



OUTRIGHT
ACTION INTERNATIONAL

**Report
on peace, security, sexual orientation and gender identity in Afghanistan**

*Submission to the UN Independent Expert on protection against violence and
discrimination based on sexual orientation and gender identity*

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With the support of:

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Introduction and Methodology

This document has been prepared by ILGA World and OutRight Action International as a response to the [call for submissions](#) published by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. It studies the impact of conflict on lesbian, gay, bisexual and transgender (LGBT) people in Afghanistan, focusing on the violence and discrimination based on sexual orientation and gender identity since August 2021, when the Taliban re-took most of the country. OutRight, in collaboration with Human Rights Watch, interviewed 60 LGBT Afghans inside, including 40 in Afghanistan and 20 who had left the country, between October and December 2021. ILGA World conducted two additional interviews with Afghan LGBT rights activists with the aim of better understanding the current challenges and priorities of LGBT people in Afghanistan. ILGA World also carried out qualitative research of human rights reports, legal texts, UN reports and media reports in English and Dari in March 2022.

Background summary

Afghanistan has been enmeshed in military conflict since the 1979 Soviet invasion. In September 2001, a new phase of international armed conflict began when the United States initiated its invasion calling for a military campaign to punish all parties involved in the terrorist attack of 9/11. After years of conflict between the Taliban and the United States and the International Security Assistance Force (ISAF), in October 2004, the first democratic election was held, in which Hamid Karzai became the elected president.¹ During these years and supported by the United States, the Afghan National Security Forces (ANSF) fought against the Taliban and the Khorasan province branch of the Islamic State group (IS-KP), which emerged in 2015 as a new armed group opposing the government of Afghanistan.² However, following the withdrawal of US troops from Afghanistan in August 2021, the country's situation dramatically changed with the Taliban re-taking the government.

Years of conflict have led to the country's catastrophic human rights and humanitarian situation.³ Sexual and gender minorities that already were subject to discrimination and human rights violations from society and government are now experiencing an increasingly desperate situation and a great threat to their safety and lives after the Taliban recaptured the government.⁴

¹To read more on the history read: Ja'far Muhibullah. 2005. "A War on Terror." American journal of Islam & society (Online) 22, no. 1

²RULAC. 2021. "Afghanistan Conflict". <https://www.rulac.org/browse/countries/afghanistan>. Last accessed: March 17, 2022

³United Nations News. December 14, 2021, "Afghanistan: Humanitarian crisis threatens basic human rights". United Nations News. <https://news.un.org/en/story/2021/12/1107902>. Last accessed: March 17, 2022

⁴ Human Rights Watch and OutRight Action International. 2022. "Even If You Go to the Skies, We'll Find You" LGBT People in Afghanistan After the Taliban Takeover". <https://outrightinternational.org/Afghanistan-Report>. p 1

Gender Dimensions of the Conflict

Violence and discrimination based on sexual orientation and gender identity (SOGI) have a long history in Afghanistan. People of diverse sexual orientations and gender identities have always existed in Afghanistan; however, sexual and gender diversity has been perceived as a taboo subject by institutions and the general society for years.⁵ Various Afghan governments have reinforced human rights violations and discrimination against LGBT persons throughout the decades by imposing discriminatory and criminalizing laws.⁶ Until 2018 “Pederasty was an undefined crime, understood by some observers to include not only sex with children, but also sex between consenting adult males, incurring “long imprisonment” of 5 to 15 years.”⁷ Since 2001, the state has not enforced the death penalty as a punishment for non-marital sexual acts; however, Sharia has been invoked to legitimize extrajudicial killings.⁸ Under the new Penal Code that came into effect in 2018 (APC 2017), consensual same-sex sexual acts between women (*Musaheqeh*), consensual same-sex sexual act between men (*Lavat*), and thigh sex between men (*Tafkhiz*) are criminalized.⁹

In recent years, there were some positive developments: at least one newspaper openly wrote about LGBT people and their current circumstances with the Taliban taking over¹⁰, also some Afghan lawyers, officials, prosecutors and parliament members have advocated for the improvement of LGBT people situation in the country¹¹ and at least one doctor offered therapy for trans people who opted for the sex reassignment surgery.¹² Yet, a lack of SOGI advocacy organizations or networks during the years before the Taliban took over the country meant it was challenging, if not impossible, for LGBT people to speak out and challenge persistent stigma, violence and discrimination.¹³ Now, with the Taliban's take-over of Afghanistan in August 2021, where the regime's mandate is to rule within Sharia,¹⁴ the safety of LGBT Afghans is considerably more precarious than it was previously. Under the sharia, the punishment for same-sex sexual acts

⁵Richard Bränström & John E. Pachankis. 2019. “How many sexual minorities are hidden? Projecting the size of the global closet with implications for policy and public health.” PLoS ONE 14(6): e0218084. <https://doi.org/10.1371/journal.pone.0218084> & BBC. 2016. “زندگی پنهان: زندگی دگرباشان جنسی جامعه افغانستان”. *Hidden Life: Afghanistan LGBT community*. <https://www.bbc.com/persian/afghanistan-37531351>. Last Accessed 20 March 2022.

⁶ Human Rights Watch and OutRight Action International, 2022. Ibid. p 29.

⁷ Human Rights Watch and OutRight Action International, 2022. Ibid. p 29.

⁸ UNAMA/OHCHR. 2015. “Annual Report on Protection of Civilians in Armed Conflict”. p. 50-51, https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf

⁹ “قانون جزای جمهوری افغانستان” The penal code of Islamic Republic of Afghanistan 2017 (APC 2017). 2017. Articles 645- 649. <https://ago.gov.af/sites/default/files/2019-03/%DA%A9%D8%AF%20%D8%AC%D8%B2%D8%A7.pdf>.

¹⁰ For more information see : Etilaatroz Newspaper. 5 July 2021. “دگرباشان از قدرت گرفتن طالبان”. *LGBTI community concerns over the Taliban taking over*. Last accessed 20 March 2022. <https://www.etilaatroz.com/127987/homosexuals-fear-taliban-take-power/>.

¹¹ Name withheld. 22 March 2022. Interview with ILGA World.

¹² Roohani, vahed. 1 June 2021. “رونق تطبیق جنسیت ترنس ها در هرات”. *The increase in the sex reassignment surgery in Harat*. Etilaatroz Newspaper. <https://www.etilaatroz.com/125133/change-of-identity-with-a-surgical-razor-transgender-transgender-boom-in-herat/>

¹³ ILGA World: Lucas Ramon Mendos, 2019. “State-Sponsored Homophobia 2019”. p. 430. https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

There are only a few medical institutions dedicated solely to sexual health issues in Kabul, Human Rights Campaign. 2021. “The LGBTIQI refugee crisis in Afghanistan”. Human Rights Campaign. p. 3. <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/assets/LGBTQI-Afghan-Refugee-Crisis-IssueBrief-090821-v3.pdf?mtime=20210909093923&focal=none>

“One large Afghan nongovernmental organization provided services to LGBT people under the previous government with international support, though it had to do so secretly.” Human Rights Watch and OutRight Action International, 2022 “Even If You Go to the Skies, We’ll Find You” LGBT People in Afghanistan After the Taliban Takeover”. p 25. <https://outrightinternational.org/Afghanistan-Report>

¹⁴Jeong, Andrew, Jennifer Hassan and Sarah Pulliam Bailey. August 19, 2021. The Taliban says it will rule under sharia . What does that mean?. August 19, 2021. The Washington Post. Last accessed March 24, 2021. <https://www.washingtonpost.com/world/2021/08/19/sharia-law-afghanistan-taliban/>

classified as *hadd* crime (punishment mandated by God) can differ depending on various factors and different interpretations. In July 2021, according to media reports, a Taliban judge promised that the Taliban would execute gay people under Sharia, saying, "for homosexuals, there can only be two punishments: either stoning (*Sangsar*), or he must stand behind a wall that will fall down on him. The wall must be 2.5 to 3 meters high"¹⁵ A manual issued by the Taliban's Ministry of Vice and Virtue in 2020 states that religious leaders shall prohibit same-sex relations and that "strong allegations" of homosexuality shall be referred to the ministry's district manager for adjudication and punishment.¹⁶

As a result of violence and the threat of violence at the hands of Taliban police and supporters, during the past few months, LGBT people have faced a desperate situation; many had to flee the country, while others live secretly without any access to humanitarian aid, education, health, an adequate standard of living or work, which is explained in detail below.

I. Humanitarian crisis

Afghanistan is one of the world's most rapidly growing humanitarian crises where widespread famine is a serious risk in the country.¹⁷ The humanitarian crisis in Afghanistan affects everyone; however, LGBT persons are particularly at risk of hunger.¹⁸ Some cannot stay in queues asking for food as they are under the threat of being spotted as an LGBT person and, as a result, being subjected to violence.¹⁹

II. Refugees' situation

Leaving Afghanistan is difficult for all Afghans and even more dangerous for those with limited mobility, such as women and LGBT people. LBQ women and trans people, in particular, face problems getting passports and visas for leaving the country. Some LGBT people are scared to appear in public and apply for a visa from the authorities.²⁰ Gender nonconforming persons are afraid of being spotted by Taliban officials if they go to the country's passport office or simply pass through routine checkpoints on public roadways.²¹ Some who have already been deprived of education are not eligible to apply for certain evacuation programs.²²

¹⁵ Ronzheimer. Paul. 13 September 2021. This Taliban judge orders stoning, hanging, hands chopped of. Last accessed March 18, 2021. https://www.bild.de/politik/international/bild-international/this-taliban-judge-orders-stoning-hanging-hands-chopped-of-77067554.bild.html###wt_ref=https%3A%2F%2Fwww.google.com%2F&wt_t=1648380232422

¹⁶ Afghanistan: Taliban 'Vice' Handbook Abusive," Human Rights Watch news release, October 29, 2021, <https://www.hrw.org/news/2021/10/29/afghanistan-taliban-vice-handbook-abusive#>.

¹⁷ UN News agency. January 11, 2022. "Afghanistan: UN launches largest single country aid appeal ever". Un News Agency. <https://news.un.org/en/story/2022/01/1109492>

¹⁸ Name withheld. 22 March 2022. Interview with ILGA World. & Name withheld. 24 March 2022. Interview with ILGA World & Ghoshal, Neela and Feder, Lester. Advocate News Agency. January 26, 2022. "Will Humanitarian Aid Reach the LGBTQ+ Afghans in Hiding?" <https://www.advocate.com/commentary/2022/1/26/will-humanitarian-aid-reach-lgbtq-afghans-hiding>

¹⁹ Name withheld. 22 March 2022. Interview with ILGA World. & Name withheld. 24 March 2022. Interview with ILGA World

²⁰ Name withheld. 22 March 2022. Interview with ILGA World.

²¹ Human Rights Watch and OutRight Action International, 2022. "Even If You Go to the Skies, We'll Find You" LGBT People in Afghanistan After the Taliban Takeover". p 3. <https://outrightinternational.org/Afghanistan-Report>

²² Name withheld. 24 March 2022. Interview with ILGA World

The persons who are able to obtain travel documents and flee to neighboring countries face ongoing challenges. Most have entered Pakistan and Iran,²³ where consensual same-sex sexual acts are banned. In Turkey, they are treated with violence and discrimination.²⁴ The lack of experience and expertise on the part of some UNHCR staff in working with LGBT persons is among the other problems they face.²⁵ Therefore, many Afghan LGBT refugees continue to be at serious risk of different forms of abuse even after fleeing Afghanistan.

III. Threats to life and security, including sexual violence

LGBT people are living under the threat of violence after the Taliban takeover. ILGA World and OutRight Action International have heard reports of killings but have not been able to verify them. For instance, in February this year OutRight Action International interviewed an LGBT activist who reported the death of another activist, whose body was found outside a police station in a major Afghan city. This information was also supported by the dead man's brother. Both witnesses believe he was killed by the police because of his association with the LGBT community. However, police has denied any relation to the incident. The brother also reported that medical examinations suggested evidence of sexual assault.

Likewise, there is also fear of formal efforts by the Taliban to target LGBT defenders, for example Outright has received testimonies and evidence of summons letter from Taliban police looking for an activist specifically because of his work with LGBT people.

Moreover due to the Taliban restrictions on media freedom and because family members and friends of LGBT victims are often too afraid or humiliated to speak out about what happened, the extent of Taliban violence against LGBT persons, including killings, is unknown.²⁶ However, other cases of violence targeting LGBT people, including beatings and lashes, by Taliban members, have been documented since August 2021.²⁷ OutRight has documented cases in which gay men and transgender women have been beaten at checkpoints or detention centers by Taliban officials, subjected to mob attacks by members of the public, and subjected to death threats by individuals who emphasize their links with the Taliban to lend credence to the threats.²⁸ OutRight documented two cases in which gay men were raped by Taliban police or supporters.²⁹

Fear of Taliban violence leaves LGBT people vulnerable to extortion. Some opportunistic members of the public use the sexual orientation and gender identity of LGBT persons as blackmail to not reveal them to the Taliban members.³⁰

²³ Tazreena Sajjad, August 24, 2021. "Analysis: Where do Afghanistan's refugees go?" <https://www.pbs.org/newshour/world/analysis-where-do-afghanistans-refugees-go>

²⁴ Name withheld. 22 March 2022. Interview with ILGA World.

²⁵ Name withheld. 22 March 2022. Interview with ILGA World

²⁶ Human Rights Watch and OutRight Action International, 2022. Ibid. p 12.

²⁷ Name withheld. 22 March 2022. Interview with ILGA World

Also for a possible case of murder by the Taliban look at: Human Rights Watch and OutRight Action International, 2022. "Even If You Go to the Skies, We'll Find You" LGBT People in Afghanistan After the Taliban Takeover". p 13. <https://outrightinternational.org/Afghanistan-Report>

²⁸ Human Rights Watch and OutRight Action International, 2022. Ibid. pp 13-14, p. 20

²⁹ Human Rights Watch and OutRight Action International, 2022. Ibid. pp 13-14. See also Independent. August, 31. 2021 "Man raped and beaten by the Taliban in Kabul after he was duped into meeting them" Independent. <https://www.independent.co.uk/asia/south-asia/taliban-homophobic-attack-lgbt-afghanistan-b1911848.html>. Last accessed March 22, 2022

³⁰ Name withheld. 24 March 2022. Interview with ILGA World

V. Forced marriage, child marriage, and coerced sex

In order to survive, LGBT people are frequently forced to comply with compulsory heterosexuality as a societal norm in Afghanistan; they have to marry, have sex and have children under heteronormative rules and traditions. For some LGBT persons, it means they will never be able to live with a partner of their choice or live in line with their sexuality or gender identity.³¹ With the Taliban's return, the pressure on LGBT people to conform to heterosexual marriage increased.³² Many are under the age of 18 when they are forced into marriage. Child marriage which was already widespread in the country, has been growing since August 2021.³³ OutRight documented one case in which a lesbian, after facing death threats from family members who had joined the Taliban, was forced into marriage and routinely beaten by her husband after he learned about her sexual orientation.³⁴

VI. Barriers to job and employment, education, health and an adequate standard of living

The most serious concern to many LGBT persons still in Afghanistan is not only the direct violence but the inability to earn a living or go out to buy food or other basic goods.³⁵ Some LGBT people hiding from the Taliban lost their jobs, stopped going to school or university, and are also scared to access health care.³⁶ The Taliban ruling the country affected all dimensions of their lives and deprived them of many human rights, including an adequate standard of living, health, work, and education.

VII. Women, intersectionality, and a unique experience of discrimination

Since the Taliban's return, Afghan women have faced increasing violence and repression, including *mahram* requirements (women need to be accompanied by a male relative when moving in the country or when traveling abroad), clothing regulations, bans on education and obstacles to work.³⁷ Thus, LBT women and girls suffer from a unique experience of discrimination and violence in the country.³⁸ They are not only subject to discrimination in terms of work and education, but also they are more likely to be subject to child marriage, and to be unable to escape on their own.

³¹ Human Rights Watch and OutRight Action International, 2022. Ibid. p 22

³² Name withheld. 24 March 2022. Interview with ILGA World

³³ United Nations News agency. November 12, 2021. "Afghanistan: Girls at increasing risk of child marriage". <https://news.un.org/en/story/2021/11/1105662>. Last accessed March 28, 2022.

³⁴ Human Rights Watch and OutRight Action International, 2022. Ibid. p. 15.

³⁵ Human Rights Watch and OutRight Action International, 2022. Ibid. . p 24.

³⁶ Name withheld. 24 March 2022. Interview with ILGA World

³⁷ UN Women. December 3, 2021. "Women's rights in Afghanistan: Where are we now?" UN Women. Last accessed March 28, 2022. <https://www.unwomen.org/sites/default/files/2021-12/Gender-alert-Womens-rights-in-Afghanistan-en.pdf>

³⁸ Name withheld. 24 March 2022. Interview with ILGA World

Needs, priorities and recommendations

LGBT people in and from Afghanistan desperately need humanitarian aid and human rights protection. Here are some of the urgent needs and priorities of LGBT Afghans impacted by the Taliban takeover:

I. The obligations of the international community

In the absence of an effective, inclusive government in Afghanistan, the international community has a responsibility to protect Afghans from human rights violations and humanitarian crises.

a. Regarding LGBT refugees

Under international law, the countries to which LGBT Afghans have fled have an obligation to respect their rights. The principle of non-refoulement embedded in the Convention relating to the Status of Refugees (1951)³⁹ prohibits returning refugees or asylum seekers to the countries where they were persecuted. Countries hosting refugees and asylum seekers are obliged to protect and respect the human rights of LGBT people and ensure their safety and security. In order to provide a modicum of security to LGBT refugees, neighboring countries should provide training to border officers and humanitarian staff on persecution based on sexual orientation and gender identity, and sensitive handling of LGBT asylum cases. UNHCR and other international agencies should also conduct such training.

Evacuation and resettlement of vulnerable refugee populations, including LGBT people, should be prioritized. Countries with legal and policy frameworks protecting LGBT people's rights need to increase their capacity to resettle more LGBT Afghans and establish LGBT-specific shelters. Lastly, UNHCR must facilitate LGBT Afghans settling in countries with legal and policy frameworks protecting LGBT people. Organizations helping to evacuate Afghans at risk should create safe conditions that facilitate identification of and support for LGBT persons who live in secrecy and cannot leave the country without help.

b. Regarding humanitarian aid

There is a need to create humanitarian aid programs targeting LGBT persons in Afghanistan. The United Nations, international and national non-governmental organizations, and any other organizations delivering humanitarian aid to the country need to design programs targeting LGBT communities, especially in the context of food and an adequate housing as many are suffering from hunger and living in unsafe dwellings. We recommend the Independent Expert to include humanitarian aid standards on SOGIEC as a priority in his report.

³⁹ Art 33

II. International law and obligations of the Taliban

The Taliban, as Afghanistan's de facto authorities, have an obligation to respect and protect the human rights of LGBT persons under international law. Afghanistan as a member of the United Nations is bound by the Universal Declaration of Human Rights(UDHR)⁴⁰ under international customary law, and core human rights instruments that it is a party to, including International Covenant on Civil and Political Rights (ICCPR)⁴¹, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴², the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Equality and non-discrimination⁴³ are protected under the UDHR, ICCPR, and ICESCR. The UN Human Rights Committee has determined that the prohibition against discrimination under article 26 of the ICCPR comprises discrimination based on sexual orientation and gender identity.⁴⁴ The rights to life, liberty and security of the person,⁴⁵ right to work,⁴⁶ right to an adequate standard of living, the highest attainable standard of physical and mental health,⁴⁷ right to education,⁴⁸ and prohibition of arrest and detention⁴⁹, torture and other cruel, inhuman or degrading treatment⁵⁰, including rape and other sexual violence, on the basis of sexual orientation are protected by international human rights instruments.

III. Peacebuilding and Transitional Justice

The failure to adequately address the LGBT people's security and human rights in Afghanistan in the years leading up to the 2021 Taliban takeover, and its obvious consequences in terms of human suffering, offers lessons to international stakeholders as to the need to avoid such gaps in the future, both in Afghanistan and elsewhere.

The UN Special Rapporteur on truth, justice and reparations has suggested adopting gender perspective in the conceptualization, design and implementation of national transitional justice strategies and mechanisms to ensure addressing discrimination and violence based on sexual orientation and gender identity during the conflict,⁵¹ Unfortunately transitional justice has been almost nonexistent in Afghan's decades of lurching between conflict and post-conflict; to the extent that the previous government paid lip service to transitional justice, there were no measures that addressed violence and exclusion of LGBT people in Afghanistan or that offered the hope of

⁴⁰ United Nations General Assembly. 1948. "Universal Declaration of Human Rights." United Nations General Assembly Resolution. U.N. Doc. A/810.

⁴¹ United Nations General Assembly. 1966. "International Covenant on Civil and Political Rights (ICCPR)", General Assembly. Res. , U.N. Doc. A/6316.

⁴² United Nations General Assembly. 1966. "International Covenant on Economic, Social and Cultural Rights (ICESCR)". General Assembly Resolution. U.N. Doc. A/6316

⁴³ For example: Art 1,2, 7 UDHR, art 2, 26 ICCPR, art 2 ICESCR

⁴⁴ United Nations Human Rights Committee, 2003. *Young v. Australia*, U.N. Doc. CCPR/C/78/D/941/2000. para. 10.4 & United Nations Human Rights Committee. 2017. *G v. Australia*, UN Doc. CCPR/C/119/D/2172/2012. para. 7.12.

⁴⁵ Art 3 UDHR, art 6, 9 ICCPR

⁴⁶ Art 23 UDHR, art 6 ICCPR

⁴⁷ Art 25 UDHR, Art 11 and 12 ICESCR

⁴⁸ Art 26 UDHR, art 13 ICESCR

⁴⁹ Art 9 UDHR,

⁵⁰ Art 5 UDHR, art 6,7,8 ICCPR & Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵¹ United Nations General Assembly. 2020 "The gender perspective in transitional justice processes". Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. United Nations General Assembly. U.N. Doc A/75/174. 75th Session. 17 July 2020.

reconciliation or reparations for LGBT people.⁵² Furthermore, international organizations have called for the involvement of LGBT community representatives in peace negotiations to ensure the rights of LGBT persons,⁵³ but the peace negotiations in Doha took place without any participation from the LGBT activists, closing the door for negotiating LGBT rights in Afghanistan.

The international community should no longer treat sexual orientation and gender identity as untouchable issues in Afghanistan.⁵⁴ Any peace negotiations should not be without involvement of vulnerable people in Afghanistan including LGBT persons. In any engagement with the Taliban, all human rights, including the rights of LGBT people, should be on the table. Any future Commission of Inquiry or other internationally supported mechanism to account for violence under the Taliban and during previous cycles of conflict should commit to including documentation of abuses against LGBT people and ensuring access to recourse.

⁵² Name withheld. 24 March 2022. Interview with ILGA World. & Name withheld. 22 March 2022. Interview with ILGA World.

⁵³ Myrntinen, Henri, Jana Naujoks, and Judy El-Bushra. 2014. "Re-thinking gender in peacebuilding." International Alert.

⁵⁴ For more information see: ILGA-ASIA. August 18. 2021. "Joint Statement on Afghanistan: Protect Women, Children, LGBTIQ & Other Vulnerable Persons. <https://www.ilgaasia.org/news/2021/8/18/joint-statement-on-afghanistan>. Last accessed March 30, 2022.