

MUSLIM CENTRE FOR JUSTICE AND LAW

# ACCESS TO JUSTICE IN QADHI COURTS

Baseline Survey Report

Kampala and Butambala Districts, Uganda

[2012]

# MUSLIM CENTRE FOR JUSTICE AND LAW

## **Access to Justice in Qadhi Courts** Baseline Survey in the Districts of Butambala and Kampala, Uganda

September - October 2012

## **LIST OF ACRONYMS**

<b>AIP</b>	ASSISTANT INSPECTOR OF POLICE
<b>CAP</b>	CHAPTER
<b>DGF</b>	DEMOCRATIC GOVERNANCE FACILITY
<b>DRT</b>	DEVELOPMENT RESEARCH & TRAINING
<b>FCPU</b>	FAMILY CARE AND PROTECTION UNIT
<b>FGD</b>	FOCUS GROUP DISCUSSION
<b>FHRI</b>	FOUNDATION FOR HUMAN RIGHTS INITIATIVE
<b>HON</b>	HONOURABLE (TITLE)
<b>IJS</b>	INFORMAL JUSTICE SYSTEM
<b>JLOS</b>	JUSTICE LAW AND ORDER SECTOR
<b>KII</b>	KEY INFORMANT INTERVIEW
<b>LASP-NET</b>	LEGAL AID SERVICE PROVIDERS NETWORK
<b>LC</b>	LOCAL COUNCIL
<b>MCJL</b>	MUSLIM CENTRE FOR JUSTICE AND LAW
<b>MIC</b>	QADHI COURT
<b>MP</b>	MEMBER OF PARLIAMENT
<b>NECJOGHA</b>	NETWORK OF CLIMATE JOURNALISTS OF THE GREATER HORN OF AFRICA
<b>ODI</b>	OVERSEAS DEVELOPMENT INSTITUTE
<b>PAS</b>	PARALEGAL ADVISORY SERVICES
<b>PRO</b>	PUBLIC RELATIONS OFFICER
<b>SEC</b>	SECTION
<b>SIP</b>	STRATEGIC INVESTMENT PLAN
<b>ULC</b>	UGANDA LAW COUNCIL
<b>ULRC</b>	UGANDA LAW REFORM COMMISSION
<b>UMSC</b>	UGANDA MUSLIM SUPREME COUNCIL
<b>UMTC</b>	UGANDA MUSLIM TABLIGH COMMUNITY
<b>UN Women</b>	UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN
<b>UNDP</b>	UNITED NATIONS DEVELOPEMNT PROGRAMME
<b>UNICEF</b>	UNITED NATIONS CHILDREN EDUCATION FUND
<b>UPS</b>	UGANDA PARALEGALS SOCIETY

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Omar Kalinge  
**LEAD RESEARCHER**

Kampala, November 2012

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## 1.0 EXECUTIVE SUMMARY

Until recently, informal justice systems (IJS) were relatively invisible in development partner-assisted justice interventions yet, IJS form a key part of individuals' and communities' experience of justice and the rule of law, with over 80 percent of disputes resolved through informal justice mechanisms in some countries. (Wojkowska, 2006). IJS may be more accessible than formal mechanisms and may have the potential to provide quick, relatively inexpensive and culturally relevant remedies. given this 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.

### **Objective**

The objective of this base line survey was to determine the prevalence of Qadhi Courts in the districts of Butambala and Kampala, the average number and nature of cases handled, accessibility to these courts, how they link to formal courts, whether they incorporate human rights and statutory laws while adjudicating cases, barriers to access to justice - and to assess the capacity needs of those officials who preside over these courts to identify capacity gaps.

### **Methodology**

The survey was based on both a quantitative and qualitative approach. The combination of the two approaches made it possible to measure the extent/coverage of Qadhi Courts and to determine their accessibility, capacity, inclusivity and relationship with formal justice structures. 66 users and 31 Qadhi court administrators took part in the survey. 20 focus group discussions of ten participants each were held thus targeting 200 respondents in the two districts. Interviews with 26 key informants (10 in Butambala and 16 in Kampala) were also carried out. A validation workshop for the survey was held on November 16<sup>th</sup> 1 2012, in Kampala with key respondents, key informants and stakeholders for government agencies and the Muslim community and the development partners, led by DGF.

### **Findings**

The data analysis reveals that the Qadhi justice system is fully operational in the two districts albeit with a multitude of weaknesses. They constitute the informal Qadhi courts as the law 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.

**Key challenges identified by a cross section of respondents included:** No payment for services rendered; No facilitation for court operations; No authority to enforce decisions/judgements; Lack of statutory legal knowledge by Qadhi court administrators; Lack of Islamic judicial knowledge and ignorance of Muslim court procedures; Lack of Books of reference; Absence of an institution that trains administrators of the Qadhi justice system; Lack of basic facilities like office furniture, filing cabinets and stationery; Lack of personnel and facilities to keep records; Absence of a known Muslim judicial system to be followed; Absence of a central authority for supervision; Absence of an empowering law to operationalise the “Qadhis Court” in Uganda; Perceptions from the public that the introduction of Qadhi courts in Uganda would make Muslims a special group of citizens; Lack of proper understanding and appreciation of Sharia/Islamic Law and its values; Ignorance by court administrators of the importance of human rights and often unclear ideas on jurisdiction; and the limited Interface between Qadhi justice courts and statutory courts.

**Key recommendations made included the following:**

- JLOS should provide opportunity for the findings of this baseline survey, the first of its kind in Uganda, on “Access to Justice in Qadhi Courts” to be disseminated to a wider JLOS audience. The forthcoming JLOS National Forum provides a good opportunity (Policy – Priority/Short term).
- Short courses/workshops for Qadhi court administrators should be held to introduce them to gender sensitivity and mainstreaming, children’s rights, human rights, statutory laws, mediation skills and formal court system procedures. (Training – Priority/Short term).
- Short Courses in record keeping should be held for Qadhi court administrators in the target districts in each of the two target districts (Training- Priority/ Short Term).
- A case record keeping system for use by all Qadhi Courts in Uganda (and simple tools like registration forms, case referral forms etc), should be developed by a consultant with extensive judicial record/ judicial procedures knowledge and expertise. (Technical- Priority/Short Term).
- Sensitization workshops should be held for the Muslim community especially the women, children and youth and indigent persons on their right to access to Justice and existence of the Qadhi Courts, in the target districts of Butambala and Kampala. (Sensitization/ Training – Priority/Short term).

- There should be a deliberate effort to train Qadhi court administrators who hold degrees in Sharia, to attain statutory legal knowledge from a recognized institution like the Law Development Centre. A Diploma in Law is recommended. (Training/Technical /Medium term).
- Key Qadhi court administrators in Uganda should be assisted to learn from other countries where the system is well developed through study tours. Kenya, where Qadhi's courts are well established is a logical first destination (Training/Financial – Medium term).
- A Consultant with relevant academic qualifications preferably in Comparative Law (Sharia and English Law) should be hired to develop a course content for a Diploma in Sharia, to be delivered by a recognized tertiary institution. (Technical/Financial – Medium Term).
- Qadhi Courts should be assisted to obtain Reference Books and establish Law libraries at their justice centres. The libraries should contain essential Uganda's statutory law books, and Sources of Islamic Law like the Quran and the six authentic Books of Hadith namely; "Sahih Bukhari", "Sahih Muslim", "Sunan Abu Dawood" and "A-Tirmidhi" and any other recommended texts on Muslim family and inheritance laws (Technical /Financial- Medium Term).
- Qadhi courts in the two districts of Butambala and Kampala should be assisted to acquire dedicated offices/ office spaces to accommodate them, basic office furniture (Desks Chairs, Book shelves, Filing Cabinets) and office equipment i.e.,computers and printers and their accessories. (Financial/Physical - MediumTerm).
- A plan for massive (grassroots) legal education in the target districts should be implemented by JLOS through the Mosque system (Policy – Medium Term)
- Before operationalisation of the Qadhi courts, mobile Qadhi courts, i.e, teams of adjudicators well trained in Sharia and with recognized secular legal qualifications should be constituted and facilitated to serve areas where access to Muslim informal justice is limited due to proximity and availability of qualified personnel especially in rural areas (Policy – Medium Term).
- Muslims with secular legal qualifications and /or officers in the statutory courts who profess the Muslim faith, should be encouraged and given scholarships to train in Islamic Law (for Diploma in Islamic

Law at a recognized tertiary institution like the Islamic University in Uganda) to enable them work as Qadhi court judicial officers in the future when the Qadhi courts come into operation. (Policy – Technical- Long Term).

- A training institute for Qadhi court officers should be established to serve the Muslim community and the general public. A feasibility study for the project should be undertaken by a competent consultancy (Technical/Financial - Long Term).
- The process to operationalise the Qadhi Courts should be expedited. (Policy – unfinished government business).
- Government should develop clear guidelines to regulate the relationship between Qadhi Courts and the statutory courts and other informal justice systems in Uganda like the LC courts and traditional courts (Policy).
- Phasing of the establishment of the Qadhis Court before a nation- wide roll out should be considered, starting with a pilot phase for the target districts of Butambala and Kampala (Policy).

## 2.0 MAIN OUTCOMES

### **Users' responses:**

#### **There were 66 Qadhi court users interviewed**

- 2.1 More Qadhi court users were from Butambala (52%)- Kampala (42%).
- 2.2 Majority of the users' ideas about Islamic schools of thought is that they belong to the Shafi school of thought. Other users did not understand what was meant by Islamic school of thought.
- 2.3 Out of 66 users, 34 are from Butambala and 32 from Kampala. There were more female respondents (users case) from both districts, i.e. 56% and 53% from Butambala and Kampala respectively.
- 2.4 Most of the Qadhi Court (MIC) users were female (55%).
- 2.5 Out of 66Qadhi Court users, no female has either a degree or diploma in Islamic studies or in secular studies. No male has never attained some Islamic and secular education. Most of the Qadhi court users male or female have attained secular primary education. However, 7 male and 2 male have degree and diploma qualifications in secular education respectively. No one had and secular legal qualification.

- 2.6 Most of the Qadhi Court users are married (62%).
- 2.7 The highest proportion of Qadhi Court users (male and female) have wages and salaries as their main source of income, majority of the being teachers. The female are more engaged in businesses especially salons and restaurants as shown above.
- 2.8 Most of the respondents (83.3%) are willing to use the Qadhi Court in solving disputes.
- 2.9 Most of the respondents are not actually using the Qadhi Court (59%) to due various reasons. Only one respondent has never heard of Qadhi court.
- 2.10 The highest proportion of respondents does not practically use the Qadhi court and thus report no disputes. However, the commonest nature of cases reported by users of the Qadhi Court are domestic related cases (17%) followed by business related cases (13%).
- 2.11 The most common case received is physical abuse (29%) of women by men followed by disputes over property ownership (24%) and inheritance with 21%.
- 2.12 Most of the users (57%) are above 30 years old.
- 2.13 The majority of the Qadhi court users who have used the Qadhi courts are satisfied with the outcomes of the Qadhi court (74%) against 13% who are dissatisfied and another 13% who are somehow satisfied.
- 2.14 The majority of the Qadhi Court users went to the Qadhi courts out of their own choice without being advised by others(77%).
- 2.15 The majority of the cases are disposed of within less than 3 months (79%)
- 2.16 The majority of the users (20 out of 26) decision to seek justice in Qadhi Court was theirs
- 2.17 The majority ; 25 out of 27 users i.e, (93%) of the Qadhi court users do not receive written documents from the Courts (93%).
- 2.18 The majority of the Qadhi Court users (23 out of 25) reside near (in close proximity) to the Qadhi court (92%).
- 2.19 The majority (12 out of 1) of the Qadhi Court users cannot afford court fees (92%).
- 2.20 The majority of the Qadhi Court users do not pay for Qadhi court services (88%).
- 2.21 The majority (16 out of 21) of the users are not aware of their rights while in the Qadhi Court (76%).

2.22 4 out of 6 of both “dissatisfied” and “somehow satisfied” users do appeal (67%).

**Administrators’ responses :**  
**There were 31 Qadhi court Administrators interviewed**

2.23 Majority of the Qadhi Court administrators belong to Shafii Islamic school of thought.

2.24 Most cases presented to the Qadhi Court administrators are family related (92%)

2.25 The majority (93%) of the Qadhi Court administrators use the Qadhi court in solving disputes.

2.26 Most administrators (90%) handle cases ranging from 1 to 9 cases in a month.

2.27 Most of the Qadhi Court panels have a woman representative (80%).

2.18 Most of the Qadhi Court administrators were Imams (23%)

2.19 3 in 4 of the Qadhi Court administrators handle cases of market value below UGX 50 million.

2.20 Other qualifications, for example Quranic and Islamic knowledge, basically in Sharia, are preferred for one to be a member of the Qadhi court panel. However, degree/diploma holders in Islamic studies are among the preferred qualifications.

2.21 The majority of the Qadhi Court administrators prefer the informal court because it understands their issues (87%).

2.22 The major area of Qadhi court jurisdiction is the parish.

2.23 An appreciable number of administrators (who refer cases) refer them to the (UMSC) headquarters (67%).

2.24 According to the administrators, the greatest number of clients appeal to the headquarters (41%). Other places where clients appeal include county (Twale).

2.25 Majority of the Qadhi Court administrators have never been consulted by the statutory court (62%).

- 2.26 Both Butambala and Kampala districts have the same number of Qadhi court administrators and the majority of the Qadhi Court administrators are male (77%).
- 2.27 Majority of the Qadhi court administrators are married (87%).
- 2.28 More of the Qadhi Court administrators completed Islamic primary school education (29%) and are degree also holders (26%) in Islamic studies.
- 2.29 Out of the 24 male informal court administrators from both districts, 13 were from Butambala District. Out of the 16 respondents from Butambala, 3 were female and 13 male. Kampala had 15 respondents; 4 female and 11 were male.
- 2.30 Almost all the Qadhi Court administrators are above 30 years (90%).
- 2.31 More male Qadhi Court administrators are degree holders in Islamic studies than female. Only one female administrator is a degree holder.
- 2.32 Wages and salaries is the main source of income to the male Qadhi Court administrators while the female Qadhi Court administrators are more engaged in other economic activities such as private businesses including salons and restaurants.
- 2.33 Quran memorization forms the highest proportion of the Qadhi education level.
- 2.34 Most of the Qadhi Court administrators (68%) do not refer cases to other courts
- 2.35 Majority of the administrators do not receive payment for the Qadhi services.
- 2.36 All the users ideas about Islamic schools of thought is that they belong to Shafi school, otherwise other users do not understand what is meant by Islamic school of thought (47%).
- 2.37 Most of the users above 30 years (57%).
- 2.38 Islamic laws take precedence over the statutory laws (82%) in case they both conflict, in cases related to family matters. Most are not aware that there are statutory laws that govern family matters (e.g. on domestic violence or administration of estate of deceased person).
- 2.39 Most of the Qadhi Court administrators (55%) own some Islamic reference materials to assist them in their adjudication. No Qadhi court administrator owns any statutory law reference material
- 2.40 Few children access the Qadhi Court (39%). (Access referring to being involve in the proceedings)
- 2.41 The highest proportion of the Qadhi Court administrators handle cases in one place (65%) given the fact that they have permanent places.

- 2.42 Majority of the Qadhi courts have permanent offices (65%) which are actually the mosques.
- 2.43 The majority of Qadhi Court administrators (93 %)do not receive payment for services rendered.
- 2.44 Most of theQadhi Court administrators (61.3%) do not keep records of cases

### **3.0 THE CONTEXT OF THE SURVEY- Review of literature**

#### **3.1 About Uganda: Geography, Economy, demography , politics etc**

Uganda has a population of 30.7 million people, of which the large majority (84.6 percent) live in rural areas. Uganda's GDP is around 15.7 billion USD (2009). The GDP per capita is around 1,200 USD.

Income distribution in Uganda is highly unequal (Gini index 42.6). Around 52 percent of the population lives below UNDP's official poverty line (whereas around 31 percent lives below the national poverty line). Ranked number 143, Uganda falls below Kenya in UNDP's Human Development Index. (Uganda is ranked number 109 on UNDP's Gender Inequality Index).

The main sources of income in Uganda are services (46.4 percent), agriculture (23.7 percent) and transport and communication (6.8 percent). Uganda gained independence from British colonial rule in 1962, and Milton Obote became Prime Minister. In 1966, Obote suspended the constitution and claimed all government powers. In a 1971 military coup Obote was overthrown and Idi Amin installed himself as president. The constitution was subsequently amended so he acquired absolute power. Amin's regime was responsible for serious repression of the political opposition and systematic human rights violations, which cost the lives of at least 100,000 Ugandans. In 1978, Ugandan rebels joined forces with the Tanzanian army and Amin was ousted.

The subsequent years were characterised by political instability, and Obote's return to the presidency in 1980 did not lead to an increased protection of human rights. In 1985, Obote was once again overthrown in a military coup. The new president, Tito Okello, offered promises that he would end tribal rivalry and opened negotiations with the rebel forces (the National Resistance Army (NRA)) led by Yoweri Museveni, but the armed struggle continued and in 1986 the NRA overthrew the regime. Since then, Museveni has ruled the country, which has arguably become more stable due to the adoption of a one-party policy. However, serious human rights violations have continued to occur under Museveni's regime, in particular in the context of the long-lasting conflict between government forces and the Lord's Resistance Army (LRA) in the north. Presidential elections were held in 2001 and again in 2006, with Museveni claiming victory in both. A partial opening up of the political space has taken place in Uganda over the last couple of years, as other political parties are now allowed to operate more freely. However, parliamentary and presidential elections held in 2011 confirmed the large

domination of Museveni (elected with 68.4% of the votes) and his party at the National Assembly (with control of 75% of seats).

### **3.2 The survey area**

**Kampala** is the largest city and capital of Uganda. The city is divided into five boroughs that oversee local planning: Kampala Central Division, Kawempe Division, Makindye Division, Nakawa Division and Lubaga Division. The city is coterminous with Kampala District. The national census in 2002 estimated the population of the city at 1,189,142. In 2011, UBOS estimated the mid-year population of the city at 1,659,600. (*"2011 Estimated Populations of Ugandan Cities And Towns". Newvision.co.ug.*)

#### **Butambala (District)**

Butambala is situated south of Kampala. In 2011, UBOS reported the district's population of 86,755 (2002); Estimated 99,400 (2012). It comprises 6 local administrative areas (sub counties) namely; Kibibi, Bulu, Kalamba, Ngando, Budde and Gombe Town Council.

### **3.3 The system of governance and key actors in the legal system**

Uganda is governed by the 1995 constitution, which was amended in 2005 to remove presidential term limits and to adopt a multi-party system. The constitution establishes an executive branch of government with broad powers; a National Assembly with 332 seats, of which 215 are elected by popular vote and the rest selected by interest groups; and an independent judiciary.

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, which as in Kenya use Islamic Law to deal with family and inheritance cases.

The constitution (art. 126) promotes reconciliation and administration of justice without undue regard to legal technicalities. The formal justice system has adopted ADR mechanisms, which are in particular used by the commercial division of the High Court. Paralegals have been deployed to local communities in order to facilitate dispute resolution using reconciliatory modes of justice. As is the case in Kenya, community-based traditional justice systems are widely used in Uganda, especially in rural areas.

Other central actors in the Uganda legal system include the Tax Appeals Tribunals; the Family and Children's Court; the Land Tribunals; the Local Council Courts; the Centre for Conflict Resolution; and the Uganda Human Rights Commission (UHRC), which besides being mandated to monitor government compliance with human rights standards and undertake civic education has court-like powers to summon persons to appear before it in connection with investigations into human rights abuses.

Like Kenya, 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.

### **3.4 The functioning of the legal system and the general access to justice situation**

Despite some serious points of criticism, the functioning of the legal system in Uganda has improved over the last years, and the current implementation of a number of reforms is expected to further improve this. In particular the use of a sector wide strategy, referred to as the Justice, Law and Order Sector (JLOS), has helped decentralise the delivery of justice and has led to the establishment of codes of conduct and performance standards for legal sector personnel. These efforts are reported to have improved the efficiency and the level of services in the legal system.

That being said, some 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, for example by using unlawful searches or detain suspects in a manner inconsistent with the law.

The general access to justice situation has improved in recent years, and as one informant notes, the perception is that "the existing laws and ongoing reforms are a big achievement in the right direction to ensure access to justice".

Part of the explanation for these improvements concerns the creation of additional courts, a measure that has strengthened physical access to the justice system. Increased use of civil society actors in the delivery of justice is also said to have had positive effects on the access to justice situation in general.

Furthermore, increased use of information technology has allowed case files to be easier accessed, which is also important from an access to justice perspective.

Despite these improvements, a number of factors significantly limit access to justice in Uganda. One major challenge concerns the huge backlog of cases, which is in part caused by budgetary constraints that limit the number of judicial personnel.

Another key problem is that legal sector personnel, including paralegals, often lack the necessary training. It has also been reported that there are "legislative bottlenecks" relating to procedural guidelines, which cause access to justice problems, especially at the local level.

Furthermore, the lack of coordination and communication between key actors in the legal system is mentioned as a cause of concern. Poverty also constitutes a significant obstacle for access to the formal justice system, both because it is connected to ignorance of the law and because many people cannot afford legal assistance and representation or cover the costs related to transport, user fees or even bribery. This also has to do with the fact that despite the current efforts to decentralise justice, “geographical distribution and proximity of justice delivery” remains a problem.

In particular, conflict affected areas such as northern Uganda suffer from these problems, and the failure to implement in such areas the reforms currently underway in other parts of Uganda presents a significant challenge for access to justice.

In addition to these problems, there might be a lack of willingness on the part of some legal aid providers to promote access to justice. One informant of in a report on Access to Justice and Legal Aid in East Africa A comparison of the legal aid schemes used in the region and the level of cooperation and coordination between the various actors *A report by the Danish Institute for Human Rights, based on a cooperation with the East Africa Law Society* (December 2011) notes that most lawyers “do not give quality legal aid services to indigent clients. The legal profession is looked at by most people as a business and not as a means to enable others attain justice. As a result paid up clients get better legal aid services than the poor or indigent clients”.

### **3.5 The Role of the Justice Law and Order Sector**

Following almost two decades (1966-1986) of political, civil and economic regress in Uganda, there was an extensive breakdown of functions of the state including the maintenance of law and order. Governments then failed to provide the requisite infrastructure, logistics, personnel, legal and policy direction to legitimate state institutions to effectively execute their mandate.

This period was characterized by: Chronic systemic constraints that delayed and hampered access to justice and service delivery; effective planning and budgeting; Antiquated methods and tools of investigations and prosecution; The high cost of justice due to corrupt practices and limited proximity to the justice delivery agencies by end-users; Case backlogs and high prison populations; Inefficiencies and lack of effective procedural guidelines and performance standard in Justice delivery institutions as well as significant gender-based discrimination.

To stem the tide (i.e. the above stated six constraints in the justice delivery chain, amongst others), the Justice Law and Order Sector JLOS was born. JLOS is a sector wide approach adopted by Government bringing together institutions with closely linked mandates of administering justice and maintaining law and order and human rights, into developing a common vision, policy framework, unified on objectives and plan over the medium term. It focuses on a holistic approach to improving access to and administration of justice through the sector wide approach to

planning, budgeting, programme implementation, monitoring and evaluation. The sector comprises of: Ministry of Justice and Constitutional Affairs (MOJCA); Ministry of Internal Affairs (MIA); The Judiciary; Uganda Police Force (UPF); Uganda Prison Service (UPS); Directorate of Public Prosecutions (DPP); Judicial Service Commission (JSC); The Ministry of Local Government (Local Council Courts); The Ministry of Gender, Labor and Social Development (Probation and Juvenile Justice); The Uganda Law Reform Commission (ULRC); The Uganda Human Rights Commission (UHRC); The Law Development Centre (LDC); The Tax Appeals Tribunal (TAT); The Uganda Law Society (ULS); Centre for Arbitration and Dispute Resolution (CADER) and The Uganda Registration Services Bureau (URSB).

JLOS started off with a Strategic Investment Plan (SIP I 2001/01 –2005/06) to address the constraints and at its lapse we introduced the Second Sector Strategic Investment Plan (SIP II 2006/07 – 2010/11). Currently, the Sector is implementing the Third JLOS Strategic Investment Plan (SIP III 2012/13 - 2016/17).

Uganda's Justice Law and Order sector is a significant innovation now in operation for over 10 years as a holistic Government approach focused on improving the administration of justice, maintenance of law and order as well as the promotion, protection and respect of human rights.

The sector has over the past decade implemented the first and second investment plans and is proud to note that there is now a more developed system approach to evidence based budgeting with increased coordination, communication and cooperation in public service delivery and development assistance in the sector. The sector has also redefined the commercial and criminal justice system which is now the basis of reforms in other African countries.

Building on the above successes, JLOS has developed the third Sector Strategic Investment Plan (SIP III). SIP III is based more on the need to achieve clear results and impact aiming at the promotion of the rule of law. The sector is thus focused on increasing public confidence and trust in the justice system as well as user satisfaction in the services offered by the sector.

Article 20 (2) of the Constitution of the Republic of Uganda states that "the rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government, and by all persons". By discharging this duty, the Justice, Law and Order Sector dovetails into Objective 7 of the National Development Plan of Uganda 2010/11-2014/2015 that recognizes the Justice, Law and Order Sector as an enabling sector for national development. JLOS is a platform and basis for the performance of the primary growth sectors that directly pursue economic growth, employment and prosperity.(Access to Justice as a key result of the Third JLOS Strategic Investment Plan 2012/13-2016/17).

The strategic investment plan iii envisages that at the end of the SIP III in 2016/17; the Sector will deliver to all people in Uganda the following three results:

- i) A Legislative, policy and regulatory framework conducive to JLOS operations; promoting rule of law and human rights and enabling national development;
- ii) *More people, particularly the poor and vulnerable groups, will have better access to justice, and live in a safer and secure environment*
- iii) JLOS institutions that are more responsive to human rights, and are more accountable to service users and the public.

It is in this strategic context that this baseline survey is being conducted.

## **4.0 RATIONALE**

### **4.1 Rationale**

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. They enforce Shariah laws on domestic related issues such as marriage contracts, spousal violence and inheritance. However, the effective operation of these courts is negated by a number of factors, key being the limited capacity of the adjudicators to dispense justice. The majority of adjudicators under these 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.

Most of them only attend a section of Islamic Qur'anic teaching for a maximum of 2 years learning how to recite a section of the Qura'n and the basic rules of conducting the pillars of Islam like Prayer, Fasting, Zakaat and Haj. They also learn to administer the last rites – i.e., washing of the dead body, and prayer for the dead. As a result, they lack the capacity to appreciate the applicability of Shariah law within the general enfold of human rights and principles of natural justice.

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.

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 decisions reached are rarely documented and there are no appellate structures to address possible dissatisfaction with the decisions reached.

Further, the unintentional discount by the court officials to 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 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.

Fortunately, Qadhi courts are located at major mosques within communities across the country. They are thus fairly accessible and do not have a serious case backlog. It is thus possible to reach out to these courts. The 1995 Constitution of Uganda provides for the establishment of Qadhi courts to offer assistance in handling matters of marriage, divorce, inheritance, and child custody. Although these courts are not formally established, they are otherwise in operation and are heavily believed in and utilised by the Muslim community. They are a means through which a section of Uganda's population access justice, and should not be overlooked.

## 4.2 Africa Regional Context

When most sub-Saharan African countries became independent in the 1960s, the majority of African citizens were resolving their disputes using traditional and informal justice forums. Despite their popularity, these forums were regarded as obstacles to development. It was thought that as Africa modernised they would eventually die out. This did not occur. Informal and traditional modes of settling disputes have remained as widespread as ever.

Three key factors help explain why most Africans continue to look to traditional and informal justice forums to resolve disputes:

- The vast majority of Africans continue to live in rural villages where access to the formal state justice system is extremely limited.
- The type of justice offered by the formal courts may be inappropriate for the resolution of disputes between people living in rural villages or urban settlements where the breaking of individual social relationships can cause conflict within the community and affect economic co-operation on which the community depends.
- State justice systems in most African countries operate with an extremely limited infrastructure which does not have the resources to deal with minor disputes in settlements or villages (*Traditional and Informal Justice Systems in Africa, South Asia and the Caribbean (Penal Reform International [www.penalreform.org](http://www.penalreform.org), 2000)*).

One of the key areas of debate in relation to traditional and informal justice systems is whether justice can be made more accessible by encouraging such systems, by adopting or transforming some of their processes, or by facilitating a more collaborative approach between such systems and formal justice systems. Indeed, there have been proposals that some elements of informal justice should be incorporated into formal state processes. However, the role of traditional and informal justice remains a contentious issue for a number of reasons.

- No one should be subjected to discrimination on the basis of sex or any other status by either formal courts or informal justice forums.
- Physical punishments – whether imposed by formal courts or informal justice forums – amount to inhuman or degrading treatment which is absolutely prohibited. States have an obligation to protect all those under their jurisdiction from such treatment.
- States should make it an offence for traditional or informal adjudicators to order physically coercive punishments, to try a person under duress or in *absentia*, or to try a person for serious offences such as murder or rape.
- These laws should be actively enforced and forums in which such offences are repeatedly committed should be outlawed.

Most traditional and informal justice systems are dominated by men and tend to apply customary or religious norms which discriminate against women and young people. While it is undeniably the case that very few women preside over traditional and informal justice forums, it is also the case that women are grossly under-represented on formal court benches in Africa, as well as other parts of the world. The difference between the formal and the informal systems as regards the equal treatment of women should, therefore, be seen as a matter of degree.

Although traditional forums are on the whole more prone to discrimination than formal systems, there are examples of nondiscriminatory informal forums, as well as of discriminatory formal courts. For example, in a number of countries in Africa and Asia, wife beating is not considered a crime under the formal law and blatantly discriminatory laws still remain on the statute books. It would be misleading, therefore, to attribute the discrimination primarily to the informal process itself, rather than to the prevailing attitudes which lie behind discriminatory customary norms and laws.

Just as the formal legal system in many parts of the world has become less discriminatory towards women over the last century, in line with changing social attitudes to women, so traditional and informal justice systems in Africa have witnessed some improvements. Although change has been less pronounced in rural areas, where traditional forums operate, the pace of change could be increased through education, regulation and increased resources.

Most African states do not have the resources necessary to extend the formal

justice system to village level to deal with all types of disputes, or to provide the additional legal aid and interpreters that this would require. However, even if resources were not an issue, traditional and informal justice systems might provide a better solution in a large number of cases. Both the formal and informal systems have their merits which may vary according to factors such as the nature of the dispute and the relationship between the parties.

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. It is worth noting that similar forms of social control, which also constitute a type of informal justice, are exercised in boardrooms, professional organizations, clubs and fraternities.

Formal state courts on the other hand are best able to provide the legal and procedural certainty required where serious penalties such as imprisonment are regarded as appropriate, or where the parties are unwilling or unable to reach a compromise.

Every individual, whether rich or poor, should be able to freely exercise their right to seek redress in a formal court of law. The choice must rest with the parties. The aim in providing assistance to traditional and informal justice systems should be to encourage satisfactory alternatives which offer more appropriate solutions, not to promote a substitute to formal courts for the poor. Support for traditional and informal structures, therefore, needs to be accompanied by support for legal aid organizations and legal literacy programmes, as well as appropriate assistance to the formal legal sector.

Particular efforts must be made to ensure that women and other vulnerable groups are guaranteed a choice through access to legal aid, advice and education. It is possible to incorporate several features of traditional justice into state criminal justice processes in order to improve access to justice for the poor and for sections of the population where literacy levels are low.

However, as a general rule, incorporating traditional and informal systems into the formal state hierarchy of courts should be avoided as it tends to undermine the positive aspects of traditional and informal justice without any real gain. However, the extent to which traditional and informal justice processes are incorporated into formal systems or remain voluntary dispute resolution forums will depend in great part on the historical circumstances prevailing in particular African countries. A criticism often levelled at any research which takes a positive view towards any aspect of traditional justice is that such a view romanticises the past. However, such a criticism ignores the fact that traditional justice forums are constantly evolving as the social, cultural, political and economic circumstances in which they operate change.

### **4.3 International Context**

Informal or traditional justice systems resolve up to 80 percent of disputes in some countries and must be integrated into broader development initiatives aimed at guaranteeing human rights and access to justice for all, according to a new UN study released in September 2012. Informal justice systems (IJS) "may be more accessible than formal mechanisms and may have the potential to provide quick, relatively inexpensive, and culturally relevant remedies, with particular impact for women and children", the study, [\*\*\*Informal Justice Systems: Charting a Course for Human Rights-Based Engagement\*\*\*](#), said. The report commissioned by the UN Development Programme (UNDP), UNICEF, and UN Women and produced by the Danish Institute for Human Rights, which is actually is the most comprehensive UN study on this complex area of justice to date, draws conclusions based on research in [Bangladesh](#), [Ecuador](#), [Malawi](#), [Niger](#), [Papua New Guinea](#), [Uganda](#), and 12 other developing countries.

"Informal or customary justice systems are a reality of justice in most of the countries where UNDP works to improve lives and livelihoods and government capacities to serve," UNDP Assistant Administrator and UN Assistant Secretary-General Olav Kjørven said. "The evidence in this report illustrates the direct bearing such systems can have on women and children's legal empowerment, covering issues from customary marriage and divorce to custody, inheritance, and property rights."

Commenting on the findings, Susan Bissell, UNICEF Assistant Director, Child Protection Section says that there has been little research or literature on children and IJS to date, and this study was important in beginning to document the issues around children's engagement with informal Justice Systems. "Reconciling the procedures followed by IJS with children's rights, and ensuring that international standards about children and justice are implemented in IJS, is a challenge that the report clearly documents." At the same time, the report also showed that IJS can be useful as a means of avoiding formal prosecution of children, and can be responsive to changing cultural attitudes about children and justice.

Both formal justice systems—government-supported laws, police, courts, and prisons—and informal or traditional systems can violate human rights, reinforce discrimination, and neglect principles of procedural fairness. "The efficacy of working with informal justice systems requires that it be complemented by engagement with the formal justice system and with development programming that addresses the broader social, cultural, political, and economic context of IJS," the report said.

Where formal justice mechanisms are inoperative or inaccessible to ordinary people, informal justice systems "may be better placed to achieve the principles of impartiality, accountability, participation, and protection of substantive human rights," the report said.

"The best access to justice and protection of human rights will be afforded when the different systems and mechanisms, formal and informal, are allowed (a) to exchange with and learn from one another, (b) to cooperate with one another, (c)

to determine the best division of labour, guided by user preferences as well as state policy imperatives, and (d) to develop in order to meet new challenges."

Discriminatory practices regarding marital and family relations, property ownership, and inheritance, or superstitious practices and punishments "are not simply expressions of justice standards, but are expressions of how societies are structured," it said. "The best ways to change this may include broader development initiatives in education, livelihoods and public health. Broader development initiatives are also key to creating an environment where human rights can be respected and fulfilled."

#### **4.4 National : Muslims in Uganda**

Officially, Muslims are said to constitute between 12.5% of the Ugandan population. (*Uganda National Population and Housing Census 2002*). Quoting the CIA factbook, The United States Institute of Peace records the Muslim population as 16% (*United States Institute of Peace Special Report 140, May 2005*). The Islamic website IslamicWeb.com puts the figure at 36% of the population. There has not been an independent census of Muslims in Uganda by the Uganda Muslim Supreme Council the Muslim apex organisation established in 1972. Some Muslims, however, have tended to dispute the official (government) statistics.

Islam was introduced in various parts pre-colonial Uganda by a merchant class at different periods. In West Nile and some parts of the North it was introduced largely from The Sudan. In the South, especially in the Kingdom of Buganda, it was introduced from the East African coast in 1844. It was during the reign of Kabaka Mutesa I that Islam reached its highest peak in pre-colonial Buganda. Indeed, the period between 1862-1875 has been called the golden age of Islam in Buganda.

Much as Islam was introduced as a state religion from above with the objective of using it as an ideology for strengthening Kabaka Mutesa I's control over his subjects, by the 1870s people had started identifying certain aspects of the faith which they could use to question some autocratic tendencies of the king. The Muslim youth in particular were critical of the hereditary aspects of the king which in their view, did not conform to the teachings of Islam.

By 1875, the impact of Islam in Buganda had become great enough to cause concern for the Kabaka. Islam had become a basis on which the legitimacy of the King of Buganda was being questioned. In 1876, Mutesa I ordered the death of 200 Muslims. In the long run, however, he sought to neutralize the revolutionary force being created by Islam from below by inviting Church Missionaries through the European explorer, Sir Henry Morton Stanley in 1872. The Church Missionary Society missionaries were to arrive three years later in 1875. (The Roman Catholic Missionaries, the White Fathers arrived four years on, in 1879).

Even before the colonial period Religious violence probably caused more devastation to human and animal life in Buganda than the kingdom had experienced since its foundation in the fourteenth century. Beginning in 1888, political parties based on religion- *Bafransa* (Roman Catholic), *Bangereza* (Anglican

Protestants, *Bawadi* (Muslim)- armed themselves, united and overthrew the king of Buganda, Mwanga II. Their aim was not only to survive (they claimed that the king wanted to eliminate them), but to grab power and formulate laws derived from their new religious beliefs. From then on, foreign religions in Buganda became a springboard for political mobilisation. (Kasozi, *ABK The Social Origins of Violence in Uganda, Fountain Publishers, Kampala, Fountain Publishers, 1994: 27*). Kasozi urges further that in post colonial Uganda- the unequal distribution of the country's meager resources is the main cause of violence in Uganda. There was, and still is, inequality based on region, ethnicity, class, religion, and gender, and these forms of inequality were entrenched during the colonial period. (*ibid, 30*).

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. Moreover, the government recruited functionaries – clerks, interpreters, policemen and other workers – from missionary schools. Most novices attending school were being prepared for baptism. Many of the schools shared the same grounds, if not building with churches.

Muslim parents were afraid of this kind of education because it exposed their children to Christian ideas and values and had the potential to lead to Christian conversion. On the other hand, Muslims had no missionaries. This was the same in the whole of East Africa. A report on Muslim Education by Dr. Sergent found that Muslims all over East Africa were so backward in education that they needed special help (*Ahmed Abdallah, "Ambivalence of Muslim Education" East African Journal, February 1965*).

Writing in the Uganda Journal (1965) Felice Carter stated that by 1960, Muslims had only one university graduate. When in 1964, two years after independence the African government opened all secondary schools to everyone irrespective of religious denomination, Muslims had only one secondary school as compared to 16 for Catholics and 10 for Anglicans (Kasozi, 1996).

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.

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.

Dating back to the struggle for independence, however, there are many examples of Muslim involvement in Uganda nation building and the struggle for a better

Uganda. However, today's Uganda seems to be struggling to mobilise commitment from the Muslim community to actively participate in building the nation. 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.

Recent Developments within Uganda, East Africa region, the horn of Africa and around the world underscore the need to create an accurate portrayal, through rigorous research, of social, economic and political life for the Muslim community in Uganda; build understanding about how conditions for the Muslim community can impact nation building; and determine a way forward for the Muslim community to actively participate in building a democratic and better Uganda. A baseline survey on access to justice in Qadhi Courts is one way of meeting this need.

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.

Part V of the Ordinance/Act concerned distribution of property of a person who died without leaving a valid will.

The Governor, and later the Minister had power by Statutory Order to exempt from the operation of any part of the Ordinance/ Act any class of persons in Uganda. General Notice of 22<sup>nd</sup> January 1906 was an Order made in exercise of that power by the Governor.

The estates of all the Natives of the Protectorate were exempted from the operation of the Succession Ordinance.

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:

"2.(1) 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" (Mukiibi, 2012)

#### **4.4 Qadhis Courts in Uganda**

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.

However, religious practices in succession matters need legal backing for recognition before they become binding. (ibid, 6)

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. However, they remain in abeyance as a law to operationalise them has not been enacted.

The proposed act will apply to persons who profess the Islamic faith. Each Qadhi court shall be a court subordinate to the High court. The minister responsible for Justice and Constitutional Affairs may in consultation with the Chief Justice by statutory instrument divide Uganda into Qadhi courts areas for purposes of the Act.

The proposed Qadhi court shall be of two grades Chief Qadhi and Qadhi.

The proposed qualifications of Chief Qadhi, apart from being Muslim of high moral character are; degree in Sharia, a degree in secular law recognized in Uganda and should not have less than three years experience in Islamic law and practice.

The proposed qualification of a Qadhi, apart from being Muslim of high moral character are; degree in Sharia and a legal qualification obtained from a tertiary institution recognized in Uganda.

Under the proposed law, any provision or interpretation of Islamic law or Sharia law which is inconsistent with the Constitution shall to the extent of the inconsistency be void.

The operationalisation of the Qadhi courts therefore presupposes the important element of availability of qualified personnel. Until now it is not clear whether a critical mass of personnel with both Sharia and secular law qualifications are available. What is logical is that the Qadhi courts can be implemented in phases using the available personnel as training of more personnel progresses in a systematic manner. It is also possible for the implementation to start with pilot areas before a national roll out is possible.

#### **4.5 Qadhi courts in other African countries**

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 Kadhis Courts while in others the Courts are established as subordinate Courts to the Secular High Courts or Supreme Court. The Kadhis Courts are also called Qadhis Courts (Uganda), Cadi Court (Gambia), Sharia Court (Nigeria), Shariat Court (Pakistan) and Religious Court (Jordan).

The Nigeria constitution provides for the establishment of the Kadi and Sharia Courts in the states and in the Federation. The Sharia Court of Appeal is to compose of the Grand Kadi and such number of Kadis as may be prescribed by Law. The jurisdiction of the Sharia Courts is listed under Sections 262 and 277 of the Constitution. The qualification for appointment to the office of Grand Kadi or Kadi of the Sharia Court of Appeal is set out by Sections 261 and 266 of the Constitution. Sections 264 and 279 give the grand Kadi, who is equivalent to the Chief Kadhi in Kenya, the Power to make rules for regulating the Practice and Procedure of the Sharia Court. The major difference between the Kadhis Courts in Nigeria and Kenya is that the former apply full Islamic Sharia law while in Kenya, the jurisdiction is limited to personal law i.e marriage, divorce and inheritance which is the case in Gambia and Uganda.

The Gambian Constitution under Section 137, establishes the Cadi Court to be constituted by the Cadi and two other Scholars qualified to be a Cadi or Ulama. Appeals from this Court goes to a review Court composed of the Cadi and four ulamas (Islamic Scholars). The Cadi Court has jurisdiction to apply Islamic Sharia in matters of marriage, divorce and inheritance where the parties before the Court are Muslims. The qualification for appointment to the position of Cadi requires a person of high moral standing and professional qualification in Sharia Law.

#### **4.6 Laws, Policies and Strategies on Informal Justice Systems in Uganda**

Uganda uses a number of different systems to ensure that the poor and vulnerable have access to legal aid, including the staff attorney model (through the pilot Justice Centres that employ lawyers on a salaried basis), the judicare (or state brief) model and the community legal clinic model. Though the state is increasingly becoming involved in the provision of legal aid, it is fair to say that legal aid relies extensively on private initiatives, such as the services offered by the legal profession, NGOs and paralegals. In terms of funding, most of the legal aid schemes in Uganda can be used free of charge, thus placing the country closest to the charitable model.

Uganda uses the following models: Pro bono legal aid services offered by private lawyers; judicare (state brief) referrals to private lawyers; justice centres (presently operating under the judiciary), which use lawyers and paralegals to provide a range of legal aid services; cooperation agreements, where a national legal aid body (or more correctly put in the case of Uganda, state legal aid initiatives) contracts specialists to provide legal aid in a particular area of law; independent university law clinics, where law students under the supervision of

legal professionals provide a range of legal aid services; and paralegal advice offices.

Provision of legal aid in Uganda is regulated through legislation and policies. Central documents include the 1995 Constitution, which deals with legal aid in the most serious criminal cases (art. 28 (2) (e)), and the Advocates (Amendment) Act 2002, which deals with lawyers' pro bono services. The Uganda Law Council (ULC) has been established by an act of parliament to supervise and regulate legal aid in Uganda.

It is important to note that Uganda relies on the dualist system, where international treaties ratified by the state only become part of the domestic legal order after parliament adopts a bill to govern ratification.

The provision of legal assistance and representation in criminal cases relies on the state as well as the legal profession and paralegals. Art. 28 (3) of the Ugandan Constitution requires the state to ensure and pay for legal representation in cases where the defendant can be sentenced to death or life imprisonment, and the Poor Persons Defence Act further spells out the procedures and criteria of eligibility for legal aid in these cases. To facilitate legal assistance and representation in serious criminal cases, Uganda uses a *judicare* (or state brief) system, where the state calls on private lawyers and pay them a (modest) fee to provide legal aid on a case-by-case basis.

The Law Development Centre and the Justice Centres Pilot Project, legal aid initiatives adopted by the government, contract lawyers and others to provide legal aid.

Another way of ensuring legal aid in criminal cases as well as other cases concerns lawyers' obligation to provide pro bono services. Uganda has adopted legislation which lays down requirements for lawyers to offer pro bono services, including an obligation for every lawyer to use 40 hours on this task every year. This obligation, however, does not only concern legal assistance and representation, but can be fulfilled by providing a number of other legal aid services, including legal education, and in reality many lawyers appear to circumvent the rule by instead paying a penalty fee.

In part, this might be so because the statutory obligation to provide pro bono services is currently primarily being implemented through a pilot pro bono project established by the Uganda Law Society (ULS). In these clinics, lawyers and paralegals with a diploma in law are permanently employed by the ULS to provide legal aid, which includes conducting human rights outreach programmes and providing assistance and representation free of charge for the poor and vulnerable.

There are a number of other relevant initiatives concerning legal aid in Uganda, many of which are based on cooperation between the state, the legal profession, NGOs employing and organising paralegals, and other actors. For example, a Law Development Centre was established by the government, which uses lawyers as well as law post graduate students (under the guidance of experienced lawyers) to provide legal aid and assistance for members of vulnerable groups during their

training in legal practice. Also based on cooperation between different actors, the judiciary-run Justice Centres Pilot Project uses lawyers and paralegals to offer free legal advices in clinics.

There is also a Department of the Administrator General under the Ministry of Justice, where jurists are employed on a full-time basis to offer free legal services in certain areas of law, including inheritance and issues related to minors.

Other actors involved in legal education and legal awareness raising in Uganda include the state-run ULC, the UHRC and the Uganda Law Reform Commission, which uses lawyers and jurists to conduct workshops etc. in connection with the drafting of new laws. In 2008, the ULS launched a national legal aid week.

Paralegals play an important role for the various aspects of legal aid in Uganda (even if they are presently not allowed to provide legal representation). Paralegal activities in the field of legal aid are not yet regulated by law, but some strategies are currently being drafted under the auspices of the ULC. Many paralegals work with state bodies in a partnership between the Paralegal Advisory Services (PAS), which is currently hosted by the Foundation for Human Rights Initiative (FHRI) and the various institutions of the JLOS. No national regulation concerning the work of paralegals has yet been put in place, but many paralegal organisations apply codes of conduct. A number of legal aid networks, such as the Legal Aid Service Providers Network (LASP-NET) and the Uganda Paralegals Society(UPS), coordinate paralegals' legal aid work, but the level of cooperation is still limited.

The availability of legal aid in Uganda is much higher in urban centres compared to rural areas, which still suffer from an inadequate number of legal aid providers, especially lawyers.

## 5.0 THE SURVEY METHODOLOGY

### 5.1 Objective of the study

**The objective** of this base line survey was to determine the prevalence of Qadhi Courts in the districts of Butambala and Kampala, the average number and nature of cases handled, accessibility to these courts, how they link to formal courts, whether they incorporate human rights and statutory laws while adjudicating cases, barriers to access to justice - and to assess the capacity needs of those officials who preside over these courts to identify capacity gaps.

### 5.2 Definition of Terms

#### **Access to justice**

The term **Access to Justice** is not defined in international law and has been used in different ways in different contexts. Traditionally, the term refers to opening up the formal systems and structures of the law to disadvantaged groups in society. This includes removing legal and financial barriers, but also social barriers such as language, lack of knowledge of legal rights and intimidation by the law and legal institutions.

**Access to justice** has, thus, two dimensions: procedural access (having a fair hearing before a tribunal) and also substantive justice (to receive a fair and just remedy for a violation of one's rights). Further, protection of rights must continue through all stages of the legal process, from the time of reporting a crime to the police, to following the grant of a remedy by the court to make certain that it is enforced.

### **Informal Justice Systems (IJS)**

Any attempt to define IJS must acknowledge that no definition can be both very precise and sufficiently broad to encompass the range of systems and mechanisms that play a role in delivering rule of law and access to justice. IJS vary considerably, encompassing many mechanisms of differing degrees and forms of formality. Degrees of formality vary with respect to legal or normative framework, state recognition, appointment and interaction, control and accountability mechanisms, and systems of monitoring and supervision, including the maintenance of case records and the implementation of referral procedures. IJS also encompass systems that might have formal state recognition, such as alternative dispute resolution that operate at the community level, either facilitated by traditional mechanisms or facilitated by NGOs.

In some settings, the word 'informal' may carry value-laden assessments, according to which a system may be held in lower esteem because of the 'informal' label. The study uses the word with no such value judgments. It is used rather than the term 'non-state' justice systems, as there are many forms of IJS that are tolerated, partially state-linked or recognized along the formal-informal continuum. For example, customary courts or local courts are categorized as IJS, but are regulated under specific legislation, have a state-determined procedure for appointments, and may be attached to the judiciary.

This survey distinguishes among informal justice mechanisms anchored in Qadhi Courts, with the mosque as the 'first court of instance' administered by Religious authorities in Uganda, with the Imam as the first administrator.

### **Imam**

In Uganda's context, Imam is the person who leads the five daily prayers in a mosque and is responsible for the teaching of basic Islamic tenets to the followers. Invariably a male adult, an Imam is not the head/owner of the Mosque but is appointed by a Mosque committee, but his spiritual role sets him above all in matters related to the interpretation of Islamic injunctions.

### **Sheikh**

A sheikh, in Uganda's context is a learned person in Islamic studies education, will in most cases be a graduate of an Islamic university and with a good mastery of the Quran and Arabic language. In earlier years (prior to 1980s) Sheikhs without University education were common.

### **Qadhi**

Muslim judge who renders decisions according to the Shari'ah, the canon law of Islam. The Qadhi hears only religious cases, such as those involving inheritance, pious bequests, marriage, and divorce, though theoretically his jurisdiction extends to civil and criminal matters. The second caliph, 'Umar ibn al-Khattab, was the first to appoint a Qadhi to eliminate the necessity of his personally judging every dispute that arose in the community. In the Middle Ages the *Qadhi* was also a notary and cared for orphans or assigned them to guardians; he also saw to the execution of sentence in civil and criminal cases. In the 19<sup>th</sup> and early 20<sup>th</sup> century, with the development of the new civil courts, the *Qadhi's* function was limited to the deciding of questions involving family and religious law, and occasionally inheritance.

In Uganda the Qadhi is appointed by the Uganda Muslim Supreme Council (UMSC) for every Muslim district and is called a District Qadhi. In the early years of the Uganda Muslim Supreme Council, the Chief Qadhi was the head of the Muslim community. The title was later abolished and replaced with Mufti. Today the highest Qadhi is not a "Chief Qadhi" but the Director of the Sharia Department at the UMSC.

### **Twale**

In Uganda's context Twale refers to sub county level. Mosques at village and parish levels are organized under the Twale, headed by a Twale Sheik. The Twale sheikh reports to the District Qadhi.

### **Juma Mosque**

This is a ranking term. A Juma mosque is authorized to conduct the Friday Congregational Prayer, Juma. Not every mosque has this authority.

### **Jama Mosque**

A mosque that is authorized to conduct the five daily prayers only, mostly situated in a rural area.

### **Taraweh Mosque**

A mosque that is authorized to conduct the special recommended (not obligatory) evening prayer in the holy month of Ramadhan. Most Jama mosques are also Taraweh mosques, but some are not, the currency to the classification **Jama-Taraweh Mosque**.

### **Shariah (Islamic Law)**

Sharia is the body of Islamic law. The term means "way" or "path"; it is the legal framework within which the public and some private aspects of life are regulated for those living in a legal system based on Islam.

Sharia deals with all aspects of day-to-day life, including politics, economics, banking, business law, contract law, sexuality, and social issues.

There is not a strictly codified uniform set of laws that can be called Sharia. It is more like a system of several laws, based on the Qur'an, Hadith and centuries of debate, interpretation and precedent.

The Qur'an is the principal source of Islamic law, the Sharia. It contains the rules by which the Muslim world is governed (or should govern itself) and forms the basis for relations between man and God, between individuals, whether Muslim or non-Muslim, as well as between man and things which are part of creation. The Sharia contains the rules by which a Muslim society is organized and governed, and it provides the means to resolve conflicts among individuals and between the individual and the state.

There is no dispute among Muslims that the Qur'an is the basis of the Sharia and that its specific provisions are to be scrupulously observed. The Hadith and Sunna are complementary sources to the Qur'an and consist of the sayings of the Prophet and accounts of his deeds. The Sunna helps to explain the Qur'an, but it may not be interpreted or applied in any way which is inconsistent with the Qur'an.

### **Hadith**

Sayings of the holy prophet Muhammad (peace be upon him)

### **Sunna**

Traditions and practice of prophet Muhammad

### **Islamic School of Thought (also known as Madhab)**

Often translated as "way of thinking, persuasion", in general terms it is "a method", a method of interpretation of religious material in the three major areas: belief, religious practice and law.

There are four major schools of thought, namely Hanafi, Maliki, Shafi'i, Hanbali, named after their proponent scholars Abu Hanifa, Malik, Shafi, and Hanbal respectively)

Because most Ugandans invariably travel abroad to seek higher Islamic education, on graduation they return with the influences of the countries where they studied. This makes their interpretation of various Islamic teachings varied. These schools of thought follow a geographical distribution geographical distribution is as follows:

### **Hanafi**

Both Moghul and Ottoman empires were Hanafi, that means their former subjects would normally be Hanafi: Turkey, Central Asia, the Balkans, Iraq, Afghanistan, Pakistan, India, Bangladesh.

### **Maliki**

Maliki school is followed in Algeria, Tunis, Morocco, Mauritania, Libya, Kuwait, Bahrain, Dubai and Abu Dhabi.

There are Shafi'is in Egypt, Sudan, Ethiopia, Somali and North Yemen, but the main concentration of the Shafi madhab is in South East Asia: Indonesia, Malaysia, and the Muslim minorities of mainland SEA and the Philippines are overwhelmingly Shafi.

**Hanbalis** are concentrated in Saudi Arabia, Qatar, North East of Oman and the rest of the Arab Emirates.

Syria, Jordan, and Palestine have **Hanafi** laws since the Ottoman sultan Selim the Grim (1512-1520) imposed Hanafi judicial system on all its subjects, but because he did not insist on any changes in the matters of worship, they mostly retain Shafi'i rites.

Egypt is unique in traditionally representing, maintaining and accommodating all the four schools. Each Mamluk Madrasa in Egypt has four sections to accommodate students of each school. Until Muhammad Ali, there were four courts as well, but he had limited it to Hanafi legislation.

Imam Ash-Shafi'i (d. 204/820 in Egypt) was the first one to systematise Islamic Law. Originally, he studied both in Iraq and in Medina, but disagreed with the methodology of those older schools, in favour of the Traditionists, but did not fully accept their ideas either.

In his tractate, the "Risala", balancing the two trends, he laid down the sources of Law, Usul al-Fiqh,

He fixed them (in order of priority) to be:

1. Quran
2. Sunna of the Prophet, based on: Hadith from the Prophet Hadith from the Companions of the Prophet
3. Ijma (consensus of the Umma - Muslim community)
4. Ra'y - reasoning. Primarily kiyas (reasoning by analogy), but also istihsan.

His system had become the basis of Islamic jurisprudence, and it was subsequently used by all the schools.

Ahmad Ibn Hanbal (d. 241/855), founder of the latest of the four madhabs had followed Shafi'i method with ever greater emphasis on the ahadith (plural of hadith), avoiding reasoning as far as possible, but not completely denying it.

Thus, the difference between the schools is primarily in the various weight given to those four components, and in some original decisions remaining from the very beginnings of these schools, and belonging to its first masters.

"Notwithstanding their divergent doctrinal roots, the orthodox schools of law share a common legal theory which asserted itself in the 3rd/9th century, and which accepted Shafi'is (and the Traditionists') principle of the overriding authority of the traditions from the Prophet as the only evidence of sunna but subordinated its

practical application to the consensus of the scholars." (*Encyclopaedia of Islam, article "Fikh"*)

### **5.3 Survey methodology /Methodological approach**

The baseline survey on access to justice in Qadhi courts was based on both a quantitative and qualitative approach. The combination of the two approaches made it possible to measure the extent/coverage of Qadhi Courts and to determine their accessibility, capacity, inclusivity and relationship with formal justice structures. The survey was carried out in two districts, Kampala and Butambala.

66 users and 31 Qadhi justice centre administrators took part in the survey. 20 focus group discussions of ten participants each were held, thus reaching 200 respondents in the two districts. Interviews with 14 key informants were also carried out (see appendix).

#### **5.3.1 Sampling Technique**

A purposive sampling technique was employed to capture responses from Qadhi court users and administrators. The key informants were also purposively selected from the police family division, officials from formal justices systems, senior religious leaders from Old Kampala and Kibuli mosques, Jumuiatul Daawah As-salafiya, Uganda Muslim Tabligh Community, (UMTC) parliament and academia.

#### **5.3.2 Document Review**

The research team sourced and reviewed various documents related to informal justice system in Uganda in the national, regional and international contexts. The key literature was extracted from the following documentations: research reports, concept papers, issues papers, reviews related to access to justice in Uganda, and in regional and international contexts.

### **5.4 Quantitative approach: Sampling plan**

#### **5.4.1 Size and distribution of the sample**

Taking into account the timing of the survey and the budget available, the size of the representative sample is twenty mosques, ten in either district.

The interviews were purposive and responses were obtained from Qadhi justice court users and administrators. The interviews were conducted with the use of structured questionnaires and were one-on-one interviews to contribute to quantitative data.

This survey adhered to traditional sampling techniques. This required the preparation of a survey plan explaining all the sample selection steps and the procedures used to arrive at an estimate of the surveyed population.

#### **5.4.2 Stratification**

The sample of the quantitative survey was stratified at two levels - users and administrators classified into two groups, namely: Butambala district and Kampala District.

### **5.5 Recruitment of Research assistants**

In order to carry out data collection, processing and exploitation of the collected data, researchers and a data input agent were recruited, taking their experience and skills in data collection and input, and especially their total availability for the survey.

### **5.6 Training and orientation of Research assistants**

Research Assistants were then familiarized with the instruments by the lead researcher, first as part of primary instrument testing. They further underwent training on the questionnaire and interview guide as well as the data collection methodology. The training session included a session on the code of ethics and behaviour for researchers.

Further, in order to ensure the feasibility of the survey, the research team carried out a pilot survey for the purpose of testing the whole process. This pilot survey took place from September 1 – 2, 2012 and covered 5 mosques in the neighbourhood of MCJL offices in Kampala, from sectors that were not involved in the sample.

The test enabled us to demonstrate the respondents' positive reception of the exercise and provided us with an opportunity, to correct some deficiencies found in the draft questionnaire. We were also able to enhance the researchers' mastery of the questionnaire.

In particular, it was established before roll out that:

- Respondents were willing to provide their names and other personal details, after the researchers had had prayer with them, at a mosque, not before that.
- Women respondents were more free with fellow women researchers.
- A high proportion of women (than men) needed the researcher to translate and interpret some questions.
- Court administrators regarded themselves more resolvers of conflict (mediators) than adjudicators.
- Qadhi court users tended to look at the imams not as judges but as advisors, counselors and mediators.
- Muslims regard the Qadhi Courts, which are based at mosques as the informal Qadhi courts pending their operationalisation by law

A sensitization of the subjects of the survey took place as the interviews progressed; the sensitization encouraged the perception of the survey as intended to increase access to justice in the Muslim community and not to hinder or undermine it. There was the lingering perception that the government is not interested in operationalising the Qadhi courts or to recognize the Qadhi justice system.

The data collection took place from September 3<sup>rd</sup> to October 3<sup>rd</sup> 2012. The data input and processing were done using CPro and SPSS statistical software.

Finally, tabulation and analysis plans were prepared following the adopted variables and the expected indicators.

## **5.7 Survey instrument**

The survey instrument was designed and tested on MCJL staff, research assistants and ten other people randomly selected in the neighbourhood of the MCJL offices. After the test, some adjustments to the instrument were made before the final instrument was administered.

## **5.8 Qualitative approach**

**5.8.1 An interview guide** based on the participatory approach was prepared to include the themes and sub-themes to be developed during discussions with the participants so that their attitudes, opinions, and perceptions on the Qadhi justice system phenomenon could be recorded.

### **5.8.2 The Focus Group Discussions were set up as follows**

Members of each mosque committee were invited, ensuring a balanced number of men women and youth. Another cross cutting focus group was created drawn from a cluster of mosques targeting women and youth who are not officials of a mosque committee. Using applicable PRA techniques, and with aid of FGD checklist, FGDs were conducted among specific groups of Qadhi justice courts. The purpose was to solicit common responses on perceptions of specific category of Qadhi court users.

**5.8.3 Key Informants Interviews (KII):** These were specifically organized and conducted with those respondents with adequate knowledge about the Qadhi justice system. During the field missions, in-depth interviews were held with representatives of selected stakeholder categories i.e. officials from formal courts, family divisions police, senior religious leaders, among others.

### **5.8.4 Semi-structured interviews with key informants and formal court officials**

The semi-structured interviews, using an interview guide were conducted among the local authorities, a law maker, the police, the heads of formal legal officers. Appointments with key informants were arranged, the researchers traveled to hold interviews. In a few cases, on the request of the respondents, interviews were held on telephone.

### 5.8.5 Observation

Direct observations of Qadhi justice court users and administrators were carried out to assess the state of their livelihood opportunities and vulnerabilities and skill levels.

### 5.9 Process Reporting

A process report form was designed for research assistants who filed individual report to record progress, challenges faced and other feedback from the field. The researchers met four times during the survey to consider the process reports.

## 6.0 DISCUSSION OF THE RESULTS

### Users' responses.

There were 66 Qadhi court users interviewed.

More of Qadhi court users were from Butambala district (52%) as shown in the table below. Also, all the users' ideas about Islamic schools of thought belong to Shafii. Otherwise other users did not understand what is meant by Islamic School of thought. See tables below:

**Table 1 Users interviewed per district**

District	Frequency	Percent
Butambala	34	51.5
Kampala	32	48.5
<b>Total</b>	66	100.0

**Table 2 Islamic School of Thought of Qadhi Court (MIC) users**

School	Frequency	Percent
Missing	31	47.0
Shafii	35	53.0

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School	Frequency	Percent
Missing	31	47.0
Shafii	35	53.0
<b>Total</b>	<b>66</b>	<b>100.0</b>

**Table 3 Sex of respondent by District**

		District		Total
		Butambala	Kampala	
Sex of respondent	Female	19	17	36
		52.8%	47.2%	100.0%
		55.9%	53.1%	54.5%
	Male	15	15	30
		50.0%	50.0%	100.0%
		44.1%	46.9%	45.5%
Total		34	32	66
		51.5%	48.5%	100.0%
		100.0%	100.0%	100.0%

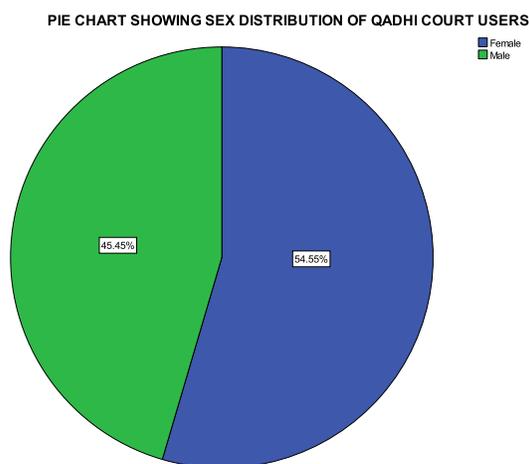
Out of 66 users, 34 are from Butambala and 32 from Kampala. There were more female respondents (users case) from both districts, i.e. 56% and 53% from Butambala and Kampala respectively. This is shown above.

From the Table and chart below, most of the Qadhi court users were female (55%).

**Table 4 Sex of respondent**

Sex	Frequency	Percent
Female	36	54.5
Male	30	45.5
<b>Total</b>	<b>66</b>	<b>100.0</b>

**Figure 1 Sex of Qadhi Court user**



**Table 6 (i) Sex of Qadhi Court (MIC) users by Highest education level**

		Highest education level					
		Missing	A level	Degree	Diploma	No education	O level
Sex of respondent	Female	2	2	0	0	3	12
		5.6%	5.6%	.0%	.0%	8.3%	33.3%
		100.0%	100.0%	.0%	.0%	100.0%	66.7%

Male	0	0	7	2	0	6
	.0%	.0%	23.3%	6.7%	.0%	20.0%
	.0%	.0%	100.0%	100.0%	.0%	33.3%
Total	2	2	7	2	3	18
	3.0%	3.0%	10.6%	3.0%	4.5%	27.3%
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

**Table 6 (ii) Sex of Qadhi Court users by Highest education level**

	Highest education level		Total	
	Primary	Technical/Vocation/Agric training		
<b>Sex of respondent</b>	<b>Female</b>	15	2	36
		41.7%	5.6%	100.0%
		62.5%	25.0%	54.5%
	<b>Male</b>	9	6	30
		30.0%	20.0%	100.0%
		37.5%	75.0%	45.5%
<b>Total</b>		24	8	66
		36.4%	12.1%	100.0%
		100.0%	100.0%	100.0%

Out of 66 Qadhi court users, no female had either a degree or diploma and no male had never attained some education. Most of the Qadhi court users, male and female have attained primary education. However, 7 male and 2 male have degree and diploma respectively as shown in the table above.

**Table 7 Marital status of Qadhi Court users**

<b>Marital status</b>	<b>Frequency</b>	<b>Percent</b>
Missing	2	3.0
Married	41	62.1
Separated	1	1.5
Single	22	33.3
<b>Total</b>	<b>66</b>	<b>100.0</b>

From the table above, most of the Qadhi court users are married (62%). This is probably because the most cases handled were of a domestic nature. Islamic cultural practices encourage marriage too.

**Table 8 (i)****Sex of Qadhi Court users by main economic activity/source of income**

			<b>Main economic activity/Source of income</b>			
				Boda-boda	Builder	Business
Sex of respondent	<b>Female</b>	Count	1	0	2	10
		Row percent	2.8%	.0%	5.6%	27.8%
		Column percent	11.1%	.0%	50.0%	90.9%
	<b>Male</b>	Count	8	1	2	1
		Row percent	26.7%	3.3%	6.7%	3.3%
		Column percent	88.9%	100.0%	50.0%	9.1%
<b>Total</b>	Count	9	1	4	11	

Row percent	13.6%	1.5%	6.1%	16.7%
Column percent	100.0%	100.0%	100.0%	100.0%

The highest proportion of Qadhi court users (male and female) have wages and salaries as their main source of income, majority of the being teachers. The female are also more engaged in businesses especially salons and restaurants as shown above and below.

**Table 8 (ii) cont'd**

**Sex of Qadhi Court users by main economic activity/source of income**

			Main economic activity/Source of income		
			Crop farming	House wife	Mosque Cleaner
Sex of respondent	<b>Female</b>	Count	3	1	0
		Row percent	8.3%	2.8%	.0%
		Column percent	33.3%	50.0%	.0%
	<b>Male</b>	Count	6	1	1
		Row percent	20.0%	3.3%	3.3%
		Column percent	66.7%	50.0%	100.0%
<b>Total</b>	Count	9	2	1	
	Row percent	13.6%	3.0%	1.5%	
	Column percent	100.0%	100.0%	100.0%	
			Main economic activity/Source of income		

			Mosque cleaner	Petty trading	Poultry framing
Sex of respondent	Female	Count	0	3	0
		Row percent	.0%	8.3%	.0%
		Column percent	.0%	100.0%	.0%
	Male	Count	1	0	1
		Row percent	3.3%	.0%	3.3%
		Column percent	100.0%	.0%	100.0%
Total	Count	1	3	1	
	Row percent	1.5%	4.5%	1.5%	
	Column percent	100.0%	100.0%	100.0%	

**Table 8 (iii) cont'd****Sex of Qadhi Court users by main economic activity/source of income**

			Main economic activity/Source of income			Total
			Student	Wages and salaries	Welding	
Sex of respondent	Female	Count	1	14	1	36
		Row percent	2.8%	38.9%	2.8%	100.0%
		Column percent	100.0%	63.6%	100.0%	54.5%
	Male	Count	0	8	0	30
		Row percent	.0%	26.7%	.0%	100.0%

	Column percent	.0%	36.4%	.0%	45.5%
Total	Count	1	22	1	66
	Row percent	1.5%	33.3%	1.5%	100.0%
	Column percent	100.0%	100.0%	100.0%	100.0%

According to the table and graph below, most of the respondents (83.3%) are willing to use the Qadhi Court in solving disputes.

**Table 9 Respondent would go to Qadhi Court in case of dispute**

Response	Frequency	Percent
No	8	12.1
Not sure	3	4.5
Yes	55	83.3
<b>Total</b>	66	100.0

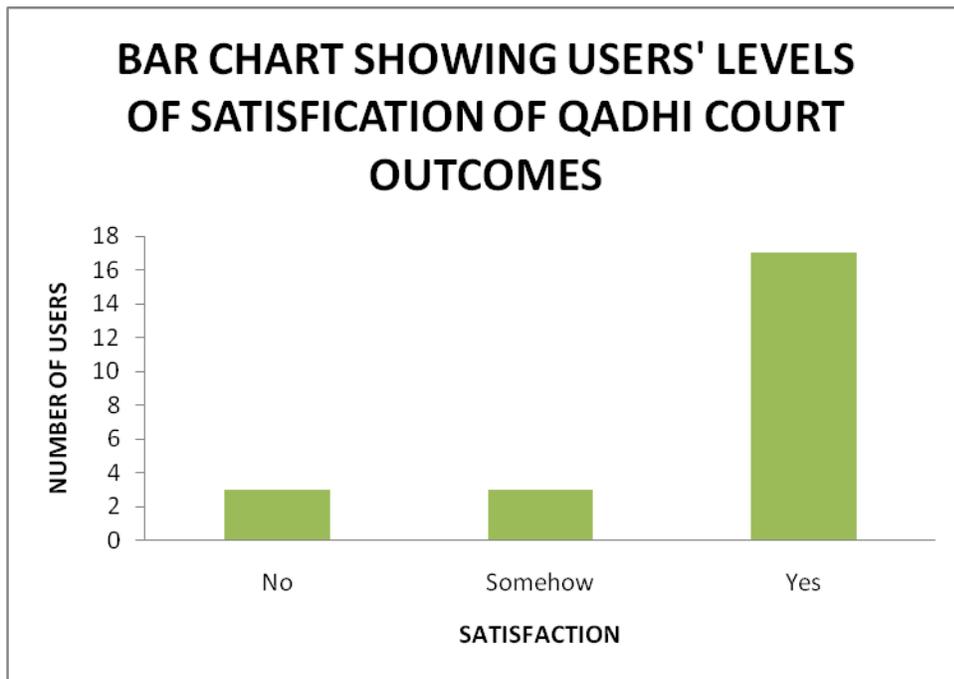
**Table 10 User satisfaction with outcome of case in Qadhi Court**

Satisfaction	Frequency	Percentage
<b>No</b>	3	13%
Somehow	3	13%
Yes	17	74%

<b>Grand Total</b>	<b>23</b>	100%
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The table and figure below illustrates that 4 out of 6 of both dissatisfied and somehow satisfied users do appeal (67%).

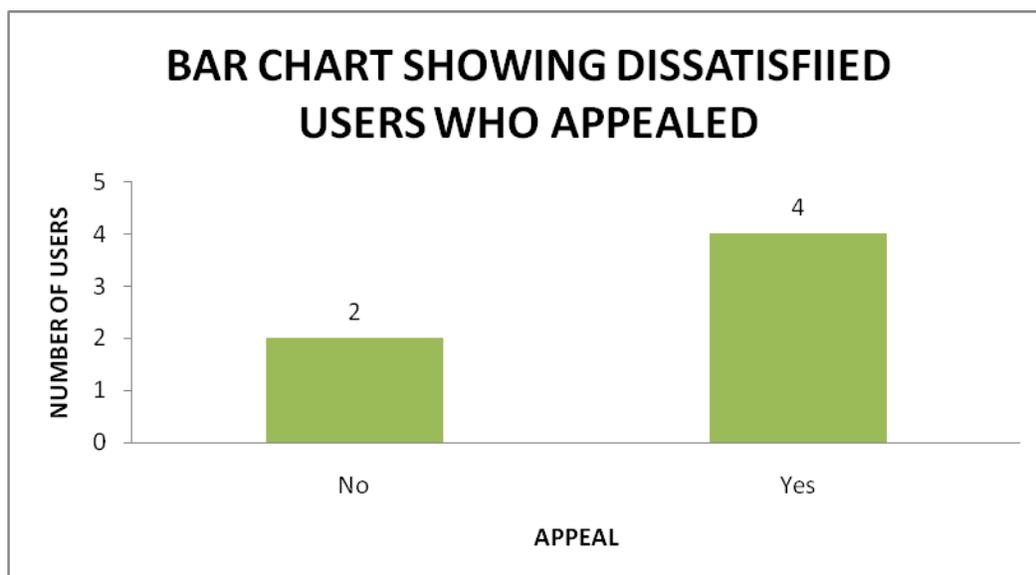
**Figure 2 Levels of satisfaction by Qadhi Court user**



**Table 11 Appeal by user who is dissatisfied and somehow satisfied**

Appeal	Frequency	Percentage
No	2	33%
Yes	4	67%
<b>Grand Total</b>	<b>6</b>	<b>100%</b>

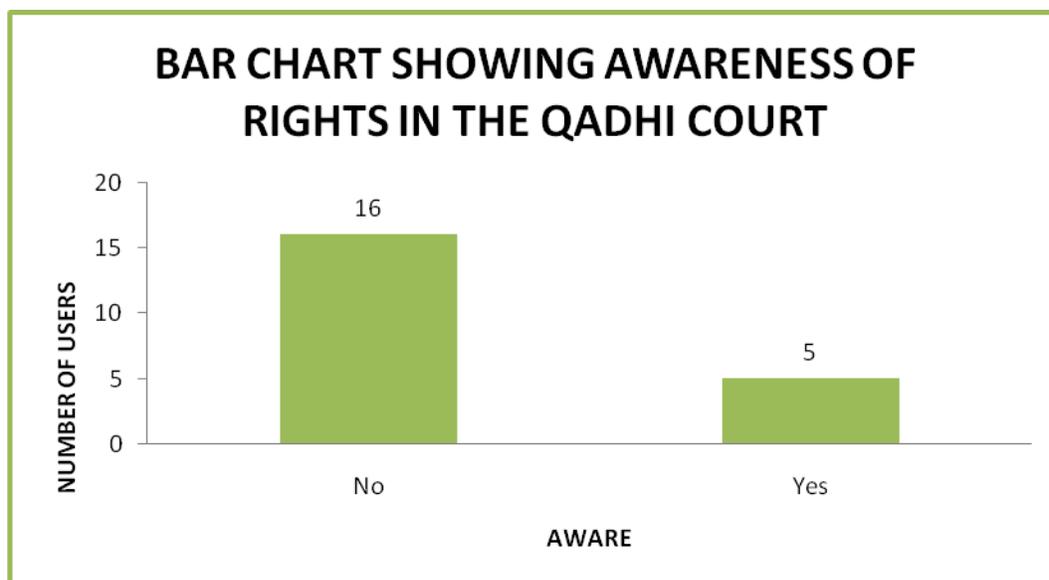
**Figure 3 Appeal by user who is dissatisfied and somehow satisfied**



**Table 12 : Awareness of user’s rights of in Qadhi Court**

Aware	Frequency	Percentages
No	16	76%
Yes	5	24%
<b>Grand Total</b>	<b>21</b>	<b>100%</b>

**Figure 4 Awareness of user’s rights in Qadhi Court jurisdiction**

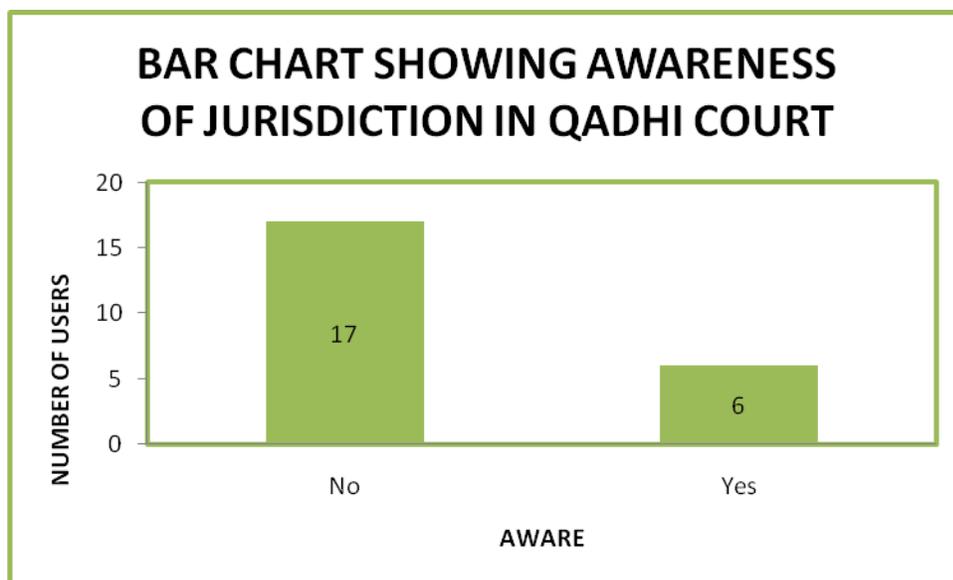


The table and graph above show that majority (16 out of 21) of the users are not aware of their rights while in the Qadhi Court (76%). They are at the absolute mercy of the court administrators, they cannot raise any rights issue nor demand that their rights be observed.

**Table 13 Awareness of jurisdiction of Qadhi Court by user**

Aware	Frequency	Percentages
No	17	74%
Yes	6	26%
<b>Grand Total</b>	<b>23</b>	<b>100%</b>

**Figure 5 Awareness of jurisdiction of Qadhi Court by user**

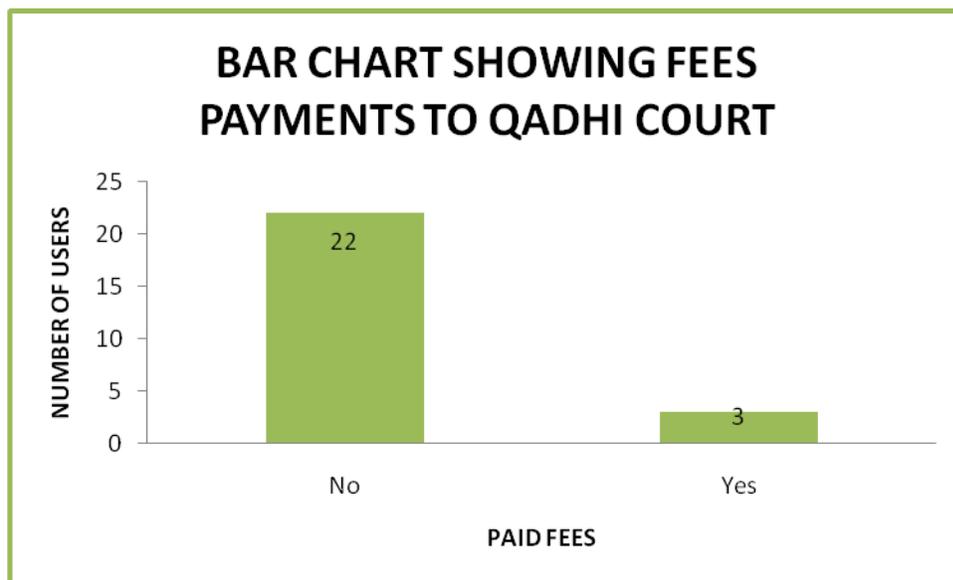


The table and graph above show that majority; 17 out of 23 of the Qadhi court users are not aware of the Jurisdiction of the Qadhi court (74%). They believe that they can handle any nature of case brought before them, provided it is of a domestic nature, including defilement, if it happens in a family.

**Table 14 User paid any form of fees at the Qadhi Court**

Row Labels		Percentage
No	22	88%
Yes	3	12%
<b>Grand Total</b>	<b>25</b>	<b>100%</b>

**Figure 6 User paid any form of fees at the Qadhi Court**

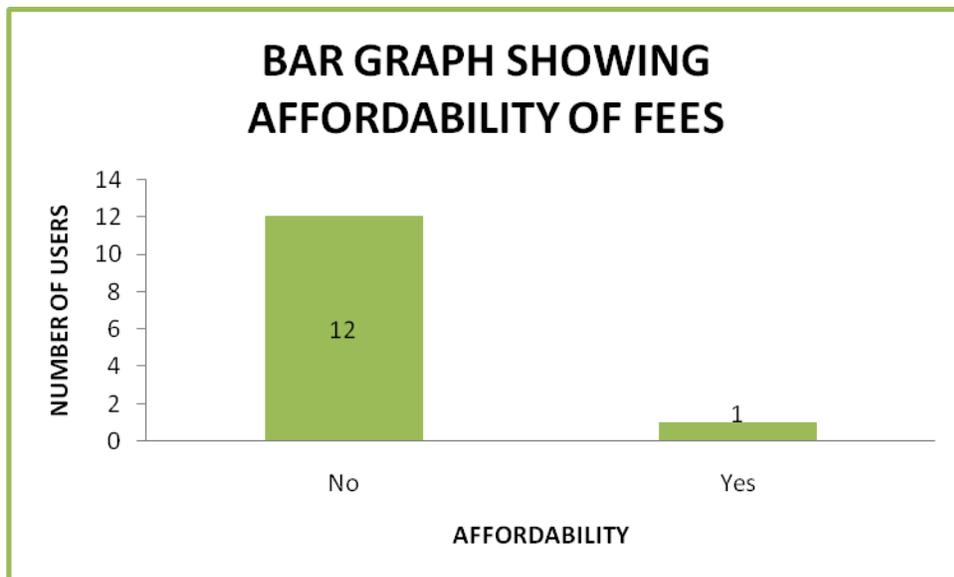


The table and graph above show that majority of the Qadhi court users do not pay for Qadhi court services (88%). However a small percentage reported voluntarily paying a small fee for the transport refund to the administrators and for making telephone calls to contact key witnesses in some instances. Others report a token that they gave to the administrators after conclusion of a case.

**Table 15 Affordability of fee/payment by Qadhi Court user**

Affordability	Frequency	Percentage
No	12	92%
Yes	1	8%
<b>Grand Total</b>	<b>13</b>	<b>100%</b>

**Figure 7 Affordability of fee/payment by Qadhi Court user**

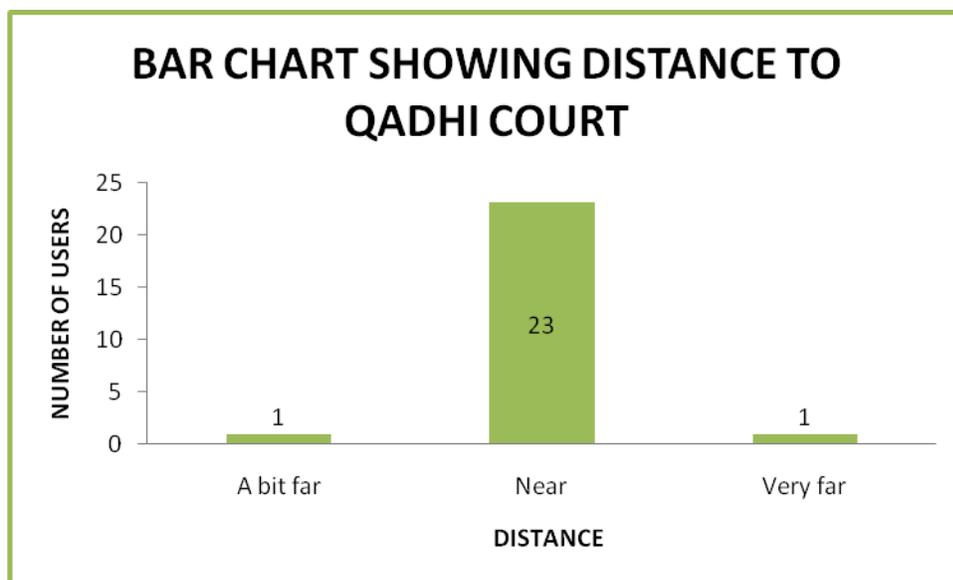


The table and graph above show that majority (12 out of 1) of the Qadhi court users cannot afford court fees (92%).

**Table 16 Distance of user to Qadhi Court**

Distance	Frequency	Percentage
A bit far	1	4%
Near	23	92%
Very far	1	4%
<b>Grand Total</b>	<b>25</b>	<b>100%</b>

**Figure 8 Distance of user to Qadhi Court**



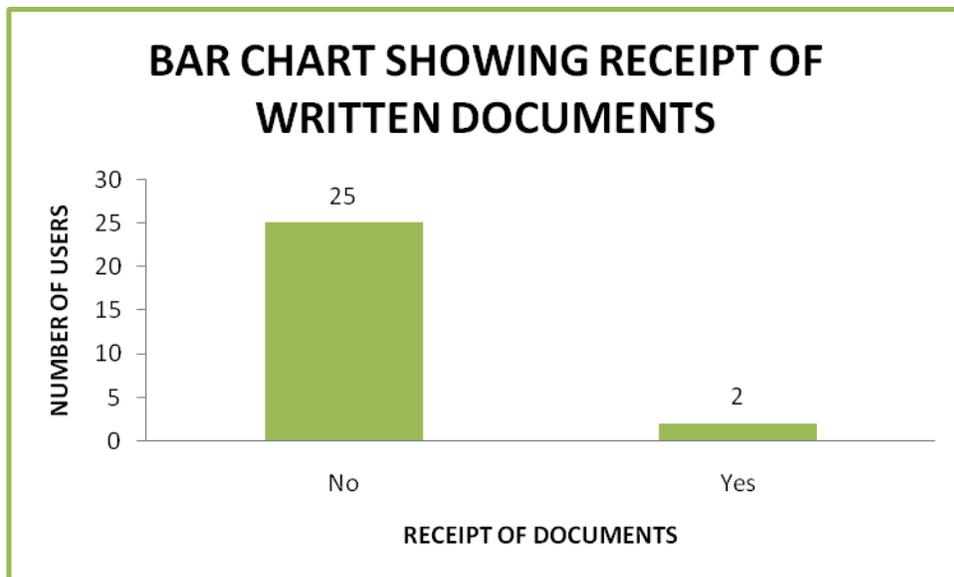
The table and graph above illustrate that the majority of the Qadhi court users (23 out of 25) reside near to the Qadhi court (92%).

**Table 17 User received a written document from the Qadhi Court**

Receipt of documents	Frequency	Percentages
No	25	93%
Yes	2	7%
<b>Grand Total</b>	<b>27</b>	<b>100%</b>

The table and graph above illustrate that the majority 25 out of 27 users (93%) of the Qadhi court users do not receive written documents from the Courts (93%).

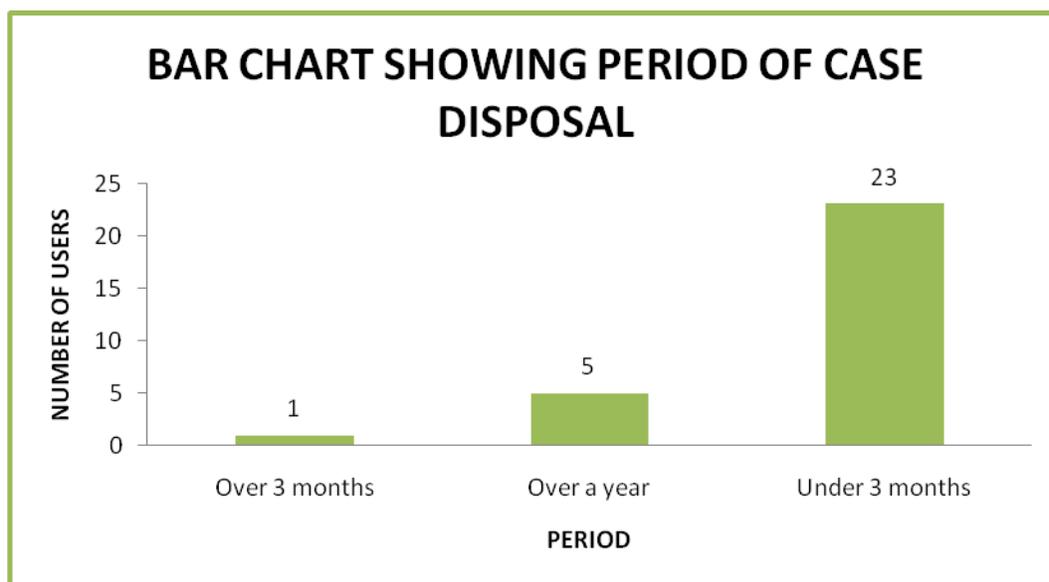
**Figure 9 User received a written document from the Qadhi Court**



**Table 18 Period taken to dispose of case in Qadhi Court**

Period	Frequency	Percentage
Over 3 months	1	3%
Over a year	5	17%
Under 3 months	23	79%
<b>Grand Total</b>	<b>29</b>	<b>100%</b>

**Figure 10** Period taken to dispose of case in Qadhi Court



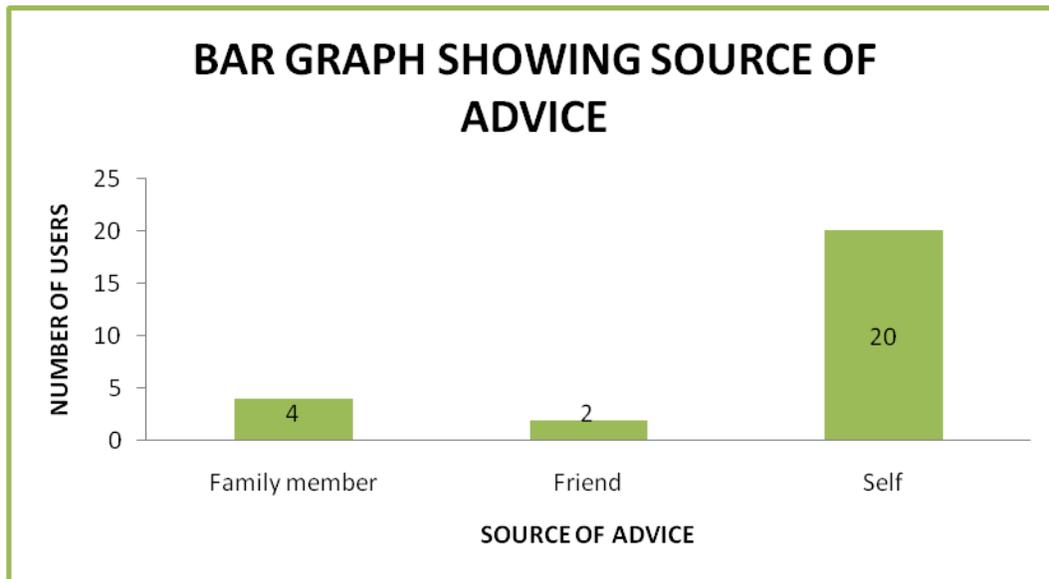
The table and graph above show that majority of the cases are disposed of within less than 3 months (79%).

As the table below illustrates, the majority of the users (20 out of 26) decision to seek justice in Qadhi Court was theirs

**Table 19** Source of advice to user to seek justice in Qadhi Court

Source of advice	Frequency	Percentages
Family member	4	15%
Friend	2	8%
Self	20	77%
<b>Grand Total</b>	<b>26</b>	<b>100%</b>

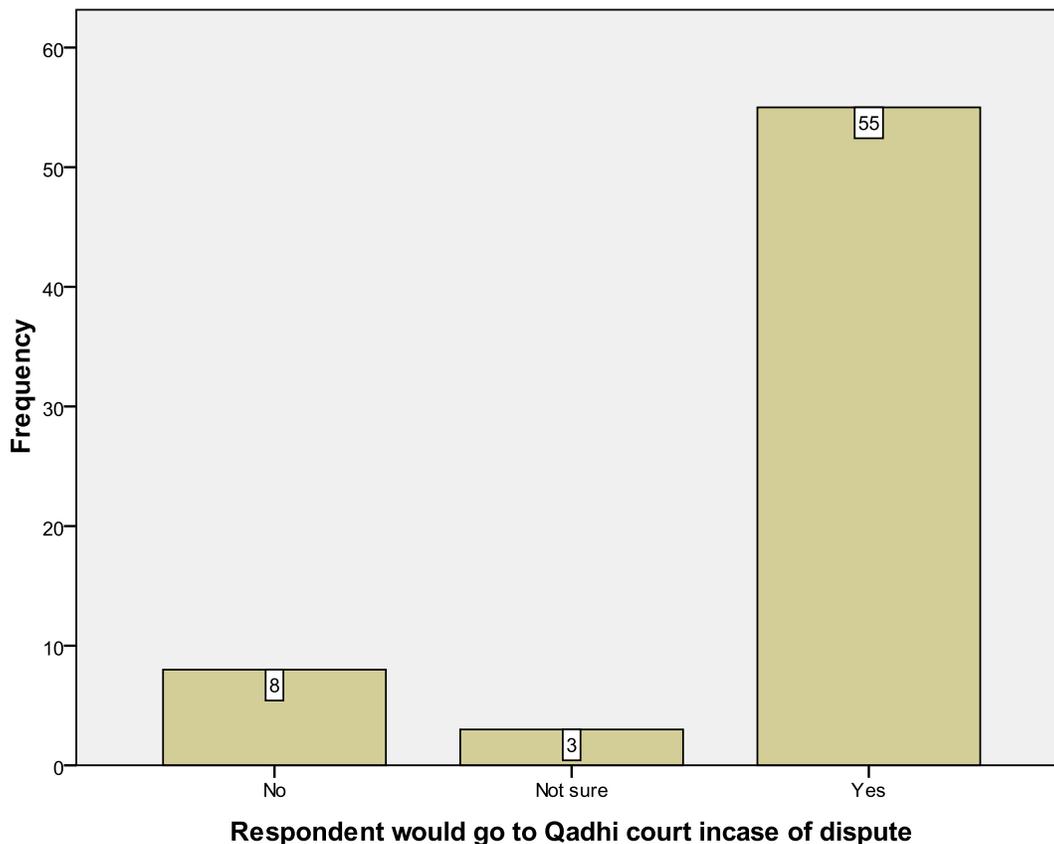
**Figure 11 Source of advice to user to seek justice in Qadhi Court**



The table and graph above show that majority of the Qadhi court users went to the Qadhi courts out of their own choice (77%).

**Figure 12 Willingness of user to use Qadhi Court**

**BAR GRAPH SHOWING USERS WHO ARE WILLING TO USE THE QADHI COURT**



**Table 20 Use of Qadhi Court to solve disputes**

Response	Frequency	Percent
Missing	1	1.5
No	39	59.1
Yes	26	39.4

**Table 20 Use of Qadhi Court to solve disputes**

Response	Frequency	Percent
Missing	1	1.5
No	39	59.1
Yes	26	39.4
Total	66	100.0

With reference to the table and graph above, most of the respondents are not actually using the Qadhi court (59%) to due various reasons and only one respondent was ignorant about the use of Qadhi Court.

The highest proportion of respondents do not practically use the Qadhi court and thus report no disputes. However, the commonest nature of cases reported by practitioners of the Qadhi court are domestic related cases (17%) followed by business related cases (13%) as shown in the table below:

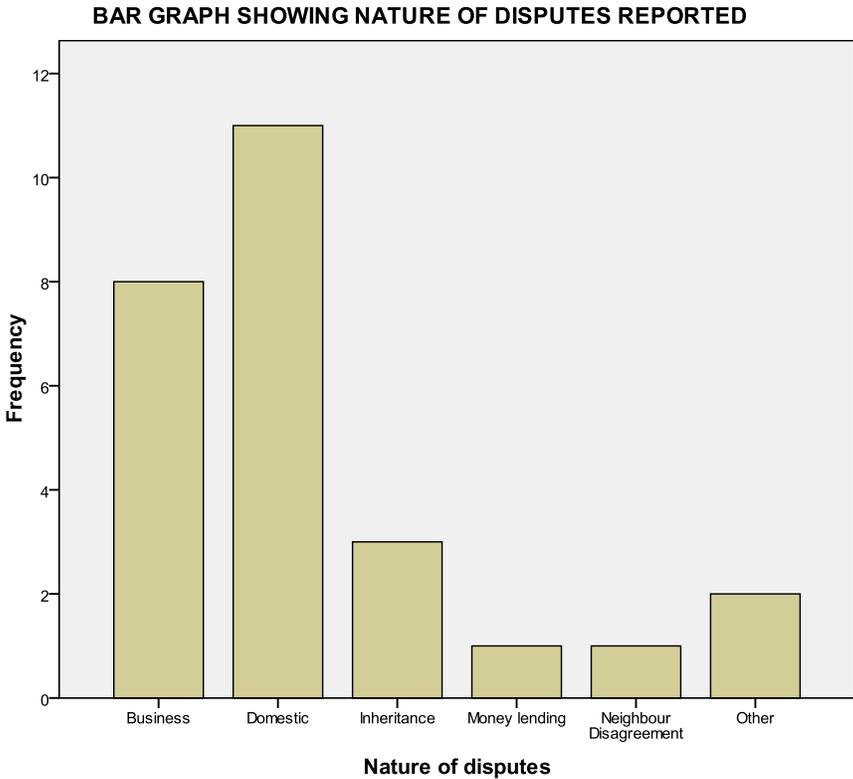
**Table 21 Nature of disputes**

Disputes	Frequency	Percent
Not using	40	60.6
Business	8	12.1
Domestic	11	16.7
Inheritance	3	4.5
Money lending	1	1.5
Neighbor Disagreement	1	1.5
Other	2	3.0

**Table 21 Nature of disputes**

<b>Disputes</b>	<b>Frequency</b>	<b>Percent</b>
Not using	40	60.6
Business	8	12.1
Domestic	11	16.7
Inheritance	3	4.5
Money lending	1	1.5
Neighbor Disagreement	1	1.5
Other	2	3.0
<b>Total</b>	66	100.0

**Figure 13 Nature of disputes**



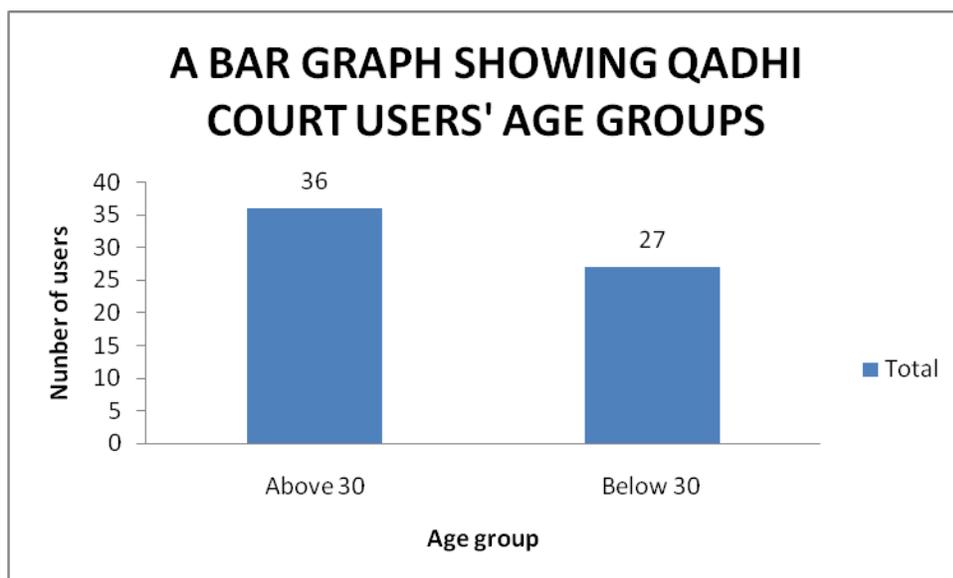
**Table 22 Nature of cases received by Qadhi court administrators**

<b>Cases</b>	<b>Frequency</b>	<b>Percentage</b>
Disagreements	1	3%
Domestic Violence	4	11%
Family related	1	3%
Inheritance	8	21%
Marriage	1	3%
Marriage/Family	1	3%
Physical Abuse	11	29%
Property	9	24%
Psychological Abuse	2	5%
<b>Grand Total</b>	<b>38</b>	<b>100%</b>

The most common case received is physical abuse by men against women in marriage (29%) followed by property disputes after the death of head of family with 24%.

Most of the Qadhi court users above 30 years (57%) as shown below

**Figure 14 Age group of Qadhi Court user**



**Table 14 Age of Qadhi court user**

Age group	Frequency	Percentages
Above 30	36	57%
Below 30	27	43%
<b>Grand Total</b>	<b>63</b>	<b>100%</b>

**Qadhi Court Administrators' responses and 31 administrators were interviewed**

**Table 15 Islamic School of thought of court administrator**

School	Frequency	Percent
Hanafi	11	35.5
Hanbali	1	3.2
Maliki	1	3.2
Shafii	18	58.1

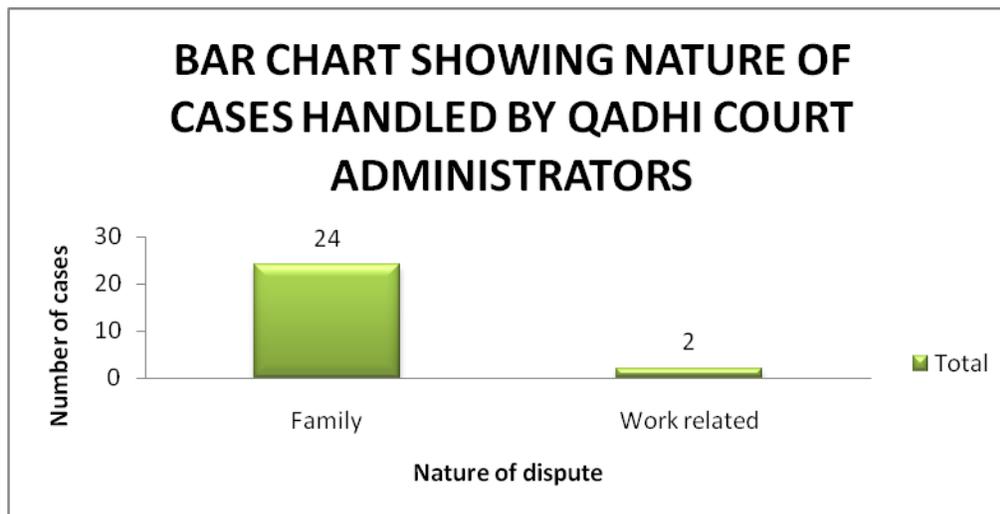
Total	31	100.0
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Majority of the Qadhi court administrators belong to Shafii Islamic school of thought as shown above.

**Table 16 Nature of cases handled by court administrators**

Nature of dispute	Frequency	Percentage
<b>Family</b>	24	92%
<b>Work related</b>	2	8%
<b>Grand Total</b>	<b>26</b>	100%

**Figure 5**

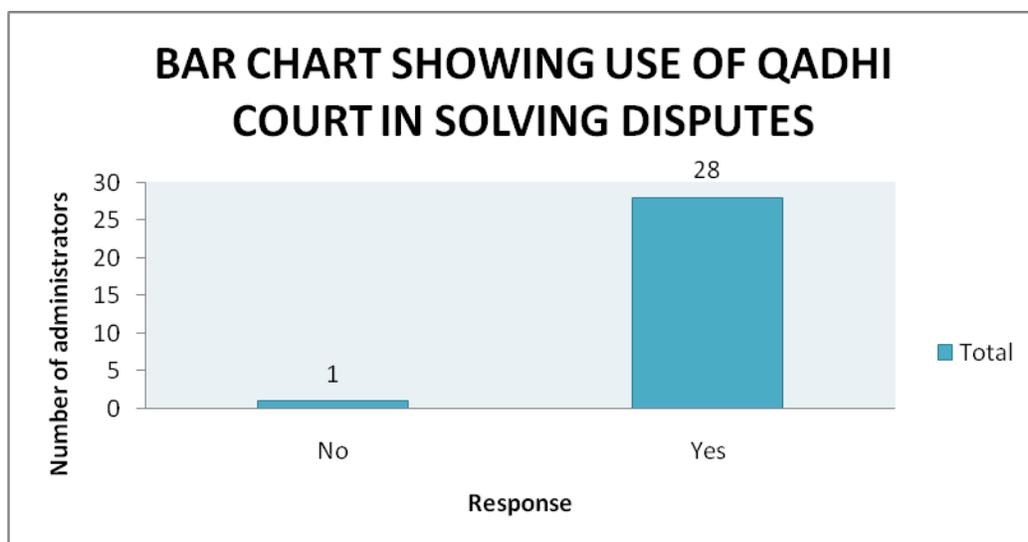


From the above table and chart, most cases presented to the Qadhi court administrators are family related (92%)

**Table 17 Use of Qadhi court by administrators to solve disputes**

Response	Frequency	Percentage
No	1	3%
Yes	28	97%
<b>Grand Total</b>	<b>29</b>	<b>100%</b>

**Figure 6**

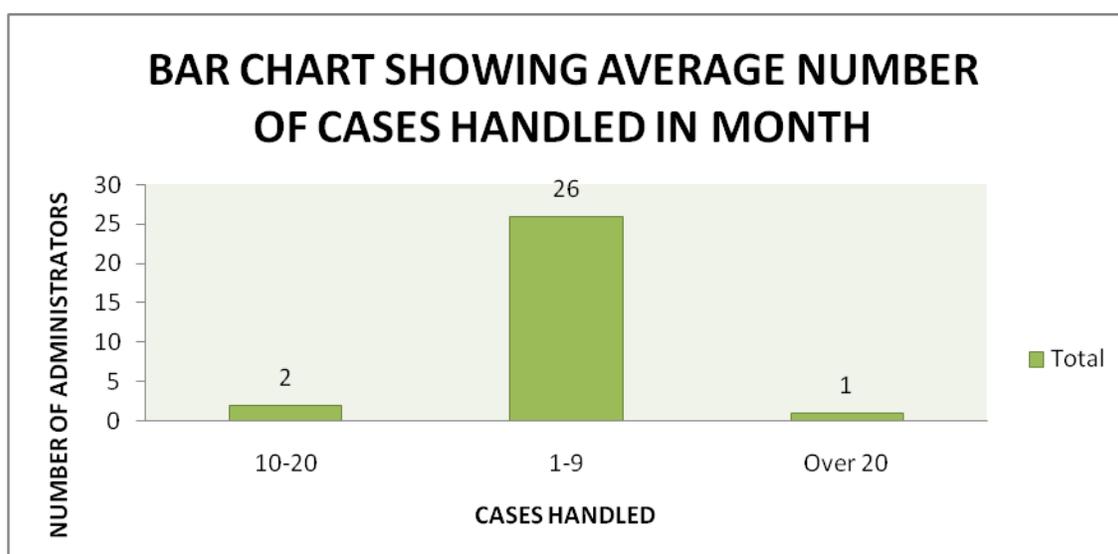


From the above table and bar graph, it can be observed that majority of the Qadhi court administrators use the Qadhi court in solving disputes.

**Table 18 Number of Cases handled per month**

Cases	Frequency	Percentages
10-20	2	7%
1-9	26	90%
Over 20	1	3%
<b>Grand Total</b>	<b>29</b>	<b>100%</b>

**Figure 7**



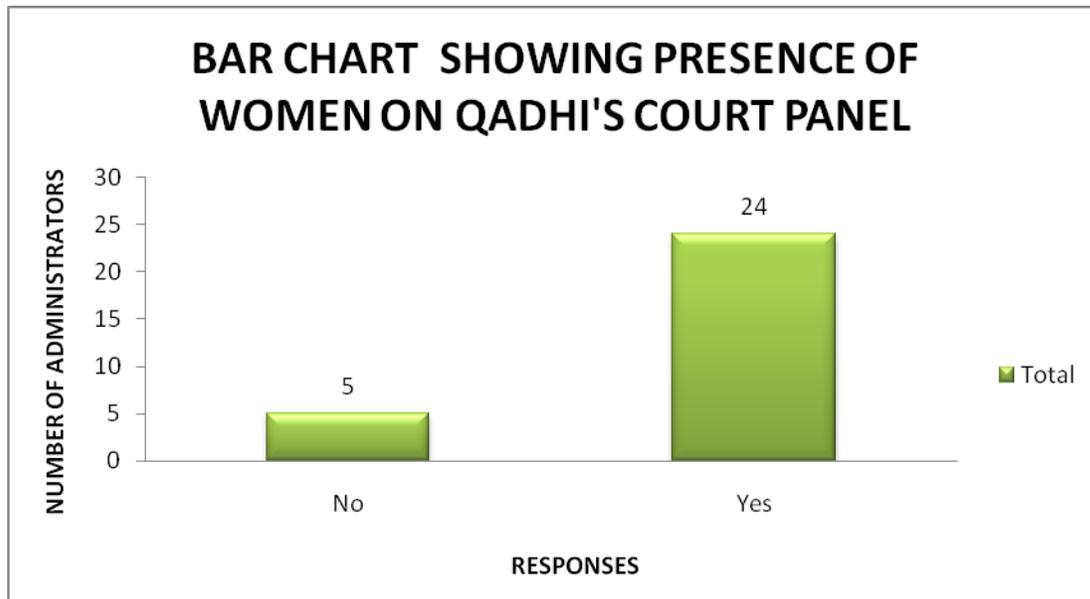
The table and bar chart above show that most administrators (90%) handle cases ranging from 1 to 9 cases in a month.

**Table 19 Women representation of Court panel**

Response	Frequency	Percentages
No	5	17%
Yes	24	83%

<b>Grand Total</b>	<b>29</b>	100%
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**Figure 8**



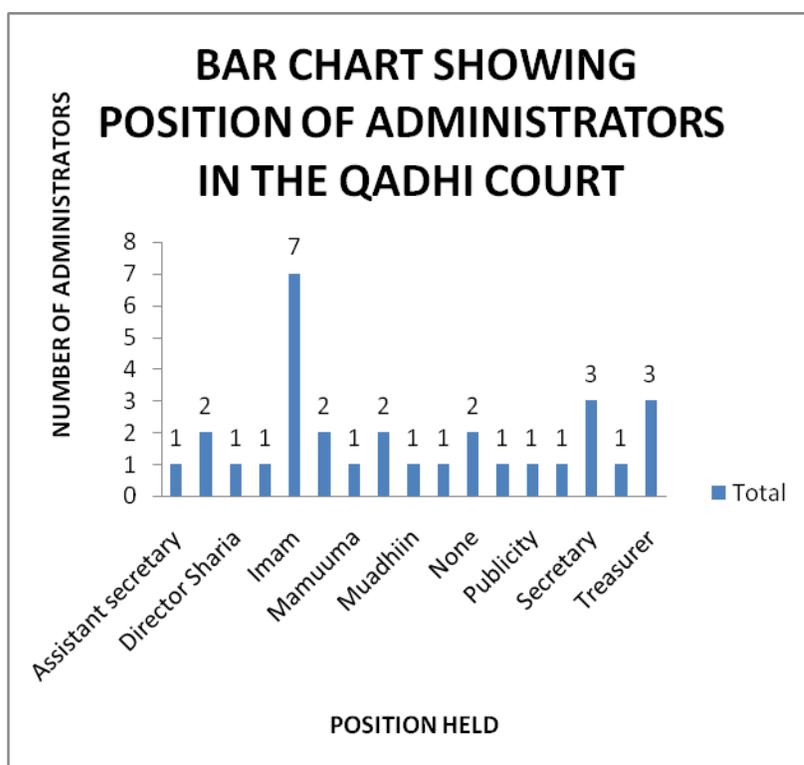
Basing on the table and bar chart above, most of the Qadhi court panels have a woman representative.

**Table 20 Position of administrators on court panel**

Position	Frequency	Percentages
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Assistant secretary	1	3%
Deputy Imam	2	6%
Director Sharia	1	3%
Disciplinary Officer	1	3%
Imam	7	23%
Information officer	2	6%
Mamuuma (lay Muslim)	1	3%
Member	2	6%
Muadhin (caller to Prayer)	1	3%
Mwalimu (teacher)	1	3%
None	2	6%
Opinion Leader	1	3%
Publicity	1	3%
Registrar Sharia court	1	3%
Secretary	3	10%
Sheikh	1	3%
Treasurer	3	10%
<b>Grand Total</b>	<b>31</b>	<b>100%</b>

**Figure 9**

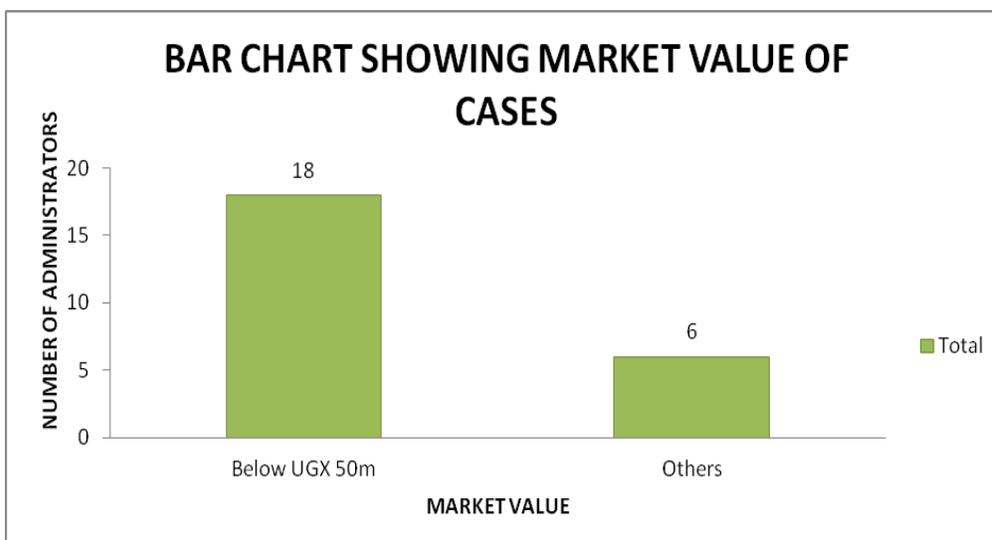


From the table and figure above, most of the Qadhi court administrators were Imams (23%).

**Table 21 Market Value of cases handled by Qadhi court**

Case Value (UGX)	Frequency	Percentages
Below UGX 50m	18	75%
Others	6	25%
<b>Grand Total</b>	<b>24</b>	<b>100%</b>

**Figure 10**

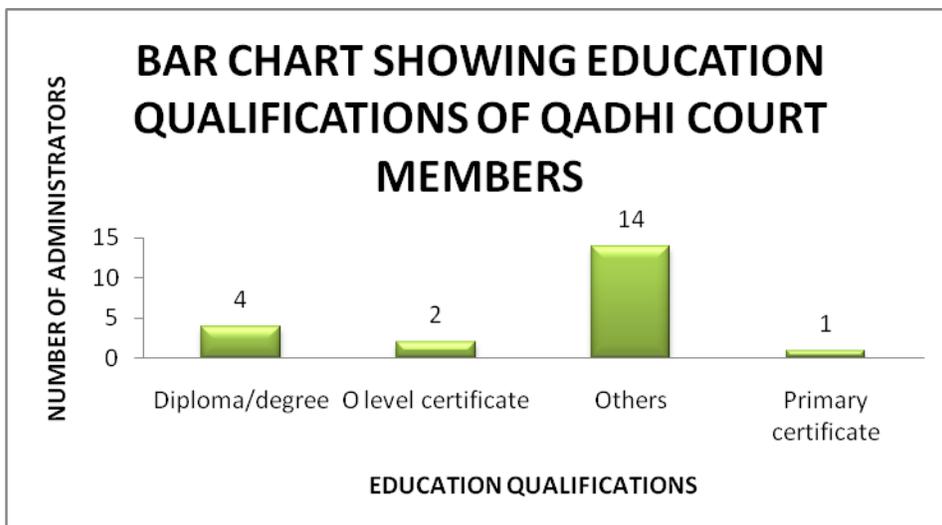


The above table and graph show that 3 in 4 of the Qadhi courts handle cases with a market value of below UGX 50 million

**Table 22 Qualifications for Qadhi court member**

Education level	Frequency	Percentages
Diploma/Degree in Islamic heritage	4	19%
O level certificate	2	10%
Others	14	67%
Primary certificate	1	5%
<b>Grand Total</b>	<b>21</b>	<b>100%</b>

**Figure 11**

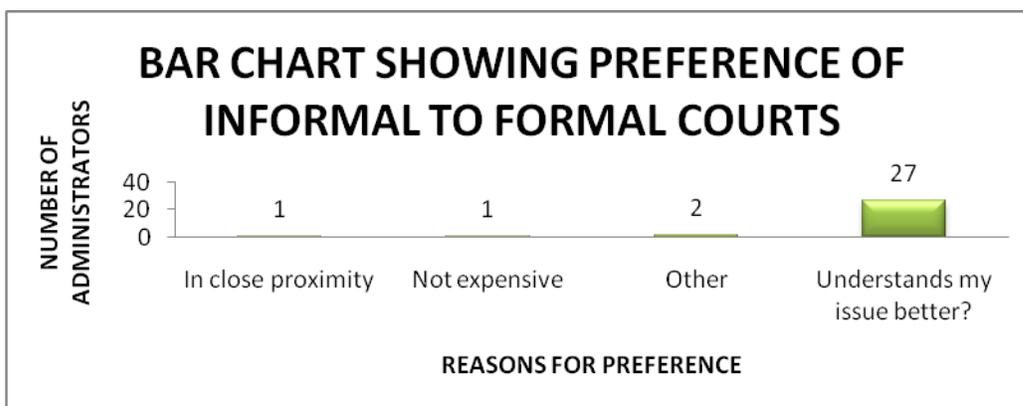


Other qualifications for example Quranic and Islamic knowledge basically Sharia are more preferred for one to be a member of the Qadhi court panel. However, degree/diploma holders are among the preferred qualifications, as shown above.

**Table 23 Why prefer Qadhi court?**

Reasons	Frequency	Percentages
In close proximity	1	3%
Not expensive	1	3%
Other	2	6%
Understands my issue better	27	87%
<b>Grand Total</b>	<b>31</b>	<b>100%</b>

**Figure 12**

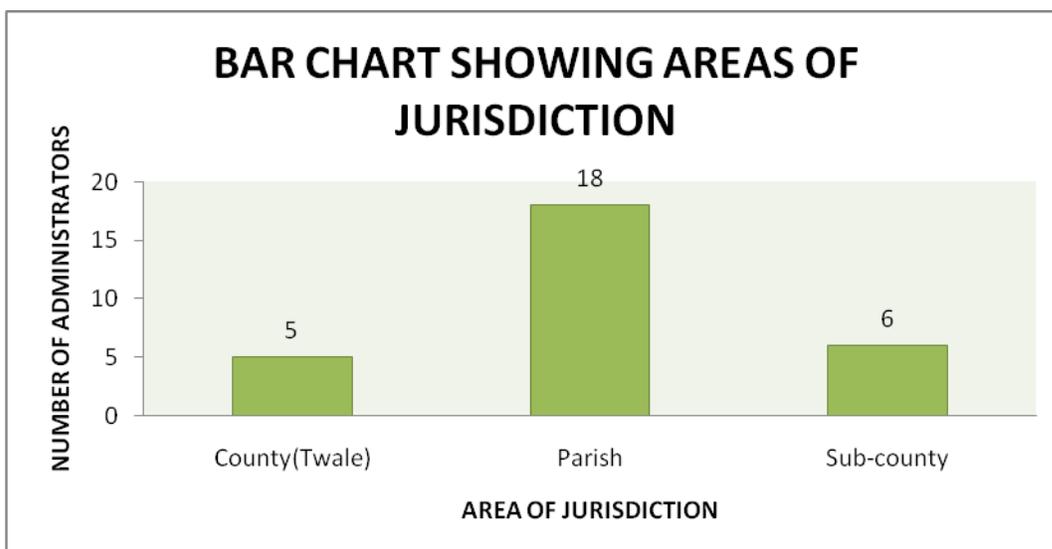


The above table and graph indicate that majority of the Qadhi court administrators prefer the informal court because it understands their issues (87%).

**Table 24 Area of Jurisdiction**

Area of jurisdiction	Frequency	Percentages
County(Twale)	5	17%
Parish	18	62%
Sub-county	6	21%
<b>Grand Total</b>	<b>29</b>	<b>100%</b>

**Figure 13**

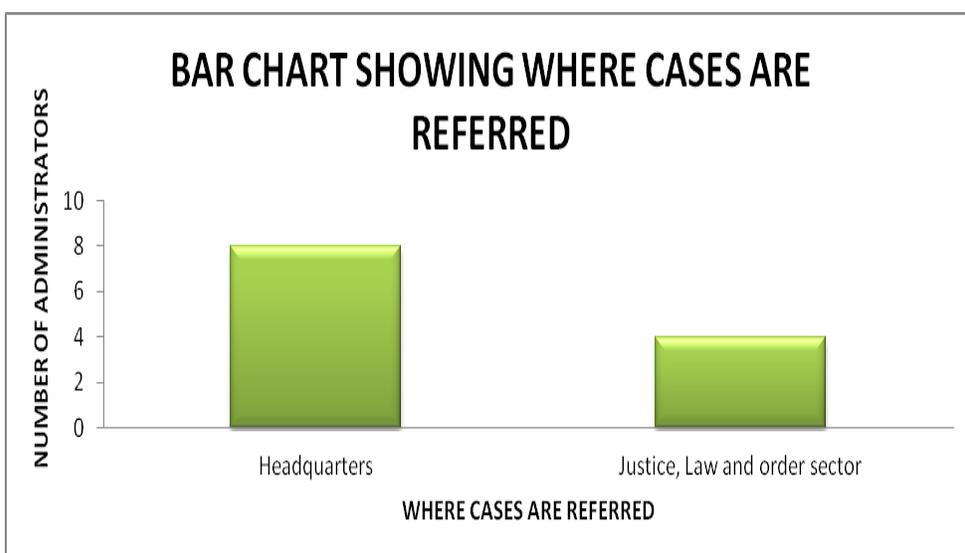


The major area of jurisdiction is the parish as shown above.

**Table 25 Where cases are referred**

Referrals	Frequency	Percentages
Headquarters (Uganda Muslim Supreme Council)	8	67%
Justice, Law and order sector (Police, Courts)	4	33%
<b>Grand Total</b>	<b>12</b>	<b>100%</b>

**Figure 14 Where cases are referred**

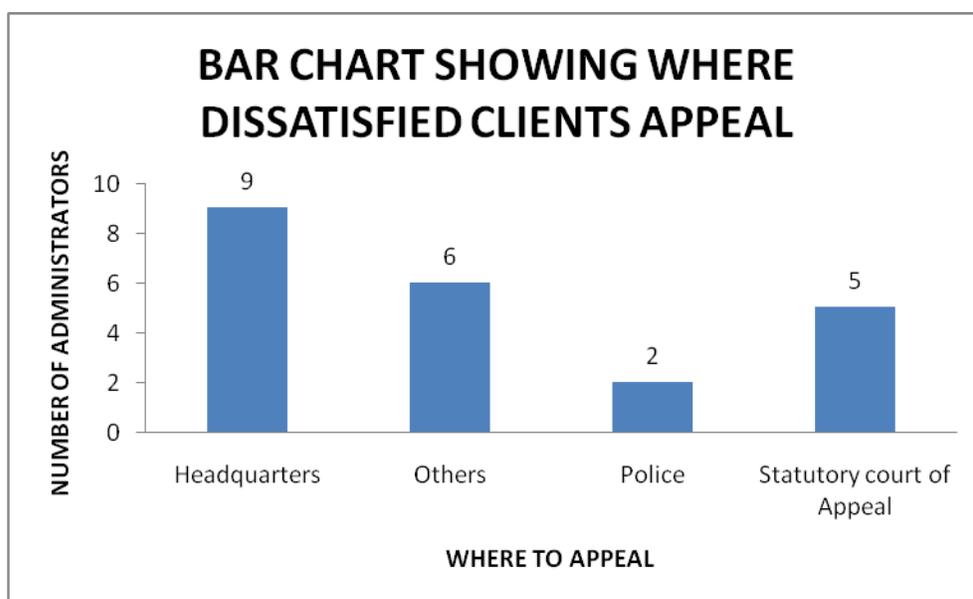


The above table and graph show that the few administrators who refer cases, refer them to the headquarters (67%).

**Table 26 Where users appeal**

Where to appeal	Frequency	Percentages
Headquarters	9	41%
Others	6	27%
Police	2	9%
Statutory court of Appeal	5	23%
Grand Total	<b>22</b>	100%

**Figure 15 Where users appeal**



According to the administrators, the greatest number of clients appeal to the headquarters (41%). Other places where clients appeal include county (Twale), police as shown above.

**Table 27 Consultation of Qadhi court administrators by statutory courts**

Consulting level	Frequency	Percentages
<b>Much</b>	11	38%
<b>Never</b>	18	62%
<b>Grand Total</b>	<b>29</b>	<b>100%</b>

Majority of the Qadhi court administrators have never been consulted by the statutory court (62%) as shown above.

**Table 28**

**Number of Qadhi court administrators per district  
District**

District	Frequency	Percent
Butambala	16	<b>51.6</b>
Kampala	15	<b>48.4</b>
<b>Total</b>	<b>31</b>	100.0

Almost both districts shared the number of Qadhi court administrators and majority are male (77%) as shown below.

**Table 29 Sex of Qadhi court administrator**

	Frequency	Percent
Female	7	22.6
Male	24	77.4
Total	31	100.0

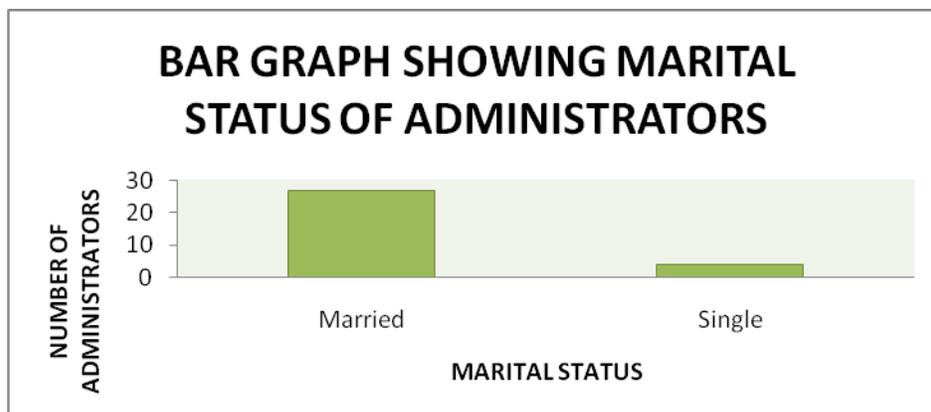
Almost all the Qadhi court administrators are married (87%) as shown in the table and bar chart below (marital status of administrators).

**Table 30 Marital status of Qadhi court administrator**

Status	Frequency	Percent
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Married	27	87.1
Single	4	12.9
Total	31	100.0

**Figure 16 Marital status of Qadhi Court administrator**



Most of the Qadhi court administrators completed primary school (29%) and are degree holders (26%) as shown in table below (Education level).

**Table 31 Education level of Qadhi court administrators**

Education Level	Frequency	Percent
Missing	1	3.2
A level	2	6.5
Degree	8	25.8
Diploma	1	3.2
O level	7	22.6

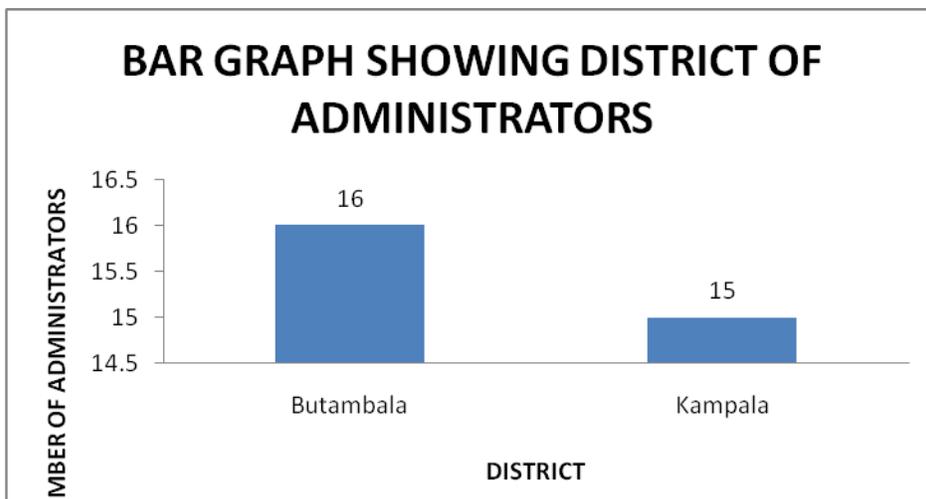
Primary	9	29.0
Technical/Vocation/Agricultural training	3	9.7
<b>Total</b>	<b>31</b>	<b>100.0</b>

Out of the 24 male respondents from both districts, 13 were from Butambala district and out of the 16 respondents from Butambala, 3 were female and 13 male. Kampala had 15 respondents out of which 11 were male as shown below.

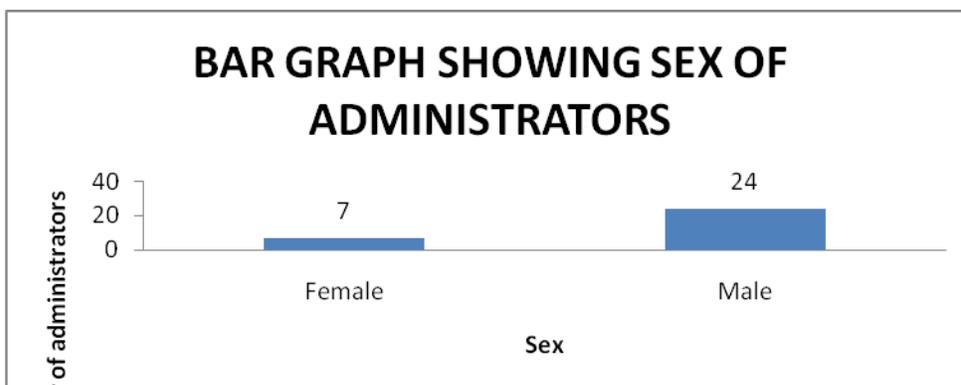
**Table 32 District by Sex of Qadhi court administrator**

District	Sex of respondent		Total
	Female	Male	
Butambala	3	13	16
Kampala	4	11	15
<b>Total</b>	<b>7</b>	<b>24</b>	<b>31</b>

**Figure 16 District of Qadhi Court administrator**



**Figure 17 Qadhi Court Administrator by sex**



Almost all the Qadhi court administrators are above 30 years (90%) as shown in Table 33 below.

**Table 33 Age group of Qadhi Court administrator**

	Frequency	Percent
1	3	9.7
2	28	90.3
<b>Total</b>	<b>31</b>	<b>100.0</b>

Majority of the male Qadhi court administrators are degree holders. Only one female administrator is a degree holder. This is shown in the table below.

**Table 34 Education level by Sex of Qadhi Court Administrator**

Education level	Sex of respondent		Total
	Female	Male	
	0	1	1
A level	0	2	2
Degree	1	7	8
Diploma	0	1	1
O level	3	4	7
Primary	3	6	9
Technical/Vocation/Agric Training	0	3	3
Total	7	24	31

From the table below, Wages and salaries is the main source of income to the male Qadhi court administrators while the female Qadhi Court administrators are more engaged in other economic activities such as private businesses including salons and restaurants, as shown below.

**Table 35 Main economic activity/Source of income by Sex of Administrator**

Main economic activity/Source of income	Sex of respondent		Total
	Female	Male	
Crop farming	0	4	4
Livestock	1	4	5
Wages and salaries	1	11	12
others	5	4	9
<b>Total</b>	7	23	30

From table 36 below, Quran memorization forms the highest proportion of the Qadhi education level.

**Table 36 Level of education of the Qadhi**

	Frequency	Percent
Degree in Sharia	5	16.1
Don't know	1	3.2
Islamic studies	9	29.0
Quran memorization	16	51.6
<b>Total</b>	31	100.0

Most of the Qadhi court administrators do not refer (68%) cases to other courts, whether statutory or Qadhi Court as illustrated in the table below.

**Table 37 Referring cases to other courts**

	Frequency	Percent
Don't know	1	3.2
No	21	67.7
Yes	9	29.0
Total	31	100.0

**Table 38 Receive payment for Qadhi /MIC services**

	Frequency	Percent
No	28	90.3
Yes	3	9.7
<b>Total</b>	31	100.0

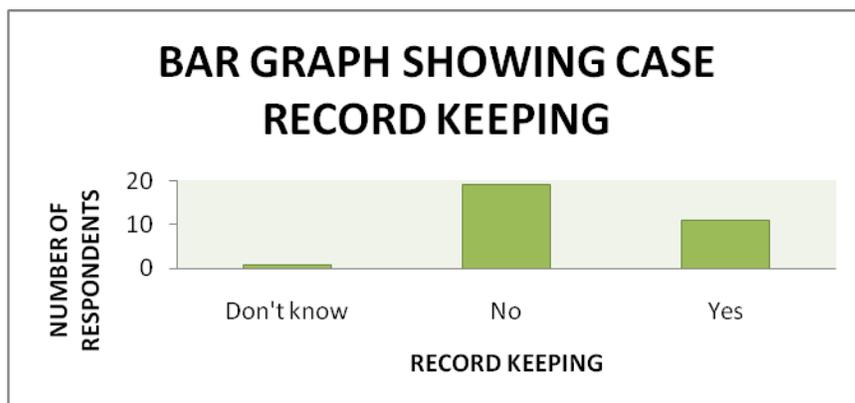
Majority of the administrators 28 out of 31 do not receive any form of payment for the Qadhi services as shown above. Some receive some facilitation in form of transport and communication/air time for their phone to trace witnesses and follow up on cases.

Majority of the administrators do not keep records as illustrated below:

**Table 39 Record keeping by Qadhi Court administrator**

	Frequency	Percent
Don't know	1	3.2
No	19	61.3
Yes	11	35.5
<b>Total</b>	<b>31</b>	<b>100.0</b>

**Figure 18 Record keeping by Qadhi Court administrator**



**Table 40 Possession of reference material by Qadhi Court**

Possession	Frequency	Percentages
No	13	45%
Yes	16	55%
<b>Grand Total</b>	<b>29</b>	<b>100%</b>

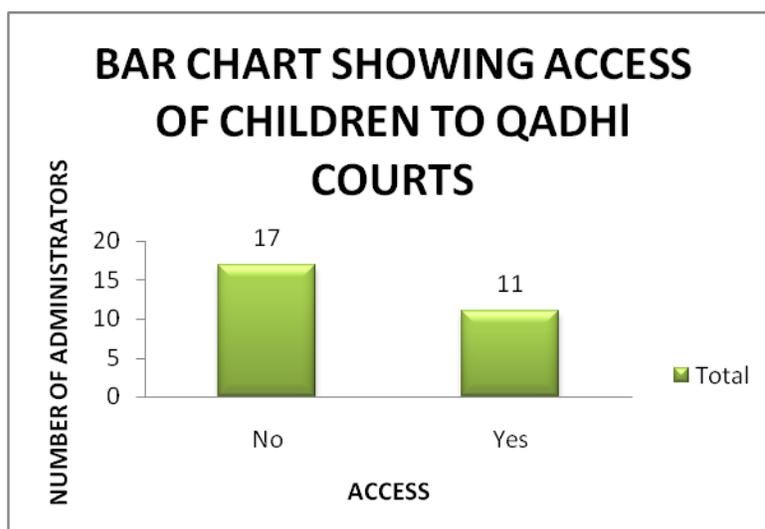
The above table shows that (55%) of the Qadhi court administrators possess some Islamic reference materials to assist them in their work. None had any Ugandan statutory /secular reference books.

According to the table 41 below, and bar chart figure , very few children can access the Qadhi court (39%)

**Table 41 Access of children to Qadhi court**

Access	Frequency	Percentages
No	17	61%
Yes	11	39%
<b>Total</b>	<b>28</b>	100%

**Figure 19 Access of children to Qadhi court**



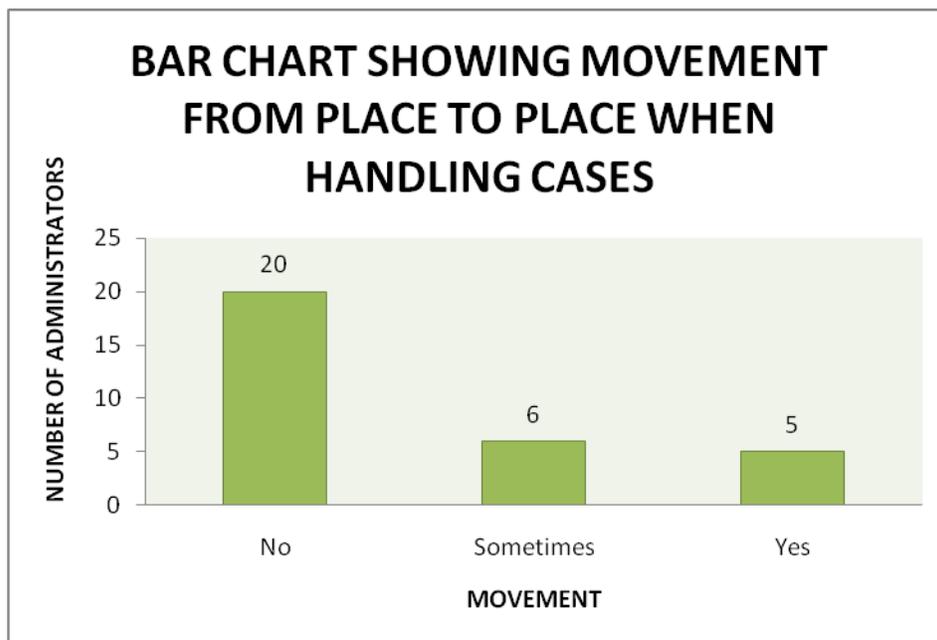
The table and bar chart below illustrate that the highest proportion of the Qadhi court administrators handle cases in one place (65%) given the fact that they have permanent places.

**Table 42 Movement of Qadhi court administrator to handle cases**

Movement	Frequency	Percent
No	20	65%

Sometimes	6	19%
Yes	5	16%
<b>Total</b>	<b>31</b>	100%

**Figure 20 Movement of Qadhi court administrator to handle cases**



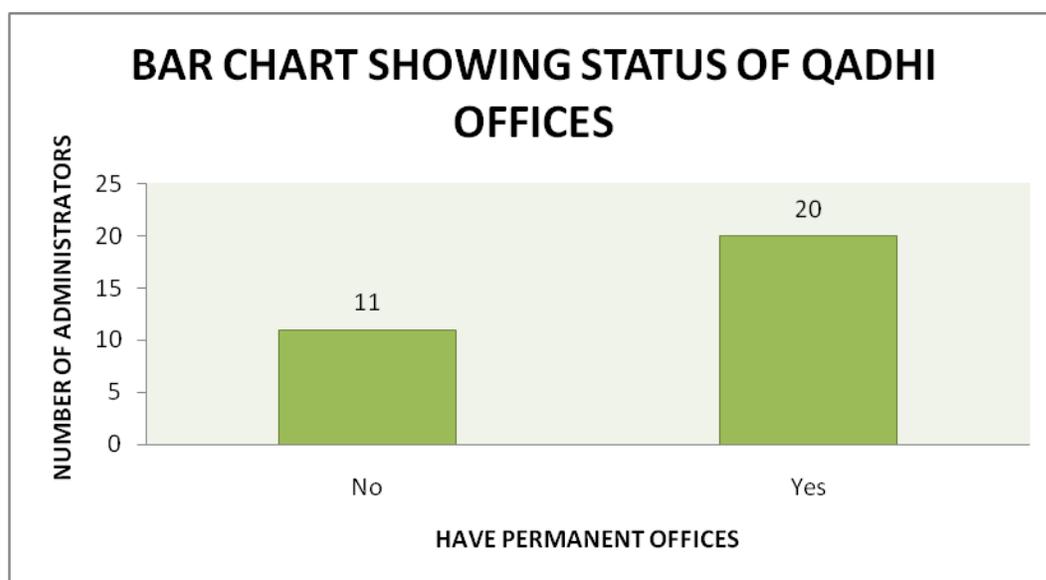
The table and bar chart below indicate that majority of the Qadhi Courts (65%) have permanent offices, which are actually the mosques (not offices in the conventional sense).

**Table 43 Have permanent offices/ places of operation**

Have permanent offices	Frequency	Percentages
------------------------	-----------	-------------

No	11	35%
Yes	20	65%
Grand Total	<b>31</b>	100%

**Figure 21 Permanent places of operation**



**6.1 Summary of focus group discussions and key informant interviews**

**Probe for availability of justice systems facilities in the community?**

There are Qadhi court establishments in all of Kibibi, Gombe, Bulo, Ngando, and Budde sub-counties. They are variably called Sharia courts. This, according to Sheik Yahaya Kakungulu, the Deputy Director of Sharia at Uganda Muslim Supreme Council, (UMSC), the Qadhi courts are the same as Sharia courts, the only difference is that people of other faith feel more comfortable with the term Qadhi

court than the term Sharia court. Besides since it is common knowledge that the Qadhi courts have not been yet operationalised in Uganda, the use of the term "Qadhi court" may cause legitimacy issues. There 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. Responses from Kasubi Mosques indicate Imams are the Qadhis especially at mosques where committees have not been established.

**Establish the procedures, nature and foundations of the system.**

There are two kinds of mosques settings namely villages Juma and Jamah & Taraweh mosques. The mosque is the first court of instance.

**Juma Mosques:** These conduct the five congregational daily prayers (Jamah) and Friday (Juma) summons and Prayers mostly at the parish, sub-county and district levels.

**Jamah & Taraweh mosques:** these are mostly at village levels that do not conduct Friday (Juma) Prayers, but can conduct the five prayers every day. This setting is more common in Butambala district, but rather different with Kampala where every mosque is almost a Juma mosque.

Cases or disputes are handled by the Jama and Taraweh mosque committees and Imams that are elected by the Muslim community in the area. 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.

With Butambala, most of the time when Jama fail to settle a case or a dispute they refer to the parish or Sub-county (Juma) mosque committees and Imams from different Jama Mosques. With Kampala village mosques, they refer cases to their headquarters such as Old Kampala UMSC Sharia court, or Kibuli Sharia department.

The foundations are both tradition and Qadhi justice system based on the principles of the Quran and Sunnah.

**Probe for the nature of facilities and distance to nearest court.**

Most of the village (Jama) mosques are located within the distance of 1-2km from the users. Most of the cases are handled or reported to the Imams of the Mosques. However this is different from Kampala where one Zone (village) may have more than two mosques. The facility comprises the mosque itself, without a separate area for the court. Court proceeds only when there is no prayer.

**Probe for coverage, management and records of the Qadhi court**

Cases are managed at each village mosque by Imams mostly and mosque committees. The mosques cover the entire village population in Butambala District. These mosques serve the Muslim and non-Muslim populations around them. In

Kampala district school of thought and sect where one belongs is important. For example the Salaf, Tabligh, 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. There is no record management system in place.

### **How do you resolve the disputes in your home/community?**

Disputes are solved and settled using traditional, formal and Qadhi justice system. From the focus group discussion in Kibibi, Ngando, Kalamba and Gombe as well as the entire Kampala districts, it is revealed that the three forms used:

**Islamic Law:** from the discussions at Kibibib Town Mosque, it is was reported that most of the Muslims with various disputes, such land wrangles, inheritance, succession, among others, first present cases to seek Islamic knowledge judgment from Imams and other religious leaders before they choose which system to use. Just consultations on guidance from Islamic law are much more common than dispute resolution. In other words, many Muslims may seek guidance form Islamic law without necessarily seeking to be adjudicated.

Literally, Islamic Law Justice is based on the Holy Quran and Hadith (authentic sayings of the Holy Prophet Muhammad). Another common term used used interchangeably with Hadith is Sunnah – meaning the reported practices of the Holy Prophet. More men opt for the Qadhi justice system than women in all the areas visited. However, from Nakawa, Kampala central, Rubaga, and Makindye division both men and women use this system. They use this to solve mostly cases related to guidance and counseling, marriage and divorce, inheritance and succession.

**Traditional Justice:** cases that concern family violence which do not involve physical beatings, cases that concern property distribution among various family members, inheritance and succession. The parents of wife, husband, elders and opinion leaders are involved. This is commonly used where the deceased never left a will.

**Formal Justice:** The Local council structures and the police especially the family Division are mostly involved in solving various cases especially those that involve domestic violence. Mostly women in all areas visited opt for this system more than any other category.

### **Do you use the Qadhi justice system to solve disputes in your community?**

In Kikumbe, Gombe, Gombe TC and most mosques in Kampala, especially Sharia department at UMSC headquarters at Old Kampala and Kibuli reported widespread usage of the Qadhi justice system to solve cases that include guidance and counseling, marriage and divorce, inheritance and succession.

### **Which Muslim leader(s) do they report to?**

From all the discussions it was agreed that Imams are reported to more than any other Muslim leader in the area. This is because Imams interact with the Muslim community at least five times every day for Jamah prayers and the believers have faith and belief that they are understood better by Imams than any other religious leader. From the Kasubi (Kampala) Focus Group discussion it was noted that "...currently Imams in their respective positions serve as the Qadhis, however many of them are unaware of this responsibility".

**About how many cases do you/they handle in a month?**

Between 1-15 cases are handled by various Muslim leaders at different mosques every month. Town mosques handle more cases than village ones. Kampala mosques handle more cases than Butambala mosques.

**Discuss the most common cases that are reported to you?**

- Inheritance and Succession
- Guidance and Counseling
- Marriage and Divorce (Nikah and Talaq)
- Enforcing Discipline mostly for children
- Business (failure to pay back borrowed money/default on payment/loans)
- Death (enforcing the Will of the deceased)
- Guardianship (Welfare of under age children o death of, especially, father)
- Custody (children in broken marriages)

**Explore the category of people use Qadhi courts more often than the other,**

From the focus group discussions of Gombe UMEA, Kibibi TC, and Kalamba main mosque it was found that more men opt for the Islamic Informal justice system as opposed to women, who prefer the formal system like the Local Councils (LCs) and police. However this changes with Kampala District where both men and women almost on equal numbers prefer the Qadhi courts.

**Women prefer:** 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 favour of men. Other women lack information that Qadhi justice system exists or can solve their problems.

**Men Prefer:** Qadhi justice system because they believe it about family building, and reunion. They also believe that it saves them from embarrassment that accompanies say, arrest by police or LC officials which they perceive as loss of their personal dignity. They have confidence in them on issues enforcing the (written) Will of the deceased. Both Men and women who prefer Qadhi Courts said that it is because their issues are understood better by Qadhis.

**Men and Women:** Both use Qadhi justice system for the cases of marriage and divorce, guidance and counseling, inheritance and succession.

**Establish whether children have access the Qadhi courts as well.**

Children are not represented on the mosque committees that resolve disputes within Muslim communities in Butambala and Kampala. For cases of gross indiscipline and early sexual relations among the children from different families, it is the parents that are involved to settle the matter in respect of their children.

**Discuss the Education and other qualifications for anyone to sit on the committee?**

When electing the mosque committee, there are education qualifications set for any representative or Imams. Specifically, Imams must be knowledgeable in Quran memorization & recitation among the Muslim community. The secretary will have demonstrated ability to read and write clearly, both Luganda and English. Other critical qualifications include good personal conduct/ exemplary behavior and a demonstrated spirit of volunteerism. Besides, it is preferred that they were born in that area (locals) or have lived there long enough for their character to be evaluated with some certainty.

**Highlight on the term limits for the informal judge.**

There are no term limits for the Imams and the Head of the Twale (county) Sheikhs among others. One can be disqualified when he/she misbehaves or contravenes social norms of the community, e.g. drinking alcohol, committing fornication/adultery etc. There are no standards for legal education qualifications for the Imams and the committees.

**Other than Islamic Related Studies explore the legal education qualifications for the Qadhi?**

No Imam interviewed had any other legal qualification(s) other than the Islamic related studies.

**Do you keep a record of the cases that are brought to you?**

From all the lower mosques such as Lugooye, Kikumbo in Gombe TC across Butambala District, there are no proper records are kept for the cases handled or disposed of. Even the main sub-county mosques such as Ngando TC mosque, Lukalu Mosque, which was reported to keep some of the records for the cases they have settled, there was no evidence to confirm this. In Kampala, major centres namely Kibuli and Gadaffi National Mosque's Sharia department records are kept for marriage and divorce, guidance and counseling, inheritance and succession. There is no standardised documentation framework for the Qadhi Courts visited.

**Discuss the records and information system between lower Qadhi courts and the higher Qadhi courts**

In Kampala, the division among Muslims congregations dictates where cases are referred; either to UMSC Old Kampala, Kibuli, Nakasero, by the lower mosque levels affiliated to either group. However, most mosques in Kampala keep records and there is referral of cases to higher Qadhi courts.

For Butambala, there are no records of the cases that are settled at the lower mosques, and no information is shared with top/ sub-county level mosques. The imams believe that once a case has been disposed off, there is no use share or publicize that kind of information.

However, for the cases the lower mosques they have failed to settle they refer to the above (sub-county /TC mosques) in case justice has not been achieved by the concerned parties the cases are referred to the County (twale).

In certain cases, individuals, especially who are well to do and can afford transportation to Kampala (in case of Butambala district) prefer to go straight to the UMSC headquarters without reference to the lower local mosques. Sometimes they are referred back to the lower centre, but sometimes the headquarters hears the disputes.

Cases are often referred to the higher court by verbal instruction – no recorded referral letters are written or any other documentation provided.

### **Describe the sitting environment when adjudicating various cases?**

In closed places such as the mosques and school classrooms. Imam's Homes, homes of the complainants are preferred for those cases which demand maximum privacy such as marriage and divorce. Some cases such as enforcing the Will of the deceased in done in the open when all the concerned parties present with non-mosque committee members present to serve as witnesses. In general, the Qadhi courts in Kampala and Butambala are open to all except where privacy is specifically requested by the parties involved.

### **Discuss the area of Qadhi court jurisdiction, when informal courts work together with statutory law officers**

In Kibibi Trading Centre, Butambala district the Muslim leaders confirmed that they are regularly consulted by the police of the family division to reconcile various family members. In many cases their advice is well regarded by the police.

The UMSC Sharia department confirmed that they are consulted by the Justice Ministry, local NGOs and other international agencies and organizations on the issues of marriage and divorce, counselling and guidance, and inheritance and succession that involve Muslims.

Among the formal JLOS institutions, it is only the police that was cited to be closely working with Muslim religious leaders for family issues especially with family civil cases involving man wife and children. In Kibibi and Ngando sub-counties of Butambala, the police was especially commended for their cooperation the Muslim leadership. In all cases, no case of a lower magistrate consulting the Qadhi Court was cited. However, at the headquarters it was confirmed that some consultations do take place at the High court level.

### **What market value cases do you handle?**

There are no limits to nor even consideration for the value of cases handled, responses from Lukalu mosque area, thought without much certainty, that cases ranging from 0-20 UGX millions are more regularly handled.

For cases of inheritance, as long as the deceased left the Will governing his property and estates to be implemented under the Islamic Law, the religious leaders most especially Imam, community Sheiks, and Directorate of Sharia at the UMSC enforce the Will without due regard the value of property or estates left by the deceased.

### **Discuss who appoints, pays, and fires the Qadhi court judge?**

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 are not represented. All appointments are done by the Muslim community around the villages where 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. They can be expelled or fired when their behavior contradicts with the Islamic way of life. Evidence must be presented to the head of the sub-county or county committee heads. Whenever a replacement of an imam or mosque committee member is sought, three nominations are made before one of them is finally selected.

Although they are ready to work for no monetary compensation, they receive some allowances in form of cash gifts of no fixed value, after conducting marriages, and from donations that are normally made during Duwa (special prayer/supplication) ceremonies.

### **Do you have uniform rules of procedure across all Qadhi Courts/ Qadhi Courts in the country?**

There are no uniform procedures, 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. There is no standardized court procedure for the Qadhi Courts.

### **Do you charge any fees to your clients?**

There are no charges set to handle any cases. The work is **voluntary** and the rewards are expected from the almighty Allah. Every Friday's various Muslims congregate for Juma prayers in different Juma mosques and generously donate whatever they can. It is from these donations that Imams are given some allowances. Individual generous Muslims also donate directly to the Muslim leaders.

### **Where do clients appeal in case dissatisfied with the ruling of Qadhi court?**

From Kibibi, it was found that Jama mosques committee's cases are referred to Juma mosques. Sometime the police especially family division/family protection unit works with various religious leaders and elders to settle family disputes. The appellant system is from village mosque level, to the sub-county level the county (Twale), districts and national or headquarters.

### **Do the Muslims know that formal courts bind them as well?**

Muslims especially in urban centres where the formal justice systems are active and concentrated know that formal systems bind them as well. Few in both Butambala and Kampala believe that formal courts bind them in matters of marriage, divorce and inheritance. They believe that such cases are and should be the preserve of the Qadhi court.

### **What are some of the problems faced with informal courts**

Lack of facilitation to most of the Imams and other religion leaders involved in the informal justice system especially at the grassroots. Facilitation like transport to and fro their homes, operational fees among others. Some rich Muslim community members who use the informal justice system can easily manipulate it for their own interest.

Sometimes there is delay in decision making mostly when the Qadhi justice system has to consult or work with the traditional justice system. This is common for inheritance and succession cases where a will was not left by the deceased.

There are no advocacy and awareness campaigns for the Qadhi justice system and no efforts have been made to sensitize the Muslim community on the availability of the system.

Divisions/factions in the Muslim community with two Muslim leaders at the top i.e. the Mufti of Uganda from Muslim Supreme Council and the Supreme Mufti based in Kibuli tend to interfere with the smooth operations of the Muslim courts.

### **Challenges**

The following were listed as major challenges facing the Qadhi justice system by users, administrators and statutory court officials.

- No payment for services rendered by the courts.
- No facilitation for Qadhi court operations.
- No authority to enforce decisions/judgements taken by the Qadhi courts.
- Lack of statutory legal knowledge by Qadhi court administrators.
- Lack of Muslim judicial knowledge and ignorance of Muslim court procedures
- Lack of Books of reference, thus leaving room to limited interpretation of Islamic Laws.
- Absence of an institution that trains administrators of the Qadhi justice system.
- Lack of basic facilities like office furniture, filing cabinets and stationery
- Lack of manpower and facilities to keep records of the Qadhi justice system.

- Absence of a known Muslim judicial system to be followed as there is no active experience sharing with other countries that operate Qadhi courts or Qadhi courts in other countries.
- Absence of supervision of the Qadhi courts by a central authority.
- Absence of an empowering law to operationalise the Qadhi Courts in Uganda – they remain ad-hoc without formal recognition.
- Lack of political will to operationalise Qadhi courts. Not many Muslim legislators have not been as forthcoming in pushing for the enabling law to be passed.
- Perceptions from the public that the introduction/recognition of Qadhi courts in Uganda will make Muslims a special group of citizens.
- Lack of proper understanding and appreciation of Sharia/Islamic Law and its values (not only by the wider community but by Muslims as well).
- Access to Qadhi justice is still limited to a few districts with large Muslim populations.
- 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.
- Interface between Qadhi courts and statutory courts is limited due to the fact that the language is English whereas the majority of Qadhi court administrators do not speak English

## **7.0 GENERAL CONCLUSION**

The Qadhi justice system is fully operational in the two districts of Butambala and Kampala albeit with a multitude of capacity gaps. They constitute the informal Qadhi courts 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. There is little interface between the formal statutory courts and the Qadhi courts was reported, but law enforcement organs like the police work well with these Qadhi courts. Even before the implementation of the Qadhis Court is effected, several steps can be taken to prepare the way for their sustainable implementation in the future.

## **8.0 RECOMMENDATIONS**

- 8.1 JLOS should provide opportunity for the findings of this baseline survey, the first of its kind in Uganda, on “Access to Justice in Qadhi Courts” to be disseminated to a wider JLOS audience. The forthcoming

- JLOS National Forum provides a good opportunity (Policy – Priority/Short term).
- 8.2 Short courses/workshops for Qadhi court administrators should be held to introduce them to gender sensitivity and mainstreaming, children’s rights, human rights, statutory laws, mediation skills and formal court system procedures. (Training – Priority/Short term).
  - 8.3 Short Courses in record keeping should be held for administrators of the Qadhi courts in the target districts in each of the two target districts (Training- Priority/ Short Term).
  - 8.4 A case record keeping system for use by all Qadhi Courts in Uganda (and simple tools like registration forms, case referral forms etc), should be developed by a consultant with extensive judicial record/ judicial procedures knowledge and expertise. (Technical- Priority/Short Term).
  - 8.5 Sensitization workshops should be held for the Muslim community especially the women, children and youth and indigent persons on their right to access to Justice and existence of the Qadhi Courts, in the target districts of Butambala and Kampala. (Sensitization/ Training – Priority/Short term).
  - 8.6 There should be a deliberate effort to train Qadhi court administrators who hold degrees in Sharia, to attain statutory legal knowledge from a recognized institution like the Law Development Centre. A Diploma in Law is recommended. (Training/Technical /Medium term).
  - 8.7 Key Qadhi court administrators in Uganda should be assisted to learn from other countries where the system is well developed through study tours. Kenya, where Qadhi’s courts are well established is a logical first destination (Training/Financial – Medium term).
  - 8.8 A Consultant with relevant academic qualifications preferably in Comparative Law (Sharia and English Law) should be hired to develop a course content for a Diploma in Sharia, to be delivered by a recognized tertiary institution. (Technical/Financial – Medium Term).
  - 8.9 Qadhi Courts should be assisted to obtain Reference Books and establish Law libraries at their justice centres. The libraries should contain essential Uganda’s statutory law books, and Sources of Islamic Law like the Quran and the six authentic Books of Hadith namely; “Sahih Bukhari”, “Sahih Muslim”, “Sunan Abu Dawood” and “A-

Tirmidhi” and any other recommended texts on Muslim family and inheritance laws (Technical /Financial- Medium Term).

- 8.10 Qadhi courts in the two districts of Butambala and Kampala should be assisted to acquire dedicated offices/ office spaces to accommodate them, basic office furniture (Desks Chairs, Book shelves, Filing Cabinets) and office equipment i.e., computers and printers and their accessories. (Financial/Physical - MediumTerm).
- 8.11 A plan for massive (grassroots) legal education in the target districts should be implemented by JLOS through the Mosque system (Policy – Medium Term)
- 8.12 Before operationalisation of the Qadhi courts, mobile Qadhi courts, teams of adjudicators well trained in Sharia and with recognized secular legal qualifications should be constituted and facilitated to serve areas where access to Qadhi a justice is limited due to proximity and availability of qualified personnel especially in rural areas (Policy – Medium Term).
- 8.13 Muslims with secular legal qualifications and /or officers in the statutory courts who profess the Muslim faith, should be encouraged and given scholarships to train in Islamic Law (for Diploma in Islamic Law at a recognized tertiary institution like the Islamic University in Uganda) to enable them work as Qadhi court judicial officers in the future when the Qadhi courts come into operation. (Policy – Technical-Long Term).
- 8.14 A training institute for Qadhi justice officers should be established to serve the Muslim community and the general public. A feasibility study for the project should be undertaken by a competent consultancy (Technical/Financial - Long Term).
- 8.15 The process to operationalise the Qadhi Courts should be expedited. (Policy – unfinished government business).
- 8.16 Government should develop clear guidelines to regulate the relationship between Qadhi Courts and the statutory courts and other informal justice systems in Uganda like the LC courts and traditional courts (Policy).
- 8.17 Phasing of the establishment of the Qadhis Court before a nation- wide roll out should be considered, starting with a pilot phase for the target districts of Butambala and Kampala (Policy).

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**ANNEX A Quantitative questionnaire**

**Muslim Centre for Justice and Law**

**Access to Justice in Qadhi Courts**

**BASELINE SURVEY QUESTIONNAIRE**

<b>SECTION A : IDENTIFICATION</b>			<b>Questionnaire No.....</b>
<b>PARTICULARS</b>			
<i>(for Both Qadhi Court/ Qadhi Court administrators and</i>			
	<b>Code</b>		<b>Location</b>
<b>A01. DISTRICT:</b>			
<b>1=Kampala</b>	<b>1</b>		<b>1. Central</b> <b>2. Western</b> <b>3. Eastern</b> <b>4. North</b> <b>5. North Eastern</b>
<b>2=Butambala</b>	<b>2</b>		
<b>A02. COUNTY:</b>			
<b>A03. SUB-COUNTY:</b>			
<b>A04. PARISH:</b>			

<b>A05. Village:</b>						
<b>A07. Name of Mosque to which the respondent belongs:</b>						
<b>A08. Which Islamic School of thought do you belong to? (Shafii, Hanbali, Maliki, Hanafi etc)</b>						
<b>A09. Position in the Mosque:</b>						
<b>A10. NAME OF INTERVIEWER:</b>						
<b>A11. DATE OF INTERVIEW:</b>						
		DD	MM	YY		

## SECTION B : INVESTIGATIVE QUESTIONS

*(for BothMIC/ Qadhi Court administrators and Users)*

S/N	Investigative questions	Codes
B01	Sex of the Respondents	1=Male, 2=Female
B02	Age of the Respondents	
B03	What is your marital status?	1=Single, 2=Married, 3=Widowed, 4=Divorced, 5=Separated, 5=NA
B04	What is your highest education level?	1=No education, 2=Primary, 3=O level, 4=A level, 5=Technical/Vocation/Agric training, 6=Adult education, 7=Diploma 8=Degree
B05	Are you the head of household?	1=Yes, 2=No
B06	What your main economic activity or source of income?	1=crop farming, 2=livestock, 3=poultry framing, 4=forestry products 5=bee keeping, 6= fishing, 7=Petty trading, 8= wages and salaries 9= remittances 1. 10 others specify....

B07	In 2002, did you live in same place as now?	1. Yes 2. No
B08	How long ago did you move to new settlement? In years	

**SECTION C: CAPACITY GAPS WITHIN THE Qadhi Court/QADHI COURTS  
(Qadhi Court Administrators only)**

Code	Question	Response
<b>C01</b>	Have you ever experienced a conflict/ dispute that required intervention by an authority?	1=Yes, 2=No
<b>C02</b>	What was the nature of the dispute?	1=Family, 2=Work Related
<b>C03</b>	How did you resolve the dispute?	1=Qadhi's Court, 2=Statutory Court 3=Tradition Court, 4=Others /specify
<b>C04</b>	Do you use the Qadhi's Court to solve disputes in your HH/ community?	1=Yes, 2=No
<b>C05</b>	Which Muslim leader(s) do they report to?	1=Chairman at the mosque, 2=Imam, 3=court Qadhis 4= others specify.
<b>C06</b>	What are the most common cases that are reported to you?	1=Physical Abuse, 2=Psychological Abuse, 3=Inheritance 4=property 5=Others Specify
<b>C07</b>	About how many cases do you handle in a month?	1=1-10 cases, 2=10-20, 3= over 20,
<b>C08</b>	Are you comfortable with the workload?	1=Yes, 2=No, 3= don't know
<b>C09</b>	Do you work on the cases alone or with others?	1=Alone, 2= With a committee 3=others Specify
<b>C10</b>	If not alone, what is the selection criterion of the Qadhi's Court panel or group of people that assist you?	1=Gender, 2=Age, 3=Education, 4=Social Status
<b>C11</b>	Do you employ any staff in your Qadhi court?	1= Yes, 2=No 3= Some times
<b>C12</b>	Do you pay any staff in your Qadhi court?	1= Yes, 2= No 3= Not applicable
<b>C13</b>	Which category of people report more often	1=Women, 2=Men, 3=Children 4= other

	than the other?	specify
<b>C14</b>	Do you have a woman on your Qadhi's Court panel?	1=Yes, 2=No
<b>C16</b>	Do children have access to Qadhi Courts?	1=Yes, 2=No
<b>C17</b>	What is the Education qualifications for anyone to sit on Qadhi's Court panel?	1= Primary certificate 2= O lever certificate 3=A level certificate 4= diploma/degree, 5=Master, 6= other specify
<b>C18</b>	What do you base on when adjudicating cases before you?	1=Holy Quran, 2= Hadith, 3=Sharia Law, (case law) 4= All the above
<b>C19</b>	What is your school of thought?	1=Shafii, 2=Maliki, 3=Hanafi, 4=Hanbali, 5=Other
<b>C20</b>	Do you have reference materials? (Library)	1=Yes, 2=No, 3= don't know
<b>C21</b>	Have you ever heard a case where the statutory law conflicts with your decision?	1=Yes, 2=No, 3= don't know
<b>C22</b>	Do you ever make reference to the statutory laws of Uganda?	1=Yes, 2=No, 3= don't know
<b>C23</b>	In case the statutory laws conflict with Islamic laws what takes precedence over the other?	1=Islamic law, 2=Statutory law
<b>C24</b>	What is the level of Education of the Qadhi?	1=Degree in Sharia, 2=Islamic Studies, 3=Quran Memorisation 4=others Specify.
<b>C25</b>	Who appoints the Qadhi?	1=Headquarters, 2=District Officials, 3= Government , 4=Self 4=Community 5=others specify
<b>C26</b>	For how long have you served as a Qadhi?	1=One year, 2=2-5 years, 3=5-10 years, 4=others specify
<b>C27</b>	Other than Islamic Related Studies do you have any western legal qualification?	1=Yes, 2=No, 3= I don't know
<b>C28</b>	Do you keep a record of the cases that are brought to you?	1=Yes, 2=No, 3=I don't know
<b>C29</b>	Do you have a permanent office for your Qadhi court?	1= Yes, 2= No
<b>C30</b>	Do you move from place to place to handle	1= Yes, 2=No, 3=Sometimes

	cases?	
<b>C31</b>	What is the average time of disposing off a case?	1= Days, 2 = Weeks, 3 = Over one month 4= more than 3 months
<b>C32</b>	Do you share the records with the headquarters?	1=Yes, 2=No, , 3=I don't know
<b>C33</b>	Do you receive supervisors from headquarters in your Qadhi court?	1= Yes, 2 = No
<b>C34</b>	Do you share your rulings with other Qadhi courts across the country?	1=Yes, 2=No, , 3=I don't know
<b>C35</b>	Where do you sit when adjudicating various cases?	1=Open Spaces, 2=Closed room, 3=Other specify
<b>C36</b>	What is the nearest Qadhi Court to yours?	1=less than 1km, 2=above 1 km, 3= Other specify.....
<b>C37</b>	What is your area of jurisdiction?	1=Parish, 2=Sub-county , 3=County (Twale)
<b>C38</b>	What market value cases do you handle?	1=Below UGX 50millions, 2=above UGX 50 millions 3=others specify .....
<b>C39</b>	Are you paid for your Qadhi services?	1=Yes, 2=No, 3=Sometimes, 4=Never know
<b>C40</b>	If a client cannot pay for your service what do you do?	1= Provide pro bono service 2= ask them to return when they are able to pay 3= Not Applicable
<b>C41</b>	If yes, Who pays the judges in the Qadhi courts?	1=Headquarters, 2=District , 3= Government , 4=Voluntary 4=Clients 5=others Specify
<b>C42</b>	Do you have uniform rules of procedure across all Qadhi courts in the country?	1=Yes, 2=No, 3=I don't know
<b>C43</b>	Have you ever referred a case to another Court?	1=Yes, 2=No, 3=I don't know
<b>C44</b>	Where do you refer ? (where next)	1=Headquarters, 2=Justice law and order sector, 3=others specify
<b>C45</b>	Where do clients appeal in case dissatisfied with your ruling?	1=Headquarters, 2=Statutory Court of appeal, 3=Police 4=others specify
<b>C46</b>	Have you ever been consulted by a	1=Never, 2=Much, 3=Very Much,

	statutory court?	4=Others Specify
<b>C47</b>	Do the Muslims know that formal/statutory courts bind them as well?	1=Yes, 2=No, 3= I don't know
<b>C48</b>	Why do you prefer informal to formal courts?	1=in close proximity 2=Not expensive, 3=Understands my issue better, 4=others specify,
<b>C48</b>	What are some of the challenges faced by Qadhi courts?	

**Section D: CAPACITY GAPS WITHIN THE Qadhi Court/QADHI COURTS ( for Qadhi Court Users only)**

<b>Code</b>	<b>Question</b>	<b>Response</b>
D01	If you ever had a dispute that requires adjudication, would you go to a Qadhi court?	1=Yes 2= No 3=Not sure
D02	Have you ever used a Qadhi court to solve a dispute?	1=Yes 2= No 3=Not sure
D03	If not why?	1=Expensive, 2=Takes a lot of time,
D04	Did you get any written documents about the case from the Qadhi court?	1=Yes 2= No 3=Not Applicable
D05	How long did it take for your case to be disposed of?	1=Under 3 months 2= Over 3 months 3= Over six months 4=Over a year
D06	Who advised you to go to a Qadhi court?	1=Self, 2= My Imam , 2=Family member, 3= Friend, 4. Other specify ----- ----- 5= N/A
D08	What was the nature of the dispute?	1=Domestic, 2= Inheritance, 4=Business 4= Other specify ----- -----, 5= N/A
D09	Were children involved in the dispute?	1=Yes 2= No 3=Not Applicable

D11	In the Qadhi court were there any women were on the panel?	1=Yes 2= No 3=Not Applicable
D12	Were you satisfied with the outcome?	1=Yes 2= No 3= Somehow
D13	If you were not, did you appeal?	1=Yes 2= No 3=Not Applicable
D14	If yes, where did you appeal?	1=Director Sharia UMSC, 2= District Qadhi 3=Twale Qadhi 4.=Other Specify - -----
D15	Were you aware of your rights in the Qadhi court	1=Yes 2= No 3=Not Applicable
D16	Were you aware of the jurisdiction of the Qadhi court?	1=Yes 2= No 3=Not Applicable
D17	Did you pay any fees to the Qadhi court?	1=Yes 2= No 3=Not Applicable
D18	Was the fee affordable to you?	1=Yes 2= No 3=Not Applicable
D19	How far was the Qadhi court from your home?	1=Near 2= A bit far 3=Very Far 4= N/A

## **ANNEX B: Interview Guide for Key Informants and Focus Group Discussions**

### **MUSLIMCENTRE FOR JUSTICE AND LAW**

#### **ACCESS TO JUSTICE IN QADHI JUSTICE SYSTEM**

##### **KIIS AND FGDS**

1. Probe for availability of justice systems facilities in the community? Establish the procedures, nature and foundations of the system. Probe for the nature of facilities and distance to nearest court.
2. Probe for coverage, management and records of the Qadhi court
3. How do you resolve the disputes in your home/community?
4. Do you use the Qadhi justice system to solve disputes in your community?
5. Which Muslim leader(s) do they report to?
6. Do people report to you any cases that demand your adjudication?
7. About how many cases do you/they handle in a month?
8. Discuss the most common cases that are reported to you?
9. Explore the category of people use Qadhi courts more often than the other, establish whether children have access the Qadhi courts as well.
10. Discuss the Education and other qualifications for anyone to sit on the committee?, highlight on the term limits for the informal judge.
11. Other than Islamic Related Studies explore the legal education qualifications for the Qadhi?
12. Do you keep a record of the cases that are brought to you?
13. Discuss the records and information system between lower Qadhi courts and the higher Qadhi courts
14. Describe the sitting environment when adjudicating various cases?
15. What is the nearest Qadhi Court in terms of distance; describe the days and hours they sit.
16. Discuss the area of Qadhi Court jurisdiction, when informal courts work together with statutory law officers
17. What market value cases do you handle?
18. Discuss who appoints, pays, and fires the Qadhi court judge?
19. Do you have uniform rules of procedure across all Qadhi in the country?
20. Do you charge any fees to your clients
21. Where do clients appeal in case dissatisfied with the ruling of Qadhi court?
22. To what extent have the formal courts involved Muslim religious leaders when adjudicating cases
23. Do the Muslims know that formal courts bid them as well?

24. Why do you prefer informal to formal courts

25. What are some of the problems faced by/in informal courts

## **ANNEX C List of key informants interviewed**

### **Access to Justice in Qadhi Courts**

Baseline Survey in the Districts of Butambala and Kampala, Uganda

#### **KEY INFORMANTS INTERVIEWED**

##### **BUTAMBALA**

- District Qadhi Butambala, Abdul Karim Wadda
- Vice Chairman, Hajji Bukenya Waggwa Hood
- District Police Commander, Kibibi Police Station, AIP Musa Kayongo
- FCPU Officer Kibibi, Semakula Sulait
- Deputy Twale Lukalu & Chairman LC I Sheikh Yahya Musoke- Lukalu
- Court Assessor/ Muslim elder and Women Advisor Kibibi, Hajjat Mariam Sengooba
- Secretary Butambala District Muslim Executive Committee and First Deputy Supreme Mufti Sheikh Mahmoud Kibaate
- State Attorney, Administrator General's Office Min of Justice and Constitutional Affairs – Ms. Butanura Rashidah
- Mayor, Gombe Town Council, Haji Hassan Kalule
- Probation Officer, Butambala District, Mr. Yiga Farook

##### **KAMPALA**

- Clerk to Senior Principal Magistrate Grade one, Mwanga Court, Ms. Sharifah Nabawanda
- Clerk to Kabagye Bahinguza Joyce, Chief Magistrate Nakawa, Mrs. Grace Kasiriivu
- Grade one Magistrate Wobulenzi, Mary Kisakye (Kampala Resident)
- Deputy Head, Family Division, High Court, Justice Moses Mukiibi
- Senior Legal Officer, Law Reform Commission, Ms. Kiwanuka Lilian
- Registrar Court of Appeal, and PRO, Judiciary, Elias Kisawuzi
- Officer in Charge, Kira Road Police Station, AIP Mugerwa John
- Deputy Director , Directorate of Sharia, Uganda Muslim Supreme Council, Sheikh Kakungulu Yahaya
- Registrar Directorate of Sharia, Sheikh Mpatwe
- Sec. for Administration, Uganda Muslim Supreme Council, Haji Rugasa
- Amir, Uganda Muslim Tabligh Community (UMTC) -Sheikh Sulaiman Kakeeto
- Director Dawah - UMTC Sheikh Yusuf Dumba
- University Mullah, Makerere University Business School, Sheikh Muhammad Ali Waiswa
- Member, Majlis Ulama (College of Sheikhs), Uganda Muslim Supreme Council, Sharia Graduate Sheikh Juma Mawejje
- Qadhi, Office of the Supreme Mufti, Kibuli and Lecturer, Islamic Law of Banking, Kampala international University, Sheikh Luwalira Lubowa
- Member, International Fiqh Academy, Anas A. Kaliisa, PhD. (Comparative Law).

- **ANNEX D Newsreport on legislators' demand for a policy on Informal Justice in Uganda**



### **Uganda Government Asked to Recognise Informal Justice Systems**

Submitted by *Patrick Luganda* on Tue, 05/08/2012 - 14:11



**A man undergoing traditional justice in Uganda**

**By Gard Benda Kibaale, Uganda May 8th 2012**-Members of Parliament from Bunyoro sub region in Uganda have vowed to push government to formulate a policy on informal justice systems in an effort to improve access to justice for the poor. The commitment was made by the Members of parliament recently during a symposium on informal justice systems at Kibaale Hotel in Kibaale District.

While presenting a paper titled 'Is there room for informal justice systems in parliament for legislative consideration?' Barnabas Tinkasimire MP Buyaga West remarked that formal courts are foreign and do not suit the needs of the poor people. He said the poor were suffering injustice and kept in life cycle of poverty due to unfairness and the hectic nature of formal courts.

"They make arguments and kill a fly with a hammer. Sometimes, even where there is no case lawyers will try to create one using all types of arguments. The robes of the judges intimidate our poor people. Few people want to appear before courts because of the corruption and intimidation," said Tinkasimire.

Tinkasimire underscored the importance of Bataka Courts as informal justice systems and urged government to recognise these courts and promised to commit support and to lobby fellow MPs to pass a bill if it ever appears in parliament.

“Even LC courts were initially not recognised until we passed that statute under the Local government Act. All agitators should keep advocating for such a status. I was among the first supporters of the Peace talks with Kony, and the Mato Oput in Northern Uganda and it is bearing fruits” he said.

Meanwhile Buyaga East MP Besisira Ignatius, reiterated that in the past unlike today, it was very rare for a woman or child to sue her husband/father because conflict would be handled by elders at the community level. He faulted contemporary systems of governance as having eroded ‘our beautiful traditions which he said needed drastic reforms to create an environment conducive for the poor to access justice.

Besisira appreciated Bataka courts initiative which he said has contributed to poverty reduction since accessing justice is free and instant.

“Why should I bribe the law when I can find justice in my own village free of charge? We need a policy to support this initiative in the same way we legalised the LC system. The beauty with the informal courts is that people reconcile, are cheap, you do not have to pay for lodging near the court or pay for fuel for the police. Let us all go back to our traditions and support our clan Bataka systems” Besisira added.

In Kibaale district, the World Voices Uganda, in partnership with Overseas Development Institute (ODI) and Development Research and Training (DRT), has piloted the Bataka courts with financial support from DFID, as a low cost justice model for improving access to justice for the poor. Bataka courts resolve civil cases in an open space with full participation of community members.

Ms Beatrice Mugambe, Executive Director of Development Research and Training said the model was initiated on the success of the traditional justice system that existed before the modern justice system was introduced. She asked government to pick up on the model and put laws in place to strengthen the system.

***//Ends***

