

# NEW HATE CRIMES REGULATIONS 2023: WHAT YOU NEED TO KNOW

Category: Media and OTT

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The Minister of Justice and Constitutional Development has recently published Draft Regulations in terms of the *Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act 16 of 2023)* ("**the Act**"). These Regulations, issued after consultation with key justice-sector stakeholders including the Cabinet Members responsible for policing and finance, and the National Director of Public Prosecutions ("**NDPP**"), set out the operational and reporting framework necessary to implement the Act. Their purpose is to ensure that hate crimes and hate speech are uniformly recorded, monitored, and reported across the criminal justice system, thereby supporting data-driven prevention strategies, accountability, and transparency.

## Duties and Functions of the Director-General

A key responsibility of the Director-General ("**DG**") is the creation and maintenance of the national database, a comprehensive electronic database that captures and stores information submitted by the South African Police Service ("**SAPS**"), the Directors of Public Prosecutions, and the Clerks and Registrars of the courts. This system must be capable of generating anonymised statistical data for national reporting and oversight. In addition, the DG is required to publish updated statistical data on the Department's website every quarter and to submit an annual consolidated report within the first two months of each financial year. This report must be delivered to the Speaker of the National Assembly, the Chairperson of the National Council of Provinces, and the Chairpersons of the South African Human Rights Commission, the Commission for Gender Equality, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. These measures create a public transparency mechanism intended to monitor the state's response to hate crimes and hate speech.

## Information to be Collected by SAPS

SAPS plays a pivotal role as the first point of contact in most hate crime and hate speech matters.

When a complaint is lodged, SAPS must record all information using prescribed forms. Form 1 is the SAPS report on hate-motivated underlying offences. It records underlying offences charged as hate crimes. Form 2 is the SAPS record of hate speech complaints which records hate speech complaints under section 4(1)(a). Form 3 is the SAPS record of the electronic distribution of hate speech, which records the distribution or making available of hate speech via electronic communication under section 4(1)(b).

Form 4 is the six-monthly report prepared by Station Commanders and Form 5 is the annual report submitted by Provincial Commissioners. Station Commanders are required to submit six-monthly reports to their respective Provincial Commissioners, while Provincial Commissioners must submit annual reports to the National Commissioner and the Director-General. These reports capture the number and types of reported offences, victim characteristics associated with the alleged hate motivation, the number of dockets handed over for prosecution, and the number of prosecutions instituted. This ensures a standardised nationwide reporting system.

### **Information to be Collected by Directors of Public Prosecutions**

Form 6 is the annual prosecution report prepared by the Directors of Public Prosecutions. Directors of Public Prosecutions, or their delegates, must submit annual prosecutorial reports to the NDPP and the Director-General. This form captures the number of dockets received, authorisations for prosecution, prosecutions instituted, successful and unsuccessful outcomes, and victim characteristics connected to the alleged hate element. This reporting requirement ensures transparency in prosecutorial decision-making and outcomes.

### **Information to be Collected by Clerks and Registrars**

Form 7 is the report prepared by Clerks and Registrars on convictions, reviews, and appeals. Regulation 5 imposes duties on Clerks of the Magistrates' Courts and Registrars of the High Court to report every conviction of an underlying offence as a hate crime, as well as every conviction for hate speech under section 4(1)(a), and every conviction under section 4(1)(b) relating to the electronic distribution of hate speech. If a conviction is taken on review or appeal, the Registrar must also report the outcome using Form 7. This requirement closes the loop in the justice process by ensuring that the DG's database reflects not only initial convictions but also the results of further judicial processes.

### **Conclusion**

Forms 1 – 7 are highly detailed and include personal information relating to accused persons and victims. They also capture characteristics connected to hate motivation, case numbers, and court outcomes. As such, the Draft Regulations provide the detailed administrative machinery required to operationalise the Act. By establishing a standardised system for data collection across SAPS, the National Prosecuting Authority, and the courts, the Regulations aim to improve the detection and prosecution of hate-motivated crimes, enhance national monitoring, strengthen transparency, and support evidence-based policy interventions. Stakeholders, including legal practitioners, human rights organisations, government departments, and civil society, are encouraged to familiarise themselves with the Regulations and the reporting structures they introduce.