

## **DRAFT REGULATIONS:**

### **PREVENTION AND COMBATING OF HATE CRIMES AND HATE SPEECH ACT, 2023 (ACT NO. 16 OF 2023)**

The Minister of Justice and Constitutional Development has, under—

- (a) section 8(1)(a) and (b) of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act No. 16 of 2023), in consultation with the Cabinet member responsible for policing and the National Director of Public Prosecutions; and
- (b) section 10(2)(c) of the Act, in consultation with the Cabinet member responsible for finance, made the Regulations in the Schedule.

### **SCHEDULE**

#### **ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Duties and functions of Director-General
3. Information to be collected by members of South African Police Service
4. Information to be collected by Directors of Public Prosecutions
5. Information to be collected by clerks of court and Registrars of High Court
6. Short title

#### **Annexure**

Form 1: Particulars to be recorded by South African Police Service (Underlying offence as Hate Crime)

Form 2: Particulars to be recorded by South African Police Service (Hate Speech)

Form 3: Particulars to be recorded by South African Police Service in respect of contravention of section 4(1)(b) of the Act (Distribution or making available electronic communication which constitutes Hate Speech)

Form 4: Station Commander's Six-monthly report to Provincial Commissioner

Form 5: Provincial Commissioner's annual report to National Commissioner and Director-General

Form 6: Particulars to be forwarded to National Director of Public Prosecutions and Director-General

Form 7: Particulars to be forwarded to Director-General by Registrar of the High Court/Clerk of the Court

## Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context otherwise indicates—

**'clerk of the court'** means a—

- (a) clerk, including an assistant clerk, of the court appointed in terms of section 13; and
- (b) registrar, including an assistant registrar, of a regional division appointed in terms of section 13A, of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

**'complainant'** means the alleged victim of an offence referred to in section 3(2)(a), 4(1)(a) or 4(1)(b) of the Act or a person who reports such offence to the South African Police Service;

**'data-base'** means any disaggregated statistical information or case management records recorded in a manner that facilitates the collection, analysis, generation and dissemination of information as envisaged by the Act including for monitoring and reporting purposes, in possession of the Director-General whether such information is in electronic format or not;

**'Director-General'** means the Director-General: Justice and Constitutional Development;

**'Registrar of the High Court'** means a registrar, including an assistant registrar, of any Division of the High Court appointed in terms of section 11 of the Superior Courts Act, 2013 (Act No. 10 of 2013); and

**'the Act'** means the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act No. 16 of 2023).

## Duties and functions of Director-General

2. (1) The Director-General must, subject to regulations 3, 4 and 5, keep a data base as part of the electronic infrastructure of the Department of Justice and Constitutional Development in a manner that facilitates information to be transmitted as contemplated in section 8(1)(a), (b) and (c) of the Act, respectively.

(2) (a) The information received by the Director-General in terms of regulations 3(2)(b), 4 and 5 must be included in the data base in a manner that enables anonymised statistical data to be generated for purposes of complying with the reporting duties referred to in section 8 of the Act.

(b) The Director-General must—

- (i) make the statistical data, referred to in paragraph (a), available on the website of the Department of Justice and Constitutional Development and update the data on a quarterly basis; and
- (ii) within the first two months of each financial year, submit a report to the—
  - (aa) Speaker of the National Assembly and the Chairperson of the National Council of Provinces;
  - (bb) Chairperson of the South African Human Rights Commission;
  - (cc) Chairperson of the Commission for Gender Equality; and
  - (dd) Chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

### **Information collected by South African Police Service**

**3.** (1) The South African Police Service must, when an alleged offence of a hate crime or hate speech is reported by a victim, record the information, in the case of the alleged commission of—

- (a) an underlying offence as a hate crime referred to in section 3(2)(a);
- (b) hate speech referred to in section 4(1)(a); or
- (c) an offence referred to in section 4(1)(b),

of the Act, in a form that corresponds substantially with Form 1, 2 or 3 in the Annexure, respectively.

(2) (a) The Station Commander of each police station must, every six months, submit a report in a form that substantially corresponds with Form 4 in the Annexure to the Provincial Commissioner concerned.

(b) The Provincial Commissioners must, at the end of each financial year, submit consolidated reports in a form that corresponds substantially with Form 5 in the Annexure to the National Commissioner of the South African Police Service and the Director-General.

### **Information collected by Directors of Public Prosecutions**

**4.** The Directors of Public Prosecutions or the persons delegated thereto by them, as provided for in terms of sections 3(3) and 4(3) of the Act, must, at the end of each financial year, submit reports in a form that corresponds substantially with Form 6 in the Annexure to the National Director of Public Prosecutions and the Director-General.

**Information collected by clerks of court and Registrars of High Court**

**5.** (1) When a court convicts a person of an—  
(a) underlying offence as a hate crime referred to in section 3(2)(a);  
(b) offence of hate speech referred to in section 4(1)(a); or  
(c) offence referred to in section 4(1)(b),  
of the Act, the clerk of the court or the Registrar of the High Court must immediately submit reports in a form that substantially corresponds with Form 7, respectively, to the Director-General.

(2) When a conviction referred to in subregulation (1) is taken on review or appeal the Registrar of the High Court must submit a report in a form that corresponds substantially with Form 7 to the Director-General.

**Short title**

**6.** These Regulations are called the Prevention and Combating of Hate Crimes and Hate Speech Regulations.

**Annexure****Form 1****Section 8(1)(a) of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023  
(Act No. 16 of 2023)**

[Regulation 3]

**Particulars to be recorded by South African Police Service****(Underlying offence as Hate Crime)**

<b>INFORMATION TO BE RECORDED IN RESPECT OF AN UNDERLYING OFFENCE AS A HATE CRIME</b>	
CASE NUMBER/CRIM NO:	
POLICE STATION:	
RANK, FULL NAMES AND SURNAME OF POLICE OFFICER REPORTED TO:	
DATE OF COMPLAINT:	
DATE, PLACE AND TIEM (IF TIME IS AVAILABLE) WHERE ALLEGED OFFENCE WAS COMMITTED:	
TYPE OF UNDERLYING OFFENCE COMMITTED AS AN ALLEGED HATE CRIME:	

<b>INFORMATION TO BE RECORDED IN RESPECT OF AN UNDERLYING OFFENCE AS A HATE CRIME</b>	
<b>1. PERSONAL INFORMATION OF PERSON WHO ALLEGEDLY COMMITTED AN UNDERLYING OFFENCE AS A HATE CRIME</b>	
Title: (If known)	
Full names and surname:	
Indicate any other surnames:	
Indicate any known alias or nickname:	
Any known profession or trade:	
Date of birth:	
Age:	
Gender:	
Race:	
Identity number (If known):	

Passport number if person is not a South African citizen (If known):	
Home address/Last known physical address:	

<b>2. PERSONAL INFORMATION OF ALLEGED VICTIM OF THE UNDERLYING OFFENCE AS A HATE CRIME</b>	
Title: (If known)	
Full names and surname:	
Indicate any other surnames:	
Indicate any known alias or nickname:	
Any known profession or trade:	
Date of birth:	
Age:	
Gender:	
Race:	
Identity number (If known):	
Passport number if person is not a South African citizen (If known):	
Home address/Last known physical address:	

<b>3. CHARACTERISTIC/S OF VICTIM OR COMPLAINANT'S FAMILY MEMBER AGAINST WHOM THE UNDERLYING OFFENCE AS A HATE CRIME WAS COMMITTED</b>	
Age:	
Albinism:	
Culture:	
Disability:	
Ethnic or social origin (Choose only one):	
Gender:	
HIV or AIDS status:	
Language:	
Nationality, migrant, refugee or asylum seeker status (Choose only one):	
Occupation or trade (Choose only one):	
Political affiliation or conviction:	
Race:	
Religion:	
Sex:	

Sexual orientation, gender identity or expression or sex characteristics:	
Skin colour:	

<i>Officer to whom offence is reported</i>	<i>Rank, Full names and surname</i>
<i>Date:</i> _____	

## Form 2

### Section 8(1)(a) of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act No. 16 of 2023)

[Regulation 3]

(Particulars to be recorded by South African Police Service)

(Hate Speech)

INFORMATION TO BE RECORDED IN RESPECT OF REPORTED HATE SPEECH	
CASE NUMBER/CRIM NO:	
POLICE STATION	
RANK, FULL NAMES AND SURNAME OF POLICE OFFICER REPORTED TO:	
DATE OF COMPLAINT:	
DATE, PLACE AND TIME (IF AVAILABLE) WHERE ALLEGED HATE SPEECH WAS COMMITTED:	

INFORMATION TO BE RECORDED IN RESPECT OF HATE SPEECH
1. PERSONAL INFORMATION OF PERSON WHO ALLEGEDLY COMMITTED HATE SPEECH

Title: (If known)	
Full names and surname:	
Indicate any other surnames:	
Indicate any known alias or nickname:	
Any known profession or trade:	
Date of birth:	
Age:	
Gender:	
Race:	
Identity number (If known):	
Passport number if person is not a South African citizen (If known):	
Home address/Last known physical address:	

2. PERSONAL INFORMATION OF ALLEGED VICTIM OF HATE SPEECH	
Title:	
Full names and surname:	
Indicate any other surnames:	
Indicate any known alias or nickname:	
Any known profession or trade:	
Date of birth:	
Age:	
Gender:	
Race:	
Identity number:	
Passport number if person is not a South African citizen:	
Home address/Last known physical address:	

3. ALLEGED HATE SPEECH WAS COMMITTED IN RESPECT OF ANY OF THE FOLLOWING GROUNDS	
Albinism:	
Ethnic or social origin (Choose only one):	
Gender:	
HIV or AIDS status:	
Nationality, migrant, refugee or asylum seeker status (Choose only one):	
Race:	

Religion:	
Sex:	
Sexual orientation, gender identity or expression or sex characteristics:	
Skin colour:	

### Form 3

#### Section 8(1)(a) of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act No. 16 of 2023)

[Regulation 3]

**Particulars to be recorded by South African Police Service in respect of contravention of  
section 4(1)(b) of the Act**

***(Distribution or making available an electronic  
communication which constitutes Hate Speech)***

INFORMATION TO BE RECORDED IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT	
CASE NUMBER/CRIM NO:	
POLICE STATION:	
RANK, FULL NAMES AND SURNAME OF POLICE OFFICER REPORTED TO:	
DATE OF COMPLAINT:	
DATE ON WHICH DISTRIBUTION OR MAKING AVAILABLE OF AN ELECTRONIC COMMUNICATION WHICH CONSTITUTES HATE SPEECH FIRST TOOK PLACE:	

INFORMATION TO BE RECORDED IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT	
1. PERSONAL INFORMATION OF PERSON WHO ALLEGEDLY CONTRAVENED SECTION 4(1)(b) OF THE ACT	
Title: (If known)	
Full names and surname:	
Indicate any other surnames:	

Indicate any known alias or nickname:	
Any known profession or trade:	
Date of birth:	
Age:	
Gender:	
Race:	
Identity number (If known):	
Passport number if person is not a South African citizen (If known):	
Home address/Last known physical address:	

2. PERSONAL INFORMATION OF ALLEGED VICTIM OF HATE SPEECH	
Title:	
Full names and surname:	
Indicate any other surnames:	
Indicate any known alias or nickname:	
Any known profession or trade:	
Date of birth:	
Age:	
Gender:	
Race:	
Identity number:	
Passport number if person is not a South African citizen:	
Home address/Last known physical address:	

3. ALLEGED HATE SPEECH WAS COMMITTED IN RESPECT OF ANY OF THE FOLLOWING GROUNDS	
Albinism:	
Ethnic or social origin (Choose only one):	
Gender:	
HIV or AIDS status:	
Nationality, migrant, refugee or asylum seeker status (Choose only one):	
Race:	
Religion:	
Sex:	

Sexual orientation, gender identity or expression or sex characteristics:	
Skin colour:	

### Form 4

## Section 8(1)(a) of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act No. 16 of 2023)

[Regulation 3]

### Station Commander's Six-monthly report to Provincial Commissioner.

REPORT TO BE SUBMITTED BY STATION COMMANDERS ON A SIX-MONTHLY BASIS TO PROVINCIAL COMMISSIONER	
POLICE STATION:	
RANK, FULL NAMES AND SURNAME OF STATION COMMANDER:	
UNDERLYING OFFENCES AS HATE CRIMES	
NUMBER OF CASES REPORTED OF UNDERLYING OFFENCES AS HATE CRIMES:	
TYPES AND NUMBER OF UNDERLYING OFFENCES:	
CHARACTERISTICS OF VICTIM THAT MOTIVATED UNDERLYING OFFENCES AS HATE CRIMES:	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF PROSECUTIONS INSTITUTED:	
HATE SPEECH (CONTRAVENTION OF SECTION 4(1)(a) OF THE ACT)	
NUMBER OF CASES REPORTED OF HATE SPEECH:	
GROUND(S) IN RESPECT OF WHICH HATE SPEECH WERE COMMITTED:	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF PROSECUTIONS INSTITUTED:	

<b>CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT (DISTRIBUTION OR MAKING AVAILABLE AN ELECTRONIC COMMUNICATION WHICH CONSTITUTES HATE SPEECH)</b>	
NUMBER OF CASES REPORTED OF CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT:	
GROUND IN RESPECT OF WHICH A CONTRAVENTION OF SECTION 4(1)(b) TOOK PLACE:	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF PROSECUTIONS INSTITUTED:	

### Form 5

## Section 8(1)(a) of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act No. 16 of 2023)

[Regulation 3]

**Provincial Commissioner's annual report to National Commissioner and Director-General.**

<b>REPORT TO BE SUBMITTED BY PROVINCIAL COMMISSIONER ANNUALLY TO NATIONAL COMMISSIONER AND DIRECTOR-GENERAL</b>	
PROVINCE:	
RANK, FULL NAMES AND SURNAME OF PROVINCIAL COMMISSIONER:	
<b>UNDERLYING OFFENCES AS HATE CRIMES</b>	
NUMBER OF CASES REPORTED OF UNDERLYING OFFENCES AS HATE CRIMES:	
TYPES AND NUMBER OF UNDERLYING OFFENCES:	
CHARACTERISTICS OF VICTIM THAT MOTIVATED UNDERLYING OFFENCES AS HATE CRIMES:	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF PROSECUTIONS INSTITUTED:	
<b>HATE SPEECH (CONTRAVENTION OF SECTION 4(1)(a) OF THE ACT)</b>	

NUMBER OF CASES REPORTED OF HATE SPEECH:	
GROUND IN RESPECT OF WHICH HATE SPEECH WERE COMMITTED:	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF PROSECUTIONS INSTITUTED:	
<b>CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT (DISTRIBUTION OR MAKING AVAILABLE AN ELECTRONIC COMMUNICATION WHICH CONSTITUTES HATE SPEECH)</b>	
NUMBER OF CASES REPORTED OF CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT:	
GROUND IN RESPECT OF WHICH A CONTRAVENTION OF SECTION 4(1)(b) TOOK PLACE:	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF PROSECUTIONS INSTITUTED:	

### Form 6

### Section 8(1)(b) of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act No. 16 of 2023)

[Regulation 4]

### Particulars to be forwarded to National Director of Public Prosecutions and Director-General

<b>REPORT TO BE SUBMITTED TO NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS AND DIRECTOR-GENERAL</b>	
PROVINCE OF DIRECTOR OF PUBLIC PROSECUTIONS:	
FULL NAMES AND SURNAME OF DIRECTOR OF PUBLIC PROSECUTIONS:	
<b>UNDERLYING OFFENCES AS HATE CRIMES</b>	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF AUTHORISATIONS IN RESPECT PROSECUTIONS TO BE INSTITUTED:	

NUMBER OF PROSECUTIONS INSTITUTED:	
NUMBER OF SUCCESSFUL CONVICTIONS OBTAINED:	
NUMBER OF UNSUCCESSFUL CASES:	
CHARACTERISTICS OF VICTIMS INDIVIDUAL CASES THAT MOTIVATED UNDERLYING OFFENCES AS HATE CRIMES:	
<b>HATE SPEECH (CONTRAVENTION OF SECTION 4(1)(a) OF THE ACT)</b>	
NUMBER OF CASES REPORTED OF HATE SPEECH:	
GROUND IN RESPECT OF WHICH HATE SPEECH WAS COMMITTED:	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF PROSECUTIONS INSTITUTED:	
<b>CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT (DISTRIBUTION OR MAKING AVAILABLE AN ELECTRONIC COMMUNICATION WHICH CONSTITUTES HATE SPEECH)</b>	
NUMBER OF CASES REPORTED OF CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT:	
GROUND IN RESPECT OF WHICH A CONTRAVENTION OF SECTION 4(1)(b) TOOK PLACE:	
NUMBER OF CASE DOCKETS HANDED OVER TO PROSECUTOR:	
NUMBER OF PROSECUTIONS INSTITUTED:	

### Form 7

### Section 8(1)(c) of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act No. 16 of 2023)

[Regulation 5]

**Particulars to be forwarded to Director-General by Registrar of the High Court/Clerk of the Court**

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CASE NUMBER/CRIM NO:	OFFICIAL STAMP Registrar of High Court/Clerk of Court
DATE:	

\*IN THE REGIONAL/MAGISTRATE'S COURT \_\_\_\_\_ FOR THE DISTRICT OF \_\_\_\_\_  
HELD AT \_\_\_\_\_

**OR**

\*IN THE HIGH COURT OF \_\_\_\_\_ HELD AT \_\_\_\_\_

<b>1. PERSONAL INFORMATION OF CONVICTED PERSON</b>	
Title:	
Full names and surname:	
Indicate any other surnames:	
Indicate any known alias or nickname:	
Any known profession or trade:	
Date of birth:	
Age:	
Gender:	
Race:	
Identity number:	
Passport number if person is not a South African citizen:	
Home address/Last known physical address:	

Fingerprint number:	
<b>2. PARTICULARS OF UNDERLYING OFFENCE AS A—</b> <b>* HATE CRIME;</b> <b>* HATE SPEECH; OR</b> <b>* CONTRAVENTION OF SECTION 4(1)(b) OF THE ACT</b>	
* Type of underlying offence (i.e. murder, assault, rape etcetera);	

* Hate Speech; or * Contravention of section 4(1)(b) of the Act.	
* Characteristics of complainant in respect of which the court convicted the accused persons of an underlying offence as a Hate Crime; or * Grounds in respect of complainant in respect of which the court convicted the accused person of Hate Speech or a contravention of section 4(1)(b) of the Act.	
Date and Place of conviction:	
Sentence:	
Sentence imposed:	
<b>3</b>	<b>* REVIEW; OR * APPEAL</b>
* Outcome of Review; or * Outcome of Appeal.	

_____	_____
<i>*Clerk of the court/Registrar of the High Court</i>	<i>Full names and surname</i>
<i>Date:</i> _____	
<i>*Delete whichever is not applicable</i>	