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AFGHANISTAN

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Introduction

1. ADF International (registered name “Alliance Defending Freedom”) is a global alliance-building legal organization that advocates on behalf of religious freedom, life, and marriage and the family in front of national and international institutions. As well as having ECOSOC consultative status with the United Nations, ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Afghanistan must repeal its apostasy and blasphemy laws in order to safeguard the human rights to freedom of religion, freedom of association, and freedom of expression, as well as prevent and end all forms of religious persecution and discrimination, both by the State and by non-State actors, including violent terrorist attacks on Christians.

(a) Religious Freedom

3. Afghanistan is an overwhelmingly Muslim country with no other religious groups known publicly.¹ There are 30,000,000 Muslims living in Afghanistan, but only several thousand Christians, including international military staff, diplomats, and NGO workers, who all worship in high security military compounds.² The government prohibits worship or religious practices of other religious groups.³
4. Article 2 of the Constitution of the Islamic Republic of Afghanistan explicitly states that Islam is the official state religion.⁴ The Constitution mandates that “[n]o law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.”⁵ The post-Taliban Constitution guarantees freedom of religion while recognizing Islamic, or Sharia, law as the basis of the country’s legal system.⁶ Under Sharia law, Muslims who convert are subject to the death penalty.⁷
5. The President and Vice President of Afghanistan must belong to the state religion of Islam, and senior officials must swear allegiance to Islamic

¹ Santosh Digal, *Appeal for Afghan Christians, sentenced to death for their faith*, AsiaNews.it (Jun. 15, 2010), <http://www.asianews.it/news-en/Appeal-for-Afghan-Christians,-sentenced-to-death-for-their-faith-18680.html>.

² Lindy Lowry, *Battle Of Two Persecution Hotbeds: North Korea Vs Afghanistan*, Open Doors (Jan. 10, 2018), <https://www.opendoorsusa.org/christian-persecution/stories/battle-two-persecution-hotbeds-north-korea-vs-afghanistan/>.

³ <http://assets.pewresearch.org/wp-content/uploads/sites/11/2018/06/19164253/Restrictions-IX-FULL-REPORT-WITH-APPENDIXES.pdf>

⁴ AFG. CONST. ART. II.

⁵ AFG. CONST. ART. III.

⁶ AFG. CONST., *supra* note 4.

⁷ Lionel Beehner, *Religious Conversion and Sharia Law*, Council on Foreign Relations (Jun. 6, 2007), <https://www.cfr.org/backgrounder/religious-conversion-and-sharia-law>.

principles when reciting their oaths of office.⁸ Additionally, political parties' charters are required not to run contrary to the principles of Islam.⁹

6. Afghanistan's national government has an established organization to regulate and manage religious affairs: the Ulema Council¹⁰, a group of influential Islamic scholars, imams, and jurists, who meet regularly with government officials to advise on relevant legislation. Based *inter alia* on the Council's advice, the Government has characterized certain religious groups as dangerous "cults" or "sects".¹¹ As a result, Afghanistan's national government has formally banned religious groups even in the absence of reasonable security reasons.¹²
7. Widespread harassment and intimidation of religious minorities is rampant by the local population and government.¹³ A local TV station, Noorin TV, broadcast a documentary showing photos and videos of alleged secret Christian converts, revealing their names and faces. This documentary sparked riots in the streets with protestors demanding swift action based in Sharia law.¹⁴
8. In addition, radical religious terrorist groups have been targeting religious minorities and caused over 50 casualties in 2016 alone.¹⁵ Reports of detentions, abductions, and even deaths motivated by religious animus are numerous.¹⁶
9. In 2007, the Taliban murdered a 42-year-old South Korean Protestant church leader named Bae Hyung-kyu on his birthday in Ghazni after he was kidnapped, along with 24 members of his church, Saemmul Community Church.¹⁷ Another member of the church, 29-year-old Shim Sung-min, was killed on July 31, 2007, by the kidnappers.¹⁸
10. A 23-year-old Muslim journalist student named Sayed Parvez Kambakhsh was condemned to death for blasphemy by Afghan courts.¹⁹ He was charged with distributing blasphemous pamphlets that desecrate the

⁸ <http://assets.pewresearch.org/wp-content/uploads/sites/11/2018/06/19164253/Restrictions-IX-FULL-REPORT-WITH-APPENDIXES.pdf>

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² <http://assets.pewresearch.org/wp-content/uploads/sites/11/2018/06/19164253/Restrictions-IX-FULL-REPORT-WITH-APPENDIXES.pdf>

¹³ *Id.*

¹⁴ Digal, *supra* note 1.

¹⁵ <http://assets.pewresearch.org/wp-content/uploads/sites/11/2018/06/19164253/Restrictions-IX-FULL-REPORT-WITH-APPENDIXES.pdf>

¹⁶ *Id.*

¹⁷ ". . .for you and for all", *the Christian martyrs killed in 2007*, AsiaNews.it (Mar. 21, 2008), <http://www.asianews.it/news-en/-.-.for-you-and-for-all,-the-Christian-martyrs-killed-in-2007-11826.html>.

¹⁸ *Id.*

¹⁹ *Concern for health of young "blasphemous" journalist*, AsiaNews.it (May 27, 2008), <http://www.asianews.it/news-en/Concern-for-health-of-young-%E2%80%9Cblasphemous%E2%80%9D-journalist-12353.html>.

principles of Islam. The pamphlets discussed the rights of women in Afghanistan and questioned polygamy. He was sentenced to death under Article 130 of the Afghan constitution, which states that if no law exists regarding an issue then a court's decision should abide by Hanafi jurisprudence, an orthodox school of Sunni Islam.²⁰ While an appeal was pending, his health conditions worsened because of the poor and highly unsanitary conditions in which he was being held, as well as the severe psychological stress that he sustained since his arrest in October 2007 and his conviction in January 2008. His appeal was continuously pushed back due to his ill health, which was a direct result of his prolonged detention. Sayed was only given four minutes to defend himself with no lawyer in a closed-door trial.²¹

11. Shoaib Assadullah Musawi has been held in prison since November 2010 for sharing a copy of the Gospel with a friend. The Afghan constitution states that it guarantees freedom to practice religion, but it leaves it to the courts to determine whether Sharia law applies to many issues, including conversion.²²

(b) Blasphemy Laws

12. Afghanistan has strict blasphemy laws, which have been applied to people speaking out against Islam or its prophets.
13. It has been reported that laws are often exploited and deliberately misused against Christians by Muslim family members and neighbors. Individuals charged with blasphemy are often subject to vigilantism in the form of harassment and physical attacks. Most Christians go into hiding or leave Afghanistan for the sake of their privacy and for the physical safety of themselves and their families.
14. Under Article 7 of the Afghanistan Constitution, the state “shall” observe the United Nations Charter and the Universal Declaration of Human Rights.²³ Afghanistan’s blasphemy laws are in violation of the rights contained within Article 18 of the International Covenant on Civil and Political Rights (“ICCPR”), which guarantees the right to freedom of religion or belief, including the right to manifest one’s religion or belief—whether in public or in private. Blasphemy laws are also an egregious violation of Article 19 of the ICCPR, which ensures that all people have the right to freedom of expression and to hold opinions without governmental interference. Lastly, such laws violate Article 22, which guarantees the right to freedom of association. Mere hostility on the part of the government towards certain

²⁰ AFG. CONST. ART. CXXX.

²¹ *Death penalty for young Afghan journalist who reported on the conditions of women*, AsiaNews.it (Jan. 23, 2008), <http://www.asianews.it/news-en/Death-penalty-for-young-Afghan-journalist-who-reported-on-the-conditions-of-women-11325.html>.

²² *Christian in prison for apostasy secretly released in Kabul*, AsiaNews.it (Feb. 25, 2011), <http://www.asianews.it/news-en/Christian-in-prison-for-apostasy-secretly-released-in-Kabul--20877.html>.

²³ AFG. CONST. ART. VII.

religions is not sufficient justification for limiting this fundamental human right guaranteed under international law.

15. These freedoms are fundamental to the operation and maintenance of an open and free society, even when content that is expressed and disseminated proves unpopular or offensive.
16. Moreover, as already explained, blasphemy laws open the way to baseless allegations being launched in order to exploit the laws for cynical purposes. Even deeply religious societies must defend and respect all of its citizens and residents' human rights, including the right to freedom of religion or belief.
17. For these reasons, Afghanistan is ranked 2nd on the 2018 World Watch List of countries where it is most difficult to be a Christian.²⁴ The widespread evidence of flagrant disregard for personal freedom and violations of fundamental human rights, including of the right to freedom of thought, conscience, and belief—which includes the right to freedom of religion and right to privacy and security of a person—constitutes a serious reason for concern, requiring urgent action by the Afghan Government.

(c) Apostasy Laws

18. In Afghanistan, conversion is considered apostasy and it thought to bring shame to the convert's family and community. Ethnic antagonism plays a significant role in this regard, as Christianity is considered "Western" and therefore hostile to Afghan culture, society, and ultimately Islam.
19. An Afghan Christian convert, known as A.A. for security reasons, who is currently living in Switzerland, could face persecution, prison, or even the death penalty if the Swiss government deports him.²⁵ A.A. appealed his denial of asylum to the Strasbourg Court.
20. Sayed Mussa, a married father of six kids and an Afghan Christian convert who worked for the International Committee of the Red Cross, was held in prison for nine months after a local television station showed Afghans being baptized and praying in a secret Christian gathering. Before facing the death penalty for his conversion, he was smuggled out of the country before being convicted of apostasy. His release was credited to months of discreet diplomacy negotiations between the Afghan government and western representatives in Kabul pleading on his behalf.²⁶ His family reportedly has not heard from him.

²⁴ Open Doors, *World Watch List 2018: The 50 countries where it's most dangerous to follow Jesus* (Jan. 2018) <https://www.opendoorsusa.org/wp-content/uploads/2017/05/WWL2018-Booklet-11518.pdf>.

²⁵ *Afghan convert 'could face death' if deported from Switzerland*, World Watch Monitor (Jan. 18, 2018), <https://www.worldwatchmonitor.org/coe/afghan-convert-face-death-deported-switzerland/>.

²⁶ *Christian in prison for apostasy secretly released in Kabul*, *supra* note 22.

21. Josef, a former Muslim from Afghanistan, is currently on the run after converting to Christianity. He sought refuge from four countries in Europe, but was rejected by all of them. He has no protection from the Afghan government and his family, who is from Afghanistan and Pakistan. Both his family and the government are actively trying to kill him for apostasy.²⁷ Josef is not the only Afghan Christian in hiding. There is a group of Christians who practice their faith in secret out of fear of persecution and attend one of a handful of underground churches that allegedly operate in Afghanistan. Many Afghans have fled to India to convert, which according to MP Nazir Ahmad Hanafi, "is an offense to Islamic laws[,] and according to the Quran, they need to be executed."²⁸
22. Obaid S. Christ is one of 150 Afghan Christian refugees and asylum seekers in India who has revealed that there are many Christians living in exile in Afghanistan. Obaid asserts that he and his family were forced to flee their homeland in order to save their lives due to orders of execution issued by the Afghan government for apostasy.²⁹ He further proffers that the Afghan Home Minister and the Chairman of Afghan Intelligence told the Afghan Parliament that four Afghan Christians and one family were arrested and under investigation and that the names of Afghan Christians are listed with the Afghan Intelligence Agency. House checks by police are common and family members are under investigation and even arrested, with all Afghan believers missing.
23. Abdul Rahman is a Christian convert from Islam who was granted asylum by Italy after the Afghan parliament called on the national authorities to prevent Abdul from leaving the country after he was charged with apostasy.³⁰ Pope Benedict XVI appealed to President Hamid Karzai, along with members of the United Nations, to allow him refugee status. Abdul was a health worker for a Christian organization granting aid to Afghan refugees.

Recommendations

24. In light of the foregoing, ADF International suggests the following recommendations be made to Afghanistan:
- a. Ensure the freedom of religion or belief in Afghanistan, both in law and in practice, for adherents of all religions, and root out all cases of religious persecution and exploitation of laws against members of religious minorities;
 - b. Prosecute and punish all cases of religiously-motivated violence against individuals and property, including vandalism and destruction

²⁷ *Afghani Christian convert being hunted*, World Watch Monitor (Jul. 1, 2014), <https://www.worldwatchmonitor.org/coe/afghani-christian-convert-being-hunted/>.

²⁸ *Afghan MP wants converts executed*, World Watch Monitor (Sept. 9, 2013), <https://www.worldwatchmonitor.org/coe/afghan-mp-wants-converts-executed/>.

²⁹ Digal, *supra* note 1.

³⁰ ". . . for you and for all", *the Christian martyrs killed in 2007*, *supra* note 17.

of people's homes, and work to eliminate the occurrence of such atrocities;

- c. Repeal all apostasy and blasphemy laws and ensure and safeguard the rights to freedom of opinion and expression as required under international law, and release and/or grant relief and protection to individuals whose rights have been violated by these laws;
- d. Release all prisoners of conscience who are incarcerated or arbitrarily detained because of their faith;
- e. Foster an environment of religious harmony and cooperation, and cease discriminating against individuals or communities on the basis of their religious denominations;
- f. End all restrictions on the right to freedom of opinion and expression and ensure that the right to manifest one's religion in public and in private is fully protected and realized; and
- g. Repeal all laws that place limitations on the legal ability of individuals who practice their faith to evangelize and share their faith with others.



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