

TYPES OF LGBTI-PHOBIC HATE INCIDENTS AND BIAS INDICATORS

1. Types of hate incidents

We are aware that the criminal law differs between countries in Europe. As explained in the guidelines, the definition of hate crime used in this project 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.

This definition is based on the OSCE's definition of hate crime¹.

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

For the purpose of classifying your collected data we therefore propose two main broad groups of hate incidents:

- Group I: Actions that are "crimes" according to the national criminal law in most European countries (categories 1-6);
- 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 you are invited to record the following types of incidents:

- Incidents actively perpetrated by public officials should be recorded according to the same standards as all other incidents and can be classified in any relevant category of crimes or incidents (all categories from 1 to 7).
- 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.) should be classified under category 7 (other incidents with bias motivation).

¹ <http://www.osce.org/odihr/66388>

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

Category	Subcategory	Description
1. Homicide		<ul style="list-style-type: none"> • Any attack on a person that causes loss of life.
2. Extreme physical violence		<ul style="list-style-type: none"> • 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	<p>An act of sexual violence can be committed by the victim's partner (married or not), previous partner, family member or co-habitant.</p> <ul style="list-style-type: none"> • Rape². • Sexual assault³. • 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. <p>Sexual harassment, including unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature.</p>

² 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.

³ Sexual assaults can be defined as unwanted sexual contact that stops short of rape or attempted rape. This includes sexual touching and fondling.

3. Assault		<ul style="list-style-type: none"> • 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		<ul style="list-style-type: none"> • 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 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		<ul style="list-style-type: none"> • 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		<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • <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. • <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. • <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. • Public hate speech e.g. by politicians.
	Literature and Music	<ul style="list-style-type: none"> • 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.
Discriminatory incidents		<ul style="list-style-type: none"> • Any form of discriminatory incidents which is not considered a crime.

2. 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.	Do the suspect and victim differ in terms of sexual orientation, gender identity or gender expression? Has the victim recently moved to the area in which the incident took place? Was the victim engaged in activities of LGBTI communities at the time of the incident? 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? Is the victim associated to a member of the LGBTI communities (e.g. married, or a family member)? Is the victim's sexual orientation, gender identity publicly known?
Location and/or timing	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)? 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? Did the incident occur on a date of particular significance for the LGBTI communities (e.g. day of LGBT pride march)?
Language and word used, including written statements, gestures, graffiti, visible signs of the suspect	Did the suspect make comments, written statements or gestures regarding the victim's background? Were drawings, markings, symbols or graffiti left at the scene of the incident? Did/does the suspect wear any visible sign (tattoo, clothes, haircut) to deduce his/her membership to a specific group opposed to LGBTI communities?
Organised hate groups	Were objects or items left at the scene that suggest the crime was the work of paramilitary or extreme nationalist organisations? Is there evidence of such a group being active in the neighbourhood? Did any organized hate group claim responsibility for the crime?

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?