



NETWORK PROJECT

[Be-Gen]

[Understanding the operational, strategic, and political implications of the National Genetic Database]

Contract - BR/132/A4

FINAL REPORT (January 2019)

PROMOTORS: BERTRAND RENARD (NICC) - Coordinator
TOM VANDER BEKEN (UGent)
PAUL DE HERT (VUB)

AUTHORS: CAROLINE STAPPERS (NICC)
SABINE DE MOOR (UGent)
INES GALLALA (VUB)
PAULINE PRAILE (NICC)
PIA STRUYF (UGent)



Context and objectives

Since the 1990's the Belgian Government has been exploiting DNA to help criminal investigations (e.g., by identifying the source of genetic material found on crime scenes). In 1999 a law was voted to regulate its use – including its management by the National Institute for Criminalistics and Criminology (NICC) of the National Genetic Database (NGDB) which holds numerous DNA profiles sampled for the Justice Department. The NGDB can be used to relate judicial cases which *a priori* may not have anything to do with each other, by detecting whether they involve the same genetic profiles (i.e., *in fine*, the same individuals). Without a doubt, forensic DNA (i.e., genetic science in the service of justice) has revolutionised the pursuit of truth and helped numerous judicial investigations.

In the Be-Gen research, researchers from the NICC, the Ghent University and the VUB studied the implications of Forensic DNA at three levels: operational (i.e., the level of judicial cases) (WP1), strategic (i.e., the level of criminal phenomena) (WP2) and political (i.e., the level of public policies) (WP3). These three different levels all come together in one specific aim: to connect the knowledge we have gained on the day-to-day business in the field (WP1), to explore new potential ways to use the structured information at hand (WP2) and to grasp the legal and political evolutions (WP3) in order to inform the legislator and policy makers and help them make conscious decisions in how to regulate and use DNA in criminal cases.

Methodology

This research combined different methods. Both qualitative and quantitative methods were used as well as a comparative legal study. The success of the Be-Gen project relied heavily on access to a number of data, both judicial and police. The project was conceived on this basis, taking care to associate the natural partners of such a project, namely the judicial authorities, the federal police as well as the DIS service of the NICC which manages the national genetic databases (NGDB).

Results

The research was a new and multidisciplinary look on a subject (forensic DNA) in full evolution. This evaluation conducted on three distinct yet coordinated levels show that (1) on the operational front many collected traces are not being analysed because actors are still

unfamiliar with different aspects of DNA, the coordination between the different stages of the process is not optimal and the practice is not identical depending on the geographical location of where the DNA is samples and analysed. The addition of an Elimination National Genetic Database (to contain the DNA profiles of all the intervening partners - doctors, firefighters, technical and scientific police operators, magistrates, ... to detect possible contaminations) by the law of 17 May 2017 in the landscape of identification by DNA analysis certainly shares a laudable political intention, that of improving the quality and the relevance of the DNA results used in the criminal investigation. However, the research shows many difficulties that need to be overcome before the concrete implementation of this new DNA database.

On the strategic front (2) the research made it possible to emphasise the informational potential of DNA, its importance and the fact that, for now, it is underutilised due to the low number of crimes registered in the database (NGDB). The added value of DNA linked to police data particularly shows that this leads to a better understanding of unknown offenders. Offender networks made up of both known and unknown offenders may not only be larger but may also have a different structure from networks that only include known offenders. As was the case in the network study on crime level, the network study on offender level emphasised the importance of integrating unknown offenders and their crimes in criminological research.

The comparative study of the legal landscape and political discourse in the political aspect of the research (3) shows that the provisions adopted in Belgian legislation are characterised by extreme caution and restrictive solutions. The focus group discussions and analysis of the applied criminal policy confirm this conclusion. The fact that we are for example limited to working solely on so-called 'non-coding' DNA, is a considerable hurdle in implementing new technologies and applications.

Recommendations

In observing the technical and scientific evolutions as well as the social practices in the exploitation of forensic DNA, the triple approach on an operational, strategic and judicial-political level allow to bring forth 12 concrete recommendations. These simultaneously take into account democratic values that support the different legal options, the perception of persons for whom the DNA is recorded, practical constraints for the judicial actors and the Justice Department, new social practices relating to DNA, as well as the added value for the

efficacy of the tool and the exploitation of its informational potential for the Justice Department.

1. Create a legal framework for administrative identification via DNA analysis.
2. Conduct a global policy and approach on the availability of genetic materials coming from situations other than judicial.
3. Using the existing data in DNA databases (NGDB) for purposes other than mere comparison.
4. Prepare legislation and actors for the integration of the Rapid DNA tool specifically, and for future advanced tools in general.
5. Anticipate and prepare the adoption of legal provisions enabling the possibility of familial searches within a legitimate framework.
6. Establish proportionality criteria to replace the non-coding DNA criteria that we are applying today but which is no longer scientifically established.
7. Establish the criteria aiming to define a national criminal policy on the use of DNA in order to harmonise the optimal practices of exploitation of DNA.
8. Define a clear policy to prevent DNA profiles of victims being recorded in the Criminalistics database.
9. Distinguish between two distinct purposes of DNA legislation, one aiming at IDENTIFICATION and the other at investigatory ORIENTATION. Define in each purpose and for each specific application of the DNA the precise criteria of proportionality and subsidiarity.
10. Adapt the respective legal frameworks on police data and on judicial DNA data in order to allow these deep-seated scientific evaluations, both quantitatively and qualitatively.
11. Define a research programme with all priorities and finance it.
12. Re-enforce the follow-up of technological and scientific evolutions in DNA analyses and create a structure that is in charge of permanent multidisciplinary reasoning for this purpose.

The research group, lastly, takes this opportunity to highlight serious obstacles relating to the access of data, both police and DNA data, for the sake of scientific research.



Coordinates

Coordinator

Bertrand Renard
Institut National de Criminalistique et de Criminologie – Direction Opérationnelle Criminologie
bertrand.renard@just.fgov.be

Partners

Tom Vander Beken
Universiteit Gent - Institute for International Research on Criminal Policy (IRCP)
Tom.VanderBeken@UGent.be

Paul De Hert
Vrije Universiteit Brussel - Department for Interdisciplinary Studies of Law
paul.de.hert@vub.ac.be

Project website

<https://nicc.fgov.be/be-gen>