



## SOMALIA

As the Somali National Constituent Assembly (NCA) prepares to debate a new constitution, the question is whether it will provide a roadmap for a future democratic and representative Somalia.

The U.S. Commission on International Religious Freedom (USCIRF) is concerned that the text which the Draft Constitution Technical Review Committee released on June 12 contains contradictory language on protections for freedom of religion or belief. Also, there are ongoing debates about the centrality of Shari'ah law in the constitution.

The drafting effort is one of the central provisions of the Roadmap for Ending the Transition in Somalia which seeks to move the country to a representative government by August 20, 2012. The NCA, which will convene from July 21 through July-29, will decide if it will adopt the draft constitution. If it is adopted, it will become the Provisional Constitution of Somalia and replace the current Transitional Federal Charter. On a date to be determined, the Somali people will vote in a referendum on permanent adoption of the Provisional Constitution.

### USCIRF Recommendations for U.S. government action

Actions taken in the next several months will be key to enshrining religious freedom in Somalia. Along with steps being taken on the constitution, the new Somali government also is rebuilding judicial and rule-of-law structures. To this end, USCIRF recommends the U.S. government:

- Engage government officials, religious leaders, and clan elders in Somalia, Somaliland, Puntland, and the Somali diaspora community on universal human rights, including freedom of religion or belief, and good governance; and
- Fund rule-of-law programs by the UN and non-governmental organizations in Somalia, Somaliland, and Puntland in order to establish a legal system that respects international legal standards, including freedom of religion or belief.
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**THE U.S. COMMISSION  
ON INTERNATIONAL  
RELIGIOUS FREEDOM**

was created by the

International Religious  
Freedom Act of 1998

to monitor the status  
of freedom of thought,  
conscience, and religion

or belief abroad, as

defined in the Universal

Declaration of Human

Rights and related

international instruments,

and to give independent

policy recommendations

to the President,

Secretary of State, and

Congress.

SOMALIA

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## Background

Somalia has not had a central government since the fall of former dictator Siad Barre in 1991. Numerous peace agreements and political transitions have failed to bring democracy and security to the country. In the absence of the rule of law, insurgents, warlords, self-appointed officials, local authorities, and prevailing societal attitudes have undermined all human rights, including freedom of religion or belief. Somalia currently is governed by the 2004 Transitional Federal Charter which adheres to the 1960 constitution's provisions of freedom of religion or belief, including the right to discuss and study one's religion of choice. An Independent Federal Constitution Commission was created and submitted a draft constitution in July 2010. However, no action was taken.

Somalia's current transitional government, the Transitional Federal Government (TFG) led by President Sheik Sharif Ahmed, was formed in early 2009 and was set to expire in August 2011. However, in early 2011, the Transitional Federal Parliament unilaterally extended its term by three years, while the cabinet, including the president and prime minister, sought a one-year extension. These extensions led to international condemnation and pressure for the TFG to transition to a permanent, elected government. In response, on June 9, 2011 President Sheikh Sharif and the Transitional Federal Parliament Speaker Sharif Hassan signed the Kampala Accord extending the transitional period until August 2012. Building off of this accord, all major political stakeholders, except Somaliland, signed the Roadmap for Ending the Transition in Somalia on September 6, 2011. The Roadmap includes benchmarks, timelines and compliance mechanisms to implement priority tasks, including holding presidential and parliamentary speaker elections by August 20, 2012 and drafting and passing a new constitution.

## New Constitution and Protections for Freedom of Religion or Belief

The drafting of a new constitution began in December 2011, when representatives at the Somali National Consultative Constitutional Conference adopted the Garowe Principles which determined the process for drafting, review and adoption. While the initial deadline for the constitution process called for adoption by May 20, that deadline has been extended to July 29. The National Constituent Assembly tasked with adopting the text consists of 825 Somali representatives, based on the "4.5 clan" formula<sup>1</sup>, with at least 30 percent of the delegates being women. The NCA delegates were selected by traditional elders nationwide.

Key issues raised during the constitutional discussions included the inclusion of Shari'ah and religious freedom rights. Historically, Somalis generally have practiced a moderate form of Shari'ah as well as customary law. The issue of Shari'ah became significant in 2008 when the U.S.-designated Foreign Terrorist Organization al-Shabaab took control over central and southern Somalia. In territories it controlled, and continues to control, al-Shabaab has implemented a harsh interpretation of Shari'ah, similar to that of the Taliban, and metes out hudood punishments and imposes behavioral and dress norms.

When the TFG came to power in 2009, President Sheik Sharif announced that Shari'ah would be applied nationwide, while conforming to international human rights standards and respecting women's rights. In May of that year, the TFG parliament unanimously approved the nationwide implementation of Shari'ah. The TFG's actions were part of an effort to combat al-Shabaab's questioning of its Islamic credentials, as well as address increasing support by the Somali population for Shari'ah as the basis of governance.

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1. The 4.5 clan formula is used to ensure representation of all clans in Somali governing institutions. Per the formula, one appointment goes to each of the four major Somali clans, while a coalition of minority clans receives a quota of 0.5.

## Current text

The June 2012 language the constitution drafting committee presented, prior to its review by technical committees, includes a prominent role for undefined notions of Shari'ah law. Other provisions of the draft are inconsistent with international standards for freedom of religion or belief. The draft:

- Asserts that Somalia is a Muslim country and makes Islam the state religion;
- States (twice) that no other religion can be propagated in the country;
- Requires that all laws comply “with the general principles of Shari’ah,” but does not define the scope of Shari’ah law;
- Claims that the constitution is “based on the foundations of the Holy Quran and the Sunna of our prophet Mohamed (PBUH) and protects the higher objectives of Shari’ah and social justice”;
- Makes undefined Shari’ah law supreme to the constitution;
- Makes compulsory the teaching of Islam for public and private schools, although it exempts schools owned by non-Muslims (but these schools presumably would be unable to teach a non-Muslim religion given the propagation ban);
- Requires the president to be a Muslim and the oath of office for government officials to include a promise to act “in the best interest of the Nation, People, and Religion” (emphasis added); and
- Mandates that the national Human Rights Commission promote Shari’ah and that Constitutional Court members have appropriate qualifications in law and Shari’ah.

Some religious freedom protections are provided. The draft:

- States that all citizens are equal regardless of, and cannot be discriminated against based on, religion;
- Affirms that every person is free to practice his or her religion;
- States that the rights it provides can be limited by law, although not by a law that targets a particular individual or group; and
- States, confusingly, that when interpreting rights, courts “may consider the Shari’ah, international law, and decisions of courts in other countries, though it is not bound to follow these decisions.”

For more information on international standards for religious freedom protections, visit the USCIRF website, [www.uscifr.gov](http://www.uscifr.gov).