



## What the ODIHR's 2008 Hate Crime Report Reveals about States' Implementation of OSCE Commitments

### Summary

The Hate Crime Report 2008 of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) sheds light on the failure of many of the organization's 56 participating States to fulfill commitments to collect data on hate crime: 8 governments did not submit data to the ODIHR, while 5 of those that did reported that they do not collect any data on hate crime. Nine countries reported fewer than 10 hate crimes nationally, even though in some cases nongovernmental sources have reported far more. Even countries that have made efforts to establish more robust monitoring systems generally do not disaggregate the data—limiting its usefulness to serve as a tool to develop sound policies to protect those vulnerable to hate crime.

Although states have taken on commitments to adopt hate crime laws, 22 OSCE countries still have not done so. Among those that have, the legislation extends to sexual orientation bias in only 13 countries.

In light of these continued shortcomings, this paper advances specific recommendations that are tailored to states' varying levels of adherence to commitments to combat hate crimes.

### OSCE Commitments

Since 2003, the fifty-six participating States of the Organization for Security and Cooperation in Europe (OSCE) have adopted Ministerial and other decisions that have highlighted their commitments to combat hate crimes, including by improving their efforts to collect data and adopt adequate hate crime legislation. As part of those decisions, States have agreed to the following:

#### Government Data Collection

- "Collect and maintain reliable data and statistics on hate crimes and incidents, to train relevant law enforcement officers and to strengthen co-operation with civil society" (Ministerial Council Decision No. 10/07).
- "Collect and maintain reliable data and statistics on hate crimes which are essential for effective policy formulation and appropriate resource allocation in countering hate motivated incidents and, in this context, also invites the participating States to facilitate the capacity development of

civil society to contribute in monitoring and reporting hate motivated incidents and to assist victims of hate crimes" (MC Decision No. 13/06);

- "Strengthen efforts to collect and maintain reliable information and statistics on hate crimes and legislation, to report such information periodically to the ODIHR, and to make this information available to the public and to consider drawing on ODIHR assistance in this field, and in this regard, to consider nominating national points of contact on hate crimes to the ODIHR" (MC Decision 10/05);

#### Hate Crime Laws

- "Recognize the importance of legislation regarding crimes fuelled by intolerance and discrimination, and, where appropriate, seek the ODIHR's assistance in the drafting and review of such legislation" (MC Decision No. 4/03).

#### ODIHR Data Collection

- Encourage the ODIHR, based on existing commitments, including through cooperation with the relevant OSCE executive structures to continue to serve as a collection point for information and statistics on hate crimes and relevant legislation provided by participating States and to make this information publicly available through its Tolerance and Non-discrimination Information System and its report on Challenges and Responses to Hate-Motivated Incidents in the OSCE Region. (MC Decision No. 13/06).

In line with these commitments, the Office for Democratic Institutions and Human Rights (ODIHR) has reported on hate crimes in the OSCE region and government responses to them in annual reports on the subject. In this connection, the ODIHR sought to identify National Points of Contact on Combating Hate Crimes representing each participating State—individuals and bodies responsible for channeling hate crime statistics to ODIHR. As part of this data collection effort, the ODIHR also developed a questionnaire for states to submit data to the ODIHR in line with their commitments. A total of 48 of the 56 participating States responded to ODIHR questionnaires for the 2008 annual report, which provides a record of the latest data on hate crimes available in and provided by the OSCE participating States.

## Group I: No Hate Crime Data Collected No Data to ODIHR

Eight governments—**Bosnia and Herzegovina, Estonia, Holy See, Malta, Monaco, Montenegro, San Marino,** and **Turkmenistan** did not respond to their commitment to provide data to the ODIHR.

### No Hate Crime Data Available

Five governments—**Azerbaijan, Bulgaria, Luxembourg,** the **Former Yugoslav Republic of Macedonia,** and **Portugal** submitted the questionnaire, indicating that they do not compile any data on hate crime incidents.

### No Public Data Available

Ten governments—**Albania, Croatia, Italy, Kyrgyzstan, the Netherlands, Moldova, Spain, Turkey, Tajikistan,** and **Uzbekistan** collect data, but either do not publicize it or make it available to the public only upon request. Such a policy essentially eliminates the public from discussions about the nature and scale of hate crimes as well as measures to combat them.

### No National Points of Contact appointed

Three governments—**Kyrgyzstan, San Marino,** and **Uzbekistan** still have not appointed a National Point of Contact on Combating Hate Crime (NPC)—one of the first steps in providing accurate and timely information to the ODIHR.

### Recommendations

- Designate a National Point of Contact from the relevant government body.
- Relevant law enforcement or other body should provide data on the basis of the questionnaire and submit it to ODIHR.
- Make hate crime data, including the data submitted to the ODIHR and other international institutions, is made available to the public.
- For those countries in which no hate crime data is available, undertake to establish a system for the collection of hate crime data.

## Group II: Few or No Hate Crimes Reported

Nine governments - **Andorra, Armenia, Georgia, Greece, Iceland, Liechtenstein, Moldova, Ukraine** and **Uzbekistan** reported that *fewer than ten hate crime incidents* were recorded

by police in 2008. While underreporting of hate crime incidents remains a problem throughout the region, such low official figures often run counter to records of incidents reported in the media and by nongovernmental monitors. The discrepancy between official and unofficial reporting of incidents reveals shortcomings in police reporting of bias-motivated crimes and demonstrates the need for improved systems of official data collection that include greater outreach to community-based and other non-governmental organizations.

### Recommendations

- Conduct an inquiry into the potential shortcomings in existing reporting and data collection systems.
- Train police to identify and properly record bias-motivated incidents and to forge links with community groups.
- Reach out to nongovernmental organizations and develop programs to enhance reporting of hate crimes.

## Group III: Data Is Insufficiently Disaggregated According to Bias

One of the goals of effective systems of data collection is to identify the groups that are most affected by hate crime—a process that hopefully guides the creation of effective policies aimed at protecting any such vulnerable groups. However, few OSCE participating States disaggregate data by the type of bias or victim characteristics involved in hate crime incidents. More than half of the participating States do not disaggregate hate crime data on the basis of the bias motivations or victim's characteristics. While questionnaires submitted to ODIHR revealed that 29 states do record data related to victims' ethnicity/origin/minority status, 27—religion, 27—race/color, few of those same states actually submitted the data. Furthermore, on the basis of publicly available data Human Rights First has concluded that only 14 of the 56 participating States have adequate systems of monitoring and data collection of racist violence, with little or no data provided on other forms of bias-motivated violence.

The table below demonstrates the discrepancy between the claims made by OSCE participating States and the data they actually submit to the ODIHR.

Bias type	States that claim to collect data	States that submitted data to ODIHR <sup>1</sup>
Racism and Xenophobia	29	18 (Austria, Belarus, Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Lithuania, Poland, Russia, Slovenia, Spain, Sweden, Ukraine, United Kingdom)
Religious intolerance	27	4 (Holy See, Slovenia, Sweden, United Kingdom)
Antisemitic	19	8 (Austria, Belgium, Czech Republic, France, Germany, Italy, Sweden, and the United Kingdom)
Anti-Muslim	15	2 (Austria, Sweden)
Anti-LGBT	15	3 (Germany, Sweden, United Kingdom)
Anti-Roma	10	1 (Sweden)
Anti-disability	10	2 (Germany, United Kingdom)

## Recommendations

- Develop monitoring systems that provide disaggregated data on the characteristics of the victims or on the bias motivations.
- Make disaggregated hate crime data available to the ODIHR and to the public.

## Group IV: Data Is Insufficiently Disaggregated Between Violent Crimes, Incitement, Discrimination, and other Violations

Fifteen governments—**Belgium, Canada, Croatia, Czech Republic, Finland, Germany, Ireland, Kyrgyzstan, Latvia, Lithuania, Norway, Poland, Slovenia, United Kingdom**, and the **United States** indicated that data is disaggregated according to the type of crime committed, distinguishing between violent crimes, verbal threats and insults, and incitement to hatred.

However, such data is rarely available publicly, and was in many cases not submitted to the ODIHR.

Due to insufficient disaggregation of hate crime incidents between violent crimes, incitement, discrimination, and other violations, it is difficult to assess the exact nature of the problem, in a given country and identify the targeted measures that would be most effective.

## Recommendations

- Classify data on the basis of all types of bias motivated crime, disaggregating between violent crimes and nonviolent criminal violations.
- Make hate crime data—disaggregated by crime type—available to the ODIHR and to the public.

## Group V: Existence of Hate Crime Laws in Criminal Codes

A growing number of the 56 countries in the OSCE are adopting criminal laws to expressly address violent hate crimes, largely in the form of penalty enhancement provisions, since the ODIHR began to track the issue. At present, there are 40 countries in which legislation treats at least some bias-motivated violent crime as a separate crime or in which one or more forms of bias is regarded as an aggravating circumstance that can result in enhanced penalties.

However, 22 OSCE countries still have no express provisions defining bias as an aggravating circumstance in the commission of a range of violent crimes against persons. They are: **Albania, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Germany, Holy See, Hungary, Iceland, Ireland, Luxembourg, Lithuania, Macedonia, Monaco, Montenegro, the Netherlands, Poland, San Marino, Serbia, Slovenia, Switzerland**, and **Turkey**.

Data from government bodies, NGOs and media in several of these countries indicate that violent hate crimes are occurring, but criminal justice authorities are unable to address the bias nature of the crime because they lack a legislative basis to do so.

All laws in the 40 countries where legislation addresses bias-motivated violence as a separate crime or as an aggravating circumstance, cover bias based on race, ethnicity, and/or national origin, while 33 also cover religious bias. However, hate crime legislation extends to bias motivated by animus based on sexual orientation in only thirteen countries—**Andorra, Belgium, Canada, Croatia, Denmark, France, Greece, Portugal, Romania, Spain, Sweden, United Kingdom, United States**—

<sup>1</sup> 2008 data from Canada, Finland, Norway, Spain, and the United States were not available in time for this report.

and disability in only seven—**Andorra, Belgium, Canada, Romania, Spain, United Kingdom, United States.**<sup>2</sup>

## Recommendations

- Enact laws that establish specific offenses or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other similar status.
- Concrete steps to begin this process could involve utilizing the ODIHR publication on Hate Crime Laws: a Practical Guide as a basis for a training or consultation among experts and officials across relevant ministries.

## Group VI: Lack of Data on Prosecution and Sentencing

Statistics for sentencing and prosecutions are necessary to assess the government response to hate crime.

However, the vast majority of states did not submit data regarding prosecutions in hate crime cases in 2007 and 2008. Thus, though there are an increasing number of states that are adopting hate crime laws, there is little evidence to determine how those laws are used.

### Recommendation:

- Establish and/or enhance existing monitoring systems to disclose the record of both prosecutions of hate crime cases and the use of sentence enhancement provisions.

## General Recommendations

This paper highlights the different stages of compliance with commitments among the 56 Participating States in the areas of data collection and implementation of hate crime laws. While specific recommendations are provided in the sections below, some general recommendations for all states include the following:

- **Acknowledge and condemn violent hate crimes whenever they occur.** Irrespective of whether a state has enacted a hate crime law, senior government officials should take leadership and send immediate, strong, public, and consistent messages that violent crimes which appear to be

motivated by prejudice and intolerance will be investigated thoroughly and prosecuted to the full extent of the law.

- **Enact laws that expressly address and therefore recognize the particular harm caused by violent hate crimes.** Governments should enact laws that establish specific offenses or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other similar status.
- **Strengthen enforcement and prosecute offenders.** Governments should ensure that those responsible for hate crimes are held accountable under the law, that the enforcement of hate crime laws is a priority for the criminal justice system, and that the record of their enforcement is well documented and publicized.
- **Provide adequate policy guidance, training, and resources to law enforcement bodies to address hate crime.** Governments should ensure that police and investigators—as the first responders in cases of violent crime—are specifically instructed and have the necessary procedural tools and other resources and training to identify, investigate and register bias motives before the courts. Prosecutors must also be trained to bring evidence of bias motivations and apply the legal measures required to prosecute hate crimes.
- **Undertake parliamentary, inter-agency or other special inquiries into the nature and magnitude of the problem of hate crimes.** Such public, official inquiries can raise public awareness, encourage public debate, outline ways to better respond to hate crimes, and seek creative ways to address the roots of intolerance and discrimination through education and other means.
- **Monitor and report on hate crimes.** Governments should maintain official systems of monitoring and public reporting to provide accurate data for informed policy decisions to combat violent hate crimes. Such systems should include anonymous and disaggregated information on bias motivations and/or victim groups, and should monitor incidents and offenses, as well as prosecutions.
- **Forge links with community groups.** Governments should conduct outreach and education efforts to communities and civil society groups to reduce fear and assist victims, advance police-community relations, encourage improved reporting of hate crimes to the police and improve the quality of data collection by law enforcement bodies.

<sup>2</sup> Information in this section comes largely from Human Rights First's Hate Crime Report Card, available at: <http://www.humanrightsfirst.org/discrimination/index.aspx>.