



**Statement by Michael McClintock
Director of Research, Human Rights First**

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**OSCE Tolerance Implementation Meeting:
Addressing the Hate Crime Data Deficit**

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DATA COLLECTION AND THE FIGHT AGAINST HATE CRIMES

The Information Deficit and Public Policy

Good governance requires good information. Bad information or the wrong information can have disastrous consequences for governments and their societies. Our focus today is on the role of information in addressing a particularly pernicious form of violence that is common to most societies and can in extreme cases tear a nation apart.

Good information is not enough for good governance, but is a fundamental enabling factor for good policy. My emphasis today is on the data collection and analysis needed to respond to violence motivated by prejudice and hatred. These forms of violence are particularly serious crimes because they harm whole sectors of a nation's population, not only through fear but through a process of progressive alienation.

Reliable data collection and analysis on these forms of violence is required to chart a course for good governance, national unity, and social peace. Most of my remarks concern the obstacles we need to overcome to meet this need. This data collection can be undertaken in the criminal justice system, in other parts of local and national government, and by civil society. My remarks will focus

largely on the information deficit in criminal justice systems, its causes, and on ways to address this that will help governments meet their OSCE commitments.

Quantitative data on hate crimes helps us discover patterns and practices, the policies behind them, and gaps in public policy and action. Data on hate crimes—including responses to them—can provide a basis for changes in public policy to allow more effective policing and greater security across the board, in the short and the long run.

Hate crimes measurement may be as simple as counting the victims and assessing the physical damage done. The larger impact on society of racist, antisemitic, homophobic, and other related violence also needs to be measured. This is more than a calculus of broken bones, shattered glass, and frightened children, but data on actual incidents provides a window into this larger picture.

Some governments have recognized the threats of escalating antisemitic, anti-immigrant, and anti-Muslim violence as long term threats to public order and stability. In the short term, rising levels of threats have led to preventive action such as special police protection for synagogues, mosques, and religious schools. Data on the real levels and social costs of violence can help move other governments to follow suit. Some governments in Europe, most recently Croatia, have also taken long-term institutional measures by enacting laws devised expressly to combat hate crimes.

What data?

A principal determinant of what and how incidents and crimes are monitored and reported is definitional. Crimes become hate crimes when they are motivated in whole or in part by prejudice and hatred. But different legal systems define this differently. Some concern only prejudice and hatred based on perceptions of race, religion, or ethnicity. Others are more inclusive, extending to prejudice based on gender, disability, social status, sexual orientation and other attributes. Ideally, any violence motivated because of a person's distinct group identity should be acknowledged as a hate crime.

Data collection will also need to differentiate between hate crimes, that involve acts and immediate threats of violence, and the expression of racist and other hateful views and opinions, the difference between hate crime and hate speech.

The criteria for inclusion in a data set are usually determined by the needs and priorities of the institution gathering and structuring the data. For example, tracking cases through the criminal justice system may be a basic management tool for such purposes as scheduling cases and court appearances, but if monitoring the progress of hate crime cases is not a priority it will not happen.

And when hate crimes are not defined as specific crimes in the criminal code, hate crimes may be indistinguishable from other offenses in this monitoring. A racist assault, even if prosecuted, will commonly appear only as simple assault, or as a crime such as hooliganism, in tracking and statistical systems, unless separate coding for such offenses is required in these systems as a matter of policy.

There are other needs for differentiation. In many European countries, crimes of “discrimination,” “racism,” or “xenophobia” are defined in criminal codes, and used to prosecute discrimination in speech and in act. Statistics on such crimes are readily available, as they can be identified by specific criminal code articles. But these numbers have little to do with the incidence of hate crimes. More commonly they concern such discriminatory acts as denial of access to a nightclub or a restaurant. Hate crime violence in these justice systems, in contrast, is commonly prosecuted as an ordinary offense and is statistically invisible. New statistical means are needed to distinguish crimes of violence from other crimes of discrimination.

What is included in statistics is also defined by criteria other than the criminal law itself. Are incidents registered as *prima facie* hate crimes if motivated in whole or in part by prejudice and hatred, or only if hatred was considered the predominant motive for an attack? The former is by far preferable.

The end-use of the data, too, may dictate a higher or lower threshold for the registration of an incident. If the sole interest is prosecution, police will be reluctant to take on the added efforts required to prove an act was more than a

common offense. And they will be less enthusiastic to record the details of a hate crime if they believe it unlikely to result in a prosecution.

To remedy this, police need to recognize at the highest level and on the street that data collection and analysis is also a priority for practical and policy reasons. A victim's or witnesses' testimony that an attack was racist or homophobic should be sufficient to record it as a hate incident, even if this in itself may not be sufficient for a successful prosecution as a hate crime. Statistics from such incident reports will then allow the rapid deployment of needed resources in emerging hot spots or other longer term options to nip an emerging problem in the bud.

Where is the Data Collected?

Official data on crime is compiled largely within the different structures of criminal justice systems. Its limitations are a consequence of the primary end-use for which each distinct agency gears its information management.

Police can generate statistics that are extremely meaningful to the issue of hate crimes, but often do so primarily to measure police productivity and to serve other management purposes. Information that could provide insights into discriminatory practices often remains unavailable to other agencies or to civil society groups concerned with these issues.

Other agencies of government may also play an important role in monitoring and reporting. In France, the Ministry of Education now produces regular reports on incidents [involving discrimination and violence] in schools. And official antidiscrimination bodies can collect data on hate crimes from all government agencies as well as complaints from the public, although most do not do this. NGOs, in turn, conduct their own data collection, and in some circumstances work closely with and have access to information from government agencies.

Data and the criminal justice system

Data collection even within criminal justice systems is undertaken for different purposes and with different methodologies by different agencies. Any

professional police establishment receives daily incident reports of suspected crimes, complaints of crimes, and in large part determine the charges to be brought in prosecutions.

Other record systems are maintained by public prosecutors and the courts. The data in each stream of criminal justice serves multiple purposes, from providing a basis for performance evaluation, to informing higher authorities of the need for reform. Hate crimes may be reflected in each set of data.

[Police administrators can be expected to want accurate and timely information on how and where crimes are committed as an essential management tool. Accurate data on hate crimes is required both to enable police to identify the perpetrators of serious crimes of racist and related violence while deploying the right personnel resources, with the right skills and trained in the appropriate tactics, to areas with high concentrations of crime.]

[Police may also be aware that good relations with minority communities are required for effective policing in multi-ethnic societies (not least so that crimes are reported), and that this may in large part depend on their response to racist violence and other hate crimes.]

Under-Reporting and Under-Recording

A series of hurdles must be overcome so that hate crimes are reflected in official statistics. On the one hand, many incidents of crime are never even reported to the authorities: what police experts review to the “Dark Figure” of unreported crime. On the other, whatever statistics exist are skewed by the *under-recording* of the complaints by victims who come forward, as accounts of the role of prejudice and hatred are omitted from incident reports.

Incidents are under-reported where victimized groups have no confidence that law enforcement authorities will provide protection, redress, and respect. Reporting also lags when a victim fears reprisals for going to the police—although provisions for confidentiality or witness protection can mitigate this. Cultural or social factors also limit the reporting of attacks and threats by members of some groups, notably women from some cultures, and members of sexual minorities. Special police units have been created in some jurisdictions to

make it easier for these victims to seek police assistance, measures that should be replicated.

[Similarly, victims of uncertain immigration status may also fear that coming forward will both afford no redress and expose the victim to deportation. Even where there are provisions in law providing special visas to victims of serious crime who cooperate in the prosecution of crimes, these provisions are little known and rarely applied.]

Structural obstacles

The point of measurement within the criminal justice process will be a major factor in data collection and analysis. Records and statistical systems based on police data from complaints will inevitably cover a greater number of incidents than will data on crimes that reach the next level of the system, the public prosecutors. But police records of hate crime incidents will generally reflect only a fraction of the actual incidents: a conclusion drawn from comparisons with the findings of government crime surveys (most notably in the United Kingdom) as well as reports generated by NGOs.

Under-recording occurs when police fail to file the accurate incident reports required to identify hate crimes. Police may dissuade people from filing formal complaints by asserting that the police can do nothing about the incident, or that their pursuing the case will disrupt efforts to seek reconciliation between social groups. Crime victims may be asked not “to make waves.” If victims insist, police receiving their statements may register the incident accurately, but only for the record—and not with the status of an official complaint.

Long established procedures and reporting guidelines may also limit what is recorded. Police systems may be geared to register only the most serious of the charges that could be brought based on the specific complaints. Hate crimes that take the form of assault, arson, or vandalism may routinely be recorded in the simplest way: as assault, arson, or vandalism. And there may be no routine coding with which to statistically flag an offense as a hate crime.

Police resistance to recording the element of prejudice in hate crimes can in some cases derive from bureaucratic pressures to reduce paperwork and to

narrow the gap between cases open and crimes resolved. Basing police performance evaluations on the ratio between the commission of crimes and the disposal of cases by the courts—“the criminal justice gap”—can also discourage police from recording complaints of hate crimes, or from recording the details that show prejudice and so increase the evidentiary requirements and workloads.

Giving special responsibility for hate crimes to particular police personnel and public prosecutors in every district, with a capacity to follow up hate crime incident reports, may be one way to contribute to improved reporting and attention to hate crimes at all levels of criminal justice.

Efforts to facilitate tracking and statistical analysis can also include measures to ensure the compatibility of the documentation systems used respectively by the police, the prosecution, and the courts. [In some systems each part of the criminal justice system has its own unique file tracking systems and reporting periods. Reference numbers assigned by the police do not correspond to numbers on case dossiers assigned by the prosecution service.]

Finally, training must be an essential part of any effort to change the institutional policies, procedures, and attitudes required of law enforcement agencies and public authorities for effective action against hate crimes. Training can not be exclusively or primarily about cultural sensitization and attitudes. Personnel will need training on what to do and how to do it, and how they will be held accountable for implementation of the new procedures. This must be backed by formal procedures and practical tools, from incident report templates to easy to use computer software, to put new systems into operation.

However brilliant the training, institutional change to combat hate crimes will depend ultimately on the commitment of institutional leaders to this end. National authorities can help ensure this buy-in by providing central government assistance to local law enforcement bodies, through training, procedural models, and a sustained program of practical assistance and resources. International organizations, notably the OSCE’s Office for Democratic Institutions and Human Rights, can provide assistance in developing such programs.