

**The Violations of the Rights of Lesbian, Gay, Bisexual,
Transgender Persons in AZERBAIJAN**

A Shadow Report

Submitted during the third periodic report to
the U.N. Human Rights Committee
(July, 2009)

Introduction

Azerbaijan acceded to the International Convention on Civil and Political Rights¹ (ICCPR) on 13 November, 1992, as well as the first Optional Protocol of the ICCPR² on 27 February 2002. On 20 July, 2009 the country will present its third periodic report to the U.N. Human Rights Committee.

This shadow report is a collaborative effort of Gender and Development of Azerbaijan (G&D), International Lesbian, Gay, Bisexual, Trans and Intersex Association: Europe (ILGA Europe), and Global Rights. This report aims to offer an evaluation of Azerbaijan's compliance with the ICCPR and the protection of its lesbian, gay, bisexual, and transgender (LGBT) people.

We hope that the findings in this report will be useful to the Human Rights committee as well as serving as a catalyst for future advocacy efforts.

Ehlan Bagirov
Gender and Development
gender.and.development.az@gmail.com

Beth Fernandez
Programmes and Policy Officer, ILGA Europe
Beth@ilga-europe.org

Stefano Fabeni
Director, LGBTI Initiative, Global Rights
StefanoF@GlobalRights.org

Derek Tripp
Legal Intern (J.D. expected in 2011), LGBTI Initiative, Global Rights
DerekT@GlobalRights.org

¹ U.N. General Assembly, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

² U.N. General Assembly, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302.

Executive Summary

For lesbian, gay, bisexual, and transgender (LGBT) people in Azerbaijan, the protections guaranteed in the ICCPR are still too often absent. While great deals of current violations are due to non-state actors, the government of Azerbaijan tacitly permits violations like discrimination in employment and in enacting protections necessary to prevent abuses against the LGBT community.

After decriminalizing same-sex sexual relations in 2001, Azerbaijan has done little in the way of actively improving the lives LGBT people. There have been some positive indications that the government can react and protect its entire people. After the attack of a transgender woman by a police chief in 2006, Elchin Behbtov, president of the Azerbaijan Committee against Torture, said, “When Azerbaijan was entering the Council of Europe the state took upon itself responsibilities one of which was to see to the rights of the representatives of sexual minorities. However, the duties have not been respected and the rights of sexual minorities are being violated. For this reason I intend to appeal to the Minister of Internal Affairs, Ramil Usubov, and to the general procurator of the Republic, Zakir Zeynalov so that they take appropriate measures”.³ In another instance, a lower division court was overturned when it unjustly gave a lenient prison sentence to a murderer who killed a transgender man. The defense attorney made the argument that since the victim was transgender, he deserved to be killed. However, the appellate court refuted the appalling argument that a transgender person is less worthy of having their lives protected and subsequently raised the prison sentencing from 6 to 13½ years.

There are still a number of serious threats to the rights and protections of LGBT citizens in Azerbaijan. Police brutality and harassment permeate the lives of LGBT citizens in the forms of physical violence, black mail, intimidation, invasions into homes, raids on public establishments, interference with personal privacy, and manipulations of the court system. These types of abuses stem from a number of sources, including insufficient training and education on LGBT people, homophobia, transphobia, and public attitudes and misrepresentations of LGBT Azerbaijani people. The state cannot be blamed for the actions of private individuals, but the brutality of police officers reflects the attitudes of the government. Fear of police brutality is so strong that individuals have resorted to violence against themselves in order to escape.

Gender and Development documented an instance where twenty-seven gay and transgender people were unjustly targeted, arrested, and jailed by the police. There are quotes from LGBT people describing the fear of being persecuted at work, on the streets, and at home. Abuses in the justice system, from both inside and outside the courtroom, further cripple the ability to seek help.

In a society that can be very hostile to, LGBT people, privacy is a paramount concern. Individuals with non-conforming sexual orientation or gender identity must often keep that fact secret from their family and friends, employers, medical professionals, government officials, the police, and others in order to avoid persecution and violence. Denying transgender men and women the right to proper state-issued identification is one example of the way the state stands

³ Dennis van der Veur, Forced Out: LGBT People in Azerbaijan, Report on ILGA-Europe/COC fact finding mission, p 26 (August, 2007).

by but fails to take action to stop the harassment of LGBT people in the state. While there are not official laws condoning these abuses, Azerbaijan has been too reluctant to enact affirmative protections for LGBT people in the home, on the streets, at their job, in a doctor's office or in prison. In order to remedy these violations, the government of Azerbaijan must become actively involved in protecting LGBT people.

Substantive Violations of the Convention

Article 2(1) and 26 (Non-discrimination)

Relevant Law and Jurisprudence

Article 2(1) of the ICCPR ensures that the citizens of signatory countries are guaranteed the equal application of the rights within the covenant “without distinction of any kind, such as...sex”. Article 26 requires equal application of the law and prohibits discrimination “on any ground such as... sex”.

Article 25(III) of the Constitution of the Azerbaijan Republic guarantees equality of rights and does not allow those rights to be restricted, “irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organizations.”⁴ Article 26(II) states, “The state guarantees protection of rights and liberties of all people.”⁵

In *Toonen v. Australia*⁶, the Human Rights Committee held that protections afforded based on “sex” in articles 2(1) and 26 do apply to sexual orientation and that criminalization of consensual same-sex relations violated the ICCPR.⁷ Azerbaijan has removed their criminal provisions punishing same sex conducts between consenting adults in January 2001 as a precondition to joining the Council of Europe.

Employment

Azerbaijan does not have any provision against discrimination based on sexual orientation and/or gender identity in the fields of employment and occupation. As such, LGBT employees are legally threatened and harassed by employers based on their sexual orientation and/or gender identity. This allows for the widespread abuse and intimidation of LGBT employees by their employers without fear of reprisal or punishment. In *Forced Out: LGBT People in Azerbaijan*, ILGA Europe and Cultuur en Ontspannings-Centrum Netherlands (COC) completed a comprehensive study of the life of the lives of LGBT people in Azerbaijan. For instance, in 2005 an insurance agency fired two lesbians and stated that “we did the right thing because we can’t tolerate this in our society.”⁸

The government’s failure to pass comprehensive employment non-discrimination leaves LGBT people without job security or stability. This lack of protection, like many, affects transgender people more harshly than individuals whose gender identity match their birth sex. The report *Forced Out* interviewed LGBT people in Azerbaijan and according to one respondent, “It is for

⁴ “Constitution of the Azerbaijan Republic”, §2, Article 25. Right for Equality, III.

⁵ *Id.*, Article 26. Protection of rights and liberties of a person and citizen, II.

⁶ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

⁷ *Id.* at 8.7. (“[T]he reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.”)

⁸ *Forced Out*, *supra* at p 26.

many difficult to find a job and if your employer finds out that you are gay, you can lose the job even more easily”⁹. Transgender people find employment even more challenging because of the discrimination against them for their gender identity. Transgender people often are forced into sex work as the only steady means of supporting themselves.

As members of [the transsexual/transgender community in Baku] do not hide their gender identity (most wore dresses and make up), they all have problems in being accepted in society and particularly in finding a job. Most of them therefore go out on the street - to the Tbilisi Avenue, ‘to sell their body’ (in their own words). As one of them stated: “You can’t get a job here because we are petuh”¹⁰”¹¹

In January 2008, Gender and Development was approached by a lesbian woman working in a bank who was being threatened with being fired. Her photo had been posted on the internet showing herself and another woman with the caption “Gay parties are being held in Baku”. She was accused by her employer of “indecent behavior” which risked bringing the whole team of people into disrepute and scaring off clients. The photograph was put on the Bank’s intranet and she was verbally bullied by colleagues. Gender and Development was forced to provide her with a letter saying that the party which she had attended had been organized by Gender and Development and was on HIV/AIDS prevention, but had no connection to sexual minorities. The woman was allowed to keep her job but still endures bullying from her colleagues without any recourse to remedy, either through legislative protection or the good practice of her employer.¹²

Other cases relate to members of the LGBT community being asked to leave bars because of their gender expression or appearance (men with long hair, earrings). The lack of an antidiscrimination law plus the fact that even in the presence of a law, cases of discrimination are difficult to prove, mean that such cases generally are not addressed.

Medical Care / Access

The Azerbaijani Constitution protects people’s health and medical care and requires that the government develop necessary measures for all forms of health services.¹³ Hospitals in Azerbaijan have refused treatment to the transgender people, even in instance where they are hurt after an accident, because of unaddressed transphobia.¹⁴ The marginalization of LGBT people also leads to an invisible and undertreated HIV/AIDS population. Because the Azerbaijan’s health services do not actively include LGBT people and does not provide adequate education or resources on the prevention and treatment HIV/AIDS, there is no sufficient reporting of how LGBT people are affected by this disease.

⁹ Forced Out, *supra* at p 27.

¹⁰ Slang/vulgar expression for a penis.

¹¹ *Id* at p 21.

¹² Communication with Gender and Development, on file with Global Rights, 29 June, 2009.

¹³ Constitution, *supra*, Article 41. Right for Protection of Health.

¹⁴ Forced Out, *supra* at 21, 36.

Article 3 (Equality of Men and Women)

Article 3 of the ICCPR requires that party states “ensure the equal right of men and women to the enjoyment of all civil and political rights”. However, this protection does not extend to the transgender or transsexual community in Azerbaijan. The societal blindness towards LGBT women and men creates additional hurdles and difficulties in the lives of these citizens.

Without the indivisible and universal right to sexuality and gender identity, lesbian, bisexual and transgender women experience double or inter-sectional discrimination and inequality compared to women from other subgroups... The Report of Azerbaijan Republic on the obligations undertaken under CEDAW lacks any mention of the lesbian, bisexual women and transgender women, which limits the realization of their human rights and fundamental freedom, as already mentioned above. In addition, problems of homosexual, bisexual women and transgender women are also absent from any state documents dealing with anti-discrimination efforts of the country, which makes this group of women invisible to government programs despite their vulnerable status in a society.¹⁵

The Council of Europe, to which Azerbaijan is a member, first made the recommendation in 1989 that transsexual persons be allowed to change the sex and name of their legal documentation.¹⁶ Although the recommendation is not legally binding, Azerbaijan has ignored the jurisprudence of the European Court of Human Rights, which is binding to member states. In the cases *Goodwin v. United Kingdom*¹⁷ and *L. v. Lithuania*¹⁸, described more extensively below, the court required that states allow transsexuals who have undergone gender reassignment to change their legal sex and name.

Under Azerbaijani law, because there is no recognition of transgender/transsexual women or men, the current punishments regarding sexual assault do not equally protect men and women. Trans women who are the target of sexual assaults, either by police or non-state actors, are also not protected by the same sentencing rules against sexual assault. The UN Special Rapporteur on the question of Torture and other Cruel, Inhuman and Degrading Treatment and Punishment has before noted that, “the rape of a man or of a male-to-female transsexual woman is often subject

¹⁵ Gender & Development, 44th Session of the Committee on the Elimination of Discrimination against Women (CEDAW), “Discrimination and Violence against Lesbians, Bisexual Women and Transgender People in Azerbaijan Republic”, (June, 2009).

¹⁶ Parliamentary Assembly of the Council of Europe, 41st Session. *Recommendation 1117 on the Condition of Transsexuals*, (1989).

¹⁷ *Christine Goodwin v United Kingdom*, Application No. 28957/95, ¶91 (12 July 1992). (“...No concrete or substantial hardship or detriment to the public interest has indeed been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, the Court considers that society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost.”)

¹⁸ *L. v. Lithuania*, Application no. 27527/03, (11 September 2007). (“The present case presents another aspect of the problems faced by transsexuals: Lithuanian law recognises their right to change not only their gender but also their civil status. However, there is a gap in the pertinent legislation; there is no law regulating full gender-reassignment surgery... The Court finds that the circumstances of the case reveal a limited legislative gap in gender reassignment surgery which leaves the applicant in a situation of distressing uncertainty vis-à-vis his private life and the recognition of his true identity... the budgetary burden on the State would not be expected to be unduly heavy. Consequently, the Court considers that a fair balance has not been struck between the public interest and the rights of the applicant.”)

to the lesser charge of ‘sexual assault’, which carries lighter penalties than the more serious crime of rape”.¹⁹ This inequality is compounded by the fact, “that considerable portions of the incidents of torture carried out against members of sexual minorities suggests that they are often subjected to violence of a sexual nature, such as rape or sexual assault in order to ‘punish’ them for transgressing gender barriers or for challenging predominant conceptions of gender roles.” This is not only a violation of Article 7 (*see below*), but highlights the need for equal protection from sexual violence against LGBT people.

In Azerbaijan, sexual assault crimes are designated as either rape or the more leniently punished crime of a “violent act of a sexual nature”.²⁰ According to the statutory definitions, men can only be considered a victim of a “violent act of a sexual nature”²¹, carrying a 3 to 5 year sentence. Rape²² carries a punishment of 4 to 8 year and is only possible if a man assaults a woman, but does not recognize trans women. This discrepancy sends the message that sexual violence against transgender people and same-sex rape are not as reprehensible or worthy of punishment. This is similar to the judge that gave a shortened criminal sentence to a murderer who killed a transgender man (*see Article 14 below*).

Article 7 (Freedom from Torture and other Cruel, Inhuman, Degrading Punishment or Treatment)

Article 7 of the Covenant reads in part, “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” This article includes treatment of prisoners by police or guards. The Constitution of Azerbaijan similarly states that, “Nobody must be subject to tortures and torment, treatment or punishment humiliating the dignity of human beings.”²³ During the recent session of the Universal Periodic Review, the Czech Republic called for Azerbaijan “to provide law enforcement and judicial officials with specific education/sensitivity training towards the protection of... persons of minority sexual orientation or gender identity.”²⁴

Based on the self-reported statistics from their periodic report, Azerbaijan has not seen an overall decrease in the reports filed against the police.

¹⁹ U.N. General Assembly, 56th Session. “Report of the UN Special Rapporteur on the Question of Torture and other Cruel, Inhuman or Degrading Treatment”, Sir Nigel Rodley, Special Rapporteur. UN Doc. A/56/156 (3 July, 2001).

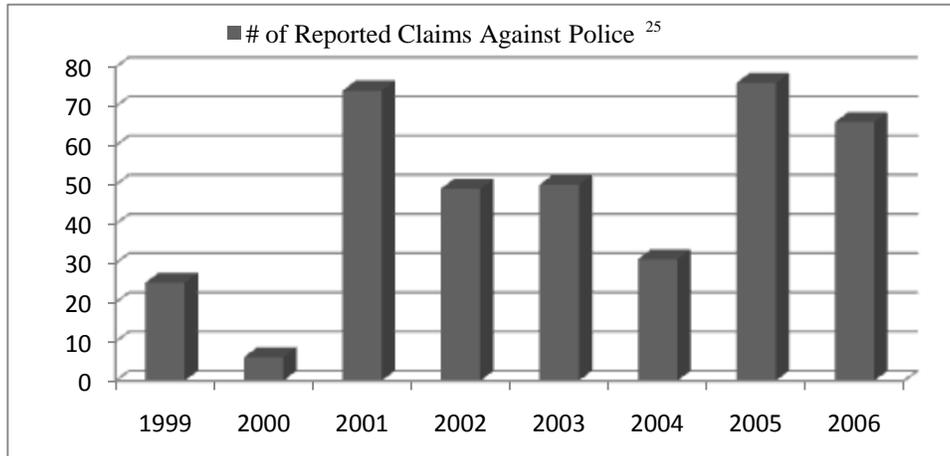
²⁰ *Forced Out*, *supra* at p 25.

²¹ Azerbaijan Penal Code, Article 150.

²² *Id.*, Article 149.1.

²³ *Supra*, Article 46. Right to Defend the Honor and Dignity, III.

²⁴ Human Rights Council, 11th session, “Universal Periodic Review: Report of the Working Group on the Universal Periodic Review, Azerbaijan”, U.N. Doc. A/HRC/11/20, (6 March 2009).



Due to the underreporting of police abuses, these numbers only reflect a portion of total abuses by the police. (See Article 14 below) The Forced Out report heard from LGBT people that, “argued they are often intimidated and harassed by the police and live in constant fear”. In 2006 a local news paper reported on the attempted rape by a police official against a young trans woman named Toma²⁶.

A 22 year old [trans woman] was beaten and raped on June 1 in the Police Department #27 of Yassamal Region in Baku. On that particular night Toma and some friends were strolling in the streets of the Yassamal Region. There [Toma] met somebody whom [she] liked. Toma got to know him. Soon after a police car approached them and the policemen arrested everyone, including the stranger in the street. [Toma], however, escaped. Later, when [she] found out that [her] “girl-friends” were taken to the Police Department #27 of the region [she] decided to help, and came to the police station. The “girl-friends” were released, the stranger too, but [Toma] was asked to stay for a “talk”. [She] was then beaten and raped by somebody called Arzuman – Captain of police. To escape the police [Toma] cut open [her] stomach a couple of times with a razor. The police got scared by that and let [her] escape.²⁷

On 13 May 2007, Gender and Development documented the arrest and severe beating of twenty-seven transgender persons and gay men at a location where LGBT people meet in Baku. Everyone arrested was then forced to undergo testing for HIV/AIDS without any warning or preparation. The police then took these individuals on a 3 km (about 2 miles) march, while in handcuffs, from the police station to the court in a police convoy. This is treatment usually reserved for highly dangerous criminals. Throughout the journey, they were subjected to humiliating insults from the police and onlookers. That same day, the LGBT people involved received a sentence of three days of incarceration in a pre-detention centre. After the third day of incarceration, they were forcibly transferred to a dispensary for people suffering from gynecological diseases and subjected to more forced medical examinations. All of their personal belongings, including money, mobile phones and outer clothing, were confiscated and never

²⁵ Third Periodic Report of State Parties, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Azerbaijan”, UN Doc. CCPR/C/AZE/3, ¶155, p 27-8 (10 December, 2007).

²⁶ The ECHO newspaper identifies the trans woman as a homosexual man, but Toma (legally recognized as Gasanov) identifies as female, not male.

²⁷ Forced Out, *supra* at p 32.

returned. The police used these mobile phones to contact and blackmail men whose name and phone numbers were stored on the phones. Two years later, Gender and Development has still not managed to recover the stolen items nor stop the blackmail. Abuses by the police of this nature not only violate Article 7, but also Articles 2(1), 6, 9, 10 and 17 as well.

Article 9 (Right to Liberty and Security of the Person)

Article 9 states that individuals are protected from arbitrary treatment and harassment by law enforcement. Articles 9(1) and (2) prohibit police from arresting or interfering with individuals without giving a legitimate purpose. Many of these interferences by the police could also be seen as violations of Article 17 (which is discussed more below).

Harassment, violence, and abuses against LGBT people in Azerbaijan are systemic problems. These activities range from threats on the street, to blackmail, to physical attacks. The *Zerkalo* newspaper in Azerbaijan reported on a typical example of how police disrupt and regularly harass LGBT people:

As one of the officials of Yasamal Regional Department of Internal Affairs (...) said (...), the police periodically carry out spot-checks or raids in places where gays meet. This is, by the way, not only Tbilisi Avenue, but also several central city bars where transvestites and their potential clients prefer to party. However, after short identity checks the police prefer to let them go without causing harm; this is again because of the absence of the actual crime.²⁸

One transgender woman described her experiences, saying “Society has a negative approach to us, the police are very aggressive to us, harass us. The police beat us up. The police chief harasses us, physically and verbally.”²⁹ A pair of transsexual sex-workers described their violent encounter with police,

The Police stopped our car and started to beat us up. I took a knife, stood up in the middle of the road and threatened to commit suicide. Then I cut myself. The ambulance arrived and they took me to the hospital where they refused to treat me. My friends were detained for 15 days. I went to the Council of Europe office to complain about our treatment. They gave me some prints from the Internet from ILGA-Europe.³⁰

In January 2008, the organization was approached by a man called Rauf, three months previously his car had been stolen which he had reported to the police. The police found the stolen car and the person who had stolen it who claimed that he had befriended Rauf on an internet site and had subsequently taken his car from outside his house. The thief thought that taking something from a passive homosexual did not constitute a crime. Once the police learnt of Rauf’s sexual orientation, they ignored the theft and attempted to blackmail Rauf. They threatened to inform his parents if he didn’t pay hush money. Gender and Development then accompanied Rauf to the

²⁸ *Forced Out*, *supra* at p 33.

²⁹ *Id* at p 21.

³⁰ *Id* at p 22.

police station with an attorney at which point the police decided to drop the threats of blackmail.³¹

In June 2008, a young man approached Gender and Development for help saying that the police had called him into their station and tried to blackmail him about his sexual orientation. He was unable to give them the money they demanded. As a consequence, the police informed his parents. They threw the young man out of the house, leaving him without any adequate means of support. There have been several such cases, including against the President of Gender and Development. That complaint against the police is still awaiting a verdict one and a half years later, and the police continue to engage in blackmail in the interim. In almost every case, the victims of blackmail buy the silence of the police because many are married with children and afraid of being outed.³²

These are not isolated incidents, but emblematic of a system that turns a blind eye to human rights violations committed by police. A human rights advocate in Azerbaijan described the system of paid protection, where police force individuals to pay bribes or face harassment. The police use “tricks to put pressure on them, like the continuous checking of identity papers during patrol and the use of false allegations of involvement in murder”³³ to coerce bribes from transgender or gay sex-workers. LGBT people are not safe from harassment off the street either, according to the Forced Out study, based on “statements of respondents about the authorities often conducting searches of private premises without warrants.”³⁴

Article 10 (Rights of Prisoners)

Article 10 of the Covenant protects detained persons by requiring that their inherent dignity be respected. The widespread human rights violations that occur within the police department are also present within the prison system of Azerbaijan.

UN Special Rapporteur notes that, “members of sexual minorities in detention have been subjected to considerable violence, especially sexual assault and rape, by fellow inmates and, at times, by prison guards... transsexual and transgendered persons, especially male-to-female transsexual inmates, are said to be at great risk of physical and sexual abuse by prison guards and fellow prisoners if placed within the general prison population in men’s prisons.”³⁵ ILGA-Europe’s Forced Out report detailed the treatment of LGBT prisoners:

“Gays and lesbians are not treated as human beings and they have no right to speak” according to Mr. Zeylanov of the Azerbaijan Human Rights Group. He described the ‘caste system’ prevalent in the prison system: all prisoners are fitted into the (informal) hierarchy whereby prisoners are separated and stigmatised based on a colour. Grey is the colour for Roma people, red for ‘spies’ (those who tried to undermine the administration or worked against the government) and blue for ‘passive homosexual men’ and those sentenced for rape. The ‘blue category’ is the lowest in the

³¹ Communication with G&D, *supra*.

³² *Id.*

³³ Forced Out, *supra* at p 22.

³⁴ *Id.* at p 26.

³⁵ UN Doc. A/56/156, *Supra*, at p 7.

hierarchy. “Active lesbians” are referred to as *‘kobla’*, ‘active dogs’. The system is enforced by the administration as well as by the prisoners themselves.³⁶

The de facto hierarchical structure of prison system violates the rights of LGBT people and encourages mistreatment by other prisoners and guards alike. While there is no official law that is to blame for this system, the unofficial policy is the abuse people of a minority sexual orientation or non-conforming gender identity.

Article 14 (Right to a Fair Trial)

Article 14 says all persons shall be equal before independent and impartial tribunals. However, there have been several instances of clear prejudice, transphobia, and/or homophobia pervert the equal application of justice. This injustice is the result of a number of violations inside and outside the courtroom.

The ability of LGBT people in Azerbaijan to use their own legal system is interfered with by police force. As discussed above, the police abuse their position of power to harass and manipulate LGBT people in Azerbaijan. These abuses prevent individuals and groups from using judicial remedies against previous harassments, preventing judges from even getting to hear a case.

In 2001 the Clean World NGO started a criminal case against four policemen who had beaten up some gay men on Tbilisi Avenue. The gay men and their supporters were threatened and bribed not to testify. Those who were beaten up withdrew their complaint due to pressure on them by police. Clean World believes that the police told the beaten up gay men that if they filed a lawsuit against the police, they would have ‘a difficult life’. The police also tried to bribe the representative of Clean World to stop the lawsuit.³⁷

Another case involved a lower court judge literally devaluing the worth of a transgender person’s life. However, it was satisfactorily dealt by the Appeals Court. The case involved the murder of a transgender man called Samir in August 2007 by a member of a Wahabi religious group. The two agreed to meet in person after meeting on an internet site. However the murderer came to Samir’s flat intending to kill him with a large kitchen knife. There were other witness in the flat at the time, and the murderer was identified and caught. The lawyer of the accused openly stated in court in his client’s defense that such people as Samir *need to be killed* and did not receive any admonition from the judge. The conviction did not prove difficult, but both the judge and the prosecutor agreed to reduce his sentence, and he was given six years in prison. On appeal, the attorney for Gender and Development asked the bench to raise the sentence to fifteen years and the sentence was extended to thirteen and a half. It is fortunate that the judicial review process in Azerbaijan was able to address this instance of clear transphobia.³⁸

On 13 March, 2008 reporter Agil Khalil was attack and stabbed, he claims, by interior ministry officials. However, authorities ignored these allegations completely. Instead, Mr. Khalil was required to appear before a court where a man he had never met, Sergey Strekalin, claimed to be

³⁶ *Forced Out*, *supra* at p 36.

³⁷ *Id* at p 33.

³⁸ Communication with G&D, *supra*.

the attacker.³⁹ Mr. Strekalin alleged that he stabbed Mr. Khalil after the reporter made sexual advances. The reporter claims that he was being targeted for slander and that this case was politically motivated. Parts of the trial, alleging instances of homosexual prostitution, were broadcast on television, but Mr. Khalil was not allowed to provide witnesses that could testify to the assailant's identity.⁴⁰ Additionally, the National Security Ministry was permitted to submit evidence regarding alleged phone conversations that neither the telecommunication company nor Mr. Khalil corroborated as true.⁴¹ The Arabia Reporters Sans Frontières reported the following,

“We deplore the fact that the investigation into Khalil's attack led to Strekalin's conviction and that Khalil's real assailants were left alone,” Reporters Without Borders said. “This entire case was nothing but a sham designed to give the impression that the attack was sex-related although Khalil recognised security ministry employees among his assailants.”

Strekalin was convicted under criminal code article 127.1 (deliberate injury) and article 234.1 (possession of drugs). Khalil insisted that the investigation was not objective and that Strekalin had not attacked him. When judge Shahin Abdullayev issued his verdict today, Khalil exclaimed: “Shame on this unfair court!”⁴²

These violations of Article 14 deprive LGBT people of justice under the law or prey on and abuse the judicial system to uphold or advocate for homophobia and transphobia. These abuses continue the cycle of human rights violations by state actors because there is no available remedy for LGBT people. Judicial review does curtail these violations, as seen in the 2007 case, and is an important to educate all judges on the need for equal application of the law to LGBT people.

Article 17 (Right to Privacy)

Article 17(1) states that people should be free from “arbitrary or unlawful interference with his/her privacy, family, home or correspondence” and “unlawful attacks on his/her honour and reputation.” Article 17(2) additionally mandates that the law must protect all people from these interferences and attacks.

Azerbaijan does not currently permit a change of sex on a birth certificate.⁴³ The European Court of Human Rights in *Goodwin v. UK*⁴⁴ held that the UK government violated Article 8 (right to private life) and Article 12 (right to marry) of the European Convention of Human Rights by denying a post-operative transsexual's petition for the rectification of her birth certificate, thus denying her right to be recognized in her new gender. Such situation, as a consequence, would affect the right to formally obtain the status as a woman with her own separate and distinct

³⁹ Arabia Reporters Sans Frontières, “Trial Reporter's Stabbing Case Called Crude Manipulation”, (6 June 2008). http://arabia.reporters-sans-frontieres.org/article.php?id_article=27356 [accessed 3 July 2009]

⁴⁰ Arabia Reporters Sans Frontières, “Sham Trial of Journalist Supposed Assailant Continues”, (11 July 2008). *supra*, [accessed 3 July 2009].

⁴¹ *Id.*

⁴² Arabia Reporters Sans Frontières, “Court Convicts Wrong Man of Knife Attack on Newspaper Reporter”, (15 July 2008). *supra*, [accessed 3 July 2009].

⁴³ *Id.* at p 22.

⁴⁴ *Supra.*

identity for National Insurance purposes, as well as her fundamental right to marry a person of the opposite sex enshrined under both Article 12 ECHR and Article 23 ICCPR.

In this context, the Court found the member state in violation of the right to private life enshrined in Article 8 of the European Convention by arguing that “gender identity is one of the most intimate areas of a person’s private life”⁴⁵.

Similarly, in *L. v. Lithuania*⁴⁶ the Court found the state in violation of article 8 for not having fulfilled its positive obligation to ensure the private life of its citizens by not providing adequate legislation to allow transgender individuals to undergo gender reassignment, thus impeding the rectification of legal sex.

Finally, in the case of *Van Kück v. Germany* (2003), the Court held that the German government was in breach of Article 6 (right to a fair trial), Article 8 (right to private life) and Article 14 (principle of non discrimination) for failing to provide a means of redress for the transition phase of a post-operative transsexual, which included hormone therapy and surgery, as a consequence of the refusal of a private insurance company to cover for such medical costs. Also, in its decision “[t]he Court reiterates that where domestic courts base their decisions on general assumptions which introduce a difference of treatment on the ground of sex, a problem may arise under Article 14 of the Convention.”⁴⁷.

A number of the above violations, including in Articles 2, 3, 7, and 9 are also clearly violations of personal privacy as well. Police officers regularly stopping trans sex-workers, for instance, and checking their IDs.

Article 23 (Family Life)

Article 23 of the ICCPR designates the family as the “fundamental unit of society” and grants special protections to the family. However, LGBT people are not able to enjoy a protected family life for a number of reasons, both sanctioned by the state and perpetuated by Azerbaijani society in general.

... lesbian, bisexual and transgender women in Azerbaijan face numerous serious problems, which make their lives unfoundedly more difficult, because of their sexual orientation or gender identity (SOGI). Among others there is family violence, which we consider to be one of the most insidious forms of violence against women in general. The huge majority of more frank displays of violence against the lesbian and bisexual women occurs at home and includes oral and physical abusing, the internal confinement and compulsion, compulsory marriage, and possibility of crimes of honour. Information about crimes of family violence over the lesbian and the bisexual woman is virtually nonexistent, mostly because of the full social ostracism, which these women can encounter after reporting.

⁴⁵ *Van Kück v. Germany*, 37 Eur. Ct. H.R. Rep, p 73 (2003). <http://www.worldlii.org/eu/cases/ECHR/2003/285.html>

⁴⁶ *Supra*.

⁴⁷ *Id* at p 90.

LGBT organization “Gender and Development” has conducted researches within the LBT (lesbian, bisexual, and transgender) communities, in the course of which, it was revealed that 90% LBT groups were exposed or are being exposed to family violence.⁴⁸

The government is required to ensure that not only are families protected by society but that individuals have freedom to consent to a spouse. In the instance of lesbian, bisexual and transgender women, they face possible disownment or violence true sexual orientation and/or gender identity.

For transgender people, they are also deprived of the right to marry members of the opposite sex because the state does not recognize their gender identity. In the light of *Goodwin v. UK*⁴⁹, according to both Article 23 of the ICCPR and Article 12 of the European Convention on Human Rights⁵⁰, post-operative transsexuals should be recognized by the state as their gender identity and be allowed to marry people of the opposite sex.

⁴⁸ Gender & Development Social Union, 44th Session of CEDAW, “Report: Discrimination and Violence against Lesbians, Bisexual Women and Transgender People in Azerbaijan Republic”, (Session held 20 July – 7 August 2009).
http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Gender_Development_Social_Union_azerbaijan_cedaw44.pdf

⁴⁹ *Supra*.

⁵⁰ “Convention for the Protection of Human Rights and Fundamental Freedoms, Section I, Article 12 (1950). (“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”)

Recommendations

- That the Azerbaijan Government reviews and addresses the systemic abuses by police and prison officials, including bribery or blackmail, harassment, and physical or sexual abuse of LGBT people, also by introducing codes of conduct in the law enforcement, army and prison services, which take account of the need to respect the rights of LGBT people.
- That the government of Azerbaijan adopts the Czech Republic’s recommendation from the last Universal Periodic Review, “to provide law enforcement and judicial officials with specific education/sensitivity training towards the protection of... persons of minority sexual orientation or gender identity.”⁵¹
- That the government adopts a law against hate crime which includes ‘sexual orientation’ and ‘gender identity’ as bias grounds.
- That the government of Azerbaijan allows transgender people to change their forms of ID and birth certificate to properly align with their gender identity.
- That the government passes comprehensive antidiscrimination legislation (with particular emphasis on employment and occupation, to protect individuals regardless of their sexual orientation and gender identity, and strengthens the capability of its Ombudsman’s Institute, including the development of expertise on LGBT issues.
- That the state setup HIV/AIDS, education, outreach, and treatment to address the invisibility of the LGBT community in Azerbaijan health care system.
- That the state revises its penal code to address sexual violence and assault that recognizes gender identity and instances of same-sex rape.
- That Azerbaijan enacts comprehensive protections from domestic violence and forced marriage for sexual orientation and gender identity, as well as outreach and education for the general public.

List of Proposed Questions for Government Delegation

- What are the current measures to prevent police abuses against all citizens of Azerbaijan? What steps is Azerbaijan taking to ensure that police do not harass, intimidate, blackmail or interfere with the lives of LGBT people?

⁵¹ U.N. Doc. A/HRC/11/20, *supra*.

- What is Azerbaijan doing to document, prevent and fight discrimination based on sexual orientation and gender identity in society, and especially in employment and occupation, as well as in education?
- What does Azerbaijan intend to do to allow rectification of legal sex for transsexuals in compliance with the jurisprudence of the European Court of Human Rights on the issue and, therefore, in accordance with articles 17 and 23 of the ICCPR?