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## Hate crime based on disability in South Africa

### Lessons for law reform

**Willene Holness<sup>1</sup>**

holnessw@ukzn.ac.za

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*When contemplating whether to introduce disability hate crime as a new substantive offence or as a penalty enhancement of existing crimes, legislators should consider the peculiarities of reporting, investigating and prosecuting hate crimes perpetrated against disabled people. This article argues that existing laws on sexual offences, domestic violence, harassment, and unfair discrimination should be strengthened, and research should be conducted to identify the appropriate initiatives to prevent and attend to disability hate crime by and with persons with disabilities. Creating a substantive hate crime based on disability has symbolic value, but should only be considered if the existing challenges to full and meaningful participation by persons with disabilities in investigative and court proceedings are addressed through appropriate procedural accommodations.*

### Introduction

Hate crimes against persons with disabilities are victimisations aimed at someone specifically because of their disability.<sup>2</sup> Such victimisation take various forms, including physical attacks that target disability aids; cruelty, humiliation, and degrading treatment related to the victim's

disability, and theft by people close to the victim (such as care givers or family members).<sup>3</sup> These crimes also include 'bullying, cyber-bullying, physical violence, sexual harassment and assault, domestic violence, financial exploitation and institutional abuse',<sup>4</sup> as well as the use of derogatory language (like calling someone crazy,

mental, lunatic, insane, psycho, retarded, dumb, and stupid).<sup>5</sup> Mocking can degenerate into physical assault.<sup>6</sup>

Since 1994, South Africa has focussed mainly on addressing hate crimes based on race.<sup>7</sup> The Department of Justice and Constitutional Development has considered introducing a hate crime offence into South African law, producing two versions of the so-called 'Hate Crimes Bill' (in 2016 and 2018),<sup>8</sup> the last of which lapsed in May 2019.<sup>9</sup> The law reform process is likely to address hate crime by introducing a hate element that aggravates, at sentencing, the base offence (such as rape, theft or assault). The 2018 Bill explains this hate element or 'bias motive' as 'the prejudged negative attitude towards an individual or group that is based on a real or perceived characteristic, which can lead to the victim or victims being attacked based on that attitude'.<sup>10</sup>

Because the law reform process was not undertaken by the South African Law Reform Commission (SALRC), it has not elicited the kind of broad-based consultation from stakeholders and the public that is usually the norm. Crucial input from affected parties, such as persons with disabilities, has not been sought. The process appears therefore to be political knee-jerk reaction, rather than a comprehensive process to reform the law that considers existing legislative provisions and the challenges facing the criminal justice system.

In this article, I set out several issues that law reform efforts should address when considering whether to introduce disability hate crime as a self-standing substantive crime or as a penalty enhancement. I also discuss factors that influence accessible reporting by persons with disabilities as victims and witnesses.

## **Crime against persons with disabilities**

Persons with disabilities face criminal and violent behaviour perpetrated by people who have

internalised stigma (ignorance, prejudice and discrimination) and who dehumanise persons with disabilities.<sup>11</sup> In some communities, persons with disabilities are deprived of their civil, political and socio-economic rights at the hands of private individuals, the state and the law. These unlawful deprivations of rights involve disability hate crimes that violate mental and physical integrity, life, dignity, and freedom from violence, abuse and exploitation.<sup>12</sup> Perceptions of disability can 'translate into pity, overprotection and the exclusion of disabled people from opportunities'.<sup>13</sup> These attitudes individualise the 'problem' by pathologising the person's disability, rather than viewing it as a social determinant that can be exacerbated by social and environmental barriers, processes and prejudices.<sup>14</sup> Some communities link disability with ancestral beliefs, or witchcraft, with potentially dire consequences, for example, for persons with albinism.<sup>15</sup>

Hate crime intensifies already high levels of stigma and entrenches exclusions from full and equal participation in society for people with disabilities. At the heart of disability hate crime is the socialisation and internalisation of ableism,<sup>16</sup> which is 'the belief that it is better or superior not to have a disability than to have one and that it is better to do things in the way that nondisabled people do'.<sup>17</sup> The effect of ableism is:

a pervasive system of discrimination and exclusion that oppresses people who have mental, emotional and physical disabilities ... Deeply rooted beliefs about health, productivity, beauty, and the value of human life, perpetuated by the public and private media, combine to create an environment that is often hostile to [them]...<sup>18</sup>

Ableism is a form of oppression that takes place between individuals, in institutions (education, health and employment settings

for example) and social systems.<sup>19</sup> The introduction of disability hate crimes in the law is one way of addressing, at a symbolic level, ableism that manifests in crime and violence. Although hate crimes cannot categorically address racism, sexism or homophobia, they are an important way to signal society's abhorrence of such offences.

Statistics on crimes committed against persons with disabilities have not been collected or published and there is a dearth of disaggregated data on disability (and types of disability) in criminal offences.<sup>20</sup> The media mainly reports on contemporary hate crimes based on race, religion (Islamophobia), ethnicity or social origin (xenophobia), and sexual orientation (homophobia)<sup>21</sup> rather than disability. Among these, race hate crimes receive most attention, focusing on the implications for 'social and legal treatment of victims, the sentencing of perpetrators, and the availability of resources for research, intervention and advocacy'.<sup>22</sup>

However, evidence suggests that persons with disabilities in South Africa experience higher levels of crime and violence, such as rape, theft, assault, murder, and fraud. At a structural level, macro-level violence occurs through laws that allow sterilisation without consent,<sup>23</sup> abuse of mental health users<sup>24</sup> and deadly neglect. The latter was illustrated by the Life Esidimeni case, in which 1 700 patients with psycho-social and/or severe and profound intellectual disabilities were transferred from the Life Esidimeni private hospital to non-governmental organisations (NGOs) for reasons of cost, resulting in the death of approximately 144 people from malnutrition, dehydration, lack of basic hygiene and lack of adequate basic or highly specialised medical care. The case, which was described by Justice Moseneke as 'murderous' and 'tortuous' illustrates how persons with disabilities residing in institutions are particularly vulnerable to violence.<sup>25</sup>

Social perceptions of women with intellectual disabilities may increase their risk of violence (including psychological violence, financial abuse, neglect, and deprivation).<sup>26</sup> This stems from the combined cultural devaluation of women and persons with disabilities, overprotection, social isolation and the denial of sexuality in women with disabilities. People with disabilities are also perceived as lacking credibility and exhibiting sexual deviance, and are frequently not provided sexuality education. Perpetrators perceive that there is a lower risk of discovery.<sup>27</sup> These myths, perceptions and stigma increase the likelihood that a victim with a disability is targeted for violence, and make it less likely that she will be able to identify, react to and report it.<sup>28</sup>

Police attitudes towards disability and victims' perceptions regarding the effectiveness of the criminal justice system exacerbate under-reporting.<sup>29</sup> The criminal justice system is largely inaccessible for persons with disabilities: from reporting at police stations, to investigation and evidence gathering by police, prosecution by the National Prosecuting Authority, testifying in court as a complainant or witness, and the resolution of criminal cases.<sup>30</sup> Although most victims of gender-based violence face barriers, persons with disabilities are disproportionately affected because of the stigma they face, communication and understanding difficulties and the fact that their legal capacity and credibility is questioned.<sup>31</sup> People with disabilities are less able to self-advocate (or have lower access to advocacy partners who can do so on their behalf), or to follow up with justice personnel on the progress of cases or to agitate for speedy resolution. Access to traditional dispute resolution structures and courts is similarly limited by perceived and actual barriers, stereotypes, attitudes and physical accessibility challenges.<sup>32</sup>

South Africa's international and regional law obligations require that the state make

accommodations for disabled persons to enable them to participate equally with those without disabilities, including accommodations in process, in the investigative and preliminary stages.<sup>33</sup> The UN Committee on the Rights of Persons with Disabilities has recommended that South Africa establish legal safeguards to ensure that persons with disabilities are accommodated in all legal proceedings, provide information and communication in accessible formats such as Easy Read, and introduce a systematic training programme on the rights of all persons with disabilities.<sup>34</sup>

## Legislative choices

Countries seeking to enact hate crime laws choose one of two mechanisms. First, states may create a substantive new offence, such as the United Kingdom's (UK) racially and religiously aggravated offences.<sup>35</sup> Second, states may increase the penalty for a base offence when that offence is committed with a bias motive – prejudice towards a person because of a particular status, or perceived status, such as race or disability. In common law countries, motive is considered in respect of aggravation at the sentencing stage. Most countries opt for this method.<sup>36</sup> For example, the United Kingdom's penalty enhancement hate crime law establishes a duty on the courts to increase sentencing for offences that involve hostility based on a disability (or perceived disability) of the victim, or where a crime is wholly or partly motivated by hostility toward persons who have a disability or a particular disability (and other protected characteristics).<sup>37</sup> A second aspect – demonstration of hostility – restricts the scope of the offence. Mere evidence of the crime being committed against a person with a disability would not be sufficient to satisfy the 'demonstration of hostility' test, but rather the perpetrator should have indicated (through words or conduct) his or her hostility toward the victim based on the victim's

disability (or perceived disability) at the time of, immediately before or after the offence.

A specific penalty enhancement already exists in South Africa through mandatory minimum sentencing provisions for sexual offences perpetrated against victims with disabilities.<sup>38</sup> The Criminal Law Amendment Act 105 of 1997 specifies that rape and compelled rape, if perpetrated against a victim with a physical or mental disability, will attract the prescribed life sentence.<sup>39</sup> Although protective rather than targeted at hate crimes, the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMA) creates specific offences against persons with 'mental disability' to 'address the particular vulnerability' of these persons. SORMA requires a sentence of 10 to 20 years for a person convicted of sexual exploitation of, or using a person with a mental disability for pornographic purposes.<sup>40</sup> Sexual grooming and exposure of pornography to persons with mental disability are also recognised, although these do not attract penalty enhancements.<sup>41</sup>

SORMA defines a person with a mental disability as 'including any disorder or disability of the mind, to the extent that he or she, at the time of the alleged commission of the offence in question, was:

- (a) unable to appreciate the nature and reasonably foreseeable consequences of a sexual act;
- (b) able to appreciate the nature and reasonably foreseeable consequences of such an act, but unable to act in accordance with that appreciation;
- (c) unable to resist the commission of any such act; or
- (d) unable to communicate his or her unwillingness to participate in any such act.<sup>42</sup>

This definition covers intellectual and psychosocial disability and may include neurological disability (such as cerebral palsy and epilepsy) as well as the broader category of cognitive disability (Alzheimer's disease).<sup>43</sup> The physical disability status is qualified with the clause 'due to his or her physical disability, is rendered particularly vulnerable'.<sup>44</sup>

During hearings on the then-Sexual Offences Bill, the South African Human Rights Commission (SAHRC) noted that persons with mental disabilities may be isolated, ostracised and 'made fun of' in their communities, making them vulnerable to sex offenders who befriend them and then take advantage of them.<sup>45</sup> The SAHRC also raised concerns about caregivers who may play a role in sexual grooming. Proposed provisions addressing exploitation and abuse of trust were omitted in the final version of the grooming offence in SORMA, which has been described as a 'missed opportunity'.<sup>46</sup>

South Africa already recognises that persons who are 'mentally disabled' are at heightened risk of, and are less likely to report, sexual offences by setting out provisions to address their lack of ability to consent to sexual act and that require mandatory reporting of 'knowledge, reasonable belief or suspicion' of a sexual act perpetrated against such a person.<sup>47</sup> Unfortunately, however, such measures can inadvertently feed the stigma relating to the ability and capacity of persons with disabilities to exercise their right to sexuality.<sup>48</sup>

## The South African Hate Crimes Bills

Disability hate crimes have not received as much attention in South African legal literature as those based on lesbian or gender-nonconforming status (curative/corrective rape),<sup>49</sup> ethnicity (xenophobia)<sup>50</sup> and race.<sup>51</sup> In 2013, Parliament's Research Unit issued a short discussion paper on the topic of

corrective rape and law reform for hate crimes, expressing a preference for the penalty enhancement option.<sup>52</sup>

This discussion paper called for the Department of Justice and Constitutional Development to 'consult with vulnerable groups on the scope of such a Bill, or the scope of crimes that should be considered for penalty enhancements'. However, to date, consultation with persons with disabilities has not occurred. In 2011, the Minister of Justice established a National Task Team on Gender and Sexual Orientation-based Violence Perpetrated on LGBTI Persons to develop a national intervention strategy for these affected groups, including hate crimes legislation and a policy framework.<sup>53</sup> Persons with disabilities were not included in the terms of reference of this task team and the strategy that was developed did not focus on persons with disabilities, bar mention of an intersectional approach that includes disability.<sup>54</sup>

The Hate Crimes Bills have not made a definitive choice between the two legislative approaches available to the state. The first Bill was criticised for not clarifying whether the preferred approach was a substantive offence or penalty enhancement.<sup>55</sup> The second Bill appears to allow a court to declare *any* offence as aggravated in law based on a protected characteristic such as disability, and not only at the sentencing stage. This hybrid approach means the hate crime aspect is 'layered on' existing base crimes.<sup>56</sup> The Bill stipulates that:

'A hate crime is an offence recognised under any law, the commission of which by a person is motivated by that person's prejudice or intolerance towards the victim of the crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member or the victim's association

with, or support for, a group of persons who share the said characteristics...'<sup>57</sup>

The Bill lists 17 characteristics that may give rise to a hate crime including albinism, disability and HIV status.<sup>58</sup> The bias element, present in the 2016 Bill, has been removed from the motivation of the offence of hate crime.

Defining disability itself is problematic due to the fact that persons with disabilities are not homogenous and neither are those individuals within a specific 'type' of disability. Accordingly the definition of the UN Convention on the Rights of Persons with Disabilities (CRPD) is open ended.<sup>59</sup> The position in other jurisdictions of a 'clear and uncomplicated definition'<sup>60</sup> of a disability hate crime may be ideal, but such definition should define the hate crime element and not the disability status to promote inclusion of disabilities broadly speaking.

Guidance from the development of a list of illustrative examples of conduct that may constitute hate crimes perpetrated against persons with disabilities may be sought (whether in the hate crimes legislation itself, or national instructions to police). Such a list or definitions may help not only the police in identifying demonstrations or motivations related to a victim's disability, but will also assist in the education and awareness required on the part of the public and persons with disabilities to ensure the reporting of these offences. Such a list should be contextualised for the South African situation and its drafting will require consultation with persons with disabilities. The Promotion of Equality and Prevention of Unfair Discrimination Act 3 of 2000 (PEPUDA) has an illustrative list of unfair practices in certain sectors that may constitute unfair discrimination.<sup>61</sup> Such a list has value for 'unimaginative' attorneys acting for clients in similar situations to those listed.<sup>62</sup> Similarly, an illustrative list could assist the police to identify hate crime incidents for investigative

purposes as a primary aim; and as a secondary purpose enable monitoring, including collection of statistics.

The Bill's penalty clause provides that a person convicted of a hate crime is liable, on conviction, to the following penalties deemed appropriate on sentencing:

'Imprisonment, periodical imprisonment, declaration as an habitual criminal, committal to any institution established by law, a fine, correctional supervision or imprisonment from which a person may be placed under correction supervision, as contemplated in section 276 of the Criminal Procedure Act; or (b) postponement or suspension of the sentence or a caution or reprimand, as contemplated in section 297 of the Criminal Procedure Act.'<sup>63</sup>

Where the minimum sentencing under the Criminal Law Amendment Act is not applicable, in instances where the victim suffered '(i) damage to, the loss of, or the destruction of, property or the loss of money; (ii) physical, or other injury; or (iii) loss of income or support,' the conviction of a 'hate crime' is to be regarded as an aggravating circumstance on sentencing.<sup>64</sup>

The retention of imprisonment as penalty is problematic because it excludes other sanctions, like those provided for in PEPUDA, including civil remedies. Restorative justice principles may be worth exploring as a means to restore fractured relationships and start to address societal prejudices against persons with disabilities.

### **Considerations for law reform on disability hate crime**

Crimes against persons with disabilities are pernicious, but are often invisible. This stems from two factors. First, people think that the crime results from the 'vulnerability' of persons

with disabilities rather than motivation of 'hatred' toward a person with such characteristics.<sup>65</sup> This stems from widely held beliefs that disability resides in an individual rather than the societal response to difference. Second, law enforcement fails to identify that disability may be an element in the offence due to the invisibility of some disabilities and because of prejudice or ignorance of the potential for disability to be a motivating factor in these cases.<sup>66</sup> Under-reporting is therefore a symptom of the failure by society and the law to recognise disability hate crime.<sup>67</sup>

Naidoo argues that like hate crimes based on race, 'disability ... [is a] personal, unalterable [characteristic] of the victim. The specific targeting of these characteristics in a criminal act would undoubtedly have a profound psychological and emotional effect on the victim, particularly in a community where ... disability prejudice [is] endemic'.<sup>68</sup> The retributive function of hate crimes recognises that these crimes cause greater harm than other crimes where membership of a protected group is not the motivation (in whole or in part),<sup>69</sup> and that they harm not only the individual with the disability, but also their community and society at large.<sup>70</sup>

Substantive hate crimes require a higher burden of evidence as the motivation aspect (hostility) has to be proved. A disadvantage to this approach is that indictments for the base offence may not be successful without the motivation aspect. Prosecutors may therefore avoid using the hate crime law or permit guilty pleas in respect of the base offence to secure a conviction. Appropriate training on indicators of motive could address these challenges.<sup>71</sup> One option would be to use a discriminatory selection version of a substantive offence, which does not require proof of hostility, but rather selection on the basis of prejudices or stereotypes about the vulnerabilities of the

victim. This option has easier application in practice.<sup>72</sup> Penalty enhancements, although easier to implement may lose the 'expressive' value of hate crimes, particularly where the reason for the sentencing uplift is not recorded.

An appropriate penalty for hate crime should express society's condemnation of the crime and address the harm caused to the community. There is limited evidence of the efficacy of minimum sentencing (or penalty enhancements) on crime and rehabilitation. Restorative justice processes have the potential to undo the harm suffered after reporting,<sup>73</sup> challenge the prejudice and bigotry that underlie hate crimes and forge relationships of respect and understanding.<sup>74</sup> Restorative justice practices are used in child justice<sup>75</sup> and in traditional courts in South Africa.<sup>76</sup> Restorative justice is used in mediations, which are used by the Equality courts<sup>77</sup> and the SAHRC in cases of human rights violations.<sup>78</sup> We should therefore, consider the potential that alternative methods such as restorative justice hold, particularly for less serious hate crimes.

## **Training and accountability measures**

Article 13 of the CRPD requires the adequate training of police, prosecutors and judges. The state must train justice personnel on a number of listed areas, including the rights of persons with disabilities, their diversity and individuality that requires individual measures to ensure their effective access to justice on an equal basis with others, their individual autonomy and legal capacity, and the 'centrality of effective and meaningful communications to successful inclusion'.<sup>79</sup> Currently, South Africa provides very little training of this kind, and the CRPD has recommended adequate training of justice personnel to ensure the right of access to justice is realised.<sup>80</sup> Poor understanding of different types of disabilities, the inability to identify 'invisible' disabilities such as intellectual, psychosocial and neurological disabilities,

and the failure to identify or investigate a perpetrator's motivation for committing an offence, (and consequentially collect insufficient evidence in that regard)<sup>81</sup> can scupper the prosecution of hate crimes based on disability.

Court rules also provide very little procedural accommodation for persons with disabilities. The directives issued to prosecutors on SORMA lack also detail on such accommodations, despite recognising that mentally disabled persons (and children, the elderly and, shockingly, someone who 'has AIDS') are vulnerable and that proceedings involving such persons should be 'expedited' and the cases 'receive priority'.<sup>82</sup> The glaring gaps in these directives remain a major barrier to the equal participation, dignity and access to justice for persons with disabilities.

Court preparation officers at Sexual Offences Courts have received only limited basic training in how to communicate with and prepare a child witness.<sup>83</sup> Heath et al reported that despite an estimated 10–15% of cases involving children and adults with disabilities (often mental and intellectual disabilities), 'most of the court actors had not received specific training on consulting with or preparing persons with intellectual disabilities. Senior stakeholders confirmed that many of these cases are not making it to trial and corroborates the statements of some prosecutors that these types of cases get screened carefully and withdrawn early.'<sup>84</sup> Sexual offences cases are withdrawn, fail to go to trial or result in acquittals where there is no DNA evidence. Witnesses wait a long time for mental age assessments and deaf witnesses do not receive sign language interpretation due to cost. Many court personnel believe that persons with 'mental' disability provide 'weak' testimonies, making cases 'unwinnable'.<sup>85</sup>

Justice personnel are not equipped to obtain evidence from persons with disabilities, particularly where communication is

problematic, for example where persons cannot 'fully [understand] what is being said to them, [express] themselves through speech, [concentrate] for long periods of time and [remember] information they have been given'.<sup>86</sup> Holness and Rule argue that '[t]he ability to effectively communicate with the court... is a key requirement for the competence of witnesses.'<sup>87</sup> Although research shows that intermediaries are sometimes used in court for people with communication difficulties (dependent on the person's disability), there have been no studies on the accommodations that are offered in police stations when receiving a complaint from a person who struggles to communicate. Barriers in communication negatively affect not only the witness's experience, but also 'the fairness of the outcome and other people's perceptions of the fairness of the system'.<sup>88</sup>

Msipa argues that in criminal proceedings 'the question should not be whether a person is competent to testify; rather it should be what types of accommodations are required to enable the person to give effective testimony'.<sup>89</sup> Measures used in other jurisdictions may offer potential in South Africa, such as developing appropriate questioning techniques for adults who experience communication difficulties, and training personnel to use them.<sup>90</sup> Introducing dedicated intermediaries or third party support persons (or both) provide other possibilities.<sup>91</sup> Dedicated training of police and prosecutors may challenge assumptions of persons with disabilities as 'pitiable' and inculcate a recognition of them as 'potential and actual victims of crime'. This also emphasises that 'accommodating and including persons with disabilities is, in fact, a matter of entitlement, not charity'.<sup>92</sup>

## Conclusion

The systemic challenges of gender inequality, racism and xenophobia in post-apartheid South

Africa have meant that combatting ableism has been deprioritised compared to victimisation on the basis of race, sex, sexual orientation, religion and ethnicity. Existing laws such as SORMA, PEPUDA, Protection from Harassment Act 17 of 2011 and the minimum sentencing provisions are not adequately implemented and resourced. Legal and policy frameworks do not adequately provide the procedural accommodations needed by victims with disabilities to participate in the legal process.

South Africa's law reform efforts have favoured mechanisms that introduce disability (and other statuses) as motivating factors in hate crime (substantively) and as an aggravation of sentence. This hybrid model provides an opportunity to bring awareness of the equal recognition before the law of persons with disabilities and to begin dismantling disablist discourse and address criminal conduct. However, we first need to strengthen existing legal provisions as a first course of action. The introduction of a new substantive offence of hate crime may bring symbolic value, higher levels of visibility, dedicated resources and victim support initiatives, but it will be unlikely to succeed if existing accessibility and other challenges for persons with a disability are not addressed.

We need evidence-based research and advocacy, including by and with persons with disabilities, to determine the viability of either (or none) of the options for a hate crime law. Given the evidence of the ill-conceived minimum sentencing provisions currently in our law, we should proceed cautiously should the penalty enhancement option prevail.<sup>93</sup>

We must prioritise dedicated training of police, prosecutors and the judiciary (including magistrates) on disability, how disability can motivate bias crime, and why it is wrongful. If these stakeholders are not committed to the goal of addressing disability hate crime,

measures put in place to do so may not be effective.

Should new legislation to address hate crime be considered, parliament should consult widely with persons with disabilities to ensure that the law addresses their experiences of victimisation and dismantles the barriers to reporting that they face. Carefully considered measures must be put in place to address the barriers to accessing justice for persons with disabilities otherwise the under-reporting of disability hate crime will continue.

Lastly, extra-legal initiatives to dismantle ableism, address disability prejudice, undo systemic violations and to build social cohesion are needed too. Perhaps these initiatives should be the starting point.



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## Notes

- 1 Wilene Holness is a senior lecturer at the School of Law, University of KwaZulu-Natal, Howard College campus in Durban. She is Doctorate of Laws candidate at the Centre for Human Rights, University of Pretoria, focusing on access to justice for persons with intellectual disabilities. As a member of the Navi Pillay Research Group, she conducts human rights and social justice research and advocacy on disability related issues.
- 2 Mark Sherry and Anna Neller, "Intellectual Disability, Stigma, and Hate Crimes," in *Intellectual Disability and Stigma*, ed., Katrina Scior and Shirli Werner (Palgrave Macmillan, London, 2016), 111.
- 3 Organization for Security and Cooperation in Europe (OSCE), *Hate Crimes Against People with Disabilities* (undated), 1 <https://www.osce.org/odihr/hate-crime-against-people-with-disabilities?download=true>.
- 4 Equality and Human Rights Commission, *Tackling Disability-Related Harassment: Final Progress Report* (United Kingdom: Equality and Human Rights Commission, 2017), 5. [https://www.equalityhumanrights.com/sites/default/files/tackling\\_disability-related\\_harassment\\_final.pdf](https://www.equalityhumanrights.com/sites/default/files/tackling_disability-related_harassment_final.pdf).
- 5 QuadPra Association of South Africa, *Sawubona Disability: Myths, Manners, Do's and Don'ts About Disability* (Johannesburg: QuadPra Association of SA, undated) 11; Lorenzo, Theresa and Viki Janse van Rensburg, eds., "Disability Inclusion and Social Change," in *Disability Catalyst Africa Series No. 5* (Cape Town: Disability Innovations Africa, 2016), 24.
- 6 Crown Prosecuting Service, *Public Statement on Prosecuting Disability Hate Crime and Other Crimes Against Disabled People*, (United Kingdom: Crown Prosecuting Service, 2017), 5.
- 7 Bronwyn Harris, *Arranging Prejudice: Exploring Hate Crime in Post-Apartheid South Africa* (Johannesburg: Centre for the

- Study of Violence and Race, 2004), <http://csvr.org.za/docs/racism/arrangingprejudice.pdf>.
- 8 Talia Meer and Helene Combrinck, "Invisible Intersections: Understanding the Complex Stigmatisation of Women with Intellectual Disabilities in Their Vulnerability to Gender-Based Violence," *Agenda* 29, no. 2 (2015): 21, <https://doi.org/10.1080/10130950.2015.1039307>; *Prevention and Combating of Hate Crimes and Hate Speech Bill* (B9 of 2018); *Prevention and Combating of Hate Crime and Hate Speech Bill* (2016).
  - 9 Parliamentary Monitoring Group, <https://pmg.org.za/bill/779/>.
  - 10 European Network on Independent Living (ENIL) *Disability Hate Crime: A Guide for Disabled People's Organisations, Law Enforcement Agencies, National Human Rights Institutions, Media and Other Stakeholders* (Brussels: EIL, 2014), 31 [http://www.enil.eu/wp-content/uploads/2014/11/Disability\\_Hate\\_Crime\\_Guide-FINAL-ENG-1.pdf](http://www.enil.eu/wp-content/uploads/2014/11/Disability_Hate_Crime_Guide-FINAL-ENG-1.pdf).
  - 11 Faraaz Mahomed, "Stigma on the Basis of Psychosocial Disability: A Structural Human Rights Violation," *South African Journal on Human Rights* 32, no. 3 (2016), 493, <https://doi.org/10.1080/02587203.2016.1258199>.
  - 12 Oliver Lewis and Ann Campbell, "Violence and Abuse Against People with Disabilities: A Comparison of the Approaches of The European Court of Human Rights and The United Nations Committee on the Rights of Persons with Disabilities," *International Journal of Law and Psychiatry* 53 (2017): 45, <https://doi.org/10.1016/j.ijlp.2017.05.008>.
  - 13 Edson Munsaka and Helen Charnley, "'We Do Not Have Chiefs Who Are Disabled': Disability, Development and Culture In a Continuing Complex Emergency," *Disability & Society* 28, no. 6 (2013): 767, <https://doi.org/10.1080/09687599.2013.802221>.
  - 14 Mark Priestly, "Developing Disability Studies Programmes," in *Disability and Social Change: A South African Agenda*, ed. Brian Watermeyer, Leslie Swartz, Theresa Lorenzo, Marguerite Schneider & Mark Priestly (Cape Town: HSRC Press, 2006), 25.
  - 15 Joseph Kisanji, "Growing Up Disabled," in *Disabled Children in Developing Countries*, ed. Pam Zinkin and Helen McConachie (London: Mac Keith Press, 1995), 195; Maureen Mswela, "Violent Attacks Against Persons with Albinism in South Africa: A Human Rights Perspective," *African Human Rights Law Journal* 17, no. 1 (2017):114, <http://dx.doi.org/10.17159/1996-2096/2017/v17n1a6>.
  - 16 Lydia Brown, "Ableism is Not 'Bad Words' It's Violence," 25 July 2016, <https://www.autistichoya.com/2016/07/ableism-is-not-bad-words-its-violence.html>.
  - 17 Keith Storey, "Combating Ableism in Schools, Preventing School Failure," *Preventing School Failure: Alternative Education for Children and Youth* 52, no. 1 (2007): 56, <https://doi.org/10.3200/PSFL.52.1.56-58>.
  - 18 Laurel Rauscher and Joseph McClintock, "Ableism Curriculum Design," in *Teaching for Diversity and Social Justice*, ed. Maurianne Adams, Lee Anne Bell and Pat Griffin (New York: Routledge, 1997), 198–199.; Fiona Kumari Campbell *Contours of Ableism* (Basingstoke, UK: Palgrave Macmillan, 2009), 2.
  - 19 Rita Hardimann, Bailey Jackson and Pat Griffin, "Conceptual Foundations for Social Justice Education," in *Teaching for Diversity and Social Justice*, ed. Maurianne Adams, Lee Anne Bell and Pat Griffin (New York: Routledge, 1997), 66.
  - 20 StatsSA, *Crime Against Women in South Africa: An In-Depth Analysis of the Victims of Crime Survey Data, 2018, Crime Statistics Series Volume V*, <https://www.statssa.gov.za/publications/Report-03-40-05/Report-03-40-05June2018.pdf>
  - 21 Naledi Shange, "Six Hate Crimes That Shocked South Africa," *TimesLive*, 9 February 2018, <https://www.timeslive.co.za/news/south-africa/2018-02-09-six-hate-crimes-that-shocked-south-africa/>.
  - 22 Harris, "Arranging Prejudice," 18.
  - 23 The Sterilisation Act (4 of 1998), as amended.
  - 24 Joan van Dyk, "Health Ombud Slams Doctor, Media Over Allegations of Abuse at Tower Hospital," *Bhekisisa, Mail & Guardian*, 23 August 2018, <https://bhekisisa.org/article/2018-08-23-health-ombud-slams-doctor-media-over-allegations-of-abuse-at-tower-hospital>; Jay Kruuse, "Tower Hospital: How the Health Ombuds Report Falls Short," *The Daily Maverick*, 6 September 2018, <https://www.dailymaverick.co.za/opinionista/2018-09-06-tower-hospital-how-the-health-ombuds-report-falls-short/>.
  - 25 The Health Ombud found that numerous human rights violations occurred, including access to adequate health care and nutrition. See Office of the Health Ombud, *Report Into the Circumstances Surrounding the Deaths of Mentally Ill Patients: Gauteng Province. No Guns: 94+ Silent Deaths and Still Counting*, (Johannesburg: Office of the Health Ombud, 2017), 49, <http://ohsc.org.za/wp-content/uploads/2017/09/FINALREPORT.pdf>; Brandon Ferlito and Ames Dhai, "The Life Esidimeni Tragedy: The Courts Are Also to Blame," *SAMJ: South African Medical Journal* 108, no. 3 (2018): 155, <http://dx.doi.org/10.7196/samj.2018.v108i3.13011>; Arbitration award: *Families of the Mental Health Care Users Affected by the Gauteng Mental Marathon Project v National Minister of Health of the Republic of South Africa and Others*, para 175 and 226(3), <http://www.saflii.org/images/LifeEsidimeniArbitrationAward.pdf> (accessed 1 September 2018).
  - 26 Ingrid van der Heijden, Naeemah Abrahams and Jane Harries, "Additional Layers of Violence: The Intersections of Gender and Disability in the Violence Experiences of Women with Physical Disabilities in South Africa," *Journal of Interpersonal Violence* 34, no. 4 (2019): 1, <https://doi.org/10.1177/0886260516645818>; Meer and Combrinck, "Invisible intersections," 14; Judith Ann McKenzie, "Disabled People in Rural South Africa Talk About Sexuality," *Culture, Health & Sexuality* 15, no. 3 (2013): 372, <https://doi.org/10.1080/13691058.2012.748936>; Ereshnee Naidu, Sadiyya Haffejee, Lisa Vetten and Samantha Hargreaves, *On the Margins: Violence Against Women with Disabilities* (Johannesburg, Centre for the Study of Violence and Reconciliation, 2005) <http://www.csvr.org.za/docs/gender/onthemargins.pdf> (accessed 1 September 2018).
  - 27 Paul Chappell, "Dangerous Girls and Cheating Boys: Zulu-Speaking Disabled Young Peoples' Constructs of Heterosexual Relationships in Kwazulu-Natal, South Africa." *Culture, Health & Sexuality* 19, no. 5 (2017): 587, <https://doi.org/10.1080/13691058.2016.1256433>; Barbara Waxman, "Hatred: The Unacknowledged Dimension in Violence Against Disabled People," *Sexuality and Disability* 9, no. 3 (1991): 185, <https://doi.org/10.1007/BF01102392>; Tlakale Phasha and Lucy Myaka, "Sexuality and Sexual Abuse Involving Teenagers with Intellectual Disability: Community Conceptions in a Rural Village of Kwazulu-Natal, South Africa," *Sexuality and Disability* 32, no. 2 (2014): 153, <https://doi.org/10.1007/s11195-014-9344-x>; Rebecca Johns and Colleen Adnams, "My Right to Know: Developing Sexuality Education Resources for Learners with Intellectual Disabilities in the Western Cape, South Africa," *African Disability Rights Yearbook* 4 (2016): 100, <https://heinonline.org/HOL/P?h=hein.journals/afdry4&i=108>.
  - 28 Claire Edwards, "Pathologising the Victim: Law and the Construction of People with Disabilities as Victims of Crime in Ireland," *Disability & Society* 29, no. 5 (2014): 685–698, <https://doi.org/10.1080/09687599.2013.844099>.

- 29 Shane Kilcommins, Máire Leane, Fiona Donson, Caroline Fennell and Anna Kingston, *The Needs and Concerns of Victims Of Crime in Ireland, Dublin: Commission for the Support of Victims of Crime* (2010), 31, cited in Claire Edwards, Gillian Harold and Shane Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland*, 2012, <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>.
- 30 Dianah Msipa, "How Assessments of Testimonial Competence Perpetuate Inequality and Discrimination for Persons with Intellectual Disabilities: An Analysis of the Approach Taken in South Africa and Zimbabwe," *African Disability Rights Yearbook* 3 (2015): 89, <https://heinonline.org/HOL/P?h=hein.journals/afdry3&i=69>; Robyn White, Juan Bornman and Ensa Johnson, "Testifying in Court as a Victim of Crime for Persons with Little or No Functional Speech: Vocabulary Implications," *Child abuse research in South Africa* 16, no. 1 (2015): 1, <https://hdl.handle.net/10520/EJC171281>; Helen Dagut and Ruth Morgan, "Barriers to Justice: Violations of the Rights of Deaf and Hard-Of-Hearing People in the South African Justice System," *South African Journal on Human Rights* 19, no. 1 (2003): 30, <https://doi.org/10.1080/19962126.2003.11865171>.
- 31 Paralegal Alliance Network *Challenging Disadvantage in Zambia: People with Psychosocial and Intellectual Disabilities in the Criminal Justice System* (Lusaka: Paralegal Alliance Network, 2015).
- 32 Willene Holness and Sarah Rule, "Legal Capacity of Parties with Intellectual, Psycho-Social and Communication Disabilities in Traditional Courts in Kwazulu-Natal," *African Disability Rights Yearbook* 6 (2018): 38, <https://heinonline.org/HOL/P?h=hein.journals/afdry6&i=33>.
- 33 Articles 4, 5, 8, 9, 12 13 of the UN Convention on the Rights of Persons with Disabilities; article 9 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities. The UN Committee on the Rights of Persons with Disabilities has called on states to review their legislation to explicitly embed the duty to provide procedural accommodations in all legal proceedings which is not subject to progressive realisation. See CRPD/C/KEN/CO/1, para. 26 (b) (Kenya); CRPD/C/ECU/CO/1, para. 27 (c) (Ecuador); and CRPD/C/CHN/CO/1, para. 24 (China).
- 34 CRPD Committee *Concluding Observations on the Initial Report of South Africa* (2018) CRPD/C/ZAF/CO/1.
- 35 Section 153 of the Powers of Criminal Courts (Sentencing Act) (2000).
- 36 OSCE, "Hate Crime Laws," 33.
- 37 Section 146 of the UK Criminal Justice Act (2003).
- 38 Such enhancements do not extend to cases where the offence is based on bias related to race, gender, sexual orientation.
- 39 Section 51(1) of the Criminal Law Amendment Act read with Part I of Schedule 2.
- 40 Sections 23 and 26 of the *Sexual Offences and Related Matters Amendment Act* (SORMA) read with Part III of the Schedule 2 to the Criminal Law Amendment Act (105 of 1997).
- 41 Section 24 and section 25, of SORMA.
- 42 Section 2 of SORMA.
- 43 Helene Combrinck, "Chapter 14: Sections 23–26: Sexual Offences Against Persons Who Are Mentally Disabled," in *Sexual Offences Commentary*, ed. Bronwyn Pithey and Dee Smythe, RS 1, 2014 ch14-p3.
- 44 Part I to Schedule 2 of the Criminal Law Amendment Act.
- 45 South African Human Rights Commission, *Comments on the Sexual Offences Bill from a Disability Perspective* (Submission to the Justice and Constitutional Development Portfolio Committee, National Assembly, 12 September 2006), 16-17.
- 46 Combrinck, Chapter 14, OS, 2011 ch14-p20.
- 47 Sections 2, 54(2)(a) and 57 of SORMA.
- 48 Michael Perlin and Alison Lynch, "All His Sexless Patients: Persons with Mental Disabilities and the Competence to Have Sex," *Washington Law Review* 89 (2014): 257, <https://heinonline.org/HOL/P?h=hein.journals/washlr89&i=27>.
- 49 Juan Nel, "Hate Crime: A New Crime Category for a New South Africa," in *Victimology in South Africa*, ed. Linda Davis and Rika Snyman (Pretoria: Van Schaik, 2005); René Koraan and Allison Geduld, "'Corrective Rape' of Lesbians in the Era of Transformative Constitutionalism in South Africa," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 18, no. 5 (2015): 1931, <https://doi.org/10.4314/pej.v18i5.23>; Kamban Naidoo and Michelle Karels, "Hate Crimes Against Black Lesbian South Africans: Where Race, Sexual Orientation and Gender Collide (Part I)," *Obiter* 33, no. 2 (2012): 236, <https://hdl.handle.net/10520/EJC128567>.
- 50 Duncan Breen and Juan Nel, "South Africa – A home for All: The Need for Hate Crime Legislation," *South African Crime Quarterly* 38 (2011): 33, <https://doi.org/10.17159/2413-3108/2011/v0i38a851>; but see Bill Dixon and David Gadd, "Look Before You Leap: Hate Crime Legislation Reconsidered," *South African Crime Quarterly* 40 (2012): 25, <https://doi.org/10.17159/2413-3108/2012/v0i40a842>.
- 51 Narnia Bohler-Muller, Gary Pienaar, Gregory Houston, Vanessa Barolsky and Nkululeko Majozi, "Criminalising Racism in Tumultuous Times," *HSRC Policy Brief*, 2017, 1.
- 52 South African Parliament Research Unit '*Corrective Rape*', *Hate Crimes, and the Law in South Africa*, (Pretoria: South African Parliament, 2013). Copy with the author.
- 53 Department of Justice and Constitutional Development (DOCJ), *National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Sector*, 2014, 1 [https://www.gov.za/sites/default/files/gcis\\_document/201409/2014dojnationalinterventionstrategylgbtisector.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/2014dojnationalinterventionstrategylgbtisector.pdf).
- 54 DOCJ, National Intervention Strategy, 2.
- 55 SAHRC Submission to DOJCS regarding Hate Crimes and Hate Speech Bill, 31 January 2017, <https://www.sahrc.org.za/home/21/files/SAHRC%20Submission%20to%20DOJCS%20re.%20Hate%20Crimes%20%20Hate%20Speech%20Bill-31.1.17%20FINAL.pdf>
- 56 Kay Goodall and Mark Walters, *Legislating to Address Hate Crimes Against the LGBT Community in the Commonwealth*, Technical Report, (United Kingdom: Human Dignity Trust, 2019), 43.
- 57 Clause 3(1) of the Prevention and Combatting of Hate Crimes and Hate Speech Bill (B9 of 2018).
- 58 Clause 3(1), Hate Speech Bill (2018).
- 59 The Preamble of the CRPD states that: '[D]isability is an evolving concept and ... results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.
- 60 Her Majesty's Crime Prosecution Inspectorate (HMCP), *Living in a Different World: Joint Review of Disability Hate Crime* (London: HMCP, 2013), 5, [https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2014/04/CJJI\\_DHC\\_Mar13\\_rpt.pdf](https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2014/04/CJJI_DHC_Mar13_rpt.pdf).
- 61 The Schedule to PEPUDA, Illustrative list of Unfair Practices in Certain Sectors, in terms of section 29(1) of the Act 'is intended to illustrate and emphasise some practices which

- are or may be unfair, that are widespread and that need to be addressed.'
- 62 Anton Kok, "The Promotion of Equality and Prevention of Unfair Discrimination Act: Why the Controversy," *Journal of South African Law* (2001): 309, <https://heinonline.org/HOL/P?h=hein.journals/jsouaff2001&i=304>.
- 63 Clause 6(1)(a), Hate Speech Bill (2018).
- 64 Clause 6(2), Hate Speech Bill (2018).
- 65 Alan Roulstone, Pam Thomas and Susie Balderston, "Between Hate and Vulnerability: Unpacking the British Criminal Justice System's Construction of Disablist Hate Crime," *Disability & Society* 26, no. 3 (2011): 351, <https://doi.org/10.1080/09687599.2011.560418>.
- 66 Ryken Grattet and Valerie Jenness, "Examining the Boundaries of Hate Crime Law: Disabilities and the Dilemma Of Difference," *Journal of Criminal Law and Criminology* 91 (2000): 653, <https://heinonline.org/HOL/P?h=hein.journals/jclc91&i=665>.
- 67 Chih Hoong Sin, "Making Disablist Hate Crime Visible: Addressing the Challenges of Improving Reporting," in *Disability, Hate Crime and Violence*, ed. Alan Roulstone and Hannah Mason-Bish (London: Routledge, 2013), 147.
- 68 Kamban Naidoo, "Are the Perceived Greater Harms Caused by Hate Crimes a Plausible Justification for the Existence of Hate-Crime Laws?" *Stellenbosch Law Review* 27, no. 3 (2016): 642, <https://hdl.handle.net/10520/EJC-6157c2137>.
- 69 Phyllis Gerstenfeld, *Hate Crimes: Causes, Controls and Controversies*, 3 ed, (California: Sage Publications, 2013), 18, cited in Naidoo, "Are the Perceived Greater Harms," 635.
- 70 Stephan Terblanche, *Guide to Sentencing in South Africa*, 2 ed, (Durban: LexisNexis, 2007), 167.
- 71 OSCE, Hate Crime Laws, 35.
- 72 Article 162(2) of Bulgaria's Criminal Code provides imprisonment for up to three years for those who apply violence against another or damages another's property because of his nationality, race, religion, or political conviction.
- 73 Robert Coates, Mark Umbreit and Betty Vos, "Responding to Hate Crimes Through Restorative Justice Dialogue," *Contemporary Justice Review* 9, no. 1 (2006): 7, <https://doi.org/10.1080/10282580600564784>.
- 74 Mark Walters and Carolyn Hoyle, "Healing Harms and Engendering Tolerance: The Promise of Restorative Justice for Hate Crime," in *From Hate Crime: Concepts, Policy, Future Directions*, ed. Neil Chakraborti, (New York: Willan Publishing, 2010), 228.
- 75 Ann Skelton, "Developing a Juvenile Justice System for South Africa: International Instruments and Restorative Justice," in *Children's Rights* ed. R Keightley (Juta: Cape Town, 1996), 180.
- 76 Caiphas Soyapi, "Regulating Traditional Justice in South Africa: A Comparative Analysis of Selected Aspects of the Traditional Courts Bill," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 17, no. 4 (2014):1443, <https://doi.org/10.4314/pelj.v17i4.07>.
- 77 Section 21(4)(b) of PEPUDA.
- 78 Section 14 of the South African Human Rights Commission Act 40 of 2013.
- 79 CRPD Committee, *General Comment 6: On Equality And Non-Discrimination* (2018) CRPD/GC/6/2018 paras 55 (b), (c) and (d).
- 80 CRPD Committee, *Concluding observations on the initial report of South Africa* (2018) CRPD/C/ZAF/CO/1.
- 81 HM Crime Prosecution Inspectorate, "Living in a Different World," 3.
- 82 National Prosecuting Authority, Directives issued in terms of section 66(2)(a) and (c) of SORMA para E(1).
- 83 Aisling Heath, Lillian Artz, Michelle Odayan and Harsha Gihwala, *Improving Case Outcomes for Sexual Offences Cases Project: Pilot Study on Sexual Offences Courts. Cape Town, South Africa* (Cape Town: Gender Health and Justice Research Unit, 2018), 13, [http://www.ghju.uct.ac.za/sites/default/files/image\\_tool/images/242/report\\_images/1%20ICOP%20BASELINE%20EXEC%20SUMMARY%20FINAL%20PDF2.pdf](http://www.ghju.uct.ac.za/sites/default/files/image_tool/images/242/report_images/1%20ICOP%20BASELINE%20EXEC%20SUMMARY%20FINAL%20PDF2.pdf).
- 84 Heath et al, *Improving Case Outcomes*, 12.
- 85 Heath et al, 69.
- 86 Robin White and Dianah Msipa, "Implementing Article 13 of the Convention on the Rights of Persons with Disabilities in South Africa: Reasonable Accommodations for Persons with Communication Disabilities," *African Disability Rights Yearbook* 6 (2018): 101 citing J Talbot 'Effective Communication' (2017) unpublished conference paper 3.
- 87 Holness and Rule, "Legal Capacity," 42.
- 88 Penny Cooper and Michelle Mattison, "Intermediaries, Vulnerable People and the Quality of Evidence: An International Comparison of Three Versions of the English Intermediary Model," *The International Journal of Evidence & Proof* 21, no. 4 (2017): 364, <https://doi.org/10.1177/1365712717725534>.
- 89 D Msipa, "How Assessments of Testimonial Competence Perpetuate Inequality," 89.
- 90 Government of South Australia, *Guidelines Supporting Vulnerable Witnesses in the Giving of Evidence; Guidelines for Securing Best Evidence*, undated, [https://www.agd.sa.gov.au/sites/default/files/djp\\_guidelines\\_web.pdf?v=1490763319](https://www.agd.sa.gov.au/sites/default/files/djp_guidelines_web.pdf?v=1490763319) (accessed 01 April 2019).
- 91 Communication partners (intermediaries) are volunteers that assist persons with intellectual disabilities to navigate the justice system in Australia. See Penny Cooper, "A Double First in Child Sexual Assault Cases in NSW: Notes From the First Witness Intermediary and Pre-Recorded Cross-Examination Cases," *Alternative Law Journal* 41, no. 3 (2016): 191. Intermediaries in the United Kingdom perform a similar task. United Kingdom Ministry of Justice, *The Registered Intermediary Procedural Guidance Manual*, (London; United Kingdom Ministry of Justice 2015), 7, <https://www.theadvocatesgateway.org/images/procedures/registered-intermediary-procedural-guidance-manual.pdf>. In Victoria, Australia, independent third persons supports persons with intellectual and psycho-social disabilities when interviewed by the police, primarily in criminal cases. Their role is to "facilitate communication between the person and the police, assist the person to understand their rights, and support the person through the police interview process". Office of the Public Advocate *Breaking the cycle: Summary Report*, 2012, 18, <https://www.publicadvocate.vic.gov.au/our-services/publications-forms/research-reports/justice-system/64-breaking-the-cycle-full-report>.
- 92 Grattet and Jenness, "Examining the Boundaries," 694.
- 93 Dixon and Gadd, "Look Before You Leap," 27.