

November 1, 2003: Silenced Again in Kabul - New York Times

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American efforts to build a democratic, tolerant Afghanistan are facing a serious challenge: the draft of the Afghan constitution, which may be made public as early as this week, does not yet provide for crucial human rights protections, including freedom of thought, conscience and religion. The United States and the international community should insist that the draft presented by the constitutional commission explicitly protect these core human rights for all Afghans. Despite reports to the contrary, the current draft versions of the constitution enshrine particular schools of Islamic law, or Shariah, that criminalize dissent and criticism of Islam through blasphemy laws. If this draft is ratified in December by the loya jirga, or grand council, the freedoms of Afghan citizens would continue to be in the hands of judges educated in Islamic law, rather than in civil law. Official charges of blasphemy, apostasy or other religious crimes could still be used to suppress debate, just as they were under the Taliban. Making changes in the draft is all the more important because, as Afghanistan's Human Rights Commission and the United Nations' Assistance Mission in Afghanistan have reported, Afghan reformers seeking to express their views on their new constitution have been hindered by threats, harassment and even imprisonment. In one case, an editor and a reporter have been charged with blasphemy for publishing an article questioning the role of Islam in the state. On our recent trip to Kabul as members of the bipartisan United States Commission on International Religious Freedom, we met many Muslims who recognize the compatibility of Islam with human rights. Yet these Muslims are being intimidated into silence by vocal and well-armed extremists. Freedom-loving Afghans won't be able to rely on conscientious judges to protect religious freedom without an explicit reference to it in the constitution. Afghanistan's chief justice, Fazl Hadi Shinwari, for example, has shown little regard for those who disagree with his hard-line interpretation of Islam. He told us that he accepted the international standards protected by the Universal Declaration on Human Rights - with three exceptions: freedom of expression, freedom of religion and equality of the sexes. "This is the only law," the chief justice told us, pointing to the Koran on his desk. Even in a self-proclaimed Islamic republic, however, all citizens, Muslims as well as non-Muslims, must be free to debate the role of religion and to question prevailing orthodoxies without fear of being subjected to trials, prison or death. At a minimum, Afghan leaders should amend the draft constitution to specifically ensure the human rights guarantees that Afghanistan has already accepted and ratified in six international treaties. Afterward, the United States must ensure the safety of reformers who want to speak out at the loya jirga to ensure that the constitution of Afghanistan makes possible a free and just society based on the rule of law. While respecting that Afghans should determine their own future, United States officials must not let a "hands off" policy lead to political conditions that will embolden repression and enable a few to hijack the future from the many Afghans who hope to embrace freedom. After all, it is not just Afghanistan's future that is at stake. Iraqis are watching to see what minimum standards of individual rights will be acceptable to the United States. Unfortunately, the message that the Afghan draft constitution is giving Iraq is the wrong one. We should instead send our own message to President Hamid Karzai, to Afghan officials and to the Afghan people: Americans will only support a state with a constitution that clearly and unequivocally enshrines human rights and religious freedom. Preeta D. Bansal, former solicitor general of New York State, and Felice D. Gaer, director of the Jacob Blaustein Institute for Human Rights, are members of the United States Commission on International Religious Freedom. Copyright 2003 The New York Times