



Organization for Security and  
Co-operation in Europe  
Mission to Bosnia and Herzegovina

A photograph of a brick wall with red graffiti. The graffiti reads 'TACKLING HATE CRIMES' in a bold, distressed, stencil-like font. The wall is made of light-colored bricks with grey mortar. The background of the entire page is a dark, textured grey.

**TACKLING  
HATE CRIMES**

# **An analysis of bias-motivated incidents in Bosnia and Herzegovina with recommendations**

# **Tackling Hate Crimes:**

An analysis of  
bias-motivated  
incidents in  
Bosnia and Herzegovina  
with recommendations

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## EXECUTIVE SUMMARY

Hate crimes target the basic fabric of society. Given their destructive potential, the OSCE Mission to Bosnia and Herzegovina has partnered with Bosnia and Herzegovina (BiH) officials since 2008 to address these crimes. This report presents the Mission's findings based on its past five years of monitoring hate crimes and hate-related incidents, while concurrently assessing the gaps between international standards and domestic practice in relation to responding to these incidents. This report addresses the lack of a comprehensive guide and/or report on the domestic legislative framework and the resulting concerns found in domestic practice when dealing with hate crimes.

The OSCE has taken the lead and remains at the forefront internationally in developing standards and commitments relating to hate crimes. This report provides an overview of both international and domestic legislative frameworks for hate crimes. Key aspects of the overall public response to bias-motivated incidents are examined and grouped under the following categories:

- Investigation and prosecution;
- Sentencing and compensation;
- Public officials' response;
- Prevention, support and the role of civil society; and
- Data collection.

Common practices and relevant developments in the above areas are discussed. Of particular note are the recent amendments to the Republika Srpska (RS) and Brčko District BiH (BDBiH) criminal codes (CCs), which introduced a range of aggravated forms of criminal offences when committed out of bias. A further positive step can be seen by the increasing number of appropriate public condemnations of hate crimes and bias-related incidents by local authorities.

As well as identifying developments, this report also identifies the crucial areas for improvement in BiH with regard to the effective tackling and processing of hate crimes, such as:

- Lack of thorough police investigation into bias motivation;
- Lack of effective communication between police and prosecutors on bias indicators;
- Omissions of bias motivation in indictments;
- Lack of recognition of bias motivation in sentences;
- Lack of preventative efforts; and
- Lack of centralized and systematic data collection.

As a conclusion, this report offers a set of recommendations for law enforcement, governmental authorities, judicial authorities and NGOs, to address the above-mentioned observations and to take additional steps to bring domestic practice closer to international standards and guidelines. While a complete list of recommendations is provided at the end of this report, some of them are highlighted here:

- Legislative amendments to the CC of the Federation of Bosnia and Herzegovina (FBiH) should be adopted, and further discussion among legal professionals on existing provisions related to hate crimes fostered to ensure their increased and more consistent implementation;
- Specialized training on investigating and processing hate crimes should be provided for law enforcement and judicial professionals;
- Data collection on bias-motivated incidents and criminal offences should be improved;
- Public and adequate condemnation of bias-motivated incidents, as well as timely and appropriate reactions by governmental authorities should be increased;
- The work of civil society organizations towards prevention and improved responses to hate crimes should be actively supported.

In summary, further and additional efforts need to be taken by BiH to fully acknowledge the grave impact upon victims and those affected by hate crimes, and to recognize the underlying and potentially serious risks that such crimes pose to BiH's overall stability and future security.

## I. INTRODUCTION

The inherent power of hate crimes is frequently underestimated. Hate crimes not only threaten an individual's physical security, but can pose a cardinal threat to the basic fabric and cohesion of a society. The symbolism of hate crimes runs deep due to their intrinsically personal nature. As stated by the OSCE's Office of Democratic Institutions and Human Rights (ODIHR);

*Hate-motivated crimes and incidents have a stronger impact on victims than "ordinary" crimes: They send a message to entire communities. The message is that these communities should be denied the right to be part of society.*<sup>1</sup>

Hate crimes, also known as bias-motivated crimes, fuel animosity and intolerance, while simultaneously widening and perpetuating the divisions between certain ethnic, religious or minority groupings. In a country such as BiH, where society is still recovering from violent conflict, hate crimes are detrimental to rebuilding social trust.

Manifestations of the divisions associated with the 1990's conflict continue to surface today, ultimately hampering BiH's chance to secure a durable co-existence and trust between people. The targets of hate crimes within BiH, however, are not only limited to the three constituent peoples (Bosniacs, Croats and Serbs), but often include minority and vulnerable groups, such as Roma, Jews and sexual minorities. In areas inhabited by returnee communities, incidents are particularly prevalent. Similarly, in former conflict hot spots, inter-ethnic tensions persist to this day. As shown by the OSCE Mission to Bosnia and Herzegovina's (the Mission's) monitoring, incidents in the Srebrenica, Banja Luka and Mostar regions still occur regularly. Some of these incidents involve juveniles and young male adults. While this is a concern, such incidents tend to be downplayed by authorities on the grounds that juveniles are not fully aware of their actions.

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<sup>1</sup> See the OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Preventing and Responding to Hate Crimes – A resource guide for NGOs in the OSCE region* (hereafter, 'Preventing and Responding to Hate Crimes'), 2010, Warsaw, p.9.



Bias-motivated incidents in BiH range from physical and verbal attacks to material damage and the destruction of religious objects. Although many of the reported incidents are minor by nature, their number and frequency, in a generally tense political climate, pose potential risks to BiH's stability. Past commemorations and events have also been marred by expressions of intolerance and hate-related incidents. Such events have included the 2008 Queer Festival in Sarajevo, a 2009 football match between Široki Brijeg and Sarajevo, and the annual Srebrenica commemoration of victims of the war. External political developments have also spurred the commission of bias-motivated incidents, a prime example being Kosovo's unilateral declaration of independence.

Unless the appropriate action is taken, there is a risk that these types of crimes will continue to increase in number and gravity, particularly given the historical context of this country.<sup>2</sup> These ostensibly minor crimes have the potential to lead to more serious ones, which could trigger further retaliations and violence within the community.

Since 2008, the Mission has worked to assist the BiH authorities to meet their commitments as an OSCE participating State, related to the prevention of, and responses to, hate crimes. A core activity of the Mission's work in this field has been to monitor hate crimes and other bias-motivated incidents, in line with the Mission's mandate to "monitor closely the human rights situation in Bosnia and Herzegovina."<sup>3</sup> In addition to its monitoring activities, the Mission also undertakes a number of activities in relation to hate crimes and bias-motivated incidents. For instance, the Mission has advocated for improvements to the legislative framework for the processing of hate crimes. In 2009, the Mission collaborated with the ODIHR and the National Point of Contact on Combating Hate Crimes (within the BiH Ministry of Security) in drafting legislative amendments to incorporate hate crime provisions into all CCs.<sup>4</sup> Other Mission activities include building the institutional capacity of law enforcement and the judiciary, raising public awareness of hate crimes and tolerance, advocating for proper responses from the authorities, and promoting the engagement of civil organizations in combating hate crimes.<sup>5</sup>

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2 See ODIHR, *Understanding Hate Crimes: A handbook for Bosnia and Herzegovina* (hereafter '*Understanding Hate Crimes Handbook*') 2010, Warsaw, p.9, available at: [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2010122712342149eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2010122712342149eng.pdf)

3 See Article XIII of Annex 6 of *The General Framework Agreement for Peace in Bosnia and Herzegovina*, signed in Paris on 14 December 1995 (usually referred to as the Dayton Peace Agreement).

4 The National Point of Contact (NPC) in BiH is appointed under OSCE MC Decision No. 9/09 Combating Hate Crimes, 2 December 2009, Athens, para. 9. Paragraph 9 states that participating States should, "nominate, if they have not yet done so, a national point of contact on hate crimes to periodically report to ODIHR reliable information and statistics". BiH's current appointed NPC works within the BiH Ministry of Security.

5 Capacity building activities have included providing specialized training to police officials on hate crimes in 2009 in co-operation with the ODIHR and the BiH Ministry of Security, and supporting the follow-up goal of developing a training module on hate crimes to be permanently incorporated into both entities' police curricula, as well as providing training to civil society organizations in 2011 and to prosecutors in 2012, both in co-operation with the ODIHR. Other activities included the 'Building Bridges Project', which introduces teaching about the diversity of the peoples, religions and traditions of BiH in schools and encourages local education authorities to introduce new subjects, themes or activities in schools to foster respect for diversity and civic activism. Awareness-raising activities have included, and currently include, the hosting of a series of roundtables on hate crimes and the delivery of presentations in Security Forums or Security Councils in BiH.

## 1. PURPOSE AND STRUCTURE

The aim of this report is to present the Mission’s monitoring findings in relation to hate crimes and other bias-motivated incidents, and to assess the gaps between international standards and domestic practice in BiH when responding to these types of incidents. In addition, this report seeks to engage law enforcement, judicial and governmental authorities, NGOs, and civil society groups dealing with or coming into contact with these issues.

This report has four sections. The first section describes the report’s methodology and terminology. The second section lays out the broader international human rights and domestic legal frameworks relating to hate crimes. The third section addresses the main issues pertaining to hate crimes currently present in BiH, including subsections on investigation and prosecution issues; sentencing and compensation; adequate public reaction and condemnation; prevention, support and civil society involvement, and data collection. Examples from the Mission’s monitoring are used to illustrate these concerns. The concluding section provides recommendations for potential reform and areas where improvement is needed.

## 2. TERMINOLOGY

The expression ‘hate crimes’ refers to those criminal acts committed with an underlying motive of intolerance or bias towards a certain group in society.<sup>6</sup> The expression ‘hate crimes’ has gained currency internationally and especially within the OSCE region. The ODIHR, a strong leader and advocate in combating hate crimes, has proposed a working definition for hate crimes which is based on two essential criteria:

1. The act must be a **crime under the CC** of the applicable legal jurisdiction; and
2. The crime(s) must be committed with a **bias motivation**,<sup>7</sup> which means that the perpetrator chose the target of the crime based on the victim’s “protected characteristics.”<sup>8</sup>

The target may be a person, people, or property associated with a group that shares fundamental or core characteristics, such as race, religion, ethnicity, language or sexual orientation (so-called protected characteristics). It is worth noting that ‘bias-motivated crimes’ is synonymous with ‘hate crimes’ and the two terms are used interchangeably throughout this report. However, in some respects the term ‘bias-motivated crimes’ is more accurate and easier to understand as it avoids the emotionally-laden term ‘hate,’ which frequently leads to confusion and misunderstanding.

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6 See *Understanding Hate Crimes Handbook*, *supra* note 2, p.7.

7 *Ibid.*

8 *Ibid.*

The ODIHR has developed objective criteria to assist in identifying whether the possible motive of the crime was based on bias (see Annex I). ‘Bias indicators’ do not necessarily prove that the underlying motive was in fact influenced by bias, but may merely suggest that there was a bias motivation behind the commission of the crime. Bias indicators can and should be used by police, prosecutors and organizations monitoring hate crimes to identify which incidents should be investigated or analysed further to determine whether they are hate crimes or not.

The term ‘hate-motivated incident’ is also used in this report to denote:

... An incident or act committed with a bias motive that may not reach the threshold of hate crimes, either because a criminal offence was not proven, or because the act may not have been a criminal offense under a particular State’s legislation. Thus, both hate-motivated incidents and crimes have a bias motive, but hate-motivated incidents may not involve criminal acts. Nevertheless, hate-motivated incidents may precede, accompany, or provide the context for hate crimes. Since hate-motivation incidents can be precursors to more serious crimes, records of incidents can also be useful to demonstrate not only a context of harassment, but also evidence of escalating patterns of violence.<sup>9</sup>

A concept worth differentiating from hate crimes is ‘hate speech.’<sup>10</sup> Although there is no internationally recognized definition of ‘hate speech,’ the Council of Europe (CoE) has defined it as:

... [A]ll forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.<sup>11</sup>

In some countries, such as BiH, certain forms of speech which are motivated by bias, and which can thus be qualified as ‘hate speech,’ are criminalized. As explained further below, in BiH, speech that incites or inflames national, racial or religious hatred, discord or hostility, is criminalized. These forms of ‘hate speech’ must thus be considered as hate crimes because the *type* of speech constitutes in itself a crime. However, to be clear, the above-mentioned CoE’s definition of hate speech is broader than the forms of speech that BiH legislation currently criminalizes.

In any case, biased and insulting speech often accompanies other hate-related incidents and can regularly be heard before, during or after those incidents. In such

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9 See ODIHR, *Hate Crimes in the OSCE Region: Incidents and responses - Annual Report for 2010 (ODIHR Annual Report 2010)* 2010, Warsaw.

10 An initiative was recently undertaken by the Mediacentar Sarajevo, in co-operation with Civil Rights Defenders, conducting an analysis on hate speech. This analysis was published in the July 2010 report, *Strategies of Exclusion: Hate Speech in BiH public*, available at: [http://www.media.ba/mcsonline/files/shared/Strategije\\_isklju\\_ivanja\\_IZVJE\\_TAJ.pdf](http://www.media.ba/mcsonline/files/shared/Strategije_isklju_ivanja_IZVJE_TAJ.pdf)

11 Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to Member States on Hate Speech, 30 October 1997.

cases, the use of this bias-laden language can be used as evidence of a bias motivation towards a group that has a protected characteristic.

Hate crimes should also be clearly distinguished from situations of discrimination. Although there are often elements or components of discrimination present in the commission of hate crimes, hate crimes solely belong to the realm of the criminal justice system, in contrast to discrimination, which in most jurisdictions, is a wholly civil law matter.<sup>12</sup> Discriminatory circumstances may encompass such situations as an individual being excluded from the enjoyment of a certain right, or an individual being given certain rights due to race, religion or national origin.<sup>13</sup>

### 3. MONITORING METHODOLOGY AND CONTEXT

Since 2008, the Mission has, as part of its justice sector monitoring and reform programme, monitored the occurrence of bias-motivated and hate-related incidents, and responses to these by law enforcement, judicial authorities and governmental authorities at the local and State level, as well as by members of the affected communities and the media. The Mission has additionally monitored bias-related cases as part of its activities on the return of forcibly displaced persons since 1996. However, the majority of the data, case studies and examples used throughout this report are taken primarily from the Mission's monitoring of hate crimes since 2008.

The Mission's hate crimes monitoring methodology is as follows. The Mission relies on police daily occurrence reports and other sources – media, civil society, individuals and associations – to identify incidents or crimes where one or more bias indicators are present. In other words, where factors are present that may indicate that the act was committed with an underlying motive of bias or prejudice. Once an incident has been identified as a **potential** hate crime using these bias indicators, all possible information is gathered. Specifically, the Mission examines, where

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12 See ODIHR, *Hate Crime Laws: a Practical Guide* (hereafter '*Hate Crimes Laws Practical Guide*' 2009, Warsaw, p.25: "While in most jurisdictions discrimination is a civil law matter, in some it carries criminal penalties."

13 For instance, see the UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p195. Article 1 of this Convention states that 'racial discrimination' means "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

In 2009, the BiH Parliamentary Assembly adopted the Law on the Prohibition of Discrimination, which provides for victims of discrimination to undertake civil proceedings in all instances of discrimination in various fields of life, such as employment, housing, and education as well as allowing the victims the right to compensation. See the compensation provision in Article 12(1) (c) in the BiH Law on the Prohibition of Discrimination, BiH Official Gazette No. 59/09, published 28 July 2009, entered into force on 5 August 2009.

In addition to this protection against discrimination, there are provisions found in all CCs in BiH prohibiting discrimination. The BiH CC only regulates for acts of discrimination committed by public officials; in contrast, the CCs at the entity level stipulate that discrimination can be committed by any individual. See Article 145 of Criminal Code BiH, "Infringement of the Equality of Individuals and Citizens," BiH Official Gazette Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, and 8/10.

appropriate, responses by the police, prosecutors, courts, local/municipal officials, civil society/NGOs, religious leaders, the media and the public perception of the incident. As to the monitoring of judicial proceedings, the Mission follows its long-standing methodology of trial monitoring – once an indictment is issued the judicial proceedings are monitored until their conclusion. During the investigation phase, the Mission also requests regular updates from police and prosecutors on cases being monitored. The Mission’s monitoring also includes reviewing those official documents which form part of the case file.

There are various challenges to the Mission’s monitoring of hate crimes, many of which are mentioned in Section III below. These challenges are a result of:

- a) the inherent complexity of the concept of ‘hate crimes’ as crimes whose distinctive feature is the bias motive behind their commission, which presents challenges to the identification of such crimes;
- b) the difficulty in obtaining reliable data relating to hate crimes, predominately due to the lack of adequate identification and processing of hate crimes; and the lack of any systemic and comprehensive data collection on these crimes in the country; and
- c) the lack of or insufficient requirements in legislation specifying that an act should be qualified as a hate crime if there has been a bias motivation behind the offence - an issue that has been addressed by recent amendments to the CCs in the RS and BDBiH.

It is worth remembering, however, that these problems are not unique to BiH, as the ODIHR has also noted similar obstacles when collecting data on hate crimes in other OSCE States.<sup>14</sup> What is unique to BiH is the complex law enforcement and judicial structure which makes countrywide data collection a challenge in general, not only for hate crimes.

The observations and recommendations made throughout this report on improvements needed in tackling hate crimes were formed on the basis of information gathered from a number of sources. These sources include: information gathered through the monitoring of judicial proceedings; regular updates obtained from the police and prosecutors; views shared by legal, law enforcement and judicial professionals during the regular course of the Mission’s activities; and information obtained from NGOs and, in some cases, the affected communities.

This report does not provide statistical data on the occurrence of bias-motivated incidents or on hate crimes judicial proceedings in BiH as this is simply not possible in the current context. As explained further below, this is due to the lack of official data collection on these incidents generally and on criminal offences committed out of bias (except for offences of ‘incitement to hatred’), as well as to existing and previous gaps in legislation. As also explained below, some of the key challenges to tackling hate crimes relate precisely to the identification or qualification of these cases as such; therefore it is very difficult to speak about ‘x’ number of hate crimes that took place in BiH in a certain period of time.

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<sup>14</sup> See ODIHR *Annual Report 2010*, p. 12, *supra* note 10.

The maximum that can be offered in terms of data is the number of incidents and judicial proceedings monitored by the Mission, which should be taken very cautiously as indicators of the occurrence of hate crimes in BiH due to the above-mentioned reasons. From early 2008 until June 2012, the Mission identified and monitored a total of 691 incidents in BiH where one or more bias indicators were identified by the Mission's staff. The most common types of incidents recorded include: graffiti with insulting content (mostly based on ethnic grounds), damage to religious objects/sites and cemeteries, verbal insults, property damage, and physical assault. In many of these cases, investigations are pending due to the fact that suspects have not been identified.

At the same time, as part of its trial monitoring programme, the Mission monitored 104 trials of cases where, again, Mission staff had identified the presence of one or more bias indicators. The majority of these trials were monitored in the following regions: Mostar, Bijeljina, Banja Luka, Brčko, and Srebrenica.<sup>15</sup> To be clear, not all of these 104 cases involved charges for criminal offences where bias motivation was a constituent element of the offence – in other words, not all of these cases involved hate crimes-related charges. In fact, most did not. That very fact, and the analysis of those cases, form the basis for the observations made in section III. Out of those 104 trials, 38 were for cases involving charges of 'incitement to hatred.' A table with the description and outcome of these 'incitement to hatred' cases, in which a guilty verdict was pronounced, is provided in Annex IV.

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<sup>15</sup> An overview of a few selected cases which the Mission monitored at the trial phase is provided in Annex IV.

## II. LEGAL FRAMEWORK

### 1. INTERNATIONAL HUMAN RIGHTS NORMS AND STANDARDS

A wide range of international standards and guidelines come into play when discussing hate crimes and frequently several fundamental rights and freedoms are also violated when a hate crime is committed. This section provides an overview of the human rights framework relating to hate crimes and bias-related incidents; more specific standards relating to the various themes addressed in this report are elaborated in further detail in the respective sections below.

Very broadly, affected rights may include the right to be treated equally before the law and not be discriminated against, the right to be free from torture or inhuman treatment, and the right to privacy.<sup>16</sup> All of these rights and fundamental freedoms are enshrined in the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms (ECHR), which is directly applicable in BiH.<sup>17</sup> Ultimately, hate crimes essentially go against all that the UN Declaration of Human Rights stands for in terms of “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family.”<sup>18</sup>

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16 These rights were the focus of the ECtHR judgment of *Šečić v Croatia*, 31 May 2007, Application no. 40116/02, which concerned the racially-motivated physical attack and abuse of a Romani man.

17 UN General Assembly, *International Covenant on Civil and Political Rights* (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p.171; CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), 4 November 1950, ETS 5.

18 See the Preamble of the UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III). The principle of equality and equal protection before the law is emphasized in the preamble of the ICCPR, *supra* note 18, which states, “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”

Various international standards require States to adopt appropriate legislation to punish bias-motivated crimes. For instance, States Parties to the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) are required to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons.”<sup>19</sup> The European Commission against Racism and Intolerance (ECRI) also recommends that all CoE Member States need to penalize intentional acts of a bias-motivated nature, that is, public incitement to violence, hatred or discrimination; public insults and defamation or threats against a person or group of people on the grounds of their race, colour, language, etc.<sup>20</sup> The most recent report by ECRI on BiH reiterates that the laws in BiH should “explicitly provide that racist motivations constitute an aggravating circumstance in respect of all offences.”<sup>21</sup>

The criminalization of bias-motivated crimes is accompanied by a number of other specific legal measures States should undertake. These measures and efforts include the responsibility to ensure a thorough investigation by police and prosecutors into the motives of hate-related offences and to take into account the bias motive at the sentencing stage.<sup>22</sup> The European Court of Human Rights has made a significant contribution through its jurisprudence in this respect.<sup>23</sup> While not directly applicable, a further example of these types of measures can be found in the European Union Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, which instructs that:

Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties [...]<sup>24</sup>

19 Article 2(1) of the *UN Convention on the Elimination of All Forms of Racial Discrimination*, *supra* note 14; and Article 4(2) of the UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55. Article 4(2) states that “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.”

20 See the CoE, ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, adopted on 13 December 2002, para. 18. This can also be found in the EU Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. This Framework Decision stipulates that: “Each Member State shall take the measures necessary to ensure that the following international conduct is punishable: (a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin...”

21 Emphasis added - See the *ECRI Report on BiH*, Fourth monitoring cycle, adopted on 7 December 2010, published February 2011, para.16.

22 Para.11 of the ECRI General Policy Recommendation No.11 on Combating Racism and Racial Discrimination in Policing, adopted on 29 June 2007 states, “To ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account.”

23 Notable ECtHR cases (discussed in detail in section III) include *Šečić v Croatia*, *supra* note 17; *Angelova and Iliev v Bulgaria*, 26 July 2007, Application no. 55523/00; *Nachova and Others v Bulgaria*, 6 July 2005, Applications nos. 43577/98 and 43579/98.

24 See Article 4 of the EU Council Framework Decision, *supra* note 21.



The OSCE has taken the lead and remains at the forefront internationally in developing standards and commitments relating to hate crimes. All OSCE participating States have pledged to combat hate crimes through the measures mentioned above, as well as others, including the systematic collection of hate crime statistics, and the implementation of specialized training for law enforcement, prosecution and judicial officials dealing with hate crimes.<sup>25</sup> The OSCE has tasked the ODIHR with taking the lead in assisting participating States to implement OSCE commitments.<sup>26</sup> The ODIHR annually collects data for each of the participating States on hate crimes, reports and raises awareness of hate-motivated incidents and trends, and provides recommendations and assistance to participating States, upon their request, in hate crimes-related areas where a more adequate response is needed.<sup>27</sup>

In addition to the standards relating to criminalizing hate-motivated acts, there are also a multitude of international instruments and bodies instructing States to take preventative measures to tackle hate crimes outside of the judicial and law enforcement system. For example, the CoE Framework Convention for the Protection of National Minorities requires that Member States take appropriate measures to protect people who may be subject to “threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic, or religious identity.”<sup>28</sup> These complementary measures may take the form of educational efforts and support to civil society to assist victims, and are elaborated on in section III on prevention and support.<sup>29</sup>

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25 See OSCE Ministerial Council Decision (OSCE MC Decision) No. 9/09 Combating Hate Crimes; OSCE MC Decision No.13/06; OSCE MC Decision No.10/07 Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding, 30 November 2007, Madrid; OSCE MC Decision No.10/05 Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding, 6 December 2005 Ljubljana; OSCE MC Decision No.12/04 Tolerance and Non-Discrimination, 7 December 2004, Sofia; OSCE MC Decision No. 4/03 Tolerance and Non-Discrimination, 2 December 2003, Maastricht.

26 See OSCE MC Decision No.12/04, *supra* note 26.

27 OSCE MC Decision No.13/06, *supra* note 26, para. 14 (e): “To strengthen, within existing resources, its early warning function to identify, report and raise awareness on hate-motivated incidents and trends and to provide recommendations and assistance to participating States, upon their request, in areas where more adequate responses are needed.”

28 See Article 6(1) of the CoE *Framework Convention for the Protection of National Minorities*.

29 For example, OSCE MC Decisions have also addressed these measures. See OSCE MC Decision No.10/07, *supra* note 26, which “encourages the promotion of education programmes in the participating States in order to raise awareness among youth of the value of mutual respect and understanding.” The same Decision also “encourages the establishment of national institutions of specialized bodies by the participating States which have not yet done so, to combat intolerance and discrimination.” OSCE MC Decision 13/06, *supra* note 26, also states that Member States need to “Engage more actively in encouraging civil society’s activities through effective partnerships and strengthened dialogue and cooperation between civil society and State authorities in the sphere of promoting mutual respect and understanding, equal opportunities and inclusion of all within society and combating intolerance, including by establishing local, regional or national consultation mechanisms where appropriate.”

## 2. NATIONAL FRAMEWORK

BiH is one of 37 countries in the OSCE region that has enacted legal provisions specifically to deal with bias-motivated crimes and incidents.<sup>30</sup> As a reflection of BiH's complex constitutional framework, these provisions are found in legislation adopted at the State, entity, BDBiH and the FBiH levels. In 2010, significant amendments to the criminal legislation regarding hate crimes were adopted at the State level, and in the RS and BDBiH. The following section elaborates on these amendments and the rest of the national legal framework on hate crimes.

### 2.1. Criminal Legislation - Prior to the 2010 legislative amendments

Before the adoption of the 2010 amendments in the RS, BDBiH and the BiH CCs, the criminal legislative framework applicable to hate crimes was composed of:

- some provisions in the FBiH and BDBiH CCs which provided for **aggravated forms of certain criminal offences**, such as murder, grievous bodily harm, rape and malicious mischief;
- provisions on **'incitement to hatred'** in the FBiH, BDBiH and RS CCs – an analysis of these provisions is provided below.

The provisions on aggravated forms of certain criminal offences established penalty enhancements for those offences when committed with a bias motivation. By way of example, in Article 293 of the FBiH CC (malicious mischief) it is stipulated that anyone who damages, destroys or renders unusable any property belonging to another, and the underlying motive is based on the victim's ethnic or national background, race, religion, sex or language, shall be fined or imprisoned for a maximum of one year. If the bias motivation is absent, the base sentence is a fine or imprisonment for a maximum of six months.<sup>31</sup>

### 2.2. Criminal legislation - the new amendments

In 2010, upon proposition by the BiH Ministry of Security, the following legislative amendments on hate crimes-related provisions were adopted:

- in the BiH CC – a provision on 'incitement to hatred' was added. See below for an analysis of this provision;
- in the RS and BDBiH CCs, a set of amendments explained further below was adopted.<sup>32</sup>

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<sup>30</sup> See *Hate Crimes Laws Practical Guide*, *supra* note 13, p. 38.

<sup>31</sup> Malicious Mischief, Article 293(1) of the FBiH CC, FBiH Official Gazette Nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, and 42/11.

<sup>32</sup> The amendments entered into force on 7 August 2010 in the RS (Official Gazette 73/10) and on 30 June 2010 in BDBiH (Official Gazette BDBiH 21/10).

The amendments to the RS and BDBiH CCs bring them further into line with international standards. At the time of writing, a similar set of amendments has been proposed for adoption in the FBiH and is currently under consideration. The innovations brought by these amendments are the following:

- A definition in the general part of the CCs of the meaning of ‘hatred,’ i.e. of the bias motivation behind the commission of a criminal offence;<sup>33</sup>
- The provision of aggravated forms of certain criminal offences for which an enhanced penalty is foreseen when committed out of hatred: aggravated murder, grievous bodily harm/injury, rape, aggravated theft, aggravated robbery, robbery, malicious mischief, and causing public danger;<sup>34</sup>
- The inclusion among general principles of punishment that any bias motivation must be taken into consideration by the court as an aggravating circumstance when fashioning a sentence for **any** offence.<sup>35</sup>

#### a. Definition of ‘hatred’

The definition of ‘hatred’ can now be found in the general part of the RS and BDBiH CCs. It provides clarity on what should be understood as a bias motivation when a criminal offence is committed “out of hatred.” ‘Hatred’ is defined as:

“[A] motive for perpetration of a criminal offence provided in this code that is entirely or partly perpetrated due to actual or assumed ethnic or national origin, language or script, religious beliefs, race, colour, sex, sexual orientation, political or other affiliation, social origin, social status, age, health and other characteristics, or due to associating with persons with such characteristics.”<sup>36</sup>

Without this clarification, the term ‘hatred’ could be erroneously understood as implying a specific emotional state on the part of the offender towards a particular individual, i.e. that he or she feels hate towards that individual. Instead, what is required is that the perpetrator believes the victim belongs to a certain group in society characterized by, for example, ethnic origin, religious beliefs, or sexual orientation and that the offence is at least partly motivated by the perpetrator’s bias against that group.

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33 See Article 147(25) RS CC and Article 2(37) BDBiH CC.

34 See RS CC: Article 149 (aggravated murder); Article 156 (grievous bodily injury); Article 193 (rape); Article 232 (aggravated theft); Article 233 (robbery); Article 234 (aggravated robbery); Article 249 (malicious mischief); Article 402 (causing public danger). BDBiH CC: Article 163 (murder); Article 169 (grievous bodily harm); Article 200 (rape); Article 281 (aggravated theft); Article 282 (aggravated robbery); Article 283 (robbery); Article 287 (malicious mischief).

35 Article 37(3) of the RS CC reads: “In cases when the criminal offence was perpetrated out of hatred as provided in Article 147 paragraph 25 of this code, the court shall take it into consideration as an aggravating circumstance and fashion a more severe sentence unless the code provides for a harsher sentence for the aggravating form of a criminal offence.”

36 See Article 147(25) RS CC and Article 2(37) BDBiH CC.

In this definition a few elements are worth emphasizing:

- The bias motive should be considered even if it is just one of the various motives for the perpetration of a given offence;
- The offence should be considered motivated by bias also when the offender has made a wrong assumption about the victim's characteristics. In other words, it is enough that he or she committed the crime because he or she *thought* that the victim, for example, was homosexual even if this was not in reality true;
- The protected characteristics provided for in this definition are rather broad. Whereas most of the characteristics are in line with international standards, others such as 'social status' might lead to difficulties in the enforcement of the relevant provisions that rely on this definition; and
- The last part of the definition – “or due to association with persons with such characteristics” – is meant to include persons or property associated with the group that is defined by the protected characteristic.

#### **b. Aggravated forms of criminal offences committed out of 'hatred'**

The amendments to the RS and BDBiH CCs created aggravated forms of certain criminal offences when these are committed with a bias motivation. In these cases, the bias motive is a constituent element of the aggravated criminal offence, and the sentencing range for that offence is increased.

An example of an aggravated form of criminal offence with a bias motivation can be seen by the following example of robbery, found in Article 282 BDBiH CC.

- (1) A person caught in a robbery who uses force against another or threatens to attack the life and body with an intention to keep the stolen property, shall be sentenced to prison from 1 to 10 years.
- (2) If, during the commission of any criminal offence under paragraph 1 of this article, grievous bodily harm is intentionally inflicted on a person **or if the criminal offence was perpetrated out of hatred**, or if the robbery is committed by a group, or a weapon or dangerous articles are used, the offender shall be punished by imprisonment for a term of minimum five years.<sup>37</sup>

As mentioned above, before the 2010 amendments, the FBiH and BDBiH CCs already provided for some aggravated forms of criminal offences when committed out of bias. Thus, as of writing, bias is foreseen as an aggravating element in the following criminal offences:

- In the RS, BDBiH and FBiH CCs: murder, aggravated murder, grievous bodily harm/injury, rape, malicious mischief.
- In the RS and BDBiH CCs: aggravated theft, aggravated robbery, robbery, causing public danger.

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37 Bold added.

However, it must be noted that while in the RS and BDBiH the bias element is framed as ‘hatred’ as defined in the general part of the CC (see sub-section a. above), in the FBiH, bias as a constituent element of these aggravated criminal offences is limited to “racial, national or religious” grounds in the case of murder and grievous bodily harm, or to “national or ethnic origin, race, religion, sex or language” grounds in the case of rape and malicious mischief.

#### **c. ‘Hatred’ as an aggravating circumstance for any criminal offence**

Both the RS and BDBiH CCs stipulate that in cases where a criminal offence was perpetrated out of hatred (as defined above), the court shall take this into consideration as an aggravating circumstance and shall hand down a more severe sentence, unless there is already a provision for an aggravated form of that particular crime.<sup>38</sup> In other words, when fashioning the sentence for *any* criminal offence, if evidence is presented that the offence was committed out of bias, the court should take this into consideration as an aggravating circumstance. However, when there is an aggravated form of the criminal offence provided for in the CC based on a bias motivation, the prosecutor should, of course, use that provision. In other words, when no aggravated form of a criminal offence exists, the court should apply the sentencing range provided by the law for the base offence, but when considering the exact measure of the sentence, it should weigh in the bias motivation as an aggravating circumstance, which in certain cases will tip the balance towards the higher limit of the sentencing range.

#### **d. A note on the application of the 2010 legislative amendments**

At the time of writing, the Mission has identified only one case qualified under the 2010 legislative amendments described above. Consequently, an analysis of the application and impact of these amendments cannot yet be made. It has, however, identified cases where the new provisions could have been used and were not – see example number 5 in section III. This fact indicates that further awareness-raising and training of law enforcement and judicial professionals on these new amendments is needed, along with the need for training in investigating and prosecuting hate crimes more generally as mentioned throughout this report.

### **2.3. *Incitement to Hatred, Discord or Hostility***

All CCs in BiH have a provision prohibiting, in broad terms, incitement to national, racial or religious hatred (see Annex II).<sup>39</sup> The RS, FBiH and BDBiH CCs inherited this provision from the CC of the former Socialist Federal Republic of Yugoslavia (SFRY). In February 2010, this provision was also included in the BiH CC.

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<sup>38</sup> Article 37 RS CC and Article 49 BDBiH CC.

<sup>39</sup> Commentary on ‘incitement to hatred’ in the FBiH and RS CC can be found in Miloš Babić, Lijljana Filipović, Ivanka Marković, and Zdravko Rajić, *Commentaries on the CCs in BiH*, Book II, pages 1814-1815 (on Article 390 RS CC) and 961-962 (Article 163 FBiH CC), CoE/European Commission, Sarajevo, 2005.

These provisions prohibit certain forms of hate speech – be it written or spoken<sup>40</sup> – and provide that the punishment of imprisonment is to be given to **anyone who incites and/or inflames national, racial or religious hatred, discord or hostility among the constituent peoples and others.**<sup>41</sup> However, it should be noted that, according to the precise wording of this provision, the exact form of incitement or inflaming is not limited to speech or other forms of expression, but also through other actions.<sup>42</sup>

There are express clauses that stipulate and criminalize other actions that incite and/or inflame national, racial and religious hatred, discord or hostility in the subparagraphs in the ‘incitement to hatred’ provision of the entity and BDBiH CCs.<sup>43</sup> For instance, included in the entity and BDBiH CCs is a clause prohibiting the derision of national, ethnic or religious symbols, damaging other people’s belongings, and desecrating monuments and graves, which calls for a punishment between 6 months and 5 years.<sup>44</sup>

In the FBiH CC there is also a reference to ‘incitement to hatred’ in its provision on ‘Unauthorized Control of a Radio or Television Station and Violation of the Public Peace,’ which establishes that, “Whoever in serious breach of the professional code of conduct for media workers and journalists uses provocative and hateful language which incites violence, national and ethnic conflict and thereby endangers public peace and order, shall be fined or sentenced to a maximum of three years of imprisonment.”<sup>45</sup> A similar provision is included in the BDBiH CC.<sup>46</sup>

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40 Note that in the report made by the Commissioner for Human Rights of the CoE it is stated in para. 64 that “the Commissioner calls on the authorities in Bosnia and Herzegovina to amend the formulation of the criminal offence of ‘incitement to national, racial or religious intolerance’ so that it includes all forms of hate speech, in accordance with the Committee of Ministers’ Recommendation No. R (97) 20 on ‘hate speech’”. See Thomas Hammarberg, Commissioner for Human Rights of the CoE, following his visit to BiH on 27-30 November 2010, available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1766837>

41 Refer to Annex II, Article 145a of the BiH CC states: “Whosoever publicly incites and inflames national, racial or religious hatred, discord or hostility among the constituent peoples and others who live in BiH shall be punished by imprisonment for a term of between three months and three years...” See also Article 160 BDBiH CC, Article 163 FBiH CC, and Article 294a RS CC.

42 The precise meaning and parameters of this provision have indeed been called into question by the ODIHR. The ODIHR in a recent analysis, stated that the use of the terms ‘inflames’, ‘discord’ and ‘hostility’ causes confusion and impinges upon the principle of legal certainty due to their intrinsically broad nature. In order to avoid this, it would appear that a consistent judicial interpretation of these terms is necessary. See OSCE/ODIHR *Opinion on Draft Amendments to the Federation of Bosnia and Herzegovina Criminal Code*, ODIHR, July 2009, available at: <http://www.legislationline.org/documents/id/15597>

43 Refer to Annex II for full paragraphs – see Article 163(2) FBiH CC, Article 294a (2) RS CC, and Article 160(2) BDBiH CC.

44 Article 294a RS CC and Article 160(2) BDBiH CC.

45 See Article 363(2) FBiH CC (italics added). Article 15 (programming restrictions) in the RS Law on Radio-Television, RS Official Gazette No. 49/06, also uses similar language. Article 15(1) states that the “RT RS shall not broadcast any material which by its content or tone incites national, religious or racial hatred, intolerance or discrimination against individuals or groups, or which by any reasonable judgment could incite violence, disorder or rioting or instigate the perpetration of a criminal offence.”

46 Article 357(2) BDBiH CC (Unauthorized ownership of a radio or television station and public disturbance through their use) states: “A person in serious violation of the code of professional conduct of media and journalists, uses *inciting language or the language of hate, or language which obviously calls for or instigates violence, national or ethnic clashes*, and thereby induces jeopardy to public peace and order, shall be fined or sentenced to prison for up to three years.” (italics added).

From the Mission's monitoring, it appears that the 'incitement to hatred' provision was one of the most utilized provisions in cases where a bias motivation was present. Despite its common usage, when looking at the application of this provision in concrete cases monitored by the Mission, concerns have arisen over its consistent application, as will be discussed in more detail in section III on sentencing. It is expected, however, that with the new amendments in place, these concerns should be alleviated.

#### 2.4. *Other legislation*

In addition to those in the CCs, related provisions can also be found in other pieces of legislation, particularly with regard to expressions or acts that, in broad terms, incite national, religious or racial hatred.

The Laws on Public Peace and Order of the RS, BDBiH and at the cantonal level in the FBiH make clear that certain behaviour which insults the national, religious or racial feelings of citizens in public can constitute a minor offence and should thus be sanctioned by fines.<sup>47</sup> For instance, the BDBiH Law on Public Gatherings also states that "Police shall forbid a public gathering if it is organized to (...) induce and incite national, racial and religious hostility and hatred."<sup>48</sup> Likewise, the RS Law on Radio-Television prohibits the broadcasting of any material that by either tone or content incites national, religious or racial hatred, intolerance or discrimination against individuals or groups.<sup>49</sup> A similar provision is also found in the FBiH Law on Radio-Television.<sup>50</sup> Lastly, an example of a cantonal law prohibiting 'incitement to hatred' is the Law on the Prevention of Riots at Sports Competitions in Herzegovina-Neretva Canton.<sup>51</sup> This law states that "bringing and putting up banners, or other objects with texts, pictures, signs or other symbols that incite hate or violence" or "singing

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47 Article 3, para. 7 of the BDBiH Law on Public Peace and Order, BDBiH Official Gazette No. 2/02, reads: "In violation of the public peace and order shall be a person who in a public place speaks, by his writings or in any other manner insults or of disdains national, religious or moral feelings of the citizens," BDBiH Law on Public Peace and Order; Article 7 of the RS Law on Public Peace and Order, RS Official Gazette No. 20/07, (Quarrel, yelling, screaming and indecent behaviour' states: "Who violates public order by quarrel, yelling, screaming or by playing music, carrying or hoisting up symbols, pictures, drawings of indecent, insulting or disturbing contents or by any other indecent and rude behavior, shall be fined from 50 – 300KM". See also the cantonal Laws on Public Peace and Order, e.g. Article 8(5) (j) of Sarajevo Cantonal Law on Minor Offences against Public Peace and Order, Article 3 of Tuzla Cantonal Law on Public Peace and Order, Article 8 of the Herzegovina-Neretva Cantonal Law on Public Peace and Order, among others.

48 Article 13 BDBiH Law on Public Gatherings, BDBiH Official Gazette No. 26/04.

49 Article 15 RS Law on Radio-Television. In the FBiH this is found in the FBiH CC Article 363(2) (Unauthorized Control of a Radio or Television Station and Violation of the Public Peace): "Whoever in serious breach of the professional code of conduct for media workers and journalists uses provocative and hateful language which incites violence, national and ethnic conflict and thereby endangers public peace and order, shall be fined or sentenced to a maximum of three years of imprisonment."

50 Article 15(1) FBiH Law on Radio-Television states: "RTV FBiH shall not broadcast any material which by its content or tone incites national, religious or racial hatred, intolerance or discrimination against individuals or groups, or which by any reasonable judgment could incite violence, disorder or rioting or could instigate the perpetration of a criminal offence."

51 Herzegovina-Neretva Cantonal (HNC) Law on Prevention of Riots at Sports Competitions in HNC, Official Gazette of HNC No. 3, 22 April 2005.

songs or yelling words that show or incite hate or violence” can constitute unlawful behaviour and consequently be sanctioned by a fine or imprisonment.<sup>52</sup>

## IN BRIEF

The adoption of legislative amendments on hate crimes in the RS and BDBiH is a welcome development, as these amendments assist considerably in ensuring that BiH has the capacity to effectively combat hate crimes. To reiterate, these amendments, which are anticipated to be adopted in the FBiH, introduced the following:

- A definition of ‘hatred’ into the general part of the CCs;
- Aggravated forms for certain offences where an enhanced penalty is foreseen when committed out of ‘bias’; and
- An inclusion of bias motivation as an aggravating circumstance when determining a sentence for any offence.

Overall, these amendments are fundamental as they also signal to potential victims, perpetrators and society that hate crimes are to be taken seriously.<sup>53</sup> Despite the introduction of such amendments into the respective CCs, there is still a need for judicial practice to develop with respect to these provisions.

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52 Article 4 HNC Law on Prevention of Riots at Sports Competitions in HNC, *supra* note 52 and see Article 31 Law on Prevention of Riots at Sports Competitions in HNC, *supra* note 52. In addition to this, this law stipulates that if somebody commits a crime, considered to be a hate crime under the respective CC, during the sports competition, they can be banned from the competition for up to one year; similarly they can be banned for a duration of 6 months to 1 year if they committed an offence relating to unlawful behaviour before, during or after the competition.

53 *Preventing and Responding to Hate Crimes*, *supra* note 1. This reason of ‘symbolic acknowledgement’ is only one of the important reasons for having hate crime legislation in place.



### III. CURRENT CHALLENGES IN EFFECTIVELY COMBATING HATE CRIMES IN BOSNIA AND HERZEGOVINA

Identifying solid trends and developments in hate crimes is problematic given the current situation of hate crime reporting and data collection in BiH. However, through monitoring, the Mission has drawn observations relating to five main aspects of processing and responding to hate crimes in BiH, namely:

- Investigation and prosecution;
- Sentencing and compensation;
- Responses by public officials and local authorities;
- Prevention, support and the role of civil society; and
- Data collection and statistics.

#### 1. KEY CONCERNS ON INVESTIGATION AND PROSECUTION IN BOSNIA AND HERZEGOVINA

##### 1.1. *International standards*

One of the key international standards pertaining to hate crimes is a **State's obligation to effectively and thoroughly investigate potential hate-motivated crimes**. Parallel to this obligation is the associated duty to ensure that **bias motivation is recognized by the prosecution**.<sup>54</sup>

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<sup>54</sup> See ECRI *General Policy Recommendation No. 1* on Combating Racism, Xenophobia, Anti-Semitism and Intolerance and Racial Discrimination, adopted on 4 October 1996, point A, p.5. Here, ECRI has set out that States need to "ensure that criminal prosecution of offences of a racial or xenophobic nature is given a high priority and is actively and consistently undertaken."; Article 4 of the 2008 EU Council Framework Decision, *supra* note 21, "... Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or alternatively that such motivation

The European Court of Human Rights (ECtHR) has established that contracting States have a duty to investigate possible racial and prejudicial motives, pursuant to the positive obligations arising from Article 2 (the right to life) and Article 3 (the right to be free from torture, inhuman or degrading treatment or punishment) of the ECHR. In a case that involved the deaths of two Bulgarian citizens (both Roma), the ECtHR in *Nachova and Others v Bulgaria* established “the contracting State’s procedural obligation to investigate possible racist motives for acts of violence” and that it must do so in an impartial manner.<sup>55</sup> Further, in another case that involved the death of a Roma individual, the ECtHR ruled that it is unacceptable that when an event was “most probably induced by ethnic hatred” the investigation team did not take any serious action to identify the perpetrators and, in addition to this, took longer to investigate than usual.<sup>56</sup> In *Šečić v Croatia* the ECtHR stressed that all reasonable steps need to be taken to **unmask any motive and establish whether ethnic hatred or prejudice played a role**.<sup>57</sup> If these extra steps are not taken, meaning that the State

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may be taken into consideration by the courts in the determination of the penalties...”; *Angelova and Iliev v Bulgaria*, ECtHR, *supra* note 24, para. 115: “...Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”

- 55 *Nachova and Others v Bulgaria*, ECtHR, *supra* note 24, para. 160. The Grand Chamber endorsed the Chamber’s view that “... States have a general obligation under Article 2 of the Convention to conduct an effective investigation in cases of deprivation of life. [...] That obligation must be discharged without discrimination, as required by Article 14 of the Convention [...] [W]here there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society’s condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence. Compliance with the State’s positive obligations under Article 2 of the Convention requires that the domestic legal system must demonstrate its capacity to enforce criminal law against those who unlawfully took the life of another, irrespective of the victim’s racial or ethnic origin (see *Menson and Others v the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V). [...] [W]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.” The Grand Chamber added (see para.161) that the “authorities’ duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination.”
- 56 *Angelova and Iliev v Bulgaria*, *supra* note 24, para. 105: The court found a violation of Article 2 to effectively investigate the death of the applicants’ relative promptly, expeditiously and with the required vigour, considering the racial motives of the attack and the need to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence”. At para. 116, the court also found a violation of Article 14 (principle of non-discrimination) in conjunction with Article 2, stating that it is “completely unacceptable that, while aware that the attack was incited by racial hatred, the authorities did not expeditiously complete the preliminary investigation against the assailants and bring them to trial.”
- 57 *Šečić v Croatia*, *supra* note 17, paras. 66-69: “The Court reiterates that when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State’s obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and is not absolute; the authorities must do what is reasonable in the circumstances of the case.” The rights at stake in this case included Article 3 of the ECHR (torture, inhumane or degrading treatment), Article 8 ECHR (respect for private life), and Article 13 ECHR (right to an effective remedy).

treats bias-induced violence or incidents on an equal footing with other common crimes, the State is “turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”<sup>58</sup> In the 2010 case *Milanović v Serbia*, the court held that when investigating violent incidents, State authorities have the additional duty to unmask any religious motive and to establish whether religious hatred or prejudice may have played a role in the events.<sup>59</sup>

In these three cases, the ECtHR also found a violation of Article 14 (principle of non-discrimination) in conjunction with Article 2 or Article 3. In *Angelova and Iliev v Bulgaria*, the ECtHR found that “the authorities failed to make the required distinction from other, non-racially motivated offences, which constitutes unjustified treatment irreconcilable with Article 14 of the Convention.”<sup>60</sup>

In summary, while acknowledging the practical difficulties of unveiling the bias motivation behind a particular act, the ECtHR is adamant about States’ obligation to pursue an adequate investigation and prosecution of these cases, and provides some guidance on what constitutes an adequate investigation into such motives: it must be impartial, vigorous, and expeditious. The ECtHR also notes factors or indicators of bias which must not be ignored – for example in *Nachova and Others v Bulgaria*, it was stated that “any evidence of racist verbal abuse being uttered by law enforcement agents in connection with an operation involving the use of force against persons from an ethnic or other minority is highly relevant to the question whether or not unlawful, hatred-induced violence has taken place.”<sup>61</sup>

The European Commission against Racism and Intolerance (ECRI) expands the duty to investigate possible racial motives to encompass not only violence against persons, but also against property.<sup>62</sup> The ECRI points out that police need to “thoroughly investigate racist offences, including by taking the racist motivation of ordinary offences into account.”<sup>63</sup> In specific reference to BiH, in their 2011 report, the ECRI notes that “serious crimes have been committed [in BiH] against minority returnees, including murders, for which the motivations remain unelucidated.”<sup>64</sup>

In addition to ECRI guidelines, OSCE Ministerial Council Decisions encourage participating States to “promptly investigate hate crimes and ensure that the motives

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58 *Šečić v Croatia*, *supra* note 17, para. 67.

59 *Milanović v Serbia*, ECtHR, 14 December 2010, Application no. 44614/07, paras. 96-97.

60 *Angelova and Iliev v. Bulgaria*, *supra* note 24, para.117.

61 *Nachova and Others v Bulgaria*, *supra* note 24, para.164. The court continues, “[w]here such evidence comes to light in the investigation, it must be verified and – if confirmed – a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives.”

62 See the ECRI *Report on BiH* February, which recommends (with specific reference to BiH) that “all incidents of alleged racist violence, whether against people or property, be thoroughly and promptly investigated so as to ensure that the perpetrators of criminal acts are brought to justice. It calls on political leaders to take the lead in denouncing racist violence wherever it occurs.”

63 Also see ECRI General Policy Recommendation No.11 on combating Racism and Racial Discrimination in Policing, *supra* note 23.

64 ECRI *Report on BiH*, *supra* note 22, p. 25.

of those convicted of hate crimes are acknowledged and publicly condemned...’<sup>65</sup> The 2008 European Union Framework Decision also emphasized that each Member State is to take the necessary measures to ensure prompt investigation into offences involving racism and xenophobia, and that the investigation and prosecution of these type of offences are not to be dependant on reports or accusations by victims, but need to be carried out and undertaken *ex officio* by police and law enforcement agencies.<sup>66</sup>

## 1.2. Investigating and prosecuting bias-related offences

The Mission’s monitoring has shown that there are a variety of issues in the investigation and prosecution stages of hate crimes and bias-related incidents that require further attention from the authorities. This section deals with two key issues: a) the omission of bias motivation in indictments; and b) the lack of consistency in applying the ‘incitement to hatred’ provisions.

Admittedly, the omission of bias motivation in charges laid by prosecutors has some correlation with how the investigation is conducted by the prosecutor, or by the police under the prosecutor’s guidance. It should be noted that there is a shared responsibility by both police and prosecutors to search for and inquire about bias indicators in the preliminary investigation, and to communicate such findings to each other.<sup>67</sup>

The Mission has learned, through regular updates from police officers and prosecutors monitoring bias incidents, of certain shortcomings related to the investigation of potential bias-motivated crimes, namely: lack of thoroughness in police investigation and reporting of bias indicators, resulting in the prosecutor not being made aware of such indicators and also, insufficient guidance given by the prosecutors for the police to investigate further potential bias indicators. These observations are necessarily of an indicative nature given the Mission’s limited access to the investigative actions undertaken by the police and prosecutors. One anecdotal example of changes being made to the police report and the prosecutor not verifying the existence of bias indicators is given below:

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65 OSCE MC Decision No. 9/09, *supra* note 5, para. 6.

66 EU Council Framework Decision 2008, *supra* note 21.

67 For the rights and duties of the prosecutor and investigation procedures, see Articles 35-37 BiH Criminal Procedure Code; Articles 45-47 FBiH Criminal Procedure Code; Articles 43-44 RS Criminal Procedure Code; Articles 35-37 BDBiH Criminal Procedure Code.

### Example 1

In 2010, based on an initial official police note and the injured party's statements, a young Bosniac male entered the house of an 81-year-old Serb woman in a municipality which has a majority Bosniac population in the FBiH. The woman's village, however, was close to a Serb returnee settlement. After entering the house, the accused beat the woman. He hit her head against the wall, kicked her legs, all the while shouting: "I f\*\*\* your mother, I came to kill you...what are you doing in the Federation... curse your Serb mother." These actions were recorded by the police and forwarded to the prosecutor. However, for reasons unknown to the Mission, adjustments to this record

were made in a subsequent official police note, and the events were described solely in the following manner: "The perpetrator came to the house of the injured party and, during the discussion, punched her [the victim] several times, causing light bodily injury." Nowhere in this later note is it mentioned that there were insults or threats that had an ethnic basis. The prosecutor's investigation order does not contain reference to the ethnically related elements of the situation as a possible motive for the incident. In the end, the perpetrator was charged with 'bodily injury,' which does not take into account a bias motivation.

### Omission of bias motivation in indictments

Through the monitoring of judicial proceedings in cases where one or more bias indicators were identified in the description of the incident, the Mission has observed that those bias indicators were not reflected in the charges laid by prosecutors in the indictment. This observation captures a variety of concrete situations in which bias indicators were omitted from the prosecutorial phase – in some cases, such indicators were not taken into consideration, in others they were simply not reflected in the charges. The following examples illustrate the various types of cases from which this observation is drawn.

### Example 2

In 2009, a 15-year-old Croat boy was beaten up by a group of Bosniac juveniles while coming back from a playground on his bicycle in a village in the FBiH. In his testimony he revealed that the attackers first swore at him using curses based on his ethnic background and then physically charged at him with the apparent intent to injure. The perpetrators were charged with 'grievous bodily harm,' a charge

that did not include any reference to bias motivation. Further, the factual description of the criminal offence given by the prosecutor related exclusively to the manner in which the bodily injury had been inflicted, and was recorded to have occurred "after verbal conflict and shoving with the injured party." There was no mention of the insulting language used.

### Example 3

In the FBiH in 2008, an intoxicated Croat man forcefully entered the house of his Roma neighbour. The man attacked a pregnant Roma woman inside the house as she was attempting to hide under the table. The accused then went into another room where he physically attacked two other Roma women while cursing their "Gypsy mother", including the owner of the apartment, a 73-year-old Roma woman. Two young Roma children, ages nine and ten, were also witnesses to the attack on their mother and the violence that occurred that day. The 73-year-old woman suffered from a heart condition and died later that day. The prosecution did not qualify the crime

to take into account the possible bias motivation. Instead, the accused was prosecuted for 'violent behaviour.' The accused was subsequently found guilty and sentenced to six months imprisonment suspended for two years, on the basis of a plea agreement. Following the conclusion of the case, the prosecutor indicated to the Mission that there was not enough evidence to prove aggravated bodily injuries. Under the FBiH CC, the Article on 'grievous bodily harm' has a provision with penalty enhancements for when the crime is committed on racial, national or religious grounds.

### Example 4

In 2010, in the RS, the alleged perpetrator (Serb) entered a mosque in the centre of the town, climbed up the minaret, and waved the Serbian flag in one hand, with the Koran and a knife in the other hand. For this specific act, the defendant was charged with 'infringing the inviolability of a dwelling,' Article 170(1) of the RS CC. The prosecutor involved did not include any bias-motivated charges in the indictment, despite the fact that the police

submitted a criminal report for this incident under Article 390 of the 'RS CC - inciting national, racial or religious hatred.' In the indictment, the prosecutor stated that the purpose of the defendant's actions was to attract public attention to his adverse living conditions. For the charge of 'infringing the inviolability of a dwelling,' the defendant was sentenced to two months imprisonment.<sup>68</sup>

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68 The defendant was also charged with two other counts committed at an earlier stage. In addition to Article 170(1) RS CC, the defendant was found guilty of theft, Article 231(1) RS CC and sentenced to five months imprisonment.

### Example 5

In July 2011, a few days after the annual commemorations for war victims in eastern RS, a group of four Bosniac men from the FBiH went to a café in a neighbouring town in eastern RS and greeted those present with "As-Salamu Alaykum." When the owner of the café (Serb) responded "good morning," the four men started insulting the owner and began causing damage to the café while saying "This is Bosnia where all should greet each other with 'As-Salamu Alaykum'" and shouting "Allahu Akbar." The four men were indicted for 'malicious mischief' under Article 249(1) RS CC. They all pleaded guilty and were ordered to pay fines of BAM 400. At the time of the events, this provision in the RS CC already had one additional paragraph covering cases where such acts of malicious mischief are committed "out of hatred" – i.e. committed with a bias motivation, carrying a sentence of imprisonment between 6 months and 5 years. The Mission learned from the police who investigated this case that, in spite of the indications of bias motivation in this case, the police were directed by the prosecutor's office to submit a report for the base offence of malicious mischief.

It is acknowledged that, in many cases, it can be very difficult to decipher and ascertain the reasons behind the exclusion of bias motivation, particularly taking into account the discretionary choices made by prosecutors. When opportunities arose during the Mission's monitoring process to inquire with prosecutors about the lack of reference to bias motivation in indictments, the reasons cited for this exclusion were that they often have insufficient evidence to establish the bias motive, or because there was an alternative motive which diminished the effect of the bias motive, subsequently leading to its exclusion.

Based on the Mission's inquiries with police and prosecutors, it is reasonable to suggest that such omissions of bias motivation could also be attributed to a general lack of understanding of the notion of hate crimes and how such crimes can be identified. This in turn can reasonably be further traced to the lack of, or insufficient, specialized training and education on the complexities and intricacies of bias-related crimes and incidents. In addition, legislative gaps will also have played a role in restricting the opportunities for police and prosecutors to adequately investigate and account for bias motives in indictments.

Another reason for the lack of inclusion of bias motivation in the final indictment could potentially be due to the fact that, in general, proving bias motivation is markedly more difficult and time consuming than proving the typical constituent elements of ordinary crimes, and can consequently be seen as a demotivating factor for police and prosecutors. Through its inquiries with police and prosecutors, the Mission has also noted that there is often insufficient realization or recognition on their part of the importance and impact that establishing a bias motivation has for the victims of hate crimes and the affected communities.

## Lack of consistency in the application of the ‘incitement to hatred’ provisions

A further observation drawn from the Mission’s monitoring is the lack of consistency in the interpretation and application of the ‘incitement to hatred’ provisions. In some cases, prosecutors have relied on the ‘incitement to hatred’ provisions, and at times have used them in concurrence with other non-hate crime charges. This is presumably due to the absence of aggravated forms of certain criminal offences in the legislation that incorporate a bias motivation. For instance:

### Example 6

In 2008 in the RS, an individual of Bosniac ethnicity said to another individual of Serb ethnicity the following; “F\*\*\* you Chetnik’s child and mother, we know you, we would slaughter you in Potočari.” Additionally the accused punched the victim in the head and continued to beat him even after he had fallen to the ground. The accused was charged with ‘bodily harm,’ Article 155(1) RS CC, in concurrence with the ‘incitement to hatred’ provision, Article 390(1) RS CC, and sentenced to three months imprisonment, suspended for one year.

### Example 7

In June 2011, during a funeral at an Orthodox cemetery in a town in north-eastern FBiH, an individual stopped nearby and through the window of his car insulted the persons participating in the funeral on ethnic grounds. He returned soon after, once again insulted those present, and fired several bullets into the air. The individual was charged with ‘illegal possession of weapons or explosives,’ Article 371 FBiH CC, in concurrence with the ‘incitement to hatred’ provision, Article 163(2) FBiH CC. Through a plea agreement the parties agreed on a compound sentence of 1 year and 3 months imprisonment.

Further, there is a lack of consistent utilization of this provision by prosecutors, meaning that in some situations prosecutors rely solely upon the ‘incitement to hatred’ provision, and in other factually very similar situations, prosecutors have chosen not to charge under such provision. While the table provided in Annex IV gives more examples of this, the three examples below illustrate this observation:



### Example 8

In the RS, individuals of Serb ethnicity physically attacked, insulted and threatened three individuals of Bosniac ethnicity who were walking past a café bar in the RS, where the accused individuals had been sitting. The insults were ethnic-based and were recorded to have included: "F\*\*\* your Turkish mother!", "You should be slaughtered!" and "You are done in this town!" As the three individuals started running away, the accused chased them and threw stones at them. The accused caught one of the individuals, a female, and physically attacked her. In 2006, the accused were charged with 'inciting national, racial or religious hatred, discord or hostility' under Article 390(2) of the RS CC (currently Article 294a), which prescribed an imprisonment sentence between 6 months and 5 years. They were sentenced to six months imprisonment, suspended for 18 months. In June 2011, during a funeral at an Orthodox cemetery in a town in north-eastern FBiH, an individual stopped nearby and through the window of his car insulted the persons participating in the funeral on ethnic grounds. He returned soon after, once again insulted those present, and fired several bullets into the air. The individual was charged with 'illegal possession of weapons or explosives,' Article 371 FBiH CC, in concurrence with the 'incitement to hatred' provision, Article 163(2) FBiH CC. Through a plea agreement the parties agreed on a compound sentence of 1 year and 3 months imprisonment.

### Example 9

In December 2011, in Stolac, a young Croat man entered the yard of a mosque and set fire to the flag of the Islamic Community. The incident occurred one day after a nativity set had been set on fire in the same town – at the time of writing, an investigation is ongoing against three Bosniacs for this incident. The individual was charged with the 'incitement to hatred' provision, Article 163(1) FBiH CC. A plea agreement was signed, and he was sentenced to seven months imprisonment, suspended for two years. The defendant was also ordered to pay BAM 200 in compensation to the injured party, the Islamic Community of Stolac.

### Example 10

In 2006, in Brčko, the two accused approached the victims on two occasions and physically assaulted them. Based on statements from the investigation, during the beatings, the accused insulted them on ethnic grounds and told them that "they all need to be killed." Despite the case occurring in 2006, the indictment was only raised in 2008. The accused were charged with 'violent behaviour,' Article 356(2) BDBiH CC, the prescribed sentence for which is imprisonment from 6 months to 5 years. Based on a plea agreement, a sentence of 30 days was imposed.

The above cases are clear examples of situations involving physical assault, damage to property and verbal abuse on bias-motivated grounds. However, in the first two examples (examples 8 and 9), the perpetrators were **solely** prosecuted using the ‘incitement to hatred’ provision, in contrast to the third example (example 10) wherein the perpetrators were prosecuted solely with ‘violent behaviour,’ and with no mention of the apparent bias motivation at sentencing. Yet in other cases – such as the example below – involving insulting forms of speech, the provisions on ‘incitement to hatred’ are not used, sometimes because the act is qualified as a minor offence.

### Example 11

In 2011, in eastern RS, two days after the beginning of Ramadan, a young Serb man sprayed the ‘4S’<sup>69</sup> sign in red colour on the walls of houses belonging to Bosniac returnees in a small and isolated settlement, as well as the following words on the road that accesses the house of a Bosniac returnee: “All those who are worthy, are sitting now in The Hague.” The young man was charged with a minor offence under Article 7 of the RS Law on Public Peace and Order (“quarrelling, yelling, screaming and indecent behaviour”). He admitted to committing these actions, and the court issued a reprimand.

General guidance on these provisions overall has been lacking from the courts’ jurisprudence, consequently allowing this provision to be employed as a ‘safety net’ for cases of hate crimes, and it being applied in situations for which possibly it was not initially intended by the legislator. Nonetheless, it is also hoped that in light of the legislative amendments which provide for more options for the prosecution of bias-related incidents, these inconsistencies will decrease. Further discussion among legal professionals about the interpretation and application of these provisions is needed. It would also be useful for the High Judicial and Prosecutorial Council’s (HJPC’s) database of verdicts to include a thorough and updated selection of hate crimes and bias-motivated incidents.

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69 In the Cyrillic alphabet the ‘4S’ symbol alludes to the slogan “Only Unity Saves the Serbs” from medieval-time Serbia which refers to the need for Serbian people to unite to preserve their heritage and nationhood. In BiH it is perceived negatively by Bosniacs and Croats as a Serb nationalist symbol.

## IN BRIEF

The Mission's key monitoring observations related to the police and prosecutors' approaches to cases involving bias are often difficult to separate from each other, but generally can be summarized as follows:

- a. Insufficient identification, investigation and accurate reporting of bias indicators by the police;
- b. Concerns relating to communication and co-operation between police and prosecutors – including police not always drawing the prosecutor's attention to bias indicators, and insufficient guidance from prosecutors to the police for investigating such indicators;
- c. The lack of reference to bias motivation in indictments; and
- d. Inconsistent application of the 'incitement to hatred' provisions.

These observations raise questions as to whether ECtHR standards on the investigation and prosecution of bias-motivated incidents are being consistently fulfilled, and require further attention by the relevant law enforcement and judicial authorities.

## 2. SENTENCING

### 2.1. *International standards*

International standards and guidelines instruct States to provide for sanctions that are proportionate and **commensurate with the gravity of the crime**. The OSCE addressed the issue of proportionate sentencing and penalty enhancements in a Ministerial Council Decision, stipulating that participating States must “enact, where appropriate, specific, tailored legislation to combat hate crimes, providing for effective penalties that take into account the gravity of such crimes.”<sup>70</sup> A European Council Framework Decision elaborates on this standard. As well as obliging each Member State to take the necessary measures to ensure that conduct motivated by racism or prejudice has a penalty that is effective, proportionate and dissuasive, the Decision also stipulates that these crimes have penalties between 1 and 3 years imprisonment.<sup>71</sup> Apart from the specific types of conduct enumerated in this Decision, it also establishes that for any other offences, “racist or xenophobic motivations” should be considered an aggravating circumstance, or taken into account by courts when determining a sentence.

Besides a proportionate, effective and dissuasive sanction, international standards also establish the right of victims of these crimes to reparation for harm suffered – including both material and non-material harm.<sup>72</sup> More broadly, the *International Convention on the Elimination of All Forms of Racism and Discrimination* (the Convention) establishes the obligation of States Parties to ensure “effective protection and remedies (...) against any acts of racial discrimination” covered by the Convention, as well as the right of victims to “just and adequate reparation or satisfaction for any damages suffered as a result of such discrimination.”<sup>73</sup> These obligations are also affirmed by ECRI recommendations.<sup>74</sup>

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70 OSCE MC Decision No. 9/09, *supra* note 5.

71 EU Council Framework Decision 2008, *supra* note 21, Article 3. The decision enumerates in Articles 1 and 2 the acts that fall within its scope.

72 See the UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, A/RES/40/34; The CoE Recommendation No. R (85) 11 of the Committee of Ministers on the Position of the Victim in the Framework of Criminal Law and Procedure, 28 June 1985; and the Council of the European Union Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings.

73 Article 6 of the *Convention on the Elimination of All Forms of Racial Discrimination*, *supra* note 14.

74 ECRI General Recommendation No. 1, *supra* note 55, which holds that Signatory States must ensure that adequate legal remedies are available to victims of discrimination, either in criminal law or in administrative and civil law where pecuniary or other compensation may be secured.

## 2.2. *Hate crimes sentencing in Bosnia and Herzegovina*

This section draws on cases from the Mission's trial monitoring programme which, as mentioned previously, includes cases from before 2008 monitored as part of the Mission's earlier focus on return-related violence.<sup>75</sup> An overview of criminal proceedings monitored by the Mission on bias-related cases and the final sentences handed down can be found in Annex IV.

### a. Type of sanctions

The CCs stipulate that either an imprisonment sentence or a fine may constitute punishment for hate crimes. The Mission's trial monitoring indicates that those convicted of hate crimes in BiH are frequently given a suspended imprisonment sentence or a fine for the commission of such crimes.<sup>76</sup> The BiH CC states that when deciding whether to impose a suspended sentence, the court needs to take into account the purpose of the suspended sentence, the personality of the perpetrator and their past, the perpetrator's behaviour after the perpetration of the criminal offence, and the degree of criminal responsibility.<sup>77</sup> Similar provisions are found in the entities' and BDBiH CCs.<sup>78</sup>

A concern identified with regard to the imprisonment sentences stipulated in the 'incitement to hatred' provisions is the lack of harmonization of the sentencing ranges prescribed by law. Essentially this means that the sentences for this crime vary from criminal code to criminal code and there is no consistency.<sup>79</sup> Overall the sentencing ranges stipulated for these offences are between a minimum of 3 months and a maximum of 10 years.<sup>80</sup>

### b. Lack of recognition of bias motivation in sentences

Sentences which are handed down by courts in cases of apparent hate crimes and which do not acknowledge the bias motivation appear to be incommensurate with the gravity of the crime. It is admittedly difficult to assess the proportionality of a sentence

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<sup>75</sup> See section I Methodology and Context.

<sup>76</sup> Article 58 BiH CC: "The purpose of a suspended sentence is to give to a perpetrator of a criminal offence an admonition with a threat of punishment (suspended sentence), which achieves the purpose of criminal sanctions by pronouncing a punishment without executing it, when the execution of punishment is not necessary to ensure legal protection."

<sup>77</sup> Article 59 BiH CC.

<sup>78</sup> Article 62 FBiH CC, Article 47 RS CC, Article 61 BDBiH CC.

<sup>79</sup> See Annex II.

<sup>80</sup> Article 145a(1) BiH CC stipulates between 3 months and 3 years; Article 294a(1) RS CC states for up to two years; Article 160(1) BDBiH CC between 1 year and 5 years; and Article 163(1)(3) FBiH CC between 3 years and 10 years. The BiH CC and FBiH CC are further qualified by certain circumstances; for example, in both codes, if the 'incitement to hatred' is committed by somebody who is in office or in a position of authority, there is an enhanced sentencing range of 1 year to 10 years. Another qualification for sentencing is when one of the following conditions are present - employment of duress, torture, jeopardizing of safety, exposing national, ethnic or religious symbols to derision, or desecrating graves. The sentencing ranges provided for in these cases are between 6 months and 5 years in the RS and BDBiH, and 1 year to 8 years in FBiH. A final qualification to the 'incitement to hatred' provision is if the offence results in riots, violence or results in "serious consequences" to the co-existence of the people. In such a case, 1 year to 8 years sentence is stipulated in the BDBiH and RS, and 1 year to 10 years in the FBiH.

in cases where bias indicators were present but were not properly acknowledged by the prosecution or by the court. Having said that, when such indicators exist and have been proven, by discounting the bias motivation at the sentencing stage, the courts diminish the severity and effect hate crimes have on the victim and the wider community. It should also be noted that hate crimes are known to frequently cause greater harm than ordinary crimes because “the immediate victim may experience greater psychological injury and increased feelings of vulnerability because he or she is unable to change the characteristic that made him or her a victim.”<sup>81</sup>

According to the Mission’s monitoring, the previous hate-related provisions in the RS and BDBiH CCs were insufficient to achieve the effective prosecution and sanctioning of bias-motivated incidents. The recent changes introduced into the criminal legislation in the RS and BDBiH have improved the legal foundation by allowing for more effective prosecution and sanctioning of bias-motivated criminal offences.<sup>82</sup> As mentioned above, they now provide for a detailed definition of hatred and they also explicitly oblige courts to take this motivation into account as an aggravating circumstance when determining a sentence for any given criminal offence. The aforementioned amendments also created a number of aggravated forms of criminal offences based on bias. A table with penalty enhancements based on bias motivation, as provided by the legal framework amended in 2010, can be found in Annex III.

The FBiH CC has not been amended in line with international standards, in contrast to the RS and BDBiH CCs, which raises questions as to the effectiveness of adequate sanctions. For instance, criminal legislation in the FBiH did not, and still does not, provide for bias on the grounds of sexual orientation to be considered as an aggravating factor in a case like the one described below:

### Example 1

On 24 September 2008, during the opening exhibition of the Queer Festival, a group of around 70 protestors gathered outside the event at the Academy of Fine Arts in Sarajevo and violently interrupted the event by shouting insults and throwing rocks at the visitors. Despite the enhanced police presence and private security agency, eight persons were injured. Notably some attacks occurred on neighbouring streets or in settlements several kilometres away from the venue itself. Eight persons were arrested. One 18-year-old male, seen attacking two journalists, was charged with ‘violent behaviour,’ Article 362(1) of the FBiH CC, in conjunction with ‘obstructing an official in the execution of official duties,’ Article 358 FBiH CC. He signed a plea agreement stipulating a one year prison sentence suspended for two years. Another 19-year-old was also charged with ‘violent behaviour’ under Article 362(1) of the FBiH CC for inflicting light bodily injuries on one person and damaging a vehicle. This accused received a suspended sentence for five months with a two-year probation period. In both cases, the indictments did not include reference to any bias motivation.

<sup>81</sup> *Hate Crime Laws Practical Guide*, *supra* note 13, p.20.

<sup>82</sup> See section II.

In a case such as the one above, the bias motive could have been referred to in the reasoning of the verdict, since all CCs in BiH list “motives for committing the criminal offence” as one of the circumstances affecting the level of punishment. However, bias motivation is rarely considered by courts in the context of aggravating circumstances. While the CCs do not explicitly list various motives that could come into consideration, the Commentary to the CCs<sup>83</sup> does point to ‘hate and revenge’ as an aggravating circumstance which is to be taken into account in the process of determining the sentence.<sup>84</sup>

Further, it is submitted that when courts choose to impose a sentence below the minimum provided by law, they should also take into account the bias motive of the offence when determining whether there are ‘highly extenuating circumstances’ which allow a lesser sentence.<sup>85</sup> For instance, the bias motivation was not considered in the following case:

### Example 2

In 2006, a Croat man threw a hand grenade from a moving vehicle, which was driven by another individual, also Croat. The incident took place in a small town in the FBiH in an area with a Croat majority and a small returnee Bosniac population. The hand grenade exploded in the yard of the town mosque and damaged the house of the Imam, as well as windows in residential buildings across the street and one vehicle, all property of Bosniac residents. Both defendants were charged with ‘inciting national, racial or religious hatred, discord or hostility’ under Article 163(2) FBiH CC and convicted to eight months imprisonment, even though the sentence range prescribed imprisonment for 1 to 8 years. The panel justified the lowering of the sentence for both defendants by finding circumstances, as a whole, highly extenuating. Such circumstances included the fact that the defendants were young, without prior convictions, of little means, and unemployed.

<sup>83</sup> *Commentary to CCs in BiH*, supra note 40, p. 274.

<sup>84</sup> It is important to recall here the distinction between ‘hate’ as an emotional feeling against a particular person, and ‘hate’ as bias or prejudice against members of a group. This report deals with the second notion.

<sup>85</sup> The possibility of a sentence of imprisonment below the lower limit stipulated by law is allowed when the court determines the existence of highly extenuating circumstances which indicate that the purpose of punishment can be attained by a lesser punishment (see Article 49 BiH CC; Article 50 FBiH CC; Article 38 RS CC; and Article 50 BDBiH CC). The consideration of the motive behind the commission of the crime, if imposing a lower sentence, can be found in Article 48 BiH CC; Article 49 FBiH CC; Article 37 RS CC; and Article 49 BDBiH CC.

In the above case, the court tried to justify the reasons for stipulating a lower sentence as required by the CC, however the court did not acknowledge or weigh the possible bias motives behind the commission of this serious offence, nor the damage, danger or impact caused to the protected objects and injured parties of this hate crime in making its decision.<sup>86</sup>

Generally, another way a court can ensure that the bias motivation of a given criminal offence is taken into account at the sentencing stage is to re-qualify the offence when possible and in an appropriate way that results in a penalty enhancement. Criminal procedure legislation allows judges to re-qualify a certain offence, that is, to convict the perpetrator of an offence different from the one contained in the indictment as formulated by the prosecution. Indeed, the court is not bound by the legal qualification of the criminal offence offered by the prosecutor in the indictment either the original or amended indictment based on evidence presented in the main trial.<sup>87</sup>

### c. Lack of compensation

All of the criminal procedure codes in BiH allow those who suffered damage resulting from a given criminal offence to request compensation for that damage in the course of criminal proceedings – including both material and non-material damage, such as emotional suffering.<sup>88</sup> However, the Mission's monitoring has shown that this option is rarely used in practice.<sup>89</sup> This is mainly due to the fact that injured parties are not properly informed, as required by law, that they can make use of this practice in criminal proceedings, and because prosecutors and courts find that gathering the necessary evidence and resolving these claims during criminal proceedings would considerably prolong the proceedings.

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86 See *General Principles on the Imposition of Punishment* - Article 49 FBiH CC which holds that "(1) The court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the level of punishment (extenuating and aggravating circumstances), and, in particular: the degree of culpability, **the motives for committing the offence, the degree of danger or injury to person, property or thing**, the circumstances in which the offence was committed, the past conduct of the offender, his personal situation and his conduct after the commission of the criminal offence, as well as other circumstances related to the offender.." (emphasis added).

87 Article 280 BiH Criminal Procedure Code ('Correspondence between the Verdict and Charges'). Article 280(1): "The verdict shall refer only to the accused person and only to the criminal offense specified in the indictment that has been confirmed, or amended at the main trial or supplemented. (2) *The Court is not bound to accept the proposals of the Prosecutor regarding the legal evaluation of the act.*" (italics added) See similar provisions in Article 295 FBiH Criminal Procedure Code; Article 294 RS Criminal Procedure Code; and Article 280 BBiHD Criminal Procedure Code.

88 Chapter XVII Articles 193-204 BiH Criminal Procedure Code; Chapter XVII Articles 207-218 FBiH Criminal Procedure Code; Chapter XIV Articles 103-114 RS Criminal Procedure Code; Chapter XVII Articles 193-204 BDBiH Criminal Procedure Code.

89 To facilitate the process of receiving compensation for the injured parties, the Mission has published a leaflet, *Victim or Witness of a Criminal Offence: Know your rights and duties* which provides victims and witnesses in proceedings with key information about their rights, as well as a template that injured parties can use to file their damage claims.

The leaflet is available at: [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2010122712570728eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2010122712570728eng.pdf), and the claim template at: [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2010122713020999eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2010122713020999eng.pdf)



For this reason, the Mission has little information on what type of compensation is awarded to injured parties for damage suffered as a result of a criminal offence committed with a bias motivation. The Mission has identified only two cases in which compensation was awarded (both in BDBiH). One of these cases is illustrated below:

### Example 3

In a case in BDBiH involving the spraying of graffiti on public buildings with insulting content, the perpetrators were convicted jointly for 'malicious mischief,' Article 287(2) BDBiH CC and for 'inciting national hatred,' Article 160(2) BDBiH CC. They received sentences of three months and 15 days, and four months and 15 days respectively. They were ordered to pay BAM 5,317.00 in compensation to the BDBiH Government for the repainting of the buildings.

The act of compensation is particularly important in cases of hate crimes, as it clearly sends the message that manifestations of prejudice will not be tolerated or overlooked by local authorities – thus restoring feelings of security in the community.

### IN BRIEF

- In principle, sentences for hate crimes offences should be more severe than sentences for the same offences committed in their ordinary forms (i.e. without bias motivation or any other aggravating circumstance) to ensure that there is just and fair redress for the damage suffered and to foster a dissuasive effect. There have been, and continue to be, some concerns about the proportionality and effectiveness of the sanctions that are given for hate crimes in BiH, largely due to the lack, or under utilization of, the appropriate legislation.
- The lack of consideration of compensation in most hate crime cases monitored is concerning. Both the explicit reference to a bias motivation behind a criminal act, and the awarding of compensation for the damage, are important ways of explicitly recognizing the full character, gravity and context of the offence, and of validating the experience of the individual victim and the affected community.

### 3. RESPONSES BY PUBLIC OFFICIALS AND LOCAL AUTHORITIES

Appropriate response and condemnation by local authorities and governmental officials is a crucial component in the effective tackling of hate crimes and hate-related incidents. The absence of public condemnation, or an inflammatory reaction by those in roles of responsibility tacitly sends a message that such crimes are acceptable and of little consequence. In contrast, a firm and appropriate response by officials sends a message of support to individual victims and affected communities, as well as strengthens the public's sense of security in BiH.

#### 3.1. *International standards*

OSCE standards encourage States and their respective relevant authorities to publicly condemn hate crimes.<sup>90</sup> In one OSCE Ministerial Council Decision, it was expressed that participating States need to ensure that officials, at the appropriate level, consistently and unequivocally speak out against acts and manifestations of hate, particularly in political discourse.<sup>91</sup> A further OSCE Ministerial Council Decision calls for “continued efforts by political representatives, including parliamentarians, to strongly reject and condemn manifestations of racism, xenophobia, anti-Semitism, discrimination and intolerance, including against Christians, Jews, Muslims and members of other religions, as well as violent manifestations of extremism associated with aggressive nationalism and neo-Nazism, while continuing to respect freedom of expression.”<sup>92</sup>

The purpose of publicly condemning bias-motivated incidents is to prevent and limit the potentially broader destructive effects of such incidents. A verbal response fuelled by one-sided rhetoric or discussion of “who started the fight” is not an adequate condemnation. The response should place emphasis on condemning the act in question, and any other acts or incidents of similar nature, and should stress the equality of citizens regardless of their nationality, ethnicity, sexual orientation, social background or any other distinguishing features. Thus, the response to hate crimes should not be engendered by support for one group or person against another, but should be given in an objective manner condemning all acts incited by hatred.

Furthermore, local authorities are encouraged to develop consistent strategies and practices to counter possible expressions of intolerance. There are a number of good practices and very concrete actions that authorities can adopt. These can include: the removal of offensive graffiti; the promotion of school projects to educate students

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<sup>90</sup> See OSCE MC Decision No. 9/09, *supra* note 5. Also see, OSCE MC Decision No. 4/03, *supra* note 26: “Condemn publicly, at the appropriate level and in the appropriate manner, violent acts motivated by discrimination and intolerance” and OSCE MC Decision No.12/04, *supra* note 26: “Combat hate crimes.... and appropriately denounce such crimes publicly when they occur.”

<sup>91</sup> OSCE MC Decision No. 10/05, *supra* note 26.

<sup>92</sup> OSCE MC Decision No. 10/07, *supra* note 26, para. 1.

about hate crimes; and the creation of community partnership panels to enable municipalities and law enforcement agencies to meet with civil society and religious community representatives to exchange information and concerns.<sup>93</sup>

### 3.2. *Instances of public condemnation of hate crimes*

Over the past two years, the Mission has noted more adequate condemnation of hate crimes and bias-related incidents by authorities than when the Mission started monitoring these types of incident. It is worth noting that this trend was identified based on reactions that become known to the Mission, and therefore it is not possible to speak about such an increase in absolute or statistical terms. Two examples of adequate public condemnation by local authorities are given below:

#### Example 1

In July 2010, unknown individuals damaged an Orthodox Church located in Novo Sarajevo by breaking several lights and tiles that were outside for the reconstruction of the roof. In addition to promising assistance to repair the damage and asking the police and judicial authorities to make maximum efforts to find the perpetrators, the Mayor condemned the incidents by saying that he was committed to protect the "human rights and freedoms of all citizens of Sarajevo, and believes that the attacks on houses of prayer and peace in this city, regardless of ethnic or religious characteristics, will never have fertile ground." A press release containing this message was found on the City of Sarajevo's website and was published in various newspapers at the time.

#### Example 2

In August 2009, graffiti was sprayed on the side of a house in Banja Luka with the following: "*Murija, poturice, židovske, krvave*" (Pigs, Turks, Jews, Bloody) and "*Hrvatsku decu na kolac*" (Croat children on a spit). The City Administration of Banja Luka condemned the graffiti and placed the following statement on their website: "Such ugly incidents do not reflect the real picture of Banja Luka city, and the perpetrators of this act for sure are not aware of the damage they cause. Banja Luka is an open city, where all citizens are equal, regardless of their nationality, race or gender. The City Administration of Banja Luka would use this opportunity to request the public security center to undertake all the measures available in order to identify those who committed this act."

The Mission has also noted that Security Forums in the RS and Security Councils in the FBiH are being used in some locations to address hate crimes or bias-related incidents. These bodies have been established in some municipalities in BiH to gather

<sup>93</sup> *Understanding Hate Crimes Handbook*, supra note 2, p. 12-13. For an example of some of initiatives undertaken in the USA, see Chapter 5 "Other responses to Hate Crimes" in US Department of Justice - Office of Justice Programs, *A Policymaker's Guide to Hate Crime*, 1997, Washington DC.

representatives of local police, mayors, municipal officials, minority and religious leaders and civil society representatives to discuss key security concerns in their municipality.<sup>94</sup> In 2011, the Mission began giving presentations on hate crimes to Security Forums and Security Councils throughout BiH, with the aim of capacity building and developing co-ordinated and appropriate responses to hate crimes at the municipal level. In the course of these presentations, a booklet, *Understanding Hate Crimes: a Handbook for BiH* was distributed to attendees.<sup>95</sup> To date, there have been some examples of Security Forums making appropriate and public condemnation and taking action to tackle hate crimes, for instance:

### Example 3

According to the Mission's monitoring, there have been numerous reported instances of attacks on a mosque in the RS. Up until 2010 it was noted that the local authorities had not publicly condemned any of these incidents. However, in October 2010, the local Security Forum condemned the smashing of the windows in the town mosque, the third attack in a short period of time, and invited the police to invest more effort into the investigation of all similar attacks. This condemnation followed a request to the Forum by a local Imam seeking the inclusion of these attacks on the agenda. In addition to the Forum's condemnation, they also took additional positive measures by organizing the placing of CCTV cameras close to the mosque for increased security.

These Security Forums/Councils have the potential to provide a valuable platform for public officials and other relevant actors in the municipality to regularly discuss local hate-related incidents and how these can be dealt with on both a short and a long-term basis. Another useful initiative at the municipal level to holistically integrate appropriate reactions to hate incidents is to affirmatively recognize the need to respond to such incidents in the municipality's communication strategy. In December 2010, the municipality of Kiseljak adopted a communication strategy which states that the municipality shall publicly condemn incidents that are potentially caused by racial, national or religious hatred. Broadly, the aim of municipal communication strategies is to strengthen the capacity of municipalities to communicate with citizens, especially through the media.

Despite the above-mentioned observation on more adequate condemnation being issued, it is still the case that public officials often fail to condemn hate-related incidents. More often than not, the practice in BiH is that the authorities remain silent in the face of such incidents. In parallel to this, there are also cases in which the authorities do not respond appropriately to bias-motivated incidents, as illustrated below:

<sup>94</sup> The work of these bodies was given official support in the BiH Strategy for Community Policing, adopted by the BiH Council of Ministers in 2007. Such bodies have not been established, as of yet, in all municipalities in the country, and their functionality also varies among municipalities.

<sup>95</sup> *Understanding Hate Crimes Handbook*, supra note 2.

#### Example 4

In October 2009, there were riots between football club fans from two cantons.<sup>96</sup> Both sides took part in violent confrontations, the instigation of such clashes apparently relating to problems with the tickets before the football match. In total, six persons were shot, one of whom died as a result, and 16 police officers and dozens of fans were injured. Besides the typical traits of football hooliganism, this incident has bias as a dominant factor; that is, there was a significant amount of heated rhetoric and verbal abuse based on the perceived affiliation and assumption about ethnic origin. The response by

the authorities fueled such rhetoric. For instance, a local representative from one of these cantons publicly stated that immediately after the arrival of the other side's football fans at the stadium, there was a deliberate attack by such fans on their fans - thus fundamentally shifting the entire blame of the conflict onto the supporters who had travelled to be there. Such supporters were publicly referred to as "an ordinary gang," and the policemen trying to stop such supporters were described as defending the lives and the property of *svog naroda*, "their people."<sup>97</sup>

The sentiments expressed in the above example are inappropriate as they widen the divisions between citizens by employing the very language the perpetrators used in the criminal offence.

#### IN BRIEF

Appropriate reactions to hate incidents by local authorities and officials are slowly but steadily increasing. Such responses indicate a better understanding of the seriousness of these acts and are a hopeful sign of a more widespread and systematic response by public officials to manifestations of hate. However, in BiH it is still the case that public officials too often do not respond to hate crimes at all. At times, statements by public officials mirror the sentiments of prejudice that led to the incident, thereby furthering tensions and intolerance.

<sup>96</sup> Also see the report by Mediacentar Sarajevo, available at: <http://www.media.ba/mconline/bs/tekst/strategije-iskljucivanja-govor-mrznje-u-bih>. Mediacentar Sarajevo conducted an analysis on hate speech between January and July 2010, as part of a pilot project 'Hate Speech Watch: Action against Hate Speech in BiH.' This analysis was published in the report *Strategies of Exclusion: Hate Speech in BiH Public*. The report includes an analysis of the media representation of two particular incidents that took place in 2008 and 2009 – the incidents surrounding the Queer Festival in Sarajevo and the clashes in Široki Brijeg among supporters of the Sarajevo and Široki Brijeg football clubs.

<sup>97</sup> Four separate indictments were filed after this event. Charges were brought against 11 Sarajevo fans for Article 341(1) FBiH CC (participating in a group committing a criminal offence); one Široki Brijeg fan for attacking an official under Article 359(1) FBiH CC (attacking an official in the execution of security duties); another against a Široki Brijeg fan for the attempted murder of six other persons under Article 166(1) FBiH CC (murder); and lastly, two police officers were charged with the illegal release of the detainee under Article 391 (unlawful release of a detainee). With regard to the charges against 11 Sarajevo fans, a first instance was passed in late November 2011 whereby 10 out of the 11 defendants were found guilty and sentenced to prison terms ranging from 3 to 10 months. At time of writing, the other three cases are still ongoing.

## 4. PREVENTION, SUPPORT AND THE ROLE OF CIVIL SOCIETY

Besides the importance of public and appropriate condemnation of hate crimes, it is also crucial that the authorities, in partnership with civil society, adopt a comprehensive approach towards preventing and combating bias-motivated incidents. This involves building and strengthening mutual understanding, tolerance and cohesion through various extra-legal and extra-judicial measures. Three elements will be discussed in this section: prevention, support services to victims, and the role of NGOs/civil society. Education is widely considered to be the cornerstone of general preventative measures and an effective awareness-raising tool for addressing the root causes of bias-motivated incidents. However, if a hate-related incident has occurred, the value of support services to victims, by both governmental and non-governmental institutions, should not be underestimated and attention should be directed towards improving such services. Lastly, civil society groups play a key role in combating hate crimes by undertaking preventive and supportive measures.

### 4.1. *International standards*

#### a. **Prevention and education**

The existing international guidelines and norms pertaining to hate crimes not only relate to judicial measures, but equally concern wider preventive matters. OSCE commitments, mentioned further below, are prevalent in this respect and are extensive in their reach. They are, however, reinforced by more general overarching standards, such as those set down by the Committee on the Elimination of Racial Discrimination, which stress that State Parties need to promote, through awareness-raising campaigns and other concrete steps, **national unity, tolerance and the peaceful co-existence** of members of various nationalities and religious groups.<sup>98</sup>

Education was acknowledged in March 2009, and again in 2011, by the OSCE High Commissioner on National Minorities, as being crucial to building mutual understanding between different groups and promoting tolerance and social cohesion in the next generation by preventing juveniles from inheriting old stereotypes and prejudices.<sup>99</sup> In conjunction with this, OSCE Ministerial Council Decisions have also emphatically emphasized the value of education. For instance, in a 2006 Ministerial Decision, the OSCE called upon participating States to “address the root causes of intolerance and discrimination by encouraging the development of comprehensive

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98 Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination - Bosnia and Herzegovina*, August 2010, CERD/C/BIH/CO/7-8, para. 10, available at: [http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-BIH-CO-7\\_8.doc](http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-BIH-CO-7_8.doc)

99 OSCE High Commissioner on National Minorities, *Integration versus Separation: Education in multi-ethnic societies* 18 March 2009 Sarajevo, available at: <http://www.osce.org/hcnm/36583>. Also see the press release from the OSCE High Commissioner on National Minorities' visit to Sarajevo on 21 February 2011, available at: <http://www.oscebih.org/News.aspx?newsid=78&lang=EN>

domestic education policies and strategies, as well as through increased awareness-raising measures.”<sup>100</sup>

In addition to OSCE commitments, there is an array of other education-related standards encouraging non-segregation and tolerance in schools. For instance, a European Parliament Resolution specifically on the situation in BiH underlined that:

“[E]ducation is a primary vehicle for genuine inter-ethnic reconciliation; [and] [...] in the context of EU assistance, increased attention should be paid to promoting an inclusive, non-discriminatory education system, based on tolerance and respect for diversity and on efforts to reach an understanding of the common history.”<sup>101</sup>

A similar emphasis on inclusive and non-segregated education is also made in a CoE Recommendation in reference to BiH and in a report by the United Nations Special Rapporteur on BiH.<sup>102</sup> Educational measures are not limited to traditional notions of education in schools, but also refer to other measures, such as educating communities as to the seriousness of hate incidents and encouraging victims of hate crimes to report incidents.<sup>103</sup>

#### **b. Support and assistance**

Within the international framework, along with the focus on preventative measures, equal attention has also been given to the provision of assistance and support to victims of bias-motivated incidents. For instance, it has been recommended that OSCE participating States explore ways to provide victims of hate crimes with access to counseling and legal assistance, as well as effective access to justice.<sup>104</sup> In addition to the more conventional victim support measures, such as legal representation of victims and psychological counseling, OSCE standards have also stated that participating States should “conduct awareness-raising and education efforts, particularly with law enforcement authorities, directed towards communities and civil society groups that assist victims of hate crimes.”<sup>105</sup>

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100 OSCE MC Decision 13/06, *supra* note 26, para. 5.

101 European Parliament, *Resolution on the situation in Bosnia and Herzegovina*, 17 June 2010, RSP/2010/2734.

102 CoE, *Parliamentary Assembly Resolution Recommendation 1454 (2000) Education in Bosnia and Herzegovina*, 13 February 2001, para. 1: “The Assembly considers education in Bosnia and Herzegovina to be one of the most critical factors both for establishing democratic stability in the country and for bringing about the return of refugees and displaced persons.” Also see UN Human Rights Council, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Report of the Special Rapporteur*, Vernor Muñoz: Mission to BiH, (24 September-2 October 2007) A/HRC/8/10/Add.4.

103 OSCE MC Decision No. 9/09, *supra* note 5, para. 3: “Take appropriate measures to encourage victims to report hate crimes, recognizing that under-reporting of hate crimes prevents States from devising efficient policies. In this regard, explore, as complementary measures, methods for facilitating, the contribution of civil society to combat hate crimes.”

104 OSCE MC Decision No. 9/09 Combating Hate Crimes, *supra* note 5.

105 *Ibid.*

### c. Civil society involvement

Civil society organizations are a vital component in efforts towards the prevention of hate crimes and the establishment of effective victim support.<sup>106</sup> The ODIHR has made a concerted effort to address the role civil society has in providing assistance to victims of bias-motivated incidents. The ODIHR stated that civil society leaders have often reminded State authorities of their duties to respond to hate crimes and, in some places, “civil society has been instrumental in empowering communities to induce social change and inspire legal reforms.”<sup>107</sup> The ODIHR has provided detailed guidance on how NGOs can provide support with regard to combating hate crimes in their publication, *Prevention and Responding to Hate Crimes: A resource guide for NGOs in the OSCE region*.<sup>108</sup> In summary, an NGO can assist in the battle against hate crimes through the following actions:<sup>109</sup>

- Working with governments to improve legislation;
- Monitoring and reporting incidents;
- Acting as a voice for victims of hate crimes, especially by serving as intermediaries with the authorities;
- Providing practical assistance to victims of hate crimes, such as legal advice, counseling and other services;
- Raising awareness about the existence of discrimination, intolerance and hate crimes; and
- Campaigning for action to meet the challenge of hate crimes.

## 4.2. Current practice

### a. Prevention

To the Mission’s knowledge, there are few initiatives led by local authorities for approaching education institutions and their beneficiaries with projects to address the visible need for increased tolerance and dealing with prejudice. However, there are some *ad hoc* positive examples, activities and initiatives regarding the promotion of a tolerant environment, suppression of bias-related incidents and conflict prevention among youth. For instance, in 2009 the Ministries of Education in BiH, with the support of Save the Children UK, developed a curriculum and manual for the prevention of violence which was intended to be implemented in all homeroom classes throughout BiH after September 2010.<sup>110</sup>

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<sup>106</sup> *Preventing and Responding to Hate Crimes*, *supra* note 1, p. 9.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Preventing and Responding to Hate Crimes*, *supra* note 1.

<sup>109</sup> *Ibid.*, p. 13.

<sup>110</sup> At time of writing, Save the Children UK has since closed down in BiH, which has left the Ministries of Education in BiH alone to implement the curriculum. This has caused concern, as many of the Ministries did not expect this, nor were they prepared to organize training or to use their funds to do so. To assist in this, the Mission helped support training for teachers from all schools in Tuzla in December 2010, and is currently supporting cantonal ministries of education in developing strategic documents regarding prevention of violence in schools.



## **b. Support**

Currently BiH lacks satisfactory support services for victims of crimes, including victims of hate crimes.<sup>111</sup> Akin to the situation with regard to preventative measures, there is also no systematic support system for victims of hate crimes in BiH. That is, there is a general lack of governmental support for removing graffiti and reconstruction of damaged property, and collaboration with community and civil society leaders to assist victims in reporting and dealing with such crimes.

In 2008, through a Memorandum of Agreement between the Ministry of Security of BiH and the ODIHR, the Ministry pledged to undertake a number of activities which would bolster the police response to hate crimes throughout the country.<sup>112</sup> These activities included the training of police to deal with victims and affected communities, as well as the establishment of a permanent mechanism for co-operation and consultation between law enforcement and civil society representing minority and victim groups. There has been little development in any of these support-related initiatives, except for the police training in 2009 on hate crimes.<sup>113</sup>

## **c. Civil society involvement**

The involvement and engagement of civil society in BiH in tackling hate crimes has also been limited, although there are some positive developments in this area. In November 2010, the Inter-Religious Council (IRC) began monitoring attacks on religious buildings and other places of importance to religious communities in BiH. This project includes establishing a database of bias-related incidents.<sup>114</sup> It is anticipated that the collected data will assist in determining long-term solutions to reduce the number of attacks on religious facilities and representatives. This project also aims to establish a routine response mechanism whereby IRC representatives, local religious leaders and mayors present a joint statement of condemnation after each incident.

In 2011, the RS Helsinki Committee for Human Rights undertook a preliminary analysis of the existence of web-based hate speech and its impact on BiH. The analysis is part of a project which seeks to contribute to a comprehensive, cross-sector action against cyber hate speech and hate crimes. Additionally, this project aims to initiate a wider public and professional dialogue about the possible risks to stability in BiH from websites that promote ethnic, national, racial and religious hatred and violence.

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<sup>111</sup> See OSCE Mission to BiH, *Witness Protection and Support in BiH Domestic War Crimes Trials*, January 2010, Sarajevo, available at: <http://www.oscebih.org/Download.aspx?id=65&lang=EN>

<sup>112</sup> Memorandum of Agreement between ODIHR and the Ministry of Security of BiH, 1 September 2008, on file with the OSCE, para. 8.

<sup>113</sup> See footnote 6.

<sup>114</sup> The database includes essential information such as: the objects of attack, location, nature of the attack, perpetrators, motivation, response from the authorities and communities, and punishment of the perpetrators.

Also, at time of writing, the NGO Analitika and the FBiH Association of Prosecutors were about to start a one-year project entitled “Prosecuting hate: Towards adoption and implementation of EU standards and best practices in combating hate crimes in BiH,” and the NGO Civil Rights Defenders were planning to conduct activities with a group of NGOs regarding responses to hate crimes, in co-operation with the Mission. Three other NGOs, the Youth Initiative for Human Rights, the Association for Democratic Initiatives and the Sarajevo Open Center had also conducted a series of trainings for activists which included sessions on hate crimes.

## IN BRIEF

Prevention and support services are instrumental in the fight against hate crimes and wider signs of intolerance. While authorities have been slower to move, civil society engagement is increasing. The power of civil society in recognizing the early signs of instability due to bias-motivated incidents, providing support to the affected victims and communities, and lobbying with governments and local authorities on change in this area is invaluable.

## 5. DATA COLLECTION AND STATISTICS

Data collection is a vital component of prevention and responses to bias-motivated incidents. The benefits of data collection include: increasing the likelihood of victims reporting hate crimes; presenting the community with an opportunity to discuss ways to deal with hate crimes; placing members of that community on alert to look out for the safety of residents; and giving law-makers and governmental officials the information necessary to decide upon education, funding, prevention and victim assistance.<sup>115</sup>

### 5.1. *International standards*

The OSCE plays a leading role in the development of international standards in relation to data collection on hate crimes. Several OSCE Ministerial Council Decisions call on participating States to “collect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and violence manifestations of intolerance, including the numbers of cases reported to law enforcement, the numbers prosecuted and the sentences imposed.”<sup>116</sup> These standards also call on participating States to enhance the capacity of civil society to contribute to the monitoring and reporting of hate-motivated incidents.<sup>117</sup>

In its latest report on BiH, the ECRI explicitly encourages the authorities to continue strengthening their efforts to collect data concerning the application of criminal law in this area,<sup>118</sup> and to monitor the effectiveness of criminal law provisions against racism and racial discrimination.<sup>119</sup> All of this presumes that adequate legal provisions on hate crimes are in place and that there is some monitoring and collection of data on these crimes.

### 5.2. *Current practice*

No official consolidated statistical data exists for crimes committed out of bias in BiH.

The aforementioned 2008 Memorandum of Agreement between the ODIHR and the BiH Ministry of Security, which primarily pertains to strengthening training for police officers on hate crimes, also includes the express goal of “developing

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<sup>115</sup> See *Preventing and Responding to Hate Crimes*, *supra* note 1, p. 36, which also refers to a manual produced by the Organization of Chinese Americans, available at: <http://www.ocanational.org/images/stories/doccenter/ocahatecrime2006.pdf>

<sup>116</sup> OSCE MC Decision No. 9/09, *supra* note 5.

<sup>117</sup> OSCE MC Decision No. 13/06 and OSCE MC Decision No. 9/03: “take appropriate measures to encourage victims to report hate crimes, recognizing that under reporting of hate crimes prevents States from devising efficient policies. In this regard, explore, as complementary measures, methods for facilitating, the contribution of civil society to combat hate crimes.”

<sup>118</sup> *ECRI Report on BiH 2011*, *supra* note 22, para. 22.

<sup>119</sup> *Ibid*, para. 17.

an effective template to assist in the collection, analysis and dissemination of hate crimes data.” At time of writing, this goal has not yet been met.<sup>120</sup>

The problem mainly lies in the fact that police and Ministries of Interior do not record information on aggravated forms of criminal offences. Thus, for example, data will be recorded as to how many cases of murder were reported, but there is no information available as to how many of these were aggravated forms of murder committed with a bias motivation. A similar problem exists in the HJPC BiH’s data on cases processed by the judiciary in BiH since 2008. Again, there is no disaggregated data to indicate which cases involved charges of offences committed with a bias motivation.

Currently, of all the bias-related criminal offences provided for in the BiH CCs, it is only possible to obtain data on cases processed by the police and the judiciary involving charges of ‘incitement to hatred’ because this constitutes a stand-alone provision in the CC. According to data obtained by the Mission from the Ministries of Interior, in total, from 2008 – 2010, there were 32, 29, and six criminal reports submitted by the police for this criminal offence in the RS, FBiH and BDBiH respectively.<sup>121</sup>

## IN BRIEF

BiH needs to establish a systematic, harmonized and comprehensive mechanism for collecting data on hate crimes. Data collection on hate crimes is one of the most important tools for improving prevention as, from it, authorities can grasp a real understanding of the extent of the problem and its potential threat to society.

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<sup>120</sup> Each year ODIHR, for its annual reports on incidents and responses to hate crimes, asks participating States to indicate the number of hate crimes they have recorded. These results are then tabulated and published in the report. In the most recent report, it was clear that the section dedicated to data on hate crimes in BiH was left blank. See *ODIHR 2011 Report*, page 96 (S.B.).

<sup>121</sup> According to this data, the number of criminal reports submitted by police for this provision clause in 2008, 2009, 2010, respectively are 11, 13, and 8 in the RS; 7, 18 and 4 in the FBiH; and 0, 4 and 2 in the BDBiH.

## IV. RECOMMENDATIONS

### ***To the Legislative Authorities of the FBiH / Ministry of Justice of the FBiH:***

- Adopt the necessary legislative amendments related to hate crimes to bring FBiH legislation in line with international standards.

### ***To the BiH Ministry of Security:***

- Establish a mechanism to ensure consultation between law enforcement agencies and civil society groups and representatives of victims groups;
- Serve as the centralized collection point for all data and disaggregated statistics on hate crimes in BiH, and work towards greater harmonization in the collection of data across all jurisdictions (entity and cantonal); and
- Provide the necessary working conditions and support to the BiH National Point of Contact on Hate Crimes to fulfil this role and carry out their tasks, which include ensuring that there are reliable hate crimes records and that these are reported to the ODIHR on an annual basis.

### ***To the Entity Ministries of Interior and the Police:***

- Ensure that all law enforcement officials possess the requisite knowledge and skills to identify bias indicators and conduct a thorough, expeditious and impartial investigation;
- Include specialized training on hate crimes in the RS and FBiH Police Academies curricula, and ensure that there are ongoing training opportunities for law enforcement officials handling hate crimes;
- Ensure that the police draw the prosecutor's attention to the presence of a possible bias motivation and bias indicators, and encourage effective communication between police and prosecutors;
- Encourage community policing strategies and create close contact with leaders in

vulnerable communities, in particular returnee communities, who are frequently the victims of hate crimes; and

- Take the lead in organizing and co-ordinating efforts to initiate, develop and establish mechanisms for the collection and maintenance of data (including disaggregated data) on hate crimes at all levels. This data should include: the number and type of bias-related offences reported to the police; the number of bias-related cases prosecuted; and the sentences imposed, including in minor offence proceedings.

#### ***To the Municipal Authorities:***

- Condemn bias-motivated incidents in an appropriate and consistent manner that respects the presumption of innocence and the dignity of the individuals involved (both suspect and victim) and the respective groups they belong to, with the ultimate aim of preventing and limiting the potentially broader effects of such incidents;
- Take immediate action to counter expressions of intolerance, such as removing bias-related graffiti and supporting the reconstruction of public property damaged as a result of these crimes;
- Devise and establish comprehensive programmes or initiatives primarily aimed at raising awareness of the destructive impact of hate crimes; encourage tolerance and understanding through educational channels and policies; and work towards other general preventative measures relating to hate crimes in BiH, namely through the work of the Security Forums and Councils; and
- Establish reliable and comprehensive support services to victims of bias-motivated incidents, and cultivate relationships with other agencies and civil society organizations that can assist in victim support.

#### ***To the High Judicial and Prosecutorial Council of BiH and the Judicial and Prosecutorial Training Centres:***

- Undertake measures, including comprehensive and specialized training, to assist prosecutors and judges to adequately process hate crimes; and
- Continue to update the HJPC BiH database of court decisions in all hate crimes cases to provide a foundation for the development of robust and consistent judicial practice.

#### ***To the Judges:***

- Determine sentences that take into account the respective penalty enhancements for bias-motivated crimes in the legislative framework and provide thorough reasoning in verdicts in support of the imposed sentences. For instance, when deciding to impose a suspended sentence, the court is obliged to fully take into account certain factors stipulated by their respective CC and to provide the necessary reasoning; and

- Provide guidance on the application and meaning of the ‘incitement to hatred’ provision, for example by using the HJPC database of court decisions as a reference tool to ensure consistency in application.

***To the Prosecutors’ Offices:***

- Ensure that prosecutors possess the requisite knowledge to recognize bias motivation and are familiar with the relevant legislative penalty enhancements, aggravated forms of certain offences and the right to compensation that can be employed in situations where bias motivation is present;
- Support an effective and communicative working relationship with the police in cases of a hate-related nature, and be able to request additional investigation actions in cases when there are potential indications of bias; and
- Inform victims of hate crimes of their right to apply for compensation and to collate the necessary evidence for those claims.

***To the Civil Society Organizations:***

- Work towards supporting the victims of hate crimes through services and advocacy such as: assisting victims to report hate crimes; advocating on behalf of victims; acting as an intermediary for contact with local authorities and law enforcement/judicial authorities; and providing counselling to victims; and
- Monitor and raise awareness of hate crimes and hate-related incidents in BiH.

# ANNEX I

## Identifying a hate crime: bias indicators<sup>122</sup>

### Victim/Witness Perception

- Does the victim or witness perceive that the incident was motivated by bias?

### Comments, Written Statements, Gestures or Graffiti

- Did the suspect make comments, written statements or gestures regarding the victim's community?
- Were drawings, markings, symbols or graffiti left at the scene of the incident?
- If the target was property, was it an object or place with religious or cultural significance, such as an historical monument or a cemetery?

### Racial, Ethnic, Gender and Cultural Differences

- Do the suspect and the victim differ in terms of their racial, religious or ethnic/national background or sexual orientation?
- Is there a history of animosity between the victim's group and the suspect's group?
- Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?
- Was the victim engaged in activities promoting his/her group at the time of the incident?
- Did the incident occur on a date of particular significance (e.g. a religious holiday or a national day)?

### Organized Hate Groups

- Were objects or items left at the scene that suggest the crime was the work of a paramilitary or extremist nationalist organization?
- Is there evidence that such a group is active in the neighbourhood (e.g. posters, graffiti or leaflets)?

### Previous Bias Crimes/Incidents

- Have there been similar incidents in the same area? Who were the victims?
- Has the victim received harassing mail or phone calls or been the victim of verbal abuse based on his/her affiliation or membership of a targeted group?
- Was the victim in or near an area or place commonly associated with or frequented by a particular group (e.g., a community centre or mosque, church or other place of worship)?

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<sup>122</sup> *Understanding Hate Crimes Handbook*, supra note 2, p. 9.



## ANNEX II

### Legal provisions on ‘incitement to hatred’

#### Criminal Code of BiH<sup>123</sup>

*Article 145a - Inciting National, Racial and Religious Hatred, Discord or Hostility*

- (1) Whoever publicly incites or inflames national, racial or religious hatred, discord or hostility among the constituent peoples and others who live in Bosnia and Herzegovina shall be punished by imprisonment for a term between three months and three years.
- (2) Whoever perpetrates the criminal offence referred to in paragraph (1) by abuse of office or authority shall be punished by imprisonment for a term between one and ten years.

#### Criminal Code of the FBiH<sup>124</sup>

*Article 163 - Inciting National, Racial or Religious Hatred, Discord or Hostility*

- (1) Whoever publicly incites and inflames national, racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation of Bosnia and Herzegovina shall be punished by imprisonment for a term of between three months and three years.
- (2) Whoever commits an offence under paragraph (1) above by employing duress and torture, jeopardizing the safety of any person, exposing national, ethnic or religious symbols to derision, damaging other people’s belongings, desecrating monuments or graves, shall be punished by imprisonment for a term of between one to eight years.
- (3) Whoever perpetrates the criminal offence referred to in paragraph (1) of this Article by abuse of office or authority shall be punished by imprisonment for a term between one and ten years.
- (4) Whoever commits an offence under paragraph (2) above by abuse of his official capacity, or if the offence results in riots, violence or any other serious consequence to the coexistence of the constituent peoples and others who live in the Federation of Bosnia and Herzegovina, shall be punished by imprisonment for a term of between one and ten years.

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<sup>123</sup> BiH CC, BiH Official Gazette No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, and 8/10.

<sup>124</sup> FBiH CC, FBiH Official Gazette No. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, and 42/11.

## **Criminal Code of the RS**<sup>125</sup>

### *Article 294a<sup>126</sup> - Inciting National, Racial or Religious Hatred, Discord or Hostility*

- (1) Whoever incites and inflames national, racial or religious hatred, discord or hostility, or spreads ideas of superiority of one race or nation over another, shall be punished by a fine or imprisonment for a term of not more than two years.
- (2) Whoever commits an offence under paragraph (1) above by employing duress and torture, jeopardizing the safety of any person, exposing national, ethnic or religious symbols to derision, damaging other people's belongings, desecrating monuments or graves, shall be punished by imprisonment for a term of between six months and five years.
- (3) Where an offence under paragraphs (1) and (2) above results in riots, violence or any other serious consequence to the co-existence of the constituent peoples and others who live in the Republika Srpska, the offender shall be punished by imprisonment for a term of between one and eight years.
- (4) Any material or article bearing messages under paragraph (1) above and equipment for their production, duplication or distribution shall be subject to forfeiture.

## **Criminal Code of BDBiH**<sup>127</sup>

### *Article 160 - Inciting National, Racial or Religious Hatred, Discord or Hostility*

- (1) Whoever incites and inflames national, racial or religious hatred, discord or hostility amongst constitutional peoples and others in the Brčko District BiH, shall be sentenced to imprisonment of one to five years.
- (2) If the criminal offence referred to in paragraph (1) of this Article has been committed by coercion, molestation, jeopardizing of safety, exposing to derision of national, ethnic or religious symbols, damaging belongings of another, desecrating monuments, memorials or graves, the perpetrator shall be sentenced to prison from one to eight years.
- (3) Whoever commits the criminal offence referred to in paragraph 1 of this Code through the abuse of his position or authority or if these offences resulted in disorder, violence, or other grave consequences for the joint life of constitutional nations and others living in the Brčko District BiH, shall be punished by the sentence referred to in paragraph 2 of this Article, shall be sentenced to prison from one to ten years.
- (4) Any material or article bearing messages under paragraph 1 above and equipment for their production, duplication or distribution shall be subject to forfeiture.

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<sup>125</sup> RS CC, RS Official Gazette No. 49/03, 108/04, 37/06, 70/06, and 73/10.

<sup>126</sup> This Article was renumbered in 2010; it was previously Article 390.

<sup>127</sup> BDBiH CC, BDBiH Official Gazette No. 10/03, 45/04, 6/05, and 21/10.

### ANNEX III - Aggravated forms of criminal offences based on bias motivation

Criminal Offence	FBIH Criminal Code <sup>128</sup>		RS Criminal Code <sup>129</sup>		BDBiH Criminal Code <sup>130</sup>	
	Base Offence	Aggravated form	Base Offence	Aggravated form	Base Offence	Aggravated Form
Murder	5 years +	10 years + or long-term imprisonment	No reference to bias motivation		5 years +	10 years + or long-term imprisonment
Aggravated Murder	This criminal offence is not stipulated by the FBIH Criminal Code		10 years + or long-term imprisonment	Hatred stipulated in the base form of the offence	This criminal offence is not stipulated by the BDBiH Criminal Code	
Grievous Bodily Harm	6 months-5 years	1 year-10 years	6 months-5 years	1 year-8 years	6 months-5 years	1 year-10 years
Rape	1 year-10 years	3 years-15 years	2 years-10 years	3 years-15 years	1 year-10 years	3 years-15 years
Aggravated Theft	No reference to bias motivation		1 year-8 years	Reference to bias made in the base offence	6 months-5 years	Reference to bias made in the base offence
Robbery	No reference to bias motivation		1 year-10 years	5 years-15 years	1 year-10 years	5 years +
Aggravated Robbery	No reference to bias motivation		1 year-10 years	5 years-15 years	1 year-10 years	5 years +
Malicious Mischief	Less than 6 months or a fine	Less than 1 year or a fine	Less than 2 years or a fine	6 months-5 years	Less than 6 months or a fine	6 months-5 years
Causing Public Danger	No reference to bias motivation		6 months-5 years	1 year-10 years	1 year-10 years	Reference to bias made in the base offence

<sup>128</sup> FBIH CC, FBIH Official Gazette No. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, and 42/11.

<sup>129</sup> RS CC, RS Official Gazette No. 49/03, 108/04, 37/06, 70/06, and 73/10.

<sup>130</sup> BDBiH CC, BDBiH Official Gazette No. 10/03, 45/04, 6/05, and 21/10.

## ANNEX IV

### Overview of selected hate crimes cases monitored by the OSCE Mission<sup>i</sup>

ii	Length of Proceedings <sup>iii</sup>	Court	Charge	Stipulated Sentence for Charge	Outcome	Other relevant info.	Brief Description of Case <sup>iv</sup>
1.	October 2009 - May 2011	Prijedor BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (2) RS CC</i>	6 months to 5 years imprisonment	6 months imprisonment, suspended 1 year and 6 months		In 2004 and in 2006, the accused (Croat) intercepted 3 hunters (1 in the first incident and 2 in the second) with <b>weapons</b> in his hands (a wooden stick and a rifle) and began <b>insulting</b> the hunters (Serbs) on ethnic grounds, cursing "Serbland" and "Serb police", stating that "this land belongs to Croats" and that "we are still enemies."
2.	January 2011	Srebrenica BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 294a (1) RS CC</i>	Fine, or up to 2 years imprisonment	2 months imprisonment, suspended 1 year	Warrant for Pronouncement of Sentence	In 2010, the accused (Bosniac) entered the yard and <b>attempted to enter by force</b> the house of a Serb resident in the municipality of Srebrenica while <b>insulting</b> the owner of the house on ethnic grounds and asking him to come out and fight with him, and <b>threatening</b> to "slaughter all Serbs" there.
3.	October - December 2010	Travnik MC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 163 (2) FBiH CC</i>	1 year to 8 years imprisonment	1 year imprisonment, suspended 1 year and 6 months	Plea agreement signed	In 2004, the accused (Croat) wrote a letter to the President of the Municipal Council of Vitez (Bosniac) stating that "call for prayers from nearby mosques are shouting", that he will perform "terrorist attacks in all the settlements populated by Muslims", that he will "destroy all the mosques", as well as <b>threatening to kill</b> the addressee of the letter.

i This table provides only an overview of some of the cases monitored by the Mission, which involved court proceedings for charges of 'incitement to hatred' and which ended in a conviction.

ii Each number in this table corresponds to one single case. Whenever there is more than one accused in a single case, with different charges for each, this is reflected in different lines, separated by a bold line within one same case/number. When the charges and imposed sentences were the same for more than one accused, that information is provided in one single line.

iii The dates provided in this column refer to the date when the indictment was confirmed and the date when the proceedings ended. The selected cases are ordered by reverse chronological order from the date when the proceedings ended.

iv The information provided in this column is taken from the indictments in these cases.

4.	September 2009 - November 2010	Zvornik BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1)/294a RS CC</i>	Fine, or up to 2 years imprisonment	BAM 800		In 2009, in Zvornik, there was a dispute over the appointment of the president of the local community office. During this dispute, the accused (Serb) <b>insulted</b> the victim (Bosniac) by calling him a "Turk."
5.	June - July 2010	Novi Grad BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Fine, or up to 2 years imprisonment	6 months imprisonment, suspended 2 years	Warrant for Pronouncement of Sentence	In 2007, the accused (Bosniac) <b>insulted</b> 4 persons (Serbs) present in the same restaurant on ethnic grounds, saying that "Serbs should be killed and expelled over the river Drina" and that he was going to teach his son how to kill Serbs to avenge the death of his own grandfather who was an <i>Ustaša</i> and was killed by partisans in World War II.
6.	October 2009 - April 2010	Brčko BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 160 (1) BDBIH CC</i>	1 year to 5 years imprisonment	1 year imprisonment, suspended 3 years	Damage compensation was granted Defendant was obliged to pay BAM 1,643 to the Islamic community in BDBIH.	In 2009, the accused (Serb) wrote "Knife, Wire, Srebrenica" and the "4S" sign on a Mosque in Brčko. On another occasion the accused made and distributed leaflets that contained the following <b>offensive content</b> : "Serbs were followed up by the authorities," the Mayor (Bosniac) was called "bajija", "Muslims and Croats should be slaughtered if they mess with Serbs" and "Brčko belongs to Serbs." The accused gave these leaflets to two primary school pupils.
			Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 160 (2) BDBIH CC</i>	1 year to 8 years imprisonment			

October 2009 - April 2010	Brčko BC	Malicious Mischief Art. 287 (g) BDBIH CC	Fine, or up to 1 year imprisonment	3 months imprisonment, suspended 2 years	The accused had previous disputes with the injured party based on their nationality differences. The accused was once fined BAM 200 because of these past actions and had been convicted before for 7 criminal acts, which were mostly acts of violent behaviour.	In 2009, the accused (Bosniac) approached the house of the victim (Serb) and broke the window, causing <b>BAM 80 worth of damage</b> , while insulting the victim on ethnic grounds.
7.						
January - February 2010	Brčko BC	Inciting National, Racial or Religious Hatred, Discord or Hostility Art. 160 (1) BDBIH CC	1 year to 5 years imprisonment	3 months imprisonment, replaced by a fine of BAM 4,500	Plea Agreement Signed	In 2009, the accused (Serb) made his friend (Serb) write a message on a receipt, which was in his name, saying that "Turks you will not be at peace anymore, we Serbs will bring to your graves d....k, instead of flowers" and placed it at the entrance door of a mosque.
8.						
May 2009 - January 2010	Srebrenica BC	Inciting National, Racial or Religious Hatred, Discord or Hostility Art. 390 (2) RS CC	6 months to 5 years imprisonment	6 months imprisonment, suspended 2 years		On two occasions in 2009, the accused (Bosniac) arrived at a settlement in Srebrenica, where he insulted the Serb residents on ethnic grounds, cursing their "Chetnik's mother and their children" and threatened that he would kill them with a hand grenade.
9.						

10.	August - November 2009	Zvornik BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (2) RS CC</i>	6 months to 5 years imprisonment	6 months imprisonment, suspended 1 year	The accused (Bosniac) removed a Serbian flag from a vehicle used for a wedding cursing "Serb's mother" and the "Serb nation" (loc. srpstvo) and then broke the rear light of the car. The car had BAM 400 worth of <b>damage</b> as a result.
11.	December 2008 - November 2009	Zvornik BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Fine, or up to 2 years imprisonment	3 months imprisonment, suspended 2 years	In 2008, the accused (Bosniac) was approached by the victim (Serb) on an issue regarding illegal foresting. In response, the accused <b>insulted</b> him on ethnic grounds and <b>threatened</b> him saying "let me live, f... your Chetnik mother, you have slaughtered enough, if you enter my house I will kill you".
12.	November 2006 - October 2009	Zvornik BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (2) RS CC</i>	6 months to 5 years imprisonment	6 months imprisonment, suspended 1 year and 6 months	In 2004, the three accused (Serbs) were sitting at a café-bar in Zvornik when three individuals (Bosniacs) walked past. The three accused <b>verbally insulted</b> the victims calling them "Turks", cursing their "Turk mother" and saying "Are they Turks? – Slaughter them!". When the victims started to run away, the accused began chasing them, throwing stones in their direction and <b>physically attacked</b> a woman in the group hitting her with their fists and legs.
13.	January 2006 - June 2009	Zvornik BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Fine, or up to 2 years imprisonment	BAM 500	In 2005, the accused (Bosniacs) while returning from a party walking through a village inhabited by Serb population, were singing <b>offensive songs</b> about Serbs with reference to Orthodox Christmas, and cursing "Serb and Chetnik's mother" and religious symbols (ikona ikandilo). This resulted in <b>physical conflict</b> between the accused and inhabitants of that village.

14.	January - April 2009	Srebrenica BC	Bodily Harm <i>Art. 155 (1) RS CC</i>	Fine, or up to 1 years imprisonment	3 months imprisonment, suspended 1 year	In 2008, in Srebrenica, the accused (Bosniac) <b>verbally insulted</b> an individual (Serb) by saying; "F... you Chetnik's child and mother, we know you, we would slaughter you in Potocari" and began pushing him. Simultaneously, another accused (Bosniac) punched the victim in the head. The two accused continued to <b>physically assault</b> the victim afterwards.
			Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Fine, or up to 2 years imprisonment		
15.	January - April 2009	Srebrenica BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (2) RS CC</i>	6 months to 5 years imprisonment	BAM 4,000	Over the course of 2006 and 2007, the accused (Bosniac) made several phone calls to the victim (Serb) <b>threatening to harm him and his family</b> by saying "f... your Chetnik mother, I will kill your family and children. I will burn your house and will set you on fire when you come to the café bar".
				Plea agreement signed		
16.	January 2007 - March 2009	Bijeljina BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Fine, or up to 2 years imprisonment	BAM 2,000 (converted to 40 days imprisonment upon non-payment)	In 2006, during an Orthodox Christmas morning prayer the accused (Serb), who was working at a carousel, played a song through the loudspeaker, mentioning "I do not like you Alija, because you are 'Baliija'" and other <b>insulting</b> content.
17.	December 2007 - January 2009	Srebrenica BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Fine, or up to 2 years imprisonment	BAM 500	In 2007, the two accused (Serbs) <b>verbally insulted</b> police officers (Bosniac). The first accused said to one policeman: "What do you want Turk? You are smaller than a rat..." and then <b>threatened</b> to beat him and cut off his head. The second accused said, "I don't know what you Turks want, our Serbian region is 600 years older than yours, you are not even Turks, you are converts to Islam."



18.	February 2006 - December 2008	Zvornik BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Fine, or up to 2 years imprisonment	BAM 800 (converted to 16 days imprisonment upon non-payment)	In 2005, the accused (Bosniac) verbally insulted a female victim (Serb), her husband and her son on ethnic grounds calling them "Chetniks' dukes".
19.	September 2007 - July 2008	Brčko AC	Malicious Mischief <i>Art. 287 (2) BDBiHCC (refers to Art. 31 CC BDBiH Accomplices)</i>	Fine, or up to 1 year imprisonment	4 months and 15 days imprisonment	In 2007, on different occasions, the 4 accused (Serbs) drew graffiti on several public and private buildings in Brčko. Such graffiti included: "Serbia," the "4S" sign, the Swastika, "Knife, Wire, Srebrenica" and "Kosovo Serbia".
			Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 160 (2) BDBiHCC (refers to Art. 31 CC BDBiH Accomplices)</i>	1 year to 8 years imprisonment		
19.			Malicious Mischief <i>Art. 287 (2) BDBiHCC (refers to Art. 31 CC BDBiH Accomplices)</i>	Fine, or up to 1 year imprisonment	3 months and 15 days	
			Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 160 (2) BDBiHCC (refers to Art. 31 CC BDBiH Accomplices)</i>	1 year to 8 years imprisonment		

20.	January 2007 - March 2008	Konjic MC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 163 (2) FBiH CC</i> Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 163 (2) FBiH CC</i> Illegal Possession of Weapons or Explosive Substances <i>Art. 371 (1) FBiH CC</i>	1 year to 8 years imprisonment 1 year to 8 years imprisonment Up to 3 years imprisonment	8 months imprisonment 8 months and 15 days imprisonment		In 2006, the first accused (Croat) threw a <b>hand grenade</b> from a moving vehicle driven by the second accused (Croat). The hand grenade landed in the yard of a mosque, exploded and damaged the house of an imam. In addition, windows were broken on a residential building across the street.
21.	January 2006 - February 2008	Srebrenica BC	Obstructing an Official in the Execution of His Official Duty <i>Art. 387 (2) RS CC</i> Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i> Bodily Harm <i>Art. 155 (1) RS CC</i> Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Up to 3 years imprisonment Fine, or up to 2 years imprisonment Fine, or up to 1 years imprisonment Fine, or up to 2 years imprisonment	5 months imprisonment, suspended 2 years BAM 800		A number of events took place: <ul style="list-style-type: none"> <li>In 2005, the first accused (Serb) <b>physically assaulted</b> a Bosniac in front of a café and caused him bodily harm. Additionally, the accused threw the victim onto a car next to the café which resulted in material damage (800 BAM) for the owner of the car.</li> <li>The second, third and fourth accused (Serbs) tried to prevent the policemen present from stopping the fight at the café, and the first accused <b>threatened</b> to beat up the policemen.</li> <li>The first, second and third accused (Serbs) <b>insulted</b> the Bosniac individuals sitting at the café on ethnic grounds cursing "Turk and Balija's mother", and made similar insults towards the Bosniac policemen.</li> </ul>

22.	October 2004 - February 2007	Mostar MC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 163 (2) FBiH CC</i>	1 year to 8 years imprisonment	1 year and 6 months imprisonment	Plea agreement signed	In 2004, in a village in the municipality of Mostar, the accused (Croat) approached a local mosque and fired a hand-held rocket launcher at it. <b>Damage</b> was caused to the wall and interior of the mosque.
23.	September 2006 - January 2007	Srebrenica BC	Inciting National, Racial or Religious Hatred, Discord or Hostility <i>Art. 390 (1) RS CC</i>	Fine, or up to 2 years imprisonment	6 months imprisonment, suspended 3 years		In 2006, the accused (Bosniac) went to a house belonging to him, temporarily occupied by a Serb family, and started to shout at them "Move out!", while simultaneously banging on a piece of sheet metal. The accused also told one family member "that he would slaughter all people on the way to Bratunac, since his father had been slaughtered in Potocari," and continued to <b>insult them on ethnic grounds</b> . The accused additionally <b>threatened to kill</b> a Serb neighbour.