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. As the UN High Commissioner for Refugees has stressed, “refugees who flee intolerance at home are increasingly finding more intolerance in the countries where they seek protection.”

Indeed, xenophobia can contribute to a range of difficulties for refugees, asylum-seekers, and migrants, encouraging policies that undermine access to asylum and depriving refugees and asylum-seekers of basic human rights protections. In its most extreme form, xenophobia has taken the form of bias-motivated violence (in many countries, referred to as “hate crime”), a pernicious form of discrimination in which individuals are targeted because of their ethnicity, race, religion, nationality, sexual orientation, or other similar factor. These individuals are often distinguished by their appearance, language, religion, and customs—particularly in largely homogenous societies. Their vulnerability increases when they are concentrated in urban areas and neighborhoods.

In his 2010 protection Note, the High Commissioner reported that, in many cities around the world, “refugees and asylum-seekers suffered intolerance, violence, exploitation, discrimination and xenophobia” in many cities around the world.

Asylum-seekers, refugees, and migrants who fear such violence cannot move freely in the towns and cities where they reside, much less participate fully in the larger society. Hate crimes send messages of fear to entire communities that share a similar identity, and thus such incidents threaten the equal enjoyment of fundamental rights and freedoms. Fear of violence may prevent vulnerable individuals from seeking available services—including education, health care, food aid, and even access to UNHCR registration or to formal asylum procedures—for anxiety of venturing out to those places where they are offered. This leads to progressive marginalization and exclusion, largely barring those under threat from the exercise of a range of rights.

Though the most visible and brutal of hate crimes—such as the murder of a Congolese refugee in Ukraine, the beating to death of an Afghan asylum-seeker in Moscow, the mob attacks on Zimbabwean refugees and migrants in South Africa—may make the news headlines, the large majority of cases of violent attacks and day-to-day harassment—including by state officials—remains under the radar screen. Underreporting of hate crimes is endemic as refugees, asylum-seekers and migrants may be afraid to identify themselves to local government authorities due to fear of deportation or mistrust of local law enforcement authorities.

As outlined below, there are effective steps that States can take to combat bias-motivated violence. Over the next year, as States and UNHCR mark a series of important anniversaries, including the 60th anniversary of the Refugee Convention, States should commit to taking these concrete steps to address these challenges.
Hate Crime: A Global Phenomenon

As the examples below illustrate, hate crime targeting refugees, asylum seekers, and migrants is a global phenomenon, not limited to any one country or region of the world.

- In the **Dominican Republic**, Haitian immigrants have been brutally assaulted and killed; documented cases include street attacks, arsons, and even a beheading.\(^4\)

- In **Greece**, human rights organizations have condemned the lack of police protection and attacks against asylum-seekers in Athens carried out by right-wing groups fueled by racism and intolerance against Muslims.\(^5\)

- In **Libya**, migrants and refugees from sub-Saharan Africa have been attacked.\(^6\)

- In **Russia**, racist and ethnically motivated murders and other violent attacks by neo-Nazi skinhead groups continue to occur with an alarming frequency; migrants and refugees from Asian and African countries are among the primary victims of attacks.\(^7\)

- In **South Africa**, asylum seekers, migrants, and other foreign nationals were attacked in as many as 135 locations in May 2008, leading to at least 62 deaths and the displacement of over a hundred thousand people.\(^8\)

- In **Turkey**, lesbian, gay, bisexual, and transgender (LGBT) refugees and asylum-seekers have been subjected to acts of violence motivated by intolerance—including severe beatings and sexual assaults.\(^9\)

State Obligations to Respond

States have taken on a range of legal and political commitments to combat discrimination and have the primary obligation to protect individuals—citizens and noncitizens—from such abuses, including by taking practical action to combat hate crimes.

**International Commitments**

The **International Covenant on Civil and Political Rights** (ICCPR) (1966) guarantees the right to life (article 6) and security of the person (article 9)—rights that States have an obligation to ensure “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status” (article 2).\(^10\)

The **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD) (1965) obligates States to combat racial discrimination and report to the CERD committee. The Convention obliges governments to condemn and eliminate racial discrimination by both public institutions and officials and private individuals.\(^11\)

Regional human rights instruments, such as the **European Convention on Human Rights** (ECHR) (1953) have similar provisions.\(^12\) The European Court of Human Rights has found that States have an obligation to investigate and prosecute bias-motivated violence.\(^13\)

The 56-mostly European members of the **Organization for Security and Cooperation in Europe** have agreed to a range of political commitments to combat discrimination and hate crime violence, including a Decision on “Combating Hate Crime,” adopted by OSCE foreign ministers in December 2009.\(^14\)

As UNHCR has noted in its December 2009 Guidance Note on Combating Racism, Xenophobia and Related Intolerance Through a Strategic Approach, 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.” Moreover, as the Guidance Note points out, government institutions and officials “will recognize the advantages of a respectful, diverse and tolerant society for security, social cohesion, democracy, and development.”\(^15\)
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. Many governments downplay the problem, despite media and civil society reports that violence is taking place. Government officials do not actively speak out against the danger of hate crime, and successful investigations and proper prosecutions of hate crime incidents are still rare.

Human Rights First has developed a comprehensive plan of action for governments to combat hate crime. Several key elements of this Ten-Point Plan, which is detailed at the end of this document, are:

- public officials should acknowledge and condemn hate crimes whenever they occur;
- governments should strengthen law enforcement personnel responsible for hate crime investigations and prosecutions;
- law enforcement and official human rights agencies should monitor and report on hate crimes; and
- local police should conduct community outreach to groups affected by or vulnerable to hate crime.

Among the recommendations identified during a panel at the UNHCR-NGO consultations in July, was that “national authorities, which have the ultimate responsibility for protection, should strengthen their role to address such violence in the context of refugee protection, including developing relevant public policy and prosecuting those who commit violent acts.”

Underreporting: A Persistent Challenge

Though there are numerous aspects to a comprehensive government response to hate crime, 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 remains one of the principal problems, especially among refugees, asylum-seekers, and migrants. There are many reasons for this. Among them:

- fear of retaliation by the perpetrators of violent acts;
- fear of victimization by law enforcement officers, some of whom may be corrupt or may even share the same biases as the perpetrators;
- fear of deportation; and
- uncertainty about how reporting the incident will help them in their lives.

As a result, governments must make particular efforts to ensure that hate crimes are reported to the appropriate authorities so that action can be taken to hold the perpetrators responsible in individual incidents, and to better measure the response of governments over time. Governments can increase confidence in their response to hate crime by speaking out publicly against incidents, responding to instances of abuse by law enforcement officials against victims of hate 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 hate crime victims.

UNHCR’s Impact and Role

While States have the preeminent duty to protect all individuals on their territories from discrimination and respond to acts of violence, other actors also have important roles to play—including civil society and intergovernmental organizations, such as UNHCR. As UNHCR stressed in the December 2009 Guidance Note:

- “Racism, racial discrimination, xenophobia, and related intolerance constitute a serious threat to the overall protection environment for people of concern.”
- “Racial discrimination and related intolerance are common causes of flight and can threaten the protection of asylum-seekers and refugees at subsequent States of the displacement cycle. They can be manifested through restricted access to asylum or negatively affect the quality of asylum.”
In his June 2010 report on international protection, the High Commissioner pointed out that delivering protection "requires combating racism and various forms of violence against individuals." Furthermore, the High Commissioner has expressed in many public statements his deep concern about rising xenophobia.

Over the last few years, UNHCR has taken some important steps toward addressing protection of refugees, asylum seekers, and other persons of concern who are affected by xenophobia, racism, intolerance, and bias-motivated violence. In December 2009, the UN Refugee Agency released its Guidance Note which outlines key elements of a strategic approach to address these protection challenges, including hate crimes. In addition, UNHCR has worked with Human Rights First and other partners to organize events—specifically a side panel at the 2009 Executive Committee sessions in October and a session at the 2010 NGO Consultations—in order to discuss with States, NGOs, and other stakeholders effective strategies and the need for collaborative action to address these challenges.

UNHCR has also developed or supported specific projects in various countries that are aimed at countering xenophobia and related protection problems. At the October 2009 panel, UNHCR’s Director of International Protection, Volker Türk, cited projects in several countries, including Italy, Ukraine, and South Africa. In Italy, for example, UNHCR worked with partners to develop a “code of conduct” for journalists, aimed at improving the media’s discourse relating to asylum-seekers and migrants. In collaboration with IOM, UNHCR in Ukraine played an important role in the creation of the Diversity Initiative—a coalition working to raise awareness about xenophobia, intolerance, and bias-motivated violence; provide assistance to victims; and advocate for a more robust government response.

In these and other efforts, UNHCR has collaborated with various partners, including the OSCE's Democracy and Human Rights Office (ODHIR), IOM, the Office of the High Commissioner for Human Rights, and civil society groups. The success of the Diversity Initiative in Ukraine made clear that civil society is an invaluable partner to both governments and intergovernmental bodies. Efforts to mitigate hate crime and xenophobia require the development of strong partnerships among States, civil society, and intergovernmental organizations.

Going forward, UNHCR should take steps to make sure that hate crime is treated as a serious protection problem throughout the agency and by its partners, including by:

- preparing and circulating additional tools to assist in the design of effective local programs;
- supporting successful initiatives with adequate staffing and resources;
- assisting victims and encouraging them in reporting incidents and encouraging prosecutions;
- ensuring that cases of bias-motivated violence affecting refugees, asylum-seekers, and other persons of concern to UNHCR are reported, raised with local authorities, and channeled to official bodies and/or nongovernmental organizations monitoring hate crimes;
- funding specific initiatives to combat racism, xenophobia, and hate crime;
- working together with civil society networks to increase awareness about hate crimes among the general public; and
- expanding legal and medical services for individuals affected by the problem.

UNHCR should also encourage States, in its bilateral meetings as well as in the context of the commemoration of the anniversaries in 2011, to commit to take concrete steps to address bias-motivated violence and related protection challenges.

**Recommendations to States: Ten-Point Plan for Combating Hate Crimes**

Human Rights First’s Ten-Point Plan is a set of recommendations for governments facing the challenge of combating hate crime. The plan is developed based on Human Rights First’s
decade-long research of incidents of bias-motivated violence.

1. **Acknowledge and condemn violent hate crimes whenever they occur.** Senior government leaders should 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.

2. **Enact laws that expressly address hate crimes.** Recognizing 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.

3. **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.

4. **Provide adequate instructions and resources to law enforcement bodies.** Governments should ensure that police and investigators—as the first responders in cases of violent crime—are specifically instructed and have the necessary procedures, resources and training to identify, investigate and register bias motives before the courts, and that prosecutors have been trained to bring evidence of bias motivations and apply the legal measures required to prosecute hate crimes.

5. **Undertake parliamentary, interagency or other special inquiries into the problem of hate crimes.** Such public, official inquiries should encourage public debate, investigate ways to better respond to hate crimes, and seek creative ways to address the roots of intolerance and discrimination through education and other means.

6. **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. Governments should consider establishing third party complaint procedures to encourage greater reporting of hate crimes and conducting periodic hate crime victimization surveys to monitor underreporting by victims and underrecording by police.

7. **Create and strengthen antidiscrimination bodies.** Official antidiscrimination and human rights bodies should have the authority to address hate crimes through monitoring, reporting, and assistance to victims.

8. **Reach out to 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.

9. **Speak out against official intolerance and bigotry.** Freedom of speech allows considerable latitude for offensive and hateful speech, but public figures should be held to a higher standard. Members of parliament and local government leaders should be held politically accountable for bigoted words that encourage discrimination and violence and create a climate of fear for minorities.

10. **Encourage international cooperation on hate crimes.** Governments should support and strengthen the mandates of intergovernmental organizations that are addressing discrimination—like the Organization for Security and Cooperation in Europe, the European Commission against Racism and Intolerance, and the Fundamental Rights Agency—including by encouraging such organizations to raise the capacity of and train police, prosecutors, and judges, as well as other official bodies and civil society groups to combat violent hate crimes. Governments should also provide a detailed accounting on the incidence and nature of hate crimes to these bodies in accordance with relevant commitments.
Endnotes

16 UNHCR’s 2010 Annual Consultations with NGOs, 29 June – 01 July 2010, Rapporteur’s report, p.13.