



# LIST OF ACRONYMS

FCPU FAMILY CARE AND PROTECTION UNIT

IJS INFORMAL JUSTICE SYSTEM

JLOS JUSTICE LAW AND ORDER SECTOR

MP MEMBER OF PARLIAMENT

ULRC UGANDA LAW REFORM COMMISSION

MCJL MUSLIM CENTRE FOR JUSTICE AND LAW

UWOPA UGANDA WOMENS PARLIAMENTARY ASSOCIATION

FIDA-U UGANDA FEDERATION OF WOMEN LAWYERS

UMSC UGANDA MUSLIM SUPREME COUNCIL

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# Executive summary

In Africa, States are seen to rely on traditional and informal justice forums to resolve disputes mostly because vast majority of Africans continue to live in rural communities with limited access to the formal state justice system.[[1]](#footnote-1) The informal justice systems are usually more accessible than formal mechanisms and may have the potential to provide quick, relatively inexpensive and culturally relevant remedies. In Uganda, dispute resolution through Courts of law are at a rate of 5%, those involving advocates are less than 1% of such cases. Majority of the population are hindered from accessing legal services due to conditions of extreme deprivation and the problems of increasing case backlog, corruption and the high costs associated with the formal justice system.[[2]](#footnote-2)

A study conducted by the Uganda Law Reform Commission revealed that the actors in the informal justice systems have a limited appreciation of international human rights standards and manifestation of gender discrimination both within the composition of the administrative structures and the actual operations of the informal justice systems and therefore affecting the delivery of justice.[[3]](#footnote-3) This has been proved by the work FIDA Uganda has done through a number of districts where legal officers have worked with the informal justice actors to handle and conclude cases. Given the central role and increasing government and partnering donor interest in IJS, it is key to build an understanding of IJS and how best to engage with them for the strengthening of human rights, the rule of law and access to justice. The Qadhi courts (sharia courts) are some of the informal justice structures that are utilsed by the Muslims to handle their disputes and regulate conduct in relation to matters concerning marriage, divorce, inheritance and guardianship and custody of children. They obtain their mandate to operate under Art 129(1) d) of the 1995 Constitution as amended although an enabling law to operationalize them has not been passed. Findings from a baseline survey report on access to justice in traditional communal Muslim justice systems (Qadhi courts) that was conducted by Muslim Centre for Justice and Law(MCJL) in 2012 reveals that the Qadhi justice system is fully operational albeit with a multitude of weaknesses.[[4]](#footnote-4) They currently operate informally because the enabling law for the establishment of the “Qadhis Court” has not been passed. They provide access to justice to multitudes of people including the indigent who use them and prefer them over formal courts in matters related to family, inheritance, property and often, business disagreements. There is little interface between the formal statutory courts and the Qadhi courts reported, but law enforcement organs like the police work well with these informal Qadhi courts. Legal review of Muslim family laws across Commonwealth Asia and Africa, analysing the nature and extent to which they discriminate against Muslim women and girls is ongoing although in Uganda, it is yet to be passed into law.

The report discusses the work of various stakeholders in urging legal reform for the Muslim personal law that involves elements of marriage, divorce, inheritance and guardianship of children. It highlights the critical legal advocacy work of domestic human rights organisations across the country giving a brief review of how other Muslim countries are integrating the Muslim personal law into their legal systems; and analyses steps taken by governments to reform and/or overcome the bottlenecks to access to justice caused by the lack of Qadhi courts in the legal system. The report concludes by making a series of recommendations for reform of Muslim family laws by highlighting the relevance of the Qadhi courts in the justice system. The purpose of this report is to give an insight on work that has been done in efforts to ensure the passing of the Qadhi courts bill that provides and enabling law for implementation of the Muslim personal law and to advance and support the reform of family and personal laws that discriminate against Muslim women and girls.

# Objective

The objective of this report is to justify the need for reform of Muslim Family laws in Uganda and for formalization and enhancement of performance of Qadhi courts through establishment of an enabling law for their functionality. It also highlights the context of operation, relevancy of Qadhi courts and challenges that the Qadhi courts are facing and what is required for them to function efficiently with required human international rights standards.

# Specific Objectives

To interrogate the functionality and context of operation of the Muslim adjudication system in. (Qadhi Courts)

To discuss the relevance of establishing an enabling law to operationalise the Qadhi courts.

To discuss the challenges affecting operation of Qadhi courts.

To make recommendations on how to improve the functionality of Qadhi courts.

# Methodology

The report is based on purely qualitative approach. The data collected included already existing literature on access to justice in the informal Muslim justice systems with an objective and updated understanding of the situation of implementation within Muslim adjudication processes, taking into consideration its implications on gender considerations, existing opportunities for reform and resources with a view to enhancement of human rights and gender equity for female users of the Muslim adjudication system

Report Structure: The report is divided into four parts. Part I gives an introduction and context of the research environment in Uganda

# Introduction

Inequality between women and men has overarching impacts on not just the physical, psychosocial and economic wellbeing of women, children and the family as a unit, but also impacts social and national development. Muslims make up a significant portion of the world’s population. Based on an estimate by the Pew Research Centre, as of 2020 there will be approximately 1.9 billion Muslims across the world – 24% of the world’s population.[[5]](#footnote-5)

Uganda has a strong policy framework for promotion of gender equity, including the 1995 Constitution which specifically provides for affirmative action in favour of women’s representation in decision-making bodies, at the national and local government levels; the Uganda Gender Policy (1997) and the National Action Plan for Women (NAPW) (1999). The country is also signatory to key international instruments promoting women’s rights and gender equality such as the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), the Beijing Declaration and Platform for Action (1995), the Millennium Declaration (2000), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and has what is regarded by many as a progressive constitution.[[6]](#footnote-6)

Under Uganda’s constitution, all persons are entitled to freedom from any form of discrimination, including those based on the ground of sex. Article 21 provides for equality of persons under the law while Article 33 specifically provides that “women shall be accorded full and equal dignity of the person with men”.[[7]](#footnote-7) Despite these constitutional guarantees, access to justice remains a mirage for the majority of people living in Uganda and especially for marginalised groups such as women. The services of private legal practitioners are too expensive for most, while the existing formal mechanisms are over burdened with heavy caseloads.[[8]](#footnote-8)However,

However, there is a slow pace of implementation of ratified treaties with several standards at the international and regional levels not yet incorporated in national legislation. Many of the Muslim minority and majority countries continue to hold reservations with regard to family law matters, including Article 16 of CEDAW on marriage and family relations.[[9]](#footnote-9) These provisions have been cited to be inconsistent with Islamic law (Sharia); and/or Muslim family law provisions on specific matters (eg: age for marriage, polygamy, inheritance) cannot be changed because these provisions are based on the Qur’an or specific hadith. As a result, these countries state that they are unable to reform their family laws even though they conflict with the definition of discrimination against women as set forth in the Convention.

It is on these grounds that Muslim women face a lot of injustice within the family setting on ground of human interpretation of the injustice related to family rights on grounds of being suppressed in status according to juristic interpretations of the Quran which places women as subordinate to men in status. Women face violence from their intimate partners due to traditional and religious norms of bride price payments, provision of basic needs by the husbands, polygamy and early marriages.[[10]](#footnote-10) Because of the dep rooted beliefs that religious texts cannot be challenged, you find that this kind of gender based violence appears to be socially legitimized and accompanied by a culture of silence and impunity.

Discriminatory practices continue to persist in regard to Muslim women’s property, inheritance and land rights, despite the government’s recent adoption of a national law on land, the Land Act of 2010, designed to improve women’s access to land and grant them the right to manage their property. Culturally, decision-making powers are typically granted to men. Even where there are wills, customs and religious norms in some instances seem to override the wishes of the testator because custom and religion are very influential and respected. Furthermore, custom and culture are enforced largely by the male elders and religious leaders of the community. The lack of representation of women on influential decision making organs is synonymous with the patriarchal nature of the Ugandan society and works to deprive women of their inheritance rights.

More importantly for women is access to land, the biggest asset and factor of production in Uganda. Less than 10% of registered land is owned by women whereas they comprise the majority of the labour force in the agricultural sector. In fact, less than 20% of women involved in agriculture control outputs from their efforts. Additionally, there is low awareness of rights and low confidence in the judicial system. Thus, for the majority of Uganda’s population who are poor and vulnerable persons, interfacing with legal processes can be a tedious and frustrating process. Predictably therefore, facts such as the aforementioned justify the establishment of other sources of justice such as Qadhi courts.

There are many factors that make women in Uganda that make women more vulnerable than men in accessing justice services. These include aspects such as lower levels of education. The introduction of Universal Primary Education (UPE) in 1994 has not resulted into gender parity in education due to the high dropout rate and low completion levels for girls. Further, girls are more affected by early marriages, pregnancies, absence of gender sensitive sanitation facilities in schools, preferential treatment to boys as opposed to girls in accessing education, family responsibilities, financial constraints and sexual harassment in schools.

Another hindrance to women’s access to justice is Violence Against Women (VAW) which is wide spread in Uganda across ethnic, social, educational, and religious groups and is caused by an imbalance between men and women that is rooted in gender norms and attitudes. All forms of violence against women are common in Uganda including sexual violence, physical, emotional and psychological, socio-economic and harmful traditional practices. According to the 2006 Uganda Demographic Household Survey (UDHS), 59.6% of women had experienced physical violence since the age of 15 committed by either their husband or partner with the rate higher in rural areas at 61. In fact, the 2010 Concluding Observations made by the Committee on the Elimination of Discrimination against Women note with concern the prevalence of domestic and sexual violence against women and girls in Uganda. The Committee noted that such violence appears to be socially legitimized and accompanied by a culture of silence and impunity.[[11]](#footnote-11)

Wife beating is premised on social practices such as bride wealth, early marriage and polygamy. In a society such as this, women are unlikely to seek justice against their partners in fear of violence. Women are also marginalized in inheritance rights. Discriminatory practices persist in regard to women’s land rights, despite the government’s recent adoption of a national law on land, the Land Act of 2010, designed to improve women’s access to land and grant them the right to manage their property. Culturally, decision-making powers are typically granted to men. A 2011 Chronic Poverty Research Centre report indicates that only 36.41% of widows inherited the majority of assets after their spouses died. Even where there are wills, customs in some instances seem to override the wishes of the testator because custom and culture are very influential and respected. Furthermore, custom and culture are enforced largely by the male elders of the community who comprise of clan leaders. The lack of representation of women on influential decision making organs is synonymous with the patriarchal nature of the Ugandan society and works to deprive women of their inheritance rights.

Women continue to face constraints related to access to, control over and ownership of businesses and productive resources such as land and credit. Islamically, the juristic interpretations of Quran dictate that the surbodination of a woman to her husband entails being enclosed in the home with major role of housekeeping and child bearing. This precludes women from gainful employment of women and being involved in skill-based sectors and this further constrains women’s income potential. Less than 10% of registered land is owned by women whereas they comprise the majority of the labour force in the agricultural sector and yet less than 10% of registered land is owned by women and 20% of those involved in agriculture control their outputs. So you find that women only have user rights and not registerable interest in land which further constrains their wellbeing considering that women these days are the key providers and care takers of homes. In fact, less than 20% of women involved in agriculture control outputs from their efforts.[[12]](#footnote-12) The limited enjoyment by women of access to factors of production such as land and incomes in turn negatively affects their confidence, empowerment and ability to take decisions to seek justice, especially if such decisions involve domestic disputes.

# The functionality of the legal system and the general access to justice situation Uganda

Uganda is governed by the 1995 constitution as amended. The judiciary is structured according to art. 129 (1) of the constitution, which establishes a Supreme Court, a Court of Appeal (which also includes the Constitutional Court), a High Court and Subordinate Courts.

The High Court has established a number of divisions to handle specific fields of law, including the Family Division, the Criminal Division, the Anti-Corruption Division, the War Crimes Division, the Land Division, the Civil Division and the Commercial Division. The Subordinate Courts include the Magistrates’ Courts; the Industrial Court; Local Council Courts; the Court Martial; and Qadhis’ Courts,

The constitution (art. 126) promotes reconciliation and administration of justice without undue regard to legal technicalities. Uganda uses the common law system that was established by the British during colonial rule, but the legal order also accommodates Islamic and customary law to certain disputes.

According to a report by HiiL (The Hague Institute for Innovation of Law) serious problems for the legal system are also reported. For example, corruption and political interference to some extent continue to obstruct judicial independence and fair justice. In addition, legal sector personnel are reported to regularly abuse their powers, Of the two thirds of people who pursue a solution to their problems, most seek help of the Local Council Courts, their families and their social networks. Only 5% of cases end up in a court of law. In practice, this means the formal justice system in Uganda is out of reach for the majority of Ugandans.[[13]](#footnote-13)

Access to justice is recognized as one of the most important basic human rights without which it is not possible to realize many of the human rights, whether they be civil or political, or social and economic. It is guaranteed by international human rights law the Universal Declaration of Human Rights (1948) and other international treaties to which the Government of Uganda is signatory. In particular, Article 14 of the International Covenant on Civil and Political Rights (ICCPR) provides for access to justice and the right to a fair trial. Uganda provides guarantees for access to justice both through formal and informal justice mechanisms in Articles 23, 42, 50, 126, 127 and 128 of its constitution. The constitution mandates that in the determination of any matter regarding the rights of a person, there should be a fair hearing within a reasonable time by an independent and impartial tribunal established by law. While the administration of justice usually implies formal judicial mechanisms, such as formal courts and tribunals, traditional dispute resolution mechanisms are equally relevant. The latter is described as a system of largely British jurisprudence (in Commonwealth countries) that sets specific definitions of offences, rights, obligations, remedies and particular process of its administration.

On the other hand, traditional/informal justice is heavily inclined towards reconciliation and dispute resolution. Traditional dispute resolution practices are carried out at the community level and vary from one place to the next. There are, however, commonalities in the approaches. For example, aspects of trust, voluntarism, truth, compensation, restoration and reconciliation are essential forms of traditional dispute resolution mechanisms.

The constitution[[14]](#footnote-14) incorporates a gender-sensitive approach to the definition of discrimination on the grounds of sex, in harmony with the CEDAW Convention and guarantees the equality of men and women and freedom from discrimination (Article 21). The Constitution goes further to provide for equal rights in marriage (Article 31(1)), affirmative action for marginalized groups (Article 32) and places the rights of women at the forefront of the legal and development agenda (Article 33). These legislative reforms have translated into some progress in the realization of women’s rights including increased protection of women’s rights on specific aspects such as harmful socio-cultural practices, equal recognition of women before the law and increased numbers of women representatives at various elected and appointed positions. Traditional and informal justice systems are best suited to conflicts between people living in the same community who seek reconciliation based on restoration and who will have to live and work together in future.

# Contextual legal framework of Islamic law and Muslim Dispute resolution Systems( Qadhi courts In Uganda .

In Uganda, the constitution under Article 129 (1) (d) provides for the establishment of Qadhi courts. These are dispute resolution mechanisms sanctioned through Islamic principles and is guided by sources of Islamic Law. The primary sources are the Qur'an and Sunnah (teachings and practices of the prophet Muhammed). The Quran is the highest authority, while the Sunnah represents the actions and words of the Prophet, who is a model for Muslims to follow. Other sources include Hadiths which are reports by others of what the Prophet did or said, and they are considered as authoritative sources as well. Another source of Islamic law is the interpretation of Islamic law called fiqh by Islamic jurists. The process of fiqh is necessary because in some instances the Qur'an's injunctions are not easy to interpret. However, it should be noted that different rules of interpretation have led to the co-existence of various schools of Islamic jurisprudence, as is evident of the different Islamic sects in Uganda.

Islam provides a complete manner of life concerning every aspect of the human life including a comprehensive legal and judicial system under which every individual not only enjoys full protection from encroachment upon his or her rights but also is guaranteed swift justice in case of an infringement of his rights. Islam ensures proper management of the legal and judicial system by providing a code of conduct for those who are appointed to implement law and justice in society.[[15]](#footnote-15)

In a Quran verse, it is provided“O Daud! We did indeed make you vicegerent on earth so judge between men in truth (in justice). And do not follow the lusts (of thy heart) for they will mislead you from the path of Allah”[[16]](#footnote-16) This provision makes it clear that administration of justice between mankind is a noble and indispensable responsibility.

Family laws in Islam are therefore human constructs of Quranic and hadith texts which are based on social, cultural and political factors that place women as subordinate to men. The juristic(fiqh) interpretations belonged to a time and place where male patriarchy was part of the social setting. The Quran however was revealed on basis of fairness and justice and to eliminate such conduct of oppression in the society and to enable family to attain social justice.[[17]](#footnote-17) The CEDAW Committee has consistently raised issues relating to Muslim family laws in its Constructive Dialogues with States Parties, as well as in the Committee’s Concluding Observations and recommendations. All 10 Commonwealth countries analysed in this report have been reviewed by the CEDAW Committee within the past six years has made a number of recommendations for reform of discriminatory family laws, including: Mandating 18 years as the legal minimum age of marriage for girls without exception. Reforming all personal laws to comply with CEDAW Articles 15 (equality before the law) and 16 (equal rights of women in marriage and family matters). Amend all personal status laws to address ownership, transfer and disposal of land and property, as well as take legislative measures to guarantee the equal rights of Muslim women in all matters of inheritance.[[18]](#footnote-18)

In Uganda, Muslim family laws are regulated by the governing body called the Uganda Muslim Supreme Council(UMSC) which was established in 1972 as an umbrella body for all Muslims in the country. It is headed by the chief Qadhi and has national structures that undertake varied functions, among which is that of conflict resolution. To date, administration of Muslim matters is organised under the Uganda Muslim Supreme Council. The organizational structure of the UMSC runs from grassroots to the national level through community mosques, counties, Muslim districts, the Executive, and the General assembly as the top policy making body.

The UMSC administers an adjudication mechanism that resolves conflicts such as marital disputes, it issues divorce certificates for marriages contracted under Shariah. Muslim officials such as district Qadhi’s, county sheikhs and mosque Imams are some of the officials that carry out dispute resolution under the UMSC structure in line with Shariah law and issue binding agreements. However, due to divergent views on how to practice Islam, several sects emerged within the Muslim population, resulting into internal struggles for Muslim leadership. To date, there are several Muslim sects, each with its own leadership and organizational arrangements, including a multitude of dispute resolution fora. This situation brings about the urgent need for codified laws that regulate the muslim personal staus laws of marriage divorce and inheritance matters to avoid injustice that could accrue from different application of Quranic text.

In all countries, that incorporate Muslim family laws, the maintenance of discriminatory Muslim family laws and resistance to reform is primarily from within Muslim communities and in particular, conservative religious groups and institutions, political parties, Muslim leaders and Islamic scholars. For Muslim majority countries, reform of Muslim family laws is explicitly interlinked with religion, in that it is seen as directly challenging religious belief and Islamic scholarship and leadership. Governments justify discriminatory Muslim family laws and arguments against reform by upholding Islam and what is perceived as Sharia and sacred.[[19]](#footnote-19)

In almost all instances, whether in majority Muslim countries or countries with Muslim minorities, those formulating or interpreting Muslim family laws claim that these laws are “divine” and therefore unchangeable. In reality, these laws are based on interpretations of religious texts made by primarily male Islamic scholars and based on a legal framework developed by Muslim jurists centuries ago.[[20]](#footnote-20)

Muslim and non-Muslim governments consider reform of Muslim family laws as a “religious” issue which requires expertise of religious scholars. This perspective effectively excludes the voices of

Muslim women. Muslim women’s groups campaigning for equality and justice are labelled “antiMuslim” and their demands for reform regarded as anti-Islam and anti-Sharia. For this reason, very few men in authority, not least political leaders, are willing to support Muslim women’s rights activists in their campaigns to reform discriminatory laws. As a consequence, there is a high risk factor for Muslim women activists and groups who are often faced with direct threats, attacks and various forms of intimidation in the process of advocating for change.[[21]](#footnote-21)

Qadhi courts do exist in many countries. Several countries in Africa and the Commonwealth that have a significant population of Muslims provide for these courts in their constitutions and Laws to cater for the regulation of the personal status of their Muslim Citizens. Save for those countries that have established Islamic states which apply Islamic Law throughout the country, other states tend to limit the jurisdiction of these Courts to matters affecting the personal status of the Muslims. In some cases, the jurisdiction is exclusive to the Qadhis Courts while in others the Courts are established as subordinate Courts to the Secular High Courts or Supreme Court as in the case of Uganda.[[22]](#footnote-22)

Since Muslim family law is not codified, procedures relating to family matters, particularly divorce, are not clearly defined. There are no guidelines for judges on how cases are to be handled in the Qadhi Courts, and there is no defined timeframe for procedures. Therefore, much of the process is dependent upon judicial discretion as exercised by individual judges. As per the Kenyan Constitution and 2012 Qadhis Court Act, there are no legal barriers to qualified Muslim women becoming Qadhi judges; however, no woman has ever been appointed.

Marriage is recognised in the “eyes of God”. Kenyan Muslims are under no legal obligation to have matters relating to marriage and family relations adjudicated by the Qadhi Courts. They may choose for their matters to be adjudicated by other competent courts including Magistrates’ Courts and High Courts, which apply civil law.[[23]](#footnote-23) As there is no codified legislation on Muslim family matters, individual *Qadhi* judges determine cases and judgments through a combination of Sharia principles and judicial precedence. The interpretation of law and procedure also differs based on Islamic schools of law. As majority of Muslims in Kenya are Sunni Muslims of the *Shafi’i* School, generally, the rules of *Shafi’i* jurisprudence apply in Muslim personal status matters [[24]](#footnote-24)

# Background and Status of Islam in Uganda

According to the 2013 National Census, Islam in Uganda was practiced by 13.7 percent of the population. Islam as the first foreign religion arrived in Uganda from the north at the dawn of 18th century and spread through inland networks of the East African coastal trade by the mid nineteenth century. Islam was first taught in the Kingdom of Buganda in the year 1844 during the reign of Kabaka Suuna II. It was taught by the Arab/Swahili people from Zanzibar on the East African Coast. However, while Kabaka Suuna allowed Arab/Swahili preachers to teach Islam at his court, he himself did not convert to Islam nor did he encourage it to be taught outside his court.

Suuna’s son and successor, Kabaka Mutesa I, took more interest in the religion. Its teaching greatly appealed to him, and he converted to Islam. He learnt the Arabic language and mastered the Quran. He also directed his chiefs and relatives to study it; his palace at Banda on the outskirts of Kampala became an Islamic Education Centre.

When Christian Missionaries arrived in Uganda in 1877, they challenged the monopoly of Islam by teaching Mutesa an alternative world religion. The religious atmosphere began to slowly change, and continued to change until the Christians gained the upper hand.[[25]](#footnote-25)

Formal education was introduced in Uganda by missionaries to enable their converts to read the Bible and prayer books. Perhaps due to lack of funds, or expediency, the early British colonial administrators allowed the missionaries to control the supply of education and so facilitated the building of a Christian society in Uganda. On the other hand, Muslims had no missionaries and had only one university graduate by the time Uganda got its independence and had only one secondary school as compared to 16 for Catholics and 10 for Anglicans [[26]](#footnote-26)

Over the years Muslims achieved positive disproportionate influence on economic, social and political activity in comparison to their numbers. However, relations with the government have ebbed and flowed. A combination of historic transgressions combined with the current backdrop of the global war on terror and Uganda’s activities in regional politics drive a perception by the Muslim community that it is marginalized. Muslims are therefore financially weak, politically insignificant and critically deficient in civil society. Wrangles in the apex body, Uganda Muslim

Supreme Council (UMSC) have persisted, due to the government’s interference with no end in sight.[[27]](#footnote-27)

In response, some in the Muslim community have withdrawn from democratic processes and retreated to religious seclusion. They don’t actively participate in nation building and view democratic exercises with suspicion. Muslims that actively participate in public life in Uganda face challenges from all sides; often viewed with suspicion by other communities and by fellow Muslims too, who question their loyalty to the community and faith. Discrimination against Muslims, which began in colonial missionary schools and continued in education and employment long after independence has played a big role in fostering Muslim dissatisfaction with successive post-colonial governments.[[28]](#footnote-28)

In the historical context of the quest of the Muslim community for a Muslim justice system, was acknowledged by the colonial government. The Succession Ordinance (No. 1 of 1906) and the Succession Act (Cap. 139) contained provisions empowering the Governor (sec. 337), and subsequently, the Minister (sec. 334) respectively, to exempt Mohammedans (Muslims) and African Natives from the operation of the provisions contained in the Ordinance or Act on intestate Succession.[[29]](#footnote-29)

Part V of the Ordinance/Act concerned distribution of property of a person who died without leaving a valid will. The estates of Mohammedans (Muslims) were exempted from the provisions of part v of the Ordinance. This was the position in Uganda until 1906. Rule 2 of the Succession Act (exemption) Order (S.I. 139-3) provided as follows: All Africans of Uganda are exempted from the Operation of the Act. (2) The rules for the distribution of intestate estates in the Act shall not apply to Mohammedans.[[30]](#footnote-30)

# Current status and operation of Qadhis Courts in Uganda

In Uganda, the Muslim personal law is provided for under the Marriage and Divorce of Muhammedans Act cap 252, which provides for the marriage and divorce of those who profess the Muslim faith. Another very important legal provision for Muslim personal law is article 129 (1) (d) of the 1995 constitution which provides for establishment of qadhi’s Courts that are mandated to handle matters relating to marriage, divorce, inheritance and guardianship in respect to persons professing the Islamic faith.

Article 29(1)(C) of the constitution of the republic of Uganda (1995) provides: “(1) Every person shall have the right to- (c) freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution. The freedom to practice any religion should include

–i) Liberty to live a full life according to one’s religious beliefs; ii) Liberty to apply the doctrines of one’s faith to disposition of his or her economic acquisitions.

The Ugandan Constitution (1995) establishes the Qadhis Courts under Section 129(1)(d) as one of the subordinate Courts of judicature exercising judicial power in Uganda to deal with matters of marriage, divorce, inheritance of property and guardianship. Qhadi Courts in Uganda first operated without legislation until 2009 when their legalization was passed as an Act of Parliament. Cases were handled at mosques of Uganda Muslim Supreme Council (UMSC)) offices at Districts, where offices existed.

All Muslim dispute resolution mechanisms in Uganda fall under the Uganda Muslim Council Council (UMSC) which heads all mosques in the country. The Shariah Court is situated at the UMSC headquarters at Old Kampala in Kampala. This court is established under the constitution of UMSC and is one of the organs of UMSC falling under the Directorate of Sharia. It is headed by a director. The directorate is composed of the director, a deputy director and three registrars one of whom is tasked with handling the administration and registration of cases reported. The role of the registrar is to summon both parties and register the complaints received. The court handles mostly cases of a domestic nature as laid out under Article 129 (d) of the constitution to include marital disputes, inheritance, guardianship, guidance and counseling.

Beneath the Council’s Shariah Court at headquarters, it is expected that all districts should have their own smaller shariah courts which should handle matters arising from individual mosques. At the same time, most district mosques have executive committees comprising of village muslim elders who assist the mosque heads, the Imams, in dispute resolution. However, due to several factors especially limited financial resources, these district courts are not operational. However, the presence of the shariah court at UMSC and Qadhi courts generally has created controversy over whether they are competent court whose rulings or orders can be enforced in Uganda. There are claims over lack of jurisdiction and force while others argue that they are competent courts envisaged under Section 2 of the Marriage and Divorce of Mohammedan Act and under Article 129(1)(d) read together with Article 274 of the Constitution.

Though existing, Qadhi courts are not legally operational. The establishment of Qadhi courts under of the 1995 constitution has not been regularised due to the absence of a supporting legislation. To date, Qadhi courts operate informally and are headed by the Director of Shariah at the UMSC. Below the directorate at the UMSC, area Imams of district and village Mosques adjudicate over cases that may be brought to them. Other than the constitution, the other legislation that regulates Muslim affairs in Uganda is the Marriage and Divorce of Mohammedan Act chapter 213 of the laws of Uganda. This however is limited to matters of marriage and divorce.

Since 1964, the government of Uganda has been debating bills in various iterations that would regulate affairs including marriage, separation, and divorce. For instance, the Domestic Relations Bill (DRB) drafted in 2003 attempted to address these issues, but failed to pass into legislation. After its withdrawal from parliament in 2005, the Domestic Relations Bill was split into two parts: The Marriage and Divorce Bill and the Muslim Personal Law Bill. This was because the DRB attracted varied reactions from the Muslim population about its implications asserting that it offended their personal law as enshrined in the Holy Qur’an. One of the views advanced by Muslims was that the DRB couldn’t effectively administer Muslim personal affairs like marriage and divorce as such matters had to be handled by Qhadhi courts as per the constitution. Muslims argued that the DRB had clauses that were not in conformity with the principles of Muslim. The UMSC (main body governing Muslim Affairs in Uganda) made a petition to the speaker of parliament against the DRB arguing that it constituted a threat to the principles of freedom of worship as enshrined under article 29(1) © of the Constitution.[[31]](#footnote-31)

As a result, ULRC requested UMSC to prepare a draft for the Muslim personal law. UMSC constituted a technical committee to draft the Muslim Personal Law Bill. i.e. Administration of Personal Muslim Personal law Bill 2008 (AMPLB).

According to the Uganda law reform commission 2009, the Commission submitted the AMPLB to Cabinet in 2009 and the same was returned to the ministry of justice and constitutional affairs to make improvements and consult further. In 2010, the bill was removed from the Legislative process. To date, the said Bill is not anywhere close and among the other parliament Bills let alone on the Parliament website.

In 2012 the government came up with the Qadhi’s Courts bill which is intended to replace the AMPLB. The Qadhi’s Courts bill has since then been kept with the ministry of Justice and constitutional affairs and has never received wider consultation. The draft Bill was forwarded to the AG for further analysis but couldn’t proceed and was removed from the legislative process in 2010. Currently, there is a draft bill on Qhadhi’s courts but has not yet been presented to parliament because of the ongoing government consultations on its content. According to the AG, that as, he says that that as soon as there is consensus on the consultations and content of the bill, it shall be submitted to Cabinet for approval and introduction in Parliament.[[32]](#footnote-32)

There is a delay in the establishment of Qhadhi’s Courts and an enabling law envisaged under article 129 of the Constitution of the Republic of Uganda. According to former Nakaseke North MP, Hon. Syda Bbumba, she said that that the public was not made aware of any consultations in that regard especially the main stakeholders who are the Muslim authorities. “Nobody has consulted the Uganda Supreme Council in Old Kampala, Kibuli or Nakasero; it has taken 12 years for the government to do anything about this issue.[[33]](#footnote-33)

On the 3rd of May 2021, Qadhi’s Courts bill 2012 was presented by the Deputy attorney general for discussion, however Parliament directed the attorney general to go back and make timely consultations and bring back the bill to parliament for consideration.

Pending the passing of the Muslim Personal Law Bill, there is no comprehensive law or policy governing Muslim affairs in Uganda and this is a serious gap. There is serious need to codify some of the instruction on matters affecting public and private life as dictated by the Qur’an. This will help to demystify and disseminate Islamic law, and further provide guidance on matters which are known only to a few Muslim clerics. Government needs to put Qadhi Courts in place such that Islamic Laws are properly implemented and their decisions recognized in the justice system. Cases that have been handled under jurisdiction of Qadhi courts present structural challenges that question their eligibility

The status of the informal Sharia court at UMSC has been considered by Hon. Justice B. Kainamura in the case of **Nabawanuka v Makumbi**in which the petitioner (Sumaya) filed a petition seeking for a decree nisi dissolving her marriage with her husband, the respondent. The marriage was contracted in accordance with Muslim law. She wanted custody of the child; maintenance of the child, alimony; share of the matrimonial property and costs. The respondent filed his reply refuting the allegations in the petition and by way of a preliminary objection applying that the petition be dismissed because it was re-judicata since the matter before court had been finally determined by the Shariah Court of the Muslim Supreme Council. He argued that a shariah court is a court of competent jurisdiction as provided for Under Article 129 (1) (d) of the Constitution 1995. He further contended that the shariah Court of the Muslim Supreme Council is such court that is envisaged under the Marriage and Divorce of Mohammedans Act. He urged further that the petition was incompetent in as far as it sought reliefs under the Divorce Act Cap 249 even though the marriage between the parties was celebrated under Mohammedan law. Counsel for the petitioner refuted the assertion that the shariah court of the Muslim Supreme Council was a court of competent jurisdiction as envisaged under Article 129 (1) (d) of the constitution. She urged that Parliament had not yet operationalised Art. 129 (1) (d) of the constitution which requires Parliament: Muslim Adjudication Processes and Gender Justice in Uganda Introduction This part details the responsiveness and sensitivity of the current set up of the Muslim justice system to gender concerns. It further outlines recommendations for improvement. I. Functionality of Muslim Adjudication Mechanisms Structural Set up All muslim dispute resolution mechanisms in Uganda fall under the Uganda Muslim Council (UMSC) which heads all mosques in the country. The Shariah Court is situated at the UMSC headquarters at Old Kampala in Kampala. This court is established under the constitution of UMSC and is one of the organs of UMSC falling under the Directorate of Sharia. It is headed by a director. The directorate is composed of the director, a deputy director and three registrars one of whom is tasked with handling the administration and registration of cases reported. The role of the registrar is to summon both parties and register the complaints received. The court handles mostly cases of a domestic nature as laid out under Article 129 (d) of the constitution to include marital disputes, inheritance, guardianship, guidance and counseling. Other non-domestic cases such as theft are mediated or referred. Mediation is employed first before a decision is made and both disputing parties are included as much as possible in amicable settlement and resolving of disputes. However, it should be noted that the decision of the UMSC Shariah Court is not final, the unsatisfied party can appeal to a higher court. Beneath the Council’s Shariah Court at headquarters, it is expected that all districts should have their own smaller shariah courts which should handle matters arising from individual mosques. At the same time, most district mosques have executive committees comprising of village Muslim elders who assist the mosque heads, the Imams, in dispute resolution. However, due to several factors especially limited financial resources, these district courts are not operational. However, the presence of the shariah court at UMSC and Qadhi courts generally has created controversy over whether they are competent court whose rulings or orders can be enforced in Uganda. There are claims over lack of jurisdiction and force while others argue that they are competent courts envisaged under Section 2 of the Marriage and Divorce of Mohammedan Act and under Article 129(1)(d) read together with Article 274 of the Constitution.

The status of the informal Sharia court at UMSC has been considered by Hon. Justice B. Kainamura in Sumaya Nabawanuka v. Med Makumbi (High Court Family Division Divorce Cause No. 39 0f 2011) in which the petitioner (Sumaya) filed a petition seeking for a decree nisi dissolving her marriage with her husband, the respondent. The marriage was contracted in accordance with Muslim law. She wanted custody of the child; maintenance of the child, alimony; share of the matrimonial property and costs. The respondent filed his reply refuting the allegations in the petition and by way of a preliminary objection applying that the petition be dismissed because it was re-judicata since the matter before court had been finally determined by the Shariah Court of the Muslim Supreme Council. He argued that a shariah court is a court of competent jurisdiction as provided for Under Article 129 (1) (d) of the Constitution 1995. He further contended that the shariah Court of the Muslim Supreme Council is such court that is envisaged under the Marriage and Divorce of Mohammedans Act. He urged further that the petition was incompetent in as far as it sought reliefs under the Divorce Act Cap 249 even though the marriage between the parties was celebrated under Mohammedan law. Counsel for the petitioner refuted the assertion that the shariah court of the Muslim Supreme Council was a court of competent jurisdiction as envisaged under Article 129 (1) (d) of the constitution. She urged that Parliament had not yet operationalised Art. 129 (1) (d) of the constitution which requires Parliament to establish qadhi’s courts and that if there are such courts in operation they are operating outside the dictates of Art.129 and are consequently incompetent. Hon Justice B. Kainamura held that whereas indeed it is true that qadhis courts envisaged under Art 129 (1) (d) of the Constitution have not yet been established, he did not agree with the petitioner’s view that shariah courts currently operate outside the law. His Lordship based his position on Article 274 of the Constitution which provides: -

Subject to the provisions of this article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of the Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this constitution

He noted that the shariah courts of the Uganda Muslim Supreme Council is operating within the law and was a competent court to handle divorce cases and grant relief.[[34]](#footnote-34)

## Another recent decision interpreting the status of Qadhi courts was considered in Re Hamza Mohamed and Nashat Mohamed (Minors), a decision of the High Court Family Division Misc. Appl. No. 89 of 2012 where the UMSC court issued a divorce certificate between the two contesting parties and further granted custody of the two children of the union to their mother. The applicant (wife) brought action to the High Court seeking other relief under section 18 of the Act. While considering section 18 of the Mohammedan Act, Justice Mukiibi indicated that that particular section means that “any party to an Islamic marriage may come to this court seeking relief by way of divorce and other consequencial orders but the court must apply Mohammedan law. He further noted that:

In my view this is an alternative choice to proceeding in a Sharia Court. The Sharia Court of Uganda Muslim Supreme Council applies Islamic law to marriages and divorce…. In my view, if a party chooses to file a petition for dissolution of Marriage before the Sharia Court the proceeding are valid any decisions made by that court are binding and have the full force of law. Section 2 of the Marriage and Divorce of Mohammedan Act provides that all divorces from marriages between persons professing the Mohammedan(Islamic) religion, given according to the rites and observance of the Mohammedan religion shall be valid… the Sharia Court of the Uganda Muslim Supreme Council which applies the rites and observances of the Mohammedan religion is a competent court to handle divorce cases and to grant relief.

The High Court upheld the decision of the shariah court’s decision granting divorce to the parties and custody of two children to the wife (mother) until they reach the age prescribed by Islamic law. The High Court further noted that “Shariah Court has jurisdiction and is competent to grant divorce as relief and is equally competent to grant orders relating to custody of the children.” Since the shariah court had already made a valid custody order it was not necessary for the High Court to determine the application on merit and the application had been overtaken by events at the Sharia Court. The implication of these cases is that orders made by shariah / qadhi courts are enforceable and only in limited circumstances and civil courts may reverse the decisions issued if contrary to natural justice

The baseline survey conducted by Muslim Centre for Justice and law on access to justice in Muslim justice structures and operation of Qadhi courts reveled that here are no facilities such as buildings and other structures specifically for the Qadhi courts. They operate from Mosques and other Muslim founded religious establishments like schools. Sometimes individual facilities are also used such as the homes of the religious leaders, mostly Imams, there is rarely female representation on the committees, there is no specific minimum requirements for the judges who sit in these courts and they have no knowledge about human rights standards that should be observed during adjudication of cases including the fact that they also handle cases beyond their mandate like rape, defilement and theft.

**Competence and Quality Assurance**

In most cases, mosques in Uganda are privately established, there is minimal control and oversight over their work by the UMSC. Beyond the issuance of a certificate of practice, there is no technical or financial assistance received by the mosques from UMSC with regard to aspects such as dispute resolution. In some limited instances, leadership of mosques including mosque chairpersons and deputies undertake monitoring of the welfare of the mosque, but this is mainly limited to physical upkeep and sanitation with no input into the handling of disputes because they are not religious leaders.

The majority of Imams across the country have not received any specific training and mostly rely on their knowledge of the Qur’an to resolve disputes. Additionally, because of the internal wrangles within Muslim leadership in Uganda, some mosques fall outside of the control of UMSC, to other factions which have even less administrative capacity to provide over sight and quality assurance. Thus, most lack simple items such as stationery for case documentation purposes which affects their competence to perform effectively. Related to the aspect of competence is the undue reliance on legal technicalities which do not often serve the purpose of justice or protection of vulnerable parties especially women. As shared by MCJL, most Islamic marriages are not formally registered. This however creates challenges especially at divorce.

The Qadhi courts are arranged in the descending order of National level (headquarters of UMSC), Regional Level, District, Twale, and Mosque. The good practice with this system is that an aggrieved party may appeal to the higher rank in case they fail to get justice in a lower court of Jurisdiction.[[35]](#footnote-35) The Uganda Muslim Council has no statistics regarding the number of courthouses in the country. The general presumption is that all mosques may act as courthouses.

The committees and Imams are not given term limits to their services nor do they receive any payment for their services. They survive on donations especially after Friday summons. For Kampala, Imams survive on contributions levied for conducting marriages and other Duwa (special prayer) ceremonies. They do not charge for settling any dispute. The foundations are both tradition and Qadhi justice system based on the principles of the Quran and Sunnah.[[36]](#footnote-36)

It should also be noted that the different sects school of thought and sect where one belongs is important. For example the Salaf, Tabliq, and other Ahli Sunna Wa al Jamaa all have their different mosques spread in the same localities. Most Muslims prefer to use the Qadhi justice system in line of their school of thought and sect.

The survey[[37]](#footnote-37)also revealed that women prefer to use formal justice system like Local Councils (LCs), and police because they believe their voices can be heard louder than in the Qadhi justice system. They mostly report cases of domestic violence (both physical and emotional), issues of family neglect or lack of family provision with essentials by their husbands. Some women believe men should be condemned by state law for their acts of violence. Some women accuse the Qadhis of bias in favor of men on the other hand men prefer the Qadhi justice system because they believe it about family building, and reunion. They also believe that is saves them from embarrassment that accompanies say, arrest by police or LC officials which they perceive as loss of their personal dignity.

# Human Rights and Gender Implications of the Current State of Qadhi Courts in Uganda.”

Islam elevated women to a spiritual and legal status equal with men.[[38]](#footnote-38) Shariah granted to women a series of protections including a legal personality[[39]](#footnote-39) as well as property and inheritance rights that did not exist before.[[40]](#footnote-40) Similarly, women can participate in justice mechanisms and can seek justice including the right to be heard, defend oneself, call or appear as witnesses so as to aid dispute resolution.[[41]](#footnote-41) But this does not mean that Islamic law respects human rights as they are understood and implemented in modern societies.

In most cases the difference in interpretation of religious text restricts women from enjoyment of their rights and through discriminatory practices like women’s testimony is worth half a man’s in, she gets only half the inheritance of her male siblings regardless of the burden of financial responsibility for her family that is placed on her and a woman’s marriage contract is between her male guardian and her husband, she can only seek divorce through her guardian and relatives. A man can have four wives without clear regulation and yet he can divorce without clear grounds by simply using the word “Talaq.” Furthermore, a woman must give specific reasons to get a divorce. Even if the father of her children is abusive, women who remarry lose custody of their children. There are clear examples of the discrepancies between national and Islamic legal systems that clearly need to be regulated and harmonised.

Most of the adjudicators who sit in the Qadhi courts are not conversant with gender based principles to justice and thereby have little sensitivity to gender concerns. Oftentimes, the adjudicators are male and in such instances, parties to the conflict, if female may not be free to participate effectively in the dispute resolution processes. Even the directorate of Sharia at UMSC is an all-male staff though this gap is plugged at that level by the gender officer. The UMSC Gender office is a member of the management structures at the UMSC whose major role is to provide counseling services to contesting parties. It however does not resolve disputes unlike the Sharia court which may even issue divorce certificates.

There seems to be limited awareness or perhaps desire to undertake gender justice programming with a gender lens. For instance, there is no gender disaggregated data either at the UMSC or in the courts lower down. This is unfortunate because the majority of parties seeking justice under Muslim adjudication systems are female. According to the research findings, the majority of users of these justice systems are younger women between the ages 25 – 35, poorer women most with few or no assets, less formal education, usually working in the agricultural sector and mostly dependent on male relatives or husbands for their sustenance.[[42]](#footnote-42)

However mechanisms such as Ameerats (female mosque leaders) exist. Ameerats are members of the executive committee of mosques and therefore part of its leadership. They do not only provide female representation on the leadership institutional framework but they also provide support in cases where women require administrative assistance.[[43]](#footnote-43) Additionally, the Ameerat convenes meetings where women relay their day-today challenges or concerns which are then discussed at the mosque’s executive meetings. Some Ameerats are also involved in mediating cases.

MCJL has endeavored to empower the adjudicators with knowledge and skills on how to integrate gender and human rights standards when handling cases. At institutional level, mosque leaders are now able to collaborate and work with formal institutions to enhance justice services. For instance, at Kibuli Mosque, when unable to resolve a matter in relation to distribution of property, contesting parties are referred to an advocate to organize valuation of the property before distribution. Another example identified from the UMSC is that when a divorce is dissolved, the decree is filed with the Uganda Registration Services Bureau (URSB) to ensure that no illegal claims arise thereafter.

Similarly, most Imams work with the police and refer cases that cannot be resolved, especially those with a criminal aspect such as domestic violence. This factor is very important because it indicates that Muslim adjudication systems no longer work in isolation of the formal justice system. One of the other good practices is the use of trained paralegals to sensitize members of the community on rights and duties within the family and especially in relation to marriage.

One important case to note, and which has significant strategic implications for users of the Muslim justice system is the ruling made in favour of MCJL regarding an application made to the High Court on powers of Magistrate courts to handle matrimonial causes relating to Mohammedan marriages. This is pursuant to a divorce case made before a Chief Magistrate court Darausi Tebandeke (Applicant) v Lugolobi Saidat (Respondent)[[44]](#footnote-44) in which the applicant sought for an order of dissolution of marriage as well as custody of children, alimony and distribution of property. The contention in the case was whether other courts subsidiary to the High Court had jurisdiction to determine matrimonial matters between persons professing the Muslim faith. The High Court affirmed that magistrate courts are competent to handle matrimonial causes under Mohammedan law. This ruling is of significance to the users of the Muslim adjudication system because it expands the scope of courts that can handle such cases in the direct absence of formally established sharia /Qadhi courts. As such, the application of sharia law is not suspended through the in operationalization of the said courts but rather, allowed to continue existing through other courts.

# Relevance of a law to operationalize establishment and operationalization of Qadhi courts.

The constitution provides for the establishment of Qadhis courts for marriage, divorce, inheritance of property and guardianship. This initiative shall also remove the legal pluralism which affects the uniformity in the application of laws in Uganda especially on issues of age of marriage, polygamy, matrimonial property, child custody, inheritance upon death of spouse, alimony after divorce, matrimonial home, illegitimate children’s rights to maintenance and inheritance, among others. These are the key issues affecting women in family setting especially when administered under Islamic law for lack of clear guidelines which harmonize the legal regimes protecting gender equality and justice in family.

Operationalization of the Qadhi courts will address the loopholes in the existing Marriage and divorce of Muhammadan Act of 1906 which is not clear on administrative issues related to Muslim marriages. In light of the above, Uganda needs to enact a law regulating operation of its own Qadhi courts, combining both substantive Qur’anic provisions on aspects outlined under the constitution such as marriage and child maintenance, as well as procedural issues such as structure and numbers of Qadhi courts countrywide. In order to strengthen the operation of these courts, the law should further elaborate on aspects such as:

➢ Specifications of personnel manning the courts

➢ Permission for women to be appointed as assistants to the Qadhi (a position limited only to men) to help in those instances where women litigants in the court find it difficult to explain to the male Qadhi the delicate and intimate details of some of their domestic problems;

➢ Establishment of courts with representation of all Muslim sects across the country, both Sunni and Shia. Consideration ought to be given to the appointment of Qadhi of both sects so as to cater for the interests of all Ugandan Muslims.

Providing a separate law for Muslims is not unique since Muslims already have a separate law on marriage and divorce and where previously excluded from the operation of part V of the Succession ordinance of 1906 which provided for intestate succession and Muslims where entirely left to rely on sharia in respect of estate of an intestate person. Like wise According to the memorandum of the Marriage Bill, specifically under paragraph 4 and 5 because specifically provides for civil marriages, Hindu marriages, Christian marriages, customary marriages and Bahai marriages. This means that there is a still a gap in regulation of Muslim marriages which needs to be addressed by enacting a law that operationalizes the Muslim adjudication system.

Although not well documented, a considerable number of Muslims in local communities in Uganda make use of informal Muslim courts, which, in a strict sense, cannot be described as Qadhi courts as they possess neither the competencies nor the jurisdiction to qualify as such. It is clear therefore, that Muslim adjudication mechanisms including the existing forms of Qadhi courts are regarded as pertinent in enhancing justice for women. However, whereas these systems exist and are operational, the forms and standards of performance vary from place to place and this is because of the limited oversight and resourcing role by the UMSC. As a result, the performance of these systems and especially their sensitivity to gender is weak and requires strengthening through codification of regulations to that effect.

The Qadhis courts shall continue to have and exercise jurisdiction in relation to the estate of a Muslim for the determination of questions relating to inheritance in accordance with Muslim law. Family disputes are interconnected to each other. They are in form of a chain, hence cannot be separated from each other. These rights cannot however be enjoyed by women since the administrators of these affairs are men who do not exercise gender justice in their adjudication of these matters. The lack of a uniform law to regulate this only makes it worse because the male religious leaders will exploit this gap to give their own interpretations and application of religious texts.

Creation of other institutions to help resolve matrimonial dispute among Muslims may be seen as an added advantage because it widens avenues by bringing service of justice closer to people, hence enhances access to justice. The fact that they already exist and are operating creates a need to regulate their operation in order to administer equitable justice to its users. The Bill seeks to change and enforce all laws and practices that impact on the rights of the family in order to ensure that they conform to the Constitution, which entitles equal rights to both men and women in marriage, and to ensure that all barriers to equal justice within the family unit is confronted and challenged by active participation in the legal processes so as to uphold gender equality and respect for human rights in the family.

The Qadhi courts bill will entail interpretations that can be used in the administration of justice and the said laws should be harmonized with the laws of Uganda. For instance, while Islam talks about a woman getting a share of family property upon divorce, it doesn't specify how much. Women in such situations prefer to go to conventional courts for fear that they might not be treated fairly when they use Islamic channels.

The government is still reluctant to make Islamic family law compliant with the Constitution and particularly the Succession Act even when it is clear that the distribution under Islamic law of succession is contradicting the provisions of the Constitution and the Succession Act especially on multiple widows illegitimate and adopted children. Distribution of property under statutory and customary/religious provisions is usually based on discrimination, unfairness and injustice. Rectifying this legal inconsistence shall be a big step towards harmonizing the statutory and the Islamic religious laws on inheritance in order to achieve gender justice and equality.

The Qadhi courts support the officiating of and registration of marriages between Muslims, counseling and mediation between Muslim couples in marital disputes, Adjudicating over divorce proceedings and the issuance of divorce certificates, Dissolution of Muslim estates. There are however no clear guidelines on how this should be done. The mosques create their own mode of operation that differs depending on their understanding of religious text. In most cases you find that gender considerations are ignored and therefore women continue to face discrimination on these grounds.

The need to have a codified Islamic law to regulate inheritance will also address gender justice and equality concerns that arise from the dictates of Islam requiring a woman to get only half share of what a male gets during succession maters. This mainly justified on grounds of the holistic socio-economic system which requires the man to shoulder the financial responsibility. The lived realities of today’s contemporary society however have left women as care givers and providers of homes which requires them to be financially empowered to do so. This means that an enabling law to harmonize the legal regimes. To mitigate the areas of conflict between the religious system and state laws, the Constitution mandates that state law prevails where it is contradicted by customary or other law. However, this stipulation is often unheeded, resulting in the continuation of gender inequality and discrimination in the ownership of land and other assets that is observed in many customary Ugandan communities today.

# Challenges of failure to operationalize Qadhi courts in Uganda.

Many in the Muslim community are greatly encumbered by the absence of law to operationalize the Qhadhi Courts to help them resolve issues like inheritance and divorce. Justice by Islamic law faces several challenges because of the lack of uniform interpretation and application. Muslim women who are treated as subordinate to men will not get the justice they need from these courts which are administered in a patriarchal manner.

The majority of adjudicators under the Qadhi courts, who are mainly local Imams, have not undergone any specific training in delivering justice and in fact, their interpretation of Shariah is most often narrow, harsh and it cannot stand under national law and the international human rights commitments that Uganda has signed up to which incorporate gender justice and equality. This may be a limiting factor to officially operationalize these courts.

Muslim communities at most village mosques elect the governing committees mostly comprised of the chairperson, Imam, publicity and information, secretary for women and youth. However, on some committees the youth and women are not represented. All appointments are done by the Muslim community around the villages were a mosque is centered. No official appointment letters are issued, no job description is made to the appointee of elect, but general expectations are flagged. All their work is voluntary and they expect rewards from only the Almighty Allah.

There are no uniform procedures, for how the sharia courts operate but the guiding book is the Holy Quran and the Hadith. However, the interpretation may differ across because different religious leaders have different theological education backgrounds. This creates a lack of standardized court procedure for the Qadhi Courts. Once a marriage is not formally registered, a woman who has been solely relying on her husband’s provision is bound to lose upon dissolution of the marriage is she can’t show proof of validity of marriage. Women’s access to property is often tied to their relationship within the household and community and they thus become vulnerable to losing this access when the household dissolves more especially by death.

Another matter to highlight is the lack of consensus on how to handle contentious matters such as the return of Mahr (Bride wealth / dowry). According to Quran 4:4, the Mahr is given as a free gift by husband to the wife at the time of contracting the marriage, but the wife has to return it to her husband once she seeks divorce from him. The gap in interpretation of this matter due to lack of codified law makes women vulnerable to returning the dowry once they initiate divorce regardless of the contribution made during the marriage. This means that a woman may be bound to an abusive marriage for lack failure to return the dowry she received upon contracting the marriage.

The structural challenges like lack of facilitation to most of the Imams and other religious leaders involved in the informal justice system especially at the grassroots. Facilitation like transport to and fro their homes, operational fees among others. Since most of the work done is voluntary, some rich Muslim community members who use the informal justice system can easily manipulate it for their own interest. This means that a vulnerable and poor woman’s interests will not be considered on these grounds.

Due to the limitations in funding, most Qadhi courts experience low standards of performance. For one, documentation is almost non- existent, cases are rarely recorded and therefore enforcement of decisions becomes difficult, or appeals therefrom. In the case of Makundane Ismail Adam v Kyerani Zainabu, Zainabu who approached MCJL seeking legal aid in 2014 to challenge the ruling of the UMSC which had earlier granted her husband a divorce and gone ahead to issue a divorce certificate. The shariah court in UMSC however did not pronounce itself over the custody of the children and distribution of the parties’ matrimonial property. Following the divorce, Zainabu’s husband stopped providing from the children and yet Zainabu had lost her Job. Her husband was also threatening to sell their home. MCJL assisted Zainabu to file for custody and maintenance at the secular Wakiso Court, including seeking an order to prevent her husband from selling their matrimonial home. The said court was reluctant to address the issue of the matrimonial home since it had no mandate to do so. Instead it referred the parties back to the shariah court that handled the divorce. Expectedly, Zainabu was hesitant to revert to the sharia court because she felt that it had been biased against her and therefore did not expect justice from them. This case highlights the obvious challenges and neglect by the UMSC shariah court to address critical gender aspects such as custody of children and their continued maintenance which inevitably fall on the shoulders of often poor women. It indicates that shariah courts are often oblivious to the need to take extra steps to protect vulnerable women.

The general lack of political will to operationalize Qadhi courts. Not many Muslim legislators have not been as forthcoming in pushing for the enabling law to be passed despite the numerous position papers and hand books in order to influence policy and legal reform including lobby meetings with key stakeholders to steer the operationalization of Qadhi Courts. The lack of an enabling law for Qadhi courts presents a continued violation of rights of Muslim women who utilise the Qadhi courts more than men.

There is lack of dedicated offices/ office spaces to accommodate the courts, basic office furniture (Desks Chairs, Book shelves, Filing Cabinets) and office equipment i.e., computers and printers and their accessories. Documentation of the cases handled is therefore limited or nonexistent and one may fail to make reference of judgments in case of desire to appeal.

The lack of teams of adjudicators well trained in Sharia and with recognized secular legal qualifications to serve in Qadhi court justice system. The adjudicators have only knowledge of sharia law with varying interpretations and applications. They have total disregard to gender considerations when applying the sharia law and you find that women in most cases do not get justice because of this.

Ignorance of the importance of human rights and often unclear ideas on jurisdiction, thus putting the Muslim informal justice system in conflict with the statutory courts and creating biase about their inadequacy to dispense justice especially for the women. In the case of Nakazzi Sumayiya v Kabuye Muhamed, Nakazzi had filed a suit contending that her husband had sold their matrimonial home without her consent. The two had been married under Islamic law for over 25 years and had five children. By the time Nakazzi filed the suit, they had undergone divorce under Islamic law on request of the wife. On divorce, the husband had given her five million Ushs. as a conciliatory gift. However, she felt that she had been unfairly treated by both the court and her husband. She filed a suit in a secular court seeking a revision of the ruling by the shariah court and therefore a share of their matrimonial property. In defence, the husband stated that the shariah court had handled the divorce properly and she had received was appropriately due to her. The court consequently decided that since both parties were muslims and has submitted themselves to the jurisdiction of the shariah court, it could not interfere with the decision. Nakazzi was left homeless and hopeless.

The users of the courts are as ignorant of the law and human rights. In their search for dispute resolution, the beneficiaries of these courts, especially women and children, fail to question the extent to which their human and legal rights are upheld during the processes of mediation or adjudication. They lack knowledge about their human rights principles such as gender equality, equity, non- discrimination, participation and inclusion as well as the right to makes one’s own decisions while adjudicating cases results in a compromise of equitable justice and a denial of basic human rights and freedoms.

The adjudicators largely have undisputed powers to the extent that their verdict may never be reversed or disputed even where the interests of justice may so require. More so, the judicial process in these courts is not flexible and is mostly based on the discretion of the presiding religious leader, most often a local Imam. The informal nature of the Qadhi courts can perpetuate existing power dynamics and provide little recourse for women seeking to enforce their rights in civil courts.

The application of principles of equity during mediation is also questionable. In a number of cases, the women and children are not fairly judged, given their social status within the male dominated patriarchal society. There is need to improve access to justice within these informal courts by building capacity of the adjudicators to dispense it, as well as that of the users to demand for it in its appropriateness.

There is no specific training institute for Qadhi justice officers like the Judicial Service Commission to serve the Muslim community and the general public. This leaves a gap of qualifications for potential judges who would serve on the courts once they are formalized. They would require knowledge on how to integrate human rights and gender principles when adjudicating cases to harmonize the secular and Islamic laws.

Related to the aspect of competence is the over reliance on legal technicalities which do not often serve the purpose of justice or protection of vulnerable parties especially women. As shared by MCJL, most Islamic marriages are not formally registered. This however creates challenges especially at divorceas seen in the case of Nakamya Zura v Kakooza Abdul Nakamya who approached MCJL seeking a more equitable distribution of property upon divorce from her husband who had thrown her out of their home empty handed. She had been married Islamically to Abdul for over 40 years and the two had accumulated a lot of wealth including 2 motor vehicles, different pieces of land and houses. However, this case proved difficult on grounds of lack of proof of marriage. When asked by MCJL for proof of marriage, she informed the Centre that she had not obtained a marriage certificate and further still, all the witnesses to the marriage had died. All mediation efforts made by MCJL to have her husband share with her some properties were fruitless as he insisted that the two were never married. The attempts made to contact the sheikh who officiated her marriage ceremony were declined with the Sheikh stating that Nakamya’s husband had warned him not to do so. All she had as evidence of her marriage were her children some of whom were adults. Nakamya was disappointed when MCJL was unable to help her to file for divorce since she had no proof of the marriage. Through the case above, it is clear that providing justice to women especially through the formal justice system is often hindered by the lack of formal proof of marriage. This is not helped by the obvious incompetence of Muslim clerics who fail to advise parties to formally register their marriages so as to obtain marriage certificates.

# Recommendations: How operationalization of Qadhi courts will improve access to justice.

The Government is yet to set up an inclusive inquiry to determine the merits of a uniform family code in consultation with representatives from civil society, media and the legal community and i ncluding all ethnic, indigenous and minority groups.

There should be a specific curriculum learnt by Qadhi judges so as to ensure standardization and quality of services provided by these courts. In the current situation, anyone with some form of Islamic training, whether from training centers in Saudi Arabia, Libya or Sudan for instance may, upon return, act as a leader of a mosque and therefore a Qadhi. To date in Uganda, it is left to the Qadhi in their different courts to interpret the law as they understand it and this creates a gap in administration of the courts.

Additionally, efforts should be made to teach basic principles of Islamic law to the general public. Such efforts will help to demystify this law and further provide a starting point for judicial officers handling appeals from the Qadhi courts. As we see to date, the High Court is mandated to apply Islamic Law in appeals from Qadhi courts. However, there may be some practical difficulties where the judge hearing the appeal is not a Muslim and does not understand Islamic Law.

Furthermore, a wider teaching of Islamic law will fortify the capacity of advocates to effectively advise their clients without necessarily having to be Muslims. It is therefore necessary for sections of the same law to be taught at laws schools across the country and at the Law Development Centre (LDC). If strengthened in line with lessons from jurisdictions such as Kenya and elsewhere, Qadhi courts in Uganda may not only be a symbol of Islamic faith and culture for practicing Muslims but more importantly for the Muslim women, these courts have the opportunity to become an important site for resisting the oppression experienced in marriage and in their domestic circumstances in a traditionally patriarchal and male dominated society.

There is a need to harmonize Islamic law and civil law especially in instances where there is potential for a conflict between the two, or even abuse through deliberate misinterpretation. An example of this is the aspect of domestic violence which, if not well interpreted by Muslim clerics, is subject to abuse. As such, consensus positions on controversial muslim issues such as age of marriage, return of Mahr and domestic violence should be enacted by women rights organisations. This will help in dissemination of knowledge about Islam but further work towards nationwide standardization and better protection of vulnerable groups through uniform standards which will be easier to enforce.

In terms of widening application of shariah law, there is need to undertake deliberate steps to sensitise the public and especially users of the Muslim justice system about the implications of the Darausi Tebandeke v Lugolobi Saidat case which ruling clarifies that the Marriage contracted under Islamic rules of Mohamedans Act give jurisdiction to magistrate courts to undertake divorces of Muslim marriages. These courts if well-structured may aid Muslim women in particular in fighting for the protection and enforcement of their rights as guaranteed under Islamic law and to challenge negative cultural practices and customs of Muslim communities that tend to undermine these rights.

Steps should be taken by women rights organisations to protect vulnerable followers of the Islamic faith by sensitizing communities on formal legal requirements such as the need for documentation of marriages so as to provide proof often required in legal proceedings. This includes registration of marriages and acquisition of certification as well as certification of birth and death, the latter being extremely useful in cases of contested paternity of children or management of deceased’s estates. In this case when the courts are administering cases there is sufficient documentation to support attainment of justice.

Further, in the protection of marginalized groups, MCJL should partner with other women rights organisations with the national mandate for supporting vulnerable and marginalized groups. Many of the female users of the Muslim adjudication system fall under this bracket and require support from the formal justice system for aspects such as transport to and from courts, and assistance towards costs such as DNA tests to prove paternity of their children in case of contestation that may deny them justice.

Muslim justice mechanisms can best work especially for women if formally established and operationalized. This is not an action that can be achieved by MJCL alone, but rather, requires collective responsiveness of the women’s rights movement in particular women’s rights organisations involved in advocating for law reform, enactment and implementation of gender equity laws like FIDA-U, UWOPA, UWONET. The collective effort should be geared towards must strategically engaging other actors such as the Governance and Security Program, former (JLOS), Uganda Law Reform Commission (ULRC), Parliament and the Ministry of Justice and Constitutional Affairs (MoJCA) who are primarily responsible for enacting the Muslim Personal Law Bill. Advocacy for enactment of the Muslim Personal Law Bill should highlight the following aspects of the law as being crucial for the protection of vulnerable groups

* Minimum obligations for one to contract a marriage. This should include some guidance on minimum economic status and specify, for example, requirement to prove one’s ability to provide each wife with a separate home in cases of polygamy.
* Requirement to register marriages
* Early and forced marriages
* Child custody upon divorce
* Child maintenance and alimony of wives
* Inheritance rights, matrimonial home and matrimonial property
* Minimum level of education and other qualifications for Qadhi (persons officiating over Qadhi
* courts).
* The requirement to involve women in resolution of disputes in Qadhi courts, especially those involving female contestants.

Engage in public interest litigation to challenge some of the specific provision of the law that cause gender discrimination and inequality. It has been observed that the courts of Judicature wield a lot of power in the area of legal interpretation and law reform. FIDA-U for e.g. proposed a strategic interest litigation case to challenge the exclusion of Islamic marriages from dissolution under the divorce Act in S18 of the Muhammedans Act. FIDA-U also influenced a judicial pronouncement that promoted the position of irretrievable breakdown of marriage as aground for divorce which resulted in reform in the area of Divorce.

As we are moving towards a dual system of law by virtue of Article 129(1(d) of the constitution, there is a need to widen public knowledge about Islamic law, first through general sensitization seminars but more specifically through a restructuring of law academic programs at university level. Save for the Islamic University in Uganda (IUIU), little legal teaching covers Muslim marriages, divorce and inheritance at universities. A course on Muslim Personal law should be introduced and taught in detail both at law schools as well as at the Law development Centre so as to build the capacity of advocates to advise their clients appropriately. Judicial officers should also be encouraged to learn about Muslim personal law since they have a role to interpret Islamic law in accordance with emerging trends in society.

# Conclusion

The Qadhi justice system is fully operational in Uganda albeit with a multitude of capacity gaps. They constitute the informal Qadhi courts that administers the Muslim personal law related to marriage, divorce, inheritance and guardianship of children, as the law enabling law for the establishment of the “Qadhis Court” has not been passed. However, they provide access to justice to multitudes of people including the indigent who use them and prefer them over formal courts. Whereas there is little interface between the formal statutory courts and the Qadhi courts, but law enforcement organs like the police and Magistrates courts work well with these Qadhi courts. Even before the implementation of the Qadhis Court is effected, several steps are already being taken to prepare the way for their sustainable implementation in the future following the rigorous advocacy work to influence policy and legal reform that will enable the operationalization of the qadhi courts.

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