



*We will be a better world when each religious group can trust its members to obey the dictates of their own religious faith without assistance from the legal structure of any country*

Adapted From Margaret Mead

### **Kenya is a multi faith country**

We are a very religious country and even our National Anthem recognizes this fact. Save for a few cases of religious intolerance, people from different religions co exist well with each other in Kenya. It is very important that this balance be kept, and evidenced in the new Constitution.

### **The Constitution has always protected the freedom of religion**

The current Kenyan Constitution provides for freedom of religion, it also provides that nobody shall be discriminated against by reason of their religion among other things. The new Constitution should give equal, fair and just treatment to all Kenyans.

Until now... all versions of the proposed new Constitution (since 2002) have consistently stated that

- State and religion will be separate
- All religions will be treated equally; and
- There will be no state religion

**In the latest draft... these provisions have been changed!**

The latest draft has dropped the statement “all religions will be treated equally”.

It also no longer states that “State and religion will be separate”

The draft only states that “There will be no state religion”

So why were these important clauses removed? Who instigated these changes and what are the implications?

**Why is Islam being recognised as superior to other religions?**

In the section on the Judiciary, the Draft states that “there will be Kadhi Courts” it also states categorically that “a person shall not be qualified to be appointed to hold or act in the office of Kadhi unless that person professes the Muslim religion”

No other religion is recognised in the Draft.

**Should the Constitution create a State office for which only a person from one specific religion can apply?**

A Constitution cannot correctly create such an office in a multi religious country. A person seeking a State funded job in Kenya cannot be disqualified on religious grounds. Every citizen regardless of his/her faith MUST be able to occupy any office of State.

**The Kenyan Muslims are no different from other Kenyans – they deserve every protection of the law.**

Like every citizen, Kenyan Muslims are entitled to practice their religion in the best way they know how. Muslims deserve and must have their systems of dispute resolution. Their right to have must be protected by the Constitution. Disputes relating to personal law such as marriage, divorce e.t.c. may be determined by Muslim courts.

**The latest draft goes against the principle of equality and non-discrimination**

It favours one religion over others by providing for State funding of a purely religious system of dispute resolution. It creates state offices that are only accessible to one faith group, it perpetuates a historical wrong.

The State must not fund a religious institution and observance.

The Draft seeks to require the state to use taxpayers' money and resources to fund what is essentially a religious practice. Referring a dispute to a Kadhi court is essentially observance of a religious practice, ritual and duty. There is no place for the Kadhi's courts in the Constitution.

**But haven't the Kadhi Courts always been in the Constitution?**



AP Photo/Abdullahi Abubakar  
The image shows a group of men, likely of African descent, dressed in white traditional clothing and caps. They are outdoors, and the scene suggests a protest or a demonstration. In the foreground, a man on the right is shouting with his mouth wide open, showing his teeth. Next to him, another man has his fist raised in a gesture of solidarity or protest. Other men in the background also appear to be part of the group, some with their hands near their faces. The background is slightly out of focus, showing some buildings and a clear sky.



Kenya's new constitution is a landmark document that will guide the country for many years to come. It is a document that has been the result of a long and arduous process, and it is a document that has been the subject of much debate and discussion. The new constitution is a document that is designed to ensure that all citizens are treated equally, and it is a document that is designed to ensure that all religions are treated equally.