

# Islamic Courts in Kenya and Tanzania: *Reactions and Responses*

**John Chesworth** traces the history of contemporary tensions arising from different models of accommodating Islamic law within a secular state.

Whether or not the state should sanction Kadhi Courts<sup>1</sup> (Islamic courts) has become a contentious issue between Muslims, Christians and the state in different ways in Kenya and Tanzania. In the late 19<sup>th</sup> century, the coastal strip of East Africa came under British and German protection. Treaties with the Sultan of Zanzibar were conditional on the Europeans respecting the Islamic judicial system. During the colonial period, though, Western officials reduced the role of the Islamic judicial system to dealing only with personal law (marriage, divorce and inheritance). Treaties with the Sultan were renewed prior to independence.

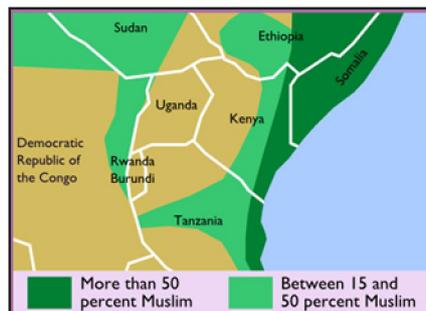
**Two Different Models:** Following independence, Tanzania abolished Kadhi Courts on the mainland, incorporating Muslim legal tenets in the 1970 Marriage Act, whereas Kenya ‘enshrined’ Kadhi Courts in its Constitution. Why did these two neighbouring states, with common histories, make such different decisions? In Tanzania, with around 120 different people groups, the first president, Julius Nyerere, wanted to create a united country, with a national identity. Kadhi Courts, serving only part of the community, were seen as divisive.

Kenya had a more developed commercial sector and the first president, Jomo Kenyatta, sought to accommodate diversity so as to encourage non-Africans to stay and help develop the country. The decision to retain and expand Kadhi Courts was part of this process.

**The Models Questioned:** In Tanzania, public discourse about Kadhi Courts was renewed in 1998 when an opposition party MP requested the creation of a Kadhi Courts Law, and Parliament appointed a Committee to examine the matter. This, in 2004, found in favour of the re-introduction of Kadhi Courts.

In Kenya, it was church leaders’ criticism of the Government on justice issues during the 1997 elections which forced the government to agree to a review of the constitution. Country-wide consultations, in co-operation between

the government and the ‘faith-based’ Ufungamano Initiative, resulted in a draft constitution in 2002. It dealt with many of the justice issues, and retained the existing Kadhi Courts clause. Church leaders discussing the draft objected to the Kadhi Courts clause, saying that no single religion should be favoured in the constitution of a secular state. Comments indicated mistrust of Muslims and little awareness of the history or purpose of Kadhi Courts. A series of conferences marked by increasing Christian objections to the clause led to the collapse of the ‘faith-based’ initiative, but the subsequent constitutional draft retained the Kadhi Courts clause.



**The Debate Develops:** In Tanzania, the 2005 election manifesto for CCM,<sup>2</sup> the ruling party, pledged that it would find a solution to the issue of re-establishing Kadhi courts on the mainland. CCM was re-elected but the new president, a Muslim, appeared to distance himself from the election pledge. Some Muslims stated that they wanted the Government to institute Kadhi courts as the decisions of Magistrates Courts deviated from Islamic law; others called for Kadhi Courts to be a government-funded institution. Church leaders denounced the re-introduction of Kadhi courts, claiming it infringed the country’s Constitution, and opposed the proposal of government financial support. In July 2009, the government announced that it would incorporate Islamic principles into the country’s laws, rather than institute Kadhi courts. Muslim leaders condemned this decision as proof of Christian bias by the government and warned that if Kadhi

Courts were not re-instated, Muslims would not vote for CCM in the 2010 elections.

In Kenya, a final draft constitution was produced during 2005. This sought to appease Christians and other non-Muslims by establishing a Religious Courts Clause rather than just Kadhi Courts. The referendum campaign divided the nation and the proposed constitution was rejected. Following the December 2007 elections, the process to produce a new draft constitution began again and in November 2009 the *Harmonized Revised Draft Constitution* was published, retaining a clause concerning Kadhi Courts. Church leaders began to speak out against the clause. Some called for the removal of the Kadhi Courts from the constitution, as Parliament has the power to create other courts through legislation. This raised concerns amongst Muslims, as an Act of Parliament can be overturned by a simple majority in Parliament.

## Current Situation: 2010

*Tanzania, February:* the Minister for Justice denied that the government had barred Muslims from establishing Kadhi Courts. Muslims may see this as a ploy to encourage them to support CCM.

*Kenya, January:* A revised Draft Constitution was published, retaining the Kadhi Courts clause. Some Church leaders say this single issue is sufficient to cause Christians to vote against it in the referendum, despite thereby risking losing the progress on justice issues for which they have fought for so long.

The place of Islamic Courts has become a focal point of distrust in both countries, allowing resentments to endanger relations between the Muslim and Christian communities.

## Notes

- <sup>1</sup> Kadhi is the Swahili for qāḍī (judge) in Arabic.
- <sup>2</sup> Chama Cha Mapinduzi, the Party of the Revolution

*Dr John Chesworth* is a lecturer at the Centre for Muslim-Christian Studies.

A ‘Starter Bibliography’ on Islamic Law can be found at: <http://www.cmcsoxford.org.uk/index.php?pageid=74>