**Human Rights Violations Based on Sexual Orientation and Gender Identity in Azerbaijan**

An “alternative report”

as a commentary on Report E/C.12/AZE/Q/4

by Azerbaijan

68th Session of the

Committee on Economic, Social, and Cultural Rights

Review of the fourth periodic report by Azerbaijan

August 2020

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An “alternative report” as a commentary on Report E/C.12/AZE/Q/4 by Azerbaijan. 68th Session of the Committee on Economic, Social, and Cultural Rights. Review of the fourth periodic report by Azerbaijan.

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**Introduction**

* 1. The Republic of Azerbaijan acceded to the International Covenant on Economic, Social, and Cultural Rights (hereinafter referred to as the Covenant) in 1992 and has a “State Party” status within the framework of the Covenant. Azerbaijan submitted its fourth periodic report on 27 December 2018, which included its response to the Concluding Observations that the Committee on Economic, Social, and Cultural Rights (hereinafter, the Committee) had presented it with in 2013. After national and non-governmental civil society organizations had submitted their alternative reports regarding observation of human rights in Azerbaijan, the Committee published its List of Issues E/C.12/AZE/Q/4 on 4 November 2019 with issues for the State Party to comment on.
  2. The current Follow-Up Report is submitted as per the invitation of the Committee that welcomes “alternative reports” from regional NGOs regarding the observation of the Covenant by a State party, in this case, by Azerbaijan. References to the previous alternative report by ECOM will be made, certain issues summarized, and new information will be added for the Committee’s consideration during the Session, whenever it shall occur, considering the ongoing uncertainties of the COVID-19 pandemic.
  3. In its List of Issues E/C.12/AZE/Q/4 (hereinafter, LOI), the Committee asked the State Party to “provide information on the measures taken to prevent discrimination on grounds of sexual orientation or gender identity, including those aimed at raising awareness of the human rights of lesbian, gay, bisexual, transgender and intersex persons among the general population. Please also provide information on measures taken to address discrimination against lesbian, gay, bisexual, transgender and intersex persons in courts and by law enforcement agencies so that they can seek redress for violations of their economic, social and cultural rights” (para 10). LOI (para 26, 27) also inquired that Azerbaijan provided information regarding how the national strategy on reproductive health 2019-2025 intends to improve the availability of sexual and reproductive health services, and whether the State Party plans to decriminalize consensual sexual activities between adults and unintentional exposure to and transmission of HIV.
  4. At the time of this alternative report’s writing, Azerbaijan had not yet provided its response to LOI. Prior to providing further information with regards to the above-mentioned issues outlined in LOI, ECOM - Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (hereinafter, ECOM) and Nafas LGBT Azerbaijan Alliance would like to express its full understanding of the hardships and confusion that COVID-19 pandemic causes all around the world, in the country of Azerbaijan included. ECOM and Nafas LGBT Azerbaijan Alliance is aware of the State Party’s desire to become a fully-fledged legal, social, and democratic state and the amount of diverse resources it takes to do that while following the UN Treaty Bodies’ Concluding Observations and other recommendations. Subsequently, we understand that it is straining for the government to simultaneously improve on all human rights areas in its country because of the financial, human, and mental resources it takes. ECOM is a regional NGO proficient in working with gay men, other MSM, and trans people specifically in the area of ensuring their right to health, which makes it competent in revealing shortcomings in state healthcare services and offering professional recommendations to amend them since public servants may lack such skills due to not having the necessary training. Therefore, the present follow-up reports on the right to health and other human rights of the LGBT in Azerbaijan are presented by ECOM and Nafas LGBT Azerbaijan Alliance, again, in good faith and hopes to draw the State Party’s attention to the suffering that unfairly befalls these populations, that their discrimination is nothing more than actions of bias and hate towards them and that non-discrimination laws and programmes should be adopted swiftly to alleviate their suffering and stop the violation of their human rights.
  5. Article 16 section 1 of the Covenant indicates that “[t]he States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.” Article 17 section 2 of the Covenant stipulates that “[r]eports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.” In response to List of Issues, ECOM considers that, within the scope of right to non-discrimination (Article 2 of the Covenant) and right to health (Article 12 of the Covenant), the current data and information provided by Azerbaijan do not provide the Committee with the ability to grasp the situation with the human rights in terms of LGBT. The current alternative Follow-Up Report is meant to serve as additional information regarding the dire situation these disadvantaged groups tend to find themselves in, within Azerbaijan’s borders, and what needs to be done to remediate that.

**Article 2 — Right to Non-Discrimination**

* 1. Azerbaijan has yet to adopt a law that would ban discrimination based on sexual orientation, gender identity and gender expression. The State Party’s constitution bans discrimination of human rights and freedoms in general but wording of the respective articles is not all-inclusive. The lists of constitutionally and criminally protected grounds are still exhaustive and such that provide no room for interpretation to try and extend them to SOGIGE (ECOM’s Alternative Report para 9, 11).[[1]](#footnote-1) Azerbaijan legislation, in the past year, has seen no introduction of definitions of direct and indirect discrimination, hate speech or what gender actually constitutes as per UN practices.
  2. “The Law of the Republic of Azerbaijan on Ensuring Gender (Between Men and Women) Equality” extends its provisions only to heterosexual people and those assigned at birth as men and women. In article 2, this law defines “gender” as “the social aspect of relations between men and women in the political, economic, cultural and other areas of public life.”[[2]](#footnote-2) The same article defines “gender equality” as “the equality of rights of men and women, and equal abilities in the realisation of those rights and their equal status in the society.”[[3]](#footnote-3) Respectively, this law is aimed only at eliminating discrimination based on biological sex. The Law on Ensuring Gender (Between Men and Women) Equality has no capacity and is not intended to ban gender-based discrimination in terms of SOGIGE. In addition, pervasive and systemic discrimination and stigma of LGBT in all areas of life by the general public, high-profile political and public personas, the law enforcement, and religious figures eliminates any chances of utilizing existing legislation to redress a right that’s been violated based on homophobia or transphobia.
  3. The civil society reports that there has not been one case where article 154 of the Azerbaijan Criminal Code, which protects the citizen’s equality, has been used in a case where the victim had been discriminated against based on SOGIGE and filed a respective case. The criminal and administrative legislation in Azerbaijan has zero instruments for the LGBT to file for defense in homo-/transphobic cases nor are there any norms that would prevent cases of such discrimination. ECOM’s partner NGO indicates that LGBT people refuse to file official cases of SOGIGE-based discrimination because of pervasive distrust the community has towards the law enforcement and because of multiple cases of further discrimination such people meet when they come to police. ILGA Europe reports that blackmail, harassment, extortion, rape, and bribes are common practices on the part of police in relation to LGBT in Azerbaijan.[[4]](#footnote-4) Not only that, the law enforcement tries to manipulate the LGBT sometimes by trying to bribe them to hold rallies against the political party that is in opposition to the ruling one, offering to pay them 100-300 USD, allegedly a common practice.[[5]](#footnote-5) After the horrible and inhuman crackdown on 83 gay men and trans women in 2017,[[6]](#footnote-6) which resulted in them being tortured and sexually abused, and further degraded during the investigation and in court for no reason at all, the LGBT, as well as LGBT NGOs are scared for their lives and try to avoid any interaction with any government bodies, even if it means they have to suffer any injustices that they are currently being subjected to.
  4. No positive changes have occurred since ECOM’s last Alternative Report when it comes to freedom of assembly and association in Azerbaijan. The national legislation still has discriminatory and unnecessarily rigid regulations when it comes to NGO activity. NGOs have to officially register themselves and file registration applications for receiving grants, in addition to straining reporting demands for such organizations.[[7]](#footnote-7) LGBT NGOs also report that the procedure of registration and grant registration is so discriminatory and rigid, that not only many NGOs simply give up, some of them have been refused to register their grants by respective government bodies.[[8]](#footnote-8) Such an approach exhibits the government’s discriminatory treatment of disadvantaged groups, especially LGBT persons, as they have no chances of winning in court if they file for right infringement since as soon as the law enforcement and the judiciary see that they are dealing with the LGBT, not only discrimination but persecution will ensue.
  5. Article 16 of the Labor Code prohibits discrimination on several grounds. However, no explicit prohibition of the discrimination on the grounds of SOGIESC has hitherto been added to the Labor Code. On 18 February 2019, the Cabinet of Ministers adopted a list that prevents people with several health conditions from teaching at schools. It consists of 34 conditions, one of which is called “Disorder of sexual preference.”[[9]](#footnote-9) Azerbaijan has the lowest score on social acceptance of LGBTI people among the 141 countries around the world (0.96 out of 10).[[10]](#footnote-10) According to ILGA Europe, since 2014, Azerbaijan has the worst scoring on laws, policies, and practices concerning LGBTI people among all Member States of the Council of Europe. This raises concerns regarding the interpretation of the term “disorder of sexual preference” and how it might put LGBT educators at higher risks of facing dismissal due to their “sexual preferences.” Considering the high levels of stigma, such an article will definitely be grossly abused to violate rights to equal working opportunities and otherwise of the LGBT in Azerbaijan.
  6. “Traditional values,” “family values,” and “mentality” are the standard instruments of hate speech in Azerbaijan. For example, during the “Maiden Tower — To Be a Woman” Festival organized by the European Union's Delegation to Azerbaijan and several diplomatic missions in 2019, a graffiti work by a Swedish artist Carolina Falkholt, depicting the body of a trans woman, caused a public uproar regarding the visibility of sexuality. It led to transphobic hate speeches and even a government response in defense of the country’s traditional mentality. The statement issued by the Baku Mayoral Office said: “Even though Azerbaijan is a multicultural country, it has its national values and mentality. [...] Just because it was allowed to draw on a building within the scope of the festival, it does not mean they are allowed to project their values that are against our morality.”[[11]](#footnote-11) As can be seen from this statement, Azerbaijan overtly depicts its intention of not supporting the LGBT and further either ignoring or investing in the suffering, discrimination, and degrading treatment that befalls this disadvantaged group.
  7. It is hypocrisy and attack upon fundamental human rights and freedoms of peaceful people to utilize “values” or “morality” as instruments of hate propaganda. Morals, family and traditional values that are universally appreciated by the international community (and by any law-abiding and virtuous person) refer to principles of kindness, respect for one another, compassion, and peacefulness. The HRC Advisory Committee’s Study A/HRC/22/71 states that “[h]uman rights have moral universality, since human rights are held universally by all persons ‘simply because one is a human being’, and international normative universality, meaning that human rights are universally accepted by Governments through their commitments and obligations under international human rights law.”[[12]](#footnote-12) Azerbaijan recognized the authority and the rights enclosed in the Covenant of its own free will. Further, the Study explains that “[n]o one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope [...to] seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights.”[[13]](#footnote-13) Therefore, any appellation to the “traditional values” or “family values” or “morality” to limit the rights of the LGBT contradicts the obligations Azerbaijan took upon itself under the Covenant and its other international human rights treaties.
  8. Hate speech is a manifestation of deep-rooted biased and irrational enmity towards a group based on their social or biological attribute, in this case, SOGIGE. Notably, in a series of recently leaked zoom calls between senior members of the National Council of Democratic Forces, representing opposition parties in the Azerbaijani National Assembly, has revealed strong homophobic sentiment within the group, according to a Mako news report, APA reports citing Jerusalem Post:

*Revealed between May 13 and 17 [2020], four videos expose conversations that focus on the issue of LBGT rights, with one former MP and member of the National Council’s Coordination Centre, Gultakin Hajibayli, saying that “the number one priority for the West is the rights of sexual minorities, the rights of undesirables.” The conversation then moved to Ismail Djalilov, an openly gay Azerbaijani journalist who was previously critical of Hajibayli, with a board member of the Civil Unity Party, Rafik Manafli, calling the former a “male whore,” adding that “it’s a pity that Hitler did not exterminate all the gays in his time.” In response to the reveal, the Chairman of the National Council Jamil Hasanli referred to the incident as a “cybercrime.”[[14]](#footnote-14)*

* 1. The mentioned event happened just recently, in May 2020. Not only does it reveal high-profile politicians disrespecting the LGBT and openly upholding a stigmatizing homo-/transphobic rhetoric, it shows that a part of Azerbaijan’s political elite considers that such people should be killed and openly shows disrespect towards the West, which includes UN Treaty Bodies. Coupled with the aforementioned facts, it begs the conclusion that Azerbaijan consciously avoids responding to the Committee’s inquiries regarding the actions being taken or planned by the government when it comes to banning all forms of discrimination, including based on sexual orientation and gender identity. It also implies that, most likely, no steps are being seriously planned to be taken to end the discrimination of the LGBT in Azerbaijan.
  2. ECOM’s partner NGO in Azerbaijan reports that, like in the past, during the year Azerbaijan had to respond to List of Issues, no sensitization activities were held to raise the awareness of the law enforcement regarding SOGIGE issues, working with the LGBT, educating them about sexual diversity, as well as how to work with such sensitive populations as PLHIV and others. LGBT NGOs have not been invited to participate in any discussions regarding anti-discrimination laws. The law enforcement does not gather statistics about crimes committed out of hate, specifically, out of hate based on SOGIGE.
  3. Gay men, other MSM, and trans people consider to be widely subjected to verbal and physical abuse, and other inhuman and degrading treatment.[[15]](#footnote-15) In one case, on this year’s Valentine’s Day, a video of a young Azeri gay couple was obtained and leaked without the couple’s consent to different Internet groups with thousands of followers. The couple turned to an NGO for protection. The NGO reports that “The comments to those posts disclose the couple’s whereabouts and call for murder and/or cause injury to the couple. [...] At the same time, those pages and groups threaten the people who stand for the support of the couple by sharing their photos and accounts. According to the victims, although they appealed to the police, the law enforcement agencies refused to look into the complaint and advised them to appeal to court.”[[16]](#footnote-16) The lives, not only metaphorically speaking but literally, of this couple are now in danger. They hide their faces behind masks and try to stay inside, afraid of attacks.

**Article 12 — Right to Health**

* 1. As highlighted in ECOM’s Alternative Report, Azerbaijan still continues to infringe Article 12 of Covenant when it comes to the right to health of the LGBT, particularly MSM and trans people.[[17]](#footnote-17) The law still demands that non-citizens provide a health certificate that discloses their HIV-status while applying for a residency permit or working visa to the country with all the negative circumstances that stem from such a discriminatory law.[[18]](#footnote-18) The articles that criminalize the transmission of HIV or other STIs have not been harmonized with the UNAIDS recommendations to criminalize only explicit direct intent with a factual infection of the victim.[[19]](#footnote-19) Due to the rigid regulations when it comes to NGO registration and registration of grants, the Azerbaijan government continues to impede the civil society’s activity when it comes to HIV-prevention among the LGBT. The State Party also does not allocate any funds to LGBT NGOs. NGOs have to avoid stating anywhere that they work with the LGBT when it comes to HIV-services, otherwise they will definitely be denied any funds when filing for public grants. Azerbaijan introduced no changes to its HIV legislation, so the national HIV-prevention strategy and laws still do not include any provisions that would gather HIV-data on MSM and trans persons.
  2. ECOM wants to remind that as per its research, the HIV epidemic in Azerbaijan remains at roughly the same level since 1987: 5.0 HIV cases per 100 thousand people in 2007, 5.6 HIV cases in 2016.[[20]](#footnote-20) In terms of infection routes, 48% account for injecting route of HIV transmission and 40% for heterosexual route.[[21]](#footnote-21) When it comes to general epidemics, it is vital to note that 20% of infection cases happen in the Russian Federation, and Turkey has accounted for a country of HIV infection, too, where the trans sex worker culture is quite popular, although in the dark. Because Azerbaijan has been doing a very poor job in gathering HIV/AIDS data, especially in terms of the LGBT persons, information about HIV among MSM is only partially available. Notably, Azerbaijan has not been submitting reports to UNAIDS during the recent years, and data on HIV among trans persons is absent. 114 new HIV cases were registered in 2016 among MSM, and twice as more were registered in 2015; both of the figures are quite higher than in previous years.[[22]](#footnote-22) It has also been discovered that one-third of MSM are injection-drug users and 18% are involved in commercial sex.[[23]](#footnote-23) UNAIDS reports that in 2019, only 68.8% of MSM in Azerbaijan used a condom during their last sexual intercourse and only 43.6% of MSM have been tested for HIV and know their status.[[24]](#footnote-24) The Global Fund reports that only 44% of MSM have knowledge about where they can get tested.[[25]](#footnote-25) The combination of stigma along with governmental indifference towards this minority group results in increased HIV-prevalence rates that have begun to grow significantly during the recent years. Immediate action on a national level is required. Coverage of HIV/STIs information, free condoms and lubricants is very low: somewhere between 16-19% of the MSM population.[[26]](#footnote-26) The problem here lies in the passiveness of the Azerbaijan government in the involvement in combating the HIV epidemic overall and in, virtually, overlooking the MSM and trans population. Additionally, the public taboo on homosexuality and stigma result in MSM and trans people keeping a low profile, being under-educated about sexual health, not receiving enough coverage in terms of HIV-services.
  3. Azerbaijan has no national HIV-programme specifically tailored to the needs of the LGBT, although MSM and trans people, as well as people who inject drugs (PWUD) and other categories are recognized as key population groups at an increasingly high risk of getting infected with HIV. Due to stigma and discrimination, the key populations require decentralized and targeted HIV-care administered for the community by the community. The government has not discussed, adopted, or administered any sensitization programmes targeted at medical workers which would raise their awareness about issues of SOGIGE, how to work with LGBT and would decrease their discrimination towards MSM and trans people overall.
  4. The Azerbaijan government has not adopted any laws that would allow trans people to successfully conclude gender confirmation or any other trans-related identification and/or healthcare activities. Trans people are discriminated against when turning for regular healthcare, as well as when turning for HIV-services to public institutions. They are widely subjected to abuse both at work, home, police, and healthcare facilities. Trans people can take a chance and apply for gender confirmation but only after they present a certificate that they have undergone a sex reassignment surgery. There are virtually no specialists in Azerbaijan who can perform such complex surgeries and national healthcare does not provide for pre- and post-surgery medication, including hormonal therapy. ECOM’s partner NGO reports that Azeri trans people travel to Turkey to perform the surgery but then meet obstacles when entering Azerbaijan as their appearance and sex do not conform to their documents. Even when applying after a surgery for identification gender confirmation, they get denied and have to go through a judicial process of trying to prove the fact where they meet further discrimination. Domestic legislation does not prohibit or regulate gender reassignment processes. ECOM’s Alternative Report (para 25-27) covered other negative situations that befall trans people in Azerbaijan due to the absence of any legislation that would govern legal gender confirmation with and without sex reassignment surgery.[[27]](#footnote-27) Because there is no law that bans discrimination based on sexual orientation, gender identity and gender expression, trans people have to resort to sex work as means of survival, where they get abused, attacked, raped, blackmailed by the law enforcement, as well as they meet public humiliation and degrading treatment during regular healthcare and HIV services.

**Education and Sensitization**

* 1. The public taboo on sex and reproductive health, as well as SOGIGE issues, negatively impacts the perception of the LGBT community by the general heteronormative public. There is no positive public discussion about sexual diversity, and, usually, if the media does mention it, it is revealed in a negative light or reinforces the negative public attitude towards it.[[28]](#footnote-28) While cooperating with its partner NGOs on the spot, the latter shared with ECOM that NGOs that work with LGBT persons do not attempt to apply for public assembly certificates; most commonly, it is the political parties that widely use their right to public assembly during electoral campaigns. Azerbaijan has adopted no national curricula or other regulations that would include SOGIGE into secondary and higher education; no national campaigns that would try to normalize sexual diversity have been held during the past year.
  2. Article 13 of the Covenant proclaims that “[t]he States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” However, Azerbaijan does not promote freedom of sexuality in terms of one’s right to health and privacy. Based on the above-mentioned, there is no room for contemporary, progressive, and scientifically based conversation when it comes to sex education in Azerbaijan, although they are crucial to a person’s healthy human development. Not only that, right to education is inalienable from the right to the highest attainable standard of physical and mental health: “For example, the right to sexual and reproductive health, combined with the right to education (articles 13 and 14) and the right to non-discrimination and equality between men and women (articles 2 (2) and 3), entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate.”[[29]](#footnote-29)
  3. As per the practice of UN Treaty Bodies, trans men and women are considered as men and women, and everyone is entitled to the same rights regardless of their SOGIGE status. “The right to sexual and reproductive health entails a set of freedoms and entitlements. The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one’s body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant.”[[30]](#footnote-30) Nonetheless, topics of sexual and reproductive health and sexual diversity are still an area of discomfort and hostility in Azerbaijan. As usual, “traditional values” and “morality” are taken up against the LGBT and sex education.
  4. It becomes apparent that the predominant reason for stigma and discrimination of the LGBT in Azerbaijan is absence of education and low awareness on the matters of sexual and reproductive health, as well as SOGI-based awareness. Azerbaijan should devise national programmes that will focus on educating the medical staff and law enforcement officers about gender and LGBT issues, and about working with LGBT PLHIV. It also needs to lower the unnecessary legal scrutiny for NGOs and invest in supporting LGBT NGOs financially to raise the awareness about HIV for LGBT and decrease the public stigma. Taking into account the important role of LGBT NGOs in this matter, the Law "On protection of children from information harmful to their health and development" that came into force in 2020 raises concerns about negative implications on LGBT NGOs that do carry awareness-raising activities.[[31]](#footnote-31) Furthermore, the State announced their will to ratifying the Istanbul Convention and noted that the ratification requires additional internal State agreements. We presume that if the newly adopted law falls into that process, it will be used to deviate from the obligation under Article 14 of the Istanbul Convention, in which it requires from the State to include teaching material on non-stereotyped gender roles in formal curricula. Not only are MSM and trans people undereducated and scared to undergo regular HIV screening and/or treatment and exercise safe sex practices, they are afraid to turn for regular medical or legal aid, fearing abuse. The State Party needs a unified scientifically based position on the matter which would allow for adopting education and sensitization programmes for its civil servants and medical workers to decrease stigma and increase the effectiveness of human rights observation.
  5. When it comes to sex education and SOGI issues awareness, children are often scared to ask questions related to that area; the family and school are undereducated in that respect. The discriminatory stereotypes that are voiced by the family, media, peers, or other public figures are taken at face value and the critical mind is met with hostility. The government needs to adopt a contemporary, scientifically driven educational curriculum regarding sexual and reproductive health and SOGI issues awareness for children at schools, which will not be simply focused on girls not becoming teenage parents. This has to be an awareness-raising and positively educational curriculum that will encompass issues of sexual identity, hygiene, gender, gender identity and expression, sexual orientation, friendliness and non-hostility towards people who have different sexual needs, and, of course, sexual health and reproductive health and safety during sex, and other sex health related issues. The Azerbaijan government should also introduce, on a national scale, issues of sexual orientation and gender identity, as well as PLHIV issues, into the mandatory curriculum of medical students of all specializations. It is on these levels, during secondary and higher education, that roots of stigma and discrimination towards LGBT and PLHIV take place. By providing not only the currently working medical and law enforcement staff with contemporary education and awareness-raising regarding those topics but also educating the future generations based on actual scientific data and not discriminatory stereotypes will result in a broad positive impact across the general public and the LGBT community.

**Concluding Note**

* 1. Based on Fact Sheet No.16, This provision from article 2, paragraph 1, requires all States parties to begin immediately to take measures towards the full enjoyment by everyone of all the rights in the Covenant. The adoption of legislation will, in many cases, be indispensable if economic, social and cultural rights are to be made real, but laws alone are not a sufficient response at the national level. Administrative, judicial, policy, economic, social and educational measures and many other steps will be required by Governments in order to ensure these rights to all.[[32]](#footnote-32) Unfortunately, Azerbaijan not only ignores the questions inquired by the Committee regarding the failure to adopt an all-encompassing effective legislation to ban all forms of discrimination, including based on SOGIGE, it also does not provide answers as to the complications that deter it or slow it down from adopting it as Article 17 Section 2 demand it. The cases above also prove that the political elite frequently exhibits biased treatment towards LGBT, bolstering ungrounded public misconception about sexual diversity. During the past year, when the State Party had been presented with inquiries regarding its steps toward promotion of equality for the LGBT, Azerbaijan adopted no laws or programmes in that direction. The right to non-discrimination and the right to health of the LGBT are currently grossly violated by the law enforcement, medical workers, and the general public in Azerbaijan. Civil society is discriminated against in its rights, too. Therefore, Azerbaijan is currently failing in fulfilling its obligations under Covenant before all of its population groups, especially the disadvantaged ones.

**Recommendations**

ECOM and Nafas LGBT Azerbaijan Alliance recommend that the Committee uses its authority over the Republic of Azerbaijan and inquires it to follow its international obligations under the Covenant, as well as its national obligations, before its people in a multi-dimensional fashion, and that the Republic of Azerbaijan swiftly undertakes respective activities and steps to secure the rule of law and equality of all people, the LGBT included, on all its territory. With this consideration in mind, ECOM asks the Committee on Economic, Social, and Cultural Rights to consider the following during its 68th Session:

* That the Republic of Azerbaijan should adopt all-inclusive anti-discrimination legislation, which would ban all forms of discrimination and would protect all people from any discrimination, including from discrimination based on the grounds of gender identity, gender discrimination, and sexual orientation.
* That the Republic of Azerbaijan takes contextual and factual steps to eradicate all homophobic language from its legislation, particularly the Criminal Code, and reprimands and punishes, as per the rule of law, all hate speech, whether it comes from regular individuals or political figures on its territory as part of its journey towards becoming a free, democratic, secular state.
* That the Republic of Azerbaijan harmonises its criminal law with the UNAIDS policy in terms of considering it to be a crime only if the perpetrator intentionally infects the victim with HIV and decriminalising the threat of such infection and infecting the victim unintentionally.
* That the Republic of Azerbaijan amends its Criminal Code by explicitly recognizing crimes based on sexual orientation and/or gender identity as an aggravating factor; and to ensure that such cases are properly investigated and that perpetrators are held accountable.
* That the Republic of Azerbaijan amends its Criminal Code to counter hate speech, including on social media, on the basis of sexual orientation and/or gender identity as grounds of deliberate humiliation of honor and dignity of a person.
* That the Republic of Azerbaijan revises its Criminal Code to indiscriminately punish the perpetrators of rape and other coercive sexual actions against the victims regardless of the victims’ sex, sexual orientation, and gender identity.
* That the Republic of Azerbaijan repeals any laws that create an option of discriminating against a person’s labor rights based on their SOGIGE and any other laws that consider non-heterosexuality a mental or other disorder.
* That the Republic of Azerbaijan develops and adopts a comprehensive sexual education curriculum in schools that is inclusive of the full spectrum of gender identity and sexual orientation, culturally responsive that provides evidence-based information about healthy relationships and non-stigmatized preventative methods for STIs.
* That the Republic of Azerbaijan revises its legislation governing the activity of non-governmental organizations and strikes out unnecessary provisions regarding registering all NGOs and all grants and straining reporting demands for such organizations as it impedes their ability to help their representational communities ensure their economic, social, and cultural rights.
* That the Republic of Azerbaijan adopts a non-discriminatory procedure of performing the legal gender recognition procedure regardless of whether the trans person had undergone gender reassignment surgery, and that Azerbaijan adopts a scientifically-based contemporary healthcare regulation for medical facilities to ensure the trans persons’ right to health in terms of transitioning to their desired gender.
* That the Republic of Azerbaijan endeavors to swiftly adopt national sensitization programmes for the law enforcement and medical workers that would raise the level of their education and awareness about sexual diversity and SOGIGE-based issues, as well as about proper nondiscrimination and equal treatment of all who turn to them for protection and during prevention activities.
* That the Republic of Azerbaijan ensures the universal right to health of all, including the LGBT, and, among others, by means of including men who have sex with men (MSM) and trans people into its national HIV-prevention legislation and strategies, to collect proper data on them and ensure that HIV-services are administered to them without discrimination.

1. Alternative Report by ECOM, 2019, [https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fICO%2fAZE%2f37053&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FAZE%2F37053&Lang=en) [↑](#footnote-ref-1)
2. Law on Ensuring Gender (Between Men and Women) Equality, [Об обеспечении гендерного (мужского и женского) равенстваscfwca.gov.az/.../Закон%20Азербайджанской%20Республики%2...](http://scfwca.gov.az/store/media/Закон%20Азербайджанской%20Республики%20Об%20обеспечении%20гендерного%20(мужского%20и%20женского)%20равенства.doc) [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
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