

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	388
Land:	Afghanistan
Kilde:	United States Commission on International Religious Freedom
Titel:	USCIRF Annual Report 2011 – The Commission's Watch List: Afghanistan.
Udgivet:	28. april 2011
Optaget på baggrundsmaterialet:	10. juni 2011

Title	USCIRF Annual Report 2011 - The Commission's Watch List: Afghanistan
Publisher	United States Commission on International Religious Freedom
Country	Afghanistan
Publication Date	28 April 2011
Cite as	United States Commission on International Religious Freedom, <i>USCIRF Annual Report 2011 - The Commission's Watch List: Afghanistan</i> , 28 April 2011, available at: http://www.unhcr.org/refworld/docid/4dbe90bcc.html [accessed 7 June 2011]

USCIRF Annual Report 2011 - The Commission's Watch List: Afghanistan

[Covers April 1, 2010 to March 31, 2011]

FINDINGS: Conditions for religious freedom remain exceedingly poor for minority religious communities and dissenting members of the majority faith, despite the presence of U.S. armed forces in Afghanistan for almost 10 years and the substantial investment of lives, resources, and expertise by the United States and the international community. The 2004 Afghan constitution has effectively established 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. The government has prosecuted individuals for religious "crimes" such as apostasy and blasphemy in violation of international standards. In addition, the Afghan government remains unable to protect citizens against violence and intimidation by the Taliban and other illegal armed groups.

Based on these concerns, USCIRF in 2011 again places Afghanistan on its Watch List. The Commission will closely monitor these negative trends to determine whether conditions of freedom of religion or belief rise to a level warranting the country's designation as a "country of particular concern," or CPC. Afghanistan was first placed on the Commission's Watch List in 2006. Earlier in 2000 and 2001, USCIRF 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 the ouster of the Taliban regime in late 2001, conditions for religious freedom remain problematic. The Afghan constitution fails explicitly to protect the right to freedom of religion or belief, allows other fundamental rights to be superseded by ordinary legislation, and contains a repugnancy clause stating that no law can be contrary to the tenants of Islam. Individuals who dissent from the prevailing orthodoxy regarding Islamic beliefs and practices are subject to legal action. In the past year, the small and vulnerable Christian community experienced a spike in government arrests, with Christians being detained and some jailed for the "crime" of apostasy. At the same time, the minority Hazara Shi'a community experienced greater freedoms to hold public religious festivals without incident. Gains for women's human rights remain tenuous and reversible. Violence and intimidation by the Taliban and other insurgents poses a serious threat to the human rights of all Afghans. Serious concerns exist about the potential implications for human rights protections in the efforts at national reconciliation with the Taliban and other insurgents.

PRIORITY RECOMMENDATIONS: Promoting religious freedom and religious tolerance should be an integral part of U.S. strategy, particularly as the government of Afghanistan pursues a peace or reconciliation process with anti-government insurgents. U.S. policy has not prioritized freedom of religion or belief in Afghanistan. U.S. engagement has been reactive and has not effectively engaged 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; 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; increase efforts to ensure that the formal judicial sector upholds international standards of human rights; urge inclusion of representatives of civil society, including women and members of minority communities, in any reconciliation talks; and work to ensure that any reconciliation process does not provide immunity to known human-rights violators. Additional recommendations for U.S. policy towards Afghanistan can be found at the end of this chapter.

Religious Freedom Conditions

Governing and Legal Framework

The United States and international community have placed great emphasis on the 2004 Afghan constitution, particularly its language guaranteeing women's human rights and incorporating international standards. However, contrary to international standards, the constitution does not explicitly protect the right to freedom of religion or belief for every Afghan. It only 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." Other fundamental rights, such as the right to not be deprived of life and protections for free expression, can be superseded by ordinary legislation. These shortcomings are 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 empowering the judicial system to enforce the repugnancy clause and to apply Hanafi sharia (Islamic) jurisprudence where there is no other applicable law. In addition, the constitution prohibits any amendments that would be contrary to the "provisions of adherence to the fundamentals of the sacred religion of Islam."

In effect, the constitution has been interpreted to establish Islamic law as the law of the land. The text of the constitution tried to balance rights and religious law, but recent interpretations and application have prioritized a strict interpretation of Islamic law over human rights guarantees, and have resulted in abuses. During a December 2010 visit by USCIRF staff to Kabul, government ministers and government-backed religious leaders repeatedly explained that Islamic law trumped the constitution's human rights provisions, as those references come later in the document and do not take precedence.

This widely-held interpretation of the constitution is problematic on a number of fronts, the foremost being possible negotiations with insurgents. 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, given that the constitution's undefined notions of Islamic law are considered to supersede human rights guarantees, this could seriously undermine religious freedom and women's human rights in the country. In other words, any potential peace deal could therefore be meaningless insofar as it relates to protection of human rights.

Afghanistan's system of government involves religious leaders in reviewing laws and recommending government action. The Supreme Court maintains a special office staffed by clerics, the General Directorate of Fatwa and Accounts, which issues official fatwas on religious issues. 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 sharia law nationwide. In discussions with USCIRF staff in

Kabul, Council representatives said that sharia does not require corporal punishments, such as stoning, but peace and women's rights. However, sharia 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. The Ministry of Education has also attempted to implement curriculum reforms for the country's madrassas, with limited success. The Afghan National Army also has the equivalent of Muslim chaplains called Religious and Cultural Affairs officers.

The demands of influential religious leaders have limited freedom of expression in the country. In 2007, the Ulema Council voted to urge 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 material 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 the bill was passed with a two-thirds majority and was promulgated in the national gazette in September 2009. 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 continues to be serious, exacerbating the religious freedom and human rights problems in many parts of the country. 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. Al-Qaeda terrorists and Taliban insurgents continue to stage attacks inside Afghanistan, posing an ongoing threat to the stability of the country. Attacks have included bombings of Islamic religious sites – for instance, insurgents bombed a mosque in the capital of Takhar province in October 2010, killing the provincial governor and 12 other worshippers. In some areas of Afghanistan, the Taliban administer a virtual parallel state, based on their interpretation of Islamic law and custom and in contrast to the protections found in the Afghan constitution. Some Afghans reportedly prefer Taliban courts, which they view as less corrupt than government ones.

However, Al-Qaeda terrorists and Taliban insurgents are still associated with political killings, torture, coercion to enforce social and religious conformity, and abuses against women and girls. For instance, in August 2010, Taliban members ordered the stoning to death of a young couple for eloping in Konduz Province. In addition, in April 2009, Sitara Achakzai, a member of Kandahar's provincial council and an outspoken human rights defender, was shot and killed by two unidentified attackers. While two men were arrested by the Interior Ministry, no one has been prosecuted for the murder. The substantial disregard for human rights presents a persistent danger to the establishment of democracy and the rule of law throughout Afghanistan, and constitutes a serious security threat.

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 and the empowerment of state-backed religious leaders to interpret arbitrarily, and the judicial system to enforce, undefined Islamic principles and sharia 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 when justifying the state's actions that limit religious freedom and basic human rights.

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, a court in Kabul in September 2008 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 Koran. 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. 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

The situation of Afghanistan's Shi'a Muslim minority has improved markedly since the end of Taliban rule, when its members were severely persecuted due to religious and ethnic differences. Most Shi'a Afghans are from the Hazara ethnic group and comprise between 10 to 19 percent of the population. Hazaras have traditionally 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 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. Hazara Shi'a Muslims participate fully in public life, including in parliament and in senior positions in the Karzai government. While the September 18 elections for the lower house of the Afghan parliament were criticized for fraud, 59 of 249 parliamentary seats were given to Hazara Shi'a Muslims. In addition, four Ismaili Muslims, followers of a branch of Shi'ism, were also elected. Afghanistan's Second Vice President, Abdul Karim Khalili, is a member of the Hazara Shi'a Muslim minority. Dr. Sima Samar, head of the Afghanistan Independent Human Rights Commission (AIHRC), is also a Hazara Shi'a Muslim. The former Minister of Justice, Sarwar Danesh, is a Hazara Shi'a Muslim, the first of that community to hold that post. There were also reports that during the reporting period the Ministry of Information closed a radio station for two months, as punishment for programming that incited violence against Shi'a Muslims.

The constitution provides that Shi'a 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 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.

Despite the overall improvement for the status of the Shi'a Muslim community, its members are still threatened by insurgents. In June 2010, the decapitated corpses of 11 Hazara males were discovered in the Khas Oruzgan district of Oruzgan province. Police officials reported they were killed by the Taliban "because they were ethnic Hazaras and Shiite Muslims." There also are claims of forced expulsions of ethnic Hazaras and Tajiks from areas controlled or conquered by the Taliban, as well as harassment of these minorities throughout Taliban-controlled areas.

Non-Muslim Minorities

As previously discussed, Afghanistan's constitution states that "followers of other religions are free to practice their faith and perform their religious rites within the limits of the provisions of law." However, the Afghan constitution also declares that no law can contradict the beliefs and provisions of Islam, declares Islam the sole religion of the state, and restricts access to various public offices to Muslims. The media law prohibits the propagation of any religion other than Islam, and other laws, such as those pertaining to marriage, also discriminate against religious minorities. Marriage is formally restricted to Muslims; non-Muslims can marry as long as they do not publicly express their faith. The penal code permits the courts to defer to sharia 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 during the reporting period of non-Muslims being prosecuted for apostasy and potentially facing death sentences – Said Musa and Shoaib Assadullah (see below).

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 further in the past year, after a May 2010 broadcast by Noorin TV showed Afghans being baptized. This broadcast set off a firestorm of criticism from the conservative religious establishment, and President Karzai then stated that his ministries would track down converts. Reportedly, 20 individuals were arrested. All were released soon after, except Said Musa. Musa was detained in a Kabul prison for six months before being quietly released due to U.S. and international pressure. Musa was reported to have fled the country with his family. After the May television broadcast, the Afghan government also suspended the operations of two Christian relief groups on charges of proselytizing. Both groups rejected these assertions and reportedly have been allowed to continue their work in the country. Shoaib Assadullah was arrested in late October 2010 and was been imprisoned in Mazar-i-Sharif for six months, after being accused of giving a Bible to a friend.

As in the case of Shi'a Muslims, 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. USCIRF staff was able to visit 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 are effectively barred from most government jobs and face societal hostility and harassment.

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 completely excluded 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. 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 words with action was less clear.

The constitution reserves for women at least 17 of the 102 seats in the upper house, and for the lower house requires the election of two female delegates from each of the 34 provinces. 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 quota of 62. Non-governmental organizations report that female parliamentarians often censor what they say due to concerns about the reactions of religious conservatives.

The number of women in senior government positions has decreased since President Karzai dropped three female ministers from his cabinet in 2006. There is one female minister approved by the parliament – Minister of Work and Social Affairs, Martyrs & Disabled, Amana Afzali. There is one acting female minister – Minister of Women's Affairs, Hassan Bano Ghazanfar. There are more than 200 female judges, but no Supreme Court judges are women. The governor of one of Afghanistan's 34 provinces (Bamiyan) is a woman. A woman, Dr. Sima Samar, heads the Afghanistan Independent Human Rights Commission, a constitutional body. USCIRF hosted Dr. Samar in Washington in the fall of 2010 to discuss the status of women's human rights with Commissioners, U.S. government officials, and congressional staff.

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. However, many continue to object 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 traditional 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 new 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 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

Regarding negotiations with insurgents, the first quarter of 2011 also saw the beginning stages of a "reconciliation and reintegration" process. In 2010, President Karzai publicly stated that he was open to talking with anti-government insurgents, and he and United States officials have said that the nonnegotiable conditions for reintegration include renouncing violence, cutting links with terrorist groups, and accepting the Afghan constitution. Efforts to reintegrate the lower-level and less ideological elements among the insurgents are run through the Afghan government led Afghan Peace and Reintegration Program. The program encourages insurgents to end their armed opposition to the government and to reintegrate peacefully into society. However, observers have expressed concern about the implications of reintegrating major human rights violators. For instance, negotiations must include individuals like Gulbuddin Hikmatyar, a notorious human rights abuser and the leader of a major insurgent group, Hizb-i-Islami Gulbuddin.

Nevertheless, during the reporting period President Karzai moved ahead with these efforts and established a consultative Peace Jirga that brought together tribal leaders, including those with ties to the Taliban. (A jirga is a traditional Afghan assembly of notables, often resorted to in Afghan history to provide legitimacy to major political developments.) In June 2010, the peace jirga met with 1,600 delegates and approved the creation of a High Peace Council, which was established in October. While the United States has publicly welcomed Afghan-lead peace efforts, human rights advocates have criticized the composition of the Council, as its 68 members include former warlords and human rights violators, as well as religious scholars, and only eight women. It is led by Buhanuddin Rabbani, who heads the predominately ethnic Tajik Jamiat-e Islami party. 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. Observers are skeptical that Rabbani can negotiate a deal, noting his weak peacemaking credentials and ethnic differences with the Pashtun-dominated Taliban.

Although it has held meetings throughout the country, the High Peace Council has yet to produce any major breakthroughs, although it reports that it is working to facilitate talks between the Taliban, Hizb-i-Islami, and U.S. and ISAF officials. The council has demanded that Taliban members be removed from the UN list of terrorists and that the United States release from Guantanamo detention a former interior minister alleged to be close to Osama bin Laden. The council concluded that these actions would bolster talks with insurgents.

U.S. Policy

The declared goal of U.S. policy in Afghanistan is to "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. The Obama administration conducted a major review of its strategy for Afghanistan and Pakistan in December 2010, one year after the release of its initial strategy. President Obama announced that this strategy had brought about "significant progress" towards the core goal of disrupting, dismantling, and defeating al-Qaeda, but that challenges remain to make these gains "durable and sustainable."

In February 2011, Secretary of State Clinton identified "three mutually reinforcing tracks" in the implementation of the U.S. strategy: military action against al Qaeda and the Taliban; 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. The last component focuses on negotiating with insurgents, and the Secretary made clear that the Afghan government must "safeguard the rights of all Afghans, especially women and minorities" during this process. There have also been repeated, but unconfirmed, reports of the United States reaching out to insurgents about the possibility of negotiating a settlement. During this speech, the Secretary also announced that retired diplomat Ambassador Marc Grossman would replace the late Richard Holbrooke as the new Special Representative on Afghanistan and Pakistan.

This reporting period saw a continued intensification of U.S. military efforts in Afghanistan, with U.S. troop levels nearing 100,000, and an additional 40,000 from the nations comprising the International Security Assistance Force, with the goal of pressuring insurgents to bring them to the negotiating table. The Obama administration has stated that a withdrawal of American forces would begin in 2011, based on conditions on the ground, and would continue until 2014. This timeline was reinforced at the November 2010 NATO summit when all 28 member countries agreed to a long-term partnership between NATO and Afghanistan, lasting through 2014 and possibly beyond. At the same summit, NATO countries and the 20 other troop-contributing nations comprising ISAF decided to begin transitioning security responsibility to Afghan forces, with the intention that they "be in the lead country-wide by the end of 2014."

The State Department's 2010 *Annual Report on International Religious Freedom* included new language finding a decline in respect for religious freedom. It stated that "[r]espect for religious freedom deteriorated during the reporting period, particularly for Christian groups and individuals." It went on to state that "[t]he lack of government responsiveness and protection for these groups and individuals contributed to the deterioration of religious freedom."

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, the United States has spent almost \$54 billion on this effort. Approximately \$30 billion of this has been assistance to Afghan military and police forces, primarily for training and equipment. Of the remaining funds, generally one third has been for development and humanitarian assistance, 10 percent for counter-narcotics efforts, and only five percent for promoting good governance and democratization.

The United States substantially increased its public diplomacy efforts during the reporting period. The budget of Embassy Kabul's public affairs section reportedly increased from less than \$4 million in 2008 to \$114 million in FY2010. Under the leadership of former journalist David Ensor, the section has begun to engage the religious dynamic in Afghanistan by reaching out to tribal and religious leaders to empower moderate voices. New initiatives include a program, conducted with the U.S.

Institute of Peace, to take 100 Afghan mullahs to Egypt, Indonesia, and the United States to meet with local imams. The Fulbright program has also doubled, with approximately 60 Afghan Fulbright scholars for 2011. The International Visitors Program has doubled in the past two years, and 82 Afghans will visit the United States in 2011. In addition, there will be a tenfold increase in U.S. funding to support English language teaching and increased funding for media centers to train the next generation of journalists, both inside the country and through partnerships with American universities. In addition, the U.S. military has worked with ISAF partners from Muslim countries to engage Afghan Islamic religious leaders about moderate Islam.

As part of its rule of law initiatives, USAID has a small 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. USAID is initiating projects in 20 predominately southern provinces (out of 400 nationwide) deemed to be "key terrain districts" where counterinsurgency work is underway, and the U.S. Institute of Peace has run pilot projects in six northern districts. These programs seek to train practitioners 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.

However, human rights groups both inside and outside of Afghanistan fear that it will be difficult to ensure that these bodies respect human rights, particularly religious freedom and women's rights, given that their decisions are based on local custom determined by traditional male community leaders. Leading human rights figures expressed concern to USCIRF that these local courts will 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 over the thousands of informal bodies.

Recommendations

The U.S. government has only recently begun to respond to the Taliban's manipulation of the religious narrative to support their insurgency in the Afghan conflict. 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 religious freedom and create civic space for diverse religious opinions on matters of religion and society. With this, efforts should be undertaken to coordinate the many components of U.S. activity in Afghanistan under an overarching strategy focusing on religious engagement and religious freedom promotion. Such an effort would help preserve and consolidate the Afghan people's gains in the protection of human rights, including freedom of religion or belief, and foster increased religious tolerance.

I. Promoting Freedom of Religion or Belief and Religious Tolerance

The U.S. government should:

- clearly articulate a concern for religious freedom and related human rights as an essential element of U.S. strategy in Afghanistan and have the Special Representative for Afghanistan and Pakistan Amb. Marc Grossman, Amb. Karl Eikenberry, and General David Petraeus and their staff increase their effective engagement on these issues, including by:
 - bolstering the position of Afghans who advocate respect for human rights and religious tolerance;
 - protecting Afghans who advocate for human rights and religious tolerance

by encouraging the Afghan government to fund, train, and deploy law enforcement personnel to provide security;

- ensuring that U.S. assistance to educational programs promotes respect for human rights and religious tolerance;
 - supporting judicial sector and legal reforms conducive to protecting human rights; and
 - ensuring that human rights concerns are integrated into the reconciliation process looking toward a post-conflict Afghanistan;
- 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 with 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, create an inter-agency U.S. government task force on the protection of the freedom of thought, conscience, and religion and freedom of expression in Afghanistan and Pakistan, and direct it to recommend policies for promoting religious freedom and religious tolerance to counter violent religious extremism;
 - vigorously support respect for the right of every individual to freedom of thought, conscience, and religion or belief, and increase efforts to ensure the protection, in law and practice, of fundamental human rights, including freedom of conscience and the equal rights of women;
 - use its influence to protect freedom of religion and expression against charges that may be used to stifle debate, such as blasphemy, "offending Islam," apostasy, or similar offenses, and continue to press for the release of any individuals detained for these "crimes";
 - 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;
 - ensure that discussion of how to make progress in ensuring freedom of thought, conscience and religion and related human rights are incorporated into international meetings that focus on the situation in Afghanistan, such as meetings hosted by the International Contact Group and the upcoming meeting celebrating the 10th anniversary of the Bonn Conference, and is addressed in the anticipated new Strategic Partnership Declaration between the United States and Afghanistan;
 - increase the training of U.S. and International Security Assistance Forces, especially U.S. military chaplains, on international standards of freedom of religion or belief, to ensure that military forces conducting operations throughout Afghanistan are mindful of these 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 the government of Afghanistan, when engaging in reconciliation talks, to:

- ensure that recognized representatives of civil society, including Shi'a 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; and
- ensure that any reconciliation process does not provide immunity to known human rights violators and that such individuals are barred from appointive or elective office, as well as from leadership positions in political parties.

The U.S. government should:

- not negotiate with the Taliban leadership except to draw away less ideological individuals and elements from the Taliban structure.

II. Advancing Institutional Reform

The U.S. government should:

- 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, 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 as part of the content 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, including by encouraging regular visits by the Ambassador-at-Large for International Religious Freedom and USCIRF Commissioners, 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 religious tolerance;
- fund training on religion/state issues for Afghani officials, policymakers, legal professionals, representatives of non-governmental organizations, religious leaders, and other members of key sectors of society, including:
 - strengthening efforts to reform the judicial system by helping to develop needed infrastructure and supporting the reconstruction of a judicial sector operating under the rule of law and upholding civil law and international standards of human rights;
 - supporting efforts to reform the legal system and constitution to ensure that laws and legal systems uphold international standards on human rights and religious freedom;
 - providing training to judges and prosecutors in civil law and international human rights standards and the importance of equal access to the courts by all;

- assist legal experts in visiting Afghanistan, engaging their Afghan counterparts, and providing 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 may be practiced in a free society;
- engage the Afghan government and parliament about implementing the Law on the Elimination of Violence against Women and in further amending the Shi'a family law to bring it into line with international standards; and
- press the Afghan government to annually fund the Afghan Independent Human Rights Commission to a level allowing it to maintain and staff its office in Kabul and its satellite offices around the country and implement programs, while preserving its autonomous nature and ability to investigate human rights abuses and issue independent reports.

Statement of Chairman Leonard Leo, with whom Commissioner Nina Shea Joins:

I write separately to underscore three concerns. First, though conditions for minority Muslims have improved, the plight of the few Christians who remain has become even more dire. Roving, politically-driven arrests for conversion and the suspension of relief operations of Christian groups on dubious charges of proselytism – regardless of whether they resulted in adverse government action – send a strong signal that Christian worship is not welcome in Afghanistan's culture. So much for the Afghan Constitution's guarantee that "followers of other [non-Muslim] religions are free to practice their faith...."

Second, the plight of Christians is not likely to improve any time soon. That result is pre-ordained – built into the 2004 Afghan Constitution, which declares that no law can contradict the beliefs and provisions of Islam and that Islam is the sole religion of the state. From the moment the United States turned a blind eye to the inclusion of these provisions during the constitutional drafting process, which it oversaw, the fight for freedom of religion in Afghanistan was assured defeat.

Third, the USAID program supporting the informal justice system in Afghanistan – which can employ traditional community-based dispute resolution in villages – is deeply disappointing. To be sure, USAID's support is small, reaching only about 20 provinces, and informal tribunals enjoy local support for being less corrupt and more efficient. But it is hard to see how these bodies will be constrained in applying sharia and tribal principles that contradict international human rights standards. USAID does not offer any kind of solution to ensure otherwise, and furthermore through this approach is allowing resources and attention to be diverted from the more important enterprise of reforming the formal judicial sector.

Afghanistan may not meet the IRF Act's standards for CPC status today. But even the most casual observation makes clear that it is just a matter of time. The United States' unwillingness to place serious pressure on the Karzai government to address human rights fully will only hasten the downward slide.