

September 24, 2003: Afghanistan: Freedom in Crisis

FOR IMMEDIATE RELEASE

September 24, 2003 Contact:

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U.S. Commission on International Religious Freedom, Trip to Kabul, Afghanistan, August 10-13, 2003 During the crucial period when Afghan experts are preparing a draft constitution, a delegation of the U.S. Commission on International Religious Freedom led by Vice Chair Felice D. Gaer and Commissioner Preeta D. Bansal visited Kabul, Afghanistan. Based on the findings of the trip, the Commission makes the following recommendations: The U.S. government should insist that individual rights to freedom of religion and belief be explicitly set forth in the Afghan constitution. The constitution should also exclude the use of blasphemy, "offending Islam," apostasy or similar offenses to stifle debate or restrict religious freedom. The U.S. government, in all its activities in Afghanistan, should act to bolster the position of those reformers who respect human rights. The U.S. government must make clear that it and the American people expect post-Taliban Afghanistan to respect and implement the freedoms included in the universal human rights instruments that Afghanistan has signed, ratified, and supported. The United States should not shy away from insisting on guarantees of the individual right to freedom of religion and belief and other basic rights. The United States should assist Islamic legal experts to visit Afghanistan to engage their Afghan counterparts and to provide information to the Afghan public on the compatibility of Islam and human rights. Public diplomacy and education efforts must be expanded. Freedom of expression is in danger. Afghan reformers must be protected from accusations of blasphemy or similar charges and not face prosecution for discussing peacefully the appropriate role of Islam in Afghanistan's political and legal systems or for criticizing specific political figures or political parties, or dissenting from prevailing views and beliefs. U.S. assistance should 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. Security must be improved outside Kabul in order for Afghanistan's political reconstruction to succeed. Security is critical not just during the meeting of the Constitutional Loya Jirga, but also during the process of selecting delegates to that Loya Jirga. The United States must provide the leadership, sound policy, and resources needed to secure freedom for all in Afghanistan. Commission Findings The Commission has repeatedly voiced its concern that serious abuses of human rights, including freedom of religion and belief, were continuing under the U.S.-supported Transitional Administration. Moreover, there have been troubling signs that Afghanistan's reconstructed legal system and the new Afghan constitution might be used by extremists in the Transitional Administration to deny universal human rights, including freedom of religion and belief, to the Afghan population. What is more, these developments are occurring under the watch of the United States. Afghan leaders explained they have tried to stay on the timetable set by the December 2001 Bonn Agreement for re-establishing a permanent government representative of the Afghan people. There are indications, however, that the gains for human rights achieved by the U.S.-led coalition's victory over the Taliban are in peril. The security situation both within and outside Kabul is precarious and perhaps even deteriorating, as indicated by the serious terrorist attacks that occurred just before and after the Commission delegation's departure from Afghanistan. Taliban and al-Qaida remnants remain active and have been joined by others hostile to the internationally recognized Transitional Administration led by President Karzai. Regional warlords and local military commanders operate independently of the central government and abuse human rights with impunity. The Commissioners encountered numerous Muslim moderates, who recognize the compatibility of Islam with internationally recognized human rights. Yet these moderates face grave fear for their physical security in the face of increasingly vocal, well-armed and confident extremists. Even some officials in the Transitional Administration displayed open hostility to freedom of religion and belief, freedom of expression, and women's rights. Afghanistan's Chief Justice Shinwari, for instance, told the Commission that he accepts all the international standards protected by the Universal Declaration on Human Rights with three exceptions: freedom of expression, freedom of religion, and equal rights for men and women. When asked about the draft constitution, Shinwari told the Commission that "this is the only law," pointing to the Koran, raising the concern that the Afghan judiciary will arrogate to itself the authority to interpret it. The Commission stated to its Afghan interlocutors the strong message that the American public and the Congress cannot be expected to sustain support for Afghanistan if the country's new constitution does not ensure that universal human rights, including freedom of religion and belief, are fully respected. Religious freedom, including freedom of belief, freedom to manifest one's beliefs, and freedom from coercion, must be guaranteed in the new constitution as a fundamental right for every individual, whether Muslim or non-Muslim. During their meetings it was clear to the Commission that many Afghans believe the freedoms enumerated in the Universal Declaration of Human Rights and the human rights treaties are compatible with Islam. The Commission reiterated to key Afghan officials and opinion-makers that Afghanistan's successful political reconstruction and future economic development depend on the full participation of all members of Afghan society, including women and members of minority religious communities. Keeping in mind recent arrests of an editor and journalists by the Transitional Administration on the charge of "offending Islam," the Commission also stressed that all members of the society, including journalists, should be free to debate the nature and role of Islam in state and society and to question the actions and policies of officials, politicians, and political parties without fear of being accused of blasphemy, "offending Islam," or other religious charges. There are, however, some encouraging signs. As mentioned, some Muslim religious leaders and Islamic scholars told the Commission delegation that the universal human rights standards enshrined in international human rights treaties to which Afghanistan is a party are compatible with Islamic teachings. The Commission is encouraged by the dedication and courage of Afghans who are struggling to overcome the

legacy of decades of conflict and to build a more just and peaceful society. Commission Recommendations As a result of its recent visit to Afghanistan, the Commission reports the following findings: The U.S. government should insist that individual rights to freedom of religion and belief be explicitly set forth in the constitution. The constitution should also exclude the use of blasphemy, "offending Islam," apostasy or similar offenses to stifle debate or restrict religious freedom. The United States government should be prepared to do everything possible to ensure that fundamental human rights, including religious freedom and the rights of women as outlined in international human rights instruments that Afghanistan has signed, are guaranteed in the new Afghan constitution. The U.S. government, in all its activities in Afghanistan, should act to bolster the position of those reformers who respect human rights. Yet those elements in Afghan society are currently on the defensive—even threatened. They need U.S. support. Otherwise the constitution-making process may well entrench the power of the warlords and those with an Islamist or extremist agenda. The U.S. government must make clear that it and the American people expect post-Taliban Afghanistan to respect and implement the freedoms included in the universal human rights instruments that Afghanistan has signed, ratified, and supported. Although most Muslim religious leaders and Islamic scholars affirm the compatibility of universal human rights standards and Islam, there are influential figures in Afghanistan who challenge it. Thus, the United States should not shy away from insisting on guarantees of the individual right to freedom of religion and belief and other basic rights. The United States should assist Islamic legal experts to visit Afghanistan to engage their Afghan counterparts and to provide information to the Afghan public on the compatibility of Islam and human rights. The U.S. government should expand existing programs to bring Afghans to this country to see how Islam and other faiths may be practiced in a free society. Public diplomacy and education efforts must be expanded to make both elite and mass audiences aware of the importance of respect basic human rights, including religion and belief. Freedom of expression is in danger in Afghanistan. Even in Kabul, journalists have recently faced prosecution by the U.S.-supported Transitional Administration for allegedly having "offended Islam" when the real offense is political. Outside Kabul, conditions are even worse. Those who would express their political views are in peril at the hands of the warlords. Afghan reformers must be protected from accusations of blasphemy or similar charges and not face prosecution for discussing peacefully the appropriate role of Islam in Afghanistan's political and legal systems or for criticizing specific political figures or political parties, or dissenting from prevailing views and beliefs. The United States must use its influence to protect freedom of expression now when all Afghans need to debate freely their new constitution. Moreover, U.S. government influence is needed to support the incorporation of strong guarantees of freedom of expression in the new constitution to ensure such protection in the future. The U.S. government should strongly support the reconstruction in Afghanistan of a judicial sector operating under the rule of law and upholding international standards of human rights. U.S. assistance should 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. Afghanistan must not become a judicial theocracy in which activist judges abridge the internationally recognized human rights of reformers, religious minorities, women or others. Security must be improved outside Kabul in order for Afghanistan's political reconstruction to succeed. With specific regard to the process of producing a new Afghan constitution, security is critical not just during the meeting of the Constitutional Loya Jirga, but also during the process of selecting delegates to that Loya Jirga. Without adequate security, the warlords will have undue influence on the selection of delegates because of their capacity to intimidate those who are chosen to attend. Clearly, delegates will not be able to speak their consciences or for their constituencies if they fear for their safety when they return home. The recent assumption by NATO of responsibility for the International Security Assistance Force (ISAF) provides a new opportunity to assess the feasibility of expanding ISAF to major urban centers outside Kabul. The United States must provide the leadership, sound policy, and resources needed to secure freedom for all in Afghanistan. Afghanistan is at a juncture from which it can either move forward to secure greater protections for the rights of its people or fall back into Taliban-like practices. Afghanistan is closely watched as a harbinger of U.S. willingness to stay the course in Iraq. U.S. leadership and engagement in Afghanistan must be stepped up to preserve and consolidate any gains in the protection of human rights for Afghans. There is no other nation or international institution able to substitute for the United States in this daunting task. Failure will leave Afghanistan not only less free but also more unstable, contributing to regional insecurity and potentially, once again, to global terrorism that threatens U.S. interests. Background to Commission visit The Commission has for several years monitored and spoken out about the importance of ensuring religious freedom for all in Afghanistan. Even after the fall of the Taliban, the Commission continued to monitor the situation there, especially as it became increasingly apparent that religious freedom and other human rights were not being restored to all Afghans as readily as had been hoped. In January 2003, in cooperation with the George Washington University Law School, the Commission sponsored a major international forum on law and human rights in Afghanistan's post-Taliban reconstruction. The Commission facilitated the participation of a high-level Afghan delegation, including Justice Minister Karimi, Judicial Reform Commission Chairman Baha, and members of Afghanistan's Constitutional and Human Rights Commissions. The Commission has issued two major reports on Afghanistan in June 2002 and May 2003, with recommendations on U.S. policy. Having learned of the Commission's interest in Afghanistan, President Hamid Karzai, during a visit to Washington in February 2003, publicly invited the Commission to come to see conditions first-hand. In Kabul, delegation members held an intensive series of discussions with more than two dozen senior officials of the Transitional Administration and other experts, the chairs and other members of the Constitutional, Human Rights, and Judicial Reform Commissions established under the Bonn Agreement, representatives of non-governmental organizations and of Afghan civil society, religious leaders, and members of the diplomatic community, including the United Nations Assistance Mission in Afghanistan (UNAMA). Substantive meetings with senior Afghans included Vice President Niamatullah Shahrani, who also serves as Chairman of the Constitutional Commission; Vice President Abdul Karim Khalili; the Ministers of Justice, Interior, and Hajj and Islamic Endowments; Chief Justice Shinwari, and former President Burhanuddin Rabbani. During the visit, the

Commission also met with U.S. personnel assigned to Afghanistan, including Charge d'Affaires David Sedney. The Commission received the full cooperation and support of the American Embassy in Kabul, whose staff are operating under difficult and dangerous conditions. The Commission has met previously in Washington on Afghanistan issues with Secretary of State Colin Powell, National Security Advisor Condoleezza Rice, U.S. Coordinator for the Future of Afghanistan Ambassador Richard Haass, Special Presidential Envoy for Afghanistan Zalmay Khalilzad, and State Department Afghanistan Coordinator Ambassador David Johnson.

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