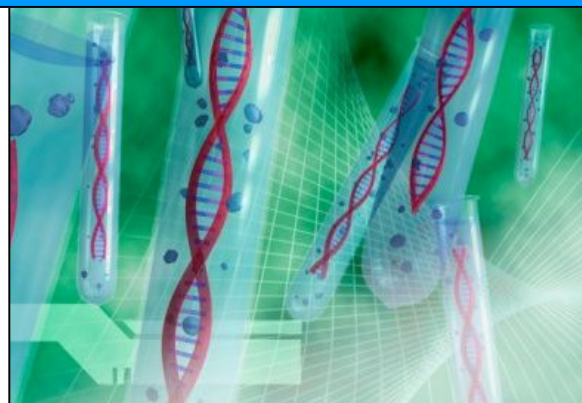


## CPPS Policy Factsheet: DNA Bill

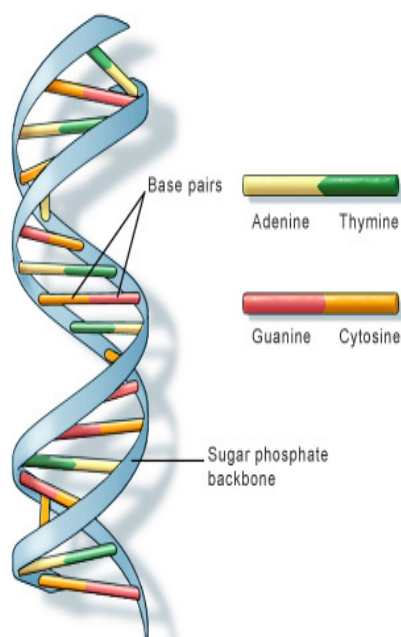
CPPS is pleased to bring you its “CPPS Policy Factsheet” on DNA Bill. In this fact sheet we will review the rationale, its problematic nature and the events pertaining to the Bill. Access other CPPS policy factsheets [here](#) and [here](#).

### BACKGROUND

The Malaysian Government tabled the first reading of the **Deoxyribonucleic Acid (DNA) Identification Bill 2008** in August of 2008. The bill broadly outlines the authority of the police force to collect DNA data from citizens suspected of committing crimes, storing their DNA and submitting DNA analyses as conclusive evidence in a court of law. Though DNA evidence is generally considered useful to criminal investigations and the need for DNA legislation is not disputed, certain clauses of the bill have raised concerns about possible human rights abuses. The bill has sparked contentious debate amongst human rights groups and was highly criticized by the Opposition. The third and final reading of the bill has been deferred until 2009, following an Opposition walkout when the second reading was passed.



### FACTS



**WHAT is DNA?** DNA, or **deoxyribonucleic acid**, is the hereditary material in humans and almost all other organisms. Nearly every cell in a person’s body has the same DNA. Most DNA is located in the cell nucleus (where it is called nuclear DNA), but a small amount of DNA can also be found in the mitochondria.

The information in DNA is stored as a code made up of four chemical bases: adenine (A), guanine (G), cytosine (C), and thymine (T). Human DNA consists of about 3 billion bases, and more than 99 percent of those bases are the same in all people. The order, or sequence, of these bases determines the information available for building and maintaining an organism, similar to the way in which letters of the alphabet appear in a certain order to form words and sentences. DNA bases pair up with each other, A with T and C with G, to form units called base pairs. Each base is also attached to a sugar molecule and a phosphate molecule. Together, a base, sugar, and phosphate are called a nucleotide. Nucleotides are arranged in two long strands that form a spiral called a double helix.

The structure of the double helix is somewhat like a ladder, with the base pairs forming the ladder’s rungs and the sugar and phosphate molecules forming the vertical sidepieces of the ladder. An important property of DNA is that it can replicate, or make copies of itself. Each strand of DNA in the double helix can serve as a pattern for duplicating the sequence of bases. This is critical when cells divide because each new cell needs to have an exact copy of the DNA present in the old cell.

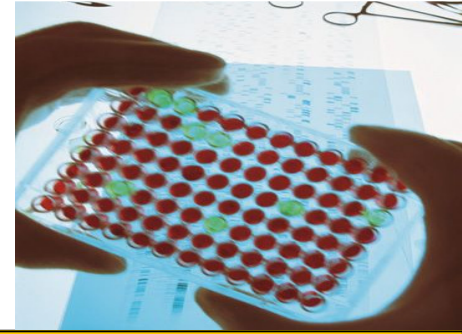
- DNA evidence has been increasingly used to aid criminal investigations since the late 1980s and has contributed to the successful conviction of a growing number of criminals.
- Techniques in DNA profiling have continued to improve since inception in 1985. However, DNA samples are still susceptible to contamination and analysis can be affected by laboratory error. It is also possible to plant fake DNA samples at crime scenes. Nevertheless, DNA profiling is a significant constituent of forensic analysis and is crucial to the improvement of the criminal justice system, not only in aiding conviction but also in exoneration.
- DNA databanks are now commonplace around the world, but their growth has been accompanied by concerns about the deleterious effects DNA profiling can have on civil liberties.

# The DNA Identification Bill 2008

The Bill provides for 'the establishment of a Forensic DNA Databank Malaysia, the taking of DNA samples, forensic DNA analysis, the use of DNA profiles and information in relation thereto, and for matters connected therewith'.

## General concerns:

- The Bill goes against the basic principles of jurisprudence, such as the right to silence and right to privacy.
- The Bill does not provide sufficient independence of the DNA Databank from the Police Force, who has not given ample evidence of transparency and non-corruption.
- Under the provisions of the Bill the DNA Databank is effectively under the control of the Minister of Home Affairs.
- The lack of independence does not bode well for impartial DNA testing and interpretation.
- The Bill does not safeguard the rights of the people.



## CLAUSES FOR CONCERN

### Clause

### Concerns

Section 7 stipulates that the Minister of Home Affairs will appoint a police officer not below the rank of Deputy Commissioner of Police as Head of the Forensic DNA Databank Malaysia. DNA databank officers will be appointed from the police force, chemist and other officers from or attached to the

- No separation of powers.
- An independent body should be responsible for the collection, storage and interpretation of biological data.

Chemistry Department of Malaysia who shall be subject to the control, direction and supervision of the Head of DNA Databank.

Section 9 empowers the Head of DNA databank to rectify information in the database without being subject to allegations of tampering.

- Open to abuse.

Section 13 states that all police officers may use all means necessary to collect biological samples on suspicion of a committed crime.

- Officers' discretion is the sole criteria in evaluating need to attain DNA samples, no warrant or court order is needed.
- The phrase 'all means necessary' is open to wide interpretation including ones that violate civil liberties. Under this provision the police are entitled to collect DNA surreptitiously.

Section 14 states that refusal to give DNA samples is a criminal offence, subject to a fine of up to RM10,000 and imprisonment of up to a year.

- Infringement on the right to privacy.

Section 24 stipulates that all DNA evidence submitted from the DNA databank is to be conclusive proof of identification.

- An independent review of DNA results cannot be requested.
- DNA evidence is subject to degradation, contamination and tampering.
- Laboratory error is a possibility.

Section 25 stipulates that no action, suit, prosecution or other proceedings can be brought against

- (a) the Minister of Home Affairs;
- (b) the Head of DNA Databank;
- (c) the Deputy Head of DNA Databank;
- (d) DNA Databank officers;
- (e) a government medical officer; or
- (f) a chemist,

in respect of any act, neglect, default or omission done by him in good faith in

carrying out his powers, functions and responsibilities under the proposed bill.

- Open to abuse.



## OMISSIONS

The Bill makes no provisions for data storage and destruction, such as the length of time DNA information of those convicted may be kept on the database and safeguards to protect misuse and distribution of DNA information.

## STAKEHOLDERS



**Ministry of Home Affairs:** The Home Ministry is divided into two different ministries, which are the Ministry of Home Security and the Ministry of Internal Affairs. The objectives of the Ministry of Home Security are preserving and improving national security and public order. The function of the ministry is to amend and execute security and public order policies by enforcing laws related to safety and ensuring public order.

**Royal Police of Malaysia:** Under the proposed Bill members of the police force would be elected as officers of the DNA Databank and a member of the force would be elected as its head, making the police force in charge of both investigation and crucial evidence. This would make investigations susceptible to tampering and bias.

**Rakyat:** Under the proposed Bill anybody could face imprisonment for up to a year on refusal to provide a DNA sample.

## AROUND THE WORLD

**United Kingdom** set up the first government DNA database in 1995.



- Any person suspected of committing a recordable crime can be required to provide a DNA sample. Britain's database is the largest in the world, covering 5.2 per cent of the population.
- A tri-partite board, consisting of the Home Office, the Association of Chief Police Officers (ACPO) and the Association of Police Authorities (APA), as well as independent representatives from the Human Genetics Commission, governs data held on the National DNA Database.
- Under British law, the DNA of any person is kept on the database regardless of conviction for up to 100 years.
- In December 2008 the European Court of Human Rights ruled that the police's actions in retaining the DNA information of two British men not convicted of crimes was a breach of civil liberties, specifically the right to respect for private and family life.

**Switzerland:** the DNA Profile Information System (EDNA) has been in operation since 2000

- Members of the police force take DNA information from persons and stains are taken by the police or the Institutes of Legal Medicine.
- DNA samples are transferred to a laboratory where they are codified and anonymized. The codes, as well as the suspect's name and other relevant information are transferred to the Automated Fingerprint Identification Service (AFIS).
- The forensic genetic laboratories analyze the data and transmit them to the DNA Coordination Unit that checks the data before importing it into the Combined DNA Index (CODIS) system, and automated searches that turn up hits are reported to AFIS where codified information is matched up. As such, personal and case data are handled separately, and there is a clear separation of powers in administration.



## POLICY RECOMMENDATIONS

Amendments to the bill that address the following:

- More independence from the police force e.g. the appointment to the position of head to a person not on the police force and personnel of the databank to include more members of the public service.
- Tighter conditions upon provision of DNA samples, for example on issue of arrest, warrant or court order.
- Tighter regulations on the power of police officers to procure samples, i.e. the removal of clause 13(7).
- Less authority given to the Minister of Home Affairs, and no authority of the head of the databank to rectify information i.e. the removal of Section 9.
- Tighter rules governing information protection, such as codifying DNA samples.
- Removal of Section 24 so that evidence submitted from the databank is not considered conclusive proof of DNA identification in a court of law.

In addition the following issues need consideration:

- Removal of DNA samples from the database.
- Independent laboratories similar to the Swiss model.
- Greater accountability and measures for transparency, e.g. a regulatory body.
- Greater safeguarding of civil liberties, e.g. a strict code of practice governing DNA collection.

