

For Your Information

October 15, 2012| by [Katrina Lantos Swett](#) and [Robert P. George](#)

The following op-ed appeared in Foreign Policy on October 15, 2012 at http://www.foreignpolicy.com/articles/2012/10/15/why_a_constitution_is_a_bad_place_for_a_blasphemy_law?page=0,0

A constitutional ban on blasphemy might sound like a good idea to some. But it can mean less freedom for everyone.

Words matter -- and few matter more than those found in a country's constitution. They reflect its unique culture, heritage, and history. Since no two nations are alike, constitutions will differ. Yet because all people share a common humanity, constitutions also should exhibit certain bedrock similarities, including the protection of basic universal human rights. That there are such rights is affirmed in the 1948 Universal Declaration of Human Rights, which nearly every country has adopted.

Today, many nations, including some in the Muslim world, are engaged in drafting or revising their constitutions. At stake is the status of fundamental freedoms, including the central and foundational freedom of religion and conscience.

According to internationally recognized standards, religious freedom applies to every person. It includes the right to manifest one's faith and convictions, individually or in one's community of faith, in public or in private, as well as the right to change one's religion. It is restricted only under narrow circumstances which international law specifies.

How do current constitutions compare with these standards?

The U.S. Commission on International Religious Freedom (USCIRF), on which we serve, recently released an analysis of the constitutions of 46 majority Muslim countries and 10 other member states of the Organization of Islamic Cooperation (OIC). (For an Arabic version of the report, see [here](#).)

Stretching from Europe to Africa, through the Middle East and into Asia, these nations have constitutions which range from establishing Islam as the state religion to separating religion completely from the state. And even among constitutions in which Islam is the state religion, the extent of Islam's role and of human rights guarantees vary.

Here is a summary of USCIRF's findings:

About 44 percent of Muslims live in 23 majority Muslim countries that have declared Islam the state religion; 56 percent dwell in nations that either proclaim the state to be secular or are silent about a state religion.

Approximately 39 percent of the world's Muslims live in 22 countries whose constitutions provide that Islamic law, principles, or jurisprudence should have some role in the legal system. This is also the case in 18 of the 23 countries where Islam is the state religion, as well as four majority Muslim nations where it is not.

Only six of the countries surveyed, all of which deem Islam the state religion, include no specific religious freedom provisions in their constitutions. Other nations, including ones in which Islam is the state religion, guarantee religious freedom in ways that comply in varying degrees with international standards. Some provisions identify religious freedom as every individual's right, or protect individuals against coercion in matters of religion or belief. Other provisions protect only certain religions or classes of religions; do not protect all aspects of religious freedom, including both public and private manifestations of belief; or allow limitations contrary to international standards.

In short, our analysis shows that, while freedom of religion and conscience is present in most of the constitutions of the surveyed countries, some nations are decidedly freer than others.

Two of the surveyed countries -- Egypt and Tunisia -- are reportedly debating whether to insert blasphemy prohibitions in their new constitutions. While a number of countries in the Middle East and North Africa region criminalize blasphemy in their penal codes, none have done so in their constitutions. By stifling the peaceful and constructive exchange of ideas by majorities and minorities alike, blasphemy laws underscore the intimate link between freedom of religion or belief and freedom of expression. By punishing the expression of unpopular religious beliefs and opinions, blasphemy provisions not only violate both of these freedoms but exacerbate religious intolerance and abet extremism and violence. Elevating blasphemy laws to a constitutional level could be harmful indeed.

Despite these challenges, it is possible that religious freedom will progress in a number of participating nations. To be sure, enshrining this freedom in a country's constitution won't ensure its respect in practice. Nevertheless, constitutional texts matter, both as statements of a nation's laws and aspirations and as ways for people to hold their government accountable for protecting their rights.

As a number of studies suggest, when religious freedom advances in nations, so do stability and prosperity as well as overall democracy. Language affirming religious freedom is a vital first step toward this advance.

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