CONNECTING ON HATE CRIME RECORDING AND DATA COLLECTION: EMERGING THEMES

**Preliminary Results presented at the
Facing all the Facts
Multimedia Conference**

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INTRODUCTION

Since late 2016 we have been working across the Facing all the Facts partnership in England and Wales, Greece, Hungary, Ireland, Italy and Spain to:

- develop and test ways that bring diverse stakeholders together to map strengths and gaps in national hate crime recording and reporting systems,
- better understand what supports and what undermines cooperation between expert civil society organisations and public authorities in this area.

We have created victim-focused tools to help stakeholders map their hate crime recording and data collection *process* and to co-describe their recording and data collection *system*. You will find the *Journey of a hate crime* and *Systems* graphics in your conference packs.

This document sets out the emerging themes including a framework for cooperation and connection, a focus on the transformative potential of perception-based recording, and a conceptual analysis of what strengthens connections in different contexts. It also makes suggestions for next steps. It is intended to be a basis for discussion and consideration during our Multi-Media conference on 11 December 2018. We would be delighted if you share your thoughts about the ideas set out here either by slipping us a handwritten note during the conference, sharing your thoughts in the afternoon plenary, or writing to joannaeperryconsulting@gmail.com. It will help us make sure that final report and tools are as useful as possible!

The full report will be published in early 2019 and we will make sure that you all receive copies.

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FRAMEWORK FOR CONNECTION: A VICTIM-CENTRED APPROACH TO HATE CRIME RECORDING AND REPORTING

Important reasons for a sustained focus on improving hate crime recording and data collection system include the need to:

- produce comparable data across the system at the national and international levels;
- have the ability to trace cases across the investigation, prosecution and sentencing stages of the criminal justice process;
- reduce the reporting gap, or the 'dark figure' of unreported hate crime;
- contribute to understanding of local patterns and prevalence of hate crime.[1]

Findings from in-depth interviews with 'change-agents' led to deeper questions about the core purpose of improving reporting and recording. People were asking: what do victims want and need to happen as a result of reporting and recording? How is the information that we already have being used?

These discussions led to the following proposed victim-focused framework, which builds on national and international efforts.

Improving reporting and recording should lead to:

- reduction in risk: stop re-victimisation and escalation
- improved routes to support: address the evidenced mental health impacts of hate crime and practical needs of victims

- increased access to justice: more effective investigation and prosecution leading to the proper application of national hate crime laws
- reduced the reporting gap: better allocation of resources.

From this perspective it becomes clear that law enforcement, criminal justice agencies, government ministries, recording and monitoring CSOs each have an equal, distinct, independent, yet interconnected role to play in securing these outcomes. As pointed out by one interviewee "what probably helps the cooperation is when we both, when the public administration and the civil society, feel that we are *partners in the same story* and we have to cooperate." (Public authority)

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1 See 'Hate Crime Data-Collection and Monitoring Mechanisms: A practical guide', ODIHR 2014, https://www.osce.org/odihr/datacollectionguide?download=true; 'Hate Crime recording and Data Collection Practice Across the EU', FRA, 2017, http://fra.europa.eu/en/publication/2018/hate-crime-recording; and the home page of the High Level Group on Racism and Xenophobia, https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=51025, for a comprehensive overview of OSCE, Council of Europe, European and FRA norms and standards in the area of hate crime recording and data collection

MECHANISM FOR CONNECTION: SHARED MONITORING DEFINITIONS AND PERCEPTION-BASED RECORDING

Adopting a shared monitoring definition

Adopting a shared definition of hate crime for monitoring purposes allows hate crimes to be tracked across the stages of the criminal justice process thus better 'connecting' law enforcement, prosecutors and the judiciary.[2] Such definitions tend to include the crime types and protected characteristics to be captured and monitored. This approach is particularly useful for:

- legal frameworks that recognise hate crime through aggravating circumstances provisions that are applied at the sentencing stage but should be identified at the earliest stage;
- legal frameworks containing several protected characteristics within a single provision that require disaggregation.

Integrating a perception-based approach to recording

ECRI's Policy Recommendation No. 11 recommends that law enforcement records racist incidents, defined as "any incident which is perceived to be racist by the victim or any other person".

As explained in a recent report by FRA, including the perception of the victim or any other person within these definitions,

'allows the police to implement their legal duty under ECtHR case law to "unmask bias motivation". If a case is flagged as a racist incident – in other words, a potential hate crime – early on in the investigation, it is more likely that evidence of bias motivation will be identified and secured and that measures to support victims to remain part of the criminal investigation will be put in place.'[3]

FRA also identifies the possibility of adopting the perception based recording approach across all monitored forms of hate crime. Important reasons for adopting this practice have been set out elsewhere by ECRI, FRA and ODIHR[4], including that evidence of bias and victim support needs are identified as early as possible and data and statistics on patterns of hate crime victimisation at the community level are improved.

This research explores another central reason for adopting this approach. Including the perception of the victim or any other person as the basis of recording and monitoring hate crime creates a specific point of connection between law enforcement and relevant CSOs and can transform their cooperation. For example, CSO data can automatically be considered by local police in joint efforts to monitor patterns, impact and trends. This has potentially far reaching benefits including building

2 See 'Hate Crime Data-Collection and Monitoring Mechanisms: A practical guide', ODIHR 2014, https://www.osce.org/odihr/datacollectionguide?download=true

3 'Hate Crime recording and Data Collection Practice Across the EU', FRA, 2017, http://fra.europa.eu/en/publication/2018/hate-crime-recording, p. 16

4 See 'Hate Crime Data-Collection and Monitoring Mechanisms: A practical guide', ODIHR 2014,p. 15, https://www.osce.org/odihr/datacollectionguide?download=true; 'Hate Crime recording and Data Collection Practice Across the EU', FRA, 2017, http://fra.europa.eu/en/publication/2018/hate-crime-recording in particular.

stronger relationships and - most importantly - keeping victims and communities safe.

As explained by one interviewee who played a leading role in setting up police-CSO information-sharing agreements in the UK,

> *"the important thing about the [perception based] definition for the police is that a lot of people thought that they were reporting a hate crime but the police weren't taking them seriously and that is what the [perception-based definition] changed. It forced the police to change that mindset. And now we are in the place that if you say that if you are a victim of [a hate crime] you are more likely to be believed…it adds to that pressure on the police to take victims seriously and victim organisations seriously and to work with NGOs and to trust NGOs... you can have disagreement based on the evidence but .... the mindset orientates the police more towards communities to engage with them.'*

Only England and Wales has fully adopted the perception-based definition across all monitored types of hate crime and across the criminal justice system. It forms the basis of national information-sharing agreements secured between the National Police Chiefs Council and the Community Security Trust, Galop, Stophate UK and Tell MAMA.[5]

There are significant perceived obstacles to adopting this approach. First important data protection and confidentiality requirements must be met. Second, a distinction between recording on the basis of perception for *monitoring* purposes as opposed to *legal* purposes must be understood. In other words, the mere perception that an incident is a hate crime is not sufficient to prosecute it as one. However, understanding patterns of incidents that are perceived as hate or bias-motivated by victims and communities provides essential community intelligence for law enforcement and policy-makers.

An important intermediate step that has been taken in several countries is to include victim perception and witness perception as a 'bias indicator' that should be recorded by the police. Eight states reported to FRA that victim and witness perception is included in their list of bias indicators.[6]

It is suggested that we collectively explore ways to include perception-based monitoring with the aim of strengthening relationships with victims and communities and to transform connections across CSOs and public authorities.

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5 See http://www.report-it.org.uk/information_sharing_agreements

6 Cyprus, Denmark, Spain, Finland, Croatia, Ireland, Latvia, Sweden, United Kingdom, see 'Hate Crime recording and Data Collection Practice Across the EU', FRA, 2017, http://fra.europa.eu/en/publication/2018/hate-crime-recording, p.

CONCEPT FOR CONNECTION: ENGINES OF COOPERATION AND CHANGE

Many countries have key institutions, organisations and individuals that have generated progress in hate crime recording and data collection at the national level. These 'engines of cooperation and change' are likely to have the strongest connections and relationships across national hate crime recording and data collection systems.

The 'engines' can be found anywhere in the system. They can be led by: civil society organisations that are expert in recording and monitoring hate crime, agencies such as the police, government ministries or a 'hybrid' of two or more bodies. The 'human factor' is also important. Individual change agents play a strong role in maintaining and nurturing relationships and driving forward action. Below are some examples of these 'engines'.

Civil Society Organisations

- The Racist Violence Recording Network in Greece was set up in 2011 in response to a significant increase in racist violence on the streets of Athens.[7] The Network developed a recording methodology, shared across over 30 civil society organisations, based on in-person reports of violent hate crime. Its annual reports highlight the prevalence and trends of hate crime and have directly influenced and improved official reporting by the police and ministries. Network members have regularly contributed to police training.

- The Working Group Against Hate Crime in Hungary was established in January 2012 by five Hungarian NGOs to work together with the police to tackle hate crimes.[8] The National Police Headquarters and the Working Party created a platform that meets twice a year. The group discusses hate crime cases and other related issues; ensures efficient communication between the police and civil society; identifies flaws in the current system; and establishes a common understanding among the police and civil society of the legal frameworks relating to hate crime. They have worked together to develop a list of bias indicators that are used by Hungarian police.

- iReport, ENAR Ireland is an independent, national online system to capture incidents of racist violence, and police responses to victims.[9] It provides the basis for a number of analyses and reports on hate crime, racist violence and discrimination in Ireland. It has been the most reliable sources of information and data on hate crime in Ireland across the system.

Government ministries

- The Observatory for Security against Acts of Discrimination, Italy: OSCAD is a multi-agency body formed by the Italian National Police and the Carabinieri, housed within the Department of Public Security at the Ministry of the Interior, set up in 2010. It leads on hate crime training and cooperation with civil society organisations. The OSCAD Secretariat receives reports concerning all types of discrimination, collects the data in a database and then analyses the information. The information is integrated into the National System of Criminal Data Collection (SDI). OSCAD devised a way to monitor crimes based on

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7 see http://rvrn.org/category/english/
8 see http://gyuloletellen.hu/about-us
9 see http://www.ireport.ie/

bias against LGBT groups even though these are not protected under current hate crime law.

- The Spanish Observatory for Racism and Xenophobia[10] (OBERAXE) provides the secretariat to the inter-institutional steering group, that oversees the implementation of Spain's national strategy against racism (see below). [11]

Hybrids between CSOs and public authorities

- The UK National Community Tension Team, overseen by the National Police Chiefs Council has agreed national Information-Sharing Agreements with the Community Security Trust (antisemitic crime), Galop (anti-LGBT hate crime), Stop Hate UK (all forms of hate crime) and Tell MAMA (anti-Muslim hate crime). The agreement allows the sharing of anonymised data on incidents across the country in line with strict data protection and confidentiality agreements.

The impact of national strategies that include commitments relating to hate crime recording and data collection.

On their own, "engines" can only drive progress and cooperation so far. Strategic, institutional frameworks sparked and supported by political will, are needed to support these 'engines' and to spread broader improvements across the system.

- England and Wales has had a national hate crime action plan since 2009, committing ministries, law enforcement and criminal justice agencies to record and monitor hate crime. While victimisation surveys indicate a decrease in hate crime, in line with a decrease of overall crime, police-recorded hate crime has more than doubled since 2013.[12]

- Spain implemented a National Strategy against racism, racial discrimination, xenophobia and other intolerance. An interinstitutional steering committee supports the implementation of and includes representatives from across government departments and criminal justice agencies, as well as nongovernmental organisations that are active in monitoring cases and supporting victims of hate crime. The committee focuses on improvement in four areas, including hate crime recording and data collection. Spain has seen a five-fold increase in police-recorded crime since 2013.[13]

It is recommended that we collectively identify our engines of change and cooperation whether they are institutions, individuals and/or frameworks and work to strengthen and support this work.

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10 part of the General Secretariat for Immigration and Emigration, Ministry of Labor, Migration and Social Security
11 The full list of institutions that are signatories to the MoU: General Council of the Judiciary; State Attorney General; Ministry of Justice ; Ministry of Interior; Ministry of Education; Ministry of Culture and Sports; Ministry of Labour, Migrations and Social Security; Ministry of Health and Social Services; Center of Legal Studies.
12 See 'Hate Crime, England and Wales, 2017-18', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748598/hate-crime-1718-hosb2018.pdf
13 See hatecrime.osce.org/spain

PRINCIPLE OF CONNECTION: CRITICAL FRIENDSHIPS

The 'critical friendship approach' was identified by many interviewees as essential to maintaining and navigating positive and productive relationships between recording and monitoring CSOs and public authorities.

'[You can] convince by being an ally, a good critical friend. A friend who has criticisms but puts them forward... someone they can trust, who is a source of assistance, and will go the extra mile to help if things aren't going well, rather than saying "you're rubbish", saying, "here's how we can help".' (CSO)

"'What civil society brings from the point of view of the victim, what the police brings from the investigative side, those two together can make the fight against hate crimes successful… they call our attention to their concerns, how – from the point of view of the victim – we could have been more successful. This is all very constructive, with the aim to help." (Public authority)

'Engaging with these authorities is as important as supporting victims of hate crime'. (CSO)

'You make the most out of it when you try to show from the very beginning that, "I am not here to make your life more difficult, I am here to make our lives easier…. We are keeping [the police] in the spotlight as perpetrators but at the same time we are also trying to cooperate with them to support victims' (CSO)

NGOs have to maintain the trust of all elements of their community while they build these constructive relationships with public authorities. This can be particularly challenging where a lack of trust in public authorities persists. Those organisations that explicitly seek to sustain positive relationships with the authorities can face mistrust within their own communities.

There is also a limit to what CSOs can do to seek productive relationships:

'if a public authority doesn't want to engage, then it doesn't matter what you do' (CSO)

Particular considerations for CSOs

For CSOs, effective and transparent recording and monitoring is resource-intensive, requires a high level of skill and resources, a strong commitment to constructive partnerships with the police and other public authorities, and the trust of their community. Taking this path requires strategic decisions about how resources are used and the most appropriate approaches to campaigning work so that public authority partners are not alienated and the trust of communities is protected.

European Policy Directions

FRA recently published the following opinion:

'EU Member States should set up frameworks of systematic cooperation between law enforcement agencies and relevant civil society organisations (CSOs). This can be done in the area of data and information exchange; by early consultation of relevant CSOs, drawing on their experience; cooperating on the development of instructions, guidance or training on recording hate crime, including exchanging expertise to develop, refine and revise bias indicators; and by involving CSOs in working groups on how to improve the recording of hate crime.'[14]

It is recommended that we build on these concepts and frameworks to develop guiding principles and standards for CSO-public authority cooperation that highlight inspiring practice, support existing practice and spark ideas for successful progress in diverse contexts.

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14 'Hate Crime recording and Data Collection Practice Across the EU', FRA, 2017, http://fra.europa.eu/en/publication/2018/hate-crime-recording, p. 12