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Promoting Mutual Respect and Understanding**

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**Working Group 9: How is legislation on hate crimes  
implemented? How are the commitments related to data  
collection implemented?**

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I would like to thank the ODIHR for inviting me to introduce this important subject. The commitments undertaken by the OSCE participating States are only as good as their implementation and so we should welcome the opportunity as civil society actors to weigh in on the implementation discussion.

## **HATE CRIME LAWS**

“Hate crimes” are often held to include both violent crimes motivated by bias as well as certain nonviolent forms of expression, including Holocaust denial, incitement, propaganda offenses and defamation. Different countries define and punish hate crime offenses differently, but the common element is a motivation founded on prejudice and bias.

My focus here will be on bias-motivated *violence*, which in itself is a broad concept that can encompass acts such as assault and murder, intimidation, threats and threatening behavior, as well as acts of vandalism and destruction of property.

### **Why are hate crime laws needed?**

Bias-motivated violence has resonance beyond the victim of the crime, extending to the entire community to which the victim belongs. Hate crimes are not just a criminal justice problem, but are also a human rights problem, an acute form of discrimination in which one’s identity is under attack. Hate crimes breed fear, restrict movement and interaction, and limit the ability of individuals to exercise their rights. Hate crimes can spin out of control and threaten the stability of the state itself.

Hate crime laws provide a framework for law enforcement by viewing these crimes through the lens of discrimination and human rights violations. The effective enforcement of hate crime laws can serve as a deterrent (since such laws often include provisions for penalty enhancements) by sending a message to perpetrators that such crimes are a major societal concern that will be punished. Such laws also send a message to the communities under threat that such crimes are a priority to government and law enforcement.

### **What are the guidelines and commitments?**

In decisions at the ministerial level, the OSCE has called in general terms on the participating states to develop a proper legal framework for dealing with hate crimes. Most recently, the OSCE Ministerial Council passed a decision in 2006 which “underlines the crucial importance of States enacting a sound legal framework ensuring equality before the law and adequate judicial protection...”<sup>1</sup>

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<sup>1</sup> Organization for Security and Co-operation in Europe, Ministerial Council, “Decision No. 13/06: Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding,” December 5, 2006, available at: [http://www.osce.org/documents/mcs/2006/12/22565\\_en.pdf](http://www.osce.org/documents/mcs/2006/12/22565_en.pdf).

Other bodies whose recommendations apply to many of the OSCE participating states have been more specific in their recommendations. The European Commission against Racism and Intolerance (ECRI), has recommended that “the law should provide that ... racist motivation constitutes an aggravating circumstance.”<sup>2</sup>

Similarly, the European Monitoring Center for Racism and Xenophobia (EUMC) has called on E.U. Member States “to adopt a workable and sufficiently broad legal definition of crime as racist, and to recognize racist motive as an aggravating factor that increases sentencing.”<sup>3</sup>

### **Where do the OSCE participating States stand in terms of the adoption of such provisions?**

Currently, more than 30 countries in Europe and North America have some legislation that treats bias-motivated violent crimes as distinct crimes or that defines bias motivation as an aggravating circumstance in the commission of crimes.

**Croatia** is one of the latest countries to have adopted new legislation on violent hate crimes. On June 9, 2006, the Croatian parliament adopted an amendment to the criminal code which defines hate crimes as “any criminal act according to the Criminal Code, committed by reasons of hatred towards a person on the basis of his/her race, skin colour, sex, sexual orientation, language, religion, political or other belief, national or social background, property, birth, education, social status, age, medical status or any other attribute.”<sup>4</sup>

**Latvia**, similarly, although less comprehensively, amended its criminal code in 2006. On October 12, 2006, the Latvian Parliament amended section 48 of the criminal code dealing with aggravating circumstances in the commission of a crime. According to the newly amended part 14 of that section, a “racist motivation” now constitutes an aggravating circumstance.

Among the 56 OSCE participating states, there are more than 20 that still have no express legislative provisions whereby bias is considered an aggravating circumstance. They include: **Albania, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Lithuania, Luxembourg, Macedonia, Monaco, Montenegro, the Netherlands, Romania, San Marino, Serbia, Slovenia, Switzerland, and Turkey.**<sup>5</sup>

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<sup>2</sup> European Commission against Racism and Intolerance, “ECRI general policy recommendation N°7 on national legislation to combat racism and racial discrimination,” Adopted on December 13, 2002.

<sup>3</sup> European Monitoring Center on Racism and Xenophobia, “Annual Report 2005,” page 106, available at: [http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp\\_cat\\_content&catid=3fb38ad3e22bb&contentid=42b943c7300a2](http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3fb38ad3e22bb&contentid=42b943c7300a2).

<sup>4</sup> Remarks by Daniela Petkovic, Ministry of Interior of the Republic of Croatia, at an OSCE Expert Meeting on Best Practices in Combating Antisemitism, Berlin, November 20-21, 2006.

<sup>5</sup> On March 27, 2007, the International Day for the Elimination of Racial Discrimination, Human Rights First issued a public letter to German Chancellor Angela Merkel, calling on her to use the occasion of Germany’s

***Recommendation 1:*** Governments should adopt legislative provisions that treat bias-motivated violence as a separate offense or that recognize bias as an aggravating circumstance in the commission of violent crime.

### **How expansive are definitions of bias motivations?**

Hate crime legislation in many countries is subject to limitations concerning the forms of discrimination it protects against. In most of those 30 or so countries where bias is recognized as an aggravating circumstance, such provisions cover race, ethnicity and national origin, while slightly fewer cover religion. Legislation addresses bias-motivated violence based on sexual orientation in only 10 countries and disability in only 6 countries.

The countries with the most expansive range of bias covered under such legislation include **Andorra, Belgium, Canada, Croatia, Spain, the United Kingdom, and the United States.**

***Recommendation 2:*** Governments should enact hate crime laws that include in the definition those crimes motivated in whole or in part by animus on the basis of the victim's race, religion, ethnicity, gender, sexual orientation, mental and physical disabilities, or other similar forms of discrimination.

### **How are these provisions implemented?**

Determining the extent to which the laws are enforced relates to the subject of monitoring and data collection. The most effective monitoring systems not only register incidents and offences, but also track them through the criminal justice system. Yet, few data collection systems on hate crime incidents are coordinated with systems that track cases through the criminal courts. This hinders a more complete assessment of the enforcement of hate crime laws, although some general conclusions can however be made.

Monitoring conducted by NGOs and intergovernmental antiracism bodies points to a general reluctance by criminal justice officials to investigate bias motives and to provide evidence of these motives in prosecutions.

Furthermore, even when prosecutors have successfully shown that a bias motive was present in the commission of a crime, it is difficult if not impossible to assess the extent to which a sentence may have been enhanced as a result.

Shortcomings in the implementation of hate crime laws are not solely the responsibility of criminal justice officials, however. Without special training, police may overlook bias motivations in the course of responding to crimes. Prosecutors may similarly hesitate to

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presidency of the European Union to advocate for stronger hate crime laws in the E.U., while enhancing Germany's own legislation to better combat this violence.

complicate their caseload by introducing into their cases such bias motives, which may be more difficult to prove. Many may not be aware of the larger social and political significance of recognizing bias elements and bringing them out into the public domain. Senior government leaders must therefore show the political will to provide the resources and support so that law enforcement officials are able to successfully respond to, investigate, and prosecute hate crimes.

Let me cite one example where such vigorous political and police follow-up appears to have had positive results. Following a surge in antisemitic violence in **France** in 2001 and 2002, legislators there responded with tough new hate crime laws in 2003. The Ministry of Justice followed up on the new laws by calling for greater vigilance by public prosecutors toward racist and antisemitic acts. The ministry also advised that it should be informed of all antisemitic offenses reported and required public prosecutors to keep victims informed of the progress of cases through the justice system. In addition, the instruction required each office to assign a particular magistrate to monitor the consistency of the penalties – and to assume responsibility for promoting relations with local civil society groups that work against antisemitism. In order to improve the reporting mechanism an electronic mail account was set up in the intranet of the public prosecutor’s office to transmit reports on antisemitic acts. These and other measures likely contributed to the 48 percent decrease in antisemitic offences reported in 2005, following a peak in 2004. The fact that antisemitic acts increased moderately in 2006 indicates that the level of vigilance must be maintained.

***Recommendation 3:** Governments should ensure that those responsible for violent hate crimes are held accountable under the law and that the record of enforcement of hate crime laws is well documented and publicized. Governments should ensure that police and investigators have the resources and training to detect bias motives and that prosecutors are well aware of the legal measures available and required to prosecute hate crimes.*

## **DATA COLLECTION**

### **Why is data collection needed?**

An important step in dealing with the larger phenomenon of violent hate crimes is to fill the information deficit about its nature and extent, the gaps in states’ responses, and the protection required for those under threat.

Data that is collected systematically and regularly can show short and long-term trends and suggest whether or not government policies to combat hate crimes are working or need to be enhanced or altered. Data on hate crime incidents can also provide important insights into social dynamics. Statistics that are disaggregated by the attributes of the victim can help political leaders and police better understand which groups are most susceptible to violence and to determine how best to allocate policing resources.

## What are the guidelines and commitments?

Most recently, in December 2006, the OSCE Ministerial Council passed a decision which “encourages the participating States to step up their efforts in implementing their commitments to collect and maintain reliable data and statistics on hate crimes...”<sup>6</sup>

Other intergovernmental bodies have also issued recommendations on data collection. ECRI recommends to its participating States to “ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted.”<sup>7</sup>

Similarly, the EUMC has called on Member States of the E.U. to “collect and make publicly available detailed statistics on racist crime, at every stage of the criminal justice system, which can be anonymously disaggregated to reveal information about the victims’ ethnicity, “race,” and religion.”<sup>8</sup>

## How have these commitments been implemented?

The EUMC has determined that only two E.U. Member States - **Finland** and the **United Kingdom** – have criminal justice data collection systems on racist crime that can be considered “comprehensive.” Only nine others – **Austria, the Czech Republic, Denmark, France, Germany, Ireland, Poland, Slovakia, and Sweden** – have systems that are described as “good.”<sup>9</sup>

Outside of the E.U., both **Canada** and the **United States** have comprehensive reporting systems. Few countries outside the E.U. and North America report on hate crimes and none do so in a comprehensive enough way as to allow serious analysis of the problem of bias-motivated violence.

***Recommendation 4:** Governments should establish or strengthen official systems of monitoring and public reporting to provide accurate data for informed policy decisions to combat hate crimes. Governments should undertake to monitor incidents, offenses, as well as prosecutions.*

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<sup>6</sup> OSCE Ministerial Council, Brussels 2006, Decision No. 13/06, “Combating Tolerance and Discrimination and Promoting Mutual Respect and Understanding,” December 5, 2006.

<sup>7</sup> European Commission against Racism and Intolerance, “ECRI general policy recommendation N°1 on combating racism, xenophobia, antisemitism, and intolerance,” Adopted on October 4, 1996.

<sup>8</sup> European Monitoring Center on Racism and Xenophobia, “Annual Report 2005,” page 106, available at: [http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp\\_cat\\_content&catid=3fb38ad3e22bb&contentid=42b943c7300a2](http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3fb38ad3e22bb&contentid=42b943c7300a2).

<sup>9</sup> European Monitoring Center on Racism and Xenophobia (EUMC), “Annual Report 2006,” page 97.

## What do hate crime statistics reveal about victim groups and bias motives?

Although a growing number of countries – albeit still far too few – are collecting data on hate crimes, those statistics often don't reveal much about those targeted, thus limiting the potential of such information to serve as a useful tool in developing policy to provide protection to target groups. **Canada**, the **United Kingdom**, and the **United States** have the best record on the production of statistics based on the attributes of the victim, although few other countries do so. Most countries that publish hate crimes data report on the incidence of “racist” crimes without giving a further breakdown. Other types of bias-motivated violence that aren't racist, or in which racism is only one element– such as violence motivated by religious intolerance, sexual orientation, and disability, are rarely reported in official statistics.

An increasing number of countries provide some data on crimes motivated by antisemitism, although only **Canada**, **France**, **Germany**, **Sweden**, the **United Kingdom** and the **United States** provide meaningful statistics. NGOs have to some extent made up for the data deficit and those operating in Belgium, Canada, France, the Netherlands, the Russian Federation, the United Kingdom and the United States produce systematically-collected data on a regular basis.

Fewer countries report on violence against Muslims. Only **Canada**, and the **United States** report on “anti-Muslim” crimes. The **United Kingdom** reports on such crimes in its statistics on faith-based crimes, although it is moving toward a system of classification that will add the category “motivated by Islamophobia.” **France** reports on anti-Muslim crimes only indirectly – a majority of reported racist crimes (which exclude antisemitic crimes) are committed against people of North African origin who are typically Muslim. Data collection conducted by NGOs has not yet been able to fill the information deficit that exists throughout the OSCE region.

Similarly, only a few countries can provide reliable statistics on incidents motivated by bias based on sexual orientation, among them **Canada** (in some police jurisdictions), **Sweden**, the **United Kingdom** and the **United States**. NGOs in a number of countries – France, Germany, the United States –report regularly on homophobic violence.

Other minority groups and forms of bias are similarly statistically invisible in the data collection systems of most governments.

Various reasons – among them privacy concerns – are cited by some governments for not wishing to record the nationality, ethnic background, religion or sexual orientation of the victim of an attack. ECRl has addressed this issue in many of its country reports, stating that it is possible to develop reliable systems of data collection while at the same time paying due respect to the principles of confidentiality and voluntary self-identification of persons as belonging to a particular group.

***Recommendation 5:*** *In reporting on hate crimes, governments should record the attributes of the victims of hate crimes or the specific bias motives and disaggregate their public reporting accordingly.*

### **What is the role of nongovernmental organizations?**

In an environment in which governments have either not met their commitments to collect data or produce incomplete statistics, NGOs have an important role to play. In many cases, NGOs produce incident reports that either highlight a problem that has been overlooked or ignored by the government. Governments may be convinced to establish monitoring systems of their own only after NGO monitoring has revealed a problem sufficiently severe to warrant official monitoring.

The problem of underreporting is another reason for governments to work more closely with NGOs. Even the best official data collection systems won't be effective if trust in the police and other officials collecting the information is lacking and hate crimes are not reported. By most accounts, there is an endemic problem of underreporting in most countries in cases of hate crimes. NGOs and community groups, who in many cases are seen by the victims of hate crimes as more trustworthy than the authorities, can help to bridge the divide created by mistrust.

***Recommendation 6:*** *Governments should take steps to increase the confidence of minority communities by demonstrating a willingness to work more closely with community-based organizations in the reporting and registration of hate crimes.*