

KENYA REPORT TO MUSAWAH

PART A: INTRODUCTION

This report has been written as a result of two meetings held in Mombasa by a group of Muslim women. These women met at the chief's office to form The Kenyan Muslim Women Family Rights Movement. This is in their bid to join other Muslim sisters in Islam all over the world to charter a way forward for Kenyan Muslim women. We all agreed to form this movement since equality and justice in the Muslim family is necessary. This is one method to empower our Muslim sisters and speak with one voice, encourage us to exchange opinion, experiences and our voices to be heard.

PREAMBLE

In most ethnic communities in Kenya, the woman's place is in the private domain of the home, while men belonged to the public life. For a long time, education for girls has been given scanty emphasis in comparison to that of boys leaving the girls disadvantage in various ways. This has in turn led to gender imbalance in positions of leadership and decision-making. Muslim women's representation in decision making forums is still minimal though significant today. Since independence there has been only one Muslim woman elected to parliament. During the 1997-2002 parliament, Marere wa Mwachai, a Muslim woman, was elected to parliament and rose to the position of an assistant minister. In the current parliament (2007-2012) there are two Muslim women as nominated Members of Parliament. These disparities project the problems that Muslim women in Kenya face in the private sphere that is the family. Muslims women's right in the family have been flouted by the insistence of obedience to the husband and other male relatives, culture and tradition.

In this era of HIV/AIDS there is necessity to address the inequalities and injustices that Muslim women face in the family. This is because women are more vulnerable to further injustices as a result of this pandemic. It is in the framework of these problems that the Kenyan Muslim women Family rights movement was founded. The main objective of this movement is to evaluate and bridge the gaps of Kenyan Muslim women rights in the family. The specific objectives of the movement will be to:

1. Assess the rights of Kenyan Muslim women in the family.
2. Account for the inequalities and injustices affecting women within the family.
3. Identify the strategies to eliminate the injustices that Kenyan Muslim women face in an attempt to participate fully in national development.
4. To empower Kenyan Muslim women to fully understand their rights through all the possible forums such as religion, human rights, and gender empowerment programmes.
5. To help reduce the sentinel prevalence of inequality and injustices of Muslim women in the family by affirming that it is necessary and possible to achieve that.

The major premise of our organization is that the framework of improving the lot of women is never lacking in the formulations of the Sharia. The realization has been hindered by existing cultural norms, male based interpretations and disregard of current situations and time.

PART B: EQUALITY AND JUSTICE IN THE FAMILY ARE NECESSARY

The family laws and practices in contemporary Kenyan Muslim society is sustained by assumptions and notions developed in the early Islamic period. They were based on the different historical, social, political and economic situations. The jurists were guided by the social-cultural milieu in which they lived, their own biased views about women and the predominance of patriarchy. The interpretation of family union was one of total submission by the wife and complete dominance by the husband. Men were the presupposed sole bread winners.

Today, the circumstances have changed and women are no longer shielded from the public sphere. Muslim women in Kenya continue to be more actively involved in the public sphere. They are no longer the “protected lot” but have turned into the heads of their households. The earlier assumptions of complete absence in the public sphere are no longer possible. With this increased involvement into the public sphere, it calls for necessary re-examination of family roles and duties of Muslim women. The following problems are faced by Kenyan Muslim women with regard to family equality and justice.

In order to analyse Kenyan Muslim women’s inequality and injustices, we have based our problems on various sections of Muslim Family Law as enshrined in the Kenyan Constitution, under the Kadhi’s courts Act. The thematic areas or sections included; Marriage (contraction), Maintenance/Provision, Divorce, Consequences (*iddah*, *mahr*, custody of children, property inheritance), reconciliation & remarriage after divorce, widowhood (*iddah*, and remarriage) and Succession.

1. Marriage (its contraction):

- i) The women agreed on *Kadhi* court’s central role in the celebration of marriages. Many Kenyan Muslim women had their marriages celebrated either by *Kadhi* or his representative.
- ii) Interplay between culture and religion prevailed as dowry was paid to the bride’s family and the bride mentioned her requirement for *mahr* (a token) on the day of marriage. In some cases, the woman never knows what her exact dowry is. *Kadhis* were not keen on issuance of *mahr* (dowry) during the contraction of marriages. Men manipulated women’s decisions in acing their requests for *mahr* even in the presence of *Kadhi* or his representative.
- iii) Informality in the contraction of marriages was reported pertaining to the persons who officiated and the obscure manner in which they were conducted. It has been often observed that a person who had knowledge of the Qur’ân had officiated on their contraction of *nikah*’ but whether they remitted returns to the *Kadhi*’s Office so that the couples received their marriage certificates is not known. Many Muslim women do not possess a copy marriage certificate which is a vital document to show that she is actually married.
- iv) Representative of the *Kadhi* does not attend to issues presented to him by couples who simply cohabited without having their marriages legalised. There are some Muslim women in the interior of Kenya who have not solemnised their unions.

2. Maintenance:

- i) *Kadhis* rarely dispensed on issues of maintenance during marriage because they were not presented to them for legal redress. It is culturally befitting for a woman to be silent about her marital problems. Many Kenyan Muslim women toil to make ends meet but do not report their problems to the *Kadhi*. Very few women do report such circumstances that could have been avoided if maintenance was available.
- ii) For divorced women very few receive maintenance as their husbands seldom remit financial support for his divorced wife..

3. Talaq (Divorce):

- i) The *Kadhis* courts handle divorce cases. However, *Kadhi* and his representative dispensed on divorce cases without witnesses appearing in the court.
- ii) A case was reported in which *Kadhi* had issued a letter of divorce in the absence of the defendant who was a woman (wife).
- iii) Certificate of marriage was a prerequisite in the dispensation of divorce cases. It was not only a document that affirmed legality of the marriage but also proof of the couples' religious status as Muslims. This has brought a lot of injustices on women.

4. Consequences of Divorce:

- i) Iddah (a woman's waiting period):
Kadhis did not address *iddah* whenever they dispensed on divorce cases. Likewise inheritance of property in divorce was not addressed.
- ii) Mahr (dowry):
Some Muslim women acknowledge that the representative of the *Kadhi* addresses the issue of *mahr* in divorce. They note that in most cases, *mahr* is actualized only in divorce for example a sewing machine was delivered before the representative of the *Kadhi* from where the defendant (a woman) collected it.
- iii) Custody of children:
 - The women had divergent views on whether the issue was addressed by the *Kadhi* or not. A victim of the circumstance recalled *Kadhi's* effort to have them join their mother to an extent of deploying the police.
 - At times neighbour's children were left on their own (not placed under definite guardianship) after *Kadhi* had irregularly issued divorce to their mother; and after She had been put under duress her husband (plaintiff before *Kadhi*).

5. Reconciliation and Re-marriage

- The *Kadhi* and his representative are reported to have given a couple duration for possible reconciliation by avoiding to address the divorce request brought before him by the woman.

6. Widowhood

- Little attention is paid to *iddah* in widowhood. This is a situation that needs urgent redress by the *Kadhi*.
- Most women noted that they could not observe *iddah* because of financial constraints and ignorance. The hardship that is here cannot let the widows observe *iddah*. If they stay home, how will their children eat?

7. Succession:

Kadhis do not address succession of property. It manifested along cultural paradigm. Mostly women do not access their share of inheritance. At times the process lacked a clear and systematic direction. The concerned party or parties would shift around the legal systems at their disposal including cultural systems, as they deemed fit.

Also there are inequalities and injustices meted out on women in terms of labour. Many Muslim women in Kenya are working to support their families. This is due to the harsh economic situations prevailing in the country. However, they carry double burdens as they engage in meaningful employment. That is they still carry on their household duties when they get back from work. The husbands have set it clear that they can work outside the home as long as they will still ensure smooth running of the house. Muslim men are hardly involved in household work.

In the context of HIV/AIDS pandemic, many Muslim families are affected and infected. Many have become heads of families after losing their husbands. These women face hardships in providing for their families because they are not recognized as heads of families. Some have been denied inheritance and access to property of their late spouses and seeking legal redress is almost impossible.

PART C: EQUALITY AND JUSTICE IN THE FAMILY ARE POSSIBLE

In view of the above problems faced by Kenyan Muslim women, it is possible to attain equality and justice in the family.

1. Concerning the matters related to Kadhi courts, the government is employing more Kadhis so that women can seek legal redress.
2. The office of the Kadhi has always encouraged married couples to attain marriage certificate if the marriage was conducted over the weekend. Couples should always register their marriage.
3. In cases of custody, Muslim women have at times sought the help from FIDA (Federation of Women Lawyers, Kenya chapter). FIDA has members who are Female Muslim Lawyers to help them sort out cases whose parties are Muslim. This has helped a lot in custody and maintenance of children cases.
4. Labour laws in Kenya provide for equality and justice at the place of work. In case of problem Muslim women can always seek address. However, Muslim women working as house helps are mostly underpaid and have no knowledge of how to seek help.
5. To prepare women for public positions there are several nongovernmental organization such as CLARION, FAWE, FIDA, among others that have offered trainings to empower women on their rights and provide them with the necessary skills to participate in public sphere.