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INTRODUCTION TO HATE CRIMES FOR LAW ENFORCEMENT: INVESTIGATION AND PROSECUTION

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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 LEGISLATION¹

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

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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

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- 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 PREVENTION³

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 deprivation 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

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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 CRIMES⁵

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.

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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?