



ESTABLISHING A FRAMEWORK FOR THE IMPLEMENTATION OF LEGISLATION TO ADDRESS ANTI-LGBT HATE CRIME

About the Human Dignity Trust

The Human Dignity Trust works with LGBT activists, local lawyers and governments around the world to defend and advance human rights in countries where private consensual sexual activity between people of the same sex is criminalised. In collaboration with our local partners, we support both strategic litigation to challenge laws that persecute people on the basis of their sexual orientation and/or gender identity and law reform efforts to eradicate these laws and enact protective legislation. Our technical assistance for legislative reform focuses on sexual offences, equal opportunities and hate crime laws, in order to better protect LGBT people and a wide range of other marginalised groups from stigma, discrimination and violence.

While political will may exist to address these laws, access to adequate technical expertise and resources often remains a barrier to reform. Our legislative reform programme exists to fill that gap, providing governments and other stakeholders with the world-class technical legal expertise needed to pursue successful reform.

In addition to our in-house legal expertise, we work with 25 of the world's leading law firms and eminent barristers, who as of 2021 have together contributed more than £18 million of pro bono technical legal assistance to our work across five continents. We also host and work with a Commonwealth Group of Experts on Law Reform to Eliminate Discrimination against LGBT People, Women and Other Marginalised Groups, comprised of technical experts in legislative drafting and a range of relevant substantive legal issues.

Local activists always lead and inform our work. They set the pace, to ensure that legal interventions are timely and help to drive wider calls for change. Conscious that together we are stronger, we build highly-skilled international teams to achieve meaningful, measurable and sustainable structural legal change.

We are a registered charity No.1158093 in England and Wales.

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Glossary

Cisgender describes people with a gender identity that matches the gender that is culturally affiliated with the sex assigned to them at birth. It is a term often used to describe people who are not transgender or gender diverse.

Gender Diverse is an umbrella term used to encompass some of the wide variety of gender identities and expressions, particularly those in the global south and east that are not represented within the term 'transgender'.

Gender Expression refers to external manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behaviour, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture. Typically, people seek to make their gender expression align with their gender identity, regardless of the sex they were assigned at birth.

Gender Identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

LGBT is an acronym for Lesbian, Gay, Bisexual and Transgender.

LGBTI is an acronym for Lesbian, Gay, Bisexual, Transgender, and Intersex.

Sex describes the classification of people as male, female or intersex based on a combination of bodily characteristics, including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics. At birth, infants are assigned a sex, usually based only on the appearance of their external reproductive organs.

Sex Assigned at Birth refers to the sex individuals are allocated when they are born on the basis of the appearance of their external genitalia. A person's assigned sex may not conform with their gender identity, which develops over time.

Sexual Orientation describes an individual's capacity for physical, romantic and/or emotional attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. Gender identity and sexual orientation are not the same. Transgender and gender diverse people's sexual orientation is as diverse as that of cisgender people, and they may identify as heterosexual, bisexual, gay or lesbian.

Transgender is an umbrella term for people whose gender identity differs from the gender that is culturally affiliated with the sex assigned to them at birth. This includes people who present themselves or identify differently from the cultural gender expectations of the sex assigned to them at birth, including all of those who intend to undergo, are undergoing, or have undergone gender affirming treatments, as well as those who will not undergo medical treatments. A person's gender identity is independent from their sexual orientation. Just as a cisgender person can be lesbian, gay, bisexual or heterosexual, so can a transgender or gender diverse person. 'Trans' is often used as a shorthand for transgender.

Introduction

Anti-LGBT¹ hate crime remains a social problem of global proportions. In an earlier (2020) report, *Hate Crimes against the LGBT Community in the Commonwealth: A Situational Analysis* (HDT, 2020), the Human Dignity Trust ('the Trust') evaluated empirical evidence that showed that anti-LGBT hate crimes remain pervasive throughout Commonwealth jurisdictions. These targeted and often brutally violent incidents can have devastating impacts on both individual victims and entire communities of LGBT people. The research revealed a number of common themes, including that LGBT people are disproportionately subjected to repeated criminal acts of physical violence and sexual abuse which are likely to have an enhanced impact on all LGBT people, whether as direct or indirect victims of such offences; and that in countries that criminalise same-sex intimacy, state actors such as the police can be common perpetrators of anti-LGBT violence, meaning that victims are reluctant to report victimisation.

In legislating to address anti-LGBT crime, there are some key features of such criminality that legislatures and policy makers must be aware of, including: that LGBT people are often at risk of mob attacks and physical violence resulting in injury; that they frequently experience state-sanctioned torture, other ill treatment and extortion in countries where same-sex intimacy is criminalised; that they experience sexual violence as a form of hate crime, including so-called 'corrective rape' ostensibly in an attempt to 'cure' perceived lesbianism, and are forced into heterosexual marriages which violate their sexual integrity and autonomy and in which sexual violence is regularly inflicted upon them; and that trans and non-binary people are disproportionately subjected to hate crime compared with cisgender LGB people.

In *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (HDT, 2019a), the Human Dignity Trust outlined why governments should enact laws that specifically criminalise anti-LGBT hate crimes. These reasons included:

1 This report uses the acronym LGBT (lesbian, gay, bisexual and transgender) as this is the most widely used acronym across the international literature and is commonly understood within domestic and international institutions. We recognise, however, that the definition and conceptualisation of sexual orientation, gender identity and gender expression are an ongoing and fluid process and vary across the world, and that a number of variations of this acronym are used to represent the diversity of individual identity.

-
- That the government should acknowledge in law the enhanced impact of anti-LGBT hate incidents on individuals, families, victim groups, and broader society;
 - That legislation should reflect the increased culpability that offenders hold when expressing anti-LGBT prejudice through criminal acts;
 - That in order to prevent anti-LGBT victimisation, the state must publicly censure such conduct;
 - That hate crime legislation plays an important symbolic role in supporting and protecting LGBT communities against targeted violence, including from state agencies; and
 - That the law is an important mechanism for ensuring that incidents are monitored and measured. In turn, this supports effective resource deployment in combating incidents.

That report also offered recommendations on legislating against anti-LGBT hate crime, including a step-by-step guide to drafting new legislation.² It is essential that legislatures think carefully about how hate crime laws are drafted, including the type of law enacted, and the models and tests used within the relevant provisions, in order to ensure that the law is clear and concise and, most importantly, that it can be applied in practice.

That said, the establishment of new hate crime laws is only part of a state's strategy to effectively respond to anti-LGBT victimisation. The implementation of these laws can be severely inhibited where anti-LGBT hostilities remain pervasive across society (see e.g. Godzisz, 2019). As set out in our earlier report (2020), it is therefore important that a framework of policies, educational measures and justice tools be developed and implemented alongside the law to ensure that there is not a gap between 'the law on the books' and 'the law in practice' (see e.g. Schweppe et al., 2018). International and comparative research has shown that a 'justice gap' can quickly arise between what is legislatively proscribed and what is applied in practice if the new legislation's implementation is not adequately supported by policies and practical measures (Schweppe et al., 2018). These policies and measures include: education campaigns, the establishment of policies, operational guidance and monitoring mechanisms within criminal justice institutions, and identifying

² Based on an international analysis of the effective application of different types and models of hate crime legislation used across the Commonwealth.

alternative justice mechanisms (such as restorative justice).³ The administration and full implementation of such policies and measures can increase public confidence that anti-LGBT hate crime is being treated seriously by the state and its apparatuses, which, in turn, can increase rates of reporting (Grattet and Jenness, 2008).

This report sets out the ‘next steps’ for governments that establish hate crime laws to support them in ensuring that those laws are applied fairly and robustly. The report establishes a framework based on comparative empirical evidence and international resources, and highlights current practices in jurisdictions that have a mature policy domain for hate crime. It is important to note that the framework outlined in this report is one which we believe governments should aim to implement. We acknowledge, however, that the implementation of all aspects of the framework is dependent upon numerous variables, including resources, access to expertise, and existing criminal justice infrastructures.⁴

APPROACHING THE CREATION OF A FRAMEWORK

Before we set out the various measures and tools for the implementation of anti-LGBT hate crime legislation, it is important to outline how and why we have constructed the framework in the way we have. In the absence of specific international frameworks – at least to date – the concept of ‘hate crime’ has developed in a piecemeal fashion at both domestic and international levels (Schweppe and Walters, 2016). This means that the ways in which hate crime has been defined in policy and law have differed between jurisdictions. However, the *UN Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the achievement of the 2030 Agenda for Sustainable Development* made the following statement, emphasising the importance of addressing hate crime not just through legislation, but in practice, by ensuring its full implementation:

*Develop effective strategies, including by enhancing the capacity of criminal justice professionals, to prevent, investigate and prosecute hate crimes, as well as engage effectively with victims and victim communities to build public trust when engaging with law enforcement to report such crimes.*⁵

³ Each of which will be detailed in this report.

⁴ The Human Dignity Trust’s goal is to facilitate and support the administration of elements of these measures where it can.

⁵ https://www.unodc.org/documents/commissions/Congress/documents/in-session/Kyoto_Declaration_Advance_Unedited_Version.pdf.

With respect to the LGBT community in particular, the UN Human Rights Council adopted the first UN resolution on violence and discrimination based on sexual orientation and gender identity in 2011. Pursuant to the second UN resolution on this topic, it maintains that:

States have an obligation to exercise due diligence to prevent, investigate, punish and redress deprivation of life and other acts of violence. United Nations mechanisms have called upon States to fulfil this obligation by taking legislative and other measures to prohibit, investigate and prosecute all acts of targeted, hate-motivated violence and incitement to violence directed at LGBT and intersex persons, and to provide remedy to victims and protection against reprisal (UNHCR, 2015).

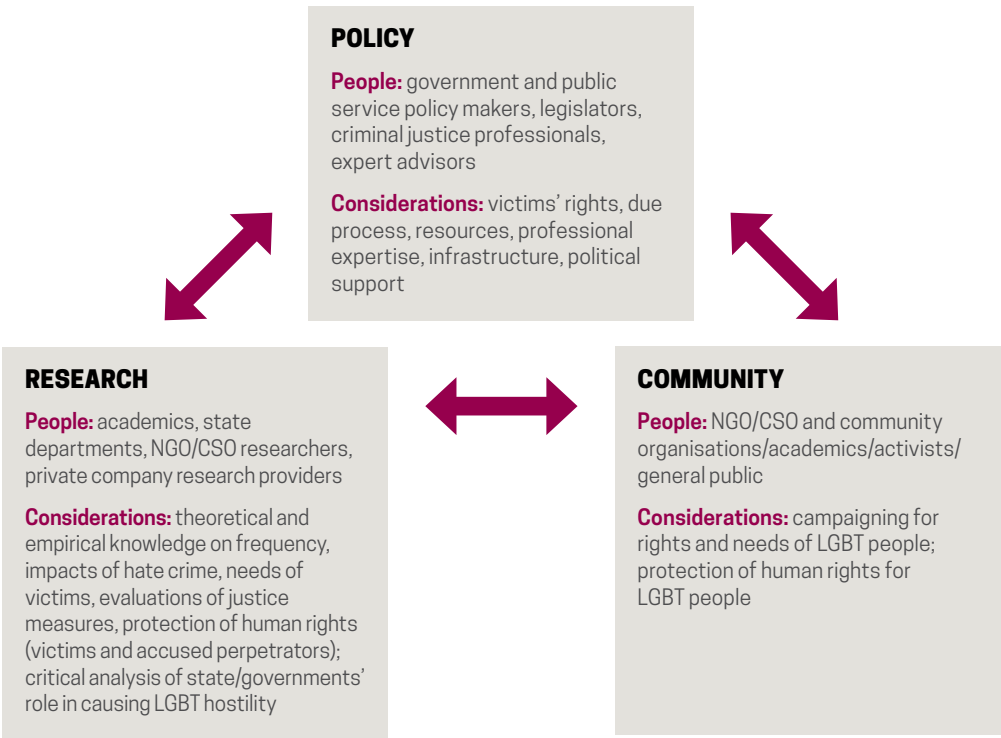
Any framework of law that implements this human rights approach to addressing hate crime, in which States must actively prevent the persecution of individuals because of their sexual orientation or gender identity, must also take into account due process considerations that ensure those accused of hate crime are treated fairly by the criminal justice system.

There are three domains which should play an equal role in the development of strategies and measures aimed at implementing hate crime legislation. Each strategic area can involve individuals from within the same and different sectors (see Figure 1, below).

Figure 1 outlines the three domains, and the people central to each, which should underpin the development, implementation, and review of a framework for implementing hate crime law. While policy makers must ultimately draft and administer many of the policies and measures that support the application of hate crime laws, they can only do this effectively if they integrate research and community, including academics, civil society organisations (NGOs) and activists, into this process (see also OSCE/ODIHR, 2018a). Policy makers should resist a top-down approach to implementing legislation, whereby senior policy makers in association with expert advisors establish laws, policies and measures to tackle identity-based social problems. The engagement of community in this process is not only key to uncovering specific social ills that affect certain segments of society, but the community is also pivotal in shaping the most meaningful responses to those ills. Academics and other researchers can, in tandem, provide the theoretical foundations for enacting laws, while also providing empirical evidence

that enhances our understanding of both the nature and dynamics of anti-LGBT hate crime and how the law might address its harms, as well as conducting independent research on the operation of legislation to test its efficacy.

Figure 1: Multi-partnership approach to implementing hate crime laws⁶



Participants in this multi-directional partnership are not siloed stakeholders who simply bring their outside knowledge and insight to the table. The aim is to engage in a process that is mutually enabling and responsive. As an example, activists can help to bring the specific social needs of LGBT communities to the attention of policy makers. In doing this, both policy makers and activists then reveal to researchers new issues and needs as they arise, which in turn brings new direction to the thinking of researchers. This process is not only about offering information for others to learn from, but it can also be a participatory process whereby academics and non-academics co-design and produce

⁶ This approach adapts and amends some of the work of Perry (2015).

research, or in which the beneficiaries of new knowledge shape the aims and objectives of the research being undertaken (Perry-Kessaris and Perry, 2020).

In many ways this report is an example of a multi-partnership approach to addressing hate crime. The Human Dignity Trust is a registered charity that uses the law to defend and advance the human rights of LGBT people globally. It has commissioned academic experts to undertake a range of empirical work on the impacts of hate crime and on how best to legislate against it. The project has been funded by the UK Government's Foreign, Commonwealth & Development Office, and is intended to support governments (policy makers) globally that seek technical assistance in enacting and implementing hate crime laws. The reports referenced above have highlighted the need for further information on how to effectively implement such laws. In response, the Human Dignity Trust has commissioned new work (this report) which draws on the work of civil society organisations, policy makers, and academic and NGO research from across the world. The collaborative approach to this project is a model which we advocate as the basis for establishing and administering any framework for the successful implementation of hate crime law. It is through multi-agency and multi-partnership approaches to combating hate crime that governments can build and then sustain the policies, guidance and measures that will provide meaningful responses to anti-LGBT offending.

At each step of the framework outlined below, researchers, activists, and civil society organisations must assist policy makers in co-producing an evolving strategy to tackle anti-LGBT hate crime. Inevitably, the social dynamics of each society will change, research will reveal new knowledge about harms and needs, and changing political and economic environments will expose new forms of justice and injustice. The multi-partnership relationship should therefore be an ongoing one that will involve a multiagency framework that is sustained through formal structures (outlined below). A framework that systematises multiagency working will enable jurisdictions to be responsive to social change. Crucially, the production of an implementation strategy is not a final point, but rather one stage in an iterative process whereby the implementation strategy itself is subject to review utilising the framework above, with civil society, policy makers and researchers working in tandem to test and review the operation of the legislation, as well as to make recommendations for revision.

Within this framework we have identified three main, interlinking stages that will support the effective implementation of hate crime laws:

1. **National and institutional policies and strategies.** These are documents that a government or state agency (e.g. the police service) publishes, setting out the aims and objectives of tackling hate crime under the legislative framework. It is to these strategy documents that other measures and tools can then be anchored. Strategies are likely to outline targets for criminal justice bodies that must then implement a number of measures and tools to ensure the policy aims are met.
2. **Institutional and community measures and tools.** These are the practical methods to assist in the effective enforcement of legislation, and may include guidance documents for prosecutors or police officers, reporting mechanisms, community-based programmes that support victims of hate crime, and criminal justice interventions that address offending behaviour.
3. **Education initiatives.** These can operate at national and regional levels, and may include campaigns to raise awareness of new legislation and its content and provide information on reporting mechanisms and on understanding when a crime becomes a ‘hate crime’, as well as initiatives that help community members learn about the impacts of hate crime.

The rest of this report outlines the various types of policies, strategies, measures, tools and education campaigns, highlighting current practices used internationally to support the implementation of hate crime laws. While the identification of current practices is key to developing new policies and measures, we believe that it is essential that the construction and implementation at the domestic level is done via the multi-partnership model proffered here. In other words, the policies and measures below are examples to learn from, but those developed in any given jurisdictions should be tailored to the needs of their communities, as identified by the stakeholders in the multiagency partnership.

STRUCTURE OF REPORT

It is important to note that this report is not addressing the broad question of how to combat hate crime in society; a multifaceted and complex question exploring, among other things, structural

inequalities, decades of marginalisation, colonial oppression, and – in the context of LGBT communities particularly – criminalisation. Rather, the report limits its consideration to the implementation of hate crime legislation within and across criminal justice institutions.

This report has four main parts. The first introductory section sets out the international contexts of hate crime, and the approach taken to the report. The second part emphasises the need for national action plans and institutional policies, detailing the manner in which plans and policies should be developed. The third outlines some of the key matters that criminal justice institutions need to address in implementing hate crime legislation, and the fourth outlines the importance of education campaigns to support its implementation.

Finally, throughout the report, we reference current international practices as examples of how each of the policies and measures we outline can be implemented. It should be noted that we have made frequent reference to policies, strategies, and developments in England and Wales. It is generally acknowledged that the approach taken in England and Wales to addressing hate crime and implementing legislation is one of the most comprehensive globally, and indeed international and inter-governmental organisations often adapt and adopt definitions, approaches, and policies developed in England and Wales in their guidance and policy documents. Our reference to these examples is a result of this evolved framework and it is in no way intended to suggest that other Commonwealth jurisdictions should adopt the models used in England and Wales. Rather, these are examples that others may wish to learn from or adapt. Where possible, we highlight practices in jurisdictions outside the Commonwealth and foreground those international policies.

A NOTE ON TERMINOLOGY

We note that across jurisdictions – and indeed sometimes within jurisdictions – the terms ‘action plan’, ‘framework’, ‘strategy’, ‘guidance’ and ‘policy’ are used with varying meanings. In this report, for ease of reading and for purposes of clarity, we have chosen to use these terms as follows:

- Action Plan – national level
- Strategy – community level
- Policy – institutional level
- Guidance – sub-institutional level to support operationalisation of policy.

Figure 2: The relationship between action plans, strategies, policies and guidance



Section 1. National Action Plans and Strategies, and Institutional Policies

1.1. National Action Plans and Community Strategies: A Horizontal and Vertical Approach

NATIONAL ACTION PLANS

A state-level action plan to combat hate crime, which includes a task list to implement that plan, is vital if legislation is to be implemented effectively. Such an action plan can also emphasise the fact that the government is prioritising the elimination of hate crime and is committed to improving the lives of those who are commonly targeted. It is then crucial that the action plan looks not just at hate crime in a criminal justice context, but sees hate crime as part of a continuum of oppression and marginalisation. Thus, the Plan should seek not simply to ensure the appropriate implementation of hate crime legislation, but rather should see such legislation as just one tool in the arsenal that is required to successfully combat hate and hate crime. For this reason, the Plan should set out high level goals which the state sees as essential both to implementing legislation and to combating the underlying causes of hate.

With respect to criminal justice matters, the strategy should set out overarching principles and use agreed definitions, including a shared understanding of hate crime which can be used across institutions. It will be a single document to which all criminal justice agencies can refer in addressing hate crime internally, but also how each, as an agency or institution, fits within the criminal justice process as a whole when tackling hate. Schweppe et al. (2018) outline the following core actions that should be covered by such a Plan, though naturally there will be some divergences and additions across jurisdictions:

- a. Setting out a system for monitoring and recording of hate crime;
- b. Actions for improved reporting;
- c. Development of guidance policies for police, prosecutors, and judges on addressing hate crime;
- d. Development of effective criminal justice interventions that address the underlying causes of hate crime;
- e. Victim support initiatives; and
- f. Education as prevention.

COMMUNITY-FOCUSED STRATEGIES

We also recognise that those who are victims of hate crime are often members of communities which are marginalised more generally in society. For this reason, States will often develop action plans with respect to protecting, and activating the rights of, the community across a broader range of needs. Typically, such frameworks pre-exist those which relate to hate crime, and will sometimes include reference to eliminating hate or targeting hate crime. Crucially, in this context, such strategies might also outline means by which relationships of trust can be repaired or built between marginalised communities and criminal justice institutions, most particularly the police. In short, while an action plan might address how hate crime legislation can be implemented across criminal justice institutions and state sectors, in order to combat the root causes of anti-LGBT hate, such a strategy should be accompanied by community-focused measures that seek to support and celebrate diversity, and to combat intolerance and prejudice. These horizontal strategies should also focus on the means by which LGBT communities can be supported in activating their rights, highlighting barriers to such activation, and providing solutions. A hate crime strategy works horizontally across these pillars of diversity, ensuring that all strategies and action plans work in concert and across communities and institutions:

Figure 3: Community strategies which make up a National Action Plan on Hate Crime



This approach recognises the very different needs of, for example, disabled people and transgender people with respect to state policies and inclusion while understanding that there will be commonalities across strategies in relation to how hate crime should be defined and implemented. In following this model, this report will detail implementation measures which are shared across all protected groups, whilst also highlighting core aspects which focus particularly on the LGBT community, either as a whole, or, on occasion, broken down into constituent parts.

DEVELOPING PLANS AND STRATEGIES: AN ENGAGED APPROACH

In developing individual action plans or strategies, a multi-agency partnership approach is required to ensure that all perspectives are considered and that workable and operational policies are introduced which have support across institutions and communities. Such policies should be developed in association with a multiplicity of community groups, recognising both the individual and intersectional experiences of hate (Schweppe et al., 2018). Alongside such engagement, those working within criminal justice institutions and educational contexts must also be involved, ensuring that policies are both appropriate and workable. Finally, a clear understanding of the current context and situation must be established by determining not only what the policy is, and thus what shortfalls it has on paper, but also to understand the existing gaps between policy and practice, best established by independent and appropriately funded researchers. In doing so, a core understanding of values and practices can be established, and then used as a baseline to explore the institutional needs and supports necessary. In utilising a multi-agency approach to policy-making, the plan is at once appropriate to the needs of each State, meeting the needs as they are, while also drawing on international practices to set out goals and targets for the future.

Figure 4: The multi-agency partnership framework in action



1.2. Institutional Policies

If an action plan sets out core values that a state seeks to promote and protect in combating hate crime and implementing legislation, and sets out commonly accepted definitions and understandings, then each criminal justice institution should develop its own policy or strategy which will implement the broad goals of the action plan while addressing its own specific concerns. Across criminal justice institutions, there will be some commonly shared goals, such as providing adequate training in recognising hate crime and appropriately recording or acknowledging hate crime. If we look to England and Wales, for example, the College of Policing has a policy, *Responding to Hate* (2020b), and the Crown Prosecution Service has a *Hate Crime Strategy 2017–2020* (2018). It is important, however, that these institution-level policies are not developed in a piecemeal way, but rather are contextualised within the national framework set out in the action plan. Ideally, they should be developed collaboratively across criminal justice institutions, thereby ensuring that definitions are shared and inter-agency collaborations clearly reflected. Thus, the institutional policies should sit neatly within the action plan framework, reflecting its core values, goals, understandings, and directions.

In the next section of this report, we will outline some of the core issues which these individual policies should contain. It is important, however, that all such policies are developed in a manner which is appropriate to the national context.

Section 2. Institutional Measures and Tools

In this second main part of the report, we will outline how, in order for action plans to be implemented, there is a need for supporting documentation to guide the establishment, administration and evaluation of criminal justice measures aimed at preventing hate crime. Institutional policies should foreground a toolkit of measures to aid the criminal justice apparatus in its mission to enforce hate crime legislation. This includes reporting mechanisms, practitioner guidance documents, and learning and training resources to support professionals to develop an understanding of anti-LGBT hate crime.

2.1. Reporting Mechanisms and Monitoring Processes

In order for hate crime to come to the attention of state authorities, victims must have a means of reporting incidents to the police. If victims are not willing to report their experiences to the police, then any efforts at developing or implementing legislation will bear little fruit. Underreporting of crimes in general is a phenomenon recognised worldwide, and victims will often not report their experiences to the authorities for a number of reasons. In the context of hate crime, however, it is internationally accepted that underreporting is a much more significant issue (FRA, 2021), with some communities – for example, the transgender community – reporting victimisation at a much lower rate than the general population (see below). The simple presence of hate crime legislation on the statute books may give some victims confidence to report their experiences to the authorities. However, this will not, in and of itself, be sufficient, and a number of steps should be taken (including the use of victimisation surveys) to understand why victims do not report, how hate crime manifests in LGBT communities, and its prevalence. Following this, the criminal justice system must institute measures to support official reporting that responds to victim experiences and perspectives and, alongside that, introduce measures to allow for third-party or parallel reporting. These processes will also, in turn, assist states, as protectors of all citizens against violence and crime, in making evidence-based policy decisions. Such data are also useful in identifying the prevalence

and patterns of hate-based violence, which is useful in prevention, response and future institutional planning to tackle the problem.

VICTIMISATION SURVEYS

As noted in the previous report, *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (HDT, 2019a), there is a major gap in data collection on hate crime across the Commonwealth, with only a small number of jurisdictions collecting and publishing those data. Further, where such data are collected and published, they do not always reflect all communities targeted, and rarely disaggregate crimes against an individual because of their sexual orientation from those against an individual because of their gender identity and/or expression.

It must be accepted, however, that Commonwealth jurisdictions are not unique in relation to data gaps. It is largely because of the work of the European Union Fundamental Rights Agency (EU FRA) that information is known about the prevalence or manifestations of hate crime in the European Union. The EU FRA emphasises the importance, not only of collecting data with respect to reported hate crime, and its journey through the criminal justice process, but also the need to ‘make hate crime visible’ through crime victimisation surveys. Standard crime victimisation surveys, the EU FRA states, should encompass hate crime specifically, which will uncover the following:

1. The nature and extent of non-reported crimes;
2. The experiences of victims of crime with law enforcement;
3. Reasons for non-reporting; and
4. Rights awareness among victims of hate crime.

This type of data will greatly assist states to understand the experiences and needs of victims of anti-LGBT hate crime. Such understanding will also shed light on any structural deficiencies in the criminal process which hamper victims from having their rights fulfilled, as well as provide a means by which the justice gap in prevalence levels can be assessed. The EU FRA has conducted two such victimisation surveys at a European level with members of the LGBTI community (2013b, 2020a).⁷ Importantly, the survey allows for data to be internally disaggregated in the following categories: lesbian women; gay men;

⁷ EU FRA has also conducted similar surveys with members of the Roma and Traveller communities (2014 and 2020b), and racialised communities (EU MIDIS I and II) (2012 and 2017).

bisexual women; bisexual men; trans people; and intersex people. Importantly, these surveys use different sampling methodologies; across the work of EU FRA with various communities, surveys have been conducted face to face (in, for example, the case of the Roma and Traveller survey) and online (in the case of the LGBTI survey).

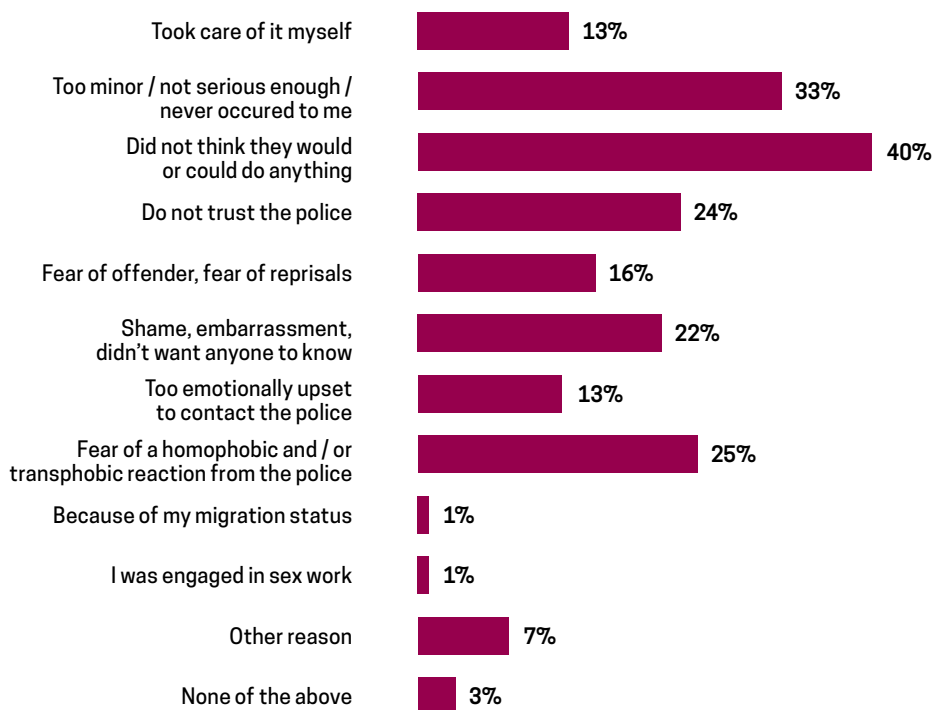
As well as victimisation surveys which seek to understand the specific experiences of individual minority communities, broader crime and victimisation surveys can also capture the experiences of victims of hate crime as compared to victims of ordinary crime. For example, the Crime Survey of England and Wales (CSEW), a face-to-face survey of more than 55,000 households, provides detailed data on the estimated numbers of anti-LGBT hate crimes that occur each year. The survey also examines the impacts that hate crimes have on individuals. The most recent analysis of data showed that there were an estimated 23,000 sexual orientation-based hate crimes and 7,000 anti-trans hate crimes each year between 2018 and 2020 (Home Office, 2020). More generally, the data showed that 96 per cent of victims of hate crime were emotionally affected by the incident compared with 83 per cent of CSEW crime victims overall, while 36 per cent felt ‘very much’ affected, compared with 15 per cent overall.

OFFICIAL REPORTING

In considering the underreporting of hate crime, it is important to assess in each jurisdiction the extent of the underreporting and the reasons why LGBT victims do not contact the authorities. With respect to LGBTI people, the EU FRA survey shows that, across Europe, rates of reporting are low. Survey participants, all of whom were LGBTI, were asked if they reported the last incident of hate-motivated physical attack they had experienced to the police or any organisation or institution. Responses across the community ranged from 31 per cent of victims in Denmark responding that they had reported their experience, to only six per cent of victims in Romania doing so. However, when we change the filter, the responses for trans respondents are different: 35 per cent of trans respondents in Belgium stated that they had reported their last incident, while not even one trans respondent in Lithuania reported their experience.

The EU FRA set out the reasons why individuals did not report their victimisation to the police (see Figure 5, below). These are the aggregated responses for all respondents across all 30 countries surveyed (that is, the countries of the European Union, the United Kingdom, North Macedonia, and Serbia) taken from the EU FRA LGBTI Survey II Data Explorer (2020c).

Figure 5. Stated reasons for non-reporting of victimisation to police



While the reasons for not reporting are many, fear of a homophobic or transphobic reaction from the police is clearly one of the most significant reasons. This is not unique to Europe. The Transgender Europe report *For the Record: Documenting Violence Against Trans People* (2016) identified the police as among the top five perpetrators of transphobic hate crimes. A study of trans people in Columbia found that 78.7 per cent of trans people had been victims of police harassment, violence or brutality (Columbia Diversa, 2011: 40). The conclusions drawn in the Trust's *Injustice Exposed: The Criminalisation of Transgender People and its Impact* (2019b) is stark: "[i]n multiple studies from the Americas, Africa and Asia, overwhelming majorities of trans and gender diverse people experience harassment, violence and abuse from state officials" (see also HDT, 2020).

The problem of police violence and discrimination is not limited to the trans community. Where same-sex intimacy is criminalised, the likelihood of an individual reporting their victimisation due to their

sexuality is low. For example, the Trust's report *Breaking the Silence: Criminalisation of Lesbians and Bisexual Women and its Impacts* (HDT, 2016) notes that physical and sexual violence against women is notoriously under-reported and that for multiple reasons, including fear of re-victimisation by police, this can be exacerbated for lesbians and bisexual women. Even where decriminalisation has occurred, non-reporting is common. In the United States, for example, Lambda Legal (2012) found that 25 per cent of respondents to its survey reported at least one type of police misconduct, and an overwhelming majority (71 per cent) of those who made a complaint reported that the police failed to fully address that complaint.

It is clear that no matter what the jurisdiction or the legal context, many members of the LGBT community fear, at best, a homophobic, biphobic or transphobic response from the police, and, at worst, violence perpetrated by officers tasked with addressing their complaint. While the introduction of hate crime legislation will go some way in sending a message to communities that their experiences will be heard and respected, trust in the police must be earned. This is no easy task. For instance, in Ireland, a jurisdiction that decriminalised same-sex intimacy between men in the 1990s, voted in marriage equality by popular referendum in 2015, and which now has some of the most progressive gender recognition legislation in the world (also introduced in 2015), the relationship between the trans community and the police is extremely poor. Research conducted in 2017, which compared the relationship of the trans community to that of the general population, found that only eight per cent of members of the trans community categorised themselves as having 'high trust' in the police, compared with 43 per cent of the general population (Haynes and Schweppe, 2018). Similarly, 69 per cent of the general population categorised themselves as being 'very satisfied' or 'quite satisfied' with the police, compared to 34 per cent of respondents to the Trans Policing Survey.

In order to encourage reporting, a number of measures can be put in place. We will discuss the training needs of police officers below, as well as the need for specialist community support police officers who work with impacted community groups. The gap in trust cannot, however, be rectified overnight, and requires entrenched and sustained work on the part of the police to repair or sometimes create relationships with communities. As an interim measure, third-party reporting processes could be valuable.

INDIRECT REPORTING AND MONITORING PROCESSES

There are three means by which reports can be collected from victims without direct and formal engagement with the police, each of which will be discussed in the following subsections. At the outset, it must be noted that each has advantages and disadvantages, with the first two requiring well-funded and engaged civil society organisations operating across victim groups. The three means are:

- Online (anonymous) reporting;
- Third-party reporting processes; and
- Third-party monitoring processes.

ONLINE (ANONYMOUS) REPORTING

There are two primary online police reporting mechanisms. The first allows victims to give information to police services as a way of formally reporting the crime, in the expectation that they will be contacted by the police with a view to the crime being further investigated, or at least formally recorded. The Singaporean Police Force, for example, allows those with a Singpass (a digital identity document issued by the State) to report a crime online.⁸ Some police services specifically highlight the fact that hate crimes can be reported online.⁹ The Ottawa Police Service, for example, allows victims of ‘hate-motivated incidents’ to report their experiences online, though again this cannot be done anonymously and those reporting must fill in personal details to make the report. In England and Wales, where there are a range of territorial police forces, there is a single website to specifically facilitate online reporting of hate crime nationally,¹⁰ though again, and while individuals making such reports can provide their personal details so that police officers can contact them, reports can also be made anonymously. Anonymous reporting allows victims to have their experiences recognised by the police, and may allow for police to collect data to provide for what Mason et al. (2017: 95) describe as “an evidence based preventative approach” to hate crimes. That said, the OSCE/ODIHR observes that the absence of information about the victim will negatively impact on the ability of the police to process the case, and note that an investigation may not be opened in the absence of knowledge of the identity of the victim. Indeed, some police

⁸ It must be noted, however, that reporting in Singapore will be complicated for LGBT people by the criminalisation of same-sex intimacy and lack of LGBT rights protections.

⁹ See, for example, Singapore:
<https://eservices.police.gov.sg/content/policehubhome/homepage/police-report.html>.

¹⁰ https://www.report-it.org.uk/your_police_force.

services will not open an investigation without a signed statement on the part of the victim, which would give online reporting a monitoring function only, as opposed to an operational one.

THIRD-PARTY REPORTING PROCESSES

The OSCE/ODIHR recommends that States enable hate crime reporting by third parties, either civil society organisations or human rights/equality bodies. It notes that in England, there are currently formal information sharing agreements between four civil society organisations and the police which allow for the exchange of anonymised information regarding hate crimes for the purpose of “identifying trends and measuring the impact of reporting policies” (OSCE/ODIHR 2020: 45). Participants in research by Mason et al. (2017: 95) identified these processes as useful for providing police with information to allow for targeted interventions and prosecutions, with members of the LGBT community being “strong advocates” of this approach, given that many members of the community were unable to identify themselves as victims for a variety of reasons.

Other researchers have suggested that for third-party reporting services to be effective they must be visible and accessible to LGBT community members. A common problem that has been faced by third-party reporting agencies is that the vast majority of community members remain unaware of when and where they should report an incident. Chakraborti and Hardy (2015) have recommended that, where third-party reporting services are established, they should be supported by a mainstream media and minority press campaign, utilising poster advertisements in appropriate community venues and LGBT ‘hubs’. Services should also be publicised via social networking sites such as Twitter and Facebook.

It should be noted that, while third-party reporting services are an important part of the reporting framework for anti-LGBT hate crimes, they should not serve as a replacement for robust reporting and recording mechanisms.

THIRD-PARTY MONITORING PROCESSES

A third and final monitoring function that civil society organisations can perform to capture victim experiences and highlight the prevalence/reporting gap is a third-party monitoring system. As Schweppe et al. (2020) observe, such systems exist in parallel with official mechanisms for recording hate crime. To supplement or

complement such systems: “they can provide an alternative to official mechanisms, and can highlight a phenomenon which could otherwise be invisible” (Schweppe et al., 2020: 48). They can supplement limited official recording, be used to challenge official statistics, inform legislative and policy change, validate victims’ experiences, and be used as a means by which victims can seek and obtain support in the absence of a police reporting process (Schweppe et al., 2020). However, the value of such monitoring processes should be seen as limited in the context of a broad and comprehensive implementation strategy, and Mason et al. (2017) note that, in England and Wales, where significant efforts have been made to increase police reporting of hate crime, victims are “significantly more likely to report to the police” than they are to civil society organisations. For this reason, where a full implementation plan is established and put into practice, these monitoring processes can have limited value, and should not be used as an alternative to state obligations in this regard.

2.2. Policing Guidance and Training

While victims of hate crime may discuss their experiences of victimisation with a friend, a medical practitioner, or a civil society organisation, if they want to have their experience formally recognised through the criminal justice system, the police are their first engagement in that process. Thus, the relationship between the police and victims is key to ensuring that hate crime is formally recognised and addressed by the criminal justice system. As we have seen, one of the key reasons for not reporting is a lack of trust in the police. As Mason et al. (2017: 19) note, “there is a correlation between notions of procedural justice, fairness and trust ... and victims’ willingness to report hate crime to police”. As well as earning the trust of the community, however, further mechanisms should be put in place to operationalise policing in the context of hate crime, particularly with reference to recognising and investigating anti-LGBT offences.¹¹

RECORDING

If a crime is not recorded as a ‘hate crime’ when it comes to the attention of law enforcement agencies, it is likely that, as it moves through the criminal process, the hate element will be ignored or ‘disappeared’ (Schweppe et al., 2018). Further, as the OSCE/ODIHR observes, “[i]f

¹¹ We note that, across a number of jurisdictions, police officers will investigate and prosecute crime. However for reasons of clarity, we address prosecution issues in the next section. The considerations there apply equally to the prosecution service as to police prosecutors.

crimes are not recorded, it allows state authorities to believe or assert that there are no hate crimes occurring” (OSCE/ODIHR, 2009). The OSCE/ODIHR Report (2014a) notes that there are three main reasons for recording hate crimes as a specific category of crime:

- It enables application of the relevant hate crime provisions in legislation and punishment of perpetrators;
- It improves the authorities’ understanding of the problem, providing information needed to prevent hate crimes, monitor trends and measure the effect of efforts applied to counter hate crimes; and
- It is necessary to identify the victims of such crimes and meet their specific needs.

In the aftermath of the 1993 murder of Stephen Lawrence in the United Kingdom, the discretion afforded to the police in the recording of racist hate crimes was removed through the operation of the ‘Macpherson test’, or the ‘perception’ test. The definition as it applies to a person’s sexual orientation and gender identity are as follows:

A hate crime is any criminal offence which is perceived by the victim or any other person to be motivated by a hostility or prejudice based on:

- a person’s sexual orientation or perceived sexual orientation, or any person’s sexual orientation.
- a person who is transgender or perceived to be transgender, including people who are transsexual, transgender, cross dressers and those who hold a Gender Recognition Certificate under the *Gender Recognition Act 2004*.

This test has now been adopted at a European level, and includes the recording of non-crime prejudice-based incidents. In ECRI’s GPR 11 on combating racism and racial discrimination in policing (2007), paragraph 14 defines a racist incident as “any incident which is perceived to be racist by the victim or any other person.” This test removes the discretion typically afforded to police officers in recording crimes, and requires them to record a crime as racially motivated if the victim or any other person perceives it to have been so motivated.¹²

12 It must be noted that the test is not universally supported: Mason et al. (2017: 141), for example, describe the perception test as ‘over-inclusive’, and argue that its utilisation has a number of risks, including “a large gap between recording and prosecution that can sap public confidence, unsustainable public expectations for greater say over the provision of policing services, and confusion about the evidence which investigating officers need to gather to meet legal threshold”, ultimately arguing that it has the capacity to “damage, rather than strengthen, the legitimacy of policing policy in the public eye”.

It attempts to address what Macpherson described as “institutional racism” in policing by removing police discretion from the reporting of hate crime. Introducing such a definition and reporting requirement is not without controversy, and requires police officers to change their practices in recording hate crime. However, in doing so, it ensures that the hate element of an offence is not ignored or side-lined in the investigative process. It must be said, however, that such a change in process must be accompanied by intensive training and have institutional support; in Ireland, such a definition was introduced and was officially part of police practice for more than a decade, but researchers determined that, due to an absence of policies to underpin the definition and training to reinforce it, “it was not understood in any meaningful way across the service” (Haynes and Schweppe, 2017).¹³

INVESTIGATION

Following the reporting and recording of a hate crime, the next stage in the policing process is investigation. The European Commission (2014: para 4), in its report to the European Parliament on the implementation of the Council Framework Decision on combating racism, states that, from a review of information provided by Member States to the Commission, it was clear that those responsible for investigating inter alia hate crimes need “practical tools and skills to be able to identify and deal with the offences... and to interact and communicate with victims”. Dedicated policies should be put in place to support police officers in investigating hate crime, which could, amongst other things, highlight culturally specific bias indicators which are commonly present in hate crimes (see below).¹⁴

13 That part of the Hate Crime Operational Guidance (HCOG), which sets out the test for recording non-crime hate incidents, was the subject of recent legal proceedings in England. In the case of *R (Miller) v College of Policing and Chief Constable of Humberside* [2020] EWHC 225, the High Court found HCOG to be compliant with Article 10 of the European Convention on Human Rights, but that the police need to ensure that there is a ‘rationality’ to the belief of the individual reporting that the incident in fact involved prejudice or hostility. On appeal, the Court of Appeal [2021] EWCA Civ 1926 noted that so-called ‘gender critical’ speech is protected speech in England and Wales and highlighted the fact that the record of a non-crime hate incident may be disclosed on an enhanced criminal record certificate to prospective employers. The recording of non-crime hate incidents directed at the transgender community, the court found, had the potential to create a chilling effect on what is deemed an “issue of controversy and public importance in an area of expression where the scope for lawfully restricting such debate is very limited.” The case is arguably limited to the context of non-crime hate speech directed at the transgender community, and is thus also potentially confined to the specific context of England and Wales where speech which might be considered transphobic in other jurisdictions is deemed ‘political’ in nature, a line of argument perhaps less likely to be persuasive elsewhere. That said, it is important to consider both what the purpose of recording non-crime hate incidents is, as well as what disclosure requirements there are with respect to criminal record checks.

14 See section 3, below, and also OSCE/ODIHR (2019a and 2019b).

In its report, the European Commission (2014) also observed that the existence of special police hate crime units was particularly useful in supporting the implementation of legislation. As well as having specialisms in investigating hate crimes, which can be complex in their manifestation, such specialist units can also provide a message to other police officers that the police service as a whole is dedicated to addressing hate crime (Walker and Kanz, 1995). Many police services in Canada have specialist hate crime units, and the first was established as early as 1993 by the Ottawa Police Service (StatCan, 2001). Such units follow specific policies and procedures regarding hate crime, and officers within such units are specially trained. Units have a number of different functions (StatCan, 2020):

1. Supporting frontline officers;
2. Investigating hate crimes;
3. Educating other police officers and the community about addressing and identifying hate crimes;
4. Monitoring and tracking hate crimes and hate incidents; and
5. Providing outreach to affected communities.

Specialist units thus have the capacity to support police officers in the investigation of anti-LGBT hate crime, but also support LGBT communities and provide the ‘wrap-around’ services that victims require.

ANTI-LGBT BIAS INDICATORS

Of particular significance will be the identification and curation of what are known as jurisdictionally-specific ‘bias indicators’ to support the prosecution of hate crime. Bias indicators are evidential markers that can be used to prove the hate element of a crime. Research by Walters et al. (2017) developed a list of indicators that may assist both police investigators and prosecutors in this difficult task:

- Complainant and witness testimony of anti-LGBT verbal slurs and prejudiced epithets;
- Police-worn cameras and mobile phone footage of verbal slurs;
- Emergency service recordings of incidents that include words spoken in the background;
- Police questioning which may elicit anti-LGBT hostilities;

-
- Background information on the accused, including:
 - a. past convictions, membership of hate-based groups, websites, and blogs;
 - b. previous conversations with associates evidencing anti-LGBT prejudices; and
 - c. previous convictions for hate-based offences;
 - d. possession of hate-based signs and symbols;
 - e. social media posts displaying anti-LGBT hate speech;
 - f. text messages expressing identity-based hostility towards LGBT people; and
 - g. possession of leaflets, letters or other written documents with hate content;
 - Conduct that specifically targets the identity/perceived vulnerability of the victim (e.g., abuse towards LGBT sex workers);
 - Excessive brutality of violence (often a marker in anti-LGBT hate crimes) (see HDT, 2020); and
 - Contemporaneity with trigger events, including resistance to newly enacted laws protecting the human rights of LGBT people.¹⁵

As highlighted in the section above, prosecutors are likely to be unable to prove anti-LGBT bias in court unless evidence is first identified and collated by law enforcement. It is therefore essential that law enforcement and prosecutors work closely together early in an investigation. The initial stage of interviewing suspects is particularly crucial, and questioning relating to motive and context surrounding an incident can become key to identifying indicators and subsequently collating evidence of the hate element of the offence.

TRAINING

Across the criminal justice process, training on the content and implications of legislation is key. In policing, however, as Miles-Johnson (2016) evidences, training which supports the relationship between the police and LGBT communities is vital. Thus, as well as addressing hate crime, the European Commission on Racism and Intolerance (2007: 3) recognises the specific need to address prejudice within policing, stressing that “in order to fully accomplish their tasks, the police must ensure that the rights and security of all persons are guaranteed and protected”. It is

¹⁵ Adapted from Walters et al. (2017: 80). Further information on the use of indicators can also be found in OSCE/ODIHR (2014: 47-48).

important that, as well as policing hate crime in society, the police should also reflect on practices within their own organisation that are considered oppressive to LGBT communities. ECRI specifically highlights, for example, the need to address certain biases, including racial profiling, the need to ensure that all forms of discrimination and racially-motivated misconduct by the police are addressed appropriately, and the need to promote relations between the police and members of minority groups. In the context of the latter, ECRI recommends the following:

1. To place the police under a statutory obligation to promote equality and prevent racial discrimination in carrying out their functions;
2. To train the police in policing a diverse society;
3. To recruit members of under-represented minority groups in the police and ensure that they have equal opportunities for progression in their careers;
4. To establish frameworks for dialogue and co-operation between the police and members of minority groups;
5. To provide, to the extent possible, those who are in contact with the police and do not understand the official language, with access to professional interpretation services; and
6. To ensure that the police communicate with the media and the public at large in a manner that does not perpetuate hostility or prejudice towards members of minority groups.

While some of these specifically address racism in policing, there remain genuine concerns in LGBT communities about the institutional prejudices which continue to pervade police forces. Thus, exposing, recognising, and challenging institutional biases is key to promoting policing practices which encourage reporting and support victims.

Police officers will also require training in the recording and investigation (and, where justified, prosecution) of hate crime. Policies should be developed on the policing of hate crime (see, for example, College of Policing, 2020a) and embedded in the service through training. Training on hate crime generally is required (see Mullaney and Trickett, 2018; Mason, 2017) to embed the concept into policing, and to develop police competencies with respect to the different aspects of policing hate crime. As well as training on hate crime generally, specific training is useful in supporting officers in recording and investigating anti-LGBT hate crime in particular.

Examples of bespoke training with respect to policing LGBT hate crime are freely available. For example, Facing Facts provides online training for police officers, including an online module entitled ‘Understanding & Identifying Anti-LGBT Hate Crime’.¹⁶ The stated aims of the module are to:

- Assist police to recognise the signs of prejudice, hostility and bias that drive homophobic, biphobic and transphobic hate crime;
- Understand the impact of anti-LGBT hate crime on victims, LGBT communities and the society;
- Identify and articulate potential bias indicators to unmask homophobic, biphobic and transphobic crime;
- Learn more about how to reach out to victims, their communities and offer support; and
- Learn which key questions to ask when interviewing victims, witnesses and suspects to effectively unmask evidence of bias motivation.

Perry and Franey (2017) have also developed a manual which has the aim of providing assistance, information, and the appropriate tools for conducting training on hate crimes against LGBT persons. Produced by the Council of Europe, it provides the content and materials required for training, broken into five modules:

1. Why are we here;
2. Key concepts;
 - a. Key concepts and definitions – the LGBT community – homophobia, transphobia, stereotyping and discrimination;
 - b. Key concepts and definitions – hate crime;
3. Policing hate crime against LGBT persons – a human rights and anti-discrimination approach;
4. Investigating hate crimes against LGBT persons; and
5. Working with civil society organisations (CSOs).

2.3. Prosecution Guidance and the Need for Specialism

As we outlined in the section on the approach to this report (and in our linked report, see HDT, 2019a), a human rights approach to tackling hate crime helps to ensure that LGBT victims are protected from

¹⁶ <https://www.facingfacts.eu/courses/understanding-identifying-anti-lgbt-hate-crime/>

targeted violence while safeguarding the right of the accused to defend themselves from such charges adequately in court. This is best achieved where the criminal law is used to proscribe hate crime offences (known as substantive offences), meaning that the ‘hate element’ must be proved before a trier of fact. Other hate crime laws apply only at the sentencing stage of the criminal process (known as sentence enhancements), typically providing powers to a judge to aggravate sentence post-conviction where there is evidence of identity-based hostility.

Whether for a substantive offence or for sentence enhancement, prosecutors will need to prove the hate element in court. This can be a highly complex task, especially in cases where the motivation of the defendant is under scrutiny. This process can be aided where prosecution services provide clear guidance to prosecutors that support the management of their case. There are several examples of guidance documentation currently in use, including that provided by the Office for Democratic Institutions for Human Rights (OSCE/ODIHR 2014b), as well as implementation guides that were developed as part of the EU-based *Lifecycle of a Hate Crime* project for countries including the Czech Republic, England and Wales, Ireland, and Latvia.¹⁷ The Crown Prosecution Service for England and Wales (CPS) also provides specific prosecutorial guidance for anti-LGBT hate crimes. It includes information on the following: how to flag and identify homophobic, biphobic and transphobic hate crime; building a case for prosecution; reviewing cases before prosecution to identify how the legislation applies in the case and to observe whether special measures are required for the victim as a witness; indicators of bias relating to the victim and the perpetrator; an outline of the legislation on anti-LGBT hate crime; and how to use appropriate language during case management. The guidance also notes that the prosecution of anti-LGBT hate crimes should be prioritised over minor infractions committed by the victim.¹⁸

Where an LGBT person has been involved in a situation which breaches local rules or regulations, but in that situation has been a victim of a hate crime, they should not fear coming forward to the authorities to complain that they have been the target of anti-LGBT violence. Guidance should state that it is more important to prosecute a perpetrator of a more serious anti-LGBT crime than to criminalise a

¹⁷ *Lifecycle of a hate crime: Guides for implementation*:
<https://www.iccl.ie/hatecrime/guides-implementation/>.

¹⁸ Such as where the victim may be engaged in less serious criminal conduct.

victim who has committed a more minor offence where that offence is connected to the hate crime.

VICTIM (WITNESS) SUPPORT

Prosecutors should note that victims of LGBT hate crime are likely to fall within the category of ‘vulnerable witnesses’. For example, the EU Victims’ Directive states that in assessing any special needs of victims, particular attention should be paid to those who “have suffered a crime committed with a bias or discriminatory motive, which could notably be related to their personal characteristics.” Prosecutors should be sensitised to the fact that LGBT victims may require measures to support them giving evidence in court. These include:

- Measures providing that interviews with the victim should be carried out by or through professionals trained for that purpose;
- Measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means, for example providing evidence from behind a screen, or the giving of pre-recorded evidence or examination through a live-link;
- Measures to avoid unnecessary questioning concerning the victim’s private life that are not related to the offence; and
- Measures allowing a hearing to take place without members of the public being present.¹⁹

These measures can assist vulnerable and intimidated LGBT people to participate more confidently in criminal proceedings. They not only enhance the quality of a witness’ evidence at a trial, but they can also minimise the negative emotional effects of giving oral evidence in court proceedings. Where necessary, prosecutors should bring the need for special measures to the attention of the courts.

USE OF INCLUSIVE LANGUAGE

Inappropriate language by prosecutors can have the effect of alienating or re-victimising victims. All criminal justice practitioners should remain mindful of making incorrect assumptions about an individual based on their sexual or gender characteristics, which can be offensive. Guidance documentation should provide definitions on LGBT community identities and emphasise the importance of inclusive language. For example, the CPS guidance on prosecuting homophobic,

¹⁹ See Article 23(3) EU Victims’ Directive.

biphobic and transphobic hate crime includes a section on ‘appropriate language’. It is essential that prosecutors adopt a style of address or reference that demonstrates respect for the sexual orientation and/or gender identity of all stakeholders in a case. Importantly, the CPS notes that “[i]f there is any doubt about how to refer to the sexual orientation or gender of the victim or witness, the person concerned should be asked how they wish to be addressed”.

TRAINING

As noted in the section above, the use of guidelines becomes most effective where practitioners are trained on their content and, importantly, on the value it has in helping to address anti-LGBT hate crime through enforcement of the law. There are numerous international organisations that provide hate crime training for police and prosecutors, including Facing Facts, which provides online courses on hate crime and bias indicators.²⁰ The OSCE/ODIHR (2018b) also provides a manual on joint hate crime training for police and prosecutors. It outlines how to set up training programmes and provides examples of using case studies to help officers identify hate crime offences using bias indicators, investigation techniques, and prosecution. One of the case studies provides an example of an attack related to a victim’s real or presumed sexual orientation. Participants are prompted to ask questions relating to common bias indicators in such crimes, including various events that might be related to the attack, and the locality and nature of the violence committed (2018b: 48 and Annex 4).

There are a number of obstacles to the successful prosecution of hate crime cases. Training that highlights these challenges will assist prosecutors to identify problems before they inhibit the successful enforcement of hate crime laws. One such obstacle is that many LGBT victims will likely be reluctant to report incidents to the police or to engage with prosecution services due to a lack of trust. Levels of trust can be particularly problematic in countries where same-sex intimacy remains illegal or where certain forms of gender expression are (indirectly) criminalised. Training can be particularly important in this regard. Research by Walters et al. (2020) found that trans people in England and Wales who reported hate crime to the police had even lower levels of confidence in them than those who had not reported an incident, indicating that their experiences of reporting may have been negative. However, in a reversal of the findings relating to the police,

²⁰ Facing Facts: <https://www.facingfactsonline.eu/>.

levels of confidence in the CPS were slightly improved amongst victims who had engaged directly with the service (i.e. those trans people whose cases had likely gone to court).²¹ Of particular note was that police officers in England and Wales had not been specifically trained on the policing of transphobic hate crime, whereas the CPS had trained all its prosecutors in prosecuting all forms of hate crime offences.

SPECIALISM

The most effective prosecutors of hate crime are those who specialise in such cases. The evidential and legal rules for hate crime are complex, and the needs of victims equally so. While training of all prosecutors and judicial officers is crucial to building awareness of new hate crime provisions and to the application of practices that ensure laws are properly utilised, the use of specialist prosecutors with expertise in hate crime further increases the likelihood that any new provisions will be applied in court. A selection of prosecutors should participate in advanced training on case management of hate crime. These practitioners will then be tasked with the main bulk of managing and prosecuting cases for the state. In England and Wales, each prosecution district has a 'hate crime coordinator' (HCC). These are senior prosecutors who act as a single point of contact for all hate crime-related questions, as well as supporting case work on cases across their district. HCCs also deliver training to other prosecutors. The HCCs, along with a CPS Area Inclusion and Engagement Manager, form the 'HCC Network'. The Network meets three times a year for a half-day conference that focuses on operational issues raised locally and identified nationally that need a whole-of-network response.

MULTI-PARTNERSHIP WORKING

Prosecution services are strengthened where they engage in working groups that include civil society and researchers coming together, monthly, quarterly or biannually, to scrutinise the work and practices of prosecutors. Some jurisdictions have also established 'scrutiny panels' in which community members, civil society representatives and academics review closed cases to assess how these were managed, whether they could have been handled more effectively, and to identify areas where the prosecution service could improve (see e.g. CPS, 2007). The aim is to bring transparency and accountability to prosecution services, which, if facilitated honestly and openly, may in turn help to improve the confidence levels amongst LGBT communities in law enforcement agencies.

²¹ Although levels of confidence still remained low.

2.4. Judicial Guidance

In most jurisdictions it will be the role of a judge to determine whether the prosecution has met its evidentiary burden with respect to hate crime legislation, and where the defendant is found guilty, or charges are established by the prosecution against them, what punishment should be imposed. Judicial guidelines on the application of provisions can be a useful tool for sentencers in this process. Research has suggested that parts of the judiciary can be reluctant to apply laws that increase the penalties for hate crime offenders (Walters et al., 2017; Schweppe et al., 2018).²² Further guidance can therefore be important in setting out why such provisions are important and, procedurally, when they should be applied.

EXPLANATORY NOTES

Some jurisdictions make use of statutory ‘explanatory notes’ that explain the purpose of a Bill. Given the complexity of hate crime legislation, it is advisable that, where these can be used as an interpretative tool by the courts, legislatures provide additional notes on how hate crime legislation is intended to work. For example, the recently enacted *Hate Crime and Public Order Act 2021* (Scotland), includes a detailed explanatory note.²³ The notes contain further information on each section of the Act. Of particular importance to the inclusion of LGBT characteristics within legislation is further explication of the meaning of different sexual orientations, gender identities, and variations in sex characteristics. For instance, the Scottish legislation states under section 14(4) that “transgender identity” refers to “(a) a female-to-male transgender person, (b) a male-to-female transgender person, (c) a non-binary person, (d) a person who cross-dresses.” However, it does not detail who may or may not fall within the meaning of these identities. The explanatory note explains further that:

Section 14(7) defines what is meant by “transgender identity”. This definition does not only refer to people with a Gender Recognition Certificate or who have undergone, are undergoing, (or propose to undergo) medical or surgical interventions, but includes people whose gender identities are different from their sex at birth. This includes

²² Such as where judicial officers remain ignorant to why or how a hate-element increases offender culpability or victim harm.

²³ *Hate Crime and Public Order (Scotland) Bill* Explanatory Notes: <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/introduced/explanatory-notes-hate-crime-and-public-order-scotland-bill.pdf>.

those who identify as male, but were registered as female at birth, those who identify as female but were registered as male at birth, non-binary people and cross-dressing people.

The detail necessary to explain the meaning of sexual and gender identities is not always transferable into legislation. Such information can therefore be helpful to judges, who are often tasked with deciphering and interpreting the meaning of LGBT characteristics when applying hate crime laws in practice.

SENTENCING GUIDELINES

Some jurisdictions have sentencing bodies that provide guidelines to judges with the aim of improving consistency in sentences across courts. These documents can set out the general approach that should be taken to sentencing in hate crime cases. In England and Wales, the Sentencing Council provides a guide on hate crime that sets out information on the statutory provisions on sexual orientation and transgender identity. The guide also sets out the approach to sentencing hate crimes more generally. It also provides a step-by-step approach for the sentencing of aggravation of anti-LGBT offences:

1. Sentencers should first determine the appropriate sentence, leaving aside the element of aggravation related to... sexual orientation or transgender identity but taking into account all other aggravating or mitigating factors;
2. The sentence should then be increased to take account of the aggravation related to... sexual orientation or transgender identity;
3. The increase may mean that a more onerous penalty of the same type is appropriate, or that the threshold for a more severe type of sentence is passed;
4. The sentencer must state in open court that the offence was aggravated by reason of... sexual orientation or transgender identity; and
5. The sentencer should state what the sentence would have been without that element of aggravation. (Sentencing Council, n.d.)

Guidance can also provide further information on the types of aggravation common in hate crime cases and the extent to which these should aggravate a final penalty. For instance, the Sentencing Council states that the following factors could be taken as “indicating a high level of aggravation”:

Offender's intention:

- The element of aggravation based on... sexual orientation or transgender identity was planned;
- The offence was part of a pattern of offending by the offender;
- The offender was a member of, or was associated with, a group promoting hostility based on... sexual orientation or transgender identity;
- The incident was deliberately set up to be offensive or humiliating to the victim or to the group of which the victim is a member.

Impact on the victim or others:

- The offence was committed in the victim's home;
- The victim was providing a service to the public;
- The timing or location of the offence was calculated to maximise the harm or distress it caused;
- The expressions of hostility were repeated or prolonged;
- The offence caused fear and distress throughout a local community or more widely;
- The offence caused particular distress to the victim and/or the victim's family.

The provision of sentencing guidance not only helps to ensure that hate crime provisions are applied by the court, but that each court follows a similar approach in enforcing the law.

TRAINING

As with police/prosecution service personnel, training of judicial officers on any new laws, explanatory notes, and/or sentencing guidance will be critical to ensuring the legislation is identifiable by judges and applied correctly by the courts. Such training should sensitise judges to the harms of hate, and to the impacts of hate crime on direct and indirect victims. It should also include guidance on the extent to which a sentence can be aggravated, and recommendations as to the importance of stating in open court whether the judge was of the view that the hate element was proven in the case, whether they consider it an aggravating factor, and the extent of the aggravation (Schweppe et al., 2018).

2.5. Post-Conviction and Out-of-Court Interventions

It is outside the scope of this report to fully set out the evidence of ‘what works’ in relation to criminal justice interventions for hate crime.²⁴ However it is important to emphasise that legislation to prevent hate crime will likely be most effective where it is supported by justice measures aimed at addressing the underlying causes and consequences of such offences. These measures can be used as an alternative to prosecution (especially for minor criminal infractions) or in addition to, or as part of, an official penalty imposed by the courts post-conviction.

RESTORATIVE INTERVENTIONS

An innovative justice measure that is becoming more common for hate crime is restorative justice (RJ) (Walters, 2019; 2020). The aim of RJ is to bring stakeholders in a hate crime together via inclusive dialogue which focuses on the harms caused by the incident and how these can be repaired. RJ is often used as an alternative to formal prosecution and provides a mechanism through which victims and perpetrators of hate crime can engage in a justice process without entering into the more formal criminal justice system.

Research has shown that these types of restorative practice can help to reduce the emotional harms caused by hate crime, including reducing levels of anger and anxiety, and the fear that an incident will be repeated (Walters, 2014). The research suggests that there are four key variables that assist in supporting the emotional wellbeing of hate crime victims:

- Participants feel they can play an active part in their own conflict resolution;
- Participants are able to explain to the accused perpetrator and others the harms they had experienced, while additionally talking about what it is like for them to be ‘different’ in the community;
- Participants feel supported by restorative facilitators who listen to their version of events; and
- The accused perpetrator signs an agreement promising to desist from further hate incidents.

²⁴ Such a review can be found in Walters et al. (2016).

The capacity for victims of anti-LGBT hate crime to participate in the resolution of their own victimisation can be empowering. Often, LGBT people feel that they are without a voice. This can especially be the case where the state has enacted laws to restrict the freedoms of LGBT people. RJ processes can be transformative for those who have historically been without a voice, enabling them to play a central role in the resolution of their victimisation.

There is some tentative evidence that suggests RJ can additionally help to reduce reoffending of hate incidents. Walters found that in 17 out of 19 cases of ongoing hate crime, incidents ceased after the restorative process, either directly after the meetings took place (11/19) or after a multi-agency approach was used where other local agencies, including schools, social services, community police officers and housing officers, were included in the process to help support the needs of either of the parties. This will ensure that a more holistic approach is taken to addressing the needs of both victims and perpetrators of hate crime.

Some caution must be exercised in the implementation of restorative interventions for hate crime. There is, without certain precautions, a genuine risk of re-victimisation where stakeholders of a hate crime come together through structured dialogue. As such, it is important that restorative practices used for anti-LGBT hate crimes:

- Are facilitated by experienced and fully trained restorative practitioners;
- Are facilitated by practitioners who have an appreciation of the sensitive dynamics of anti-LGBT hate crime victimisation;
- Include preparatory meetings with each participant outlining the purpose, aims and objectives of RJ;
- Ensure that participation is voluntary and that neither victim nor accused perpetrator are cajoled into participating; and
- Integrate a multi-agency approach, whereby facilitators are encouraged to work with other agencies and organisations when facilitating restorative meetings (including community-support organisation, schools, neighbourhood policing teams, community safety units, and social services).

POST-CONVICTION REHABILITATION PROGRAMMES

For many cases of hate crime, a formal prosecution may be desirable. In such cases, the courts will likely have a number of options at their disposal when imposing a sentence, including imprisonment or community-based orders. Post-conviction, offenders will become the responsibility of criminal justice agencies, including prisons and/or offender management services (such as a probation service). These institutions are responsible for administering punishment, but many will also have the role of implementing rehabilitation or community-based programmes. The aim of rehabilitative interventions is to create a change in an offender's attitudes and understanding that leads to desistance. Educational programmes can be incorporated into hate crime legislation itself. For example, under a recent amending law²⁵ in Illinois (USA), the Criminal Code now states:

... any order of probation or conditional discharge entered following a conviction or an adjudication of delinquency shall include a condition that the offender enroll in an educational program discouraging hate crimes if the offender caused criminal damage to property consisting of religious fixtures, objects, or decorations. The educational program may be administered, as determined by the court, by a university, college, community college, non profit organization, or the Holocaust and Genocide Commission.

Whether hate crime offenders can be 'rehabilitated' through such educational programmes remains largely unevidenced. It is important for policy makers to recognise that the causes of 'hate' are both individual and structural. While the actions of offenders can be symptomatic of individually felt animosities towards LGBT people, they are also likely to reflect the hostilities expressed towards LGBT communities more broadly across society. Challenging the moral wrongs of anti-LGBT hatred within a system that has historically subordinated minority sexual and gender identities will therefore be challenging. As such, policy makers should avoid the trap of pathologising hate crime offending as something that is 'curable' on an individual level.

²⁵ Public Act 100-0197, Illinois.

Nevertheless, the aim of hate crime legislation is to reverse structural biases entrenched in many societies, and programmes that support this endeavour should be welcomed. A number of rehabilitation programmes have been developed internationally to address the causes of hate crime (including anti-LGBT hate crime). Many of these aim to help perpetrators of hate to better understand their prejudiced attitudes and beliefs, as well as how internalised feelings of anger and rage can be externalised and projected onto those perceived to be a threat, or the main/sole cause of individual offenders' own problems. One of the first of these to be developed was the 'Promoting Human Dignity' (PHD) programme (Palmer and Smith, 2010).²⁶ The programme utilises both one-to-one sessions and group work and consists of 14 weekly two-and-a-half hour sessions. The programme includes homework and a final programme report for the relevant offender manager, and is underpinned by Rational-Emotive Behavioural Therapy. An independent evaluation suggested that the programme had a positive effect on participants, with many responding positively to the part of the programme focused on developing empathy.

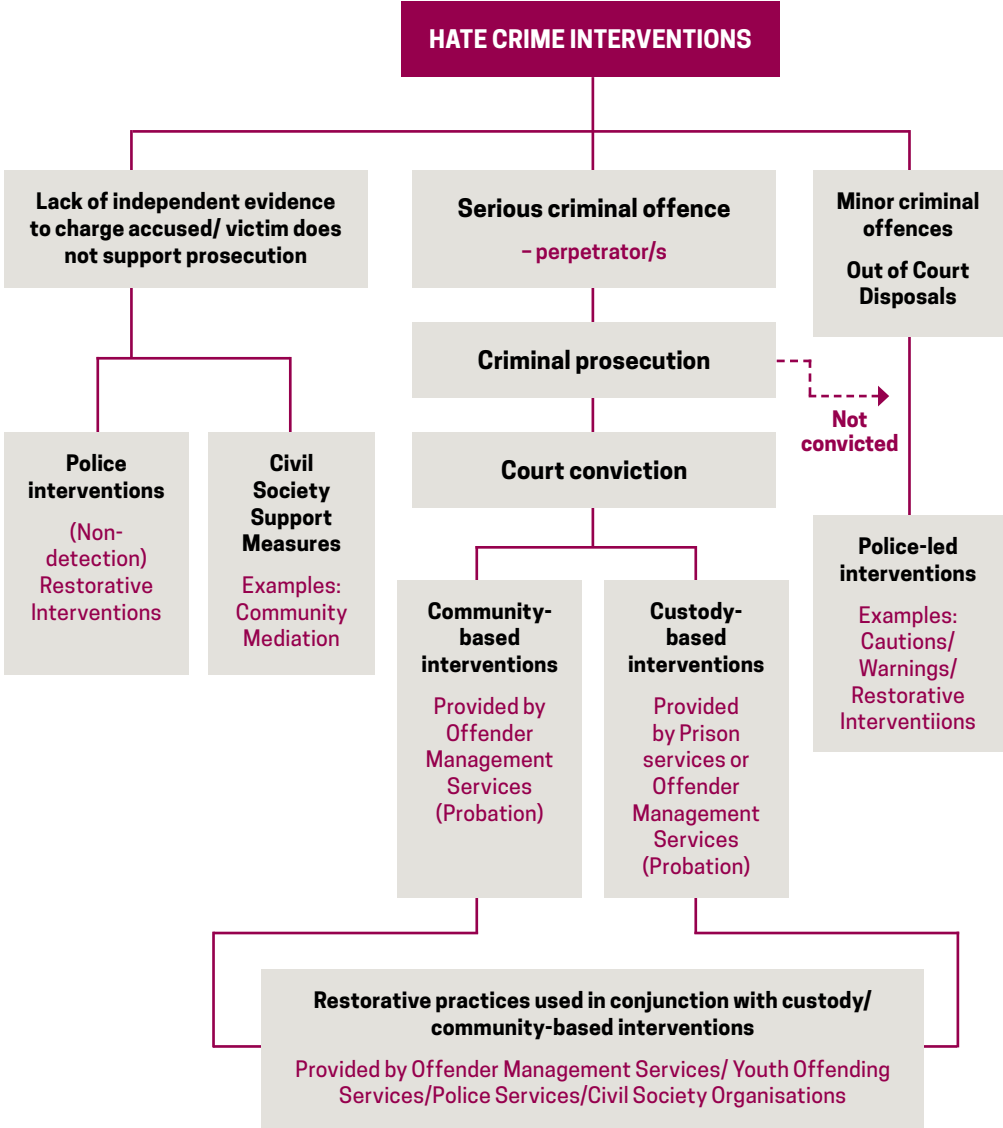
Other rehabilitation programmes that have provided some tentative evidence of reducing prejudices and recidivism have the following features in common:

- Their sessions include work on raising cultural and diversity awareness;
- They focus on reflecting on attitudes and beliefs; and
- They give consideration to the impacts that hate crime can have on victims and communities (see Walters et al., 2016).

Note that there have been no long-term evaluations of these programmes. Generally, those evaluations that have been undertaken suggest that one-to-one work is necessary for the successful implementation of these programmes. This is due to the fact that each perpetrator of anti-LGBT hate crime will have differing experiences, beliefs, and needs.

²⁶ First developed in 2000 in Merseyside, England (see Palmer and Smith, 2010).

Figure 6: A framework of post-conviction and out-of-court justice interventions²⁷



²⁷ Adapted from Walters et al. (2016).

2.6. Communication Across and Between Criminal Justice Institutions

As well as creating policies on hate crime within discrete parts of the criminal justice system that are supported and reinforced by training, there must equally be policies which ensure that hate crimes are dealt with appropriately through the criminal process. This helps to ensure that the hate element is not dropped, lost, or ‘disappeared’ as it makes its way through the criminal justice system. In its opinion on the Framework Decision, the European Union Agency for Fundamental Rights (FRA, 2013b) notes that there should be a shared understanding of what constitutes hate crime across the criminal justice system. The National Action Plan Against Hate Crime is a useful mechanism for ensuring that definitions are shared across criminal justice processes, as well as putting in place mechanisms for communicating hate throughout the system.

With respect to sharing definitions through the criminal justice system, Schweppe et al. (2018: 101) state:

Important as it is for the hate element to be recognised at individual stages in the process, it is equally important that this comprehension be communicated forward in the process: from the recording of the crime to its investigation; from the investigation to the prosecution; presenting the evidence in court to ensure it is addressed at sentencing; and openly acknowledging the hate element at sentencing.

Of course, this is perhaps easier where prosecutors are actively involved in the investigation of criminal offences (see, for example, Granström and Åström, 2017), but where the investigatory and prosecution processes are separated, the importance of communication cannot be overestimated. In these cases, states can introduce mechanisms that allow the criminal justice system to document and highlight the hate element of a crime, through the addition of tick boxes on online crime reporting systems or on pre-prepared crime recording sheets. As well as setting out a shared definition to be used across the process, the National Action Plan Against Hate Crime can require the development of appropriate policies and guidelines for ensuring that the hate element is not dropped through the process. In the absence of such a requirement, and the development of appropriate mechanisms to support it, it is likely that the hate element of a crime will be dropped at some point in the process, resulting in fewer prosecutions and convictions.

2.7. Victim Support Programmes

It might be said that the entire purpose of the preceding sections is to ensure that the experiences of victims as victims of hate crime are appropriately recognised through the criminal justice system. However, as well as ensuring that the perpetrator of such offences is brought to justice, and, where appropriate, that the victim is compensated, we must also look specifically at how to support victims of hate crime within and through the criminal justice process. It is crucial to recognise that, as we have previously highlighted, victims of LGBT hate crime in jurisdictions which criminalise aspects of their identity (expression) might be slow to report their experiences of victimisation to the police. For this reason, we must also support victims of hate crime outside the criminal justice process to provide them with appropriate supports, as well as support them in reporting their experience, if appropriate.

SUPPORTING VICTIMS THROUGH THE CRIMINAL PROCESS

The European Union Victims' Directive sets out the minimum standards required across the EU for the support and protection of victims of crime, and highlights victims of hate crime as having specific protection needs. Chapters 2 and 3 of the Directive set out thematically what minimum standards are to apply to all victims, including rights with respect to the provision of information and support, and rights in relation to their participation in criminal proceedings. Chapter 4 of the Directive sets out the rights and protections to be afforded to victims "with specific protection needs", which includes victims of hate crime, as follows:

- Right to protection;
- Right to avoid contact between victim and offender;
- Right to protection during criminal investigations;
- Right to protection of privacy;
- Right to individual assessment to identify specific protection needs; and
- Rights of victims with specific protection needs during criminal proceedings.

To support victims of crime generally, and victims of hate crime particularly, the Directive finally provides, in Article 25, that officials likely to come into contact with victims – such as police officers and court staff – should receive "general and specialist training to a level

appropriate to their contact with victims to increase their awareness of the needs of victims”, and to enable them to support victims in a manner which is “impartial, respectful and professional”.

It is of course the case that the role that a victim plays in a criminal prosecution differs from jurisdiction to jurisdiction, but we have seen that where the rights of victims are protected and respected, and the rights set out in the Victims’ Directive fully implemented, victims have a more positive experience of the process (see, Granström and Åström, 2017; Schweppe et al., 2018).

The European Union High Level Group (2017) on combating racism, xenophobia and other forms of intolerance developed ten key guiding principles for supporting victims of hate crime and hate speech, particularly:

1. Ensuring quality, sustainability, and coordination;
2. Addressing actual or perceived barriers to reporting;
3. Facilitating participation in criminal proceedings;
4. Ensuring adequate redress and exploring the role of restorative justice services;
5. Ensuring timely and individual assessment to identify specific protection needs;
6. Ensuring protection from secondary victimisation and protecting the victim’s identity;
7. Ensuring protection from repeated victimisation, retaliation, and intimidation;
8. Targeting support to hate crime victims’ needs;
9. Facilitating effective access to support services; and
10. Ensuring sustainability of civil society and/or community-based organisations providing support.

SUPPORTING VICTIMS OUTSIDE THE CRIMINAL PROCESS

Importantly, a victim does not need to have reported their crime to the police to be considered a victim, and should not be under an obligation to formally report their experiences in order to avail themselves of the rights and supports they are entitled to. Thus, while some rights are activated only when an individual is recognised by the criminal justice process as a victim of a crime, it is important to support victims of crime outside that process also, especially where high rates of underreporting are evident.

THE ROLE OF CIVIL SOCIETY ORGANISATIONS

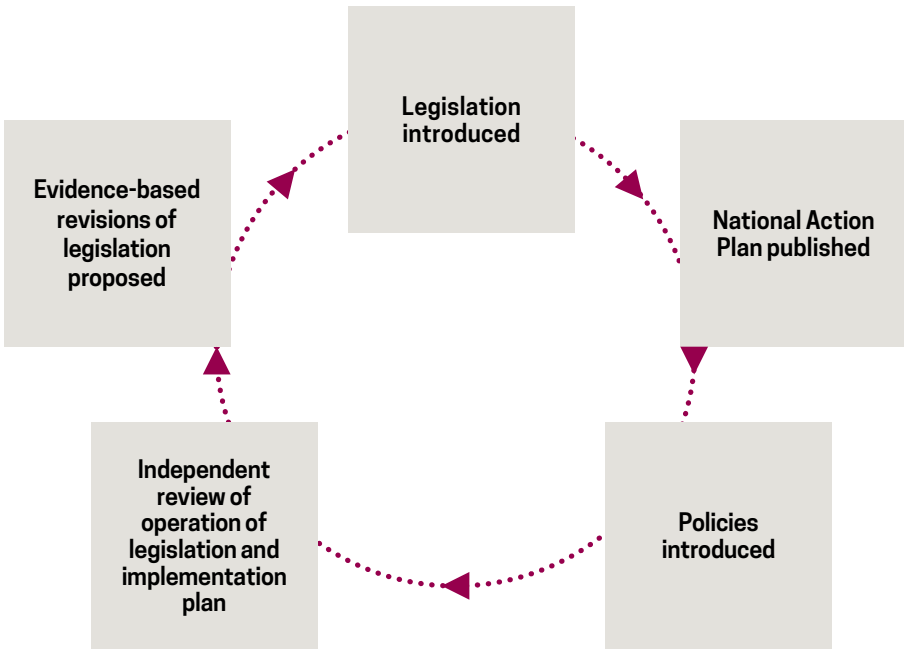
Civil society and community organisations have the capacity to play an important role by providing “emotional, advocacy and practical support” in promoting and operationalising victims’ rights (EU High Level Group, 2017). Thus, it is important that such supports are community-led, with specialist and funded support services provided, but that they are also available on a national level, and not funded in a geographically fragmented way (as is the case with some services in England and Wales, for example). It is crucial to recognise, however, that in order to perform this role, such organisations must be properly funded. The EU High Level Group advocates for the exploration of ways in which such organisations can be properly funded, including “the establishment of partnerships, the conclusion of formal service agreements, or the establishment of national funds.” Such funding must be multiannual in nature and provide a sustainable means of supporting victims (Schweppe et al., 2020). EU FRA (2016: 40) recommends:

For victims of hate crime, EU Member States should strive to overcome, where it exists, the fragmentation of victim support services and ensure that appropriate support services are available to all victims of hate crime. Such support services should combine an understanding of discrimination and of anti-discrimination policies with expertise in criminal justice matters and the situation and rights of victims in criminal proceedings.

2.8. An Iterative Process

To conclude this section on the importance of institutional measures, we would finally suggest that this is a constant, cyclical and iterative process. Institutional policies must be under constant revision, with training and guidelines being updated to take account of, for example, feedback from police officers, lawyers, and civil society organisations on how the process is working, interpretations of the legislation by courts, and independent research conducted to test and understand how the legislation operates in practice. In this context, the methodology devised as part of the *Lifecycle of a Hate Crime* project (Schweppe et al., 2018) is a useful means by which researchers can engage with criminal justice professionals (police officers, lawyers, and judges), victims, and offenders to explore how the legislation is working, and to propose changes to support the implementation of the legislation. Periodic legislative reviews should be built into the National Action Plan, with key stakeholders given an opportunity to feed into that review.

Figure 7: Legislation and policies must be reviewed and revised on a cyclical basis



Section 3. Education Campaigns Pre and Post Enactment of Hate Crime Legislation

The application of hate crime laws will be limited where society remains unaware that such laws exist. Public knowledge about ‘hate crime’ is therefore key to LGBT communities, and other members of the public, coming forward to report incidents. Research suggests that victims are unlikely to report incidents to the police if they lack confidence that they will be treated seriously (Chakraborti and Hardy, 2015).

Education campaigns should therefore aim to widely disseminate the aims and purposes of new legislation and the means through which individuals can report incidents. This information is also pivotal in educating the public on what is a ‘hate crime’ and why it is important for victims to report incidents to the police. There are a number of steps that the multiagency partnership can follow when creating an effective education campaign on hate crime, and these are discussed in the following subsections.

3.1. Determine the Audience

Educational campaigns must begin by determining the attitudes and opinions of key audiences. This can involve random sampling of populations using polling or surveys in order to gather baseline evidence of societal attitudes regarding LGBT people and support for (or resistance to) hate crime legislation. Generating data on attitudes towards LGBT people will allow campaigners to ascertain which sections of society are ignorant of, or hostile towards, LGBT people. Simultaneously, polls/surveys can help to identify the extent of societal support for any new legislation, and, again, which sections of society are most/least supportive of such laws. For example, as part of a recent education campaign in Belize on discrimination and hate crime, including against LGBT communities, entitled *Live and Let Live*,²⁸ a Public Opinion Survey on National Values and Discrimination in Belize was carried out.²⁹ The researchers found that a majority of respondents supported the introduction of laws banning discrimination against LGBT people, but that certain sections of society remained sceptical about such laws. Another example is the European Commission funded *Call it Hate* project, which involved a ten-country survey which informed public information campaigns across Europe on the harms of anti-LGBT hate crime (Godzisz and Viggiani, 2019). The Irish campaign associated with the *Call it Hate* project won a number of awards for its design and use of social media, and was shortlisted for two national LGBT awards.³⁰

3.2. Identify Key Facts

When developing a strong message about anti-LGBT hate crime, campaigners should attempt to identify the key facts about the nature and dynamics of such offences, as well as why it should be addressed through legislation. Many of these facts can be obtained from our linked international reports that detail common experiences and impacts of anti-LGBT hate (HDT, 2020), and the purposes of enacting hate crime laws that aim to prevent such incidents from occurring (HDT, 2019a). However, it is important to also ascertain the local experiences of LGBT communities, including the different ways individuals are experiencing targeted victimisation and the effects this has on them.

²⁸ <https://liveandletlive.bz/>.

²⁹ <https://secureservercdn.net/198.71.233.47/839.39a.myftpupload.com/wp-content/uploads/2020/09/Public-Opinion-Survey-National-Values-Discrimination-in-Belize.pdf>.

³⁰ <https://callitout.ie/>.

The Belize *Live and Let Live* campaign identified a number of key facts which were used to underpin the project’s main message, including that a majority of respondents to a survey felt that gay and transgender people often “fear that they will be treated differently in the workplace and in public spaces because of who they are”. At the start of this report (and in our linked 2020 report), we noted a number of other key facts about anti-LGBT hate crime which could also be used to underpin educational campaigns, including that LGBT people are disproportionately subjected to repeated criminal acts of physical and sexual violence and abuse, and that these incidents are likely to cause enhanced emotional trauma for LGBT people, such as constant feelings of anxiety and fear. Exploring the particular jurisdictional manifestations of anti-LGBT hate crime, and homophobia, biphobia, and transphobia, is particularly useful in this context.

3.3. Develop a Message

The preliminary data collated on LGBT awareness and support (resistance) for hate crime legislation can be used as a starting point from which more qualitative data can be gathered about how messaging in relation to LGBT identity and hate crime legislation should be presented. Focus groups are commonly used to test ideas and evaluate responses to certain messages, allowing campaign managers to craft the most impactful message/s possible. It is through this process that campaigners can also identify potential persuasive messengers; individuals who are trusted and whose voices can potentially penetrate cultural, linguistic or political barriers. Persuasive messengers can also helpfully serve as ‘change agents’. These are individuals who have the ‘skill and power’ to guide and facilitate change (Perry, 2019). Change agents may come from within public sector organisations, but they can also be other influential public figures, community leaders and activists, depending on the local context. These individuals can become key to carrying the main message of the campaign and mobilising others into action.

The *Live and Let Live* campaign focused its key message on national values, emphasising that “discrimination isn’t a Belizean value”. In relation to LGBT people, the campaign focused its messaging on family, highlighting that:

Every gay, lesbian, bisexual and transgender Belizean is someone's son or daughter, sister, brother, niece, nephew or grandchild. No person should be rejected by their family for any reason – and no young person should be told that they are undeserving of respect in Belizean society.

3.4. Disseminate the Message

Once enough information (data) is collated on the nature and dynamics of anti-LGBT hate crime (whether locally sourced or internationally generated), the key messages should be disseminated to the target audience. This part of the campaign is most resource-dependent, and may involve:

- Public service announcements (PSAs) for radio, TV, YouTube and social media platforms;
- Coordinated web and social media platforms hosting the PSAs and other related content;
- Media buy – TV, radio, newspapers, online, billboards;
- Launch events to promote the campaign;
- Post-campaign polling to measure campaign impact; and
- Leveraging of poll results across mainstream media and social media.

One of the most powerful ways of disseminating a campaign message is through film. Short films, in particular, can bring to life the experiences of LGBT people, which helps to humanise LGBT people through first-hand stories of the pain caused by discrimination and hate.³¹ A recent example of such a campaign is that produced by the Human Dignity Trust, entitled *A Wake Up Call – Hate Crime Law in the Commonwealth*, which provides a powerful commentary on how the law can be used to protect LGBT people from violence.³² Similarly, the Irish campaign *Call it Out* used a powerful, award-winning video *Have you Ever Felt?* across social media channels, with the message, “LGBT+ people across Ireland deserve to live happy lives free from prejudice. For that to happen, we must all step up to help bring homophobia, biphobia and transphobia to an end.”³³

³¹ See, for example: <https://liveandletlive.bz/videos/>. See e.g. ‘Belizean mother shows love and support for her gay son’: <https://www.youtube.com/watch?v=gnFvTND4yc&t=34s>.

³² <https://www.humandignitytrust.org/news/hate-crime-law-in-the-commonwealth/>.

³³ <https://vimeo.com/337332492>.

3.5. Other Education Initiatives

Education-based initiatives can also be used outside the criminal justice system to help reduce the anti-LGBT prejudices which give rise to hate incidents. Programmes that have been used at primary and post-primary school level have been shown to reduce prejudice and to enhance understanding of LGBT people. Researchers have asserted that the most effective way of preventing homophobic, biphobic and transphobic hostilities in schools is to take a ‘whole school’ approach to teaching about LGBT people. This involves moving beyond the facilitation of single or multiple sessions that provide information about LGBT people, and includes incorporating information about LGBT people more pervasively throughout the materials used in curricula in age-appropriate ways (Mitchell et al., 2014). Such an approach helps not only to ‘normalise’ LGBT people, but ‘usualises’ them as individuals who have the right to participate in everyday life as much as anyone else.

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