

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	729
Land:	Afghanistan
Kilde:	ILGA
Titel:	State-Sponsored Homophobia. A World Survey Of Sexual Orientation Laws: Criminalisation, Protection and Recognition
Udgivet:	maj 2017
Optaget på baggrundsmaterialet:	2. juni 2017

AFGHANISTAN



Penal Code, 1976.

Chapter Eight: Adultery, Pederasty, and Violations of Honour

Article 427:

[INTERCOURSE BETWEEN MALES]

- "(1) A person who commits adultery or pederasty shall be sentenced to long imprisonment.
(2) In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions:
a) In the case where the person against whom the crime has been committed is not yet eighteen years old."

Although the Afghan Penal Code does not contain any explicit provisions on the criminality of consensual same-sex sexual acts. Article 130 of the Constitution does allow recourse to be made to Sharia law, which prohibits same-sex sexual activity in general, and indeed any sexual contact outside marriage. Afghanistan's Sharia law criminalises same-sex sexual acts with a maximum of the death penalty. A BBC article of late-2016 **confirms** that LGBT people live in constant fear of this or other severe persecutory penalties and they are forced to hide their identities. A high-profile scholar is quoted "there was broad consensus amongst scholars that execution was the appropriate punishment if homosexual acts could be proven", and this is consistent with a **history** of such repression in Afghanistan.

In Afghan legal terminology "pederasty" appears to refer to intercourse between males regardless of age. The fact that paedophilia - or sexual relations with persons under the age of consent - falls under subsection 2(a) of article 427 indicates that this is the case. Terming sexual acts between adult men "pederasty" has previously not been uncommon; this occurred for example in the translations of the Criminal Codes of Albania (1977) and Latvia (1933), and in the old Russian legal tradition a "pederast" usually referred to a male who had anal intercourse with another male, regardless of age. Further, the traditional practice of keeping Bacha Bazi (teenage boys typically aged 14-18) for sexual use and as symbols of status amongst older men is **reported** to be currently widespread.

In its 2nd cycle UPR in January 2014, the only **recommendation** regarding SOGI that Afghanistan received was **not accepted** ('noted'), Norway called for the "repeal the provisions of the penal code that criminalise sexual relations between consenting adults of the same sex". No mention was made of the death penalty in relation to same-sex behaviour directly, although ten recommendations calling for the abolition of the death penalty in line with civil and political rights were made: under international human rights law these necessarily include SOGI in their scope. A Joint Submission (SRI, IFPP, and AFGA) made a **reference** to men who have sex with men (MSM), and this appears to be the only mention of SOGI-related material through Afghanistan's entire 2nd cycle UPR process. Its next review is October 2018.

Although a senior member of Afghanistan Independent Human Rights Commission **attended** the Workshop on the Role of NHRIs in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific, February 2015, but to date there has been **no mention** of sexual orientation or SOGI in the work of that Commission.

BANGLADESH



Penal Code, 1860 (Act XLV of 1860).

Section 377. "Unnatural Offences"

[AGAINST THE ORDER OF NATURE]

"Whoever voluntarily has carnal intercourse against the order of nature with man, woman, or animal, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."