

Overview

Hate Crime Report Card

December 2007

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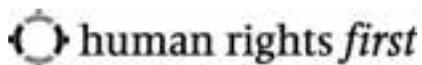
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About Us

Human Rights First is a leading human rights advocacy organization based in New York City and Washington, DC. Since 1978, we have worked in the United States and abroad to create a secure and humane world – advancing justice, human dignity, and respect for the rule of law. All of our activities are supported by private contributions. We accept no government funds.

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Preface

The Human Rights First *2007 Hate Crime Report Card* is a review of the implementation of commitments undertaken by the 56 participating states of the Organization for Security and Cooperation in Europe (OSCE) to combat the rising tide of violent hate crimes.

Six months ago, Human Rights First released the *2007 Hate Crime Survey*, in which we documented and analyzed the reality of racist violence and other forms of intolerance in Europe, Central Asia, and North America. In that report, we reviewed available reports on violence motivated by prejudice and hatred, including the findings of the handful of official monitoring systems that provide meaningful statistical information. This data, combined with the findings of nongovernmental monitoring organizations, provided important insights into the nature and incidence of violent hate crimes. Our findings showed that hate crimes, including those motivated by antisemitism, homophobia, and Islamophobia, were on the rise—in some cases reaching record highs—in many parts of Europe and North America.

We concluded that report with a series of recommendations to governments to combat hate crimes. In particular, we called on governments to establish systems of official monitoring and data collection to fill the hate crime information gap. We likewise urged governments to strengthen criminal law and law enforcement procedures required to combat hate crimes. These are not new recommendations: since 2002, Human Rights First has consistently called on states to undertake these measures. Furthermore, the need for states to take these steps is increasingly rooted in the agreements and directives of intergov-

ernmental organizations with which these states have binding political and legal commitments.

The *2007 Hate Crime Report Card* is a companion and follow-up to the survey. It assesses the extent to which governments have responded to the increasing threat violent hate crimes pose to their societies by fulfilling their commitments to establish hate crime monitoring systems and to adopt strong hate crime laws and enforce them. This overview is accompanied by a country-by-country section that looks in more detail at each of the 56 countries under review.

This report card builds upon the findings of Human Rights First's 2005 report *Everyday Fears: A Survey of Violent Hate Crimes in Europe and North America*, which was our first effort to examine government responses to the full range of hate crimes in each of the OSCE participating states. At the time we found that only a handful of governments had taken concrete measures to effectively monitor, respond to, and prevent hate crimes.

While there has been some progress since then, this report card makes clear that governments still have a long way to go. We hope that this report contributes to establishing a baseline of steps states have taken until now to combat hate crimes and a roadmap of what remains to be done.

Executive Summary

In recent years, hate crimes have occurred at alarmingly high levels throughout much of Europe and North America. Human Rights First's *2007 Hate Crime Survey*, released in June 2007, documents dozens of hate crime cases, analyzes trends, and discusses the causes and consequences of hate crime violence.

In particular, we found that antisemitic incidents have continued to proliferate throughout Europe, reaching record high levels in some countries. Likewise, bias-motivated violence has threatened many Muslim communities, with such crimes occurring amidst a backdrop of highly polarized debates concerning immigration and Muslim integration. The problem of anti-gay prejudice and violence has in many countries become more visible, with some of the reported acts of violence in 2006 taking place at gay pride demonstrations.

The official response to these crimes has been inadequate, as this *2007 Hate Crime Report Card* documents. In particular, we focus on two fundamental areas where government action is essential: 1) establishing systems of monitoring and reporting, and 2) adopting and enforcing criminal law provisions to combat violent hate crimes.

Systems of Monitoring and Reporting

Within the European Union, the Fundamental Rights Agency (FRA), the E.U.'s antiracism and human rights body has determined that only 13 of the 27 member states have criminal justice data collection systems that could be considered "good" or "comprehensive" in their coverage of hate crimes. Outside of the E.U., both

Canada and the United States have fairly well-developed reporting systems. Thus, only 15 of the 56 participating states of the OSCE are fulfilling their basic commitments to monitor hate crimes, with countries in the European Union and North America leading the way. These countries include: **Austria, Belgium, Canada, the Czech Republic, Denmark, Germany, Finland, France, Ireland, Poland, Slovakia, Sweden, the United Kingdom, and the United States.**

There are no countries in southeastern Europe or the former Soviet Union with comprehensive systems of monitoring and regular public reporting expressly on violent hate crimes.

Only the **United Kingdom** reports regularly and publicly nationwide on bias-motivated incidents, acts that may fall short of actual criminal offenses, but which offer a more complete picture of the level of intolerance in a society. A greater number of countries monitor and report on bias-motivated criminal offenses, with **Canada, Finland, France, Germany, Sweden, the United Kingdom, and the United States** having relatively well-developed systems that suggest a commitment to understanding and responding to the problem of hate crimes.

While a number of other governments provide some limited statistics—although more frequently on nonviolent violations of hate speech laws than on violent hate crimes—nearly 40 states provide only limited or no public reporting specifically on the incidence of violent hate crimes. Those states include: **Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Georgia, Greece, Holy See, Iceland, Italy, Kazakhstan, Kyrgyzstan,**

Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovenia, Spain, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, and Uzbekistan.

Ukraine, for example, is among those countries. Without accurate data, the increasing number of such crimes reported by NGO monitors and the media fall under the radar of policy makers. Recently, in October 2007, a Jewish school in Kiev was torched in an apparent anti-Semitic attack. No one was hurt in the attack, as the school was closed for vacation. According to the school's rabbi, Moti Levenhartz, just a week earlier, a rock was thrown through a school window with a note reading "Death to Jews."¹ Yet the fact that these crimes are not reported as hate crimes contribute to a lack of awareness of the seriousness of the problem at the highest level. Ukrainian authorities have denied that antisemitism and racism are a problem in Ukraine, and stated in an official report to the United Nations that "all forms of discrimination based on race and nationality have been eliminated in Ukraine."²

Similarly, the authorities in **Italy** do not produce reliable statistics on the incidence of violent hate crimes. Yet a recent series of attacks on people of immigrant origin provided a grim reminder of the need for more concerted action to combat racist violence and other forms of intolerance—a process that will remain incomplete without better data collection systems. On November 2, 2007, in Rome, three Romanians were hospitalized—one of them seriously injured—after being attacked by a masked, club-wielding gang. According to an eyewitness, there were some six to eight attackers carrying metal bars and knives. The attack further contributed to racial tension and was part of a violent backlash against immigrants following the beating to death of a naval captain's wife.³

Most countries that publish hate crime data report on the incidence of "racist" crime, yet other types of violent bias crimes that are not racist, or in which racism is only one element—such as violence motivated by religious intolerance, sexual orientation, and disability, are more rarely reported in official statistics. **Canada**, the **United Kingdom**, and the **United States** have the best record on the production of statistics based on the more specific nature of bias motivations, a methodology shared by only a few other countries.

While the police and the courts are the two bodies that collect relevant data in most countries, specialized anti-discrimination and human rights bodies have an important role to play in this area as well. When such bodies have mandates to combat hate crimes, data

collection improves, criminal investigations are assisted, and minority communities gain confidence in public authorities. Few however, have undertaken any significant work on hate crimes. An exception is France's National Consultative Council on Human Rights (CNCDH), which provides detailed annual hate crimes reports using data from the Ministry of Justice. While Belgium's Centre for Equal Opportunities and Opposition to Racism (CEOOR) expanded its the mandate in 2003 to include work on violent hate crimes, its activities in this regard have been limited thus far.

The constraints to monitoring and reporting, even for those countries that have already taken important steps, are significant. Underreporting is endemic and there are a wide range of reasons—with fear experienced by the victim a principal explanation—that the victims of hate crimes choose not to report them to the police. Even when such crimes are reported, the elements of bias may not be recorded by the police. Thus the incidence of hate crimes, even in countries with relatively well-developed monitoring systems, is in most cases many times higher than official figures show.

NGOs have filled the gap in a number of cases where governments have either failed to monitor hate crimes or where monitoring systems are incomplete. In the **Russian Federation**, for example, NGO monitors have documented a rising tide of hate crimes of disastrous proportions, while the limited official data largely ignores the problem. In the absence of official data in the **Netherlands**, incidents of violent rightwing extremism are documented annually by an NGO working together with a Dutch university.

The Framework of Criminal Law

A growing number of the 56 countries in the OSCE are adopting legislation to expressly address violent hate crimes. At present, there are over 30 countries in which legislation treats bias-motivated violent crime as a separate crime or in which bias is regarded as an aggravating circumstance that can result in enhanced penalties.

However, 23 OSCE countries still have no express provisions defining bias as an aggravating circumstance in the commission of a range of violent crimes against persons. These countries include: **Albania, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Luxembourg, Lithuania, Macedonia, Monaco, Montenegro, the Netherlands, Poland, San Marino, Serbia, Slovenia, Switzerland, and Turkey.**

In **Greece**, for example, in October 2007, a group of youths attacked a 24-year old Israeli citizen while uttering antisemitic slurs. The youths punched and kicked the victim, Nick Kolyohin, in the head while yelling, “F--- Israel” and “You’re Jewish” and stole the bag that included his passport and money. Kolyohin had been vacationing in the country.⁴ Greece is among those countries where there are no legislative provisions to 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.

Even where legislation exists, it is too often limited in terms of the forms of discrimination against which it protects. While aggravating circumstances provisions in most countries cover bias based on religious or racial grounds, provisions extend to sexual orientation bias in only 11 countries and to disability bias in only 7 countries.

Effective enforcement of these provisions is difficult to gauge, although widely thought to be inadequate. Statistics on the use of bias crime sentencing norms, including those convictions resulting in enhanced sentences, are largely unavailable. Monitoring conducted by NGOs and intergovernmental antiracism bodies points to a general reluctance by criminal justice officials to bring charges using hate crime provisions.

In the **Russian Federation**, for example, although adequate hate crime legislation exists, it has been ignored in the prosecution of the vast majority of hate crime cases. Although prosecutors have brought an increasing number of hate crime cases before the courts in recent years, the number of hate crimes continues to surge unabated and only a small fraction are thoroughly investigated and prosecuted. Even when prosecuted, hate crime charges are not always vigorously pursued, with potentially severe consequences for Russian society. The acquittal on hate crime charges in the brutal racist murder of a nine-year Tajik girl, for instance, led a Russian human rights activist to suggest the verdict was “a moral catastrophe for Russia that in the multinational society of a huge country could lead to nothing less than the collapse of the state.”⁵

Table 1: Legislation on Bias-motivated Violence

Country	Bias-motivated Violent Crime as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as Aggravating Factor in Specific Common Crimes
Albania			
Andorra		X	
Armenia		X	X
Austria		X	
Azerbaijan		X	X
Belarus		X	X
Belgium			X
Bosnia and Herzegovina			X
Bulgaria	X		
Canada		X	X
Croatia		X	X
Cyprus			
Czech Republic	X		X
Denmark		X	
Estonia			
Finland		X	
France			X
Georgia			X
Germany			
Greece			
Holy See			
Hungary	X		
Iceland			
Ireland			
Italy		X	
Kazakhstan		X	X
Kyrgyzstan			X
Latvia		X	
Liechtenstein		X	
Lithuania			X
Luxembourg			X
Macedonia			
Malta			X
Moldova		X	X
Monaco			
Montenegro			
Netherlands			
Norway			X
Poland	X		
Portugal			X
Romania		X	
Russian Federation		X	X
San Marino			
Serbia			
Slovak Republic			X
Slovenia			
Spain		X	
Sweden			X
Switzerland			
Tajikistan		X	X
Turkey			
Turkmenistan		X	X
Ukraine		X	
United Kingdom	X	X	
United States of America	X	X	X
Uzbekistan		X	X

Table 2: Bias Types Covered by Provisions on Aggravating Circumstances⁶

Country	Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
Albania						
Andorra	X	X	X		X	X
Armenia	X	X				
Austria	X					
Azerbaijan	X	X				
Belarus	X	X				
Belgium	X	X	X	X	X	X
Bosnia and Herzegovina	X	X				
Bulgaria	X	X				X
Canada	X	X	X	X	X	
Croatia	X	X	X	X		X
Cyprus						
Czech Republic	X	X				X
Denmark	X	X	X			X
Estonia						
Finland	X					
France	X	X	X			
Georgia	X	X				
Germany						
Greece						
Holy See						
Hungary	X	X				
Iceland						
Ireland						
Italy	X	X				
Kazakhstan	X	X				
Kyrgyzstan	X	X				
Latvia	X					
Liechtenstein	X					X
Lithuania	X	X				
Luxembourg	X					
Macedonia						
Malta	X	X				
Moldova	X	X				
Monaco						
Montenegro						
Netherlands						
Norway	X					
Poland	X	X				X
Portugal	X	X				X
Romania	X	X	X	X	X	X
Russian Federation	X	X				X
San Marino						
Serbia						
Slovak Republic	X					
Slovenia						
Spain	X	X	X	X	X	X
Sweden	X	X	X			X
Switzerland						
Tajikistan	X	X				
Turkey						
Turkmenistan	X	X				
Ukraine	X	X				
United Kingdom	X	X	X		X	
United States of America ⁷	X	X	X	X	X	X
Uzbekistan	X	X				

Recommendations

Systems of Monitoring and Reporting

Monitor hate crimes: Governments should establish or strengthen official systems of monitoring and public reporting to provide accurate data for informed policy decisions to combat hate crimes. In particular, governments should do the following:

- Establish data collection systems that are sufficiently broad to include incidents and crimes motivated in whole or in part by bias on the basis of the victim's race, religion, ethnicity, gender, sexual orientation, mental and physical disabilities, or other similar forms of discrimination.
- Ensure that police register claims of hate motivation in complaints and incident reports, in a form and through procedures that allow for these incidents to be distinguished in statistical analysis from similar crimes without a bias motivation.
- Establish systems for the registering and reporting of incidents involving acts motivated by racial and other animus that may fall short of crimes. Complaints should be recorded and registered for statistical purposes even when a criminal charge is unlikely.
- Undertake to monitor incidents, offenses, as well as prosecutions. Statistics should chart the number of hate crime events referred to prosecutors and the outcomes of such case filings.
- Establish national standards of data collection and reporting, even when law enforcement is undertaken through a decentralized system.

Provide statistics on bias motivations and/or victim groups: In reporting on hate crimes, governments should record the real or perceived attributes of the victims of hate crimes and/or bias motivations and disaggregate their public reporting on the basis of those attributes and/or bias motivations, while assuring the anonymity of the individuals who are victims of crime.

Report regularly and publicly on hate crimes: Publish and widely disseminate regular public reports on the incidence of bias-motivated incidents and criminal offenses, as well as on the outcome of prosecutions in such cases.

Ensure that all law enforcement professionals are adequately trained: National standards on data collection and reporting should be accompanied by practical action to ensure that police and investigators—as the first responders in cases of violent crime—have the resources and training to detect bias motives. National authorities should provide government training and financial support for measures to overcome obstacles faced by local police in registering and responding to hate crimes.

Explore and establish systems of third-party reporting: Third-party reporting should include provisions for complaints to be made to the police on behalf of persons who, in a context of intimidation and possible lack of confidence in the authorities, are either unwilling or unable to make the complaint themselves.

Conduct periodic crime victimization surveys: In light of the general problem of underreporting of incidents by victims and underrecording of bias by police, national authorities should include questions in

crime victimization surveys that seek to assess the incidence and nature of violent hate crimes.

Create and strengthen antidiscrimination bodies: Governments need to ensure that the mandates of official antidiscrimination and human rights bodies are sufficiently robust and broad in scope to address hate crimes through monitoring, reporting, and assistance to victims.

The Framework of Criminal Law

Adopt laws addressing violent hate crime: Governments should adopt legislative provisions that treat bias-motivated violence as a separate offense or that recognize bias expressly as an aggravating circumstance in the commission of violent crime.

Define bias motivations inclusively: Governments should enact hate crime laws that include in the definition those crimes motivated in whole or in part by bias on the basis of the victim’s race, religion, national origin, ethnicity, gender, sexual orientation, mental and physical disabilities, or other similar forms of discrimination.

Enforcement of the Law

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

Announce publicly when the bias element is part of the prosecution and sentencing: Ensure that prosecutors and the courts clearly state when penalties have been enhanced due to aggravating circumstances provisions, so as to reap the full “public advocacy” benefits of those provisions.

Ensure that prosecutors and judges are properly trained: Prosecutors and judges must be fully apprised of community and law enforcement strategies for combating hate crimes, so charging and sentencing decisions are consistent.

Consider alternative sentences within the framework of enhanced penalties: Enhanced penalties may be appropriate for chronic, violent hate crime offenders who pose a significant and continuing risk to community safety. On the other hand, restorative justice options, like mandatory community service with an organization representing the victim’s social, ethnic, or religious group, may be more appropriate in cases of first-time nonviolent offenders. Such punishments can promote healing of victims and change offender attitudes, while restoring the trust of the community.

Relationships with Nongovernmental Organizations

Reach out to 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.

Partner with NGOs to promote reporting: NGOs can act as an important resource for law enforcement officials, particularly during the initial phases of implementing data collection and training programs. NGOs may be in the best position to encourage individuals—especially their own constituents—to report incidents to the police. Implementing hate-motivated data collection efforts in partnership with community-based groups can greatly enhance police-community relations.

Part I: Systems of Monitoring and Reporting

Introduction

Hate crimes are serious crimes of violence that endanger the lives of thousands every day across Europe and North America. In our *2007 Hate Crime Survey*, Human Rights First reported on the rise of racist and other forms of bias-motivated violence across the region of the OSCE.

In particular, antisemitic incidents have continued to proliferate throughout Europe, reaching record high levels in some countries. The problem of anti-gay prejudice and violence has in many countries become more visible, with some of the reported acts of violence in 2006 taking place at gay pride demonstrations. Bias-motivated violence has threatened many Muslim communities, with such crimes occurring amidst a backdrop of highly-polarized debates concerning immigration and Muslim integration.

We also reported in the survey on several high profile cases in 2006:

1. In February 2006, Ilan Halimi died soon after he was found outside of Paris half-naked, stabbed and burned with cigarettes and acid. He had been tortured and murdered because he was a Jew.
2. In April, in the Russian Federation, a gunman shot and killed Lampsar Samba, a student from Senegal, with a hunting rifle as he left a night club in St. Petersburg with a group of other African students. The weapon, emblazoned with a swastika, was found near the scene of the crime.
3. In May, in Belgium, an anti-immigrant fanatic murdered a pregnant Malian au pair and the two-year old Belgian infant in her charge, just moments

after having shot and seriously wounded a woman of Turkish origin wearing a Muslim headscarf.

4. In July, in Latvia's capital Riga, anti-gay demonstrators hurled feces and eggs at gay rights activists and their supporters who were taking part in a gay pride event.
5. In October, in Ukraine, five men attacked and murdered an oil company professional of Nigerian origin.

Attacks across the region have continued unabated in 2007:

1. In April 2007, in the Russian Federation, eight neo-Nazis murdered a Kyrgyz man in the Moscow suburb of Mytishchi. Police suspect that the attack was meant to commemorate Hitler's birthday on April 20.
2. In July, in the Czech Republic, twenty gravestones were found desecrated in a Jewish cemetery in the town of Pisek. The incident occurred just ten days after a similar attack on another Jewish cemetery in Bohumin.
3. In July, in the Netherlands, a group of six assailants attacked two gay men, punching the victims in the face, while shouting anti-gay epithets on a main street in Amsterdam.
4. In August, in France, two assailants attacked a 23-year-old Jewish woman in Noisy-le-Grand, near Paris, shouting antisemitic slurs while beating her about the head and body.

5. In September, in the Russian Federation, unknown assailants fatally stabbed a 19-year-old Iranian student, Ahmad Riza Kharrani on a Moscow street.
6. In the first week of December, a series of violent incidents were reported in Germany in which groups of young men attacked people of immigrant origin. In Magdeberg, Anhalt-Saxony, an Iraqi woman and her two-year-old child were insulted and then physically attacked on a bus. Two young men were briefly detained for the attack and may face charges of assault and “incitement.” Also in Magdeberg, two men from Niger and a police officer who tried to protect them were attacked in what was described as a racist attack.⁸

These are some of the incidents that have helped bring the issue of hate crimes to the public eye, although the rising tide of such violence continues to go largely unreported. Perpetrators of hate crimes persistently target individuals who stand out because of their real or perceived ethnic origin, race, nationality, religion, or such attributes as disability or sexual orientation. This violence is driven by discrimination that often involves multiple factors, including the double discrimination of racism and gender, physical appearance and religion.

These crimes of discrimination, motivated by prejudice based on skin color, religion, and other similar attributes, harm far more than the individual victims of violence. Every one of these crime threatens others as well, and can send fracture lines through entire societies. But most governments fail even to monitor the nature and frequency of these crimes, an essential step toward providing all in their societies with equal protection under the law.

Hate crimes are often unreported and, even when brought to the attention of public authorities, are often unrecorded. Many hate crimes are known only in the families or communities of those who are victimized. Others, when reported to public authorities, are recorded as lesser crimes unrelated to discrimination or disregarded as altogether inconsequential. The same prejudices that drive hate crime violence may also lead to their denial as real and serious threats to society—and ensure that fighting these crimes remains a low priority. The result is both an information deficit and a hate crimes policy gap that effectively bars real progress against discriminatory violence.

This part of the report card addresses the hate crime information gap and why and how this data deficit can and should be addressed. The focus is on the various approaches to hate crime monitoring and data collection in the OSCE region. We look at monitoring and data collection as a critical means to combat hate crimes, and detail the way governments have met their

obligations to fill the information gap—or, more frequently, failed to do so.

Why is Data Collection Important?

To confront the menace of any form of violent crime it is essential to know what happened, where, when, and to whom, with a view to punishment, deterrence, and protection. The same holds for hate crimes—which we define as violent crimes motivated in whole or in part by prejudice and hatred. If such crimes are to be deterred and future victims protected there is also a need to distinguish the elements of discrimination that drive these crimes and the particular populations under threat. Yet many governments neither monitor these crimes nor report even basic information on their occurrence. The true extent of hate crime violence is largely unknown, particularly where governments fail in their commitments to monitor, report, and vigorously combat these crimes.

Police the world over have traditionally made the collection and systematization of information a high priority in combating crime. Monitoring and reporting on hate crimes, however, too often falls outside the frame of reference of police and public authorities, even when the seriousness of the problem of racism and other forms of discrimination has been acknowledged.

Even where detailed statistics are compiled based on crime reports, violent acts of racism, homophobia, religious intolerance, and other forms of bias crime may be largely unrepresented in the data. Data on hate crimes in such cases may be largely unavailable unless nongovernmental sources, often drawn from those communities most under threat fill the gap. Nongovernmental reporting in such cases can provide a baseline against which to assess the gaps in official information, but can not substitute for official action.

Transparent systems of data collection are also essential to determine whether the law is in fact being enforced, and enforced equitably. The most effective monitoring systems not only register incidents and offences, but also track them through the criminal justice system, from the moment charges are filed to the outcome of cases before juries or judges. Hate crime monitoring and the aggregate of individual incidents can show official indifference, acquiescence, or complicity in targeted hate crimes by private citizens. Perhaps most importantly, it can provide the roadmap needed by policy makers to confront crime that can be both a consequence and a motor of social disorder.

Tracking hate crime violence should be an essential tool of governments and civil society alike to remedy serious social ills, providing important insights into

social dynamics that may bear the seeds of disorder and future conflict. Statistics that are disaggregated by the attributes of the victim, for example, can help political leaders and police better understand the groups most susceptible to violence and to determine how best to allocate policing resources. Such data can help answer the questions of who did what to whom, why, and with what consequences, which lie at the heart of the fight against discrimination.

International Standards and Commitments

International human rights standards, including the standards of the Council of Europe and the European Union provide a strong framework for the protection of all people against discrimination. An important part of this protection is the guarantee of equal rights for all, and equal protection of these rights.⁹ In addition to the framework of international human rights law, there are a series of opinions, standards, and directives that provide authoritative guidance and sometimes binding norms on the way in which international guarantees against discrimination should be implemented. Among these, E.U. and Council of Europe norms provide detailed special attention to the fight against violence motivated by racism and related intolerance through effective monitoring and reporting, among other things.

European Union

The European Union's European Monitoring Center on Racism and Xenophobia (EUMC), now the Fundamental Rights Agency (FRA), in 2002 called upon member states to "install a reporting and monitoring system for racist crimes that is clear, consistent and accessible; maintain statistics on the treatment of racist crimes in the criminal justice system, from the police to the courts; ensure that monitoring categories for victims are disaggregated by race and religion; and publish annual reports on racist crimes."¹⁰

The EUMC's/FRA's subsequent reports, including those specifically addressing racist violence, antisemitism, and Islamophobia, have provided regular progress reports on data collection by member states, combined with further calls for improvement. The EUMC's 2005 Annual Report, for example, called on member states to "collect and make publicly available detailed statistics on racist crime, at every stage of the criminal justice system, which can be anonymously disaggregated to reveal information about the victims' ethnicity, "race," and religion."¹¹

Council of Europe

Forty-seven of the 56 OSCE participating States are members of the Council of Europe, whose antiracism body, the European Commission against Racism and Intolerance (ECRI), stated in its General Policy Recommendation No. 1 (October 4, 1996), on combating racism, xenophobia, antisemitism and intolerance, that its member states should "ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted."¹² ECRI has also consistently criticized poor data collection in its periodic country reports, highlighted progress, and made recommendations for improvement.

The jurisprudence of the European Court of Human Rights, the jurisdiction of which extends to all member states of the Council of Europe, adds further normative building-blocks. The Courts' ruling in the case of *Nachova and Others vs. Bulgaria*, for example, addresses both racist violence by public authorities and that of private citizens, and stresses the importance of due diligence to discover the facts in such cases:

[W]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.¹³

Organization for Security and Cooperation in Europe (OSCE)

The OSCE Ministerial Council, meeting in December 2006 in Brussels, passed Decision No. 13/06 on "combating intolerance and discrimination and promoting mutual respect and understanding," which "encourages the participating States to step up their efforts in implementing their commitments to collect and maintain reliable data and statistics on hate crimes which are essential for effective policy formulation and appropriate resource allocation in countering hate-motivated incidents and, in this context, also invites the participating States to facilitate the capacity development of civil society to contribute in monitoring and reporting hate-motivated incidents and to assist victims of hate crimes."¹⁴

Similar recommendations have been part of previous OSCE ministerial decisions, for example, in Maastricht in 2003 and in Ljubljana in 2005, as well as declarations following meetings in Berlin, Brussels, and Cordoba. The OSCE Parliamentary Assembly has likewise recommended better data collection systems in its annual declarations. OSCE participating states

can also benefit from the detailed recommendations produced by such OSCE forums as the NGO Preparatory Roundtable on Addressing the Hate Crimes Data Deficit in Vienna on November 8, 2006.¹⁵

United Nations

The final documents of the U.N.'s World Conference Against Racism, held in 2001, stressed the need both for data collection and for meticulous and enforced safeguards against the misuse of this data. The WCAR Plan of Action urges states "to collect, compile, analyze, disseminate and publish reliable statistical data at the national and local levels and undertake all other related measures which are necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance..."¹⁶

Data Collection and Privacy Concerns

Human Rights First, like the antidiscrimination bodies of the E.U. and the Council of Europe, has stressed the importance of data being disaggregated by victim group, with appropriate safeguards to protect privacy, as essential if remedial action to protect is to be taken.

Various reasons—among them privacy concerns—are cited by some governments for not wishing to record the nationality, ethnic background, religion, disability, or sexual orientation of the victim of an attack. ECRI has addressed this issue in many of its country reports, while encouraging the development of reliable systems of data collection that are in accord with the strictest European standards on data protection and privacy.

Data collection systems without safeguards have long made data collection that distinguishes distinct population groups controversial, with the racialized politics of Nazi Germany an ever-present concern. More recently, the misuse of data on ethnicity and other similar attributes has been a particular concern as it concerned the large Roma communities present in many OSCE countries, where those of Roma origin have been targeted for discrimination by both state agencies and private citizens.

E.U. and Council of Europe norms today, however, have incorporated elaborate safeguards against the misuse of sensitive data, founded on the principles of privacy and data protection. This includes procedures for data collection and handling to ensure the anonymity of data on ethnicity and other similar characteristics. Although systems that distinguish population sectors by national origin, ethnicity, religion, or other indicators have been employed historically in some countries as a *means* of discrimination, data collection with due

safeguards is an essential tool for the fight against discrimination.

The U.N. has similarly set guidelines for data collection. These also stress that data collection is to be undertaken with strict safeguards to prevent its misuse, in particular by adhering to the principle that "such statistical data should be disaggregated in accordance with national legislation. Any such information shall, as appropriate, be collected with the explicit consent of the victims, based on their self-identification and in accordance with provisions on human rights and fundamental freedoms, such as data protection regulations and privacy guarantees..."¹⁷

Norms established for the collection of census information concerning origins and identity can provide a useful framework for the identification of discriminatory practices, including violent hate crimes. These norms establish ways in which population groups are identified as well as restrictions on the collection or analysis of such data, including considerations of data protection and privacy that require data to be made anonymous, stripped of information that distinguishes particular individuals.

National Requirements and Guidelines

While international organizations provide helpful guidelines, the effectiveness of data collection on hate crimes by police, prosecutors, and the courts may in large part turn on requirements issued in administrative orders and regulations.

In **Belgium**, for example, on March 21, 2006 the College of Procurators General issued an *Omzendbrief*, a formal and binding document emphasizing the need for police services and the courts to recognize and identify racist and xenophobic violence. The police are now required to register common crimes with a racist or xenophobic motive under a separate heading on the police registration and report form (*Proces Verbaal*).

In **Canada**, the federal Statistics Act (1985) requires all police jurisdictions to report their crime statistics to the Canadian Centre for Justice Statistics, a part of Statistics Canada, the national statistics bureau.

Criteria for inclusion of hate crime data in Canada's Uniform Crime Reports system are set out in a March 2006 manual, with participants advised to "use the UCR violation codes (e.g., assault, criminal harassment, vandalism); and, in addition...flag whether or not the incident was motivated by hate." In considering the latter, they are to consider in particular whether "[t]he perpetrator's actions and/or words may demonstrate

that their reason for committing the crime was based on hatred for an identifiable group.”¹⁸

These statistics are submitted monthly and go through “a rigorous verification,” with edits and errors flagged and sent back for corrections. According to an official from the centre, “we place a flag on any file, any criminal offence that has a hate motivation, so you can have an assault that is hate motivated, a murder that is hate motivated, a sexual assault, a robbery...” The center began collecting data on a national level as of January 2005.¹⁹ The first national statistics on hate crimes are expected to be released in early 2008.

In **Denmark**, guidelines for classifying crimes as bias crimes with a racist motive were issued to local police forces by the Chief Superintendent of the Danish Civil Security Service (PET) in 1992. These set out fairly simple factors to be taken into account for inclusion, among them: (1) the victim’s, perpetrator’s or witnesses’ statements; (2) the presence of racist/xenophobic symbols or graffiti; (3) whether the victim or perpetrator knew each other; or (4) whether the crime was planned.²⁰

In 2001, a revised circular was issued to local police forces setting out procedures for reporting racially motivated crime to PET. This requires registration of incidents considered to be 1) a criminal offence; and (2) motivated by race, color, national or ethnic origin, or religious beliefs. Each police district is also required to appoint an officer “with the overall responsibility of reporting racist crime to PET.”²¹

In **France**, administrative orders within the prosecutorial system followed the enactment of an initial hate crime law in 2003 and appear to have generated effective monitoring and reporting within the justice system. Efforts to secure improved information preceded the new law, including instructions in April 2002 to all public prosecutors “to remind them of the necessity of a firm and dissuasive response directed at known perpetrators of racist/anti-Semitic offences,” and to requests reports to be made of the legal outcomes of such cases “to the victims and to local Jewish organizations.”²²

After the new hate crime law was enacted, the Ministry of Justice sent an official dispatch on March 21, 2003 calling for greater vigilance within the prosecutor’s office towards racist and antisemitic acts. It followed this up on November 18, 2003, advising that it should be informed of all antisemitic offenses known by the judicial authorities and that public prosecutors keep victims informed of the progress of cases through the justice system. An electronic mail account was set up in the intranet of the public prosecutor’s office to receive hate crime reports in accord with a simple format.²³

Currently, the General Headquarters of the National Police (*Direction générale de la police nationale*), under the authority of the Ministry of Interior, collates data on offences through a centralized uniform crime reports system, the *Système de traitement des infractions constatées* (STIC). 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.²⁴

In the **United Kingdom**, differing systems are in place in England and Wales, under the overall coordination of the Home Office, and in Scotland and Northern Ireland. In March 2005, the Home Office Police Standards Unit published detailed guidelines for police officers to assist victims, record incidents, investigate the crime and conduct risk assessments for repeat victimizations. The report recommends the establishment of either a dedicated Hate Crime Unit in each police force or a Hate Crime Coordinator.²⁵

Hate crimes can be reported directly to any of the 44 police authorities in the England and Wales, or by witnesses or victims of hate crimes through an online “Non-Emergency Crime and Hate Crime/Incident Reporting” form in a number of police jurisdictions. Official statistics on hate crimes are published by the Home Office and the Crown Prosecution Service. The Home Office reports systematically on police statistics including those on racist and other bias incidents—a requirement under Section 95 of the Criminal Justice Act of 1991.²⁶ Comprehensive hate crimes 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 guidelines for recording bias motivations in the United Kingdom is likely the most sweeping in scope. There, any incident that is perceived by the victim or any other person as being motivated by the offender’s prejudice or hatred based on the victim’s race, color, ethnic origin, nationality or national origins, religion, sexual orientation or disability is to be registered as a hate incident. The victim’s own views (or those of a third person) are thus considered an important factor in the first stage of determining that an incident that may subsequently be determined to have involved a criminal offense was motivated by bias.

In the **United States**, the Hate Crime Statistics Act of 1990 (28 U.S.C. 534) requires the Attorney General to “acquire data... about 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. This was amended by the Violent Crime Control and Law Enforcement Act of 1994 to cover bias crimes motivated by bias based on physical or mental disabilities.²⁷

The definition of hate crimes in U.S. statutes covering the collection of hate crime statistics are more comprehensive than in other U.S. federal laws, as they are intended to ensure that Congress receives the information it needs to determine whether existing laws are being enforced, as well as whether further legislation is required to ensure equal protection against hate crimes.

In addition to federal hate crime laws, the Federal Bureau of Investigation (FBI) provides detailed guidelines on data collection for hate crimes reporting in its system of Uniform Crime Reporting (UCR).²⁸ A baseline is that bias is to be reported “only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender’s actions were motivated, in whole or in part, by bias.” To determine that the criminal act itself was motivated by bias, the analyst can take into account a range of factors. These include factors related to the identities of the victims and the offenders, including that: they were of different races, religions, etc.; the victim was a member of a minority within the neighborhood in which he or she lived and in which the incident took place; or the victim was visiting a neighborhood where members of the minority to which he or she belonged had previously been attacked.

The role of the victim as a human rights defender can also be a factor: “The victim was engaged in activities promoting his/her race, religion, disability, sexual orientation, or ethnicity/national origin. For example, the victim was a member of the NAACP (National Association for the Advancement of Colored People) or participated in gay rights demonstrations.”²⁹ A hate crime may also be identified when the victims are not members of the targeted groups, but rather are members of “an advocacy group supporting the precepts of the victim group.” Human rights defenders who are attacked for fighting discrimination may themselves become victims of hate crimes.

Other indicators include the location of an attack (a mosque, a synagogue, a community center), or that the attack occurs on a symbolic date, as in incidents that

coincide “with a holiday or a date of particular significance relating to a race, religion, disability, sexual orientation, or ethnicity/national origin, e.g., Martin Luther King Day, Rosh Hashanah.” Finally, the FBI’s guidelines identify a number of factors in which the perpetrators of an act or the nature of the act itself betray its racist or other bias motivation:

1. Bias-related oral comments, written statements, or gestures were made by the offender, which indicate his/her bias. For example, the offender shouted a racial epithet at the victim.
2. Bias-related drawings, markings, symbols, or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue.
3. Certain objects, items, or things were used which indicate bias. For example, the offenders wore white sheets with hoods covering their faces or a burning cross was left in front of the victim’s residence.
4. There were indications that a hate group was involved. For example, such a group claimed responsibility for the crime or was active in the neighborhood.³⁰

What Data is Collected?

Bias-motivated Incidents

Bias-motivated *incidents* are often recorded with a view to preliminary investigations to determine whether hate *crimes* occurred, but include incidents representing lesser forms of racist and related abuse. While all hate crimes may initially be the object of hate incident reports, not all hate incidents are ultimately determined to be hate crimes. This notwithstanding, a distinction is often drawn between hate crimes and incidents in which the latter term is used to describe a lesser category of discriminatory action. The International Association of Chiefs of Police notes that “[p]rejudicial behavior exists along a continuum including negative speech, discriminatory practices, property damage, physical assault, and murder.” Within this continuum, hate crimes are punishable by statute, and “subject to an enhanced penalty if the crime was motivated by bias.” In contrast, hate incidents are those that “involve behaviors that, though motivated by bias against a victim’s race, religion, ethnic/national origin, gender, age, disability, or sexual orientation, are not criminal acts.”³¹

Ideally, reporting systems should reflect both actions that are punishable by law and abusive actions that fall into a grey area of threats and intimidation that fall short of but approach a punishable criminal act.³²

Hate motivated incidents are recorded and reported separately from crimes in relatively few countries. Police authorities in the **United Kingdom**, for example, publicly report on the number of hate-motivated incidents, separate from those which are ultimately

determined to constitute a criminal offense. For example, the Home Office reported that during 2004/2005, 57,902 racist incidents were recorded by police in England and Wales. Of those, 37,028 were determined to be racially aggravated offenses.³³

This practice originates from the 1999 recommendations of the inquiry into the murder of black London teenager Stephen Lawrence in 1993 that, “the term ‘racist incident’ must be understood to include crimes and non-crimes in policing terms; both must be reported, recorded and investigated with equal commitment”; and this definition “should be universally adopted by the Police, local Government and other relevant agencies.” This subsequently became the norm for British policing.³⁴ While police and civil rights bodies in other countries may also document the number of hate-motivated incidents, notably in Canada and parts of the United States, the data tends to be absent from crime statistics, in which there is a focus on criminal offenses.

As noted, in recording incident reports, one norm, notably in force in **Canada** and the **United Kingdom**, is to give considerable weight in the first instance to the victim’s own stated view of the reason they were attacked. If the victim believes an assault was driven by hatred and prejudice based on their real or perceived identity, the record reflects this as sufficient reason to record a hate *incident*. Further investigation would be required to determine that a hate *crime* had in fact occurred.

In the **United States**, civil rights commissions and other local antidiscrimination bodies also collect both incident and crime reports. For example, the Los Angeles County Human Relations Commission, appointed by the county government, distinguishes bias crimes and incidents and reports in both categories. It compiles and publishes detailed statistical information concerning these incidents, disaggregated by the groups affected.³⁵ There the use of derogatory words or epithets motivated by racism or related violence, where no violence is threatened and there is no apparent ability to harm the person targeted, could be recorded as a hate incident even when no crime under U.S. law was committed. Although these hate incidents are not criminal offenses, they are however important indicators of intergroup tensions and may provide the context of violent hate crimes. In the absence of hate crime legislation, reporting on hate incidents may also help identify a need for new law that acknowledges certain hate incidents as crimes.³⁶

The recommendations of the International Association of Chiefs of Police (IACP) also stress that monitoring should cover *all* bias incidents—and not only those that clearly constitute crimes. People are to be encouraged:

- To report all bias-related incidents to the police, even if these incidents do not constitute hate crimes, so high-risk situations can be tracked and appropriate problem-solving actions can be taken.
- To always report hate crimes to the police; other hate incidents may be reported to community organizations and kept in some central repository or database.
- To ensure that protocols for reporting are clearly stated and widely disseminated to community groups.

In stressing that “[o]fficers should thoroughly document evidence in all bias-motivated incidents,” the IACP stresses data collection’s role in preventing crime and in preparing the response to more serious incidents. “Law enforcement can help to defuse potentially dangerous situations and prevent bias-motivated criminal behavior by responding to and documenting bias-motivated speech or behavior even if it does not rise to the level of a criminal offense.”

Nongovernmental organizations also generally record both racist incidents and hate crimes, and usefully explain this in describing their methodologies in public information documenting hate crimes. The U.S.-based Anti-Defamation League (ADL), for example, in describing its methodology, notes that its ongoing audit of antisemitic incidents “identifies both criminal and non-criminal acts of harassment and intimidation, including distribution of hate propaganda, threats and

slurs³⁷—a distinction of particular importance in the United States, where a high threshold must be met to make threatening speech punishable.³⁸

Similarly, the Community Security Trust, a nongovernmental organization that monitors antisemitic acts in the United Kingdom, distinguishes between acts of extreme violence (with a threat to life), assaults, property damage and desecration, threats, abusive behavior, and the dissemination of antisemitic literature.

Bias-motivated Criminal Offenses

While official bodies in some countries do report on the larger universe of incidents, the norm in most countries that report on hate crimes is to focus on those acts that constitute criminal offenses and are motivated by bias.

The Most Developed Monitoring Systems

A number of countries—**Canada, Finland, France, Germany, Sweden, the United Kingdom** and the **United States** in particular—have developed systems for monitoring hate crimes that are relatively broad and systematic and where data serves as a useful source of information for determining trends and affecting policy. Even in these countries though, there are shortcomings that need to be addressed.

In **Canada**, data collection with annual reporting is currently limited to a number of individual police jurisdictions, although plans are underway to introduce a system of hate crime data collection and reporting at the national level in 2008. Police in certain jurisdictions, like the city of Toronto, publish detailed annual hate crime statistics, disaggregated based on the victim group affected.

In **Finland**, the Interior Ministry publishes annual reports on crimes reported to the police, including crimes involving racist violence. The standardized incident reporting form used by police on which the statistics are based are comprehensive, although it is estimated that little more than half of all “suspected hate crimes” are in fact entered into the system.³⁹ As in most other countries, a deficiency in monitoring racist violence and crime in Finland is that there is no monitoring mechanism in place that enables incidents to be followed through the criminal justice system.⁴⁰

In **France**, government statistics have been useful tools to identify the levels of certain forms of violence motivated by racism and religious bias, in practice predominantly tracking racism against citizens of North African origin and, as a distinct category, antisemitism. Other French minorities are statistically invisible in the annual reports produced by the National Consultative

Commission for Human Rights (CNCDH), the official body that reports on hate crimes using Ministry of Justice figures. 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. There are likewise no published statistics on violence based on sexual orientation. Data on discrimination in France, including hate crimes, is hampered by government policies barring the collection or analysis of data in a way that identifies particular population groups as distinguished by race, ethnicity, religion, or other similar attributes.

In **Germany**, statistics on hate crimes are rigorously and systematically collected in the context of measures to combat politically-motivated and extremist crimes. This framework can however exclude “everyday” racist incidents committed by people who may not be part of right-wing or extremist groups. (In the United States, in contrast, such “everyday” racist acts of violence among neighbors constitute the large majority of all incidents.) The German data collection system may be underestimating the level of bias-motivated incidents by focusing on those committed by extremist groups, or where an express political or ideological background to the crime can be discerned. German statistics on attacks against persons targeted because of their sexual orientation are not made public in annual crime reports, although this information is reportedly collected at the local and state levels for submission to the state authorities.⁴¹

In **Sweden**, the National Council for Crime Prevention (Brå) publishes annual statistics on the basis of police crime reports. The statistics include data on racially motivated/xenophobic crimes, antisemitic crimes, and homophobic crimes. However, the police crime reporting forms do not contain any special codes for specifically registering bias motivations. Instead, annual statistics are generated by putting reports through a computer program that checks for key words related to racism and extreme right-wing activity.⁴² Consequently, hate crimes are thought to be significantly under-reported, with statistics failing to reflect the actual number of hate crime offences in Sweden.⁴³

In the **United Kingdom**, fairly comprehensive hate crimes monitoring and systems are operated by a number of independent police authorities, in particular by London’s Metropolitan Police Service, and the Home Office produces annual statistics on hate crimes in England and Wales. Yet there is no national standard for recording racist incidents and different police forces record them in different ways. For example, according to the Report of the All-Party Parliamentary Inquiry into Antisemitism, all but eight of the 44 independent police forces in England and Wales incorporate antisemitic

incidents into their figures for racist incidents, without producing separate figures for antisemitic incidents.⁴⁴ In those jurisdictions where such offenses are classified as racist acts, the problem of violence motivated specifically by antisemitism is not registered. Similarly, crimes motivated by hatred of those who are perceived to be Muslims, and often involve the dual discrimination of racism and religious intolerance, may be recorded *either* as racist or as “faith-based,” which may skew the statistics toward one bias or another. Finding ways to accurately reflect double discrimination, in particular the intersection between racism and religious intolerance, is an issue that many police forces throughout Europe will need to find ways to address in their data collection.

In the **United States**, the Federal Bureau of Investigation collects data on bias-motivated offenses from local police jurisdictions and produces reports that are disaggregated in accord with the attributes of the victims, geographical distribution, nature of the crime, and by other criteria. However, participation in this aspect of the FBI’s Uniform Crime Reporting Program is optional and there is an uneven participation among the some 17,000 police jurisdictions in the country. Most of the jurisdictions have either opted out of participation (some 5,000) or have reported “zero” as the tally of bias-motivated crimes (some 10,000). This has resulted in an incomplete picture of the incidence of hate crimes in the country, although most major metropolitan areas do participate in the system.

Data on Specific Criminal Code Offenses

In countries that define certain violent hate crimes as distinct offences, data collection can readily track relevant criminal code offences through the criminal justice system. A distinction must be drawn, however, between violent hate crimes and other forms of discrimination that are defined as crimes in different legal systems. Many European countries punish certain forms of speech that fall short of direct incitement to violence as crimes, and include these crimes as “hate crimes” in statistics that do not differentiate between crimes of hate speech and violent hate crime.

For a number of countries, the limited available data is organized strictly around articles of the criminal code defining specific offenses. There are limitations, though, when governments organize their data in this way. Firstly, only those complaints of incidents that have been passed on to public prosecutors are reflected. Secondly, only hate crimes that are defined as specific crimes (and not as specific common offenses with a bias element) will register. The latter is particularly limiting since relatively few countries have criminal provisions which define bias-motivated violence as a specific offense. As a result, the inci-

dence of violence against individuals and property motivated by bias is absent or severely underreported in the hate crime statistics.

In several countries that organize their data in this way—**Bulgaria**, the **Czech Republic**, **Hungary**, and **Poland**—some aspects of bias-motivated violence is defined in criminal law as a separate offense, albeit in a limited fashion. The data on violation of these offenses is the most complete in the **Czech Republic**, where data is provided according to a number of articles of the criminal code related to “hate crime” offenses. For example, the Security Police Department’s 2005 annual report on extremism cites 36 crimes of violence under Article 196 (“violence against a group of inhabitants and against individuals on the basis of race, nationality, political conviction or religion”), for which 47 persons were prosecuted, and 20 crimes under Articles 221 and 222 (intentional serious physical injury), for which 27 persons were prosecuted.⁴⁵

In **Bulgaria**, although the Supreme Prosecution Office reported on 3 cases of incitement to hatred in 2006, it did not report on violent cases under article 162, which punishes “violence against another or damage of his property because of his nationality, race, religion, or political conviction.” In **Hungary**, the Chief Prosecutor’s Office reported 13 cases of violations against provisions outlawing “violence against a member of a national, ethnic, racial, or religious group” and “incitement against a community.” Authorities in **Poland** reported in 2005 on 172 racist crimes of both a violent and non-violent nature, among those crimes that violate provisions outlawing “violence or unlawful threats toward a group of persons or a particular individual because of their national, ethnic, political, or religious affiliation.”⁴⁶

Similarly, data is more readily available on nonviolent criminal offenses since most countries in Europe have provisions criminalizing incitement to hatred and other non-violent forms of expression as a separate offense. In countries like **Lithuania** and **Latvia**, for example, only charges based on incitement provisions figure in statistics on hate crimes, since there are no provisions in criminal law specifically addressing *violence* motivated by bias as a specific offense. Similarly, in **Austria** and **Switzerland**, comprehensive reporting is done with regard to violations of criminal incitement provisions, but violent hate crimes are not distinguished statistically from ordinary cases of crimes such as assault.

In **Belgium**, Justice Ministry hate crime statistics are based upon the registration of crimes by the Public Prosecutors’ office, and include nonviolent offenses of discriminatory action and racist and prejudicial speech. Only the *principal* offense is registered where multiple

offenses are involved, moreover. The statistical system accordingly registers for statistical purposes only the more serious offense when offenses such as assault are combined with offenses such as “racism” or “xenophobia.”⁴⁷ If a crime such as “racism” is in fact registered as the most serious offense, it will be reflected in subsequent statistics on hate crimes, although there will be no clear distinction between those involving violence and other speech-related offenses. Most hate crimes involving violence, if prosecuted, are registered as common crimes, with the element of bias considered either as a secondary factor or disregarded altogether.⁴⁸

In the **Netherlands**, the National Expertise Center on Discrimination (LECD) of the Public Prosecution Service keeps very accurate statistics on the violation of discrimination laws (Articles 137c through 137g and Article 429quater), but does not compile data on violent hate crimes.⁴⁹ Nor does the Public Prosecution Service register hate crimes, although a new registration system is to be introduced that will be capable of registering hate crimes (common crimes with a discriminatory element). The system is reportedly to be phased in during 2007, with the first statistics (including those on hate crimes) to become available. A first national report on hate crimes registered by the Prosecution Service is expected to be available by mid 2009.⁵⁰ Similarly, in **Luxembourg**, data is publicly available on criminal law violations of antidiscrimination provisions, although not on violent hate crimes.⁵¹

Hate Crimes as “Extremist Crimes”

Data collection that reflects the incidence of violent hate crimes is inevitably framed by the way the problem of discrimination and violence is defined in law and portrayed by political decision makers. Although all participating states of the OSCE are committed to international norms to combat discrimination, those that monitor and report on violent hate crimes use different analytical frameworks.

Hate crime incidents and/or offences are addressed in some countries under a broader framework of measures introduced to combat extremist actions and ideologies. In a number of countries, notably **Austria** and **Germany** (as mentioned above), data collection and reporting on *extremism* is the principal way in which the response to violent hate crimes and criminalized hate speech can be discerned in official data.

In **Austria**, the activities of right-wing extremists, including acts of antisemitism, are closely monitored by law enforcement agencies as potential threats to national security.⁵² While crimes committed by individuals believed to have ties with extremist groups are

documented under these provisions, racist violence per se and other related hate violence is not necessarily registered in this system. In its 2005 report on hate crimes in the E.U., the Fundamental Rights Agency (then the EUMC), noted that “[w]hile the [Austrian] administration, through the Ministry of the Interior, puts a lot of resources into monitoring the activities of these *organized* groups, there is a comparative lack of focus on ‘everyday’ examples of racism and racist violence.”⁵³

In the **Czech Republic**, although data is available on violations of specific articles of the criminal code relating to hate crimes (defined to include violent and nonviolent offences), statistics are reported publicly in the context of the Security Police Department’s annual report on extremism. Data on crimes falling into the category of “extremist violence” is disaggregated to identify crimes motivated by racist or other motives, such as antisemitism, and since the beginning of 2005, Islamophobia.⁵⁴

In the **Russian Federation**, there is no separate reporting on crimes carried out with a bias or hate motivation. The Ministry of the Interior’s annual report for 2006 does, however, include a category on crimes “of an extremist nature,” and reports 263 such crimes, up from 152 in 2005.⁵⁵ While Russia’s published statistics don’t provide a breakdown of the crimes considered to be of an extremist nature, inter-ministerial instructions provide a list of the articles of the criminal code which fall within that category. Included among the list are several articles (articles 105, 111, 112, 117, 214, 243, 244) dealing with certain common crimes, when they have been determined to have been aggravated by “national, racial, or religious hatred.” For the purposes of these statistics, an extremist crime includes any crime in which enhanced penalties were sought under the general article 63, according to which national, racial, or religious hatred is considered an aggravating circumstance.⁵⁶

More generally, a study of racist violence in the Nordic countries notes that “concepts of racist/racial violence, right-wing extremist violence, anti-immigrant violence, and violence against immigrants/asylum seekers have been used interchangeably in studies on racist violence,” while noting that “the use of a particular definition serves to emphasize certain elements at the expense of others.”⁵⁷

Thus, violence against political opponents is included in notions of right-wing extremist and neo-Nazi violence, but excluded from the other notions. “Racist violence” and “right-wing extremist violence” may connote a stronger ideological motive and consciousness than what is usually held by the perpetrators. Another example is the fact that the notions of anti-immigrant and anti-foreigner violence do not include

violence perpetrated against people who are not immigrants or of foreign nationality. In multi-cultural European societies, however, racist violence is perpetrated against people as representatives of ethnic minorities based on their phenotypical characteristics or religion, who have lived in their new home country for generations.⁵⁸

Countries With Limited or No Public Reporting Expressly on Violent Hate Crimes

While a number of the countries mentioned above are increasingly making efforts to monitor hate crimes, governments in nearly 40 of the OSCE participating states provide only limited or no public reporting specifically on the incidence of violent hate crimes. Those states include: **Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Georgia, Greece, Holy See, Iceland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovenia, Spain, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, and Uzbekistan.**

Crime Victimization Surveys

In light of the problem of underreporting and underrecording of hate crimes, crime surveys provide an important check on the real level and nature of crime that can be contrasted with the levels of crime reported and recorded by police.⁵⁹ Based on direct contact with representative samples of the population in question, surveys using modern techniques can identify patterns of crime as well as the perceptions of those polled: whether they and their families feel safe in the streets and their homes, whether they have confidence in the police services, and others. The geography, demographics, and varying nature of crime may be shown by surveys in a way that provides an independent analytical tool for policy makers to employ together with data available on cases recorded by the police and other parts of the criminal justice system.

In **Canada**, the General Social Survey on Victimization (GSS) collects information on a range of crimes, based on a telephone-administered survey conducted every five years. This asks Canadians aged 15 years and older about their personal experiences of victimization whether or not the incident was reported to police.⁶⁰ The survey “asks about police reported and non-reported hate motivated crimes, and why they were unreported, as well as the fear of becoming a victim of hate motivated crime. This together with the police reported incidents give us a better picture of what hate crime looks like in Canada.”⁶¹ The last such survey was

carried out in 2001 and the results released to the public in 2004.

Data collection in **Finland** on racially motivated crime is undertaken based on information collected by the police and the courts, as well as victimization surveys. Information about victims of crime is gathered “by means of interviews or questionnaires addressed to the public at large in order to explore the experiences of crime victimization in the population or within certain special groups,” including surveys of those of immigrant origin.⁶²

In the **United Kingdom**, an annual national victim survey that is 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. 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, a 13 percent decrease.⁶³

The **United States'** National Crime Victimization Survey (NCVS), undertaken on behalf of the Department of Justice by the Bureau of the Census, is based on interviews with “a nationally representative sample of 77,200 households comprising nearly 134,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States.”⁶⁴ Inclusion in the survey under the NCVS definition of a hate crime requires that corroborating evidence of hate motivation must be present at the incident:

- the offender used derogatory language
- the offender left hate symbols, or
- the police confirmed that a hate crime had taken place.⁶⁵

Although the NCVS provides the data needed to track hate crime victimization, its findings on hate crimes are published only after years' long delays. The most recent summary of hate crime data, for example, covers NCVS findings for the 2000-2003 period.⁶⁶ In the 2005 report summarizing the surveys, released in September 2006, there is no single reference to hate crimes or to the data collected on their nature and incidence.⁶⁷

The study of the 2000-2003 victimization surveys in the United States in many ways confirmed the findings of other less extensive reviews of data elsewhere, in particular concerning the tendency toward extreme violence in hate crimes.⁶⁸ According to data compiled from victim reports, “hate crimes were more likely to be violent—a sexual assault, robbery or simple or aggravated assault—than crimes not associated with the characteristics of a hate crime.” “Approximately 84% of NCVS hate crimes and 23% of non-hate crimes were violent offenses,” while in a third of all hate crimes victims reported a major violent crime: “a rape, robbery, or an assault in which a victim was injured or threatened with a weapon.”⁶⁹

Similarly, the survey over three years found that “Almost all bias crime victims cited offenders' remarks as evidence for classifying the offense as a hate crime:”

Victims of hate crimes knew the crime they experienced was hate related because offenders made fun of them, made negative comments, used slang, hurtful words, or abusive language. About 99% of victims encountered hate-related language, irrespective of the offenders' motives.

What Does the Data Say about Bias Motivations?

Although a growing number of countries—albeit still far too few—are collecting data on hate crimes, those statistics often don't reveal much about those targeted, thus limiting the potential of such information to serve as a useful tool in developing policy to ensure equal rights and protection for target groups. Most countries that publish hate crimes data report on the incidence of “racist” crime, a concept generally held to embrace bias founded on ethnic origin, color, national origin, immigrant origin, and often to subsume characteristics such as language, religion, culture, and even form of dress. Other types of bias-motivated violence that aren't racist, or in which racism is only one element—such as violence motivated by religious intolerance, sexual orientation, and disability, are more rarely reported in official statistics.

Some examples of recent hate crimes are included at the beginning of each section.

Antisemitism⁷⁰

In Lisbon, a man released on September 15, 2007 without bail for an attack on an immigrant on the occasion of Hitler's birthday was arrested less than a week later while reportedly vandalizing a Jewish cemetery in Lisbon. The suspect was reportedly a member of the neo-Nazi movement National Front, and in the possession of firearms and a grenade when detained. Charges pending are reported to include assault and three weapons charges.⁷¹ Portugal does not have general provisions for penalty enhancement for hate crimes, and although the law provides for

penalty enhancement for assault causing bodily harm when motivated by bias, but this is rarely applied. Portugal does not monitor and report on hate crimes.

In Belarus, Jewish organizations reported more than 30 cases of vandalism of Jewish cemeteries and property in 2007.⁷² Although Belarusian law does allow for enhanced penalties in cases of vandalism motivated by religious intolerance, there are no known cases in which Belarusian authorities have ever used these provisions. The government likewise does not monitor or report on hate crimes, including those motivated by antisemitism. During an October 12, 2007 press conference, President Lukashenko himself uttered an antisemitic outburst when he characterized the city of Bobruisk as “a Jewish city, and the Jews are not concerned with the place they live in. They have turned Bobruisk into a pigsty.”⁷³

In France, on July 21, 2007, a 23-year-old Jewish man was violently attacked while on his way to the synagogue. The attacker, who was later arrested and charged with a hate crime, beat him with a metal bar while shouting antisemitic epithets. The victim of the attack was wounded in the head and suffered a broken arm. Responding to the attack, the French National Bureau of Vigilance Against Anti-Semitism issued a statement deploring that “the situation of many Jews becomes more and more intolerable and appalling despite the measures taken by the authorities.”⁷⁴ The French authorities do monitor hate crimes, including those motivated by antisemitism, and there are provisions in the criminal code that allow for enhanced penalties in cases of bias-motivated violence.

Since 2002, Human Rights First has worked to draw international attention to a disturbing rise in antisemitic violence in Europe—a revival of the ancient hatreds of antisemitism with horrific echoes of the climate in Europe that prevailed on the eve of the Holocaust. Human Rights First has documented the renewed rise of antisemitic hate crimes, including its new political dimensions, in a series of major reports and promoted an action plan to address these crimes as serious violations of human rights. Human Rights First has in particular pressed governments to document and respond to the violence of antisemitism with public statements, effective monitoring and reporting, and strong action by law enforcement and the courts.

In a special report on antisemitism published as part of the 2007 Hate Crime Survey, Human Rights First reported that antisemitic attacks remained at historically high levels in 2006, with an increasing proportion of these incidents involving violent attacks against persons. This analysis was made possible largely by independent NGO monitoring and reporting—and important data collection undertaken by a handful of governments, including **Canada** (in some police jurisdictions), **France, Germany, Sweden,** the **United Kingdom** and the **United States**. Most European governments still neither monitor nor report on antisemitic violence, which we see as a policy of indifference.⁷⁵

A December 2006 report on antisemitism by the E.U.'s principal antidiscrimination body, the EUMC, found that only nine of the 25 E.U. Member States—Austria, Belgium, the Czech Republic, Denmark, France, Germany, the Netherlands, Sweden, and the United Kingdom—provide statistics on antisemitic incidents, and that most do so indirectly. For example:

- Police in **Austria** and **Germany** report on antisemitic incidents, but only in the context of recording right-wing extremist activity.
- In **Belgium**, police do not officially record antisemitic incidents, although the CEOOR, an official specialized body, does compile statistics on “allegations of antisemitism.”
- In **Denmark**, police record antisemitic incidents as racist, although incident reports can be accessed that distinguish those motivated more specifically by antisemitism.
- The statistics available for the **United Kingdom** are documented by the Community Security Trust (CST), a nongovernmental organization, rather than from an official body (although the CST draws upon publicly available police information).
- Statistics on antisemitism in the **Netherlands** are likewise documented by a nongovernmental or-

ganization, the Centre for Information and Documentation on Israel (CIDI).

The EUMC concluded that the other E.U. member states are unable to provide any official statistics on antisemitic incidents.⁷⁶ Most other European and Central Asian states in the OSCE region similarly do not monitor and report on antisemitic incidents.

To a certain extent, NGOs have been able to conduct independent data collection and analysis, which fills the gap created by the absence or inadequacy of official data collection. Among the most effective such organizations are the Community Security Trust (United Kingdom), the Representative Council of Jewish Institutions (France), the Center for Information and Documentation on Israel (the Netherlands), the Executive Committee of Community Monitoring (Belgium), and the SOVA Center for Information and Analysis (Russian Federation). In North America, the Anti-Defamation League in the United States and the League for Human Rights of B’Nai Brith in Canada also provide comprehensive annual statistics on antisemitic incidents in those countries. The Stephen Roth Institute compiles an annual report on antisemitic incidents worldwide, with a large proportion of the countries covered by this reporting belonging to the OSCE.

Violence against Muslims⁷⁷

On October 24, 2007, in Italy, a masked man on a motorcycle reportedly threw a firebomb into the courtyard of the Alif Baa Islamic Centre, in Abbiategrasso, near Milan, although no major damage or injuries were reported. The center had reported similar attacks earlier this year on July 25 and August 10. This was reportedly the eighth assault against Islamic centers in the region of Lombardy in recent months. On August 5, a mosque in the nearby city of Segrate was attacked and the car of the Imam, Hamid Zariate, was destroyed.⁷⁸ Italy does not publish detailed statistics on hate crimes.

On the early morning of June 30, 2007, in the United Kingdom, four men reportedly jumped from a car in Blackley and attacked and repeatedly stabbed Ghulam Mustafa Naz, a Muslim religious teacher, leaving him seriously wounded. On August 9, assailants attacked the 58-year-old Iman of the Central Mosque, in London’s Regents Park, who required emergency surgery to both eyes as a result (his name has been withheld).⁷⁹ On August 3, a mosque in Bradford was seriously damaged in an arson attack.⁸⁰ The incidents were among a serious of attacks attributed to backlash attacks in the wake of failed car bombings in London’s West End and at the Glasgow airport in June.⁸¹

Systems of hate crime data collection and criminal law providing for enhanced penalties for crimes motivated by racist or religious animus are in force in England and Wales.

Only **Canada** (in some police jurisdictions), and the **United States** report on “anti-Muslim” crimes. The **United Kingdom** reports on such crimes in its statistics on faith-based crimes, although it is moving toward a system of classification that will add the category “motivated by Islamophobia.”⁸² **France** reports on anti-Muslim crimes only indirectly—finding that a majority of reported racist crimes are committed against people of North African origin who are typically Muslim. NGO statistics have not yet been able to fill the data deficit there.

In **France**, official statistics for 2006 provided by National Consultative Council for Human Rights (CNCDH) distinguish between antisemitic and racist and xenophobic offences. The findings identify people of North African origin (*maghrebines*)—typically Muslims—as the most affected by racist and xenophobic offenses, accounting for nearly 70 percent of the total.⁸³

In the **United Kingdom**, statistics produced by London’s Metropolitan Police Service on “faith-based” hate crimes in London registered 692 such hate crimes in the year 2004/2005, while the figure increased to 1,103 in 2005/2006. The figures include hate crimes perpetrated against members of various faiths, although the large majority of attacks are against Muslims, those suspected to be Muslims, or their property (antisemitic crimes are categorized separately).⁸⁴

In **Canada**, detailed statistics on hate crimes are maintained by several metropolitan police authorities, and a federal anti-discrimination plan has been adopted that is eventually to provide for national hate crimes statistic collection. In 2006, a total of 162 hate/bias crimes were reported in Toronto, representing a 23 percent increase over the 132 incidents reported in 2005. Fifteen of these 162 hate crimes, for example, were categorized as anti-Muslim, while 13 separate offences were tabulated as “anti-Pakistani.” Fifteen cases were described “multi-bias” offences, where offenders were motivated by more than one animus: these included 2 offences described as “anti-Sunni.”⁸⁵ The number of anti-Muslim offences increased in 2006 over 2005 levels, when just 3 of the 132 hate crimes tabulated by the Hate Crimes Unit were classified as anti-Muslim, and 7 were classified as anti-Pakistani.⁸⁶

In the **United States**, the FBI’s Uniform Crime Reports program produces a yearly report on the number of

incidents, offenses, victims, and known offenders under a wide range of bias categories. In 2005, 128 anti-Islamic incidents were recorded, with 146 offenses, 151 victims, and 89 known offenders. Incidents are only recorded by participating police jurisdictions if they are considered to constitute a specific offense.⁸⁷

Reporting on incidents and offences by nongovernmental groups provides some information on the nature and extent of violence against Muslims, compensating in part for the absence or incomplete nature of official data. In the **United States**, local and national organizations, like the Council on American-Islamic Relations (CAIR) and the American-Arab Anti-Discrimination Committee (ADC) are tabulating hate incidents against the Muslim community.

In its annual report on anti-Muslim incidents, released in September 2006, CAIR reported an almost 30 percent increase in the total number of complaints of anti-Muslim bias from 2004 to 2005. CAIR reported 1,972 incidents of anti-Muslim violence, discrimination, and harassment in 2005, a rise of 26 percent over the 1,522 cases reported in 2004 using the same methodology.⁸⁸

Violence Based on Sexual Orientation⁸⁹

*A series of violent attacks on gay men in Amsterdam raised the profile of homophobic hate crimes in the Netherlands in 2007, and city officials reported that 26 such attacks had been reported during the first six months of the year, in contrast to the 26 incidents reported there in all of 2006. No official national statistics are released in the Netherlands, but Amsterdam has commissioned a study of rising hate crimes there.*⁹⁰

In October 2007, a first indictment under Croatia’s new hate crime law was reported, with prosecutors indicting a man for an attack on a Gay Pride parade in Zagreb in July. The man was detained when preparing to throw Molotov cocktails at participants in the central square.⁹¹ No official statistics on violent hate crimes are regularly reported in Croatia.

Few of the OSCE participating states track and provide statistics on crimes motivated by sexual orientation bias. **Canada**, **Sweden**, the **United States** and the **United Kingdom** are the countries where such monitoring is most developed, although only the United States produces comprehensive official statistics nationwide.

There are national hate crime figures in the **United Kingdom**, but these do not track crimes motivated by

bias based on sexual orientation. Within the United Kingdom, London's Metropolitan Police is the independent police authority with the most consistent and comprehensive monitoring on sexual orientation bias crimes. Official statistics though are thought to represent only the tip of the iceberg as police themselves estimate that some 90 percent of homophobic hate crimes go unreported. The percentage of unreported homophobic hate crimes is suspected to be considerably higher than for racially- or religiously-motivated violence, even though the police there have made a concerted effort to improve their relationship with the capital's gay population.⁹²

In **Sweden**, the Swedish Security Service has, since 1997, published statistics on hate crimes with a xenophobic, antisemitic, or homophobic motive. As of 2006, the National Council for Crime Prevention has been commissioned to produce hate crime statistics. In 2006, out of a total of 3,259 reported hate crimes, there were 684 with a homophobic motive.⁹³

In two other European countries, reporting on hate crimes is systematic, although violence based on sexual orientation is left out of the picture in published statistics. In **France**, a law against violent crimes motivated by bias founded on sexual orientation was enacted on March 18, 2003, yet official data collection has lagged behind (or has simply not been made public). Currently, the statistics collected by the Interior Ministry and made available in reporting by the National Consultative Council for Human Rights (CNCDH) concern only antisemitic and racist offenses (in practice, those targeting people of North African origin). In **Germany**, annual public reporting on extremist crimes does not provide information on crimes against the lesbian, gay, bisexual and transgender (LGBT) community, although police sources have told Human Rights First that this information is in fact collected locally and at the state (*Bundesland*) level.⁹⁴

While there is no nationwide uniform reporting in **Canada**, a number of police agencies in metropolitan areas report on hate crimes, including those motivated by sexual orientation. In Toronto, for example, police reported 13 occurrences representing 10 percent of the total reported bias-motivated crimes in 2005.⁹⁵ The police in Calgary reported 16 offenses motivated by sexual orientation in 2005 out of a total of 96 reported bias-motivated crimes.⁹⁶

In the **United States**, the Uniform Crime Reporting Program of the Federal Bureau of Investigation reported that in 2005 there were 1,017 incidents motivated by a sexual orientation bias. This figure

represented about 14 percent of the total 7,163 reported offenses motivated by bias.⁹⁷

In the absence of police or other official reporting, gay rights organizations in some countries collect statistics and report on incidents of violence against the LGBT community. In **Germany**, for example, a number of organizations representing the interests of the LGBT community have released reports on violence based on sexual orientation. No one organization produces national statistics—rather reporting generally covers a particular city or state. In its most recent report, the Berlin-based organization Maneo, which monitors reports of violence against gays made by victims or provided to the organization by the police, reported 197 cases of anti-gay violence in Berlin in 2005.⁹⁸

In **France**, *SOS homophobie*, in its eleventh annual report on homophobia in France, reported on 1,332 incidents of homophobia, representing a 10 percent increase over 2005. The organization expressed particular concern by the 17 percent rise in the number of physical assaults in comparison with 2005. The number of physical attacks in 2006 represents 12 percent of the total number of incidents reported.⁹⁹

In the **United States**, the National Coalition of Anti-Violence Programs (NCAVP), a coalition of anti-violence non-governmental organizations from across the country, produces annual reports on bias-motivated violence against the LGBT community. In its report for 2006, NCAVP reported on 1,393 anti-LGBT incidents.¹⁰⁰

Violence Based on Disability Bias

In November 2007, the organization Mind, the leading mental health charity in England and Wales, released a report on the harassment and victimization of people with mental health problems. It found that 71 percent of its respondents were victimized in the past two years—a proportion eleven times greater than that of the general population. Twenty-two percent said they had been victims of physical assaults, 10 percent of sexual assault, and 41 said they were victims of “ongoing bullying.”¹⁰¹ Major recommendations of the report were that British Crime Survey should better monitor abuses of people with mental health problems, and that sentences of perpetrators of such crimes should be enhanced.

The disabled are a group whose victimization is thought to go largely unreported and unrecorded. 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....”¹⁰² 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.”¹⁰³ As in the case of the double discrimination of racism and gender, gender and disability bias, too, frequently took the form of sexual violence.¹⁰⁴

Hate crime statistics published by the Police Services of Northern Ireland (PSNI) for the 2005/2006 monitoring year covered 70 disability-based incidents and 38 crimes, including 21 assaults and woundings.¹⁰⁵ 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 offenses), and exceeded only in homophobic crimes (68.2 percent of 148 offenses).¹⁰⁶

In its 2006/2007 report, the PSNI reported 48 disability-based incidents and 26 crimes.¹⁰⁷ Violence again accompanied a high percentage (61.5 percent) of disability-based crime.¹⁰⁸ The proportion of crimes of violence in disability-based bias crimes continued to be far higher than that of racist crimes (37.6 percent), crimes of “faith/religious” motivation (50.8 percent), and sectarian crime (44.5).¹⁰⁹

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 hate crime legislation that extends to crimes based on disability bias, and a draft hate crimes statute was approved by the executive.¹¹⁰ More than two years 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 based on disability bias.

In the **United States**, the Leadership Conference on Civil Rights has observed that disability-based 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.¹¹¹ Even when crimes are reported, the disability dimension may not be investigated or recorded.¹¹² 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.¹¹³ Just 0.7 percent of the total of 7,160 hate crime incidents registered were classified as disability-based in 2005.

The contrast between the figures of actual offences registered with the FBI’s annual Uniform Crime Reports (UCR) for disability-bias crime and the estimated figures for such crimes revealed in the U.S. National Crime Victimization Survey (NCVS) is striking. The NCVS estimates for the one period for which data has been made public, 2000-2003, puts victim-reported disability bias crimes at more than 10 percent of the estimated totals of around 200,000 incidents yearly.¹¹⁴ In recent years, disability-bias offences represented just less than 1 percent of the around 8,000 hate crimes reported annually in the UCR data.¹¹⁵

Violence against Minorities and Immigrants

On October 7, 2007, in Spain, a young man was filmed on security cameras insulting, kicking, and punching a 16-year-old girl of Ecuadorian origin on the Barcelona metro. A suspect was detained almost two weeks later, but subsequently ordered released without bail, although required to report twice daily to police pending trial. The incident brought national and international attention to the issue of violence against immigrants in Spain.¹¹⁶ Although Spain has legislation providing for enhanced penalties in cases of racist and other bias crimes, these provisions are rarely applied and no official statistics on hate crimes are made public.

On August 19, 2007 in the German town of Muegeln, a mob attacked eight men of Indian origin and the immigrant-owned pizza parlor in which they sought refuge, resulting in bruises, cuts, and other injuries. Three men were summarily fined for minor offenses in relation to the incident, and one faces a charge of property damage and “race hate”—a charge reportedly not previously heard by the courts. Germany has no hate crime law that provides for enhanced penalty for hate attacks, but collects data on crimes characterized as “extremist.”¹¹⁷

Racist violence in Europe affects minority nationals and recent immigrants alike. In much of Europe attacks on people of sub-Saharan African origin in Europe are endemic. They are also poorly documented—an example of serious blind spots in official statistics on hate crimes and in monitoring and reporting by nongovernmental organizations. Anti-immigrant bias changes over time in response to economic hard times, political upheavals, and international events, with immigrants often made scapegoats in nationalist political discourse. The threat of international terrorism has become only the latest factor driving anti-

immigrant bias and xenophobia in many parts of Europe.

The level of victimization of immigrants, in particular recent immigrants and those of irregular immigration status, may be particularly difficult to document through police statistics on crime reports. Immigrants, including those of longstanding legal status, may be more reluctant to trust the police, face linguistic or cultural barriers to reporting, and fear further violence or reprisals from members of the majority population should they make waves. Immigrants who have no legal status may in particular fear making themselves known to authorities even when they are victims of ongoing harassment and violence and serious crimes.

Despite the underreporting of hate crimes directed at immigrants and those of immigrant origin, survey methodologies have produced significant evidence that this population suffers a higher rate of victimization and is more likely to live in fear than majority populations.

Who Collects the Data?

The Police

Police everywhere are at the forefront of the effort to monitor, assess, and combat crime of all kinds. In many countries, the only channel of redress for hate crime is through a formal complaint to the local police. Even where official anti-racism bodies exist, factors such as facility of access, transparency of procedures, the nature of interaction with community-based organizations, and perhaps above all, the confidence established by such organizations with minority communities may mean that such bodies receive reports of only a small percentage of actual incidents. The victimized communities' lack of familiarity with official procedures also constitutes a barrier to formal reporting, which is compounded by fear or distrust of public authorities.¹¹⁸

The procedures and practical means of recording complaints and the details of police investigations can make all the difference between effective and ineffective data collection. Police may routinely seek to discourage complainants from pressing forward with a formal complaint, reflecting their own perceptions toward the seriousness of racist incidents and bias crimes, institutional attitudes founded on a reluctance to take on a larger work load, or bias on the part of those receiving the complaints themselves. Police procedures can either facilitate or discourage the documentation of public reports of bias crimes.

Internationally-recognized police experts are increasingly calling for more inclusive recording and investigation of hate crime elements by police. In a February 2006 OSCE study of policing in multiethnic societies, policing experts concurred that *all* crimes in

which racist motivation are alleged should be investigated—a view that could equally be applied to motives driven by other forms of prejudice:

The element of racism or ethnic hatred in crime is often explicit, though sometimes it may be subtle or concealed. In multi-ethnic contexts, police should always consider the possibility of such motivation in crime, and (regardless of their own initial view on the matter) should always accept for investigation the allegation of the victim or any other person that an element of racial motivation was involved.¹¹⁹

While the obligation of governments to act with due diligence to investigate either direct or indirect discrimination is an established principle of international human rights law, the OSCE's police experts have also cited European case law to this effect. In this respect, the judgment by the European Court of Human Rights in the *Nachova* case “makes clear that all European States have an obligation to investigate possible racist motives behind acts of violence.”¹²⁰

The same experts' report summarized the importance of improved police monitoring, reporting, and investigation of complaints of racist and related violence, while identifying particular obstacles to be overcome:

In order to combat crime motivated by ethnic hatred effectively, the first requirement is that police must have procedures for recording such crimes, and for investigating them effectively. These procedures need to ensure that evidence of the element of ethnic motivation is properly collected so that it can be presented in court. Police officers need to be trained so that they follow these procedures, and understand why they are important. Police need to ensure that not only majorities but also minorities, who are disproportionately victims of such crimes, have the confidence to report such

crimes, and police should co-operate with NGOs and community groups for this purpose. Police should also compile anonymized, aggregated statistical information about such crimes, and analyze it so that they can monitor the incidence of such crime and their own effectiveness in responding to it.

The Courts

In many countries in which statistics are unavailable from the police on reported hate incidents and offences, detailed information is in fact available from the justice system on those cases that have been brought before the courts. In the majority of these cases, however, information on particular crimes is coded exclusively by penal code designations. This may allow administrators and policy makers to track prosecutions through the legal process from indictment to final conviction, while generating statistical data on violent hate crimes only if such crimes are defined as specific offences.

Even where states report statistics on crimes of discrimination to the OSCE, what is reported often excludes coverage of violent hate crimes. In contrast, statistics are provided for the criminal code offenses of “discrimination,” “racism,” or “xenophobia” that punish discrimination in hate speech and a range of nonviolent acts of discrimination. Statistics on such crimes are readily available, as they can be identified by specific criminal code articles, but they have almost no correlation with the incidence of violent hate crimes reported to police. In most cases involving violent attacks or imminent threats of violence charges are brought under criminal code articles defining common crimes. These, then, are not flagged as hate crimes for statistical purposes.

A major obstacle to statistical reporting is that crimes involving violence, even when laws require more serious punishment for bias crimes, are generally prosecuted as violations of common crimes (assault, arson, vandalism, murder). When reflected in statistical reporting, the numbers and analysis give no indication that they were also hate crimes. The details of the records of racist assaults that may be reflected in initial incident reports recorded by police fall away, at least for statistical purposes, at the next level, where the system is geared to count criminal cases without reference to aggravating factors.

At the prosecutorial level, systems are normally structured to count cases brought under specific articles of the criminal code, without taking into account procedural norms in which hate motivations should be flagged as aggravating factors. Although a growing number of countries have provisions in law identify hate

motivations as aggravating factors in sentencing, the application of such norms is almost invisible statistically.

Specialized Antidiscrimination Bodies

Specialized anti-discrimination and human rights bodies 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.

European Union anti-racism directives require member states to establish specialized anti-discrimination bodies with significant powers to initiate investigations and make findings public, to have access to official information, and to act on behalf of victims of racist violence.¹²¹ Council Directive 2000/43/EC of June 29, 2000, the Racial Equality Directive, was intended to implement the principle of equal treatment between persons irrespective of racial or ethnic origin. Its article 13 requires member states to designate a specialized body (or bodies) for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.

Council of Europe members are encouraged to establish specialized anti-racism bodies in line with ECRI's General Policy Recommendations No. 2, adopted in June 1997, and No. 7, adopted in December 2002. The former called on member states to consider “setting up a specialized body to combat racism, xenophobia, antisemitism and intolerance at a national level,” and included a body of principles to serve as guidelines for such a body. These bodies are to be tasked with providing assistance to victims and mandated by law with investigative powers, the right to initiate and participate in court proceedings, monitoring legislation, and providing advice to legislative and executive authorities, as well as to raise awareness of issues concerning racism and racial discrimination. E.U. and Council of Europe recommendations on specialized agencies do not expressly call for data collection by these bodies, but can be read in conjunction with other recommendations by these bodies to this effect.

The specialized antidiscrimination bodies required by the E.U. may cover both racism and other forms of discrimination, although most have opted to limit their scope to combating racism. Exceptions include the Centre for Equal Opportunities and Opposition to Racism (*Centre pour l'égalité des chances et la lutte contre le racismisme*, CEOOR) in **Belgium**. Its mandate

was extended by law in February 2003 “to cover other grounds of discrimination such as marital status, sexual orientation, birth, fortune, age, religion or belief, current or future state of health, a disability or other physical characteristics.”

Notwithstanding the focus of most specialized bodies on racism, most have opted to exclude a programmatic response to racist and related *violence* from their work. Belgium’s CEOOR again is a recent exception, and now has a strong legal mandate to pursue individual hate crime cases through the courts. While information on progress in addressing individual complaints is provided on CEOOR’s website, no quantitative data on violent hate crimes had been made available.

In **France**, the National Consultative Commission for Human Rights, (*Commission Nationale Consultative des Droits de l’Homme*, CNCDH), too, undertakes a broad range of action to combat hate crimes, and publishes annually a summary and analysis of statistics provided by the Ministry of the Interior.

Other antidiscrimination bodies leave the issue of violent hate crimes largely to the police. In the **United Kingdom**, for example, the Commission for Racial Equality (CRE) works within the scope of the Race Relations Act 1976, which makes it unlawful to discriminate against anyone on grounds of race, color, nationality (including citizenship), or ethnic or national origin. This notwithstanding, the commission told Human Rights First that “The CRE does not however deal with hate crimes.”¹²²

Specialized bodies also include ombudsmen with specific mandates to address racism and other forms of discrimination. Discrimination that takes the form of violent bias crimes, however, is often not addressed. In some cases, ombudsmen may consider hate crimes to be outside of their purview unless expressly defined by law to be in their mandate. In **Sweden**, protection against discrimination is promoted by a number of specialized bodies including an Ombudsman for Ethnic Discrimination and an Office of the Ombudsman for Disability-Based Discrimination. These offices do not, however, address violent hate crimes.¹²³ The Office of the Special Ombudsman for Disability-Based Discrimination informed Human Rights First that it does not address disability-based hate crimes on the grounds that legislation guiding its work does not mandate this.¹²⁴

In contrast, **Sweden’s** Office of the Ombudsman against Discrimination on Grounds of Sexual Orientation, while operating under a similar mandate, provides important information on the outcome of prosecutions for sexual-orientation bias crimes on its website. An example of homophobia as an aggravating circumstance, from a January 2006 verdict, was posted on the ombudsman’s website and includes all of the basic information required by monitors:

Two men, 22 and 26 years old, were charged with two accounts of arson, consisting in throwing fire bombs into a building used by the local branch of the Swedish Federation for Lesbian, Gay and Transgender Rights (RFSL) in the town of Piteå in northern Sweden. They were both convicted of arson and were sentenced to 4.5 years in prison, the Court taking into special account the homophobic motives of the perpetrators as an aggravating circumstance.¹²⁵

Specialized bodies also exist at the level of local government. In the **Netherlands**, a network of some 35 local Anti-Discrimination Bureaus provide a helpful and sympathetic source of assistance to those confronting discrimination, although most victims of hate crimes there recur initially to the police. While providing practical assistance to victims of discrimination, the network publishes only limited information on violent hate crimes.¹²⁶

Constraints on Data Collection

Underreporting

A series of hurdles must be overcome, not least by the victims of these acts, if bias incidents and hate crimes are to be reflected in official statistics. Incidents may in particular be underreported where victimized groups have no confidence that law enforcement authorities will provide protection or redress. A 2005 study in the Canadian province of Ontario described as “a common message” of those interviewed:

Many victims of hate activity and their communities are deeply concerned that their experience of hate is not recognized by police, the justice system and other public institutions. Hate motivated acts are ignored, denied, diminished and/or viewed as random criminal offences and treated as such.¹²⁷

Underreporting may be exacerbated when a group fears not only indifference but abuse at the hands of the police, particularly when law enforcement personnel have a reputation for the same prejudices that motivated a victim’s attackers.

Constraints on reporting can also arise when a victim fears reprisals may be taken for reporting an incident to the police, particularly if there is no provision for confidentiality in incident reporting or witness protection. Similarly, a victim with uncertain immigration status may also fear that coming forward will both afford no redress and expose the victim to deportation: a phenomenon that extends also to common crimes, exposing immigrants in many countries to predatory attacks and exploitation without fear of effective police action.

Some groups may face cultural or social obstacles to reporting attacks and threats. Hate crimes that include sexual abuse of women may remain in the shadows because of cultural taboos, combined with a lack of confidence that complainants will be treated with respect. Members of other groups—in particular members of sexual minority groups—may also be less likely to have full confidence in either law enforcement or local political authorities, and thus may report only the most serious crimes.

Attacks motivated by hatred or bias against lesbian, gay, bisexual, or transgender people may go unreported both through victims’ lack of confidence in police and because to file a report can bring into the light an individual’s sexual orientation. Special units to deal with victims, with police officers trained in dealing with these issues, have been established in a number of countries to help overcome these obstacles.

A hate crimes guide for police officers produced by the International Association of Chiefs of Police lists a range of reasons victims may be reluctant to report a hate crime or participate in police investigations:

- fear of re-victimization or retaliation
- fear of having privacy compromised
- for gays and lesbians, fear of repercussions from being “outed” to family and employers
- fear of law enforcement and uncertainty about justice agency responses
- for aliens, fear of jeopardizing immigration status, being reported to INS or deportation
- humiliation or shame about being victimized

- lack of a support system
- cultural and language barriers¹²⁸

The E.U.'s Fundamental Rights Agency (FRA) has identified the issue of public confidence as an important indicator in the evaluation of the official data collection systems of criminal justice systems. This is broken down into several questions:

- Are victims and witnesses encouraged to report incidents of racist victimization?
- Does the public trust the police to respond to them professionally and sensitively?
- Does the public believe that the police can do anything about their victimization; that is, do they think they can find and charge the offender/s?¹²⁹

Obstacles to Recording Bias Motivations

A reluctance of many to report even serious hate crimes to the police may derive in part from the attitudes of police and to aspects of police training and procedure. Problems of overt bias may be combined with an organizational culture that has failed to accept the importance of special measures to combat hate crimes, so that hate crime complaints get at best a low priority. Resistance to recording the bias element of hate crimes also derives from bureaucratic pressures to reduce paperwork while narrowing the gap between cases open and crimes resolved.

Police attitudes are a crucial factor in determining whether the public has the confidence to report violent hate crimes, and are in turn influenced by the attitudes and instructions of political officials, prosecutors, and perhaps most directly, senior police officers. Police training, effective reporting procedures, and accountability protocols for compliance with procedural norms can be important ways to improve police hate crime information and response systems, and in doing so to win public confidence. Training and procedural oversight can also help overcome entrenched attitudes in those criminal justice systems that reflect the prejudices of broader societies, particularly when these are inimical to the fair and equal protection of groups that face discrimination and violence. The creation of special hate crime units and the assignment of specially-trained liaison officers can go some way to overcoming these obstacles.

Institutional obstacles to accurate *recording* within the law enforcement system can be major factors behind underreporting. Even well-documented hate crimes

may be recorded as common crimes—because there is a lesser burden of proof or less paperwork, a lack of understanding of the system, or a reluctance to accept the importance of its implementation. Even when bias does not arise, there may be a tendency to write off even pervasive abuse as low-level harassment or inconsequential common crimes. In considering the merits of hate crime monitoring systems, for examples, the FRA asks the questions:¹³⁰

- Do the police systematically record all 'racist' (and/or religiously motivated) incidents reported to them?
- Are the police trained and encouraged to accurately record 'racist' incidents?

Studies of hate crimes monitoring in the United States have referred to problems of “departmental culture” as an obstacle to the recording of bias elements—described as the responsible agency’s “organizational commitment and general sensitivity toward bias crime.”¹³¹ This concerns the “level of priority” given to addressing bias crimes—a matter of resources, the orientation toward the community in question, and the perspective of leadership.¹³²

Deeply engrained racism and other bias in police institutions can also play a dominant role, particularly where officers exercise high degrees of discretion in the recording of the details of bias when complaints are made. This can extend both to what is recorded in records of complaints, and to how police investigations are conducted when evidence of racism is present.

The inquiry in the United Kingdom into the 1993 murder of black teenager Stephen Lawrence found that London’s Metropolitan Police was riddled with “institutional racism” and that this had played a significant role in the indifference and incompetence displayed by police assigned to investigate the case.¹³³ The 1999 report took as a point of departure that there was significant underreporting of “racial incidents” throughout the country, and concluded that this was “occasioned largely by a lack of confidence in the police and their perceived unwillingness to take such incidents seriously.” The inquiry concluded that “a core cause of under-reporting is the inadequate response of the Police Services.”¹³⁴

The Lawrence inquiry’s recommendations for better monitoring and reporting of hate crimes were put into practice, including performance indicators in relation to “strategies for the prevention, recording, investigation and prosecution of racist incidents; measures to encourage reporting of racist incidents; [and] the number of recorded racist incidents and related

detection levels,” as well as monitoring and reporting of “levels of complaint of racist behavior or attitude and their outcomes.”¹³⁵

The perspectives of public officials also come into play. Where superiors downplay the severity of a bias-motivated threat or an act, subordinates are unlikely to take the initiative to investigate bias elements of crimes or to reflect these in their reports. Other factors may include a perception that “a crime is a crime”—taking issue, for example, with the very principle that an assault or a murder motivated by bias should be distinguished from other similar crimes.¹³⁶ At the same time, the severity of the criminal act has also been identified as a factor in the failure of police to recognize the elements of a hate crime. A murder might well be seen as a sufficiently serious crime to make the incorporation of a bias element into a charge an unnecessary complication. A common assault or persistent threats accompanied by vandalism, in turn, might be seen as too insignificant even to merit police action.

Basing police performance evaluations on the ratio between the commission of crimes and the disposal of cases by the courts—“the criminal justice gap”—can in itself discourage police from recording complaints of hate crimes, or from recording the details that show bias and so increase the evidentiary requirements. One recommendation to ease this performance pressure, from Moscow’s SOVA Center, is that the receipt and registration of reports of hate crimes be undertaken by units independent of those responsible for investigations. The goal is to ensure that conscientious police officers are not penalized for their detailed recording of the facts that increase the seriousness of a crime, by being held accountable also for the ultimate outcome of the case. By uncoupling the registration of the case from its resolution for performance evaluation purposes, there would be no incentive for officers to represent a hate crime as a lesser crime that could either be dismissed or be more easily resolved.

What Do Nongovernmental Bodies Monitor?

Information from nongovernmental organizations (NGOs) can provide an essential antidote to incomplete or nonexistent official reporting as well as to media reports that may misrepresent the nature of hate crimes, severely understate their scope, or report only the most extreme bias violence (the bombings and shootings).

An important part of this role is the qualitative dimension of nongovernmental reporting, including the details and the human dimension of a particular individual's or a group's experience as victims of violence. Quantitative data produced by NGOs can be enormously important, even when drawn from relatively small samples, but we should not forget the power of a narration of personal experience and other qualitative information that NGOs are uniquely positioned to record and report.

Whether governments have wholly failed in their commitments to collect data or have systems already in place that need fine-tuning, NGOs have an important role to play. In many cases, NGOs produce incident reports that highlight a problem that has been overlooked or ignored by the government. Governments may be disinclined to establish comprehensive monitoring systems of their own and in some cases may be convinced to do so only after NGO monitoring has revealed a problem sufficiently severe to warrant official monitoring.

As concerns the **Russian Federation**, we reported in our June 2006 *Minorities Under Siege* report that the government's response to the proliferation of hate crimes was inadequate, including in its commitment to collect data on this growing problem. In the

absence of official information, the SOVA Center for Information and Analysis, a Moscow-based nongovernmental organization that monitors hate crimes in Russia, documented 541 victims of hate-based attacks, including 55 racist murders in 2006. This compares with 462 overall victims, including 47 murders, documented by the organization using the same criteria in 2005.¹³⁷ In the first seven months of 2007, the organization has already documented 310 hate based attacks on individuals (among those 37 racist murders), a 22 percent increase over the same time period in 2006.¹³⁸

In **Georgia**, in the absence of any official hate crime monitoring or use of hate crime laws, the Union "Century 21" has similarly sought to document the problem of hate crimes there by establishing a network of contact points available to hate crime victims.

In the **Netherlands**, the Monitor Racism and Extreme Right Violence, a project of the Anne Frank House and the University of Leiden, has to some extent compensated for the absence of national data from either the police or public prosecutors on violent hate crime. The Monitor project, for example, has tapped data from local and regional police sources, the national intelligence agency, and from other independent sources to compile its own statistical picture of violent hate crimes annually. In its annual survey of 2005 data, for example, the Monitor team registered 296 violent and threatening incidents.¹³⁹

Even where governments have developed systems of monitoring, those systems are rarely as comprehensive as they need to be. In **France**, official statistics

are systematically collected and helpful in determining the incidence of bias-motivated incidents against Jews and people of North African descent, but provide no data on the situation of hate crimes targeting people of other backgrounds, including those from the LGBT community. *SOS homophobie* has in part filled the gap by collecting and reporting on homophobic incidents in France. In **Germany**, hate crimes motivated by homophobia are similarly invisible in the official statistics, even though the authorities do report systematically on right-wing extremist violence. As mentioned above, a number of organizations representing the interests of the LGBT community in various cities in Germany have released reports on violence based on sexual orientation.

The development of systems of monitoring may in fact be a product of a problem highlighted through NGO monitoring. More recent efforts by a growing number of governments to monitor hate crimes specifically motivated by antisemitism is undoubtedly a response to the problem of antisemitic violence that has been well-documented by NGOs in a wide range of countries such as **Austria, Belgium, Canada, Denmark, France, the Russian Federation, the United Kingdom, and the United States.**

Even where governments are already monitoring and reporting, NGO statistics can provide a backstop to the official data, in some cases showing weaknesses and discrepancies in the official data. In **Germany**, for example, a number of NGOs that provide victim support services to victims of right-wing violence in the new federal states register and document right-wing attacks and acts of violence. For example, a coalition of NGOs documented 819 hate crimes in 2006 (694 in 2005) in Berlin and the states of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, and Thuringia. The official statistics in these areas, based on those recorded by the police, were much lower—462 violent crimes with an extremist background in 2006 (and 422 such crimes in 2005).¹⁴⁰

Similarly and as mentioned above, in the **United States** where FBI statistics include hate crimes motivated by an anti-gay bias, the National Coalition of Anti-Violence Programs (NCAVP), a coalition of anti-violence non-governmental organizations from across the country, produces annual reports on bias-motivated violence against the LGBT community.

Beyond the important function of data collection, NGOs also play a crucial role as intermediaries between those facing abuse and the government. This role is also increasingly respected by govern-

ments, including law enforcement officers concerned with the threat to public order that the eruption of violence poses in multi-ethnic societies. This can take the form of advice as to procedures available, accompaniment for the presentation of complaints, or even assistance with formal representation in criminal or civil proceedings. In one case in the **Netherlands**, a gay man was harassed and threatened by assailants using homophobic epithets, who, in the course of the encounter, also stole his cell phone. Although the victim described the incident in full to the police, it was registered as a case of simple theft: information that would support a conclusion that this was a hate crime was omitted. Through the intervention of an NGO, the individual returned to the police and an accurate formal complaint of a hate crime was filed.

From the police point of view, close consultation with NGOs can be essential to work with minority communities, both in order to win (and sustain) the confidence and support of these communities for law enforcement in general and in order to confront the particular threat of hate crimes and inter-ethnic violence. NGOs often work directly with community and community structures—churches, social organizations, sports clubs, political representation—in ways official bodies can not.

Increasingly, governments have acknowledged the central role played by NGOs in addressing problems of discrimination. Governments can enhance this role by facilitating regular consultations between NGOs and law enforcement agencies as well as with specialized antidiscrimination bodies. Similarly, if governments are to benefit from the assistance of NGOs, procedures should be developed to allow NGOs to represent victims of hate crimes in contacts with the criminal justice system. The U.K.'s Monitoring Group employs caseworkers who deal with a network of solicitors and liaise with statutory agencies as well as work with the Crown Prosecution Service to bring out racial motivation in cases brought before the courts.¹⁴¹

The problem of underreporting is another reason for governments to work more closely with NGOs. By most accounts, there is an endemic problem of underreporting in most countries in cases of hate crimes. NGOs and community groups, who in many cases are seen as more trustworthy than the authorities, can help to bridge the divide created by mistrust. In countries, like the **United Kingdom**, where third-party reporting is also being developed, NGOs have a central role to play as well.

Part II: The Framework of Criminal Law

Introduction

Why Are Hate Crime Laws Necessary?

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. Specific legislation can also serve as a remedy to the too common reality that discriminatory crimes, if not recognized as rendering more serious consequences, may well be overlooked as a casualty of a reality in which equal protection is absent in part because of an engrained bias at some level of government. This remedial role can be especially important where prejudice dominates local government structures, in violation of national laws and policies. Hate crime laws and monitoring and enforcement procedures can be a crucial means in bringing all individuals under the same protection of the law by making prejudice that drives violent crime a national priority, and to overcome the malign influence of local—or national—officials who may be a party to prejudice and violence.

These are important parts of the rationale by which hate crimes should be accorded a higher priority within the competing priorities of criminal justice systems. Hate crime legislation provides a powerful signal of a society's commitment to combat violent discrimination and gives force to this by providing for more severe penalties, in line with the legal principle that more severe punishments should be accorded to crimes that are "most destructive of the public safety and happiness."¹⁴²

Studies have clearly shown that bias-motivated violence has resonance beyond the victim of the crime, extending to the entire community to which the victim belongs. Hate crimes are thus not just a policing problem, but a social problem that affects the potential for different communities to coexist. National legislation to address hate crimes through the criminal justice system provides a fundamental tool for dealing with the problem of such violence. Hate crime laws provide a framework for *law enforcement's* response to such crimes, with penalties serving as a deterrent (since such laws often include provisions for penalty enhancements). Ideally, effective application of the law can send a message to perpetrators of zero tolerance for such crimes. Such laws, when vigorously enforced, also send a message that the authorities are committed to protecting those who may be vulnerable to violence because of their identity.

International Standards and Commitments

There are ample guidelines—and in some cases political and/or legal commitments—for countries to incorporate within their legislative framework laws that address racist violence and other forms of intolerance. In decisions at the ministerial level, the Organization for Security and Cooperation in Europe (OSCE) has called in general terms on its participating states to ensure that they have a proper legal framework for dealing with hate crimes, without specifically defining what that framework should look like. The Fundamental Rights Agency (FRA) and the

European Commission against Racism and Intolerance (ECRI) have on the other hand offered specific recommendations for the inclusion of provisions defining discrimination as an aggravating circumstance in the commission of a crime. Several decisions of the European Court of Human Rights have also solidified the justification for such provisions.

European Union

In its Annual Report 2005, the European Monitoring Center on Racism and Xenophobia (now the Fundamental Rights Agency, FRA) called on E.U. Member States “to adopt a workable and sufficiently broad legal definition of crime as racist, and to recognize racist motive as an aggravating factor that increases sentencing.”¹⁴³

The European Union Framework Decision on Combating Racism and Xenophobia, adopted on April 20, 2007 and is a binding commitment of the E.U. Member States, provides that racist and xenophobic motives are to be considered an aggravating factor in criminal offenses and that such motives may be taken into consideration by the courts in fixing the penalty.¹⁴⁴

Council of Europe

In its General Policy Recommendation No. 7, “on national legislation to combat racism and racial discrimination,” ECRI recommends, among other things, that “the law should penalize for the following acts when committed intentionally ... public incitement to violence, hatred or discrimination.” The recommendation also states that “the law should provide that ... racist motivation constitutes an aggravating circumstance.”¹⁴⁵ In General Policy Recommendation No. 9 “on the fight against antisemitism,” ECRI states further that such motivation should cover antisemitic motivation.¹⁴⁶

The European Court of Human Rights, a body whose jurisdiction extends to the member states of the Council of Europe (all of which are party to the European Convention on Human Rights), has likewise offered some guidance in decisions involving racist violence. In the case of *Nachova and Others vs. Bulgaria*, in which two persons of Roma origin were shot and killed by the police, the court in its July 6, 2005 decision made the link between Article 2 of the European Convention on Human Rights on the right to life and Article 14 on the enjoyment of rights and freedom without discrimination. In particular, the Grand Chamber found that “the authorities’ duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of

their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination.”¹⁴⁷

More generally, the court also stated in this decision that “racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of its enrichment.”¹⁴⁸

On July 26, 2007, the court issued another related judgment in the case of *Angelova and Iliev vs. Bulgaria*, which involved the murder of two Romani men by a group of teenagers in 1996. In this case, there was ample evidence indicating that the murders were racially-motivated, the perpetrators were found and detained, and six persons were eventually charged with “hooliganism and exceptional cynicism and impudence.” Yet for the next nine years, the investigating authorities failed to bring the perpetrators to justice. In 2005, a regional prosecutor’s office dismissed the charges against five of the juveniles on the grounds that the statute of limitations had expired. Charges remained against two others.¹⁴⁹

In its decision, the court found that Bulgaria was in breach of the procedural aspect of the right to life (Article 2) since it had failed to conduct a prompt and effective investigation into the incident. The court also concluded that it was “completely unacceptable that, while aware that the attack was incited by racial hatred, the authorities did not expeditiously complete the preliminary investigation against the assailants and bring them to trial... It notes in this respect the widespread prejudices and violence against Roma during the relevant period and the need to reassert continuously society’s condemnation of racism and to maintain the confidence of minorities in the authorities’ ability to protect them from the threat of racist violence...”¹⁵⁰

The Framework of Criminal Law in the OSCE Participating States

The participating states of the OSCE vary considerably in the ways they address hate crimes. Criminal law in all of these states establishes penalties for violence and related forms of intolerance that comes in the form of murder, assault, physical harassment or other violent acts, although without necessarily taking into account the element of bias that may accompany these crimes. Similarly, criminal codes uniformly establish penalties for violence directed at property, while some define as specific crimes the vandalism and desecration of religious properties.

Most countries in Europe have criminal laws that address intolerance in the form of speech, incitement, formation of extremist groups, distribution of racist and other intolerant literature and other such acts. These offenses will not be address in this report, which focuses on legislation addressing acts of violence perpetrated with a bias motivation.

This report and the attached country-by-country modules focus on three categories of legislation, often overlapping. As shown in the tables below, there are still over 20 OSCE countries that don't deal expressly with bias-motivated violence, while others do so on multiple legal fronts. Among the 56 participating states of the OSCE, those that still have no express provisions defining bias as an aggravating circumstance in the commission of a range of violent crime against persons include: **Albania, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Luxembourg, Lithuania, Macedonia, Monaco,**

Montenegro, the Netherlands, Poland, San Marino, Serbia, Slovenia, Switzerland, and Turkey.

Bias-Motivated Violent Crimes as Specific Offenses

Only a few countries have legislative provisions in which separate statutes or articles of the criminal code defines forms of bias-motivated violent crime as a separate offenses. The **United States** and the **United Kingdom** are the two countries in the OSCE where this type of legislation is most comprehensive in the area of violent crime. In both countries, the legislation covers a range of offenses of varying degrees of severity.

In the **United States**, federal law (18 USC Sec. 245) prohibits intentional acts that by force or threat of force interfere with the enjoyment of federal rights or benefits, such as voting or going to school or work, on the basis of race, color, religion, or national origin.¹⁵¹ This law does, however, create a high standard for prosecuting such acts as the government must prove both that the crime was motivated by bias towards a person's race, religion, or national origin *and* because of a person's participation in one of six federally protected activities.¹⁵²

Draft legislation which has been introduced to Congress on several occasions would amend the existing federal statute to bridge some of the gaps in the criminal justice system's response to hate crimes. The Local Law Enforcement Hate Crime Prevention

Act of 2007 (LLEHCPA), if enacted, would bring under federal jurisdiction the most serious hate crimes, while providing federal support for state investigations and prosecutions. The current statute would be amended to bring under federal purview hate crimes motivated by the victim's real or perceived sexual orientation, gender, or disability (in addition to race, color, religion, or national origin), and existing requirements that prosecutions go forward only where the victim was attacked because he or she was engaged in a specific federally-protected activity would be lifted.

Even if such legislation is passed, most investigations and prosecutions in the United States will continue to take place on the basis of state laws on the local level where they are most effectively addressed. At the state level, many states address bias-motivated crime as a specific offense.

For example, the state of Washington's penal code created a separate criminal offense called "malicious harassment" (RCW 9A.36.080) that applies to persons who cause physical injury, physical damage or destruction of property, or threaten a specific person or group of persons "because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical or sensory handicap."¹⁵³

The Massachusetts penal code similarly treats some bias-motivated offenses as a separate category of offense—"assault or battery for purpose of intimidation." Hate crimes under this statute are limited to assault and battery and the enhanced punishment includes completion of a diversity awareness program.¹⁵⁴

Although the New York penal code doesn't create any new bias-motivated offenses, it does include a separate section on "Hate Crimes" (Section 485.00—485.10), which outlines the reasons for treating hate crimes more severely than crimes committed without a bias motivation, defines what constitutes a hate crime and sets out the punishments for those crimes. Under the New York law, a wide range of offenses can be prosecuted as "hate crimes," and subjected to punishments that are generally enhanced one step (by one "category") beyond the punishment for the same crime committed without a bias motivation.¹⁵⁵

In the **United Kingdom**, the development of separate hate crime legislation can trace its roots back to the Crime and Disorder Act of 1998, which created new "racially-aggravated offences."¹⁵⁶ The Anti-Terrorism, Crime and Security Act of 2001 expanded the range of offenses to include "religiously-aggravated offenses."¹⁵⁷ On the basis of these two acts, in force in

England and Wales, the new offenses include: racially or religiously aggravated assault, racially or religiously aggravated criminal damage, racially or religiously aggravated public order offenses, and racially or religiously aggravated harassment.

Other countries, such as **Bulgaria, the Czech Republic, Hungary, and Poland** also contain provisions that deal separately, albeit in a limited fashion, with violence motivated by identity bias. These provisions addressing bias-motivated violence as separate offenses are far less expansive than in the United States and the United Kingdom. In each of the four countries, penal codes make punishable as bias crimes only cases of minor assault motivated by bias against an individual or group of individuals.¹⁵⁸ These provisions, while treating certain forms of bias-motivated violence separately, don't necessarily treat them as more severe cases of violence with correspondingly more severe punishments. NGOs in these countries as well as international antiracism organizations have pointed to a reluctance on the part of criminal justice authorities in these countries to bring charges under these articles of the criminal code defining hate crimes.

Bias as an Express General Aggravating Factor

A growing number of countries are enacting provisions that treat bias as an express general aggravating factor in the commission of a common crime, allowing the courts to enhance the penalty at the sentencing stage when a bias motivation has been shown to have accompanied the crime.

Latvia is the most recent country to have amended its criminal code to adopt such general penalty-enhancement provisions. On October 12, 2006, the Latvian Parliament amended section 48 of the criminal code dealing with aggravating circumstances in the commission of a crime. According to the newly amended part 14 of that section, a "racist motivation" now constitutes an aggravating circumstance.

At present, there are 23 countries in which bias is specifically mentioned as a general aggravating circumstance that can lead to penalty enhancements at the sentencing stage *for all crimes*.¹⁵⁹ The application of such provisions can lead to penalty enhancements in the determination of sentencing, although in most cases it remains difficult if not impossible to determine when such provisions have been applied and the extent to which their application affected the sentence. As these provisions do not stipulate the extent to which the penalty should be

enhanced, it is usually left to the discretion of the judge to make that determination in accord with general sentencing guidelines.

In the **United States**, the laws of many states provide for enhanced penalties at the sentencing stage for crimes committed with a bias motivation. The Texas Penal Code, for example, addresses the “penalty if the offense committed because of bias or prejudice” and calls for a penalty enhancement by “one category” of punishment (Section 12.47). Other states such as Wisconsin similarly contain penalty enhancement provisions for crimes when bias has been determined to be an aggravating circumstance.

A court’s determination that a criminal offense has been aggravated by bias need not always lead simply to more prison time, although this is one of the more common forms of penalty enhancements. Tolerance training has also been included as an element of the sentence for such offenses, especially when the crime did not involve actual violence against persons. As mentioned above, in Massachusetts, the law stipulates that those found guilty of assault or battery for the purpose of intimidation must complete a diversity awareness program.

In Florida, the Palm Beach County State Attorney’s civil rights unit has pushed for “restorative justice” in sentences it has recommended to the courts. In one case, a man who struck two Haitian men and shouted epithets was ordered to learn about Haitian history and culture. In another case involving youths who painted swastikas on property owned by Jews, the teens were ordered to participate in a group conference in which they apologized to the victims and members of the Jewish community.¹⁶⁰

The International Association of Chiefs of Police, while recommending enhanced penalties in the form of longer sentences for chronic violent hate crime offenders, also suggests that restorative justice may be more appropriate for first-time nonviolent hate crime offenders.¹⁶¹

In the **United Kingdom**, the Criminal Justice Act 2003 contains provisions on enhanced penalties for a range of offenses that are racially or religiously aggravated. Racially or religiously aggravated assaults, criminal damage, and public order offences are treated as separate offenses.¹⁶² The Criminal Justice Act similarly provides for enhanced penalties for aggravation related to disability or sexual orientation. Article 146 states that if the offense is “motivated (wholly or partly) by hostility towards persons who are of a particular sexual orientation, or by hostility towards persons who have a disability or a particular disability, then the court *must* treat the fact that the

offense was committed in any of those circumstances as an aggravating factor, and *must* state in open court that the offense was committed in such circumstances.” (Emphasis added.)¹⁶³

Many of the countries that were once part of the Soviet Union—including **Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**—continue to have similar systems of criminal law. These provide for bias motivated by race, ethnicity and religion to be treated as a general aggravating circumstance in the prosecution of common crimes. These provisions are applicable to all crimes, although there is little evidence that they are ever used in most of these countries.

Similarly, a range of other countries, including **Andorra, Austria, Canada, Denmark, Finland, Italy, Liechtenstein, Romania, and Spain** also contain provisions in their criminal law defining bias as a general aggravating circumstance.

The authorities in some countries, such as **Bulgaria, Estonia, Greece, and Slovenia**, claim that general provisions on aggravating circumstances can be applied in cases of racist violence, even though the laws in those countries do not explicitly mention bias motivations in the provisions on aggravating circumstances. While this may be the case in theory, there is little evidence that such provisions are applied in practice in cases of racist violence.

In the **Netherlands**, provisions for penalty enhancements based on bias motivations are not expressly stated in law, although the Board of Procurators General issued a Discrimination Directive that establishes guidelines for the investigation, prosecution, and sentencing of common crimes with a discriminatory motivation. The directive instructs prosecutors to seek a 25 percent increase in penalties when a crime is motivated by bias, although data on the implementation of this norm is unavailable.

In **Ireland**, although there is no legislation on bias as an aggravating circumstance, a process is underway to determine whether such legislative provisions are necessary. In December 2005, the Minister of State at the Department of Justice announced the awarding of a contract to the School of Law of the University of Limerick to assist the Ministry of Justice and the National Action Plan Against Racism (NPAR) to assess the effectiveness of national legislation in Ireland to combat racially-motivated crime. In March 2007, the lead researchers released their conclusions, including the recommendation of a new criminal law provision to “provide that where a court is

determining the sentence to be imposed for any offender, and it appears to the court that the offence was one which was committed with racial or religious hostility, then the court must treat that hostility as an aggravating factor. This then ensures that a clear message is sent out that racist attacks are not tolerated by either society or the law, and that such attacks are punished accordingly without compromising the criminal law in any way.¹⁶⁴

Bias as an Express Aggravating Factor in Specific Common Crimes

In 25 countries, the law identifies specific crimes for which bias may be considered an aggravating circumstance. In some cases, these specific provisions are in addition to provisions on bias-motivated violence as a separate offense or on general aggravating factor provisions. Thus, among the 56 participating States of the OSCE, 39 of them contain some provisions—in one form or another—allowing for bias to be treated as an aggravating factor in the commission of certain common crimes.

A few of these countries have recently adopted new laws that provide for aggravating circumstance provisions with respect to specific crimes. In August 2006, the parliament of **Malta** approved Act No. XVI of 2006 that amended the criminal code to the effect that punishments for certain crimes “shall be increased by one to two degrees when the offense is racially or religiously aggravated...” This penalty enhancement amendment applies to a wide range of offenses including bodily harm, trafficking of human beings, threats, blackmail, arson and destruction of property.¹⁶⁵

On June 9, 2006, the parliament of **Croatia** adopted an amendment to the criminal code that defines hate crimes as “any criminal act according to the Criminal Code, committed by reasons of hatred towards a person on the basis of his/her race, skin colour, sex, sexual orientation, language, religion, political or other belief, national or social background, property, birth, education, social status, age, medical status or any other attribute.”¹⁶⁶ The law also specifically provides for an enhanced sentence in the case of murder. A murder that meets the definition of a hate crime is considered to be an aggravated murder, with a punishment of imprisonment of not less than ten years.¹⁶⁷

On January 1, 2006, a new criminal code in **Slovakia** entered into force. The new code has a more expansive treatment of hate crimes than the previous code and introduces the concept of “special bias” which is defined in Section 140(d) as applying in cases where crimes were motivated by biases based on “national, ethnic or religious hatred or hatred because of skin color.” This new concept can be applied to a wide range of crimes against persons including murder and assault, as well as desecration.

Similarly, in **Belgium, France, Norway, and Sweden**, bias can only be a factor in the prosecution of certain specific crimes identified in the criminal law, although these norms are in fact applicable to a wide range of violent crimes against persons and property.

In the **United States**, penalty enhancement provisions in some states are limited to specific crimes, such as assault and battery, although in most these provisions apply to a wide range of violent crimes. Penalty enhancement provisions in cases of the most serious forms of violence, such as murder, are not available in some states, on the grounds that the punishment for such crimes, even without enhancements, is already severe.¹⁶⁸

In most of the countries of the former Soviet Union, in addition to legislative provisions addressing racial, ethnic and religious hatred as a general aggravating circumstance in the commission of a crime, legislation also sets out more specific penalty enhancements for crimes such as murder and assault. For example, in the **Russian Federation**, murder is punishable by imprisonment ranging from six to fifteen years, while murder committed with a racist motive is punishable by imprisonment for eight to twenty years.

In other countries as well, legislation is specific in limiting the use of aggravating circumstance provisions. In **Portugal**, for example, aggravating circumstances provisions extend only to murder and assault. In **Bosnia and Herzegovina**, enhanced penalties on the basis of bias motivation can be applied only in cases of murder.

In **Germany**, legislative provisions on aggravating circumstances do not expressly refer to bias motivations, yet bias motivation may, but does not have to be considered by the court. A Federal Supreme Court decision however determined that racist motives should be considered among the “base motives” to be taken into account as an aggravating circumstance by the courts in the case of (attempted) homicide.¹⁶⁹ This norm has been applied by prosecutors in prosecutions for murder committed with a racist motive, but is not known to have been extended to other crimes.

Vandalism and Destruction of Property

A number of countries have sought to amend their legislation to include enhanced penalties for crimes against property when accompanied by a religious or racist motive, in some cases in response to precipitous rises in religious intolerance manifested in the vandalism, desecration, and destruction of religious property,

Most recently, in the **Russian Federation**, Article 214 on vandalism was amended in July 2007 to include increased penalties for acts of vandalism “committed with a motive of ideological, political, national, racial, or religious hatred.” Whereas acts of vandalism could previously only be punished by a fine or by detention of up to three months, the new provisions allow for punishments of up to three years imprisonment for acts of vandalism motivated by hatred. **Armenia**, **Georgia**, and **Tajikistan** are among the other countries of the former Soviet Union with similar penalty enhancement provision in cases where vandalism and desecration are motivated by bias. (Human Rights First is unaware of any recent incidents in the three countries in which prosecutors have applied these norms.) It is too early to draw conclusions about the implementation of newly-adopted provisions on vandalism in the Russian Federation.

In the **United States**, the Church Arson Prevention Act of 1996 makes it a crime to commit attacks on religious property and covers racially-motivated church bombings as well as acts of desecration motivated by religious animus. In addition, 43 states have passed legislation punishing institutional vandalism, which includes the targeting of places of worship and burial.

In **Canada**, under the 2001 Anti-Terrorism Act, a new provision was enacted under section 430(4.1) of the Criminal Code criminalizing “mischief” committed “in relation to property that is a building used for religious worship, including a church, mosque, synagogue or temple, or an object associated with religious worship located in or on the grounds of such a building or structure, or a cemetery, if the commission of the mischief is motivated by bias, prejudice or hate based on religion race, color or national or ethnic origin.”¹⁷⁰

In **Lithuania** and **Luxembourg**, criminal law allows for enhanced punishments in cases of desecration of property, when such acts are committed with a racial or religious bias, but not bias crimes of violence against persons.

Biases Covered by Criminal Law Provisions

There are 39 countries where legislation addresses bias-motivated violence as a separate crime or as an aggravating circumstance. Those provisions generally all cover bias founded on race, ethnicity, and national origin, while slightly fewer—32—also cover religious bias. Legislation extends to bias motivated by animus based on sexual orientation in 11 countries, disability in seven, and gender in six countries.

The countries with the most expansive definitions of the biases covered under such legislation include **Andorra**, **Belgium**, **Canada**, **Croatia**, **Romania**, **Spain**, the **United Kingdom** and the **United States**. In the **United States**, federal hate crime legislation does not extend to sexual orientation, gender, or disability, although state legislation in more than half of the 50 states does.

The legislation in a few countries expressly refers to certain specific categories of bias, but is open-ended, providing for it to be applied more broadly. In **Liechtenstein**, legislation refers to “racist, xenophobic, or other particularly reprehensible motives,” while in **Sweden** the aggravating circumstances provisions stipulate that the penalty may be enhanced at sentencing when the crime was motivated “by reason of race, color, national or ethnic origin, religious belief or other similar circumstance.”

The legislation in several countries extends to other categories as well. In **Austria**, **Poland**, and **Portugal**, bias extends to political convictions, while in **Austria** and **Liechtenstein**, crimes motivated by “xenophobia” may also be punished more severely.

In the **Russian Federation**, criminal law has long allowed for penalties to be enhanced when a crime is motivated by “national, racial, or religious hatred.” Following amendments to the criminal code adopted in August 2007, those provisions were amended to include “ideological” and “political” hatred, as well as “hatred toward a certain social group.” Some observers have argued that these provisions will now allow prosecutors to seek enhanced penalties in cases of neo-Nazi violence against anti-fascists (which might now be prosecuted as “ideological” hate crimes). Some have also argued however, that the new range of “hatred” is too broad and opens the possibility for misuse, especially given the fact that what constitutes a “social group” is not currently defined in Russian criminal law.¹⁷¹

Implementation of Criminal Law Provisions

Determining the extent to which the laws are enforced requires data collection. The most effective monitoring systems not only register incidents and offences, but also track them through the criminal justice system. The reality that few data collection systems on violent hate crimes are coordinated with systems that track cases through the criminal courts hinders a more complete assessment of the enforcement of hate crime laws.

Statistics on the use of bias crime sentencing norms, including those convictions resulting in enhanced sentences, are largely unavailable. Where even egregious racist crimes are punishable as ordinary crimes, the absence of statistical evidence on sentence enhancement leaves an enormous gap as to how these most serious crimes are dealt with in the justice system. Were those charged convicted? Were the sentences enhanced on the grounds of bias motivation? There is little data to answer these questions.¹⁷²

Monitoring conducted by NGOs and intergovernmental antiracism bodies points to a general reluctance by criminal justice officials to bring charges using hate crime provisions. Some countries apparently never invoke such provisions—or indeed never acknowledge that hate crimes occur. In **Azerbaijan**, for example, neither the Prosecutor General nor the Justice Ministry reported a single crime motivated by bias during the period from 2003 through mid-2006.¹⁷³ In **Georgia**, NGOs monitoring hate crimes have indicated that prosecutors generally don't seek enhanced penalties on the grounds of a bias motivation, even though such provisions are included in the law.

NGOs monitoring hate crimes in the **Russian Federation** have long noted a reluctance of criminal justice officials to investigate bias motives and to provide evidence of these motives in prosecutions. More recent data shows however that there has been a slight increase in the use by Russian criminal justice officials of hate crime provisions, including those that identify bias as an aggravating circumstance and allow for enhanced penalties to be sought. The SOVA Center for Information and Analysis, a leading Moscow-based nongovernmental organization that monitors hate crimes in Russia, reported 31 convictions (involving not less than 96 persons) in which hate crime provisions were applied in 2006. This was up considerably from figures in 2005 (17 convictions involving 56 persons) and 2004 (9 convictions involving 26 persons), suggesting that prosecutors have in fact become more inclined to use these provisions.¹⁷⁴

This progress is overshadowed by the enormous scale of racist violence and religious intolerance in Russia. Criminal court convictions for violent hate crimes remain all too infrequent in view of the scale of this violence. The SOVA Center reported on 541 cases of violent hate crimes in 2006, including 55 murders, sustaining a steady trend of rising violence over the past several years.

Even when hate crime provisions are used in Russian prosecutions, it is difficult if not impossible to assess the extent to which a sentence may have been enhanced even when prosecutors have successfully shown that a bias motive was present in the commission of the crime. Sentences may take into consideration a wide range of other aggravating and

mitigating factors, making it difficult to determine whether the racist or other bias element was in fact brought to bear on the sentence.

In **Canada**, as in some other countries in which bias can be taken as an aggravating circumstance, the bias motivation plays no role in determining a person's guilt, which is based on evidence of the underlying common crime, but may result in the enhancement of the sentence once that guilt has been proven. A recent report found, however, that as bias motivation is only one of several aggravating and mitigating factors a judge may consider in determining the sentence, it may thus not always result in an enhanced sentence. Even when it does play a role in the sentencing, a judge rarely specifies the extent to which a sentence is increased on account of the bias motivation.¹⁷⁵

In the **Netherlands** as well, in the absence of official reporting on the implementation of the Discrimination Directive in the case of bias-motivated violent crime, there is little means to determine when this provision has been invoked and how it may have influenced the sentencing. There is a serious data deficit in most OSCE participating states regarding the implementation of such penalty enhancement provisions, thus limiting the possibility of assessing their effectiveness.

Specialized antidiscrimination bodies can play a role in monitoring hate crimes cases before the courts, in particular when empowered by a legislative mandate to do so. In **Belgium**, anti-discrimination legislation in 2003 provided for penalty enhancements where bias is shown to have been an aggravating circumstance, yet the enhancement has been used in only a limited number of cases. There, too, it is in general not possible to determine the degree to which the courts make use of the penalty enhancement option.¹⁷⁶ The Centre for Equal Opportunity and Opposition to Racism (CEOOR) reported in mid-2006 that nine cases had been introduced in Belgian courts in which enhanced penalties were sought (of which, two were still under investigation); the courts recognized bias as an aggravating circumstance in seven cases.¹⁷⁷ In the first ever conviction in Belgium for a murder ruled by the courts to be a "racist murder," Hans Van Themsche was given a life sentence for the murder of a Malian au-pair, her two year old Belgian charge and the attempted murder of a Turkish woman in October 2007.

More generally, in its country-by-country reporting on the 46 member states of the Council of Europe, the European Commission against Racism and Intolerance (ECRI) has regularly brought attention to the fact that hate crime provisions appear to be used in a

small number of cases, if at all. ECRI has noted that this is especially striking in those countries where NGOs monitor racist violence: NGOs generally report on significantly more cases than are registered by the police and prosecuted using hate crime laws.

If enhanced penalties are to serve as a statement of society's condemnation of bigotry and intolerance, it is important that a message of effective enforcement of these judicial norms reaches the public. Prosecutors must therefore state their intentions to seek an increased sentence due to the bias motivation and courts should indicate in their verdicts the consequences bias motivations had in terms of penalties. Justice ministers, in turn, should provide information on the aggregate of such cases prosecuted and brought to completion.

The blame for these shortcomings in the enforcement of the law should not be placed only on the shoulders of criminal justice officials, however. Police may be under pressure to give priority to other aspects of crime, while without special training, police may overlook bias motivations in the course of responding to crimes. Prosecutors may similarly hesitate to complicate their caseload by introducing into their cases bias motives, which may be difficult to prove or more time-consuming to prosecute. Many may not be aware of the larger social and political significance of recognizing bias elements and bringing them out into the public domain. Senior government leaders must show the political will to provide the resources so that law enforcement officials have the tools they need to successfully respond to, investigate, and prosecute hate crimes.

Despite limited detailed statistics, vigorous political and police follow-up can have positive results. For example, following a surge in antisemitic violence in **France** in 2001 and 2002, legislators there responded with tough new hate crime laws in 2003. The Ministry of Justice followed up on the new laws by calling for greater vigilance by public prosecutors toward racist and antisemitic acts. The ministry also advised prosecutors that it should be informed of all antisemitic offenses reported and required public prosecutors to keep victims informed of the progress of cases through the justice system. In addition, the instruction required each office to assign a particular magistrate to monitor the consistency of the penalties—and to assume responsibility for promoting relations with local civil society groups that work against antisemitism. In order to improve the reporting mechanism an electronic mail account was set up in the intranet of the public prosecutor's office to transmit reports on antisemitic acts. These and other measures likely contributed to the 48 percent

decrease in antisemitic offences reported in 2005, following a peak in 2004. The fact that antisemitic acts increased moderately in 2006 indicates that the level of vigilance must be maintained.

Since a number of countries in Europe have only recently adopted hate crime legislation, proper implementation will take time. To help move forward with implementation, governments should take advantage of opportunities for the training of law enforcement officials, such as those offered by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) as part of its Law Enforcement Officer Program on Combating Hate Crimes. Several countries, including Croatia, Hungary, Spain, and Ukraine, have already trained police officers through this program. There are also ample lessons to be learned from countries like the United States and the United Kingdom where criminal justice responses to hate crimes are well developed, albeit constantly in need of review and improvement. When combined with political support from the highest levels of government, such training will combine to make the implementation of hate crime laws more effective in responding to bias-motivated violence.

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- ⁶⁰ Statistics Canada, Juristat, Maire Gannon, "Crime Statistics in Canada, 2005," Catalogue no. 85-002-XIE, Vol. 26, no. 4, July 2006, available at: <http://www.statcan.ca/english/freepub/85-002-XIE/85-002-XIE2006004.pdf> (accessed August 18, 2007).
- ⁶¹ "The Survey goes out to the general public and interviews ... people representing all provinces, all age groups, visible and non-visible minorities, all incomes, and education levels. So each participant is very specifically selected to represent a group of people." Human Rights First E-mail correspondence with Warren Silver, Policing Services Program, Canadian Centre for Justice Statistics, December 4, 2006.
- ⁶² "Additionally, surveys based on a self-reporting procedure are used in Finland, particularly when the criminal behaviour of young people is evaluated." Juha Kääriäinen and Noora Ellonen, "The Finnish racist crime monitoring system," 2007. For a review of past surveys and studies of anti-immigrant racism in Finland, see Timo Virtanen (editor), "Youth, Racist Violence, and Anti-Racist Response in the Nordic Countries, Victims and Perpetrators of Racist Violence."
- ⁶³ See Human Rights First, "2007 Hate Crime Survey."
- ⁶⁴ The Bureau of Justice Statistics (BJS) and the U.S. Census Bureau, which undertook the data collection for the NCVS, developed questions through which to identify victims of hate crimes in 1997, first using them in the survey in July 2000. Caroline Wolf Harlow, Bureau of Justice Statistics Special Report, National Criminal Victimization Survey and Uniform Crime Reporting Hate Crime Reported by Victims and Police, November 2005, available at: <http://www.ojp.gov/bjs/pub/pdf/hcrvp.pdf> (accessed August 26, 2007).
- ⁶⁵ Caroline Wolf Harlow, Bureau of Justice Statistics Special Report, National Criminal Victimization Survey and Uniform Crime Reporting Hate Crime Reported by Victims and Police, November 2005.
- ⁶⁶ Caroline Wolf Harlow, Bureau of Justice Statistics Special Report, National Criminal Victimization Survey and Uniform Crime Reporting Hate Crime Reported by Victims and Police, November 2005.
- ⁶⁷ Shannan M. Catalano, National Crime Victimization Survey, Criminal Victimization, 2005, Bureau of Justice Statistics Bulletin, available at <http://www.ojp.gov/bjs/pub/pdf/cv05.pdf> (accessed August 26, 2007).

- ⁶⁸ Caroline Wolf Harlow, Bureau of Justice Statistics Special Report, National Criminal Victimization Survey and Uniform Crime Reporting, p. 2. "Information is provided on the motivations for hate crime as perceived by victims, the types of crimes which victims thought were hate-related, reasons for reporting or not reporting hate crimes to police, police response to victim's notification of a crime, the time and place at which hate crimes occurred and offenders' gender, race, age, relationship to the victim, use of weapons, and gang membership. Rates of hate crime are presented for victims by gender, race, ethnicity, age and other characteristics. The report also compares results from the NCVS and the UCR on motivations for hate crime, the types of crimes that involve hate, and the characteristics of victims and offenders."
- ⁶⁹ As a proportion of overall crime, "an estimated 3% of all violent crimes revealed to the NCVS by victims were perceived to be hate crimes." Caroline Wolf Harlow, Bureau of Justice Statistics Special Report, National Criminal Victimization Survey and Uniform Crime Reporting, table 3.
- ⁷⁰ This section borrows from more detailed material provided in Human Rights First's 2007 Hate Crime Survey and its Companion Report on Antisemitism (2007).
- ⁷¹ "Lisbon Nazi at Liberty," *Portugal Resident*, October 5, 2007, in ICARE Racism Monitor, October 8, 2007.
- ⁷² "Jewish Cemeteries Violated in Brest, Babruisk, Mahilou, Shkhou, and Barysau," Charter 97, in CASW Antisemitism Monitor, October 27, 2007.
- ⁷³ "Israel's Ambassador Surprised by Belarusian President's Remarks About Jews," RFE/RL Newsline, Vol. 11, No. 193, Part II, October 18, 2007.
- ⁷⁴ "Young Jewish Man Violently Attacked in France," *European Jewish Press*, in CASW Antisemitism Monitor, July 29, 2007.
- ⁷⁵ See Human Rights First's 2007 Hate Crime Survey and its Companion Report on Antisemitism, available at: http://www.humanrightsfirst.org/discrimination/reports.asp?country=multi&id=1&misc1=landing_page.
- ⁷⁶ EUMC, "Antisemitism: Summary overview of the situation in the European Union 2001-2005," December 2006.
- ⁷⁷ This section borrows from more detailed material provided in Human Rights First's 2007 Hate Crime Survey and its Companion Report on Islamophobia (2007).
- ⁷⁸ Abbiategrosso is the hometown of the Italian missionary, Giancarlo Bossi, who was kidnapped by Muslim separatists in the Philippines in June and released after a month of captivity. Bossi reportedly responded to the incidents by declaring that "There is a need for dialogue among religions," and that "Whoever committed this act is a fanatic who does not respect a sacred place." "Italy: Eighth mosque attacked in northern region of Lombardy," AKI, October 25, 2007, available at <http://www.adnkronos.com/AKI/English/Religion/?id=1.0.1472225001> (accessed December 5, 2007). See also Islamophobia Watch, "Anti-Muslim Violence," at <http://www.islamophobia-watch.com/> (accessed December 4, 2007).
- ⁷⁹ Nigel Morris, "Imam Attacked as Anti-Muslim Violence Grows," *Independent*, August 14, 2007, available at: <http://news.independent.co.uk/uk/crime/article2861744.ece> (accessed December 5, 2007). See also Karima Hamdan, "The Tragic Consequences of Demonizing Muslims," *Umma Pulse*, August 13, 2007, available at: http://ummahpulse.com/index.php?option=com_content&task=view&id=181&Itemid=37 (accessed December 5, 2007).
- ⁸⁰ Police were investigating the incident and its possible motivation. The mosque's director general, Ahmad Al-Dubayan, said "that he suspected the assault was religiously motivated. He added: 'We are worried about Islamophobic feelings and racial attacks. I believe there has been an increase in Islamophobia. We have received threatening and insulting letters and emails.'" Ibid. In an August 4 report, a West Yorkshire Police spokesman today said: "The fire is being treated as suspicious," but added that "[t]here is nothing to suggest it is racially motivated." James Rush, "Mosque fire treated as arson," *Telegraph and Argus*, August 4, 2007, available at http://www.thetelegraphandargus.co.uk/mostpopular.var.1596062.mostviewed.mosque_fire_treated_as_arson.php (accessed December 4, 2007). See also Henry K. Lee and Marisa Lagos, "Muslim leaders call Antioch mosque fire 'act of terror,'" *San Francisco Chronicle*, August 13, 2007, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/08/13/BAGKRRHRLH9.DTL> (December 5, 2007).
- ⁸¹ Ibid, and "Attack on Imam Believed to be Racist," *Middleton Guardian*, August 9, 2007, in ICARE Antiracism News, August 10, 2007.
- ⁸² The Metropolitan Police Service in London began registering Islamophobic crimes separately from other "faith-based hate crimes" in March 2006.
- ⁸³ CNCDH, p. 12. For a critique of this terminology, see Human Rights First, "Everyday Fears," pp. 74-81.
- ⁸⁴ Metropolitan Police Department, "Communities Together," Information Bulletin 93, 13 August 2006.
- ⁸⁵ Toronto Police Services, Hate Crimes Unit, "2006 Annual Hate/Bias Crime Statistical Report," page 11, available at: <http://www.torontopolice.on.ca/publications/files/reports/2006hatecrimereport.pdf> (accessed on April 21, 2007).
- ⁸⁶ Toronto Police Services, Hate Crimes Unit, "2005 Annual Hate/Bias Crime Statistical Report," page 11, available at: <http://www.torontopolice.on.ca/publications/files/reports/2005hatecrimereport.pdf> (accessed on May 7, 2007).
- ⁸⁷ Federal Bureau of Investigation, United States Department of Justice, "Hate Crime Statistics 2005," available at: <http://www.fbi.gov/ucr/hc2005/index.html> (accessed on May 8, 2007).
- ⁸⁸ Council on American-Islamic Relations (CAIR), "The Struggle for Equality," September 2006.
- ⁸⁹ This section borrows from more detailed material provided in Human Rights First's 2007 Hate Crime Survey and its Companion Report on Homophobia (2007).
- ⁹⁰ The study, commissioned by Amsterdam Mayor Jacob Cohen, is to be undertaken by the University of Amsterdam to examine the underlying motives of hate crimes. "Amsterdam to Study Gay Bashers," *Spiegel On Line*, November 11, 2007, cited in ICARE, Antiracism News, December 4, 2007.
- ⁹¹ "Croat Charged with Hate Crime for Attempting to Attack Gay Parade," *International Herald Tribune*, October 30, 2007.

- ⁹² Home Office, United Kingdom, available at: <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/hate-crime/> (accessed May 9, 2007); "Drive to Tackle Homophobic Crime," BBC News, December 29, 2006, available at: http://news.bbc.co.uk/2/hi/uk_news/politics/6216601.stm (accessed May 1, 2007).
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- ⁹⁵ Toronto Police Service, Hate Crime Unit, "2005 Annual Hate/Bias Crime Statistical Report, available at: <http://www.torontopolice.on.ca/publications/files/reports/2005hatecrimereport.pdf> (accessed on May 9, 2007).
- ⁹⁶ Calgary Police Service, "Annual Statistical Report: Person and Property Crimes: 2001-2005," page 17.
- ⁹⁶ Federal Bureau of Investigation, Uniform Crime Reports, available at: <http://www.fbi.gov/ucr/ucr.htm> (accessed on May 1, 2007).
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- ⁹⁹ SOS homophobie, "SOS homophobie publie son Rapport annuel 2007 sur l'homophobie," Press release, May 15, 2007, available at: http://www.sos-homophobie.org/index.php?menu=1&menu_option=12&news=75#chap75 (accessed on May 22, 2007).
- ¹⁰⁰ National Coalition of Anti-Violence Programs, "Anti-Lesbian, Gay, Bisexual, Transgender Violence in 2006," 2007, available at: <http://www.avp.org/> (accessed on May 16, 2007).
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- ¹⁰² ODIHR, "Challenges and Responses to Hate-Motivated Incidents in the OSCE Region," p. 31.
- ¹⁰³ See Human Rights First Hate Crime Survey, 2007, "Violence Based on Disability-Bias."
- ¹⁰⁴ See Human Rights First Hate Crime Survey, 2007, "Violence Based on Disability-Bias."
- ¹⁰⁵ Police Service of Northern Ireland (PSNI), Statistical Report No. 3, Hate Incidents and Crimes, 1st April 2006-31st March, 2007, available at http://www.psnipolice.uk/3_hate_incidents_and_crimes-4.pdf (accessed August 12, 2007). The 2006/07 report was released on May 2, 2007.
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- ¹⁰⁷ PSNI, Statistical Report No. 3, Hate Incidents and Crimes, April 1, 2006 - March 31, 2007, Section 3. Hate Incidents and Crimes.
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- ¹¹⁰ Human Rights First, "Everyday Fears," p. 125.
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- ¹¹² "...[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.
- ¹¹³ FBI, "Hate Crime Statistics 2005, available at <http://www.fbi.gov/ucr/hc2005/table1.htm> (accessed March 25, 2007)."
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- ¹¹⁶ "The images of the attack have been widely shown on television in Spain, showing the assailant kicking and shouting racist insults at the girl while talking on his mobile phone. Another passenger is clearly seen facing away and doing nothing to intervene." Court documents said insults included calling her a "zorra inmigrante de mierda" ("shitty immigrant slut"). "Demonstrations Across Spain Against Racism," *Typically Spanish*, October 27, 2007, cited in ICARE Antiracism News, November 1, 2007.
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- ¹¹⁹ OSCE, Policing in Multi-Ethnic Societies. p. 27, citing Judgment of the European Court of Human Rights, Case of Nachov and Others vs. Bulgaria, Para. 161, Strasbourg, July 5, 2005.
- ¹²⁰ European Court of Human Rights, Nachova and Others v. Bulgaria (Applications nos. 43577/98 and 43579/98), Judgment, July 6, 2005, available at <http://www.bghelsinki.org/intl%20law/2005/Nachova.doc> (accessed August 14, 2007).

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- ¹²³ The website of the Ombudsman for Ethnic Discrimination stresses its attention to discrimination in “working life,” and notes that the office does not have a mandate to deal with other forms of discrimination such as sex or disability discrimination.” Its legal mandate states that “ethnic discrimination means a situation where a person or a group of persons is treated less favorably in relation to others or is in some other way subjected to unfair or offensive treatment due to their race, skin color, national or ethnic origin or religious faith.” Ombudsman for Ethnic Discrimination, “This is How the DO Works,” available at: <http://www.do.se/o.o.i.s?id=618> (accessed August 15, 2007).
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- ¹³⁵ Home Office, The Stephen Lawrence Inquiry, Section 6, 45. See also the Report Submitted by the United Kingdom Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, July 26, 1999, for a review of government measures in the wake of the Lawrence inquiry and an assessment of hate crimes in the United Kingdom. Council of Europe, ACFC/SR(1999)013, available at: [http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_\(MONITORING\)/2._Monitoring_mechanism/3._State_reports/1._First_cycle/1st_SR_United_Kingdom.asp#TopOfPage](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/3._State_reports/1._First_cycle/1st_SR_United_Kingdom.asp#TopOfPage) (accessed April 10, 2005).
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- ¹⁵² The 1968 "Federal Hate Crime Statute," 18 USC 245, outlines the six federally protected activities as follows: " (1) A student at or applicant for admission to a public school or public college; (2) A participant in a benefit, service, privilege, program, facility or activity provided or administered by a state or local government; (3) An applicant for private or state employment; a private or state employee; a member or applicant for membership in a labor organization or hiring hall; or an applicant for employment through an employment agency, labor organization or hiring hall; (4) A juror or prospective juror in state court; (5) A traveler or user of a facility of interstate commerce or common carrier; (6) A patron of a public accommodation or place of exhibition or entertainment, including hotels, motels, restaurants, lunchrooms, bars, gas stations, theaters, concert halls, sports arenas or stadiums."
- ¹⁵³ Penal Code of Washington, RCW 9A.36.080, available at: <http://apps.leg.wa.gov/RCW/default.aspx?cite=9A.36.080>.
- ¹⁵⁴ Penal Code of Massachusetts, Chapter 265, Section 39, available at: <http://www.mass.gov/legis/laws/mgl/gl-265-toc.htm>.
- ¹⁵⁵ Penal Code of New York, Section 485.00 – 485.10, available at: <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>.
- ¹⁵⁶ The Crimes and Disorder Act, 1998, United Kingdom, available at: <http://www.opsi.gov.uk/acts/acts1998/19980037.htm>.
- ¹⁵⁷ The Anti-Terrorism, Crime and Security Act, 2001, United Kingdom, available at: <http://www.opsi.gov.uk/acts/acts2001/10024--f.htm#40>.
- ¹⁵⁸ In Bulgaria, article 162(2) punishes those "who apply violence against another or damages his property because of his nationality, race, religion, or political conviction..." In the Czech Republic, article 196(2) deals with the use of "violence against a group of inhabitants or against an individual, or to threaten them with death, injury to health or infliction of serious injury because of their political conviction, nationality, race, creed, or lack of creed." In Hungary, section 174/B punishes persons "who assault somebody else because he belongs or is believed to belong to a national, ethnic, racial, or religious group, or coerce him with violence or menace into doing or nor doing or into enduring something..." In Poland, Article 118(1) punishes those who, "acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group..."
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- ¹⁶⁰ Nancy Othon, "Palm Beach County prosecutors see creative punishment as part of their job," *South Florida Sun-Sentinel*, September 4, 2007.
- ¹⁶¹ International Association of Chiefs of Police, "Hate Crime in America Summit Recommendations," available at: http://www.iacp.org/documents/index.cfm?fuseaction=document&document_id=160#measure (accessed on September 6, 2007).
- ¹⁶² Criminal Justice Act 2003, Article 145, available at: <http://www.opsi.gov.uk/acts/acts2003/30044--o.htm#145>.
- ¹⁶³ Criminal Justice Act 2003, Article 146, available at: <http://www.opsi.gov.uk/acts/acts2003/30044--o.htm#146>.
- ¹⁶⁴ Jennifer Schweppe and Dermot Walsh, "Combating Racism through the Criminal Law," School of Law, University of Limerick, March 2007.
- ¹⁶⁵ Act No. XVI of 2006, August 8, 2006, available at: <http://www.doi.gov.mt/EN/parliamentacts/2006/ActXVI.pdf>.
- ¹⁶⁶ Remarks by Daniela Petkovic, Ministry of Interior of the Republic of Croatia, at an OSCE Expert Meeting on Best Practices in Combating Antisemitism, Berlin, November 20-21, 2006.
- ¹⁶⁷ Remarks by Daniela Petkovic, November 20-21, 2006.
- ¹⁶⁸ Anti-Defamation League, "Hate Crimes Data Collection and Prosecution: Frequently Asked Questions," available at: http://www.adl.org/combating_hate/ (accessed on August 30, 2007).
- ¹⁶⁹ Decision of the Federal Supreme Court, BGH 5 StR 359/93 from 07.07.1993.
- ¹⁷⁰ Section 430(1) of the Criminal Code of Canada provides that "[e]very one commits mischief who willfully (a) destroys or damages property; (b) renders property dangerous, useless, inoperative or ineffective; (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property."
- ¹⁷¹ SOVA Center for Information and Analysis, "Antiekstremistkie popravki prinyati v tretem chtenii: Kratky komentarii," July 6, 2007, available at: <http://xeno.sova-center.ru/89CCE27/89CD14E/975C903> (accessed on September 9, 2007).
- ¹⁷² The data challenge is complicated in part because sentences may take into consideration a wide range of other aggravating and mitigating factors, while monitoring systems have not been established to register whether the "racist" or other bias element was in fact taken into account in sentencing.
- ¹⁷³ Official submission of the government of Azerbaijan to a Human Rights First questionnaire, received on September 1, 2006.
- ¹⁷⁴ Galina Kozhevnikova, "Radical Nationalism in Russia and Efforts to Oppose it in 2006," SOVA Center, March 2007.
- ¹⁷⁵ "Addressing Hate Crimes in Ontario: Background Documentation and Resources," Final Report of the Hate Crimes Community Working Group to the Attorney General (2006), Part 4: Justice System, p. 4
- ¹⁷⁶ Center for Equal Opportunities and Opposition to Racism, "Jaarverslag 2005," May 2006, p. 20, available at: http://www.diversiteit.be/NR/rdonlyres/CCAB46F8-997F-44FE-B9AF-A566CEFB25C1/0/05_JaarverslagCentrumfull.pdf
- ¹⁷⁷ Information provided by CEOOR by e-mail to Human Rights First on August 9, 2006.