

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	1039
Land:	Afghanistan
Kilde:	UK Home Office
Titel:	Country Policy and Information Note Afghanistan: Sexual orientation and gender identity or expression
Udgivet:	februar 2020
Optaget på baggrundsmaterialet:	11. maj 2020



Home Office

Country Policy and Information Note

Afghanistan: Sexual orientation and gender identity or expression

Version 3.0

February 2019

Preface

Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in [the basis of claim](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion.

Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

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 support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

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. The IAGCI may be contacted at:

Independent Advisory Group on Country Information

Independent Chief Inspector of Borders and Immigration

5th Floor

Globe House

89 Eccleston Square

London, SW1V 1PN

Email: chiefinspector@icibi.gov.uk

Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

Contents

Assessment	7
1. Introduction.....	7
1.1 Basis of claim.....	7
1.2 Points to note.....	7
2. Consideration of issues.....	7
2.1 Credibility.....	7
2.2 Exclusion.....	7
2.3 Convention reason(s).....	7
2.4 Risk.....	8
2.5 Protection.....	11
2.6 Internal relocation.....	11
2.7 Certification.....	12
Country information	13
3. Legal context.....	13
3.1 Constitution and statutory laws.....	13
3.2 Sharia and customary law.....	15
4. State attitudes and treatment.....	16
4.1 Government views.....	16
4.2 Law enforcement.....	16
4.3 Treatment by the police.....	17
4.4 Ombudsman/complaints mechanism(s).....	17
5. Societal attitudes and treatment.....	18
5.1 Societal norms.....	18
5.2 Men who have sex with men (MSM).....	20
5.3 Bacha bazi.....	20
5.4 Transgender persons.....	20
5.5 Public and religious views.....	22
5.6 Violence and discrimination.....	22
5.7 LGBTI rights activists.....	23
5.8 Gay ‘scene’ or ‘community’.....	23
6. Access to services.....	23
7. LGBT groups, civil society and human rights NGOs.....	24
7.1 Government recognition of LGBT NGOs.....	24
7.2 Civil society and NGOs.....	24
Terms of Reference	25

Bibliography	26
Sources cited	26
Sources consulted but not cited.....	29
Annex A.....	30
Foreign and Commonwealth Office, 10 January 2017	30
Version control.....	31

Assessment

Updated: 20 February 2020

1. Introduction

1.1 Basis of claim

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

1.2 Points to note

1.2.1 This note provides an assessment of the general situation of gay men, lesbians, bisexuals, trans and intersex persons, as well as those perceived as such. They are referred hereafter collectively as 'LGBTI persons', although the treatment and experiences of each group may differ.

1.2.2 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

[Back to Contents](#)

2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#) the [Asylum Instruction on Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

2.1.1 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](#)).

2.1.2 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

[Back to Contents](#)

2.2 Exclusion

2.2.1 Decision makers must consider whether one (or more) of the exclusion clauses applies. If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection. Each case must be considered on its individual facts and merits.

2.2.2 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

[Back to Contents](#)

2.3 Convention reason(s)

2.3.1 Actual or imputed membership of a particular social group (PSG).

- 2.3.2 LGBTI persons in Afghanistan form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.
- 2.3.3 Although LGBTI persons in Afghanistan form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.
- 2.3.4 For further guidance on Convention reasons see the instruction on [Assessing Credibility and Refugee Status](#).

[Back to Contents](#)

2.4 Risk

a) General points

- 2.4.1 Paragraphs 82 and 35 of the determination of the Supreme Court's ruling in [HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department \[2010\] UKSC 31](#), heard 10,11,12 May and promulgated 7 July 2010, has set out the approach to take and established the test that should be applied when assessing a claim based on a person's sexual orientation, which can also be applied to claims based on a person's gender identity / expression.
- 2.4.2 For further guidance, see the Asylum Instruction on [Sexual identity issues in the asylum claim](#).
- 2.4.3 The country guidance case of [AJ \(Risk to Homosexuals\) Afghanistan CG \[2009\] UKAIT 00001 \(5 January 2009\)](#), heard on the 28 October 2008, focussed on the situation for gay men. The findings in [AJ](#) pre-date [HJ \(Iran\)](#). The Upper Tribunal in [AJ](#) applied the 'reasonably tolerable' (to act discreetly and conceal identity) test, which was found to be incorrect and rejected by [HJ \(Iran\)](#), and so much of AJ's findings cannot now be relied on.
- 2.4.4 The Upper Tribunal's conclusions in [AJ \(Risk to Homosexuals\)](#) in Headnotes 3, 4, 5, 6, and 7 and related paragraphs should therefore not be followed. The test that should be adopted are in paragraphs 35 and 82 in [HJ \(Iran\)](#).

[Back to Contents](#)

b) State treatment

- 2.4.5 The revised Afghan Penal Code came into force in February 2018. It explicitly criminalises consensual same-sex sexual acts (for both men and women), which are punishable with imprisonment of up to two years or, under Islamic (Sharia) law, a maximum penalty of death. Sharia law is more likely to be applied in isolated, rural communities. There is no law prohibiting discrimination on the basis of sexual orientation and no legal recognition of transgender or, unlike in other some South Asian countries, 'third gender' persons (see [Legal context](#) and [Law enforcement](#)).
- 2.4.6 In the country guidance case of [AJ \(Risk to Homosexuals\)](#) the Upper Tribunal (UT) 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 1 and paragraphs 57-59 and 61).

- 2.4.7 It should be noted that homosexuality is not exclusive to Pashtun culture. LGBTI persons (predominantly males and transgender women) have reported that they face harassment, extortion, violence (including sexual assault and rape), arrest and detention by the police ([Treatment by the police](#)). However, accurate statistics on the number and frequency of arrests of LGBTI persons are not available to determine how systematically the law is enforced and there are no documented prosecutions of persons involved in same-sex sexual acts (see [Law enforcement](#)).
- 2.4.8 The Upper Tribunal in [AJ \(Risk to Homosexuals\)](#) found, specifically referring to those who have had same sex experiences but do not identify as LGBTI, that:
- 'In a society in which sexual activity between males is so prevalent, many asylum seekers from Afghanistan may in the past have had some homosexual experience. That does not necessarily mean that they are practising homosexuals and would not prefer heterosexual relationships if women were available. Nor does it necessarily imply that they would on return engage in open homosexual activity [...]. It is also a very proper reminder that in the Afghan context a carefully reasoned 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, and the persuasiveness of the evidence about it, may well be a significant factor in this assessment.' (Paragraph 57)
- 2.4.9 Although [AJ \(Risk to Homosexuals\)](#) is now over ten years old the country situation has not changed significantly. A new Penal Code continues to render same-sex sexual activity illegal.
- 2.4.10 Same-sex sexual relations amongst men is not uncommon and occurs in a range of divergent cultural circumstances. It may be regarded as a legitimate satisfaction of carnal desire and preferable to pre-marital sex with a woman. However, the majority of these men would not identify as gay (see [Societal norms](#)).
- 2.4.11 Same-sex relations remain hidden and stigmatised and a person who openly identifies as LGBTI could be liable to prosecution by the state, and is likely to face discrimination and violence by the state, which by its nature and repetition, will amount to persecution and serious harm. If a person does not live openly as LGBTI, consideration must be given to the reasons why they do not. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.12 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.13 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

c) Societal treatment

- 2.4.14 The Upper Tribunal in [AJ \(Risk to Homosexuals\)](#) held:
‘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 2 and paragraph 57]
‘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 8 and paragraph 57)
- 2.4.15 While same-sex relationships are not uncommon (participants may, however, not identify as being LGBTI) there is, in general, no societal understanding or acceptance of people who have non-conforming sexual orientation and / or gender identity and very few people are open about their same-sex attraction or alternative identity (see [Societal norms](#)).
- 2.4.16 Information about societal treatment of LGBTI persons is limited. Sources indicate that LGBTI persons face societal and family discrimination and pressure to follow cultural and religious norms, including marriage and having children (see [Societal norms](#)).
- 2.4.17 There is little reported information on lesbians, but available information indicates that lesbianism is seen as ‘un-Islamic’ and a high rate of family violence against LGBTI persons prevents the majority of lesbians from living openly (see [Societal norms](#)). The general position of women in Afghan society should also be considered – see the [Country Policy and Information Note on Afghanistan: Women fearing gender-based harm and violence](#).
- 2.4.18 In the country guidance case of [AJ \(Risk to Homosexuals\)](#) the Upper Tribunal held that ‘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 4 and paragraphs 58 and 61).
- 2.4.19 The conclusions in Headnote 4 and paragraph 58, that a practising homosexual on return to Kabul, who would not attract or seek to cause public outrage, would not face restrictions on his ability to live as such which amount to a real risk of persecution, is based on the ‘reasonably tolerable’ test in that it concluded that a homosexual would and can be expected to keep his homosexuality private. As [HJ \(Iran\)](#) found the ‘reasonable tolerable’ test to be incorrect, the Upper Tribunal in [AJ \(Risk to Homosexuals\)](#) applied the incorrect test so its guidance in respect of return to Kabul should not be followed.
- 2.4.20 Transgender persons, particularly transgender women, are marginalised or ostracised by their families and wider society, often keeping their identities secret to avoid discrimination, abuse and sexual exploitation (see [Transgender persons](#)).

- 2.4.21 There are few reports on societal violence and discrimination against LGBTI persons. This may be due to the limited space in which a person can be open about their sexuality and/or gender identity. However, a person who openly identifies as LGBTI is likely to face discrimination and violence by non-state actors, which by its nature and repetition, will amount to persecution and serious harm. If a person does not live openly as LGBTI, consideration must be given to the reasons why they do not. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.22 [HJ \(Iran\)](#) provides that, even if a person would not be open about their sexuality, if the reason why they would not do so is fear of persecution then they will still be a refugee.
- 2.4.23 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.24 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

[Back to Contents](#)

2.5 Protection

- 2.5.1 Where the person has a well-founded fear of persecution from state actors, they will not be able to avail themselves of the protection of the authorities.
- 2.5.2 Where the person has a well-founded fear of persecution from non-state actors, decision makers must assess whether the state can provide effective protection.
- 2.5.3 In areas controlled by the Taliban, the state will be unable to provide effective protection (see the [Country Policy and Information Note Afghanistan: Anti-government elements](#)).
- 2.5.4 Same-sex sexual acts are prohibited in Afghanistan, and it would be unreasonable to expect a person identifying as LGBTI, who has a well-founded fear of persecution from non-state actors because of their sexuality, to seek protection from the authorities as they are unwilling to provide effective protection.
- 2.5.5 For further guidance on assessing the availability of state protection, see the Asylum Instruction on [Assessing Credibility and Refugee Status](#).
- 2.5.6 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

[Back to Contents](#)

2.6 Internal relocation

- 2.6.1 Where the person has a well-founded fear of persecution from state actors, they will not be able to relocate to escape that risk.
- 2.6.2 Where the person has a well-founded fear of persecution from non-state actors, decision makers must determine whether the person could relocate internally to a place where they would not face a real risk of persecution or

serious harm and where they can reasonably be expected to stay (see also the [Country Policy and Information Note Afghanistan: security and humanitarian situation](#)).

- 2.6.3 Homophobic and traditional attitudes are prevalent throughout the country and there is very little space in Afghan society to openly identify as an LGBTI person (see [Societal norms](#)). Whilst Kabul and other large cities might offer a degree of anonymity, there is unlikely to be any place in Afghanistan to which a person, who openly identifies as LGBTI, could reasonably relocate without making fundamental changes to their behaviour. Therefore, Headnotes 6 and 7 of [AJ \(Risk to Homosexuals\)](#) should not be followed.
- 2.6.4 Internal relocation will not be an option if it depends on the person concealing their sexual orientation and/or gender identity in the proposed new location for fear of persecution.
- 2.6.5 For further guidance on internal relocation, see the Asylum Instruction on [Assessing Credibility and Refugee Status](#).
- 2.6.6 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

[Back to Contents](#)

2.7 Certification

- 2.7.1 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.
- 2.7.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

[Back to Contents](#)

Country information

Section 3 updated: 13 November 2019

3. Legal context

3.1 Constitution and statutory laws

3.1.1 Article 22 of the Constitution states 'Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden.'¹

3.1.2 The 1976 Afghan Penal Code (superseded by a new Code in 2018) did not contain any specific provisions on the criminality of consensual same-sex sexual acts but instead, under Article 427, proscribed long term imprisonment for 'pederasty'², which may be interpreted as sexual intercourse between men and anal intercourse³, but may also refer to sex between an adult male and a boy⁴. According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) 2017 report on State-Sponsored Homophobia, noted 'In Afghan legal terminology "pederasty" appears to refer to intercourse between males regardless of age.'⁵

3.1.3 The new Afghan Penal Code came into force in February 2018 and explicitly criminalises consensual same-sex sexual acts⁶. Whilst no official English translation of the new penal code could be found by CPIT at the time of publication of this Note, in its 2019 report, ILGA cited the following provisions and respective definitions:

- Section 645. Mosaheghe^[7]: A person who commits 'Mosaheg[h]e' with another person, each of the former shall be sentenced to small imprisonment, not exceeding one year.
- Section 646. Crime of Sodomy.
 - (1) A person who commits sodomy with another female or male, shall be punished in accordance with the provisions of this chapter.
 - (2) For the purpose of this section, sodomy happens by the penetration of a male sexual organ into a female or a male anus, not considering the depth of the penetration.
- Section 647: Those who commit sodomy, shall be sentenced to medium imprisonment not exceeding two years.

¹ 'Constitution of Afghanistan', 26 January 2004, [url](#).

² Afghanistan Penal Code, 22 September 1976, [url](#).

³ Sida, 'Human rights based approach at Sida', November 2014, (Afghanistan), [url](#).

⁴ Collins English dictionary, 'Pederasty', n.d., [url](#).

⁵ ILGA, 'State-Sponsored Homophobia 2017', (page 121), May 2017, [url](#).

⁶ ILGA, 'State-Sponsored Homophobia 2019', (page 429), March 2019, [url](#).

⁷ Mosaheghe or Mosahegheh = traditionally feminine same-sex sexual relationship does not involve penetration, it is all about touching both sexes and sexual pleasure (ILGA definition)

- Section 649. Tafkhiz⁸. When the male offender commits ‘Tafkhiz’ with another man, the former shall be sentenced to small imprisonment (three months to a year)⁹.
- 3.1.4 The Ministry of Foreign Affairs of the Netherlands, Department for Country of Origin Information Reports (CAB), report on Afghanistan, dated March 2019 and based on a range of sources, defined the penal code articles that proscribed same-sex sexual activity: ‘Articles 645 and 649 of the Code state that if a woman is found in an intimate position with another woman (performing sexual acts) or if a man performs a sexual act other than actual penetration, each of the persons involved is liable to a short-term prison sentence. Article 147 describes a short-term sentence as between three months and one year.’¹⁰
- 3.1.5 The CAB report also noted:
- ‘If a man has anal sex with a woman or a man, this is punishable by up to two years in prison on the basis of Articles 646 and 647 of the Penal Code. Article 648 states that the penalty is more severe if the offence was committed by the suspect with a relative in the third degree [i.e., ‘Maharem’ (with whom marriage is prohibited according to rules of Islam)¹¹]; with a chaperone, teacher or servant, as the suspect has authority over or influences these persons in some way; and/or if the person who is the victim of the offence becomes infected with a sexually transmitted disease.’¹²
- 3.1.6 According to UNAIDS, there were no laws criminalising transgender persons¹³. Neither are transgender persons recognised as a ‘third gender’ in Afghanistan, unlike in other South Asian countries like India, Pakistan and Bangladesh¹⁴. (see [Transgender persons](#)).
- 3.1.7 There are no laws prohibiting discrimination on the basis of sexual orientation and no legal protection against hate crimes. There is no legal recognition of same-sex civil unions or marriages, and same-sex couples cannot adopt children¹⁵.
- 3.1.8 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...’¹⁶ 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.’¹⁷

⁸ Tafkhiz = (masculine or feminine) same-sex sexual relationships not involving any penetration (ILGA definition)

⁹ ILGA, ‘State-sponsored Homophobia 2019’, (page 429), March 2019, [url](#).

¹⁰ CAB, ‘Country of Origin Report Afghanistan’, (page 102), March 2019, [url](#).

¹¹ ILGA, ‘State-Sponsored Homophobia 2017’, (page 430), May 2017, [url](#).

¹² CAB, ‘Country of Origin Report Afghanistan’, (page 102), March 2019, [url](#).

¹³ UNAIDS, ‘Country progress report – Afghanistan’, 2018, [url](#).

¹⁴ IWPR, ‘Afghanistan’s Third Gender People’, 24 February 2017, [url](#).

¹⁵ ILGA, ‘State-sponsored Homophobia 2019’, (sections 4.2 and 4.3), March 2019, [url](#).

¹⁶ Civil Law of the Republic of Afghanistan (Civil Code), 5 January 1977, [url](#).

¹⁷ MPIL, ‘Max Planck Manual on Family Law in Afghanistan’, (page 32), July 2012, [url](#).

3.2 Sharia and customary law

- 3.2.1 Where no other laws exist, Article 130 of the Constitution allows recourse to be made to Islamic (Sharia) law¹⁸.
- 3.2.2 According to a general paper on Sharia law and LGBT rights, not specifically relating to Afghanistan, by Javaid Rehman and Eleni Polymenopoulou of the Brunel Law School, published in 2013 in the Fordham International Law Journal, 'Regarding the punishment for homosexuality, there is a consensus among the four leading Sunni schools of thought and most Islamic scholars that homosexual acts are a major sin (fahicha) and may be punishable by death.'¹⁹
- 3.2.3 The Journal paper noted '[F]or Islamic scholars who consider that the punishment of homosexuality is equivalent to the punishment for zina [sexual intercourse outside marriage²⁰], the death sentence, provided the evidentiary requirements are met, may be also applied; married men who are offenders of zina (muhsan) face a mandatory death sentence, while flogging is applied to unmarried men (ghayr muhsan).'²¹
- 3.2.4 In 2015, Huff Post's RYOT reported 'According to many Afghan religious scholars and leaders, it's abhorrent and forbidden to profess love for another man. However, a sexual relationship with a male, approached from purely carnal desire, is not only permissible but considered a preferable alternative to the perceived horror of pre-marital sex with a woman, a crime known as "Zina".'²²
- 3.2.5 In its 'Child Notice Afghanistan', dated 2018, the UN Children's Fund (UNICEF) quoted a legal expert, Mr Ezmarey Osmani from Afghanistan, on both customary and Sharia law:
- 'One of the reasons that LGBTs are not recognized in the Afghan law is that it contradicts Sharia and Islamic teachings. There is no mention of LGBTs in Quran or Hadiths and thus it is not recognized in our judicial system. Even if someone is born transgender, the person itself and the family will not disclose it to others as it will be some kind of social stigma for the person and the family. The other issue has to do with rights as the right to marriage, the right to custody of children, right to inheritance and many other issues. It will create many complications within the law and Sharia. For this reason it is easier to divide persons between male and female.'²³
- 3.2.6 In February 2017, the Institute of War and Peace Reporting (IWPR) 'Despite widespread prejudice, Islamic scholars said that there was no basis in Sharia for discriminating again [sic] third gender people.'²⁴ (see [Transgender persons](#)).

¹⁸ 'Constitution of Afghanistan', 26 January 2004, [url](#).

¹⁹ Fordham International Law Journal, 'Is Green a Part of the Rainbow?', (page 12), 2013, [url](#).

²⁰ CW4WA, 'Women and the Rule of Law in Afghanistan', (page 2), n.d., [url](#).

²¹ Fordham International Law Journal, 'Is Green a Part of the Rainbow?', (page 12), 2013, [url](#).

²² Huff Post RYOT, 'Hand Covers Bruise: The Destruction of Afghanistan's Boys', 6 June 2015, [url](#).

²³ UNICEF, 'Child Notice Afghanistan; 2018, (page 39), 2018, [url](#).

²⁴ IWPR, 'Afghanistan's Third Gender People', 24 February 2017, [url](#).

- 3.2.7 In addition to codified and Islamic law, the Max Planck Manual on Family Law in Afghanistan referred to customary law, describing it as ‘a collection of standards which are culturally and ethnically valid for the adherents of a particular group as accepted norms’, which was widely used by local shuras and jirgas (tribal councils) to settle disputes²⁵.

[Back to Contents](#)

Section 4 updated: 13 November 2019

4. State attitudes and treatment

4.1 Government views

- 4.1.1 The Government of Afghanistan rejected a recommendation made in the UN Human Rights Council (UNHRC) Universal Periodic Review (UPR) 2014 to ensure non-discrimination on the basis of sexual orientation and gender identity and repeal the provisions of the penal code which criminalise sexual relations between consenting adults of the same sex^{26 27}.
- 4.1.2 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.’²⁸

[Back to Contents](#)

4.2 Law enforcement

- 4.2.1 The Swedish International Development Cooperation Agency (Sida) noted in a report dated November 2014, ‘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.’²⁹
- 4.2.2 However, according to confidential sources cited in the March 2019 CAB report ‘As far as is known, the Afghan government has not initiated criminal proceedings and/or imposed penalties either in cases of voluntary sexual acts between persons of the same sex, or in cases where one of the persons involved was a minor.’ According to one of the sources, no such punishments had occurred since the fall of the Taliban in 2001³⁰. In correspondence with the Country Policy and Information Team (CPIT), dated 10 January 2017, an official at the Foreign and Commonwealth Office (FCO) considered that the lack of appetite to prosecute did not indicate an increased openness to homosexuality³¹.
- 4.2.3 Whilst there were no formal accounts of women in prison for being lesbian, Dr Orzala Ashraf Nemat, Senior Teaching Fellow at the School of Oriental and African Studies (SOAS), indicated, in her Independent Advisory Group

²⁵ MPIL, ‘Max Planck Manual on Family Law in Afghanistan’, (page 3), July 2012, [url](#).

²⁶ UNHRC, ‘Report of the Working Group on the UPR’, (para 138.11), 4 April 2014, [url](#).

²⁷ UNHRC, ‘Report of the Working Group on the UPR Addendum’, 16 June 2014, [url](#).

²⁸ Ariana News, ‘Homosexuality among men causes HIV continues...’, 1 December 2015, [url](#).

²⁹ Sida, ‘The rights of LGBTI persons in Afghanistan’, (page 1), November 2014, [url](#).

³⁰ CAB, ‘Country of Origin Report Afghanistan’, (page 102), March 2019, [url](#).

³¹ FCO, correspondence with CPIT, 10 January 2017, [Annex A](#).

on Country Information (IAGCI)-commissioned review of the February 2016 version of the Home Office country information and guidance on Afghanistan: Sexual Orientation and Gender Identity, that there was a risk that a woman convicted of such would face imprisonment³².

[Back to Contents](#)

4.3 Treatment by the police

- 4.3.1 The USSD report for 2018 observed ‘Members of the LGBTI community reported they continued to face arrest by security forces...’³³ Freedom House noted in its report, Freedom in the World 2019, that LGBT persons faced abuse by the police³⁴. In September 2017, while reporting on gay men in Afghanistan, Radio Free Europe Radio Liberty (RFERL) recited a young man from the western Afghan city of Farah, who said ‘gay men are wary of police, who he says frequently demand money or sexual favors if they come across a gay man. “We have to do it – otherwise they threaten to tell our families”.’³⁵
- 4.3.2 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.’³⁶ (see [Transgender persons](#)).
- 4.3.3 According to the Australian Government’s Department of Foreign Affairs and Trade (DFAT) report on Afghanistan, dated June 2019, ‘... there have been frequent credible reports that individuals perceived to be homosexual (almost exclusively males) have continuing difficulties with the police, including harassment and/or arrest (usually on spurious charges).’³⁷
- 4.3.4 ILGA noted ‘Police violence is not uncommon, which includes the use of “honey traps” to arrest persons because of their perceived sexual orientation.’³⁸ The IWPR reported in February 2017 on transgender (‘third gender’) persons, where one transgender woman said they risked sexual exploitation by the police³⁹ (see [Transgender persons](#)).

[Back to Contents](#)

4.4 Ombudsman/complaints mechanism(s)

- 4.4.1 ILGA noted in its 2019 report that ‘Although a senior member of Afghanistan Independent Human Rights Commission (AIHRC) attended the Workshop on the Role of NHRIs [National Human Rights Institutions] in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific in 2015, there has been no mention of sexual orientation or SOGI in the work of that Commission, or in its 2018 submission to the Universal Periodic Review.’⁴⁰

³² IAGCI, ‘Inspection of Country of Origin Information November 2016 Report, (page 144), [url](#).

³³ USSD, ‘Country Report on Human Rights Practices for 2018’, (page 37), 13 March 2019, [url](#).

³⁴ Freedom House, ‘Freedom in the World 2019’, (Section F4), [url](#).

³⁵ RFERL, “‘Fake Life’: Being Gay In Afghanistan”, 12 September 2017, [url](#).

³⁶ Guardian, ‘Will Afghanistan learn that cross-dressers are not criminals?’, 13 November 2011, [url](#).

³⁷ DFAT, ‘Country Information Report Afghanistan’, (para 3.70), 27 June 2019, [url](#).

³⁸ ILGA, ‘State-sponsored Homophobia 2019’, (page 430), March 2019, [url](#).

³⁹ IWPR, ‘Afghanistan’s Third Gender People’, 24 February 2017, [url](#).

⁴⁰ ILGA, ‘State-sponsored Homophobia 2019’, (page 431), March 2019, [url](#).

See also [Civil society and NGOs](#).

[Back to Contents](#)

Section 5 updated: 13 November 2019

5. Societal attitudes and treatment

5.1 Societal norms

5.1.1 Reporting on the rights of LGBTI persons in Afghanistan, Sida stated in November 2014, in regard 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 have non-conforming sexuality or gender expressions, as well as women and men who oppose arranged marriages or domestic violence.’⁴¹

5.1.2 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.’⁴²

5.1.3 Although reports on lesbians were few, the BBC report confirmed their presence in Afghanistan and 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”.⁴³

For the general situation on women see the [Country Information and Guidance Afghanistan: Women fearing gender-based harm and violence](#).

5.1.4 In correspondence dated 10 January 2017, an official 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

⁴¹ Sida, ‘The rights of LGBTI persons in Afghanistan’, (page 1), November 2014, [url](#).

⁴² BBC News, ‘Afghanistan LGBT community living under threat of death’, 7 October 2016, [url](#).

⁴³ BBC News, ‘Afghanistan LGBT community living under threat of death’, 7 October 2016, [url](#).

strengthen Afghan institutions for governance, rule of law and human rights.⁴⁴

- 5.1.5 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.’⁴⁵
- 5.1.6 In December 2017, the European Asylum Support Office (EASO) published a report on individuals targeted under societal and legal norms. The EASO report cited a range of sources and, regarding LGBTI persons:
- ‘Although male same-sex behaviours in Afghanistan occur in a range of divergent cultural contexts and circumstances, sexual orientation as an identity issue is not accepted; same-sex practices remain hidden and are highly stigmatised if mentioned publicly. Gender identity and sexual orientation that fall out of the main stream are often seen by Afghan society to be synonymous or associated with prostitution and sexual abuse, or, through a wider lens of socio-cultural constructions of the “masculine male” versus the dishonourable “non-male” categories: superior to women and to the stigmatised “beardless youth” or “feminised” male. Although same-sex acts are condemned by Islam, they may be tolerated when they are “invisibilised” by males conforming to “honourable” roles of husbands and fathers.’⁴⁶ (see [Men who have sex with men \(MSM\)](#)).
- 5.1.7 RFERL interviewed several gay Afghan men inside Afghanistan for a 2017 article who described themselves as having to lead secret, double lives, meeting secretly in parks, gyms, underground cafes and guest houses and in cars during the night. Described as ‘heterosexuals in public and homosexuals in private’, the men were still expected to marry and follow traditional social norms⁴⁷.
- 5.1.8 Though widely seen as taboo, indecent and un-Islamic^{48 49}, ILGA noted in its 2019 report ‘same-sex sexual relations, both amongst men and amongst women (vastly under-reported) are not uncommon in the country. A researcher noted [in 2016] that men in Afghanistan would sometimes have consensual same-sex sexual relations, though they would not identify as gay in the Western sense; these relations are culturally accepted, as encapsulated in a common phrase that “women are for babies, men are for sex”.’⁵⁰
- 5.1.9 DFAT noted ‘There is no societal understanding or acceptance towards consenting adults who consciously embrace same-sex attraction (or alternative gender identity) as a key part of their personal identity.’⁵¹

⁴⁴ FCO, correspondence with CPIT, 10 January 2017, [Annex A](#).

⁴⁵ FCO, correspondence with CPIT, 10 January 2017, [Annex A](#).

⁴⁶ EASO, ‘Individuals targeted under societal and legal norms’, (page 64), December 2017, [url](#).

⁴⁷ RFERL, “‘Fake Life’: Being Gay In Afghanistan”, 12 September 2017, [url](#).

⁴⁸ USSD, ‘Country Report on Human Rights Practices for 2018’, (page 37), 13 March 2019, [url](#).

⁴⁹ CAB, ‘Country of Origin Report Afghanistan’, (page 102), March 2019, [url](#).

⁵⁰ ILGA, ‘State-sponsored Homophobia 2019’, (page 430), March 2019, [url](#).

⁵¹ DFAT, ‘Country Information Report Afghanistan’, (para 3.71), 27 June 2019, [url](#).

5.2 Men who have sex with men (MSM)

- 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 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 gay⁵². As noted by ILGA in 2019, same-sexual relations between men were relatively common⁵³ and, according to the EASO report of 2017, occurred across different cultural contexts and circumstances⁵⁴.

[Back to Contents](#)

5.3 Bacha bazi

- 5.3.1 Bacha bazi ('boy play') is not recognised as homosexuality but is a form of child exploitation and sexual abuse. The new Penal Code criminalises this practice⁵⁵.
- 5.3.2 See the [Country Policy and Information Note Afghanistan: Unaccompanied minors](#) for further information.

[Back to Contents](#)

5.4 Transgender persons

- 5.4.1 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 Afghanistan⁵⁶. 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'⁵⁷. Dr Orzala Ashraf Nemat indicated, in her October 2016 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 homosexuality was not isolated to Pashtun culture⁵⁸.
- 5.4.2 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% male. Niaz, who changed her name to Emanullah, cut her hair, wore 'boy's' clothes, and had minor surgery to complete the transition, and was accepted as a boy by his father, who already had 11 daughters⁵⁹.

⁵² Los Angeles Times, 'Kandahar's Lightly Veiled Homosexual Habits' [iagci](#), 3 April 2002, [url](#).

⁵³ ILGA, 'State-sponsored Homophobia 2019', (page 430), March 2019, [url](#).

⁵⁴ EASO, 'Individuals targeted under societal and legal norms', (page 64), December 2017, [url](#).

⁵⁵ CAB, 'Country of Origin Report Afghanistan', (page 84), March 2019, [url](#).

⁵⁶ Seattle Times, 'Pakistani Pashtuns get their groove back', 27 February 2008, [url](#).

⁵⁷ Los Angeles Times, 'Kandahar's Lightly Veiled Homosexual Habits' [iagci](#), 3 April 2002, [url](#).

⁵⁸ IAGCI, 'Inspection of Country of Origin Information November 2016 Report', (page 31), [url](#).

⁵⁹ The Lahore Times, 'Niaz Bibi, 16, becomes a boy, now named Enamullah', 18 February 2013, [url](#).

5.4.3 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].’⁶⁰

5.4.4 On a similar vein, in 2018 and 2019 other media sources reported on the practice of bacha posh, enabling the girls raised as boys to undertake the roles traditionally available to males⁶¹ ⁶². However, a National Geographic report of March 2018, which focussed on a family who had raised two of their daughters as boys, noted that the family were forced to move multiple times to avoid harassment and the ‘boys’ faced verbal abuse, being called anti-Islamic and transsexuals⁶³. CNN noted in June 2019 that, according to the advocacy group, Women for Afghan Women (WAW), it assisted at least two bacha posh cases a year in its women’s shelters. WAW added that some bacha posh were abused and made to partake in drinking, dancing and sexual activities⁶⁴. Both reports cited the emotional and psychological difficulties faced by bacha posh when they had to revert to living as women⁶⁵ ⁶⁶.

5.4.5 Dr Nemat noted that transgender persons, also known as eunuchs, were often victims of abuse, and that they danced in the male-only wedding ceremonies. Unlike in Pakistan, transgender persons did not live within their own communities⁶⁷.

5.4.6 The IWPR reported in February 2017 that there was no provision to recognise transgender persons as a ‘third gender’ in Afghanistan, adding ‘those who do not conform to gender norms face discrimination and abuse’. They faced sexual exploitation, were often rejected by their families and society and became sex workers to survive⁶⁸.

5.4.7 In March 2017, the independent news site, KBR, interviewed a group of transgender women in Nangahar province, who had set up an organisation called Khazina, which in Pashtu means transgender. However, their

⁶⁰ The Guardian, ‘The Afghan girls raised as boys’, 22 September 2014, [url](#).

⁶¹ National Geographic, ‘Inside the Lives of Girls Dressed as Boys in Afghanistan’, 2 March 2018, [url](#).

⁶² CNN, ‘They wanted a son so much they made their daughter live as a boy’, 18 June 2019, [url](#).

⁶³ National Geographic, ‘Inside the Lives of Girls Dressed as Boys in Afghanistan’, 2 March 2018, [url](#).

⁶⁴ CNN, ‘They wanted a son so much they made their daughter live as a boy’, 18 June 2019, [url](#).

⁶⁵ National Geographic, ‘Inside the Lives of Girls Dressed as Boys in Afghanistan’, 2 March 2018, [url](#).

⁶⁶ CNN, ‘They wanted a son so much they made their daughter live as a boy’, 18 June 2019, [url](#).

⁶⁷ IAGCI, ‘Inspection of Country of Origin Information November 2016 Report, (page 31), [url](#).

⁶⁸ IWPR, ‘Afghanistan’s Third Gender People’, 24 February 2017, [url](#).

meetings, as well as wearing women's clothes, had to be kept secret as cross-dressing was considered indecent and they feared repercussions. The report noted that 'Afghanistan's transgender community live in constant fear – of people finding out their real identity, and of the attacks that could follow.'⁶⁹

[Back to Contents](#)

5.5 Public and religious views

- 5.5.1 As reported by the BBC in October 2016, 'Prominent Afghan cleric Shams-ul Rahman told the BBC there was broad consensus amongst scholars that execution was the appropriate punishment if homosexual acts could be proven. "An old wall should fall on them and they should be killed in the harshest of manners," he said.'⁷⁰ (see also [Sharia and customary law](#)).

[Back to Contents](#)

5.6 Violence and discrimination

- 5.6.1 The USSD report for 2018 noted 'Members of the LGBTI community reported they continued to face... discrimination, assault, rape by society at large.'⁷¹

- 5.6.2 ILGA noted that:

'[A]cross Afghanistan, people who identify as gay or LGBT, particularly if in any way public, are faced with significant discrimination. For instance, in 2013, a gay Afghan man, Nemat Sadat, was the first person to come out publicly on social media, which led to his being pressured to resign from his position as a professor at the American University of Afghanistan and leave the country.

'Following the 2016 shooting by Afghan-born Omar Mateen at a gay club in Florida, USA, a news report found that many Afghans supported his actions on the basis that "homosexuality" was wrong.'⁷²

- 5.6.3 According to the UN Assistance Mission in Afghanistan (UNAMA), in 2015 a parallel justice court, overseen by anti-government elements, sentenced three gay men, including one boy who was 17-years-old, to execution by "wall-toppling". The 17-year-old survived and was allowed to live⁷³.

- 5.6.4 In December 2018 it was reported in The Straits Times that members of the Afghan National Women's Football team accused Keramuddin Keram, the head of the Afghan Football Federation (AFF) and former governor of Panjshir Province, and other AFF officials of sexual assault, harassment, and discrimination. According to the report, Keram labelled 9 of the players as lesbians and sacked them from the team⁷⁴.

[Back to Contents](#)

⁶⁹ KBR, 'Living a double life as a transgender woman in Afghanistan', 6 March 2017, [url](#).

⁷⁰ BBC News, 'Afghanistan LGBT community living under threat of death', 7 October 2016, [url](#).

⁷¹ USSD, 'Country Report on Human Rights Practices for 2018', (page 37), 13 March 2019, [url](#).

⁷² ILGA, 'State-sponsored Homophobia 2019', (page 431), March 2019, [url](#).

⁷³ UNAMA, 'Annual Report 2015', (page 51), February 2016, [url](#).

⁷⁴ Straits Times, 'Afghanistan FF staff promised women players...', 16 December 2018, [url](#).

5.7 LGBTI rights activists

- 5.7.1 The ILGA report noted ‘Reports suggest that LGBT advocates largely function underground out of fear of persecution due to the threat of severe punishment.’⁷⁵ The December 2017 EASO report, on individuals targeted for transgressing social norms, noted ‘In 2013, Nemat Sadat, an Afghan-American university lecturer who is openly gay, received threats and was forced from his post at the American University of Afghanistan (AUAF), reportedly due to his online LGBT activism and public comments about his sexual orientation. He describes himself as the first openly gay public figure and LGBTI advocate in Afghanistan.’⁷⁶ (see also [Violence and discrimination](#))

[Back to Contents](#)

5.8 Gay ‘scene’ or ‘community’

- 5.8.1 Reports indicated that there was no active LGBTI scene or community (see [Societal norms](#)).

[Back to Contents](#)

Section 6 updated: 13 November 2019

6. Access to services

- 6.1.1 Information on the accessibility to services such as health, employment, housing and education specifically for LGBTI persons was scarce in the sources consulted (see [Bibliography](#)).
- 6.1.2 According to the USSD HR Report 2018, LGBTI persons did not have access to certain health services⁷⁷. DFAT also stated that there were credible reports that of LGBTI persons being restricted from accessing health services⁷⁸ and noted there were reports of persons being dismissed from their jobs because of their sexuality⁷⁹.
- 6.1.3 For general information on health care and services in Afghanistan, see the World Health Organization (WHO) report ‘[Afghanistan Country Office 2019](#)’.
- 6.1.4 For general information on education, employment, health care and housing, see the EASO ‘[COI Report: Afghanistan Key socio-economic indicators. Focus on Kabul City, Mazar-e Sharif and Herat City](#)’.

[Back to Contents](#)

⁷⁵ ILGA, ‘State-sponsored Homophobia 2019’, (page 226), March 2019, [url](#).

⁷⁶ EASO, ‘Individuals targeted under societal and legal norms’, (page 65), December 2017, [url](#).

⁷⁷ USSD, ‘Country Report on Human Rights Practices for 2018’, (page 37), 13 March 2019, [url](#).

⁷⁸ DFAT, ‘Country Information Report Afghanistan’, (para 3.72), 27 June 2019, [url](#).

⁷⁹ DFAT, ‘Country Information Report Afghanistan’, (para 3.72), 27 June 2019, [url](#).

7. LGBT groups, civil society and human rights NGOs

7.1 Government recognition of LGBT NGOs

- 7.1.1 The USSD HR Report 2018 stated that ‘Organizations devoted to protecting the freedom of LGBTI persons remained underground because they could not legally register with the government.’⁸⁰

[Back to Contents](#)

7.2 Civil society and NGOs

- 7.2.1 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 working in women’s health and protection. Such organisations would keep the person’s sexual orientation and identity confidential to protect both the person and the organisation⁸¹.
- 7.2.2 In February 2017, the IWPR noted ‘... there is little or no activism on third gender issues in Afghanistan. Even dedicated human rights groups said that they had no information on the subject. The Afghanistan Independent Human Rights Commission (AIHRC) said that discrimination against third gender people was not an issue that they had ever addressed.’⁸² (see [Transgender persons](#)).

[Back to Contents](#)

⁸⁰ USSD, ‘Country Report on Human Rights Practices for 2018’, (page 37), 13 March 2019, [url](#).

⁸¹ IAGCI, ‘Inspection of Country of Origin Information November 2016 Report, (page 31), [url](#).

⁸² IWPR, ‘Afghanistan’s Third Gender People’, 24 February 2017, [url](#).

Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legal context
 - Constitution
 - Legislation
 - Sharia law
- Law in practice
 - Enforcement
- State attitudes and treatment
 - Treatment by police
 - Government views
 - Ombudsman/complaints mechanism(s)
- Societal attitudes and treatment
 - Societal norms
 - Men who have sex with men (MSM)
 - Transgender
 - Public and religious views
 - Violence and discrimination
 - Rights activists
 - Gay 'scene' or 'community'
- Access to services
 - Healthcare
 - Accommodation
 - Employment
 - Education
- LGBT groups, civil society and human rights NGOs
 - Government recognition of LGBT NGOs
 - Civil society and support groups

[Back to Contents](#)

Bibliography

Sources cited

- Afghanistan Penal Code, 22 September 1976, available at: <http://www.refworld.org/docid/4c58395a2.html>. Last accessed: 31 October 2019
- 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: 6 November 2019
- Australian Government, Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Afghanistan', 27 June 2019, <https://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>. Last accessed: 31 October 2019
- BBC News, 'Afghanistan LGBT community living under threat of death', 7 October 2016, <http://www.bbc.co.uk/news/world-asia-36884732>. Last accessed: 4 November 2019
- CAB, Department for Country of Origin Information Reports, Ministry of Foreign Affairs of the Netherlands, 'Country of Origin Report Afghanistan', March 2019, <https://www.rijksoverheid.nl/documenten/ambtsberichten/2019/03/01/algemeen-ambtsbericht-afghanistan>. Last accessed: 31 October 2019
- Civil Law of the Republic of Afghanistan (Civil Code), 5 January 1977, <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/>. Last accessed: 31 October 2019
- Collins English dictionary, 'Pederasty', n.d., <https://www.collinsdictionary.com/dictionary/english/pederasty>. Last accessed: 28 November 2019
- Constitution of Afghanistan, 26 January 2004, <http://www.afghanembassy.com.pl/afq/images/pliki/TheConstitution.pdf>. Last accessed: 31 October 2019
- CNN, 'They wanted a son so much they made their daughter live as a boy', 18 June 2019, <https://edition.cnn.com/2019/06/18/world/bacha-posh-afghanistan-as-equals-intl/index.html>. Last accessed: 8 November 2019
- CW4WA – Canadian Women for Women in Afghanistan, 'Women and the Rule of Law in Afghanistan', n.d., https://www.cw4wafghan.ca/sites/default/files/attachments/pages/cw4wafghan-womenruleoflaw-factsheet2_0.pdf. Last accessed: 28 November 2019
- European Asylum Support Office (EASO), 'Country of Origin Information Report: Afghanistan: Individuals targeted under societal and legal norms', December 2017, https://coi.easo.europa.eu/administration/easo/PLib/Afghanistan_targeting_society.pdf. Last accessed: 1 November 2019
- Fordham International Law Journal, 'Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World', Volume 7, Issue 1, 2013, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2322&context=ilj>. Last accessed: 31 October 2019

Freedom House, 'Freedom in the World 2019', 4 February 2019, <https://freedomhouse.org/report/freedom-world/2019/afghanistan>. Last accessed: 28 November 2019

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>. Last accessed: 6 November 2019

'Will Afghanistan learn that cross-dressers are not criminals?', 13 November 2011, <http://www.theguardian.com/commentisfree/2011/nov/13/cross-dressing-afghanistan-transvestite>. Last accessed: 6 November 2019

Huff Post RYOT, 'Hand Covers Bruise: The Destruction of Afghanistan's Boys', 6 June 2015, <https://medium.com/ryot-news/hand-covers-bruise-the-destruction-of-afghanistan-s-boys-e4c6db2b7f7f>. Last accessed: 8 November 2019

Independent Advisory Group on Country Information (IAGCI), 'Inspection of Country of Origin Information November 2016 Report', published 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/614322/Inspection-of-Country-of-Origin-Information_November-2016.pdf. Last accessed: 31 October 2019

Institute of War and Peace Reporting (IWPR), 'Afghanistan's Third Gender People', 24 February 2017, <https://iwpr.net/global-voices/afghanistans-third-gender-people>. Last accessed: 4 November 2019

International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA),

'State-Sponsored Homophobia 2017', 12th Edition, May 2017, https://ilga.org/sites/default/files/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf. Last accessed: 28 November 2019

'State-Sponsored Homophobia 2019', 13th Edition, March 2019, https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf. Last accessed: 31 October 2019

KBR, 'Living a double life as a transgender woman in Afghanistan', 6 March 2017, https://kbr.id/english/03-2017/living_a_double_life_as_a_transgender_woman_in_afghanistan_/89024.html. Last accessed: 6 November 2019

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/>. Last accessed: 6 November 2019

Los Angeles Times, 'Kandahar's Lightly Veiled Homosexual Habits', 3 April 2002, <http://articles.latimes.com/2002/apr/03/news/mn-35991>. Last accessed: 6 November 2019

MPIL – Max Planck Institute for Comparative and International Private Law, 'Max Planck Manual on Family Law in Afghanistan', Amended 2nd edition, July 2012, https://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf. Last accessed: 31 October 2019

National Geographic, 'Inside the Lives of Girls Dressed as Boys in Afghanistan', 2 March 2018,

<https://www.nationalgeographic.com/photography/proof/2018/march/bacha-posh-gender-afghanistan/>. Last accessed: 8 November 2019

Radio Free Europe Radio Liberty (RFERL), “Fake Life”: Being Gay In Afghanistan’, 12 September 2017, <https://www.rferl.org/a/afghanistan-being-gay-fake-life/28731934.html>. Last accessed: 31 October 2019

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/>. Last accessed: 6 November 2019

The Straits Times, ‘Afghanistan FF staff promised women players spots on team in exchange for sex’, 16 December 2018, <https://www.straitstimes.com/sport/football/afghanistan-ff-staff-promised-women-players-spots-on-team-in-exchange-for-sex>. Last accessed: 5 November 2019

Swedish International Development Cooperation Agency (Sida), ‘The rights of LGBTI persons in Afghanistan’, November 2014, <https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. Last accessed: 31 October 2019

UNAIDS, ‘Country progress report – Afghanistan, Global AIDS Monitoring 2018’, 2018, https://www.unaids.org/sites/default/files/country/documents/AFG_2018_countryreport.pdf. Last accessed: 4 November 2019

UN Assistance Mission in Afghanistan (UNAMA), ‘Annual Report on Protection of Civilians in Armed Conflict: 2015’, February 2016, https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf. Last accessed: 31 October 2019

UN Children's Fund (UNICEF), ‘Child Notice Afghanistan 2018’, 2018, https://www.ecoi.net/en/file/local/2004819/UNC+Rapport+Child+Notice_Afghanistan+EN+%282018%29+FINAL.pdf. Last accessed: 6 November 2019

UN Human Rights Council (UNHRC),

‘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>. Last accessed: 1 November 2019

‘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>. Last accessed: 1 November 2019

US Department of State (USSD),

‘Country Report on Human Rights Practices for 2018 – Afghanistan’, 13 March 2019, <https://www.state.gov/wp-content/uploads/2019/03/AFGHANISTAN-2018.pdf>. Last accessed: 5 November 2019

‘Trafficking in Persons Report 2019: Afghanistan’, 20 June 2019, <https://www.ecoi.net/en/document/2010740.html>. Last accessed: 5 November 2019

[Back to Contents](#)

Sources consulted but not cited

Erasing 76 Crimes, (website), <https://76crimes.com/>. Last accessed: 6 November 2019

Human Dignity Trust, 'Afghanistan', n.d., <https://www.humandignitytrust.org/country-profile/afghanistan/>. Last accessed: 5 November 2019

Human Terrain Team (HTT) AF-6 Research Update and Findings, Pashtun Sexuality, n.d., <https://info.publicintelligence.net/HTT-PashtunSexuality.pdf>. Last accessed: 5 November 2019

Il Grande Colibri, (website), <https://www.ilgrandecolibri.com/en/>. Last accessed: 5 November 2019

Outright Action International, 'Afghanistan', n.d., <https://outrightinternational.org/search/node/Afghanistan>. Last accessed: 5 November 2019

UN High Commissioner for Refugees (UNHCR), 'UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan', 30 August 2018, available at: <https://www.refworld.org/docid/5b8900109.html>. Last accessed: 1 November 2019

UN Human Rights Council (UNHRC), 'The situation of human rights in Afghanistan and technical assistance achievements in the field of human rights; Report of the United Nations High Commissioner for Human Rights [A/HRC/40/45]', 28 January 2019, https://www.ecoi.net/en/file/local/2003554/a_hrc_40_45_E.pdf. Last accessed: 5 November 2019

[Back to Contents](#)

Annex A

Foreign and Commonwealth Office, 10 January 2017

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. 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

Version control

Clearance

Below is information on when this note was cleared:

- version **3.0**
- valid from **20 February 2020**

Changes from last version of this note

Updated country information and assessment.

Some findings in AJ should no longer be followed. See [Assessment](#).

[Back to Contents](#)