

Using the law to protect against hate crimes

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Hate crimes occur, to a varying extent, in all countries. However, states' approaches in tackling hate crimes differ widely, both from state to state and across continents. Some states have legislation to protect against hate crimes, while others do not. Where legislation is in place, it may be thorough and effective, or inadequate; similarly its use may be inconsistent. This chapter aims to establish the extent to which legislation can and should provide an effective framework to protect against and respond to hate crime, drawing on some specific examples, as well as relevant international legal standards and jurisprudence.

What is a hate crime?

Hate crimes can be broadly defined as criminal acts motivated by intolerance towards a certain group in society. Hate crimes therefore comprise two elements:

- i. First, a *criminal offence* must have taken place. In other words, an act must have been committed that constitutes an offence under ordinary criminal law. Criminal law varies from state to state, and not all states criminalize exactly the same kind of conduct. However, in general, there are certain violent acts which most states can be said to criminalize. Further, a hate crime is not one particular offence. It could be an act of intimidation, threats, property damage, assault, murder or any other criminal offence. The term 'hate crime' therefore describes a type of crime, rather than a specific offence within a penal code.
- ii. The crime must have been committed with a *bias motive*. It is this element which differentiates hate crimes from ordinary crimes. The perpetrator of the crime will have intentionally chosen the target of the crime (whether an individual or a group, or even property associated with a group) because of a characteristic shared with others, for example, national or ethnic origin, religion or descent.

Why should the law protect against hate crimes?

Hate crimes, by their very definition, are aimed at intimidating the victim and his or her community on the basis of their personal

characteristics or presumed community. They send a clear message to both the victim and those sharing the characteristics that they are being targeted. These effects can be multiplied where a community has historically been a victim of discrimination. It will come as no surprise, therefore, that it is the most marginalized communities, including minorities and indigenous peoples, who are disproportionately affected as victims of hate crimes. Therefore there is a particularly strong symbolic value to adopting and enforcing clear, robust legal standards on hate crimes.

Further, if hate crimes are treated like other crimes and are not recognized as a special category by the law, the response may not be adequate. As established in European Court of Human Rights (ECtHR) case law, when investigating violent incidents state authorities have the additional duty 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.¹ Those investigating a crime may fail to address allegations of bias motive, or judges may not hand down a sentence which reflects the severity of the crime. During the investigation of a hate crime, the victim may be accused of being at fault. Further, if hate crimes are not appropriately investigated or prosecuted and sufficient punishments handed down, this can send a clear message to other potential or actual victims that institutionalized discrimination will not change. All of this will in turn deter other hate crime victims from reporting similar offences. This further underlines the need for 'proportionate and dissuasive penalties' for such offences.²

International and regional legal standards on hate crimes

First, hate crimes undermine and threaten the right to equality and non-discrimination, a fundamental principle of international human rights law which features in most human rights instruments and state constitutions. Although hate crimes conducted by private individuals do not violate human rights standards by themselves, they are 'particularly destructive'³ of fundamental human rights and demand a response from the authorities which, if not forthcoming, results

in a human rights violation. As a result, states should take steps to prevent, eliminate, prohibit, investigate and punish all acts and manifestations of discrimination and intolerance, including hate crimes.

The right to equality and non-discrimination is set out in the very first line of the UN Declaration on Human Rights (UDHR) and refers to the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family', while Article 2 of the UDHR states: '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),⁴ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Economic, Social and Cultural Rights⁵ all require states to refrain from racial discrimination (including discrimination based on ethnicity or national origin) and to provide their residents with equal protection of all laws. In addition, Article 4 of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief requires states to 'prevent and eliminate discrimination on the grounds of religions' and to 'take all appropriate measures to combat intolerance on the grounds of religion'.

Regional human rights instruments also afford protection against discrimination. The American Declaration of the Rights and Duties of Man (the American Declaration) states: 'All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor'; the African Charter on Human and Peoples' Rights (African Charter) provides for the rights to non-discrimination and equality under Articles 2 and 3;⁶ while Article 14 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) protects against non-discrimination in relation to other ECHR rights, and Protocol 12 provides a stand-alone right to non-discrimination.⁷

Other rights which hate crimes may violate

include the right to be free from torture or inhuman treatment, and the right to privacy. All of these rights and fundamental freedoms are enshrined in the UN international instruments including the UDHR and the ICCPR, as well as within the regional conventions such as the ECHR, African Charter and American Declaration. Further, the recently adopted Inter-American Convention against All Forms of Discrimination and Intolerance and Convention against Racism, Racial Discrimination, and Related Forms of Intolerance both refer to the 'surge in hate crimes motivated by gender, religion, sexual orientation, disability, and other social conditions',⁸ specifically reaffirm the principles of equality and non-discrimination, and oblige states to prevent, eliminate, prohibit and punish all acts and manifestations of discrimination and intolerance, including hate crimes.

In addition to the protection afforded by these legal instruments, some go further and specifically call on states to criminalize certain acts and/or require states to adopt appropriate legislation to punish bias-motivated crimes. For example, Article 4 of CERD imposes an obligation on states to take 'immediate and positive measures'; while paragraph (a) requires that it should be an offence to 'disseminate 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'.

The European Commission on Racism and Intolerance (ECRI) has also called for the criminalization of such acts in its General Policy Recommendations.⁹ Meanwhile, the EU's Framework Decision on Combating Racism and Xenophobia recognizes the differences across the EU in laws dealing with racist and xenophobic behaviour, and different approaches to prohibitions on speech. It aims to establish a common criminal law approach, punishable in the same way in all the member states, and instructs them to take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.¹⁰



Above: Roma children in Bosnia and Herzegovina. *Damir Sagolj/REUTERS.*

National legislation tackling hate crimes

The adoption of national criminal law to protect against hate crimes sends a clear signal to potential victims, perpetrators and society that hate crimes are not acceptable. The Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) has identified a number of factors which should feature in effective national legislation and which can be used as a guideline for drafting and analyzing such legislation.¹¹ Viewed from a minority rights perspective, these should include the following:

- Hate crime laws should include characteristics that are fundamental to a person's identity, such as religion, ethnicity or national origin, and these characteristics should be visible or readily known to the offender;
- Hate crime laws should protect victims who are associated or affiliated with persons or groups having protected characteristics;
- Further, hate crime laws should include offences where the offender was *mistaken* about

the victim's identity;

- Hate crime laws should recognize social and historical patterns of discrimination;
- Sentences for hate crimes should be more severe than sentences for the same offences committed in their ordinary forms, to ensure just and fair redress and also have a dissuasive effect;
- Courts should be required to consider evidence of motivation, however they should not require a specific emotional state, such as 'hate' or 'hostility';
- Hate crime laws should recognize that offenders sometimes act with multiple motives; and
- Hate crime legislation should recognize that either people or property can be victims.

Since these criteria are only a regional guideline, the extent to which domestic legislation meets them varies throughout the world, as will be seen by the following examples.

Bosnia and Herzegovina (BiH)

Bosnian society is still recovering from violent conflict and therefore hate crimes are hugely detrimental to rebuilding social trust. The targets of hate crimes will not only be Bosniaks, Croats

and Serbs, but also minority and vulnerable groups, such as Roma and Jews. It is therefore a welcome development that BiH has become one of the many European states that has enacted legal provisions specifically to deal with bias-motivated crimes and incidents. BiH's complex constitutional framework means that these provisions are set out in legislation adopted at the state and entity levels.¹² Recent amendments to this legislation have ensured that it provides a clear definition of hatred which does not rely on an emotional state but recognizes that the perpetrator *believes* the victim belongs to a certain group in society (even if mistaken); incorporates a broad list of protected characteristics; and provides for aggravated forms of criminal offence where committed with a bias motivation. It also prohibits incitement to national, racial or religious hatred. The legislation is largely seen as positive with regard to protection against and responses towards hate crimes, but extensive monitoring by the OSCE has shown that there is still a need for police, lawyers and courts to start using the legislation appropriately and therefore overcome the societal prejudice which impedes access to justice.

South Africa

Despite a robust and exemplary Bill of Rights, to date South Africa has not enacted any legislation which protects against hate crimes related to intolerance of or discrimination against people on the basis of their ethnicity, gender, religion, nationality, sexual orientation or other forms of identity. Hate crimes occur frequently in South Africa, and reports of assaults which aim to 'correct' sexual orientation through rape are rife. Following years of pressure from human rights groups and a global petition signed by 170,000 people from 175 countries on change.org, significant steps have now been taken to rectify this position, with the recent announcement of a Policy Framework on Combating Hate Crimes, Hate Speech and Unfair Discrimination. According to the government, this framework:

'is a result of intense research into the development of legislation that will introduce the concept of hate crime to South African criminal law. It will make hate speech a crime and will provide for the

development of measures to combat hate crimes, hate speech and unfair discrimination [and] seeks to introduce a further category of newly-defined hate crimes in instances where the conduct would otherwise constitute an offence and where there is evidence of a discriminatory motive on the basis of characteristics such as race, nationality, religion, sexual orientation and the like.'

At the time of writing, the Policy Framework will soon be presented to cabinet for approval, prior to a public consultation process. Given this, it is difficult to comment on the extent to which the eventually adopted legislation will meet the desired criteria set out above, and indeed the extent to which such legislation will be used in practice, given widespread societal attitudes (for instance towards sexual minorities), but the establishment of a policy is to be welcomed as an important move to recognize and protect the plight of the most marginalized.

India

Although India does not have specific hate crime legislation, it does have legislation which seeks to prevent 'atrocities' against its Scheduled Castes and Scheduled Tribes (essentially, India's most disadvantaged communities, Dalits and *Adivasis*, as recognized by its Constitution). The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 aims to curb and punish violence against Dalits and *Adivasis*. It lists a number of acts which would be considered atrocities, and therefore criminal acts, against those it seeks to protect, including acts which seek to cause injury, insult or humiliation, such as the forced consumption of noxious substances; systemic violence, for example through forced labour, denial of access to water or sexual abuse; and deprivation of property. The Act also creates Special Courts for the trial of such offences, and calls on states with high levels of caste violence to appoint qualified officers to monitor and maintain law and order. While such an attempt to address endemic discrimination against India's most marginalized communities is laudable, unfortunately it has not yet achieved the desired effect. Very few states have created separate Special Courts in accordance with the law, and there is very little will to either register

or investigate alleged offences under the Act, partly due to lack of awareness and partly due to discriminatory attitudes. In addition, using the law within the courts is often degrading to these communities, because of systemic bias within the judiciary. Moreover, hate crimes take place in India against other communities, for example Muslims are particularly at risk of hate incidents, and no legislation exists to specifically address these issues. In sum, this points to a need to significantly overhaul the implementation of the existing legislation, and consider enacting legislation to protect and respond to all hate crimes in India. This need has gained increasing recognition; in early 2014, the Delhi High Court called on the government to develop new hate crimes legislation.

Investigations and prosecution of human rights standards

To have a lasting effect on the ground, hate crime laws – as with all laws – need to be implemented. Legislation which is not used or respected by citizens, courts, lawyers, police and governments is undermined in terms of its value, as is respect for the rule of law. It follows that, when an allegation of a hate crime is made, it must be properly and thoroughly investigated and judiciously pursued through the courts. The efficacy of state investigation of hate crimes has been tested in various international cases where regional human rights mechanisms have sought to positively address the issue of hate crime legislation being ineffective or not applied in certain states. The resulting jurisprudence has established important standards which such investigations should meet and therefore regional bodies are helping to make these laws more meaningful in practice.

United Nations Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination has adopted a robust stance in relation to state responsibility to investigate hate crimes. In *Dawas and Shava v. Denmark*,¹³ the Committee considered an attack by a group of over 35 people on the house of Mahali Dawas, a refugee of Iraqi descent based in Denmark, who lived with his wife and eight children, all of whom

are recognized refugees. Windows were broken, the front door damaged and two of the family members, including Dawas, were beaten. Other attackers outside the house shouted ‘go home’.

In its analysis of the merits, the Committee stated that:

[t]he issue before the Committee is whether the state party fulfilled its positive obligation to properly investigate and prosecute the assault suffered by the petitioners ... having regard to its duty, under article 2 of the Convention, to take effective action against reported incidents of racial discrimination.’¹⁴

The Committee considered that in the present case ‘enough elements warranted a thorough investigation by public authorities into the possible racist nature of the attack against the family’,¹⁵ that ‘the investigation into the events was incomplete’¹⁶ and concluded that the state failed ‘to effectively protect the petitioners from an alleged act of racial discrimination, and to carry out an effective investigation, which consequently deprived the petitioners from their right to effective protection and remedies against the reported act of racial discrimination’.¹⁷ Therefore, Article 6 and Article 2, paragraph 1 (d) of CERD were violated.

European Court of Human Rights

In a series of recent judgments, the ECtHR has held that states have positive obligations under the ECHR to investigate the potential racial motivation of crimes.

First, in the landmark decision of *Nachova and Others v. Bulgaria*,¹⁸ the ECtHR’s Grand Chamber considered the case of two Roma who had absconded from a military construction crew, and were shot and killed during an attempted arrest by a Major, and senior officer in charge, of the military police. After the shooting, the Major allegedly pointed a gun at a local resident and shouted ‘You damn gypsies.’ The Major claimed he had aimed at their feet in order not to cause a fatal injury. An autopsy showed one victim died of a chest wound, and was shot from the front, while the other was shot from behind. A preliminary investigation summarized that the Major had not committed any offence and the

matter should be closed. Finding a violation of the right to life, the right to an effective remedy, and the right to non-discrimination under the ECHR, the ECtHR held in particular that there was a duty to investigate possible racist motives behind acts of violence by state authorities, and that Bulgaria's failure to do so constituted a violation of the right to life (the procedural aspect to investigate) taken in conjunction with the non-discrimination provision set out in Article 14 of the ECHR. This represented a significant step forward in its explicit recognition that hate crimes require a criminal justice response proportionate to the harm caused. However, the ECtHR failed to find a violation of the *substantive* element of the right to life – that is, the negative obligation on the state not to deprive you of your life – which is not surprising given that it is very difficult to prove as a matter of human rights law that police or military have committed a hate crime.

Two years later, the ECtHR reaffirmed and extended these principles to a different scenario involving non-state actors, in the case of *Šečić v. Croatia*.¹⁹ The applicant, a Croatian national of Roma ethnicity, was violently attacked by a group of individuals. He was hospitalized with multiple rib fractures and suffered long-term psychological damage. His attackers were known to belong to a skinhead group who would engage over the following years in numerous attacks against Roma. The applicant filed a criminal complaint immediately after the attack and, over the ensuing years, provided further evidence to the police as to the identity of his attackers. However, the efforts undertaken by the authorities to identify and punish the attackers were very limited, and in fact the investigation was still open at the time of the ECtHR's judgment. Finding violations of the procedural aspect of the right to freedom from torture and inhuman or degrading treatment in conjunction with the right to non-discrimination, the ECtHR reiterated the emphatic condemnation of racism and racist crime already articulated in *Nachova*. The ECtHR made it clear that, when investigating violent incidents, state authorities have the additional duty 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. 'Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are *particularly destructive of fundamental rights*.'²⁰

The ECtHR has confirmed these principles in subsequent cases²¹ and, most recently, in the case of *Abdu v. Bulgaria*.²² The applicant was a Sudanese national living in Bulgaria who, together with another Sudanese friend of his, was attacked by two Bulgarian skinheads when walking past a shopping centre. As a result of the fight, Abdu suffered a number of minor injuries. An investigation was launched but the prosecutor decided to dismiss the case, finding that the information transmitted by the police offered no evidence to establish that there had been racially motivated violence, a criminal offence in Bulgaria. The ensuing appeal was also dismissed. Observing that a number of national and international instances documented the rarity of criminal sanctions of racist acts in Bulgaria despite the increase of such violence, the Court declared a procedural violation of the right to freedom from torture and inhuman or degrading treatment, in conjunction with the right to non-discrimination. However, it is worth noting that the Court rejected the applicant's claim that the ineffective investigation was caused by the authorities' racial bias because the applicant had not substantiated his allegations through evidence of tendentious remarks or racist insults. This reaffirms the Court's finding in *Nachova*, that it is very difficult to prove as a matter of human rights law that the authorities were themselves guilty of discrimination in the context of a hate crime; it is much easier to prove that they failed in their positive obligations to investigate the hate motivation.

Inter-American jurisprudence

The Inter-American Commission on Human Rights (IACHR) has recently adopted a stance in its jurisprudence mirroring that of the ECtHR. In *Wallace de Almeida v. Brazil*,²³ a case concerning an 18-year-old black man serving as a professional soldier in the Brazilian Army who was murdered on 13 September 1998 by members of the military police, the IACHR relied on ECtHR

Right: Rio Negro resident in Guatemala.
James Rodriguez.

case law – specifically the case of *Nachova and Others v. Bulgaria*²⁴ – in its analysis of the presumed violation of the right to equality before the law (Article 24 of the American Convention on Human Rights). The IACHR relied upon the obligation for states, under Article 2 of the ECHR, ‘to conduct an effective investigation in cases where someone has been deprived of life’ in developing its own standards:

*‘This obligation must be met without discrimination, as required under Article 14 of the Convention. When there are suspicions that racial attitudes led to a violent act, it is particularly important that an official investigation be conducted vigorously and impartially, considering the need to continuously reaffirm society’s condemnation of racism, and to retain minorities’ trust in the ability of the authorities to protect them from the threat of racial violence.’*²⁵

The IACHR insisted on the ‘additional duty to take all reasonable steps to expose any racist motive and to establish whether any racial hatred or prejudice could have played a role in what happened’,²⁶ but mitigated this statement declaring that:

*‘[i]t is acknowledged that proving the existence of racist motives is extremely difficult in practice. The respondent state’s obligation to investigate any racist overtone in a violent act is an obligation to use its best efforts in a non-absolutist way.’*²⁷

In the end, the IACHR found a violation of Article 24 of the American Convention, in relation to the failure to protect the life of an individual belonging to a group considered vulnerable (of African descent, poor, living in a *favela*) – that is, the substantive, negative obligation on the state not to deprive a person of his life – and not in relation to the lack of thorough and effective investigation. The case clearly sets important legal standards for the investigation of hate crimes in the future, in particular since it seems to go further than the ECtHR in *Nachova*.²⁸



The Inter-American Court of Human Rights (IACtHR) – a separate body from the IACHR, which can consider cases referred to it by the IACHR – has however been less progressive in the development of such rigorous standards of investigation. In *Río Negro Massacres v. Guatemala*, which concerned the early 1980s massacre of approximately 5,000 members of the Maya community of Rio Negro by Guatemalan military and paramilitaries, the IACtHR considered claims that:

*‘the failure to comply with [the] increased obligation to investigate and prosecute the acts of genocide and racism perpetrated against the community of Rio Negro perpetuates the effects of the racial discrimination to which the members of the Maya Achi people were subjected.’*²⁹

Although the Court had the opportunity to analyze the relation between acts of violence and ethnic origin, it has not followed the approach adopted by the ECtHR and now the IACHR, which recognizes a specific obligation for states to investigate racial motivation in

crimes. The IACtHR instead confined itself to recalling its traditional jurisprudence on the obligation for states to investigate allegations of human rights violations. Unfortunately, this attitude does not allow it to take into consideration the specificity of acts of violence directed towards a particular category of individuals because of their very characteristics, such as ethnic or national origin, religious belief or sexual orientation. Currently, the IACtHR only recognizes the specific importance of the obligation to investigate in cases of massive violations of human rights. For example, in the case of the *Massacres of El Mozote and nearby places v. El Salvador*, the IACtHR declared that:

*'the obligation to investigate, as a fundamental and conditioning element for the protection of certain violated rights, acquires a particular and determining importance and intensity in view of the severity of the crimes committed and the nature of the rights violated, as in cases of grave human rights violations that occur as part of a systematic pattern or practice applied or tolerated by the state or in contexts of massive, systematic or generalized attacks on any sector of the population, because the urgent need to prevent the repetition of such events depends, to a great extent, on avoiding their impunity and meeting the expectations of the victims and society as a whole to know the truth about what happened.'*³⁰

Clearly this is an area of the IACtHR's jurisprudence which would benefit from some further development, and the Court would do well to follow the approach of the IACHR, for example.

African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (ACHPR) has considered several incidents of hate crime in its jurisprudence³¹ and commented on state failure to adequately investigate such events, but has not yet established the same detailed standards as other regional and international mechanisms above. In *Kevin Mgwanga Gunme et al. v. Cameroon*,³² the ACHPR considered allegations that individuals in South

Cameroon – who were seeking self-determination – had been killed by the police either during violent suppression of peaceful demonstrations or in detention, and had also been ill-treated. The ACHPR found that, as the government did not deny the alleged violations, and had the opportunity to enquire into the alleged violations but did not conduct an investigation and provide redress for the victims, it failed to protect the rights of the alleged victims in accordance with Article 4 of the African Charter (the right to life). Although the ACHPR recognized that discriminatory practices had occurred, it did not look into the racial motivation behind the crimes, nor did it establish any standards in relation to the level of investigation that should be conducted where there is evidence of hate crimes. The ACHPR's approach to some extent reflects the lack of development of hate crime policies and legislation in Africa; as with the IACtHR, this area of the ACHPR's jurisprudence would benefit from some development in order to set valuable legal standards.

Conclusion

As demonstrated throughout this chapter, states' – and therefore regional – approaches in tackling hate crimes differ widely. While some states have legislation in place which is effective and enforced, others do not. In addition, while European countries and regional structures appear to have the most progressive approach towards tackling hate crime, this is an unfortunate phenomenon that minorities and indigenous peoples face throughout the world – including of course in that region. Hate crime legislation is imperfect, but opportunities to improve it increase as it evolves. Legislation and, in turn, jurisprudence of regional and international bodies, can – and should – provide an effective framework to protect against and respond to hate crime, and minority and indigenous rights activists and practitioners would do well to develop it. ■

Endnotes

1 See *Šečić v. Croatia*, application no. 40116/2002, judgment dated 31 May 2007.

2 The EU Framework Decision on Combating Racism and Xenophobia, 2008/913/JHA of 28 November 2008, Preamble, para. 5.

- 3 See *Šečić v. Croatia*, *op. cit.*
- 4 See Articles 2 and 26, which provide, respectively: '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' and '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.'
- 5 See Article 2(2), which provides: 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'
- 6 Article 2 states 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status'; while Article 3 provides '(1) Every individual shall be equal before the law and (2) Every individual shall be entitled to equal protection of the law.'
- 7 Article 14 states: '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.'
- 8 Preambles to the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance, Ag/Res. 2805 (Xliii-O/13) and the Inter-American Convention against All Forms of Discrimination and Intolerance, Ag/Res. 2804 (Xliii-O/13).
- 9 See for example, ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination.
- 10 The EU Framework Decision on Combating Racism and Xenophobia, *op. cit.*
- 11 OSCE/ODIHR, *Hate Crime Laws: A Practical Guide*, Warsaw, OSCE, 2009, pp. 31–56.
- 12 Bosnia is split into two autonomous entities, the Federation of Bosnia and Herzegovina and the Republika Srpska; with a third region, the Brcko District, under local government. Criminal legislation has been enacted at both the state level and at the level of the entities/local government district and both have effect in the relevant area.
- 13 UN Committee on the Elimination of Racial Discrimination, Communication No. 46/2009, *Dawas and Shava v. Denmark*, 6 March 2012.
- 14 *Ibid.*, para. 7.2.
- 15 *Ibid.*, para. 7.4.
- 16 *Ibid.*, para. 7.5.
- 17 *Ibid.*, para. 7.5.
- 18 Application nos. 43577/98 and 43579/98, judgment by the Grand Chamber dated 6 July 2005.
- 19 Application no. 40116/2002, judgment dated 31 May 2007; see also *Bekos and Koutrououlos v. Greece*, 15250/02, judgment dated 13 December 2005.
- 20 *Ibid.*, para. 67, emphasis added.
- 21 See, for example, *Angelova & Iliev v. Bulgaria*, application no. 55523/00, judgment dated 26 July 2007.
- 22 Application no. 26827/08, judgment dated 11 March 2014; at the time of writing, the judgment was not yet final and therefore open to a request for referral to the Grand Chamber under Article 43 of the ECHR.
- 23 IACHR, Report No. 26/09, Case 12,440, *Wallace de Almeida v. Brazil*, Admissibility and Merits, 20 March 2009.
- 24 The Inter-American Commission also referred in the footnotes to the cases *Menson et al. v. the United Kingdom* and *Shanaghan v. the United Kingdom*.
- 25 *Wallace de Almeida v. Brazil*, *op. cit.*, para. 139.
- 26 *Ibid.*, para. 140, emphasis added.
- 27 *Ibid.*
- 28 A few years before its decision in the *Wallace de Almeida* case, the IACHR had dealt with a very similar case, also regarding Brazil: *Jailton Neri Da Fonseca v. Brazil* (IACHR, Report No. 33/04, Case 11,634, Merits, 11 March 2004). In this case, the victim was a 14-year-old black child, also living in a *favela* in Rio de Janeiro, who had been murdered by military police officers. The IACHR had highlighted the link between racial discrimination and violence from the police forces in Brazil (paras. 35–38) but had also concluded that it 'does not have compelling evidence that the reason for the murder of Jailton Neri da Fonseca was his race' (para. 39).
- 29 IACtHR, *Case of the Rio Negro Massacres v. Guatemala*, judgment of 4 September 2012 on Preliminary objections, merits, reparations and costs, para. 231.
- 30 IACtHR, *Case of the Massacres of El Mozote and nearby places v. El Salvador*, judgment of 25 October 2012 on merits, reparations and costs, para. 244.
- 31 See for example, Communications 54/91–61/91–96/93–98/93–164/97–196/97–210/98, *Malawi African Association, Amnesty International, Ms Sarr Diop, Union Interfricaine des Droits de l'Homme and RADDHO, Collectif des Veuves et Ayants-Droit, Association Mauritanienne des Droits de l'Homme v. Mauritania*, ACHPR, May 2000; Communications 27/89–46/91–49/91–99/93, *Organisation Mondiale contre la Torture, Association Internationale des Juristes Démocrates, Commission Internationale des Juristes, Union Interfricaine des Droits de l'Homme v. Rwanda*, ACHPR, October 1996; Communications 279/03–296/05, *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, ACHPR, May 2009.
- 32 Communication 266/03, ACHPR, decision dated May 2009.

Minority Rights Group International

Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities.

Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations which represent minority and indigenous peoples.

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www.minorityrights.org/Directory

State of the World's Minorities and Indigenous Peoples 2014

Events of 2013

Across the world, minorities and indigenous peoples are disproportionately exposed to hatred. From intimidation and verbal abuse to targeted violence and mass killing, this hatred often reflects and reinforces existing patterns of exclusion. The impacts also extend beyond the immediate effects on individual victims to affect entire communities – in the process further marginalizing them from basic services, participation and other rights. This year's edition of *State of the World's Minorities and Indigenous Peoples* highlights how hate speech and hate crime, though frequently unreported or unacknowledged, continue to impact on every aspect of their lives. The volume also documents many of the initiatives being taken to promote positive change and the different ways that governments, civil society and communities can strengthen protections for minorities and indigenous peoples.

