

Hate Crimes

Why hate crimes require special attention?
The impact of hate crimes on social cohesion

Hate crimes are crimes based on prejudice. They happen everywhere as no society is immune to the effects of prejudice and intolerance. Hate crimes undermine societal cohesion by sowing the seeds of wider-scale violence. While institutions often underestimate the impact of this phenomenon, civil society organisations (CSOs) can play a crucial role in winning the battle against hate crimes.

This article is based on the experience of a practitioner who works with CSOs and victims groups in Europe and former Soviet Union to empower them and build on their capacities to respond to hate crimes.

Olaolu Femi, a student in Luhansk, Ukraine, was attacked by 5 young people. After defending himself and his friend, he was charged with attempted premeditated murder with the motive of hooliganism. Despite the fact that the attackers got officially considered "light injuries", and the type of injuries indicate they were inflicted during the self-defence of Olaolu, Femi was charged, detained and imprisoned. Olaolu was released after 1,5 year of unfair and illegal detention. Though Olaolu is free today, his case is still pending and he has to face a trial.

CRIMINAL OFFENCE AND BIAS MOTIVE

Hate crimes always comprise two elements: a criminal offence committed with a bias motive.

The first element of a hate crime is that an act is committed that constitutes an offence under ordinary criminal law. Hate crime could be a murder, threats, property damage, assault etc..

The second element is that the criminal act is committed with a particular motive, referred to as "bias". It is this element of bias motive that differentiates hate crimes from ordinary crimes. This means that the perpetrator intentionally chose the target of the crime because of some protected characteristics. The target may be one or more people, or it may be property associated with a group that shares a particular characteristic. The perpetrator might target the victim because of actual or even perceived affiliation with the group. This means that everyone can be a victim of hate crimes as for example a woman wearing a scarf might be wrongly perceived as "Muslim" and attacked because of bias against the wrongly perceived protected characteristic, meaning "religion".

PROTECTED CHARACTERISTICS

A protected characteristic is a common feature shared by a group, such as "race", language, religion, ethnicity, nationality, gender, sexual orientation or any other similar factor that is marker of a group identity.

Protected characteristics generally cannot be changed, but not all unchangeable characteristics are markers of group identity. For example, blue eyes may be described as an immutable characteristic, but blue-eyed people do not usually identify together as a group, nor do others see them as a cohesive group, and eye colour is not typically a marker of group identity.

Differently, there are a few characteristics, which are changeable but are nevertheless fundamental to a person's sense of self. For example, even though it is possible to change one's religion, it is a widely recognized marker of group identity, which a person should not be forced to surrender or conceal.

Different states' hate crime laws differ widely with respect to the characteristics of the groups covered.

The term "hate crime" or "bias crime" describes a type of crime, rather than a specific offence within a penal code. Because of its complicated nature and manifestation the mere legal perspective is not sufficient to address hate crimes, and the socio-anthropological aspects of this phenomenon have to be taken in account to tackle the root of the problem.

SOCIAL IMPACT OF HATE CRIME

The impact of hate crimes can be far greater than that of crimes without a bias motive; this greater impact is one of the key reasons why hate crimes should be treated differently than the same crimes committed without a bias motivation. Hate crimes send the message that victims are not an accepted part of the society in which they live. As a consequence, those attacked may experience both a sense

of extreme isolation and greater fear than that experienced by other victims of crime. Hate crimes have a similarly destructive impact on the family and friends of the victim and on others who share the characteristics that were the object of the prejudice behind the attack. In the worst cases, hate crimes can cause retaliatory attacks by the victim groups, creating a spiral of violence that can lead to social or ethnic conflict.

LEGAL APPROACHES TO HATE CRIME

Hate crimes constitute a breach of the principle of non-discrimination and a human rights violation. The legislation dealing with hate crimes can take many different forms, but broadly there are three approaches. The first is to define acts that are already crimes as distinct, more serious offences ("substantive offences") if the victim was selected on the grounds of his or her membership of a protected group. The second approach is sentence enhancement, where the court can or must impose a higher penalty because

MONITORING HATE CRIME BY OSCE

The OSCE is a regional security organization linking the respect of human rights and democratic values to a comprehensive concept of security. With the Ministerial Council decision no.9/99 OSCE participating States took a series of commitments on combatting hate crimes, including monitoring and reporting. Using the official data received by states the OSCE office for Democratic Institutions and Human Rights (ODIHR) publishes an annual report on "Hate Crimes in the OSCE Region" (see usefull adresses). The ODIHR includes also information received by CSOs, through an on-line call for contribution. Even though these data are not official, they can contribute to develop a more comprehensive overview of the hate crime situation in the OSCE region.

DATA DEFICIT

Despite the general consensus on the importance of data collection as a starting point to develop strategies to respond to hate



SELF-DEFENCE IS NO OFFENCE

of the motivation, which is considered an aggravating factor. The third form involves the creation by states of laws that mandate collection of data on hate crimes without creating criminal offences related to them, or in addition to criminal laws.

INCREASING AWARENESS AMONG STATES

In last twenty years states members of the European Union, the Council of Europe and the Organisation of Security and Cooperation in Europe (OSCE) have changed their stand on responding to hate crimes adopting a more assertive position. By explicitly condemning hate crimes states agreed about undertaking positive actions to respond to these crimes. The recent case law of the European Court of Human Rights" (Šešić vs. Croatia, Angelova and Iliev vs. Bulgaria, Milanović vs. Serbia) emphasize states positive duty to investigate the potential racist motivation or prejudice, eventually unmasking racist or religious hate. This approach is the result of increased awareness of the destabilizing consequences of hate crime, and the need for institutions to properly react in order to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.

crimes, data deficit is a serious challenge in many countries.

Data deficit is caused by several factors and underreporting is probably the most common. There are many reasons for underreporting by victims. They might be unwilling to disclose personal information, like sexual orientation even in their own family or community. Many people may be unaware that hate crime laws exist or what the procedures to report are. Victims might lack confidence that law enforcement will take appropriate action to respond to their hate crime report; Individuals who are not citizens of the country where they have been victimized may fear that their involvement with police may result in arrest and/or deportation. Many victims fear that if they report a crime the perpetrators will retaliate against them or their family members. From the police's side, often law enforcement agencies lack skills in identifying and investigating hate crimes or share the prejudice of the perpetrators. In this kind of environment, officers might not question victims and perpetrators appropriately about possible hate motivation in reported bias incidents and exclude from the report details of hate motivation provided by a complainant.

HELP IN COLLECTING DATA

Where official data collection is ineffective, CSOs can contribute to increase and improve data collection.

Community-based organizations (CSOs) cooperating with minority and vulnerable groups are often well placed to know of hate motivated incidents and crimes, hence they have access to information that law enforcement agents are not likely to find. In Italy, for example, the police unit dealing with racist or religious motivated crimes holds consultative meeting with leaders of Muslim and Jewish communities to exchange information and prevent a dangerous increase of intolerance.

For establishing a good cooperation it is crucial that minority and vulnerable communities understand CSOs services and trust their organizations. This can be achieved through reaching out to the communities that are affected by hate crimes by advertising available services in printed and electronic media and by developing language-appropriate materials.

response to a number of high profile and serious offences committed against disabled people. Following the report it was decided to further investigate into what actions public authorities are taking to discharge their legal duty to eliminate disability-related harassment and its causes. The inquiry involved substantial public consultation and evidence sessions with senior members of the criminal justice system, including the Director of Public Prosecution.

The Inter-religious Council in Bosnia Herzegovina (BiH) implemented a project on Monitoring and Responses to Attacks on Religious Buildings and Other Holy Sites in BiH. The outcome of the monitoring action carried out between 2011 and 2012 was successfully used to lobby for better surveillance and more frequent police patrolling of religious sites.

Governments are primarily responsible to properly investigate hate crimes and sentence the perpetrator. However CSOs are often in a better position to both detect signs of intolerance and function as a bridge between

HOW CAN CSOs RECOGNIZE HATE CRIMES?

CSOs can use indicators to recognize a possible bias motivation. In listening to victims' stories CSO staff should try to clarify as many details as possible using the indicators as a reference.

Hate crime indicators are objective facts that signal that a case may involve a hate crime; they form a consistent factual basis upon which a CSO can advocate with police or other governmental agencies for treating incidents as possible hate crimes. If such indicators exist, the incident should be recorded as a possible hate crime and should trigger further investigation about the motive for the crime. However, the proof of hate motivation will come only after a thorough and completed investigation, with a result confirmed by a court. National experts and law enforcement agencies have developed detailed lists of hate crime indicators. While these may and do vary, there are some indicators that should be looked at.

In some countries (e.g. the United Kingdom) the victim's perception is a primary indicator in the investigation on potential hate crimes. Since hate crimes are "message crimes" the crucial evidence in most hate crimes consists of the words or symbols used by the perpetrators themselves. Moreover, the incident often involves extreme or unusual violence, or expressly degrading and humiliating treatment. The differences of ethnicity, "race", religion, nationality, gender, sexual orientation etc. between perpetrator and victim should be taken in account. Indicators can also be identified in attacks on property that suggest bias motivations. A perpetrator's association with an organization founded on ideologies of prejudice is an important indicator requiring further investigation into motivation. Very often the crime is committed near a place commonly associated with a particular minority group (e.g., housing for asylum seekers, a centre for people with disabilities, or bar with a predominately gay clientele). Also dates that assume special significance to a community should be taken in account as, for example religious holidays or days commemorating significant historical events.

ASSISTING VICTIMS

A crucial role that CSOs can play in the battle against hate crimes is assisting victims. CSOs can provide victims with the information they need to lodge formal complaints against the perpetrators of hate crimes, to receive compensation and government benefits, and to provide practical help with medical and psychological care. Moreover, since many victims feel more comfortable in reporting hate crimes to law enforcement officers if they are accompanied by a person with experience in these matters whom they trust. CSO's representatives can help ensure that official bodies treat complainants with respect, record the testimony fully and accurately, and observe established procedures. In many cases victims belong to vulnerable groups like immigrants, Roma, or other ethnic minorities who do not have the possibility to afford legal support. CSOs can provide legal assistance and serve as legal representatives of hate-crime victims in criminal cases, in civil court cases seeking compensation.



ADVOCACY

Data on hate crimes can be used by CSOs as powerful advocacy tool with both government and specialized institutions like equal-opportunity commissions or anti-discrimination ombudsmen to show that there is a problem that calls for political action and the adoption or implementation of comprehensive legislation, as well as for better support services for hate crime victims. Moreover, this data can be used by CSOs to increase public awareness of the serious impact that these crimes can have on the entire society. It is important to change the general perception that hate crimes concern 'the others': minorities in terms of ethnicity, religious belief, sexual orientation etc.; while to confront the problem, authorities and the public need to know its real nature and extent - and the threat the problem poses to society.

In comparative practice examples of successful CSO advocacy projects are not rare. In 2009, the United Kingdom Equality and Human Rights Commission (EHRC) published a report that presented research into disabled people's experiences of targeted violence and hate crime. This report revealed an unsatisfactory authorities'

authorities and the victims/vulnerable groups. If CSOs manage to establish regular contacts with the police, interaction between the police and the victim will be probably facilitated. CSOs who managed to cooperate with the police have gone through a process often beginning with CSO staff developing a positive working relationship with a single police official. Over time, the trust that is built between individuals can result in regular collaboration in developing policies, advocacy strategies and tools for change in combating hate crimes. For example, in the United Kingdom, the Community Security Trust published A Guide to Fighting Hate Crime in March 2011. The guide aimed at minority groups and potential victims of hate crime sets out how to monitor and report incidents of hate crime and work with the police to improve responses.

Even though it is a difficult and slow process, the cooperation with police is unavoidable to succeed in fighting hate crimes. To buy in police support, CSOs should demonstrate that thanks to the information that victims and witnesses are willing to give to CSOs more than to the police, the latter would be able to intervene on time in potentially dangerous situations and advance in the investigations.

An important issue for CSOs providing victim support is ensuring that the best interests of the victim are respected. This is particularly important when determining whether a formal complaint is made to authorities, whether the name of the victim is released to the media, or whether details of an incident are used in advocacy calling attention to this and other hate crimes. CSOs should always take into account the wishes of the victim in these cases, after victims are informed of their options.

There are many successful projects dealing with victims' assistance in a broader sense. In 2010 In Ukraine the Social Action Centre implemented a project entitled "Legal Assistance to Victims of Racist Crimes in the City of Kyiv", funded by the German foundation Stiftung Erinnerung, Verantwortung und Zukunft. Within the framework of the project, pro bono legal assistance was offered to victims of 13 incidents in several Ukrainian towns.

CSOs can also provide victims with emergency assistance. Many CSOs have 24-hour emergency telephone and internet hotlines for hate-crime victims, through which they, their families or their friends can report hate-motivated incidents and situations in which they feel an attack is imminent.

In 2010, the NGO Faith Matters set up the "Measuring Anti-Muslim Attacks (MAMA)" project, which enables people from across England to report any form of anti-Muslim abuse via telephone, e-mail, SMS, Facebook or Twitter. The purpose of the project is to collect information about anti-Muslim incidents and enable local police forces and social support services to target their resources

In many cases CSOs have programmes for medical services, including psychological counselling or can refer hate-crime victims to other organizations that have these services and assist victims in gaining access to state health services for medical help. In these cases CSOs, through support and encouragement, can help victims regain a sense of confidence in their community and control of their lives. This also contributes to reducing victims' sense of isolation.

A recent development in CSO's work to help victims of hate crimes is to act as "amicus curiae" in cases dealt by the European Court of Human Rights. For example, in the case Đorđević v Croatia the European Disability Forum (EDF) - an European umbrella organisation representing the interests of persons with disabilities - submitted written comments in support of the applicants.

PREVENTIVE MEASURES

Hate crimes are a sign of a deep fracture in the society that is often difficult to repair. However, often it is possible to implement preventive measures, as these crimes do not always happen suddenly; they are preceded by a series of episodes of intolerance that often culminate into crime. Community-based organizations can carry out preventing actions to avoid dangerous escalations to hate crimes both in terms of number of incidents and level of violence.

UNITED for intercultural action

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WORK TOGETHER

For CSOs working on hate-crime prevention it is strategically important to develop working relations with other CSO actors within the community. This will optimize the resources as each partner organization may have its own specific relationship with or access to particular decision makers. In the coalition different minority groups have to be represented for the victims to feel more comfortable in the relationship with the organisation, and, when possible, organisations with different expertise should join their forces in order to cover different areas of intervention. Coalitions engage in different levels of co-operation, from information sharing and networking to collaboration on specific projects and advocacy.

The general financial constraints make CSOs coalitions strategically important because this increases possibilities to raise funds and to succeed in project implementation. Networking is a requirement for many donors' tenders, as it optimises the resources and might contribute to community cohesion and reconciliation. Furthermore, having a good geographical coverage is useful as grass-root organisations can be strategic "antennas" for early warning, especially in areas where ethnic tension might explode.

USEFUL ADDRESSES:

- **OSCE Office for Democratic Institutions and Human Rights:** www.osce.org/odihr
- **OSCE - Annual Report on Hate Crime in OSCE Region** tandis.odihr.pl/hcr2012
- **United Kingdom Equality and Human Rights Commission:** www.equalityhumanrights.com/uploaded_files/research/disabled_people_s_experiences_of_targeted_violence_and_hostility.pdf
- **EVZ Foundation - Victim Support and Monitoring:** www.stiftung-evz.de/eng/funding/human-rights/stop-hate-crime.html
- **FRA - European Union Agency for Fundamental Rights:** fra.europa.eu
- **FRA - Info Graphic:** fra.europa.eu/sites/default/files/fra_images/infographic-hatecrime-frc-2013.jpg
- **FRA - Hate crime in the EU:** fra.europa.eu/en/publication/2012/hate-crime-european-union
- **FRA - Combating hate crime in the EU:** fra.europa.eu/sites/default/files/frc2013-conclusions.pdf
- **ECHR/FRA Handbook on European Non-discrimination Law:** echr.coe.int/Documents/Handbook_non_discrimi_law_ENG_01.pdf
- **Inter-religious Council of Bosnia and Herzegovina:** www.mrv.ba/eng
- **ECHR - European Court of Human Rights:** www.echr.coe.int
- **Media smarts Introduction to Online Hate:** mediasmarts.ca/online-hate/online-hate-introduction

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