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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 orthodoxy regarding Islamic beliefs and practices continues to result occasionally in serious abuses, including criminal court cases that are in violation of the rights of the accused. 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 human rights in many of the provinces. Although the status of religious freedom has improved since the fall of the Taliban regime, these developments indicate that religious extremism, including through the return of the Taliban, is an increasingly viable threat once again in Afghanistan. In light of these very real dangers to the declared U.S. goal of instituting democracy and human rights protections in Afghanistan, the Commission has determined that Afghanistan should remain on its Watch List. Since the United States has a crucial role to play, the Commission will continue carefully to monitor the regrettably deteriorating situation in Afghanistan.

In January 2004, Afghanistan adopted a new constitution. The constitution contains an explicit recognition of equality between men and women and a reference to Afghanistan's commitment to abide by its international human rights obligations. However, though the Constitution provides for the freedom of non-Muslim groups to exercise their various faiths, it does not contain explicit protections for the right to freedom of religion or belief that would extend to every individual, particularly to individual Muslims, the overwhelming majority of Afghanistan's population. Other fundamental rights, such as the right to life and free expression, can be superseded

by ordinary legislation. This omission is 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 jurisprudence to cases where there is no other applicable law.

The absence of a guarantee of the individual right to religious freedom and the inclusion of a judicial system instructed to enforce Islamic principles and Islamic law mean that the new 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 also fewer 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 interpreta-

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tions of Islamic precepts without fear of retribution or being charged with “insulting Islam.” There is concern that these constitutional deficiencies could permit a harsh, unfair, or even abusive interpretation of religious orthodoxy to be officially imposed, violating numerous human rights of the individual by stifling potential dissent within the Afghan population.

In the past few years, several very troubling cases

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exemplifying the constitution’s inadequacies came before the courts. The most recent example is the case of Parwiz Kambakhsh, who in January 2008 was sentenced to death for blasphemy in the northern Balkh province for circulating a document with opposing views about women’s rights in Islam. A panel of three judges ruled that because the article he circulated was “blasphemous,” he must receive the death penalty in accordance with sharia. Kambakhsh reportedly did not have a lawyer or a public trial. Although an influential council of religious scholars has pressed for the execution to be carried out, others—including several human rights and other civic organizations and groups of journalists—have led protests in his defense. As of this writing, Kambakhsh remains under a death sentence and has appealed his case. In December 2007, a government press aide was arrested and almost lynched for circulating a translation of the Koran in the Dari language that had not been approved by senior religious scholars. He is reportedly still in prison and awaiting trial.

In March 2006, Abdul Rahman, an Afghan citizen, was arrested and threatened with execution on the charge of changing his religion. His offense, according to a public prosecutor in Afghanistan, was “rejecting Islam.” Rahman was to face the death penalty if found guilty of

apostasy. The prosecutor in the case called Rahman “a microbe [who] should be cut off and removed from the rest of Muslim society and should be killed.” The judge overseeing the trial publicly affirmed that if Rahman did not return to Islam, “the punishment will be enforced on him, and the punishment is death.” Within a few weeks, in the face of a massive international outcry about the case, the court dismissed the charges against him, citing lack of evidence and suspicions about his mental state, but concerns about his personal safety forced him to seek asylum abroad. In October 2005, Afghan journalist and editor Ali Mohaqiq Nasab was imprisoned after being found guilty of charges of blasphemy and “insulting Islam.” The purported “crime” of Nasab, editor of the journal *Haqooq-i-Zan* (Women’s Rights), was to question discrimination against women and the use of certain harsh punishments under traditional Islamic law, including amputation and public stoning. Although Nasab, who is also an Islamic scholar, was initially sentenced to two years of hard labor, the prosecutor in the case reportedly intended to seek the death penalty against him. In December, Nasab’s term was reduced to a six-month suspended sentence, but only after he apologized to the court.

All of these cases, involving Muslim individuals exercising their internationally guaranteed rights, indicate that the inadequate guarantees for individual human rights in the constitution represent a significant problem for Afghanistan’s development as a democratic, rule of



Human Rights Commission Chair Sima Simar and member Ahmad Nader Nadery, himself a former prisoner of the Taliban, meet with Commissioner Bansal.



law-based state where fundamental human rights are protected. According a 2007 report from the UN Development Program and Kabul University, this problem has been exacerbated by the persistent weakness of the country's central judicial system more generally, which continues to face substantial challenges that include mounting insecurity, a lack of basic infrastructure, massive corruption, an expanding illegal drug trade, and the unresolved human rights violations from previous conflicts that have given rise to a "climate of impunity" in many parts of the country.

These constitutional pitfalls have been extended to other legislation also, and journalists and others, including publishers, sometimes face severe legal consequences for writing or disseminating material that is deemed "un-Islamic." The current media law prohibits publication or broadcast of information that insults "the sacred religion of Islam and other religions." According to the State Department, the vagueness in the definition of what constitutes offensive material allows for the potential abuse of this clause with the aim of limiting freedom of the press and intimidating journalists. Indeed, this sort of abuse has already occurred. In November 2007, the popular "Tolo TV" was criticized by the country's Culture Ministry and key Muslim clerics for broadcasting western-style

programs. This and other such incidents are thought to be part of a growing "backlash" by Afghanistan's powerful traditionalist religious forces against the liberalization that occurred after the fall of the Taliban. In January 2006, the Afghan Minister of Information, Culture, and Tourism declared that though Afghan law allows citizens access to a free press, there are limitations that are "not imposed by the government but are in line with Islamic and national principles." That same month, cable television was shut down in Balkh province for broadcasting films and music that were "against Islam and Afghan culture." In February 2006, the Afghan government, through a special media commission, imposed a fine on Afghan TV, one of four private stations in Kabul, for broadcasting "un-Islamic materials."

In July 2006, there were reports that Afghanistan's Ulema, or council of Muslim clerics, proposed the establishment of a Department for the Promotion of Virtue and Prevention of Vice, an organization troublingly reminiscent of a similarly named body used by the Taliban to enforce its strict religious codes through public beatings, imprisonment, torture, and execution, including stoning to death. At the time, Afghanistan's Deputy Minister for Religious Affairs was quoted as stating that the new Vice and Virtue agency will not be the same as that under the

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Taliban but would instead be aimed at promoting religious values through “education, preaching, and encouragement.” The proposal has reportedly been referred to the country’s parliament, but as of this writing, had not yet been enacted.

In May 2007, the General Directorate of Fatwas and Accounts under the Supreme Court issued a ruling on the status of the Baha’i religion and declared it distinct from Islam and a form of blasphemy. The ruling also noted that Baha’is would therefore be treated similarly to Christians and Jews. According to the State Department, while the ruling is not expected to affect the expatriate Bahai’is in Afghanistan, it may create problems for the country’s tiny (approximately 400) Baha’i community, primarily in issues involving marriage. Many Afghan Baha’is are married to Afghan Muslims, and the ruling could invalidate those marriages. Converts to the Baha’i religion would face the same consequences as other converts from Islam.

These religious freedom concerns take place in a context of declining democracy more generally, 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. In July 2007, an Afghan journalist who was critical of the government was released after four days detention on undisclosed charges. Another journalist, who reprinted extracts of an essay critical of President Karzai, remains in detention. According to a December 2007 report from the Institute for War and Peace Reporting, five staffers from *Cheragh*, an Afghan daily newspaper, were arrested and interrogated after security forces objected to a letter to the editor that had been published.

The five were released only after the editor agreed to publish an apology. The office of another newspaper, *Erada*, was raided by armed men seeking to arrest the editor after he published an analysis deemed unacceptable. Similar attacks on media freedom are reportedly occurring with increasing frequency.

The security situation continues to deteriorate. 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. Due to the continued security problems, 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 both precarious and problematic in many parts of the country. 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, the illegal militias have not been disarmed. According to the UN, there are hundreds of illegally armed groups, some of them nominally allied with the government, that 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, there is reportedly now a “parallel Taliban state,” and Afghans are increasingly receptive to Taliban courts, as they are, once again, seen as less corrupt than those administered by the tribal warlords. 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 strong concerns about the decision not to extend the international security presence outside of Kabul and the repercussions that could potentially ensue as a consequence of this decision. 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.” It seems clear that the political reconstruction process has indeed become seriously threatened as a result of the alarming and deteriorating security conditions.

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. There are a number of women serving in the parliament and on provincial councils. However, recent reports indicate that women’s inclusion in the government has been regressing. In 2006, President Karzai dropped all three female ministers from his cabinet. Under the previous Chief Justice, the Supreme Court sometimes ruled against women’s rights, including by banning women from singing on television and arresting a scholar who questioned polygamy. (The new make-up of the Court is seen as a positive development.) In addition, reports indicate that women in Afghanistan are frequently denied equal access to legal representation and due process, especially in rural areas, where rule of law is rare and justice is instead meted out by traditional councils. In August 2006, the UN released a report indicating that violence against women, particularly domestic violence, remains widespread in Afghanistan. A later report from January 2008 describes the persistently common practice of child marriages and the fact that girls are frequently sold into marriages in which they are ill-treated. There are few avenues for redress.

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 (approximately 15 percent of the population) that was perpetrated by the Taliban has largely ended, and

Shi’as are once again able to perform their traditional processions and to participate in public life. In January 2005, President Karzai appointed a Shi’a scholar to the country’s Supreme Court, the first Shi’a scholar ever to be appointed to that body. The State Department reports that in February 2006, six people were killed during a Shi’a Ashura procession in Herat, though some consider the violence to have been politically rather than strictly religiously motivated. Most Shi’a are from the Hazara ethnic group, which has traditionally 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 religious minorities, which include small communities of Hindus and Sikhs, has also improved since the fall of the Taliban, as there is no longer any official discrimination, though societal violence against both groups, particularly in the areas outside of government control, continues to be a concern. Although there are no churches, expatriate Christians are reportedly able to meet for private worship services in Kabul and one or two other major urban centers. However, some religious advocacy organizations are reporting instances of societal intolerance of and violence against persons who have converted to Christianity.

In the past year, the Commission continued to speak out about the deteriorating situation in Afghanistan. In January 2008, the Commission wrote to Secretary of State Condoleezza Rice about the Kambakhsh case, noting that Kambakhsh’s conviction and sentencing on a spurious allegation of blasphemy was a clear violation of Afghani-



Vice President Niamatullah Shahrani (left), Chair of the Constitutional Commission, speaks with Commissioners Gaer and Bansal.

stan's commitments under international human rights laws and an alarming signal of deteriorating conditions for the freedom of religion or belief and other human rights in the country.

In July 2006, the Commission issued a statement raising several concerns about the proposed creation of a Department for the Promotion of Virtue and Prevention of Vice. The Commission noted that the creation of such a government institution in Afghanistan charged with the promotion of religious adherence to state-imposed orthodoxy could amount effectively to a religious police force that could: violate Afghan citizens' universal right to freedom of thought, conscience, and religion or belief, including the right to be free from state compulsion with regard to religious worship and practice; abridge the human rights of Afghan women and girls; impose political conformity and stifle political debate about human rights and political freedom in Afghanistan, as well as the role of religion in Afghan law and society; and arbitrarily determine the "correct" nature of religious adherence and what constitutes a "violation"—a significant problem given the wide variety of doctrines and practices that exist within the majority Muslim community in Afghanistan.

In March 2006, the Commission wrote to President Bush expressing its concern about the trial and threatened execution of Abdul Rahman on charges of apostasy. In April, then-Commission Vice-Chair Felice D. Gaer testified on behalf of the Commission before a Congressional Human Rights Caucus Members' Briefing on "Anti-Conversion Laws and Religious Freedom in South Asia and the Middle East: The Case of Abdul Rahman." In her testimony, Commissioner Gaer described the weak state of human rights protections in Afghanistan today, and cautioned that freedom and democracy are still in peril in that country. In October 2005, the Commission issued a statement condemning the arrest and trial of Ali Mohaqiq Nasab on charges of blasphemy and "insulting Islam." In December, the Commission wrote to the State Department asking that it urgently communicate with the German government to prevent the imminent involuntary deportation of thousands of particularly vulnerable asylum seekers from Germany to Afghanistan, including Hindu refugees who face the threat of violence upon return to Afghanistan.

During the period that the constitution was being drafted, the Commission met with numerous high-rank-

ing U.S. government officials to articulate the importance of institutionalizing human rights guarantees in the document that adequately protect the rights of each individual. The Commission also briefed Members of Congress and relevant committee staff on its policy findings and recommendations. In January 2003, the Commission held an international forum, "*Reconstructing Afghanistan: Freedom in Crisis?*" in cooperation with George Washington University Law School, which brought together Afghan leaders, U.S. policymakers, and other experts to discuss ways of integrating adequate human rights protections into judicial and legal reform processes. The Commission also raised the issue of religious freedom in numerous public statements, as well as in two separate opinion-editorial articles, in *The Washington Post* and *The New York Times*, authored by Commissioners Michael K. Young, Felice D. Gaer, and Preeta D. Bansal. In late 2003, the Commission was cited on this issue in over a dozen editorials in major newspapers worldwide.

In August 2003, a Commission delegation visited Afghanistan for an intensive series of discussions with senior officials of the Transitional Administration, U.S. officials, representatives of non-governmental organizations and of Afghan civil society, former President Burhanuddin Rabbani, religious leaders, and members of the diplomatic community, including the United Nations Assistance Mission in Afghanistan (UNAMA). In September 2004, the Commission issued a press release criticizing the Supreme Court Chief Justice's attempt to stifle freedom and electoral democracy by calling for the disqualification of a candidate who made comments of which Chief Justice Shinwari did not approve.

The U.S. government should provide greater leadership and resources needed to secure freedom for all in Afghanistan, which regrettably appears to be reverting more and more to Taliban-like practices. The U.S. government should therefore step up its leadership and engagement in Afghanistan to preserve and consolidate the Afghan people's gains in the protection of human rights, since the United States has been so directly involved in the country's political reconstruction. Failure 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 has also recommended that the U.S. government should:

1 On Promoting the Individual Right to Religious Freedom and Other Human Rights

- vigorously support respect for the right of every individual to freedom of thought, conscience, and religion or belief in Afghanistan, and be prepared to make great efforts to ensure protection 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, human rights, since those persons in Afghan society who would promote respect for internationally recognized human rights are currently on the defensive and are threatened, and these people 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, encour-

aging President Karzai to appoint independent human rights defenders to the country’s independent national human rights commission;

2 On Addressing the Deteriorating Security Conditions

- make greater efforts to improve security outside Kabul in order for Afghanistan’s political reconstruction to succeed, because without adequate security, the warlords will continue to hold sway over much of the country, undermining the rule of law and Afghanistan’s nascent democratic institutions;
- direct measurable, 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;

3 On Advancing Institutional Reform

- ensure that programs, administered by the U.S. Agency for International Development, to help develop primary and secondary education, including through the printing of textbooks, and to provide 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 through helping to develop sorely needed

infrastructure and through strongly supporting the reconstruction in Afghanistan of a judicial sector operating under the rule of law and upholding civil law and international standards of human rights, and 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 universal human rights, including freedom of religion and belief, and expand existing programs to bring Afghans to this country to experience how Islam and other faiths may be practiced in a free society.

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