

DIAC-IN-CONFIDENCE

AFGHANISTAN
SEXUAL MINORITIES

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The document does not purport to represent the views of the Department of Immigration and Citizenship on any matter with which it deals. The purpose of this paper is to assist decision makers in rapidly familiarising issues through a brief that has a specific focus on the Refugees Convention and other key human rights elements in the country of reference.

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1. ACRONYMS AND ABBREVIATIONS

AIHRC	Afghanistan Independent Human Rights Commission
BBC	British Broadcasting Corporation
CRS	Country Research Section
ILGA	International Lesbian and Gay Association
IWPR	Institute for War and Peace Reporting
LGBTI	Lesbian, Gay, Bisexual and Transgender and Intersex
UNHCR	United Nations High Commission for Refugees
UNODC	United Nations Office on Drugs and Crime

2. NAMING CONVENTIONS

Organisations	Also Known As
Taliban	Taleban
Hudood	Hudud
Shari'a	Sharia; Shariah; Sharia'h; Sha'ariah
Pashtun	Pushtun; Pakhtun; Pakhtoon
Bacha baazi	Bache-bazi
Koran	Qu'ran; Quran; Qur'an; Qoran

3. EXECUTIVE SUMMARY

Homosexuality is reportedly outlawed in Afghanistan under both criminal and Islamic law, although some sources refer to the illegality of homosexual acts when reporting on this issue. The Taliban are alleged to have executed homosexuals during their period of government but it is reported that homosexuality, or homosexual acts, have not attracted the same harsh punishments in Afghanistan since the demise of the Taliban regime. Some sources describe sex between men in Afghanistan as prevalent although it is considered a taboo subject and is unacknowledged. Conservative societal attitudes repress homosexuals, who are alleged to conceal their sexual orientation. Sexual relations between men and young boys are reported to be a Pashtun tradition that is prevalent in the city of Kandahar. Young boys involved in these relationships are often exploited. Some Western sources have criticised both the portrayal by Western media of these relationships and of homosexuality in general in Afghanistan. Information on the extent of homosexuality amongst non-Pashtun ethnicities is extremely scarce. The limited information that could be located by the Country Research Section (CRS) on lesbians in Afghanistan indicates the illegality of same-sex female relationships and a low level of acceptance in society. Information on the existence of transgender or transsexuals in Afghanistan could not be located by CRS, however this should not be interpreted as a lack of presence of these groups in the country. No information could be located by CRS on the existence of support services for sexual minorities in Afghanistan although some level of support appears to exist for those afflicted with HIV/AIDS, of which there are estimated to be thousands.

4. INTRODUCTION

This issues paper intends to provide background information for decision makers on the situation concerning sexual minorities in Afghanistan.

The paper commences with a discussion on the legality of homosexuality and homosexual acts in Afghanistan, with reference to criminal and Islamic law. It is here that a reference is drawn to the use of the terms “homosexual”, “homosexuality” and “homosexual activity” - these terms are not clearly distinguished in the literature consulted by CRS for this paper and are often used interchangeably. Information is provided in subsequent sections on the enforcement of punishment for homosexual acts or homosexuality during and after the Taliban regime in the country. The references contained in this document should be carefully considered against their time of publication to ascertain which government they refer to: as discussed in *Section 5*, the government in power has had a significant influence on the treatment of alleged homosexuals or those accused of committing homosexual acts in Afghanistan.

An analysis of the existence and treatment of gay men and men who engage in homosexual activities in Afghanistan is presented in *Section 6* of this paper. A review of all available material located by CRS on these issues is provided, from sources such as international news services, the *United Nations High Commission for Refugees (UNHCR)*, the *US Department of State* and sexual minority organisations. Criticism by some sources of the portrayal of homosexuality by Western media has been incorporated into this section. Identity issues faced by men who engage in homosexual activity are also discussed in this section. This complicates the use of

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identity terms such as ‘homosexual’ when reporting on sexual minorities in Afghanistan.

Section 6.2 examines sexual relations between young boys and men in Afghanistan. A critique of the interpretation of these relationships by Western media is incorporated into this section.

Although only limited information could be located by CRS on lesbians, transsexuals, transgenders and cross-dressers in Afghanistan, a discussion of available material is included in *Section 6.3* and *Section 6.4* of this report.

This issues paper also addresses HIV/AIDS in Afghanistan and concludes with a discussion on the provision of support services for both sexual minorities and HIV/AIDS sufferers in the country.

5. THE LAW AND PROTECTION OF SEXUAL MINORITIES IN AFGHANISTAN

The terms “homosexuality”, “homosexuals” and “homosexual acts” are used throughout the literature consulted by CRS for this paper, often interchangeably, and with limited reference to their different meanings. It is evident from reading this section that some sources report on the criminalisation and punishment of homosexuality and of homosexuals in Afghanistan. Other sources report on legal prohibitions and the punishment of homosexual acts. The differing terminology should be noted when reading the sources included in this paper, as homosexual or homosexuality indicates an identity whilst homosexual acts signifies a practice. There are identity issues that further complicate the use of these terms, which is discussed further in *Section 6.1.1*.

Several sources have reported that homosexual acts in Afghanistan are outlawed under Islam, the dominant religion in the country and also under criminal law.¹ It is stated in a report published by the *US Department of State* in 2008 that:

Article 427 of the penal code reads that "any person who conducts adultery or sodomy with a female or sodomy with a male shall be sentenced to lengthened imprisonment in accordance with the circumstances." Article 247 [a different article] authorizes lengthened punishment (not to exceed 10 years), "if the victim has not attained the age of 18."²

The *UK Home Office* cites the *International Lesbian and Gay Association (ILGA)*, a global network of local and national groups working for equality for lesbian, gay, bisexual and transgender and intersex (LGBTI) people, on the illegality of “same-sex male and same-sex female” relationships.³

¹ “American arrested in Afghanistan on suspicion of homosexuality, soliciting, officials say”, *PakTribune*, 1 September 2004, CX143333; “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

² “Country Report on Human Rights Practices 2007: Afghanistan”, *US Department of State*, 11 March 2008 (CISNET). Parenthesis added by CRS.

³ “Country of Origin Information Report: Afghanistan”, *UK Home Office*, 29 August 2008, p.127 (CISNET).

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According to this source, Article 427 (1) of the Afghan penal code states:

Article 427: (1) “A person who commits adultery or pederasty shall be sentenced to long imprisonment.

(2) In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions:

a. In the case where the person against whom the crime has been committed is not yet eighteen years old”...⁴

The term “pederasty” is included in the above passage rather than “sodomy” as referred to in the previous passage from the *US Department of State* report. According to the *United Nations Office on Drugs and Crime (UNODC)*, pederasty denotes “same sex relations between a man and a younger boy”.⁵ Sexual relationships between men and male minors in Afghanistan are discussed in *Section 6.2*.

The *ILGA* reports that the relevant Afghan penal law is applied with Islamic *Shari'a* law in Afghanistan and capital punishment is described as the maximum penalty for homosexual acts. According to the *Los Angeles Times*, who cite a local cleric in the city of Kandahar, punishments prescribed by the *Koran* for sodomy include being burned at the stake, pushed over a cliff or crushed by a toppled wall.⁶ The *UNHCR* reported in 2007 that homosexuality is outlawed under Islam in Afghanistan and is punishable by death as a *hudood* crime. *Hudood* crimes are religious punishments which have a mandatory sentence under Islamic law and are not subject to change by a judge. Stoning is a punishment for homosexuality in Islam and a person who is homosexual should seek repentance for being in violation of God’s law, according to the *UNHCR*.⁷

The enforcement and extent of the above punishment differed during the Taliban regime in Afghanistan, which is discussed in subsequent sections.⁸ The Taliban are an extremist Islamic movement that emerged in Afghanistan in 1994. They controlled most of the country by the late 1990s and enforced a strict version of *Shari'a* law. The Taliban were forced from Kabul and driven from power in October 2001 by US-led troops and local fighters.⁹ A constitution of Afghanistan was signed in 2004 and Hamid Karzai won the country’s first direct presidential elections in this year, after heading the provisional administration established after the defeat of the Taliban. The next presidential and provincial elections in Afghanistan are scheduled for mid-2009.¹⁰

⁴ “Country of Origin Information Report: Afghanistan”, *UK Home Office*, 29 August 2008, p.127 (CISNET).

⁵ “Afghanistan: Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation - Assessment Report”, *United Nations Office on Drugs and Crime*, May 2008, CIS16965.

⁶ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

⁷ “UNHCR’s Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers”, *United Nations High Commission for Refugees*, 31 December 2007, CIS15572; “Women still under attack – a systematic failure to protect (full report)”, *Amnesty International*, 30 May 2005, CX123352.

⁸ “Taliban Propaganda, winning the war of words”, *International Crisis Group*, 24 July 2008, CIS16308.

⁹ “Quick guide: Afghanistan”, *British Broadcasting Corporation (BBC)*, 20 November 2008, CX214750.

¹⁰ ‘Afghans start registering voters for 2009 polls,’ *Associated Press*, 6 October 2008, CX213568.

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Despite the defeat of the Taliban regime they reportedly retain control in the southern and eastern provinces of the country and increased insurgency has been reported in provinces closer to Kabul and Kabul itself.¹¹ The Taliban has a “shadow government” which has its own court and policing system and has the support of some locals, in areas where the government lacks control.¹² For more information on the Taliban see “Who are the Taleban?”, *British Broadcasting Corporation (BBC)*, 28 February 2008, CX194391. Several thousands of US and other foreign troops remain in Afghanistan to fight Taliban supporters.¹³

As mentioned above, the sources in this paper should be considered against their time of publication to determine which government they refer to.

5.1. Punishment of homosexuality and homosexual acts during the Taliban regime

Some sources allege that homosexuals were regularly executed when the Taliban ruled Afghanistan.¹⁴ Jurists in Kabul and Kandahar are described to have differed only on the method of execution of homosexuals they prescribed during this period.¹⁵ In February 1998 three men in Kandahar were sentenced to death, two for sodomy and one for homosexual rape, and had a large wall pushed onto them by a tank.¹⁶ Only one of the men managed to survive and was sent to prison, where he served six months before fleeing to Pakistan.¹⁷ *Planet Out*, an online media service for the lesbian, gay, bisexual and transgender community, reported that this incident was possibly the first such execution for sodomy since the Taliban came to power.¹⁸

The execution of this punishment was watched by the then Taliban leader Mullah Mohammad Omar and thousands of other spectators, according to *FrontPage Magazine* which is an online political magazine published by a non-profit organisation based in the US. This magazine has drawn this information from a book published in 2002, entitled “The Sword of the Prophet: A Politically Incorrect Guide to Islam”. Written by Serge Trifkovic, a Serbian-American journalist, historian, and political analyst, the book describes the rise of Islam. This source also reports that at least five men were convicted of sodomy by *Shari’a* courts in Afghanistan and were

¹¹ “The situation in Afghanistan and its implications for international peace and security,” *UN General Assembly Security Council*, 23 September 2008, CIS16562.

¹² ‘Some Afghans live under Taliban rule – and prefer it,’ *The Christian Science Monitor*, 15 October 2008, CX213279.

¹³ “Quick guide: Afghanistan”, *British Broadcasting Corporation (BBC)*, 20 November 2008, CX214750.

¹⁴ “Top Taliban militant arrested, 15 killed in Afghan raids”, *Agence France Presse*, 6 April 2008, CX197105; “Islam’s love-hate relationship with homosexuality”, *FrontPage Magazine*, 24 January 2003, CX143335.

¹⁵ “Islam’s love-hate relationship with homosexuality”, *FrontPage Magazine*, 24 January 2003, CX143335.

¹⁶ “Kandahar comes out of the closet”, *The Times of London*, 12 January 2002, CX143344;

“Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

¹⁷ “Kandahar comes out of the closet”, *The Times of London*, 12 January 2002, CX143344;

“Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

¹⁸ “Executions fail in Afghanistan”, *Planet Out*, 27 February 1998, CX212413.

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“placed next to walls by Taliban officials and then buried under the rubble as the walls were toppled upon them”.¹⁹

Planet Out, an online media service for the lesbian, gay, bisexual and transgender community, published a report in March 1998 of the execution of two men in the western Afghanistan province of Herat. News of the execution came from the Taliban-controlled radio station *Voice of Sharia*, who reported that the men were executed for sodomy and had a wall bulldozed onto them. The men had allegedly confessed to committing sodomy.²⁰ The *British Broadcasting Corporation (BBC)* reported in January 1999 that an elderly man survived the punishment of having a wall collapsed on him, after he was convicted of sexually assaulting a young boy. According to this article, an offender is free if they survive a punishment under Islamic law.²¹ Making gay men stand for hours in a public area in “blackface” was another punishment enforced by the Taliban.²² CRS was unable to locate information to clarify what this means.

According to the *US Department of State* the Taliban published a new set of prohibitions in 2006, after their period of rule in Afghanistan, on the recruitment of young boys for sexual pleasure.²³ Information on relationships between boys and men in Afghanistan is provided in *Section 6.2* of this paper.

5.2. Punishment of homosexuality and homosexual acts after the Taliban regime

It was reported in 2004 that according to Afghan officials, homosexuality remains a crime but does not attract the same harsh punishments as under the Taliban regime.²⁴ The law in Afghanistan criminalises homosexual activity but this was only sporadically enforced by authorities, according to the *US Department of State* who reported this in 2007. No death sentences are reported to have been dispensed after the end of the Taliban rule but the *ILGA* are of the belief that this is still “technically possible”.²⁵ Most interpretations of the relevant criminal law in Afghanistan indicate that homosexual acts would be severely punished by authorities, according to the *UNHCR*.²⁶

The *UNODC* performed an assessment of the juvenile justice system in Afghanistan in 2006/07 and reported instances of boys charged with homosexual behaviour. Many

¹⁹ “Islam’s love-hate relationship with homosexuality”, *FrontPage Magazine*, 24 January 2003, CX143335.

²⁰ “Afghanistan Kills 2 for Sodomy”, *Planet Out*, 24 March 1998, CX212632.

²¹ “Afghan man survives wall ordeal”, *BBC News*, 16 January 1999, CX212414.

²² “Executions fail in Afghanistan”, *Planet Out*, 27 February 1998, CX212413.

²³ “Country Report on Human Rights Practices 2007: Afghanistan”, *US Department of State*, 11 March 2008 (CISNET).

²⁴ “American arrested in Afghanistan on suspicion of homosexuality, soliciting, officials say”, *PakTribune*, 1 September 2004, CX143333.

²⁵ Daniel Ottosson, “State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults”, *International Lesbian and Gay Association*, April 2007, p.6, CIS15437.

²⁶ “Compilation of Country of Origin Information on Afghanistan Relevant in the Context of Refugee Status Determination in Australia – Part II”, *UNHCR*, 22 March 2004, CX91722. Parenthesis added by CRS.

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of these boys appeared to be held under charges of pederasty, or same sex relations between a man and a younger boy, although it is reported that they “are almost certainly victims of rape or other forms of unconsensual (sic) sex acts” inflicted by older men.²⁷ The *UNODC* has provided information on this issue citing commissioners from the *Afghanistan Independent Human Rights Commission (AIHRC)*, an Afghan organisation established to preserve human rights and to investigate human rights abuses, on this issue. According to the *AIHRC* commissioners, police arrested many children after apprehending them while having sex with an adult. The child was not perceived as a victim and received the same treatment as the apprehended adult.²⁸ One source alleges that Afghan authorities, supported by the US-led coalition, were still jailing teenagers convicted of homosexuality in a Kandahar prison, despite the end of the Taliban government.²⁹

The *Los Angeles Times* have described the issuance of an order banning boys from under 18 from living with troops. This order was issued in 2002 by Gul Agha Shirzai, the former governor of Kandahar. The ban has been described as officially aimed at ending the practice of child soldiers but there is some controversy surrounding the objectives of this ban. Some allege that this ban was implemented to prevent the use of young boys for sex.³⁰ This is discussed in more detail in *Section 6.2*.

CRS has located reports by the American news agency *Associated Press* and *PakTribune*, a Pakistani news service, of the arrest of an American advisor to the Afghan government in 2004, for allegedly having sex with an Afghan man. It was reported that the American could receive a jail term of five to 15 years if convicted.³¹ CRS was unable to locate further information on the outcome of the reported arrest.

6. SEXUAL MINORITY GROUPS

6.1. Gay Men

Sex between men in Afghanistan does occur but it is a taboo subject and is rarely acknowledged, limiting the amount of information available on this issue. According to the *UNHCR*, who cite a particular study on this issue, “the prevalence of sex between Afghan men is an open secret”.³² Homosexual relations are reported to be higher amongst ethnic Pashtuns who reside mostly in Kandahar. A professor at Kandahar Medical College, in an article published by the *Los Angeles Times* in 2002, estimated that around 50 percent of men in Kandahar have sex with men and boys at

²⁷ “Afghanistan: Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation - Assessment Report”, *United Nations Office on Drugs and Crime*, May 2008, CIS16965.

²⁸ “Afghanistan: Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation - Assessment Report”, *United Nations Office on Drugs and Crime*, May 2008, CIS16965.

²⁹ “US, Canada round up gays in Afghanistan”, *365gay.com*, 27 February 2006, CX147841.

³⁰ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

³¹ “American arrested in Afghanistan on suspicion of homosexuality, soliciting, officials say”, *PakTribune*, 1 September 2004, CX143333; “American arrested in Afghanistan on suspicion of soliciting gay sex”, *Associated Press*, 10 September 2004, CX220728

³² “Compilation of Country of Origin Information on Afghanistan Relevant in the Context of Refugee Status Determination in Australia – Part II”, *UNHCR*, 22 March 2004, CX91722.

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some point in their life.³³ In a news article published in 2002, *The New York Times* reported homosexuality to be a long term facet of life in the segregated society of southern Afghanistan, “cloaked in the tradition of strong masculine bonds that are a hallmark of Islamic culture”.³⁴

The *UNHCR* reported in “UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers”, published in 2007, that overt homosexual relations in Afghanistan are “not possible to entertain” due to conservative social traditions. It is stated in this same report that “homosexual persons would have to hide their sexual orientation”. Also according to the *UNHCR*, both gays and lesbians would be subject to violence from family or community members in addition to being punished under the law if noticed by authorities.³⁵ *The New York Times* reports that homosexual sex is still socially unacceptable in Afghanistan society despite the demise of the Taliban regime.³⁶ The *US Department of State* reported in 2007 that “many observers believed that societal disapproval of homosexuality was partly the cause for the prevalence for the rape of young boys”.³⁷ Sexual relations between men and young boys are discussed in more detail in *Section 6.2*.

Sources differ on whether homosexual practices were more prevalent under the Taliban regime. The *Los Angeles Times*, citing a doctor in Kandahar in 2002, report that the male community in Kandahar abstained from homosexual acts in fear of the Taliban. However an Afghani man who engages in homosexual acts is also cited in this article to believe that “if coeducation returns and the dress code for women eases (in post-Taliban society), men will have fewer reasons to seek solace in the beds...of other men”. Traditions of homosexuality are described by another source to be re-emerging in post-Taliban Kandahar, evident through the public visibility of Pashtun males with young boys (this is discussed in more detail in *Section 6.2* below).³⁸ The re-emergence of these types of relationships is also confirmed in an article published in 2002 by *Gay.com U.K.*, an online gay and lesbian portal in the UK.³⁹

6.1.1. Identity Issues and Men who have Sex with Men in Afghanistan

A detailed article published in 2002 in the *Los Angeles Times* provides an insight into homosexuality in Afghanistan and associated identity issues faced by men who engage in sex with other men. In this article, it is reported that liaisons between men are widespread in Afghanistan due to the level of sexual repression in society. Strict restrictions exist on gender relations and premarital, heterosexual sex is forbidden in Afghanistan. This has blurred the distinction between men who have sex with men and those who engage in homosexual sex and identify as gay. An Afghani man interviewed by the *Los Angeles Times* is reported to be unmarried and only has sex

³³ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

³⁴ “Kandahar Journal; Shh, It’s an Open Secret: Warlords and Pedophilia”, *The New York Times*, 21 February 2002, CX219222.

³⁵ “UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers”, *United Nations High Commission for Refugees*, 31 December 2007, CIS15572.

³⁶ “A New Sorrow for Afghanistan: AIDS Join List”, *New York Times*, 13 March 2007,

³⁷ “Country Report on Human Rights Practices 2007: Afghanistan”, *US Department of State*, 11 March 2008 (CISNET).

³⁸ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339 (parenthesis added by CRS).

³⁹ “Homosexual practice back in Kandahar”, *Gay.com U.K.*, 15 January 2002, CX143318.

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with men and boys but does not consider himself to be homosexual. A psychiatry professor at Columbia University is cited in this article as believing it would be “wrong to call Afghan men homosexual, since their decision to have sex with men is not a reflection of what Westerners call gender identity” - their decision is motivated by a situation where men are more available as sex partners.⁴⁰ The *UNHCR* has also provided some information on identity issues and homosexuals in Afghanistan in a 2004 report entitled “Compilation of Country of Origin Information on Afghanistan Relevant in the Context of Refugee Status Determination in Australia – Part II”. In this report, homosexuality is described as a “temporary (but nevertheless valid and important) proxy stage of growth between puberty and marriage”. Gender segregation in a Muslim society such as Afghanistan causes young men to develop homosexual relationships, some of which continued despite marrying females. According to the *UNHCR*:

Those who do continue to be involved in such relationships are the true homosexuals, but who would not dare to reveal it... it would seem that sex between men is frowned upon but accepted, as long as the practicing persons marry and have their own children and also keep quiet about this activity.⁴¹

It is further reported by this source that truly gay men would not be tolerated by society in Afghanistan and would need to conceal their sexual orientation, for fear of severe consequences on their lives.⁴²

6.1.2. Criticism of the Portrayal of Homosexuality in Afghanistan

When consulting the sources referenced in this paper, it is important to note that some authors have criticised the portrayal by Western media of homosexuality in Afghanistan. Leslie Feinberg levels such criticism in an article published in 2007 by *Workers World*, the newspaper of the *Workers World Party* who are a US-based socialist party. Feinberg is critical of articles appearing in US and British corporate media that were published in the months after the 2001 military invasion of Afghanistan. According to Feinberg, these articles claimed to “analyse sexualities and genders and the organization of the sexes in Afghanistan”.⁴³ In Feinberg’s opinion:

In some of the coverage, "experts" - who are not Afghan - focused on sexual and social organization in Pashtun culture, the majority culture in Afghanistan, as though it was the only culture. Other non-Afghan "authorities" didn't differentiate between the diverse cultures in that ancient land, including the Durrani, Ghilzai, Wardak, Jaji, Tani, Jadran, Mangal, Khugiani, Kuchi, Safi, Mohmand and Shinwari; or Uzbek or Arab. Most reports did not differentiate between peoples of the lowlands and those in the mountain ranges. Or between peoples who lead nomadic lives, and those who dwell in crowded cities. And speculations only focused on same-sexuality between male-bodied individuals.⁴⁴

⁴⁰ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

⁴¹ “Compilation of Country of Origin Information on Afghanistan Relevant in the Context of Refugee Status Determination in Australia – Part II”, *UNHCR*, 22 March 2004, CX91722.

⁴² “Compilation of Country of Origin Information on Afghanistan Relevant in the Context of Refugee Status Determination in Australia – Part II”, *UNHCR*, 22 March 2004, CX91722.

⁴³ Leslie Feinberg, “U.S.-Britain gay-bashed Afghanistan”, *Workers World*, 18 December 2007, CX219257.

⁴⁴ Leslie Feinberg, “U.S.-Britain gay-bashed Afghanistan”, *Workers World*, 18 December 2007, CX219257.

Although the writer has a visible agenda, the reader might form the view that this criticism is valid for consideration when consulting the sources referenced in this paper.

The portrayal of homosexuality in Afghanistan by Western media has also been criticised by Brian James Baer. Baer is an associate professor of Russian Literature and Translation at the Kent State University based in Ohio and has published information on homosexuality in post-Soviet culture. Baer has provided his critique in an article published in *The Gay and Lesbian Review*, March to April 2003, entitled “Kandahar: Closely Watched Pashtuns--A Critique of Western Journalists' Reporting Bias about 'Gay Kandahar'”. In this article, Baer notes that:

In Kandahar, there is clearly no sense in which homosexuality constitutes a minority identity – but this did not prevent Western journalists from constantly using the language of the Western gay rights movement [such as ‘gay’ and ‘the closet’] to describe it.⁴⁵

Baer has also criticised the depiction of relationships between young boys and older men in Afghanistan by Western journalists - this is discussed in detail in *Section 6.2*.

6.2. Relationships between Boys and Men in Afghanistan

Sexual relations between men and young boys are reported by *The Times of London* to be a tradition amongst Pashtuns, a prominent ethnic group in Afghanistan.⁴⁶

According to *The Times of London*, this tradition is practised at all levels of Pashtun society and is prevalent amongst Pashtun men in Kandahar.⁴⁷ Young boys in these relationships are called *ashna*, *halekon* or *haliq* (boy for sex) and are reported to be “marked for life” once they have participated in such relationships, which is discussed in more detail below.⁴⁸ Often the men participating in such relationships are married and have a family but Kandaharis reportedly “accept these relationships as part of their culture”.⁴⁹ The *UNHCR* reported in “UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers” in 2007 that:

The practice of using young boys as objects of pleasure seems to have been more than a rare occurrence. Such relations are often coercive and opportunistic as more influential, older men are taking advantage of the poor economic situation of some families and young males, leaving them with little choice.⁵⁰

⁴⁵ Brian James Baer, “Kandahar: Closely Watched Pashtuns--A Critique of Western Journalists' Reporting Bias about 'Gay Kandahar'”, *Gay and Lesbian Review*, March - April 2003, CX219224 (parenthesis added by CRS).

⁴⁶ “Kandahar comes out of the closet”, *The Times of London*, 12 January 2002, CX143344.

⁴⁷ “Kandahar comes out of the closet”, *The Times of London*, 12 January 2002, CX143344.

⁴⁸ “Kandahar Journal; Shh, It's an Open Secret: Warlords and Pedophilia”, *The New York Times*, 21 February 2002, CX219222; “Kandahar comes out of the closet”, *The Times of London*, 12 January 2002, CX143344 ;“Kandahar's Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339; “Homosexual practice back in Kandahar”, *Gay.com U.K.*, 15 January 2002, CX143318.

⁴⁹ “Kandahar comes out of the closet”, *The Times of London*, 12 January 2002, CX143344.

⁵⁰ “UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers”, *United Nations High Commission for Refugees*, 31 December 2007, CIS15572.

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Other sources have also criticised sexual relationships between young boys and men in Afghanistan. *The New York Times* uses the term ‘pedophilia’ when reporting on this issue and describes the re-emergence of these relationships after the demise of the Taliban in Kandahar. In an article entitled “Kandahar Journal; Shh, It’s an Open Secret: Warlords and Pedophilia”, this source reports in 2002 that men are again “courting” young boys but not openly for fear of familial shame.⁵¹

The *Institute for War and Peace Reporting (IWPR)*, an organisation that publishes information using local journalism on war, human rights and justice issues, describe a long standing tradition known as *bacha baazi* or literally “boy-play”. The *IWPR* report of the criticism of this practice by human rights activists and clerics and describe the re-emergence of this practice in north Afghanistan.⁵² A report published in 2007 by the *IWPR* states that “boys are kept by powerful older men, made to dance at special parties and often sexually abused afterwards”. A sign of prestige amongst militia leaders, the boys are usually under 18 (preferably 14) and are referred to as *bacha bereesh*, or the “beardless boys”. These boys are often poor, underage or orphaned and some of them receive a wage for their services. According to a former commander in North Afghanistan, a boy cannot be forced into this practice, however it is reported by the *IWPR* that those who under perform or refuse to dance are physically abused. Attractive boys are bought and sold using parties held for the practice of *bacha baazi* as marketplaces. Religious scholars are reported to condemn this practice and to prescribe capital punishments for those involved but local officials are allegedly powerless to stop the commanders engaging in this practice.⁵³ However, the arrest of 30 men for their engagement in *bacha baazi* has been reported by the head of the prosecutor’s office in Baghlan, a northern province in Afghanistan. Several men are alleged to have been sent to prison on charges for this practice and jail terms are reported to be as long as 15 years.⁵⁴ *Pink News*, one of Europe’s largest gay news services, and *Reuters*, an organisation that provides global news, has also published articles on *bacha baazi*.⁵⁵

There is some debate as to whether the Taliban engage in this practice. It is reported by the *IWPR* that whilst not restricted to the north of Afghanistan, participants in the practice of *bacha baazi* are deterred by the moral code of the Taliban in the south.⁵⁶ Efforts by the Taliban to eliminate these types of relationships during their ruling period have also been reported, but it has been alleged that they participated in sexual relationships with young boys in secret. The concealment of boys in the religious schools, or *madrassas*, of the Taliban has been reported although the source of this allegation is an anti-Taliban commander who is “rumoured to keep two halekon”.⁵⁷

As discussed in *Section 6.1.2*, the portrayal by Western media of relationships between boys and men in Afghanistan has been criticised by Brian James Baer.

⁵¹ “Kandahar Journal; Shh, It’s an Open Secret: Warlords and Pedophilia”, *The New York Times*, 21 February 2002, CX219222.

⁵² “The Dancing Boys of the North”, *Institute for War and Peace Reporting*, 23 June 2007, CX219190.

⁵³ “The Dancing Boys of the North”, *Institute for War and Peace Reporting*, 23 June 2007, CX219190.

⁵⁴ “The Dancing Boys of the North”, *Institute for War and Peace Reporting*, 23 June 2007, CX219190; “Afghan boy dancers sexually abused by former warlords”, *Reuters*, 18 November 2007, CX219221.

⁵⁵ “Dancing boys a mark of prestige”, *Pink News*, 19 October 2007, CX219255; “Afghan boy dancers sexually abused by former warlords”, *Reuters*, 18 November 2007, CX219221.

⁵⁶ “The Dancing Boys of the North”, *Institute for War and Peace Reporting*, 23 June 2007, CX219190.

⁵⁷ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

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According to Baer, “in their reporting Western journalists insisted in reducing relationships that are often long-term emotional bonds to a crude sexual bargain”. Baer notes that these relationships can last for many years. He references a *Los Angeles Times* article, “Kandahar’s Lightly Veiled Homosexual Habits”, cited throughout this section to emphasise his point: it is reported in this article that older men marry their *halekon* to their daughters in order to keep them in the family.⁵⁸ It was mentioned earlier in this section that boys who participated in relationships with older men are reportedly “marked for life”. Baer criticises this description, made in an article published in *The Times of London*, as there is evidence from Islamic cultures “that have a tradition of age-stratified bonding” to suggest that these relationships are forgotten when the boy comes of age.⁵⁹

It was mentioned previously that a ban was issued by the former Governor of Kandahar after the demise of the Taliban, officially to prevent the use of child soldiers.⁶⁰ However some sources report that the real objective of this ban was to prevent young boys from living with troops as objects of sexual pleasure.⁶¹ One of the former governor’s top aides, engineer Yusuf Pashtun, dismissed such insinuations, arguing that the governor’s order said only that “no boys should be recruited into the army before the age of 18”.⁶² However according to the *Los Angeles Times* an anti-Taliban commander, who was reported as “close” to the governor of Kandahar at that time, acknowledged that one of the goals of the ban was to “keep *halekon* out of the barracks”. The ban was reported as only driving this practice underground.⁶³ *The New York Times* reported in 2002 that a directive was issued by the government banning “beardless boys”- a euphemism for underage sex partners- from police stations, military bases and commanders’ compounds”.⁶⁴ On a similar note, the *US Department of State* reported that the Taliban issued new rules during 2006 forbidding the recruitment of young boys for sexual pleasure.⁶⁵

6.3. Lesbians

As mentioned in *Section 5*, the *ILGA* report that relationships between same-sex females are illegal in Afghanistan.⁶⁶ According to the *UNHCR* :

...truly gay men and women would not be tolerated by society and those who are truly homosexual would have to hide their sexual orientation.⁶⁷

⁵⁸ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

⁵⁹ Brian James Baer, “Kandahar: Closely Watched Pashtuns--A Critique of Western Journalists' Reporting Bias about 'Gay Kandahar'”, *Gay and Lesbian Review*, March - April 2003, CX219224.

⁶⁰ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

⁶¹ “Homosexual practice back in Kandahar”, *Gay.com U.K.*, 15 January 2002, CX143318.

⁶² “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

⁶³ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

⁶⁴ “Kandahar Journal; Shh, It’s an Open Secret: Warlords and Pedophilia”, *The New York Times*, 21 February 2002, CX219222.

⁶⁵ “Country Report on Human Rights Practices 2007: Afghanistan”, *US Department of State*, 11 March 2008 (CISNET).

⁶⁶ “Country of Origin Information Report: Afghanistan”, *UK Home Office*, 29 August 2008, p.127, (CISNET).

⁶⁷ “Compilation of Country of Origin Information on Afghanistan Relevant in the Context of Refugee Status Determination in Australia – Part II”, *UNHCR*, 22 March 2004, CX91722.

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The *UNHCR* has reported that both gays and lesbians would be subject to violence from family or community members in Afghanistan as well as being punished under the law if noticed by authorities.⁶⁸

Some general information has been provided on Muslim lesbians by the *Safra Project*. This UK-based resource project was established in 2001 to work on issues relating to lesbian, bisexual and transgender women who identify religiously and/or culturally as Muslim. According to this source, most Muslims and non-Muslims believe that Islam prohibits any sexual activity between those of the same sex. Homosexuality is reportedly “irreconcilable with being Muslim”. Muslim lesbians, as well as Muslim gays and bisexuals, are reported to frequently “struggle to reconcile their sexual orientation with their cultural or religious identities”. Harsh consequences are anticipated for their “coming out” or for being discovered.⁶⁹

CRS was unable to locate further information on the existence of lesbians in Afghanistan but this is not to imply that such a community does not exist in this country.

6.4. Transgenders and Transsexuals

An article published in *The Wall Street Journal*, an international news source publishing information primarily of a business and financial nature, referred to the important role that eunuchs and cross-dressers have traditionally played in the culture of Pashtuns, “the main ethnic group here in Pakistan’s North Western Frontier Province, and in the southern half of Afghanistan”.⁷⁰ A report by the *Los Angeles Times* on homosexuality in Afghanistan in 2002 referred to a “strong streak of dandyism among Pushtun males” and alleged that many wear kohl pencil, henna and “high-heeled sandals”.⁷¹

CRS could not locate any additional information relating to transgenders and transsexuals in Afghanistan. However this should not be interpreted as a lack of presence of these groups in Afghanistan.

7. RELATED ISSUES

7.1. HIV/AIDS

The first case of HIV in Afghanistan was registered in 1989.⁷² Since then, the Afghan government has officially identified only 436 cases of HIV, however international and Afghan health experts say there are likely to be thousands of cases.⁷³ The *Ministry of Public Health* estimates that at least 3,000 people may be infected with HIV. Most are

⁶⁸ “UNHCR’s Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers”, *United Nations High Commission for Refugees*, 31 December 2007, CIS15572.

⁶⁹ “Muslim moral instruction on homosexuality”, *Safra Project*, undated, CX129881.

⁷⁰ “Pakistani Pashtuns get their groove back — cross-dressing artists”, *The Wall Street Journal*, 27 February 2008, CX219166.

⁷¹ “Kandahar’s Lightly Veiled Homosexual Habits”, *Los Angeles Times*, 3 April 2002, CX143339.

⁷² “AIDS adds sting to Afghanistan misery”, *Chicago Tribune*, 5 August 2008, CX207627.

⁷³ “Food prices fuelling sex work in north”, *Integrated Regional Information Network (IRIN)- United Nations*, 16 July 2008, CX205541; “AIDS adds sting to Afghanistan misery”, *Chicago Tribune*, 5 August 2008, CX207627.

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undiagnosed and lack adequate awareness about the risks of HIV and AIDS.⁷⁴ The rising number of cases has been attributed to the booming heroin trade, a rise in Afghans injecting rather than smoking drugs and a lack of knowledge about HIV and AIDS.⁷⁵

Surveys in 2005 reported that there were 920,000 drug users in Afghanistan. In July 2008 the *Integrated Regional Information Network (IRIN- United Nations)* reported that opium cultivation and heroin production had increased over the past three years, which led to an increase in the number of domestic drug users.⁷⁶ Health experts have warned that this is the group most vulnerable to HIV infection.⁷⁷ Since the fall of the Taliban, refugees addicted to opium and heroin have been returning to Afghanistan from Iran and Pakistan, some of them bringing HIV with them. Truck drivers are now also carrying goods to Afghanistan and using Afghan prostitutes.⁷⁸

Many AIDS patients face ostracism due to the stigma surrounding the HIV virus.⁷⁹ Although the Taliban government is no longer in power, sex outside marriage and homosexual sex are still socially unacceptable. In March 2008, parliamentary members at a budget debate described HIV positive people as “criminals and adulterers who deserve death.”⁸⁰ Some government officials and members of parliament have been known to say “let the sinners die”.⁸¹ Many Afghans do not voluntarily visit test centres, a consequence of the stigma associated with HIV/AIDS. There is also a common misconception that HIV/AIDS “results solely from illegitimate sexual relationships”.⁸²

7.2. Support Services

No information could be located by CRS on support services for the sexual minority groups discussed in this paper. The taboo nature of these groups and the subsequent lack of dialogue on sexual minority issues in Afghanistan means that it is highly likely groups providing such services would have an extremely low profile, if in existence at all.

In regards to support services for HIV/AIDS sufferers in Afghanistan, there are six centres in Afghanistan that now test for HIV. There are also programs that test drug users and sex workers. It was reported in January 2009 that the first ever antiretroviral therapy for about 40 HIV positive patients will soon commence.⁸³ Other efforts to

⁷⁴ “Can condoms fulfil multiple expectations?”, *Integrated Regional Information Network (IRIN) - United Nations*, 6 May 2008, CX199422.

⁷⁵ “AIDS adds sting to Afghanistan misery”, *Chicago Tribune*, 5 August 2008, CX207627.

⁷⁶ “New campaign to tackle stigma and misconceptions”, *Integrated Regional Information Network (IRIN)- United Nations*, 23 July 2008, CX206165.

⁷⁷ “New campaign to tackle stigma and misconceptions”, *Integrated Regional Information Network (IRIN)- United Nations*, 23 July 2008, CX206165.

⁷⁸ “AIDS adds sting to Afghanistan misery”, *Chicago Tribune*, 5 August 2008, CX207627.

⁷⁹ “A new sorrow for Afghanistan: AIDS joins list”, *New York Times*, 13 March 2007, CX173988.

⁸⁰ “AIDS adds sting to Afghanistan misery”, *Chicago Tribune*, 5 August 2008, CX207627.

⁸¹ “New campaign to tackle stigma and misconceptions”, *Integrated Regional Information Network (IRIN)- United Nations*, 23 July 2008, CX206165.

⁸² “New campaign to tackle stigma and misconceptions”, *Integrated Regional Information Network (IRIN)- United Nations*, 23 July 2008, CX206165.

⁸³ “Little awareness of HIV among migrants in Iran”, *Integrated Regional Information Network (IRIN) -United Nations*, 21 January 2009, CX 218956.

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mitigate this issue in Afghanistan include the expansion of clean needle programs, including jails, education programs and methadone programs.⁸⁴ A national HIV/AIDS program was launched in 2003 and since then has received \$23 million funding from various international donors.⁸⁵ It was reported that the *National HIV/AIDS Control Programme* in Kabul planned to launch a project to boost awareness and introduce preventive measures among sex workers in September 2008.⁸⁶ CRS was unable to locate further information on the progress of this project in Afghanistan.

⁸⁴ “AIDS adds sting to Afghanistan misery”, *Chicago Tribune*, 5 August 2008, CX207627.

⁸⁵ “New campaign to tackle stigma and misconceptions”, *Integrated Regional Information Network (IRIN)- United Nations*, 23 July 2008, CX206165.

⁸⁶ “Food prices fuelling sex work in north?”, *Integrated Regional Information Network (IRIN) -United Nations*, 16 July 2008, CX205541.

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Integrated Regional Information Network (IRIN)- United Nations, “Food prices fuelling sex work in north”, 16 July 2008, CX205541.

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9. ATTACHMENT 1: Regional Map

