

SPEECH BY HON. ATTORNEY-GENERAL
Workshop:
“DNA Evidence in the Criminal Justice System”
Domaine Des Pailles
Friday 6 August 2010

The Ag. Director of the FSL, Mrs. Madhub-Dassyne
Mrs. Fong Weng-Poorun, Permanent Secretary, Prime Minister’s Office,
The Ag. Solicitor General, Mr B Madhub
Hon. Judge Tompkins
The Commissioner of Police
Sir Hamid Moolan, Q.C, Chairperson Mauritius Bar Council
Mr Naren Appa Jala, Chairperson, Mauritius Law Society
Mr Guy Ollivry, Q.C, Chairperson, Law Reform Commission
Excellencies of the Diplomatic Corps
Distinguished Guests,
Ladies and Gentlemen,

It is with great pleasure that I am taking the floor today. Indeed this is a long awaited event and I take this opportunity to congratulate Dr the Hon. Prime Minister, who has a personal interest in forensic DNA and the FSL, for having organized this series of workshops for the benefit of our Judges, magistrates, law officers, the legal profession and stakeholders linked with the judicial and criminal process. In addition, with the implementation of the DNA Act 2009, this workshop is coming at an opportune time, and will no doubt enhance our knowledge on the existing and future challenges in this area of law and evidence. It is a privilege to have as resource person His Honour Judge Tompkins from New Zealand, who is also an honorary member of the INTERPOL’s DNA Monitoring Expert Group.

DNA analysis was first proposed in 1985 by the English Scientist Mr. Alec Jeffreys. In fact Alec Jeffreys received a request from the local police after having found the body of a school girl, near a village called Narborough. The schoolgirl had been raped and strangled. A local mentally retarded man named Buckland confessed to the crime. However, he refused to confess to a strikingly similar rape and killing, some years earlier.

The first DNA profiling technique using ‘hyper variable minisatellite array’ was then developed by Mr. Alec Jeffrey and his assistant Vicky Wilson and it was found that Buckland could not be the murderer. In that respect, some 5,500 men in Narborough area gave samples as the police were after DNA match between the semen samples and the unknown murderer. In time, police heard of the swap. A man named Colin Pitchfork was located who afterwards confessed to both killings.

This marked the very beginning of DNA in the criminal process and was thereafter referred to as DNA fingerprinting. This historical interlude gives us an idea of some of the pertinent issues that arose when using DNA Identification techniques.

In the late 1980's, DNA was being performed by law enforcement agencies, including Federal Bureau of Investigation and by commercial laboratories. It consisted of comparing selected segments of DNA molecules from different individuals.

DNA has proved to be very effective. An example from the early 1990's illustrates the way in which DNA evidence has been used in the criminal justice system. After a Vermont woman was kidnapped and raped in a semi-trailer truck, police identified Randolph Jakobetz, a truck driver as a suspect in the crime. Officers searched the trailer that Jakobetz had hauled on the night of the crime and found hairs matching those of the victim. After arresting Jakobetz, law enforcement officials sent a sample of his blood to the FBI laboratory in Washington D.C, for DNA analysis and for comparison with DNA taken from semen found in the victim shortly after the crime. At Trial, an FBI expert testified that the blood and semen samples were a match, concluding that there was one chance in 300 million that the semen could have come from someone other than Jakobetz as a result of which the latter was convicted.

Indeed DNA identification has proved to be useful in legal cases, especially in the field of criminal litigation and evidence. Of course law enforcement officials have over the years looked for things that uniquely identify individuals in an endeavour that links a criminal to the scene of a crime.

The year 1992 marked the 100th anniversary of the use of fingerprints as an identifier. They are powerful as they are essentially unique. There are computer databases for fingerprints that are online across the country and very often used.

It is easier to find fingerprints for property crimes and harder to find for violent crimes. In such situations, scientists turn to other markers, for example, biological markers as one might find in a semen sample from a rape.

In the 1970's, numerous persons including children and pregnant women were kidnapped and murdered in Argentina. Years later some of them could be identified.

DNA has again proved to be very effective in the identification of victims in the September 11, World Trade Centre attack and the victims of the tsunami.

DNA can provide insights into many intimate aspects of people and their families including susceptibility to particular diseases, legitimacy of birth and perhaps predisposition to certain behaviours and sexual orientation.

However DNA evidence also has been a subject of controversy both in U.S and U.K criminal justice system. However, courts have increasingly allowed DNA analysis to be admitted.

Whatever be the debate, after a force field analysis, the Government has decided that we need to adopt a more scientific approach to crime, rather than to rely on the traditional investigation techniques. Forensic DNA will provide one of the tools that will enhance the reliability and credibility of investigation.

As the Hon Prime Minister stated in his address in the National Assembly, during the introduction of the Bill in Parliament, I quote:

“Introducing The DNA identification Bill is a milestone event for Mauritius as it reflects the Government’s commitment to improving all aspects of the criminal justice system and in particular maximizing the potential of scientific evidence. It is now the view of all stakeholders that science is the key to efficient and effective investigations.

Here, I pause, once again to congratulate the FSL and the Police, who have done a tremendous job in ensuring that the Protocols and Guidelines concerning the collection, preservation, analysis and destruction of samples containing DNA, and contemplated at section 18 of the DNA Identification Act 2009, have been developed in time and this will no doubt ensure that people will have confidence in the system this Government has decided to put into place.

Let me emphasize on the need to rigorously observe these protocols and guidelines, as the integrity of the system depends on them.

The objectives of the DNA Identification Act 2009 Act are many folds and are as follows:

- (a) Empowering the Police, in connection with serious offences, to take and make use of DNA samples for the purpose of determining the connection with or involvement of a person with an offence;
- (b) Providing for an application of an order of a Judge in Chambers in case a person suspected to be connected to or associated with a serious offence does not consent for a DNA sample to be taken from him;
- (c) Providing for the establishment of a DNA Data Records which shall contain the DNA profiles which will assist in the investigation of criminal offences.
- (d) Providing for the establishment of a DNA population Statistical Database for the purpose of statistical interpretation of the results of forensic analysis;
- (e) Providing for the taking, store, preservation and destruction of DNA samples;
- (f) Ensuring that DNA data is securely stored and remains strictly confidential;
- (g) Enabling cooperation with foreign law enforcement agencies; and

(h) Establishment of filiation using DNA.

As can be gleaned from the above, the Act set the broad parameters of that are essential to get the system going and functional. It is also obvious that we are dealing with cutting-edge technology and the cost implication of implementing of such a system is not negligible. There are both fixed costs and variable costs in the use of DNA technology. For the best use to be made of DNA technology, it is crucial to bear in mind that cost implications of DNA technology should not be a barrier to its use if we are to have a fairer justice system.

Another point which I wish to emphasis is the need to collaborate with foreign entities. In case, the Act specifically provided for cooperation with foreign law agencies. In this aspect of the Law, my Office has an important role to play and we intend to give our full support and collaboration to the FSL, in ensuring we gain from the experience and knowledge of our foreign counterparts, and why not share our own experience with them.

No doubt, this is an interesting topic and a multifaceted one. However, I believe that it is time that I conclude my intervention and wish you successful and fruitful deliberations.

I, now, have the pleasure to declare this workshop open.