

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	343
Land:	Afghanistan
Kilde:	United States Commission on International Religious Freedom.
Titel:	USCIRF Annual Report 2010 – The Commission's Watch List: Afghanistan.
Udgivet:	29. april 2010
Optaget på baggrundsmaterialet:	29. juni 2010

Title	USCIRF Annual Report 2010 - The Commission's Watch List: Afghanistan
Publisher	United States Commission on International Religious Freedom
Country	Afghanistan
Publication Date	29 April 2010
Cite as	United States Commission on International Religious Freedom, <i>USCIRF Annual Report 2010 - The Commission's Watch List: Afghanistan</i> , 29 April 2010, available at: http://www.unhcr.org/refworld/docid/4be284070.html [accessed 22 June 2010]

USCIRF Annual Report 2010 - The Commission's Watch List: Afghanistan

FINDINGS: The Afghan constitution fails to explicitly protect the right to freedom of religion or belief, allows other fundamental rights to be superseded by ordinary legislation, and contains a repugnancy clause stating that no law can be contrary to Islam. As a result, individuals lack protection to dissent from state-imposed orthodoxy, to debate the role and content of religion in law and society, to advocate for the rights of women and members of religious minorities, or to question interpretations of Islamic precepts. Doing so risks unjust accusations of religious crimes such as apostasy and blasphemy. In high-profile cases, Afghan courts have not protected freedom of religion or belief in accordance with international standards, with the result that members of the majority Muslim community have been imprisoned for exercising their internationally guaranteed rights of freedom of expression on sensitive religious or social issues. In addition, the Afghan government continues to be unable to protect citizens against violence and intimidation by the Taliban and other illegal armed groups.

Based on these concerns, the Commission continues in 2010 to place Afghanistan on its Watch List. Afghanistan was first placed on the Commission's Watch List in 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.

Conditions for religious freedom remain problematic, despite gains in human rights since the ouster of the Taliban regime in late 2001. Individuals who dissent from the prevailing orthodoxy regarding Islamic beliefs and practices are subject to legal action due to the influence of religious leaders. A government ministry announced it had destroyed Shi'a Muslim books from Iran, apparently because they contained material deemed offensive to the Sunni majority. Before final revision, a new Shi'a family or personal status law appeared to sanction marital rape and to require a husband's permission for a wife to leave home except in an emergency. Violence and intimidation by the Taliban and other insurgents poses a serious threat to human rights of all Afghans. Efforts at national reconciliation could potentially return Taliban or other insurgents hostile to international standards of human rights to positions of influence.

PRIORITY RECOMMENDATIONS: U.S. policy has not sufficiently prioritized human rights, including religious freedom, in Afghanistan. Promoting respect for freedom of religion or belief must be an integral part of U.S. strategy, particularly as the government of Afghanistan pursues a peace or reconciliation process with anti-government insurgents. USCIRF recommends the U.S. government should continue to maintain a high level of diplomatic, development assistance, and military engagement to preserve and consolidate the Afghan people's human rights gains since 2001. The U.S. government should clearly state its concern for religious freedom as an essential element in U.S.

policy in Afghanistan; use its influence to support those who advocate respect for human rights, including freedom of religion or belief; support efforts to develop a judicial sector that upholds international standards of human rights; support the promotion of respect for human rights and of religious tolerance in public education; 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

Government Policies toward Religious Groups and Activities

In January 2004, Afghanistan adopted a constitution that provides for the freedom of non-Muslim religious groups to exercise their faith, contains an explicit recognition of equality between men and women, and declares the state will abide by "the UN charter, international treaties, international conventions ... and the Universal Declaration of Human Rights." However, the constitution does not extend explicit protections for the right to freedom of religion or belief, as it only provides that "followers of other religions 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 life and 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 for a judicial system empowered to enforce the repugnancy clause and apply Hanafi sharia (Islamic) jurisprudence to cases 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."

The absence of a guarantee of the individual right to religious freedom and the empowerment of the judicial system to enforce Islamic principles and sharia law mean that the constitution does not fully protect individual Afghan citizens who dissent from state-imposed orthodoxy against unjust accusations of religious "crimes" such as apostasy and blasphemy. There are few protections for Afghans to debate the role and content of religion in law and society, to advocate the rights of women and religious minorities, and to question interpretations of Islamic precepts without fear of retribution or being charged with "insulting Islam." These legal deficiencies have permitted the official imposition of harsh, unfair, and at times even abusive interpretations of religious orthodoxy, violating the human rights of individuals.

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. Although an influential council of religious scholars pressed for the execution to be carried out, others – including human rights groups, civic organizations, and groups of journalists – staged public protests in his defense. In October 2008, an appeals court in Kabul reduced his sentence to 20 years in prison. Another blasphemy case similarly ended with a presidential pardon with the release of three prisoners on March 20, 2010, in conjunction with the Nowruz spring festival. In that case, in September 2008 a court in Kabul had sentenced veteran 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 Afghan religious scholars 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.

Such cases involving Muslim individuals exercising their internationally guaranteed rights demonstrate the inadequate guarantees for individual human rights in the Afghan constitution. These cases 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 mounting insecurity, a lack of basic infrastructure, massive corruption, an expanding 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.

Religious sensitivities, heightened by the ongoing conflict with Taliban insurgents, have limited freedom of expression in the country. There has been a "backlash" by Afghanistan's powerful traditionalist religious forces against the liberalization that occurred after the fall of the Taliban. 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 attempted to block the passage of this bill by veto, but the bill was passed with a two-thirds majority. At the end of the reporting period, the authorities do not appear to have implemented the law. Nevertheless, media outlets, including radio and television, face pressure and occasional legal action from authorities influenced by Muslim clerics who object to particular content, such as references to other religions or the scenes of women dancing common in Indian films.

These concerns about freedom of religion and expression take place in a context of declining respect for democratic norms and human rights, including with regard to freedom of speech and the press. In addition to cases involving views on religious interpretation, journalists in Afghanistan are coming under increasing pressure – and facing legal consequences – for criticizing political leaders, powerful local politicians, drug dealers, or warlords.

The security situation continues to be serious, and 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 NATO International Security Assistance Forces. As a result, the situation for religious freedom and other human rights is precarious in many parts of the country. The Taliban continues to stage attacks inside Afghanistan, posing an ongoing threat to the stability of the government. In addition, illegal militias have not been disarmed, and they, as well as some nominally allied with the government, continue to exercise power throughout the country and often perpetrate human rights abuses. These abuses include political killings, torture, coercion to enforce social and religious conformity, and abuses against women and girls, sometimes with the active support of the local courts and police. In some areas of Afghanistan, the Taliban administer a virtual parallel state, and some Afghans reportedly prefer Taliban courts, as they are seen as less corrupt than government ones. These substantial security threats present a persistent danger to the establishment of democracy and the rule of law throughout Afghanistan.

Women's Rights

The human rights of women were severely and egregiously violated in the name of religion by the Taliban regime. Since then, the status of women has improved significantly, although it remains under threat. Women, traditionally accorded a subordinate status in Afghan society, have become more prominent in public life. Women serve in both houses of Afghanistan's national parliaments (some in seats reserved for women) and in provincial councils. Record numbers of women ran as candidates in the August 2009 presidential and provincial assembly elections. Two candidates for president, seven of the candidates for vice president, and approximately 10 percent of the candidates for provincial council seats were 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. A few women also serve as judges, prosecutors, and ambassadors.

Nevertheless, women's progress in the public sphere is threatened today both by the Taliban resurgence and the continuing strong influence of religious traditionalists. Women who seek to engage in public life are likely to be seen as "immoral" by

traditionalists and to be targeted for intimidation, harassment, or violence by Taliban or other extremists. The number of women in senior government positions has decreased since President Karzai dropped three female ministers from his cabinet in 2006. Currently, the Minister of Women's Affairs is the sole female cabinet minister. There are no women on the Supreme Court.

Although the enveloping burqa, required during the Taliban regime, is less common in Kabul, almost all women wear some form of head covering, either out of 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.

Pervasive discrimination continues to place women in a second-class status and to limit their opportunities to obtain education, employment, and even medical care. Women in Afghanistan frequently are denied equal access to legal representation and due process, especially in rural areas, where traditional councils mete out justice. 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." Lack of access to the legal system hampers efforts to combat violence against women, particularly domestic violence. The government has taken some steps to combat this problem. According to the UN High Commissioner for Human Rights, Afghanistan's new Law on the Elimination of Violence against Women, endorsed by presidential decree in July 2009 but still awaiting parliamentary approval, "explicitly criminalizes rape, as well as underage and forced marriage, and other forms of violence against women."

The Shi'a Muslim Minority

The situation of Afghanistan's Shi'a Muslim minority has improved markedly since the end of Taliban rule, when they were severely persecuted. Shi'a are now able to perform their traditional *Ashura* public processions and rituals in Kabul without incident or hindrance. Shi'a participate fully in public life, including in parliament and in senior positions in the Karzai government. Afghanistan's Second Vice President, Abdul Karim Khalili, is a member of the Shi'a minority. Most Shi'a are from the Hazara ethnic group, which traditionally has been harshly discriminated against and segregated from the rest of society due to a combination of political, ethnic, and religious reasons.

The constitution provides that Shi'a law will be applied in cases in which both parties are Shi'a. The government's efforts to further accommodate Shi'a practices with the adoption of a Shi'a family or personal status law proved controversial, however, because of provisions that many Afghan and international observers believed to be contrary to constitutional guarantees of equal rights to men and women, particularly in regard to women's rights in marriage. In its original form, the law appeared to sanction marital rape and to deny wives the right to leave home without permission from their husbands, except in emergencies. In response to such criticism, the Shi'a Personal Status Law underwent a process of technical review before an amended version was endorsed by presidential decree in July 2009. The most controversial article, that appearing to sanction marital rape, was removed and others reworded. In a December 2009 report, Ms. Navanethem Pillay, the UN High Commissioner for Human Rights, stated that the law, even following these changes, "legitimizes discriminatory practices against women" and "represent(s) a set-back for women's rights" in Afghanistan. Judge Pillay personally recommended that the law be repealed.

Despite the overall improvement in respect to the Shi'a Muslim community, there was one reported instance of a restriction on the importation of Shi'a religious literature in the current reporting period. In May 2009, the Ministry of Culture and Youth Affairs announced that in late 2008 it had seized and destroyed a shipment of Shi'a religious books from Iran. The stated reason for this action was that the books were dangerous to the unity of Afghanistan because they contained interpretations of Islam offensive to members of the majority Muslim community. This action appears to have been arbitrary and extralegal in nature as there are no legal restrictions on the importation of religious texts.

Non-Muslim Minorities

Although specifying that Islam is the state religion, the 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." There were no known cases of non-Muslims being formally accused by Afghan authorities of blasphemy or prosecuted on other religious grounds. 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, as there is no longer any official discrimination. Hindus and Sikhs are allowed to practice their faith and to have places of public worship. However, they are effectively barred from most government jobs, and face societal hostility and harassment. The few Afghan Christians, converts from Islam or their children, are forced to conceal their faith and are unable to worship openly. Members of Afghanistan's small Baha'i community also 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.

U.S. Policy

During the past year, U.S. policy in Afghanistan and Pakistan, increasingly viewed as a single theater for U.S. diplomatic and military efforts, has been based on the results of a policy review announced in March 2009. The declared goal of U.S. policy in both countries is to "disrupt, dismantle, and defeat al-Qaeda and its safe havens in Pakistan, and to prevent their return to Pakistan or Afghanistan." The Obama Administration's stated objectives for achieving this goal in Afghanistan include disrupting terrorist networks, promoting a more accountable and effective government, developing Afghan security forces, and involving the international community, with an important leadership role for the UN. The counterinsurgency strategy now being pursued in Afghanistan appears to be designed to improve the security of Afghanistan's civilian population by providing better protection from insurgent violence and by better strengthening Afghanistan's economy and institutions in order to increase popular support for the Afghan government.

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 \$40 billion on this effort, just over half of which has been assistance to Afghan military and police forces (primarily for training and equipment). Approximately a third has been development and humanitarian assistance, about 10 percent has gone to counter-narcotics efforts, and only 5 percent to promoting good governance and democratization.

Early 2010 witnessed an intensification of U.S. military efforts in Afghanistan. In February 2010, U.S. forces, in conjunction with the NATO International Security Assistance Force and Afghan forces launched a major anti-Taliban offensive in Helmand province, in what was described as perhaps the largest such operation since 2001. In March 2010, preparations appeared underway for a similar offensive around Kandahar, a traditional area of Taliban support.

The first quarter of 2010 also saw the tentative, beginning stages of a peace or "reconciliation" process that could possibly bring the current conflict to an end. At an international conference on Afghanistan held in London on January 28, 2010 President Karzai sought support for plans to hold a "peace jirga" that would bring together tribal leaders, including those with ties to the Taliban, to be held in May. (A jirga is a traditional Afghan assembly of notables, often resorted to in Afghan history to provide legitimacy to major political developments.) President Karzai publicly stated that he was open to talking with anti-government insurgents who could accept the Afghan constitution and respect human rights, including the rights of Afghan women. Although the Taliban led by Mullah Omar appear to have rejected this initiative, in March 2010 a

delegation arrived in Kabul representing another major insurgent group, the faction of Hizb-i-Islami led by Gulbuddin Hikmatyar, a major mujahideen commander during the Afghan resistance to the Soviet occupation. Although there appeared to be widespread awareness among the Karzai government's international supporters of the claimed need to reintegrate into Afghan society lower-level and less ideological elements among the insurgents, some observers cautioned about the human rights implications of reintegrating notorious human rights abusers such as Hikmatyar.

Recommendations

The United States bears a special responsibility toward Afghanistan as instrumental in ousting the Taliban regime following the September 11, 2001 terrorist attacks against the United States, as the major outside actor in supporting subsequent efforts toward political and economic reconstruction, and as the major contributor to current military operations. In light of these circumstances and the priority placed on the U.S.-Afghanistan relationship by President Obama, USCIRF recommends that the U.S. government increase its diplomatic, development, and military engagement in Afghanistan to preserve and consolidate the Afghan people's gains in the protection of human rights, including freedom of religion or belief. This engagement should involve new strategies for development assistance to promote human rights, transparency and mutual accountability.

The failure of these efforts would threaten a return to the Taliban-era's repression of women and independent thinkers within the majority population. Not only would Afghanistan be less free but it would also more be unstable, thereby contributing to regional insecurity and potentially serving again as a future haven for global terrorism that threatens U.S. interests.

I. Vigorously Promoting Every Individual's Human Right to Freedom of Religion or Belief and Related Rights

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 Special Representative for Afghanistan and Pakistan Richard Holbrooke and his office increase their effective engagement on these issues, including by:
 - bolstering the position of Afghans who advocate respect for human rights and tolerance;
 - 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;
- 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, as outlined in international human rights instruments to which Afghanistan is a party;
- use its influence to protect freedom of expression against charges that may be used to stifle debate, such as blasphemy, "offending Islam," apostasy, or similar offenses, including expression on sensitive subjects such as the role of religion in society and the rights of women and members of minority groups;

- act to bolster the position of those reformers who respect, and advocate respect for, religious freedom and human rights, since those persons currently are on the defensive and are threatened and need U.S. support to counter the influence of those who advocate an Islamic extremist agenda;
- amplify the voices of political reformers and human rights defenders by, among other things, encouraging President Karzai to appoint independent human rights defenders to the country's independent national human rights commission and court system;
- in the context of increased military activity by U.S. and NATO International Security Assistance Forces throughout Afghanistan, but especially in the south, ensure that any engagement or partnership with Afghan religious leaders is mindful of international standards of freedom of religion or belief; and
- utilize 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.

II. Advancing Institutional Reform

The U.S. government should:

- 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;
- strengthen efforts to reform the judicial system, including 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;
- undertake efforts to reform the legal system to ensure that laws and legal systems uphold international standards on human rights;
- work to ensure that all judges and prosecutors are trained in civil law and international human rights standards, women are recruited into the judiciary at all levels, and all Afghans have equal access to the courts; and
- 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.

III. Integrating Human Rights into the Reconciliation Process

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 any 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 should be 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 set terms of their surrender or to draw less ideological individuals and elements away from the Taliban structure.
-