

# Protecting Individuals and Communities in a Pluralistic Society

## WORKSHOP REPORT

12 SEPTEMBER 2018



## Acknowledgements

ALPS Resilience would like to thank the U.S. Consulate General Cape Town and the U.S. State Department Bureau of Democracy, Human Rights and Labor (DRL) for their partnership in combatting xenophobic violence and hate crimes.

COMPILED AND PRODUCED BY



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# About the workshop

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On 11 and 12 September 2018, the Cape Town Consular General and ALPS Resilience co-hosted a workshop about religious freedom, religious intolerance, xenophobia, and social cohesion. The workshop was generously sponsored by the United States (U.S.) State Department's Bureau of Democracy, Human Rights and Labor (DRL). Participants included a U.S. delegation that included a government interagency group composed of people from the Departments of State, Justice, and Homeland Security, as well as a representative of the U.S. Sikh Coalition. Representatives from South Africa included members of local civil society organizations, religious groups, legal experts, and national and provincial government officials.

## Key messages

- The histories of South Africa and the United States offer valuable lessons for tackling hate crimes and religious discrimination.
- The organisations at the workshop provide a large intellectual knowledge base about discrimination and related issues.
- The two countries differ in their approaches to hate speech. South Africa regulates it in order to protect citizens' right to dignity, sometimes at the expense of freedom of expression. The United States does not regulate it in order to protect citizens' right to freedom of expression; as such, civil society often steps in to police hate speech on its own terms.
- South African authoritative bodies set up to enforce protective laws against discrimination and hate crimes are either non-existent or under-resourced.
- Many migrants, refugees and asylum-seekers in South Africa live in fear of xenophobic attacks. According to the HCWG, crimes against religious minorities, migrants and refugees have not been taken seriously enough by authorities.
- South Africa still does not have a clear understanding of what triggers xenophobic violence and other forms of hate crimes. The United States has a clearer picture because the Department of Justice effectively collects data about hate crimes and discrimination from both law enforcement and civil society.
- Coalition-building within South African civil society has assisted the government to develop responses to hate crimes through the Hate Crimes Bill. However, the Bill's additional clauses regulating hate speech have resulted in delays in its passage.
- Safe and resilient communities are most effectively built through threat outreach; civil rights enforcement and outreach; immigrant integration; the internet; community policing; parents; religious leaders; civil society; local partners and outreach; and cultural competency training for government officials.



# Session summaries

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## Session 1: Overview of country laws and history regarding civil rights and minority communities

### SESSION OVERVIEW

Speakers from the US Department of Justice (DOJ) and the South African Human Rights Commission (SAHRC) provided overviews of laws protecting religious and minority communities and civil rights history for the United States and South Africa, respectively.

### PRESENTATION SUMMARY

Eric Treene of the US DOJ demonstrated how principles of justice have not always been applied in practice in the US. For example, during the era of segregation, the legal principle of “separate but equal” was never actually upheld in practice. Thankfully, civil rights leaders in the US fought for more rights and greater freedoms, many of which now protect religious and minority communities in the United States. Now, freedom of expression and freedom of religion are practiced in line with legal principles. When discrimination does occur in the US, it is often difficult to prove, as it requires objective evidence. Hate crimes, or bias-motivated acts of violence, are one form of discrimination that the US DOJ has addressed. They have found that the largest proportion of hate crimes are motivated by racism, followed by anti-Semitism and Islamophobia, and then homophobia. Hate crimes cases focus on violations or threats, rather than on hateful or angry (but non-threatening) speech because Americans’ diversity makes them hesitant to allow the government to police ideas and speech.

Lloyd Lotz of the South African Human Rights Commission (SAHRC) offered a presentation about the Commission; how the Commission plays a role as an independent Chapter IX Institution; how it relates to hate crimes; and the discourse around hate crimes. The SAHRC has a mandate to monitor and assess the realization of rights and observers of human rights; promote respect for, a culture of, and knowledge of human rights; promote the development and attainment of human rights; engage in public advocacy; monitor and investigate threats to human rights; find solutions; and advocate in Equality Courts. However, the SAHRC has a large backlog of cases behind it, as well as a lack of resources to carry out its mandate and tackle all of those cases. It also has to continually work to improve its relationships with government and civil society. Moving forward, the SAHRC is assessing how to follow up on recommendations that have been made in past cases.

### THEMES FROM THE Q&A:

- Strengthening the SAHRC’s relationships with grassroots and community-based organizations. The SAHRC has also been looking for strategic partnerships for its advocacy activities.
- Hate speech is speech that attacks a person or group on the basis of attributes such as race, religion, ethnic origin, national origin, sex, disability, sexual orientation, or gender identity. Unlike in the United States, current South African equality legislation takes a narrower approach to defining freedom of expression and a broader approach to defining hate speech than in the South African Constitution.

## Session 2: Hate Crime Laws: Combatting bias-motivated violence while protecting freedom of expression

### SESSION OVERVIEW

Sanja Bornman, of Lawyers for Human Rights, provided a short description of the South African journey towards a Hate Crimes Bill and an outline of the content of the Bill approved by parliament in March 2018. Risa Berkower, a trial attorney in the US DOJ, focused on the legal policy framework for combating hate crimes and working with affected communities in the US. Adv. Muhammad Zakaria Suleman reflected on the rights of recourse a person has when they are the recipient of hate speech in South Africa, the tools that South African courts have used to understand freedom of expression and the lines drawn to distinguish it and limit it.

### PRESENTATION SUMMARY

Sanja Bornman explained the need for the pending Hate Crimes Bill in South Africa. There is no current legal definition of what constitutes a hate crime, making it impossible to prosecute, detect and count these violations. Hate crimes are message crimes – they are not only against an individual but a community. The Hate Crimes Working Group (HCWG) has been advocating for hate crimes legislation for 10 years (since 2009), and their efforts have led to a draft bill. The HCWG is glad that regulation of discrimination against people based on their trade/occupation has remained incorporated in the draft bill, because this will protect sex workers. However, the bill does not have any national instructions or directives for police officers or actors in social development, basic education or health. It needs to have instructions for *every* role player. The bill also regulates hate speech, a controversial topic that has resulted in delays in its passage. A lingering question for those following the draft bill remains whether there are sufficient funds in the treasury to implement the bill.

Risa Berkower discussed the different statutes that regulate bias-motivated violence in the United States. Under the US Constitution, people are allowed to hold biased beliefs and to act accordingly if such action is not criminal or threatening, so only assaults, property damage, and “true threats” are targeted by the laws that she discussed. A true threat is a serious communication of an intent to commit an act of unlawful violence against someone. Each US federal statute differs in terms of the type of bias motivations it addresses. Race and religion are included in all of them, but disability, gender and sexual orientation have been added to the more recent statutes. In addition to prosecuting hate crimes, the US DOJ addresses the issues of social cohesion exposed in hate crimes through a special office that works with communities, called the Community Relations Service. This office conducts mediation between groups to promote dialogue and reduce tension.

Advocate Zakaria Suleman discussed constitutional law on hate speech in South Africa. Freedom of expression is embedded within the South African Constitution. However, when [hate] speech incites violence, protective mechanisms within the state and civil society are triggered. These protective mechanisms include Section 16 of the Constitution, the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) Act, and laws against *crimen injuria* (acts that intentionally and seriously harm the dignity of another person). As such, one can declare that their rights have been impeded by speech. Adv. Suleman laid out how these protective mechanisms already give fairly far-reaching provisions around hate speech: in other words, that legislation regulating hate speech already exists in South Africa. Further, he mentioned the difficulties in terms of implementing and legislating against existing law and argued that adding hate speech legislation would offer another unnecessary layer of complication.

### THEMES FROM THE Q&A:

- Concern around xenophobic statements by South African political leaders is growing. The Hate Crimes Bill is expected to provide a better legal understanding of xenophobia, as well as other forms of hate, hate crimes, and discrimination.
- Data on hate crimes in the United States are collected from trained local police agencies.



## Session 3: Religious communities and governmental security agencies

### SESSION OVERVIEW

Kareem Shora of the Office for Civil Rights and Civil Liberties in the US Department of Homeland Security (DHS CRCL) and Rajdeep Singh Jolly of the Sikh Coalition engaged in a dialogue about how the department has responded to concerns expressed by various religious communities about its operations, and the internal mechanisms it uses to protect civil rights and civil liberties. Na'eem Jeehan of the Afro-Middle East Centre discussed the tensions between freedoms of religion and expression in South Africa. Wendy Kahn of the South African Jewish Board of Deputies (SAJBD) identified trends in anti-Semitism in South Africa over the past decade and observed the advantages and disadvantages of the various available forms of recourse to anti-Semitic and other hate crimes.

### PRESENTATION SUMMARY

Kareem Shora and Rajdeep Singh Jolly discussed best practices for government security agencies engaging with religious communities. The best practices are listed below:

- Ask how to make the engagement useful and interesting.
- Do no harm.
- Address challenging issues.
- Share information.
- Go local.
- Engage early.
- Identify the right people.
- Involve government partners.
- Focus on policy *and* operations.
- Be there in person.
- The community sets the agenda.
- Measure success.
- Address grievances and vulnerabilities.
- Actively seek feedback.
- Be consistent.
- Diversify your audience, the location, and the means of engagement.
- Employ multiple means of communication.
- Centralize convening and decentralize solutions.

Na'eem Jeehan of the Afro-Middle East Centre (and formerly of the Freedom of Expression Institute) explained how South Africa maintains a secular state despite the fact that culture and religion are so closely linked. The highest courts of the country often set landmark precedents in cases that address this linkage. However, at times, its rulings are at the expense of freedom of expression: for example, the banning of a Daily Maverick cartoon featuring the Prophet Muhammad for religious reasons. Sometimes people do not think that these issues are the business of the state; but when there is a possibility of violence within the country, such as through the return of South African recruits to the Islamic State of Iraq and the Levant (ISIS), it becomes the state's business.

Wendy Khan shared statistics about the prevalence of anti-Semitism in South Africa. She showed that anti-Semitic incidents in SA rise when there is conflict between Israelis and Palestinians and argued that criticism of Israel can lead to hate crimes against South African Jews. She then offered a comparison of the three options for legal responses to anti-Semitism: going to the SAHRC, going to the equality court, and engaging in conciliation. The bodies set up to enforce the laws are either non-existent or under-resourced. For example, the standing waiting time for a case to be heard in front of the Equality Court is four years. Wendy encouraged the attendees to stand beside one another, explaining that it is important for groups targeted by discrimination/hate crimes to stand together and speak with a united voice.

### THEMES FROM THE Q&A:

- Discrimination against African spirituality and other minority religions, particularly on the part of the South African government against traditional religion, should be advocated against by interfaith organisations.
- In the United States, hate speech is addressed by society despite the fact that it is not criminalized by law. For example, the Sikh Coalition used social media to shame companies that sold items that portrayed Sikhs offensively and inaccurately. Such responses are not legal mechanisms, but a grassroots way for society to reject and disincentivise anti-social behaviour.





## Session 4: Community Engagement: Engaging minority communities as a model for effective policy reform

### SESSION OVERVIEW

Kareem Shora of DHS CRCL and Rajdeep Singh Jolly of the Sikh Coalition discussed the effectiveness of DHS's best practices and offered examples. Isaiha Mombilo Mongombe, Chairperson of the Congolese Civil Society of South Africa (CCSSA), described South Africa's current crisis of xenophobia and presented recommendations for moving forward.

### PRESENTATION SUMMARY

Kareem Shora and Rajdeep Singh Jolly discussed how DHS uses community engagement to ensure that their operations do not violate civil rights, to share information with civil society, and to buy good will among civil society groups in order to carry out their operations. Rajdeep Singh Jolly discussed the importance of private citizens organising to hold their government accountable. Both presenters found that they could most effectively build safe and resilient communities through threat outreach; civil rights enforcement and outreach; immigrant integration; the internet; community policing; parents; religious leaders; civil society; local partners and outreach; and cultural competency training for government officials.

Isaiha Mombilo Mongombe discussed community responses and solutions to xenophobia in South Africa. The consequences of xenophobic attacks in South Africa affect communities over the long-term. For many immigrants, their hopes of finding Ubuntu in South Africa have been dashed. They instead fear for their own and their children's safety wherever they go. To make matters worse, since the 2008 crisis, xenophobia has become an instrument for politicians' agendas, especially during election periods. Each time xenophobic attacks flare up, media attention is immediately upon them; but eventually the issue gets pushed aside and the political will to address it weakens over time. All of this occurs in a context of desperate migration. Isaiha Mombilo Mongombe recommended that we deal with xenophobia by addressing rhetoric as soon as it appears; recognizing that documents are difficult for immigrants to acquire; and sharing accurate information about migrants, refugees and asylum-seekers. He called for civil society to target all youth in positive messaging, to listen to the experiences of migrant youth, and to encourage youth to exchange ideas. CCSSA's strategy is to foster interactions that continue to break down barriers of fear.

### THEMES FROM THE Q&A:

- Civil society, journalists and research institutions have a responsibility to respond to narratives of hate (be they xenophobic, ignorant, etc.) by sharing accurate information about groups facing discrimination.
- The United States government sees all forms of expression – including hate speech – as a sign of a healthy and democratic society and a free market of ideas.
- The most common thing in refugee appeals is their lengthy process – it can take a decade for cases to arrive at the High Court of Appeals.
- University exchange programs between South Africa and other African countries offer an opportunity for cultural exchange that could result in reduced xenophobia.



## Session 5: Metrics and measurement of discrimination and hate crimes

### SESSION OVERVIEW

Iriann Freemantle of the African Centre for Migration & Society (ACMS) described how *Xenowatch* tracks xenophobic attacks in South Africa. Eric Treene and Risa Berkower of the US DOJ described how the government agency they work for tracks data on discrimination.

### PRESENTATION SUMMARY

Iriann Freemantle of the African Centre for Migration & Society (ACMS) talked about *Xenowatch*, South Africa's independent early warning platform for xenophobia. The platform records incidents of xenophobic threats and physical attacks, as well as responses (or lack thereof) to the violence. *Xenowatch* consolidates multiple databases which use very fragmented and different definitions of xenophobia. It does so by monitoring media reports, crowdsourcing, and asking people to engage with reporting the incident. The similarity across all databases is that South Africa still does not have a clear understanding of what triggers xenophobic violence. These databases give an idea of the micropolitical factors and structures of what results in violence, but in general we do not know what we are tackling. We do know that quicker and better responses are necessary, because all present responses are reactive without a warning system. A future goal of *Xenowatch* is to increase accountability when xenophobia presents itself.

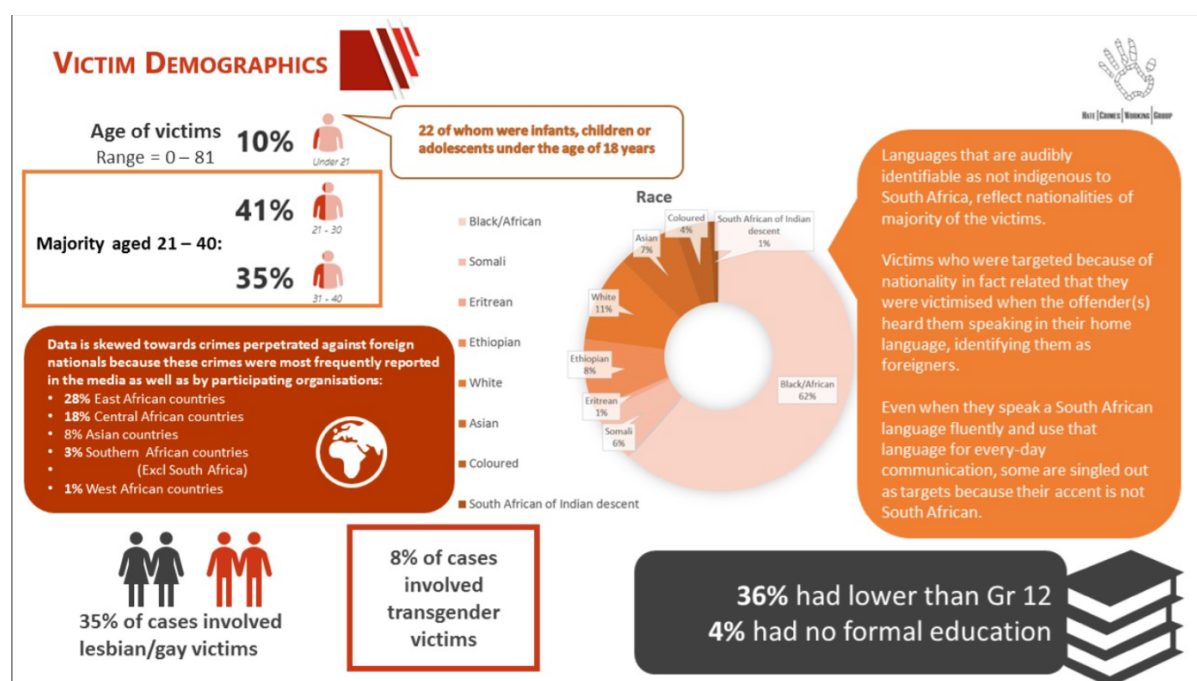


Figure 1 Data about victims of hate crimes in South Africa.<sup>1</sup>

Risa Berkower and Eric Treene discussed how data on hate crimes and civil rights cases in housing, employment, and other areas are collected in the United States. The DoJ takes two approaches to collecting data: first, seeking incident-based reporting from law enforcement and second, collecting victimisation reports from a statistical sample of population.

<sup>1</sup> Hate Crimes Working Group (2017) "Hate and Bias Crimes Monitoring Form Project Final Report". Accessed at [http://hwcg.org.za/wp-content/uploads/2018/02/HCWG-HateBias-Crime-Monitoring-project-InfoGraphics\\_2017.pdf](http://hwcg.org.za/wp-content/uploads/2018/02/HCWG-HateBias-Crime-Monitoring-project-InfoGraphics_2017.pdf).

## Types of Hate Crimes in the U.S., 2009-2016

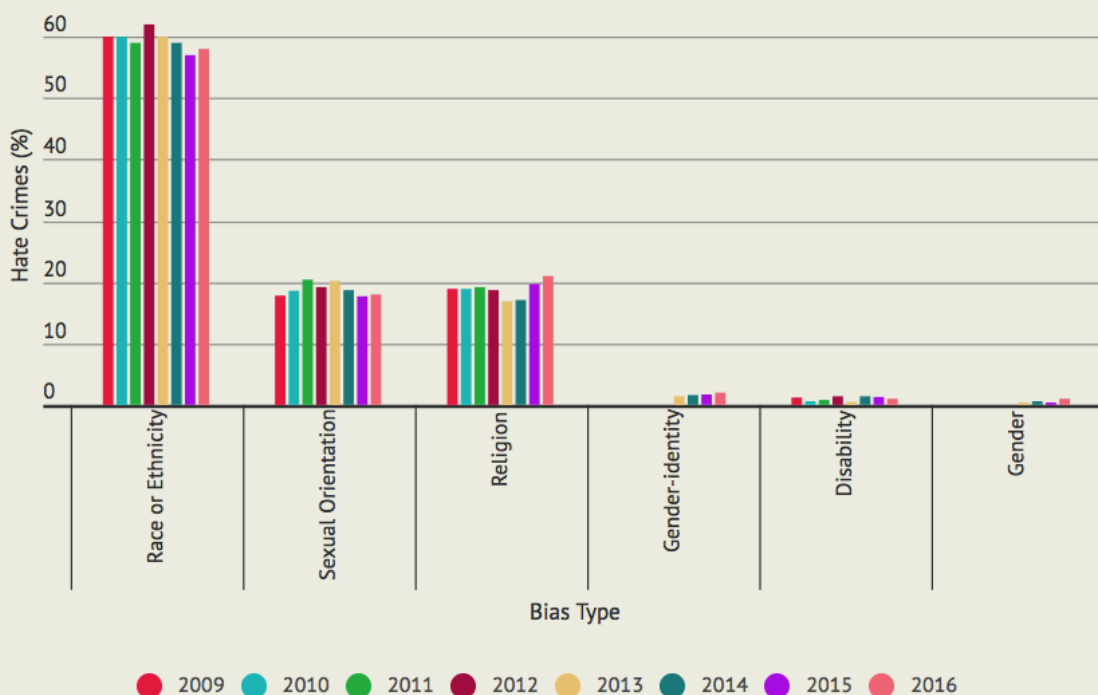
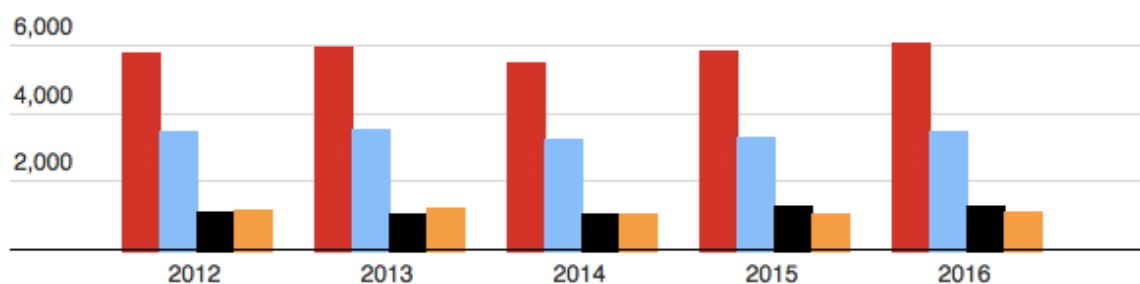


Figure 2 The FBI reports the type of bias that motivated the offender.<sup>2</sup>

## Hate crimes in the U.S., 2012-2016

Rates of reported hate crimes based on sexual orientation have remained fairly stable, while rates of race- and religion-based crimes have gone up. A single-bias incident is defined as an incident in which one or more offense types are motivated by the same bias.

■ Single bias incidents ■ Race/Ethnicity ■ Religion ■ Sexual orientation



In 2015, the FBI combined crimes based on ethnic identity with their race tally. Before 2015, they included these in separate tallies. Numbers adjusted to show combined incidents based on race and ethnicity during this time period.

Figure 3 Rates of reported, variously-motivated hate crimes in the United States have not decreased<sup>3</sup>.

<sup>2</sup> Matthew Shepard Foundation (2018) Infographic: Gaps in Hate Crimes Reporting. *Hate Crimes Reporting and Prevention Initiative*. Accessed at <https://www.matthewshepard.org/hate-crimes-reporting/>.

<sup>3</sup> Bjork-James, Sophie (2017) What the latest FBI data do and do not tell us about hate crimes in the US. *The Conversation*. 27 November. Accessed at <https://theconversation.com/what-the-latest-fbi-data-do-and-do-not-tell-us-about-hate-crimes-in-the-us-87561>.

## Are Hate Crimes Actually Decreasing?



Figure 4 According to the Matthew Shepard Foundation, FBI's Hate Crimes Report statistics do not capture a majority of estimated actual hate crimes; so, "while the number of incidents reported by victims shift drastically, the Hate Crimes Report remains relatively unaffected"<sup>4</sup>.

<sup>4</sup> Matthew Shepard Foundation (2018) Infographic: Gaps in Hate Crimes Reporting. *Hate Crimes Reporting and Prevention Initiative*. Accessed at <https://www.matthewshepard.org/hate-crimes-reporting/>.

## Session 6: Building NGO coalitions and facilitating understanding

### SESSION OVERVIEW

Matthew Clayton, the Research, Advocacy & Policy Manager at Triangle Project, discussed maintaining and growing the Hate Crimes Working Group (HCWG). The Hon John Jeffery, MP, Deputy Minister of Justice and Constitutional Development spoke about his work with coalitions from civil society, including on upcoming hate crimes legislation and with the LGBTI National Task Team. Rajdeep Singh Jolly of the Sikh Coalition discussed coalition-building strategies among minority groups which have led to reforms in the United States.

### PRESENTATION SUMMARY

The HCWG is a large and diverse coalition of organizations and individuals committed to conducting research and advocacy towards the passage of legislation that protects people living in South Africa from hate crimes. Matthew Clayton discussed the group's research between 2012 and 2017. The HCWG is made up of a very broad cross-section of organisations representing groups facing discrimination in South Africa. The group is driven by a single goal to pass a Hate Crimes Bill in South Africa. In its research, the HCWG found that, when hate crimes occur, the perpetrators are often known by the victims and the communities in which they live. They found that hate speech is becoming the norm in South Africa. Hate crimes that occur in the form of targeted destruction of property are meant to destroy people's livelihoods and homes to make them leave their community. Crimes against religious minorities, migrants and refugees have not been taken seriously enough by authorities. The group is working to pass the bill and anticipates the potential challenge that it may not pass before the 2019 election, at which point the HCWG would need to re-assess its strategy. As it looks to the future passage of the bill, the group is considering training and sensitising service providers to build capacity for responding to hate crimes.

Deputy Minister of Justice & Constitutional Development John Jeffery discussed how civil society organisations assist the government by providing research, information and realistic assessments of how programmes are working. The Hate Crimes Bill is a complex bill, and its impact must be monitored once it is passed and implemented.

Rajdeep Singh Jolly of the Sikh Coalition shared his knowledge about engaging religious minority communities for effective policy reform. Effective strategies that have led to reforms have included legislative advocacy, strengthening hate crime data, police trainings, and security for houses of worship. Participants found the Sikh Coalition's advocacy for a 'fly rights' app, explaining what rights people have when going through airport security, to be a useful example for South Africa.

### THEMES FROM THE Q&A:

- How will the hate speech-related clauses of the Hate Crimes Bill be implemented, given how prevalent hate speech is within South Africa?
- The decriminalisation of sex work would make it far easier to track hate crimes committed against sex workers. Otherwise, it is difficult for these individuals to report violations to the police.
- An app similar to the 'fly rights' app developed in the United States could be useful in assisting key populations who are victims of hate crimes in South Africa.



## Next steps and recommendations

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1. Continue to share expertise and experiences of discrimination and hate crimes, and responses to them, between the United States and South Africa.
2. Victims of hate crimes should be protected under the South African Hate Crimes Bill as soon as possible. However, the draft bill must first provide further instructions for *every* role player responding to hate crimes.
3. Build on the workshop platform and create partnerships with attending organisations.
4. When rhetoric promoting xenophobia, homophobia, transphobia, and other forms of hate appears, address it immediately by sharing accurate information about the targeted groups.
5. Hate crimes should be consistently and adequately monitored in South Africa. An early warning system could result in quicker and better responses.
6. Civil society should encourage exchanges of ideas and experiences, especially among youth.
7. Interfaith organisations in South Africa should address discrimination against African traditional religions.
8. University exchange programs between South African and other African universities should be promoted as a way of preventing xenophobia before it can appear.
9. The SAHRC requires more funding to fulfil its mandate of monitoring and investigating threats to human rights and taking other actions in response to discrimination.
10. Groups which are targeted by discrimination and hate crimes must stand together and speak with a united voice.



## OUR FUNDERS

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