

# (South) African perspectives on the prevention, monitoring and combating of hate victimisation

Juan A. Nel and Zindi Venter

## Abstract

**Purpose** – *This paper aims to provide an overview of South African perspectives on preventing, monitoring and combating hate victimisation, towards informing international understandings.*

**Design/methodology/approach** – *Using a general review approach, this paper provides a historical examination of measures proposed by the South African Government and civil society since 1994, to prevent, monitor and combat hate crime, hate speech and intentional unfair discrimination.*

**Findings** – *Regardless of a constitutional commitment to social inclusion, diversity and minority rights, significant progress remains lacking after almost three decades of related advocacy, lobbying and limited government intervention. Findings of the South African Hate Crimes Working Group (HCWG) longitudinal Monitoring Project emphasise the need for decisive legal responses to hate victimisation.*

**Social implications** – *A Bill, recognising hate crime and hate speech as distinct criminal offences, has been in development for almost 15 years and will soon serve before Parliament. Enactment of this legislation will be ground-breaking in Africa.*

**Originality/value** – *This paper contributes to the field of hate studies by providing an overview of the journey towards current conceptual understandings of hate in (South) Africa. It sets the stage for evaluating the potential of the redesigned HCWG monitoring tool, which holds promise for early identification and intervention in hate hotspots and targeted sectors. This instrument can establish trends not only in South Africa but also across the African continent.*

**Keywords** *Hate victimisation, Hate crime, Hate speech, Intentional unfair discrimination, South Africa, Bias monitoring, Civil society, Hate Crimes Working Group, Constitutional court, Human rights*

**Paper type** *Research paper*

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## Introduction

The peaceful transition to a post-apartheid South Africa in 1994 and the associated constitutional promise of a better life for all its inhabitants [Republic of South Africa (RSA), 1996] were lauded, internationally (Breen *et al.*, 2016; Breen and Nel, 2011). However, almost 30 years later, thought leaders and social commentators are increasingly of the opinion that years of misgovernance, significant service delivery challenges and rampant crime and corruption—reminiscent of a mafia state, may suggest South Africa's rainbow as a beacon of hope for the world is fading (for instance, see Austro-British Society [www.oeborg.at/policy-paper-27/](http://www.oeborg.at/policy-paper-27/) and News24 [www.tinyurl.com/58n7uyn4](http://www.tinyurl.com/58n7uyn4)). In addition to the aforementioned concerns, there has been growing international attention to hate incidents driven by prejudice and their enduring impact on safety and belonging in South Africa, particularly affecting targeted groups such as non-nationals and LGBT+ communities (Breen *et al.*, 2016; Nel and Judge, 2008; Nel and Mitchell, 2019; Olofinbiyi, 2022). Despite some efforts to prevent and address hate victimisation, effectively tackling such incidents remains a significant challenge.

Received 7 December 2023  
Revised 20 February 2024  
Accepted 20 February 2024

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Internationally, hate incidents, broadly, refer to a range of acts of bias and crimes driven by prejudice based on various attributes (Fitch-Bartlett and Healy, 2021; Harris, 2004; Nel and Mitchell, 2019). Notably, in academia and policy circles, attempts to establish a universally accepted definition for hate incidents are ongoing (Brax, 2016; Hall, 2013). Limited consensus exists on how to define hate incidents, and no singular framework definitively applies (Hall, 2013; Schweppe, 2021; Sheppard *et al.*, 2021). Nevertheless, shared understandings and creating a common definition are deemed important (Fitch-Bartlett and Healy, 2021). In this regard, Brax (2016) emphasises the significance of considering the motivation, intention, expression of discrimination, and impact on the victim when categorising such occurrences.

Hate incidents can be understood as actions directed at individuals or groups based on characteristics such as race; ethnicity; nationality; sexual orientation, gender identity and -expression (SOGIE) or religion [American Psychological Association (APA), 2017; Department of Justice and Correctional Services (DoJ&CS), 2018; Pieterse *et al.*, 2018]. These incidents manifest in various forms of violence, all specifically motivated by bias, such as property damage, robbery/theft, illegal eviction, threats with a weapon, assault with intent to cause severe harm, attempted murder, murder, (corrective) rape, sexual assault, extortion/blackmail, arson, intimidation, harassment and defamation of character/harm to dignity (Breen and Nel, 2011; DoJ&CS, 2018; Mitchell and Nel, 2017; Noelle, 2002).

In the article, the terms “hate victimisation” and “hate incidents” are used interchangeably and are preferred over “hate crime” (Hardy and Chakraborti, 2016; Nel and Mitchell, 2019; Vergani and Navarro, 2023). Hate incidents include actions that are regulated by criminal law, actions that are regulated by civil law, as well as actions that are not regulated by any specific laws (Chakraborti and Garland, 2015; Geldenhuys and Kelly-Louw, 2020; Hardy, 2019). The focus is on acts driven by hate and the harm they cause, regardless of the legal framework in which they fall. Importantly, these types of incidents convey a message to targeted individuals and groups that they are unwelcome, undervalued and face potential harm (Breen and Nel, 2011; Iganski, 2001; Perry and Alvi, 2012). Hate incidents harm social unity and cohesion, causing significant trauma and distress to their victims (Iganski, 2001; Marais *et al.*, 2022). By using the term hate incidents, we aim to encompass a broader spectrum of harmful acts driven by bias (that is, hate crime, hate speech and intentional unfair discrimination), including both criminal offences and non-criminal acts that have an impact on targeted individuals or communities. Indeed, in the absence of hate crime legislation, an official definition of hate crime, and a policing recording category for “hate crime” in South Africa, this broader understanding allows for a comprehensive examination of the nature and impact of hate-related behaviours over the past decade, in particular.

Recognising the seriousness of such incidents is crucial for politicians, policymakers and practitioners, to develop measures that protect regularly targeted groups and prevent such incidents (Browne *et al.*, 2011; Paterson *et al.*, 2018; Wilson, 2014). In the following sections, we provide an overview of related legislation and policies that came into effect over the past 30 years, since the onset of the dismantling of apartheid, that has relevance in contemporary South Africa in the (in)direct prevention and combating of hate victimisation. We share current understandings of related definitions, i.e. hate crime, hate speech and unfair discrimination, as South Africa edges closer to specific hate crime legislation. The article then delves into the necessity of monitoring hate incidents in South Africa, given the absence of specific hate crime legislation and a related recording category within the criminal justice system. The role of civil society in lobbying and advocacy efforts, particularly the South African Hate Crimes Working Group (HCWG), is highlighted, along with the findings of its Hate Crimes and Bias Monitoring Project, which shape the understanding of hate victimisation in the country. The redesign of the HCWG monitoring tool is discussed, emphasising its potential in early identification of hate hotspots and vulnerable sectors. The promise this initiative may hold

regarding targeted intervention, and establishing trends in South Africa, but also elsewhere on the African continent, is also elucidated.

## **Advancing equality and social justice: a 30-year overview of related laws and policies, lobbying and advocacy in contemporary South Africa**

After decades of oppressive apartheid rule, the dawn of democracy in South Africa was intended to provide a platform for a radical and decisive break from the past. The commitment to foster inclusivity, embrace diversity and safeguard the human rights of all individuals, regardless of their background or identity, contributed to the country's constitutional and legal framework being widely recognised as one of the most progressive in the world (da Costa Santos, 2013; De Vos, 2007; RSA, 1996). This is particularly the case in terms of its first-time reference worldwide to sexual orientation as early as 1994, and subsequent government approval of same-sex marriage in 2006 – a first for the African continent, and South Africa being only one of five countries in the world to do so at the time (da Costa Santos, 2013; De Vos, 2007).

Over the past three decades, South Africa has witnessed the implementation of numerous laws and policies aimed at dismantling systemic discrimination, redressing historical injustices and promoting social cohesion. This section presents an overview, in chronological order, of the Acts and policies that have shaped the contemporary South African landscape, beginning with the highest law of the land, the Constitution (RSA, 1996). We provide a critical examination of the impact of these laws and policies on advancing equality and social justice, particularly for those on the margins of society, who too often are the targets of hate.

### ***The South African Constitution and the associated Bill of Rights (Act 108 of 1996)***

Notably, South Africa's Constitution, enacted in 1996, explicitly upholds the principles of human dignity, freedom and social justice thus setting a remarkable foundation for the nation's democratic aspirations. With its cornerstone the Bill of Rights, the Constitution promotes a human rights culture and promises equality for all, regardless of, among other things, gender, race, sexual orientation, religion and ethnic or social origin (RSA, 1996). This also refers to equality in the eyes of the law and equal access to justice.

The South African Constitution provides a legal structure and a framework for antiprejudice, while its political message is one of tolerance and non-discrimination. Accordingly, it specifically provides for the establishment of institutions to serve as oversight bodies to deal with the legacy of the past, protect democracy and promote human rights. Referred to as Chapter Nine institutions, these, among others, include the South African Human Rights Commission (SAHRC) with the mandate to ensure the realisation of the broader spirit of the Bill of Rights (Geldenhuys and Kelly-Louw, 2020). Promoting, protecting and monitoring human rights in South Africa, they are expected to provide accessible and efficient access to justice through the Equality Courts for those seeking redress for the trio of offences of unfair discrimination, harassment and hate speech (Hunter-Parsonage and Albertyn, 2021).

While equality is legally recognised, the question is whether equality is truly realised. Certainly, the society envisaged in the Constitution and the "rhetoric" of the architects of the "new" South Africa seem far removed from everyday realities, with ever-widening socio-economic and other inequalities (Geldenhuys and Kelly-Louw, 2020; Nel, 2007). Also, see Mail&Guardian ([www.tinyurl.com/ydtsea58](http://www.tinyurl.com/ydtsea58)). Indeed, despite the constitutional promise of a better life for all and some significant strides, South Africa, among others, still faces persistent challenges in addressing widespread victimisation and discrimination, much like many other African nations (Nel and Mitchell, 2019). Regardless of the transformative nature of the Constitution that specifies the right to freedom from all forms of violence, there is a notable absence of distinct provisions to categorise and/or offset hate incidents and their chilling effects (Breen *et al.*, 2016; Breen and Nel, 2011; Judge and Nel, 2018; Nel, 2007).

This deficiency not only undermines the alignment of responses to such victimisation with democratic principles but also tarnishes the country's international reputation for failing to guarantee not only freedom of speech, association and movement but also security for those on the margins of society too often targeted by hate ([Breen et al., 2016](#); [Nel, 2007](#)).

### *Equality Act (Act 4 of 2000)*

To comply with international obligations, South Africa introduced the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) in 2000, commonly known as the 'Equality Act' [[Geldenhuys and Kelly-Louw, 2020](#); [Republic of South Africa \(RSA\), 2000](#)]. The Act serves as a primary recourse for individuals who experience unfair discrimination, harassment and hate speech based on prohibited grounds, including race, gender, disability, sexual orientation, religion/culture, language and poverty ([Hunter-Parsonage and Albertyn, 2021](#)). It plays a crucial role in solidifying the nation's commitment to dismantling discriminatory practices and promoting inclusive policies across various domains such as employment, education, housing and public services [[Department of Justice and Constitutional Development \(DoJ&CD\), 2003](#)]. By making constitutional principles more accessible to people from all walks of life, the implementation of the Equality Act empowers individuals to confront and challenge inequality and discrimination in their daily lives ([Hunter-Parsonage and Albertyn, 2021](#)). Additionally, the Act highlights the importance of public education and raising awareness about addressing unfair discrimination (that is, the act of displaying favouritism, prejudice or bias towards or against an individual based on prohibited grounds), hate speech and harassment ([DoJ&CD, 2003](#); [Nel et al., 2013](#)).

The Equality Act, however, exposes a disheartening reality: much like the Constitution, this Act often falls short in delivering justice, equally. While there were high expectations for the widespread use of the Act to address inequality and discrimination in society, its implementation has been uneven ([Hunter-Parsonage and Albertyn, 2021](#)). Research conducted by [Hunter-Parsonage and Albertyn \(2021\)](#) reveals a consistent influx of complaints related to hate speech and racial discrimination, particularly targeting Black Africans, in Magistrate Courts. Many of these cases are resolved quickly through written apologies or minimal damages payments. Complaints regarding religious discrimination, predominantly focused on anti-Semitism, are also commonly addressed through written apologies and sensitivity training. In these cases, both complainants and defendants often represent themselves. Conversely, cases brought to the High Court operating as an Equality Court, due to their complexity, are more likely to involve legal representation by attorneys and advocates. The sought relief often includes declaratory orders instructing the state or a state organ to take specific actions to address unfair discrimination.

The Equality Act has demonstrated effectiveness in addressing racial discrimination, as highlighted earlier. However, there are concerning disparities in its application. One notable example is the case of Julius Malema, a controversial public figure in South Africa, who has repeatedly made racist remarks against Indian and White groups, without facing consequences ([Bambi, 2018](#); [Rall, 2022](#)). In contrast, individuals like Penny Sparrow and Vicki Momberg gained notoriety for their anti-Black African racism, resulting in swift justice. Sparrow was fined significantly for a racist Facebook post, while Momberg received a two-year prison sentence for crimen injuria towards a Black African police officer ([Momberg v State, 2019](#); [Nel and Mitchell, 2019](#)).

Until recently, there was ambiguity regarding the interpretation of hate speech protection provided in Section 10 of the PEPUDA by the SAHRC and the Equality Court, particularly in balancing the right to dignity, equality, and freedom of expression ([Geldenhuys and Kelly-Louw, 2020](#)). As a result, the DoJ&CS has emphasised the need for reviewing and amending the PEPUDA to provide clarity. Given the deep-rooted legacy of apartheid, the courts have shown understanding in addressing racism, as evident in the Sparrow and Momberg cases. However, hate speech perpetrated on other grounds has often seen

justice delayed. Over the course of 13 years, two such hate speech cases have since come to play a critical role in shaping South Africa's legal response to the limits of freedom of expression and hate speech definitions ([van Wyk and Nel, 2023](#)). The first case, dating back to 2008, involved a controversial high-profile, politically connected columnist, Jon Qwalane, who published a homophobic newspaper article with derogatory statements about the LGBT communities and a cartoon illustration of a man marrying a goat, thus comparing same-sexuality to bestiality ([Judge and Nel, 2018](#); [Qwelane v SAHRC \[South African Human Rights Commission\] and Another, 2021](#)). The second case, originating in 2009, centred on anti-Semitism, where former trade union leader Bongani Masuku, directly targeted Jews with threats to inflict continuous suffering, also referring to Hitler as their friend ([SAHRC obo South African Jewish Board of Deputies \(SAJBD\) v Masuku and Another, 2022](#); [The Jerusalem Post, 2019](#), para 6). Both these cases were referred to the South African Constitutional Court, many years after their occurrences for pronouncements on them constituting hate speech.

South Africa's stumbling efforts to build a more democratic and equal society and strengthen the rule of law in addressing hate incidents include two additional government-led initiatives. First, an overview follows of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP) [[Department of Justice and Correctional Services \(DoJ&CS\), 2019](#)]. This is followed by the Prevention and Combating of Hate Crimes and Hate Speech Bill (B9-2018), a.k.a. "the Hate Crimes and Hate Speech Bill".

### ***NAP (2003–2019)***

South Africa's entrenched history of segregation and othering presents a significant challenge to fostering national unity ([Breen et al., 2016](#)). Traditional aspects of identity such as nationality, race, gender, ethnicity and sexual orientation continue to shape power dynamics in contemporary South Africa, resulting in continued social differentiation and the marginalisation of individuals perceived as different ([Harris, 2004](#); [Nel and Judge, 2008](#)). South Africa's journey towards formulating the NAP dates back to the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance [[World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance \(WCAR\), 2001](#)]. The WCAR was held in South Africa, in 2001, as a tribute to the courageous fight carried out by the people of this country against the oppressive apartheid system, and in acknowledgement of the country's journey towards democracy, rooted in the principles enshrined in its Constitution ([DoJ&CS, 2019](#); [WCAR, 2001](#)). The development of the NAP was done in consultation with various stakeholders, including the government, the Chapter Nine institutions and civil society organisations (CSOs) ([DoJ&CS, 2019](#)). While development commenced in 2003, and a draft version of the NAP was presented in 2013, notably it was only launched 16 years after its inception, in 2019.

The NAP, at least on paper and in principle, complements existing laws, policies and programmes addressing equality and discrimination, and provides the basis for developing comprehensive public policy against racism, racial discrimination, xenophobia and intolerance. Additionally, it aims to monitor and report on such incidents, with a rapid response team reporting to the government and society at large ([DoJ&CS, 2019](#)). Indeed, if implemented, the NAP ought to enhance not only the monitoring and documentation but also comprehending the extent and enduring nature of racism, racial discrimination, xenophobia and intolerance among others, on grounds of SOGIE ([Nel and Mitchell, 2019](#); [van Wyk and Nel, 2023](#)). However, it is regrettable that the NAP has fallen short of achieving its objectives thus far, as still today there are no established monitoring and evaluation mechanisms to report on incidents of racism, racial discrimination, xenophobia and intolerance. Without such progress in place, the realisation of a more equitable society, as

well as the reinforcement of the rule of law to protect those relegated to the margins of society, remains elusive.

### *Hate Crime and Hate Speech Bill (B9-2018) (2009–present)*

Specific hate crime legislation is often seen as an important step towards combating discrimination, protecting vulnerable communities, and sending a strong message that hate and prejudice will not be tolerated (Breen and Nel, 2011; Hall, 2013; Iganski, 2001; Marais *et al.*, 2022). South Africa's current approach to treating hate incidents as ordinary offences fails to recognise their unique motivations and the impact associated with bias and prejudice. Consequently, the accurate tracking, prosecution, and prevention of hate incidents on a national level are hindered (Nel and Mitchell, 2019).

The Prevention and Combating of Hate Crimes and Hate Speech Bill [B9-2018] (Minister of Justice and Correctional Services, 2018), recognising hate crime and hate speech as distinct criminal offences has been in development since 2009, thus for almost 15 years, but was finally passed by the South African Parliamentary National Assembly ([www.tinyurl.com/9j5kjawy](http://www.tinyurl.com/9j5kjawy)) and transmitted to the National Council of Provinces for concurrence on 14 March 2023. The pending Hate Crime and Hate Speech Bill aims to address hate crimes and hate speech by fulfilling the country's obligations to establish these offences and prosecution processes, determining appropriate sentences, preventing such acts, ensuring reporting on implementation and making necessary legislative amendments (Minister of Justice and Correctional Services, 2018). Enactment of this legislation will be groundbreaking in Africa, as no other country on the continent has related measures in place.

According to the most recent version of the Bill [B9-2018], a hate crime is defined as an offence, committed by a person who is motivated by prejudice or intolerance towards the victim, their family member or their association with a group of people who share certain characteristics. The following characteristics, in alphabetical order, are specified: age; albinism; culture; disability; ethnic or social origin; gender; HIV or AIDS status; language; nationality, migrant or refugee status or asylum seekers; occupation or trade; political affiliation or conviction; race; religion; sex; SOGIE; or skin colour. The hate crime is based on one or more of the actual or perceived characteristics of the target. In addition, it is an offence of hate speech for any person to intentionally publish, propagate, advocate, make available or communicate anything in a manner that demonstrates a clear intention to be harmful, incite harm or promote hatred based on certain grounds. Additionally, it is an offence to intentionally distribute or make available hate speech through an electronic communications system that is accessible by the public or directed at a specific person who can be considered a victim of hate speech. The Bill also outlines increased penalties for such incidents, as well as measures to support victims and promote awareness and education (Minister of Justice and Correctional Services, 2018).

By recognising and attempting to respond to hate victimisation South Africa can reaffirm its commitment to democratic values and demonstrate its unequivocal intolerance for any form of discrimination or prejudice. While the Bill acknowledges the importance of monitoring and reporting, it does not provide specific details on implementing this process (Stratford, 2023). A lack of clear reporting mechanisms is likely to result in less accurate documentation of hate incidents which consequently may hinder effective intervention and the prosecution of perpetrators of such hate incidents (Stratford, 2023). Ultimately, the success of this proposed legislative response lies in its finalisation, publication, and implementation, which currently South Africa is failing at, despite considerable guidance/assistance/and comments from a variety of parties, including the HCWG. It is noteworthy that amidst the extensive backlash against the pending Bill, little attention is given to the hate crime provisions. Instead, the focus tends to centre on opposition to the hate speech provisions and concerns regarding implications for freedom of expression. Fervent opposition is evident from social commentary on various influential media platforms: Politics



Web ([www.tinyurl.com/5cv4vuk2](http://www.tinyurl.com/5cv4vuk2)); Mail&Guardian ([www.tinyurl.com/er7smxrh](http://www.tinyurl.com/er7smxrh)); Sowetan Live ([www.tinyurl.com/58tjcecv](http://www.tinyurl.com/58tjcecv)); and Business Tech ([www.tinyurl.com/yr67fr78](http://www.tinyurl.com/yr67fr78)), to name only a few.

“Justice delayed is justice denied,” a saying coined by the English philosopher and jurist Sir Edward Coke in the early 1600s ([Juris Academy, 2023](#)). The saying holds true as hate incidents continue to raise significant concerns and are an under-reported issue, with specific legal provisions yet to be adequately established. From this section, it ought to be evident that, regardless of a constitutional commitment to social inclusion, diversity, and minority rights, limited progress has been made by the government to prevent, monitor, and combat hate crime, hate speech and intentional unfair discrimination in South Africa after almost three decades. A historical examination of measures taken by the government to date, as outlined above, will be incomplete without considering the numerous advocacy and lobbying efforts made by civil society.

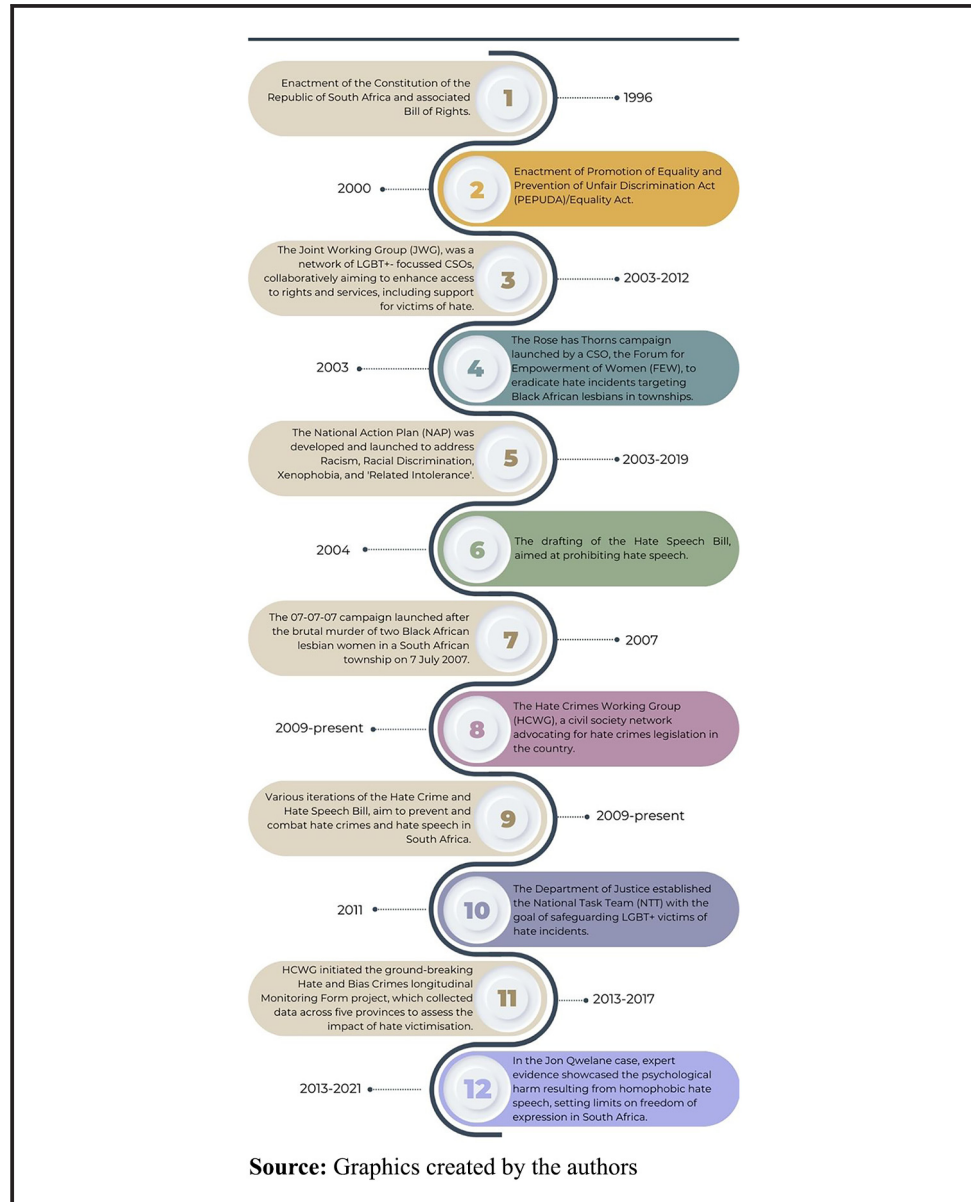
*Civil society’s role in shaping government responses to hate.* [Figure 1](#) provides an overview of the role of civil society, and in particular the LGBT+ sector, since the early 2000s, in mobilising their constituencies to demand prioritisation by government of access to rights and services, including support for victims of hate. In this regard, some of the earliest efforts were under the auspices of the Joint Working Group (JWG) (2003–2012). Initiated by OUT LGBT Well-being (OUT), the University of South Africa (Unisa) Centre for Applied Psychology, and four other leading CSOs, the goal was to have a national network of LGBT+-focussed organisations in South Africa ([Nel and Judge, 2008](#); [Odendaal and Nel, 2022](#)). During 2003–2006, the JWG conducted a community-based study, the first of its kind, aimed at establishing the levels of empowerment among LGBT+ people living in the three most urban-based and resourced provinces of the country ([Odendaal and Nel, 2022](#)). Several groundbreaking publications emanated from this research, including an exploration of homophobic victimisation in Gauteng ([Nel and Judge, 2008](#)), and a determination of factors affecting vulnerability to depression among gay men and lesbian women, which included fear of victimisation ([Polders et al., 2008](#)). At the time of discontinuation, the JWG consisted of 24 LGBT+ CSOs forming the organised South African LGBT+ sector.

A CSO, the Forum for the Empowerment of Women (FEW), which was one of the founder members of the JWG, in 2003 launched the “Rose has Thorns” campaign with the objective of eradicating hate incidents against Black African lesbian women in the townships in South Africa ([Serojane, 2003](#)). After the brutal homophobic murder of two Black African lesbians in Soweto, South Africa, on 7 July 2007, several members of the JWG launched the 07-07-07 ([Breen and Nel, 2011](#)). The campaign set out to draw attention to the gap between the promise of constitutional rights, and the lack of implementation of these rights, as well as to raise awareness of the plight of Black African lesbians in townships and rural areas, in particular, as targets of hate (see Mail&Guardian, [www.mg.co.za/article/2017-07-08-070707-10-years-on-and-the-struggle-against-homophobic-hate-crimes-continues/](http://www.mg.co.za/article/2017-07-08-070707-10-years-on-and-the-struggle-against-homophobic-hate-crimes-continues/)).

The HCWG – a multi-sectoral network of CSOs serving the interests of a cross-section of marginalised groups, including those targeted based on their nationality, religion, status as a sex worker and SOGIE was established in South Africa in 2009, to lobby for hate crimes legislation. Still today, the HCWG endeavours to address the persistent occurrence of hate- and bias-related victimisation and the fragmented mechanisms for collecting data on hate incidents ([Breen and Nel, 2011](#); [HCWG, 2021](#); [van Wyk and Nel, 2023](#)). One of its founding members, the South African Jewish Board of Deputies (SAJBD) has a long history of monitoring anti-Semitic incidents in South Africa [[Nel and Mitchell, 2019](#); [South African Jewish Board of Deputies \(SAJBD\), 2014](#)].

In 2011, the then DoJ&CD initiated a multi-sectoral national task team (NTT) in response to persistent (inter)national lobbying for the government to take the plight of LGBT+ victims of hate more seriously ([Breen and Nel, 2011](#)).

**Figure 1** Timeline of key developments in response to hate victimisation in South Africa



### Unveiling key findings on the nature and impact of hate victimisation in contemporary South Africa (2013–2023)

In collaboration with various stakeholders, including CSOs, government entities, academic institutions and individuals, and informed by international research, the HCWG initiated the longitudinal Hate Crimes and Bias Monitoring Project (2009- ongoing) that today significantly shape the understanding of hate victimisation in the country. The University of South Africa led the development process, with support from the Psychological Society of South Africa (Mitchell and Nel, 2017; Nel and Mitchell, 2019; Nel *et al.*, 2013). The monitoring tool developed for the project was used to gather data for five years (2013–2017), covering five provinces in South Africa. The monitoring tool is a customised



monitoring tool consisting mostly of closed-ended questions, aimed at collecting information on hate crimes, hate speech and intentional unfair discrimination across different sectors known to be targets of hate. Without hate crime legislation in place nor a specific policing recording category for 'hate crime' in South Africa, taking a broader perspective enabled a thorough exploration of the nature and consequences of hate-related behaviours. This groundbreaking HCWG study documented a total of 1,060 cases, with 945 cases used for analysis after data cleaning (Mitchell and Nel, 2017; Nel and Mitchell, 2019; Nel *et al.*, 2013).

The exploratory study not only informed understanding of the nature and impact of such incidents on individual victims and communities but also shed light on the reporting and recording challenges associated with hate crimes, hate speech and intentional unfair discrimination in South Africa. Within this context, hate crimes were defined as any offences committed under common law against individuals, property or organisations, motivated by bias (Nel *et al.*, 2013). Hate speech, on the other hand, referred to the public and intentional expression of hatred towards another group, based on bias, with the intention to incite violence (Nel *et al.*, 2013). Lastly, intentional unfair discrimination was conceptualised as incidents where victims are discriminated against in any way based on an immutable characteristic (Nel *et al.*, 2013).

The research findings indicate a significant issue of limited reporting by victims and inadequate recording of hate incidents by the government as a whole (Mitchell and Nel, 2017). Only one-third of the cases were reported to the South African Police Service, aligning with the broader international trend of underreporting observed in hate incidents (Erentzen and Schuller, 2020; Hardy, 2019; Myers and Lantz, 2020; Pezzella *et al.*, 2019; Tzenios, 2022; Vergani and Navarro, 2023). To put it simply, there is a substantial number of unreported hate incidents that contributes to what is referred to as a "dark figure" (Myers and Lantz, 2020). Many victims of hate hesitate to report these incidents to the police, leading to a lack of comprehensive data. This dark figure of unreported hate incidents has significant implications. Without accurate information and understanding of hate victimisation, it becomes challenging to generate reliable estimates and allocate resources effectively to support victims and communities that need them the most (Myers and Lantz, 2020; Rennison *et al.*, 2011; Ruback *et al.*, 2018; Shively *et al.*, 2001; Vergani and Navarro, 2023).

A contributing factor to this challenge is the absence of specific recording categories in the police reporting systems in South Africa. Furthermore, not all incidents motivated by hate or bias, such as intentional unfair discrimination and hate speech, fall under criminal jurisdiction. The study highlighted the intrinsic association between hate incidents and hate speech and reported that in 68% of the 945 cases examined, victims were subjected to denigrating words and insults, exposing the underlying prejudice that fuelled these incidents (Mitchell and Nel, 2017). Moreover, in some instances, defamatory remarks preceded the actual attack by several months (Mitchell and Nel, 2017). The HCWG study identified the top six types of hate crimes: robbery/theft (30%), damage to property (27%), illegal eviction (17%), assault (14%), threat with a weapon (12%) and assault with intent to do grievous bodily harm (11%) (Mitchell and Nel, 2017). While the study was not a prevalence study, it revealed that the three most affected targeted groups were non-nationals (45%), LGBT+ persons and communities (28%) and victims targeted due to their religion (14%). These findings align with the hate crime statistics report released by the FBI that showed a significant percentage of hate crime victims in the USA were targeted based on their race/ethnicity and sexual orientation (FBI National Press Office, 2023). These two top categories of victimisation align with the current situation in South Africa, alongside accusations of racism against businesses and individuals with severe consequences to the victim and the broader community (Matthews and Tabensky, 2015; Nel and Mitchell, 2019; SAJBD, 2014). Furthermore, about half of the victims from the HCWG research reported

experiencing various consequences as a result of the incidents, including emotional, mental and/or physical effects, impacts on relationships and negative influences on their living conditions (Marais *et al.*, 2022; Mitchell and Nel, 2017).

Findings of the HCWG longitudinal Monitoring Project emphasise the need for decisive legal responses to hate victimisation. However, since the revival of the Hate Crimes and Hate Speech Bill in South Africa, progress in its passage has been limited and hate incidents have continued to occur (HCWG, 2021). The HCWG highlighted these ongoing hate incidents in their letter to Parliament on 16 April 2021, documenting incidents reported between October 2019 and April 2021 (HCWG, 2021). These incidents encompass various forms of hate, including 125 xenophobic attacks that led to 41 deaths, acts of anti-Semitism, cases of corrective rape – a sexual act involving an individual who deviates from traditional gender norms, and the act is often to “correct” or punish the individual for their non-conformity, and/or murder targeting LGBT+ individuals, threats involving deadly weapons and instances of racism (Doan-Minh, 2019; HCWG, 2021).

The research conducted by the HCWG provides valuable insights into the nature and impact of hate and bias incidents in South Africa, emphasising the significant psychological and emotional consequences hate incidents have for victims, communities and society as a whole (Nel and Mitchell, 2019). These findings confirm those of other scholars, including Armstrong (2019), Erentzen and Schuller (2020), McDevitt *et al.* (2001), Mitchell and Nel (2017), Perry (2003) and Tyson (2019).

A defining characteristic of hate victimisation is that they often go unreported, making effective monitoring of such incidents a pressing social concern (Armstrong, 2019; Pezzella *et al.*, 2019).

### **Towards an effective hate incident monitoring system: redesigning the HCWG monitoring tool for early intervention and policy development in South Africa**

Notably, challenges were encountered in the utilisation of the existing monitoring tool of the Hate Crimes and Bias Monitoring Project. Mitchell and Nel (2017) documented various challenges categorised as institutional (involving case intake procedures and organisational capacity limitations), individual (concerning participants’ willingness to disclose information) and instrumental (pertaining to difficulties in using the monitoring tool itself). Nel *et al.* (2022) conducted a follow-up study which identified further challenges related to the monitoring tool utilisation, such as its use as an interview schedule, length and the terminology employed within it.

Accordingly, there is an urgent need for a comprehensive monitoring tool that can serve multiple purposes in addressing hate incidents. Such a tool may contribute to the ongoing refinement of the Hate Crimes and Hate Speech Bill once enacted and help identify areas that require immediate attention (Stratford, 2023). The WCAR (2001), and NAP (DoJ&CS, 2019) have also recommended comprehensive monitoring of hate incidents at both local and international levels. To fulfil these monitoring objectives outlined in the latest draft of the Bill, a redesigned HCWG monitoring tool can be presented as a valuable instrument to the DoJ&CS.

By redesigning the existing Hate Crimes and Bias Monitoring Project, South Africa will be able to accurately track and document hate incidents, enabling early identification and intervention in high-prevalence areas and among vulnerable populations. A comprehensive monitoring system will serve multiple purposes and address the disproportionate emphasis on policing as the sole solution to hate incidents, as argued by Dixon and Gadd (2012). By taking action through the redesign of the monitoring tool, the HCWG and South Africa can achieve the following advantages:

- Valuable data for researchers, policymakers and practitioners: the redesigned monitoring tool will provide data that can be analysed to identify trends, patterns and root causes of hate incidents. This information supports evidence-based decision-making and targeted interventions to address underlying issues ([Breen and Nel, 2011](#)).
- Identification of hotspots and vulnerable sectors: Accurate information on the occurrence and nature of hate incidents will help identify areas where such incidents are more prevalent. This will enable resource allocation and targeted educational campaigns to promote social cohesion ([Brax, 2016](#)).
- Informing legal frameworks: The prevalence and nature of hate incidents, as captured through a monitoring system, can inform the development of effective legal frameworks to combat hate incidents while promoting tolerance and inclusivity. This information will increase the likelihood of enactment of the Hate Crimes and Hate Speech Bill, sending a clear message that such incidents will not be tolerated and that perpetrators will be held accountable ([Breen and Nel, 2011](#)).
- Unlocking additional resources and support services: An effective monitoring mechanism can attract additional resources to address hate incidents and provide support services for victims where needed. Increased availability of assistance, such as counselling and legal aid, contributes to the healing and recovery process of those affected by hate-motivated incidents ([Nel and Mitchell, 2019](#)).
- Establishing an effective hate incident monitoring system in South Africa is crucial. Such a system is necessary not only for early intervention, targeted interventions, and evidence-based policy development but also for gaining a comprehensive understanding of the impact on victims and the frequency of hate incidents. By addressing and preventing these incidents more effectively, the country can strive towards a society that values equality, respect and human rights for all its citizens.

In conclusion, the challenges highlighted in this study underscore the pressing need for redesigning the monitoring tool. [Nel et al. \(2022\)](#) propose a more concise version of the monitoring tool that uses everyday language and offers tailored variations for different data sources, enabling comprehensive data collection. This redesign holds great potential for enhancing our understanding of hate incidents in the South African context, as emphasised by [Van Wyk and Nel \(2023\)](#). By collecting high-quality data, the redesigned monitoring tool can facilitate early identification and intervention in hate hotspots and targeted sectors. Moreover, its impact extends beyond South Africa, as it has the capacity to establish trends in hate incidents across the African continent.

This article significantly contributes to the field of hate studies by providing a comprehensive overview of the conceptual understandings of hate in (South) Africa. It sets the stage for evaluating the effectiveness of the redesigned monitoring tool, offering promising prospects for fostering equality, justice and dignity for all in South Africa. Moving forward, it is essential to encourage continued dialogue, critical reflection and informed decision-making, propelling South Africa's transformative journey towards a society rooted in principles of equality and social harmony. While the South African Constitution provides a solid foundation for addressing discrimination and hate, and promoting inclusivity in conjunction with the Equality Act, NAP and the pending Bill, the challenge lies in the lack of implementation.

Overcoming these challenges and working within the framework is crucial to improving the lives of all individuals in South Africa. It is imperative to continue advocating for the effective implementation of existing legislation and developing and implementing new policies that specifically address hate incidents. This requires collaboration between legislators, policymakers, CSOs and the broader society to ensure that the rights and safety of all

individuals are protected. By doing so, South Africa can take meaningful steps towards creating a society that upholds the principles of equality, freedom and security for all its citizens.

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