

November 4, 2003: Afghanistan: Constitution Threatens to Institutionalize "Taliban-lite"

FOR IMMEDIATE RELEASE

November 4, 2003

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Foundation for Free and Stable Country Imperiled, says Commission Chair Young

WASHINGTON - Contrary to reports in the international media, the new Afghan draft constitution fails to protect the fundamental human rights of individual Afghans, including freedom of thought, conscience and religion, in accordance with international standards. "There is no guarantee of freedom of thought, conscience, and religion in the draft constitution's Bill of Rights. The draft threatens to institutionalize a "Taliban-lite" state where appointed judges are given the unchecked authority to ensure that all laws conform to their interpretation of the religion of Islam. Provisions protecting these freedoms are found in the constitutions of other Islamic countries. The people of Afghanistan deserve no less," said U.S. Commission on International Religious Freedom (USCIRF) Chair Michael K. Young.

USCIRF Commissioners expressed concern that the draft constitution:

subordinates to ordinary legislation most basic individual rights, including rights to life and the freedoms of expression and association. The rights provisions are thus non-binding aspirations that may be displaced by ordinary enactments of legislative bodies.

mandates that all legislation must conform to the religion of Islam, enshrining the supremacy of Islamic law even over the individual rights provisions in the constitution.

fails to include a specific guarantee for individual rights to freedom of thought, conscience and religion, as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to both of which Afghanistan is party.

threatens to create a judicial theocracy where judges who are unrestrained by checks and balances of other branches of government, have the ultimate authority to determine the conformity of enacted laws with Islam and must apply specific schools of Islamic jurisprudence when no provision of law addresses an issue before them. This would allow for a religious orthodoxy to be officially imposed, stifling dissent within the Islamic tradition.

Several provisions of the draft constitution enshrine the supremacy of Islamic law, threatening the rights of all Afghans. According to the draft constitution, judges should adjudicate cases based on specified schools of Islamic jurisprudence where there is no relevant constitutional provision or law. According to articles one through three, Afghanistan is to be "an Islamic Republic." Islam is proclaimed "the religion of Afghanistan" and "no law can be contrary to the sacred religion of Islam" and to the values of the constitution. The final authority to determine the conformity of legislation to Islam is granted to the Supreme Court. Afghanistan's Supreme Court Chief Justice Fazl Hadi Shinwari has shown little regard for those who disagree with his hard-line interpretation of Islam. He told the USCIRF that he rejects three crucial freedoms - expression, religion and equality of sexes - all of which are international standards protected by the Universal Declaration of Human Rights.

Activist judges could pursue an Islamist political agenda, silencing political moderates and reformers with charges of apostasy, blasphemy, or "offending Islam," a concept that is already part of the legal system. Charges have already been made on several occasions. Recently, the Washington Post reported that a group of women producing a radio program concerning women's rights in the new Afghanistan were forced to pull the program from the air when several religious leaders complained that the show was encouraging women to leave their husbands. The women complied in fear of being labeled "infidels."

Under the draft constitution, the state has affirmative obligations to devise and implement educational curricula "based on the provisions of the sacred religion of Islam," to support Islamic religious institutions, and to ensure "the elimination of [family and child-rearing] traditions contrary to the principals of the sacred religion of Islam." The draft thus envisions, provides for, and firmly guarantees the privileged place of Sharia law.

The draft recognizes a limited right to perform religious "ceremonies" that is restricted to non-Muslims. Even the exercise of this right can be limited by ordinary law.

The draft does include an explicit statement that the Afghan state "shall abide by the United Nations Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights." However, the rights provisions in the draft constitution do not track international standards, making those standards vulnerable to being ignored in practice.

The United States should strongly urge Afghans:

to include in their Bill of Rights a specific guarantee that, "Everyone has the right to freedom of thought, conscience, and religion" as affirmed in Article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

to provide in the constitution that ordinary laws cannot limit the exercise of rights, except under the limited circumstances, such as the protection of public safety and order, permitted in international human rights law; and

to state clearly in the constitution that any law that abridges constitutionally-protected rights is void.

"Provisions such as these are found in the constitutions of other Islamic countries," said Young. "Without these protections, not only will the current transitional Afghan administration have failed its people, but the United States will have failed in its efforts to lay the foundation for a free and stable Afghanistan."

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