

Drafting Somalia's Constitution Opens Debate on Religion, Law
By Gabe Joselow, VOA News
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In a country torn apart by civil war, piracy and terrorism, many hope a new constitution will bring some amount of stability to Somalia.

Since the fall of the last government in 1991, a succession of interim governments have failed to establish rule of law. Millions of people have been displaced or exiled by fighting and famine.

Somalia is now under pressure to produce a draft of a new constitution by April 20, according to the guidelines agreed to in the "Roadmap" to end the donor-backed transitional government and to hold new elections this year.

Prime Minister of the Transitional Federal Government of Somalia Abdiweli Mohamed Ali gestures during a press conference at The Foreign and Commonwealth Office in London, FILE February 23, 2012 . Prime Minister Abdiweli Mohammed Ali pleaded with participants at a constitutional conference in February to find a solution to the few challenges remaining.

"Everything in our lives has been and continues to be in transition," he said in prepared remarks at the talks in Garowe. "To me this constitutional process represents the possibility of a new beginning, the possibility for the Somali people to say 'enough' to transitions."

Balancing Act

But crafting a one-size-fits-all constitution for a society deeply divided along clan and family lines, with no allegiance to a central authority, is no easy task. The key is to find a balance between civil law, customary law and Islamic Sharia law.

Because Somalia is wholly Muslim, many agree that elements of Sharia, based on the teachings of the Quran, must serve as a basis for the constitution.

"It's very well and fine to say Sharia is a source of law," said J. Peter Pham, Director of the Michael Ansari Africa Center at the Atlantic Council in Washington D.C. "It's a great slogan, no one is against it in Somalia by and large."

But, Pham points out that Somali culture has always respected the distinction between the "spearman and the priest," - the separation of traditional and religious law. He says tradition usually takes precedence.

"If it was a matter that touched on customary law, dealt with major property, murder, rape, you held a Gurti - an assembly of elders - and they looked at what the precedents were and based on what people had always done, they issued rulings," he said.

Religious law as interpreted by clerics, he says, would traditionally only be used to settle domestic disputes, including issues of marriage and family.

Even during the time of the Islamic Courts Union around 2006, when a coalition of Sharia courts ruled over parts of southern Somalia, Pham says traditional law was more commonly used to settle property and criminal matters.

If Sharia is imposed in Somalia as strictly as it is in some other Muslim countries, he says, "you're begging for trouble."

Red Lines

The United Nations' role in the drafting process has irked some Somali religious leaders, who fear new rights put in the text will contradict the tenets of Islam.

April Powell-Willingham, head of the joint constitution unit at the U.N. Political Office for Somalia (UNPOS) and U.N. Development Program for Somalia (UNDP) says the perception that the United Nations has commandeered the drafting process to force its own principles onto the Somali people has put the U.N. in a "double-bind."

"We need to keep certain values at the forefront - inclusivity, representation and respect for universal norms," she said. "At the same time, however, the U.N. is accused of having too heavy a footprint. So it's a very difficult position and a rather circular discussion."

Some attempts to insert an interpretation of Sharia that prohibits women from serving in top elected positions are also causing tension.

Powell-Willingham says the debate centers on a section of the 2010 Consultative Draft Constitution (CDC) that guarantees political rights for women.

"There is some discussion about removing article 1 section 4 of the CDC, which ensures that women shall be represented in all elected and appointed positions at all levels and branches of government, a protection which prohibits women from being banned from public service writ large, but particularly from being banned from serving at the highest levels of government, for instance, as president, prime minister or as judges," she said..

Powell-Willingham says the United Nations is trying to ensure the constitution protects internationally recognized human rights. She says there are a number of "red lines" that the U.N. has drawn - including the death penalty.

Sheikh Abdirashid Ali Noor, a cleric in Nairobi, Kenya, says it is possible for Sharia and civil law to work side by side, only if there are limits.

"It gets a little complicated since democracy gives people excess freedoms, for example, to homosexuals," he said. "If you look at that from a moral point of view it's not good, and the population sees this as too much freedom."

"It is Not Our Constitution"

In drafting the new document, the United Nations says it is drawing on Somalia's past and present constitutions. It is also referencing documents from around the world, including South Africa, Kenya, Indonesia, Malaysia and Spain, adding to the perception that the constitution is not fully "Somali."

"The fact is that in a deeply globalized world, it is often true that Constitution making and democratization is no longer solely a national exercise," said Powell-Willingham. "There are multiple local, national, regional and international influences at play at any given time."

The U.N.'s role is limited to providing technical support and advice.

"We are not in the business of drafting and imposing constitutions on anyone," she stated.

Ibrahim Farah, a Somali analyst and lecturer at the University of Nairobi says the U.N. is not to blame for its heavy role.

"We can forget about the rhetoric a little bit and agree with the concept that the United Nations is good intentioned and that they just want to help Somalia," said Farah. "But because of the lack of visionary nationalistic Somali leadership then, there has been this vacuum, and that's why UNDP ended up writing one for Somalia."

He blames an absence of political will for the Transitional Federal Government's failure to draft a constitution since the TFG was founded eight years ago.

He argues there are plenty of homegrown constitutions to draw on. He notes the autonomous region of Somaliland has its own constitution; Puntland and Galmudug are both working on their own. Even the al-Qaida-linked militant group al-Shabab has a charter of principles.

A National Constituent Assembly of no more than 1,000 members, of which 30 percent will be women, will vote on the draft in May.

But Ibrahim Farah says the assembly's approval might not mean very much to Somali people who feel like they have been left out of the process.

"Even if this 1,000 men and women constitution assembly being put together in the next month or so endorses it," he said. "It is not our constitution and it's never going to be."

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