



**Report  
on peace, security, sexual orientation and gender identity in  
Afghanistan**

*Joint submission to the UN Independent Expert on protection against violence and discrimination based  
on sexual orientation and gender identity*

15 April 2022

**Report submitted by:**

International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA  
World)  
and  
Asian Region of the Int'l Lesbian, Gay, Bisexual, Trans and Intersex Association  
(ILGA-Asia)

**With the support of:**

Independent LGBTIQ+ activists from the region

## Table of Contents

<b>Introduction</b> .....	3
<b>Background</b> .....	3
<b>The SOGIESC dimensions of the conflict</b> .....	4
<b>I. Sexual violence and other threats to security</b> .....	5
<b>II. Forced marriage, child marriage, and coerced sex</b> .....	6
<b>III. LBTQ+ Women and girls, intersex people and intersectional discrimination</b> .....	6
<b>V. Barriers to employment, health, housing and an adequate standard of living</b> .....	8
a) Financial Security and right to work .....	8
b) The psychological well-being and right to health.....	8
c) Lack of safe shelters and right to adequate housing .....	8
d) Digital access to aid .....	9
<b>Needs, priorities and recommendations</b> .....	10
<b>I. The obligations of the international community</b> .....	10
a) Regarding LGBTQI+ refugees.....	10
b) Regarding humanitarian aid .....	11
<b>II. International law and obligations of the Taliban</b> .....	11
<b>III. Peacebuilding and Transitional Justice</b> .....	12

## Introduction

This document has been prepared by ILGA World and ILGA-Asia as a response to the [call for submissions](#) published by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. It explores the impact of conflict on lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) people in Afghanistan, particularly since August 2021, when the Taliban re-took most of the country. ILGA-Asia has collected information through the frontline and case management work of the Afghanistan Special Project's response team. Information was collected in a secure manner through ILGA Asia adapted contacts. ILGA World conducted two additional interviews with Afghan LGBTIQ+ rights activists and carried out qualitative research of human rights reports, legal texts, UN reports and media reports in English and Dari in March 2022.

## Background

Since the 1979 Soviet invasion, Afghanistan has been enmeshed in military conflict. In September 2001, a new phase of international armed conflict began when the United States initiated its invasion calling for a military campaign to punish all parties involved in the terrorist attack of 9/11. After years of conflict between the Taliban and the United States and the International Security Assistance Force (ISAF), in October 2004, the first democratic election was held, in which Hamid Karzai became the elected president.<sup>1</sup> During these years and supported by the United States, the Afghan National Security Forces (ANSF) fought against the Taliban and the Khorasan province branch of the Islamic State group (IS-KP), which emerged in 2015 as a new armed group opposing the government of Afghanistan<sup>2</sup>. However, following the withdrawal of US troops from Afghanistan in August 2021, the country's situation dramatically changed with the Taliban re-taking the government.

Years of conflict have led to the country's disastrous human rights and humanitarian situation.<sup>3</sup> Sexual and gender minorities that already were subject to discrimination and human rights violations from society and government are now experiencing an

---

<sup>1</sup>To read more on the history read: Ja'far Muhibullah. 2005. "A War on Terror." American journal of Islam & society (Online) 22, no. 1

<sup>2</sup>RULAC. 2021. "[Afghanistan Conflict](#)". Last accessed: March 17, 2022. According to International Humanitarian Law this new stage of the conflict can be categorized as a NIAC (Non-international armed conflict). In this line, if the intervention of a foreign country happens with consent of the government, this makes the conflict a NIAC- In Afghanistan's case, after the election, US intervention was alongside the government, which changed the qualification of the conflict to a NIAC. For more information about the NIACs in Afghanistan before the Taliban take over see <https://www.geneva-academy.ch/research/publications/detail/202-the-war-report-2016>

<sup>3</sup>United Nations News. December 14, 2021, "[Afghanistan: Humanitarian crisis threatens basic human rights](#)". United Nations News. Last accessed: March 17, 2022

increasingly desperate situation and a great threat to their safety and lives after the Taliban recaptured the government.

It is also crucial to highlight that no government has officially recognized the Taliban as the legitimate governing authority of Afghanistan. Despite this lack of international recognition, as the *de facto* governing entity, Taliban authorities are still bound to the principles and provisions of international humanitarian law and international human rights law (including those as provided by treaties entered into by Afghanistan's previous and forcibly displaced government), and are obligated as duty bearers to respect, protect, and fulfill the human rights of all people in Afghanistan, including women, girls, LGBTIQ+ people, and religious and ethnic minorities.

## The SOGIESC dimensions of the conflict

Violence and discrimination based on sexual orientation, gender identity and expression and sex characteristics (SOGIESC) have a long history in Afghanistan. People of diverse sexual orientations and gender identities have always existed in the country; however, SOGIESC has been perceived as a taboo subject by institutions and the general society for years.<sup>4</sup> Throughout the decades, the governments in Afghanistan have reinforced human rights breaches and discrimination against LGBTIQ+ people by enacting discriminatory and criminalizing laws.<sup>5</sup> Since 2001, the state has not enforced the death penalty as a punishment for non-marital sexual acts; however, Sharia has been invoked to legitimize extrajudicial killings, particularly against minority groups.<sup>6</sup> Under the new Penal Code that came into effect in 2018 (APC 2017), consensual same-sex sexual acts between women (*Musaheqeh*), consensual same-sex sexual act between men (*Lavat*), and thigh sex between men (*Tafkhiz*) are criminalized.<sup>7</sup>

In recent years, there were some positive developments: at least one newspaper openly wrote about LGBTIQ+ people and their current circumstances with the Taliban taking over<sup>8</sup>, also some lawyers, officials, prosecutors and parliament members in Afghanistan have advocated for the improvement of LGBTIQ+ people situation in the country<sup>9</sup> and at least one doctor offered therapy for trans people who opted for sex reassignment

---

<sup>4</sup>Richard Bränström & John E. Pachankis. 2019. ["How many sexual minorities are hidden? Projecting the size of the global closet with implications for policy and public health."](#) PLoS ONE 14(6)

& BBC. 2016. ["زندگی پنهان: زندگی دیگر باشان جنسی جامعه افغانستان"](#). Last Accessed 20 March 2022.

<sup>5</sup> For more look at: ILGA World: Lucas Ramon Mendos, 2019. ["State-Sponsored Homophobia 2019"](#). p. 430. & Etilaatroz Newspaper. 5 July 2021. ["LGBT community concerns over the Taliban taking over"](#)

<sup>6</sup> UNAMA/OHCHR. 2015. ["Annual Report on Protection of Civilians in Armed Conflict"](#). p. 50-51

<sup>7</sup> ["قانون جزای جمهوری افغانستان"](#) ["The penal code of Islamic Republic of Afghanistan 2017 \(APC 2017\)"](#). 2017. Articles 645- 649.

<sup>8</sup> For more information see : Etilaatroz Newspaper. 5 July 2021. ["LGBT community concerns over the Taliban taking over"](#). Last accessed 20 March 2022..

<sup>9</sup> Name withheld. 22 March 2022. Interview with ILGA World.

surgery.<sup>10</sup> Yet, a lack of SOGIESC advocacy organizations or networks during the years before the Taliban took over the country meant it was challenging, if not impossible, for LGBTQI+ people to speak out and challenge persistent stigma, violence and discrimination.<sup>11</sup> Now, with the Taliban's take-over of Afghanistan in August 2021, where the regime's mandate is to rule within Sharia,<sup>12</sup> the safety of LGBTQI+ people in Afghanistan is considerably more precarious than it was previously. Under sharia law, the punishment for same-sex sexual acts classified as *hadd* crime (punishment mandated by God) can differ depending on various factors and different interpretations. For instance, a manual issued by the Taliban's Ministry of Vice and Virtue in 2020 states that religious leaders shall prohibit same-sex relations and that "strong allegations" of homosexuality shall be referred to the ministry's district manager for adjudication and punishment.<sup>13</sup>

As a result of violence and the threat of violence at the hands of Taliban police and supporters, during the past few months, LGBTQI+ people have faced a desperate situation; many had to flee the country, while others live secretly without any access to humanitarian aid, education, health, or an adequate standard of living and work, which is explained in detail below.

## I. Sexual violence and other threats to security

LGBTQI+ people are living under increased threats of violence after the Taliban takeover. Individuals who are identified as LGBTQI+ by the Taliban are subjected to various forms of physical and psychological abuse. Incidents of threats, harassment, beating, stabbing, arbitrary kidnapping and detention, disappearances, as well as shootings and killings have been reported.<sup>14</sup> All of the individuals that have contacted ILGA Asia have reported at least one of the aforementioned incidents.

Moreover, ILGA Asia documented cases of sexual and gender-based violence and physical and psychological abuse by close family members. Several individuals had to be hospitalized due to the severity of their physical conditions after being beaten and flogged, while others remain without access to proper healthcare. Reports of disappearances and murder of partners, friends, and relatives by the Taliban have also been documented.

Fear of Taliban violence leaves LGBTQI+ people vulnerable to extortion and performance of sexual favours. Some opportunistic members of the public use the SOGIESC of

---

<sup>10</sup> Roohani, vahed. 1 June 2021. "رونق تطبیق جنسیت ترنس ها در هرات". [The increase in the sex reassignment surgery in Harat](#). Etilaatroz Newspaper.

<sup>11</sup> ILGA World: Lucas Ramon Mendos, 2019. "[State-Sponsored Homophobia 2019](#)". p. 430.

<sup>12</sup> Jeong, Andrew, Jennifer Hassan and Sarah Pulliam Bailey. August 19, 2021. "[The Taliban says it will rule under sharia. What does that mean?](#)". The Washington Post. Last accessed March 24, 2021.

<sup>13</sup> Human Rights Watch. "[Afghanistan: Taliban 'Vice' Handbook Abusive](#)", Human Rights Watch news release, October 29, 2021.

<sup>14</sup> Information provided by ILGA Asia (obtained from direct interviews with key informants in Afghanistan). See also <https://edition.cnn.com/2021/09/17/middleeast/afghanistan-lgbtq-evacuation-intl-hnk-dst/index.html> and <https://www.theguardian.com/global-development/2022/jan/26/lives-of-lgbtq-afghans-dramatically-worse-under-taliban-rule-finds-survey>

LGBTQI+ persons as blackmail to not reveal them to the Taliban members.<sup>15</sup> ILGA Asia has received several reports of incidents of group rape of LGBTQI+ detainees by members of the Taliban, in addition to the usage of footage obtained, including recorded sexual footage, that is later used for extortion, sexual favors, and coercing information about the person's close social circle. Additionally, incidents of rape have also been reported within the survivor's close circles or 'safe' spaces. Women and LGBTQI+ community members have reported such incidents by relatives, when seeking temporary shelter from male acquaintances, or during their attempts to travel and relocate to temporary third countries.

## **II. Forced marriage, child marriage, and coerced sex**

In order to survive, LGBTQI+ people are frequently forced to comply with compulsory heterosexuality as a societal norm in Afghanistan; they are pressured to enter marriages and engage in heterosexual sex. Women are often pressured to bear children as per heteronormative cultural and religious narratives and traditions." Many are LGBTQI+ people are under the age of 18 when they are forced into an arranged marriage. Child marriage, which was already widespread in the country, has increased in prevalence since August 2021.<sup>16</sup> Fear of the Taliban has pushed families to pressure LGBTQI+ members and women to either flee from home, live as prisoners by confiscating some of their personal belongings, or coerce them into arranged heteronormative marriages regardless of their age, sexual orientation, and consent. The threat of public 'outing' that could result in imprisonment by the Taliban further isolates LGBTQI+ people in Afghanistan. Several reports of forced marriage attempts have been documented through the testimonials of women and men with diverse SOGI by ILGA Asia. Many LGBTQ+ women have reported subjection to forced marriage attempts with Taliban members or to other men from their community, including relatives or older male family acquaintances. Men of diverse SOGI have also reported incidents where their families have forced them to marry women.<sup>17</sup>

## **III. LGBTQ+ Women and girls, intersex people and intersectional discrimination**

Since the Taliban's return, Afghan women have faced increasing violence and repression, including *mahram* requirements (women need to be accompanied by a male relative when moving in the country or when traveling abroad), clothing regulations, bans on education and obstacles to work.<sup>18</sup> Thus, LGBTQ+ women and girls suffer from a unique experience of discrimination and violence in the country —particularly those who were

---

<sup>15</sup> Name withheld. 24 March 2022. Interview with ILGA World

<sup>16</sup>United Nations News agency. November 12, 2021. "Afghanistan: Girls at increasing risk of child marriage". <https://news.un.org/en/story/2021/11/1105662>. Last accessed March 28, 2022.

<sup>17</sup> Information provided by ILGA Asia (obtained from direct interviews with key informants in Afghanistan).

<sup>18</sup> UN Women. December 3, 2021. "[Women's rights in Afghanistan: Where are we now?](#)" UN Women. Last accessed March 28, 2022.

previously politically active, worked in journalism and the media, or are part of the LGBTQI+ community.<sup>19</sup> Likewise, lesbian and trans women with visible non-normative expressions almost constantly report fear and/or experiences of rape, harassment, sexual abuse, and forced marriages. Additionally, due to gender-based discrimination in the labour market, most LGBTQ+ women experience absolute economic and financial dependency on male members of the family.<sup>20</sup> In the case of intersex people, some families perform infanticide on intersex babies when they are born and tell other people that the baby was born dead to avoid shame from within communities and the burden of life-long secrecy.<sup>21</sup> Moreover, there is one reported case in the media of torture and abuse against an intersex person.<sup>22</sup>

#### IV. Humanitarian crisis

Many individuals from the LGBTQI+ community in Afghanistan express non-normative gender identities and expressions, which makes them much more visible to the public. Because of this visibility, many are unable to leave their homes/safe hideouts for basic necessities. Due to ongoing home raids, security at homes/safe spaces have been compromised, putting the safety of LGBTQI+ people in Afghanistan at risk. Some individuals are directly identified and criminalized for not adhering to the Taliban's violent enforcement of heteronormative gender expression, while others may be outed by individuals they share close social circles with. For this reason, and despite the fact that some organizations and service providers may be able to support some individuals, the LGBTQI+ community still lacks access to such services because of an oppressive environment of fear, discrimination, and prejudice that exist within Afghanistan and in neighboring countries. Without a catered referral mechanism and adequate sensitization of local service providers, the LGBTQI+ community remains vulnerable and unable to access services intended to benefit them

Afghanistan is one of the world's most rapidly growing humanitarian crises that affects everyone where the widespread famine is a serious risk in the country.<sup>23</sup> LGBTQI+ persons are particularly at risk of hunger.<sup>24</sup> Testimonies collected by ILGA Asia indicate that LGBTQI+ persons have little to no access to daily food which in turn severely affects their health and chances of survival. In addition, many are left without proper clothing that can keep them warm through harsh winter conditions. There is also limited funding and in-country service provision.<sup>25</sup>

---

<sup>19</sup> Name withheld. 24 March 2022. Interview with ILGA World

<sup>20</sup> Information provided by ILGA Asia (obtained from direct interviews with key informants in Afghanistan).

<sup>21</sup> Name withheld. 24 March 2022. Interview with ILGA World

<sup>22</sup> See Etilaatroz. December 23, 2021. "بنجانسی افغان با چشمان اشکبار: من را سوختاندند، مرگ از این زندگی بهتر است." [The intersex person with teary eyes: they burned me, death is better than this life](#)" Last Accessed March 29, 2022.

<sup>23</sup> UN News agency. January 11, 2022. "Afghanistan: UN launches largest single country aid appeal ever". UN News Agency. <https://news.un.org/en/story/2022/01/1109492>

<sup>24</sup> Name withheld. 22 March 2022. Interview with ILGA World. & Name withheld. 24 March 2022. Interview with ILGA World

<sup>25</sup> Information provided by ILGA Asia (obtained from direct interviews with key informants in Afghanistan).

## **V. Barriers to employment, health, housing and an adequate standard of living**

The Taliban ruling the country affected all dimensions of lives of LGBTQI+ persons and deprived them of many social and economic rights, including an adequate standard of living, food and clothing, health, and work.<sup>26</sup>

### **a) Financial Security and right to work**

Almost all LGBTQI+ individuals in Afghanistan have little to no financial security. Many sectors such as entertainment, journalism, NGOs, and fashion have been shut down. Some LGBTQI+ people employed by these industries now find themselves unemployed and in need of immediate financial aid. Many have fled elsewhere across the country, unexpectedly leaving behind their jobs and sources of income. Up until this point, many have expressed need for urgent financial assistance in order to be able to meet their immediate basic needs such as food, shelter, clothing and sanitation.<sup>27</sup>

### **b) The psychological well-being and right to health**

The psychological well-being of LGBTQI+ people in Afghanistan is perpetually deteriorating. With constant fear of violence and persecution, members of the LGBTQI+ community have reported feelings of depression, anxiety, and PTSD. ILGA Asia documented a few cases of individuals that have been unable to even express or talk about their experiences due to the resulting trauma. Some have attempted suicide several times or suffer from suicidal thoughts. Moreover, the lack of access to psychosocial therapy services exacerbates mental health issues affecting the LGBTQI+ community in Afghanistan. Around a third of the LGBTQI+ persons registered with ILGA Asia have urgently requested the need for psychological support as they have either been diagnosed or are experiencing severe mental health issues.<sup>28</sup>

### **c) Lack of safe shelters and right to adequate housing**

Many LGBTQI+ people in Afghanistan flee home when their location is revealed to the Taliban. They are sometimes rejected and expelled by their families. Acquaintances and friends are reluctant to host LGBTQI+ individuals as they fear facing severe consequences for supporting a regime-sanctioned and prosecuted group. Friends who agree to host LGBTQI+ persons can only do so for a limited time, and thus the individuals are in constant movement from one place to another. Some cases documented by ILGA Asia involved: reports of LGBTQI+ women sleeping in parks where they are exposed to

---

<sup>26</sup> Name withheld. 24 March 2022. Interview with ILGA World

<sup>27</sup> Information provided by ILGA Asia (obtained from direct interviews with key informants in Afghanistan).

<sup>28</sup> Information provided by ILGA Asia (obtained from direct interviews with key informants in Afghanistan).



sexual harassment and harsh weather conditions, cases of LGBTQI+ women who were evicted from university dorms—their only last remaining safe space—and cases of LGBTQI+ persons seeking temporary shelter at mosques.<sup>29</sup>

#### **d) Digital access to aid**

Because most aid services are accessed online, many LGBTQI+ people in Afghanistan, particularly those with limited internet connectivity, are unable to access them. Service access is further compounded by the fact that several individuals stopped using social media platforms because their published posts, photos, and videos compromised their safety. For some, regular messaging has put them at risk. Personal belongings, including mobile phones, are at risk of being confiscated by family members and the Taliban. This also endangers their associated contacts. Furthermore, some are not able to use online messaging apps as the necessary financial resources to afford internet access fees are significantly limited. Many LGBTQI+ people report reaching their data consumption limits without the ability to top up, which puts them at risk of losing contact with aid service providers.

### **VI. Refugees' context**

Leaving Afghanistan is difficult for all people in the country, and even more dangerous for those with limited mobility, such as women and LGBTQI+ people. LBQ+ women and trans people, in particular, face problems receiving national passports and second country visas for leaving the country. Some LGBTQI+ people are scared to appear in public and apply for a visa from the authorities.<sup>30</sup> Some who have already been deprived of education are not eligible to apply for certain evacuation programs.<sup>31</sup> They may experience extortion or exorbitant fees in black markets when attempting to acquire passports, visas, or other legal documents for travel, may be detained at checkpoints, and may be exploited by predatory mediators.<sup>32</sup>

Those who are able to obtain travel documents and flee to neighboring countries face ongoing challenges. Most have entered Pakistan and Iran,<sup>33</sup> where consensual same-sex sexual acts are banned. In Turkey, they are treated with violence and discrimination.<sup>34</sup> The lack of experience and expertise on the part of some UNHCR staff in working with LGBTQI+ persons is among the many problems they face.<sup>35</sup> Therefore, many LGBTQI+ refugees from Afghanistan continue to be at serious risk of different forms of abuse after fleeing the country.

---

<sup>29</sup> Information provided by ILGA Asia (obtained from direct interviews with key informants in Afghanistan).

<sup>30</sup> Name withheld. 22 March 2022. Interview with ILGA World.

<sup>31</sup> Name withheld. 24 March 2022. Interview with ILGA World.

<sup>32</sup> Information provided by ILGA Asia (obtained from direct interviews with key informants in Afghanistan).

<sup>33</sup> Tazreena Sajjad, August 24, 2021. "Analysis: Where do Afghanistan's refugees go?" <https://www.pbs.org/newshour/world/analysis-where-do-afghanistans-refugees-go>

<sup>34</sup> Name withheld. 22 March 2022. Interview with ILGA World.

<sup>35</sup> Name withheld. 22 March 2022. Interview with ILGA World.

## **Needs, priorities and recommendations**

LGBTQI+ people in and from Afghanistan desperately need humanitarian aid and human rights protection. Here are some of the urgent needs and priorities of LGBTQI+ people from Afghanistan impacted by the Taliban takeover:

### **I. The obligations of the international community**

In the absence of an effective, inclusive government in Afghanistan, the international community must hold the Taliban accountable for all human rights violations against people in Afghanistan, whether due to discrimination on the basis of any prohibited grounds, or resulting from humanitarian crises.

#### **a) Regarding LGBTQI+ refugees**

Under international law, the countries to which LGBTQI+ persons from Afghanistan have fled have an obligation to respect their rights. The principle of non-refoulement embedded in the Convention relating to the Status of Refugees (1951)<sup>36</sup> prohibits returning refugees or asylum seekers to the countries where they were persecuted. Countries hosting refugees and asylum seekers are obliged to protect and respect the human rights of LGBTQI+ people and ensure their safety and security. In order to provide a modicum of security to LGBTQI+ refugees, neighboring countries should provide training to border officers and humanitarian staff on persecution based on sexual orientation and gender identity, and sensitive handling of LGBTQI+ asylum cases. UNHCR and other international agencies should also conduct such training.

Evacuation and resettlement of vulnerable refugee populations, including LGBTQI+ people, should be prioritized. Countries with legal and policy frameworks protecting LGBTQI+ people's rights need to increase their capacity to resettle more refugees from Afghanistan and establish LGBTQI+ specific shelters. Lastly, UNHCR must facilitate LGBTQI+ people from Afghanistan settling in countries with legal and policy frameworks protecting LGBTQI+ people. Organizations helping to evacuate those at risk should create safe conditions that facilitate identification of and support for LGBTQI+ persons who live in secrecy and cannot leave the country without help.

---

<sup>36</sup> Art 33

## b) Regarding humanitarian aid

There is a need to create humanitarian aid programs targeting LGBTQI+ persons in Afghanistan. The United Nations, international and national non-governmental organizations, and any other organizations delivering humanitarian aid to the country need to design inclusive programs addressing the needs of LGBTQI+ communities, especially in the context of food and adequate housing as many are suffering from hunger and living in unsafe dwellings. Without a catered referral mechanism and adequate sensitization of local service providers, the LGBTQI+ community remains vulnerable and unable to access services intended to benefit them. We recommend the Independent Expert to include humanitarian aid standards on SOGIEC as a priority in his report.

## II. International law and obligations of the Taliban

It is conventionally understood that “human rights obligations apply to *de facto* governmental authorities exercising territorial control.<sup>37</sup> The Taliban, as Afghanistan's *de facto* authorities, have an obligation to respect and protect the human rights of LGBTQI+ persons under international law. Afghanistan as a member of the United Nations is bound by the Universal Declaration of Human Rights (UDHR)<sup>38</sup> under international customary law, and core human rights instruments that it is a party to, including International Covenant on Civil and Political Rights (ICCPR)<sup>39</sup>, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>40</sup>, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, among others.

Equality and non-discrimination<sup>41</sup> are protected under the UDHR, ICCPR, and ICESCR. The UN Human Rights Committee has determined that the prohibition against discrimination under article 26 of the ICCPR comprises discrimination based on sexual orientation and gender identity.<sup>42</sup> The rights to life, liberty and security of the person,<sup>43</sup> right to work,<sup>44</sup> right to an adequate standard of living, the highest attainable standard of physical and mental health,<sup>45</sup> right to education,<sup>46</sup> and prohibition of arrest and

---

<sup>37</sup> <https://icct.nl/publication/recognition-talibans-international-legal-status/>

<sup>38</sup> United Nations General Assembly. 1948. "Universal Declaration of Human Rights." United Nations General Assembly Resolution. U.N. Doc. A/810.

<sup>39</sup> United Nations General Assembly. 1966. "International Covenant on Civil and Political Rights (ICCPR)". General Assembly. Res. , U.N. Doc. A/6316.

<sup>40</sup> United Nations General Assembly. 1966. "International Covenant on Economic, Social and Cultural Rights (ICESCR)". General Assembly Resolution. U.N. Doc. A/6316

<sup>41</sup> For example: Art 1,2, 7 UDHR, art 2, 26 ICCPR, art 2 ICESCR

<sup>42</sup> United Nations Human Rights Committee, 2003. *Young v. Australia*, U.N. Doc. CCPR/C/78/D/941/2000. para. 10.4 & United Nations Human Rights Committee. 2017. *G v. Australia*, UN Doc. CCPR/C/119/D/2172/2012. para. 7.12.

<sup>43</sup> Art 3 UDHR, art 6, 9 ICCPR

<sup>44</sup> Art 23 UDHR, art 6 ICCPR

<sup>45</sup> Art 25 UDHR, Art 11 and 12 ICESCR

<sup>46</sup> Art 26 UDHR, art 13 ICESCR

detention<sup>47</sup>, torture and other cruel, inhuman or degrading treatment<sup>48</sup>, including rape and other sexual violence, on the basis of sexual orientation are protected by international human rights instruments.

### III. Peacebuilding and Transitional Justice

The failure to adequately address the LGBTQI+ people's security and human rights in Afghanistan in the years leading up to the 2021 Taliban takeover, and its obvious consequences in terms of human suffering, offers lessons to international stakeholders as to the need to avoid such gaps in the future, both in Afghanistan and elsewhere.

The UN Special Rapporteur on truth, justice and reparations has suggested adopting gender perspective in the conceptualization, design and implementation of national transitional justice strategies and mechanisms to ensure addressing discrimination and violence based on sexual orientation and gender identity during the conflict,<sup>49</sup> Unfortunately transitional justice has been almost nonexistent in decades of lurching between conflict and post-conflict in Afghanistan; to the extent that the previous government paid lip service to transitional justice, there were no measures that addressed violence and exclusion of LGBTQI+ people in Afghanistan or that offered the hope of reconciliation or reparations for LGBTQI+ people.<sup>50</sup> Furthermore, international organizations have called for the involvement of LGBTQI+ community representatives in peace negotiations to ensure the rights of LGBTQI+ persons,<sup>51</sup> but the peace negotiations in Doha took place without any participation from the LGBTQI+ activists, closing the door for negotiating LGBTQI+ rights in Afghanistan.

The international community should no longer treat sexual orientation and gender identity as untouchable issues in Afghanistan.<sup>52</sup> Any peace negotiations should not be without involvement of vulnerable people in Afghanistan including LGBTQI+ persons. In any engagement with the Taliban, all human rights, including the rights of LGBTQI+ people, should be on the table. Any future Commission of Inquiry or other internationally supported mechanism to account for violence under the Taliban and during previous cycles of conflict should commit to including documentation of abuses against LGBTQI+ people and ensuring access to recourse.

---

<sup>47</sup> Art 9 UDHR,

<sup>48</sup> Art 5 UDHR, art 6,7,8 ICCPR & Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>49</sup> United Nations General Assembly. 2020 "The gender perspective in transitional justice processes". Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. United Nations General Assembly. U.N. Doc A/75/174. 75<sup>th</sup> Session. 17 July 2020.

<sup>50</sup> Name withheld. 24 March 2022. Interview with ILGA World. & Name withheld. 22 March 2022. Interview with ILGA World.

<sup>51</sup> Myrntinen, Henri, Jana Naujoks, and Judy El-Bushra. 2014. "Re-thinking gender in peacebuilding." International Alert.

<sup>52</sup> For more information see: ILGA-ASIA. August 18. 2021. ["Joint Statement on Afghanistan: Protect Women, Children, LGBTIQ & Other Vulnerable Persons"](#).. Last accessed March 30, 2021.