

Institute on Religion and Public Policy Report: Religious Freedom in Afghanistan

Executive Summary

(1) The most significant event over the past decade affecting the status of religious freedom in Afghanistan is the fall of the repressive Taliban regime in 2001. Post-Taliban reforms under the Islamic Republic of Afghanistan were aimed at creating an environment more accepting of the Shi'a minority, other religious minorities, sectarian equality, and gender equality. Although the government made significant progress addressing religious freedom issues, considerable problems persist. In addition to continuing societal biases, the government is facing decreased control over rural areas, a resurgence of the Taliban and other traditionalist religious forces, failing infrastructure, and a return to tribal politics. These threats to the stability of the Afghan state are also a serious threat to religious freedom as evidenced by increased harassment, discrimination, and violence against religious minorities and their religious expression. If the government does not take the necessary steps to curtail the growing religious intolerance, religious freedom may become as inaccessible as it was under the Taliban.

Institute on Religion and Public Policy

(2) Twice nominated for the Nobel Peace Prize, the Institute on Religion and Public Policy is an international, inter-religious non-profit organization dedicated to ensuring freedom of religion as the foundation for security, stability, and democracy. The Institute works globally to promote fundamental rights and religious freedom in particular, with government policy-makers, religious leaders, business executives, academics, non-governmental organizations and others. The Institute encourages and assists in the effective and cooperative advancement of religious freedom throughout the world.

Legal Status

(3) The Constitution of the Islamic Republic of Afghanistan was enacted in 2004 and explicitly states that Islam is the "religion of the state," that "followers of other religions are free to exercise their faith and perform their religious rights within the limits and provisions of the law," but that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam." On the other hand, it obligates the state to adhere to international human rights standards and to "create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, realization of democracy, and to ensure national unity and equality among all ethnic groups and tribes." These constitutional provisions are internally inconsistent because they all for the free exercise of religion but limit that free exercise to laws that comply with Islamic values, which in and of itself do not comply with internationally guaranteed rights of religious freedom. Although the Constitution allows non-Muslims to practice their religion it does not provide any protection for dissent or debate about religion, and enables the government to enforce its own interpretation of Islam.

(4) According to the Constitution, the judiciary is charged with interpreting the Constitution and laws of the country, but struggles with this role because Afghanistan does not have a historical

culture of judicial review. Complicating this fact, the Constitution also provides for the application of Hanafi jurisprudence, a Sunni interpretation of Sharia law, when civil and criminal codes do not apply. Forcing Hanafi jurisprudence to fill legal gaps limits the growth of an independent judiciary that is fully capable of judicial review and constitutes a prime example of the government forcing Islamic values on the entire country.

(5) Afghanistan maintains a number of religious crime laws that do not comply with its international obligations or its own constitutional protections. The two most egregious and widely publicized religious crime laws are the apostasy law and the blasphemy law. Under the apostasy law, conversion from Islam can be punished by death if the convert does not recant within three days. The blasphemy law establishes the same three day time frame for a blasphemer to recant before facing possible execution. The death penalty is now a rare punishment for apostasy and blasphemy, but is still used in some cases.

(6) In May 2007, the General Directorate of Fatwas and Accounts and the Supreme Court ruled that the Bahai faith is distinct from Islam. This ruling means that converts will be treated as apostates and promoting the Bahai faith will be treated as blasphemy. In addition, domestic Afghan Bahais could face various other discriminatory action and punishments including having their marriages invalidated.

(7) Other areas of law restrict religious liberty. The media law prohibits publishing information that insults “the sacred religion of Islam and other religions.” In addition to the prohibitions against publishing insulting information, Article 45(6) prohibits disseminating materials that publicize or promote conversion from Islam. The media laws are vague, providing extensive room for abuse by interpretation. Thus, anything not specifically written into the law will be implied from the prevailing interpretation of Islam. A cable television station in Balkh Province was shut down in January 2006 for airing shows that were “against Islam and Afghan culture.” Subsequently, the government created a reviewing commission that fined Afghan television stations for showing “un-Islamic materials.” In November 2007, Tolo TV was banned from airing a popular soap opera. The station believes the ban is unconstitutional and continues to air the show. This resulted in a serious backlash, and in 2008 a conservative mullah threatened to blow up their antennas. The government is not the only entity pressuring the media; in 2007 a gunman invaded the home of a female radio operator, Zakia Zaki, and shot her in front of her 8 year old son because she had criticized local warlords after they warned her to change her station’s programming.

(8) In July 2006, the Ulema, a high-level, influential council of Muslim clerics, scholars, imams, and Islamic jurists, proposed a Department for the Promotion of Virtue and Prevention of Vice, which shared a number of similarities to the Taliban’s religious police force. The Minister for Religious Affairs claims the Department will not resemble the Taliban force, but many religious rights groups are concerned the Department’s enforcement division would violate universal human rights and promote a state sponsored interpretation of religion that would dictate correct views and practice. Although the Ulema submitted this proposal to Parliament it has not been enacted because it requires a presidential decree, which President Hamid Karzai has not issued. However, a local Ulema attempted in July 2007, to impose its own interpretation of religious

rules by promulgating regulations on music, paying high dowries, and having celebrations before or after a wedding.

(9) The government is attempting to counteract some of the effects of extremist forms of Islam that are rampant in the region. Although Afghanistan does not require religious groups to register, the government recently began an initiative to register mullahs. The government is also opening its own madrassahs to educate young Afghans in a tolerant and modern form of Islam as an alternative to the Taliban's use of education as a weapon. The government opened 14 madrassahs in 2007 and they plan to open at least one in each of the country's 34 provinces. In addition to state run madrassahs, the government also offers Islamic education in public school curriculum, as provided for in the Constitution. The Ministry of Education is slowly attempting to replace teachings of Jihad with moderate Islamic principles promoting human rights. The government does not teach any other religious beliefs, but there are no restrictions on parental religious teaching and non-Muslim students are not required to study Islam.

(10) High levels of corruption, insecurity, and a lack of infrastructure within the judiciary are another road block to establishing the rule of law, and consequently the protection of fundamental rights, in Afghanistan, as described in a 2007 report by the UN Development Program and Kabul University. The judiciary's lack of power and difficulty interpreting laws are resulting in a "climate of impunity" that is contributing to the weakening of democratic institutions. These weakening democratic institutions and judicial shortcomings deprive the state of the ability to adequately protect the safety, security, and rights of religious minorities throughout the country.

Official Instances of Discrimination and Abuse

(11) In 2007, Parwiz Kambaksh, a journalist and student at Balkh University, circulated a document promoting women's rights that was allegedly inconsistent with Islam. In violation of Afghanistan's international commitments, he was denied counsel and sentenced in January 2008 to death under Sharia law. Immediately after his sentencing, the upper house of Parliament issued a statement supporting the sentence, but retracted it quickly. Additionally, his sentence sparked numerous protests on both sides of the issue. He appealed his case, but it has been delayed 4 times with no date set for the next hearing.

(12) In December 2007, Ghaus Zalmai, a government press aide, was arrested and almost lynched for distributing a translation of the Koran in Dari, which had not been approved by senior religious scholars. Protests against his actions were held around the country, some demanding his execution. Although no official charges have been brought against him, Zalmai is still in prison. Malawi Mushtaq Ahmed, who sanctioned the translation, was also arrested in June 2008.

(13) Afghanistan's criminal procedure code allows the government to hold someone for 15 days in jail without bringing charges. If the investigation is ongoing, authorities may request a 15 day extension. In April 2007, an Afghan woman reported her husband, a Bahai man, to the police for blasphemy so she could have her marriage invalidated. He was imprisoned for 31 days without

being charged and without an extension being issued. His release was primarily the result of international inquiries. Following the ordeal, he fled the country fearing for his life.

(14) The Taliban enforced the “strictest interpretation of Sharia law ever seen in the Muslim world,” while they were in power from 1995-2001. Now, along with Al Qaeda, they are experiencing a resurgence, and are again becoming involved in the religious and political affairs of the state. In 2007, Taliban forces assassinated 4 religious leaders for their links to the government. Maulaw Mohammad Aslam, the head of the Balkh Ulema Council, was assassinated because Taliban insurgents believed his actions violated tenets of Islam. In December 2007, suspected Taliban militants kidnapped Maulawi Saleh Mohammad, an imam from Arghanadab, because they believed he was a government informer. The following day, local news reported he had been beheaded. In some parts of the country observers claim there is a “parallel Taliban state,” because Taliban rulers and courts are seen as less corrupt than those run by local warlords.

(15) The Taliban’s treatment of women was closely tied to its oppression of religious freedom because it egregiously violated women’s rights in the name of religion. Women’s rights improved dramatically after the fall of the Taliban, but reports show the country may now be regressing on this issue. Women’s representation in the government is dwindling, as exemplified by President Karzai’s 2006 removal of all three female cabinet members. The central government’s decreasing role in rural regions, coupled with increased tribalism, means that in rural areas women’s legal rights are frequently denied including the right to legal representation and due process. Furthermore, a 2008 UN report states that child marriage, the sale of girls into marriage, and abuse against women are all still common practices. Women continue to face the risk of divorce, ostracism, and punishment if a bride’s virginity is not confirmed through a local proof of consummation marriage tradition. Local religious officials frequently confront women about their dress and behavior; women are still often forced to wear the notoriously confining burqa.

(16) Sectarian strife between Sunni and Shi’a Muslims is often complicated by ethnic or tribal disputes. Although the Shi’a minority is treated better now than they were under Taliban, six Shi’as were killed in 2006, during an Ashura procession in Herat. Some think the violence was politically motivated because most Shia are members of the minority ethnic Hazaras. Many Sunnis resent the Shi’as’ growing political influence and claim the Shias are closely linked to Iran to discredit them.

(17) Other religious minorities constitute about 1% of the population and are significantly better off than they were under the Taliban. Despite decreased governmental discrimination, most minorities still face high levels of societal discrimination. Hindus have difficulty obtaining land for cremation ceremonies and getting government jobs. Many Sikh and Hindu children do not attend public schools because of intense harassment. Christians, on the other hand, usually hide their religious affiliation and hold secret worship services because of the high levels of societal intolerance.

Conclusion

(18) President Hamid Karzai and the Afghan government have the overwhelming task of repairing a war-torn country and healing the wounds left by Taliban rule. They have responded to international input and made relative progress in ending sectarian strife and promoting religious freedom. However, there are many legal issues which severely degrade the status of religious freedom in the country. The blasphemy and apostasy laws must be rescinded. The imposition of Sharia law on the country's populace represents a backwards step which imperils the progress which the new government has made following the overthrow of the oppressive Taliban regime. Furthermore, the government must do more to protect the rights of religious minorities such as Bahais, Hindus, Shia Muslims and Christians from both governmental and societal discrimination and abuse.

(19) In addition, recent events challenging the stability of the state are creating serious road blocks to ensuring true religious freedom. The government must continue its efforts emphasizing interfaith and inter-sect reconciliation. Of utmost concern, it must regain control over the regions slipping back to tribal rule and enforce the rule of law. The international community must support the government in its efforts and continue to promote human rights.