



# Countries of Particular Concern

## Why This U.S. Foreign Policy Tool Is Often Ineffective and How to Make It Better

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### Key Points

In 1999, the State Department began designating foreign governments that engage in or tolerate “particularly severe” religious freedom violations as Countries of Particular Concern.

In the past 24 years, the State Department has designated 15 countries as Countries of Particular Concern and has seen few improvements in the religious freedom conditions of those countries.

U.S. leaders are often reluctant to designate CPCs or provide the enforcement necessary to promote meaningful improvement in religious freedom conditions abroad.

The U.S. government should consider implementing policy changes that could make the CPC designation far more effective than it currently is.

### Summary

**T**he Country of Particular Concern (CPC) designation is an important instrument in the U.S. government’s foreign policy toolbox. Governments that engage in or tolerate “particularly severe violations” of religious freedom risk receiving the unenviable distinction of being labeled a CPC. This designation can be accompanied by significant diplomatic and economic consequences.

Unfortunately, the State Department is often reluctant to designate deserving foreign governments as CPCs. Even when the Department does issue a designation, it does not always follow it up with the enforcement necessary to promote meaningful improvement. Steps ought to be taken to ensure that the CPC designation is better utilized so that the United States can be a more effective advocate for religious freedom abroad.

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## **Introduction**

When Congress passed the International Religious Freedom Act of 1998 (IRFA), it mandated that the promotion of religious freedom across the globe be a central part of U.S. foreign policy. One of IRFA's primary provisions was giving the U.S. president the ability to declare foreign governments that engage in or tolerate "particularly severe violations" of religious freedom as being "countries of particular concern." Congress intended that such a designation would be accompanied by certain diplomatic and economic penalties; however, the State Department infrequently affixes such punishments to offending nations and often issues waivers. This, along with the executive branch's failure to designate some deserving foreign governments as CPCs, has undermined the efficacy of the CPC designation.

This report will examine why the CPC designation has failed to meet its full potential since it was first introduced in 1999 and will also recommend ways to make the designation a more effective means of promoting international religious freedom going forward.

## **A Tool Kept from Reaching Its Full Potential**

A few of the ways the executive branch has undermined the CPC designation's effectiveness in the past are (1) failing to designate some deserving foreign governments as CPCs and (2) removing offending governments from the CPC list prematurely, before any significant religious freedom improvements have been made. The most conspicuous example of the latter is the State Department's mysterious removal of Nigeria in 2021.

Nigeria could hardly be more deserving of a CPC designation. In the first half of 2021 alone, an average of 17 Christians were murdered for their religious identity every day. In the country's Northeast, Boko Haram and other Islamist terrorist groups routinely target Christian villages,

churches, and individuals to be burned, attacked, and slaughtered.<sup>1</sup> Fulani militants in Nigeria's Middle Belt raid Christian villages, kill defenseless individuals, and take over their land.

Nigeria was first designated a CPC in 2020 under former U.S. Secretary of State Mike Pompeo. When Pompeo's successor, Secretary Antony Blinken, announced the 2021 list, it contained many of the usual suspects when it comes to abusing the religious rights of individuals. These designations were well-deserved. However, Nigeria was mysteriously removed from the list despite its religious freedom conditions getting worse, not better. Notably, the removal of Nigeria's CPC status came one day before Blinken went to Nigeria to visit with state leaders, including President Muhammadu Buhari.

Nigeria's glaring omission from the list continued in 2022. On December 2, 2022, Secretary Blinken quietly announced that Burma (Myanmar), China, Cuba, Eritrea, Iran, Nicaragua, North Korea, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan had all been designated countries of particular concern as a result of engaging in or tolerating particularly severe religious freedom violations.<sup>2</sup> Why Nigeria didn't merit a similar designation remained unexplained.

By removing Nigeria's CPC designation without explanation, the Biden administration raised serious questions about how the State Department currently utilizes CPC designations and how this tool might be made more effective in order to help persecuted religious adherents.

## **The Purpose of the CPC Designation**

As previously noted, the U.S. government's CPC designation was established by the groundbreaking International Religious Freedom Act of 1998, a statute designed to elevate religious freedom so that it would become a priority in U.S. foreign policy. With respect to why the advancement of religious freedom ought to be a U.S. foreign policy priority, IRFA points to the historical truth that religious freedom was instrumental in the creation of the United States and is, therefore, a fundamental

national value. Furthermore, religious freedom is recognized as a fundamental human right in international documents such as the Universal Declaration of Human Rights of 1948 (UDHR) and the International Covenant on Civil and Political Rights of 1966 and 1976 (ICCPR).

To advance religious freedom across the globe, IRFA:

- (1) Created the Office of International Religious Freedom at the State Department and the role of ambassador-at-large for international religious freedom.
- (2) Mandated an annual government report on international religious freedom. These extensive reports describe the religious freedom conditions for every country in the world except for the United States.<sup>3</sup>
- (3) Established the U.S. Commission on International Religious Freedom (USCIRF), an independent, bipartisan, federal government agency tasked with making policy recommendations to the president, secretary of State, and Congress regarding international religious freedom.
- (4) Created an official U.S. government designation for “countries of particular concern” regarding religious freedom. This designation is to be assigned to the government of a country that has “engaged in or tolerated particularly severe violations of religious freedom.” Notably, President Bill Clinton delegated his responsibilities under IRFA to the secretary of State in 1999, the first year that IRFA went into effect.<sup>4</sup> Every successive president has done the same.

IRFA defines “particularly severe violations of religious freedom” with regard to the CPC designation to mean: “systematic, ongoing, egregious violations of religious freedom, including violations such as— (A) torture or cruel, inhuman, or degrading treatment or punishment; (B) prolonged detention without charges; (C) causing the disappearance of persons by the abduction or clandestine detention of those persons; or (D) other flagrant denial of the right to life, liberty, or the security of persons.”

In 2016, Congress enacted and President Barack Obama signed into law the Frank R. Wolf International Religious Freedom Act (Frank Wolf Act), which amended IRFA by expanding its provisions. In addition to the CPC designation, it added a Special Watch List (SWL) for governments

that “engaged in or tolerated severe violations of religious freedom during the previous year, but do[] not meet, in the opinion of the President at the time of publication of the Annual Report, all of the criteria” for a CPC designation. The Frank Wolf Act also requires the U.S. government to identify non-state actors engaging in particularly severe violations of religious freedom and designate them as an Entity of Particular Concern (EPC). An EPC is defined as “a non-sovereign entity that exercises significant political power and territorial control; is outside the control of a sovereign government; and often employs violence in pursuit of its objectives.”<sup>5</sup>

The primary basis for CPC designations is the State Department’s annual country reports on religious freedom. The Department is also supposed to consider recommendations made by USCIRF. Every year before May 1, USCIRF releases an annual report on some of the world’s worst religious freedom violators. Starting in 2021, these reports specifically recommended countries that should be given a CPC designation or added to the SWL. Although IRFA specifies that the president should make these determinations by September 1 each year, they are typically released anytime from September until the end of the year.

IRFA states that the president is to determine whether the government of a country has engaged in or tolerated “particularly severe violations of religious freedom” and designate such countries as Countries of Particular Concern. Yet, the designation is not the end of U.S. action regarding governments that have earned CPC status. IRFA identifies 15 presidential actions to be carried out “as expeditiously as practicable” in response to religious freedom violations by a foreign government.<sup>6</sup> Items 9-15 in the list deal with economic penalties, and IRFA instructs the president to take one of these actions against CPCs. Alternatively, the president may “negotiate and enter into a binding agreement with the government of such country” to secure improvements in religious freedom conditions.

Commensurate action can also be taken. Although the statute’s reference to “commensurate action” can be vague, it can include any substitute action that would further the purposes of IRFA.<sup>7</sup> In the past, the State Department might have considered the “double hatting of sanctions to be a “commensurate action.” “Double hatting” occurs when the State Department points to other human rights-related

sanctions imposed by the United States on a country designated a CPC and states that these existing sanctions also fulfill the requirements for economic penalties related to IRFA.

**List of Presidential Actions for Countries of Particular Concern**

*IRFA provides a list of 15 “presidential actions” ranging in intensity that might be taken against countries that violate religious freedom. However, the president is supposed to take one of the following actions against foreign governments that receive a CPC (these are numbers 9-15 on the list of presidential actions). These actions are meant to place economic pressure on the foreign government to prompt reform.*

(9) The withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961.

(10) Directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participations in the extension of credit with respect to the specific government, agency, instrumentality, or official found or determined by the President to be responsible for violations [...].

(11) The withdrawal, limitation, or suspension of United States security assistance [...].

(12) [...] directing the United States executive directors of international financial institutions to oppose and vote against loans primarily benefiting the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violation [...].

(13) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations [...].

(14) Prohibiting any United States financial institution from making loans or providing credits totaling more than \$10,000,000 in any 12-month period to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations [...].

(15) Prohibiting the United States Government from procuring, or entering into any contract for the procurement of, any goods or services from the foreign government, entities, or officials found or determined by the President to be responsible for violations [...].

Although IRFA expects U.S. leaders to take robust action to advance religious freedom among the world's worst violators, the president can use a waiver authority if it would advance U.S. policy on international religious freedom or if the "important national interest of the United States" warrants the use of a waiver.<sup>8</sup>

Which leads us to the other ways the executive branch has undermined the CPC designation's effectiveness in the past: (3) failing to affix penalties to offending countries and (4) distributing too many waivers.

The Frank Wolf Act noted the problem of the State Department's inappropriate and excessive use of waivers. In Section 304(d), it explained that "ongoing and persistent waivers" of the appropriate presidential actions "do not fulfill the purposes of this Act."<sup>9</sup> Additionally, it stated that the president, State Department, and other executive branch officials should find ways to address existing violations through presidential actions.<sup>10</sup>

However, presidential action currently takes place far less frequently than it ought. USCIRF reported that in 2021, for the 10 countries that earned a CPC designation, "the State Department reimposed existing ('double hatted') sanctions on five and issued waivers on taking any action for the other five."<sup>11</sup>

The CPC designation itself was intended to motivate foreign governments to improve religious freedom conditions in order to avoid the public shame of being labeled a CPC and being the recipient

of accompanying economic penalties or sanctions. Removing the possibility of economic penalties or sanctions undermines the potential impact of the CPC list.

## **History of CPC, SWL, and EPC Designations**

One reason that CPC designations act as a crucial means to “name and shame” the world’s worst violators of religious freedom is the public nature of the designation. Unfortunately, the CPC designation announcement tends to be quiet and muffled. In recent years, they have been revealed via a short press release towards the end of the year. The 2022 list was announced on a Friday afternoon. Even so, the designations can ruffle the feathers of some foreign leaders whose countries are so named.

The United States has been monitoring religious freedom conditions in every nation for over 20 years. Reviewing past designations can tell us a lot about their efficacy. Below is every CPC, SWL, and EPC determination made by the U.S. government. Also included from 1999-2000 is the State Department’s label “particularly severe violator,” which predated the EPC designation.<sup>12</sup>

### **2022**

**Date:** December 2, 2022

**CPC:** Burma (Myanmar), China, Cuba, Eritrea, Iran, Nicaragua, North Korea, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan

**SWL:** Algeria, the Central African Republic, Comoros, and Vietnam

**EPC:** Al-Shabab, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS-Greater Sahara, ISIS-West Africa, Jama’at Nusrat al-Islam wal-Muslimin, the Taliban, and the Wagner Group

### **2021**

**Date:** November 15, 2021

**CPC:** Burma (Myanmar), China, Eritrea, Iran, North Korea, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan<sup>13</sup>

**SWL:** Algeria, Comoros, Cuba, and Nicaragua<sup>14</sup>

**EPC:** Al-Shabab, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS, ISIS-Greater Sahara, ISIS-West Africa, Jamaat Nasr al-Islam wal-Muslimin, and the Taliban

## **2020**

**Date:** December 2, 2020

**CPC:** Burma (Myanmar), China, Eritrea, Iran, North Korea, Nigeria, Pakistan, Saudi Arabia, Tajikistan, and Turkmenistan<sup>15</sup>

**SWL:** Comoros, Cuba, Nicaragua, and Russia

**EPC:** Al-Shabab, al-Qa'ida, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS, ISIS-Greater Sahara, ISIS-West Africa, Jamaat Nasr al-Islam wal Muslimin, and the Taliban

## **2019**

**Date:** December 18, 2019

**CPC:** Burma, China, Eritrea, Iran, North Korea, Pakistan, Saudi Arabia, Tajikistan, and Turkmenistan<sup>16</sup>

**SWL:** Comoros, Cuba, Nicaragua, Nigeria, Russia, Sudan, and Uzbekistan

**EPC:** al-Nusra Front, al-Qa'ida in the Arabian Peninsula, al-Qa'ida, al-Shabab, Boko Haram, the Houthis, ISIS, ISIS-Khorasan, and the Taliban

## **2018**

**Date:** November 28, 2018

**CPC:** Burma, China, Eritrea, Iran, North Korea, Pakistan, Saudi Arabia, Sudan, Tajikistan, and Turkmenistan<sup>17</sup>

**SWL:** Comoros, Russia, and Uzbekistan

**EPC:** al-Nusra Front, al-Qa'ida in the Arabian Peninsula, al-Qa'ida, al-Shabab, Boko Haram, the Houthis, ISIS, ISIS-Khorasan, Taliban

## **2017**

**Date:** December 22, 2017

**CPC:** Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, Tajikistan, Turkmenistan, and Uzbekistan<sup>18</sup>

**SWL:** Pakistan

## **2016**

**Date:** October 31, 2016

**CPC:** Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, Tajikistan, Turkmenistan, and Uzbekistan<sup>19</sup>

## **2015**

**Date:** February 29, 2016

**CPC:** Burma, China, Eritrea, Iran, North Korea, Sudan, Saudi Arabia, Tajikistan, Turkmenistan, and Uzbekistan<sup>20</sup>

## **2014**

**Date:** July 18, 2014

**CPC:** Burma, China, Eritrea, Iran, North Korea, Sudan, Saudi Arabia, Turkmenistan, and Uzbekistan<sup>21</sup>

## **2013**

**Date:** August 2011

**CPC:** Burma, China, Eritrea, Iran, North Korea, Sudan, Saudi Arabia, and Uzbekistan<sup>22</sup>

## **2012**

**Date:** August 2011

**CPC:** Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan<sup>23</sup>

## **2011**

**Date:** August 2011<sup>24</sup>

**CPC:** Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan<sup>25</sup>

## **2010**

**Date:** November 17, 2010

**CPC:** Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan<sup>26</sup>

## **2009**

**Date:** January 16, 2009

**CPC:** Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan<sup>27</sup>

## **2008**

**Date:** September 2008

**CPC:** Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan<sup>28</sup>

## **2007**

**Date:** 2007

**CPC:** Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Uzbekistan, and Sudan<sup>29</sup>

## **2006**

**Date:** September 15, 2006

**CPC:** Burma (Myanmar), China, Eritrea, Iran, North Korea, Saudi Arabia, Uzbekistan, and Sudan<sup>30</sup>

## **2005**

**Date:** November 8, 2005

**CPC:** Burma (Myanmar), China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Vietnam<sup>31</sup>

## 2004

**Date:** September 15, 2004

**CPC:** Burma (Myanmar), China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Vietnam<sup>32</sup>

## 2003

**Date:** December 18, 2003

**CPC:** Burma (Myanmar), China, Iran, Iraq, North Korea, and Sudan<sup>33</sup>

## 2002

**Date:** October 7, 2002

**CPC:** Burma (Myanmar), China, Iran, Iraq, North Korea, and Sudan<sup>34</sup>

## 2001

**Date:** October 7, 2002

**CPC:** Burma (Myanmar), China, Iran, Iraq, North Korea,<sup>35</sup> and Sudan<sup>36</sup>

**“Particularly severe violator”:** Taliban regime in Afghanistan<sup>37</sup>

## 2000

**Date:** September 5, 2000

**CPC:** Burma (Myanmar), China, Iran, Iraq, and Sudan<sup>38</sup>

**“Particularly severe violator”:** Milosevic regime in Yugoslavia and the Taliban regime in Afghanistan.<sup>39</sup>

## 1999

**Date:** October 27, 1999

**CPC:** Burma (Myanmar), China, Iran, Iraq, and Sudan<sup>40</sup>

**“Particularly severe violator”:** Milosevic regime in Yugoslavia and the Taliban regime in Afghanistan<sup>41</sup>

## **Why the CPC Designation Has Been Removed for Countries in the Past**

When examining the efficacy of CPC designations, how countries are removed from the list must be taken into consideration. The following is a summary of foreign governments that have had their CPC designation removed and why.

### **Iraq (1999-2003)**

In 1999, Iraq was among the first countries to receive the CPC designation. The 2000 International Religious Freedom Report noted that the Iraqi government “conducted a brutal campaign of murder, summary execution, and protracted arbitrary detention” against Shi’a Muslims, prevented Shi’a from practicing their religion, and targeted Christian Assyrians and Chaldeans by denying members their political rights.<sup>42</sup> Iraq remained on the CPC list through 2003 (the CPC designations were released in March 2003).<sup>43</sup>

By the next year, Saddam Hussein’s regime was no longer in power due to the military campaign conducted by the United States and other allied nations in the Iraq War. Iraq was removed from the designation list in 2004 after an Iraqi provisional government was established and a Transitional Administrative Law (TAL) subsequently adopted. The State Department found that the TAL provided for “freedom of thought, conscience, and religious belief and practice.” Although it was noted that the Iraqi government “generally respected these rights in practice [...] there was substantial politically and religiously driven violence between Sunni and Shi’a [...] and against Christians.”<sup>44</sup> Currently, USCIRF recommends that Iraq be added to the SWL.<sup>45</sup>

### **Vietnam (2004-2005)**

Vietnam was added to the CPC list in 2004 for what the State Department described as “poor or deteriorat[ing]” religious freedom for some groups, “notably ethnic minority Protestants and some

independent Buddhists.”<sup>46</sup> Religious groups encountered tight restrictions regarding the training of religious leaders, and Christian ethnic minorities testified that the government pressured them to recant their faith. At times, those who refused to recant their faith were beaten or imprisoned.

In conjunction with the CPC designation, U.S. leaders made a marked effort to work with counterparts in Vietnam to negotiate an agreement to improve religious freedom conditions so that Vietnam might be taken off the CPC list. Ambassador-at-Large for International Religious Freedom John Hanford visited Vietnam to advocate for greater religious freedom in meetings with the deputy prime minister, deputy foreign minister, deputy minister of public security, the head of the Office of Religious Affairs, the chairman of the Fatherland Front, and other government officials.<sup>47</sup> There was a particular focus on the release of religious prisoners and prisoners of conscience, the cessation of demanding renunciations of faith, and the reopening of churches in the Central Highlands that had been forced to close.

Ambassador Hanford successfully negotiated an agreement with the government of Vietnam, which was formalized on May 5, 2005. On the basis of an agreement having been reached with the United States, Vietnam would not face sanctions or “commensurate action” associated with CPC designations under IRFA. The agreement was never made public, but some aspects of it came to light. It is believed that Vietnam committed to:

[...F]ully implement the new laws on religious activities and to render previous contradictory regulations obsolete; to instruct local authorities to strictly and completely adhere to the new legislation and ensure their compliance; to facilitate the process by which religious congregations are able to open houses of worship, and; to give special consideration to prisoners and cases of concern raised by the United States during the granting of prisoner amnesties.<sup>48</sup>

Upon Vietnam’s fulfillment of these requirements, the U.S. government promised to “consider the removal of Vietnam from the CPC list.” This agreement prompted the removal of Vietnam’s CPC designation in 2006. At the time, Ambassador Hanford said, “Though important work remains to be done, Vietnam can no longer be identified as a severe violator of religious freedom.”<sup>49</sup>

However, USCIRF argued that conditions in Vietnam had not improved enough to warrant the designation's removal and that it was too soon to determine if Vietnam's commitments would last. After the designation was lifted, USCIRF did observe a slight improvement in Vietnam's religious freedom conditions, which it attributed to the binding agreement; however, it has continued to recommend that the designation be reinstated. In 2022, the State Department added Vietnam to the SWL.<sup>50</sup>

### **Uzbekistan (2006-2017)**

Uzbekistan was designated a CPC in 2006 due to government restrictions on religion, arbitrary detentions of religious adherents, and the "climate of harassment and fear" that Protestants churches with ethnic Uzbek members were forced to operate within.<sup>51</sup> Evangelization was dangerous, and the government placed Jehovah's Witnesses on a terrorist list.

In 2018, after a dozen years on the CPC list, Uzbekistan was dropped to the SWL, and the State Department cited improvements in religious freedom conditions and steps taken by the Uzbek government. Uzbekistan remained on the SWL in 2019 and was completely removed in 2020. At the time, Secretary of State Mike Pompeo said of Uzbekistan: "We documented no police raids of unregistered religious-group meetings during 2019, compared with 114 such raids in 2018, and 240 the year before that. These are great strides, real progress."<sup>52</sup>

Throughout this time period, Uzbek leaders had been cooperative with U.S. leaders regarding improvements for religious freedom and other human rights. Following the removal of the designation for Uzbekistan, Ambassador-at-Large Sam Brownback stated that "the new leadership of Uzbekistan is truly committed to the transformation process and significant progress has been made in the country not only in the field of religious freedoms, but also in the field of forced labor and human rights in general."<sup>53</sup> Senator Roger Wicker (R-Miss.), who had met with some Uzbek leaders, also commented: "Under the leadership of President Shavkat Mirziyoyev, Uzbekistan has become the only country from

this list that is committed to fulfilling its international obligations and is taking significant measures to carry out the necessary reforms.”<sup>54</sup>

However, the year that Uzbekistan was removed from the CPC list, USCIRF had recommended that the country be redesignated. It thought that the newly elected president Shavkat Mirziyoyev, who had promised reform, did not make enough progress on religious freedom.<sup>55</sup> In 2022, USCIRF recommended that Uzbekistan be placed on the SWL.<sup>56</sup>

### **Sudan (1999-2018)**

Sudan was among the first CPC designees in 1999. The State Department’s religious freedom report for that year stated that although the new constitution at the time acknowledged religious freedom, “the Government severely restricts freedom of religion in practice.”<sup>57</sup> Furthermore, “The Government treats Islam as the state religion and has declared that Islam must inspire the country’s laws, institutions, and policies.”

In the spring of 2019, the military overthrew longstanding president Omar al-Bashir, and a joint military-civilian Sovereign Council was created. This ruling body enacted significant reforms to improve religious freedom conditions. Given the change in government and the embrace of religious freedom reforms, Sudan was dropped to the SWL in 2019, although USCIRF had still recommended a CPC redesignation. Sudanese leaders worked with U.S. partners, including USCIRF, to take steps to expand religious freedom.<sup>58</sup> Meanwhile, conditions in Sudan continued to improve. In July 2020, the government repealed Article 126 of Sudanese criminal law, which prohibited apostasy and required the death penalty as punishment if the accused did not repent.<sup>59</sup> The following year in 2020, Sudan was removed from the list entirely.

The path toward religious freedom has not been clear-cut in Sudan. Although USCIRF did not recommend either a CPC or SWL designation in 2022, USCIRF remains “concerned about the potential for backsliding.”<sup>60</sup>

## Nigeria (2020)

Nigeria was added to the SWL in 2019 and was designated a CPC in 2020. The Nigerian government was found to have “tolerated” (although perhaps it did not always engage in) “systematic, ongoing, egregious violations of religious freedom.” Nigeria had experienced an uptick in violence against and murders and kidnappings of Christians, and many minorities reported that the government did not make a satisfactory effort to stop the escalating violence.<sup>61</sup> In addition, Muslims, Christians, and humanists have all been charged under the country’s blasphemy law.<sup>62</sup>

In 2021, the Biden administration removed Nigeria’s CPC designation. State Department officials gave no reason for the action, and Secretary of State Antony Blinken visited Nigerian state leaders, including President Muhammadu Buhari, the day after the CPC list was announced.<sup>63</sup> USCIRF issued a press release saying it was “appalled” at the Biden administration’s removal of Nigeria from the CPC list.<sup>64</sup> USCIRF Commissioner Nadine Meanza said, “USCIRF is especially displeased with the removal of Nigeria from its CPC designation.”<sup>65</sup>

The move received criticism from human rights groups that focus on religious freedom, including Family Research Council.<sup>66</sup> In response to the removal, Sens. Marco Rubio (R-Fla.) and Josh Hawley (R-Mo.) sent a letter to Secretary Blinken urging him to redesignate Nigeria as a CPC immediately.<sup>67</sup> USCIRF continues to recommend that Nigeria be reinstated to the CPC list.<sup>68</sup>

## Is the CPC Designation Accomplishing Its Purpose?

After 24 years with the Country of Particular Concern designation at our disposal, what has this government mechanism accomplished? To assess the usefulness of the CPC designation, we must answer several questions.

*Has the United States government effectively utilized the CPC designation with respect to foreign governments that meet the CPC criteria as outlined in IRFA?*

Although USCIRF recommends countries that ought to have a CPC designation or be added to the SWL, there is often a great disparity between USCIRF's recommendations and the countries the State Department designates. USCIRF has explained this disparity by pointing to the fact that it can focus solely on religious freedom conditions while the State Department must balance other bilateral matters.<sup>69</sup> Other interests being considered by the State Department sometimes conflict with America's advocacy for religious freedom and other human rights. Even presidential administrations that make a concerted effort to promote religious freedom must contend with personnel who have other priorities.<sup>70</sup>

Due to the public nature of the CPC designation, a designation can place a great deal of pressure on foreign governments. That pressure can motivate reforms, but it can also strain diplomatic relations with the United States. Consequently, it can be tempting to merely redesignate the same countries that were on the list the previous year. The countries that have been on the list since 1999 (Burma, China, and Iran) already have strained or unmistakably hostile relations with the United States, so there is no diplomatic cost to keeping them on the list. Former USCIRF Chair Leonard Leo expressed concern about this in 2011 when no new countries had been added to the CPC list. He noted at the time that "Repeating the current list continues glaring omissions."

This reticence to make new CPC designations causes the United States to over-emphasize the religious freedom violations of some countries while overlooking the violations of others. At a public event reviewing IRFA's successes and obstacles eight years after its passage, Elizabeth Prodromou, a senior fellow at the Atlantic Council, observed:

Some countries have come under the microscope of IRFA while others have not. There have been inconsistencies in the use of the watch list and the CPC list and, in particular, the willingness of the State Department and the White House to bring IRFA's teeth to bear. In terms of action—where we have intervened, how we have intervened—but also in terms of inaction—where we have not intervened when it's clear there are very serious violations of religious freedom—inconsistencies have given traction [to] arguments that the promotion of religious freedom is nothing more than realism under the garb of idealism.<sup>71</sup>

Today, many religious freedom advocates would still agree with these observations.

*Has the U.S. government taken appropriate actions with respect to foreign governments that receive CPC designations?*

Even after a country is designated a CPC, such countries have rarely faced any consequences or negative ramifications for their religious freedom violations. On September 18, 2014, Robert Smith, managing director of the International Center for Law and Religion Studies at Brigham Young University, testified before the House Committee on Oversight and Government Reform regarding how IRFA could be better implemented. He noted, “The U.S. government has only imposed one sanction against one country in 16 years while during that same time period international religious freedom has rapidly declined.”<sup>72</sup>

The widespread use of waivers for CPC governments also undermines the efficacy of the CPC designation. Although IRFA outlines a list of 15 actions, including six actions that should be utilized with regard to CPC designees (of which one or more can be taken by the president), IRFA also states that the president can waive the imposition of sanctions if an “important national interest” warrants the use of a waiver.

According to available data, most countries that have been designated a CPC since 1999 have received waivers. Most often the State Department utilizes “double-hatting,” whereby it states that other sanctions already placed on the CPC designees also count for religious freedom violations. The State Department has also justified a fair number of waivers based on the national interest grounds previously described in this report. On a handful of occasions, a waiver was given to “further the purposes” of IRFA.

However, it is worth noting that the CPC designation (even without presidential actions being taken against the countries) is considered a very significant—and unwanted—label for some governments. For example, USCIRF’s current recommendation that India receive a CPC designation was a monumental event—one that was met with denial and rebukes from Indian leaders.<sup>73</sup> This speaks to

the importance of the CPC designation as a tool that can be used to apply pressure on offending nations.

*Have countries responded to the CPC designation by improving religious freedom conditions?*

Vietnam and Sudan are two examples of the State Department utilizing the CPC designation generally well.

With Vietnam, the U.S. government successfully negotiated a binding agreement centered on commitments that the Vietnamese government would make to improve religious freedom. This in itself was a major win. It is a big change to take a country that was effectively on the “worst in the world” list for religious freedom and get its leaders to agree to take concrete steps to improve religious freedom. This occurrence was directly enabled by IRFA, and the main negotiating chip that the State Department brought to the table was its pledge to consider removing Vietnam’s CPC designation in the future. That review did, in fact, take place shortly thereafter. This signals that when robustly implemented, the tools outlined in IRFA can be effective at getting governments to reexamine their failure to protect religious freedom.

Because the U.S. government and USCIRF had a history of advocating for religious freedom in Sudan, the new Sudanese leadership took that seriously and began to work with USCIRF and others to make improvements. The application of the CPC designation itself may not have played a major role in Sudan’s religious freedom reforms, but the fact that it was a consistent feature of the U.S. government’s advocacy regarding Sudan put religious freedom on the radar for the new government to discuss with the United States. When Sudan was removed from the CPC list, it validated the positive changes the new leadership had enacted.

In contrast to these positive examples, many of the countries that have remained on the CPC list for years or even decades have seen little to no improvement, such as North Korea, Iran, or China. However, these countries are generally resistant to respecting human rights and are typically hostile toward the United States.

## **Recommendations to Strengthen U.S. Action Regarding the CPC Designation**

By establishing the CPC designation, IRFA handed a powerful tool to the U.S. government. However, for that tool to be meaningful, it must be wielded well. To realize the CPC designation's potential, policymakers, political leaders, and human rights advocates can consider implementing the following recommendations.

### **1. The State Department should increase publicity of the annual CPC designations.**

In recent years, the State Department has announced the CPC designations with a simple press release and little fanfare. This undermines the public nature of the designation and its ability to create pressure on foreign governments. The secretary of State should instead personally announce the designations with a speech in a public venue. This provides an opportunity to articulate the United States' specific concerns regarding each country. Furthermore, the secretary could delineate the changes each country must make in order to be removed from the list.

### **2. The U.S. government should make a greater effort to negotiate an agreement with foreign governments before placing them on the CPC list.**

Governments that wish to avoid the damaging distinction of being a Country of Particular Concern should be given the opportunity to work with officials from the State Department to negotiate an agreement that would address specific religious freedom concerns. It is undeniable that the CPC designation is a blunt instrument, and that has been a source of frustration for some State Department officials. However, this bluntness is a source of pressure on potential designees that could be used to elicit change by negotiating binding agreements prior to being named. This would serve the interests of the nation in question while furthering the United States' religious freedom objectives. However, if a nation calls our bluff, the Secretary must pull the trigger and issue a CPC designation. Otherwise, America's bargaining reputation will be damaged around the world.

### **3. Congress should consider passing legislation that would assess countries' religious freedom conditions via a three-tier system.**

The Trafficking Victims Protection Act of 2000 was passed to address the problem of human trafficking around the world. It created a reporting system similar to reports that IRFA mandated for the State Department. However, the annual Trafficking in Persons Report ranks every country according to a three-tier scale:

- Tier 1: Countries whose governments fully meet the minimum standards for the elimination of trafficking according to the Trafficking Victims Protection Act of 2000.<sup>74</sup>
- Tier 2: Countries whose governments do not fully meet the minimum standards but are making significant efforts to bring themselves into compliance with those standards.
- Tier 3: Countries whose governments do not fully meet the minimum standards and are not making significant efforts to do so.

This evaluative methodology is effective because it ensures that all countries will receive an assessment. Given the success of these annual reports, Congress should consider amending IRFA to create a three-tier reporting system. This will ensure that every country receives a public assessment of some kind. Implementing such a system would also remove pressure from the secretary of State to make a separate formal designation at his discretion.

### **4. Human rights advocates and NGOs must continue to press the State Department to address religious freedom concerns for CPC countries.**

Political will is required for an administration to utilize the CPC designation effectively. The “tools” are all in place to enable the president and secretary of State to place offending nations on the CPC list and to take actions to pressure those governments to stop persecuting their citizens. However, many other foreign policy interests come into play that the State Department must consider when addressing these issues. All too often, those considerations take precedence over religious freedom. Therefore, it is imperative for human rights advocates to weigh in with U.S. decision-makers, including members of

Congress who have oversight responsibility, to highlight the importance of religious freedom concerns and advocate that offending nations be designated as CPCs.

**5. The State Department should utilize waivers less and sanctions more.**

There is the opportunity to use the CPC designation and the SWL as a dial that should slowly be turned up if a foreign government refuses to address persecution. The SWL should put foreign governments on notice. A CPC designation with a waiver would convey a more serious warning. If the foreign government still does not attempt to stop persecution in the country even after receiving a CPC designation with a waiver, then it is more than appropriate for the United States to enact penalties and sanctions. Robust diplomatic engagement and simultaneous pressure from Capitol Hill is crucial at every stage.

**6. Implement more positive incentives for countries that do not yet meet SWL or CPC criteria and are open to improving religious freedom conditions.**

The countries that meet the standard for a CPC designation are not the only countries with religious freedom issues. Although the CPC designation is an important tool to influence governments that persecute or tolerate the persecution of religious groups, it is not the only tool. Some countries might be more willing to institute reforms that will benefit human rights conditions. Rather than focusing solely on the worst religious freedom violators, U.S. leaders should also focus on countries that are open to reforms and make concerted efforts to work alongside them on their journey to create a more just society where their people will be free to live according to their religious beliefs.

**7. Congress must use its oversight capacity to hold presidential administrations accountable for fulfilling the requirements of IRFA.**

To produce meaningful change, an administration must care about religious freedom and have the political will to robustly utilize IRFA. To that end, members of Congress should hold hearings regarding the implementation and effectiveness of CPC designations and the use of waivers.

Congress should act in an oversight capacity to ensure that religious freedom remains a part of U.S. foreign policy.

## Conclusion

Ultimately, the CPC designation is a crucial mechanism that Congress has provided the president through IRFA in order to advance international religious freedom. To that end, the State Department, Congress, and human rights activists ought to make a concerted effort to ensure that the CPC designation is fully utilized. By considering and implementing the recommendations in this report, the U.S. government could make the CPC designation far more effective than it currently is.

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<sup>1</sup> Lela Gilbert, “The Crisis of Christian Persecution in Nigeria,” Family Research Council, February 2021, <https://downloads.frc.org/EF/EF20G16.pdf>.

<sup>2</sup> U.S. Department of State, “Religious Freedom Designations,” press release, December 2, 2022, <https://www.state.gov/religious-freedom-designations-2/>.

<sup>3</sup> A complete collection of these reports can be found at the USCIRF website: <https://www.uscirtf.gov/annual-reports>.

<sup>4</sup> U.S. President William J. Clinton, Memorandum, “Delegation of Responsibilities Under the International Religious Freedom Act of 1998,” Federal Register 64, no. 168 (August 17, 1999): 47345, <https://www.federalregister.gov/documents/1999/08/31/99-22781/delegation-of-responsibilities-under-the-international-religious-freedom-act-of-1998>.

<sup>5</sup> U.S. Commission on International Religious Freedom, “USCIRF Releases 2017 Annual Report,” press release, April 26, 2017, <https://www.uscirtf.gov/news-room/releases-statements/uscirtf-releases-2017-annual-report>.

<sup>6</sup> 22 U.S.C. § 6442(a)(1)-(15).

<sup>7</sup> 22 U.S. Code § 6445(b).

<sup>8</sup> 22 U.S.C. § 6447(a)(2).

<sup>9</sup> 22 U.S.C. § 6447(d)(1).

<sup>10</sup> 22 U.S.C. § 6447(d)(2).

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<sup>11</sup> Kirsten Lavery and Elizabeth Cassidy, “Factsheet: International Religious Freedom Act (IRFA),” U.S. Commission on International Religious Freedom, March 2021, <https://www.uscirf.gov/sites/default/files/2021-03/2021%20Legislation%20Factsheet%20-%20IRFA.pdf>.

<sup>12</sup> The early years of the CPC list included a designation not provided for in IRFA, which the State Department labeled “particularly severe violator” for regimes such as the Taliban, which was guilty of religious freedom violations in Afghanistan but could not be labeled a CPC because it was not a government recognized by the United States. When the Entity of Particular (EPC) designation was formally created by the Frank R. Wolf Act in 2016, the Taliban was added to that list.

<sup>13</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determinations Under the International Religious Freedom Act of 1998 and Frank R. Wolf International Religious Freedom Act of 2016,” Federal Register 86, no. 226 (November 29, 2021): 67780-81, <https://www.federalregister.gov/documents/2021/11/29/2021-25923/secretary-of-states-determinations-under-the-international-religious-freedom-act-of-1998-and-frank-r>.

<sup>14</sup> “Countries of Particular Concern, Special Watch List Countries, Entities of Particular Concern,” U.S. Department of State, <https://www.state.gov/countries-of-particular-concern-special-watch-list-countries-entities-of-particular-concern/>.

<sup>15</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determinations Under the International Religious Freedom Act of 1998 and Frank R. Wolf International Religious Freedom Act of 2016,” Federal Register 86, no. 8 (January 13, 2021): 2718-19, <https://www.federalregister.gov/documents/2021/01/13/2021-00556/secretary-of-states-determinations-under-the-international-religious-freedom-act-of-1998-and-frank-r>.

<sup>16</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determinations Under the International Religious Freedom Act of 1998 and Frank R. Wolf International Religious Freedom Act of 2016,” Federal Register 84, no. 247 (December 26, 2019): 71064-65, <https://www.federalregister.gov/documents/2019/12/26/2019-27787/secretary-of-states-determination-under-the-international-religious-freedom-act-of-1998-and-frank-r>.

<sup>17</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determinations Under the International Religious Freedom Act of 1998 and Frank R. Wolf International Religious Freedom Act of 2016,” Federal Register 83, no. 245 (December 21, 2018): 65782, <https://www.federalregister.gov/documents/2018/12/21/2018-27632/secretary-of-states-determination-under-the-international-religious-freedom-act-of-1998-and-frank-r>.

<sup>18</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determination Under the International Religious Freedom Act of 1998,” Federal Register 83, no. 8 (January 11, 2018): 1451-52, <https://www.federalregister.gov/documents/2018/01/11/2018-00333/secretary-of-states-determination-under-the-international-religious-freedom-act-of-1998>.

<sup>19</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determination Under the International Religious Freedom Act of 1998,” Federal Register 81, no. 234 (December 6, 2016): 87997, <https://www.federalregister.gov/documents/2016/12/06/2016-29171/secretary-of-states-determination-under-the-international-religious-freedom-act-of-1998>.

<sup>20</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determination Under the International Religious Freedom Act of 1998,” Federal Register 81, no. 76 (April 20, 2016): 23344-45,

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<https://www.federalregister.gov/documents/2016/04/20/2016-09163/secretary-of-states-determination-under-the-international-religious-freedom-act-of-1998>.

<sup>21</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determination Under the International Religious Freedom Act of 1998,” Federal Register 79, no. 85 (September 24, 2014): 57171-72,

<https://www.federalregister.gov/documents/2014/09/24/2014-22769/secretary-of-states-determination-under-the-international-religious-freedom-act-of-1998>.

<sup>22</sup> The Obama administration did not issue any CPC designations in 2013. However, countries remain designated until removed, so the designations for the year 2011 carried over.

<sup>23</sup> The Obama administration did not issue any CPC designations during 2012. However, countries remain designated until removed, so the designations for the year 2011 carried over.

<sup>24</sup> U.S. Commission on International Religious Freedom, “USCIRF Comment on the State Department’s Designation of ‘Countries of Particular Concern’ and Annual Report on International Religious Freedom,” press release, September 13, 2011, <https://www.uscirf.gov/news-room/releases-statements/uscirf-comment-state-departments-designation-countries-particular>; U.S. Department of State, Public Notice, “Secretary of State’s Determination Under the International Religious Freedom Act of 1998,” Federal Register 77, no. 66 (April 5, 2012): 20687-88, <https://www.federalregister.gov/documents/2012/04/05/2012-8240/secretary-of-states-determination-under-the-international-religious-freedom-act-of-1998>.

<sup>25</sup> U.S. Department of State - Bureau of Democracy, Human Rights, and Labor, “International Religious Freedom Report for 2011,” <https://2009-2017.state.gov/j/drl/rls/irf/2011religiousfreedom/index.htm>.

<sup>26</sup> U.S. Department of State - Bureau of Democracy, Human Rights, and Labor, “July-December, 2010 International Religious Freedom Report,” September 13, 2011, [https://2009-2017.state.gov/j/drl/rls/irf/2010\\_5/168441.htm](https://2009-2017.state.gov/j/drl/rls/irf/2010_5/168441.htm).

<sup>27</sup> U.S. Department of State, Public Notice, “Secretary of State’s Determination Under the International Religious Freedom Act of 1998,” Federal Register 74, no. 89 (May 11, 2009): 21843, <https://www.federalregister.gov/documents/2009/05/11/E9-10970/secretary-of-states-determination-under-the-international-religious-freedom-act-of-1998>.

<sup>28</sup> U.S. Department of State - Bureau of Democracy, Human Rights, and Labor, “International Religious Freedom Report 2008,” <https://2009-2017.state.gov/j/drl/rls/irf/2008/108349.htm>.

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<sup>30</sup> U.S. Department of State - Bureau of Democracy, Human Rights, and Labor, “Countries of Particular Concern 2006 Under the International Religious Freedom Act,” May 9, 2007, <https://2001-2009.state.gov/g/drl/rls/84565.htm>.

<sup>31</sup> To the best of our knowledge, we can infer that the countries on the CPC list from 2004 were redesignated in 2005. U.S. Department of State - Bureau of Democracy, Human Rights, and Labor, “International Religious Freedom Report,” 2005, <https://2009-2017.state.gov/j/drl/rls/irf/2005/51386.htm>.

<sup>32</sup> U.S. Department of State - Bureau of Democracy, Human Rights, and Labor, “International Religious Freedom Report,” 2004, <https://2009-2017.state.gov/j/drl/rls/irf/2004/35335.htm>.

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<sup>33</sup> U.S. Department of State - Bureau of Democracy, Human Rights, and Labor, "International Religious Freedom Report," 2003, <https://2009-2017.state.gov/j/drl/rls/irf/2003/27185.htm>.

<sup>34</sup> U.S. Department of State - Bureau of Democracy, Human Rights, and Labor, "International Religious Freedom Report 2002," October 7, 2002, <https://2009-2017.state.gov/j/drl/rls/irf/2002/13608.htm>.

<sup>35</sup> For 2001, there is a discrepancy between the CPC list recorded in the Federal Register on May 1, 2001, and what was publicly announced in the 2002 State Department annual report on international religious freedom. In the Federal Register, North Korea is not among the countries listed. In the State Department report in 2002, it states, "Thus in October 2001, the Secretary of State, acting under the authority of the President, re-designated five countries--Burma, China, Iran, Iraq, and Sudan--as 'countries of particular concern' under the Act for having engaged in or tolerated particularly severe violations. In addition, the Secretary designated North Korea a 'country of particular concern.'" In addition to this account from the State Department, a USCIRF press release from 2001 included North Korea on the CPC list. Thus, it is our understanding that the Federal Register contains a mistake by not listing North Korea as CPC in the year 2001.

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<sup>38</sup> U.S. Department of State, "Annual Report on International Religious Freedom 2001," December 2001, <https://2009-2017.state.gov/documents/organization/9001.pdf>.

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