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HATE CRIMES: A GLOBAL RACIALISTIC & XENOPHOBIC ENTERPRISE (A SOCIO-LEGO-GENETICAL UNDERSTANDING)

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Hate oozes hardness of heart, a scourge of the human race, a fiend in human shape, a worker of iniquity, the evil eye and the cloven hoof. It sows dissentions among all. Hate is an inferno that is never quenched and it is the worm that never dies. Hate is the dominion of warped, wicked and wilted. Hate is a primordial, parochial and perversionary process of aversion towards a caste, creed, colour, customary practices, ethnicity, ideology, and nationality, membership of social group, religion, race, political opinion and social origin indoctrinated by one population to another population. It has also involved preposterous predilections, paradoxical preferences and polemical prejudices well-founded upon the damnatory discrimination against a wide variety of "non-white" sexes, groups, genders, communities, societies, regions and nation-states. White supremacy is infested with a paranoid precarity, racial raison d'etre and xenophobic xylonite.

On the other hand mawkish movements such as Anti-Gay, LGBT, Racism, Religious Freedoms and Blasphemy Laws across the globe have sent shockwaves contrary to rule of law, justice, equity and good conscience. There is a great deal of social stress in India over violence between Muslims and Hindus. If the Indian government proves unable to deliver justice, it will lose its legitimacy as a government for multiple religions or ethnicities. Thus, there is a great deal riding on this: not just justice for the victims and their families, but justice for Indian society as a whole. Although religion is often seen as a force for good, in reality it is often a force for evil, too. One of the ways in which religion can cause problems is by causing people to become intolerant: intolerant of other religions, intolerant of other races, etc. particularly in India.

Today, hate crimes have entered a period of unprecedented globalization, national and international institution-building, and a deepened understanding of the centrality of a balanced and effective elimination of such crimes within the municipal institutional framework of the Indian system and as an integral part of global multi-culturalism development and diversity agenda. The period has also precipitated a wide-ranging inquiry about how to adapt and apply international anti-hate crimes regime to benefit countries that are highly diverse in their economic, socio-cultural and technological make-up, in their developmental priorities, and in their legal and commercial systems. In his contextual institutionalist perspective, the author

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I am immensely indebted to my home maker Aaisha Khan, Advocate, B.Sc, MA, LLB, for her support and services rendered in my academic and intellectual pursuits. I teach Comparative Constitutional Law of SAARC Nations, Public International Law and International Human Rights Law, International Humanitarian Law, Law of International Organizations, Minority Rights, Nationalism, Ethnicity, Sociology of Law and Law of Federal Constitutions.
explores the “social foundations for the effective assertion of rights, the political foundations for the effective judicial protection of rights, and the institutional mechanisms that impede or facilitate the process by which formal rights are made effective”

Keywords: Hate, Crimes, Xenophobia, Racism.

Beware of extremism in religion; for it was extremism in religion that destroyed those who went before you.

The Prophet Mohammad (570-632)

Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that.

Martin Luther King, Jr.

1. Exordium

Hate has borne with humanity. It oozes hardness of heart, a scourge of the human race, a fiend in human shape, a worker of iniquity, the evil eye and the cloven hoof. It sows dissensions among all. Hate is an inferno that is never quenched and it is the worm that never dies. Hate is a feeling of human heart which takes birth with the death of love. Hate is the dominion of warped, wicked and wilted. Hate is inherent in human nature ever since the existence of humanity on this animal planet hunches and crunches on the volcano of climatic chaos. Hate pervades human relationships, societal citadels and norms and nuances appurtenant to institutional apocalypses. Hate is an obtuse apostil on human hierarchy. Hate is a primordial, parochial and perversionary process of aversion towards a caste, creed, colour, customary practices, ethnicity, ideology, and nationality, membership of social group, religion, race, political opinion and social origin indoctrinated by one population to another population.

Hate crimes arise from specific social, political and economic conditions, which foster stereotypes and prejudices. These, in turn, can encourage or enable violent manifestations of intolerance. “Hate crimes can be fuelled by racist, xenophobic and anti-Semitic propaganda” and “racist, xenophobic and discriminatory public discourse”. Intolerant speech can lend a sense of social acceptance to potential perpetrators of violence. Even where intolerant speech or hate speech does not result in hate crimes, it can inflame social tensions and induce fear among targeted groups. This concern has been echoed by the European Union Commissioner for Equal Opportunities and in the reports of the European Commission against Racism and Intolerance.

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4 The European Union Commissioner for Equal Opportunities, Vladimir Spidla, stated “It seems that the Roma have become the target of organized racist violence – fed by political populism, hate speech and media hype. In some cases, Roma are being made scapegoats for wide societal problems”. Erio enews, European Roma Information Office, 9 March 2009, p. 5. <http://erionet.org/site/upload/pubblications/enews/e-news,%2009%20March%202009.pdf>.
In particular, specific events or circumstances can contribute to the incidence of hate crimes. The analysis of these conditions is a field of research for social and political scientists. However, States have acknowledged the importance of some contextual issues in the general fight against hate crime. A number of NGOs reported an increase in the number of anti-Semitic and anti-Muslim incidents during the conflict in the Gaza Strip in early 2009. These included assaults, attacks on religious buildings, threats and intolerant speech. Such incidents were reported, for example, in France, Spain and the United States. It has really been a universal fashion to have ill-conceived illusions, preposterous predilections and hawkish hangovers among the castes, creeds, races, religions, social origins and so on so forth against each other.

At times we are victims of our own milieu. Pope Benedict XVI, for a host of reasons, found himself a member of the Hitler Youth. St Paul, a Pharisaic persecutor of Christians, become a believer in Christ and spread the faith into Rome and beyond. Tony Blair, once an ardent activist in the Campaign for Nuclear Disarmament, ended up with his finger on Britain’s trigger. Forms of religious fundamentalism have arisen in various parts of the world. The significance of Christian fundamentalism, for examples, has increased in the USA since the 1970s as a result of the emergence of the ‘New Christian Right’, which campaign against abortion, and for the introduction of prayers in US schools and return to traditional family values. In Israel, Jewish fundamentalism, long represented by a collection of small religious parties, has grown in importance as a result of attempts to prevent parts of what are seen as Jewish homeland being seceded to an emerging Palestinian state. Hindu Fundamentalism in India has developed to resist the spread of western secularism, and to combat the influence of rival creeds such as Sikhism and Islam.

In US it really began with *Dred Scott v. Sandford*, which helped to precipitate the civil war. In Dred Scott, the Supreme Court held that under the Constitution, slaves and their descendants could never count as “citizens” of the United States. Not incidentally, this much revealed decision was a self-conscious exercise in fundamentalism. The Court spoke explicitly in fundamentalist terms:

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7 The French NGO LICRA noted an increase of reported incidents in January 2009, with more than 92 alleged anti-Semitic incidents. Information from the International League against Racism and Anti-Semitism (LICRA), 3 April 2010.


12 60 U.S. 393 (1857)
“it is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws....the duty of the court is, to interpret the instrument (the constitutions authors) have framed, with best lights we can obtain on the subject, and to administer as we find it, according to its true intent when it was adopted.”

It is not implausible to describe *Dred Scott v. Sandford* as the first prominent appearance of “originalism” in American Constitutional Law. However, this was a famous decision for entrenching slavery but it had collaterally established the racial bias against the black people in America and accorded the constitutional sanctity to the concept of liberty to own fellow human beings as property. This was the decision which had created constitutional controversies, labyrinths of liberty, puzzles of property, chaos of questions, dilemmas of due process, eagles of equality and political polemics in the public sphere.

The narratives of hate perpetuate the exclusions which decimated the coherent sensibility, the frontiers of fraternity catapulted into frenzy, individual inferno morphed into groups’ grief and simmering volcano of disparity, ultimately, bestowed upon India a racial and xenophobic enterprise of Naxalism, Maoism and Terrorism which is pervading every nook and corner of the country at a pace never witnessed before. The theology of hate crimes accords primacy to violence as a medium of securing to the depriveds equity, equality and parity wedded to human rights and human dignity and the ideology of terrorism are no different from the former except its being a global phenomenon. While the individual remains the distinct subject of human rights justifications and jurisprudence but achieving the promise of a world in which all human beings have the opportunity to lead minimally good lives, free from the threat of systematic and significant suffering, can be achieved only as a collective enterprise.

Therefore, equality is the only true and central premise from which constructive ideas can radiate freely and be operated without prejudice. Equality springs from a divine dictate which is available in every system of temporal authority pervading all the geo-political demarcations in the world. Since the inception of humanity on this planet, movements were initiated, struggles were spearheaded and battles were fought for accomplishing and realizing a World Human Order founded upon the principles of equality such as equality of status and of opportunity in every civil society wedded to the desiderata of justice---social, economic and political; human rights with all the manifestations of human dignity backed by the rule of law. Hinduism, Christianity and Islam presented an order of equality which is distinct from each other in letter and spirit. However, Hinduism has presented such a social compartmentalization of humanity which is alien to the basic principles of equality, fraternity, liberty and human rights.

The most politically significant of modern fundamentalisms is undoubtedly Islamic Fundamentalism. The idea that intense and militant faith in Islamic beliefs should constitute the overriding principles of social life and politics first emerged in writings of thinkers such as Sayyid Qutb (1906-1966) and activists of the Muslim Brotherhood. Their goal was the establishment of a Islamic state based on the principles of *Sharia’h* Law. Political Islam was brought to prominence by the Iranian revolution of 1979, which led to the founding of the world’s first Islamic state, under Ayatollah Khomeini (1900-1989). It has subsequently spread throughout the Middle East, across

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13 Ibid.
15 Dr. Nafees Ahmad, Human Rights and Human Hierarchy in India: Paradigms and Praxis (A Comparative Conceptual and Jurisprudential Perspective)
16 Ibid.
North Africa, and into parts of Asia. Although the Shi’ite fundamentalism of Iran has generated the fiercest commitment and devotion, Islam in general has been a vehicle for expressing anti-westernism, through both antipathy towards the neocolonialism of western powers, and attempts to resist the spread of permissiveness and materialism. This was clearly reflected in the Taliban regime in Afghanistan, 1997-2001, and also in the growth of Jihadist groups such as al-Qaeda, for whom the spiritual quest has come to be synonymous with militant politics, armed struggle and possibly martyrdom.\footnote{Supra note 10. P 67}

In India, hate has been morphed into political ideology that derives its legitimacy from religious revanchism against the minorities and the same is inter-woven in the development of the core Hindu ideological traditions to gain political power. Hate helped to shape the ideas of Hindu religious fundamentalism deviant to anthropocentric expositions that have become the biggest indoctrination drive to re-orient the administrative, executive, legislative and political minds of state and non-state actors on the asymmetrical assumptions to imply inflexibility, dogmatism, authoritarianism and totalitarianism towards the Muslims in their quest of socio-economic, religio-political and lego-institutional empowerment within the gamut of Indian Constitutionalism which is at the verge of desuetude and desultory derailment in Post-Modernism. The Rashtriya Sevak Sangh (RSS) has deep-seated obsessional hatred and homicidal impulse against the Muslims of India that has been inculcated, indoctrinated and trained to the Hindu young men and women in its camps in various parts of the country. The agenda of hate is being executed by the RSS through its political branch Bhartiya Janata Party (BJP) since 1925 in India. The philosophy of hate gyrates around the ethnic cleansing of Muslims in India and pogrom of Muslims in the state of Gujarat on February 26, 2002 is an example of what I call it “The Holocaust of the East”\footnote{The communal carnage of Muslims on February 26, 2000 in Gujarat in India was the first ever flagrantly well-organized, brutally well-orchestrated and meticulously well-executed plan of pogrom wherein state openly sided with the perpetrators which was never witnessed before in independent India. Thus, ethnic cleansing of Muslims in Gujarat may be equated with the Holocaust in its magnitude, scale and barbarity that was beyond the horizontal and vertical limitations of human sanity.} as solid as sun rises in the east in addition to communal and racial riots, rapes and rancour elsewhere in the world emulating Fascism fused with hate making it diabolical, debilitating and disastrous for the present and posterity.

2. Hate Crimes: Meaning and Definition

While “hate crime” would be the term most often used in the United States to describe an attack by a white supremacist against an African American, the act would be known in Germany as “right-wing violence” or “xenophobic violence.” In Britain and France, it would be referred to simply as “racial violence.”\footnote{Hamm, p. 11.} The term “hate crime” entered the lexicon most likely because it is broad enough to cover offenses perpetrated not only against African Americans, but also against gays, Muslims, Koreans, and members of various other groups. The Hate Crime Statistics Act\footnote{Chapter 1, The Hate Crime Statistics Act, 1990.} of 1990 defines hate crimes as “crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson, and destruction, damage or vandalism of property.” For the purposes of this report, hate crimes—or
bias-motivated crimes—are defined as offenses motivated by hatred against a victim based on his or her race, religion, sexual orientation, ethnicity, or national origin.

While such a definition may make identifying a hate crime seem like a simple task, criminal acts motivated by bias can easily be confused with forms of expression protected by the National Constitutions. A person’s biases may compel him to announce his dislike for the practice of homosexuality, which would not rise to the level of a hate crime, or may spur him to smear a swastika on a building or commit homicide, which most certainly would be identified as hate crimes. With the increasing influence of hate crime groups and the coalescence of formerly disparate groups, the line between hate crimes and terrorism is beginning to blur. In fact the rising influence of hate groups and the increase in acts of domestic terrorism have even led a few researchers and political leaders to call for a new definition of hate crimes, one that might include crimes motivated by a hatred of people, not because of their race, national origin, sex, sexual preference, and religion but because of their affiliations or occupation as well. Jerome Skolnik of the University of California at Berkeley’s School of Law said that terrorism and hate crimes are similar in that they are both “ideologically connected.” Brent Smith, a criminal justice professor at the University of Alabama, however, pointed out that while both hate crimes and terrorism include motive as an element of the offense, traditionally the motive in a terrorist act has been considered only during the sentencing phase of a prosecution. William Chambliss, a sociologist who teaches at George Washington University in Washington, D.C., suggested that such a definition might encompass any “ideologically justified act.” The hate crimes and terrorism share an “overlapping pathology and actors.” The differences between a hate group follower and someone who commits bias-motivated violence, and what actions might be taken to prompt a hate group follower to reject his racist, anti-Semitic, or anti-government ideology must be institutionally emplaced.

3. Hate Crimes and Human Rights

Hate crimes – also known as bias crimes – are crimes motivated in whole or in part by racism, anti-Semitism, anti-Muslim prejudice, homophobia, and related forms of prejudice and hatred. These are most commonly crimes committed by ordinary people, little different from those who are their victims. But hatred and prejudice and the impulse to violence against those who stand out from the majority are also cultivated and manipulated. Hate crimes proliferate and involve the most extreme violence when encouraged by opportunistic leaders and political movements founded on chauvinism and exclusion. In some cases, hate crimes occur with the complicity or acquiescence of governments. More commonly, they proliferate in the face of government indifference or complacency, below the threshold of government attention. And shamefully, despite expanding cooperation in the fight against discrimination, it is often left to the victimized groups themselves to document attacks and speak out in protest.

Hate crimes are among the most violent and pernicious forms of discrimination and are thus serious violations of internationally-recognized human rights. Those who indiscriminately victimize members of a group they hate or despise threaten and harm all members of that group, and cause immeasurable harm to whole societies. History shows, too, that they can ultimately shatter nations. These acts are part of the same continuum of discrimination that includes “ethnic cleansing” and genocide. Human rights law obliges governments to take necessary measures to combat violence founded on prejudice. Hate crimes require special scrutiny by governments because of their greater harm to society. Local government authorities have an affirmative obligation to monitor and report on hate crimes and to prosecute these crimes as a priority.
The need to renegotiate our current understanding, rather myths, of ‘communal violence’ beyond the clichéd explanations of violence as ‘spontaneous outburst of emotions’, handiwork of a few ‘anti-social elements’ or as a regrettable proof of mutual hatred that periodically occurs in South Asia, becomes imperative after Gujarat. The communal violence in India in the last two decades clearly belies such simple categorizations. The participation of large crowds, gruesome massacres of minority communities, the dubious role of governmental law enforcement agencies, and the transformation of minority communities into second class citizenry, requires much more complex considerations than what is ordinarily offered in the ‘communal ideology’ explanations.\(^{21}\) Thus, two main themes that need to be addressed, heterodoxed and rummaged are that of process of religious mobilization that have produced an intolerant and unapologetic constituency among the upper middle and middle classes, and role of the state and other institutions of law and governance such as parliament, courts, and police etc. that are not only seen as having withdrawn but as facilitators of violence. Without the complicity, culpability and connivance of state and its institutions in any organized or unorganized crime as a state policy at a mawkish magnitude such as racial elimination of Jews in Germany popularly known as Holocaust, racial riots in USA, ethnic cleansing of Muslims in Bosnia & Herzegovina, and communal carnage of Muslims in Gujarat in India could have never been possible. It is, now, an open secret that genocide in Gujarat was the most heinous, horrible and horrendous beyond the betrayal, barbarity and brutality never ever imagined by the rationale creatures on this beautiful planet. Therefore, institutional perspective becomes imperative in seriously understanding the global racialistic and xenophobic enterprise of hate crimes in a socio-ego-genetical milieu.

On 19.02.2012 at around 3.20 pm in New Delhi while interacting with my young friend Mr. Gabriel Schwartz,\(^{22}\) whom I put direct question “What is perception of hate or idea of hate”? He instant and categorically said, “I think, hate is opposite of love, scared and absolute inability to empathize with someone causing fear, distress, dislike and repulsion, I think that what I would say”. He further elaborated that “to hate someone is to negate his/her humanity…it goes against the confluence of multi-culturalism, diversity and co-existence”. Another observation has been made with a sense of anxiety by Dr. Shadab Ansari,\(^{23}\) “Hate anywhere in this world is always politically-induced and politically-engineered” while explaining it further in medical philosophy, “a new born baby is impregnated with the dominance of the genes of happiness, peace and calmness but having come subsequently under the influence of the prevailing socio-political imperatives, he/she gets induced altered behaviour which slowly gets inculcated in their genes and remains throughout their life but not inheritable because it is phenotypic in nature.” said he. On the other hand, Miss Aaisha Khan\(^{24}\) made it unequivocally discreet while saying, “Women and children are the main victims of communal conflagration in India and elsewhere. Hate is the driving force behind every kind of violence. Over the years, state institutions got weakened and are not capable enough to address this sordid and grim situation in the right earnest.” It is axiomatic that hate and its hermeneutics are same everywhere, be it USA, Germany or India, with anticipated amount of vileness, violence, and

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\(^{22}\) A student of BA (Human Biology & Sociology) from San Francisco in Brown University of Ivy League Institutions USA who was in India under Study Abroad Program.

\(^{23}\) An Orthopedic Surgeon in Saint Stephens Hospital, New Delhi, March 24, 2012.

\(^{24}\) An Advocate, High Court of Adjudicature at Allahbad-UP-India.
vilification owing to the grounds cited hereinafore deviant to norms and nuances of humanity and transcendental institutionalism.

White supremacy is a racist ideology based on the assertion that white people are superior to other racial groups. The term is sometimes used specifically to describe a political ideology that advocates social and political dominance for whites. Racism, indeed, transcends the established desideratum of discrimination or what has been ordained in the organic and inorganic orientations of human faculties who accidentally or otherwise got best socio-ego-genetical understanding owing to their geo-strategic settings. Therefore, white supremacy, as with racial supremacism in general, is rooted in ethnocentrism and a desire for hegemony. It is associated with varying degrees of racism and xenophobia as well as a desire for racial separation. White supremacy has often resulted in anti-black racism and anti-Semitism, although it has also involved preposterous predilections, paradoxical preferences and polemical prejudices well-founded upon the dammatory discrimination against a wide variety of "non-white" sexes, groups, genders, communities, societies, regions and nation-states. White supremacy is infested with a paranoid precarity, racial raison d'etre and xenophobic xylonite.

Different forms of white supremacy have different definitions of 'white', and not all white supremacist organizations agree on which group the greatest enemy is. White supremacists frequently consider Jews to be the graver threat to their cause, because they can assimilate much easier than other ethnic groups. The creation of state of Israel and one of the state’s attributes i.e. population mandated under Articles 1 and 2 of the Montevideo Convention, 1933 and Articles 1 to 4 of the United Nations Charter is a testimony to the fact how Jews have been imported around the world into Israel and whosoever came to Israel got assimilated therein.

Politically, socially and economically, white supremacy was dominant in the USA before the American Civil War for decades after Reconstruction. The same is true of Aparthied-Enveloped South Africa and of parts of Europe at various time periods; most notably under Nazi Germany’s Third Reich. The extent and nature of white supremacy’s continuing influence in western culture is a subject of ongoing debate. In some parts of the United States, many people who were considered non-white were divested of enfranchisement, barred from government office, and prevented from holding most government jobs — well into the second half of the twentieth century. White leaders often viewed Native Americans (known as First Nations in Canada) and Australian Aborigines as obstacles to economic and political progress, rather than as emigrants in their own right. Many European-settled countries bordering the Pacific Ocean

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27 Flint, Colin (2004). *Spaces of Hate: Geographies of Discrimination and Intolerance in the U.S.A.*. Routledge, 53. ISBN 0415935865. “Although white racist activists must adopt a political identity of whiteness, the flimsy definition of whiteness in modern cultrue poses special challenges for them. In both mainstream and white supremacist discourse, to be white os to be distinct from those marked as nonwhite, yet the placement of the distinguishing line has varied significantly in different times and places.”

28 Gerstenfeld, Phyllis B. (2003). *Hate Crimes: Causes, Controls, and Controversies*. Sage Publications Inc., 155. ISBN 0761928146. “The third reasib that Jews nay be si vikufued us that, compared with people of color, they can much more easily assimilate; they can easily "pass." This represents a particular threat to white supremacy because Jews can infiltratet the white power structure in a way that people of color cannot.”
limited immigration and naturalization from the Asian Pacific countries, usually on a cultural basis. Many North American states banned interracial marriages through so-called "Anti-Miscegenation Laws" until 1967, when these laws were declared unconstitutional. South Africa maintained the white supremacist Apartheid system until the early 1990s.

The white supremacist ideology has become associated with a racist\textsuperscript{29} faction of the skinhead\textsuperscript{30} sub-culture, despite the fact that when the skinhead scene first developed in the United Kingdom in the late 1960s, it was heavily influenced by Jamaican Rude Boys and British Mods\textsuperscript{31} By the 1980s, a sizable and vocal White Power Skinhead faction had formed; partly influenced by Ian Stuart Donaldson and his Rock Against Communism band. The band's 1983 EP \textit{White Power} was the first white power rock music recording printed by the White Noise.

4. Hate Crimes: The Global Snapshots

There is no dearth of such sordid instances which have shaken the human conscience, sent shock waves and destroyed the social harmony across the globe. For instance, Attackers repeatedly stabbed a nine-year-old Russian girl of mixed Afro-Russian heritage in St. Petersburg and left her for dead. Arsonists murdered two Muslim shopkeepers in London in a firebomb attack. Skinheads in the Belgian city of Bruges attacked and left in a coma a French artist of Togolese descent, who subsequently died. A group of youths tortured and murdered a transgender woman in the Portuguese city of Porto. Young men in the Polish city of Olsztyn horrified an antiracism festival when they knifed and nearly killed a refugee actor. A young man in Trabzon, Turkey shouted a religious slogan as he shot dead a praying Roman Catholic priest. These were just some of the series of dramatic incidents across Europe in late 2005 and 2006 that brought the issue of hate crimes to the public eye, even as most of the incidents in a rising tide of such violence went unreported. A minority of incidents echoed around the world because of the number of victims affected, their often lethal nature, the identity of the victims (who are sometimes children), or the place they occurred (a synagogue, a mosque, a school). Some particularly heinous crimes provoked unprecedented public responses, bringing people from across community and political divides together in solidarity with the victims and their families and in protest against xenophobia and rising violence.

In France, Ilan Halimi died soon after he was found outside of Paris half-naked, stabbed, and burned with cigarettes and acid on February 13, 2006. Halimi was a 23-year-old French Jew who had been kidnapped from the shop in which he worked and tortured for three weeks before he died. French Police later made arrests and confirmed the antisemitic nature of the crime: the gang had targeted Halimi as a Jew, seeking ransom because they believed that “all Jews are rich.” They tormented and ultimately killed him because he was a Jew. Ilan Halimi’s murder prompted a national period of reflection in France marked by demonstrations across much of the country. A silent march through Paris brought 100,000 people into the streets. National antiracism organizations such as SOS-Racisme and LICRA (International League Against Racism) and groups from the Jewish community came together in solidarity against antisemitism. Demonstrations were held in Bordeaux, Lille, Grenoble, Marseille, Nice, Orleans, Strasbourg, Toulouse, and numerous other French towns and cities. French authorities reaffirmed their commitment to combat antisemitism, combining efforts to guarantee the security of the

\textsuperscript{29} Quoted from Smiling Smash: An Interview with Cathal Smyth, a.k.a Chas Smash, of Madness
\textsuperscript{30} Special Articles
\textsuperscript{31} Id, Skool Jim. \textit{Trojan Skinhead Reggae Box Set} liner notes. London: Trojan Records. TJETD169.
Jewish community with high-level political action and new educational programs. Halimi’s murder also resonated internationally, in the news media and in intergovernmental bodies. In June 2006, for example, his case was cited in the European Union’s resolution on the increase of racism and homophobic violence in Europe.\textsuperscript{32}

In the **Russian Federation**, on January 11, 2006 Alexander Koptsev entered a Moscow synagogue shouting antisemitic epithets and attacked worshippers during evening prayer, leaving nine people seriously injured before being subdued. Koptsev was subsequently detained and charged with attempted murder with a motive of religious hatred, deliberate infliction of grievous bodily harm, and with inciting hatred. On September 15, the Moscow city court convicted Koptsev of all charges. He was sentenced to 16 years in a high security prison.\textsuperscript{33} The incident received widespread national and international coverage and prompted public statements and resolute condemnation by political leaders across the political spectrum. Jewish leaders pointed out that the attack was part of a broader trend of xenophobia and criticized the inadequate response of the Russian authorities. “This is the result of what we have seen in Russia over the last few months,” Chief Rabbi Berl Lazar said at a news conference, referring to the murders of foreign students and other dark-skinned people in St. Petersburg, Voronezh, and other cities.

He said xenophobia was growing because of “the propaganda of extremism and fascism, which is conducted openly and for which no one has yet been held accountable.”\textsuperscript{34}

In **Belgium**, on May 11, 2006 anti-immigrant fanatic Hans Van Themsche murdered 24 year-old Oulemata Oudibo, a pregnant Malian au pair, and the two-yearold Belgian infant in her charge, Luna Drowart. Shortly before he had shot and seriously wounded Songul Koç, a woman of Turkish origin wearing a Muslim headscarf, as she sat on a bench reading. The attacker was shot and detained by police soon afterward. The attacks helped to bring home the danger of racist violence to a broad spectrum of the Belgian population. Government officials condemned the violence while establishing a link between xenophobic rhetoric and racist violence. Belgian Prime Minister Guy Verhofstadt strongly condemned the attacks and the threat of racism, warning that “[Belgians] have to avoid our society being sucked into a spiral of violence....”\textsuperscript{35}

\begin{itemize}
\item \textsuperscript{33} “Mosgorskud prigovoril Alexandra Koptseva k 13 godam,” Lenta.ru, March 27, 2006, available at http://lenta.ru/news/2006/03/27/koptsev1/ (accessed on May 9, 2007). On March 27, a judge found Koptsev guilty of attempted murder with a motive of religious hatred, deliberate infliction of grievous bodily harm, but acquitted him of inciting hatred. He was sentenced to 13 years in prison. On June 20, Russia’s Supreme Court overturned the conviction on the basis of appeals by both the prosecution and the defense. The defense had appealed the original sentence on the grounds that it was excessively harsh. The prosecution appealed the judge’s decision to not include incitement charges in the final verdict. On September 15, the Moscow city court convicted Koptsev additionally of incitement. He was sentenced to 16 years in a high security prison. “Supreme Court Overturns Conviction of Synagogue Slasher,” UCSJ, Bigotry Monitor, Volume 6, Number 22, June 23, 2006, citing Itar-Tass and “Koptsev priznan vinovnym v razzhiganii mezhnatsional’noi rozni. Srok nakazaniya uvelichen do 16 let,” NEWSru.com, September 15, 2006, available at: http://www.newsru.com/russia/15sep2006/koptsev.html (accessed on May 9, 2007).
\item \textsuperscript{34} “Eight Men Stabbed in Moscow Synagogue,” UCSJ, Bigotry Monitor, Volume 6, Number 2, January 13, 2006.
\item \textsuperscript{35} The attacks, in the port city of Antwerp on May 11, 2006, were just the most lethal of a series of racist attacks there in the lead-up to Belgium’s first ever regionally organized municipal elections. Antwerp, where the municipal elections were fiercely contested by the Flemish Interest Party (Vlaams Belang), an extreme nationalist party
He added that “Everyone in our country has to realize what a climate of intolerance can lead to.”36 There were broad-based public demonstrations in Belgium condemning the attacks, including a massive March Against Racism in Antwerp on May 26.

5. Hate Crimes: Causes and Consequences

Perpetrators of hate crimes in 2006 persistently targeted individuals who stood out because of their perceived ethnic origin, race, nationality, religion, or such attributes as disability or sexual orientation. The violence was driven by discrimination that often involved multiple factors, including double discrimination such as race and gender, or physical appearance and religion. Discrimination thrives on stereotypes through which members of particular groups are reduced to caricatures. Events, to which members of particular groups can be tied, however tenuously, can serve as a motor or a precipitant for large-scale violence based on the victim’s race or religion. In situations of conflict, members of minority populations often are perceived by the majority as the kin of its foreign enemies. Viewed in these terms they are held collectively responsible for the acts of distant governments, or radical groups.37

In the Russian Federation, disputes in 2006 with the government of Georgia were accompanied by new levels of orchestrated and popular discrimination against ethnic Georgians there. The long conflict with Chechen separatists has similarly had as a corollary the stigmatization of Chechens throughout the federation, and generalized discrimination against people of the Caucasus whether or not they hold Russian citizenship. Official discrimination against members of minority nationalities in the Russian Federation may provide a framework that abets racist violence against them by ordinary citizens and organized political groups. On August 29, 2006, in Kondopoga, a small city in Karelia in northwest Russia, a deadly brawl in the “Seagull,” a restaurant owned by a man of Azerbaijani descent, set off violent attacks against people of Caucasian origin living there.38 In the following days, two of the owner’s businesses were set on fire, an arson attack on the restaurant was frustrated, and a market that employed many people of Caucasian origin was attacked. In the wake of a mass meeting on September 2, when speakers demanded that unregistered people of Caucasian origin leave Kondopoga within 24 hours, mobs set fire to cars, overturned commercial stalls belonging to people from the Caucasus, and threw fire bombs that burned down the “Seagull.”39 Some thirty Chechen families

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38 After a barman was attacked, two ethnic Russian men were killed and others were seriously injured at the hands of ethnic Chechen men associated with the owner. For an account of the initial incident, see “’Chaika’ na krovi,” Petrozavodsk stolitsa, September 5, 2006.
39 The head of the Movement Against Illegal Immigration (DPNI) Alexander Belov, traveled to Kondopoga expressly to speak at the rally, and was subsequently the object of an investigation on incitement of hatred charges.
fled their homes and were sheltered in a nearby school that was in turn firebombed three days later, although no injuries resulted.40

In many cases in Eastern Europe, entire Roma communities have been the object of attacks in reprisal for incidents in which individuals identified as Roma were accused of crimes or violence. In May 2006, in Ukraine, near Kiev, the family of a man killed in a fight with a Roma gathered others in the village to seek vengeance against the Roma community as a whole. The group approached village authorities “to declare their intention to forcibly expel all Roma from the village and to burn their houses down,” but was stopped by local officials.41 Common features of racism and xenophobia are the perpetuation of stereotypes and generalizations concerning the attributes, failings, and responsibilities of members of a particular group. Every member of a suspect nationality, religious confession, or ethnic group may be in effect held hostage to the behavior of every other, and subjected to reprisals should an individual with similar attributes commit a crime – or a distant government cause offense or outrage. In Turkey, in February, a young man murdered Rev. Andrea Santoro, a 61-year-old Catholic priest, in what police said was a an expression of outrage over the publication of cartoons deemed offensive to Islam. A priest was targeted as a stand-in in what was seen as an act of retaliation against predominantly Christian Europe.

In the United States, on July 28, 2006 Naveed Afzal Haq, a U.S. citizen of Pakistani descent, broke past security at the Jewish Federation of Greater Seattle, and opened fire on staff members with handguns, killing one and wounding five. Haq reportedly told a police dispatcher he had randomly attacked because “[t]hese are Jews and I’m tired of getting pushed around and our people getting pushed around by the situation in the Middle East.”42 Elsewhere in Europe and North America, too, authors of antisemitic threats and attacks frequently invoked Israel and Israeli policies as a supposed justification for random attacks on Jews and Jewish institutions, even while employing the language and symbols of Nazi Germany.

Discrimination and violent attacks against Muslims follow a similar pattern in Europe and North America, with attacks on ordinary people in their shops, schools, or homes misguided substitutes for those keen to lash back at Islamist terrorism. Assaults are often accompanied by epithets directed at Muslim terrorists or the organization Al Qaeda, as if every Muslim is accountable for the acts for every other. In the wake of the London bombings on July 10, 2005, for example, a gang of youths attacked and murdered Kamal Raza Butt, a Pakistani immigrant and shopkeeper, while shouting ethnic slurs and yelling “Taliban.” Similar attacks followed elsewhere in Europe: in Denmark, a Sikh bus driver mistaken for a Muslim was attacked by an unidentified man with a baseball bat who reportedly shouted “London.”43 Increasing fears of terrorism and anti-immigrant sentiment have contributed to growing xenophobia and intolerance throughout western Europe, while extreme nationalist movements in eastern Europe and the

44 EUMC, “The Impact of the July 7 Bombings on Muslim Communities in the E.U.,” page 4
Russian Federation have increasingly expressed virulent racist and antisemitic doctrines through organized violence.

In Germany, people of African origin, whether citizens or immigrants have faced particular violence. In May 2006, 12-year-old Kevin Khune, who is of German-Ethiopian descent, was assaulted by five young men in Pommelte, near Magdeburg, in eastern Germany. In the summing up at their trial, the judge described how the young men abducted the boy as he got off a bus, took him to an isolated spot, and beat, kicked, choked, and burned him. His tormenters, who also spat and urinated on him, subjected him to a litany of racial abuse, reportedly asserting that the village had been “clean” before he arrived. He was subsequently hospitalized for head injuries.\(^4^4\)

In Ukraine’s capital Kiev, on October 25, five men described as skinheads and who reportedly shouted that they would “save Ukraine from these freaks” attacked and murdered 44-year-old Dr. Godknows Mievi, a long-time resident of Nigerian origin employed by an oil company. Mievi, whose wife and son were Ukrainian citizens, died of multiple stab wounds.\(^4^5\) An arrest was reportedly made of an activist in the Ukrainian Movement against Illegal Immigration, an extreme anti-immigration group modeled on the Russian organization of the same name.\(^4^6\)

In the United Kingdom, in September, 2006, in Moygashel, Dungannon, bricks with threatening notes attached were thrown by unidentified attackers through the windows of seven homes occupied by Polish and Lithuanian immigrants.\(^4^7\) Anti-immigrant bias has been a factor in attacks on people of particular national or ethnic or religious origins as well as targeted attacks on asylum seekers: people who are often particularly vulnerable as they are housed together in highly visible concentrations. In Finland, in two separate incidents in August 2006, groups of young men armed with clubs and stones attacked a building housing some 40 refugees from Myanmar (Burma) in the coastal city of Kotka. Two of the estimated 20 among the attackers were arrested; police said the motive for the attack was under investigation.\(^4^8\)

### 6. HATE CRIMES: TYPES

There are many difficulties that may arise in categorizing types of crimes, just as they do in categorizing different victim groups. For example, if an attack on a place of worship is accompanied by theft, the primary motive may be economic, religious bias, or both. Some states collect data under the rubric of “extremism”.\(^4^9\) In general, extremist crimes are crimes committed

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\(^4^6\) Ibid


\(^4^9\) For example, Austria, Czech Republic, Slovakia, Germany, Switzerland and the Russian Federation all have such laws, although of very differing scopes. In Germany, for example, data collection under the rubric “extremism” corresponds to politically motivated crimes (politisch motivierte Kriminalität), including right-wing or left-wing crimes, crimes committed by foreigners and other politically motivated crimes.
for political or ideological purposes, or by members of extremist political groups. Laws on extremism can be relevant to hate crimes. Extremism laws were often enacted to combat the promulgation of fascist or neo-Nazi ideologies, which can potentially motivate the commission of hate crimes. In some instances, extremist crimes may also be hate crimes, when members of extremist groups commit a criminal act with a bias motivation. However, in many instances, these laws have different effects than hate crime laws. For example, under some extremism laws, racist crimes committed by individuals with no affiliation to an extremist group are not recognized as hate crimes and no data are recorded. Some states collect hate crime data under the classification of “hate-motivated offenses” or “discrimination”, which often include incitement to hatred, forms of hate speech and other propaganda-related crimes, in addition to hate crimes. Oftentimes, the data on hate crimes is subsumed in the larger scheme of such bias offenses and, therefore, it is difficult to discern exact figures on hate crimes. While these laws can also be important tools for combating intolerance in society, there is no consensus on such laws in the OSCE region.

7. White Supremacist Movements and Ideologies

White supremacist groups can be found in most countries and regions with a significant white population, including North America, Europe, Australia, New Zealand, South Africa, and Latin America. In all of these locations, their views represent a relatively small minority of the population, and active membership of the groups is quite small. However, a backlash to the influx of non-white immigrants into various European nations has spurred a rise in membership in such extremist organizations, as well as an escalation in militant white supremacist demonstrations and Hate Crimes. The militant approach taken by white supremacist groups has caused them to be watched closely by law enforcement officials. Some European countries have laws forbidding hate speech, as well as other laws that ban or restrict white supremacist organizations but not all.

Pan Europeanism accepts all native and original European peoples, from Swedes, Britons, Germans, Italians, Spaniards, Portuguese, and Greeks. Another variant, Pan Aryanism, accepts native Europeans from all of continental Europe and extends its acceptance to non-European Caucasoids, such as some Middle Easterners, North Africans, and Central/West Asians. Yet this is usually on an individual basis and not all people from these regions are accepted by Pan-Aryanists as white. The acceptance of Middle Easterners in Pan-Aryanist ideology, Syrians, Lebanese, Turks (who are often considered European), and Persians are accepted as white, but Saudis and Yemenites as a whole are not. South Asian Caucasoids (Pakistanis, Northern Indians etc) as a whole may generally not be accepted in this ideology as well, however some Pan-Aryanists acknowledge and have disputing beliefs on lighter skinned people descended from Indo-Europeans in this region. An example is a textbook for those taking entrance examinations for the British Civil Service in the early 1900s categorically stated that Afghans and Berbers were in the highest classification, along with Northern Europeans, but above the Spanish and Southern Italians.\(^{50}\)

Those who follow the ideology of Nordicism and Germanicism only consider Northern European people who are Nordic (Scandinavians, Germans, and Dutch) to be white, shunning those of the British Isles (who are not considered Nordic because of historical mixing and cultural differences) Southern and Eastern Europe (who often have darker complexion and

\(^{50}\) Geography of the World. Civil Service Book Depot, 1904.
different cultures) along with anyone whose ethnic heritage is not European. In Madison Grant's 1916 book, The Passing of the Great Race, Europeans who were not of Germanic origin and had Nordic characteristics such as blonde hair and light eyes were considered to be a Nordic admixture and suitable for Aryanization. By the early twentieth century the concept of a "masterly" Nordic race had become so familiar that the British psychologist William McDougall, writing in 1920, could say with confidence:

Among all the disputes and uncertainties of the ethnographers about the races of Europe, one fact stands out clearly — namely, that we can distinguish a race of northerly distribution and origin, characterized physically by fair colour of hair and skin and eyes, by tall stature and dolichocephaly (i.e. long shape of head), and mentally by great independence of character, individual initiative, and tenacity of will. Many names have been used to denote this type; it is also called the Nordic type.

Nordicists claimed that Nordics had formed upper tiers of ancient civilizations, even in the Mediterranean civilizations of antiquity, which had declined once this dominant race had been assimilated. Thus they argued that ancient evidence suggested that leading Romans like Nero, Sulla, and Cato were blond or red-haired. Some Nordicists admitted the Mediterranean race was superior to the Nordic in terms of artistic ability. However, the Nordic race was regarded as superior on the basis that, although Mediterranean peoples were culturally sophisticated, it was the Nordics who were alleged to be the innovators and conquerors, having an adventurous spirit that no other race could match.

The Alpine race was usually regarded as inferior to both the Nordic and Mediterranean races, making up the traditional peasant class of Europe while Nordics occupied the aristocracy and led the world in technology, and Mediterraneans were regarded as more imaginative. Opponents of Nordicism rejected these arguments. The anti-Nordicist writer Giuseppe Sergi argued in his influential book The Mediterranean Race (1901) that there was no evidence that the upper tiers of ancient societies were Nordic, insisting that historical and anthropological evidence contradicted such claims. Sergi argued that Mediterraneans constituted "the greatest race in the world", with a creative edge absent in the Nordic race. According to him, they were the creators of all the major ancient civilizations, from Mesopotamia to Rome. This argument was later repeated by C.G. Seligman, who wrote that "it must, I think, be recognized that the Mediterranean race has actually more achievement to its credit than any other". Even Carleton Coon insisted that among Greeks "the Nordic element is weak, as it probably has been since the

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54 According to Madison Grant, "The Nordics are, all over the world, a race of soldiers, sailors, adventurers, and explorers, but above all, of rulers, organizers, and aristocrats in sharp contrast to the essentially peasant character of the Alpines...The mental characteristics of the Mediterranean race are well known, and this race, while inferior in bodily stamina to both the Nordic and the Alpine, is probably the superior of both, certainly of the Alpines, in intellectual attainments." Grant accepts that Mediterraneans created Semitic and Egyptian cultures, but insisted that Greece was "invigorated" by Nordics, and that "Roman ideals of family life, loyalty, and truth, point clearly to a Nordic rather than to a Mediterranean origin". Grant, Madison (1916). "The Passing of the Great Race". p. part 2, ch. 11; part 2, chapter 5. http://www.churchoftrueisrael.com/pgr/pgr-2.-11.html. Retrieved 2007-07-18.
days of Homer...It is my personal reaction to the living Greeks that their continuity with their ancestors of the ancient world is remarkable, rather than the opposite.\textsuperscript{56}

7.1.1. Religious Movements

Members of the second Ku Klux Klan at a rally in 1923 spearheaded the Christian Identity movement, which is regarded by other branches of Christianity as heretical, is closely tied to white supremacy. The Ku Klux Klan's reasons for supporting racial segregation are not primarily based on religious ideals, although some Klan groups are openly Christian Protestant because of their northern European/Germanic roots. Some white supremacists identify themselves as Odinists, although most Odinists reject white supremacy, and white supremacists make up only a small fraction of those who support Odinism (belief in the gods of Norse Mythology). The white supremacist version of Odinism claims that the universe is composed of "worlds of light" (white people) and "worlds of dark" (non-white people). Some white supremacist groups, such as the South African Boeremag, conflate elements of Christianity and Odinism.

The World Church of the Creator, now called the Creativity Movement, believed that a person's race is his religion. Aside from this central belief, its ideology is similar to many Christian Identity groups, in the conviction that there is a Jewish Conspiracy in control of the United States government, international banking, and the media. They claim that a Racial Holy War (\textit{RAHOWA}) is destined to happen, which would eliminate Jews and "mud races" from the planet. In the early 1990s, there was a dramatic increase in membership, due to the growing belief in the Apocalypse. A different (non-racist) group called Church of the Creator legally trademarked the name and won a lawsuit in 1996, leading to the white supremacist group to change its name to the Creativity Movement.\textsuperscript{57} Hate crimes (also known as bias motivated crimes) occur when a perpetrator targets a victim because of his or her membership in a certain social group, usually defined by race, religion, sexual orientation, disability, ethnicity, nationality, age, gender, gender identity, or political affiliation.\textsuperscript{58} Hate crime can take many forms. Incidents may involve physical assault, damage to property, bullying, harassment, verbal abuse or insults, or offensive graffiti or letters.\textsuperscript{59}

7.1.2. Anti-Semitism

Anti-Semitism, a particularly pernicious form of racism and religious intolerance, has persisted at a high level throughout Europe and North America, while tending to surge in response to international events involving Israel. Attacks that are directly tied to the Middle East conflict are an important part of this picture, with some political groups indiscriminately targeting Jews everywhere for violence as if proxies for Israel. Europeans and immigrants alike have invoked the Middle East conflict to demonize Jews as a people and to incite racist violence against individual Jews regardless of their views on or relationship to Israel. Terrorist attacks such as the


\textsuperscript{57} Trademark Litigation - Church Of The Creator®

\textsuperscript{58} Stotzer, R.: Comparison of Hate Crime Rates across Protected and Unprotected Groups, the Williams Institute, 2007-06. Retrieved on 2007-08-09.

\textsuperscript{59} Home Office | Hate crime
Istanbul synagogue bombings of November 2003 have illustrated the potential extremes of violence intended to give voice to enmity towards Israel.

Recently, a gunman directed automatic rifle-fire at an Oslo synagogue; Norway’s largest, on September 29, 2006. Four men arrested for the attack were subsequently held on multiple charges, including terrorism, and were accused also of plotting the assassination of the Israeli ambassador and bombings of the Israeli and U.S. embassies. The synagogue attack occurred in the context of the Israel-Hezbollah conflict, and followed months of incidents in which the synagogue was targeted in part as a means to express hatred for Israel. It was daubed with graffiti, the community’s cantor was physically attacked, and in one incident captured on security cameras, a man defecated on the synagogue steps and then broke two windows with stones. In 2006 as in previous years, anti-Semitic discourse concerning Israel has often been a major factor in anti-Semitic violence.

The blurring of criticism of a nation or a government into racism and religious intolerance is a common feature in times of armed conflict and heightened international tensions, particularly when building upon deep foundations of hatred and prejudice. But this convergence and merging of ancient prejudices and political animosity has been particularly widespread and acute with regard to Israel, and has become a persistent feature of anti-Semitic discourse. This form of discourse becomes racism and religious hatred, and anti-Semitism, when critics of Israel vilify and demonize Jews as a people, and every Jew everywhere. As a British community organization noted, this is often the case: Messages that start out as attacks on alleged Israeli policy or behavior often conclude with abuse of, or threats to, all Jews, the wish that all Jews were dead, claims of Jewish conspiracy or the accusation that Jews killed Christ. The anti-Semitism is compounded if the incident is targeted at a Jewish person or institution – such as a synagogue - that is then held responsible for the alleged actions of the Israeli government. This charge of collective responsibility and collective guilt, whereby every Jew in the world is supposedly answerable for the behavior of every other Jew, is one of the fundamental building blocks of all racism.

But modern anti-Semitism is multifaceted and deep-rooted, a combination of racism and religious intolerance, and cannot be viewed as a transitory side-effect of the conflict in the Middle East. Anti-Semitic incitement and violence in Europe and North America both predated the Middle East conflict and continues to flourish based on centuries old sources of hatred and prejudice. The age-old demonization of Jews as a people, not least as supposed world conspirators and as scapegoats for both ancient and modern ills, remains a powerful underlying factor in the irrational hatreds of anti-Semitism today. The growing nationalist extremist movements of Europe are steeped in the most primitive ideologies of anti-Semitism, and share a

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60 The expanded charge was brought under paragraph 147a of the Criminal Code, which concerns groups committing acts of terrorism. “Charged with terrorism: Police have expanded the charges against the four arrested for firing on the Oslo synagogue,” Aftenposten (online edition, in English), September 21, 2006. Initial charges were “vandalism, violation of the Weapons Act and reckless handling of a firearm.” “Arrest in synagogue shooting,” Aftenposten, September 20, 2006. The Norwegian criminal code provides for racist motivation to be considered an aggravating circumstances with regard to the specific offenses of bodily harm, vandalism, and some felonies against personal liberty. (See Human Rights First, “Everyday Fears,” p. 98).


hatred and commitment to violence toward both Europe’s Jewish communities and Muslim and other minorities. Often, an anti-Semitic attack will have no apparent link to organized extremist movements, but will be no less lethal for being a random assault by ordinary people steeped in anti-Semitism.

In Kiev, the capital of Ukraine, for example, a group of young men shouting antisemitic slogans and brandishing bottles attacked three Orthodox Jewish men on December 16, 2006, injuring one severely, as well as a passerby who came to their aid. The three had just left a service at a synagogue in the city’s Podol district. Sometimes violence against Jews forms part of a larger pattern of racism, notably in European football (soccer) violence. On the night of November 23, 2006, in the aftermath of a match in France between Paris Saint- Germain and Israel’s Tel Aviv Hapoel on the outskirts of Paris, some 150 local fans shouting “kill the Jews,” and “the dirty Jew must die” attacked 25-year-old Yanniv Hazout, a Frenchman who is Jewish.

The incident received national and international prominence in part because a black police officer, Antoine Granomort, rushed to Hazout’s aid—and one alleged attacker was killed. Granomort reportedly first used teargas to fend off kicks and punches from the mob and then fired his revolver, killing one of the alleged attackers. “The crowd hurled insults – ‘dirty Jew,’ ‘dirty negro’ and monkey cries - and raised Nazi salutes,” said Antoine Granomort, rushed to Hazout’s aid—and one alleged attacker was killed. The state prosecutor, Jean-Claude Marin, said afterward…. According to [former Interior Minister] Sarkozy, some fans shouted, “Death to the Jew!” before attacking Hazout. When the crowd began kicking and beating Granomort and apparently threatened to kill the fan he was protecting, he fired his service revolver, killing 25- year-old Julien Quemener, a home-appliance technician, and wounding 26-year-old Mourir Boujaer, a truck driver…. The response of senior public authorities was to stress the importance of eradicating racism and anti-Semitism in football. Then-Interior Minister Nicolas Sarkozy, demanded action even if meant barring spectators. After meeting with soccer officials and representatives of fans, he told the press “We prefer to see stands that are empty than full of unwanted people.” “We no longer want racists, Nazi salutes, monkey noises in stadiums. Soccer is not war.” The multiple strands of ancient and modern anti-Semitism can also come together in particular surges of violence, when perpetrators motivated by the traditional hatreds of anti-Semitism associated with the European extreme right make common cause with minority populations concerned with the Middle East. Events that set these particular surges in motion may mean different things to different people, but combine to reinforce pre-existent prejudices and hatred.

64 “Gang Attacks Three Jews in Kiev, UCSJ, Bigotry Monitor, December 22, 2006, vol. 6, no. 44, citing the AEN news agency. Ukrainian news media reportedly did not cover the attack.


66 Bruce Crumley, “France Confronts’ Soccer’s Vicious Underside.”

67 Elaine Sciolino, “Night of Soccer Violence in France Reveals an Ugly Underside,” New York Times, November 28, 2006. For background on racism at the Parc de Princes stadium, see Bruce Crumley, “France Confront’s Soccer’ Vicious Underside.” Racist chants and violence are so much a part of the Paris San Germaine (PSG) culture there, writes Crumley, that “some PSG ultras have mockingly denied anti-Semitism motivated their slander of Hapoel fans and their attack on Hazout, explaining it was the same unbridled belligerence they direct at all ‘enemies’… To be sure, the PSG ‘ultras’ have established a reputation for equal-opportunity thuggery….”
8. Hate Crimes in Historical Retrospect

Concern about hate crimes has become increasingly prominent among policymakers in many nations and at all levels of government in recent years, but the phenomenon is not new. Examples from the past include Roman persecution of Christians, the Ottoman genocide of Armenians, and the Nazi "final solution" for the Jews, and more recently, the ethnic cleansing in Bosnia and genocide in Rwanda. Hate crimes have shaped and sometimes defined world history. In the United States, racial and religious biases have inspired most hate crimes. As Europeans began to colonize the New World in the 16th and 17th centuries, Native Americans increasingly became the targets of bias-motivated intimidation and violence. During the past two centuries, some of the more typical examples of hate crimes in the US include lynching of African Americans, cross burnings to drive black families from predominantly white neighborhoods, assaults on gay, lesbian and transgender people, and the painting of swastikas on Jewish synagogues.

9. Hate Crime Targets

In the United States, anti-Black bias was the most frequently reported hate crime motivation. (African-Americans constitute the second-largest minority group; Hispanics are the largest). Of the nearly 8,000 hate crimes reported to the FBI in 1995, almost 3,000 of them were motivated by bias against African Americans. Other frequently reported bias motivations were anti-white, anti-Jewish, anti-gay, and anti-Hispanic. In India, minorities are the main targets of the Hindu chauvinists and ultra-nationalists tendencies who work in tandem with state and non-state institutions, instruments and instrumentalities. Of these, Indian Muslims are at the receiving end without any social, economic and political justice, rule of law and human rights.

9.1.1. Violence against Muslims

Anti-immigrant bias and xenophobia and old-fashioned racism have been major contributing factors to the modern phenomenon of anti-Muslim discrimination and violence. Often termed Islamophobia, this combination of racism and religious intolerance has been fueled by government policies and practices and by partisan politics. Popular concerns over national security, cultural integrity, economic prosperity, and religious homogeneity are all underlying factors in this newly potent form of xenophobia. The rise of racist and religious violence against Muslims in Europe has occurred in tandem with the adoption of anti-immigrant political platforms by both fringe and mainstream political movements that are charged with racism. This new climate of chauvinism and xenophobia has made immigrants and those of immigrant origin particularly vulnerable to scapegoating for a broad range of social ills and political dilemmas. A result has been heightened anxiety and rising violence against racial, ethnic, and religious

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68 A Policymaker's Guide to Hate Crimes
69 Hate Crime Statistics 2005
70 FBI - Uniform Crime Reports - Hate Crime Statistics 1995
71 Microsoft Word - Everyday Fears FINAL for web.doc
minorities and a new climate of exclusion. Citizens and non-citizens alike who are identified as Muslims have in particular been disparaged, discriminated against, and singled out for violence.

In Western Europe, the attribution of acts of terrorism to Islamist extremists has continued to be a pivotal factor in backlash violence based on race and religion, targeting people who are perceived to be linked by reason of kinship, religion, nationality, or ideology with the perpetrators of the atrocities. Again, the racist principle was invoked to arbitrarily hold people responsible for the actions of others, related to them only by the color of their skin, their religion, or their national origins. Racist violence against people of Middle East or Asian origin who are thought rightly or wrongly to be Muslims builds upon preexistent racism and xenophobia that is both exacerbated and given an outlet in times of public distress over terrorist outrages. Crimes now seen to be fueled by Islamophobia may often be almost indistinguishable with the racist violence that occurred against the same minority communities in the past in which religion was but a minor factor.

A distinction between racism and Islamophobia is often an artificial one, as the two generally tend to blur together in the reality of modern Europe. Yet Islamophobia is a new and potent factor in the modern stew of racism and anti-immigrant bias. As a recent report by the European Monitoring Centre on Racism and Xenophobia (EUMC) noted, “[d]iscrimination against Muslims can be attributed to Islamophobic attitudes, as much as to racist and xenophobic resentments, as these elements are in many cases inextricably intertwined.”

The true number of hate crimes committed against Muslims in Europe, and members of minorities often mistaken for Muslims, is unknown. Even where governments themselves monitor and report hate crimes, there is broad acceptance that such crimes are both underreported and often, when reported, unrecorded. Monitoring of discrimination against Muslims is still not a priority in most of the countries of the OSCE. Only the United Kingdom and the United States systematically record data on anti-Muslim crimes, although some official French data is also available. Elsewhere, the norm is that police either do not register reported incidents, register incidents without the details from which a motive of hatred and prejudice can be identified, or register incidents in the general category of xenophobic violence. Even where hate crimes are systematically registered, anti-Muslim crimes that involve the double discrimination of racism and religious prejudice may be recorded as single bias incidents motivated by either racism or anti-Muslim bias, the real level of violence against Muslims accordingly understated. Underreporting is often particularly acute when a minority community lacks confidence in public authorities, or ready access to public complaints channels.

These are problems confronted both by Muslim nationals of many countries as well as recent immigrants. Immigrants of uncertain status in their countries of residence may in particular suffer discrimination and violence in silence, having no means to seek public support without risking further abuse from police or the threat of deportation. Facilities for third-party reporting, through which victims and their families can recur to a trusted organization or to a civil agency as an intermediary with public authorities, have been established in the United Kingdom but are available in few other countries. A December 2006 EUMC report on Muslims in the European Union concluded that the incidence of Islamophobia in the E.U.’s then 25 countries, from verbal threats to physical attacks on people and property, was both under

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documented and underreported. It points out that just one E.U. country, the identifies Muslims as victims of hate crimes. The report lists scores of cases of hate crimes against Muslims, ranging from attacks on mosques to assaults on women wearing Islamic headscarves.\textsuperscript{74} The EUMC report highlights the importance of responding constructively to the stereotypes and generalizations that surround any discussion of Europe’s Muslim minorities. A series of events such as the September 11 terrorist attacks against the US, the murder of Theo van Gogh in the Netherlands, the Madrid and London bombings and the debate on the Prophet Mohammed cartoons have given further prominence to the situation of Muslim communities. The central question is how to avoid stereotypical generalizations, how to reduce fear and how to strengthen cohesion in our diverse European societies while countering marginalization and discrimination on the basis of race, ethnicity, religion or belief.\textsuperscript{75}

An August 2006 report by the Organization for Security and Cooperation in Europe’s (OSCE’s) Office for Democratic Institutions and Human Rights (ODIHR) also addressed both contemporary manifestations of anti-Muslim discrimination and violence and its roots. Hatred and intolerance towards Muslims has increasingly been given expression through violent physical attacks, burning or vandalism of mosques and Islamic schools, verbal harassment and threats, and calls for Muslims to be deported or expelled from Europe. Incidents against Muslims are fuelled by a combination of racism, hostility towards Islam and its adherents, powerful anti-immigrant sentiment and the association of Muslims and Islam with terrorism.\textsuperscript{76} The perpetrators of anti-Muslim discrimination are often inspired by virulently nationalist, chauvinist, and racist ideologies that make little distinction between the minorities that are the object of their hatred. Those who espouse violent anti-immigrant views may find their prejudices exacerbated with regard to immigrants of the Muslim faith, but the fusion of racism and religious intolerance may in practice express a more generalized hatred of the “other” who stands out as different.

This generalized intolerance may be expressed in multiple ways. The desecration of graves reported in Allied military cemeteries in Europe in recent years, for example, has involved the daubing of swastikas on and systematic smashing of both Muslim and Jewish tombstones.\textsuperscript{77} Similarly, in recent incidents expressions of anti-Muslim hatred and violence were sometimes also accompanied by antisemitic screeds. In the United Kingdom, a British National Party supporter was sentenced to five years imprisonment for daubing antisemitic and racist graffiti on a Swindon mosque —including “Pakistanis United Kingdom, publishes criminal justice data that and Jews go back to Auschwitz” — and then firebombing it in August 2006.\textsuperscript{78} Antisemitic and anti-Muslim incidents in the Russian Federation coincided on at least one occasion. On the night of September 23, 2006 in Yaroslavl, a group described as skinheads attacked a mosque during a service marking the beginning of Ramadan, throwing rocks and Molotov cocktails at the building and smashing the windows of nearby parked cars before police came to the scene. The same night, the eve of the Jewish New Year, a group of young men chanting antisemitic slogans attacked the synagogue in Khabarovsk with rocks and bricks, breaking windows.\textsuperscript{79}

\textsuperscript{74} EUMC, “Muslims in the European Union: Discrimination and Islamophobia.”
\textsuperscript{75} Ibid, p. 5.
\textsuperscript{76} ODIHR, “Challenges and Responses to Hate-Motivated Incidents in the OSCE Region,” p. 19.
\textsuperscript{77} Human Rights First, “Everyday Fears,” p. 8, on the “equal opportunity racism” present in an attack on a French military cemetery.
\textsuperscript{78} CST, “Antisemitic Incidents Report 2006,” p. 15.
In France, the beginning of Ramadan was similarly marked on September 23 by a series of attacks on mosques. In Quimper, in the northwest, a mosque was set alight and seriously damaged in an arson attack. Its walls were also daubed with six swastikas in what was said to have been the fourth time the mosque was targeted. On the same weekend, a mosque in Carcassone, in the southwest, was painted with the slogans “France for the French,” “Arabs get out,” and “Death to Islam.” Official French statistics continue to identify the preponderance of incidents of racist violence as involving “anti-Maghrebin” violence and threats—hate crimes against people of North African origin (antisemitic incidents are recorded separately). In 2006, the limited record of racist violence continued to be mostly of attacks on the predominantly Muslim Maghreb community, with 42 incidents (66 percent of the total) (no further information was provided on the targets of the 22 violent incidents involving “other victims of racism”). Eleven incidents were identified as expressly Islamophobic, targeting places of worship, monuments, and individuals, contrasting with the 13 incidents registered as Islamophobic in 2005.

The breakdown of the 64 serious racist acts registered in France in 2006 (again, excluding antisemitic offences) includes two bombings, eight arson attacks, and 34 cases of assaults on individuals. The targets included five mosques that were attacked with explosives or arson. Three mosques were the object of vandalism as were four cemeteries or monuments. Crimes characterized as menaces included those involving graffiti and “minor vandalism,” with 21 such incidents targeting mosques, 19 schools, and three cemeteries. In its December 2006 report on discrimination against Muslims in Europe, the EUMC stressed that as “[d]ata collection on anti-Muslim incidents is not obligatory,” French police databases “contain only a partial account of reports where the victim’s origin or religion – as Muslim – might be noted: 131 such incidents were reported in 2004 and 65 in 2005.”

In the United Kingdom, the July 7, 2005 London bombings triggered a wave of backlash violence against Muslims and people perceived to be Muslims, particularly in the weeks immediately after. Two weeks after the attacks, the Muslim Safety Forum, which works closely with the police monitoring the total number of incidents, said the total number of “religiously-related” attacks reported across London rose 500 percent compared with the same period last year. These attacks ranged from verbal abuse and spitting, to property damage, arson attacks, and murder. Nine mosques were attacked, a garage firebombed, people were assaulted in the street, and windows were broken in homes. Among the more serious personal assaults was the attempted murder of 21-year-old Zana Osman, an Iraqi Kurdish asylum seeker who was stabbed 11 times, with wounds to his back, face, neck, chest, and abdomen.

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81 CNCDH, Section I, p. 39.
83 An assailant was charged with attempted murder, but admitted to a reduced charge of wounding with intent to causing grievous bodily harm that was accepted by the prosecution. “Hate crimes rise after UK bombs,” BBC News, July 28, 2005, available at: http://news.bbc.co.uk/2/hi/uk_news/4723339.stm
9.1.2. Violence Based on Religious Intolerance

Hate crimes motivated by antisemitic and anti-Muslim bias, as well as bias towards other minority religions often take the form of attacks on places of worship, on religious leaders, and on individuals who are targeted for their faith while moving to or from places of worship. Religious dress or symbols can also be the basis for bias attacks. Attacks on symbols of a particular group can also take the form of desecration, including by public displays intended to disparage and denigrate both members of particular faiths and the religions itself. More commonly, the vandalism of synagogues and mosques is accompanied by the destruction or desecration of religious articles and revered texts as well as the daubing of antisemitic or anti-Muslim slogans.

In Spain, in the town of Soria, on January 26, 2006, a group publicly burned a copy of the Koran and threw other religious books in a trash can outside a mosque. In many parts of the former Soviet Union, statesponsored hostility toward religions considered “nontraditional” continued to be reflected in a refusal to register religious congregations as religious bodies, the denial of permits to build places of worship, the disruption of services in private homes or rented premises, and a policy of indifference toward attacks on members of these independent congregations. In the Russian Federation, official intolerance has been paralleled by the actions of extreme nationalist movements founded upon ideologies combining ethnic and religious chauvinism. The slogan “Russia for the Russians” has had both an ethnic and a religious dimension, and fueled the persecution of members of non-Orthodox believers. Members of so-called “nontraditional” Protestant and other faiths have been particular targets of abuse, even as antisemitism has been a unifying factor among nationalist groups. On April 23, 2006, in Spassk in southern Siberia some 20 young people attacked the congregation of the Reconciliation Pentecostal Church as a children’s Easter concert was about to begin, causing injuries requiring hospitalization for some as well as damaging electronic equipment. Attackers reportedly seized a microphone and denounced the congregation as “sectarians” and “demons,” and declared that only Orthodox Easter was to be celebrated in Spassk. Police at the scene reportedly stood by and did nothing to halt the attack.

In Serbia, assailants reportedly attacked a Hare Krishna devotee in front of his home in Jagodina on the night of June 17-18, 2006, injuring him with three stab wounds and by carving a cross on his head. The victim, who had suffered a previous attack in 2005, was hospitalized. Extremists claiming to defend the Serbian Orthodox Church attacked the churches of other faiths on numerous occasions in 2006. The religious freedom organization Forum 18 has documented many of the cases: One black spot is the town of Backa Palanka, where Seventhday Adventist and Pentecostal churches have faced graffiti, arson and stone-throwing attacks and a Jehovah’s Witness was assaulted. A newly-built Catholic church in Smederevo has faced three attacks in the past year, while Nazarene, Orthodox, Lutheran, Muslim and Mormon sites have also been defaced with graffiti.

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attacked. On 6 September a new Islamic faculty being prepared in Novi Pazar was vandalized. Forum 18 also reported that Serbia’s Jehovah’s Witness community has recently sued the Serbian state for “failure to prosecute those who boasted of burning down a Jehovah’s Witness Kingdom Hall in 1999.”

In Turkey, in February 2006, a young man approached Rev. Andrea Santoro, a 61-year-old Catholic priest, as he prayed in his church and shot and killed him, reportedly shouting a religious slogan to justify the killing. Police said he subsequently confessed to the crime and said the killing was religiously motivated: related to the publication of Danish cartoons that were offensive to Islam and the Prophet Mohammed. Also in February, a group of young men assaulted a Franciscan priest in Izmir, who was not seriously harmed, in what also appeared to be a religiously motivated attack. The attacks occurred at the time of international protests over the publication by major European media of caricatures of the prophet Mohammed and were widely attributed to this. In July, Father Pierre Brunissen, a French national, was attacked in the street in the port of Samsun and wounded with a knife.

In Uzbekistan, on December 18, 2006, four attackers severely beat a member of a Pentecostal church in the capital, Tashkent, not long after the broadcast on state run television of two widely viewed programs that demonized Protestant faiths. The attacks come in the context of longstanding state policies to limit the practice of Islam to an “official” religion of state sponsored mosques, while subjecting to police raids, arrests, and prosecutions worshippers of independent Muslim congregations as well as members of Jehovah’s Witness and Protestant faiths.

9.1.3. Violence against Roma and Sinti

The murder of 500,000 Roma and Sinti in the Holocaust was “an experience that is burned deep in the collective memory of the Roma and Sinti minorities,” writes Romani Rose, the chairman of the Central Council of German Sinti and Roma, but “is still barely acknowledged by the majority in their countries of nationality.” The Porrajmos—literally “the Devouring”—is the Romani word for the Holocaust. Centuries of prejudice against Roma and Sinti were reinforced by anti-“gypsy” laws of exclusion long before the Third Reich. Often described as Europe’s

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88 Ibid.
89 Ibid.
91 ODIHR, “Challenges and Responses to Hate-Motivated Incidents in the OSCE Region,” p. 22.
95 See, for example, Habiba Hadziavdic, “Images of Gypsies, a German Case: Gilad Margalit,” Nebula, December 2006, citing
largest ethnic minority, Roma and Sinti suffer discrimination and violence as part of longstanding patterns of racism and social marginalization by both the state and civil society. Although the Roma and Sinti, like other minorities, are victims of the broad trend of racist violence throughout much of Europe, they disproportionately face the menace of violent abuse by public authorities themselves. Data on hate crimes targeting Roma and Sinti is largely unavailable, in contrast to often detailed reporting on racist violence at the hands of police authorities. Reporting on individual cases of abuse, however, regularly illustrates patterns of abuse in which combinations of state and private violence combine to terrorize and intimidate Roma communities, to exact vigilante vengeance for crimes associated with individual Roma, or to expel Roma families from their homes in towns and villages in many parts of Europe. Although violence against Roma is most frequently reported in Eastern Europe and in the countries of the former Soviet Union, hate crimes and police brutality against Roma are also a phenomenon in Western Europe.

In Belgium, a group of men described as skinheads reportedly attacked two young Roma men in the town of Tirlemont (Tienen) on August 26, 2006, kicking and beating them. Eighteen-year-old Peter Danyi, a Roma of Slovak origin who had lived in Belgium for ten years, was reportedly stabbed four times, but survived after emergency medical intervention. Some 250 Roma and supporters demonstrated there in solidarity on September 2. Three alleged assailants were reportedly detained, although local authorities initially discounted charges of racism. Eddy Poffé, the newly elected mayor, reportedly told the press that “Tirlemont is not a racist town, and we have no problems here.” His predecessor, Marcel Logist, told the press: “I doubt that this was a racist act. This was just a scuffle between young people.” Peter Danyi’s sister responded to a question on what had provoked the attack: In fact, nothing caused it. Except a clearly racist attitude of “chase the foreigner.” … We knew the same thing in Slovakia when we were younger. The young people always had to be alert for places where there were skinheads. Also we avoided these places. Or then, if they came in the district, we stayed inside. A climate of repression and racist violence contributes to the effect of formal policies of some national and local authorities to deny Roma the enjoyment of rights to education, employment, and access to social services. Roma in many parts of Europe continue be the threatened by pogroms intended to drive whole communities from their homes, with houses firebombed and threatening mobs backed by police.

In the Slovak Republic, the public response to racist attacks on Roma families sometimes portrayed the violence as the product of tit for tat attacks by Roma and skinhead groups where each was equally to blame. In September 2006, a group of two dozen skinheads in Orlova attacked the home of a Roma family on a housing estate, injuring four residents, including a 15-year-old girl whose head was cut. The next day, according to police spokesmen, two Roma men attacked two Slovak girlfriends of the skinheads in retaliation: the Roma were subsequently


Ibid.
detained. Police said the men shouted racist insults at the girls, while holding weapons, but that no physical violence occurred. Police spokesmen said “attackers from both camps” would be prosecuted, and five skinheads and the two Roma men were subsequently charged with “defamation of race and nation, rioting and bodily harm.” The Slovak courts also acted in 2006 in a case of racist assault against a Roma couple carried out three years before. Three young men had been accused of entering the couple’s apartment “under the pretext of being policemen” and then assaulting both, permanently injuring the eye of a pregnant woman who was struck with a cobblestone, and stabbing her husband. A local court had given the perpetrators suspended sentences in January 2004, which generated wide scale protests. The case was reopened on appeal and in August 2006 verdicts were handed down: one was sentenced to three years and three months imprisonment, a second to three years of imprisonment, while a third was given a three year suspended sentence.99

In the Russian Federation, there have been numerous incidents in which Roma families have been harassed and subjected to violence, often with the complicity of local authorities, with a view to driving them from their homes and communities.

- In the Siberian town of Iskitim, Roma families have been subjected to repeated violent attacks. In a series of incidents there in 2004 and early 2005, assailants attacked Roma homes with a dozen or more arson attacks, forcibly expelling Roma families. A new round of violence followed the return of part of the Roma population to Iskitim late in 2005. On November 10, 2005, the home of the Zaikova family was firebombed in a renewed series of attacks. Angela Zaikova, an eight-year old Roma girl, was set alight in her bed and died in hospital soon afterward with burns over most of her body. Her mother was also terribly burned.

- In the city of Volzhsky in the Volgograd region, on April 13, 2006, a group of 10 to 20 youths armed with metal poles and wooden stakes attacked a group of eight Roma near their home. They killed one member of the local Roma community, Grigory Markenkov, and Galina Ponamareva, an ethnic Russian who was visiting, while seriously injuring a 14-year-old girl and an 80-year-old woman.100 In contrast to other incidents, Volzhsky police detained nine suspects in the crime soon afterwards, and charges were brought of murder with racist motives against two men, with lesser charges not involving racist motives brought against the others.101 A jury was selected on April 10, 2007 and subsequently began hearing sides in the case.102

- In Belgorod, in late September 2006, a district court convicted eleven young men on charges of hooliganism, aggravated assault with a racist motive, and forming an extremist group (the “Belgorod National Corps”) in relation to an attack on a Roma family a month earlier on

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99 “Man Sentenced to Three Years for Brutal Attack on Romanies,” August 31, 2006, Prague Daily Monitor.


101 The case was brought under article 105(2)(a)(g)(k) – murder committed by a group with a motive of national, racial, religious hate or enmity.

August 25. Sentences ranged from five years for the leader of the group, a former student at the Belgorod police academy, and from one and a half to four years for his codefendants.\(^{103}\)

The charges were based on an attack on the home of the Nikolaenkos family on the outskirts of the town. Acting with malicious forethought, the extremists placed a sign reading “Road Closed” on the Nikolaenkos’ street in order to isolate their home from any witnesses. They then threw a firebomb and a smoke canister into the house and waited until the family members came out. The teenage son of the home’s owner ran out first and was stabbed multiple times, including once in the neck. His father and mother were then beaten with metal rods (the mother’s arm was broken in three places). The attackers were arrested within a week.\(^{104}\) According to the prosecution, the men were part of an extremist group formed expressly to force non-Russians from the city. Defense lawyers argued that the attack was not motivated by racism, however, but was intended to punish the Roma family for “drug dealing”—in line with a common anti-Roma stereotype of criminality that is widely promoted in the Russian Federation. Police investigators confirmed that the allegations against the family were groundless.\(^{105}\)

In the Ukraine, discrimination against Roma was also reported to include large scale racist violence by public authorities, notably in the course of mass roundups and house searches that target Roma alone. In its December 2006 report, the European Roma Rights Center (ERRC) concluded that “police throughout Ukraine have failed to protect Roma from extreme forms of violence, including pogroms. When such acts have taken place, police and prosecutors and judicial authorities have failed to provide due remedy to victims. These failures are long standing.”\(^{106}\) The same source attributes the violence against Roma in the Ukraine to a combination of factors, including public authorities that are tolerant of expressions of hatred, racist discourse in the public sphere, the involvement of police in human rights abuses of Roma, and impunity for perpetrators.\(^{107}\)

The ERRC submission to the Committee on the Elimination of Racial Discrimination (CERD), the U.N. body that monitors compliance by states parties to the Convention on the Elimination of All Forms of Racial Discrimination, described a background to violence and hatred that included state support for racist stereotypes of Roma, reinforced by widely known discrimination and violence by police and public authorities, including mass round-ups and house-to-house searches that target every Roma family in a locality.\(^{108}\) Incidents reported in 2006 include:

- On April 29, six men shouting “dirty gypsy” beat Romani Albert Kondi with metal bars near his home in Uzhgorod in the Zakarpitia region. The attackers told him “we’ll destroy all of you” if he did not hand over his valuables. A woman who came to his assistance was also


\(^{104}\) Ibid.

\(^{105}\) Ibid.


\(^{107}\) Ibid.

injured, a bottle broken over her head.\textsuperscript{109} Although, a formal complaint was made to the police, investigations were reported suspended in June 2006.\textsuperscript{110}

- In May, in the village of Grebenki, in the Kyiv region, a non-Roma man was killed in a fight by a Roma, leading the family of the dead man to gather supporters within the village to seek vengeance against the Roma community as a whole. The group approached village authorities “to declare their intention to forcibly expel all Roma from the village and to burn their houses down.” The mayor reportedly stopped the mob action, but agreed to take other measures with a view to driving the Roma from Grebenki, including cutting electricity to the Roma homes.\textsuperscript{111}

Notwithstanding evidence to the contrary, the government of the Ukraine, in May 2006, asserted in a formal statement that observance of the rights and freedoms guaranteed in the Ukraine “confirms that all forms of discrimination based on race and nationality have been eliminated in Ukraine.”\textsuperscript{112} At the same time, the government was aware of international attention to the situation of Roma there, adding in a subsequent clause that “representatives of the Roma national minority are not always in agreement with this fact.”\textsuperscript{113} The statement was made in Ukraine’s periodic submission to Committee on the Elimination of Racial Discrimination, as a state party to the convention.

In Slovenia, the forced expulsion of a large Roma extended family was reported, when Roma on the edge of the village of Ambrus, near the capital Ljubljana, were threatened by a mob after a non-Roma was injured in a fight. On October 23, 2006, hundreds of villagers gathered, in the presence of police, and called for violence to expel the Roma from the area; the meeting was broadcast on national television.\textsuperscript{114} A mob went to the Roma settlement shouting “gypsies out,” according to press reports.\textsuperscript{115} Fires were set, and the over 30 Roma, mostly members of the Strojan family, fled. One of them was quoted declaring that “They were building bonfires on our land and shouting that if we don’t move out, they will bomb us and crucify our children.”\textsuperscript{116} One villager, pensioner Joze Lindic, reportedly told a reporter ”Some 600 of us gathered near their

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\textsuperscript{110} ERCR, “Proceedings Discontinued: The Inertia of Roma Rights Change in Ukraine.”

\textsuperscript{111} Ibid, p. 34.


\textsuperscript{113} CERD, Ukraine, 2006, para. 84.


\textsuperscript{116} Ibid.
house. We wanted to burn and destroy everything but we came too late, the police were already deployed.”

In the face of mob action, the Roma fled into the forest, where they remained sheltering under plastic tarps for several days. On attempting to return to their homes on October 28, under police protection, they were again turned away by some 200 villagers who asserted that they would never be allowed to return. Police subsequently barred access to the former homes of the Roma, and the Roma were relocated to refugee housing. National authorities sought to relocate the Roma permanently out of the Ambrus area, but faced further protests from local people where relocation was considered. In November, the Council of Europe’s Human Rights Commissioner, Thomas Hammarberg, visited Slovenia and criticized the forced relocation as “unacceptable.” He called upon both political and religious leaders to speak out against xenophobia and racism, declaring that: “They have a particular obligation to stand up for human rights and tell people that minorities also have rights and that mob activities against minorities cannot be tolerated.”

In late November 2006, after continuing international protests, a strong police escort facilitated the return of most of the Strojan family to their compound outside Ambrus after three months sharing three rooms in an army barracks in Postojna. Some one hundred villagers gathered nearby but were kept away by a strong police presence. An attempt to return the previous week was thwarted when some 1,000 villagers blocked their path.

9.1.4. Violence Based on Sexual Orientation

Bias crimes motivated by sexual orientation, like those motivated by anti-Semitism, hatred of Roma and Sinti, and disability bias have antecedents in the Holocaust. Nazi campaigns to exterminate Jews and the Roma and Sinti were accompanied by a program called “Operation T4,” designed to annihilate the disabled, and by the persecution and murder of tens of thousands of Europeans identified as homosexuals. Although homosexuals are no longer forced to wear pink triangles or openly targeted for extermination, sexual orientation is still a basis for stigmatization and oppression, often with the open support of government at some level and by influential political and religious organizations. Bias today towards those distinguished by their minority sexual orientation is vigorously promoted by both extremist and mainstream political and religious leaders across much of Europe and North America. Continuing violence motivated by hatred and prejudice based on sexual orientation, though largely unseen, is an intimidating day to day reality for gay men and lesbians, bisexual and transgender people in many parts of many countries.

Discrimination by reason of sexual orientation, often termed homophobia, embraces prejudices against gay men and lesbians and bi-sexual and transgender individuals, as well as those perceived to have these attributes. This form of discrimination also extends to gender identity bias, in which individuals are targeted for violence on the grounds that they do not conform to gender stereotypes in their appearance or in behavior. Few of the OSCE participating States track and provide statistics on crimes motivated by sexual orientation bias. Canada, Sweden, the United Kingdom, and the United States are the countries where such monitoring is

most developed, although only Sweden and the United States produce official statistics nationwide. Victims of hate crimes driven by homophobia often face particular cultural or social obstacles to reporting attacks and threats. Attacks on lesbian, gay, bisexual, or transgender (LGBT) people may go unreported because to do so would expose an individual’s sexual orientation, possibly bringing about further abuse. LGBT people may both fear additional victimization and have little confidence that the criminal justice system will act appropriately in response to criminal complaints.

Notwithstanding obstacles, incidents of homophobic hate crimes are regularly reported in the media and in reports by nongovernmental organizations in many parts of Europe and in North America. While data for all but a few countries is insufficient to determine whether levels of violence are rising or in decline, incident reports provide some basis to conclude that homophobic violence is both frequent in incidence and often of particular brutality.

- In Portugal, on February 22, 2006, a group of boys attacked and killed a homeless, Brazilian transgender woman in the city of Oporto, leaving her body to be found in a water-filled pit. The boys, who confessed to the crime, were found to have previously harassed and intimidated the victim. Although Portuguese criminal law defines some forms of bias as aggravating circumstances in the commission of homicide and assault, this does not explicitly extend to gender identity and was not invoked in the course of the prosecution of this case.\(^\text{120}\)

- In the United States, on February 2, 2006, an 18-year-old man entered a bar in New Bedford, Massachusetts, asked a bartender whether it was a “gay bar,” and then attacked men there at random, first with a hatchet and then with gunfire. One man suffered deep cuts on his head and was shot in the face, and two others were shot in the back and chest. The assailant then fled the bar and later the state, and died on February 6 following a shootout with Arkansas police who tried to arrest him. At the time, police were investigating the assault as a hate crime.\(^\text{121}\)

Other attacks were reported in the context of actions aimed at securing the rights of LGBT persons, in particular through public demonstrations often described as “Gay Pride” marches. Gay pride parades and other events organized in a number of countries in 2006 confronted anti-gay diatribes from political leaders, poor police protection, and serious acts of violence against those taking part in the parades and events. Criminal justice officials generally responded inadequately to the violence, making some arrests, but following through with few if any criminal prosecutions of the individuals responsible for the violence:

- In the Russian Federation, mobs of skinheads, extreme nationalists, and Russian Orthodox believers chanting homophobic slogans attacked participants and observers at Moscow gay pride events on May 27. The harassment and physical assaults plagued activists both in a ceremony at the Tomb of the Unknown Soldier in Alexander Gardens and a subsequent rally outside the Moscow Mayor’s office. The events went forward despite active opposition from


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Moscow’s mayor and from Orthodox Christian, Jewish, and Muslim religious leaders there. Among those who were attacked and injured as police stood by was Volker Beck, a German member of parliament.  

- In Romania, over a thousand people protested the Bucharest Gay Pride parade on June 3, with violent attacks injuring at least ten marchers; others were hurt as crowds who lined the route pelted the several hundred marchers with eggs, stones, and plastic bottles. Police provided only limited protection to the marchers, but made some fifty arrests of anti-gay protesters.

- In Latvia’s capital Riga, on July 22, anti-gay demonstrators hurled feces and eggs at gay rights activists and their supporters who were leaving a church service there on Saturday. Dozens of protesters had gathered outside the Anglican Church in Riga where gay activists were attending a service that served as an alternative to a gay pride parade which authorities has banned.

- In Estonia, on August 13, some 20 anti-gay protesters armed with sticks and stones attacked the estimated 500 marchers in a Gay Pride Parade in Tallinn, injuring some twelve marchers.

9.1.5. Violence Based on Disability Bias

In a few countries, legislation providing for sentence enhancement for bias crimes includes disability-based bias in these provisions. In its October 2006 report, the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) stressed “an increased need for participating States to collect data on hate crimes and violent incidents against people with disabilities…” The report states that preliminary research “suggests that a disabled person is at least one and a half times more likely to be the victim of assault or abuse than other people of similar age and gender.” As in the case of the double discrimination of racism and gender, gender and disability bias, too, frequently took the form of sexual violence. Teasing or taunting disabled persons because of their physical or mental conditions often graduates into the torment of intimidation and physical violence. Often only violent physical assaults in public places will attract the attention and assistance of the public and of law enforcement, while even such actions that terrorize the disabled may be treated as minor offences.

Most hate crimes against the disabled may never be reported, as they occur largely out of sight in private homes and institutions. Even the most serious crimes against the disabled, from systematic beatings to rape to burnings with cigarettes, when carried out by those responsible for

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124 “Latvian Gay Priders Hit With Eggs and Excrement,” Internet Center Anti-Racism Europe (ICARE), citing Reuters on July 22, 2006.
126 ODIHR, “Challenges and Responses to Hate-Motivated Incidents in the OSCE Region,” p. 31.
their care, may never reach the criminal justice system if carried out in custodial situations. When they become known, they are often characterized as “abuse,” not crimes. Crimes may be written off as abuse, or little more than teasing or pranks, even when seriously harming a disabled person. An example cited by one authority occurred in a school setting: “the schoolmates of an 18-year-old North Carolina high school student with a developmental disability soaked his lunch in cleaning fluid and watched him eat it.” The victim was poisoned and required hospitalization, but the incident was not treated as a crime. “Abuse is a ubiquitous metaphor for experiences of disability oppression,” adds this author. The disabled, like others, may also be the object of discrimination on multiple grounds, doubly victimized because of their gender, their ethnic origins, or their religion. That disability-based bias crime is among the least likely to be reported has been repeatedly shown in the limited data available.

In the United States, the Leadership Conference on Civil Rights has observed that these hate crimes are rarely reported to law enforcement, as “the victim may be ashamed, afraid of retaliation, or afraid of not being believed,” or reliant upon caregivers to do so, who do not. In the latter case, caregivers themselves may be responsible for serious crimes. Even when crimes are reported, the disability dimension may not be investigated or recorded. These observations are reflected in the low numbers reported in the FBI’s annual crime reports. In 2005, the latest survey available, the FBI reported 53 disability-based offenses, with 54 victims nationwide. Of these, 21 victims were targeted because of physical disabilities and 33 for mental disabilities. Just 0.7 percent of the total of 7,160 hate crime incidents were classified as disability-based in 2005.

While the annual crime reports are important as an acknowledgment that disability-based crime is a part of the larger crime picture in the United States, the system has been criticized for severely underestimating the scale of these offenses. Critics have noted, for example, that even hate crimes that receive national attention may not be registered as such in the crime reports police jurisdictions submit to the FBI. Hate crimes expert Jack Glaser, of the University of California at Berkeley, cites analysis showing that “disability hate crimes are not just underreported, they are virtually unreported. The number of media stories outnumber the statistics.” The crimes that dropped out of the statistics include what is generally considered the first disability-based hate crime to go to trial in the United States: the 1999 assault in Middletown, New Jersey on a man with cognitive disabilities who was “kidnapped, choked, beaten, burned with cigarettes, taped to a chair, his eyebrows shaved, and ultimately abandoned in a forest.” The prosecutor opened the case by declaring that the accused had “tormented this

127 “Perhaps the biggest reason for underreporting of disability-based bias crimes is that disability-bias crimes are all too frequently mislabeled as ‘abuse’ and never directed from the social service or education systems to the criminal justice system. Even very serious crimes—including rape, assault, and vandalism—are too frequently labeled ‘abuse.'” Leadership Conference on Civil Rights, “Cause for Concern: Hate Crimes in America,” 2004.
129 “[T]here may be no reporting of the victim’s disability, especially in cases where the victim has an invisible disability that they themselves do not divulge.” Leadership Conference on Civil Rights, “Cause for Concern: Hate Crimes in America,” 2004.
130 FBI, “Hate Crime Statistics 2005.”
mentally disabled man because of his disability”; seven of the accused were sentenced to long prison terms. But the case did not appear in the Uniform Crime Reports as a hate crime.

In the United Kingdom, prosecution of disability hate crimes is relatively new, as provisions of the Criminal Justice Act of 2003 for increasing sentences for crimes against disabled people where these are aggravated by bias became law only in April 2005. The act covers England and Wales. Similar provisions were enacted in Northern Ireland, in the Criminal Justice (No. 2) (Northern Ireland) Order of 2004, which came into force in September 2004 after extensive surveys of disability based crime. The Northern Ireland act establishes a statutory requirement for judges to treat racist, sectarian, sexual orientation, and disability bias as an aggravating fact in sentencing.

Hate crime statistics published by the Police Services of Northern Ireland for the 2005/2006 monitoring year covered 38 incidents of disability-based hate crime, including 21 assaults and woundings. The proportion of violent crime in disability-based offenses, 63.2 percent, was higher than in crimes classed as racist (45.7 percent of 746), faith/religion (57.7 percent of 78 crimes), or in crimes classed as sectarian (47 percent of 1,470 offences), and exceeded only in homophobic crimes (68.2 percent of 148 offences). There were 33 offences of wounding or assault, 4 of threat or conspiracy to murder, and 27 of criminal damage. Violent crimes are defined as crimes against the person, sexual offenses, and robbery.

In Scotland a high incidence of hate crimes targeting the disabled was revealed in a survey by the Disability Rights Commission (DRC) and Capability Scotland, the leading disability organization there. A Working Group on Hate Crime set up by the Scottish Executive recommended similar legislation, and a draft hate crimes statute was approved by the executive. More than a year later, however, the act had yet to be submitted to the Scottish Assembly, and Scotland still lags behind other parts of the United Kingdom in protection against hate crimes. In February 2007, the Crown Prosecution Service, which covers England and Wales, published a policy to explain how it will prosecute cases of disability hate crimes.

In a statement, Director of Public Prosecutions Kenneth Macdonald stressed that the courts “can now pass a higher sentence when we prosecute a case as a disability hate crime,” and that when disabled persons are victims of crimes aggravated by hostility towards their disability, “our prosecutors will work with the police to find evidence of this.” The disabled themselves have been among the strongest advocates for action against hate crimes, including through such organizations as Scotland’s Capability Scotland, and through media run by and for disabled people. The BBC’s website “Ouch!” (Its stated aim is “to reflect the lives of disabled people right here and now in the third millennium.”) includes first person accounts from those who have

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133 Kathleen Maclay, “Flawed FBI reporting system undercounts disability hate crimes.”


suffered such attacks, and how they cope. Liz Ball, who is deaf and blind and who works in London, recounts being assaulted upon leaving an underground station, her attackers stealing only her white and red cane and the notebook she uses to communicate, and describes what it meant to her.\(^\text{139}\)

10. Hate Crime and The Laws

While governments have an obligation to combat all crime, the hate crime concept is a simple acknowledgement of the greater seriousness of crimes motivated by racial, religious, or other hatred that harm whole communities. This is an important part of the rationale by which hate crimes should be accorded a higher priority within the competing priorities of criminal justice systems. Hate crime legislation also provides for more severe penalties, in line with the legal principle that more severe punishments should be accorded crimes that are “most destructive of the public safety and happiness.”\(^\text{140}\)

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 violent crimes. In many of these countries, however, the list of crimes to which these aggravating factors can be applied is limited. Hate crime laws generally fall into one of several categories:

1. laws defining specific bias-motivated acts as distinct crimes;
2. criminal penalty-enhancement laws;
3. laws creating a distinct civil cause of action for hate crimes; and
4. laws requiring administrative agencies to collect hate crime statistics.\(^\text{141}\)

Thus, the U.S. Supreme Court has addressed certain issues raised by first amendment scholars in two recent rulings on the constitutionality of hate crime legislation. In \textit{R.A.V. v. City of St. Paul, Minn.},\(^\text{142}\) the Court in 1992 examined legislation that made particular bias an element of a crime. R.A.V. was accused of burning a cross on a black family’s lawn. He was charged subsequently under St. Paul’s Bias-Motivated Crime Ordinance, which made it a misdemeanor to “place on public or private property a symbol, object, appellation, characterization, or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender.” The trial court dismissed the charges on the grounds that the ordinance violated the first amendment because it was impermissibly broad and regulated the content of the offender’s speech. The Minnesota Supreme Court reversed the trial court’s decision, holding that the ordinance prohibited “fighting words”—words that inflict injury or tend to incite immediate violence—which are not protected by the first amendment.

The court further found that the regulation was tailored appropriately to serve the State’s interest in protecting the community against bias-motivated threats to public safety and order.


\(^{140}\) A Human Rights First Report, “It is but reasonable that among crimes of different natures those should be most severely punished, which are the most destructive of the public safety and happiness.” Justice William Blackstone.

\(^{141}\) Ibid.

\(^{142}\) 505 U.S. 377 (1992)
In an opinion written by Justice Antonin B. Scalia, a majority of the U.S. Supreme Court reversed the Minnesota Supreme Court’s ruling, finding that the ordinance unconstitutionally restricted speech on the basis of its content. Applying its free speech precedents to the St. Paul ordinance, the majority concluded that the ordinance applied only to “fighting words” that insult or provoke violence “on the basis of race, color, creed, religion, or gender.” A jurisdiction may proscribe unprotected speech on the basis of its content, the Court held, but it may not select one area of speech to criminalize while leaving other areas unrestricted, unless the selection is content-neutral. Therefore, Scalia wrote, a jurisdiction may criminalize unprotected speech in a selective manner, as long as the selectivity is not “conditioned upon the government’s agreement with what the speaker may intend to say.” The Court noted that words that expressed hostility toward a person because of his or her sexual orientation or political affiliation were not prohibited by the city ordinance. The Court wrote that because the ordinance restricted biases of a particular nature, it barred only those viewpoints that the city council found distasteful. Scalia asserted that the ordinance unconstitutionally allowed persons on one side of a debate to speak freely while restricting the other side’s response. The majority held that a law prohibiting all fighting words communicated in a threatening manner, instead of proscribing all fighting words that convey messages of racial intolerance, would be constitutional. In this case, the Court ruled, the Minnesota ordinance went beyond permissible regulation and infringed upon the free speech rights of the defendant.

*R.A.V.* did not address the constitutionality of other types of hate crime legislation. In 1993, the Court provided clarification when it considered the constitutionality of a statute that enhanced the penalty for otherwise criminal behavior motivated by prejudice. In *Wisconsin v. Mitchell*, a group of young African-American males, including Todd Mitchell, discussed a scene from the movie “Mississippi Burning” in which white men beat a black boy who is praying. As the group left the apartment where they had gathered, Mitchell asked them if they were “hyped up to move on some white people.” A few minutes later a white boy approached the group from across the street. As the boy walked by, Mitchell prompted the others to attack him. He said, “There goes a white boy; go get him.” Mitchell counted to three and pointed toward the boy. The group ran toward the boy and beat him severely, rendering him comatose for 4 days. Mitchell was convicted of aggravated battery, an offense that normally carried a penalty of 2 years’ imprisonment. Because the jury found that Mitchell intentionally had selected his victim based upon the boy’s race, however, the maximum sentence increased to 7 years. State law specifically provides that a maximum penalty for an offense is enhanced if the defendant intentionally selects the person against whom the crime is committed because of the “race, religion, color, disability, sexual orientation, national origin, or ancestry of that person.” Mitchell was sentenced to 4 years’ imprisonment. He appealed his conviction and sentence, arguing that Wisconsin’s penalty-enhancement provision violated the first amendment by punishing offensive thought.

On the day after the *R.A.V.* decision was issued by the U.S. Supreme Court, the Wisconsin Supreme Court issued a ruling in *Wisconsin v. Mitchell* that the State’s hate crimes law violated the defendant’s right to free speech. According to the court, the law violated the first amendment because the State imposed additional penalties solely because of the defendant’s biased motivation in committing the crime. “A statute that is designed to punish personal prejudice impermissibly infringes upon an individual’s first amendment rights,” the court said. Relying on Scalia’s majority opinion in *R.A.V.*, the court concluded that the hate crime law was

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143 113 S. Ct. 2194 (1993)
unconstitutional because it singled out the defendant’s biased thoughts and penalized him based upon the content of those thoughts. The U.S. Supreme Court rejected this analysis and upheld the statute as constitutional. Chief Justice William Rehnquist, who wrote the Mitchell court’s unanimous opinion, found that the St. Paul ordinance targeted expression, which is protected by the first amendment, while the Wisconsin statute is aimed at conduct not protected by the Constitution. Wisconsin’s enhanced-penalty statute created an increased penalty for illegal conduct inspired by the defendant’s “bigoted motivations,” according to the Court. While a particular bias was an element of the crime itself under the Minnesota ordinance, it was a factor to be considered during sentencing under the Wisconsin statute, said the Court. Rehnquist said that, although a sentencing judge may not take into account the defendant’s abstract beliefs, however obnoxious to most people, the Constitution does not preclude the admission of evidence concerning one’s beliefs and associations at sentencing if those beliefs and associations are in some way related to the commission of the crime. Rehnquist explained that sentencing judges traditionally have considered a wide variety of factors in addition to evidence bearing on guilt, including a defendant’s motive for committing the offense. For example, murder, if committed for financial gain, can be considered an aggravating factor under many States’ capital sentencing statutes, said the Court. Moreover, the Court held, the first amendment permits admission of a defendant’s statements to prove motive or intent, provided they are relevant and reliable. The Court also held that the statute has no “chilling effect” on free speech. Rehnquist said that it would be highly unlikely that an individual would suppress his “bigoted” beliefs for fear that evidence of those beliefs would be used against him at trial if he committed a serious offense.

Other State appellate and high courts considering the constitutionality of hate crime legislation since Mitchell have followed either Mitchell or R.A.V. without expressing difficulty in reconciling the two decisions. These courts generally have upheld State statutes that punish specific behavior motivated by bias, and the U.S. Supreme Court has denied appeals of these decisions. State courts have ruled that there is no meaningful difference between such statutes and the penalty-enhancement statute upheld in Mitchell. Both types of statutes punish a crime motivated by bias, the courts have held. Following this line of reasoning, the Maryland appellate court, for example, upheld a statute making it a crime to “harass or commit a crime upon a person . . . because of that person’s race, color, religious belief or national origin.” As the Supreme Court of Missouri summarized with regard to a similar statute, “While [the statute] admittedly created a new motive-based crime, its practical effect is to provide additional punishment for conduct that is already illegal but is seen as especially harmful because it is motivated by group hatred. It is clear from Mitchell that enhanced punishment for criminal conduct on account of a defendant’s motives of bias or hatred toward a protected group is consistent with the United States Constitution.” Federal courts have upheld Federal hate crime legislation against first amendment challenges based on similar reasoning.


147 State v. Vanatter, 869 S.W.2d 754 (Mo. 1994).
In *United States v. Stewart*, for example, the U.S. Court of Appeals for the Eleventh Circuit held that a defendant who burned a cross on a black family’s front lawn was properly prosecuted under Federal civil rights laws including 42 U.S.C. 3631, which prohibits intimidation motivated by the defendant’s hatred for a characteristic of the victim such as race or gender. The court held that “because such intimidation itself is unprotected conduct, under *Mitchell* the statute is not facially invalid.” The court said the defendant’s conduct in *Stewart* was different from a cross burning held to make a political statement. While in *Stewart* the defendant burned a cross to threaten and intimidate a black family, political statements are constitutionally protected expression, said the court. The U.S. Supreme Court refused to hear an appeal in this case. The most recent Supreme Court action on hate crimes occurred in February 1996, when the Court denied review of a Florida Supreme Court decision upholding the State’s statute that prohibits burning a cross on another’s property without the property owner or occupant’s written permission.

In *T.B.D. v. Florida*, a delinquency petition was filed against T.B.D., a juvenile, charging him with placing a burning cross on private property without permission. Section 876.18 of the Florida Code provides that it is a misdemeanor for “any person or persons to place or cause to be placed on the property of another in the State a burning or flaming cross, real or simulated, in whole or in part without first obtaining written permission of the owner or occupier of the premises to do so.” The trial court dismissed the petition on the grounds that the statute violated the first amendment. The appellate court affirmed and the State appealed to the Florida Supreme Court. The State high court reversed the lower courts, ruling that the law impacts fighting words or threats, which are unprotected by the first amendment. Adopting some of its language from U.S. Supreme Court opinions, the court explained that “[t]hreats of violence can be regulated because government has a valid interest in ‘protecting individuals from fear of violence, from the disruption that fear engenders, and from the possibility that the threatened violence will occur’ . . . [and] ‘[f]ighting words’ . . . ‘by their very utterance inflict injury or tend to incite an immediate breach of the peace.’ The court commented that in light of the State’s history of brutal violence connected to cross burning, “it is difficult to imagine a scenario more rife with potential for reflexive violence and peace-breaching.” The court said the Florida statute differed from the ordinance in *R.A.V.* in that it did not prohibit threats or fighting words on a particular subject matter. Furthermore, the statute is not overly broad because cross burning is “eminently proscribable under the first amendment,” said the court. One justice dissented arguing that the statute failed the *R.A.V.* standard because cross burning was not regulated in a neutral manner. In order to comply with *R.A.V.*, the legislature must ban all burnings and fires set on private property with the intent to intimidate or threaten, said the dissenting justice.

Although the first amendment debate continues in the prosecution of hate crimes, State and Federal legislative attempts to combat bias-motivated offenses generally have been successful. Sometimes (as in Bosnia and Herzegovina), the laws focus on war crimes, genocide, and crimes

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149 42 U.S.C. 3631 specifically provides that “whoever . . . by force or threat or force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—(a) any person because of his race, color, religion, sex, handicap . . ., familial status . . ., or national origin and because he is or has been . . . purchasing, [or] occupying . . . any dwelling ... shall be fined under this subchapter or imprisoned not more than one year, or both . . .”


151 656 So. 2d 479 (Fla. 1995).
against humanity with the prohibition against discriminatory action limited to public officials.\footnote{Ibid.} On the other hand, sexual harassment at the work place is a violation of Articles 15 and 21 of the Constitution of India as stipulated by the Supreme Court of India in \textit{Vishakha v. State of Rajasthan}.\footnote{AIR 1997 SC 3011} In \textit{Bijoe Emmanuel v. State of Kerela}\footnote{AIR 1987 SC 748} the Supreme Court of India has observed that the expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the national anthem in the morning assembly though they do standup respectfully when the anthem is sung, is a violation of their fundamental right to freedom of conscientious and freely to profess, practice and propagate religion---fundamental rights of the appellate under Articles 19 (1) (a) and 25 (a) have been infringed and they are entitled to be protected. There are adequate legal provisions to deal with the menace of hate crimes in India but operatives of the system are callous, clumsy and insensitive to the niceties, nuances and dire implications of the issue for the present and the posterity.

11. Eurasian Scenerio: Racist and Xenophobic Crimes and Incidents

hate crimes fuelled by racist or xenophobic propaganda; and to publicly denounce such crimes.\footnote{OSCE Ministerial Council, Decision No. 4/03, “Tolerance and Non-discrimination”, Maastricht, 2 December 2003, <http://www.osce.org/item/19330.html>}

In furtherance of its mandate, in 2009 ODIHR organized a number of events and activities to address the problems of racism and xenophobia. In May, ODIHR and the OSCE Chairmanship organized a Supplementary Human Dimension Meeting on “Hate Crimes – Effective Implementation of Legislation”.\footnote{“Supplementary Human Dimension Meeting on Hate Crimes – Effective Implementation of Legislation, Final Report”,} This meeting highlighted the importance of improving legislation on hate crimes and identifying the barriers to effective implementation of such legislation. In addition, as mentioned earlier, ODIHR published two practical handbooks: \textit{Hate Crimes Laws – a Practical Guide}, and \textit{Preventing and Responding to Hate Crimes, A Resource Guide for NGOs in the OSCE Region}.\footnote{Preventing and Responding to Hate Crimes: A Resource Guide for NGOs in the OSCE Region (Warsaw: ODIHR, 2009), <http://www.osce.org/item/40781.html?ch=1382>}. Throughout the year, ODIHR continued to provide support to OSCE participating States in the area of police training on hate crimes.

The continuing global economic downturn in 2009 contributed to public expressions of racism and xenophobia. This issue was discussed at a roundtable meeting entitled “	extit{Racism in the OSCE region: Old issues, New Challenges}”, organized by ODIHR in March 2009, at which participants explored the relationship between hate crime and the economic crisis. As noted previously, this issue was also reflected in the OSCE Ministerial Council Decision on Combating Hate Crimes, adopted on 2 December 2009 in Athens, in which participating States recognized “that the global economic downturn may increase incidents of hate crimes in the OSCE area”.\footnote{OSCE Ministerial Council, Decision No. 9/09, “Combating Hate Crimes”, Athens, 1-2 December 2009, <http://www.osce.org/item/41853.html>}

In 2009, the OSCE Chairperson in Office’s Personal Representative on Combating Racism, Xenophobia and Discrimination, also focusing on Intolerance and Discrimination against Christians and Members of Other Religions, Mario Mauro, went on a joint visit with the other Personal Representatives to Canada and the United States. There, he emphasized the importance of training criminal justice agencies in addressing hate crimes.

\section*{12. Hate Crimes and Incidents Motivated By Racism and Xenophobia: Information and Data}

Although the vast majority of OSCE participating States recognize racist or xenophobic motives as aggravating factors for crimes, their differing legal systems and approaches to data collection make comparative reporting extremely difficult. The situation is further complicated by the fact that racism and xenophobia are extremely broad categories that can encompass linguistic, ethnic, racial, religious and citizenship issues. Some countries disaggregate their data into narrower categories, while others do not. The disaggregated information, to the extent that it is available, is included in the sections of this report dealing with specific groups of victims.

Information submitted to ODIHR by participating States indicated that ethnicity/origin/minority status were the victim categories most frequently recorded in data-collection systems. The
participating States that reported collecting data on this basis in 2008\(^{163}\) were joined by two additional countries – Bulgaria and Denmark – in 2009, bringing the total to 32 states.

The victim category for which the next-largest number of participating States recorded data was that involving persons identified by race/colour. Bulgaria first reported collecting data on this basis in 2009, bringing the total number of countries recording such data to 30.\(^{164}\) However, of the participating States that reported collecting data on victim groups identified by ethnicity/origin/minority status and/or race/colour, only 12 provided ODIHR with data on hate crimes in 2009 related to these groups.\(^{165}\) Six states described incidents involving racist or xenophobic acts.\(^{166}\) A number of countries reported that they recorded categories of victims identified by citizenship and language.\(^{167}\)

In addition to official information from governments, 21 NGOs from 14 participating States\(^{168}\) submitted information on hate crimes or incidents motivated by racism and xenophobia. Of the NGO submissions, 19 described general trends related to racism and xenophobia in a particular country and included collections of incidents. In eight cases NGO submissions were based on data from hate crime victim-assistance programmes or monitoring networks.\(^{169}\) The country listing below summarizes the information received by ODIHR on each participating State with regard to racist and xenophobic crimes. If a participating State is not listed, this indicates that ODIHR did not receive any information concerning such crimes from the government, IGOs or NGOs.

In Albania no data on racist or xenophobic crimes were reported to ODIHR by officials or NGOs. The UNHCR office in Albania reported that hate crimes were not prevalent in this country.\(^{170}\) In Andorra discriminatory acts constituting harassment or infringement of a person's dignity on the basis of origin, citizenship, race, religion, or sex (Penal Code Article 313). Courts have cited bias-based motivation in delivering sentences, but there is no explicit penalty enhancement provision in the Criminal Code. The government does not track hate crime statistics, although they are relatively rare.\(^{171}\) Armenia has a penalty-enhancement statute for crimes with ethnic, racial, or religious motives.\(^{172}\) Austria has a penalty-enhancement statute for crimes with racist or xenophobic motivation.\(^{173}\) The Interior Ministry reported that there were 49

\(^{163}\) Andorra, Austria, Belgium, Canada, Croatia, Cyprus, Finland, France, Germany, Iceland, Ireland, Italy, Kazakhstan, Latvia, Liechtenstein, Lithuania, Moldova, Netherlands, Norway, Poland, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, United Kingdom, United States and Uzbekistan.

\(^{164}\) Andorra, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Moldova, Netherlands, Norway, Poland, Serbia, Slovakia, Spain, Sweden, Switzerland, Tajikistan, United Kingdom, United States and Uzbekistan.

\(^{165}\) Austria, Croatia, Czech Republic, Denmark, Germany, Hungary, Italy, Norway, Poland, Slovakia, Sweden, and the United Kingdom.

\(^{166}\) Austria, Bulgaria, Poland, Portugal, Spain and Uzbekistan.

\(^{167}\) Belgium, Canada, Cyprus, Finland, France, Georgia, Germany, Moldova, Netherlands, United Kingdom and the United States.

\(^{168}\) Austria, Cyprus, Czech Republic, France, Germany, Italy, Latvia, Malta, Netherlands, Norway, Russian Federation, Slovakia, Turkey and Ukraine.

\(^{169}\) NGO reports from Austria, Czech Republic, France, Germany, Italy, Russia, Slovakia and Ukraine.

\(^{170}\) Communication from UNHCR Albania, 19 March 2010.

\(^{171}\) Ibid.

\(^{172}\) Article 63, Criminal Code

\(^{173}\) Section 33(5) Penal Code
racist or xenophobic hate crime cases in 2009.\textsuperscript{174} The NPC reported anti-black graffiti.\textsuperscript{175} The NGO Zara, which provides legal aid to victims of racism and discrimination, reported 798 racist incidents, including 56 cases of racist violence and 209 cases of racist graffiti.\textsuperscript{176} Azerbaijan has a penalty-enhancement statute for crimes motivated by racial, national, or religious hatred. Murder and infliction of serious bodily injury motivated by racial, religious, national, or ethnic intolerance are distinct crimes.\textsuperscript{177}

Belarus has a penalty-enhancement statute for crimes motivated by racial, national, and religious hatred and discord.\textsuperscript{178} Although no data on racist or xenophobic crimes were reported to ODIHR by officials or NGOs. The UNHCR office in Belarus reported that hate crimes were not prevalent in this country.\textsuperscript{179} Belgium's Act of 25 February 2003 ("aimed at combating discrimination and modifying the Act of 15 February 1993 which establishes the Centre for Equal Opportunities and the Fight against Racism") establishes a penalty-enhancement for crimes involving discrimination on the basis of sex, supposed race, color, descent, national or ethnic origin, sexual orientation, civil status, birth, fortune, age, religious or philosophical beliefs, current or future state of health and handicap or physical features. The Act also "provides for a civil remedy to address discrimination." The Act, along with the Act of 20 January 2003 ("on strengthening legislation against racism"), requires the Centre to collect and publish statistical data on racism and discriminatory crimes.

12.1.1. Bosnia and Herzegovina

The Criminal Code of Bosnia and Herzegovina contains provisions prohibiting discrimination by public officials on grounds, inter alia, of race, skin colour, national or ethnic background, religion and language and prohibiting the restriction by public officials of the language rights of the citizens in their relations with the authorities incommensurate with the Constitution of Bosnia and Herzegovina under Article 145 (1) and 145(2).\textsuperscript{180}

But no official data on racist or xenophobic crimes were reported to ODIHR. The OSCE Mission to Bosnia and Herzegovina reported 151 bias motivated incidents; including attacks targeting cemeteries and religious symbols.\textsuperscript{181} The Mission noted that incidents based on ethnic affiliation are recorded in almost all regions of the country, most frequently in areas where there are a large number of returnees. These incidents should be viewed in the wider context of inter-ethnic tensions in this part of the OSCE region. Among the incidents mentioned by the OSCE Mission was a dispute before a football match in Široki Brijeg that escalated into a mass brawl resulting in the death of one person. The conflict further spread to the centre of town, where windows of houses were smashed and several police cars were vandalized. Seven persons were arrested and charged with offences against the public safety of persons and property. No

\textsuperscript{174} Information from the Austrian NPC, 18 March 2010.
\textsuperscript{175} Questionnaire from the Austrian NPC, 18 March 2010.
\textsuperscript{176} Communication from ZARA, 15 April 2010.
\textsuperscript{177} Article 61, Criminal Code
\textsuperscript{178} Criminal Code of the Republic of Belarus, Article 64 (1), Para. 9, June 9, 1999.
\textsuperscript{179} Communication from UNHCR Regional Office for Belarus, Moldova and Ukraine, 19 March 2010
\textsuperscript{180} Office of the High Representative, Criminal Code of Bosnia and Herzegovina, January 2003.
\textsuperscript{181} This number includes attacks targeting cemeteries, religious symbols and incidents that appear to be of inter-ethnic nature. Communication from the OSCE Mission to Bosnia and Herzegovina, 26 March 2010; Information from the NPC of Bosnia and Herzegovina, 19 March 2010.
information on racist or xenophobic incidents in Bosnia and Herzegovina was provided to ODIHR by NGOs. On the other hand, Bulgarian criminal law prohibits certain crimes motivated by racism and xenophobia, but a 1999 report by the European Commission against Racism and Intolerance found that it does not appear that those provisions "have ever resulted in convictions before the courts in Bulgaria."\(^\text{182}\) The NPC reported an assault on an Indian diplomat by a group of skinheads.\(^\text{183}\) No information was provided by NGOs.

12.1.2. Croatia

Croatian law allows for consideration of any extenuating or aggravating circumstances in sentencing, but no explicit provision is made for bias-based motivations. The Interior Ministry recorded 18 cases of ethnically motivated hate crimes.\(^\text{184}\) UNHCR provided similar figures, quoting the Interior Ministry as the source for the information, and noted that eight of the reported cases targeted the ethnic-Serb minority.\(^\text{185}\) No information was provided by NGOs. No official data on racist or xenophobic crimes were reported to ODIHR. The NGO Embargoed! Has reported one case of ethnically motivated violence in Nicosia.\(^\text{186}\)

12.1.3. Czech Republic

"The Czech Criminal Code defines racist motivation as a specific aggravating circumstance that judges are required to take into account in sentencing, as well as defining specific racist acts as crimes. Section 196 punishes ‘‘violence against a group of inhabitants and against individuals on the basis of race, nationality, political conviction or religion.’’\(^\text{187}\) The Interior Ministry reported 265 extremist crimes motivated by national or racial hatred, including 23 cases of physical assault, five cases of causing bodily harm and one case of attempted murder.\(^\text{188}\) According to statistics from the Supreme Public Prosecutor’s Office, 33 persons were prosecuted for the use of violence or threats of violence based on racist, national or other hatred; 24 persons were prosecuted for bias-motivated assaults and three persons were prosecuted for bias motivated damage to property.\(^\text{189}\) The NGO In IUSTITIA reported 11 cases of alleged hate crimes, most of them targeting Roma.\(^\text{190}\) Additionally, the NGO People in Need Reported six cases of racist

\(^{183}\) Pertinent Amendments include Articles 162(2), 163(3), and 164(2), Section 1, Chapter 3, “Crime against National and Racial Equality”. Questionnaire from the Bulgarian NPC, 19 March 2010.
\(^{184}\) Communication from the Interior Ministry, Republic of Croatia, 15 April 2010.
\(^{185}\) Communication from UNHCR Croatia, 19 March 2010.
\(^{186}\) Information from Embargoed!, 19 March 2010.
\(^{187}\) Ibid.
\(^{188}\) Information from the Czech NPC, 15 April 2010.
\(^{189}\) Information from the Czech Republic NPC, 2 July 2010; Questionnaire from the Czech Republic NPC, 9 September 2010. Two publications detail the programmes: “Manual for municipalities to Act No. 84/1990 Coll on the Right of Assembly” (Ministry of the Interior, 2009); and “Methodological Manual ‘Extremism’ dealing with the penalties of crimes with an extremist context” (Supreme Public Prosecutor’s Office, Brno October 2009), the latter of which is available at: <http://portal.justice.cz/nsz/hlavni.aspx?j=39&o=29&k=41116&d=309768>.
\(^{190}\) The Czech NGO In IUSTITIA reported that migrants (mostly from Vietnam) do not report incidents. Information from In IUSTITIA, 17 March 2010.
violence, four of them targeting Roma, one targeting citizens of Sri Lanka and one targeting a white person.\textsuperscript{191}

12.1.4. Denmark

Although Denmark law does not include explicit hate crime provisions, "section 80(1) of the Criminal Code instructs courts to take into account the gravity of the offence and the offender’s motive when meting out penalty, and therefore to attach importance to the racist motive of crimes in determining sentence."\textsuperscript{192} In recent years judges have used this provision to increase sentences on the basis of racist motives.\textsuperscript{193} Since 1992, the Danish Civil Security Service (PET) has released statistics on crimes with apparent racist motivation.\textsuperscript{194} The Ministry of Justice reported 122 hate crime cases, including one attempted murder, 13 assaults and six cases of vandalism, but did not specify in its submission if these were considered to be racist or xenophobic crimes.\textsuperscript{195} No information was provided by NGOs.

12.1.5. England and Wales

In England and Wales criminal actions are considered hate crimes if they are perceived by the victim or any other person as being motivated by prejudice and hatred. Hate crimes may be physical attack, verbal attack, threats or insults and will be considered a hate crime if they are motivated by the victims race, colour, ethnic origin, nationality or national origins, religion, gender or gender identity, sexual orientation or disability.\textsuperscript{196}

A 23-year-old Indian student studying at Lancaster University in northwest England was shot dead early on Monday at Salford in the suburbs of Manchester. Greater Manchester Police said he was part of a group of nine Indian students staying at a nearby hotel for Christmas holiday. An armed unit of the police reached the spot around 1.35am following reports of a shooting near a McDonald's restaurant. The student was taken to hospital where he was pronounced dead. His parents in India were informed about his death.\textsuperscript{197}

12.1.6. Finland

Finnish Penal Code 515/2003 (enacted January 31, 2003) makes "committing a crime against a person, because of his national, racial, ethnical or equivalent group" an aggravating circumstance in sentencing.\textsuperscript{198} In addition, ethnic agitation (Finnish: \textit{kiihotus kansanryhmää vastaan}) is

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\textsuperscript{191} The full title of the action plan is “A common and safe future – an Action Plan to prevent extremist views and radicalization among young people”. Questionnaire from Danish NPC, 19 March 2010. The Danish NPC also noted that Denmark only collects data by ethnicity/origin/minority status.


\textsuperscript{193} Ibid.

\textsuperscript{194} Report of 1999, Danish Civil Security Service (PET)

\textsuperscript{195} Questionnaire from the Danish NPC, \textit{op. cit.}, note 69. The Danish NPC also noted that Denmark only collects data by ethnicity/origin/minority status.

\textsuperscript{196} Chahrokh, Klug, and Bilger, Migrants, Minorities, and Legislation.

\textsuperscript{197} Ashis Ray, TNN Dec 27, 2011, 06.17AM IST

\textsuperscript{198} Penal Code (39/1889) as of 1006/2004. §§ 6:5.1.4 (ethnic hatred as an aggravating factor), 11:8 (ethnic agitation) and 12:2 (War Mongering). The points cited remain in force on the day of retrieval, checked from the Finnish
criminalized and carries a fine or a prison sentence of not more than two years. The prosecution need not prove that an actual danger to an ethnic group is caused but only that malicious message is emissioned. A more aggravated hate crime, warmongering (Finnish: sotaan yllyttäminen), carries a prison sentence of one to ten years. However, in case of warmongering, the prosecution must prove an overt act that evidently increases the risk that Finland is involved in a war or becomes a target for a military operation. The act in question may consist of

1. illegal violence directed against foreign country or her citizens,
2. systematic dissemination of false information on Finnish foreign policy or defence
3. public influence on the public opinion towards a pro-war viewpoint or
4. public suggestion that a foreign country or Finland should engage in an aggressive act.\textsuperscript{199}

12.1.7. France

In 2003, France enacted penalty-enhancement hate crime laws for crimes motivated by bias against the victim's actual or perceived ethnicity, nation, race, religion, or sexual orientation. The penalties for murder were raised from 30 years (for non-hate crimes) to life imprisonment (for hate crimes), and the penalties for violent attacks leading to permanent disability were raised from 10 years (for non-hate crimes) to 15 years (for hate crimes).\textsuperscript{200} No official data on racist or xenophobic crimes were reported to ODIHR. The International League against Racism and Anti-Semitism (LICRA) reported 45 cases of alleged assault and 320 cases involving alleged racist insults.\textsuperscript{201} In 2006, French authorities reported a decrease by 10 percent in the overall number of hate crimes in comparison with 2005, although crimes were increasingly of a violent character. Anti-Semitic offenses, a subset of the hate crimes monitored, rose by 6.6 percent in 2006, after a 48 percent decline the previous year. Hate crime levels remained extraordinarily high compared to the late 1990s. Official data on hate crimes has been systematically collected and reported since 2002, but incidents involving a number of minority groups are not represented, leaving discrimination against these groups statistically invisible. In France, a tendency toward an increase in the proportion of bias crimes involving violence was confirmed in the past years, and individuals, not property, were the primary victims of this increase.

Although the total number of offences decreased 10 percent—the number of anti-Semitic offences rose by 6.6 percent. The total of all bias offences remained extraordinarily high compared with the period of the late nineties.\textsuperscript{202} In addition to the increasingly violent character of hate crimes, individuals were targeted in a larger proportion of the total cases, increasing from 4.9 percent in 2005 to 5.7 percent in 2006. As in past years, bias crimes were characterized as either acts (sometimes described as violent acts) or threats (menaces – defined to include graffiti and “minor vandalism”). There were 64 offences registered as acts in 2006, down from 88 in

\textsuperscript{199} Ibid
\textsuperscript{200} Home Office | Hate crime
\textsuperscript{201} Questionaire From Dutch NPC, 8 September 2010.
2005 while there were 280 registered threats, down from 383.\textsuperscript{203} These offences, in turn, were broken down into antisemitic offenses and racist and xenophobic offences. The proportion of incidents involving violence (which includes violence against individuals and property) increased from 19 percent in 2005 to 22 percent in 2006 within the total number of racist, xenophobic, and antisemitic threats and acts. Attacks upon persons as a proportion of violent acts rose 9 percent, from 44 percent in 2005 to 53 percent in 2006.\textsuperscript{204} Statistics on racist threats similarly showed an increase by 15 percent (from 29 percent to 45 percent in 2006) in threats “that directly affect persons (spoken threats and written and telephone threats).”\textsuperscript{205}

While anti-Semitic threats and acts rose 6.6 percent in the year, the more significant finding was that the expression of anti-Semitism was increasingly violent. Violent anti-Semitic acts increased with a rise of 35 percent, from 99 in 2005 to 134 in 2006, as did attacks on persons. The statistics show that the number of attacks against persons practically doubled, from 53 in 2005 to 94 in 2006. In addition, threats against persons doubled over the year, from 69 of a total of 409 threats in 2005 to 135 of a total of 407 threats in 2006.\textsuperscript{206} As a measure of the gravity of the incidents, there were 22 cases in 2005 in which people described as “of immigrant origin” were wounded, while 26 from the Jewish community were wounded. In 2006, there were 20 wounded of immigrant origin and 30 “of or perceived to be of the Jewish confession.” In addition, the report highlighted the kidnapping, torture and murder of Ilan Halimi, a member of the Jewish community. Halimi was the only person reported killed in a bias crime in France in 2006, and the only individual victim named in the report.\textsuperscript{207} Statistics on racist and xenophobic offences that exclude those motivated by antisemitism experienced a significant decline in total numbers, with a 27 percent reduction in numbers of violent acts: from 88 acts in 2005 to 64 in 2006.

As in past reports, the National Consultative Commission on Human Rights (CNCDH), the official human rights body, continued to avoid the word minority in its reporting on hate crimes, indiscriminately substituting the term “immigré” to describe the targets of “racist or xenophobic” offences.\textsuperscript{208} The findings identify people of North African origin (“maghrébin”) as the most affected by racist acts, accounting for 66 percent of racist acts, as well as racist threats, with 69 percent of the total.\textsuperscript{209} No other groups that are victims of racist violence are identified, and as in past reports, victims of racist violence are in most charts and narrative sections described as “immigrants” or “of immigrant origin” – a generalization that blurs the distinction between foreigners and immigrant newcomers and France’s large minority population of citizens.\textsuperscript{210} Sections of the CNCDH report concerning hate crimes and hate crime statistics omit any reference to such minority groups as Roma or people of sub-Saharan African origins, nor is there any express reference to violence and discrimination against foreigners, as contrasted to citizens. Although reporting on the findings of an annual public opinion survey for 2006 does refer to attitudes towards specific minority groups, including homosexuals, no reference is made to crimes based on sexual orientation bias, disability bias, or racism other than anti-North African

\textsuperscript{203} Ibid, pp. 12, 34.
\textsuperscript{204} Ibid, p. 12.
\textsuperscript{205} Ibid, p. 12.
\textsuperscript{206} Ibid, p. 13.
\textsuperscript{207} Ibid, p. 35.
\textsuperscript{208} Ibid, p. 32.
\textsuperscript{209} Ibid, p.12
\textsuperscript{210} For a critique of this terminology, see “Everyday Fears,” pp. 74-81.
bias. Statistics for 2006 indicate just 42 violent acts described as “anti-maghrebines” and 22 described as “other.” There were 280 offences of “lesser gravity,” classified as threats, of which 192 were anti-maghrebines, with 88 motivated by other forms of racism or xenophobia.

While these are relatively low levels, in comparison with those of other European countries that publish detailed statistics, the report gives little guidance as to the effectiveness of police data collection in addressing all forms of racist and xenophobic violence. In contrast to the report’s validation of statistics on anti-Semitic offences by reference to the comparable statistics produced through Jewish community-based monitoring, there is no basis provided by which reporting on other bias crimes is assessed. The CNCDH report for 2006, like its 2005 report, falls short of the far more detailed reporting on individual cases produced in its 2004 report. This included an extensive appendix apparently based on police reports that provided basic information including the date, place, and nature of incidents, in a “non-exhaustive list of the most serious cases.” This included details of cases characterized as violent acts of anti-Semitism, as well as summary accounts of 165 incidents of “racist and xenophobic” violence.

In these, victims and perpetrators (where known), were categorized loosely by origin, when distinct from the French majority, while details about any imputed ties of the perpetrators to extremist groups were spelled out. There was no reference to crimes against Roma in 2004; nor do Roma figure in the 2005 and 2006 reports. The case information in the 2004 report, as well as the statistical data in the 2006 reports, suggests an emphasis by the criminal justice system—the source of the CNCDH data—on the major problems of anti-Semitic violence and violence against France’s large minority of North African origin, and little attention to the victims of other forms of hate crime – at least in the area of monitoring and statistical reporting.

The French government’s policy to ban the collection and disaggregation of data based on a person’s ethnicity, religion or national background perpetuates the concept that one’s origin outside of France renders a person permanently “foreign” regardless of citizenship. While French government statistics have been useful tools to identify the levels of both anti-Semitic and anti-Muslim violence, other French minorities are statistically invisible in periodic reports. There is no official data on the situation of black, Asian, Roma, or other significant minorities—or on racist violence affecting non-citizens, such as immigrants from the Balkans or Eastern Europe. Yet France is one of the few Council of Europe member states that conducts serious monitoring of hate crimes and has enacted and enforces effective hate crimes legislation.

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212 CNCDH, Section II, p. 148. The Direction générale de la police nationale, under the authority of the Ministry of Interior, provide data on offences through a centralized uniform crime reports system, the Système de traitement des infractions constatées, STIC. The STIC is operated by the Direction Centrale des Renseignements Generaux, DCRG. In recent years, documentation tools have been created to identify indicators of motive relative to hate crimes, although it is not known whether guidelines in this regard have been made public. The 2006 CNCDH report has identified STIC indicators such as “the scene of the crime (a synagogue, mosque, church, etc.), the profession of the perpetrator or of the victim (member of the clergy, pastor, rabbi, etc), the modus operandi (the throwing of an incendiary device, etc)” in order to allow a more accurate statistical projection. See also EUMC, “Muslims in the European Union: Discrimination and Islamophobia,” p. 18.)
12.1.8. Georgia

"There is no general provision in Georgian law for racist motivation to be considered an aggravating circumstance in prosecutions of ordinary offenses. Certain crimes involving racist motivation are, however, defined as specific offenses in the Georgian Criminal Code of 1999, including murder motivated by racial, religious, national or ethnic intolerance (article 109); infliction of serious injuries motivated by racial, religious, national or ethnic intolerance (article 117); and torture motivated by racial, religious, national or ethnic intolerance (article 126). ECRI reported no knowledge of cases in which this law has been enforced. There is no systematic monitoring or data collection on discrimination in Georgia."\(^{214}\)

12.1.8. Germany

The German Criminal Code permits the motives and aims of the criminal, including racist motives, to be taken into account in sentencing.\(^{215}\) The NPC reported that 2,564 xenophobic crimes were recorded by the police, 383 of this involving violence.\(^{216}\) Germany records racist crimes separately and reported a total of 428, of which 70 were violent.\(^{217}\) The NGO RAA Saxony reported 68 cases of racist violence in Saxony.\(^{218}\) Their network of advisory offices recorded a combined 222 incidents of hate crimes in Berlin, Brandenburg, Mecklenburg-Lower Pomerania, Saxony, Saxony-Anhalt and Thuringia.\(^{219}\) The majority of these were cases of assault. The Heidelberger Forum for Politics and Science reported one assault and property damage targeting members of the Turkish community.\(^{220}\) In Germany, most hate crimes continued to be addressed officially in the context of legislation and reporting procedures on crimes of political motivation and extremism. Interior Ministry statistics cited in press reports revealed 8,000 incidents involving the extreme right in the first eight months of 2006 (January-August). This was a 20 percent rise over 2005 levels (6,065), and nearly double 2004 levels for the same period (5,127).\(^{221}\)

The rise in the number of incidents was accompanied by a rise in attacks on individuals in far right hate crime attacks. A total of 452 violent attacks, with 325 people injured, was reported between January and August 2006, a rise from 363 attacks and 302 people injured in 2005 during the same period.\(^{222}\) A Ministry of Interior statement confirmed the statistics, which were first

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\(^{214}\) EUMC, “Racism and xenophobia in the E.U.,” p. 51

\(^{215}\) Ibid

\(^{216}\) Information from German NPC, 16 June 2010. The NPC also noted that the same crime could be recorded under multiple victim-group categories, using multiple biases, such as xenophobia and religion.

\(^{217}\) Ibid

\(^{218}\) “Monitoring Hate Crimes in Saxony, Germany”, RAA Saxony, 2009, p. 4.

\(^{219}\) Information from RAA Saxony, 18 March 2010.

\(^{220}\) Information from Heidelberger Forum für Politik und Wissenschaft (Heidelberger Forum for Politics and Science), 4 September 2010.

\(^{221}\) “Germany’s Far-Right Rolls Up its Sleeves,” Deutsche Welle, October 17, 2006, available at: http://www.dwworld.de/dw/article/0,2144,2214527,00.html

reported in the press, and stressed that the rise in violent attacks required “intensified” action.\textsuperscript{223} In December 2006, official statistics showed that the rise in the number of incidents continued, with 10,154 “far-right crimes” registered from January through the end of October 2006, the highest levels for that time period since the current system of monitoring such crimes was introduced in 2001.\textsuperscript{224} The information was published by the newspaper 	extit{Taggespiel}, which cited parliamentarians and leaders of the Jewish community who attributed the rise to the inadequate response of the main political parties to a growing neo-Nazi movement.\textsuperscript{225}

The rise in hate crimes in 2006 continued a trend observed the previous year. A 2005 report by Germany’s domestic security agency, the Bundesamt für Verfassungsschutz, said “rightist crimes” there rose to 15,361 in 2005, up 27 percent from the 12,051 crimes in 2004.\textsuperscript{226} The highest levels of these crimes per capita were reportedly in eastern Germany, with the highest number in 2005 reported in Saxony-Anhalt, “followed by Brandenburg and Thuringia,” with Berlin ranked ninth out of the 16 federal states (Länder).\textsuperscript{227} In 2006, the same regions continued to stand out for both the number and severity of racist and related attacks.\textsuperscript{228} Racist and anti-Semitic violence was frequently directed at young people, with children targeted both for the color of their skin or their religion and for their friendship and support of others who face discrimination. In October 2006, in Parey, in the German state of Saxony Anhalt, a sixteen-year-old schoolboy who spoke out against racism was forced by schoolmates to wear a placard declaring “I’m the nastiest swine in town; with the Jews I always hang around” – reproducing Nazi doggerel of the 1930s that vilified those who associated with Jews. At the same school a year before, schoolmates insulted and brutalized a boy of Lebanese descent at the school gate, burning his neck with a cigarette.\textsuperscript{229} In the wake of the more recent incident, the response of local education authorities was to criticize the media exposure of the situation. The school principal reportedly protested at the harm done the reputation of the school and declared: “We are working to fix this situation, so please leave us alone.”\textsuperscript{230} Germans and foreign citizens who stood out for the color of their skin were particularly vulnerable to racist attack.

In May, Germany’s Africa Council, a grouping of Afro-German activists and community groups, produced a “No-Go” guide for World Cup visitors that identified areas with a high incidence of extremist violence, where people who were not white could face attack. The guide, which was prepared for the internet and distribution in pamphlet form, was aimed not only at

\begin{footnotesize}
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\item \textsuperscript{223} “Neo-Nazi Crime Rises in Germany, Report Says,” Expatica News, October 17, 2006.
\item \textsuperscript{224} “Germany Expects Record Hate Crimes in 2006,” UPI, December 14, 2006.
\item \textsuperscript{225} Ibid
\item \textsuperscript{226} “Neo-Nazi Crime Doubles in Berlin, Police Chief Says,’ Expatica News, December 8, 2006, citing Deutsche Presse-Agentur.q
\item \textsuperscript{227} Ibid
\item \textsuperscript{228} “World Cup Highlights Germany’s Racist Hotspots,” Deutshe Welle, May 3, 2006, available at: http://www.dwworld.de/dw/article/0,2144,1991934,00.html
\item \textsuperscript{229} “German Schoolboy Forced to Wear Antisemitic Placard,” Expatica News, October 16, 2006, available at http://www.expatica.com/
\item \textsuperscript{230} Ibid.
\end{itemize}
\end{footnotesize}
football supporters from African countries, but others of non-European background. In this background, the statement by German Chancellor Angela Merkel that “anybody who threatens, attacks or, worse, kills anybody because of the color of his skin or because he comes from another country will face the full force of the law” was a welcome recognition of the problem and the willingness to address it. The Africa Council’s “No-Go” guide for World Cup visitors fairly accurately reflected official police statistics on concentrations of extremist violence, with the states of Brandenburg and Saxony-Anhalt highlighted as particular problem areas. In a pattern reported also in response to particular cases that received national or international attention, local authorities appeared to be as concerned with being in the spotlight as with the serious abuses reported. Police spokesmen from some of the highlighted “nogo” areas, moreover, expressed surprise that their jurisdictions were singled out. Anja Trojahn, for example, a spokeswoman for police in Saxony-Anhalt’s capital, Magdeburg, appeared oblivious to federal crime statistics when she told the London Daily Telegraph “I do not know why (the publishers) picked our state as the worst example.” She acknowledged only that “there are xenophobic incidents, but they happen everywhere.” In the first six months of 2006, 110 acts of right-wing violence were reported in Saxony-Anhalt, compared to 129 incidents there in the whole of 2005. Human rights monitors there attributed the high levels of violence in part to the pervasive racism of large sectors of the population there and institutional racism within state structures.

The head of nongovernmental organization Miteinander’s (“Together”) mobile victim support unit, Heike Kleffner, told the press that “the extreme right's prejudices and hatred of minorities mirrors the prejudices of some of the wider population.” Sympathy with extremist views, in turn, may also be reflected in official responses in the state. According to the same source, “Police and prosecutors are slow to bring cases to court and some judges refuse to identify right wing militancy even when they see neo-Nazi emblems tattooed on criminals. Conviction rates remain low in Saxony-Anhalt.” In Berlin, one of Germany’s most multicultural and cosmopolitan cities, police chief Dieter Glietsch told the press in December 2006 that violent neo-Nazi crimes had nearly doubled over the previous year. Official statistics documented 52 attacks in 2005 in Berlin, while levels were expected to exceed 100 in 2006.

The president of Germany’s Central Council of Jews, Charlotte Knobloch, remarked in October that antisemitic and right wing violence had become “so blatant and aggressive that it brings to

231 “Black people (in Germany) are facing racist assaults ranging from verbal insults to murder. There are areas where non-whites are simply not safe, not even to use public transport,” Moctar Kamara, the Africa Council’s president said in an interview with British broadsheet the Daily Telegraph. “That is why we are warning the thousands of football fans who are coming to Germany without knowing what could happen if they go into the wrong areas.” “World Cup Guide Highlights Germany’s Racist Hotspots,” Deutsche Welle, May 3, 2005, available at: http://www.dw-world.de/dw/article/0,2144,1991934,00.html


235 Ibid.

mind the years after 1933.” She added that both political leaders and the general public were largely ignoring the phenomenon.\(^{237}\)

12.1.9. Greece

Article Law 927/1979 "Section 1,1 penalizes incitement to discrimination, hatred or violence towards individuals or groups because of their racial, national or religious origin, through public written or oral expressions; Section 1,2 prohibits the establishment of, and membership in, organizations which organize propaganda and activities aimed at racial discrimination; Section 2 punishes public expression of offensive ideas; Section 3 penalizes the act of refusing, in the exercise of one’s occupation, to sell a commodity or to supply a service on racial grounds."\(^{238}\) Public prosecutors may press charges even if the victim does not file a complaint. However, as of 2003, no convictions had been attained under the law.\(^{239}\) No official data on racist or xenophobic crimes were reported to ODIHR. UNHCR reported almost daily incidents targeting Afghan, Iraqi and Pakistani refugees. The Group of Lawyers for the Rights of Immigrants and Refugees, an NGO, reported to UNHCR that an Afghan national was hospitalized with stab wounds after an assault that was alleged to have been bias motivated. The Greek Council for Refugees reported to UNHCR the beating of an Afghan asylum seeker and threats made against an Afghan refugee. An allegedly bias-motivated attack on an Arab community was also reported.\(^{240}\) No information was provided directly to ODIHR by NGOs.

12.1.10. Hungary, Iceland, Ireland and Italy

Violent action, cruelty, and coercion by threat made on the basis of the victim's actual or perceived national, ethnic, or religious status are punishable under article 174/B of the Hungarian Criminal Code.\(^{241}\) The NPC reported 12 cases of violence against members of national, ethnic, racial or religious groups and three cases of racist crimes involving bodily injury.\(^{242}\) No information was provided by NGOs.

Section 233 of the Icelandic Penal Code states "Anyone who in a ridiculing, slanderous, insulting, threatening or any other manner publicly assaults a person or a group of people on the basis of their nationality, skin colour, race, religion or sexual orientation, shall be fined or jailed for up to 2 years." (The word "assault" in this context does not refer to physical violence, only to expressions of hatred.) Icelandic Penal Code (in Icelandic) "The Prohibition of Incitement to Hatred Act 1989 makes it an offense to incite hatred against any group of persons on account of their race, color, nationality, religion, ethnic or national origins, or membership of the Traveler

\(^{237}\) Other members of the Central Council of Jews criticized the statement as an exaggeration. “German Jewish Leader Says Right-wing Violence Recalls 1930s,” Deutsche Welle, October 25, 2006, available at: http://www.dw world.de/dw/article/0,2144,2214527,00.html
\(^{239}\) Ibid
\(^{240}\) Communication from UNHCR, 18 March 2010.
\(^{241}\) Ibid
\(^{242}\) Information from the Hungarian NPC, 17 March 2010.
community, an indigenous minority group.\textsuperscript{243} Ireland does not systematically collect hate crime data.\textsuperscript{244}

Italian criminal law, at Section 3 of Law No. 205/1993, contains a penalty-enhancement provision for all crimes motivated by racial, ethnic, national, or religious bias.\textsuperscript{245} The Interior Ministry recorded 64 racist and 31 xenophobic crimes between January and September 2009.\textsuperscript{246} The NGO Lunaria reported seven people killed, 58 other cases of racist violence targeting immigrants and refugees, and 11 cases in which property was damaged.\textsuperscript{247} Lunaria stated that the groups targeted most often included citizens of Bangladesh and Romania. The NGO EveryOne Group documented 51 cases of racist violence against migrants and Roma.\textsuperscript{248}

### 12.1.11. Kazakhstan, Kyrgyzstan

In Kazakhstan, there are constitutional provisions prohibiting propaganda promoting racial or ethnic superiority.\textsuperscript{249} No data on racist or xenophobic crimes were reported to ODIHR by officials or NGOs. The UNHCR office in Kazakhstan reported that hate crimes were not prevalent in this country.\textsuperscript{250}

In Kyrgyzstan, "the Constitution of the State party prohibits any kind of discrimination on grounds of origin, sex, race, nationality, language, faith, political or religious convictions or any other personal or social trait or circumstance, and that the prohibition against racial discrimination is also included in other legislation, such as the Civil, Penal and Labour Codes."\textsuperscript{251} Article 299 of the Criminal Code defines incitement to national, racist, or religious hatred as a specific offense. This article has been used in political trials of suspected members of the banned organization Hizb-ut-Tahrir.\textsuperscript{252}

### 12.1.12. Latvia and Lithuania

No data on racist or xenophobic crimes were reported to ODIHR by officials. According to the Latvian Centre for Human Rights, there was no official or unofficial information on investigations of racial violence.\textsuperscript{253} The government approved the National Anti-discrimination Programme for 2009-2011, which obligates the Interior Ministry and the Information Technology and Communications Department to improve the collection of data on hate crimes and to make this information public.\textsuperscript{254}

\textsuperscript{243} Ibid
\textsuperscript{244} Ibid
\textsuperscript{245} Ibid
\textsuperscript{246} Communication from the Permanent Mission of Italy to the OSCE, 22 December 2009 and 30 March , 2010.
\textsuperscript{247} Information from Lunaria, 14 April 2010.
\textsuperscript{248} Information from EveryOneGroup, 30 March 2010.
\textsuperscript{249} Ibid
\textsuperscript{250} Communication from UNHCR Kazakhstan, 19 March 2010.
\textsuperscript{252} Ibid
\textsuperscript{253} Information from the Latvian Centre for Human Rights, 17 March 2010.
\textsuperscript{254} Specific crimes with a general aggravating circumstance include: Article 129: Murder; Article 135: Severe Health Impairment; and Article 138: Non-Severe Health Impairment. \textit{Ibid}. Questionnaire from the Lithuanian NPC.
12.1.13. Malta, Moldova and Montenegro

No official data on racist or xenophobic crimes were reported to ODIHR. Human Rights Watch reported an attack on two Somali migrants. No data on racist or xenophobic crimes were reported to ODIHR by officials or NGOs. The UN office in Moldova reported two racially motivated incidents. No information on racist or xenophobic crimes was reported to ODIHR by officials or NGOs. The OSCE Mission to Montenegro reported an assault on a person who was perceived to be a Croatian. The UNHCR office in Montenegro reported that hate crimes were not prevalent in this country.

12.1.14. Netherlands, Northern Ireland and Norway

No information on racist or xenophobic crimes was reported to ODIHR by the authorities. The Turks Forum reported an attack on a property associated with Turks. In Northern Ireland, extremely high levels of hate crimes were reported throughout the past years, including a major rise in racist violence. The Police Service of Northern Ireland in its latest annual survey reported 746 crimes of racist violence there between April 1, 2005 and March 31, 2006, a 17.7 percent rise over the same period the previous year. Nearly half of the incidents registered (47 percent) were crimes of violence against individuals, including 25 crimes of threat or conspiracy to murder, 238 woundings or assaults, 69 cases of intimidation or harassment, and 351 incidents of criminal damage. The Northern Ireland statistics also for the first time provided a measure of faith/religion-based crimes, recording 78 offences (57 percent of them violent crimes), and sectarian offences, recording 1,470 offences (with 47.6 violent offences). Sectarian crimes relate to ongoing tensions between the majority Protestant communities and the Catholic minority. A report by the anti-racism magazine Searchlight highlighted the new statistics, while stressing both the rise in the number of incidents and “the growing ferocity and systematic nature of these hate crime” in the same areas previously torn by violence between Protestant and Catholic communities. Detailed guidelines concerning hate crimes published by the Home Office in the United Kingdom have noted that “[t]he majority of hate crimes goes unreported through lack of trust in the police service.” Measures to overcome these obstacles include improved “witness care,” and both public information campaigns and victim-friendly procedures to address

256 Information from UNDP, 16 March 2010.
257 Communication from the OSCE Mission to Montenegro, 12 March 2010.
258 Communication from UNHCR Montenegro, 19 March 2010.
259 The Turks Forum in the Netherlands noted under-reporting of incidents. Information from the Turks Forum, 17 March 2010.
underreporting of incidents. The issue of under-recording of complaints is also addressed with the admonition that “it is important that recording of all such incidents is mandatory.” Other good practices published by the Home Office include procedures for handling threatening mail and related documentation as forensic exhibits. The NPC reported that the police recorded 179 crimes committed based on the victims’ race and/or ethnicity. The Norwegian Centre against Racism reported six incidents, including racially-motivated assaults targeting visible minorities and damage to property, specifically two reception centres for asylum seekers.

12.1.15. Poland and Portugal

The police recorded 12 cases of violence or threats based on the national, ethnic or racial origin of the victim and 48 cases of incitement to hatred. The Interior Ministry’s Monitoring Team on Racism and Xenophobia recorded 54 racist incidents. The NPC reported an assault against a person the perpetrators perceived to have been an Arab. Three perpetrators were convicted for the crime. No information was provided by NGOs. The NPC reported the murder of an African worker. The court, however, ruled that the crime did not warrant the application of the aggravating circumstances provision for crimes based on racial, religious or political hatred.

12.1.16. Russian Federation

No official data on racist or xenophobic crimes were reported to ODIHR. The Moscow Bureau of Human Rights reported, citing media sources, 79 cases of xenophobic murder, 116 xenophobic assaults, one attack on a group of migrants using explosives, and 36 incidents of xenophobic graffiti. The SOVA Center for Information and Analysis recorded 71 persons killed and 333 others targeted in racially motivated assaults. The majority of victims were from Central Asia (29 killed and 68 injured) and the Caucasus (11 killed and 47 injured). The Moscow Protestant Chaplaincy reported the fatal stabbing of a Cameroonian man, and two other instances of assault against persons of African origin.

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263 The latter includes the recommendation that “[f]orces should also consider developing protocols for self-reporting forms. This both helps to increase reporting of hate crime incidents and can provide a useful source of community intelligence.” See United Kingdom Home Office, “Hate Crime: Delivering a Quality Service,” 2005, Sections 5.2 and 6.6, available at: http://www.acpo.police.uk/asp/policies/Data/Hate%20Crime.pdf


265 Information from Norwegian NPC, 16 July 2010.

266 Information from the Norwegian Centre against Racism, 25 March 2010.

267 Questionnaire from the Polish NPC, 22 March 2010.

268 Ibid.

269 Information from Portuguese NPC, 1 November 2010.


271 Information from the SOVA Center for Information and Analysis, 23 March 2010.

272 The Moscow Protestant Chaplaincy (MPC) conducted a survey among the black community in Moscow. Of 209 respondents, 41 per cent responded that they had been victims of a racially motivated attack within the last 12 months. Of the respondents who define themselves as refugees, 85 per cent had been victims of an attack since arriving in Russia. The MPC reported skepticism in the African community about reporting to the police. Only 23
In the Russian Federation, hate crimes have proliferated in the context of organized nationalist movements of the extreme right, including neo-Nazi organizations. Although there is no official data from which to quantify annual levels of violence, media reports and statistical analysis by domestic nongovernmental organizations, notably the SOVA Center for Information and Analysis, a leading Moscow-based organization that monitors hate crimes in Russia, describe rising violence against Russia’s ethnic, religious, and national minorities of crisis proportions. The SOVA Center documented 31 racist murders in 2005 and hate-based attacks on 413 individuals. Those numbers rose significantly in 2006 to 540 cases of violent hate crimes, including 54 murders, sustaining a steady trend of rising violence over the past several years.\(^{273}\)

St. Petersburg was host to the annual meeting of the G8 in July 2006, bringing an international spotlight to the lethal record of racist violence there and in other major Russian cities. In June, in the lead-up to the summit, Human Rights First issued *Minorities Under Siege: Hate Crimes and Related Intolerance in the Russian Federation*, which highlighted the inadequate government response to the problem of rising racist violence. Human Rights First likewise sought to draw attention to the particular problem of racism in St. Petersburg with a special short report, *Minorities Under Siege: the Case of St. Petersburg*\(^{274}\), but there was little evidence of concerted action to combat such violence through the criminal justice system.

Russian laws today provide a basis for the investigation and prosecution of crimes motivated by racial, ethnic, or religious bias. The Russian Criminal Code contains a general penalty enhancement provision for “the commission of crimes with a motive of national, racial, religious hate or enmity…” Several other articles of the code provide specific enhanced punishments for particular crimes committed with these motivations. Russian law also contains provisions to punish incitement to hatred. Nongovernmental monitors have indicated an increase in the use by Russian criminal justice officials of provisions identifying bias as an aggravating circumstance and allowing for enhanced penalties to be sought. The SOVA Center reported that in 2006 there were 33 convictions (involving not less than 109 defendants) in which hate crime provisions were applied. This was up considerably from figures in 2005 (17 convictions involving 56 defendants) and 2004 (9 convictions involving 26 defendants), suggesting that prosecutors have become slightly more inclined to use these provisions.\(^{275}\)

While these statistics show that prosecutors have managed in some cases to successfully apply provisions on aggravating circumstances, there have also been a number of acquittals in high-profile racist murder cases. These have raised questions about the seriousness of efforts by criminal justice officials to effectively investigate, prepare for and try these cases.

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\(^{273}\) Galina Kozhevnikova, “Radical Nationalism in Russia and Efforts to Oppose it in 2006,” SOVA Center for Information and Analysis, March 2007.

\(^{274}\) Galina Kozhevnikova, “Radical Nationalism in Russia and Efforts to Oppose it in 2006.”
On October 17, 2006, all thirteen of the defendants in the case of the murder of 20-year-old Vu An Tuan were acquitted by a jury. Tuan, a Vietnamese student, was murdered in St. Petersburg in October 2004. Prosecutors in the case had determined that the murder was motivated by ethnic hatred and were seeking penalty enhancements on that basis.

On July 25, 2006, all four defendants in the case of the murder of Roland Epasak were acquitted by a jury. Epasak, a student from the Congo, died on September 13, 2005 from wounds sustained days before when he was brutally attacked and beaten by a group of 15 to 20 youths. Prosecutors had likewise determined that the assault leading to death was racially-motivated and were seeking enhanced penalties as a result. There is a general perception by Russian human rights monitors and other sectors of the public that charges of “hooliganism” are routinely pressed by prosecution authorities as an alternative to more serious charges even when serious bodily harm occurs.

In the case of the 2004 murder of nine-year-old Khursheda Sultanova, for example, in which there were eight defendants, prosecutors charged only one of them with racist murder and hooliganism, whereas the other seven were charged with simple hooliganism. In March 2006, a jury acquitted on the charge of murder, but found all the defendants guilty of hooliganism, resulting in relatively lenient sentences.

Similarly, in the case of the murder of Enrique Hurtado, a Peruvian student who was murdered in the city of Voronezh, only one of the thirteen defendants in that case – the one charged with murder – was sentenced for a crime motivated by bias. Although the prosecutors did in this case seek penalty enhancements for the other defendants under hate crime provisions, the court ultimately sentenced those defendants on assault and hooliganism charges, without any consideration for the bias motives.

12.1.17. Slovakia Scotland Spain and Sweden

The Interior Ministry reported seven cases of racially motivated violence. The NGO People Against Racism reported six assaults, mostly on Roma and students from Africa and the Middle East. In Scottish Common law the courts can take any aggravating factor into account when sentencing someone found guilty of an offence. There is specific legislation dealing with the offences of incitement of racial hatred, racially-aggravated harassment and offences aggravated by religious prejudice. A Scottish Executive working party examined the issue of hate crime and ways of combating crime motivated by social prejudice, reporting in 2004. Its main recommendations were not implemented, but in their manifestos for the Scottish Parliament election, 2007 several political parties included commitments to legislate in this area, including the Scottish National Party who now form the Scottish Government.

Article 22(4) of the Spanish Penal Code includes a penalty-enhancement provision for crimes motivated by bias against the victim's ideology, beliefs, religion, ethnicity, race, nationality, gender, sexual orientation, illness, or disability. The Spanish NPC reported two

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277 Information from the People Against Racism, 19 March 2010.
278 http://www.scotland.gov.uk/Topics/Justice/criminal/17543/8978
attacks, one on a person of Chinese origin and one on a Columbian.\textsuperscript{280} \textsuperscript{234} No information was provided to ODIHR by NGOs. Article 29 of the Swedish Penal Code includes a penalty-enhancement provision for crimes motivated by bias against the victim's race, color, nationality, ethnicity, religion, or "other circumstance" of the victim.\textsuperscript{281} The Swedish NPC reported that the police identified 4,116 hate crime reports with xenophobic/racist motives in 2009, 911 of which were violent crimes and 585 that targeted people of African origin.\textsuperscript{282} No information was provided to ODIHR by NGOs.

12.1.18. Tajikistan and Turkey

No data on racist or xenophobic crimes were reported to ODIHR by officials or NGOs. The OSCE Office in Tajikistan reported that it had no information about such incidents.\textsuperscript{283} UNHCR reported that there were no incidents motivated by racism or xenophobia.\textsuperscript{284} No official data on racist or xenophobic crimes were reported to ODIHR. The NGO Kurdish Human Rights Project reported seven assaults targeting Kurdish persons.\textsuperscript{285}

12.1.19. Ukraine

No official data on racist or xenophobic crimes were reported. UNHCR reported four assaults, including two against two asylum seekers from Uzbekistan and Pakistan, respectively, and two against two recognized refugees, one from Congo and the other from the Russian Federation. Two of these four attacks were reported to the police.\textsuperscript{286} The Diversity Initiative recorded 26 assaults in 2009. Seventeen incidents were reported to have been brought to the attention of the police.\textsuperscript{287} The Congress of National Communities of Ukraine, an NGO, reported 37 assaults. Victims included persons from Africa, Central and Southeast Asia, the Middle East and the Caucasus.\textsuperscript{288} Hate crimes in the Ukraine have been reported in the context of proliferating extremist movements whose members often describe themselves as skinheads and neo-Nazis, as well as a continuing discourse of racism and intolerance by established political parties, educational institutions, and religious leaders.

Anti-Semitism is propagated by mainstream political leaders and in widely disseminated publications, although senior officials have on a number of occasions stated a commitment to action against anti-Semitism. Hate crimes have included violent attacks on individuals, attacks on places of worship, the desecration of cemeteries, and vandalism or the destruction of property associated with Crimean Tatar, Jewish, Roma, and other minorities. Despite Ukraine’s

\begin{itemize}
\item \textsuperscript{280} Information from the Spanish NPC, 30 April 2010.
\item \textsuperscript{281} Ibid.
\item \textsuperscript{282} Information from the Swedish NPC, 19 August 2010.
\item \textsuperscript{283} Communication from the OSCE Office in Tajikistan, 2 April 2010.
\item \textsuperscript{284} Communication from UNHCR Tajikistan, 19 March 2010.
\item \textsuperscript{286} Communication from UNHCR Regional Office for Belarus, Moldova and Ukraine, 19 March 2010.
\item \textsuperscript{287} Information from International Organization for Migration, Diversity Initiative, 31 August 2010.
\item \textsuperscript{288} Information from the Congress of National Communities of Ukraine, 31 March 2010 and 12 October 2010.
\end{itemize}
commitments to do so, as a member of the Council of Europe and a participating state of the OSCE, the government does not collect and publicly report on crimes of violence motivated by anti-Semitism, racism, or other forms of intolerance. Although the Criminal Code of Ukraine contains provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing, prosecutions are rarely brought under these terms.  

Information on the incidence of hate crimes is available from nongovernmental organizations and from limited coverage provided by the news media. The Union of Councils for Jews of the Former Soviet Union (UCSJ), in particular, continued to publish detailed information on hate crimes against all vulnerable communities in the Ukraine, including by monitoring of Ukrainian and Russian local media. People of African origin, Crimean Tatars, Roma, and the Jewish community have been under particular threat in Ukraine. Hate crimes were also reported against ethnic Russian institutions in the predominantly ethnic-Ukrainian west of the country. The windows of the Russian cultural center in the city of Lviv were shattered on November 16, 2006, in the fourth act of vandalism in the year.  

In its annual report for 2005, the International Helsinki Federation reported an increase in the number of assaults on people with a darker skin color that it said were frequently carried out by groups of youths dressed in military-style uniforms.  

In the most recent lethal attack against people of African origin, 34-yearold Gambian student Lamin Jarjue, a captain in the Gambian air force, was stabbed to death on December 28, 2006 outside his dormitory in Kiev. In July 2006, Crimean Tatars who protested at proposals to expand a market on the site of an ancient Tatar cemetery were attacked in an incident marked by ethnic hatred. Part of the grounds of the cemetery had been taken over for a market in the aftermath of the mass deportation of the Crimean Tatars under the government of Josef Stalin. According to the UCSJ, “mausoleums dating back to the 15th century were – and are -- being used as public restrooms.” A day after protesters barred access to the site, some traders reportedly “aligned themselves with extreme nationalist Cossack and skinhead groups” to attack the Tatars. In August, Prime Minister Viktor Yanukovich met with Tatar leaders, and reportedly pledged that the market would be moved and the site returned to the Tatars. On August 12, however, a delegation from the Crimean Tatar parliament was attacked at the market by a mob of extreme nationalists reportedly shouting “Tatars out of the Crimea!” and other

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290 “In Lviv Russian Cultural Center Vandalized Again,” UCSJ, Bigotry Monitor, November 21, 2006, citing a November 17, 2006 report posted on the web site of the Ukrainian newspaper Gazeta Po-Ukrainsky.
slogans. National officials subsequently announced that the market would be closed down on September 11.

Anti-Semitic violence was reportedly on the rise in 2006, and included vandalism and destruction of property and assaults on individuals. Synagogues were targeted for attack and Jewish cemeteries and memorials to victims of the Holocaust were damaged. Information on rising antisemitism can be derived from incident reports, although consistent or comprehensive statistics are unavailable. In June 2006, vandals shattered windows in a synagogue in Kirovograd, the fifth time in 2006 that the building had been vandalized, according to local Jewish leaders. In May, dozens of gravestones were destroyed in a Jewish cemetery in Berdichev, while in October, 18 tombstones in a Jewish cemetery in central Ukraine were destroyed. In July, the Babi Yar memorial, near the site where Nazis massacred tens of thousands of Jews, was badly damaged, one of a series of incidents in which Holocaust memorials were attacked during the year. Other Jewish institutions were also targeted. In July, vandals threw stones through the windows of a Jewish orphanage in Zhitomir. According to the school’s director, vandals had previously smashed windows in her home.

Violent assaults on individuals proliferated, including an incident that appeared to be a copy-cat attack following the Moscow synagogue stabbings of January 11, 2006: on February 3, a man brandishing a knife entered Kiev’s Brodsky synagogue “screaming that all Jews should be killed,” but was restrained by guards. Attackers in Dnipropetrovsk described as local skinheads attacked an Israeli yeshiva graduate in April, stabbing him and hitting him over the head with a bottle, apparently because he was visibly Jewish. He was taken to the hospital and treated for injuries. In a separate incident in Dnipropetrovsk, a group of some 30 skinheads reportedly attacked four Jewish boys. Despite evidence of ongoing abuse against Roma, violent antisemitism, and attacks on members of other minorities, the government of Ukraine in May 2006 asserted that “all forms of discrimination based on race and nationality have been eliminated in Ukraine.” The statement was made in Ukraine’s periodic submission to the Convention on the Elimination of All Forms of Racial Discrimination (CERD), as a state party to the convention.

295 Ibid.
296 Ibid.
301 “Rocks Thrown at Windows of Jewish Orphanage,” UCSJ, Bigotry Monitor, Volume 6, Number 27, July 28, 2006, citing the AEN news agency on July 23.
302 “Israeli Student Attacked in Ukraine,” UCSJ, Bigotry Monitor, Volume 6, Number 16, April 28, 2006, citing the Jewish Telegraphic Agency on April 23.
At the same time, the government acknowledged that it was aware of international attention to the situation of Roma there, adding in a subsequent clause that “representatives of the Roma national minority are not always in agreement with this fact.”\textsuperscript{304} The statement was made in its periodic submission in compliance with its obligations as a party to CERD.\textsuperscript{305} Ukrainian President Viktor Yushchenko spoke out against racism and antisemitism on September 26 at a ceremony at the Babi Yar ravine, where more than 33,000 people were killed between September 29 and 30, 1941.\textsuperscript{306} The example of Babi Yar, he said, “should become a vaccine” against a renewal of “aggressive and bloody xenophobia.”\textsuperscript{307} Speaking at a conference the following day, he added: “I clearly and straightforwardly promise that there will never be ethnic intolerance and religious hatred in Ukraine. Like all Ukrainians, I refuse to accept and tolerate the slightest manifestation of xenophobia and antisemitism.” An estimated 100,000 people were killed at Babi Yar in the course of the 1941-1943 Nazi occupation of Ukraine.\textsuperscript{308}

12.1.19. United Kingdom

The British NPC reported that 43,426 racist hate crimes were recorded by the police in England and Wales. Police in Scotland recorded 6,590 racist crimes.\textsuperscript{309} No information was provided to ODIHR by NGOs. In the United Kingdom, a dramatic surge of racist and religiously-motivated violence followed the July bombings of the London Underground and a city bus. The spike of violence diminished within weeks, but a high level of violence preceded the incidents and continues.\textsuperscript{310} On July 7, 2005, coordinated bomb attacks by Muslim extremists on three of London’s underground trains and a bus left 52 dead and 770 persons injured. Within three days of the incident, London Police recorded a backlash that included 68 religiously-related crimes, targeting mostly communities of South Asian origin. Scotland Yard reported that by August 3, religiously motivated hate crimes had risen nearly 600 per cent in London since the July 7 bombing.\textsuperscript{311} The crimes included verbal and physical attacks as well as criminal damage to property, including mosques.

\textsuperscript{304} CERD, Ukraine, 2006, para. 84.
\textsuperscript{307} Ibid
\textsuperscript{308} “Presidential Pledge,” UCSJ, Bigotry Monitor, September 29, 2006.
\textsuperscript{309} Information from the British NPC, 9 September 2010.
\textsuperscript{310} The EUMC noted in its 2006 annual report that “the strong stand taken by political and community leaders in both condemning the attacks and defending the rights of Muslims seems to have played a part in reducing such attacks in the following months.” See “The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU,” EUMC 2006, available at http://eumc.europa.eu/eumc/material/pub/ar06/AR06-P2-EN.pdf
There were 273 incidents reported since the bombings compared to 41 over the same period (July 6 to August 1) the previous year. Racist and religiously motivated crimes increased elsewhere in England and in Scotland as well, although the rate was less dramatic than in London. “Across the Central Belt, where the vast majority of Scottish Muslims live, race hate crimes have risen by nearly a third.” Overall in 2006, hate crimes in the United Kingdom continued at a high rate, despite significant efforts by central government and independent police authorities to monitor and combat them. The Home Office and the Crown Prosecution Service produce annual statistics on police reports and prosecutions, respectively. Home Office statistics cover both reported incidents and registered offenses. Additionally, an annual national victim survey carried out under the auspices of the Home Office asks participants in England and Wales if they or a member of their household over 16 years of age have been the victim of a (hate) crime in the previous year. Comprehensive hate crime monitoring systems are operated by a number of independent police authorities, in particular, London’s Metropolitan Police Service.

Further detailed statistical information on hate crimes is published annually by the Police Service of Northern Ireland. The Home Office reported 57,902 racist incidents (no separate data was published on religiously aggravated incidents) and 37,028 racially or religiously aggravated offenses in England and Wales in 2004/2005, the latest period for which statistics are available. This was a moderate rise over 2003/2004 levels in which there were 54,286 incidents and 34,996 registered offences. In contrast, the British Crime Survey indicates that in 2003/2004 participants reported 206,000 “race and faith hate crimes.” The figure dropped to 179,000 in the year 2004/2005 resulting in a 13 percent decrease. Incidents in 2006 included the following murders:

- Khizar Hayat and Hamidullah Hamidi died as a result of an April firebomb attack on their shop in Kennington in South London. In May, a man was charged with the murders and with three other arson attacks.
- In August, Wei Wang, a 41-year-old Chinese asylum seeker died in hospital after being attacked outside his home in the Sighthill area of Glasgow, just three months after he was relocated there from London.
- In March, 18-year-old Christopher Alaneme, whose parents are from Nigeria, was attacked and stabbed while with white friends in the coastal town of Sheerness, and died almost immediately in what police considered a racist murder.

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317 Jonathan Brown, Jason Bennetto, and Oliver Duff, “How the killing of Christopher Alaneme is a shocking insight into racist Britain, Independent on Line, April 26, 2006, available at: http://news.independent.co.uk/uk/this_britain/article360220.ece
In a number of high-profile incidents, exemplary sentences were handed down by U.K. courts in the course of the year. Two 19-year-old assailants were sentenced to 25 and 21 year imprisonments on charges of racially-aggravated murder for the July 2006 beating death in West Yorkshire of 41-year-old Mohammad Parvaiz, an Asian taxi driver. Two other younger teenagers were sentenced to 17 years imprisonment for participating in the attack. In December 2005, sentences were handed down for the July 28, 2005 murder of 18-year-old Anthony Walker in Huyton, Merseyside. Walker, who was black, was waiting at a bus stop with his white girlfriend and a cousin when they were subjected to racist abuse. When they decided to move to another bus stop, they were pursued by a gang of youths into a park, where Walker was struck in the head with an axe. Two men were convicted of racially motivated murder and sentenced to minimum sentences of 24 and 18 years; the judge described the offense as “racial thuggery of a type that is poisonous to any civilized society.”

12.1.20. Uzbekistan

Through the office of the OSCE Project Co-ordinator in Uzbekistan, the authorities reported six hate crimes in the Andijan and Ferghana regions, and that the crimes had been investigated and the perpetrators tried, convicted and sentenced. No information was provided to ODIHR by NGOs.

According to the OSCE Mission in Kosovo, the local Ministry of Justice reported three hate crimes to have been committed. The Mission itself reported that there had been attacks with stones on vehicles in ten cases related to ethnic tensions. Eight of these were aimed at Kosovo Serbs and two at Kosovo Albanians. All cases were reported to the police. These incidents should be viewed in the wider context of inter-ethnic tensions in this part of the OSCE region.

In 2009, the ECRI noted concern over racial and xenophobic crimes in Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Germany, Greece, Hungary, Slovakia, Switzerland and the United Kingdom. Thomas Hammarberg,

320 Communication from the OSCE Project Co-ordinator in Uzbekistan, 19 March 2010.
321 Communication from the OSCE Mission in Kosovo, 8 April 2010.
Nafees Ahmad

Commissioner for Human Rights of the Council of Europe, mentioned racism and xenophobia in his reports on visits to Italy, \(^{333}\) the Netherlands, \(^{334}\) and Turkey. \(^{335}\)

The Committee on the Elimination of Racial Discrimination (CERD) and the United Nations Human Rights Council, in their periodic country review reports, made a number of recommendations related to addressing racism and xenophobia in OSCE participating States. The CERD recommendations were included in reports on the Netherlands, \(^{336}\) Poland, \(^{337}\) and Slovakia. \(^{338}\) The Human Rights Council recommendations related to Bosnia and Herzegovina, \(^{339}\) Italy, \(^{340}\) Malta, \(^{341}\) Norway, \(^{342}\) Portugal, \(^{343}\) and Slovenia. \(^{344}\)

\(^{327}\) “ECRI Report on Germany (fourth monitoring cycle)”, European Commission against Racism and Intolerance, \(op. cit.\), note 96, pp. 27 and 34.

\(^{328}\) “ECRI Report on Greece (fourth monitoring cycle)”, European Commission against Racism and Intolerance, \(op. cit.\), note 97, p. 28.

\(^{329}\) “ECRI Report on Hungary (fourth monitoring cycle)”, European Commission against Racism and Intolerance, \(op. cit.\), note 103, p.25.


\(^{331}\) “ECRI Report on Switzerland (fourth monitoring cycle)”, European Commission against Racism and Intolerance, \(op. cit.\), note 100, p. 32.


12.1.21. Eurasian Countries With No Hate Crime Laws

There are many Eurasian countries wherein anti-hate crime have not been enacted. Albania, Cyprus, Estonia, San Marino, and Slovenia have no hate crime laws.³⁴⁵

13. North America

13.1.1. Canada

Since 1966 the Canadian Criminal Code has included a penalty-enhancement provision for crimes "motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor."³⁴⁶ The Code also "punishes anyone who “advocates or promotes genocide,” with genocide defined to require that acts be committed “with the intent to destroy in whole or in part any identifiable group.” “Identifiable group,” in turn, is defined to mean “any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation.” Section 319, adopting the same definition of “identifiable group,” punishes the incitement or expression of hatred against such a group.”³⁴⁷ Civil remedies are also available in Canada for discriminatory acts.³⁴⁸

13.1.2. United States

Most hate crimes in the United States target victims on the basis of race or ethnicity (for Federal purposes, crimes targeting Hispanics based on that identity are considered based on ethnicity). Leading forms of bias cited in the FBI's Uniform Crime Reporting (UCR) Program, based on law enforcement agency filings are: anti-black, anti-Jewish, anti-white, anti-homosexual, and anti-Hispanic bias in that order in both 2004 and 2005. There are more hate crimes against whites than against Hispanics, Asians, American-Indians and multiple-race groups - a statistically expected trend given that there far more whites than other ethnic groups put together. By contrast, the National Criminal Victimization Survey finds that per capita rates of hate crime victimization varied little by race or ethnicity, and the differences are not statistically significant.

³⁴⁵ Ibid
³⁴⁶ Canadian Criminal Code, Subparagraph 718.2(a)(i)
³⁴⁷ Ibid
³⁴⁸ Ibid
The New Century Foundation, a white nationalist organization founded by Jared Taylor, argues that blacks are more likely than whites to commit hate crimes, and that FBI figures inflate the number of hate crimes committed by whites by counting Hispanics as "white". Other analysts are sharply critical of the NCF's findings, referring to the criminological mainstream view that "Racial and ethnic data must be treated with caution. ... Existing research on crime has generally shown that racial or ethnic identity is not predictive of criminal behavior with data which has been controlled for social and economic factors." NCF's methodology and statistics are further sharply criticized as flawed and deceptive by anti-racist activists Tim Wise and the Southern Poverty Law Center.

As defined in the 1999 National Crime Victim Survey, "A hate crime is a criminal offense committed against a person or property motivated, in whole or in part, by the offender's bias against a race, religion, ethnicity/national origin, gender, sexual preference, or disability. The offense is considered a hate crime whether or not the offender's perception of the victim as a member or supporter of a protected group is correct." 

14. Hate Crimes: Latest Legends

The arsonist accused of firebombing a Mosque and a Hindu temple on New Years' Day has been indicted on hate crimes charges by the feds and the Queens district attorney. Ray Lazier Lengend, 40, is also charged with throwing a Molotov cocktail into a deli in Jamaica where he had been caught shoplifting a week earlier and a private home in Queens Village, said Queens District Attorney Richard Brown. After his arrest, Lengend told detectives that he hated Muslims and planned to "take out as many Muslims and Arabs as possible." The New Year's Day rampage began with Lengend purchasing five glass Starbucks coffee bottles and filling them with gasoline at a service station. He is accused of throwing a flaming bottle at the exterior wall of the Al-Khoei Benevolent Association mosque, then another one at a private home on 170th St., which doubles as a Hindu temple, authorities said. "This defendant allegedly sought to fan the flames of ethnic and religious tension," said Brooklyn U.S. Attorney Loretta Lynch. The indictments were unsealed on Monday in Queens Supreme Court and Brooklyn Federal Court. He was admitted to Bellevue Hospital for psychiatric evaluation and is scheduled to be arraigned in the weeks ahead.

Hate crimes laws are supposed to promote ideals of fair treatment and equality. The tragic recent case of two Rutgers students, however, shows that instead of guaranteeing uniform standing to all segments of society, such legislation grants special protection and governmental favoritism to selected groups of victims. A Jury in New Brunswick, N.J., convicted 20-year-old Dharun Ravi on Friday of 15 charges related to webcam spying on his freshman roommate, Tyler Clementi. Beyond the undoubtedly appropriate charges of invasion of privacy and tampering with evidence, prosecutors accused Ravi of the far more serious crime of “bias intimidation”

349 Ibid
under New Jersey’s hate crimes statute. At his sentencing May 21, Ravi could face 10 years or more in prison, as well as deportation to India, where he was born.351

The basis for this crushing penalty is the suicide of Clementi, who killed himself Sept. 22, 2010 by jumping from the George Washington Bridge. The two freshmen had shared dormitory accommodations for only a few weeks and had experienced strained relations from the start. Three days before his death, Clementi, who was gay, asked for privacy to use their room for an encounter with a 32-year-old non-student with whom he had connected on the Internet. Ravi met his roommate’s date briefly and sent text messages to friends describing the man as “creepy” and expressing worries about theft. Ravi said he deliberately left his webcam on to monitor the visitor because he was worried about the security of his property. With another student, he watched Clementi embracing the other man and then sent out derisive Twitter and text messages about his roommate “kissing a dude.”352

Ravi invited other friends to join him in watching the next scheduled visit, two days later. But the webcam did not work on that occasion, perhaps because a guilt-stricken Ravi dismantled it, as he later claimed, or because it malfunctioned, or because Clementi discovered the intrusion and disconnected the equipment himself. The next day, Clementi complained to the dormitory’s resident assistant and to two other officials, and said he no longer wanted to share his room with Ravi.353 Ravi sent his roommate a vaguely apologetic message—just five minutes after Clementi used his cellphone to post a final message to Facebook: “Jumping off the gw bridge sorry.” Authorities recovered his body a week later. This horrible story shows boorish, cruel, arrogant behavior on the part of Ravi. He rejected a proffered plea bargain, however, saying he was not guilty of the “hate crimes” prosecutors accused him of committing. The trial focused on Ravi’s motivation, with the prosecution insisting he acted out of deep-seated anti-gay bias and the defense arguing he was merely wary and curious about his roommate’s actions but never intimidating or hate-filled. The first witness testified that when Ravi said he wanted to use the webcam to spy on his roommate, “he didn’t seem to have a problem with homosexuality.”354

Eventually, the jury agreed with the defense on Ravi’s intentions, though they convicted him anyway. Annemarie McAvoy, an adjunct professor at Fordham Law School, described the verdict to The Philadelphia Inquirer as “murky and confusing...The jury appeared to find that Ravi’s intentions were not out of hatred or bias. But the jurors believed Tyler Clementi perceived them as such...It’s an outrageous standard.”355 To determine just how outrageous, imagine that Clementi’s intimate encounters had involved a 32-year-old non-student who was female. If Clementi had brought a woman he had just met on the Internet to his dorm room, and his embarrassed roommate had found her “creepy,” while worrying about theft and the invasion of his privacy, isn’t it conceivable Ravi could have set up a webcam to monitor the exchange of affection? And even if he made subsequent Internet comments about the gross nature of the incident, and attempted to broadcast a subsequent tryst some two days later, would anyone claim the commission of a heinous hate crime meriting 10 years or more in prison?

Mar 20, 2012 4:45 AM EDT

352 Ibid
353 Ibid
354 Ibid
355 Ibid
New Jersey law would seem to make such a prosecution impossible, as the “bias intimidation” statutes provide no special protection for lusty, heterosexual 18-year-olds. But those laws do guarantee that randy, adventurous homosexual teenagers must be defended from insult or harassment. In other words, the state has decided to grant special standing and governmental respect to one form of erotic expression over most others. Lost in all the legal proceedings and the debates about the nature of homophobia is a basic anomaly in the story: the notion that a newly enrolled freshman living away from home for barely a month has a sacred right to bring a 32-year-old stranger, male or female, into a freshman dorm at a state-funded university, in order to enjoy sex without objection or ridicule from the roommate with whom he shares the space.\textsuperscript{356} The simple facts of this case suggest that Ravi and Clementi had many reasons to resent and distrust each other that bear little connection to questions of sexuality or anti-gay bias. The phrase “hate crimes” most commonly conjures images of cross-burning, swastika-painting, or crude taunts and physical assaults on gay or female victims. The perpetrators in these classic episodes express unmistakable hostility to a target group and an apparent intention to perpetuate that group’s subjugation. Dharun Ravi’s behavior fell far short of such standards, leading the triumphant prosecutors to boast of their bold “expansion” of the definition of bias intimidation.

The Ravi case suggests that if the target of alleged abuse can claim membership in a specially protected group, then his emotional reactions to that abuse matter more than the intentions of the perpetrator, or even the specifics of the actions in question. The testimony at the trial and even comments by the jurors indicate that Ravi never knowingly committed a hate crime targeting homosexuality in general, nor ever understood that he had done so. Without doubt, he behaved cruelly, even despicably, to his roommate, but had that roommate been straight, no one would have claimed that the pattern of behavior constituted a major offense. After his sentencing, Ravi’s attorneys promise they will launch a vigorous appeal, and the ultimate disposition of his case will help to determine whether advocates of hate crimes laws can continue to claim that they serve the cause of fair and equal justice, rather than patent preference for favored victim classes.

In the United States federal prosecution is possible for hate crimes committed on the basis of a person’s race, color, religion, or nation origin when engaging in a federally protected activity. As of October 2007, Congress is considering the Matthew Shepard Act (Local Law Enforcement Hate Crimes Prevention Act of 2007), legislation that would add gender, gender identity, sexual orientation, and disability to the list. Forty-five states and the District of Columbia have statutes criminalizing various types of hate crimes. Thirty-one states and the District of Columbia have statutes creating a civil cause of action in addition to the criminal penalty for similar acts. Twenty-seven states and the District of Columbia have statutes requiring the state to collect hate crime statistics.\textsuperscript{357} According to the FBI Hate Crime Statistics report for 2006, hate crimes increased nearly 8 percent nationwide, with a total of 7,722 incidents and 9,080 offenses reported by participating law enforcement agencies. Of the 5,449 crimes against persons, 46 percent were classified as intimidation and 31.9 percent as simple assaults. 81 percent of the 3,593 crimes against property were acts of vandalism or destruction. 58.6 percent of the 7,330 known offenders were white and 20.6 black. More than half, 52 percent, of the 9,652 victims identified were targeted because of race.\textsuperscript{358}

\textsuperscript{356} Ibid
\textsuperscript{357} Ibid
\textsuperscript{358} Ibid
15. Hate Crimes in South Asia

15.1.1. Afghanistan

In the pre-Taliban era, Afghanistan was an Islamic country that embraced a diversity of Muslim and non-Muslim groups. Peaceful interaction between religious groups has strong roots in the country’s history. Afghanistan was for centuries a crossroads of civilizations, connecting nations and faiths. Located on the ancient Silk Road, which connected the Far East to the Mediterranean, Afghanistan was once the meeting point between Greek, Chinese, and Indian civilizations; in turn, Afghanistan was influenced by these cultures. The country became the hub of the Greekobkherentian’s art (a unique mixture of Greek and Indian arts) and culture (135-250 B.C.). It also became a magnificent center of Buddhism, a history the Taliban tried to erase by destroying the famous Buddha statues and other cultural treasures.\(^\text{359}\)
Islam was brought to Afghanistan in 642 A.D. by Arabs. Though the largely Buddhist and Hindu population resisted conversion at first, a particularly Afghan form of Islam soon took shape which integrated the Muslim faith with traditional Hindu and Buddhist teachings. Emphasizing the spiritual aspects of Islam, most Afghan Muslims embraced the equality of all people before God, regardless of religious differences. Afghan Muslims were thus able to resist the caste system (the segregation of social groups) that became so prevalent in India.

In 754, Afghan Muslims led a revolt against the brutality of the Arab Muslim Khalifahs and caused the subsequent downfall of the Amawiad dynasty in the Islamic heartland.\(^\text{360}\)

After a half-century of armed clashes between Arab armies and the Afghan resistance, the more moderate Islamic faith spread over much of present day Afghanistan. This uniquely peaceful Islamic expansion in Afghanistan allowed for the irenic spirit of Islamic mystics and Sufis to have great influence in vast regions of the Middle East and South and Central Asia. Islamic mystic leaders like Ha’fiz, Rumi, the Persian Sufi poet and philosopher, argued that a person might only enter into the territory of infinite truth, where God’s kingdom lies, if he is able to reach the highest level of love for God. In this case, God is seen as the ultimate truth, reflected in His creation. Loving God means loving His creation, and one may reach the highest level of love for God only by making peace with all those who belong to Him.\(^\text{361}\)

Most Afghan Muslims are the followers of Islamic mystics and Sufi groups such as Naqshbandi, Qattalli, Khosrawi, Cheshiti, and Suhwardi. In fact, Afghanistan was the birthplace of many Sufi teachings that later found their way into the broader Islamic world. The Islamic mystic teachings emphasize reason in human thought and the importance of life on earth. Living according to humane principles is the task that allows believers to keep their souls out of the domain of the devil and enjoy freedom in wisdom. As Rumi writes:

\[
\text{Knowledge is the seal of the kingdom of Solomon: the whole world is form, and knowledge is its spirit.}
\]
\[
\text{Because of this virtue, the creatures of the seas and those of hill and plain are helpless before Man.}
\]

Of him the tiger and the lion are afraid; the whale of the great ocean trembles.
From him angel and demon take refuge, each lurks in some hiding-place.
There are hidden beings, evil and good: at every moment their blows are falling on the heart.
The pricks of angelic inspiration and satanic temptation come from thousands, not only from one.
Wait for your senses to be transmuted, so that you may discern these occult presences.
And see whose words you have rejected and whom you have made your captain.362

Through the course of Afghan history, Islamic mystic teachings (also known as Erfan) have impacted the ethics and morality of local communities, exerting pacific effects on social behavior. The notion that good and evil, hidden in every moment of life, must be sought out and discerned encourages people to value knowledge. This has, in turn, allowed Afghans to be open to new ideas and to live in a mixed social environment with other faiths. One can argue that this is the main reason why many of the pre-Islamic traditions remain preserved in the overall culture, such as the Afghan celebration of the New Year (a tradition of ancient Aryans).363

Another such legacy is Pashtunwali, a tradition based upon hospitality, honor, and revenge as a form of social contract. The hospitality principle is a social leveler. If you go unarmed to any household, they will feed you and sacrifice their well-being for your protection, because you are their guest. It is an accepted norm; under the code of hospitality, they or others are not allowed to harm you. As an Afghan, this was his obligation of hospitality. It is also important to note that a key dimension of the honor principle is respecting women. In the history of Afghanistan, there is no tradition of norms under which women may be disrespected, beaten, and executed, as the Taliban were famously known to do (while forcing onlookers to cheer about it). Among other reasons, this is why the Taliban were so despised by most ordinary Afghans. Another dimension of Pashtunwali, “revenge,” is a very simple principle—if someone is harmed, perpetrators will not escape justice. In the Afghan cultural context, the conception of revenge has very strong connections to consequences for dishonesty. If one is dishonest, they cannot run away from the consequences of that dishonesty. There are, in short, historical and cultural wellsprings of civil society indigenous to Afghanistan. Virtues of tolerance, peace, individuality, respect, and justice are not so alien after all. Even a cursory review of the history of Afghanistan’s principal religious minorities suggests strongly that the culture is not somehow inevitably hardwired for inter-religious violence and theocracy.364

The Afghan Hindus, who have a long history in Afghanistan as a numerically small, but not insignificant, minority but whose numbers increased during Indian struggles for independence from the British Empire, in which Afghan nationalists known as Patans participated—on the side of India against the British. This had the effect of strengthening Muslim-Hindu relations and catalyzing national solidarity of Afghans with India. Afghanistan provided training and assistance to the Indian liberation activists and allowed Indian families to immigrate to Afghanistan and obtain citizenship. Moreover, Afghanistan was among the first states to recognize India’s independence from the British Empire and to open a wide range of communication and interaction with the Indian state. The interaction extended to cultural matters as well. For instance, the celebration of the annual Hindu religious holiday in the eastern

362 Ibid
364 Ibid.
province of Nangarhar was once one of the country’s most famous national ceremonies. The Jewish experience in Afghanistan also bears witness to a more tolerant legacy that might be reclaimed.365

Historically, Jews lived in Afghanistan since before the Islamic era, when large numbers were concentrated in the northern cities. Unlike many other Islamic countries, Afghanistan has no history of a state campaign for the conversion of Jews. In the early 19th century, sectarian violence and conflicts between religious groups in Persia (present-day Iran) forced thousands of Jews to seek refuge in Afghanistan. Around the turn of the century, the Jewish population reached about 40,000. Most emigrated when the state of Israel was established in 1948.366 Circa the Soviet invasion in 1979, only about 5,000 Jews were left in Afghanistan. This minority, though small, was both economically successful and relatively well-respected in the society at large. Afghan Jews enrolled their children in the public educational institutions and conducted religious ceremonies freely. Even at the height of the Arab-Israeli conflict during the 1960s, Afghan Jews were protected and treated as an important part of Afghan civil society.367 Though the Afghan Jewish population was reduced even further after 1979, the Jewish synagogues in Kabul and Herat still stand today and, remarkably, have been pre-served through years of war and destruction by the Muslim majority.

Through much of its history, the social and cultural setting of Afghanistan allowed secular political leaders to run the government with an appreciation for the role of faith in the life of its citizens. As a result, the separation of mosque and state was an accepted practice in the country until as recently as the late 1970s. In contrast to some countries with secular governments and Muslim populations, such as Turkey and Egypt, the separation of mosque and state in Afghanistan had been the outcome of social and cultural development rather than government-enforced measures. This sets Afghanistan apart from its neighbors as well as the Middle East and North Africa. Historically, religious leaders never ruled the country. State leaders were in charge of public affairs, while religious institutions were man-aged either independently or under the auspices of the state. In most cases, the state authorities were in good-faith relationships with the religious institutions, and the religious institutions were supportive of the governmental leaders in times of crises. Such a relationship between mosque and state was reflected in the pre-1979 Constitution. In 1964, the Afghan national assembly known as Loya Jirga declared Afghanistan a constitutional monarchy through the formation of a modern constitution. Article II of this Constitution guaranteed freedom of worship to non-Muslims while Afghan Hindus were granted representation in the national assembly. Under Title III, the Constitution laid down the fundamentals of social justice, equality before the law, personal liberty, protection of private property, freedom of thought and expression, the right to educational and health facilities, and the right to form political parties. Non-Muslim Afghans were given the freedom not only to conduct their religious practices openly, but also to expand their religious activities and maintain their places of worship in many different parts of the country.368 Like Muslims, Afghan religious minorities were given access to higher education and public health facilities, and were able to serve in the armed forces and other public sector positions.

The communist coup in 1978 and the Soviet invasion in 1979 thrust Afghanistan into a complex crisis that impacted the normal pace of social, political, economic, and cultural orders.

365 Ibid.
367 Supra note 190
368 Supra note 190
The Afghan communist party and its Soviet supporters attempted to mobilize Afghan society, according to its ideology, under the banner of anti-religious slogans. The program entailed a violent campaign against the religious and traditional values of the Afghan culture. Ironically, this merely encouraged most Afghans to hold more tightly to their cultural and religious values and national traditions in order to resist the communist regime and the Soviet invaders. As a result, another layer was added to the military and political conflicts between the Afghan masses and the pro-Soviet regime—a war of cultures and ideologies.\(^{369}\)

In the midst of this ideological struggle (and just after the establishment of the Islamic Republic of Iran), Afghan radicals who were following the political ideology of the Egyptian Muslim Brotherhood were armed and financed by external sources. This political and military development created momentum that allowed Afghan and non-Afghan radicals to influence politics in Afghanistan. Groups like the Islamic Party of Afghanistan, led by Gulbadin Hekmatyar, received the lion’s share of the international aid channeled to the Afghan Mujahideen. Because of their fierce opposition to communism, these extremist groups garnered strong regional and international support from the Persian Gulf states, Pakistan, Iran, and the United States. Soon they were able to mobilize forces across Afghanistan as well as among the Afghan refugees in Pakistan and Iran. This mobilization delivered a body blow to progressive movements, such as Mahaz-meli, Nejat-e-meli and Shura-e-enqelab-e-meli, within the Afghan Mujahideen. It gave a green light to the Islamic Party and its allies to engage in bloody armed clashes against political opponents. As a result, the progressive forces of Afghan Mujahideen—whose ranks once included this author—were forced to fight on two fronts simultaneously: the Afghan Islamic radicals, and the Afghan communist and Soviet forces. Under the influence of Afghan Islamic radical groups in Pakistan and Iran, large numbers of progressive Afghan leaders, such as Shamsadin Majrooh, were assassinated. Many more were forced to flee to Europe or the U.S. The political ideology of the Islamist fanatics was not rooted in Afghan political and cultural traditions, but was heavily influenced by outside elements. This is why Islamic radicals in Afghanistan ran a massive campaign of terror and hate crimes, not unlike those of the Afghan communists.\(^{370}\) On a national level, this terror campaign created a social environment filled with fear and suspicion, reducing cooperation among divergent Afghan groups and depriving Mujahideen forces of open and democratic dialogue about military and political strategies against the Soviets. Furthermore, it prevented the development of an organized national leadership competent to pull the country out of years of war and destruction.\(^{371}\) This dearth of leadership among Afghan Mujahideen contributed greatly to the power vacuum that was left in the wake of the Soviet pullout from Afghanistan in 1988.

Along with their regional allies, Islamic radicals were engaged in sectarian violence and hate crimes throughout this turbulent period. Moderate and democratic-minded Muslims were under fire from radical groups among both Sunnis and Shias. Even though the non-Muslim Afghan religious groups were active in the struggle against the Soviet invasion, they were constantly harassed by Islamic radicals. These minorities supported the Afghan resistance financially and provided medicine and medical support for the wounded fighters. Many members of these groups were killed or forced to pay ransoms and then leave the country. In 1992, Afghanistan slipped into a bloody civil war when Hekmatyar’s armed groups, with the support of Pakistan’s

\(^{369}\) Supra note 190  
\(^{371}\) Ibid
military intelligence, attacked Kabul, completely destroying the city and killing 5,000 civilians. Armed radical units, particularly those of Hekmatyar and Sayyaf forces, killed many people in the Hindu and Sikh communities. They also forced many religious minorities out of their houses and looted their businesses. Armed conflict soon spread all over the country. This situation worsened the power vacuum in Afghanistan and provided an opportunity for the Taliban movement to rise in southern Afghanistan in 1994.

The establishment of the Taliban regime (known formally as the Islamic Emirate of Afghanistan) in 1996 marked the beginning of theocratic dictatorship in Afghanistan. For the first time in both ancient and modern history, a group of radical Islamic clerics seized political power and took control of the government. Taliban leaders introduced their own interpretation of Shari’a (Islamic law), which was disputed by many Islamic scholars and religious leaders. According to this interpretation, Mullah Omar, the Taliban supreme leader, was the living Khaliph on earth and the Emir of Muslims in Afghanistan. They argued that all Muslims and non-Muslims who lived in a territory under the rule of the Emir were obligated to obey him as the representative of divine power on earth. Obeying the Emir-ul-Mumineen was fardh neamut nojumi the progressive forces of afghan mujahideen—whose ranks once included this author—were forced to fight on two fronts simultaneously (God’s demand that must be practiced). And because obeying the Emir was fundamental to the law of God, anyone who refused bai’at (oath to obey), and opposed him, “would be called a rebel according to Shari’a. It would be a fardh to execute him [or her].”

Moreover, if the Emir were to call the people to jihad, it would also be fardh for all qualified Muslims to follow his order and bear arms against those who are enemies of the Emir. In keeping with their strict, truncated interpretation of the Koran, during their first year of rule in Kabul the Taliban closed schools to girls, and women were required to cover themselves head-to-toe. Broad and stringent legal decrees were imposed across the board. In September, 1996, Radio Kabul announced: In the areas under the Taliban government every kind of wickedness and immorality, cruelty, murder, robbery, songs and music, TV, VCR, satellite dish, immodesty, traveling women without a mehram [immediate blood related person], shaving-off or trimming the beard among male adult, pictures and photographs, interest, have all been totally banned.

The establishment of a dictatorial theocracy was contrary to the traditional politics of Afghanistan in which jirga, the council both on a local and national level, was the epicenter of decision making. Traditionally, people solved their local grievances (such as disputes over water and land, family disputes, etc.) via these consultative assemblies where members of the communities or their representatives expressed their opinions freely. On the national level, Loya Jirga was the accepted mechanism to support the government’s decisions on critical issues such as ratification of the Constitution or management of national crisis. Within the mechanism and process of Jirga, Afghans were able to enjoy a measure of individual freedom and communal autonomy. What the Taliban failed to recognize, and what most outsiders still fail to appreciate fully, is that individualism and autonomy are deeply rooted in the social psyche of the Afghan people. Long-standing cultural mores give a person his or her own space to deal with both familial and personal issues. Assisted by the geography of Afghanistan, ethnic groups and local

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372 Ibid
373 Supra note 190
communities also preserve their own sense of space wherein they share issues of concern and interest with their members.

Historically, Afghan central authorities often attempted to break the ethnic and communal autonomies in different parts of the country, but they faced resistance. Inevitably, they accommodated the traditional local culture and government. Taliban decrees, however, attacked the foundation of traditional Afghan politics. The Taliban were not able to understand (or simply did not want to understand) the history of the Afghan people and the craft of governance in this context. The absolute rule of the Taliban supreme leader as the Emir was in conflict with the concept of Jirga. Restrictions on men’s beards and women’s dress were a direct violation of the traditional social code of autonomy and honor. Taliban involvement with non-Afghan radicals such as Osama bin Laden’s network was a further violation of individual freedom and communal autonomy. The Taliban campaign of cultural terrorism, which destroyed the Buddha statues and many archives in the national museum, was an attack on Afghan cultural treasures. It was, in short, one of the worst cases of cultural terrorism in the past century. Under the Taliban, Afghan religious minorities (Muslim Shias as well as non-Muslims) suffered the most severe discrimination and harassment. Muslim Shias were massacred in large numbers, while Hindus were forced to wear yellow armbands in public. Many religious minorities were forced to leave their homes, and their houses and shops were looted or burned. Young girls of ethnic and religious minorities were sexually abused at gunpoint; large numbers were kidnapped by the Taliban and al Qaeda fighters and never returned to their families.

After years of armed conflict and warfare, the end of the Taliban regime in December, 2001 opened the road to peace and freedom in Afghanistan domestically, and to participation in the processes of global politics. After years of isolation, Afghans have gained the opportunity to open their doors to other nations and once again become a peace-loving member of the international community. Lasting peace and normalization of international relations, however, are contingent upon the revitalization of an Afghan civil society whose default setting is religious tolerance, not religious tyranny.

While some of the urgent and ongoing reconstruction priorities are economic, cultural and economic revitalization are inextricably interwoven. The collapse of the national economy and the social infrastructure have forced millions of young boys and girls aged six and older to work from dawn to dusk to help their families survive economically. Under the Taliban, an entire generation of Afghan girls was forced out of schools, and although girls are now allowed back in school there are not enough schools, books, teachers, classrooms, and other educational facilities to accommodate them. Even if there were, families could not afford to have their children leave work to go to school. The expansion of primary education and secondary education can take place only when families have food and the financial means to purchase their daily needs. Cash intervention and targeted food aid are essential to the education that is needed to establish a civil society.

Years of war have destroyed many villages, in the process eliminating their traditional safety nets. Rebuilding villages is necessary for the rehabilitation of a social safety network, especially for Afghanistan’s children. Furthermore, programs to demilitarize and enroll children and young adults in educational and technical training for the market place are crucial. In order to meet basic needs, large numbers of Afghan teenage boys had, until recently, few options other than joining armed groups. Too young to even carry a gun, these young people were for all intents and purposes drafted. As a result, they were forced to engage in violent confrontations against

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different ethnic and religious groups. The use of violence and hate crimes under the banner of religion has left deep traumatic scars on these young men. In most cases they need moral, ethical, and educational support. Since the teachings of the Islamic mystics and Sufis have strong roots in the history of Afghanistan, they could be very helpful, if utilized appropriately, in the process of re-socializing Muslim boys and young men.

Then there are the refugees. The millions of refugees in Pakistan and Iran who are waiting to return home, as well as millions of internally displaced men, women, and children, have lived in deep trauma and desperation for many years. The process of returning to homes that have been destroyed, and of recuperating from long-term trauma, is beyond the local capacity of Afghans. Massive destruction of the physical infrastructure has undermined the environment for civil dialogues between different ethnic and religious groups, not to mention the havoc unleashed in social institutions. The educational system, press, art and music academies—all are in need of revitalization.

Efforts to consolidate and reform governmental institutions under Hamid Karzai must be attentive to the overall socio-religious context. In particular, the international community must multilaterally promote a healthy legal system to promote security and protect human rights and individual freedoms. The Constitution of Afghanistan should—in fact, as well as on paper—guarantee equal rights to ethnic and religious minorities. Success in the development of a functioning judicial system will be much more likely if leaders draw on indigenous cultural templates, such as the traditional Loya Jirga.

More broadly, the international community should encourage dialogue between different religious groups within Afghanistan via all viable means of communication and cooperation. This will require the active participation of Afghan religious leaders in a national forum to improve relations between different faith groups and heal the wounds that were created by years of war and violent confrontations. It is important that religious leaders come into the public eye and encourage their followers in tolerance, respect, and friendship.

Indeed, human rights and religious freedom must go hand in hand with the reconstruction of the shattered civil society of Afghanistan. The disappearance of the black-turbaned religious police from the streets of urban centers is a necessary but insufficient condition for freedom of faith. People can worship freely only when they are able to understand their differences and tolerate—even respect—one another. And peace can be achieved only when human rights and religious freedom is the keystone of social revitalization. In the case of Afghanistan, many cultural resources already exist for a tolerant, civil society. The international community should embrace the rich traditions that have been oppressed in the recent past and provide the practical assistance that is needed for them to flourish. In short, international supporters should recognize that an effective “Marshall Plan” for Afghanistan must include a long-term commitment to the reconstruction of a culturally relevant civil society.

15.1.2. India

India has been a land of monarchies, oligarchies and principalities and is now of Democracy whereunder We, the People of India claim to be sovereign, socialist, democratic republic of India where, unfortunately, republic is away from public, socialists morphed into capitalists, sovereigns have become subservient and democrats behave like autocrats and India has really become a land of hierarchy wedded with disproportionate discrimination, social exclusion, marginalization of minorities, judicialization of justice, politicization of criminals, criminalization of federalism, and communalization of transcendental institutionalism which, in
ultimate analysis, breeds hate culture and this is all prevailing against the constitutional values. The present sordid state of affairs focuses on the criminal prosecution of police homicides to show how victims of social exclusion continue to be victimized by a flawed, weak legal system. This is an under funded system, both permeable to political pressure and resistant to institutional reform. Moreover, it is a system that, by not being able to provide the same kind of justice to all those who need it, ultimately calls into question the very idea of democracy and equality before the rule of law. Of course, the idea that “there is one justice for poor people, and another justice for rich people,” as is commonly said in India, should not be surprising even to the privileged citizens of First World countries.

The anti-minority violence, for example in Gujarat, does not just keep the traditional community boundaries in place, rather it helps push boundaries further afar, which when redefined create demographic pockets of social isolation, produce subjugated minority groups, and therefore actualize a social order that matches the sacred socio-political landscape imagined by the often dominant majority group. One clear indicator of the isolation and subjugation of victims lies in the aftermath of violence when survivors seek “safety in numbers” that is migrate to areas considered safe because of the numerical strength of their group. Another indication is economic boycott that ensure further loss of economic and social power of the minority group. It is such subtle markers of social re-arrangement in the aftermath of violence that often remained overlooked since “violence” is treated as limited sub-category of physically discernible acts of violation, within the concept of communal violence.\textsuperscript{376}

The most significant myth that needs to be confronted is that frequent incidents of violence occur like a disease in the society and leave everything else unaltered, to return to ‘normal’ once the disease has elapsed. However, the crucial post-violence socio-spatial re-arrangements take place only when the immediate attention of outsiders in the locality, like media persons, social activists and high political leadership, has subsided after a period. Every episode of violence, then, remains systematic of violent rupture in people’s personal lives, loss of faith in the governmental agencies, and a deep sense of subjugation and alienation from the ‘mainstream.’ The victims of violence often express their rage at being treated like ‘second class citizens’---deprived of protection, fundamental rights and basic human dignity. Perhaps, realization of the victim’s secondary status is what the perpetrators aim at, since the sentiment of ‘teach them a lesson’ often accompanies the actual violence.\textsuperscript{377}

There have, unfortunately, been more six hundred communal carnages against Muslims and minorities in India since independence. The 1980s, but more stridently in the 1990s, religion and communalism have become an integral part of the rubrics of politics. The anti-Sikh riots following Indira Gandhi’s assassination was a ghastly reminder that communalism could well lurk just beneath the surface. The Bhagalpur massacres in 1989 represent another extreme communal manifestation. The demolition of the Babri Masjid on December 6, 1992 is an acknowledged turning point in majoritarian communalism, and impunity. The complicity of the state is undeniable. The killing of Graham Staines and his sons in Orissa was another gruesome aspect of communalism. The questioning of conversions in this climate is inevitably seen as infected with the communal virus. The forcible “re-conversion” in the Dangs area in Gujarat too has communal overtones. Attacks on Christians are regularly reported in the press, and the theme of impunity is being developed in these contexts.

\textsuperscript{376} Supra note 3
\textsuperscript{377} Supra note 3
Pursuant to this approach and a solid cross-country comparative analysis, it can be determined why victims are more successful at court in certain cities. To begin with, all the cases under study show a specific combination of normative failure and insufficient factual record. This, in turn, contributes to patterns of legal effectiveness, or responsiveness of the legal system, and lack of equality with which the legal system treats the victims in relation to their socio-economic status and many other variables. Among these variables, the victim’s connection to previous crimes, class, gender, age, place of residence, the ability to mobilize political resources, the social perception of police violence, the decision to use private legal support to accompany or supplant the prosecution, the structure of the judicial system, and the social legitimacy of the legal system. Each of these plays a role both in terms of an individual’s chances of becoming a victim of police violence and also in determining the outcome of the legal battle in courts.

It is poignant but perspicuous that religion does seem to play a very active role in most cases, but this may be a reflection of the religious homogeneity of some of the cities. In Delhi, Mumbai and many more Indian cities and states like Andhra Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Rajasthan, Orissa, Uttar Pradesh, however, religion clearly plays a role in the selection of the victims, but it is almost irrelevant in terms of the outcome of court battles.

Another key piece in this puzzle is the quality of the information presented in the courts, a byproduct of the credibility of the witnesses and the available evidence. Interestingly, the system is not only shaped by the laws that judges apply but also by informational failures and procedural truth, which is, in most cases, a “police-crafted reality”. Almost invariably, with the notable exception of upper caste Hindus, the lower-class victims, the undereducated, and the marginalized are more likely to become victims and have fewer resources to craft another reality.

The legal system is notably impaired by the police, who investigate their own crimes and commit many other illegal acts, from planting guns to manipulating forensic evidence. The social and political support for violent police tactics against Muslims is much stronger in India than in countries also shapes judicial outcomes. In India, where the odds of being shot by the police are sixty times higher than in other countries, the laws have been pushed aside to make way for killing the socially undesirable i.e. Muslims of India—the largest second majority of India.

What kind of citizenship do these victims enjoy? Where do they turn when the state persecutes them, kills them, and then fails them when they turn to the courts in their search for justice? How does a fragile Indian democracy redress the imbalance of power between victims and the police? Institutional reforms will certainly help, such as securing better autonomy for the courts so that they do not depend on police branches for their investigations. Legal reform should radically change both rule-crafting and fact-finding procedures. In rectifying the imbalance of resources, witness protection programs and speedy trials will surely be welcome. But, ultimately, institutional change will remain ineffective if it is not preceded by a profound political change that challenges social inequalities that corrode democracies. Universal effective citizenship should ensure the enjoyment of rights but also efficient courts that enforce those rights and, finally, the availability of the extra-juridical resources--socio-economic and institutional--needed to effectively engage the legal system and address police violence in courts.

15.1.3. Pakistan

Pakistan’s state-endorsed discrimination, and in some cases extermination, of its minorities has finally caught the eye of Washington lawmakers. Coming on the heels of support in Congress for a Baloch homeland in the face of Islamabad’s depredations in the regions, a US Congressman has zeroed in on the abduction and forced religious conversion of Hindus in the country.
highlighted by the case of Rinkel Kumari. In a sharply-worded letter to Pakistan’s President Asif Ali Zardari, Congressman Brad Sherman urged him to take action to ensure the return of Rinkel Kumari to her family, pursuant to reports that she had been abducted with the help of a Pakistan People’s Party (PPP) lawmaker. In a case that has been widely reported in the liberal Pakistani media, Rinkel, who was abducted on February 24, 2012, was forced to marry one Naveed Shah and convert to Islam.

She was subsequently produced before a civil judge twice, but she was reportedly coerced into claiming that she had converted on her own will, even as her family was denied access to her in kangaroo court proceedings that revealed in video clips to be led by a frenzied mob of zealots, including armed followers of the Pakistani lawmakers. According to Pakistani civil liberties activists in Washington, Rinkel was allegedly threatened while in police custody that if she did not change her statement, she and her family would be killed. “Rinkel’s case is just one case of abduction and forced religious conversion in Pakistan,” Sherman said in the letter to Zardari, citing the Asian Human rights Commission figure of 20-25 kidnappings and forced conversions of Hindu girls in Sindh every month.

16. Hate Crime Laws: Arguments in Favour and Opposition

Justifications for harsher punishments for hate crimes focus on the notion that hate crimes cause greater individual and societal harm. In *Wisconsin v. Mitchell* the Supreme Court of the United States unanimously found that "bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.... The State's desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provision over and above mere disagreement with offenders' beliefs or biases. As Blackstone said long ago, 'it is but reasonable that, among crimes of different natures, those should be most severely punished which are the most destructive of the public safety and happiness.'" It is said that, when the core of a person’s identity is attacked, the degradation and dehumanization is especially severe, and additional emotional and physiological problems are likely to result. Society then, in turn, can suffer from the disempowerment of a group of people. Furthermore, it is asserted that the chances for retaliatory crimes are greater when a hate crime has been committed. The riots in Los Angeles, California, that followed the beating of Rodney King, a Black motorist, by a group of White police officers are cited as support for this argument.

The U.S. Supreme Court unanimously found that penalty-enhancement hate crime statutes do not conflict with free speech rights because they do not punish an individual for exercising freedom of expression; rather, they allow courts to consider motive when sentencing a criminal for conduct which is not protected by the First Amendment. When it enacted the Hate Crimes Act of 2000, the New York State Legislature found that:

> Hate crimes do more than threaten the safety and welfare of all citizens. They inflict on victims incalculable physical and emotional damage and tear at the very fabric of free society. Crimes

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378 The Times of India, March 14, 2012 New Delhi
380 Ibid
381 Ibid
382 Ibid
motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs. Hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic processes. In a democratic society, citizens cannot be required to approve of the beliefs and practices of others, but must never commit criminal acts on account of them. Current law does not adequately recognize the harm to public order and individual safety that hate crimes cause. Therefore, our laws must be strengthened to provide clear recognition of the gravity of hate crimes and the compelling importance of preventing their recurrence. Accordingly, the legislature finds and declares that hate crimes should be prosecuted and punished with appropriate severity.\textsuperscript{383}

The U.S. Supreme Court unanimously found that hate crime statutes which criminalize bias-motivated speech or symbolic speech conflict with free speech rights because they isolated certain words based on their content or viewpoint.\textsuperscript{384}

Arguments against hate crime legislation include the following:

- Perpetrators of the same criminal act should not be treated differently because they hold different beliefs or motives.\textsuperscript{385}
- Over time, these provisions might be disregarded and hate crime laws and associated case law could evolve to the point where speaking out strongly against a particular group or its actions could be construed as a libelous hate crime, violating rights to freedom of expression, thought, religion (among others).\textsuperscript{386}
- Penalties that do not include hate-crimes enhancement are already sufficient, in that vandalism, assault and murder have always been illegal and subject to prosecution. The fact that they still occur does not justify infringing on the freedoms of speech and religion.\textsuperscript{387}
- It brings the law into disrepute and further divides society, as groups apply to have their critics silenced.\textsuperscript{388}
- Religious practices will become subject to government regulation, violating the separation of church and state.\textsuperscript{389}
- Allowing a self-declared victim to decide if a crime has occurred violates the principle of objective justice.\textsuperscript{390}
- If it is true that all violent crimes are the result of the perpetrator's contempt for the victim, then all crimes are hate crimes. Thus if there is no alternate rationale for prosecuting some people more harshly for the same crime based on who the victim is, then different defendants treated unequally under the law, which violates the United States Constitution.\textsuperscript{391}

17. Monitoring and Reporting Systems (MRS)

\textsuperscript{383} Hate Crimes Act – Chapter- 107, 2000
\textsuperscript{385} Jacob Sullum, Looking for Hate in All the Wrong Places
\textsuperscript{386} Chuck Colson, What the Hate Crimes Law Would Do
\textsuperscript{387} Hate Crimes Law Could Muzzle Free Speech, Critics Fear - 04/18/2007
\textsuperscript{388} AEI - Short Publications
\textsuperscript{389} Concerned Women for America - 'Hate Crime' Laws Threaten Religious Freedom
\textsuperscript{390} http://traditionalvalues.org/pdf_files/HateCrimes.pdf
\textsuperscript{391} Constitutional Challenges to Hate Crimes Statutes
Official monitoring and data collection to fill the information gap is another building block for effective action to combat hate crimes. This is an essential means to assess and respond to patterns of bias motivated violence. Yet few countries currently have systems that are capable of providing meaningful statistical information. In its 2006 Annual Report, the European Monitoring Centre on Racism and Xenophobia (EUMC) determined that only two European Union (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.” Outside of the E.U., both Canada and the United States have comprehensive reporting systems. While those systems in the United States are nationwide, in Canada they are limited to police units in major cities.

Specialized Anti-Discrimination Bodies of both the European Union and the Council of Europe have encouraged the creation of anti-discrimination bodies with strong mandates, yet only a few European states have such agencies that make the fight against violent hate crimes a priority. Specialized anti-discrimination bodies, especially those with mandates to monitor hate crimes and cooperate with law enforcement efforts, have an important role to play. When effective anti-discrimination bodies have mandates to combat hate crimes, data collection improves, criminal investigations are assisted, and minority communities gain confidence in public authorities.

18. Conclusion

The lack of accurate, comprehensive data on hate crimes undermines the ability of states to understand fully and to deal effectively with the problem of hate crimes. Adoption of adequate legislation to define and punish hate crimes is a key first step in addressing the problem. To most advocacy organizations, the failure to report a hate crime is nearly as bad as the offense itself. Underreporting masks the true extent of hate crime activities, which encourages the perpetrators to continue their bigoted behavior and encourages similar behavior among their friends and associates. If potential victims know a reporting system is in place and see a well-publicized case result in a stiff sentence for the perpetrators, they will be more likely to report a hate crime in the future. Thus, collecting and acting upon bias-motivated incident data serves a number of purposes such as making victims feel that someone is aware of their problem; creating opportunities for referrals to victim assistance services; encouraging reporting by individuals who might not otherwise notify police; providing police with information on potential trouble spots of hate group activity to allow for early intervention; and increasing public awareness of the issue.

Participating States should consider further measures to ensure that law-enforcement officials, prosecutors and judges are well equipped to prevent and respond effectively to hate crimes. Civil society organizations are particularly well placed to supplement participating States’ activities to address hate crimes, especially though monitoring incidents and assisting victims. National jurisdictions, therefore, continue to strengthen its co-operation with NGOs active in hate crime monitoring, recording and reporting as one important source of information about hate crime developments in participating States. States can also benefit from increasing co-operation with civil society in a number of ways. Over the last several years, national

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governments have come to recognize the necessity of better integrating their populations, both to reduce societal tensions and inequalities, and as part of their efforts to help prevent radicalization and counter violent extremism.

When law enforcement officers are trained to identify, respond to, and report hate crime incidents, the result is that more hate crimes actually are reported, responded to, and prosecuted. The investigation and prosecution especially of notorious or high-profile hate crimes causes a trickle-up effect that tends to promote even more reporting by victims and witnesses. The officer sets the proper tone for a thorough investigation and prosecution if he or she is able to “identify a hate crime, respond to it appropriately, and report it accurately.” If police verify a hate crime and conduct follow up inquiries, “prosecutors should be expected to press hard for convictions” and “judges should then be under scrutiny to provide substantial sentences after convictions.” The majority of every ethnic, racial or religious community in Asia, America or Europe is not involved in extremist activities. However, the frequent disruption of terrorist plots and recruitment efforts in different parts of the world, and incidents such as the December 2010 suicide bombing in Sweden and the March 2011 shootings of U.S. service personnel in Germany, continue to concern policymakers, as well as their counterparts, given the role of many countries as key allies in the fight against hate crimes and global terrorism. Despite the strong political commitment by many leaders to tackle the parallel challenges of improving integration of their populations and communities, curbing radicalization, and combating violent extremism, many governments in Asia, Europe and USA continue to grapple with a number of policy issues. Regarding integration there is a central question for many countries is whether the burden lies primarily with foreign governments and societies to essentially make room for a more diverse array of cultures and customs, or with other ethnic minorities to adapt their ways of life to host countries political and cultural traditions. At the same time, most European countries—with the exception of France—seem reluctant to fully embrace assimilation. Rather, they appear to be searching for a policy that upholds the values placed on diversity and tolerance but which falls somewhere in between the “failed” multicultural policies of the past and complete assimilation.

Most European governments appear to recognize the value of distinguishing between policies aimed at promoting integration and those that seek to counter radicalization, but in practice, the line between them can often be blurry and some policies may be working at cross-purposes. While some experts view Islamic dress bans as a means to encourage secularism and the integration of ethnicities including Jews and Muslims etc, others see them largely as an attempt to stem radicalization and as doing more harm than good because of the feelings of discrimination they may engender. Many European governments also continue to struggle with determining which Muslim groups and community organizations they should engage with as they attempt to encourage greater dialogue and Muslim political participation. Some Muslim leaders considered moderate by many in the Muslim community have not been invited to cooperate with certain European governments because of positions they have taken in support of groups such as Hamas or Hezbollah. On the other hand, a number of Muslim leaders involved in various government discussions may be viewed by some Muslims, especially younger ones, as co-opted opportunists or sell-outs.

In the fight against prejudice and hate crimes, the criminal justice system can have only a limited impact in its ability to stem the rising tide of bigotry and bloodshed. Solutions that work will require that our leaders lay the groundwork by long term planning to reduce both intolerance and resentment. The measures must be taken to reduce the sources of resentment among groups that feel they are being deprived of the benefits they believe other groups are attaining through affirmative action. For example, some low-income whites might feel less disenfranchised by
affirmative action programs and policies if they were based on residence instead of race. Colleges and universities, for example, could change their image “from that of exclusivity to access” if they provided scholarship programs that “address the needs of lower-income families in the neighborhoods in which the particular schools are located.

Finally, balancing measures to combat violent hate crimes, Islamist extremism and terrorist recruitment with European democratic ideals, civil liberty protections, and human rights concerns remains challenging. For example, the extent to which liberal societies should tolerate, in the name of free speech, those who preach intolerance is a key question for many European governments, particularly those with histories of authoritarianism and state repression. Countries such as Germany and Spain remain cautious about limiting the rights of freedom of speech and assembly, and wary of stronger surveillance and security policies that could intrude on the right to privacy or on religious freedoms. On October 28, 2009, President Barack Obama signed hate crimes legislation into law. Rick Perry signed similar legislation in Texas. Crimes of passion are treated differently than pre-meditated crimes. Conspiracy will get criminals added jail time. Why shouldn't we consider whether a person is motivated by hatred toward a certain class of people when sentencing them? If they are motivated by prejudice, than they are likely to strike again at other members of the hated group. Hate crime laws give people "special rights." But this isn't true. Under all existing hate crime laws, everyone is protected equally from being targeted for their race, religion, and other relevant factors. I do wonder if there has been a problem with enforcing these laws equally, but I don't think that's a reason to do away with the laws themselves.

19. Suggestopedia

All national governments across the globe may be cogently convinced to have incorporated the following points to reduce hate crimes in their anti-hate crimes legislation in future:

1. Acknowledgement and Condemnation of Violent Hate Crimes

Senior government officials and civil society leaders should send a strong and immediate political signal that violent crimes which appear to be motivated by prejudice and intolerance will be investigated thoroughly and prosecuted to the full extent of the law. Public officials should publicly recognize the destructive forces that hate crimes can have increasingly diverse communities.

2. Enactment of Specific Laws on Hate Crimes

Governments should recognize hate crimes as the more serious crimes that they are while defining categories of bias motivation broadly. They should enact laws that provide enhanced penalties for crimes motivated by animus on the basis of the victim’s race, religion, ethnicity, gender, sexual orientation, social origin, geo-political affiliation, mental and physical disabilities, or other similar forms of discrimination or otherwise.
3. Strengthening of Enforcement and Prosecution of Offenders

Governments should ensure that those responsible for hate crimes are held accountable under the law and that the record of enforcement of hate crime laws is well documented and publicized. In order for hate crimes laws to provide an effective deterrent, governments should make enforcement of hate crimes laws a priority within the criminal justice system and in their political platforms.

4. Provide Adequate Resources to Law Enforcement Agencies

Governments should ensure that police and investigators – as the first responders in cases of violent crime – have the resources and training to detect bias motives and those prosecutors are well aware of the legal measures available and required to prosecute hate crimes. They should ensure that procedures are in place for rapid response to possible trigger events.

5. Parliamentary Intervention and Other Special Inquiries into the Hate Crimes

Parliamentary intervention must be institutionalized by setting up or adding a special committee on Hate Crime through its committee system. Parliamentary Committee on Anti-Hate Crimes must be the nodal agency to make the people and police accountable and responsible for any lapses whatsoever in case of the occurrence of hate crime. Such official inquiries should investigate ways to better respond to hate crimes, but also seek creative ways to deal with the roots of intolerance through education.

6. Monitoring and Reporting on Hate Crimes

Governments should establish or strengthen official systems of monitoring and reporting to provide accurate data, including on the victim groups targeted, for informed policy decisions to combat intolerance. These monitoring systems should include improved access to complaints procedures by individual victims and advocacy groups through the introduction of measures such as third party reporting.

7. Emplacement of Empowered Anti-Discrimination Bodies

There must be an emplacement of a highly empowered body exclusively dealing with hate crimes with penal powers deterrent consequences. Governments need to ensure also that the mandates of official anti-discrimination and human rights bodies have the authority to address hate crimes through monitoring, reporting, and assistance to victims.

8. Reach Out to Engage Community Groups

Governments need to take steps to increase the confidence of minority communities by demonstrating a willingness to work more closely with their leaders and community-based
organizations in the reporting and registration of hate crimes and on measures to provide equal protection for all under the law.

9. **Speak out Against Intolerance and Bigotry**

Freedom of speech allows considerable latitude for offensive and hateful speech, but public figures should be held to a higher standard. Members of parliament and local government leaders should be held politically accountable for bigoted words that encourage xenophobia and violence and create a climate of fear for minorities.

10. **Encourage International Cooperation on Hate Crimes**

Governments should support and strengthen the mandates of intergovernmental organizations with a human rights component – like the Organization for Security and Cooperation in Europe (OSCE) – to address hate crimes. Governments should also provide a detailed accounting on the incidence and nature of hate crimes to the inter-governmental bodies responsible for monitoring compliance with their obligations under international and regional human rights conventions (treaty bodies), notably the Convention for the Elimination of All Forms of Racial Discrimination.