Number 108 September 2019

ANNUAL REPORT FOR 2018
AND
RESOURCE MATERIAL SERIES

FEATURED ARTICLES

The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

ANNUAL REPORT FOR 2018

AND

RESOURCE MATERIAL SERIES NO. 108

CRIMINAL JUSTICE RESPONSE TO CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

UNAFEI

Akishima, Tokyo, Japan **September 2019**

Takeshi Seto
Director

United Nations
Asia and Far East Institute
for the Prevention of Crime and
the Treatment of Offenders
(UNAFEI)

2-1-18 Mokuseinomori, Akishima-shi, Tokyo, Japan
unafei@i.moj.go.jp

CONTENTS

INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 108. This volume contains the Annual Report for 2018 and the work produced in the 171st International Senior Seminar, conducted from 9 January to 7 February 2019. The main theme of the 171st Seminar was the *Criminal Justice Response to Crimes Motivated by Intolerance and Discrimination*.

In order to suppress intolerance crimes effectively, it is necessary to establish proper legal bases to punish intolerance crimes, such as by adopting penalty enhancement or other substantive offences. During investigation, criminal justice authorities must seek and identify bias indicators, that is, adequate evidence to prove the offender's intolerant or discriminatory motives. Moreover, it is essential to take steps to build public confidence in law enforcement in order to facilitate cooperation with investigations. This can be done by establishing positive professional relationships with victims and victim communities and by implementing witness protection and other measures that provide broader assistance (e.g. access to victim support services). When crimes are motivated by discrimination or intolerance, imposing a penalty alone may not be sufficient to prevent the offender from committing further crimes. Thus, it is important to administer proper interventions, including those aimed at correcting the offender's biased or discriminatory thoughts, and utilization of the restorative justice approach.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this Seminar to explore various issues that relate to crimes involving intolerance and discrimination. This issue of the Resource Material Series, in regard to the 171st International Senior Seminar, contains papers contributed by visiting experts and selected individual-presentation papers from among the participants. I regret that not all the papers submitted by the participants of the Seminar could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation, for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

September 2019

瀬戸　毅

Takeshi SETO
Director of UNAFEI

PART ONE

ANNUAL REPORT

FOR 2018

- ***Main Activities of UNAFEI***
- ***UNAFEI Work Programme for 2019***
- ***Appendix***

UNAFEI

MAIN ACTIVITIES OF UNAFEI
(1 January 2018 – 31 December 2018)

I. ROLE AND MANDATE

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1962 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in the Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the reintegration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

II. TRAINING

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of the criminal justice field discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice from the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks) and one international seminar (five weeks). Approximately one hundred government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA is an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from Africa, Eastern Europe, Latin America, the Middle and Near East, and Oceania. These participants are experienced practitioners and administrators holding relatively senior positions in the criminal justice field.

By the end of 2018, UNAFEI had conducted a total of 170 international training courses and seminars. Over 5,900 criminal justice personnel representing 139 different countries and administrative regions have participated in these seminars. UNAFEI also conducts a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved. In their respective countries, UNAFEI alumni have been playing leading roles and hold important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

A. The 168th International Senior Seminar

1. Introduction

The 168th International Senior Seminar was held from 11 January to 9 February 2018. The main theme was “Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms”. Twenty-one overseas participants (including one course counsellor) and seven Japanese participants attended the Seminar.

2. Methodology

Firstly, the Seminar participants introduced the roles and functions of criminal justice agencies in their countries in regard to the main theme. After receiving lectures from UNAFEI professors and visiting experts, the participants were then divided into three group workshops as follows:

Group 1: Law-Related Education Contributing to Peaceful and Inclusive Societies

Group 2: Access to Justice for All in the Criminal Justice System

Group 3: Community-Based Dispute Resolution

Each Group selected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) in order to facilitate the discussions. During group discussion, the group members studied the designated topics and exchanged views based on information obtained through personal experiences, the Individual Presentations, lectures and so forth. The Groups presented their reports during the Report-Back Session, where they were endorsed as the Reports of the Seminar. The full texts of these Reports were published in UNAFEI Resource Material Series No. 105.

3. Outcome Summary

(i) Law-Related Education Contributing to Peaceful and Inclusive Societies

Group 1 discussed approaches and measures for using law-related education to contribute to peaceful and inclusive societies. Specifically, the group focused on strategies and implementation of law-related education (LRE) for teachers, students, community leaders, and the general public.

The rule of law protects human rights by ensuring that the laws are applied fairly and equally to all members and segments of society. Yet without a firm understanding of the purpose of the law and its obligations, members of the general public will not be able to follow the law or vindicate their rights. Therefore, promoting LRE is a key element for deepening public understanding about human rights, the rule of law and the values behind them; this will also help to instil a culture of lawfulness in society, which exists when the general public respects the law and believes in its justness and fairness.

In order to teach students about the rule of law, *teachers* must familiarize themselves with the basic principles of the rule of law by receiving training from relevant ministries, criminal justice officials, etc., and, when possible, Training for Trainers sessions should be held. The group recommended that curricula should be developed using a multisectoral approach by a committee consisting of government officials, academics and experts. To implement new educational programmes, developing countries may seek funding from international development agencies. To be accessible to *students*, LRE must be age appropriate and interesting, for which the group recommended cooperating with the private sector. It was also recommended that governments make LRE compulsory for all students.

Community leaders, such as religious leaders, police officers, artists, politicians, volunteer probation officers, village leaders etc., can play vital roles in disseminating information to the general public. For example, in Sri Lanka, village leaders and selected citizens are trained in LRE by the police and then coordinate matters with the police and other institutions on behalf of the village. By doing so, community leaders, as well as the general public, feel that they are part and parcel of the legal system. Sustainable development of a society can only occur in an environment in which *the general public* supports the rule of law through direct participation in the criminal justice system. In Japan, citizens participate directly through the *saiban-in* (lay judge) system and by serving as volunteer probation officers. The group also stressed the importance of using the mass media, social media, and mascots or cartoon characters to draw the public's attention to LRE-related messaging. The ultimate goal of LRE is to achieve a culture of lawfulness, in which all members of society respect, support and understand the rule of law and actively participate in maintaining it.

(ii) Access to Justice for All in the Criminal Justice System

Group 2 addressed the issue of access to justice by focusing on victims of crime. Modern societies seek to avoid violence by resolving disputes through independent, impartial judiciaries, making access to justice for all—but particularly for victims—important to maintaining peaceful societies in which all members place

trust in the criminal justice system. Public understanding of basic information about the criminal justice system will enable victims to make informed decisions, to understand the process of identifying wrongs committed against them and to find suitable remedies.

The group's discussions identified a number of challenges to access to justice for victims, including access to police stations and facilities, legal expenses for the victims, inefficiency and lack of trust in the criminal justice system, failure to provide victims with sufficient information about the prosecution of the defendant and his or her sentence, lack of cooperation between criminal justice agencies and other professions, lack of knowledge about the criminal justice system, community attitudes, and failure to prioritize access-to-justice issues.

In response to these challenges, a number of good practices were identified to improve access to justice. These include: women only police stations to encourage reporting of crimes (Brazil); legal aid clinics and legal support centres to provide information to crime victims (Cote d'Ivoire, Japan, Laos); forensic interviewing to reduce mental burdens on child-victims (Japan and Thailand); information brochures on access to justice (Cote d'Ivoire and Japan); law-related education (Japan and Thailand); alternative dispute resolution to help victims obtain justice (Thailand).

Considering the challenges and drawing from the good practices identified, the group offered the following recommendations: (1) improving the location and facilities of police stations; (2) improving the process for reporting crime; (3) establishing women only police stations; (4) providing legal expenses for crime victims and extending legal aid to include victim support or establishing Legal Support Centres for victims; (5) increasing and improving training for criminal justice agencies to improve interactions with victims; (6) establishing Independent Integrity Commissions to handle victim complaints on the conduct of criminal justice officials; (7) establishing victim notification mechanisms and victim feedback forms; (8) developing a network for communication between criminal justice agencies and relevant professionals; (9) promoting criminal justice through campaigns, use of media and publication of materials to inform the public; (10) promoting legal education in schools and the public; and (11) developing marketing strategies to promote access to justice.

The group concluded by noting that its recommendations are intended to increase victims' access to, and trust in, the criminal justice system. To implement these recommendations, it is necessary to secure funding that is based on effective data analysis and proper record management.

(iii) Community-Based Dispute Resolution

Group 3, addressing the issue of public participation in criminal justice, focused on the measure of community-based dispute resolution (CBDR) as a way of increasing public participation and access to justice. The aim of CBDR is to reach resolution between the parties to the dispute. While the formal criminal justice system is the main approach for preventing crime in accordance with the rule of law, the formal system is expensive. Taking account of cultural diversity and geographical remoteness, CBDR is an alternative approach that can prevent crime by providing fair, prompt and inexpensive means to maintain peace and harmony in the community.

The group introduced practices from many of the participating countries that represent the CBDR approach, such as the *Nangdrik* community dispute resolution programme in Bhutan, civil reconciliation in Japan, village court mediation in Papua New Guinea, the *Barangay* Justice System in the Philippines, and civil and criminal mediation in Thailand, in which the court's mediators are selected from among the general public. It was noted that most countries use mediation in civil or minor cases as a customary community-based practice, but few countries apply CBDR to criminal cases.

While the group agreed that CBDR is an important measure for resolving disputes, there are numerous challenges to its use and implementation, including, among others, cultural and geographical diversity and lack of awareness of legal rights and options. To achieve fairness in CBDR, the group agreed that there must be balance between the protection of defendants' rights and victims' rights. It is also important to have criteria for selecting mediators, codes of conduct, and training for mediators, as well as greater public awareness of the mediation process. Finally, effective measures must be identified to ensure performance of obligations agreed to through the CBDR process. Several of the measures identified include the practice of

referring the matter to the police (Bhutan and Thailand), involving relatives in the mediation to encourage performance of obligations (Japan), and seeking the assistance of village court officials or clan/tribal leaders (Papua New Guinea).

The group offered a number of recommendations to enhance the quality of CBDR in countries that adopt the approach. These measures include: legislation on CBDR; public awareness and education campaigns; collaboration with bar associations; making use of the Japanese volunteer probation officer system; creation of policy guidelines for CBDR; providing incentives to mediators; providing appropriate training and selection of mediators; and referring cases to the formal legal system if obligations agreed to during CBDR are not performed. The group concluded that the CBDR approach not only enhances public participation in criminal justice but enhances access to justice and LRE.

B. The 169th International Training Course

1. Introduction

The 169th International Training Course was held from 9 May to 14 June 2018. The main theme was "Criminal Justice Practices against Illicit Drug Trafficking". Twenty-four overseas participants and seven Japanese participants attended the Course.

2. Methodology

The objectives of the Course were primarily realized through the Individual Presentations, lectures by visiting experts and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into three groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Effective Investigative and Prosecutorial Measures to Detect, Prosecute and Punish Leaders of Crime Organizations and High Value Targets

Group 2: Confiscation of Drugs and Proceeds Derived from Drug Offences: A Way Forward for Effective Enforcement

Group 3: Multi-Agency and International Cooperation

The three groups each selected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. The Groups presented their reports during the Report-Back Session, where they were endorsed as the reports of the Course. The full texts of the reports were published in full in Resource Material Series No. 106.

3. Outcome Summary

(i) Effective Investigative and Prosecutorial Measures to Detect, Prosecute and Punish Leaders of Crime Organizations and High Value Targets

Drug trafficking is a global crime in which organized crime groups operate in secrecy. Thus, special measures are necessary to combat drug trafficking. The group reported on the current situation of special measures in the participating countries, explained common problems, and recommended solutions. For all measures, the group stressed the importance of establishing legal frameworks (specific legislation) for the use of such measures.

Because drug trafficking is committed in secret, informants are critical for detection and investigation. However, challenges faced include the reliability of information provided, protection of informants, and corruption among law enforcement officials. Thus, the group stressed the need to scrutinize and corroborate information obtained before making decisions. Additionally, witness protection frameworks should be established, and compensation should be offered subject to strict record keeping.

While electronic surveillance and communication interception are important techniques to detect drug trafficking, safeguards (i.e., warrants and time limitations) are necessary to protect the privacy rights of

citizens. In addition to laws on electronic surveillance, the group recommended the adoption of standard operating procedures for the use of these technologies, increasing budgets to acquire state-of-the-art technologies, and specialized training.

Undercover operations are high-risk investigative operations to infiltrate criminal organizations and detect their criminal activities. Common problems include lack of legal frameworks, technology and training. Solutions proposed include enhanced commitments to staffing, technology, training, and the protection of agents and their families,

Controlled delivery operations permit illicit or suspect consignments to pass into or through an enforcing jurisdiction in order to identify and apprehend those involved in the criminal activity. The group recommended enhancing professionalism by conducting such operations by special law enforcement units, combining controlled delivery with other investigative techniques, and establishing procedures to ensure timely cooperation with foreign and domestic law enforcement agencies.

Finally, without testimony at trial, drug-trafficking prosecutions will fail. The group recommended witness protection measures and the granting of immunity from prosecution to ensure that witnesses can safely testify at trial.

(ii) Confiscation of Drugs and Proceeds Derived from Drug Offences: A Way Forward for Effective Enforcement

To promote public safety and prevent the further commission of crime, confiscation of drugs and criminal assets is a fundamental law-enforcement priority. Global conventions such as the Palermo Convention (UNTOC) and the Vienna Convention require States Parties to adopt measures to detect money laundering and confiscate illicit drugs, criminal proceeds and other instrumentalities of crime.

While the traditional approach to drug confiscation (informants and random checking) is important, the group noted that special investigative techniques (controlled delivery, undercover operations, electronic surveillance) are more effective. These special techniques require a greater emphasis on training. Likewise, investigators need training to stay up to date on drug-trafficking trends and modus operandi. For example, proving intent in trafficking cases is a constant challenge that is compounded by the dark web and cryptocurrencies. The drug confiscation process is: search warrant, seizure, investigation, forensic testing and storage in a secure facility. To prevent the loss/theft of seized drugs, early disposal of drugs before the conclusion of the case was addressed by some members. The challenges of lack of international standards on the disposal of drugs and lack of public trust in some countries were identified.

Criminal assets can be identified by search procedures (with or without warrants), Financial Intelligence Units (FIUs), investigations and interrogations, and asset tracing. Challenges include the often-limited scope of investigation of FIUs, registration of assets in the names of third parties, cross-border transactions and the slow pace of international cooperation. To overcome these challenges, the group recommended strengthening the investigative authority of FIUs, establishing clear guidelines for international cooperation, adoption and implementation of international frameworks for asset tracing, and capacity-building for law enforcement officers. Once assets are identified, authorities must freeze, confiscate, and ultimately dispose of them. However, certain assets often decline in value and are stored by the state at high cost. Measures to address these challenges include releasing assets on bond and authorizing special agencies to manage the storage of seized property. Finally, the group also recommended that countries consider the adoption of civil or non-conviction-based forfeiture per the FATF Recommendations. The group concluded by offering recommendations to improve information sharing, border control practices, domestic coordination between agencies, statistical information and analysis, and capacity-building

(iii) Multi-Agency and International Cooperation

All countries, whether origin, transit or destination countries, are impacted by the cross-border nature of drug trafficking. Therefore, drug trafficking is a matter of global concern, and international cooperation is necessary to combat it. Group 3, under the theme of multi-agency and international cooperation, focused on the topics of (a) border control, (b) information exchange, (c) mutual legal assistance, and (d) financial institutions.

Regarding border control, many participants reported severe difficulties in interdicting the trafficking of drugs across their inland borders, coastlines and points of entry. To respond to this challenge, the group recommended strengthening border security and enhancement of visa application screening. Along similar lines, the group stressed the importance of agency-to-agency information exchanges between countries by entering into treaties or other agreements with neighbouring countries, as well as utilizing channels between liaison magistrates, police attaches, FIU liaison officers and focal points of international cooperation networks, such as INTERPOL.

Mutual Legal Assistance (MLA) is also an important measure to combat drug trafficking, but there are numerous challenges to successful assistance, such as lack of domestic laws on MLA, lack of expertise, differences in legal systems and terminology, discrepancies in domestic laws, difficulty in implementing special investigation techniques through MLA, and lack of timely response. Among numerous recommendations, the group suggested: (a) establishing international cooperation units within relevant agencies; (b) promotion of an active international cooperation culture among practitioners; (c) fostering communication through informal cooperation; (d) facilitation of international cooperation based on a harmonized list of common illicit substances and precursors; and so on.

Regarding financial institutions, the group reviewed the practices implemented in the participating countries to combat money laundering connected with drug trafficking. These practices include strengthening anti-money-laundering laws, reliance on international cooperation, and sharing financial intelligence through networks such as the Egmont Group. Still, challenges remain such as overcoming refusals to provide assistance and meeting the dual criminality requirement with respect to countries deemed as tax havens. The group recommended enhancing capacity-building efforts and using open source and FIU tools to trace foreign accounts and assets.

C. The 170th International Training Course

1. Introduction

The 170th International Training Course was held from 22 August to 21 September 2018. The main theme was "Treatment of Illicit Drug Users". Eighteen overseas participants (including four observers) and seven Japanese participants attended.

2. Methodology

The participants of the 170th Course endeavoured to explore the topic primarily through a comparative analysis of the current situation and the problems encountered. The participants' in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realized through the Individual Presentations, lectures by visiting experts and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. To facilitate discussions, the participants were divided into two groups.

Group 1: Effective Treatment Modalities and Interventions for Incarcerated Drug Users

Group 2: Diversion Options and Treatment Methods in the Community Setting

Each Group selected a chairperson, co-chairperson, rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Both groups examined the course theme. The Groups presented their reports in the Report-Back Sessions, where they were endorsed as the reports of the Course. The reports were published in full in UNAFEI Resource Material Series No. 107.

3. Outcome Summary

(i) Effective Treatment Modalities and Interventions for Incarcerated Drug Users

Group 1 addressed the issue of the treatment of drug users in prisons, including coordination between prisons and community organizations to prepare for reintegration. Four crucial challenges were identified as necessary to improve drug treatment in the custodial setting: (a) lack of trained personnel, (b) specialized

assessment, (c) lack of community support and partnership, and (d) diversity of drug use programmes.

Regarding training of correctional staff, each country should conduct a training needs analysis on a yearly or biennial basis to identify training needs and skills gaps. Specific training measures may include academic and professional training programmes, such as obtaining certificates in social work. In-service training should be provided by internal and external experts to enhance practical skills in the fields of law, medicine, etc., and learning from the experiences of community-based organizations should be encouraged.

Specialized assessment protocols and tools are necessary to determine which inmates are drug users, have higher risk of relapse or reoffending, or are suffering from infectious diseases or mental health problems. The Screening Brief Intervention Referral and Treatment (SBIRT) protocol provides a structured method that enables trained and untrained staff alike to conduct initial screening using tools such as ASSIST, DAST 20 and C-SRRS. These tools can be quickly and easily implemented to conduct initial assessments.

As drug users' multifactorial risks and needs make it impossible to identify an ideal treatment programme, a diversified portfolio of programmes, including psychological (*e.g.* CBT), social (*e.g.* family involvement) and pharmacological (*e.g.* detox) approaches, should be developed. To the greatest extent possible, treatment programmes should be administered on a voluntary basis.

Finally, community organizations should be involved in offender treatment programmes as early as possible to coordinate ongoing treatment after release. In so doing, practitioners in correctional facilities should utilize the through-care approach, aftercare and the promotion of offender reintegration into society through public awareness programmes. The group concluded by recommending that policymakers align criminal justice laws with current public health policies, including harm-reduction strategies.

(ii) Diversion Options and Treatment Methods in the Community Setting

Noting that evidence-based studies support the effectiveness of diversion and other alternatives to imprisonment at helping offenders successfully reintegrate into society, Group 2 discussed ways to create and implement such measures. While the traditional approach to drug crime involves criminalization, harsh punishment and stigmatization of the offender, this approach has been ineffective at deterring drug use. Furthermore, incarceration has numerous disadvantages including a higher incarceration rate, higher costs of correctional facilities, weakening of the economic status of the inmate's family, decreasing the inmate's employability upon release, and so on. Accordingly, criminal justice systems stand to benefit greatly from reliable diversion methods that focus on treatment and reintegration.

Effective diversion can be applied at all stages of the criminal justice process, including the pre-trial, trial, and post-trial stages. Even incarcerated offenders may receive community-based treatment through work release programmes or by engaging in community-based programmes on day release, enabling offenders to continue treatment in the community upon release. Diversion is a bridge to the community through which offenders can access community support, such as volunteer probation officers, rehabilitation centres, self-help groups, hospitals, clinics, etc. Eligibility for diversion programmes—and matching of offenders with appropriate programmes—should be based on assessments of each offender's unique risks and needs. In particular, judges have an important role in sentencing or diverting offenders.

Despite general acceptance of the importance of diversion and alternatives to imprisonment by criminal justice practitioners, a number of issues and challenges prevent the implementation of effective measures and practices, including (a) the absence of legislation on diversion, (b) stigmatization of offenders, (c) lack of public awareness/information, (d) lack of professionals in the field, (e) inadequate collaboration among criminal justice agencies, and (f) lack of adequate funding of drug treatment programmes. To address these challenges, the group recommended legal reforms adopting diversionary measures, training and skills development for officers, community outreach and public awareness programmes, countering stigmatization, and prioritizing community-based rehabilitation for drug offenders.

III. SPECIAL TRAINING COURSES AND TECHNICAL ASSISTANCE

A. Third Country Training Programme for Development of Effective Community-Based Treatment of Offenders in the CLMV Countries

From 9 to 19 January 2018, UNAFEI co-hosted the Third Country Training Programme for Development of Effective Community-Based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar, and Viet Nam).

B. The Fifth UNAFEI Criminal Justice Training Programme for French-Speaking African Countries

From 12-23 February 2018, UNAFEI co-hosted the Fifth Criminal Justice Training Programme for French-Speaking African Countries in Abidjan, Cote d'Ivoire. 33 practitioners from 8 French-speaking African countries discussed capacity-building for investigation, prosecution and adjudication, and measures for combating terrorism and organized crime.

C. The Training Course for Myanmar Prison Officials

From 14-28 February 2018, ten prison officials from Myanmar studied the institutional correction system of Japan.

D. The Comparative Study on Criminal Justice Systems of Japan and Nepal

From 5-16 March 2018, nine Nepalese participants studied and compared Japanese and Nepalese trial procedure, police investigation and criminal identification practices.

E. The RTI-SPP Exchange Programme for Viet Nam

From 11-17 March 2018, two Vietnamese participants discussed the amended criminal procedure code.

F. Training Course on Legal Technical Assistance for Viet Nam

From 12-23 March 2018, ten Vietnamese participants discussed the implementation of the amended criminal procedure code.

G. Follow-up Seminar for the Second Phase of the Third Country Training Programme for Development of Effective Community-Based Treatment of Offenders in the CLMV Countries

From 26-28 June 2018, UNAFEI hosted the Follow-up Seminar for the Third Country Training Programme for Development of Effective Community-Based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar, and Viet Nam).

H. The 21st UNAFEI UNCAC Training Programme

UNAFEI's annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, took place from October to November 2018. The main theme of the Programme is "Combating Corruption through Effective Criminal Justice Practices, International Cooperation and Engagement of Civil Society". Twenty-five overseas participants and several Japanese participants attended.

I. The Twelfth Regional Seminar on Good Governance for Southeast Asian Countries

From 27 to 29 November 2018, UNAFEI held the Twelfth Regional Seminar on Good Governance in Da Nang, Viet Nam. Among other participants, 19 anti-corruption practitioners from the 10 ASEAN countries attended as official delegates.

IV. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

V. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute

has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2018, the 104th, 105th and 106th editions of the Resource Material Series were published. Additionally, issues 155 to 157 (from the 168th Senior Seminar to the 170th International Training Course, respectively) of the UNAFEI Newsletter were published, which included a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI's website at http://www.unafei.or.jp/english.

VI. OTHER ACTIVITIES

A. Public Lecture Programme

On 26 January 2018, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the participants of the 168th International Senior Seminar. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. In 2018, Dr. Roy Godson, Professor Emeritus, Georgetown University, and Ms. Lulua Asaad, Crime Prevention and Criminal Justice Officer at the United Nations Office on Drugs and Crime (UNODC), were invited as speakers. They presented on "Culture of Lawfulness and Measures to Promote It" and "UN Congresses and Education for Justice", respectively.

B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

C. Overseas Missions in 2018

Professors WATANABE and MINOURA visited Bangkok, Thailand from 8 to 20 January as Visiting Experts for the Third-Country Training Programme for Development of Effective Community-based Treatment of Offenders in Cambodia, Lao PDR, Myanmar and Viet Nam hosted by Rehabilitation Bureau, Ministry of Justice, Thailand.

Professor YUKAWA visited Valletta, Malta from 29 January to 1 February to attend the Plenary Meeting of the Global Counterterrorism Forum (GCTF) Criminal Justice and Rule of Law (CJ-ROL) Working Group.

Deputy Director ISHIHARA, Professor YUKAWA and Professor YAMADA visited Abidjan, Côte d'Ivoire from 9 to 25 February to conduct the Fifth UNAFEI Criminal Justice Training Programme for French-Speaking African Countries.

Professor YAMAMOTO visited Abu Dhabi, United Arab Emirates from 17 to 21 February to attend the GCTF Countering Violent Extremism (CVE) Working Group Workshop on Monitoring, Measurement and Evaluation.

Director SENTA and Professor AKASHI visited Manila, Philippines and Kuala Lumpur, Malaysia from 1 to 10 March to obtain feedback on JICA/UNAFEI training programmes and to research offender rehabilitation in the institution and the community in Malaysia and the Philippines.

Professor YAMADA visited Da Nang and Hanoi, Viet Nam from 5 to 9 March to discuss the Twelfth Regional Seminar on Good Governance for Southeast Asian Countries with related organizations.

Professor AKASHI visited Jakarta, Indonesia from 11 to 15 March to research community-based corrections in Indonesia.

Professors YOSHIMURA and WATANABE visited Yangon, Mandalay, and Naypyidaw, Myanmar from 4 to 18 March to discuss the Comparative Study of Myanmar and Japan to improve prison management.

Professor YOSHIMURA visited Colombo, Sri Lanka from 12-18 March to attend the 7th Asian Conference of Correctional Facilities Architects and Planners (ACCFA).

Professor YAMAMOTO visited Bishkek, Kyrgyz Republic from 12 to 18 March to attend a UNODC regional workshop on the prevention of violent extremism.

Professors WATANABE and MINOURA visited Bangkok, Thailand and Phnom Penh, Cambodia from 15 to 24 March to implement the monitoring and evaluation session of the Third Country Training Programme (TCTP) in Cambodia and to report the results and discuss the Follow-up Seminar on the Third Country Training Programme for Development of Effective Community-Based Treatment of Offenders in the CLMV Countries with the Department of Probation in Thailand.

Director SENTA, Deputy Director ISHIHARA and Professors WATANABE and YAMAMOTO visited Vienna, Austria from 12 to 20 May to attend the 29th Session of the Commission on Crime Prevention and Criminal Justice.

Professor YAMAMOTO visited San Diego, California (USA) from 8 to 16 June to attend the College on Problems of Drug Dependence (CPDD) 80th Annual Scientific Meeting.

Professor YAMAMOTO visited Manila, Muntinlupa, and Quezon, Philippines from 4 to 13 July to discuss the UNODC Project "Improving Criminal Justice Response Inside and Outside Prison to Prevent and Counter Terrorism in the Philippines".

Deputy Director ISHIHARA visited Delhi, India from 23 to 28 July to attend the Global Central Authorities Initiative: South Asia Regional Workshop hosted by the International Institute for Justice and the Rule of Law (IIJ).

Professor YAMAMOTO visited Dili, Timor-Leste from 23 to 27 July to discuss the seminars for fiscal year 2018 with relevant organizations.

Professor YAMADA visited Garmisch, Germany from 30 July to 26 August to attend the Countering Transnational Organized Crime (CTOC) Course hosted by the George C. Marshall European Center.

Professor FURUHASHI visited Kuala Lumpur, Malaysia from 1 to 9 September to attend the 38th Asian and Pacific Conference of Correctional Administrators.

Professors WATANABE and KITAGAWA visited San Antonio, Texas (USA) from 15 to 21 September to attend the 26th Annual Conference of the International Community Corrections Association (ICCA).

Director SETO visited Siracusa, Italy and Vienna, Austria from 22 to 30 September to attend a meeting hosted by the Siracusa International Institute for Criminal Justice and Human Rights in and to meet with officers of the UNODC in Vienna.

Professor YAMAMOTO visited Marrakesh, Morocco from 30 September to 6 October to attend the Workshop on Countering Violent Extremism in Prisons, hosted by the GCTF Countering Violent Extremism (CVE) Working Group.

Professor FURUHASHI visited Vancouver, British Columbia, Canada from 15 to 23 October to attend the 37th Annual Research and Treatment Conference hosted by the Association for the Treatment of Sexual Abusers.

Professors YAMAMOTO and OHINATA visited Montreal, Canada from 20 to 28 October to attend the 20th AGM and Conference of the International Corrections and Prisons Association (ICPA) on the theme of "Beyond Prisons: The Way Forward".

Professors WATANABE and FURUHASHI visited Yangon and Naypyidaw, Myanmar from 4 to 9 November to hold meetings with related organizations on the preparation of training materials.

Professor YAMAMOTO visited Dili, Timor-Leste from 7 to 17 November to hold a seminar for prison officials and to discuss the UNODC Project "Improving Criminal Justice Response Inside and Outside Prison to Prevent and Counter Terrorism in the Philippines".

Professor KITAGAWA visited Vientiane, Lao PDR from 8 to 14 November to research the current condition of community-based treatment of offenders and to hold meetings with relevant organizations.

Director SETO and Professor YAMADA visited Hanoi and Ho Chi Minh City, Viet Nam from 18 to 24 November to attend the Joint Study on the Legal Systems of Japan and Viet Nam.

Director SETO, Deputy Director ISHIHARA, and Professors YAMADA and FUTAGOISHI visited Da Nang, Viet Nam from 25 November to 1 December to conduct the Twelfth Regional Seminar on Good Governance for Southeast Asian Countries.

Professors OTANI, HIRANO and WATANABE visited Kathmandu, Nepal from 16 to 23 December to discuss plans for the Comparative Study on Criminal Justice Systems of Japan and Nepal.

Professor KITAGAWA visited Bangkok, Thailand from 10 to 22 December to attend the Third Phase of the Third Country Training Programme for the Development of Effective Community-Based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar and Viet Nam).

D. Assisting ACPF Activities

UNAFEI cooperates and collaborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of the ACPF's membership consists of UNAFEI alumni, the relationship between the two is very strong.

VII. HUMAN RESOURCES

A. Staff

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and approximately nine professors are selected from among public prosecutors, the judiciary, corrections, probation and the police. UNAFEI also has approximately 15 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

B. Faculty and Staff Changes

Mr. MATSUMOTO Takeshi, formerly professor of UNAFEI, was appointed to the United Nations Office on Drugs and Crime Regional Office Southeast Asia and Pacific on 2 January 2018.

Mr. YUKAWA Tsuyoshi, formerly professor of UNAFEI, was transferred to the Tokyo High Public Prosecutors Office on 1 April 2018.

Ms. WATANABE Ayuko, formerly professor of UNAFEI, was transferred to the Tokyo District Public Prosecutors Office on 1 April 2018.

Mr. YOSHIMURA Koji, formerly professor of UNAFEI, was transferred to the Tama Juvenile Training School on 1 April 2018.

Mr. MINOURA Satoshi, formerly professor of UNAFEI, was transferred to the International Affairs Division, Minister's Secretariat on 1 April 2018.

Ms. AKASHI Fumiko, formerly professor of UNAFEI, was transferred to the International Affairs Division of the Minister's Secretariat on 1 April.

Mr. FUTAGOISHI Ryo, formerly attorney, coordinator of the Litigation Bureau, was appointed a professor

of UNAFEI on 1 April 2018.

Mr. OTANI Junichiro, formerly public prosecutor of the Chiba District Public Prosecutors Office, was appointed a professor of UNAFEI on 1 April 2018.

Mr. FURUHASHI Takuya, formerly director of Juvenile Correction of the Takamatsu Regional Correction Headquarters, was appointed a professor of UNAFEI on 1 April 2018.

Mr. OHINATA Hidenori, formerly director of the planning and coordination department of the Niigata Probation Office, was appointed a professor of UNAFEI on 1 April 2018.

Ms. KITAGAWA Mika, formerly probation officer of the Kanto Regional Parole Board, was appointed a professor of UNAFEI on 1 April 2018.

Mr. SENTA Keisuke, formerly director of UNAFEI, was transferred to the Takamatsu District Public Prosecutors Office on 25 June 2018.

Mr. SETO Takeshi, formerly chief public prosecutor of the Tokushima District Public Prosecutors Office, was appointed director of UNAFEI on 25 June 2018.

VIII. FINANCES

The Ministry of Justice primarily provides the Institute's budget. UNAFEI's total budget for its programmes is approximately ¥70 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

WORK PROGRAMME FOR 2019

I. TRAINING

A. Training Courses & Seminars (Multinational)

1. The 171st International Senior Seminar

The 171st International Senior Seminar was held from 9 January to 7 February 2019. The main theme of the Seminar was "Criminal Justice Response to Crime Motivated by Intolerance and Discrimination". Thirteen overseas participants and six Japanese participants attended.

2. The 172nd International Training Course

The 172nd International Training Course was held from 15 May to 21 June 2019. The main theme of the Course was the "Criminal Justice Response to Trafficking in Persons and Smuggling of Migrants". Twenty-one overseas participants and seven Japanese participants attended.

3. The 173rd International Training Course

The 173rd International Training Course will be held from 21 August to 20 September 201p. The main theme of the Course is "Tackling Violence against Women and Children Through Offender Treatment: Prevention of Reoffending". Government officials from across Southeast Asia and other parts of the world, including Japan, and visiting experts and lecturers will attend.

4. The 22nd UNAFEI UNCAC Training Programme

UNAFEI's annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, will take place from October to November 2019. The main theme of the Programme is "Detection, Investigation, Prosecution and Adjudication of High-Profile Corruption". Approximately thirty overseas and Japanese participants will attend.

5. The Thirteenth Regional Seminar on Good Governance for Southeast Asian Countries

From 17 to 19 December 2019, UNAFEI will host the Thirteenth Regional Seminar on Good Governance in Tokyo, Japan. The main theme of the seminar will address anti-money-laundering measures and asset recovery. Among other participants, 20 anti-corruption practitioners from the 10 ASEAN countries are expected to attend as official delegates.

B. Training Course (Country Specific)

1. The Comparative Study of Myanmar and Japan to Improve Prison management

From 25 February to 7 March 2019, ten prison officials from Myanmar studied the topic of prison management, including prison work and vocational training.

2. The Comparative Study on Criminal Justice Systems of Japan and Nepal

From 4-15 March 2019, ten Nepalese participants attended to study and compare practices in reference to the theme of "Challenges to the Implementation of the New Criminal Procedure Code and the Sentencing and Execution Act in Nepal".

3. The RTI-SPP Exchange Programme for Viet Nam

From 18-22 February 2019, two Vietnamese participants discussed the amended criminal procedure code.

4. Training Course on Legal Technical Assistance for Viet Nam

From 18-22 February 2019, ten Vietnamese participants discussed the implementation of the amended criminal procedure code.

5. Follow-up Seminar for the Third Phase Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries

From 22-24 April 2019, UNAFEI hosted the Follow-up Seminar for the Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar, and Viet Nam).

6. Training Seminar for Timor-Leste Prison Officials

From 7-19 December 2019, 30 prison officials including senior officials from the Ministry of Justice of Timor-Leste studied basic principles of managing offenders.

Distribution of Participants by Professional Backgrounds and Countries

(1st International Training Course - 172nd International Training Course, U.N.Human Rights Courses and 1 Special Course)

研修参加者・セミナー参加者　地域別・職種別一覧表　（第1回国際研修から第172回国際研修まで）

As of 18 July 2019

	Country/Area	国・地域名	Judicial and Other Administration	Judge	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investigation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
	Professional Background / 職名		司法行政（矯正・保護行政を含む）	裁判官	検察官	警察官	矯正官（成人）	矯正官（少年）	保護観察官	家裁調査官	児童福祉職員	社会福祉職員	教育・研究・調査機関職員	その他	計
1	Afghanistan	アフガニスタン	11	9	6	5		1							32
2	Bangladesh	バングラデシュ	24	15		22	5	1	4			6		2	79
3	Bhutan	ブータン				23									23
4	Brunei	ブルネイ	4				2								6
5	Cambodia	カンボジア	1	3	1	7	1								13
6	China	中　国	13	5	5	10							8		41
7	Georgia	グルジア				1									1
8	Hong Kong	香港	22			12	31	3	9		1	3	1		82
9	India	イ ン ド	15	10		55	7	1	1			2	6	4	101
10	Indonesia	インドネシア	23	24	33	33	15		3			6		2	139
11	Iran	イ ラ ン	5	12	8	8	6						2	1	42
12	Iraq	イ ラ ク	6	3	3	8	5	5					2		32
13	Jordan	ヨルダン	1	1	3	7	2								14
14	Korea	韓国	13	3	53	6	36	4					3		118
15	Kyrgyzstan	キルギス	1			2									3
16	Laos	ラ オ ス	14	9	7	10									40
17	Malaysia	マレーシア	24	2	7	51	37	8	3		1	6	3	1	143
18	Maldives	モルディヴ	6	4	5	8	2		2						27
19	Mongolia	モンゴル	3		1	3							2		9
20	Myanmar	ミャンマー	12	1	1	11	3								28
21	Nepal	ネパール	38	18	18	34								3	111
22	Oman	オマーン			1	4									5
23	Pakistan	パキスタン	22	12	3	48	8	1	2				2	2	100
24	Palestine	パレスチナ	2		4	1			1			1			9
25	Philippines	フィリピン	23	9	29	44	11	3	16	3	1	7	5	7	158
26	Saudi Arabia	サウジアラビア	5			7	3						1	1	17
27	Singapore	シンガポール	11	18	5	12	10	3	10			3	1	1	74
28	Sri Lanka	スリランカ	24	23	21	25	20	1	11		1	3		1	130
29	Taiwan	台湾	12	4	2	2	1								21
30	Tajikistan	タジキスタン	1	3											4
31	Timor-Leste	東ティモール					1							1	2
32	Thailand	タ　イ	28	51	46	19	22	9	20	1		8	7	1	212
33	Turkey	ト ル コ	2	1	1	2							1	1	8
34	United Arab Emirates	アラブ首長国連邦	1												1
35	Uzbekistan	ウズベキスタン		4	2	1							1	1	9
36	Viet nam	ベトナム	15	5	6	8	1					4	6		45
37	Yemen	イエメン	2			2									4
	ASIA	**小計（アジア州）**	384	249	271	491	229	40	82	4	4	49	51	29	1,883
1	Algeria	アルジェリア		4	2										6
2	Botswana	ボツワナ	2		1	5	2					1			11
3	Cameroon	カメルーン	4		1										5
4	Cote d'Ivoire	コートジボアール		12	4	2									18
5	Democratic Republic of the Congo	コンゴ民主共和国	2	3	4	2									11
6	Egypt	エジプト	1	5	3	3							3	1	16
7	Ethiopia	エチオピア	3			2									5
8	Gambia	ガンビア				2									2
9	Ghana	ガ ー ナ	1		1	5	1								8
10	Guinea	ギ ニ ア	2		1	4									7
11	Kenya	ケ ニ ア	13	6	2	14	10	2	18		1		2		68
12	Lesotho	レ ソ ト				1			2						3
13	Liberia	リベリア											1		1
14	Madagascar	マダガスカル				1									1
15	Malawi	マラウィ		1	1										2
16	Mali	マリ	1	1	2										4
17	Mauritius	モーリシャス		1			2								3
18	Morocco	モロッコ	2	1	1	4							1	1	10
19	Mozambique	モザンビーク	1			1	1								3
20	Namibia	ナミビア	3		1	1	2								7
21	Niger	ニジェール			1										1
22	Nigeria	ナイジェリア	1			6	7							1	15
23	Somalia	ソマリア	1												1
24	South Africa	南アフリカ共和国				4	3					1	1		9
25	Seychelles	セーシェル				4			1						5
26	Sudan	スーダン	2		1	13	1		1				2		20
27	Swaziland	スワジランド				2									2
28	Tanzania	タンザニア	4	3	7	9	2								25
29	Tunisia	チュニジア		1		1									2
30	Uganda	ウガンダ			1	5								1	7
31	Zambia	ザンビア		1	1	6									8
32	Zimbabwe	ジンバブエ	1		3	8									12
	AFRICA	**小計（アフリカ州）**	44	39	38	105	31	2	22	0	1	2	10	4	298
1	Australia	オーストラリア			1				1			1			3
2	Cook Islands	クック諸島	1						3						4
3	Fiji	フィジー	7	1	9	22	17					1			57
4	Kiribati	キリバス	1												1
5	Marshall Island	マーシャル	1			4									5
6	Micronesia	ミクロネシア				1			1						2
7	Nauru	ナ ウ ル					1								2
8	New Zealand	ニュージーランド	1			1									2
9	Palau	パラオ				2	1								3
10	Papua New Guinea	パプアニューギニア	17	1	6	26	10		9			1		4	74
11	Samoa	サモア	5			2	1		2					1	11
12	Solomon Islands	ソロモン	3		2	2	1								8
13	Tonga	ト ン ガ	2	1		7	4		4				1		19
14	Vanuatu	バヌアツ			1	4	2		1						8
	THE PACIFIC	**小計（大洋州）**	38	3	19	72	37	0	21	0	0	3	1	5	199
1	Antigua and Barbuda	アンティグア・バーブーダ				1			1						2
2	Argentina	アルゼンチン	2	2	0	2								1	7
3	Barbados	バルバドス				2			1						3
4	Belize	ベリーズ	1			2									3
5	Bolivia	ボリビア		1										1	2
6	Brazil	ブラジル	4	1	22	31	4				1	1			64
7	Chile	チ　リ	1		1	4	2								8
8	Colombia	コロンビア	3	1	2	6					1			1	14
9	Costa Rica	コスタリカ	3	5	5								1	2	16
10	Dominican Republic	ドミニカ共和国				1									1
11	Ecuador	エクアドル			1	4		1							6
12	El Salvador	エルサルバドル	2	1	1	5	1						1	1	12
13	Grenada	グレナダ				1									1
14	Guatemala	グアテマラ	2			1	1							1	5
15	Guyana	ガイアナ				3	1								4
16	Haiti	ハイチ				1									1
17	Honduras	ホンジュラス			2	8								1	11
18	Jamaica	ジャマイカ	3			2	5	1							11
19	Mexico	メキシコ	2			2								1	5
20	Nicaragua	ニカラグア		1											1
21	Panama	パ ナ マ	1		8	5								2	16
22	Paraguay	パラグアイ	1		1	9		1							12
23	Peru	ペ ル ー	4	10	4	5	1						1	2	27
24	Saint Christopher and Nevis	セントクリストファー・ネイヴィス			1	1									2
25	Saint Lucia	セントルシア	1			1	1								3
26	Saint Vincent	セントビンセント				2									2
27	Trinidad and Tobago	トリニダード・トバゴ	1				1								2
28	U.S.A.	米国								1					1
29	Uruguay	ウルグアイ				3									3
30	Venezuela	ベネズエラ	1		1	12							1		15
	NORTH & SOUTH AMERICA	**小計（アメリカ州）**	32	22	49	114	17	3	2	1	2	1	4	13	260

1	Albania	アルバニア	1			2								3
2	Armenia	アルメニア	1											1
3	Azerbaijan	アゼルバイジャン	1											1
4	Bulgaria	ブルガリア				1								1
5	Estonia	エストニア			1									1
6	Former Yugoslav Republic of Macedonia	マケドニア旧ユーゴスラビア共和国	2											2
7	Hungary	ハンガリー	1											1
8	Lithuania	リトアニア				1								1
9	Moldova	モルドバ				1								1
10	Poland	ポーランド				1								1
11	Ukraine	ウクライナ	1	2	4							1	1	9
	EUROPE	**小計（欧州）**	7	2	5	6	0	0	0	0	0	1	1	22
	United Nations Office on Drugs and Crime	**国連薬物・犯罪オフィス**											1	1
1	**JAPAN**	**日　　本**	119	212	334	113	108	101	231	71	38	2	48	93	1,470
125	**TOTAL**	**合　　計**	624	527	716	901	422	146	358	76	48	57	115	146	4,133

MAIN STAFF OF UNAFEI

Faculty:

Mr. SETO Takeshi	Director
Ms. ISHIHARA Kayo	Deputy Director
Mr. FUTAGOISHI Ryo	Professor
Ms. KITAGAWA Mika	Professor
Mr. OTANI Junichiro	Professor
Mr. YAMADA Masahiro	Professor
Mr. HIRANO Nozomu	Professor
Mr. OHINATA Hidenori	Professor
Mr. WATANABE Hiroyuki	Professor Chief of Information and Public Relations
Dr. YAMAMOTO Mana	Professor Chief of Research Division
Mr. FURUHASHI Takuya	Professor
Mr. Thomas L. SCHMID	Linguistic Adviser

Secretariat:

Mr. FUJITA Takeshi	Chief of Secretariat
Mr. TOYODA Yasushi	Chief of Training and Hostel Management Affairs Section
Ms. KIKUCHI Yoshimi	Chief of General and Financial Affairs Section

AS OF 31 DECEMBER 2018

2018 VISITING EXPERTS

THE 168TH INTERNATIONAL SENIOR SEMINAR

Dr. Roy Godson	Professor Emeritus Georgetown University United States
Dr. Matti Joutsen	Special Advisor Thailand Institute of Justice Finland
Dr. Kittipong Kittayarak	Executive Director Thailand Institute of Justice Thailand
Mr. Severino H. Gaña, Jr.	Senior Deputy State Prosecutor Department of Justice Philippines
Ms. Lula Asaad	Crime Prevention and Criminal Justice Officer Commission on Crime Prevention and Criminal Justice United Nations Office on Drugs and Crime (UNODC)

FIFTH UNAFEI CRIMINAL JUSTICE TRAINING PROGRAMME FOR FRENCH-SPEAKING AFRICAN COUNTRIES

Ms. Céline VERDIER	Vice-prèsidente chargée de l'instruction Tribunal de Grande Instance de Brest France
Mr. Julien Savoye	Program Officer in the Terrorism Prevention Team UNODC Regional Office for West and Central Africa Immeuble Abbary France
Mr. Soufiane El Hamdi	The International Institute for Justice and the Rule of Law (IIJ) Morocco

THE 169TH INTERNATIONAL TRAINING COURSE

Mr. Wasawat Chawalitthamrong	Head of Cybercrime Sector One Bureau of Technology and Cyber Crime Department of Special Investigation Ministry of Justice Thailand
Mr. Gregory Matthew Millard	Resident Agent in Charge Chiang-Mai Resident Office DEA Far East Region United States

Mr. Celso Eduardo Faria Coracini	Crime Prevention and Criminal Justice Officer United Nations Office on Drugs and Crime (UNODC)

THE 170TH INTERNATIONAL TRAINING COURSE

Ms. Anja Busse	Programming Officer Prevention, Treatment and Rehabilitation Section on Drug Prevention and Health Branch United Nations Office on Drugs and Crime (UNODC)
Dr. Alexander David Wodak	Emeritus Consultant, Alcohol and Drug Service, St. Vincent's Hospital, Visiting Fellow, Australian Drug Law Reform Foundation, Director, Alcohol and Drug Service / St. Vincent's Hospital / Australian Drug Law Reform Foundation Australia
Dr. Sheldon Xiaodong Zhang	Professor/Chair School of Criminology and Justice Studies University of Massachusetts Lowell United States

THE 21ST UNAFEI UNCAC TRAINING PROGRAMME

Mr. M. Sc. Bŏstjan Lamešič	Vice Chair of the Economic Crime Team and Assistant to the National Member for Slovenia Eurojust
Ms. Corinna Wong	Assistant Director Community Relations Department Independent Commission Against Corruption Hong Kong Special Administrative Region, China
Dato' Sri Ahmad Khusairi Bin Yahaya	Director Intelligence Division Malaysian Anti-Corruption Commission Malaysia

2018 UNAFEI PARTICIPANTS

THE 168TH INTERNATIONAL SENIOR SEMINAR

Overseas Participants

Mr. Tshulthrim DORJI	Superintendent of Police Division-VII, Trongsa, Bhutan Royal Bhutan Police Bhutan
Mr. Samuel Miranda ARRUDA	Federal Prosecutor Criminal Division in Ceara Federal Prosecution Service Brazil
Mr. Tra Vincent N'GUESSAN	Deputy Prosecutor Justice Court of Man Ministry of Justice Cote d'Ivoire
Mr. Agus Akhyudi MANGKUADININGRAT	Judge/Chief Rengat District Court Supreme Court Indonesia
Mr. Khee SIMEUANG	Judge Assistance The Commercial Chamber The People's Supreme Court Lao PDR
Mr. Mohamed FAZEEN	Chief Inspector of Police Deputy Head of General Investigation Department Maldives Police Service Maldives
Mr. Hassan HANEEF	Superintendent of Police Head of Family and Children Protection Department Maldives Police Service Maldives
Mr. Abdelkader TAYBI	Deputy of Social and Cultural Office Office of Social and Cultural Work in Favour of Inmates and Their Reintegration The General Delegation to Penitentiary Administration and Reintegration Morocco
Mr. Myint Maung	Police Major Police Officer Teaching School Myanmar Police Force Ministry of Home Affairs Myanmar

APPENDIX

Mr. Ahmed G. H. RISHA	Prosecutor Civil Appeal Department and File Reviewing Palestinian Public Prosecution Palestine
Mr. Terry Uralam LUI	Assistant Director Crime Prevention and Restorative Justice Coordination Branch Department of Justice and Attorney General Papua New Guinea
Ms. Helen Vagivaro ROALAKONA	State Prosecutor/Team Leader Serious Corruption and Dishonesty Unit Port Moresby Public Prosecutors Office Papua New Guinea
Mr. Mark Palus YANGEN	Director Criminal Investigation Division Crimes Division Department of Police Papua New Guinea
Ms. Marina Amtalao AVANCENA	Deputy Chief Police Strategy Management Unit Intelligence Group Philippine National Police Philippines
Ms. Mahamuni Kumari Magliyan ABEYRATNE	Judge Embilipitiya High Court Judicial Service Commission Ministry of Justice Sri Lanka
Mr. Sanjeewa Manojith DHARMARATNA	Deputy Inspector General of Police Recruitment, Training and International Relations Range Sri Lanka Police
Mr. Handapangoda Don Lushan Thusith MUDALIGE	Deputy Solicitor General Criminal Attorney General's Department Sri Lanka
Mr. Peerapong PAREERURK	Judge Phuket Provincial Court Court of Justice Thailand
Ms. Pattraporn POMMANUCHATIP	Provincial Public Prosecutor Civil Rights Protection, Legal Aid and Execution Office of the Attorney General Thailand
Ms. Kattiya RATANADILOK	Director Research and Development Institute Department of Juvenile Observation and Protection Thailand

Ms. LEUNG Ho Yee Elis (Course Counsellor)	Senior Community Relations Officer Regional Office (Kowloon West) Community Relations Department Independent Commission Against Corruption Hong Kong

Japanese Participants

Mr. HONDA Susumu	Special Assistant Judge Yokohama District/ Family Court Kawasaki Branch
Mr. KATADA Yasushi	Judge Kyoto District Court
Mr. OKUDA Yukio	Probation Officer Tohoku Regional Parole Board Yokohama Prison
Mr. SHIONOYA Takashi	Public Prosecutor Tokyo District Public Prosecutors Office
Mr. TSUTSUMI Yasushi	Public Prosecutor Osaka High Public Prosecutors Office
Mr. UEKUSA Taro	Chief Inspector Safety Division, Community Safety Bureau National Police Agency
Mr. WAKABAYASHI Tetsuya	Deputy Director Sasebo Juvenile Training School

FIFTH CRIMINAL JUSTICE TRAINING PROGRAMME FOR FRENCH-SPEAKING AFRICAN COUNTRIES

Overseas Participants

M. BAKO Souleymane	Juge d'Instruction près le Tribunal de Grande Instance de Ouagadougou Burkina Faso
Mme. DANGO Florence	Juge du siège Tribunal de Grande Instance de Ouagadougou Burkina Faso
M. HIE Djibril	Chef de Service de la Scolarite et des stages Ecole Nationale de Police Burkina Faso
M. SAWADOGO Sidi Becaye	Substitut du procureur général parquet général Cour d'Appel de Ouagadougou Burkina Faso
M. DEZAI Alain-Joel	Juge de l'application des Peines Tribunal de Première Instance d'Abidjan Plateau Côte d'Ivoire

M. KONE Bénogo	Conseiller Juridique Gendarmerie Nationale Côte d'Ivoire
M. KOUAKOU Antonin	Juge d'Instruction Tribunal de Yopougon Côte d'Ivoire
M. KOUAME Yao	Procureur de la République Adjoint Tribunal de Première Instance de Plateau Côte d'Ivoire
M. OSSOHOU Avis Léopold	Chef de section d'Enquêtes Direction de la Police Criminelle Côte d'Ivoire
M. ABDOULAYE Amadou	Président Chambre Correctionelle Cour d'Appel de Bamako Mali
M. AG HOUSSA Mohamedine	Juge d'Instruction au pôle judiciaire spécialisé Tribunal de Grande Instance de la commune VI de Bamako Mali
M. SANOU Gaoussou	Substitut General Cour d'appel de Kayes Mali
M. TRAORE Hamadoun Bilal	Commandant Brigade d'Investigations judiciaires (BIJ) Direction de la Police Judiciaire Mali
M. Mohamed Ahmed BABANA	Président de la Cour Ciminelle du Tagont Mauritanie
M. BRAHIM SIYID Brahim	Chef Service Investigation crime financière Direction centrale lutte contre les crimes économiques Mauritanie
M. ELWAGHEF Abdellahi Ahmedyanja	L'inspection générale L'inspecteur au Ministère de la Justice en Mauritanie Mauritanie
M. NAHY Mohamed Bouya	Directeur Général Direction des Etudes, de la Législation et de la Coopération Ministère de la Justice Mauritanie
M. ABDOU OUABI LAMINE Aliou	Premier Substitut du Procureur au pôle judiciaire spécialisé en matière économique et financière Tribunal de Grande Instance hors Classe de Niamey Niger

M. HAROUNA OFFEN Mounkaïla	Président du Pôle judiciaire spécialisé en matière économique et financière Tribunal de grande instance hors classe de Niamey Niger
M. MAHAMAN Issoufou	Directeur adjoint de la Police Judiciaire Police Niger
M. SALAO Youssouf	Juge d'instruction du pôle anti-terroriste près le Tribunal de Grande Instance hors classe de Niamey, Pôle judiciaire aunti-terroriste Niger
Mme. BONKONYA Catherine Wassa	Commandant Commissariat de Police Lemba Commissariat Provincial Ville de Kinshasa République Démocratique du Congo
Mme. KANJINGAMBA Elysée Matumpu	Juge Pouvoir Judiciaire République Démocratique du Congo
M. KIPAKA Basilimu Baudouin	Conseiller à la Cour d'Appel Kinshasa Pouvoir Judiciaire République Démocratique du Congo
M. MUSEME Ngaruka Christophe	Premier Substitut du Procureur de la République Pouvoir Judiciaire République Démocratique du Congo
M. BA Mouhamadou Lamine	Président du Tribunal d'instance de Grande Instance de Pikine Guediawaye Sénégal
M. DIOUF Augustin	Juge d'instruction chargé du 6ème cabinet Tribunal de Grand Instance Hors classe de Dakar Sénégal
M. DIOUF Moustapha	Chef de la Division de la Formation et Directeur des Etudes Direction de l'Ecole Nationale de Police et de la Formation Permanente Sénégal
M. SARR Alioune	Procureur de la République près le Tribunal de Grande Instance de M'bour Sénégal
M. ABADJE Breme	Directeur Adjoint de la Législation, des Etudes du Suivi Direction de la Législation, des Etudes du Suivi Tchad

M. ABDERAMANE Ahmat Abrass	Juge d'instruction substitut du procureur de la République Tribunal de Grande Instance de N'Djamena Tchad
M. Abdoulaye BONO KONO	Juge au siège Tribunal de Grande Instance de N'Djamena Tchad
M. NADJITESSEM Simplice Togoto	Substitut du procureur général près la Cour d'Appel de MONGO Tchad

THE 169TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Rodrigo LEITE PRADO	Federal Prosecutor Criminal Division of the Federal Prosecution Office in Minas Gerais Federal Prosecution Service of Brazil
Ms. Yasmine Nagnouma KEITA	Judge Court of First Instance of Abidjan Ministry of Justice Cote d'Ivoire
Mr. Maurice Kouadio N'DRI	Magistrate Tribunal of Abengourou Ministry of Justice Cote d'Ivoire
Ms. NKULU Mbayo Marie Claude	First Prosecutor's Assistant Prosecutor Justice Department Gombe Court Democratic Republic of the Congo
Ms. TSHIBOLA Mulumba Annie	Judge High Court of Gombe Superior Magistrate Counsel Democratic Republic of the Congo
Mr. Mostafa Hicham Mohamed Osman ELBASTAWISSY	Senior Public Prosecutor Centre of Cairo Criminal Prosecution Office Public Prosecution Egypt
Mr. Mohamed Ahmed HABIB	Judge Criminal Section, Technical Office of the Court Egyptian Court of Cassation, The Egyptian Judicial Authority Egypt
Ms. Maxine Tuedian BERNARD	Detective Inspector Narcotics Division Jamaica Constabulary Force Jamaica

Ms. Aida Syeliza Binti ABDUL JALIL	Head of Data/Analysis Narcotics Crime Investigation Department Royal Malaysia Police Malaysia
Mr. Chandra Segaran SUBRAMANIAM	Head of Legal/Investigation Unit Narcotics Crime Investigation Department Royal Malaysia Police Malaysia
Mr. Modibo SACKO	Technical Adviser/Magistrate Secretary General Ministry of Justice Mali
Mr. Cheick Sala SANGARE	Prosecutor/Magistrate Court of District II Bamako Ministry of Justice Mali
Mr. Asghar ALI	Assistant Inspector General of Police Human Resource Management National Highways and Motorway Police Ministry of Communications Pakistan
Mr. Ismail M. I. HAMMAD	Public Prosecutor Palestinian Public Prosecution Palestine
Mr. Augustus Apelis Mathew BRAY	State Prosecutor Justice and Attorney General Public Prosecutors Office Papua New Guinea
Ms. Marie Catherine Reniva NOLASCO	Executive Officer for Operations Anti-Organized and Transnational Crime Division National Bureau of Investigation Philippines
Mr. Roshan Wijesinghe GAMMANPILA IMIYAGE DON	In Charge of Mount Lavinia Division Sri Lanka Police Sri Lanka
Mr. Palinda Prabhanthi Rashmi Edirisinghe Hewa SINGAPPULIGE	Additional Secretary (Judicial) Legal Division Ministry of Justice, Sri Lanka Sri Lanka
Mr. Abdushukur Ibrohimjon IBROHIMZODA	Judge Court of Gisar Region Supreme Court of the Republic of Tajikistan Tajikistan

Mr. Khurshed Iskandar ISOZODA	Judge Court of Somoni District Supreme Court of the Republic of Tajikistan Tajikistan
Mr. Nitchan HADSARANG	Judge Chiang Mai Juvenile and Family Court Court of Justice Thailand
Mr. Valentyn SHMITKO	Senior Detective Main Department of Detectives National Anti-Corruption Bureau of Ukraine Ukraine
Mr. Ihor Vitaliyovych YASELSKYI	Judge Lutsk City Court Ukraine
Mr. Murod Abduraximovich MAVLYANOV	Senior Investigator, Major Investigative Department Ministry of Internal Affairs Uzbekistan

Japanese Participants

Mr. AKIMA Shunichi	Public Prosecutor Tokyo District Public Prosecutors Office
Mr. AMAYASU Ryo	Official of Health, Labour and Welfare Narcotic Control Department Tohoku Regional Bureau of Health and Welfare
Mr. FUKUSHIMA Yoshihiko	Public Prosecutor Chiba District Public Prosecutors Office
Mr. KONISHI Takahiro	Assistant Judge Tokyo District Court
Mr. NAKAJIMA Hirokazu	Deputy Director International Organized Crime Base 3rd Regional Coast Guard Headquarters
Ms. SADA Yoshiko	Public Prosecutor Kyoto District Public Prosecutors Office
Ms. TAKEUCHI Yoshie	Chief Inspector Organized Crime Department, Criminal Affairs Bureau National Police Agency

THE 170TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Eduardo Tomio TAKATA	Federal Penitentiary Agent, Special Class National Penitentiary Department Ministry of Justice Brazil
Mr. Somlith MANICHANH	Deputy Head of Division Prisoners Management Division, Prisons and Rehabilitations Police Department Ministry of Public Security Laos
Mr. Suhaizak Bin AB. WAHAB	Assistant Commissioner of Prison Prison Policy Division Malaysian Prison Department
Mr. Syahrul Amri Bin ABD MUTALIB	Parole Officer Parole & Community Services Division Malaysian Prison Department
Mr. Abdul Sattar ABDUL HAMEED	Chief Judge Legal Division Drug Court Maldives
Ms. Joanna Marie Helisa FIGARO JOLICOEUR	Hospital Officer Mauritius Prison Service
Mr. Deepak Roomesh GUNNOO	Senior Hospital Officer Mauritius Prison Service
Mr. Thet Paing Soe	Staff Officer Prisons Department Ministry of Home Affairs Myanmar
Ms. Nanja LIMBO	Senior Superintendent Structured and Support Rehabilitative Programmes Namibian Correctional Service
Mr. Najeeb ULLAH	Deputy Director Home & Tribal Affairs Department Directorate of Reclamation and Probation Pakistan
Mr. Eko Kubi MANGERE	Senior Inspector Detainee Rehabilitation Division Papua New Guinea Correctional Service
Mr. John Junior SMITH	Principal Correction Officer Security and Rehabilitation Operations Division Samoa Prisons and Corrections Services

Mr. Nishantha Shanthilal HAPUARACHCHI	Judge Civil Appellate High Court of Galle Sri Lanka
Ms. Pareena NOKCHAN	Senior Probation Officer Bangkok 12 Probation Office Department of Probation Ministry of Justice Thailand
Mr. Yuen Tak LAM	Principal Officer Rehabilitation Unit Hong Kong Correctional Services Department
Mr. Gun Young NA	Senior Inspector Daegu Detention Center Korea
Ms. Ma. Beverly Duque AMPO	Chief Probation and Parole Officer, Officer-In-Charge of the Assistant Regional Director Parole and Probation Administration Department of Justice Philippines
Mr. Santiago LINDAYAG, Jr.	Chief Probation and Parole Officer Parole and Probation Administration Department of Justice Philippines

Japanese Participants

Mr. ANDO Yo	Instructor Seto Juvenile Training School
Mr. KABE Tsuyoshi	Public Prosecutor Tokyo District Public Prosecutors Office
Ms. KOMINO Keiko	Probation Officer Mito Probation Office
Mr. NAGAI Toru	Director General Affairs Division Chiba Prison
Ms. TANIGUCHI Maki	Judge Osaka District Court
Mr. TONE Kazumasa	Probation Officer Chugoku Regional Parole Board
Mr. YAMANE Masashi	Senior Officer for Smuggling Countermeasures Tokai Hokuriku Regional Bureau of Health and Welfare

THE 21ST UNAFEI UNCAC TRAINING PROGRAMME

Overseas Participants

Mr. Daniel Silvestre de LIMA	Federal Police Chief Police Station to Combat Corruption/Diversion of Public Resources Police Superintendence in Pernambuco Brazil Federal Police
Mr. Gustavo NOGAMI	Federal Prosecutor/Administrative Chief Prosecutor Federal Prosecution in Mato Grosso State Federal Prosecution Service of Brazil
Ms. Leakena SAUT	Official Department of Legal Affairs, Complaint and International, Anti-Corruption Unit Cambodia
Mr. Mohamed Shaaban KASSEM	Chief Prosecutor Public Funds, Public Prosecution Egypt
Mr. Dulat OMAR	Chief Prosecutor Prosecutor's Office of Korgalzhyn District Kazakhstan
Mr. Abdulhamid Farooque LOW	Senior Investigations Officer Asset Tracing Ethics and Anti-Corruption Commission Kenya
Mr. Khamsone Sone PHIMMASONE	Acting Chief of Inspection Division Inspection Department, Ministry of Justice Lao PDR
Mr. Tsiry Harivelo RAZAFIMANDIMBY	Inspector and Advisor General Direction Independent Anti-Corruption Bureau Madagascar
Mr. Chrispin K.C KHUNGA	Director/Head of Legal and Prosecution Anti-Corruption Bureau Malawi
Mr. Westmoreland Anak AJOM	Assistant Commissioner Forensic Division/Forensic Accounting Unit, Malaysian Anti-Corruption Commission Malaysia
Mr. Ismail NADEEM	Deputy Head General Investigation Department/Crime Investigation Command Maldives Police Service Maldives
Mr. Pascoal Francisco JUSSA	Second Criminal Section Nampula Superior Court of Appeal Mozambique

Mr. Myo Zaw Win	Director Bureau of Special Investigation Ministry of Home Affairs Myanmar
Mr. Gokul BANSTOLA	Under Secretary Special Investigation Division Commission for the Investigation of Abuse of Authority Nepal
Mr. Sada MOUSSA	Deputy Prosecutor Specialized Judicial Centre Niger
Mr. Abid Hussain KHAMISANI	Deputy District Public Prosecutor Criminal Prosecution Service Department of Law Province of Sindh Pakistan
Mr. Pare Kupson KUIAP	Legal Officer Fraud & Anti-Corruption, Police Papua New Guinea
Mr. Christopher Thomas Bautista MESA	Executive Officer Cagayan Valley Regional Office (CAVRO) National Bureau of Investigation Philippines
Mr. Adrian Bernard Conrad SAMUELS	Prosecutor Prosecutions Anti-Corruption Commission Sierra Leone
Ms. Kankanamge Medhavi Anuradha SIRIWARDHANA	Assistant Director Legal Division Commission to Investigate Allegations of Bribery or Corruption Sri Lanka
Mr. Mahir Abdallah SHALLAKEY	Director Society Security Police, Khartoum State Police Sudan
Mr. Parviz ODINAMAHMADZODA	Main Inspector Main Department on Prevention of Corruption Agency under the state financial control and fight against corruption Tajikistan
Mr. Henrique Lopes SOARES	Prevention Specialist Anti-Corruption Commission Timor-Leste
Ms. Anna DZHAVAHA	Chief Specialist - Legal Counsel International Law Division/Legal Department National Anti-Corruption Bureau Ukraine

Mr. Oleksii GEIKO	Senior Detective Main Detectives Department National Anti-Corruption Bureau Ukraine
Mr. Matchanboy Sadullayevich MATCHANOV	Judge Mirabad District Court Supreme Court Uzbekistan
Ms. Yen Hai HOANG	Head of Criminal Law Division Criminal Law Faculty Hanoi Procuratorate University Viet Nam
Ms. Charity MATUMBI	Acting General Manager Legal Services Department Zimbabwe Anti-Corruption Commission Zimbabwe

Japanese Participants

Mr. NAGANO Kiminori	Judge Hiroshima High Court, Okayama Branch
Ms. KURODA Maki	Judge Niigata District Court
Mr. NISHIGAYA Yusuke	Prosecutor Osaka District Public Prosecutors Office
Mr. BONO Yoshitaka	Prosecutor Nagoya District Public Prosecutors Office, Toyohashi Branch
Mr. NAKAJIMA Kenichi	Prosecutor Fukuoka District Public Prosecutors Office
Mr. SUGITA Mitsuhiro	Chief Inspector Organized Crime Department, Criminal Affairs Bureau National Police Agency
Mr. MURAKAMI Kaoru	Securities Investigator Securities and Exchange Surveillance Commission

PART TWO

RESOURCE MATERIAL SERIES

No. 108

Work Product of the 171st International Senior Seminar

"Criminal Justice Response to Crimes Motivated by Intolerance and Discrimination"

UNAFEI

VISITING EXPERTS' PAPERS

INTRODUCTION TO HATE CRIMES FOR LAW ENFORCEMENT: INVESTIGATION AND PROSECUTION

*Cristina M. Finch**

I. INTRODUCTION TO HATE CRIMES

A. Purpose and Origin of Hate Crime Legislation

Hate crimes are message crimes; they are meant to send the message that your kind is not wanted here. That's why a strong government response is necessary to counteract that message.

The concept of hate crimes started in the United States after the U.S. civil war. State and local authorities rarely prosecuted crimes against African Americans perpetrated by Whites. A series of laws were passed to give the federal government jurisdiction over such crimes. In the civil rights era, the Civil Rights Act of 1968 was passed which made it a crime to use, or threaten to use, force to wilfully interfere with any person because of race, colour, religion, or national origin and because the person is participating in a federally protected activity, such as voting, or helping another person to do so.

However, in the late 1990s, it had become clear to civil society and law enforcement that the face of hate was changing. Different communities were being affected, and it was clear that the current federal hate crime law was inadequate.

One of the reasons that we knew this was because the US was now collecting hate crime statistics. On April 23, 1990, Congress passed the Hate Crime Statistics Act, which required the Attorney General to collect data "about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity." Subsequent acts of Congress have added bias against persons with disabilities, gender and gender identity.

In 2009, Congress passed, and President Obama signed, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, expanding the federal definition of hate crimes to include sexual orientation, gender identity, gender and disability and expanding the ability of the federal government to prosecute crimes.

II. UNDERSTANDING HATE CRIME AND HATE CRIME LEGISLATION[1]

The OSCE participating States have defined hate crime as a *criminal offence* committed with a *bias motive*.

ODIHR's publication, "Hate Crime Laws: A Practical Guide" provides the following explanation of hate crimes and related concepts.

The first element of a hate crime is that the act committed is a crime, such as assault or damaging property. Hate crimes always require a base offence to have occurred. If there is no underlying crime, there is no hate crime.

The second element of a hate crime is that the perpetrator must commit the criminal act with a particular motive, referred to as "bias". It is this element of bias motive that differentiates hate crimes from ordinary

* Head, Tolerance and Non-Discrimination Department, OSCE Office for Democratic Institutions and Human Rights. These lectures draw upon existing materials created by the OSCE Office for Democratic Institutions and Human Rights and are not the original work of the author. The content of these lectures come primarily from ODIHR's training curricula for police (TAHCLE programme) and for prosecutors (PAHCT programme). More information on ODIHR's programmes and publications can be found here: https://www.osce.org/odihr/tolerance-and-non-discrimination

[1] This section taken from "Hate Crime Laws: A Practical Guide," OSCE Office for Democratic Institutions and Human Rights, 2009.

crimes. This means that the perpetrator intentionally chose the *target* of the crime because of some *protected characteristic*.

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. For example, a perpetrator may attack someone because he thinks the victim is gay. If the victim is not gay, the attack can still be prosecuted as a hate crime because the perpetrator selected his victim *because of* sexual orientation.

Hate crimes could include murder, an act of intimidation, threats, property damage, assault, or any other criminal offence.

A. Protected Characteristics

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

B. Hate versus Bias

A hate crime does not require that the perpetrator feels hate. Instead, it requires only that the crime is committed out of *bias motivation*. Bias means that a person holds prejudiced ideas about a group. Since hate crimes are committed because of what the targeted person, people or property represent, the perpetrator may have no feelings at all about an individual victim.

C. Discrimination

Acts of discrimination lack the essential element of an act constituting a crime. Discrimination issues are dealt with under civil law, even if the penalty is a criminal sanction. The legal and institutional frameworks governing discrimination and hate crimes are different.

D. Hate Speech

Many nations have hate speech laws that make certain types of racist speech a crime. Hate crime laws may apply to racist or other biased speech that involve threats of violence or damage to property.

E. Genocide

Genocide involves intentional conduct aimed at destroying, in whole or part, a national, ethnic, racial or religious group. Hate crimes can be part of the process that leads to genocide. Individual acts of genocide may be considered to constitute hate crimes.

F. Types of Hate Crime Laws

A "substantive offence" is a separate offence that includes the bias motive as an integral element of the legal definition of the offence. Within the OSCE region, this kind of hate crime law is relatively rare. The United States (both at the federal and state levels), the Czech Republic and the United Kingdom have created specific offences that incorporate a bias motive. Most other countries have not.

Penalty enhancements, which are sometimes referred to as "aggravating sentencing clauses" or "aggravating circumstances clauses", can also be used to create a hate crime law. Simply put, they increase the penalty for a base offence when it is committed with a bias motive. The majority of hate crime laws in the OSCE region fall within this description.

[general (to all criminal offences) or specific (to some criminal offences)]

III. INTERNATIONAL LEGAL FRAMEWORK

Hate crime legislation is grounded in international and regional obligations to combat discrimination and to protect and promote equality. There are universal and regional sources of international obligations to combat hate crimes, including:

- The UN treaties and conventions;
- OSCE commitments

- Case law of the European Court of Human Rights.

A. Universal Declaration of Human Rights

- "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family";

- "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.";

B. International Covenant on Civil and Political Rights (ICCPR)

- Taking the provisions as a whole it obligates states to investigate violence committed against individuals and to discharge these duties without discrimination.

- Articles 6 & 7 obligate states to investigate violations of right to life & inhumane treatment committed by public or private actors;[2]

- Article 2 echoes same principle of equality of UNDHR; "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

- Article 26 requires equality before the law, equal protection of the law and protection from discrimination: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

C. Convention on the Elimination of all Forms of Discrimination (CERD)

Represents the international standard for combating discrimination

Obligation to punish racist violence:

ARTICLE 4 (a): *Shall declare an offence punishable by law* all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as *all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin*, and also the provision of any assistance to racist activities, including the financing thereof;

Broad interpretation of the concept of "race":

"Race" refers to groups of people who are considered distinct due to physical characteristics such as skin colour. Many people are unaware that "race" is a social construct and has no basis as a scientific concept.

The use of the term race therefore remains prevalent and is used in international and national legal texts. If there is no definition of race at a national level, it can be useful to refer to international and regional instruments which provide definitions or explanations.

ARTICLE 1: defines the related term, "racial discrimination", as:
"[T]he term 'racial discrimination' shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

[2] UNHRC "General Comment 31: The Nature of the General Legal Obligations Imposed by the Covenant", Human Rights Committee, Eightieth Session, adopted on 29 March 2004, UN Doc CCPR/C/21/Rev.1/Add.13, para. 6-8.

OSCE Commitments on Hate Crime: The OSCE's Ministerial Council has repeatedly asserted that hate crimes not only affect individual human rights to equality and non-discrimination but have the potential to lead to conflict and violence on a wider scale. As the OSCE requires consensus for any decisions or commitments, every participating State has actively agreed to abide by these commitments. While OSCE commitments are not legally binding, they form a set of principles which bear moral weight on states. The Ministerial Council Decision in 2009 (9/09) on Combating Hate Crime remains one of the most comprehensive commitments by the international community concerning state obligations to address hate crime.

Participating States, *inter alia,* committed themselves to:

- Collect, and make public, data on hate crimes;
- Enact, where appropriate, specific, tailored legislation to combat hate crimes;
- Take appropriate measures to encourage victims;
- Develop professional training and capacity-building activities for law-enforcement;
- prosecution and judicial officials dealing with hate crimes;
- Promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership.

IV. IMPACT OF HATE CRIMES AND ROLE OF STATE AUTHORITIES IN PREVENTION[3]

The impact of hate crimes and hate incidents on victims is severe. These include:

- Fear and terror;
- Isolation;
- Denial;
- Self-blame;
- Anxiety, loss of hope and spirit;
- Anger.

The mental health symptoms or behaviours that are self-destructive or dangerous to others that victims might engage in if they are experiencing these emotions. These behaviours can include:

- Drug or alcohol abuse;
- Cutting or self-mutilation;
- Violence;
- Depression;
- Anxiety;
- Attempted suicide;
- Suicide.

Studies have shown that hate crime victims experience more significant impacts than victims of similar crimes committed for other reasons. For example, hate crime victims spend more time in hospitals recovering from their injuries, lose more time from work, and have more intense and longer lasting feelings of lack of safety in their communities.

V. INTRODUCTION TO BIAS INDICATORS

Knowing and recognizing bias indicators is crucial for police because the failure to recognize those indicators often leads to the failure of police to pursue hate crime investigations.

Definition of Bias Indicators

Objective facts, circumstances, or patterns connected to a criminal act or acts which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated in whole or in part by any form of bias.

[3] Section taken from ODIHR's Training against Hate Crime for Law Enforcement (TAHCLE) curriculum.

Bias Indicators

- Victim/witness perception
- Comments, written statements, or gestures
- Drawings, markings, symbols, and graffiti
- Differences between perpetrator and victim on ethnic, religious or cultural grounds
- Involvement of organized hate groups or their members
- Location and timing
- Patterns/frequency of previous crimes or incidents
- Nature of violence
- Lack of other motives

ODIHR's handbook on hate crimes for Bosnia and Herzegovina provides further details on how to use bias indicators:

Victim/Witness Perception

→ *Does the victim or witnesses perceive that the incident was motivated by bias?*

Comments, Written Statements, Gestures or Graffiti

→ *Did the suspect make comments, written statements or gestures regarding the victim's community?*
→ *Were drawings, markings, symbols or graffiti left at the scene of the incident?*
→ *If the target was property, was it an object or place with religious or cultural significance, such as a historical monument or a cemetery?*

Racial, Ethnic, Gender, and Cultural Differences

→ *Do the suspect and victim differ in terms of their racial, religious or ethnic/national background or sexual orientation?*

- → *Is there a history of animosity between the victim's group and the suspect's group?*
- → *Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?*
- → *Was the victim engaged in activities promoting his/her group at the time of the incident?*
- → *Did the incident occur on a date of particular significance (e.g. a religious holiday or national day?)*

Organized Hate Groups

→ *Were objects or items left at the scene that suggest the crime was the work of a paramilitary or extremist nationalist organization?*
→ *Is there evidence that such a group is active in the neighbourhood (e.g., posters, graffiti or leaflets?)*

Previous Bias Crimes/Incidents

→ Have there been similar incidents in the same area? Who were the victims?

- → *Has the victim received harassing mail or phone calls or been the victim of verbal abuse based on his/her affiliation or membership of a targeted group?*
- → *Was the victim in or near an area or place commonly associated with or frequented by a particular group (e.g., a community centre or mosque, church or other place of worship).*[4]

Case study:

A teenager in an automobile drives onto the sidewalk and knocks down and destroys an informational display about refugees. The display is located outside of a refugee centre. The staff of the refugee centre tells the police that they believe the youth is racist and hit the sign intentionally.

The teenager says he lost control of his car and that the incident was an accident.

Questions: Is there enough evidence at this point to arrest the teenage boy for a hate crime? The bias indicators are not sufficient to justify a charge of a hate crime. Further investigation is needed.

What other information would the responding police officer want to know? Additional questions include: Was

[4] *Understanding Hate Crimes: A Handbook for Bosnia and Herzegovina*, pg. 9-10, OSCE ODIHR, 2010.

the teenager a refugee? Was there any evidence such as the weather or road conditions that would suggest that the incident was either accidental or intentional? Has the teenager been involved in prior racist incidents? Did the teenager say any racist words? Why does the staff of the refugee centre believe this was a hate crime?

VI. RESPONSE AND INVESTIGATION

This is an accounting of a real incident. These events took place in June 2003, in one of the largest social housing estates in the UK, Wales, in the place called Wrexham, with over 5,000 houses and a population of over 12,000 people. The estate had a very high unemployment level; acute social depravation and many of the houses required repairs or were boarded up and unoccupied. There was a public house (pub) in the centre of the housing estate called the Red Dragon.

One year prior to this story taking place six male Kurdish refugees who had fled Iraq had been housed in a house on the estate. A few months later another six Kurdish refugees were housed in a house nearby followed by twelve more. The Iraqi Kurdish refugees all lived close to each other near the centre of the housing estate.

Most of the refugees living on the Caia Park estate were able to work under the terms of their refugee status, and they obtained local employment in nearby factories. There had not been any issues or a raise in racist tensions during the first 12 months that they lived there.

The refugees were working so they were able to get cars and nice clothes. They were young men, aged between 18 and 31. Indeed, through their work the refugees were able to purchase items for their homes, buy cars and to socialize in the Red Dragon. One of the refugees commenced a relationship with a local woman living on the estate.

Then some local youths and men began shouting abuse to some of the refugees, telling them: "Go back where you came from!", "Leave our women alone!" and other racist comments. The refugees tried to ignore the verbal abuse and started to change their routes when walking to work to avoid groups of people, checking streets before walking down them.

Then one of the houses the refugees lived in had graffiti containing racial slurs sprayed on the door and walls. Initially the refugees cleaned off the graffiti but after a few days later more appeared and a window was broken. One of the refugees went to the local police station to report the verbal abuse, racist comments, graffiti and damage. The police took a report of the issues and arranged for the local authority to quickly remove the graffiti and repair the broken window, which they did.

One afternoon a few days later one of the Kurdish refugees was found unconscious on the pavement near to the Red Dragon pub. He had a serious head injury and was taken by ambulance to hospital. The friends living with him were informed and they were convinced that their friend had been attacked by the locals and the attack had been racially and hate motivated.

Later that day a group of 15 to 20 of the refugees armed themselves and went to the Red Dragon pub where they believed the people who had assaulted their friend were. They threw stones and missiles through the windows and shouted, confronting the people inside.

The people inside armed themselves with snooker cues and legs broken from chairs and bar stools and ran outside to retaliate with the refugees and a large and violent fight ensued.

The first police officers arrived at the scene quickly and found a large number of local residents gathered at the scene, where missiles and petrol bombs were being thrown. A number of local men and refugees were arrested, and a large number of police officers were injured, four of them were hospitalized. The remaining Iraqi Kurds fled the estate and sought refuge in a Church Hall several miles away. Fearing for their safety, they asked community leaders and North Wales Police to find them new accommodation.

The following night about 200 local people including boys of 12 and 13 years old gathered outside the Red

Dragon pub on the estate in search of Kurdish refugees. But by that time all refugees had fled the estate fearing for their lives. So the 200-mob began attacking the police officers who were present patrolling the area. Chief Supt Stephen Curtis confirmed that CCTV footage had identified members of the Wrexham Frontline, a hooligan gang that follows the town's football team, as being among the ringleaders.

The violence was so intense that North Wales Police could not cope with this large riot situation and a Mutual Aid of Public Order Officers from surrounding forces of West Mercia and Merseyside was requested. A police helicopter flew overhead as the mob rampaged through the sprawling Caia Park council estate. Over 100 officers from the surrounding police forces attended in full riot equipment. Specialist officers recorded the rioting and the people involved. It escalated into really serious public disorder with running battles. Petrol bombs and missiles being thrown with police officers as the targets and cars and buses were set alight. More officers were injured including one who was set on fire; many required hospital treatment and a number of arrests were made.

In the end, 100 years in prison sentences were given to 50 people convicted of the more serious offences.

→What evidence do you believe should be collected? Discuss the following categories: 1. First Response; 2. Evidence Collection; 3. Interviewing and Interrogating; 4. Victim Support and Follow-up.

Collecting evidence: Photographs were not taken of the graffiti and damage to the outside of the refugee's home. The police did a positive thing in quickly arranging for the graffiti to be removed and the broken window to be repaired, but they did not photograph the evidence. Photographs could be very useful in crime investigation, and any criminal justice process particularly to prove hate crime.

Collecting the evidence, talking to the witnesses and perpetrators: Ask participants what they would do if they were called to the crime scene at the different stages of the story development (graffiti, an Iraqi Kurdish men found unconscious, a fight between the refugees and the local men, escalation of riots).

- During the riots the evidential recordings obtained by the police and CCTV from local buildings were used to identify, arrest and subsequently convict offenders.

- What should the police officers ask the witnesses? The most persuasive evidence of bias is the words used by perpetrators during, before or after the incident. It is critically important to find the witnesses of the incidents and ask them what the local men said and what the Iraqi Kurds said. Officers need to learn exactly what ethnic slurs, if any, were used by the local men and if there was any response by the refugees.

- A BBC reporter who grew up in the local area stated she witnessed racist behaviour hearing people on the estate demanding police "get the Iraqis out" and that, "Saddam Hussein's gone now, they should go back to Iraq".

- Police officers who heard race and hate comments and threats were able to put these in their statements and any placards and banners displayed were seized.

- Ask why it is important to quote these words in the police report. If these words are not in the officers' report, then prosecutors may never learn of the important convincing evidence of bias.

- What should the police ask the local men? The approach to interviewing hate crime perpetrators is very important.

Hate crimes are message crimes. Perpetrators not only want the victims to hear their message of bias and hate but they often want to share those messages with the community because they expect that the community shares their views. Some perpetrators believe that police officers will share their biases and even approve of their bias-motivated violence.

Officers should ask perpetrators "what did you say" to the victims initially. This is much more effective than asking a perpetrator if he or she used racial slurs. Asking about racial slurs may send the message that

the officers oppose that language and cause the perpetrator to be unwilling to describe what occurred. However, it is never appropriate for the officer to affirmatively send the message that he or she does share the perpetrator's bias. This strategy can result in the officers' testimony being discredited at trial.

It would be important to check the arrested individual's social media sites, Facebook and mobile phones, which can produce evidence of hate crime motivation and bias indicators. This evidence is all vital in assisting to prove hate crime through the criminal justice process.

Interviewing the Victims

Ask how participants would approach the interview of the victims. It is just as important to ask victims to describe the exact words used by the perpetrators (slurs shouted on the streets), what did graffiti say (before it was removed), and how the situation escalated. Again, this is the most persuasive evidence of bias motivation.

It is very helpful to the victims to hear that you are sorry about what happened to them, and that you (as a police officer) are taking the case seriously. This serves two important purposes. First, many hate crime victims assume that police and the broader community will not care that they were victimized because of bias. Victims, as a result, feel isolated and alone. Telling the victims that you are sorry about what happened to them, without characterizing it as a hate crime (because it is too early in the investigation to reach that conclusion), dramatically reduces their sense of isolation. Second, this approach builds trust with the victim and increases the likelihood that the victim will be open and candid with you.

Ask participants whether they should refer victims to other agencies or organizations. Police should refer victims to organizations or offices that provide support services and also to human rights organizations that address hate crimes.

If the officers will continue to be active in the case through the trial, they can tell the victims that they will try to update them on the progress of the case. This also is reassuring to the victims.

Interviewing Neighbours and Acquaintances of the Perpetrators and Victims

If no witnesses to the crime exist and if the perpetrators deny that crime was bias-motivated police should interview neighbours or acquaintances of the perpetrators and the victims. This accomplishes two things. First, because hate crime perpetrators often boast about their crime, officers may obtain information that establishes the bias motivation. Second, since many hate crime perpetrators and victims live in the communities where the crimes were committed, speaking with neighbours sends a message that the police are taking the hate crime seriously. These actions by police may deter the perpetrators or others from committing another hate crime. At the same time, people who are upset and scared by the hate crime will feel reassured that the police are committed to protecting them.

Outreach

It is helpful to reach out to the victims' group or community. Ask participants what outreach they could engage in with the refugee's community in the case discussed earlier. Police could have reassured that community that police were taking the crime seriously. Police also could have reached out to a non-governmental organization that provides services to refugees.

Avoid Minimizing the Seriousness of the Crime

Secondary victimization occurs when police or other government officials minimize the seriousness of the crime, as we could see from the escalation of the story. Remind the participants about the beginning of the hate crime case when racist graffiti was spray-painted on the victims' building door. What might be the impact on the victims if the responding officer told them that he did not have time to investigate a case with such minimal property damage? You can comment that the emotional impact of the victims believing that the police do not care about the crime may dramatically exceed the monetary damage of repainting their door and the walls. The victims may become more isolated, believing that police and the community do not care about what happened to them. Victims may be very reluctant to report future hate crimes to police.

VII. CASE STUDIES: IDENTIFYING HATE CRIMES AND WORKING WITH VICTIMS

Participants will be given a case study and deal with a hate crime case. The purpose is to identify bias motives and the main differences between hate crimes and other related concepts such as hate speech/ incitement to hatred, discrimination, hate-motivated incidents and extremism.

- Each group should analyse the scenario and respond:
- Was the case a hate crime? If so, what were the bias indicators?
- How did the police respond to the incident? What could have they done differently?
- How was the case investigated? What could have they done differently?

CASE STUDY #1

A mosque was vandalized last night. Several windows were broken and the front door was kicked in. Inside the mosque someone had spray painted on a wall "ALL MUSLIMS ARE TERRORISTS. GET OUT OF OUR COUNTRY NOW".

The bloody carcass of a pig was lying in the middle of the mosque. Muslims represent only a small portion of the population in this region. There were no witnesses to the property damage.

You arrive at 8 a.m. the next morning shortly after men arrive for morning prayer. You are in charge of the investigation.

Question 1: What actions should you take?

Question 2: How will you respond to the situation below?
Two hours later a reporter from the largest newspaper in your country arrives and asks you if you are investigating this as a hate crime.

CASE STUDY #2

Three days ago, the first gay bar in your city opened for business. Last evening two women were assaulted as they left the bar together holding each other's hands. One of the victims is in the hospital in a coma from a kick to her head. She is in danger of dying. You are assigned to lead the investigation of this case early on the morning after the attack.

Question 1: What actions should you take?
You interview the victim who is not in the hospital and she gives you a detailed physical description of the attacker who kicked the other victim in the head. However, she tells you that she will not testify in court or sign a written statement.

Question 2: Why might she refuse to cooperate?

Question 3: What can you do to increase the chance that she will cooperate?

VIII. BARRIERS TO INVESTIGATING HATE CRIMES

Officers may face multiple barriers that prevent them from investigating hate crimes. Many different barriers exist including failure of victims to report hate crimes and failure of police officers to report hate crimes. It is important for police to identify these barriers so that they can develop and implement strategies to overcome them. These barriers include:

Lack of Reporting by Victims

- Victims may be in denial that the attack was bias motivated
- Victims may be scared of reporting any crimes to the police
- Victims may not trust police to investigate hate crimes
- Victims may be fearful of retaliation from the perpetrators if they report to police
- Victims may blame themselves for the attack
- Victims may not be aware of the procedure of reporting to the police

Lack of Response by Law Enforcement

- Lack of reporting by police officers
- Lack of resources of police
- Lack of support by police commanders or other high-ranking government officials
- Lack of interest by prosecutors in handling hate crime cases
- Biases held by some portion of the law enforcement establishment

Lack of Response by Political Leaders

- Lack of political will to recognize hate crimes as a serious issue
- Lack of awareness about hate crimes by political leaders

IX. PROSECUTING HATE CRIMES[5]

Introducing specific attributes of hate crimes and hate crimes prosecutions

Hate crimes continue and escalate if not stopped: Hate crimes are usually part of a pattern of escalating conduct beginning with non-criminal acts of bias that, if not confronted, end with hate crimes.

Hate crimes can threaten community stability: Hate crimes often are directed at particular ethnic, national or religious groups. When these crimes grow in number, communities can split apart and retaliatory violence may result.

Individual hate crimes can have a deeply destructive impact on individual victims: Hate crimes undermine the sense of security and safety for victims and their family and friends.

Hate crimes are one of the few crimes in which the perpetrator's motivation is a critical part of the offence: In an ordinary assault, the police and prosecutors do not need to establish in court the attacker's motivation. With hate crimes, however, the perpetrator's bias motivation is a critical part of the investigation. Determining whether evidence establishes that the perpetrator acted because of bias is the most significant difference between investigating

What makes hate crime prosecutions different from other crimes?

Proof of motive
Increased impact: Message crimes
Individual victims
Targeted community
Societal stability and security

What is a hate crime prosecution?

Presenting evidence of the defendant's bias motive;
Providing the victims the opportunity to have their experiences with bias recognized by the criminal court;
Seeking an appropriate sentence for the increased impact of the crime.

Why are hate crime prosecutions important?

Contribute to the deterrent effect that criminal punishment has on the offender and potential offenders;

[5] Information for the prosecution section comes from ODIHR's Prosecutors and Hate Crimes (PAHCT) training curriculum.

Send a message to victims, communities and societies that violent manifestations of intolerance will be actively pursued by law enforcement;
Help prevent retaliatory crimes; and
Meet the State's international obligations and commitments to effectively investigate and prosecute hate crimes.

X. BARRIERS TO PROSECUTING HATE CRIMES AND SOLUTIONS TO OVERCOME THEM

Lack of Reporting by Victims

- Victims may be in denial that the attack was bias motivated
- Victims may be scared of reporting any crimes to the police
- Victims may not trust police and prosecutors to investigate hate crimes
- Victims may be fearful of retaliation from the perpetrators if they report the crime
- Victims may blame themselves for the attack

Lack of Response by Law Enforcement

- Lack of reporting by police officers
- Lack of resources of police
- Lack of support by police commanders or other high-ranking government officials
- Biases held by some portion of the law enforcement establishment

Lack of Response by Prosecutors

- Lack of information received from law enforcement about bias
- Lack of resources by prosecutors
- Lack of willingness by prosecutors to seek additional evidence of bias motivation when already sufficient evidence for conviction

Lack of Response by Judges

- Lack of clear legislation can lead wary judges not to consider bias motivation at sentencing
- Lack of an appreciation of the importance of addressing hate crimes through the criminal justice system
- Judges may require very high standard of evidence (e.g., will only consider defendant's direct admissions) for recognizing bias motivated crime

Lack of Response by Political Leaders

- Lack of political will to recognize hate crimes as a serious issue
- Leadership lacks understanding that downplaying any social tensions in society leads to more insecurity and greater tensions than by acknowledging them and addressing them

XI. CASE STUDIES 2: MOTIVE EVIDENCE (HANDOUTS 10 & 11)

Work in small groups to practice using evidence to prove bias motivation for convictions and sentencing

How is motive relevant to the prosecution's case? How often do they highlight aspects of motive? What is the difference in proving bias motive? What are common types and sources of bias evidence? It may be useful and very effective to highlight the types and sources of evidence through the use of case examples.

Case study:

<A> is a Muslim woman living in Bratislava. She was leaving a shop at 8 PM on 11 January when a man, <Z>, assaulted her with a knife which left her with superficial wounds. The owner of the shop saw the scene but by the time he was outside, the assailant had run away. He helped the victim to sit down and called the police as well as an ambulance.

<A> explained to the police that she was simply leaving the shop when the man assaulted her and that the assailant didn't say a word during the attack. She briefly described the assailant as being white and bald and wearing a green jacket.

The owner confirmed what he could see from the counter and described what happened as an unprovoked attack. He confirmed that he didn't hear anything being shouted by the perpetrator and that the perpetrator was bold and wearing a green jacket.

Later that same evening a person corresponding to the description and carrying a knife in his jacket has been arrested by the police. The person admitted that while entering a shop he had a small dispute with a woman wearing a headscarf earlier in the evening.

Investigators also conducted interviews in the neighbourhood of the shop showing the picture of the assailant and asking neighbours if they knew anything about <Z>. A bartender told the police that this person came regularly to his bar with other friends and that a couple of days ago he heard them talking about slitting the throat of refugees. He thought they were just joking and showing off.

<Z> was brought to the police station and arrested on suspicion of assault committed with a knife. Police asked questions about what happened and explained that the victim and the owner testified that the attack was unprovoked and that they suspected that he had committed the assault because of <A>'s religion. <Z> immediately denied these facts and explained that he had nothing against Muslim people, that he doesn't hate Muslim people.

Police asked <Z> why he was carrying a knife in his jacket. <Z> explained that he previously had problems with refugees and that he felt more protected with a knife in his jacket. He also explained that he reads news online and that with all the migrants around, it's better to carry a knife to be safe. At the end of the interview, he also mentioned that if another potential terrorist like her stands again on his way, he might use his knife again.

Questions

1. What are the bias indicators here?
2. Which offences would you indict <Z> with? What evidence of bias motive would you use? What further evidence might you seek?
3. Respond to <Z>'s argument that this was not a hate crime.
4. How would you ensure that the Court takes the bias motivation into consideration at sentencing?
5. Your boss asked you to prepare a public statement about the case. What should it say?

THAILAND'S EFFORT TO END VIOLENCE AGAINST WOMEN: ONE FORM OF CRIME MOTIVATED BY GENDER DISCRIMINATION

Santanee Ditsayabut[*]

Although there are many forms of crime motivated by gender discrimination, I chose to address the issue of violence against women as one form of gender-related crime which has its own complexities. It is considered a real challenge for the criminal justice system in Thailand to deal with this type of crime effectively. Consider the three cases below.

The first case concerns a drunk man, the ex-husband, who came to ring the doorbell at the front gate, yelling for his ex-wife to open the door, and promptly said, "Don't try to hide from me, you can't escape anyway". However, the woman stayed silent with her daughter behind the closed door. After waiting for a while, she peeked out from the window and saw a fire burning her clothes that were hanging on the clothesline near the front gate. She, together with her daughter, hastily extinguished the fire. The results of the investigation revealed that the ex-husband had reached out his hand into the house to ignite a cigarette lighter and set fire to those clothes. The prosecutor indicted the man for the offence of criminal mischief. Even though, he was convicted, the Court ordered a suspension of his punishment because the damage value for the clothes was trivial.

The second case is related to a defendant who was a university professor. On the night of the incident, the defendant brutally attacked his wife and hit her with a blunt object until she died. The Supreme Court, after having examined the case based on the evidence, concluded that the defendant was a doctorate degree professor, who continuously and carefully preserved his honour and reputation. His wife had a duty to take care of their son by taking him to and from school. On the day of the incident, she was heavily intoxicated, and did not go to pick up her son but left him with her servant alone at the school. She had also failed to pick up the defendant, which was the cause of their quarrel. She confessed to the defendant that she had met with her ex-boyfriend. Even though the defendant was highly educated, he is just a layman. In his anger, he grabbed the umbrella from his golf bag to hit his wife, although he could have chosen other lethal weapons. His weapon choice suggested that he had no intention to kill his wife. When he saw her lying unresponsive, he thought at first that it was because she was drunk and quickly sent her to the hospital while calling his wife's relatives to come take care of her. Since the defendant was well-educated and had confessed to his crimes, the court found him guilty but agreed to a reduced sentence, in order to allow the defendant to turn over a new leaf and to take care of his son.

In the third case, Soi lived with Ray since she was 17 and he was 23. They have 1 child and initially lived happily together. However, Ray gradually started to drink more and more, spending all his money on alcohol and cigarettes rather than on paying the bills. Instead, it fell on Soi to support the family by selling meat at the market. She also had to take care of the household chores without any help from Ray who was constantly drunk. He always found issues to scream at Soi for and was physically abusive. He would also act intrusive whenever Soi talked to other people. When Soi managed to save up enough money to build a new home, Ray would intentionally dirty up the house by walking around with muddy shoes or using the curtains to wipe his nose and mouth. However, the one thing that weighed her down the most was having to sleep on the same bed as Ray each night since Ray always stank of alcohol. Whenever Soi refused to sleep with him, Ray would flare-up and start screaming at Soi that she was disgusted by him, kicking her around, or pulling her hair. One time, Ray woke up in the middle of the night and found that Soi was not next to him. In a fit of anger, he pulled the quilt down from the bed and started stabbing at it with the knife he kept under the bed. Ray burnt the ruined quilt the next morning in the Longan field.[1]

This cycle kept on being repeated for over 23 years. There were many times when Soi wanted to run away but Ray threatened that he would find her and kill her if she ever did. In the end, Soi managed to

[*] Provincial Public Prosecutor, Office of the Attorney General of Thailand.

[1] Napaporn Hawanon, *Testimonies of Battered Women*, p. 28-45.

escape but Ray followed her and pled with her to return to him, promising in front of his entire family that he would turn over a new leaf. Ray managed to quit drinking and they were able to live peacefully together for two months until one day they got into a minor argument. Ray kept Soi in a headlock and held a 3-inch knife to her stomach while saying that he was going to kill her today and himself afterwards. Soi calmed Ray down by talking about their child until Ray put away the knife. Soi knew then that either Ray would have to die, or she would die. That evening, Soi went out to buy gloves and a tarp. She secretly prepared the tarp under the bedsheets before going to bed. Once she was sure that Ray had fallen asleep, Soi stabbed him with the very knife that Ray had threatened her with earlier in the day. Soi was charged with premeditated murder and received a death sentence for her crimes. However, since Soi confessed to the crime, the court reduced her sentence to 25 years in prison.

What points do you see from these three different cases?

I. CRIMES MOTIVATED BY GENDER DISCRIMINATION IN THAILAND, FOCUSING ON VIOLENCE AGAINST WOMEN

The study released by the United Nations Office on Drugs and Crime (UNODC) on the International Day for the Elimination of Violence against Women last year on 25 November 2018 revealed that a total of 87,000 women were killed worldwide in 2017 and 58 percent of those female victims were killed at the hands of intimate partners or family members.[2] The regions with the largest number of female victims killed by intimate partners and family members were Asia (20,000 women), followed by Africa (19,000 women).[3]

In principle, common elements of all crimes consist of (1) a voluntary act ("actus reus"); (2) a culpable intent ("mens rea"); (3) concurrence between the mens rea and the actus reus; and (4) causation of harm. To determine whether the defendant is guilty or not, the criminal justice personnel would concentrate only on the moment the crimes occurred. Therefore, most official records collected by the criminal justice organization neglect to include data on history or relationship between victim and offender as well as the motivation to commit a crime if such factors do not relate to an aggravated offence or a mitigated sentence. Thus, it is arguable whether the main drivers of the crimes are related to gender.

However, in the case of female victims of violence, it is well accepted that gender discrimination lies at the root of the crimes. According to the statement of the UN Secretary General Antonio Guterres, "... violence against women and girls is the manifestation of a profound lack of respect – a failure by men to recognize the inherent equality and dignity of women ... Violence against women is tied to broader issues of power and control in our societies. We live in a male-dominated society. Women are made vulnerable to violence through the multiple ways in which we keep them unequal ..."[4] The UNODC Executive Director Yury Fedotov also expressed his concern that, "While the vast majority of homicide victims are men, women continue to pay the highest price as a result of gender inequality, discrimination and negative stereotypes."[5]

Violence against women is defined in the Declaration on the Elimination of Violence against Women, and reiterated in various international instruments including the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice, to mean any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.[6]

---

[2] United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide 2018* (Vienna, 2018) <https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html> accessed 8 Jan. 2019.

[3] Ibid.

[4] United Nations, Antonio Guterres, *Remarks on International Day for the Elimination of Violence against Women* (19 November 2018) <https://www.un.org/sg/en/content/sg/speeches/2018-11-19/international-day-elimination-violence-against-women-remarks> accessed 8 Jan. 2019.

[5] United Nations Office on Drugs and Crime (UNODC), *UNODC press release* (25 November 2018) <https://www.unodc.org/unodc/en/press/releases/2018/November/home--the-most-dangerous-place-for-women--with-majority-of-female-homicide-victims-worldwide-killed-by-partners-or-family--unodc-study-says.html> accessed 8 Jan. 2019.

[6] General Assembly resolution 65/228, annex, para. 2.

In Thailand, the male dominant attitude is still pervasive in society. There is a commonly known phrase that "A man is the front legs of an elephant" which implies that male always leads the way. This manifests the problem of structural inequalities of power. It has been deeply cultivated in Thai culture that a man is the leader of the family whereas a woman shall behave as a good wife by taking care of family and the house chores. All these beliefs make a man feel that he holds power over a woman and can act in any way towards to his female partner in exerting his dominance.

Considering the information revealed by a UNICEF-supported study on Comprehensive Sexuality Education in 2017 which found that 41 percent of male vocational school students believed that a husband is entitled to beat up his wife if he found that she is unfaithful to him,[7] male superiority is a problematic attitude that is deeply rooted in the society.

According to the study on Thai women's experiences of and responses to domestic violence published in the International Journal of Women's Health in 2018, about 16% of the 1,444 married or cohabiting women faced various forms of violence from their male partner, often repeatedly in most cases.[8] Previously, there was also a survey on domestic violence and violence against women that was carried out from January 27 to February 2, 2017 by the Women and Men Progressive Movement Foundation (WMP). There were 1,608 female respondents aged between 17 and 40 from various levels of education and occupations in Bangkok and its outskirts. The survey revealed that in terms of attitude towards love, 76.8% of respondents said women must have a monogamous relationship, 47.9% said men are family leaders, 43.3% said wives or girlfriends must obey and pay attention to their partners.[9]

II. LEGISLATIVE DEVELOPMENT CONCERNING CRIMES MOTIVATED BY GENDER DISCRIMINATION

The male dominant attitude and the view that women become the property of their husbands can be seen generally even in Thai legislation. The Penal Code of Thailand was promulgated in 1956 (B.E. 2499). At that time, the offence of rape was provided in section 276 of the Penal Code, stating that "Whoever has sexual intercourse with a woman, who is not his wife, against her will, by threatening by any means whatever, by doing any act of violence, by taking advantage of the woman being in the condition of inability to resist, or by causing the woman to mistake him for the other person, shall be punished with imprisonment for four to twenty years and a fine of eight thousand to forty thousand Baht". Thus, the Thai law at that time allowed a husband to rape his wife with impunity. It sent a message that if a woman got married, she instantly loses her right to refuse to have sexual intercourse with her husband.

This section in the Penal Code was amended by the Penal Code Amendment Act (No.19) B.E. 2550 (2007) with the reason given in the promulgation of the Act that section 276 of the Penal Code B.E. 2499 was drafted based on sexual discrimination and needed to be amended in order to be in line with the principles of equality between men and women that do not discriminate against sexual orientation. The Act removed the previous distinction under section 276 of the Penal Code which had limited rape to sexual intercourse between a man and a woman who is not his wife and expanded the definition of rape to cover all sexes and all types of sexual penetration. Therefore, at present, marital rape is criminalized in Thailand and the offender could be sentenced to a term of imprisonment for four to twenty years and a fine of eighty thousand baht to four hundred thousand baht. However, if the spouses still intended to live with each other as a married couple after the crime, the Court may reduce the sentence to any extent below that prescribed by law or may impose any additional condition to control the behaviour of the offender.

Thailand does not have a specific offence for gender-related murder while some countries have termed an act of killing women because they are women as "femicide" or "feminicide". Thailand has also not adopted

[7] Bangkok Post, *Sex education falling short, Unicef finds* (1 June 2017) <https://www.bangkokpost.com/news/general/1260046/sex-education-falling-short-unicef-finds> accessed 8 Jan. 2019.
[8] Dovepress, *Thai Women's experiences of and responses to domestic violence* (2018) <https://www.dovepress.com/thai-womens-experiences-of-and-responses-to-domestic-violence-peer-reviewed-article-IJWH> accessed 8 Jan. 2019.
[9] Bangkok Post, *Violence against women in Thailand, a survey* (11 Feb. 2017) <https://www.bangkokpost.com/learning/advanced/1198332/violence-against-women-in-thailand-a-survey> accessed 8 Jan 2019.

an approach of establishing gender-related motivation as an aggravating factor for criminal offence. The crime motivated by gender-discrimination in Thailand is treated as a normal crime under the law. However, with the view that domestic violence contains special factors which are different from ordinary cases of physical assault, the enforcement of a criminal offence under the Criminal Code alone is inappropriate. Therefore, the Domestic Violence Victim Protection Act of B.E. 2550 (2007) was promulgated to protect victims of domestic violence and to punish the perpetrators while providing various measures for the rehabilitation of the perpetrators. The Act established a domestic violence offence punishable by a term of imprisonment not exceeding six months or a fine not exceeding six thousand baht, or both. The Court may order an offender to pay financial assistance to the victim and direct the offender to refrain from the acts that gave rise to domestic violence. Another important point is that domestic violence under this law is a compoundable offence where the offender and victim can negotiate and settle the case without going to trial. However, where there is settlement, the inquiry officer or the Court, whichever the case maybe, shall arrange to have an initial settlement record made prior to such settlement in order to impose conditions for compliance. Later, if the offender violates or does not comply with such settlement record, the inquiry officer or the Court is able to resume the case again.

Table 1 Statistics on violence cases, classified by charge and the relationship between the perpetrator and the victim for the fiscal year 2018 (1 Oct 2017- 30 Sept 2018)

Type of Charge	Relationship between perpetrator and victim						
	Spouse	Ex-spouse	Common law partner	Children	Adopted child	Family member	Dependent
1. Violence against life, body, and mind	56	12	28	23	4	33	2
2. Sexual Violence	-	-	-	1	-	1	2
3. Violence against freedom	-	-	1	-	-	-	-
4. Violence against health	-	-	-	-	-	-	-
5. Social Violence (negligence, abandonment, etc.)	-	-	-	-	-	-	-
Total	56	12	29	24	4	34	4

Remarks: In some cases, there is more than one perpetrator or victim.
Source: Office of the Attorney General of Thailand

Table 2 Statistics on violence cases, classified by charge. Cases classified by age and perpetrator's gender, age and victim's gender for the fiscal year 2018 (1 Oct 2017- 30 Sept 2018)

Type of Charge	Amount							
	perpetrator's age between 0 - 18 years old		perpetrator's age above 18 years old		victim's age between 0 - 18 years old		victim's age above 18 years old	
	Male	Female	Male	Female	Male	Female	Male	Female
1. Violence against life, body, and mind	1	-	138	13	9	10	18	122
2. Sexual Violence	1	-	1	-		2	-	-
3. Violence against freedom	-	-	-	-		-	-	-
4. Violence against health	-	-	-	-		-	-	-
5. Social Violence (negligence, abandonment, etc.)	-	-	-	-		-	-	-
Total	2	-	139	13	9	12	18	122

Remarks: In some cases, there is more than one perpetrator or victim.
Source: Office of the Attorney General of Thailand

From the above statistics, we can see that those who are/were intimate partners, whether spouses, ex-spouses, or common law partners, make up the majority of people who commit violence against each other. Moreover, when Table 1 is compared to Table 2, we can see that in the majority of cases, men often perpetrate violence against women (91.56% of cases were committed by men).

III. CHALLENGES OF CRIMINAL JUSTICE RESPONSE TO WOMEN EXPERIENCING CRIMES MOTIVATED BY GENDER DISCRIMINATION

A. Women as Victims of Crime

Despite various surveys demonstrating that a high percentage of women around the world have suffered from violence, cases of violence against women that survive to trial were fewer in number. It is a fact in every country that violence against women is underreported to authorities. Many factors are accountable for this phenomenon. For female victims of violence, speaking up and reporting the incident to an official is always the most difficult first step to take. For many reasons, some women may also face the dilemma of whether they should report a crime of violence committed by their intimate partners to the police. The worst factor is that these female victims do not see any benefit in reporting the crime because they know that they will not receive the help they really need.

In cases of domestic violence, many police officers still see it as a private issue or an internal family affair and therefore are reluctant to intervene at the early stages or even process the complaint as is normally done when a case of another nature is reported. There are also repeat cases wherein the women were battered by their intimate partners on a regular basis. Whenever they went to report the criminal incident to the police, the police would only conduct a mediation between the offender and the victim and drop the complaint. While the couple may agree to live together again, there would be no happily ever after in most cases.

Moreover, in the case where a woman's complaint survives to become an investigated case file that goes to trial in court, the insensitive process of the criminal justice system seems to unintentionally revictimize the female victim. The process requires the victims to tell their stories repetitively to different officers in each and every stage of the criminal procedure, forcing the victims to recall their tragic memories and suffer from such feelings over and over again. Some questions about the victims' behaviour or provocation of crime can make the victims feel even worse and begin considering that it might be their fault that the crime happened, not the perpetrator's.

Considering the fact that violence against women is a silent crime, occurring between two intimate partners, it is difficult to find another witness besides the victim herself at the crime scene. If the victims do not want to testify in court because they do not want to confront the defendant, or if the victims died as a result of the crimes, the Courts would rule that there were not enough evidence to prove beyond a reasonable doubt that the defendants have committed the crimes. Even if the Courts found the defendants guilty of the crimes, the defendants would be able to make an uncontested claim of provocation or self-defence to reduce their sentence, as demonstrated in the second case example earlier. Impunity for perpetrators usually happens in the case of domestic violence.

B. Women as Criminal Offenders Caused by Being Abused in the Past

There is also the aspect that women who were the victims of domestic violence become the defendants on trial for the murder of their abusive partners. When women who have been brutally abused for a long time rise up to fight back, believing that to be the only way they could protect themselves against the never-ending abuse, most of them are often subject to legal penalties without being able to receive a reduced sentence by the law. The legal principle of self-defence often cannot be applied in such cases where the danger of the situation may not be generally considered as imminent. Moreover, due to having less physical strength, women tend to use a weapon in committing their crimes. This is considered an aggravating factor that will result in harsher punishment.

In this regard, the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice urges the Member States to ensure that claims of self-defence by women who have been victims of violence, particularly in cases of battered woman syndrome, are taken into account in investigations, prosecutions and sentences against them.

Moreover, psychologists confirmed that the mental state of women who were repeatedly traumatized by their loved ones is different from women who have never undergone such experiences. Nevertheless, in practice, the way in which criminal justice officers apply the concept of 'self-defence' in the case of previously abused female offenders does not differ from general standards in other cases.

This is similar to the scenario in case number three where Soi, who had patiently endured everything for years, decided to do something to protect her life. Nobody in the criminal justice system had paid attention or even asked about her motivation for killing Ray. The question remains as to whether or not what Soi had experienced for almost 23 years before the day that she murdered Ray matters in the eye of the criminal justice system. Her case did not even qualify for a claim of self-defence, necessity or even provocation to help mitigate the sentence.

IV. THAILAND' S INTEGRATED EFFORTS TO OVERCOME THE CHALLENGES

A. Legislation

Even though the substantive law of Thailand is quite comprehensive to criminalize all acts of violence against women, gender-insensitive judicial process is another challenge for the effective prosecution and punishment of perpetrators of violence against women. There is still room for improvement in the procedural law of Thailand regarding the procedures for investigating the case, collecting the evidence, as well as admitting evidence in court. Currently, the Office of the Attorney General is considering proposing an amendment to the Criminal Procedure Code of Thailand so that in cases of sexuality-related offences, the inquiry officer shall arrange an appropriate examination place for the female victim/witness and shall prepare an image and voice recorder for recording such examinations and they shall be used as admissible evidence in court. This proposed amendment is in line with the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice, Section 15(c), according to which Member States are urged to update their criminal procedures to ensure that women subjected to violence are enabled to testify in criminal proceedings through adequate measures that facilitate such testimony by protecting privacy, identity and dignity of the women; ensure safety during legal proceeding; and avoid "secondary victimization."[10]

B. Raising Awareness and Changing People's Mindset, Especially Law Enforcement

When cases of domestic abuse, sexual assault, and rape against women are reported, many times we will hear victim-blaming criticism such as she dressed or expressed herself inappropriately, the place she went was isolated, the job she had was misleading, etc., which has the tendency to place the blame for the crime on the victim rather than the perpetrator. Elimination of violence against women requires true understanding of the issues and the right mindset of people in the criminal justice system. Referring to the first case recounted from my experiences with prosecution work, the reason given by the trial court to reduce the sentence and to suspend the punishment imposed on a defendant shows that the Court did not understand the psychological impact inflicted on the woman caused by the defendant who was her ex-husband. This psychological damage is huge and cannot be compensated quickly. That is why the Court considered only the monetary value of the damage. Cases like this are not unusual. Therefore, no matter how good the law is, if law enforcement does not understand the deeply rooted issue of power inequality between men and women, and have the correct attitudes towards gender discrimination, it is impossible to effectively enforce the law.

Thailand has been actively campaigning to raise awareness to end violence against women since 2008 when Her Royal Highness Princess Bajrakitiyabha Mahidol graciously accepted the position of Goodwill Ambassador for the Say No to Violence against Women initiative in Thailand. In 2010, under the leadership of Her Royal Highness Princess Bajrakitiyabha Mahidol, 622,189 actions taken by Thai individuals to end violence against women were recorded as part of the UN Secretary General's Campaign, UNITE to End Violence against Women. Since 2012, the Office of the Attorney General has joined hands with the Police Cadet Academy in organizing training workshops for young police cadets on the nature, extent, and seriousness of violence against women crimes and how the police have played a crucial role to end this problem. With the belief that such training would help shape the mindset of those who will become police officers in the near future, such training has been organized annually. The Office of the Attorney General also

[10] General Assembly resolution 65/228, annex, para. 15 (c)

conducts regular trainings and workshops for prosecutors at various levels on the issue of violence against women.

C. Providing a Mechanism for Access to Justice

It is undeniable that insufficient access to justice is the main obstacle to the effective protection of the victim and punishment of the offender. In order to begin the legal process, the first stage that female victims of violence usually have to undergo is to report their cases to the police. Unfortunately, this simple process appears to be very difficult for the victims who have been frightened for a long time and who question whether the justice system can help them live better lives without violence or whether they can even reach the justice system at all. The information regarding what they will be facing in entering to the world of the criminal justice system, what rights they have under the law, and what will happen with their children etc., are necessary for female victims to make an informed decision throughout the process.

We currently live in a world of technological advances. We talk about many disruptive technologies that change the way we live our daily lives. It might be time to think of innovating the justice system in order to contribute to a safe environment for female victims to feel more comfortable in coming forwards. In Thailand, there is an effort to use Artificial Intelligence (AI) to compliment the conventional way to access justice. The development of the AI chat bot project, called "Police Noi", which means little police is one interesting example. Police Noi is a computer programme that was designed to give friendly answers to questions relating to violence against women in all aspects, ranging from medical treatment to preliminary legal counselling and includes providing the contacts of various related agencies from which help can be sought. Without having to come face to face with an unknown person, the victims of violence can talk and ask any questions including the legal process and its consequences before making a decision whether to report the case to the police. Moreover, the possibility that the AI chat bot can communicate with people through LINE and Facebook allows people to interact with Police Noi in a way that is similar to communicating with a real person. Therefore, Police Noi also serves as a lively platform that female victims can talk and tell stories to without fear of getting judgmental responses from the neutral AI. This is one instance where technology can overcome the inequalities or forms of discrimination that women face in accessing the justice system. This is in line with the target of Sustainable Development Goal 16, which aims to provide equal access to justice for all.

Violence against women is not an emerging crime but it is a crime that occurs in conjunction with the deeply rooted unequal power relations between men and women. Discriminatory attitudes of people in society as well as law enforcement officers cannot be changed over a short period of time. However, if we start doing whatever we can to end this gender-bias-motivated violence today, future women all over the world can surely enjoy their lives without violence.

REPAIRING THE HARMS OF HATE CRIME: TOWARDS A RESTORATIVE JUSTICE APPROACH?

*Mark Austin Walters**

I. INTRODUCTION

The commission of offences which are either motivated by bias towards the victim's identity, or where hostility is demonstrated towards the victim's identity during the commission of the offence, are called hate crimes. Responding to the causes and consequences of hate crime is more important than ever, as we have entered into what academics, media commentators and politicians have referred to as a global "era of hate".[1] The growth in activities and electoral success of far-right groups has been observed across the globe, while the numbers of reported hate crime incidents continues to skyrocket.[2] These types of crime are unique in that they are aimed at attacking a victim due to a group characteristic (or characteristics) that they hold. Hence, whether an incident involves a premeditated violent physical assault by a gang of extreme racists, or the hurling of a homophobic insult by a neighbour in the heat of the moment, in each case the victim, and others who display similar characteristics, will know that they have been targeted because of *who they are*. The fact that group identity is central to both the nature and dynamics of hate crime creates an exceptional set of challenges for victims that are likely to impact significantly upon both their emotional and physical well-being.[3] The harms of hate are also likely to ripple out, affecting entire communities of people who can experience similar traumas to those of direct victims. Comprehending how hate crimes have unique *direct* and *indirect* impacts is central to determining how these offences can be effectively addressed by criminal justice systems.[4]

A. Addressing the Harms of Hate

1. The Conventional Approach

Governments across North America, Europe and Australasia have tended to focus their attentions on combating hate-based criminality by enacting new laws that enhance the penalties of hate crime offenders.[5] They have done so using a number of different methods of legislation. Broadly speaking, hate crime laws fall into one of two categories, either an animus model (whereby an offence is considered a hate crime where it is motivated by hate or prejudice, or where hate or prejudice is demonstrated during the commission of an offence), or a group selection model, whereby an offence becomes a hate crime where the offender selects his or her victim by reason of their identity characteristics.[6]

There are a number of justifications that have been advanced for enacting either type of hate crime legislation[7]. These can be summarized as follows:

- Penalty enhancers recognize the elevated levels of harm that are typically caused by hate crimes (retributive theory)
- New laws send a strong message of social condemnation (censure), that hate-based crimes will not be

* Professor of Criminal Law and Criminology, School of Law, Politics and Sociology, University of Sussex, UK, and co-Director of the International Network for Hate Studies.

[1] May Bulman, "Thousands across Europe march in protest against racial and religious discrimination", *The Independent*, March 18, 2018; Jennifer Schweppe and Mark A. Walters, eds., *The Globalization of Hate: Internationalizing Hate Crime?* (Oxford, OUP, 2016).

[2] See e.g. Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London: Home Office, 2018). The total number of hate crimes rose 17% to 94,098 in England and Wales between 2017-18.

[3] Linda Garnets, Gregory. M. Herek and Barrie Levey, "Violence and victimization of lesbians and gay men: Mental health consequences", in *Hate Crimes: Confronting Violence Against Lesbians and Gay* Men, G. Herek and K. Berrill, eds. (Newbury Park, Sage, 1992).

[4] NB parts of this paper are adapted from Mark. A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014).

[5] Frederick Lawrence, *Punishing Hate: Bias Crimes under American Law* (London, Harvard University Press, 1999).

[6] See examples in ibid.

[7] For a detailed analysis see, ibid.

tolerated in society (deterrence and retributive theories)
- The law helps to support positive social norms that reject public expressions of prejudice (educative deterrence)
- New laws simultaneously send a message of support to targeted identity groups that they will be protected from victimization (fair protection paradigm)
- Legislation ensures more effective resource deployment to tackle hate-based offences, as the police and prosecution services must enforce specific laws (practical reasons)

By legislating for hate-based offences, the government sends out a strong message to society that such crimes will not be tolerated and that commonly targeted groups will be protected from such violence. However, the criminalization of hate-motivated offences also has a particularly important role for the effective implementation of justice interventions for hate crime. This is because hate crime legislation helps to ensure that criminal justice agencies officially record and monitor these types of offences, and in turn, criminal justice agencies must attend specifically to this "type" of offending. Indeed, within the UK, since hate crime laws were first enacted in 1998, there is now a large body of policy and guidance documentation aimed at tackling hate crime.[8]

a. The "Justice Gap"

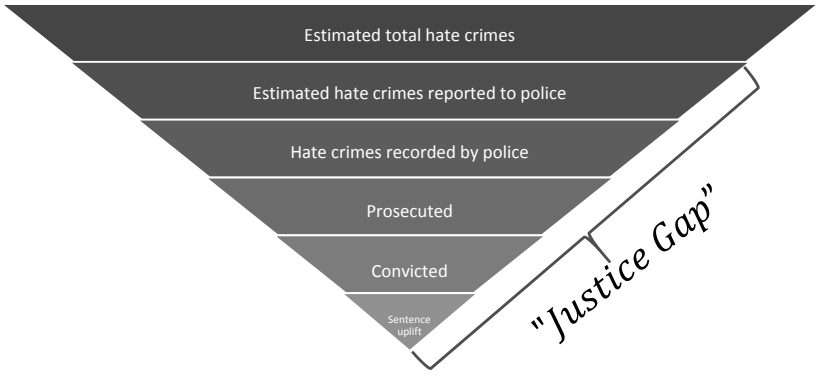
Despite the persuasive arguments that can be proffered in favour of legislating against hate, there are two fundamental criticisms to relying solely on this approach to addressing hate crime:

1. The enhancement of punishment and additional criminalization of hate-motivated perpetrators does little to repair the harms caused by incidents of hate;

2. Enhancing the penalties of offenders is unlikely to effectively challenge the underlying causes of prejudice, at least at an individual level.

Firstly, penalty enhancers do little to challenge the enhanced vulnerability of hate crime victims (explored in more detail below) or minority communities more broadly – at least in the short term. In fact, some have even argued that punishment enhancements serve only to uphold victims' emotional attachments to "hate, anger, malice and revenge", none of which are conducive to emotional or physical convalescence.[9] Secondly, one must also question whether punishing an offender more, will make them hate less. Does the labelling and stigmatizing of an individual as a "racist" or "hater" help to challenge the underlying causes of prejudice and identity-based hostility in society? Indeed, there is little evidence to show that hate crime laws yield any meaningful reparative benefits directly to victims, or to society by reducing overall levels of hate crime offending.

Figure 1: Calculating the Justice Gap for Hate Crime[10]

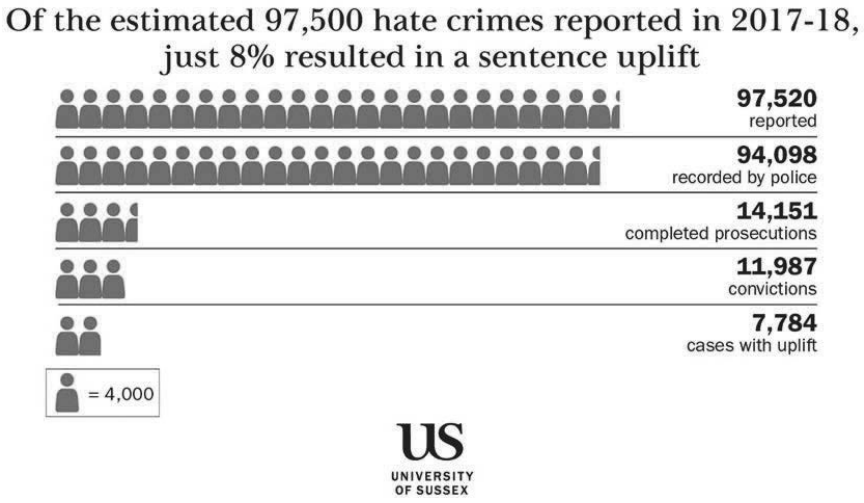


[8] Mark A. Walters, Abenaa Owusu-Bempah and Susann Wiedlitzka, "Hate Crime and the 'Justice Gap': The Case for Law Reform", *Criminal Law Review*, vol. 12 (2018) 961.
[9] Les Moran and Beverley Skeggs, *Sexuality and the Politics of Violence and Safety* (London, Routledge Taylor & Francis Group, 2004).
[10] Figure adapted from Mark A. Walters, Susann Wiedlitzka and Abenaa Owusu-Bempah, *Hate Crime and the Legal Process: Options for Law Reform* (Brighton, University of Sussex, 2017).

Further limitations of this legislative approach to combating hate crime have been examined in detail during a two-year empirical study on the application and enforcement of hate crime legislation conducted in England and Wales.[11] The researchers identify what is referred to as the "justice gap" for hate crime, which refers to the percentage of cases that "drop out" of the system once reported to the police and that do not result in the implementation of hate crime laws. The justice gap is calculated using official statistics on recorded hate crimes and comparing these with data from the Crime Survey for England and Wales. It should be noted that the "justice gap" percentage does not represent the "conviction rate" for hate crime, but rather is an *estimate* of how many hate crimes are filtered out of the justice system.[12]

Data from 2017-18 shows that there were an estimated 97,520 incidents of hate crime that came to the attention of the police. During this same period the police recorded 94,000 hate crimes. The Crown Prosecution Service charged and prosecuted 14,233 hate crimes that year, resulting in just over 12,000 convictions. Of these convictions, an estimated 7,784 cases received a sentence uplift, signifying the application of hate crime legislation. This means that the percentage of cases that drop out of the criminal justice system or which do not result in the application of hate crime laws is 92%. In other words, the vast majority of hate crime cases may result in no justice at all.

Figure 2: The Justice Gap for Hate Crime, England and Wales[13]



B. Readdressing Hate Crime: Understanding the Harms of Hate Crime

1. The Direct Harms of Hate

If hate crime laws are failing to provide justice for victims and communities, what else can be done to help repair the harms of hate? In order to determine how hate crimes can be most effectively addressed, we need to first understand how demonstrations of hate harm individuals. A crime that is a direct attack against a victim's identity is likely to heighten that individual's sense of vulnerability, beyond that of a non-hate-based incident.[14] Vulnerability relates to two elements of victimization. The first relates to the *risk* of victimization,

[11] Mark A. Walters, Abenaa Owusu-Bempah and Susann Wiedlitzka, "Hate Crime and the 'Justice Gap': The Case for Law Reform", *Criminal Law Review*, vol. 12 (2018) 961.

[12] The data should also be viewed with caution as there are some differences in which "hate crime" is defined by the criminal justice agencies. The agreed definition of hate crime across the criminal justice system is "An offence which is perceived by the victim or anyone else as being motivated by prejudice or hostility", College of Policing, 'Hate Crime Operational Guidance' (2014). However, "aggravated" offences in law are defined as offences which are (partly) motivated by (racial, religious, sexual orientation, disability, or transgender identity) hostility, or where hostility is demonstrated during the commission of an offence (see e.g. ss. 145 & 146 Criminal Justice Act 2003). Note also that the different datasets (CSEW, police, CPS data) may not precisely match with police data time periods, as some recorded hate crimes take months before coming to court and definitions for hate crime vary for each dataset.

[13] Ibid.

[14] Gregory M. Herek, J. Roy Gillis, Jeanine C. Cogan, Eric K. Glunt, "Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults: Prevalence, Psychological Correlates, and Methodological Issues", *Journal of Interpersonal Violence*, vol. 12, No. 2 (1997)

which is increased for certain groups due to their identity, while the second relates to the *level* of harm that victims are likely to experience as a direct result of their targeted victimization. In the first element, hate crime victims' vulnerability becomes heightened due to the personal danger that is correlated with their membership of a particular identity group; typically linked to race/ethnicity, religion, sexual orientation, disability and gender identity (amongst other characteristics).[15] This heightened sense of vulnerability is exacerbated by the fact that hate crimes are often repetitive in nature, meaning that victims are more likely to experience multiple incidents of hate crime compared with non-hate victims.[16]

Victims of hate crime often try to grapple with their experiences while attempting to make sense of the world as a just and fair place.[17] Such a process can be difficult, as unlike non-hate victims, when hate crime victims try to bring about a renewed sense of security and safety, they are less able to rationalize their victimization as being in the "wrong place at the wrong time". Indeed, in attempting to come to terms with their experience of hate victimization, some individuals will feel that they are to blame for their own victimization and, consequently, that they deserve to be punished for being "different". Such an outcome can be described as a process of internalized prejudice, whereby individuals from some identity groups experience a sense of shame for who they are, compounding further their emotional turmoil.[18] For example, those who have had to come to terms with their homosexuality in an environment hostile towards LGB people, or who have parents who have been disapproving of gay relationships, will have had emotional burdens put upon them that require they conform to a heterosexual "lifestyle".[19] Such social pressures are likely to result in feelings of internalized homophobia. In other words, LGB people can feel that their being gay (bisexual) equates to them being less decent, or worse still to their feeling that they are dirty or immoral compared to others.[20] Noelle states that experiences of hate crime can confirm that something is wrong with them, which can create "characterological self-blame...in which one feels there is something they could do differently if faced with the situation again".[21] The questioning of one's own value as a decent human being invariably destabilizes a person's sense of "self" and their "place" in society. As a result of both internalized and externalized experiences of hate, victims will often attempt to adjust the way they portray themselves to the world in order to "fit in". Those who can do little to change who they are can become trapped in a cycle of self-loathing and of constantly feeling "othered". It is no wonder, then, that LGB and also T youth and adults experience higher rates of suicidal ideation compared with their straight cis gender counterparts.[22]

The constant threat of targeted victimization, and the internalized feelings of prejudice that many victims experience, ultimately serve to enhance victims' feelings of isolation, anxiety and depression.[23] Data from the Crime Survey for England and Wales (CSEW) has shown that victims of hate crime are more likely than victims of CSEW crime overall to say they are emotionally affected by the incident (89% and 77%, respectively), and more likely to be "very much" affected (36% and 13%, respectively).[24] Further analysis of this data showed that more than twice as many hate crime victims suffer a loss of confidence or feel vulnerable after an incident (40%), compared with CSEW crime overall (18%). Hate crime victims are also more than twice as

195.

[15] Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London, Home Office, 2018).

[16] Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London, Home Office, 2018).

[17] Linda Garnets, Gregory. M. Herek and Barrie Levey, "Violence and victimization of lesbians and gay men: Mental health consequences", in *Hate Crimes: Confronting Violence Against Lesbians and Gay Men,* G. Herek and K. Berrill eds. (Newbury Park, Sage, 1992)

[18] Gregory. M. Herek, "Beyond 'homophobia': Thinking about sexual stigma and prejudice in the twenty-first century", *Sexuality Research and Social Policy*, vol. 1, No. 2 (2004) 6.

[19] Monique Noelle, "The Psychological and Social Effects of Antibisexual, Antigay, and Antilesbian Violence and Harassment", in *Hate Crimes*, P. Iganski, ed., vol. 2 (London, Praeger, 2009).

[20] Ibid.

[21] Ibid: 86.

[22] See e.g., Katherine Johnson, Paul Faulkner, Helen Jones, Emma Welsh, *Understanding Suicide and Promoting Survival in LGBT Communities* (Brighton, University of Brighton, 2007).

[23] Gregory M. Herek, J. Roy Gillis, Jeanine C. Cogan, Eric K. Glunt, "Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults: Prevalence, Psychological Correlates, and Methodological Issues", *Journal of Interpersonal Violence*, vol. 12, No. 2 (1997) 195; Gregory M. Herek, Jeanine C. Cogan and Roy Gillis, "Victim Experiences in Hate Crimes Based on Sexual Orientation", *Journal of Social Issues*, vol. 58, No. 2 (2002) 319; Jack Mcdevitt, Jennifer Balboni, Luis Garcia, Joann Gu, "Consequences for Victims: A Comparison of Bias- and Non-bias-Motivated Assaults", *American Behavioural Scientist,* vol. 45, No. 4 (2001) 697.

[24] Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London, Home Office, 2018).

likely to experience fear, difficulty sleeping, anxiety or panic attacks or depression compared with victims of CSEW crime overall.

The emotional traumas that are likely to be experienced by hate victims can also go on for longer periods of time, compared with non-hate victims. Gregory Herek et al. found, for instance, that victims of homophobic violence suffered from periods of depression, stress and anger for as long as five years after their primary experience of a hate crime.[25] In contrast, non-hate related victims showed vast improvements within two years. These prolonged periods of emotional trauma are likely linked to a heightened perception of threat towards certain groups' sense of safety in society.[26] Iganski, for example, found that higher proportions of hate victims reported being "worried" or "very worried" about future victimization.[27] Such concerns are likely to have behavioural consequences, with many victims feeling that they no longer feel safe in their own neighbourhood, which in turn results in them avoiding certain locales.[28]

2. Indirect and Community Harms

Hate crimes are not only likely to hurt individual victims more, but they can also have negative impacts that affect entire communities of people. Hate crimes serve a symbolic message that certain groups of people are unequal and undeserving of social respect in society.[29] As such, hate crimes can have invidious effects, not just on direct victims, but on all members of the victim's "in-group".[30] Reports of hate-motivated violence in both national and local media help to promote a message of *danger* to groups of people, which in turn fosters a hostile environment for those who are targeted.[31]

Paul Iganski refers to these impacts as "waves of harm"[32] as they emanate out into society. Research has shown that the indirect effects of hate crime can have profound emotional and behavioural impacts that extend to those who share the victim's group characteristic.[33] For example, Monique Noelle conducted a qualitative study with lesbian, gay and bisexual participants in the wake of the homophobic murder of Matthew Shepard in the USA in 1998. Noelle found that the murder of Matthew had significant consequences for other LGB people who stated that they felt personally threatened as a consequence of sharing the victim's LGB identity. Barbara Perry and Shahid Alvi have also studied these indirect impacts, finding that victim group members often experience feelings such as shock, anger, fear, inferiority, and a sense that violence towards them is the "norm".[34]

Most recently, the Sussex Hate Crime Project spent five years studying the indirect impacts of both anti-LGBT and anti-Muslim hate crimes in England. The researchers conducted a total of 21 separate studies focusing on both quantitative methods (such as surveys and experiments) and qualitative methods (interviews). Over 3,000 LGBT and Muslim people participated in the project. In their final report the researchers report that that simply knowing other LGBT or Muslim people in the local community who had been a victim of a hate crime, had significant impacts on their emotional well-being (most frequently resulting in high levels of

[25] Gregory M. Herek, J. Roy Gillis, Jeanine C. Cogan, Eric K. Glunt, "Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults: Prevalence, Psychological Correlates, and Methodological Issues", *Journal of Interpersonal Violence*, vol. 12, No. 2 (1997) 195.

[26] Ibid.

[27] Paul Iganski, *Hate Crime and the City* (Bristol, The Policy Press, 2008), p. 83.

[28] Ibid: 78-79.

[29] Barbara Perry and Shahid Alvi, "'We are all vulnerable': The in terrorem effects of hate crimes", *International Review of Victimology,* vol. 18, No. 1 (2012) 57.

[30] Paul Iganski, "Hate crimes hurt more", *American Behavioural Scientist*, vol. 45, No. 4 (2001) 626.

[31] Jenny L. Paterson, Rupert Brown and Mark A. Walters, "The short and longer term impacts of hate crimes experienced directly, indirectly and through the media", *Personality and Social Psychology Bulletin* (2018). https://doi.org/10.1177/0146167218802835

[32] Paul Iganski (2001), "Hate crimes hurt more", *American Behavioural Scientist*, 45(4): 626-38.

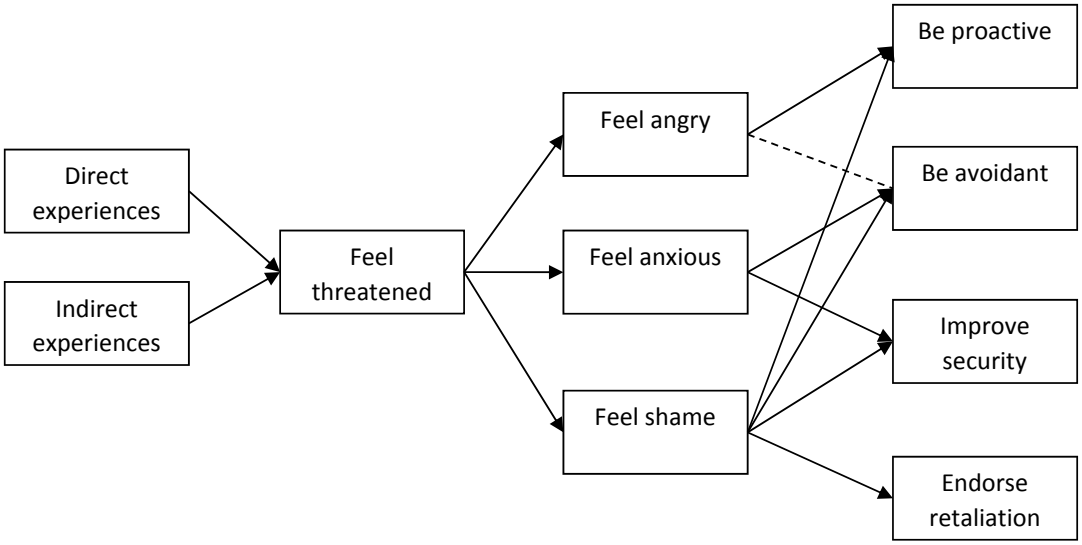
[33] Jenny L. Paterson, Rupert Brown and Mark A. Walters, "Feeling *for* and *as* a group member: understanding LGBT victimization via group-based empathy and intergroup emotions", *British Journal of Social Psychology* vol. 58, No. 1 (2019) 211; Jenny L. Paterson, Rupert Brown and Mark A. Walters, "The short and longer term impacts of hate crimes experienced directly, indirectly and through the media", *Personality and Social Psychology Bulletin* (2018). https://doi.org/10.1177/0146167218802835

[34] Barbara Perry and Shahid Alvi, "'We are all vulnerable': The in terrorem effects of hate crimes", *International Review of Victimology,* vol. 18, No. 1 (2012) 57.

anger, anxiety, vulnerability and, to a lesser extent, shame).[35] The study was the first quantitative study to evidence both correlation and causation of negative emotions with behavioural responses. In particular, it showed that experiences of both direct and indirect hate crimes were linked to an individual's perceptions of threat (both physical and symbolic). Heightened perceptions of threat were linked to three main emotions: anger, anxiety and shame. Each of these emotions predicted certain behavioural reactions. For example, anxiety was strongly correlated with avoidant behaviours (e.g. avoiding certain locations and changing one's appearance), while feelings of anger were most strongly correlated with proactive behavioural intentions (e.g. joining rights-based groups, community-focused charities, and being more active on social media).[36]

In a series of longitudinal studies and psychological experiments the researchers also tested the effects that media coverage of anti-LGBT hate crimes has on LGBT people. They found that media exposure to reported anti-LGBT hate crimes had *lasting* impacts on individuals' emotions. The study found that individuals from within the LGBT community were more empathic towards other LGBT individuals' experiences of hate crime, which in turn heightened their emotional responses to observing incidents via media outlets.

Figure 3: Flow chart illustrating the emotional and behavioural impacts of hate crime[37]



Note. Black lines denote a positive correlation and the dotted line denotes a negative correlation

Figure 3 illustrates the emotional and behavioural reactions to hate crime using a pathway model. Each emotional reaction to feeling threatened by hate crime predicts different behavioural responses. Black lines denote a positive correlation with the following emotion/behaviour. The dotted line in the diagram denotes a negative correlation. For example, the emotion of anger is negatively correlated with avoidance, meaning that those who experience anger as a predominant emotion are less likely to avoid certain locations, and are instead more likely to be proactive (including joining rights groups or posting supportive messages about LGBT rights on social media). It should be noted that the emotion of shame, experienced by fewer respondents overall, may have the most negative consequences for individuals. Not only is this emotion positively correlated with all the behavioural responses that are connected to other emotions, but it was the only emotion to be linked with an endorsement to retaliate with violence.

C. Addressing the Harms of Hate Crime through Restorative Justice

Given the significant direct and indirect impacts caused by hate incidents it is incumbent upon governments to invest in measures and interventions that can reduce these harms. One of the most increasingly utilized

[35] Jennifer Paterson, Mark. A. Walters, Rupert Brown and Harriet Fearn, *The Sussex Hate Crime Project: Final Report,* Project Report (Brighton, University of Sussex, 2018).
[36] Jennifer Paterson, Rupert Brown, and Mark A. Walters, "Understanding victim group responses to hate crime: shared identities, perceived similarity and intergroup emotions", *Testing, Psychometrics, Methodology in Applied Psychology*, vol. 25, No. 2 (2018) 163.
[37] Flow chart taken from Jennifer Paterson, Mark. A. Walters, Rupert Brown and Harriet Fearn, *The Sussex Hate Crime Project: Final Report,* Project Report (Brighton, University of Sussex, 2018) with permission of authors.

interventions aimed at reducing the harms of crimes and other forms of conflict over the past 15-20 years is restorative justice (RJ) practices. Howard Zehr in his seminal book Changing Lenses: A New Focus for *Crime and Justice* argued that crime is a "wound in human relationships" which requires convalescence.[38] Zehr asserted that instead of focusing on punishing offenders for wrongdoing, perpetrators of crime should be obliged "to restore and repair" harm. The restorative process works by bringing together the "stakeholders" of an offence, typically the victim, offender and other affected community members, via a dialogical process focused on how harms can best be repaired.[39]

Restorative justice practice emphasizes equal participation, with each participant having a voice and no single individual being silenced by the domination of others.[40] The main objective is for the parties to find resolution through inclusive discussion that is typically settled by a restorative agreement.[41] In most cases, perpetrators of harm are asked to put right the wrongs they have inflicted. Restoration should not be imposed on the perpetrator and the aim is not to inflict further pain on them. In most cases, this involves discussion and then agreement on a form of reparation that the perpetrator will carry out. Examples of restoration are provided below in Figure 4.

Figure 4: Types of reparation in restorative justice practices

Types of reparation	Examples
Material	Provision of materials goods/ property - Financial restitution to victim/s - Replacement of damaged goods - Fixing of damaged property (e.g. painting fence)
Emotional	Apology - Verbal - Written - By physical gestures (handshake / embrace)
Relational	Renewal of interpersonal relations - Proactive: agreement regarding future interaction, e.g. "to say hello" when walking past each other in the street - Restrictive: agreement to desist from certain future action (not to use certain words or language/ not to play music at certain times)
Community	Unpaid work in local community - Volunteering at a charity - Removing graffiti from public property - Tidying/ litter picking in local parks
Moral learning	Studying/ research projects/ attendance at workshops/ courses - Carrying out a short research project supervised by a (restorative) justice practitioner - Providing a short report on a topic relating to the harm caused - Presenting a reflections document to victim/family/local community about what has been learned/new understandings
Multiagency support	Provision of additional social support - Social services support (social worker) - Educational support (teachers) - Housing advice (housing officers) - Medical (psychiatric) referral (doctors) - Alcohol or drug awareness (rehabilitation centres)

The restorative process typically begins by focusing on the perpetrator's responsibility for having harmed another (others). The aim of this part of the dialogical process is to bring about a greater level of understanding of the consequences of the perpetrator's actions and is often accompanied by what Braithwaite labels as "reintegrative shaming":

[38] Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottdale, Herald Press, 1990), pp. 181.
[39] Ibid. See also, Howard Zehr and Harry Mika, "Fundamental Concepts of Restorative Justice", *Contemporary Justice Review,* vol. 1 (1998) 47.
[40] John Braithwaite, "Restorative Justice and Social Justice", in *Restorative Justice: Critical Issues,* E. McLaughlin, R. Fergusson, G. Hughes and L. Westmorland, eds (London, Sage, 2003), pp. 157.
[41] Tony Marshall, *Restorative Justice: An Overview* (Research Development and Statistics Directorate, London, Home Office, 1999); Howard Zehr and Harry Mika, "Fundamental Concepts of Restorative Justice", *Contemporary Justice Review,* vol. 1 (1998) 47.

> Because shaming is a participatory form of social control, compared with formal sanctioning, which is more professionalized than participatory, shaming builds consciences through citizens being instruments as well as targets of social control. Participation in expressions of abhorrence toward the criminal acts of others is part of what makes crime an abhorrent choice for us ourselves to make.[42]

The stakeholders of an offence, including the main parties' community supporters, share their "stories" of what has happened, and provide disapproval of the perpetrator's *actions*. Facilitators should attempt to engage stakeholders in a process that focuses on encouraging the taking of responsibility for harmful actions, and not on dialogue that emphasizes the perpetrator as a bad person (known as shame management).[43] Dialogue that focuses on action and harm as against individuals as wrongdoers, helps to ensure that the process is "reintegrative" as against "stigmatic"; the latter serving mostly to alienate and ostracize offenders.

Structured dialogue that is focused on harm reparation can also assist in inducing feelings of remorse, which are the result of "empathy or understanding the effects on victims".[44] Those who are directly (or indirectly) confronted with the victim's pain are more likely to feel compassion for them compared with processes that separate individuals and focus *solely* on punishment.[45] Indeed, one factor that has consistently been shown to be associated with increased empathy between different identity groups is structured intergroup contact.[46] If members of different groups encounter each other under the right conditions—broadly, those which do not exacerbate existing negative or unequal intergroup relations—then increased empathy and trust and lessened anxiety are commonly observed.[47] It is through the forming of these empathic connections with those who have been harmed, that perpetrators are most likely to reassess their past behaviour. Where this is possible, perpetrators are better equipped to offer genuine reparation and show contrition for the hurt they have caused.[48]

The dialogical process and the empathic connections that can be made during restorative meetings may additionally form the catalyst for attitudinal and behavioural change. Though this cannot be an expected outcome in every case, the most successful outcomes are where a perpetrator is reintegrated back into a community where they are less likely to re-harm others (Braithwaite 1989).

Figure 5: Howard Zehr's Paradigms of Justice[49]

Two Different Views

Criminal Justice	*Restorative Justice*
• Crime is a violation of the law and the state.	• Crime is a violation of people and obligations.
• Violations create guilt.	• Violations create obligations.
• Justice requires the state to determine blame (guilt) and impose pain (punishment).	• Justice involves victims, offenders and community members in an effort to put things right.
• *Central focus: offenders getting what they deserve.*	• *Central focus: victim needs and offender responsibility for repairing harm.*

[42] John Braithwaite, J. (1989), *Crime, Shame, and Reintegration*, Cambridge: Cambridge University Press, 80.
[43] John Braithwaite and Valerie Braithwaite, "Part I. Shame, shame management and regulation," in *Shame Management Through Reintegration,* E. Ahmed and others, eds. (Melbourne, Cambridge University Press, 2001).
[44] Gabrielle Maxwell and Allison Morris, "The Role of Shame, Guilt, and Remorse in Restorative Justice Processes for Young People", in *Restorative Justice: Theoretical Foundations*, E. Weitekamp and H. Kerner, eds. (Cullompton, Devon, Willan Publishing, 2002), pp. 280-81.
[45] Nathan Harris, Lode Walgrave and John Braithwaite, "Emotional Dynamics of Restorative Conferences", *Theoretical Criminology,* vol. 8, No. 2 (2004) 191.
[46] Rupert Brown and Miles Hewstone, "An integrative theory of intergroup contact", *Advances in Experimental Social Psychology*, vol. 37 (2005) 255.
[47] Ibid.
[48] Nathan Harris, Lode Walgrave and John Braithwaite, "Emotional Dynamics of Restorative Conferences", *Theoretical Criminology,* vol. 8, No. 2 (2004) 191.
[49] Taken from Howard Zehr, *The Little Book of Restorative Justice* (Intercourse, PA, Good Books, 2002).

Johnstone and Van Ness state that for a justice process to be considered as credibly "restorative" it must be guided by three key principles: "encounter", "repair" and "transformation". In effecting these principles practices should encompass a number of attributes:[50]

1. It must be relatively informal and aim to engage the victim, offender(s) and others closely connected to them (or the crime) in dialogue about what happened, why it happened, what harms resulted from it and what should be done to repair those harms.

2. The process should emphasize empowering individuals who have been affected by the crime.

3. Facilitators must promote a response to the incident that focuses on responsibility and repairing harms, rather than on labelling, punishing and stigmatizing the offender.

4. Decisions made during meetings should be based on set values such as equality, respect and inclusion, thereby resisting domination by any of the stakeholders.

5. Time should be devoted to talking about harm, the needs of victims and what is required to help them recover from their experience of victimization.

6. Emphasis should be placed on strengthening or renewing relationships and resolving interpersonal conflict.[51]

At the global level, the UN Resolution 2002/12 on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters states at principle 6:

Restorative justice programmes should be generally available at all stages of the criminal justice process.

The Resolution defines "Restorative process" as:

> …any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party.

Since the UN's resolution, there has been a significant increase in the number of practices being used globally within and outside criminal justice systems that aim to integrate most or all of these attributes, including (among others): victim-offender mediation; family group conferencing; police-led restorative interventions; neighbourhood dispute panels; and community-based practices such as community mediation.[52] Within the UK, for example, the Code of Practice for Victims 2015 states that victims are "entitled to receive information on Restorative Justice from the police or other organization that delivers Restorative Justice services for victims in your area, including how you could take part".[53] A recent amendment to the Powers of Criminal Courts (Sentencing) Act 2000 also now allows for the deferment of sentence for restorative justice activities (sections 1 & 1ZA). These new developments in criminal justice practice mean that RJ interventions are becoming increasingly common as both alternative justice mechanisms (especially in cases involving low-level offences) and as additional interventions used alongside conventional/court processes.

With the proliferation of restorative practices comes the question: how effective have these practices been in repairing harms and reducing reoffending? It is outside the scope of this paper to examine in any detail whether RJ helps to reduce reoffending or if it helps to repair harms of crime generally. In brief,

[50] Gerry Johnstone and Daniel Van Ness, "The meaning of restorative justice", in *Handbook of Restorative Justice*, G. Johnstone and D. Van Ness, eds. (Cullompton, Devon, Willan Publishing, 2007), p. 7.
[51] See also, Howard Zehr and Harry Mika, "Fundamental Concepts of Restorative Justice", *Contemporary Justice Review,* vol. 1 (1998) 47; and John Braithwaite, "Restorative Justice and Social Justice", in *Restorative Justice: Critical Issues,* E. McLaughlin and others, eds. (London, Sage, 2003), for RJ "signposts".
[52] For an overview of these see Mark A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014), chap 2.
[53] Ministry of Justice, *The Code of Practice for Victims of Crime* (London, Ministry of Justice, 2015), p. 35.

research has shown that victims "almost always indicate a high level of satisfaction with the process".[54] Numerous studies have also shown that restorative conferencing is more likely to reduce feelings of emotional trauma such as anger, anxiety and fear compared with the court process.[55] Victims are also less likely to fear that their victimization will be repeated. For instance, Strang's study in Australia found that just two per cent of victims of violent offences anticipated that the offender would repeat the offence against them after participating in a restorative conference, compared to 18 per cent who went to court.[56]

In terms of reoffending rates post RJ, the research here is less equivocal, though many studies have produced encouraging results. One recent study on juvenile offending and variations of restorative intervention by Jeff Bouffard et al. found that "[o]ur results… suggest that each type of RJ intervention, even those that are minimally involved (e.g., indirect mediation) reduces recidivism risk relative to juvenile court proceedings."[57] In another meta-analysis of ten studies by Lawrence Sherman et al. the authors similarly conclude that, "on average, RJCs [restorative justice conferences] cause a modest but highly cost-effective reduction in the frequency of repeat offending by the consenting offenders randomly assigned to participate in such a conference."[58]

While these studies are broadly positive in outlining the potential benefits that restorative practices have for resolving crime, there has been little research on whether RJ works for offences involving hate and prejudice. The question remains, then, can RJ help to repair the unique harms caused by hate crime, while reducing repeat offending? In answering that question, I turn now to my own research study on two restorative interventions that have been used to address the causes and consequences of hate crime in England and Wales.

1. The Hate Crime Project, Southwark Mediation Centre, London

The Hate Crime Project (HCP) is a project run at Southwark Mediation Centre (a civil society organization based in London, England) that deals with cases involving both hate crimes and hate incidents. Cases are often referred to the Project by schools, housing associations, the police and anti-social behaviour units, as well as by self-referral. The key aims and objectives of HCP are:

- To use inclusive dialogue to explore the effect that inter-personal conflicts has had on the lives of those directly and indirectly involved;
- To enquire into issues around prejudice and identity, which may be at the heart of the conflict; and
- To find a resolution that is acceptable to all or most.

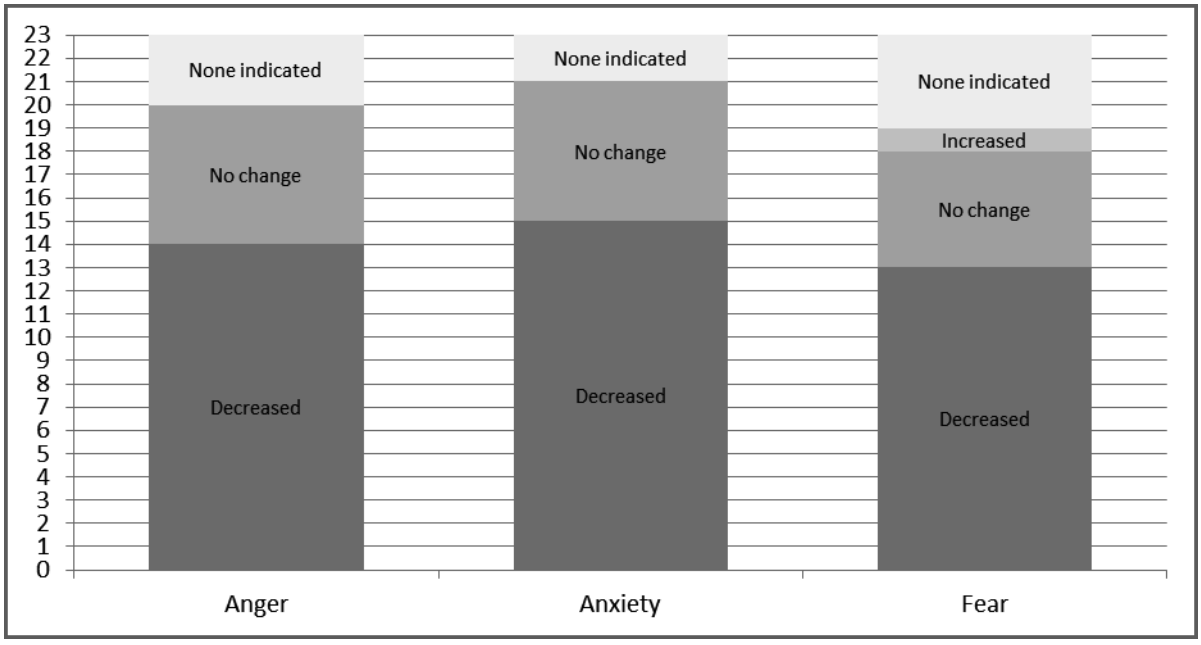
The mediation process is typically completed with a written and signed agreement outlining the undertakings that each party has agreed to. Agreements often include a commitment to cease certain activities (including hate speech), commitments to avoid combative communication if similarly provoked in the future; and sometimes an apology. Although the mediation process may not be termed as "fully" restorative (most prominently because it does not typically involve individuals who have been charged with a criminal offence – although many had been accused of committing one), it does embody most of the

[54] Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (London, The Smith Institute, 2007).
[55] Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Oxford, Oxford University Press, 2002). Reductions in feelings of fear after RJ are also reported in many other studies, see summary in Mark A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014) chap 2.
[56] Ibid.
[57] Jeff Bouffard, Maisha Cooper, Kathleen Bergseth, "The effectiveness of various restorative justice interventions on recidivism outcomes among juvenile offenders", *Youth Violence and Juvenile Justice,* vol. 15, No. 4 (2017) 465.
[58] Lawrence W. Sherman, Heather Strang, Evan Mayo-Wilson, Daniel J. Woods, Barak Ariel, "Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review", *Journal of Quantitative Criminology*, vol. 31, No. 1. Some studies have shown no difference between reoffending rates (Lawrence Sherman and others, *Preliminary Analysis of Northumbria Restorative Justice Experiments, Lee Center of Criminology, Philadelphia Pennsylvania,* unpublished (2006), cited in Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (London, The Smith Institute, 2007), while in one study on drink driving the reoffending rate increased post RJ (Lawrence. Sherman, Heather Strang and Daniel Woods, *Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE)*, Canberra, Centre for Restorative Justice, 2000).

principles that are central to restorative justice and was therefore considered to be a "restorative practice".

The HCP was evaluated during 2008-2011 and involved 15 direct observations of direct and indirect mediation meetings, followed by 23 semi-structured interviews with complainant victims involved in a total of 19 separate hate crimes/incidents, each of whom had completed the mediation process. The study found that, in the majority of cases researched (17/23), interviewees stated that the mediation process had directly improved their emotional well-being. In addition, most participants indicated that their levels of anger, anxiety and fear were reduced directly as a result of having participated in the project. Such a finding is particularly significant considering that these emotions are found to be heightened in cases involving hate crime (outlined above).

Graph 1: Impact of community mediation on victims' feelings of anger, anxiety and fear



Total N = 23.

NB: Measurement of fear was carried out on a 6-point ordinal scale. The measurement of anger and anxiety was based on a 10-point interval scale.

Analysis of interviewee data revealed four common variables that helped to explain the improvement of emotional well-being during the restorative process:

1. Participants were able to explain to the accused perpetrator and others the harms they had experienced, while additionally talking about what it is like for them to be "different" in the community;

2. Participants felt supported by mediators who listened to their version of events;

3. The accused perpetrator signed an agreement promising to desist from further hate incidents; and

4. Reparation was made to the complainant victim, including material, emotional, relational, community, moral learning and multi-agency social support (see Figure 5).

As is outlined at the start of this paper, those who are perceived as somehow "different" are often exposed to the threat of targeted victimization, which in turn heightens their sense of vulnerability. Important, therefore, is that any justice process that aims to address the harms of hate crime, reorientates victims from a position of disempowerment to that of empowerment. Restorative practices aim to achieve this by bringing victims centre stage in the justice process where they are given a say over how their case should be resolved. At the HCP, complainant victims were encouraged to express how they had been harmed by their experience of targeted victimization. By sharing their "stories" of harm, victims were able to explain to

others, not only the impacts of their direct experience of victimization, but also what it was like for them to be "different" in the community. For many complainant victims this also involved them articulating other experiences of prejudice and discrimination in the past and in other areas of their life. One restorative practitioner interviewed explained:

> In cases where I've worked with homophobia the party has wanted them [the offender] to know... what it's like to be a gay man or a woman in the community, what it's like to experience... homophobic prejudice, so there's a lot of learning that can be gained.

The inclusivity of restorative practices also means that other "community" members can participate in dialogue. As I have outlined above, part of hate crime's unique character is that its harms extend beyond the immediate victim, often affecting entire groups of people. Interventions that include the indirect victims of hate crime are therefore particularly useful to repairing its broader harms. For example, one restorative practitioner interviewed as part of the study (outside of the HCP) illustrated the importance of the victims' "community of care" also talking about their group identity.

> They [the victim's family members] went to great lengths telling me about their own family history and who of their own family members they'd lost during periods of time [referring to the Holocaust], and showing me memorabilia in the house, paintings and things which had been done by relatives who were no longer with us, very personal stuff. And probably half an hour or more spoke about those sorts of issues... Their identity was very, very important to them. And they went to lengths to tell me how proud they were to be Jewish. And they certainly want to maintain and hang on to that identity and those roots.

Allowing participants to vocalize their stories in this way can help them to recover from their experiences of targeted victimization. This is especially important where victims' narratives have been destabilized and where individuals experience self-blame, shame and internalized feelings of prejudice. By allowing victims of hate to talk about their "difference", restorative processes may help them to regain a sense of control over their victimization, while simultaneously reasserting their identity as something that should not be shamed. A further case study from the HCP helps to illustrate the importance of talking about the effects of prejudice.

Case Study One: Homophobic violence and community mediation

Mr V's case involved homophobic harassment and violence, which occurred over a period of 18 months. A new neighbour (Mr X) moved in directly above Mr V's apartment. At first the two neighbours would say hello as they passed each other. However, when Mr X found out that Mr V was gay, he began to verbally abuse him calling him amongst other things an "AIDS spreader" and on one occasion Mr V came home to find "AIDS F**KER" spray painted on his front door.

Over the course of his targeted victimization, Mr V had his car keyed (scratched), he was spat on, and had liquids poured over him by Mr X. Mr V's abuse came to a head when on returning home from hospital one day on crutches, he was pushed to the ground by one of Mr X's friends. His front two teeth were knocked out and he required hospital attention where he was given medication and several stitches in his chin. Mr V described at interview the impacts of his victimization:

"... it's almost soul destroying for me because it took away everything I had and am as a person... it reached the stage where I was frightened to go out of my home. I used to sit in here in the dark because I didn't want anyone to know I was in because I was frightened that if they knew I was in that they would do something."

Eventually, Mr X was referred to the HCP where he and his neighbour were invited to participate in indirect (shuttle) mediation. The mediation process had a profound impact on both Mr V and his neighbour. Mr V conveyed how important it was to be able to tell someone how the incidents had been affecting him. This, he believed, had a profound impact on Mr X's understanding of him and the harms he had been inflicting:

"I know that one of the things that [Mr X] automatically presumed was that all gay men are also paedophiles... I think that was one of the issues and once all those issues were put to him in sensible conversation whilst he's not going to change his opinion totally, I think it led to him realising that everything was not as black or white."

Mr V obtained assurances from Mr X that the incidents would stop. He commented further that:

"because the incidents have stopped... I'm healthier again I don't have the stress, I'm not frightened to go out of my own home. Overall everything about my health is better."

a. Preventing hate crime from recurring

Research suggests that hate crime victims are more likely to experience repeat forms of targeted victimization compared with non-hate victims.[59] In fact, in all of the 19 cases of hate crime and hate incidents studied at the HCP, conflict between the stakeholders had been ongoing, usually occurring over a period of several months but in some cases many years. Out of these 19 separate cases studied, 11 ceased directly after either direct or indirect mediation between the parties took place. A further six cases stopped after the mediator included other local agency professionals within further mediation meetings, including schoolteachers, social services practitioners, community police officers and local authority housing officers.

These findings suggested that the HCP helped to change the behaviours of those accused of hate and prejudice. However, it remained unclear whether those who had participated had also transformed their prejudiced attitude towards those they had previously targeted. The success of a justice measure cannot be judged solely on whether an offender has reoffended against the same victim. Recidivism rates must also be examined in relation to whether the perpetrator has reoffended against others. If restorative practices are capable of bringing about a genuine transformation in perpetrators' world views, then RJ will not only help to reduce harm in individual cases, but it might be a mechanism through which broader social change can be brought about.

What, then, did the research tell us about RJ's capacity to challenge the underlying causes of hate? Earlier in this paper, I briefly outlined the theory of reintegrative shaming, and the role that empathy may play in transforming attitudes and in turn behaviour. In relation to hate crime, those who participate in structured dialogue that focuses on harm *and identity* can be challenged to reassess their prejudiced beliefs and attitudes. This was revealed in Case Study 1 where Mr X's beliefs that all gay men were paedophiles and his stereotypes that they spread HIV and AIDS were challenged. Numerous other examples were observed of individuals whose views and attitudes were challenged and where renewed relationships emerged during dialogue.[60] However, it is not only through restorative dialogue that attitudinal change can be fostered. There are also opportunities for moral learning to be integrated directly into restorative agreements themselves. The following case study illustrates how restorative justice can help to address both the behaviour and the attitudes of perpetrators through the study of identity "difference".

Case Study 2: Antisemitic harassment – Exploring the harms of the Holocaust through restorative dialogue

A 17-year-old Jewish male (K) was racially and religiously harassed by another 17 year old white British male (Y) in Oxford. Y was later prosecuted and convicted of racially and religiously aggravated harassment under section 32 of the Crime and Disorder Act 1998. As a first-time offender, Y was sentenced to a Referral Order and later referred to Oxford Youth Offending Service where a restorative justice practitioner was assigned to his case.

The RJ practitioner met with K and his father who spoke at length about how the incident had affected them and how important their Jewish roots were. The facilitator asked K how the offender might help to repair some of the harms he had caused. K suggested that the offender learn about the impacts caused by antisemitism. This suggestion led to the offender being asked to undertake a research project on the rise of the Nazi party and the devastating effects of antisemitism during WWII.

The offender manager, herself Jewish, supervised the project which was completed over a two-week period. A project report was then presented back to the victim and his family by the RJ facilitator. At the end of the six-page report, the young offender reflected:

"I feel that I understand why incidents involving racial abuse against Jewish citizens and [other] races are taken so seriously. As I have been… reading about… the Holocaust… [and] I understand the hurt and pain the victim and his family must of [sic] felt when I said what I said to him as it was obviously a terrible time for there [sic] race… it is not just him that it relates to but a whole race of people and that's not what I

59 Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London, Home Office, 2018).

60 See Mark A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014), chaps 4, 6 and 8.

intended to do. On reflection of my actions I now feel that I will be able to use language more appropriately towards over [sic] people and not to talk about peoples religions and believes [sic] in such a way… as it is unacceptable because of the pain it causes to the people it happens to."
When asked whether K believed the offender now had a better understanding of his identity background, he replied:
"Somewhat I think, well the fact that he had to do this [referring to the report]… he's looked into some things that hatred can do… the bad times of the Holocaust…"
The victim went on to state that he had not experienced any further forms of harassment from Y.

Whether the perpetrator in this case study experienced a genuine transformation in attitude is to some extent unclear.[61] His own words indicated that he had come to a new understanding about the experiences of Jewish people, while the words of his victim were also hopeful that his attitudes and behaviours will change.

Although cases such as these illustrate the potential of RJ to facilitate both attitudinal and behavioural transformations, such an outcome does not occur in every case. In fact, the study also found examples of perpetrators who continued to deny that they had acted out of prejudice throughout the restorative process. In a couple of cases, perpetrators held deep-seated animosity towards certain communities and were keen to vocalize their disdain of these groups.[62] It is questionable whether the stakeholders of hate crime in such cases can truly form the empathic connections that are key to promoting behavioural and attitudinal transformation.

Yet in many respects it is questionable whether we can expect any justice measure to truly change how someone sees others in the world. Indeed, we might even question whether it is ever the role of the criminal justice system to attempt such a feat. Perhaps, then, what the case examples above show is not that RJ should have as its key *objective* attitudinal change, but rather to acknowledge that it has the *capacity* to facilitate moral learning that is *more likely* to bring about such changes when compared with other punishment based interventions.

However, if restorative practices are to achieve even this, its practitioners must carefully apply the underlying principles and processes (outlined above) that give RJ its unique reparative and transformative capabilities. As we will see below, failure to administer these key principles properly may undermine RJ's capacity to both repair harm or challenge prejudice and hate.

2. Restorative Police Disposals, Devon and Cornwall

The research study showed that, when administered with care, a restorative practice such as the HCP can help not only to reduce harm, but also potentially reduce the likelihood of revictimization. What though of other "restorative" practices that do not specialize in hate crime and which are run more centrally by agencies such as the police? In attempting to evaluate a broader range of restorative practices, I included within the study a newly established police-led restorative intervention.

In 2008, Devon and Cornwall Police Service trained all of its officers to use a new restorative disposal for "low level" offences. The disposal is only used where the victim agrees to take part in a street level restorative encounter, (direct or indirect) victim-offender mediation or a restorative conference. A total of fourteen victims of hate crime were interviewed who had participated in the restorative disposal. Out of these 14, seven (half) stated that they were satisfied with the outcome of their case. Seven interviewees also felt that they were provided with an opportunity to explain how the incident affected them – a key aspect of restorative justice outlined above. However, unlike the HCP, only a minority of interviewees (four) stated that they felt the restorative disposal had helped to repair the harms caused by the hate crime.

There were several reasons outlined by interviewees explaining this lower level of emotional recovery.

[61] The offender was not available for interview during the study period.
[62] See examples in Mark A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014), chap 8.

The first related to the fact that some participants had felt pressured by a police officer to participate in the disposal. This had direct implications for the voluntariness of the process and effectively undermined a key aspect of restorative practice. Despite 11 out of 14 victims stating that they had received an apology from the offender, most felt that the apology had been disingenuous. In several cases, the apology had been written on a note pad without explanation as to why the crime had been committed. One interviewee explained:

> It was a scam, it wasn't really an apology. It made me feel really upset. If someone had really felt that they had done something wrong they would have written something in a way to express their feelings... sending me a piece of paper was like rubbing salt into the wound. I would have been more happy not receiving anything, it was like making fun of it.

Such a situation left this victim feeling more harmed by the intervention, while similar conditions resulted in several other victims feeling "let down" by the police.

It should be noted that most offenders took part in what is called a "Level One" restorative intervention (i.e., street level encounters commonly used at the scene of the crime).[63] Such encounters do not include preparation meetings and they are unlikely to be held in a neutral setting. Only one victim was given an opportunity to talk directly with the offender about the offence and how he could repair the harms he had caused. These findings gave rise to the question of whether the Devon and Cornwall police restorative disposals should be labelled as a "restorative" intervention at all.

D. Avoiding the Risks of Using Restorative Justice for Hate Crime

Interventions such as "restorative disposals" highlight a number of potential risks that are posed to victims when using RJ for hate crime. The most significant concern is that restorative meetings might expose victims to revictimization. The worst-case scenario is where an offender uses a restorative meeting to re-vocalize their animosity towards the victim. Other concerns, however, relate to more subtle but potentially equally invidious, manipulation of dialogue which sees those in positions of power exerting control over other participants; thereby perpetuating their social marginalization.

These issues were central concerns during the HCP study and all victims and practitioners were interviewed in depth about any experiences of inequality, domination or revictimization during the restorative process. Revictimization and power differentials are important considerations for all practitioners facilitating restorative justice interventions. The study found that all complainant victim interviewees, bar one, stated that they did not experience any feelings of inequality or revictimization during any part of the restorative process.[64] The direct observations also supported these claims, with detailed notes taken of communication, including paralanguage[65] and body language throughout, revealing no evidence of direct revictimization and little evidence of communicational domination. There were several factors that were highlighted during the study as minimizing power divisions, causal to hate crime cases, and that limited the risk of revictimization during the restorative process:

- Thorough preparation of participants before any direct dialogue took place. This involved outlining the aims and objectives of RJ meetings, to prepare participants for difficult questions, and to ascertain whether accused perpetrators/offenders would re-vocalize their prejudices in direct meetings.

- Ground rules at the start of meetings outlining expected language and behaviour during meetings.

- Arranging for other participants to take part who supported the participant, but not the prejudice/s that were central to the case, including: schoolteachers, sports coaches, friends and family members.

- Using indirect mediation meetings, allowing participants to talk and for an agreement to be reached between participants without them directly meeting.

[63] See Criminal Justice Joint Inspection (CJJI), *Facing Up To Offending: Use of Restorative Justice in the Criminal Justice System* (London, HMIC, HMI Probation, HMI Prisons and the HMCPSI, 2012).

[64] A total of 38 complainant victims were interviewed. The one victim who stated that he had felt discriminated against because of his ethnicity noted that this came from the facilitating police officer and not the other party involved in the incident.

[65] Vocal features that accompany speech and contribute to communication, such as intonation, tone and timbre of voice.

Preparation was reiterated by practitioners throughout the study as being *the* key factor in reducing risk to victims. This is most effectively achieved at the beginning of the process when facilitators meet and talk to the parties separately. It is here that practitioners can ask questions about what participants hope to gain from the process and, importantly, how they feel about what has happened and what they feel towards each other. During direct meetings, ground rules as to expected behaviour and language were invariably set out. Facilitators at this stage also considered involving participants who supported the accused perpetrator but not the prejudices which they had demonstrated. This could, for example, involve inviting a teacher, sports coach, or other person to engage in the dialogical process. Finally, where there is a risk of revictimization, facilitators often offered complainant victims the opportunity to participate in an indirect/shuttle mediation process. Half of complainant victims at the HCP decided that this was the better option for them.[66]

II. CONCLUSION

Restorative practices that are administered by experienced practitioners who prepare stakeholders of hate crime for inclusive dialogue that is focused on the harms caused by targeted victimization can, in most cases, expect to assist in the emotional recovery of victims and prevent ongoing incidents from recurring. The success of any restorative practice is predicated on: the amount of preparation that facilitators put into outlining the aims and objectives of RJ and preparing stakeholders for dialogue; facilitating opportunities for "story telling"; the support offered by facilitators and other agencies during the process; and agreements that contain promises of desistance. There are, however, risks to administering "restorative" interventions for hate crime. The research study suggested that short "restorative encounters" that are used at the scene of an incident risk exacerbating the harms of hate incidents and therefore should not be used. These so called "Level One" restorative disposals lack adequate preparation, with participants often feeling cajoled into accepting the intervention. There is very little that is "restorative" about such practices.

Although RJ may well help to address both the causes and consequences of hate crime, it must not be concluded that this approach is a panacea to tackling hate crime. In particular, policymakers and practitioners must recognize that the concept of "community", central to many restorative practices, can have both a benevolent and malevolent effect on hate crime. The study found that in most cases practitioners can utilize "community" as a tool; for example, by ensuring that the victim's family and friends (part of their "community of care") are there to provide support during restorative meetings. However, simultaneously practitioners working in the area of hate crime must come to understand that the notion of "community" can itself be causal to hate incidents. Community, defined by Braithwaite as a set of "dense networks of individual interdependencies with strong cultural commitments to mutuality and obligations",[67] is often bound by norms and values that can lead to the rejection of certain identities within its sphere. Barbara Perry argues that communities that become fearful of certain "Others" develop mechanisms of control that are used to marginalize certain groups.[68] This can occur, for instance, where a community predominantly made up of a single ethnic and religious group, evinces hostility towards new minority ethnic members who seek to practice different religious beliefs in the community. Some "dominant" community members may even take it upon themselves to police the boundaries of what is acceptable community "membership" (including what identities are acceptable) and use violence in order to vanquish those who fail to conform. In fact, a cogent reason explaining why RJ did not completely repair the harms caused by hate crime in this study was that victims, although less fearful and angry towards the perpetrator in their case, continued to remain fearful and anxious that other community members might target them. Practitioners must, therefore, be mindful that the inclusion of "community" members in the restorative process can involve those who are fearful or prejudiced towards "othered" victims, potentially resulting in their experiencing further marginalization during the process itself.

While concerns about the cultures of prejudice that can pervade entire communities must not be underestimated, neither should they exclude the use of RJ for hate crime as some have suggested.[69] Important

[66] Note that the findings regarding emotional wellbeing did not differ across those who participated in direct compared with indirect mediation.
[67] John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge, Cambridge University Press, 1989), p. 85.
[68] Barbara Perry, *In the Name of Hate: Understanding Hate Crimes* (New York, Routledge, 2001).
[69] Terri. Lee. Kelly, "Is Restorative Justice Appropriate in Cases of Hate Crime" (published in the Western Pacific Association of Criminal Justice Educators Conference Papers, Lake Tahoe: Nevada).

is that practitioners fully comprehend both the harming and healing qualities of "community", and are equipped with the knowledge of how to exploit those aspects which are healing, while guarding against those which may be victimizing. As we have seen above, this can be achieved via adequate preparation, ground rules, and ensuring that appropriate "community supporters" participate in dialogue.

A. The Future of RJ for Hate Crime: Effective Training

Given the potential reparative outcomes of RJ for hate crime, should restorative measures be available to all victims of hate crimes across criminal justice systems? The answer to this question may depend on two factors. The first relates to who the facilitators of RJ are. The realization of RJ's key goals may depend largely on whether facilitators are specialist independent practitioners, or whether they are existing criminal justice practitioners who are *additionally* trained as RJ facilitators. Practitioners who are completely independent from the criminal justice system are likely to bring with them greater levels of independence and impartiality. In turn, they are less inclined to be influenced by the institutional processes that are ingrained within a "system" and the institutional prejudices (i.e. unwitting and unthinking bias that can be demonstrated towards certain groups) that continue to permeate many criminal justice systems.[70] If justice agencies do decide to use professionals from within the system (such as was the case in Devon and Cornwall Police), it is likely that the organization's traditional institutional values and practices will compete with those of RJ. This means that the principles of repair, encounter and transformation may be situated within a paradigm of justice that remains focused predominantly on retribution and/or punitivism. If this is the case, and recent experience from the UK suggests that practitioners will mostly come from within such organizations, it will be pivotal that these practitioners operate exclusively as restorative facilitators. Only then can the values of conventional justice practices become secondary to the work of restorative practitioners.

The second factor relates to training and experience. Practitioners will clearly need to undertake advanced training on the causes and consequences of hate in order to effectively negotiate the minefield of socio-cultural issues pertinent to such cases. The HCP manager, herself a British African-Caribbean woman, had over ten years' experience mediating hate crime cases in one of London's most diverse boroughs and was discernibly well qualified in helping to resolve complex cases that involved hate-based conflict. Other providers of RJ must ensure that facilitators have a suitable comprehension of the issues relevant to hate crime before they carry out adequate preparation and effective facilitation of direct dialogue. In many respects, I believe that this is RJ's greatest hurdle in promoting justice for victims of hate crime. Cultural resistance within some institutions, especially those with strong conventional retributive values, will actively limit practitioners' ability to fully embrace the aims and objectives of RJ.

It is even more important, then, that facilitators represent the communities that they will be helping to resolve conflict. While I would not go so far as to suggest that only minority ethnic practitioners facilitate conflict involving stakeholders from such backgrounds, it is certainly the case that facilitators who have themselves experienced socio-cultural marginalization will have a greater appreciation of the harms that discrimination and prejudice can cause. First-hand knowledge of identity "difference", cultural diversity and the socio-structural dynamics of hate crime will mean that facilitators are better able to understand pre-existing divisions and help encourage the emotional connections central to restorative dialogue. Only when restorative practitioners represent the multicultural communities that they serve can restorative practices be truly inclusive of the differing cultures, ethnicities and orientations of the communities that are affected by hate crime.

[70] William Macpherson, *The Stephen Lawrence Inquiry*, Cm 4262-I (London: The Stationery Office, 1999); David Lammy, *The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System,* (London, Lammy Review, 2017).

INTERNATIONAL EFFORTS TO FOLLOW-UP ON THE DOHA DECLARATION OF THE THIRTEENTH UNITED NATIONS CONGRESS ON CRIME PREVENTION AND CRIMINAL JUSTICE

Dimosthenis Chrysikos[*]

I. INTRODUCTION

The United Nations crime congresses are the oldest periodic United Nations conferences devoted to a specific subject area. Since 1955, they have been held every 5 years. They have been convened six times in Western Europe (Geneva, 1955 and 1975; London, 1960; Stockholm, 1965; Milan, 1985; and Vienna, 2000), three times in Asia (Kyoto, 1970; Bangkok, 2005; and Doha, 2015); three times in Latin America (Caracas, 1980; Havana, 1990; and Salvador, Brazil, 2010); and once in Africa (Cairo, 1995).

As the only major United Nations conferences in the field of crime prevention and criminal justice, the crime congresses constitute the largest and most diverse gatherings of policymakers and practitioners in this area. Over half a century, the congresses have shaped international and domestic policies and have contributed to novel thinking and approaches in the field of crime prevention and criminal justice.

The first Congresses, from 1955 to 1990, had adopted a large amount of soft law in the form of non-binding resolutions, guidelines, action plans and a heterogeneous set of standards and norms. These latter soft law instruments, collectively referred to as "United Nations standards and norms in crime prevention and criminal justice", cover a broad range of crime prevention and criminal justice issues, from the prevention of juvenile delinquency, the position of victims in the criminal justice process and the use of force and firearms by the law enforcement officials, to the independence of the judiciary and capital punishment; and from the standard minimum rules for the treatment of prisoners to model treaties on extradition, mutual assistance and transfer of proceedings in criminal matters and the model agreement on the transfer of foreign prisoners.

The introduction of congress declarations as the main output of the crime congresses was first introduced in practice as an innovative element at the Tenth Congress in Vienna (2000). This practice was officially endorsed by the General Assembly in its resolution 56/119 on the "Role, function, periodicity and duration of the United Nations congresses on the prevention of crime and the treatment of offenders". In that resolution, the General Assembly decided, among others, that each United Nations congress on crime prevention and criminal justice shall adopt a single declaration.

II. PAVING THE GROUND FOR THE DOHA DECLARATION

The process that leads to the adoption of a congress declaration goes through the preparatory arrangements for each of the congresses. In those preparatory arrangements, the Commission on Crime Prevention and Criminal Justice has a leading role and it is on the recommendation of this Commission that pertinent resolutions paving the ground for the congress ahead are adopted—through the ECOSOC—by the General Assembly.[1]

In discharging its mandated function as the preparatory body for the congresses, the Commission on Crime Prevention and Criminal Justice gives consideration to the need for advance planning and close coordination with all parties involved, including the relevant counterparts of the host country, and the

[*] Crime Prevention and Criminal Justice Officer, United Nations Office on Drugs and Crime (UNODC), Division for Treaty Affairs, Organized Crime and Illicit Trafficking Branch. The opinions expressed in this article are those of the author and do not reflect the views of the United Nations.

[1] Recommendations for streamlining the preparatory phase of the congresses, as well as their conduct and follow-up, have been made by the Intergovernmental Group of Experts on Lessons Learned from United Nations Congresses on Crime Prevention and Criminal Justice at its meeting held in Bangkok from 15 to 18 August 2006. These recommendations were subsequently endorsed by the General Assembly in its resolution 62/173 of 18 December 2007.

institutes of the United Nations crime prevention and criminal justice programme network (PNI network). A *sine qua non* condition for the effectiveness of such preparatory arrangements is the timely preparation of, and agreement on, a focused and streamlined agenda for each congress, under which there is a sequential relationship between the main theme and the agenda items and workshop topics. The earlier a decision is made by the Commission on agenda items and workshops topics,[2] the easier it is to undertake preparatory activities, in particular the development of the discussion guide and the arrangement of regional preparatory meetings, including consultations on the workshops programmes with the institutes of the United Nations crime prevention and criminal justice programme network and with relevant non-governmental organizations, for the organization of ancillary meetings.

The preparatory phase for each crime congress extends within a five-year cycle, with relatively distinct stages, as follows:

a) The Commission on Crime Prevention and Criminal Justice invites governments to make suggestions on the theme, substantive agenda items and workshops topics of the congress (usually at the first year of the cycle);

b) The Commission decides on the theme, substantive agenda items and workshops topics of the congress (usually at the second year of the cycle);

c) The Commission accepts the invitation of the future host country to organize the congress (usually at the second or third year of the cycle);

d) The Secretariat drafts the discussion guide that sets out the main issues and possible questions for discussion in respect of each substantive agenda item and workshop topic of the congress; input on the discussion guide is also received from the Programme Network Institute(s) with responsibility for organizing the respective workshop (usually at the third year of the cycle);

e) The discussion guide of the congress is approved by the Commission (usually at the third year of the cycle);

f) Regional preparatory meetings are organized (during the first four months of the fourth year of the cycle);[3]

[2] The Intergovernmental Group of Experts that met in Bangkok in 2006 proposed that attention needed to be paid to the nature and significance of potential topics for the congresses (and potentially for the content of a future Declaration as an outcome of a congress), as follows: Issues that may require policy-making at the international level, including, if necessary, international standard-setting; issues with predominantly transnational aspects or dimensions that may require transnational approaches and solutions; issues of substantial concern and importance to as many States as possible from all regions; issues that strike a balance between crime prevention and control, on the one hand, and criminal justice, on the other; issues of political significance on which consensus has already been reached, but for which a reiteration of political commitment might be warranted or desirable, or on which progress in action by the international community would be registered; issues likely to command consensus for the first time; and emerging issues that do not enjoy consensus and are not likely to do so in the near future, but that warrant more discussion and accumulation of knowledge.

[3] The regional preparatory meetings are consistently organized for the following regions: Asia and the Pacific, Western Asia, Latin America and the Caribbean, Europe and Africa. In the cycles up to and including the one for the preparation of the Ninth UN Crime Congress (Cairo, 1995), also European regional preparatory meetings for Europe were also held. These were then discontinued, only to be revived in preparation for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (Kyoto, 2020). The Intergovernmental Group of Experts on Lessons Learned from United Nations Congresses on Crime Prevention and Criminal Justice, at its meeting held in Bangkok from 15 to 18 August 2006, stressed the importance of regional preparatory meetings as a key preparatory tool for the congresses and noted that, despite globalization and the increasingly transboundary nature of criminality, different regions of the world continued to have different concerns, which they wanted to see properly reflected in the consideration of various topics by the congresses (see the report of that meeting, E/CN.15/2007/6, para. 23).
During the cycles for the preparation of the Sixth, Seventh and Eighth UN Crime Congresses (1980-1990), interregional expert meetings were organized on each of the agenda items. This practice was discontinued after the 1990 Congress, following the restructuring of the United Nations Crime Programme.

g) The Secretariat and the host country negotiate the "host country agreement", which is necessary for the organization of the congress (finalization of this agreement may continue to up to near the time of the congress); and

h) Informal negotiations begin on the text of the congress declaration (following the holding of the regional preparatory meetings). The declaration is formulated on the basis of the recommendations of the regional preparatory meetings and the recommendations that are brought forward in the congress documentation, including the discussion guide.

III. THE DOHA DECLARATION AS THE OUTCOME OF THE THIRTEENTH UNITED NATIONS CONGRESS ON CRIME PREVENTION AND CRIMINAL JUSTICE

Consistent with the general practice followed in preparation of crime congresses, as described above, the General Assembly adopted in December 2012, upon the recommendation of the Commission on Crime Prevention and Criminal Justice, resolution 67/184. In that resolution, the General Assembly decided that the main theme of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice would be "Integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation".

Pursuant to the offer of the Government of Qatar to act as host to the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, the General Assembly decided, in its resolution 68/185, to hold the Thirteenth Congress in Doha from 12 to 19 April 2015, with pre-Congress consultations to be held on 11 April 2015.

The Assembly also decided that the high-level segment of the Thirteenth Congress would be held during the first two days of the Congress in order to allow Heads of State or Government and Government ministers to focus on the main theme of the Congress and to enhance the possibility of generating useful feedback.

In its resolution 67/184, the General Assembly approved the provisional agenda for the Thirteenth Congress, finalized by the Commission at its twenty-first session, and the issues under consideration by workshops to be held within the framework of the Thirteenth Congress.

In its resolution 68/185, the General Assembly requested the Secretary-General to proceed with the organization of the four regional preparatory meetings for the Thirteenth Congress and to make available the necessary resources for the participation of the least developed countries in those meetings, in accordance with past practice.

All four regional preparatory meetings have been held successfully: the Asian and Pacific Regional Preparatory Meeting, from 22 to 24 January 2014 in Bangkok, Thailand; the Western Asian Regional Preparatory Meeting, from 3 to 5 February 2014 in Doha, Qatar; the Latin American and Caribbean Regional Preparatory Meeting, from 19 to 21 February 2014 in San José, Costa Rica; and the African Regional Preparatory Meeting, from 9 to 11 April 2014 in Addis Ababa, Ethiopia.

In its resolution 68/185, the General Assembly further decided that, in accordance with its resolution 56/119, the Thirteenth Congress would adopt a single declaration that would contain the major recommendations reflecting and emerging from the deliberations of the high-level segment, as well as the discussion of the agenda items and the workshops.

Informal consultations for the formulation of the draft text of a declaration of the Thirteenth Congress took place between October 2014 and early 2015 in Vienna. Consultations involved Member States as well as other U.N. entities, intergovernmental organizations and the institutes of the United Nations crime prevention and criminal justice programme network in order to seek their support in advancing the aims of the Thirteenth Congress.

The Doha Declaration on *"Integrating Crime Prevention and Criminal Justice into the Wider United*

Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation" was the final outcome of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice. It was then endorsed by the General Assembly in its resolution 70/174.

The main issue underpinning the Declaration, as its common denominator, was the interrelationship and reciprocal reinforcement between the rule of law and sustainable development. Key commitments reflected in the Doha Declaration included, among others, the following:

a) Integrity and accountability in the criminal justice systems;

b) Rehabilitation and social reintegration of prisoners;

c) Promotion of a culture of lawfulness among children and youth;

d) Integrating crime prevention and criminal justice and rule-of-law-related aspects into educational systems; and

e) Fostering international cooperation and addressing new and emerging forms of crime.

The Doha Declaration was a ground-breaking development in different ways:

a) For the first time, the negotiations towards the Doha Declaration were successfully completed before the Congress itself;

b) For the first time, the content of the Declaration reflected a downstream and upstream flow between the substantive agenda items and the workshop topics;

c) For the first time, a political declaration of a Crime Congress served as a basis for the development of an operational programme;

d) The Declaration was adopted in April 2015 at a critical juncture, while the discussions and negotiations on the establishment of the 2030 Sustainable Development Agenda at the United Nations had begun, but were still ongoing; and

e) (As a result of (d)), the Doha Declaration essentially provided an added impetus to include the recognition of the interrelationship between the rule of law and sustainable development in the final text of the 2030 Agenda, which is most particularly reflected in the inclusion of Goal 16.

The Doha Declaration recognized the importance of strengthening crime prevention and criminal justice systems and the institutions comprising them, with a view to ensuring that they are fair, just and humane, as well as accessible and responsive to the needs and rights of all individuals.

The Declaration also stressed the commitment and political will of Member States at the highest level on the importance of implementing comprehensive crime prevention and criminal justice policies and strategies which promote the rule of law at the national and international levels. It further highlighted that reliable, fair and transparent justice and governance systems contributed to sustainable development by fostering a culture of trust in the authorities to lead and work with an independent, reliable and professional judiciary, and in line with well-planned and integrated crime prevention strategies.

The Declaration also stressed the need to strengthen cooperation to address persistent challenges posed by organized crime, corruption and terrorism, as well as new and emerging forms of crime and terrorism at the national, regional and international levels. In this regard, international cooperation was recognized as a cornerstone of the efforts of States to prevent, prosecute and punish all crimes, demonstrating the direct link between development and crime, and the negative economic and social implications of organized criminal activities.

The Declaration further recognized the need for Member States to continue supporting the implementation of capacity-building programmes and training in preventing and combating terrorism, including by taking into account the threat posed by foreign terrorist fighters, preventing the financing, mobilization and recruitment by terrorists, as well as countering violent extremism and radicalization, which can be conducive to terrorism.

Finally, the Declaration recognized that while the development and adoption of crime prevention policies, the strengthening of criminal justice institutions and their monitoring and evaluation are the responsibility of Governments, the successful implementation of such policies should be based on a participatory, collaborative and integrated approach that includes all relevant stakeholders, among them, most importantly, are children and youth.

The Declaration was anchored in the fundamental importance of universal education for children and youth, for the prevention of crime, terrorism and corruption, as well as for sustainable development. It placed a premium on instilling shared values based on the importance of the rule of law and protection of human rights to promote a culture of lawfulness.

IV. FOLLOW-UP TO THE DOHA DECLARATION

A. National Efforts to Implement the Declaration

Efficient and effective ways to ensure appropriate follow-up to outcomes of the congresses were thoroughly discussed at the intergovernmental expert group meeting in Bangkok in 2006. Possible scenarios under consideration for such follow-up included resolutions to be presented to the Commission on Crime Prevention and Criminal Justice, action plans, checklists, mid-term reviews by the Commission, or discussions on follow-up at future congresses.

In that connection it was pointed out that outcomes, including recommendations, could be deemed as falling into two broad categories: (a) those that invited or required policy level action by appropriate bodies, such as the Commission; and (b) those that called for national level action by Governments and consequently necessitated the availability of a channel of communication through which States would be able to provide information either to the Commission or to subsequent congresses (or to both) on action taken and progress achieved. With respect to the latter category, it was stressed that there was "questionnaire fatigue" and, consequently, chronic underreporting that impeded the ability of competent bodies to obtain sufficient information and draw appropriate conclusions. Therefore, the Intergovernmental Group of Experts welcomed exploring alternative means of information-gathering, including voluntary self-assessments followed by oral reporting to the Commission under the appropriate agenda item. Such an approach would benefit from States using the template of a checklist offered by Thailand as an innovative tool that could guide them in undertaking such a detailed self-assessment and developing, as appropriate, a corresponding plan.[4]

The advice offered by the IEG was taken into consideration by the Commission on Crime Prevention and Criminal Justice and the Secretariat in their efforts to ensure that the crime congresses, at least the ones held over the last 20 years, are not "one-off" events with no further follow-up. The follow-up to the congress, together with the preparations for the next congress, are both components of a standing thematic item on the agenda of the Commission.

Especially with regard to the follow-up to the Doha Declaration, as the outcome of the Thirteenth Crime Congress, the Secretariat, pursuant to General Assembly resolution 70/174 by which the Doha Declaration was endorsed, distributed the report of the Thirteenth Congress, which included the Doha Declaration, to Member States, intergovernmental organizations and non-governmental organizations, so as to ensure that its recommendations are disseminated as widely as possible.

In the same resolution, the General Assembly invited Governments to take into consideration the Doha Declaration and the recommendations adopted by the Thirteenth Congress when formulating legislation and policy directives and to make every effort, where appropriate, to implement the principles contained therein in conformity with the purposes and principles of the Charter of the United Nations. The same invitation was

[4] See E/CN.15/2007/6, para. 32.

reiterated in resolutions 71/206, 72/192 and 73/184 of the General Assembly.

Member States were also invited to identify areas covered in the Doha Declaration where further tools and training manuals based on international standards and best practices were needed, and to submit that information to the Commission on Crime Prevention and Criminal Justice so that it may take that information into account when considering potential areas of future activity of the United Nations Office on Drugs and Crime (UNODC).

In addition, the General Assembly requested the Secretary-General to seek proposals by Member States on ways and means of ensuring appropriate follow-up to the Doha Declaration, for consideration and action by the Commission at its twenty-fifth session. Moreover, in the resolution, the General Assembly requested the Commission to review the implementation of the Doha Declaration under the standing item on its agenda entitled "Follow-up to the Thirteenth Congress and preparations for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice".

The present report provides information on the follow-up to and implementation of the Doha Declaration geared towards operationalizing those recommendations in the Declaration that require immediate action

Based on the mandates provided by the aforementioned General Assembly resolutions, the Secretariat prepared and presented to the Commission on Crime Prevention and Criminal Justice, at its 25th, 26th and 27th sessions (2016, 2017 and 2018) respectively, reports containing information on action taken by Member States to implement the principles contained in the Doha Declaration.[5] These reports contained summaries of national responses on measures taken to ensure the implementation of, and follow-up to, the Doha Declaration; an overview of action taken by Member States to implement the Doha Declaration and proposals made by them for ways and means of ensuring appropriate follow-up to it; and accumulated knowledge and overview on legislative developments and policy directives/initiatives at the national level to implement the principles contained in the Declaration.

B. Global Programme for the Implementation of the Doha Declaration

Following the endorsement of the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation by the General Assembly in its resolution 70/174, the United Nations Office on Drugs and Crime (UNODC) launched, with the support of the Government of the State of Qatar, the Global Programme for the Implementation of the Doha Declaration: Towards a Culture of Lawfulness. The activities under the global programme directly support the operational, legislative and policy-related work required by Member States to make progress towards and successfully achieve the goals and targets contained in the 2030 Sustainable Development Agenda.

The global programme comprises four specific and interrelated components: strengthening judicial integrity and preventing corruption in justice systems; fostering prisoners' rehabilitation and social integration; preventing youth crime through sports; and an initiative entitled "Education for Justice", the aim of which is to develop age-appropriate educational materials and programmes on topics related to crime prevention and criminal justice, with a view to assisting Member States in integrating those programmes into the curricula of their schools and universities.

Since the inception of the global programme a total of more than 9,700 stakeholders, primarily judges, prison practitioners, academics, teachers, sports coaches, representatives of relevant non-governmental organizations and an increasing number of children and youth in more than 158 countries have been reached through the activities carried out under the programme. Furthermore, more than 4,000 stakeholders from 121 countries benefited from a multitude of capacity-building activities, including conferences, workshops and training events.

The global programme has also produced a host of innovative knowledge products and tools for a diverse audience of practitioners, including the Line-up, Live-up: Trainer Manual on Life Skills Training Through Sport to Prevent Crime, Violence and Drug Use, the Roadmap for the Development of Prison-based

[5] See documents E/CN.15/2016/11, E/CN.15/2017/11 and E/CN.15/2018/11.

Rehabilitation Programmes, and the "Resource Guide for organizing model United Nations conferences that address crime prevention, criminal justice and other aspects of the rule of law".

The implementation of the global programme continues at an increased pace, and several initiatives have taken place, in particular the launch of the Global Judicial Integrity Network in April 2018. Under the programme, more than 13,000 stakeholders from more than 189 countries have been reached; capacity-building has been structured and developed for more than 5,400 stakeholders from more than 150 countries; awareness-raising and advocacy activities are reaching more than 8,000 stakeholders from 180 countries; more than 130 events have been held, including expert group meetings, training and awareness-raising workshops. In terms of gender distribution, 43% of the participants are women and 57% male participants. More than 95% of the beneficiaries rated the quality of events as high or very high; more than 85% of the beneficiaries indicated that they would apply the knowledge and skills acquired immediately.

In terms of policy impact, the Human Rights Council, in its resolution 35/25, "noted with appreciation the capacity-building activities and specialized curricula developed". The Conference of States Parties to the United Nations Convention against Corruption, in its resolution 7/6, "welcomed the work under the Global Programme". The report of the Secretary-General at the 72nd session of the General Assembly (A/72/175), welcomed the follow-up to the implementation of the Doha Declaration. The report of the Executive Director of UNODC to the Commission on Crime Prevention and Criminal Justice (26th session, 2017) highlighted the Global Programme as a catalyst and a resource to help States in achieving the Sustainable Development Goals.

1. Strengthening Judicial Integrity and Preventing Corruption in Justice Systems

The Judicial Integrity initiative within the framework of the Global Programme for the Implementation of the Doha Declaration aims to assist judiciaries across the globe in strengthening judicial integrity and preventing corruption in the justice sector, in line with article 11 of the *United Nations Convention against Corruption*.[6] For that purpose, the initiative has facilitated the creation of the Global Judicial Integrity Network. The Network met for the first time in April 2018 in Vienna, attracting more than 350 participants from 106 countries, 40 judicial associations and relevant organizations, and 35 Chief Justices.

According to its Terms of Reference, the Global Judicial Integrity Network is a platform to provide assistance to judiciaries in strengthening judicial integrity and preventing corruption in the justice system. The Network intends to promote peer learning and support activities among judges and other justice sector stakeholders, including the Judicial Integrity Group; facilitate access to relevant tools and resources on various issues relating to judicial integrity; and support the further development and effective implementation of principles of judicial conduct and the prevention of corruption within the justice system. Through the Network, global guidance and technical materials on judicial integrity and anti-corruption will be developed and strengthened, and technical assistance will be provided to support judiciaries in the development and implementation of strategies, measures and systems to strengthen integrity and accountability in the justice system.

The core objectives of the Network are the following: (i) to promote networking opportunities for judges and other justice sector stakeholders through virtual and face-to-face opportunities for dialogue, with a view to continuously expanding the Network and advancing the exchange of knowledge and mutual support in strengthening judicial integrity and preventing corruption in the justice system; (ii) to facilitate the access of judges and other justice sector stakeholders to existing guidance materials, tools and similar resources on judicial integrity; (iii) to assist in the identification of gaps in international standards and technical resources on judicial integrity and to support the development of new tools and technical resources to address such gaps; and (iv) to facilitate the identification of technical assistance needs and the provision of required technical assistance, including through facilitating peer-to-peer support and learning opportunities.

[6] UNODC has been providing assistance to Member States in strengthening judicial integrity, accountability and professionalism since 2000, by supporting the development of the Bangalore Principles of Judicial Conduct and the related commentary (see the following link: https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf) and producing various tools to help judiciaries to that effect.

The participation in the Network is open to individuals and institutions, as follows: (i) Judges, magistrates, other judicial office holders, members of judicial councils and court personnel regardless of the participation of their respective judiciaries; (ii) Judiciaries; (iii) Judicial associations; (iv) Other justice sector stakeholders; and (v) Relevant international organizations

In its commitment to the promotion of a culture of lawfulness, UNODC's Global Programme for the Implementation of the Doha Declaration has been contributing to strengthening judges' knowledge foundations and helping rejuvenate their instincts. One of the resource packages developed to this end is the Global Judicial Integrity Network's tailor-made *Judicial Ethics Training Package*, which includes an e-learning course, a self-directed course, and a Judicial Conduct and Ethics Trainers' Manual.

The training tools are aimed at providing newly appointed and serving members of the judiciary with a solid understanding of the *Bangalore Principles of Judicial Conduct* and the requirements of article 11 of the United Nations Convention against Corruption. Strong demand for such tools was identified through cooperation with Member States under the Global Programme.

2. Fostering the Rehabilitation and Social Integration of Prisoners

Within the framework of the Global Programme for the Implementation of the Doha Declaration and its pillar on fair, humane and effective criminal justice systems, UNODC supports Member States in establishing a more rehabilitative approach to prison management. Investments into corresponding programmes for prisoners are one of the best and most cost-effective ways of preventing their reoffending, with significant benefits not only for the individuals concerned, but also for public safety more broadly.

UNODC assists Member States in breaking the cycle of reoffending by providing prison administrations with technical guidance on how to initiate and/or enhance rehabilitation programmes, in close coordination with other (non-)governmental stakeholders, including civil society and the private sector. All guidance and advisory services are based on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) — UNODC's 'normative compass' in this regard.

In support of this objective, UNODC has developed a *Roadmap for the Development of Prison-based Rehabilitation Programmes*, which provides practical guidance for prison administrations in order to assist them in developing high-quality and sustainable rehabilitation programmes that meet international standards. Additional guiding tools published under the auspices of the Global Programme are the *Handbook on Anti-Corruption Measures in Prisons*[7] and the second edition of the Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders.[8] Another tool currently under development is a practice-oriented handbook on the classification of prisoners.

These guidance materials form the basis for concrete technical assistance provided by UNODC, in a second step, to selected Member States around the world to support the implementation of new or enhanced prison-based effective rehabilitation and social reintegration programmes. Sound planning, including the proposed programme's responsiveness to local needs, human rights compliance as well as sustainability provided key selection criteria for such support, which focuses on education, vocational training and work programmes for prisoners.

As a third step, UNODC is supporting the creation of national brands of prison products aimed at enhancing prisoners' work and products with a view to generate income for prisoners, increase their self-esteem, qualifications, and employability upon release, as well as, more generally, to raise awareness in the general public that prisoners are a continuous part of society. A relevant website provides information on good practices in prison-based work programmes and national brands of prison products.[9]

UNODC is preparing a technical guide to assist Member States in creating or strengthening their national brand of prison products emanating from prison-based work programmes in line with international standards.

[7] Available at https://www.unodc.org/documents/justice-and-prison-reform/17-06140_HB_anti-corr_prisons_eBook.pdf.

[8] Available at https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Introductory_Handbook_on_the_Prevention_of_Recidivism_and_the_Social_Reintegration_of_Offenders.pdf.

[9] Available at https://www.unodc.org/dohadeclaration/news/index.html?tag=2432.

The guide will focus on requirements in terms of safeguards to preserve prisoners' rights, and on requirements related to marketing and the organizational set-up of such a brand.

3. Preventing Youth Crime through Sports

As part of its efforts to support the implementation of the Doha Declaration, UNODC has launched a global youth crime prevention initiative that builds on the power of sports as a tool for peace. The initiative aims to promote sports and related activities to prevent crime and to effectively build resilience of at-risk youth. Strengthening the life skills of youth is a key objective in order to minimize risk factors and maximize protective factors related to crime, violence and drug use. By enhancing knowledge of the consequences of crime and substance abuse and developing life skills, the initiative seeks to positively influence behaviour and attitudes of at-risk youth and prevent anti-social and risky behaviour.

The 2030 Agenda for Sustainable Development underlines the growing contribution of sports as a tool for peace in its promotion of tolerance and respect. It also highlights the contributions that sport can make to the empowerment of communities as a whole, to individuals (particularly women and young people) as well as to health, education and social inclusion.

More specifically, sports offer an important opportunity for building life skills of at-risk youth that allow them to better cope with daily life challenges and move away from involvement in violence, crime or drug use.

Through partnerships with Governments, sports organizations and civil society, UNODC conducts national and regional youth-oriented awareness raising sports initiatives to further promote civic values and disseminate the benefits of sport in keeping youth from becoming involved in crime and violence. Youth is, thus, placed at the centre of outreach activities as "agents for change". By sharing their experiences on how sports and life skills training helped them to stay away from crime, youth will engage and reach out to other at-risk youth.

Line Up Live Up — UNODC's evidence-informed and sports-based life skills training curriculum — has been designed as a unique tool that transfers the accumulated expertise of the United Nations and other partners in implementing life skills training for crime and drug use prevention to sport settings. Through the Line Up Live Up programme, sports coaches, teachers and others working with youth in sports settings can target valuable life skills, such as resisting social pressures to engage in delinquency, coping with anxiety and communicating effectively with peers, through a set of interactive and fun exercises. The training programme has been first tested and piloted in Brazil in 2017 and has been and continues to be implemented in a number of countries across the world, including those in Africa, Central Asia, the Middle East and South America.

4. The "Education for Justice Initiative" (E4J)

The Education for Justice (E4J) initiative seeks to prevent crime and promote a culture of lawfulness through education activities designed for primary, secondary and tertiary levels. These activities will help educators teach the next generation to better understand and address problems that can undermine the rule of law and encourage students to actively engage in their communities and future professions in this regard. The common objective at all levels is to improve education on crime prevention, criminal justice and the rule of law.

In support of this aim, E4J focuses on promoting and teaching values such as acceptance, integrity, respect and fairness at the primary level (6-12 years old). E4J's educational materials contribute to building resilience among children. Moreover, these tools help to equip them with skills such as conflict resolution, critical thinking, teamwork and empathy. These values and skills are crucial in reducing the tolerance and acceptance of crime and violence as well as assisting children in solving ethical dilemmas.

E4J's educational materials also provide support in education relating to the 2030 Agenda for Sustainable Development Goals, in particular Goals 4, 5, 10 and 16. Some products and activities for the primary level are being developed in partnership with UNESCO. Other educational materials have been developed by UNODC with the involvement and consultation of educators, international organizations, non-governmental organizations and, most importantly, with children.

In the field of secondary education, E4J developed a Resource Guide to support those who organize Model United Nations (MUN) conferences to incorporate issues from UNODC mandate areas into their conferences. The Model UN Guide (Resource Guide for Organizing Model United Nations Conferences that Address Crime Prevention, Criminal Justice and Other Aspects of the Rule of Law) intends to provide support to organizers of, and students taking part in, Model United Nations conferences that address crime prevention, criminal justice and other aspects of the rule of law. It has been prepared to further knowledge of crime prevention, criminal justice and other aspects of the rule of law in schools and universities. The Resource Guide comprises seven sections relating to core topics, an introduction and information on useful resources, as follows:

- An introduction: what the Guide can help students and organizers achieve;
- Crime prevention, criminal justice and other aspects of the rule of law for Model United Nations;
- Crime prevention, criminal justice, the rule of law and the Sustainable Development Goals;
- United Nations congresses on crime prevention and criminal justice;
- Commission on Crime Prevention and Criminal Justice;
- Conference of the Parties to the United Nations Convention against Transnational Organized Crime;
- Conference of the States Parties to the United Nations Convention against Corruption;
- Rules for simulating the United Nations crime prevention and criminal justice bodies; and
- Resources.

In the field of tertiary education, UNODC has developed a series of university modules and other tools to assist academics teaching on some of today's most crucial threats. Specifically, E4J aims to support tertiary level educators and academics in their efforts to transmit knowledge and create a deeper understanding of rule of law related issues, with a focus on the subject areas of crime prevention and criminal justice, anti-corruption, organized crime, trafficking in persons and smuggling of migrants, firearms, cybercrime, wildlife, forest and fisheries crime, counter-terrorism as well as integrity and ethics. The university module series and the related tools were developed in close coordination with more than 590 academics and national experts from more than 400 universities and 96 countries. The university modules are designed for use as a stand-alone teaching resources, or as a means of enhancing existing courses in criminology, law, political science, international relations, business, sociology, and many other disciplines.

V. EPILOGUE: THE WAY FORWARD—FROM DOHA TO KYOTO AND BEYOND

Bearing in mind the need for continuity, the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in Kyoto, Japan, in April 2020, is uniquely placed to build on the achievements of the Thirteenth Crime Congress and the Doha Declaration, and support the implementation for the years 2020-2025 of the 2030 Agenda for Sustainable Development up until five years before its intended maturity.

Having said that, a reversed analogy should be taken into account: "From Kyoto to Doha and beyond" referred to the multilateral negotiation and agreed course of action in the field of climate change (Kyoto Protocol – Doha Amendment – Paris Agreement). Similarly, the analogy of the roadmap "from Doha to Kyoto and beyond" leads to thinking of the past United Nations congresses, as well as the forthcoming one in Kyoto, as important milestones towards a much bigger outcome, namely the implementation of the 2030 Agenda, to the extent that the rule of law contributes substantially to achieving sustainable development

CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION: OVERVIEW OF TRENDS AND RESPONSES AT THE NATIONAL AND INTERNATIONAL LEVELS

Dimosthenis Chrysikos[*]

I. INTRODUCTION: "FROM SALVADOR TO DOHA" – POLITICAL COMMITMENTS AT THE INTERNATIONAL LEVEL TO COMBAT CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Crimes motivated by intolerance are among the most severe expressions of discrimination and constitute a core fundamental rights abuse. They demean victims and call into question an open society's commitment to pluralism and human dignity. Furthermore, although not always the case, they are generally committed against groups that have already experienced some form of social discrimination. The lack of an effective response from authorities encourages perpetrators to reoffend and further alienates the victim and her or his community. This, in turn, can undermine wider social cohesion, as communities are set against each other and can provoke retaliatory attacks. At their most extreme, these crimes can spiral into civil unrest if competent authorities do not acknowledge and address them.

It is essential for Member States to take measures to prevent such crimes from taking place, but it is equally important to ensure that victims have access to justice. This means enabling them to report their experiences to competent institutions, and then providing them with the support they need. At the same time, the effective handling of intolerance crime cases requires close cooperation across the criminal justice agencies and not only at the operational level, but also at the policy level.

The Salvador Declaration, adopted by the Twelfth United Nations Congress on Crime Prevention and Criminal Justice and endorsed by the General Assembly in its resolution 65/230, was a first step to demonstrate the political commitment of the international community to address the challenges posed by those crimes. In that Declaration, Member States expressed great concern about *"criminal acts against migrants, migrant workers and their families and other groups in vulnerable situations, particularly those acts motivated by discrimination and other forms of intolerance"*; and affirmed *"determination to eliminate violence against migrants, migrant workers and their families"* calling on the adoption of *"measures for preventing and addressing effectively cases of such violence and to ensure that those individuals receive humane and respectful treatment from States, regardless of their status"* (para. 38 of the Declaration). In the same paragraph, the Declaration contained an invitation with different recipients: first, an invitation to Member States *"to take immediate steps to incorporate into international crime prevention strategies and norms measures to prevent, prosecute and punish crimes involving violence against migrants, as well as violence associated with racism, xenophobia and related forms of intolerance"*; and, secondly, an invitation to the United Nations Commission on Crime Prevention and Criminal Justice *"to consider this issue further in a comprehensive manner"*.

The Doha Declaration, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice in 2015 and endorsed by the General Assembly in its resolution 70/174, explicitly addressed the issue. In paragraph 5, Member States reaffirmed their *"commitment and strong political will in support of effective, fair, humane, and accountable criminal justice systems and the institutions comprising them"*, and encouraged *"the effective participation and inclusion of all sectors of society, thus creating the conditions needed to advance the wider United Nations agenda, while respecting fully the principles of sovereignty and territorial integrity of States and recognizing the responsibility of Member States to uphold human dignity, all human rights and fundamental freedoms for all, in particular for those affected by crime and those who may be in contact with the criminal justice system, including vulnerable members of society, regardless of their*

[*] Crime Prevention and Criminal Justice Officer, United Nations Office on Drugs and Crime (UNODC), Division for Treaty Affairs, Organized Crime and Illicit Trafficking Branch. The opinions expressed in this article are those of the author and do not reflect the views of the United Nations.

status, who may be subject to multiple and aggravated forms of discrimination, and to prevent and counter crime motivated by intolerance or discrimination of any kind".

To that end, the Declaration enumerated a number of measures that Member States endeavour to take, such as: to conduct further research and gather data on crime victimization motivated by discrimination of any kind and to exchange experiences in and information on effective laws and policies that can prevent such crimes, bring perpetrators to justice and provide support to victims (paragraph 5(p)); to consider providing specialized training to criminal justice professionals to enhance capacities for recognizing, understanding, suppressing and investigating hate crimes motivated by discrimination of any kind, to help engage effectively with victim communities and to build public confidence and cooperation with criminal justice agencies (paragraph 5(q)); and to intensify national and international efforts to eliminate all forms of discrimination, including racism, religious intolerance, xenophobia and gender-related discrimination by, inter alia, raising awareness, developing educational materials and programmes, and considering, where appropriate, drafting and enforcing legislation against discrimination (paragraph5(r)).

II. "SETTING THE DEFINITIONAL FRAMEWORK": DEFINING RELATED CRIMES AND CONCEPTS UNDER DISCUSSION

"Crimes motivated by intolerance or discrimination of any kind" are usually described for purposes of convenience and in a generic manner as "hate crimes". However, the term "hate crime" may be misleading. Many crimes which are motivated by hatred are not categorized as hate crimes. Murders, for instance, are often motivated by hatred, but they are not "hate crimes" unless the victim was chosen because of a protected characteristic. Conversely, a crime where the perpetrator does not feel "hate" towards the particular victim can still be considered a hate crime. Hate is a very specific and intense emotional state, which may not properly describe most hate crimes.[1]

Hence, although there is inconsistent use of relevant terms in the aforementioned subsections of the Doha Declaration, it is preferable to use the term "crimes motivated by intolerance/bias/discrimination of any kind". This term, in its different variations, has a broader meaning than "hate crime" as a bias motive only requires some form of prejudice on account of a personal characteristic. In any case, the term describes a concept and does not define a criminal offence.

Two factors need to be considered to turn an ordinary offence — established under the criminal code of the legal jurisdiction in which it is committed — into a crime motivated by bias/intolerance: the motive of the offender, who selects the victim because of his/her membership in a group; and the impact on victims given that intolerance crimes are designed to intimidate them (or the victims' community) on the basis of their personal characteristics.

III. GROUNDS OF DISCRIMINATION—"PROTECTED CHARACTERISTICS"

There is no global definition of the notion of crime motivated by intolerance and discrimination, and there is no agreement, in particular, as to which characteristics of persons should be protected by specific legislation and policies. At the national level, the scope of the protected characteristics varies over time and among countries. In most cases, it includes fundamental or universally protected characteristics such as race, ethnic and religious identities, national origin. Frequently protected characteristics include gender, age, mental or physical disability, sexual orientation.

Decisions about which characteristic to protect have an impact on the scope of application of related criminalization provisions and the types of crimes that are classified as crimes motivated by intolerance and discrimination.

IV. DEFINING THE MOTIVE OF THE PERPETRATOR(S)

The crucial mental element of the motivation of the offender may be defined through the use of the so

[1] OSCE Office for Democratic Institutions and Human Rights (ODIHR), "Hate Crime Laws. A Practical Guide", 2009, pp. 16-17.

called "hostility" and "discrimination" models.

According to the "hostility model",[2] the offender should have committed the offence because of hostility or hatred based on one of the protected characteristics of the targeted victims. Pursuant to the "discrimination model",[3] the offender deliberately targets the victim because of a protected characteristic, but no actual hatred or hostility is necessary to prove the offence.

In many cases, offenders leave clear indications of their motive ("message crimes"). Challenges, however, exist, where "bias motivation" is not always immediately apparent and may not be sufficient for an investigator to classify an incident as a crime motivated by discrimination. In addition, many jurisdictions have specific criminal laws that allow for the consideration of mixed motives, where an offence is committed wholly or partly due to bias. It is common for legislation to be drafted broadly, in a way that does not exclude the possibility of more than one motive, including bias.

Requiring that bias should be the sole motive may drastically limit the number of offences that could be charged as crimes motivated by bias or to which a relevant penalty enhancement might apply. Furthermore, a law that does not directly address issues of mixed motive may produce varying interpretations by law enforcement and the prosecutors. This could lead to significant differences in the number of crimes categorized and prosecuted as crimes motivated by intolerance.

V. "RECOGNIZING RELATED CRIMES": INDICATORS OF CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Circumstances that may be indicative of intolerance crimes include the following: the "race", religion, ethnicity/national origin, disability status, gender, or sexual orientation of the victim differs from that of the offender; the victim is a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred; the victim is a member of a community that is concentrated within particular areas and was attacked upon leaving that area; the incident occurred during an incursion by members of a majority group into an area that is predominately populated by members of minorities (pattern reflecting the historical experience of pogroms, in which attacks were carried out on a minority population that was largely confined to a particular district neighbourhood); the fact that the victim is a member of a minority who is attacked by a group from members of a different population group; and there is historical animosity between the group of which the victim is a member and that of the offender.

Characteristics of a victim that may be indicators of intolerance crimes may include the following scenarios: the victim is identifiable as "different" from the attackers and, often, from the majority community, by such factors as appearance, dress, language or religion; the victim is a prominent figure, such as a religious leader, rights activist or public spokesperson, in a community that has faced ongoing discrimination; and the victim was in the company of or married to a member of a minority group.

The characteristics, behaviour and background of alleged offenders can also yield several potential indicators of bias/prejudice. For example, statements, gestures or other behaviour before, during or after the incident displaying prejudice or bias against the group or community to which the target or victim belongs; clothing, tattoos or insignia representative of particular extremist movements, e.g., the use of swastikas or other Nazi insignia or paramilitary style uniforms; the offender's behaviour suggests possible membership in a hate organization; and the fact that the offender has a history of previous crimes with a similar modus operandi and involving other victims from the same minority group or other minority groups.

---

[2] See, for example, Canada, Criminal Code 1985, section 718.2(a): "*A court that imposes a sentence shall also take into consideration the following principles:*(a) *a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,* (i) *evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor*".

[3] As an example, see Greece, article 21 of Law No. 4356/2015. The provision establishes an aggravated form of hate crime without the condition of the subjective element of the motivation of the offender. It is sufficient that the victim was targeted because of protected characteristics. The objective is to expand the scope of application of the criminalization provision.

Indicators can also be identified in attacks on property that suggest bias motivations. Such indicators may include the following: the property targeted has religious or other symbolic importance for a particular community, such as a church or a synagogue, a cemetery, or a monument commemorating the dead or celebrating historical figures from the community; the property targeted is a centre of community life—such as a school, social club or shop—for a particular group; such property is different from surrounding property because it is owned or occupied by members of a particular community; and the property has been the object of previous similar attacks.

Indicators that an organized group was involved may involve the following scenarios: objects or items that represent the work of organized hate groups were observed or left at the scene of the incident; an organized hate group made recent statements threatening the group that was targeted or claimed responsibility for the crime afterwards; the incident coincided with a date of particular significance to hate groups; and the incident occurred during or shortly after an event sponsored by a hate group or after a hate group was campaigning or was otherwise active.

Previous crimes of same nature or incidents may also be of relevance, especially where: previous similar incidents have occurred in the same area in which members of the same group were targeted; the victim or victims had received previous harassing or threatening mail or telephone calls based on membership in their group; and a previous incident or crime was reported that may have sparked a retaliatory bias crime against members of the group presumed responsible.

The nature of the violence may further be used as an indicator of intolerance crimes, especially where: the incident involved extreme or unusual violence, or expressly degrading and humiliating treatment, including sexual abuse of victims in homophobic crimes; the violence was carried out in a public place or in a form intended to make a public impact, such as through video recording by perpetrators; or the violence involved mutilation in which racist symbols were cut or burned onto victim's bodies, or the damage to property included an express "message", through the use of symbols.

VI. THE INTERNATIONAL FRAMEWORK

A. United Nations

The United Nations human rights framework requires States to guarantee equal rights and the equal protection of laws and to prevent discrimination. The Universal Declaration of Human Rights provides the framework for the principles of equal rights and non-discrimination, and was the first international instrument to affirm that *"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as "race", colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"*.

The International Covenant on Civil and Political Rights (ICCPR) expands on these principles through specific provisions. In particular, article 2 of the ICCPR[4] sets forth requirements on the non-discrimination principle similar to those found in the Universal Declaration, while article 26[5] goes into more detail on equality before the law, equal protection of the law and protection from discrimination.

The General Assembly, in its resolutions on extrajudicial, summary or arbitrary executions, has highlighted the need for States to effectively protect the right to life of all persons, and to carry out prompt, exhaustive and impartial investigations into all killings, including those targeted at specific groups of persons.[6]

A key legally binding international instrument is the International Convention on the Elimination of all

[4] *Article 2*. 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[5] *Article 26*. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[6] See, for example, General Assembly resolution 71/198.

Forms of Racial Discrimination. The Committee on the Elimination of Racial Discrimination (CERD), operating under article 8 of the Convention, is a body of independent experts that monitors the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the warming procedure, the examination of inter-State complaints and the examination of individual complaints. The Committee meets in Geneva and normally holds three sessions per year consisting of three-four-three weeks per year. The Committee also publishes its interpretation of the content of human rights provisions, known as general recommendations (or general comments) on thematic issues and organizes thematic discussions.

The responsibility of criminal justice systems in preventing and countering crime motivated by intolerance or discrimination has been addressed by both the Committee on the Elimination of Racial Discrimination and the Human Rights Committee in the concluding observations and recommendations issued in response to regular reports from States. In its opinion concerning the case *Mahali Dawas and Yousef Shava v. Denmark*, the CERD held that, when investigating and prosecuting crimes with a potential bias motivation, the prosecution had a duty to ensure that racist motivation was fully investigated through the criminal proceedings.[7]

With the adoption of the Durban Declaration and Programme of Action at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, the international community affirmed its commitment to eradicate racism and racial discrimination. The Durban Declaration and Programme of Action constituted the first comprehensive, victim-centred and action-oriented document in this area, and it outlines concrete measures to address these issues, including measures directly relevant to the criminal justice system. The outcome document of the Durban Review Conference, held in 2009, assessed the implementation of the Durban Declaration and Programme of Action and highlighted future requirements for action. Those two documents underline the importance of the criminal justice system in combating racism, racial discrimination, xenophobia and related intolerance.[8]

B. Council of Europe

The European Court of Human Rights has interpreted the European Convention on Human Rights, and particularly its article 14 which contains the principle of non-discrimination, in conjunction with articles 2, 3, 9 and 13 (see below the relevant jurisprudence), when considering Member States' obligations in relation to crimes based on bias motives.

Another normative instrument which is of relevance in this regional framework is the Additional Protocol to the European Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (see below).[9]

The European Commission against Racism and Intolerance (ECRI) is a human rights monitoring body which specializes in questions relating to the fight against racism, discrimination (on grounds of "race", ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance. Set up on 13 June 2002. In its country monitoring work, ECRI analyses the situation in each of the Member States and makes recommendations for dealing with any problems of racism and intolerance identified there. A contact visit is organized before the preparation of each new country report in order to obtain as comprehensive a picture as possible of the situation in the Member State concerned.

C. European Union

The European Union (EU) Framework Decision on Combating Certain Forms and Expressions of Racism

[7] CERD/C/80/D/46/2009.
[8] See A/CONF.189/12 and Corr.1, chap. I and A/CONF.211/8, chap. I.
[9] ETS No.189. Entered into force on 1 March 2006. So far, 32 States, including non-Members of the Council of Europe, have ratified or acceded to the Protocol.

and Xenophobia by Means of Criminal Law of 28 November 2008[10] requests all EU Member States to review their legislation and ensure compliance with the decision. The FD is intended to harmonize criminal law across the EU and to ensure that states respond with effective, proportionate and dissuasive penalties for racist and xenophobic crimes.

The Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA[11] identifies hate crime victims as particularly at risk of secondary or repeat victimization.

The European Union Agency for Fundamental Rights (FRA), based in Vienna, provides institutions and authorities of the EU and its Member States with assistance and expertise relating to fundamental rights. FRA collects and publishes data and information on issues of racism, xenophobia and related intolerance through its European Information Network on Racism and Xenophobia (RAXEN) National Focal Points (NFPs) covering all EU Member States.

Racism, xenophobia and other forms of intolerance are core themes covered by FRA's work and, in line with its founding regulation, fall under the agency's permanent mandate. Over the years, FRA has gathered evidence on the situation of hate crime victims from their perspective as well as on some of the barriers and challenges criminal justice professionals face. In 2013, the Council conclusions on combating hate crime in the European Union invited FRA to work together with Member States to facilitate the exchange of promising practices and assist the Member States at their request in their efforts to develop effective methods to encourage reporting and ensure proper recording of hate crimes. In response, FRA established a Working Party on Improving Reporting and Recording of Hate Crime. This working party produced, in 2016, an online Compendium of illustrative practices for preventing and combating hate crime across the EU.[12]

D. OSCE

In No. 9/2009 OSCE Ministerial Council Decision on "Combating Hate Crimes", participating States committed themselves to, inter alia, collect, and make public, data on hate crimes; enact, where appropriate, specific and tailored legislation to combat hate crimes; take appropriate measures to encourage victims to report hate crimes; develop professional training and capacity-building activities for law enforcement, prosecution and judicial officials dealing with hate crimes; and promptly investigate hate crimes, and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and the political leadership.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) supports government officials in designing and developing monitoring mechanisms and data collection on hate crime. It further helps participating States design and draft legislation that effectively addresses hate crimes and provides training to build the capacity of participating States' criminal justice systems to address effectively hate crimes. ODIHR also supports participating States that have committed themselves to promoting educational programmes which counter intolerance.

In terms of hate crime reporting, ODIHR releases an annual basis hate crime reports compiling information from participating States, civil society organizations and inter-governmental organizations on hate crimes.[13] In 2014, the ODIHR launched an accompanying website to support participating States in combating hate crime.

VII. THE NATIONAL FRAMEWORK: DEVELOPING APPROPRIATE AND EFFECTIVE LEGISLATIVE RESPONSES

Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination[14]

[10] OJ L 328, 6.12.2008, pp. 55–58.
[11] OJ L 315, 14.11.2012, p. 57–73.
[12] https://fra.europa.eu/en/theme/hate-crime/compendium-practices.
[13] See http://hatecrime.osce.org/.
[14] Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965; entered

provides that States parties *"shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof"*.

In its general recommendation No. 15 on article 4 of the Convention, the CERD specified that States are required to penalize four categories of misconduct: (a) Dissemination of ideas based upon racial superiority or hatred; (b) Incitement to racial hatred; (c) Acts of violence against any race or group of persons of another colour or ethnic origin; and (d) Incitement to such acts. The Committee also emphasized that "the provisions of article 4 are of a mandatory character. To satisfy these obligations, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced".

Criminal justice responses to crimes motivated by intolerance vary from country to country. When it comes to criminalization of such crimes, there may be several types of approaches. One of them is the so called "substantive offence" approach, whereby the law criminalizes a separate offence of intolerance crime that includes the bias motive as an integral/constituent element of the legal definition of the offence. Usually, the separate offence carries a higher penalty than the same act without the bias motive.[15]

A second model of a "substantive offence" approach focuses on that type of provision which defines the crime as a form of violence or threats of serious injury against a group of people or an individual on the basis of a protected characteristic.[16]

Another approach is the "penalty enhancement" approach, whereby the law does not recognize the bias motive as the constituent element of the offence, but as an aggravating factor which increases the penalty for a "base offence" such as murder, sexual violence, assault, on the ground that the crime is committed with such motive. The penalty enhancement approach also includes cases where the law does not explicitly refer to bias motive as an aggravating sentencing factor, but, through the use of general sentencing principles, including the proportionality principle, a more severe penalty may be imposed on crimes motivated by intolerance or discrimination.

In jurisdictions where the law specifically refers to such crimes, whether from a "substantive offence" approach or "penalty enhancement" approach, other legal issues may vary and include: whether an offence committed against persons, property or both all constitute substantive offences or aggravating factors; which characteristics should be protected (e.g. race, nationality, religion, gender, political affiliation, ideology, disability); and which standard of proof should be required for the bias elements.

Further, in jurisdictions where neither a "substantive offence" approach nor a "penalty enhancement" approach is taken, other measures may be taken to ensure that a proportionate penalty is imposed, for example, by relying on the sentencing discretion of the judge.

When penalty enhancements are used to punish crimes motivated by intolerance, the question of bias motive is usually considered when the offender is sentenced. The penalty enhancement can only be applied if a bias motivation has been substantiated before the court in the fact-finding phase of the court proceedings.

The existence of legislation as an appropriate response to crimes motivated by intolerance or discrimination is important for a number of reasons. It is, first of all, a symbolic acknowledgement to potential victims, perpetrators and wider society that crimes motivated by bias are taken seriously. Further, the legislative process encourages discussion of the issue, which, in turn, increases public awareness.

---

into force on 4 January 1969.

[15] See, for example, United Kingdom*:* Article 28 of the Crime and Disorder Act (1998): *An offence is racially or religiously aggravated if, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group.*

[16] See, for example, Poland: Criminal Code (1997) Art. 119. § 1. *Whoever uses violence or makes unlawful threat towards a group of person or a particular individual because or their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.*

Clear and precise legislation clarifies terminological issues, thus ensuring legal certainty and minimizing chances for abuses. Moreover, it mandates what law enforcement authorities consider as motive of the offender, as well as other constituent elements of the offences and, thus, guide, their action; defines the evidentiary requirements that have to be fulfilled in a given case; enables victims to support their case; and, finally, facilitates the collection of more accurate data on the basis of defined criteria.

VIII. EVIDENTIARY REQUIREMENTS

A. Standard of Proof, Challenges and Related Considerations

Experience at the national level shows that there is a number of challenges particularly relevant to the investigation, prosecution and adjudication of cases involving intolerance crimes. As motivation is a subjective element, it is difficult to collect evidence and prove the bias elements if the offender denies the commission upon bias motives or admits to have had bias motives but states that there were other decisive ones. If law enforcement authorities overlook evidence of bias motivation, it is unlikely that it will be identified later in the criminal justice process, and relevant criminal laws cannot be implemented effectively. Identifying and recording bias motivation is also essential for prevention purposes, a core police function.

In order to suppress crimes motivated by intolerance or discrimination effectively, it is necessary for criminal justice authorities to seek adequate evidence that would enable them to prove the offender's intolerant or discriminatory motives. Moreover, it is essential for them to take steps to build public confidence with the victims and victim communities so as to facilitate their cooperation. It is also crucial to take practical measures to encourage the victims and victim communities to report to and cooperate with criminal justice authorities, which include witness protection measures and other measures to provide them with proper assistance in a broader sense (e.g. access to victim support services).

In cases where the bias motivation is not obvious, bias indicators are a useful tool. Bias indicators can help guide investigators and prosecutors through the factors that normally point towards a bias motive. The presence of one or more of these indicators suggests the commission of intolerance crimes and should result in further investigation into motive. Bias indicators provide objective criteria by which probable motives can be discerned, but do not necessarily prove that an offender's actions were motivated by bias. Many of them can be used to build circumstantial evidence of the motive behind the offence (see above, under section V).

A decision to flag a case as a bias crime can be taken at different stages by either the police or the prosecution. Bias indicators are, therefore, relevant both at the crime scene and when reviewing evidence of a crime.

B. The Jurisprudence of the European Court of Human Rights

As the European Court of Human Rights has consistently held, article 14 of the European Convention on Human Rights (ECHR)[17] imposes a positive duty on state authorities to render visible the bias motivation of a crime. Article 14 is read as obliging States to render visible bias motives underlying criminal offences. Over time, the Court has expanded this line of jurisprudence to cover actions of private parties, other forms of harm, a variety of bias motives and, finally, bias motives by association.

As stated in the case *Angelova and Iliev v. Bulgaria*,[18] while States do not need to pass specific hate crime legislation, the criminal justice system must be able to identify, recognize and appropriately punish racist-motivated crime. The Court held that the lack of direct hate crime laws did not hinder the ability of the authorities to pursue the racist motivation during the criminal process, and that the general legal framework allowed for an appropriate and enhanced punishment for these types of crimes. The Court's decision underscored that, although States are not required to have specific hate crime laws, crimes that are particularly egregious, including those causing increased harm to individuals and society, such as hate crimes, require proportionate punishment under the law. Furthermore, the Court also examined the role of authorities in uncovering a racist motivation stating that in cases of deprivation of life and ill-treatment, State

[17] "Prohibition of discrimination": The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

[18] Judgment of the European Court of Human Rights, 26 July 2007.

authorities have the duty to conduct effective and prompt investigations without discrimination; and that any racist or anti-religious motivation must also be effectively and promptly investigated under reasonable circumstances.[19]

In the case *Nachova v. Bulgaria*,[20] the Court, sitting in plenary session as a Grand Chamber and departing from the Chamber's approach, did not consider that the authorities' alleged failure to carry out an effective investigation into the alleged racist motive for the killing should shift the burden of proof to the respondent Government with regard to the alleged violation of article 14, taken in conjunction with the substantive aspect of article 2 (right to life).[21]

However, the Court derived from article 14 of the European Convention a positive duty for State authorities to investigate and unmask the bias motivation of an offence, if there are indications of its existence. In particular, the Court concluded that the investigator and the prosecutors involved in the case had had before them plausible information sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible racist overtones in the events that had led to the death of the two men. Nevertheless, according to the Court, they had done nothing to verify the neighbour's statement, or the reasons it had been considered necessary to use such a degree of force. They had disregarded relevant facts and terminated the investigation. It followed that, from a procedural point of view, the authorities had failed in their duty under article 14, taken together with article 2, to take all possible steps to investigate whether or not discrimination may have played a role in the events.

In the case *Bekos and Koutropoulos v. Greece*,[22] the Court stated that, when investigating violent incidents, state authorities have the additional duty to take all reasonable steps to unmask any racist motive and to

[19] The applicants alleged that the State had failed in its obligation to conduct an effective and prompt investigation into the death of a Roma man, and that the lack of legislation for racially motivated murder failed to provide adequate legal protection against such crimes. According to the facts of the case, the police had identified the alleged assailants in the death of a Roma man, one of whom directly admitted the racial motivation for the crime. However, the police failed to conduct the necessary investigative proceedings within the statute of limitations for prosecutions against most of the suspects. The Court held that the domestic authorities had failed to conduct a prompt and effective investigation into the incident, especially "considering the racial motives of the attack and the need to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racial violence". Consequently, the Court found that the State was in breach of the procedural aspect of the right to life (article 2) in connection with the principle of non-discrimination (article 14) because the authorities failed to make the required distinction from other, non-racially motivated offences, which, in turn, constitutes unjustified treatment irreconcilable with article 14.

[20] Judgment of the European Court of Human Rights, 6 July 2005. According to the facts of the case, two men of Roma origin were conscripts serving compulsory military service in an army division dealing with the construction of apartments. They were in detention for repeated absences without leave when they escaped. Neither of the two was armed. The military police officers who found them had instructions to arrest the fugitives using all the means and methods dictated by the circumstances. Having noticed the military vehicle in front of their house, the fugitives tried to escape. While running away they were shot after a warning to stop. Both men died on their way to hospital. One neighbour claimed that several of the policemen had been shooting and that at one stage, one military police officer had pointed his gun at him in a brutal manner and had insulted him saying "You damn Gypsies".

[21] Nevertheless, in the subsequent case *Makhashevy v. The Russian Federation* (Judgment of the European Court of Human Rights, 31 July 2012), the applicants' (ethnic Chechens) allegations under article 14 of the Convention were supported by witness statements and documents the contents of which were not contested by the Government. The Court found that the evidence was sufficient to prove that there were racial motives behind the police officers' actions. Further, the Court noted that the Government did not submit any explanation for the applicants' allegation that their detention by the police was racially motivated other than making a general statement to the effect that it was unsubstantiated. The Court further noted that, unlike in the *Nachova* case, no explanations were given to the reasons necessitating the authorities' intervention and the use of force against the applicants. The Court considered that the applicants made a *prima facie* case that their arrest and detention in the police station were not racially neutral. The Government submitted that the applicants' complaints were unsubstantiated. However, such general reference, in the absence of any explanation on the part of the authorities, was found by the Court to be insufficient to discharge them from the obligation requiring them to disprove an arguable allegation of discrimination (shifting of the burden of proof) (para. 179 of the decision of the Court).

[22] Judgment of the European Court of Human Rights, 13 December 2005. In the applicants' (Greek nationals belonging to the Roma ethnic group) case, despite the plausible information available to the authorities that the alleged assaults by police officers during investigation had been racially motivated, there was no evidence that they carried out any examination into the question, nor verification of statements and inquiries; nor, further, any investigation on how the police officers were carrying out their duties when dealing with ethnic minority groups.

establish whether or not ethnic hatred or prejudice might have played a role in the events. Admittedly, proving racial motivation would often be extremely difficult in practice. The authorities have to do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that might indicate racist motives. The Court found a violation of article 14, taken together with article 3, in that the authorities failed in their duty to take all possible steps to investigate whether or not discrimination might have played a role in the events at issue.

In the case *Secic v. Croatia*,[23] the Court extended the same reasoning to violations of the investigative procedural aspect of the right to be free from ill-treatment (article 3) in connection with article 14 of the Convention. The Court held that state authorities have the duty, when investigating violent incidents, *"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. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have non-racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."* In doing so, prosecution and investigation authorities must be impartial in their assessment of the evidence before them.[24]

The failure of authorities to exercise their positive duty to ascertain the bias motivation in specific circumstances was further highlighted in two other cases: first, in the case of *Cobzaru v. Romania*,[25] the Court noted that the applicant did not refer to any specific facts in order to substantiate his claim that the violence he sustained was racially motivated. Instead, he argued that his allegation should be evaluated within the context of documented and repeated failure by the Romanian authorities to remedy instances of anti-Roma violence and to provide redress for discrimination. However, the expression of concern by various organizations about the numerous allegations of violence against Roma by law enforcement officers and the repeated failure of the national authorities to remedy the situation and provide redress for discrimination did not suffice to allow the Court to consider that it had been established that racist attitudes played a role in the applicant's ill-treatment. The Court further observed that the numerous anti-Roma incidents which often involved State agents following the fall of the communist regime in 1990, and other documented evidence of repeated failure by the authorities to remedy instances of such violence were known to the public at large, as they were regularly covered by the media. It appeared from the evidence submitted by the applicant that all those incidents had been officially brought to the attention of the authorities and that, as a result, various programmes had been set up to eradicate such discrimination. However, there was no attempt on the part of the prosecutors to verify the behaviour of the police officers involved in the violence, ascertaining, for instance, whether they had been involved in the past in similar incidents or whether they had been accused of displaying anti-Roma sentiment. The Court concluded that the failure of the law enforcement agents to investigate possible racial motives in the applicant's ill-treatment combined with their attitude during the investigation constituted discrimination in violation of article 14 taken in conjunction with articles 3 and 13 (right to an effective remedy) of the Convention.

Second, in the case *Turan Cakir v. Belgium*,[26] the Court considered that the general context at the relevant time, referred to by the applicant (Belgian citizen of Turkish origin), was not sufficient to explain the allegedly racist attitude of the police officers during the arrest. However, the Belgian authorities failed to take all the necessary measures to ascertain whether discriminatory conduct could have played a role in the events in question. Hence, the Court concluded that there was violation of article 14 taken in conjunction with

[23] Judgment of the European Court of Human Rights, 31 May 2007. The applicant was a Roma man who was severely beaten by two individuals. Despite several leads, police failed to take reasonable investigative measures to find the perpetrators and bring them to justice.

[24] *Stoica v. Romania*, Judgment of the European Court of Human Rights, 4 March 2008. In that case, where the alleged ill-treatment by police of a 14-year-old Roma boy left him with permanent disabilities, the Court found that the military prosecutors had premised their findings on the statements of the police officials, who had reasons to wish to exonerate themselves and their colleagues from any liability. At the same time, the prosecutors had dismissed all statements by villagers, all of whom were of Romani ethnicity, on the grounds of an alleged bias in favour of the applicant. Additionally, the prosecutors had ignored statements by police officials that the villagers' behaviour was "purely Gypsy", a statement that in the eyes of the Court demonstrated the stereotypical views of the police. The Court held that there was a breach of the prohibition of inhuman and degrading treatment (article 3 of the Convention) in conjunction with the prohibition of discrimination (article 14).

[25] Judgment of the European Court of Human Rights, 26 July 2007.

[26] Judgment of the European Court of Human Rights, 10 March 2009.

article 3 of the Convention.

A piecemeal departure from the—described above—consistency of the jurisprudence of the European Court of Human Rights was noted in the case *Mižigárová v. Slovakia*.[27] In that case, the Court addressed the question whether independent evidence of a systemic problem could be deemed sufficient to alert authorities to the possible existence of racist motives in the absence of any other evidence. The Court said it would not exclude such possibility in a particular case in respect of persons of Roma origin. In the instant case, however, it was not persuaded that "the objective evidence is sufficiently strong in itself to suggest the existence of a racist motive". As a result, the Court did not find a procedural violation of article 14 in conjunction with article 2 (also dissenting opinion). For the applicant, the fact that her husband was of Roma origin, coupled with the legacy of widespread and systematic abuse of Roma in police custody, was enough to create an obligation to investigate possible racist motives behind his death.

In the specific context of anti-religious bias, the Court has established very interesting and consistent jurisprudence. In the case *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*,[28] the Court found that the refusal of the police to intervene promptly was largely due to the applicants' religious convictions. The comments and attitudes of the officials alerted about the attack or subsequently instructed to conduct the investigation were not compatible with the principle of equality before the law. No justification for that discriminatory treatment had been put forward by the Government. The authorities had enabled the instigator of the attacks to continue to stir up hatred through the media and to pursue acts of religiously motivated violence, accompanied by his supporters, while alleging that they enjoyed the unofficial support of the authorities. This suggested possible complicity on the part of State representatives. Consequently, the Court concluded that there was violation of article 14 in conjunction with articles 3 and 9 (freedom of thought, conscience and religion) of the Convention.

In the case *Milanovic v. Serbia*,[29] the Court extended the same principles concerning crimes motivated by racism to crimes motivated by an anti-religious bias. The Court made clear that in crimes involving bias on the grounds of race or religion, investigators and prosecutors should recognize and give additional weight to the bias element of crimes and take all reasonable steps to collect evidence of motive and bring offenders to justice. Prosecutors must, therefore, assess the evidence in a fair and unbiased manner and ensure that witness evidence is not dismissed on the basis of stereotypes. Where investigators appear to have applied stereotypes, prosecutors must be aware of the responsibility to challenge these and to question whether the investigation was thorough and effective.

In the case *Begheluri and Others v. Georgia*,[30] the Court found a violation of article 14 in conjunction with articles 3 and 9. Having regard to all available materials, the Court concluded that the various forms of violence directed against the applicants either by State officials or private individuals had been motivated by a bigoted attitude towards the community of Jehovah's Witnesses; and that the same discriminatory state of mind had been at the core of the relevant public authorities' failure to investigate the incidents of religiously motivated violence in an effective manner.

[27] Judgment of the European Court of Human Rights, 14 December 2010. The victim, a young man of Roma origin apprehended on suspicion of bicycle theft, ended up dead four days after he was shot in the abdomen during police interrogation. The police officer was off-duty and had previous encounters with the victim.

[28] Judgment of the European Court of Human Rights, 3 May 2007. The case concerned an incident in October 1999 in which a fanatical group of Orthodox believers led by a defrocked priest attacked a congregation of Jehovah's Witnesses. The group surrounded and entered a theatre in which 120 members of the congregation were gathered. Although some of the members managed to escape, 60 others, including women and children, were violently assaulted by the attackers.

[29] Judgment of the European Court of Human Rights, 14 December 2010. The applicant, a member of the Vaishnava Hindu, or Hare Krishna, religious community, was subjected to numerous physical attacks around the time of major Serbian Orthodox religious holidays. The State was held in breach of the procedural aspect of article 3 (prevention of ill-treatment) in conjunction with article 14 for failing to investigate effectively and promptly the religious bias motivation of the crimes. In particular, the Court noted that the police failed to take the victim's case seriously, even though there was a pattern of targeting minorities around religious holidays. Instead, the police referred to the victim's religion and "strange appearance", which suggested that any investigative steps were pro forma and inadequately addressed the seriousness of the anti-religious bias motivation presented in the case.

[30] Judgment of the European Court of Human Rights, 7 October 2014. The case concerned 99 Georgian nationals and Jehova's Witnesses, who alleged having been subjected to large-scale religiously motivated violence in the years 2000-2001.

A significant decision of the European Court is particularly related to circumstances involving bias based on homophobia. In the case of *Identoba and others v. Georgia*,[31] the Court first noted that the question of whether or not some of the applicants sustained physical injuries of certain gravity became less relevant. Instead, all applicants became the target of hate speech and aggressive behaviour and that was not disputed by the Government. Given that the applicants were surrounded by an angry mob that outnumbered them and was uttering death threats and randomly resorting to physical assaults, demonstrating the reality of the threats, and that a clearly distinguishable homophobic bias played the role of an aggravating factor, the situation was already one of intense fear and anxiety. The aim of that verbal—and sporadically physical—abuse was evidently to frighten the applicants so that they would desist from their public expression of support for the LGBT community. In contrast to the State's positive obligation to provide the peaceful demonstrators with heightened protection from attacks by private individuals, the Court noted the limited number of police patrol officers initially present at the demonstration distanced themselves without any prior warning from the scene when the verbal attacks started, thus allowing the tension to degenerate into physical violence. By the time the police officers finally decided to step in, the applicants and other participants of the march had already been bullied, insulted or even assaulted. Furthermore, instead of focusing on restraining the most aggressive counterdemonstrators with the aim of allowing the peaceful procession to proceed, the belated police intervention shifted onto the arrest and evacuation of some of the applicants, the very victims whom they had been called to protect. The Court considered that the domestic authorities failed to provide adequate protection to the thirteen individual applicants from the bias-motivated attacks.

Moreover, the Court considered that it was essential for the relevant domestic authorities to conduct the investigation in that specific context, taking all reasonable steps with the aim of unmasking the role of possible homophobic motives for the events in question. The necessity of conducting a meaningful inquiry into the discrimination behind the attack on the march was indispensable given, on the one hand, the hostility against the LGBT community and, on the other, in the light of the clearly homophobic hate speech uttered by the assailants during the incident. The Court considered that without such a strict approach from the law-enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes. The Court accordingly considered that the domestic authorities failed to conduct a proper investigation of the applicants' allegations of ill-treatment. Thus, there was violation of article 3 taken in conjunction with article 14 of the Convention.

IX. WORKING WITH VICTIMS AND THE CHALLENGE OF UNDER-REPORTING

Accurate and reliable data are essential for effective action against crime motivated by intolerance. Well-designed mechanisms to record and compile data enable law-enforcement agencies to gather intelligence about local intolerance crime patterns, assist in the allocation of resources, and support more effective investigation of specific types of cases. Policymakers can then rely on this information to make sound decisions and to communicate with affected communities and the wider public about the scale of intolerance crimes and responses to them.[32]

The police provide the first law-enforcement response to intolerance crimes and the information they collect comprises the backbone of official crime data in this field. However, despite efforts by police and other government agencies, official statistics generally understate the frequency of intolerance crimes.[33] This is

[31] Judgment of the European Court of Human Rights, 12 May 2015. The historical background of the case was as follows: During the clashes between the participants of a march conducted to mark the International Day Against Homophobia, including the thirteen individual applicants, and representatives of the two religious groups, the latter were particularly insulting in the language used. The homophobic connotation of the counter-demonstrators' speech was also evident in the acts of scornful destruction and ripping of LGBT flags and posters. In addition to those acts, there were also verbal attacks, followed by actual physical assaults on some of the applicants.

[32] OSCE Office for Democratic Institutions and Human Rights (ODIHR), "Hate Crime Data Collection and Monitoring Mechanisms. A Practical Guide", 2014, p. 11.

[33] Of the 19 EU Member States that publish data on recorded hate crime, only 15 disaggregate these data by different bias motivations. Some States publish specific reports on hate crime, providing information on the circumstances of the offences, which population groups are most at risk of suffering violent offences, and levels of satisfaction with the police's response. Publishing and disseminating specific reports on hate crime improves transparency and contributes to combating hate crime effectively, including by raising awareness of the phenomenon. See European Union Agency for Fundamental Rights (FRA), "Hate

because official reporting relies on victims coming forward to report incidents and accurate recording by police officers.

Victims may not report crimes motivated by bias because of fear of re-victimization or retaliation by perpetrators; feelings of humiliation or shame about being victimized; uncertainty about how/where to report the incident or how reporting will help them; lack of confidence that law-enforcement agencies will be able to help or will pursue their case seriously or effectively; language barriers; fear of being deported (on the part of undocumented people); for lesbian, gay, bisexual or transgender (LGBT) people, fear of having their identity or status exposed; or because the victim does not consider the incident to have been a criminal act.

From the perspective of law enforcement officers and prosecutors, crimes motivated by bias might be under-recorded because of lack of understanding of what constitutes a crime motivated by bias; lack of training in how to deal with and interview victims of related crimes; inadequate recognition of the different victim groups that may be targeted; absence of policy guidance on how to report relevant crimes; use of reporting forms that do not include specific spaces to report possible crimes motivated by bias; failure of witnesses to come forward; lack of interest by prosecutors in handling pertinent crime cases; or biases held by some portion of the law-enforcement establishment.

Focusing on victim protection challenges, it should be noted that, unlike victims of other criminal acts, hate crime victims are selected on the basis of what they represent rather than who they are. The victim is targeted because of his or her membership in a group. As such, intolerance crimes convey the message to both the victim and to their group that they are not welcome, and they are not safe. This wider impact makes intolerance crimes more serious than the same crime without the bias motive.[34]

Victims of bias-motivated offences are often particularly vulnerable, and therefore reluctant to initiate legal proceedings. Evidence shows that, compared to victims of other types of crime, they often face higher levels of protracted suffering and of negative health outcomes, including post-traumatic stress disorder. Court mechanisms and procedures are often not accessible or sensitive to the needs of groups facing discrimination or do not ensure the fair and timely processing of cases. Access to justice is often limited, owing to a lack of access to free legal aid or court support and interpretation services, or to potential beneficiaries being unaware of the availability of such services. Obstacles faced by victims in claiming their rights and participating in criminal proceedings often result from a combination of inequalities and biases at legal, institutional, structural, socioeconomic and cultural levels.

Against this background, victim-oriented protective measures may include, inter alia, measures to provide assistance and protection to victims in particular in cases of threat of retaliation or intimidation; procedures to provide access to compensation and restitution; and evidentiary rules to permit witness protection testimony to be given in a manner that ensures the safety of the witness.

Victimization surveys can also provide useful information about victims' perceptions of many aspects of crimes motivated by bias. They can also shed light on the "dark figures" of relevant crimes to further understand victim experiences, trends and emerging issues. If resources allow, the following are among the types of information that can be gathered in victimization surveys: the level of victim satisfaction with the police response; the level of concern about crimes motivated by bias in general;[35]reasons for reporting or not reporting to the police;[36] the location of the crime;[37] whether the respondent has witnessed a relevant crime

Crime Recording and Data Collection Practice Across the EU" (2018), p. 11.

[34] OSCE Office for Democratic Institutions and Human Rights (ODIHR), "Prosecuting Hate Crimes. A Practical Guide", 2014, p. 16.

[35] For example, respondents can be asked if they think that such crimes are a significant problem, and how worried they are about being victims.

[36] For instance, victims may report offences in order to stop re-offending, or may not report because they believe that the police would not take action against the offender.

[37] This information can be used to determine if crimes motivated by bias are more under-reported in some local areas than in others; this may point to weaknesses in particular police administrations or prosecution services. Localized data are especially valuable where policy-making powers are devolved to the regional and local levels.

or if a family member has been a victim; and victim demographics, including ethnicity, age and gender.[38]

Other promising practices to improve the treatment of victims of crime motivated by intolerance and discrimination and increase their trust in the authorities include measures such as the establishment of toll-free helplines to obtain rapid police assistance, improving the enforcement of protection orders, providing access to shelters, providing free psychosocial and legal assistance, conducting awareness-raising campaigns, and developing user-friendly reporting tools and structures.

An adequate legal basis is also crucial for ensuring that victims have access to justice and can obtain assistance, protection and compensation. The possibility for third parties, such as civil society organizations, to initiate proceedings on behalf of victims should be explored. It is important to include victim organizations and representation from marginalized communities when designing responses and programmes.[39]

X. SPECIFIC THEMES OF RELEVANCE FOR FURTHER DISCUSSION

A. Combating Bias Violence against Migrants

Violence against migrants, migrant workers and their families can result from racism, discrimination, xenophobia and related intolerance emanating from private or state actors in transit and destination countries. In recent years, xenophobia has been on the rise in many parts of the world. Anti-immigrant rhetoric is increasing, as newcomers are blamed for political, economic, and societal ills. Xenophobia can contribute to a range of difficulties for refugees, asylum-seekers and migrants, thus encouraging policies which undermine access to asylum and deprive refugees and asylum-seekers of basic human rights guarantees.

Lack of understanding can aggravate prejudices between migrants and non-migrants, particularly during times of economic hardship, tensions can increase as competition (or perceived competition) for social goods including jobs, houses and welfare may increase. As tensions take on racist, discriminatory or xenophobic dimensions, violence can result, impacting migrants more than other groups. In some cases, racism, discrimination and xenophobia may lead to intolerance crimes, i.e. criminal acts motivated by bias or prejudice towards particular groups of people like migrants.[40]

Intolerance crimes targeting refugees, asylum seekers and migrants is a global phenomenon, not limited to any one country or region of the world. Although some States are taking steps to address violent acts and the xenophobic climate in which they occur, significant gaps remain, and additional action is necessary. As UNHCR has noted in its December 2009 Guidance Note on "Combating Racism, Xenophobia and Related Intolerance Through a Strategic Approach",[41] while "concerted efforts are required from all concerned parties—States, the United Nations, and other international and regional organizations, as well as NGOs and community groups, to address these issues," ultimately "the success of any such effort will be directly proportional to the political will of States to put in place systems for the protection of basic rights and mechanisms for ensuring their effective implementation".

Though there are numerous aspects to comprehensive responses to intolerance crimes, one particular challenge is the problem of underreporting. In order to respond to individual incidents, understand the nature and frequency of hate crime and develop sound public policy, governments must be aware of their occurrence. Underreporting of crimes is a particular difficulty and remains one of the principal problems, especially among refugees, asylum-seekers and migrants.

Member States should make particular efforts to ensure that intolerance crimes are reported to the appropriate authorities so that action can be taken to hold the perpetrators responsible in individual cases and to better measure the effectiveness of strategic responses over time. Those efforts may include action

[38] As victim surveys are anonymous, this approach will allow policymakers to ascertain if victim experiences are affected by other dimensions of their identity. For example, questions on demographics can reveal whether men or women are more likely to report crimes, or if older victims of relevant crimes experience a more significant psychological impact than younger victims.
[39] E/CN.15/2019/6, para. 80.
[40] See "Combating violence against migrants. Criminal justice measures to prevent, investigate, prosecute and punish violence against migrants, migrant workers and their families and to protect victims", UNODC 2015, p. 3.
[41] Available at https://www.refworld.org/pdfid/4b30931d2.pdf.

such as speaking out publicly against incidents, responding to instances of abuse by law enforcement officials against victims of intolerance crimes, developing systems of third-party reporting and enhancing outreach to bodies like the UNHCR and civil society groups that have regular and direct contact with intolerance crime victims.

In the same context, sentences imposed for violent crimes against migrants should be aggravated where there is a racial, religious or any other discriminatory element so as to make a clear statement to society on the unacceptability of such intolerance. In providing services to migrants who are victims, it is important to respect the right of victims to be individually assessed to determine their special needs. Services must be tailored to gender-based considerations and the type and nature of the violence inflicted on victims should be considered. Examples of special measures include sexual assault crisis centres, shelters for women subject to violence and hotlines to assist victims of crimes motivated by bias.

B. Gender-Bias Crimes and the Hate Crime Paradigm—Femicide and Gender-Related Killings

Certain cases of gender-based violence and gender-related killing may fall in the category of crime motivated by intolerance or discrimination. Gender-related killing of women is generally understood to refer to the intentional murder of women because they are women, whether the crime is committed in public or in private.[42] Among the legal definitions in countries that have adopted provisions creating specific offences to deal with gender-related killing of women and girls, only some require a specific mental state on the part of the perpetrator, such as misogyny, hatred or contempt for the victim because of her gender; any other motive related to her gender; or the context of unequal power relations.

In her 2012 report,[43] the Special Rapporteur on violence against women, its causes and consequences identified gender-related killing as the extreme manifestation of violence against women, often representing the final event of an ignored continuum of violence. Rooted in gender-based discrimination and the unequal power relations between men and women, gender-related killing is frequently made more likely by the existence of other forms of discrimination. Some groups of women are particularly vulnerable to violence, either because of their nationality, ethnicity, religion or language or because they belong to an indigenous group, are migrants, are stateless, are refugees, live in underdeveloped, rural or remote communities, are homeless, are in institutions or in detention, have disabilities, are elderly, are widowed, or live in conflict, post-conflict or disaster situations.

Several international and regional treaties contain binding obligations on States parties to prevent and investigate gender-based violence against women, to prosecute and punish the perpetrators and to protect and provide redress to the victims.[44] Those treaties are complemented by internationally agreed instruments and resolutions on violence against women and gender-related killing of women and girls.[45]

Today, most countries have laws to address violence against women and some have criminalized gender-related killing of women. However, in many other countries, existing legal provisions are gender-neutral and hence do not allow for specific responses in cases of crimes motivated by intolerance or discrimination based on sex or gender. Moreover, not all forms of violence against women are criminalized or prohibited in many countries and some legal systems still retain procedural provisions that discriminate against women or have a discriminatory impact on women, which allows perpetrators to escape criminal responsibility. Some countries have established the crime of *femicide* or *feminicide* in their criminal codes, although the subjective and objective elements of the crime vary. Other countries have included gender-related aggravating factors

[42] UNODC/CCPCJ/EG.8/2014/2, para. 4.

[43] Available at https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add4_en.pdf.

[44] Convention on the Elimination of All Forms of Discrimination against Women; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

[45] Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104, annex); Beijing Declaration and Platform for Action, as adopted by the Fourth World Conference on Women (1995); updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 65/228, annex); General Assembly resolutions 68/191 and 70/176 on taking action against gender-related killing of women and girls.

for homicide offences or for offences in general.[46]

It has also been highlighted that including gender or "gender hostility" in domestic hate crime legislation so that violent crimes against women are considered acts of prejudice to oppress, subordinate and control women, could help to prevent victim-blaming and promote offender accountability.[47]

According to the UNODC Global Study on Homicide (2013),[48] what emerges from available statistical evidence relating to the relationship between victims and offenders is that a significant portion of lethal violence against women takes place in a domestic environment. The study further suggests that exploring intimate partner/family-related homicide is one way of gaining a clearer understanding of the killing of women due to gender motives. In contrast to other types of homicide in which the victims are predominantly men, the percentage of female homicide victims resulting from intimate partner/family-related homicide is much higher than the corresponding percentage of male victims in all regions. Homicide of this type is the ultimate consequence of unequal power relationships between men and women in the private sphere, which it serves to reinforce and sustain.

UNODC launched the Femicide Watch Platform[49] at the 26th session of the United Nations Commission on Crime Prevention and Criminal Justice (2017). The prototype has been developed by the Academic Council on the United Nations System (ACUNS) Vienna Femicide Team and the United Nations Studies Association, in consultation with many stakeholders, including UNODC and the UN Special Rapporteur on Violence Against Women. The prototype contains key information on femicide such as definitions, official data and landmark documents, and best practices in various action areas, including data collection efforts, investigations, legislation, and prevention measures, from all over the world. Offering a global and integrated platform, it also provides information for policy and decision makers at all levels, ranging from criminal justice system to civil society activists and academics, as well as practitioners.

In another more focused study of UNODC, the Global Study on Homicide/Gender-related killing of women and girls (2018),[50] it was highlighted that gender-related killings of women and girls are committed in a variety of contexts and through different mechanisms. In broader terms, such killings can be divided into those perpetrated *within the family* (intimate partner and domestic violence, honour-related killings of women and girls, dowry-related killings of women); and those perpetrated *outside the family sphere* (killings of women in the context of armed conflict, gender-based killings of aboriginal and indigenous women, killings of women due to accusations of sorcery or witchcraft, killing of female sex workers). Data availability at regional and global levels show that the vast majority of cases of this type of crime fall into the first category.

Gender-related killing of women and girls is analysed in the aforementioned study using the indicator for intimate partner/family-related homicide. This provides a concept that covers most gender-related killings of women, is comparable and can be aggregated at global level. Other existing national data labelled as "femicide" are not comparable as countries use different legal definitions of this concept when collecting data. Where data are available, however, it is clear that intimate partner/family-related homicide covers most of the killings categorized as "femicide" and is a good fit for analysing trends in the latter.

Statistical data reflected in the study included the following:

- ✓ A total of 87,000 women were intentionally killed in 2017. More than half of them (58 per cent)—50,000—were killed by intimate partners or family members, meaning that 137 women across the

[46] See "Guide for the thematic discussion on the responsibility of effective, fair, humane and accountable criminal justice systems in preventing and countering crime motivated by intolerance or discrimination of any kind", Note by the Secretariat, E/CN.15/2019/6, para. 46.

[47] See *Aisha K. Gill* and *Hannah Mason-Bish*, "Addressing violence against women as a form of hate crime: limitations and possibilities", Feminist Review, No. 105 (2013); and *Mark Austin Walters* and *Jessica Tumath*, "Gender "Hostility", Rape and the Hate Crime Paradigm", Modern Law Review 77(4), pp. 563-596.

[48] Available at https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.

[49] http://femicide-watch.org/.

[50] Available at https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf.

world are killed by a member of their own family every day.

- ✓ More than a third (30,000) of the women intentionally killed in 2017 were killed by their current or former intimate partner—someone they would normally expect to trust.
- ✓ Based on revised data, the estimated number of women killed by intimate partners or family members in 2012 was 48,000 (47 per cent of all female homicide victims). The annual number of female deaths worldwide resulting from intimate partner/family-related homicide therefore seems be on the increase.
- ✓ The largest number (20,000) of all women killed worldwide by intimate partners or family members in 2017 was in Asia, followed by Africa (19,000), the Americas (8,000) Europe (3,000) and Oceania (300). However, with an intimate partner/family-related homicide rate of 3.1 per 100,000 female population, Africa is the region where women run the greatest risk of being killed by their intimate partner or family members, while Europe (0.7 per 100,000 population) is the region where the risk is lowest. Americas at 1.6, Oceania at 1.3 and Asia, at 0.9.

The findings of the study show that even though men are the principal victims of homicide globally, women continue to bear the heaviest burden of lethal victimization as a result of gender stereotypes and inequality. Many of the victims of "femicide" are killed by their current and former partners, but they are also killed by fathers, brothers, mothers, sisters and other family members because of their role and status as women. The death of those killed by intimate partners does not usually result from random or spontaneous acts, but rather from the culmination of prior gender-related violence. Jealousy and fear of abandonment are among the motives.

C. "Cyber Hate": Countering Related Crimes in the Online Environment

1. Hate Crimes through the Internet and Social Networks

The growing reach of the Internet, the rapid spread of mobile information and communications technologies (ICTs) and the wide diffusion of social media represent new challenges in the field of combating discrimination and intolerance crimes, given their potential for promoting and propagating the discourse and incitement of hatred. It is therefore essential to put in place coherent measures and responses to counter related crimes in the online environment as well as particularly address hate speech on the Internet, which has become a growing concern.[51]

An important regional instrument in this field is the Additional Protocol to the European Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (2003) (see also above). The Protocol requires each Party to, first, adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the conduct of distributing, or otherwise making available, racist and xenophobic material to the public through a computer system (article 3, paragraph 1).[52] [53]

---

[51] According to the draft UNODC comprehensive study on cybercrime (2013), computer - related acts involving hate spe ech" are placed within the category of "computer content-related acts". This category refers to "computer content" – the words, images, sounds and representations transmitted or stored by computer systems, including the internet. The material offence object in content-related offences is often a person, an identifiable group of persons, or a widely held value or belief. One argument for the inclusion of content-related acts within the term "cybercrime" is that computer systems, including the internet, have fundamentally altered the scope and reach of dissemination of information. See the text of the draft study, which is available at: https://www.unodc.org/documents/organized-crime/cybercrime/CYBERCRIME_STUDY_210213.pdf (page 18).

[52] According to the Protocol, "*racist and xenophobic material*" means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors (article 2).

[53] The explanatory report accompanying the Protocol (available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d37ae) specifies that whether a communication of racist and xenophobic material is considered as a private communication or as a dissemination to the public, has to be determined on the basis of the circumstances of the case. Primarily, what counts is the intent of the sender that the message concerned will only be received by the pre-determined receiver. The presence of this subjective intent can be established on the basis of a number of objective factors, such as the content of the message, the technology used, applied security measures, and the context in which the message is sent. Where such messages are sent at the same time to more than one recipient, the number of the receivers and the nature of the relationship between the sender and the receiver/s is a factor to determine whether such a communication may be considered as private.

Further, exchanging racist and xenophobic material in chat rooms, posting similar messages in newsgroups or discussion fora,

The Protocol also requires each Party to adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the conduct of threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics (article 4, paragraph 1).[54]

The Protocol further obliges States parties to adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the conduct of insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics. A Party may either require that the offence has the effect that the person or group of persons is (not only potentially, but also actually) exposed to hatred, contempt or ridicule; or reserve the right not to apply, in whole or in part, the criminalization provision (article 5).[55]

Another category of criminal offences that the Additional Protocol requires to be established in the domestic legal order of States parties includes the denial, gross minimization, approval or justification of genocide or crimes against humanity. Thus, each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right: distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimizes, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognized as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognized by that Party. A Party may either require that the denial or the gross minimization referred to in the article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise; or reserve the right not to apply, in whole or in part, the criminalization provision (article 6).[56]

2. Cyber Violence against Women and Girls and Other Vulnerable Groups

Acts of cyber violence against women and girls (cyber-VAWG) have emerged over the last years as a global problem with serious implications for societies and economies around the world. The growing prominence of mobile devices, social media, and other communication technology has opened up new avenues for gender violence, with the fast spread of content and digital footprint magnifying the consequences for the victims, having a profound impact at individual, community and society levels.

Research shows that one in three women will have experienced a form of violence in her lifetime, and despite the relatively new and growing phenomenon of internet connectivity, it is estimated that one in ten

---

are examples of making such material available to the public. In these cases, the material is accessible to any person. Even when access to the material would require authorization by means of a password, the material is accessible to the public where such authorization would be given to anyone or to any person who meets certain criteria. In order to determine whether the making available or distributing was to the public or not, the nature of the relationship between the persons concerned should be taken into account.

[54] Pursuant to the explanatory report accompanying the Protocol, the notion of "threat" may refer to a menace which creates fear in the persons to whom the menace is directed, that they will suffer the commission of a serious criminal offence (e.g. affecting the life, personal security or integrity, serious damage to properties, etc., of the victim or their relatives). It is left to States Parties to determine what a serious criminal offence is. There is a no restriction that the threat should be public. The article also covers threats by private communications.

[55] According to the explanatory report, the notion of "insult" refers to any offensive, contemptuous or invective expression which prejudices the honour or the dignity of a person. It should be clear from the expression itself that the insult is directly connected with the insulted person's belonging to the group. Unlike in the case of threat, an insult expressed in private communications is not covered by this provision.

[56] The European Court of Human Rights has made it clear that the denial or revision of "clearly established historical facts – such as the Holocaust – [⋯] would be removed from the protection of Article 10 by Article 17" of the ECHR (see in this context the Lehideux and Isorni judgment of 23 September 1998).

women have already experienced a form of cyber violence since the age of 15. Women aged 18 to 24 are at a heightened risk of being exposed to every kind of cyber-VAGW as they are uniquely likely to experience stalking and sexual harassment, while also not escaping the high rates of other types of harassment common to young people in general.

According to the report of the U.N. Broadband Commission for Digital Development,[57] there are six broad categories that encompass forms of cyber-VAWG, as follows: *hacking* (the use of technology to gain illegal or unauthorized access to systems or resources for the purpose of acquiring personal information, altering or modifying information, or slandering and denigrating the victim and/or VAWG organizations); *impersonation* (the use of technology to assume the identity of the victim or someone else in order to access private information, embarrass or shame the victim, contact the victim, or create fraudulent identity documents); *surveillance/tracking* (the use of technology to stalk and monitor a victim's activities and behaviours either in real-time or historically); *harassment/spamming* (the use of technology to continuously contact, annoy, threaten, and/or scare the victim); *recruitment* (use of technology to lure potential victims into violent situations, fraudulent postings and advertisements of traffickers); and *malicious distribution* (use of technology to manipulate and distribute defamatory and illegal materials related to the victim and/or VAWG organizations, e.g., threatening to or leaking intimate photos/video; using technology as a propaganda tool to promote violence against women).

In addition, the proliferation of online violence means cyber-VAWG has gained its own set of terminology, such as *"revenge porn"* consisting of an individual posting either intimate photographs or intimate videos of another individual online with the aim of publicly shaming and humiliating that person, and even inflicting real damage on the target's 'real-world' life (such as getting them fired from their job).

Although several countries have adopted legislation to combat cyber-violence, current legislative and policy approaches may need to be reconsidered with a view to addressing adequately the psychological and social impacts of harassment and/or sexual coercion that women and girls suffer through this type of crime.[58] In this context, cyber-VAWG need to be addressed as a systemic concern and confronted through a multi-level approach which is sensitive to a gender lens.

With respect to the effects of new information technologies on the abuse and exploitation of children, a UNODC study[59] highlighted research findings that girls account for the majority of victims of child abuse and exploitation, although boys are increasingly at risk as well. Figures from the Internet Watch Foundation (IWF) show that up to 76 per cent of sexual abuse images on the Internet featured girls in 2013, while 10 per cent featured boys and 9 per cent featured both genders. With respect to the commercial sexual abuse and exploitation of children, the International Labour Organization (ILO) estimates that 1.2 million children are trafficked per year and 1.8 million children are exploited annually in the global sex trade, of which about two-thirds are female. In cases of children abused and exploited in the travel and tourism industries, girls are again most frequently victimized.

In relation to user-generated content such as "sexting", girls may be disproportionately victimized. A 2012 study described the gender dynamics involved in sexting as follows: "Sexting is not a gender-neutral practice; it is shaped by the gender dynamics of the peer group in which, primarily, boys harass girls, and it is exacerbated by the gendered norms of popular culture, family and school that fail to recognize the problem or to support girls. We found considerable evidence of an age-old double standard, by which sexually active boys are to be admired and 'rated', while sexually active girls are denigrated and despised as 'sluts'. This

[57] Launched by the International Telecommunication Union (ITU) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) in response to the United Nations Secretary-General's call to step up efforts to meet the Millennium Development Goals. Established in May 2010, the Commission brought together industry executives with government leaders, thought leaders and policy pioneers and international agencies and organizations concerned with development. The report is available at http://www.unwomen.org/~/media/headquarters/attachments/sections/library/publications/2015/cyber_violence_gender%20report.pdf?v=1&d=20150924T154259.

[58] See *Henry, N.* and *Powell, A.* (2015). Beyond the «sext»: Technology-facilitated sexual violence and harassment against adult women. Australian and New Zealand Journal of Criminology, 48(1), p. 105.

[59] Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC 2015, pp. 23 et seq. The study is available at https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf.

creates gender specific risks where girls are unable to openly speak about sexual activities and practices, while boys are at risk of peer exclusion if they do not brag about sexual experiences".[60]

Technology plays an important role in exacerbating this effect, with mobile phones and other devices, social networking sites, and other communication technologies facilitating the objectification of girls by allowing the creation, exchange, collection, ranking and display of images. Girls also suffer more frequently from cyberbullying.

A survey conducted by Microsoft found that worldwide, 37 per cent of children aged 8-17 years had been subjected to a range of online activities such as mean or unfriendly treatment, being made fun of or teased, or being called mean names. Of that number, 55 per cent were girls.[61] Further, girls may be exposed to a higher proportion of harmful content in the context of child sexual abuse material and sexually explicit self-generated material sent by perpetrators during a grooming process.

In addition, youth identifying themselves as lesbian, gay, bisexual, or transgender may be more likely to receive online solicitations and can experience higher degrees of cyberbullying or harassment. In particular, boys who are gay or exploring their sexual orientation may be more liable to become involved in or to be victimized in Internet-initiated sex crimes than other children. With respect to harassing conduct, a study in the United States found that more than 50 per cent of LGBT youth reported being subjected to cyberbullying.[62]

In enhancing the fight against ICT-facilitated child abuse and exploitation, national authorities may need to focus on a child protection approach that fully respects human rights and takes into account gender considerations as appropriate; ensuring that legislation keeps pace with technological innovation; recruiting, training and maintaining specialized personnel; gaining access to state-of-the-art technological resources; developing effective mechanisms for accessing third party data and conducting undercover investigations that are consistent with the rule of law; as well as developing policy guidance on harmful conduct committed by youth. The formulation of policies in this area is best based on a multidisciplinary approach that draws on research findings and best practices from social science, legal policy and public policy.

XI. EPILOGUE: TOWARDS MULTI-DISCIPLINARY STRATEGIES AND POLICIES TO COMBAT CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Multi-disciplinary strategies and policies need to be in place to combat effectively crimes motivated by intolerance. Elements of such strategies and policies may include the elaboration of relevant legislation with clear conceptual frameworks to facilitate effective implementation, ensure legal certainty and avoid potential abuses; the development of monitoring and recording mechanisms for the effective collection of data; the elaboration of prosecutorial policies/guidelines for use in prosecuting related crime cases or supervising related crime investigations; adopting victim-outreach strategies to address the problem of under-reporting; mainstreaming gender considerations into the work of prosecution offices and law enforcement authorities on crimes motivated by bias; the creation of a special units or focal points in prosecutors' offices and law enforcement authorities to help ensure that hate crimes are addressed effectively; steps to enhance interagency cooperation and collaboration; and the elaboration of communications and engagement strategies, including steps such as outreach to local communities, partnerships with civil society, public awareness campaigns and a media strategy to ensure the appropriate dissemination of information to the public.

From a policy perspective, the thematic discussion at the 28th session of the United Nations Commission on Crime Prevention and Criminal Justice (May 2019) was devoted to the theme entitled *"Responsibility of*

[60] NSPCC, 2012. Children, Young People and 'Sexting'. A Qualitative Study. p. 12. Available at http://www.lse.ac.uk/media%40lse/documents/MPP/Sexting-Report-NSPCC.pdf.

[61] Cross-Tab Marketing Services & Telecommunications Research Group for Microsoft Corporation, 2012. Online Bullying Among Youth 8-17 Years Old – Worldwide. Executive Summary. See https://download.microsoft.com/download/E/8/4/E84BEEAB-7B92-4CF8-B5C7-7CC20D92B4F9/WW%20Online%20Bullying%20Survey%20-%20Executive%20Summary%20-%20WW_Final.pdf.

[62] *Blumenfeld W. J. / Cooper, R. M.,* 2010. "LGBT and Allied Youth Responses to Cyberbullying: Policy Implications", International Journal of Critical Pedagogy 3: pp. 114-133.

effective, fair, humane and accountable criminal justice systems in preventing and countering crime motivated by intolerance or discrimination of any kind". That was a propitious occasion for Member States to exchange views, experiences and lessons learned in this field and to provide direction on the role of UNODC in helping them build appropriate and robust crime prevention and criminal justice responses and implement international standards and good practices in this regard.

It is further envisaged that the forthcoming Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in Kyoto, Japan, in April 2020, will also discuss the challenges posed by intolerance crimes, in continuity with the outcomes of the previous congresses, the Salvador and Doha Declaration. As the Discussion Guide of the Fourteenth Congress stressed, reforms to create more victim-centred criminal justice systems are essential to prevent secondary and repeat victimization and to increase the reporting of incidents, thus responding more effectively to crime and ensuring better protection of specific groups of victims and victims of particular types of crimes.[63] From that perspective, the Fourteenth Congress is expected to offer significant contributions to advancing the promotion of the Sustainable Development Goals – and relevant targets - of the 2030 Agenda for Sustainable Development, including those pertaining to the end of all forms of discrimination and violence against women and girls (targets 5.1 and 5.2).

63 A/CONF.234/PM.1, para. 84.

PARTICIPANTS' PAPERS

CRIMINAL JUSTICE RESPONSE TO CRIME MOTIVATED BY INTOLERANCE AND DISCRIMINATION—BRAZILIAN LEGISLATION AND EXPERIENCE

*André Lopes Lasmar**

I. INTRODUCTION

In his iconic book published in 1936, *"Roots of Brazil"*[1], after having lived a couple of years in Germany as a journalist correspondent and written some articles trying to describe the main characteristics of the Brazilian people to Europeans, the renowned Brazilian sociologist Sergio Buarque de Holanda coined the myth according to which Brazilians are mainly "cordial men" (not necessarily referring to a candid person but someone who acts mostly by heart than by reason, exactly the opposite of what he had seen in Germany, as he understood both societies at the time). From that time on, it is widely believed both locally and internationally that the mixed and interracial Brazilian society is a very generous, tolerant and pacific one, not prone to violence or war. Although it is true that Brazil has not waged a war of conquest for many decades since the Paraguayan War, current statistics of violence and crimes motivated by intolerance and discrimination tend to show otherwise of its own people.

The Brazilian Constitution of 1988 establishes that *"the practice of racism is a non-bailable crime, with no limitation, subject to the penalty of confinement, under the terms of the law"*[2]. Brazil signed and ratified most of the International Documents related to the subject of the protection of individual rights, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities, among others. Brazil has also enacted domestic law to enforce most of these international obligations.

Nevertheless, the steadily growing number of crimes motivated by intolerance and discrimination in Brazil is an undeniable reality, especially in recent times, proving what is widely known—that the very existence of the legislation to cope with the problem rarely seems to be the single solution to what is perceived as a complex and multifactorial problem. Many changes beyond the legislation and criminal justice itself must be achieved in order to reduce the number of such crimes, namely educational, economic and social structural approaches. It is important though to stress that this paper deals exclusively with viable and effective criminal justice responses to problems faced here.

After a hotly contested presidential election in October 2018, many minorities in Brazil justifiably fear an enhancement of such crimes and even more frequent intolerant and discriminatory acts and/or policies against them in the light of a new far-right regime which is due to rule for the next four years, starting on 1 January 2019. Although it is naturally too soon to draw to any conclusions on this matter, the fact remains that this theme is to be seriously studied, observed and addressed not only by the domestic criminal justice system but within the Brazilian society and international community as a whole.

* Federal Prosecutor in Brazil and PhD in International Law from the Law School of University of Sao Paulo. Contact: andrelasmar@usp.br

[1] Holanda, Sérgio Buarque. Raízes do Brasil. São Paulo: Editora José Olympio, 1936.

[2] Constitution of the Federative Republic of Brazil. Official translation access on http://english.tse.jus.br/arquivos/federal-constitution

II. TARGETED GROUPS AND VIOLENCE MOTIVATED BY INTOLERANCE AND DISCRIMINATION IN BRAZIL

After more than twenty years of dictatorship in Brazil, the Brazilian Constitution was promulgated in 1988, whose article 5(XLII), as mentioned before, determined that the practice of racism was to be criminalized as a non-bailable crime, with no limitation, and punished with imprisonment under the terms of the law.

It did not take long (precisely three months to be more accurate, from 5 October 1988 when the Constitution was promulgated until 5 January 1989) for the Congress to enact a law establishing what is to be considered racism and its penalties: Act 7716/1989, whose first article determines that crimes resulting from *"prejudice of race or colour"* will be punished.

Although this newly enacted law, with its punishment of imprisonment up to five years, was far better than its previous Act 1390/1951, which considered racism as *"the practice of acts resulting from prejudice of race or colour"* only as a misdemeanour, the new legislation did not eliminate its original problem as being too narrow in describing which targeted and victim groups would be protected by the law.

It took more than eight years for the Congress to review the scope of it, until it adopted Act 9459/1997, providing a new definition to the aforementioned article 1, determining that crimes resulting from *"discrimination and prejudice against race, colour, ethnicity, religion or national origin"* will be punished.

There is no doubt that the new terms of the law are better than the original one, for two main reasons: first, it criminalized both prejudice and discrimination; second, the protected groups were broadened to include victims that might be targeted exclusively because of their ethnicity, religion or national origin.

According to Oxford Dictionary, prejudice means: "1. preconceived opinion that is not based on reason or actual experience. 2. *Law*. Harm or injury that results or may result from some action or judgement". And discrimination means: "the unjust or prejudicial treatment of different categories of people, especially on the ground of race, age, or sex".[3]

The broadening of the protected group is also welcomed, albeit still insufficient. In 2014, a well-known human rights activist Congresswoman in Brazil presented in Parliament a Draft Act 7582/2014 to "*define the crimes of hate and intolerance and to set mechanisms to prevent them*", whose general but accurate article 2 determines that

> *every person, regardless of class and social origin, migrant condition, refugee or internally displaced person, sexual orientation, identity and gender expression, age, religion, homeless situation and disabilities shall enjoy the fundamental rights inherent to every human, and it shall be guaranteed to them the opportunity to live without violence, and to preserve their physical and mental health as well as their moral, intellectual and social improvement.*

Articles 3 and 4 of the Draft Act clarify, respectively, hate and intolerance crimes against the protected groups mentioned in article 2. Article 3 determines that it is considered a hate crime if the offence is against *"life, physical integrity (assault) or someone´s health motivated by prejudice or discrimination"*, while article 4 sets a list of acts which shall be considered as intolerance crimes, such as, psychological violence, to deny a position in the public or private sector, to prevent access to public transportation and public or private schools, among many other unlawful acts described in quite similar terms of the current Act 7716/1989.

Nevertheless, this Draft Act has not been given the deserved consideration by Parliament during its current term (2014/2018), and some minorities in Brazil fear that the newly elected conservative Congress due to resume its duties on 1 January 2019 might be even less prone to discuss and enact such measures on their behalf.

Meanwhile, jurists and the criminal justice system in Brazil must work with the Act still in effect from 1989, whose must recent text sets a very specific targeted and protected group against crimes motivated by

[3] Oxford Dictionary of English. New York: Oxford University Press, 2010.

intolerance and discrimination.

A. Intolerance and Violence against Religious Minorities in Brazil

The most recent and official report on Religious Intolerance and Violence in Brazil was presented in 2016 by the Federal Special Secretary on Human Rights, collecting data and information nationwide between 2011 and 2015.[4] It considered religious intolerance and violence to be all ideologies and offensive attitudes against different creeds and religions that might in some extreme circumstances become an actual persecution, hate crime, discrimination and even the harm against individuals, leading to assault or murder.

During this period between 2011 and 2015, at least 95 cases of assault directed against Afro-Brazilian people who professed religions with African origins and 99 cases of depredation, arson and destruction of cult sanctuaries of these religious groups were officially reported, though many more are believed to be underreported.

The number of cases brought to justice varied from a small number of 12 in 2011/2012 to 31 in 2014/2015, according to the Report, most of them waiting for a final decision.

B. Violence against Indigenous Peoples of Brazil

Brazilian law also criminalizes acts which are motivated by prejudice or discrimination based on the ethnicity of the victim, and this is particularly worrying in relation to the native communities, especially the Indigenous Peoples, who suffer from aggravated discrimination and poverty in the national society, and who lack the adequate assistance and effective policies to ameliorate their precarious situation.

The Indigenist Missionary Council (Centro Indigenista Missionário, or CIMI), a well-known organization in defence of Indigenous Peoples ´ rights and linked to the Catholic Church, has been presenting its Report on Violence against Indigenous Peoples since 1996 (since 2003, CIMI has been publishing it annually with data and information from the previous year), with an alarming and steadily growing number of violent cases directed against these communities in Brazil.

According to its latest Report presented in September 2018, collecting data from 2017, the amount of systematic violence against Indigenous Peoples in Brazil has increased dramatically, including at least the following number of well-reported and documented cases: 110 murders, 27 attempted murders, 19 manslaughters, 14 death threats, 12 assaults, 16 sexual assaults and 36 cases of discrimination and other forms of threatening.[5]

The elevated number of crimes and violence specifically targeting these already impoverished communities is worrying, despite the fact that they represent less than 0.5% of Brazil ´ s total population (approximately nine hundred thousand Indigenous Individuals).

C. Crimes Motivated by Race and Colour

Brazil has experienced a spate of homicides unprecedented in modern western history in "peaceful times" (many international and local experts truly believe, though, that Brazil lives in a state of undeclared civil war), revealing a "devastating scenario" in which Brazil "broke its own record for homicides last year [2017]", counting 63,880 deaths by violent means.[6]

According to the Brazilian Institute of Applied Economic Research (or IPEA based on its acronym in Portuguese), in cooperation with the Brazilian Forum on Public Security, the Atlas from violence in 2017 showed that most victims of such violent crimes in Brazil in 2016 were men (92%), black (74.5%) and young

[4] Secretaria Especial de Direitos Humanos. Relatório sobre Intolerância e Violência Religiosa no Brasil (2011-2015): Resultados Preliminares. Access on: http://www.mdh.gov.br/informacao-ao-cidadao/participacao-social/cnrdr/pdfs/relatorio-de-intolerancia-e-violencia-religiosa-rivir-2015/view

[5] Conselho Indigenista Missionário (CIMI). Relatório Violência conta os Povos Indígenas no Brasil – Dados de 2017. Access on https://cimi.org.br/wp-content/uploads/2018/09/Relatorio-violencia-contra-povos-indigenas_2017-Cimi.pdf

[6] 'A devastating scenario': Brazil sets new record for homicides at 63,880 deaths. The Guardian, published online on 9th August 2018: https://www.theguardian.com/world/2018/aug/09/brazil-sets-new-record-for-homicides-63880-deaths. Access on 03/11/2018.

between 15 and 29 years old (53%).[7]

Although it is not possible to affirm on legal terms at least that all these crimes against young black men were motivated by intolerance and discrimination (most are believed to be the result of drug trafficking wars in major cities), this same research published in its 2018 version concludes that "*racial inequality in Brazil expresses itself in a very clear manner in relation to lethal violence and policies of public security*".[8] It is also observed that the risk of a young black boy to be a victim of homicide is 2.7 times higher than that of a young white boy in Brazil.

D. Crimes Motivated by Gender and Sexual Orientation

After a paradigmatic case in the Inter-American Commission on Human Rights in Washington/DC presented against Brazil in 1998, a law was finally enacted in 2006, known as "Maria da Penha Act" (in regard to the victim ´ s name of the case presented before the Commission), aggravating the penalty of domestic violence.

Recently, the Brazilian Congress enacted the "Feminicide Act" (or "Femicide Act"; Act 13104/2015), declaring as Murder in the First Degree ("qualified and aggravated murder") the homicide of a women for the simple reason of her feminine condition, either in domestic and family violence cases, or due to scorn or discrimination against her nature as a woman.

LGBT (lesbian, gay, bisexual, and transgender) communities have been fighting for many years to have a similar specific criminalization of acts directly targeting them, although the Brazilian Congress has refused to adopt it, until now. Differently from other groups, these groups are not especially protected by the law and many of them feel marginalized in relation to other victims, particularly due to the restrictive categorization of the Brazilian legislation.

According to a recent report of an important activist Non-Governmental Group, at least 387 murders were committed in 2017 in Brazil motivated by sexual intolerance and discrimination.[9]

III. BRAZILIAN APPROACHES BY THE CRIMINAL JUSTICE SYSTEM TO CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Although the number of crimes motivated by intolerance and discrimination in Brazil is considerably high, the main cause for it is not a lack of legislation, but its enforcement as well as an absence of a coherent and nationally uniform mechanism and effective responses to this type of criminal offence.

The aforementioned Draft Act 7582/2014 intends to cope with this absence of uniformity and reliable data by establishing in its article 6 the following obligations of Brazilian authorities: I – the operational integration of the Judiciary, the Prosecution Service and the Public Legal Defence in order to safeguard victims ´ rights; II – the elaboration of studies, research, statistics and other relevant information that could map the causes, consequences and the frequency of the practice of such hate crimes motivated by intolerance; III – the adoption of a specialized police district to cope with crimes motivated by hate and intolerance; and IV – to stimulate the continuous learning of public servants in the attendance of potential victims of such crimes.

The lack of reliable data and statistics involving crimes motivated by intolerance and discrimination in Brazil is remarkable and undeniable, since most data and information are gathered by non-governmental organizations, as shown in this paper.

Nevertheless, one major advance in this area in Brazil might come from the already implemented (in

[7] Instituto de Pesquisa Econômica Aplicada (IPEA). Atlas da violência 2017. Access on http://www.ipea.gov.br/atlasviolencia/download/2/atlas-2017.

[8] Instituto de Pesquisa Econômica Aplicada (IPEA). Atlas da violência 2018. Access on http://www.ipea.gov.br/portal/images/stories/PDFs/relatorio_institucional/180604_atlas_da_violencia_2018.pdf

9 Grupo Gay da Bahia. Pessoas LGBT mortas no Brasil – Relatório 2017. Access on https://homofobiamata.files.wordpress.com/2017/12/relatorio-2081.pdf

some States) obligation number three, mentioned above, in the Draft Act 7582/2014, determining the adoption of a specialized police district to cope with crimes motivated by intolerance and discrimination, which is known in Brazil as DECRADI (in its original Portuguese acronym from "Delegacia de Crimes Raciais e Delitos de Intolerância", or Police District on Racial Crimes and Intolerant Offences).

The first experience of its kind in Brazil was established in 2006 in Sao Paulo (Brazil ´ s largest and most populated city), specifically designed to combat racism and homophobia, prejudice and intolerance against religious minorities, as well as crimes against ethnic minorities, migrants and Romani (or Roma) people (popularly but improperly called "Gypsies").

In the last few years several other States have created their own DECRADI. The actual results in most parts of Brazil are still to be seen. Just as an example, Rio de Janeiro, Brazil ´ s second most populated city, has only recently in August 2018 implemented its first DECRADI.

The experience in Sao Paulo, on the other hand, has shown that the establishment of a specialized police force against crimes motivated by intolerance and discrimination is welcome: from January 2010 until November 2015 the DECRADI of Sao Paulo investigated 962 cases.[10]

The expected future coordination among all sectors of the criminal justice system is to be thoroughly discussed and implemented as soon as possible, since the number of crimes motivated by intolerance and discrimination is rising significantly in Brazil.

IV. CONCLUSION

Brazil has a high record of crimes motivated by intolerance and discrimination, despite the fact it has immediately after the promulgation of its latest 1988 Constitution enacted a specific law coping with the problem of racism. Thirty years later, the world and Brazilian society have significantly evolved, and the newly elected Congress with the newly elected President should gather and discuss a new set of more comprehensive rules, in order to cope with this *"devastating scenario"* of more than sixty-three thousand violent deaths only last year. It is time for the Federal Government to show that it does not condone any sort of violence, especially that which is criminalized as hate crime or motivated by intolerance and discrimination. The criminal justice system would never be, for obvious reasons, the single solution to this holistic problem, since educational, economic and social approaches are indispensable. But its response to this type of crime is certainly a good start, and the criminal justice system definitely plays a key role in the solution

10 Government of the State of Sao Paulo´s webpage, access on http://www.ssp.sp.gov.br/LeNoticia.aspx?ID=36514

CRIMINAL JUSTICE RESPONSE TO CRIME MOTIVATED BY INTOLERENCE AND DISCRIMINATION

Raufa Haidar[*]

I. INTRODUCTION

Until the new Constitution of the Republic of Maldives came into effect in 2008, the criminal justice system of the Maldives has been functioning as an integrated body, whereby all relevant agencies of the system work together, but these bodies (i.e. investigation, prosecution and adjudication) became independent with the enforcement of the new Constitution, the purpose being to empower these agencies to work effectively and independently.

II. THE STATUS OF CRIME MOTIVED BY INTOLERANCE AND DISCRIMINATION

Although Maldives still remains a homogeneous country belonging to one nationality, it has become a host for thousands of migrant workers and hundreds of tourists of different nationalities. Thus, Maldives can now be considered a country where multi-racial people live or reside, be it for pleasure or for economic reasons.

Reported cases of ill-treatment faced by migrant workers are increasing although the basis of such treatment is ambiguous, and the negative attitudes faced at times by migrant workers from locals are of noticeable concern, but no official survey has been done so far.

In a press statement[1] released by the Human Rights Commission of the Maldives in 2016 on the International Day for the Elimination of Racial Discrimination, it was explained that Maldives is seeing an increase of racial indifference and hostility towards those of different races living the country. It pointed out that expatriate workers are subjected to harsh conditions such as congested spaces and that the most notable suffering inflicted on those workers is the society's perception of them as insignificant, making them prone to all kinds of abuse. It was also noted that, even though Maldivians are based on the same race, acts of discrimination (however small) against others based on differences among the society are seen and that being judgmental of a person based on his or her island, language, and political or religious differences will have adverse effects on the society.

With the enforcement of the new Constitution of the Republic of Maldives in the year 2008, discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status or native island, was prohibited. Article 17(b) of the Constitution states:

Everyone is entitled to the rights and freedoms included in this chapter without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island[2].

Article 55 of the Constitution of the Republic of Maldives guarantees that no person is subjected to cruel, inhumane or degrading treatment or punishment, or to torture, while Article 56 of the Constitution ensures the right to appeal a conviction and sentence, or judgment or order in a criminal or civil matter tried on anyone, including foreigners, under the Maldivian Law.

Maldives has been taking measures on a national and international level to combat crimes against discrimination. Maldives acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (ECRD) on 24 April 1984 and to the Convention against Torture and Other Inhuman or

[*] Assistant Legal Officer, Supreme Court of the Maldives.

[1] http://www.hrcm.org.mv/dhivehi/news/pressreleasearchive/PR052016.pdf

[2] Constitution of the Republic of Maldives 2008; Article 17 (b).

Degrading Treatment or Punishment (CAT) on 20 April 2004[3]. Since then, a lot of work has been done on a national level by the relevant authorities and the parliament. The output of this work can be seen through the new enforced laws on sexual offences and harassment, gender equality, and the Domestic Violence Act[4].

The object of the Gender Equality Act is to facilitate all steps towards prevention of discrimination based on gender and prevention of all ideas and practices that promote discrimination between men and women in conformation with the Convention on the Elimination of All forms of Discrimination Against Women and the Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women[5].

According to Section 4 of the Gender Equality Act:

> Gender equality, for the purpose of the Act shall mean equality of opportunity, equality in accessing opportunities, the opportunity to achieve results on equal terms and the fundamental equality of rights and freedoms for men and women.

Similarly, Maldives has taken important policy initiatives to strengthen labour management and to protect labour rights including the ratification of the eight International Labour Organization conventions in 2013. The Government is committed to end the exploitation of workers in Maldives and this commitment was further demonstrated by the ratification of the Anti-Human Trafficking Act in 2013.[6]

Legislation, such as the Employment Act and the Civil Service Act (compatible with the Constitution), provides equal socio-economic services and benefits as well as equal access to economic and political participation. In addition to the above-mentioned legislation, the Penal Code of the Maldives enacted in 2014, provides a mechanism to criminalize the homicide offences, assault, threat offences, property damage and destruction offences and offences against the family, irrespective of the motive of the offender.

III. INVESTIGATION

In every country, the investigation authorities play a key role in combating any offence. In Maldives the main investigation agency is the Maldives Police Service. They are empowered by the Police Act 2008. The police are responsible for enforcing criminal law, enhancing public safety, maintaining order and keeping the peace throughout Maldives.[7] Thus police officers are vested with special powers to arrest persons on suspicion of a crime, conduct searches, seize or discover evidence, and investigate criminal acts. The powers of the police are further elaborated and extended in the "Regulations on Executing of the Constitutional Authority and Discretion Accorded to the Police."

Although Maldives Police Service is the principle investigating agency, the Human Rights Commission (HRCM) of Maldives[8] which was established on 10 December 2003 as an independent and autonomous statutory body, was created by the President of the Republic of Maldives with the right to sue and be sued. The HRCM has the authority to investigate complaints filed with the HRCM alleging infringement of human rights or aiding and abetting such an act or should the Commission have reason to believe such an act was committed or is being committed[9].

IV. PROSECUTION

In the Maldives, the sole power to prosecute any criminal case is vested in the Prosecutor General[10].

---

[3] https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=MDV&Lang=EN

[4] Act No. 17/2014 (The Sexual Offences Act); Act No. 16/2014 (Sexual Harassment Act); Act No. 3/2012 (Domestic Violence Act).

[5] Section 2; Act No. 18/2016 (Gender Equality Act).

[6] Report of the Working Group on the Universal Periodic review (Human Rights Council; thirtieth session, Agenda item 6 (18 September 2015)).

[7] Section 2 and 6, Act No.5/2008 (Police Act).

[8] http://www.hrcm.org.mv/aboutus/about.aspx#Establishment

[9] Section 20, Act No. 6/2006 (Human Rights Commission Act).

[10] Article 223, The Constitution of the Republic of Maldives 2008.

Article 220 of the Constitution of the Maldives states that there shall be an independent and impartial Prosecutor General of the Maldives. The Prosecutor General has the power to evaluate and asses the evidence presented by the investigating bodies to determine whether charges should be pursued and to institute and conduct criminal proceedings against any person before any court in respect of any alleged offence. These responsibilities and the power of the Prosecutor General are clearly defined in the Constitution of the Maldives, and they have been further elaborated in the Prosecutor's General Act[11].

While the Constitution ensures an independent and impartial prosecution, prompt investigation and prosecution are also guaranteed by the Constitution of the Republic of Maldives. Article 50 of the Constitution states:

> After notice of an alleged offence has been brought to the attention of the investigation authorities, the matter shall be investigated promptly, and where warranted, the Prosecutor General shall lay charges as quickly as possible.

V. ADJUDICATION

With the ratification of the new Constitution of the Republic of Maldives, in the year 2008, the Maldivian Judiciary entered a new phase of transformation and progress. With the separation of powers of the state, it was established that all judicial powers are vested in the Supreme Court, High Court and such Trial Courts as established by the law. According to Article 141 of the Constitution of the Republic of Maldives, the Supreme Court is the highest authority for administering justice. Thus, the Supreme Court has the final authority on the interpretation of the Constitution, the law, or any other matter dealt by a court of law[12]. Also, as the guardian of the Constitution and law, the Supreme Court plays a crucial role in the administration of the court system.

Maldives has a three-tier system for the administration of justice[13]. The Supreme Court, the High Court and lower courts. The lower courts, which include at least one Magistrate's Court (with limited jurisdiction) in each inhabited island, as well as the five specialized courts which sit in Male: The Criminal Court, the Civil Court, the Drug Court, the Family Court and the Juvenile Court. The Criminal Court as the first instance court has jurisdiction to adjudicate all types of criminal cases[14]. Even though magistrate courts, as the first instance courts, have jurisdiction to adjudicate criminal cases, an exception has been laid down by the Judicature Act of the Maldives. Schedule 5 of the Judicature Act stated that the following matters shall not be adjudicated by the magistrate courts.

(a) Cases related to murder.
(b) Issues specified in the Narcotics Act.
(c) Among offences of theft, embezzlement, deception, fraud and treachery and mugging, those that involve an amount of MVR 100,000 (one hundred thousand) and above, or assets of the same value.
(d) Matters regarding counterfeiting of notes and coins and the contraband of counterfeit money into Maldives.
(e) Cases related to terrorism.
(f) Charges brought under any of Chapter 1 of the Penal Code under the title 'Sedition and treason against the State'.
(g) Cases of rape.
(h) Cases which involve an amount of MVR 5,000,000 (five million) and above, or assets of the same value.

VI. CHALLENGES

The most challenging problem that the Maldives faced in approaching crimes motivated by the intolerance and discrimination is that there are no specific legal instruments criminalizing crimes motived by intolerance and discrimination. Though legal instruments against discrimination (as mentioned above) have been

[11] Section 15, Act No. 9/2008 (Prosecutor General's Act).
[12] Article 145 (c), The Constitution of the Republic of Maldives 2008.
[13] Act No. 22/2010 (Judicature Act of the Maldives).
[14] Schedule 2 of the Act No. 22/2010 (Judicature Act of the Maldives).

established, awareness programmes are not effectively held on the mechanisms for reporting such crimes. Investigating and other relevant authorities are not well trained to proceed with the investigation and uncovering evidence of such crimes. Hence many of the crimes motivated by intolerance and discrimination remain unreported, unprosecuted and, therefore, invisible.

Another crime prevention issue faced by Maldives is the delay in prosecution and the adjudication process for various reasons, the main reason being not having resources and well-trained support staff.

Failure of the investigating authorities to make the investigation in line with the provisions of the Constitution is another critical issue. Article 52 of the Constitution of the Maldives states: "No confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind. No statement or evidence must be obtained from any source by compulsion or by unlawful means and such statement or evidence is inadmissible in evidence." Hence, the investigation itself becomes unconstitutional if not carried in accordance to the Constitutional provision.

Delay in the investigation, prosecution and in adjudication amounts to disposal of evidence and witnesses being reluctant to testify against the offenders as they are being threatened. However, the Criminal Procedure Act[15] has taken measures to lessen such problems as it laid down a timeframe for the investigation, prosecution and adjudication process. It also established a mechanism for witness protection such as suppression of identity, testimony through video-link and use of voice distortion.

The Ministry of Gender and Family has the mandate to facilitate the provision of social, psychological and legal services to persons reporting deprivation of rights resulting from gender discrimination or violence, but they do not have the investigatory power which further delays the justice to the victims of domestic violence.

VII. VIOLENCE AGAINST WOMEN IN MALDIVES

Like in any other country, violence against women is a crime Maldives is struggling to deal with. It is a serious issue and often a hidden issue where the victims silently live in humiliation. Giving voice to the issue is a first step in combating it, and the Domestic Violence Act, enacted on 23 April 2012, is a milestone in making the existence of the issue in Maldives loud and clear. The creation of the Domestic Violence Act paved way to establish stakeholders in combating violence in the Maldives. The Domestic Violence Act defines certain acts conducted between individuals in a domestic relationship to be an act of domestic violence. Section 3(a) of the Domestic Violence Act defines what constitutes such domestic relationship while Section 4(a) lists the individual acts which, when conducted between two people, can be considered an act of domestic violence. A major outcome of the Domestic Violence Act is the introduction of "protection orders" detailed in sections 7 and 8 of the Act. Under the Act, victims are able to request and obtain emergency and permanent protection orders against the perpetrators.

VIII. CASES OF DOMESTIC VIOLENCE

Name, place and specific details have been omitted from the below-mentioned cases to ensure the confidentiality of the victims.

1. A case filed by the Applicant against her husband for committing various domestic violence acts, at the Family Court of the Maldives on 2017 for a protection order. According to the case report the husband committed physical, psychological and verbal abuse along with intimidation and many other acts and caused the children to witness the domestic violence against the Applicant. Here, the court issued a protection order for a period of one year as the domestic violence acts committed against the Applicant were proved by the witnesses' statements and by the reports presented by the Maldives Police Services stating that 2 incidents of violence against the Applicant by her husband were lodged and investigated and sent to the Prosecutor General's office for prosecution.

With regard to this case, it is noted that the perpetrator's acts were reported to the relevant investigating authority and are being investigated but sadly our records show that the perpetrators are not prosecuted.

[15] Act No. 12/2016 (Criminal Procedure Act)

2. A case filed by the Prosecutor General against the Respondent at the Criminal Court for breaching the Protection Order issued by the Family Court against the Respondent to avoid committing any act against his ex-wife, that would suffice as a domestic violence act. He denied the charges against him. To prove the case, the Prosecutor General presented the ex-wife, her father and sibling as witnesses, but in their statements, they supported the Respondents' stand. Hence, the Court decided that the Respondent was not guilty of the charge.

In this case, it is evident from the case report that the witnesses, especially the father, favoured the Respondent as he did not want the Respondent to be prosecuted with criminal charges as the child of the Respondent is in the care of the ex-wife and if prosecuted, the child might suffer.

These case studies give us a clear indication that various forms of violence exist in Maldives and that also indicate that there are very limited services available to the victims. The case studies also show that perpetrators are rarely prosecuted or punished. Hence, they are not held accountable for their actions.

3. A case filed by the Prosecutor General at the Criminal Court of the Maldives, where the respondent was reported by his wife, for hitting her and pushing her from a jetty. The respondent hit the wife's head, whereby the respondent's wife fell onto a boat nearby and hit her mouth which rendered her unconscious. It was proved by the medical reports that the respondent's wife suffered severe injury to her mouth and that her leg was injured by the respondent's acts. It was decided that the respondent was guilty and sentenced to pay a fine of MVR 200, as this was his first criminal offence.

This clearly is a case of violence against women which can be prosecuted under the Domestic Violence Act, but the respondent was prosecuted under the Penal Code for battery. This case raised concerns among the public and the Court was criticized for its judgment. But it is important to note that the court decides cases based on the facts presented before it.

IX. RECOMMENDATIONS

- Revising and improving the legislative framework to facilitate the anticipated results, so that the prosecution can prosecute under the relevant legislation to achieve the results from the specialized acts such as the Domestic Violence Act.

- Creating school and society-based awareness programmes across all age groups on respectful relationships and responses to domestic and family violence.

- The provision and availability of supportive housing models to assist victims of domestic and family violence to find safety for themselves and their children.

- Focus on long-term care of the victims, such as rehabilitation and reintegration, and measures to decrease the chances of reoccurrence of any type of further abuse against women.

- Establish a good psychosocial support system at a national level.

VIOLENCE AGAINST WOMEN IN MALDIVES

Ahmed Shuhad[*]

I. INTRODUCTION

Violence against women (VAW) is a crime that is prevalent in many countries. It is a highly complex category of crime and may include very severe offences such as murder, rape and sexual assault. But it may also include offences that are seen as less serious but have significant implications to victims and the society. Domestic Violence (DV) is a type of violence that is often interchangeably used with VAW. Unlike VAW, DV is defined by the offence and the relationship between victims and offender.

Maldives has also seen VAW become a national concern that requires immediate attention. Commonly known statistics publicized in the Maldives on VAW suggest that 1 in every 3 women aged 18-59 may have experienced some form of physical or sexual violence. There are, undoubtedly, many reasons for this phenomenon. An important dimension that can shed some insight into this problem is the level of tolerance and intolerance towards women and girls in the Maldivian context. As such, this paper seeks to explore and explain how debates about tolerance and intolerance can be used to understand and explain VAW in the Maldives.

II. VIOLENCE AGAINST WOMEN IN THE MALDIVIAN CONTEXT

In Maldives, the first ever comprehensive study on violence against women carried out in 2007 revealed that 1 in 3 women between ages of 15-49 have experienced some kind of physical or sexual abuse at some point in their lifetimes (Ministry of Gender and Family, 2007). This was the 'shocking' finding from this study. And. like in many other countries, the various forms of violence against women (VAW) that are highly prevalent in Maldives have since been recognized as a national problem. Since then, the phrase 1 in 3 has become a powerful slogan for policy and practice change to improve the status of VAW.

Other findings from MSWHLE include:

- 1 in 5 women aged 15-49 (19.5%), who had ever been in a relationship, reported experiencing physical and/or sexual violence by an intimate partner.
- Approximately 1 in 8 women aged 15-49 (13.2%) reported experiencing physical and/or sexual violence by someone other than an intimate partner, since the age of 15.
- Combining physical and/or sexual violence by partners and non-partners, since the age of 15, we find that more than 1 in 4 women (28.4%) have experienced partner or non-partner violence, or both.
- Approximately 1 in 8 women aged 15-49 (12.2%) reported that they had been sexually abused before the age of 15, that is, that they had experienced childhood sexual abuse.

The study also revealed that among those women who have experienced violence, very few sought help from formal services including the formal justice system. There may be several reasons for this, including barriers in addressing their grievances through the formal justice system. In studies conducted on trust towards key criminal justice system agencies, it has been shown that the public has very low trust and confidence in the justice sector including the police and courts (UNDP, 2016).

III. CONCEPTUALIZATION OF TOLERANCE, INTOLERANCE AND VAW

To begin with, it is useful to understand what tolerance and intolerance mean in such a social context. The relation that is expressed by the words tolerance and intolerance may well be explained by the notion of attitudes and behaviours towards views that are not in line with what one believes. In the gender sphere, therefore, this is related to what people believe the roles and responsibilities of men and women are in the

[*] Chief Superintendent of Police, Maldives Police Service, Republic of Maldives.

society. There are many factors that contribute to these beliefs that include, but are not limited to, religion, culture, upbringing and media. These various factors help build a world view that generates intolerance towards a group of people especially when they do not confirm to your notion of what is acceptable.

Indeed, the concept of equality itself needs to be conceptually redefined and related to how it will improve in a more holistic manner. The United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) explains this when they state the following:

> a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

Eliminating gender inequality and discrimination are important for criminal justice, especially for access to justice. As such there are important achievements to be gained from having mechanisms for good governance, independence, impartiality and the credibility of the criminal justice system that can enable these developments.

IV. CURRENT SITUATION

A. Legal

1. Domestic Violence Prevention Act 2012

In 2012 the much-awaited Domestic Violence Prevention Act (DVPA 2012) was passed and enacted, which offered a comprehensive legislative framework to tackle domestic violence. The term domestic violence means different things in different legal jurisdictions. The Domestic Violence Prevention Act (DVPA) 2012 defines "domestic violence" as "acts by a perpetrator where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the victim(s), and provided the victim(s) and perpetrator are in a domestic relationship" (*Domestic Violence Prevention Act*, 2012, Article 4(a)). Domestic relationship is meant to include:

1. Persons who are or were married to each other;
2. Persons who share or have recently shared the same residence;
3. Persons who are the parents of a child or a person who has or had parental responsibility for that child;
4. Persons who are family members related by consanguinity, affinity or marriage;
5. Persons who are domestic child caretakers or domestic workers; or
6. Persons who are in an intimate relationship.

Furthermore, the DVPA (2012) recognizes various acts as domestic violence. They are:

1. Physical abuse;
2. Sexual abuse;
3. Economic and financial abuse;
4. Impregnating the spouse, without concern for her health condition and against any medical advice to refrain from impregnation for a specified period;
5. Deliberately withholding the property of a person;
6. Intimidation;
7. Harassment;
8. Stalking.

This conceptualization of domestic violence in Maldives is very broad and covers offences that are

attributed to the intolerance of women and their rights in the society. This progressive approach to criminalizing domestic violence opens new challenges as the institutions that must be at the forefront of protecting women and assisting them with access to justice are tasked with a broad mandate. The Human Rights Commission of the Maldives (HRCM) stated in a 2005 study "men have become more conservative on these sensitive issues related to women's rights, or at least less certain, whereas women's views, for the most part, have altered much less and in some areas have become more strongly supportive of women's rights" (HRCM, 2013, p. 3). Comparing results from 2005 baseline data, the HRCM reports:

The current survey indicates a significant drop in support for women's equality. In all seven areas surveyed (inheritance, divorces, work, politics, etc.) fewer respondents than in 2005 considered women should have equal rights with men. Support for women's right to equality in custody matters, for example, has dropped from over 90% among both rural and urban populations to around 60% (HRCM, 2013, p. 2)

B. Recorded Data

Like many other countries, and to similar proportions as several others, domestic violence is recognized as a significant issue in Maldives. Until recently, it remained strongly hidden, and it is only recently that it has become an issue of public and open debate. Today, domestic violence can be considered a highly focused arena of violence against women (VAW).

Table 1. Reported cases to Family Protection Authority 2013-2016

	2013	2014	2015	2016
Number of cases	19	149	438	642

Table 2. Present statistics based on reported incidents to the police

	2016	2015	2014	2013	2012	2011	2010	2009	2008
Domestic Violence reported cases to the police	304	341	187	207	178	146	84	110	114

As can be seen from the above two tables, the reported incidents to both the FPA and the MPS have been increasing rapidly. In part, this is because of an increased awareness of domestic violence in the community.

As can be seen from the following table, the majority of domestic violence victims in Maldives are women, although the law covers violence against men too.

Table 3. Gender and age of victims of domestic violence

Gender	Age		Total
	Under 18 years	Over 18 years	
Female	125	433	558
Male	87	83	170

Number of domestic violence victims involved in reported cases for 201

C. Some Underlying Problems and Gaps

While the enactment of DVPA (2012) has allowed new avenues to provide support to victims, there are several issues that need further ratification. Some of them include the following:

1. The DVPA is a semi-criminal law in the sense that it only allows punishment if there is a violation of the protection order issued under the law. The law itself does not provide a pathway to hold offenders accountable within the criminal justice system for the offence of domestic violence.

2. While DVPA covers some elements of hate crimes when there is an existing domestic relationship between offender and victim, the fact that there is no framework or law to criminalize hate crimes

make it difficult for the state to prosecute individuals for the underlying issues, which in many cases is intolerance

3. The criminal justice system is yet to formalize emerging good practices such as restorative justice. Domestic Violence offers a venue where restorative justice can be effectively applied, make the offender accountable and empower the victims to move on from the situation. It will further allow rehabilitation and reintegration of offenders into the society.

D. Challenges to the Police and Criminal Justice System

One of the greatest challenges facing the criminal justice system, including the police, is the reluctance of victims to provide support to the investigation. This happens for many reasons but mainly because victims are afraid to leave the violent situation in fear of either retaliation or fear of losing children. The fact that society still sees VAW as a private matter and something that should not be talked about outside of the home makes women, who are most often than not the victims of domestic violence, reluctant to seek help either from the police or relevant other authorities.

Also, it is not uncommon for women to experience a cycle of revictimization within the justice system. Many police officers and staff from criminal justice agencies still do not accept VAW or DV as a true crime; rather they see this as a personal dispute. Because of this, inadvertently or not, victims get revictimized within the system.

There are many emerging forms of VAW and DV that require urgent attention. Cyberbullying and cyberharassment, including sexual harassment and blackmail, are becoming common. The advances in technology place police and other relevant agencies at a disadvantage as they tend to remain far behind the criminals in technological development.

V. CONCLUSIONS AND RECOMMENDATIONS

1. **Getting more accurate empirical data on prevalence rate**: There is an urgent need for robust primary research relevant to the current state of issues in Maldives. The most commonly referred to research in this area—the Maldives Study on Women's Health and Life Experiences of 2007[1]—while useful for some policy and decision-making related to domestic violence in Maldives, it predates the domestic violence legislation and is not based on the legal definition of domestic violence as used in Maldives now. Data needs to be available disaggregated by variables such as gender, age and geography as well as social demographic factors like victim-offender relations, etc.

2. **Understanding organizational knowledge and attitudes**: Key criminal justice agencies such as the police, courts and correctional system can influence how policy is actually practised. Acknowledging that these agencies may have low trust from the public, it is important to understand how different agencies actually contribute to resolving the abuse or revictimizing the victim. Capacity-building of these key agencies needs to be undertaken to ensure that policy is practised as envisioned in law. Investments in victim support units (VSU), such as that of the Maldives Police Service and Prosecutor General's Officer, are highly important and required. Attention needs to shift from seeing victims as only the person at the receiving end of the violence. Instead, a broader focus on victimization with an acknowledgement of impact and implications to society and community should be given attention. Thus, building resilient communities and community groups, involvement of community such as through restorative justice programmes can have useful impact.

3. **Improving legislative and regulatory framework review**: The extent to which, and how, the existing legislative and regulatory framework facilitates, obstructs or limits desired results needs to be held more openly, and any revisions or amendments required must be brought as soon as possible. Maldives does not have legal aid assured by legislation, and rehabilitative and reintegrative measures are under-developed. Mechanisms such as restorative justice offer promising solutions but need proper

1 Emma Fulhu: Maldives Study on Women's Health and Life Experiences (WHLE), Published by the Ministry of Gender and Family - ISBN 99915-95-01-5

legislative and regulatory mechanisms to be implemented.

4. **Addressing various types of violence**: Physical and sexual violence against women and children are the most common forms of domestic violence, and these are some of the most heinous forms of violence experienced within the context of domestic violence. The current effort on combating violence against these highly vulnerable victims needs to continue. But there are also other emerging crimes and victim categories that have been observed and, hence, the ongoing efforts need to be inclusive. Some of most noticed emerging issues are addressed in the Action Plan and includes:

- Technology facilitated domestic violence: (ab)use of technology in the commission of domestic violence (domestic violence in the digital era: harassing, stalking, blackmailing, threatening)
- Domestic violence against and by those with mental health problems and persons with disabilities
- Elder abuse and domestic violence (from financial crimes to violence)
- Expatriate population and domestic violence: From sexual exploitation to slavery
- Domestic violence against men
- Domestic violence and extremism

References

Attorney General's Office, & UNDP. (2014). *Legal and Justice Sector Baseline Study*. Attorney General's Office and the United Nations Development Programme in the Maldives.

CEDAW Committee. (2015). *General Recommendation No. 33 (Women's Access to Justice)*. CEDAW Committee.

Domestic Violence Prevention Act, Pub. L. No. Number 3/2012 (2012).

Emma Fulhu: Maldives Study on Women's Health and Life Experiences (WHLE), Published by Ministry of Gender and Family - ISBN 99915-95-01-5

Human Rights Commission of Maldives. (2011). *Six Years On - The Rights Side of Life: The second Maldives baseline human rights survey*.

Maldives Police Service. (2016, October 4). Crime Statistics. Retrieved from https://www.police.gov.mv/#casestat

Ministry of Gender and Family. (2007). *The Maldives Study on Women's Health and Life Experiences: Initial results on prevalence, health outcomes and women's responses to violence*.

CRIMINAL JUSTICE RESPONSE TO CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Shahid Javed[*]

I. INTRODUCTION

Violent crimes resulting from intolerance and discrimination are not uncommon in Pakistan. While, on the one hand, crimes against women such as 'honour killing', domestic violence resulting in severe injuries and even murder and 'stove burning' have stemmed from gender-related discrimination, on the other, religious intolerance has given rise to assaults on members of religious minorities and registration of blasphemy cases against them. Thus, the crime pattern is marked with crimes motivated by intolerance and discrimination. This paper aims at analysing the crimes motivated by religious intolerance and the response of the criminal justice system. Faith based persecution is an ongoing phenomenon in Pakistan which has severely affected the religious minorities of the country. Violence motivated by intolerance has been targeted 'against all religious minorities, including Ahmadis, Christians, Shia Muslims, Sikhs, Hindus and Parsis'.[1]According to a recent report by Amnesty International, "state and non-state actors continued to discriminate against religious minorities, both Muslim and non-Muslim, in law and practice".[2] This paper discusses how a weak legal framework coupled with societal pressures and a lack of adequate law enforcement measures has contributed towards such crimes.

A. Organization of the Paper

The first section of the paper traces the origins of Pakistan with a historical context. The ideology in favour of merging religion and politics was present since the birth of Pakistan and set forth the ground for crimes motivated by religious intolerance. The second section discusses how the country's legal framework fails to offer adequate protection to religious minorities. It also outlines the societal pressures such as the rise of religious-political groups which have led to an increase in religious discrimination. The third section outlines how, due to a lack of adequate law enforcement measures, the victims of such attacks are denied justice. In this section the statistics of crimes motivated by religious intolerance will be analysed. An analysis of the criminal justice system (CJS) shall also be made outlining why it failed to respond effectively to these crimes. In the end some recommendations on how the situation/response can be improved shall be made and a conclusion shall be drawn.

B. Historical Context of the Creation of Pakistan its Religious Ideology

On 14 August 1947, Pakistan was founded as an independent nation state after achieving its independence from India. Pakistan was based very much on the concept of a 'Muslim homeland'. Whether Pakistan was created for Islam or Muslims is a question which remains debatable to this day. Some ideologies of Pakistan maintain that Pakistan was meant to create an Islamic state[3] in the Indian subcontinent. Other ideologies doubt this position and maintain that the primary purpose of Pakistan was to build a secular state for Muslims to escape dominance of Hindu rule. Ahmed in his book *Jinnah, Pakistan and Islamic Identity* discusses that Pakistan meant different things to different people. For some it was theology; Pakistan was seen as an Islamic country, a homeland where Muslims will enjoy religious freedom and will abide by the laws based on the Quran and the Sharia. A famous slogan still chanted in Pakistan is *Pakistan ka Matlab kya La Illahal IllAllah*, which translates to "What is the meaning of Pakistan? There is no God but Allah." For some it was sociology; Muslims were concerned about preserving their culture and language and feared that they had little chance in a Hindu dominant society. For some it was economics; there was a fear that

[*] Deputy Inspector General of Police, Pakistan.

[1] Farahnaz Ispahani, "Pakistan's Descent into Religious Intolerance." Hudson Institute, March 1, 2017. Available at: < https://www.hudson.org/research/13492-pakistan-s-descent-into-religious-intolerance>.

[2] Amnesty International, "Amnesty International Annual Report 2016/17: Pakistan", February 23, 2017. Available at: <https://amnesty.org.in/amnesty-international-annual-report-201617-pakistan/>.

[3] Not to be confused with the Islamic state of Iraq and Syria. Refers to a state based on Islamic principles.

Muslims might not be able to succeed under the powerful Hindu commercial and entrepreneurial monopolies. Yet for some it was an expression of a Hindu-Muslim confrontation which had been taking place for centuries and posed a challenge to the idea of Muslims being dominated by Hindus.[4] As such, there is still a debate about the true ideology that resulted in the creation of Pakistan. However, despite the disagreements it is evident that the idea of Pakistan was associated very strongly, in one way or another, with a Muslim identity.

Despite the debate, there can be little doubt that Pakistan's founder, Muhammad Ali Jinnah, had a vision of a secular Pakistan; a Muslim homeland which guaranteed minority rights. In his first Presidential Address to the Constituent Assembly of Pakistan (August 11, 1947), he famously said:

"You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed — that has nothing to do with the business of the State… We are starting with this fundamental principle: that we are all citizens, and equal citizens, of One State."[5]

However a competing ideology advocated for the merging of Islam and politics through the establishment of an Islamic republic governed by Sharia law.[6] Eventually, the secular vision of Jinnah lost to the ideology of the Islamic forces, composed of both traditional *ulema* and a number of Islamist parties, notably the Jammat-i-Islami (JI). Their influence during the initial crafting of the Pakistani constitution injected religion (Islam) into the governing system of the country, an influence which deepened with time.[7] The fact is that over time Pakistanis have been made to believe that Jinnah intended to create Pakistan as a theocratic state.[8] Pakistan's self-identification as an 'Islamic Republic' clearly speaks of the role religion has played in shaping the Pakistani identity. This identity was further reinforced by the 'islamization' of Pakistan under the Military Regime of Zia-ul-Haq.

II. DISCRIMINATION UNDER THE CONSTITUTION AND THE LAW

The legal framework of Pakistan provides insufficient protection to religious minorities. Despite being a signatory to the Universal Declaration of Human Rights (UDHR) 1948[9] and the International Covenant on Civil and Political Rights, the legal framework fails to safeguard minority rights. As per the UDHR, Pakistan is obligated to provide its citizens with the following rights:

- **Article 1**: 'All human beings are born free and equal in dignity and rights…'
- **Article 2**: 'Everyone is entitled to all the rights and freedom(s) set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political…'
- **Article 7**: 'All are equal before the law and are entitled without any discrimination to equal protection of the law…'
- **Article 18**: 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.'

Pakistan has also ratified the International Covenant on Civil and Political Rights (ICCPR), in 2010. Therefore, Article 18[10] mentioned above is binding on Pakistan and its courts and constitution are required

[4] Akbar Ahmed, *Jinnah Pakistan and Islamic Identity* (London: Rutledge, 1997), p. 109
[5] Columbia.edu, "Muhammad Ali Jinnah's first Presidential Address to the Constituent Assembly of Pakistan", (August 11, 1947). http://www.columbia.edu/itc/mealac/pritchett/00islamlinks/txt_jinnah_assembly_1947.html>.
[6] Fatima Zainab Rahman, "State restrictions on the Ahmadiyya sect in Indonesia and Pakistan: Islam or political survival?", *Australian Journal of Political Science* vol. 49, no. 3 (2014): 408-422.
[7] Ibid.
[8] Ibid.
[9] UN General Assembly, "Universal declaration of human rights," 1948, <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)>
[10] Article 18(1) of the *International Covenant on Civil and Political Rights* provides: "Everyone shall have the right to freedom

to provide and ensure religious freedom to its citizens, especially to its minorities, 'who being equal citizens of Pakistan are entitled to equal protection of law'[11].

The constitution of Pakistan[12] guarantees equality before the law for all its citizens and non-discrimination on the basis of race, religion etc. Article 20 of the Constitution states: "every citizen shall have the right to profess, practice and propagate his religion". Article 25 (1) provides, "all citizens are equal before law and are entitled to equal protection of law." Article 5 states, "adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures," and article 33 fixes the state's responsibility in safeguarding the rights and interests of religious minorities. However, these provisions are in contradiction with some other provisions of the Constitution, as Article 2 declares, "Islam shall be the State religion of Pakistan;" Article 31 states that it is the state's duty to foster an Islamic way of life. Article 41(2) provides, "a person shall not be qualified for election as President unless he is a Muslim," Article 91(3) provides that the Prime Minister shall also be a Muslim and Article 227 (1) states, "all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions."[13]

In view of the above, certain sections of the Pakistan Penal Code (PPC) and the Criminal Procedure Code (CrPC) were amended, and new penal sections for blasphemy and 'other offences against religion' were promulgated with penalties ranging from imprisonment to death sentence. In 2009, the UN Committee on the Elimination of Racial Discrimination noted that Pakistan's "blasphemy laws may be used in a discriminatory manner against religious minority groups".[14] Evidently section 295-A of the PPC criminalizes the "deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan"; however, the other religious offences in the PPC specifically protect Muslims, thus putting a limit to 'freedom of expression' of non-Muslims. Section 295-B declares, "whoever wilfully defiles, damages or desecrates a copy of the Holy Quran, or of an extract therefrom, or uses it in any derogatory manner, or for any unlawful purpose, shall be punishable with imprisonment for life".[15] Section 295-C states, "whoever by words, either spoken or written, or by visible representation, or by any imputation, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet (peace be upon him) shall be punished with death or imprisonment for life, and shall also be liable to fine."[16] In 1990, the Federal Shariat Court[17] made the death penalty mandatory for conviction under Section 295-C[18]. It is pertinent to note that Section 298 of the PPC states about protection of "the religious feelings of *any* person", both Muslim and non-Muslim, yet it is so vague that it criminalizes not only speech but any form of expression whether it directly displays hostility or not. Thus, this section can be used and bent to the advantage of any complainant and is often misused against members of minorities unjustifiably

Referring to the text of Section 298 of the PPC, a professor of law at Harvard University who specializes in Islamic law commented, "as enacted into a statute, this law has wreaked havoc in Pakistan because the usual checks on its extreme consequences in old Islamic states do not exist in the modern context, and

---

of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

[11] All Party Parliamentary Group for International Freedom of Religion or Belief, "Discrimination against Religious Minorities in Pakistan: An Analysis of Federal and Provincial Laws," Available at: <https://appgfreedomofreligionorbelief.org/media/RESEARCH-DOCUMENT-1-discrimination-against-religious-minorities.-Analysis.pdf >.

[12] National Assembly of Pakistan, Government of Pakistan, *The Constitution of Islamic Republic of Pakistan*, 1973.

[13] Ibid. *The Constitution Of Islamic Republic of Pakistan, with the Provisional Constitution Order, 1981: as Amended up-to-Date. Lahore: All Pakistan Legal Decision, 1982*

[14] Committee on the Elimination of Racial Discrimination, United Nations, "International Convention on the Elimination of all Forms of Racial Discrimination", 16 March 2009, para 19. Available at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fPAK%2fCO%2f20&Lang=en>

[15] Pakistani.org, "Pakistan Penal Code: Act XLV of 1860". Available at:
<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

[16] Ibid.

[17] The Federal Shariat Court of Pakistan has the authority to examine and determine whether the laws of the country comply with Islamic Sharia Law.

[18] Federal Shariat Court, "PLD 1991 FSC 10 (Ismail Qureshi vs the Government of Pakistan)", <http://federalshariatcourt.gov.pk/5.html>

because the law is seen by some as government license for popular or mob violence against any person alleged to have insulted Islam."[19] These legal gaps have enabled bigoted members of the Pakistani society to victimize the minorities. Many innocent people from among minorities (Christians, Sikhs and Hindus and Ahmadis) have been booked under the vaguely worded Blasphemy Law.[20]

III. DISCRIMINATION DUE TO SOCIETAL FACTORS

As discussed in the first section, since the birth of the country, a political ideology has borne roots which make religious minorities second-class citizens in their own country. Successive governments in Pakistan and different political parties have used the Islamic ideological card to their own political end. Religious differences, lust for power and a race for material gains have made religion 'explosive' in the society. Coupled with high levels of poverty and illiteracy, the masses seek refuge in religion and are sensitive to the call of clergy who use them for their political motives. Over the last few decades, religious-political groups have grown in power making life even more difficult for religious minorities.[21]

In 2011, a study sponsored by the U.S. Commission on International Religious Freedom (USCIRF) and conducted by the International Center for Religion and Diplomacy (ICRD) concluded, "Pakistan's public schools and madrassas negatively portray the country's religious minorities and reinforce biases which fuel acts of discrimination, and possibly violence, against these communities."[22] The negative attitude towards religious minorities influences the way people think and affects various aspects of the society. In such an environment there is tremendous pressure on the criminal justice system to remain neutral and deliver effectively in response to crimes motivated by religious intolerance. It was observed by the UN Special Rapporteur on the judiciary on her visit to Pakistan in 2013, "judges have been coerced or pressured to decide against the accused, even without supporting evidence, and that lawyers, in addition to their reluctance to take up such cases because they are afraid for their security, are targeted and forced not to represent their clients properly".[23]

A. The Case of Asia Bibi

The case of Asia Bibi demonstrates how the societal pressures from religious groups can lead to highly unfavourable circumstances for religious minorities. In 2011, governor of Punjab Salman Taseer was murdered by his police bodyguard when he publicly spoke against the blasphemy law being unjust and in favour of an accused Christian women (Asia Bibi who was accused of blasphemy). A Christian farm labourer, a 47-year-old mother of five, was sentenced to death for blasphemy in 2010, after she had angered fellow Muslim workers by taking a sip of water from a cup. When the workers demanded she convert to Islam, she refused which prompted a mob to later allege that she had insulted the Prophet of Islam.[24] After remaining in prison for 9 years, Asia Bibi was declared innocent by the Supreme Court of Pakistan on 31 October 2018.[25] The decision of the court was not welcomed by the extremist religious elements who blocked roads, raised processions in protest and openly uttered death threats to the judges followed by violent outbreaks on the streets. By evening, "thousands of club-wielding demonstrators had blocked highways, burned tyres and

[19] Research Directorate, Immigration and Refugee Board, "Immigration and Refugee Board of Canada, Pakistan," *Whether section 298 of the Pakistan Penal Code (PPC) refers to any offence under religious law or Shari'a and, if so, the penalty under religious law or Shari'a*. January 30, 2002, PAK 38359.E. Available at: <http://www.refworld.org/docid/3df4be8e8.html>.

[20] Farahnaz Ispahani, "Pakistan's Descent into Religious Intolerance", *Hudson Institute*, Mach 1st, 2017, <https://www.hudson.org/research/13492-pakistan-s-descent-into-religious-intolerance>

[21] Ibid.

[22] United States Commission on International Religious Freedom, "Pakistan's Educational System Fuels Religious Discrimination," November 11, 2011, Available at: <https://www.uscirf.gov/news-room/press-releases/pakistans-educational-system-fuels-religious-discrimination>.

[23] Gabriela Knaul, "Report of the Special Rapporteur on the independence of judges and lawyers, Addendum: Mission to Pakistan" (Pakistan: UN Human Rights Council, 4 April 2013), Available at: <http://www.refworld.org/docid/51b9a0794.html> p. 56-61.

[24] Harriet Agerholdm, "Asia Bibi: Husband pleads for family asylum in UK after blasphemy conviction overturned," *The Independent*, November 4, 2018. Available at:
<https://www.independent.co.uk/news/world/asia/asia-bibi-pakistan-asylum-theresa-may-uk-protests-blasphemy-supreme-court-a8616556.html>.

[25] Memphis Barker, "Asia Bibi: Pakistan court overturns blasphemy death sentence," *The Guardian*, October 31, 2018. Available at: < https://www.theguardian.com/world/2018/oct/31/asia-bibi-verdict-pakistan-court-overturns-blasphemy-death-sentence>.

pelted police with stones in major cities including Islamabad and Karachi."[26] The actual publication of the ruling was delayed for weeks after blasphemy campaigners "promised to paralyse" the country and kill the judges if they did not uphold Bibi's death sentence."[27] The Supreme Court was due to hear the case in 2016, but delayed the trial after one of the judges resigned. After the havoc these religious fuelled protesters laid on the country, the lawyer representing the Christian woman fled the country for fear of his[28] life and Asia Bibi's husband has pleaded for asylum from the UK, US and Canada.[29]

IV. DISCRIMINATION DUE TO LACK OF LAW ENFORCEMENT

Considering the above scenario there is not much space for the police, prosecution and courts (main organs of CJS) to deter crimes motivated by religious intolerance and to bring offenders to justice and prosecute those guilty of such crimes speedily and fairly.

A. Lack of Authentic Data

The following figures represent crimes against religious minorities in the province of Punjab as per the record of the Central Police Office Punjab (Lahore).[30]

Table 1: Crimes against Religious Minorities in the Province of Punjab

1	**Cases Registered Where Either Minorities or their Place of Worship Were Targeted From 01.01.2016 to 30.09.2018**					
	District	**Total Cases**	**Cancelled**	**Untraced**	**Challenged**	**Under Inv.**
	Lahore	3	0	1	2	0
	Gujranwala	2	0	0	2	0
	Gujrat	1	0	0	1	0
	Sahiwal	1	0	0	1	0
	Chakwal	1	0	0	1	0
	Faisalabad	1	0	0	1	0
	Total	**9**	**0**	**1**	**8**	**0**
2	**Cases Registered under Blasphemy against Minorities From 01.01.2016 To 30.09.2018**					
	District	**Total Cases**	**Cancelled**	**Untraced**	**Challenged**	**Under Inv.**
	Lahore	1	0	1	0	0
	Sheikhupura	1	0	0	1	0
	Layyah	1	0	0	1	0
	Total	**3**	**0**	**1**	**2**	**0**
3	**Cases Registered Where Person of Other Sects or their Places of Worship Were Targeted from 01.01.2016 to 30.09.2018**					
	Nil	**0**	**0**	**0**	**0**	**0**
4	**Cases Registered Where Accused of Blasphemy Cases Were Targeted From 01.01.2016 to 30.09.2018**					
	Nil	0	0	0	0	0
Grand Total		**12**	**0**	**2**	**10**	**0**

It is important to note, however, that the numbers reported in the aforementioned tables are misleading. These numbers have been taken from the official data collected by the Central Police Office Punjab which does not provide a true picture. According to reports by civil-society and non-governmental organizations, the actual number of crimes motivated by religious intolerance is much more substantial. For instance, the

[26] Ibid.
[27] Ibid.
[28] BBC, "Asia Bibi: Lawyer flees Pakistan in fear of his life," November 3, 2018, Available at: <https://www.bbc.com/news/world-asia-46082324>.
[29] BBC, "Asia Bibi Blasphemy Case: Husband pleads for asylum", November 3, 2018, Available at: <https://www.bbc.com/news/world-asia-46085577>.
[30] Data collected from Statistical Officer, Central Police Officer, Lahore.

above figures depict that only three cases of blasphemy were registered against members of minorities from 2016 to 2018 in the whole of Punjab (with NO case in 2017),[31] while only one minority group (Ahmadis) claimed that in the year 2017 two cases of blasphemy (case 1061/17 & 245/17)[32] had been registered in Lahore against their members. Similarly the official data notes that only four cases have occurred where minorities or their places of worship have been targeted in 2017, while the report[33] by only one minority group (Ahmadi) claimed that four Ahmadis were murdered in four separate incidents, while two assault attempts to murder were made on Ahmadis due to religious intolerance in 2017.

There are serval reasons for this disconnect between the actual numbers and the reported numbers. Firstly, the crimes reported are often not classified as hate crimes but instead as general crimes. For instance, if a member of a minority religious community is assaulted due to religious intolerance, that crime is classified as a general assault, and not as a hate crime. According to Ahmadis (a religious minority), 260 Ahmadis have been murdered and 379 assaulted for their faith since 1984 in Pakistan without these crimes being classified as 'crimes motivated by religious intolerance' in police records. Secondly, for small crimes like assault without grievous harm, the victims of the crime motivated by religious intolerance are unwilling to come forward to seek redress against the perpetrators. This is in large part due to the lack of faith in the criminal justice system. As a result, many of the religion-motivated crimes remain unreported and unprosecuted. Thirdly, there have been many reported instances in which the government officials have failed to intervene in favour of the victim. There have been cases in which despite the victim making a claim to a police official, the official report goes unfiled. According to the Pakistan International Religious Freedom Report 2017, civil-society groups have expressed concern "that authorities often failed to intervene in instances of societal violence against religious minorities, and police failed to arrest perpetrators of such abuses."[34]

Just as a quick reference, data from the fact sheet of 'Violence Towards Religious Communities in Pakistan' by the United States Commission on International Religious Freedom for the year 2013-14 is shared below.[35]

Table 2: Statistics on Targeted Violence against Religious Communities in Pakistan

July 2013 – June 2014

OVERALL ATTACKS		**CASUALITIES**			
Number of Attacks		**Numbers Killed**		**Numbers Injured**	
Shi'a	54	Shi'a	222	Shi'a	289
Christians	22	Christians	128	Christians	185
Ahmadis	10	Ahmadis	10	Ahmadis	1
Sufis	7	Sufis	22	Sufis	59
Hindus	4	Hindus	0	Hindus	1
Sikhs	3	Sikhs	2	Sikhs	0
Other Groups	20	Other Groups	46	Other Groups	238
Total	**122**	**Total**	**430**	**Total**	**773**

[31] Data collected from Statistical Officer, Central Police Officer, Lahore.
[32] Daniel Mark, "A Report on Persecution of Ahmadis in Pakistan; During the Year 2017" (Washington, D.C: USCIRF, 2018).
[33] Ibid.
[34] Bureau of Democracy, Human Rights, and Labor, United States Department of State, "Pakistan: International Religious Freedom Report," (Washington, 2017), Available at:
<https://www.state.gov/documents/organization/281276.pdf>.
[35] UNSIRF, "Fact Sheet Pakistan: Violence Towards Religious Communities in Pakistan", August 2014, <https://www.uscirf.gov/sites/default/files/Pakistan%20Factsheet.pdf>.

Table 3: Examples of Types/Methods of Attacks

Targeted bombings		**Targeted Shootings**		**Rapes**	
Shi'a	11	Shi'a	29	Shi'a	0
Christians	1	Christians	5	Christians	3
Ahmadis	0	Ahmadis	4	Ahmadis	0
Sufis	3	Sufis	3	Sufis	0
Hindus	0	Hindus	0	Hindus	0
Sikhs	0	Sikhs	1	Sikhs	0
Other Groups	4	Other Groups	6	Other Groups	0
Total	**19**	**Total**	**48**	**Total**	**3**

It is evident that the number of incidents reported by any independent private agency is far more than those compiled and updated by official police records in Punjab.

B. Ineffectiveness of the Criminal Justice System of Pakistan

The ineffectiveness of the criminal justice system of Pakistan is not limited to crimes motivated by religious intolerance but transcends across all crimes. However, in the case of crimes motivated by religious intolerance, the situation becomes even more glaring. Factors such as a weak judicial system, lack of effective prosecution services, lack of capacity of law enforcement agencies, such as the police force, and the lack of an effective witness protection programme, all contribute towards this ineffectiveness.

C. Weak Judicial System

In addition to a weak legal framework discussed in section II of this essay, Pakistan also suffers from a weak judicial system. The country's judicial system has been for several years marred by excessive delays. The judiciary in Pakistan is severely overworked as the number of judges has not increased with the increasing population. Various Law Commissions established from time to time for reforming criminal justice system have unanimously pointed towards this issue. According to a Supreme Court report, there is one judge for every 42,857 persons which does not match international standards by any means.[36] With 90% of the total litigation in subordinate courts, these courts are confronted with problems of insufficient courtrooms and office equipment and shortages of judicial officers and support staff.[37] According to civil-society organizations, "lower courts often failed to adhere to basic evidentiary standards in blasphemy cases."[38] The official crime statistics reflect that all nine cases registered for attack on religious minorities or their places of worship are under-trial to-date. Not a single case has been decided in the court of law. Similarly, out of three cases of blasphemy two are still being tried while one has been declared 'untraced'. The recent blasphemy case that got worldwide publicity (Asia Bibi) was decided after nine years and the accused was declared not guilty. The accused remained in prison for 9 years despite being innocent.

D. Lack of Effective Prosecution Services

The District Public Prosecutor is the head of district prosecution and all work related to different courts is distributed by him/her among prosecutors in a district.[39] A public prosecutor has to guide the police in investigations, collection of evidence and prosecute offenders in courts of law. However, the country also suffers from an ineffective prosecution services system and there is a significant gap of collaboration between the prosecutor and the police. According to the Supreme Court of Pakistan, more than 65% criminal cases do not end up in conviction in the province of Punjab alone.[40] This is the result of weak and defective investigation and deficient prosecution. It was further observed that no consistent Standard Operating Procedures (SOPs) exist for cooperation between the police and prosecution during the investigation stage.

[36] Dr Faqir Hussain, "Judicial System of Pakistan" (Islamabad: Federal Judicial Academy, May 2015). Available at <http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf>.
[37] Ibid.
[38] Ibid.
[39] Punjab Laws, "Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006", Available at: <http://punjablaws.gov.pk/laws/483.html>.
[40] Supreme Court of Pakistan, "Civil Petition No. 1282 of 2014", Available at: <http://www.supremecourt.gov.pk/web/page.asp?id=2022>.

E. Lack of Capacity of Law Enforcement Agencies

The lack of capacity issues of the law enforcement agencies such as the police force is also a major impediment for an effective response toward the crimes committed. According to the US Department of State (USDoS), there is a 'weak criminal justice system' in Pakistan, but the effectiveness of the police varies by district, ranging from 'good to ineffective'.[41] The Pakistan Institute of Legislative Development And Transparency (PILDAT) observes that Pakistani police lack operational capacity and professionalism.[42] Most of the officers conducting investigations are not abreast with modern techniques of evidence collection and preservation. Low conviction rates reflect poor investigation of cases by police and highlight their capacity and training issues. Additionally, SOPs and even rules are not followed during investigation, thus leaving legal lacunas in cases. For instance, according to the Criminal Procedure Code, the blasphemy complaints under section 295-C of the PPC should not be investigated by an officer below the rank of Superintendent of Police. However, in practice this provision was rarely implemented.[43]

F. Lack of Adequate Witness Protection

The Pakistan criminal justice system also lacks an adequate witness protection programme, which is a serious concern for the effective implementation of the rule of law. Witnesses who withdraw their statements or fail to appear before courts are very common in the criminal justice system of Pakistan. While a number of factors can account for this, the absence of protection available to witnesses greatly exacerbates the issue. In absence of an effective witness protection programme, people fear to testify against hardened criminals.

V. RECOMMENDATIONS

A. Response to Crimes Motivated by Intolerance

Considering that religious intolerance is so deep rooted in the country, it is safe to conclude that there is no quick and easy fix to the problem. However, several steps can and should be taken to improve the situation. First, the government needs to align its national laws with international conventions which promote tolerance and religious freedom. The existing laws are clearly discriminatory in nature and do not offer an effective framework for the protection of religious minorities. Pakistan as a signatory to the Universal Declaration of Human Rights should ensure that its domestic laws uphold the spirit of the declaration and all citizens of the country receive equal protection and right under the law.

The government should take steps to minimize the societal pressures. This would require collaboration among various departments of the government. For instance, the Ministry of Education should ensure that religious hate is not being taught at the education centres in the country and instead religious tolerance is promoted through various academic curriculums. The law-enforcement agencies need to play a pro-active role against mobs and protesters (such as those who took to the street in the aftermath of the Asia Bibi acquittal), as they pose a major threat to peace and security of not only religious minorities but to the entire Pakistani society.

The Pakistani government should ensure that there is a reliable database for crimes motivated by intolerance and discrimination. As the aforementioned discussion has shown, the numbers reported by the official authorities are misleading due to a number of factors. Therefore, effective steps need to be taken to ensure that there is a reliable database starting from providing an environment in which the victims feel safe to report their crimes to the law enforcement agencies. According to the European Union Agency for Fundamental Rights, "Victims of crimes motivated by bias and prejudice are often unable or unwilling to seek redress against perpetrators. As a result, many of these crimes remain unreported, unprosecuted and, therefore, invisible."[44] Pakistan should combat hate crimes and address the fundamental rights violations by

[41] Bureau of Democracy, Human Rights, and Labor, United States Department of State, "Pakistan: International Religious Freedom Report," (Washington, 2016), Available at:
<https://www.state.gov/documents/organization/281276.pdf>. p. 11.
[42] Muhammad Ali Nekokara, "Policy Brief: Policy Recommendations for Reforms in Police," (Islamabad: PILDAT, January 2016), p. 7.
[43] Prof. Sir Nigel Rodley, (President), Prof. Robert Goldma, (Vice President), et. al., "On Trial: The Implementation of Pakistan's Blasphemy Laws," (Geneva, Switzerland: International Commission of Jurists, November 2015). Available at: <http://www.refworld.org/pdfid/565da4824.pdf>.
[44] Michael O'Flaherty, "Ensuring justice for hate crime victims: professional perspectives," (Luxembourg: European Union Agency for Fundamental Rights, 2016) Available at <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-

making the crime more visible and holding perpetrators accountable.

As discussed in the previous section, a weak judicial system, lack of effective prosecution services, lack of capacity of law enforcement agencies and the lack of an effective witness protection programme stand in the way of victims achieving justice. These weaknesses in the criminal justice system need to be immediately addressed. The current Law Minister has recently announced amendments in civil law to speed the pace of pending cases to improve the efficiency of judicial system.[45] Such amendments should be welcomed and in addition, effective case-management system should also be implemented.

The government should dedicate resources for the capacity-building of prosecution services and the law enforcement agencies. Both the prosecutors and the police force should be extensively trained in their relevant fields. Moreover, better and modern techniques of evidence collection and preservation should be introduced to ensure that more reliable investigative material is collected. Greater collaboration between the prosecution services and the police should also be fostered to ensure that the victims are able to pursue their cases.

Measures need to be introduced for the Witness Protection Programme. The first legislation of its kind in Pakistan was the *Sindh Witness Protection Act* 2013. This law allows witnesses to establish new identities, record witnesses testimony through video-link facilities without attending court in person, concealing their identities and provision of financial assistance to legal heirs in case a witness gets killed during the process.[46] Such legislation should be enacted in other provinces as well. The government should ensure that such programmes are properly implemented at the ground level with proper budget allocations and support staff.

VI. CONCLUSION

Violent crimes resulting from religious intolerance and discrimination are a common occurrence in Pakistan. The ineffectiveness of Pakistan's criminal justice system has serious repercussions for religious minorities. A weak legal framework coupled with societal pressures and lack of adequate law enforcement measures have all contributed towards such crimes. While religious persecution is severely deep rooted in the social fabric of the country, the situation can be improved by introducing special measures dedicated to target each of the aforementioned factors. The country's laws must be brought in compliance with Pakistan's obligations under the signed and ratified international instruments on human rights. Focus should be laid on capacity-building of law enforcement agencies and prosecution services. Police training facilities should be immediately tasked to revise investigation modules to bring those in conformity with modern techniques of data analysis, collection of forensic evidence from crime scenes and preservation of evidence. These steps are imperative to build the confidence of the public, especially minorities, in the CJS so that they report their complaints in case of any transgression against them.

victims-professional-perspectives>.

[45] The News, "Judicial Reforms to be introduced," September 14, 2018, Available at: <https://www.thenews.com.pk/latest/368551-judicial-reforms-to-be-introduced-for-speedy-justice-law-minister>.

[46] Provincial Assemble of Sindh, "Witness Protection Act 2013." Available at: <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.LI%20of%202013.pdf>.

Bibliography

Agerholdm, Harriet. "Asia Bibi: Husband pleads for family asylum in UK after blasphemy conviction overturned," *The Independent*, November 4, 2018. Available at: <https://www.independent.co.uk/news/world/asia/asia-bibi-pakistan-asylum-theresa-may-uk-protests-blasphemy-supreme-court-a8616556.html>.

Ahmed, Akbar. *Jinnah Pakistan and Islamic Identity*. London: Rutledge, 1997.

All Party Parliamentary Group for International Freedom of Religion or Belief. "Discrimination against Religious Minorities in Pakistan: An Analysis of Federal and Provincial Laws". Available at: <https://appgfreedomofreligionorbelief.org/media/RESEARCH-DOCUMENT-1-discrimination-against-religious-minorities.-Analysis.pdf >.

Amnesty International. "Amnesty International Annual Report 2016/17: Pakistan". February 23, 2017. Available at: <https://amnesty.org.in/amnesty-international-annual-report-201617-pakistan/>.

Barker, Memphis. "Asia Bibi: Pakistan court overturns blasphemy death sentence," *The Guardian*, October 31, 2018. Available at: < https://www.theguardian.com/world/2018/oct/31/asia-bibi-verdict-pakistan-court-overturns-blasphemy-death-sentence>.

BBC. "Asia Bibi Blasphemy Case: Husband pleads for asylum", November 3, 2018. Available at: <https://www.bbc.com/news/world-asia-46085577>.

BBC. "Asia Bibi: Lawyer flees Pakistan in fear of his life," November 3, 2018. Available at: <https://www.bbc.com/news/world-asia-46082324>.

Bureau of Democracy, Human Rights, and Labor, United States Department of State. "Pakistan: International Religious Freedom Report." Washington, 2017, Available at: <https://www.state.gov/documents/organization/281276.pdf>.

Columbia.edu. "Muhammad Ali Jinnah's first Presidential Address to the Constituent Assembly of Pakistan." August 11, 1947, Available at <http://www.columbia.edu/itc/mealac/pritchett/00islamlinks/txt_jinnah_assembly_1947.html>

Committee on the Elimination of Racial Discrimination, United Nations. "International Convention on the Elimination of all Forms of Racial Discrimination." 16 March 2009, Available at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fPAK%2fCO%2f20&Lang=en>

Federal Shariat Court. "PLD 1991 FSC 10 (Ismail Qureshi vs the Government of Pakistan)", <http://federalshariatcourt.gov.pk/5.html>

Flaherty, Michael O. "Ensuring justice for hate crime victims: professional perspectives." Luxembourg: European Union Agency for Fundamental Rights, 2016, Available at <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>

Hussain, Dr Faqir. "Judicial System of Pakistan". Islamabad: Federal Judicial Academy, May 2015. Available at <http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf>.

Ispahani, Farahnaz. "Pakistan's Descent into Religious Intolerance." *Hudson Institute*, March 1, 2017. Available at: < https://www.hudson.org/research/13492-pakistan-s-descent-into-religious-intolerance>.

Ispahani, Farahnaz. "Pakistan's Descent into Religious Intolerance". *Hudson Institute*, Mach 1st, 2017, <https://www.hudson.org/research/13492-pakistan-s-descent-into-religious-intolerance>

Knaul, Gabriela. "Report of the Special Rapporteur on the independence of judges and lawyers, Addendum: Mission to Pakistan". UN Human Rights Council, 4 April 2013, Available at: <http://www.refworld.org/

docid/51b9a0794.html>

Mark, Daniel. "A Report on Persecution of Ahmadis in Pakistan; During the Year 2017". Washington, D.C: USCIRF, 2018.

National Assembly of Pakistan, Government of Pakistan. *The Constitution of Islamic Republic of Pakistan*, 1973.

Nekokara, Muhammad Ali. "Policy Brief: Policy Recommendations for Reforms in Police." Islamabad: PILDAT, January 2016.

Pakistani.org. "Pakistan Penal Code: Act XLV of 1860". Available at: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

Provincial Assemble of Sindh. "Witness Protection Act 2013." Available at: <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.LI%20of%202013.pdf>.

Punjab Laws. "Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006", Available at: <http://punjablaws.gov.pk/laws/483.html>.

Rahman, Fatima Zainab. "State restrictions on the Ahmadiyya sect in Indonesia and Pakistan: Islam or political survival?", *Australian Journal of Political Science* vol. 49, no. 3 (2014).

Research Directorate, Immigration and Refugee Board. "Immigration and Refugee Board of Canada, Pakistan," January 30, 2002, Available at: <http://www.refworld.org/docid/3df4be8e8.html>.

Rodley, Prof. Sir Nigel., and (President), Prof. Robert Goldma, (Vice President), et. al., "On Trial: The Implementation of Pakistan's Blasphemy Laws." Geneva, Switzerland: International Commission of Jurists, November 2015. Available at: <http://www.refworld.org/pdfid/565da4824.pdf>.

Supreme Court of Pakistan. "Civil Petition No. 1282 of 2014". Available at: <http://www.supremecourt.gov.pk/web/page.asp?id=2022>.

The News. "Judicial Reforms to be introduced," September 14, 2018. Available at: <https://www.thenews.com.pk/latest/368551-judicial-reforms-to-be-introduced-for-speedy-justice-law-minister>

UN General Assembly. "Universal declaration of human rights", 1948. <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)>

United States Commission on International Religious Freedom. "Pakistan's Educational System Fuels Religious Discrimination." November 11, 2011, Available at: <https://www.uscirf.gov/news-room/press-releases/pakistans-educational-system-fuels-religious-discrimination>.

UNSIRF. "Fact Sheet Pakistan: Violence towards Religious Communities in Pakistan", August 2014,<https://www.uscirf.gov/sites/default/files/Pakistan%20Factsheet.pdf>.

SRI LANKAN RESPONSE TO COMBATING CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

*Ranga Srinath Abeywickrema Dissanayake**

I. INTRODUCTION

According to the main theme of the programme, which is the "Criminal Justice Response to crime Motivated by Intolerance and Discrimination," I would like to share my experience and knowledge as a judicial officer who served in the Sri Lankan Judiciary for the last 15 years. Experience gained, especially as a Magistrate performing in various parts of the country, and knowledge enhanced by studying for the LLM Degree at the University of Colombo on criminal Justice, has paved the path for addressing the main theme of the programme successfully. Therefore, I intend to present my presentation having studied concepts of intolerance and discrimination, crime causation, various offences motivated by intolerance and discrimination in Sri Lanka and initiatives taken by Sri Lanka as a country to combat these offences.

II. INTOLERENCE AND DISCRIMINATION

A. Intolerance

The meaning of tolerance is defined in Article 1 of the UNESCO Declaration of Principles on Tolerance. Thus, tolerance consists of respect, acceptance and appreciation of the rich diversity of the cultures of our world, our forms of expression and the ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and religion. Tolerance consists of harmony in difference. It is not only a moral duty, but also a political and legal requirement. Therefore, intolerance can be interpreted as "conduct that adversely and unfairly targets an individual or group on the basis of one or more of the following actual or perceived characteristics: gender or gender identity, race or ethnicity, disability, religion, sexual orientation, nationality or age[1]. I would like to add another characteristic to the above interpretation; that is the economic status of the people.

B. Discrimination

Discrimination is the opposite of the equal treatment principle. The principle of equal treatment shall mean that there shall be no direct or indirect discrimination, specifying thereafter that:

- Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation

- Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless:

  i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary; or

  ii) with regards to persons with a particular disability, the employer or any person or organization, is obliged, under national legislation, to take appropriate measures in line with the principles in order to eliminate disadvantages entailed by such provision, criterion or practice[2].

People may be discriminated against because of their age, disability, ethnicity, origin, political belief, race, religion, sex or gender, sexual orientation, language, culture and on many other grounds. Discrimination,

* Judicial Officer, Magistrate Court-Fort, Judicial Service Commission, Sri Lanka.

[1] https://www.sandiego.edu/safety/reporting/hate-crimes/response.php

[2] HOW TO DEAL WITH CASES OF DISCRIMINATION AND HATE AND INTOLERANCE CRIMES: PRACTICAL GUIDE: EDITED BY: Instituto de la Mujer y para la Igualdad de Oportunidades Condesa de Venadito.

which is often the result of prejudices people hold, makes people powerless, impedes them from becoming active citizens, restricts them from developing their skills and, in many situations, from accessing work, health services, education or accommodation.

The principles of equality and non-discrimination are laid down in the Universal Declaration of Human Rights (UDHR), "All human beings are born free and equal in dignity and rights"[3]. This concept of equality in dignity and rights is embedded in contemporary democracy, so states are obliged to protect various minorities and vulnerable groups from unequal treatment. Article 2 of UDHR enshrines freedom from discrimination: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind".

III. CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

When studying crimes motivated by intolerance and discrimination, we can see those crimes can be interpreted as hate crimes in general, which are criminal acts motivated by bias or prejudice towards particular groups of people. Hate crimes therefore comprises two distinct elements:

- It is an act that constitutes an offence under criminal law; and
- In committing the crime, the perpetrator acts on the basis of prejudice or bias.

Thus, the perpetrator of an intolerant or discriminatory crime selects the victim based on the victim's membership or perceived membership of a particular group. The group must share a common characteristic that is immutable or fundamental, such as race, ethnicity, language religion, nationality, sexual orientation, or other characteristic.

A. Forms of Intolerance and Discrimination Crimes

1. Racism

Any incident or crime which is perceived to be motivated because of a person's race, or due to xenophobia, can be identified as a closely related cause for racism. The Oxford English Dictionary defines xenophobia as "a morbid fear of foreigners or foreign countries". Racism involves discriminatory or abusive behaviour towards people because of their imagination of inferiority.

2. Religion and Faith

This encompasses any incident or crime which is perceived to be motivated by a person's faith or religion. Freedom of religion and religious tolerance are basic values present in every country, acts of discrimination based on religion have not yet disappeared. Religious intolerance is often linked with racism and xenophobia particularly with Antisemitism and Islamophobia.

3. Sexual Orientation or Gender-Based Hostility

Gender-related discrimination includes the discrimination of women. Domestic violence is a form of crime that may be carried out by partners, relatives, careers or friends. A homophobic hate crime is any incident or crime that is perceived by the victim, or any other person, to be motivated by a prejudice based on another person's sexuality, or perceived sexuality. Another targeted group is transgender or transsexual people, whose gender identity is inconsistent or not culturally associated with their assigned sex. Discrimination based on sexual orientation affects homosexual and bisexual people.

4. Disability and Difficulty

Any incident or crime, which is perceived by the victim or any other person to be motivated because of a person's disability can be interpreted as a hate crime. Poverty can also be considered as a disability in this context. The definition of a disability hate crime would include anyone who was targeted as a result of his or her disability or impairment, including those diagnosed with HIV.

B. Theory of Crime Causation behind Hate Crimes

According to the article submitted by Daniel Burke, CNN Religion Editor, on June 12, 2017 recognized

[3] Article I, Universal Declaration of Human Rights.

four reasons that people commit hate crimes. Those are:

- Thrill-seeking
- Defensive
- Retaliatory
- Mission offenders

When considering the above reasons, we can identify the rationale behind offenders who are committing hate crimes. When studying the theories of crime causation, this type of criminal behaviour comes under the Psychological Theories of Crime Causation. This theory can be used to illustrate criminal behaviour of this kind of perpetrators. They are failures in psychological development, have an overbearing or weak conscience, inner conflict, insufficient moral development, and maternal deprivation with its concomitant failure of attachment. Aggression and violence are learned through modelling and direct experience. Personality characteristics of these criminals found that criminals do tend to be more impulsive, intolerant, and irresponsible than non-criminals. Such mental states relate to disorders as psychosis and psychopathy.

IV. BASIC LEGAL FRAMEWORK RELEVANT TO CRIMES MOTIVATED BY INTOLERENCE AND DISCRIMINATION

By passing several conventions and resolutions, the United Nations has taken several measures to combat crimes motivated by intolerance and discrimination. Most member countries ratified those conventions and are taking necessary measures to comply with those conventions by taking action through local legislation.

A. Conventions and Resolutions Adopted by United Nations (UN)

- International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965.
- International Covenant on Civil and Political Rights, 19 December 1966.
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966.
- Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1978.
- Convention on the Rights of Persons with Disabilities and its Voluntary Protocol, 13 December 2006.
- Convention on the Rights of the Child, 20 November 1989.
- Declaration of Principles on Tolerance, 16 November 1995.
- Resolution adopted by the UN General Assembly on Measures to Combat Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, 25 February 1997.

V. SRI LANKAN SITUATION OF CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Frankly, I am obliged to say that as a country we cannot be satisfied with the situation in Sri Lanka in this regard. For the last three to four decades, we have experienced all forms of crimes motivated by intolerance and discrimination.

A. Crimes Relating to Racism

For almost three decades, the country was embroiled in an ethnic civil war. The Sri Lankan Civil War was an armed conflict fought on the island of Sri Lanka. The conflict officially began on 23 July 1983, by a minority Tamil militant organization called the Liberation Tigers of Tamil Eelam (LTTE) which fought to create an independent Tamil state called Tamil Eelam on the north and the east sides of the island. After a

26 year military campaign, the Sri Lankan military defeated the LTTE in May 2009, bringing the civil war to an end.

Though the war ended, the larger questions which led to the ethnic conflicts still remain unanswered. After the war ended, the Sri Lankan government took some measures for finding solutions. In 2010, the Lessons Learnt and Reconciliation Commission (LLRC) was appointed by His Excellency President Mahinda Rajapaksa to look back at the conflict Sri Lanka suffered, as well as to look ahead towards an era of healing and peace to build the country. The Report and recommendations of the above Commission were handed over to the President Mahinda Rajapaksa in November 2011. But those recommendations have not been implemented. Therefore, my personal view is that we were not able to find concrete solutions to the country's ethnic conflict that would satisfy all parties.

The World Bank's study paper on "The Root Causes of the Ethnic Conflict in Sri Lanka" explained the root causes for the ethnic conflict as follows:

The ethnic conflict in Sri Lanka has many root causes and consequences that are closely inter-linked. However, given its complexities, it should not be assumed that these causes are part of linear historical processes where one event led to another. Often many of the issues that may be regarded as root causes arose within a single but extended context and equally as often, simultaneously. It is primarily within the context of ethnic politics that language and education policy can be located. However, for discussion purposes it is necessary to separate these issues as clearly identifiable themes that would emerge in any analysis of the Sri Lankan conflict. In general, these themes can be broadly identified as:

- Ethnic politics and the interpretation of the past;
- Politics of language;
- Politics of education; and
- Other factors, including employment and land.[4]

It shows the aforementioned causes having close relationships with intolerance and discrimination.

B. Crimes Relating to Religion and Faith

In the past six years, over 300 religion-related incidents of violence have taken place in the country. Communal violence is not a new phenomenon in the country. Throughout history there have been many incidents of communal violence among the Sinhala, Tamil and Muslim ethnic groups. However, in the post-conflict era, religious violence has become very common between the Sinhala and Muslim ethnic groups.

Sri Lanka is a multi-religious country where Buddhists (71%), Hindus (13%), Muslims (9%) and Christians (7%) have lived in peace and harmony for over 1,000 years. However, in the post-conflict era (after 2009) religion-related violence between Sinhalese and Muslims has become very common. There have been a number of incidents reported in the past. In March 2018, the violence that took place in Kandy (Digana) is one of the recent communal clashes between the Sinhala and Muslim ethnic groups. Rioting in Kandy began in Udispattuwa and Teldeniya, later spreading to Digana, Tennekumbura and other areas.

At least two people have been killed and eight others injured in these anti-Muslim riots and a lot of properties were destroyed. The government blocked Facebook and other social media services in an effort to quell the violence.

1. Sri Lankan Legal Framework against Crimes Related to Religion and Faith

(a) Constitution

The following Articles in the Sri Lankan Constitution are relevant to religious freedom:

- Article 9
  The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana (the teaching of the Buddha), while assuring to all religions the rights granted by Articles 10 and 14(1)(e).

[4] https://siteresources.worldbank.org/INTSRILANKA/Resources/App1.pdf

- Article 10
  Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.

- Article 12(2)
  No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.

- Article 12(3)
  No person shall, on the grounds of race, religion, language, caste, sex or any one such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.

- Article 14(1)(e)
  Every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice or teaching.

- Article 27(6)
  The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation.

(b) Penal Code
The Penal Code of Sri Lanka in 1885 (updated several times since then) 'Offences Relating to Religion':

- Section 290
  Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class persons, with the intention of thereby insulting the religion or insult the any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- Section 290A
  Whoever does any act, in or upon, or in the vicinity of, any place of worship or any object which is held sacred with intent to or in veneration by any class of persons, with the intention wounding the religious feelings of any class of persons or with the knowledge that any class of persons is likely to consider such act as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

- Section 291
  Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

- Section 291A
  Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

- Section 291B
  Whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of persons, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- Section 292
  Whoever with the intention of wounding the feelings of any person, or of insulting the religion of any

person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulchre or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

(c) International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 0F 2007

Sri Lanka is a Party to the International Covenant on Civil and Political Rights which was adopted by the General Assembly of the United Nations on 16 December 1966 and entered into force on 23 March 1976: and whereas Sri Lanka has acceded to the aforesaid Covenant on 11 June 1980 and subsequently enacted the act No 56 of 2007 to give effect to those civil and political rights referred to in the aforesaid Covenant.

Sections 2 and 3 of the Act state follows:

- Section 2
  Every person shall have the right to recognition as a person before the law.

- Section 3
  (1) No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
  (2) Every person who—
  (a) attempts to commit;
  (b) aids or abets in the commission of; or
  (c) threatens to commit,
  an offence referred to in subsection (1), shall be guilty of an offence under this Act.
  (3) A person found guilty of committing an offence under subsection (1) or subsection (2) of this section shall on conviction by the High Court, be punished with rigorous imprisonment for a term not exceeding ten years.
  (4) An offence under this section shall be cognizable and non-bailable, and no person suspected or accused of such an offence shall be enlarged on bail, except by the High Court in exceptional circumstances.

According to the above legal provisions in Sri Lankan law, the country is fully equipped to combat crimes motivated by intolerance and discrimination. Sufficient laws are available for giving maximum sentences to offenders who commit the above crimes. We can satisfy the Sri Lankan legislative response in combating the above crimes but there are many problems with the implementation process. For instance, recently, some newspaper articles revealed that most of the communal violence took place in the presence of Sri Lankan police and forces.

C. Gender-Based Crimes

1. Key Findings of a Survey Done by the Statistics Department of Sri Lanka in 2016 Regarding Domestic Violence of Sri Lanka

- Prevalence of domestic violence: In Sri Lanka, 17 percent of ever-married women age 15-49 have suffered from domestic violence from their intimate partner.

- Forms of domestic violence: Two percent of ever-married women who suffered from domestic violence, experience domestic violence daily.

- Differentials of domestic violence: Prevalence of domestic violence by an intimate partner increases with the age of the women. Urban residents also reported the highest percentage of domestic violence (20 percent). Kilinochchi and Batticaloa districts have the highest level of domestic violence (50 percent). Ever married women who belong to the lowest wealth quintile and those with primary education reported the highest percentages in domestic violence (28 and, 30 percent respectively).

- Support for domestic violence: Among women who suffered from domestic violence, only just over one fourth of women (28 percent) have sought help, with three fourth of them (75 percent) seeking help from their family members, 27 percent from friends or neighbours and only 18 percent seeking help from the police. Half of the ever-married women age 15-49 (50 percent) indicated knowledge about the Sri Lanka Women Bureau to combat violence, while 26 percent mentioned mid-wives and Women Help Line[5].

Prevention of Domestic violence Act No 34 of 2005 (PDVA) was unanimously passed by the Sri Lankan parliament on 9 August 2005. At the time this Act was introduced, Sri Lanka made a commitment to deal with gender violence and thereby honour its obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, it has been observed that, initially, PDVA has been enacted as gender-neutral legislation. Though PDVA can be considered as gender-neutral legislation, it is important to identify why the Sri Lankan government intended to enact this type of legislation and application of act in the present situation. According to available resources, the following facts have been taken into account by the government when introducing the PDVA;

- Insufficiency of existing criminal and civil laws for the protection of women from various kinds of domestic violence

- Reported numbers of domestic violence have been increasing, and specific legislation to address this issue was required.

- Protection of women from domestic violence came into focus as an internationally recognized issue as a result of the demands made by international organizations pressuring states to address this issue.

Considering all these facts, the parliament of Sri Lanka enacted the PDVA.

VI. CONCLUSION

Sri Lanka has ratified international conventions and enacted local legislation in line with the international conventions and treaties. It has taken steps to protect the victims from crimes motivated by intolerance and discrimination. That response towards combating the above crimes is much appreciated, but drawbacks of implementing procedures should be reduced and worked out to accommodate more practical approaches for fulfilling the objectives of the enacted laws.

5 http://www.statistics.gov.lk/social/DHS_2016a/Chapter13.pdf

CRIMINAL JUSTICE RESPONSE TO CRIME MOTIVATED BY INTOLERANCE AND DISCRIMINATION

*Waruna Jayasundara**

I. INTRODUCTION TO INTOLERANCE CRIMES IN SRI LANKA

Sri Lanka is an island situated in the Indian Ocean with a population of nearly 21.44 million which comprises three main ethnic groups, namely Sinhala, Muslims and Tamils. The ethnic distribution of the country is 74.9 % Sinhalese, 15.7 % Tamils and 9.2 % Muslims. The Sinhalese history draws back more than 2500 years, and later the Tamils migrated from the Southern parts of India. It is presumed that the Muslims arrived during the last few centuries from the Arabian Gulf region as traders. At present there are no intolerance crimes prevailing in Sri Lanka except for few incidences that occurred during the last few years. In June 2014, a tense situation developed between the Sinhalese and Muslims in the Aluthgama area in the South Western part of Sri Lanka due to an issue involving a Muslim shopkeeper abusing a male Sinhalese minor and, later, the assault of a Buddhist monk by three Muslim youths. As a result of the clashes between the Sinhalese and Muslims, four were killed and many were wounded. It was reported that 8000 Muslims and 2000 Sinhalese were displaced, and many shops, houses, mosques and factories were destroyed.

The most recent intolerance crime which was reported was from the Digana area which is situated in the Central Province of Sri Lanka. In March 2018, a Sinhalese lorry driver was brutally assaulted and killed by drunken Muslim youths. It left many shops in the area damaged and burnt down by angry Sinhalese from surrounding villages. Other than the violence between Sinhalese and Muslims, there were isolated incidents where Christian religious places were attacked. As per the National Christian Evangelical Association of Sri Lanka (NCEASL), there were 52 incidents of religious violence against Christians or Christian places of worship since January 2015[1].

A. History, Root Causes and Trends of Intolerance Crimes in Sri Lanka

A deep analysis into the reported intolerance crimes in Sri Lanka reflects that all incidences are connected with the Sri Lankan history starting with colonization, introduction of new religions and expansion of minority settlements on the Island. In general, the majority Sinhalese are a peace-loving community deeply influenced by the philosophy of Buddhism and guided by four sublime states of mind which are Love or Loving-kindness (*metta*), Compassion (*karuna*), Sympathetic Joy (*mudita*) and Equanimity (*upekkha*). Prior to colonization by the Portuguese, Dutch and British, Sri Lanka was an agriculturally rich self-sustained Buddhist country. The colonial masters destroyed the agricultural-based economy of Sri Lanka and adopted their policy of "Divide and Rule". This targeted policy side-lined the majority Buddhist Sinhalese and all comforts were rendered to minority Tamils and Muslims. The Buddhist religion and its religious places were systematically eliminated, and Christianity was introduced by the Colonial masters. This intimidated the majority Buddhist Sinhalese community which is all well connected to the present religious sentiments in Sri Lanka. Then the Arabic Muslim traders who arrived in Sri Lanka expanded their settlements along the Southern and South Western Coastal belt threatening the land ownership of majority Buddhist Sinhalese.

The present global trends such as the Islamic State (IS) and the "War on Terror" have aligned Sri Lanka with the international community to fight against Islamic terrorist sentiments. This has also made an indirect impact on the intolerance crimes committed against the minority Muslims in the country. As reported, the Christian pastors on the other hand keep spreading Christianity among the poorest in rural parts of Sri Lanka, agitating the majority Buddhist Sinhalese. Therefore, an analysis of the above-noted historical factors, root causes and current trends reveals that all are well connected with the isolated crimes motivated against the minority religions due to intolerance and discrimination.

* Director in Charge, Counter Terrorism and Investigation Division, Sri Lanka Police, Sri Lanka.

[1] Shamara Wettimuny, Religious violence in Sri Lanka: A new perspective on an old problem, http://www.ft.lk/article/617872/Religious-violence-in-Sri-Lanka:-A-new-perspective-on-an-old-problem accessed on 20 October 2018.

B. Nature and Types Intolerance Crimes in Sri Lanka

An analysis into the reported intolerance crimes in the country depicts that the majority are in the form of vandalism, theft, intimidation and do not constitute serious crimes such as murder, gang rape, robbery etc. During the Aluthgama area incident in June 2014, which mainly targeted Muslims, 153 businesses and 23 houses were damaged. As further revealed, 207 houses were partially damaged, and 73 vehicles were attacked. According to the police, some minor damages and thefts were also reported[2]. At the recently reported Digana area incident in March 2018, 27 Muslim owned shops, businesses and several houses were set on fire[3]. In cases involving attacks on Christian installations, threats, intimidation and 'administrative restrictions' have been used against them. There was no serious physical harm committed against the Christian pastors and followers in recent times. An analysis reveals that the hidden motives behind most of the violent acts against Christian movements were mainly due to the opposition against their religious conversions.

II. LEGISLATIVE APPROACHES AGAINST INTOLERANCE CRIMES

The earlier legislative approach against the intolerance crimes in Sri Lanka was to exhaust the legal provisions contained in the Penal Code of Sri Lanka, which was enacted in 1883. The offences relating to religion are stated from section 290 to 292 of the Penal Code, and in cases of more serious intolerance crimes, such as murder, rape and robbery, are also covered under the same code. Section 290 is relevant to "injuring or defiling a place of worship with intent to insult the religion of any class", which carries a punishment of imprisonment of either description for a period up to two years with fine or with both. Section 291 describes "disturbing a religious assembly", which carries a prison term up to one year. Section 291 A deals with "uttering words with deliberate intent to wound religious feelings", which consists of a prison term extended up to one year. Section 79(2) of the Police Ordinance of Sri Lanka also provides space for thwarting hate speech indirectly when it says that "Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour which is intended to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence under this section." The legal structure which deals with these offences commences with police investigations and reporting facts to the courts followed by filling charges through the plaint.

An analysis on the above-noted legislative approaches on intolerance crimes reveals that their scope and punishments are very much limited and does not cover sensitive and well-orchestrated intolerance and discriminatory crimes. Therefore, the enactment of the International Covenant on Civil and Political Rights (ICCPR) Act in 2007 was an effective legal approach compared to earlier initiatives. Section 3 of the International Covenant on Civil and Political Rights (ICCPR) Act of 2007 reproduced Article 20 of the ICCPR and prohibits the advocacy of 'religious hatred that constitutes incitement to discrimination, hostility or violence'. It also gives the High Court jurisdiction to try and punish offenders. This initiative consists of the separate offence approach and the penalty enhancement approach. Earlier the intolerance crimes were also included within the general Penal Code along with all other crimes, and the penalties were not adequate enough to address the gravity of the problem. However, the present ICCPR Act No 56 of 2007 is separate legislation orchestrated specifically to address the intolerance crimes and carries severe punishment. However, human rights defenders criticized its lack of enforcement against hate speech when it is already encrypted within the existing ICCPR Act of 2007[4].

III. EFFECTIVE MEASURES ADOPTED TO INVESTIGATE, PROSECUTE AND ADJUDICATE INTOLERANSE CRIMES

A. Types of Useful Evidence Required to Prove Intolerance Motive

The most important aspect in an investigation involving an intolerance crime is to gather the crucial evidence connected to the intention of committing the intolerance crime and its physical components. The intention of an ordinary crime may be due to personal hatreds, sudden provocation, rivalry etc. However,

[2] Waruni Karunarathne, *Economic Cost Of The Aluthgama Incident, http://www.thesundayleader.lk/2014/06/29/economic-cost-of-the-aluthgama-incident/* accessed on 20 October 2018.

[3] Financial Times, *Digana turns divisive,* <www.ft.lk>, accessed on 20 October 2018.

[4] Gehan Gunatilleke, Hate Speech in Sri Lanka: How a New Ban Could Perpetuate Impunity, < http://ohrh.law.ox.ac.uk/hate-speech-in-sri-lanka-how-a-new-ban-could-perpetuate-impunity/> accessed on 20 October 2018.

the intolerance crimes are intended or motivated mainly by ethnicity, religion, race and tend to be violent in nature such as assault, intimidation, vandalism etc.

In an effective investigation of an intolerance crime, it is important to gather evidence pertaining to telephone interceptions, emails, social media, public speeches and interviews which led to the commission of crimes. It is also ideal to assign a separate group of investigators with specialists such as IT experts, digital forensic experts, and lawyers to investigate intolerance crimes.

B. Measures to Encourage Victims and Witnesses to Report and Cooperate with Criminal Justice Authorities

In Sri Lanka the victims and witnesses are reluctant to report and cooperate with criminal justice authorities due to various reasons. The main reason is the majority of the population has lost their confidence in the criminal justice system. The police have somewhat lost public confidence and have been criticized by the media and general public for their short comings. The judiciary system on the other hand managed to keep its credibility, but the conclusions of its cases are sometimes time consuming. Therefore, it is high time for all concerned parties in Sri Lanka to rebuild the lost confidence on the criminal justice system and to encourage victims and witnesses to corporate with criminal justice authorities, especially in cases involving intolerance crimes. The following are some of the measures that can be taken in this regard:

1. Witness Protection Measures

It is worthwhile to note that Sri Lanka has introduced the Protection of Victims of Crime and Witnesses Act, No. 04 of 2015 which provides for the establishment of the National Authority for the Protection of Victims of Crime and Witnesses. The main objective of this Act is to strengthen the course of administration of justice by identifying a proper legal framework to protect the rights of the victims of crime and witnesses. In cases involving intolerance crimes, it is of paramount importance to protect the victims and witnesses of crimes since the majority of such crimes are committed by the majority of the population or the parties in power. In reality, there are no known cases where the provisions of victim protection act have been adopted to safeguard the victims of intolerance crimes in Sri Lanka.

2. Adequate Assistance for Victims and Their Communities

The cost of litigation in Sri Lanka has significantly increased during recent times, and it has become impossible for an average citizen to retain a highly competent legal representation. Therefore, in cases where the affluent are involved with committing intolerance crimes, the minority victims and witnesses are lack proper legal assistance. Therefore, it is of paramount importance to provide adequate assistance for victims and their communities. It is commendable to note that the Legal Aid Commission of Sri Lanka is playing a vital role in providing legal assistance for victims of crimes.

3. Measures Adopted to Strengthen the Security of the Victims of Crimes

It is worthwhile to note that the Sri Lanka Police established a separate Victims Protection Division in 2017 to address the protection issues of the victims of crimes. Therefore, any victim who has been threatened or intimidated in intolerance cases can make a complaint and seek assistance of the respective Police Division. However, it is recommended to improve and establish a mechanism to protect the victims from identification.

4. Measures to Strengthen the Mutual Trust and Relationship among Opposing Parties

In Sri Lanka a majority of Sinhalese are against the intolerance crimes and are living harmoniously with the two other communities. It is only a selective group of people who are creating tense and uncomfortable situations whenever there is a minor incident involving a minority ethnic group. Therefore, it is important to strengthen the mutual trust and religious harmony among the three ethnic groups in Sri Lanka to prevent the reoccurrence of intolerance crimes which have taken place in Aluthgama (2014) and Digana (2018) areas causing immense property damages.

IV. EFFECTIVE TREATMENT OF OFFENDERS OF INTOLARANCE CRIMES INCLUDING DELIVERING PROPER INTERVENTIONS

There are few offenders who are still in remand custody for causing intolerance crimes in the Kandy area during March 2018. They were charged under the new ICCPR Act of 2007 where bail has to be obtained

from the High Court. The offenders in the Aluthgama incident in June 2014 were released from remand custody, and now some of them are facing trial. It is not clear whether authorities have taken due care for effectively treating the offenders of the above noted two incidents. Further evidence of proper intervention to correct the bias and discriminatory motives of the perpetrators were not documented as required. Therefore, it is high time for all relevant parties to have timely interventions and initiate effective treatment mechanisms for offenders of intolerance crimes.

V. CONCLUSION

As elaborated above, Sri Lankan authorities should overcome shortcomings and have a proper and effective criminal justice response mechanism to address the intolerance crimes in its journey towards making Sri Lanka the "Wonder of Asia".

Group Workshop Sessions

Group 1

THE CHALLENGES AND BEST PRACTICES TO ENCOUNTER CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Chairperson	Mr. Ahmed Shuhad	(Maldives)
Co-Chairperson	Mr. Jimmy Puieki Onopia	(Papua New Guinea)
Rapporteur	Ms. Rana Fujita	(Japan)
Co-Rapporteur	Mr. Win Myint Zaw	(Myanmar)
Members	Mr. Tufail Ahmend	(Pakistan)
	Mr. Teruhide Numamae	(Japan)
Advisers	Prof. Takuya Furuhashi	(UNAFEI)
	Prof. Junichiro Otani	(UNAFEI)
	Prof. Masahiro Yamada	(UNAFEI)

Report Summary

Group 1 explored challenges faced by the participating countries in combating crimes motivated by intolerance and discrimination (hereinafter, "intolerance crimes"), as well as best practices to respond to such crimes. Recognizing that gender-based violence is a common problem in all countries, the group reported that some countries face unique intolerance crimes (such as those related to ethnicity, political ideology, sorcery and tribal conflict). The group offered recommendations to enhance the response to intolerance crimes, stressing the importance of establishing legal frameworks to overcome intolerance crimes.

There are a number of underlying problems which limit the ability of criminal justice authorities to respond to intolerance crimes. These problems include: the lack of specific legal frameworks, making it difficult to prosecute and impose appropriate sentences; lack of recognition by some within criminal justice systems that violence against women (VAW) and domestic violence (DV) are crimes; the prevalence of revictimization; social stigma against victims of abuse; lack of gender sensitivity; and lack of skilled human and financial resources.

To respond to these problems, specific recommendations were offered in reference to the following categories: (1) legal framework and political will; (2) human resources and staff training; (3) monitoring and reporting of intolerance crimes; (4) inclusion of victims' perspectives in policymaking; and (5) public awareness and access to victim support services. Further, it was noted that social barriers—such as socio-cultural beliefs, attitudes toward domestic violence, lack of awareness of legal rights and options, and fear of retaliation—weaken efforts to counter intolerance crimes.

Group 1 stressed the importance of establishing legal frameworks to overcome intolerance crimes. Each of the countries participating in the group relied on international conventions, constitutional provisions, penal codes, and domestic violence legislation. Several countries have established national action plans to respond to intolerance crimes, while others have adopted specific legislation focused on vulnerable groups in need of protection.

Group 2

CRIMES MOTIVATED BY INTOLERANCE AND DISCRIMINATION: PROBLEMS AND THEIR RESOLUTION

Chairperson	Mr. Andre Lopes Lasmar	(Brazil)
Co-Chairperson	Mr. Shahid Javed	(Pakistan)
Rapporteur	Mr. Waruna Sanjeewa Ekanayake Jayasundara	(Sri Lanka)
Co-Rapporteur	Ms. Shizu Ichihara	(Japan)
Members	Mr. Istam Rustamovich Astanov	(Uzbekistan)
	Mr. Takuro Himeda	(Japan)
Adviser	Prof. Ryo Futagoishi	(UNAFEI)

Report Summary

The members of Group 2 conducted a comprehensive review of the victim and witness protection measures and legislative approaches to addressing intolerance crimes in the participating countries. Noting that intolerance crime is a global problem, each country reported challenges, particularly in terms of public awareness of victim and witness protection measures, lack of public confidence in the effectiveness of such measures, and lack of public and professional understanding of laws enacted to counter intolerance crimes.

The group's analysis focuses on intolerance crimes and responses in all five participating countries. While the specific forms of intolerance crime and the target groups of these crimes vary from country to country, the group agreed that intolerance crimes are a global problem. Target groups include religious minorities, immigrants, racial minorities, the LGBT community, indigenous communities, among many others.

The group's review of key measures taken to counter intolerance crimes focused on legislative measures to enhance victim and witness protection and legislative measures to criminalize or enhance punishment of intolerance crimes. Regarding victim and witness protection, the challenges identified include: (1) the lack of victim and witness protection programmes in some countries, (2) lack of public awareness of victim and witness protection measures, (3) lack of faith in the effectiveness of such measures, resulting in less cooperation from the public in law enforcement investigations, and (4) insufficient human and financial resources.

From the perspective of legislative measures to criminalize or punish intolerance crimes, some countries have elected to create new substantive offences to criminalize intolerance crimes, while others have opted for penalty enhancement. Challenges identified include (1) lack of understanding of the new laws and reluctance to prosecute, (2) lack of sentencing parameters for judges, and (3) restrictive definitions of protected groups.

Group 3

BEST PRACTICES FOR SUPPORTING VICTIMS OF CRIME MOTIVATED BY INTOLERANCE AND DISCRIMINATION

Chairperson	Mr. Ranga Srinath Abeywickrema Dissanayake	(Sri Lanka)
Co-Chairperson	Mr. Kotaro Kadowaki	(Japan)
Rapporteur	Mr. Hai Ngoc Nguyen	(Viet Nam)
Co-Rapporteur	Ms. Raufa Haidar	(Maldives)
Members	Mr. Koji Tamada	(Japan)
	Mr. Salvador Mamauag Trono Jr.	(Philippines)
	Mr. Kodir Voithanovich Askarov	(Uzbekistan)
Adviser	Prof. Mika Kitagawa	(UNAFEI)
	Prof. Nozomu Hirano	(UNAFEI)
	Prof. Hidenori Ohinata	(UNAFEI)

Report Summary

Group 3 reviewed the current situation of intolerance crime in the participating countries and identified best practices to support victims. Intolerance crimes target persons and groups based on ethnicity, race, disability, religious beliefs, etc. and include gender-based violence. To counter these crimes, the group stressed the need to protect victims and witnesses throughout all stages of the criminal justice process.

In response to intolerance crimes, a number of approaches used in various jurisdictions were reported: legislative measures to protect victims and witnesses, special laws for gender-based violence, the creation of special victim and witness protection agencies and specific police units for gender-based violence, and measures to protect victims and witness throughout the judicial process, including when giving testimony. While victim and witness protection measures do encourage cooperation with law enforcement authorities, the group found that cooperation can be limited due to lack of confidence in the criminal justice system, fear of revictimization, the attitude of the victims (including economic dependency, community norms, etc.), and insufficient levels of victim support.

To ensure sufficient support for victims and witnesses, their unique needs during the pre-trial, trial and post-trial stages must be addressed. Throughout all stages, the confidentiality of victims' identities should be maintained in order to prevent revictimization. During the pre-trial stage, measures to facilitate reporting of crime include providing interpreters, psychological and legal support, providing hotlines for reporting crimes and utilization of specialized units for handling intolerance crimes. To facilitate police investigations, the group recommended establishing safehouses and interview rooms suitable to victims, judicial and police protection, and the provision of financial support to victims. During the trial stage, the group recommended a number of measures including the use of video-link and witness screening equipment, providing personal and legal support, etc. During the post-trial stage, the group stressed the importance of ensuring adequate victim compensation. Further, the group recommended providing psychological support, safehouses, and keeping the victim appropriately informed of the status of the offender's conviction and sentence.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

171ST INTERNATIONAL SENIOR SEMINAR

The 171st International Senior Seminar

Left to Right:

Above
Ms. Finch (OSCE), Ms. Ditsayabut (Thailand), Mr. Chrysikos (UNODC), Mr. Javed (Pakistan)

4th Row
Ms. Iwakata (Staff), Ms. Ide (JICA), Ms. Yamada (Staff), Ms. Odagiri (Chef), Ms. Nagahama (Staff), Mr. Saito (Staff), Mr. Lasmar (Brazil), Mr. Shuhad (Maldives), Mr. Win Myint Zaw (Myanmar), Mr. Jayasundara (Sri Lanka), Mr. Hirose (Staff), Mr. Hirose (Staff), Ms. Iinuma (Staff)

3rd Row
Ms. Oda (Staff), Mr. Onopia (Papua New Guinea), Mr. Nguyen (Viet Nam), Mr. Tamada (Japan), Mr. Numamae (Japan), Mr. Kadowaki (Japan), Mr. Ahmed (Pakistan), Mr. Himeda (Japan), Mr. Askarov (Uzbekistan), Mr. Trono (Philippines), Mr. Astanov (Uzbekistan), Mr. Dissanayake (Sri Lanka), Ms. Ichihara (Japan), Ms. Fujita (Japan), Ms. Haidar (Maldives)

2nd Row
Mr. Okamoto (Japan), Ms. Mitsuhashi (Japan), Mr. Higuchi (Japan), Mr. Oda (Japan), Mr. Ishizaki (Japan), Ms. Nishida (Japan), Mr. Nakajima (Japan), Mr. Fujita (Japan), Mr. Ueda (Japan)

1st Row
Ms. Kikuchi (Staff), Mr. Fujita (Staff), Prof. Ohinata, Prof. Yamamoto, Prof. Kitagawa, Prof. Mark Walters (United Kingdom), Director Seto, Prof. Futagoishi, Prof. Yamamoto, Prof. Otani, Prof. Furuhashi, Mr. Toyoda (Staff), Mr. Schmid (LA)

RESOURCE MATERIAL SERIES INDEX			
Vol.	Training Course Name	Course No.	Course Dates
1	Public Participation in Social Defence	25	Sep-Dec 1970
2	Administration of Criminal Justice	26	Jan-Mar 1971
3	[Corrections]	27	Apr-Jul 1971
	[Police, Prosecution and Courts]	28	Sep-Dec 1971
4	Social Defence Planning	29	Feb-Mar 1972
	Treatment of Crime and Delinquency	30	Apr-Jul 1972
5	United Nations Training Course in Human Rights in the Administration of Criminal Justice	n/a	Aug-Sep 1972
	Administration of Criminal Justice	31	Sep-Dec 1972
6	Reform in Criminal Justice	32	Feb-Mar 1973
	Treatment of Offenders	33	Apr-Jul 1973
7	[Administration of Criminal Justice]	34	Sep-Dec 1973
8	Planning and Research for Crime Prevention	35	Feb-Mar 1974
	Administration of Criminal Justice	36	Apr-Jun 1974
9	International Evaluation Seminar	37	Jul 1974
	Treatment of Juvenile Delinquents and Youthful Offenders	38	Sep-Nov 1974
10	The Roles and Functions of the Police in a Changing Society	39	Feb-Mar 1975
	Treatment of Offenders	40	Apr-Jul 1975
	NB: Resource Material Series Index, Nos. 1-10 (p. 139)	n/a	Oct 1975
11	Improvement in the Criminal Justice System	41	Sep-Dec 1975
12	Formation of a Sound Sentencing Structure and Policy	42	Feb-Mar 1976
	Treatment of Offenders	43	Apr-Jul 1976
13	Exploration of Adequate Measures for Abating and Preventing Crimes of Violence	44	Sep-Dec 1976
14	Increase of Community Involvement	45	Feb-Mar 1977
	Treatment of Juvenile Delinquents and Youthful Offenders	46	Apr-Jul 1977
15	Speedy and Fair Administration of Criminal Justice	47	Sep-Dec 1977
	Prevention and Control of Social and Economic Offences	48	Feb-Mar 1978
	Report of United Nations Human Rights Training Course	n/a	Dec 1977
16	Treatment of Offenders	49	Apr-Jul 1978
	Dispositional Decisions in Criminal Justice Process	50	Sep-Dec 1978
17	Treatment of Dangerous or Habitual Offenders	51	Feb-Mar 1979
	Community-Based Corrections	52	Apr-Jul 1979
18	Roles of the Criminal Justice System in Crime Prevention	53	Sep-Dec 1979
19	Arrest and Pre-Trial Detention	54	Feb-Mar 1980
	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
20	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980

	Integrated Approach to Effective and Efficient Administration of Criminal Justice	56	Sep-Nov 1980
	NB: Resource Material Series Index, Nos. 1-20 (p. 203)		Mar 1981
21	Crime Prevention and Sound National Development	57	Feb-Mar 1981
	Integrated Approach to Effective Juvenile Justice Administration (including Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration: A draft prepared by UNAFEI on the basis of the reports of the study groups at the 58th International Training Course)	58	May-Jul 1981
22	Contemporary Problems in Securing an Effective, Efficient and Fair Administration of Criminal Justice and Their Solutions	59	Feb-Mar 1982
	Secruing Rational Exercise of Discretionary Powers at Adjudication and Pre-adjudication Stages of Criminal Justice Administration	60	Apr-Jul 1982
23	Improvement of Correctional Programmes for More Effective Rehabilitation of Offenders	61	Sep-Nov 1982
24	Promotion of Innovations for Effective, Efficient and Fair Administration of Criminal Justice	62	Feb-Mar 1983
	Community-Based Corrections	63	Apr-Jul 1983
25	The Quest for a Better System and Administration of Juvenile Justice	64	Sep-Dec 1983
	Documents Produced during the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice	n/a	Nov 1983
26	International Cooperation in Criminal Justice Administration	65	Feb-Mar 1984
	Promotion of Innovation in the Effective Treatment of Prisoners in Correctional Institutions	66	Apr-Jul 1984
27	An Integrated Approach to Drug Problems	67	Sep-Dec 1984
28	Contemporary Asian Problems in the Field of Crime Prevention and Criminal Justice, and Policy Implications	68	Feb-Mar 1985
	Report of the Fifth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Mar 1985
	Report of the International Workshop on the Role of Youth Organizations in the Prevention of Crime Among Youth	n/a	Jul 1985
	Follow-up Team for Ex-Participants of UNAFEI Courses	n/a	Dec 1985
	Community-Based Corrections	69	Apr-Jul 1985
29	In Pursuit of Greater Effectiveness and Efficiency in the Juvenile Justice System and Its Administration	70	Sep-Dec 1985
30	Promotion of Innovation in Criminal Justice Administration for the Prevention of New Criminality	71	Feb-Mar 1986
	The Quest for Effective and Efficient Treatment of Offenders in Correctional Institutions	72	Apr-Jul 1986

31	Economic Crime: Its Impact on Society and Effective Prevention	73	Sep-Nov 1986
	Report of the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Aug 1986
32	Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration	74	Feb-Mar 1987
	Non-institutional Treatment of Offenders: Its Role and Improvement for More Effective Programmes	75	Apr-Jun 1987
33	Evaluation of UNAFEI's International Courses on Prevention of Crime and Treatment of Offenders, and Drug Problems in Asia	76	Aug-Sep 1987
	Crime Related to Insurance	77	Oct-Dec 1987
	Report of the Sixth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Sep 1987
	Report of the Workshop on Implementation Modalities for the Twenty-Three Recommendations Adopted by the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Sep 1987
34	Footprints, Contemporary Achievements and Future Perspectives in Policies for Correction and Rehabilitation of Offenders	78	Feb-Mar 1988
	Search for the Solution of the Momentous and Urgent Issues in Contemporary Corrections	79	Apr-Jul 1988
	Resolution of the Asia and Pacific Regional Experts Meeting	n/a	Mar 1988
	Report of the Meeting of Experts on the United Nations Draft Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)	n/a	Jul 1988
35	Quest for Effective International Countermeasures to Pressing Problems of Transnational Criminality	80	Sep-Nov 1988
36	Advancement of the Integration of Criminal Justice Administration	81	Feb-Mar 1989
	Innovative Measures for Effective and Efficient Administration of Institutional Correctional Treatment of Offenders	82	Apr-Jul 1989
	Report of the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region	n/a	Aug 1989
37	Crime Prevention and Criminal Justice in the Context of Development	83	Sep-Nov 1989
	International Workshop on Victimology and Victim's Rights	n/a	Oct 1989
38	Policy Perspectives on Contemporary Problems in Crime Prevention and Criminal Justice Administration	84	Jan-Mar 1990
	Wider Use and More Effective Implementation of Non-custodial Measures for Offenders	85	Apr-Jun 1990
39	Search for Effective and Appropriate Measures to Deal with the Drug Problem	86	Sep-Dec 1990
40	Development of an Effective International Crime and Justice Programme	87	Jan-Mar 1991

	Institutional Treatment of Offenders in Special Categories	88	Apr-Jul 1991
	NB: Resource Material Series Index, Nos. 21-40 (p. 333)	n/a	n/a
41	Effective and Innovative Countermeasures against Economic Crime	89	Sep-Dec 1991
42	Quest for Solutions of the Pressing Problems of Contemporary Criminal Justice Administration	90	Jan-Feb 1992
	Further Use and Effectual Development of Non-Custodial Measures for Offenders	91	Apr-Jul 1992
43	Quest for Effective Methods of Organized Crime Control	92	Sep-Nov 1992
44	Policy Perspective for Organized Crime Suppression	93	Feb-Mar 1993
	Current Problems in Institutional Treatment and Their Solution	94	Apr-Jul 1993
45	Effective Countermeasures against Crimes Related to Urbanization and Industrialization—Urban Crime, Juvenile Delinquency and Enviromental Crime	95	Sep-Dec 1993
46	Promotion of International Cooperation in Criminal Justice Administration	96	Jan-Mar 1994
	Effective Treatment of Drug Offenders and Juvenile Delinquents	97	Apr-Jul 1994
47	Economic Crime and Effective Countermeasures against It	98	Sep-Dec 1994
48	The Effective Administration of Criminal Justice: Public Participation and the Prevention of Corruption	99	Jan-Mar 1995
	The Institutional Treatment of Offenders: Relationships with Other Criminal Justice Agencies and Current Problems in Administration	100	Apr-Jul 1995
49	The Fair and Efficient Administration of Criminal Justice: The Proper Exercise of Authority and Procedural Justice	101	Sep-Dec 1995
50	Crime Prevention through Effective Firearms Regulation	102	Jan-Mar 1996
51	Improvement of the Treatment of Offenders through the Strengthening of Non-custodial Measures	103	Apr-Jul 1996
	International Cooperation in Criminal Justice Administration	104	Sep-Nov 1996
52	The Effective Administration of Criminal Justice for the Prevention of Corruption by Public Officials	105	Jan-Feb 1997
	The Quest for Effective Juvenile Justice Administration	106	Apr-Jul 1997
53	The Role and Function of Prosecution in Criminal Justice	107	Sep-Nov 1997
	The Ninth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Oct 1997
54	Current Problems in the Combat of Organized Transnational Crime	108	Jan-Feb 1998
	Effective Treatment Measures for Prisoners to Faciliate Their Reintegration into Society	109	Apr-Jul 1998
55	Effective Countermeasures against Economic and Computer Crime	110	Aug-Nov 1998
	The Role of Police, Prosecution and the Judiciary in the Changing Society	111	Jan-Feb 1999

56	Participation of the Public and Victims for More Fair and Effective Criminal Justice	112	Apr-Jul 1999
	The Effective Administration of Criminal Justice for the Prevention of Corrupt Activities by Public Officials	113	Aug-Nov 1999
57	International Cooperation to Combat Transnational Organized Crime—with Special Emphasis on Mutual Legal Assistance and Extradition	114	Jan-Feb 2000
	Current Issues in Correctional Treatement and Effective Countermeasures	115	May-Jun 2000
58	Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes	116	Aug-Nov 2000
	Current Situation and Countermeasures against Money Laundering	117	Jan-Feb 2001
59	Best Practices in the Institutional and Community-Based Treatment of Juvenile Offenders	118	May-Jul 2001
	Current Situation of and Countermeasures against Transnational Organized Crime	119	Sep-Nov 2001
60	Effective Administration of the Police and the Prosecution in Criminal Justice	120	Jan-Feb 2002
61	Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process	121	May-Jul 2002
62	The Effective Administration of Criminal Justice to Tackle Trafficking Human Beings and Smuggling of Migrants	122	Sep-Oct 2002
63	The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process Specifically Considering Restorative Justice Approaches	123	Jan-Feb 2003
64	The Effective Prevention and Enhancement of Treatment for Drug Abusers in the Criminal Justice Process	124	Apr-Jun 2003
65	Effective Countermeasures against Illicit Drug Trafficking and Money Laundering	125	Sep-Oct 2003
	Sixth International Training Course on Corruption Control in Criminal Justice	6th UNCAC	Nov 2003
66	Economic Crime in a Globalizing Society—Its Impact on the Sound Development of the State	126	Jan-Feb 2004
67	Implementing Effective Measures for the Treatment of Offenders after Fifty Years of United Nations Standard Setting in Crime Prevention and Criminal Justice	127	May-Jun 2004
	Measures to Combat Economic Crime, Including Money Laundering	128	Aug-Oct 2004
68	Crime Prevention in the 21st Century—Effective Prevention of Crime Associated with Urbanization Based upon Community Involvement and Prevention of Youth Crime and Juvenile Delinquency	129	Jan-Feb 2005
69	Integrated Strategies to Confront Domestic Violence and Child Abuse	130	May-Jun 2005
	Seventh Special Training Course on Corruption Control in Criminal Justice	7th UNCAC	Oct-Nov 2005

70	The Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power—Twenty Years after Its Adoption	131	Aug-Oct 2005
71	Strengthening the Legal Regime for Combating Terrorism	132	Jan-Feb 2006
	Eighth International Training Course on Corruption Control in Criminal Justice	8th UNCAC	Oct-Nov 2005
72	Effective Prevention and Enhancement of Treatment for Sexual Offenders	133	May-Jun 2006
73	Challenges in the Investigation, Prosecution and Trial of Transnational Organized Crime	134	Aug-Oct 2006
	Ninth International Training Course on Corruption Control in Criminal Justice	9th UNCAC	Oct-Nov 2006
74	Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders: An Examination of Best Practices	135	Jan-Feb 2007
75	Effective Measures for the Treatment of Juvenile Offenders and their Reintegration into Society	136	May-Jun 2007
76	Corporate Crime and the Criminal Liability of Corportate Entities	137	Sep-Oct 2007
	Tenth International Training Course on the Criminal Justice Response to Corruption	10th UNCAC	Oct-Nov 2007
77	Effective Legal and Practical Measures for Combating Corruption: A Criminal Justice Response	138	Jan-Feb 2008
78	Profiles and Effective Treatment of Serious and Violent Juvenile Offenders	139	May-Jun 2008
79	The Criminal Justice Response to Cybercrime	140	Sep-Oct 2008
	Eleventh International Training Course on the Criminal Justice Response to Corruption	11th UNCAC	Oct-Nov 2008
	The Improvement of the Treatment of Offenders through the Enhancement of Community-Based Alternatives to Incarceration	141	Jan-Feb 2009
80	Effective Countermeasures against Overcrowding of Correctional Facilities	142	May-Jun 2009
	Twelfth International Training Course on the Criminal Justice Response to Corruption	12th UNCAC	Jul-Aug 2009
	Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials	143	Sep-Nov 2009
81	The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process	144	Jan-Feb 2010
82	Effective Resettlement of Offenders by Strengthening "Community Reintegration Factors"	145	May-Jun 2010
83	Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures	146	Aug-Oct 2010
	The 13th International Training Course on the Criminal Justice Response to Corruption	13th UNCAC	Oct-Nov 2010
84	Community Involvement in Offender Treatment	147	Jan-Feb 2011

85	Drug Offender Treatment: New Approaches to an Old Problem	148	May-Jun 2011
86	Securing Protection and Cooperation of Witnesses and Whistle-blowers	149	Aug-Sep 2011
	Effective Legal and Practical Measures against Corruption	14th UNCAC	Oct-Nov 2011
87	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	150	Jan-Feb 2012
88	Evidence-Based Treatment of Offenders	151	May-Jun 2012
89	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	152	Aug-Sep 2012
	Effective Legal and Practical Measures against Corruption	15th UNCAC	Oct-Nov 2012
90	Treatment of Female Offenders	153	Jan-Feb 2013
91	Stress Management of Correctional Personnel—Enhancing the Capacity of Mid-Level Staff	154	May-Jun 2013
92	Effective Collection and Utilization of Evidence in Criminal Cases	155	Aug-Oct 2013
	Effective Measures to Prevent and Combat Corruption and to Encourage Cooperation between the Public and Private Sectors	16th UNCAC	Oct-Nov 2013
93	Protection for Victims of Crime and Use of Restorative Justice Programmes	156	Jan-Feb 2014
94	Assessment and Treatment of Special Needs Offenders	157	May-Jun 2014
95	Measures for Speedy and Efficient Criminal Trials	158	Aug-Sep 2014
	Effective Measures to Prevent and Combat Corruption Focusing on Identifying, Tracing, Freezing, Seizing, Confiscating and Recovering Proceeds of Corrpution	17th UNCAC	Oct-Nov 2014
96	Public Participation in Community Corrections	159	Jan-Feb 2015
97	The State of Cybercrime: Current Issues and Countermeasures	160	May-Jun 2015
98	Staff Training for Correctional Leadership	161	Aug-Sep 2015
	Effective Anti-Corruption Enforcement and Public-Private and International Cooperation	18th UNCAC	Oct-Nov 2015
99	Multi-Agency Cooperation in Community-Based Treatment of Offenders	162	Jan-Feb 2016
100	Children as Victims and Witnesses	163	May-Jun 2016
101	Effective Measures for Treatment, Rehabilitation and Social Reintegration of Juvenile Offenders	164	Aug-Sep 2016
	Effective Anti-Corruption Enforcement (Investiagation and Prosecution) in the Area of Procurement	19th UNCAC	Oct-Nov 2016
102	Juvenile Justice and the United Nations Standards and Norms	165	Jan-Feb 2017
103	Criminal Justice Procedures and Practices to Disrupt Criminal Organizations	166	May-Jun 2017
104	Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists	167	Aug-Sep 2017

	Effective Measures to Investigate the Proceeds of Corruption Crimes	20th UNCAC	Nov-Dec 2017
105	Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms	168	Jan-Feb 2018
106	Criminal Justice Practices against Illicit Drug Trafficking	169	May-Jun 2018
107	Treatment of Illicit Drug Users	170	Aug-Sep 2018
	Effective Criminal Justice Practices through International Cooperation and Engagement of Civil Society for Combating Corruption	21st UNCAC	Oct-Nov 2018
108	Criminal Justice Response to Crimes Motivated by Intolerance and Discrimination	171	Jan-Feb 2019

ISSN 0256-5471
ISBN 978-4-87033-328-4

Printed in Japan by TAIHEI PRINTING Co., LTD.