

VIOLENT HATE CRIME IN SOUTH AFRICA

Introduction

This report is a submission to the Office of the High Commissioner for Human Rights (OHCHR) for consideration in its summary of stakeholder submissions for South Africa's appearance before the thirteenth Universal Periodic Review session, scheduled from May 12—June 1, 2012. It is submitted jointly on behalf of the following organizations:

- The Centre for Applied Psychology of the University of South Africa (South Africa)*
- The Consortium for Refugees and Migrants in South Africa (South Africa)*
- Durban Lesbian and Gay Community Health Centre (South Africa)
- Forum for the Empowerment of Women (South Africa)*
- Gay and Lesbian Memory in Action (South Africa)*
- Gay and Lesbian Network (South Africa)*
- Human Rights First (USA)
- Independent Projects Trust (South Africa)*
- Scalabrini Centre of Cape Town (South Africa)*
- Sonke Gender Justice (South Africa)*
- South African Jewish Board of Deputies (South Africa)*

*Designates organizations that are members of the South African Hate Crime Working Group.

This submission is consistent with the guidelines approved by the Human Rights Council and the Civil Society Unit of the OHCHR. This submission focuses primarily on the situation of **“hate crime” (violent acts in which people are targeted in a discriminatory fashion because of their race, ethnicity, national origin, religion, sexual orientation, gender identity, or other similar factors) in South Africa**, which is of particular relevance to sections I.(C), I.(F), and I.(G) of the Human Rights Council's Guidelines, and to sections 7 (c), (f), and (g) of the Civil Society Unit's Guidelines.

Executive Summary

In addition to the recommendations contained in the final section, this submission makes the following key points:

1. Violent hate crime affects the lives of many individuals in South Africa, where some people are targeted for violence for reasons including because of their race, national origin, ethnicity, sexual orientation or gender identity, or religion.
2. Following a major outbreak of xenophobic violence in 2008 that resulted in at least 62 deaths and the displacement of a hundred thousand people, incidents of hate crimes against migrants and refugees continue to be reported in various parts of the country. In addition to this troubling trend, lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons have been the targets of vicious violent attacks, and lesbians or women

perceived to be lesbian are targeted for murder or ‘corrective’ rapes in which a victim is chosen based on her real or perceived identity. Over the years, race too has been a causal factor in a number of violent crimes. The country’s religious communities—notably, Hindus and Jews—are also sometimes affected by hate crime, mostly in the form of antireligious graffiti on places of worship, as well as residencies and businesses associated with religious believers.

3. Victims of hate crimes have had difficulty in accessing the criminal justice system and impunity for such crimes remain at high levels.
4. The government of South Africa has at times taken steps to address the reports of hate crimes against a range of communities by sending strong signals, in both rhetoric and action, that violence is not permissible as well as appealing for tolerance and nondiscrimination.¹ Currently, the government is in the process of developing a National Action Plan against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as per the Durban Declaration. An investigation and report of the South African Human Rights Commission into the 2008 wave of xenophobic violence produced a set of concrete recommendations, some of which the government has acknowledged and begun implementing. The South African Police Service has taken some steps to improve the response to cases of mob violence targeting foreign nationals with the appointment of a national coordinator for xenophobia within the Visible Policing Unit and the National Prosecuting Authority is monitoring cases of xenophobia according to an internal definition. Recently, to address the safety of LGBTI individuals, the government has created a national task team responsible for developing an action plan for combating sexual orientation- and gender-based hate crimes, raising awareness about the issue. The authorities are also in the process of laying the groundwork for specialized hate crime legislation that would strengthen enforcement and prosecution.
5. The signatories of this submission call on the government of South Africa to 1) consistently condemn any and all acts of violence motivated by prejudice or bias toward the victim’s identity, 2) enact specialized and comprehensive hate crime legislation strengthening state response to bias-motivated violence, 3) collect and publish official data on hate crime incidents, and 4) work with global partners in the international forums and through bilateral engagements to share best practices, technical advice, and capacity building programs on combating hate crimes.

Violent Hate Crimes—Serious Human Rights Abuses

Violent attacks on individuals on account of their race, ethnicity, religion, national origin, sexual orientation, gender, gender identity, disability, or other similar attributes, or a combination thereof are serious abuses of the rights to life, liberty and security of the person, threatening the equal enjoyment of fundamental rights and freedoms. States have an obligation to respond to such abuses by recording, adequately investigating bias motives and prosecuting the perpetrators of these abuses, thereby prohibiting discrimination and upholding the equal protection of the law in accordance with the Universal Declaration of Human Rights and state obligations under the International Covenant on Civil and Political Rights. The Outcome

Document of the Durban Review Conference also outlines specific obligations and commitments of States to protect refugees, asylum seekers, migrants, and other persons of concern from violent acts motivated by xenophobia.

Hate Crime in South Africa

There are no official statistics on the number of cases of hate crimes, although human rights groups have documented a disturbing pattern of violent attacks, ranging from race-related attacks and targeted mob violence in residential and commercial districts occupied by foreign nationals, to severe beatings of LGBTI individuals and “corrective” rapes and murders of lesbians, to arson and graffiti incidents targeting houses of worship. What has been documented is likely only the tip of the iceberg as it is widely believed that many incidents—particularly lower level violence and harassment—go unreported, in large part due to mistrust of the police and a consistently high level of other crime and violence in the country.

Xenophobic violence. In March 2010, the South African Human Rights Commission (SAHRC) issued a comprehensive report outlining its findings and recommendations relating to a wave of xenophobic violence in 2008 that targeted migrants, refugees, and others viewed as foreigners. Several academic and civil society reports have also examined the May 2008 attacks that broke out in as many as 135 different locations across the country leading to at least 62 deaths (two-thirds of the victims were foreign nationals), over a hundred thousand people displaced, and substantial property damage.² Before the 2008 violence, at least another 72 foreign nationals had been killed since 2000 in attacks thought to be xenophobic. Patterns of violence included a number of cases of attacks on all foreign nationals living in a given neighborhood as well as attacks specifically targeting foreign-owned shops.³ In the run-up to the FIFA World Cup of 2010, evidence emerged of widespread threats of violence against foreign nationals and a number of attacks did take place. There have been discussions by some South African leaders over whether or not certain cases of violence against foreign nationals is specifically “xenophobic,” but few dispute the patterns of violence specifically targeting foreign nationals in South Africa.⁴ Over the past year, notable incidents have included:

- The murder of a Zimbabwean national by a mob in Diepsloot, Gauteng in January 2011.⁵
- Threats against all foreign business owners in various parts of Gauteng by a group calling itself the Greater Gauteng Business Forum in May 2011.
- More than 50 Somali-owned shops are attacked and looted in Motherwell, Port Elizabeth in May 2011.⁶
- The stoning to death of a Zimbabwean man by a mob in Polokwane, Limpopo in June 2011.⁷
- The murder of over 25 Somali shopkeepers in townships around Cape Town between May and June 2011. Somali community leaders regard the attacks as xenophobic.⁸
- The stoning to death of a Mozambican man in GaPhasha, Limpopo in July 2011.⁹
- Threats of violence against foreign nationals occupying government-provided housing in Alexandra as well as violence in Laudium, Pretoria in October 2011.¹⁰
- Threats of violence against foreign business owners in Ekurhuleni, Gauteng by South African business owners in November 2011.¹¹

Violence Based on Sexual Orientation or Gender Identity Bias. South Africa’s constitution guarantees a wide range of rights for lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. However, the day-to-day reality for many LGBTI individuals remains grim due to the ongoing harassment, intimidation, and violence motivated by a sexual orientation or gender identity bias. Lesbians from urban townships are affected by the heinous practice of “corrective” rapes, in which victims are targeted with the specific goal of “curing” them of homosexuality. Openly gay men and women—as well as human rights defenders working to promote the rights of LGBTI individuals—have been targeted across the country due to their visibility.¹² Over the past year, notable incidents have included:

- In September 2011, the body of Nontsikelelo Tyatyeka was found in a dustbin in Nyanga, Cape Town in what is suspected to be a homophobic case.¹³
- On May 3, 2011, Nqobile Khumalo was attacked and murdered in Kwamashu township in Durban. Her ex-boyfriend later confessed to the crime, stating that he had killed her because he could not accept that she left him for another woman. According to reports, in addition to being severely beaten, Khumalo was also raped prior to her death. The suspect is in police custody.¹⁴
- In March 2011, Nokuthula Radebe’s body was discovered in a playground in Soweto. The 20-year-old victim’s face was found covered in plastic and she was strangled with shoelaces. Nongovernmental groups believe the openly lesbian woman was a victim of “corrective” rape before she was murdered. A case has been opened at the Thokoza police station though no arrests have reportedly been made.¹⁵

Racist violence. South Africa’s submission to the African Peer Review Mechanism in early 2011 notes progress in race relations but also states that “there are still incidents which appear to be influenced by racism, which indicates that a lot of work must still be done to truly eradicate this scourge.”¹⁶ In the past there have been a number of cases where race appears to have been one motivating factor in the commission of the crime. These include:

- A suspected racially-motivated sexual, verbal and physical attack on factory workers in Blackheath, near Cape Town in April 2011.¹⁷
- The random shooting of four black people by white teenager Johan Nel in Skierlik, North-West in January 2008.¹⁸
- The shooting of three black bus passengers by self-proclaimed right winger De Wet Kritzinger in 2000.¹⁹
- The racially-motivated Christmas Eve bombing of a pharmacy and shopping centre in Worcester, Western Cape in 2005.²⁰

Such incidents have been recognized to be relatively rare but the fact that they have occurred in the not too distant past as well as the major social impact such crimes have on the country means that additional attention is needed on race-related crimes.²¹

Antireligious Vandalism. Attacks on property belonging to or associated with religious believers have an impact on entire communities for whom that property is a place of worship. Individuals within the 80,000-strong Jewish community in South Africa have reported verbal threats and hate mail as well as occasional instances of desecration of synagogues and cemeteries. The South African Jewish Board of Deputies reported on 65 such antisemitic incidents in 2010. Some Hindu temples and statues have been vandalized over the past decade, usually resulting in significant public and interfaith outcry in support of the vulnerable community.²² Notable recent incidents have included:

- A Hindu temple was vandalized with graffiti in summer 2011.²³
- In August 2011, 35 of the 85 tombstones in the Ermelo Jewish Cemetery in Mpumalanga province were desecrated in an attack believed to be motivated by antisemitism.²⁴
- In October 2010, several tombstones at a Jewish cemetery in Bloemfontein were defaced with swastikas and antisemitic graffiti.²⁵
- In May 2010, eggs were thrown at Jews attending Lag Ba'Omer celebrations at a synagogue in Oaklands, Johannesburg.²⁶

United Nations Reporting

The First Universal Periodic Review of South Africa

During the first peer review of South Africa in 2008, other delegations enquired about the measures taken to protect the rights of Zimbabwean refugees, migrants, and asylum seekers following reports of increased violence. These delegations requested more information about the implementation of national plans to combat hate crime and about government-led campaigns to reduce xenophobia and racism, and even urged South Africa to assume a regional and global leadership role in promoting tolerance and interethnic and interreligious coexistence. South Africa's Department of Home Affairs recognized the importance of paying more attention to the rise of xenophobia. The government cited the creation of a Counter-Xenophobia Unit and agreed to advance a human rights-based approach to immigration control, including by implementing training programs for officials interacting with refugees and migrants.²⁷

OHCHR's summary of stakeholder submissions provided additional information about hate crimes in South Africa. Several civil society groups noted that refugees and asylum seekers are victimized by xenophobic attitudes, pointed to a high rate of hate crimes and violations targeted against LGBTI persons, and in particular black lesbians, and raised concerns about high levels of violent crime in general. Human Rights Watch also highlighted the government's efforts to develop a program of action for addressing hate crimes and determining whether South Africa should develop specific legislation for bias-motivated violence.²⁸

Committee on the Elimination of Racial Discrimination (CERD)

The Committee considered the initial three periodic reports of South Africa in August 2006—before the resonant outbreaks of xenophobic violence in 2008—nevertheless raising concern about both the frequency of hate crimes and “the inefficacy of the measures in preventing such

acts” in South Africa. In addition to recommending that South Africa ensure the full implementation of article 4 of the Convention on the Elimination of Racial Discrimination (ICERD), the Committee called on the government “to adopt legislation and other effective measures in order to prevent, combat and punish hate crimes.”²⁹

The Committee on the Elimination of Discrimination against Women (CEDAW)

During the combined second, third, and fourth periodic report of South Africa, the Committee noted the constitutional prohibition of discrimination based on the sexual orientation of individuals, expressed “grave concern” about reported crimes committed against women on account of their sexual orientation, and expressed further concern about “corrective” rapes of lesbian women. The Committee recommended additional awareness-raising efforts and the adoption of comprehensive antidiscrimination legislation in South Africa.³⁰

The Special Rapporteur on the Human Rights of Migrants

Jorge Bustamante conducted an official visit to South Africa in 2011, visiting Pretoria, Johannesburg, Musina, and Cape Town. The Special Rapporteur’s mission report commended the government’s organization of the FIFA World Cup without a major xenophobic incident and called for an expedited introduction of the hate crime bill that was being prepared at the time of visit by the Department of Justice and Constitutional Development.³¹

Mr. Bustamante stressed the importance of consulting migrant communities during the preparation of a hate crime law, highlighting the importance of using aggravating circumstance provisions to prosecute hate crimes and the need for effective resources and training for police, justice and other relevant officials—including training on investigating, prosecuting, and monitoring incidents. Additionally, the Special Rapporteur called for the establishment of a permanent body in the office of the Presidency tasked with coordinating state programs on social cohesion, xenophobia, police profiling, and hate crimes.³²

The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism

During the mission to South Africa in April 2007, Special Rapporteur Martin Scheinin “got varied and skeptical responses from authorities concerning the rights of immigrants in the country,” noting the existing xenophobia against the immigrant community in South Africa. The Rapporteur was told by the authorities that the 2006 outbreak of violence against Somali immigrants that led to dozens of murders in the Western Cape was not motivated by xenophobic sentiment, but was best explained by financial disputes between the local population and the immigrants. Mr. Scheinin called for firmer action to “address violence and other expressions of xenophobia towards immigrants, both from private individuals and any government actors.”³³

The African Peer Review Mechanism

The African Peer Review Mechanism (APRM) report published in October 2007 raised specific concern stating that “xenophobia against other Africans is currently on the rise and should be

nipped in the bud” and recommended that the government strengthened “anti-xenophobic institutions” and “capacitate institutions mandated to protect vulnerable groups”.

In its 2011 submission on progress, South Africa acknowledged the specific challenges of racism and xenophobia and indicated some steps that are being taken to begin to address these.³⁴ However, a subsequent civil society report notes some significant shortcomings on both issues including the lack of clarity on the government’s implementation of the recommendations from the Human Rights Commission report on xenophobia. The combined civil society report concluded that the government is not doing enough to address xenophobia in the country.³⁵

Shortcomings in the State’s Response to Hate Crime

During the past several years, the government has made several positive steps to begin addressing the problem of hate crime, including by increasing high-level rhetoric in support of tolerance and nondiscrimination, by condemning specific incidents, by carrying out some of the recommendations that have emerged from inquiries into past outbreaks of hate crime violence, by reaching out to and working with communities affected by hate crime violence, and by taking short-term steps to improve inter-ministerial cooperation and adopt specific legislation to address hate crime violence. These initiatives should be sustained in accordance with recommendations listed at the end of this submission. Despite these positive steps, a number of shortcomings in the government’s response remain.

An Inadequate Legal Framework for Hate Crimes. Currently there are no legal provisions allowing the application of enhanced penalties or “fast-tracking” in the prosecution of bias-motivated incidents. Even without such provisions, hate crime incidents must be investigated and prosecuted by the authorities, yet NGO and government-commissioned reports continuously decry significant problems in accessing justice for victims of hate crimes. As a result, significant levels of impunity exist for the individuals responsible for orchestrating violent mob raids in areas populated by foreigners, for seeking out and raping and/or murdering lesbian women or assaulting gay men, or for vandalizing places of worship and cemeteries. Despite being listed as a priority group in the National Victim Empowerment Programme (VEP) Policy guidelines, victims of hate crime are also often at risk of secondary victimization from service providers and thus unable to specific support services.

The Lack of Official Monitoring and Reporting. At present there is no effective system for collecting data on violent hate crimes, or that encourages the recording by police of potential bias—a key factor in determining if the crime was motivated by bias. Although some departments are introducing mechanisms to monitor aspects of hate crimes, there is at present no effort to develop joint definitions and standardize reporting. The absence of an adequate system for monitoring and public reporting on hate crimes impedes policymakers from seeing and understanding the full scope of the problem and developing adequate responses. Because hate crimes often affect the most socially vulnerable groups, the victims often chose not to report incidents to the police, fearing further attacks or even possible secondary victimization by the police.

Inadequate Inter-Departmental Cooperation. At present, there is no joint effort to develop strong inter-departmental measures to address hate crimes. Shortfalls in this type of inter-departmental effort were noted as impeding efforts to hold perpetrators of xenophobic violence in May 2008 accountable. In contrast, good coordination in the establishment of special courts to try perpetrators of crimes relating to the FIFA World Cup in 2010 demonstrated how effective good inter-departmental cooperation can be. In addition, although victims of hate victimization are noted as a priority group in the VEP guidelines, there is no practical guidance to ensure effective support for victims as a cooperative effort from the Department of Justice and Constitutional Development and Department of Social Development.

Recommendations to the South African Government for Combating Hate Crimes

We appeal to the Universal Periodic Review to make the following recommendations in its outcome document:

- Senior government officials should speak out against hate crime violence against any vulnerable group whenever such acts occur and ensure that every effort is made to thoroughly investigate the crime and hold the perpetrator(s) accountable.
- The President should establish a permanent body in the office of the Deputy President to ensure effective coordination of the various government departments' programs on social cohesion, addressing racism and xenophobia, and tackling hate crimes in general.
- The government should strengthen measures to address hate crime violence by introducing legislation that expressly criminalizes violence against individuals or property on the basis of a person's race, nationality, religion, ethnicity, sexual orientation, or gender identity. In this connection, the government should also provide effective resources and training for police, justice and other relevant officials to ensure the successful implementation of the provisions of this legislation, including training on detecting, recording, and prosecuting hate crime, as well as monitoring trends of hate crimes.
- Law enforcement agencies should develop measures to monitor cases of hate crimes by using police and justice statistics as a means of tracking trends of hate crimes and monitoring police and justice responses to these cases (with statistics such as number of arrests, number of offenders prosecuted and number convicted).
- Law enforcement officials should take steps—including by reaching out to community and other nongovernmental groups—to increase the confidence of crime victims to report crimes to the police. The authorities should ensure thorough investigations and prosecution of any reports of police misconduct or abuse.

Endnotes

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