



# MUHURI

## MUSLIMS FOR HUMAN RIGHTS

P. O. Box 42261-80100, Mombasa, Kenya  
Tel: 041-2315607/8  
Fax: 041-2315609  
E-mail: info@muhuri.org

1st Floor, Shree Links Building,  
Next to Links Plaza,  
Links road, Nyali  
Mombasa.

Our Ref: RRP/2021/4  
Date: August 16, 2021

**The Commissioners  
The Judicial Service Commission of Kenya  
NAIROBI, Kenya.  
Judicial Service Commission  
Kenya Re-Insurance Plaza  
Podium Floor  
Taifa Road, CBD, Nairobi  
P.O. Box 40048 – 00100, Nairobi**

Dear Honorable Commissioners,

**RE: Appointment of women Kadhis in Kenya**

Muslims for Human Rights (MUHURI) had commissioned Professor Alamin Mazrui of Rutgers University in the USA to prepare a research brief on the question of women kadhis in Kenya. Professor Mazrui's statement, which reflects the position of MUHURI, is attached herewith.

An important takeaway from the document is that the local opposition to female kadhis in Kenya has no direct Islamic doctrinal support, in fact, and it is controverted by (a) lessons from the history of Islam, (b) opinions of several leading Muslim scholars, including the Grand Mufti of Al-Azhar in Egypt, and (c) the appointment of women kadhis in a number of Muslim-majority nations, including in a country like Pakistan where Islamic law plays a central role.

MUHURI urges the Judicial Service Commission (JSC) to adopt the view advanced in the attached brief as it is the only position that would allow the Honorable Commissioners to abide by their oath to serve in conformity with the Constitution of the Republic of Kenya which, among other things, prohibits discrimination on grounds of sex.

Yours sincerely,

**Khelef Khalifa  
Chairman, MUHURI Board of Directors.**



## MUSLIM WOMEN AND JUDICIAL AUTHORITY: KENYA IN COMPARATIVE CONTEXT

Since its onset, the institution of Kadhi's Court in Kenya has been entirely male in judicial authority. This enduring practice of excluding women from adjudicating in Islamic courts is, of course, partly a product of the belief that the engagement of women kadhīs would somehow usher in a new tradition unprecedented in the history of Islam. Yet this belief itself is fundamentally flawed and inconsistent with the historical record of Islam.

We know for certain that women were at the very core of the founding of Islam as a creed. It was the wisdom, foresight and intervention of Khadija, the wife of the Prophet, that helped Muhammad overcome his own self-doubt and arrive at the realization that he had been divinely chosen to serve as the Messenger of Islam. If we refer to Khadija as one of the Mothers (*Ummahaat*) of Islam, it is also to acknowledge her indispensable role in the construction and shaping of this religion. And needless to say, Khadija was followed by a string of *Muaddithat*, women as scholars of Hadith, who, as the Oxford University scholar Mohammed Akram Nadwi explains, were in such great number and such great prominence in the formative years of Islam that it became normal for men to go and learn from them.<sup>1</sup>

The tradition of Muslim women scholars was by no means restricted to this most crucial foundational stage of Islam. It continued for centuries after that. There is a rich record of leading male scholars, both Sunni and Shi'a, and from different schools of Islamic thought – Shafi'i, Maliki, Hanafi and even Hanbali – who acknowledged in their own writings the many women scholars under whom they studied and who shaped their juridical thinking. These women scholars also issued legal decisions and opinions on a wide range of issues based on Islamic law. As Khaled Abou El-Fadl, the distinguished professor of law at the University of California notes, "a careful reading of biographical dictionaries reveals a large number of women who are described as jurists and who are asserted to have attained a level of competence that qualified them to issue *fatwas*." <sup>2</sup> Indeed, for several centuries, "Women jurists could be found from Timbuktu to Cairo, from Damascus to Baghdad, from Isfahan to Nishapur."<sup>3</sup>

---

<sup>1</sup> See Mohammad Akram Nadwi, *Al-Muaddithat: Women Scholars in Islam*. Oxford: Interface Publications, 2007.

<sup>2</sup> See Khaled Abou El-Fadl, "Legal and Jurisprudential Literature: 9<sup>th</sup> to 15<sup>th</sup> Century," in *Encyclopedia of Women and Islamic Cultures*. Ed, Souad Joseph. Brill Online, 2012.

<sup>3</sup> See Mirjam Kubler, "Woman as Religious Authorities: What a Forgotten History Means for the Modern Middle East," Rice University's Baker Institute for Public Policy, Issue Brief 10.02.18

If this gender-inclusive history of Islam died out for a while, it was partly because the Muslim community itself turned extremely inward with its political decline following the Wars of the Crusades. This development eventually led to the gradual constriction of the room for *ijtihad* – mental effort at interpretive reasoning -- and the consolidation of patriarchal and masculinist readings of Islamic doctrines that increasingly marginalized women in judicial authority and in Islamic scholarship at large. Unfortunately, it is this more recent historical turn in the Muslim experience that came to define and characterize dimensions of the gender worldview of a large section of the global Muslim community.

Against this backdrop, then, Muslims need to rethink the controversy over Muslim women kadhis and reframe the discourse by placing it within its wider historical context. They ought not to see the growing calls to appoint women as judges in Kadhis' Courts in Kenya and elsewhere in the world as an alien imposition, a novel tradition introduced from without. Rather, there are strong reasons to regard these appeals as part of an effort aimed at bringing Islam as practiced in many societies today in line with the religion's inclusive spirit, the same spirit that once allowed it to play a leading role in world civilization in matters of science, philosophy and the law, as Sari Nusseibeh demonstrates in his fascinating study of *The Story of Reason in Islam*.<sup>4</sup>

From the doctrinal point of view, it is clear that there is not a single verse of the Qur'an nor a single Hadith of the Prophet that explicitly bars women from assuming positions of judicial authority. Members of the Kenyan Muslim clergy who seek evidence from these religious texts to support their opposition to women kadhis are always reduced to making indirect and often tangential inferences from a couple of verses or hadiths that bear no direct relationship to the specific question of women in the judiciary. To be sure, the opinion of these Kenyan clerics is at variance with the interpretation of many internationally acclaimed Muslim scholars in many parts of the Muslim world. Just this year, for example, Sheikh Ahmad al-Tayeb, the Grand Imam of Al-Azhar in Egypt, affirmed that it is perfectly acceptable for women to serve in all leadership positions, including those of judges and muftis.<sup>5</sup>

The views of the likes of Sheikh al-Tayeb have influenced several Muslim majority countries to move in the direction of appointing women as jurists in matters of Islamic law. These include, for example, Egypt, Sudan, Mauritania, Algeria, Morocco, and Tunisia, in Africa, Indonesia, Malaysia and Pakistan, in Asia, and Syria, Kuwait and Bahrain in the Middle East. In

---

<sup>4</sup> Sari Nusseibeh, *The Story of Reason in Islam*. Stanford University Press, 2017

<sup>5</sup> Heba Yousry, "The Words of the Grand Imam of Al-Azhar welcomed by Muslim women everywhere." *Alarabiya News*, May 20, 2021 (See: <https://english.alarabiya.net/views/2021/05/20/The-words-of-the-Grand-Imam-of-al-Azhar-is-welcomed-by-Muslim-women-everywhere>).

places like Pakistan and Algeria, over thirty percent of judges are women. And as the edited book on *Women Judges in the Muslim World* demonstrates, this trend is continuing to grow both in the proportion of women jurists and the scope of law and legal issues over which women sit in authority.<sup>6</sup> Kenyan Muslims need to be part of this global, rising tide of Islamic revival that has begun to reopen the doors of women's appointment in judicial leadership and authority.

It is not enough, of course, that the Kenya Muslim public comes to terms with the idea of women kadhis. Attitudes about women in positions of religious leadership must undergo fundamental change among scholars, educators, students, and the general public. And this change in attitude must be accompanied by concerted efforts aimed at empowering women and providing them with equal opportunities to study Islamic sources and gain knowledge in their interpretation.

Sheikh Ahmad al-Haddad, the Grand Mufti and the Head of Islamic Affairs in Dubai is reported to have said that Islamic history is "rich in examples of highly learned women acting as muftis and issuing decrees on all religious matters."<sup>7</sup> Some of them, like Shaykha Hujayma bint Huyay al-Atabiyya rose to great prominence to become key legal advisers of such consequential caliphs as Abd al-Malik bin Marwan. Now Muslims in Kenya ought to draw on and be inspired by these examples and seek to chart a future path of a gender-inclusive living Islam that is compatible with the religion's historical foundations and with a new vision of a Kenya that would better serve this generation and its posterity. Accepting the possible appointment of female kadhis in Kenya's judicial system is one step in that direction.

Alamin Mazrui, Rutgers University (USA)  
August 15, 2021.

---

<sup>6</sup> See Nadia Sonneveld and Monika Lindbekk, eds. *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Brill, 2017

<sup>7</sup> See "The first female Mufti in the Arab world." *Siasat Dailty*, November 4, 2009 (Online)