

MARGINALISATION OF MUSLIMS AND MEASURES TO PROMOTE MINORITY RIGHTS IN ACCESS TO JUSTICE IN UGANDA

POSITION PAPER - MUSLIM CENTRE FOR JUSTICE AND LAW



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LIST OF ACRONYMS AND ABBREVIATIONS

ADF	Allied Democratic Forces
Cap	Chapter
CIA	Central intelligence Agency
GDP	Gross Domestic Product
JLOS	Justice Law and Order Sector
LC	Local Council
LDC	Least Developed Countries
LRA	Lord's Resistance Army
MCJL	Muslim centre for Justice and Law
MNR	Minority Rights Report
MP	Member of Parliament
SDA	Seventh Day Adventist
SFG	Special Forces Group
SIP	Strategic Implementation Plan
UMSC	Uganda Muslim Supreme Council
UNDP	United Nations Development Programme
UNRF	Uganda National Rescue Front
WNBF	West Nile Bank Front

POSITION PAPER

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I. INTRODUCTION

The paper states the position of Muslim Centre of Justice and Law, MCJL, on the controversial yet neglected subject of Muslim marginalisation in Uganda. This position paper is arranged in two sections. Section A discusses our position on marginalisation in allocation of government positions of influence. Section B discusses marginalisation in respect to access to justice.

Scope

The paper examines marginalisation at two levels, namely; representation in government and its agencies (what is popularly termed share of the national cake) and marginalisation in access to justice with reference to Muslim personal law. While distinct in nature and manifestation, there is a logical correlation between the two.

In this position paper we examine the international and national context of minorities and provide a background to the Uganda Muslim population's historical and contemporary causes of marginalisation. We examine the constitutional obligation of government to ensure the rights of minorities and the conscious duty to integrate the minorities fairly and to guarantee fair distribution of national resources, including government appointments.

We capture a prominent Muslim voice, Haji Nsereko Mutumba the Public relations Officer Uganda Muslim Supreme Council, UMSC, the Muslim Apex organisation in Uganda on the subject; and Investigative journalist Ivan Okuda who investigated the mystery of murders of Muslim clerics in Uganda for Al-Jazeera in 2016. We also apply evidence from a study done earlier by MCJL, titled Access to Justice in Qadhi Courts.

We assert, in agreement with UNDP, that access to justice is a human right and denial of access to justice is a violation of that right.

We argue that marginalisation, is a driving factor in the discernible anti-government stance of sections of the Muslim community some of whom use it as mobilisation/recruitment rhetoric.

We rebut a representative view by some Ugandans that Muslim marginalisation does not exist in our response to a letter to the editor (Daily Monitor) February 11, 2014 written by a one Brian Kisomose of School of Law Makerere University entitled "*Muslims are not marginalised*".

We then make recommendations that can inform policy makers in designing policies that would mitigate the impact of marginalisation and reduce the overall feeling of exclusion that the Ugandan Muslim community in a general sense, harbour.

We argue that the operationalisation of Qadhis Courts is long overdue and now urgent to address the marginalisation of Muslims in respect of access to justice.

We finally recommend some interim measures to ensure access to justice for Muslims before the full operationalisation of the Qadhi courts, which we believe is long overdue. These interim measures are in a way useful in the preparation for the full implementation of the Qadhi court system in Uganda.

Minority-Terminology

A minority is a culturally, ethnically, or racially distinct group that coexists with but is subordinate to a more dominant group. As the term is used in the social sciences, this subordinancy is the chief defining characteristic of a minority group. As such, minority status does not necessarily correlate to population. In some cases one or more so-called minority groups may have a population many times the size of the dominating group, as was the case in South Africa under apartheid (c. 1950–91).

Because they are socially separated or segregated from the dominant forces of a society, members of a minority group usually are cut off from a full involvement in the workings of the society and from an equal share in the society's rewards. Thus, the role of minority groups varies from society to society depending on the structure of the social system and the relative power of the minority group.

For instance, the degree of social mobility of a member of a minority group depends on whether the society in which he lives is closed or open. A closed society is one in which an individual's role and function can theoretically never be changed, as in the traditional Hindu caste system.

An open society, like Uganda on the other hand, allows the individual to change his role and to benefit from corresponding changes in status. Unlike a closed society, which stresses hierarchical cooperation between social groups, an open society permits different social groups to vie for the same resources, so their relations are competitive.

Uganda's minority groups

According to a 2001 report by the Minority Rights Group, titled: Uganda: The Marginalization of Minorities, Muslims are listed as a minority that deserves attention.

A list of minority groups identified by the Minority rights group (2011) are attached as Appendix I.

II. ABOUT UGANDA

According to the CIA Fact Book (July 2016), the colonial boundaries created by Britain to delimit Uganda grouped together a wide range of ethnic groups with different political systems and cultures.

These differences complicated the establishment of a working political community after independence was achieved in 1962.

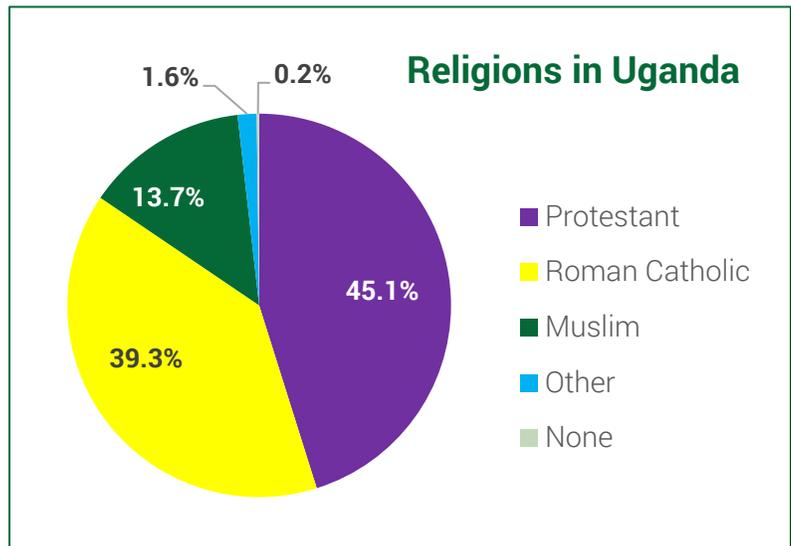
Uganda has a population of 34.7 million people, of which the large majority (84.6 percent) live in rural areas. Uganda’s GDP is around 15.7 billion USD (2009). The GDP per capita is around 1,200 USD. Income distribution in Uganda is highly unequal (Gini index 42.6).

Demographic profile

Uganda has one of the youngest and most rapidly growing populations in the world; its total fertility rate is among the world’s highest at 5.8 children per woman. Except in urban areas, actual fertility exceeds women’s desired fertility by one or two children. However, even if the birth rate were significantly reduced, Uganda’s large pool of women entering reproductive age ensures rapid population growth for decades to come.

Religions

Protestant **45.1%** (Anglican 32.0%, Pentecostal/Born Again/Evangelical 11.1%, Seventh Day Adventist 1.7%, Baptist .3%), Roman Catholic **39.3%**, Muslim **13.7%**, other **1.6%**, none **0.2%** (2014 est.) (CIA Fact book 2016).



III. ISLAM AND MUSLIMS IN UGANDA - A BACKGROUND NOTE

Officially, Muslims are said to constitute between 13.7% of the Ugandan population. (*Uganda National Population and Housing Census 2014*). Quoting the CIA fact book, The United States Institute of Peace records the Muslim population as 16% (*United States Institute of Peace Special Report 140, May 2005*). The Islamic website Islamic Web.com puts the figure at 36% of the population. There has not been an independent census of Muslims in Uganda even by the Uganda Muslim Supreme Council the Muslim apex organisation established in 1972.

Islam was introduced in various parts pre-colonial Uganda by a merchant class at different periods. In West Nile and some parts of the North it was introduced largely from The Sudan. In the South, especially in the Kingdom of Buganda, it was introduced from the East African coast in 1844, thirty years before

Christianity. It was during the reign of Kabaka Mutesa I that Islam reached its highest peak in pre-colonial Buganda. Indeed, the period between 1862-1875 has been called the golden age of Islam in Buganda.

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

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

Even before the colonial period Religious violence probably caused more devastation to human and animal life in Buganda than the kingdom had experienced since its foundation in the fourteenth century. Beginning in 1888, political parties based on religion - *Bafransa* (Roman Catholic), *Bangereza* (Anglican Protestants), *Bawadi* (Muslim)- armed themselves, united and overthrew the king of Buganda, Mwanga II. Their aim was not only to survive (they claimed that the king wanted to eliminate them), but to grab power and formulate laws derived from their new religious beliefs. From then on, foreign religions in Buganda became a springboard for political mobilization. (*Kasozi, ABK The Social Origins of Violence in Uganda, Fountain Publishers, Kampala, Fountain Publishers, 1994: 27*). Kasozi urges further that in post-colonial Uganda- the unequal distribution of the country's meagre resources is the main cause of violence in Uganda. There was, and still is, inequality based on region, ethnicity, class, religion, and gender, and these forms of inequality were entrenched during the colonial period. (*ibid, 30*).

Formal education was introduced in Uganda by missionaries to enable their converts to read the Bible and prayer books. Perhaps due to lack of funds, or expediency, the early British colonial administrators allowed the missionaries to control the supply of education and so facilitated the building of a Christian society in Uganda. Moreover, the government recruited functionaries – clerks, interpreters, policemen and other workers – from missionary schools. Most novices attending school were being prepared for baptism. Many of the schools shared the same grounds, if not building with churches.

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

Writing in the Uganda Journal (1965) Felice Carter stated that by 1960, Muslims had only one university graduate. When in 1964, two years after independence the African government opened all secondary

schools to everyone irrespective of religious denomination, Muslims had only one secondary school as compared to 16 for Catholics and 10 for Anglicans (Kasozi, 1996).

Over the years Muslims achieved positive if often disproportionate influence on economic, social activity in comparison to their numbers. However, relations with the government have ebbed and flowed. A combination of historic transgressions combined with the current backdrop of the global war on terror and Uganda's activities in regional politics drive a perception by the Muslim community that it is marginalised and often harassed by the government. The government denies this.

In response, some sections of the Muslim community have withdrawn from community and public life and retreated to religious devotional seclusion. They don't actively participate in nation building and view democratic exercises with suspicion. Muslims that actively participate in public life in Uganda face challenges from all sides; viewed with suspicion by the majority non-Muslim population and by Muslims who question their loyalty to their community and faith.

Dating back to the struggle for independence, however, there are many examples of Muslim involvement in Uganda nation building and the struggle for a better Uganda. However, today's Uganda has not effectively been able to mobilize commitment from the Muslim community to actively participate in nation building. Discrimination against Muslims, which began in colonial missionary schools and continued in education and employment long after independence played a big role in fostering Muslim dissatisfaction with successive post-colonial governments.

Uganda has also grappled with the problem of violent extremist groups, also referred to Armed Rebel groups since 1986. Notable among them have been Lord's Resistance Army, LRA; Uganda National Rescue Front, UNRF-I which later split to form UNRF-II; West Nile Bank Front, WNBF, and Allied Democratic Forces, ADF. With the exception of the LRA and ADF, the above groups have disbanded after signing amnesty/peace agreements with the government of Uganda, under the Amnesty Act. Except the LRA, the above groups have been dominated by Muslims. The Muslim rebel groups use marginalisation as tool for recruitment.

Uganda's Muslim minority situation

Muslims in Uganda are a minority, just 13.7% by official count (*Uganda Population and Housing Census 2015*).

Though concentrated in certain regions like West Nile, Eastern and central, Muslim presence is well spread

nationally as evident from Mosques visible as one traverses the country. They are also observable from their distinctive head gear for males - the Muslim cap, mainly worn by older Muslims. Muslim women can be noticed from their dress code - a veil on the head and often long dresses that cover the whole body. A majority of Muslims however cannot be observed from their attires- they dress like any other non-Muslim in Uganda. Many retain Arabic (given) names; Hassan, Muhammad, Ali, Khadijah, Aisha etc., but others don't use Arabic names. Some carry two African names. Prominent Muslims whose known names were two joined African names are Kakyama Mayanja, Bidandi Ssali, Kirunda Kivejinja, Nsereko Mutumba and

Muslims in Uganda are a minority, just 13.7% ...

others. Others use Christian sounding names; Moses, David, Mary etc. ostensibly to fit in their wider society.

Muslims are largely engaged in business and tend to be more visible in urban and peri-urban centres. A good number of them are in the technical trades- artisans, motor vehicle mechanics, electricians, masons. Muslim drivers for a long time in Uganda were preferred partly because of their no –alcohol regime. Muslims are also visible in the eating industry –running small to medium size restaurants across the country. For a time, they also dominated the meat business and to date, perhaps slightly over 50% of butcheries are owned by Muslims. In sum, Muslims are more visible in the private and non-formal sectors but less visible in the public and formal sectors.

The past ten years have seen significant presence of Muslims in the area of education and media and security (especially Police). On the other hand, Muslims are almost invisible in government and in civil society spaces.

IV. (A) MARGINALISATION IN RESPECT OF ALLOCATION OF GOVERNMENT POSITIONS OF INFLUENCE

Are Muslims in Uganda marginalised?

Yes. This is borne by the fact that Muslims are found at the periphery of power centres. They are a truly subordinate group whose members have significantly less control or power over their lives than members of other faiths in Uganda, be it in the Legislature, Judiciary or the Executive. They are a group that experiences a narrowing of opportunities (success, education, wealth, etc) that is disproportionately low compared to their numbers in the society.

Muslims have not been shy to state their strong view that they are marginalised. Writing in the *New Vision* April 15, 2016: ***“Why Ugandan Muslims have lagged behind”***, Haji Nsereko Mutumba the UMSC Public Relations Officer affirmed that view when noted:

“An educated person has more chances of social mobility from the peasantry to either the middle-class or the skilled working class. When European missionaries settled in Uganda, the first thing they did was to establish missionary schools meant for Christian children who would eventually become political leaders and indeed they led.

The Arabs who were the first to arrive were more interested in the propagation of Islam and business.

By the time Muslims woke up to focus on education, our Christian counterparts had established themselves both politically and economically. This explains the current education gap between Muslims and Christians in Uganda. The situation was made worse by the colonial and post-colonial governments that marginalized Muslims when it came to matters of education, politics and economic transformation”.

Is there a deliberate government policy to marginalise Muslims?

Our position is that there is NO deliberate policy to marginalise Muslims presently.

However, in the pre-independence period Muslims were deliberately marginalised, for purely political reasons. This gave rise to the so called historical injustices that the present should seek to address in a deliberate manner for the sake of national cohesion and equity. The post-colonial government failed to address these injustices adequately thus leading to disquiet amongst the Muslim community.

A historical case in point was in 1920 when the colonial governor Sir Harry Johnston wanted Uganda to be a Christian state.

According to a book titled *Abaasimba Obuyisiraamu Mu Uganda* written by Prince Al Haji Badru Kakungulu and Prof. A.B.K Kasozi – page 58-59, Sir Harry Johnston once said:

“... it is not in the interest of the British government to just watch as more people embrace Islam. This is because Muslims are not easy to govern and they are opposed to a government dominated by Christians”.

This was in response to reports that one of the chiefs known as Salehe was using his position to spread Islam. In the same year, one of the colonial secretaries in charge of native affairs strongly opposed the idea of Muslims acquiring secular education. He went to the extent of rewarding those who were distorting and insulting Islam as well as Muslims. Attempts by Muslims to bring an Indian teacher to teach secular education to their children were frustrated by the governor himself.

Therefore, failure by Muslims to acquire secular education by then was not out of their own making, but a design by the British colonialists who were predominantly Protestants”. The link between education and progress needs no emphasis.

Addressing himself to the education sector, Nsereko Mutumba in the article cited above further noted that:

“When the NRM government came to power, it made education a priority. On the side of Muslims, the government cleared the operationalisation of the Islamic University in Uganda and even offered land in Mbale and Kampala for its expansion and sustenance. A good number of Muslims were able to establish private Muslim Schools/institutions which are currently thriving. Despite the above successes, there is evidence of unfairness from the government side towards Muslims when it comes to the current education system in Uganda. Muslims, like any other religious denomination are key stakeholders in the education system of the country.

Considering the fact that we have lagged behind in education and now that Muslims have woken up and started many Muslim schools/institutions to bridge the education gap, government has not fully involved us in the management of education in this country.

The ministry of Education he noted, has four directorates.

Out of the three substantive directors, one is an Anglican, one Catholic and one Muslim who was due to retire in June 2016.

The Education Ministry has 15 functional departments; 12 of these are headed by Catholics and 3 by Anglicans. There is no single Muslim commissioner in the entire ministry, yet it is the commissioners who sit in the ministry strategic committee meetings where strategic decisions that impact the development of schools are taken e.g. the top management of the ministry and the education sector consultative committee where development partners participate etc.

Out of the 31 Assistant Commissioners, only three are Muslims; two of whom were set to retire in 2016. Going by the promotional ladder and those below them, these two, he projected, would be replaced by non-Muslims.

At the level of principal education officers, in 2016, there are only two Muslims out of the 52 in the entire ministry.

Most of the Muslim staff in the Ministry are drivers and office attendants, a case similar in all ministries and government departments.

The Ministry of Education has got over 60 contract staff members and out of these, only two are known to be Muslims.

(http://www.newvision.co.ug/new_vision/news/1422185/ugandan-muslims-lagged).

The figures

According to the Ministry of Education and Sports statistical abstract, of the 2,695 schools surveyed in 2015 at secondary school level, 493 were Catholic founded schools (18.3%) followed by 481 Church of Uganda [Protestant] schools (17.8%); 126 Muslim-founded schools (4.7%) and 40 SDA-founded schools (1.5%).

Of the 18,889 primary schools surveyed in Uganda in 2015, a total of 5,351 (28.3%) schools were Protestant or Church of Uganda-founded followed by the Catholic with 4,678 schools (24.8%); while Muslim-founded and Seventh Day Adventist (SDA)-founded schools were 1,127 (6%) and 303 (1.6%) schools respectively.

At the post primary school level (business, technical, vocational and training plus primary teachers colleges), the ministry listed the ownership by religious sect of the institutions being; Catholic (20%), Church of Uganda (18%), Muslim-founded (2%) and SDA institutions (1%).

At the university level, the Ministry of Education as of Jan.23 listed up to 32 universities, with five public universities and 27 private universities. Of these 27, seven are Christian-leaning while two are Muslim-founded.

Muslims in influential positions

A community's influence is easily gauged by the offices its members occupy. Among the top ten positions in the country none of them is held by a Muslim.

Premiership

The First and Second Deputy Prime ministers are Muslim (Moses Ali and Kirunda Kivejinja).

Cabinet

The present cabinet of 77 has 7 Muslims – 4 Full Cabinet Ministers (Haji Nadduli, Jeje Odong and Janat Mukwaya) and 3 Ministers of State (Jeniffer Namuyangu, Isaac Musumba and Haroon Kasolo. This represents 9% of cabinet.

The present cabinet of 77 has 7 Muslims...

Security Sector

In the security sector, The Inspector General of Police, and his deputy, Chief of Defence Forces, Commander of Land forces, Commander of the Air Force, and SFG, Commissioner General of Prisons and his deputy, Director General of Internal Security Organization and his deputy, Director General of External Security Organization and his deputy, Head of Chieftaincy of Military Intelligence and his deputy – none of them is a Muslim.

Government Agencies

The list of Gazetted government agencies below (Some with their mandates stated) reveals another striking level of absence of Muslims in influential positions.

Only 2 out of 39 government agencies namely; Amnesty Commission (Ganyana Miiro) and Uganda Human Rights Commission (Medi Kaggwa) are headed by Muslims. This represents 5.1% of allocation.

Only 2 out of 39 government agencies ...are headed by Muslims.

(A List of government agencies is attached as Appendix II).

Most highly paid government officers

The Equal opportunities commission Annual report in 2015/16 documents the salaries of the better paid government officers. Among these, only one, the Managing Director Namboole Stadium at 8.5 million a month, is Muslim.

(Table showing salary differences among the top paid government officers attached as Appendix III).

So what if there are few Muslims in sectors?

An argument often advanced by persons that don't agree that Muslims are marginalized is that Uganda is a secular country and no appointment on the basis of religion should be entertained. They argue that the reason Muslims are few (fact; 13.7 % of the population). They also add that government jobs are not allocated but won by the most competent and qualified individuals without consideration for their religion.

One such argument can be summarized here by a letter to the Editor published in the Daily Monitor on February 11, 2014, written by a one Brian Kisomose of *School of Law Makerere University* entitled "Muslims are not marginalized".

He wrote:

"Allegations have been put forward by Kawempe North MP Latif Sebagala who is also the parliamentary Imam, in the Daily Monitor of February 10 that the President has from time to time appointed Ugandans to various government offices notably, cabinet ministers, and heads of constitutional bodies, government agencies, judicial officers, permanent secretaries and ambassadors at the exclusion of Muslims. We all know that Uganda is a secular state in a sense that every Ugandan is free to practice and profess any religion.

There is no law or policy in Uganda that provides for appointment of any person basing on religious background in the public sector which also stretches to the private sector unless otherwise for instance a non-Muslim cannot be appointed as Imam similarly a Muslim can't be appointed as archbishop.

I personally have never witnessed any public service job advertisement that excludes Muslims as eligible applicants. Of all people Sebagala should know that nominations are not based on one's religion but potential, academic credentials, probity, conduct, and expertise of which the list is not exhaustive depending on the nature of the job but not solely religion as he puts it.

I dare him to come up with a list of Muslims who he alleges were competent to take on various posts but were not appointed simply because they were Muslims. If he does that, then we shall believe his assertions but if not then such assertions amount to desperate and selfish interests. The 1995 Constitution provides for economic rights to all persons by allowing such persons to practice and profess any occupation so long as it is lawful under Article 40 (2) of the same. There is nothing like discrimination of the Muslims and they are not a Marginalised group because they have always enjoyed all rights entitled to them by virtue of the fact that they are human beings.

All is not lost for Sebagala. If he is aggrieved, Article 137 of the 1995 Constitution provides that he can petition the Constitutional Court for redress since he accuses the President and the Speaker of Parliament for not answering his cries. What will happen if every religion's faction leader or representative comes out and claims they are not treated fairly? Soon it will stretch to tribe, race, and historical background as a consideration for appointment. If this matter is not carefully handled it can spark off hatred and ridicule among masses basing on religious beliefs"

(<http://www.monitor.co.ug/OpEd/Letters/Muslims-are-not-marginalised/806314-2200718-kkImlpz/index.html>)

Our rebuttal

On the contrary, the Constitution of the Republic of Uganda 1995 (as amended) is very clear on the principle that government should reflect national character. It is in this spirit that affirmative action for women and persons with disabilities and youth were allocated a quota in the National Assembly.

Immediately after the Preamble to the Constitution, under: "National Objectives and Directive Principles of State policy" the Constitution stipulates: We underline Democratic Principles: II (iv) and National Unity and Stability III (ii) to highlight the argument.

General

I. Implementation of objectives

Political Objectives

II. Democratic principles

- i. The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.
- ii. All the people of Uganda shall have access to leadership positions at all levels, subject to the Constitution.
- iii. The State shall be guided by the principle of decentralisation and devolution of Governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.
- iv. The composition of government shall be broadly representative of the national character and social diversity of the country.
- v. All political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organisations and practice.
- vi. Civic organisations shall retain their autonomy in pursuit of their declared objectives.

III. National unity and stability

- i. All organs of State and people of Uganda shall work towards the promotion of national unity, peace and stability.
- ii. Every effort shall be made to integrate all the peoples of Uganda while at the same time recognizing the existence of their ethnic, religious, ideological, political and cultural diversity.

- iii. Everything shall be done to promote a culture of cooperation, understanding, appreciation, tolerance and respect for each other's customs, traditions and beliefs.
- iv. There shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully.
- v. The State shall provide a peaceful, secure and stable political environment which is necessary for economic development.

It should therefore be the policy of government to address any imbalances if observed and this we believe is what the Muslim community keeps reminding government of. It is neither an attempt to make religion a basis of employment or government appointment but a cry for equitable allocation of the national cake.

It is the same cry by other minorities, especially cultural minorities – it is not unique to Muslims. Women fall into this category too.

The framers of the constitution correctly related recognition of the existence country's diverse of their ethnic, religious, ideological, political and cultural composition in all matters of governance to the pursuit of national unity and stability.

As explained in the introduction to this position paper, some of the reasons why Muslims have been identified with anti-government and often armed rebellion in the past and present is in part because they fell shortchanged and marginalised. The messages of recruiters to violent political groups rotate around marginalization, unemployment, harassment by security forces.

This view is not held by Muslims alone. Investigative journalist Ivan Okuda who also investigated the mystery of murders of Muslim clerics in Uganda for Al-Jazeera in 2016 writing on his face book wall in May this year notes:

“Our security agencies are slowly but surely setting this, our beloved country, on an extremely dangerous collision course with our brothers and sisters in and from the Muslim community. From my involvement in an attempt to search for answers to the question, ‘who is killing Uganda’s Muslim clerics?’ we spoke to not less than 30 Muslims and their leaders, directly and indirectly, in and out of Uganda.

A good number of them, while acknowledging internal weaknesses and intrigue, don’t have the nicest outlook to how government of Uganda treats them. They feel victimized. Abused. Harshly judged and a punching bag of security agencies’ own weaknesses. Some young Muslims claimed they were tortured to confess membership to terror groups like ADF in exchange for freedom. Others claim, with evidence of bodily harm, they were tortured and asked to confess to some killings.

When you follow arrests made after high profile assassinations, without singling out any, it is of mainly Muslims. This doesn’t appear a coincidence in the mind’s eye of Muslims as some feel this

is part of an unwritten program of demonizing a community. This may not be true of course but it is a perception we can't ignore.

Often time the success rate of prosecution let alone investigations, is below satisfactory (read cases dismissed or don't take off at all). Talk to human rights advocates in this town and they will share horror tales of their Muslim clients being tortured in a bid to connect them to terror groups or acts of terrorism. Never mind that even Christians and other faithful, find themselves in these situations but again, perception that one group is targeted, can't be dismissed.

To appreciate the gravity of this problem, one needs to read well researched books and scholarly work on origins of terror groups, how they get recruits etc. The titles are too many to share here but one of the golden threads running through the research on 'what drives people to terror', for instance if you read 'Black Flags: The Rise of ISIS' by JobyWarrick; is the feeling of exclusion/isolation, '*being othered*' as Prof. Sylvia Tamale would say, and indeed, a community feeling pushed to the wall. Sometimes the sentiments are a product of perception and not even reality and often time wrong elements such as ISIS, ADF, Boko Haram, feed off and into this perception to recruit.

If and when there are wrong elements in the Muslim community, even Muslims themselves admit, they should be weeded out and be brought to book. Government deserves credit for instances when it has done this for the safety of us all. However, on the whole, from interactions with the rank and file of this community, there is a steadily growing feeling of 'being othered' and targeted and abused and unwanted and profiled and judged with prejudice. And this doesn't have to be true. The perception is as good as reality in these socio-political issues.

The managers of the affairs of the state should reflect on this for the safety of us all and harmonious co-existence of Ugandans. Otherwise we are sitting on a time bomb. Everyone deserves a chance at justice and respect for human rights is not only a cornerstone of free and fair societies but also a guarantor of peace and security. Let's not throw the cliché line, 'leave matters of security to security' because security is run by human beings not robots from mars."

3https://www.facebook.com/ivanokuda/posts/1522230371155193?comment_id=1522319024479661¬if_t=feed_comment_reply¬if_id=1494501843750001hrs

Muslims tend to interpret the attitude of security agencies towards their community as one manifestation of marginalisation.

RECOMMENDATIONS

To address the marginalisation of Uganda's Muslim minority in respect of government jobs, we recommend that:

1. The equal opportunities Commission should carry out a census of government employees aggregated by Gender, Ethnicity and religion in all government agencies to establish the correct status of minorities.
2. Government should be sensitive to the National Democratic and National Unity and Stability principles as enshrined in the constitution in all appointments
3. Government should make a conscious attempt to review its treatment of Muslims by security agencies and through the Uganda Human Rights Commission like wrongful arrest, illegal detention and search without warrant. Encourage the reporting of cases of human rights abuse
4. Government should proactively seek to check the imbalance in government employment statistics of minorities in general through a range of affirmative actions.
5. Government should embark on a comprehensive human rights education program to enable citizens aware of their rights and to teach them civil ways of demanding for those rights to reduce incidents of violence.

IV. (B) MARGINALISATION OF MUSLIMS IN RESPECT OF ACCESS TO JUSTICE

Access to Justice

The position paper operates with a definition of access to justice that focuses on outcomes and remedies rather than merely on institutions. It involves the following elements:

- A framework of legal protection setting out acceptable substantive and procedural standards
- Legal awareness on the part of providers and users
- The availability of legal services needed to link needs to enforceable remedies, including legal aid and counsel
- Adjudication of disputes that is fair and effective
- Enforcement of remedies
- Transparency and oversight of the operation of the system

Barriers to Access to Justice

From the user's perspective, the justice system in Uganda is frequently weakened by:

- Long delays; prohibitive costs of using the system; lack of available and affordable legal representation, that is reliable and has integrity; abuse of authority and powers, resulting in unlawful searches, seizures, detention and imprisonment; and weak enforcement of laws and implementation of orders and decrees.

- Severe limitations in existing remedies provided either by law or in practice. Most legal systems fail to provide remedies that are preventive, timely, non-discriminatory, adequate, just and deterrent.
- Gender bias and other barriers in the law and legal systems: inadequacies in existing laws effectively fail to protect women, children, poor and other disadvantaged people, including those with disabilities and low levels of literacy.
- Lack of *de facto* protection, especially for women, children, and men in prisons or centres of detention.
- Lack of adequate information about what is supposed to exist under the law, what prevails in practice, and limited popular knowledge of rights.
- Lack of adequate legal aid systems.
- Limited public participation in reform programmes.
- Excessive number of laws.
- Formalistic and expensive legal procedures (in criminal and civil litigation and in administrative board procedures).
- Avoidance of the legal system due to economic reasons, fear, or a sense of futility of purpose.

International context, UNDP on Access to Justice

United Nations Development Program, UNDP, regards Access to justice is a basic human right as well as an indispensable means to combat poverty, prevent and resolve conflicts. UNDP uses a human rights-based approach in its programming, guided by international human rights standards and principles. We adopt this view on access to justice.

Access to justice is a vital part of the UNDP mandate to reduce poverty and strengthen democratic governance. Within the broad context of justice reform, UNDP's specific niche lies in supporting justice and related systems *so that they work for those who are poor and disadvantaged*. Moreover, this is consistent with UNDP's strong commitment to the Millennium Declaration and the fulfilment of the Millennium Development Goals.

Empowering the poor and disadvantaged to seek remedies for injustice, strengthening linkages between formal and informal structures, and countering biases inherent in both systems can provide access to justice for those who would otherwise be excluded.

National strategic context: The Role of The Justice Law and Order Sector, JLOS

JLOS comprises Ministry of Justice and Constitutional Affairs (MOJCA); Ministry of Internal Affairs (MIA); The Judiciary; Uganda Police Force (UPF); Uganda Prison Service (UPS); Directorate of Public

Prosecutions (DPP); Judicial Service Commission (JSC); The Ministry of Local Government (Local Council Courts); The Ministry of Gender, Labor and Social Development (Probation and Juvenile Justice); The Uganda Law Reform Commission (ULRC); The Uganda Human Rights Commission (UHRC); The Law Development Centre (LDC); The Tax Appeals Tribunal (TAT); The Uganda Law Society (ULS); Centre for Arbitration and Dispute Resolution (CADER) and The Uganda Registration Services Bureau (URSB).

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

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

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

It is in this strategic context that this position paper was prepared.

It is our position that the failure of government to operationalize the Qadhi Courts 21 after the constitution established them, constitutes marginalisation of Muslims in respect of Access to Justice and is inconsistent with JLOS strategic direction.

Article 20 (2) of the Constitution of the Republic of Uganda states that

“... the rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government, and by all persons”.

By discharging this duty, the Justice, Law and Order Sector dovetails into Objective 7 of the National Development Plan of Uganda 2010/11-2014/2015 that recognizes the Justice, Law and Order Sector as an enabling sector for national development.

Historic context of Qadhis courts in Uganda

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

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

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

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

The estates of Mohammedans (*Muslims*) were exempted from the provisions of part v of the Ordinance. This was the position in Uganda until 1906.

Rule 2 of the Succession Act (exemption) Order (S.I. 139-3) provided as follows:

“2. (1) All Africans of Uganda are exempted from the Operation of the Act.
(2) The rules for the distribution of intestate estates in the Act shall not apply to Mohammedans”
(Mukiibi, 2012).

Qadhis Courts in the Uganda Constitution

Article 29(1) (c) of the constitution of the republic of Uganda (1995) provides:

“(1) Every person shall have the right to-

(c) freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution.

The freedom to practice any religion should include:

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

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

The Ugandan Constitution (1995) establishes the Qadhis Courts under Section 129(1) (d) as one of the subordinate Courts of judicature exercising judicial power in Uganda to deal with matters of marriage, divorce, inheritance of property and guardianship. However, they remain in abeyance as a law to operationalise them has not been enacted despite various attempts.

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

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

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

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

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

The operationalisation of the Qadhi courts therefore presupposes the important element of availability of qualified personnel. Until now it is apparent that a critical mass of personnel with both Sharia and secular law qualifications are not available. Investment in developing this capacity should be a priority for policy makers.

What is logical is that the Qadhi courts can be implemented in phases using the available personnel as training of more personnel progresses in a systematic manner. It is also possible for the implementation to start with pilot areas before a national roll-out is possible.

Islamic Marriages

Islamic marriages in Uganda follow Islamic law. The Administration of Muslim Personal Law 2008 is a bill that was proposed to regulate family and inheritance law for Ugandan Muslims based on principles of Islamic Law as laid down in the Qur'an and Sunnah.

The bill is also based on Article 129(1)(d) of the Constitution, which provides for the administration of judicial power by Qadhi courts "for marriage, divorce, inheritance of property and guardianship." As of July 2017, the bill had yet to pass. The proposed bill spells out the property rights of women in Islamic marriages. Under the bill, a married woman would have the right to the property she got before the marriage as well as the right to get her own property during marriage.

A married woman's salary or income belongs to her as separate property. In Islam, a married woman has the absolute right to own, sell, give away or manage her property. This property includes the gift (mahr) given to her by her husband at the time of marriage. The husband has no rights over the mahr at all and cannot take it away from his wife. A husband and wife can, however, acquire property together during the marriage.

Opposition to Qadhis Courts

Although the 1995 Constitution established Qadhis courts, there is political opposition to their operationalisation. Opponents argue that establishment of Qadhis courts would favour one religion over others and to provide a special status for Muslims. This should partly explain the 21 year delay in operationalizing them.

This view is unrealistic. The constitution Article 29(1) (c) of the constitution of the republic of Uganda (1995) provides:

“(1) Every person shall have the right to-

(c) Freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution.

The freedom to practice any religion should include –

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

It is our position that Ugandan Muslims are not unreasonable to seek regulate their personal lives in accordance with their faith as it is common in other parts of the world, some which share a similar colonial history.

Comparative Context: Qadhi courts in other countries

Qadhi courts do exist in many countries. Several countries in Africa and the Commonwealth that have a significant population of Muslims provide for these courts in their constitutions and Laws to cater for the regulation of the personal status of their Muslim Citizens. Save for those countries that have established Islamic states which apply Islamic Law throughout the country, other states tend to limit the jurisdiction of these Courts to matters affecting the personal status of the Muslims.

In some cases, the jurisdiction is exclusive to the Kadhis Courts while in others the Courts are established as subordinate Courts to the Secular High Courts or Supreme Court. The Kadhis Courts are also called Qadhis Courts (Uganda), Cadi Court (Gambia), Sharia Court (Nigeria), Shariat Court (Pakistan) and Religious Court (Jordan). The Nigeria constitution provides for the establishment of the Kadi and Sharia Courts in the states and in the Federation.

The Sharia Court of Appeal is to compose of the Grand Kadi and such number of Kadis as may be prescribed by Law. The jurisdiction of the Sharia Courts is listed under Sections 262 and 277 of the Nigerian Constitution. The qualification for appointment to the office of Grand Kadi or Kadi of the Sharia Court of Appeal is set out by Sections 261 and 266 of the Constitution. Sections 264 and 279 give the grand Kadi, who is equivalent to the Chief Kadhi in Kenya, the Power to make rules for regulating the Practice and Procedure of the Sharia Court.

The major difference between the Kadhis Courts in Nigeria and Kenya is that the former apply full Islamic Sharia law while in Kenya, the jurisdiction is limited to personal law i.e. marriage, divorce and inheritance which is the case in Gambia and Uganda.

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

The qualification for appointment to the position of Cadi requires a person of high moral standing and professional qualification in Sharia Law.

The dilemma of the Ugandan Muslims who wish to access family justice according to the Sharia

Although Marriage and Divorce of Mohamadan Act enacted 1906 provides the basis for the application of Islamic law in Uganda in respect of Marriage and divorce, it has many short comings as it was. It lacks detailed description of circumstances and procedures to be followed in reaching a decision. Therefore, there is no law or regulation providing for how the Qadhi courts are constituted in regard to the qualifications of the adjudicators and the quorum.

While Marriage and divorce are easy to settle within this framework, matters of inheritance and custody of children are problematic.

Although Islam has its own system of distributing the wealth of the deceased, when a dispute arises at the informal Islamic court the parties are forced to apply the succession act and the Administrator General Act which have no reference to the Islamic law.

In cases of guardianship disputes (custody) in divorce involving children, they parties are forced to apply the Child Protection Act although the Sharia has its own guidance on matters of custody of minors.

In 2014 Muslim Centre for Justice and Law commissioned a research on the existing (currently) non-formal Qadhi court system in the Districts of Butambala and Kampala. This was followed by rapid assessment visits in Mbale, Tororo, Gulu and Masindi. Findings revealed that the Qadhi courts are established at many mosques and a mosque not having a Qadhi court informal as it is at present, is viewed as a matter of institutional weakness.

RECOMMENDATIONS

To address marginalization of Muslims in Uganda with respect to Access to Justice, we recommend that:

- The process to operationalise the Qadhis Courts should be resumed and expedited by the Executive and Parliament.
- Short courses/workshops for hitherto non formal Qadhi court administrators should be held to introduce them to gender sensitivity and mainstreaming, children's rights, human rights, statutory laws, mediation skills and formal court system procedures.
- The Muslim religious leaders who offer legal services basing on shariah law at their mosques should be trained in handling cases, recording keeping, decision making and the Ugandan laws.
- A case record keeping system for use by all Qadhi Courts in Uganda (and simple tools like registration forms, case referral forms etc), should be developed by a consultant with extensive judicial record/ judicial procedures knowledge and expertise.

- Sensitization workshops should be held for the Muslim community especially the women, children and youth and indigent persons on their right to access to Justice and existence of the Qadhi Courts throughout the country.
- There should be a deliberate effort to train Qadhi court administrators who hold degrees in Sharia, to attain statutory legal knowledge from a recognized institution like the Law Development Centre. A Diploma in Law is recommended.
- Key Qadhi court administrators in Uganda should be assisted to learn from other countries where the system is well developed through study tours. Kenya, where Qadhi's courts are well established is a logical first destination.
- A Consultant with relevant academic qualifications preferably in Comparative Law (Sharia and English Law) should be hired to develop a course content for a Diploma in Sharia, to be delivered by recognized tertiary institutions in Uganda.
- Qadhi Courts should be assisted to obtain Reference Books and establish Law libraries at their justice centres. The libraries should contain essential Uganda's statutory law books, and Sources of Islamic Law like the Quran and the six authentic Books of Hadith namely; "Sahih Bukhari", "Sahih Muslim", "Sunan Abu Dawood" and "ATirmidhi" and any other recommended texts on Muslim family and inheritance laws.
- Qadhi courts in the two districts of Butambala and Kampala should be assisted to acquire dedicated offices/ office spaces to accommodate them, basic office furniture (Desks Chairs, Book shelves, Filing Cabinets) and office equipment i.e. computers and printers and their accessories.
- A plan for massive (grassroots) legal education targeting Muslims should be implemented by JLOS through the Mosque system.
- Before operationalisation of the Qadhi courts, mobile Qadhi courts, i.e, teams of adjudicators well trained in Sharia and with recognized secular legal qualifications should be constituted and facilitated to serve areas where access to Muslim informal justice is limited due to proximity and availability of qualified personnel.
- Muslims with secular legal qualifications and /or officers in the statutory courts who profess the Muslim faith, should be encouraged and given sponsorships/scholarships to train in Islamic Law to enable them work as Qadhi court judicial officers in the future when the Qadhi courts are fully operationalised.
- A training institute for Qadhi court officers should be established to serve the Muslim community and the general public.
- Government should develop clear guidelines to regulate the relationship between Qadhi Courts and the statutory courts and other informal justice systems in Uganda like the LC courts and traditional courts.

- Judicial, police and officers should be trained to be able offer their legal services with knowledge especially on the Muslim family law
- JLOS to put in place structures for Qadhi courts.
- Phasing of the establishment of the Qadhis Court before a nation- wide Roll-out should be considered, starting with a pilot phase for the districts of Butambala, Mpigi, Kampala, Iganga and Yumbe where a sizeable Muslim population reside.
- Further and more in-depth research would be required to further study the issue of marginalization of Muslims in regard to access to justice.

V. CONCLUSION

Muslims in Uganda face a situation of marginalisation in the allocation of government jobs and in access to justice. Whereas some Muslims can be regarded as influential, they are far less than their numerical strength would allow. While they can access some basic justice in matters related to family life, that the Qadhi courts are not operationalised reduces their chances of satisfaction from a hybrid justice system. Government and policy makers need to appreciate the need for equity in sharing the national cake and in access to justice which is a human right, to ensure national unity and stability. Policy makers may find the recommendations made in both cases of marginalisation this paper discusses useful. This position paper, limited in scope as it is, should open a long ignored honest and rich conversation on the subject of social equity in Uganda, not limited to the Muslim minority but to all minorities.

Resources

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Key Access to Justice Website Resources

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- <http://www.unece.org/env/pp/a.to.j.htm>
- <http://www4.worldbank.org/legal/leglr/access.html>
- <http://www1.worldbank.org/publicsector/legal/access.htm>
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