

A Queer World Order: Examining the Potential for LGBTQ+ Rights Within Global Institutions Following the ICC's Afghanistan Ruling

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In the present day, at least some semblance of pro-LGBTQIA2S+ (hereafter referred to interchangeably as LGBTQ+ or queer for the purposes of this paper) policies are viewed as the norm within neo-liberal society. Despite this, international institutions like the United Nations (UN) have done very little to secure the rights of these vulnerable queer communities. Instead, until very recently, international institutions governed queer rights superficially, claiming to uphold agreed upon standards while simultaneously allowing states to commit horrendous abuses with little to no consequence. This trend was broken only in January of 2025, when the Prosecutor of the International Criminal Court (ICC) announced his intention to seek arrest warrants for high profile Taliban officials, to charge them with crimes against humanity committed against not only women but LGBTQ+ Afghans as well. The decision to recognize queer rights, especially under charges of gendered violence, marks a novel and fundamental shift in the future of global governance that establishes a new burden of responsibility for international institutions and bodies. Establishing a

precedent of inclusive and nuanced examinations of LGBTQ+ human rights abuses has the potential to alter the course of the global world order toward a time with queer safety and protection centered in discussions of global peace and international security.

The importance of the ICC decision must first be necessarily located by an engagement with the lived experiences of LGBTQ+ Afghans following the 2021 regime change. The realities of political suppression coupled with a radicalized populace has transformed the Afghan state from an unfriendly nation for queer people to one that is outright hostile and violent, with many surviving LGBTQ+ Afghans forced into hiding or living in fear. A brief examination of the violence exercised by the Taliban regime as well as the religious and nationalist-cultural justifications of this violence is set against a background of historical failures to effectively create a universal minimum standard of queer rights. The UN in particular bears the brunt of the blame for this problem, failing to hold its member states accountable for crimes against the LGBTQ+ community

even as it preaches global peace and tolerance.

The particulars of the ICC ruling will then serve as a contrast to the traditional failure of other global institutions and will be examined for its symbolic and legal value. This will engage two key concepts of Queer Legal Theory, the first being heterosexism and the second being the law as a normative force. Using the concept of heterosexism, the notion of gendered violence will be recontextualized to locate vulnerability beyond a traditional cisgender heterosexual setting. This forms a vital part of queer analysis in Afghanistan and helps entrench the ICC ruling within the broader framework of international rights. This entrenchment thus provides a sense of legitimacy for LGBTQ+ rights movements, which then creates a distinct precedent that forces global governing bodies to locate conceptions of peace and security within, among others, the context of minimum LGBTQ+ standards. Serving as a normative force, the laws and precedents set by the ICC create standards of acceptance within legal and social frameworks, thereby instituting a simultaneous top-down and bottom-up approach to securing the recognition, and thus protection, of queer rights.

LGBTQ+ Rights in Afghanistan: Past and Present

Prior to the Taliban takeover of the country, Afghanistan was no stranger to homophobic and transphobic attitudes and policies. Transgender Afghans faced the worst of these regulations, which outright refused to recognize their existence and denied them the right to change gender

markers on official identification, while policies regarding same-sex relationships were often vaguely worded and relied on inferences and implications. In 2018, then-president Ashraf Ghani took these policies a step further and explicitly declared same-sex relationships and acts illegal.⁵² The penalty was harsh, ranging from prison sentences of up to two years, to flogging or execution for engaging in consensual sexual relations with someone of the same gender. It is important to note that, although there were no recorded state executions of homosexual people between 2001 and 2020, there is very likely to be many who were killed by families or law enforcement while being detained, meaning that a lack of state willingness to seek maximum punishment did not save LGBTQ+ Afghans from that fate.⁵³ Even outside of hate crimes and punishments, being openly queer carried with it the threat of familial or community rejection, a lack of access to healthcare services, particularly for transgender Afghans, and the threat of job or shelter loss, among others.⁵⁴

Already in a tenuous position, the re-taking of Afghanistan by the Taliban in 2021 came with the reinstatement of strict Sharia Law, which preaches an ultra-conservative interpretation of Islam that is used to justify the oppression and discrimination of women and minorities; this created exponentially more risks for queer Afghans. As the Taliban began to assert its power more fully in the few weeks after the capture of Kabul, they maintained that they were willing to commit to the peace process and maintain some rights for women. While this clearly proved false, it is

vital to note that even before the takeover, the Taliban was explicitly anti-LGBTQ+. In 2020, the Taliban Ministry of Vice and Virtue distributed a manual that instructed religious leaders to prohibit same-sex relationships and encouraged “strong allegations” of homosexuality to be reported.⁵⁵ In a similar vein, shortly before Kabul fell, a Taliban judge is reported to have said that there can only be two punishments for “homosexuals [...]”: either stoning, or he must stand behind a wall that will fall down on him”.⁵⁶ On October 29, 2021, a Taliban official explicitly declared that the Taliban regime would uphold Ghani’s 2018 restrictions and would not respect the rights of LGBTQ+ Afghans.⁵⁷ Within weeks, there were already reports of executions of people who were suspected to be gay or queer.⁵⁸

Tapping into the existing bias against LGBTQ+ people provides a sense of legitimacy for a new regime, after which the Taliban was able to capitalize on and expand their rhetoric to push for even further restrictions.⁵⁹ This rhetoric manifests in a variety of ways across a variety of states but generally follows three standard strategies: The first of these strategies is framing LGBTQ+ friendly policies as inherently *unfriendly* to the rights and safety of non-LGBTQ individuals. One way to do this is to position LGBTQ+ families as a direct, but vaguely defined, threat against heterosexual families or cisgender women.⁶⁰ While this is used to an extent by the Taliban regime, its primary strategies focus on nationalist and religious justifications, both of which follow similar patterns. Nationalist justifications present

queer identity as a concept being forced upon the state by the Western world in an attempt to devalue domestic sovereignty, traditional ways of life, and create moral decay and declining populations. Similarly, religion-based arguments insist that the liberal push for LGBTQ+ acceptance is an attempt to dominate and extinguish religious freedoms.⁶¹ In both instances, the state earns legitimacy by presenting itself not as an aggressor to the queer community, but as a champion of the nation.

By equating queerness with Westernism, the Taliban casts LGBTQ+ acceptance as a type of neo-colonialism that threatens cultural autonomy. This transforms anti-LGBTQ+ violence, creating a space where killings, rapes, or beatings are not violent actions at all, but rather an assertion of culture and national independence. Such a transformation ingrains queerphobic violence and oppression into the fabric of national identity, thereby reinforcing Taliban claims of neo-colonial threats. This view gains religious legitimacy through the Taliban interpretation of Sharia law, which pushes for an ultra-conservative interpretation of Islamic texts, seeking to emphasize, among other things, a social and spiritual division between men and women.

Cherry-picked hadiths compiled by Islamic scholar Sahih al-Bukhari aid the Taliban in their mission; for example, one part in this collection details the prohibition of “men who imitate women and women who imitate men”, which allows the Taliban to conveniently justify their position as adherent to the wisdom and wishes of Allah Himself.⁶²

This has significant implications for transgender individuals in particular, who are not recognized by Afghanistan and are unable to change gender indicators on official identification documents. These two factors mean that transgender people who take actions to alter their physical appearance are viewed as sinful and traitorous to Allah and His creation. Many transgender people, women in particular, reported being accosted and beaten by security forces for wearing makeup and clothes that align with their gender identity or for having shaved off beards.⁶³

Tying gender binaries to religious and cultural identity thereby assigns prescribed gender roles a moral value; not only is men shaving and dressing in a feminine manner ‘gay,’ but it also becomes a rejection of the Islamic faith and a symptom of the moral failing and corruptness of Westernism. The argument is similar for transgender or gender non-conforming identities; indeed. In a report published by Human Rights Watch, many transgender Afghans reported transphobic violence to be accompanied by simultaneous condemnations for “imitating” a gender and for wearing “western” clothes, thereby equating the two issues.⁶⁴ This, then, is an inherent betrayal of the Afghan identity, a fact that is unacceptable to many even outside the Taliban who fought hard to preserve their cultural identity in the face of foreign invasion and influence.

Such underpinning ideology has served to radicalize a large percentage of the Afghan population; queer Afghan’s report that before 2021, while family members or friends may have threatened

violence or been otherwise unaccepting, they did not expect such threats to materialize.⁶⁵ After the Taliban takeover, these same family members and friends were emboldened and this violence was actualized by rapes, beatings, and murders.⁶⁶ Those that were able went into hiding and have remained there since; many others, however, were not so lucky.⁶⁷ Even in the event that LGBTQ+ Afghans could escape, Western nations have turned their backs on the sufferings of this demographic and surrounding nations offer no guarantees of queer recognition or rights, leaving queer Afghans without respite or options.

Failures of the International Rules Based Order

While the situation in Afghanistan has been condemned by international organizations like the UN, very little recognition has been given to the ways in which these international bodies helped facilitate a legal culture that allowed the Taliban regime to pose such a significant threat to the queer community. A brief engagement with these failures is thus necessary to help locate the importance of the ICC’s Afghanistan ruling within the broader frame of international politics.

Prior to this decision, discussions of queer rights and vulnerabilities were largely contained within domestic borders and contexts; as such, countries approached these rights without a standard framework or universal understanding of basic policy advancements.

It was not until 2011 when the UN published Resolution 17/19: Human

Rights, Sexual Orientation, and Gender Identity, effectively creating the first official international document aimed at explicitly addressing human rights and queer sexuality and gender identity.⁶⁸ This resolution was monumental, arguably the most important step forward in legitimizing LGBTQ+ claims and experiences, largely because of its use of “soft law” to establish the need for a comprehensive framework.⁶⁹ In November of the same year, the UN Human Rights Council published a detailed report on the status of the LGBTQ+ community within the context of the global community, including records of forms of violence and discrimination and discussions around the anti-LGBTQ+ policies and punishments across global regions and borders.⁷⁰ This report proved the existence of a clear pattern of queerphobic violence and provided a list of recommendations aimed at addressing instances of this type of violence or discrimination. The eight recommendations for member states were expansive, and included assigned responsibilities to investigate any and all killings by state and non-state actors, repeal laws that criminalize consensual same-sex activity and enact pre-emptive anti-discrimination legislation to prevent legal inequalities based on gender identity and sexuality, facilitation of laws and policies that accept and legalize name changes for transgender individuals, and a responsibility to provide queer-friendly sensitivity training for all forms of law enforcement alongside educational campaigns aimed at breaking societal stigma.⁷¹ The recommendations

also established a responsibility on the part of the Human Rights Council to continuously monitor the status of queer individuals globally.⁷²

A key issue with the resolution and the report, however, is that they have had largely ineffective implementation. To date, there are sixty-five countries where queerness is punishable by imprisonment or capital punishment. Only twenty-three states signed on to the resolution, a fact that is hardly surprising considering the fact that sixty-three of the sixty-five countries are still member states within the UN, regardless of their brutally repressive actions against LGBTQ+ communities.⁷³ Other countries, like Russia, the United States, and the United Kingdom, still hold high ranking positions on UN councils, despite enacting increasingly repressive policies seeking to erase queer sexuality and gender expression from public life. This attitude towards the value of LGBTQ+ safety created the precedent of abuse with little to no consequence; thus, the ICC ruling stands in sharp contrast.

The ICC and the Afghanistan Case

The ICC’s engagement with Afghanistan begins fourteen years before the 2021 Taliban takeover when the Luis Moreno-Ocampo, the first ICC Prosecutor, opened a preliminary examination into the Afghanistan situation.⁷⁴ Lasting ten years, the preliminary examination found clear evidence that war crimes and crimes against humanity had been committed in Afghanistan since 2002 and 2003 by the Afghan government, foreign powers, and rebel groups like the Taliban, but

communication throughout this process was slow, and the investigation alone was not enough to stave off precarity.⁷⁵ On November 20, 2017, the second Prosecutor, Fatou Bensouda, requested the Afghanistan case be sent to the third Pre-Trial Chamber in order to launch a formal investigation. After nearly eighteen months, though the judges agreed that the necessary requirements were met, the Pre-Trial Chamber III denied the investigation on the grounds that it would not serve the “interests of justice.”⁷⁶ Meanwhile, the Taliban’s power grew, and violence within Afghanistan was steadily increasing.

The ICC’s Appeal Chamber resurrected the case by repealing the Pre-Trial Chamber decision, at last authorizing an investigation March 5, 2020; almost immediately, however, Kabul requested a deferral of the investigation under Article 18 of the Rome Statute, to which it has been a signatory of since 2003.⁷⁷ A novel request, Article 18 allows a State to inform the ICC that it is conducting its own investigation into the matters at hand, in which case “the Prosecutor shall defer to the State’s investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.”⁷⁸ Relying on the latter half of article 18(2), newly installed Prosecutor Karim Ahmed Khan once again rejuvenated the process by requesting a formal investigation, though this time with a more narrowed focus on crimes committed by the Islamic State and the Taliban. This was finally approved by the second Pre-Trial Chamber in October

of 2022, with work beginning immediately.⁷⁹ Finally, in January of 2025, a motion was filed to issue arrest warrants for Taliban Supreme Leader Haibatullah Akhundzada and Taliban Chief Justice Abdul Hakim Haqqani for crimes against humanity committed on gender grounds, justified under article 7(1)(h) of the Rome Statute which determines crimes of humanity to be:

Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.⁸⁰

In the statement from Prosecutor Khan, the two Taliban officials were issued warrants for undertaking and facilitating persecution and brutal treatment against women, girls, and “persons whom the Taliban perceived as not conforming with their ideological expectations of gender identity or expression” dating back to at least August 15, 2021. He then explicitly stated the application for these warrants recognizes that “Afghan women and girls as well as the LGBTQI+ community are facing an unprecedented, unconscionable and ongoing” persecution at the hands of the Taliban regime.⁸¹ These warrants were approved on July 8, 2025, officially committing the ICC and its

member states to the protection of the queer community.⁸²

Examining the Impact of the ICC Ruling

The impact of the ICC's ruling in the Afghanistan case can be analyzed using key tenets of Queer Legal Theory, which seeks to deconstruct the dichotomy between queer and non-queer society and uncover the ways in which laws and legal proceedings have been used to assist or disadvantage the queer rights movement. The first part of this analysis will focus on the idea of the law as a normalizing force, which thus gives it the power to influence not only political institutions but social contracts as well.⁸³ Key to this notion of influence is the role of the ICC warrants as both a tangible and symbolic force within international law.

As a tangible force, the ICC decision to pursue a case against Taliban officials for persecution of women and those “non-conforming with the Taliban’s policy on gender, gender identity or expression” is a novel step forward, marking the first time LGBTQ+ people have been included as victims in cases of gendered violence.⁸⁴ In doing so, the ICC cements the complex interplay between gendered violence and heterosexism within legal frameworks. Recognized as sharing the same root cause, heterosexism is a central concept of queer theory and represents a more nuanced, and often far more insidious, element of systemic gender inequality, largely because of the way it subtly replicates itself in various factions of society.⁸⁵ Within the context of LGBTQ+

identity, heterosexism becomes an ideology that “denies, denigrates, and stigmatizes any non-heterosexual form of behaviour, identity, relationship or community” that manifests itself in subjective and institutional attitudes.⁸⁶

Definitions of heterosexual forms of behaviour vary from culture to culture, but typically rely on strict gender norms that decide certain manners of speech, appearance, and behaviour as either masculine or feminine. Under such a system, even the smallest action or trait becomes hyper-analyzed for indications of queer- or otherness. Queer women are perceived as a “threat to the nuclear family, to male dominance and control, [and] to the very heart of sexism” because they represent a way of life outside male determinism. Subsequently, much sexual violence aimed at queer women is intended to force them back under heteropatriarchal control.⁸⁷ Since 2021, numerous LGBTQ+ women reported being raped or assaulted by people sympathetic to the Taliban regime, or being forcibly married off upon discovery of their queerness.⁸⁸ Queer men are also considered threats to patriarchal order, especially when their queerness is visible or easily identifiable because it serves as a reminder that queer men are “breaking ranks with male heterosexual solidarity.” Physical and sexual violence targeting this group is executed in order to feminize them or otherwise “invoke the ‘indignity’” of being treated like a woman or queer person “based on the belief that men enjoy a higher standing than women or LGBTQI+ persons.”⁸⁹ In an effort to avoid such accusations, some queer men have been forced to join Taliban ranks and turn

on former lovers and friends in order to secure their own survival.⁹⁰ Trans individuals in particular become threatened by heterosexist ideology because it prohibits a fluid or moveable definition and expression of gender; in any regime, the trans community often is the first to be targeted.

When gender norms become tied to cultural and religious ideologies like that of the Taliban, breaking them becomes far riskier. An embedded culture of heterosexism is inherently threatening to LGBTQ+ individuals and communities, but it becomes a far more overt threat when it is tied to overt ideological beliefs. In the case of Afghanistan, this can be understood as the overemphasis on pre-existing inequalities that becomes a symbol of righteous cultural assertion. Those unable to conform become easy targets, as they are viewed as both religious traitors, cultural traitors, and gender traitors. With this in mind, it becomes evident that simplistic definitions of gendered violence as impacting (cisgender) women are unable to account for the ways in which states manipulate perceptions and expectations of gender to intentionally marginalize LGBTQ+ individuals. By accepting a heterosexist analysis of the conflict, the ICC creates the space for more expansive reports on the atrocities committed by Taliban soldiers and highlights the unique vulnerabilities assigned to non-conforming sexual/romantic and gender identities. This gives legitimacy to queer theory arguments surrounding heterosexism and has the potential to highlight queer rights within the general

populace, without these vulnerabilities being hidden behind intersecting identities.

A symbolic value is also attached to this ruling because its very existence sets a new precedent under international law, a space that has historically downplayed or outright ignored the lived experience of anti-LGBTQ+ violence and discrimination. By not only recognizing queer victims but also integrating them within a historically cisgender-heterosexual framework, the ICC actively integrates the queer community into the fabric of global governance, rather than regulating it to a mere

footnote. Acknowledging an intersection between misogynistic and queerphobic violence, then, can be viewed as an attempt to install a stronger sense of legitimacy for LGBTQ+ issues, especially when considering that the ICC sets international standards surrounding crimes against humanity and genocide. Based on this precedent, the international community no longer has any excuse to exclude LGBTQ+ people from conceptions of peace and security, nor does it have the ability to ignore situations of injustice that target the queer community. This has the potential to completely reshape international order in light of rising trans- and queerphobia.

A New World Order?

Until recently, many people's conceptions of queer rights issues were located only in vague discourse surrounding access to legal same-sex marriage or the ability to openly declare a sexuality and nothing more. This new era of rising right-wing ideology,

however, has brought the harsh realities of anti-LGBTQ+ violence experienced by queer people across the world into the limelight. As these realities gain more recognition, international governing institutions are caught between a growing demand for queer protections and the typical erasure of queer issues that has defined international queer policy for generations. Amidst limited pro-LGBTQ+ precedent, the ICC issued a novel request in the early months of 2025 that highlighted the experiences of LGBTQ+ Afghans forced to live under and oppressive Taliban regime. While it is still too early to examine the impact of this ruling in full, its

introduction amidst global increases in transphobic and homophobic sentiment and policy makes a powerful statement that pulls the direction of global governance away from this trend. Setting a precedent that declares violence against LGBTQ+ people as an abuse of human rights legitimizes and prioritizes the safety and security of this vulnerable demographic. The coming months will reveal how the UN and other governing bodies will respond to this new standard, and the ways in which this recognition will begin to embed itself within global civil society. A progressive queer future is, perhaps, not so far out of reach.

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