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# THE LGBTQI REFUGEE CRISIS IN AFGHANISTAN

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## INTRODUCTION

The Taliban's August 2021 takeover of Afghanistan has led to international concerns for the safety and livelihood of vulnerable populations, including lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) Afghans. Same-sex activity was already criminalized and punishable by death in the country before the Taliban took control, but the new regime's mandate to rule with Sharia law makes the fate of LGBTQI Afghans even more precarious than before.<sup>1</sup> An exodus of LGBTQI refugees has commenced and will likely expand over the next few weeks and months.

The Taliban established a deadline of August 31 for all foreign troops to withdraw, necessitating a swift response from the international community to protect the most vulnerable during this period of regime change. Canada has pledged to accept 20,000 refugees, prioritizing women and LGBTQI people among others, and Ireland also pledged to explicitly support LGBTQI and women Afghans seeking refuge.<sup>2</sup> The US must take additional steps to protect refugees and ease the refugee process for LGBTQI people going forward.

***“As a woman, I will lose my freedom to study, to work, and live freely... As an LGBTQ+ member, I am not even recognised.”***

— **Rani**, a lesbian Afghan woman. (Pallavi Pundir, 'If they Find Out I'm Gay, They Will Kill Me on the Spot': Life Under Taliban Rule, Vice (Aug. 19, 2021), <https://www.vice.com/en/article/akg84p/queer-afghans-fear-death-under-taliban-rule>.)

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<sup>1</sup> Sarah Pulliam Bailey, Jennifer Hassan & Andrew Jeong, *The Taliban says it will rule under Sharia law. What does that mean?*, WASHINGTON POST (Aug. 19, 2021, 2:48 PM), <https://www.washingtonpost.com/world/2021/08/19/sharia-law-afghanistan-taliban/>.

<sup>2</sup> Matthew Laviertes & Rachel Savage, *LGBT+ Afghans desperate to escape amid Taliban takeover*, THOMSON REUTERS (Aug. 22, 2021, 1:58 PM), <https://www.reuters.com/article/us-afghanistan-lgbt-refugees/lgbt-afghans-desperate-to-escape-amid-taliban-takeover-idUSKBN2FN0FA>.



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## THE SITUATION OF LGBTQI PEOPLE IN AFGHANISTAN

### Population

Population estimates for LGBTQI Afghans are difficult to obtain due to high levels of discrimination and violence. Extrapolating from data available in counties that do report sexual minority populations, an estimated 526,097 Afghans are sexual minorities.<sup>3</sup> Data is even more challenging to obtain for gender minorities though often data on sexual minorities includes gender minorities. Virtually the entire population of LGBTQI Afghans conceal their identities.<sup>4</sup>

### Political and Legal Landscape

In Afghanistan, discrimination based on sexual orientation and gender identity is common. The US Department of State reports that within Afghanistan being LGBTQI is considered a “taboo” and “indecent”.<sup>5</sup> The LGBTQI community is often subjected to mental and physical abuse, arrests, harassment and violence.<sup>6</sup>

Article 130 of the Afghan constitution allows for the use of Hanafi jurisprudence,<sup>7</sup> a form of Sharia Law,<sup>8</sup> which prohibits same-sex sexual activity between men or women, and makes same-sex sexual activity punishable by death. Sharia and Afghan law specify that marriage must be between a man and a woman. The punishment for sexual relations outside of marriage in Shariah law includes a possible death sentence.<sup>9</sup> Same-sex sexual relations are a form of sex outside of marriage. Use of the death penalty as punishment for nonmarital sex hasn't been enforced by the state since 2001, however Sharia law has been used to justify extrajudicial killings.<sup>10</sup>

**The United Nations Assistance Mission in Afghanistan documented an incident in 2015 where a wall was toppled on two men and a 17-year-old male for allegedly engaging in same-sex sexual activity. The two men were killed and the teen was injured.**

[UNAMA/OHCHR 2015 Annual Report on Protection of Civilians in Armed Conflict, p. 50-51, https://unama.unmissions.org/sites/default/files/poc\\_annual\\_report\\_2015\\_final\\_14\\_feb\\_2016.pdf.](https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf)

3 Richard Bränström & John E. Pachankis, *How many sexual minorities are hidden? Projecting the size of the global closet with implications for policy and public health*, PLOS ONE (June 13, 2019), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0218084#sec002>.

4 Id.

5 U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Afghanistan 2020 Human Rights Report*, p. 42-43 (2020), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/afghanistan/>.

6 Id.

7 The Constitution of Afghanistan, Jan. 26, 2004, Ch. 7, art. 130 (Afghan). <https://www.mfa.gov.af/constitution/chapter-seven-judiciary.html>

8 *What is Sharia law? What does it mean for women in Afghanistan*, BBC NEWS (Aug. 19, 2021), <https://www.bbc.com/news/world-27307249>.

9 Id.

10 UNAMA/OHCHR 2015 Annual Report on Protection of Civilians in Armed Conflict, p. 50-51, [https://unama.unmissions.org/sites/default/files/poc\\_annual\\_report\\_2015\\_final\\_14\\_feb\\_2016.pdf](https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf).



After the fall of the Taliban in 2001, a new penal code came into force in 2018.<sup>11</sup> While it did bring some reforms, including reducing the punishment for same-sex sexual conduct from the the maximum penalty of death, it also explicitly criminalized that conduct. Currently 69 countries criminalize same-sex sexual relationships, but only nine make conviction punishable by death.<sup>12</sup>

With the Taliban's return to power, LGBTQI Afghans face even greater risk of death. In July this year, Taliban judge Gul Rahim promised that under Sharia law, the Taliban would seek to prosecute and execute LGBTQI Afghans: "For homosexuals, there can only be two punishments: either stoning, or he must stand behind a wall that will fall down on him."<sup>13</sup> The extremism of the the Taliban during their last period of power resulted in only three countries -- Pakistan, Saudi Arabia, and the United Arab Emirates -- officially recognizing the regime.<sup>14</sup>

***"If the Taliban finds out about us, they'll sentence us to death... Rameen said, crying. "I think we will have to stop our relationship."***

– **Rameen** (a pseudonym), a 37 year-old gay Afghan man. (Joshua Zitser and Alia Shoaib, Men from Afghanistan's secret gay community say they are living through a 'nightmare' and fear that the Taliban will execute them at any moment, Business Insider (Aug 21, 2021), <https://www.businessinsider.com/afghanistans-secret-gay-community-is-living-in-fear-of-taliban-terror-2021-8>

### LGBTQI organizing

Because of the extreme risks, there are no visible LGBTQI groups in Afghanistan. Only a handful of care centers are working exclusively on sexual health issues in Kabul. Nemat Sadat, was the first gay man to come out publicly in Afghanistan in August 2013 on his social media, and was fired from his job.<sup>15</sup> In 2020, transgender activist Saboor Husaini was beaten to death by a group of unidentified men.<sup>16</sup> Violence and threats are all too common in Afghanistan, against minority groups as well as the general population.

11 *Afghanistan: UN mission welcomes new penal code, urges measures protecting women from violence*, UN NEWS (Feb. 22, 2018), <https://news.un.org/en/story/2018/02/1003271>.

12 *Criminalization Around the World*, HUMAN RIGHTS CAMPAIGN, <https://assets2.hrc.org/files/assets/resources/Criminalization-Map-042315.pdf>.

13 Keegan Williams, *Taliban to Institute Sharia Law as LGBTQ People Flee Afghanistan*, OFM (Aug. 23, 2021), <https://www.outfront-magazine.com/taliban-institute-sharia-law-lgbtq-afghanistan/>; see also Bill Browning, *Taliban promises to brutally execute gays if it regains power in Afghanistan*, LGBTQ NATION (July 14, 2021), <https://www.lgbtqnation.com/2021/07/taliban-promises-brutally-execute-gays-regains-power-afghanistan/>.

14 Hannah Bloch, *A Look At Afghanistan's 40 Years Of Crisis — From The Soviet War To Taliban Recapture*, NPR (Aug. 31, 2021 at 5:25 PM), <https://www.npr.org/2021/08/19/1028472005/afghanistan-conflict-timeline>.

15 Lz Granderson, *Column: The Taliban's return means death for LGBTQ Afghans. Biden will you help?*, LA TIMES (Aug. 18, 2021, 3:35 PM PT), <https://www.latimes.com/opinion/story/2021-08-18/afghanistan-lgbtq-taliban-persecution-killings>.

16 U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Afghanistan 2020 Human Rights Report*, p. 43 (2020), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/afghanistan/>.



## REFUGEE CHALLENGES

### Short term

Fear of imminent violence have propelled many LGBTQI people to flee Afghanistan, though many are currently unable to leave. Many of the immediate challenges, both political and logistical, to getting out of the country are shared by all vulnerable populations. First, obtaining the correct papers is necessary to secure temporary admission to the United States or other countries.<sup>17</sup> Special Immigrant Visas (SIV) may be available to Afghans who were employed by or worked on behalf of the US government.<sup>18</sup> Those who don't qualify under the SIV program, but are at-risk for their involvement with the US, may instead be eligible for a Priority-2 (P-2) designation under the US Refugee Admissions Program.<sup>19</sup> This new designation was created to allow more Afghans to resettle, but is still very limited covering individuals who had a working relationship with the US government, worked for US government-funded programs, or worked for US based media or non-government organization plus their families.<sup>20</sup> The P-2 designation does not currently cover groups who are vulnerable based upon personal characteristics such as LGBTQI people.<sup>21</sup> In addition, the definition of family covers spouses but not domestic or intimate partners and LGBTQI Afghans can not marry their same-sex partners.

Once paperwork is obtained, individuals must navigate the logistical challenges of getting to an airport then securing transportation to a third country. The August 31, 2021 end date to evacuations from Afghanistan by the United States combined with earlier end dates by other countries-- including France,<sup>22</sup> Germany,<sup>23</sup> and the UK<sup>24</sup> -- eroded options for leaving. However, individuals will continue to find ways to seek refuge in other countries as they did during the first Taliban regime.<sup>25</sup> The UN refugee resettlement agency estimated that up to half a million Afghans could flee their home country by the end of 2021.<sup>26</sup>

### ***“They will kill us without sympathy.”***

– N, a 20-year-old lesbian student living in Afghanistan (Julie Moreau, 'A virtual death sentence': Gay Afghans brace for uncertain future under Taliban, NBC News (Aug. 29, 2021), <https://www.nbcnews.com/nbc-out/out-news/-virtual-death-sentence-gay-afghans-brace-uncertain-future-taliban-rcna1779>

17 Jennifer Hansler & Paul LeBlanc, *Here's how Afghan refugees coming to the US are being vetted*, CNN Politics (Aug. 23, 2021, updated 7:28 PM), <https://www.cnn.com/2021/08/23/politics/afghan-refugee-vetting-biden-administration-siv/index.html>.

18 Id.

19 U.S. DEP'T OF STATE, *U.S. Refugee Admissions Program Priority 2 Designation for Afghan Nationals* (2021), <https://www.state.gov/u-s-refugee-admissions-program-priority-2-designation-for-afghan-nationals/>

20 Id.

21 Id.

22 Michael Levenson, *U.S. Officials warn Americans again to leave the Kabul airport after Biden says a new attack is "highly likely"*, NEW YORK TIMES (Aug. 28, 2021), <https://www.nytimes.com/2021/08/28/world/asia/uk-france-afghanistan-evacuation-withdrawal.html>.

23 *Germany has completed military evacuations from Kabul*-security source, THOMSON REUTERS (Aug. 26, 2021, 10:57 AM), <https://www.reuters.com/world/germany-has-completed-military-evacuations-kabul-security-source-2021-08-26/>.

24 Michael Levenson, *U.S. Officials warn Americans again to leave the Kabul airport after Biden says a new attack is "highly likely"*, NEW YORK TIMES (Aug. 28, 2021), <https://www.nytimes.com/2021/08/28/world/asia/uk-france-afghanistan-evacuation-withdrawal.html>.

25 National Geographic Society, Education, *Afghan Migration After the Soviet Invasion* (2012), [https://media.nationalgeographic.org/assets/file/afghan\\_MIG.pdf](https://media.nationalgeographic.org/assets/file/afghan_MIG.pdf).

26 Stephanie Nebehay & Emma Farge, *Half a Million Afghans Could Flee Across Borders-UNHCR*, Reuters, (Aug. 27, 2021, 11:35 AM), <https://www.reuters.com/world/asia-pacific/half-million-afghans-could-flee-across-borders-unhcr-2021-08-27/>.



## Longer term

Afghan refugees may end up dispersed across the world with 98 countries pledging to take in at least some of the population,<sup>27</sup> however the vast majority have entered Pakistan and Iran.<sup>28</sup> Many of those fleeing have arrived in processing centers in countries such as Germany, Spain, Qatar and Uzbekistan.<sup>29</sup> LGBTQI people remain vulnerable based upon their gender minority and sexual minority status in several of the countries to which they have been relocated. Iran implements the death penalty for same-sex sexual relations and the death penalty remains a legal option in Pakistan and Qatar.<sup>30</sup> Uzbekistan imposes incarceration for same-sex sexual relations.<sup>31</sup>

Even in countries that do not criminalize LGBTQI people, receiving appropriate treatment and being recognized as a vulnerable population within the larger refugee community may not occur routinely or at all. LGBTQI Afghan refugees may face harassment and violence at the hands of other Afghan refugees as a result of prevalent anti-LGBTQI attitudes among Afghans.<sup>32</sup> Officials from receiving countries may also threaten LGBTQI refugees using their authority to garner compliance or directly engage in harassment and violence themselves.<sup>33</sup> LGBTQI refugees are often reluctant to identify themselves as LGBTQI as a result, making it more difficult to reach them for targeted assistance programs.

Once LGBTQI refugees leave processing centers and refugee camps, issues can arise related to resettlement in the receiving country. The laws, policies, and attitudes of the receiving country regarding LGBTQI people impact the daily lives of LGBTQI refugees. Countries that criminalize same-sex sexual relations without the death penalty are an improvement for LGBTQI refugees but still place them at risk for criminal penalties and contribute to minority stress that can lead to psychological and physical health disparities.<sup>34</sup>

***“If the family members come to know their son is gay, they will persecute their own son...The only difference between before and now is that earlier, we could be sent to jail for being gay. Now, we will be shot dead.”***

-- **Omid**, a 21-year-old gay Afghan man. (Pallavi Pundir, 'If they Find Out I'm Gay, They Will Kill Me on the Spot': Life Under Taliban Rule, *Vice* (Aug. 19, 2021), <https://www.vice.com/en/article/akg84p/queer-afghans-fear-death-under-taliban-rule>.)

27 Lara Jakes, *98 Countries Pledge to Accept Afghans After U.S. Military Departs*, N.Y. Times (Aug. 30, 2021), <https://www.nytimes.com/2021/08/29/us/politics/afghanistan-refugees.html>.

28 Tazreena Sajjad, *Analysis: Where do Afghanistan's refugees go?*, The Conversation (Aug. 24, 2021 at 12:57 PM), <https://www.pbs.org/newshour/world/analysis-where-do-afghanistans-refugees-go>.

29 The Visual Journal Team, *Afghanistan: How many refugees are there and where will they go?*, BBC News (Aug. 31, 2021), <https://www.bbc.com/news/world-asia-58283177>.

30 Map of Countries that Criminalise LGBT People, Human Dignity Trust (2021), <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/>.

31 Ibid

32 See U.S. Dep't of State, Bureau of Public Affairs, Diplomacy in Action, *Protecting and Assisting LGBT Refugees*, <https://2009-2017.state.gov/j/prm/policyissues/issues/c62979.htm>. See also Andrew R. Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, Research That Matters, UCLA William Institute of Law (Oct. 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Global-Acceptance-Index-LGBT-Oct-2019.pdf>.

33 Id.

34 David J. Lick et al., *Minority Stress and Physical Health Among Sexual Minorities*, 8 *Perspectives on Psychological Science* 5 (2013), <https://journals.sagepub.com/doi/10.1177/1745691613497965>.



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## **POLICY SOLUTIONS FOR EASING THE REFUGEE CRISIS**

The United States bears a special responsibility not to abandon those it has encouraged along the path to democracy and human rights, and to act expeditiously to ensure their safety. Taking the following concrete steps will help to ease the refugee crisis, particularly for LGBTQI people.

- 1.** Prioritize the evacuation and resettlement of vulnerable refugee populations, including LGBTQI people, and ensure that any transitory stay in a third country is indeed temporary by expediting refugee processing.
- 2.** Provide and effectively implement explicit “Priority 2” (P-2) access to the U.S. refugee program for the highly vulnerable population of LGBTQI individuals fleeing Afghanistan. Waive the application fee for any LGBTQI Afghan applying to relocate to the United States on an expedited basis via humanitarian parole and look favorably upon those emergency requests. Initiate a new program of Temporary Protected Status (TPS) for Afghans in the United States, including those paroled into the United States on an emergency basis.
- 3.** Ensure that existing lists that have been collected by various governments of at-risk Afghans, including those who wish to flee because of their sexual orientation or gender identity, are carefully safeguarded so that they do not fall into Taliban or third-country hands and are not used to target individuals or family members. Use the lists as a basis for expedited P1 or P2 refugee processing or humanitarian parole for those who seek protection abroad.
- 4.** Lift or expand the FY 2022 refugee cap of 125,000 refugees accepted into the United States.
- 5.** Work with our allies to coordinate refugee protection for LGBTQI Afghans, open avenues to other countries for migration and asylum, and provide assistance to neighboring countries that have acted as points of first entry for thousands of refugees as well as countries where LGBTQI Afghan refugees will be processed.
- 6.** Provide funding to support the temporary housing, livelihoods, and security of LGBTQI refugees in third countries while they are being processed for refugee resettlement in the United States or elsewhere.
- 7.** Recognize NGOs that have been reliable partners in identifying and recommending LGBTQI Afghans to the State Department for protection and instruct U.S. embassies to process LGBTQI refugee applications on site when referred by these designated partners.
- 8.** Recognize for the purposes of refugee relocation, humanitarian parole, or any other entry into the United States any same-sex Afghan partner as a spouse. Take an equally expansive view of the definition of family for LGBTQI relocation given the lack of legal recognition for LGBTQI partnerships in the region.
- 9.** Expand LGBTQI-sensitive resettlement programs in the United States and engage with NGOs and local communities to expand the U.S. capacity to absorb larger numbers of LGBTQI Afghan refugees in supportive and inclusive environments, including through new refugee sponsorship programs.
- 10.** Speak out forcefully against human rights abuses by the new Taliban regime and any increased targeting of vulnerable communities, including LGBTQI people, and use existing mechanisms to sanction and hold accountable perpetrators of human rights abuse. Negotiate explicit human rights monitoring access, with a particular focus on vulnerable communities including LGBTQI Afghans, when the mandate of the UN Assistance Mission in Afghanistan is renewed by the Security Council later this month.



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## **ACKNOWLEDGEMENTS**

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