

Hate Crimes and Sexual Orientation/Gender Identity in Spain 2013

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FELGTB would like to thank the following for their participation in this study:

Col.lectiu Lambda de Valencia, Colectivo Gamá de Gran Canarias, Programa de Atención a Homosexuales y Transexuales de la Comunidad de Madrid, Esteban Ibarra, presidente de Movimiento contra la intolerancia y Miguel Ángel Aguilar, Fiscal del Servicio de Delitos de Odio y Discriminación de la Fiscalía Provincial de Barcelona.

1. INTRODUCTION

This report is the result of 'Step up reporting on homophobic and transphobic violence', a project undertaken with the support of ILGA-Europa, the European branch of the International Lesbian and Gay Association. The objective of the project is to facilitate European LGTB organizations with the skills to more consistently monitor and report incidents and hate crimes resulting from homophobia and transphobia.

So as to develop this project, ILGA-Europa has developed its own specific method of data collection for this task. This methodology is based on international standards and from knowledge acquired in previous studies such as those undertaken for the OSCE (Office of Democratic Institutions and Human Rights). These previous studies included OIDDH's annual hate crimes report, and it's own 'Facing Facts! Making Hate Crimes Visible' project.

The project 'Step up reporting on homophobic and transphobic violence' was set up in March 2013. ILGA-Europe, together with the support of the government of the Netherlands, dedicated resources to 12 pan-national and regional NGOs across Europe including Bosnia and Herzegovina, Greece, Ireland, Italy, Latvia, Lithuania, Moldova, Poland, Portugal, Spain (FELGTB), Turkey and Ukraine. For this reason, we shall making use of ILGA's advanced data collection methods in our own work with the aim of eventually making this data available to them through this report.

In the future, it is hoped that the collection of data and the publication of this report will be developed from a more sustainable and professional base as a result of the strengthening of the skills and relationships developed in the current project. Following this pilot initiative, this methodology, developed by ILGA-Europa, will be put at the service of other European LGTB organizations.

1.1 Methodology

The present report contains a sample of 103 people whose answers have been collected over a period of 8 months (from March to November 2013). We have collected the testimonies of both victims (69 people) and witnesses (34 people) of homophobic, biphobic, transphobic violence of between 10 and 63 years old. All are resident in Spain.

The present report intends to:

- Establish the frequency of certain types of crimes or offenses towards LGTB persons.
- Identify the sexual orientation or gender identity of the victim and relate it to the offense/crime suffered.
- Detect the possible relation between the crime/offense suffered and incident location/age/degree of visibility of the victim.
- Identify the possible relation between the victim and their aggressors.
- Get to know the victim/aggressor relationship and how this interacts with the type of crime or offense committed.
- Learn about the type of support sought by the victim after the crime/offense.

1.2 Data Collection

We have collated a sample of 103 cases. The people in these cases have either been victim to, or witnessed hate crimes or discrimination stemming from an intolerance of sexual orientation or gender identity. All these cases were collated in 2013, beginning the 15th March and ending on the 31st November. Of these cases, 69 (representing 67% of the total) correspond to testimonies coming from the victims of these crimes/offenses and 34 cases (33% of the total) to the testimonies of the witnesses of such incidents. All the people included in the sample are resident in Spain.

This data collection has been realized via a standardized questionnaire designed by ILGA-Europa - validated by the other partners in the study - and whose dissemination strategy we shall detail below:

1.2.1 Data collection tools

The data collection has been carried out using a standardized questionnaire which is available online, and in paper form. Extra information will also be collated via a series of face-to-face interviews.

1. **Online questionnaire** specifically for the victim/witness. The questionnaire can be found at www.felgtb.com/crimenesdeodio which is accessible via a banner posted on FELGTB's general webpage.
2. **Paper questionnaire** is the same questionnaire as above but used by LGBT support/service groups and associations to gather information. (See below). The collection of this data is directly carried out with those who have suffered hate crimes and have therefore attended a consultancy session at these organizations where the questionnaire is completed.
3. **Indepth face-to-face interviews with 3 legal experts** specializing in hate crimes. Miguel Ángel Aguilar (Fiscal del Servicio de Delitos de Odio y Discriminación de la Fiscalía Provincial de Barcelona), Manuel Ródenas (lawyer working in Programa de Atención a Homosexuales y transexuales de la Comunidad de Madrid), y Esteban Ibarra (lawyer and president of Movimiento contra la Intolerancia). These interviews have allowed us to address any doubts regarding the legal definitions of hate crimes and offenses (explanations further on), the limitations of our penal code, as well as the functioning of the legal system in these matters.

1.3 Scope

1.3.1 Questionnaire Dissemination Strategies

- **Banner**; from the 14th March until the end of the project in November, we inserted a banner of 715 x 275 pixels at the top of our website (www.felgtb.org) which appeared in all of our webpage as well as having a prominent position on our homepage. In this way, we have been able to assure that 80,000 visitors to our website between the months of March to October were able to see it. The banner included the slogan "No te calles; denuncia, si has sido víctima o testigo de

LGTBfobia...(Don't be quiet, if you have been a victim or witness of LGTB-phobia, report it!)” Once having clicked on this banner, the visitor was directed to another page which explained the study, gave the possibility to participate in it, and also explained the confidentiality policy.

- **Information Cards.** FELGTB printed 5000 information cards about the size of a credit card (8,5 x 5,5 cm) that we distributed in the other branches of the Federation and in various other organizations that provide services and support to the LGBT community such as: the Programa de Atención a Homosexuales y transexuales de la Comunidad de Madrid, Servicio de atención a la víctima de Movimiento Contra la Intolerancia, the Coordinadora Estatal de VIH-SIDA as well as in various academic settings. They were also distributed in various events held or organized by FELGTB (see Events).

- **Press Note, we referenced the study in 3 press notes in 2013.**
- **FELGTB social networks**
- **Other websites,** www.orgullogaymadrid.com (general news website for LGTB population), www.ociogay.com (general news website for LGTB population), www.bakala.org (dating website specifically for gay and bisexual men).
- **FELGTB Events.** In the Spring Annual General Meeting(26-28 April) 110 attendees, Family Conference (10-12 May, 109 attendees), LGTB Youth Conference (19-22 September) 103 attendees, Autumn Annual General Meeting (4-6 October) 95 attendees, LGTB Rights are Human Rights Conference (12-13 October) 94 attendees.
- **Academic centers,** within our national education program in which we go to schools across Spain giving talks on our work as part of "Red Educa 2013", we have included information to both students and teachers on hate crimes, and what you can do should you suffer one. We also talk about the opportunity to participate within the study. We distributed such information in approximately 1000 academic centers in the Canary Island, Madrid, Valencia, Seville, Murcia and Zaragoza.
- **LGBTB Information Services and Organizations;** We have utilized the following LGTB services and organizations to disseminate information on the study: Servicio estatal de Información a la población LGTB de la FELGTB, Servicio de Información LGTB del Colectiu Lambda Valencia, Servicio de Información LGTB del Colectivo Canario Gamá, Servicio de Información LGTB del colectivo Altihay in

Fuerteventura, Servicio de Información LGTB de la asociación DeFrente de Sevilla, Servicio de Información LGTB de la asociación Extremadura-Entiende in Extremadura and the Servicio LGTB de Información de la Asociación Magenta in Zaragoza, y el Programa de Atención a homosexuales y transexuales de la Comunidad de Madrid. As a result of this collaboration we were able to more effectively gather data for this study by meeting with victims and by distributing even more the information cards. We greatly appreciate the assistance of all the aforementioned organizations.

- **Other collaborating NGOs:** We were able to collaborate with other NGOs who were then able to disseminate more information about our study project. These included the Plataforma por la gestión de la diversidad policial, Comité de ayuda al Refugiado (CEAR), Movimiento contra la Intolerancia, Amnistía Internacional, Open Society Justice Initiative, Fundación secretariado Gitano, Fundación Pluralismo y Convivencia, UNIJEPOL and the Coordinadora Estatal de VIH/Sida.

Working in collaboration with ILGA-Europa, we were able to monitor the project through a variety of means: regular emails, telephone calls, Skype meetings and physical training meetings in Brussels with other participating organizations. This form of monitoring and coordination allowed us to reinforce our knowledge of hate crimes whilst improving the way in which we disseminated the questionnaire so that we could reach a larger sample of people. It was in fact collaborating with ILGA that we had the idea of the information cards to improve our dissemination methods after limited success towards the beginning of the study.

1.4 Data collection period

We collected the data between the 15th March and 31st November of 2013, obtaining by the end of this period a sample of 103 cases, 67% being direct testimonies of victims of hate crimes and offenses, and 33% being witnesses to such incidents.

1.5 Limitations

The principal bias of the report is a result of the sample used. The sample used is unfortunately not representative of the LGTB population as a whole given its limited size. This may therefore lead to bias in its analysis, limiting its capacity for impartially and correct representation of the group in question in its entirety.

Of the 103 cases we gathered, we only have one in which we were able to question someone over 65 years old, thus leaving this demographic greatly unrepresented. This is most likely owing to the fact that we did not adequately consider the best ways of reaching this group of the LGTB community (i.e. via elderly LGTB associations or centers). On the other hand, it is also possible that our heavy use of the online questionnaire led to the reduced representation of this demographic as, according to the INE (Spanish Statistical Office), only 15.6% of Spaniards over 65 currently use the internet on a regular basis today.

Regarding the transexual community, we have unfortunately only been able to collect 6 cases. Given that this an especially vulnerable collective, running a greater risk of suffering violence and discrimination, we feel that this is greatly underrepresented. As a result, we believe it will be necessary to diversify our means of reaching this group in future investigations. In future studies we hope to approach this group more directly to be able to assure a more representative sample.

Concerning the representation of women in our sample, they only make up 21.3% of the final sample. We believe the reason for this underrepresentation of women is a result of the invisibility that many lesbian women suffer. This 'invisibilization' is in itself an indicator of the discrimination that this group suffers, however, it could also suggest that way in which this particularly vulnerable group minimizes its exposure to protect itself from the most violent homophobic reactions.

2. Conclusions

Following our data collection period, we finished with a sample of 103 cases, where the average age of the participants was between 18 and 35 years old, and in which cissexual gay men made up the majority. 55% of our sample were 'completely out' or 'somewhat out' whilst a high proportion (74%) were linked, or in some way involved, with the LGTB movement.

Not only did verbal abuse appear as an issue in 81% of the victim and witness testimonies, but we also found that a third of these testimonies included some kind of physical violence on the part of the assailant. Moreover, we found that many such incidents (62%) did not occur in isolation, and that they were connected to further abuses as well.

We often found the assailant to be someone close to the victim suggesting that the LGTB-phobic incident was not a casual occurrence. Furthermore, the victim identified their assailant as belonging to 'violent, neonazi groups' in 32% of the cases.

In many cases, the victim is 'out' and is involved with the LGTB movement, therefore having a greater access to information and resources. Even so, the reporting of such LGTB-phobic incidents is very low, with such instances being reported in only 25% of cases.

Internalized homophobia and the self-victimization that occurs as a result of having suffered such an incident does not encourage the victim to reach out, seek support or report such an offense or crime. Perhaps we, as LGTB organizations, need to self-evaluate and consider whether we are providing sufficient support and information to the wider community regarding what to do in such instances.

Such statistics demonstrate the need to continue studying and widening our knowledge of the way in which hate crimes are reported, the legal protections afforded to the victims and persecution of those who commit such crimes and offenses. We must also highlight the fact that there still remains much work to be done to protect the victim, provide better training to members of the police forces, judiciary, lawyers and district attorneys, amongst others in the legal community.

3. Bias Motivated Violence Against LGTBI People

Although in recent years, the rights of LGTB people in Spain have greatly increased, most notably as a result of the 13/2005 Law (the so called, Equal Marriage Law) and the 3/2007 Law (Equality Act), discrimination and violence towards this community continues to persist today.

As a result of this, and other prejudices present in our society, many people in both Spain and the rest of Europe continue to conceal their sexual orientation or gender identity from their family, friends and work or school colleagues.

According to the most recent survey carried out by the European Union Agency for Fundamental Human Rights (EU LGTB Survey), in which 93,000 people were questioned, 16% of LGTB persons in Spain had experienced some type of persecution or discrimination. 36% of those questioned were afraid of holding their same-sex partner's hand in public for fear of being threatened, harassed or assaulted.

This fear, which is neither unfounded or irrational, responds to the very real perception of the victims that the environment in which they live, work and study is discriminatory, hostile, and on occasions, violent.

We define a hate crime as any offense motivated by intolerance, committed against persons for their apparent membership to certain social groups (related to, for instance, racial origin, ethnicity, age, language, religion, ideology, handicap, sexual orientation, gender identity).

Hate crimes differ from other crimes not only in the motivation of the perpetrator, but also in the way it affects the victim. Such crimes violate the dignity and fundamental rights of the victims. These victims may suffer from fear, loss of confidence and paranoia leading to feeling marginalized and defenseless.

One of the factors that influence the lack of action to resolve cases of discrimination and violence for reasons of intolerance is the lack of knowledge about the victims, their circumstances and the inequality they face.

The European countries currently collecting thorough data on homophobic and transphobic hate crimes are a minority. According to the Organization for Security and Cooperation in Europe (OSCE) in 2012, 18 countries of the EU collect some kind of data on homophobic hate crimes whilst 9 countries collect some kind on transphobic hate crimes. Spain managed to collect data on 9 cases through various NGOs (including FELGTB). No such data was contributed nor collected by the Spanish government.

3.1. The legal position on hate crimes prompted by homophobia, biphobia and transphobia.

Spain has the obligation and the requirement to protect victims of hate crimes because of its involvement in various international pacts and European-wide decisions:

- Art. 20 of the International Covenant on Civil and Political Rights of 1611/1966 signed by Spain on 20/04/1977.
- The demands of the United Nations to eliminate all racial discrimination of 21/11/1965, ratified by Spain on 23/04/1969.
- Decision 2008/913/JAI of the Council of Europe on 28 of November 2008 concerning the fight against racism and xenophobia.
- Directive 2012/29/UE of the European Parliament and the Council of Europe of 25 October 2012 which established the most basic rights of all those within the Union regarding receive support and assistance from the state in instances of hate crime.

In practice however, in what way(s) does the Spanish legislation protect a victim of hate crime for reasons of sexual orientation or gender identity? To provide an answer to this question, we must first examine the way in which the Spanish legal system approaches such crimes.

According to the OSCE, a hate crime is any crime that is motivated by either direct or indirect intolerance. In Spain however, we currently lack a precise definition of such

crimes and how to interpret them within the context of the law as there is no provision for such instances within our Penal Code.

We will begin by explaining how the first chapter of the Spanish penal code establishes what is, and what isn't, a violation of the law. According to art.10 of the Spanish penal code, a violation of the law is the willful and/or reckless action punishable by law.

The Spanish penal code classifies such violations as one of 2 types depending on their severity: offenses and crimes. Offenses are less serious violations whilst crimes are more serious violations. Both types are covered extensively within the penal code.

The Spanish penal code punishes discrimination, hatred and violence based on intolerance, however it does not so directly, but rather through the following articles:

- Article 22.4 on aggravated circumstances which we will explain later on.
- Article 173.1 penalizing attacks on human dignity.
- Articles 510.1, 510.2, and 511, penalizing the incitement to hatred, violence or discrimination.
- Articles 607.1 and 607.2 penalizing genocide.
- Articles 515-3 and 515-5 until 521 on illegal associations promoting discrimination, hatred and violence for reasons of intolerance.
- Articles 513 and 514 on illicit meetings or demonstrations with the intent of committing a crime.
- Article 170 on the penalization of threats targeting a certain ethnic group or wide group of people.
- Article 197 on the disclosure of a person's confidential information concerning their personal character, ideology, religion, beliefs, health, racial origin or sex life.
- Articles 511 and 512 on the denial of public or private benefits.

Of all these articles, the ones which we find most difficult to apply to the fight against intolerance are articles 510 and 22.4.

In article 5.10 for instance, dealing with the incitement to discrimination, hatred or violence, it does not adequately explain which types of actions are considered as discriminatory and what sentences such behaviors warrant.

3.2. Hate crimes motivated by sexual orientation and gender identity

3.1.2. Hate crimes

Article 22.4

Article 22.4 of the Spanish penal code details the situations which would increase the sentences of certain crimes: “an aggravating circumstance (...) committing the crimes for racist or antisemitic reasons or any other type of discrimination related to the victim’s religion, beliefs, ethnicity, race, nation, gender, sexual orientation or gender identity, disease or disability.”

This article only applies in instances of actual crimes (it is never used for offenses). For instance, this would mean that if somebody insulted a person on the basis of their sexual orientation, the perpetrator of such an offense would never be punished as hate speech is only considered an offense, and not a crime in our penal code.

Regarding the application of this article are 2 further problems to address:

1. The police must collect adequate evidence and assure that the motivation behind such instances is recorded.
2. The judge should be trained and sensitized as to what constitutes a hate crime and how the penal code should be applied to such cases.

In the following section of this report we are going to present a synopsis of the incidents that we have recorded in the survey conducted for the present study and whether they would be considered a crime or an offense according to the Spanish penal code.

Category	Subcategory	Crime	Offence
1. Homicide		X	
2. Extreme physical violence	Attacks that cause serious physical damage, abductions etc	X	
	Sexual assault	X	
Sexual assault is always a crime; however the final sentence depends ultimately on the severity of the attack.			

3. Non-extreme physical aggression		X	X
Whether a case of non-extreme physical violence is considered a crime or an offence depends upon the severity of the injuries sustained by the victim. An instance of shoving would, for example, be an offence, not a crime.			
4. Damage to property		X	X
Property damage can include burglary, arson, the intention to inflict damage upon one's person property. It is always a crime, and in cases in which people's lives are put in danger also, the sentence is more severe. The severity of sentences related to graffiti, tagging and other pictorial symbols with an aim to incite hatred will depend upon the decision of each individual case's judge and the police. A piece of graffiti or tagging that contains a specific threat, for instance, would be considered a crime.			
5. Fire / Arson		X	
Arson is always a crime (the setting on fire of garbage cans is included within this). Should this put the lives of anyone in danger, the sentence is increased.			
6. Threats and psychological violence		X	X
Threats and psychological violence are always a crime. The difficulty is finding evidence that proves these. If the threat is neither severe nor specific, it will be considered as abusive behavior (see below) and therefore considered an offence. Bullying, regardless of whether it occurs in an educative or work environment, is considered a crime provided that the aggressor is more than 14 years old. Revealing somebody's sexual orientation ("outing") is not considered a crime, unless, that is, to do so, they have accessed the victim's confidential information.			
7. Abusive Behaviour	Insults		X
	Hate speech	Hate speech can only be prosecuted if it incites and encourages violence. If it is only inciting further hatred or discrimination it won't be punished.	
	Literature and Music		
8. Instances of discrimination		X	¿?
The refusal of a public service based on one's sexual orientation or gender identity is considered a crime (for instance, refusal of medical services or entrance to restaurant/store). However, the refusal of a private service based on such motives (such as the renting of an apartment) is not included within the Penal Code.			

As we can see in the previous table, practically every incident we recorded related to hate crimes are covered in some way by the penal code, with the exception of hate speech that doesn't incite violence.

What are the steps are we taking in Spain to address the deficiencies outlined above?

On one hand, associations like FELGTB, who fight against discrimination and intolerance based on hatred, have proposed a Bill of Equal Treatment Law to the Ministry of Justice which would affect victims affected by hate crimes that are not currently covered by the Spanish penal code. Such a law as the one we are proposing would establish a catalogue of infractions and sanctions which would look to deal with certain crimes and offenses not currently covered in the Spanish penal code.

On the other hand, on the 11th of October 2012, the Ministry of Justice passed a bill to reform the current penal code. This bill intends to modify the law prior to 1995, and especially the paragraphs relative to article 510 dealing with hate crimes.

The bill is currently being revised by a selection of Spanish private and public institutions. This process is expected to last for at least 2 years. Therefore, during this period, FELGTB's objective will be to work with the following groups and institutions:

- Ministry of Justice
- Political parties currently in government
- The political party charged with revising the current penal code
- The group of experts currently working on the project (government offices, police forces, NGOs, etc.)

Furthermore, FELGTB has proposed that the Ministry of Justice **create a public attorney whose role is to manage hate crime on a national level** and whom would manage the 50 current public attorneys across the country and provide them with real and effective training.

Reports such as these, together with the work that we carry out as part of the Platform for Diversity, serve to apply pressure upon the Ministry of the Interior so that they establish minimum rights for these groups, as well as improving current policy and creating an inventory of information to store data on such crimes. In Spain, there are

already two organizations that have such a system to store such crucial data: Mossos d' Esquadra (police force of Catalonia) and the police department of Fuenlabrada (in the municipality of Madrid).

3.1.2. Other incidents motivated by hatred (Hate speech)

Article 510

1. Those who incite discrimination, hatred or violence against groups or associations for racist, anti-Semitic or other reasons related to ideology, religion or beliefs, family status, membership of members of an ethnic group or race, national origin, sex, sexual orientation, illness or disability, shall be punished with imprisonment of one to three years and a fine.
2. Such persons who, with knowledge of their falsity or reckless disregard for the truth, propagate slanderous information about groups or associations in relation to ideology, religion or beliefs, membership of members of an ethnic group or race, national origin, sex, sexual orientation, illness or disability, will be punished with the same penalty.

This article makes use of the word 'incitement' in its composition. In this text, incitement is understood as an incitement to violence. Hate speech is therefore only punishable if it leads to violence. In sum, if such 'incitement' only leads to further hatred and discrimination it is not punishable.

Article 510 needs to be reformed so that it can be used more efficiently as there are currently considerable problems in its interpretation and application given the linguistic deficiency present within its composition.

3.3. Respondent Profiles

3.3.1. Gender Identity

The concept of **transsexuality** in Spain is generally more encompassing than in other European countries. By transsexuality, we understand it as anybody who identifies with the gender opposite to the sex into which they were born, both regardless of whether they have had gender reassignment surgery or not, or if they even desire it or not.

The concept of **transgenderism** applies to those who, at times, don't identify with any specific gender. Transgendered people may also at times identify differently with the binary gender system or identify independently with one or other depending on the situation.

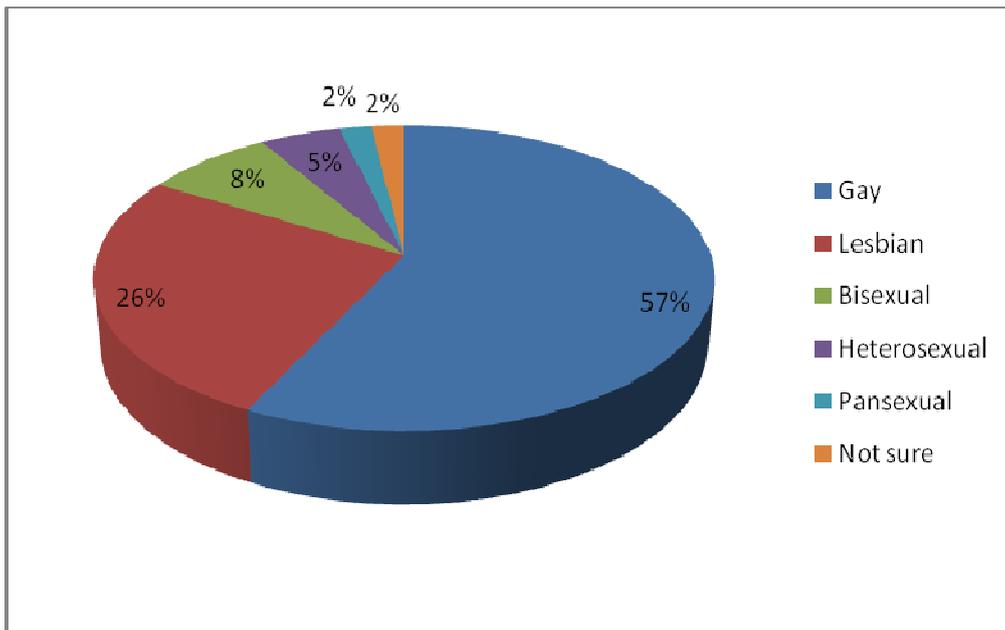
Our sample is characterized by having a greater number of men interviewed (62%), whilst women only make up a third at 31%. Transexual people are only represented by 6% of the cases, whilst transgendered people only make up 1%. Unfortunately, we have been unable to collect any data on intersex people.

Gender Identity	N	%
Man	64	62%
Woman	32	31%
Transexual Man	1	1%
Transexual Woman	5	5%
Transgendered	1	1%
Intersex	0	0%
TOTAL	103	100%

Graph 1: Gender identity of the victim

3.3.2. Sexual Orientation

Regarding **sexual orientation** (graph 2), we found 57% of our sample to identify as gay (59 cases), followed by 26% identifying as lesbians (27 cases). 8% of those questioned identified as bisexuals (8 cases), 5% as heterosexuals (5 cases), 2% as pansexuals (2 cases) and 2% weren't sure of their sexual orientation (2 cases).

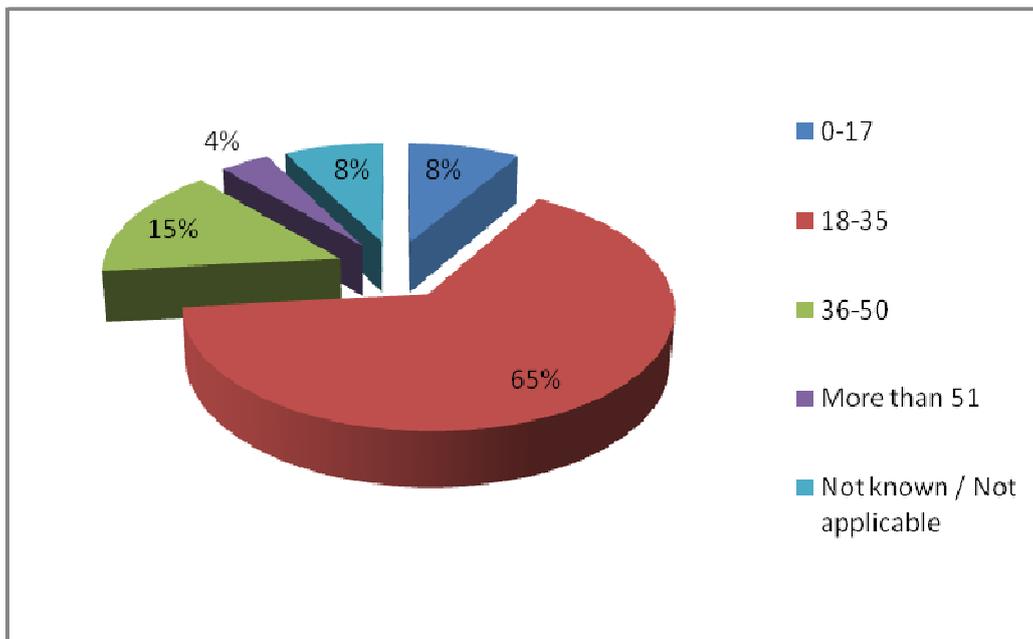


Graph 2: Sexual orientation

When we compare the sexual orientation and the type of incident suffered, we have been able to observe that even if heterosexual persons are also potential victims of hate crimes based on gender identity or sexual orientation (especially in cases where their behaviour does not conform to traditional gender norms, or maybe, for their involvement in the LGTB population), they cumulatively suffer less from such crimes than LGTB persons themselves.

3.3.3. Age

Our sample includes a wide range of **ages** (graph 3), of people ranging between 10 and 63 years old, however within this it is predominantly the young, notably 18 to 35 year olds, making up the majority of those questioned. Regarding the break down of the ages within the sample, we will be referring to 18 to 35 years olds as 'young', 36 to 50 year olds as 'young adults', and people of 51 years and above 'adults'. Our sample also includes a considerable proportion of minors, with under 18 year olds representing 8%. Young people between the ages of 18 and 35 years old represent 65% of our sample, whilst young adults between the ages of 36 and 50 years old account for 15%. 4% of our sample are over 51 years old, and for 8% we have no data regarding age.

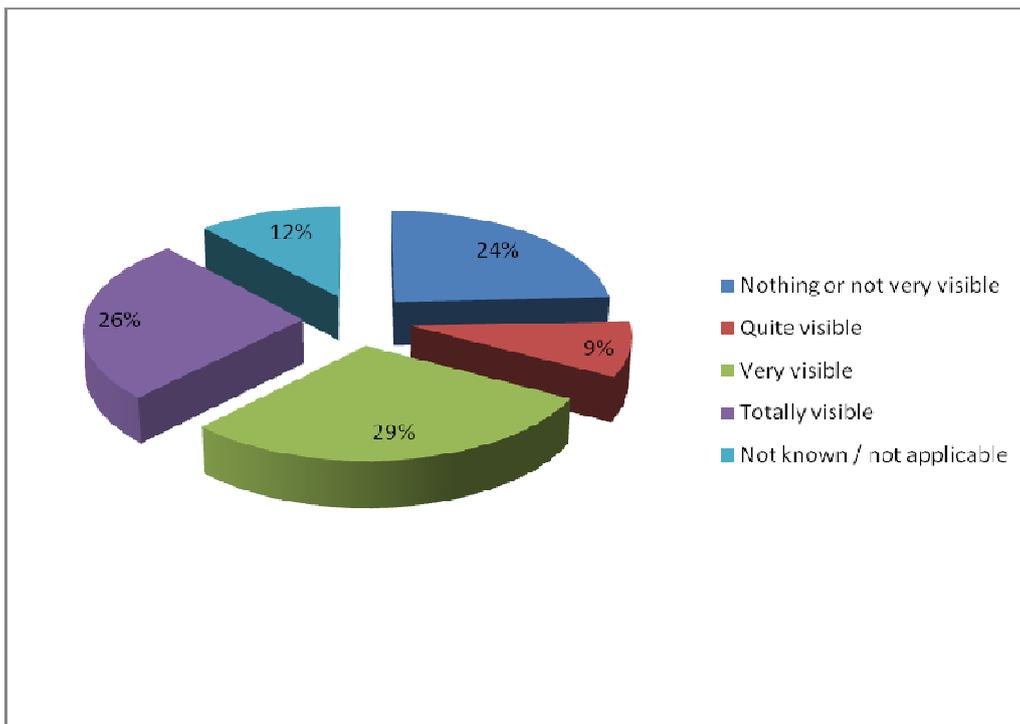


Graph 3: Age of the victims

3.3.4. Victim's involvement in the LGTB movement

By taking in consideration the victim's relationship with the LGBT movement, we have been able to observe that 74% of the victims have participated in some sort of activity related with the wider LGBT community and that a further 17% show an even greater visibility as they are in some way involved as activists or working for an LGBT organization or NGO.

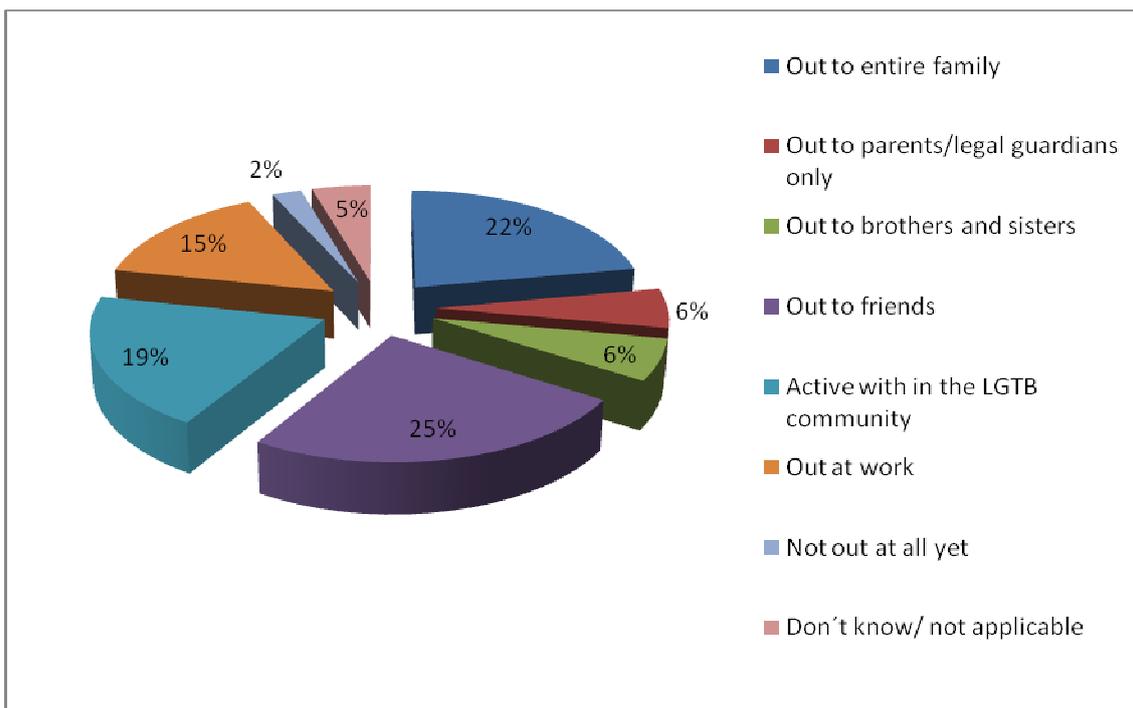
Regarding the percentage of people who chose to answer 'Don't know/Not applicable', which made up 14% of the answers for this question, after careful consideration and further analysis we have found these answers to come from the questionnaires completed by those who identified as witnesses to these crimes, and are therefore unable, for this reason, to provide a more specific answer.



Graph 4: Victim's involvement in the LGTB movement

3.3.6. Victim's Visibility

Regarding visibility (graph 5), we found that 25% of those questioned are 'out' amongst friends, making it the most popular category. This is followed by 22% who state that they are out to their family (immediate and extended), 19% out within the wider LGBT community and 15% out at work. 6% indicated that only their parents knew whilst 2% stated that they are out to their siblings. 2% attested that they were not out at all.



Graph 5: Environments in which the victim is 'out'

However, to better understand how 'out' the victims are in the different spheres of their lives, we created a scale that they could use to choose to what extent they were visible in certain areas. Our scale contains the following categories:

Not out at all / not very out: the victim hasn't revealed their sexual orientation or gender identity to anyone, or if they have, only to a very limited number of people.

Somewhat out: the victim is out in at least 2 areas of his life, for instance, within his family (or part of it), and/or amongst his friends or at their workplace.

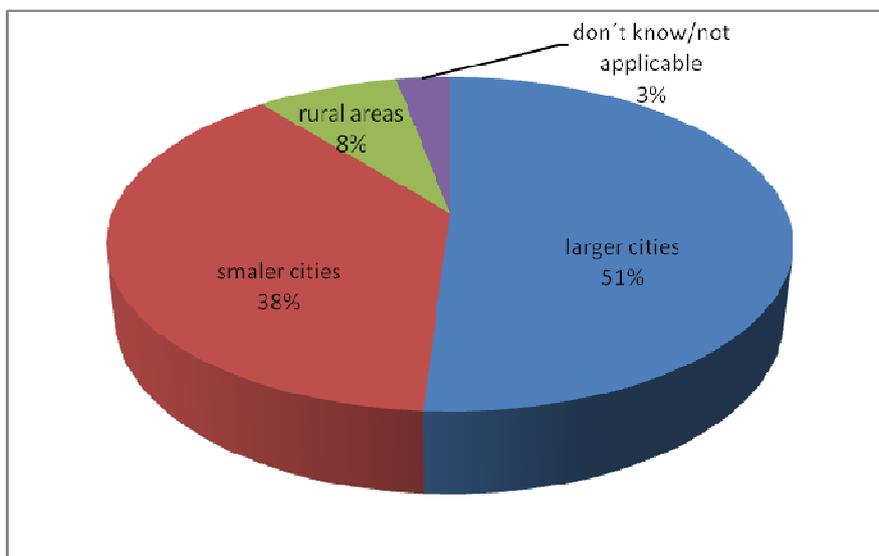
Very out: the victim is out in at least 3 to 5 areas of their life questioned about.

Completely out: the victim is out in all the areas of their life questioned about, including the wider LGBT community.

According to this data, and in accordance with graph 4, we have found 26% of people questioned identified as 'completely out', 29% consider themselves 'very out' and 9% who consider themselves 'somewhat out'. In comparison, we found 24% of people to be 'not out at all/not very out', whilst 12% 'didn't know' or didn't answer.

3.3.7. Location of incident

Regarding the location in which the incidents occurred, we have classified these utilizing population statistics. The categories are devised as follows: rural areas are calculated as having less than 10,000 inhabitants, areas with between 10,000 and 300,000 inhabitants are categorized as urban centers and those areas with more than 300,000 as large cities. According to these guidelines, Spain currently has 13 large cities with more than 300,000 inhabitants.

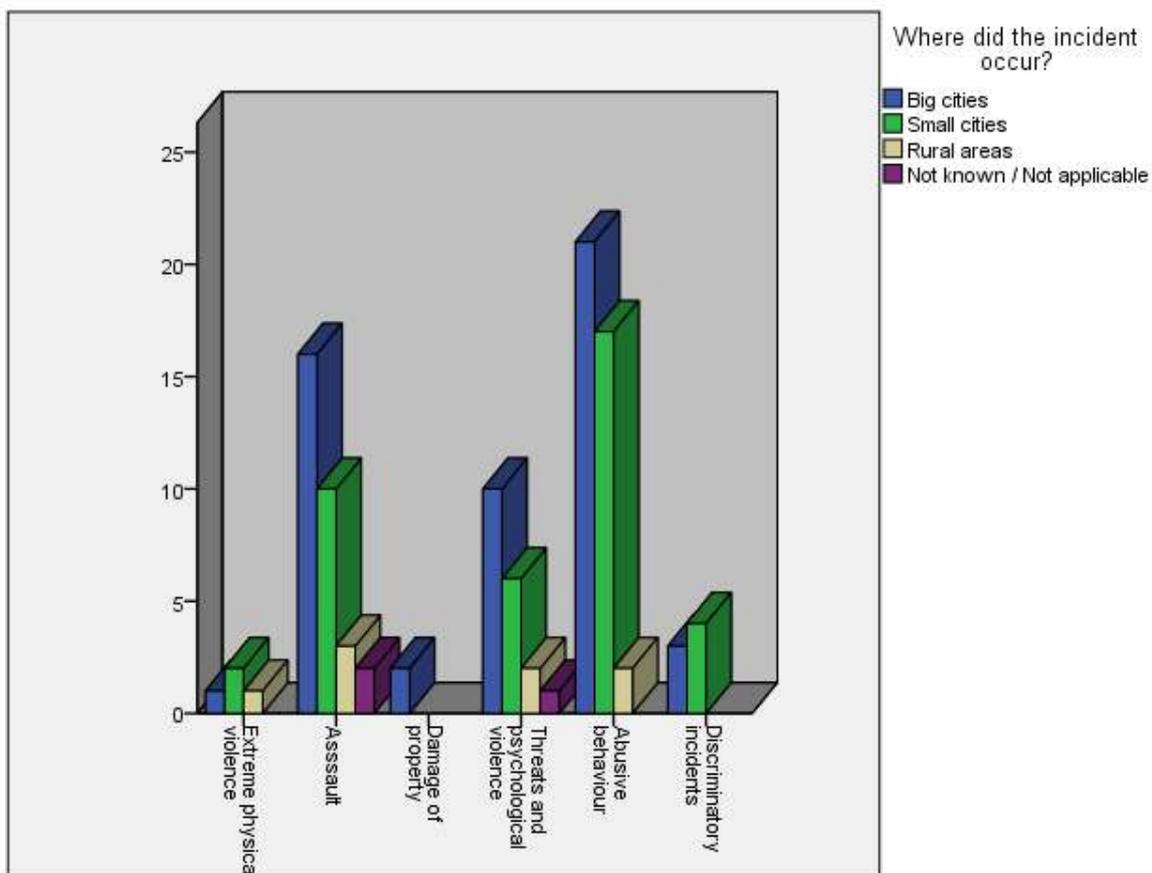


Graph 6: Location of incident

If we observe the **distribution** of different types and incidents of hate crimes amongst these different areas (graph 7), we find that in the larger cities there is a higher rate of incidences of threats and bullying (47% of which occurred in large cities according to our sample) whilst in smaller cities we observed a higher rate of incidences of discrimination (71% of such instances occurred in small cities). It is also in smaller

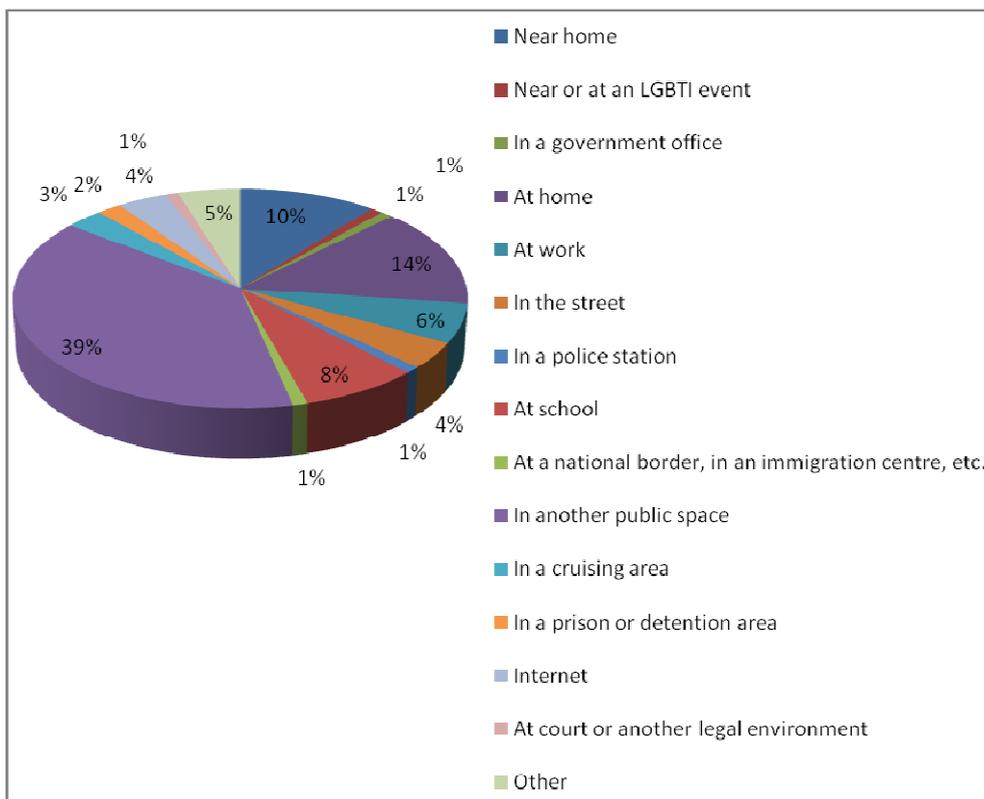
Documenting homophobic and transphobic violence, ILGA-EUROPE

cities where we found rates of physical violence to be much higher. 50% of all our recorded cases of physical violence occurred in smaller cities (categorized as urban centers) whilst only 25% occurred in large cities and the last 25% occurred in rural areas.



Graph 7: Comparing location and type of incident

Concerning the **spaces** in which the attacks occurred (graph 8), we have found that public spaces are those which account for the largest percentage of LGBT-phobic incidents and attacks, making up 39% of the total. Attacks and incidents in the victim’s home neighborhood represent 10%, whilst those occurring actually within their homes account for 14% of the sample. Finally, we found incidents occurring at work, in the street, and at school to represent the fewest incidents of LGBT-phobic attacks and incidents, accounting respectively for 6%, 4% and 8% of the total sample.



Graph 8: Spaces of incident

With respect to the **specific time of the incidents**, during the night is when the majority of the incidents/attacks took place, accounting for 43.7% of the cases, followed by during the morning at 31.1%. Those that took places in the afternoon represented 25.2% of the total. It is also important to note that in 61% of the incidents, the attacks were carried out by more than one person.

3.3.8. Motivation behind incident

If we analyze the motivation behind the incident or assault, 66% of the victims suffered the incident directly as a result of their sexual orientation (61%) and / or gender identity (1%). Gender expression was also a motive for the attacks in 13% of the cases. The sex of the victim was the motivation in 7% of the cases.

3.3.9. Indicators of 'hate' crime

Regarding the factors that triggered the incident or hate crime, 45% of the victims identified the words and expressions used by the perpetrator as one of the factors that led to the incident. 36% considered that the perpetrator(s) knew either their sexual orientation or gender identity and this formed the basis for the incident. 11% asserted that there were threats or some other form of incident that preceded the principal incident. 6% of those questioned identified certain signs (graffiti, for instance) of the location in which the attack occurred which made them concerned that some sort of incident could happen. 3% stated that just the place in which the incident occurred was a triggering factor. 4% either didn't know or didn't answer.

The largest part of the answers given identify the verbal attacks that accompanied the other forms of aggression as being the motivation for the attack. The majority of these verbal insults were discriminatory attacks directly related to the victim's sexual orientation or identity. One of the victims interviewed related that '[They] called me a crazy fag, mocked my sexual orientation and threatened to beat me up when [they] saw me on repeated occasions.'

3.3.10. Assailants

Regarding the **relationship of the victim with their assailant** we have found that, in 43% of the cases, the victim actually knows their attacker. 12% of these know their assailants closely as they are either work or class mates, neighbors or teachers. In 10% of these cases, their assailants are either the victim's parents or legal guardians. Their partner or ex-partner is the assailant in 9.5% of the cases. In a further 9% of the cases, the attacker is another member of the family. And in 35% of the cases the assailant(s) is unknown. Finally, in 18% of the cases, the victim was able to identify that the victim belonged to some locally known, formal or informal, LGTB-phobic group.

In 45% of the cases, the victim or witness were able to **identify** the assailant with some known LGTB-phobic group from certain characteristics of the assailant. In 32% of the cases, this identifying feature was related to a neonazi or far-right group. The rest of the cases were not connected with any particular ideological group.

On the other hand, whether the assailant has power or not over the victim does not appear to be very significant according to the findings we have collected. In only 37% of the cases was the assailant in a position of power. In 34% of the cases the assailant was not in a position of power relative to the victim. In 29% of the cases the victim either didn't know, or didn't answer.

Bearing in mind that in 52% of the analyzed cases there were witnesses to the incident, rather than the victim themselves, we believe that it is necessary to consider these separately at this point. The majority of the witnesses to such incidents we interviewed (38.2%), stated that they helped and supported the victim during the incident. However, it is also important that we note that the victims' version of these incidences is not so positive, with 43.4% of the victims stating that when the attack was happening, the witnesses either didn't help or ignored what was happening to them.

3.4. Incidents

3.4.1. Types of incident

Regarding the types of incidents suffered by the victims, we identified the following: insults (in 81.6% of cases), physical violence (32%), threat of violence (31.1%) and persecution (18.4%). Other types of incidents reported in the questionnaire include: property damage (9.7%), refusal of medical or other public services (7.8%), refusal of commercial services (5.8%), psychological mistreatment, anti-social behavior, workplace bullying or cyber-bullying (5.8%), detention, sexual harassment and refusal of police protection (all three at 4.9%), and lastly workplace discrimination or dismissal (3.9%). The incidents we found to occur the least amongst those we questioned were the following: armed assault (1.9%), murder attempt (1%) and rape (1%).

In 59.2% of the cases, the victim did not require medical care. In 20% of the cases, the victim did require medical care, of whom only 65% of these were completely satisfied with the services provided.

As we have just seen, a large part of the victims suffered various discriminatory incidents at the same time, however below, we will analyze each individual case only taking into account the gravest: for instance, if the victim suffered a physical attack but was also subject to anti-social behaviour or taunting, they would be analyzed as a victim of physical abuse in this case as it is the most serious offense.

Below we have grouped the incidents suffered by the victims we questioned into the following categories (graph 10):

3. 4.1. 1. Hate crimes

- **Murder.**

None of those questioned reported to have suffered an incident of this nature.

- **Physical violence: murder attempt, armed assault, rape, other sexual assaults and sexual harassment.**

We have collected 4 cases (4% of our total sample) of extreme physical violence (bullet or other wounds, breaking of bones or violence leading to cardiac arrest). 50% of these victims were transsexual women, indicating that transsexual women remain more susceptible to extreme physical violence than cissexual men or women. The remaining 2 victims identified as a cissexual man and a cissexual woman.

Of these 4 people, 50% are lesbians, one is gay and the other is unsure of their sexual orientation. 50% of the victims were between 18 and 35 years whilst the other 50% were between 35 and 65 years old. 50% were in some way involved with the LGTB community (whether through being involved in LGTB events or working as an activist) therefore being 'very out' or 'completely out.'

In 50% of the cases, the attacks took place during the night and either at home, or near to the victim's home in generally small cities. In these cases the perpetrators were numerous and either unknown to the victim (25%) or belonging to a known LGTB-phobic group, normally a neonazi cell (50%). In 75% of the cases the language of the perpetrator or the perpetrators demonstrated the motivation of the incident being

LGTB-phobic. Only 25% of the victims in these cases reported the incident to the police (to which the reaction was neutral). Not one of the perpetrators was ever brought to justice.

- **Assault: Physical Violence**

We have collected 31 cases of **physical violence or assault** (30% of the total sample). Of the total number of people who suffered assault, 80% were young people aged between 18 and 35.

68% of those who suffered incidents of assault were cissexual men. 65% of the total sample identified as gay, 19% as lesbians, 6.5% as heterosexual, 6.5% as bisexual and 3% as pansexuals. In 61% of the cases of assault the victims were 'very out' or 'completely out'. 16% even worked as LGBTBI activists.

32% of the cases of physical violence occurred either at home, or near the victim's home, 39% in another public space and 10% in schools (56% of the minors that suffered physical violence did so in an academic setting). In 55% of these cases, the assault was perpetrated by somebody unknown to the victim (half of these from a locally known LGBTB-phobic group, usually of the extreme-right) whilst 26% of the instances of assault were carried out by someone known to the victim (in many cases by someone within the victim's family). In 52% of the cases the victim remarked that the assault was motivated by hatred as a result of the language used by the perpetrator(s).

In 52% of the cases the incidents occurred at night (during the morning at some point in 32%). 48% of these incidents occurred in larger cities, whilst 35% occurred in smaller cities. In 35% of the cases the incident was reported to the police (with 3% of these receiving abuse from the police themselves, and only 3% of the cases reported being taken seriously and considered as an actual hate crime). Only 16% of the cases were ever eventually brought before a judge.

- **Property damage: any damaged sustained by the victim's property or possessions**

We have collected 2 cases (2% of our total sample) of property damage which were suffered by 2 cissexual women (1 bisexual and 1 lesbian), both of whom were visibly 'out'. One of the women regularly participated in LGTBI activities and the other did not. Our recorded cases of property damage demonstrate the same propensity both in smaller cities, as in larger ones, and both during the night as during the day. In 50% of the cases there were previous threats. Both women reported the incidents to the police but neither were considered hate crimes. Both considered the treatment received by the police as neither positive or negative, rather it was neutral. Neither case was brought to court.

- **Fire:**

None of those questioned reported to have suffered an incident of this nature.

- **Threats and psychological damage: threats, bullying, antisocial behavior, workplace bullying, cyber-bullying.**

We have collected 19 cases of this incident (18% of the total sample), 14 of which are from cissexual men and 5 from cissexual women. The sexual orientation of these people is predominantly homosexual (in 95% of the cases) with gay men representing 68% and lesbians at 26%. The other 5% of these victims define themselves as bisexual.

Those who suffer from threats and psychological damage are aged between, in 79% of the cases, 18 and 35 years old. 42% of the victims have participated in some form of LGTBI activity. Only 21% were not 'out' at all.

In 68% of the incidents, the threats or harassment occurred at some point during the evening or the night. 31.5% of the cases occurred in a non-specified public place whilst 21% of the incidents occurred at home or close to the victim's home. 16% of the incidents occurred online whilst 10.5% occurred whilst the victim was in the street. 5% of the incidents occurred in an LGTB event, and in either a police station or school (or other academic setting) both 5% of the time respectively. 47% of the incidents of threats occurred in a large city, 37% in a small city and 10.5% in a rural area.

In 84% of the cases, the victim was targeted by more than 1 person, who was unknown to the victim in 53% of the instances (and who belonged to a known LGTB-phobic group in half of these). Furthermore, in 31.5% of such cases of this nature the perpetrator had some sort of distinctive feature which would render them identifiable. In 84% of the cases, the victims noted that they were able to identify the motivation behind the attack via the language used by the perpetrator.

Only 26% of the victims of such offenses reported the incident to the police. The majority of the victims who did, however, state that the police demonstrated either a positive response or neutrality on 3 out of 4 occasions. That said, in 5% of the cases presented to the police the victim was received negatively by the police and was not given any positive support. 89% of the victims stated that they did not know whether the offense they suffered was considered a crime and whether the police would consider it a hate crime. 10.5% of the cases were brought before to court.

3. 4.1. 2. Other hate-motivated incidents

- **Abusive behaviour: detention, insults, verbal abuse and intimidation.**

We have collected 40 cases (39% of the total sample) of incidents of discriminatory, abusive behaviour, which were suffered by young people (between 18 and 35 years old) in 57.5% of these cases. Of this total, 57.5% are cissexual men, 35% are cissexual women, 5% are transsexual women and 2.5% define themselves as transgendered.

80% defined themselves as being homosexual (52.5% defining as gay and 27.5% defining as lesbians), whilst 7.5% identified as heterosexual. Bisexual people represent 7.5% of the respondents, and pansexual people at 2.5%. In 27.5% of the cases, the respondents work as LGTB activists. 22.5% of the victims stated that they regularly attend LGTB events, whereas 10% noted having attended at least one LGTB event. In 57.5% of the cases the victims were either 'very out' or 'completely out'. In only 22.5% of the cases did the victims respond saying they were either 'not very out' or 'not out at all'.

We have been able to observe that the discriminatory, abusive behaviour generally occurred either in the evening or at some point during the night (in 75% of the the cases analyzed), and either in a public space (in 45% of the cases), at home or near home (22.5%), at school or in another academic setting (10%), at work (7.5%), in a prison or detention centre (5%) or in the street (2.5%). 47.5% of these incidents occurred both in larger and smaller cities.

In 40% of the cases, there was only 1 perpetrators, whilst in 50% the perpetrator acted with others. 70% of the victims stated that they did not know the people who attacked them. In 20% of the cases the perpetrators formed part of a known local LGTB-phobic group, who were recognizable in 17.5% of the cases by characteristics identifiable to the victims. Of the people who knew their assailants, in 37.5% of the cases, the perpetrators of such attacks were members of the victim's family. In 62.5% of the cases the victims recognized that the incident was motivated by hate as a result of the derogatory language used by their assailants referencing either their sexual orientation or gender identity. Previous, similar incidents or threats had occurred in 17.5% of the cases.

Only 17.5% of the victims reported the incident to the police. However, no arrests were ever made. Furthermore, in 2.5% of the cases, when trying to report such an incident to the police, the victim was turned away. Lastly, there was not a single case in which such an incident being reported to the police was considered a hate crime.

- **Discrimination: refusal of access to medical and other public services, refusal of protection by law enforcement agencies, refusal of commercial services, workplace discrimination.**

We have collected 7 incidents of discrimination. Of these, 4 are testimonies of gay, cissexual men, 1 from a bisexual, cissexual man and 2 from cissexual, lesbian women. Half of the victims are aged between 18 and 35, and the other half between 36 and 65 years old. One person preferred not to answer.

43% of the victims did not answer when asked about how 'out' they were whilst 28.5% stated that they were not out at all. The remaining 28.5% stated that they were either 'somewhat' or 'completely out'. 28.5% of victims admitted that they had participated in some form of LGTB event, whilst 14% said that they had attend an LGTB pride event

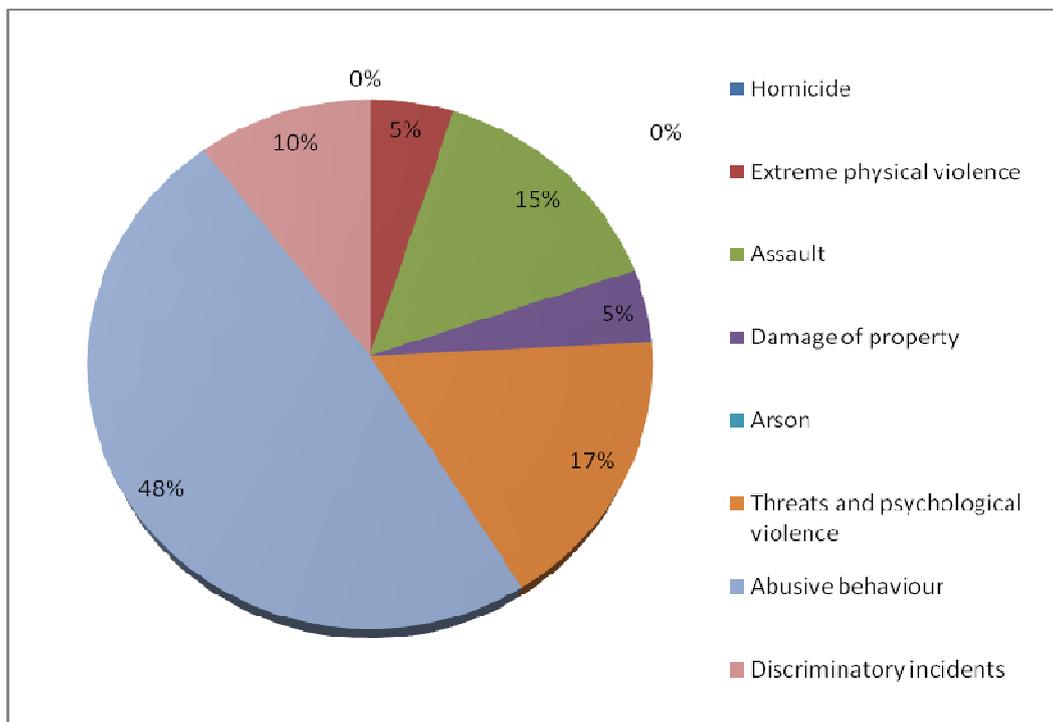
at least once. 14% of those questioned are involved at all with the LGTB movement and 43% decided not to answer.

71% of the discriminatory incidents occurred during the morning, either in a public space (57% of the cases), at work (14%), in a cruising ground (14%) or on the Internet (14%). 71% of these incidents occurred in smaller cities.

In 71% of the cases, there was more than 1 assailant, unknown to the victim (57%) or who formed part of a locally known group or organization (14%). Furthermore, in 14% of such cases of this nature the perpetrator had some sort of distinctive feature which would render them identifiable. In 57% of the cases, the perpetrators of such behaviour were either public or private sector health professionals.

The victim recognized the motivation for the discriminatory behaviour as a result of the language used by the perpetrators or because the perpetrator(s) thought or knew that the victim was LGTBI.

None of the victims reported the incident to the police and no cases were brought to court, but 43% of those questioned did inform an LGTB NGO whilst 14% filed a complaint with the organization in which the incident occurred.



Graph 9: Types of incident

4. Police and Security Forces

In 2007, the Council of Europe lobbied its member states to introduce legislation and policy to combat and prevent discrimination. In Spain, this led to the introduction of 'Ley 62/2003 de Medidas Fiscales, administrativas y del Orden Social (Administrative Measures and Social Order Law)'. This led to the creation of a working group of 50 public lawyers working on policies of non-discrimination, therefore constituting Spain's first hate crime and discrimination services. It must be pointed out however, that this law did not create a new independent service, rather it was simply an additional responsibility for these public lawyers. Furthermore, given that these lawyers are given little training so as to adequately understand the mechanisms of hate crime and discrimination and how these are specifically tied to the LGTB community, these service providers lack of workable knowledge has led to a "mala praxis".

Within this working group, we would like to especially highlight the work of the contracted lawyers from Barcelona and Malaga as those applying and utilizing these legal and legislative tools to fight against discrimination and have direct contact and involvement with their surrounding civil society in general.

In our study, as we have previously indicated, we found that only 25% of the victims and witnesses that we questioned ever reported the hate crime experienced. By this estimate, we currently lack 75% to 78% of the necessary data on such crimes to have a complete picture of the situation.

On the other hand, we have encountered a further problem which complicates the collection of such necessary data. We have found that in many cases, even when hate crimes are reported to the police, they are often not classified as such. It is for this reason that Spain has no little data on these types of crimes therefore making it appear as if there is no problem. In reality, the problem is the lack of visibility about such crimes leading to limited public knowledge or recognition.

Thanks to growing international pressure, promoted by the Council of Europe and the European Agency for Fundamental Human Rights, the option to classify crimes and offenses as being motivated by hatred or a desire to discriminate is becoming increasingly commonplace in security forces' data collection methods across Europe. For instance, should a person now try to report such an offense to their local police force, there will be the option of profiling that crime or offense as motivated by hatred in the official data collection protocol. However, we found ourselves with another problem which is that in many cases, the police forces are not sufficiently trained in this matter

and can therefore not adequately identify a hate crime and not afford it the importance it deserves.

At the moment, the Autonomous Community of Catalonia is about to start a training course dealing with this aforementioned issue for their police forces. However, as training for police forces is generally administered from Madrid, especially for other regions, Catalonia will remain, in this case, an exception.

It is then perhaps for this reason that Spain's justice system still lacks statistics on hate crimes. As a result of Spain's various judicial and security forces' IT systems inability to adequately classify such crimes as being motivated by hatred or discrimination, such information and evidence is unable to be used by any organization or individual to address the situation.

What is also notable is that a great number of those interviewed chose not to report the incident to the police, with 68% of the sample not opting for this service. In these cases, the following reasons were cited:

- For being underage. (2%)
- For not having adequate evidence to bring to the police. (7%)
- For having doubts about whether the police would be able to help. (4%)
- For considering police intervention unnecessary. (13%)
- For being scared. (17%)
- So as to avoid revealing their sexual orientation/identity to family members or friends. (8%)
- Not known/no answer. (49%)

In summary, only 32% of the LGBT-phobic incidents were reported (25% to the police, and 7% being brought to court). Only 14% of the instances reported were ever brought to trial.

With regards to the reactions of the victims after the incident, 40.8% of those interviewed looked to friends for support and to overcome the psychological damage of the incident. Of the rest, 24.3% sought the support of a NGO, 17.5% went to their families for help and 16.5% sought professional psychological and mental health support.