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**UNITED NATIONS, HUMAN RIGHTS,  
FREEDOM OF RELIGION OR BELIEF**

*The Tandem Project is a UN NGO in Special Consultative Status with the  
Economic and Social Council of the United Nations*

*Separation of Religion or Belief and State*

**DRAFT CONSTITUTION FOR THE FEDERAL REPUBLIC OF SOMALIA**

The Draft Constitution for the Federal Republic of Somalia by the Independent Federal Constitution Commission has 179 Articles and was passed on July 30, 2010. The Consultation by the Commission is a draft for approval by the Somali people of a citizen-based democracy under Shari'ah Law. There is no article, or provision of an article, on constitutional and legislative guarantees for the right to change one's religion. Preparation for student review of the Somalia Universal Periodic Review & Freedom of Religion or Belief focuses on: Article 2, State and Religion; Article 22, Freedom of Religion or Belief. One of the *five unchangeable universals of Shari'ah* is protection of religion.

[FINAL CDC 30 July ENG](http://www.tandemproject.com/pdf/cdc_30.pdf) Location: [http://www.tandemproject.com/pdf/cdc\\_30.pdf](http://www.tandemproject.com/pdf/cdc_30.pdf)

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Shari'ah - the "path to Allah" includes the Quran (recitation), Hadith (sayings), Qiyas (analogical reasoning), Ijma (consensus of the community) and Ijtihad (free and independent thinking).

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**CAN THERE BE CONSENSUS BETWEEN SHARI'AH LAW,  
HUMAN RIGHTS & FREEDOM OF RELIGION OR BELIEF?**

" So which is the real history of the world? The task lies in the never-ending task of compiling them in the quest to build a universal human community situated within a single shared history." – *Destiny Distrupted – A History of the World Through Islamic Eyes*, Tamin Ansary, page 357.

Draft Constitution in black: suggestions for consideration in *italics*.

**Article 2. State and Religion**

**(1) Islam is the religion of the Somali Republic.**

**(2) No religion other than Islam can be propogated in the Republic.**

*Suggestions for consensus between the general principles and laws of Shari'ah, Article 18 of the International Covenant on Civil and Political Rights and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*

**(3) No law which is not compliant with the general principles and with Shari'ah can be enacted.**

*Suggestions for consensus between the general principles and laws of Shari'ah, Article 18 of the International Covenant on Civil and Political Rights and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*

#### **Article 22. Freedom of religion or belief**

**(1) A person is free to practice his or her religion or belief.**

**(2) No Muslim can renounce Islam.**

*Suggestions for consensus between the general principles and laws of Shari'ah, Article 18 of the International Covenant on Civil and Political Rights and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*

**(3) No religion other than Islam can be propagated in Somalia.**

*Suggestions for consensus between the general principles and laws of Shari'ah, Article 18 of the International Covenant on Civil and Political Rights and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*

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### **RESOLUTIONS ON HUMAN RIGHTS & FREEDOM OF RELIGION OR BELIEF**

#### **2007**

In 2007 the U.N. Human Rights Council voted 29 in favor, 0 against and 18 abstentions on 14 December 2007 in the sixth session for a three year extension of the mandate on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief (A/HRC/6/L.15/Rev.1). Those abstaining included: Azerbaijan, Bangladesh, Cameroon, China, Mali, Djibouti, Egypt, Gabon, Indonesia, Jordan, Malaysia, Nigeria, Pakistan, Qatar, Saudi Arabia, Senegal, South Africa and Sri Lanka.

**The abstentions were based on the objections from Pakistan, speaking on behalf of the 57 country Organization of the Islamic Conference (OIC) that norms in Muslim countries prohibit leaving Islam as a religion, and were not being honored in the draft resolution.**

**Portugal, speaking on behalf of the European Union (EU) said over 40 paragraphs in the draft resolution was eliminated in an attempt at consensus with the abstaining states, but consensus over the right to leave one's religion or belief was inviolable and could not be compromised.**

#### **2010**

In 2010, Morocco in the 65<sup>th</sup> session of the UN General Assembly spoke on behalf of the Organization of the Islamic Conference (OIC) and made a positive statement on the elimination of all forms of intolerance and of discrimination based on religion or belief, and work of the UN Special Rapporteur on Freedom of Religion or Belief.

“In a general statement, the representative of Morocco, on behalf of the OIC, said all forms of intolerance and discrimination based on religion and belief were opposed by that Organization, which condemned all acts of violence carried out in the name of religion. It was the belief of the Organization that all religions shared the same message of peace and respect for others. **Terrorism could not and should not be associated with any religion, nationality or ethnic group. The mandate of the Special Rapporteur on the issue had been consistently supported by the Organization, which had no problem with the general thrust of the resolution.** Many of the Organization’s considerations had been taken into account by the co-sponsors in the final stages of consultations; it was understood that they had to work very hard with their constituents.”

However, the representative of Morocco, on behalf of the Organization of the Islamic Conference said **it had not been possible to resolve differences on respect for national laws and religious norms regarding changing one’s religion.** Despite such divergences, it had been decided by the Organization not to oppose the draft; such resolutions ought to be adopted by consensus.

The representative of Belgium, the main sponsor, on behalf of the European Union, recalled that similar resolutions had been adopted by consensus in previous years. This year’s draft had been the subject of many rounds of open and transparent informal consultations. It was regretted that, once again, it had not been possible to explicitly state in the resolution that the freedom of religion and belief included **the right not only not to have, but also to change or abandon one’s religion or belief**; such language had been let go for the sake of a highly valued consensus.

## 2011

The United Nations Human Rights Council on March 24, 2011 adopted two resolutions without a vote. These draft resolutions will be sent to the Third Committee of the United Nations General Assembly for review and approval in October 2011.

[A-HRC-16-L.14 - Resolution on Freedom of Religion or Belief](#)

[A-HRC-16-L.38 - Resolution Combating Intolerance, Stereotyping, Discrimination & Incitement to Violence Against Persons Based on Religion or Belief](#)

The Draft Resolution on Freedom of Religion or Belief (A/HRC/16/L.14) is the same as 2007 and 2010 urging states to guarantee in constitutions and legal systems the right to change one’s religion.

### **Resolution (A/HRC/16/L.14) – Freedom of Religion or Belief: adopted without a vote (by consensus) by the UN Human Rights Council, March 24, 2011.**

7. *Urges* States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end:

**(a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience and religion or belief to all without distinction by, inter alia, the provision of access to justice and effective remedies in cases where the right to freedom of thought, conscience and religion or belief, or the right to freely practice one’s religion, including the right to change one’s religion or belief, is violated;**

Resolution (A/HRC/16.L.38) – Combating intolerance: adopted without a vote (by consensus) by the UN Human Rights Council, March 24, 2011 is a potential groundbreaking draft resolution to replace Defamation of Religion resolutions passed by the UN Human Rights Council and General Assembly. Pakistan, speaking on behalf of the OIC, said they have gone the “extra-mile” in this approach. Adopted without a vote by consensus.

**5. (g) Understanding the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, regional and international levels through, inter alia, education and awareness-building;**

**(h) Recognizing that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels, can play a positive role in combating religious hatred, incitement and violence;**

**9. Calls for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs, and decides to convene a panel discussion on this issue at its seventeenth session within existing resources.**

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### *Moving Forward*

Resolutions (A/HRC/16/L.14) and (A/HRC/16/L.38) adopted by the UN Human Rights Council on March 24, 2011 without a vote may be a significant *step forward* to resolve the question of **universality vs. cultural relativity** relating to the norms to change one’s religion or belief in the long history of the United Nations on Freedom of Religion or Belief on Article 18 of the International Covenant on Civil and Political Rights and the 1981 UN Declaration.

<http://www.tandemproject.com/program/history.htm>

In 1968, the United Nations deferred work on a legally-binding treaty on religious intolerance as too complex and sensitive and passed a non-binding declaration in its place. The Tandem Project believes until a core legally-binding human rights *Convention on Freedom of Religion or Belief* is adopted international human rights law will be incomplete. It may be time to begin to consider reinstating the 1968 Working Group to better organize and bring all matters relating to freedom of religion or belief under one banner, a core international human rights legally-binding treaty.

**The Tandem Project** a non-governmental organization (NGO) founded in 1986 to build understanding, tolerance, and respect for diversity of religion or belief, and to prevent discrimination in all matters relating to freedom of religion or belief. The Tandem Project has sponsored multiple conferences, curricula, reference material and programs on Article 18 of the International Covenant on Civil and Political Rights- Everyone shall have the right to freedom of thought, conscience and religion – and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

