

“INCREASING THE CAPACITY OF LAW ENFORCEMENT AUTHORITIES TO TACKLE RACIST CRIME, HATE CRIME AND HOMOPHOBIC CRIME THROUGH EXPERIENTIAL LEARNING (EXPERIENCE CRIME)”

Agreement Number - JUST/2013/FRAC/AG/6185



PROTOCOL ON THE EFFECTIVE INVESTIGATION/PROSECUTION OF HATE CRIME (GENERAL)

1. BACKGROUND

Hate crimes are criminal acts committed with a bias motive based on a so called “protected characteristic” of an individual. The most commonly protected characteristics are: “racial”/ethnic origin, nationality, religious belief, sexual orientation, gender identity, disability.

Hate Crime is a “message crime” that does not affect only the victim, but also the community of the victim and the democratic society as a whole.

Failure to effectively prosecute hate crimes can lead to fear in the victim community, mistrust in the capacity of public authorities and law enforcement to maintain public order and protect vulnerable citizens and lack of faith in the justice system.

Major barriers in effectively addressing hate crime include under-reporting, under-recording, lack of knowledge in the actors of the process to recognize hate crimes or secure/use vulnerable evidence, lack of clear procedures and lack of cooperation and sharing of information between major actors. A major challenge for all actors lies in ensuring trust among the members of the protected groups so as victims/witnesses are encouraged to come forth and provide all the information needed to effectively combat the hate crime.

The present protocol is the result of information sharing, exchange and discussion between law enforcement officers that took part in the capacity building seminars organized in the context of the project “Increasing the capacity of law enforcement authorities to tackle racist crime, hate crime and homophobic crime through experiential learning”. The protocol aims to offer a holistic approach to hate crimes from the perspective of practitioners and brings together practices that are effective in addressing the barriers mentioned above.



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2. ORGANIZATIONS INVOLVED IN ADDRESSING HATE CRIME AND THEIR ROLE

Several actors are involved in the effective investigation and prosecution of hate crimes, the main ones being the police, the public prosecution, the judiciary and defence practitioners.

All actors have an important role to play in protecting victims and the society and in sending a clear message with regard to the respect of the rule of law and the fundamental principles of equality.

However, hate crimes cannot be addressed effectively if all actors in the process do not share the same knowledge, do not have a clear role and if they do not all share a common vision on the importance and the due process for addressing hate crime.

Police. Police officers are often the first professionals to arrive at the scene of a hate crime. What police officers do and say at a crime scene can affect the outcome of the investigation, the victims but also public perception of hate crimes. Officers who recognize a probable hate crime, interact with the victims with empathy, and take action to initiate a hate crime investigation send a strong message that hate crimes are a serious issue.

The main role of the police is to record, respond and investigate all reported hate incidents in a consistent, robust, proactive and effective manner. In specific, the police needs to collect all key evidence that can be lost if not collected and recorded promptly and prepare a complete file with the evidence the prosecution needs for the trial. The early recognition of potential bias motivation by police has a critical impact on whether enough evidence is gathered, enabling the successful prosecution of the case as a hate crime.

Public Prosecution. In many jurisdictions, the public prosecution will prosecute and coordinate the investigation of a hate crime. The main role of the prosecutor is to determine if the case should be prosecuted as a hate crime and whether additional evidence is needed to prove the elements of the crime and the bias motivation. It is thus necessary that prosecutors are aware of the concept of hate crime and of protected characteristics and have close co-operation with the police.

Defense practitioners. Defense practitioners play an important role in hate crimes. Firstly, they act as a voice for victims and act as intermediaries with the



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authorities; secondly, they help and guide the victim during the police investigation and contact with the police; and thirdly, they appear in court and make a valid case. Secondly, they also have a role in raising awareness on hate crime and campaigning for action.

Victim support or NGOs. NGOs or victim support services might often be the first point of contact for the victim. They have an important role in identifying potential hate crimes, providing comprehensible and clear information, encouraging the victim to report and referring it for specialized assistance or services.

Judiciary. The court is the ultimate place where justice will be delivered. The role of the judge is to objectively assess the evidence and apply the law.

3. ORGANIZATIONAL STRUCTURES WITHIN LAW ENFORCEMENT AGENCIES FOR AN EFFECTIVE RESPONSE TO HATE CRIME

The special nature of hate crime makes specific organizational requirements essential for an effective response to it. These respond to the need to ensure specialized knowledge and skills for all those involved in coming into contact with victims, collecting evidence, investigating, representing and hate crime. The project highlighted the following organizational structures are effective practices for addressing in a holistic way hate crime:

1. A Police Unit at National level should follow up developments and collect statistics on hate crime, provide directions and guidance and organise regular trainings for police officers.
2. Specially trained first contact officers tasked to combat hate crime should operate at local (regional, provincial etc. according to the specific country) level. The main responsibility of first contact officers is to a) recognise bias motivations and probable hate crimes and b) identify and secure all existing evidence, including vulnerable evidence and c) be aware of how to treat the victim with respect and ensure its cooperation in the process of investigation and prosecution.
3. A clear system for registering hate crime needs to be in place, preferably at police region level. The registration system should include both basic forms of discrimination and offences with a discriminatory aspect. A



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report should be made available at regular intervals on hate crime incidents and a statistical evaluative annual overview (management report) on the reported incidents.

4. A specialized public prosecutor/public prosecution service at national level is recommended to allow an effective, rapid and consistent response to hate crimes. Its role would be to provide solid guidance on the prosecution of hate crimes, collect and process statistical data and disseminate knowledge to public prosecutors.
5. Public prosecutors specifically trained to prosecute hate crime should operate at local (regional, provincial etc. according to the specific country) level.
6. Judicial academies and courts should introduce in their continuous training curricula specialized training seminars and workshops on hate crime, bias indicators, protected grounds and awareness of prejudice.
7. Local Bar Associations should form specialized groups of lawyers who can provide legal aid and assistance to victims of hate crime.
8. Bar Associations should provide continuous training seminars to lawyers on hate crime, bias indicators, protected grounds and awareness of prejudice.
9. Coordination between actors involved in addressing hate crime and especially between the police, prosecution, Bar Associations and lawyers is important for an effective response to hate crime and the protection of victims. Coordination meetings have proven to be a simple yet effective practice for information-sharing, monitoring case progress and aligning guidelines and responses. Coordination meetings can take place at local, regional and central levels.



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4. (PRE) INVESTIGATION

1. Obligatory reporting and notification of hate crime

The police must record all *reports* of discrimination and hate crime. The police needs to adopt a victim oriented approach to hate crime and accept without challenge the view of a victim or any other person that an alleged crime was motivated by hate. A police officer must not have discretion in recording or investigating a hate incident or crime and should be obliged to meticulously collect all available evidence.

A report always leads to action under criminal law (summons, settlement of the criminal case out of court, dismissal etc.), unless the report does not prove a criminal offence. All *notifications* of hate crime incidents made at a police station are included in the list of discriminatory incidents.

2. Suspicion of bias motivation

If there is suspicion of a bias motivation, the police must identify and record all objective facts, circumstances, or patterns in relation to a criminal act(s), which, stand alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated, in whole or in part, by any form of bias.

The police must investigate the case following the “bias indicators” list (Racial, Ethnic, Gender, and/or Cultural Differences; Comments, Written Statements, or Gestures; Drawings, Markings, Symbols, or Graffiti; Organized Hate Groups; Previous Bias Crimes or Incidents; Victim/Witness Perception; Timing/Date/Location of Incident; Lack of Other Motives).

3. Contact with the victim and testimony

One of the main barriers in effective responses against hate crimes is the fear of the victim to share their traumatic experience. It must be safeguarded that the victim is not afraid to testify to the police all relevant circumstances, even if they can constitute another crime committed by the victim that is not prosecuted ex officio (e.g. admitting he/she was an irregular prostitute etc.). Therefore, adequate information must be provided to the victim before the testimony is recorded.

- The first interview with the victim is of key importance. It is important to create a friendly environment and to use decent premises and support to the extent possible



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- The victims should be encouraged to share all circumstances of the case and should not be forced to admit eg that they are LGBTI or disabled
- Comprehensive information should be provided to the victim about the whole procedure, including the judicial procedure. Information should include available remedies and recourse to support organizations
- full background check of the suspect on social media, etc. for homophobic comment, membership in a homophobic group, previous conviction if any
- recording the feelings of the victim
- data has to be recorded in a way that the victim’s LGBTI identity/hate crime is specified
- registration of the characteristics of the victim can be very useful, but it must be done with utmost caution
- demonstrate an objective attitude: reach out for useful information if available from other police officers; cultural mediator (affiliated with the police or an NGO) who provides a link to the community
- interpretation is a key issue
- differentiate between the race based hate crime committed against (1) foreigners and (2) citizens

In the context of the individual assessment aimed to identify the “specific needs” of the victim, particular attention needs to be paid to victims. It must be stressed that the victim should not have to go through the narration of his/her story more times than is absolutely necessary nor should the police or the public prosecutor ask for his/her residence permit (when an alien) more than once.

If bodily harm is involved, the victim should be immediately referred to a, free of charge, forensics doctor (or other specialized public hospital department), so as not to let time heal the wounds and conceal the possible marks that the offender left behind him/her.

4. Collection of evidence and preparation of case file report

The starting point is that investigation into the identity of the suspect will be carried out and a case file report will be completed and sent to the prosecution. Reports must be prepared as soon as possible.



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In the case of a report or notification of common offences, the police must be alert and devote attention to any discriminatory elements in incidents, even if the person reporting the incident does not directly regard these elements as discriminatory. The discriminatory circumstances of the incident must be explicitly stated in the official report and/or the report.

5. PROSECUTION

After receiving the police report, the prosecution has to order specific, additional investigations when the possible bias motivation has not been sufficiently investigated. If the prosecution believes that there is ambiguity regarding the bias motives or other circumstances of the reported crime, the victim should be called to give additional details or clarifications.

In case the alleged offender is part of a special group (e.g. member of a political party, public servant etc.), investigation should extend to other accusations that this special group has been confronted with, if any, to identify potential patterns of actions.

The prosecutor should be in the position to provide adequate protection measures to victims/witnesses claiming that they are afraid of secondary victimization or reprisals.

Prosecutors review the police report and decide whether they can take further action. In principle, every violation that can be proven and where the suspect appears to be criminally liable, should lead to a response under criminal law.

The presence of the prosecution at court should clearly reflect society's rejection of hate crime incidents.

With regard to sentencing hate crime cases when hate crime is a penalty-enhancement provision it can be helpful for prosecutors to ensure that the case file includes a clear analysis of why sentencing should take into account the bias motive, including references to the international standards¹

¹<http://www.osce.org/odihr/prosecutorsguide?download=true>
http://www.ndaa.org/pdf/hate_crimes.pdf



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6. NON-GOVERNMENTAL ORGANISATIONS AND VICTIM SUPPORT SERVICES

NGOs are often very well positioned to serve as bridges among police, communities, victims and others. The important role of NGOs consists mainly in²:

- Providing direct support for victims, including centres for support and counseling
- Helping Victims to Report Hate Crimes
- provide victims with information to receive compensation and government benefits
- Emergency Assistance
- Accompanying Victims to Police or Other Government Agencies
- Representing Victims
- Medical Services
- Advocating for Services
- Empowering Victims
- Community Support for Victims

7. LAWYERS

The role of lawyers is critical in the way that victims are treated and in the way they cooperate in the investigation and prosecution. Especially the first meeting between a lawyer and a victim can be crucial. Bar Associations are encouraged to develop guidelines to ensure that victims are dealt with respect and sensitivity. Key elements in the response of lawyers include:

- Respond immediately - meet with victims immediately after a hate crime occurs, to cater for emergency assistance needs, ensure clear memories and avoid further victimization.
- Ensure safety and listen to the victim. Meetings should take place in safe spaces and lawyers should be trained to have some skills on how to handle individuals who might be traumatized or in a state of shock.
- Ensure confidentiality - privacy and anonymity should be safeguarded, if the victim desires.

²<http://www.osce.org/odihr/39821?download=true>



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- Preserve physical evidence that is important for the investigation of the hate crime
- Explain and Refer - Lawyers should explain who they are, what they can and cannot do, and what others can do.

8. PROVISION OF INFORMATION

In any stage of the process, the victim must be advised on where and how to access (free) legal counseling or representation and available victim support services offered by NGO's or other bodies.

Information provided to the victim must be in plain language and unambiguous. It must include at least a) information in plain language on procedural rules and options related to testifying as the victim of a crime, as a civil party in the criminal proceedings or as witness b) information on services that can be accessed and the kind of support to be received c) information on special protection measures available d) information on ways to address claims at civil/administrative courts, e) information on legal aid or legal representation.

Access to the file of the ongoing investigation should not be denied, unless there is a justified decision of the public prosecutor.

Cooperation agreements or Memoranda of Understanding can be signed to facilitate the communication and cooperation between public prosecutor, police and NGOs of victim support services.

9. MISCELLANEOUS

Translation of medical or other documents should be provided to the victim (even orally), so as the victim to know what these papers of his/her case are about.

Interpretations should always be free of cost and training of interpreters on how to deal with a traumatized victim (e.g. facilitating to express him/herself) should be encouraged. On gender-based hate crimes, it could be wise to ask the victim if he/she has a special desire to have a same sex/gender interpreter.



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Compensation to the victim should always be applicable and mediation in penal matters should not be excluded, as long as it includes restorative actions (e.g. public apology and/or restoration of the burnt shop of the victim).

Having a uniform definition of hate crimes and systems in place will ensure the smooth flow of case information across the criminal justice system and will facilitate co-operation.

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