

**Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 33/9, 32/2 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **unlawful arrests and detention, torture and ill-treatment of persons perceived to be gay, transgender persons or persons involved in sex work**.

According to the information received:

From 14 to 16 September 2017, the Azeri police launched several raids in the capital city of Baku arresting and detaining several dozens of persons, mainly gay men and transgender women. These raids were followed by other more targeted arrests but at a lower scale. People were arrested on their way home from work, at home, at work or while standing in front of night clubs.

On 26 September 2017, the spokesperson of the Ministry of Internal Affairs, Ehsan Zahidov, explained in a media interview that the raids had been prompted by multiple complaints from local residents about disturbance caused by prostitution in the city centre. Mr. Zahidov also publicly justified the raids as a means to protect the population from people with sexually transmitted diseases. In an official communiqué published on 2 October 2017, the Ministry of Internal Affairs and the General Prosecutor Office confirmed that 83 persons “violating public order by offering intimate services in Baku city centre [...] and even insulting those who refuse” had been arrested and detained by the police between 15 and 30 September 2017 in order to “check whether they were carrying skin and venereal diseases” and with a view to “prevent the spread of infectious venereal diseases”.

In its communiqué dated 2 October 2017, the Ministry of Internal Affairs and the General Prosecutor Office indicated that administrative “protocols” were sent to the courts for hooliganism (article 510 of the Code of Administrative Offences) and for resistance to police order (article 535.1). It further informed that 56 persons were sentenced by the District Court of Baku to administrative detention, 18 people were imposed administrative fines, and 9 persons received a warning. Out of the 56, the Ministry and the Prosecutor’s Office indicated that 32 were then sent to a medical dispensary for medical treatment and 24, who were not diagnosed with venereal disease, were released from administrative detention.

The total number of persons arrested in this context varies depending on the sources. While some were quickly released, including through bribes, others were only released at the beginning of October. Persons arrested in this context were either detained in centres for administrative detention or, due to overcrowding, in police custody for periods extending the 48 hours permitted by Azeri law.

According to information at our disposal the length of administrative detention imposed by the court ranges from 10 to 30 days. Some sources report that at least 45 people under administrative detention appealed against the decision. Between 28 and 30 September the Baku Court of Appeal, which is the court of last resort in such procedures, heard 34 cases and dismissed all appeals. The 11 remaining cases were scheduled to be heard at the beginning of October. Only three out of the 45 persons mentioned above were sporadically working as sex workers while the others were able to indicate the name of their employers to the court. Two of them claimed that they were not gay but effeminate.

Requests by lawyers to dismiss police officers during court hearings were denied, despite allegations of abuses and ill-treatment in detention and potential risks of reprisals.

Some sources reported cases of abuse during arrest and in detention, such as beatings, threats, humiliations, and torture or other cruel, inhuman or degrading treatment, including electroshocks, forced medical examinations for sexually transmitted diseases, and forced shaving. According to information at our disposal, nearly all detainees who appeared before the Baku Court of Appeal at the end of September had their head forcibly shaved. In most cases, it seems that torture was aimed at obtaining confessions from the detainees, in particular names of their “client” or sexual partners, and at coercing them to sign self-incriminating testimonies with regard to the charges brought against them.

Some of the victims complained about torture, ill-treatment and forced confession during their hearing before the Baku Court of Appeal but none of them was

questioned by the judge on these abuses and in some instances such complaints were not even recorded in the court file. In addition, requests by lawyers to have the allegations of their client sent to the Prosecutor's Office were dismissed by the judge. On 2 October, the Ministry of Internal Affairs and the General Prosecutor Office said these claims were unfounded and did not reflect the reality.

In the interview dated 27 September, the spokesperson of the Ministry of Internal Affairs, Ehsan Zahidov, said that medical examinations had been carried out on detainees and revealed that several of them were HIV positive and had other sexually transmitted diseases and were therefore being isolated from society. According to the spokesperson, the persons arrested were tested by the Dispensary of Venereal Diseases, although other sources claim that this institution is not equipped to undertake HIV tests. The National Centre to fight against AIDS denied having tested any of the persons arrested. The Ministry of Internal Affairs and the General Prosecutor Office confirmed in the communiqué released on 2 October that several of the detainees were HIV positive or diagnosed with other sexually transmitted diseases and indicated that "urgent measures [were] being taken with health authorities to prevent the spread of illnesses".

Some sources also report a dozen cases of unrecorded detention lasting from 2 to 9 days at the Ministry of Internal Affairs's Organized Crime Department (OCD) of transgender women mostly, but also persons perceived to be gay or believed to be involved in prostitution. Persons detained at the Organized Crime Department reported that they had been ill-treated and tortured by officers with a view to obtaining the names of sex partners having an influential position mostly in the business sector. It is believed that these persons were then blackmailed and asked to pay a bribe to keep this information secret.

According to information at our disposal, cases of arrests and intimidation against gay and transgender people have already taken place in the past in Azerbaijan, but never on such a scale and in such an organised manner.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern about these allegations of unlawful and incommunicado detention, torture and ill-treatment of individuals on the basis of their actual or perceived sexual orientation and gender identity or involvement in prostitution in Baku, Azerbaijan. We are also concerned at the allegations of false charges of "hooliganism" or "resistance to police order" brought against those arrested and the harsh sentences of administrative detention imposed by the court which were reportedly based on forced self-incriminating testimonies obtained under duress. In addition, we are very concerned about the allegations of forced medical examinations and the public disclosure of some of the detainees' HIV-positive status and infection by sexually transmitted

diseases, which if confirmed, may constitute a breach of the right to privacy, in addition to the absolute prohibition of torture.

These allegations appear to be in contravention of the rights of every individual to non-discrimination, liberty and security of person, and physical integrity as laid down, inter alia, in articles 2, 3, 5, 8, 9, 10 and 12 of the Universal Declaration of Human Rights (UDHR) and articles 2, 7, 9, 10, 14, 17, 18, and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which the State is party since 13 August 1992. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Azerbaijan is a party since 16 August 1996. Article 12 of CAT specifically requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed.

We would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished"

Article 2 of the International Covenant on Economic, Social and Cultural Rights – acceded by your country on 13 August - requires States to guarantee that all rights enunciated in the Covenant will be exercised without discrimination of any kind. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights provides that the right to health is closely related to, and dependent upon, the realization of other human rights including non-discrimination, privacy, and the right to information. The Committee reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of national or social origin, sexual orientation, health status (including HIV/AIDS), and civil, political, social or other status (E/C.12/2000/4, para. 3 and 18).

The Human Rights Committee also found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3). In 2016, the Human Rights Committee expressed concern about impunity in Azerbaijan for reported acts of discrimination and violence against persons on the basis of their sexual orientation and gender identity and of extortion of money from lesbian, gay, bisexual and

transgender persons in some police stations in return for not disclosing their sexual orientation or gender identity, among others. The Committee recommended that adequate and effective protection against all forms of discrimination, hate speech or violence committed on the basis of sexual orientation or gender identity is afforded to persons both in law and in practice, that such cases are properly investigated and that perpetrators are held accountable. It also recommended that Azerbaijan ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent and impartial body, that perpetrators are prosecuted and, if convicted, are punished with adequate sanctions (CCPR/C/AZE/CO/4, para. 8, 9, 19 and 20).

We would like to draw the attention of your Excellency's Government to article 15 of the Convention against Torture which provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." We would also like to recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment

In 2015 the Committee against Torture expressed concerns about numerous and consistent allegations that persons deprived of their liberty in Azerbaijan had been subjected to torture or ill-treatment for the purpose of compelling a confession, and that such confessions have subsequently been admitted as evidence in court. It recommended Azerbaijan to ensure that, in practice, statements made as a result of torture may not be invoked as evidence in any proceedings, except against the person accused of torture (CAT/C/AZE/CO/4, para. 18-19).

We would like to draw the attention of your Excellency's Government to article 13 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which requires that "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given in addition to paragraph 14 of General Comment No. 20 of the Human Rights Committee, which provides that, "Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective".

The Human Rights Council, through resolutions 17/19 and 27/32, has expressed grave concern at acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity. On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasized that States have obligations to, inter alia, protect individuals from violence, torture and discrimination on the basis of their sexual orientation, including conducting prompt, thorough investigations of incidents of hate-motivated violence against and torture of LGBT persons, holding perpetrators to account, and providing redress to victims; ensure that police and prison officers are trained to protect the safety of LGBT detainees, and holding to account State officials involved or complicit in incidents of violence (A/HRC/29/23, para. 78).

We would like to draw the attention of your Excellency's Government to the former Special Rapporteur on Torture's 2009 report to the Human Rights Council, which states that "If testing is indispensable, the way in which it is undertaken needs to be least intrusive and respect the dignity of the person subjected to the testing. [...] If forcible testing is done on a discriminatory basis without respecting consent and necessity requirements, it may constitute degrading treatment, especially in a detention setting" (A/HRC/10/44, paras. 64 and 65).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the seriousness of the matter, we would appreciate a response on the steps taken by your Excellency's Government to respond to these allegations and to effectively protect the rights of persons perceived to be gay and transgender or believed to be involved in prostitution in the country, in compliance with Azerbaijan's international legal obligations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, we are seeking from your Excellency's Government the following clarifications:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the arrest, detention, and forced medical examinations of the individuals and how these measures are compatible with Azerbaijan's international human rights obligations.

3. Please provide the details, and where available the results, of any investigation carried out in relation to the allegations of unlawful arrests, detention, torture or ill-treatment, and forced medical examinations of sex workers, men and transgender persons on the basis of their actual or perceived sexual orientation or gender identity. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that alleged perpetrator(s) have been identified, please provide full details of any prosecutions undertaken so far.
5. Please provide information about any measures taken to ensure the protection of the rights to physical integrity, liberty, security and privacy of persons perceived to be gay or transgender in Azerbaijan. If no specific protection measures have been granted, please explain why.
6. Please indicate what measures have been taken to combat discrimination and violence against persons based on their sexual orientation and gender identity; to prevent, investigate and prosecute violence against them; and to provide effective remedy, protection and support to victims.
7. Please provide information on the measures taken to implement the recommendations related to sexual orientation and gender identity made by the international human rights mechanisms.

While awaiting a reply, we respectfully urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of them.

Given the seriousness of the allegation, we intend to publicly express our concerns in the near future as, in our view, the information in our possession appears to be sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the Government authorities at all levels and the wider public should be alerted to the potential implications of these allegations. Our public statement will indicate that we have sought your Excellency's Government's information to clarify the issue in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the cases through its regular procedure in order to render an

opinion as to whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

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