



Institute on Religion and Public Policy

Religious Freedom in Afghanistan

Executive Summary

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

Institute on Religion and Public Policy

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

Legal Status

The Constitution of the Islamic Republic of Afghanistan was enacted in 2004 and explicitly states that Islam is the "religion of the state," that "followers of other religions are free to exercise their faith and perform their religious rights within the limits and provisions of the law," but that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam." Furthermore, it obligates the state to adhere to international human rights standards and to "create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, realization of democracy, and to ensure

national unity and equality among all ethnic groups and tribes.” The greatest Constitutional limit to religious freedom is the repugnancy clause because it requires that all laws adhere to Islam and, thus, subjects all citizens to Islamic principles. Although the Constitution allows non-Muslims to practice their religion it does not provide any protection for dissent or debate about religion, and enables the government to enforce its own interpretation of Islam.

The judiciary, as created under the Constitution, is charged with interpreting the Constitution and laws of the country, but struggles with this role because Afghanistan does not have a historical culture of judicial review. Complicating this fact, the Constitution also provides for the application of Hanafi jurisprudence, a Sunni interpretation of Sharia law, when civil and criminal codes do not apply. Forcing Hanafi jurisprudence to fill legal gaps limits the growth of an independent judiciary that is fully capable of judicial review and constitutes another facet of forcing the government’s interpretation of Islamic values on the entire country. The high levels of corruption, insecurity, and lack infrastructure within the judiciary are another road block to establishing the rule of law in Afghanistan, as described in a 2007 report by the UN Development Program and Kabul University. The judiciary’s lack of power and difficulty interpreting laws are resulting in a “climate of impunity” that is contributing to the weakening of democratic institutions.

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

In July 2006, the Ulema, a high-level, influential council of Muslim clerics, scholars, imams, and Islamic jurists, proposed a Department for the Promotion of

Virtue and Prevention of Vice, which shared a number of similarities to the Taliban's religious police force. The Minister for Religious Affairs claims the Department will not resemble the Taliban force, but many religious rights groups are concerned the Department's enforcement division would violate universal human rights and promote a state sponsored interpretation of religion that would dictate correct views and practice. Although the Ulema submitted this proposal to Parliament it has not been enacted because it requires a presidential decree, which President Hamid Karzai has not issued. However, a local Ulema attempted in July 2007, to impose its own interpretation of religious rules by promulgating regulations on music, paying high dowries, and having celebrations before or after a wedding.

Afghanistan maintains a number of religious crime laws that do not comply with its international obligations including laws that make it illegal to interrupt a religious ceremony. The two most important and widely publicized religious crime laws are the apostasy law and the blasphemy law. Under the apostasy law, conversion from Islam can be punished by death if the convert does not recant within three days. The blasphemy law establishes the same time frame for a blasphemer to recant before facing possible hanging. The death penalty is now rare punishment for apostasy and blasphemy, but is still used in some cases. In May 2007, the General Directorate of Fatwas and Accounts and the Supreme Court ruled that the Bahai faith is distinct from Islam, which means that converts will be treated as apostates and promoting the Bahai faith will be treated as blasphemy. Thus, domestic Afghan Bahais could face various punishments including having their marriages invalidated.

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

There are currently a number of political movements in Afghanistan that are influencing the laws regarding religious freedom. Rural Afghans, who hold more conservative religious views than their urban counterparts, increased their support for the Taliban from 2% in 2005 to 27% in 2007. As a result, Parliamentary representatives from rural areas proposed a number of laws in April 2008 that would ban T-shirts, loud music, the mingling of women and men

in public, billiards, video games, playing with pigeons and other regulations very similar to laws from the Taliban era. This is the latest move by religious conservatives to restrict “un-Islamic influence,” but legal analysts do not expect them to pass.

Official Instances of Discrimination and Abuse

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

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

The massive international outcry over Abdul Rahman’s 2006 arrest and near execution under the apostasy may have influenced the trial’s outcome. The judge eventually dismissed the case citing a lack of evidence and Rahman’s possible mental instability. He was not convicted, but continues to receive threats to his personal safety and is currently seeking asylum.

Afghanistan’s criminal procedure code allows the government to hold someone for 15 days in jail without bringing charges. If the investigation is ongoing, authorities may request a 15 day extension. In April 2007, an Afghan woman reported her husband, a Bahai man, to the police for blasphemy so she could have her marriage invalidated. He was imprisoned for 31 days without being charged and without an extension being issued. His release was primarily the result of international inquiries. Following the ordeal, he fled the country fearing for his life.

The Taliban enforced the “strictest interpretation of Sharia law ever seen in the Muslim world,” while they were in power from 1995-2001. Now, along with Al Qa’ida, they are experiencing a resurgence, and are again becoming involved in the religious and political affairs of the state. In 2007, Taliban forces assassinated 4 religious leaders for their links to the government. Maulaw Mohammad Aslam, the head of the Balkh Ulema Council, was assassinated because Taliban insurgents believed his actions violated tenets of Islam. In December 2007, suspected Taliban militants kidnapped Maulawi Saleh

Mohammad, an imam from Arghanadab, because they believed he was a government informer. The following day, local news reported he had been beheaded. In some parts of the country observers claim there is a “parallel Taliban state,” because Taliban rulers and courts are seen as less corrupt than those run by local warlords.

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

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

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

United States Foreign Policy toward Afghanistan

The United States declared war on Afghanistan in the fall of 2001 as a part of the global War on Terror instigated to find Osama bin Laden, the mastermind behind the 9/11 attacks. The US military succeeded in overthrowing the Taliban in that same year; however troops remain in the region to find bin Laden and to keep the peace. Recently there has been a Taliban resurgence due to rural opposition

to the more liberal interpretations of Islam of the current democratic government. President Obama has pledged to continue the war in Afghanistan and is in the process of sending more troops to combat this resurgence and locate al-Qaeda leaders. In the meantime, the United States has also sent much aid to Afghanistan to relieve the suffering of the people and to help rebuild the country by repairing the infrastructure and training a new police force.

Conclusion

President Hamid Karzai and the Afghan government have the overwhelming task of repairing a war-torn country and healing the wounds left by Taliban rule. They have responded well to international input and made significant progress in ending sectarian strife and promoting religious freedom. However, recent events challenging the stability of the state are creating serious road blocks to ensuring true religious freedom. The government must continue its efforts emphasizing interfaith and inter-sect reconciliation. Of utmost concern, it must regain control over the regions slipping back to tribal rule and enforce the rule of law. The international community must support the government in its efforts and continue to promote human rights.