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Global Human Rights: International Religious Freedom Policy

Introduction

For decades, U.S. policymakers have sought to promote religious freedom abroad, reflecting both support for human rights in U.S. foreign policy as well as the particular emphasis on freedom of religion in U.S. domestic law and political culture. Protection of religious freedom is also affirmed in international law through the United Nations Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other instruments. Congress has been an advocate for international religious freedom issues and has sought to ensure continued support for religious freedom as a focus of U.S. foreign policy, most prominently through passage of the International Religious Freedom Act of 1998 (IRFA).

Legislative Background

The International Religious Freedom Act of 1998 (P.L. 105-292) is the foundational legislation for U.S. international religious freedom (IRF) policy. Recognizing religious freedom as a “universal human right,” IRFA created various government mechanisms aimed at cementing IRF as a foreign policy priority of the United States. Most significantly, the law

- created an Office on International Religious Freedom within the State Department headed by an Ambassador at Large (AAL) for IRF;
- required that the Secretary of State issue an annual report on the status of religious freedom around the world;
- mandated that the President identify “countries of particular concern” (CPCs) and prescribed punitive actions in response to violations of religious freedom, subject to presidential waiver authority;
- created the independent U.S. Commission on International Religious Freedom (USCIRF); and
- amended the Immigration and Nationality Act (INA) to make inadmissible into the United States foreign government officials who have committed particularly severe religious freedom violations.

Congress has subsequently strengthened IRFA via amendment, notably through the Frank R. Wolf International Religious Freedom Act (Wolf IRFA; P.L. 114-281), which became law in December 2016. The major provisions of the law

- called for the AAL for IRF to have a greater role within interagency policy processes and to report directly to the Secretary of State;
- mandated designation of a “special watch list” of countries with severe violations of religious freedom but that did not meet CPC criteria; and
- mandated designation of nonstate entities of particular concern (EPCs).

The State Department’s Role

The State Department leads the federal government’s efforts to promote international religious freedom. The

AAL for IRF heads the Office on International Religious Freedom (IRF Office). Per IRFA, the AAL integrates IRF policies into U.S. foreign policy efforts and is to participate in any interagency processes in which the promotion of IRF “can advance United States national security interests.” The AAL and the IRF Office lead the drafting of the annual international religious freedom report and advise the Secretary of State on U.S. policy actions in response to religious freedom violations. Sam Brownback, confirmed by the Senate in January 2018, serves as the current AAL. Other senior State Department positions related to religious freedom include the congressionally mandated positions of Special Envoy for Monitoring and Combating anti-Semitism (currently held by Elan S. Carr) and Special Advisor for Religious Minorities in the Near East and South/Central Asia (situated in the IRF Office, and currently held by Knox Thames).

In June 2019, Secretary of State Pompeo announced that the State Department was “elevating” the IRF Office and the Office of the Special Envoy for Monitoring and Combating anti-Semitism by designating that these offices report directly to the Under Secretary of State for Civilian Security, Democracy, and Human Rights. The offices had previously been situated within the Bureau of Democracy, Human Rights, and Labor. Pursuant to IRFA, the AAL for IRF continues to report to the Secretary of State.

IRF Adviser on the National Security Council

IRFA amended the National Security Act of 1947 to add a sense of Congress provision that there should be an adviser on IRF issues on the National Security Council (NSC) staff. In February 2020, news reporting indicated that the White House had appointed an individual to the NSC staff to focus on IRF issues. The U.S. Commission on International Religious Freedom had recommended the filling of a position in line with IRFA and applauded the reported appointment in a press statement.

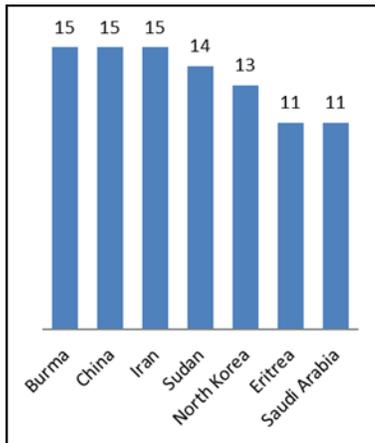
International Religious Freedom Report

The IRF report, which is statutorily required by May 1 each year, covers developments in each foreign country during the prior calendar year and includes information on the status of religious freedom, violations of religious freedom, and relevant U.S. policies. The IRF report is the official U.S. government account of religious freedom conditions abroad, and is a primary information source for the Secretary of State’s “country of particular concern” designations. The report covering calendar year 2018, available on the Department of State website, was released on June 21, 2019.

Countries (and Entities) of Particular Concern

IRFA mandates that the President, using information from the IRF report and other sources, designate “particularly severe” religious freedom violators as “countries of particular concern” (CPCs) (see **Figure 1**). The law defines particularly severe violations as those that are systematic, ongoing, and egregious.

Figure 1. Countries Most Often Designated as CPCs
By Number of Times of CPC List (out of 15 lists since 1999)



Source: U.S. State Department.

The Wolf IRFA mandated an additional “special watch list” of countries with severe religious freedom violations but that do not reach the threshold of systematic, ongoing, and egregious. In recognition of religious freedom abuses carried out by the Islamic State and other nonstate actors, Wolf IRFA also added a new requirement that the President designate entities of particular concern (EPCs) and, “when practicable,” take actions to address severe violations of religious freedom committed by EPCs.

Reflecting broader debates over human rights in U.S. foreign policy, some disagreement exists over the practice of officially designating countries that are the worst religious freedom violators. Proponents argue that this concretely signals U.S. support for religious freedom and creates diplomatic pressure on these governments to improve. Critics contend that it damages bilateral relations and thus may hamper pursuit of other U.S. interests.

Actions in Response to Religious Freedom Violations

IRFA prescribes a list of U.S. government actions that may be exercised in response to religious freedom violations. Permitted actions include diplomatic measures such as demarches and public condemnations. For CPC countries, sanctions of varying severity are suggested, including suspension of foreign assistance, trade restrictions, or loan prohibitions. However, the law provides the executive branch significant discretion in determining which, if any, punitive actions to take. Administrations can apply “commensurate substitute action” in lieu of IRFA’s suggested measures, exempt a country from new sanctions by referring to already existing human rights-related sanctions against that country, or waive sanctions by citing U.S. national interest. In practice, Administrations have

generally either referred to sanctions already in place against CPC countries or issued waivers instead of implementing new sanctions under IRFA. The most recent CPC designations and accompanying government actions were announced in December 2019 (see **Table 1**).

Table 1. CPCs and U.S. Actions (Dec. 2019)

Country	Action
Burma (Myanmar)	Referred to preexisting sanctions
China	Referred to preexisting sanctions
Eritrea	Referred to preexisting sanctions
Iran	Referred to preexisting sanctions
North Korea	Referred to preexisting sanctions
Pakistan	Issued national interest waiver
Saudi Arabia	Issued national interest waiver
Tajikistan	Issued national interest waiver
Turkmenistan	Issued national interest waiver

In addition, in December 2019, the State Department placed Comoros, Cuba, Nicaragua, Nigeria, Russia, Sudan, and Uzbekistan on the special watch list. Sudan was removed from its prior listing as a CPC “due to significant steps taken by the civilian-led transitional government” to address the prior government’s religious freedom violations. This was the first time since IRFA’s enactment that Sudan was not listed as a CPC. EPC designations were al-Nusrah Front, Al Qaeda, Al Qaeda in the Arabian Peninsula, al-Shabab, Boko Haram, the Houthis, the Islamic State, the Islamic State-Khorasan, and the Taliban.

U.S. Commission on International Religious Freedom

IRFA established the U.S. Commission on International Religious Freedom (USCIRF), an independent federal commission tasked with monitoring IRF conditions, reviewing U.S. government policy, and making policy recommendations. The President and House and Senate leadership appoint USCIRF commissioners, and IRFA’s provisions ensure its composition reflects recommendations of both the majority and minority party. Commissioners are appointed to one-year or two-year terms and are to be composed of distinguished individuals in fields relevant to religious freedom. The AAL for IRF also serves as a nonvoting member. USCIRF in June 2019 elected Tony Perkins as USCIRF’s Chair for 2019-2020. Legislation in the 116th Congress (S. 2503 and H.R. 5379) would amend rules concerning the service tenure of commissioners, among other proposed changes, and reauthorize USCIRF through FY2023.

Pursuant to IRFA, USCIRF produces its own annual report, which it has utilized to analyze the executive branch’s implementation of IRFA during the preceding year, make general policy recommendations, and recommend CPC, special watch list, and EPC designations. USCIRF’s recommendations for designations are typically more expansive than the official designations by the State Department. In its report covering calendar year 2019 (released in April 2020), USCIRF recommended that five countries be added to the official CPC list in addition to those already on it: India, Nigeria, Russia, Syria, and Vietnam. USCIRF similarly recommended that an additional 11 countries be added to the special watch list, and that one additional entity be added to the EPC list.

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