

## KENYA



Muslims constitute approximately 10 per cent of the Kenyan population. In most ethnic communities in Kenya, men are considered to belong to the public sphere while a woman's place is seen to be in the private domain of the home. Muslim women's rights in the family are thwarted by culture and tradition, including the insistence on women's obedience to their husbands and other male relatives. In the era of HIV/AIDS, it is necessary to address the inequalities and injustices that Muslim women face in the family, since women are more vulnerable to further injustices as a result of this pandemic. Article 66 of the Kenyan Constitution provides for *Kadhis'* Courts, which have been set up based on provisions of the *Kadhis'* Courts Act 1967. Some aspects of the family laws are governed by the *Kadhis'* Courts Act and other statutes; others are governed by classical law.

## Equality in the Family is Necessary

- ▶ Marriages are often conducted informally, with a person with knowledge of the Qur'an officiating the contraction of *nikah*, but not submitting documentation to the *Kadhis'* Office. Many Muslim women do not possess copies of their marriage certificate and have no records to show that they are actually married. Some Muslim women in the interior of Kenya have not solemnised their unions.
- ▶ Many women remain silent about their marital problems, including the failure of their husbands to provide maintenance, because of cultural reasons. Few divorced women receive maintenance from their former husbands.
- ▶ The *Kadhis'* Courts, which handle divorce cases, sometimes conclude divorce cases without witnesses appearing in the court. In one case reported to NGOs, a *Kadhi* issued a letter of divorce in the absence of the wife.
- ▶ The certificate of marriage is required in divorce cases to affirm the legality of the marriage and prove the spouses' religious status as Muslims. Since many women don't have marriage certificates, this has brought a lot of injustices on women.
- ▶ *Kadhis* often do not address *iddah* or division of property when they rule on divorce cases. Little attention is paid to *iddah* in widowhood. *Kadhis* often do not address succession of property, so women often are not able to access their shares of inheritance.
- ▶ Boys are generally privileged over girls in terms of education, leaving the girls disadvantaged in various ways. This has in turn led to gender imbalance in positions of leadership and decision-making. Muslim women are still only minimally represented in decision-making forums; since independence there has been only one Muslim woman has been elected to the parliament. In the current sitting of Parliament (2007-2012), two Muslim women were nominated as Members of Parliament.
- ▶ Many Muslim women in Kenya work to support their families because of the economic situation in the country. Husbands allow women to work outside the home only if the women can still ensure smooth running of the house.
- ▶ Many Muslim families are affected and infected by the HIV/AIDS pandemic. Many women have become heads of families after losing their husbands. They face hardships in providing for their families because they are not recognised as heads of families. Some have been denied inheritance and access to the property of their late spouses; seeking legal redress is almost impossible.

## Equality in the Family is Possible

- ▶ The government is employing more *Kadhis* in the *Kadhis'* Courts so that women can seek legal redress.
- ▶ The office of the *Kadhi* has always encouraged married couples to register their marriages and to attain marriage certificates if the marriages were conducted over the weekend.
- ▶ The Federation of Women Lawyers (FIDA), Kenya chapter, has female Muslim lawyers who can help to help Muslim women with their legal problems, which has helped in cases of custody and maintenance of children.
- ▶ Labour laws in Kenya provide for equality in the workplace, though Muslim women working as home helpers are mostly underpaid and have no knowledge of how to seek help.
- ▶ Several nongovernmental organisations such as Centre for Law and Research International (CLARION), the Forum for African Women Educationalists (FAWE), and the Federation of Women Lawyers (FIDA), among others, have offered trainings to empower women on their rights and provide them with the necessary skills to participate in public sphere.
- ▶ The realisation of equality and justice are hindered by existing cultural norms, male-based interpretations of the *Shari'ah* and a disregard of current realities. The framework for improving the lot of women is provided for in the formulations of the *Shari'ah*, which can be used to push for equality and justice in the family.

Source: Report submitted to Musawah in English by the Kenyan Muslim Women Family Rights Movement, a group of Muslim women who came together in 2008 to exchange opinions and experiences and to empower Kenyan Muslim women to fully understand their rights through all of the forums available.