

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 (paragraph 5(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 ICCPR⁴ sets forth requirements on the non-discrimination principle similar to those found in the Universal Declaration, while article 26⁵ 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.

171ST INTERNATIONAL SENIOR SEMINAR
VISITING EXPERTS' PAPERS

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 warning 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 2008¹⁰ 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/JHA¹¹ 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 Discrimination¹⁴

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

171ST INTERNATIONAL SENIOR SEMINAR
VISITING EXPERTS' PAPERS

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 of 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.

171ST INTERNATIONAL SENIOR SEMINAR
VISITING EXPERTS' PAPERS

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

171ST INTERNATIONAL SENIOR SEMINAR
VISITING EXPERTS' PAPERS

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 Platform⁴⁹ 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 to 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 speech 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).

171ST INTERNATIONAL SENIOR SEMINAR
VISITING EXPERTS' PAPERS

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-VAWG 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 study⁵⁹ 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.

171ST INTERNATIONAL SENIOR SEMINAR
VISITING EXPERTS' PAPERS

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.