

V&S *90 Years
Jaar*



VICTIMOLOGY

IN SOUTH AFRICA

Editors

Linda Davis & Rika Snyman

Van Schaik
PUBLISHERS

Dedicated to all individuals who have
been harmed by crime, violence and
abuse of power in South Africa

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PREFACE

South Africa's history of apartheid (and the culture of violence associated with it), political instability, internal conflict, liberation struggles and the socio-economic conditions (such as poverty and the country's high unemployment rate) have resulted in a high crime rate and the violent victimisation of innocent individuals. The rights and needs of crime victims received very little attention prior to 1994. The situation has, however, changed, and the current concern in South Africa for citizens who suffer the direct consequences of criminality is reflected in the spate of conferences dealing with crime, the prominence of victim issues in local government elections and the way in which research is applied in action. Since 2001, the government has prioritised fighting crime and victimisation as areas of critical concern and has increased expenditure for the safety and justice sectors. Within this context it is evident that the time is ripe to take stock of the position of victims and the stance of victimology in South Africa.

The selection of authors and topics for this book was an arduous task, as only authors who are well-respected researchers and/or practitioners considered experts in the field of victimology were asked to contribute.

The book is written in a manner that makes it useful and required reading for a wide spectrum of readers, ranging from practitioners, researchers, policymakers and role-players in the criminal justice system to any other individual interested in the plight of victims of crime in South Africa. Since the book could also be used in various learning contexts, core issues have been added and critical-thinking questions formulated to encourage further debate. It is our hope that this anthology of writings will be a meaningful addition to other available literature in the field of victimology and that it will not only extend knowledge but also stimulate further South African research on the topics covered.

We are grateful for the support, encouragement and assistance of Rhodé Odenaal from Van Schaik Publishers, and that of Tania Steyn, a special friend and colleague. We would also like to thank the two local and two international reviewers whose constructive recommendations contributed to the value of the book. Finally, our appreciation is extended to our respective families for their support during this exciting project.

Linda Davis
Rika Snyman
June 2005

ABOUT THE AUTHORS

Lillian Artz is a criminologist and director of the Gender, Health and Justice Research Unit in the Faculty of Health Sciences at the University of Cape Town. She spent eight years in the Faculty of Law at the University teaching and conducting research in the Institute of Criminology. Her research and teaching focus primarily on special issues relating to women and criminal justice, including sexual offences, domestic violence, commercial sex work, and feminist research methods and ethics. Her work includes law reform and monitoring the implementation of legislation in relation to rape and domestic violence.

Mike Batley has 18 years' experience as a social worker. He has spent most of this time in the Department of Social Services and Population Development, with several years as a probation officer and manager of probation services in Pretoria. It was in this capacity that he chaired the Family Group Conference Pilot Project of the Inter-Ministerial Committee on Young People at Risk from 1996–1997. He co-founded the Restorative Justice Centre in 1998, and has been executive director since 2001. He presents and writes regularly on restorative justice, is chairperson of Restorative Justice Initiative Southern Africa and is a member of the driver group of the Child Justice Alliance.

Karen Booyens is a lecturer in the Department of Criminology, University of Pretoria. She holds a Master's degree in Criminology from the University of Cambridge, United Kingdom and is currently registered for her doctoral studies with the title: "A psycho-criminological investigation into the perceptions and experiences of prisoners regarding male-on-male rape in Pretoria Central Prison". She has attended and delivered papers at various conferences, and has published numerous articles in scientific journals. Twice weekly she presents life skills programmes to awaiting-trial juveniles at Pretoria Local Prison.

David Bruce is a senior researcher at the Centre for the Study of Violence and Reconciliation

(CSV) in Johannesburg, where he has worked since 1996. He has a Master's in Management (Public and Development Management) from the University of the Witwatersrand.

Dellene Clark is an admitted advocate of the High Court of South Africa. Her academic qualifications include the following degrees: BLC; LLB and LLM, all obtained through the University of Pretoria. She is a principal state law advisor on the establishment of the South African Law Reform Commission.

Linda Davis is an associate professor in Criminology at the University of Pretoria. She holds a BA (SW), BA (Hons) and MA (in Criminology), all cum laude. She completed her DPhil degree (in Criminology) on vehicle hijacking, and has authored and co-authored numerous articles and chapters in web-based and other publications relating to this and other topics. Her academic fields of interest are victims of crime, violent crime and crime reduction. She is currently serving as vice-president of the World Society of Victimology, vice-president of the Criminological and Victimological Society of Southern Africa and she is the vice-chair of the South African Qualifications Authority Standards Generating Body (SGB) for Criminology and Criminal Justice.

Rina Delpoit is an associate professor in the Department of Social Work at the University of Pretoria. She previously taught gerontology and currently her teaching assignments include research methodology and community work. She is the co-author of two research methodology textbooks, as well as an international book on qualitative research ethics. She has supervised many postgraduate students, delivered different international papers and published in different peer-reviewed journals.

Amanda Dissel holds a BA and an LLB degree and is the programme manager of the Criminal Justice Programme at the Centre for the Study of Violence and Reconciliation. Her interest lies in

research and policy on corrections and intervention work with young offenders.

Marthi du Plessis is a crime prevention project manager at the Council for Scientific and Industrial Research Crime Prevention Centre. Skills and areas of expertise include crime and violence prevention (particularly sexual violence). She conducts external monitoring and evaluation of various projects, programmes and interventions (including both primary and secondary research and analysis), in the above-mentioned fields.

Sasha Gear is a researcher at the Centre for the Study of Violence and Reconciliation in Johannesburg where she has done extensive work to develop an understanding of the current situations of ex-combatants in South Africa, as well as on the issues of sex and sexual violence in men's prisons. She has a BA from the University of the Witwatersrand.

Stefan Frederick Grobler holds a BA degree in Police Science from Unisa. He was a member of the South African Police Service (SAPS) for 40 years, where he served in the Detective Service, the Fraud Unit, the Commercial Branch, Special Investigations and Management Services, and set up and commanded the National Anti-Corruption Unit. He held the rank of director and left the SAPS in 2003 to join the Special Investigating Unit, where he is currently the training mentor.

Marc Groenhuijsen is head of the Department of Criminal Law and Criminal Procedure at Tilburg University in the Netherlands. For many years he has been chairman of the Dutch Victim Support Organisation and of the Executive Committee of the European Forum for Victim Services.

Barbara Holtmann heads the Social Crime Prevention Unit of the Council for Scientific and Industrial Research Crime Prevention Centre. She develops capacity and programmes in support of the criminal justice system (CJS) through crime prevention partnerships, with specific focus on youth violence, youth justice, violence prevention and local crime prevention strategies.

Veronica Hornschuh completed a BA (Law) degree at Rhodes University in Grahamstown in 1967 and a Secondary Education Diploma at the University of Stellenbosch in 1968. While teaching in the Eastern Cape, she attained a BProc

degree at Unisa in 1982 and an Honours degree in Criminology at the University of Pretoria in 1997. She is currently working on her Master's degree on farm attacks.

David Kgosimore is a lecturer in Criminology at the University of the North. He holds an MA in Criminology and is currently working on his PhD in Criminology on workplace violence. He is a member and past president of the Criminological and Victimological Society of Southern Africa and a member of the Standards Generating Body (SGB) for Criminology. He has published more than ten articles in accredited journals and has participated in various national and international conferences.

Harriët Klopper is a lecturer in Criminology at the University of Pretoria. She holds a BA (Hons) and MA (in Criminology), all cum laude. She is also involved in the presentation of various courses to both public and private sectors on forensic nursing. She is secretary of the South African Qualifications Authority Standards Generating Body for Criminology and Criminal Justice and also an executive committee member of the Criminological and Victimological Society of Southern Africa. Her academic fields of interest are forensic criminalistics, female crime and contemporary crime issues.

Barbara Louw is the chief executive officer of Inter Trauma Nexus, managing 850 crisis supporters in 33 teams. She is a public speaker and lecturer on trauma, victimisation and life skills, and has a private practice. She is also a member of the South Africa Integrated Traumatological Council, the Council of Counsellors of South Africa, the Christian Counsellors Association of South Africa and the International Institute for Trauma and Crisis Intervention. She is furthermore a BTh graduate and registered candidate for a Master's in Sociotherapy (Narrative Therapy) for victims of rape in South Africa.

Alice Maree is responsible for research and strategy development at the South African Banking Risk Intelligence Centre (SABRIC), a Section 21 company. She is an executive committee member of the Criminological and Victimological Society of Southern Africa.

Mandisa Mbali is an Aids researcher and activist based at the Centre for Civil Society at

the University of KwaZulu-Natal in Durban. She holds a Master's degree in History and has written on the political history of Aids and Aids policy-making in post-apartheid South Africa.

Anthony Minnaar has been a senior researcher and the postgraduate student co-ordinator for the Department of Security Risk Management at the School of Criminal Justice in the College of Law at Unisa since January 2004. He was appointed professor of Criminal Justice Studies on 1 July 2003. Between March 1998 and December 2003 he was a senior researcher at the Institute for Human Rights and Criminal Justice Studies at the former Technikon Southern Africa, where he undertook research on a variety of topics within the broad criminal justice system, *inter alia* border controls, illegal motor vehicle importations, migrants' rights, vehicle hijackings, use of force by police, informers and witness protection programmes. Most recently his research has been on the struggle to legislate for stricter gun controls and the declaring of certain persons as unfit to possess a firearm; security measures at ports of entry; and the role of the private security sector in public policing and crime prevention.

Juan Nel is a clinical and research psychologist; director, Centre for Applied Psychology, Unisa; and leader of its Short Course in Victim Empowerment and Support. He is a founding member of and serves on both the National Crime Prevention Strategy Victim Empowerment Programme Management Team and the South African Qualifications Authority Standards Generating Body for Victim Empowerment.

Robert Peacock holds a Master's degree from the University of Pretoria and is currently reading for his PhD in the specialisation fields of identity and institutional victimisation as senior lecturer in Criminology and Criminal Justice at the University of Monash. He has published extensively in international and local scientific journals, and his research findings on victimisation, personality and punishment have been presented at various international conferences and symposia. He has also presented guest lectures abroad (in Spain and Croatia) on the topics of institutional and structural victimisation.

Zuzelle Pretorius is the deputy director at Themba Lesizwe, the South African Network of Trauma Service Providers (SANTSEP). Previ-

ously she was the national programme manager for the Business Against Crime (BAC) Victim Support Programme, which entailed the establishment of community-based volunteer networks linked to local community police forums and police stations. She matriculated in 1983, obtained her BPrimEd/BA at the University of Pretoria and her BA (Hons) degree in Psychology through Unisa. From 1989–2000 she was a member of the South African Police Service and responsible for the development of the South African Police Service Victim Empowerment Programme.

Britta Rotmann is currently the legal advocacy and lobbying coordinator for the Sex Workers Education and Advocacy Taskforce (SWEAT). She holds a BA and an LLB from the University of the Witwatersrand. She has worked as an associate at the Labour Courts and Labour Appeal Court for acting judges of the Labour Court, as well as for the Judges-President, Judges S Ngcobo and R Zondo. After completing her articles at Webber Wentzel Bowens in 2002, she was admitted as an attorney in May 2002. She worked as an associate at Webber Wentzel Bowens up until December 2003, specialising in labour law, immigration law and HIV/Aids in the context of labour law. She started at SWEAT on 1 June 2004 and her work includes advocating for legal changes to the current laws criminalising sex work, lobbying parliamentarians and the Department of Justice to support decriminalisation; monitoring other laws that impact on the day-to-day lives of sex workers, such as by-laws, and police harassment of sex workers; monitoring other cases which involve aspects of sex work; as well as attempting to organise the industry so that guidelines may be established for indoor sex workers.

Divya Singh is currently the director of the School of Criminal Justice, Unisa. She has practised as an advocate of the High Court, South Africa and has done extensive research in the field of gender and domestic violence, both from a social and legal perspective.

Dee Smythe is a senior researcher at the Gender, Health and Justice Research Unit and a JSD candidate at Stanford Law School. Her work focuses on criminal justice policy in relation to violence against women, human rights, and the relation-

ship between violence, development and the rule of law. Her most recent work involves the examination of the levels of criminal justice attrition of rape cases.

Rika Snyman is a professor at Unisa's School for Criminal Justice. Her attachment to victimological issues in South Africa is on different levels, and ranges from the focus of her doctorate to various publications in journals and papers at national and international conferences. She participated in the crafting of victim empowerment in South Africa through membership of the National Victim Empowerment Committee of the South African Law Reform Commission, as well as organising the XIth International Symposium on Victimology of the World Society of Victimology. The theme of this symposium – *New Horizons in Victimology* – epitomises her vision for victimology in the future.

Gerhard Swanepoel is the founder-chief executive officer of CROWA Global (the Criminological Research Centre for Wildlife and Ecological Crime). As an ecological criminologist/victimologist he has presented papers and published globally on topics in the fields of Eco-Humanities and Eco-Criminal Justice. He serves as a member of

SAQA (the South African Qualifications Authority) on the Standards Generating Bodies for Conservation as well as Criminology and Criminal Justice.

Anna van der Hoven is an associate professor in the Department of Criminology at Unisa. Her main fields of study and interest are victims of crime, crimes of violence and forensic criminology. She is an executive committee member of the Criminological and Victimological Society of Southern Africa.

Tessa van Wijk is a South African traumatologist in private practice and has been a registered professional social worker for 14 years, with a PhD in Psychology. Apart from lecturing in Traumatology, she has made numerous appearances on national television and has participated in many radio programmes. She has presented workshops all over South Africa with a specific focus on emotional baggage. Furthermore, she has implemented a national trauma network to assist trauma counsellors and victims, and has acted as a key participant in the Committee of Inquiry into Farm Attacks and Farm Murders. She is the founder and director of the Rand Afrikaans University Trauma Centre.

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17

Hate crimes: a new category of vulnerable victims for a new South Africa

JUAN NEL

17.1 Introduction

Following decades of oppressive, authoritarian and apartheid rule, the year 2004 marked the celebration of ten years of democracy in South Africa. Internationally, the “new” South Africa is commended for its peaceful and rapid transformation to becoming an open society, founded on democratic values and a Constitution that, among others, enshrines the principles of human dignity, achievement of equality and social justice.

In stark contrast with constitutional guarantees of freedom and respect for the fundamental human rights of all, reports of endemic crime and corruption dominate news headlines. While hate crime is not recognised as a separate crime category in current South African legislation, media reports on incidents of prejudice-motivated hate speech and victimisation have also increased sharply. Apparent failure to protect the many victims of crime not only instils further uncertainty and fear, but also impacts negatively on the image of the country as miracle “rainbow nation”.

Many countries consider hate crimes a priority crime that justifies special measures to give

Core issues in this chapter

- ▶ Internationally accepted criteria for the classification of an incident as a hate crime
- ▶ The extent of hate-motivated victimisation
- ▶ The extent to which the impact of crimes of hate differ from that of other crimes
- ▶ Factors that contribute to hate victimisation
- ▶ Current developments, trends and controversies in relation to hate crime legislation in South Africa with reference to the country’s recent political history
- ▶ Interventions for the reduction or prevention of hate crimes

Key terms

democracy
equality
hate-based victimisation
hate crime
hate crime legislation
hate incidents
hate speech
human rights
identity
institutionalised discrimination
message crime
prejudice
race-based victimisation
secondary victimisation
sexual orientation-based crimes of hate

effect to anti-hate crime legislation. This chapter considers the appropriateness of hate crime as a reporting and sentencing category for post-apartheid South Africa and contextualises controversies surrounding proposed anti-hate speech legislation by referring to “race” and “sexual orientation”, two grounds for hate victimisation of particular relevance to the rapidly transforming nation and African continent.

17.2 Defining hate crimes, hate incidents and hate speech

This section considers the international classification criteria for hate crimes and hate incidents, and discusses controversies surrounding the proposed South African anti-hate speech legislation.

17.2.1 An international perspective on hate crimes

Hate crimes may be defined as extreme expressions of prejudice through violent criminal acts that are committed against people, property or organisations because of the group to which they belong or identify with. Perpetrators seek to demean and dehumanise their victims whom they consider different from them based on their actual or perceived race, ethnicity, gender, age, sexual orientation, disability, health status, nationality, social origin, religious convictions, culture, language and/or other characteristic (American Psychological Association, 1998:1; Turner, n.d.).

Perpetrator prejudice is what differentiates a hate crime from another act of violence. Violence directed at the identity of the victim and motivated by hatred not of the individual but of the group to which they belong further distinguishes hate crime from other crimes. Hate crime can thus be seen as an identity crime (Harris, 2004:11). The message conveyed by perpetrator actions impacts beyond direct victims to others of the targeted group. Crimes of hate may thus also be defined as message crimes (American Psychological Association, 1998).

While displays of hostility or opposition to the victim can be in the form of violence or a crime, prejudice can, however, also be expressed in other subtler forms of victimisation that fall short

of being punishable under the prevailing laws of many countries, including the United States and South Africa (Human Rights Campaign, 2004; South African Human Rights Commission, 2003). In this regard, the International Association of Chiefs of Police distinguishes between “hate crimes” and “hate incidents”. While hate crimes constitute violent acts (such as battery, sexual assault, assault with a deadly weapon, murder or criminal damage to property), hate incidents include hostile or hateful speech (such as harassment, slurring, name calling and other forms of verbal and psychological abuse), that cannot be classified as criminal acts or illegal in many countries. Only when these bias-motivated behaviours “... directly incite perpetrators to commit violence against persons or property, or if they place a potential victim in reasonable fear of physical injury” does the International Association of Chiefs of Police consider them criminal (Turner, n.d.). While hate-based victimisation may be in the form of an isolated incident, such victimisation most often occurs in contexts of sustained harassment including daily, ongoing acts of taunting, constant bullying or conflicts between people known to each other within specific settings, such as a school or a community (Eliason, 1996:191; Mjoseth, 1998).

17.2.2 International standards for human rights and non-discrimination

Harris (2004:16) postulates that the term “hate crime” frames prejudice as a concept with legal, moral and specific practical implications. The term “hate crime” conveys a social message that a) this is the violence of prejudice, and b) it is to be condemned. As such, the concept comments directly from a human rights framework on the immorality of such violence. It also comments on the moral values of the society in which the term is applied.

Cruel, inhuman or degrading treatment and torture are prohibited in numerous international standards, including the Universal Declaration of Human Rights – the cornerstone document of modern human rights – and the International Covenant on Civil and Political Rights¹

1 The Universal Declaration of Human Rights (Resolution 217 A (III) adopted by the United Nations General Assembly in 1948), the International Covenant on Civil and Political Rights (Resolution 2200 A (XXI), adopted in 1966) and the International Covenant on Economic, Social and Cultural Rights (Resolution 2200 A (XXI) adopted in 1966) together constitute the International Bill of Human Rights (Mann et al., 1999:453, 465).

(Amnesty International, 2001:7; Mann, Gruskin, Grodin & Annas, 1999:9). A human rights approach seeks to describe and then to promote and protect the societal-level prerequisites for human well-being in which each individual can achieve his or her full potential. Discrimination compromises or threatens the physical and mental health and well-being of the victims thereof and may result in denial of access to care, inappropriate therapies or inferior care. Prejudice and hate are incompatible with the principles of equality and respect for fundamental human rights and are thus considered highly undesirable in democratic societies (Mann et. al., 1999:2).

While crimes of hate are not new, laws that punish perpetrators specifically for their hate or prejudice were only introduced in recent years. In the United States the term “hate crime” was first introduced in legislation in 1985, but it was the Hate Crimes Statistics Act (Public Law 102-275 of 1990) that brought about the new crime category (Siasoco, 1999; Turner, n.d.). This Act encourages American people to report hate crime data to the FBI in the interest of protecting and fostering civil rights (Federal Bureau of Investigation, 2001). In the United Kingdom and several Scandinavian countries the category of hate crime is similarly used for reporting prejudice-motivated criminal actions. In these countries evidence of prejudice as motivation for crime is an aggravating factor that justifies harsher sentencing (Harris, 2004:18; Mjoseth, 1998). Interestingly, however, the definition of hate crime varies between, and in some instances within, countries. While hate crime as category has become more inclusive over time, certain of the grounds for prejudice are strongly contested in different parts of the world. This has created a “prejudice hierarchy” (Harris, 2004:19) in which race-based hate crime is the oldest and the largest, and its inclusion in the hate crime category currently internationally the least contested. The inclusion in anti-hate crime legislation of “newer” forms of recognised prejudice, such as those motivated by sexual orientation, mental ill health, physical disability and HIV status, are, however, more contentious and controversial in certain societies or contexts (Harris, 2004:19; Siasoco, 1999).

The International Convention on the Elimination of All Forms of Racial Discrimination² sets

the international standard in respect of race and racism. Amnesty International, a worldwide movement of people who campaign for human rights, is adamant that governments also have an international obligation to protect citizens from all other forms of violence in the home or in the community, including violence inflicted because of real or perceived sexual orientation (Amnesty International, 2001:5). The constitutions of Canada, Ecuador, Switzerland, Portugal and South Africa include non-discrimination on the basis of sexual orientation. Canada furthermore passed a measure in 2004 to add sexual orientation coverage to the nation’s hate crime laws, which will protect lesbian and gay persons from incitement of hatred and genocide under the Criminal Code (Wockner, 2004b:1). However, in stark contrast to race, non-discrimination on the basis of sexual orientation may be one of the most contentious and contested characteristics to be included in anti-prejudice legislation (Harris, 2004:19).

The term “sexual orientation” refers to all sexual orientations: homosexuality, bisexuality and, importantly, also heterosexuality, but internationally, activists campaigning for non-discrimination on the grounds of sexual orientation generally do not explicitly include heterosexuality. They use the acronym “lgbt” in reference to lesbian, gay, bisexual, and importantly, also to transgender persons, or those whose gender presentation does not conform to the norm or who have a compelling sense that their gender identity does not conform with the physiological characteristics of their sex (Ministerial Advisory Committee on Gay and Lesbian Health, 2002:3). Very recently, it has also become standard practice in activist, and increasingly also in academic, texts to include intersex persons (i.e. those previously referred to as “hermaphrodites”, who are born with reproductive organs and/or chromosomes that are not exclusively male or female) in the sexual orientation collective, referred to by the acronym “lgbti” (Ministerial Advisory Committee on Gay and Lesbian Health, 2002:3). Although neither transgender and intersex are scientifically classified under sexual orientation, similarities in experiences of discrimination and marginalisation in a hetero-normative or heterosexist society (one that holds the belief that everyone is and should be heterosexual and that other types of sexuality are unhealthy, unnatural

2 Resolution 1904 (XVIII) was adopted by the United Nations General Assembly in 1966 (Mann et al., 1999:465).

and a threat) are considered enough justification for their inclusion in efforts to ensure equality before the law and equal protection by the law, irrespective of sexual orientation. According to Amnesty International (2001:62), incitement to discrimination, hostility or violence against lgbt people should be prohibited in accordance with the international standards prohibiting advocacy of hatred and anti-discrimination standards.

Regardless of the international standard, sexual orientation is not included in anti-discrimination legislation either in the United Kingdom or in several states of the United States (Harris, 2004: 19). Recognising that the criminalisation of homosexuality can act as a licence to torture and ill-treat, Amnesty International (2001:12–13) reports that no less than 70 countries prohibit same-sex relations and that perpetration still incurs the death penalty in some of them. In the European Union, the International Lesbian and Gay Association Europe (2004:6) has expressed concern over high levels of violence experienced by lgbt persons in nine countries that are new member states, and another that is a candidate for accession to the European Union.

Within the newly established African Union, South Africa has taken the lead in propagating the idea of an “African Renaissance” founded on democratic principles and human rights for all. As in the European Union, conflicting legal positions on sexual orientation in member states of the African Union may well become a point of contestation. In 1994 South Africa was first in the world to render constitutional protection on the basis of sexual orientation. The majority of countries on the African continent, however, not only continue to outlaw same-sex relations but also view them as highly undesirable, if judged by the severe sentences imposed on perpetrators. Anti-gay pronouncements and hate speech by African leaders may have increased. In 1995 President Robert Mugabe of Zimbabwe, publicly condemned lesbians and gays as “less than human” and “lower than dogs and pigs” (Amnesty International, 2001:4; Peacock, 2003: 4). In another neighbouring country, Namibia, the Home Affairs Minister (Jerry Ekandjo) in 2000 incited police officials to “eliminate” gay men and lesbian women “from the face of Namibia” (Amnesty International, 2001:5; Reuters, 2004). During 2002 and 2003 much international publicity was given to the persecution of a group of gay men in Egypt. In 2004 Zanzibar, part of the

nation of Tanzania and primarily Muslim, outlawed homosexual acts, punishable with 25 years in prison for men and seven years in prison for women. Nigeria punishes gay sex with up to 14 years in jail; however, the 12 northern states that have adopted Islamic shariah law punish homosexuality with death by stoning (Wockner, 2004a:2; Wockner, 2004c:4). The brutal murder and possible rape in her office on 28 September 2004 of Fanny Ann Eddy, the African lesbian activist and founder of the Sierra Leone Lesbian and Gay Association, bears further testimony of deep-seated and widespread hatred of those who challenge the heterosexist and patriarchal norms (i.e. that males and masculinity are superior to females and femininity, and that those characteristics and roles assigned to men are to be valued over those assigned to women) subscribed to in many African countries (Humanist Institute for Cooperation with Developing Countries, 2004).

17.2.3 A South African perspective on prejudice-motivated crime

The South African Constitution (Act 108 of 1996) is a tool of governance and a platform for shaping social attitudes. It provides a legal structure based on human rights and a framework for anti-prejudice, while its political message is one of tolerance and non-discrimination. The Constitution endorses the right to freedom and security; however, translation of these principles into practice is where the challenge lies. South Africa post-1994 has a poor track record of policy implementation (Nel & Kruger, 1999:1) and concerns have thus been raised that the Constitution, even if correctly applied, may not be enough to safeguard victims of prejudice without specific legislation to deal with hate crime.

Although the term “hate crime” goes beyond racism, these terms are often used synonymously in South Africa. Apartheid South Africa was world renowned for its institutionalised race discrimination and other forms of oppression, and in light thereof it is interesting both that hate crime is not a recognised crime category, and that its relevance for the transformation of post-1994 South Africa is not more extensively debated. Harris (2004:29) purports that the endemic nature of violent crime may be the reason that distinguishing between general crime and prejudice-motivated crime has not been considered to be important. Prejudice-driven offences are cur-

rently treated as general criminal offences in the “new” South Africa, although the law allows for increased penalties if prejudice as motive is established. Victims are generally not familiar with hate crime as a term and it is therefore not often used. Also, the South African Police Service generally does not distinguish between prejudice-motivated and other crimes. As a result, official statistics on the prevalence of hate crime are unavailable, which may contribute to perceptions that crimes of hate do not often occur (Theron & Bezuidenhout, 1995:3).

Current legislative developments and trends in South Africa in general suggest an increased awareness, not only of the physical or visible harm of hate crime, but also of the insidious nature and potential severity of “invisible” harm inflicted by words, negative attitudes or covert actions. One of the legislative tools to give effect to the ideals specified in the Constitution is the Promotion of Equality and Prevention of Unfair Discrimination Act (Act 20876 of 2000). Often referred to as the “Equality Bill”, it contains 17 grounds (including those of race, gender, sexual orientation, age, culture, religion, language, disability, marital status and pregnancy) on which no person may be discriminated against (Ferreira, 2000). The proposed Prohibition of Hate Speech Bill, as part of the Equality Bill, is set on establishing a legal framework in which hate and/or prejudice-motivation and even thoughts will not only be considered an aggravating factor in sentencing procedures, but a crime in and of itself. The draft Bill proposes that criminal liability ensues for

any person who in public advocates hatred that is based on race, ethnicity, gender or religion against any other person or group of persons that could reasonably be construed to demonstrate an intention to be hurtful, harmful or to incite harm, intimidate or threaten, promote or propagate racial, ethnic, gender or religious superiority, incite imminent violence, cause or perpetuate systemic disadvantage, undermine human dignity or adversely affect the equal enjoyment of any person’s or group of persons’ rights and freedoms in a serious manner (Kirby, 2004:34).

Greater provision in the law for the rights of the marginalised and vulnerable, as is evident from the Constitution, the Equality Bill, as well as the

2004 proposed amendment of the Sexual Offences Act (Act 23 of 1957), namely the Criminal Law Sexual Offences Amendment Bill (B50 of 2003), is another significant legislative development in the “new” South Africa. If the amended Sexual Offences Bill is approved, the scope of the crime of rape will be widened to include, among others, same sex, male rape and non-penetrative acts, and numerous new offences related to sexual misconduct, including that of hate crime (Equality Project, 2004).

17.2.4 Controversial legislation

Although discussing the controversies surrounding anti-hate crime legislation falls outside the scope of this chapter, points raised in opposition and criticism to such legislation follow:

- Hate crimes are redundant as these offences are already punishable under the law and the law can already consider malice and motive behind a crime without hate crime laws (Siasoco, 1999).
- Hate speech is one of the acts of discrimination or disrespect motivated by prejudice towards a victim’s race, religion, sexual orientation and the like that can not be classified as a criminal act or illegal. Hate speech is classified as a hate incident rather than a hate crime (Turner, n.d.).
- Hate crime legislation does not grant equal rights, but rather special rights and unfair privileges. In that hate crimes aim to provide special protection for minority groups, it violates the principle of equality under the law (Traditional Values Coalition, 2002:1).
- The legislation is overly broad, extensive and inherently vague, and has far-reaching implications for freedom of expression, one of the prerequisites of a real democracy (Ndungu, 2004).
- South Africa has gone from reactionary “old” oppression to trendy “new” oppression: the emphasis on politically correct language required in reference to the elderly, disabled, gay, obese, black, etc. is stifling and prescriptive (Kirby, 2004).
- “... when people can be given additional time in jail for what they were thinking while committing a crime we are approaching rule by a

thought police” (Traditional Values Coalition, 2002:2).

- What constitutes hurt for people is subjective and so are self-descriptions. For instance, LGBTI persons all call themselves something different: gay, moffie, lesbian, dyke, queer. What for one is hate speech or submission to language stereotyping is for another an assertive re-appropriation of language (Gevisser & Cameron, 1994:5).
- Who has the right to determine the criteria for classification as a group that is vulnerable to hate victimisation? The Equality Bill contains the complete list of 17 grounds on which no person may be discriminated against, as also specified in Section 9.3, the Equality Clause, of the Constitution. It thus follows that all these grounds should be covered by the new hate crime legislation. The Prohibition of Hate Speech Bill, however, only specifies three of these grounds, namely race, religion and gender-based. The omission of the remaining 14 grounds appears almost contradictory and may have to be challenged.

To understand the reasons for the significant legislative developments in South Africa post-1994, the nature and extent of race-based and sexual orientation-related prejudice, discrimination, hate and/or victimisation internationally, but more specifically in South Africa, are now considered.

17.3 The extent of hate crime

Prevalence and incidence estimates are required to document the scope of the problem of prejudice-motivated criminal acts. Understanding prevalence and patterns of hate crimes again requires accurate and comprehensive police reporting (Turner, n.d.). One of the distinguishing characteristics of hate crime is, however, the significant under-reporting thereof. Schippers (1997:207) estimates that 90% of incidents of anti-gay violence in the Netherlands are not reported. As earlier indicated, hate crimes (and/or incidents) often occur in contexts of sustained harassment, and in fact most often in the home, at schools or in tertiary institutions of learning (Harris, 2004:69–70). A critical analysis of the incidence of hate crime as reported in the literature, however, leaves the impression that isolated (and severe) incidents of hate crime are what

count, and that the daily, ongoing hate incidents or acts of taunting, constant bullying or conflicts between people known to each other are not considered. Media prioritisation of the sensational, dramatic and exceptional may also contribute to the tendency not to notice and/or report ordinary, everyday experiences of hate victimisation (Harris, 2004:41). Uncertainty as to what qualifies as a “real” crime of hate and mistakenly believing that only extreme and violent cases qualify may similarly contribute to hesitation in reporting. Other reasons for significant under-reporting to the police by victims of hate crime include the following:

- Fear of future contact with the perpetrator or even retaliation
- Mistrust of the police and fear that the criminal justice system too may be biased against the group to which the victim belongs
- Negative attitudes, actions and secondary victimisation by the criminal justice system
- Shame, among others, because it is precisely their identity that is being problematised or attacked
- Lack of words to accurately describe their experience of being prejudiced, especially in contexts where hate crime is not acknowledged as crime category
- Ignorance of the law of victims and law enforcers alike (American Psychological Association, 1998:5; Schippers, 1997:207)

Although statistics on hate crime are generally still lacking, and comparisons between and within countries impossible or useless due to variances in the definition thereof, scientific research is internationally beginning to provide indicators as to the general nature of crimes committed because of real or perceived differences between the perpetrator and victim. In the United States where hate crime statistics have been collected since 1991, almost 70% of such crimes committed in 1996 involved an attack on a person ranging from simple to aggravated assault, rape and murder, while 30% were crimes against property, including robbery; vandalism; destruction; stealing; or setting fire to vehicles, homes, stores or places of worship (American Psychological Association, 1998:1–2). Most hate crimes (29%) occurred in/on residential properties and 10% occurred at schools and colleges (Federal Bureau

of Investigation, 2001). The FBI statistics of 2001 as compared to 1999 (provided in brackets) reflect that in the United States

- 45% (55%) of hate crimes were motivated by racial bias
- 19% (18%) by religious bias
- 22% (11%) by ethnicity/national origin bias
- 14% (17%) by sexual-orientation bias (Federal Bureau of Investigation, 2001).

Although the issues of race and sexuality in contemporary society are not identical, there are many similarities and points of overlap and intersection (Eliason, 1996:3).

17.3.1 Race-based hate crimes

Internationally, race-based crimes of hate are consistently indicated to be most prevalent. Worldwide long-term use of race and racism as the basis for measures formulated by white people to subject black people to unequal treatment explains why black people are most at risk of suffering the consequences of racist acts perpetrated mostly by white people (American Psychological Association, 1998:6).

Considering its legacy of apartheid and colonial roots, race as a motive for criminal victimisation is of particular relevance to South Africa and the African continent. Racism was institutionalised, legalised and internalised in apartheid South Africa. Within the apartheid system the maintenance of white control and dominance called for active discrimination, exclusion and the oppression of black people. During the liberation struggle incidents of race victimisation were mostly referred to as having been politically motivated. Harris (2004:38–39) postulates that this politicised definition has distorted understanding of the role of race and racial identity in violence in the past, and continues to do so in the new dispensation.

While a culture of respect, tolerance, harmony and diversity is propagated, extensive media coverage of extreme and sensational incidents of racist victimisation continues to shape the international image of post-apartheid South Africa and contributes to urgent appeals for anti-hate legislation. The racist gunning down in 1988 by Barend Strydom (a self-proclaimed member of the right-wing and racist political group, the *Wit Wolwe*) of black passers-by at Strijdom Square in Pretoria during which he killed seven and injured

16 people, received extensive media coverage. A similar incident took place in 2000 when De Wet Kritzinger fired shots at black bus passengers, killing three and wounding a further four. In the same year, the South African Broadcasting Corporation (SABC) broadcast the xenophobic and racist mauling by police dogs of three black Mozambican illegal immigrants during their arrest at the instruction of six white police officials of the South African Police Service Dog Unit. Filming of the brutal incident by the perpetrators themselves in order to gloat with friends and colleagues was interpreted as indicative of their absolute dehumanisation and hatred of black people. Painting black people white, dragging them to death behind motor vehicles, and allegedly feeding them to lions are all examples of recent race-based and racially motivated crimes that have alarmed the world (Ndungu, 2004).

The South African Human Rights Commission (2003) interprets increased reports of race-based hate crimes as indicative of deep-seated resentment among ordinary South Africans and that not enough is being done to address the scars inflicted by apartheid. It is, however, important to guard against simplistic understandings of race and racism. Racism is not only something white people perpetrate with black people as their victims. Racist political slogans of the early 1990s that instilled doom and gloom in the hearts of many, now officially considered to constitute hate speech, include: “Kill the boer, kill the farmer”, coined by the then leader of the African National Congress Youth League, the late Peter Mokaba; and “One settler, one bullet” of the leftist political party that propagates Black Pride, the PAC (Pan Africanist Congress). As recently as 2002, the popular black singer, Mbongeni Ngema was also accused of inciting hate toward Indian people through the lyrics of a song (South African Human Rights Commission, 2002:2). Another simplistic assumption may be that personal experiences of the pain and other consequences of prejudice, exclusion and/or discrimination will translate into an attitude of not inflicting the same on others. This notion is, however, disproved by, among others, the earlier mentioned widespread condemnation and persecution by African leaders of LGBTI persons, as well as evidence of widespread incidents of racism against black patrons in LGBTI venues traditionally frequented by white people only (Isaack, 2003).

17.3.2 Sexual orientation-based hate victimisation

Internationally, research (Eliason, 1996:191; Schippers, 1997:202) indicates that the vast majority of openly lesbian, gay and bisexual (lgb) persons have experienced some form of victimisation, such as verbal abuse, threats, being chased or followed, or being spat on. Indicative of a possible conflict between activist and academic agendas, to date transgender and, even more so, intersex persons are seldom included in sexual orientation-related research. A study conducted in 2000 in Victoria, Australia, however, did include transgender persons in the research sample and found that 84% of lgb respondents reported having experienced discrimination on the basis of their sexual orientation and/or gender presentation (Ministerial Advisory Committee on Gay and Lesbian Health, 2002:6). Of these, 70% reported having experienced at least one form of public abuse, from physical violence (7%) to verbal abuse (63%). The transgender people in the study reported consistently higher levels of abuse in public (Ministerial Advisory Committee on Gay and Lesbian Health, 2002:6). According to Eliason (1996:191) “gay bashing” – a hate crime that physically violates someone solely based on perceived sexual orientation – is said to affect about 20% of lgb persons residing in the United States in their lifetime. A comparison of the findings of seven United States anti-gay violence victimisation surveys (1988–1991) with a South African study conducted in 1992 found that while the South Africans were less likely to experience verbal abuse and threats of violence than their American counterparts, they were, however, more prone to be physically assaulted and substantially more often sexually assaulted (Theron, 1994:111).

To understand the remarkable changing legal and political nature of prejudice, one only has to contemplate the dramatic legislative changes in South Africa regarding sexual orientation. As with racism and sexism, prejudice and discrimination on the basis of sexual orientation was also entrenched in apartheid South African legislation. In fact, homosexuality was criminal until 1996. On the other hand, inclusion in the new South African Constitution of the right to non-discrimination on the basis of sexual orientation not only constitutes a world first but, as indicated, is unprecedented on a continent where homosex-

uality is mostly considered a taboo, and more importantly, a “white man’s disease”, “un-African” or a “bourgeois Western phenomenon” (Amnesty International, 2001:4; Gevisser & Cameron, 1994:4). The sexual orientation and gender clauses of the Constitution afford lgb persons equal protection before the law, and through proposed anti-hate crime legislation mentioned earlier, lgbt persons may now in fact be considered potential victims of prejudice (Harris, 2004:23).

Decriminalisation and constitutional guarantees of equality may, however, not be enough. Both in the Netherlands and in the United States there are indications that anti-gay hate crime in fact increases as lesbian and gay communities become more visible (Eliason, 1996:191; Schippers, 1997:201). South African lesbian and gay activists and the organisations they represent consistently claim that the criminal justice system and civil society do not take anti-discrimination on the grounds of sexual orientation seriously. Several of these organisations, such as the Equality Project and Forum for the Empowerment of Women (FEW), have urged the recognition of hate crime as a separate category in the law and the criminalisation of hate speech and other hate-motivated oppression, believing that it will contribute to the realisation that no one may be subjected to inhumane and degrading treatment (Isaack, 2003; Smith, 2004).

In the “new” South Africa, disproportionate numbers of lgb persons continue to face oppression, marginalisation, discrimination and victimisation because of their sexual orientation and/or gender presentation. During 2003 and 2004, so-called “corrective rapes” by members of their own communities of black lesbian women living in Gauteng-based townships received substantial media coverage (Reuters, 2004; *Special Assignment*, 2004). The unpublished research on which FEW, a community organisation from Johannesburg, based its innovative anti-hate crimes campaign, “The rose has thorns”, indicates that lesbians, particularly in black townships where they are seen to challenge traditional male authority, are increasingly targeted for rape. Of the 46 black women interviewed, 41% have been raped, and 9% have been victims of attempted rape, 37% of assault and 17% of verbal abuse. Most victims know the perpetrators, often a family member, friend or neighbour. Although not a separate and distinct phenomenon from the high incidence of

gender-based violence in the country, and similar to findings on effeminate men, the people most targeted, however, are those most visibly lesbian because of their masculine traits (Isaack, 2003; Smith, 2004).

Literature studies indicate that the incidence of violence is not experienced equally across class, race and gender lines, and that in South Africa the poor are more susceptible to crime, especially social fabric crimes, such as rape, domestic violence and child abuse (Nel & Kruger, 1999:21). In gender and human rights activist circles and also in the media, it is often purported that working-class poor African communities and women are disproportionately at risk of crime victimisation (Isaack, 2003). In this regard, the findings of a recent study representative of race, sex and class conducted by OUT LGBT (Lesbian Gay Bisexual Transgender) Well-Being (a Gauteng, Tshwane-based non-governmental organisation) are interesting. The study aimed to establish the levels of empowerment among its 487 lgb respondents, of whom 45% were female and 55% male, 64% black and 36% white, and 46% between 15 and 24 and 48% between 25 and 40 years of age (Polders & Wells, 2004:6). The disconcertingly high prevalence of anti-gay hate crime in Gauteng indicated in other studies was confirmed in this study; however, more males than females reported having being victims of anti-gay hate crime during their schooling. White males, closely followed by black females, were found to be most often exposed to experiences of verbal abuse and negative jokes at school perpetrated mostly by fellow scholars. During a 24-month period from 2002–2003, 37% of all respondents had experiences of verbal abuse, and 15% were physically abused or assaulted. Rates of sexual abuse are twice as high for black than for white respondents, and domestic violence is similarly twice as high for black than for white women. While 10% of black women and 4% of white women were victims of sexual abuse or rape in the 24-month period, it is important to note that 9% of black males and 5% of white males were similarly sexually abused and/or raped (Polders & Wells, 2004:6). Although not investigated, chances are that even a larger percentage of transgender people are affected by hate crimes because of their heightened visibility. This hypothesis was to an extent confirmed in a documentary “Ripping the rainbow”, shown on *Special Assignment* (2004), a journalistic inves-

tigative programme of the SABC which reported on the high levels of homo-prejudice (the irrational fear, contempt for and hatred of lesbians and gays) and trans-phobia (when transgression of gender expectations ignites hatred in the minds of oppressors), in the Western Cape.

As with race and racism, it is important to guard against simplistic understandings of sexual orientation-based discrimination and victimisation. Prejudice on the basis of sexual orientation, called homo-prejudice (or more commonly, homophobia) and/or gender presentation is not only something heterosexual people perpetrate with lgbt people as their victims. Hetero-normativity, patriarchal understandings, as well as internalised homo- and trans-prejudice (i.e. the internalisation of negative attitudes and feelings toward homosexuality on the part of gay men and lesbians, and the internalisation of negative attitudes and feelings toward transgenderism on the part of transgender people respectively), may similarly contribute to hate victimisation (Hattingh, 1994:17; Ministerial Advisory Committee on Gay and Lesbian Health, 2002:6; Schippers, 1997:203).

The potentially devastating and wide-ranging impact of hate crime will be indicated in the next section.

17.4 Impact of hate crime victimisation

In victimology and traumatology the emphasis is traditionally on the individual or primary victim(s), and an incident of crime victimisation is usually isolated to establish the impact thereof. Hate crime, however, requires a different approach. The priority internationally given to hate crimes is not on the basis of prevalence, but rather on the severity of their emotional and psychological impact that potentially extends beyond the individual victim to the group to which the individual belongs or is perceived to belong, as well as to the broader community or society at large.

17.4.1 Individual impact

In recognition that victims of hate violence and their significant others often require additional support to cope with its effects, the American Psychological Association approved a resolution as far back as 1991 opposing hate crimes, com-

mitting to help reduce or eliminate hate crimes and to alleviate the effects on victims (Mjoseeth, 1998). When considering the impact of prejudice-motivated victimisation on the victim, it is important to move beyond the notion of victim homogeneity. South African Constitutional Court judge Justice Albie Sachs has the following to say about the impact of discrimination on its victims:

The manner in which discrimination is experienced on grounds of race or sex or religion or disability varies considerably – there is difference in difference. The commonality that unites them all is the injury to dignity imposed upon people as a consequence of their belonging to certain groups (Amnesty International, 2001:vii).

With hate crime victims there may similarly be difference in difference as the category or vulnerable grouping to which the victim belongs or is seen to belong includes a range of different types of individuals that share some aspect of oppression. Within each of these categories there is a diverse array of individuals who are similarly members of other oppressed or marginalised groups with varying levels of social power.

As two individuals who fall victim to exactly the same incident may experience it totally differently, subjectivity and personal experience are relevant in understanding the potential impact of prejudice-motivated victimisation. However, regardless of all the variables, international literature on hate crime consistently indicates higher levels of psychological distress of the victim as one of the reasons these crimes require unique psychological, legislative and policy responses, and prioritisation (Siasoco, 1999). Although the reactions of victims may vary, they mostly include known symptoms of trauma, including depression, anger, sleep disturbance, nightmares, diarrhoea, headaches, relationship problems, increased substance abuse, and decreased levels of trust, as well as feelings of being unsafe. Post-traumatic stress disorder (PTSD) may be a further reaction to hate crime victimisation (American Psychological Association, 1998:6; Harris, 2004:48).

The earlier-mentioned hesitation of hate crime victims to report their victimisation to the police or to access available support services is one of the reasons hate crimes require unique psycho-

logical, legislative and policy responses. Recovery from the emotional trauma brought about by prejudice-motivated crimes may take up to five years, in comparison to the two years generally required for the alleviation of distress for victims of non-bias crimes. As victims who have access to appropriate support services and other resources soon after the incident have been found to heal more rapidly, early intervention is believed crucial (Eliason, 1996:192; Mjoseeth, 1998).

The tendency is to regard visible, physical injury more seriously than the invisible or psychological damage done by behaviours motivated by hate, bias and discrimination. Similarly, the impact of an incident of hate-based victimisation is generally considered in isolation. However, recognition of societal or systemic victimisation (daily and ongoing exposure to hate incidents or victimisation) is in fact also vital. For instance, in this regard the damaging effects of growing up in a racist society or of being gay in heterosexual contexts must be properly recognised. Sexual minority status increases the risk for stress related to “chronic daily hassles” (including hearing anti-gay jokes and being on constant guard) and to more serious negative life events, especially gay-related ones. These can include loss of employment, home and custody of children, and anti-gay violence and discrimination due to sexual orientation (Theunick, Hook & Franchi, 2002: 131).

Understanding the mechanisms of internalised oppression is also crucial when considering the impact of hate crime. The internalisation of shame is compounded by apparent community support for hate- and sexual orientation-based victimisation. Communities are seen as endorsing hate crimes when they remain silent, fail to act, do not render support to the victims thereof or, for that matter, shun them because of their sexual orientation (Eliason, 1996:192). For these reasons, and possibly as a consequence of having bought into self-stigmatisation both with regard to their sexual minority status and as crime victims, lgbt persons victimised in circumstances relating to their sexual orientation or gender presentation may be even more hesitant to acknowledge their needs or to seek out the required assistance (Theron & Bezuidenhout, 1995:2).

Therapeutic support groups have been found to make a very important contribution in empowering lgbt participants to deal with various

issues relevant to their lives, including hate-based victimisation (Nel & Joubert, 1997:6). The sharing and comparing of experiences with similar others within formalised group settings provide a forum in which members can explore their feelings, consolidate their sense of identity and self-worth, move toward fulfilling the roles they strive for, and find support in their journey towards self-realisation.

17.4.2 Societal impact

The emotional and psychological impact of hate crime potentially extends beyond the individual victim. Other individuals from the targeted group may similarly be left feeling isolated, vulnerable, unprotected and intimidated, but so too may the victim's larger community experience fear, distrust and renewed conflicts around previous areas of division in the community, resulting in further polarisation and/or destabilisation.

Two recent examples of hate crimes in South Africa serve to indicate how these crimes may have an impact way beyond the primary victim(s). Several racial incidents in 1999 at a secondary school, Hoërskool Vryburg in Vryburg, North West Province, including a black scholar stabbing a white scholar with a pair of scissors, brought about community polarisation and racial tensions beyond the school. Among others, open conflict between black and white police officials ensued (Harris, 2004:33–34). The disproportionately violently slaying of nine male sex workers during a so-called armed robbery in 2003 at Sizzlers, a Cape Town-based gay massage parlour, also sent shock waves through not only LGBT circles, but also society at large and even internationally among LGBT communities, as Cape Town is a favourite travel destination for international visitors who have grown to know it as the “gay capital” of South Africa. While disdain for sex workers may have been at play, the incident was widely interpreted as indicative of high levels of homo-prejudice (De Swardt, 2003:1–2).

17.4.3 Secondary victimisation

Too often victims who report crime to the police or interact with others in the criminal justice or health services encounter secondary victimisation or “victim blaming”. The dissatisfaction LGBT

persons express regarding the treatment they so often receive from criminal justice officials, including the police, in many instances relate to subtle or not-so-subtle homo-prejudiced or heterosexist attitudes displayed by these officials (Eliason, 1996:190; Theron & Bezuidenhout, 1995:6–7).

Victim blaming and moral judgments by service providers substantially increase in interactions where it becomes apparent that the sexual orientation and/or gender presentation of the victim differs from that of the service provider. Among LGBT people who reside in Victoria, Australia, 23% have experienced discrimination in relation to medical care. The underutilisation of health services in Victoria by LGBT persons is understood to be as a result of their expectation that they run the risk of being subjected to heterosexist abuse and indifference within mainstream health services (Ministerial Advisory Committee on Gay and Lesbian Health, 2002:8). In the earlier-mentioned OUT LGBT Well-Being study, Polders and Wells (2004:8–9) ascertained that approximately double the sample of blacks than whites had experiences of health care practitioners asking questions which imply that heterosexuality is the only normal way to be. It also appears more common for health care practitioners to assume that females are heterosexual. Six percent of the sample, most of them black, had been refused treatment based on their sexual orientation, and 12% of the sample delayed seeking treatment for fear of discrimination based on sexual orientation.

17.5 Factors contributing to hate crimes

The section of the book in which this chapter is contained deals more generally with vulnerability to crime victimisation because of risk factors such as age, disability, ill health or immigrant status *per se*. It may be important to distinguish vulnerability to hate crime from vulnerability to other crime in general. Hate crime victimisation may be due to physical appearance, gender presentation and sexual orientation. Other than the primary victimisation, victims of hate crimes may also be at risk of decision-maker de-prioritisation and service provider neglect, or discrimination within the criminal justice system and/or health system. Stigma or marginalisation by society or service providers and subsequent limited

access to the police and legal system increase the vulnerability of victims of hate crime. This vulnerability may be compounded by internalised oppression and the hesitancy of hate crime victims to approach service providers (Schippers, 1997:207).

Lgbt people are also considered soft targets for ordinary crime victimisation, especially if they have not disclosed their sexual orientation to significant others. This heightened vulnerability lies in their hesitation to report crime out of fear that they may have to divulge their activities at the time of victimisation and in so doing, expose their sexual orientation (Theron & Bezuidenhout, 1995:6).

By now it has been established that victims of hate crime do not constitute a homogeneous group. Similarly, offenders are driven by a variety of factors. The following motives for hate crimes, which can in turn increase vulnerability, have been identified (American Psychological Association, 1998:12; Booyens, 2003:39–40; Mjoseh, 1998):

■ THRILL-SEEKING BEHAVIOUR

This behaviour is very often directed at gay men, where gay bashing is viewed as a “sport” or a means of alleviating boredom. The thrill associated with victimisation and as a way to gain respect from their peers is said to account for the largest group or perpetrators of race related crimes.

■ PEER PRESSURE

To show prowess or masculinity, or prove heterosexuality, the perpetrator may take up a challenge posed by friends to, for instance, vandalise the personal belongings of someone known to be gay or someone of another race.

■ IN SELF-DEFENCE, REACTIVELY OR IN RESPONSE TO THE VICTIM'S ACTIONS

This motive relates to “scapegoating” as described in sociological theory on social transition and change. Socio-economic conditions contribute to frustration and aggression relating to experiences of ongoing deprivation and poverty. Most often associated with race-based bias, the main aim may be to preserve own turf by, for example, sending a message to the intended victim to reconsider settling into a certain neighbourhood or face the consequences, or sending a

message that the promotion of the intended victim is not accepted and will be resisted. Ethnic minorities and immigrant groupings may be targeted merely on the basis of their perceived difference from the mainstream (i.e. language and accent), negative stereotypes of the group to which they belong, their challenging of accepted norms, or the threat they may pose with regard to competition for resources (American Psychological Association, 1998:12–13; Harris, 2004: 74–75). In sexual orientation-related instances, the victim’s behaviour may have been perceived as a sexual advance and thus reaction to the perceived threat aims to discourage or punish. Those who commit the crime in retaliation or with revenge as motive in response to a perceived injustice from the other group constitute the second most common motivator.

■ AN IDEOLOGY OR MISSION-DRIVEN BEHAVIOUR

This usually happens where perpetrators view their actions as contributing to “ridding the world of evil”, and where they want to maintain prevailing social norms that, for instance, condemn homosexuality or interracially intimate relationships. The specialist offenders or members of organisations that promote racial and ethnic inequality or members of recognised hate groups, such as the *Wit Wolwe* or American Ku Klux Klan, also fall within this category.

17.5.1 Social background factors

Perpetrators of hate crimes may have criminal and/or marginalised backgrounds and, certainly, perpetrators of extreme hate crimes mostly have histories of anti-social behaviour. Also, substance abuse sometimes helps fuel these crimes. However, research (American Psychological Association, 1998:2; Schippers, 1997:203) indicates that most hate crimes are carried out by otherwise law-abiding young people, mostly male and under 22 years of age, who see little wrong with their actions.

17.5.2 Group dynamics

Group context can amplify aggressive reactions by diffusing the responsibility of individuals and inhibition to bring about a group mentality. Most hate-crime offenders usually act alone, in pairs or small groups rather than as part of hate groups

or organisations, as is sometimes mistakenly believed (American Psychological Association, 1998:2). In light of this, it comes as no surprise that schools are very frequently identified as the site of such violence (Harris, 2004:70). Despite the high media profile of cases in which the perpetrator belonged to a hate group, such as the *Wit Wolwe*, South African research (Harris, 2004: 55–56) seems to confirm the American finding.

17.5.3 Psychological notions

Most often, hate crimes are brought about by personal prejudice, aggressors blinded in terms of the wrongness of their actions by their judgments of “difference” as threatening, and perceived societal approval to engage in the violence and/or discrimination (American Psychological Association, 1998:3). Considered as “crimes of ignorance” (Harris, 2004:26), much of this discrimination is perpetuated through prejudice, stereotypes, assumptions and misinformation. Hate crimes have their roots in normative, individual and societal attitudes, and moral beliefs and ideologies that may lead to intimidation, bullying, teasing, physical assault, rape and even murder. In spite of legislative changes, LGBTI issues in many communities still often evoke strong feelings and responses from many people based on their attitudes, beliefs and values. Prejudice with regard to sexual orientation and gender presentations also often has deep religious and cultural roots, which view anything other than heterosexuality (or traditional/conventional gender presentations) as a sin or as “un-African”.

17.5.4 Institutionalised discrimination

Basic identity theory teaches us that those in dominant social categories rarely see their own position or recognise their identity with reference to privilege or power. In the traditional worldview the beliefs, values, norms, standards and expectations of the “reasonable man” as described in South African law, or the “generic human” (i.e. a white, heterosexual male who is resourced, able-bodied and Christian) are considered superior and/or more valid, and thus dominant, and for the greater good of society, they may be imposed on inferior “others”.

Governments, the military, medical and psychiatric services, schools, businesses, mass media, legal system and religious teachings may

all reinforce heterosexist, patriarchal and/or racist attitudes, values and behaviours. Also, hate speech and hate-motivated violence may be partly encouraged or legitimised by a climate in which the dissemination of ideas of the perpetuation of violence appears to be allowed or tolerated. Hate crimes are considered state-sponsored when the police and other criminal justice officials blame the victim overtly or subtly for the incident.

Apartheid South Africa not only subtly “allowed” hate-based victimisation, but also encouraged and even overtly permitted hate crimes to occur without deterrence for perpetrators (Theron & Bezuidenhout, 1995:1–2). Apartheid was more than a system of institutionalised racism that denied black people the opportunity to vote and their freedom of movement, and restricted where they could live and attend school, or with whom they could have intimate relations. Discrimination in general and also on the basis of gender and sexual orientation amongst others, was institutionalised.

Social engineering by the state via active interventions, institutionalised discrimination and systemic oppression was the order of the day, and every sphere of life was controlled and prescribed. Power and privilege to varying degrees were reserved for the generic human described above. The harm has been done, and today the devastating and long-lasting after-effects of the apartheid system, such as inequalities, disadvantage, disempowerment and disqualification, are recognised.

17.5.5 Patriarchy

Patriarchy is of special importance regarding sexual orientation as it places lesbians under a double burden of discrimination, both as women and as lesbians. Gender-based violence, with primarily women as the victims, has been recognised in the United States as a hate crime since 1998. Domestic violence, through to femicide at the hands of intimate partners, has been found to be highly prevalent in South African society, which is mostly considered to be patriarchal and sexist (Nel & Joubert, 1997:3). “Corrective rape” of lesbian women is understood to be motivated by sexual orientation bias and fuelled by patriarchal attitudes and sexism. It is similarly understood to be a violent response to their challenging of traditional male authority. The hatred is

fuelled by the improving status of women in a country where many people are unemployed (Reuters, 2004). Most overtly gay or lesbian people are more often the targets of anti-gay violence or bashing, specifically in response to their transgressions of traditional gender roles and expectations (Reuters, 2004). South African society is also particularly vicious towards gay and transgender males who in respect of their gender presentations pose a strong subversive threat to the traditional gender norms and patriarchal ideals of aggression and dominance. Their real or perceived sexual orientation is thus considered a threat to the social order.

17.6 Challenges in reducing hate crimes

Researchers do not yet fully understand the causes of hate. Influential philosophers such as Aristotle and psychologists such as Freud had opposing views on whether hate is learned or instinctual. However, most social psychologists today agree that aggression can be controlled and that hate is learned behaviour influenced by the environment. Hate crimes (which can be viewed as outbursts of aggression) are thus preventable (American Psychology Association, 1998:3).

The reduction and prevention of hate crimes and their impact require a multidisciplinary approach, and interventions and activism at multiple (macro, meso and micro) levels. Interventions may be the terrain of educators, spiritual leaders, social scientists, counsellors or therapists, depending on the nature and extent of the bias. Chapter 9 deals with victimisation reduction, and the following section will thus not enter into an in-depth discussion of preventative measures in general, but rather will highlight some of the challenges that are specific to hate crime victimisation reduction.

17.6.1 Criminal justice responses

Although only one of many required interventions, legislation such as the Draft Prohibition of Hate Speech Bill 2004³ that specifically restricts people from publicly expressing their stereotypes, prejudices or hate may have symbolic and educational value, and can deter as well as serve both a remedial and a punitive role.

Under-reporting as a feature of hate crime represents a challenge to the criminal justice system or any legal framework for accommodating and addressing crimes motivated by prejudice. Reporting systems need to be carefully constructed and implemented in order to ensure that those, targeted and vulnerable because of their perceived or real identity, feel safe enough to report their experiences.

Criminal justice officials should not allow personal value judgments about victim's behaviour, lifestyle or culture to affect their objectivity, judgment and service. Such officials ought to be provided with training opportunities to develop skills in working with people whose value systems differ from theirs and where they can obtain accurate information.

Alternative models of rehabilitation and justice may be called for. The emphasis ought to be on reconciliation, peace building and restoration as ways to deal with hate crimes and prejudice (Harris, 2004:89).

17.6.2 Human rights awareness programmes

To prevent the victimisation of marginalised individuals and groups it is crucial to examine privilege and status and to challenge hetero-normativity (Peacock, 2003:4). The importance of intervention in school programmes to prevent violence and combat bully behaviour should not be underestimated. Training and education should start with children to prevent hate before it starts, before preconceived ideas bring about the separation and exclusion of those who are different.

Democracy in action implies that the human rights of all are respected and that no one can prescribe to anyone else what to believe or value. One has the right to hold stereotypes and prejudices about, and hate of, others. No one, however, has the right to impose their beliefs or values on others, or prescribe to them, and neither does anyone have the right to act on their prejudices or hate, nor discriminate on the basis thereof. Interventions by educators can serve to sensitise individuals and communities regarding the impact of hate crimes and the consequences thereof for both the perpetrator and victim.

3 This Bill is still in draft form and was first circulated for comment in 2004.

17.6.3 Diversity training and stereotype reduction

Social psychologists have indicated the value of social cognition and specific stereotype reduction to combat discrimination as theoretical underpinning for diversity training (Van der Westhuizen, 2000:13). Diversity training is concerned with educative processes that are designed to promote “intercultural learning”; for example the acquisition of cognitive, affective and behavioural competencies associated with effective interaction across different groups. The scope of diversity extends beyond culture and includes aspects such as nationality, age, sexual orientation, gender, ethnicity, disability and physical appearance. Diversity training impacts on individual, interpersonal and organisational levels and can be described as a “soft skill” or sensitivity training programme because of its emphases on self-awareness. The self-awareness is done through systemic process and group interaction. The aim is to develop a “diversity mindset” and to facilitate a positive attitude regarding the “other” which will then help erode negative discrimination (Van der Westhuizen, 2000:37).

Educational efforts aimed at stereotype and prejudice reduction, anti-bias training, the encouragement of intercultural understanding and appreciation and/or the promotion of tolerance may contribute to the prevention, or at least reduction, of hate crimes. Eliason (1996:31) states that “whereas providing accurate information to dispel stereotypes may improve the attitude of the tolerant or even disapproving person, education alone is unlikely to change the attitude of the person who feels hatred”.

Clinicians may have a crucial contribution to make to reduce or eliminate bias by altering deep-seated values, social attitudes and belief systems, and the reduction of stereotypical thinking. People who feel hatred may require empathy training and the development of a mindset of introspection to help them understand what the victim of a hate crime may experience.

17.7 Conclusion

The debate on hate crimes may be informed by a human rights perspective, concern for social justice or public safety and community stability, or discourses on morality. The social context and history must be recognised, as well as the macro

political and socio-economic factors within which hate victimisation occurs.

Hate, in itself, does not cause harm to others. It is when someone acts on the hate that the put-down, exclusion, discrimination and infliction of pain and suffering follow. In the “real world” where “legal truths”, and thus the law and legal rights, have more influence than “spiritual or human truths” or morality and human rights, the prevention, or at least reduction, of hate crimes will happen when

- hate crime victims report their cases and follow through on them by testifying in court
- the criminal justice system illustrates the seriousness of these crimes through the severity of sentences passed
- community members, inclusive of their leaders, are aware and understand legal (and human) rights
- there is a concerted effort to combat these hate-motivated crimes by law enforcement officials, community leaders, educators, researchers and policymakers (Chicago Lawyers’ Committee for Civil Rights Under Law, n.d.).

Individuals, communities, educators, spiritual leaders, counsellors, clinicians, researchers and policymakers should take up the challenge to promote social change in creating an “ideal world” that

- understands the relationship between and potentially destructive consequences of ignorance and perceptions of difference that become stereotypes; rigidity, defensiveness, intolerance, exclusion, distrust and fear of the “other”; the power to enforce rules, place restrictions or oppress “them”; hate, rejection and/or discrimination; and victimisation and retaliation
- believes in and values knowledge, diversity, openness, fluidity, tolerance, inclusion, trust, empathy, consent, choice, acceptance, equality, upliftment; love and peace; and reconciliation
- internalises and lives these understandings and attitudes as indicated in behaviours and actions, rather than doing the right thing for fear of consequences.

Given its recent history, it may very well serve post-apartheid South Africa and the African continent well to follow the international example and to prioritise anti-hate crime legislation and the special measures required to give effect to

hate crime as a reporting and sentencing category. Concerns regarding the implementation of hate crime legislation in South Africa seem unfounded. If anything, the proposed legislation will serve the interests of all.

Critical thinking questions

1. Recent attacks on two men that seems to be motivated by prejudice have brought the problem of hate crimes under the spotlight. The Minister of Safety and Security requests you to advise him on what hate crime is, its prevalence in South Africa, the factors that contribute towards it and measures to prevent it.
2. The South African Law Reform Commission approaches you to advise them on the international scenario pertaining to hate crimes, and to assist them in identifying appropriate legal measures to deal with this type of crime. Explain how you will assist them.

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