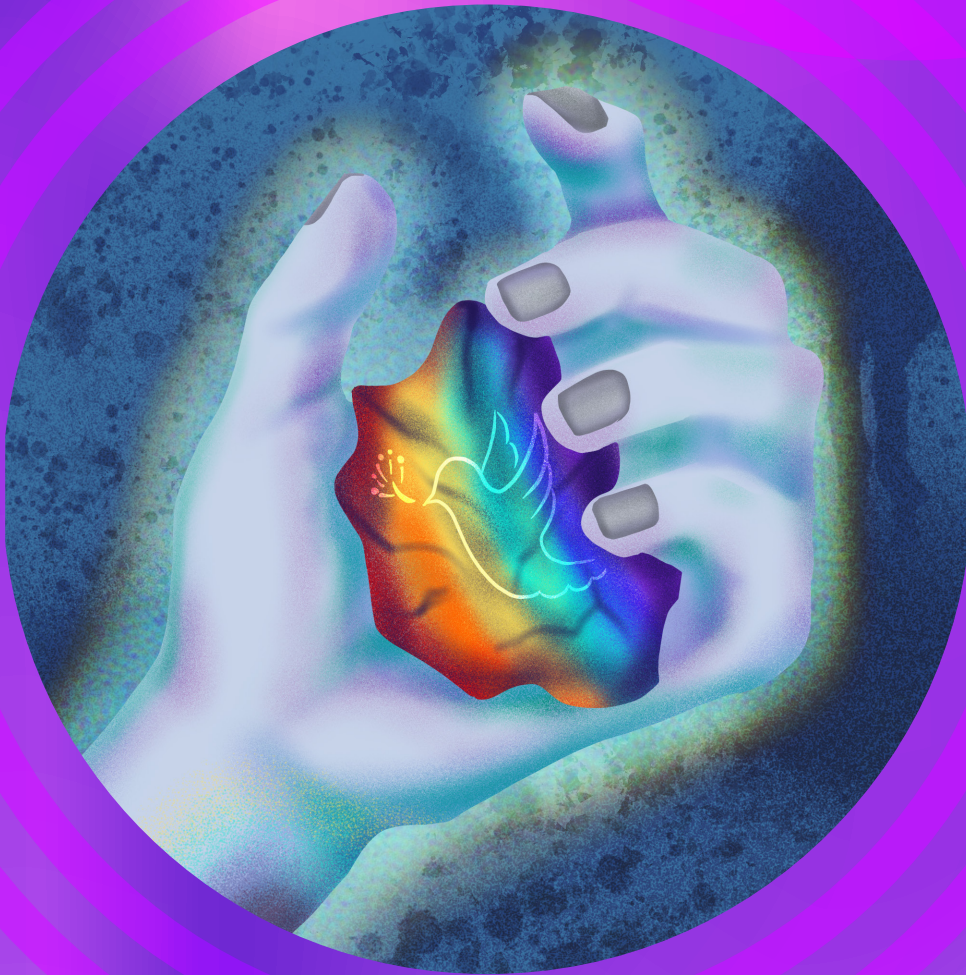


A Mountain on My Shoulders

18 Months of Taliban
Persecution of LGBTIQ
Afghans



OUTRIGHT
INTERNATIONAL

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Glossary

Gay: A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is toward other men.

Gender: The social and cultural codes (linked to but not congruent with ideas about biological sex) used to distinguish between society's conceptions of "femininity" and "masculinity."

Gender-based Violence: Any type of violence that is perpetrated against a person or group of people because of their actual or perceived sex, gender, gender expression, sexual orientation, sex characteristics, or any perceived violation of gender norms.

Gender Identity: A person's internal, deeply felt sense of being female or male, both, or something other than female or male.

Gender Nonconforming: Behaving or appearing in ways that do not fully conform to social expectations based on one's assigned sex.

Homosexual: The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

Intersex: An umbrella term that refers to a range of traits and conditions that cause individuals to be born with chromosomes, gonads, and/or genitals that vary from what is considered typical for female or male bodies.

LGBTIQ: Lesbian, gay, bisexual, transgender, intersex, and queer; an inclusive term for groups and identities sometimes also grouped as "sexual and gender minorities."

Queer: An inclusive umbrella term covering multiple identities, sometimes used interchangeably with "LGBTIQ." Also used to describe divergence from heterosexual and cisgender norms without specifying new identity categories. In this report, "queer men" is used to cover gay men, bisexual men, and other men of non-heterosexual sexual orientations, and "queer women" is used to cover lesbian women, bisexual women, and other women of non-heterosexual sexual orientations.

Sex Assigned at Birth: Classification of bodies at time of birth as female, male, or other, based on factors such as external sex organs, internal sexual and reproductive organs, hormones, and chromosomes. Typically, the sex assigned at birth is recorded on a person's birth certificate and on some official identification documents. A person's sex assigned at birth may or may not match their gender identity.

Sexual Orientation: The way in which a person's sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or other sex, or to both or others.

Sexual Violence: Any sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.¹

Transgender: A term to describe people whose sex assigned at birth does not conform to their identified or lived gender. A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their gender identity but may or may not desire to permanently alter their physical characteristics to conform to their gender identity.

Transgender Men: People designated female at birth but who identify and may present themselves as men. Transgender men are generally referred to with male pronouns.

Transgender Women: People designated male at birth but who identify and may present themselves as women. Transgender women are generally referred to with female pronouns.

¹International Criminal Court, "Elements of Crimes," 11 June 2010, <https://legal-tools.org/doc/3c0e2d> (accessed 29 January 2023).

Summary

The Taliban's return to power in August 2021 left many lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) Afghans fearing for their lives. Hundreds sought to leave the country with help from foreign governments and non-governmental organizations (NGOs), while many who chose to stay or could not leave went into hiding at home.

The Taliban's first year of rule by force in Afghanistan demonstrates that LGBTIQ people's fears were not unfounded. Between September and October 2022, Outright International interviewed 22 LGBTIQ Afghans, all of them currently in Afghanistan. Their accounts suggest that Taliban security officials now appear to be pursuing LGBTIQ people – especially gay men and trans women – more systematically than in the first few months of Taliban rule, subjecting them to physical and sexual assault and arbitrary detention. In several cases, the authorities have subjected people to public flogging for alleged same-sex relations, and the Taliban Supreme Court, on social media, has confirmed and defended the implementation of these punishments.²

Interviewees often did not know whether they were interacting with officers from the Ministry of Promotion of Virtue or Prevention of Vice, police under the supervision of the Ministry of Interior, or local militia members controlled by powerful individuals. Beyond the incidents these interviewees experienced first-hand, interviewees said they knew of 38 additional LGBTIQ Afghans who had been detained, assaulted, or, in a few cases, were believed to have been killed by Taliban officials. Details of these cases are not included in this report because they could not be confirmed by Outright, but these accounts suggest the abuse of LGBTIQ people goes far beyond what is described here.

This report follows an initial report published by Outright International and Human Rights Watch in January 2022. That report, "Even If You Go to the Skies, We'll Find You": LGBT People in Afghanistan After the Taliban Takeover, was based on interviews with 60 LGBTIQ Afghans conducted shortly after the Taliban's return to power. They shared stories of beatings, sexual assault, or threats from Taliban members or supporters because of their sexual orientation, gender identity, or gender expression.

While that report documented some abuses clearly linked to the Taliban security forces, in many cases the first threats came from those closest to LGBTIQ Afghans – family members, romantic partners, and neighbors – who saw Taliban rule as an opportunity to act on their own prejudice or sought to curry favor with the new regime by turning in LGBTIQ people.

² "Twenty-one Criminals were Sentenced to Punishment in the Kabul Urban Sharia Court," Supreme Court of Afghanistan, 1 December 2022, https://twitter.com/SupremeCourt_af/status/1598230346872786945?s=20&t=0uAfspXetTl6GTb98Mq-cw (accessed 29 January 2023).

A year later, our new report reveals the situation has changed. Taliban officials appear to have made targeting LGBTIQ people a greater priority, collecting intelligence on LGBTIQ activists and community members, hunting them down, and subjecting them to violence and humiliation.

“In the initial days of Taliban takeover of Kabul, they were not paying much attention to MSMs [men who have sex with men] and the transgender community,” said Pari, who was a health outreach worker before August 2021. “But now the Taliban are actively following us and trying to capture us, torture and detain us.”³

As the situation worsened inside Afghanistan, paths to safety disappeared. The risk of violence complicated LGBTIQ people’s ability to seek aid from groups inside the country. Meanwhile, Afghanistan’s neighbors have made it harder over the past year for Afghans to cross their borders, and those countries are far from safe for LGBTIQ people. Iran, Pakistan, Turkmenistan, and Uzbekistan also criminalize same-sex relations; in Iran same-sex sexual acts can be punished by death.⁴ The US and European countries provided far too few spaces for Afghans wanting to be resettled abroad, and even the few hundred LGBTIQ Afghans accepted for resettlement have been forced to spend many months in dangerous limbo waiting for their cases to be processed.

The international community has also failed LGBTIQ Afghans in other ways, declining to press the Taliban to respect LGBTIQ people’s fundamental rights. The United Nations Assistance Mission in Afghanistan (UNAMA), which coordinates the UN’s work in the country, did not even mention abuse of LGBTIQ people in a human rights report it published in July 2022.⁵

All governments have an obligation to promptly and fairly process asylum claims, including those from LGBTIQ Afghans who fear persecution under the Taliban. All states must uphold their obligation to provide safe and legal pathways for entry from Afghanistan and the de facto authorities must uphold their obligation to allow safe passage across Afghanistan’s borders. States bordering Afghanistan that host asylum seekers fleeing persecution must uphold their obligations to non-refoulement by not forcibly returning Afghans into territory controlled by the de facto authorities. Further, neighboring states must coordinate with the United Nations High Commissioner for Refugees (UNHCR) and its implementing partners, including other UN agencies, to create safe and legal pathways for entry, process asylum claims in a timely and secure manner, and assist in resettlement.

For those who cannot – or choose not to – leave the country, it is urgent that their rights be protected within Afghanistan. The de facto authorities must uphold the obligations set forth by international treaties to which Afghanistan is signatory and end targeted abuses against LGBTIQ people. International donors and aid agencies should make delivering services that assist and protect LGBTIQ people a priority, even when Taliban abuses complicate doing so.

³ Outright International interview with Pari by secure voice app, late 2022.

⁴ ILGA World, “State Sponsored Homophobia: Global Legislation Overview Update,” 2020, https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf (accessed 29 January 2023). In 2018, Pakistan’s senate passed a sweeping transgender rights bill that explicitly prohibits discrimination and harassment of trans people and protects their rights to health and access to public places. Pakistan, “Transgender Persons (Protection of Rights) Act,” 2018, https://senate.gov.pk/uploads/documents/1521612511_419.pdf (accessed 29 January 2023).

⁵ United Nations Assistance Mission in Afghanistan (UNAMA), “Human Rights in Afghanistan: 15 August 2021 – 15 June 2022,” July 2022, https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf (accessed 29 January 2023).

Recommendations

To the de facto authorities in Afghanistan:

- Publicly call for an end to all violence against anyone based on a person's perceived or actual sex, gender, sexual orientation, gender identity, gender expression, or sex characteristics.
- Publicly direct all Taliban members to cease discrimination and violence against LGBTIQ people and take appropriate measures against Taliban members who violate this prohibition.
- Publicly disavow the 29 October 2021 statement by a Taliban official that the Taliban will not respect the rights of LGBTIQ people, and recognize that LGBTIQ people's human rights are protected under international law.
- Adopt and enforce laws and regulations that prohibit all forms of violence and discrimination on any grounds, including a person's perceived or actual sexual orientation or gender identity. Provide meaningful remedies including justice, compensation, and assistance to people who experience discrimination or abuse related to sexual orientation or gender identity.
- Remove provisions in the Ministry of Vice and Virtue manual that prohibit and punish consensual same-sex relations.
- Do not criminalize consensual sexual relations between adults, including sex outside of marriage and same-sex relations, either under the civil penal code or any version of Sharia.
- Reinstate institutions and systems established by previous Afghan governments to address gender-based violence, including Family Response Units, prosecution offices, and special courts with female judges to carry out the 2009 Ending Violence Against Women law, and ensure that these institutions and systems are accessible to all survivors of gender-based violence, including LGBTIQ people.
- Permit and facilitate the operation of programs by nongovernmental organizations to assist LGBTIQ people.

To the United Nations Assistance Mission in Afghanistan (UNAMA):

- Develop meaningful partnerships across all segments of civil society, including with Afghan LGBTIQ civil society organizations inside and outside Afghanistan, and with other organizations inside Afghanistan that protect the rights of LGBTIQ people. Engage with them in ongoing consultation and in monitoring and evaluation of existing support mechanisms and their processes and inclusiveness. Institute systems for continuous exchange of information and input required for rapid and effective humanitarian response.
- Improve coordination among all UN entities within Afghanistan to strengthen and expand upon mechanisms for documenting and reporting human rights abuses, particularly all forms of sexual violence, gender-based violence, and gender persecution on the basis of sexual orientation, gender identity, gender expression, and sex characteristics.
- Undertake to identify individuals detained in Afghan prisons, police stations, or other places of detention on the basis of their real or perceived sexual orientation, gender identity, gender expression, or sex characteristics. With due regard to the safety and privacy of detained individuals, call on the de facto authorities to immediately release any individual detained on these grounds.
- Support the integration of LGBTIQ persons in all broader gender mainstreaming efforts that are part of the UNAMA mandate. Ensure that gender mainstreaming is inclusive of LGBTIQ mainstreaming by promoting, funding, and supporting the integration of LGBTIQ persons and assessing LGBTIQ people's needs in all levels of decision-making.
- Represent the concerns and priorities of LGBTIQ persons in coordination and negotiation with the de facto authorities, without taking actions that pose a risk to their safety.
- Mainstream the human rights of LGBTIQ people in ongoing efforts to provide technical and operational assistance to the de facto authorities to implement their obligations under international human rights treaties to which Afghanistan is a party, particularly the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, Cultural Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child.

To the UN Special Rapporteur on Human Rights in Afghanistan:

- In accordance with the Human Rights Council mandate establishing the position of Special Rapporteur, monitor the human rights situation of LGBTIQ people in Afghanistan; offer support and advice to civil society organizations on protecting the rights of LGBTIQ people; seek, receive, examine and act on information related to the human rights of LGBTIQ people; and integrate a gender perspective throughout the work of the mandate that is inclusive of sexual orientation, gender identity, gender expression, and sex characteristics.
- In particular, monitor and report on any arrests on the basis of sexual orientation, gender identity, gender expression, and sex characteristics.

To donor governments funding humanitarian assistance in Afghanistan:

- Continue to provide assistance and cooperation to ensure that adequate resources are made available to all Afghans, including LGBTIQ persons, and coordinate with the de facto authorities to ensure human rights are upheld, particularly the rights to adequate food, safe drinking water, sanitation, health, and education without discrimination.
- Ensure that all affected populations, including LGBTIQ persons, are included in safety and risk analyses and needs assessments. Ensure the meaningful consultation and participation of LGBTIQ persons in decision making on humanitarian aid planning and distribution, including through engaging with LGBTIQ Afghans in the diaspora and with regional and international LGBTIQ organizations that work with LGBTIQ people in Afghanistan.
- Support and facilitate the delivery of humanitarian assistance to all Afghans without adverse distinction, and in accordance with the principles of “do no harm” and the duty of impartiality as defined by the Geneva Conventions and their additional protocols.
- Develop and implement safeguarding policies to ensure that funding to humanitarian assistance and aid service delivery organizations operating within Afghanistan is directed to organizations that commit to gender-sensitive programming, nondiscrimination, and inclusion of LGBTIQ beneficiaries.
- In engagements with formal and informal civil society organizations in Afghanistan, including human rights organizations, women’s rights and feminist organizations, and organizations focused on health, education, or youth, integrate concerns about abuses against LGBTIQ Afghans as part of the broader humanitarian intervention and assistance agenda.
- Engage with civil society organizations directly or indirectly addressing LGBTIQ issues in Afghanistan, informal groupings of LGBTIQ people, and community leaders who are well networked within LGBTIQ communities to understand their needs and priorities and request input on effective means to address their concerns.
- Strengthen coordination with UNAMA, particularly its Human Rights Service, and provide technical assistance and coordination in improving and expanding monitoring, reporting, and accountability mechanisms for all forms of human rights abuses, including persecution on the basis of sexual orientation, gender identity, gender expression, and sex characteristics.
- Support the establishment of an international inquiry into human rights abuses against LGBTIQ persons, and coordinate with the Special Rapporteur on Afghanistan to document, investigate, and provide legal redress for such crimes using a survivor-centered approach.

To the UN Security Council:

- Maintain the travel ban on de facto leaders and do not recertify the waiver allowing select representatives of the de facto government to leave Afghanistan.
- Impose targeted sanctions against the de facto authorities, only after conducting thorough risk assessments and gender analyses that are inclusive of LGBTIQ persons to accurately determine the potential for negative impacts on civilians.
- Use existing monitoring, reporting, and accountability mechanisms for responding to conflict-related sexual violence to address crimes against LGBTIQ people.
- Call on the de facto authorities to end all forms of discrimination or violence against anyone based on a person's perceived or actual sexual orientation or gender identity in accordance with international legal obligations, and to ensure respect for the human rights and fundamental freedoms of LGBTIQ people.

To the US–Europe Group on Afghanistan, bilateral Special Envoys and Special Representatives for Afghanistan, and governments engaging with the Taliban:

- Ensure that human rights remain at the center of all engagements on Afghanistan and with the de facto authorities, including the rights of LGBTIQ people.
- Publicly condemn Taliban human rights violations against LGBTIQ people, in the same way that special envoys and representatives have condemned discrimination against girls and women and ethnic and religious minorities.
- Develop specific, detailed strategies to address violence against LGBTIQ Afghans.

To countries neighboring Afghanistan and in the region:

- Keep borders open to Afghans who are seeking asylum from persecution.
- Respect the rights of LGBTIQ Afghans to claim asylum where they can demonstrate a well-founded fear of persecution.
- Ensure that civil society organizations, including LGBTIQ organizations, are able to carry out work to assist LGBTIQ Afghans who have fled the country without interference with their work or safety.
- Enact laws prohibiting discrimination based on sexual orientation or gender identity and repeal laws criminalizing consensual same-sex sexual relations.

To refugee-receiving governments with Afghan asylum seekers:

- Fully respect the rights of Afghan people who are or are perceived to be LGBTIQ to claim asylum.
- When considering asylum claims and other requests for protection from LGBTIQ Afghans, fully consider all evidence regarding systemic violations of the rights of LGBTIQ people in Afghanistan.
- When considering asylum claims for LGBTIQ Afghans, take into consideration that LGBTIQ individuals often conform to societal norms, such as entering into different-sex marriage, in order to survive. Married status should not be taken as an indication of someone not being LGBTIQ.
- Recognize that LGBTIQ Afghans face unique risks of persecution based on sexual orientation, gender identity, gender expression, and sex characteristics in Afghanistan and within neighboring countries, and expedite asylum claims on the basis of these heightened risks.
- Accelerate relocation of LGBTIQ Afghans who may be survivors of possible crimes against humanity and other grave human rights violations so that they can safely share testimony, including before the International Criminal Court.

To the UN Refugee Agency (UNHCR):

- Prioritize LGBTIQ people and other vulnerable Afghans for opportunities to be resettled in a country whose legal and policy framework provides protections for the rights of LGBTIQ people. Make this an urgent priority for individuals in countries that do not protect LGBTIQ people's rights or criminalize consensual same-sex relations.
- Ensure that UNHCR staff and implementing partners are adequately trained on and respect the rights of LGBTIQ people in accordance with Guidelines on International Protection no. 9, including ensuring that interviews by UNHCR and its contractors with Afghans seeking asylum offer a safe, supportive, and confidential space that allows interviewees to raise issues related to sexual orientation and gender identity.

To the Office of the Prosecutor of the International Criminal Court:

- Monitor crimes on the basis of sexual orientation, gender identity, gender expression, and sex characteristics in Afghanistan that may amount to crimes against humanity under international law, including sexual violence and the crime of gender persecution. If there is evidence of such crimes, conduct a preliminary examination into the possibility of initiating a formal investigation.

To organizations delivering humanitarian assistance and intervention services in Afghanistan:

- Support and enhance interventions to prevent and respond to gender-based violence to ensure that these efforts support all survivors, including LGBTIQ people.
- Ensure all staff are adequately trained to understand LGBTIQ identities and respond competently and appropriately to their particular concerns, including with respect to family composition, marital, or parental status. Implement safeguards to protect the identities and respect the confidentiality and anonymity of LGBTIQ persons at risk for targeted violence and persecution.
- Develop capacity, wherever possible, to provide targeted and specialized assistance to LGBTIQ people through existing and new programs, especially in the context of protection, health, and education.

To digital platforms and social media companies:

- Engage meaningfully with organizations defending LGBTIQ Afghans' rights in the development of policies and features, from design to implementation and enforcement, including content moderation and trust and safety strategies that prioritize the concerns of LGBTIQ people in Afghanistan. Remove and block abusive content and content that could put them at risk. Provide context-specific information in Dari and Pashto to users and advise on their rights and the applicable law.
- Establish direct lines of communication between users and local or regional advocacy or support groups for rapid response.
- Introduce the use of encrypted data transfer, including encrypted SMS, disabled geo-location, and disappearing messages on all applications.
- Introduce app-cloaking, including through a feature that automatically deletes the app and its content in case of danger to the user.

Methodology

Afghan researchers working with Outright International interviewed 22 people for this report between September and November 2022 via secure voice and messaging platforms in Dari, Pashto, and Uzbek. They identified these individuals by reaching out to their networks, including networks developed online and in Afghanistan prior to the Taliban takeover. No one who participated in the research received compensation. Outright carried out an informed consent process allowing interviewees to decline to be interviewed and to end the interview at any time. Outright made clear to interviewees that it was unable to assist them financially or through support in asylum-seeking and refugee resettlement processes.

Afghan terminology describing gender and sexual identity does not neatly correspond to terms used in English. Fifteen of the cases in this report concern people assigned male at birth, who describe themselves in terms best translated as queer men or transgender women. Five of our interviewees were assigned female at birth; this lower participation rate reflects the Taliban's rules restricting women's access to public spaces, making them more isolated and harder to identify for interviews, or unable to participate because they could not access a private space for a phone interview. Outright also interviewed two intersex people.

Names have been changed and other identifying details have been withheld throughout this report to protect the privacy and security of interviewees and people close to them.

A Note on Taliban Structure and Perpetrators

In reporting on human rights violations by state actors, Outright strives to identify specific perpetrators in order to press for accountability. In many countries, survivors of human rights violations have some degree of clarity regarding the identity of perpetrators: not always by name or rank, but whether they belong to the police, military, local government, a militia group, or another formal state agency or informal grouping. In contrast, survivors in Afghanistan typically described their perpetrators as “the Taliban.” When asked what identified their perpetrators as “Taliban,” they described their clothing and the vehicles they drove as factors. They often expressed uncertainty as to whether the perpetrators were part of the Taliban police force, the military, local officials, or members of armed groups affiliated with the Taliban. Outright spoke to a representative of the US Institute for Peace who described the Taliban as having operated, throughout its many years as a rebel group, under a veil of “intentional illegibility,” with structures and hierarchies often unclear to outside observers. Since seizing control of the state in August 2021, some structures have coalesced, but other lines between different parts of the state remain vague, with, for instance, no clear distinction between police and military uniforms. For this reason, we often use language such as “the Taliban,” or “Taliban members,” and “Talibs” when referring to alleged perpetrators, echoing the language used by interviewees, without greater specificity.

1. Case Studies

The kinds of abuses LGBTIQ Afghans face is heavily dependent on their sex assigned at birth, which is how we have organized the following case studies.

People assigned male at birth (most of whom identified themselves with terms that translate best as queer men or transgender women) have much greater ability to move about in public and are therefore the primary targets of the Taliban's growing crackdown on LGBTIQ people. Queer men and transgender women are far more likely than other sexual and gender minorities to encounter officials acting as police, guards at checkpoints, or in other roles of the de facto government. Transgender women, or other people assigned male at birth who are gender-nonconforming, are often easily identified and therefore are especially vulnerable to abuse.

The current violence against queer men and transgender women in Afghanistan also occurs against the backdrop of cultural practices that encourages abuse of young queer and trans Afghans assigned male at birth. The practice known as bacha bazi, in which boys and trans girls are essentially held as sex slaves by older, powerful men, was tolerated by both the Taliban and the US-backed Afghan governments when in power.⁶

For Afghans assigned female at birth – queer women and trans men who are subject to Taliban rules dramatically curtailing their independence and freedom of movement – the biggest threats are often found close to home. Afghans assigned female at birth who are discovered to be lesbian or transgender face threats and abuse from family members, and find it nearly impossible to flee to safety because the de facto authorities require women to be escorted by a close male relative (known as a mahram) in public.

Abuses of Afghans Assigned Female at Birth

Nasira

Nasira, a 25-year-old trans man, had fled his family in the provinces and was living in a group house for students in a major city when the Taliban retook power. On 19 August 2022, Nasira's uncle showed up at his house with some of his other relatives and tried to drag him out. Nasira said his uncle broke down the door of the kitchen where he was hiding and began to beat him.

⁶ Anuj Chopra, "Bacha Bazi: Afghan Subculture of Child Sex Slaves," Yahoo! Finance, 19 December 2016, <https://finance.yahoo.com/news/bacha-bazi-afghan-subculture-child-sex-slaves-041554165.html> (accessed 29 January 2023).



He said, 'You whore, you can't escape this time,'" Nasira remembered. "Now it is the time to take you to the Taliban, let them use you some nights... I won't dirty my hands by your blood, I will ask the Taliban to stone you and execute you in front of people, to show them what is the punishment of a bacha posh [a girl who dresses as a boy] and a whore."

When Nasira's mother tried to stop the beating, the uncle beat her as well, Nasira said. Nasira said he finally passed out after his uncle repeatedly beat his head against a wall. His uncle then allowed his mother to take him away in a taxi, and she is now protecting him.

"My injuries are fresh and deep. I can't walk, stand, or move," Nasira said in an interview with Outright several weeks after the beating. "I can't sleep, my days and nights are full of darkness, with every second, every breath, I smell death... [and] blood. I am in pain and they punish me for being myself, for being real."⁷

Mansoor

Mansoor, a 22-year-old trans man, started hormone replacement therapy about a year before the Taliban's return to power. He was relatively lucky: his father was supportive of his transition and worked for the government, giving him connections that kept him safe. But after that government fell, Mansoor said, some of his extended family members joined the Taliban almost as soon as the group retook power in Afghanistan and began threatening him.

"I never forget [a call that] said, 'I know who you really are: you are a girl but fighting God's will and trying to become a man. Either I will stop you from disobedience or I will send you to hell,'" Mansoor said.

Mansoor went out for a walk in early October when he was stopped by one of his relatives and a few of his friends. The relative said, "How are you coming out alone? You are a girl and you should have a mahram escort you." The relative's friend chimed in, "Look at her beard and body hair, you can't fool us." They attempted to grab Mansoor's genitals, mocking him as a "girl but trying to become a man."

Mansoor tried to phone his father, but they broke his phone and beat him, escaping only when a passerby intervened to stop the attack.

By July, Mansoor felt so unsafe that he moved to the house of a female relative. But, one evening, the relative's husband came home early from the mosque and told Mansoor to hide because the Taliban was looking for him. Mansoor climbed into a box of clothing while his relative cut the power to the house so it would be dark and harder to search. Men came and hunted for Mansoor throughout the house, threatening his relative's husband when they failed to find him.

It is a great shame for you as a Muslim man with passion that you keep a trans [murat, bacha berish] who has disobeyed Allah's order and creation by trying to change her body and gender," Mansoor heard one of the men say. "We won't tolerate this kind of ignorance and disobedience. We will find her and deal with her about her sin."

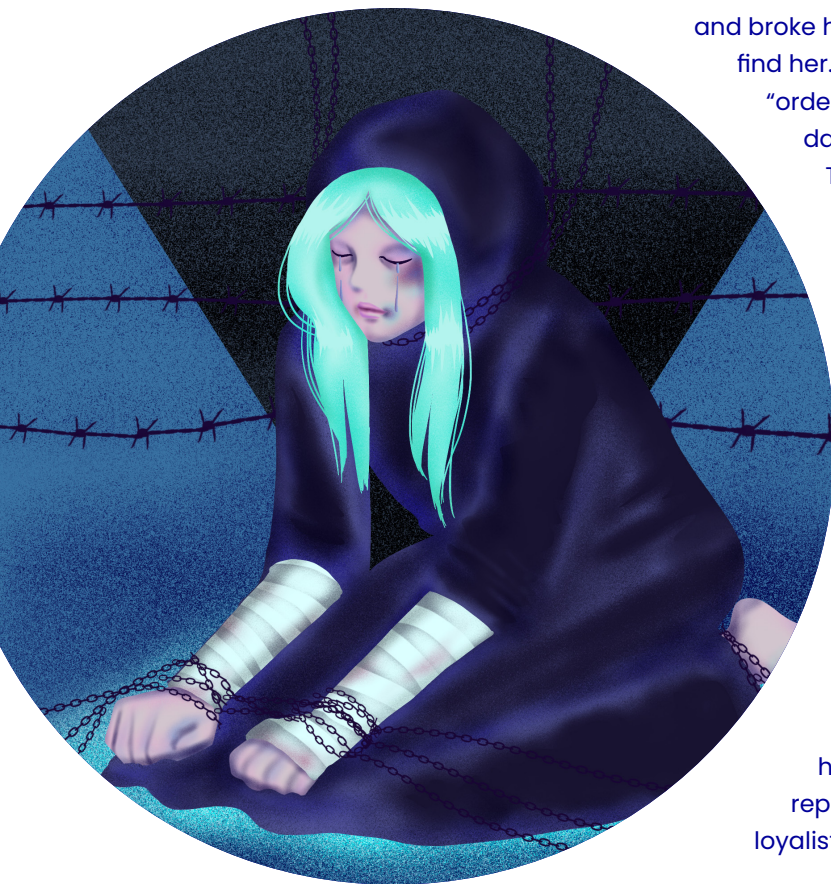
⁷ Outright International interview with Nasira by secure voice app, September 2022.

Day by day his security continues to deteriorate, Mansoor said. This is especially hard to endure, he said, because unlike gay men and trans women, “lesbians and trans men are more silent because they don’t have opportunities to show how they are suffering.”

He added, “Isolation, fear, hiding, abuse, and insults are killing me gradually.”⁸

Fatima

Fatima, a 26-year-old lesbian, has an uncle who is a prominent religious leader allied with the Taliban. Her uncle and eight Taliban soldiers came to her family’s house in August 2021, shortly after the Taliban returned to power in Afghanistan.



Fatima successfully hid behind bags of wheat as the men searched the house, and the men beat her father and broke his arm when they couldn’t find her. As they left, she said, the men “ordered him to arrange your lesbian daughter marriage with one of Taliban soldiers as soon as possible.” Her father denied Fatima is a lesbian and said she’d been engaged to a boy since childhood.

The soldiers left, but have returned repeatedly to “ask my father and neighbors if I have married or not,” Fatima said. The soldiers also sometimes beat her and her father.

She was also forced out of her job in a local university and replaced by a man who is a Taliban loyalist.

From the moment the Taliban returned to power, “the world changed to a dark hollow that is trying to swallow all of my dreams, my happiness, my peace, my achievements, my education, my job,” Fatima said, explaining she had repeatedly attempted suicide.

“I became a prisoner in my home to stay alive... I am totally isolated,” she said. “Every day I think I am closer to death.”⁹

⁸ Outright International interview with Mansoor by secure voice app, late 2022.

⁹ Outright International interview with Fatima by secure voice app, late 2022

Najwa

Najwa, a 31-year-old lesbian, fled her hometown when Taliban forces recaptured nearby territory in northern Afghanistan. She said that her uncle who beat her in the past for refusing to get married was now a Taliban commander, and she worried he would use his new power to finally force her to marry.

She tried to hide out in a major city, but that stopped being safe when the Taliban took control of all Afghanistan in August 2021. The friend who at first took her in begged her to leave, fearing Najwa's sexual orientation put them both in danger. In March 2022, her uncle visited her father and beat him, asking questions about Najwa. Najwa's older brother came to collect her a short time later, declaring that the family had decided to marry her to a Taliban member who is friends with her uncle.

She is now hiding in the house of another friend, but her situation is precarious. She wants to leave the city, but she can't travel without a close male relative to escort her. One driver she approached for a ride out of town started shouting that she was a prostitute and calling for Taliban members to come arrest her.

"Always, when I close my eyes, I see that dreadful scene," she said. "The sky was far, the earth was hard. Everyone was looking at me judgmentally and they were probing me with their eyes. I tried to run away before the Taliban arrived or people attacked me."

Abuse of Intersex Afghans

Madina and Nabila

Madina, a 25-year-old intersex woman, received a growing number of threats from people who knew or suspected she was intersex when the Taliban returned to power in 2021. Her mother decided to arrange a marriage in the hopes that it would protect her. When her new husband discovered she was intersex, he began to beat her daily, Madina said, and forced her to sleep in the cowshed instead of in the house. He took her jewelry and deprives her of food, she said, spending their money on other women.

"He threatened me that he will tell the Taliban that I am not a complete human. I am a sign of the devil," Madina said. Her husband also beat her mother when she tried to protest how he was treating Madina.

"My mother tries her best to protect me, but still the society, people's mindset – religious and traditional beliefs – about intersex are so strong that my mother can't protect me." Madina said. "She decided to arrange my marriage but it harmed me.... and I am suffering much more than before. Even my life is in danger."¹⁰

Madina's 19-year-old sister, Nabila, is also intersex. Nabila told Outright she has been unable to go to school or seek medical help since the Taliban's return to power. She said her parents were also planning to arrange a marriage for her, but they decided against it after Madina's experience. Her neighbors bar her from public gatherings.

¹⁰ Outright International interview with Madina by secure voice app, late 2022.

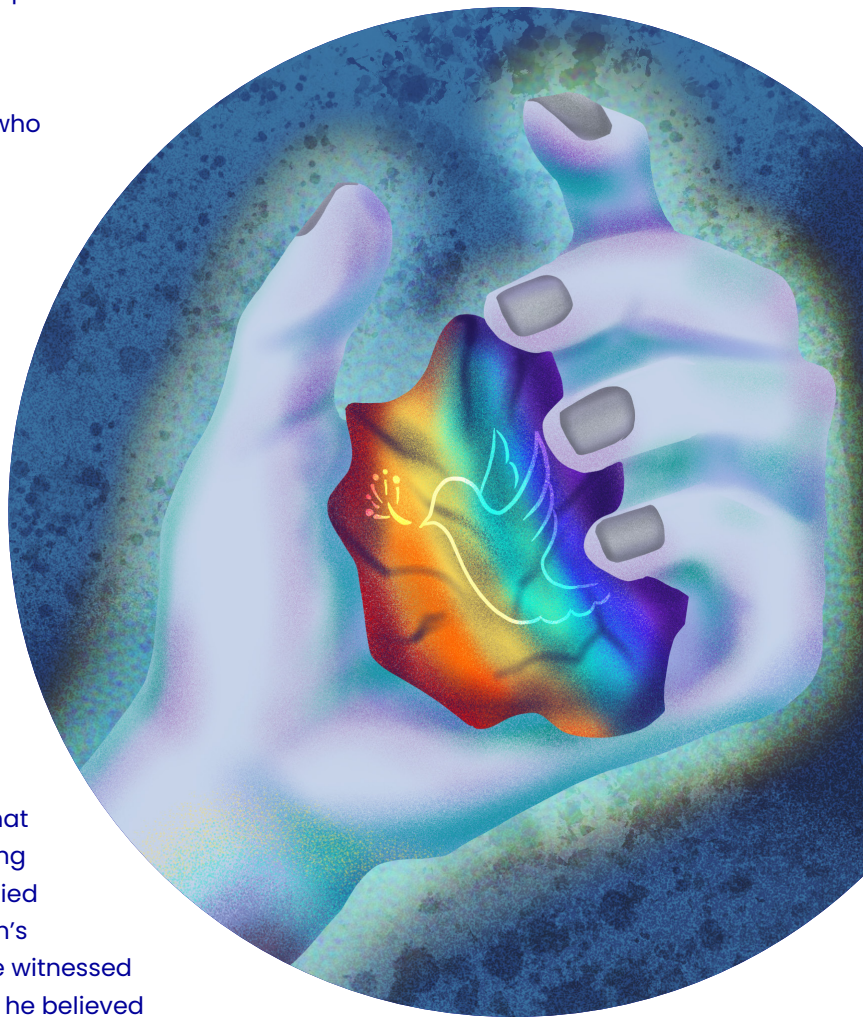
“People say that I am like a tree which doesn’t have fruit. They say if a girl doesn’t get her period and can’t be pregnant, it means she is a fruitless human,” Nabila said. “I don’t know what my future will be. I am tired of hopelessness – I don’t have hope.”¹¹

Abuse of Afghans Assigned Male at Birth

Outright interviewed 15 Afghans assigned male at birth who had experienced serious human rights violations. For purposes of brevity and because several cases involved similar types of abuses, only 9 cases are reported here.

Ghulam

Ghulam was an activist in a major city who provided counseling to LGBTIQ people. Ghulam’s brother, Nabil, told Outright that Ghulam disappeared in January 2022 and was missing for more than a week. Ghulam was ultimately found dead right outside a police station, Nabil said, his body bearing bruises as if he had been whipped and beaten with the butt of a rifle. Nabil said the family had a doctor examine Ghulam’s body before burial, and he found evidence that Nabil had been raped. Nabil said the doctor wanted to produce a written report stating Ghulam had been sexually assaulted, but the family refused out of fear it could be interpreted as evidence that he was gay. The family accused Taliban police of torturing and killing Ghulam, but Nabil said the Taliban police denied involvement.¹² Nabil’s account was confirmed by Ghulam’s friend, Rahmat, a 27-year-old gay man who also said he witnessed the brutalized body.¹³ Rahmat later fled the city because he believed police were looking for him due to his work with LGBTIQ people.



Sona

Sona, a 22-year-old trans woman who always dresses as a woman, went to buy bread in September 2021, shortly after the Taliban recaptured control of Afghanistan. Two Taliban members stopped her on the street because she did not have a mahram – a close male relative – escorting her in public. Sona said she knew they were Taliban members because they were carrying guns in public and emerged from a Ford Ranger, a vehicle typically used by Taliban soldiers or members.

¹¹ Outright International interview with Nabila by secure voice app, late 2022.

¹² Outright International interview with Nabil by secure voice app, early 2022.

¹³ Outright International interview with Rahmat by secure voice app, early 2022.

At first she tried not to speak to them, fearing her voice would out her as trans. When she finally felt she had no choice but to reply to their questions, one of them said, "Your voice seems different ... you are a male wearing women's clothes." He began to beat her with an electric cable, Sona said.¹⁴ Photos she shared from the incident showed scratches on her back, hand, and leg.

Sona successfully fled, running away through some small city streets. After the beating by the Taliban, however, she did not feel she could safely stay in her home. "There were rumors that Talibs were searching houses for LGBT people," she said, and her family was "telling me to leave the home before the Taliban investigation."

Her boyfriend, Sohail, arranged for them to marry in mid-October in a small ceremony in his family's house. Sohail's family did not know that Sona was transgender. They objected to the union because Sohail is Suni and Sona is Shia, but Sohail's uncle, a mullah, ultimately agreed to perform an Islamic marriage ceremony.¹⁵

When Sona failed to get pregnant, however, Sohail's family demanded she undertake a medical exam. They beat her when she refused. The couple was finally forced to flee when Sona's brother-in-law discovered she was trans and reported them to the Taliban. Now the couple is separated; Sona is hiding in a remote area with her extended family, while her husband is homeless in a major city, sleeping in a mosque.¹⁶

"I am very depressed, I can't sleep, I don't know if I am living or dead. I even tried to kill myself... even my husband tried to kill himself," she said.¹⁷

Hamrah

Hamrah, a 24-year-old trans woman, made her living dancing and singing at weddings before the Taliban retook control of her province in northern Afghanistan. Hamrah tried to keep a low profile, but after two months she was running out of food and needed to work. She agreed to perform at a wedding in a village in October 2021. Taliban soldiers, however, arrived to shut down the party.

"The hosts tried to hide me," Hamrah recalled, "but the Taliban searched throughout the house and arrested me and nine of the hosts." Hamrah said Taliban soldiers took them to a "dark basement" and blindfolded them, and beat them with whips, chains, and the butts of their guns.

On the second night of her detention, Hamrah said a soldier came to her and said, "you are an infidel who dirtied our society by your prostitution," punched her in the mouth, and spit in her face.

After three days and nights of detention, Hamrah said, the soldiers took her to a mosque, where the mullah publicly denounced her. "You prostitute shamelessly and destroy morality, religion, and the hereafter [*akhirat*]," Hamrah recalls the mullah saying.

¹⁴ Outright International interview with Sona by secure voice app, late 2022.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

She said the mullah gave a sermon that said people who engage in homosexuality or wear gender non-conforming clothes are “cursed.” “When someone like this boy wears a woman’s clothes and dances in front of you they are worthy of hellfire [*nar*],” Hamrah remembered the mullah saying, pointing his finger at her, “and when you watch them and do not stop them you are also worthy of hellfire and damnation [*jahanam*].”

“I was very afraid and crying,” Hamrah said. “I was thinking maybe they will kill me.”

She was finally released after performing a public repentance ritual, with her family members and the relatives of the party hosts guaranteeing community leaders that she “won’t do the dancing and homosexual activities anymore.”

But her family and neighbors would not let the issue go. She fled her village in December, after residents chased her and pelted her with stones as she went to buy groceries, calling her *izak* [a derogatory term for a gay or effeminate man].

“Even some of my relatives were with them,” Hamrah said. “I think I am not living; I am seeing a nightmare.”¹⁸

Farzad

Farzad, a 21-year-old trans woman, was on her way to a date on 23 July 2022 when two men dressed like Talibs, who used walkie-talkies and drove black Ford Ranger style cars generally used by Taliban members, stopped her on the street. They demanded she go with them. When she refused, they grabbed her and said, “What, do you think we don’t recognize you? Now is the time we rip your roots from the earth.” One of the men then took out a walkie-talkie and told the person on the other end to come to the city center. “We got another *nar omad* [a derogatory term for trans women].”

Farzad said the two men took her to a police station where they were met by a third Talib. All three began to beat her, dragging her across gravel and whipping her, laughing and egging each other on. “I don’t know how humans can be this heartless, I didn’t say even one word against them. I was begging all the time, but they continued torturing me,” Farzad said.

After beating Farzad, the Taliban members left her in the police station. During the night, a guard came to give her water and offered her a deal: he would let her go if she would have sex with him. “You are beautiful, you have a good body. Why are you not a woman?” Farzad said he told her.

Farzad agreed. “I didn’t have another option for staying alive and escaping from there but to accept his demand – even if I was full of injuries, blood and pain I accepted,” she said. In the morning the guard let her go.

¹⁸ Outright International interview with Hamrah by secure voice app, late 2022.

On another occasion, two of her friends who were secretly supporting the Taliban lured her into a building and demanded she have sex with them. When she refused, two other men with guns showed up, and they “all assaulted me sexually,” she said. They recorded the assault on video. Interviewed two months later, Farzad said she was in hiding because she was afraid that the video was shared with other Talibs.¹⁹

Khandan

Khandan, an 18-year-old trans woman, and another friend agreed to dance at a party in February 2022 in exchange for 1,000 Afghani, an amount equal to about US\$12.

“When we went to the party we realized it was a trap,” Khandan said. “We tried to run but we couldn’t – [the persons hosting the alleged party] took us to the Taliban.”

Their captors took Khandan and her friend’s cellphones and bound their hands, insulting them and beating them with a whip.

“I will never forget when two of them came to me and my friend with a nail clipper, wearing cruel and angry faces,” Khandan said. “I mourned and cried for them not to cut my nails, but one of them held my hands and started cutting while the other whipped me several times to stop me from resisting. The one who was holding the nail clipper said, ‘I wish I could do this to your neck and sever your head from your filthy body instead of cutting your nails.’”

“I told them that Allah created me like this and it is not my fault,” she said. They finally let her go after extracting a promise that she would stop wearing makeup and dancing.

A few weeks later, in March, two men stopped her on the street as she headed to the bazaar. Khandan believed they belonged to an organized crime gang in her city. They flashed a gun at her and addressed her with “nargida,” an offensive slur for trans people. “Come with us or let your family collect your dead body in pieces from the garbage,” she remembered them saying.

They took her to a house where they were joined by two other men. The men smoked cigarettes and hashish and forced her to dance. Suddenly two of them grabbed her and burned her face with cigarettes.

“Shut up stupid nargida,” she remembered them saying as she screamed. “You are nothing and we will enjoy doing anything [we want] with you, you worthless animal.”

They ultimately let her go, but Khandan said nowhere feels safe now. She told Outright, “I was afraid and I couldn’t ask for help from anyone, not the government, human rights agencies, educated people, elders, religious or community leaders... If we ask for help, they will bring us more trouble because we are LGBT. They will misuse our bodies, they will torture us, they will insult us.”

¹⁹ Outright International interview with Farzad Poya by secure voice app, late 2022.

"There is not only one group of Taliban – they are everywhere and they look for gay people ... [and the] gangsters are looking for gay people to misuse them" she said. "I am trying my best to hide myself but it is not always easy.... Sometimes I think I am dead. Sometimes I feel there is a fire inside me burning me from inside. Sometimes I feel like there is a mountain on my shoulders."²⁰

Shahnaz

Taliban security officers pulled Shahnaz, a 22-year-old trans woman, out of a car at a highway checkpoint between two major cities. They interrogated her about her hair and traces of nail polish she had been unable to wipe off before her trip.

"One of them asked, 'Do you dance and [engage in] prostitution?'" Shahnaz said. "One of them said, 'What will you gain by pretending you're a woman and doing feminine things? God has created you a man. Why don't you people live like men?'"

They proceeded to cut her nails and shave her head. They did so without water or lubrication, which one of her captors said would "teach him to live like a man with a proper masculine hair style." They left her head patchy and bleeding, she said, and then "some of them beat me for their fun." Then, she said, they told her, "if you are not gay, prove it and call someone to collect you." Fortunately, she knew someone in the area who agreed to escort her away from the Taliban soldiers.

On another occasion, Shahnaz said, an acquaintance said a rich property owner was distributing food aid out of a real estate office, and they were willing to help LGBTIQ people. But it turned out to be a trap. When she arrived, she said, three people at the office asked "personal questions and then they tried to touch my body to prove if I have male private parts or not."

Then, she said, they raped her and beat her, breaking her hand.

Afterward she said, they told her "If you tell anyone, we will find you again and kill you and throw you in the garbage."²¹



²⁰ Outright International interview with Khandan by secure voice app, late 2022.

²¹ Outright International interview with Shahnaz by secure voice app, late 2022.

Pari

Pari, a 48-year-old gay man, was an outreach worker for an organization that provided HIV services in a major city when the Taliban retook control of Afghanistan. Just a few weeks into the new regime, Pari said, a group of Taliban fighters visited the organization's offices and beat the security guards. The organization immediately halted all operations out of security concerns, leaving Pari without a job. The organization was concerned that some of its former patients, who had grown long beards and adopted Taliban-style dress, might be giving the Taliban information about the clinic and its workers.

"They know about us, our work and locations where we meet, so they always identify us to Taliban forces and we are at risk," Pari said.

In July 2022, a group of four armed Taliban who appeared to know Pari stopped him in the street. "You are izak, and promote gay sex. Where are those individuals [you worked with before]? You have to tell us," Pari remembered them saying.

Pari insisted they had the wrong person, but he said they took him to a small police post mostly used for traffic control, where they beat him, demanding that he provide names of his former patients. They threatened to take him to the city's main police station and torture him by electric shock, Pari said.

Eventually another person entered the checkpoint: a previous acquaintance of Pari who had joined the Taliban. "He said, 'I know you, you worked in the project, and you were dancing at parties,'" Pari recalled. "Now, have sex with me, [and] I will manage to get you away from these people."

Pari agreed out of desperation. After the man finished, he told him to run away from the police station. Pari fled so fast he left his cell phones behind. He returned home with bruises all over his body, telling his family he had a traffic accident.



Pari told Outright that he has been beaten by Talibs at least five other times simply because he shaves his beard. Once, he said, while gathering with a group of gay and trans friends at a restaurant, five Taliban soldiers arrived and began beating the group in the middle of the restaurant.

Pari said he recently got his passport but has no way out of the country. He also believes he could not bring his children with him, so has no choice but to stay. He is increasingly afraid to leave his home at all.

"I am mostly living in hiding," he said. "I prefer to die than to live in the current situation. I pray that God grants me death."²²

Mozhgan

Mozhgan, a 33-year-old gay man, was selling small items from a road-side cart with his 10-year-old child's help in September 2022 when two Taliban officials began interrogating him. "What are you doing here?" Mozhgan remembered them asking him, before they slapped him and forced him into their car.

When they got to the police station, the men who detained him told their commander, "This is the person we had information about," Mozhgan recalled. The commander told him, "You know about dancing boys, you know boys who were doing sex. You have to tell us about those boys, and tell us the truth, otherwise you will face a very difficult time." Mozhgan said they showed him someone in detention who was badly beaten, and warned him, "Your situation will be even worse."

Mozhgan's child soon came with his wife to try to get him released. After two hours they let him go, but first beat him in front of his children. They also continued to harass him by phone.

"The Taliban are specifically looking to detain LGBT [people]," Mozhgan said. "I am thinking if they found me, they must also have information about others and can identify them."²³

Abuses Against and Vulnerability of Transgender Children

Two of the cases documented by Outright involved Taliban abuses against transgender children. Abuses by state officials against children constitute grave offenses and may have severe, lifelong impacts on the children subjected to violations. Their stories indicate the vulnerability of gender-nonconforming children in Afghanistan, who may face family abandonment and commercial sexual exploitation in addition to abuses by the Taliban.

In one case, Ziba Gul, a 15-year-old trans girl, was detained at a Taliban checkpoint in early 2022. They discovered "photos of other boys and LGBT [community] members" on her cell phone and began asking her to reveal their locations.

²² Pari interview.

²³ Outright International interview with Mozhgan by secure voice app, late 2022.

"I told them, 'I don't know, I think all of them went to Iran,'" she said. They began to beat her and berate her for wearing make-up. "I started begging them and said I won't do it again." They ultimately released her after a few hours.

Ziba Gul told Outright that after the arrest, she hoped to flee the country, but had no financial resources to do so. Ziba Gul had been abandoned by her family and survived dancing at parties before the Taliban's return to power. Because those parties are mostly impossible under Taliban rule, she now survives through sex work despite the danger of being caught.²⁴

In another case, Arash, a 16-year-old trans girl, was dancing at a party in August 2022 with four adult trans women when suddenly they heard shots fired outside. They tried to run, but it was impossible because there were too many Talibs raiding the house. Someone punched her in the head, and then another person struck her jaw with the butt of his gun. Then she fainted.

She regained consciousness in a hospital, bleeding heavily and in tremendous pain. Arash said the doctors and nurses were ignoring her, "whispering to each other, 'why is he wearing makeup and a woman's dress?'"

Finally, a doctor agreed to patch her up. "I know you are LGBT and I know you have rights – you are also human and worthy of living freely and happy, but convincing these people is not easy," Arash remembered the doctor saying. "I am not sure what might happen to me after a few hours because of my support for you." The doctor advised her to get a friend to help her go into hiding before the Taliban returned to the hospital to take her away.

Arash has been abandoned by her family, and now is getting by with help from friends who are not able to help her much longer. "We are really in trouble – even one second of my life is not guaranteed," she said.

²⁴ Outright International interview with Ziba Gul by secure voice app, late 2022.

2. Analysis of Case Studies: Patterns of Anti-LGBTIQ Violence

The above case studies provide detailed information on cases of human rights violations reported by 14 LGBTIQ Afghans. In addition, Outright interviewed eight other Afghans who reported human rights violations whose cases are not included here for the sake of brevity. Some details from their stories bear mention, however. One 24-year-old trans woman, Permila, described how the Taliban soldiers who arrested her at gunpoint described her and her trans friend as “hated insects,” whipped them at a police station, and captured photos and videos of them.²⁵ Maisam, a gay man, described Taliban members sexually assaulting him and subjecting him to electric shocks in a local jail after arresting him on the street, apparently on the basis of his attire.²⁶ Naima, a gay man, described being arrested with a trans woman who had been on hormone replacement therapy and had large breasts. She was subjected to particularly harsh abuse, Naima said.²⁷ Each story sheds further light on the architecture of Taliban violence against LGBTIQ people.

Overall, a pattern emerges from these interviews: Taliban violence towards LGBTIQ Afghans is growing more systematic, more institutionalized, and more brutal as they consolidate their hold on power. Armed men acting in de facto state roles as police, guards, and local authorities are detaining and abusing people without due process, targeting them for gender-based violence because of their sexual orientation, gender identity, gender expression, or sex characteristics.

Where abuse does not happen directly at the hands of Taliban officials, the Taliban regime has created a climate where family members, criminal gangs, and others can victimize LGBTIQ people with impunity.

Several other key themes emerge from these interviews, all of which merit further research and exploration:

- Taliban officials are also abusing children, as the two minors included in our interviews attest. Afghan children of all genders are at risk of violence, including sexual abuse, and human trafficking.²⁸
- LGBTIQ Afghans who have no choice but to leave their homes are at greatest risk of attracting the attention of Afghan officials, whether they encounter them at a checkpoint, while accessing food and other services, or at parties and public events that draw official sanction.
- Many of our interviewees are in desperate economic conditions after having lost work, whether they were outreach workers for HIV organizations, dancers, or sex workers. The danger of going out in public limits LGBTIQ people’s ability to access food and other essential services, compounding the risks of poverty and hunger.
- Easy access to digital recording and sharing of arrests and assaults of trans people puts them at risk of revictimization. Permila, a trans woman who said Taliban soldiers arbitrarily detained and whipped her in December 2021, said that she is in hiding because the

²⁵ Outright International interview with Permila by secure voice app, late 2022.

²⁶ Outright International interview with Maisam by secure voice app, late 2022.

²⁷ Ibid.

²⁸ US Department of State, “2022 Trafficking in Persons Report: Afghanistan,” July 2022, <https://www.state.gov/reports/2022-trafficking-in-persons-report/afghanistan/> (accessed 29 January 2023).

officials who assaulted her photographed and filmed the attack, and she is afraid that the documentation of the assault could lead to her rearrest.²⁹ Farza, another trans woman, said she was afraid the Taliban supporters who recorded their sexual assault of her would share the video with other Talibs.³⁰

- There is danger posed by family members, particularly male relatives. Each of the interviewees assigned female at birth faced violence or threats of violence from a male relative.
- Family members are also in danger; in some cases, LGBTIQ interviewees reported their family members have also been threatened or abused because of their sexual orientation or gender identity. This includes their children: social pressure leads many same-sex attracted Afghans to marry a person of a different sex and have children.
- Policies that discriminate based on gender pose a risk to LGBTIQ Afghans, along with cisgender women, as evidenced by the case of Sona, the trans woman stopped by Taliban members for not traveling with a male relative.
- Several abuses ended with the Taliban extracting “promises” from their victims that they would no longer engage in same-sex intimacy, gender nonconformity, or actions deemed to be immoral such as dancing at weddings and events.

²⁹ Permila interview.

³⁰ Farzad Poya interview.

3.

International Response

While the evidence of violence against LGBTIQ people in Afghanistan by the de facto Taliban authorities is indisputable, the international response has so far been inadequate.

Support for LGBTIQ people under the radar may be the fastest route to provide assistance to those stigmatized on the ground. Donor governments and human rights organizations should identify partners trusted by LGBTIQ Afghans to connect them with shelter, food and medical assistance, and other essential services. Those that engage with the de facto authorities should also make use of the whole range of diplomatic tools available, including quiet diplomacy.

But international institutions have been inexcusably silent on threats to queer Afghans and have an obligation to integrate issues of sexual orientation and gender identity into discussions of Afghans' human rights. The UN Security Council established the UN Assistance Mission in Afghanistan (UNAMA), a Security Council subsidiary body, in 2002. It is charged with promoting peace and stability, coordinating humanitarian assistance efforts, protecting and enhancing respect for civil, political, social, economic, and cultural rights, establishing robust democratic structures, and supporting gender equality in the country. Its most recent mandate (2022) requires it, *inter alia*, to undertake impartial and independent monitoring, documentation, and reporting of violations of the rights to life, liberty, and physical integrity against local populations, to work toward the elimination of violence against women and girls and the full enjoyment of their rights, to monitor and promote the rights of detainees, to prevent and respond to sexual and gender-based violence and torture, and to strengthen the protection of children.

Despite this broad mandate and the reports of abuses targeting LGBTIQ Afghans, UNAMA has thus far neglected LGBTIQ realities in the country. In its public statements and press releases, it has never mentioned LGBTIQ Afghans. Its last human rights report, published in July 2022, does not include any reference to human rights violations on the grounds of sexual orientation, gender identity or expression, or sex characteristics.³⁵ UNAMA has no system in place to proactively identify and safely reach out to LGBTIQ survivors of human rights violations.

In addition to the Security Council's efforts in Afghanistan, in October 2021 the UN Human Rights Council adopted Resolution 48/1 establishing the mandate of a Special Rapporteur on the situation of human rights in Afghanistan.³⁶ The mandate requires the Special Rapporteur to monitor and document the developing situation of human rights in Afghanistan, provide recommendations to improve it, assist the authorities in fulfilling their obligations under international human rights law, and support civil society actors. The mandate also demands the integration of a gender perspective and a survivor-centered approach in all aspects of its work.

³¹ Outright International, Guide to Inclusion of LGBTI People in Development and Foreign Policy, 23 November 2021, <https://outrightinternational.org/our-work/human-rights-research/guide-inclusion-lgbti-people-development-and-foreign-policy>.

³² United Nations Security Council, Resolution 1401 (2002), S/RES/1401 (2002), <http://unscr.com/en/resolutions/doc/1401> (accessed 209 January 2023)

³³ United Nations Security Council, Resolution 2626 (2022), S/RES/2626 (2022), https://unama.unmissions.org/sites/default/files/res_2626_2022_e.pdf (accessed 29 January 2023).

³⁴ See UNAMA homepage, <https://unama.unmissions.org/> (accessed 29 January 2023).

³⁵ UNAMA, "Human Rights in Afghanistan: 15 August 2021 – 15 June 2022," https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf.

³⁶ United Nations Human Rights Council, "Situation of Human Rights in Afghanistan," Resolution 48/1, A/HRC/RES/48/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/285/32/PDF/G2128532.pdf?OpenElement> (accessed 29 January 2022).

In spite of this, the Special Rapporteur's latest report, published in September 2022, only superficially addresses human rights violations against LGBTIQ individuals, merely noting that the new government will continue to criminalize consensual same-sex sexual acts. Despite this lack of reporting, several of the recommendations issued in the report are relevant to LGBTIQ Afghans, and explicit references to LGBTIQ people should be included in future reports. The Special Rapporteur recommends that the international community and states undertake the following actions. Outright has added suggested language in bold and brackets that would ensure that such recommendations address human rights violations against LGBTIQ people.

- a. Continue to provide assistance and cooperation to ensure that adequate resources are made available to realize human rights, particularly rights to adequate food, safe drinking water, sanitation, health and education without discrimination, put in place mechanisms to ensure meaningful consultation with and participation of all groups, including women **[and LGBTIQ people]**, in the planning, decision-making, delivery and monitoring of humanitarian aid, and ensure that it is distributed equitably, giving priority to disadvantaged groups, and that the roles of women aid workers in reaching people most in need are strengthened;
- b. Take necessary measures to strengthen accountability for human rights violations and abuses, including through the Special Rapporteur and others, including potential mechanisms to address impunity, provide redress for survivors and victims, and bring perpetrators to justice, **[especially with regard to violence against marginalized groups, including LGBTIQ people]**;
- c. Explore additional means, including through incentives as well as penalties, to convince the de facto authorities to ensure that the rights and freedoms of women and girls **[and LGBTIQ people]** are respected, protected and promoted and take all measures necessary to support and protect women and girls **[and LGBTIQ people]**, especially women's **[and LGBTIQ]** rights defenders.

Individual countries and regional blocs that have sought to engage the Taliban on issues related to human rights, including women's and girls' rights and gender equality, have typically matched UN bodies' inattention to human rights violations against LGBTIQ individuals. The US-Europe group on Afghanistan has issued several communiqués that reference "marginalized groups," but contain no specific reference to LGBTIQ people or to discrimination based on sexual orientation, gender identity and expression, and sex characteristics. In contrast, the communiqués raise concern about specific human rights issues affecting women and girls, ethnic and religious minorities, activists, and journalists. LGBTIQ people appear to be written out of the text.³⁷

Civil society actors and organizations have sought to fill the void, speaking out in international settings to bring attention to the realities of LGBTIQ Afghans. On 3 October 2022, the NGO Working Group on Women, Peace, and Security published an open letter, signed by 481 civil society organizations across 92 countries, to the permanent representations to the United Nations in advance of the Security Council Open Debate on Women, Peace and Security (WPS) in October 2022. The letter, which calls on the Security Council, UN entities, and member states to take action to defend peace, human rights, and gender equality, highlights the violence

³⁷ See European Union External Action, "Communiqué of the Special Representatives and Envoys for Afghanistan," 5 April 2022, https://www.eeas.europa.eu/eeas/communiqu%C3%A9-special-representatives-and-envoys-afghanistan_en (accessed 29 December 2023); US Department of State, "Communiqué of the US-Europe Group on Afghanistan," 22 September 2022, <https://www.state.gov/communiqué-of-the-u-s-europe-group-on-afghanistan/> (accessed 29 January 2023).

faced by LGBTIQ Afghans on the basis of their sexual orientation and gender identity. During a multi-stakeholder forum on Women, Peace and Security hosted by UN Women, Sweden, and the NGO Working Group in October 2022, two Afghan activists sought to cast light on the persecution of LGBTIQ individuals in Afghanistan. Lastly, at the UN Security Council Open Debate on Women, Peace, and Security, also in October 2022, Afghan activist and journalist Zahra Nader addressed the devastating situation of Afghan women, girls, ethnic and religious minorities, and LGBTIQ people. She underscored the double discrimination and persecution faced by LGBTIQ individuals who are subject to murder, assault, sexual violence, and death threats both from within their communities and Taliban members.³⁸

The United Nations Independent Expert on violence and discrimination based on sexual orientation and gender identity has also explicitly highlighted the increasingly precarious situation of LGBT and gender-diverse people in Afghanistan.³⁹ The mandate's July 2022 report on protection against violence and discrimination based on sexual orientation and gender identity details how the Taliban's takeover in 2021 coupled with its commitment to rule according to a particular interpretation of Sharia threaten the safety of queer people in Afghanistan. The report also underlines how conflict actors may strategically instrumentalize structural patterns of discrimination against LGBT and gender-diverse people, resulting from criminalization and exclusionary societal norms. It includes recommendations on how to improve the protection of LGBT and gender-diverse individuals in conflict situations, such as the promotion of inclusive and effective support, relief, reallocation and protection programs, disaggregation of data based on gender identity and sexual orientation, and reliance on a broad understanding of gender in efforts to enforce international human rights law and international criminal law.

³⁸ "Statement by Ms. Zahra Nader at the UN Security Council Open Debate on Women, Peace and Security," NGO Working Group on Women, Peace and Security, 20 October 2022, <https://www.womenpeacesecurity.org/resource/statement-zahra-nader-security-council-open-debate-women-peace-security/> (accessed 29 January 2023).

³⁹ Office of the United Nations High Commissioner for Human Rights, Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, A/77/235, 27 July 2022, <https://www.ohchr.org/en/documents/thematic-reports/a77235-report-independent-expert-protection-against-violence-and> (accessed 29 January 2023).

4.

International Law Obligations

The Taliban, as Afghanistan's de facto authorities, are failing in their obligation to respect, uphold, and protect the human rights of LGBTIQ people under international human rights law. Violations committed by individuals within the Taliban ranks amount to severe infringements on the human rights of LGBTIQ Afghans, among others, to life, liberty, and security of the person; bodily integrity; to be free from torture or cruel, inhumane, or degrading treatment, including rape and other sexual violence; nondiscrimination; and effective remedy and due process. These abuses violate multiple core international human rights treaties, to which Afghanistan is a party, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Committee on the Elimination of Discrimination against Women (CEDAW), and the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. The scope of these treaties has evolved to include protections against discrimination and violence on grounds of sexual orientation and gender identity and expression.⁴⁰

The testimonies highlighted in this report also indicate violations of the Convention on the Rights of the Child, to which Afghanistan is a party. States Parties are under an obligation to prevent torture or other cruel, inhumane or degrading treatment to any child, which includes LGBTIQ children.⁴¹ The Committee on the Rights of Child has interpreted the expression "other status" in the non-discrimination clause as encompassing sexual orientation and gender identity.⁴² It has also recognized LGBT minors as children in vulnerable situations, particularly at risk of being exposed to violence.⁴³

The widespread and systematic attacks against LGBTIQ Afghans could amount to crimes against humanity under international criminal law. The abuses could fall within the ambit of Article 7(h) of the Rome Statute, which describes persecution of any identifiable group or collectivity on other grounds that are universally recognized as impermissible under international law.⁴⁴ Despite the growing recognition of sexual orientation and gender identity as protected categories under international law, the International Criminal Court (ICC) has never prosecuted individuals for violations on such basis. In November 2022, the prosecution resumed its investigation of the Afghanistan situation and should seize this opportunity to expand the scope of investigation to include human rights violations committed under the newly established Taliban government, thereby documenting abuses committed against LGBTIQ individuals.⁴⁵ A new policy paper on gender persecution, issued by the Office of the Prosecutor in December 2022, makes clear that crimes on the basis of sexual orientation,

⁴⁰ Outright International and Human Rights Watch, "Even if You Go to the Skies, We'll Find You": LGBT People in Afghanistan After the Taliban Takeover, January 2022, https://outrightinternational.org/sites/default/files/2022-09/afghanistan_lgbt0122_web_0.pdf.

⁴¹ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, arts. 37. 39.

⁴² Committee on the Rights of the Child, "General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24)," CRC/C/GC/15, <https://www.refworld.org/docid/51ef9e134.html> (accessed 29 January 2023), para. 8.

⁴³ André Viviers, General Comments of the Committee on the Rights of the Child – A Compendium for Child Rights Advocates, Scholars, and Policy Makers, UNICEF, January 2014, <https://www.unicef.org/southafrica/media/1541/file/ZAF-general-comments-committee-on-rights-of-the-child-2014.pdf> (accessed 29 January 2023), p. 150.

⁴⁴ Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed 29 January 2023), art. 7.

⁴⁵ See "ICC Judges Authorise Prosecution to Resume Investigation in Afghanistan," ICC press release, 31 October 2022, <https://www.icc-cpi.int/news/icc-judges-authorise-prosecution-resume-investigation-afghanistan> (accessed 29 January 2023). See also "Afghanistan: As the International Criminal Court's Probe Gets Green Light, Rights Groups and Victims' Representatives Urge Investigation into all Crimes and Perpetrators," International Federation for Human Rights (FIDH), 7 November 2022, <https://www.fidh.org/en/region/asia/afghanistan/afghanistan-as-the-international-criminal-court-s-probe-gets-green> (accessed 29 January 2023).

gender identity and expression, and sex characteristics can amount to gender persecution under the Rome Statute.⁴⁶

The UN Security Council's series of resolutions on Women, Peace, and Security impose binding obligations on both Security Council subsidiary bodies and member states to respond to human rights violations based on gender. Paragraph 15 of Resolution 1325 (2000) demands Security Council missions, in the present case UNAMA, to take gender into consideration.⁴⁷ Paragraph 13 of Resolution 1888 (2009) "encourages states, with the support of the international community, to increase access to health care, psychosocial support, legal assistance and socio economic reintegration services for victims of sexual violence, in particular in rural areas."⁴⁸ Paragraph 26 of Resolution 2467 (2019) "calls upon member states and the United Nations to support affected countries to address sexual violence in conflict and post-conflict situations in the context of security sector reform processes including to enhance the capacity of military structures to address and prevent sexual violence related crimes, and put in place safeguards through vetting to prevent individuals credibly suspected of committing sexual violence related crimes from being recruited, retained or promoted within the security forces."⁴⁹

The countries to which LGBTIQ Afghans are fleeing also have obligations under international refugee law. The principle of non-refoulement prevents refugee-welcoming states from transferring or removing individuals from their jurisdiction or effective control if there is sufficient evidence that the individuals would be persecuted upon their return to their country of origin. Given the current dangerous situation for sexual and gender minorities in Afghanistan, countries hosting LGBTIQ Afghan refugees and asylum seekers have the obligation to protect and respect their human rights. In light of this obligation, Afghanistan's neighboring countries, regardless of whether or not they criminalize consensual same-sex intimacy, should respect the principle of non-refoulement and should set up training programs on persecution on grounds of sexual orientation and gender identity for border officers, humanitarian staff, and anyone else who could be in direct contact with LGBTIQ refugees. Obligations to ensure the safety of LGBTIQ refugees and asylum seekers exist even in countries that criminalize consensual same-sex intimacy. International agencies should also consider providing such training.

⁴⁶ ICC, "Policy on the Crime of Gender Persecution," 7 December 2022, <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf> (accessed 29 January 2023).

⁴⁷ United Nations Security Council, Resolution 1325 (2000), S/RES/1325 (2000), <http://unscr.com/en/resolutions/doc/1325> (accessed 29 January 2023).

⁴⁸ See United Nations Security Council, Resolution 1888 (2009), S/RES/1888 (2009), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/534/46/PDF/N0953446.pdf?OpenElement> (accessed 29 January 2023), para. 13.

⁴⁹ United Nations Security Council, Resolution 2467 (2019), S/RES/2467 (2019), https://www.un.org/shestandsforspeace/sites/www.un.org/shestandsforspeace/files/unscr_2467_2019_on_wps_english.pdf (accessed 29 January 2023), para. 26.

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