Afghanistan

Afghanistan has suffered from chronic instability and conflict in its modern history from the Cold War to the civil wars between the Mujahedeen and the Taliban. The Taliban was removed from power in 2001 (but still exists) and Afghanistan has had a democratically elected government since 2004. 2016 was marked by a period of rapid ISIS brutality that adds another front to the already existing mix of Islamist militant groups. Human rights abuses, including the torture of detainees, violence against women and children, and attacks on journalists remain a serious problem. Security forces continue to operate largely with impunity. Indiscriminate attacks by the Taliban and ISIS have led to a sharp rise in civilian deaths particularly amongst minority sects including Shiites.

<table>
<thead>
<tr>
<th>Constitution and government</th>
<th>Education and children’s rights</th>
<th>Family, community, society, religious courts and tribunals</th>
<th>Freedom of expression advocacy of humanist values</th>
</tr>
</thead>
<tbody>
<tr>
<td>State legislation is largely or entirely derived from religious law or by religious authorities</td>
<td>Religious or ideological indoctrination is utterly pervasive in schools</td>
<td>Expression of non-religious views is severely persecuted, or is rendered almost impossible by severe social stigma, or is highly likely to be met with hatred or violence Government figures or state agencies openly marginalize, harass, or incite hatred or violence against the non-religious It is illegal to register an explicitly Humanist, atheist, secularist or other non-religious NGO or other human rights organization, or such groups are persecuted by authorities</td>
<td>Expression of core Humanist principles on democracy, freedom and human rights is brutally repressed ‘Apostasy’ or conversion from a specific religion is outlawed and punishable by death ‘Blasphemy’ or criticism of religion is outlawed and punishable by death It is illegal to advocate secularism or church-state separation, or such advocacy is suppressed</td>
</tr>
</tbody>
</table>
Constitution and government

State legislation is largely derived from religious law, which is not only contradictory to some articles of the constitution but also to its international commitments to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. For example, despite constitutional guarantees of freedom of religion, apostasy is still punishable by death. Although the constitution protects certain basic rights such as freedom of religion and belief, or freedom of press, nonetheless, the government, regional leaders and local chiefs frequently violate individuals’ basic rights. Thus, effective enforcement of the constitution is a continuing challenge due to its contradictory commitments, inexperienced judges and the lack of a tradition of judicial review.

Article 2 of the constitution explicitly states that followers of religions other than Islam are “free to exercise their faith and perform their religious rites within the limits of the provisions of the law” implying that Islam is privileged in some way – even implying a trump on the law.

Article 7 specifically obligates the state to abide by the Universal Declaration of Human Rights, which includes commitments to religious freedom and the right to change one’s religion, as well as the right to freedoms of expression and assembly. However, Article 3 of the constitution also declares that Islam is the official “religion of the state,” that “no law can be contrary to the beliefs and provisions of the sacred religion of Islam,” and that “the provisions of adherence to the fundamentals of the sacred religion of Islam and the regime of the Islamic Republic cannot be amended.”

Although the constitution expressly protects free exercise of faith for non-Muslims, in situations where the constitution and penal code are silent, such as apostasy and blasphemy, the constitution also instructs courts to rely on the Hanafi School of Sunni Islamic jurisprudence.
The Office of Fatwa and Accounts within the Supreme Court interprets Hanafi jurisprudence when a judge needs assistance in understanding its application. Courts continue to rely on Hanafi interpretations of Islamic law, even in cases which conflict with the country’s international commitments to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The constitution also grants that Shia law may be applied in cases dealing with personal matters where all parties are Shiite. But there is also no separate law applying to non-Muslims.

According to the constitution, the president and vice president must be Muslim. This requirement is not explicitly applied to government ministers or members of Parliament, but each of their oaths includes swearing allegiance and obedience to the principles of Islam.

The criminal code makes no specific references to religious conversion. However, in the absence of a provision in the constitution or other laws, Article 130 of the constitution instructs that court decisions should be in accordance with constitutional limits and Hanafi religious jurisprudence to achieve justice.

Under some interpretations of Islamic law, active in practice under Article 130, converting from Islam to another religion is deemed apostasy and considered an egregious crime. Those found guilty may be given three days to recant, or face death.

**Education and children’s rights**

**Children affected by conflict**

In 2016, the latest update from the United Nations Assistance Mission to Afghanistan (UNAMA) released figures for the first nine months of the year, which documented 639 conflict-related deaths of children and 1,822 injuries; this is 15 percent higher than the same period in 2015 and much higher than the years 2013 and 2014.


**Religion in schools**

The primary focus of all schooling is instruction in Islam. According to the constitution, the “state shall devise and implement a unified educational curriculum based on the provisions of the sacred religion of Islam, national culture, and in accordance with academic principles, and develop the curriculum of religious subjects on the basis of the Islamic sects existing in Afghanistan.”

In government-controlled schools, religious education is taught more than general education, and the new government has promised more religious education. In privately run madrassas, the schooling is even more skewed, with the instruction almost entirely religious.

**Family, community and society**

**Violence against women**

“Violence against women is largely ignored by Afghanistan’s judicial sector,” said Veeda Saghari, a woman attending a small rally in Western Kabul. “That is why all kinds of violence against women such as acid throwing, beating, stoning, informal community tribunal verdicts, burning, forced divorces, forced marriages, forced pregnancies, forced abortions have reached a peak.”
These words reflect many cases of violence against women recorded recently.

In late October 2015, a 19-year-old woman named Rukhshana was stoned to death, having been accused of adultery. She was forced into a dug pit and stoned by Taliban and local people. Again the murder was filmed. President Ashraf Ghani called for an investigation and sent a delegation to investigate the case, following a public outcry after the footage went viral on social media. Maulavi Baleegh, who is a prominent member of the National Ulema Council, the country’s highest religious authority, and an adviser to Mr. Ghani on religious affairs, made it clear in interviews and sermons that he believes in the stoning to death of adulterers; and the investigation revolved around the question of whether stoning a woman to death over an allegation of adultery was in accordance to Sharia Law, instead of being about the murder of Rukhshana. A presidential decree known as the Elimination of Violence Against Women Act, which should have outlawed the stoning and flogging of adulterers, was issued in 2009, but never ratified by Parliament.

Following a donor conference in Brussels, October 2016, Human Rights Watch complained that international donors “have backpedaled from holding the Afghan government to account for rampant human rights violations... The benchmarks set at the conference – the product of months of negotiations between donors and the Afghan government – make it perfectly clear that rights have slipped off the table.” Women’s participation in peace negotiations was a hot topic amongst activists, some of whom managed to get visas and attend the Brussels Conference. Yet their fear was realized: “Afghanistan’s roadmap for involving women in the peace process has only been described in broad principles and lacks any detail about specific tasks, timelines, and benchmarks.”

Parwiz Kambakhsh, a student and independent journalist, was sentenced to death in 2007 by a local court for printing and circulating an article critical about the rights of women in Islam. This was reported as a violation of the Afghan Media Law. Kambakhsh was immediately arrested. Intensive diplomatic negotiations between the international community and Afghan government surrounded his case. Kambakhsh was secretly conveyed from jail to a secure place and was kept there for some days under great security until he left the country.

Freedom of expression, advocacy of humanist values

Freedom of expression in Afghanistan has rigid margins and limitations, in particular when it runs up against religion. A popular slogan exemplifies the reactionary suppression of ideas: “One is free to express, but not after expressing it”.

Article 3 of the constitution (“no law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan”) is often invoked both by clerics and government officials to contest the application of any secular regulation, including the two human rights conventions that Afghanistan is a party to, and particularly with respect to non-believers, apostates and women rights.

The penal code addresses “Crimes against Religions“ and states that a person who physically attacks a follower of any religion shall receive a short-term prison sentence of not less than three months and a fine of between 3,000 and 12,000 Afghanis (US$60 to $240); physical attacks on non-religious people are, by exclusion from this law, not technically as serious.
“Apostasy”

According to the Article 1 of the Penal Code, crimes of Hudud and Qisas including apostasy are inflicted in accordance with the Hanafi Jurisprudence of Sharia law, which includes death punishment for non-believer and apostates.

With regard to non-believers and apostates, very few incidents are recorded, though this probably means that many converts and dissenters from Islam generally are simply too afraid to speak out. Assuming or defending any right to criticize, abandon or renounce Islam is considered a taboo even by many people who adhere to broadly democratic values.

In 2006, a Muslim man, Abdul Rahman, who converted to Christianity faced prosecution for his apostasy. All pleas to throw the case out were rejected at once; the judge vowed to resist international pressure and threatened to sentence Abdul Rahman to death unless he reverted back to Islam. His death was prevented when President Karzai, under the strong advocacy and pressure of international community, requested the Supreme Court to spare him of his charges. The charges were dropped because of lack of evidence and ostensibly his mental instability. He left Afghanistan shortly thereafter.

“Blasphemy”

The criminal code makes no specific references to blasphemy; courts therefore rely on Islamic law to address this issue. Blasphemy – which can include anti-Islamic writings or speech – is a capital crime under some interpretations of Islamic law. As a result atheists and freethinkers are forced to hide their beliefs and the only way they can express their thoughts are anonymously through social media. For males over age 18 and females over age 16 of sound mind, an Islamic judge may impose a death sentence for blasphemy. Similar to apostates, those accused of blasphemy are given three days to recant or face death.

When accusations of blasphemy or defamation of religion are made people can be violently targeted.

Farkhunda Malikzada “blasphemy” murder

In March 2015 Afghanistan witnessed the most shocking murders in recent years, when Farkhunda Malikzada was beaten to death and then her body lit on fire by a mob in Kabul. The violence followed false accusations that she burnt a copy of the Qur’an. Farkhunda had reportedly questioned elderly local men about their habit of selling superstitious talismans to vulnerable women. The attack was captured on phone cameras, with many men seen looking on as she was killed. The trial of men accused of her murder was, according to human rights groups, “both rushed and riddled with due process violations.”

Her brutal death triggered different reactions from human rights activists and clerics of both high and low levels. Among others, Ayaz Niazi, the prominent imam of Wazir Akbar Khan Mosque (attended by many high government officials and most favored by the Presidential Palace) warned against taking any action against the attackers. Ayaz Niazi said in his Friday’s sermon: “My appeal to the judicial and legal institutions is to act with caution ... When the people’s most important element of belief is insulted, they are not responsible to see if this [alleged blasphemer’s] mind is working or not working. You have to be careful. This is a huge mistake. If you start arresting people, they will probably revolt. It will be difficult to rein them in”.

hrw.org/news/2015/07/07/dispatches-11th-hour-justiceforfarkhunda

theguardian.com/world/2014/oct/24/afghanistan-express-article-isis-taliban-islam-blasphemy
Afghanistan Express “blasphemy” events

Another blasphemy case appeared in 2014 after Qutbuddin Hilal, ex-Deputy Prime Minister of the Islamic Republic of Afghanistan, and the son-in-law of Gulbuddin Hekmatyar (leader of Hizb e Islami) noticed a “blasphemous” piece in the Afghanistan Express newspaper. Some lines of the article were underlined by him and were posted on his Facebook page. The image was shared by his followers which are predominantly male Pashtuns. <rferl.org/a/afghan-blasphemy-case-an-early-test-for-new-government/26654627.html>

His post went viral on the internet and was reported by leading international news agencies from the Middle East to the USA and Europe. Ultimately, another warlord, Abdurrab Rasul Sayyaf, condemned the blasphemous piece and called for the arrest of the author and the news agency. It transpired that the article had been copied from the personal website of the author, Ahmad Javeed Ahwar, a writer and a social media activist, and was published without his permission. A demonstration was held in Kabul where the crowd demanded punishment of the author. The newspaper office was shut down and the owners were arrested. President Ashraf Ghani and Chief Executive Abdullah Abdullah, assured people of Afghanistan of taking all the required measures regarding the arrest and trial of Ahmad Javeed Ahwar. <rferl.org/a/afghan-blasphemy-case-an-early-test-for-new-government/26654627.html>

Reportedly, most of the coworkers of the newspaper are said to have sought asylum in European countries. <theguardian.com/world/2014/oct/24/afghanistan-express-article-isis-taliban-islam-blasphemy>

NAI, which appears to be the only local Afghan NGO that campaigns of support of open media in Afghanistan, condemned Ahmad Javeed Ahwar for violating Afghan Constitution.

Broader freedom of expression issues

The constitution protects freedom of expression and of the press; however, the media law includes articles detrimental to freedom of religion and expression. Among other prohibited categories, Article 45 prohibits production, reproduction, printing, and publishing of works and materials contrary to the principles of Islam, works and materials offensive to other religions and denominations, publicizing and promoting religions other than Islam.

Many authorities and most of society view proselytizing by adherents of other faiths as contrary to the beliefs of Islam.

The ambiguity surrounding what constitutes offensive and un-Islamic material offers the potential for restrictions on and abuse of press freedom and intimidation of journalists. These rules also apply to non-Muslims and foreign-owned media outlets. An amendment to the media law instructs National Radio and Television Afghanistan (RTA), the state-run media outlet, to provide balanced broadcasting that reflects the culture, language, and religious beliefs of all ethnic groups in the country. The law, however, also obligates RTA to adjust its programs in light of Islamic principles and national and spiritual values.

The annual World Press Freedom Index that was published by Reporters without Borders, ranked Afghanistan 122nd out of 180 countries on the degree of freedom that journalists, news media, and internet citizens are afforded. There are 63 incidents of threats, beatings and kidnappings of journalists has been documented so far by, Nai, an Afghan NGO that promotes freedom of
expression, including 3 deaths reported. Five attacks are directly linked to government. 12 by police, 8 by other government bodies such as traffic officers and provincial council members governors etc. The rest attacks are committed by Taliban and some are still unknown.
<data.nai.org.af>

In spite of the fact that Afghanistan’s national unity government has taken measures designed to improve freedom of information, including dissolving the commission for the verification of press offences and adopting the Law on Access to Information, journalists remain the targets of acts of violence and intimidation by government officials and local governors.

In 2016, according to the local organization Nai, “supporting Open Media in Afghanistan”, hundreds of journalists have been threatened or intimidated, with many leaving their jobs or relocating.
<nai.org.af/blog/two-recent-months-witness-sever-violations-against-journalists>

Highlighted Cases

In 2003, Sayeed Mahdawi and Ali Reza Payam, both accused of blasphemy were arrested in Kabul for writing a column entitled “Holy Fascism”, in which they described Islamic laws as outdated, and questioned the hypocrisy of Muslim leaders and social corruption under the banner of religion. The order of their arrest was issued by President Karzai himself to “protect the constitution and the beliefs of the majority of the people.” The two were eventually offered asylum in the West by the assistance of UN High Commissioner for Refugees
<refworld.org/docid/46e690f223.html>

A similar case took the attention of international media in 2005 when a journalist and the editor of a women’s rights magazine, Ali Mohaqiq Nasab, was prosecuted for blasphemy charges. He criticized Islam for its brutal punishment for crimes such as adultery and stealing. Nasab was initially sentenced to two years imprisonment. Meanwhile, another warrant was issued to arrest those who publicly defended him and justified his act. A diplomatic dedication that included representatives from European Commission and the US Embassy requested his release claiming that his trial was against Article 34 of the Afghan Constitution.
<wikileaks.org/plusd/cables/05KABUL5076_a.html>  
<cpj.org/2005/12/cpj-calls-on-karzai-to-free-journalist-ali-mohaqiq.php>

In 2007, Ghaws Zalmai—a well known journalist and spiritual figure was arrested and tried for attempting “unofficial [unauthorized] translation of the Qur’an in Dari”. He was accused of misinterpreting some verses of Quran in his translations. The Afghan Parliament prohibited him from leaving the country. The clerics who had approved the translation was also arrested a year later and later sentenced to 20 years imprisonment. He was later reported to have been released in secret and in hiding.
<refworld.org/docid/48d5cbf4c.html>  

Testimonies

“My curious mind has led me to exploring questions about science and Humanist philosophy. Becoming an atheist as a result of my curiosity, and on some occasions, openly discussing scientific issues and evolution even with my closest friends has put me in trouble. In Afghanistan nothing ends without a reference to God. That reference to god always stopped me from further exploring things openly with people. So I had to explore and talk to likeminded people on social media and Facebook,
with, of course, a pseudonym, and openly challenging them and openly asking questions to satisfy my curiosity. The problems I will be facing if my atheistic views become apparent will be too grave, not only from authorities but also from my work colleagues and even my family. When my colleagues go to mosque for praying I have to go with them, to avoid suspicion or I may be brutally murdered.”
— Khalid

“As an atheist I’m facing constant problems with family, friends, and even in dealing with people at the university campus and the community at large. Having any beliefs outside of Islam or that of which is not compatible with Islam and its teachings are considered an unforgivable crime. Such a view is prevalent throughout society, family, friends and even at the university, which supposed to be a place to question and doubt; Not to mention that such beliefs are systematically reinforced by the constitution and the state’s laws. Thus, I am closet atheist, and my Secular Humanist views are limited to social media and to myself alone. The environment in Afghanistan is suffocating for freethinkers and Humanists. There are two ways available to me and others like me: Either stay quiet for your entire life which in turn is an imposed punishment for a social being like humans, or voice your concern for equality, freedom of thought and expression publicly. But to what cost?”
— Arash Kargar (pseudonym)