



LEGISLATIVE ANALYSIS RELATED TO LGBT RIGHTS AND HIV IN AZERBAIJAN

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The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning advocacy processes, promoting the rights of PLHIV, gay men, other MSM, and trans* people and eliminating the barriers hindering their access to services.

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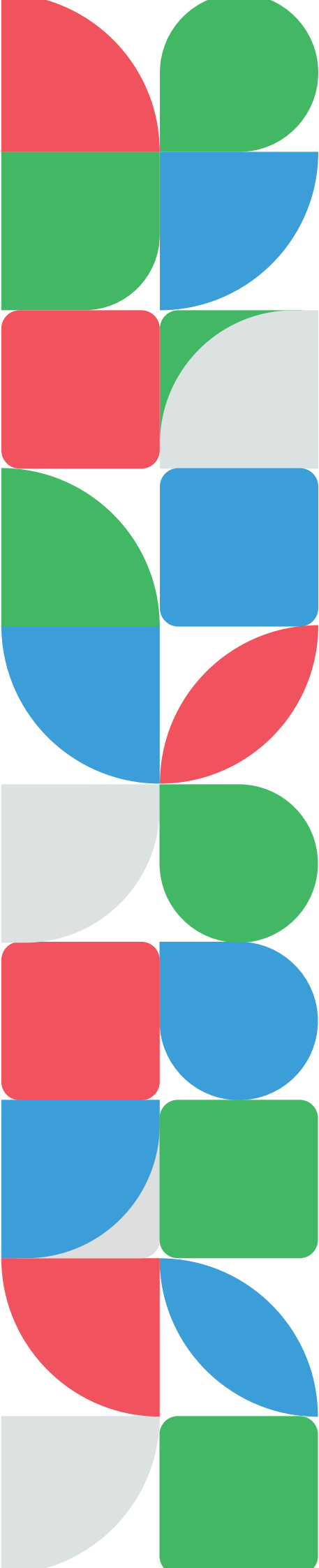


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The goal of this review is to identify the legal barriers for people living with HIV, gay men, other men who have sex with men and trans* people in exercising their rights in different areas. To conduct such review, ECOM developed a methodology and a survey questionnaire, which we filled in with the help of our local partners. When analyzing legal practices, consideration was given both to judicial practices and to the information provided by activists, received from the organizations documenting cases of human rights violations and protection of such rights, news in mass media, and reports of non-governmental organizations submitted to the international agencies.

Both legislation and law enforcement practices were analyzed in terms of their compliance with the international and European standards. Besides, we analyzed the recommendations received by Azerbaijan within the international monitoring mechanisms as well as performance of such recommendations by the government.

To present information on the legislation currently in force, in this review we used extracts from the regulatory documents, which are, unfortunately, not always correct and fail to comply with the international politically correct terminology standards. In this case, the original wording is presented to ensure objective demonstration of the existing regulatory framework and the language used in the matters analyzed. All quotations from the regulatory documents are given in quotation marks.

The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning the advocacy processes, promoting the rights of PLHIV, gay men, other MSM, and trans* people and eliminating the barriers hindering their access to services.

ABBREVIATIONS

AIDS Acquired Immune Deficiency Syndrome

ECOM Eurasian Coalition on Male Health

HIV Human Immunodeficiency Virus

LGBT Lesbian, Gay, Bisexual, and Trans* people

MSM Men who have sex with men

PLHIV People who live with HIV

SOGI Sexual orientation and gender identity

UN United Nations Organization

Trans* People who have a gender identity or gender expression that differs from their birth assigned sex



SUMMARY

The preamble of the WHO Constitution states that «**the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition**»; this is one of the basic principles of human rights, namely the principle of non-discrimination. Taking this into account, it should be noted that there are no laws in Azerbaijan that discriminate against the rights of homosexual people. At the same time, article 25 of the Constitution of Azerbaijan¹ guarantees everyone equal rights and freedoms irrespective of their «**country, race, nationality, religion, language, sex, origin, property and official status, conviction, or membership in political parties, trade unions, or other public organizations**». The relevant provisions are enshrined in various areas of legislation, including civil, criminal, labor, and family law. The legislation of Azerbaijan does not directly protect people from discrimination on the grounds of sexual orientation and gender identity, at the same time, equality is theoretically guaranteed to all.

In Azerbaijani society, it is not acceptable to speak and disclose information about one's sexual life. There are no education programs on television or the radio, and no education materials for school children on this topic. There are no public discussions on this topic in the media. Educational programs in public schools do not include sex education. The topic of homosexuality is not spoken about, and if it is mentioned in the media, any references to it have a negative connotation, which creates stereotypes about the abnormality of this kind of lifestyle that is seen as contradicting the norms accepted by society in Azerbaijan. As a result, issues such as discrimination based on sexual orientation, same-sex marriage, or adoption of children by same-sex families are not considered or discussed in society.

Disclosure of one's homosexuality is considered as immoral by society. As a result, there is a negative attitude in society towards gay marriage, public gathering of LGBT communities, and pride marches. Since laws reflect public opinion on various issues, this also largely explains the fact that there are no references to discrimination on the basis of sexual orientation or gender identity in national legislation. According to ILGA, Azerbaijan is the most homophobic country in Europe², ranking last place in its 2016-2018 rating of 49 European countries.

After declaring independence from Russia in 1918, there were no laws against homosexuality in the Azerbaijan Democratic Republic. When Azerbaijan became a part of the Soviet Union in 1920, rarely applied Soviet laws criminalizing sex between men came into force. In 1923³, in the Azerbaijan SSR, sexual intercourse between men became a criminal offense punishable by up to five years in prison for voluntary sexual relations or up to eight years if sexual intercourse was committed using physical violence or threats⁴.

¹ Constitution of the Republic of Azerbaijan https://www.caa.gov.az/index.php?option=com_k2&view=item&id=93:constitution-of-the-republic-of-azerbaijan&Itemid=173&lang=ru

² ILGA Europe <https://www.ilga-europe.org/>
<https://www.gaystarnews.com/article/lgbti-friendly-country-europe-malta/#gs.lumxdc>

³ Healey, Dan. «Masculine purity and 'Gentlemen's Mischief': Sexual Exchange and Prostitution between Russian Men, 1861–1941». *Slavic Review*. Vol. 60, No. 2 (Summer, 2001), p. 258.

⁴ Law of the RSFSR of 27.10.1960. Article 121 «Sodomy».

Currently, the age of consent for sexual intercourse for both heterosexual and homosexual sex is 16 years old⁷.

In the Republic of Azerbaijan, the HIV epidemic is in a concentrated stage. HIV is primarily prevalent among key populations: PWID, SW, and MSM. According to UNAIDS assessments of HIV and AIDS for 2018⁸:

МУЖЧИНЫ, ИМЕЮЩИЕ СЕКС С МУЖЧИНАМИ

Оценка численности населения (#)	23 900
Распространенность ВИЧ (%)	1.1
Знание ВИЧ-статуса (%)	43.6
Использование презервативов (%)	68.8
Презервативы, распространяемые с помощью профилактических программ (#)	43.6
Активный сифилис (%)	7.3
Гепатит В и коинфекция с ВИЧ (%)	7.2
Гепатит С и коинфекция с ВИЧ (%)	4

⁵ «[Council of Europe](#)». Retrieved 7 May 2013.

⁶ «[Azerbaijan](#)». Retrieved 7 May 2013.

⁷ «[LGBT Rights in Azerbaijan | Equaldex](#)». www.equaldex.com. Retrieved 15 May 2017.

⁸ <https://www.unaids.org/ru/regionscountries/countries/azerbaijan>



1

TRAVEL AND IMMIGRATION BANS FOR PEOPLE LIVING WITH HIV (PLHIV)

In accordance with the Migration Code of the Republic of Azerbaijan⁹, there are no restrictions on visits (entry and exit) for PLHIV to Azerbaijan. Foreign citizens and stateless persons are not required to provide a medical certificate in order to obtain visas.

In addition to this, according to the code, when applying for a permanent or temporary residence permit (or extension), as well as for a work permit, foreign citizens and stateless persons must provide a «medical certificate stating that they are not carriers of dangerous, infectious diseases» a list of which is approved by the relevant executive authority and includes hepatitis B and C, as well as HIV¹⁰.

At the same time, according to the code, foreign citizens and stateless persons are not issued permanent or temporary residence permits «if they are carriers of hepatitis B or C, or HIV. Exceptions are persons married to citizens of the Republic of Azerbaijan. Thus, a foreign citizen with HIV can obtain a residence permit on this basis. Consequently, other foreign citizens living with HIV and in a non-heterosexual marriage will be denied permission to reside in the Republic of Azerbaijan, as same-sex unions are not recognized by law»¹¹.

According to the law on combating HIV¹², medical care (including specialized medical care) is provided in state medical institutions with funding from the state budget to citizens of the Republic of Azerbaijan living with HIV, to stateless persons permanently residing in the Republic of Azerbaijan, and to persons who have been granted refugee status. The amount of medical care provided at the expense of the state budget to people living with HIV is determined by the relevant executive authority.

Despite the fact that a foreign citizen living with HIV and who has a residence permit (on the basis of the fact that their spouse is a citizen of the Republic of Azerbaijan) is not a stateless person, he still has access to ARV therapy.

- ⁹ Migration Code https://www.migration.gov.az/content/pdf/5bfcdc9872aa8_mecelle.pdf
- ¹⁰ Republic of Azerbaijan. Cabinet of Ministers. Decision 105, Baku, 30 June 2011 On approval of the «List of dangerous infectious diseases». <http://www.cabmin.gov.az/page/doc/495>
- ¹¹ Migration Code https://www.migration.gov.az/content/pdf/5bfcdc9872aa8_mecelle.pdf
- ¹² Law of the Republic of Azerbaijan «On combating diseases caused by the human immunodeficiency virus». https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_175318.pdf



2

CRIMINALIZATION OF HIV TRANSMISSION

According to the law «On combating the spread of diseases caused by the human immunodeficiency virus»¹², people living with HIV must employ responsible and safe behavior in order to prevent other people from becoming infected with HIV; and they must inform the other party upon marriage that they are infected with HIV.

Based on the legislation of the Republic of Azerbaijan, a person who is aware of his infection with HIV bears criminal liability for in any way knowingly placing another person at risk of HIV infection or infecting another person with HIV. Article 139 of the Criminal Code of the Republic of Azerbaijan¹³ imposes criminal liability for: the infection of another person with a sexually transmitted disease by a person who knew that he had this disease (punishable by a fine equal to 300-500 times the minimum wage) or correctional labor or imprisonment of up to two years. The same act committed against two or more persons, or against a minor, is punishable by imprisonment for a term of up to four years.

The legislation of the Republic of Azerbaijan contradicts international recommendations¹⁴, as it emphasizes the danger of infection and the unintentional infection with STIs and HIV in the provisions of two criminal offenses. As a result, the legislation itself stigmatizes people living with HIV, as well as people vulnerable to HIV.



3

PROHIBITIONS ON BLOOD DONATION BY MSM

According to the law, a donor of blood and its components can be, irrespective of nationality, gender, race, or religious belief, any healthy, capable citizen of the Republic of Azerbaijan between 18 and 60 years of age, who has undergone a medical examination and who does not suffer from diseases that would contraindicate the donation of blood and its components.

A medical examination of the donor is carried out in accordance with the legislation of the Republic of Azerbaijan. According to the rules, a medical examination of an MSM donor does not differ from the medical examination of a heterosexual donor. There is no prohibition on the donation of blood by MSM in Azerbaijan.

¹² Law of the Republic of Azerbaijan «On combating diseases caused by the human immunodeficiency virus». https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_175318.pdf

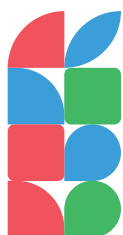
¹³ AZƏRBAYCAN RESPUBLİKASININ CİNAYƏT MƏCƏLLƏSİ. Maddə 140. İnsan immun çatışmazlığı virusu ilə yoluxdurma, <http://www.e-qanun.az/code/11> Translated version: https://online.zakon.kz/document/?doc_id=30420353#pos=5;-137

¹⁴ UNAIDS and the Office of the High Commissioner for Human Rights, International Guidelines on HIV/AIDS and Human Rights, Principle 4, paragraph 21 (a); UNAIDS, Policy Brief: Criminalization of HIV Transmission (2008).

In addition, foreigners and stateless persons who wish to donate blood can also become donors if they undergo medical examinations in health institutions in the manner prescribed by the legislation of the Republic of Azerbaijan. They enjoy the same rights and must fulfill the same obligations as all donors in the Republic of Azerbaijan.

A decision of the Cabinet of Ministers defined a list of diseases that restricts blood donation. HIV is blood-borne disease, the presence of which excludes potential donors from donating blood, regardless of the duration of the disease or method of treatment¹⁵.

Administrative liability is imposed for the violation of legislation on blood donation.



4

ACCESS OF NGOS WORKING WITH MSM OR THE LGBT COMMUNITY TO STATE FUNDING FOR THE PROVISION OF SOCIAL AND HEALTH SERVICES

Azerbaijan has legislative acts, which provide a basis for the allocation of state and municipal funds to NGOs. The law of the Republic of Azerbaijan «On non-governmental organizations (public associations and foundations)»¹⁶ regulates the relations between public associations and foundations, as well as the creation and activities of branches and representative offices of non-governmental organizations of foreign states.

According to the law, grants can be provided to legal entities and individuals (both citizens and foreigners) living in the Republic of Azerbaijan. Grants are provided from the state budget. All grant agreements must undergo mandatory registration, which, in practice, creates additional difficulties for the implementation of projects by civil society¹⁷.

«The Action Plan to Combat HIV/AIDS for 2016-2020»¹⁸ approved by the order of the Ministry of Health 26 of 14 April, 2016, along with the law on combating HIV, creates a regulatory framework for funding NGOs whose activities are aimed at combating HIV infection.

Therefore, the partial costs of NGOs for the procurement of goods began to be financed with state funding. However, the proportion of the funding itself is quite small.

¹⁵ <http://www.e-qanun.az/framework/11502>

¹⁶ Qeyri-hökumət təşkilatları (ictimai birliklər və fondlar) haqqında AZƏRBAYCAN RESPUBLİKASININ QANUNU. <http://www.e-qanun.az/framework/511>

¹⁷ <https://haqqin.az/news/8978>

¹⁸ Source: Official website of the Ministry of Health. http://www.sehiyye.gov.az/files/pdf/2016/emr_2016_28.pdf

In 2018, a grants competition was held among NGOs whose activities are focused on HIV prevention. As a result of the competition, 12 organizations were selected, including PO «Gender and Development», a non-governmental organization providing services for MSM in Azerbaijan. The agreements are concluded for a period of 2.5 years.

Thanks to the work carried out, in 2017, the state allocated a budget for the first time to support three HIV-service organizations working with vulnerable groups: PO «Fighting AIDS», PO «Gender and Development», and PO «Clean World». Funding is made available from public funds in the form of goods pledged by the Ministry of Health.



5

LEGISLATION AND POLICIES IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY. SAME-SEX SEXUAL RELATIONS

Azerbaijan repealed its law on «sodomy» in 2000, however, current legislation does not explicitly prohibit discrimination on the basis of sexual orientation and gender identity. Same-sex marriages and other forms of unions (civil partnerships) cannot be registered and are not recognized by law.

Moreover, **Article 150** of the Criminal Code on «violent acts of sexual nature» establishes the following:

150.1. Sodomy or other acts of a sexual nature with the use of violence or with threats thereof against the victim or to other persons, or by taking advantage of the helpless condition of the victim, is punishable by imprisonment for a term of three to five years.

150.3. The same action: **150.3.2.** through negligence, resulting in the infection of the victim with HIV or other serious consequences is punishable by imprisonment for the term of eight to fifteen years¹⁹.

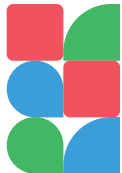
¹⁹ AZƏRBAYCAN RESPUBLİKASININ CİNAYƏT MƏCƏLLƏSİ. Maddə 140. İnsan immuñatışmazlığı virusu ilə yoluxdurma, <http://www.e-qanun.az/code/11>
Translated version: https://online.zakon.kz/document/?doc_id=30420353#pos=5;-137



6 PROHIBITION OF «GAY PROPAGANDA»

The legislation of Azerbaijan does not mention so-called «gay propaganda». In society, the topic of sexuality in general, and in particular homosexuality, is not publicly or openly discussed. Since homosexuality is taboo in society, the topic is not subject to public discussion in the media, and when it is rarely discussed, it is only in negative terms. The overwhelming majority of citizens regard representatives of the LGBT community as deviating from the norm.

Despite the fact that some public figures have come forward with a proposal to prohibit «gay propaganda»²⁰, through legislation, such a bill has not yet been submitted for consideration.



7 LAWS ON GENDER IDENTITY/EXPRESSION (legal change of sex in passport, gender confirmation procedures, etc.)

The legislation of the Republic of Azerbaijan does not directly provide protection from discrimination to trans* people, however, the Criminal Code imposes liability for violations of the principle of equality of citizens, which includes acts of discrimination based on sex.

Trans* people can change their legal sex through a court decision. In order to change the information in one's passport about one's sex, the citizen must first apply to the civil registry office with a request to change the data in the "sex" column of their birth certificate. In the event of an official refusal to change information regarding sex in the birth certificate, the citizen must ask a court to make a legal determination on the matter on the basis of relevant medical reports (medical certificates depending on the measures that the person has already taken during transition, including psychological therapy, hormonal therapy, or gender correction surgery, which is a mandatory condition of recognition). The court considers the matter (it may appoint a medical expert to confirm information about the surgery carried out to correct the patient's sex), provides a legal assessment, and makes an appropriate decision on the matter. The citizen, on the basis of the court decision, then has the right to submit an application to change their birth certificate and identity card.

²⁰ <http://www.1news.az/news/el-mira-ahundova-zakon-o-zaprete-propagandy-gomoseksualizma-yavlyaetsya-logichnym>



8

FREEDOMS OF EXPRESSION AND ASSEMBLY OF THE LGBT COMMUNITY

Laws guaranteeing the freedoms of expression and assembly apply equally to all citizens of Azerbaijan, including representatives of the LGBT community. Although there are laws protecting the freedoms of expression and assembly, and equality is theoretically guaranteed to all, in practice, representatives of the LGBT community are unable to exercise these rights on an equal basis with others

On 10 September, 2018, representatives of the LGBT community held a public event in the center of Baku²¹. According to witnesses, the event did not result in any aggression from others, and, on the whole, did not attract much attention. Sexuality is a taboo topic in society, particularly when it comes to same-sex relations. In this regard, neither society nor law enforcement agencies are prepared for gatherings, meetings, or Pride marches of the LGBT community to be held openly.

In 2017, mass arrests of gays and lesbians occurred in the center of Baku²². The following statement of the head of the press service of the Ministry of Internal Affairs of Azerbaijan, Colonel Ehsan Zakhidov led to the mass arrest of representatives of the LGBT community: «The police do not have any issue with anyone who does it secretly, in private, whose personal life does not cause anyone to protest. The police are fighting those whose behavior is demonstrative, who cause irritation to those around them, and who are a reason for complaints».

The Council of Europe's Commissioner for Human Rights, Nils Muiznieks, sent a letter to the Minister of Internal Affairs of Azerbaijan, in which he called for «a thorough investigation of allegations of serious violations of the human rights of LGBT people who were recently arrested and detained in Baku».

However, in his response letter, Minister Ramil Usubov, claims that violations of the rights of representatives of the LGBT community are unfounded and that the purpose of their detention was to maintain public order.

«In general, the rights of all groups of people in Azerbaijan are ensured without any restrictions, and the situation of LGBT people in the republic does not differ from the situation in many European countries,» he states in the letter²³.

Despite the fact that sexual orientation is mentioned as a basis in the statistical survey of crimes, there are no statistics on crimes linked with sexual orientation in Azerbaijan²⁴.

²¹ <https://1news.az/news/v-centre-baku-razvernuli-flag-lgbt-foto>

²² <https://www.bbc.com/russian/features-41392231>

²³ <https://hromadske.ua/ru/posts/azerbaidzhan-hod-spustia-posle-lhbt-pohromov-cto-yzmenylos-v-samoi-homofob-noi-strane-evropy>

²⁴ State Statistical Committee of the Republic of Azerbaijan, page 56, page 114. https://www.stat.gov.az/menu/5/source/Ci-nayetkarliq_st.pdf



9

ANTIDISCRIMINATION LAWS IN RELATION TO SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION

In October 2006, Azerbaijan adopted the law on gender equality²⁵. The aim of the law is to ensure gender equality by eliminating all forms of gender discrimination, and by creating equal opportunities for men and women in political, economic, social, cultural, and other spheres of public life. However, sexual orientation may be the basis for dismissal from work, and there are no protections from discrimination on the basis of SOGI in the labor code.

For example, it is impossible to find open representatives of the LGBT community among public officials in Azerbaijan.

The law on gender equality does not address transgender issues. With all else being equal, trans* people have the lowest chance of getting a job. Trans* people face problems related to gender reassignment and difficulties with changing their official documents. Although this is not legally prohibited, the general negative attitude coupled with complex bureaucracy makes their lives quite difficult.



10 HATE CRIMES

The legislation of Azerbaijan does not impose liability for hate crimes. However, along with the Constitution, which guarantees the right to equality and freedom of thought and speech, Azerbaijan has a number of laws that impose criminal liability for crimes motivated by national, racial, or religious intolerance or hatred. However, a study shows that gross violations still occur.

According to the results of integrated bio-behavioral surveillance (IBBS) carried out in 2018 with the technical assistance of an epidemiology consultant, Lisa Johnson²⁶, as part of the Global Fund's HIV monitoring program for MSM in three cities of Azerbaijan, Baku, Ganja, and Sumqayit (a total of 700 MSM were surveyed), the majority of MSM reported that they were never physically assaulted, because someone thought they were attracted to men (Fig.1).

²⁵ Gender (kişi və qadınların) bərabərliyinin təminatları haqqında. AZƏRBAYCAN RESPUBLİKASININ QANUNU. of 10 October 2006 150-IIIQ. On ensuring gender (male and female) equality. (as of 21 December, 2010). <http://www.e-qanun.az/frame-work/12424>

²⁶ www.lisajohnston.com

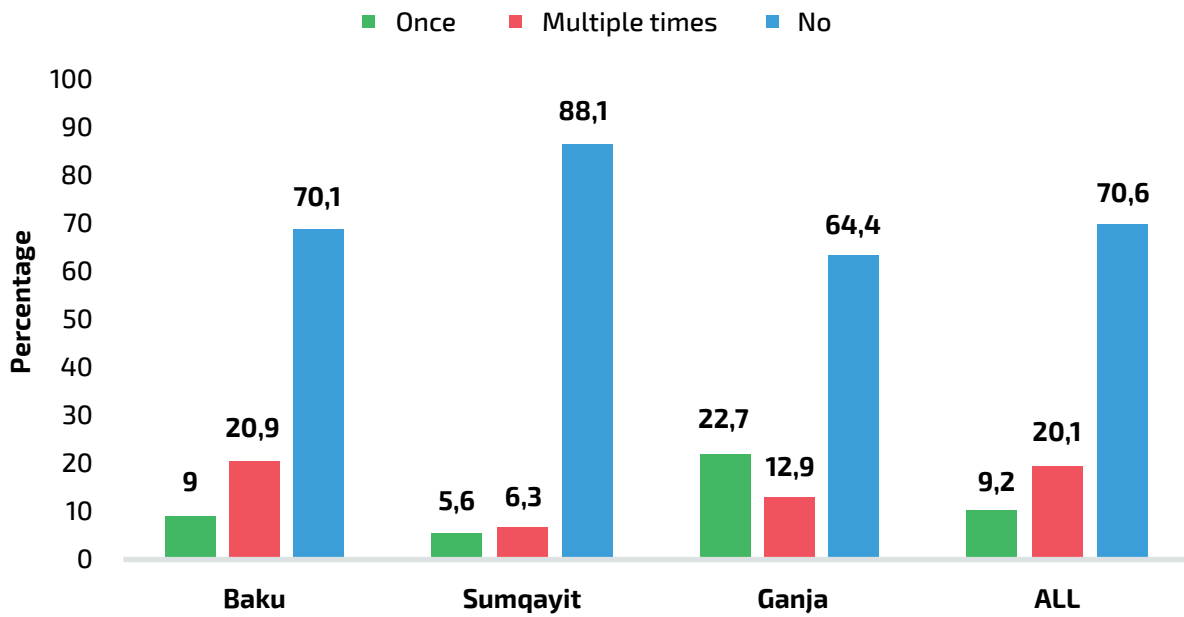


Figure 1. Physical assault due to sex with men, 2018

22% of MSM in all cities reported that they have been repeatedly subjected to violence or abuse by police, while only a few MSM reported that they were denied health or medical services because they were perceived to be sexually attracted to men.



INTERNATIONAL AND REGIONAL DOCUMENTS RATIFIED/ SIGNED/UNDERGOING ACCESSION BY AZERBAIJAN

- 1 International Covenant on Civil and Political Rights — ***signed, ratified.***
- 2 Optional Protocol to the International Covenant on Civil and Political Rights — ***signed, ratified.***
- 3 International Covenant on Economic, Social and Cultural Rights — ***signed, ratified.***
- 4 Convention on the Rights of Persons with Disabilities (CRPD) — ***signed, ratified.***
- 5 Convention on the Rights of the Child (CRC) — ***signed, ratified.***
- 6 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families — ***signed, ratified.***

