

UNITED STATES COMMISSION ON
INTERNATIONAL RELIGIOUS FREEDOM

REPORT ON
AFGHANISTAN

MAY 2003

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* Effective March 24, 2003, Ambassador Shirin Tahir-Kheli was appointed Special Assistant to the President and Senior Director for Democracy, Human Rights and International Operations by National Security Advisor Condoleezza Rice. This appointment necessitated Amb. Tahir-Kheli's resignation from the Commission.

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LETTER OF TRANSMITTAL

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

Washington, DC, May 1, 2003

The PRESIDENT

The White House

DEAR MR. PRESIDENT: On behalf of the United States Commission on International Religious Freedom, I am transmitting to you the Commission's Report on Afghanistan, prepared in compliance with section 202(a)(2) of the International Religious Freedom Act of 1998, 22 U.S.C. 6401 *et seq.*, P.L. 105-292, as amended by P.L. 106-55 and P.L. 107-228.

We would welcome the opportunity to discuss with you this Report, and the policy recommendations that it contains.

Sincerely,

FELICE D. GAER
Chair

Enclosure

LETTER OF TRANSMITTAL

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

Washington, DC, May 1, 2003

Hon. COLIN POWELL

Secretary of State

Department of State

DEAR MR. SECRETARY: On behalf of the United States Commission on International Religious Freedom, I am transmitting to you the Commission's Report on Afghanistan, prepared in compliance with section 202(a)(2) of the International Religious Freedom Act of 1998, 22 U.S.C. 6401 *et seq.*, P.L. 105-292, as amended by P.L. 106-55 and P.L. 107-228.

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LETTER OF TRANSMITTAL

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

Washington, DC, May 1, 2003

Hon. DENNIS HASTERT

Speaker of the House

U.S. House of Representatives

DEAR MR. SPEAKER: On behalf of the United States Commission on International Religious Freedom, I am transmitting to you the Commission's Report on Afghanistan, prepared in compliance with section 202(a)(2) of the International Religious Freedom Act of 1998, 22 U.S.C. 6401 *et seq.*, P.L. 105-292, as amended by P.L. 106-55 and P.L. 107-228.

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LETTER OF TRANSMITTAL

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

Washington, DC, May 1, 2003

Hon. TED STEVENS

President Pro Tempore

U.S. Senate

DEAR MR. STEVENS: On behalf of the United States Commission on International Religious Freedom, I am transmitting to you the Commission's Report on Afghanistan, prepared in compliance with section 202(a)(2) of the International Religious Freedom Act of 1998, 22 U.S.C. 6401 *et seq.*, P.L. 105-292, as amended by P.L. 106-55 and P.L. 107-228.

We would welcome the opportunity to discuss with you this Report, and the policy recommendations that it contains.

Sincerely,

FELICE D. GAER
Chair

Enclosure

AFGHANISTAN

A. Introduction

Afghanistan is in the midst of an historic transition, one in which the United States has played, and continues to play, a crucial role. The U.S. government, the United Nations, including 16 separate UN agencies, and as many as 90 other donors are heavily engaged in Afghanistan's reconstruction. The repressive rule of the Taliban is gone, although their remnants remain and continue to pose a threat to the stability of a transitional government that enjoys U.S. and international recognition and support. That government also enjoys legitimacy at home as it is the product of a process that began with the Bonn Agreement of December 2001 and has been selected by a *loya jirga* (a traditional Afghan institution). Afghan scholars and legal experts are working in the various commissions envisaged in the Bonn Agreement, laying the foundations for reconstructed political and legal systems. A draft constitution will be considered by a Constitutional Loya Jirga, perhaps as early as October. According to the current timetable, Afghanistan is scheduled to have general elections by June 2004.

Nevertheless, the United States and the United Nations are still far from achieving their goals in Afghanistan. Even as attention shifts to the reconstruction of post-Saddam Iraq, the U.S. government needs to be careful not to forget that its work in Afghanistan is just beginning.¹

Recognizing that precedents are being set and foundations laid now for Afghanistan's development over the next several decades, the United States Commission on International Religious Freedom has dedicated a great deal of attention to monitoring human rights developments in Afghanistan, both before and after the fall of the Taliban. The Commission has held meetings with various high-level U.S. government officials as well as with appropriate United Nations personnel, including Lakhdar Brahimi, the UN Secretary General's Special Representative for Afghanistan and head of the UN Assistance Mission in Afghanistan (UNAMA), and Dr. Kamal Hossain, the UN Commission on Human Rights' Special Rapporteur for human rights in Afghanistan. In these meetings, the Commission has consistently raised concerns over early warning signs of human rights problems in the reconstruction of Afghanistan.² Such warning signs include:

- Reported efforts to circumscribe universal human rights, including omission of adequate safeguards for freedom of religion and the rights of women and religious minorities, in Afghanistan's new constitution,

- Misguided judicial activism by Afghanistan's Chief Justice, including the endorsement of amputations and other abusive corporal punishments and public death threats against recalcitrant non-Muslims,

- Coercive measures by official agencies, including religious police organizations, to enforce social conformity, particularly against women, including abusive acts designed to stop "un-Islamic behavior,"³

- Threats and actual attacks against girls' schools,

- Curbs on freedom of expression, ostensibly to prevent "offending Islam,"⁴

-- A charge of blasphemy against a prominent reformer made for apparently political motives,⁵ and

-- Torture and other maltreatment of prisoners, including reports of incidents resulting in mass deaths, of which there have been no thorough, credible investigations.⁶

Concerned over the reported continuation in the post-Taliban era of many of the human rights abuses practiced by the Taliban, the Commission, in cooperation with the George Washington University Law School, held a forum in Washington, D.C. on January 29, 2003, entitled "Reconstructing Afghanistan: Freedom in Crisis."⁷ This Forum on human rights and law in Afghanistan's reconstruction was attended by international experts, non-governmental organization (NGO) representatives, and interested members of the foreign policy community, as well as prominent U.S. and Afghan officials. An eleven-person delegation from Afghanistan was led by the Minister of Justice and included the Chairman of the Judicial Reform Commission and members of Afghanistan's Human Rights Commission and Constitutional Drafting Committee.

Participants in the Forum supported the Commission's call for the appointment of a high-ranking official to the U.S. Embassy in Kabul to advance the human rights agenda with the Afghan government.⁸ Participants discussed many human rights challenges facing Afghanistan and how best to meet those challenges: how the protection of human rights, including religious freedom, could be incorporated into Afghanistan's new constitution, judicial system, and laws; how human rights protections could be extended throughout a highly decentralized country, much of it currently dominated by warlords; how tolerance can best be instilled in a society that has known enmity and war for over two decades; and what the United States can do to assist Afghanistan establish and implement human rights guarantees in the process of reconstructing its legal and judicial systems. Several participants raised concerns about negative trends in the current phase of Afghanistan's judicial and constitutional reconstruction and sought to encourage Afghans and the international donor community to ensure that Afghanistan's new institutions, laws, and practices reflect internationally-guaranteed human rights standards.⁹

From the discussion there emerged a consensus that there is an urgent need for greater focus on human rights in U.S. policy toward Afghanistan and that Afghan reformers look to the U.S. for support in building a society in closer accord with universal values of justice and respect for human dignity. Appointment of a high-ranking U.S. official, as the Commission has recommended, would help bring that focus to U.S. activities in Afghanistan.¹⁰

The Forum's deliberations have strengthened the Commission's view that respect for human rights, including religious freedom, is essential for the successful reconstruction of Afghanistan. As stated in the Commission's June 2002 Report, a future Afghanistan that respects human rights will become a more stable, responsible member of the international community and will be less likely to become a haven for terrorists or the cause for renewed regional instability and conflict.

The active participation in the Forum by Afghans who are leaders in the reconstruction and reform effort underlined the crucial role of the Afghans themselves in this complex international effort. Equally, however, the Forum underlined the reality that outside support is

essential to their success. The support of the international community, with the leadership of the United States, is needed to help counter those forces, both internal and external, that would deny equal rights to some Afghans because of their gender, their ethnicity, or their beliefs.

B. Background

1. Political Situation

Since the Commission's previous report in June 2002, Afghanistan has seen both major progress and significant disappointments. Employing a traditional Afghan means of conferring legitimacy in times of national crisis, delegates broadly representative of Afghan society met in an Emergency Loya Jirga and chose Hamid Karzai as President. Islamist elements prevailed on the Loya Jirga to name the new government the Transitional Islamic State of Afghanistan. Warlords or their followers, as well as some Islamists, retained control of key ministries or were awarded other senior positions in the central government. On the positive side, none of the major factions represented at Bonn have opted out of the process set out in the Bonn Agreement for Afghanistan's political reconstruction.¹¹

On the humanitarian front, some progress has been made, although the picture remains mixed. Large numbers of refugees and internally displaced persons returned home. Economic recovery began, particularly in Kabul, where the presence of the International Security Assistance Force (ISAF) gave a measure of security. Recovery and reconstruction efforts are underway, under various United Nations, bilateral donor agency, and non-governmental organization (NGO) programs. Millions of Afghan young people, including many girls and women, have returned to school.¹²

Security remains precarious in much of the countryside. Regional warlords give mere lip service to central government authority, financing themselves through control over customs duties or from the profits of a resurgent drug trade.¹³ Organized demobilization and disarmament efforts have scarcely begun. There is widespread lawlessness. Armed might provides impunity. Police forces are undisciplined, poorly trained, and poorly paid, and are often under the influence of warlords or influential local notables, including mullahs. Taliban and al-Qaeda remnants are at large and the fates of Taliban leader Mullah Omar and Osama bin Laden remain unknown. These elements have been joined in their guerrilla struggle against the Karzai government and coalition forces by former mujahideen commander Gulbuddin Hekmatyar. U.S. forces continue to be engaged militarily. In the process, U.S. forces are providing resources, and thus greater legitimacy, to some warlords.¹⁴

2. Human Rights

The current human rights situation is both precarious and problematic, especially outside Kabul. Many of the human rights abuses practiced by the Taliban are reportedly continuing today, including political killings, torture, coercion to enforce social and religious conformity, and abuses against women and girls, sometimes with the active support of the courts and police.¹⁵ Particularly disturbing is the continued influence of regional warlords.¹⁶ Even within the Transitional Administration, the Supreme Court Chief Justice and other influential figures are attempting to impose an obscurantist, repressive system reminiscent of the Taliban era.

The situation of Afghanistan's religious minorities has improved significantly since the fall of the Taliban, although religious freedom is not protected to the extent called for by international standards. The country's religious minorities include small communities of Hindus and Sikhs.¹⁷ Although there are no churches, expatriate Christians are reportedly able to meet in informal worship services in Kabul and one or two other major centers.¹⁸ Afghan jurists have stated that apostasy from Islam would be considered a capital offence, but have intimated that ways would be found to avoid the death penalty. Atheism, which would be considered apostasy for a Muslim, is also apparently punishable by death. Although some discrimination continues, the active persecution of Afghanistan's Shi'a minority (perhaps 15 percent of the population) that was perpetrated by the Taliban has ended, and Shi'a are once again able to perform their traditional processions and to participate in public life. A Shi'a Hazara, Mohammad Karim Khalili, is one of four Vice Presidents in the Afghanistan Transitional Administration. The Hazara have effective local autonomy in their home region around Bamiyan.¹⁹

Afghan women and girls, who were especially oppressed under Taliban rule, still face major hurdles to participating fully in Afghanistan's post-Taliban reconstruction.²⁰ On the positive side, women have returned to public life, although women's service in government offices has not yet returned to pre-Taliban levels. Two cabinet departments in the Interim and Transitional Administrations have been headed by women Ministers: Women's Affairs and Health. Women have also served in other prominent positions, including as Chair of the national Human Rights Commission.²¹ Women have also gained employment opportunities and access to health care and education denied them under the Taliban.²²

Progress has been offset, however, by the continuing effects of the abusive behavior toward women perpetrated by the Taliban, and encouraged by al-Qaeda, in a highly traditional and patriarchal society. According to a report by UN Secretary General Kofi Annan to the UN Commission on the Status of Women, "...the serious lack of security for women and girls continues to create major impediments to their full integration into political, economic and social public life."²³

Women suffer disproportionately from the pervasive lack of security outside Kabul. During the past school year, there was a series of bombings and other acts of vandalism on girls' schools, apparently perpetrated by elements opposed to girls' education.²⁴ In Herat and neighboring areas under the control of regional warlord Ismail Khan, Human Rights Watch (HRW) has reported that women have limited freedom of movement (not only having limited access to public transportation but being barred from using taxis alone or from driving themselves), are officially discriminated against in employment, are actively discouraged from seeking employment with the UN or with NGO's, and are effectively excluded, by rules designed to keep the sexes segregated, from participating in the decision-making process. According to HRW, women who speak out are in danger of being termed "un-Islamic" and risk losing their jobs. Women reportedly have been forced by Ismail Khan's religious police to submit to gynecological examination if found in the company of unrelated males.²⁵

Even in Kabul, women face significant restrictions.²⁶ Under the Transitional Administration, the former Ministry for the Promotion of Virtue and the Prevention of Vice has been recreated as the Department of Islamic Guidance. Although President Karzai has publicly denied that the new Department will carry out the police functions of the notorious Taliban-era

organization,²⁷ the new Department's staff includes hold-overs from the previous Ministry which had used whips to enforce the Taliban's strict social edicts.²⁸ According to Secretary General Annan, "The Department has trained and deployed women to stop 'un-Islamic' behavior among Afghan women in public institutions and places and to monitor women's appearance and views, including the wearing of the traditional hijab."²⁹ Women are imprisoned, sometimes at the request of their husbands or other male family members, in questionable cases where the real "crime" appears to have been defying an abusive husband or parents who insist upon choosing a suitable match.³⁰

Certain officials in the Transitional Administration have moved to reverse some of the more liberal media atmosphere that followed the fall of the Taliban. Female singers and Indian musicals featuring women dancing were banned from state television broadcasts in August 2002. Even though the ban was subsequently retracted, scenes with women singing or dancing continue to be edited out.³¹ According to the State Department, the Transitional Administration's draft press law has banned material that "offends Islam."³²

3. Constitution

Afghanistan is now engaged in a process of political transition whose outlines are set by the Bonn Agreement.³³ The Bonn Agreement, signed on December 5, 2001 by representatives of major anti-Taliban Afghan factions, has been endorsed by the United States and the United Nations as the blueprint for Afghanistan's political reconstruction. In June 2002, in accord with the Bonn Agreement, an Emergency Loya Jirga selected the current Transitional Administration under President Hamid Karzai to replace the first post-Taliban interim government.

Under the Bonn Agreement, Afghanistan's relatively liberal 1964 Constitution, excepting those provisions relating to the monarchy and any provisions inconsistent with the Agreement itself, is to be applied on "an interim basis until the adoption of a new constitution."³⁴ Although the Bonn Agreement had called for a Constitutional Commission to be established within two months of the launch of the Transitional Administration, President Karzai instead chose a nine-member Constitutional Drafting Committee, headed by Vice President Neamatullah Shahrani, and tasked this smaller body with producing a draft constitution for the consideration of the full Constitutional Commission. The Constitutional Commission itself was not inaugurated until April 26, 2003.³⁵ The preliminary draft prepared by the Drafting Committee will not be finalized and released until after a period of public consultation, during which the Constitutional Commission will hold public meetings throughout Afghanistan and possibly in countries with large communities of Afghan refugees, such as Pakistan and Iran. The Constitutional Commission will then present the final draft to the Constitutional Loya Jirga, scheduled for October. The Constitutional Loya Jirga, envisaged as "a grand representative meeting made up of all sectors of Afghan society," is to complete its work by October 25, 2003.³⁶

Vice President Shahrani has stated that the new constitution would be anchored in Islamic values and would guarantee equal rights and democracy to everyone, including minorities and women.³⁷ Although the draft reportedly has a close resemblance to the 1964 Constitution (other than provisions on the monarchy), the secrecy of the drafting process has left considerable uncertainty as to how Islamic values are to be reconciled with human rights protections for religious minorities and women.³⁸ There are believed to be strong pressures in

both directions, i.e., either to bring provisions of the 1964 constitution in line with Afghanistan's international obligations or to reduce or circumscribe human rights protections.³⁹

Enshrining Sharia in the new constitution as the basis for law would run the very real risk of placing the rights of Afghan citizens in the hands of Islamist judges whose training has been predominantly or exclusively in Islamic law and who are thus inadequately prepared to apply Afghanistan's civil law codes or international human rights standards. Moreover, if the new constitution does give Sharia a role in the legal system, there is a question as to what school or schools of Sharia are to be applied. The 1964 constitution gave special status to the Sunni Hanafi school of Islamic jurisprudence. Afghanistan's sizable Shi'a minority follows the Ja'fari school. A conference of constitutional and Islamic legal scholars held by Rand's Center for Asia Pacific Policy in January 2003 recommended omitting any mention of a special school of Islamic law.⁴⁰

4. Judicial reconstruction

The Bonn Agreement called for "a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law, and Afghan legal traditions."⁴¹ After an initial false start (the first Judicial Commission was disbanded after three months), the current Judicial Reform Commission was launched in November 2002. Italy, the lead donor country for judicial sector reconstruction, also has had a slow start in assisting the Afghans in this crucial area. In December 2002, the International Development Law Organization held a seminar for Afghan jurists in Rome, immediately followed by a donors conference. Participating donors pledged \$30 million for judicial sector reconstruction.⁴²

While the donors were slow to engage, Islamist conservatives were moving quickly to put their stamp on the judicial system in post-Taliban Afghanistan. President Karzai retained as Chief Justice Fazl Hadi Shinwari, an associate of Professor Abdurrah Rasul Sayyaf, leader of the Saudi-funded, Wahhabi Ittihad-i-Islami Party. Originally appointed by President Burhanuddin Rabbani, Shinwari was ineligible for the position according to the 1964 Constitution's age and education requirements (being over the maximum age of 60 for a new Chief Justice and lacking the education in civil law required by the position).⁴³ Chief Justice Shinwari quickly appointed some 137 judges, far in excess of the 9 called for in the 1964 Constitution. None were women and many lacked the legal-education qualifications specified in existing Afghan law.⁴⁴ Equally troubling, Justice Shinwari's public pronouncements have shown that he favors an Islamic state under a hard-line interpretation of Sharia that restricts the rights and freedoms, including religious freedom, of those who do not agree. Chief Justice Shinwari has spoken out against coeducation, endorsed amputations and other abusive corporal punishments, threatened death to recalcitrant non-Muslims, founded a religious law-enforcement apparatus under the Supreme Court's control, and attempted to curtail freedom of speech and expression through bans on television broadcasting of women dancing or singing and on cable or satellite television in general.⁴⁵

5. Democracy

The Bonn Agreement's preamble spoke of the participants at the Bonn Talks "acknowledging the right of the people of Afghanistan to freely determine their own political future in accordance with the principles of Islam, democracy, pluralism, and social justice...." Furthermore, the transition process begun by the Bonn Agreement would last only until "...a fully representative government can be elected through free and fair elections" to be held "no later than two years from the date of the convening of the Emergency Loya Jirga."⁴⁶ As noted above, the Emergency Loya Jirga was held in June 2002, thus setting the date for national elections as no later than June 2004.

Thus far, aside from the constitution-drafting process, little appears to have been done to prepare the way for those elections. Afghanistan lacks a national election commission, has no accurate count of the population, no system of voter registration, no law legalizing and regulating the activities of political parties, and no agreed electoral system (e.g., single-majority, proportional representation, or some mixture of the two). Considering Afghanistan's difficult terrain and precarious law and order situation, major efforts would be needed to ensure the logistic support and security for the results of the upcoming elections to be regarded as legitimate both domestically and internationally.⁴⁷

6. U.S. policy

The current phase of U.S. engagement in Afghanistan began with the U.S. military intervention in that country against Osama bin Laden's al-Qaeda organization following the horrific terrorist attacks of September 11, 2001 against the United States. U.S. and coalition military action, aided by the anti-Taliban Northern Alliance, dislodged the Islamist Taliban regime that had sheltered bin Laden and his associates. The United States has played a major role in sponsoring Afghanistan's post-Taliban political and economic reconstruction, while continuing military operations against Taliban remnants, al-Qaeda, and other armed groups opposing the Interim and Transitional Administrations.

U.S. government statements on Afghanistan, including those made at the Afghanistan Forum sponsored by this Commission, have typically included the themes that the United States has made a long-term commitment to Afghanistan's reconstruction and that this commitment includes support for improving the human rights of Afghans.⁴⁸ Similarly, the State Department carries on its web site the pledge that the United States "supports the Afghan Government in its efforts to establish a framework for a vibrant civil society, one that emphasizes democratic principles through [the] rule of law and creates accountable and transparent forms of government." Furthermore, in the State Department's words, "the United States and its international partners remain committed to helping Afghans realize their vision of a country that is stable, democratic, and economically successful, and to an Afghan government committed to the protection of women's rights, human rights, and religious tolerance."⁴⁹

According to a recent policy statement by the Assistant Secretary of State for South Asian Affairs, the U.S. government is committed to four objectives in Afghanistan: ensuring security, establishing a stable and effective central government, promoting economic reconstruction and development, and meeting humanitarian needs.⁵⁰

With respect to security, the United States is the lead donor country in assisting Afghanistan to re-establish “a multi-ethnic and disciplined” Afghan national army. By the Assistant Secretary’s own admission, the United States has, nevertheless, been “rely(ing) to some degree on local leaders and their militia to provide interim security and stability in many parts of the country.”⁵¹ As an important part of the U.S. government’s efforts to close the gap between Afghanistan’s central government and local authorities, the United States has launched “Provincial Reconstruction Teams” (PRT’s).⁵² The PRT’s are mixed groups of U.S. military and civilian personnel tasked with helping to maintain security in major centers outside Kabul while assisting in reconstruction projects.⁵³ The PRT’s consist of 50-100 individuals per team. About 10 teams are planned altogether.⁵⁴ These teams have, however, been controversial. Some critics, particularly those in the NGO community, have charged that the teams undermine the security of humanitarian workers by blurring the distinction between military and humanitarian activities and personnel.⁵⁵ Their personnel numbers and dual mission of security and reconstruction also raise questions about their effectiveness in dealing with the continuing insurgency, warlordism, and pervasive lawlessness that prevails outside Kabul.

Although the State Department Spokesman is officially on record as saying the United States is “not opposed to the expansion of the International Security Force in Afghanistan,”⁵⁶ a combination of U.S. lack of enthusiasm and European reluctance appears to have shelved the possible expansion of the International Security Force (ISAF) beyond Kabul.⁵⁷ President Karzai, in contrast to his earlier position favoring ISAF expansion, has recently called for a focus on the development of a strong Afghan national army.⁵⁸ ISAF’s mandate to provide security in the capital was extended for a year from December 20, 2002 by a UN Security Council resolution that “recogniz(ed) that the responsibility for providing security and law and order throughout the country resides with the Afghans themselves....”⁵⁹ NATO is scheduled to assume command of ISAF in August 2003.⁶⁰

Since September 11, 2001, the United States has provided nearly \$900 million for relief and reconstruction in Afghanistan.⁶¹ USAID’s Strengthening Democracies Initiatives (SDI) project envisages spending \$21.6 million over two years to support the work of the Constitutional, Judicial Reform, and Human Rights Commissions, to help prepare for the June 2004 elections, and to strengthen the role of the media, both government and independent.⁶² Under this project, the Asia Foundation has provided technical assistance to the Constitutional Drafting Committee, including two consultants. The Asia Foundation has also provided technical assistance and institutional support to the Judicial Reform Commission.⁶³ Under the SDI project, USAID is also funding the democratization work of the National Democratic Institute (NDI), the International Republican Institute (IRI), and the International Foundation for Election Systems (IFES). USAID has also funded IFES to begin working with Afghan authorities to prepare for general elections.⁶⁴ A Canadian government agency, Elections Canada, is cooperating with IFES on this project.⁶⁵ No USAID funding has been allotted for the election itself, estimated to cost \$100-150 million, though the United States will be seeking other donors to share the burden.⁶⁶

Under the Afghanistan Freedom Support Act of 2002, which became law in December 2002:

-- U.S. assistance to Afghanistan should “foster the growth of a pluralistic society that promotes and respects religion freedom” and should help achieve a representative government that respects the human rights of all Afghans.

-- The President is urged to work within the UN Security Council and with U.S. allies to expand the International Security Assistance Force throughout Afghanistan.

-- Funding is authorized to support the drafting of a new Afghan constitution, other legal reforms, and the development of civil society organizations that promote human rights.

-- Assistance is also authorized for Afghanistan’s Human Rights Commission, human rights training for the military, police, and legal personnel, and the dissemination of information on human rights, including religious freedom and the rights of women.

-- Reconstruction assistance is conditioned on progress on human rights issues. The President must certify each year “that progress is being made toward adopting a constitution and establishing a democratically elected government for Afghanistan that respects human rights.” Although the President may waive this restriction, he must explain to the Congress why it is in the U.S. national interest to do so.⁶⁷

U.S. statements about the importance of human rights have not been matched, however, by U.S. engagement. Contrary to the recommendation of this Commission, the United States has not appointed a high-ranking official to our embassy in Kabul with the sole mandate of advancing religious freedom and other human rights during Afghanistan’s reconstruction. Meanwhile, Afghanistan has been replaced as a major focus of U.S. foreign policy by the conflict and post-conflict reconstruction process in Iraq, as signified by the fact that the President’s Special Envoy to Afghanistan, a key policymaker, has been given additional responsibility as Ambassador-at-Large for Free Iraqis.

C. Commission Recommendations

In June 2002, the Commission issued a report on Afghanistan, making a number of recommendations for U.S. policy, including:

- support for expanding the International Security Assistance Force beyond Kabul;
- unequivocal U.S. opposition to human rights abuses;
- provision of U.S. assistance, especially to Afghan military and law enforcement agencies, only upon compliance with human rights standards;
- vigorous and public U.S. support for efforts to strengthen the rule of law and the protection of religious freedom and other human rights;
- appointment of a high-ranking U.S. official to promote human rights during Afghanistan’s reconstruction; and

-- U.S. support for efforts to nurture a culture of democracy in Afghanistan, including through public education, broadcasting, and educational and cultural exchanges.

President Bush has made strong public statements affirming the U.S. commitment to freedom in Afghanistan. In his last State of the Union address, the President declared that our liberation of Afghanistan would set a precedent for the liberation we intend to bring to the people of Iraq. The President stated that “In Afghanistan, we helped liberate an oppressed people. And we will continue helping them secure their country, rebuild their society, and educate all their children – boys and girls.” He also stated, “...as we and our coalition partners are doing in Afghanistan, we will bring to the people of Iraqi food and medicines and supplies – and freedom.”⁶⁸ Other official U.S. government statements have made similar points.⁶⁹

The Commission endorses these policy goals. The Commission is, nevertheless, seriously concerned about U.S. policies in Afghanistan and their impact on Afghanistan’s future. There are continuing reporting of serious human rights abuses. There are indications that Afghanistan is being reconstructed – without serious U.S. opposition – as a state in which an extreme interpretation of Sharia would be enforced by a government which the United States supports and with which our nation is closely identified. The Commission strongly supports U.S. engagement in Afghanistan and is concerned that U.S. public and Congressional support for Afghanistan’s reconstruction will be eroded by the establishment of an Afghan state in which universal human rights, including religious freedom and the rights of women and minorities, are not respected or protected in law and in practice.⁷⁰

Given the political and legal developments outlined above, this is therefore a crucial time to ensure that basic rights are included and fully guaranteed in Afghanistan’s fundamental law as well as protected in practice. The Commission therefore urges the U.S. government to act on the following recommendations, augmented and updated from those made by the Commission in its June 2002 Report on Afghanistan.⁷¹

I. Security: Afghans must be protected so that they can exercise their human rights

1. The U.S. government should enhance its efforts to enable the Transitional Administration to exercise its authority throughout the country. The United States should actively support expanding the international security presence beyond Kabul.

2. In accordance with U.S. legislation, the U.S. government should actively oppose human rights abuses (including torture, arbitrary arrest, extrajudicial killings, and politically-motivated disappearances) by Afghan authorities at any level, particularly by local commanders who have received or are receiving U.S. military support and advice in the campaign against terrorism.

2.a. U.S. assistance to Afghan military, security, or law enforcement agencies should be conditioned on demonstrated respect for human rights in accordance with existing law.

2.b. Afghanistan's military and security forces should be screened to exclude known human-rights violators.

2.c. Known human-rights violators should be barred by law from appointive or elective office, as well as from leadership positions in political parties.

3. The U.S. government should continue to incorporate human rights training as an integral part of its assistance in establishing the Afghan national army and Afghanistan's national and provincial police forces.

4. The U.S. government should assist the Transitional Administration and the Human Rights Commission in establishing effective mechanisms for accountability for past human rights abuses and for promoting long-term reconciliation.

5. Crimes against humanity, war crimes, and other violations of international humanitarian law should be investigated and prosecuted.

Security is absolutely essential for the protection of all human rights, including religious freedom, and is essential to the reconstruction process. Security for much of the country remains in the hands of armed factions under powerful regional leaders, usually referred to as warlords. Despite outside assistance, led by the United States, Afghanistan's national army is years away from providing an effective presence throughout the country. In the meanwhile, the U.S.-led Provincial Reconstruction Teams are not an adequate substitute for expanding the International Security Assistance Force (ISAF), which has proven its effectiveness in Kabul.

The Afghan central government must have a monopoly of force in order to exercise authority and establish the rule of law throughout the country. Part of the solution is ending U.S. support for warlords and local commanders operating independently of central authority. U.S. and other donor attention is urgently needed to assist in the disarmament, demobilization, and reintegration into civilian society of militia members.

U.S. legislation, including the Afghanistan Freedom Support Act of 2002, provides needed leverage to press for Afghan compliance with international human rights standards. The U.S. government should retain and comply with current human rights conditions on U.S. security assistance, such as those in the Leahy Amendment and the Foreign Assistance Act. These provisions bar assistance to any unit of a foreign country's security forces if the Secretary of State has credible evidence of gross violations of human rights and in the absence of effective measures to bring the responsible members of the unit to justice.

II. Legal Reform: Institutions should be established to respect, protect, and ensure rights

A. Primacy of the Constitution: The U.S. government must ensure that human rights are fully guaranteed in Afghanistan's new constitution

6. The U.S. government should work closely with the Transitional Administration and the Constitutional, Judicial Reform, and Human Rights

Commissions to ensure that guarantees of freedom and universal human rights, including freedom of religion and belief and the rights of women and members of religious minorities, are fully ensured in Afghanistan's new constitution and implemented throughout Afghanistan's legal and judicial systems.

Afghanistan's new constitution should contain strong guarantees of internationally recognized human rights for all Afghans, and particularly for vulnerable groups such as women and religious minorities. Although these guarantees may not be fully implemented in the short term, the assurances and protections laid down in Afghanistan's new constitution will be a source to which those defending human rights can turn. Conversely, it is important that the constitution not incorporate language that can be used to restrict universal human rights standards. Despite the fall of the Taliban, there are influential elements in Afghan society that favor strict social and religious controls, e.g., regarding the role of women, and who would not afford the same rights to non-Muslims as to Muslim males. Moreover, many repressive forces elsewhere in the Islamic world continue to exert influence detrimental to human rights protections. Many Afghan reformers and others have therefore expressed their concerns that newly won freedoms may be circumscribed, rather than protected and promoted, in the new constitution.⁷² Outside influence, particularly from the United States, is needed to bolster the position of the reformers.

The U.S. government, as an essential part of its engagement in Afghanistan's recovery and reconstruction, should take an active role in promoting adherence to the rule of law and protection of religious freedom and other universal human rights. A constitution that codifies repression, rather than securing freedom, may well undermine the support of the American people for reconstruction efforts in Afghanistan and thus prove detrimental to the U.S. national interest in a peaceful and stable Afghanistan.

B. Judicial Reform

7. In order to establish the rule of law, which is essential for the protection of human rights, including religious freedom, the U.S. government should continue to provide material, training, technical assistance, and other support to the Transitional Administration and specifically to the Judicial Reform Commission to re-build the domestic justice system in accordance with international standards.

8. To ensure that rights are fully protected, the U.S. government should urge the adoption of the highest possible judicial standards. Therefore:

8.a. Selection of judges should be based on merit and should be in accordance with established law. Appointments of judges who lack required qualifications or that do not comply with legally-established procedures should be invalidated, including that of the current Chief Justice and of any others appointed *ultra vires*.

8.b. Courts, such as the National Security Courts, that do not have an established basis in law should be abolished. Any judgments rendered by such courts should be reviewed to ensure their conformity with international human rights standards. No new courts should be established without the review of the Judicial Reform Commission or as provided in the Constitution.

8.c. Courts should be permitted to act only on matters brought before them according to established legal procedures. Judgments must not be inconsistent with the constitution and with international human rights standards.

8.d. All judges and prosecutors should be trained in civil law and international human rights standards.

8.e. The legal system should ensure that all Afghans have equal access to courts established by law.

8.f. Women should be actively recruited and appointed to the judiciary in all courts at all levels.

The Bonn Agreement called for Afghanistan's justice system to be rebuilt "in accordance with Islamic principles, international standards, the rule of law, and Afghan legal traditions." The results have not been encouraging so far. Outside of Kabul, what passes for justice all too often appears to be arbitrary decisions dispensed by ill-educated mullahs or dictated by powerful local leaders. Even in the capital, sweeping pronouncements by the current Chief Justice, including an attempted ban on satellite television, illustrate the danger that activist judges with an Islamist agenda could attempt to restrict individual rights. Other public actions by the Chief Justice, including charging political opponents with blasphemy, are reminiscent of the Taliban period.

There is a very real danger that, without countervailing influence from the United States and other major donors, Afghanistan's judicial system will not uphold universal human rights standards. Believing in the primacy of Sharia, judges appointed by Chief Justice Shinwari may use their positions to enforce strict Islamic law outside of established law or the constitution and in contravention of international human rights standards which Afghanistan is formally obliged to uphold. Relying on Islamic law, such judges may follow Chief Justice Shinwari's example of issuing broad pronouncements outside of cases properly before them. They may be aided by government officials, police, and security personnel who themselves do not feel obliged to adhere to statutory law or the constitution, as is the case with the National Security Courts.⁷³ Judicial training is therefore essential not only to upgrade the skills of Afghan judges, many of whom have been trained only in Sharia, but to change attitudes as well by introducing judges and future judges to international human rights norms.

Due to the poor representation of women among Afghan judges, and the relegation of the few women judges primarily to Afghanistan's specialized family and children's courts, it is

necessary to make a special effort to recruit women to the judicial profession and to expand their opportunities in it.⁷⁴

C. Rights to be Guaranteed

9. The U.S. government should endeavor to ensure that Afghanistan's new constitution is consistent with international human rights standards. The constitution should therefore guarantee that:

9.a. Afghanistan is committed to the principles of representative government and the rule of law, including specific reference to Afghanistan's adherence to the provisions of the Universal Declaration of Human Rights and compliance with the international human rights conventions to which Afghanistan is a party.

9.b. All persons, including women and members of religious or ethnic minorities, have equal rights and are entitled without discrimination to the equal protection of the law.

9.c. All persons are ensured freedom of religion in full accordance with international standards.

9.d. No law or official government action may violate international principles of human rights.

9.e. Non-Muslims are not to be subject to Sharia.

9.f. Punishments such as flogging, amputation of limbs, and death by stoning are banned.

It is not unlikely that Islam will be given a special status under the new constitution. Although this is not prohibited under international human rights law, the existence of a state religion must not result in any impairment of human rights, including religious freedom, or in any discrimination on the basis of religion or belief.⁷⁵

Whatever formulation of Islamic law or principles is used to guide the law-making process in Afghanistan, such a reference should be accompanied by references to internationally accepted human rights standards, ensuring that religious law is not the only source of guidance for the Afghan legal system. Non-Muslims should not be subject to Islamic law.

Furthermore, in order to ensure fully the rights of all Afghans, the constitution should guarantee that no law or official action, whether grounded in Islamic law or any other source of law, violate standards of universal human rights as stipulated in the Universal Declaration of Human Rights and the international conventions to which Afghanistan is a party. No group, official or private, including those who are pursuing an Islamist agenda, must be permitted to engage in any activity aimed at the destruction of any of the rights guaranteed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the

International Covenant on Economic, Social and Cultural Rights, in accordance with Article 30 of the Universal Declaration of Human Rights and Articles 5 of the two covenants.

The constitution should guarantee the right to freedom of religion or belief in accordance with international standards. This includes the freedom to have or to adopt a religion or belief, or not to have any particular religion or belief system. It also includes the principle that no one shall be subject to coercion which would impair that freedom; the freedom, either individually or in community with others and in public or private, to manifest a religion or belief; and the right and duty of parents and, when applicable, legal guardians to ensure that religious and moral education of their children in conformity with their own convictions as provided in the Universal Declaration of Human Rights, the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child.

The constitution should also guarantee equal protection of the law and the equal right of men and women to the enjoyment of their human rights, including freedom of religion and belief. The constitution should make clear that women and members of religious minority groups have rights equal to those of Muslim males. Some Islamists have reportedly argued that women having equal rights to other women constitutes equality under the law. Moreover, in neighboring Iran and Pakistan, non-Muslim citizens (or those deemed non-Muslims such as the Ahmadi religious community in Pakistan) have had their legal rights so circumscribed as to become effectively second-class citizens. Such potential developments should be precluded by guarantees in the new constitution and should be actively opposed by the United States in Afghanistan.

The constitution should prohibit corporal punishments such as flogging, amputation of limbs, and stoning, which are not only reprehensible by their very nature, but also violate the Convention Against Torture, to which Afghanistan is a party.⁷⁶

D. The Right to Religious Freedom

10. To promote religious freedom and tolerance, the U.S. government should urge the Transitional Administration and its successors to:

10.a. abolish the religious police and similar organizations, and protect all persons against coercion in matters of religious belief and practice by Afghan government agencies or by local authorities;

10.b. ensure that accusations of apostasy do not give rise to civil or criminal liability; exclude the use of accusations of blasphemy, apostasy, “offending Islam,” or similar accusations to stifle public debate or the right to freedom of expression;

10.c. allow all religious groups to conduct their activities freely without interference or burdensome regulation by the state, including religious instruction, the selection and training of religious leaders, the content of sermons, and the publication of religious literature,

subject only to restrictions provided for in international conventions to which Afghanistan is a party;

10.d. ensure that all religious groups are free to build, repair, and operate houses of worship and other institutions, subject only to such land-use regulations as are applicable to all, regardless of religion; and

10.e. repeal legislative and other measures that discriminate against women and non-Muslims.

The Transitional Administration's Department of Islamic Guidance must be deterred from following the notorious example of its Taliban-era predecessor, the Ministry for the Promotion of Virtue and the Prevention of Vice, which harshly enforced mandatory religious observance; severe, and often arbitrary, restrictions on social behavior including segregation of the sexes; and bans on music, dance, and games traditionally enjoyed by Afghans. Women's access to education, employment, health care, and medical treatment was severely limited. As under the Taliban, restrictions fall most heavily on Afghan women, and include pressure to conform to particular dress codes, ostensibly on religious grounds. The Department and any other form of religious police, such as those reportedly under the control of the Chief Justice and of regional leaders such as Ismail Khan in Herat, should be dissolved. Enforcement of the law should be entrusted to regular professionals in law enforcement agencies subject to judicial review and appropriate human rights standards.

In neighboring Pakistan, laws regarding blasphemy and other religious offences have frequently been abused. Instigators of such charges typically have a personal dispute with the accused that can be advanced by a false charge or use such accusations to target for persecution members of religious minorities or those deemed to be liberal or heterodox Muslims. The false accusation of blasphemy against the current Chair of the Human Rights Commission demonstrates how easily such accusations can be used for political purposes in Afghanistan as well.

The U.S. government should strive, in all program areas, to advance the rights of Afghan women and girls, including by U.S. support for the removal of legal impediments and arbitrary restrictions on women's rights, so that Afghan women may contribute fully to the reconstruction effort and exercise all their basic human rights, including freedom of religion and belief.

E. Assistance to the Human Rights Commission

11. The U.S. government should continue to assist Afghanistan's Human Rights Commission in discharging its responsibilities under the Bonn Agreement to monitor and investigate violations of human rights.

Such assistance should include support for the establishment of offices in all major urban centers, development of data collection and processing, public outreach, and protection of witnesses and victims of abuses. Afghanistan's Human Rights Commission has the potential of playing a leading role in promoting and protecting human rights, including religious freedom and the rights of women. To do so, it must develop recognized expertise, maintain its independence,

be representative of the diversity of the Afghan people, and continue to receive adequate funding. For the Human Rights Commission's authority to be respected, it must be seen to enjoy the full support of the Transitional Administration, including President Karzai himself.⁷⁷

III. Education about Rights: The Afghan people should be educated in human rights principles

12. The U.S. government should actively support those elements in Afghan society that favor adherence to international human rights standards, democratic values, the rule of law, pluralism, and tolerance.

13. The U.S. government should continue and expand programs to better inform Afghans regarding Afghanistan's international obligations in the field of human rights, including freedom of religion and belief. These efforts should include:

13.a. technical and financial assistance to Afghanistan's Human Rights Commission in its efforts to educate the Afghan people regarding human rights;

13.b. educational and cultural exchanges, including of scholars and legal experts;

13.c. use of broadcast and print media to discuss human rights issues and to disseminate local language translations of the basic documents and conventions that establish international human rights standards; and

13.d. inclusion in all school curricula, in school textbooks, and in teacher training of the concepts of tolerance and respect for human rights, including religious freedom, and conversely, exclusion from all textbooks of language or images that promote enmity, intolerance, hatred, or violence toward any group of persons based on faith, gender, ethnicity, or nationality.

14. The U.S. government should support Afghanistan's public education system in order to improve the availability and quality of education for all Afghans.

Living in one of the world's most underdeveloped countries and having suffered through conflict and repression for the past generation, few Afghans are aware of the development of universal human rights standards that has occurred since World War II. Various avenues, including exchange programs, broadcasting, and print media, should be explored to inform Afghans regarding these standards and the importance of developing institutions to promote and safeguard them.⁷⁸

Basic texts that should be made widely available in Afghanistan include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the

United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. The Universal Declaration has been translated into Dari, Pashtu, Uzbek, and Turkmen, as well as into Arabic, Farsi, and Urdu.⁷⁹ The U.S. government should assist in the translation into local languages and scripts of any major human rights documents not already available and in their dissemination to the Afghan public.

Obviously, these documents will only be accessible to the literate. Education is crucial to Afghanistan's long-term prospects for reconstruction and development. It is also a powerful tool for the encouragement of respect for human rights and religious tolerance. The Commission therefore believes that the United States, in close cooperation with the United Nations and other donors, should support public education and literacy efforts, which should be available to all Afghans regardless of ethnicity, religion, gender, or other status.

Standards promoting tolerance should be promoted in all schools, both government and sectarian. Textbooks provided by the United States to Afghanistan in the early 1980's included violent images and text inciting resistance to the Soviet occupation. The U.S. government now must not only ensure that textbooks published with U.S. funding convey messages of respect for the rights of others, but urge Afghanistan's educational authorities do likewise throughout the school system.

IV. The Recovery and Reconstruction Process: The United States should appoint a high-ranking official to ensure that U.S. assistance actively promotes human rights

15. As previously recommended, the U.S. government should appoint a high-ranking official to the American diplomatic mission in Afghanistan to advance human rights, including freedom of religion, particularly in connection with reconstruction and recovery programs and the establishment of the new constitution, judiciary, and legal system.

16. The U.S. government should fully fund programming envisaged in the Afghanistan Freedom Support Act of 2002 to strengthen civil society organizations that promote human rights, including freedom of religion; support the development and expansion of democratic and market-based institutions, including independent media; and support the expanded participation of women and members of all ethnic groups in government at all levels.

Advancing human rights, including religious freedom, is critical to the reconstruction of Afghanistan into a state that no longer promotes terrorism and regional instability. The President and the Secretary of State have both affirmed this point. There are danger signals, however, that political reconstruction is going in directions – the wrong ones – that would be counter to protecting human rights, including religious freedom. Those Afghans who would like to move their society in the direction of greater respect for human rights need more support from the United States and the international community.

The U.S. government is deeply engaged in the reconstruction effort in several different areas: security (including both military and law enforcement), political, judicial, economic, and

social (including education and health). As discussed above, reconstruction efforts are currently in an extremely important phase in which the legal groundwork is being laid and essential institutions are being created that can either protect rights or abuse them.

U.S. decisions at every level and at every stage of the process must be calculated to advance human rights. In order to assure this, there needs to be someone looking across all issues with a human-rights lens. This person must also be able to engage the U.S. decision-making process at a senior level, as well as represent the United States at a high level with senior Afghan, UN, and donor-country officials. Otherwise, key decisions will continue to be made piecemeal, in isolation from their long-term consequences for human rights.

Afghanistan is not the usual case. It requires more than normal staffing on human rights issues. This task cannot be left to the Ambassador because he has to deal with an unusually large burden of diverse issues. The proposed official must operate with the Ambassador as part of his Country Team of senior Embassy officers and agency heads. This important task cannot be relegated to a junior officer who lacks bureaucratic clout and who has other competing responsibilities. Appointment of a high-level official would meet the challenge of the current phase of U.S. engagement in Afghanistan's political, legal, and judicial reconstruction.

The Commission sees this official as spearheading U.S. efforts to influence the process of constitutional and legal development; as being the Embassy's lead in dealing with the Judicial Reform and Human Rights Commissions; as ensuring that the human rights dimension is actively and adequately considered in all U.S. assistance programs, including civil society, military and law enforcement, and education; as ensuring the inclusion of human rights themes in U.S. public diplomacy; as ensuring better coordination of U.S. human rights efforts with the United Nations and other donors; as well as encouraging the United Nations and other donors to take a more active role in the promotion of human rights. Such an official would encourage the Transitional Administration and the Constitutional Loya Jirga to guarantee freedom of religion and belief and other universal human rights in the new constitution, to ensure that U.S. and UN assistance goes only to those local leaders and central government agencies that firmly "demonstrate respect for human rights" as specified by the UN Security Council,⁸⁰ and to send the message that security and respect for human rights must go hand in hand.

The Commission believes that the Afghanistan Freedom Support Act of 2002 underlines the importance of human rights as an important part of the U.S. policy agenda in Afghanistan and urges the Administration to make full use of the tools the legislation provides to promote respect for human rights.

¹ See Felice D. Gaer and Michael K. Young, "Remember Afghanistan," *The Washington Post*, February 27, 2003.

² U.S. Commission on International Religious Freedom, "Afghanistan: Back to the Past?" February 26, 2003 (<http://www.uscirf.gov/prPages/pr0149.php3>, accessed April 23, 2003)

³ Kofi Annan, *Report of the Secretary-General on the Situation of Women and Girls in Afghanistan*, Commission on the Status of Women, United Nations Economic and Social

Council, E/CN.6/2003/4, January 23, 2003

⁴ U.S. Department of State, *2002 Country Reports on Human Rights Practices*, “Afghanistan,” March 31, 2003 (<http://www.state.gov/g/drl/rls/hrrpt/2002/18308pf.htm>, accessed April 1, 2003).

⁵ Human Rights Watch, “Afghanistan: Former Women’s Minister Intimidated,” June 26, 2002 (<http://www.hrw.org/press/2002/06/afghan0626.htm>, accessed April 22, 2003). In a troubling development for Afghan women who wish to participate in public debate regarding their country’s future, one of the most prominent women in the Interim Administration, then-Minister of Women’s Affairs Dr. Sima Samar, was formally charged in June 2002 with blasphemy for allegedly having criticized Sharia. Although this charge was subsequently dropped, after Dr. Samar spoke to President Karzai, Dr. Samar’s political standing and influence was clearly eroded. She was not chosen for the Transitional Administration’s cabinet, but was appointed instead to the lower-ranking position of Chairman of the Human Rights Commission.

⁶ *2002 Country Reports*, “Afghanistan” (Internet).

⁷ A full transcript of the Forum is available online at <http://www.uscirf.gov/hearings/29Jan03/afganForum022503.pdf>.

⁸ U.S. Commission on International Religious Freedom, “Appoint a High-Level Human Rights Envoy for Afghanistan,” October 10, 2002 (<http://www.uscirf.gov/prPages/pr0140.php3>, accessed April 23, 2003).

⁹ Afghanistan is a party to a number of international human rights conventions, including the Convention on the Rights of the Child (1989), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Political Rights of Women (1953), and the Convention on the Prevention and Punishment of the Crime of Genocide (1948). On March 5, 2003, Afghanistan became a party to the Convention on the Elimination of All Forms of Discrimination Against Women (1979). In accordance with various resolutions and other treaties, Afghanistan also affirms the provisions of the Universal Declaration of Human Rights (1948).

¹⁰ U.S. Commission on International Religious Freedom, *Report on Afghanistan*, June 2002.

¹¹ Kofi Annan, *Report of the Secretary-General: The Situation in Afghanistan and its Implications for International Peace and Security*, UN Doc. A/57/487-S/2002/1173, October 21, 2002, paragraph 10.

¹² Robert Oakley, “The New Afghanistan: Year 2,” *The Washington Post*, January 3, 2003; John Lawton, “Rebuilding in Afghanistan,” *Saudi Aramco World* 53, no. 6 (November/December 2002): 14-31; Nasrine Gross, “On the Human Rights Situation in Afghanistan,” English-translation by the author of an article published in Dari and French in *Les Nouvelles de Kaboul*, January 2003 and included in an electronic communication to USCIRF staff, January 28, 2003.

¹³ Human Rights Watch, *Afghanistan: Return of the Warlords*, June 2002 (<http://www.hrw.org/backgrounder/asia/afghanistan/warlords5.htm>, accessed March 21, 2003).

¹⁴ Richard C. Hottelet, "...and an Afghan present," *The Christian Science Monitor*, March 12, 2003; Marc Kaufman and Jonathan Weisman, "U.S. Targets Militant Leaders in Southern Afghan Assault," *The Washington Post*, March 21, 2003; Human Rights Watch, *Afghanistan's Bonn Agreement One Year Later: A Catalog of Missed Opportunities*, December 5, 2002 (<http://www.hrw.org/background/asia/afghanistan/bonn1yr-bck.htm>, accessed March 21, 2003).

¹⁵ *2002 Country Reports*, "Afghanistan" (Internet); Human Rights Watch, *We Want to Live as Humans: Repression of Women and Girls in Western Afghanistan*, December 2002 (<http://www.hrw.org/reports/2002/Afghnwmn1202.pdf>, accessed March 27, 2003).

¹⁶ Human Rights Watch, *Afghanistan: Return of the Warlords* (Internet).

¹⁷ U.S. Department of State, *Annual Report on International Religious Freedom 2002*, "Afghanistan," October 7, 2002 (<http://www.state.gov/g/drl/rls/irf/2002/c7601.htm>, accessed April 9, 2003). There are also a few Jews in Kabul. Most non-Muslims left Afghanistan during the prolonged period of conflict that began in the 1970's.

¹⁸ Electronic communication from international aid workers in Kabul, March 18, 2003.

¹⁹ *2002 Country Reports*, "Afghanistan" (Internet); Ivan Sigal, "Afghanistan's Shiites revive Traditions," Eurasianet, April 28, 2003 (<http://www.eurasianet.org/departments/culture/articles/eav042503.shtml>, accessed April 28, 2003); Gross, op. cit.

²⁰ Radio Free Europe/Radio Liberty, "Afghanistan's Women – Progress and Unmet Promises," (*UN*)*Civil Societies* 4, No. 4, March 13, 2003 (<http://www.rferl.org/ucs/2003/03/4-130303.html>, accessed March 27, 2003); International Crisis Group, *Afghanistan: Women and Reconstruction*, March 14, 2003; Equality Now, "Appeal to George W. Bush, President of the United States," (http://www.equalitynow.org/bush/bush_eng.html, accessed April 28, 2003). (http://www.crisisweb.org/projects/asia/afghanistan_southasia/reports/A400919_14032003.pdf, accessed April 28, 2003).

²¹ Nasrine Gross, *Afghan Women: From Sub-zero of Terrorism and Taliban to Today*, February 2003 (<http://www.kabultec.org/moralid.html>, accessed March 28, 2003). Also encouraging are the heroic efforts undertaken by Afghan women on their own behalf to organize themselves and to mobilize support for initiatives such as the Declaration of the Essential Rights of Afghan Women, the text of which is available online at <http://kakbultec.org/declarat.html>.

²² Kofi Annan, *Report of the Secretary-General on the Situation of Women and Girls in Afghanistan*, Commission on the Status of Women, United Nations Economic and Social Council, E/CN.6/2003/4, January 23, 2003. Of the approximately 3 million students who returned to school in March 2002, 30 percent were girls; among their teachers, 28 percent were women.

²³ Ibid., 9.

²⁴ David Rohde, "Attacks on Schools for Girls Hint at Lingering Split in Afghanistan," *The New York Times*, October 31, 2002 (<http://www.iun.edu/~hisdcl/h232/afghan/attackonschools.htm>, accessed March 28, 2003); Feminist Daily News Wire, "Four More Girls' Schools Attacked in Afghanistan," October 30, 2002 (<http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7233>, accessed March 28, 2003); BBC News World Edition, "Attacks on Afghan schools condemned," October 31, 2002 (http://jnews.bbc.co.uk/2/hi/world/south_asia/2379969.stm, accessed March 28, 2003); UN News Service, "UN envoy deplores attacks against school in Afghanistan," March 24, 2003 (<http://www.reliefweb.int/w/rwb.nsf/480fa8736b88bbc3c12564f6004c8ad5/d331e1f70afe3c2685256cf300702c89?OpenDocument>, accessed March 28, 2003). These attacks were strongly condemned by UNICEF and by UNAMA head Lakhdar Brahimi, who termed them "unacceptable" and declared that "Neither the religion of Afghanistan, nor the culture, nor any tradition and certainly not the tradition of jihad allow something like this to happen."

²⁵ Human Rights Watch, *We Want to Live as Humans: Repression of Women and Girls in Western Afghanistan* (Internet); Reuters, "Afghan females face new classroom crackdown," January 10, 2003 (<http://www.afgha.com/?af=printnews&sid=28949>, accessed March 28, 2003). In January 2003, Ismail Khan reportedly extended existing prohibitions against co-education by banning women from being taught by men in privately-run courses, thus making it difficult for Herati women to learn highly-sought-after English or computing skills.

²⁶ Belquis Ahmadi, "Reality Gap in Afghanistan," *The Washington Post*, July 8, 2002, A17; International Human Rights Law Group, *IHRLG in Afghanistan and Pakistan* (http://www.hrlawgroup.org/country_programs/afghan_pak/default.asp, accessed April 28, 2003); Ariane Brunet and Isabelle Solon Helal, *Women's Rights in Afghanistan: Report of Rights & Democracy's Mission to Afghanistan*, September 2002 (<http://www.w4wafghan.ca/pdf/R&DAfghanMission.pdf>, accessed March 27, 2003), 11. Noting the lack of women appearing in public, visiting Canadian NGO representatives concluded that "Public space in Afghanistan is largely controlled and defined by men and this divide is evident at first glance, even in Kabul, contrary to claims that the departure of the Taliban from power has freed Afghan women."

²⁷ Statement made, in the presence of USCIRF staff, by President Karzai at the National Press Club, Washington, D.C., February 27, 2003; Jeffrey Donovan, "Afghanistan: with Iraq Looming, Karzai competes for U.S. Attention," *Eurasianet*, March 1, 2003 (http://eurasianet.org/departments/insight/articles/eav030103_pr.shtml, accessed April 28, 2003).

²⁸ Amir Shah, "New 'Minders' Back in Afghanistan," *Associated Press*, August 12, 2002; staff interview with Mawlawi Ataurrahman Saleem, Deputy Minister, Ministry of Guidance, Hajj, and Endowment, April 22, 2003.

²⁹ Annan, *Report of the Secretary-General on the Situation of Women and Girls in Afghanistan*,

paragraph 30.

³⁰ Amy Waldman, “The 15 Women Awaiting Justice in Kabul Prison,” *The New York Times*, March 16, 2003 (<http://www.nytimes.com/2003/0316/233kinreview/16WALD.html?....>, accessed March 17, 2003).

³¹ Indira A.R. Lakshmanan, “Afghanistan: Tradition, Modernism fight to dominate a culture, Women Living Under Muslim Laws,” *Boston Globe*, October 17, 2002 (<http://www.wluml.org/english/new-archives/afghanistan/trad-mod-culture-oct-02.htm>, accessed March 27, 2003).

³² *2002 Country Reports*, “Afghanistan” (Internet).

³³ Formally known as the “Agreement on Provisional Arrangements in Afghanistan pending the Re-establishment of Permanent Government Institutions.”

³⁴ Article I.1.i, Agreement on Provisional Arrangements in Afghanistan pending the Re-establishment of Permanent Government Institutions, December 5, 2001 (<http://www.uno.de/frieden/afghanistan/talks/agreement.htm>, accessed April 26, 2003).

³⁵ Todd Pitman, “Afghanistan’s former king inaugurates new government commission to review draft constitution,” *Associated Press*, April 26, 2003 (<http://www.sfgate.com/cgi-bin/article.cgi?f=/news/archive/2003/04/26/international2243EDT0646.DTL>, accessed April 29, 2003); *UN News Service*, “UN welcomes inauguration of Afghanistan’s Constitutional Commission,” April 27, 2003 (<http://www.un.org/apps/news/printnews.asp?nid=6859>, accessed April 28, 2003).

³⁶ The Secretariat of the Constitutional Commission of Afghanistan, *The Constitution-making Process in Afghanistan*, March 10, 2003.

³⁷ Sanjeev Miglani, “Interview – New Afghan constitution rooted in Islam,” *Reuters*, February 23, 2003 (http://www.afghanic.de/verfassungen/neue_verfassung.htm, accessed April 26, 2003).

³⁸ Other major issues include the form of government (parliamentary versus presidential, as a republican form of government is a given) and relations between the central government and regional or provincial authorities.

³⁹ See transcript of USCIRF Forum “Reconstructing Afghanistan: Freedom in Crisis,” January 29, 2003 (<http://www.uscirf.gov/hearings/29Jan03/afganForum022503.pdf>); Miglani (Internet).

⁴⁰ Khaled M. Abou El Fadl, Said Arjomand, Nathan Brown, Jerrold Green, Donald Horowitz, Michael Rich, Barnett Rubin, and Briol Yesilada, *Democracy and Islam in the New Constitution of Afghanistan*, January 28, 2003 (<http://www.rand.org/publications/CF/CF186/CF186.pdf>, accessed March 7, 2003). According to Article 2 of the 1964 Constitution (an English translation of which is included as an appendix to the Rand study), “Islam is the sacred religion of Afghanistan. Religious rites performed by the state shall be according to the provisions of the

Hanafi doctrine. Non-Muslim citizens shall be free to perform their ritual within the limits determined by laws for public decency and public peace.”

⁴¹ Article II.2, Agreement on Provisional Arrangements in Afghanistan pending the Re-establishment of Permanent Government Institutions, December 5, 2001.

⁴² International Crisis Group, *Afghanistan: Judicial Reform and Transitional Justice*, January 28, 2003, 8-9; Associated Press, “Afghan Ministers wrap up justice meeting,” December 12, 2002.

⁴³ According to Article 105, clause 3 of the 1964 Constitution, “the King shall appoint the members of the Supreme Court from among persons who shall...have sufficient knowledge of jurisprudence, the national objectives, and the laws and legal system in Afghanistan.”

⁴⁴ International Crisis Group, 10.

⁴⁵ Nina Shea, “Sharia in Kabul? A theological iron curtain is descending across Afghanistan,” *National Review* 54, 20, October 28, 2002; Lakshmanan (Internet); Kenneth Katzmann, Congressional Research Service, *Afghanistan: Current Issues and U.S. Policy*, January 28, 2003 (www.fas.org/man/crs/RL30588.pdf , accessed March 31, 2003).

⁴⁶ Article I.4, Agreement on Provisional Arrangements in Afghanistan pending the Re-establishment of Permanent Government Institutions, December 5, 2001.

⁴⁷ Chris Johnson, William Maley, Alexander Their, and Ali Wardak, *Afghanistan’s political and constitutional development*, January 2003, 32-40 (<http://www.odi.org.uk/hpg/papers/evaluations/afghandfid.pdf>, accessed March 31, 2003).

⁴⁸ See in particular George W. Bush, “President Delivers ‘State of the Union,’” The White House, January 28, 2003 (<http://whitehouse.gov/news/releases/2003/01/print/20030128-19.html>, accessed April 26, 2003); Office of the Press Secretary, the White House, “Joint Statement Between the United States of America and Afghanistan,” February 27, 2003 (<http://www.whitehouse.gov/news/releases/2003/02/20030227-22.html>, accessed March 3, 2003); U.S. Department of State, “Dobriensky Pledges Continuing U.S. Support for Rebuilding Afghanistan,” January 9, 2003 (<http://usinfo.state.gov/topical/global/refugees/archive/03011002.htm>, accessed April 26, 2003); also see the remarks of Dr. Zalmay Khalilzad, Special Presidential Envoy to Afghanistan and Ambassador at Large for Free Iraqis, Special Assistant to the President and Senior Director for Southwest Asia and Islamic Strategy Initiatives, included in the Forum transcript available at <http://www.uscirf.gov/hearings/29Jan03/afganForum022503.pdf>.

⁴⁹ U.S. Department of State, “Country Information: Afghanistan,” (<http://www.state.gov/p/sa/ci/af/>, accessed April 9, 2003).

⁵⁰ Christina Rocca, Assistant Secretary of State for South Asian Affairs, Foreign Assistance Programs in South Asia, Testimony before the Senate Committee for Foreign Relations, March

26, 2003 (<http://www.state.gov/p/sa/rls/rm/19091pf.htm>, accessed March 31, 2003).

⁵¹ Ibid.; see also Human Rights Watch, *Afghanistan: Return of the Warlords* (Internet).

⁵² Rocca (Internet).

⁵³ Personnel would generally be drawn from U.S. Army Civil Affairs, Army Special Operations, the State Department, and USAID, according to Philip T. Reeker, Deputy Spokesman, U.S. Department of States, "Security Situation in Afghanistan," Press Statement, April 1, 2003 (<http://www.state.gov/r/pa/prs/ps/2003/19252.htm>, accessed April 9, 2003).

⁵⁴ Amin Tarzi, "Establishing security in Afghanistan: The role of provincial reconstruction teams," *Radio Free Europe/Radio Liberty*, January 31, 2003 (<http://www.rferl.org/afghan-report/2003/01/5-300103.asp>, accessed March 31, 2003).

⁵⁵ Scott Baldauf, "U.S. forges new approach on aid to Afghans: 500 U.S. civil-affairs soldiers blur the role of fighter and humanitarian – with varying success," *The Christian Science Monitor*, March 26, 2003, 9.

⁵⁶ Richard Boucher, Spokesman, U.S. Department of State Daily Press Briefing, September 18, 2002 (<http://www.state.gov/r/pa/prs/dpb/2002/13553.htm>, accessed April 26, 2003).

⁵⁷ Tarzi (Internet); Center for Defense Information, *CDI Fact Sheet: International Security Assistance Force (December 2002)* (http://www.cdi.org/terrorism/isaf_dec02-pr.cfm, accessed April 26, 2003).

⁵⁸ Abe Rein, "Afghan President sees the Afghan Army as key to security, not an expanded ISAF," *Eurasianet*, February 28, 2003 (<http://www.eurasianet.org/resource/afghanistan/hypermail/200302/0112.shtml>, accessed April 28, 2003).

⁵⁹ United Nations Security Council Resolution 1444, UN Doc. S/RES/1444 (2002), November 27, 2002.

⁶⁰ U.S. Department of State, "NATO's Takeover of the International Security Assistance Force in Afghanistan," April 28, 2003 (<http://www.state.gov/secretary/rm/2003/19743pf.htm>, accessed April 26, 2003).

⁶¹ U.S. Agency for International Development, "Helping Afghanistan," (<http://usaid.gov/afghanistan/>, accessed April 9, 2003).

⁶² U.S. Department of State, "Rebuilding Afghanistan – Progress Update," January 9, 2003 (<http://www.state.gov/p/sa/rls/fs/16594pf.htm>, accessed March 24, 2003).

⁶³ The Asia Foundation, *The Asia Foundation Monthly Update: January 2003*, electronic communication received January 31, 2003.

⁶⁴ USCIRF staff interviews with USAID personnel, March 5, 2003 and April 9, 2003.

⁶⁵ International Foundation for Election System (IFES), Partnership Helps Afghanistan Prepare for June 2004 Elections, December 2002 (http://www.ifes.org/news/archive_12_2002.htm, accessed April 26, 2003); IFES, *Elections Canada and IFES to Help Afghanistan Prepare for June 2004 Elections*, January 13, 2003 (http://www.ifes.org/research_comm/01_13_2003_ElectionsCanada.pdf, accessed April 26, 2003).

⁶⁶ USCIRF staff interviews with USAID personnel, March 5, 2003 and April 9, 2003.

⁶⁷ U.S. Commission on International Religious Freedom, “Commission Commends Initial Congressional Action on Afghanistan: Urges More,” December 13, 2002 (<http://www.uscirf.gov/prPages/pr0144.php3>, accessed April 23, 2003).

⁶⁸ George W. Bush, “President Delivers ‘State of the Union,’” The White House, January 28, 2003 (<http://whitehouse.gov/news/releases/2003/01/print/20030128-19.html>, accessed April 26, 2003).

⁶⁹ Office for Afghanistan Reconstruction, U.S. Department of State, *Fact Sheet: Progress in Afghanistan*, March 24, 2003 (<http://www.state.gov/p/sa/rls/fs/18939pf.htm>, accessed March 25, 2003). The State Department’s Fact Sheet states that “The United States and its international partners remain committed to helping Afghans realize their vision for a country that is stable, democratic, and economically successful, and to an Afghan government committed to the protection of women’s rights, human rights, and religious tolerance.”

⁷⁰ U.S. Commission on International Religious Freedom, “Afghanistan: Draft Constitution could Codify Repression,” April 17, 2003 (<http://www.uscirf.gov/prPages/pr0154.php3>, accessed April 23, 2003).

⁷¹ These recommendations are the result of a lengthy process of consultation, analysis, and deliberation, drawing on discussions by Commissioners and by USCIRF staff with Afghan experts, U.S. and Afghan officials, members of Congress, academic specialists, and international civil servants. Those wishing further information on the subject of Afghanistan’s judicial, constitutional, and legal reconstruction may wish to see the full transcript of USCIRF’s January 29, 2003 Afghanistan Forum “Reconstructing Afghanistan: Freedom in Crisis” (<http://www.uscirf.gov/hearings/29Jan03/afganForum022503.pdf>), the United States Institute of Peace’s Symposium on Afghanistan and the Rule of Law, Rand’s conference *Democracy and Islam in the New Constitution of Afghanistan* (<http://www.rand.org/publications/CF/CF186/CF186.pdf>), the Overseas Development Institute’s report *Afghanistan’s Political and Constitutional Development* (<http://odi.org.uk/hpg/papers/evaluations/afghandfid.org>), the International Crisis Group study *Afghanistan: Judicial Reform and Transitional Justice* (http://www.crisisweb.org/projects/asia/afghanistan_southasia/reports/A400879_28012003.pdf), and the Report of the Consortium for Response to the Afghanistan Transition *Filling the Vacuum: Prerequisites to Security in Afghanistan*

(<http://www.hrlawgroup.org/resources/content/AfghanRpt.pdf>).

⁷² See transcript of USCIRF Forum “Reconstructing Afghanistan: Freedom in Crisis,” January 29, 2003 (<http://www.uscirf.gov/hearings/29Jan03/afganForum022503.pdf>).

⁷³ International Crisis Group, ii-iii. According to an Afghan legal expert interviewed by USCIRF staff on April 25, 2003, the National Security Courts have “no basis in law,” operate in a “secret and unprofessional manner,” and do not keep proper records. According to this source, their judgments are not currently subject to judicial review.

⁷⁴ International Crisis Group, 10, 21.

⁷⁵ See Human Rights Committee, General Comment No. 22 (48)(art. 18), UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), paragraph 9.

⁷⁶ See Committee against Torture, Conclusions and Recommendations: Saudi Arabia. 15/05/2002. CAT/C/xxviii/concl.6 (Concluding Observations/Comments, Saudi Arabia (<http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/db0fbbcb36280f4fc1256bbc00364aed?OpenDocument&Highlight=0,CAT%2FC%2FXXVIII%2FCONCL.6>, accessed April 23, 2003). In paragraph 4b, the Committee noted with concern “The sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention.” The Convention cited is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985).

⁷⁷ Kamal Hossain, *Report on the Situation of Human Rights in Afghanistan*, United Nations Commission on Human Rights, UN Doc. E/CN.4/2003/39, January 13, 2003, paragraphs 9-13.

⁷⁸ In this regard, the announced reestablishment of the Fulbright program with Afghanistan is a welcome development; see Office of the Spokesman, U.S. Department of State, “Deputy Secretary Richard L. Armitage to Announce Key Partnership in Continued Rebuilding of Afghanistan,” April 29, 2003 (<http://www.state.gov/r/pa/prs/ps/2003/20056pf.htm>, accessed April 30, 2003).

⁷⁹ The Office of the UN High Commissioner for Human Rights provides translations of the Universal Declaration of Human Rights at <http://www.unhchr.ch/udhr/navigate/alpha.htm>.

⁸⁰ UN Security Council Resolution 1401, March 28, 2002, UN Doc. S/RES/1401(2002): “The Security Council...3. Stresses that the provision of focused recovery and reconstruction assistance can greatly assist in the implementation of the Bonn Agreement and, to this end, urges bilateral and multilateral donors, in particular through the Afghanistan Support Group and the Implementation Group, to coordinate very closely with the Special Representative of the Secretary-General, the Afghan Interim Administration and its successors; 4. Stresses also, in the context of paragraph 3 above, that while humanitarian assistance should be provided wherever there is a need, recovery or reconstruction assistance ought to be provided, through the Afghan Interim Administration and its successors, and implemented effectively, where local authorities

contribute to the maintenance of a secure environment and demonstrate respect for human rights....”