person convicted of any offence under a written law;

- 1 (d) detainee's index;
- 2 (e) drug dependant's index;
- 3 (f) missing person's index with such sample taken from-
- 4 (i) the body or part of the body of an unidentified deceased person,
- 5 (ii) anything worn or carried by a missing person, or
- 6 (iii) the next of kin of a missing person if so required; and
- 7 (g) voluntary index with such samples taken from a person who
- 8 volunteers to submit the same for the purpose of storage of the DNA
- 9 information in the DNA Databank and for such other purpose required by law.

Objectives of
DNA Databank

10 3.-(1) The primary objective of the DNA Databank is to keep and
11 maintain the indices referred to in section 2 (f)(i) for the purpose of human
12 identification in relation to forensic investigation.

13 (2) In addition to subsection (1), the DNA profiles and any related
14 information kept and maintained in the DNA Databank may be used in
15 assisting the-

16 (a) recovery or identification of human remains from a disaster or for
17 humanitarian purposes; and

18 (b) identification of living or deceased persons.

Function of
DNA Databank

19 4. The function of the DNA Databank shall be to store DNA profiles
20 and any related information from any forensic DNA analysis carried out by-

21 (a) the Nigerian Institute of Science Laboratory Technology;

22 (b) Forensic Laboratory of the Nigeria Police Force; or

23 (c) any agency or body as may be designated by the Minister from
24 time to time by order published in the Gazette.

Power of Minister
to designate
agency or body
to carry out
forensic DNA
Analysis

25 5.-(1) The power of the Minister to designate any agency or body to
26 carry out forensic DNA analysis under section 4 (c) shall only be exercised in
27 the event that the Nigerian Institute of Science Laboratory or Forensic
28 Laboratory of the Nigeria Police Force is unable to carry out any forensic DNA
29 analysis.

30 (2) The Minister may, in the order referred to in section 4 (c), specify

1 that the forensic DNA analysis carried out by the agency or body so
2 designated shall only be for the purposes mentioned in section 3 (2), subject
3 to such terms and conditions as he may impose.

4 PART II - APPOINTMENT OF DIRECTOR, DEPUTY DIRECTOR AND

5 OTHER STAFF OF THE DNA DATABANK

6 6.-(1) The Minister shall appoint an expert or a police officer not
7 below the rank of-

Appointment of
Director of DNA
Databank, Deputy
Director of DNA
Databank and
other Officers

8 (a) Deputy Commissioner of Police as Director of the DNA
9 Databank for such period and on such terms and conditions as may be
10 specified in his letter of appointment;

11 (b) Assistant Commissioner of Police as Deputy Director of DNA
12 Databank who shall be subject to the control and direction of the Director
13 and may exercise the powers and perform the functions of the Director under
14 this Bill.

15 (2) The Minister shall appoint such number of DNA Databank
16 staff, as may be necessary for realising the objectives of this Bill, from
17 members of the police force, chemists and other officers from or attached to
18 the Nigerian Institute of Science Laboratory Technology who shall be
19 subject to the control, direction and supervision of the Director.

20 (3) The Director may in writing, subject to such condition as he
21 thinks fit to impose, delegate all or any of his powers or functions under this
22 Bill to the Deputy Director or to any of the DNA Databank staff.

23 (4) A delegation under subsection (3) may be revoked at any time
24 by the Director.

25 7.-(1) The Director shall-

Functions and
powers of the
Director of DNA
Databank

26 (a) be responsible for the general conduct, administration
27 supervision and management of the DNA Databank;

28 (b) establish mechanisms to facilitate the collection, storage and
29 dissemination of data in connection with DNA profiles and any related
30 information stored in the DNA Databank;

1 (c) ensure that DNA profiles and any related information are securely
2 stored and remain confidential;

3 (d) store and dispose of the intimate and non-intimate sample taken
4 for the purpose of forensic DNA analysis in accordance with the provisions of
5 this Bill and as prescribed the regulations;

6 (e) co-operate with foreign law enforcement agency in accordance
7 with the provisions of this Bill; and

8 (f) carry out any other function that may be assigned to him by the
9 Minister in furtherance of the objectives of the DNA Databank.

Rectification of
particulars in
DNA profile and
information

10 8.-(1) The Director shall be entitled to rectify the particulars in the
11 DNA profiles and any related information if-

12 (a) a clerical error has occurred; and

13 (b) sufficient evidence is produced to satisfy him that the entry made
14 is incorrect.

15 (2) In rectifying the particulars incorrectly entered under subsection
16 (1), the Director may issue, where necessary, such particulars to the person
17 entitled to the information derived from the analysis of sample taken from him.

18 (3) The powers under this section shall be exercised by the Director
19 alone.

20 (4) Any rectification made pursuant to this section shall not constitute
21 an offence under section 21 of this Bill.

Power of Minister
to give directions

22 9. The Minister may give the Director directions of general character
23 consistent with the provisions of this Bill relating to the performance of the
24 functions and the exercise of the powers of the Director and the Director shall
25 give effect to such directions.

Access of DNA
profile and
information

26 10.-(1) The access to, a communication or use of DNA profiles and
27 any related information stored in the DNA Databank by the Director, the
28 Deputy Director, DNA Databank staff and any chemist shall only be for the
29 purpose of-

30 (a) forensic comparison with any other DNA profile or information in

1 the course of an investigation of any offence conducted by any law
2 enforcement agency;

3 (b) administering the DNA Databank; or

4 (c) making the information available to the person to whom the
5 information relates.

6 (2) A communication or use of DNA profiles and any related
7 information under subsection (1) by a chemist shall be for the purpose
8 mentioned in subsection (1) (a) of this section.

9 PART III - TAKING, STORING AND DISPOSING OF INTIMATE AND NON-
10 INTIMATE SAMPLES, REMOVAL OF DNA PROFILE AND INFORMATION

11 11.-(1) The procedures for the taking of an intimate sample of any
12 person under this Bill shall be in accordance with the provisions of this
13 section and as prescribed by the regulations.

Taking of
intimate sample

14 (2) An intimate sample of-

15 (a) a person reasonably suspected of having committed an offence;

16 (b) a detainee; or

17 (c) a drug dependent, may be taken for forensic DNA analysis only

18 if-

19 (i) an authorized officer permits it to be taken, and

20 (ii) an appropriate consent in the prescribed form is given by the
21 person from whom an intimate sample is to be taken.

22 (3) Subject to an appropriate consent given under subsection (2) (c)

23 (ii), an authorized officer shall only give his permission under subsection (2)

24 (c) (i) if-

25 (a) he has reasonable grounds for-

26 (i) suspecting that the person from whom the intimate sample is to
27 be taken has committed an offence, and

28 (ii) believing that the sample will tend to confirm or disprove the
29 commission of the offence by that person;

30 (b) an arrest has been effected on, or a detention order has been

1 made against, a detainee; or

2 (c) an order or a decision has been made against a drug dependant.

3 (4) An authorized officer-

4 (a) shall give his permission under subsection (3) in writing; or

5 (b) where it is impracticable to comply with paragraph (a) of this
6 subsection, may give such permission orally, in which case he shall confirm it
7 in writing as soon as may be possible.

8 (5) A person from whom an intimate sample is taken shall be entitled
9 to the information derived from the analysis of the sample taken from him.

10 (6) An intimate sample shall only be taken by a government medical
11 officer.

Taking of non-
intimate sample

12 **12.-(1)** The procedures for the taking of a non-intimate sample of any
13 person under this Bill shall be in accordance with the provisions of this section
14 and as prescribed by the regulations.

15 (2) A non- intimate sample of-

16 (a) a person reasonably suspected of having committed an offence;

17 (b) a detainee; or

18 (c) a drug dependent, may be taken only if an authorized officer
19 permits it to be taken.

20 (3) An authorized officer shall only give his permission under
21 subsection (2) if-

22 (a) he has reasonable grounds for-

23 (i) suspecting that the person from whom the non-intimate sample is
24 to be taken has committed an offence, and

25 (ii) believing that the sample will tend to confirm or disprove the
26 commission of the offence by that person;

27 (b) an arrest has been effected on, or a detention order has been made
28 against, a detainee; or

29 (c) an order or a decision has been made against a drug dependant.

30 (4) An authorized officer-

1 (a) shall give his permission under subsection (2) in writing; or

2 (b) where it is impracticable to comply with paragraph (a) of this
3 subsection, may give such permission orally in which case he shall confirm
4 it in writing as soon as possible.

5 (5) The person from whom a non-intimate sample is taken shall be
6 entitled to the information derived from the analysis of the sample taken
7 from him.

8 (6) A non-intimate sample shall only be taken by a-

9 (a) government medical officer;

10 (b) police officer; or

11 (c) chemist.

12 (7) A police officer may use all means necessary for the purpose of
13 taking or assisting the taking of a non-intimate sample from a person.

14 13. If a person from whom a non-intimate sample is to be taken
15 under this Bill-

Refusal to give
sample

16 (a) refuses to give such sample;

17 (b) refuses to allow such sample to be taken from him; or

18 (c) obstructs the taking of such sample from him, that person
19 commits an offence and is liable, on conviction, to a fine not exceeding
20 N100,000 or to imprisonment for a term not exceeding one year or to both.

21 14.-(1) Any person, other than the person whose intimate sample or
22 non-intimate sample may be taken under sections 11 and 12, may
23 voluntarily give an appropriate consent in the prescribed form to a police
24 officer not below the rank of Assistant Superintendent of Police for the
25 taking of his intimate or non-intimate sample.

Sample given
voluntarily

26 (2) Where an appropriate consent is given under subsection (1) of
27 this section, a police officer not below the rank of Assistant Superintendent
28 of Police shall, before the taking of the intimate or non-intimate sample,
29 inform the person from whom the sample is to be taken that-

30 (a) the DNA profiles and any related information derived from the

1 intimate or non-intimate sample may be stored in the DNA Databank and may
2 be used for the purposes of forensic DNA analysis, police inquiry and for such
3 purposes referred to in section 10 of this Bill;

4 (b) he may-

5 (i) make a request to a police officer for an access to the information,
6 and

7 (ii) at any time withdraw his consent given under subsection (1) of
8 this Bill.

DNA sample
of prisoner

9 15. An intimate sample or a non-intimate sample may be taken for
10 forensic DNA analysis from any person who is serving his term of
11 imprisonment in connection with an offence of which he has been convicted.

Storage and
disposal of
intimate and non-
intimate samples

12 16.-(1) The Director shall store all intimate and non-intimate samples
13 that are collected for the purpose of forensic DNA analysis, or the portions of
14 the samples that the Director considers appropriate and without delay destroy
15 any remaining portion.

16 (2) The procedures for the storage and disposal of an intimate and a
17 non-intimate sample shall be as prescribed under this Bill.

Removal of DNA
profile and
information
from suspected
persons index

18 17. Where an intimate sample or a non-intimate sample has been
19 taken in accordance with this Bill from a person reasonably suspected of
20 having committed an offence and-

21 (a) investigations reveal that he was not involved in the commission
22 of any offence;

23 (b) the charge against him in respect of any offence is withdrawn;

24 (c) he is discharged by a court for an offence with which he has been
25 charged, at the trial or on appeal;

26 (d) he is acquitted of an offence with which he has been charged, at the
27 trial or on appeal; or

28 (e) he is not charged in any court for any offence within a period of one
29 year from the date of taking of such sample from him, the Director shall, within
30 six months of being notified by a State Commissioner of Police referred to in

1 paragraph (a), (b), (c), (d), or (e) of this section, remove the DNA profile and
2 any related information of such person from the DNA Databank.

3 PART IV - OFFENCES

4 18.-(1) A person shall not tamper or cause to be tampered with any
5 intimate or non-intimate sample taken for the purposes of this Bill.

Offence of
tampering, abetting
or attempting to
tamper with
sample

6 (2) A person who contravenes subsection (1) of this section
7 commits an offence and is liable, on conviction, to imprisonment for a term
8 not exceeding five years or to a fine not exceeding N500,000 or to both.

9 (3) A person who abets the commission of, or who attempts to
10 commit, the offence under this section commits an offence and is liable, on
11 conviction, to the punishment provided for that offence under subsection (2)
12 of this section:

13 Provided that the term of imprisonment imposed shall not exceed
14 one-half of the maximum term provided for the offence.

15 19.-(1) A person who receives a DNA profile for entry in the DNA
16 Databank or who has access to information contained in the DNA Databank
17 shall not, except in accordance with sections 10 and 22 of this Bill, use or
18 communicate such DNA profile or any related information to be used or
19 communicated other than for the purposes of this Bill.

Unauthorized use
or communication
of DNA profile
or information

20 (2) Any person who contravenes subsection (1) of this section
21 commits an offence and is liable, on conviction, to imprisonment for a term
22 not exceeding three years or to a fine not exceeding N100,000 or to both.

23 20.-(1) The Director, Deputy Director, staff of the DNA Databank
24 or any person who, for any reason, has, by any means, access to any data,
25 record, book, register, correspondence, document, material or information
26 relating to the DNA profiles in the DNA Databank which he has acquired in
27 the performance of his functions or the exercise of his powers, shall not give,
28 divulge, reveal, publish or otherwise disclose to any person such document,
29 material or information unless the disclosure is required or authorized-

Obligation of
secrecy

30 (a) under this Bill or regulations made under this Bill;

- 1 (b) under any written law;
2 (c) by any court; or
3 (d) for the performance of his functions or the exercise of his powers
4 under this Bill.

5 (2) A Person who contravenes subsection (1) of this section commits
6 an offence and is liable, on conviction, to imprisonment for a term not
7 exceeding two years or to a fine not exceeding x50,000 or to both.

Offence of
tampering, abetting
or attempting to
tamper with DNA
profile or
information

8 **21.-(1)** A person shall not tamper or cause to be tampered with any
9 DNA profile or any related information in the possession, custody or control of
10 the DNA Databank.

11 (2) For the purpose of this section, tampering with any DNA profile or
12 related information includes any instance where-

- 13 (a) DNA profile or any related information is altered or erased;
14 (b) a new DNA profile or related information is introduced or added to
15 such DNA profile or related information; or
16 (c) an event occurs which impairs the ability of the Director, Deputy
17 Director or DNA Databank staff to have access to such DNA profiles or any
18 related information.

19 (3) A person who contravenes subsection (1) of this section commits
20 an offence and is liable, on conviction, to imprisonment for a term not
21 exceeding five years or to a fine not exceeding x200,000 or to both.

22 (4) A person who abets the commission of, or who attempts to
23 commit, the offence under this section commits an offence and is liable, on
24 conviction, to the punishment provided for that offence under subsection (3) of
25 this section:

26 Provided that the term of imprisonment imposed shall not exceed
27 one-half of the maximum term provided for the offence.

28 PART V - GENERAL PROVISIONS

Cooperation with
foreign law
enforcement
agency

29 **22.-(1)** The Director shall, upon a request by a foreign law
30 enforcement agency, compare a DNA profile received from the foreign law

1 enforcement agency with the DNA profiles in the DNA Databank in order to
2 determine whether such DNA profile is already contained in the DNA
3 Databank and communicate any relevant information to the foreign law
4 enforcement agency.

5 (2) The Director may, upon a request by a foreign law enforcement
6 agency in the course of an investigation of an offence or a prosecution of a
7 criminal offence in that foreign state, communicate a DNA profile contained
8 in the DNA Databank to that foreign law enforcement agency.

9 (3) For the purposes of this section, "foreign law enforcement
10 agency" means the law enforcement agency of a foreign state and includes
11 an international organization established by the government of foreign
12 states or an international organization.

13 23. Notwithstanding any written law to the contrary, any
14 information from the DNA Databank shall be admissible as a conclusive
15 proof of the DNA identification in any proceeding in any court.

Information from
the DNA Databank
to be conclusive

16 24. An action, a suit, prosecution or other proceedings shall not lie
17 or be brought, instituted or maintained in any court against-

Protection against
actions and legal
proceedings

- 18 (a) the Minister;
19 (b) the Director;
20 (c) the Deputy Director;
21 (d) DNA Databank staff;
22 (e) a government medical officer; or
23 (f) a chemist,

24 in respect of any act, neglect, default or omission done by him in good faith
25 in exercising his powers or carrying out his functions and responsibilities
26 under this Bill in such capacity.

27 25.-(1) The Minister may make regulations as may be necessary or
28 expedient to give full effect to, or for carrying out, the provisions of this Bill.

Regulations

29 (2) Without prejudice to the generality of subsection (1),
30 regulations may be made to-

1 (a) prescribe the procedures in taking and disposing of intimate and
2 non-intimate samples;

3 (b) prescribe any form for the purpose of this Bill;

4 (c) regulate the management, administration and control of the DNA
5 Databank; and

6 (d) provide for any matter which under this Bill is required or
7 permitted to be prescribed or which is necessary or expedient to be prescribed.

Savings and
transitional

8 26. An existing DNA profile or any related information kept and
9 maintained by the Nigerian Institute of Science Laboratory Technology or the
10 Nigeria Police Force, immediately before the coming into operation of this
11 Bill, shall, on the coming into operation of this Bill, be deemed to have been
12 kept and maintained in and to form part of the DNA Databank established
13 under this Bill in accordance with existing indices.

Interpretation

14 27. In this Bill-

15 "appropriate consent" means a written consent of a-

16 (a) parent or a guardian of a person under the age of 18 years;

17 (b) person who has attained the age of 18 years;

18 (c) parent or guardian of a person of incomplete development of mind
19 or body which condition limits his understanding to consent to give his
20 intimate or non-intimate sample;

21 "authorized officer" means any police officer not below the rank of Assistant
22 Superintendent of Police;

23 "chemist" means any chemist attached to the Nigerian Institute of Science
24 Laboratory Technology;

25 "Deputy Director" means the Deputy Director of Forensic DNA Databank
26 appointed under section 6 (1) (b) of this Bill;

27 "detainee" means a person arrested and detained under any law made pursuant
28 to the 1999 Constitution of the Federal Republic of Nigeria;

29 "Director" means the Director of Forensic DNA Databank Nigeria appointed
30 under section 6 (1) (a) of this Bill;

1 "DNA Databank" means the Forensic DNA Databank of Nigeria established
2 under section 1 of this Bill;

3 "DNA profile" means genetic information derived from a forensic DNA
4 analysis;

5 "forensic DNA analysis" means any analysis carried out for the purpose of
6 determining a person's identity;

7 "government medical officer" means a registered medical practitioner in
8 any teaching hospital of a university;

9 "intimate sample" means a-

10 (a) sample of blood, semen or any other tissue or fluid taken from a
11 person's body, urine or pubic hair; or

12 (b) swab taken from any part of a person's genitals (including pubic
13 hair) or from a person's body other than the mouth;

14 "Minister" means the Minister of Interior;

15 "non-intimate sample" means-

16 (a) a sample of hair other than the pubic hair;

17 (b) a sample taken from a nail or from under a nail;

18 (c) a swab taken from any part of a person's body other than a part
19 from which a swab taken would be an intimate sample; or

20 (d) saliva;

21 "Police officer" means any officer of the Nigeria Police Force;

22 "offence" means any act or omission punishable by any law in force;

23 28. This Bill may be cited as the Deoxyribonucleic Acid (DNA) Citation
24 Identification Bill, 2016.

EXPLANATORY MEMORANDUM

This Bill seeks to establish the Forensic DNA Databank in Nigeria charged with the responsibility for the collection of DNA samples, making forensic DNA analysis, use of DNA profiles and information targeted at addressing doubts in criminal and DNA related issues.

