

2006 ANNUAL REPORT OF THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

Countries on the Commission's Watch List

Afghanistan

Though improved since the fall of the Taliban regime, conditions for freedom of religion or belief in Afghanistan became increasingly problematic in the past year. Flaws in the country's new constitution, which does not contain clear protections for the right to freedom of religion or belief for individual Afghan citizens, failed to prevent a growing number of criminal court cases that were in violation of the rights of the accused. The defects in the constitution are compounded by the current role and power of the country's Supreme Court, which continues to be headed by a man who has shown little regard for international human rights standards. 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. These developments indicate that religious extremism—even in official circles—is an increasingly viable threat in Afghanistan. In light of the very real dangers to the declared U.S. goal of instituting democracy and human rights protections in Afghanistan, the Commission has decided to place the country on its Watch List. The Commission will carefully monitor the situation in Afghanistan, in whose development the United States should continue to play a crucial role.

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 Other fundamental rights, such as the right to life and free expression, can be superseded by ordinary legislation.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 members of religious minorities, and to question interpretations of Islamic precepts without fear of retribution. 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 dissent within the Afghan population.

These concerns are not merely theoretical, as in the past year, several very troubling cases exemplifying the constitution's inadequacies came before the courts. 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. In March 2006, Abdur 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." Under Afghanistan's sharia law, 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.

Both 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 law based state where fundamental human rights are protected. The constitutional concerns are intensified by the fact that the task of interpreting many of these provisions has been left to the Supreme Court, currently headed by Chief Justice Fazl Hadi Shinwari, who has shown little tolerance for those who disagree with his hard-line interpretation of Islam. In August 2003, Chief Justice Shinwari told a visiting Commission delegation that he rejects three crucial freedoms—those of expression, religion, and equal rights for men and women—all of which are protected under the Universal Declaration of Human Rights. As a consequence of his actions, a sitting Minister in the interim Afghan government was forced to resign after she was charged with blasphemy for questioning the role of Islamic law in Afghanistan, journalists have been jailed on charges of offending Islam, and during the October 2004 presidential elections, a presidential candidate was threatened with disqualification for purported "anti-Islamic remarks" on women's rights and family law. These incidents suggest that despite the gains since 2002 and the adoption of a new constitution, religious freedom and other human rights, along with democracy itself, remain under threat from extremism.

These constitutional pitfalls have been extended to other legislation also. In 2002, Afghanistan adopted a new press law that contains a sanction against publication of “matters contrary to the principles of Islam or offensive to other religions and sects.” 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, incidents of this sort of abuse have already occurred, as when Chief Justice Shinwari in November 2004 successfully appealed to the Afghan government to have cable television taken off the air because of its “immoral” programs that insult religion. Earlier in that year, the Chief Justice had also protested the presence of female singers on radio and television and attempted to have the practice halted, though in this effort he was ultimately not successful. In January 2006, the Afghan Minister of Information, Culture, and Tourism declared that though Afghan law allows citizens access to a free press, limitations exist 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.”

Due to 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 some parts of the country. Taliban remnants remain active in various regions and continue to pose a threat to the stability of the government. Many of the human rights abuses practiced by the Taliban reportedly persist today under the rule of the regional warlords, who continue to operate in regions that are effectively outside of central government control. 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. 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.

Despite these concerns, religious freedom conditions continue to be better than under 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 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 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. In November 2005, a Hindu aid worker from India was beheaded after being abducted by Taliban forces. Although there are no churches, expatriate Christians are reportedly able to meet for informal worship services in Kabul and one or two other major 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 spoke out several times about the deteriorating situation in Afghanistan. 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. 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, Commission Vice-Chair Felice D. Gaer testified 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.

During the period that the constitution was being drafted, the Commission met with numerous high-ranking 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 key Afghan leaders, U.S. policymakers, and other experts to discuss ways of integrating adequate human rights protections into current 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 denouncing 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 the leadership, sound policy, and resources needed to secure freedom for all in Afghanistan, which regrettably appears to be reverting more and mores 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:

- vigorously support respect for the right of every individual to freedom of thought, conscience, and religion or belief in post-Taliban 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, even threatened, and these people need U.S. support to counter the influence of those with an Islamic extremist agenda;
- amplify the voices of political reformers and human rights defenders by, among other things, encouraging President Karzai to appoint independent human rights defenders to the country's independent national human rights commission;
- ensure that its 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;

- encourage President Karzai to appoint judges who understand—and who will uphold—international human rights standards, and to replace those judges trained only in religious law;
- assist legal experts to visit Afghanistan, engage their Afghan counterparts, and provide 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 see how Islam and other faiths may be practiced in a free society;
- 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; and
- direct measurable, concrete support and benefits, including the improved, country-wide security referred to above, to the Afghan people, which will, in turn, enable the Karzai government and other moderates to make the hard choices necessary to oppose religious extremism.