



UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM



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ON THE COVER: Members of Pakistan's Women Action Forum in Lahore, Pakistan rally against the presence of Taliban and militants in the northwest of Pakistan on Thursday, February 12, 2009. The banners condemn religious extremism, domestic violence, and the burning down of girls' schools in Swat. (AP Photo/K.M. Chaudary)

THE COMMISSION'S WATCH LIST

Afghanistan

Conditions for freedom of religion or belief in Afghanistan have become increasingly problematic in recent years. The failure of the new constitution to protect individuals from within the majority Muslim community to dissent from the prevailing Islamic orthodoxy continues to result in serious abuses, including criminal court cases that violate the country's international commitments. In addition, the failure or inability of the Afghan government to exercise authority over much of the country outside Kabul contributes to a progressively deteriorating situation for religious freedom and other related human rights in many of the provinces. Although the status of religious freedom has improved since the fall of the Taliban regime, religious extremism, including violence and intimidation by resurgent Taliban insurgents, poses an increasingly serious threat to human rights in the country. In light of these very real dangers to the progress made toward establishing democracy, rule of law, and human rights protections in Afghanistan, the Commission has determined that Afghanistan should remain on its Watch List. Considering the major role the United States plays in Afghanistan's defense and institutional development, the Commission will continue to monitor the deteriorating situation in the country for religious freedom and related human rights.

In January 2004, Afghanistan adopted a new constitution that provides for the freedom of non-Muslim religious groups to exercise their faith, contains an explicit recognition of equality between men and women, and declares the state will abide by "the UN charter, international treaties, international conventions . . . and the Universal Declaration of Human Rights." However, the constitution does not extend explicit protections for the right to freedom of religion or belief to every individual, particularly to individual Muslims, the overwhelming majority of Afghanistan's population, or minority religious communities. Other fundamental rights, such as the right to life and free expression, can be superseded by ordinary legislation. These shortcomings are

compounded by a repugnancy clause that states that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam," as well as by provisions for a judicial system empowered to enforce the repugnancy clause and apply Hanafi sharia (Islamic) jurisprudence to cases where there is no other applicable law.

The absence of a guarantee of the individual right to religious freedom and the empowerment of the judicial system to enforce Islamic principles and sharia law mean that the constitution does not fully protect individual Afghan citizens who dissent from state-imposed orthodoxy against unjust accusations of religious "crimes," such as apostasy and blasphemy. There are few protections for Afghans to debate the role and content of religion in law and society, to advocate the rights of women and religious minorities, and to question interpretations of Islamic precepts without fear of retribution or being charged with "insulting Islam." These legal deficiencies have permitted the official imposition of harsh, unfair, and at times even abusive interpretations of religious orthodoxy, violating numerous human rights of individuals by stifling dissent within the Afghan population.

For instance, in January 2008 in Balkh province, student journalist Parwiz Kambakhsh was sentenced to death for blasphemy. The conduct that led to this charge was circulating to other students material, some of which he had downloaded from the Internet, concerning women's rights in Islam. Although an influential council of religious scholars pressed for the execution to be carried out, others—including human rights and other civic organizations and groups of journalists—staged public protests in his defense. In October 2008, an appeals court in Kabul changed his sentence to 20 years in prison. Similarly, in September 2008, a court in Kabul sentenced veteran journalist Ahmed Ghous Zalmai and mosque leader Mullah Qari Mushtaq to 20 years in prison for publishing an independent translation of the Koran. Authorities were influenced by Afghan religious scholars who alleged that the translation misinterpreted verses on social issues, was un-

Islamic, and did not have a parallel Arabic text next to the Dari translation.

Such cases involving Muslim individuals exercising their internationally guaranteed rights demonstrate the inadequate guarantees for individual human rights in the constitution. These cases represent a significant problem for the country's development as a democratic state based on the rule of law where fundamental human rights are protected. This problem has been exacerbated by the persistent weakness of the country's central government, which continues to face substantial challenges that include mounting insecurity, a lack of basic infrastructure, massive corruption, an expanding illegal drug trade, and unresolved human rights violations from previous conflicts that have given rise to a climate of impunity in many parts of the country.

Religious sensitivities, heightened by the ongoing conflict with Taliban insurgents, have increasingly limited freedom of expression in the country. Observers note a growing "backlash" by Afghanistan's powerful traditionalist religious forces against the liberalization that occurred after the fall of the Taliban. A new media law passed by parliament in September 2008 prohibits works and material that are contrary to the principles of Islam, works and materials offensive to other religions and sects, and propagation of religions other than Islam. Media outlets, including radio and television, face pressure and occasional legal action from authorities influenced by Muslim clerics who object to particular content, such as references to other religions or the scenes of women dancing common in Indian films.

These religious freedom concerns take place in a context of declining respect for democratic norms and human rights, including with regard to freedom of speech and the press. In addition to cases involving views on religious interpretation, journalists in Afghanistan are coming under increasing pressure—and facing legal consequences—for criticizing political leaders, powerful local politicians, drug dealers, or warlords.

The security situation continues to deteriorate, and the government of President Karzai does not exercise full control over the country. As a result, the situation for religious freedom and other human rights is increasingly precarious in many parts of the country. Some experts claim that Afghanistan is at risk of collapsing into chaos due to the resurgence of the Taliban, the failure of reconstruction efforts, and record-level opium production. Concerns that the government of Pakistan has been providing sanctuary to the Taliban intensified in the past year, as the Taliban stepped up attacks inside Afghanistan, posing a threat to the stability of the government. In addition, illegal militias have not been disarmed. Numerous illegally armed groups, some of them nominally allied with the government, continue to exercise power throughout the country and often perpetrate human rights abuses. These abuses include political killings, torture, coercion to enforce social and religious conformity, and abuses against women and girls, sometimes with the active support of the local courts and police. In some areas of Afghanistan, the Taliban administer a virtual parallel state, and Afghans are increasingly receptive to Taliban courts, as they are seen as less corrupt than government courts. These substantial security threats, which have increased in the past year, present a persistent danger to the establishment of democracy and the rule of law throughout Afghanistan.

As far back as 2002, the Commission raised concerns about the decision not to extend the international security presence outside of Kabul and the repercussions for religious freedom and related human rights. In its report from that year, the Commission recommended that the "U.S. government should actively support expanding the international security presence beyond Kabul, as there [is] an urgent need to expand security in order to safeguard the process of political reconstruction in the country and to protect religious freedom and other human rights for all Afghans both in the near term and into the future." The deteriorating security conditions over the past year continue to threaten the political reconstruction process.

The rights of women were severely and egregiously violated in the name of religion by the Taliban regime. Since then, rights for women have improved significantly, especially in light of the fact that Afghan society has hardly ever experienced the notion of gender equality. However, women's progress in the public sphere is threatened today both by the Taliban resurgence and the increased influence of religious traditionalists. Although there are a number of women serving in the parliament and on provincial councils, as well as a few women judges and prosecutors, the number of women in senior government positions has decreased since President Karzai dropped three female ministers from his cabinet in 2006. Currently, the Minister of Women's Affairs is the sole female Minister. There are no women on the Supreme Court. According to a January 2009 report by the UN High Commissioner for Human Rights, "important gains made recently by women in the public sphere are in danger of receding."

Although the all-covering burqa, required during the Taliban regime, is less common in Kabul, almost all women wear some form of head covering, either out of personal piety or fear of communal pressure. The State Department reported that in rural areas, local religious leaders continue to pressure women about their dress and most women wear the burqa. The UN report cited above also noted the widespread problem of violence and discrimination against women, which appears "deeply rooted in conservative religious and traditional values in Afghan society" and continues to place women in a second-class status. Women in Afghanistan frequently are denied equal access to legal representation and due process, especially in rural areas, where traditional councils mete out justice. Lack of access to the legal system hampers efforts to combat violence against women, particularly domestic violence.

Court cases on family issues are dealt with under a civil code based on the Hanafi school of Sunni Islam, which is applied regardless of whether the individuals are Sunni or Shi'a. In April 2009, Parliament passed and President Hamid Karzai signed a law to enact a Shi'a Muslim family code.

However, as written, the code would have sanctioned marital rape and the inability of a woman to leave home without her husband's permission, except in emergencies. Proponents of the measure stated it would have recognized the distinct practices of Afghanistan's Shi'a minority, constituting about 15 percent of the population. However, a swift international outcry prompted suspension of the legislation. According to Afghan government officials, the law will be reviewed for its permissibility under the Afghan Constitution and international human rights instruments.

Despite these concerns, some religious freedom problems have diminished since the rule of the Taliban. For example, the active persecution of Afghanistan's Shi'a minority perpetrated by the Taliban has largely ended, and Shi'as once again are able to perform their traditional processions and to participate in public life, including in parliament and in senior positions in the Karzai government. Afghanistan's Second Vice President Abdul Karim Khalili is a member of the Shi'a minority. According to news reports, the Shi'a commemoration in Kabul of *Ashura*, banned under the Taliban, was particularly prominent, as well as incident-free, in January 2009. Most Shi'a are from the Hazara ethnic group, which traditionally has been harshly discriminated against and segregated from the rest of society due to a combination of political, ethnic, and religious reasons.

The situation of Afghanistan's small communities of Hindus and Sikhs also has improved since the fall of the Taliban, as there is no longer any official discrimination. Hindus and Sikhs are allowed to practice their faith and to have places of public worship. However, they are effectively barred from most government jobs, and face societal hostility and harassment. The few Afghan Christians, converts from Islam or their children, are forced to conceal their faith and are unable to worship openly. Members of Afghanistan's small Baha'i community also lead an essentially covert existence, particularly since May 2007 when the General Directorate of Fatwa and Accounts ruled that their faith is a form of blasphemy and that all Muslims who convert to the Baha'i faith are apostates.

Recommendations for U.S. Policy

In light of these serious concerns, the priority placed on the U.S.-Afghanistan relationship by President Obama and Special Representative for Afghanistan and Pakistan Richard Holbrooke, and the direct involvement of the United States in Afghanistan's political reconstruction, the Commission believes that the U.S. government should increase its diplomatic, development, and military engagement in Afghanistan to preserve and consolidate the Afghan people's gains in the protection of human rights, including freedom of religion or belief. Beyond the commitment of more troops, this engagement will involve new strategies for development assistance to promote human rights, transparency and mutual accountability.

In this regard, the Commission welcomes the Administration's announcement on March 27, 2009 of "a comprehensive, new strategy for Afghanistan and Pakistan," including the allocation of "significantly more resources" to civilian efforts to both countries and new diplomatic efforts to enlist the cooperation of "all who should have a stake in the security of the region," specifically naming the United Nations, NATO, the Central Asian states, the Gulf nations, Iran, Russia, India, and China. The Commission notes that the failure of these U.S.-led efforts will leave Afghanistan not only less free but also more unstable, thereby contributing to regional insecurity and potentially serving again as a future haven for global terrorism that threatens U.S. interests.

With regard to Afghanistan, the Commission also recommends that the U.S. government should:

I. Vigorously Promote Every Individual's Human Right to Religious Freedom and Other Related Rights

- clearly articulate a concern for religious freedom and related human rights as an essential element of the new U.S. strategy in Afghanistan;

- vigorously support respect for the right of every individual to freedom of thought, conscience, and religion or belief, and increase efforts to ensure the protection, in law and practice, of fundamental human rights, including freedom of conscience and the equal rights of women, as outlined in international human rights instruments to which Afghanistan is a party;
- use its influence to protect freedom of expression against charges that may be used to stifle debate, such as blasphemy, "offending Islam," apostasy, or similar offenses, including expression on sensitive subjects such as the role of religion in society and the rights of women and members of minority groups;
- act to bolster the position of those reformers who respect, and advocate respect for, religious freedom and human rights, since those persons currently are on the defensive and are threatened and need U.S. support to counter the influence of those who advocate an Islamic extremist agenda;
- amplify the voices of political reformers and human rights defenders by, among other things, encouraging President Karzai to appoint independent human rights defenders to the country's independent national human rights commission and court system;

II. Address Deteriorating Security Conditions

- make greater efforts to improve security outside Kabul in order for Afghanistan's political reconstruction to succeed, because without adequate security, Taliban insurgents will continue to hold sway over much of the country, undermining the rule of law and Afghanistan's nascent democratic institutions;
- direct concrete support and benefits, including the improved, country-wide security referred to above, to the Afghan people, which, in turn, will enable the Karzai government and other moderates to make the hard choices necessary to oppose religious extremism;

III. Advance Institutional Reform

- ensure that programs administered by the U.S. Agency for International Development to help develop primary and secondary education, including through printing textbooks and providing civic education, incorporate as part of the content education on international standards with regard to human rights, including freedom of religion or belief, and religious tolerance;
- strengthen efforts to reform the judicial system, including by helping to develop needed infrastructure and supporting the reconstruction of a judicial sector operating under the rule of law and upholding civil law and international standards of human rights;
- undertake efforts to reform the legal system to ensure that laws and legal systems uphold international standards on human rights;
- work to ensure that all judges and prosecutors are trained in civil law and international human rights standards, women are recruited into the judiciary at all levels, and all Afghans have equal access to the courts; and
- assist legal experts in visiting Afghanistan, engaging their Afghan counterparts, and providing information to the Afghan public on the universality of human rights and the compatibility of Islam and human rights, including freedom of religion and belief, and expand existing programs to bring Afghans to the United States to experience how Islam and other faiths may be practiced in a free society.