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## **USCIRF Annual Report 2012 - The Commission's Watch List: Afghanistan**

**FINDINGS:** Conditions for religious freedom are exceedingly poor for dissenting members of the majority faith and for minority religious communities. The Afghan constitution fails explicitly to protect the individual right to freedom of religion or belief and allows other fundamental rights to be superseded by ordinary legislation. It also contains a repugnancy clause stating that no law can be contrary to the tenets of Islam, which the government has interpreted to limit fundamental freedoms. Individuals who dissent from the prevailing orthodoxy regarding Islamic beliefs and practices are subject to legal action that violates international standards, for example prosecutions for religious "crimes" such as apostasy and blasphemy. In addition, the Afghan government remains unable, as well as at times unwilling, to protect citizens against violence and intimidation by the Taliban and other illegal armed groups.

Based on these concerns, USCIRF in 2012 again places Afghanistan on its Watch List.\* Afghanistan has been on the Commission's Watch List since 2006. In 2000 and 2001, USCIRF had recommended that the Taliban regime, then in control of most of Afghanistan's territory, be designated as a "particularly severe violator of religious freedom." The Secretary of State designated the Taliban as such in 1999 and 2000.

Despite gains in human rights since U.S. and international forces ousted the Taliban regime in late 2001, conditions for religious freedom remain very poor. The 2004 Afghan constitution effectively has established a restrictive interpretation of Islamic law as the law of the land. Afghan jurists and government officials do not view the guarantees to human rights that come later in the document as

taking precedence. 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'a 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.

**PRIORITY RECOMMENDATIONS:** Promoting religious freedom and religious tolerance should be an integral part of U.S. policy, particularly as the government of Afghanistan pursues a peace or reconciliation process with the Taliban and other anti-government insurgents. U.S. policy can better prioritize freedom of religion or belief and engage the underlying dynamics that continue to lead to religious freedom abuses. USCIRF recommends that the U.S. government: clearly state its concern that guarantees ensuring religious freedom and religious tolerance are an essential element in U.S. policy in Afghanistan; urge the inclusion of representatives of civil society, including women and members of minority communities, in any reconciliation talks; include a special working group on religious tolerance in U.S.-Afghan strategic dialogues; use its influence to support those who advocate respect for freedom of religion or belief; and increase efforts to ensure that the formal judicial sector upholds international standards of human rights for all. Additional recommendations for U.S. policy toward Afghanistan can be found at the end of this chapter.

\* Commissioner Shea dissented from the placement of Afghanistan on the Commission's Watch List. Her full dissent can be found at the end of the chapter.

## **Religious Freedom Conditions**

Compared with the brutal rule of the Taliban, which controlled most of Afghanistan from 1996 until 2001 and applied an extremist interpretation of Islamic law, 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. Religious freedom conditions today are exceedingly poor, as dissenting members of the majority faith and minority religious communities face significant restrictions on the free practice of religion.

Governmental and nonstate actors have taken action against individuals for activity deemed to be "un-Islamic," and the Afghan constitution fails explicitly to protect the individual right to freedom of religion or belief. In addition, the Afghan government remains unable, as well as at times

unwilling, to protect citizens against violence and intimidation by the Taliban and other illegal armed groups.

### *Governing and Legal Framework*

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. Foremost, Article 7 declares "[t]he state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal 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.

Given that the influence of the Taliban will likely increase as negotiations with insurgents move forward, this widely-held interpretation of the constitution becomes increasingly problematic. The United States and President Hamid Karzai have made respecting the constitution a nonnegotiable plank in the peace talks with anti-government elements. While 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. In other words, any potential peace deal could therefore be meaningless, if the protection of human rights for all could be overridden by interpretations of religious law.

Afghanistan's system of government involves religious leaders in reviewing laws and recommending government action. Foremost is the Kabul-based Ulema Council, a group of influential and mainly Sunni scholars and imams, which advises President Karzai on legal and

religious issues. The body is nominally independent, but members receive financial support from the government. In August 2010, the Ulema Council voted to demand that President Karzai implement Shari'ah law nationwide. Council representatives said that Shari'ah does not require corporal punishments, such as stoning, but rather mandates peace and women's rights. However, Shari'ah law punishments, such as stoning, were used by the Taliban during their rule. At the end of the reporting period, the Council's recommendation had not been acted upon.

In the judicial branch, the constitution requires that the chief justice be an expert in Afghan law and Islamic jurisprudence. The Supreme Court also maintains a General Directorate of *Fatwas* and Accounts. Staffed by Islamic scholars and imams, the body advises the court on issues of state and religion and issues *fatwas* in response to questions received. The Ministry of Hajj and Islamic Affairs oversees imams paid by the government and is responsible for sending Afghans on the *hajj* (pilgrimage). The Ministry of Education has attempted to implement curriculum reforms for the country's *madrassas*, with limited success due to budget constraints. It also oversees how Islam is taught in public schools. The Afghan National Army has the equivalent of Muslim chaplains called Religious and Cultural Affairs officers. For all these reasons, it becomes important that the official interpretation and application of Islamic law be consistent with international religious freedom standards.

The demands of influential religious leaders have resulted in limitations of freedom of expression in the country. In 2007, the Ulema Council urged President Karzai to limit freedom of expression, so as to "safeguard our national honors and Islamic values." A media law passed by parliament in September 2008 prohibits works and materials that are contrary to the principles of Islam, works and materials offensive to other religions and sects, and propagation of religions other than Islam. President Karzai initially vetoed the bill, but it was passed with a two-thirds majority and was promulgated in the national gazette in September 2009. Article 45 specifically prohibits production, reproduction, print, and publishing of works and materials contrary to the principles of Islam or offensive to other religions and sects. At the end of the reporting period, there were no reports of prosecutions under the law. Nevertheless, media outlets, including radio and television journalists, face pressure due to the passage of the law and by societal actors who object to particular content.

### *Continuing Security Problems*

The security situation remains serious, exacerbating the religious freedom and human rights problems in many parts of the country. The Afghan government and international forces continue to fight the Taliban and other insurgent groups. The Taliban movement is governed by the Quetta Shura, which includes the top leadership of the Afghan Taliban and Mullah Mohammed Omar. After the removal of the Taliban in late 2001, the leadership relocated to the city of Quetta in the Balochistan province of Pakistan. While a major partner during the Taliban regime, al Qaeda operatives today are considered to be present in low numbers. The other major insurgent group to the Taliban is the Haqqani network, led by Jalaluddin Haqqani, a former U.S. funded mujahidin

fighter against the Soviets, and his son Sirajuddin. The Haqqani network enjoys safe havens inside Pakistan in North Waziristan, and while it partners with the Taliban, it is not subservient.

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 International Security Assistance Forces (ISAF), which is comprised of NATO forces plus forces from 20 other nations. The Taliban and other insurgents continue to stage attacks inside Afghanistan, posing an ongoing threat to the stability of the country. Attacks have included the September 2011 assault on the U.S. Embassy in Kabul and bombings of Islamic religious sites – for instance, the main Shi'a shrine in Kabul was bombed in December 2011.

In some areas of Afghanistan, the Taliban administer a virtual parallel state where they impose their interpretation of Islamic law and custom. Some Afghans reportedly prefer Taliban courts, which they view as less corrupt than government ones. However, the Taliban and other insurgents still perpetrate political killings, torture, coercion to enforce social and religious conformity, and abuses against women and girls. In February 2012, the Taliban beheaded four individuals in southern Afghanistan during evening prayers because they were allegedly spies. Also in February, Sadeem Khan Bahader Zoi, the director of a radio station in southern Afghanistan described as "progressive," was brutally murdered in his car. The substantial disregard of human rights for all presents a persistent danger to the establishment of democracy and the rule of law throughout Afghanistan, and constitutes a serious security threat.

Protests erupted during the reporting period in response to the destruction of Qur'ans, which resulted in several deaths and injuries. After the burning of a Qur'an in Florida in March 2011, and following public comments by President Karzai, protests occurred throughout the country in April. The most violent protest was in Mazar-e-Sharif, a major city in northern Afghanistan, where protestors stormed a UN compound and killed 12 UN employees. Other violent protests occurred in Kandahar in the south.

In February 2012, American forces burned Islamic religious materials, including copies of the Qur'an, at the U.S. Bagram Air Base, in an attempt to dispose of materials from the library in the Parwan Detention Facility. "Extremist communications" reportedly had been written in the materials. American military officials apologized and said all service members will be trained on how to properly handle religious materials. President Barack Obama also sent a letter of apology to Afghan President Hamid Karzai. The Taliban issued a statement calling on Afghans to attack U.S. military bases and American soldiers for daring to "insult the holy Qur'an." In reaction to the violent protests after the burning, President Karzai urged all Afghans to not participate in violent retaliation against international forces, while also separately requesting that NATO put on trial those involved in burning the Qur'ans.

During the protests, at least 30 Afghans were killed and scores injured. In addition, in two separate incidents, individuals wearing Afghan army uniforms killed American soldiers, prompting a pullout of all NATO personnel from Afghan ministries. In northern Afghanistan, protesters threw a grenade that injured at least six U.S. service members. Protesters attempted to storm the U.S. Consulate in Herat and the United Nations compound in Kunduz, with at least nine Afghans dying between the two events. A suicide bomber also drove a truck bomb into the entrance to a NATO airbase in Jalalabad, eastern Afghanistan, killing nine Afghans and wounding many more. Despite these incidents, U.S. ambassador to Afghanistan Ryan Crocker stated that the U.S. strategy in the country will not change.

### *State Enforcement of Religious Conformity against Dissenting Muslims*

The absence of a constitutional guarantee of the individual right to freedom of thought, conscience, and religion or belief and the empowerment of state-backed religious leaders to interpret arbitrarily, and the judicial system to enforce, undefined Islamic principles and a restrictive interpretation of Shari'ah law have permitted the official imposition of harsh, unfair, and at times even abusive interpretations of religious orthodoxy. As a result, 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. In meetings with USCIRF staff in Kabul in December 2010, Afghan government officials repeatedly cited religious law to justify the state's actions that limit religious freedom and basic human rights for all.

While there were no new major cases known to USCIRF during the reporting period, past cases demonstrate that the structural flaws in the Afghan legal system will allow for future abuses. For instance, in September 2009, former student journalist Parwiz Kambakhsh went into exile after being released from prison as the result of an unpublicized Presidential pardon. Kambakhsh had been sentenced to death for blasphemy in Balkh province in January 2008 for circulating material to other students, some of which he had downloaded from the Internet, concerning women's rights in Islam. Another blasphemy case similarly ended with a presidential pardon and the release of three prisoners in March 2010. In that case, in September 2008, a court in Kabul sentenced journalist Ahmed Ghous Zalmai and mosque leader Mullah Qari Mushtaq to 20 years in prison, and publisher Mohammad Ateef Noori to five years, for their roles in publishing an independent translation of the Qur'an. Authorities were influenced by religious scholars on the Ulema Council who alleged that the translation misinterpreted verses on social issues, was "un-Islamic," and did not have a parallel Arabic text next to the Dari translation.

These cases demonstrate the inadequacies of the Afghan constitution's human rights provisions and the willingness of state actors to enforce their alternative understanding of Islamic principles in ways that undercut the basic human rights guarantees of the constitution and Afghanistan's international treaty obligations on human rights for all. They also represent a problem for the

country's development as a democratic state based on the rule of law where fundamental human rights are protected. This problem has been exacerbated by the persistent weakness of the country's central government, which continues to face substantial challenges that include insecurity, a lack of basic infrastructure, massive corruption, an illegal drug trade, and unresolved human rights violations from previous conflicts that have given rise to a climate of impunity in many parts of the country.

### *The Shi'a Muslim Minority*

Despite the situation of Afghanistan's Shi'a Muslim minority having improved markedly since the end of Taliban rule, its members still are threatened by insurgents and their future is uncertain once international forces withdraw. Most Shi'a 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'a Muslims generally were able to perform their traditional *Ashura* public processions and rituals in Kabul without incident or hindrance. USCIRF staff saw large, temporary commemorative gates set up throughout Kabul in December 2010, and Shi'a Muslims with flags flying from their cars or motorcycles were a common sight. However, in December 2011 a suicide bomber attacked the main Shi'a shrine in Kabul as worshipers were entering, killing at least 56 people. Shortly afterward, explosives attached to a bicycle killed four Shi'a pilgrims in the northern city of Mazar-e Sharif. The Afghan Taliban denied involvement, but the Pakistani based terrorist group, Lashkar-i-Jhangvi, claimed responsibility. Lashkar-i-Jhangvi militants have repeatedly targeted Shi'a Muslims and Shi'a religious gatherings in Pakistan.

Hazara Shi'a Muslims participate fully in public life, including in parliament and in senior positions in the Karzai government. Fifty-nine of 249 parliamentary seats are held by Hazara Shi'a Muslims. In addition, four Ismaili Muslims, followers of a branch of Shi'a Islam, were also elected. The constitution provides that Shi'a Islamic law will be applied in cases in which both parties are Shi'a Muslims. The government's efforts in 2009 to further accommodate Shi'a practices with the adoption of a version of Shi'a family law proved controversial, however, due to provisions that many Afghan and international observers believed to be contrary to constitutional guarantees of equal rights for women, particularly in regard to women's rights in marriage.

### *Non-Muslim 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 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, there were two known cases

in 2010-11 of non-Muslims being prosecuted for apostasy and potentially facing death sentences – Said Musa and Shoaib Assadullah (see below). 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, have long been forced to conceal their faith and are unable to worship openly. The situation for Christians deteriorated after a May 2010 broadcast by Noorin TV showed Afghans being baptized. This broadcast set off a firestorm of criticism from the religious establishment. The Afghan government suspended the operations of two Christian relief groups on charges of proselytizing. Both groups rejected these assertions and reportedly have been allowed to resume their work in the country. President Karzai also tasked his ministries with tracking down converts. Reportedly, 26 individuals were arrested. The majority were released soon after. Many fled to India, where they have applied for refugee status due to a fear of religious persecution should they be forced to return.

However, Said Musa, a Christian, was detained in a Kabul prison for six months before quietly being released due to U.S. and international pressure. Musa was reported to have fled the country with his family. Later, Shoaib Assadullah was arrested in late October 2010 and was imprisoned in Mazar-i-Sharif for six months, after being accused of giving a Bible to a friend. He was released in May 2011 and his whereabouts are unknown.

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. The one public church in Afghanistan, which predominately was used by the 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.

The situation of Afghanistan's small communities of Hindus and Sikhs has improved since the fall of the Taliban, but as with other minority groups, these communities face discrimination and violence. Hindus and Sikhs are allowed to practice their faith and have places of public worship. USCIRF staff visited a Hindu temple in Kabul, located on a major road and next to a mosque.

However, Hindu leaders have complained about difficulties in finding locations to erect funeral pyres, and Hindus and Sikhs effectively are barred from most government jobs and face societal hostility and harassment. According to the Afghanistan Independent Human Rights Commission, there have been several cases of illegal seizure and occupation of Hindu owned lands in Kabul and Khost province. In these cases, according to the Hindu America Foundation, Hindus have been unable to reclaim their lands and have received little assistance from the government.

One Sikh is known to be jailed for more than 18 months. Baljit Singh was arrested on July 6, 2010, upon his return to Afghanistan after 18 years outside the country. Reportedly, he was on a flight carrying Afghan returnees and was arrested for falsely claiming Afghan citizenship. Observers state that he was detained after police noticed his distinctive Sikh turban.

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 that their faith is a form of blasphemy and that all Muslims who convert to the Baha'i faith are apostates. There were no reports, however, of anti-Baha'i incidents or court cases during the past year.

### *Women's Human Rights*

The Taliban regime severely and egregiously violated the human rights of women. Women were excluded completely from all forms of public life, including from jobs as teachers, civil servants, and journalists. Since the ouster of the Taliban, the status of women has improved, but the gains are tenuous and reversible, as space for advocating or exercising women's human rights has narrowed. Women's progress in the public sphere remains threatened both by the Taliban's resurgence and by the strong influence of religious traditionalists. Women who seek to engage in public life are often condemned as "immoral" and targeted for intimidation, harassment, or violence by the Taliban or other extremists.

The Afghan government has undertaken a number of efforts to protect women's human rights. Afghanistan has a constitutional provision on gender equality and acceded without reservation in 2003 to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the November 2010 NATO summit declaration, the government of Afghanistan reaffirmed its commitment to "respect for human rights, in particular the rights of women." During discussions with USCIRF staff in December 2010, virtually all government interlocutors, including government-backed religious leaders, made a point of citing the protection of women's human rights as a priority for the country. Their willingness to back up these words with action was less clear.

The constitution reserves for women at least 17 of the 102 seats in the upper house, and requires the election of two female delegates from each of the 34 provinces in the lower house. Currently, there are 23 women serving in the upper house, six more than the mandated bloc of 17 appointments. In the lower house, 68 women have been elected, six more than the minimum quota of 62.

The adoption of the Shi'a Personal Status Law in March 2009, which appeared to sanction marital rape and restricted the freedom of women to go outside the home, was considered by many to be a set-back for women's rights. In response, the Justice Ministry substantially revised the offending clauses in July 2009 and President Karzai signed the law. However, there are continued objections

to articles in the law that pertain to minimum age of marriage, polygamy, inheritance rights, right of self-determination, freedom of movement, sexual obligations, and guardianship.

Pervasive discrimination based on religious interpretations continues to place women in a second-class status and to limit their opportunities to obtain education, employment, and even medical care. Although the enveloping *burqa*, required during the Taliban regime, is less common in Kabul, almost all women wear some form of head covering, out of either personal piety or fear of communal pressure. In rural areas, local religious leaders continue to pressure women about their dress and most women wear the *burqa*. In March 2011, President Karzai dismissed the deputy governor of Helmand province for organizing a concert that featured female performers without headscarves.

Women in Afghanistan frequently are denied equal access to legal representation and due process, especially in rural areas in the informal justice system. Numerous reports by the UN and other international observers have documented the widespread and deeply-rooted problem of violence against women, including so-called "honor killings." The aforementioned lack of access to the legal system hampers efforts to combat violence against women, particularly domestic violence, despite Article 398 of the Afghan penal code stipulating two years' imprisonment for perpetrators who kill female relatives alleged to have committed adultery. The government has taken some steps to address this problem. According to the UN High Commissioner for Human Rights, Afghanistan's Law on the Elimination of Violence against Women (EVAW), endorsed by presidential decree in July 2009, "explicitly criminalizes rape, as well as underage and forced marriage, and other forms of violence against women."

Afghan women 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 a return to serious abuses of women's human rights. President Karzai has said he does not envision such backsliding and insisted that respecting Afghanistan's constitution be a core point of any reconciliation effort. However, some Afghan officials close to him reportedly do not rule out the possibility of amending the constitution to accommodate certain Taliban demands. In addition, the widespread interpretation of the constitution that ignores 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.

### *Reconciliation and Reintegration*

President Karzai has stated publicly that he is open to talking with anti-government insurgents, and the United States has encouraged this exploration to be an "Afghan-led and Afghan-owned process." However, the United States has conducted exploratory talks with Taliban emissaries about ending the ongoing conflict, and in January 2012 Taliban representatives agreed to establish an office in Qatar that could allow for direct negotiations. While the office cannot be used to fundraise

or run insurgent operations, President Karzai withdrew his ambassador to Qatar once it became known such an office was being considered. A reversal of the Taliban's longstanding refusal to participate in talks about the insurgency, the office reportedly will be staffed by top Taliban members close to Mullah Omar. However, Taliban members made clear that they would not cease fighting, accept the Afghan constitution, or engage with the Afghan government directly, and also requested the transfer of several of Taliban prisoners from the U.S. military prison at Guantanamo Bay.

The Qatar office gives the Taliban international credibility as a unified movement, despite the insurgency being comprised of many disparate elements. It also provides an area for discussions on a negotiated settlement away from the influences of its patron Pakistan. Secretary Clinton and other U.S. officials have said that the conditions for a political solution to the conflict include renouncing violence, cutting links with terrorist groups, and accepting the Afghan constitution. The U.S. government's focus on the Taliban historically has gone beyond military action, as the State Department designated the Taliban during its rule as a "particularly severe violator of religious freedom" in 1999 and 2000. Observers have expressed concern that negotiations may result in serious compromises on human rights and minority rights.

Afghan-led discussions with insurgents were dealt a major blow with the September 2011 assassination of Buhanuddin Rabbani, who led the High Peace Council and headed the predominately ethnic Tajik Jamiat-e Islami party. The Council was created by a vote of a 1,600 member peace jirga in June 2010, and was established the following October. While the United States welcomed Afghan-led peace efforts, human rights advocates criticized the composition of the Council, as its 68 members included former warlords and human rights violators, as well as religious scholars, and only eight women. The entire enterprise was thrown into question with Rabbani's killing, which came one week after Taliban insurgents conducted a surprise attack on several neighborhoods in Kabul. USCIRF Commissioners met with Rabbani during a visit in 2003. He was president of the country from 1992 to 1996, having fought the Soviets and then the Taliban for control of the country.

The Afghan government is implementing a lower-level reconciliation and reintegration process, called the Afghan Peace and Reintegration Program. It works to reintegrate lower-level and less ideological elements among the insurgents by encouraging them to end their armed opposition to the government and to reintegrate peacefully into society. ISAF reported in June 2011 that "reintegration is happening in 16 provinces and emerging in five to eight more." However, observers have expressed concern about the implications of reintegrating major human rights violators. In addition, the number of participants has been low, and as of June 2011, ISAF estimates did not exceed 2,000 individuals.

## **U.S. Policy**

The declared goal of U.S. policy in Afghanistan is "to disrupt, dismantle, and defeat al Qaeda while also eliminating safe havens and preventing its return to the region." The Obama administration has pursued these objectives by focusing on disrupting terrorist networks, promoting a more accountable and effective government, developing Afghan security forces, and involving the international community and the United Nations. The counterinsurgency strategy now being pursued in Afghanistan is designed to improve the security of Afghanistan's civilian population by providing better protection from insurgent violence and to strengthen Afghanistan's economy and institutions in order to increase popular support for the Afghan government.

In October 2011 testimony before the House Foreign Relations Committee, Secretary of State Hillary Clinton outlined a three point strategy of "fight, talk, and build." All three efforts are undertaken simultaneously: military action against the Taliban and other insurgents; civilian efforts to bolster the Afghan government, as well as the national economy and civil society; and diplomatic activity to bring the conflict in Afghanistan to an end while increasing regional security. She reiterated that the conditions for a political solution to the conflict include renouncing violence and peacefully entering the political process, cutting links with terrorist groups, such as al-Qaeda, and agreeing to abide by the Afghan constitution, including its protections for women and minorities. She added that coalition and Afghan forces will continue to press militarily the Taliban, the Haqqani network, and other insurgents.

This reporting period witnessed the beginning of the withdrawal of the U.S. forces that were surged into Afghanistan and brought U.S. troop levels to around 100,000, with an additional 40,000 from the nations comprising the International Security Assistance Force. In June 2011, President Obama announced that the surge had accomplished its goal of pressuring insurgents to the negotiating table and that the additional 33,000 troops would be withdrawn by September 2012, as part of a larger drawdown of overall forces through 2014. During this phased withdrawal, U.S. forces, NATO countries, and the 20 other troop-contributing nations comprising ISAF will transition to a security force assistance role, moving responsibility to Afghan forces so that they will "be in the lead country-wide by the end of 2014."

To guide the future relationship, U.S. and Afghan officials are negotiating a new Strategic Partnership Declaration, to replace the one that expired after five years. USCIRF has recommended that freedom of thought, conscience, and religion or belief and related human rights be incorporated into this document, and raised this directly with Ambassador Marc Grossman, the U.S. Special Representative for Afghanistan and Pakistan. The agreement has yet to be signed over disagreements regarding the ability of U.S. forces to conduct military and security operations.

According to the Congressional Research Service, U.S. assistance to Afghanistan is intended to stabilize and strengthen the economic, social, political, and security environment in order to "blunt popular support for extremist forces in the region." Since the U.S. intervention in Afghanistan after the September 11, 2001 terrorist attacks, CRS reports that the United States has spent over \$67

billion on this effort. Approximately \$39 billion of this has been assistance to Afghan military and police forces, primarily for training and equipment. In addition, a provision was added to the FY 2012 defense spending bill providing \$1 million for the Department of Defense to conduct an outside review of U.S. strategy in Afghanistan and Pakistan. The Afghanistan/Pakistan Study Group would be comprised of experts from outside of government, but the Secretary of Defense has yet to establish the group.

The United States Embassy continued its partnership with the Ministry of Hajj and Religious Affairs in a program referred to as "Countering Extremist Voices." The focus is to "build capacity and develop a database of religious leaders for education and outreach," and to bring imams from other countries to Afghanistan, so as to "exchange ideas on religion and governance." Former USCIRF Commissioner Imam Talal Eid participated in such a program in 2011. Afghan imams also were taken to "moderate Islamic countries ... to broaden education and international contacts." In addition, the embassy's Public Affairs Section sponsored "women's radio and television programming and international visitors focused on the rights of women in Islam." The U.S. military worked with ISAF partners from Muslim countries to engage Afghan Islamic religious leaders about moderate Islam. In one effort, Jordanian and American military chaplains hosted Afghani imams on visits to Jordan associated with the hajj.

As part of its rule of law initiatives, USAID has a program engaging the informal justice system in Afghanistan. The vast majority of the Afghan population uses the traditional community-based dispute resolution mechanisms found in villages, which enjoy greater trust, are perceived as less corrupt, and have a speedier outcome than the formal courts, but are based on custom and local understanding of Islamic law. These programs seek to train practitioners in recently stabilized areas on rule of law systems, and look for ways to create linkages between the formal judicial system and these informal bodies. This approach has the support of the U.S. military, which views the informal justice system as a way to speedily remove local grievances that can be used by insurgents to create resistance to international forces.

The U.S. military also established the Afghan Local Police (ALP), separate from the Afghan National Security Forces (ANSF), which comprises the Afghan National Army (ANA) and Afghan National Police (ANP). The ALP program recruits locally, so as to defend villages and small towns from insurgent activity. Participants reportedly are vetted by a local shura council and Afghan intelligence. The program eventually will operate in 100 districts and have 30,000 ALP recruits.

However, human rights groups both inside and outside of Afghanistan fear that the informal justice system and the ALP will not respect human rights, particularly religious freedom and women's rights. Decisions of the informal justice system primarily will be based on local custom, determined by traditional male community leaders. Leading human rights figures have expressed concern to USCIRF that these local courts ignore core human rights protections. Additionally, critics note that these programs siphon resources away from efforts to reform the formal judicial sector and that it is

impossible for the Afghan government to provide any meaningful oversight of the thousands of informal bodies. Regarding the ALP, Human Rights Watch in September 2011 issued a highly critical report citing serious human rights abuses by recruits, including arbitrary detentions, rapes, and extrajudicial killings.

## **Recommendations**

In light of these circumstances, and considering the priority placed on the U.S.-Afghanistan relationship by President Obama, USCIRF recommends that the U.S. government increase and strengthen its diplomatic, development, and military engagement to promote human rights, especially religious freedom, including the freedom for diverse religious opinions on matters of religion and society.

### **I. Promoting Freedom of Religion or Belief and Religious Tolerance**

The U.S. government should:

- clearly articulate a concern for human rights for all and especially religious freedom as an essential element of U.S. policy in Afghanistan and have the Special Representative for Afghanistan and Pakistan, the American Ambassador in Kabul, the head of U.S. Central Command, and their staffs increase their effective engagement on these issues, including by:
  - – bolstering the position of Afghans who advocate respect for human rights for all and religious tolerance by supporting those advocating for human rights and religious tolerance, inter alia, by encouraging the Afghan government to fund, train, and deploy law enforcement personnel to provide them security;
  - – ensuring that U.S. assistance to educational programs promotes respect for human rights for all and religious tolerance;
  - – supporting judicial sector and legal reforms conducive to protecting human rights for all Afghans; and
  - – advocating for the integration of human rights concerns into the reconciliation process looking toward a post-conflict Afghanistan;
- amplify the voices of political reformers and human rights defenders by, among other things, encouraging President Karzai to appoint independent human rights defenders and other Afghans promoting religious freedom and tolerance to the country's independent national human rights commission, peace jirgas, and court system;
- encourage the Afghan government to sponsor, with the official and semi-official religious bodies, an initiative on interfaith dialogue, focusing on both intra-Islamic dialogue and engagement among different faiths within Afghanistan;
- include a special working group on religious tolerance in U.S.-Afghan strategic dialogues and in the trilateral dialogues with the United States, Afghanistan, and Pakistan;

- actively press for the protection of individuals against charges that may be used to stifle debate, such as blasphemy, "offending Islam," apostasy, or similar offenses, and continue to urge for the release of any individuals detained for these "crimes;"
- ensure that international meetings focusing on the situation in Afghanistan, such as meetings hosted by the International Contact Group, and the new Strategic Partnership Declaration between the United States and Afghanistan address the issue of how to make progress in ensuring freedom of thought, conscience, and religion or belief and related human rights;
- increase the training of U.S. and International Security Assistance Forces, including U.S. military chaplains, on international standards of freedom of religion or belief, to ensure that military forces conducting operations throughout Afghanistan understand international standards when engaging or partnering with Afghan religious leaders, local government officials, or Afghan local police forces; and
- use the engagement of the U.S. military's chaplains corps with Afghan Religious and Cultural Affairs officers (the Afghan equivalent to U.S. military chaplains) to help ensure that religious extremists do not infiltrate the chaplaincy corps of the Afghan army.

In order to improve the prospects for human rights in a post-conflict Afghanistan, the U.S. government should press in talks with the Taliban and other insurgent groups for:

- a guarantee of the right of every individual to freedom of thought, conscience, and religion or belief, and the protection, in law and practice, of fundamental human rights, including freedom of conscience and the equal rights of women;
- the inclusion of recognized representatives of civil society, including Shi'a Muslims, members of other religious and ethnic minorities, and women, in negotiations, as well as the consultative Peace Jirga, the High Peace Council, the Afghan Peace and Reintegration Program, and any other reconciliation talks with anti-government elements; and
- no immunity to known human rights violators and the barring of such individuals from appointive or elective office, as well as from leadership positions in political parties.

## **II. Advancing Institutional Reform**

The U.S. government should:

- increase efforts to urge and assist the Afghan government to reform the legal system and constitution to ensure that laws and judicial systems uphold international standards on human rights and religious freedom, and provide training in civil law and international human rights standards, including to state-sponsored Muslim clerics, judges, and prosecutors;
- end efforts to train practitioners from the informal justice sector, as it diverts resources away from improving the formal judicial system, and ensure that decisions violating international standards are vacated;

- urge the Afghan government to ensure that Afghan government funds neither are directed to nor indirectly support any militia, para-state actor, local police unit, or other organization credibly charged with involvement in severe human rights abuses;
- ensure that programs administered by the U.S. Agency for International Development to help develop primary and secondary education, including through printing textbooks and providing civic education, incorporate education on international standards with regard to human rights, including freedom of religion or belief, and religious tolerance;
- continue to increase public diplomacy efforts relating to religious freedom and religious tolerance, bringing delegations of Afghan religious and NGO leaders to the United States and taking American religious and NGO leaders to Afghanistan, and increasing radio and television broadcasts discussing Afghanistan's history of religious tolerance;
- fund training on religion/state issues for Afghan officials, policymakers, legal professionals, representatives of non-governmental organizations, religious leaders, and other key members of society; and
- 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 human rights, including freedom of religion or belief, and expand existing programs to bring Afghans to the United States to experience how Islam and other faiths are practiced in a free society.

### **Dissenting Statement of Commissioner Nina Shea:**

A large part of our role as USCIRF Commissioners is to assess the status of religious freedom violations around the world and to do so unburdened by other issues that preoccupy the White House and the State Department. I therefore support recommending Afghanistan for designation as a "Country of Particular Concern." Every year since 2008, I have also supported USCIRF's recommendation of CPC status for Iraq – another country where the United States fought an unpopular war against an insurgency in partnership with the local government.

Apart from the depredations of the Taliban, Afghanistan's government under President Hamid Karzai fails to respect religious freedom, and its violations are egregious, ongoing and systematic. The State Department's recent religious freedom report on Afghanistan found:

"The government's level of respect for religious freedom in law and in practice declined during the reporting period, particularly for Christian groups and individuals."

An example was the razing of that country's last remaining church after its 99-year lease was cancelled, as reported in the State Department's annual report on religious freedom just last September. This event did not draw the international protest that accompanied the Taliban's detonation of the Buddhist statues in 2001, but, with respect to the status of religious freedom, it is equally emblematic.

Afghanistan therefore has now joined the lonely company of hard-line Saudi Arabia as a country with no churches. The millions of Christians in Afghanistan, including some very beleaguered and oft-jailed converts, must hide their faith and seek the protection and secrecy of walled embassy compounds to pray in community. For perspective, it should be recognized that Qatar, another country with a Wahhabi tradition, has six open churches that are protected by the state's security forces (this opening in Qatar came about through the diplomatic efforts of Pres. Reagan's Ambassador Joseph Ghougassian in the 1980s).

The one synagogue, located in Kabul, is closed because Jews dare not venture there.

Furthermore, we learn from the State Department report that in addition to Christians, Hindu and Sikh groups are particular "targets of discrimination and persecution."

Apostasy and blasphemy codes are enforced by President Karzai's government and this is contributing to the country's radicalization. For example, even writing an article against the stoning of women can result in imprisonment for blasphemy, as was seen in the case against the Shi'a scholar Ali Mohaqeq Nasab, editor of Women's Rights magazine.

The Afghan government's slide into extreme intolerance deepened this month when, at the behest of his senior Islamic advisers, Pres. Karzai publicly backed their statement that women should not mingle with men in workplaces, schools or other areas of daily life, and should not travel without a male relative, according to a March 6, 2012, BBC report.

Afghanistan's constitution, drafted with U.S. support, embraces both religious freedom and the proposition that no law can contradict Islam. The Afghanistan government has failed to reconcile these pivotal provisions, at the expense of religious freedom.