

# PROSPECTIVE STRATEGIC LITIGATION IN AZERBAIJAN

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An Exploration of Strategic Litigation Opportunities to Improve  
the Human Rights Situation in Azerbaijan



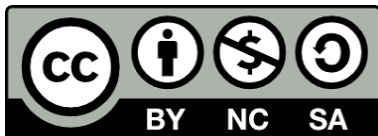
**FREEDOM NOW**

1750 K Street  
Washington, D.C. 20006  
[www.freedom-now.org](http://www.freedom-now.org)

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Freedom Now  
7<sup>th</sup> Floor  
1750 K Street  
Washington, D.C. 20006  
(202) 223-3733  
info@freedom0now.org

**[www.freedom-now.org](http://www.freedom-now.org)**

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# INTRODUCTION TO STRATEGIC LITIGATION IN AZERBAIJAN

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Azerbaijan has notable human rights challenges across several different aspects of society. A comprehensive approach to addressing systemic challenges in Azerbaijan will attempt to leverage all available advocacy avenues to promote positive human rights change. In this context, utilizing courts and the legal system—both domestic and international—can be a significant driver for the implementation of human rights standards and norms in a country. The present report identifies three high-impact issue areas where strategic casework, in parallel with issue advocacy, can bring about positive change in Azerbaijan. The three human rights issue areas identified as ripe for strategic litigation are domestic violence against women, LGBTI violence and discrimination, and workplace sexual harassment.

The themes and information for this report were collected and developed through a series of interviews and consultations, legal research of relevant domestic and international legal frameworks, and social research into the context surrounding the identified issues. Interviewees were all current or former lawyers based in Azerbaijan who have practiced either domestic or international law and who currently work on addressing human rights issues in the country. Over a dozen lawyers were interviewed for this report. Interviewees are not named individually below to protect their anonymity. Throughout the report, the lawyers that we interviewed will be collectively referred to as “interviewees.”

## What is Strategic Litigation?

Strategic litigation (also called “impact litigation”) has traditionally been the practice of litigating individual legal cases with aim of bringing about broader change in government practice or policies beyond the situation or circumstances raised in the individual cases. For example, in one of the most prominent cases of strategic litigation in the United States, *Brown v. Board of Education*, a lawsuit brought on behalf

20 children against their city’s school board successfully ended the practice of racial segregation in schooling across the entire United States.<sup>1</sup> Over the years, activists and human rights defenders have recognized that legal cases can be a significant driver of *social* reform, in terms of raising awareness and changing attitudes among groups of people. For this reason, the term “strategic litigation” has come to

refer to the use of lawsuits to bring about social and/or legal change.<sup>2</sup> Accordingly, this report will consider litigation as “strategic” even if the

ultimate or primary objective of the legal action is not achieving legal redress and reform, but rather to achieve broader social change.

## General Challenges to Strategic Litigation in Azerbaijan

There are several aspects of the Azerbaijani legal system that place antecedent limits on the potential effectiveness of any strategic litigation in the country. The three most notable, as identified by interviewees, are the repeated disbarment of human rights lawyers, the lack of independence of the judiciary, and the fact that prior court judgements do not serve as a source of law in the Azerbaijani legal system.

Access to lawyers and legal assistance are necessary elements of human rights litigation, including strategic litigation. Moreover, adequate access to legal representation cannot be ensured without a sufficient number of competent attorneys to meet the legal services needs of a community or country. However, Azerbaijan has the lowest number of lawyers per capita among Council of Europe Countries.<sup>3</sup> In addition to the low number of qualified lawyers compared to its peers, additional dynamics in Azerbaijan discourage lawyers from taking on strategic cases, especially those pertaining to controversial topics. Since the enactment of a 2017 law restricting the right to practice law to members of the bar association, the Azerbaijani bar association has used its disciplinary system and disbarment procedure as a form of reprisal against lawyers working on human rights or politically sensitive cases.<sup>4</sup> The bar association has also been found to refuse to grant licenses to

new lawyers who have expressed an interest in or have a history of working on human rights issues.<sup>5</sup> Furthermore, the openness with which retaliatory action is taken against lawyers working on human rights cases has had a chilling effect on other lawyers who might be interested in also taking on these cases. Because numerous prominent human rights lawyers have been disbarred as the result of retaliatory disciplinary proceedings, and because many new lawyers have been refused a license, the number of licensed attorneys able to address human rights issues in the country is extremely small. The dearth of lawyers willing and competent to work on human rights issues significantly curtails the number of legal cases on human rights issues brought before Azerbaijani courts. As a result of fewer cases, there are fewer opportunities to use legal cases to achieve strategic goals.

The lack of independence within the Azerbaijani judiciary also poses challenges for strategic litigation. Despite recent reforms, the judiciary remains dependent on the executive branch and has been found to be manipulated by the executive to punish dissent and opposition.<sup>6</sup> Furthermore, the court system has been complicit in the Azerbaijani Bar Association’s disbarment of prominent human rights and opposition lawyers, upholding the removal of their licenses.<sup>7</sup> Several interviewees reported that the lack of

independence of the judiciary poses a challenge for litigation on human rights issues, as judges are often resistant to interpreting and applying the law in ways that hold institutions accountable for human rights violations.

Another barrier to strategic litigation is the fact that court decisions in Azerbaijan are not a source of law (as such decisions would be in common law jurisdictions like the United States or the United Kingdom). As a result, judicial decisions from courts cannot create binding norms or rules that would apply across the entire

country. In other words, there is no legal requirement that courts give legal deference to prior court decisions. According to interviewees, the lack of weight given by courts to prior judicial decisions limits the ability to use individual legal cases to create new norms or practices within the government. The only court decisions that have precedential value (*i.e.* decisions that are a source of law) are decisions of the Azerbaijan Constitutional Court.<sup>8</sup> Other courts, such as the Azerbaijan Supreme Court, must rely only on existing statutory law and prior decisions of the Constitutional Court.

## How We Identified the Following Three Issue Areas

As noted above, the three issue areas identified and analyzed in this report are domestic violence against women, LGBTI violence and discrimination, and workplace sexual harassment. These topics were identified through consultation with local lawyers in Azerbaijan as being among social issues that are in most urgent need of improvement and ripe for strategic litigation. The ripeness of an issue was assessed by several factors: (1) whether the issue has been identified by civil society as an important issue, affecting numerous individuals and society in general; (2) the likelihood that both domestic and international litigation could contribute to improving respect for human rights; (3) whether the issue was underserved from a litigation perspective; and (4) whether there was growing social support for change.

Our conversations with interviewees revealed numerous pressing human rights issues, including curtailment of free expression, torture, arbitrary detention, a biased judiciary, and the repeated disbarment of human rights lawyers. However, many of these issues are currently receiving significant attention in terms of legal advocacy, both at the domestic and international level. Accordingly, interviewees reported that more litigation is not required on political rights issues from a strategic point of view. Moreover, several interviewees reported that the executive control over the judiciary functionally acts as a bar to successful litigation on most political rights issues. Of the interviewees that believe there are issues that could see improvement through domestic litigation in Azerbaijan, they commonly raised domestic violence, anti-LGBTI violence, and workplace rights as the areas where litigation may be most useful.

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# DOMESTIC VIOLENCE AGAINST WOMEN

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## Background on Domestic Violence in Azerbaijan

According to the Special Rapporteur on Violence Against Women, violence against women is widespread in Azerbaijan and is underpinned by the “persistence of patriarchal social norms, deeply rooted gender stereotypes and misconceptions as well as customary practices that are harmful to women.”<sup>9</sup> Statistics show that domestic violence against women is of particular concern. It is estimated that 43% of women in Azerbaijan experience domestic violence at least once in their life, and in 29% of cases, the abuser was the victim’s spouse.<sup>10</sup> In 2017, of the 1,031 reported cases of domestic violence in Azerbaijan, 78% were reported by women.<sup>11</sup> In 2016, a total of 110 women were murdered; forty-eight of whom were murdered by their husbands, and 35 were murdered by a close male relative.<sup>12</sup> Of the 97 attempts made on women’s lives in 2016, 56 were by husbands or former husbands, and 28 were by a close male relative.<sup>13</sup>

Furthermore, suicide rates among women are on the rise in Azerbaijan, and there is evidence that many suicides are a result of women being subjected to continuous violence.<sup>14</sup>

Women in Azerbaijan also face great difficulty in escaping domestic violence for a myriad of reasons. A 2008 survey revealed that less than one percent of abused women sought help from public institutions.<sup>15</sup> Their reasons included: the fear of retaliation and escalation of violence, shame and fear of impact on the family’s reputation, not being believed, being blamed, the belief that official reporting would not help (as reflected in the experiences of other women), the fear that it would end the relationship, and the fear of losing their children.<sup>16</sup> Despite the legal protections that exist in the constitution and other legal texts, these laws are not consistently enforced.

# Legal Framework on Domestic Violence

## Domestic Framework

The Constitution of Azerbaijan does not specifically address violence against women or domestic violence, but it contains protections relevant to these crimes. Article 17 states that family is “a basic element of society under special protection of the states” and obligates parents to “take care of their children and their education.”<sup>17</sup> Chapter III of the Constitution also guarantees a series of other rights that may apply to cases of violence against women and domestic violence including, *inter alia*: the right to life, the right to freedom of movement, the right to ownership of property, the right to live in safety, the right to personal immunity and confidentiality concerning personal and family life, the right to the sanctity of the home, the right to marriage, and the guarantee of the protection of rights and liberties by the court.<sup>18</sup>

In 2010, Azerbaijan adopted the Law on the Prevention of Domestic Violence. The purpose of this law is to prevent domestic violence, to provide assistance and protection to victims, and to end the conditions that give rise to domestic violence.<sup>19</sup> The law defines domestic violence as “a deliberate infliction of physical and moral damage by persons to others, envisaged under this law, caused by abuse of close relative relations, current or past cohabitations.”<sup>20</sup> The law distinguishes between psychological, physical, and sexual violence.<sup>21</sup> Under the law, complaints of domestic violence are handled by executive authorities or police,

depending on whether there were committed or premeditated crimes or the complaint contains any *corpus delicti*.<sup>22</sup>

Other Relevant laws applicable to domestic violence and violence against women include:

- **Law on State Protection of Persons Taking Part in Criminal Procedure:** Victims of domestic violence may be classified as “protected persons” according to the definition set forth in Article 3.2 of this law. As such, they would be entitled to a host of security measures, as enumerated in Article 7 of the law.
- **The Family Code:** Article 64.0.4 states that parents can be deprived of parental rights if acts related to domestic violence are committed against their children.
- **Law on Gender Equality:** This law defines and prohibits, *inter alia*, gender discrimination and sexual harassment. It also imposes a responsibility on the State for ensuring gender equality.

Despite the above legislation, Azerbaijan’s laws do not expressly criminalize domestic violence.<sup>23</sup> Domestic violence (of a non-sexual nature) must be charged under other provisions of the criminal law, such as assault or homicide.<sup>24</sup> Prosecution “can only be brought if there is evidence of physical violence.”<sup>25</sup> If there are only light injuries, [the case] will not be considered.”<sup>26</sup> Because domestic violence and violence against women includes non-physical injuries, the law fails to protect victims of lower-

level and non-physical violence, as well as victims who experience physical violence but are unable to document the physical violence.<sup>27</sup> Furthermore, the Criminal Procedural Code does

not provide any special safeguards or proceedings for domestic-violence related crimes.<sup>28</sup>

## International Framework

The government of Azerbaijan has committed to numerous international human rights instruments that protect the rights of women and girls, including the Convention on the Elimination of All Forms of Violence Against Women (CEDAW). Though most international treaties and conventions do not specifically mention domestic violence or violence against women, they have been interpreted to cover situations of domestic violence and violence against women. The UN Declaration of Human Rights, the International Covenant on Civil and Political Rights; the International Covenant on Social, Economic, and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention Against Torture all contain relevant provisions relating to the protection of women. These provisions include the right to life, liberty, and security of person, the right to equality and freedom from discrimination, and the right to be free from torture.

The European Court of Human Rights has developed an extensive body of precedent-setting jurisprudence on the issues of domestic violence and violence against women. Violence against women and domestic violence are interconnected issues. However, because

domestic violence affects men, women, and children alike, the Court's analysis of these issues differs slightly. In domestic violence cases, the perpetrator of a violent act is a member of the victim's family or household. Thus, the Court's analysis turns on the State's responsibility to prevent, protect, or prosecute that act of violence. Domestic violence cases typically raise violations under the European Convention on Human Rights (ECHR), including the right to life under Article 2, the prohibition of torture and inhuman or degrading treatment under Article 3, and the right to respect for private and family life and correspondence under Article 8.

With respect to violence against women, the focus is not only on whether the State failed to prevent, protect, or prosecute the act of violence but often includes questions about *why* they failed to do so. The perpetrators in these cases also span a variety of actors and are not limited to members of the victim's household or family. In *Opuz v. Turkey*, the European Court of Human Rights recognized for the first time that violence against women is a form of discrimination in violation of Article 14 of the ECHR.<sup>29</sup> In *Opuz*, the Court also found that Turkey, by failing to prosecute domestic



violence, had violated Articles 2 and 3, noting that the State's failure to protect women "breaches their right to equal protection of the law and that this failure does not need to be intentional."<sup>30</sup>

The European Court's jurisprudence also imposes positive obligations on States to protect women, including to "maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals."<sup>31</sup> This requires States to put in place "effective criminal-law provisions to deter the commission of offenses against the person backed up by law-enforcement machinery for the prevention, suppression, and punishment of breaches of such provisions."<sup>32</sup> In certain circumstances, States may also have a positive obligation "to take preventive operational

measures to protect an individual whose life is at risk from the criminal acts of another individual."<sup>33</sup> Thus, States must establish laws and systems that specifically protect women from violence and discrimination.

Recognizing the need for greater protection of women's rights, the Council of Europe (COE) has also created the "Convention on Preventing and Combating Violence against Women and Domestic Violence," known as the Istanbul Convention. The Istanbul Convention strives to prevent, prosecute, and eliminate violence against women and domestic violence. Azerbaijan and Russia are the only (COE) member countries to neither sign nor ratify the Convention.<sup>34</sup> Despite this, the Convention still functions as a strong persuasive norm.<sup>35</sup>

## Challenges to Domestic Violence Litigation

Among interviewees for this report, there is strong consensus that domestic violence is a crucial issue facing women in Azerbaijan. However, there are social and institutional challenges that must be addressed and accounted for when attempting to develop a legal strategy aimed at improving the Azerbaijani government's practice with respect to addressing domestic violence.

### Social Challenges

According to interviewees, the primary challenge to domestic violence litigation is the prevalence of patriarchal attitudes and gender stereotyping. This sentiment has been echoed by the Special Rapporteur on Violence Against Women, who has found that these attitudes severely affect the reporting of domestic violence and implementation of the laws.<sup>36</sup> In Azerbaijan,

domestic violence can seem normalized, with many people believing that it is acceptable in certain circumstances.<sup>37</sup> Others simply view domestic violence as a private family matter.<sup>38</sup> Due to these social circumstances, women rarely report domestic violence to authorities.<sup>39</sup> Judges and other authorities often use inappropriate language when engaging with victims of

domestic violence.<sup>40</sup> Furthermore, few women work in the criminal justice sector, contributing to a lack of understanding and mishandling of

cases.<sup>41</sup> These social attitudes must be accounted for and overcome when pursuing legal action on issues of domestic violence in Azerbaijan.

## Institutional Challenges

As noted above in a report by the Special Rapporteur Violence Against Women, a very small percentage of women in Azerbaijan actually pursue legal action against abusers.<sup>42</sup> The reasons provided by the Special Rapporteur in 2013 to explain why so few women come forward map closely with the reasons provided by interviewees. Interviewees report that many women do not come forward out of fear of retaliation by their abuser, some believe that they will bring shame to themselves or their family, some fear losing economic stability, and some also believe that bringing allegations may lead to the removal of their children. Additionally, interviewees noted that many women are unaware of the possible legal protections that are available to them under Azerbaijani law.

Because few women decide to pursue legal action, there are very few cases that could be advanced from a strategic litigation perspective. Under Azerbaijani law, a prosecutor may only charge alleged perpetrators of domestic violence with assault (assault being the only applicable crime for acts of non-lethal domestic violence) after a complaint has been filed by the alleged victim.<sup>43</sup> Therefore, without victim support for State action on criminal charges, prosecutors cannot enforce criminal law against perpetrators. Only in instances where the victim is murdered or where the victim is pregnant can the prosecution pursue criminal action without a

complaint.<sup>44</sup> The restriction on prosecutorial power partially explains the Special Rapporteur's finding that rates of prosecution and convictions for acts of violence against women, including domestic violence, are low.<sup>45</sup>

Furthermore, when women attempt to report instances of physical domestic violence to the police, some police act as a barrier to registering a complaint. Some interviewees have reported that women who attempt to file complaints without the assistance of a lawyer will face pressure from police to not submit the complaint. In some instances, police will even insult or accuse women of bringing shame to their families for complaining about these issues. Officers will insist that women resolve the matter privately with their husband rather than through legal process.

Moreover, when a complaint is filed, the court system—including both prosecutor and judge—attempt to mediate between the victim and perpetrator, pressuring the victim to resolve the issue outside of criminal proceedings. Under Azerbaijani law, authorities are encouraged to use reconciliation to terminate proceedings.<sup>46</sup> The Domestic Violence Law asks authorities to “assist in the normalization of relations between parties and resumption of family affairs.”<sup>47</sup> This applies to criminal as well as civil proceedings, allowing prosecution to be dropped if the victim withdraws their complaint. This provision

“favors family unity instead of considering the rights of the individual, and thus ignores the notions of protection of victims and accountability of perpetrators.”<sup>48</sup> Given the unequal power dynamics between victims and perpetrators, as well as pressure from authorities to reconcile, interviewees report that virtually no cases of domestic violence are criminally

prosecuted under the crime of assault. It is only in instances where the victim has been murdered that a homicide case is prosecuted.

The above institutional challenges must be accounted for and overcome when pursuing legal action on issues of domestic violence in Azerbaijan.

## Opportunities for Targeted Litigation on Domestic Violence Against Women

In light of the legal and social landscape described above, we have identified strategic litigation opportunities for legal cases concerning domestic violence against women at both the domestic and international level.

At the domestic level, a legal case intended to bring accountability for victims of violence would require criminal prosecution, which is the primary legal mechanism for prevention of domestic violence in Azerbaijan. Strategic litigation in this context would involve providing legal support for victims throughout the process of filing a complaint and pressing charges against perpetrators. Because domestic law in Azerbaijan prohibits domestic violence, there is sound legal basis for criminal prosecution of perpetrators. The primary obstacle to domestic prosecution involves the biases of the criminal justice institutions. As a result, legal representation for victims is crucial to ensure that the victim’s legal rights are vindicated.

Because Azerbaijani courts lack the legal force to order systemic change of government practice, domestic casework alone is not enough to bring about broader change. However, strategic cases can help instigate broader advocacy movements and serve as a bellwether for societal change.

With this consideration in mind, the strategic aspect of domestic litigation is to leverage the domestic court system to raise awareness of issues of non-fatal domestic violence in the country. As described above, awareness of both domestic and international protections against domestic violence is low among victims, and this lack of awareness partly contributes to the lack of State action on the issue. Accordingly, a high-profile legal case concerning domestic violence, if it receives a significant amount of media attention, would serve to raise awareness of State protections among victims as well as perpetrators. Furthermore, the right case may highlight deficiencies in the government’s response to

cases of non-fatal domestic violence and could increase political pressure to reform how domestic violence is handled. An ideal case would be one that serves as a touchstone or reference point for how the courts can be used to protect the rights of domestic violence victims' rights.

As we have seen in other contemporary social movements related to women's rights, such as the #MeToo movement, highlighting one prominent case of violence against women can encourage and empower other women to come forward and do the same, despite the social and systemic challenges that act as a barrier to prosecution. In Azerbaijan, there has been mounting pressure from activists to raise awareness around issues of domestic violence.<sup>49</sup> A legal case concerning this issue could serve to complement and amplify this growing movement. Thus, even if a legal case is lost or overturned on appeal, the knowledge and awareness that is shared as the result of advocacy surrounding the case may have a long-term impact on the society.

At the international level, there is also opportunity to bring strategic legal cases with the aim of challenging government practices with respect to domestic violence. To date, there has been virtually no international litigation on the issues of domestic violence and violence against women in Azerbaijan. Despite Azerbaijan's failure to enforce the legal frameworks to protect women, no cases have been brought before the

ECtHR, and no admissible complaints have been made to the Committee on the Elimination of All Forms of Discrimination Against Women.<sup>50</sup> Given the government's failure to uphold its international obligations to effectively develop and implement legal frameworks that prevent, protect, and prosecute these crimes, there is significant scope to raise the lack of government action on these issues before international bodies.

In this regard, the European Court of Human Rights and UN treaty bodies, such as the UN Human Rights Committee or Committee on the Elimination of Discrimination against Women, are viable forums to seek international accountability on the issue of domestic violence. The law applied by these institutions requires States to prevent and hold accountable perpetrators of domestic violence. Judgments from the ECtHR may be more likely to be implemented by Azerbaijani courts, owing to its valued membership in the Council of Europe; consequently bringing a case to the ECtHR may be preferred over UN treaty bodies. The strategic aspect of international litigation can have similar effects as domestic litigation in terms of awareness raising and in terms of changing attitudes. Because domestic litigation is a prerequisite to bringing international litigation, the international case may be used to amplify any ongoing advocacy on the issues. International litigation has the added benefit of an increased chance of leading to systemic legal change within Azerbaijan.

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# LGBTI DISCRIMINATION & VIOLENCE

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## Background on LGBTI Discrimination in Azerbaijan

In 2021, the Rainbow Index—ILGA Europe’s annual benchmarking tool for the human rights situation of LGBTI individuals in Europe—ranked Azerbaijan last of the 49 countries.<sup>51</sup> Unfortunately, there is a lack of official statistics on violence and discrimination against LGBTI individuals in Azerbaijan. As a result of the societal taboo on being an LGBTI individual, many in Azerbaijan feel pressure not to identify as such. Similarly, the attitudes of society at large—including the family, the police, healthcare workers, and the government—often lead to harassment, violence, and other abuse, leading to a lack of reporting and consequently a lack of reliable statistics.<sup>52</sup> The last time Azerbaijan reported hate crime data to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) was 2011.<sup>53</sup> Since then, ODIHR has only accumulated data from sources outside the government, resulting in a finding of six different incidents in 2019 of hate crime against LGBTI individuals.<sup>54</sup>

Following the ODIHR data, the most data recorded was research conducted by Gender and Development and “LGBT Ganja” Initiative Group for 2016 to 2017.<sup>55</sup> This revealed 77% of the 266 LGBTI respondents had experienced

physical violence at some point, 116 from police and 46 from family members. All 266 individuals said they felt discrimination and psychological pressure because of their sexual orientation or gender identity (167 by police, 121 by family members, and 145 by third parties). In 2016, the European Commission against Racism and Intolerance (ECRI) reported that according to a survey in 2014, 62% of respondents in Azerbaijan had negative views of LGBTI individuals, 52% believed homosexuality is an innate disease, 64% said they would not want to work with an LGBTI individual, and 60% replied that if they were an employer, they would prefer not to hire an LGBTI person.<sup>56</sup> Though the available statistics are few and far between, they do reflect continued negative treatment and attitudes towards LGBTI persons.

Further, it has been reported that some employers terminate employees when sexual orientation or gender identity come to light.<sup>57</sup> It was reported by a local NGO that LGBTI individuals suffered incidents of brutality at the hands of police, with those responsible not being investigated or disciplined.<sup>58</sup> It was also reported that men who were either known or suspected of being gay during a medical examination for

military service, were at times subject to a rectal exam and typically found to be “mentally ill” and thus unqualified for military service.<sup>59</sup>

In 2016, the UN Human Rights Committee in their fourth periodic report of Azerbaijan expressed concern regarding the lack

of anti-discrimination legislation based on sexual orientation or gender identity.<sup>60</sup> The Committee also expressed concern about violence, hostility on social media, and violations of freedoms of expression and peaceful assembly towards LGBTI individuals.<sup>61</sup>

## Legal Framework on LGBTI Rights

### Domestic Framework

The Constitution of Azerbaijan guarantees the right to equality under Article 25, which states “[t]he State shall guarantee the right of equality of rights and freedoms to everyone . . .” Although Article 25 mentions sex as a protected class, it does not explicitly guarantee the right to equality on the basis of sexual orientation or gender identity. Furthermore, Article 34 of the Constitution provides for the right to marriage, but does not legally recognize same-sex marriages as Article 2 of the Family Code defines marriage in Azerbaijan as only between a man and a woman.<sup>62</sup>

There are no laws against discrimination on the basis of gender identity or sexual orientation in Azerbaijan.<sup>63</sup> In 2000, same-sex relations, specifically between men, were decriminalized.<sup>64</sup> Since then, Azerbaijan enacted the Law on Enforcement of Gender Equality in

2006.<sup>65</sup> Although the Law on Gender Equality purportedly serves to “eliminat[e] all forms of gender discrimination, creating equal opportunities for male and female participation in political, economic, social, cultural and other fields of social life,”<sup>66</sup> it does not explicitly reference gender identity, sexual orientation, or violence against LGBTI individuals.<sup>67</sup>

Regarding gender identification, Azerbaijan issues an identification document to every citizen.<sup>68</sup> Family name, first name, middle name, marital status, military obligation of citizen, or inaccurate information can all be changed on the document.<sup>69</sup> However, the marker for sex or gender cannot be changed.<sup>70</sup> As such, individuals can change their name to match their gender identity, however, they are unable to change their gender.

## International Framework

The government of Azerbaijan has committed to multiple international human rights instruments that protect the rights of LGBTI individuals. Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to non-discrimination.<sup>71</sup> The UN Human Rights Committee, the treaty-body responsible for interpretation of the ICCPR, has found that the right to non-discrimination in articles 2 and 26 prohibits discrimination on the basis of an individual's sexual orientation.<sup>72</sup> Although the Human Rights Committee has not explicitly extended articles 2 and 26 to prohibit discrimination on the basis of gender identity, the Committee's analysis is trending in that direction. The Committee has, for example, placed emphasis on the need to protect transgender communities from violence, torture and harassment<sup>73</sup> and to recognize the right of transgender people to change their gender by permitting the issuing of new birth certificates.<sup>74</sup>

Furthermore, the International Covenant on Economic, Social and Cultural Rights prohibits discrimination under Article 2, which the UN Committee on Economic Social and Cultural Rights has interpreted to prohibit discrimination on the basis of sexual orientation, gender identity, and sex characteristics.<sup>75</sup> The treaty bodies responsible for monitoring the Convention on the Elimination of All Forms of Discrimination Against Women and the

Convention on the Rights of the Child have both made comments suggesting State must respect sexual orientation and gender identity in the application of their treaties.

The right to non-discrimination is also protected under Article 14 of the European Convention on Human Rights.<sup>76</sup> Furthermore, Article 8 of the European Convention gives the right to a private life.<sup>77</sup> The European Court of Human Rights in *Goodwin v. UK* held denying a post-operative petition of a transgender individual for correcting her birth certificate to reflect her new gender violated the ECHR's Article 8 and Article 12 rights.<sup>78</sup> In *X and Y v. Romania*, the Court held that it was a violation of Article 8 that Romania lacked a clear and foreseeable legal framework for legal gender recognition for transgender individuals.<sup>79</sup> In *Van Kück v. Germany*, the Court the German government failing to provide a means of redress for the transition of a transgender individual post-operation after a private insurance company refused to cover the medical costs violated ECHR articles 8 and 14.<sup>80</sup> The Court in *Y.Y. v. Turkey* recognized gender identity and sexual orientation as part of the most essential elements of self-determination and a person's identity.<sup>81</sup> Additionally, in *O.M. v. Hungary*, the Court found that States have an obligation to protect sexual minorities from harm by third parties under the Convention.<sup>82</sup>

## Challenges for Targeted Litigation on LGBTI Rights

The interviewees for this report emphasized the importance of greater legal protection for LGBTI individuals in Azerbaijan. However, there are significant challenges that must be accounted for when attempting to develop a legal strategy aimed at improving the Azerbaijani government's practice with respect to addressing domestic violence.

### Social Challenges

There is notable social and cultural stigma surrounding LGBTI issues in Azerbaijan. Interviewees reported that cultural biases are severe towards LGBTI individuals. Anti-LGBTI sentiment is common, and is often used to justify police and other State action against these groups.<sup>83</sup> Interviewees further stated that social and cultural biases have a significant impact on any attempt to litigate cases concerning LGBTI

rights and that many victims are unwilling to come forward with their cases, as they fear retribution. This finding was echoed by the US State Department, in its annual report on human rights, which found that most LGBTI individuals who experience discrimination or mistreatment do not file complaints concerning violations of their rights.<sup>84</sup>

### Institutional Challenges

Many of the institutional challenges identified by interviewees result from the pervasiveness of negative attitudes towards LGBTI individuals. A first institutional barrier identified by interviewees is the legal profession and victims' ability to obtain legal representation. Of the few human rights lawyers still licensed to practice in Azerbaijan, some will

refuse to represent LGBTI individuals or will only do so anonymously for fear of reputational harm. One interviewee estimated that there are less than five licensed lawyers in Azerbaijan willing to represent LGBTI individuals. Without the existence of lawyers willing to take on cases, the opportunity for litigation is limited, regardless of the number of viable cases.

Other institutional barriers, within the Azerbaijani police and court systems, are similar to those that exist in the domestic violence context. Interviewees report that when victims seek to report instances of violence or mistreatment, police refuse to register and investigate complaints, and in many instances, police have been found to engage in harassment of LGBTI individuals seeking to file complaints.

As noted above, local NGOs have reported that LGBTI individuals suffered incidents of brutality at the hands of police, with those responsible not being investigated or disciplined.<sup>85</sup> Interviewees also noted that when complaints are registered by police, prosecutors fail to bring charges against those involved in violence or discriminatory mistreatment.



## Opportunities for Targeted Litigation on LGBTI Rights

With the above considerations in mind, we have identified two prospective legal issues ripe for litigation in Azerbaijan.

### Violence Against LGBTI Persons

The first proposed legal issue concerns violence against LGBTI individuals, with focus on preventing and ensuring accountability for perpetrators. Legal cases concerning violence against LGBTI individuals may be pursued at both the domestic and international level, and these cases create the opportunity to shape social attitudes towards LGBTI individuals.

At the domestic level, a legal case seeking accountability for victims of violence would require criminal prosecution. Strategic litigation in this context would involve providing legal support for victims throughout the process of filing a complaint and pressing charges against perpetrators. Because the domestic law in Azerbaijan prohibits violence regardless of the victim's gender or sexual orientation, there is a sound legal basis for criminal prosecution of perpetrators. A significant obstacle to domestic prosecution is the existence of anti-LGBTI biases among actors in the criminal justice institutions. As a result, legal representation for victims is crucial to ensure that the victim's legal rights are vindicated.

The strategic aspect of any domestic litigation is about engendering social impact and raising awareness and changing attitudes towards victims. Because the Azerbaijani court system alone cannot impose policy or practice changes,

larger societal change will not come from a single domestic case. However, other positive impacts of a legal case may include more widespread changes, such as increased awareness of the rights of LGBTI individuals, increased confidence of victims to bring their cases forward, and increased awareness among members of the criminal justice system of the need to protect LGBTI individuals. Thus, even if a legal case is lost or overturned on appeal, the knowledge and awareness that is shared as the result of advocacy surrounding the case may have a long-term impact on the society. These social impacts can further lay the groundwork for legal cases brought in the future.

At the international level, a legal case to either the European Court of Human Rights or a UN treaty body, such as the UN Human Rights Committee, are both viable forums to seek international accountability on the issue of violence against LGBTI individuals. The law applied by both institutions requires States to prevent and hold accountable perpetrators of violence on the basis of sexual orientation and gender identity. Judgments from the ECtHR are more likely to be implemented by Azerbaijani courts, and consequently bringing a case to the ECtHR would be preferred over the UN Human Rights Committee. There has been at least one prominent case submitted to the ECtHR

concerning violence against LGBTI individuals that occurred in 2017 when Azerbaijani police arrested over 100 individuals suspected of being gay, bisexual, or transgender.<sup>86</sup> Although the case is now pending at the ECtHR under the heading *A v. Azerbaijan and 24 other applications*,<sup>87</sup> there is still significant opportunity for international litigation on this issue regardless of the outcome of the pending case. Similar instances of police harassment have been reported in 2019 and 2020,<sup>88</sup> and police failure to investigate instances of violence is an ongoing issue.

## Legal Gender Recognition

A second legal issue that would benefit from strategic litigation is seeking protection of the right to change identity documents to recognize one's gender identity. As noted above, there is no domestic legislation granting the right to individuals to change their identity documents to conform with their gender identity. Moreover, no constitutional provision or other non-discrimination law has thus far been interpreted in a way that would prohibit discrimination on the basis of gender identity. Accordingly, interviewees reported that domestic litigation

As noted above, the strategic aspect of international litigation can have similar effects as domestic litigation in terms of awareness raising and in terms of changing attitudes. Because domestic litigation is a prerequisite to bringing international litigation, the international case may be used to amplify any ongoing advocacy on the issues. International litigation has the added benefit of an increased chance of leading to systemic legal change within Azerbaijan.

would unlikely be a successful avenue for change on this issue. However, some interviewees indicated that bringing this to the ECtHR would likely result in changing practice in Azerbaijan to allow gender recognition on identification. Because the ECtHR has found that States, under the European Convention, have an obligation to establish a foreseeable legal framework for legal gender recognition for transgender individuals, there is a legal basis for a strategic case applying this standard to Azerbaijan, which lacks such a legal framework.

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# WORKPLACE SEXUAL HARASSMENT

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## Background on Workplace Sexual Harassment in Azerbaijan

Sexual harassment is a problem that affects women both in and out of employment contexts in Azerbaijan. Given the importance of the right to work and the low unemployment rates for women in Azerbaijan,<sup>89</sup> harassment at work poses a particular threat to the rights of women and has been attributed as a cause of lower rates of women in certain sectors and industries.<sup>90</sup>

Although some instances of sexual harassment in Azerbaijan receive media attention, there are no reliable statistics compiled on the prevalence of sexual harassment in Azerbaijan, either in the workplace or otherwise.<sup>91</sup> A representative of the Azerbaijan State Committee on Family, Women, and

Children has stated that the Committee receives no more than two complaints of workplace harassment per year, but civil society members have strongly pushed-back on the relevance of these complaint numbers, claiming that social stigma leads to severe under-reporting.<sup>92</sup>

In Azerbaijan, many women are ashamed or afraid to speak out about instances of harassment.<sup>93</sup> However, even if they chose to do so, there is not adequate legal support for victims. The European Committee on Social Rights has found that Azerbaijan has failed to provide sufficient and effective remedies for victims of workplace sexual harassment.<sup>94</sup>

## Legal Framework on Labor and Employment

### Domestic Framework

The Constitution of Azerbaijan expressly protects several fundamental labor and employment rights. Article 35 guarantees the right to work, including the right to freely choose employment, the right to safe and healthy work

conditions, and a prohibition on coerced labor.<sup>95</sup> Although the right to be free from sexual harassment is not expressly prohibited, the Constitution provides protections for human

dignity, the right to equality, and personal security and inviolability.<sup>96</sup>

Sexual harassment is defined in the 2006 Law on Gender Equality as “immoral behavior humiliating and abusing a person of the opposite gender, comprising physical acts (touching, hand touching), offensive remarks, gestures, threats, dishonorable advances and offers of employment in exchange for sexual acts.” The Law on Gender Equality expressly prohibits all sexual harassment, including workplace sexual harassment, and repeats the obligation of employers to prevent gender discrimination and sexual harassment.<sup>97</sup>

The Azerbaijan Labor Code also imposes the responsibility on employers to take necessary measures to prohibit sexual harassment and

imposes financial liability on employers to their employees for instances of sexual harassment that occur during employment.<sup>98</sup> Furthermore, the Labor Code requires that collective bargaining agreements address means of protecting employees from sexual harassment and grants employees the unilateral right to terminate an employment contract in instances of sexual harassment.<sup>99</sup>

Additionally, under Article 1 of the Labor Code, Azerbaijan’s international treaty obligations concerning labor, social, and economic issues are incorporated into the law of Azerbaijan. Azerbaijan is party to several treaties that protect labor and employment rights, the most prominent of which are identified below.

## International Framework

The government of Azerbaijan has committed to numerous international human rights instruments that require States take measures to prevent sexual harassment. Though most international treaties and conventions do not specifically mention workplace sexual harassment, they have been interpreted to cover situations of sexual harassment as a form of discrimination and violence against women.<sup>100</sup> The UN Declaration of Human Rights, the International Covenant on Civil and Political Rights; the International Covenant on Social, Economic, and Cultural Rights; and the Convention on the Elimination of All Forms of Discrimination Against Women all contain relevant provisions relating to the prevention of discrimination against women that would

prohibit workplace sexual harassment. Moreover, General Assembly Resolution 48/104 as well as the Beijing Platform for Action both recognize that workplace sexual harassment is a form of gender discrimination and that such harassment is prohibited under international law.<sup>101</sup>

Azerbaijan has also ratified the International Labour Organization Convention No. 111 on Discrimination (Employment and Occupation), which prohibits discrimination on the basis of sex and which the ILO has interpreted as prohibiting workplace sexual harassment.<sup>102</sup>

Within the European human rights system, Azerbaijan has ratified both the

European Convention on Human Rights as well as the European Social Charter (Revised), both of which prohibit discrimination on the basis of sex. Specifically, the European Social Charter (Revised) in Article 26 requires parties “to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.”

The European Committee on Social Rights, the body charged with monitoring implementation of the European Social Charter, has found that Article 26 requires that States implement a right to complain to an independent body concerning instances of sexual harassment as well as a right to obtain compensation for instances of retaliation, including the right to hold employers liable.<sup>103</sup>

## Challenges to Targeted Litigation on Workplace Sexual Harassment

Litigation concerning workplace sexual harassment faces similar challenges resulting from social stigma and gender discrimination as litigation on domestic violence. However, while there are few formal legal protections for victims of domestic violence, the legal framework on sexual harassment affords substantially stronger protections for victims. Multiple interviewees reported that the labor and employment laws, including those protecting against harassment, generally comply with international standards. Interviewees emphasized that the issue is primarily with enforcement of existing domestic

legislation. This assessment has been echoed by international monitors in the context of laws prohibiting sexual harassment. For example, a 2016 study by the Council of Europe found that “[w]hile the law prohibits sexual harassment, the enforcement of this prohibition is poor.”<sup>104</sup> The Council of Europe study further found that “[c]ultural stereotypes also influence women’s decisions not to apply to the courts and not share information about their experiences of sexual harassment, as it may lead to rumours and damage to their reputations.”<sup>105</sup>

## Opportunities for Targeted Litigation on Workplace Sexual Harassment

An interviewee specifically noted that the lack of implementation of laws prohibiting workplace sexual harassment opens the opportunity for litigation on the issue in domestic courts. Similar to the above proposed litigation areas, litigating high-profile cases of sexual harassment, when coupled with media and advocacy campaigns, can help to break through cultural and social stigmas surrounding reporting and enforcement of sexual harassment in Azerbaijan. A prominent legal case may have the effect of empowering and raising awareness among victims. Such a case may also serve to assist in raising awareness among legal professionals and the judiciary more broadly.

Litigating a high-profile case would also serve an important function of informing employers of their legal obligations to prevent sexual harassment. Despite the fact that the domestic law in Azerbaijan imposes an obligation on employers to prevent sexual harassment, few private employers have adopted policies for addressing sexual harassment.<sup>106</sup> However, litigating a case of sexual harassment may present the opportunity to raise the issue of negligence or failure prevent on behalf of the

employer. If it is publicly reported that business may incur civil liability and are in fact paying damages for instances of workplace sexual harassment, employers will be further incentivized to improve their workplace sexual harassment policies to avoid liability.

At the international level, there are also several venues which could hear cases concerning a lack of State action on instances of sexual harassment at work. For individual cases, an application may be made either to a UN treaty body, such as the Committee on the Elimination of Discrimination against Women, or to the International Labour Organization, which has an individual complaint procedure to evaluate alleged violations of international labor conventions ratified by the State against which the complaint is filed. Both of these bodies have jurisdiction to hear complaints against Azerbaijan and have determined that States have an obligation to protect individuals from workplace sexual harassment. Accordingly, they are both suitable venues to bring attention to Azerbaijan's failure to provide sufficient and effective remedies for victims of workplace sexual harassment.

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# RECOMMENDATIONS

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Below are several recommendations for how both international and domestic lawyers and civil society might further promote strategic litigation in the areas above. The recommendations are divided by and directed towards three separate groups of stakeholders, namely the Azerbaijani legal community, domestic civil society, and international non-governmental organizations (“INGOs”).

## Recommendations for the Domestic Legal Community

There are both immediate as well as long-term actions that lawyers in Azerbaijan can take to set the groundwork for and to engage in strategic litigation in the areas described above. The recommendations proposed in the short-term relate to the identification and advancement of particular cases for litigation, while the long-term proposals focus on creating the conditions for long-term success of litigation in the areas above.

- *Use domestic litigation to leverage the domestic court system to raise awareness and promote positive human rights implementation concerning issues of non-fatal domestic violence, anti-LGBTI violence, and workplace sexual harassment. (Short Term)*
- *Ensure that any litigation is coupled with complementary activism and media attention. Through coalitions built around the issue areas described above, litigation news and outcomes should be promoted through traditional and social media to achieve awareness raising of issues, as well as awareness raising of the legal rights of victims. (Short Term)*
- *Promote and popularize principles of inclusivity concerning representation of marginalized clients among the legal profession. As noted by interviewees, members of marginalized groups face difficulty obtaining legal representation. By adopting and promoting professional responsibility standards of inclusivity in client representation, lawyers can ensure that marginalized groups have equal access to legal services. These principles can be adopted and disseminated through bar associations and professionalism trainings administered to members of the legal profession. (Long Term)*
- *Assist in promoting support groups for human rights lawyers in Azerbaijan. Due to the government’s practice of harassing and disbaring lawyers working on human rights issues, ensuring that competent human rights lawyers are allowed to practice law in Azerbaijan is a necessary component of strategic litigation on the issues mentioned above. Creating groups to support currently barred and aspiring human rights lawyers can help ensure that information and support is available to protect barred lawyers against disbarment. (Long Term)*
- *Coordinate with civil society to create programs to inform victims of their legal rights and to ensure that civil society is able to support victims through the legal process. Because many victims in the issue areas*

described above are unaware of their rights, a campaign aimed at raising awareness of legal rights and protections for victims will help promote litigation. There is significant room for lawyers and civil society to coordinate on an awareness raising campaign. Furthermore, domestic lawyers can create a space for local civil society to providing legal support for victims throughout the legal process to ensure wholistic support for victim's needs. **(Long Term)**

## Recommendations for Domestic Civil Society

We also propose both short-term and long-term actions that domestic civil society members can take to support strategic litigation efforts in Azerbaijan. The recommendations proposed with a short time horizon focus upon providing assistance to individual petitioners and assisting in advancing particular legal cases, while the recommendations for long-term action addressing broader social biases and prejudices and improving institutional competence among the Azerbaijani government.

- *Establish or amend protocols for victim intake and support to include collecting information necessary for litigation.* Since evidence of physical violence is necessary for prosecution and other legal action, civil society members providing direct support can play an important role in preserving necessary medical evidence to document the physical harm, in the event the victim desires to pursue litigation in the future. Ensuring that intake protocols for victim support organizations include procedures that generate this documentation is an important step to keep the possibility for strategic litigation open. **(Short Term)**
- *Raise awareness of the issues and legal protections for victims of domestic violence, LGBTI discrimination, and workplace sexual harassment.* There is significant space for civil society to inform victims of their currently-existing legal rights under Azerbaijani law. Without awareness of their rights, victims will not seek legal protection. So, civil society efforts in raising awareness among victims may increase the pool of potential litigants. Additionally, civil society may also play a role in raising awareness of potential liabilities for perpetrators of violations in the areas described above. For example, civil society can create programs informing employers of the current liability for workplace sexual harassment under Azerbaijani law, which may serve to incentivize employers to take steps to end and prevent situations when they arise. **(Long Term)**
- *Develop programs to empower victims of violence to defend their rights and pursue justice available under the law.* As noted above, there are many societal factors that disincentivize victims from pursuing claims against perpetrators, including retaliation, shame, economic instability, removal of children, pressure from the police/authorities for out of court settlements, other pressure for “family unity”. Civil society can play an important role in providing services and programs that counter or lessen the influence of these negative factors. Such programs would serve to empower victim in their pursuit of justice and redress through the courts. **(Long Term)**
- *Civil Society should seek partnerships to educate law enforcement, prosecutors, and judges on matters of non-discrimination and the elimination of bias and social stigma surrounding gender and LGBTI issues.* Given the role of law enforcement's and the legal system's reinforcement of harmful stereotypes and



stigma, civil society taking an active role in partnering with these legal intuitions to provide education and trainings that focus on ensuring that these institutions have the knowledge, capacity, and empathy necessary to protect the rights and interests of all people, without discrimination, and sensitive to the potentially traumatic experiences they may have had. **(Long Term)**

## Recommendations for International Civil Society

Similarly, we propose both short-term and long-term actions that international civil society members can take to support strategic litigation efforts in Azerbaijan. Short term recommendations for international civil society focus on amplifying the immediate efforts of domestic lawyers and civil society, while long-term recommendations focus on assisting in coalition-building at the local level.

- *Provide legal support to domestic litigation efforts through third-party interventions to encourage and promote the implementation of international human rights standards and obligations in domestic courts.* INGOs can play an important role in informing domestic courts of their obligations under international human rights law. INGOs should take the opportunity to make interventions when possible **(Short Term)**
- *Provide technical and legal support for litigation and advocacy at the international level.* International civil society is well positioned to provide support in international advocacy concerning the issues above. With respect to international litigation, INGOs can assist in providing counsel to litigants or make amicus curiae submission in cases. Furthermore, with respect to international advocacy, INGOs can assist in developing and promoting messaging that amplifies and reinforced domestic messaging campaigns. **(Short Term)**
- *Assist domestic civil society in preparing and implementing protocols that preserve the possibility of legal action on behalf of victims.* INGOs can play an important role in assisting domestic civil society in preparing intake protocols for victim support organizations include procedures that generate evidence-preserving documentation for strategic litigation. INGOs can be of particular assistance in ensuring such protocols have a grounding in human rights norms and stem from comparative best practices around the world. **(Short Term)**
- *Build coalitions including lawyers, civil society, and victims support groups with the express aim of addressing the issues outlined above.* Coordinating between legal representation, civil society, and victims support groups help ensure that any strategic litigation may be leveraged to achieve maximal impact and exposure. Such coordination will also ensure that the strategic litigation is conducted in a way that best serves victims. **(Long Term)**

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# ENDNOTES

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<sup>1</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954)

<sup>2</sup> See e.g. Child Rights International Network, *What is Strategic Litigation?*, available at <https://archive.crin.org/en/guides/legal/guide-strategic-litigation/what-strategic-litigation.html>.

<sup>3</sup> CEPEJ, *European judicial systems—Edition 2014 (2012 data): Efficiency and quality of justice*, available at [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf).

<sup>4</sup> ICJ, *Defenceless Defenders: Systematic Problems in the Legal Profession of Azerbaijan*, (2016) at 6, available at [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/INT\\_CAT\\_ICS\\_AZE\\_30120\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/INT_CAT_ICS_AZE_30120_E.pdf).

<sup>5</sup> *Id.* at 22.

<sup>6</sup> Freedom House, *Nations in Transit 2020: Azerbaijan*, available at <https://freedomhouse.org/country/azerbaijan/nations-transit/2020>.

<sup>7</sup> *Id.*

<sup>8</sup> Ramil Isgandarov, *A Guide to the Republic Of Azerbaijan Law Research*, GlobaLex, (2006), available at [https://www.nyulawglobal.org/globalex/Azerbaijan.html#\\_6.\\_Sources\\_of\\_Law](https://www.nyulawglobal.org/globalex/Azerbaijan.html#_6._Sources_of_Law).

<sup>9</sup> Special Rapporteur Rashida Manjoo, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences: Mission to Azerbaijan*, UN Doc. A/HRC/26/38/Add.3, para. 4, (June 2, 2014), available at <https://undocs.org/A/HRC/26/38/Add.3> [hereinafter Report of the Special Rapporteur on Violence Against Women].

<sup>10</sup> The Advocates for Human Rights, *AZERBAIJAN: Domestic Violence – Stakeholder Report for the United Nations Universal Periodic Review*, (May 2018) at 2, available at [https://www.theadvocatesforhumanrights.org/uploads/azerbaijan\\_upr\\_2017.pdf](https://www.theadvocatesforhumanrights.org/uploads/azerbaijan_upr_2017.pdf). [hereinafter Stakeholder Report].

<sup>11</sup> Asian Development Bank, *Azerbaijan Country Gender Assessment*, (Dec. 2019) at 42.

<sup>12</sup> *Id.* at 43.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Report of the Special Rapporteur on Violence Against Women

<sup>16</sup> *Id.*

<sup>17</sup> Constitution of Azerbaijan, Art. 17

<sup>18</sup> *Id.*

<sup>19</sup> The Law of the Republic of Azerbaijan: On the Prevention of Domestic Violence (Domestic Violence Law), (June, 22 2010), preambular text.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Stakeholder Report at 22.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> OSCE Rule of Law and Human Rights Unit, *Domestic Violence Cases in the Justice System of Azerbaijan*, (Dec. 30, 2013) at 15. [hereinafter Domestic Violence Cases in the Justice System of Azerbaijan]

<sup>29</sup> “[A]ll forms of violence against women occur within the context of *de jure* and *de facto* discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles

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women often face in seeking remedies from the State.” *Opuz v. Turkey*, ECtHR Judgment of 9 June 2009, paragraph 188.

<sup>30</sup> *Id.* at para. 191.

<sup>31</sup> *Bevacqua and S v. Bulgaria*, ECtHR Judgment of 12 June 2008, paragraph 65.

<sup>32</sup> *Kontrová v. Slovakia*, ECtHR Judgment of 31 May 2007, paragraph 49.

<sup>33</sup> *Id.*

<sup>34</sup> Council of Europe Treaty Office, *Chart of signatures and ratifications of Treaty 210*, www.COE.INT, (accessed Aug. 27, 2019), available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

<sup>35</sup> Domestic Violence Cases in the Justice System of Azerbaijan (2013) at 10.

<sup>36</sup> Report of the Special Rapporteur on Violence Against Women at para. 31.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Domestic Violence Cases in the Justice System of Azerbaijan at 18.

<sup>41</sup> Report of the Special Rapporteur on Violence Against Women at para.70.

<sup>42</sup> Report of the Special Rapporteur on Violence Against Women at para. 12.

<sup>43</sup> Criminal Procedure Code of Azerbaijan, Art. 37.

<sup>44</sup> *Id.*

<sup>45</sup> Report of the Special Rapporteur on Violence Against Women at para. 76.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at para. 19.

<sup>48</sup> Report of the Special Rapporteur on Violence Against Women at para. 66.

<sup>49</sup> See, e.g., JAM News, *Protest march against violence against women in Baku: rally held despite police efforts*, (Oct. 20, 2019), available at <https://jam-news.net/protest-march-against-violence-against-women-in-baku-rally-held-despite-police-efforts/>.

<sup>50</sup> Advocates for Human Rights, *Assessment of Domestic Violence: Laws, Policies, & Practices in Central & Eastern Europe & the Former Soviet Union*, ECtHR HU-DOC Database; UN Treaty Body Database Azerbaijan, United Nations Office of the High Commissioner on Human Rights, (2016) at 34.

<sup>51</sup> ILGA-Europe, *Rainbow Europe 2020*, (as of May 2020), available at <https://www.ilga-europe.org/rainboweurope/2020>.

<sup>52</sup> See Silvia Stöber, *Between Appearance and Reality in Baku: LGBT Rights in Azerbaijan*, Heinrich-Böll-Stiftung, (2013), available at <https://web.archive.org/web/20181116104210/https://ge.boell.org/ka/node/1034>; see also, Gender & Development Social Union, *Report: Discrimination and Violence against Lesbians, Bisexual Women and Transgender People in Azerbaijan Republic*, (2009) at 1, 2, available at [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Gender\\_Development\\_Social\\_Union\\_azerbaijan\\_ceda\\_w44.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Gender_Development_Social_Union_azerbaijan_ceda_w44.pdf).

<sup>53</sup> OSCE, ODIHR Hate Crime Reporting: Azerbaijan, (2011), available at <http://hatecrime.osce.org/azerbaijan>.

<sup>54</sup> *Id.*

<sup>55</sup> ILGA-Europe, Civil Rights Defenders, and REDRESS, *A. against Azerbaijan and 24 other applications: Written Comments*, (2019), available at [https://www.ilga-europe.org/sites/default/files/A%20v%20Azerbaijan\\_FINAL\\_15%20July.pdf](https://www.ilga-europe.org/sites/default/files/A%20v%20Azerbaijan_FINAL_15%20July.pdf).

<sup>56</sup> Council of Europe, *European Commission Against Racism and Intolerance (ECRI) Report on Azerbaijan*, fifth monitoring cycle, (2016) at 30, para 78, available at <https://rm.coe.int/fourth-report-on-azerbaijan/16808b5581>.

<sup>57</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2019 Country Reports on Human Rights Practices: Azerbaijan*, (2019), available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/azerbaijan/>. [hereinafter 2019 Country Reports].

<sup>58</sup> *Id.*

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<sup>59</sup> *Id.*

<sup>60</sup> United Nations Human Rights Committee, *International Covenant on Civil and Political Rights: Concluding Observations on the Fourth Periodic Report of Azerbaijan*, (2016), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshv33kpjIN1yQcFINQGeFnqM5IxR4PQMZWvxmoWXYTsshELrTf%2fHJH%2fqslqI6FD8OFwu28r7iZSIA YRm9fDeUVCTGadLoglKdYRd4jrLMRra>.

<sup>61</sup> *Id.*

<sup>62</sup> Constitution of Azerbaijan, Art. 34); The Law of the Republic of Azerbaijan, Family Code of Azerbaijan (excerpts), available at [http://gender-az.org/index\\_en.shtml?id\\_doc=93](http://gender-az.org/index_en.shtml?id_doc=93).

<sup>63</sup> 2019 Country Reports.

<sup>64</sup> COWI the Danish Institute for Human Rights, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Sociological Report: Azerbaijan*, (2010) at 1, 4, available at [https://www.coe.int/t/Commissioner/Source/LGBT/AzerbaijanSociological\\_E.pdf](https://www.coe.int/t/Commissioner/Source/LGBT/AzerbaijanSociological_E.pdf).

<sup>65</sup> The Law of the Azerbaijan Republic on Gender Equality (Digest of Legislation of the Azerbaijan Republic, 2006, No. 1) (found at <https://www.legislationline.org/documents/id/16418>).

<sup>66</sup> The Law of the Republic of Azerbaijan: On Gender Equality (Digest of Legislation of the Azerbaijan Republic, 2006, No. 1, Article 1).

<sup>67</sup> *Id.*; See generally The Law of the Azerbaijan Republic: On Gender Equality (Digest of Legislation of the Azerbaijan Republic, 2006, No. 1).

<sup>68</sup> The Law of the Azerbaijan Republic: On Identification Document of Citizen of the Azerbaijan Republic (Digest of Legislation of the Azerbaijan Republic, 2006, No. 220-IIIGD, Article 4), available at [https://www.legislationline.org/download/id/4307/file/Azer\\_Law\\_on\\_identification\\_document\\_of\\_citizen\\_2006\\_en.pdf](https://www.legislationline.org/download/id/4307/file/Azer_Law_on_identification_document_of_citizen_2006_en.pdf).

<sup>69</sup> *Id.*

<sup>70</sup> See *id.*; see also Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law*, ILGA World, (2020) at 1, 118, available at [https://ilga.org/downloads/ILGA\\_World\\_Trans\\_Legal\\_Mapping\\_Report\\_2019\\_EN.pdf](https://ilga.org/downloads/ILGA_World_Trans_Legal_Mapping_Report_2019_EN.pdf).

<sup>71</sup> International Covenant on Civil and Political Rights, *opened for signature*, (19 Dec. 1966), art. 2, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>72</sup> See generally *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

<sup>73</sup> See, United Nations Human Rights Committee, *Concluding Observations on Russia*, UN Doc CCPR/C/RUS/CO/6, (Nov. 24 2009), available at <https://undocs.org/CCPR/C/RUS/CO/6>; United Nations Human Rights Committee, *Concluding Observations on Colombia*, UN Doc CCPR/C/CO/6, (Aug. 4, 2010).

<sup>74</sup> United Nations Human Rights Committee, *Concluding Observations on Ireland*, UN Doc CCPR/C/IRL/CO/3, (Nov. 24 2009), available at <https://undocs.org/CCPR/C/IRL/CO/3>,

<sup>75</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 22 on the right to sexual and reproductive health*, UN Doc. E/C.12/GC/22, (May 2, 2016) para. 23, available at <https://undocs.org/E/C.12/GC/22>.

<sup>76</sup> European Convention on Human Rights, Art. 14, (Nov. 4, 1950), 213 U.N.T.S. 221 [hereinafter ECHR].

<sup>77</sup> ECHR, *supra* note 25, Art. 8.

<sup>78</sup> *Christine Goodwin v. United Kingdom*, App. No. 28957/95, (1992) para. 91, available at [https://hudoc.echr.coe.int/eng-press#{%22itemid%22:\[%22001-60596%22\]}](https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22001-60596%22]}).

<sup>79</sup> *X and Y v. Romania*, App. No. 2145/16, (2021), available at <http://hudoc.echr.coe.int/eng?i=001-207630>.

<sup>80</sup> *Van Kück v. Germany*, App. No 35968/97, (2003) para. 102, available at <http://www.worldlii.org/eu/cases/ECHR/2003/285.html>.

<sup>81</sup> *Y.Y. v. Turkey*, App. No. 14793/08, (2016) para. 102, available at [https://www.legislationline.org/download/id/6877/file/ECHR\\_Case%20of%20Y.Y.%20v.%20Turkey\\_2016\\_en.pdf](https://www.legislationline.org/download/id/6877/file/ECHR_Case%20of%20Y.Y.%20v.%20Turkey_2016_en.pdf).

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- <sup>82</sup> *O.M. v. Hungary*, App. No. 9912/15, (2016) para. 53, available at [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-164466%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-164466%22]}).
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- <sup>92</sup> *Id.*; OC Media, *No Laws, Just Shame: Sexual Harassment in the South Caucasus* (Mar. 8 2018), available at <https://www.balcanicaucaso.org/eng/Areas/Caucaso-notizie/No-laws-just-shame-Sexual-harassment-in-the-South-Caucasus-186923>. [hereinafter *No Laws, Just Shame*]
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- <sup>94</sup> European Committee on Social Rights, *2018 Conclusions on Azerbaijan with Respect to Implementation of Article 26(1) – Sexual Harassment* (Jan. 24, 2019), available at <http://hudoc.esc.coe.int/eng?i=2018/def/AZE/26/1/EN>.
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- <sup>96</sup> *Id.* at Arts. 24, 25, 31, 32.
- <sup>97</sup> Azerbaijan Law on Gender Equality, Arts. 4, 7(2)(5).
- <sup>98</sup> Labor Code of Republic of Azerbaijan, Arts. 12(1), 195.
- <sup>99</sup> Labor Code of the Republic of Azerbaijan, Arts. 31(2), 69(3).
- <sup>100</sup> See UN Women, *Sources of International Law Related to Sexual Harassment* (Jan. 13, 2011), available at <https://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html>.
- <sup>101</sup> See *id.*
- <sup>102</sup> See, ILO, *Direct Request (CEACR) – Adopted 2016, Published 106<sup>th</sup> ILC Session, (2016)*, available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3297533](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3297533).
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