

## **Policy Brief**

# **Supporting Religious Pluralism and Respect for Freedom of Religions or Belief (FoRB) in Afghanistan**

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### **Executive Summary**

Afghanistan is a majority Muslim country where many non-Muslim communities such as Sikhs, Hindus and Jews alongside Muslim groups, have lived over years. Traditionally, Afghanistan's Constitution has ignored freedoms of religion especially that of non-Muslim communities since the Constitution bases Islam and Islamic laws as the fundamental principles for national legislations including the judicial system in the country.

Although the post-2001 legal reforms in Afghanistan have brought about legal provisions such as the Shiite Personal Status Law or Media Law, religious groups including Shia Hazaras, Sikhs and Hindus continually experience systemic violence and bloody attacks across the country. The government of Afghanistan, the international community and civil society organizations, however, have done little to develop a comprehensive, legal and/or security mechanism for the protection of religious communities in Afghanistan.

Religious freedom conditions have deteriorated under the Taliban since August 2021, with the Taliban's strict interpretation of Islam and Sharia law. As a result, Afghan Jews followed by Sikhs and Hindus are being vanished from the country, and Shia Hazaras experience a genocide; systemically attacked, broadly persecuted, and evicted from their ancestral lands in Afghanistan.

This study therefore aims to discover, assess and fill in policy gaps in countering violations of freedom of religion or belief that leads to persecution of religious groups in Afghanistan. In doing so, the paper explores the existing literature while also discussing perspectives (concerns and demands) from members of religious groups and civil society. Finally, the paper recommends that a) Afghanistan's legislation should recognize and define Freedom of Religion or Belief (FoRB), and violation of FoRB should be penalized; a future Constitution review in Afghanistan must include all ignored ethnic and religious communities especially the Sikhs and Hindus, b) Taliban should respect and protect rights and freedoms of ethnic and religious groups in Afghanistan, and c) the international community should establish and support an independent investigative mechanism, alongside a free press, to monitor and report on violations and abuses of human rights and FoRB, by all parties, including the Taliban.

### **Introduction**

Afghanistan is a diverse country where various ethnic and religious groups such as Hindus and Sikhs and Jews have lived through the course of history. Religious pluralism, in a majority Muslim country of Afghanistan, has not been cherished. Instead, the politicization of ethno-religious identities in Afghanistan has led to inter-ethnic tensions and bloody conflicts which have harmed the non-dominant religious groups, the most. On the other hand, lack of legal recognition and protection of religious communities in Afghanistan have resulted to the continuous persecutions

of those communities. Among many, massacres of Shia Hazaras throughout history<sup>1</sup> and persecution of Sikhs and Hindus are the two examples.<sup>2</sup>

Nevertheless, despite the legal reforms in the post-2001 Afghanistan, freedom of religion or belief has been widely violated and thus religious groups continue to suffer from violence and insecurities. More recently, the condition of freedom of religion has even deteriorated with the Taliban take-over of the country in August 2021. This paper therefore aims to study freedom of religion or belief in Afghanistan in four different sections; a) national legislations b) international commitments c) media and political parties of Afghanistan and d) Taliban and Sharia Law. It analyzes the cases of Hazaras and Sikhs and Hindus as the most persecuted religious groups and concludes with recommendations.

## **Freedom of Religion or Belief in Afghanistan Legislation**

Traditionally, Afghanistan's legislations are wholly based on the principles of Islam not only as the main religion but also as the medium of all rulings and regulations in the country. There has been little, or no efforts made to extend the legal provisions for the protection of rights and freedoms of non-Muslim communities who comprise a significant number of the overall population of Afghanistan.<sup>3</sup> As such, non-Muslim communities as well as non-dominant Muslims, such as Shias and Ahmadiyahs, have faced serious security challenges and violations of their fundamental human rights and freedom of religion or belief.

According to the first Constitution of Afghanistan (1964), Article 2, '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 rituals within the limits determined by laws for public decency and public peace'.<sup>4</sup> Accordingly, while "the limits determined by laws" for non-Muslims is complex and debatable, conditioning their freedom of belief to "public peace" by itself limits and questions the freedom and may lead to mistreatments in their day-to-day lives.

Despite the legal reforms in the post-2001 Afghanistan such as the constitutional revision in 2004,<sup>5</sup> or the ratification of Shiite Personal Status Law in 2009,<sup>6</sup> religious minorities including Shias and Sikh and Hinds have been continually persecuted. Ironically, the 2004 Constitution has completely denied mentioning several ethno-religious groups such as Hindus, Sikhs, Jews, Ismailis, Sadat, as well as Jats and Joggis. It has only mentioned 14 ethnic groups.<sup>7</sup> Moreover, it has continued to follow the same legal provisions for freedom of religion, as older versions, as it says; 'the sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals'.<sup>8</sup>

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<sup>1</sup> Minority Rights Group, Hazara Profile, accessed via: <https://minorityrights.org/minorities/hazaras/#:~:text=Some%20estimates%20suggest%20that%20more,campaign%20of%20violence%20against%20Hazaras.>

<sup>2</sup> Deutsche Welle, "What does Taliban rule mean for Sikhs and Hindus?", 2021, accessed via: [Afghanistan: What does Taliban rule mean for Sikhs and Hindus? | Asia | An in-depth look at news from across the continent | DW | 08.09.2021](https://www.dw.com/en/afghanistan-what-does-taliban-rule-mean-for-sikhs-and-hindus/article-60111111)

<sup>3</sup> Deutsche Welle, 2021

<sup>4</sup> Afghanistan's Constitution, 1964, accessed via: [https://www.constituteproject.org/constitution/Afghanistan\\_1964.pdf?lang=en](https://www.constituteproject.org/constitution/Afghanistan_1964.pdf?lang=en)

<sup>5</sup> Constitution of the Islamic Republic of Afghanistan, 2004, accessed via: [https://www.diplomatie.gouv.fr/IMG/pdf/The\\_Constitution\\_of\\_the\\_Islamic\\_Republic\\_of\\_Afghanistan.pdf](https://www.diplomatie.gouv.fr/IMG/pdf/The_Constitution_of_the_Islamic_Republic_of_Afghanistan.pdf)

<sup>6</sup> Shiite Personal Status Law, 2009, accessed via: <https://www.refworld.org/pdfid/4a24ed5b2.pdf>

<sup>7</sup> Constitution of the Islamic Republic of Afghanistan, 2004

<sup>8</sup> Ibid.

## International Commitments

Afghanistan is a signatory to several United Nations documents including but not limited to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. All these declarations oblige signatory states to recognize, protect and promote rights of religious and ethnic minorities. The government of Afghanistan, however, has shown less commitment to those principle. Consequently, with the take-over of Taliban in August 2021, The Afghanistan Independent Human Rights Commission has been unable to operate, and the Afghanistan Independent Bar Association faces a loss of independence following the *de facto* authorities' decision to administer its activities under the *de facto* ministry of justice.<sup>9</sup>

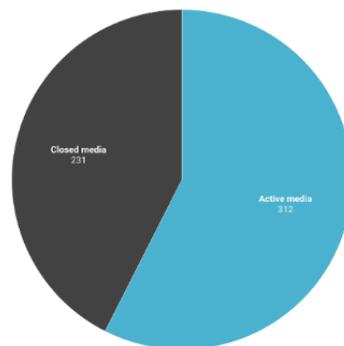
## Media, Political Parties and Freedom of Religion or Belief

In the post-2001 Afghanistan, despite the security challenges, the space for freedom of press and expression had been proportionately open, as compared with many other countries in the region and beyond.<sup>10</sup> At the same time, the post-2001 reforms included ratification of Mass Media Law in Afghanistan passed in 2006, stating that media must avoid publishing works and materials which are offensive to other religions and sects.<sup>11</sup> Similarly, Afghanistan's Political Parties Law also restrict the parties' activities that can "incite to ethnic, racial, religion and sectional violence".<sup>12</sup> In practice, however, mass media channels have been used to spread hate and incite to violence towards religious communities, especially by religious<sup>13</sup> and political leaders.<sup>14</sup>

More than four out of every 10 media have closed since the Taliban takeover

Situation on 08/12/2021 of media operating in Afghanistan before the Taliban takeover on 15/08/2021

■ Active media ■ Closed media



Data compiled on 08/12/2021  
Source: Reporters Without Borders (RSF) • Created with Datawrapper

Source; Reporters Without Borders

With the take-over of Taliban in August 2021, 'Taliban's so-called "11 rules of journalism" prohibit publishing or broadcasting reports that are "contrary to Islam" and "distort news content,"

<sup>9</sup> United Nations Human Rights Council, 2021, accessed via: [OHCHR | Oral update on the situation of human rights in Afghanistan](#)

<sup>10</sup> Reporters Without Borders, 2021, accessed [https://rsf.org/en/ranking\\_table?sort=desc&order=Ranking](https://rsf.org/en/ranking_table?sort=desc&order=Ranking)

<sup>11</sup> Afghan Pazhwok News Agency. "The Mass Media Law," January 5, 2006, accessed via: <https://elections.pajhwok.com/affiles/pdfs/12-Mass%20Media%20Law/12-Mass%20Media%20Law-English.pdf>

<sup>12</sup> Ministry of Justice of Afghanistan. "Political Parties Law," June 3, 2009. <https://bit.ly/30WbZFB>

<sup>13</sup> Public speech of a religious leader, 2020, accessed via <https://www.facebook.com/LalaaZaman/videos/2617300838584576/>

<sup>14</sup> Pazhwok Afghan News, "Facebook Tension between Saleh, Mohaqeq Heightens", 2019, accessed 20 August, 2021, <https://factcheck.pajhwok.com/en/2019/11/24/facebook-tension-between-saleh-mohaqiq-heightens/>

and discourage reporting news that has not been officially confirmed. A more recent directive requires that the media refer to the Taliban by their official name: Islamic Emirate of Afghanistan'.<sup>15</sup>As such, "A total of 231 media outlets have had to close and more than 6,400 journalists have lost their jobs... since 15 August. Women journalists have been hit hardest, with four out of five no longer working."<sup>16</sup> While local journalism and media channels have very limited chances to operate freely, access to information and investigations in general remain very challenging.

### **Taliban's Sharia Law and Religious Freedom in Afghanistan**

Taliban's strict interpretation and practice of Islam and Sharia law have limited the space for Freedom of Religion or Belief in Afghanistan. During their first rule in the 1990s, Taliban enforced the Sharia law based on Quran and according to Hanafi jurisprudence, and thus 'crimes for which Islamic law provides no fixed punishment were dealt with ad hoc'.<sup>17</sup> Recently, with the Taliban's take-over of power, they have announced that the same ruling system including harsh punishments such as public executions, cutting off hands, and lashings, will return under the reinstated Ministry for the Propagation of Virtue and Prevention of Vice.<sup>18</sup>

As a matter of fact, under the Taliban, adherence to any kind of belief except Taliban's Islamic laws is prohibited given that all judicial references are conducted solely according to the Hanafi jurisprudences as described above. This has raised concerns for non-Sunni and non-Muslim communities such as Sikhs and Hindus as Shias, regarding their legal-judicial affairs namely the implementation of Shia Personal Status Law established earlier.<sup>19</sup> Reference to the Sharia law for non-Sunni and other religious or belief communities is against their freedom of religion under the Taliban.

Nevertheless, in September 2021, despite promises to form an "inclusive" government, the Taliban announced an all-male, religiously, and ethnically homogenous cabinet.<sup>20</sup> While on the one hand Taliban has appointed a few ethnic figures in higher governmental positions such as deputy minister,<sup>21</sup> on the other hand, expulsion of Taliban officials such as commanders and religious scholars who hold ethnic or religious backgrounds have raised concerns for the minority communities.<sup>22</sup> A member of Uzbek community said; "Taliban has no respect for any religious group, even Sunnis. We are Sunnis, but Uzbek and that's why they oppress our leader".<sup>23</sup> Previously too, in June 2021, an anti-Taliban Sunni religious leader of the Wazir Akbar Khan Mosque in Kabul, was assassinated.<sup>24</sup>

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<sup>15</sup> Voice of America, "How the Taliban control Afghan Media", 2021, accessed via; <https://www.voanews.com/a/how-the-taliban-control-afghan-media/6267846.html>

<sup>16</sup> Reporters Without Borders, 2021

<sup>17</sup> Naila Mohammad and Zack Udin, United States Commission on International Religious Freedom, 2021, accessed via; <https://www.uscirf.gov/sites/default/files/2021-10/2021%20Factsheet%20-%20Religious%20Minorities%20in%20Afghanistan.pdf>

<sup>18</sup> Ibid

<sup>19</sup> Hamed and Mohammad (members of Shia community), interview, December 2021, Kabul, Afghanistan

<sup>20</sup> Naila Mohammad and Zack Udin, 2021

<sup>21</sup> Asian News International, 2021, accessed via; <https://www.aninews.in/news/world/asia/taliban-appoints-abdul-latif-nazari-as-deputy-minister-of-economy20211226091632/>

<sup>22</sup> BBC Dari, 2021, accessed via; <https://www.facebook.com/watch/?v=5202468873120098>

<sup>23</sup> Ghafar Nabel, interview, 15 Dec 2021, Faryab Afghanistan

<sup>24</sup> Reuters, 2021, <https://www.reuters.com/article/us-afghanistan-mosque-attack/afghans-condemn-killing-of-prominent-cleric-in-mosque-blast-idUSKBN23A1I5>

## **Shia Hazaras and the Taliban**

Hazaras are the third largest ethnic group in Afghanistan and remains as the most discriminated ethno-religious group in the country.<sup>25</sup> Throughout the contemporary history of Afghanistan, Hazaras have been persecuted for reasons related to their ethnic and religious identity. As Shias Muslims, they were labeled as infidels during the first rule of the Taliban which led to several massacres of Hazaras.<sup>26</sup> The history of Hazara persecution dates back to 1890s when Amir Abdur Rahman Khan massacred more than half of the Hazara population, forced Hazaras to flee and/or convert to Sunni sect of Islam and took many other Hazaras to slavery.<sup>27</sup>

Throughout the contemporary history of Afghanistan, Shia Hazaras have been persecuted for almost thirty years now; by the Taliban 1996-2001 followed by ISIS-K attacks later, and recently through forced displacement and targeted attacks of the Taliban again.<sup>28</sup> According to the United Nations Assistance Mission in Afghanistan (UNAMA), only in the first half of 2021, 143 Hazaras were killed and 357 injured in 20 attacks targeted at Hazaras.<sup>29</sup> While ISIS-K has publicly taken responsibility for many of the attacks,<sup>30</sup> the Afghan authorities have not taken any serious step to protect this religious community.

## **The Status of Sikhs, Hindus and Jews in Afghanistan**

Among others, Sikhs, Hindus and Jews are three non-Muslim communities of Afghanistan who have faced severe persecution through years. They have been treated as “others” or “Indians”.<sup>31</sup> Sikhs and Hindus have been highly discriminated, violently attacked, forced to leave the country, and those remaining are extremely vulnerable and under persecution since attacks against them continue.<sup>32</sup> During Taliban’s first rule, Sikhs and Hindus were forced to wear yellow badges to indicate their non-Muslim status and also pay jizya, a tax levied by the Taliban in some areas on non-Muslims.<sup>33</sup> While ISIS has openly taken the responsibility for many of those attacks, the Afghan Republic government, nor the new Taliban regime have taken any legal or formal measures to protect them.<sup>34</sup> As of October 2021, 250 Hindus and Sikhs remain in the country following an evacuation effort by India,<sup>35</sup> that also departed two Sikh parliament members including lawmakers Anarkali Kaur Honaryar and Narender Singh Khalsa.<sup>36</sup>

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<sup>25</sup> Minority Rights Group International, Hazara Profile

<sup>26</sup> Human Rights Watch, accessed via; <https://www.hrw.org/reports/2001/afghanistan/afghan101-02.htm>

<sup>27</sup> Minority Rights Group

<sup>28</sup> Naila Mohammad and Zack Udin, 2021

<sup>29</sup> United Nations Assistance Mission in Afghanistan, Protection of Civilians in Armed Conflicts, Midyear Update, 2021, accessed via; [unama\\_poc\\_midyear\\_report\\_2021\\_26\\_july.pdf](https://unama.poc.midyear.report.2021.26.july.pdf) ([unmissions.org](https://unmissions.org))

<sup>30</sup> Naila Mohammad and Zack Udin, 2021

<sup>31</sup> Afghan Sing, Personal Interview, Dec, 2021, Kabul Afghanistan

<sup>32</sup> Deutsche Welle, 2021

<sup>33</sup> Naila Mohammad and Zack Udin, 2021

<sup>34</sup> Ali Khan, (Member of Sikh Community of Afghanistan), Interview, 20 Dec 2021, Kabul Afghanistan

<sup>35</sup> Deutsche Welle, 2021

<sup>36</sup> Radio Free Europe, “Kabul Sikhs Fear Safety After Armed Men Attack Temples,” 2021, accessed via; <https://gandhara.rferl.org/a/31496367.html>

Just like Jews were vanished from Afghanistan due to persecutions against their religious beliefs<sup>37</sup>, bloody attacks on Sikhs and Hindu temples as well as the return of the Taliban alarms complete eviction of these religious communities from the country.<sup>38</sup>



An ISIS attack on Gurdwara-Kabul killing at least 25 Sikh devotees, 2020.<sup>39</sup>

## Recommendations

- Afghanistan's legislation should recognize and define Freedom of Religion or Belief (FoRB), and violation of FoRB should be penalized.
- A future Constitution review in Afghanistan must include all ignored ethnic and religious communities especially the Sikhs and Hindus. The constitutional revision must also make a legal provision for non-Muslim communities of Afghanistan and followers of other religions, in order to protect their freedom to religion or belief.
- the international community should establish and support an independent investigative mechanism, to monitor and report on violations and abuses of human rights and FoRB, by all parties, including the Taliban.
- International community should encourage the government of Afghanistan to respect and protect rights and freedoms of ethnic and religious minorities.
- Following the principles of Genocide Convention and the under the United Nations doctrine of Responsibility to Protect, the global community, in a joint and multinational approach, should recognize the historical Hazara genocides in Afghanistan and urge all stakeholders in Afghanistan to take serious steps to stop the Hazara persecutions.
- The civil society organizations should raise awareness and mobilize people towards the promotion of values of diversity and their importance in a diverse society such as Afghanistan.
- Media organizations should follow standards of impartiality and respect the National Media Laws; avoiding offensive publications, media channels should promote values of tolerance and acceptance among different ethnic and religious groups.
- Taliban should respect and protect rights and freedoms of ethnic and religious minorities such as Hazaras and Sikhs and Hindus. Taliban should also respect a free press that can

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<sup>37</sup> Abubakr Siddique, Radio Azadi, 2021, accessed via: [Last Afghan Jew Leaves Amid Minority Exodus In Fear Of Taliban \(rferl.org\)](https://www.rferl.org)

<sup>38</sup> Ahmad Kosha, interview, 22 Dec 2021, Ghazni Afghanistan

<sup>39</sup> DW, 2021

independently and freely report on the situation of human rights and minorities in particular.

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