



Reports

John T. Pinna and Emily Hilliard

Freedom of Religion and Belief in Afghanistan

A Case Study of the Afghan Ulema Council

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International Institute
for Religious Freedom



International Institute
for Religious Freedom

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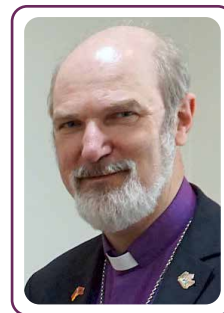
We understand Freedom of Religion and Belief (FoRB) as a fundamental and interdependent human right as described in Article 18 of the Universal Declaration on Human Rights. In line with CCPR General Comment No. 22, we view FoRB as a broad and multidimensional concept that needs to be protected for all faiths in all spheres of society.



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ABOUT THE AUTHORS

John Thomas Pinna is an international development operative working in the areas of government relations, political positioning, and engagement modelling. He focuses on the developing world, religious freedom, and national security. He is the host of the first Muslim/Christian Podcast, *Crossing Faiths*, and the Founder and Executive Director of Muslims for Muslims International. In 2009, Pinna joined the American Islamic Congress (AIC) as its director of government and international relations. After AIC, he continued to develop multi-faith events for three years while executing international programming as the executive director at the Development Organization for Societies in Transition (DOST). Pinna also has drafted segments of the U.S. National Security Strategy (NSS) and supported the logistics of the first Ministerial at the U.S. Department of State (DOS). He advises the National Security Council Directorates on Iran, Pakistan, Afghanistan, Tunisia, and international religious freedom (IRF), as well as DOS bureaus on Afghanistan, Libya, Tunisia, and Ukraine, countering radical ideology and International religious freedom.

Emily Hilliard is a clinical mental health counselor-in-training specializing in work with justice-involved youth and adults. Prior to entering the field of mental health, she served as Chief of Staff and Research Specialist at Muslims for Muslims International. In this role, she regularly participated in and contributed to International Religious Freedom (IRF) Roundtables, collaborating with diplomats, faith leaders, and civil society representatives to address global issues of religious persecution and inequality. She conducted policy research, edited BLUF (Bottom Line Up Front briefs) documents, and assisted in the writing and publishing of research papers and articles for public consumption. While her current clinical work focuses on restorative justice and trauma-informed care, she remains deeply committed to the advancement of religious freedom and human rights.

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Abstract

While many Muslim countries have an Ulema Council, a body of scholars, that intervenes and advocates for Freedom of Religion and Belief (FoRB) in humanitarian and development programming, there has been no evaluation to date on the effectiveness of such a structure in addressing FoRB in-country.

This project aimed to evaluate the Afghan National Shura al Ulema Council, an entity comprised of religious scholars who interpret and disseminate Islamic law. This body provides an overlay for all development and humanitarian programs in-country and regularly intervenes in local, regional, and national projects by national and foreign entities. This study analyzes 700 cases reported as FoRB violations, from multiple municipalities, that were put before the Ulema Council. The findings of the Ulema Council in these cases were then compared to the evaluation of the cases using the Government Restriction Index (GRI) and the Social Hostilities Index (SHI). The comparative analysis illustrated a gap between what the international community classifies as FoRB violations and how Islamic society classifies and proceeds with FoRB cases. More specifically, the Ulema Council were more specific in their classification and put the cases in the Islamic context of religion and social norms to reach solutions to FoRB cases that often stem from familial, tribal, or ethnic disputes, while international standards of FoRB evaluation lacked the social context to properly evaluate the cases. Further, this study emphasizes the need for a more inclusive international standard for evaluating FoRB that takes into account how non-Western societies evaluate and handle issues of FoRB violations.

Conducted during 2020 and into 2021, amidst the Covid-19 pandemic and the subsequent fall of the Government of the Islamic Republic of Afghanistan (GIROA), this evaluation faced many challenges. Great effort was made to update the evaluation with a snapshot of the year of Taliban rule. This update to the evaluation was concluded in August 2022. The surprising and strange developments have been integrated into this study and may provide possible avenues for further evaluation and research on trends.

Special thanks to the team in Afghanistan, who wish to remain anonymous for security reasons, many are still in Afghanistan, for their assistance with collection, editing, and continued passion and commitment to the people of Afghanistan.

Religion permeates every function of Afghan society. Hanafi, a school of Sunni Islamic jurisprudence, is the mainstay tradition of reference. Since the formation of the government in 2004, the Afghan Constitution is enshrined as one of the most coherent statements of Freedom of Religion and Belief (FoRB) protections in an Islamic context. The goal was to balance the ancient Afghan people's traditions, culture, and rich religious history as a Muslim-majority country in a more modern context. This modern and progressive context ensures adherence to international standards, and, at the same time, safeguards existing religious communities in Afghanistan (Travis, 2005). Although this constitution aimed to

protect religious freedom through legal channels, the effectiveness of these laws is called into question for two reasons: (1) in many municipalities that maintain their traditional practices, issues of religious restriction and persecution continue to be handled through informal channels, such as the local religious scholars, and (2) the rise in conflict in Afghanistan has led to an increase in religious restrictions, which, according to international sources, are disproportionately impacting religious minorities in Afghanistan.

There are many factors to consider in Afghanistan when evaluating FoRB, with conflict remaining the most prevalent factor. According to the Pew Research Center (2019), the country with the highest religious restrictions and religious favoritism is Afghanistan. All of the top countries listed in the Pew Research Center data for restriction and favoritism are countries that are presently in open conflict. A study by Grim and Finke (2008) has shown that countries that are in open conflict experience a significant decrease in FoRB and an increase in restrictions and favoritism by the government and social forces. When looking at a history of wars in the last 20 years, we can also find proof that testifies to the notion that FoRB declines as conflict increases. For example, in Ukraine, we have seen that as the conflict in the Donbas rages, particularly in the areas controlled by the Russian Orthodox Church, the Ukrainian Orthodox Church parishioners are denied their right to practice (116th Congress, 2019). The same can be noted in Crimea, where the Muslim Crimean Tartars are not free to openly practice their religious beliefs (Bleich, 2015; USCIRF, 2019). Furthermore, in the disputed territory of Kashmir, Kashmiri Muslims have been denied their right to practice, from celebrating holidays like Eid to reciting weekly prayers, which has landed India on the United States Commission on International Religious Freedom's (USCIRF) "Country of Particular Concern" (CPC) list (USCIRF, 2019). The most explicit example in the past of how conflict worsens conditions related to FoRB is the Einsatzgruppen, the German units deployed during WWII after areas were conquered by the Wehrmacht. These groups were specifically tasked with implementing Hitler's Final Solution. Their work echoes to this day. The relationships between conflict and the freedom to practice and believe one's religion has been explicit throughout history, and, despite numerous efforts by the UN and local governments in creating laws to reduce restrictions and uphold human rights, religious restrictions continue to be used as a tool during conflict to control, subjugate, and dominate minority groups within a country.

In Afghanistan, the conflict has brought about an increase in restrictions of FoRB; both the control of the Islam State (IS), the Taliban, in certain regions and the shifts in control by the Government of the Islamic Republic of Afghanistan (GIROA) has led to these increases in FoRB infringements. For example, when the Taliban attacked and held Kunduz for a period of time, there were several infringements on FoRB on the local population and the Taliban enforced strict adherence to a more rigid interpretation of prayer and practice (USCIRF, 2015). The Taliban imposed an increase in prayer and practice along with rules for prescribed worship. Since the reclamation of Kunduz by the Afghan National Army (ANA), the Taliban remnants continue to try to use violence as a disruptive tactic while imposing their strict interpretation of worship and practice to this

day (Mashal, 2020; USCIRF, 2020). The Pew Research Center (2019) notes in their annual Religious Restriction Report update that, as conflict continues to rise in Afghanistan, there remains a continued increase in the restrictions on religion. With every spike in the reports of conflict in Afghanistan, religious communities and minorities face a proportionate increase in suffering related to FoRB. The years 2018 and 2019 saw an increase in violence against Hindu, Sikh, and Shia minorities as the Islamic State and Taliban increased their incursions into regions previously controlled by GIROA (Pew Research Center, 2019).

Another factor affecting FoRB is the lack of religious pluralism. The religious make-up of Afghanistan among minorities is less than one percent, except for Shia Muslims that represent 15 percent of the population. Non-Muslims, Hindus, Sikhs, Baha'is, Christians, Buddhists, Zoroastrians, and others represent only 0.3 percent of the population (USCIRF, 2020). The lack of multifaith communities, and the low numbers of religious minorities in those multifaith communities, make it difficult to apply statistical analysis to elicit highly accurate, indisputable trending and data-driven conclusions regarding how infringements upon FoRB impact these religious minorities in Afghanistan. Furthermore, limitations on how FoRB is evaluated create challenges for the international community. The standards and codebooks used to assess the status of FoRB violations are codified through Western standards. A rubric that considers predominately Western rhetoric concerning FoRB can be difficult to use when working with diverse ethnic, traditional, cultural, tribal, and collective cultures that have their own FoRB codes embedded in them. In some cases, the concept of FoRB is complicated and unevenly disbursed among many of these elements, and the current FoRB codebooks may need to be reevaluated to consider the complexity of religious, ethnic, and cultural practices, as well as its integration with society and politics, in countries such as Afghanistan.

Afghan FoRB Law

History

Confidence in the rule of law is at an all-time low in Afghanistan. Corruption, lack of experience, and a continued lack of comfort with a formal legal system all plague efforts to strengthen the rule of law in Afghanistan (Rahbari, 2018). An estimated eighty percent of the disputes in the country are resolved through informal mediation systems. Reliance and trust in such systems have been “baked in” for millennia (Pfeiffer, 2011). One can argue that the inclusion of such systems is an essential part of strengthening the rule of law in Afghanistan, but the effectiveness of these systems compared to the legal pathways that are laid out by the Constitution and international laws for human rights has not been formally studied.

As an Islamic State that protects religious minorities, at some level, the representative bodies of governing religious leaders or clerics have existed in Afghanistan in some form since the 10th century CE. The consolidation of the governmental system centering around Islamic principles occurred during the

late 19th and early 20th centuries under Emir Rahman. During his rule, he centralized the government, consolidating power and creating uniformity of laws. These efforts saw the formalization of Sharia (Islamic Law) as state law and brought in Ulema (scholars or learned ones) to execute and uphold the law. In 1931, the Afghan Constitution established Hanafi Sharia as the governing law. In the late 1970s, Hanafi Sharia was integrated into the penal and civil codes. The Afghan Constitution states in Article 1 that Afghanistan is an Islamic Republic. Article 2 established Islam as the national religion and guarantees followers of other faiths shall be free within the bounds of the law in the exercise and performance of their religious rituals. Article 7 commits the new republic to the Universal Declaration of Human Rights. Finally, Article 130 provides that when a legal case is under consideration and no other provisions exist in the Constitution or other law, the courts shall apply Hanafi jurisprudence (The Islamic Republic of Afghanistan, 2004).

Modern Penal Code

In 2018, the new Afghan Penal Code was issued. It marked a monumental leap from the 1976 version that was being enforced up to 2018, providing provisions on violence against women, clarity and specificity on the punishment of crimes, and a coherent set amount of previously unclear jurisdictions of criminal law. The new code does mention FoRB, providing clarity for high crimes to be addressed with specific segments dedicated in Chapter 18, Crimes Against Religions. Article 347 states that persons shall be sentenced to medium imprisonment and/or a cash fine of not less than 12,000 and not more than 60,000 Afghanis for a person who, forcefully and with aversion, disturbs or stops the conduct of religious rituals or rites of any religion, a person who destroys or damages the permitted places of worship where religious rituals of one of the religions are conducted, or a person who destroys or damages any other sign or symbols in respect to followers of any religion. Article 348 states that a person who attacks a follower of any of the religions, who is in the process of performing his religious rituals “publicly” by word, act, writing, or other “public” means, shall be sentenced to a short imprisonment of not less than 3 months and a cash fine of not less than 3,000 and not more than 12,000 Afghanis (The Islamic Republic of Afghanistan, 2004).

The Role of the Ulema Council

Chapter 1, General Principles and Definitions, Article 1 defines how the law regulates crime and penalties. Those committing crimes defined within the law shall be punished under the provisions of Islamic religious law deferring to the Hanafi religious jurisprudence. Everything else, all perpetrated and reported crimes related to FoRB, fall under Islamic Law (Sharia), and the application of this practice/jurisprudence is called “fiqh”. Sharia is derived from both the Quran and the example set by the Prophet Mohammad. As Islam evolved, different scholars and religious leaders coalesced into various schools of legal practice and jurisprudence. These schools are called madhhab. Generally, Islam is divided into four madhhabs in the Sunni and four in the Shia sects. The

Afghan government references in both the Constitution and the Penal Code that the Hanafi Madhhab is the school of legal practice to be followed. The entity that governs religion in Afghanistan is the Ministry of Hajj and Religious Affairs. The Ministry governs how and who can apply Sharia law throughout the country.

The Afghan National Shura Ulema Council is authorized by the Ministry of Hajj and Religious Affairs. A council exists for each of the 34 provinces in various forms and capacities depending on the reach of the government. The Ulema Council holds regular national sessions where representatives from each province meet to discuss the pressing issues related to Sharia law, as well as current events and developments. An Ulema Council is a governing group of Muslim clerics that arbitrate over select law, usually Sharia. Some Councils work on an informal basis while others govern the entire body of law in a Muslim-majority country. Many Muslim countries have an Ulema Council that intervenes and advocates for FoRB in the areas of humanitarian and development programming. There has been no evaluation to date on the effectiveness of such a structure in addressing FoRB in-country. The Afghan National Shura Ulema Council was a quasi-governmental institution; it was considered a semi-independent watchdog, an informal governing body providing oversight on freedom of religion and belief (FoRB) throughout the country in the context of Sharia (Islamic Law) and interpretation of Islam where Sharia has no formal verdict. When issues of FoRB fall into the penal and civil codes (Hanafi religious jurisprudence), the Ulema Council may make recommendations. The value of having faith leaders from the intra-faith Muslim community from each province is an invaluable asset in making sure we address issues in a contextualized manner.

Apostasy and blasphemy are not part of either the civil or penal codes. They are both covered under Sharia. This is a sword that cuts both ways. Despite the Hanafi jurisprudence does not consider it to be an illegal act, it can still be prosecuted as a crime against the state under Sharia, as it has been seen in many high-profile cases like the prosecution of Abdul Rahman for apostasy. The Rahman Apostasy case provides a backdrop to the complex issues relating to conversion. Rahmam worked for a Christian NGO that was promoted upon conversion to the faith then left the country for seven years. During that time, he left his children in the care of his parents in Afghanistan. When Rahman returned his parents refused to give the children back to be raised as a Christian. Rahman immediately cited religious persecution. The case gained international attention until the particulars of his mental state, lack of commitment to his conversion, and personal motivations for citing religious persecution came into question (Constable, 2006).

Current Study

This study aims to evaluate how FoRB in Afghanistan is applied in a collectivistic culture, and more specifically in an Islamic context, through the Ulema Council's informal mediation practices. Despite applying the new Constitution in 2004, issuing the new penal code in 2018, and a myriad of international donor programming fortifying the rule of law, informal mediation practices continue to

be used for most FoRB cases (Svensson & Nilsson, 2018). Mostly due to corruption, a lack of experience with formal rule of law systems, and the ambiguity of how the law is applied, Afghans still rely on and trust informal systems to arbitrate FoRB more than the new legal system (Khan, 2015). Thus, most FoRB mediation cases, outside of high-profile cases, are currently being reported to informal mediation mechanisms and not to the court systems.

This project evaluates the effectiveness of one such mechanism: the Afghan National Shura al Ulema Council, an entity designed to operationalize the components of the Afghan Constitution outside of the civil and penal codes. This body provides an overlay of local community knowledge and relevant Islamic law for all development and humanitarian programs in-country. Furthermore, the Ulema Council regularly intervenes on the local, regional, and national levels. Members are chosen by standing and consensus in their locale with review by the Minister of Hajj and Religious Affairs making the final appointment.

The Council structure has a governing body that meets monthly with weekly correspondence among representatives from each province that hold councils at the regional and local levels. Each city has an Ulema Council that will advise and arbitrate on issues of Sharia and the community that may not be addressed by the civil and penal codes. The council refers cases to the governmental authorities that they deem of more serious import or that are out of their purview. For example, any case that may touch a constitutional issue is referred to the Ministry of Hajj and Religious Affairs and the Ministry of Justice. The council is comprised of approximately 80 persons from each of the 34 provinces, amounting to roughly 3000 persons. Although the majority are Sunni, 20-30 percent are Shia, which is representative of the faith makeup of the Afghan people (USCIRF, 2020).

This case study is the first evaluation of a body meant to govern and arbitrate FoRB for development and humanitarian programming in an Islamic government/country founded within the last 20 years. This study evaluates multiple cases providing a cross-section of what is considered traditional mediation by the West, although Ulema Councils at the local level are considered the authority to issue punishments related to FoRB in a context developed and implemented by an Islamic regime.

Methods

Participants and Interviewers

This study evaluated 700 cases reported as FoRB. This case study summarizes the first documented quantitative national evaluation of the Afghan Ulema Council model as it relates to FoRB. Specifically, the study provides a conservative sampling of cases from seven municipalities. While this study has the most concrete data, it is believed that the results are undervalued as time, budget, security, and the recent Coronavirus are contributing factors that limit the scope of the study.

This study reviewed a sample of 700 cases from seven municipalities working with individuals, government officials, and Council members that identified FoRB to be the core case issue from February 2014 to February 2019. The cases reflect a regional sample from Herat, Mazar E Sharif, Kunduz, Kabul, Jalalabad, and Kandahar municipalities.

The data of this study are based on multiple in-person, phone, and online interviews conducted between January 2020 through April 2020 with the plaintiff, defendant, and observers. The interviews were conducted by seven staff members and 12 volunteers. Each interviewer averaged 3 interviews a day over sixty days, amounting to approximately 2,160 interviews. Some interviews were more fruitful than others; where information on the incident was explicitly stated, whereas others received basic information. The interviewers consisted of five core persons: three males and two females, these five interviewers identify as a Tajik, a Uzbek, two Pashtuns, and a Hazara. Two were graduates of the American University of Afghanistan (AUAF) and three interviewers held Kabul University degrees. Each was chosen based on their community ties.

Materials and Procedure

The questionnaire mirrored the Government Restrictions Index (GRI) and the Social Hostilities Index (SHI) produced by the Pew Research Center (2009). The GRI and SHI are comprised of a 20-question and 13-question indices that rate 198 countries on their level of restrictions on a scale from low (bottom 60% of scores) to very high (the top 5% of scores). The GRI focuses on how national and local governments restrict religion, such as coercion and force. The SRI focuses on the ways that social groups, organizations, and individuals restrict religious practices and beliefs, such as restrictions on religious groups operating within the territory and religiously based crime. For example, “Was there mob violence related to religion?” or, “Was there a religion-related war or armed conflict in the country?”. Scores to the answers are weighted differently depending on the severity of the restriction, a weighted sum is then calculated between all the answers to the questions for each country to rank the country. It is important to note that the GRI and the SHI are quantitative measures that require contextualization to properly analyze the results (Pew Research Center, 2009).

The 700 cases identified as being related to FoRB were reviewed using the GRI and SRI over the course of three months, February 2020–April 2020, and targeting the years 2014–2019. Only closed cases were assessed. The findings of the interviewers about the FoRB cases were then compared to the analysis of these cases under the GRI and SHI criteria. The study used seven data collectors, one for each of the seven municipalities chosen where interviewing and review of records could be facilitated, (Kunduz, Herat, Mazar e Sharif, Kandahar, Jalalabad, Kabul, and Kandahar), to establish a base sample of 700 cases. The number of cases reviewed varied due to the following: the number of available cases, willingness to disclose information, availability of participants, and security.

Results and Discussion

Of the 700 cases identified to be related to FoRB, 427 were identified by the interviewees as being FoRB violations but did not fit into the GRI and SHI criteria.

Figure 14. Number of cases by type of complaint

Type of complaint/Dispute	No. of complaints	Percent of all registered complaints
Death ritual disagreement	154	22%
Death burial location	133	19%
Marriage contract/Nikah	91	13%
Death inheritance	63	9%
Worship service (Jummah)	49	7%
Worship practice	49	7%
Worship space	42	6%
Revenge/Badal	21	3%
Abusing, humiliating, intimidating	21	3%
Denial of relationship	21	3%
Harassment/ persecution	21	3%
Prohibiting from right of marriage or choosing a spouse	14	2%
Depriving from inheritance	7	1%
Forced Marriage	7	1%
Marriage before the legal age	7	1%
Total	700	100%

The claims made were diverse and surprising. Death ritual disagreements by claimants represented 22 percent of the claims. Of the claims made, 19 percent were based on not allowing women to attend mourning and burial ceremonies, disputes on what rituals would be executed, when the burials would occur and the process, and who would officiate at the ritual.

Several cases were brought to dispute over the marriage contract (nikah) negotiation. The bride and groom's families could not agree on the parameters of the contract leading to a dispute that would be religious in nature. Another example included the separation of women and men at a wedding. When advocating for integration, members of the groom's family claimed a violation of their religious rights.

Another case elaborated on the nuances of how the different practices of Islamic sects can influence how Afghans are interpreting FoRB. For example, a Sunni woman had died, and her children wanted to bury her under Sunni rites. The Sunni woman had Shia uncles who disputed the rest of the family and wanted Shia rites to be performed. This case was brought to the Council leading to an equitable outcome. In Aria City, a section of Kabul, where both Sunni and Shia communities reside, living side by side, both faith groups wanted to use the Mosque during Jummah prayer. Disputes erupted on prayer times and the use of shared space, both claiming FoRB. In Mazar e Sharif, where the Blue Mosque is situated and where both faith groups reside, each claimed their right to the prayer and funerary space. Disputes such as this are regularly brought to the council to arbitrate on an outcome.

These examples show the nuanced approach FoRB manifests in Afghan everyday life. The body of cases shows the unique nature of how daily practice and interpretation of FoRB are an integral part of the fabric of the Afghan community. It became apparent that FoRB could, indeed, be justified as a reason for these cases but could not be determined with current GRI and SRI rubrics. It was observed that ethnic, traditional, cultural, tribal, collective culture, and societal norms embedded in religious practice and observances were the primary underlying causes of the complaints. As data started to be aggregated, it became apparent that these cultural norms related to tribal, familial, ethnic, and regional traditions were the *underlying factors* or the whole impetus of the recorded case. Such claims ranged from more mundane issues such as cultural dress to more severe like ethnic segregation. In some cases, local norms like the territorial boundaries of ethnic neighborhoods and places of worship were identified as factors, whereas in other areas, tribal traditions dictated who can assemble and where. To maintain objectivity, considering the time constraints of the study and conditions upon the staff because of Covid-19, priority was given to the cases that fit the SRI and GRI indices. Cases that did not fit the indices were noted for future evaluation.

This study was conducted on Muslims. Its initial aim was to include other religious groups. Yet, it was clear, as the cases were brought to the collectors and interviews started to be conducted, that intra-faith disputes between different Sunni vs. Sunni and Shia vs. Shia and Sunni vs. Shia, plaintiffs, and defendants, were too complicated and inter-connected to be accurately evaluated and assessed. The most obvious cases of this are the terrorist groups like the Islamic State, Al Qaeda, and the Taliban who press Muslims to follow their interpretation of practice in terms of verbal, timing, and movements during worship. Groups like these, in areas over which they have control, impose their social and political views in the name of Islam (Venkatraman, 2007). For example, several cases reviewed were addressed in Taliban areas of control. During prayer times, several Afghans were forced to redo their Mughrib (sundown) prayer as it was deemed by the Taliban representative that they did not pray correctly. Issues such as forced Mosque attendance and Taliban and Islamic State governing of Sharia without qualification or authority to do so were also brought up. Declarations of who and who is not Muslim could not be assessed appropriately as there was no establishment of the number of incidents and criteria other than

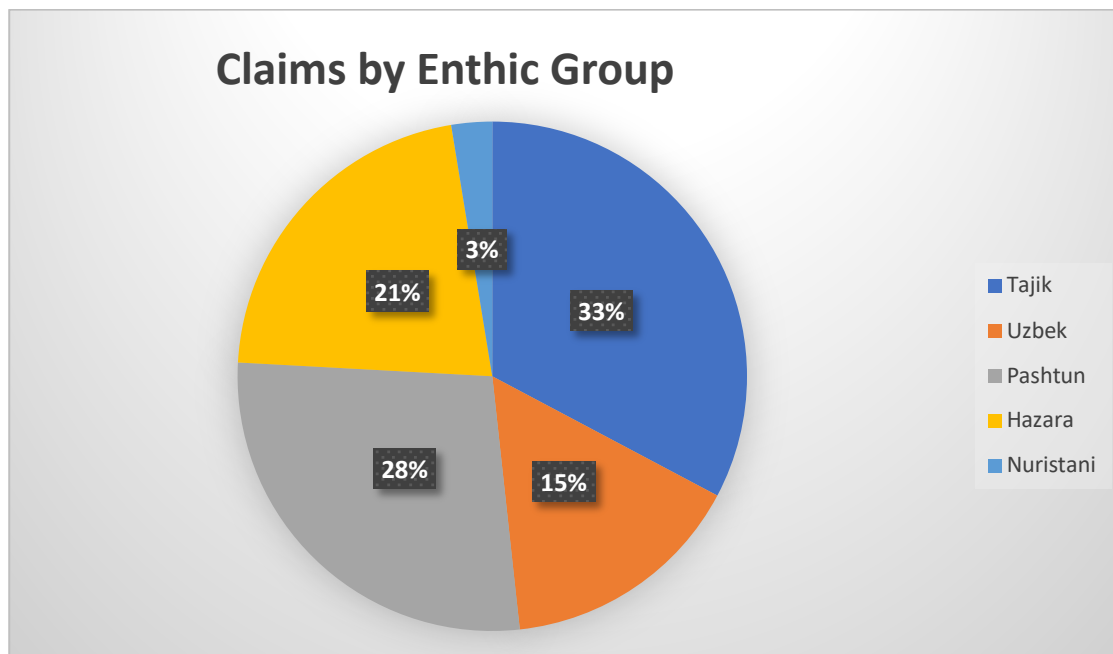
in general terms. Within the Shia community, the reasoning to approve or disapprove relationships between families came under scrutiny as multiple brands of Shia Sharia (Sistani and Shirazi), can be a factor. In one case, a Shia Ismaili was accused of performing black magic by a group of Shia Jafri. This lack of understanding of the Ismaili faith provided a learning moment to resolve the issue and explain the ritual in question. This case and other cases involving judgment on black magic became difficult to assess. Both parties agreed such things existed, yet the practice and involvement in ritual became muddled under debate. It was difficult to get into the abstract nuances of what magic is and who can deem when magic is black or going to cause harm. One interesting case focused on a shahada, (profession of faith), performed in absentia, between Shia and Sunni communities. A member of the Shia community performed a shahada of a Sunni adherent without him present, essentially, but wrongfully, converting him, and then later professing this conversion brought distress to him and his family.

Due to the minutiae of religious customs in a collectivistic and multifaith culture that relies on faith to make legal judgments, Afghanistan citizens look to the Ulema Council to provide rulings that would be lost to Westernized standards of religious restriction. The GRI and SRI needed to be adapted and translated to evaluate informal and religious rules of law, such as the Ulema Council, and acknowledge the nuances of religious practices and customs that overlap in Islamic countries. It is also noteworthy to mention the discrepancy between the number of cases reported as FoRB by Afghan authorities and the number that fit into the rubric. The Afghan definition of FoRB, as well as the Islamic definitions, are much broader than the rubric developed by Pew Research Center (2009). Of the 700 cases identified, 273 cases could be evaluated using GRI and SRI indices. The data suggests that a more contextualized approach is needed to understand how Afghani, Islamic, tribal, and collective cultures perceive FoRB. Regarding the 427 cases found to be related to FoRB by the interviewers in the study, 61 percent of the cases could not be evaluated using GRI and/or SHI indices. These cases were beyond the scope of the categories provided by the indices. A more extensive evaluation of local codes of conduct such as the Pashtunwali, Sharia, and local customs, should be conducted to establish a contextualized view of FoRB from an Afghan perspective. It became apparent from the researchers' and collectors' perspectives that the SHI and GRI criteria are too limited to evaluate the entire caseload. Further analysis of the FoRB evaluation methodology within an Afghan context is suggested. The 273 cases that remained were identified and evaluated through additional direct surveying of the participants.

Age showed to be a significant factor with most claims with 546 or 78 percent being reported by individuals 18-30 years of age. The second most significant group, 31-40 years of age, reported 84 claims, or 12 percent of the claims. The third group, 41-50 years of age, reported 49 claims, or 7 percent. Last, 51 years of age and above reported claims or 3 percent of the total 700. Gender was difficult to quantify as many women reported claims through male intermediaries. Out of the 700 cases, 103 (15%) were reported by women; all but 21 were from the 18-30 years of age group. There is a reasonable expectation that more

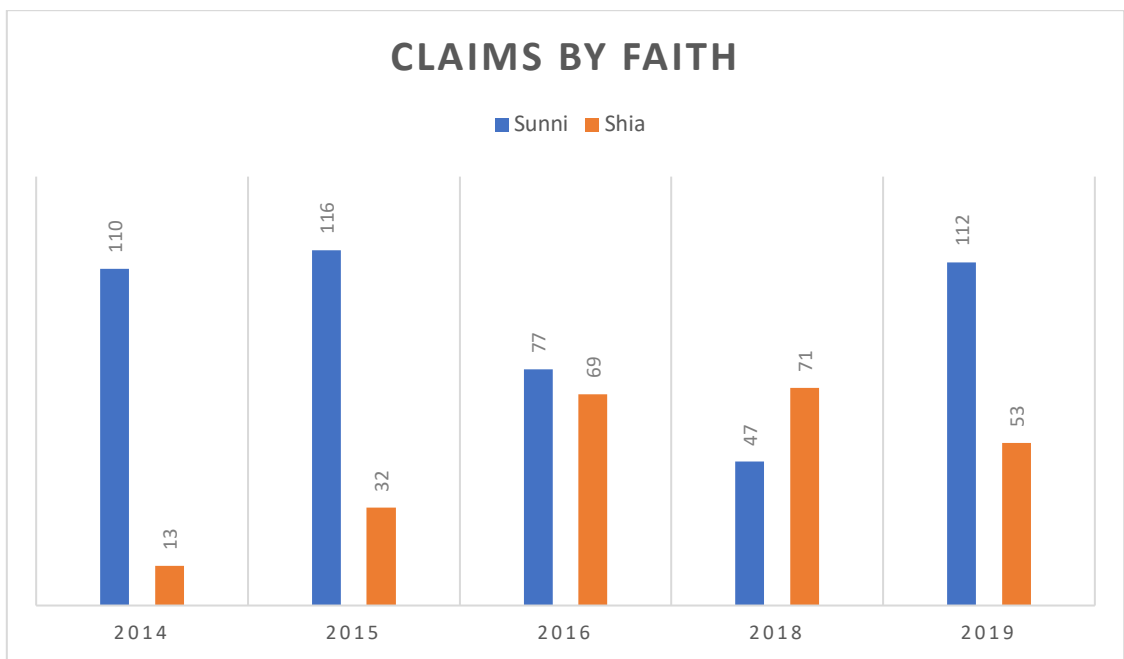
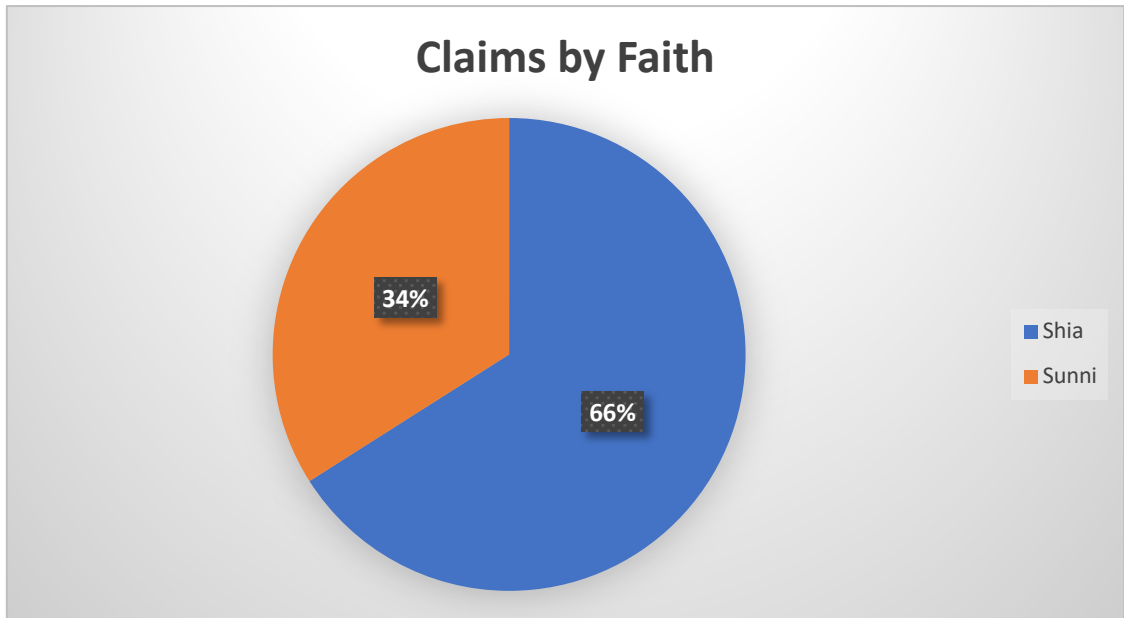
cases related to women represent a substantial number of claims. Yet, the number of cases related to women is obscured by reporting and claims that become family or tribal claims regardless of who reports them.

Figure 11. Claims by Ethnic Group



Ethnicity plays a significant role in Afghan society. The number of ethnic groups is profound; in one evaluation it was noted that there could be as many as 38 different ethnicities in Afghanistan. Each ethnic group supports its own leadership, political agenda, and parties, in some cases have their own militia and governance models (Riphenburg, 2005). Reporting was recorded along ethnic populations. Tajiks reported 231 (33 %) of the claims, making them the largest group. Second, the Pashtun reported 231 (28 %) of the claims. Hazara came in third at 147 (21 %) of the claims. Uzbeks reported 105 (15 %) of the claims, with Nuristanis only amounting to 21 claims (3 %). Faith claims were dominated by the Sunni population making 462 (66 %) of the claims, however, Sunnis hold the majority in Afghanistan. Ethnicities outlined in the chart are depicted concerning how the cases were recorded. The reports are relatively even considering the population cross-section.

Figures 12 & 13. Claims by Faith



Of the total amount of cases, 363 cases of 700 were disputes between the Sunni and Shia faiths. 307 cases of the 700 were between Sunni and 130 cases were between Shia. The majority of disputes, 349 cases, were related to death burial, and ritual. The second most related to marriage was 196 cases. Third, 140 cases related to worship.

Conclusion and Bottom Line

Practical needs in the application of FoRB evaluation differ from the conceptual models that are currently being utilized. This study demonstrates that the application of current rubrics needs to be challenged. As with some case studies,

the extrapolations of this study are limited. The results from the evaluation of the Ulema Council demonstrate a high degree of FoRB cases, however, none of the cases identified pertained to non-Muslim populations. Despite this, there appears to be a healthy amount of reporting of claims related to FoRB from an Afghan construct. The resulting information raises more questions about how contextualization may be an asset in evaluating FoRB and how it may inform new modalities to improve the current FoRB rubrics currently being utilized.

It became clear that the Afghan interpretation of FoRB in an Islamic context could be a starting point for the development of additional resources to assess FoRB in more depth. The practices in this region are ancient and have been practiced for millennia and even before Islam. These practices provide a starting point to add to the capability of the existing rubrics of assessments such as the GRI and SHI. The cases governed by Sharia provide an additional dimension for an enhanced evaluation criterion, such as including religion-specific and cultural-specific criteria. For example, the rites performed at Muslim weddings differ for Sunni and Shia, and if a family oversteps a Sunni or Shia ritual, this would be seen as a FoRB infringement in an Islamic country but not by the SHI or GRI. The existing evaluations of FoRB create a picture of FoRB on a global, regional, and country-specific scale, yet all lack an Islamic perspective. In doing so, they miss a critical factor as one confronts one of the most profound questions of our era: how does Islam evaluate and react to FoRB?

Lessons Learned

1. Regular reporting, mediation, and arbitration is occurring in Afghanistan through informal and traditional methods. The Afghan Ulema Council provides a timely, generally accepted, and widely-used platform to settle disputes on FoRB.
2. FoRB has a broader interpretation of collective cultures in an Islamic, tribal, cultural, traditional, and ethnic context. Several cases described elaborate on the nuanced interpretation of FoRB within these collective lenses.
3. This study found that religious communities' preference for mediation to address their case was influenced by several factors, such as perceived deficiencies of the criminal justice system in processing their claims, including allegations of corruption, abuse of power, and lack of professionalism. Findings also revealed the high-value religious community attached to the swift processing of their cases. Cases are held regularly in real time with resolutions occurring on average in under 14 days.
4. When evaluating FoRB with a non-Muslim population of less than .03 percent, there is a gap between how Muslim and non-Muslim populations are reporting FoRB violations. This study recorded no FoRB claims by non-Muslims.

5. There is a gap between how the international community reports what is occurring with religious minorities concerning conflict and what is taking place.
6. A lack of formal and uniform practices exists and gaps in recordkeeping make it difficult to establish data and trends on FoRB cases in Afghanistan.
7. FoRB protections exist yet, those protections are through traditional mechanisms which are difficult to evaluate.
8. This study suggests that a third index would be helpful to evaluate collective cultures in an Islamic context.
9. This study does not support, with any data, the effectiveness of FoRB on non-Muslim faith communities. A more in-depth study should take place to include other faith groups and leverage this model with non-Muslim FoRB claims.

The Use of These Findings Post-Taliban

In May of 2021, the Taliban started their summer offensive concluding in August of 2021 marking the second Taliban takeover of Afghanistan. During this time of confusion and peril, there was a general malaise of bewilderment throughout the international community and calls for what would become the end of a forward and westward liberal path for Afghanistan. In the wake of the offensive and what would be known as the US Withdrawal from Afghanistan, among the many calls for intervention and cries for the terror that would come, was the highlighting of religious communities and the fear for what would become of them.

The Taliban took great pains to present a different and more progressive mindset stating ‘The religious and civil rights of all minorities in Afghanistan are protected. In this regard, the State Department’s report is incomplete and based on false information. All our Sunnis, Shiites, Sikhs, and Hindus practice their religion freely. We reject the State Dept. report’ (Mujahid, 2022). Women would be allowed to continue to go to school and there were accounts of the Taliban protecting the Shia minority sending out armed security forces to protect religious sites and holiday services (Desk, 2022).

Since the Taliban take over the Ulema Council has stayed largely intact. The formation of the Ministry of Virtue and Prevention of Vice has become the de facto authority interfacing with the Council, representing Taliban authority. The Taliban has implemented several statements with the Council such as requiring women to not go out in public without a mahram (male escorts), engaging Shia Ulema members to act as morality police, protecting sites during Maharram and Ashura, and checkpoints to enforce dress and verify family affiliation (Ahmadi, 2022).

In the early stages of the Taliban take over the Shia have conducted their own engagement with the Taliban. The Kandahar Fatemeh Grand Mosque and

Kandahar Shia Council have been the two authorities who started a dialogue with the Taliban leadership in Kandahar, the birthplace of Taliban leadership. During these meetings, they discussed a 12-point proposal with the officials of the Islamic Emirate which inspired other provinces to follow the lead and get the security of the Taliban for the religious month of Muharram for Shia Muslims which brings with it the commemoration and mourning of the martyrdom of Hussain with the New Year, the grandson of the Holy Prophet Muhammad (PBUH) (Council, 2021). The proposed 12 points were discussed with the Taliban, and they agreed to commit and aid wherever needed (Mosque, 2021).

1. Not to pardon all civilian and military employees and foreign institutions.
2. Not to disturb religious centers, mosques, religious houses, and schools.
3. Not to disturb the women's educational centers and continue their operation.
4. Appoint at least one representative in the education and guidance commissions of Shia to establish understanding and de-escalate religious and social tensions.
5. Cooperate and exchange information about Shia arrests for crimes before sentencing.
6. Maintain the independence of the Shia judiciary and jurisprudence and the recognition of the Dispute Resolution Commission, which is active at the Fatemieh Grand Mosque, and the recognition of the rulings issued by this commission as the official court of Jafari.
7. Not to accept well-known and documented corrupt Shia officials represent the Shia community accept the Shia People's Council as the only representative body on behalf of the people
8. Helping to secure our religious ceremonies, especially in Muharram
9. Invitation from the officials of the Islamic Emirate to participate in the Ashura religious ceremony according to the custom in Kandahar
10. Informing our elders about major national and international decisions and inviting our elders to decision-making meetings, especially the peace process.
11. How the Islamic Emirate communicates with the Council of Shiite Scholars and Shiite personalities throughout the country
12. Support and secure the Khatam al-Nabiin Center as the largest religious center of Shia in Afghanistan and the preservation of endowments and assets of that center.

To date, most of these demands have been received and met with discussion and agreement (Council, 2021). The results of this remain to be seen but present a case of optimism in comparison to the Taliban of twenty-five years ago. Despite the assurance and examples of protection, the international community fears the Taliban and IS will start persecuting minorities based on religion. To date, no credible persecution cases have been presented and verified to the

international community, although restrictions and the implementation of a conservative agenda have been substantiated.

Religious minority populations have all made headlines, citing they all will be persecuted if the US leaves, in the first few months of 2020 as the United States sought to sue for peace with the Taliban. As the U.S. discussed the timing for the withdrawal of forces, permanent ceasefire parameters, guarantees, and enforcement couldn't be agreed upon (Team, 2020). With this increase in conflict, there has been an uptick in the attacks on religious communities as reported in the attacks on the Sikh and Hindu communities and several Muslim religious minorities in Afghanistan. This, coupled with an alternative view of the negotiation parameters as interpreted by the Taliban, has resulted in several violent acts and fatalities (Roohullah, 2020).

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Address

International Institute for Religious Freedom
P. O. Box 780068
Orlando, Florida 32878
United States of America

Friedrichstr. 38
2nd Floor
53111 Bonn
Germany

International Director: Dr. Dennis P. Petri (V.i.S.d.P.)
Research Director: Prof. Dr. Christof Sauer
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