

AFGHANISTAN



USCIRF STATUS:

Tier 2

BOTTOM LINE:

Religious freedom conditions continued to be exceedingly poor for dissenting Sunni Muslims, as well as Shi'i Muslims, Hindus, Sikhs, Christians and Bahai's. The Taliban and other nonstate actors continue to target individuals for activity deemed "un-Islamic," and the Afghan constitution fails explicitly to protect the individual right to freedom of religion or belief.

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Conditions for religious freedom are exceedingly poor for dissenting members of the majority faith and minority religious communities. Individuals who dissent from the prevailing orthodoxy regarding Islamic beliefs and practices are subject to legal actions that violate international standards. The threat of violence by the Taliban and other armed groups is an increasing reality, as the Afghan government increases its responsibility of providing security nationwide, yet remains unable to protect citizens against violence and intimidation. Based on these concerns, USCIRF places Afghanistan on its Tier 2 list in 2013. Afghanistan has been on the Commission's Watch List every year since 2006.

BACKGROUND

Compared with the brutal rule of the Taliban, which enforced their extremist interpretation of Islamic law in most of Afghanistan between 1996 and 2001, conditions for religious freedom have markedly improved, especially for religious minorities. However, comparisons to the abusive actions of the Taliban provide an incomplete and misleading picture. Dissenting members of the majority faith and minority religious communities continue to face significant restrictions on the free practice of religion. Governmental and non-state actors have taken action against individuals for activity deemed to be "un-Islamic." In addition, the Afghan government remains unable to protect citizens against violence and intimidation by the Taliban and other armed groups.

The 2004 Afghan constitution effectively has established a restrictive interpretation of Islamic law as the law of the land, which has resulted in abuses. Individuals lack protection to dissent from state-imposed orthodoxy, debate the role and content of religion in law and society, advocate for the human rights of women and members of religious minorities, or question interpretations of Islamic precepts. In recent years, the small and vulnerable Christian community experienced a spike in arrests, with Christians being detained and some jailed (and later released) for the "crime" of apostasy. While the minority Hazara Shi'i community has experienced greater freedoms to hold public religious festivals without incident, suicide bombers targeted religious events in late 2011. Gains for women's human rights remain tenuous and reversible. Violence and intimidation by the Taliban and other insurgents pose a serious threat to the human rights of all Afghans. Finally, the potential implications for human rights protections in the efforts at national reconciliation with the Taliban and other insurgents are of serious concern.

RELIGIOUS FREEDOM CONDITIONS

Despite gains in human rights since the Taliban regime's ouster in late 2001, conditions for religious freedom are problematic. The government places limits on the freedom of expression and restrictions on

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some religious minorities, curtails women's rights, and is unable to adequately protect religious minorities from violence.

President Hamid Karzai has undercut the Afghanistan Independent Human Rights Commission (AIHRC), an independent government agency that monitors human rights. In December 2011, President Karzai dismissed

three of its nine commissioners and has yet to fill these vacancies, hindering the effectiveness of the strongest domestic human rights institution in the country.

Legal Restrictions: The United States and the international community have placed great emphasis on the 2004 Afghan constitution, particularly its language guaranteeing women's human rights and incorporating international standards. Article 7 declares "[t]he state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal

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Declaration of Human Rights.” Article 2 also provides that “followers of other religions [than Islam] are free to exercise their faith and perform their religious rites within the limits of the provisions of law.” However, the constitution does not explicitly protect the right to freedom of religion or belief for every Afghan, and provides that fundamental rights can be superseded by ordinary legislation.

These shortcomings are compounded by the interpretation and application of a vague repugnancy clause in Article 3 that states that “no law can be contrary to the beliefs and provisions of the sacred religion of Islam,” as well as Article 130, which empowers the judicial system to enforce the repugnancy clause and to apply Hanafi Shari’ah (Islamic) jurisprudence where there is no other applicable law. In addition, Article 149 of the constitution prohibits any amendments that would be contrary to the “provisions of adherence to the fundamentals of the sacred religion of Islam.”

In practice, the constitution has been interpreted and applied as establishing a restrictive interpretation of Islamic law as the law of the land and prioritizing that interpretation over human rights guarantees, which has resulted in abuses. During a 2010 visit by USCIRF staff to Kabul, government ministers and government-backed religious leaders repeatedly explained that, in their view, Islamic law trumped the constitution’s human rights provisions, as those references come later in the document and do not take precedence. In addition, Afghanistan’s highest religious body, the government-backed Ulema Council, stated in November 2012 that it wants the power to issue legally binding decrees. This would further reinforce Islamic law’s precedence over secular provisions, leaving a wide range of legal questions up to the interpretation of government-appointed clerics.

This widely-held interpretation of the constitution will become even more problematic as the Taliban’s influence increases as negotiations with insurgents move forward. The United States and President Karzai have made respecting the constitution a nonnegotiable plank in the peace talks with anti-government elements. While this appears positive on the surface, the constitution’s undefined notions of Islamic law superseding human rights guarantees could seriously undermine religious freedom and women’s human rights in the country. Any potential peace deal respecting the constitution and human rights could be meaningless, if the protection of human rights for all could be overridden by interpretations of religious law.

...THE CONSTITUTION DOES NOT EXPLICITLY PROTECT THE RIGHT TO FREEDOM OF RELIGION OR BELIEF FOR EVERY AFGHAN, AND PROVIDES THAT FUNDAMENTAL RIGHTS CAN BE SUPERSEDED BY ORDINARY LEGISLATION.

Shi’i Muslims: The situation of Afghanistan’s Shi’i Muslim community, the largest religious minority in the country, has improved markedly since the end of Taliban rule. However, insurgents still threaten its members, and the community’s future is uncertain once international forces withdraw. Most Shi’i Afghans are from the Hazara ethnic group and comprise between 10 to 19 percent of the population. Hazaras traditionally have been harshly discriminated against and segregated from the rest of society for a combination of political, ethnic, and religious reasons.

During the reporting period, Shi’i Muslims generally were able to perform their traditional Ashura public processions and rituals in Kabul without incident or hindrance. However, there continued to be sporadic attacks against Shi’i Hazaras. In November, Shi’i and Sunni students at Kabul University clashed when Shi’i students marched in an Ashura religious procession. At least one person was killed and 16 others were wounded. Notably, Shi’i processions occurred elsewhere in the city that same day without incident, one year after a suicide bomber killed more than 70 people at an Ashura procession in the capital.

Non-Muslim Religious Minorities: The penal code discriminates against religious minorities by permitting the courts to defer to Shari’ah in cases involving matters that neither the penal code nor the

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constitution explicitly address, such as apostasy and conversion, resulting in those charges being punishable by the death penalty. While the Afghan state has not executed anyone for apostasy, charges are occasionally brought against Christian converts. For instance, there were two known cases in 2010-11 of Afghans accused of conversion being prosecuted for apostasy and potentially facing death sentences. They were eventually released, with one seeking asylum in Europe. Marriage is formally restricted to Muslims; non-Muslims can marry as long as they do not publicly express their faith.

The few Afghan Christians, converts from Islam or their children, long have been forced to conceal their faith and cannot worship openly. The situation for Christians worsened in 2010, when authorities arrested 26 Christians. After their release, many fled to India, where they have applied for refugee status due to a fear of religious persecution. There were no reports of Christians being arrested due to their faith during the reporting period. The one public church in Afghanistan, which predominately was used by the

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expatriate community, closed in 2010 when the landowner reportedly breached its 99-year lease. The courts did not uphold the lease and the facility was destroyed in March 2010. The one synagogue located in Kabul is not used due to the departure of the Jewish population years ago.

Members of Afghanistan's small Baha'i community lead an essentially covert existence, particularly since May 2007 when the General Directorate of Fatwa and Accounts ruled the Baha'i faith blasphemous and all Muslim converts to the Baha'i faith apostates.

The situation of Afghanistan's small communities of Hindus and Sikhs has improved since the fall of the Taliban. Hindus and Sikhs are allowed to practice their faith and have places of public worship, but they continue to face security threats and discrimination by the government. In November 2012, Afghan security personnel and local residents reportedly prevented Sikhs from performing cremation ceremonies for their deceased relatives. In 2010, a Sikh man, Baljit

Singh, was jailed after being pulled from a customs line at the Kabul airport due to his distinctive turban. Singh, who was returning to Afghanistan after 18 years outside the country, was arrested for falsely claiming Afghan citizenship. Singh was released in July 2012, reportedly after being tricked into making a televised conversion to Islam. He was deported to the United Kingdom.

Women's Rights: Since the ouster of the Taliban, the status of women has improved, but this progress is fragile and reversible. The number of female students has increased exponentially, and women are reported to hold 27 percent of the seats in parliament, three Cabinet posts and 120 judicial positions. Despite this, women's progress in the public sphere remains threatened both by the Taliban's resurgence and the strong influence of religious traditionalists.

Despite the constitutional reservation of seats for women in government, women who seek to engage in public life often are condemned as "immoral" and targeted for intimidation, harassment, or violence by the Taliban or other extremists. In March 2012, Afghanistan's highest Islamic authority, the Ulema Council, issued a non-binding ruling stating that women were secondary to men and women should wear the burqa. The ruling did condemn forced marriages and the practice of exchanging women to settle family and tribal disputes. Problematically, President Karzai's office endorsed the decree, with President Karzai stating at a news conference that the decree "is in accordance with a Shari'ah view of our country, which all Muslims and Afghans are committed to."

The 2009 Law on Elimination of Violence against Women remains largely unenforced, and pervasive discrimination based on traditional religious interpretations continues to place women in a second-class

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status. This limits opportunities for women to obtain education, employment, and medical care. Women in Afghanistan frequently are denied equal access to legal representation and due process, especially in rural areas. Human Rights Watch reported that approximately 400 women and girls are imprisoned for morality crimes, such as running away from home or sex outside of marriage.

Women's rights advocates have expressed concern that efforts by President Karzai and the international community to persuade insurgents to end their fight and rejoin the political process could result in serious abuses of women's human rights. Female members of the 70-member High Peace Council established to seek ways to reconcile with the Taliban say they have been effectively excluded from the negotiations. The May 2012 Chicago Summit Declaration on Afghanistan, issued by troop-contributing countries to the NATO-led International Security Assistance Force (ISAF) and the government of Afghanistan, had strong language on women's rights. However, the language was in the context of respecting the Afghan constitution. As discussed above, its widespread interpretation ignoring human rights guarantees could seriously undermine religious freedom and women's human rights in the country, even if insurgents agree to abide by the constitution.

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Limits on the Freedom of Expression: As a result of the legal restrictions discussed above, Afghans cannot debate the role and content of religion in law and society, advocate for the rights of women and religious minorities, or question interpretations of Islamic precepts without fear of retribution or being charged with religious "crimes" such as apostasy, blasphemy, or insulting Islam.

During the reporting period, the government considered increasing restrictions on the media to limit programming considered religiously offensive, but the draft legislation was revised after international pressure. The move was seen as an effort to appease Taliban sympathizers. In February 2012, the Afghan government asked female television reporters to wear headscarves and not wear makeup, in response to criticism from conservative parliamentarians. In addition, the current law governing the media requires that reporting "observe the principles of Islam," another example of a vague reference to religious law the government can use to detain or harass journalists. In September 2012, Human Rights Watch reported that Afghanistan's media commission requested the attorney general investigate two Afghan media organizations for broadcasting programs considered "immoral." HRW also reported that a new media standards committee was created in October 2012 to further supervise the conduct of media outlets and journalists.

In response to the September 2012 YouTube film about the Prophet Mohammed that spurred violent protests worldwide, President Karzai condemned the film and the government blocked access to YouTube to prevent Afghans from viewing it. The government has yet to unblock access to YouTube.

Security Problems: The transition of security from International Security Assistance Forces (ISAF) to the Afghan government continues to move ahead towards the 2014 withdrawal date of combat forces, with large sections of the country now under government responsibility. The Afghan government is struggling with its expanded security responsibilities, and the serious security situation exacerbates the religious freedom and human rights problems in many parts of the country. Despite the handover of

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responsibility, President Karzai's government does not exercise full control over the country, particularly outside Kabul and the major provincial centers, even with the active support of U.S. and ISAF troops.

Taliban and other insurgents continue to stage attacks inside Afghanistan. In some areas of Afghanistan, the Taliban administer a virtual parallel state, based on their interpretation of Islamic law. In August 2012, 15 men and 2 women were beheaded by Taliban for dancing at a party. A Taliban suicide bomber attacked a mosque in Nangahar province in August 2012, killing 19, and another bomber targeted a mosque in Faryab Province during Eid celebrations in October, killing at least 42 and wounding more than 50.

The NGO the Barnabas Fund reported that the Taliban has used social media to threaten Christians. In October 2011, the Taliban released on its website a warning that any Afghan suspected of converting to Christianity will be targeted for death. In January 2012, a Taliban blog posted pictures of Christians being baptized, individual baptismal certificates, and worship times.

RECOMMENDATIONS FOR U.S. POLICY

The United States and its allies are repositioning themselves in Afghanistan, with the impending withdrawal of combat troops in 2014. The State Department did implement USCIRF's recommendation to create an interagency taskforce on religious freedom issues. USCIRF recommends that the U.S. government, both directly and in concert with its allies, increase and strengthen diplomatic, development, and military engagement to promote human rights, especially religious freedom. Helping create and protect civic space for diverse religious opinions on matters of religion and society can help counter the rise of violent religious extremism. To do so, the U.S. government should:

- ensure that human rights concerns are integrated in the reconciliation process and that the parties to any peace agreement pledge to uphold the Universal Declaration of Human Rights and not just the Afghan constitution;
- raise directly with President Karzai the importance of religious freedom, especially for dissenting Muslims, Muslim minorities, and non-Muslim minorities;
- make religious freedom and related human rights an essential element of U.S. strategy in Afghanistan and increase effective engagement on these issues, including by:
 - bolstering the position and protection of Afghans who advocate respect for human rights and religious tolerance;
 - supporting judicial-sector and legal reforms conducive to protecting human rights; and
 - including a special working group on religious tolerance in U.S.-Afghan strategic dialogues and the trilateral dialogues with the United States, Afghanistan, and Pakistan;
- create an interagency U.S. government taskforce on religious freedom in Afghanistan to ensure religious freedom issues are properly integrated into the State and Defense Department strategies concerning Afghanistan;
- ensure that international meetings and documents focusing on the situation in Afghanistan, such as meetings hosted by the International Contact Group and communiqués from donors, address the

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issues of promoting religious tolerance and ensuring freedom of thought, conscience, and religion or belief and related human rights;

- encourage the Afghan government to sponsor, with official and semi-official religious bodies, an initiative on interfaith dialogue that focuses on both intra-Islamic dialogue and engagement with different faiths;
- increase efforts to ensure that the formal and informal judicial sectors uphold international standards of human rights; and
- press the government of Afghanistan to ensure that recognized representatives of civil society, including Shi'i Muslims, members of other religious and ethnic minorities, and women, are included in the consultative Peace Jirga, the High Peace Council, the Afghan Peace and Reintegration Program, and any other reconciliation talks with anti-government elements.