

Brief assessment of previous cycle

In response, the Azerbaijani government still fails to take necessary policy measures. During the last cycle of UPR, countries like Argentina, Canada, Chile, Costa Rica, Honduras, Iceland, Mexico and Spain urged Azerbaijan to take necessary legal and policy measures to protect and promote the human rights of LGBTIQs, explicitly sanctioning violence and discrimination on the grounds of SOGIESC in both law and practice. Recalling those 8 recommendations, amongst others, the government:

- FAILED** to adopt comprehensive anti-discrimination law to eliminate and combat discrimination based on any ground, including SOGIESC;
- FAILED** to investigate and sanction hate speech and hate crimes committed against the LGBTIQ+ community;
- FAILED** to refrain from arbitrary arrests and ill-treatment of LGBTIQs, activists in particular;

Issue: Hate speech

Existing legislation does not protect hate speech on the grounds of SOGIESC. Article 283 of the Criminal Code sets forth penal sanctions for actions - committed openly, including by using mass media - aimed at inciting national, racial, social, religious hatred and enmity. Despite ample evidence of hate speech, by public figures and government officials in particular, there is no single case known where those speeches are sanctioned. Even the opposite, in various examples, the state refrained from opening an investigation when such cases were reported.

For instance, in response to Sevinc Huseynova's call on the mass killing of LGBTIQs, a group of activists made a collective appeal to the State Security Service (SSS) and Gulnara Mehdiyeva, a feminist activist, was among them. Upon this petition, Mehdiyeva was invited to SSS and was told that "nor the concept of social groups is clearly defined in the legislation, neither laws of Azerbaijan does define the LGBTIQs as part of the social group; therefore, they (SSS) cannot take any measures".

Hate speech by state officials, in particular, is nothing new and invoked rhetoric can be perceived as manifestations of personal views backed with harmful moral-cultural-religious arguments. However, if their addressee before 2022 was a society in general, since then, they do not only crave for the exclusion of LGBTIQs from society, but they go further and propose more instrumental 'solutions', calling for policy reforms that actually aim to make Azerbaijan an LGBTIQ-FreeZone.

For example, on October 28, 2022, parliament member Tahir Karimli, also known for his anti-LGBT and anti-feminist sentiment, in an interview with the local media platform, states that "propaganda about LGBT must be banned in Azerbaijan." He raised this issue when commenting on the draft law prepared by the Russian State Duma on banning the 'propaganda' of LGBTIQs in the mass media, internet, literature and cinema, adding that "I have talked about this many times with my fellow deputies. I wish we could achieve this too. Propaganda of LGBT is a danger for Azerbaijan, it is necessary to urgently implement a draft law on it."

The overall situation of the LGBTIQ community in Azerbaijan can only be described as alarming since there is no legal protection against hate crimes or hate speech of any kind. Traditional gender roles and values remain deeply rooted within Azerbaijani society and families. Furthermore, Islamic groups, which are often influenced by the clergy of the neighboring country Iran, fuel the hatred against the community. International Lesbian, Gay, Bisexual, Trans and Intersex Association's Rainbow Europe Index shows Azerbaijan as having the worst deficit in legislation and policy aimed at protecting LGBTIQs, ranking it the worst among all Council of Europe countries since 2014.

The fear and intimidation resulting from hate crimes and hate speech prevent LGBTIQs from participating fully in society. Throughout the reporting period, widespread discrimination and violence continue to shape LGBTIQs' lives in both subtle and significant ways, exacerbating the human rights situation of LGBTIQs further and pushing the community, and trans people in particular, out of public life, making it more challenging for them to access key services, use public places, or simply go to stores or restaurants without fearing discrimination. LGBTIQs in general, and the trans community in particular, remain vulnerable to intimidation, discrimination, and violence by the police, educational and other public institutions, the local job market, and healthcare providers. In most cases, many incidents, including discrimination, hate speech and hate crime, often go unreported. This is partly because victims feel uncomfortable revealing their sexuality to law enforcement authorities, fearing reprisals and potential privacy violations.

Issue: Hate crime

There is no single case known to Nafas where police or judiciary apply domestic criminal-law mechanisms to elucidate the possible hate motive with homophobic/transphobic overtones behind the violent incident and adequately punish those responsibly, even when there are prima facie indications of violence motivated or at least influenced by the victim's SOGIESC.

In practice, those cases are most likely to be treated on an equal footing with ordinary cases where violence occurs in cases with no such overtones, thus turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. The most prominent case is the horrific murder of LGBTIQ activist and journalist Avaz Hafizli and the circumstances surrounding that case, which came on the foot of protests against hateful social media posts by the local social media phenomena, Sevinj Huseynova.

Issue: Access to justice and effective remedies

For many who face discrimination and violence, there is little recourse through the police or any official judicial channels. LGBTIQ community lacks a safe environment to file complaints when their rights are violated. Knowing the police's poor track record, they decide not to file an official complaint, fearing reprisals and potential privacy violations.

The perpetrators oftentimes are law enforcement officers themselves, who often times nullify the possibility of addressing human rights violations against the community. There are cases where the police used their knowledge of an individual's SOGIESC to blackmail and extort money from them. Extortion and violence by the police, including abuse by non-state actors, take place with almost complete impunity, resulting in constant fear of being detained and tortured by the police. LGBTIQ organizations have also documented cases of people being framed by police and forced to confess to crimes they didn't commit.

Being the most vulnerable in the community, the transgender community is regularly subjected to human rights violations by police - arbitrary detention, accompanied by derogatory and violent treatment. According to the Article 308 of the Code of Administrative Offences, sex work is illegal. This law is often instrumentalized by authorities to oppress and persecute trans and gays who are engaged in sex work. In addition, the Law on the Fight Against Illness Caused by HIV is also frequently used to justify arbitrary arrests and forced medical examinations of community members.

As seen in the anti-community crackdown that took place in 2017, this strategy allowed the authorities to gain wider public support to continue prosecuting, intimidating, physically or sexually abusing, and arbitrarily detaining gay men and transgender women periodically.

Issue: freedom of assembly and safety of LGBTI+ rights defenders and activists

Azerbaijan's Constitution guarantees the right to freedom of peaceful assembly and freedom of expression. Azerbaijan is also a party to a number of human rights treaties, including the European Convention on Human Rights, which obliges the government to respect and refrain from violating the right to assembly, freedom of expression, and privacy. However, in many instances throughout the reporting period, we witness not only inactivity but the active involvement of government bodies in violating human rights of LGBTIQ individual.

On May 23, 2023, several members of the trans community were detained by police in Baku, following confrontations between the police and three trans women. The next day, on May 24, to demand the release of the detained community members, the trans community and activists advocating for LGBTIQ+ rights peacefully gathered in front of the 37th Police Department in Baku, where detainees were kept. Cavid Nabiyev, advocacy officer of Nafas, and Ali Malikov, volunteer engagement coordinator, decided to join the protest too, showing solidarity with the community and also observing the situation and documenting, and providing assistance when needed. Shockingly, they were arrested, and upon their release after almost 24 hours, they revealed a harrowing account of mistreatment and abuse endured at the hands of the police:

Since 2019, International Women's Day in Baku has become the focal point where the LGBTIQ and feminist groups come together in solidarity to peacefully protest against gender-based violence, including femicide, demanding from the government to ensure equal rights for all without discrimination on any grounds, including SOGIESC. However, each year the government failed to respect the right to assembly, and the right to freedom of expression. **For instance:**

In 2020, police detained at least 10 people during the rally. They were afterward taken to the Gobustan district (101 km from Baku) and released. Notably, hate speech was rampant after that rally. Dozens of state-sponsored digital media platforms presented the rally as an 'attack on national and religious values and the institution of the family', saying it was 'prostitution and LGBT rights in the name of feminism', and naming the participants as 'immoral AIDS viruses in the streets of Baku'.

Although the march in 2022 took place with no critical incident, there have been critical police interventions, which violated the right to freedom of expression of rally participants in particular. For instance, police forced Cavid Nabiyev, an LGBTIQ activist, to change his mask, with rainbow colors on it, as the meaning it represented "was not found appropriate". In response to Nabiyev's demand for an explanation, the police threatened Nabiyev by saying: "You know why, but if you insist, we can provide an answer at Police Station No 9." In another example, activist Ali Malikov attempted to unfurl the rainbow flag during the march, which was immediately removed by police. The police also confiscated and tore apart a trans flag and a poster saying "Petukhs (f*ggots) are against dictatorship" immediately after they were raised.

forced medical examination sexual abuse inhuman and degrading treatment physical harm

Christophe Lacroix, General Rapporteur of the Parliamentary Assembly of the Council of Europe on the rights of LGBTI persons, issued a statement urging the Azerbaijani authorities "to put an end to these practices immediately and to conduct a full, effective and independent investigation into all allegations of abusive treatment of LGBTI persons and human rights defenders by the police".



RECOMMENDATIONS

Anti-discrimination law: #SOGIESC as protected ground

- Adopt a broadly applicable anti-discrimination law, with a view to ensuring the prohibition of all forms of direct and indirect discrimination in public and private life, specifically in the areas of employment, education, health care, and housing, encompassing all the prohibited grounds of discrimination, including sexual orientation, gender identity and expression, and sex characteristics (SOGIESC)

Hate crimes and hate speech: #criminal code; #SOGIESC as aggravating factor

- Amend Criminal Code by inserting a direct indication that hate crimes motivated by SOGIESC will be an aggravating circumstance and punishable by law.
- Establish a hate crime investigation unit within the Police and Public Prosecution Service, with a view to effectively prevent, investigate and prosecute hate crimes based on SOGIESC.
- Develop a comprehensive strategy for preventing and combating hate speech targeting LGBTI+ individuals through the establishment of a monitoring mechanism, improvement of sanctioning mechanisms, and greater cooperation between law enforcement bodies to facilitate the prosecution of hate speech.
- Take the necessary legal and administrative reforms, in particular, amending Article 283 of the Criminal Code by inserting direct indication that SOGIESC is among explicit grounds of protection, with a view to ensure that hate speech cases targeting the LGBTI+ community are effectively investigated and the perpetrators prosecuted and adequately sanctioned.

Legal recognition: #gender; #marriage/civil union

- Implement legal and administrative reforms, in particular, adopt Gender Recognition Law to ensure a quick, transparent and accessible mechanism for legal gender recognition based on self-definition, regardless of whether the person had undergone gender reassignment surgery.
- Take the necessary constitutional and administrative reforms, in particular, amending Family Code by inserting a direct indication that all forms of families, including same-sex couples, are fully encompassed in the notion of the family.

Judicial and police apparatus: #capacity building; #dissagrated data on hate speech and hate crimes

- Integrate sensitization training into the national police curriculum, establish permanent educational and awareness-raising campaigns, and conduct training for the judicial and police apparatus in particular, with a view to improving their capacity for better responding to hate speech and hate crimes on the grounds of SOGIESC.
- Incorporate within the Judicial, Police and Public Prosecution Service's criminality observatory and in the statistical yearbook detailed data on acts of violence and discrimination against LGBTI+s.

Healthcare: #Conversion therapy; #corrective surgeries on intersex; #HIV/AIDS

- Prohibit public hospitals and private healthcare practitioners from conducting so-called conversion procedures on LGBTI+ beneficiaries through developing scientifically-based contemporary regulations and rights-based healthcare protocols for healthcare professionals.
- Adopt legislative provisions, with a view taking into account the best interests of the child, explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex infants and children until they have reached an age at which they can provide appropriate consent.
- Adopt measures to eliminate all forms of discrimination in healthcare settings, including in the context of HIV/AIDS, while paying particular attention to the specific needs of key populations, including LGBTI+s.

LGBTIQ human rights defenders: #illtreatment and persecution; #freedom of assembly; #freedom of expression; #privacy

- Prevent misuse of provisions concerning public order, public health and public morals to guarantee in practice the effective enjoyment of the rights to freedom of expression, association and peaceful assembly for all citizens, including lesbian, gay, bisexual, transgender and intersex persons and to defenders of those rights.
- Ensure effective protection of all human rights defenders, including LGBTI+ defenders and women human rights defenders from threats and attacks, including cyber attacks, and end impunity by ensuring that human rights violations and abuses against them are promptly, thoroughly and impartially investigated.