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# KENYA MUSLIM PROPOSALS ON CONSTITUTIONAL REFORM 2019

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Learning to Consolidate and  
Reconstruct Our Nation

JULY 2019

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ  
 أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا  
 يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُوْبِ الْأَمْرِ مِنْكُمْ فَإِن تَنزَعْتُمْ فِي  
 شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ  
 وَأَحْسَنُ تَأْوِيلًا

“Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.

O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.”

Quran 4:58-59



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# Reflecting...

Constitutional reform is both a journey and destination. It is a journey because it involves a negotiated process, that comprises steps defined by law and involves different citizen stakeholders who may have disparate interests and positions that need moderating and final consensus. However, it is a destination in that what we currently have and eventually come up with is a document (the Constitution) that defines the country we are in, our aspirations, our institutions and systems, how we organize ourselves and relate to each other and more importantly how we exercise our constitutional sovereignty.

The Muslims in Kenya have been and are part of both, shaping both the journey and destination and also living within it and experiencing its flavours in terms of its benefits and suffering adverse consequences of those claiming to implement it. Therefore, moments of constitutional reforms bring anxiety to the Muslims not knowing what is in the horizon. However, we have always, at such times, reorganised ourselves, regrouped our constituencies and mobilized our resources to work with other Kenyans to ensure that what is planned for our country is one in which we shall all be proud members to promote and defend.

So here we are again in 2019! We have developed these proposals as our first initial thoughts sharing with other Kenyans as to how we see these reforms. In doing so, we have avoided being casual but have reflected deeply and made proposals that, in our reflection, will make Kenya a better place for everyone.

I am therefore happy to submit this Muslim document: Learning to Consolidate and Reconstruct our Nation: Muslim Proposals on Constitutional Reform 2019.

This process was a consultative process of three national symposiums and over thirty technical sessions. The Supreme Council of Kenya Muslims (SUPKEM), Jamia Mosque Committee and the National Muslim Leadership Forum (NAMLEF) provided leadership in this process which included many organisations as mentioned in the appendices to this document. I wish to sincerely thank SUPKEM leadership, Dr. Yusuf Nzibo, National Chairman, Sheikh Hassan Ole Nado, National Deputy Chairman, Sheikh Ambassador Mahat, Secretary General, Sheikh Abulatiff Shaaban, Director General for providing guidance and support in this process; the Jamia Mosque Committee leadership Abdulbary Hamid, Secretary General and Sheikh Ibrahim Yusuf, Deputy Secretary General and the NAMLEF leadership Alhaj Yusuf Murigu, Sheikh Salim Vayani and Sheikh Said Athman.

This document has been borne out of immense sacrifice and great sense of duty by Muslims who for nearly six months researched, documented, presented and reworked time and again on proposals. Let me single out the Muslim Technical Working Group. They were supported by Dr. Ibrahim Farah, Sheikh Ibrahim Lethome, Advocate Hussein Abdinassir, Col. Noor Musa, Abdulrahman Ismail and the invaluable contribution from the deputy Chief Kadhi Sheikh Sugyan and Kadhi Sheikh Abdul Jahsha. Also the constitutional and legal insights from Hon. Commissioner Abubakar Zein and Commissioner Murshid Muhammad.

The organizing support to the meetings and secretarial services were done by the Consortium for the Empowerment and Development of Marginalised Communities (CEDMAC) which remains a key component of the process.

May I also thank all the Muslim leaders who attended the three national symposiums and continue to support this process. This document is the product of their consensus.

May Allah accept all our efforts and grant success to the initiative. Amiyun.

Sheikh Abdullahi Abdi

*Chairman*

*National Muslim Leadership Forum*

## Bismillaahi Rahmaani Rahiym

In the name of Allah, The Most Gracious, The Most Merciful

# PREAMBLE



As at the time of making these proposals (June 2019), Kenya has experienced the new Constitution of Kenya 2010 dispensation for nearly a decade. The Constitution of Kenya 2010 heralded a new promise for our country and that promise has now been lived for ten years. We now have preliminary lessons of the experience of the new dispensation.

It is therefore an apt moment to consider some amendments to the Constitution.

In developing these proposals, we have taken cognizant of the context of the environment of our nation, the challenges facing the Muslim Community and Kenyans in general and the opportunities that remain potent in a robust, effective and facilitative constitutional charter that is respected, adhered to and faithfully lived and implemented by all.

We single out the daunting challenges facing majority of Kenyans including the Muslim community in governance, particularly low levels of integrity in

leadership, systemic corruption, inequality, inequity, discrimination, marginalization and exclusion. The Muslim Community has borne disproportionate suffering from the ills of this misgovernance.

The structural challenges facing the Muslim Community as citizens of this country, are those that are borne by other marginalised communities in Kenya, the challenges of inherent and inbuilt discriminatory policies and practices, deliberate post-independence marginalisation in development, deliberate colonial and post-colonial systems against Muslims and their institutions, deliberate policies to profile Muslim majority areas and Muslims as security risks and the challenge of exclusion from opportunities in government employment and appointments.

These challenges remain over-arching for Muslims and need to inform any process of constitutional design, reforms and implementation.

# INTRODUCTION

The Constitution was promulgated in 2010. It is a progressive and transformative constitution and has served us well in certain areas.

However, our experience of its implementation has shown us the areas we need to refine or change to get a better constitution and country.

We, as the Muslim Leadership, therefore have seized the opportunity and designed a process that has led to the development of this document, harnessing the views of a cross-section of the community leadership across geographical, age and Muslim organisation representation.

Our submission is based on proposals by the Muslim Community, a result of robust participation of the community. We have limited our proposals to areas of

greatest concern of the Muslim community and indeed a majority of Kenyans. Our presentation covers the following six areas:-

- I. Refinement of the Kadhis' Court.
- II. Devolution and sharing of power.
- III. Refinement and the operationalization of the Leadership and Integrity Chapter.
- IV. The electoral system
- V. Reconfiguring Executive authority and powers.
- VI. The National Parliament and the Legislative Structures in the devolved system.

# THE MUSLIM PROPOSALS ON CONSTITUTIONAL REFORMS

The Muslim Proposal cover six areas:-

- I. Refinement of the Kadhis' Court.
- II. Devolution and sharing of power.
- III. Refinement and the operationalization of the Leadership and Integrity Chapter.
- IV. The electoral system
- V. Reconfiguring Executive authority and powers.
- VI. The National Parliament and the Legislative Structures in the devolved system.

## I. Refinement of Kadhis' Court.

### a) Provision of an Appeal System:

We propose the establishment of an appeal court that will have the jurisdiction of the high court. Currently, appeals from Kadhis Court lie in the High Court of Kenya. An appeal system will afford Muslims exercise their right to appeal to a superior court within the Kadhis' system.

#### Recommendation:

We propose an appeal Kadhis' Court as a superior court be established in the constitution with the mandate of hearing and determining appeals that may arise from the Kadhis' subordinate court.

### b) To refine the conceptualization and administration of the Kadhis' Court to serve Kenyans better:

The provisions on Kadhis' court through minor amendments and limited consequential provision can be improved through;

(i) All references to **Muslim Law** should be amended to read **Islamic Law**.

The characterization of Islamic law has evolved from the condescending colonial "Muhamadan Law" to the current term "Muslim Law" used by non-Muslims. The appropriate use of the term Islamic law will be in conformity with the wishes of Kenyan Muslims and international norms.

#### Recommendation:

We propose to replace "Muslim law" whenever it appears in the Constitution with "Islamic law".

(ii) The exception clause in article 24(4) should be recast for clarity, consistency and elegance reasons. The principle of using Islamic law in matters involving Muslims in issues relating to personal status, marriage, divorce and inheritance has been accepted. Even in the context of such matters being canvassed outside the arena

of the Kadhis court, such as the high court, Islamic law is used. The current formulation therefore has a redundancy that may even be construed to limit the rights of Muslims. The current formulation reads:

**24 (4) The provisions of this chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslims religion, in matters relating to personal status, marriage, divorce and inheritance.**

#### Recommendation:

The new formulation should read as follows;

**24 (4) The provisions of this chapter on equality shall be qualified to the extent necessary for the application of Islamic Law, to persons who profess the Muslim religion, in matters relating to personal status, marriage, family, divorce and inheritance.**

Based on this proposal a consequential amendment to harmonize the drafting should also be made to article 170 (5) so as to read:

**170 (5) The jurisdiction of the Kadhis' court shall be limited to the determination of questions of Islamic law relating to personal status, marriage, family, divorce and inheritance.**

(iii) Article 171 establishes the Judicial Service Commission (JSC). All the courts are represented in constituting the JSC **except the Kadhis' court.**

#### Recommendation:

We propose the Kadhis court should also be given an opportunity to be represented in the JSC.



## II. Devolution and Sharing of Powers.

The transformative nature of the devolved system of governance can be improved further by addressing emerging issues coming from the experience of the implementation of the constitution. Some of these improvements include:

### (a) Improvement of the County Legislative Assembly by –

- (i) Providing for the office of deputy Speaker in line with similar provision for the National Parliament.

### (b) Improvement of the Office of the Governor by:

- (i) Providing for a mechanism for appointment and/or replacement of a new holder of the office of the deputy Governor.

### (c) By improving the sharing of resources between the National Government and County Governments by:

- (i) Amending article 203 (2) County share from not less than fifteen percent to not less than sixty percent so as to read –

**New 203 (2) For every financial year, the equitable share of revenue raised nationally that is allocated to county governments shall be not less than sixty percent of all revenue collected by the national government.**

- (ii) Making the approval process of audited accounts contemplated in 203 (3) a shared function between the National Assembly and the Senate. Further, ensuring the most recent audited accounts are not older than two years. The new provision should read –

#### Recommendation:

The new 203 (3) The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, provided they are not older than two years, as approved by the National Parliament.

\*Consequent amendments should be made to reflect this principle throughout the constitution.

### (d) By improving the operations of the Equalization Fund by:

- (i) Increasing the percentage allocated to not less than three percent of the national government's share.
- (ii) Including the participation of the Senate in the allocation and approval of the funds.

#### Recommendation:

The new 204 should read –

**New 204 (1) There is established an equalization fund into which shall be paid not less than three percent of funds allocated to the national government each year calculated on the basis of the most recent audited accounts of revenue received, provided they are not older than two years, as approved by the national parliament.**

### (e) Improve the principle of fair sharing of resources amongst counties by:

- (i) Amending article 62 (3) to provide for the fair interest and share in benefits accruing from the land identified from clause 1 (f) to (m).
- (ii) Converting all national forests, national game parks, and national reserves into county forests, county national game parks and county reserves.
- (iii) Providing for joint ownership and equitable share of forests, parks and reserves that transcend or cut across more than one county. The National Land Commission shall propose to concerned counties a framework for the administration and management of such resources.

**Recommendation:**

The new Article should read:

**New 62 (3) Public land classified under clause (1) (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission provided;**

**1. The interest of local people and the interest and share of benefits accruing from the land identified in 1 (f) to (m) by concerned county governments is catered for, which shall be not less than fifty percent, and is guaranteed by law.**

**2. The access and participation in economic activity and gain by the County governments is allowed.**

**3. All formerly designated national forests, national game parks and national game reserves will become county forests, county game parks and county reserves.**

**4. The National land Commission shall propose legislation, to be approved by the national parliament, to oversee the joint ownership and equitable share of benefits accruing from forests, parks and reserves that transcend more than one county.**

**5. The national parliament shall develop legislation to establish standards and levels of protection that are required for the sustainable use of forests, game parks and reserves.**

\*Consequential amendments will have to be undertaken to delete reference to national forests, national game parks and national reserves and replace with county forests, county game parks and county reserves, including the provision of joint ownership.

**(f) Refine the distribution of functions between the national and county governments.**

The distribution of functions need to reflect the architecture and design of the constitution including its principles and values.

(i) The function of use of international waters and water resources (appearing as number 2 in part one of fourth schedule) need to be shared. Thus, the use of water resources need to be added to the county governments' functions as well.

(ii) The provision number 5 on language policy and promotion of official and local languages should be a shared function.

(iii) The education function is already a shared function but allocates to the county government the responsibility of only pre-primary education, village polytechnics, home craft Centers and childcare facilities. Experience has shown that nearly all county governments, based on dire need, are already forced to invest heavily in primary and secondary education. Therefore, we propose basic education, that is, primary and secondary education, should be a county function. Further, the provision of special education and special education facilities should be a shared function.

**Recommendations:**

1. Provision 16 in part 1 should read:

**16. Universities, tertiary educational institutions, and other institutions of (\*add national) research and higher learning.**

2. Provision 9 in part 2 should read:

**9. Pre-primary education and childcare facilities, primary and secondary education, county polytechnics, special**

**education and special education institutions.**

3. A new provision 10 in part 2 which should read:

**New 10. Cultural Centres, cottage industries and homecraft Centres.**

(iv) Improve provision number 5 in part 2 by adding communication in the transport function and including county railways, county marine navigation, county civil aviation, county postal and parcel delivery services, county telecommunication and county and community radio and television.

Therefore, the new number 5 in part 2 should read:

5. County transport and telecommunication including –

- i. county roads;
- ii. county railways;
- iii. county marine navigation and shipping;
- iv. street lighting;
- v. traffic and parking;
- vi. public road transport;
- vii. ferries and harbours, excluding the regulation international and national shipping and matters related thereto and
- viii. County Public communication including outdoor advertising.
- ix. Recasting and expanding of disaster management for both the national and county governments.

**Recommendation:**

The new provision 24 in part 1 should read;

**New 24. National Disaster Reduction and management including early warning and early response, risk reduction, prevention, education, training and preparedness, capacity building and provision of national response and emergency services including search and rescue, evacuation, fire, medical and ambulance services.**

(vi) Making the management of ancient and historical monuments of national importance a shared function;

**Recommendation:**

Re-casting of provision number 25 of part 1 to read;

**New 5. Ancient and historical monuments of national importance provided the interests of local communities associated with those monuments, their memories, histories and civilizational rights are respected and transmitted; and participate in their management and receive a fair share of any benefits that will accrue from them.**

(vii) Introduce a shared function on Peace and Security.

(viii) Expand and recast the provision 3 in part 2 and remove outdoor advertisement which is now covered above.

New 3 should read;

**New 3. Control of pollution including air pollution, water pollution, soil pollution and noise pollution.**

(ix) Introduce a new 4 that will address anti-social behavior and creation of public nuisance.

### III. Refinement and operationalization of the Leadership and Integrity Chapter

This chapter was supposed to increase the levels of integrity and good governance in Kenya. We propose to refine and strengthen its operations by:

- i. Expanding the application of the chapter to both State and Public officers.
- ii. Establishing the principle of automatic vacation/removal from office of any person who has been found to have violated the constitution, a court order and/or an order of a constitution commission.
- iii. Any Kenyan may file proceedings in court or in a constitution commission to declare a public and/or state officer is not fit to hold public or state office based on, including, violating the leadership and integrity chapter, article 10 of the constitution, article 232 principles of public service, other parts of the constitution, laws on integrity and anti-corruption, and

codes of conduct of state and public institutions.

- iv. Proceedings shall be filed in the high court, which shall make a determination within 90 days on the suitability of a person to seek to serve and/or run for an elective office or continue to serve in a public or state office. The judgement/decision of the high court shall be final. For avoidance of doubt, the right of appeal shall not be available to those seeking to serve in public and/or state office.
- v. Propose criterion for demonstration of integrity before seeking a public and/or state office. (\*to be developed)
- vi. Criminalize uttering and/or filing of false information and or documentations under the chapter.

(\* to develop a safe guard clause against false and/or malicious accusation or prosecution)

### IV. Electoral System:

Our country is faced with a number of problems connected with representation and good governance.

Chapter 10 of our progressive constitution and an array of other provisions seek to promote representation of the people and good governance.

However, some of the general principles for the electoral system under Article 81 have not been realized –

- 81 (b) which requires that not more than two thirds of the members of elective public bodies shall be of the same gender;

- 81 (c) which requires fair representation of persons with disabilities;
- 81 (d) which requires fair representation and equality of votes;
- 81 (e) (ii) which requires elections to be free from violence, intimidation, improper influence or corruption.

The non-realisation of the above is the subject of heated concern among citizens. We have continued with the First Past The Post electoral system, (FPTP) which system, in our socio-political context, blocks our aspiration in attaining the objectives of Article 81 of the Constitution.

We propose the country should shift to a Mixed Member Proportional Representation, (MMPR), system that will have the following characteristics:

- i. Will retain the current 290 single member constituencies for the National Assembly and 47 members of the Senate, each county constituting a single member constituency.
  - ii. Will retain the current number of wards, each ward constituting a single member Constituency
  - iii. Will create a further thirty percent seats that will be allocated to political parties in proportion to their total country wide vote based on party lists.
  - iv. The Party lists will be published before the election, be closed and zipped so that the Constitutional principles of not more than two thirds rule is implemented and requirements of diverse representation is observed including through representation of persons with disability and respect of religious, cultural, linguistic and the representation of persons of different age groups.
- (i) and (ii) would ensure that representation of the people is not lowered
  - (iii) will ensure that every vote counts, giving expression to fair representation and equality of the vote

- (iv) would solve the otherwise complicated issue of gender parity, it would give expression to the quest for inclusivity and diversity, it would further strengthen political parties and manage the propensity of political parties being mobilized along tribal and ethnic lines.

This proposed change will ensure that our elections are not arenas for ethnic competition for political power, visited by violence, intimidation, improper influence or corruption.

We further propose that the power and function of boundaries delimitation should be de-linked from the Electoral Management Body, EMB, since boundaries delimitation evoke a lot of political heat which can impact negatively on the credibility and functioning of the EMB. A separate entity should undertake the task of boundary delimitation and may be appointed for that purpose when delimitation is due and disbanded once the delimitation and challenges, if any to the delimitation have been addressed and concluded.

To ensure retention of memory and to avoid a constitutional crisis, we propose that the term of office of the Commissioners should not end at the same time. The appointment of commissioners should be staggered and a mechanism should be adopted to ensure that not all commissioners leave office at the same time.



## V. Reconfiguring Executive Authority and Powers

We have adopted a Presidential form of government. This form of government was invented by the Americans as a rejection of the Parliamentary form of government of their colonizer – Britain in a bid to avoid the excesses of the Monarch.

The Americans designed a governance system based on their historical, political and social context. The country was originally composed of 13 independent states which states were to be enjoined in a federal unit. The challenge was to have a suitable power arrangement and they came up with a system of allocating powers between the states and the federal unit and powers that were concurrent. All reserve powers were deemed to belong to the states.

Key federal powers included national security and defence, International relations, postal service.

The states were allowed to have all government functions – each has its own legislature, executive and judiciary and each has its own flag. Each state has its own militia and citizens have the right to bear arms. Such arrangements ensured that the states exercise a high degree of autonomy from the federal unit and can safeguard its interests from an overbearing centre.

Additional safeguards include a robust and entrenched Bill of Rights that limit the power of Congress, term limits for the President, impeachment provisions for the President, (where one house frames the issues and the other tries the President), powerful checks and balances between the Congress and the Senate where laws made by one house must be endorsed by the other house.

The constitutional framework of the USA was thus developed in line with their socio-political and historical context and outside of France, the Presidential system has never

worked as well anywhere else in the world.

Many African and Asian countries that adopted this system failed to place the requisite safeguards and such countries quickly slipped into dictatorship, which meant the Executive exercised disproportionate (and overbearing) power vis a vis other branches of government, denting constitutionalism and the rule of law.

The Kenyan context is at variance with the American one – the American one emanated from independent states seeking a federated structure, ours was a centralized and powerful central governance system seeking devolution and dispersal of powers and functions. We also lack key features of ensuring and giving full effect to devolution as captured under Article 6 (2) – The governments at the National and County levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation, and fully meet the aspirations of chapter 11.

Our answer may not lie in adopting a Parliamentary form of government.

The Westminster model, much favoured by former British colonies, developed in line with the historical, socio-political and economic context of England. The development of the Parliamentary system was a journey to shift power from the Monarch to parliament and parliament became the most powerful arm of government. Sovereignty of the people resided in parliament and MPs can do anything. As the Swiss political theorist Jean-Louis de Lolme put it in his 1771 book on the English constitution: "Parliament can do everything but make a woman a man and a man a woman."

This form of government has served England well. For it to work well, it depends

on a strong democratic culture and tradition. One key tradition for its success is that it must be based on a tradition, experience and history of strong political parties, parties that are not based on individuals, and certainly parties that are not organized around ethnic and tribal interests.

The traditions of England ensured that political parties developed under certain ideals and people grew up in such parties and embraced the ideals of the party. The Labour Party is organized around those who toil – the workers; the Conservative Party has strong ties with the Monarchy and the Church and the idea of “country first”; the Liberal Democratic Party developed from those holding libertarian ideals; the Green party grew from those with environmental friendly ideals, etc.

This system of government cannot function well in a country that has no history, culture and tradition of strong political parties organized under such ideals. Party formation in Africa is based on individuals, money, parochial tribal and ethnic interests and their performance within a Parliamentary form of government quickly results in misgovernance.

We thus move away from either forms of governance as well as the mixed forms – be it mixed Parliamentary form (which means predominantly parliamentary) or mixed Presidential (which means predominantly presidential).

We propose a unique, fit for purpose Executive Power system, where we have a President and a Prime Minister, each office having distinct and clear powers and functions and in broad terms, each being a powerful check on the other by ensuring that the President is the symbol of National Unity, the head of state and the protector of the Constitution and Constitutionalism, whilst the Prime Minister is the head of government and the chief executive of the country.

We thus propose as follows:-

**A) Office of the President** – will have the following functions and powers:

**1. Role of the Head of State:**

- (i) The President shall be the Head of State.
- (ii) Be the Commander in Chief of the Armed Forces
- (iii) Is the symbol of national unity and shall promote and enhance the unity of the nation.

**2. Role in the Appointment of the Prime Minister and the constitution of government:**

- (i) Shall nominate a person supported by the majority party in the National Assembly or likely to command the support of the majority members of the National Assembly to serve as the Prime Minister.
- (ii) Dissolve the National Assembly if attempts to form government through the appointment of the Prime Minister fails after three separate votes have been taken.

**3. Role on the Appointment and Removal of State Officers:**

- (i) Appoints Judges on the recommendation of the Judicial Service Commission (JSC) and subject to the approval of the Senate, where parliamentary approval is required.
- (ii) Appoints the tribunal to investigate judges and other judicial officers based on the recommendations of the JSC and in accordance with the constitution.
- (iii) The President shall constitute panels to nominate members of the constitution commissions and independent constitution office holders in accordance with the constitution.

**4. Role on State Power of Mercy:**

- (i) Exercise the state power of mercy in accordance with the constitution.

### **5. Role on the Legislative and Policy development Processes:**

- (i) Preside over the opening of Parliament.
- (ii) Approve bills from the National Parliament as part of the enactment process.
- (iii) May refer back bills for reconsideration with reservations and or suggestions for improvements and/ or amendments. A bill referred for reconsideration must take into account the reservations of the president and incorporate the changes proposed by the president or veto them by the re-adoption of the same bill with a higher threshold of more than two thirds support of total number of members in parliament or the relevant house that passed the original bill.
- (iv) The President may submit any proposed Bill or policy to the Supreme Court to rule on its legality or constitutionality before its approval and enactment.

### **6. Potential Role in the Implementation of the Chapter on Leadership and Integrity:**

- (i) The President may recommend to the Supreme Court to consider the removal of any state officer from office for breach of the constitution, law or for gross misconduct.
- (ii) The president may direct the relevant authorities to investigate and/or prosecute the concerned state officer and/or constitute an independent counsel to investigate and/or prosecute the concerned state officer.

### **7. Role on National Defence and Security:**

- (i) Shall preside over the national security Council.
- (ii) Shall preside over the Defence Council.

(iii) Shall declare a state of emergency on consultation with the Prime Minister and the approval of the Parliament.

(iv) Shall have the power to declare war, in consultation with the cabinet and the National Security Council, subject to the approval of Parliament and in accordance with the Constitution.

### **8. President Role on Treaties and Conventions:**

(i) Shall ratify treaties and conventions recommended by Cabinet and approved by Parliament.

### **9. Role on Presidential Advisory Council:**

(i) Shall preside over the Presidential Advisory Council.

### **10. Other Functions:**

(i) Shall carry out such other functions as may be assigned to him or her by an act passed by Parliament.

### **Establishment of the Presidential Advisory Council:**

The Presidential Advisory Council will be established as an advisory mechanism to the President. The nine members of the Council will be appointed by the President for a five-year fixed term and shall reflect national diversity including gender, ethnicity, religion, region, disability and generational equity.

### **The President and deputy President -**

1. Shall be elected directly by the people through universal suffrage.

\*The conditions and process of election shall remain the same as in the 2010 Constitution.

2. Once elected the President and deputy president shall cease to be a member of any political party and shall at all times in office, act in a non-partisan manner and they shall not have any other office of profit. They may be removed from the office for violation



of the constitution or any other law, or where there are serious reasons for believing that they have committed a crime under national or international law or for gross misconduct.

\*The impeachment/removal process in the 2010 constitution shall remain the same.

**B) The Office of Prime Minister and the Cabinet shall have the following functions and powers:**

**1. Role as Head of Government and Leader of Cabinet:**

- (i) Be the Head of Government.
- (ii) Be the leader of Cabinet.
- (iii) Is responsible for the day to day running of Government and accountable to parliament.

**2. Role as the Leader of Cabinet:**

(i) Shall nominate, and by the approval of the National Assembly, appoint members of cabinet from persons not serving as members of parliament. The appointments shall reflect national diversity including gender, ethnicity, religion, region, disability and generational equity.

(ii) Shall be leader of government business.

(iii) The Prime Minister and members of the cabinet shall be accountable to parliament and be ex-officio members of

parliament without the right to vote.

(iv) The Prime Minister may remove a member of the cabinet.

**3. The Role of the Cabinet shall be to:**

(a) Develop and implement national budgets and policies.

(b) Implement and administer National Legislation and Policies.

(c) Prepare and submit National Bills and proposed National policy to Parliament for consideration.

**4. Role on Foreign and International Affairs:**

(i) The Prime Minister is responsible for foreign policy and international affairs including nomination of ambassadors, and upon approval by the senate, appoint them into office.

**5. Role on National Security:**

(i) The Prime Minister or his/her designated deputy shall be a member of the National Security Council.

\*All other functions in the current executive in the constitution that have not been allocated in this scheme of balancing the powers between the President and the Prime Minister shall be allocated to the office the Prime Minister.



## VI. The National Parliament and the Legislative Structures in the devolved system

In order to improve the integrity levels in all legislative structures the Legislative Integrity Commission will be established with the following powers;

(i) To investigate, on its own motion or based on a complaint by a citizen of Kenya, any matters concerning the violation of the Constitution and the law including the leadership and integrity chapter of the Constitution.

(ii) To consider a petition for the recall, impeachment and/or removal of a serving member of the national Parliament or the legislative structures in the county governments.

If the commission finds that there are reasonable grounds for the recall, impeachment, and/or removal of a member of national Parliament or legislative structures, the commission shall

recommend to the Chief Justice to set up a tribunal to consider the matter.

If the Tribunal finds the member to be culpable for actions and/or omissions that are grounds for recall, impeachment or removal the concerned member will be recalled, impeached and/or removed from office accordingly.

(iii) To recommend to the national parliament or legislative structures in the county governments, on its own motion or based on a complaint of a citizen of Kenya, for investigations or disciplinary action to be taken against a member of parliament or legislative structures in the county governments for violations of their respective code of conducts.

(\*The Legislative Integrity Commission shall be a chapter 13 commission.)

## CONCLUSION

As noted at the beginning of this position paper, to consolidate the gains of constitutionalism and work towards a united, peaceful and prosperous country both the journey and the destination of the reform process should be an inclusive negotiated process in which all stakeholders agree. This document has been shy to propose on the process,

given the urgent exigencies of the circumstances but will call on those responsible to learn from our past.

Finally, the Muslim Leadership will remain open in discussing these proposals with other Kenyans.

**FORGING NATIONAL TOGETHERNESS: MUSLIM REFLECTION  
NATIONAL CONSULTATIVE MEETING ON CONSTITUTIONAL  
REFORMS 3<sup>RD</sup>-4<sup>TH</sup> NOVEMBER 2018**

<b>No.</b>	<b>Name</b>	<b>Organization</b>
1.	Mohammed Habib	Imam Masjid Mbaruk
2.	Mohamed Sambul	Al Noor Education Group Nakuru
3.	Abdul Kadir Hawa	Ulinzi Africa Foundation
4.	Hamisi Ismael	Jamia Mosque Committee
5.	Abdulwahid Oyoo	Masjid Alameen
6.	Mohamed Enow	Jamia Mosque Committee
7.	Mohamed Swalih	Chair, Kenya Council of Imams and Ulamaas
8.	Mustafa Mbaru	Family Resource Centre
9.	Abdi Adan	Moyale Corner Community
10.	Al-Hajj Yusuf Murigu	National Muslim Leaders Forum (NAMLEF)
11.	Mohammed Sultan	Shaffie Masjid
12.	Abubakar Usman	Kenyatta University
13.	Salim M. Charo	Council of Imams and Preachers of Kenya (CIPK)
14.	Riziki Ahmed	Muslim Women Group
15.	Bishar Ahmed	Mandera Community
16.	Athman Abdallah	Council of Imams and Preachers of Kenya (CIPK)
17.	Ahmed Awadh (Hamdun)	Consultant
18.	Abdullatif A Sheikh	Islamic Foundation
19.	Sheikh Subki Shee	Umma Foundation
20.	Umar Sakwa	Nairobi Muslim Students Association/NAMSA
21.	Omar Dawood Kalinge	Muslim Consultative Alliance
22.	Hemed Mazrui	Tijara Foundation
23.	Sahra Ali	Muslim Women group
24.	Hassan Suleiman	Gatundu Muslim Association
25.	Aisha Dafalla	Msamaria Foundation
26.	Mohamed Ali Abdi	NAMLEF
27.	Abdallah Shaaban Ummu	Ibrahim Home of Hope
28.	Ali Mahmoud	Ali & Co Advocates
29.	Mohamed Nur	North

30.	Kipkorir Dennis	Kongasis FM
31.	Ahmed Al Omar	
32.	Ali Dida	Isiolo Muslim Community
33.	Hajj Mahmud	National Muslim Leaders Forum (NAMLEF)
34.	Hassan omesha	Muguga Masjid
35.	Sheikhan Kune	Komarock Yar
36.	Idris Yusuf Suleiman	Youth
37.	Abubakar Said	CEDMAC
38.	Anas Ali Abdalah	CEDMAC
39.	Ali Haji Jama	Kona Community

## 2nd Consultative Meeting 26-27th June 2019

1.	Dafalla Aisha	Msamaria Foundation
2.	Abdi Adan	
3.	Adul Marjan	
4.	Abdullatif A. Sheikh	Islamic Foundation
5.	Said Athman	National Muslim Leaders Forum (NAMLEF)
6.	Omar Abdullahi	National Muslim Leaders Forum (NAMLEF)
7.	Hemed Mazrui	Tijara Foundation
8.	Ahmed Kadar H.	Ali Ark Media
9.	Abdul Kadh Hawa	Ulinzi Africa Foundation
10.	Ali Hersi	Pastorist Group
11.	Mohamed A. Abdi	National Muslim Leaders Forum (NAMLEF)
12.	Mohamed Abdulahi	NAMLEF
13.	Ali Haji Abdinoor	National Muslim Leaders Forum (NAMLEF) NAKURU
14.	Murshid A. Mohamed	Muslim Technical Training
15.	Bishar Ahmed Ali	Mandera Community
16.	Mohammed Sultan	Shaffie Masjid
17.	Ali Mahmud Mohamed	Alixco Adis
18.	Mustafa Ibrahim	Polico
19.	Abdirahman Ismail	National Muslim Leaders Forum (NAMLEF)
20.	Mohamed Habib	Imam Mabrouk Mosque
21.	Mohamed Nur	North

22.	Ayanle Salad	Nairobi
23.	Abdilatif Maalim Adan	Horn Media PR
24.	Abubakar Usman D	Kenyatta University
25.	Fauz A. Qureishi	Ummah Foundation
26.	Abdullahi Derow	NGO
27.	Mustafa	F.R.C
28.	Sheikh Supki Mohamad	Umma Foundation
29.	Said Gonyo	Private
30.	Abdulwahid Oyoo	Masjid Al-Meena
31.	Abdulhamid Siraj	Jamia Mosque, Umoja
32.	Mohamed Sambu	Nakuru
33.	Aziza Gulam	National Muslim Leaders Forum (NAMLEF)
34.	Riziki Ahmed Hidaya	Muslim Women Group
35.	Ahmed Ali Omar	National Muslim Leaders Forum (NAMLEF)
36.	Mohamed Shee	Imam, NjiruMasjid
37.	Hussein Onacha	Jamia
38.	Dr. Ali Adan	Umma University
39.	Athman Abdallah	CIPK
40.	Ibrahim Ahmed	Jamia
41.	Salim M. Charo	CIPK
42.	Abdi M. Ahmed	MAGAN
43.	Dr. Ibrahim Farah	K.U.
44.	Hamisi Ismael	Jamia Staff
45.	Mohammed noor	NAMLEF
46.	Feisal Kalba Gure	
47.	Ahmed Mohamed	AEDT
48.	Mumtaz Muhumed	JKUAT/AEDT
49.	Abdinasir Mohamed	M.A.S. O/AEDT
50.	Ali Ngaruiya	AEDT
51.	Toma Zubeida	AEDT
52.	Shukri Hashim	AEDT/UMMA
53.	Salahudin Ismail	M.A.S.O.

**VALIDATION MEETING FOR MUSLIM PROPOSALS  
TO CONSTITUTION REFORMS :16TH MAY 2019**

<b>No.</b>	<b>Name</b>	<b>Organization</b>
1.	Abdullah Abdi	Chair, National Muslim Leaders Forum (NAMLEF)
2.	Yusuf A. Nzibo	Chair, Supreme Council of Kenya Muslims (SUPKEM)
3.	AbdulBarry Abdulhamid	Secretary General, Jamia Mosque Committee
4.	Abdulatif A. Sheikh	Vice Chair, Kenya Council of Imams and Ulamaas
5.	Hassan Ole Nado	Deputy Chair, Supreme Council of Kenya Muslims (SUPKEM)
6.	Abdirahman Ismail	National Muslim Leaders Forum (NAMLEF)
7.	Salim Charo	Council of Imams and Preachers of Kenya (CIPK)
8.	Col. Noor Musa	Muslim Technical Team
9.	Bilal Sadiq	MWP&J
10.	Al-Hajj Yusuf Murigu	Deputy Chair, National Muslim Leaders Forum (NAMLEF)
11.	Aisha Dafalla	United Muslim Women for Development
12.	Mohammed Sultan	Shafii Mosque
13.	Abdulatif Shaaban	Director General, Supreme Council of Kenya Muslims (SUPKEM)
14.	Hussein Abdinassir	Advocate
15.	Murshid Mohamed	Chair, Muslim Technical Team
16.	Abusufian Ahmed	Jamia Mosque Committee
17.	Bishar Ahmed	Mandera Community
18.	Abdinasir Adan	Northern Advocacy Organization
19.	Umar Sakwa	Nairobi Muslim Students Association/NAMSA



# Kenya National Anthem

## Swahili Version

- 1** Eeh Mungu nguvu yetu  
Ilete baraka kwetu  
Haki iwe ngao na mlinzi  
Natukae na undugu  
Amani na uhuru  
Raha tupate na ustawi.
- 2** Amkeni ndugu zetu  
Tufanye sote bidii  
Nasi tujitoe kwa nguvu  
Nchi yetu ya Kenya  
Tunayoipenda  
Tuwe tayari kuilinda
- 3** Natujenge taifa letu  
Ee, ndio wajibu wetu  
Kenya istahili heshima  
Tuungane mikono  
Pamoja kazini  
Kila siku tuwe na shukrani

## English Version

- 1** O God of all creation  
Bless this our land and nation  
Justice be our shield and defender  
May we dwell in unity  
Peace and liberty  
Plenty be found within our borders.
- 2** Let one and all arise  
With hearts both strong and true  
Service be our earnest endeavour  
And our homeland of Kenya  
Our Heritage of splendour  
Firm may we stand to defend
- 3** Let all with one accord  
In common bond united  
Build this our nation together  
And the glory of Kenya  
The fruit of our labour

