

Hate Crimes in South Africa

A background paper for the Hate Crimes Working Group

South Africa has a long history of prejudice and discrimination. One of the major legacies of apartheid is that of intolerance towards 'difference' - be it in terms of race, religion, nationality, ethnicity, sexual orientation or other such factors. Fifteen years after South Africa's first democratic elections, the country is still grappling to find ways to better manage 'difference'. Media reports carry stories of race-related killings (such as the Skierlik shooting), the 'corrective' rape of black lesbians, regular incidents of xenophobic violence and occasional reports of religious intolerance. With South Africa's high crime levels, there is a tendency amongst policy makers to dismiss such incidents as being simply 'criminal' and an unfortunate part of life in South Africa. Such an approach however, fails to recognise the extreme damage such prejudice-related violence has on the victims, as well as the victim's broader community. This undermines social cohesion and fails to provide protection against crimes motivated by discrimination and prejudice.

This background paper outlines the concept of hate crime, examines its impact, unpacks its context in South Africa and explores the interventions that need to take place to ensure South Africa is better prepared to combat prejudice-motivated crime. This paper further explores the role of the Hate Crimes Working Group and the areas of its strategic intervention.

What are Hate Crimes?

A 'hate crime' is an act which constitutes a criminal offence that is motivated in part or whole by prejudice or hate. A range of crimes such as intimidation, arson, damage to property, murder, assault, rape etc could be classified as 'hate crimes' if the criminal act was motivated by prejudice or hate. Anyone can be a victim of a hate crime depending on the social context and so it is not just minority or vulnerable groups that can benefit from having protection from hate crimes. Recognition of hate crimes in South Africa and the adoption of measures to tackle these crimes will serve as a safety net to protect all in South Africa so that our diverse features such as race, religion, nationality, language group, sexual orientation etc are not used as the basis to discriminate against or attack us.

A hate crime does not necessarily have to involve *actual hatred* by the perpetrator toward the victim. In fact, the term 'hate crime' can in this way be misleading. What is important, however, is that hate crimes involve an element of bias or prejudice towards the victim because of the group that the perpetrator sees the victim as belonging to. This means that hate crimes could include a robbery of a Somali trader because the perpetrator thinks this will be an easy target and thinks that Somalis are not part of the community and don't belong in the area; attacks on gay or lesbian people because the perpetrator may see

them as 'different'; assaulting a person living with a disability because the perpetrator harbors a superstition related to the disability; or an attack on a Jewish person because the perpetrator may have some negative ideas about Jewish people in general.

Hate crimes can therefore happen for different reasons. The perpetrator may see the victim as a symbol of a broader group (such as 'all foreigners', 'all Jews', 'all gay people', 'all Muslims' etc); the perpetrator may feel jealousy or resentment towards the group of people; or the perpetrator may see the victim as the symbol of an idea or concept that they don't like such as immigration.

Why are Hate Crimes different to other forms of crime?

Hate Crimes are different to other forms of crime not just because of the prejudice motive, but also because of the traumatic effect hate crimes have on their victims. International studies on hate crime have shown that victims suffer consistently higher levels of psychological distress. The psychological impact of hate crime includes a range of symptoms of distress, such as depression, anger, sleep disturbances, nightmares, diarrhoea, headaches, relationship problems, increased substance abuse, mistrustfulness, as well as feelings of being unsafe. Loss of faith in the system that has failed them, numbed general emotional expression and stress symptoms that are chronic, all have a potentially negative effect on the victim's personal well-being. This is one reason why hate crimes require specialised psychological, legislative and policy responses and prioritisation.

Hate Crimes are also seen as message crimes. A victim is often seen as a symbol of a broader group of people. In the case of the xenophobic violence in South Africa of May 2008, non-nationals were attacked not because of their individual character traits but rather as part of a campaign to remove all non-nationals from specific areas.

The priority internationally given to hate crimes is not on the basis of prevalence, but rather the severity of the emotional and psychological impact that potentially extends beyond the individual victim to the group to which the individual belongs or is perceived to belong, as well as to the broader community or society at large. When individuals are attacked because they are seen as representing a broader social group, this social group may also feel vulnerable and frightened of similar attacks. Hate crimes often take place in an environment where discrimination against particular groups is socially accepted, such as non-nationals or lesbian, gay, bisexual and transgender (LGBT) people in South Africa. Although hate crime can occur against anyone, it is often the more marginalised groups that suffer.

Prejudice in South Africa

Prejudice in South Africa has a long history. Fifteen years after the end of apartheid, we need to question whether South Africa has adequately dealt with the prejudice of the past or whether the country must adopt new measures to address it. The reality is that in many cases, prejudice remains unaddressed. Racism, xenophobia, sexism, homophobia, anti-Semitism and Islamophobia continue to undermine social cohesion in South Africa and there are no clear strategies to address them.

Introducing hate crimes protection mechanisms to South Africa will not by itself address prejudice. Social programmes, such as public awareness raising and service provider training interventions aimed at attitude change, will be required to operate in parallel to the recording and monitoring of hate crimes and incidents. But the introduction of hate crimes mechanisms to South Africa will go a long way towards addressing violent manifestations of prejudice. Ensuring accountability of perpetrators will serve as a powerful deterrent to prevent future cases of hate crimes.

Current Trends of Hate Crime

Many incidents taking place in South Africa could be classified as 'hate crimes'. Unfortunately, there is no mechanism for reporting or recording these crimes in a way that distinguishes them from any other crimes. Because of this, the deliberate murder of a person because of their religion or the colour of their skin would still just be recorded as a murder. As a result, there is no way to assess the levels of hate crime in South Africa, except when a particular case receives a lot of media attention.

Despite the lack of an official reporting mechanism for hate crimes, civil society has observed clear trends regarding certain types of hate crimes in South. The 'corrective rape' of black lesbians; race-related attacks including murders; attacks on foreign nationals such as the xenophobic violence of May 2008, as well as incidents of religious intolerance all continue to occur and to go unaddressed as hate crimes. Whilst measures have been taken to address discrimination, few have been taken to address the more violent forms of prejudice. This inaction has resulted in a culture of impunity for hate crime offenders and a general perception that these matters are not taken seriously.

Calls for Interventions

A number of bodies have called for interventions around hate crimes. The UN Committee on the Elimination of Racial Discrimination in August 2006 called on South Africa to introduce measures to address hate crimes as required by Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination. The South African Human Rights Commission has also called on government to

address this area. In addition, a wide range of civil society groups are advocating for interventions to specifically address hate crimes in South Africa.

Necessary Interventions

Three key areas have been identified for interventions to address hate crimes: 1) reforming the policing of hate crimes, 2) improving the judicial response to hate crimes and 3) developing improved monitoring of cases of hate crimes. Some of these reforms may also require legislative changes, but such legislative amendments should be guided by what police and justice practitioners identify as the stumbling blocks to an effective response to hate crimes.

Policing of Hate Crimes

1. There is a clear need to reform current methods of policing so as to be able to detect a prejudice motive in a criminal incident. For example, many police are very quick to dismiss attacks on foreign nationals as simply 'criminal' rather than xenophobic. This ignores the victims' perceptions of the motive for the attack.
2. There is a general acknowledgement globally that hate crimes are underreported often due to victim's fears that they will not be taken seriously or will be re-victimised. As a result, in many countries, third parties are allowed to report crimes on behalf of victims of hate crimes. There is a need in South Africa to explore methods of ensuring that those who perceive themselves to be victims of hate crimes feel comfortable enough to report these crimes to the police and have faith that these will be followed up effectively.
3. There is a need to assess to what extent existing policing structures are inclusive and representative of all relevant constituencies. Currently the Community Policing Forums (CPF's) serve as a liaison forum between the police and the community; yet, it is not clear to what extent CPF's are able to represent the concerns of all members of the community including foreign nationals and LGBT people. To the contrary, there have been allegations in some cases that it is the local CPF that has been responsible for fomenting hate crime against foreign nationals and as a result, it is necessary to find new ways to ensure there is an effective forum where the security concerns of all groups within a community are addressed. Building such relationships will also serve to play a role in providing early warnings of possible hate crimes by giving representatives of minority groups a forum to raise concerns regarding recent incidents.

Judicial Responses

1. There is a need to improve the way in which crimes suspected of being hate crimes are investigated and prosecuted. The current backlog in the criminal justice system means that cases suspected of involving hate

- crime will take a long time to finalise, thus extending the trauma of the victim and the victim's community. Following the xenophobic violence of 2008, where special courts were not established, the delays in prosecuting suspected perpetrators - resulting from administrative bungles such as interpreters not being located or the complainant not being found - led to a number of cases being dropped.
2. In South Africa, the National Prosecuting Authority has identified a number of priority crimes such as gender-based violence, domestic violence, sexual assault, child abuse, elder abuse and the abuse of those with disabilities. Hate victimisation is already recognised within the Integrated Policy Guidelines of the National Victim Empowerment Programme led by the National Department of Social Development and this aims to ensure that greater priority is given to the needs and rights of victims.
 3. There is also a need for the prioritisation of prosecutions of cases of suspected hate crimes to serve as deterrent and prevent escalation and/or intimidation of the victim. Such intimidation occurred a number of times following suspected xenophobic violence -- denying access to justice for the victims. This has further enhanced perceptions that crimes against some people in South Africa are not taken seriously.

Monitoring and Reporting of Hate Crimes

At present there is no record of the levels of hate crimes committed in South Africa. Police statistics, unlike in other countries, do not provide for a separate category for hate crimes. This means that it is hard to gauge the levels of hate crime in the country. Coupled with concerns regarding underreporting of hate crimes, this means that many incidents are likely to have gone undetected. Without statistics or evidence of the levels of hate crimes, it may be difficult to lobby for reforms to the policing and justice sectors. For this reason, it may be necessary for civil society to conduct their own monitoring of incidents of suspected hate crimes and the police and justice response to these. Producing such evidence can then serve as motivation for the inclusion of hate crime in official crime statistics.

The Role of the Hate Crimes Working Group

The Hate Crimes Working Group is a group comprised of civil society organisations and other interested parties that can play a role in lobbying government to develop interventions to address hate crimes in South Africa. The purpose of the group is to develop joint strategies to engage government structures such as justice and policing structures and explore how best to make interventions in order to address prejudice-related crime. Part of this process of engaging government may also require members of the group to develop mechanisms to record and monitor levels of suspected hate crime within their respective sectors so as to be able to demonstrate the extent and nature of hate crimes in South Africa.

Members of the group may also wish to raise awareness of the nature of hate crimes by conducting workshops and other activities. Such activities are useful and should be encouraged but this shall not be the core focus of the Hate Crimes Working Group, which remains around lobbying and advocacy.

Conclusion

There is widespread anecdotal evidence that incidents of suspected hate crimes are taking place within South Africa. The rape of black lesbians, continuing incidents of suspected xenophobic violence as well as occasional racially-motivated killings demonstrate the need to develop interventions to address this manifestation of prejudice. These interventions need to focus immediately on improving the policing response to hate crimes, improving the judicial response and developing ways to monitor and record incidents of hate crimes. Through such reforms, South Africa will be able to far more effectively address incidents of hate crime in the country.