AMERICAN BAR ASSOCIATION

JUSTICE WORKS

Framework for Enhanced Responses to Bias-Motivated Violence Based on Sexual Orientation, Gender Identity, or Gender Expression
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The ABA Framework for Enhanced Responses to Bias-Motivated Violence Based on Sexual Orientation, Gender Identity, or Gender Expression is the culmination of extensive research, consultations, and expert review. The ABA Justice Works program is available to provide advice and technical assistance on applying the principles of enhanced, multi-stakeholder responses to bias-motivated violence impacting LGBTI people and on transposing the different approaches highlighted in the Framework into particular domestic contexts. ABA Justice Works staff can be reached at justiceworks@americanbar.org or +1 202 662 1000.
FOREWORD

Acts of violence based on sexual orientation, gender identity, or gender expression, are on the rise throughout the world. A report from the Organization for Security and Cooperation in Europe’s Office of Democratic Institutions and Human Rights shows a 63 percent increase in reported crimes based on sexual orientation or gender identity from 2014 to 2017. In 2015, the Inter-American Commission on Human Rights noted a life-expectancy among transgender women between 30 and 35 years whereas the expectancy of the general population was 75 years. In the United States alone, law enforcement agencies reported 7,175 hate crime incidents to the Department of Justice in 2017, an increase of over 1,000 from the year before. More than 20 percent of those reported hate crime incidents involved bias toward a person’s sexual orientation or gender identity.

More troubling, we know that these numbers are incomplete. Many law enforcement agencies do not record indicators of bias motivation based on sexual orientation or gender identity. Many lesbian, gay, bisexual, transgender, and intersex (LGBTI) people globally also do not report to the police the violence they experience, fearing retraumatization by officers, reprisals from perpetrators, and inadequate responses from the criminal justice system.

In this context, the American Bar Association (ABA) Justice Works Program, a collaboration between the ABA Rule of Law Initiative (ROLI) and Center for Human Rights (CHR), provides technical assistance to civil society and justice sector actors seeking to better respond to bias-motivated violence based on sexual orientation or gender identity. As part of this effort, the Program is pleased to present the Justice Works Framework for Enhanced Responses to Bias-Motivated Violence Based on Sexual Orientation, Gender Identity, or Gender Expression.

The Justice Works Framework provides practical, operational guidance for enhanced, cross-sector responses by LGBTI civil society organizations, psychosocial support service providers, and justice sector actors to bias-motivated violence. The ideas and concepts in the Framework were developed in conjunction with a diverse group of experts, including advocates for the rights of LGBTI people, psychosocial support service providers, police departments, prosecutors’ offices, judges, ministries of justice, and other legal practitioners. The case studies were provided by courageous individuals and organizations wishing to contribute to global efforts to better respond to bias-motivated violence against LGBTI people.

We hope that the Justice Works Framework inspires LGBTI people and the organizations that represent them and justice sector actors worldwide to increasingly engage and forge strong, meaningful relationships. We hope that, following the guidance in this framework, these relationships can become the solid foundation for justice sector actors to better uphold the rule of law, take into account the interests of LGBTI survivors, and consider the impact on the entire LGBTI community in cases of bias-motivated violence.

Jordan Long
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ABA Center for Human Rights
ABA Rule of Law Initiative
About the American Bar Association Rule of Law Initiative

For more than 25 years, and through our work in more than 100 countries, the American Bar Association Rule of Law Initiative (ABA ROLI) and our partners have sought to strengthen legal institutions, to support legal professionals, to foster respect for human rights, and to advance public understanding of the law and of citizen rights.

In collaboration with our in-country partners—including government ministries, judges, lawyers, bar associations, law schools, court administrators, legislatures and civil society organizations—we design programs that are responsive to local needs and that prioritize sustainable solutions to pressing rule of law challenges. We employ rigorous and innovative monitoring and evaluation approaches in assessing the quality and effectiveness of our programs.

ABA ROLI has roughly 500 professional staff working in the U.S. and abroad, including a cadre of short- and long-term legal specialists, volunteers, interns, and third-party contributors, who in fiscal year 2017 alone contributed $1.34 million in pro bono legal assistance.

About the American Bar Association Center for Human Rights

The ABA Center for Human Rights promotes and protects human rights worldwide – defending human rights advocates facing retaliation, rallying thought leaders on crucial issues, and holding abusive governments accountable under law.
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I. EXECUTIVE SUMMARY

Introduction

The Justice Works Framework for Enhanced Responses to Bias-Motivated Violence Based on Sexual Orientation, Gender Identity, or Gender Expression, developed by the American Bar Association’s (ABA) Justice Works Program, identifies common features of discrete initiatives from various parts of the world that have been successful in supporting survivors of bias-motivated violence based on sexual orientation, gender identity, or gender expression (SOGIE) and bringing offenders to justice. Unlike other guides and tools that target specific stakeholder groups and their respective roles in the response to bias-motivated violence based on SOGIE, the Framework takes a comprehensive look at the pursuit of justice after an incident of bias-motivated violence based on SOGIE has occurred, taking into consideration the physical and psychosocial interests of individual survivor(s); the safety and security of the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community; and the state’s interest in maintaining the rule of law. The Framework includes specific examples and case studies that illustrate the importance of collaborative, multi-stakeholder responses to address the multifaceted harms that bias-motivated violence can inflict on survivors and the broader LGBTI community.

Bias-motivated violence based on SOGIE involves three distinct harms, the solutions to which are, at times, complementary and, at other times, in tension: 1) injury to the survivor of the violence; 2) injury to the broader LGBTI community to which the survivor belongs; and 3) injury to society as a whole, given that unlawful violent conduct undermines the rule of law, especially when perpetrators of such conduct are not effectively brought to justice. Enhanced responses to bias-motivated violence based on SOGIE take into account the tensions that exist among these various harms and recognize that each harmed constituency might have different demands about correcting their respective injury.

The Framework is a tool intended to strengthen stakeholders’ collaborative responses to bias-motivated violence based on SOGIE. Aggregating existing knowledge about “what works” in responding to bias-motivated violence based on SOGIE, it seeks to inform context-specific interventions by local actors and support local advocacy by civil society organizations (CSOs) working on topics relating to SOGIE to hold governments accountable for ensuring that perpetrators do not enjoy impunity. The Framework builds on the insight that redress and deterrence are optimized when CSOs, psychosocial support service providers, law enforcement, prosecutors, and judges are willing and able to collaborate closely in response efforts and is focused on providing response strategies rooted in criminal justice solutions to violence. While other responses to violence are possible through civil court proceedings or community-based channels, ABA recognizes that the use of existing criminal law that punishes violence addresses the three harms laid out above due to the role of the state in holding the perpetrators to account under criminal law. The approaches and strategies identified do not depend on the existence of hate crime legislation in a jurisdiction, as interpersonal violence is nearly universally penalized under existing criminal laws.

To these ends, the Framework outlines key considerations for stakeholders; summarizes “lessons learned”; and provides concrete examples of civil society and government actors working creatively and collaboratively to ensure that the criminal justice system is effectively responding to bias-motivated violence based on SOGIE. Pursuing immediate, intermediate, and long-term responses to such violence that facilitate collaboration across stakeholder groups is important for helping to maintain a survivor-centric approach.
Methodology

The Framework is grounded in a discussion of the typology of bias-motivated violence and how it affects various constituents of the LGBTI community. The document reflects the input of a multi-country, cross-regional group of CSO and governmental stakeholders who were willing to share their knowledge and experiences with the Justice Works Program. To elicit their contributions and anchor those contributions in existing interdisciplinary research on bias-motivated violence, ABA used a participatory and qualitative research methodology, which included:

- Literature review;
- Key respondent consultations;
- Expert Workshop on Comprehensive Responses to Violence;
- Expert review.

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The Framework explores the events that take place after a violent incident occurs. This occurrence is the point when a person experiences violence based on SOGIE, triggering the need for as comprehensive a response as possible from CSOs, psychosocial support service providers, and justice sector actors, including police officers, prosecutors, judges, and lawyers. The Framework is organized by stages of the life cycle of the response to bias-motivated violence. It describes what constitutes an enhanced response during each phase of the life cycle, identifying the stakeholder groups that are chiefly responsible and articulating how collaboration with other groups helps ensure a survivor-centric approach in the pursuit of justice for bias-motivated violence based on SOGIE and in the prosecution of perpetrators, when applicable. It identifies concrete action points and roles for each group during each phase of response, reflecting their specific technical or substantive expertise in violence response or in working with the LGBTI community and provides case studies of approaches that have been implemented in jurisdictions throughout the world.

Life cycle of response

Immediate responses: When a person experiences violence based on SOGIE, the actions taken in the immediate response phase are key to addressing the harms caused to the survivor, to the LGBTI community, and to the rule of law. Depending on the severity of the violence and the individual’s view of different authorities, a survivor might choose to access different stakeholders in the immediate aftermath of the incident, such as CSOs, emergency medical responders, psychosocial support service providers, police, or lawyers, or choose not to report at all. For survivors who choose to report, all stakeholders in the immediate response should use approaches that document the indicators of bias while avoiding retraumatization. Such documentation may serve the dual purposes of contributing to the successful prosecution of the offender and identifying key factors and trends for more effective systemic responses to such bias-motivated violence.

Intermediate responses: After the immediate response to an incident of bias-motivated violence based on SOGIE, investigators must follow up on initial reports of the incident. Prosecutors must determine whether to file charges against a perpetrator and, if so, determine which criminal statutes in their jurisdiction they will use. Judges must ensure fair and impartial legal proceedings. It is critical for justice sector actors to have the cultural competency, understanding, and sensitivity to work effectively with LGBTI survivors of violence and their communities.
**Long-term responses:** Lawmakers draft and enact the statutes available to prosecute and punish acts of bias-motivated violence based on SOGIE. In environments that are not limited by anti-LGBTI legislation, and where there is political will to go beyond using the ordinary criminal code to prosecute aspects of bias-motivated violence, lawmakers have the option of drafting and enacting “hate crime” laws, statutes that explicitly criminalize and punish acts of bias-motivated violence based on SOGIE. They authorize law enforcement and prosecutors to investigate and prosecute violations, including those that involve interpersonal and family violence; they also establish the elements of particular crimes that must be demonstrated by evidence to bring perpetrators to justice. Where such statutes exist, they often authorize law enforcement and prosecutors to collect additional data about indicators of bias and to seek enhanced sentences for specific types of hate-based interpersonal violence, thereby sending the message that bias and hate are not tolerated in society. While legislators are the key actors responsible for the adoption of such statutory long-term responses, their action is often influenced by civil society advocacy, public opinion, and data that compellingly documents the rates and extent of bias-motivated violence based on SOGIE. In this way, long-term responses to bias-motivated violence based on SOGIE should also include multi-stakeholder encouragement of reporting such violence through safe and supportive channels, so that the evidence base for legislative reform is as robust as possible.

Each section of the Framework contains concrete examples of initiatives that have had certain success in implementing enhanced responses to bias-motivated violence based on SOGIE. In countries where there is not repressive legislation in place that inhibits possibilities for cross-sectoral collaboration, the initiatives covered in this Framework can be tailored and transposed to reflect relevant countries’ domestic legal systems, local political climates, and historical relationships between the LGBTI community and authorities. The examples are intended to help stakeholders recognize and bridge any gaps in coordinated responses in their own work. Takeaway charts provide checklists for assessing how various stakeholders are working toward enhanced responses to violence and whether there are any gaps to bridge to improve coordinated responses.

Overall, the Framework provides all stakeholders involved in responding to bias-motivated violence based on SOGIE with guidance for developing collaborative, multi-stakeholder responses in ways that account for the various individual, community, and societal interests involved.