



**LESBIAN  
GAY  
BISEXUAL  
TRANSGENDER  
INTERSEX**

EQUALITY • DIGNITY • FREEDOM

# **Terms of Reference for the Rapid Response Team to fast track pending and reported LGBTI related cases in the Criminal Justice System**



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



The Working Group of the National Task Team established the Rapid Response Team comprising the Department of Justice and Constitutional Development, National Prosecuting Authority, South African Police Service and representatives from civil society organisations. The purpose of the Rapid Response Team is to urgently attend to the pending and reported cases in the criminal justice system where hate crimes have been committed against LGBTI persons. Hate crimes are defined as acts that are motivated in whole or in part by bias or hatred regarding an aspect of a person's identity (Nel, van Wyk, & Mbatha, 2013)<sup>1</sup>. Two key components of hate crimes can be identified: "The first is that the act constitutes a crime under existing criminal law (such as intimidation, arson, damage to property, assault, rape or murder); the second is that some form of specific bias was involved in the selection of the victim" (Nel et al, 2013, p. 6).

## **1. MANDATE OF THE RAPID RESPONSE TEAM**

- 1.1 Attend to the pending cases in the criminal justice system where hate crimes have been committed against LGBTI persons.
- 1.2 Ensure efficient monitoring of reported hate crimes cases and provide support to the victim and follow the required procedures from the reporting stage to avoid pending cases from becoming backlogged.
- 1.3 Develop an electronic data system to assist criminal justice role-players in collecting hate crimes related data.
- 1.4 Develop an electronic tool which will:
  - 1.4.1 outline reported hate crimes with full details of the names of the victim, full details of the perpetrator/s, date of offence, date matter reported, police station where the case was reported, incident reported, court and case number, brief facts of the offence, status of the case, outcome of the case, information on sentencing in cases of convictions.
  - 1.4.2 promote accurate tracking of cases from arrest to prosecution to conviction;
  - 1.4.3 promote early identification of delays and other obstacles to the serving of justice; and
  - 1.4.4 inform prevention and intervention strategies and build and publish best practice.

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<sup>1</sup> Nel, J.A., van Wyk, H., and Mbatha, K. 2013. User guide: Hate & Bias Crime Monitoring Form. Johannesburg: Hate Crimes Working Group.

- 1.5 Promote the reporting of hate crime incidents targeting the LGBTI persons.
- 1.6 Identify support systems for victims and promote same among victims of hate crimes.
- 1.7 Ensure increased awareness of the LifeLine SA's Stop Gender Violence Helpline (0800 150 150) reporting mechanism which will be the main point of reporting. The Stop Gender Violence Helpline provides anonymous, confidential and toll-free telephone lay counseling, support and referral services, 24 hours a day, 365 days a year to victims of gender-based violence throughout the country in the eleven official South African languages. Collaborate with CSOs in the development of information packs on the nature of hate crimes and how to report it.
- 1.8 Collect and publish local examples of best practices in preventing and addressing hate crimes.
- 1.9 Implement a multi-disciplinary integrated response in addressing LGBTI hate crimes where:
  - (a) Local partners make information available on known offences and the possible support services available to assist victims.
  - (b) The police take reports of LGBTI offences seriously, by working with other local partners to bring offenders before the court.
  - (c) The National Prosecuting Authority (NPA) prosecutes LGBTI offences and draws the courts' attention to such aggravating features for the purposes of sentencing.
  - (d) The Judiciary takes into account the aggravating factors and apply appropriate sentencing accordingly.
  - (e) Correctional Services integrate a programme on LGBTI into their rehabilitation initiatives and ensure that the rights of LGBTI offenders are protected.

## **2. DEFINITION OF RAPID RESPONSE**

It is an urgent action in response to acts of violence against LGBTI persons in order to ensure effective serving of justice. It applies from reporting the crime to the police until conviction or other outcome. Such a response includes victim support, efficient police work, and identifying and addressing delays in the criminal justice system.

### **3. COMPOSITION OF THE RAPID RESPONSE TEAM**

The Team is composed of representatives from the Department of Justice and Constitutional Development (DoJ&CD), South African Police Service (SAPS), National Prosecuting Authority (NPA) and Civil Society Organisations (CSOs). The Departments of Health, Social Development and Correctional Services will be co-opted onto the Rapid Response Team, where necessary.

### **4. ROLES AND RESPONSIBILITIES OF THE SERVICE PROVIDERS IN THE CRIMINAL JUSTICE SYSTEM**

#### **4.1 Department of Health will:**

- (a) Conduct emergency medical examinations and provide medical treatment.
- (b) Liaise with the local medical doctor or facility to ensure that proper medical systems are in place to conduct the required medical examinations and complete the relevant documentation. This will include post sexual assault examination by a suitably qualified health professional.
- (c) Ensure that the victim is dispatched after the emergency treatment to the nearest hospital in that area.
- (d) Work with the locally available service providers to provide advice and/or therapy treatment to the victim.
- (e) Ensure that post exposure prophylaxis (PEP) test kits are available in all hospitals and clinics and refer the victim to relevant specialists for further medical assistance, where necessary.

#### **4.2 South African Police Service will:**

- (a) Oversee the collection and storage of forensic evidence.
- (b) Secure the scene until the arrival of the concerned investigative and evidence experts.
- (c) Ensure that all available evidence that might indicate the identity of the suspect is collected and safeguarded.
- (d) Obtain initial statements from the victim.
- (e) Provide regular progress reports on pending cases in the criminal justice system to the Rapid Response Task Team.

- (f) Identify a central contact number at national level for purposes of recording and tracking of cases reported at local police stations.
- (g) Swift, effective resolution of the case and timeous meting out of justice includes mechanisms to effectively open a case, tracking the case, collecting the required evidence so as to assist prosecution to effectively prosecute on the case.

**4.3 Department of Justice and Constitutional Development will:**

- (a) Coordinate and convene RR Team meetings on monthly basis.
- (b) Provide assistance on the criteria for hate crimes committed against LGBTI persons.
- (c) Incorporate inputs on progress made from SAPS into the list of pending cases in the criminal justice system.
- (d) Ensure that the RR Task Team responds timeously after receiving information on reported cases.
- (e) Coordinate action by relevant team members, depending on the nature of the case.
- (f) Maintain an electronic database of pending and received cases which outlines the full details of the victim, full details of the perpetrator/s, date of offence, date matter reported, police station where the case was reported, incident reported, court and case number, brief facts of the offence, status of the case, outcome of the case, information on sentencing in cases of convictions, and contact details of organisations and institutions submitting the information to the RR Task Team.

**4.5 National Prosecuting Authority will:**

- (a) Ensure successful prosecutions of hate crimes against LGBTI persons.
- (b) Ensure the systematic reduction of secondary victimization within the criminal justice system as experienced by victims of hate crimes.
- (c) Ensure speedy prosecutions of hate crime cases as per the prescribed turnaround times.
- (d) Provide a victim friendly environment.

- (e) Empower witnesses to be more effective witnesses and to decrease the potential of them experiencing victimization.
- (f) Provide court preparation support to the victims in regional, district and high courts specialising in sexual offences.

**1.6 Department of Social Development will:**

- (a) Ensure the provision of psycho-social counseling and possible shelter, as required.
- (b) Where the victim is a child, to ensure that the proper protection measures are implemented in terms of national legislation.
- (c) Where the victim is an adult, to provide trauma services and support including counseling as required.

**1.7 Department of Correctional Services will:**

- (a) Ensure the protection and promotion of the rights of LGBTI offenders within its correctional centres.
- (b) Conduct assessment of why offences may have occurred and what problem areas needs and/or risks must be dealt with during intervention.
- (c) Keep a case file and a correctional sentence plan.
- (d) Provide needs-based rehabilitation programmes / services.
- (e) Provide appropriately infrastructure in the rehabilitation centre and provide training for officials located at the centres.
- (f) Create an environment that encourages and promotes the participation of community-based service providers in the process.
- (g) Involve all relevant stakeholders in the rehabilitation process to ensure effective integration into the community.

## **1.8 Civil Society Organisations will:**

- (a) Provide a safe, caring environment and respect the confidentiality and wishes of the victim.
- (b) Ensure provision of psycho-social counseling and possible shelter, as required.
- (c) Identify the immediate needs; give honest and clear information about services available.
- (d) If agreed and requested by victim, obtain informed consent and make referrals; accompany the victim to assist in accessing services.
- (e) If the victim wants to pursue police/legal action - or - if there are immediate safety and security risks to others, refer and accompany victim to police/security - or - to legal assistance/protection officers for information and assistance with referral to police.
- (f) Develop central system of CSO reporting of cases for CSO's to alert the DoJ&CD about LGBTI cases in the criminal justice system for tracking purposes.
- (g) It is highly recommended that the key organisations involved in the LGBTI Rapid Response process develop memoranda of understanding between them to clarify and be specific about how information sharing will take place, how much information will be shared, and which methods are to be used for engagement.

## ***Key Resources and References***

1. Service Charter for Victims of Crime – Department of Justice and Constitutional Development.
2. GBV Resource Tool: Establishing GBV Standard Operating Procedures (SOP Guide) - May 2008 IASC Sub-Working Group on Gender & Humanitarian Action.
3. Minimum Standards for Service Delivery in Victim Empowerment, by Department of Social Development.
4. Guidelines for gender-based violence interventions in humanitarian settings: focusing on prevention of and response to sexual violence in emergencies. Geneva, Inter-Agency Standing Committee, 2005.

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