

# The Country We Want to Live In:

Policy, practice, legislation with respect to  
hate crimes

HSRC and ISS Joint panel discussion

Dr. Danny Titus SA Human Rights  
Commission

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# Hate Crimes and Race in South Africa

- In 2004 CSVR Report "Arranging Prejudice: Exploring Hate Crime in post-apartheid South Africa."
- The primary focus of the report is "racially motivated hatred".
- It acknowledges that the notion of 'hate crime' goes beyond racism and as such "offers an organizing principle for discussing prejudice, particularly when it takes on a violent form."

# Hate Crimes and Race

- In concludes: “Despite very recent and limited discussions about whether to legislate against hate crime, the term is not commonly used in South Africa.” (at 72). 2004.
- Hate crimes and violence: “This is a theme that brings notions of reconciliation and peace building into the spotlight.”
- “Rather than seeing these as separate issues, hate crime creates the space to conceptualise racism as intricately related to reconciliation.”

# Hate Crimes and Race

- The Human Rights Commission noted at the time:
- “Reconciliation in our country will mean nothing if it is not racial reconciliation. At the heart of dealing with the question of reconciliation is dealing with the problems of race and racism.”
- We know that hate crimes have moved significantly from racism. The question is whether we are prepared to integrate our abhorrence to all the forms of hate crime.

# Hate Crimes Beyond Race

- In 2009 Action Aid published their report: Hate Crimes: The Rise of 'Corrective Rape' in South Africa."
- Chairperson of the HRC at the time, Jody Kollapen wrote the foreword:
- "South Africa's transition to democracy and its constitutional and human rights framework have been a source of hope and inspiration to millions inside and outside the country."

# The Rise of 'Corrective Rape'

- “But as the country deals with the challenge of translating promise into reality, it is confronted by a number of challenges and fault lines, among them the prevalence of gender-based violence.”
- “This ActionAid report describes some of the most shocking violence that continues to be perpetrated – including instances of 'corrective' rape, where men rape women in order to 'cure' them of their lesbianism.”

# Curing them of their lesbianism

- We all have a responsibility – institutions such as the South African Human Rights Commission, the police and justice system, civil society and each individual – to stand in defence of both the constitution and the rights of all. Hate crimes of this nature require decisive action and those responsible must be held to account. The criminal justice system needs to develop more effective strategies in this regard.

# Curing them of their lesbianism

- The many individuals who have come forward to share their stories in this report have done so partly in the hope that their testimony will move a society to action. One of those actions would be to ensure that hate crimes are recognised within the criminal justice system.
- We should use this report as the basis for public education and law reform and ultimately to ensure that we advance the promise of the constitution in recognising the equal worth and dignity of each person.

# Corrective Rape Rising

- “Violence against women and girls continues unabated in every continent, country and culture. It takes a devastating toll on women’s lives, on their families, and on society as a whole. Most societies prohibit such violence — yet the reality is that too often, it is covered up or tacitly condoned.”

**Ban Ki Moon, UN Secretary General.**

- “They tell me that they will kill me, they will rape me and after raping me I will become a girl. I will become a straight girl.”

**Zakhe, 23, Soweto.**

# Hatred in one's own lap

- “The object of one's hatred is never, alas, conveniently outside but is seated in one's lap, stirring in one's bowels and dictating the beat of one's heart.

And if one does not know this, one risks becoming an imitation – and therefore, a continuation – of principles one imagines oneself to despise.”

- James Baldwin, “Here be Dragons.”

# Hate crime legislation? I object, your honour

- It is not needed. “Every crime they cover is already illegal under existing state and local laws.”
- They are unfair: the perpetrators of two identical crimes will receive different sentences depending upon some characteristic of the victim e.g. gender, disability or sexual orientation.
- It will infringe upon freedom of speech: if an individual’s sexual orientation is a protected civil right, the logical conclusion is that moral, religious, or personal beliefs about certain behaviours would be criminalised. The freedoms of conscience and speech would be lost.

# I still object

- Such legislation should only apply to personal characteristics that are beyond the individual's control, like gender, race, national origin, colour, disability. Homosexuality is a chosen and changeable preference for members of the same gender.
- Hate crime legislation would grant special privileges to gays and lesbians because it would identify them as a protected class.
- This is to validate and legitimize sodomy, and other forms of sexual immorality. It's all a pretense that this is about protecting people's actual civil rights.

# Beyond legislation?

- Kollapen: We should use this report as the basis for public education and law reform and ultimately to ensure that we advance the promise of the constitution in recognising the equal worth and dignity of each person.
- Important though it is, we can just not place too much emphasis on finally having another law on the statute books. Our South African experience with laws and their implementation is very real.
- “Public education, law reform and recognising the equal worth and dignity of each person.” This to me is the broader objective.

# A Ten-Point Plan for Combating Hate Crime

- Human Rights First calls upon all governments to implement the following Ten-Point Plan for combating violent hate crimes:
  1. Acknowledge and condemn violent hate crimes whenever they occur.
  2. Enact laws that expressly address hate crimes.
  3. Strengthen enforcement and prosecute offenders.
  4. Provide adequate instructions and resources to law enforcement bodies.
  5. Undertake parliamentary, inter-agency or other special inquiries into the problem of hate crimes.

# A Ten-Point Plan for Combating Hate Crime

6. Monitor and report on hate crimes.
7. Create and strengthen antidiscrimination bodies.
8. Reach out to community groups.
9. Speak out against official intolerance and bigotry.
10. Encourage international cooperation on hate crimes.

# UN Special Rapporteur on the human rights of migrants

## Mission to South Africa 24 January – 1 February 2011

- 77. The Special Rapporteur encourages the Government to introduce as soon as possible the hate crime bill, which is currently being finalized by the Department of Justice and Constitutional Development, given the fact that general provisions included in the Constitution and the Criminal Code are not effective enough in protecting migrants from discrimination based on nationality.
- Migrant communities should be consulted and encouraged to participate in the process of elaboration of this law. The law should, in particular:

# Hate Crimes and Migrants

- (a) Make any act of violence against individuals or property on the basis of a person's race, nationality, religion, ethnicity, sexual orientation or gender identity ("hate crime") an aggravating circumstance;
- (b) Provide effective resources and training for police, justice and other relevant officials to ensure the successful implementation of the provisions of the law, including training on detecting, recording and prosecuting hate crimes, as well as monitoring any trends in them.

# Hate Crimes and Migrants

78. In addition to specific legislation, additional measures should be taken, such as:

- (a) Strengthening the response of police and justice authorities to ensure that perpetrators of hate crimes and police profiling of foreign nationals are held accountable;
- (b) The development of measures to monitor cases of hate crimes against foreign nationals by using police and justice statistics as a means of monitoring trends of such crimes and the response of police and justice authorities to these cases (with statistics on, inter alia, the number of arrests, the number of offenders prosecuted and the number convicted);

# Hate Crimes and Migrants

- (c) The establishment of a visible mechanism whereby members of the public can report cases of violence against foreign nationals as a means of providing more effective police responses to mob violence against foreign nationals;
- (d) The establishment of a permanent body in the office of the Presidency to ensure effective coordination of different Government department programmes on social cohesion, addressing xenophobia, police profiling and tackling hate crimes.

# The Country We Want to Live In?

- The issue of hate crime is bringing our Constitution, our human rights framework and more so our democracy into sharp focus.
- That we have our work cut out for us is stating the obvious.
- The issues of hate crimes as it relate to race, sexual orientation and non-nationals are presenting a framework to finalising our hate crime legislation but more than that, to establish our public education.

# Any answers to take forward?

The question, of course, say Maghan and Kelly in their “Hate Crimes – the global politics of polarisation” (1998), is *how* one can bring others to see that racial and ethnic polarization is widespread, that there exist structures of exclusion operating against gays, women, and others under the guise of “merit” or “qualifications” or national “interest.”

One part of the answer must be that it is possible that others will not be moved at all, that some will remain within the circle of beliefs in relation to which the responses they offer are obvious, predictable and static.

# Answers internal to themselves

- “Moreover, if they should be moved, if the strategies for change in attitude and behavior should succeed, it is not because those beliefs – those assumptions concerning others – have been discarded or left behind.

Rather, it is because they have been altered in ways that are internal to themselves.”

This is my hope and my prayer, that the attitudes and behaviours will change and that we will break into those circles of beliefs.