

Universal Periodic Review – 18th Session
CSW – Stakeholder Submission
AFGHANISTAN**Introduction**

1. Christian Solidarity Worldwide (CSW) wishes to draw attention to Afghanistan's domestic human rights situation, and particularly the situation of freedom of religion or belief (FoRB), over the period 2009-2013 with respect to its international obligations.
2. To understand why these issues should be considered alongside the overwhelming number of challenges faced by Afghanistan at present, it is important to recognise that FoRB concerns are relevant to the lives of all Afghans, not simply religious minorities, particularly in light of the intimate relationship between Islam and Afghan national identity, politics, social norms and law. At present, a narrow interpretation of Islamic principles and law is the dominant accepted orthodoxy and this creates restrictions for those who want to question it, manifest alternative beliefs (whether Muslim or non-Muslim), or change their personal belief. Its influence is present in nearly all aspects of life, from family relationships and finances to human rights and criminal law. State failure to uphold and promote FoRB leads to narrowed space for debate and dominance from the most powerful (or violent) groups.

Scope of International Obligations

3. Afghanistan is a state party to several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination against Women (CEDAW), and Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

Constitutional and Legislative Framework

4. Afghanistan's Constitution, ratified in January 2004, provides the primary domestic legal framework for FoRB. However, it contains highly contradictory mandates between the formation of Afghanistan as an Islamic state and its professions of free religious worship and abidance by international human rights treaties.
5. Article 1 of the Constitution declares Afghanistan to be an "Islamic Republic" and Article 2 names Islam as the official religion of the nation. Article 3 further provides that "no law shall contravene the tenets and provisions of the holy religion of Islam," thus making Islamic law the yardstick for all Afghan jurisprudence. Similarly, the Government has stated that "Islamic teachings, principles, and scholarship are to be consulted regarding the nation's development agenda, governance institutions, and legal framework."
6. The Constitution further charges the state with developing religious teachings and regulating mosques, religious schools and religious centres (Article 17); devising a unified educational curricula based on the tenets of Islam (Article 45); and adopting necessary measures to attain physical and spiritual health of the family, including the elimination of traditions contrary to the principles of Islam (Article 54).

7. Crucially, Article 130 requires courts to apply Islamic law in the absence of applicable provisions in the Constitution or other laws. In the case of apostasy, this has serious consequences for the accused as the interpreted punishment is the death penalty.
8. The Constitution contains several significant human rights guarantees but they are not permitted to contradict the tenets and provisions of Islam. Article 2 provides that “followers of other religions shall be free within the bounds of law in the exercise and performance of their religious rituals.” Article 6 obliges the state to “create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realisation of democracy, attainment of national unity, as well as equality between all peoples and tribes”. Article 7 further requires the state to observe the United Nations Charter, international treaties to which it is a party and the Universal Declaration of Human Rights (UDHR). The Constitution declares freedom of expression to be inviolable in Article 34 and grants citizens “the right to form associations,” in Article 35.

Recommendations:

9. **Afghanistan should reintroduce a moratorium on executions with immediate effect, as a first step towards abolishment of the death penalty;**
10. **Afghanistan should uphold its commitment to FoRB in full by expanding Article 2 to include the right to change one’s beliefs, as set-out in the ICCPR, thereby decriminalising apostasy.**

Institutional and Human Rights Infrastructure

11. The Afghanistan Independent Human Rights Commission (AIHRC) was initially established pursuant to the 2001 Bonn Agreement and on the basis of decree of the Chairman of the Interim Administration on June 6, 2002. Its overarching missions are the promotion, protection and monitoring of human rights, as well as investigation of human rights cases throughout the country. The AIHRC dedicates particular attention to the rights of women, children, detainees, refugees, IDPs and returnees. FoRB and freedom of expression have not yet been a major focus.
12. Earlier positive statements from the Afghan government on human rights have been undermined by actions such as the removal of three commissioners from the Afghanistan Independent Human Rights Commission in 2011 and President Karzai’s agreement with the Ulema Council’s 2012 ruling that women are secondary to men.

Recommendations:

13. **Afghanistan should take measures to ensure that the AIHRC is not hindered in addressing violations of the rights to FoRB and freedom of expression;**
14. **Afghanistan should advance the implementation of the 2009 Law on Elimination of Violence against Women;**
15. **Afghanistan should expand human rights awareness-raising campaigns, with particular emphasis on national ownership and equal citizenship, debunking perceived connections to Western agendas;**
16. **Afghanistan should ensure that all nine commissioner positions at the AIHRC are filled to maximise effectiveness of this independent body.**

Freedom of Thought, Conscience and Religion

17. Religious minority groups in Afghanistan include Shi'a Muslims (largely ethnic Hazara groups), Hindus, Sikhs, Christians and Baha'is. Non-Muslim minorities represent a tiny proportion of the population and are vulnerable to discrimination and, in some cases, religiously-motivated violence. The current human rights framework is not strong enough to offer them protection if the Taliban or similar groups regain ground after withdrawal.
18. Afghanistan is arguably one of the most dangerous countries in which to change one's religion. There is a common perception that to be Afghan is to be Muslim, so Afghan citizens who are known to have converted out of Islam face an extremely high likelihood of suffering human rights violations. Converts to Christianity are at particular risk because of perceived connections with the international armed forces in the country. Threats to converts can originate in their own family, within the community, or from the local authorities. Repercussions range from discrimination and blackmail to murder of the convert or those close to them. With time, less extreme reactions can worsen, particularly if the fact of the conversion becomes known outside the immediate family.
19. During the reporting period, in May 2010, this situation was highlighted following a politically-motivated, anti-Christian campaign from a private television station. This campaign triggered calls from high-level leaders within the country for the immediate arrest and execution of converts to Christianity. Protest groups in four provinces called for the execution of apostates, President Karzai ordered a full investigation into the matter, two Christian humanitarian aid organisations were suspended and at least thirteen other non-governmental organisations (NGOs) came under scrutiny. Non-Christians known to be associated with Westerners were also targeted for interrogation. The two individuals kept in custody for longest were only released after intense international pressure and claimed to have experienced torture at the hands of police seeking information on other converts.
20. The Afghan public was also encouraged to denounce converts. Relocation within the country is thus no guarantee of safety, both because of the ongoing aftermath of the campaign and because news of a conversion appears to spread beyond the immediate locality (even beyond national borders), particularly where pursuers have links to the Taliban network. Increasingly, known converts are highlighted by the Taliban and other groups through social media networks online.
21. In this environment, the vast majority of Christians are forced to practice their religion in secret, to avoid backlash from both society and the Afghan authorities.

Recommendations:

22. **Afghanistan should hold accountable any officials who publically incite violence and prioritise the swift prosecution and deterrence of hate speech and incitement to violence against minority groups;**
23. **Substantive measures should be taken to strengthen the rule of law for minorities and other vulnerable groups;**
24. **Afghanistan should provide a mechanism for religious and ethnic minority concerns to be raised in broader state policy debates.**