

Policy Brief

Uganda Must Establish formal Qadhi courts as Constitutionally provided for under Article 129 (1) (d) to enable Muslim Women access family law justice.

Description of Article 129

Article 129(1) (d) of Uganda's Constitution provides that "Parliament may enact a law to provide for the establishment of Qadhis courts to deal with Islamic matters of marriage, divorce, inheritance of property and guardianship. Although parliament has not yet enacted the said law, in practice, Muslims enforce Islamic law in all marriage, divorce and property distribution of their estates. The Uganda Muslim Supreme Council (UMSC) appoints a Sheikh for every district in the country to handle the said issues in accordance with the Qur'an with minimal control and oversight by the Uganda Muslim Supreme Council (UMSC).¹

Current state of the Qadhi courts Bill

Currently, there is a draft bill on Qhadhi's courts that was previously removed from the legislative

process and referred to the Attorney General for consultations. There was an attempt to re-introduce this subject in 2020 by one Member of Parliament but faced resistance from a number of people who believe that Qhadhi courts may be against their way of life.²

Jurisdiction of Qadhi courts in disposing Family law justice

There have been debates and concerns over the legality and enforceability of the remedies obtained from the the current informal Qadhi courts. In harmonizing the Constitutional position on Qadhi courts, His Lordship in the case of Sumayiyah Nabawanuka Versus Meddie Makumbi confirmed the legality of Qadhis courts.

¹ ZAHARA NAMPEWO. "GENDER RESPONSIVENESS OF THE MUSLIM ADJUDICATION SYSTEM IN UGANDA." MUSLIM CENTRE FOR JUSTICE AND LAW, DECEMBER 2016 available at http://www.mcjl.ug/wp-content/uploads/2018/10/Gender-Responsiveness-of-the-Muslim-Adjudication-System-in-Uganda_Research-Report.pdf

² Per one Advocate and Director legal and Parliamentary affairs of Uganda Parliament.

Challenges within the Qadhi courts.

The informal nature of the Qadhi courts can perpetuate existing power dynamics and provide little recourse for women seeking access to justice contrary to Prophetic teachings.³ This is particularly problematic given that users of the Qadhi courts, according to a 2012 survey, were more likely to be female (55%), couldn't afford court fees (92%), did not receive written court

documentation (93%).⁴ There are no female judges on the panels leading to concerns of bias and a lack of gender sensitivity to Ugandan Muslim women's lived realities. When Muslim women try to take their cases to authorities like the police, they are turned away or told to bring their husbands-which makes seeking justice especially difficult.⁵

RECOMMENDATIONS:

- The Muslim personal law Bill should set high minimum training standards amongst Qadhi court judges to enhance accountability, quality and professional judgements.
- The courts should be structured in such a manner that accepts feedback from the court users.
- The Qadhi courts should be bound to follow the court procedures, with appeals from the Chief Qadhi to be heard by the High Court Judges with periodic reviews from the judiciary.
- There should be Integration of gender trainings for the Qadhis judges to ensure that Muslim women are able to access services that are not discriminatory & promote inclusion.

³ DOMESTIC VIOLENCE" FROM "COMPILATION OF RESOURCES RELATED TO WOMEN'S RIGHTS IN MUSLIM FAMILY LAWS. MUSAWAH (2016)

⁴ OMAR KALINGE. "ACCESS TO JUSTICE IN QADHI COURTS IN BUTAMBALA AND KAMPALA: BASELINE SURVEY REPORT." MUSLIM CENTRE FOR JUSTICE AND LAW, NOV 2012 available at <http://www.mcjlug/wp-content/uploads/2018/10/BASELINE-SURVEY-ON-ACCESS-TO-JUSTICE-IN-QADHI-COURTS.pdf>

⁵ Responding to Community Human Rights Needs in Uganda. SIHA available <https://sihanet.org/responding-to-community-human-rights-needs-in-uganda>.