



Stakeholders Submission to the UN Human Rights Council's Universal Periodic Review

Azerbaijan: 44th Session

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The Queerdian Public Union

The Queerdian is a Baku (Azerbaijan) based non-governmental organization established in 2022 is principled to improve visibility and relevant data on LGBTIQ+ issues through in-depth research and analysis, including capacity building and awareness-raising activities to highlight the diverse needs and problems of LGBTIQ+ citizens in Azerbaijan.

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The Gender Resource Center

The Gender Resource Center is a queer-feminist platform established in early 2020. The Center was established in Azerbaijan in response to the problem of a lack of safe space and resources for people of different genders and sexual orientations.

The "Q Collective" Initiative

The "Q Collective" Initiative is aimed at empowering the Azerbaijani LGBTIQ+ community by addressing discrimination on economic, societal, and political fields. Q Collective has 5 dimensions of human freedom: health, education, economic well-being, political+civil participation and personal security.

Introduction

1. The Queerdian, the Gender Resource Center, and the Q Collective jointly submit this report to assist the UN Human Rights Council in its review of Azerbaijan's compliance with international standards on promoting and protecting LGBTIQ+ rights, assessing the effectiveness of existing legal frameworks and their application, and identifying areas of improvements.
2. The information and recommendations in this submission are based on the Queerdian's works and engagement with legal LGBTIQ+ rights in Azerbaijan, and collaborative activities with the contributing partners.
3. This joint submission concentrates on the challenges faced by LGBTIQ+ citizens in Azerbaijan since the country's last UPR review in May 2018. The submission consists of following sections:
 - 3.1 Section I incorporates findings of reports from key international and local organizations, as well as the findings of the Queerdian's recent survey conducted among LGBTIQ+ community and responses obtained from the state authorities.
 - 3.2 Section II addresses legal gaps and lack of measures combating hate speech and crimes which leave the rights of LGBTIQ+ people largely unprotected.
 - 3.3 Section III examines the arbitrary arrests and ill-treatment in custody and lack of effective investigation on ill-treatments against LGBTIQ+ people.
 - 3.4 Section IV explores discrimination faced by LGBTIQ+ people in workplaces, schools, health, housing and other essential service providers.
 - 3.5 Section V presents recommendations should be addressed to the Azerbaijani government.

I. General context

4. At its latest- third Universal Periodic Review (UPR) in May 2018, Azerbaijan received 259 recommendations, among which only 9 (141.16;¹ 141.17;² 141.18;³ 141.19;⁴ 141.20;⁵ 141.22;⁶ 141.23;⁷ 141.29;⁸ 141.30⁹) pertained to the rights of the LGBTIQ+ people.
5. During the first (2009)¹⁰ and second (2013)¹¹ UPR cycles, Azerbaijan did not receive any recommendations specifically addressing the adoption of legislation protecting the rights of LGBTIQ+ people. As evidenced in this report too, the Azerbaijani government consistently denied and still denies acknowledging the challenges faced by its LGBTIQ+ citizens.
6. While the Azerbaijani government ratified almost all core international human rights treaties applicable to LGBTIQ+ people, such as the International Covenant on Civil and Political Rights (General Comments No. 18 and 31)¹², Convention on Economic, Social and Cultural Rights (General Comment No. 20)¹³, Convention on the Elimination of All Forms of Discrimination Against Women (General Comments No. 28, No. 35 and

¹ Take the necessary measures to combat acts of violence and discrimination, such as stigmatization, against persons pertaining to the lesbian, gay, bisexual, transgender and intersex community, and encourage Azerbaijan to deepen the measures to ensure the investigation and sanctioning of those acts (141.16/Argentina). Matrix of recommendations can be found at: <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/AZ/MatriceRecommendationsAzerbaijan.docx>

² Ensure that lesbian, gay, bisexual, transgender and intersex people are protected against all forms of discrimination and violence in both law and practice (141.17/Canada).

³ Adopt a comprehensive legal framework against discrimination based on sexual orientation and gender identity (141.18/Chile).

⁴ Thoroughly review its applicable legislation, in line with its international obligations and commitments, in order to eliminate and combat discrimination based on any ground, including sexual orientation and gender identity (141.19/Honduras).

⁵ Ensure that the existing anti-discrimination legal framework explicitly prohibits discrimination based on sexual orientation and gender identity (141.20/Iceland).

⁶ Incorporate the prohibition of discrimination on the grounds of sexual orientation and gender identity in the current legal framework (141.22/Mexico).

⁷ Implement a comprehensive awareness-raising campaign on the elimination of existing sex-based stereotypes (141.23/Montenegro).

⁸ Take measures to eradicate torture, ill-treatment and arbitrary arrests in line with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, strengthen public policies and education to combat discrimination and violations of the rights of the lesbian, gay, bisexual and transgender community (141.29/Costa Rica).

⁹ Protect persons from arbitrary detentions and ill-treatment that they face for any personal consideration, including their sexual orientation and gender identity, ensuring their full social integration on the same footing (141.30/Spain).

¹⁰ UPR of Azerbaijan (1st Cycle). Report (A/HRC/11/20) of 29 May 2009 of the Working Group on the Universal Periodic Review Azerbaijan, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/136/26/PDF/G0913626.pdf?OpenElement>

¹¹ UPR of Azerbaijan (2nd Cycle – 16th session); 2013. Thematic list of recommendations, available at: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session16/AZ/AzerbaijanMatriceRecommendations_E.docx

¹² General Comments No. 18: Non-discrimination and No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant adopted by UN Human Rights Committee.

¹³ General Comment No. 20: Non-discrimination in economic, social, and cultural rights adopted by the UN Committee on Economic, Social and Cultural Rights (CESCR).

¹⁴ General Comments No. 28, No. 35 and No.3 on the Core Obligations of States Parties under Article 2 of the Convention, General Comment No. 35 on gender-based violence against women, and General Comment No. 36 on the right to education, all contain references to the inclusion and protection of LGBTI people. Adopted by the UN Committee on the Elimination of All Forms of Discrimination Against Women

No.36)¹⁴ and European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14)¹⁵ gaps in Azerbaijani legislation, including harmful practices of authorities leave the rights of LGBTIQ+ people largely unprotected.

7. In recent years, the UN Committee on Economic, Social and Cultural Rights (2022),¹⁶ the UN Committee on the Elimination of Discrimination against Women (2022),¹⁷ and the UN Human Rights Committee (2016)¹⁸ have expressed concerns about Azerbaijan's inadequate anti-discrimination legislation, insufficient investigation of hate crimes, and discrimination against LGBTIQ+ individuals. Both Committees encouraged Azerbaijan to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which mandates recognizing discrimination based on gender identity and sexual orientation.
8. In its Concluding Observations (2021), the UN Committee on Economic, Social and Cultural Rights (CESCR)¹⁹ has expressed concerns about Azerbaijan's lack of comprehensive anti-discrimination legislation, the prevalence of widespread discrimination against LGBTIQ+ people, and the absence of legal recognition for transgender individuals' gender identity. The Committee recommended that Azerbaijan adopt a comprehensive anti-discrimination framework, eliminate negative stereotypes and stigmatization through awareness-raising campaigns, and establish an efficient procedure for legal gender recognition regardless of whether a person has undergone gender reassignment surgery.
9. In October 2016, the UN Human Rights Committee²⁰ expressed concerns about Azerbaijan's anti-discrimination legal framework, noting the absence of explicit protections for sexual orientation and gender identity. The Committee also identified

¹⁴ General Comments No. 28, No. 35 and No.3 on the Core Obligations of States Parties under Article 2 of the Convention, General Comment No. 35 on gender-based violence against women, and General Comment No. 36 on the right to education, all contain references to the inclusion and protection of LGBTI people. Adopted by the UN Committee on the Elimination of All Forms of Discrimination Against Women

¹⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms https://www.echr.coe.int/documents/convention_eng.pdf

¹⁶ Concluding Observations (E/C.12/AZE/CO/4) of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of Azerbaijan (November 2022), available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW6MBygnIqQsj%2BYCoTNmRieA7T%2Fa5WkgQuBkm9KrkUtivOoddcMWvAd%2F0LPS%2FRAKuoECTcrszismP8h8manI44POZbmIKYtfaHtwJrVu0dHer>

¹⁷ Concluding observations (CEDAW/C/AZE/6) of the UN Committee on the Elimination of Discrimination against Women (CEDAW) on the sixth periodic report of Azerbaijan (July 2022), available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhshv33kpiN1yQcFINQGeFngM5Ixr4PQMZWvxmoWXYtsshELrT%2FHJH%2FqsIqI6FD8OFwu28r7iZSIAYRm9fDeUVCTGadLogIKdYRd4jrLMRra>

¹⁸ The HRC Committee considered the fourth periodic report of Azerbaijan (CCPR/C/AZE/4) at its 3315th and 3316th meetings, held on 20 and 21 October 2016. At its 3330th and 3333rd meetings, held on 1 and 2 November 2016, it adopted the present concluding observations.

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhshv33kpiN1yQcFINQGeFngM5Ixr4PQMZWvxmoWXYtsshELrT%2FHJH%2FqsIqI6FD8OFwu28r7iZSIAYRm9fDeUVCTGadLogIKdYRd4jrLMRra>

¹⁹ In its concluding observations (2021) on the fourth periodic report of Azerbaijan, the Committee on Economic, Social and Cultural Rights (CESCR), the Committee adopted the concluding observations at its 57th meeting, held on 15 October 2021, available at:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW6MBygnIqQsj%2BYCoTNmRieA7T%2Fa5WkgQuBkm9KrkUtivOoddcMWvAd%2F0LPS%2FRAKuoECTcrszismP8h8manI44POZbmIKYtfaHtwJrVu0dHer>

²⁰ The HRC Committee considered the fourth periodic report of Azerbaijan (CCPR/C/AZE/4) at its 3315th and 3316th meetings, held on 20 and 21 October 2016. At its 3330th and 3333rd meetings, held on 1 and 2 November 2016, it adopted the present concluding observations.

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- impunity for discrimination and violence against LGBTIQ+ individuals, including by family members, police, and prison officials (§ 8(a)). Recommendations included incorporating sexual orientation and gender identity in anti-discrimination laws, ensuring protection, proper investigations, holding perpetrators accountable, and guaranteeing freedom of expression and assembly for LGBT individuals and their defenders (§ 9).
10. In the European Commission against Racism and Intolerance's Report on Azerbaijan during the fifth monitoring cycle (2016), Azerbaijan is advised to properly investigate alleged hate crimes against LGBTIQ+ people (§ 44), collect data on homo- and transphobic criminal offenses (§ 33), and implement an action plan for LGBT individuals (§ 85).²¹
 11. ILGA-Europe, which is an independent international non-governmental organization, has released their most recent findings stating that among 49 countries, Azerbaijan is the least favorable country for the political, social, and legal rights of LGBTI+ people.²² According to the ILGA Europe's Annual Review-2022, hate crimes against the LGBTI+ people continued to be a serious issue during 2022.²³
 12. According to the 2020²⁴ and 2021²⁵ annual monitoring reports of the QueeRadar, Baku (Azerbaijan) based non-governmental organization which regularly monitors anti-LGBTIQ+ rhetoric in the local media, Azerbaijan maintained its LGBTIQ+ phobic status and media materials were queerphobic during 2020 and 2021 years.
 13. In addition to the general unfavourable situation, the strict quarantine restrictions imposed due to the COVID-19 crisis had also a dramatic impact on LGBTIQ+ people. Many could not pay their rent and had to leave their homes.²⁶ On 18 September, a trans woman was threatened with eviction due to her gender identity. The case was reported to the Ombudsman's office.²⁷
 14. LGBTIQ+ people have no representation in the political life of the country. LGBTIQ+ people are not heard or participate in the processes of adoption of laws, policies or programmes concern them. There are not also any single normative legal acts affirming LGBTIQ+ citizens' rights and status. This is also evident in Azerbaijan's state reports to the UN Treaty Bodies at their periodic reviews, which rest on absolute denial of alleged

²¹ The European Commission against Racism and Intolerance (ECRI), REPORT ON AZERBAIJAN (fifth monitoring cycle), Adopted on 17 March 2016. Published on 7 June 2016, available at: <https://rm.coe.int/fourth-report-on-azerbaijan/16808b5581> ; ECRI is the most important instrument in the Council of Europe's fight against all forms of racism, discrimination, xenophobia, antisemitism and intolerance.

²² Rainbow Europe is made by ILGA-Europe, the European Region of the International Lesbian, Gay, Bisexual, Trans & Intersex Association, <https://rainbow-europe.org/#8622/0/0>

²³ 11th edition of ILGA-Europe's Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe and Central Asia. The publication includes events that occurred between January and December 2021. Available (in English) at: <https://www.ilga-europe.org/report/annual-review-2022/>

²⁴ Monitoring hate speech against LGBTIQ+ [2020], QueeRadar, available (in English) at: <https://queeradar.com/en/monitoring-hate-speech-against-lgbtq-2020-2/>

²⁵ Monitoring hate speech against LGBTIQ+ [2021], QueeRadar, available (in English) at: <https://queeradar.com/en/monitoring-hate-speech-against-lgbtq-2021/>

²⁶ Testimony to the Institute for War & Peace Reporting: <https://iwpr.net/global-voices/azerbaijan-trans-people-hit-hard-lockdown>

²⁷ "If we live in a free country, everyone should have the same rights", September 18, 2020, Voice of America, available (in Azerbaijani) at: <https://www.amerikaninsesi.org/a/azad-olk%C9%99d%C9%99-ya%C9%99ayırıqsa-hamı-eyni-haqlara-sahib-olmalıdır-5589034.html>

violations of rights of LGBTIQ+ people.²⁸ In Azerbaijani political discourse, LGBTIQ+ identity has always been rhetoric to discredit political opponents.

15. Upon reviewing national frameworks and various reports, including collaborative monitoring efforts with LGBTIQ+ communities, Queerdian has observed no substantial change in practice and legislation regarding LGBTIQ+ rights in Azerbaijan since the examination of its third periodic report at the 30th session of the UPR Working Group on 15 May 2018.

A. Queerdian survey and inquires to the Azerbaijani authorities

16. The 2016 ECRI (European Commission against Racism and Intolerance) Report highlighted the lack of official data on LGBT persons and their living conditions in Azerbaijan (§ 78). The report also noted inconsistencies in the provided statistical information regarding the criminal response to hate speech (§ 32). The ECRI recommended that Azerbaijani authorities should “... maintain comprehensive statistics on racist, homophobic, and transphobic criminal offenses” (§ 33).²⁹
17. State authorities in Azerbaijan have consistently failed to collect and publish statistics related to LGBTIQ+ issues. The Queerdian reached out to various authorities, including the Ombudsperson office and Press Council and identified that state still does not gather data on LGBTIQ+ cases, including crimes based on homo- and transphobia, despite ongoing recommendations from key international institutions.
18. A Queerdian survey³⁰ conducted between February and March 2023 involving 45 Azerbaijani LGBTIQ+ activists and community members revealed that 70% experienced discrimination or harassment in the past three years. Psychological violence was reported by 75.6% (34 respondents), hate speech and insults by 66.7% (34 respondents), sexual violence by 20% (9 respondents), and physical violence by 17.8% (8 respondents). More results of the survey will be discussed in the section IV below.
19. In addition to the survey, the Queerdian sent a total of 35 questions to nine state authorities, including the ombudsman and the press council, in order to identify and assess their engagement in promoting and protecting LGBTIQ+ rights in Azerbaijan. According to the Ombudsperson's office, total 25 appeals have been recorded between 2019-2022 related to the provision and protection of the rights of individuals “with different sexual orientations”. These appeals were related to dissatisfaction with court decisions, non-execution of court orders, appeals related to law enforcement authorities,

²⁸ See, for example, Replies of Azerbaijan to the list of issues (E/C.12/AZE/Q/4) in relation to its fourth periodic report to the UN Committee on Economic, Social and Cultural Rights. (29 October 2020. E/C.12/AZE/RQ/4). Available (in English) at: [https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW6MBygnlgQsj%2bYCoTNmRieA2zGg0arX8Lx7k6cZ1lcK6TIHLvXOihu%2fw6rBEsqV89xEEiHfU4pQBmWHdwihdM1VZSOkBOgAH5FYt0%2fIFXaxM](https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW6MBygnlgQsj%2bYCoTNmRieA2zGg0arX8Lx7k6cZ1lcK6TIHLvXOihu%2fw6rBEsqV89xEEiHfU4pQBmWHdwihdM1VZSOkBOgAH5FYt0%2fIFXaxM;); Paragraph 122. It should also be noted that the situation with regard to sexual minorities in Azerbaijan doesn't differ from the situation in Europe. However, in recent years, there have been cases in our country where members of sexual minorities who have committed offenses try to get rid of responsibility by promoting or emphasizing their sexual orientation.

²⁹ The European Commission against Racism and Intolerance (ECRI) REPORT ON AZERBAIJAN (fifth monitoring cycle), Adopted on 17 March 2016; Published on 7 June 2016, available at: <https://rm.coe.int/fourth-report-on-azerbaijan/16808b5581>

³⁰This survey is conducted by the Queerdian with the collaboration of Gender Resource Center and Q Collective with the aim of identify the level of violence and effectiveness of available remedies used by the LGBTIQ+ people.

non-objective investigations, and assistance in issuing identity cards.

20. In its response, the Ministry of Internal Affairs refused to provide the information and suggested to approach the State Statistics Committee concerning to the questions on the arrests applied to LGBTIQ+ citizens, as well as cases of ill-treatment by police authorities in relation to them. The General Prosecutor's Office, Penitentiary Service and Ministry of Justice provided almost similar responses by stating that the requested information related to LGBTIQ+ citizens was not included in the information that undergoes statistical analysis, as per the instructions of the State Statistics Committee.
21. The lack of official rules (instructions) on gathering information related to LGBTIQ+ people by the law enforcement authorities, as mentioned in their responses, has been confirmed in the official reply letter of the State Statistics Committee addressed to the Queerdian. The Committee, in its response, stated that “the requested information is not included in the list of indicators monitored by the state statistics committee.”

II. Hate speech and hate crimes

22. Hate speech is regulated in Azerbaijani legislation in vague manner. The Constitution while recognizing freedom of expression prohibits hate speech under name incitement of enmity and hostility (Article 47.III of the Constitution).³¹ The protected grounds listed in the Constitution, including in the other normative legal acts do not cover the gender identity and sexual orientation.³²
23. It worth to note that national legislation related to hate speech are insufficiently mentioned in the criminal, administrative and civil laws too. The article 283 of the Criminal Code³³, including the article 13-2 of the Law on Information, Informatization and Protection of Information³⁴ and articles 14.1.4 and 14.1.9 of the Media Law³⁵ are not addressing to the discrimination or criminal offences on the grounds of gender identity and sexual orientation. The civil law (Civil Code)³⁶ – general tort law provisions is not effective due to lack of effective enforcement mechanisms in practice.³⁷

Criminal Law

³¹ The Constitution of the Republic of Azerbaijan, available (in English) at: <https://president.az/en/pages/view/azerbaijan/constitution>

³² Other grounds are limited with race, ethnicity, religion, language, sex, origin, property status, occupation, beliefs or affiliation with political parties, trade union organizations or other public associations, according to article 25 of the Constitution of the Republic of Azerbaijan.

³³ Article 283.1. The actions directed on excitation of national, racial, social or religious hate and hostility, humiliation of national advantage, as well as actions directed on restriction of citizens rights, or establishment of the superiority of citizens on the basis of their national or racial, social belonging, creeds committed publicly, including with use of mass media— is punishable by the penalty at a rate from eight thousand up to twelve thousand manats or corrective works for the term up to two years, or imprisonment for the term from two up to four years. The Criminal Code of the Republic of Azerbaijan, available (in Azerbaijani) at: <https://e-qanun.az/framework/46947>

³⁴ The Law on Information, Informatization and Protection of Information, Available (in Azerbaijani) at: <https://e-qanun.az/framework/3525>

³⁵ The Law on Media, available (in Azerbaijani) at: <https://www.e-qanun.az/framework/49124>

³⁶ The Civil Code, available (in Azerbaijani) at: <https://e-qanun.az/framework/46944>

³⁷ Rules of Ethical Conduct of Azerbaijani Journalists, available (in English) at: <https://presscouncil.az/en/code-of-professional-ethics-for-journalists-in-azerbaijan>

24. The situation in the legislation regarding with hate crimes are problematic. The Criminal Code does not set hate crimes for motives against gender identity and sexual orientation as aggravated circumstances. Aggravated circumstances that are prescribed in Article 61.1.6 of the Criminal Code limited with the ‘national, racial or religious’ motives. Gender identity and sexual orientation are not prescribed in this list. Therefore, hate crimes committed on the grounds of gender identity and sexual orientation are accepted as ordinary criminal offenses.³⁸
25. Article 283 of the Azerbaijani Criminal Code criminalises incitement and humiliation of on *national, racial, social or religious* grounds. The respective provision does not cover gender identity and sexual orientation. This lack of clarity is not explained in the legislation, nor is there any case law on the matter. As a result, the LGBTIQ+ community cannot enjoy the safeguards of criminal law. Furthermore, incitement to discrimination only against nationals, but not against foreigners, is punishable.

Administrative law

26. The law on Information, Informatization and Protection of Information and the Law on Media mainly are tools for suppression of freedom of expression.³⁹ Both laws do not specify gender identity or sexual orientation directly as protected grounds. No information available on the application of these laws against hate speech on the grounds of gender identity and sexual orientation by law enforcement or judiciary.

Civil law

27. The Civil Code remedies also not explicitly specified in the legislation. There exists an only general tort law provisions that in theory protects any kind of tort law violations. The tort law provisions are not automatically applied and requires that the applicants to submit civil action in the courts and prove the that alleged content is constituting hate speech. Furthermore, currently court fees rose in Azerbaijan and tort law provisions the limits are problematic for vulnerable social groups. Moreover, the tort law provisions also do not specify specific protection grounds for LGBTIQ+ community. Also, there is no exact case law that developed by the domestic courts concerning applying tort law provisions to the anti-discrimination cases, including hate speech on the grounds of gender identity and sexual orientation. The respective legislation, therefore, are not sufficient concerning safeguarding equal rights for LGBTIQ+ people.

Combating hate speech and hate crimes in practice

28. Hate speech remained a serious issue, in Azerbaijani media according to the QueeRadar’s 2021 hate speech monitoring report.⁴⁰

³⁸ For example, see the below to the case of LGBTIQ+ activist Mr. Avaz Hafizli killed by his relative with hate crime motive. However, the Baku Assize Court sentenced him as simple offender.

³⁹ "Who regulates content online in Azerbaijan? Legal analysis", Azerbaijan Internet Watch, May 17, 2022, available (in English) at: <https://www.az-netwatch.org/tag/law-on-information/>

⁴⁰ The QueeRadar has found that of the 501 media pieces analysed, almost two-thirds were hateful or biased against LGBTIQ+ people. Monitoring hate speech against LGBTIQ+ [2021], QueeRadar, 01/02/2023, available (in English) at: <https://queeradar.com/en/monitoring-hate-speech-against-lgbtqi-2021/>

29. This lack of clarity in legislation in regard to combating with hate speech is observed in practice, as seen in a hate speech campaign against the LGBTIQ+ community, particularly transgender people, by a social media influencer (Ms. Sevinj Huseynova) in the summer of 2021.⁴¹ The affected individuals submitted a criminal complaint to law enforcement body - State Security Service (SSS), but the SSS dismissed the case on the ground that the Criminal Code does not prohibits the hate speech on the grounds of gender identity and sexual orientation and LGBTIQ+ citizens are not considered as a social group.⁴² To date, despite the systematic incidents of hate speeches against the LGBTIQ+ community, law enforcement bodies have never applied Article 283 of the Criminal Code.
30. Problematic content of the legislation also came to the spotlight of lawyers in another case. On February 22, 2022, a 24-year-old reporter and gay rights activist, Avaz Shikhmammadov (known as Avaz Hafizli) was killed for homophobic motives by his relative, who had singled him out for assault because he looked like a homosexual.⁴³ The attacker had been found guilty of Article 120.1 of the Criminal Code and sentenced to 9.5 years in prison.⁴⁴ The Court rejected to take into account an aggravated motive of the murder. Such decision explicitly contradicts with the relevant UN⁴⁵ and Council of Europe⁴⁶ standards which requires that the grounds of sexual orientation, gender identity and sex characteristics should be explicitly included in criminal law provisions and LGBTI-phobic motivation should constitutes an aggravating circumstance.

III. Arbitrary detentions/arrests and Ill-treatment

A. Arbitrary arrests

⁴¹ "Standing against violence and hate speech targeting LGBTQI+s", Sep 3, 2021. Available (in English) at: <https://en.grcenter.org/post/standing-against-violence-and-hate-speech-targeting-lgbtqi-s>

⁴² The appellant who was summoned to the State Security Service (November 2021) was told (verbally) by the investigator that LGBTIQ+ people are not considered as a social group and therefore they are not protected against any extreme hate speech under article 283 of the Criminal Code of Azerbaijan."Should State Security Service refer to LGBTIQ+ citizens as a social group?", November 01, 2021, available at: <https://www.amerikaninsesi.org/a/dtx-lgbtqi-v%C9%99t%C9%99ndaşları-sosial-grupa-aid-etm%C9%99lidirmi-/6295717.html>

⁴³ "Azerbaijan Mourns Tragic Killing of Gay Rights Activist and Reporter", February 24, 2022, Voice of America, available (in English) at: <https://www.voanews.com/a/6457639.html>

⁴⁴ "The perpetrator of an LGBT activist was sentenced to 9.5 years in prison", July 29, 2022, Turan Information Agency, available (in Azerbaijani) at: <https://www.turan.az/ext/news/2022/7/free/Social/az/7723.htm>

⁴⁵ On 29 September 2015, twelve United Nations bodies (ILO, OHCHR, UNAIDS Secretariat, UNDP, Unesco, UNFPA, UNHCR, Unicef, UNODC, UN Women, WFP and WHO) issued a Joint Statement calling states to incorporate homophobia and transphobia as aggravating factors in laws against hate crime and hate speech; ..." available at: <https://www.ohchr.org/en/press-releases/2015/09/twelve-un-agencies-issue-unprecedented-joint-statement-rights-lesbian-gay>

⁴⁶ Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2010\)5&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=D8DCE2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2010)5&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=D8DCE2&BackColorIntranet=FDC864&BackColorLogged=FDC864) ; The Parliamentary Assembly (Council of Europe) Resolution 1728 (2010) on discrimination on the basis of sexual orientation and gender identity of 29 April 2010, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17853> ; ECRI's General Policy Recommendation No. 7, adopted on 13 December 2002 and revised on 7 December 2017, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae>

⁴⁷ The Constitution of the Republic of Azerbaijan, available (in English) at: <https://president.az/en/pages/view/azerbajjan/constitution>

31. The Constitution of the Republic of Azerbaijan⁴⁷ formally establishes the right of everyone, including the LGBTIQ+ community, to be protected from ill-treatment (including torture) (Article 46) and the right not to be subjected to arbitrary detention (Article 27). The national legislation guarantees the protection of these rights. The Criminal Code⁴⁸ (Article 293) establishes criminal liability for both arbitrary detentions and ill-treatment (including torture). In addition, the Code of Criminal Procedure⁴⁹ defines the right to a fair trial and effective investigation guarantees in the legal-formal aspect. The Civil Code (Articles 1096 and 1100)⁵⁰ and the Civil Procedure Code recognize the right to compensation for the arbitrariness of state bodies.
32. Although these guarantees are theoretically in place and formally recognized, their practical implementation faces considerable challenges.⁵¹ According to credible monitoring organizations, ill-treatment⁵² is prevalent and arbitrary detentions remain a widespread problem in Azerbaijan.⁵³
33. The LGBTIQ+ people in Azerbaijan faces dual challenges: societal discrimination and insufficient state protection. Law enforcement authorities perpetuate discrimination, often misusing anti-public morality laws, such as the Code of Administrative Offences by consistently ignoring the LGBTIQ+ people's rights in practice.
34. The case study of police raids against the LGBTIQ+ community clearly establishes that the law enforcement authorities apply systematic discrimination against LGBTIQ+ community.⁵⁴ Despite the same-sex sexual activity for both men and women has been legal in Azerbaijan since 1 September 2000, no specific laws on the protection of LGBTIQ+ people have been passed. Therefore, the same-sex sexual activity is *de-facto unlawful* in Azerbaijani.⁵⁵
35. Law enforcement authorities often justify raids against the LGBTIQ+ community by invoking domestic legislation prohibiting prostitution. The Code of Administrative Offences (COA) (Article 524)⁵⁶ establishes liability for prostitution, with a fine of 100 manats (roughly 54 euros)⁵⁷ imposed for such offenses. Police also abuse COA's

⁴⁷ The Constitution of the Republic of Azerbaijan, available (in English) at:

<https://president.az/en/pages/view/azerbaijan/constitution>

⁴⁸ The Criminal Code of the Republic of Azerbaijan of December 30, 1999 (as amended on 30-12-2022), available (in English):

<https://cis-legislation.com/document.fwx?rgn=2670>

⁴⁹ Code of Criminal Procedure of the Republic of Azerbaijan of July 14, 2000, No. 907-IQ, (as amended on 02-12-2022), available (in English): <https://cis-legislation.com/document.fwx?rgn=11597>

⁵⁰ Civil Code of the Republic of Azerbaijan of December 28, 1999 (as amended on 02-12-2022), available (in English):

<https://cis-legislation.com/document.fwx?rgn=2577>

⁵¹ For example, according to the European Court of Human Rights' case-law, rights... "should be interpreted in such a manner that the rights guaranteed are rendered practical and effective, not theoretical and illusory: <https://brill.com/display/book/edcoll/9789004421950/BP000002.xml>.

⁵² According to the 'CPT's overall impression of the situation in Azerbaijan is that torture and other forms of physical ill-treatment by the police and other law enforcement agencies, corruption in the whole law enforcement system and impunity remain systemic and endemic': <https://www.coe.int/az/web/cpt/-/azerbaijan-torture-impunity-and-corruption-highlighted-in-new-anti-torture-committee-publications>.

⁵³ <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/>.

⁵⁴ The well-established information on police raids is related to Mid-September 2017 incidents.

⁵⁵ The Danish Institute for Human Rights. Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity Legal Report: Azerbaijan: https://www.coe.int/t/Commissioner/Source/LGBT/AzerbaijanLegal_E.pdf

⁵⁶ Code of Administrative Offences: <https://www.e-qanun.az/framework/46960> (text in *Azerbaijani*) and <https://cis-legislation.com/document.fwx?rgn=85141> (text in *English*).

⁵⁷ Official exchange rates: <https://www.cbar.az/currency/rates?date=05/04/2023>

provisions such as of disobeying the lawful demands of the police (Article 535) and petty disorderly conduct (Article 510) against LGBTIQ+ people. The mentioned two accusations provide a legal basis for the administrative detention of persons for up to 30 days.⁵⁸

B. Ill-treatment, including torture and degrading treatment

36. The LGBTIQ+ community frequently experiences ill-treatment, including torture and degrading treatment, and arbitrary detention by law enforcement authorities due to their sexual orientation and gender identity. These types of ill-treatment include beatings, insults, humiliation, shaving of hair, etc. It should be noted that persons arrested by the police are sent for compulsory examination for STDs (sexually transmitted diseases) without any legal basis in national law. A major police raid in September 2017 was an example of this. Police raids of a similar nature took place in subsequent years (2019),⁵⁹ although not at this level.⁶⁰
37. Official statements confirm that in mid-September 2017, at least 83 LGBTIQ+ individuals were arrested, with 56 facing administrative detention and 18 fined.⁶¹ Unofficial sources suggest the arrest figures were much higher (hundreds).⁶² Authorities justified the interference by claiming involvement in street prostitution or petty hooliganism. However, no one was charged or fined for prostitution under Article 524 (prostitution) of the COA. Instead, most detainees were charged and convicted of disobeying lawful police orders (Article 535 of COA) resulting in up to 20 days of administrative detention.
38. Arbitrary detention of LGBTIQ+ people always involve psychological and physical violence, exacerbated by homophobic attitudes from police and prison guards. Detainees are held in overcrowded cells with poor food and sanitation, subjected to degrading medical checks, head shaving, and forced medical checks. No effective investigations into such treatment have been conducted.
39. In practice, detained LGBTIQ+ people usually have been subjected to forced medical examinations for STDs without consent, violating domestic law requiring a court order (Law on Public Health, Article 28, para.3 and Code of Civil Procedure, Chapter 30). Authorities failed to provide any court order authorizing these medical examinations.

⁵⁸ Administrative detention (*inzibati həbs*) means under Code of Administrative Offences, special type of penalty for administrative offenses (petty offenses or quasi-criminal offenses) and is similar to small-term jail punishment for misdemeanor offenses in some Western jurisdiction; therefore, administrative detention is not the similar trial procedure like, such as administrative detention of migrants in English-speaking legal area. It is mainly overlaps meaning of the German law jurisdiction: <https://criminal-law-germany.lawyer/administrative-offences/>

⁵⁹ Minorityaze.org, Since April 1 police started detention of LGBTQ individuals (in Azerbaijani): <https://minorityaze.org/201-polisin-lgbtq-reydinin-teferruatlari>

⁶⁰ Such kind of raids take place occasionally, but due to fear of reprisals most of the victims are not interested in publicizing their cases. Therefore, most of the incidents are not eligible for media coverage.

⁶¹ Ministry of Internal Affairs of the Republic of Azerbaijan (reply to the Commissioner for Human Rights): <https://rm.coe.int/reply-of-te-minister-of-internal-affairs-of-azerbaijan-concerning-arre/168075e7d0>

⁶² Human Rights Watch, Azerbaijan: Anti-Gay Crackdown: <https://www.hrw.org/news/2017/10/03/azerbaijan-anti-gay-crackdown>

IV. Discrimination in workplaces, schools, health, housing and other essential service providers

A. Labor rights

40. In Queerdian's survey, 60% (27 respondents) reported experiencing discrimination while job-seeking and in the workplace.
41. However, the Labour Code (Article 16)⁶³ establishes a general prohibition of discrimination it does not specifically list sexual orientation and gender identity as protected grounds. It is true that the Republic of Azerbaijan has ratified the European Convention on Human Rights, and according to Article 14 of that Convention, as well as the experience of the European Court of Human Rights regarding the interpretation of that article, sexual orientation and gender identity are protected grounds. Accordingly, the Republic of Azerbaijan should indirectly consider sexual orientation and gender affiliation as one of the protected grounds. Therefore, there has been no serious progress regarding the labour rights of the LGBTIQ+ community.
42. Azerbaijani labour legislation positively includes provisions that extend the prohibition of sexual harassment in workplace (Labour Code, Article 12). However, those provisions are not applied in practice. Based on research and media monitoring, the labor rights of LGBTIQ+ individuals are continuously violated - employees were immediately dismissed after their sexual orientation was discovered.⁶⁴

B. Access to essential public services

- 42.1 The Queerdian's recent survey results unveil a concerning trend of discrimination, violence, and ill-treatment faced by individuals within various educational institutions. With 62.2% (28 people) of respondents experiencing such negative encounters, it is evident that schools, universities, and other institutions are not providing a safe and inclusive environment for all. Additionally, 35.5% (16 people) faced similar challenges when interacting with state institutions, highlighting a systemic issue that extends beyond just educational facilities.
- 42.2 Discrimination also extended to other areas of life, as 33.3% (15 people) of respondents experienced prejudice while seeking rental housing or living in one. These survey findings are also consistent with reports from local organizations. In June 2021, local advocacy groups brought to light the distressing incident in which three transgender women were subjected to a forced eviction from their rented residence, carried out by law enforcement authorities.⁶⁵
- 42.3 Moreover, an equal percentage (15 people) faced discrimination, violence, refusal of service, poor service, and ill-treatment from health professionals and social workers, emphasizing that these issues are not limited to just educational and state institutions. The

⁶³ Labour Code of the Republic of Azerbaijan, (as amended on 29-11-2022), available (in English): <https://cis-legislation.com/document.fwx?rgn=2653>

⁶⁴ Violated labour rights of LGBTIQ+s. In January-August 2021, the Gender Resource Center, a Queer-feminist platform, received 130 complaints about unemployment, available (in Azerbaijani) at: <https://minorityaze.org/en/718-violated-labour-rights-of-lgbtiq-s>.

⁶⁵ Trans women were evicted from their homes by the police, available at: <https://minorityaze.org/609-trans-qadinlar-polis-terefinden-evden-qovulub>

prevalence of violence was also noted within communities (20% or 9 people), workplaces (31.1% or 14 people), and government agencies (24.4% or 11 people), illustrating the wide scope of the problem and the urgent need for interventions and reforms.

- 42.4 The survey findings show over half of the respondents (51.1% or 23 people) expressed hesitance to file complaints with any institution due to fear that their concerns would be ignored or that they would face further discrimination as a result.

V. Recommendations

43. The Queerdian, Q Collective and Gender Resource Center suggest the following recommendations be made to the Republic of Azerbaijan:

Recommendation 1

Adopt comprehensive Anti-Discrimination Strategy, in particular with regard to a set of characteristics such as sexual orientation and gender identity.

Recommendation 2

Set up timeline for the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

Recommendation 3

Amend existing regulations ensuring the collection and publishing data in all state authorities concerning to hate crimes, crimes that is motivated by a bias against the victim's sexual orientation or gender identity.

Recommendation 4

Amend the Criminal Code to ensure that the sexual orientation and gender identity be expressly added to the prohibited grounds in Article 283 of the Criminal Code and that a provision be added to that Code (Article 61) explicitly stipulating that homo/transphobic motivation constitutes an aggravating circumstance for any ordinary offence.

Recommendation 5

Adopt regulations for police and prosecuting authorities to ensure that acts of discrimination and violence against LGBTIQ+ citizens are properly investigated, and perpetrators held accountable.

Recommendation 7

Introduce a moratorium in the cases of Article 524 of COA for at least three years.

Recommendation 8

Establishment of specific ad hoc monitoring body for LGBTIQ+ rights within the Administration of Ombudsperson Office.