

Documentation of homophobic and transphobic violence

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The present report is an outcome of *Step up reporting on homophobic and transphobic violence*, a project supported by ILGA-Europe, the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association. The objective of the project was to empower European LGBTI civil society organisations to more consistently monitor and report homophobic and transphobic hate crimes and incidents.

To prepare this work, ILGA-Europe had developed a harmonised data collection methodology in 2012. The methodology builds on international standards and on the expertise gained in different past activities, such as the elaboration of European-wide submissions to the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in view of its Annual Report on Hate Crime¹, or ILGA-Europe's participation to the *Facing Facts! Making hate crime visible* project.²

Step up reporting on homophobic and transphobic violence was launched in 2013. ILGA-Europe's Documentation and Advocacy Fund, with the support of the Government of the Netherlands, provided dedicated resources to 12 national and local NGOs in Bosnia and Herzegovina, Greece, Ireland, Italy, Latvia, Lithuania, Moldova, Poland, Portugal, Spain, Turkey and Ukraine. These NGOs were trained on the methodology previously developed by ILGA-Europe, and committed to apply it in order to produce comparable data.

Data collection and publication is expected to be developed on a more sustainable and professional basis in the future, thanks to the capacity building aspect of the current project. Following this pilot initiative, ILGA-Europe's methodology will be made available to more European LGBTI civil society organisations.

¹<http://www.osce.org/odihr/108395>

² <http://www.ceji.org/facingfacts/>

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1. Introduction

The purpose of this report

This research is part of the project ‘Documentation of homophobic and transphobic violence’, promoted by ILGA-Europe, which intends to monitor and report crimes and incidents motivated by sexual orientation and gender identity in 12 European countries.

Italy lacks proper legal and policy provisions to combat hate crimes and incidents against LGBTI persons. By collecting cases of LGBTI-phobic crimes, we hope to give evidence of the existence of such phenomenon. In particular, with deeper information on the characteristics of LGBTI-phobic crimes, Italian NGOs might be able to claim more specific and appropriate measures and services to tackle crimes against LGBTI persons. Furthermore, we are confident that our participation in a European-wide project aimed at documenting hate crimes against LGBTI people will increase international pressure on the national government.

The project

We called this project ‘RAC-CONTA’: in Italian the verb ‘racconta’ is the imperative form of ‘raccontare’, which means ‘to tell’, while the imperative ‘conta’ (‘count’), as in English, has a dual meaning of calculating the number of things or people, and of having value as well.

‘RAC-CONTA’ focuses on the whole LGBTI community. The survey has covered two regions – Veneto, in Northeastern Italy, and Campania, in the South – in order for the project to be both financially sustainable and representative of the national context. These regions have been chosen based on the existence of LGBTI local branches and NGOs, the level of networking amongst them both formal and informal, and the existence of at least one trans local NGO.

A National Working Group of LGBTI NGOs was formed in order to share the process of the project implementation, intermediate with local branches to inform about the overall project, and plan the extension of data collection to other Italian regions in 2014³.

In order to reach out to the LGBTI communities, the following actions were adopted. Firstly, local LGBTI NGOs from the chosen regions were asked to join the project through organizing one regional meeting in each region involved. During the meetings, representatives of local branches of the National NGOs involved and other local LGBTI associations were trained about the details of the project and the procedures to collect data and to outreach the community. Then a regional contact person was identified in each region to follow the dissemination of the project information towards the LGBTI communities.

³The organizations that took part in the National Working Group are: Arcigay – Associazione Lesbica e Gay Italiana, AGEDO – Associazione Genitori di Omosessuali, ArciLesbica – Associazione Nazionale, Associazione Radicale Certi Diritti, MIT – Movimento Identità Transessuale, Coordinamento Trans Sylvia Rivera, and Famiglie Arcobaleno – Associazione Genitori Omosessuali.

The second action carried out to spread the project contents was the production of communication materials. In particular, the LGBTI Resource Centre produced a web site (www.progettoraccontalgbti.it) including: a description of the overall initiative's objectives, the procedures to report hate crimes in Veneto and Campania, information about hate crimes and other hate based incidents against LGBTI people and a related glossary, the list of partner NGOs, and the posters distributed throughout the involved regions to inform about the project and the procedure to collect data. Furthermore, a Facebook profile was created and other NGOs web sites were provided with a banner to inform and link with the project webpage. All the communication materials highlighted the opportunity of anonymity and the confidentiality of the data collection process. The LGBTI Resource Centre, together with the involved NGOs, targeted media at regional and national level in order to spread the information about the project to the general public.

Data collection

Data were collected between May and October 2013, while reports cover crimes and incidents committed during a longer period (starting on January 1, 2013). The used recording techniques included face-to-face personal and phone based interviews. The tool for data collection was a questionnaire (provided by ILGA-Europe and translated in Italian by the Centre), produced in two versions: the first one addressed to hate crimes or incidents victims, and the second one designed for witnesses. Each questionnaire included open-ended and closed-ended questions, and mandatory or optional questions as well.

Personnel and volunteers from local NGOs were in charge of collecting the data⁴. Moreover, local NGOs were provided with a list of hate crimes and hate based incidents definitions, with some indicators useful to correctly identify bias motives ('bias indicators')⁵, and with specific guidelines highlighting: the possible challenges posed by data collection and the solutions to overcome them; some suggestions useful to guarantee the uniformity of collected data; a glossary of words and concepts relevant to the project. Data collection was supported by the regional contact persons and by a legal expert – Dr. Mia Caielli – who guaranteed a correct approach to the privacy of victims.

By October 31, when data collection ceased, 75 cases were reported. Of them, 23 come from witnesses and 52 from victims, while 26 were collected in Veneto and 49 in Campania. Although this is a significant result for the whole project, the Centre is aware of the limitations as regards the representativeness of the respondents and the resulting data interpretation. Especially because the

⁴ Arcigay Antinoo di Napoli, Arcigay Salerno Marcella Di Folco, Arcilesbica Napoli Le Maree, Associazione Trans Napoli (ATN), Famiglie Arcobaleno Sud, I-Ken Onlus, Agedo Treviso-Triveneto, Antéros Associazione LGBTI Padova, Arcigay Pianeta Urano Verona, ArciLesbica L'Araba Fenice Verona, Arcigay Politropia Rovigo, Arcigay Tralaltro Padova, Arcilesbica Il Riparo Padova, ArciLesbica Queerquilia Treviso, Ass. D.E.L.O.S, Circolo Pink Verona, Circolo Tondelli Bassano del Grappa, Famiglie Arcobaleno Triveneto, Gaylib, Polis Aperta, Shake LGBTE Conegliano.

⁵ See Annex 2

survey was limited to hate crimes and incidents occurring in two Italian regions, the report cannot be taken as a statistical representation of the situation of hate crimes in the whole national LGBTI community. Furthermore, the Centre cannot be sure that the used reach out techniques have worked equally within the whole LGBTI community. In fact, the survey's purpose is to show the very existence and the serious prevalence of hate incidents, and to identify certain forms of crimes.

The final research report will be translated in Italian in order to allow an adequate dissemination of results and to inform target groups such as the LGBTI communities in Italy, national, regional and local governments, law enforcement bodies, and media.

The LGBTI Resource Centre

The LGBTI Resource Centre, founded in January 2012, is a non-profit organization whose mission is to improve the capacity of local and national LGBTI NGOs in Italy in order to contribute to the elimination of all forms of discrimination and human rights abuses against LGBTI persons, and to promote full equality for such persons. The Centre aims to achieve its mission through research, training and advisory services addressed to LGBTI associations and organizations.

In 2012 the LGBTI Resource Centre was responsible in Italy for ILGA-Europe's project 'Monitoring the implementation of the Council of Europe recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity'. In the framework of this project the Centre has already documented cases of human rights violation and hate crimes against LGBTI people through media monitoring and interviews to victims in partnership with national and local LGBTI organisations.

2. Key findings

75 questionnaires have been collected, 52 coming from victims (69%) and 23 from witnesses (31%). 49 events occurred in Campania (65%), and the remaining 26 in Veneto (35%). Since the questionnaires gave the possibility to choose several answers at the same time when indicating the type of suffered violation, reported crimes and incidents outnumber the questionnaires. According to the categories provided by ILGA Europe⁶, we have been able to report the following incidents: 12 acts of extreme physical violence (8.3%), 12 assaults (8.3%), 2 damages of property (1.4%), 42 threats or cases of psychological violence (29%), and 76 other incidents with a bias motivation (53%); neither cases of homicide nor of arson have been reported.

The target of violence and incidents

⁶ See Annex 2

52% of victims are women, 31% are men, while in 17% of reported cases the victim's gender or gender identity is not indicated or the whole LGBTI community is presented as victim. Crimes and incidents against trans people represent 7% of the reported cases (yet gender identity is mentioned as a motive for the incident in 14% of cases).

Lesbians represent 47% of victims, gays are 28%, while 5% of cases involve heterosexuals (both trans people or heterosexuals who have been perceived as gay or lesbian); in 20% of cases the victim's sexual orientation remains unclear or the whole LGBTI community is indicated as victim. The overrepresentation of lesbian women, especially in questionnaires collected from victims in Campania, does not necessarily reflect the real proportion of hate incidents against lesbians; such results might have been influenced by the fact that the coordination of data collection in Campania went through Arcilesbica, which is an association targeting women.

According to the available data, cases involving younger people are more likely to be reported: the average age of victims is 28.5. Furthermore, most of hate incidents occurred in urban areas (95% of reported cases); in particular, 39% of incidents were reported in the two regional capital cities (Naples and Venice). We may add that there is a strict correlation between recorded incidents and LGBTI visibility: only 3% of victims are not out at all, in 42% of cases the victim is involved as an activist or is working in an LGBTI NGO, and in 39% of cases incidents happened near an LGBTI venue or during LGBTI events (such as Prides, film festivals, etc.). Once again, the used recording method might have influenced the results, since local NGOs which collected the data mostly operate in urban areas, while their activists – often young people – might be more likely to report the occurred incidents. Nevertheless, a correlation between hate incidents and a high degree of visibility still exists: reports show that incidents normally occur when the victim is visibly out, or in case of masculine, feminine or androgynous gender expressions, when associated with women, men, and non-binary genders respectively. Indeed, gender expression, often associated with sexual orientation, is mentioned as a motive for the incident in 33% of cases.

Regarding the remaining causes, in 3 cases (4% of questionnaires) age, always combined with sexual orientation, is mentioned as a motive for the incident (twice by young lesbian couples discriminated by older people, and once by a 45 year old man attacked by a gang of younger men). Political reasons and gender are reported as motives for the incident in 2.7% of questionnaires, once again associated with other factors.

Incidents

Regarding the incidents context, 72% of reported events occurred in public or privately owned public spaces (such as streets, parks, stores, churches, courts, schools, sport facilities, cinemas, and means of public transport), 19% in private spaces (such as apartments and firms), and 9% on the

Internet. In particular, 17% of violations occurred at work, 7% at school, and 4% were suffered in the family.

On the one hand, perpetrators acted alone in 44% of reported cases. In 67% of events the perpetrator is a man, in 15% is a woman, while in 18% of questionnaires his/her gender remains unclear. Moreover, the person who committed the abuse is known to the victim in 45.5% of cases, is unknown in 48.5% of reports, while in 6% of cases his/her identity is not indicated. On the other hand, when incidents involve several perpetrators, they are members of formal or informal groups – both far-right or fundamentalist Christian movements – in 31% of cases.

Furthermore perpetrators, whether they act alone or as a group, most frequently belong to the following categories: co-workers (10.7% of reported cases), employers or supervisors (9%), owners or administrators of private stores and services (6.7%), educational staff, schoolmates, and family members (5% respectively), health practitioners in public or private facilities, police officers, landlords, and flatmates (2.7% respectively), neighbors, other public servants, and members of the clergy (1.3% respectively).

Considering only questionnaires filled in by victims, we may add that 67% of incidents were attended by one or more than one witness. In these cases, victims report that 20.5% of witnesses proved to be supportive of them, 18% showed solidarity with the perpetrator, while 61.5% remained indifferent or neutral.

Finally, it has to be highlighted that victims show a limited trust of the police and other authorities, even when the suffered abuses constitute a crime and might be prosecuted: while 79% of incidents have been reported to LGBTI NGOs, only 11% addressed law enforcement authorities, another 11% contacted other public agencies, and just 1.3% reported the abuse to the National equality body (Ufficio Nazionale Antidiscriminazioni Razziali – UNAR). We have to underline that this trend is in line with data collected across Europe by the EU Agency for Fundamental Rights (FRA): according to the *LGBT Survey*, of those respondents who in the year preceding the research had felt personally discriminated against at work or when looking for a job, in education, healthcare or social services, or when accessing goods and services because of being LGBT, just 10% had reported to the authorities the most recent incident of discrimination that they had experienced⁷.

⁷ FRA (European Union Agency for Fundamental Rights), *EU LGBT Survey – Results at a glance*, Luxembourg, Publications Office of the European Union, 2013, p. 20. In 2012 FRA conducted an online survey to collect comparable data across the EU on homophobia and discrimination on grounds of sexual orientation or gender identity. The respondents were persons aged 18 years and over, who identify themselves as lesbian, gay, bisexual or transgender, anonymously. In total, 93,079 LGBT persons completed the survey: although the results cannot be considered as representative of all LGBT people in the EU, they constitute by far the largest collection of empirical evidence of its kind in Europe to date.

3. Bias motivated violence against LGBTI

3.1. *The legal situation of homophobic and transphobic hate crime*

Italy lacks proper legal provisions to combat hate crimes and hate speech against LGBTI persons. Italian law takes into account bias motives related to race, ethnicity, nationality and religion as aggravating circumstances for crimes, but the Parliament failed several times to take action to protect LGBTI people by extending such provisions to sexual orientation and gender identity.

Data on discrimination and violence against LGBTI people in Italy

Lack of recognition of the issue is particularly severe if compared to the impact that hate crimes have on LGBTI people. According to FRA's *LGBT Survey*, 54% of Italian respondents personally felt discriminated against or harassed on the grounds of sexual orientation or gender identity in the year preceding the research (while the EU average is 47%)⁸. Furthermore, 19% said that they had been physically or sexually attacked or threatened with violence at home or elsewhere in the five years preceding the survey (the EU average is 26%). A majority of respondents who had experienced violence (64%) in the past year said that the last attack or threat of violence happened partly or completely because they were perceived to be LGBT (in this case, the EU average is 59%)⁹.

Moreover, a recent study carried out by ISTAT – the Italian National Institute of Statistics – reports the attitudes of the general population towards LGBT people: on the one hand, 61% of Italians recognise that gay and lesbian people are discriminated, while 80% think the same of trans people. On the other hand, 25% of Italians legitimate discriminating behaviors against trans people, and 30.5% do not want a trans person as a neighbor. Furthermore, 41% do not want a homosexual person as a primary school teacher, 28% find unacceptable for a gay or lesbian person to be a physician, and 25% do not want a homosexual person as a politician¹⁰.

Existing and missing legislation

Article 3 of Law no. 654 of 1975 (so-called 'Reale Law'), which ratifies and implements the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, as amended by Law no. 205 of 1993 (so-called 'Mancino Law') penalizes: a) those who propagandize ideas founded on racial or ethnic superiority or hate, or instigate someone to commit, or themselves commit, acts of discrimination for reasons of race, ethnicity, nationality or religion; b) those who, in every way, instigate someone to commit, or themselves commit, violence or acts which induce to violence for reasons of race, ethnicity, nationality or religion; c) those who take part or support organizations,

⁸ Ibid. p. 15.

⁹ EU LGBT Survey Data Explorer, Section 'Violence and Harassment', available at: <http://fra.europa.eu/DVS/DVT/lgbt.php>.

¹⁰ ISTAT (Istituto Nazionale di Statistica), *La popolazione omosessuale nella società italiana – Anno 2011* (17 May 2012). The research held by ISTAT is based on a representative sample of the Italian population (7725 individuals).

associations, movements or groups which aim to instigate discrimination or violence for reasons of race, ethnicity, nationality or religion¹¹.

Such criminal provisions do not punish hate speech motivated by homophobia and transphobia¹². However, it has to be recalled that the 'Court of Cassation', with decision no. 24513 of 17 July 2006, annulled a first instance judgment of acquittal of a man who used the epithet 'frocio' ('fag') against another man: the Supreme Court held that the judgment was «against the logic and social sensitivity» and that the use of such epithet shows «a clear intent of derision and scorn». Nevertheless, in such case the Court applied article 594 of the Penal code, which protects «personal honor and dignity» and establishes a «crime of insult», without taking into account a bias motivation as aggravating circumstance.

Furthermore, with regard to media organizations, Legislative Decree no. 44 of 2010, implementing Directive 2007/65/EC on television broadcasting activities, explicitly states that audiovisual commercial communications cannot include or promote any discrimination based on sexual orientation.

Furthermore, the above mentioned Law no. 205 of 1993 includes an aggravating circumstance for bias motives, allowing judges to increase by up to half the sentence to be imposed for a crime, if it was committed «with the purpose of discrimination or hatred based on ethnicity, nationality, race, or religion, or in order to facilitate the activity of organizations, associations, movements, or groups that have this purpose among their objectives». The law also establishes that such offences must be «prosecuted ex-officio in any circumstances», that is authorities prosecute the case irrespective of the wishes of the victim.

Grounds for hate crimes such as sexual orientation and gender identity are not included in the law, despite the fact that LGBTI rights groups have been advocating for several years for a broadening of hate crimes legislation.

Nevertheless, on the basis of information available to LGBTI Resource Centre, in one case Law no. 205 of 1993 has been applied to an offence motivated by a sexual orientation bias (Court of Trieste, order of December 2, 2011), since the judge considered the notion of 'discrimination' contained in the law general enough to cover as potential victims a broad range of social groups, not just ethnical, national, racial or religious minorities. Consequently, the judge ordered the prosecutor to take into account an aggravating circumstance and to prosecute ex-officio the crime. However, this interpretation was controversial and the need for a reform of Law no. 205 is still clear¹³.

¹¹ G. Abbadessa, 'Tutela penale dalla discriminazione e diritto penale antidiscriminatorio', in D. Tega (ed.), *Le discriminazioni razziali ed etniche. Profili giuridici di tutela*, Roma, Armando editore, 2011, pp. 182-184.

¹² M.M. Winkler, G. Strazio, *L'abominevole diritto. Gay e lesbiche, giudici e legislatori*, Milano, Il Saggiatore, 2011.

¹³ For further information on Trieste Court's order, see (in Italian): <http://www.articolo29.it/decisioni/tribunale-di-trieste-ordinanza-del-2-dicembre-2011/>

(Failed) Attempts to fill in the gaps

During the past decade different bills have been presented before Parliament, in order to extend the above mentioned criminal provisions to sexual orientation or gender identity related hate crimes by reforming both Law no. 654 of 1975 and Law no. 205 of 1993. However, none of these have yet been approved.

During the 16th parliamentary term (2008-2013), a bill aiming to broaden hate crimes legislation was brought to a vote and defeated twice. On October 13, 2009, the Chamber of Deputies threw out bill no. AC-1658–1882 brought by some members of the center-left opposition parties to include homophobia and transphobia in Italy's bias-motivated crime laws on the grounds it was unconstitutional. The preliminary questions – a parliamentary mechanism that allow the MPs to turn down a bill without examination – moved by the centrist party 'Unione di Centro' and supported by the far-right 'Lega Nord' and the center-right 'Popolo della Libertà' were approved: doubts of constitutionality concerned the supposed violation of many constitutional norms, among which: «[...] the norm is in contrast with art. 25 Const. because in the absence of a definition of "sexual orientation", the aggravating circumstance violates the principle of strict legality; it has to be noticed that the term "sexual orientation" is not defined nor is it findable in the criminal system. The term is extremely general since it might refer to specific phenomena such as homosexuality as well as, more generally, to any "sexual tendency" including incest, pedophilia, zoophilia, sadism, masochism and any other kind of sexual choice that have nothing to do with homosexuality [...]»¹⁴. In May 2011 a revised bill (no. AC-2802) was introduced in the Chamber of Deputies but it was once again rejected on July 26, 2011.

At the beginning of the current parliamentary term, inaugurated in March 2013, a new bill was introduced in the Chamber (Bill no. 245). The bill intends to reform both Law no. 654 of 1975 and Law no. 205 of 1993, by extending the existing sanctions for bias-motivated offences to crimes and hate speech based on homophobia and transphobia. The bill was elaborated in cooperation with 'Avvocatura per i diritti LGBTI – Rete Lenford', a NGO of legal professionals engaged in LGBTI issues, and received a huge support by the members of Parliament. The bill was brought to a vote in last September: the preliminary motion of constitutionality presented by some center-right MPs was defeated and the Chamber adopted an amended version of the bill, sending it to the Senate.

Although it was the first time in Italian history that a Parliamentary assembly had approved a bill punishing homophobic and transphobic hate crimes, LGBTI movements sharply criticized the final version of the bill. Indeed, the approved measure includes an amendment proposed by some conservative MPs led by Mr. Rocco Buttiglione, whose nomination as Italy's European commissioner was rejected by the European Parliament in 2004 because of his views on homosexuality and

¹⁴ In fact, this claim is completely unfounded, since the notion of 'sexual orientation' is included in Legislative Decree no. 216/2003, implementing Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation).

women. The amendment redefines the notions of ‘instigation to discrimination’ and ‘discrimination’ contained in Law no. 654 of 1975, guaranteeing «freedom of expression and manifestation of beliefs or opinions related to the pluralism of ideas, unless they instigate to hatred or violence», and legitimizing the «conducts undertaken within organizations that carry out political, union, culture, health, education, religion or worship activities, as far as the implementation of the principles and values of constitutional importance that characterize these organizations is concerned». In this way, on the one hand the existing prohibition against instigation to hatred and violence, and violence itself, has been broadened to include homophobic and transphobic behaviors, and a bias motive related to sexual orientation or gender identity is taken into account as an aggravating circumstance for all crimes. On the other hand, the prosecution of ‘instigation to discrimination’ and ‘discrimination’ under the criminal law has been weakened for all the social groups protected by Law no. 654 of 1975 (as amended by Law no. 205 of 1993), including ethnical, national, racial or religious groups¹⁵. This is why the bill has been criticized by some non-LGBTI NGOs, such as the Association for Legal Studies on Immigration (ASGI, ‘Associazione per gli Studi Giuridici sull’Immigrazione’), which defends migrants’ rights¹⁶.

The bill adopted by the Chamber of Deputies is currently being debated by the Senate Justice Committee (Bill no. 1052). In case of new amendments, the bill will be returned to the Chamber for a new consideration.

3.2. Homophobic and transphobic hate crimes and hate incidents

We provide a summary on the hate crimes and incidents that we have been able to document, following the categories identified by ILGA Europe. As mentioned in paragraph 2, neither cases of homicide nor of arson have been reported.

3.2.1 Extreme physical violence

We have documented 12 cases of extreme physical violence, representing 8.3% of total crimes and incidents. Three different types of violation fall under this category: 2 attacks by weapon (knife or gun), 1 attack without weapon that could cause serious physical harm, and 9 cases of sexual harassment.

The attacks by weapon occurred in Campania, but in two very different contexts. In the first case, a group of three gay men was attacked by a gang of four, armed with a gun and a knife, near an LGBTI venue in Naples. The victims sought medical care and reported the crime to the police; both medical staff and law enforcement authorities proved to be supportive. In the second case, a 35 year old lesbian woman, who is not out to her parents and shares with them an apartment in a small town,

¹⁵ For further information, see (in Italian): <http://www.articolo29.it/2013/omofobia-e-transfobia-il-trucco-ce-e-si-vede-2/>; <http://www.articolo29.it/2013/che-cosa-dice-veramente-la-legge-sullomofobia-ovvero-il-bambino-e-lacqua-sporca/>.

¹⁶ See (in Italian): http://www.asgi.it/public/parser_download/save/1_0013_omofobia_asgidocumenti.pdf

was attacked by her father after protesting against homophobic comments made on TV. The man rudely commanded her to stop talking, punched her in the chest, grasped a knife and further threatened his daughter. There were some witnesses, probably other family members, who remained indifferent. Although the woman had a chest contusion, she did not seek medical care nor did she report the crime to the police, because she did not want her father to be in trouble. In the questionnaire she also affirms that her father “supposes I am homosexual and feels reasonably uneasy about that”.

The attack that could cause serious physical harm involved a 45 year old gay man who was hit by a gang of six unknown younger men (in fact, the victim also mentions age as a motive for the incident). The event, which caused wounds to be healed by one month, occurred in a cruising rural area in Veneto. The victim was also verbally threatened, robbed, and targeted with homophobic insults. He received an appropriate treatment by both medical staff and the police, and the perpetrators were identified and indicted for the crime. Nevertheless, it is not clear whether the police and the judge considered the event as a hate crime.

Sexual harassment constitutes the most frequently reported form of extreme physical violence, and includes unwelcomed sexual advances, and other verbal or physical conduct of a sexual nature. 78% of incidents were reported in Campania and 22% in Veneto, while all of them occurred in urban areas (in particular 56% happened in Naples or Venice). The average age of victims is 24, while women represent 66.7% of them and men are the remaining 33.3%; furthermore, 22% of violations are suffered by trans people. In addition, 56% of victims are lesbian, 22% are heterosexual, while in 22% of cases sexual orientation is unclear or not indicated. Moreover, 67% of victims are out and 22% of them are involved as activists or are working in an LGBTI NGO.

56% of incidents occurred in public spaces, 33% in private spaces, and 11% on the Internet. Perpetrators acted alone in 56% of reported cases: all of them are men and unknown to the victim in 80% of cases. 22% of incidents occurred at school, and the same percentage were reported at work: in such contexts perpetrators are schoolmates or both co-workers and the employer respectively.

Sexual harassment cases are often correlated with other crimes or incidents: in particular, in 78% of cases victims suffered also an abusive behaviour (such as individually or not individually verbal or written abuses), 33.3% report episodes of psychological violence (such as bullying, stalking, and defamation), while 11% of victims were threatened and another 11% experienced a discriminatory incident.

Finally, it has to be highlighted that victims never sought a psychological support, nor reported the incidents to the police; on the contrary, an LGBTI association was contacted in 56% of cases. The distrust of law enforcement authorities seems especially deep in cases of sexual harassment: for instance, one victim says that “I did not even think police could be interested in helping a trans

woman”, another one affirms that she was “ashamed” of reporting the abuse, while the last one declares that she was “absolutely sure that I would not get any help or support from the police”.

3.2.2. Assault

This category includes any physical attack against a person or people, which does not pose a threat to their life and is not serious. 12 cases of assault have been documented, 8 of which involve the throwing of objects at people, and 4 concern not life-threatening physical attacks.

All incidents occurred in urban areas, 67% were reported in Campania and 33% in Veneto; in particular, assaults experienced in Naples constitute 42% of total reported cases.

The victims’ average age is 29. Women are 75% of victims, and men are the remaining 25%; moreover, in 8% of cases the assault was suffered by a trans person. In 67% of reported cases the victim is a lesbian woman, in 17% is a gay man, while in 17% of questionnaires victim’s sexual orientation is not specified or remains unclear.

Only 8% of victims are not out at all, while 42% of people who suffered the assaults are activists or work in an LGBTI NGO, and 67% of attacks occurred near an LGBTI venue or during LGBTI events. 92% of suffered assaults were experienced in public spaces, and 83% of incidents involved several perpetrators, normally unknown to the victim. Furthermore, in 75% of cases the group of perpetrators included at least one minor. Three victims – who suffered the same attack – report that perpetrators “behaved as a gang”, although offenders did not have any identifiers.

In 83% of assault cases, victims experienced also an abusive behaviour (such as individually or not individually targeted insults); moreover, 25% of them were threatened, 8% suffered an extreme physical violence (attack by weapon), and another 8% experienced a psychological violence.

While most of the attacks (75%) were performed by people unknown to victims, in 17% of assaults perpetrators were family members. In such cases victims seem especially hesitant about reporting the experienced abuse to the police, because they try to protect perpetrators. The case of a 22 year old lesbian woman sounds particularly tragic. The victim is not out to her parents, however they suppose she is lesbian. The woman was forced to go to church, where a priest exorcised her: “they took me to church by night, it was cold and I found several parishioners there, about 5. They were all around the priest, who told me to kneel, sprinkled me with holy water and shouted words in Latin. All of them were screaming as if they had been prepared. I cried nonstop. I felt dirty and tired, I was forced to kneel on the floor for hours”. Although the case shows a combination of several violations (physical attack, restriction of freedom, bullying, and individually targeted verbal abuse), the victim preferred not to report the event to the police because, as she explains, “it is my family, I do not even know if they did something wrong from their point of view”.

More generally, no documented assault was reported to the police. In cases where perpetrators are not family members, victims show the already highlighted distrust of law enforcement authorities.

Victims explain why they did not address the police as follows: “someone discouraged me from contacting the police”; “I thought police would not take care of me”; “I was sceptical about the consequences of reporting the event”; “I thought I would not receive any help”. In other cases, victims say they believed the suffered incident was not serious enough to be reported to the police, especially when perpetrators were minors.

According to the available information, victims did not seek medical care, even when they suffered injuries. On the contrary, the incidents have always been reported to LGBTI associations.

3.2.3. Damage of property

Only two incidents fall under this category, which includes any physical attack directed against property, which is not life-threatening, and damages to personal properties belonging to LGBTI people.

The first case has been already described, and involves a gay man who was hit and robbed by a gang of six in a rural area of Veneto.

In the second case, the victim is a 22 year old gay man who lives in Naples and is not out at all. The man suffered both damage of property and defamation, since unknown perpetrators targeted the facade of his house with vulgar graffiti, in this way outing his sexual orientation. The incident has been reported only to an LGBTI NGO.

3.2.4 Threats and psychological violence

Many incidents (42) have been classified into this comprehensive category, which includes clear and specific threats, both written and verbal (12 cases), stalking (4), defamation (6), restriction of freedom (1), and bullying or harassment (19). According to the Italian law, all of them reach the threshold of criminal liability.

We have been able to document 12 threats of violence against individuals or groups, equally divided between Veneto and Campania. 92% of threats were performed in urban areas, and particularly 50% occurred in the two regional capital cities. Furthermore, 75% of victims were threatened in public spaces, 17% in private spaces, and 8% on the Internet. Perpetrators acted alone in 58% of reports, were unknown to victims in 67% of incidents, and are men in 75% of cases. Among known perpetrators, 50% are family members, 25% are co-workers and the same percentage are owners of private stores and services.

As regards the identity of victims, 83% are women and 67% are lesbian; in remaining cases, the victim is a heterosexual trans woman (8%), or her sexual orientation is not indicated (8%). Moreover, 17% of victims are gay men. All victims are out in at least one circumstance, and 42% are activists or work in an LGBTI association. Furthermore, 50% of incidents occurred near an LGBTI venue (such as cruising areas) or during LGBTI events (such as Prides, or the Day Against Homophobia), while in

17% of cases lesbian couples publicly displaying their affection were targeted with verbal threats. The victims' average age is 32.

In 92% of questionnaires sexual orientation is presented as a motive behind the suffered threat, sometimes combined with other causes: gender expression (8%), age (17%), and political reasons (17%). Gender identity is mentioned as a motive for the incident in 8% of reports. Furthermore, threats are often correlated with other types of incidents, such as individually or not individually targeted verbal or written abuses (in 75% of cases), assaults (33%), extreme physical violence (25%), other kinds of psychological violence (such as stalking or harassment, 17% of reports), damage of property or discriminatory incidents (8% of cases respectively).

92% of threats have been reported to an LGBTI NGO, while only in 8% of cases victims sought medical care or psychological support. Two victims (17% of cases) contacted law enforcement authorities: in one case the police was supportive, while in the other one the Carabinieri seemed "detached", and the victim, a transgender woman, was discouraged from filing charges against the perpetrator. Reasons not to report the incidents to the police vary among victims: normally people do not trust law enforcement authorities, consider the experienced abuse as not serious enough to be reported, try to protect a family member or are not out to parents or friends.

As mentioned above, 6 cases of defamation – 4 of which reported by witnesses – have been documented. According to the information collected, the victim's reputation is usually harmed by outing her/his LGBTI identity or by spreading confidential or false information on her/his sexual conduct.

Normally defamation is associated with other types of violations, such as written or verbal homophobic insults (67% of reported cases), other kinds of psychological violence, such as stalking or bullying (25%), sexual harassment or damage of property (17% respectively).

83% of incidents occurred at work, and in this context perpetrators are the victim's co-workers (in all cases) or the employer (in one case). The incidents that occurred at work involve more than one perpetrator, and in one case perpetrators are members of a fundamentalist Christian movement.

67% of defamation victims are men, and 50% are gay. Lesbian women are 33%, while in 17% of cases the victim's sexual orientation remains undetermined. The average age of victims is 31.

An LGBTI NGO was informed in 67% of cases. On the contrary, victims never reported the crimes or sought support from the police, often because they have a limited awareness of their rights or fear some form of retaliation from perpetrators. In two cases (33% of total reports), the victims affirm the incident was not serious enough to fill a formal charge against perpetrators: the first one, a 28 year old lesbian woman defamed, bullied and insulted by co-workers, simply asked her supervisor to move to a new office in the same firm. She did not contact the police because she thought "it was not serious nor important", and also because "after all such behaviours are normal, especially in smaller towns". The second victim, a 47 year old lesbian teacher, who was stalked and defamed by

colleagues and students because of her sexual orientation and masculine gender expression, decided to move to a different school and not to contact law enforcement bodies since she believed the suffered abuses “did not constitute a crime”. In another case (17% of total reports), the victim – a 30 year old gay men working at a university, who was defamed and insulted by co-workers – did not report the incident because he feared that his career could be undermined. Finally, when incidents are reported by witnesses, victims may not be aware of the suffered abuses. Such is the case of two documented defamations (33% of reports): in the first one, the abuse is experienced by a 40 year old gay judge, who is defamed by several legal professionals; as pointed out by the witness, while perpetrators are not in a position of power or authority over the victim, they are able to undermine his reputation. The second victim is an 18 year old man working at a garage, who is insulted, stalked, bullied, defamed, and even sexually harassed with verbal conducts of a sexual nature. The man is targeted because of his feminine gender expression and presumed sexual orientation by older co-workers and the employer. Although the witness, who works at the same garage, proved to be supportive and frequently asked co-workers to stop, the victim told him not to worry, since the colleagues “are just joking to have fun”.

While the only documented case of restriction of freedom has been already presented when writing about assaults, 4 cases of stalking have been reported. All documented incidents occurred at work (75%) or at school (25%), and perpetrators are co-workers or a teacher, respectively. Stalking is usually associated with other incidents, such as homophobic verbal or written abuses, defamation or bullying (50% of cases, respectively), and threat or sexual harassment (25% of reports, respectively). In fact, the three cases of stalking experienced at work have been described when analysing the correlated incidents. The fourth case is especially serious, since it involves a 16 year old girl stalked and bullied by her teacher because of her masculine gender expression and presumed sexual orientation. The teacher repeatedly and overtly targeted the victim with verbal comments about her look before the class. The victim reported the abuse to an LGBTI NGO and sought support from friends.

The last group of incidents identified under the category “threats and psychological violence” is the largest one (19 documented incidents) and includes cases of bullying or harassment. 84% of violations occurred in Campania, 95% in urban areas, and 53% were experienced in Naples or Venice. The events happened in public or privately owned public spaces in 74% of cases, while they were suffered in private spaces in the remaining 26%. In particular, 21% of incidents occurred at school or at work respectively, while 10.5% were suffered in the family. 16% of victims were harassed near an LGBTI venue or during an LGBTI event, while 26% suffered the abuse while publicly displaying their affection or in situations of intimacy.

The victims’ average age is 22. Women represent 74% of victims, men are 26%, while trans people are 5%. As regards sexual orientation, 68.5% of victims are lesbian, 16% are gay, and 10.5% are

heterosexual (in such case, victims are both trans people and heterosexuals perceived as gay or lesbian); in 5% of cases sexual orientation remains unclear. All LGBTI victims are out.

Perpetrators are known to the victim in 74% of cases, and acted as a group in 63%, although they are members of a formal organization (a fundamentalist Christian movement) only in 5%. Furthermore offenders, whether they acted alone or as a group, most frequently belong to the following categories: co-workers (21% of reported cases), educational staff (16%), police officers, employers or supervisors, schoolmates, owners or administrators of private stores and services, family members, and neighbors (10.5% respectively), health practitioners in public or private facilities, other public servants, and members of the clergy (5%).

Bullying and harassment are associated with the following crimes or incidents: individually or not individually targeted homophobic insults (68%), discriminatory incidents (21%), sexual harassment (16%), stalking or defamation (10.5% respectively), threat, assault or restriction of freedom (5% respectively).

74% of harassment and bullying cases were reported to an LGBTI NGO, while only one victim (5% of reports) contacted the police and was treated fairly. Reasons for not contacting law enforcement bodies, when indicated, vary among victims: some of them consider the suffered violation as not serious enough to be reported, others do not trust the police or are afraid of reporting, while in some cases perpetrators are police officers, as mentioned above.

3.2.5. Other incidents with a bias motivation

The last category of incidents identified by ILGA Europe includes abuses that in their substance (irrespective of the motivation) may not qualify as crimes under national legislations in general. In particular, verbal and written abuses (whether individually or not individually targeted), intolerant or abusive speech (especially by public figures), mass-produced abusive literature (such as posters, leaflets, banners, etc.), and discriminatory incidents fall under such category.

According to the Italian law, however, some of the listed violations still constitute a crime: such is the case of individually targeted verbal or written abuses, which may qualify as 'crime of insult' on the basis of article 594 of the Penal code, that protects "personal honor and dignity". Nevertheless, as we have discussed in paragraph 3.1, currently the Italian criminal law does not take into account a homophobic or transphobic motive as an aggravating circumstance for crimes, which would be the case if the bill currently debated by the Senate was approved.

Furthermore, abuses that are not individually targeted, hate speech by public figures, and mass-produced abusive literature, when motivated by homophobia and transphobia, are not currently considered as crimes in themselves. As seen in paragraph 3.1, the currently debated bill would extend the existing prohibition against instigation to hatred and violence, to include homophobic and transphobic behaviors, and would combat organizations, associations, movements or groups which

aim to instigate discrimination or violence. However, we have to point out that the current Italian criminal law punishes “whoever publicly instigates to commit one or more crimes” (Article 414 of the Penal code). As said above, a bias motive related to sexual orientation or gender identity is not currently taken into consideration as an aggravating circumstance.

Finally, as regards discriminatory incidents, Legislative Decree no. 216/2003, implementing Directive 2000/78/EC, explicitly bans discrimination based on sexual orientation. The law covers conditions of access to employed or self-employed activities, vocational training, employment and working conditions, and membership of and involvement in employers, workers or professionals’ organisations. Nevertheless, the law does not explicitly ban discriminatory treatments in the access to and supply of goods and services (including housing), and it does not mention gender identity as a ground of discrimination. Moreover, while under Law no. 654 of 1975 (as amended by Law no. 205 of 1993) “acts of discrimination for reasons of race, ethnicity, nationality or religion” qualify as crimes, it is not the case for discriminatory acts on grounds of sexual orientation or gender identity.

On the whole, we have been able to document 76 incidents with a bias motivation, articulated as follows: 38 individually targeted verbal or written abuses, 15 not individually targeted verbal or written abuses, 2 public hate speeches, 9 cases of mass-produced abusive literature, and 12 discriminatory incidents. For the above presented reasons, individually targeted insults (a), not individually targeted abuses, hate speech and abusive literature (b), and discriminatory incidents (c) will be analysed separately.

a) Individually targeted insults

60.5% of individually targeted insults were documented in Campania, 95% occurred in urban areas, and 39.5% were registered in the two capital cities. Abuses were suffered in public spaces in 71% of cases, in private spaces in 21%, and on the Internet in 8%. In particular, 18% of insults were experienced at work, 8% at school, and 47% near an LGBTI venue or during an LGBTI event.

As regards victims, women are 63%, and men constitute the remaining 37%, while 13% of abuses have been reported by trans people. Furthermore, 53% of victims are lesbian, 26% are gay, and 10.5% are heterosexual, while in another 10.5% of questionnaires the victim’s sexual orientation is not indicated. Almost 90% of insulted people are visible to some extent, and 45% are involved as activists or are working in an LGBTI NGO. The victims’ average age is 28.

Incidents involve one perpetrator in 39.5% of cases, while in the remaining 60.5% offenders acted as a group; in particular, they are members of a fundamentalist Christian movement in 5% of reported cases. Furthermore, perpetrators are unknown to 55% of victims. We may add that in 71% of incidents there is at least a man among offenders, while in 10.5% of cases there is at least a woman; in 24% of questionnaires the perpetrator’s gender remains unclear. Although in many cases we do not have details on the perpetrators’ identity, when we have such information we can highlight that

offenders, regardless of they acted alone or as a group, most frequently belong to the following categories: co-workers (16% of reported cases), schoolmates (10.5%), employers or supervisors, flatmates, and landlords (5% respectively), health practitioners in public or private facilities, police officers, other public servants, owners or administrators of private stores and services, family members, neighbors, and members of the clergy (3% respectively).

Regarding the type of support sought by victims, 84% contacted an LGBTI association, 24% talked to friends, and 8% reported the suffered abuse to relatives. Moreover, 5% of victims sought psychological support and 3% addressed a public administration body. Although, as said above, individually targeted insults constitute a crime under the Italian law, only 3 victims (8% of total cases) reported the suffered abuse to the police, but in one case authorities discouraged the victim – a 47 year old trans woman – from filling a formal charge against perpetrators. In another case, among the ones reported to law enforcement authorities, insults were associated with more serious crimes, such as extreme physical violence, robbery, and threat (in such case perpetrators were indicted). Normally victims do not consider individually targeted verbal or written abuses as crimes serious enough to be reported to the police, or they are not even aware that the abuse is punished under the criminal law. Other victims show an explicit distrust of the police, or are worried about the consequences of filling a charge. Finally, as mentioned above, in 3% of cases perpetrators are police officers.

b) Not individually targeted abuses, hate speech, and mass-produced abusive literature

As regards the second group of incidents, 26 events have been documented. All of them occurred in urban areas, and 61.5% were reported in Campania (31% in Naples). Offences were experienced in public spaces in 65% of cases, in private spaces in 11.5%, and on the Internet in 23% of cases¹⁷. In particular, 8% of the abuses occurred at work, and 4% at school or in health facilities respectively; above all, 73% were suffered in the following contexts: near an LGBTI venue, during LGBTI events, or while legislation related to sexual orientation and gender identity – such as the law against hate speech and crimes in Italy or the marriage equality debate in France – was being debated.

Under this category, in the collected questionnaires the whole LGBTI community is often presented as victim. Such is the case of hate speeches and mass-produced abusive literature, which are directed not to individuals, but rather to social groups. As a consequence, in 58% of reports the victim's gender or gender identity is not specified, while his/her sexual orientation is not indicated in 65% of questionnaires. As for the remaining reports, in 27% of cases the victims are women, and in 15% are men; moreover, 23% of them are lesbian, and 11.5% are gay. The victims average age is 29, 82% of them are out, and 36% are involved as activists or work in an LGBTI NGO.

¹⁷ The total is greater than 100 because some questionnaires include incidents occurred both in public spaces and on the Internet.

Victims know the perpetrators in 61.5% of cases, while in 65% offenders acted as a group. Furthermore, 38.5% of perpetrators belong to a formal group, such as far-right movements (e.g. 'Forza Nuova', 'Casa Pound', and 'Veneto Fronte Skinheads'), fundamentalist Christian organizations (e.g. 'Generazione Senza Confini'), and local media (e.g. www.ildispari.it – 'Quotidiano online dell'Isola d'Ischia'). Men represent 46% of the perpetrators, women represent 4%, while in 50% of cases the offender's gender remains unclear. Moreover, offenders, irrespective of whether they acted alone or as a group, most frequently belong to the following categories: owners or administrators of private stores and services (11.5%), far-right politicians, co-workers, employers or supervisors, flatmates, health practitioners in public or private facilities, and educational staff (4% respectively).

According to the available data, we may conclude that not individually targeted offences (including hate speech and abusive literature) are more likely to be reported to the police or to public authorities: in effect, 27% of abuses have been reported to law enforcement authorities, 8% to UNAR¹⁸, and 35% to other public bodies. Furthermore, 88% of victims addressed an LGBTI NGO, while 8% talked to friends, and 4% sought a psychological support.

c) Discriminatory incidents

As regards the last group of abuses, we have been able to document 12 cases, equally divided between Veneto and Campania. 92% of events occurred in urban areas, and 33% were registered in Naples. Furthermore, one half of the incidents were suffered in public spaces, and the other half in private spaces.

In particular, 2 incidents (17%) regard housing discrimination: the abuses were suffered by a 31 year old lesbian woman and a 35 year old gay man, to whom landlords refused to rent an apartment or to renew a tenancy agreement for discriminatory reasons. One incident (8%) occurred in a cafe, and the victim is a 47 year old trans woman, treated unfairly and eventually expelled from the bar by the owner. In another case (8%) a gay couple was publicly discriminated by family members during a religious ceremony. As anticipated above, the incidents listed so far are not banned under the Italian law, which forbids discrimination based on sexual orientation only in employment.

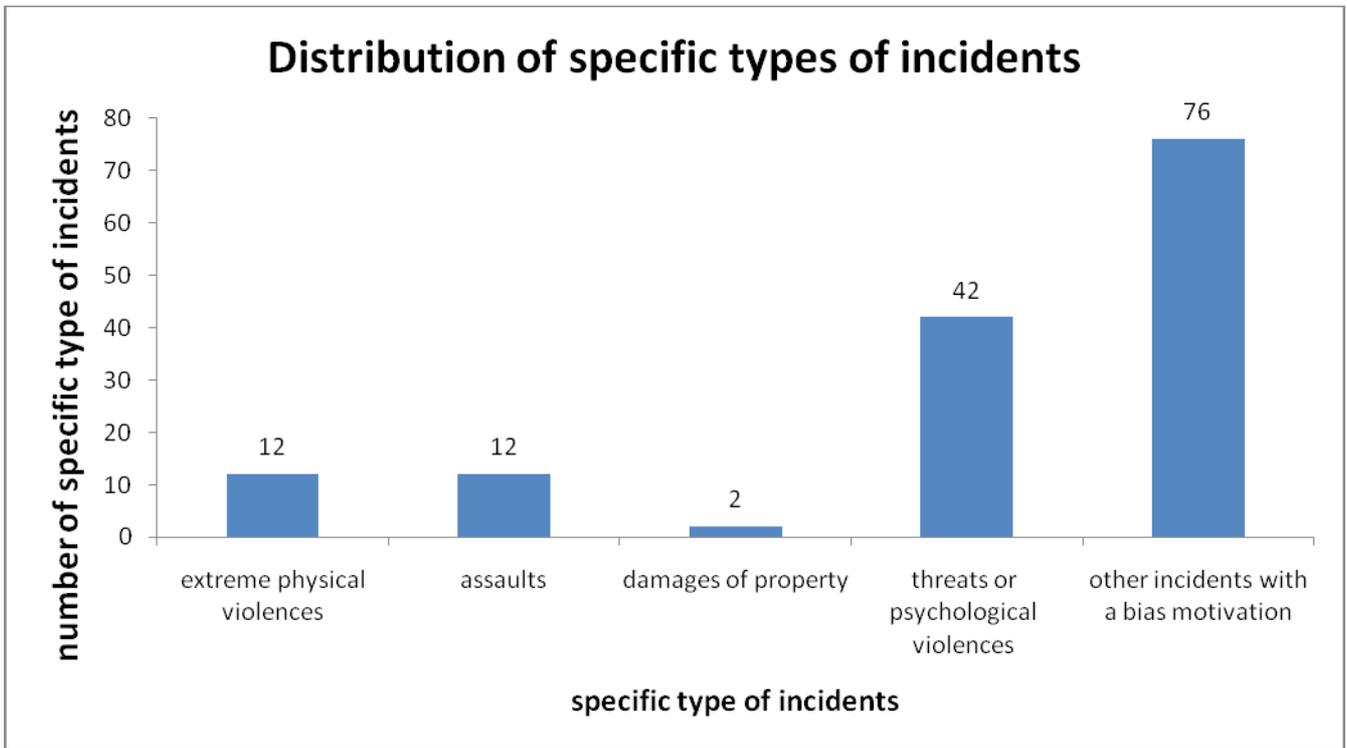
On the other hand, 5 discriminatory incidents (42%) are related to the labour market, and consist in firing (2 cases), refusal to hire (2 cases), and retaliation by the employer (1 case); victims are 3 gay men, 1 lesbian woman, and 1 trans woman.

The 3 remaining reports involve people unfairly treated in public spaces, in one case by a police officer. In such cases, discriminatory behaviours are associated with harassments.

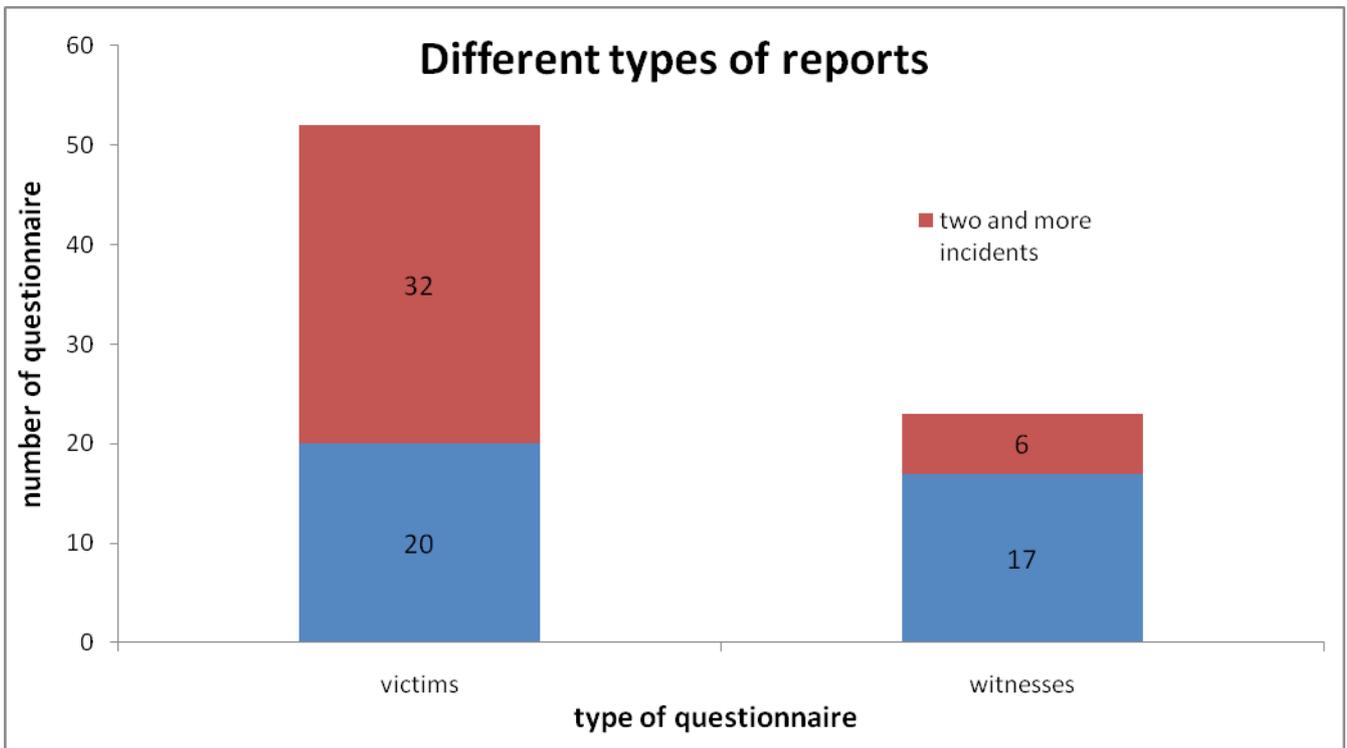
¹⁸ As said above, UNAR (Ufficio Nazionale Antidiscriminazioni Razziali – National Office Against Racial Discrimination) is the Italian national equality body, founded in 2004 in compliance with the European Union antidiscrimination Directives.

75% of victims reported the suffered discriminations to an LGBTI NGO, 17% sought a psychological support, and 8% talked to friends. Only one victim – the trans woman discriminated, threatened and insulted by a cafe owner – reported her experience to the police, but she was discouraged from filling a charge against the perpetrator. Furthermore, although discrimination in the labour market is banned by the Italian law, none of the victims who suffered abuses in this sphere reported them to law enforcement authorities. In particular, one victim affirms that “I did not even think police could be interested in helping a trans woman”, while another feared that his career perspectives could be undermined by a lawsuit. However, a victim who intended to sue her employer was rehired, showing that the law served as a deterrent in some way.

The following bar graph represents the incidents per category:



The second chart shows the number of reports including different type of incidents at the same time:



4. Police and other law enforcement authorities

The 'Observatory for Security Against Acts of Discrimination' (Osservatorio per la sicurezza contro gli atti discriminatori - OSCAD) was established in September 2010 through an administrative act of the Chief of Police Forces to help individuals who belong to minorities to enjoy their right to equality before the law and guarantee protection against any form of discrimination. The Observatory includes representatives from 'Polizia di Stato' and 'Arma dei Carabinieri', both of which serve as judicial, public order and security police forces on a national scale.

OSCAD tasks are:

1. to receive from institutions, associations and individuals reports of discriminatory acts based on race or ethnic origin, nationality, religion, gender, age, language, physical or mental disability, sexual orientation and gender identity;
2. to respond with targeted interventions based on the received reports and to monitor the cases;
3. to work in cooperation with associations and institutions, both public and private, dedicated to combating discrimination;
4. to propose measures to prevent and combat such discriminations;
5. to provide specific training to police forces on issues related to discrimination.

OSCAD signed in April 2011 a Memorandum of understanding with UNAR, which encompasses information exchange on discrimination cases, including hate crimes, and a joint effort to combat discriminations and to train police officers¹⁹.

As regards training activities, according to the information provided by OSCAD, during both pre-service and in-service training courses, in 2012 and 2013 a number of seminars were held for police officers at different ranks, overall targeting about 3,200 staff²⁰.

In addition, OSCAD signed in May 2013 a Memorandum of understanding with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE). The agreement aims to implement in Italy ODIHR's programme 'Training Against Hate Crimes for Law Enforcement' (TAHCLE), which is designed to improve «police skills in preventing and responding to hate crimes, interacting effectively with victim communities, and building public confidence and co-operation with law-enforcement agencies»²¹.

¹⁹ Available, in Italian, at: <http://www.governo.it/backoffice/allegati/63209-6723.pdf>

²⁰ See the document, on OSCE website: <http://www.osce.org/odihr/105452>

²¹ A document presenting TAHCLE can be downloaded at: <http://www.osce.org/odihr/94898?download=true>

Starting in early 2014, the programme is going to be implemented through a 'training of trainers' methodology, in which police officers are trained as instructors, and they then train their colleagues, in order to disseminate across the national territory the acquired skills²².

As mentioned above, OSCAD collects data on discrimination cases: between September 2010 and February 2013, 329 cases were reported, 138 of which were classified as crimes. The reports highlight a prevalence of racial discrimination cases (56%), followed by cases of discrimination on grounds of sexual orientation or gender identity (29%)²³. However, the lack of adequate criminal measures to combat hate crimes and discrimination motivated by homophobia and transphobia makes harder to identify and properly prosecute them.

Furthermore, in OSCAD official documents there is neither reference to a procedure that might help police officers to recognize different cases nor explicit criteria that define discrimination in the field of security. An independent and effective mechanism to investigate reports of hate crimes and incidents committed by law-enforcement staff is also lacking.

Moreover, while OSCAD has direct relations with LGBT organizations, there is no information on personnel appointed by police forces to work with local LGBT groups.

LGBTI Resource Centre is unaware of the existence of training programmes for legal professionals and the judiciary. Nevertheless, representatives of judges and lawyers organizations took part in the seminar 'Preventing and Responding to Hate Crimes: The Italian Experience', held at the 'Università Cattolica del Sacro Cuore' of Milan in December 2012 and organized in cooperation with the OSCE Office for Democratic Institutions and Human Rights²⁴.

²² Some experiences of training for local police forces on the issue of hate crimes and hate incidents motivated by sexual orientation and gender identity are presented in: LGBTI Resource Centre, *Report on implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity in Italy*, 2013, pp. 59-60.

²³ For further information, see, in English: <http://www.osce.org/odihr/105452>, and, in Italian: <http://www.dirittiglobali.it/home/categorie/37-osservatorio-razzismo/42683-discriminazioni-oscad-oltre-300-segnalazioni-e-69-arresti.html>

²⁴ For further information, see (in Italian): <http://milano.unicatt.it/eventi/preventing-and-responding-to-hate-crimes-the-italian-experience-14791>

5. Annex 1: Glossary

Advocacy

The deliberate process of influencing those who make or have responsibility for implementing policy decisions. As such, the word 'advocacy' is quite pliable and is used variously to suit organisational agendas. It is understood in terms of the work an organisation does and the fundamental mission of the organisation.

Bias indicators

Criteria that can assist law enforcement professionals in determining whether a particular crime should be classified as a bias/hate crime. These criteria are not all-inclusive, and each case must be examined on its own facts and circumstances.

Bias motivation

A bias or hate crime or hate-motivated incident can be based on one of the following motivations: race/ethnicity, religion/faith, nationality, age, disability, sex, sexual orientation, gender identity, or other grounds.

Data collection

Data collection implies determining what information is needed and establishing means for acquiring it. Fact finding and monitoring are part of this process. Methods use a wide range of tools including surveys, interviews, questionnaire, etc.

Documentation

The term documentation can have different meanings, depending on the geographical context or the field in which it is employed. It is important to stress that documenting is a process that includes different steps, which can vary depending on the goal of the documentation. Generally, documentation is the process of organising and classifying the collected data in a way that it is accessible in the short and long term. It implies categorising the collected data according to certain criteria (such as the profile of victims/perpetrators; categories of incidents; bias indicators). This makes the data accessible and creates possibilities for analysis. Analysing data includes elaborating statistics, charts and graphs to make findings more visible. Good documentation is the basis for good reporting and dissemination to actors (government authorities, European/international institutions, human rights institutions, etc.) who can take action. Good documentation can also be used to create effective advocacy tools which support changing attitudes, education, articles, posters etc.

Hate crime (or bias crime)

Hate crime are criminal acts motivated by bias or prejudice towards particular groups of people. This could be based, inter alia, on gender, gender identity, sexual orientation, ethnicity, religion, age or disability.

A hate crime comprises two distinct elements:

It is an act that constitutes an offence under criminal law, irrespective of the perpetrator's motivation; and

In committing the crime, the perpetrator acts on the basis of prejudice or bias.

Thus, the perpetrator of a hate crime selects the victim based on the victim's membership or perceived membership of a particular group. Where the crime involves damage to property, the property is chosen because of its association with a victim group and can include such targets as places of worship, community centres, vehicles or family homes.

Hate-motivated incidents

An act that involves prejudice and bias of the sort described above but does not amount to a crime is described as a "hate-motivated incident". The term describes acts motivated by prejudice ranging from those that are merely offensive to those constituting criminal acts in which the crime has not been proven. Although hate-motivated incidents do not always involve crimes, such incidents often precede, accompany or provide the context of hate crimes.

Hate speech

Forms of expression that are motivated by, demonstrate or encourage hostility towards a group or a person because of their membership of that group. Since hate speech may encourage or accompany hate crimes, the two concepts are interlinked. States differ considerably as to which forms of expression can be limited or prohibited because of their hateful nature.

Monitoring

A broad term describing the active collection, verification and use of information to address human rights problems over time. Human rights monitoring includes observing and gathering information about incidents and events (elections, trials, demonstrations, etc); it has a temporal quality as it generally takes place over an extended period of time. In the specific context of hate crime, the purpose of monitoring is to document violence motivated by hatred and to draw the attention of national authorities or international organisations to the violation of recognised human rights. Monitoring ultimately aims to collect sufficient evidence of hate crimes to convince authorities and the public that something has to be done to improve the situation. Monitoring is also done to ensure

that the authorities are adhering to the law, guidelines or agreements. It can also show trends over time.

Recording of hate incidents

In the context of hate incidents recording means the police or NGOs are keeping a log, or record, of all hate crimes/ incidents that have been experienced and reported by people. It involves taking down key information that relates to these incidents, such as when they occurred and a description of what happened.

Third Party Reporting

The aims of having third party reporting is to increase reporting of hate crime and to increase the flow of intelligence from the different communities whose members suffer from hate motivated incidents/crime. These are achieved by providing members of the public with an alternative point of contact, which is different from the police. There are a number of initiatives that encourage and assist victims and witnesses to report hate-motivated incidents and crime, these include:

Self-reporting schemes, allowing victims to make direct reports of incidents/crimes without having to speak to the police.

Assisted reporting scheme, involving a third party such as a voluntary organisation, who take details of a incident or crime and pass the report to the police.

Victim perception

The perception of the victim (or of a witness) is the defining factor in determining that an incident should be investigated as a hate incident. No assumption regarding the lack of motivation as a cause of an incident should prevent reporting it as a hate incident if the victim or a witness indicate such a perception. A victim of a homophobic or transphobic hate crime or incident does not have to be a member of LGBTI communities. For example, a heterosexual man who is verbally abused leaving a gay bar may well perceive that it is motivated by homophobia although he himself is not gay. The deciding factor lies in the perception of the victim or a witness.

Repeat Victimisation

A person, who becomes the victim of a hate crime or incident, may already have been the victim on a number of occasions. Previous incidents may not have been reported to the police for a variety of reasons and as such, when an incident is reported, it may be the culmination of a lengthy course of victimisation.

Secondary Victimisation

When a person is the victim of a hate crime and they perceive a lack of commitment or understanding in the response from the police, this can have the effect of victimising them for a second time. Whether they are in fact receiving such a level of response is immaterial, as the victims personal reaction is based on their immediate perception.

Victim of a homophobic or transphobic hate crime/ incident

A victim of a hate incident/ crime is a person that has suffered of any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate based upon his/her sexual orientation, gender identity or gender expression. The perception of the victim or any other person is the defining factor in determining a homophobic or transphobic hate incident.

6. Annex 2: Types of LGBTI-phobic hate incidents and bias indicators

Types of hate incidents

We are aware that the criminal law differs between countries in Europe. The definition of hate crime used in this project comprises two distinct elements:

1. It is an act that constitutes an offence under criminal law, irrespective of the perpetrator's motivation; and
2. In committing the crime, the perpetrator acts on the basis of prejudice or bias.

This definition is based on the OSCE's definition of hate crime²⁵.

As a result, other hate incidents that do not constitute a criminal offence irrespective of the perpetrator's motivation have not been considered as 'hate crime' for the purpose of this project.

For the purpose of classifying the collected data we have identified two main broad groups of hate incidents:

1. Group I: Actions that are "crimes" according to the national criminal law in most European countries (categories 1-6);
2. Group II: Incidents that may not qualify as crimes irrespective of the perpetrator's motivation, but that are elements of a LGBTI-phobic context and therefore are important to be monitored (category 7).

The different types of incidents ('homicide', 'extreme physical violence', 'assaults', etc.) can take place in a range of settings including in public, in someone's home (domestic violence) and in institutions (for example hospitals).

Please note that OSCE definitions do not cover incidents perpetrated by public authorities agents (e.g. police officers). However for the purpose of this project the following types of incidents have been recorded:

1. Incidents actively perpetrated by public officials, which have been recorded according to the same standards as all other incidents and have been classified in any relevant category of crimes or incidents (all categories from 1 to 7).

²⁵ <http://www.osce.org/odihr/66388>

2. Cases where public authorities abstain from fulfilling their duties as public agents (e.g. protection of individuals or pride marches against aggressions, or providing adequate safety measures, etc.) have been classified under category 7 (other incidents with bias motivation).

Group I: Actions that are crimes according to the national criminal law in most European countries

| Category | Subcategory | Description |
|-------------------------------------|----------------|--|
| 1. Homicide | | Any attack on a person that causes loss of life. |
| 2. Extreme physical violence | | Any attack on a person that potentially causes serious physical harm. Any attack on property, for example by arson or petrol bombs, where there is the potential for people in the property to be killed, for instance if the building is inhabited or occupied at the time of the attack. Bombs, including letter bombs. This includes any viable device that either detonates or is defused, and therefore was life threatening. It also includes any device which is assessed to have been intended by its sender to be viable, even if after analysis it is found that it was incorrectly constructed and therefore would not have gone off. Kidnapping. Shooting. Attack by weapon or any other object that can be used to harm. |
| | Sexual assault | An act of sexual violence can be committed by the victim's partner (married or not), previous partner, family member or co-habitant. Rape ²⁶ . Sexual assault ²⁷ . Sexual exploitation by a helping professional, i.e. sexual contact of any kind between a helping professional (doctor, therapist, carers, teacher, priest, professor, police officer, lawyer, etc.) and a client/patient. Sexual harassment, including unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature. |
| 3. Assault | | Any physical attack against a person or people, which does not pose a threat to their life and is not serious. This would include lower level assaults. Attempted assault which fails, due to self-defence, or if the victim runs away. Throwing of objects at a person or people, including where the object misses its target. |
| 4. Damage of property | | Any physical attack directed against property, which is not life-threatening. This includes also the daubing of abusive slogans or symbols, or placing stickers or |

²⁶

²⁶ Rape can be defined as forced sexual intercourse, including vaginal, anal, or oral penetration. Penetration may be by a body part or an object. Rape victims may be forced through threats or physical means. Anyone may be a victim of rape: women, men or children, straight or gay.

²⁷ Sexual assaults can be defined as unwanted sexual contact that stops short of rape or attempted rape. This includes sexual touching and fondling.

| | | |
|--|--|--|
| | | posters on property, including graffiti, or damage caused to property, where it appears that the property has been specifically targeted because of the fact that there is a perceived connection between the owner and the LGBTI communities. Damage to cars or other personal property belonging to members of LGBTI communities, where it is apparent that they have been targeted for this reason. |
| 5. Arson | | Arson attacks on property where there is no threat to life, for instance if the building is uninhabited at the time of the attack. Failed attempts, for instance attempted arson where the fire fails to catch or the arsonist is disturbed |
| 6. Threats and psychological violence | | Any clear and specific threat, whether verbal or written. If the threat is not clear and specific then the incident should be recorded as Abusive Behaviour. Any 'bomb' which is assessed to be a hoax. This would include something that was designed to look like a real device but not intended to be viable, for instance if it does not contain any explosive material. Stalking, including repeated undesired contact (phone calls, emails, letters, show up unexpectedly, etc.), following or laying in wait for the individual, making threats to the individual or her/his family. Blackmailing to divulge publicly, or to family members or at work, that a person belongs to the LGBTI community. Restriction of freedom (e.g. locking up a person). Defamation, such as outing the LGBTI identity. Bullying (e.g. at school, at work place). |

Group II: Other incidents with a bias motivation (category 7)

These incidents may or may not qualify as crimes under national law. They are elements of a LGBTI-phobic context and therefore are important to be monitored.

| | | |
|---------------------------------|-----------------------------|--|
| Abusive behaviour | Hate speech | <p><u>Individually targeted verbal abuse</u>, whether face-to-face or via telephone or answer phone messages. This includes abuse that is mistakenly directed at, or overheard by, people who are not members of the LGBTI communities.</p> <p><u>Individually targeted written abuse</u> (including emails, mobile phone text messages, and social media (facebook, twitter, etc.) as well as targeted letters (that is, those written for and sent to or about a specific individual). This includes written abusive comments about LGBTI communities or persons that are sent to individual people, regardless if they are members of the LGBTI communities. This is different from a mass mailing of abusive leaflets, emails or other publications, which is dealt with by the separate Literature category.</p> <p><u>Not individually targeted</u> verbal or written abuse (e.g. general homophobic and transphobic comments not addressed to anyone in particular), including those channelled via the internet and social media.</p> <p>Public hate speech e.g. by politicians.</p> |
| | Literature and Music | <p>Mass-produced abusive literature or music that is sent to more than one recipient. This covers mass mailings rather than individual cases of hate mail, which would come under the category of Abusive Behaviour or Threats (depending on content). Literature that is abusive in itself, irrespective of whether or not the recipient is from the LGBTI communities.</p> |
| Discriminatory incidents | | Any form of discriminatory incidents which is not considered a crime. |

Bias indicators

Bias indicators are objective facts that should be considered in determining whether a crime can be said to be homophobic or transphobic. They do not, in themselves, confirm that any incident was a hate offence. However, a bias indicator provides an indication that further investigation with a view to establishing the motive may be required. It is vital to record this information in order to evidence the possibility that an incident was bias motivated. Without this information, investigators are unlikely to take the allegation seriously and international organisations will not report it. This is also important for the purpose of data classification.

The following preliminary remarks are important to understand and use the proposed list of bias indicators correctly:

While it is very important to take a victim's perception of the incident into account, NGOs must be aware that the victim may not recognise the incident as having been motivated by hate. Equally, it is not essential to determine whether the victim is actually a member of the LGBTI communities when identifying bias indicators. The issue of concern is the offender's motive based on his or her perception of who the victim is. Therefore it is important to look for evidence of bias, as opposed to evidence of the characteristics of the victim that s/he belongs to the LGBTI communities. Simply stating that the victim belonged to the LGBTI communities is not sufficient for an incident to be classified as a bias crime.

Hostile expressions against members of the LGBTI communities may change over time. Also, the nature of hate crime intelligence may not be as obvious as that concerning certain areas of criminality (such as burglary or robbery), and the danger comes when indicators are misconstrued or not interpreted properly. Therefore, it is important for NGOs to remain in close consultation with possibly LGBTI communities to equip NGOs with an understanding of how LGBTI communities can be targeted. This includes remaining familiar with the language that is currently being used to express hostility and prejudice against LGBTI communities. Listening to and acting upon all sources of information is also vital to ensure the proper interpretation of hate crime/bias indicators.

It is also important to underline that the perpetrator may also belong to the public authority, e.g. police force, law enforcement agent, etc.

For all these reasons, the proposed list of bias indicators has to be understood as an open/indicative list.

| Bias indicators | Questions that can help determine if a bias indicator is present |
|--|--|
| Victim perception | Does the victim perceive that the incident was motivated by bias? Keep in mind that the victim does not always understand that s/he may have been victimized in a bias-motivated attack. Victims often search for other reasons to explain an attack because their sexual orientation, gender identity or gender expression represents an aspect of themselves that is not generally possible to change. |
| Witness Perception | Does the witness perceive that the incident was motivated by bias? Victim perception and witness perception may be different. Both need to be considered. |
| Difference between suspect and victim in terms of racial, religious ethnic/national origin, gender, sexual orientation, etc. | <p>Do the suspect and victim differ in terms of sexual orientation, gender identity or gender expression?</p> <p>Has the victim recently moved to the area in which the incident took place?</p> <p>Was the victim engaged in activities of LGBTI communities at the time of the incident?</p> <p>Is the victim, although not a member of LGBTI communities, is a member of an advocacy group that supports members of the LGBTI communities, or was the victim in the company of a member of LGBTI communities?</p> <p>Is the victim associated to a member of the LGBTI communities (e.g. married, or a family member)?</p> <p>Is the victim's sexual orientation, gender identity publicly known?</p> |
| Location and/or timing | <p>Was the victim in or near an area or place commonly associated with or frequented by members of the LGBTI communities (e.g. an LGBT bar, venue)?</p> <p>Did the incident happen near locations related to the perpetrator's group (e.g. headquarters of extremist organizations) or any hot spots for hate crimes?</p> <p>Did the incident occur on a date of particular significance for the LGBTI communities (e.g. day of LGBT pride march)?</p> |
| Language and word used, including written statements, gestures, graffiti, visible signs of the suspect | <p>Did the suspect make comments, written statements or gestures regarding the victim's background?</p> <p>Were drawings, markings, symbols or graffiti left at the scene of the incident?</p> <p>Did/does the suspect wear any visible sign (tattoo, clothes, haircut) to deduce his/her membership to a specific group opposed to LGBTI communities?</p> |
| Organised hate groups | <p>Were objects or items left at the scene that suggest the crime was the work of paramilitary or extreme nationalist organisations?</p> <p>Is there evidence of such a group being active in the neighbourhood?</p> <p>Did any organized hate group claim responsibility for the crime?</p> |

| Bias indicators | Questions that can help determine if a bias indicator is present |
|--|--|
| History of previous bias crimes/ incidents | <p>Is there a history of similar incidents in the same area?</p> <p>Has the victim received harassing mails or phone calls or experienced verbal abuse based on his/her sexual orientation, gender identity or gender expression?</p> <p>Has the victim been blackmailed that his/her sexual orientation, gender identity or gender expression will be made public (e.g. the victim's identity as LGBTI)?</p> |
| In case of attacks against property | Is the attacked/damaged property in a structure or location that belongs to LGBTI communities (e.g. LGBTI venue/bar)? |
| Offender Characteristics | <p>Does the offender have a history of previous incidents/crimes with a similar modus operandi and involving other victims of the same race, religion, ethnicity/national origin, disability or sexual orientation?</p> <p>Does the offender have a prior history involving hate motivated conduct?</p> <p>Is the offender a member of, or associates with members of, an organized/less organized hate group?</p> <p>Does the perpetrator, in post-arrest statements or in the commission of the crime, recognize the victim to be a member of LGBTI communities?</p> |
| Degree of violence | Was the degree of violence used against the victim particularly intense? |

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