

Annexure I

The State of Minorities in Afghanistan

Introduction

Afghanistan is a unique case when it comes to minority rights, mainly because no ethnicity is a majority in the country, and most ethnicities have tried to inflate their numbers so as to seem more powerful. The constitution identifies no minorities, and thus no minority rights. Doing a survey of minority rights is therefore essentially an attempt to make a case for them to exist in the first place. It entails outlining who the minorities are, what their status is, whether they have rights, and why they need minority rights and protection. This is how this summary is structured.

Who are Afghanistan's minorities?

Afghanistan has minorities based on religion, ethnicities and language. While it is an Islamic State, as per its constitution, people of other faiths are allowed to practise them in private according to the law. 84.7–89.7% of the population is Sunni Muslim, while 10%–15% is Shia (Central Intelligence Agency 2018). Other minorities, mainly Hindus and Sikhs, make for roughly 1% of the population. Persecution of Hindus and Sikhs has increased drastically in recent years, forcing most of them out of the country. Thus, their numbers have dwindled down to a mere 220 families.

On ethnic grounds, there is no single group that represents more than 50% of the population, even though the largest group, the Pashtuns (40%), has tended to play a dominant role. The Tajiks (33%) come second. There also exist the Hazaras (11%), Uzbeks (8%), and Turkmens (2%). The Kyrgyzs, Balochs, Aimaqs, Ismailis, Brahuis, and Nuristanis etc comprise 1% or less each (The Asia Foundation 2014). The Pashtuns mainly occupied a belt of mountains that extend along much of the border with Pakistan, but they presently live in pockets across the country. The Shia Hazaras occupy the east and the Tajiks largely occupy the western half of the central Hindu Kush range. The conditions for growing crops are extremely difficult throughout

the Hindu Kush, rendering both the Hazaras and the Tajiks relatively poor, although the Tajiks have had access to important areas of fertile land in the Shomali valley to the north of Kabul and in the adjacent Panjshir valley. The Aimaqs are Turkic in origin and are to be found in the westernmost part of the Hindu Kush, to the west of the Hazarajat. The Turkmenis occupy the hills on the northwest of the Hindu Kush, and the Uzbeks the desert of Faryab and the flat plain that extends northwards into Central Asia, which permitted an important agricultural and trading economy to develop, until occupied by Taliban. The Shia Ismaili community has its base to the immediate north and northwest of the Salang Pass, which was also controlled by opposition forces and the Taliban intermittently. The Baluchis occupy the inhospitable no-man's land of high sand dunes and a black stony desert near the borders of Iran and Pakistan in the extreme southeast of the country, and are too dispersed to correctly take account of. The Nuristanis exist in particular isolated valleys to the south of Badakshan in eastern Afghanistan (Marsden 2001: 6). They survive primarily on goat herding.

From a linguistic perspective, Persian (Dari) is a widely spoken language, spoken by around 50–55% of the population. It has not only been the native language of many ethnic groups such as Tajiks, Hazaras and Qizilbashes, but it has also been the day-to-day administrative language of the country for many centuries. The World Factbook indicates that Persian is the most widely spoken (50%), followed by Pashto (35%), Turk (Uzbeki and Turkmeni) (11%), and 30 minor languages (Balochi and Pashai) (4%) (CIA 2018).

The history of inter-ethnic relations in Afghanistan is one of coexistence, tolerance and pride in diversity, but also of unequal opportunities and conflict. Afghans are reluctant to define the conflicts that have rived their country in recent years in ethnic terms (Simonsen 2004). At first, the government of Afghanistan did not indicate tribe or ethnicity on ID cards so as to homogenise an Afghan identity, but it still continues the practice so as to not gaslight ethnic tensions. It also does not record any such data.

Minority rights in Afghanistan have improved since the 2001 Bonn agreement, but not by much. Historically, Hazaras have often been victims of discrimination and persecution by other ethnic groups for religious and racial reasons. They have been systematically excluded from government positions and education and have struggled to achieve social mobility. The Taliban regime was particularly brutal in its persecution of Hazaras. However, in the constitution ratified in 2004, Hazaras were given equal rights to other ethnic groups. Most religions, apart from Sunni Islam, have been discriminated against in one time or another. Apart from discrimination against minority ethnicities like the Hazaras or Kyrgyzs (during the Soviet invasion), discrimination against other religions such as Hinduism and Sikhism arose in the Taliban period, and is especially rife now.

The data challenge in Afghanistan

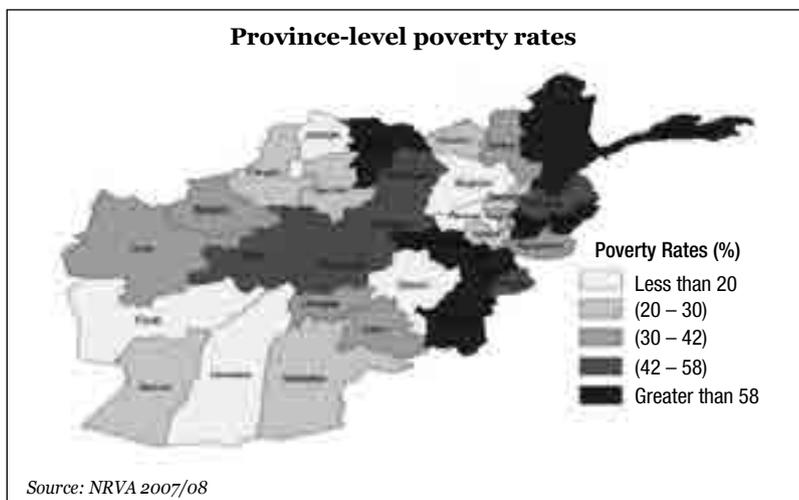
It is only right to acknowledge in the beginning that there is no comprehensive report on the status of minorities in Afghanistan. Finding data on different political, social and economic indicators related to minorities in Afghanistan is a challenging task. The government and international agencies' data, statistics and reports are not disaggregated in terms of ethnic and religious groups. This makes the task of analysing the conditions and status of minorities tough. The task is made even more difficult by the fact that most reports are slightly outdated and may

not reflect the true demographics of the current day. Heavy internal displacement and forced migration are also contributing factors. The current chapter relies on reports by governmental and international organisations whenever available; it also draws on media reports and newsletters, and secondary sources to fill the gaps in primary documents.

How do minorities perform on socio-economic rights?

It needs to be understood that specific figures are not available for most parameters that are used to check socio-economic performance. General assessments have been compiled through secondary reports about specific communities and policies.

According to the 2017 estimates of The World Factbook, 54.5% of Afghanistan's population lives below the poverty line (CIA 2018). Urban Afghans are safer and have better access to services and economic opportunities than those living in rural areas. Inequalities also persist between Afghan men and women, who increasingly find it difficult to access education and health services (World Bank 2017). Higher than 54% poverty incidences are found amongst the Kuchi population, a Pashtun Nomadic Social Group that has been forced to settle, creating disputes between existing settlers and the Kuchis.



As seen above, poverty is most rampant in the northern parts, occupied by the Aimaqs, Turkmenis, Uzbeks, and Ismailis etc. Parts of central Afghanistan, like Bamiyan, the unofficial Hazara capital, are amongst Afghanistan's poorest, often lacking basic facilities and electricity (Hucal 2016). Many reports indicate that the poorest developed areas are ones occupies by Shiite minorities like the Ismailis and Hazaras (Chiovena 2014). Government facilities like healthcare centers, schools, roads etc are fewest in such areas. This is a continuation from the Taliban regime, where these minorities were persecuted and their lands and belongings force-

fully grabbed. In trying to maintain peace after the 2001 intervention, the government never punished anyone for war crimes and the groups of people that were left without resources were never repaid. Thus, their conditions worsened. According to the diet diversity data, the most food insecure provinces are the central highlands, and the Nuristan province (Economic and Social Council 2009). Regions that are occupied largely by minority groups are very underdeveloped and see little opportunity for economic progress.

Commitment

After 11 September 2001, when international forces invaded Afghanistan, which led to the Bonn Agreement, the Government of Afghanistan agreed to support human rights and the initiation of a commission to prepare the first preliminary draft of a revised Constitution, which was later discussed, amended and adapted at the 2003 Constitutional Loya Jirga.

Since the adoption of the new constitution there have been consistent promises made by Afghan politicians, including former president Hamid Karzai and President Ashraf Ghani, to address the concerns of Afghanistan's Sikh and Hindu communities and ensure that they, like all Afghans, are equally protected by the law.

Constitutional provisions

The Constitution of Afghanistan has been made more inclusive since the Bonn Agreement but contradicts itself in various places.

The constitution includes a mandate to abide by the Universal Declaration of Human Rights (UDHR) to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, and the realisation of democracy to ensure national unity and equality among all ethnic groups and tribes (Bureau of Democracy, Human Rights and Labor 2013).

While the constitution declares Islam to be the religion of the State, other religions can be freely practised, according to the law. While there is personal freedom, however, this does not extend to lawmaking itself. The constitution states that no law can go against the tenets of Islam, and in cases where the law is unclear, the Hanafi law¹ can be applied. Thus, religious freedom is limited. Also, while local representatives can follow any religion, the President has to be a Muslim. Thus, non-Muslim minorities like Hindus and Sikhs have little to no political or electoral power. Even among Muslims, Sunni Muslims are dominant over Shia Muslims. Tenets of Islam must also be followed in the field of education, thus limiting access to education for Hindus and Sikhs, who reportedly face severe discrimination from staff and peers; although non-Muslims are not constitutionally required to study Islam in public schools (Bureau of Democracy, Human Rights and Labor 2017).

1. Hanafi is one of the four schools of jurisprudence that Sunni Muslims follow. Where laws are unclear, it is applied to everyone in Afghanistan, regardless of whether they are Sunni Muslims or not.

Although the constitution does not define the minorities in Afghanistan, it does refer to 14 ethnic groups that it says constitute the nation of Afghanistan: Balochs, Tajiks, Hazaras, Uzbeks, Pashtuns, Turkmens, Pachais, Nuristanis, Aimaqs, Arabs, Qirgizs, Qizilbashes, Gujurs and Brahwuis (Article 6). The constitution grants rights based on a liberal principle of citizenship. It considers all those who have citizenship of Afghanistan to be nationals of Afghanistan. It further stipulates that no member of the nation will be deprived of citizenship (Article 4), all the citizens have equal rights and duties, and discrimination is prohibited under the law (Article 22). The fundamental rights guaranteed by the constitution include, amongst others: non-discrimination and equality before the law; freedom of expression; and freedom of association.

While these articles ensure individual freedom, however, the exclusion of the term minority, and the non-existence of any article explicitly acknowledging such groups, puts minorities in a position of vulnerability. They have little legal reprise when discriminated against because of their ethnicity or religion.

International obligations

While Afghanistan is party to most international covenants, much of its constitution and many of its laws do not comply with them. The constitution and penal code are silent on apostasy and blasphemy, which gives a free hand to the courts, relying on their interpretation of Sharia Law, to punish alleged offences, even where this violates the country's international commitments to the UDHR and the International Covenant on Civil and Political Rights (Shayegan & Ammaar 2016).

Recently, though, efforts have been taken by the Government of Afghanistan to build its capacity to meet its obligations under the Rome Statute and to facilitate national investigations

Table 1. International Obligations of Afghanistan on Minority Rights

Conventions	Year acceded/ ratified by Afghanistan
International Convention on Prevention and Punishment of the Crime of Genocide (1948)	1956
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	1983
International Convention on Economic Social and Cultural Rights (1966)	1983
Convention on the Elimination of all Forms of Discrimination Against Women (1979)	2003
International Convention on the Rights of the Child (1989)	1994
ILO 111 - Discrimination (Employment and Occupation) Convention (1958)	1969
ILO 169 – Indigenous and Tribal Peoples Convention (1989)	Not ratified
International Covenant on Civil and Political Rights (1966)	1983

and prosecutions of ICC crimes. The Government of Afghanistan has promulgated a new Penal Code that now explicitly incorporates Rome Statute crimes and specifies superior responsibility as an available mode of liability. The Penal Code Bill was adopted by Afghanistan's parliament in May 2017 (International Criminal Court 2017).

Laws on non-discrimination and affirmative action for minorities

The criminal code states that persons who forcibly stop the conduct of rituals of any religion, those who destroy or damage 'permitted places of worship' (a term not defined by the code) where religious rituals are conducted, and those who destroy or damage any sign or symbol of any religion are subject to imprisonment for six months to one year or a fine starting from 30,000 afghanis.

The law, pursuant to a 2016 presidential decree, mandates that an added seat in parliament's lower house be reserved for a member of the Hindu and Sikh community. Four seats in parliament are also reserved for Ismailis.

Apart from this, there is little legal reprieve for a member of a minority. They can at most be protected under personal rights. In practice, however, they do not seek justice in court out of fear of being discriminated against. The International Religious Freedom Report 2017 (Bureau of Democracy, Human Rights and Labor 2017) stated that Hindus, Sikhs and Shia minorities felt unsafe seeking justice from courts, as they would be treated unfairly.

The effort on minority rights

The Afghan Professional Alliance for Minority Rights (APAMR) is a civil society organisation that has consistently worked towards minority rights, but there is little effort on the government's part.

Programmes and schemes

No specific schemes and programmes have been launched for minorities, mainly because ethnicities and religions have not been categorised as minorities.

Structures: commissions, ministries, and departments.

The government established the Afghanistan Independent Human Rights Commission (AIHRC) as part of the Bonn Agreement. The commission is composed of nine commissioners, each of whom covers a particular human rights area. The commission has distinct units for women's rights, children's rights and the rights of persons with disabilities, but it does not have a particular unit or commissioner on minority rights. The government also did not publish the commission's 800-page report on the status of minorities in 2012, fearing severe backlash.

Amongst government ministries, the Ministry of Hajj and Religious Affairs aims to ensure and promote harmony amongst all sects of Islam and also arranges for pilgrimages of Hindus and Sikhs.

Conclusion and Recommendations

As can be seen from the above summary, there is a need for the government of Afghanistan to define a set of minority rights to protect minority groups from discrimination and harassment.

On the commitment front, Afghanistan must ratify all relevant international obligations on socio-economic rights and align its national laws to international covenants. Internal discrepancies in the constitution and laws of Afghanistan need to be resolved so as to not contradict or supersede other rights and laws.

The government must also make an effort to identify minorities for special attention. It should collect data, and track and publish reports on these identified minority groups. Targeted programmes and policies with adequate budgets and resources allotted to them would help to economically uplift such groups. Special vehicles to implement such plans would be desirable.

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