



**Perpetuating Discrimination: How the U.S. Government's Compliance
with the Underreporting of Hate Crimes Leads to a
Failure to Protect Minority Groups and Effectively Combat Hate Crimes**

*ICAAD Shadow Report to the 7th-9th Periodic Reports of the United States
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The International Center for Advocates Against Discrimination (ICAAD) was founded for the purpose of combating structural discrimination globally and promoting human rights norms consistent with public international law. ICAAD works to strengthen legal systems by bridging gaps in the implementation of laws and policies. ICAAD has worked with government agencies, including the U.S. Department of Justice (DOJ), to help identify how minority communities are adversely impacted by the systemic flaws in documenting and preventing hate crimes in the United States. ICAAD works to target and remedy these systemic failings, which contribute to high rates of bias-motivated violence and murder because government resources are not being allocated to train, monitor, and prevent bias-motivated crimes against particularly vulnerable communities.

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I. Reporting Organization

This report is being submitted by the International Center for Advocates Against Discrimination (ICAAD) in preparation for the United States government review on its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in Geneva. The review will be conducted by the Committee on the Elimination of Racial Discrimination, to which the U.S. submitted its combined 7th, 8th and 9th Periodic Report in June 2013.

II. Summary

This Shadow Report lays out the context under which the U.S. government has failed to protect minority communities from hate crimes through a combination of inadequate data collection, limited training of law enforcement to investigate and document hate crimes, and the failure to devote resources to monitor domestic extremists with supremacist ideologies.

Under the current Uniform Crime Reporting (UCR) Program led by the Federal Bureau of Investigation (FBI), only 3% percent of all hate crimes are documented through the UCR Program. In 2012, the UCR reported 7,713 victims of hate crimes, whereas, the National Crime Victimization Survey (NCVS) reported on average 259,700 hate crimes a year from 2007-2011. The 34 fold gap in documenting hate crimes reveals systemic flaws that result in the government failing to devote adequate resources: to train police officers in properly identifying bias indicators in crime, to monitor domestic hate groups rather than disproportionately focusing on Islamic extremism, and to protect particularly vulnerable communities from hate crimes.

According to NCVS, 65% of all hate crime victimizations are never reported to the police. Many of the reasons stem from mistrust of law enforcement to: investigate their claim thoroughly, prosecute the case as a hate crime, prevent retaliation, and not use their position to deport victims who lack legal immigrant status. Moreover, as there is no federal mandate to ensure recording of hate crimes by local law enforcement jurisdictions, reporting is *voluntary*. As a result of the combination of voluntary reporting with a failure to adequately train police officers to identify bias indicators in crime, there is little chance that the scope of violence directed at vulnerable communities will be understood. Ultimately, the culture of a police department can be a strong determinant on whether hate crimes documentation is seen by police officers as necessary to protect vulnerable communities or functions to support the “agendas of gay and minority groups.”

Although mandating documentation of hate crimes is a priority at the local level, there are other factors that can help bridge the gap. Revitalization of Hate Crimes Task Forces that engage with civil society and communities in partnership can function as a strong bulwark against bias motivated crime. Additionally, implementing hate crimes investigating and reporting procedures into Patrol Guides (police officer manual) would enhance hate crimes documentation.

Unfortunately, the failure to properly document hate crimes is compounded by the federal government’s limited monitoring of domestic hate groups. On August 5, 2012, one of the largest

hate crimes in U.S. history occurred with the killing of six worshipers at Oak Creek Sikh Gurdwara. This massacre highlighted the government's failure to monitor domestic extremist groups who hold supremacist ideologies. During a Senate hearing on hate crimes, former senior analyst for the Department of Homeland Security (DHS), Daryl Johnson, testified that that "domestic rightwing extremists trumped all other forms of ideologically motivated violence in the U.S. for number of deaths" since September 11, 2001. Furthermore, DHS reduced the number of analysts who monitor domestic extremism (non-Islamic) from eight analysts to one in 2009. Disproportionate resources have been used on surveillance and monitoring of Islamic extremism, leaving the U.S. with a blind spot for domestic hate groups that have swelled to its highest levels.

Although the U.S. government has taken some affirmative steps to address hate crimes since the last Periodic Report in 2006, it has not addressed the failure of proper data collection, training of law enforcement, and monitoring of domestic hate groups, each of which have severe direct and downstream effects. For example, relevant law enforcement agencies don't have enough information to identify crime patterns and make sound decisions about how to allocate limited resources to prevent, prosecute, and protect communities from bias-motivated acts. Ultimately, we are all left more vulnerable when the true scope of the bias-motivated violence in the U.S. remains unknown.

III. Legal Framework

Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) prohibits State parties from engaging in any act or practice of racial discrimination and requires them "to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation." Article 2 also requires State parties to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

Article 26 of the International Covenant on Civil and Political Rights (ICCPR), requires State parties to "prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Notably, the ICCPR reaches discrimination both in law and fact that arises from public and private actors.¹

Therefore, to comply with Article 2 of CERD and Article 26 of the ICCPR, the United States must take affirmative steps to "diminish or eliminate conditions which cause or help to perpetuate discrimination"², thereby, uprooting the structural issues that make minority communities susceptible to bias-motivated crimes (hate crimes).

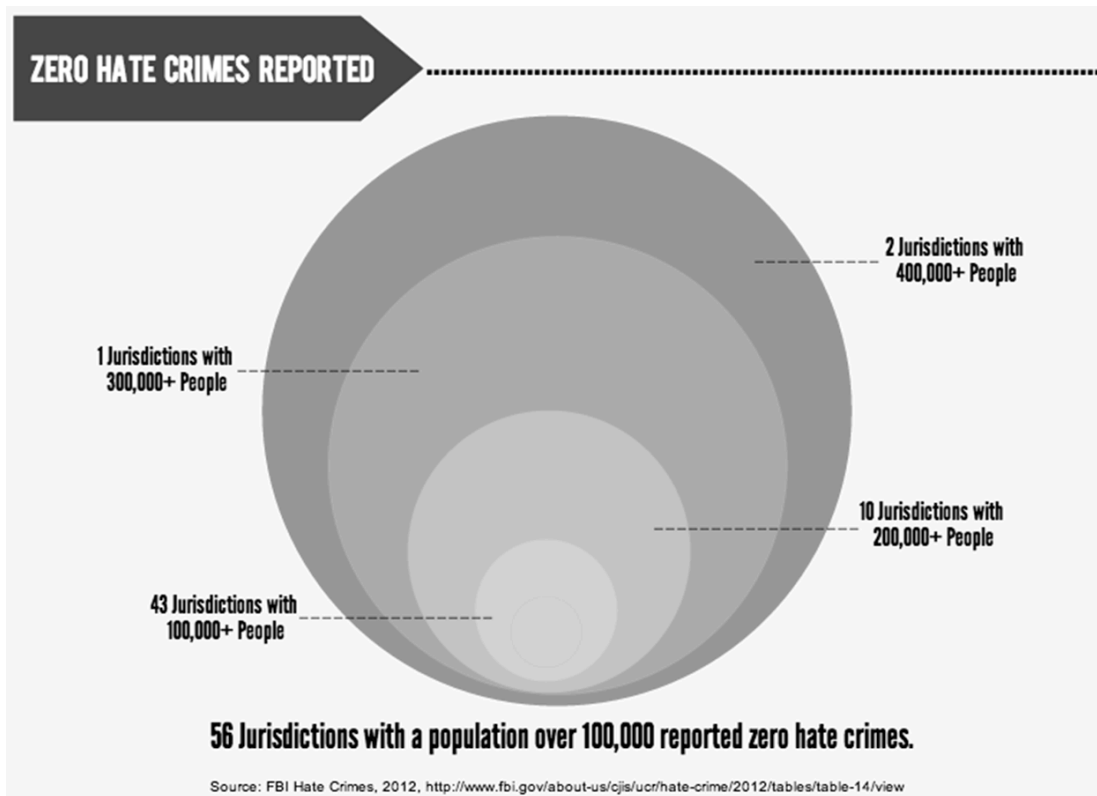
¹ U.N. Human Rights Committee, *General Comment No. 18: Non-Discrimination*, ¶¶ 9, 12 (Oct. 11, 1989), available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?OpenDocument).

² *Id.* at ¶ 10.

IV. Underreporting of Hate Crimes Masks the Severity of the Problem and Leads to Limited Governmental Resources Being Directed to Protecting Vulnerable Communities

A. Substantial Gaps in UCR Data and Variance Between Federal Government Reporting of Hate Crimes: UCR vs. NCVS

The FBI UCR data masks a widespread problem of reporting hate crimes under the Hate Crimes Statistics Act (HCSA). Under the UCR, the FBI recorded 5,796 bias-motivated incidents which resulted in 7,164 victims in 2012.³ Out of the 13,022 jurisdictions that participated in the program covering 248,809,710 people, 86.2% of agencies reported zero hate crimes.⁴ “This does not mean that they failed to report; rather, they affirmatively reported to the FBI that *no hate crimes occurred in their jurisdiction*.”⁵ Further, in 43 of those jurisdictions, the population exceeds 100,000 people.⁶ Breaking this down, jurisdictions representing the equivalent of almost a third (76,542,952) of the U.S. population, reported zero hate crimes.



³ FBI Uniform Crime Reporting (UCR), Hate Crime Incident Report, available at: <http://www.fbi.gov/about-us/cjis/ucr/reporting-forms/hate-crime-incident-report-pdf>.

⁴ FBI Uniform Crime Reports, 2012 Hate Crimes Statistics, <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012>

⁵ Leadership Conference on Civil Rights, *Hate Crimes in America: The Nature and Magnitude of the Problem*, <http://www.civilrights.org/publications/hatecrimes/nature---and---magnitude.html>.

⁶ See Hate Crime Statistics 2012, Hate Crime by Jurisdiction, at Table 14, available at: [http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/tables-and-data-declarations/14tabledatadecpdf/table 14 hate crime zero data submitted per quarter by state and agency 2012.xls/view](http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/tables-and-data-declarations/14tabledatadecpdf/table%2014%20hate%20crime%20zero%20data%20submitted%20per%20quarter%20by%20state%20and%20agency%202012.xls/view)

How is this possible? The FBI, in fact, has never reported more than 10,000 hate crimes in any given year.⁷ In contrast, the Bureau of Justice Statistics' (BJS)⁸ 2013 Special Report on hate crime victimizations, relying on data from the National Crime Victimization Survey (NCVS), found that from 2007-2011 an average of 259,700 hate crime victimizations occurred each year.⁹ In 2003-2009, the NCVS reported 195,000 hate crimes per year.¹⁰ Clearly, the FBI's UCR data accounts for only a marginal number of bias-motivated crimes (3%) in the U.S. The variance between the UCR and NCVS represents a 34-fold gap.

The NCVS has overcome some of the limitations of survey methodology through the use of "representative sampling on a national level in a longitudinal or repeated cross-sectional design."¹¹ Furthermore, scholars have found that because the data is gathered from households where victimizations happened within the last six months, the NCVS data "provides a more direct check on the true amount of crime, [and therefore] it is considered superior to the UCR for this purpose."¹²

A big part of the data gap, as revealed by the NCVS, is that law enforcement was not notified about hate crime victimizations in 65% of the cases documented by NCVS.¹³ The fact that two-thirds of victims don't report to the police suggests a larger systemic problem, which we address in the following section. However, even if we take into account that almost two-thirds of victims or bystanders never reported hate crimes to the police, it still leaves us with an average of over 90,000 hate crimes per year that were reported to law enforcement. Thus, the gap in underreporting by local agencies to the FBI is still greater than 10 fold.

B. Reasons for Underreporting by the Public to Law Enforcement

In addition to limits in data collection, there are numerous factors to explain why victims of hate crimes or those who witness such crimes may avoid reporting to the police. For instance, the League of United Latin American Citizens suggests undocumented persons who are victims of hate crimes may not report these incidences to the police because of a fear of law enforcement and deportation.¹⁴ The Department of Justice in 2005 found that most people don't understand what meets the threshold for categorizing a crime as a hate crime.¹⁵ Additionally, the American Psychological Association (APA) found that victims of hate crimes report to police at far lower rates than when faced with similar (non bias-motivated) crimes.¹⁶ The APA found that trauma,

⁷ The FBI data on hate crimes is available from 1996 onward. See Federal Bureau of Investigation, U.S. Department of Justice, Uniform Crime Reports: UCR Publications, <http://www.fbi.gov/about-us/cjis/ucr/ucr-publications#Hate>.

⁸ The BJS is a division of the Department of Justice, part of the Executive Branch of government.

⁹ Nathan Sandholtz, et al., U.S. Dep't. Of Justice, Hate Crime Victimization, 2003-2011, 4 (Mar. 2013), <http://www.bjs.gov/content/pub/pdf/hcv0311.pdf>. note 18, at 1.

¹⁰ Lynn Langton, et al., U.S. Dep't. of Justice, Hate Crime Victimization, 2003-2009, 1 (June 2011), available at: <http://www.bjs.gov/content/pub/pdf/hc0309.pdf>.

¹¹ Michael Shively, Study of Literature And Legislation On Hate Crimes In America, Abt Associates, Inc., 3 (March 31, 2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf>.

¹² Peter P. Lynch, et al., Understanding Crime Statistics: Revisiting the Divergence of NCVS and UCR, Cambridge University Press, 269 (2007).

¹³ *Id.* at 5.

¹⁴ Cindy Horswell, *Hate Crimes Fall in Houston and Texas*, Houston Chronicle (Dec. 29, 2007), available at: <http://www.chron.com/news/houston-texas/article/Hate-crimes-fall-in-Houston-and-Texas-1801444.php>.

¹⁵ Shively, *supra* note 12, at ii-iii.

¹⁶ American Psychological Association, The Psychology of Hate Crimes, at 2, available at: <https://counseling.uoregon.edu/DNN/LinkClick.aspx?fileticket=Y6V365uld4w%3d&tabid=420>.

fear of retaliation, and belief that law enforcement will not support them were leading causes of underreporting.¹⁷

Other factors that contribute to a lack of reporting by victims or bystanders are:

- Limited understanding of hate crimes laws and their application in the criminal justice system;¹⁸
- Limited knowledge of the rights and support services available to victims;
- Fear of retaliation;¹⁹
- Fear of being re-victimized because of the lack of investigation or prosecution;²⁰
- Mistrust and corruption of police in immigrant's home countries often carries over to their perception of law enforcement in the U.S.;²¹
- Limited English proficiency;
- Belief that law enforcement could not or will not help them;²²
- Shame or embarrassment for being a victim of any crime, especially a hate crime;²³
- Cultural beliefs about not complaining;²⁴
- Fear of being exposed as being part of the LGBT community to one's family, employer, friends, or the general public;²⁵ and
- Fear of retaliation on the part of the elderly or persons with disabilities who have strong dependencies.²⁶

These factors and others contribute to an astounding 65% of hate crimes cases being unreported. The government plays an important role in ameliorating the conditions that contribute to underreporting, including managing the level of trust between law enforcement and communities. This concern was partly addressed in the proposed End Racial Profiling Act (ERPA), which previously failed to pass Congress and was reintroduced in May of 2013. This has forestalled progress towards bridging the trust gap because communities are still being disproportionately surveilled (Muslims and Arabs), stop and frisked (Latinos and Blacks), and profiled at airports by being secondarily searched 100% of the time (Sikhs).²⁷ When two-thirds of hate crimes go unreported, it is not merely a statistical aberration, it is a structural failure that the government has a responsibility to address.

¹⁷ *Id.* at 2.

¹⁸ Bill Lockyer, Reporting Hate Crimes: The California Attorney General's Civil Rights Commission Hate Crimes, Final Report, 11, <http://oag.ca.gov/sites/all/files/pdfs/publications/civilrights/reportingHC.pdf>.

¹⁹ *Id.*; Bureau of Justice Assistance, A Policymaker's Guide To Hate Crimes, xii (1997), available at: <https://www.ncjrs.gov/pdffiles1/bja/162304.pdf>.

²⁰ Horswell, *supra* note 15; Shivley, *supra* note 12, at iii; Lockyer, *supra* note 19, at 11.

²¹ Lockyer at 12.

²² Sandholtz, *supra* note 10, at 6 (24% of victims, in a 2007-2011 survey by BJS, believe law enforcement "could not or would not help"); Lockyer at 11.

²³ Lockyer at 11.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Adelle M. Banks, *Sikhs Call Airport Screening for Turbans 'Security Theater'*, Huffpost Religion (Nov. 8, 2010), available at: http://www.huffingtonpost.com/2010/11/08/sikhs-call-airport-screen_n_780584.html.

C. Reasons for Underreporting by Law Enforcement to the FBI's UCR Program

The National Institute of Justice outlines reasons for why quality data collection by law enforcement on hate crimes remains elusive. Mainly, the differences in: 1) data collection efforts across jurisdictions;²⁸ 2) varying state definitions of hate crimes;²⁹ 3) law enforcement training;³⁰ 4) statistical reporting provisions; and 5) questions over whether viewing hate crimes as a separate class of crimes is legitimate.³¹

Similarly, a Report by the Criminal Justice Statistical Analysis Center ("CJSAC") notes that in large scale data collection, errors may occur for many reasons, "including inaccurate interpretation of UCR definitions, reliance on criminal rather than statistical definitions, record automation issues, and even purposive actions in an attempt to downgrade crime."³² Yet, these are only some of the reasons such a wide disparity between two federal agencies exists.

1. Voluntary reporting of hate crimes by law enforcement

A significant part of underreporting of hate crimes by law enforcement arises from the voluntary nature of local law enforcement compliance with the FBI's request for hate crime data.³³ No federal laws require participation in the UCR program nor do they require agencies provide a full year's worth of data.³⁴ To deal with this data gap, the FBI has developed an entire methodology to approximate missing data, which can produce significant errors.³⁵ Furthermore, some police departments "cook the books" by underreporting the number of crimes reported to them by victims . . . or may be recorded as less serious crimes. For the most part, the FBI cannot determine when this occurs . . . except when newspapers uncover them.³⁶

Voluntary participation by police departments began in 1992 nationally and the number of participating agencies grew rapidly in the following 10-year period.³⁷ Unfortunately, participation has not translated into reporting of hate crimes to the FBI. Commenting on the FBI UCR data that showed zero hate crime incidents reported in the state of Mississippi in 2005,

²⁸ See Alison M. Smith, State Statutes Governing Hate Crimes, Congressional Research Service (Sept. 28, 2010), <http://www.fas.org/sgp/crs/misc/RL33099.pdf>; ADL, Anti-Defamation League State Hate Crime Statutory Provisions (updated Mar. 2013), http://www.adl.org/assets/pdf/combating-hate/state_hate_crime_laws_march_2013.pdf.

²⁹ *Id.*

³⁰ *Id.* (According to ADL, 37 of 50 states do not mandate training on hate crimes for police officers).

³¹ National Institute of Justice, Hate Crime Prevalence and Victimization, available at:

<http://www.nij.gov/topics/crime/hate-crime/prevalence-victimization.htm>.

³² S. M. Haas et al., Assessing the Validity of Hate Crime Reporting: An Analysis of NIBRS Data, Charleston, WV: Criminal Justice Statistical Analysis Center, Office of Research and Strategic Planning, Division of Justice and Community Service, 2 (July 2011), note 19, at 1.

³³ Human Rights First (HRF), in filing a report during the U.S.'s Universal Periodic Review, noted that a voluntary system of documenting hate crimes at the local level, produced few jurisdictions that were reporting these incidents. See generally, Human Rights First, First Submission to the Office of the High Commissioner for Human Rights, Universal Periodic Review: United States of America (Nov. 26, 2010), http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/HRF_HumanRightsFirst.pdf. (stating that the "Underreporting of hate crimes to law enforcement agencies remains a serious problem"); Nicole Krasavage, et al., *Are Victims Falling Through America's Hate Crime Data Gap?*, CNN (March 23, 2013), <http://www.cnn.com/2013/03/15/justice/hate-crime-statistics>.

³⁴ Lynch, *supra* note 13 at 67-69.

³⁵ *Id.* at 270.

³⁶ *Id.*

³⁷ Haas, *supra* note 33, at 2.

2006, and 2007, Heidi Beirich of the Southern Poverty Law Center notes, “Hate crime data as the FBI reports is underreported by an ungodly amount . . . States like California have thousands of hate crimes, and the state of Mississippi with its record of racial animus has none? . . . It’s ridiculous.”³⁸ Currently, only 32 of 50 states have legislation mandating hate crimes data collection.³⁹

The failure of proper data collection because of its voluntary nature has downstream effects. For example, relevant law enforcement agencies don’t have enough information to identify crime patterns and make sound decisions about how to allocate limited resources to prevent and protect communities from hate crimes.⁴⁰ Despite decade-long calls from the Bureau of Justice Assistance (BJA) to mandate all law enforcement agencies to collect hate crimes data, the federal government has yet to mandate this type of comprehensive data collection.⁴¹

2. Police department culture⁴² and training plays a vital role in whether hate crimes are properly documented

The Department of Justice in 2005 made an observation that some law enforcement agencies “prefer [] not to acknowledge the role of hate in certain offenses.”⁴³ This point underscores how law enforcement officials allow bias to infiltrate and impact how they document hate crimes. The CJSAC Report which did a pilot study on hate crimes documentation at the local agency level supports this observation by finding that “some officers did not believe in enforcing bias crimes against white offenders . . . [giving] those officers the authority to effectively nullify hate crime law.”⁴⁴

Moreover, the Report found that police department culture is one of the strongest determinants of officer behavior, and consequently, whether they feel incentivized or disincentivized to document hate crimes. The culture in a police department had an overwhelming effect on the thoroughness of hate crimes reporting.⁴⁵ For example, agencies that infrequently reported hate crimes were likely to have a culture of “discouragers” in leadership positions and perpetuate the notion that “reporting hate crimes results in negative publicity [and] . . . supports the agendas of gay and minority groups.”⁴⁶

Through focus groups, the CJSAC Report further illuminated that officers need further training in identifying “indicators of bias”⁴⁷ and that a vast majority of undercounting of hate crimes, 67.35% in the pilot study conducted, can be attributed to insufficiently understanding that hate

³⁸ Krasavage, *supra* note 34.

³⁹ ADL, *supra* note 29.

⁴⁰ See Ryan Jacobs, *Just Like in “The Wire,” Real FBI Crime Stats are “Juked”*, Mother Jones (June 19, 2012), <http://www.motherjones.com/mojo/2012/06/fbi-crime-stats-fudged-the-wire-nypd>.

⁴¹ See Bureau of Justice Assistance, *A Policymaker’s Guide to Hate Crimes*, 15 (1997), <https://www.ncjrs.gov/pdffiles1/bja/162304.pdf>.

⁴² A seminal work of scholarly research found the vital role of culture in police departments in shaping young recruits. John Van Maanen, *Police Socialization: A Longitudinal Examination of Job Attitudes in an Urban Police Department*, *Administrative Science Quarterly*, Vol. 20, No. 2 (June 1975).

⁴³ Shivley, *supra* note 12, at iii

⁴⁴ Haas, *supra* note 33, at 8.

⁴⁵ *Id.* 6-8.

⁴⁶ *Id.* at 7

⁴⁷ *Id.* at 21.

crimes are not only national headline or “clear-cut cases.”⁴⁸ It is no surprise then that hate crime data collection efforts “lag[] behind data regarding most other types of crime.”⁴⁹

V. Ways to Improve Hate Crimes Documentation

D. NYPD Hate Crimes Task Force: A Model for Community Engagement

The Crime Victims' Institute (CVI) points to the Hate Crimes Task Force (HCTF) of New York City as a model to overcome some of the failures that lead to underreporting and mistrust between the local community and law enforcement.⁵⁰ For instance, while the National Crime Victimization Survey (NCVS) provides that “only 19.2% of the hate crime incidents reported by victims were determined by local authorities to be bias-related,”⁵¹ and “examination of the police response in New York from 1996-2005 shows that the Hate Crime Task Force of the New York Police Department (HCTF) confirmed as hate crimes almost 91% of victim reports.”⁵² CVI explained that this disparity existed not because victims were any more or less truthful in other jurisdictions, but because unlike many jurisdictions, HCTF engages in proper law enforcement training, engagement with NGOs and the affected communities, and oversight over hate crimes documentation.⁵³ The HCTF’s efforts have led to a better understanding of the scope of the problem in New York City, and have led to further outreach into affected communities and more resources devoted to stopping bias-motivated crimes.

Conversely, the failure to document hate crimes by law enforcement causes affected communities to feel further alienated and prevents public officials from properly apportioning resources to address crimes targeting vulnerable communities.⁵⁴ The failure to investigate and accurately report hate crimes leads law enforcement officials to treat hate-motivated crimes directed towards particularly vulnerable communities as isolated events, rather as part of a larger trend of hate and violence.⁵⁵ A few examples of the kinds of resources that government could provide include: monitoring hate groups who have increasingly targeted minority communities; increased police patrols of property that are likely to be targeted (e.g. houses of worship, community centers etc.); training officers to follow set procedures when investigating and questioning victims, witnesses, or perpetrators in potential bias related incidents; funding for the

⁴⁸ *Id.* at 18 (The consensus in the CJSAC study was “when you do see a hate crime, it is the type that makes national headlines”).

⁴⁹ Shivley, *supra* note 12, at iv.

⁵⁰ Glen Kercher et al., *Hate Crimes*, Crime Victims Institute (“CVI”), 16-21 (Aug. 2008), available at: <http://www.crimevictimsinstitute.org/documents/Hate%20Crimes%20Final.pdf>.

⁵¹ *Id.* at 16.

⁵² *Id.*

⁵³ *See Id.* at 16-18.

⁵⁴ *See* Maria Cramer, *Statistics on Hate Crimes are Sparse*, boston.com (Dec. 13, 2010), http://www.boston.com/news/local/massachusetts/articles/2010/12/13/statistics_on_hate_crimes_are_sparse/. There are many resources, including federal funds to improve security of facilities that may be threatened, and other funds allocated for preparedness available to communities that can display a need for protection through statistics. *See* Jack Jenkins & Aaron Shapiro, *Sikhs Argue for ‘The Dignity of Being A Statistic’ At Senate Hearing*, ThinkProgress (Sept. 21, 2012), <http://thinkprogress.org/politics/2012/09/21/892871/sikhs-argue-for-the-dignity-of-being-a-statistic-at-senate-hearing/?mobile=nc>.

⁵⁵ Indeed, the Hate Crime Statistics Act’s “purpose was to establish a national data collection system on crimes motivated by hate so that federal and local law enforcement authorities could determine whether hate crimes were isolated events or a more pervasive problem, and whether any particular groups were more likely to be targeted than others.” Susan J. Becker, *Tumbling Towers As Turning Points: Will 9/11 Usher in A New Civil Rights Era for Gay Men and Lesbians in the United States?*, 9 Wm. & Mary J. Women & L., 207, 250 (2003).

installation of protective boundaries at faith and community centers; press conferences standing in solidarity with the community; public education events; and training by agencies, like the FBI and Department of Homeland Security (DHS), on measures the community can take to better protect itself.

The government's failure to support and protect minority communities deepens and reinforces their lack of trust in law enforcement, especially among immigrant and lower-income families, leading people to believe that reporting crimes to the police is ineffective.⁵⁶ Thus, non-reporting and the failure to adequately document these crimes can effectively silence and further marginalize communities experiencing repeated hate motivated violence.

E. Hate Crimes Task Force: NGO and Local Community Collaboration Must be Revitalized

In 1997, then Attorney General Janet Reno pushed forth a comprehensive Hate Crimes Initiative to be deployed throughout the nation. However, the Initiative went beyond law enforcement and recognized the need to draw “on local people to craft solutions that are tailored to the particular problems of the local community.” Thus, “the centerpiece of the Department's initiative [was] the formation in each U.S. Attorney's District of a working group consisting of federal, state, and local law enforcement, as well as local community leaders and educators, to develop a comprehensive approach to hate crimes.”⁵⁷

Additional mandates also emphasized the “use [of] community outreach to help ensure effective reporting, investigation, prosecution, and, ultimately, prevention of hate crime, as well as to heal wounds, in the community caused by hate crimes” and “to aggressively expand hate crime education and training to include a wide range of programs, including the training of federal, state, and local law enforcement in hate crime enforcement, classroom-based education programs targeted at young people, and others; and finally, *to improve data collection, so that with accurate statistics we can understand the full scope of the problem and effectively deploy our resources to combat it.*”⁵⁸ Tracking of hate crimes requires an effort from all interested parties and local law enforcement and the FBI should at a minimum, create provisions for integrating community and NGO documentation of hate crimes into the UCR program.

F. Patrol Guides Across the Country Should Include Bias- Motivated Incident Procedure

A Patrol Guide is a procedural book issued to all law enforcement officers. The Patrol Guide is the controlling instrument that guides law enforcement conduct, and additionally functions as a study guide for academy examinations. Its mastery is essential for promotion and following procedures closely help officers avoid misconduct and complete thorough investigations. Thus, it

⁵⁶ ICAAD has directly represented victims of hate crimes and one of the most common complaints of victims is that police reports inaccurately described the attack or failed to record pertinent information regarding bias motivation. Victims also often express a belief that the police will not do anything anyway. *See also* Shivley, *supra* note 12, at iii, 59, and 82. (Noting that after individuals reported hate crimes and observed a lack of action by police, many individuals choose not to report.)

⁵⁷ U.S. Department of Justice, Office of the Attorney General, Memorandum for All United States Attorneys: Implementation of The Hate Crime Initiative (Dec. 22, 1997), <http://www.justice.gov/ag/readingroom/hatecrimeinit.htm>.

⁵⁸ *Id.* (emphasis added).

is a vital tool for ensuring police follow proper procedure when investigating a crime.

Many law enforcement agencies do not mandate training or the inclusion of thorough guidelines on how to investigate and document bias-motivated incidents.⁵⁹ The inclusion of bias-motivated incident guidelines similar to one included in the NYPD Patrol Guide⁶⁰ and a model hate crimes policy created by the International Association of Chiefs of Police (IACP)⁶¹ create the proper environment for identification and documentation of hate crimes. Such guidelines should be included in Patrol Guides across the country.

G. Failure to Dedicate Adequate Resources to Monitoring Domestic Hate Groups Leaves Minority Communities Susceptible

Instead of taking the threat of domestic hate groups seriously, the government has chosen to ignore the threat.⁶² In 2009, Daryl Johnson, a senior analyst in the U.S. Department of Homeland Security (DHS) authored a report, *Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment*, warning of the dangers of violent rightwing extremism in the United States. Following the publication of the Report and the political and media backlash that ensued, Mr. Johnson reported that “DHS made the decision to cancel all of its domestic-terrorism-related reporting and training for law enforcement,” and that “the Department not only decided to stop all of our work, but they also disbanded the unit, reassigned us to other areas within the office, and then made life increasingly difficult for us.”⁶³ Johnson's division of eight analysts was reduced to one analyst.⁶⁴

On September 19, 2012, the U.S. Senate Judiciary Committee held a hearing title, “Hate Crimes & the Threat of Domestic Extremism,” during which Daryl Johnson was one of the prominent experts testifying before the Senate Committee. During his testimony, Johnson identified that “domestic rightwing extremists trumped all other forms of ideologically motivated violence in the U.S. for number of deaths” since September 11, 2001.⁶⁵ Additionally, Johnson stated that the

⁵⁹ ADL, *supra* note 29 (32 of 50 states currently mandate reporting of hate crimes and 37 of 50 states do not mandate training for police officers on hate crimes).

⁶⁰ If occurrence is a bias-motivated incident, comply with P.G. 207-10, “Bias Motivated Incidents.” See NYPD Patrol Guide, Bias Motivated Incidents, at P.G. 207-10 (2012) (App can be purchased on iTunes)

⁶¹ International Association of Chiefs of Police (IACP), Investigation of Hate Crimes: Model Policy, http://www.nychiefs.org/ModelPolicies/MPTC_Hate_Crimes_Model_Policy.pdf.

⁶² Brian Levin, *U.S. Hate and Extremist Groups Hit Record Levels, New Report Says*, Huffpost Politics (Mar. 8, 2012), http://www.huffingtonpost.com/brian-levin-jd/hate-groups-splc_b_1331318.html.

⁶³ Daryl Johnson, *Daryl Johnson: I Tried to Warn Them*, SALON, http://www.salon.com/2012/08/17/daryl_johnson_i_tried_to_warn_them/; Amy Goodman, *Former DHS Analyst Daryl Johnson on How He Was Silenced for Warning of Far Right Militants in US*, Democracy Now!, http://www.democracynow.org/2012/8/9/former_dhs_analyst_daryl_johnson_on.

⁶⁴ Rania Khalek, *DHS's Right-Wing Terror Blind Spot*, SALON, 9 (Aug. 15, 2012), http://www.salon.com/2012/08/15/dhss_right_wing_terror_blind_spot/ (single analyst was left at DHS to monitor the entire spectrum of non-Islamic domestic extremism); See *Hate Crimes & the Threat of Domestic Extremism: Hearing Before the Senate Judiciary Subcomm. on the Constitution, Civil Rights and Human Rights*, 112th Cong., 8- 13 (Sep. 19, 2012) (statement of Daryl Johnson, former Senior Terrorism Analyst at the U.S. Dept. of Homeland Security), *transcript available at* <http://judiciary.senate.gov/pdf/9-19-12JohnsonTestimony.pdf> [hereinafter “Johnson Testimony”].

⁶⁵ Johnson Testimony at 2. See also, *The Benefits of Hindsight*, The Economist (Aug. 18, 2012) (“According to the Extremist Crime Database (ECDB), published by the National Consortium for the Study of Terrorism and Responses to Terrorism, between 1990 and 2010 right-wing extremists carried out 145 murderous attacks, resulting in 348 deaths, 168 of which resulted from the Oklahoma City bombing. During that same time period Muslim extremists committed around 25 attacks, which killed over 3,000 people; but 9/11 accounted for 2,977 of these.”)

government was not using its resources to conduct Behavioral Threat Assessments (BTAs) to identify whether an individual poses a greater risk of acting violently, and thus, warrant greater governmental scrutiny, rather than blindly targeting groups based on faith or ethnicity.

By ignoring the rise in domestic extremism the government leaves minority communities susceptible to bias-motivated attacks and further undermines the fragile relationship it has tried to build with the Muslim community post-9/11.⁶⁶ Ultimately, whether it is combating hate crimes or terrorism, law enforcement's ability to protect its citizens rests on the trust and relationships it has built over time with communities. If the federal government does not shift its strategy and resources to focusing on domestic extremist groups and protecting minority communities, we are all as a nation left more vulnerable.

VI. Government Has Taken Steps to Protect Minority Communities from Hate Crimes

The federal government has taken some steps to ameliorate bias-motivated crimes. We focus on four areas of tangible improvements. First, Congress's passage of the 2009 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act marked an important step in protecting the voices of all vulnerable communities by expanding federal hate crimes laws to include "crimes motivated by a victim's actual or perceived gender, disability, sexual orientation or gender identity."⁶⁷ Second, after years of advocacy, on June 5, 2013 the FBI Advisory Policy Board (APB) changed their long held position and agreed to code Sikhs, Hindus, and Arabs on the Uniform Crime Reporting (UCR) forms.⁶⁸ For years, these particularly vulnerable communities, especially post 9/11, did not have hate crimes against their communities coded in the UCR Form I-699. Often, the crimes were categorized in catchall categories (i.e Anti-Other Religion), and therefore, masking the level of violence against these communities for over a decade. Recently, this move has prompted the FBI to include other faith based communities to the 1-699 form.⁶⁹ FBI outgoing Director, Robert Mueller, recently approved these recommendations, however, the changes do not go into effect until 2015.⁷⁰ The most encouraging part of this process was that the highest levels of the executive branch, including Attorney General Eric Holder, recommended the FBI amend its existing policies.

Third, the Department of Justice underwent a review of their law enforcement training protocols specifically for the Muslim, Arab, and Sikh community in 2012. Working directly with civil society, the partnership with the Department of Justice's Community Relations Services (DOJ CRS) resulted in the creation of a new law enforcement cultural competency training materials. ICAAD, and other civil rights organizations, helped develop the training module for law enforcement to interface with the Sikh community.⁷¹ These are significant steps necessary to bridge the trust gap and we look forward to continually being involved as government takes the

⁶⁶ Colin Moynihan, *In Bay Area, a Fragile Relationship Between Muslims and the F.B.I.*, New York Times (Feb. 28, 2013).

⁶⁷ See 18 U.S.C. 249.

⁶⁸ CAPAC Praises Recommendation for FBI to Track Hate Crimes Against Sikh, Hindu, and Arab Americans (June 6, 2013), <http://capac-chu.house.gov/press-release/capac-praises-recommendation-fbi-track-hate-crimes-against-sikh-hindu-and-arab>.

⁶⁹ Jaweed Kaleem, *FBI to Start Tracking Hate Crimes Against Sikhs, Hindus, and Arabs*, Huffpost Religion (June 5, 2013), http://www.huffingtonpost.com/2013/06/05/hate-crimes-sikhs-hindus-arabs-fbi_n_3392760.html.

⁷⁰ CAPAC, *supra* note 69.

⁷¹ Press Release, *Deputy Attorney General James M. Cole Speaks at the Community Relations Service Sikh Cultural Competency Training Preview*, Department of Justice (DOJ) (Sept. 19, 2012), available at: <http://www.justice.gov/iso/opa/dag/speeches/2012/dag-speech-1209191.html>.

necessary actions to improve its relationships with minority communities. Finally, the DOJ has been extremely vigilant in pursuing hate crimes that fall within its jurisdiction, citing that “[i]n the past four fiscal years (2009-2012), the Department has prosecuted 29 percent more hate crime cases than were prosecuted in the previous three fiscal years (2005 -2008), and charged 78 percent more hate crime defendants.”⁷²

VII. Prior Concluding Observations

In Paragraph 36 of its 2008 Concluding Recommendations to the United States, the CERD Committee noted that “despite the efforts made by the State party to provide training programs and courses on anti-discrimination legislation adopted at the federal and state levels, no specific training programs or courses have been provided to, inter alia, government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and other public officials in order to raise their awareness about the Convention and its provisions.”⁷³

ICAAD would welcome a continuing recommendation that “the State party organize public awareness and education programs on the Convention and its provisions, and step up its efforts to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party in the field of racial discrimination and intolerance.”⁷⁴

In Paragraph 14 of its 2008 Concluding Recommendations to the United States, the Committee expressed “deep concern over the increase in racial profiling against Arabs, Muslims, and South Asians in the wake of the 11 September 2001 attack,” and recommended that the U.S. “strengthen its efforts to combat racial profiling at the federal and state levels.”⁷⁵

VIII. U.S. Government Report to the Committee

In its 2013 Periodic Report to the Committee, the U.S. Government noted that the country is a “far better and fairer place than it was in the past.”⁷⁶ This, despite the government’s own acknowledgement “that unfortunately hate crimes and the intolerance that breeds them is all too prevalent” in the United States. The U.S. government presented FBI records to cite a total of 6,222 criminal incidents and 7,254 offenses of hate crimes in 2011.

In 2009 in a significant expansion of federal hate crimes law the U.S. government passed the Shepard-Byrd Act in 2009. The U.S. Government notes that this act provides funding and technical assistance to state, local, and tribal jurisdictions to help them prevent investigate and prosecute hate crimes and further notes that subsequent to the Act’s passing the interested parties and agencies were trained on the Act’s requirements.⁷⁷

⁷² *Accomplishments Under the Leadership of Attorney General Eric Holder*, Department of Justice (DOJ) (April 2013), <http://www.justice.gov/accomplishments/accomplishments.pdf>.

⁷³ CERD, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶ 36, CERD/C/USA/CO/6, 8 May 2008, available at <http://www.refworld.org/publisher,CERD,,USA,4885cfa70,0.html>.

⁷⁴ *Id.*

⁷⁵ *Id.* at ¶ 14.

⁷⁶ Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination (June 2013), Article 4, 47.

⁷⁷ *Id.* at 51.

The U.S. Government did not acknowledge the disparity between the numbers of hate crimes recorded by the Federal Bureau of Investigation's Uniform Crime Reporting program and the number of hate crimes recorded by the Bureau of Justice compiled National Crime Victimization Survey. Also, the U.S. did not recognize the underreporting of hate crimes by the public to law enforcement, nor by law enforcement to the FBI's UCR program, nor does it address ways to improve hate crime documentation. Further, the U.S. government only briefly mentioned their post 9/11 discriminatory backlash initiative and failed to establish Sikhs, Muslims, or those perceived as Arabs or of South Asian descent as targeted groups of hate crimes.

However, the U.S. Government stressed the importance of federal, state, and local authorities and community organizations forming coalitions to track, prevent, and combat hate crimes.⁷⁸ The U.S. noted that in 2010 the Federal Bureau of Investigation devoted additional resources to combating hate crimes in cities or areas most at risk for bias-motivated violence.⁷⁹

IX. Recommended Questions

We respectfully recommend that the Committee pose the following questions to the United States Government:

- 1) In light of the federal government's own statistics revealing a failure to adequately document hate crimes in the U.S., what specific measure(s) is the federal government willing to take to ensure better data collection, and consequently, better law enforcement interventions to protect vulnerable communities?
- 2) In light of the decision to add Arabs, Hindus, and Sikhs to the UCR Form 1-699, does the government have the ability to disaggregate hate crimes data post-9/11 and identify how many hate crimes have been perpetrated against each community? If so, will they undertake a process of disaggregation and provide that data to civil society, which has been handcuffed to pursue specific policy recommendations to protect these communities because they have been denied this crucial data for over a decade?
- 3) Will the federal government be more aggressive in allocating funding to the states for training, centralizing their data collections systems, and will the federal government make funding to states contingent on mandatory reporting of hate crimes in all jurisdictions above a certain population threshold (i.e over 25,000) within the state?
- 4) Has the U.S. government begun to shift resources back to monitoring domestic extremist hate groups? Has the division within DHS that monitored domestic non-Islamic extremists (in 2009) been restored and how many analysts are working to prevent violence perpetrated by hate groups? If not, have those resources been shifted to other federal agencies, and if so, what department of the federal government should civil society engage with to ensure the protection of particularly vulnerable communities?

⁷⁸ *Id.* at 55.

⁷⁹ *Id.*

X. Suggested Recommendations to the United States

The U.S. federal government should:

- Mandate reporting of hate crimes at the state level, so that local jurisdictions are compelled to accurately reflect the number of hate crimes in their jurisdiction;
- Require law enforcement agencies to provide both quarterly and full year data on hate crimes, rather than having the FBI apply estimation analysis UCR data;
- Mandate law enforcement training for all new recruits regarding investigating and reporting hate crimes. Follow up training should be conducted periodically;
- Allocate sufficient resources to states to provide comprehensive training for officers to identify bias indicators in crime and incorporate hate crimes investigation procedures in *Patrol Guides* used by law enforcement;
- “Support research assessing the prevalence, incidence, predictors, and outcomes of hate crimes, as well as the psychological impact of hate crimes on victims, their families, and the community.”⁸⁰
- Encourage states to include voluntarily provided victim demographics including age, gender, race, ethnicity, sexual orientation, disability, and religion in hate crimes data collection efforts. Victims, should at a minimum, have the dignity to be counted and not excluded because the perpetrator(s) perceived target group is different than the victim's group;
- Revitalize collaboration between Hate Crimes Task Forces and civil society in every major city across the nation;
- Have the FBI and local law enforcement bridge the hate crimes documentation gap by working with a broad coalition of stakeholders, including civil society, to identify innovative solutions for more robust data collection; recognizing that combating hate crimes must be a shared burden;
- Strengthen DHS and FBI monitoring of non-Islamic extremist groups and keep vulnerable communities and civil society informed of potential threats;
- Use Behavioral Threat Assessments (BTAs) to identify individuals or groups who display supremacist ideology to prevent bias-motivated crimes against vulnerable communities;
- Ensure robust enforcement by having the DOJ file appropriate cases under HCPA; vigorously defend the constitutionality of the Act; and ensure continued education, outreach, and training to federal, state, and local law enforcement officials on HCPA and its requirements.

⁸⁰ American Psychological Association, *supra* note 17.