Voices from Afar: Afghan Justice

Author: Jean MacKenzie

Afghanistan is once again in the spotlight, with Secretary of State Condoleezza Rice jetting off to London and Afghanistan in a bid to whip up support among European allies for the war effort.

But along with discussions of troop strength and strategy must come a sober look at the kind of state we are helping to create.

Nowhere is the Afghan conundrum more clearly illustrated than in the case of Sayed Parwez Kambakhsh, the 23-year-old journalism student in northern Afghanistan who has been condemned to death for blasphemy.

"Justice will be done," President Hamed Karzai assured the Secretary of State when she brought up the matter at their meeting in Kabul on February 7.

This was interpreted as a tacit promise to ensure Parwez’s freedom. But for those who have spent a significant amount of time in Afghanistan, the wording was ominous.

Based on past performance, we have little guarantee that the Afghan concept of justice will be something we can easily recognize or live with.

The details of the case are both intricate and banal. Parwez is accused of downloading and distributing an article from the internet that contained language critical of Islam’s position on women’s rights. His brother, Sayed Yaqub Ibrahimi, maintains that the religious charge is a cover for political persecution, and that the true target is Yaqub himself, in retaliation for his aggressive reporting on warlord abuses in Afghanistan’s north.

The good news is that Parwez is unlikely to be executed. The outcry that greeted his summary trial and sentencing has placed so much pressure on the government that any attempt to enforce the extreme penalty called for by the primary court is almost certain to be quashed.

But he is also unlikely to be exonerated: the charges against him are too serious, and the domestic temper too inflamed, to allow the case to simply fade away.

What is at stake here is more than the fate of one young man. The world should not ignore the fact that Parwez’s arrest and imprisonment were not an aberration.

The case, instead, is a symbol of the central contradiction at the heart of the Afghan judicial system, and a worrying sign of the direction in which the country is heading.

The Bonn Agreement of 2001 provided a loose framework designed to transform a backward, war-ravaged land into a functioning democracy in four years, with minimal funding and moderate effort.
With the process of democratization under way, the United States was free to turn its attention to other areas, such as Iraq.

Six years later, it is obvious that we have made a serious miscalculation. The constitution that was to be a milestone on the straight road to democracy contains within it a time bomb that could make cases like that of Parwez Kambakhsh increasingly common.

Article Three of the Afghan Constitution reads “In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.”

This one sentence negates all of the ensuing high-sounding rhetoric that guarantees freedom of religion, expression and the media. If the Ulema, or Council of Religious Scholars, is allowed to interpret Islam as it wishes, then almost any act, utterance or publication can be deemed a criminal offence.

Just ask Ghaws Zalmai, a well-known journalist who tried to publish a new, vernacular translation of the Koran. Some passages offended the Ulema, who promptly declared the work to be the result of a Zionist plot. Ghaws Zalmai is now in prison, awaiting trial and sentencing.

Another glaring example was Abdul Rahman, a convert to Christianity who faced the death penalty two years ago for apostasy. He was whisked out of the country in a diplomatic sleight-of-hand which did little to placate either the domestic religious fundamentalists or the international human-rights activists who were demanding the president uphold the freedom of conscience guaranteed by law.

The solution in Abdul Rahman’s was practical, not principled. The same is likely to happen now.

The United States rightly calls on President Hamed Karzai to show leniency in the case of Parwez Kambakhsh. But demands that he uphold the law or international standards miss the central problem.

While there have been serious procedural problems in Parwez’s case, such as his lack of access to a lawyer, the closed trial and a coerced confession, there is nothing inherently illegal about his sentence. The constitution of Afghanistan allows for this kind of charge, and this kind of penalty.

That is the issue that must be addressed.

In the case of Parwez Kambakhsh, Afghanistan must decide whether it is to join the international community as a full-fledged member, or remain mired in the past.

It is instructive to note that the two bodies which have called most loudly for Parwez’s execution have been Afghanistan’s Council of Religious Scholars and the Taliban.

Presently the United States, along with its NATO partners, are expending a considerable amount in money
and soldiers’ lives in an attempt to stem the rising tide of insurgency in Afghanistan.

But if cases like this one are allowed to stand, then the resulting state will not look significantly different from a Taliban regime. So what exactly is the point?

Jean MacKenzie is Afghanistan Program Director for the Institute for War and Peace Reporting.

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