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Home Office

Country Policy and Information Note

Afghanistan: Sexual orientation and gender identity

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country information

The COI within this note has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

Contents

Policy guidance	4
1. Introduction	4
1.1 Basis of claim	4
1.2 Points to note	4
2. Consideration of Issues	4
2.1 Credibility	4
2.2 Particular social group (PSG)	4
2.3 Assessment of risk	5
2.4 Protection	6
2.5 Internal relocation	7
2.6 Certification	8
3. Policy summary	8
Country information	10
4. Legal context	10
4.1 Penal Code and the Constitution	10
4.2 Sharia law	10
4.3 Use of the laws in practice	11
4.4 Pederasty	11
4.5 Civil Code	12
5. Position in Afghan society	12
5.1 Societal taboo	12
5.2 Gay men	13
5.3 Bacha bazi	15
5.4 Lesbians	16
5.5 Transgender and transexual persons	17
6. Attitudes of, and treatment by, state authorities	18
7. Civil society organisations	20
Annex A	22
Version control and contacts	23

Policy guidance

Updated: 16 January 2017

1. Introduction

1.1 Basis of claim

- 1.1.1 Fear of persecution or serious harm by the state and/or non-state actors because of the person's actual or perceived sexual orientation or gender identity.

1.2 Points to note

- 1.2.1 For the purposes of this note, sexual orientation or gender identity includes gay men, lesbians, bisexuals and transgender (LGBT) persons though the experiences of each group may differ.
- 1.2.2 Decision makers should also refer to the [Asylum Instruction: Sexual identity issues in the asylum claim](#).

[Back to Contents](#)

2. Consideration of Issues

2.1 Credibility

- 2.1.1 For further guidance on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

[Back to Contents](#)

2.2 Particular social group (PSG)

- 2.2.1 LGBT persons form a particular social group (PSG) in Afghanistan within the meaning of the Refugee Convention because they share a common characteristic that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society.
- 2.2.2 Although LGBT persons form a PSG, this does not mean that establishing such membership is sufficient to be recognised as a refugee. The question to be addressed in each case is whether the particular person will face a real risk of persecution on account of their membership of such a group.
- 2.2.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

[Back to Contents](#)

2.3 Assessment of risk

- 2.3.1 Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as a LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why the person will do so. If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.
- 2.3.2 But if the reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded.
- 2.3.3 For further guidance, see the [Asylum Instruction on Sexual Identity Issues in the Asylum Claim](#).
- a. State treatment
- 2.3.4 Same-sex sexual acts are prohibited in Afghanistan and punishable with imprisonment or, under Islamic law, a maximum penalty of death. Although no known death sentences have been carried out since the end of the Taliban rule (2001), this is more likely due to significantly greater accountability and respect for the rule of law under the current government than the Taliban regime rather than an expression of an increased openness to homosexuality. Members of the LGBT community have reported that they face arrest, detention, robbery and sexual assault by police (see [Legal context](#) and [Attitudes of, and treatment by, state authorities](#)).
- 2.3.5 In the country guidance case of [AJ \(Risk to Homosexuals\) Afghanistan CG \[2009\] UKAIT 00001](#) (5 January 2009) the Tribunal held that:
- Though homosexuality remains illegal in Afghanistan, the evidence of its prevalence especially in the Pashtun culture, contrasted with the absence of criminal convictions after the fall of the Taliban, demonstrates a lack of appetite by the Government to prosecute (Headnote point 1 and paragraphs 57-59 and 61).
- 2.3.6 Homosexuality in Afghanistan is not exclusive to Pashtun culture. In addition, the practice of bacha bazi – sexual relationships between men in power and adolescent boys, which sources sometimes link to the practice of homosexuality – should be recognised as the sexual exploitation and abuse of boys and young men (see [Bacha bazi](#) and [Transgender and transexual persons](#)).
- 2.3.7 Furthermore, there have been some reports of boys being detained and charged with pederasty (interpreted, in the case of Afghanistan, as sexual intercourse between men and anal intercourse) for alleged same-sex activity. The state fails to offer protection to young boys who are traded and

sold for sex but rather criminalises them (see [Attitude of, and treatment by, state authorities](#)).

b. Societal treatment

- 2.3.8 Social acceptance of non-conforming sexual orientation and gender identity is low. Men who have Sex with Men (MSM) is taboo and is often associated with sexual abuse, paedophilia and prostitution. Persons identifying as LGBT, and who are open about their sexuality or gender identity, are likely to be ostracised by their family and may face becoming a victim of an “honour” killing. In a conformist society, getting married and having children is expected regardless of the person’s sexuality or preferences. LGBT people also face violence, assault, and rape (see [Position in Afghan society](#)).
- 2.3.9 However it should be noted that in the country guidance case of [AJ \(Risk to Homosexuals\)](#) the Tribunal found that:
- Some conduct that would be seen in the West as a manifestation of homosexuality is not necessarily interpreted in such a way in Afghan society (Headnote point 2 and paragraph 57).
 - So far as non-state actors are concerned, a practising homosexual on return to Kabul who would not attract or seek to cause public outrage would not face a real risk of persecution (Headnote point 4 and paragraphs 58 and 61).
 - If some individual, or some gay lobby, tried to make a political point in public or otherwise behaved in a way such as to attract public outrage, then there might be a sharp response from the Government (Headnote point 5 and paragraph 54).
 - The evidence shows that a considerable proportion of Afghan men may have had some homosexual experience without having a homosexual preference. A careful assessment of the credibility of a claim to be a practising homosexual and the extent of it is particularly important. The evaluation of an appellant’s behaviour in the UK may well be significant (Headnote point 8 and paragraph 57).
- 2.3.10 Whilst the situation in Afghanistan has changed politically and with regards to the security situation, the situation for LGBT persons largely remains consistent in respect of the evidence considered by the Tribunal in [AJ \(Risk to Homosexuals\)](#) and the latest country information.
- 2.3.11 See also the country policy and information note on [Afghanistan: security and humanitarian situation](#), and, for the position of women in society in general, see the country policy and information note on [Afghanistan: Women fearing gender-based harm and violence](#).
- 2.3.12 For further information on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

[Back to Contents](#)

2.4 Protection

- 2.4.1 Where the person’s fear is of ill treatment/persecution at the hands of the state, they will not be able to avail themselves of the protection of the

authorities without revealing their sexual orientation. As same-sex sexual acts are prohibited in Afghanistan, it would be unreasonable to expect a person identifying as LGBT, who fears persecution or serious harm by non-state actors, to seek protection from the authorities without themselves facing prosecution/persecution by the state.

- 2.4.2 For further guidance on assessing the availability or not of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

[Back to Contents](#)

2.5 Internal relocation

- 2.5.1 Decision makers must give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person (see also the country policy and information note on [Afghanistan: security and humanitarian situation](#)).
- 2.5.2 The authorities control different areas of Afghanistan to different degrees. Where the person's fear is of persecution or serious harm at the hands of the state, decision makers should not automatically presume that internal relocation is not an option.
- 2.5.3 As Lord Bingham observed in [Januzi v. Secretary of State for the Home Department & Ors \[2006\] UKHL 5 \(15 February 2006\)](#):
- "The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts." (para 21).
- 2.5.4 With regard to those in fear of non state actors, the Tribunal held in [AJ \(Risk to Homosexuals\) Afghanistan CG \[2009\] UKAIT 00001](#) that:
- A homosexual may be relatively safe in a big city (especially Kabul) and it would take cogent evidence in a particular case to demonstrate otherwise. The position in smaller towns and in rural areas could be different and will depend on the evidence in a specific case (Headnote point 6 and paragraphs 61 and 62).
 - Relocation to Kabul is generally a viable option for homosexuals who have experienced problems elsewhere, though individual factors will have to be taken into account (Headnote point 7 and paragraph 62).
- 2.5.5 It should be noted, however, that homosexuality remains wholly taboo and there is very little space in Afghan society, in any location, to openly identify as an LGBT person. It has been noted that men convicted of homosexuality in cities are generally sentenced to prison (rather than subject to Sharia law in rural areas). Whilst there are no formal accounts of women in prison for being lesbian it is likely that a woman convicted of homosexuality would face imprisonment (see [Legal context](#) and [Attitudes of, and treatment by, state authorities](#)).

- 2.5.6 For the position of women in society in general, see the country policy and information note on [Afghanistan: Women fearing gender-based harm and violence](#).
- 2.5.7 Decision makers must also take account that the Supreme Court in the case of [HJ \(Iran\)](#) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.
- 2.5.8 For further guidance on considering internal relocation see the [Asylum Instruction on Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Sexual Identity Issues in the Asylum Claim](#).

[Back to Contents](#)

2.6 Certification

- 2.6.1 Where a claim is refused, it is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.6.2 For further guidance on certification, see the [Appeals Instruction on Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

[Back to Contents](#)

3. Policy summary

- 3.1.1 Same-sex sexual acts are prohibited in Afghanistan and punishable by imprisonment or, under Islamic law, a maximum penalty of death. However, no known death sentences have been carried out since the end of the Taliban rule.
- 3.1.2 There are reports that members of the LGBT community face arrest and detention, and sexual assault by police. They also face possible conviction for “moral” crimes.
- 3.1.3 The Tribunal has held that some conduct that would be seen in the West as a manifestation of homosexuality is not necessarily interpreted in such a way in Afghan society. The evidence shows that many Afghan men may have had some homosexual experience without having a homosexual preference. A careful assessment of the credibility of a claim to be a practising homosexual is particularly important.
- 3.1.4 An openly LGBT person in Afghanistan is likely to face adverse attention from society in general; family rejection, including being at risk from an “honour” killing; may be unable to access health services; and could be fired from their jobs on the basis of their sexual orientation.
- 3.1.5 In respect of non-state actors, a lesbian, or gay man with what may be seen as feminine traits, is likely to be at risk of persecution or serious harm. Whilst space for being openly gay is limited, subject to individual factors, a practising gay man who, on return to Kabul, would not attract or seek to cause public outrage, would not face a real risk of persecution.

- 3.1.6 In the absence of other risk factors, it may be a safe and viable option for a gay man to relocate to Kabul, though individual factors will have to be taken into account.
- 3.1.7 Consideration of the situation for women in Afghanistan should be taken into account in respect of lesbians, bisexual or transgender women (see the country policy and information note on [Afghanistan: Women fearing gender-based harm and violence](#)).

[Back to Contents](#)

Country information

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4. Legal context

4.1 Penal Code and the Constitution

4.1.1 The Afghan Penal Code does not contain any specific provisions on the criminality of consensual same-sex sexual acts. Article 427 of the Afghan Penal Code states:

‘(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.’¹

4.1.2 The Swedish International Development Cooperation Agency (Sida) noted that Article 398 of the Afghan Penal Code could also apply to same-sex sexual activity.²

4.1.3 Article 398 states:

‘A person, defending his honour, who sees his spouse, or another of his close relations, in the act of committing adultery or being in the same bed with another and immediately kills or injures one or both of them shall be exempted from punishment for laceration and murder but shall be imprisoned for a period not exceeding two years, as a “Tazeeri” punishment.’³

[Back to Contents](#)

4.2 Sharia law

4.2.1 Where no other laws exist, Article 130 of the Constitution⁴ allows recourse to be made to Islamic (Sharia) law. As noted by the International Lesbian, Gay Bisexual, Trans and Intersex Association (ILGA) Islamic (Sharia) Law prohibits same-sex sexual activity (as it prohibits all sexual acts outside marriage), and criminalises same-sex sexual acts with a maximum of the death penalty⁵.

¹ Afghanistan Penal Code, 22 September 1976, available at: <http://www.refworld.org/docid/4c58395a2.html>. Date accessed: 7 January 2016.

² Swedish International Development Cooperation Agency, Sida, The Rights of LGBTI persons in Afghanistan, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. Date accessed: 8 January 2016.

³ Afghanistan Penal Code, 22 September 1976, available at: <http://www.refworld.org/docid/4c58395a2.html>. Date accessed: 7 January 2016.

⁴ The Constitution of Afghanistan, 2003, (unofficial translation) <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN015879.pdf>. Date accessed: 7 January 2016.

⁵ International Lesbian, Gay, Bisexual, Trans and Intersex Association – ILGA, Carroll, A., and

- 4.2.2 In addition to codified and Islamic law, customary law – referred to by the Max Planck Manual on Family Law in Afghanistan as ‘a collection of standards which are culturally and ethnically valid for the adherents of a particular group as accepted norms where decisions are made’ – is widely used⁶.
- 4.2.3 The US Department of State’s Human Rights report for 2015 noted that ‘The law does not prohibit discrimination or harassment on the basis of sexual orientation or gender identity.’⁷

[Back to Contents](#)

4.3 Use of the laws in practice

- 4.3.1 According to Sida ‘Sharia law-based punishment is more likely to occur in isolated, rural communities. In the cities, persons convicted of homosexuality are generally sentenced to prison.’⁸ Dr Orzala Ashraf Nemat indicated in her October 2016 Independent Advisory Group on Country Information (IAGCI)-commissioned review of the February 2016 version of the country information and guidance on Afghanistan: Sexual Orientation and Gender Identity that whilst there were no formal accounts of women in prison for being lesbian, it is likely that a woman convicted of homosexuality would face imprisonment⁹.

[Back to Contents](#)

4.4 Pederasty

- 4.4.1 Sida interpreted the term “pederasty”, as prescribed in the Penal Code, as ‘sexual intercourse between men and anal intercourse,’ adding ‘there are still legal punishments proscribed even if the people involved are legal adults.’¹⁰ ILGA noted that the term ‘pederasty’ for same-sex relations between adult men was not uncommon, citing the Criminal Codes of Albania and Latvia as examples.¹¹

Itaborahy, L. P., State Sponsored Homophobia 2015: A world survey of laws: criminalisation, protection and recognition of same-sex love, May 2015, available at: http://www.ecoi.net/file_upload/90_1433741287_ilga-state-sponsored-homophobia-2015.pdf, page 69. Date accessed: 7 January 2016.

⁶ Rastin-Tehrani, K., and Yassari, N., Max Planck Manual on Family Law in Afghanistan, Amended 2nd Edition, July 2012, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf, pages 3. Date accessed: 7 January 2016.

⁷ US Department of State, Country Reports on Human Rights Practices for 2015, Section 6, 13 April 2016, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252957>. Date accessed: 15 November 2016.

⁸ Swedish International Development Cooperation Agency, Sida, The Rights of LGBTI persons in Afghanistan, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. Date accessed: 8 January 2016.

⁹ Nemat, O. A., ‘Review of Country Information and Guidance Report: Afghanistan: Sexual orientation and gender identity, Version.1, February 2016’, 27 October 2016. Available on request.

¹⁰ Swedish International Development Cooperation Agency, Sida, The Rights of LGBTI persons in Afghanistan, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. Date accessed: 8 January 2016.

¹¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association – ILGA, Carroll, A., and Itaborahy, L. P., State Sponsored Homophobia 2015: A world survey of laws: criminalisation,

- 4.4.2 Sida added, in regards to punishments cited under Article 427, that ‘The maximum punishment increases if [the] victim is under eighteen years of age, if the defendant is in a position of authority over the victim, if the defendant has repeatedly committed the crime or if the crime results in the spread of a disease. The law also increases the available punishment if a “violation of honour” takes place.’¹²

[Back to Contents](#)

4.5 Civil Code

- 4.5.1 Article 60 of the Afghan Civil Code states that marriage is a contract “which legalizes intercourse between man and woman with the object to establish a family...”¹³ With reference to this, the Max Planck Manual on Family Law in Afghanistan stated ‘Accordingly, a marriage concluded between two persons of the same sex by deception, mistake or any other circumstance is null and void and does not produce any legal effects. Similarly, marriage with a transsexual person is not permissible and is null and void.’¹⁴

[Back to Contents](#)

5. Position in Afghan society

5.1 Societal taboo

- 5.1.1 In November 2014, the Swedish International Development Cooperation Agency, Sida, reported on the rights of LGBTI persons in Afghanistan and stated, with regards to the general situation, that:

‘LGBTI persons in Afghanistan have a very narrow space to live their lives freely. Common law and sharia law criminalise same-sex sexual relations, and the acceptance of non-conforming sexual orientation and gender identity is low. The situation of gender division and the oppression of women are obstacles for all genders, but especially lesbian women, to find spaces to live freely. Homosexuality is often associated with sexual abuse, paedophilia and prostitution. The inability to differentiate between consensual sex between adults and sexual abuse is common and trickles down into the nation’s legal system. Conservative values and a high rate of violence by family members towards LGBTI persons who break gender roles are obstacles for those who

protection and recognition of same-sex love, May 2015, available at: http://www.ecoi.net/file_upload/90_1433741287_ilga-state-sponsored-homophobia-2015.pdf, page 69. Date accessed: 7 January 2016.

¹² Swedish International Development Cooperation Agency, Sida, The Rights of LGBTI persons in Afghanistan, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbt/rights-of-lgbt-persons-afghanistan.pdf>. Date accessed: 8 January 2016.

¹³ Civil Law of the Republic of Afghanistan (Civil Code), 5 January 1977, <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/>, Article 60. Date accessed: 7 January 2016.

¹⁴ Rastin-Tehrani, K., and Yassari, N., Max Planck Manual on Family Law in Afghanistan, Amended 2nd Edition, July 2012, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf, pages 32. Date accessed: 7 January 2016.

have non-conforming sexuality or gender expressions, as well as women and men who oppose arranged marriages or domestic violence.¹⁵

- 5.1.2 The US Department of State's Human Rights report for 2015 noted 'Homosexuality was widely seen as taboo and indecent. Members of the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community did not have access to health services and could be fired from their jobs because of their sexual orientation... Members of the LGBTI community reported they continued to face discrimination, assault, rape, and arrest.'¹⁶
- 5.1.3 In correspondence with the Country Policy and Information Team (CPIT), dated 10 January 2017, an official at the Foreign and Commonwealth Office (FCO) stated that '[H]omosexuality remains wholly taboo in Afghanistan. Conservative values and culture are deeply-embedded, particularly in rural communities, and changes in attitude and behaviour are certainly not in pace with other work to strengthen Afghan institutions for governance, rule of law and human rights.'¹⁷
- 5.1.4 In addition, the FCO official stated 'There is very little space in Afghan society, in any location, to be an individual that openly identifies as LGB&T. Social attitudes and the legal position of homosexuality means that the only option for a homosexual individual, in all but the very rarest of cases, would be to conceal their sexual orientation to avoid punishment.'¹⁸ (See also [Legal context](#)).
- 5.1.5 In October 2016, BBC News produced a brief interview with four Afghans with different sexual orientation. The report noted that all those who spoke to the BBC '... share the problem of family pressure to get married to a partner from the opposite sex and conform to the norms of traditional Afghan society.' Also speaking to the BBC, Dr Niaz Shah of Hull University in the UK, an expert in Afghan and Islamic law, said that '[W]hile homosexuality was and is practised in Afghan society in a variety of male-male relationships, people do not see themselves as gay and often go on to marry women. The concept of gay love is alien to Afghan society.'¹⁹

[Back to Contents](#)

5.2 Gay men

- 5.2.1 A detailed article published in 2002 in the Los Angeles Times provided an insight into homosexuality in Afghanistan and associated identity issues faced by men who have sex with men (MSM). The report indicated that

¹⁵ Swedish International Development Cooperation Agency, Sida, The Rights of LGBTI persons in Afghanistan, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. Date accessed: 8 January 2016.

¹⁶ US Department of State, Country Reports on Human Rights Practices for 2015, Section 6, 13 April 2016, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252957>. Date accessed: 15 November 2016.

¹⁷ Foreign and Commonwealth Office, correspondence with Country Policy and Information Team, 10 January 2017. [Annex A](#).

¹⁸ Foreign and Commonwealth Office, correspondence with Country Policy and Information Team, 10 January 2017. [Annex A](#).

¹⁹ BBC News, 'Afghanistan LGBT community living under threat of death', 7 October 2016, <http://www.bbc.co.uk/news/world-asia-36884732>. Date accessed: 14 November 2016.

liaisons between men were widespread in Afghanistan due to the level of sexual repression in society, blurring the distinction between MSM and those who engage in homosexual sex and identify as gay²⁰.

- 5.2.2 In a Guardian article dated 10 September 2012, Afghan journalist, Nushin Arbabzadah, stated '...if an Afghan man is outed as a homosexual (sometimes it's enough to just be labelled gay), he is considered a disgrace to his family and runs the risk of becoming a victim of "honour killing"... To be gay and Afghan means to live life in perpetual fear of discovery and betrayal, a paranoid existence spent in continuous terror of forced outing.'²¹
- 5.2.3 In February 2013, Afghan writer and gay rights activist, Hamid Zaher, told the BBC that, as a student in Afghanistan, he did not reveal his sexual orientation fearing not only the stigma but also the threat of prosecution and possible death sentence for being gay. Zaher added "It's not possible to be openly gay in Afghanistan,... I would have been killed by my relatives, let alone the government". The BBC report added 'Although segregation between the sexes means that homosexual activity in private is not unknown in Afghanistan, there is no publicly visible gay community whatsoever.'²²
- 5.2.4 Nemat Sadat, an Afghan born in Kabul, moved to the US and wrote a piece for Out Magazine on 21 February 2014. He stated 'My coming out launched a hurricane upon my landlocked country of origin where homosexuality can be penalized with the death penalty....I received thousands of death threats from angry Afghans who were flabbergasted about my insistence that I'm both a proud homosexual and a Muslim.'²³
- 5.2.5 In October 2016, Nemat Sadat told the BBC that, whilst in Kabul, he spoke to LGBT Afghans about their lives. He said "Like anywhere else there are places where gay people meet like gyms and parks and malls... [but] overall [...] it is very hard to establish long term friendships and relationships. LGBT people are trapped by Sharia law and can't even demand their right to exist, let alone marry who they truly love".²⁴
- 5.2.6 Afghan and Islamic law expert, Dr Niaz Shah, told the BBC, in an article on LGBT persons in Afghanistan, dated October 2016, that he was "... not aware of a gay relationship in Afghanistan where two males openly express love for each other and want to live as a couple to the exclusion of any sexual relationship with a female".²⁵

²⁰ Los Angeles Times, Kandahar's Lightly Veiled Homosexual Habits, 3 April 2002, <http://articles.latimes.com/2002/apr/03/news/mn-35991>. Date accessed: 15 January 2016.

²¹ The Guardian, Gay Afghan men face exile or marriage in conformist masculine society, 10 September 2012, <http://www.theguardian.com/commentisfree/2012/sep/10/gay-afghan-men-exile-or-marriage>. Date accessed: 14 January 2016.

²² BBC News, Gay Afghan defies tradition to expose identity, 20 February 2013, <http://www.bbc.co.uk/news/world-asia-21426632>. Date accessed: 14 January 2016.

²³ Out, As Russia Runs for the Closet, Afghanistan Comes Out, 21 February 2014, <http://www.out.com/news-opinion/2014/02/21/russia-runs-closet-afghanistan-comes-out>. Date accessed: 26 January 2016.

²⁴ BBC News, 'Afghanistan LGBT community living under threat of death', 7 October 2016, <http://www.bbc.co.uk/news/world-asia-36884732>. Date accessed: 14 November 2016.

²⁵ BBC News, 'Afghanistan LGBT community living under threat of death', 7 October 2016, <http://www.bbc.co.uk/news/world-asia-36884732>. Date accessed: 14 November 2016.

- 5.2.7 In a November 2016 article, the Associated Press cited some first-hand accounts of gay men in Afghanistan, who were ‘... forced to live in fear and secrecy to avoid being kidnapped, robbed, beaten up, blackmailed, arbitrarily arrested in what police describe as “honey traps,” and murdered by relatives in “honor killings,” ...’²⁶
- 5.2.8 The Naz Foundation reported in September 2008 that whilst there is little information about social exclusion, stigma, discrimination and sexual violence against MSM, this is not an indication that this does not take place. The report noted that, in the wider context of South Asia, social constructions of masculinity are similar, where the “masculine male” is viewed as superior to both women and the “feminised male” or “beardless” boy. Distinguishing the “masculine” and “feminine” male, the report noted that it is mainly the penetrated man who will be stigmatized by both the “active” sexual partner, and society in general, given that penetration is deemed to produce feminisation. The report added that the stigma of feminisation produces human rights abuses such as extortion, violence, and rape, both by ordinary citizens and by police officers²⁷.

[Back to Contents](#)

5.3 Bacha bazi

- 5.3.1 Whilst Men who have sex with Men (MSM) is taboo and prohibited, an article published by Foreign Policy in October 2013 reported on the practice of bacha bazi – sexual companionship between powerful men and their adolescent boy conscripts. The article noted that this phenomenon is not uncommon in Afghanistan, particularly in the Pashtun belt of southern and eastern Afghanistan, and with ethnic Tajiks in the rural north. The report also noted that the practice of bacha bazi is not considered to be a homosexual act.²⁸
- 5.3.2 An official at the FCO, in correspondence with CPIT, dated January 2017, expressed concern at the suggestion that the prevalence, especially in the Pashtun community, of the practice of bacha bazi implies an acceptance of certain homosexual conduct. The official noted that this practice should be recognised as sexual exploitation and abuse of boys and young men, adding that ‘Its occurrence reflects Afghanistan’s inability to deal with child sexual abuse and paedophilia. It should not be associated with consensual homosexuality and attitudes towards this.’²⁹
- 5.3.3 Referring to MSM, Sida reported:

²⁶ Associated Press, ‘Afghanistan: While Pedophilia Is Culturally Sanctioned, LGBT Adults Fear for Their Lives’, 11 November 2016, available at: <http://www.rawa.org/temp/runews/2016/11/11/afghanistan-while-pedophilia-is-culturally-sanctioned-lgbt-adults-fear-for-their-lives.html#ixzz4Qe7CZaE8>. Date accessed: 21 November 2016.

²⁷ Khan, S., Everybody knows, but nobody knows, Naz Foundation International, September 2008 http://www.nfi.net/downloads/knowledge_centre/Useful%20documents/2008-Everybody%20knows-AfghanLitReview-final.pdf, page 44. Date accessed: 12 January 2016.

²⁸ Foreign Policy, Bacha Bazi: An Afghan Tragedy, 28 October 2013, <http://foreignpolicy.com/2013/10/28/bacha-bazi-an-afghan-tragedy/>. Date accessed: 15 January 2016.

²⁹ Foreign and Commonwealth Office, correspondence with Country Policy and Information Team, 10 January 2017. [Annex A](#).

‘Although little is known about the extent of MSM behaviour or the size of the MSM population in the country, UNAIDS refer to a “tradition”, of sexual relationships, including sexual exploitation, by powerful adult men of younger men or boys. The practice is called “Bacha bazi”, dancing boys. Despite the negative social attitudes and legal prohibitions, this is an institutionalised form of bisexuality within Afghan culture. This occurs typically in the militia, police and armed forces when powerful adult men buy sexual favours from young boys with money or gifts or even keep them in slave like conditions. These activities are tolerated within Afghan culture because they are not perceived as being an expression of an LGBT identity, but rather an expression of male power and dominance. Also, there is general impunity for gender based violence and there is not yet child protection legislation in Afghanistan. Together with high stigma and discrimination these practices lead to lack of effective HIV and STI prevention as well as lack of addressing the human rights of these groups.’³⁰

5.3.4 A report by The Star published on 17 March 2013 noted that:

‘In a grim paradox, Afghanistan’s extreme homophobia exists alongside a culture that tolerates the widespread sexual exploitation of Afghan boys.

‘Across Afghanistan, thousands of so-called bacha baz, meaning “boys for pleasure,” are routinely traded and sold for sex and entertainment by older, more powerful men. Some use the euphemism, “dancing boys,” because they are often dressed in female costumes and makeup to perform at weddings and private events.

‘The practice is against the law, but officials commonly turn a blind eye. Zaher said the men who use these boys for sex aren’t viewed as homosexual because the boys haven’t reached puberty.’³¹

See also [Pederasty](#).

[Back to Contents](#)

5.4 Lesbians

- 5.4.1 Whilst CPIT was unable to locate information on the prevalence of lesbians in Afghanistan, their presence was confirmed in an October 2016 article by the BBC. The report noted that, despite still living at home, one woman stated that her parents and siblings had no idea she was a lesbian. The woman told the BBC “There are lots of lesbian women but they can’t talk about it openly... In Afghanistan, being lesbian is seen as un-Islamic. If people found out, the result would be death. My family must never know”.³²

³⁰ Swedish International Development Cooperation Agency, Sida, The Rights of LGBTI persons in Afghanistan, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. Date accessed: 8 January 2016.

³¹ The Star, Gay Afghan Man Speaks Out on Deep Cultural Taboo, 17 March 2013, http://www.thestar.com/news/insight/2013/03/17/gay_afghan_man_speaks_out_on_deep_cultural_taboo.html. Date accessed: 26 January 2016.

³² BBC News, ‘Afghanistan LGBT community living under threat of death’, 7 October 2016, <http://www.bbc.co.uk/news/world-asia-36884732>. Date accessed: 14 November 2016.

- 5.4.2 In January 2003, some general information was provided on Muslim lesbian, bisexual and transgender (LBT) women by the UK-based Safra Project. According to this source

‘Most Muslim LBT women struggle to reconcile their sexual orientation or gender identity with their cultural or religious identities’, adding that the consequences for coming out can include ‘total or partial rejection by family and friends leading to isolation; intense pressure to get married, sometimes leading to forced marriage; domestic violence; homelessness; losing custody of children; and/or abduction of children.’³³

Also see the [Country Information and Guidance Afghanistan: Women fearing gender-based harm and violence](#).

[Back to Contents](#)

5.5 Transgender and transsexual persons

- 5.5.1 An article published in February 2008 in the Seattle Times referred to the important role that eunuchs and cross-dressers have traditionally played in the culture of Pashtuns, cited as the main ethnic group in Pakistan’s northern tribal areas and in the southern half of Afghanistan.³⁴ According to an April 2002 report in the Los Angeles Times on homosexuality in Afghanistan many Pashtun men wear kohl pencil, henna their nails and wear “high-heeled sandals”.³⁵ Dr Orzala Ashraf Nemat indicated in her October 2016 Independent Advisory Group on Country Information (IAGCI)-commissioned review of the February 2016 version of the country information and guidance on Afghanistan: Sexual Orientation and Gender Identity that the prevalence of LGBT persons was not isolated to Pashtun culture.³⁶ In November 2011, reporting on the harassment by police of a male cross-dresser, The Guardian identified the term “ezak” as ‘a vague but deeply derogatory noun referring to anything from a eunuch or a hermaphrodite to a transvestite or a male homosexual.’³⁷
- 5.5.2 The Lahore Times reported in February 2013 on a 16 year-old girl, Niaz Bibi, from Kunar province who, after realising “changes” were taking place in her body, was identified by a doctor as being 70 per cent male. Niaz, who changed her name to Emanullah, cut her hair, wore “boy’s” clothes, and had

³³ Safra Project, Identifying the difficulties experienced by Muslim lesbian, bisexual and transgender women in accessing social and legal services, January 2003, http://www.safraproject.org/Reports/Safra_Project-Initial_findings-2002.pdf, page 4. Date accessed: 15 January 2016.

³⁴ Seattle Times, Pakistani Pashtuns get their groove back — cross-dressing artists, 27 February 2008, <http://www.seattletimes.com/nation-world/pakistani-pashtuns-get-their-groove-back-8212-cross-dressing-artists/>. Date accessed: 15 January 2016.

³⁵ Los Angeles Times, Kandahar's Lightly Veiled Homosexual Habits, 3 April 2002, <http://articles.latimes.com/2002/apr/03/news/mn-35991>. Date accessed: 15 January 2016.

³⁶ Nemat, O. A, ‘Review of Country Information and Guidance Report: Afghanistan: Sexual orientation and gender identity, Version.1, February 2016’, 27 October 2016. Available on request.

³⁷ The Guardian, Will Afghanistan learn that cross-dressers are not criminals?, 13 November 2011, <http://www.theguardian.com/commentisfree/2011/nov/13/cross-dressing-afghanistan-transvestite>. Date accessed: 15 January 2016.

minor surgery to complete the transition, was accepted as a boy by his father, who already had 11 daughters.³⁸

- 5.5.3 Investigative reporter and author, Jenny Nordberg, published a report in the Guardian on 22 September 2014. She described the practice of ‘bacha posh’, literally translated from Dari for a girl “dressed like a boy”, whereby a family in Afghanistan discreetly raise their girl child as a boy. Describing the prevalence and reasons behind the tradition, which cuts across ethnic and geographical lines, Nordberg noted:

‘According to Afghan teachers, midwives and doctors, it is “not uncommon” to find a bacha posh in each school or extended family, because it is easier to have access to an education in the most conservative areas, where few girls are able to go to school. The family may also need a child who can move around more, who can work or run errands for the family, or escort sisters. But while Afghan society largely accepts the apparent contradiction of bacha posh in small children, it also requires that all girls eventually follow the path of a “proper” Afghan woman [i.e. marriage and children].’³⁹

See also [Bacha bazi](#), and the country policy and information note on [Afghanistan: Women fearing gender-based harm and violence](#).

- 5.5.4 Dr Nemat noted that transgender persons, also known as eunuchs, were often victims of abuse, and that they danced in the male-only wedding ceremonies⁴⁰.
- 5.5.5 CPIT could not locate any additional information relating to transgender and transsexual persons in Afghanistan. However this should not be interpreted as a lack of presence of these groups in this country.

[Back to Contents](#)

6. Attitudes of, and treatment by, state authorities

- 6.1.1 The US Department of State’s Human Rights report for 2015 noted that ‘The law criminalizes consensual same-sex sexual conduct, and there were reports that harassment, violence, and detentions by police continued. NGOs reported police arrested, detained, robbed, and raped gay men.’⁴¹
- 6.1.2 The Government of Afghanistan rejected a recommendation made in the Human Rights Council Universal Periodic Review 2014 to ensure non-discrimination on the basis of sexual orientation and gender identity and

³⁸ The Lahore Times, Niaz Bibi, 16, becomes a boy, now named Enamullah, 18 February 2013, <http://www.lhrtimes.com/2013/02/18/sixteen-years-old-girl-become-a-boy-in-afghanistan/>. Date accessed: 15 January 2016.

³⁹ The Guardian, The Afghan girls raised as boys, 22 September 2014, <http://www.theguardian.com/lifeandstyle/2014/sep/22/girls-boys-afghanistan-daughters-raised-as-sons-puberty-bacha-posh>. Date accessed: 22 January 2015.

⁴⁰ Nemat, O. A, ‘Review of Country Information and Guidance Report: Afghanistan: Sexual orientation and gender identity, Version.1, February 2016’, 27 October 2016. Available on request.

⁴¹ US Department of State, Country Reports on Human Rights Practices for 2015, Section 6, 13 April 2016, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252957>. Date accessed: 15 November 2016.

repeal the provisions of the penal code which criminalise sexual relations between consenting adults of the same sex.⁴²

- 6.1.3 According to May 2015 ILGA report there were no known cases of people being sentenced to death for homosexuality since the end of the Taliban rule.⁴³ However, in correspondence with the Country Policy and Information Team in January 2017, the FCO believed that the absence of known death sentences, and a fall in criminal convictions since 2001, was not ‘... an expression of an increased openness to homosexuality, but evidence that there is significantly greater accountability and respect for the rule of law under the current government than the previous Taleban regime. There has been very little shift in the cultural views and legal position on homosexuality in this period.’⁴⁴
- 6.1.4 As reported by Human Rights Watch, in 2012 a 13 year old boy was convicted on “moral crimes” charges and sentenced to one years’ imprisonment for having sex with two adult men, who were also arrested and charged. The report further noted that there is no comparable specific prohibition on rape of men and boys (compared to a 2009 law that refers only to the rape of women and girls).⁴⁵ In 2009 the UN Office on Drugs and Crime (UNODC) noted that boys were being held in prison on charges of pederasty, accused of committing homosexual acts, although the likelihood was that they were victims of sexual abuse.⁴⁶
- 6.1.5 In a 2008 report, the Afghanistan Independent Human Rights Commission (AIHRC) stated there were many cases of boys accused of MSM and charged with pederasty (see [Pederasty](#)). The report stated that ‘In many of these cases it appears that the juveniles are victims of child abuse and exploitation rather than having committed an offence. They are arrested and detained as offenders instead of being provided the protection and support that they need.’⁴⁷

⁴² UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Afghanistan, 4 April 2014, A/HRC/26/4, available at: <http://www.refworld.org/docid/539064f14.html>, paragraph 138.11; UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Afghanistan Addendum, 16 June 2014, A/HRC/26/4/Add.1, available at: <http://www.refworld.org/docid/5671934a4.html>. Date accessed: 14 January 2016.

⁴³ International Lesbian, Gay, Bisexual, Trans and Intersex Association – ILGA, Carroll, A., and Itaborahy, L. P., State Sponsored Homophobia 2015: A world survey of laws: criminalisation, protection and recognition of same-sex love, May 2015, available at: http://www.ecoi.net/file_upload/90_1433741287_ilga-state-sponsored-homophobia-2015.pdf, page 69. Date accessed: 7 January 2016.

⁴⁴ Foreign and Commonwealth Office, correspondence with Country Policy and Information Team, 10 January 2017. [Annex A](#).

⁴⁵ Human Rights Watch, Afghanistan: Don’t Prosecute Sexually Assaulted Children, 9 February 2013, <https://www.hrw.org/news/2013/02/09/afghanistan-dont-prosecute-sexually-assaulted-children>. Date accessed: 18 January 2016.

⁴⁶ UNODC, Afghanistan, Justice for Children in Conflict with the Law: A Training Manual for Judges and Prosecutors, 2009, http://www.unodc.org/documents/afghanistan/Juvenile_Justice/Juvenile_Justice_Manual_complete_2_009_Nov_10.pdf, pages 27 and 48. Date accessed: 8 January 2016.

⁴⁷ Afghanistan Independent Human Rights Commission (AIHRC), Justice for children. The situation of children in conflict with the law in Afghanistan, 26 June 2008, available at: <http://www.refworld.org/docid/47fdfae50.html>, page 12. Date accessed: 12 January 2016.

- 6.1.6 In a National inquiry on the causes and consequences of Bacha bazi (see [Bacha bazi](#)), which included, but was not limited to, acts of sodomy, the AIHRC reported on 18 August 2014 that due to restrictions in access to justice, there were no cases in its report of victims of Bacha bazi lodging complaints against their perpetrators. The National Inquiry added that, since there is no clear provision in Afghan criminal law addressing Bacha bazi, perpetrators of sexual abuse against boys in such circumstances were rarely prosecuted. Of the few that were, even fewer were sentenced to imprisonment. The AIHRC stated that there were cases where the police and judiciary were complicit with the perpetrators, or were perpetrators themselves, thus resulting in impunity.⁴⁸
- 6.1.7 Ariana News noted, in a report dated 1 December 2015, that 'Afghan minister of Public Health in celebration of World AIDS Day declared that despite gains in controlling the spread of Human Immunodeficiency Virus (HIV), the disease has continued to spread at an alarming rate and the main cause is homosexuality among men.'⁴⁹

[Back to Contents](#)

7. Civil society organisations

- 7.1.1 Sida reported in November 2014 'There are not many organisations within Afghanistan working with LGBTI rights in any form. Pakistani organisation, Naz Male Health Alliance works in regional cooperation with health clinics in Afghanistan and organisations that support MSM. Other organisations might include LGBTI persons in their work, but due to the security risks there are few that are open with their work.'⁵⁰ The US Department of State's Human Rights report for 2015 noted 'Organizations devoted to protecting the freedom of LGBT persons remained underground because they could not be legally registered.'⁵¹
- 7.1.2 Dr Orzala Ashraf Nemat indicated in her October 2016 Independent Advisory Group on Country Information (IAGCI)-commissioned review of the February 2016 version of the country information and guidance on Afghanistan: Sexual Orientation and Gender Identity that no organisations in Afghanistan openly or publicly offer support to the LGBT community. However she added that, LGBT persons, women in particular, would be able to seek help and services from some organisations. Such organisations would keep the

⁴⁸ Afghanistan Independent Human Rights Commission (AIHRC), Causes and Consequences of Bacha Bazi in Afghanistan (National Inquiry Report), 18 August 2014, http://www.aihrc.org.af/media/files/PDF/National%20Inquiry%20Report_Final_English.zip, pages 29, and 64-66. Date accessed: 12 January 2016.

⁴⁹ Ariana News, Homosexuality among men causes HIV continues to spread in Afghanistan, 1 December 2015, <http://ariananews.af/latest-news/homosexuality-among-men-causes-hiv-continues-to-spread-in-afghanistan/>. Date accessed: 26 January 2016.

⁵⁰ Swedish International Development Cooperation Agency, Sida, The Rights of LGBTI persons in Afghanistan, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. Date accessed: 8 January 2016.

⁵¹ US Department of State, Country Reports on Human Rights Practices for 2015, Section 6, 13 April 2016, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252957>. Date accessed: 15 November 2016.

person's sexual orientation and identity confidential to protect both the person and the organisation.⁵²

- 7.1.3 The SIDA report also noted that 'Despite the statements on access to treatment for all in the Afghan Constitution, service provision to people living with HIV/AIDS is limited to few provinces. Civil society organisations are still the main provider of services to this group.'⁵³

[Back to Contents](#)

⁵² Nemat, O. A, 'Review of Country Information and Guidance Report: Afghanistan: Sexual orientation and gender identity, Version.1, February 2016', 27 October 2016. Available on request.

⁵³ Swedish International Development Cooperation Agency, Sida, The Rights of LGBTI persons in Afghanistan, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. Date accessed: 8 January 2016.

Annex A

[redacted]

10 January 2017

Country Policy and Information Team
Home Office

Country information and guidance: sexual orientation and gender identity, Afghanistan

1. Thank you for the opportunity to comment on the Country Information and Guidance: Sexual Orientation and Gender Identity, Afghanistan [February 2016]. I have detailed some of our concerns with the information provided in this document.
2. To note from the outset that homosexuality remains wholly taboo in Afghanistan. Conservative values and culture are deeply-embedded, particularly in rural communities, and changes in attitude and behaviour are certainly not in pace with other work to strengthen Afghan institutions for governance, rule of law and human rights.
3. The report notes there have been no known death sentences for homosexuality and a fall in criminal convictions since 2001. We do not believe that this is an expression of an increased openness to homosexuality, but evidence that there is significantly greater accountability and respect for the rule of law under the current government than the previous Taliban regime. There has been very little shift in the cultural views and legal position on homosexuality in this period.
4. We are deeply concerned at the suggestion that the prevalence, especially in Pashtun community, of the practice of bacha bazi (pederasty) implies an acceptance of certain homosexual conduct. The report should be clear that this practice is sexual exploitation and abuse of boys and young men. Its occurrence reflects Afghanistan's inability to deal with child sexual abuse and paedophilia. It should not be associated with consensual homosexuality and attitudes towards this.
5. Additionally the guidance states that relocation to Kabul could be an option for homosexual Afghans. There is very little space in Afghan society, in any location, to be an individual that openly identifies as LGB&T. Social attitudes and the legal position of homosexuality means that the only option for a homosexual individual, in all but the very rarest of cases, would be to conceal their sexual orientation to avoid punishment.

[redacted]

Head of the Afghanistan Unit

[Back to Contents](#)

Version control and contacts

Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then [email the Country Policy and Information Team](#).

If you notice any formatting errors in this note (broken links, spelling mistakes and so on) or have any comments about the layout or navigability, you can [email the Guidance, Rules and Forms Team](#).

Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **16 January 2017**

Changes from last version of this note

Country policy and information update, including comments from the Independent Advisory Group on Country Information (IAGCI) review, and information from the Foreign and Commonwealth Office.

[Back to Contents](#)