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MUSLIM CENTRE FOR JUSTICE AND LAW

A close-up photograph of a person wearing a black hijab, with their hands pointing towards a patterned rug. The rug has a dark blue background with white and gold geometric patterns.

# **GENDER RESPONSIVENESS OF THE MUSLIM ADJUDICATION SYSTEM IN UGANDA**

**December 2016**

CURRENT CONTEXT AND POSSIBILITIES FOR IMPROVEMENT

# Gender Responsiveness of the **Muslim Adjudication System in Uganda**

A Research Report

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Commissioned by



MUSLIM CENTRE FOR JUSTICE AND LAW (MCJL)

December 2016

CURRENT CONTEXT AND POSSIBILITIES FOR IMPROVEMENT

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## Acronyms

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ACHPR	African Charter on Human and Peoples Rights
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CEDOVIP	Centre for Domestic Violence Prevention
DGF	Democratic Governance Facility
DPC	District Police Commandant
DRB	Domestic Relations Bill
IBEACo	Imperial British East African Company
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IUIU	Islamic University in Uganda
JLOS	Justice Law and Order Sector
LDC	Law Development Centre
MCJL	Muslim Centre for Justice and Law
NAPW	National Action Plan for Women
UDHS	Uganda Demographic Household Survey
UMSC	Uganda Muslim Supreme Council
UPE	Universal Primary Education
URSB	Uganda Registration Services Bureau
VAW	Violence Against Women

## Executive Summary

### I. Overview: Rationale and Methodology for the Research Study

Women's ability to access, utilize and benefit from justice mechanisms is dependent upon their ability to access information about these services as well as supportive non-discriminative services. It is particularly important for muslim women in Uganda to access services within the muslim adjudication systems because these are usually low cost and accessible for this part of society who are more likely to experience economic disadvantage and be less able to pay for services provided within the formal justice system.

According to the 2014 census, about 14% percent of the population of Ugandans are Muslims (mainly Sunni). That is a fairly substantial part of Uganda's population whose needs must be addressed accordingly in order to ensure social harmony. Administration of muslim matters is organised under the Uganda Muslim Supreme Council (UMSC) whose organizational structure runs from grassroots to the national level through community mosques, counties, muslim districts, the Executive, Magilis Umma and the General assembly as the top policy making body. The structure has been acknowledged as one which ensures a swift flow of information to the community.

The UMSC currently has programmes in health, HIV/AIDS, reproductive health targeting youth and Dawa programmes among others. The UMSC further administers an adjudication mechanism that resolves conflicts such as marital disputes. In fact, the UMSC currently issues divorce certificates for marriages contracted under Shariah. Additionally, muslim officials such as Imams and Qadhis within communities undertake conflict resolution in line with Shariah law and issue binding agreements. These practices are in line with a constitutional mandate which permits Qadhis courts to adjudicate matters like marriage, divorce, inheritance and guardianship.

However, it should be noted that the establishment of Qadhi courts as provided under Article 129 of the constitution is not yet implemented by the Parliament. Since 1964, the government of Uganda has been debating bills in various iterations that would reform and consolidate laws relating to marriage, separation, and divorce amongst its diverse religious and ethnic communities. Drafted in 2003, the Domestic Relations Bill (DRB) attempted to address these issues, but failed to pass into legislation. After its withdrawal from Parliament in 2005, the Domestic Relations Bill was split into two parts: the Marriage and Divorce Bill and the Muslim Personal Law/Qadhis Courts Bill. This was because the DRB attracted varied reactions from the muslim population about its implications on continued free worship as outlined under the Qur'an. To date, the muslim population adjudicates conflicts through an informal justice system that is largely unregulated and whose treatment of marginalised groups such as women is undocumented.

This research, which was commissioned by the Muslim Centre for Justice and Law (MCJL) interrogates the responsiveness and sensitivity of the existing muslim adjudication system for female users, and makes the case for formalization and enhancement of performance especially of qadhi courts. The research was field based and gives voice to both muslim clerics providing adjudication services as well as male and female users of the system. The research also graphically illustrates problems with the current adjudication system, especially in light of challenges faced by women.

The research therefore makes a case for reform, to formalize the qadhi courts, strengthen the oversight and resourcing capacity of the Uganda Muslim Supreme Council (UMSC) and build the capacity of users on Islamic law on adjudication and gender.

**Methodology.** This study report provides an objective and updated understanding of the situation of gender implementation within muslim adjudication processes, taking into consideration existing opportunities and resources with a view to enhancement of human rights and gender equity for female users of the muslim adjudication system. It was undertaken by two legal consultants; Dr. Zahara Nampewo and Mrs. Berna Nadia Bakidde Kiberu between 27 September – 23 October 2016 in the districts of Mpigi, Butambala and Kampala. Secondary data was generated from a desk review mostly of research reports

and MCJL's project documents (see *Annex D on list of documents reviewed*). The desk review was supplemented by qualitative focus group discussions (FGDs) with beneficiaries of the muslim adjudication system, as well as one-on-one interviews with key stakeholders involved in the project (see *Annex C for list of Persons Interviewed*). Field visits were carried out in all 3 project sites – Mpigi, Butambala and Kampala.

**Report Structure.** The report is divided into four parts. Part I gives an introduction and context of the research environment in Uganda. Part II delves into the general principles of access to justice both under mundane as well as Islamic law while Part III helps readers to understand the concept of gender justice. Lastly, the report concludes in Part IV with an assessment of the performance of muslim adjudication system as well as its sensitivity to gender. It also makes some strategic recommendations.

## II. Summary of Findings

### Key Research Findings

The message coming through from all stakeholders and beneficiaries is that the muslim adjudication system is useful especially for female members of local communities and it is a worthy compliment to the formal justice system. Adjudicators including qadhis and Imams are well regarded and mostly act in good faith to resolve disputes within the local communities conflicts. However, working as informal structures, coupled with inadequate training and resourcing has compromised their quality of services. For instance, documentation and case records are almost non-existent except at the UMSC headquarters. Furthermore, adjudicators have not received much training on aspects such as mediation, gender equality and principles of non-discrimination. This is likely true not only in the 3 study areas covered but all over Uganda. The call is for formalization of qadhi courts through operationalization of the Muslim Personal Law Bill and adequate resourcing, capacity building and monitoring by the Uganda Muslim Supreme Council.

## III. Key Recommendations

A number of recommendations arise with regard to enhancing gender equity in muslim adjudication systems in Uganda

### Short Term

- i. There is limited knowledge by most users of the muslim adjudication systems on Islamic laws and principles on dispute resolution as well as rights and duties of different stakeholders. Members of the public should be empowered to appreciate the responsibilities of both men and women in the family arrangement, as well as the mandate of qadhi courts. MCJL in collaboration with other actors such as UMSC should continue to engage with the public on these aspects.
- ii. There is a need to harmonize Islamic law and civil law especially in instances where there is potential for a conflict between the two, or even abuse through deliberate misinterpretation. As one step towards this, MCJL should compile consensus positions on controversial muslim issues such as age of marriage, return of Mahr and domestic violence. This will help in dissemination of knowledge about Islam but further work towards nationwide standardization and better protection of vulnerable groups through uniform standards which will be easier to enforce.
- iii. In terms of widening application of shariah law, MCJL needs to undertake deliberate steps to sensitise the public and especially users of the muslim justice system about the implications of the *Darausi Tebandeke v Lugolobi Saidat* case which ruling clarifies that the Marriage of Mohamedans Act Rules give jurisdiction to magistrate courts to undertake divorces of muslim marriages.
- iv. MCJL should further take steps to protect vulnerable followers of the Islamic faith by sensitizing communities on formal legal requirements such as the need for documentation of marriages so as to provide proof often required in legal proceedings. This includes registration of marriages and

acquisition of certification as well as certification of birth and death, the latter being extremely useful in cases of contested paternity of children or management of deceased's estates.

- v. MCJL should partner with the Equal Opportunities Commission (EOC) which has the national mandate for vulnerable and marginalised groups to strengthen the capacity of female users of the muslim adjudication system.

### Long Term

- i. MJCL should strategically engage with other actors such as the Justice Law and Order Sector (JLOS), Uganda Law Reform Commission (ULRC), Parliament and the Ministry of Justice and Constitutional Affairs (MoJCA) in pushing for the enactment of the Muslim Personal Law Bill and resultant operationalization of qadhi courts.

Advocacy for enactment of the Muslim Personal Law Bill should highlight the following aspects of the law as being crucial for the protection of vulnerable groups:

- Minimum obligations for one to contract a marriage. This should include some guidance on minimum economic status and specify, for example, requirement to prove one's ability to provide each wife with a separate home in cases of polygamy.
  - Requirement to register marriages
  - Minimum level of education and other qualifications for qadhis (persons officiating over qadhi courts). Not every muslim with some level of shariah law or with the role of Imam should automatically qualify to be a qadhi. This will ensure some levels of competence and quality assurance.
  - The requirement to involve women in resolution of disputes in qadhi courts, especially those involving female contestants.
  - Requirement for periodic and refresher training for imams and qadhis.
- ii. MCJL should work to strengthen the capacity of the UMSC to undertake oversight, monitoring, resourcing and quality assurance of qadhi courts as well as build skills on counseling, mediation and gender equity.
  - iii. MCJL should support UMSC to mobilize resources to support local mosques in adjudicating cases, including allowances for mosque qadhis and establishment of record keeping mechanisms.
  - iv. As a way of widening public knowledge about Islamic law MCJL should, both individually as well as in collaboration with other institutions, undertake general sensitization seminars but more specifically, support a restructuring of law academic programs at university level so as to build the capacity of legal personnel in dealing with muslim related issues - advocates to advise their clients appropriately and judicial officers to properly interpret Islamic law in accordance with emerging trends in society.

## PART ONE: Introduction and Context of the Research Study

### Introduction

This part includes an overview of the Muslim Centre for Justice and Law (MJCL) as the key implementing partner in this study and then highlights the general context of the environment of access to justice and gender equality in Uganda.

### I. Implementing Agency: Muslim Centre for Justice and Law

The Muslim Centre for Justice and Law (MJCL) is a Local Non-Government Organization formed in 2009 to promote and advance justice, tolerance and human rights in Uganda. In partnership with the Democratic Governance Facility (DGF), MCJL works towards enhanced access to justice. Under its 'Access to Justice' component, MJCL seeks to check discriminatory practices in the muslim informal justice system through capacity building of both providers and beneficiaries of justice, empowering and interesting the clerics of Qadhi courts to adjudicate cases within the confines of the laws of Uganda, as well as providing primary and secondary legal aid to indigent persons in both civil and criminal cases. The key project beneficiaries are Muslim qadhi court adjudicators including clerics/ sheikhs, vulnerable members in the Muslim community including women and children and inmates in rural prisons.

Between September – October 2016, MCJL conducted a research on the gender responsiveness of the muslim adjudication system to provide an objective, updated and accurate understanding of the situation of gender implementation within adjudication processes, taking into consideration existing opportunities and resources with a view to enhance the observance of human rights principles and gender equity for users of the muslim adjudication system.

#### Specific Objectives of the research were:

- i. To generate an overview of the extent to which Muslim adjudication systems integrate gender in their programming (analysis, design, implementation, monitoring and evaluation);
- ii. To assess the level of understanding and current capacity of appreciation of basic gender theories within Muslim adjudication centres.
- iii. To amass an evidence base of data, lessons learned and good practices that can be harnessed to inform discussions in the area of gender programming, and inform the design of gender responsive interventions in the adjudication system;
- iv. To make appropriate recommendations on interventions (both short term and long term) that could address gender based vulnerabilities and reinforce women and girls' resilience through increased access to decision making and leadership opportunities.
- v. To make appropriate recommendations on interventions (both short term and long term) that could address hindrances faced by those who are poor vulnerable and marginalised.

**Methodology.** The evaluation took place between 27 September to 24 October 2016 by Dr. Zahara Nampewo and Mrs. Bema Nadia Bakidde Kiberu, both legal consultants. A "mixed methods" approach was utilised, engaging a participatory mode in data collection. An extensive literature review was undertaken of documents generated by MCJL's Access to Justice project, as well as related reports from the wider JLOS and muslim adjudication sector. Consultations through interviews were conducted with muslim leadership and policy makers so as to ascertain policy and resourcing issues for muslim justice mechanisms. Other persons consulted include Imams, sheikhs and other muslim clerics. Users of the adjudication processes were also reached through Focus Groups Discussions (FGDs) and one-on-one interviews. Unfortunately, attempts to reach all the different muslim groupings (sunni, shiah, Ahmadiyyah muslims) were unsuccessful. Some of these groups are small and very closed.

## II. General Country Context on Human Rights and Gender in Uganda

Uganda is a member of the United Nations General Assembly and has signed and ratified most of the major human rights instruments at the international and regional level. Most crucial is the International Covenant on Economic Social and Cultural Rights (ICESCR) signed on 21 January 1987, the International Covenant on Civil and Political Rights (ICCPR) on 21 June 1995 and the International Convention on the Elimination of all Forms of Violence Against Women (CEDAW) which was signed on 22 July 1985. At the Regional Level, Uganda is a member of the African Union and the East African Community and has ratified the African Charter for Human and People's Rights (ACHPR) on 10 May 1986. The country also signed the Additional Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol) in July 2010.

However, there is a slow pace of implementation of ratified treaties with several standards at the international and regional levels not yet incorporated in national legislation. Also, Uganda's reporting to international bodies is sporadic. For instance, Uganda's reporting under the CEDAW leaves a lot to be desired. Of the 7 reports submitted since the treaty's ratification, 6 have been combined. The 1<sup>st</sup> and 2<sup>nd</sup> reports were jointly submitted in June 1992 while the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> reports were submitted as a merged draft in December 2008. At the same time, there is a lack of clarity on responsibility for reporting between the line ministries of Foreign Affairs and that of Gender, resulting into blurred responsibilities and delayed submissions. Furthermore, there is low awareness to both the existence and content of treaties such as CEDAW and the Maputo Protocol and very low use of international treaty bodies and mechanisms such as the CEDAW Committee, the UN Special Rapporteur on Violence Against Women or the AU Special Rapporteur on the Rights of Women in Africa. Uganda has also delayed to ratify a number of key protocols including the Optional Protocols to the CEDAW, which compromises the full observance of women's rights in the country.

**National Legislative and Policy Framework.** At the national level, Uganda has made progress in ratifying and domesticating several international instruments and has what is regarded by many as a progressive constitution (Concluding Comments of the CEDAW to Uganda's third period report (CEDAW/C/SR.575 and 576) 9/8/ 2002). The constitution incorporates a gender-sensitive approach to the definition of discrimination on the grounds of sex, in harmony with the CEDAW Convention and guarantees the equality of men and women and freedom from discrimination (Article 21). The Constitution goes further to provide for equal rights in marriage (Article 31(1)), affirmative action for marginalized groups (Article 32) and places the rights of women at the forefront of the legal and development agenda (Article 33). These legislative reforms have translated into some progress in the realization of women's rights including increased protection of women's rights on specific aspects such as harmful socio-cultural practices, equal recognition of women before the law and increased numbers of women representatives at various elected and appointed positions.

## III. Access to Justice and Gender Equality

**Access to justice** is one of the most important basic human rights that is crucial to ensure that a range of other human rights are met. Uganda's Constitution (Article 28) reflects the standards established under the International Covenant on Civil and Political Rights (Article 14, ICCPR) for a fair, prompt and public hearing by a competent, independent and impartial tribunal established by law. The Constitution also obliges State Parties to put in place functional and competent mechanisms that ensure access to justice for all persons.

**Challenges to Access to Justice:** Despite these constitutional guarantees, access to justice remains a mirage for the majority of people living in Uganda and especially for marginalised groups such as women. The services of private legal practitioners are too expensive for most, while the existing formal mechanisms are over burdened with heavy caseloads. In 2013 for instance, there was a 56% growth in cases registered in court, even with 89.12% disposal rate of registered cases in the judiciary (JLOS, 2013). The environment for accessing justice is further constrained by aspects such as the fact that formal justice services remain in the urban areas and central region of the country and are expensive, creating both physical and economic

barriers that may result in victims or users choosing to relinquish their rights in pursuing formal justice options. Additionally, there is low awareness of rights and low confidence in the judicial system. Thus, for the majority of Uganda's population who are poor and vulnerable persons, interfacing with legal processes can be a formidable task, daunting at best. Predictably therefore, facts such as the aforementioned justify the establishment of other sources of justice such as qadhi courts.

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

Another hindrance to women's access to justice is Violence Against Women (VAW) which is wide spread in Uganda across ethnic, social, educational, and religious groups and is caused by an imbalance between men and women that is rooted in gender norms and attitudes. All forms of violence against women are common in Uganda including sexual violence, physical, emotional and psychological, socio-economic and harmful traditional practices. According to the 2006 Uganda Demographic Household Survey (UDHS), 59.6% of women had experienced physical violence since the age of 15 committed by either their husband or partner with the rate higher in rural areas at 61. In fact, the 2010 Concluding Observations made by the Committee on the Elimination of Discrimination against Women note with concern the prevalence of domestic and sexual violence against women and girls in Uganda. The Committee noted that such violence appears to be socially legitimized and accompanied by a culture of silence and impunity (CEDAW Committee, Concluding Observations: Uganda 2010, para 23, p. 5). Another study done by the Centre for Domestic Violence Prevention (CEDOVIP) in 2011 found that up to 70% of men, compared to 60% of women felt that a man is justified to beat his partner. The study further discovered that in 2011 alone, there were over five million episodes of violence against women (CEDOVIP 2011). Wife beating is premised on social practices such as bride wealth, early marriage and polygamy. In a society such as this, women are unlikely to seek justice against their partners in fear of violence.

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

Lastly, another aspect to note is that of low enjoyment of economic rights by women. Women continue to face constraints related to access to, control over and ownership of businesses and productive resources such as land and credit. There is also limited employment of women in skill-based industries and this further constrains women's income potential. According to the UDHS 2006, 30% of women receive no payment for their work versus 13% of men and 50% of the employed women work in the lowest three paying sectors that often do not require highly skilled labour - (agriculture, household, and mining and quarrying) as compared to 33% of the men. More importantly for women is access to land, the biggest asset and factor of production in Uganda. Less than 10% of registered land is owned by women whereas they comprise the majority of the labour force in the agricultural sector. In fact, less than 20% of women involved in agriculture control outputs from their efforts. The limited enjoyment by women of access to factors of production such as land and incomes in turn negatively affects their confidence,

empowerment and ability to take decisions to seek justice, especially if such decisions involve domestic disputes.

In conclusion, despite the progresses made especially on the legal and policy fronts, women in Uganda have a long way to go before full realisation of gender equality.

## PART TWO: Access to Justice: General Principles and Islamic Standards

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### Introduction

This part includes an introduction to principles of access to justice under international law and then explains the aspects of the Islamic system of adjudication of Justice

### I. Justice and Access to Justice

Justice is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. It implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and is especially important during adjudication of disputes. Adjudication is defined as the process of resolving a dispute through the formal giving or pronouncing of a judgment or decree in a court proceeding. This definition implies that a complaint was raised, the claims of each of the parties taken into consideration during a hearing and a judgment made before a competent and impartial judicial officer.

In appreciating the concept of justice, no discussion, articulation, conceptualization and evaluation of the machinery of justice has any meaning unless it centrally addresses the question of accessibility to justice or the lack of it. Access to justice is recognized as one of the most important basic human rights without which it is not possible to realize many of the human rights, whether they be civil or political, or social and economic. It is guaranteed by international human rights law the Universal Declaration of Human Rights (1948) and other international treaties to which the Government of Uganda is signatory. In particular, Article 14 of the International Covenant on Civil and Political Rights (ICCPR) provides for access to justice and the right to a fair trial.

Uganda provides guarantees for access to justice both through formal and informal justice mechanisms in Articles 23, 42, 50, 126, 127 and 128 of its constitution. The constitution mandates that in the determination of any matter regarding the rights of a person, there should be a fair hearing within a reasonable time by an independent and impartial tribunal established by law.

While the administration of justice usually implies formal judicial mechanisms, such as formal courts and tribunals, traditional dispute resolution mechanisms are equally relevant. The latter is described as a system of largely British jurisprudence (in Commonwealth countries) that sets specific definitions of offences, rights, obligations, remedies and particular process of its administration. On the other hand, traditional/informal justice is heavily inclined towards reconciliation and dispute resolution. Traditional dispute resolution practices are carried out at the community level and vary from one place to the next. There are, however, commonalities in the approaches. For example, aspects of trust, voluntarism, truth, compensation, restoration and reconciliation are essential forms of traditional dispute resolution mechanisms.

A national survey undertaken in 2006 on access to justice in Uganda lists the following criteria as important for any access to justice mechanism;

- *Affordability and Efficiency* - provides cheap, fast and prompt service delivery . This fulfills the principle of economic accessibility.
- *Fairness and Sensitivity* - responsiveness to all social categories, including the poor, women, youth and disabled. This fulfills the principles of equality and participation and non discrimination.
- *Accessibility* – able to serve persons within local communities.
- *Impartiality and Accountability* - free of corruption and bribery, are independent and function within acceptable ethics.
- *Competence* - provides adequate technical capacity of personnel.

- *Effectiveness* – is conciliatory and conclusive on cases.
- *Has force of Law* – is respected and bears enforcement powers for decisions made.

## II. Islamic Law on Administration of Justice

In Uganda, the constitution under Article 129 (1) (d) provides for the establishment of Qadhi courts. These are dispute resolution mechanisms sanctioned through Islamic principles. The premise of Qadhi courts is based on the fact that the Islamic system provides for a system of dispute resolution. Dispute resolution under Islam is guided by sources of Islamic Law. The primary sources are the Qur'an and Sunnah. The Qur'an is revealed by God to humankind through the Prophet. It has therefore the highest authority, which is to say that it is the deepest root (*asl*) of Islamic law. The *Sunnah* represents the actions and words of the Prophet, who is a model for Muslims to follow. Other sources include *Hadiths* which are reports by others of what the Prophet did or said, and they are considered as authoritative sources as well. Another source of Islamic law is the interpretation of Islamic law or *fiqh*. The process of *fiqh* is necessary because in some instances the Qur'an's injunctions are not easy to interpret. However, it should be noted that different rules of interpretation have led to the co-existence of various schools of Islamic jurisprudence, as is evident of the different Islamic sects in Uganda.

It has been stated by various scholars as derived from the Holy Qur'an that Islam presents a comprehensive legal and judicial system under which every individual not only enjoys full protection from encroachment upon his or her rights but also is guaranteed swift justice in case of an infringement of his rights. Islam ensures proper management of the legal and judicial system by providing a code of conduct for those who are appointed to implement law and justice in society. However the details have not been compiled or codified and are scattered in different ancient works on Islamic law. Take note that the affairs of an individual are divided into two kinds, that is the religious affairs and the worldly affairs.

Obviously, most people presume that religion has nothing to do with their private life outside the place of worship. However Islam provides a complete manner of life concerning every aspect of the human life. All aspects of life are controlled and regulated by the religious commandments revealed from Allah (Subhana wa ta'aala) and the Sunnah of the Holy Prophet Muhammad (PBUH). Administration of justice may seem as a purely worldly matter but it is Part of Islam. Islam demands that like other acts and deeds, the responsibility of dispensation of justice is performed in accordance with the Qur'an and Sunnah, with utmost honesty, devotion and justice. It is regarded to be indispensable for every community. The absence of a sound and honest system of administration of justice in society leads to the infringement of rights with no hope of relief.

The Arabic word Qada' denotes administration of justice i.e to decide or adjudicate between the conflicting people and make a decision that is binding in nature. Qadi means 'judge'. There are several Qur'anic sources that outline principles to guide the administration of justice in Islam. For instance, in Surat Hudrat, it is stated that where relations are gone among, Allah implores people to verify information before acting upon it.

Furthermore, the Holy Prophet is reported to have stated that:

"On the day of judgement a judge will be summoned and will be so severely accounted that he will wish he had never given judgment between two persons regarding a single date." According to this verse, administration of justice must be done fairly and a judge is accountable for his judicial duties and will be held accountable on the day of judgement for the performance of his judicial duties."

Additionally, Islam dictates that justice must be done to all in compliance with the writings of the Qur'an. This is evident from the following verse of the Holy Qur'an:

“we sent aforetime our apostles with clear signs and we sent down with them the Book and the Balance (of right and wrong) that the men may stand forth in justice” (Al Hadis: 25).

This provision makes it clear that administration of justice between mankind is a noble and indispensable responsibility.

The above is further elaborated as follows:

“O Daud! We did indeed make you vicegerent on earth so judge between men in truth (in justice). And do not follow the lusts (of thy heart) for they will mislead you from the path of Allah” (Sad: 26).

The Prophet Muhammad (PBUH) was also assigned the responsibility of adjudication of justice through the following verse in the Holy Qur'an:

“And this (he commands): judge thou between them by what Allah has revealed and follow not their vain desires, but beware of them lest the beguile thee from any of that (teachings) which Allah has sent down to thee. And if they turn away be assured that for some of their crimes it is Allah's purpose to punish them. and truly most men are rebellious” (Al -M'idab: 49).

From the provisions above, it is clear that adjudication of cases requires the Imam or religious leader tasked with the mandate to adjudicate over cases, as guided by the principles in the Holy Quran as well as Sunnah. However it should be noted that in cases where the solution to the problem cannot be identified through those two sources, then the judge is supposed to use principles of fairness and ensure that no party is harmed further by his decision.

Even after the prophet's death, dispute resolution continued through the existing muslim leadership, first through the caliphs and later through other Islamic leaders. It is reported that upon his death, the first Caliph Abu Bakr would always refer to the Holy Qur'an and Sunnah of the Holy Prophet but if he failed to establish a solution from then he would refer to his companions. This was the same with the second Caliph Umar who would also refer to the judgments passed by the first Caliph before making his final judgment.

### III. Islam in Uganda

Islam reached B/Uganda about 1200 years after the death of Prophet Mohamed (PBUH). Ahmad bin Ibrahim led the first group of Arabs who reached the Buganda Kingdom in the year 1844 A.D. They found a kingdom with strong cultural beliefs and practices as well as a political system governed by the Lukiiko. However they were granted access to the communities and the Kabaka who converted to Islam, was given authority to lead prayers. Upon the death of Kabaka Ssuna, his son Muteesa I took over the reigns and he too practiced and learnt the Quran, performed the five daily prayers and declared Islam as the official language of the Kingdom. He too lead the prayers as the Kabaka but also as the Chief Qadhi or Mufti. Thus, Buganda's leaders, the Kabakas who embraced Islam were also the de facto leaders of Islam (chief khadhi or mufti) in the kingdom. The Buganda Parliament was also comprised of muslims including the appointment of a muslim prime minister (Katikiro), Abdul Kadir Kyambadde.

In 1890, the Imperial British East African Company (I.B.E.A.CO.) was formed, and B/Uganda was declared a British protectorate. Captain Lugard, who was sent as the representative of I.B.E.A.CO, came with the intention of promoting Christianity in this part of the world. After the signing of the Buganda Agreement in 1900, Muslims were allocated one county of Butambala and their de facto leader was not a Kabaka, but rather, Prince Nuhu Mbogo. When prince Mbogo died in 1921, Prince Kakungulu his son succeeded him and became the leader of muslims in Buganda.

Eventually, muslim leadership evolved from royal inheritance to elected leadership based on knowledge of Islam. This arrangement was facilitated through creation of the Uganda Muslim Supreme Council (UMSC), formed in 1972 as an umbrella organization for all Muslims in Uganda. It is headed by the chief khadhi and has national structures that undertake varied functions, among which is that of conflict resolution.

To date, administration of muslim matters is organised under the Uganda Muslim Supreme Council. The organizational structure of the UMSC runs from grassroots to the national level through community mosques, counties, muslim districts, the Executive, Magilis Uamma and the General assembly as the top policy making body. The UMSC administers an adjudication mechanism that resolves conflicts such as marital disputes. In fact, the UMSC currently issues divorce certificates for marriages contracted under Shariah. Muslim officials such as district khadhis, county sheikhs and mosque Imams are some of the officials that carry out dispute resolution under the UMSC structure in line with Shariah law and issue binding agreements.

However, due to divergent views on how to practice Islam, several sects emerged within the muslim population, resulting into internal struggles for muslim leadership. To date, there are several muslim sects, each with its own leadership and organizational arrangements, including a multitude of dispute resolution fora.

#### IV. National Legal Framework on Muslim Dispute Resolution Systems

According to the 2014 census, about 14% of Uganda's population is muslim (mainly Sunni). That is a fairly substantial part of Uganda's population whose needs must be addressed accordingly in order to ensure social harmony.

Since 1964, the government of Uganda has been debating bills in various iterations that would regulate muslim affairs including marriage, separation, and divorce. For instance, the Domestic Relations Bill (DRB) drafted in 2003 attempted to address these issues, but failed to pass into legislation. After its withdrawal from parliament in 2005, the Domestic Relations Bill was split into two parts: the Marriage and Divorce Bill and the Muslim Personal Law Bill. This was because the DRB attracted varied reactions from the muslim population about its implications on continued free worship as outlined under the Qur'an.

More recently, the 1995 Constitution protects the right to free worship. Article 29 (1) (c) provides that, "every person shall have the 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 organization in a manner consistent with this Constitution." Article 129 (1) (d) goes a step further to permit muslims to have their own religious adjudication system. The provision stipulates that:

*"The judicial power of Uganda shall be exercised by Courts of Judicature which shall consist of such subordinate courts as Parliament may by law establish including Qadhis courts for marriage, divorce, inheritance of property and guardianship."*

Though existing, qadhi courts are not legally operational. The establishment of Qadhi courts under of the 1995 constitution has not been regularised due to the absence of a supporting legislation. To date, qadhi courts operate informally and are headed by the Director of Shariah at the UMSC. Below the directorate at the UMSC, area Imams of district and village Mosques adjudicate over cases that may be brought to them.

Other than the constitution, the other legislation that regulates muslim affairs in Uganda is the Marriage and Divorce of Mohammedan Act chapter 213 of the laws of Uganda. This however is limited to matters of marriage and divorce.

Section 2 of this Act states that:

*“All marriages between persons professing the Mohammedan religion, and all divorces from such marriages celebrated or given according to the rites and observances of the Mohammedan religion customary and usual among the tribe or sect in which the marriage or divorce takes place, shall be valid and registered as herein provided.”*

Pending the passing of the Muslim Personal Law Bill, there is no comprehensive law or policy governing muslim affairs in Uganda and this is a serious gap. There is serious need to codify some of the instruction on matters affecting public and private life as dictated by the Qur'an. This will help to demystify and disseminate Islamic law, and further provide guidance on matters which are known only to a few muslim clerics.

### **Islamic Law and National Law**

While Islamic law and national or state law are fundamentally incompatible in terms of their respective natures, they are nevertheless compatible in terms of potentially mutually beneficial relationships. The distinction between Islamic and national law does not mean that there can be no fruitful interactions between both. For example, Islamic law requires muslims to obey state law for the sake of peace and harmony. In most societies there is a relationship between law and morality, with laws often being derived from a shared understanding of moral principles, and moral principles themselves often interpreted through religious lenses. Moral principles, and Islamic law in Muslim societies, can provide legitimacy to state laws, or inversely can be used to challenge specific laws as long as this takes place through a process of civic reason. Another example of positive interaction is the fact that there are many areas of common interest between Islamic and state law, so that the jurisprudence from Islamic law can be useful to inform state law.

The dialectic between Islamic and state law should be informed through a process of deliberation or civic reason which permits a public discussion of legislative proposals that may be inspired by religious beliefs but that should not necessarily lead citizens to challenge each other's religious views.

## PART THREE: Gender Justice

### Introduction

This part explains the concept of gender and its interaction with aspects of justice. It expounds on definitions and distinctions of gender, sources of gender equality within Ugandan, international and regional human rights law and highlights important principles for gender justice.

### I. Understanding Gender

Gender is the socially constructed roles, responsibilities behaviours, activities and attributes that a given society considers appropriate for men and women. Thus, gender is not only about women, but also men. Gender influences societal norms about how men and women are regarded and in this way, society develops rules, regulations and laws of what is normally expected of men and women (a culture of norms). Gender gives different opportunities, power, privileges and status to women and men. The Ugandan society has given men strong and superior attributes and offered women the weak and inferior attributes. In terms of justice, gender determines when, why and how women may access or fail to access justice.

Gender should be differentiated from “sex”. For many people, the terms “gender” and “sex” are used interchangeably, and thus incorrectly. Sex evokes the physical and biological characteristics that distinguish males and females, which are universal, obvious and generally permanent. Sex includes physical attributes such as external genitalia, sex chromosomes, gonads, sex hormones, and internal reproductive structures. Sex is used to identify individuals as male or female while gender assigns them as feminine or masculine. Unlike sex which is biologically determined, gender is socially learnt and can vary from time to time and place to place. Gender is closely monitored and reinforced by society. Accepted social gender roles and expectations are so entrenched in our culture that most people cannot imagine any other way. As a result, individuals fitting neatly into these expectations rarely if ever question what gender really means.

Gender is part of human rights, which aspires towards recognition of equal value between men and women, equality and non-discrimination. Human rights support the elimination of gender-based assumptions and expectations that generally place women at a disadvantage through gender equity. Gender equity is the aspiration for fairness and justice of treatment between men and women. It is achieved when women and men enjoy the same rights and opportunities across all sectors of society and the needs of women and men should be equally valued and favoured.

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

Under Uganda's constitution, all persons are entitled to freedom from any form of discrimination, including those based on the ground of sex. Article 21 provides for equality of persons under the law while Article 33 specifically provides that “women shall be accorded full and equal dignity of the person with men”.

Paragraph 326 of Uganda's Vision 2040, a development planning framework upholds the rule of law and the supremacy of the constitution including equal treatment of individuals according to the law. Paragraphs 281-290 further detail steps to be taken in order to achieve gender equality and women empowerment for the country's socio-economic transformation.

Article 2 of the Maputo Protocol also urges state parties to commit themselves to modify social and cultural patterns in order to eliminate “harmful practices that are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men”.

Additionally, international human rights law places a legal obligation on States to eliminate discrimination against women and men in all areas of their lives. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides under Article 5 that, “State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

## II. Gender and Justice Mechanisms

Expectations of women and men's behaviour such as their use of the justice system are socially developed and not biologically determined. Because Uganda is a patriarchal society, men enjoy social dominance and as a result, women have suffered historical disadvantages that have resulted into their unequal and subordinate status with men.

Part of gender equity is the assurance that women just like men will enjoy equality before the law. It is the mandatory duty of courts and other dispute resolution mechanisms to protect not only the women, but also their rights, taking into account their unique status and natural maternal functions in society. Judicial officers should act professionally without discrimination and must treat all parties fairly regardless of their gender. Patriarchal or patronizing attitudes resulting into women's unequal use or participation in justice mechanisms should be forbidden.

At the same time, gender bias within the justice system should not be encouraged. Gender bias, also referred to as gender insensitivity is 'behavior or decision making of participants in the justice system that is based on or reveals:

- i. stereotypical attitudes about the nature and roles of women and men;
- ii. cultural perceptions of their relative worth; or
- iii. myths and misconceptions about the social and economic realities encountered by both sexes".....

In other words, gender bias is action based on stereotypical ideas of masculinity and femininity that result in the privileging of male experiences, explanations and points of view at the expense of the welfare and status of women.

Most often, gender bias in dispute resolution fora mainly negatively affects women. It is documented that many judicial officers feel that women, for instance, who are beaten by a spouse or raped have provoked the attack. Moreover, because of the deeply entrenched patriarchal tendencies in our societies, much gender-biased behavior is unconscious and often subtle, but yet deeply ingrained in judicial systems.

Women should not face undue challenges in seeking justice and it is extremely important to advocate a gender sensitive and gender-responsive justice system that favours the needs of both men and women. In relation to justice, a gendered justice system should:

- Make reference to concepts of equality and equity of men and women
- Allow adequate participation of women including the right to be heard, defend oneself and call witnesses
- Entail procedures of accountability for decision makers especially the adjudicators
- Provide for a right of review of decision reached, or even appeal.

### III. Islam and Gender Justice

Islamic law has had a positive impact on women for many centuries. For instance, in a review of inheritance principles, Islam elevated women to a spiritual and legal status equal with men. Shariah granted to women a series of protections (including a legal personality as well as property and inheritance rights) that did not exist before.

Similarly, women can participate in justice mechanisms and can seek justice including the right to be heard, defend oneself, call or appear as witnesses so as to aid dispute resolution. But this does not mean that Islamic law respects human rights as they are understood and implemented in modern societies, and it is also difficult to argue with the fact that today in many muslim majority countries, women still cannot exercise some of their fundamental rights (such as equality of testimony of men and women, or equal inheritance) and do not have protections equal to those granted to men in a wide range of areas. A woman's testimony is worth half a man's in Islam. She gets half the inheritance of her male siblings and a woman's marriage contract is between her male guardian and her husband. A man can have four wives; he can divorce by simply using the word "*Talaq*." Furthermore, a woman must give specific reasons to get a divorce. Even if the father is abusive, women who remarry lose custody of their children. There are clear examples of the discrepancies between national and Islamic legal systems.

What is clear however is that women are recognized as participants within the justice system and are not prohibited from seeking justice accordingly.

## PART FOUR: Muslim Adjudication Processes and Gender Justice in Uganda

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### Introduction

This part details the responsiveness and sensitivity of the current set up of the muslim justice system to gender concerns. It further outlines recommendations for improvement.

### I. Functionality of Muslim Adjudication Mechanisms

#### Structural Set up

All muslim dispute resolution mechanisms in Uganda fall under the Uganda Muslim Council Council (UMSC) which heads all mosques in the country. The Shariah Court is situated at the UMSC headquarters at Old Kampala in Kampala. This court is established under the constitution of UMSC and is one of the organs of UMSC falling under the Directorate of Sharia. It is headed by a director. The directorate is composed of the director, a deputy director and three registrars one of whom is tasked with handling the administration and registration of cases reported. The role of the registrar is to summon both parties and register the complaints received. The court handles mostly cases of a domestic nature as laid out under Article 129 (d) of the constitution to include marital disputes, inheritance, guardianship, guidance and counseling. Other non-domestic cases such as theft are mediated or referred. Mediation is employed first before a decision is made and both disputing parties are included as much as possible in amicable settlement and resolving of disputes. However, it should be noted that the decision of the UMSC Shariah Court is not final, the unsatisfied party can appeal to a higher court.

Beneath the Council's Shariah Court at headquarters, it is expected that all districts should have their own smaller shariah courts which should handle matters arising from individual mosques. At the same time, most district mosques have executive committees comprising of village muslim elders who assist the mosque heads, the Imams, in dispute resolution. However, due to several factors especially limited financial resources, these district courts are not operational.

However, the presence of the shariah court at UMSC and qadhi courts generally has created controversy over whether they are competent court whose rulings or orders can be enforced in Uganda. There are claims over lack of jurisdiction and force while others argue that they are competent courts envisaged under Section 2 of the *Marriage and Divorce of Mohammedan Act* and under Article 129(1)(d) read together with Article 274 of the Constitution.

The status of the informal Sharia court at UMSC has been considered by Hon. Justice B. Kainamura in *Sumaya Nabawanuka v. Med Makumbi* (High Court Family Division Divorce Cause No. 39 Of 2011) in which the petitioner (Sumaya) filed a petition seeking for a decree nisi dissolving her marriage with her husband, the respondent. The marriage was contracted in accordance with muslim law. She wanted custody of the child; maintenance of the child, alimony; share of the matrimonial property and costs. The respondent filed his reply refuting the allegations in the petition and by way of a preliminary objection applying that the petition be dismissed because it was *re-judicata* since the matter before court had been finally determined by the Shariah Court of the Muslim Supreme Council. He argued that a shariah court is a court of competent jurisdiction as provided for Under Article 129 (1) (d) of the Constitution 1995. He further contended that the shariah Court of the Muslim Supreme Council is such court that is envisaged under the *Marriage and Divorce of Mohammedans Act*. He urged further that the petition was incompetent in as far as it sought reliefs under the Divorce Act Cap 249 even though the marriage between the parties was celebrated under Mohammedan law.

Counsel for the petitioner refuted the assertion that the shariah court of the Muslim Supreme Council was a court of competent jurisdiction as envisaged under Article 129 (1) (d) of the constitution. She urged that Parliament had not yet operationalised Art. 129 (1) (d) of the constitution which requires Parliament

to establish qadhi's courts and that if there are such courts in operation they are operating outside the dictates of Art.129 and are consequently incompetent.

Hon Justice B. Kainamura held that whereas indeed it is true that qadhis courts envisaged under Art 129 (1) (d) of the Constitution have not yet been established, he did not agree with the petitioner's view that shariah courts currently operate outside the law. His Lordship based his position on Article 274 of the Constitution which provides:-

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

He noted that the shariah courts of the Uganda Muslim Supreme Council is operating within the law and was a competent court to handle divorce cases and grant relief.

Another recent decision interpreting the status of shariah courts was considered in *Re Hamza Mohamed and Nashat Mohamed (Minors)*, a decision of the High Court Family Division Misc. Appl. No. 89 of 2012 where the UMSC shariah court issued a divorce certificate between the two contesting parties and further granted custody of the two children of the union to their mother. The applicant (wife) brought action to the High Court seeking other relief under section 18 of the Act.

While considering section 18 of the Mohammedan Act, Justice Mukiibi indicated that that particular section means that "any party to an Islamic marriage may come to this court seeking relief by way of divorce and other consequential orders but the court must apply Mohammedan law. He further noted that:

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

The High Court upheld the decision of the shariah court's decision granting divorce to the parties and custody of two children to the wife (mother) until they reach the age prescribed by Islamic law. The High Court further noted that "Shariah Court has jurisdiction and is competent to grant divorce as relief and is equally competent to grant orders relating to custody of the children." Since the shariah court had already made a valid custody order it was not necessary for the High Court to determine the application on merit and the application had been overtaken by events at the Sharia Court.

The implication of these cases is that orders made by shariah / qadhi courts are enforceable and only in limited circumstances and civil courts may reverse the decisions issued if contrary to natural justice.

### Accessibility

Forms of muslim dispute resolution mechanisms operate at different levels of the muslim administration system with the highest being the Shariah Court at UMSC. There are as many qadhis courts operating informally within the country as there are mosques. Except for minimal municipal standards for building, there are no strict formal requirements prior to erecting a mosque. As such, anyone can build a mosque and as a result, there are many mosques in muslim stronghold areas across the country, both public and privately owned. The multiplicity of mosques translates into physical accessibility to justice mechanisms because mosque leaders or Imams also take on the role qadhis or judges.

Furthermore, except for the UMSC Shariah Court which charges a case opening fee of 50,000 shillings (approximately USD 15), dispute resolution services in most qadhi courts are free. In general therefore, muslim justice mechanisms are fairly accessible, both physically as well as economically.

### Competence and Quality Assurance

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

The majority of Imams across the country have not received any specific training and mostly rely on their knowledge of the Qur'an to resolve disputes. Additionally, because of the internal wrangles within muslim leadership in Uganda, some mosques fall outside of the control of UMSC, to other factions which have even less administrative capacity to provide oversight and quality assurance. Thus, most lack simple items such as stationery for case documentation purposes which affects their competence to perform effectively.

Related to the aspect of competence is the undue reliance on legal technicalities which do not often serve the purpose of justice or protection of vulnerable parties especially women. As shared by MCJL, most Islamic marriages are not formally registered. This however creates challenges especially at divorce.

The case below highlights the challenge raised:

#### Nakamya Zura v Kakooza Abdul

Nakamya approached MCJL seeking a more equitable distribution of property upon divorce from her husband who had thrown her out of their home empty handed. She had been married Islamically to Abdul for over 40 years and the two had accumulated a lot of wealth including 2 motor vehicles, different pieces of land and houses. However, this case proved difficult on grounds of lack of proof of marriage. When asked by MCJL for proof of marriage, she informed the Centre that she had not obtained a marriage certificate and further still, all the witnesses to the marriage had died. All mediation efforts made by MCJL to have her husband share with her some properties were fruitless as he insisted that the two were never married. The attempts made to contact the sheikh who officiated her marriage ceremony were declined with the Sheikh stating that Nakamya's husband had warned him not to do so. All she had as evidence of her marriage were her children some of whom were adults. Nakamya was disappointed when MCJL was unable to help her to file for divorce since she had no proof of the marriage.

Through the case above, it is clear that providing justice to women especially through the formal justice system is often hindered by the lack of formal proof of marriage. This is not helped by the obvious incompetence of muslim clerics who fail to advise parties to formally register their marriages so as to obtain marriage certificates.

Another matter to highlight is the lack of consensus on how to handle contentious matters such as the return of *Mahr* (Bride wealth / dowry). According to Quran 4:4, the *Mahr* is given as a free gift by husband to the wife at the time of contracting the marriage. The settling of a dower on the woman at the marriage is obligatory, **Quran 4:24** provides:

*Thus has Allah ordained prohibitions against you except for these, all others are lawful, provided you seek them in marriage with gift from your property deserving chastity not lust. Seeing that you derive benefits from them ...*

The case of *Mifumi v Attorney General Constitutional Appeal No. 2 of 2014* decided in the Supreme Court, the highest court in the land is to the effect that the demand for a refund of bride price is unconstitutional and that the practice undermines the dignity of a woman contrary to Article 33(6) of the Constitution. Such a precedent from the highest court in the land, in line with the constitution by implication negates the return of bride wealth.

Relatedly is the issue of age for marriage. The Marriage and Divorce of the Mohammedan Act does not provide details on how to contract a Muslim marriage. According to section 2 of the Act, marriage has to be celebrated in accordance with norms and practices of Islam. Therefore, the guidance has to be derived from shariah law. It should be noted that no particular age has been specified for marriage in Islamic law. The Quran speaks of age which it identifies with the age of majority. Quran 4: 6 states:

*And go on observing and testing the orphans until they reach the marriageable age, if then you find them of sound judgment, deliver over unto them their property and devour it not by squandering and in haste lest they should grow up to demand it.*

The age of majority under Islamic law is attained when a person reaches the age of puberty. A girl is legally considered to be a major when she begins to menstruate. A boy is considered major when he starts getting night pollution or wet dreams. It should be noted that some muslim countries have legislated marriageable age to be 18 and 16 years for men and female respectively. In Uganda the age of majority is 18 years as provided for under Article 31 of the Constitution. However, the Marriage and Divorce of the Mohammedans Act does not specify the age limits at which parties may contract a muslim marriage as it appears in other marriage laws. There is a danger for not specifying the marriageable age as some parents may force their daughters in marriage when they are below the age of 18.

There is a need for MCJL to compile consensus positions on controversial issues such as those highlighted above so as to standardise judgments for potential cases going before shariah / qadhi courts.

### Standard of Performance

Due to the limitations in funding, most qadhi courts experience low standards of performance. For one, documentation is almost non-existent, cases are rarely recorded and therefore enforcement of decisions becomes difficult, or appeals therefrom.

Secondly, confidentiality is not always guaranteed because of the limited space within mosques to hold private meetings. In fact, it was revealed during the study that some Imams invite conflicting parties into their homes to guarantee some form of privacy. Even the UMSC Shariah Court though faring better than others in terms of having facilities for documentation, lacks private rooms in which to hold confidential meetings. In terms of personnel dedicated to dispute resolution, cases may be handled by normally 1-2 adjudicators, including the Imam and the Ameerat (female muslim leader) but most often it is just one person.

Due to the above mentioned factors, dispute resolution work is under-prioritized especially where it requires resources in dispensation of justice, such as where there is need to travel to the locus or where a victim requires medical support in cases of physical violence.

## II. Responsiveness to Gender

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

Furthermore, there seems to be limited awareness or perhaps desire to undertake gender justice programming with a gender lens. For instance, there is no gender disaggregated data either at the UMSC or in the courts lower down. This is unfortunate because the majority of parties seeking justice under muslim adjudication systems are female. According to the research findings, the majority of users of these justice systems are younger women between the ages 25 – 35, poorer women most with few or no assets, less formal education, usually working in the agricultural sector and mostly dependent on male relatives or husbands for their sustenance. The UMSC directorate also entertains cases from non-muslim women as well as those against male partners even when the female claimants may not be legally married to them. It however faces challenges as it undertakes its work.

The case below highlights some of the challenges faced by muslim adjudication systems.

**Bakundane Ismail Adam v Kyerani Zainabu**

Zainabu approached MCJL seeking legal aid in 2014 to challenge the ruling of the UMSC which had earlier granted her husband a divorce and gone ahead to issue a divorce certificate. The shariah court in UMSC however did not pronounce itself over the custody of the children and distribution of the parties' matrimonial property. Following the divorce, Zainabu's husband stopped providing from the children and yet Zainabu had lost her job. Her husband was also threatening to sell their home.

MCJL assisted Zainabu to file for custody and maintenance at the secular Wakiso Court, including seeking an order to prevent her husband from selling their matrimonial home. The said court was reluctant to address the issue of the matrimonial home since it had no mandate to do so. Instead it referred the parties back to the shariah court that handled the divorce. Expectedly, Zainabu was hesitant to revert to the shariah court because she felt that it had been biased against her and therefore did not expect justice from them.

This case highlights the obvious challenges and neglect by the UMSC shariah court to address critical gender aspects such as custody of children and their continued maintenance which inevitably fall on the shoulders of often poor women. It indicates that shariah courts are often oblivious to the need to take extra steps to protect vulnerable women. The case left MCJL in a dilemma of other action to take since the two concerned parties had submitted themselves to the jurisdiction of a shariah court whose judgment was binding.

The case below further reiterates the above mentioned challenge:

**Nakazzi Sumayiya v Kabuye Muhamed**

Nakazzi had filed a suit contending that her husband had sold their matrimonial home without her consent. The two had been married under Islamic law for over 25 years and had five children. By the time Nakazzi filed the suit, they had undergone divorce under Islamic law on request of the wife. On divorce, the husband had given her five million Ushs. as a conciliatory gift. However, she felt that she had been unfairly treated by both the court and her husband. She filed a suit in a secular court seeking a revision of the ruling by the shariah court and therefore a share of their matrimonial property. In defence, the husband stated that the shariah court had handled the divorce properly and she had received was appropriately due to her. The court consequently decided that since both parties were muslims and has submitted themselves to the jurisdiction of the shariah court, it could not interfere with the decision. Nakazzi was left homeless and hopeless.

With regard to nature of cases, it was found that the majority of cases entertained under muslim adjudication systems are domestic related, mainly revolving around maintenance of homes and child upkeep.

***Examples of cases handled***

- Late coming by the husband explained by the fact that since muslims do not drink alcohol there is no reason men should not return home early. This always brings suspicion between the couple that there is another woman that the husband in question intends to marry.
- Neglect of matrimonial obligations especially in relation to maintenance of family, such as provision of daily meals, school fees for the children's education and other aspects.

However, there are no gender support mechanisms within the adjudication system. For example, there is no facilitation to assist women to lodge or follow up cases such as transport costs to and from court, or DNA fees in cases of contestations of paternity of children.

Nonetheless, it was found that most women are able to approach Imams or qadhis and initiate cases for resolution, either directly or through other parties. In most of the mosques, women are given an opportunity to open up cases against their spouses and they usually report directly to the Imams. Furthermore, mechanisms such as Ameerats (female mosque leaders) exist. Ameerats are members of the executive committee of mosques and therefore part of its leadership. They do not only provide female representation on the leadership institutional framework but they also provide support in cases where women require assistance. In Mpigi for instance, Sheikh Ramadhan Lutakome, Imam of Masjid Noor, mentioned that the Ameerat plays a major role in the adjudication of cases because apart from identifying common problems face by women, she counsels them, and in turn forwards their cases to the Imam and the mosque executive for further guidance or action. Women hold sessions chaired by the Amiiirat and other female members. Additionally, the Ameerat convenes meetings where women relay their day-to-day challenges or concerns which are then discussed at the mosque's executive meetings. Some Ameerats are also involved in mediating cases.

Moreover, the approach of Imams whilst handling cases involving women reflects some sensitivity to gender. Common practice is first to discuss a case with the claimant alone before summoning the respondent to give his position. Also, the qadhi seeks from the claimant, often a woman, what would be the most suitable solution. Additionally, mediation is employed as a first means of dispute resolution. This is important not only in involving women in the process of resolving conflicts but also empowers them by giving them skills to handle future disputes.

Additionally, in order to avoid being accused of bias and prejudice, the Imam often engages other executive members. Members of the Executive may include the Imam, Secretary, Treasurer and the Ameerat. Having a larger team beyond the Imam and especially with female representation helps to mitigate prejudice against women.

Despite the challenges faced by muslim dispute adjudication systems, they enjoy good repute from the local communities as well as from justice agencies such as the police. For instance, it was relayed to the research team that the police in Kibibi, a sub county of Butambala which is one of the research study areas usually refers domestic cases to mosque leaders for determination.

As reported by the area Imam:

“Most of the residents in Kibibi are of the muslim faith. Many of the women with conflicts feel more secure with mosque leaders handling their cases than coming to the police where their cases would then become matters of public concern.”

(Sheikh Abdu Swamad Lukisa)

At the same time, respondents with whom the research team interfaced valued mediation as a tool for resolving issues following domestic relationship breakdown, thereby making qadhi courts a favourite forum of dispute resolution.

As one respondent mentioned:

“Courts are formal environments. The practices, language and conventions of the court are not something that any non lawyer can be expected to understand and navigate. To expect women who have been through the trauma of domestic antagonism and who are now trying to force their partners to maintain their homes and children, with all the challenges that entails, to be able to prepare their case and represent themselves in court is unrealistic. Moreover in the case of women who do not have a strong grasp of English, with low confidence and self esteem or those without sufficient means, qadhi courts are a preferable option.

(Paralegal, Bulo, Butambala)

### Gender Bias against Men

Whereas this report gives major focus to gender in response to women, it should be pointed out here that men too suffer gender biases within the justice system. Gender stereotypes of men as bigger, physically stronger, and less fearful than woman apparently are more powerful than the gender stereotype that women are more guileful than men. The deeper stereotype seems to be that men are more criminal than women, that it is often the men who abuse women and rarely vice versa. However, men too can be victimized by women and may require justice services.

The gender bias however often arises when men are reluctant to seek justice especially if it involves acts of violence committed against them by women. For instance to date in Uganda, most studies are of domestic violence against women. Data on domestic abuse against men is sparse, and this suggests that the rate at which male victims of abuse report the incident to police is lower than the rate at which female abuse victims report the crime to police. Because of gender stereotypes prevalent in the Ugandan society, male victims are substantially less likely than female victims to report that they have been victims of domestic abuse. As such, male victims are substantially more likely than female victims to regard domestic abuse as a "private" problem of no legitimate concern to anyone but themselves.

What evidence there is suggests that most men have to be very severely injured before they will even consider reporting an incident or threat of domestic abuse to the authorities. And even then, it is doubtful that they will. Reasons for under reporting domestic violence and other such cases by men within the formal justice system include the fear and shame of ridicule and being regarded as weak, the desire to protect the children of the union and the societal belief that men should be big and strong enough to handle their domestic problems without resort to external sources. As one scholar Suzanne Steinmetz puts it: "*The most unreported crime is not wife beating...it is husband beating.* (Wife Beating: The Silent Crisis, New York: Pocket Books (1977).

With this in mind, it is less likely that men will approach justice mechanisms to report domestic problems, and this, unfortunately hinders their access to justice and equal treatment before the law.

### III. Procedures of Accountability and Transparency

Because of the limited role of oversight by UMSC over mostly private mosques in Uganda, accountability by Imams is made to the mosque founders and members of the executive committees. However, this is limited to actions directly affecting the state and welfare of mosques and use of resources. Aspects such as records of cases handled and basis for decisions reached are never publicly accounted. Resultantly, enforceability of decisions becomes a challenge and in most instances, it falls to the goodwill of contesting parties to conform to the decision of the sheikhs.

On a positive note, most of the Imams and sheikhs were aware of the right of contesting parties to appeal to a higher body in case of dissatisfaction with the decision of the court, they are advised to appeal to a court. Sheikh Mutyaba Abdul Salamu, Executive Imam of Kibuli Mosque acknowledged that when the parties do not agree with the decision of the court despite the intervention of family members on both sides, other possibilities are sought. For example, in unresolved property disputes, advocates or valuers may be engaged to further attempt to reach amicable settlements.

### IV. Good Practices

There are several good practices located within muslim adjudication systems, both at institutional as well as individual level.

At institutional level, mosque leaders work with formal institutions to enhance justice services. For instance, at Kibuli Mosque, when unable to resolve a matter in relation to distribution of property, contesting parties are referred to an advocate to organize valuation of the property before distribution. Another example identified from the UMSC is that when a divorce is dissolved, the decree is filed with the Uganda Registration Services Bureau (URSB) to ensure that no illegal claims arise thereafter. Similarly, most Imams work with the police and refer cases that cannot be resolved, especially those with a criminal aspect such as domestic violence. This factor is very important because it indicates that muslim adjudication systems do not work in isolation of the formal justice system.

One of the good practices being practiced in the three study areas in which MCJL operates is the use of trained paralegals to sensitize members of the community on rights and duties within the family and especially in relation to marriage. Some of the users consulted affirmed that such sessions have enabled them to understand responsibilities of men and women in the family. In fact, one respondent stated that it is due to consistent messaging on rights of women that some members of the muslim community have been discouraged from marrying off their teenage daughters on grounds of being too young.

In Mpigi, the MCJL paralegal is given an opportunity to speak to the congregation after Jumrah prayers addressing the implications of several laws related to marriage, land, succession on the family. Selection of the topic for discussion depends on pressing issues identified by the congregation.

At individual level, there are several examples where Imams take initiatives to enhance access to justice for users especially women. For instance in Mirembe in Butambala, the Imam of Magatto Qur'an School, Sheikh Ali Sowedi Sseguya informed the research team that he often goes to the homes of his followers on request to intervene in their disputes, especially where women are hesitant to come out publicly about an existing conflict with their spouses, also to guarantee privacy or even where the women cannot afford transport costs to the mosque.

Additionally, Imams schedule flexible times within which to address societal disputes. This is usually between the period 4.00pm - 7.00 pm and during weekends when most parties have finished their work.

## V. Enhancing Justice. The Work of MCJL

MCJL has been involved in several interventions to enhance access to justice in Uganda especially for users of the muslim adjudication system. This includes provision of advisory legal aid services to users and there are many cases to this effect.

A mid-term review of MCJL's access to justice project that was undertaken by the Democratic Governance Facility found very high client satisfaction on the work of the project. Beneficiaries who responded to the client satisfaction forms indicated that they would return to MCJL for assistance and that they would recommend a friend. Below are some of the verbatim quotations from the beneficiaries:

**Box 1** - *“Kati mpulila bulungi okusiinzila omusango gwange aba Muslim Centre we bagutusiza, ndabanga nfunye obwenkanya ne suubi”.*

I now feel better, with my issues handled by MCJL, I see myself finding Justice.  
(Female client from Kampala district).

**Box 2** - *“kubwelele kiyambyenyo abamu kufe, aba tasobola kusalabapliidda mu kooti zamateeka.”*

The free legal services by MCJL are indeed of great help to some of us who are disadvantaged, because I could not afford to hire a lawyer.  
(Male client from Kibibi Sub County, Butambala district.)

**Box 3** - *“Esuubi no bwesigge mumatekka byalibyanzigwamu naye katin afunye esuubi okuva mu Muslim Centre.”* I had lost hope and trust but at the moment I find that my hope has been restored and I can count on MCJL.  
(Male client from Kampala).

A few success stories are mentioned hereunder.

**Legal Aid and Advisory Services**

Distribution of the Estate of the late Bukenya Sulaiman		
The Situation Before	MCJL's Intervention(s)	Results of the Impact
<p>Upon death, the late Bukenya Sulaiman left a widow, ten children and various properties including a matrimonial home, land, motor vehicle and money Ushs. 93 million (approx. 28,000 USD). He was owed a sum of money worth Ushs. 49 million by one Ssalongo Tamale.</p> <p>The mother/widow, obtained letters of administration to the deceased' s estate but started misusing his properties. The family / children approached various organizations seeking to stop the mother from intermeddling or misusing the funds of the estate but failed to get any help.</p>	<p>In May 2013, the eldest child of the deceased approached MCJL for help. MCJL intervened by mediating with all concerned parties including the mother and some relatives.</p>	<p>Consensus was reached at a family meeting to redistribute the estate, allowing the deceased's wife and her biological children, together with the other children to share the estate equitably. Consequently an inventory was filed with High court (Family division, Kampala). The different family members went away happily and praised MCJL for its work.</p>
Training as Paralegal for Sheikh Mulumba Hassan		
The Situation Before	MCJL's Intervention(s)	Results of the Impact
<p>Mulumba Hassan had been a poor struggling student who was forced to take a dead year from his university studies for lack of tuition. Efforts to solicit for financial assistance from distant family proved futile. He had given up hope of proceeding with studies at any institution of higher learning, despite having good grades.</p>	<p>MCJL communicated to the Masjid Jamia Katwe mosque about the opportunity to train paralegal sheiks at community mosques as part of a sponsorship of 20 muslim sheikhs.</p> <p>Mr. Mulumba was selected to study a diploma in law at the Law Development Centre (LDC) for the academic year 2013-2014 with full financial sponsorship. He finalized the course and scored a first class grade, the best performance at the institution.</p>	<p>Since then, Mr. Mulumba became part of MCJL's program and a beneficiary of the Democratic Governance Facility Project. He is a paralegal Sheikh. As such, he is able to advise clients in both Islamic legal as well as secular law.</p> <p>This intervention boosts the capacity of muslim clerics working with local communities. He is able to undertake mediation and referrals.</p>

Distribution of the Estate of the Late Mutyaba Ali		
The Situation Before	MCJL's Intervention(s)	Results of the Impact
<p>Three widows of the deceased were dissatisfied with the way in which his estate was being dealt by his relatives who were intermeddling and selling off parts of it. They sought MCJL's intervention for equitable management and benefit from the estate.</p>	<p>MCJL successfully summoned all concerned parties and carried out a series of meetings to ascertain the number of beneficiaries as well as the true size of the estate</p>	<p>MCJL compiled a list of properties under the estate as well as its beneficiaries and referred the matter to the UMSC for distribution according to shariah law.</p> <p>The family especially the widows were very grateful for MCJL's efforts more so because they were able to obtain their shares in the estate and were very happy with the distribution.</p>
Enhancement of Justice through ICT Innovations		
The Situation Before	MCJL's Intervention(s)	Results of the Impact
<p>Previously, there was limited access to legal information in Uganda especially for the vulnerable. With few options, most were exploited by law firms whose rates were exorbitant and as a result, access to legal advice was very expensive.</p> <p>This also applied to sheiks and other muslim clerics in qadhi courts who hardly ever referred to the secular laws of Uganda and more often relied on Hadith and Quran to resolve most of the cases reported at community mosques.</p>	<p>MCJL's introduced ICT access to justice platforms which included the Mobile phone Access to Justice Application (eLaw Uganda) and The SMS Mobile Phone Access to Justice Platform.</p> <p>The former allows user to access basic legal information on common legal matters such as family law and marriage' divorce, civil and criminal law.</p> <p>The former mechanism facilitates users to get quick and appropriate feedback on legal queries, and further provides useful contacts such as area District Police Commanders (DPCs).</p>	<p>With the proportion of the population in Uganda with access to mobile phones having increased over years, these 2 mechanisms help local communities to access faster and cheaper legal information on matters such as child custody, inheritance, marriage and divorce. Over 1,000 people have benefitted from the two platforms.</p> <p>Additionally, these platforms have helped to strengthen synergies and linkages between informal structures like the Qadhi courts and formal institutions. MCJL's eLaw Uganda innovation platform was nominated for the Digital Impacts Awards Africa ((DIAA) 2015.</p>
The Story of Abdallah Latif Nganda		
The Situation Before	MCJL's Intervention(s)	Results of the Impact
<p>Abdallah Latif Nganda, 38 approached MCJL seeking to recover 1.5 million Ushs (approx. 500 USD) on a defaulted loan payment from a friend.</p>	<p>MCJL wrote a demand letter to the defaulter who responded by making an initial payment of 500,000/- to Abdallah. The defaulter subsequently honoured a Memorandum of Understanding drawn by MCJL which outlined conditions for paying the balance. The remaining balance of 1.00.000/- was paid within a period of 30 days.</p>	<p>Abdallah, an indigent client was able to recover monies lent out to a friend. Through this intervention, MCJL was able to ensure justice for a poor and marginalised client.</p>

## Impact Litigation

MCJL has also ventured into the area of impact litigation. One important case to note, and which has significant strategic implications for users of the muslim justice system is the ruling made in favour of MCJL regarding an application made to the High Court on powers of magistrate courts to handle matrimonial causes relating to Mohammedan marriages. This is pursuant to a divorce case made before a Chief Magistrate court (Revision Application No. 006 of 2011 arising out of Mengo Divorce Cause No. 23 of 2008: Darausi Tebandeke (Applicant) v Lugolobi Saidat (Respondent) in which the applicant sought for an order of dissolution of marriage as well as custody of children, alimony and distribution of property. The contention in the case was whether other courts subsidiary to the High Court had jurisdiction to determine matrimonial matters between persons professing the Muslim faith. The High Court affirmed that magistrat courts are competent to handle matrimonial causes under Mohammedan law.

This ruling is of significance to MCJL and users of the muslim adjudication system because it expands the scope of courts that can handle such cases in the direct absence of formally established shariah /qadhi courts. As such, the application of shariah law is not suspended through the inoperationalization of the said courts but rather, allowed to continue existing through other courts. It should be noted however, as confirmed by Justice Alex Nkonge Rugadya who presided over the High court case, that such other courts other than shariah courts shall apply only the remedies permitted under shariah law rather expanding them to civil remedies as provided under the Divorce Act.

## VI. Lessons from Other Jurisdictions

Closest to the situation of shariah courts within a formal justice setting is that portrayed by Kenya. Not only is Kenya geographically contiguous to Uganda but it is also a common wealth country with similar development indicators. Therefore, it is a good country for comparison and picking lessons. Like Uganda, the constitution of Kenya provides for the jurisdiction of Kadhi courts. These are courts where Islamic law or Sharia is applied for the determination of questions of muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the muslim religion and submit to the jurisdiction of the said courts. The Constitution provides for the office of the Chief Kadhi and such number of other Kadhi's. A Kadhi is strictly speaking a judicial officer, judge or magistrate presiding over an Islamic Court but he is not necessarily a spiritual leader or imam.

Kadhi courts operate within the precincts set by several statutes, including the Kadhi's Courts Act, the Mohammedan Marriage and Divorce Registration Act and the Mohammedan Marriage, Divorce and Succession Act. Therefore, unlike Uganda, Kenya has a specific legislation guiding the operation of Kadhi courts as well as complimentary legislation on aspects such as divorce and succession which are missing in Uganda. Additionally, the said laws have codified Qur'anic provisions into statutory law, making them easily applicable in formal courts, whether or not the presiding officer is a person of the muslim faith. In the Ugandan case, this is lacking and it implies that interpretation of Islamic law on aspects such as marriage and succession are the reserve only of muslim scholars. This in itself is limiting because it confines application of this law to a selected part of the population. Additionally, because fewer persons have an adequate understanding of Islamic law, this is subject to abuse to misinterpretation which cannot be easily challenged especially in the context of poorer court users like women.

With regard to aspects of operation, Kadhi courts are subordinate to the High Court which may supervise any civil or criminal proceedings before any subordinate court. As such, whereas the Kadhi Courts Act assures that the law and rules of evidence to be applied in these courts are those applicable under muslim law, the same Act further provides that in the absence of the applicable muslim law and rules of evidence, then the law and rules of evidence applicable in the High Court shall be used.

Another area in which Kenyan law is stronger than that in Uganda is in regard to succession. Amendments to the Law of Succession Act provide for the universal application of the law of succession to the estates of deceased persons in Kenya. Thus, whereas Kenyan muslims may apply Islamic law in the devolution of estates of deceased muslims, the Succession Act may be invoked in regard to the procedural aspect

relating to the grant of letters of administration. As such, the person administering the estate of the deceased, whether doing it under Islamic law would still be recognized formally under statutory law through grant of letters of administration. This is one aspect in which Uganda can learn from its neighbour because an issuance of legal documents of this kind diminishes opportunities through which several persons may want to intermeddle in the estate of the deceased. At the same time, the person who is granted these letters attracts a legal obligation to be accountable to the family and beneficiaries of the deceased. Such an arrangement allows the muslim justice system to benefit from a procedural strength entrenched within national law for the protection of marginalised and vulnerable members of a deceased's family.

In light of the above, Uganda needs to enact a law regulating operation of its own qadhi courts, combining both substantive Qur'anic provisions on aspects outlined under the constitution such as marriage and child maintenance, as well as procedural issues such as structure and numbers of qadhi courts countrywide. In order to strengthen the operation of these courts, the law should further elaborate on aspects such as:

- Specifications of personnel manning the courts;
- Permission for women to be appointed as assistants to the qadhi (a position limited only to men) to help in those instances where women litigants in the court find it difficult to explain to the male qadhi the delicate and intimate details of some of their domestic problems;
- Establishment of courts with representation of all muslim sects across the country, both Sunni and Shia. Consideration ought to be given to the appointment of qadhis of both sects so as to cater for the interests of all Ugandan muslims.

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

Additionally, efforts should be made to teach basic principles of Islamic law to the general public. Such efforts will help to demystify this law and further provide a starting point for judicial officers handling appeals from the qadhi courts. As we see to date, the High Court is mandated to apply Islamic Law in appeals from qadhi courts. However, there may be some practical difficulties where the judge hearing the appeal is not a muslim and does not understand Islamic Law. Furthermore, a wider teaching of Islamic law will fortify the capacity of advocates to effectively advise their clients without necessarily having to be muslims. It is therefore necessary for sections of the same law to be taught at laws schools across the country and at the Law Development Centre (LDC).

If strengthened in line with lessons from jurisdictions such as Kenya and elsewhere, qadhi courts in Uganda may not only be a symbol of Islamic faith and culture for practicing muslims but more importantly for the muslim women, these courts have the opportunity to become an important site for resisting the oppression experienced in marriage and in their domestic circumstances in a traditionally patriarchal and male dominated society. These these courts if well structured may aid muslim women in particular in fighting for the protection and enforcement of their rights as guaranteed under Islamic law and to challenge negative cultural practices and customs of Muslim communities that tend to undermine these rights.

## VII. Conclusion and Recommendations

Because the Ugandan population is made up of a significant number of muslims, the Islamic adjudication system appeals to, and is used by a fair number of citizens. It is clear therefore, that muslim adjudication mechanisms including the existing forms of qadhi courts are regarded as pertinent in enhancing justice for women.

However, whereas these systems exist and are operational, the forms and standards of performance vary from place to place and this is because of the limited oversight and resourcing role by the UMSC. As a result, the performance of these systems and especially their sensitivity to gender is weak and requires strengthening.

The study proposes several recommendations to MCJL and other actors in order to address the challenges faced by users of the adjudication systems and especially the gender based vulnerabilities faced by women and girls, both in the short and long term.

### Short Term

Despite being born Muslims, most users of the muslim adjudication systems are ignorant of Islamic laws and principles on dispute resolution as well as rights and duties of different stakeholders. Members of the public should be empowered to appreciate the responsibilities of both men and women in the family arrangement, as well as the mandate of qadhi courts, Imams and muslim clerics in general. MCJL in collaboration with other actors such as UMSC should continue to engage with the public on these aspects through legal education and literacy trainings – through for example school outreaches, radio talk shows, mosque ‘after prayer’ engagements as well as development, translation and dissemination of relevant IEC materials.

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

In terms of widening application of shariah law, MCJL needs to undertake deliberate steps to sensitise the public and especially users of the muslim justice system about the implications of the *Darausi Tebandeke v Lugolobi Saidat* case which ruling clarifies that the Marriage of Mohamedans Act Rules give jurisdiction to magistrate courts to undertake divorces of muslim marriages.

MCJL should further take steps to protect vulnerable followers of the Islamic faith by sensitizing communities on formal legal requirements such as the need for documentation of marriages so as to provide proof often required in legal proceedings. This includes registration of marriages and acquisition of certification as well as certification of birth and death, the latter being extremely useful in cases of contested paternity of children or management of deceased's estates.

Further, in the protection of marginalised groups, MCJL should partner with the Equal Opportunities Commission (EOC) which has the national mandate for vulnerable and marginalised groups. Many of the female users of the muslim adjudication system fall under this bracket and require support from the formal justice system for aspects such as transport to and from courts, and assistance towards costs such as DNA tests.

### Long Term

Muslim justice mechanisms can best work especially for women if formally established and operationalized. This is not an action that can be achieved by MJCL alone, but rather, requires collective responsiveness. MJCL must strategically engage other actors such as the Justice Law and Order Secor (JLOS), Uganda Law Reform Commission (ULRC), Parliament and the Ministry of Justice and Constitutional Affairs (MoJCA) who are primarily responsible for enacting the Muslim Personal Law Bill.

Advocacy for enactment of the Muslim Personal Law Bill should highlight the following aspects of the law as being crucial for the protection of vulnerable groups:

- Minimum obligations for one to contract a marriage. This should include some guidance on minimum economic status and specify, for example, requirement to prove one's ability to provide each wife with a separate home in cases of polygamy.
- Requirement to register marriages
- Minimum level of education and other qualifications for qadhis (persons officiating over qadhi courts). Not every muslim with some level of shariah law or with the role of Imam should automatically qualify to be a qadhi. This will ensure some levels of competence and quality assurance.
- The requirement to involve women in resolution of disputes in qadhi courts, especially those involving female contestants.
- Requirement for periodic and refresher training for imams and qadhis.

In line with efforts towards formalization of qadhi courts, the UMSC's capacity should be strengthened to undertake oversight, monitoring, resourcing and quality assurance of these courts. This is because most muslim clerics and Imams adjudicate cases based on their understating of the Qur'an and Hadith, but do not have the skills to provide counseling, or mediate between parties. At the same time, mosques are generally under resourced. MJCL should support the UMSC to undertake training and skilling of clerics in aspects such as gender and human rights in Islam, mediation, documentation and non discrimination.

MCJL should support UMSC to mobilize resources to support local mosques in adjudicating cases, which includes allowances for mosque qadhis and also putting in place record keeping mechanisms. In the long term, this should lead towards the establishment of branches of UMSC's Shariah Directorate in all districts. In particular, the UMSC should create a Women's Fund to enable the most poor and vulnerable women access justice services. For instance, the file opening fee of Ushs. 50,000 at UMSC should be waived and the Fund should be used to support vulnerable women with deserving cases.

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

## Annex A: Terms of Reference



**MUSLIM CENTRE FOR JUSTICE AND LAW**  
*"justice for all and no to discrimination"*  
**TERMS OF REFERENCE FOR CONSULTANCY**

<b>Title of Assignment</b>	To undertake research on gender responsiveness of the Muslim adjudication process in Uganda.
<b>Section</b>	Programmes Department
<b>Location</b>	MCJL Head Offices.
<b>Duration</b>	30 Days

### INTRODUCTION

Muslim Centre for Justice and Law (MCJL) is a Local organization officially registered in 2011 as a faith based NGO that is dedicated in promoting and advancing Justice, tolerance and human rights in Uganda. The organization has a primary focus on poor and vulnerable members of the grassroots communities and further encompasses the diverse community as a whole.

MCJL empowers local communities to effectively advocate for their rights and duty bearers to deal with dynamic social challenges especially in the Muslim communities in Uganda. We work directly with local communities and also in partnership with both public and private sector entities.

MCJL conducts evidence based advocacy aimed at improving the governance and human rights standards in Uganda, while empowering local communities to effectively advocate for their rights and duty bearers to deal with dynamic social challenges especially in the Muslim communities.

In order to ensure that the human rights are equally promoted and protected in access to justice and that they have equitable access to justice, MCJL has put concerted effort in conducting research, developing manuals and guidelines to support paralegals in applying gender responsive justice. However this is not in reference to specific gender related guidelines or tools.

### VISION

A Ugandan society that upholds universal faith-based principles in ensuring equitable access to justice, human rights and observance of the law.

### MISSION STATEMENT

To facilitate observance of human rights, justice, peace, and good governance through promotion of public interest, civil liberties, and obligations under the law.

### BACKGROUND AND JUSTIFICATION FOR THE ASSIGNMENT

According to the 2014 census, about 14% percent of the population of Ugandans are Muslims (mainly Sunni). That is a fairly substantial part of Uganda's population whose needs must be addressed accordingly in order to ensure social harmony. Administration of Muslim matters is organised under the Uganda Muslim Supreme Council (UMSC) which is registered under the Trustees Incorporation Act Cap.165. It was established to enable the Muslims attain religious, social, educational, political and economic welfare in the Country. The organizational structure of the UMSC runs from grassroots to the national level

through community mosques, counties, Muslim districts, the Executive, Magilis Umma and the General assembly as the top policy making body. The structure has been acknowledged as one which ensures a swift flow of information to the Community. The UMSC currently has programmes in health, HIV/AIDS, reproductive health targeting youth and Dawa programmes among others.

The UMSC further administers an adjudication mechanism that resolves conflicts such as marital disputes. In fact, the UMSC currently issues divorce certificates for marriages contracted under Shariah. Additionally, Muslim officials such as Imams and Qadhis within communities undertake conflict resolution in line with Shariah law and issue binding agreements. These practices are in line with a constitutional mandate which permits Qadhis courts to adjudicate matters like marriage, divorce, inheritance and guardianship.

In Uganda, there are still different schools of thought and factions in the muslim community. Many local mosques pay allegiance to various factions like Tabliq, sunni, shiah, salafi, Ahmaddiyah among other factions. These have varying liturgies/teachings on various themes in Islam including marriage, divorce, inheritance and guardianship.

However, it should be noted that the establishment of Qadhis' courts as provided under Article 129(1) (d) of the 1995 constitution of the Republic of Uganda is not yet implemented by the Parliament. Since 1964, the government of Uganda has been debating bills in various iterations that would reform and consolidate laws relating to marriage, separation, and divorce amongst its diverse religious and ethnic communities. Drafted in 2003, the Domestic Relations Bill (DRB) attempted to address these issues, but failed to pass into legislation. After it was withdrawn from Parliament in 2005, the Domestic Relations Bill was split into two parts: the Marriage and Divorce Bill and the Muslim Personal Law/Qadhis Courts Bill. This was because the DRB attracted varied reactions from the Muslim population about its implications on continued free worship as outlined under the Qur'an.

Despite these challenges, there is a proliferation of adjudicatory mechanisms at different levels of the Muslim administration system but with little sensitivity to gender concerns. Often, the adjudicators are male and parties to the conflict, if female may not be free to participate effectively in the processes. There seems to be limited awareness or perhaps desire to undertake justice programming - planning, capacity building and implementation of adjudication mechanisms with a gender lens.

It is envisaged that conducting this research on gender-responsive adjudication will help to provide an objective, more updated and accurate understanding of the situation of gender implementation within adjudication processes, taking into consideration existing opportunities and resources in a way that benefits all sectors of the communities. MJCL will make reference to this study to design strategies for better and more gendered access to justice for users of the Muslim adjudication system.

## OBJECTIVES OF THE ASSIGNMENT

The overall objective of the consultancy will be "To conduct a research study on gender responsiveness of the Muslim adjudication processes."

The research study should contribute towards enhancement of human rights understanding and advocacy by rights holders and duty bearers, and improved functioning of selected Human Rights institutions.

## SPECIFIC OBJECTIVES

Specifically, the research study will focus on:-

1. To generate an overview of the extent to which Muslim adjudication systems integrate gender in their programming (analysis, design, implementation, monitoring and evaluation);
2. To assess the level of understanding and current capacity of appreciation of basic gender theories within Muslim adjudication centres.
3. To amass an evidence base of data, lessons learned and good practices that can be harnessed to inform discussions in the area of gender programming, and inform the design of gender responsive interventions in the adjudication system;

4. To make appropriate recommendations on interventions (both short term and long term) that could address gender based vulnerabilities and reinforce women's and girls' resilience through increased access to decision making and leadership opportunities.
5. To make appropriate recommendations on interventions (both short term and long term) that could address hindrances faced by those who are poor vulnerable and marginalised.

### SCOPE OF WORK

In consideration of the background and objectives of the assignment, an experienced consultant will be required to

- Prepare and share an inception report and a clear work-plan on how to proceed with the assignment.
- Identify and gather relevant information materials to establish the existence of secondary materials.
- Compile a list of secondary materials and persons to interview.
- Conduct secondary data analysis and primary data research including:
  - i. Key informant interviews (Muslim leadership)
  - ii. Interviews (Imams and other mosque officials) versus human rights activists and beneficiaries
  - iii. Focus Group Discussions (both men and women users of adjudication systems)
  - iv. Case studies (to generate best practices)

The research study should contextualise the following:-

- i. An overview of current public policies, laws and institutions involved in Muslim dispute resolution systems.
  - ii. Explanation of the concept of gender and selected good practices in the field of gender-responsive adjudication processes.
  - iii. Indication of the degree of understanding and compliance with gender sensitive adjudication methods (through interviews with imams and other mosque officials).
  - iv. Comment on the understanding and degree of ownership towards gender justice equity among Muslim leadership.
  - v. Recommendations to strengthen the integration of gender in Muslim gender justice programming.
- Prepare and present a draft research report on gender responsiveness of the Muslim adjudication processes for validation by key stakeholders.
  - Submit final report to MCJL in hard and soft format.

### THE PROCESS OF EXECUTING THE ASSIGNMENT

The research will be based on desk review and field visits. In this respect, both secondary and primary data sources will be used. There will be some targeted individual interviews (30 – 40) including officials of UMSC and lower Muslim administrative structures especially mosques across parts of the country with big Muslim populations, both rural and urban. Quotes from people who are interviewed are highly valued. The process will be guided by the following considerations:-

- Appropriateness- the strategy, approach and methodology must be appropriate to the context of the study.
- The methodology must be practical and user friendly.
- The content should be simple and easy to understand.
- Where possible source of reference should be shown.

### EXPECTED OUTPUTS AND DELIVERABLES

- An inception report and a clear work-plan on how to proceed with the assignment.
- Presentation of the draft research study Report at a stakeholders' validation meeting.
- A final Research Report on Gender Responsiveness of the Muslim Adjudication System in Uganda.

## MANAGEMENT OF THE ASSIGNMENT

The consultant will work under the direct supervision of the Head of Programmes at MCJL Head offices, who will also perform the evaluation of the assignment by the contracted consultant. MCJL will regularly communicate with the consultant and provide support to him/her when required.

## REQUIRED QUALIFICATIONS AND WORKING EXPERIENCE:

The consultant should meet the following minimum selection criteria:

- A Bachelor's degree in law and/or other relevant postgraduate qualifications.
- **At least 5 years of demonstrated experience of undertaking similar assignments in legal, public policy, gender based socio-economic research in Uganda is essential.**
- **A good understanding of the Muslim adjudication system will be an added advantage.**
- A clear understanding of Uganda's legal Frame-work in family matters.
- In-depth knowledge and understanding of issues of gender based socio-economic issues in Uganda.
- Good analytical and documentation/report writing skills.
- Good communication skills; excellent command of oral and written English.
- Must have a Tax Identification Number (TIN) and proof of compliance with statutory tax obligations.

## SUBMISSION FOR THE ASSIGNMENT

The interested candidate for this contract must submit a **written (computer typed)** application, a technical and financial proposal; Letter of interest; Proposed methodology; A work plan; The financial proposal should be in Ugandan Shillings; and a CV outlining the relevant experience that qualifies the candidate to undertake such assignment including contact details and signed by the candidate.

## SELECTION OF THE CONSULTANT

The selection of the consultant will be based on the technical evaluation. The Consultant with the highest technical score will be selected.

## RECOURSE

MCJL reserves the right to withhold all or a portion of payment if performance is unsatisfactory, if work/outputs is incomplete, not delivered or for failure to meet deadlines. Performance indicators against which the satisfactory conclusion of this contract will be assessed include: timeliness/quality of submission and responsiveness to MCJL and counterpart feedback.

## PROPERTY RIGHT

MCJL shall hold all property rights, such as copyright, patents and registered trademarks, on matter directly related to, or derived from, the work carried out through this contract with MCJL.

## APPLICATION PROCESS

A pre-bid meeting will be held on 26 August 2016, from 10:30 to 11:00AM. The pre-bid meeting will help to clarify any issues in regard to the issued Terms of Reference. All applications should be submitted to: Head Finance and Administration, MCJL Head Office Basiima House, Plot No. 401/2 Ku Ssatu Bwaise opposite Fuelex Petrol Station, Bombo Road.

**Email:** [info@mcjl.ug](mailto:info@mcjl.ug) and Copy to: [muslimjustice@yahoo.com](mailto:muslimjustice@yahoo.com), [kafeerosulaiman@yahoo.co.uk](mailto:kafeerosulaiman@yahoo.co.uk) and [Busulwamohamad@gmail.com](mailto:Busulwamohamad@gmail.com)

## DEAD LINE:

The deadline for submission of Expression of Interest is 29<sup>th</sup> August 2016 at 5:00PM.

MCJL is committed to diversity and inclusion within its workforce, and encourages qualified female and male candidates from all national, religious and ethnic backgrounds, including persons living with disabilities, to apply for this assignment.

Please note that only short-listed candidates will be contacted. The submitted applications will be evaluated in terms of the quality of complete coverage of all aspects of the terms of reference, timeliness in relation to research, analysis and production of a draft report as well as compliance with qualifications as provided for herein.

**Disclaimer:** The terms of reference herein above are not conclusive but simply an indication of some of MCJL's expectations. More detailed discussions as regards our comprehensive expectations from this assignment shall be held with the successful consultant.

## Annex B: Interview Guide for Key Informants / FGDs

- i. What is the law and policy guiding muslim adjudication in Uganda
- ii. What structures undertake adjudication - existence and functionality
- iii. Comment on accessibility - accessible without discrimination, within safe physical reach for all sections of the population and affordable
- iv. Acceptability - respectful of religious ethics and culturally appropriate
- v. Quality - appropriateness of services offered e.g privacy, confidentiality of proceedings
- vi. Rules of operation applied – payment of fees, requirement of presence / participation of women
- vii. Number of adjudicators involved per case
- viii. Resort to mediation
- ix. Standard of performance including time keeping, performance of adjudicators and supervision by superiors
- x. Record keeping and gender reporting including disaggregated data
- xi. Resources available from UMSC administration (resources - economic, human, training, oversight and monitoring, stationery etc)
- xii. What are the common cases handled
- xiii. Which groups of women are most marginalised?
- xiv. What opportunities exist for empowerment of women (can women speak openly, are they involved in decision making)
- xv. What are the direct and indirect benefits from women's participation
- xvi. Are complaints made on behalf of female victims acceptable and if so, how are these dealt with
- xvii. What are the necessary actions to be taken by duty bearers in strengthening the performance of muslim adjudication systems (short and long term recommendations).

## Annex C: List of Respondents

	Name	Designation	Institution
1.	Sulaiman Musana	Development Officer	UMSC
2.	Yahya Kakungulu	Director	UMSC Directorate of Shariah, Shariah Court
3.	Twaha Ali Mpasu	Registrar	UMSC Directorate of Shariah, Shariah Court
4.	Sheikh Sseguya Sowedi Ali	Butambala	Magatto Quran Primary School
5.	Sheikh Mutyaba Abdul Salamu,	Executive Imam	Kibuli Mosque
6.	Sheikh Abdu Swamad Lukisa	Imam	Kibibi Mosque
7.	Sheikh Ramadhan Lutakome	Imam	Imam Masjid Noor
8.	Twaha Sulaiman	Treasurer	Masjid Noor, Mpigi District
9.	Sheikh Ssekimuli Mustaf	Imam	Masjid Mecca, Mpigi District
10.	Sheikh Yusuf Kiggundu	Imam	Seeta Community Mosque
11.	Sheikh Lutaaya	Imam	Bweyogerere Al Nasib Masjid
12.	Nuriat Nambogwe	Resident / User	Bweyogerere
13.	Joweria Zawedde	Resident / User	Bweyogerere
14.	Muzapharu Kawuma	Resident / User	Seeta
15.	Yasin Lugolobi	Resident / User	Kawempe
16.	Sarah Namande	Resident / User	Kawempe Mbogo
17.	Fauziah Nasejje	Resident / User	Kibuli
18.	Amina Mahmood	Resident / User	Seeta
19.	Faridah Byenkya	Resident / User	Bulo, Butambala
20.	Lukiya Bukirwa	Resident / User	Najeera

## Annex D: List of Documents Reviewed

1. Muslim Centre for Justice and Law (MCJL) Annual Partner Report, July 2014 – June 2015
2. Muslim Centre for Justice and Law (MCJL) Quarterly Progress Report, July – Sept 2014
3. Muslim Centre for Justice and Law (MCJL) Quarterly Progress Report, Oct – Dec 2014
4. Muslim Centre for Justice and Law (MCJL) Quarterly Progress Report, Jan – March 2015
5. Muslim Centre for Justice and Law (MCJL) Quarterly Progress Report, Apr – June 2015
6. Muslim Centre for Justice and Law (MCJL) Quarterly Progress Report, July – Sept 2015
7. Maria Ruth Fernandez, Gender Sensitivity in the Court System, Review of Women Studies
8. Law and Advocacy for Women in Uganda, Khadi Courts in Uganda, 2006





## MUSLIM CENTRE FOR JUSTICE AND LAW

**Head Office:**

Plot 401/2, Basiima Building (Umeme Offices), Bwaise Ku Ssatu  
P.O. Box 6929 Kampala, Uganda | Tel: 0414 531084 / Mob: 0701 282887 / Fax: 0414 531088  
Email: muslimjustice@yahoo.com, info@mcjl.ug, Website: www.mcjl.ug

- **Central Region Offices:** Mpigi District, Mpigi District Head quarters
- **Northern Region Offices:** Omoro District, Opposite Palenga Primary School, Palenga
- **Eastern Region Offices:** Mayuge District, Bodobeera zone, Opposite Bunya Secondary School