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**Afghanistan:
International Religious
Freedom and
US Foreign Policy**

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Abstract

This case study addresses the US push for government protection of religious freedom in Afghanistan and the challenges the concept has faced in Afghan society. In addition to providing an overview of the country's recent history and religious demographics, the core text of the case study looks at three questions: What do the Afghan Constitution and international covenants say about religious liberty? Is there a disconnect between traditional Afghan sentiments and international law when it comes to religious liberty? What are the policy options available to the United States in religious freedom advocacy? The case study features this core text along with a timeline of key events and a list of recommended publications for further reading.

About this Case Study

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INTRODUCTION



US soldiers on patrol in Afghanistan

Religious freedom in Afghanistan is both fragile and controversial. American involvement in Afghanistan has produced a lively debate about the US role in promoting religious freedom in that country. Some argue that Afghanistan's lack of religious freedom is inconsistent with American ideals and interests. The United States has long privileged individual liberty and human rights, both of which are undermined by a lack of religious liberty. However, counterarguments suggest that the United States should not pressure Kabul on religious freedom due to concerns about cultural imperialism and out of respect for national sovereignty, and furthermore, that religious freedom advocacy is not vital to US security interests in the region. Following the September 11, 2001 attacks and the flight of the Taliban later that year, the international community pledged to help Afghanistan develop into a modern, economically viable democracy. One of the many challenges it faces is in the areas of civil liberties and human rights. The United States is particularly sensitive to these issues for both historic and practical reasons, including its commitment to religious freedom under the International Religious Freedom Act, signed by President Bill Clinton in 1998. This case study examines the challenges of establishing religious freedom in Afghanistan by observing the lives of two Afghan citizens who were imprisoned under penalty of death on religiously-motivated charges: one for apostasy—leaving one's faith—and one for blasphemy—irreverence toward a faith, especially one's own. The cases present tough questions for Western governments committed to human rights and individual liberties.

HISTORICAL BACKGROUND

The Afghan Constitution of 2004 formally establishes the procedures and political institutions of democracy, including free elections, divided powers, and an independent judiciary. It also contains significant protections for civil and human rights. For example, it reaffirms Afghanistan's commitment to international treaties the nation has ratified, including the International Covenant on Civil and Political Rights (ICCPR), Article 18 of which affirms the individual's right to "freedom of thought, conscience and religion." In addition, the constitution's preamble pledges the nation to create "a civil society free of oppression (...) and based on the rule of law, social justice, protection of human rights and dignity." Article 22 guarantees the equality of all citizens before the law. However, the Afghan government's commitment to religious freedom has not been consistent with these noble—and vital—democratic goals.

In 2006, Abdul Rahman, an Afghan who had converted

to Christianity while working abroad in Pakistan, was denounced by his parents, arrested on charges of apostasy, put on trial, and threatened with the death penalty. Under massive international pressure, Afghanistan released him; Rahman fled the country and was granted asylum in Italy. Sayed Pervez Kambaksh, a 23-year-old journalism student at Balkh University in northern Afghanistan and a part-time reporter for local newspaper *Jahan-e-Naw* (The New World), was found guilty of blasphemy and sentenced to death in 2008 for distributing an essay on women's rights that questioned passages in the Qur'an. Kambaksh declared his innocence, but confessed to the crime after being tortured. His trial was held behind closed doors, without legal representation. An appellate court reduced his sentence to 20 years in prison, which the Afghan Supreme Court upheld in 2009. Again under extreme international pressure, President Hamid Karzai issued a presidential pardon and Kambaksh was flown out of the country.

RELIGIOUS DEMOGRAPHICS

Afghanistan, a tribal society, is overwhelmingly Muslim. Although a census has not been conducted in decades, the US State Department estimates that 80 percent of Afghans are Sunni Muslim, 19 percent Shi'a Muslim, 2,200 identify as Sikh or Hindus, and 400 are Baha'i. Most Christians hide their religion from others as a result of strict social pressure and fear of persecution. Estimates of the indigenous Christian community's size range from 500 to 8,000.

Non-Sunni Muslims continue to face discrimination and persecution, even after the ratification of the new Afghan Constitution. Historically, the minority Shi'a community, largely ethnic Hazara, has faced persecution from the Sunnis, and this continues today. Local Sikhs and Hindus, while permitted to practice publicly, often face discrimination when seeking government jobs, aggravation during major celebrations, and have difficulty obtaining land for cremation. As a result of harassment from teachers and students, some Sikh and Hindu children have been unable to attend government schools.



Women come to pray at Blue mosque in Mazar

CONTROVERSIES IN DRAFTING THE AFGHAN CONSTITUTION

The final text of the 2004 constitution did not contain strong provisions on religious freedom for either Muslims or non-Muslims. The document does not directly address religious freedom for Muslims; it merely states that “[t]he religion of the state of the Islamic Republic of Afghanistan is the sacred religion of Islam” (Article 2). It also provides a “repugnancy clause” in Article 3: “no law can be contrary to the beliefs and provisions of the sacred religion of Islam.” For non-Muslims, the constitution protects a limited right to “exercise their faith and perform... religious rites” (Article 2). Whatever the content of this right, however, it may only be exercised “within the limits of the provisions of law” (Article 2). More importantly, it is constrained by the repugnancy clause of Article 3, which overrides all other constitutional provisions.

Negotiating these provisions was difficult and controversial. Afghanistan is largely dominated by conservative strands of Islam. President Karzai had to please both the hardliners, who wanted to codify Islamic law, and his US patrons, who sought to ensure the constitution protected fundamental human rights (although US diplomats did not fully understand, or simply overlooked, the significance of the constitution’s constraints on religious freedom).¹

The final text resulted from eleventh-hour bargaining between Islamists, President Karzai, and international representatives. In backrooms, diplomats clarified to Islamist leaders what the international community’s red lines were, resulting in a heavily-negotiated document.² The constitution named Afghanistan the “Islamic Republic of Afghanistan,” in part due to Vice President Nematullah Shahrani’s advocacy, a move that was opposed by some members. At Karzai’s request, the conservatives accepted a measure that nominally expanded the constitutional scope of rights accorded to non-Muslims. While Article 2 had previously read that non-Muslims were “free to perform their religious rites,” it was putatively broadened by giving non-Muslims the right “to exercise their faith.”³ As a result of these negotiations, Islamists also dropped their attempts to insert an explicit reference to sharia as a check on Afghanistan’s international human

rights obligations.⁴ Article 7 “unqualifiedly requires” the state to abide by the Universal Declaration of Human Rights and all covenants to which Afghanistan is party.

Elsewhere, the constitution retained a “repugnancy clause” in Article 3, which allows the judiciary to strike down anything that is contrary to unspecified “beliefs and provisions of Islam.”⁵ While a constitutional provision of this kind is not unusual in predominantly Muslim countries, the language is a retreat from Afghanistan’s 1964 constitution, which stipulated that no Afghan law could be against “the basic principles of the sacred religion of Islam and the other values embodied in this constitution.”⁶ In an important sense, Article 3 of the 2004 constitution “goes farther than did the 1964 document toward enshrining sharia by specifying that laws cannot contradict any of Islam’s “beliefs and provisions” and by omitting the 1964 reference to other “values of this constitution.”⁷

Scholar Barry Rubin has argued that the repugnancy clause “promises to be more central to political life than in the past,”⁸ and that conflict between international human rights standards and the repugnancy clause is “almost inevitable.”⁹ Although the conservatives made formal concessions to the principles of liberal government, the repugnancy clause gave them a trump card. The constitution grants judges extraordinary powers to decide the meaning and applicability of Islam’s beliefs and provisions to Afghanistan’s legislation and presidential decrees. Afghan courts are in general controlled by jurists trained in Islamic jurisprudence, not constitutional law. In sum, the constitutional compromise has restricted human rights in Afghanistan, especially religious freedom.

One key example is apostasy. Notwithstanding the constitution’s codification of Article 18 of the ICCPR, its commitment to human dignity, and its guarantee of equality under the law, apostasy is punishable by death. Under Islamic law, converts have three days to renounce their conversion. It is true that execution for apostasy is often ignored and putting apostates to death is very rare today; torture and imprisonment are more likely.¹⁰

THE CASES OF ABDUL RAHMAN AND PARWEZ KAMBAKSH

The case of Abdul Rahman, arrested in February 2006, is an example of prosecution for apostasy. Rahman had converted to Christianity sixteen years earlier while working for a Christian NGO in Peshawar. He left the area and worked in Germany for nine years, returning in 2002. Rahman says that he returned in order to gain custody of his daughters, who had been living with his parents. His parents alerted authorities that their son had converted to Christianity, and a Bible was found in his possession.

The judge trying the case issued the following statement: “The Attorney General is emphasizing he should be hung. It is a crime to convert to Christianity from Islam. He is teasing and insulting his family by converting. (...) [W]e are not against any particular religion in the world. But in Afghanistan, this sort of thing is against the law. It is an attack on Islam.”¹¹ Other influential Afghan clerics urged the death penalty as well. The chief cleric at Haji Yacob Mosque, said: “The government is scared of the international community. But the people will kill him if he is freed. (...) There will be an uprising. The government will lose the support of the people. What sort of democracy would it be if the government ignored the will of all the people?” A member of the Afghan Ulama Council demanded, “The government is playing games. The people will not be fooled. Cut off his head! We will call on the people to pull him into pieces so there’s nothing left.” Perhaps most telling is the argument of Mirhossain Nasri of the Hossainia Mosque: “If he is allowed to live in the West then others will claim to be Christian so they can too. We must set an example. (...) He must be hanged. (...) We are a small country and we welcome the help the outside world is giving us, but please don’t interfere in this issue. We are Muslims and these are our beliefs. This is much more important to us than all the aid the world has given us.”¹²

US President George W. Bush and Pope Benedict XVI inter-

ceded in the Rahman case, along with a long list of concerned heads of state, and pressured the Karzai government to release him. In a public statement, Bush said, “It is deeply troubling that a country we helped liberate would hold a person to account because they chose a particular religion over another.” US Secretary of State Condoleezza Rice made a direct appeal to Karzai for a “favorable resolution.” Canadian Prime Minister Stephen Harper released a written statement saying, “I phoned President Karzai personally yesterday to express our concern. He conveyed to me that we don’t have to worry about any such eventual outcome.” Australian Prime Minister John Howard described the Rahman case as “appalling.” Howard said, “The idea that a person could be punished because of their religious belief and the idea that they might be executed is just beyond belief.” Speaking on behalf of the European Union, Ursula Plassnik, the Austrian Foreign Minister, said, “We will leave no stone unturned to protect the fundamental rights of Abdul Rahman and to save his life.”

With this international pressure on the Karzai government, Rahman was freed in late March 2006; the court dismissed the case due to lack of evidence. Because Rahman was in mortal danger, he was spirited out of the country.

As the Rahman case came to light in March 2006, the situation for Afghan Christians worsened. That same month, two other Afghan Christians were arrested, a convert was surrounded by six men outside of his home and severely beaten to the point of unconsciousness, and several other Afghan Christians were subject to police raids at work and home and received threatening phone calls.¹³ While Islamist extremists had murdered at least five Afghan Christians for abandoning Islam in the previous two years, the Rahman case was the first apostasy case to be prosecuted in recent decades (and under the new constitution),¹⁴ and the mere act of prosecution encouraged violence against Afghan Christians. The day after the charges

were dropped, clerics organized a demonstration with over 700 protestors in Mazar-e-Sharif calling for Rahman's head. After Rahman was released, the Parliament strongly criticized the international community's interference in the case.¹⁵

Blasphemy—which includes interpreting passages in the Qur'an in ways not accepted by elites, or denigrating the Prophet Mohammed—is a capital crime that can be punished by death under some interpretations of Islamic. Parwez Kambaksh was accused of blasphemy for writing an article that criticized the Qur'an's depiction of women. He is also alleged to have had an offending history book in his possession, “asked difficult questions” in his courses, and sent an inappropriate joke as a text message via cell phone. Kambaksh says that he did not write the offending article, but merely downloaded it and forwarded it to friends.

A year and a half after Kambaksh was detained, the court convicted him of blasphemy, sentencing him to 20 years in prison.

His lawyer, Azfal Nooristani, found out about the decision nearly a month later: “I had a legal right to see the Supreme Court judges, but they would not see me; they did not let me submit my defense statement. They had already made up their minds.”¹⁶ Elsewhere, another Afghan journalist has been charged with blasphemy for translating the Qur'an into one of Afghanistan's official languages, Dari. He also faces 20 years in prison. Human rights organizations have urged President Karzai to pardon these journalists.

International pressure also mounted against the Kambaksh affair. The British raised the case in the European Union, with the United Nations, and strongly supported a call by the UN Special Representative to Afghanistan for a review of the original verdict. US Secretary of State Rice personally raised the case with Karzai. After a petition for Kambaksh's freedom garnered 100,000 signatures and Karzai came under increasing international pressure, Karzai secretly pardoned Kambaksh and he was released from prison and flown out of Afghanistan.



US Defense Secretary Robert Gates and Afghan President Hamid Karzai

INTERNATIONAL PROVISIONS FOR RELIGIOUS FREEDOM

Afghanistan signed the Universal Declaration on Human Rights and is party to the International Covenant on Civil and Political Rights (only the latter is binding on parties). Moreover, the Afghan case takes on additional importance because of the value that Western governments put on democratization, human rights, and civil liberties there since from the fall of the Taliban in 2001. Religious freedom advocates have been critical of the Afghan government when it comes to cases like those of Rahman and Kambaksh. For instance, Thomas F. Farr, the first director of the Office of International

Religious Freedom at the US State Department, writes that the Afghan constitutional guarantees to religious freedom were not “much better than what non-Muslims were permitted to do in Saudi Arabia, which was to worship in private.”¹⁷ Furthermore, religious freedom for both Muslims and non-Muslims was fundamentally constrained by Article 3’s repugnancy clause. As legal scholar Elizabeth Ann Mayer puts it, “traditional Islamic rules affecting religious minorities could potentially be deployed under this rubric,”¹⁸ as demonstrated in the apostasy and blasphemy cases.



Mosque in Herat, Afghanistan

DEBATING THE IMPLICATIONS FOR US FOREIGN POLICY

A major goal of US intervention was to facilitate the development of a stable democracy in Afghanistan, one that would protect minority rights and set an example for the region to emulate. The Rahman and Kam-baksh cases suggest that something went profoundly awry. The Rahman case presents a dilemma for Western countries: they can press on, trying to enforce human rights norms that are largely alien to conservative Muslim societies and will frequently be rejected, or they can intervene each time another Abdul Rahman case comes to light.

Some Western human rights advocates push for greater assertiveness. They argue that Afghanistan must live up to its commitments as party to the UNDHR and IC-CPR, which explicitly guarantee individuals the right to choose their own religion. If the United States continues to intervene and reshape Islamic countries in a more liberal way, they argue, it can and should be more aggressive in the constitutional drafting process and must continue to press such governments on religious freedom.

Noah Feldman, a constitutional advisor to the Coalition Provisional Authority in Iraq and a NYU law professor, favors a slightly different model, that of “trusteeship.” Writing in this case about Iraq, Feldman argues that, “It is appropriate for us to favor—not to impose—certain substantive constitutional outcomes... But the reason to favor these outcomes must be that we believe that the vast majority of Iraqis want them.”¹⁹ Feldman believes that we “can and should encourage guarantees of religious liberty” though “our motivation must be that Iraq (and similar countries) will be a more stable and secure place if religious free-

dom is provided.”²⁰ In Feldman’s model, it is ultimately up to the local citizenry to decide how much religious freedom they want. “If Iraqis are convinced that, say, allowing foreign religious missionaries in their country would be a threat to the stability and public safety—as indeed is the (entirely plausible) concern in India, where such missionaries are typically denied resident status—then we would not be justified in insisting on a provision guaranteeing them access.”²¹

A third position is that the United States should not engage directly on the issue of religion or with religious actors in Afghanistan. Some in the foreign policy community believe that such engagement is unconstitutional.²² Others fear that US intervention in this issue would only confirm the commonly held idea that the United States wants religious freedom so that Christian missionaries can operate freely within the country. This argument acknowledges that Afghanistan ratified international human rights agreements, but did so under duress and that such values are not deeply rooted in Afghan culture. Thomas Farr proposes a more comprehensive approach. He acknowledges that “there’s no silver bullet” and that “you cannot solve [this tension] with constitutions and you cannot solve it without constitutions.”²³ The United States should have had a “strategy that work[ed] all ends of the spectrum,” a strategy that focused on both constitutions and culture.²⁴ The US government has doled out millions in efforts to develop civil society around the world, “yet these programs do not yet focus sufficiently on the most important aspect of civil society in Muslim nations: religious communities.”²⁵

The United States should be trying to develop moder-

ate voices within faith communities in the Middle East and there is no reason why grant-making organizations like the National Endowment for Democracy and its four affiliate organizations (International Republican Institute, National Democratic Institute, Center for International Private Enterprise, and The Solidarity Center) cannot work with moderate religious organizations, according to Farr. Farr also argues that the United States needs to argue that anti-blasphemy laws and apostasy laws are not in the best interest of that society, and that if a country desires liberal democracy and all of its benefits, it must embrace religious freedom. Farr cites a growing body of social science literature that suggests that where religious freedom is strong, there tends to be less armed conflict, better health, higher levels of income, more educational opportunities for women, and higher overall human development.²⁶ For example, a recent study of 143 countries concluded that countries without restrictions on conversion—

countries that do not criminalize apostasy—tend to have less overall armed conflict, better lives for women and higher levels of fundamental freedoms.²⁷

In conclusion, there is debate about whether the energetic promotion of religious freedom is in America's national interest. It is clear that there is a chasm between grand strategies that knowingly ignore religion and foreign policies that champion religious freedom. However, there does seem to be agreement that religious freedom cannot and should not be promoted by the barrel of a gun. A commitment to religious freedom must be developed within a culture to ensure that constitutional protections are actually embraced by the public. Finally, for those like Rahman or Kambaksh, as well as those persecuted for their faith identity in Kashmir, Sri Lanka, Saudi Arabia, China, or elsewhere, this is not a merely an academic debate—it may be a matter of life or death.

KEY EVENTS

January 4, 2004 Loya Jirga approves new Afghan constitution.

February 2006 Abdul Rahman arrested on charges of apostasy.

March 26, 2006 Rahman case returned to the police.

March 27, 2006 Rahman released from prison.

March 29, 2006 Rahman arrives in Italy after receiving asylum from the Italian government.

October 27, 2007 Sayed Pervez Kambaksh arrested on charges of blasphemy and “disseminating defamatory comments about Islam.”

January 22, 2008 Sayed Pervez Kambaksh sentenced to death.

February 2008 Afghan Senate withdraws demand for death sentence.

October 21, 2008 Appellate court commutes death penalty; he is sentenced to 20 years in prison.

March 2009 Afghan Supreme Court upholds 20-year blasphemy sentence for Kambaksh.

August 2009 Karzai pardons Kambaksh secretly and he is flown outside of Afghanistan.

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DISCUSSION QUESTIONS

1. What do the Afghan Constitution and international covenants say about religious liberty?
2. Is there a disconnect between traditional Afghan sentiments and international law when it comes to religious liberty?
3. What are the policy options available to the United States in religious freedom advocacy?

¹Thomas F. Farr, *World of Faith and Freedom* (Oxford: Oxford University Press, 2008), 5-7.

²Barnett R. Rubin, "Crafting a Constitution for Afghanistan," *Journal of Democracy* vol. 15, no. 3 (July 1, 2004), 14.

³*Ibid.*

⁴*Ibid.*, 14-15.

⁵*Ibid.*, 14.

⁶Article 64, 1964 Constitution. "In Afghanistan, the 1964 Constitution does not mention the shari'a but used the phrase 'basic principles of Islam.' Reference to 'the basic principles of Islam,' as in the 1964 formulation, is to be greatly preferred over the reference only to 'Islam' or to the 'shari'a.' Insertion of the term 'principles' contributes to the idea that application of Islamic teachings cannot be mechanistic, based on a frozen interpretation of Islamic law. Moreover, the term 'Islam' avoids some of the recent connotations of the term 'shari'a.' Currently, in a number of Islamic countries, reforms are being rolled back, democratic structures threatened and extreme applications of Islamic law instituted under the name of shari'a, and the term has been politicized to signal that agenda. It suggests efforts to supplant modern legal structures and impose specific interpretations of Islam, including hudud criminal penalties [apostasy included]. The term 'principles of Islam' avoids possible misunderstanding."

⁷Rubin, 15.

⁸*Ibid.*

⁹*Ibid.*

- ¹⁰Andrea Elliott, “In Kabul, A Test for Shariah,” *New York Times* (March 26, 2006). According to a staff member at USCIRF, four people in the past twenty-five years have been executed under apostasy laws: one in Sudan in 1985; two in Iran, in 1989 and 1998; and one in Saudi Arabia in 1992.
- ¹¹“Clerics demand death for Christian convert,” *Associated Press*, March 26, 2003.
- ¹²“Clerics Call for Christian Convert’s Death Despite Western Outrage,” *Associated Press*, March 26, 2003.
- ¹³“Afghanistan: More Christians Arrested in Wake of ‘Apostasy.’” *Compass Direct News*. March 22, 2006. Available at: <http://wwrn.org/articles/20957/?&place=afghanistan>
- ¹⁴*Ibid.*
- ¹⁵“Afghanistan,” *International Religious Freedom Report* 2008.
- ¹⁶Kim Sengupta, “Free at Last: Student in Hiding After Karzai’s Intervention,” *The Independent*, Published September 7, 2009, Accessed March 9, 2011, <http://independent.co.uk/news/world/asia/free-at-last-student-in-hiding-after-karzais-intervention-1782909.html>
- ¹⁷Qtd. in “Afghanistan: 20 Year Sentence for Journalist,” March 10, 2009 at <http://hrw.org/news/2009/03/10/afghanistan-20-year-sentence-journalist-upheld>
- ¹⁸Farr, 6.
- ¹⁹Mayer, 165.
- ²⁰Feldman, 83.
- ²¹*Ibid.*
- ²²Feldman, 84.
- ²³Liora Danan, *Mixed Blessings: Government Engagement with Religion in Conflict-Prone Settings*. Washington, DC: Center for Strategic and International Studies, 2007, 29.
- ²⁴Farr, Personal Interview.
- ²⁵*Ibid.*
- ²⁶Farr, “Retooling the Middle Eastern Freedom Agenda,” in *Journal of Faith and International Affairs*, Vol. 4, No. 2 (Fall 2006), 18.
- ²⁷Brian Grim, “Religious Freedom: Good for What Ails Us,” in *Journal of Faith and International Affairs*, Vol. 6, No. 2 (Summer 2008), 4; Grim, “God’s Economy: Religious Freedom & Socio-Wellbeing,” in Paul Marshall, ed. *Religious Freedom in the World* (Washington, DC: Hudson Institute, 2007).