Speech by Pascale Charhon, Director of the European Network Against Racism

OSCE high-level conference on combating discrimination and promoting mutual respect understanding, 7-8 June 2007:

Civil Society Preparatory Meeting

Workshop Group 1

Bucharest, 6 June 2007

Mr Chairman in office,
Dear Ambassador Strohal,
Dear Mrs Crickley, Personal Representative of the OSCE Chairman in Office on racism and xenophobia,
Your Excellency,
Dear Participants,

Let me first of all thank the OSCE chairman in office, the ODHIR, the Personal Representative of the OSCE Chairman in Office on racism and xenophobia for inviting ENAR to contribute its views to the civil society preparatory meeting preceding the high-level conference on combating discrimination and promoting mutual respect and understanding. It is a pleasure for us to be here. This civil society preparatory meeting builds on best practices civil society meetings that were held in 2006 in Almaty, Dubrovnik and Vienna and we would like to acknowledge the commitment of the OSCE Spanish chairmanship, participating states and institutions to a structured dialogue with civil society on combating discrimination and promoting mutual respect and understanding.

Let me start by introducing ENAR, the European Network Against Racism. ENAR is an EU-wide network of more than 600 organisations working to combat racism in all the EU member states and acts as one of the important voice of anti-racism in Europe. The establishment of ENAR endorses the recognition by NGOs of the European dimension to the fight against racism. Anti-racist NGOs feel that they have a lot to gain from the network as a forum to share information, and influence policies across the European Union and its member states.

My presentation will concentrate on the question of racial violence with a brief overview of the manifestations of racial violence, and from the perspectives of the victims that are vulnerable to those manifestations. I will then briefly assess the responses to the problem of racial violence both from the point of reporting, data collection and criminal justice. Lastly I will provide some principles and responses as to the way forward on the question of hate crime and racial violence with the hope that they can contribute to the recommendations that should emerge from this meeting.

1. Clarifying the concepts and acknowledging the contextual factors

About hate crime and racist violence
As an introduction and when talking about hate crime and racist violence, it is important to distinguish definitions of these terms. Each member state's criminal law or penal code includes definitions of prohibited actions that constitute 'violence'. In most member states, however, legal definitions of violence are limited in the sense that they do not always include reference to the racist motivation. The existence of data collection on racist violence is also dependent on whether they law and criminal justice agencies recognise that a crime is

'racially motivated'. We have to recognise that many EU member states do not specifically refer to 'racist violence' and focus mainly on extreme right-wing groups.

'Hate crime' on the other hand, is a broad-based concept which encompasses race/ethnicity/religion, as well as gender, disability and sexuality. This approach is increasingly being adopted by member states and there have been recent moves in some jurisdictions to punish racist crime and violence under the generic heading of 'hate crime'.

While this approach is important in that it reflects a commonality of experiences across the discrimination grounds and vulnerable groups in society and focuses on equality of protection for all, it runs the risk of diluting the specificity of racist crime and violence. It is therefore essential to retain the focus on 'racist crime' and to categorise it in order to ensure effective protection mechanisms against such offences. Categorising racist crime is also crucial to ensure comprehensive data collection, as we will see later on.

Impact of external factors and political developments on racist violence
Racial violence doesn't exist in isolation of a social and political environment. Particular global or national events, a negative political and media discourse or personal experiences of majority populations can have an impact on racist violence in the sense that they may create a climate of violence. And you are all aware of this escalation process which has been well illustrated with the Pyramid of hate concept; it starts with words, it continues with harassment, scapegoating, and discrimination, then moves on to physical violence and eventually may end with mass murder.

It is important to take into consideration the impact of global conflicts at the local level in member states, which can resurface as racist violence against and between different sections of the population (e.g. Israel/Palestine and the terrorist attacks of September 11th 2001, and to a lesser extent the attacks in London and Madrid).

In addition negative political and media responses to particular groups can serve to enhance majority populations' hostile attitudes towards minorities. Minorities are for instance often linked to increased crime rates and the threat of terrorism on the basis of pure speculation rather than 'fact'.

2. State of play of racial violence in terms of trends and victims in the European Union

Every day ethnic minority groups face racist crime and violence. Often this reality is at worst denied, and at best underestimated. In its 2006 Annual Report the EUMC - which has now become EFRA - concluded that: 'Racist violence and crime is an ongoing problem in EU Member States.' Despite the lack of data and information on racist crime and violence there is no doubt that they are

serious concerns in the European context. The OSCE 2005 report on hate crimes found that 'hate crimes represent the most insidious manifestation of intolerance and discrimination'.

The use of internet as a tool for the dissemination of racist sentiment, crime and propaganda is also particularly worrying given that internet crime is not systematically recorded and the legal difficulties that have been experienced in challenging internet-based criminal activity.

Despite problems of data collection, some generalisations can be noted with regard to the nature of victims of racial violence within the EU. Some groups are particularly vulnerable to racist violence and crime. These include asylum seekers and refugees and undocumented workers which are often used as scapegoats for a country's political, social and economic situation and the tone of the political debate on immigration in many EU member states is a concern in this respect. The temporary status of asylum seekers, refugees and the lack of status of undocumented workers makes them less likely to report victimisation.

Anti-Semitic violence continues to be a reality in many member states, whether it is physical violence, vandalism and damage of property. At present, NGOs have the capacity in a series of Member States to collect information about anti-Semitic incidents. For example: Bejt Praha in the Czech Republic, Conseil Representatif des Institutions Juifs en France in France, and the Community Security Trust in the UK. While the manifestations of anti-Semitism violence through internet are linked to neo-nazi and extreme right activities, other reasons are more complex and linked to the instrumentalisation of the Middle East conflict.

The Muslim community is since September 11 and in the aftermath of the London bombings a key target of racial violence. Even if mechanisms of unofficial data collection on anti-Muslim ('Islamophobic') incidents are in their infancy across the EU, monitoring mechanisms by NGOS confirm increasing cases of verbal and physical assaults against Muslims targeting Muslim women wearing headscarves; and cases of vandalism against Mosques or desecration of Muslim graves.

The Roma experience racist violence and crime throughout the EU, but their victimisation is noted most often in some of the ten Member States that joined the EU in 2004, and also in southern European Member States where there is a sizeable Roma presence.

3. Stumbling blocks to effective data collection and criminal justice responses

Problems in data collection
Lack of data is an important obstacle although there is some evidence that methods of data collection and recording of racist crime are improving. A first

problem to achieving comprehensive data collection on racist violence and crimes is the narrow way in which existing laws are applied in practice. Although member states' laws may be adequate in theory, their application in practice may result in few successful convictions. Data collection can also be constrained by how cases are categorised on incident forms and in case files. Incidents involving racial or religious aggravation may 'disappear' in criminal justice data collection systems that do not pursue a proactive policy of recording them as 'race' or 'faith' related crimes.

Another stumbling block to effective official data collection in the area of racist violence and crime is the legal and social resistance to data collection on ethnic origin that exists in most Member States. This means that the ethnicity of citizens and non-citizens is not recorded in cases of 'racist' crime. Absence of data on ethnic origin serves to hide vital intelligence about the characteristics of a large group of victims.

Non-reporting and non-recording
Problems in reporting and recording racist violence have led to a dearth of information on the extent and nature of racist violence. At one level, as already highlighted, many jurisdictions have not given the reporting, recording and monitoring of racist violence and crime much significance. Some member states have focused solely on the activities of extreme right organisations but this does not capture the full range of racist crime. In this way, the everyday realities of racist violence, as perpetrated by people who are not affiliated to extreme right organisations, can be overlooked.

At another level, victims of racist crime do not report their experiences of victimisation to the police. If police cultures do not proactively pursue a 'victim friendly' service, and one which is geared to the needs of particular groups such as victims of racist violence, victims will not feel encouraged to report their victimisation. In this way a 'vicious circle' is created whereby victims see police as disinterested, and therefore do not report to the police, who in turn do not record racist violence, and in this way encourage victims' perception of police as disinterested. If this trend is inversed by police actively looking into a victim's case, it could in turn lead to enhanced reporting to the police.

Another problem is that the police's response to victims of racist violence is also determined by the extent to which national minorities and foreign groups are constructed as a 'problem' in different jurisdictions. If the emphasis is to police these groups as a potential threat to social order, then prioritisation of their experiences as victims of racism is more difficult and will not encourage members of these communities to trust the police and report racist violence.

Criminal justice
'Traditional' criminal justice has to date made little headway towards addressing racist crime and violence in an adequate manner. Traditional justice often marginalised victims and offenders in the resolution of their own conflicts which are 'taken over' by the State; victims can feel that the police and other criminal

justice actors are not sympathetic to their experiences as victims of racist violence; and few reports result in offenders being sentenced in a court of law.

4. Responding to racist violence and crime

ENAR believes that a comprehensive and holistic approach is needed to deal with the problem of racism in Europe. This includes strategies to overcome all manifestations of racism and discrimination; one aspect of which is the legal system, including both criminal and administrative provisions. More effective law will allow governments to deter, detect and punish racist crime. A European instrument on racist crime is therefore essential. ENAR has laid out in a General Policy paper on racism as a crime adopted in 2006 4 general policy principles that should guide actions by member states of the European Union and that should also apply to cooperation of participating OSCE member states.

PRINCIPLE 1: Harmonise criminal protections against racism at the highest level
In ENAR's view there is a clear need for a European approach that would facilitate cooperation between Member States and thus enhance best practice, implementation, and protection of victims.

There are a variety of activities and crimes that must be identified and named:
- Public incitement to racist discrimination, violence or hatred.
- Racist public insults or threats.
- Publicly condoning, denying or trivialising the Holocaust/Shoah and genocide.
- Public dissemination or distribution of tracts, pictures or other materials.
- Leadership or support of activities carried out by racist groups, political parties and movements.
- Racial discrimination in the exercise of public office.

ENAR was happy that the Council of EU Justice Ministers achieved on 20 April 2007 a political agreement on the Framework Decision on combating racism and xenophobia which provide for a minimum harmonisation of the criminal provisions to combat racism and xenophobia. The focus is on the prohibition of public incitement to violence and hatred against persons of a different race, colour, religion, or national or ethnic descent. This prohibition is the common prerequisite for imposing criminal liability for any conduct of this kind. This framework decision was proposed by the European Commission back in 2001 and negotiations on the proposal have been very difficult and stalled in 2003 and 2005. The German Presidency put the Framework Decision back on the agenda at the beginning of the year and succeeded in reaching a political agreement of EU member states. This agreement is an important step in the right direction towards ensuring protection against racist crime in Europe. However, the discussions have resulted in a weak text, which will not require substantive changes to the legal orders of many member states. Many escape

clauses have been introduced to allow member states to circumnavigate their responsibilities, such as:

- The removal of the provisions on mutual assistance, which would have provided a substantial step forward in dealing with 'cross-border racism'.
- The inclusion of vague language defining as criminal only those acts likely to 'disturb public order' or which are 'threatening, abusive or insulting'.
- The lack of a non-regression clause, and a specific reference to the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), in the text, which would have strengthened the implementation of the text and provided a benchmark against which to measure its impact.

ENAR now hopes that the Framework Decision will be formalised under the Portuguese Presidency and that EU member states will implement it properly, going further than the minimum standards it establishes. In the context of the implementation of this instrument the European Commission will not be able to issue infringements procedures against member states who would fail to implement adequately the framework decision. The role of NGOS in putting pressure on and ensuring that member states live up to their obligations will be essential.

PRINCIPLE 2: Racism must be widely defined in order to ensure an effective response
Any legal instrument must adopt a wide definition of racism in order to ensure that it responds to the complex nature of racist crime. ENAR supports the definition proposed by the European Commission in 2001 which defines racism and xenophobia as: 'the belief in race, colour, descent, religion or belief, national or ethnic origin as a factor determining aversion to individuals or groups'.

ENAR recognises that hate crime can also find expression on other pretexts, not least the other European anti-discrimination grounds such as sexual orientation or disability.

PRINCIPLE 3: Racism crime must be identified as an aggravating circumstance
Hate crimes have a much greater impact on the victim and their community. It has the effect of demonstrating the offence was not entirely random and that as a result of their ethnicity neither the victim nor other members of their community are safe from such attacks. Consequently it is essential that racist motivation is recognised as an aggravating circumstance in the administration of justice, in a clear and consistent manner across the European Union. Police officers must adequately respond to, and record, racially motivated crime.

ENAR therefore calls on all member states to recognise the impact of racist motivation on the victim through the adoption of aggravated sentencing policies.

PRINCIPLE 4: Hate crime cannot be excused on the grounds of freedom of expression

The right to freedom of expression is a core foundation for diverse and intercultural societies, and must be protected as such. However freedom of expression does not extend to incitement to racial hatred or discrimination. As has been pointed out by legal experts Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (on hate crime) includes a reference to freedom of expression as stipulated under Article 19 of the Universal Declaration of Human Rights, demonstrating that the two are compatible.

The aim is not to criminalise opinion, or to undermine freedom of expression or association, but rather to protect it. The logic of freedom of speech is based on everyone having a 'voice', when it comes to hate speech the voice of vulnerable communities is silenced. Like child pornography, hate speech is not an expression of ideas or debate, and as such cannot be justified under the pretence that it represents freedom of expression. Politicians and other leaders have a particular responsibility to refrain from using language that could justify or condone hate.

ENAR rejects the view that legislating against hate speech represents a threat to freedom of expression, protecting ethnic minority communities from hate speech is the foundation of debate and dialogue in intercultural societies.

PRINCIPLE 5: Combating racist crime requires comprehensive and complementary strategies

Legislation has an essential role to play in preventing, punishing and providing redress for racist crime, however it must be supplemented by other activities.

Enhanced reporting and recording of racist crime is important not only for promoting prosecution of such offences, but also in developing, implementing and monitoring polices intended to prevent racist crime from occurring. In parallel to developing strategies on anti-discrimination data collection, the EU and the OSCE must seek to enhance criminal data collection policies, which are sensitive to the particularities of racist crime.

Given the nature of racist crime it is essential that targeted victim support initiatives be put in place, either through mainstream service provision or if appropriate specific services dealing with racist crime. These services must be adequately supported to ensure the effective implementation of existing and new legislative provisions, and particularly in securing prosecutions.

The EU, the OSCE and their member states must continue to focus on the prevention of racist crime through education and training. Only by promoting intercultural societies through both the formal and informal educations sectors will strategies to prevent racism and xenophobia be successful.

Where there are active NGOs there tend to be more effective strategies for dealing with racism as a crime. Civil society has an important role to play in promoting positive responses to victims of crime. Political and policy responses to racist violence can be influenced by a strong NGO culture that is proactive in highlighting the experiences of victims of racist crime. In particular victim surveys have been used by NGOs and prove an effective data collection tool. Consequently NGOs must be funded to provide alternative victim support services and complementary data collection mechanisms. In this very sensitive area it is essential that there are complementary and alternative means of accessing support.

In order to provide long term and sustainable responses the needs of ethnic minority communities must be mainstreamed throughout the administration of justice. This requires: participation of ethnic minorities in all sectors of the system; training and awareness to sensitise majority actors (police officers, lawyers and judges) to the needs of ethnic minority communities; and capacity building and empowerment of the communities themselves.

Recommendations

I will conclude by proposing some practical recommendations to improve responses to racist crime and violence at all levels:

- Allow data collection on ethnicity/religion that can capture incidents of racist crime and violence against minorities.
- Establish or improve existing criminal justice data collection mechanisms for racist crime and violence in each EU member state, and in the long term, standardise data collection on racist crime across the EU member states.
- Develop a multi-stakeholder approach involving all actors, encourage partnerships and guarantee the key principles of civil society consultation and participation in policy initiatives.
- Cross-fertilise best practices responses on combating hate crimes on the basis of gender, sexual orientation, disability, race and ethnic origin.
- Promote research by NGOs and academic researchers on the extent and nature of racist crime and violence. In-depth quantitative and qualitative data collection, from a range of sources, can help to pain a more accurate picture of the situation.
- Establish and implement standardised EU and national 'good practice' criteria with which to measure the implementation and 'success' of different criminal justice and non-criminal justice initiatives that aim to monitor, combat and respond to racist crime and violence.
- Issue clear procedural and practical guidance to the police about how to effectively respond to crime with a suspected racist element. Emphasis should be given to prioritising victims' needs.
- Provide initial and in-service training to the police on the nature and significance of racially-motivated crime, the role of the police in combating it, and appropriate procedures to be followed. Representatives from NGOs should be involved in police training.