

Conditions for religious freedom in Afghanistan remain exceedingly poor for members of minority religious communities and dissenting members of the majority faith. The 2004 Afghan constitution effectively established Islamic law as the law of the land. Individuals lack protection to dissent from state-imposed orthodoxy, debate the role and content of religion in law and society, advocate for the human rights of women and members of religious minorities, or question interpretations of Islamic precepts. The government also has prosecuted individuals for religious “crimes” such as apostasy and blasphemy in violation of international standards. Based on these concerns, USCIRF in 2011 again places Afghanistan on its Watch List. Afghanistan was first placed on the Commission’s Watch List in 2006.

BACKGROUND

The Afghan constitution fails to protect the right to freedom of religion or belief, allows other fundamental rights to be superseded by ordinary laws, and contains a repugnancy clause stating that no law can be contrary to the tenets of Islam. Individuals who dissent from prevailing orthodoxies on Islamic beliefs and practices are subject to legal action. This widely-held interpretation of the constitution is problematic, and has dire implications with regard to negotiations with insurgents. The United States and President Hamid Karzai have made respecting the constitution a nonnegotiable plank in the peace talks with anti-government elements. While seemingly positive, the constitution’s undefined precepts of Islamic law that are viewed as superseding human rights guarantees could seriously undermine religious freedom and women’s human rights in the country. In other words, any potential peace deal could be meaningless insofar as it relates to the protection of human rights.

RELIGIOUS FREEDOM CONDITIONS

Despite gains in human rights since the Taliban regime's ouster in late 2001, conditions for religious freedom are problematic. The government places limits on the freedom of expression and restrictions on some religious minorities, curtails women's rights, and is unable to adequately protect religious minorities from violence.

Limits on the Freedom of Expression: Afghanistan has no constitutional guarantee of the individual right to freedom of thought, conscience, and religion. State-backed religious leaders are empowered to interpret arbitrarily, and the judicial system to enforce, undefined Islamic principles and sharia law, leading to harsh, unfair, and at times even abusive interpretations of religious orthodoxy. As a result, Afghans cannot debate the role and content of religion in law and society, advocate for the rights of women and religious minorities, or question interpretations of Islamic precepts without fear of retribution or being charged with religious "crimes" such as apostasy, blasphemy, or insulting Islam.

Legal Restrictions: The Afghan constitution declares that Islam is the sole religion of the state and that no law can contradict its beliefs and provisions. The constitution also restricts access to various public offices solely to Muslims. The media law prohibits the propagation of any religion other than Islam, and other laws, such as those pertaining to marriage, also discriminate against religious minorities. Marriage is formally restricted to Muslims; non-Muslims can marry as long as they do not publicly express their faith. The penal code permits the courts to defer to sharia in cases involving matters that neither the penal code nor the constitution explicitly address, such as apostasy and conversion, resulting in those charges being punishable by death. While the Afghan state has not executed anyone for apostasy, there were two known cases during the reporting period of non-Muslims being prosecuted for apostasy and potentially facing death sentences.

Repression of Religious Minorities: The few Afghan Christians that exist in Afghanistan have been forced to conceal their faith and are unable to worship openly. The situation for Christians worsened in the past year; 20 Christians were arrested in May 2010 after Afghans were shown being baptized on TV. Members of Afghanistan's small Baha'i community 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. The situation of Afghanistan's Shi'a Muslims and small communities of Hindus and Sikhs have improved since the fall of the Taliban. Hindus and Sikhs are allowed to practice their faith and have places of public worship. Hazara Shi'a Muslims participate fully in public life, including in parliament and in senior positions in the Karzai government and over the last year were able to perform their traditional

Ashura

public processions and rituals in Kabul without incident or hindrance. However, Hazaras are threatened by insurgents with killings, harassment and reports of their forced expulsions, along with Tajiks, from areas the Taliban control.

Women's Rights: Since the ouster of the Taliban, the status of women has improved, but women's progress in the public sphere remains threatened both by the Taliban's resurgence and the strong influence of religious traditionalists. Despite the constitutional reservation of seats for women in government, women who seek to engage in public life often are condemned as "immoral" and targeted for intimidation, harassment, or violence by the Taliban or other extremists. Pervasive discrimination based on traditional religious interpretations continues to place women in a second-class status and limit their opportunities to obtain education, employment, and even medical care. Women in Afghanistan frequently are denied equal access to legal representation and due process, especially in rural areas. Women's rights advocates have expressed concern that efforts by President Karzai and the international community to persuade insurgents to end their fight and rejoin the political process could result in serious abuses of women's human rights. In addition, the widespread interpretation of the constitution that ignores human rights guarantees could seriously undermine religious freedom and women's human rights in the country, even if insurgents agree to abide by the constitution.

Security problems: The ongoing, serious security situation exacerbates the religious freedom and human rights problems in many parts of the country. President Karzai's government does not exercise full control over the country, particularly outside Kabul and the major provincial centers, even with the active support of U.S. and International Security Assistance Forces (ISAF). Al-Qaeda and Taliban insurgents continue to stage attacks inside Afghanistan including bombing Islamic religious sites. In some areas of Afghanistan, the Taliban administer a virtual parallel state, based on their interpretation of Islamic law.

RECOMMENDATIONS FOR U.S. POLICY

To promote religious freedom and create civic space for diverse religious opinions on matters of religion and society in Afghanistan, the U.S. government should:

- Clearly articulate a concern for religious freedom and related human rights as an essential element of U.S. strategy in Afghanistan and increase effective engagement on these issues, including by: bolstering the position and protection of Afghans who advocate respect for human rights and religious tolerance; supporting judicial sector and legal reforms conducive to protecting human rights; and ensuring that human rights concerns are integrated in the reconciliation process;
- Include a special working group on religious tolerance in U.S.-Afghan strategic dialogues and in the trilateral dialogues with the United States, Afghanistan, and Pakistan;
- Encourage the Afghan government to sponsor, with official and semi-official religious bodies, an initiative on interfaith dialogue that focuses on both intra-Islamic dialogue and engagement with different faiths;
- Increase efforts to ensure that the formal judicial sector upholds international standards of human rights; and
- Press the government of Afghanistan to ensure that recognized representatives of civil society, including Shi'a Muslims, members of other religious and ethnic minorities, and women,

are included in the consultative Peace Jirga, the High Peace Council, the Afghan Peace and Reintegration Program, and any other reconciliation talks with anti-government elements; and ensure that any reconciliation process does not provide immunity to known human rights violators and that such individuals are barred from appointive or elective office, as well as from leadership positions in political parties.

Please see USCIRF's 2011 Annual Report for a more extensive review and recommendations on Afghanistan.