



# The Qadhi's Court Petition 0010/2024 Newsletter

MAY 2024

*Breaking New Ground: Advocating for Justice for Muslim Women: Uganda must enact the Administration of Muslim Personal Law Bill to allow for the establishment of formalized Qadhis' courts under Article 129 (1)(d) of the Republic of Uganda as amended to ease access to justice for Muslim women.*



Welcome to our 1st Newsletter (May 2024!). Read on to find out about our recent activities.

## WORD FROM THE CEO



**Mastullah Ashah Mwangi**  
**CEO & General Counsel**

**Dear Supporters, Advocates, and Allies,**  
We are thrilled to bring you this special edition of IWILAP 1st Newsletter, dedicated to a historic moment in our ongoing fight for justice and equality within the Muslim community. We are proud to announce that on 30th April 2024, the Islamic Women's Initiative for Justice Law and Peace (IWILAP) filed a groundbreaking court petition that addresses the systemic injustices faced by Muslim women in Sharia/Qadhi's courts. This petition, the first of its kind, seeks to ensure the formalization of Qadhi's courts and that Muslim women have fair and equitable access to justice,

challenging long-standing biases and discriminatory practices as practiced in the current informal Qadhi/sharia courts.

For too long, Muslim women have faced significant barriers within the legal system, often encountering prejudice and unequal treatment in matters of divorce, inheritance, child custody, and access to Sexual and Reproductive Health Rights. This petition represents a bold and necessary step towards rectifying these injustices and upholding the constitutional rights of all individuals, regardless of their faith or gender.

In this issue, we will provide an overview of the petition, share the grounds of the petition and the declarations we seek from the court, and highlight the tireless efforts of our legal team and allies who have made this milestone possible.

The petition against the non-implementation of Article 129 (1)(d) and the unfairness of the informal Qadhi's courts marks a crucial step towards ensuring justice and equality for Muslim women. We thank our funder "**Litigating Reproductive Justice in Africa (LIRA)**" under Afya na Haki (Ahaki) for your generous support in funding our newsletter.

We appreciate our supporters, partners, and the brave women who have shared their stories for their invaluable contributions to this cause. Together, we are making history and paving the way for a more just and equitable society.

# Editorial

In this Newsletter, we bring to the forefront a critical constitutional petition 0010/2024 addressing the need for formalized Qadhi courts as provided for under article 129 (1) (d). The newsletter highlights the injustices and Muslim women's rights abuses occurring in Qadhi courts. This petition is a vital step towards safeguarding the fundamental rights of individuals subjected to these courts, highlighting the urgent need for implementation of the said constitutional article. As we delve into these issues, we aim to shed light on the experiences of those affected by these courts. We stand in solidarity with the petitioners, the Muslim women who have over the years failed to access justice in these informal Qadhi courts, and call upon our readers to join us in advocating for justice and equality within the Muslim community. Together, we can make a difference and ensure that human rights are upheld for all.

We invite you to engage with this critical conversation and to join us in our efforts to promote a just and equitable society for all as we demand for formalization of Qadhi courts.

## Editorial Team

Mastullah Ashah Mwanga  
Hajira Gimbo  
Haurah Nalubega



# KNOW MORE ABOUT IWILAP

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Islamic Women's Initiative for Justice, law and peace (IWILAP) is the first and oldest Muslim women-led non-profit Muslim organization committed to promoting human rights especially Sexual & Reproductive Health Rights, gender equity & Muslim women's rights in Uganda. It pursues its mission through Research, Advocacy & legal aid. IWILAP is committed to promoting the rights of Muslim women within the frameworks of Islam and universal human rights. Our efforts to promote the rights of Muslim women are based on the principles of equality, justice and freedom, International human rights instruments enjoined by the Quran, Hadith & Ijtihad.

## Vision

We are a representative body for Muslim women advocating for human rights, gender equality, and the rights of all women to reach their full potential.

IWILAP has been supporting and advocating on behalf of all women and Muslim women in particular for now 10 years. At the heart of IWILAP is a commitment to fairness, equality, and justice in all our interactions and activities that support Muslim women.

## Mission

To pursue justice for Muslim women through human rights-based legal aid, research and advocacy, and strategic litigation and promote their lived realities that advance women's freedom from violence, equity, and justice for all.

IWILAP attaches significant value and importance to the role of women within the family and in society at large.

## Mwanga Mastulah Ashah, Islamic Women's Initiative for Justice Law and Peace Versus Attorney General, Constitutional petition 0010/2024

IWILAP filed a Constitutional petition upon being aggrieved by the omission of the State to enact and pass a law that operationalizes Qadhis' Courts in as far as it is inconsistent with and in contravention of the express provisions of Article 129 (1)(d) of the Constitution of Uganda as amended.

The petition was brought under Articles 137(3b) 129(1)(d),(3) 20,21, 33(1),(2), (3) and 4 of the Constitution of the Republic of Uganda 1995, Rule 3(1) & (2)(a) of The Constitutional Court (Petitions and References) Rules S.I No.91 of 2005 and Rule 7(3) of the Judicature (Fundamental and other Human Rights and Freedoms) (Enforcement Procedure) Rules S.I No.31 of 2019).

It is recalled that Article 129 (1) (d) of the Uganda Constitution as amended provides that; the judicial power of Uganda shall be exercised by the courts of judicature which shall consist of: (1) the Supreme Court of Uganda; (b) the Court of Appeal of Uganda; (c) the High Court of Uganda; and (d) such subordinate courts as Parliament may by law establish, including Qadhis's' courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.

### The grounds of the petition are;

**a)** That the omission of the State to enact and pass a Law that operationalizes Qadhi Courts under Articles 129 (1) d, and Article 79 (1) and (2) is inconsistent with and in contravention of Article 20 of the Constitution of the Republic of Uganda.

**b)** That the omission of the State to enact and pass a Law that operationalizes Qadhi Courts under Articles 129 (1) d, and Article 79 (1) and (2) is inconsistent with and in contravention of Article 21 of the Constitution of the Republic of Uganda.

**c)** That the omission of the State to enact and pass a Law that operationalizes Qadhi Courts under Articles 129 (1) d, and Article 79 (1) and (2) is inconsistent with and in contravention of Article 33(1), (2), (3) (4) and (5) of the Constitution of the Republic of Uganda.

## **IWILAP requested the court to grant the following declarations and orders;**

- a) That the omission of the State to enact and pass a Law that operationalizes Qadhi Courts under Articles 129 (1) d, and Article 79 (1) and (2) is inconsistent with and in contravention of Article 20 of the Constitution of the Republic of Uganda.
- b) That the omission of the State to enact and pass a Law that operationalizes Qadhi Courts under Articles 129 (1) d, and Article 79 (1) and (2) is inconsistent with and in contravention of Article 21 of the Constitution of the Republic of Uganda.
- c) That the omission of the State to enact and pass a Law that operationalizes Qadhi Courts under Articles 129 (1) d, and Article 79 (1) and (2) is inconsistent with and in contravention of Article 33(1), (2), (3) (4) and (5) of the Constitution of the Republic of Uganda.
- d) An order that the state through the Executive and Parliament should, within one year, or such reasonable time as the court may deem fit, enact and pass a law operationalizing Qadhi Courts.
- e) An order that the Attorney General should report to this honorable Court on the steps taken to implement the Order under (d) above after every 6 months or such other reasonable time, of passing the Judgment in this case, as the court may deem fit.

## **Implication of the delayed establishment of formal Qadhis' courts on Muslim women's access to justice.**

In the absence of formalized Qadhis' courts, the Uganda Muslim Supreme Council leadership, established informal Qadhis' courts to enforce Islamic Family Laws. These are administered by imams and religious leaders with no basic training in justice and adjudication, counseling, mediation, gender responsiveness, and dispute resolution. In many cases, they misuse and misinterpret Islamic laws as a cover for discrimination. They have interpreted the main sources of Islamic Laws in restrictive unfair ways that limit Muslim women's rights.

They usually rely on "their individual" interpretations of the Quran, Hadith, and cultural beliefs as opposed to actual Islamic provisions. It should be universally agreed that Islamic law provides and promotes gender equality that should be used in Qadhis' Courts. In all this confusion, the would-be supervisory body, the Uganda Muslim Supreme Council (UMSC) has minimal control.

Aware that Article 2 of the Constitution of the Republic of Uganda provides for its Supremacy. The procedure of handling cases in these courts is characterized by contradictions specifically to Chapter Four of Uganda's Constitution. Moreover, in the quest for justice, the majority of the indigent Muslim women rely on informal Qadhis' Courts that have less reliance and reference to the laws of Uganda hence contravening the supremacy of Uganda's Constitution.

With reference to the Constitution of the Republic of Uganda as amended, Article 33. (1) Women shall be accorded full and equal dignity of the person with men. (2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement. Several Muslim women have not been in a position to realize the intention of this article because the informal Qadhis' courts operate and make unfair judgments characterized by patriarchal decisions that are not gender sensitive and don't follow the basic human rights principles that Uganda has ratified and signed. Worse still, there is no female judge in the informal Qhadhi courts which creates challenges of bias against women.

Moreover, the government of Uganda continues to be reluctant to establish formal Qadhis courts. The informal nature of the Qadhis' courts perpetuates existing power dynamics and provides inadequate remedies for women seeking to enforce their rights in these informal courts due to their lack of basic legal procedural rules. The existing informal Qadhis courts deny Muslim women the constitutional right to be represented by a lawyer. Qadhis' courts presume that lawyers do not know Shariah law yet the same courts don't follow the said Sharia laws.

There is also a lack of privacy or confidentiality in the rooms where these matters are heard. Specifically, the court at Uganda Muslim Supreme Council (UMSC) is one room where both the aggrieved party and other litigants sit during the adjudication process of sensitive family matters. This worsens the already traumatizing court system for Muslim women in times when they need to reveal sensitive private domestic issues like Sexual and Reproductive Health challenges that have historically not been known for public discussion.



## The quest for Justice for Muslim women in Formalized Qadhi's Courts: Recommendations

The omission to establish formal Qadhis' courts should be cured by enacting an enabling Muslim Personal Law with clear and comprehensive legal provisions so that their decisions follow the human rights and gender principles as enshrined in the Constitution. This will eliminate the ambiguities, injustices, and tension between the informal Qadhis' courts and the formal justice system and ease access to justice for Muslim women.

The proposed formal Qadhis' courts should embrace the appointment of female judges since Islamic Shariah doesn't prohibit women from serving as judges.

The formal Qadhis' courts should also be structured in such a manner that accepts feedback from court users so that women have the opportunity to claim their rights and create the space to speak on traditionally known sensitive matters like Sexual and Reproductive Health concerns.

# Outcomes and Impact

### Short-term Outcomes:

- Increased public awareness about the injustices faced by Muslim women in Sharia courts.
- Strengthened legal arguments through coalition-building and expert testimonies.

### Long-term Impact (Expected):

- Legal recognition of the constitutional violations inherent in biased Sharia court practices.
- Implementation of legal reforms to ensure Muslim women's rights are upheld.
- Empowerment of Muslim women through increased awareness and legal protection.

### Next Steps

- Continue legal proceedings.
- Expand the public awareness campaign to reach a broader audience.
- Engage with policymakers to advocate for legislative changes ensuring equality and justice for Muslim women.



# A Heartfelt Thank You to Our Generous Donors!



We are immensely grateful for your generous support in funding our groundbreaking Qadhi's court petition aimed at the formalization of Qadhi's courts and improving access to justice for Muslim women in Qadhi's courts.

Your contribution has been pivotal in enabling us to take this historic step towards challenging systemic biases and advocating for the rights and dignity of Muslim women including the historically known Sexual and Reproductive Health and Rights (SRHR) which are rarely discussed within Muslim communities yet encompass fundamental aspects of human health and well-being. There are unique cultural, religious, and socio-economic factors that influence access to SRHR justice within the informal Qadhi courts. This petition aims to address these challenges through the formalization of Qadhi courts that have a direct constitutional obligation to determine marital disputes such as divorce and its causes like access to SRHR among Muslim families.

Thanks to your support, we have been able to mobilize a robust legal team, gather crucial evidence, and build a coalition of allies committed to this cause.

Your donation has not only made this petition possible but also empowered countless women who have faced discrimination and injustice. Your commitment to equality and justice inspires us and reinforces the importance of our mission at IWILAP.

On behalf of everyone at IWILAP, and the many women whose lives will be positively impacted by this petition, we extend our deepest gratitude.

Thank you for standing with us and for believing in the power of justice and equality.

With heartfelt appreciation.

<https://www.afyanahaki.org/>



We are profoundly grateful for the exceptional legal support you have provided in filing our groundbreaking constitutional court petition challenging the non-formalization of Article 129 (1)(d) and the continued abuse of Muslim women's rights in informal Qadhi's courts. Your expertise, dedication, and commitment have been instrumental in taking this historic step towards justice and equality. With your invaluable legal assistance, we have been able to craft a compelling case, gather crucial evidence, and mobilize a coalition of advocates to support this vital cause. Your support is a beacon of hope and a testament to the power of collaboration in the pursuit of justice.

Thank you for standing with us and for your steadfast dedication to advancing the rights of women.

<http://www.springspublicinterest.org>

We are deeply grateful for your invaluable support in preparing our groundbreaking court petition filed to challenge the non-formalization of Qadhi's courts under Article 129 (1) (d). Your collaboration and unwavering commitment have been essential in taking this historic step towards justice and equality. Your partnership has not only made this petition possible but has also given hope and strength to countless Muslim women who have experienced injustice and discrimination. Together, we are working towards creating a legal system that respects and upholds the rights and dignity of all individuals.

<https://womenwithmission.org/>



# Conclusion



The filing of this groundbreaking court petition marks a significant milestone in the fight for justice and equality for Muslim women. As the first of its kind, this petition not only challenges the systemic injustices faced by Muslim women in informal Qadhi's (Sharia) courts but also sets a precedent for future legal actions aimed at safeguarding their rights.

Through tireless advocacy, collaboration with allies, and the bravery of those who have shared their stories, we are bringing much-needed attention to the inequalities and biases that have persisted for too long. This petition is more than a legal document; it is a call to action, a beacon of hope, and a step towards a more just and equitable society.

We extend our heartfelt gratitude to all our supporters, partners, the media, and volunteers who have made this historic moment possible. Your dedication and commitment are vital to the success of this initiative. Together, we are making strides towards ensuring that Muslim women receive the justice and dignity they deserve.

As we move forward, we remain steadfast in our mission to pursue justice for Muslim women through human rights-based legal aid, research and advocacy, and strategic litigation and promote their lived realities that advance women's freedom from violence, equity, and justice for all. We will continue to update you on the progress of this petition and encourage you to stay engaged and informed.

Thank you for standing with us in this important journey towards justice.









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