

Utilising the Hate and Bias Crime Monitoring Form



HATE | CRIMES | WORKING | GROUP

Presented by:

Prof Juan A. Nel (Department of Psychology,
UNISA), also on behalf of Khonzi Mbatha
(Department of Psychology, UNISA) & Ms Hanlie
v Wyk (Independent researcher)





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Putting Hate Crimes in context in South Africa & an overview of related national developments

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Presentation Overview

- Hate Crime Working Group (HCWG)
- Important information toward conceptual clarity:
 - Hate crime definition(s)
 - Examples of hate crimes in SA
- Other attempts at addressing hate crimes in SA
 - Victim Empowerment Programme (VEP)
 - National Task Team (NTT) on Sexual orientation- and Gender-based violence against LGBTI persons
 - Proposed Hate Crimes Bill

Hate Crimes Working Group (HCWG)

- Formed end of 2009/ early 2010): Civil society structure with multi-sectoral focus (including xenophobic attacks, sexual orientation- and gender-based violence against LGBTIs, race-based hate victimisation, religion-based, disability-based victimisation etc, etc) - See HCWG Background paper (2010)
- Submission to DoJ (Sept 2010): Hate Crimes Working Group: Recommendations on Hate and Bias Crime Legislation (roundtable suggestion) – collaborative agreement taking shape...
- HCWG AGM 16 Nov 2011 in Gauteng with key note speakers – ToR adopted (see <http://hcwg.ipt.co.za>)
- HCWG Hate & Bias Crimes Monitoring Form – retrospective capturing of 450 hate crimes (xenophobic; LGBTI-related; other) in 5 provinces implemented during 2012, funded by OSF-SA and HIVOS, with support from Unisa
- HCWG AGM 17 Nov 2012 in Gauteng – presentation of preliminary research findings

HCWVG

Steering Committee

- Independent Projects Trust
- OUT LGBT Well-Being
- Amnesty International
- Triangle Project
- FEW
- Human Rights Watch
- Sonke Gender Justice
- Scalibrini
- GALA
- CoRMSA
- Gay and Lesbian Network
- SA Jewish Board of Deputies

Members

Note, new members
welcome!

See:

<http://hcwg.ipt.co.za>

Or email:

yolanda@uboraresearch.com

Associate
members



Hate Crimes Working Group

see <http://hcwg.ipt.co.za>

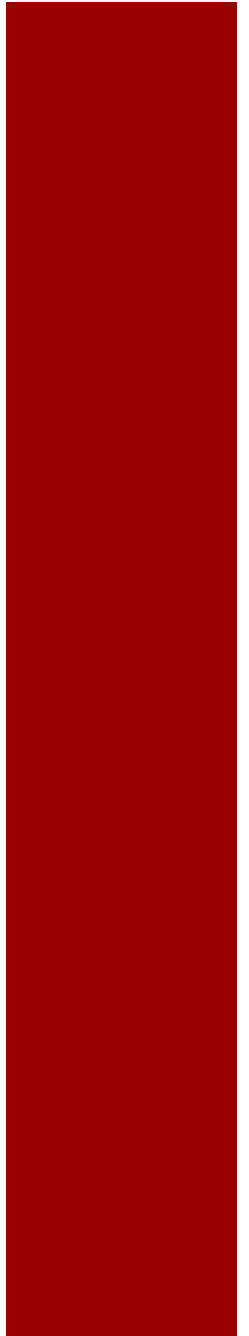
Secretariat: Yolanda Mitchell (yolanda@uboraresearch.com)

Chair: Iole Matthews (iolem@iafrica.com)

Deputy Chair: Dawie Nel (neld@out.org.za)

CONCEPTUAL CLARITY

Important information



Outline: Conceptual Clarity



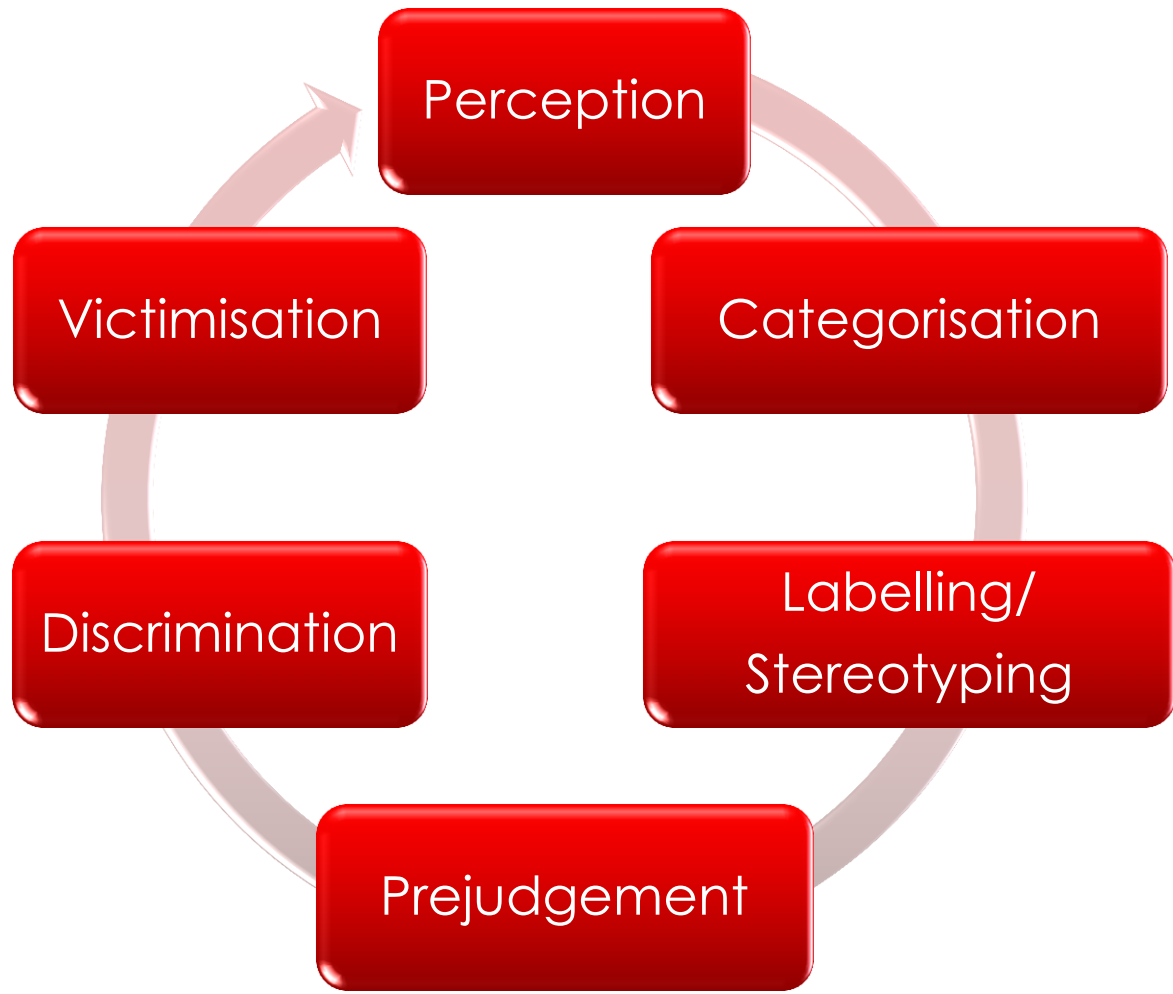
- What is hate crime?
 - Why a separate crime category?
 - Why considered a priority crime?
- Examples of hate crimes in SA
 - Sexual orientation- and gender-based violence against LGBTI persons
 - Racist victimisation
 - Violence against foreign nationals

WHAT IS HATE CRIME?



■ HATE CRIME DEFINED

- A *criminal act* committed against people, property, or organisations that is *motivated* in whole or part by prejudice because of the group to which the victim belongs or identifies with (i.e. LGBTI organisation, foreign nationals or mosque).
- Perpetrators seek to demean and dehumanise victims – considered different based on actual or perceived race, ethnicity, gender, age, sexual orientation, disability, health status, nationality, social origin, religious convictions, culture, language and/or other characteristic.
- Hate crime (i.e. homophobic murder) v Hate incident (i.e. racist hate speech)



WHAT IS HATE CRIME?



- While hate-based victimisation may be in the form of an isolated incident, such victimisation most often occurs in contexts of sustained harassment including *daily, ongoing acts of taunting, constant bullying or conflicts* between people known to each other within specific settings, such as a school or a community
- Thus, important to note that *not* only extreme or sensational cases considered to be crimes of hate...

WHY SEPARATE CRIME CATEGORY?



- **Perpetrator prejudice** differentiates hate crime from other crimes
- **Identity crime:** Directed at the identity of the victim and motivated by hatred or specific targeting not of the individual, but of the group to which they belong
- **Message crime:** Message conveyed by perpetrator impacts beyond direct victim/s, to others in targeted group

WHY CONSIDERED PRIORITY CRIME?



- Internationally considered a priority crime:
 - Not on basis of prevalence, but rather *severity of emotional & psychological impact* beyond individual victim, extending to group to which they belong or are perceived to belong, and to the broader community or society at large

WHY CONSIDERED PRIORITY CRIME?

Hate Crimes Act of New York State:

- "Hate crimes do more than threaten the safety and welfare of all citizens. They inflict on victims incalculable physical and emotional damage and tear at the very fabric of free society. Crimes motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs. Hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic processes."

EXAMPLES OF HATE CRIMES IN SA

- Sexual orientation- and gender-based violence against LGBTI persons
- Racist victimisation
- Violence against foreign nationals

Sexual orientation and gender-based Real life examples



- 2005: Vernon Gibbs & Tony Halls (first same-sex *white gay male* couple to be married under Civil Union Act in 2007) victims of property attacks in Riversdal
- 2006: Zoliswa Nkonyana (*black lesbian*) murdered by mob in Khayelitsha - 50 postponements; 4/9 accused found guilty Oct 2011 (18 yrs sentence) & role of sexual orientation/ gender expression acknowledged
- 2006: Moses “Emmerentia” Rakoma (*black gay man*) kidnapped, raped & tortured
- 07/07/07: Sizakele & Salome (*black lesbians*) brutally raped & murdered in Soweto

Sexual orientation and gender-based Real life examples



- 2007: Deric Mazibuko (*black gay man*) assaulted (GBH) in Germiston – 30+ postponements; OUT admitted as amicus curiae – hate motivation acknowledged in guilty verdict in Nov 2011; 3 accused sentenced 9 March 2012, but with disappointing outcome (aggravating element not acknowledged)!
- 2008: Eudy Simelane (former Banyana Banyana soccer player & *black lesbian*) raped & murdered in Kwa-Thema (Ekuruleni) – Mphiti sentenced to 31 yrs in jail in Feb 2009, but role of sexual orientation/ gender expression not considered...
- 2008: Daisy Dube (*Gender-non conforming black gay man/ 'Drag queen'*) shot & killed in Yeoville, Jhb
- April 2011: Noxolo Nogwaza (*black lesbian*) raped and stoned to death in Kwa-Thema

EXTREME AND SENSATIONAL INCIDENTS OF RACIST VICTIMISATION IN SA:



- 1988: Barend Strydom (self-proclaimed member of the right-wing and racist political grouping, the Witwolwe) gunning down of black passers-by at Strijdom Square in Pretoria
- 2000: De Wet Kritzinger fired shots at black bus passengers in Pretoria
- 2000 SABC broadcast of xenophobic and racist mauling by SAPS dog unit of three black Mozambican illegal immigrants during their arrest in Gauteng
- Racist political slogans of the early 1990's:
 - “Kill the Boer, kill the farmer” – also see Malema (2010)
 - “One settler, one bullet.”
- 2004: Painting black people white, dragging them behind car
- 2008: Skierlik, North-West Province massacre by Johann Nel

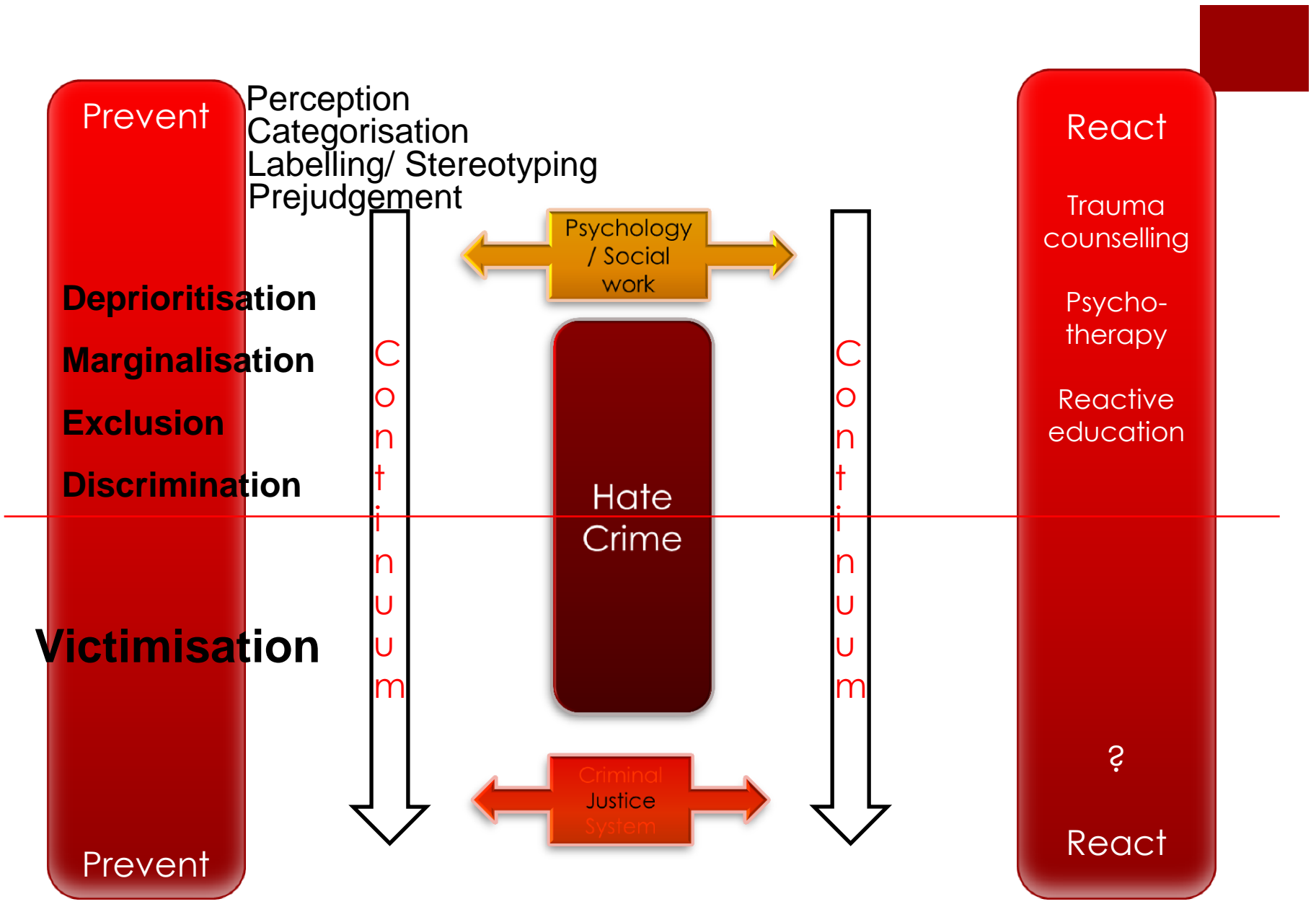
Violence against foreign nationals

- Repeated outbreaks in SA, since early 1990s largely carried out against migrants from other African countries, not all foreigners in general; mostly in squatter camps & informal settlements
- Some recent trends of violence against foreign nationals are:
 - Indiscriminate mob violence against all foreign nationals in a particular area;
 - Attacks, intimidation or specific looting campaigns targeting foreign-owned businesses; and
 - Individual attacks on foreign nationals.

Xenophobic attacks (cont)

- 2005: 20 or more Somali traders die in Cape Town
- May 2008: 60 people die and tens of thousands displaced in Gauteng, KZN & Cape Town when local residents instigated forceful removal of foreign nationals, blaming them for social ills
- Nov 2009: De Doorns and May 2010 in Sasolburg individuals with economic or political incentives mobilised residents to attack or remove foreign nationals
- 2011: local business owners campaigned against foreign-owned businesses in Freedom Park, Ramaphosa, Diepsloot and Tembisa
- For more examples see:

<http://www.cormsa.org.za/wp-content/uploads/2009/05/cormsa-database-of-violence-against-foreign-nationals.pdf>



OTHER ATTEMPTS AT ADDRESSING HATE CRIME

- Integrated Victim Empowerment Policy Guidelines (2009: includes all hate victims as priority group, in particular LGBT and foreign nationals)
Tsholo Molo (tsholom@dsd.gov.za) / Athalia Shabangu (athalias@dsd.gov.za)
- National Task Team on Sexual orientation- and Gender-based violence against LGBTI persons & other LGBTI court related issues (July 2011: with obvious emphasis...)
Adv Ooshara Sewpaul (OSewpaul@justice.gov.za) / Siphwe Ntombela (SNtombela@justice.gov.za) / Dr Ingrid Lynch (advocacy@triangle.org.za)
- Proposed Hate Crimes Bill (2010: emphasis on xenophobia & race????) – **Also see proposed Policy Framework on Combating Hate Crimes, Hate Speech & Discrimination (2013)**
Theresa Ross (TRoss@justice.gov.za) / Adv Ooshara Sewpaul (OSewpaul@justice.gov.za) / Foundation for Human Rights (mmoodlier@fhr.org.za)

Policy Framework on Combating Hate Crimes, Hate Speech & Discrimination

The mentioned hate crimes discussion document proposes the following definitions for 'hate crime', 'hate speech' and 'intentional unfair discrimination' which, therefore, also apply to this project:

Hate crime:

Hate crimes are offences recognised under the common law or any legislation, committed solely or in part because of the fact or perceived fact of

(a) the victim's race, gender, sex, pregnancy, nationality, marital status, ethnic or social origin, colour, sexual orientation, gender identity, age, disability, religion, conscience, belief, culture, language or birth, or related characteristics

(b) any other comparable characteristic where discrimination based on that characteristic causes or perpetuates systemic disadvantage or undermines human dignity.



Hate speech:

Any person who by any means of expression publicly and intentionally advocates hatred of any other person or group of persons based on

a) race, gender, sex, pregnancy, nationality, marital status, ethnic or social origin, colour, sexual orientation, gender identity, age, disability, religion, conscience, belief, culture, language or birth; or

b) any other characteristic where discrimination based on that characteristic causes or perpetuates systemic disadvantage or undermines human dignity,

in a way that incites others to harm such person or group, is guilty of the offence of hate speech, whether or not such person or group is harmed.





Intentional unfair discrimination:

It is an offence intentionally to engage in conduct, other than expression or measures in section 9(2) of the Constitution, which unfairly discriminates directly or indirectly against any other person or group of persons

a) on one or more of the grounds set out in section 9(3) of the Constitution; or

b) on any other comparable characteristic where discrimination based on such ground causes or perpetuates systemic disadvantage or undermines human dignity.

Thank you



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