

## CHAPTER ONE

### Introduction

The office of the kadhi was in existence from the seventh century (AD). During the Umayyad period, for example, kadhīs (Muslim judges) were among Muslim professionals who were appointed by the government to advance sciences such as jurisprudence and theology during the second and third century. Kadhis would be among Muslims scholars (*ulamas*).<sup>1</sup> Abdullahi Ahmed An-Na'im<sup>2</sup> notes a systematic development of kadhis' courts during the early Abbasid period (after 750). Kadhis' courts were in existence in the Tanzania mainland from the pre-colonial period and during the colonial era, and they were abolished after independence in 1963.

Prior to the arrival of colonialists, there were local courts operated under the administration of local chiefs. During German colonial rule these local chiefs were known as *liwalis*. These local courts remained until the coming of the Arab rule under the sultan of Zanzibar in 1698. Islamic law and customary law were applied to these local courts. Islamic law was not administered in criminal cases. German colonial rule was comfortable with these local courts because they were not a threat to their political and economic interests. These courts made the German colonial administration easier by encouraging unity and harmony among Tanzanians. The local courts played a key role in advancing the rights of the locals. Both Muslims

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<sup>1</sup> William Shepard, *Introducing Islam* (London and New York: Routledge, 2009), 38.

<sup>2</sup> Abdullahi Ahmed An-Na'im, *Islam and the Secular Government: Negotiating the Future of Shari'a* (Cambridge, MA: Harvard University Press, 2008), 14.

and non-Muslims would approach these courts for dispute resolution. German rule established two branches of judicial administration, one for the locals and the other for foreigners.

The Courts Ordinance established by the British colonial administration in 1920 gave legal jurisdiction to these local courts. Similarly, the British administration enacted the Native Courts Ordinance in 1929, which allowed the establishment of local courts. These new courts dealt with cases which were not handled by the courts of *liwalis*, *kadhis*, and *akida*. Besides, these two legal systems, the British regime established the Subordinate Courts for Westerners and Indians. Africans and other people were also allowed to appear before these courts. These three judicial systems continued to operate until after the independence. The Magistrates' Courts Act was introduced in 1963 (two years after independence); brought the above three judicial systems into a unified judicial system. The establishment of this new judicial system marked the official abolition of *kadhis'* courts, including the local courts and the Subordinate Courts. The rationale for the abolition of these courts was to foster national unity, which was a priority after independence.

The Muslim demand for the establishment of the *kadhis'* courts in Mainland Tanzania poses a serious challenge to Muslim-Christian relations. This challenge requires a serious and urgent response. This study is an academic response to the issue; it intends to analyze the issue, show the complexity of the issue, suggest some ways to address misunderstandings, increased suspicions that may have emerged because of the issue. This first chapter covers a brief historical background of politics and religion in Tanzania, *kadhis'* courts, and definitions of some key terms to be used in this research, the rationale for my choice of both Tanzania and the topic of *kadhis'* courts for this study, statement of the problem and my major thesis, key

questions raised by this research, aim and objectives of the study, methods, limitations and delimitations, the scope of the content, geographical location, sampling, and how this study is organized in five chapters. Before I get into the discussion proper and so give context to the question and subject of this study, let me outline the political and religious background of Tanzania.

## 1.0 Political and Religious Background of Tanzania



The Mainland Tanzania came under the colonial rule of Portuguese, Arabs (from Oman), Germany, and Britain. Vasco Da Gama was the first European to enter Mainland Tanzania as an explorer in 1498. The Portuguese controlled the coast of Mainland Tanzania and were driven out by Arabs from Oman in the seventh century. The Mainland Tanzania was under German colonial rule from 1880 to 1919, and British rule from 1919 to 1961. Following the 1884-85 Berlin Conference to divide Africa, Tanzania fell under the Territory of German East Africa. Some of the negative effects of the German colonial rule were its direct rule and economic exploitation. Due to brutality of German rule, there were fierce oppositions against it by indigenous people.

One of the concrete examples of opposition against German colonial regime was the *Maji-Maji* rebellion of 1905-07. In spite of its negative impact on the country, the German rule introduced economic infrastructure (railroads, harbors, and civil buildings) in the country.

Under British colonial regime, the name German East African Territory was replaced by the name Tanganyika (Mainland Tanzania). Unlike German colonial rule, British colonial administration used an indirect rule to control Tanzania. Under this indirect rule, the British administration ruled the country through indigenous leaders. Two of the most political achievements of British rule under Sir Donald Cameron were the introduction of the Legislative Council and the establishment of Tanganyika African Association. This political move motivated the African nationalist movement that culminated in the formation of Tanganyika African National Union (TANU) under leadership of Julius Kambarage Nyerere and independence to the country in 1961. Tanganyika and Zanzibar formed the United Republic of Tanzania in 1964.

Like other Africans, Tanzanians are religious. Even prior to the arrival of Islam and Christianity, Tanzanians were practicing their traditional religions. John Mbiti<sup>3</sup> observes that for Africans, religion is part of their cultural heritage and dominates all spheres of their lives. In support of Mbiti, Kefa M. Otiso<sup>4</sup> points out that 93 percent of Tanzanians consider religion to be very important in their daily lives, 80 percent attend weekly religious services, 97 percent believe in monotheism (one God), 96 percent believe in evil spirits, 93 percent believe in witchcraft and 80 percent believe in evil eye (certain people can cast curses or cause bad things to happen). Regarding religious population, Otiso observes that in 1967, Christians were 34 percent,

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<sup>3</sup> John S. Mbiti, *Introduction to African Religion*, 2<sup>nd</sup> edition (Oxford: Heinemann, 1991), 10, 20-29.

<sup>4</sup> Kefa M. Otiso, *Culture and Customs of Tanzania* (California: Greenwood, 2013), 43-44.

Muslims were 31 percent, and other religions were 35 percent (1967 national census). In 2004, Christians were 57 percent, Muslims were 30 percent, and other religions were 13 percent (Demographic and Health Survey).

The dominance of religion for Tanzanians evident in political rallies. Most of political rallies are opened by prayers from religious officials. Some political candidates from both the ruling and opposition parties are accompanied by religious leaders throughout the country. Religious leaders are sought by politicians for consultation, advice, blessings, and protection. This religious background was one of the factors for the positive reception of Islam and Christianity by Tanzanians. As Mbiti Observes, however, despite their adherence to these new foreign religions, African traditional religions continue to be attractive to many Tanzanians. The practices of polygamy, consultation of traditional religious specialists (medicine persons, mediums, diviners, and rainmakers) for various needs, for instance, are still common among Tanzanians despite their affiliations to Islam, Christianity, and other non-traditional religions.

Islam was introduced in the Tanzania mainland in the ninth century through Muslim traders. Arabs and other citizens from the Middle East were present along the East African coast from the eighth century. These immigrants introduced Islam in several city-states of Tanzania through the trade centers they had established along the coast.<sup>5</sup> Most Tanzanian Muslims are Sunnis. For many years Islam remained an urban religion in the coastal areas. Muslim scholars' public debates (*mihadhara*) and social services such as schools, health centers, and other humanitarian aids have helped Islam to spread in other parts of Tanzania including rural areas.

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<sup>5</sup> Lissi Rasmussen, *Christian-Muslim Relations in Africa: The Cases of Northern Nigeria and Tanzania Compared* (London; New York: British Academic Press in association with the Danish Research Council for the Humanities and Jens Norregaards og Hal Kocks Mindefond, 1993), 9-12.

Besides Islam and Christianity, other religious groups in Mainland Tanzania include Buddhists, Hindus and Baha'is. The relationship between Muslims and Christians in the Tanzania mainland is generally characterized by tolerance despite some challenges facing these two religious communities. Unhealthy relationship among some Christians and some Muslims in some parts of the countries is mainly the result of historical injustices created by colonialists. Mbogoni,<sup>6</sup> for instance, observes that the introduction of Christianity to Tanzania in the sixteenth century by the Portuguese was characterized by hostility, crusades, and discrimination against Muslims. This matter is discussed extensively in chapter four.

Chapter one, part one, section 3 (1) of the current constitution states that Tanzania has a secular government. Part three of the same chapter 19 (111) gives the right to religious freedom. Despite its establishment of a secular state, the constitution recognizes the religious affiliation of each individual.<sup>7</sup> The secular state of the government is also retained in the 2014 proposed constitution (chapter one part one, 1(2), and chapter five, part 41 (1), the government is prohibited by section (3) from running any religious institution.<sup>8</sup> This provision does not mean withdrawal of the government from providing support for social services such as health and education offered by religious institutions. In chapter four I will discuss the concepts of

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<sup>6</sup> Ibid; 2-3.

<sup>7</sup> United Republic of Tanzania. 2013. "Constitution." Accessed September 22, 2015. [http://www.egov.go.tz/egov\\_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20\\_English%20Version\\_%202009.pdf](http://www.egov.go.tz/egov_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20_English%20Version_%202009.pdf).

<sup>8</sup> United Republic of Tanzania. 2013. "Katiba Inayopendekezwa" (the Proposed Constitution). Accessed October 3, 2015. [http://www.tanzania.go.tz/egov\\_uploads/documents/KATIBA\\_INAYOPENDEKEZWA\\_sw\\_%281%29\\_en.pdf](http://www.tanzania.go.tz/egov_uploads/documents/KATIBA_INAYOPENDEKEZWA_sw_%281%29_en.pdf).

constitutionalism, secularism, secularism, justice, human rights, religious freedom, democracy, and multi-faith relations as they relate to the demand for kadhis' courts.

### **1.1 Mainland Tanzania, Zanzibar, Tanzania, Islam, Kadhis, Kadhis' Courts, Shari'a, Fiqh, Qur'an, Sunna, and Hadith.**

Some of the terms which are used frequently in this study include Mainland Tanzania, Zanzibar, Tanzania, Islam, kadhis, *shari'a*, Islamic law, *fiqh*, Qur'an, *Sunna*, and *Hadith*. The name "Mainland Tanzania" was known Tanganyika prior to the union between Tanganyika and Zanzibar in 1964. Tanganyika became independent from British colonial rule in 1961, a sovereign state on December 1, 1961 and a republic in 1962. The name "Zanzibar" refers to the Islands of Zanzibar and Pemba. Zanzibar became independent on December 19, 1963. The two sovereign states (Tanganyika and Zanzibar) formed the United Republic of Tanzania on April 26, 1963.<sup>9</sup> According to the constitution of the United Republic of Tanzania of 1977, chapter four part one, 102 (11),<sup>10</sup> Zanzibar has an executive known as the Revolutionary Government of Zanzibar with authority in Zanzibar over all matters which are not of Union matters. Section 103 (1) of the same chapter says that there shall be a head of executive for Zanzibar known the President of Zanzibar and head of the revolutionary government of Zanzibar.

Based on the above information, there are two different governments in Tanzania (Zanzibar and the United Republic of Tanzania). Though Zanzibar is a government, is an integral

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<sup>9</sup> "Tanzania Profile" 2013, United Republic of Tanzania, accessed April 5, 2016, <http://www.tanzania.go.tz/home/pages/68>.

<sup>10</sup> "The Constitution of the United Republic of Tanzania," 2013, accessed on April 5, 2016, [http://www.egov.go.tz/egov\\_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20English%20Version%202009.pdf](http://www.egov.go.tz/egov_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20English%20Version%202009.pdf).

part of the United Republic of Tanzania. The Mainland Tanzania has 30 regions compared to 5 regions of Zanzibar. According to Kefa M. Otiso<sup>11</sup>, 97 percent of Tanzanians live in Mainland Tanzania and the rest live in Zanzibar.

According to C. T. R. Hewer,<sup>12</sup> the Arabic word for Islam is *SLM*, and from this term come three words all belonging to the same family, i.e., *islam*, *muslim*, and *salam* (*s l m*, *is lam*, and *salam*). Thus the term 'Islam' refers to the state of harmony between Allah and the universe, and submission to Allah as creator. Being in harmony with Allah is the basis for peace. Only God or Allah can guarantee authentic peace. The word *Muslim* refers to the state of Islam (all creatures are Muslim). The point Hewer is trying to make with this definition is the relationship existing between God or Allah and his creatures. God is the source of all creatures. This unique relationship implies that all creatures are to remain in harmony with God if they are to be safe. Muslims submit themselves to Allah to acknowledge his unity (God is one) and their dependence on him as creator and sustainer. Muslims demonstrate this dependence by observing faithfully the five pillars of Islam. This definition of Islam as peace implies that those who use Islam to justify their criminal activities are not really Muslims.

Kadhi is a Swahili word derived from an Arabic term *qadi*, which means a Muslim judge<sup>13</sup>. A kadhi is a religious and social leader. Kadhis' courts are Islamic courts. *Shari'a* or Islamic law is the law applied in kadhis' courts or Islamic courts. *Shari'a* and Islam are inseparable. *Shari'a* gives a moral guideline to Muslims. It is one of the distinctive features of

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<sup>11</sup> Otiso, *Culture and Customs of Tanzania*, 4.

<sup>12</sup> C. T. R. Hewer, *Understanding Islam: An Introduction* (Minneapolis: Fortress Press, 2006), 3-4.

<sup>13</sup> Robert W. Hefner, ed, *Shari'a Politics: Islamic Law and Society in the Modern World* (Bloomington: Indiana University Press, 2011), 18.

Islam. The meaning of *shari'a* is determined by different contexts. With this first in mind, Frank Griffel<sup>14</sup> offers the definitions of *shari'a* in the classical Muslim era, in the modernization and Westernization, and in the contemporary situation. In the classical Muslim era, the term *shari'a* is understood as Islamic religious law, rites or rituals, the right ways of practicing Islam, path, road, high way, guide, *fiqh* (Muslim jurisprudence), and divine law.

*Shari'a* during the modernization and westernization was understood as anti-modernization, thus its scope of jurisdiction was restricted to personal matters such as marriage and inheritance. *Shari'a* was understood as a divine absolute law, codified law, a divine revelation, and a set of various rulings and directives of the Prophet Muhammad. This period witnessed the replacement of kadhis' courts by secular courts and emergence of the Shiites and Sunnis. In the contemporary context, *shari'a* is used by different Muslims to refer to different things such as Islamic law, Qur'an, *Sunna*, and *Hadith*.

Based on the above definitions of the term *shari'a* three major points arise. First, according to the classical Muslim period understanding, *shari'a* is something positive because of its moral implications. Second, *shari'a* has been the most controversial issue throughout the history of Islam among both Muslims and non-Muslims. Its controversy is related to human rights such as corporal punishments and gender inequality. Third, the meaning and scope of *shari'a* is determined by the context and different Islamic schools of thought.

*Shari'a* is mentioned once in the Qur'an (45:18). The limited reference should not be taken as a serious issue. My argument here is that the validity of something is not dependent on

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<sup>14</sup> Frank Griffel, ed, *Islamic Law in the Contemporary Context: Shari'a* (Stanford, California: Stanford University Press, 2007), 2-13.

its quantity. In Christianity, for example, the doctrine of the Trinity which in my view is at the heart of Christianity is not mentioned several times in the Scriptures. This lack has led some people who value things only by their quantity or frequency to reject this doctrine. The relationship between the word *shari'a* and Islamic law has been contentious among both Muslims and non-Muslim scholars. The major question arising from the scholarly discourse has been whether these words are synonymous or not. Elke Stockreiter<sup>15</sup> offers a solution to this dilemma: *shari'a* and Islamic law are synonymous. But *shari'a* is an appropriate term because of its holistic meaning. Islamic law is a problematic term because of its orientalist roots and misinterpretation by some Western scholars and the public. The British colonial government, for example, viewed Islamic law as opposed to modernity, civilization, justice, humanity, and human rights. Thus serious measures to deal with Islamic law (in the name of British judicial reform) were inevitable. In contrast to such a perception, historians of Islamic law argue that *shari'a* should be understood in its different social and historical contexts.

The main issue here that Stockreiter and the historians are failing to wrestle with is the extension of *shari'a* or kadhis' courts to corporal punishments. The current operation of corporal punishments in some countries poses serious challenge to *shari'a* itself. Unless this serious challenge is addressed adequately, fears and controversy surrounding *shari'a* will never end. The reinterpretation of some Qur'anic passages that are used to justify corporal punishments in Islam is critical here.

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<sup>15</sup> Elke Stockreiter, *Islamic Law, Gender and Social Change in Post-Abolition Zanzibar* (New York: Cambridge University Press, 2015), 2-3.

According to Mohammad Hashim Kamali,<sup>16</sup> *shari'a* and *fiqh* are dual aspects of Islamic law. Moreover, the origin of Islamic law is divine revelation (*wahy*) and human reason (*aqal*). According to Kamali there is a distinction between the two. Whilst *shari'a* is closely related to divine revelation, *fiqh* is a result of human reasoning. In his view Kamali defines *fiqh* as human understanding and knowledge. He uses divine revelation to refer to the Qur'an and Sunna. Unlike *fiqh* (which is a rational product) *shari'a* is central to the dogma of Islam. *Shari'a* is more holistic than *fiqh* providing a clear ruling to the fundamentals of Islam such as prayers, fasting and devotional matters. What makes *shari'a* authoritative is its sources: the Quran, sunna, *ijma* (Muslim community), and *qiyas* (legal reasoning). The Qur'an and sunna are two major sources of the *shari'a*.<sup>17</sup>

Ruthven<sup>18</sup> observes the importance of *shari'a* in Islam. Allah has not revealed his identity and nature to his people except in his law. *Shari'a* is therefore God's self-revelation to his people. In line with other scholars, Ruthven prefers the use of the term *shari'a*. Through *shari'a* Muslims are sustained and they have access to heaven. *Shari'a* is essential for promoting a good character as well as for the Muslims' salvation. While *shari'a* is unchangeable, its interpretation varies depending on the context. While the word *sunna* is used to refer to repeated or authentic acts of the Prophet Muhammad, his companions and followers, the term *hadith* means the narration of unrepeated acts of the Prophet. Sunna is the second authoritative source in Islam. The first one is the Qur'an.

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<sup>16</sup> Mohammad Hashim Kamali, "Law and Society: The Interplay of Revelation and Reason in the Shari'a" in *The Oxford History of Islam*, ed. John L. Esposito (New York: Oxford University Press, 1999), 107-109.

<sup>17</sup> Ruthven, *Islam: A Very Short Introduction*, 53-88.

<sup>18</sup> *Ibid*, 2012, 82.

In my view, there is a close relationship between the terms Islam, kadhi, kadhis' courts, *shari'a*, Qur'an, Sunna, hadith, and fiqh. In my views, these terms are some of the distinctive features of Islam. In relation to this study, the terms play a significant role in kadhis' courts. The role of a kadhi is to interpret Islamic law or *shari'a*, to give a directive, and to issue a ruling or judgment on cases presented in kadhis' courts. *Shari'a* or Islamic law is administered in kadhis' courts and some of authoritative sources are the Qur'an, Sunna, hadith, and fiqh (depending on Islamic philosophical schools). Qur'an and Sunna are the primary sources of *shari'a*. *Shari'a* is superior to kadhis because of its sources. The name kadhi reflects his or her significant role in Islam. In Islam there is no separation between the sacred and secular. A kadhi is superior to a mufti. Kadhis' courts and *Shari'a* has moral ethical implications. Muslims are to live a holy life that reflects moral character of Allah and his prophet, Muhammad.

## **1.2 Why Study the Kadhis' Courts in Mainland Tanzania?**

The choice of the Tanzania mainland as the geographical location for this study is based on two major factors: the uniqueness of Tanzania and the controversy of kadhis' courts in the country. Unlike neighboring African countries such as Kenya, Nigeria, and Uganda, Tanzania is the only country whose constitution does not have provisions for kadhis' courts in comparison to these countries. Like Tanzania Kenya, Nigeria, and Uganda have are secular governments and yet their constitutions have provisions for these Islamic courts. As part of the United Republic of Tanzania the provision of kadhis' courts in the constitution of Zanzibar puts Mainland Tanzania in an awkward situation because one of the leading factor for the Muslim demand is legal operation of kadhis' courts in Zanzibar. The operation of kadhis' courts in Zanzibar is financed by the government and the chief kadhi is appointed by the President. The controversy posed by

the Muslim demand for kadhis' courts is discussed extensively in the statement of the problem below.

My choice of the topic of kadhis' courts for this study is motivated by the seriousness of the current debate of the matter and the failure of both the government and existing works on this issue to address it adequately. The Muslim demand poses the challenge to the current constitution and as well as to the relationship of some Muslims and some Christians. These two factors are wrestled with in a discussion and analysis of the findings in the relevant sections of the study below.

### **1.3 Statement of the Problem.**

The ongoing Muslim demand for the inclusion of kadhis' courts in the constitution and operation of these courts with government funds; the appointment of the national chief kadhi by the government; and the official announcement of the establishment of kadhis' courts by the President; is creating tensions and conflicts between some Muslims and some Christians and between some Muslims in Mainland Tanzania. The situation is worsened by the way the Tanzanian government is handling this issue politically and the reaction to both the Muslim demand and the government response to this matter by some Muslims and Christians Muslims. Under Muslim pressure, for example, on October 31, 2014, the government prepared a bill known as '*The Written Laws (Miscellaneous Amendments) (No. 2) Act 2014*,<sup>19</sup> which was to be tabled at the National Assembly of January 27, 2015, in Dodoma. Parts 20, 21, and 22 of this bill were intended to amend *The Islamic Law (Restatement) Act, Cap.375*. According to the

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<sup>19</sup> Parliament of Tanzania. 2014. "Bill Supplement: Part V Amendment of the Islamic Law (Restatement) Act." Bill, Parliament of Tanzania, Dodoma, October 2014.

government, the approval of this bill by the National Assembly would give legal recognition of kadhis' courts.

It is important here to understand that the government's move was political and was intended to win Muslims' votes for both the new proposed constitution and the general elections held on October 25, 2015. In the 2005 general elections, for example, in its manifesto, the ruling party, *Chama Cha Mapinduzi* (CCM) or the Revolutionary Party pledged the possibility of the establishment of kadhis' courts should Muslims vote for it.<sup>20</sup> After the landslide victory of the ruling party presidential candidate Jakaya Mrisho Kikwete, the promise was not fulfilled. Moreover, following criticisms from both opposition parties and non-Muslim Tanzanians over this pledge, the ruling party had no option other than removing this unconstitutional promise from its manifesto for the 2010 general elections. Knowing the significance of their votes for both the new proposed constitution and the 2015 general election, the Muslims launched afresh their demand for the inclusion of kadhis' courts in the proposed constitution. Unfortunately, this demand was rejected by the majority of Tanzanians, who voted for against the inclusion of kadhis' courts in the new proposed constitution during the 2014 referendum for the first draft of the constitutional review. The vote was for various issues contained in the constitutional review. This decision left both the government and Muslims in a dilemma.

Due to the pressure for kadhis' courts from some Muslims, the government had to find another option---the amendment of some provisions of the law that would give legal recognition

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<sup>20</sup> *Ilani ya Uchaguzi ya CCM ya Mwaka 2005-2010 (b): Kulipatia Ufumbuzi Suara ya Kuanzishwa kwa Mahakama ya Kadhi Tanzania Bara* (The CCM Manifesto of the General elections of the 2005-2010 (b): To offer a Solution to the Establishment of *Kadhi's* Court in the Mainland Tanzania" (Dodoma, Tanzania: *Chama cha Mapinduzi*, 2005), no page number.

to kadhis' courts. The Prime Minister, Peter Mizengo Pinda, presented this option to members of the Constituent Assembly in 2014, as a response to Muslim members who had threatened to vote negatively for the new proposed constitution.

This time the government's move was challenged by some Muslim and Christian officials. The major contentious issues were centered on the constitutional legality of such a move, financial sustainability of kadhis' courts, the appointment of the chief kadhi, and how the government's decision did not do justice to non-Muslim religious communities. While the establishment of kadhis' courts was a national issue that would affect all Tanzanians regardless of their faith affiliations, the fierce battle of exchanged words and official letters were evident between the government, the Muslims, and the Christians. This controversy demonstrates the current relationship between Christians and Muslims and the role of the government in contributing to this relationship either positively or negatively. I will discuss more on this matter in chapters four and five.

Following the government plans to table the Act for the amendment to the National Assembly that would allow the effective operation of kadhis' courts, on March 16, 2015, the Rev. Christopher Mtikila (who died on October 4, 2015 from a car accident) filed a petition at the High Court in Dar es Salaam against the matter. In his petition, Mtikila wanted the High Court to declare that kadhis' courts alongside the Organization of Islamic Cooperation (OIC) are illegal, including the government's involvement in the establishment of kadhis' courts. Furthermore, Mtikila wanted the Prime Minister, Minister of Constitutional and Legal Affairs, Attorney General, and other government officials to be jailed for no less than five years each for their violation of the Tanzanian constitution. Similarly, he demanded the High Court declare that

Islamic corporal punishments are against human dignity and the Universal Declaration of Human Rights.<sup>21</sup> Apart from being a pastor in the Salvation Army Church, Mtikila was the national chairperson of the opposition party, the Democratic Party (DP). According to Mtikila, the OIC is illegal because its mission is to Islamize its member states. Mtikila's proposal on the announcement of kadhis' courts and the OIC as illegal violates freedom of association. In his constitutional petition, Mtikila<sup>22</sup> raises major ten issues to oppose the Muslim demand:

1. Tanzania has maintained peace because of its ability to embrace sanctity of human life and dignity, love and equality;
2. What protects Tanzania against terrorist attacks is its commitment to protect the constitution;
3. Kadhis are Islamic extremists and the Muslim demand is funded by Islamic extremists;
4. According to the Islamic principle, Islam ought to be the only religion in the world. This Islamic doctrine is achieved through Jihad or Islamic crusades;
5. A kadhi has supreme authority in Islam (he or she is the second to the head of state);
6. The purpose of the Muslim demand is to introduce corporal punishment in Mainland Tanzania;
7. Muslims want to enslave Christians to Islam through kadhis' courts;
7. Christian population is higher than Muslim population. Christian population is 29 million percent (5.5 million Lutherans, 11 million Roman Catholics, 3 million Anglicans, 1.8 million Moravians, 5.8 million Pentecostals, and 1.8 million Adventist with other members of other independent churches, against 7 million animists and 12.4 million Muslims;
9. The Muslim demand is intended to execute Christians because Muslims who convert to Christianity in Sudan are executed; and
10. Kadhis' courts were abolished in Mainland Tanzania because of their violation of human dignity.

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<sup>21</sup> A petition file for a Constitutional case number 14 of 2015 at the High Court of Tanzania in Dar es Salaam was opened by Mtikila on March 16, 2015.

<sup>22</sup> Mtikila's Petition Against the Kadhis' Courts Bill," Wavuti, accessed April 10, 2016, <http://www.wavuti.com/2015/03/mtikilas-petition-against-kadhi-courts.html>

In the petition, Mtikila identifies himself as a natural citizen and patriotic of Tanganyika, human right campaigner of international renown, head of an apocalyptic ministry, who is championing the cause of social, economic and political liberation of Tanzania under Democratic [political] party. Mtikila's holistic religious background seems to have influenced his engagement in social and political issues. His link of Muslim demand to enslave Christians to Islam and execute them demonstrates that his constitutional petition against the Muslim demand was motivated by religion and not politics. He portrays himself as a defender of Christianity against the Muslim demand. Some of the issues raised by Mtikila are convincing some are not. Mtikila's view that the current constitution is an obstacle to the Muslim demand and Islamic corporal punishments violate human rights makes sense. But his association of terrorism, Islamic extremist groups, and corporal punishments to this demand does not do justice to the matter. Mtikila's views regarding the Muslim demand demonstrate his religious prejudice against Islam, his violation of religious freedom, and his interpretation of constitutionalism, secularism, justice, and human rights. These concepts are discussed extensively in chapter four. As religious institutions, kadhis' courts and the OIC are aspects of religious freedom protected by the Universal Declaration of Human Rights. In contrast to his view, not all Islamic states allow corporal punishments. Similarly, Most Muslim participants from both Dar es Salaam and Kigoma are against Islamic corporal punishments. Furthermore, British judicial system and not kadhis' courts divided Tanzanians along their ethnic, religious, political, social, and economic lines

The current office of the Muslim national chief kadhis was approved by the government in 2012 due to Muslim pressure. The office is self-sponsored. Many Muslim groups do not recognize this

office because in their views, it has no legal recognition and the establishment of this office did not involve all Muslim groups.

In its reaction to the government stand on kadhis' courts, on January 20, 2015, Tanzania Christian Forum (whose member churches include the Roman Catholic Church, Pentecostal churches, and the Christian Council of Tanzania's membership) issued an official statement against the government stand by raising eight points: first, kadhis' courts alongside the native courts were abolished by the Magistrates Courts Act of 1963. Thus the new bill was illegal. Second, the government's move is a violation of the current constitution, which states that Tanzania is a secular state. The same constitution prohibits the government from starting and sponsoring any religious institutions. Third, according to this proposed bill, the Minister for Constitutional and Legal Affairs has legal jurisdiction to make rules for the enforcement of the decisions, rulings and orders of kadhis' courts. This provision implies that the government is not only intending to establish religious courts but also making rules for the implementation decisions, rulings, and orders of such courts. Fourth, under this bill, the Marriage, Succession and Divorce (Non-Christian Asiatics) Ordinance, Cap, 112, which gives legal recognition of customary practices of non-Christian faiths such as Baha'i, Buddhists, and Hindus, is replaced by the new law that recognizes Muslim interests only. Fifth, the bill is silent on the relationship between kadhis' courts and civil courts. Furthermore, the bill does not state whether the civil courts, which have been handling personal status cases, inheritance and marriage will continue to operate or not. Sixth, the bill is silent on cases involving Muslims and non-Muslims. Seventh, some Muslim denominations and institutions do not agree on the jurisdiction of the Mufti to appoint kadhis. Eighth, the argument that kadhis' courts will not be financed by the government is not convincing because the government will pay for the minister who will be responsible for

these courts. The same applies to clerks of the kadhis' courts, as well as to security agencies that will make sure that the orders and ruling of these courts are enforced. The statement concludes that kadhis' courts were rejected by the special Constituent Assembly for the new proposed constitution.<sup>23</sup> This official statement was directed to the Prime Minister. A similar official statement had also been forwarded to the Standing Committee on the Constitution and Law on January 16, 2015. I must clarify that the current chief kadhi is not a government appointee. As the data reports in chapter three shows the chief kadhi is appointed by mufti.

The Tanzania Christian Forum gave another official statement on March 10, 2015, insisting that the establishment of kadhis' courts violates the constitution of 1977, provision 19, and the matter has divided the government, National Assembly, judiciary, and citizens. Moreover, the Forum said that the kadhis' courts were being used by politicians to create religious hatred among Tanzanians for the political survival of such politicians. The Forum recommended that the debate on the issue should be closed and left to the Muslims.<sup>24</sup> In response to this statement, Muslims issued their official statement on March 21, 2015, condemning Christian officials for their negative reaction to the government's plan to establish kadhis' courts. The Muslim officials went on to ask the government to take serious measures against the Christian officials. The Muslim officials did not specify the kind of measures were to be taken against the Christian officials.

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<sup>23</sup>Tanzania Christian Forum 2015, "The Official Statement of Tanzania Christian Forum on the Bill for the Written Laws (Miscellaneous Amendments) (No 2) Act of 2014." Official Statement presented in Dar es Salaam on January 20.

<sup>24</sup> Tanzania Christian Forum 2015, *Tamko la Jukwa la Wakristo* (Official Statement). Issued in Dar es Salaam on January 10, 2015.

Defending the government's stand on the matter on March 28, 2015, President Jakaya Kikwete argued that kadhis' courts were in operation in Tanzania prior to its independence and what the government was doing was giving them legal recognition. Kikwete went on to clarify that kadhis' courts will deal with matters related to the Muslims, and the government will neither finance them nor introduce them into the constitution.

Kikwete's speech exacerbated the situation and led to the chaotic eruption in the National Assembly over kadhis' courts on the next day, March 29, 2015. Reacting to the new bill, Tundu Lissu, Singida East Constituent Member of Parliament (representing the opposition party, CHADEMA), argued that the government's commitment to finance the establishment of kadhis' courts and their operation was apparent, and its decision to table the amendments in the house under the miscellaneous amendments was unfair. Echoing Lissu, Deogratious Ntukamazina, Ngara constituency Member of Parliament (representing the ruling party, CCM), explained that bishops had advised them to respect the founders of this nation for their advocacy for a secular state. Similarly, Rukia Kasim, special seats Member of Parliament (representing the ruling party, CCM) argued that the power given to the Mufti was against article 70 of the current constitution. Moses Machalia, Kasulu town constituency Member of Parliament (representing the opposition party, NCCR *Mageuzi*), saw the bill as a contradiction to article 19 of the constitution. He went on to caution the government that if the bill would be passed he and his fellow members of parliament were ready to advise other non-Muslim religious groups to bring their proposal for the legal establishment of their own courts. Richard Ndasu, Sumve constituency Member of Parliament (representing the ruling party, CCM), opposed the bill saying that it was against the stakeholders' views. Nyambali Nyagwine, Tarime constituency Member of Parliament (representing the ruling party, CCM), argued that twelve Muslim institutions were in

disagreement over the establishment of kadhis' courts. Moreover, in contrast to the government, the Muslim Council of Tanzania (BAKWATA) wanted the government to finance the operation of *kadhis'* courts. Nyagwine went on to insist on the need for wisdom, public education, and sufficient scientific research on the matter. Joseph Selasin, Rombo constituency MP (representing the ruling party, CCM), accused the government of its plan to win votes from Muslims for the October 2015 general elections through this bill. Khalif Suleiman, Gando Constituency MP (representing the opposition party, CUF), accused the government of its failure to do research on the matter. Furthermore, the government's move was political, seeking votes from Muslims. Based on text messages she received from clerics, Mary Mwanjelwa, special seats Member of Parliament (representing the ruling party, CCM), said that the issue of kadhis' courts is dangerous and that if the bill is passed it will cause serious divisions among Tanzanians.

Addressing the concerns raised by the members of parliament, Prime Minister, Pinda, explained that the government was aware of divisions among Muslims over kadhis' courts and that the government was making efforts to deal with such divisions. He also said that what the government was doing was to ensure that the agreement that was reached in the Constituent Assembly on the establishment of kadhis' courts was implemented. Mr. Pinda concluded by assuring the members of parliament that their contributions and those of other stakeholders would be given serious consideration by the government.<sup>25</sup>

Having not been convinced by the president's argument, on March 30, 2015, the Tanzanian Christian Forum issued an official statement accusing the government of causing

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<sup>25</sup> IPP Media. 2015. "MP Divided Over Kadhi's Courts." Accessed September 29, 2015. <http://www.ippmedia.com/frontend/?l=78785>.

divisions and conflicts between Muslims and Christians because of its stand on kadhis' courts. It also criticized President Kikwete over the government's bias in handling the matter. In its statement the Tanzania Christian Forum concluded by repeating its call for all Christians to vote negatively against the proposed constitution.<sup>26</sup>

Both Muslim and Christian officials seem to have played a significant role in influencing their members in both the National Assembly and Constituent Assembly over the establishment of kadhis' courts. These politicians had to pay attention to their religious leaders for their political survival. Unlike Christians, Muslims were divided on the matter. The Tanzania Muslim Council (BAKWATA) is viewed by some other Muslim institutions as the government puppet because of its close collaboration with the government in some issues such the abolition of the East African Muslim Welfare Association in 1965 and its replacement by BAKWATA in the same year, the establishment of the current office of the chief kadhi without consultation with all Muslim groups, and the 2014 bill of amendment. The divisions, tensions, and conflicts among the members of parliament forced the government to withdraw the bill indefinitely. Similarly, the referendum for the proposed constitution, which was to take place in April, was postponed. Here I must clarify that the major factor for the postponement of the referendum was the government's fear of defeat following the changes the members of the Constituent Assembly had made to the second draft of the constitution, which were opposed by the majority of Tanzanians. These changes were not related to kadhis' courts. While the withdrawal of the bill seems a

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<sup>26</sup> Tanzania Christian Forum 2015, *Tamko la Jukwa la Wakristo Kuhusiana na Muswada wa Mahakama ya Kadhi 20 Machi 2015* (Official Statement of Tanzania Christian Forum on the Bill of the Kadhis' Courts, March 30, 2015), accessed October 18, 2015, <http://cct-tz.org/tamko-la-jukwaa-la-wakristo-kuhusiana-na-muswada...>

positive thing, especially to Christians and to me, it is not a lasting solution to the saga of kadhis' courts; rather, it is a postponement of unresolved debate.

The political, social, religious, and economic stability of any society depends on peace, unity, and harmony among its people. A divided society can never guarantee prosperity to its citizens. Justice is critical to authentic peace, unity, and harmony. As a proof for my argument, chapter one, part one, and section five (c and d) of the proposed constitution of the United Republic of Tanzania recognizes brotherhood, peace, and stability, among others, as national values to be protected, cherished, and celebrated.<sup>27</sup>

My major thesis for this study is that given that Tanzania is a secular democratic state and signatory of the Universal Declaration Human Rights and African Charter on Human and People's Rights, the current constitution of the United Republic of Tanzania of 1977 should be amended to allow provisions for the establishment of other courts, including kadhis' courts. Kadhis' courts should deal with Muslim family matters and are to be consulted by Muslims on a voluntary basis. While the inclusion of kadhis' courts and other courts in the constitution will enable Muslims to enjoy their religious freedom, such a legal recognition of these courts will also help the government to monitor the operation of these courts. My support for the Muslim demand includes the appointment of the kadhis' courts by the government, and official announcement of the establishment of these courts by the President. Given that government funds for kadhis' courts will cost all Tanzanians, there is the need for the involvement of

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<sup>27</sup> United Republic of Tanzania 2013, *Katiba Inayopendekezwa*. Accessed on September 25, 2015, [http://www.tanzania.go.tz/egov\\_uploads/documents/KATIBA\\_INAYOPENDEKEZWA\\_sw\\_%281%29\\_en.pdf](http://www.tanzania.go.tz/egov_uploads/documents/KATIBA_INAYOPENDEKEZWA_sw_%281%29_en.pdf).

representatives of all religious communities, groups, and organization in a discussion on this matter. I have found myself in support of this position my understanding of the holistic nature of Islam (religion and secular are inseparable); legal recognition of kadhis' courts with government funds in Zanzibar (which is part of the United Republic of Tanzania), my interpretations of constitutionalism, secularism, justice, religious freedom, and human rights; and legal recognition of religious courts in secular states such as the United Kingdom, Kenya, and Uganda. My thesis does justice to all religious groups who want their courts to have legal recognition. I will give the reasons to support this position in chapters four and five. In order to test this thesis I carried out field research (in Kibondo District and Dar es Salaam) of which this study is a report.

#### **1.4 Research Questions, Aim, and Objectives.**

This study will try to address six major questions raise by this demand for kadhis' courts namely:

- Do Tanzanian Muslims want kadhis' courts?
- If so, why do Tanzanian Muslims want kadhis' courts?
- Should the Muslims' demand for kadhis' courts be allowed in Mainland Tanzania?
- What measures have been taken to address the demand for kadhis' courts?
- How does the demand for kadhis courts affect the future of Tanzania?
- What Measures should be taken in dealing with the demand for kadhis' courts?

The main aim of this study is to analyze the complex issues surrounding the Muslims demand and proposes some ways to deal with them. To achieve this aim, the objectives of this study are:

- To examine the Muslims' demand for kadhis' courts

- To identify the root causes and effects of the demand for kadhis' courts
- To analyze views from other Tanzanians regarding the Muslims' demand for kadhis' Courts
- To Examine the measures taken in dealing with the Muslims' demand for kadhis' courts
- To assess how the demand for kadhis' courts affects the Future of the country and to propose the appropriate approaches in addressing the demand for kadhis' courts.

### **1.5 Research Methods**

A qualitative research method was employed for the data collection and for purposes of data analysis and interpretation. This method was chosen because of the nature of this study (this study is about people, their behaviors as well as their beliefs), research questions, aim and objectives, the relevance of the method to the geographical context of my respondents, and my intention of obtaining the original or primary and accurate information from the respondents. Based on this method, the information was collected through personal face-to face interviews, and focus-group discussions. Secondary sources such as academic publications, journals, articles, dissertations, books, and reliable internet websites are used for critical analysis.

### **1.6 The Scope of Content and Geographical Location of the Study, Sampling, Limitations and Delimitation, and the Organization of this Study**

In this study I am addressing the demand for kadhis' courts in the Tanzanian mainland context. Dar es Salaam and Kigoma Regions were selected for data collection because of their relevance to questions, aim, and objectives of this study and easy availability of research permits from the government. Apart from being a commercial city, Dar es Salaam is the headquarters of

most religious organizations including Muslim organizations, and government offices.

Furthermore, the inhabitants of Dar es Salaam are from all parts of Tanzania, and these people are from diverse religious, social, cultural, political, and economic backgrounds.

Participants for the interviews are listed in chapter three. Students and teachers who were interviewed from Kibondo Secondary School (public school), Kibondo Nursing College (public college), Malagarasi Secondary School (public school), and Kakangaga Muslim Secondary School (Islamic school) in Kigoma Region were from twelve different regions of Tanzania, which implies that the responses from these respondents represent the views of Tanzanians from different geographical locations. Kigoma was selected because of its influence on Islam in Mainland Tanzania. Kigoma has been producing Muslim scholars (*ulamaa*) who has been instrumental in the spread of Islam through public lectures. I chose these schools because besides being learning institutions, students and teachers from these schools are from different geographical locations of Mainland Tanzania. My choice of these participants from these schools was right because the issues of Islamic corporal punishments, Islamic code of dress (a *hijab* for female Muslims), kadhis' courts and human rights, justice, kadhis' courts and women's rights, kadhis' courts and unity among Muslims are raised by these participants. Moreover, one of these schools (Kakangaga) is a Muslim school. As high school students, these applicants have knowledge of the Muslim demand.

I was unable to have access to information from other locations such as University of Dar es Salaam, the Open University of Tanzania, Temeke District, Legal and Human Rights Center, Aga Khan Council, the ruling party (CCM) headquarters, opposition party (CHADEMA) headquarters due to several factors such as suspicion of being a spy, fears of negative reaction

from higher authorities, delay of research permits, political fears of negative impacts of the research on the October 25, 2015, general elections, complicated process of access to participants, time, and financial limitations. The lack of information from these institutions and individuals has no negative impact on my study; this is one of the factors that led me to find out another geographical option for data collection in Kigoma Region. But the failure of the Legal and Human Rights Center to participate in this project was unfortunate because this organization was a useful resource for the issues of justice, human rights, constitutionalism, and secularism. The person who was assigned by this organization to participate in interviews was not cooperative.

This study is organized in five chapters. Chapter one is the introduction in which I focus on political and religious background of Tanzania, definitions of some key terms, statement of the problem, research questions, aim, and objectives, research methods, the scope of content and geographical location of the study, sampling, limitations and delimitation, and the organization of this study. In chapter two which is the literature review I will assess critically some current scholarly works available relevant to this study. The data collection report is in chapter three. In chapter four I analyze data. In chapter five, I will give a conclusion for this study as well as make recommendations for a lasting solution to this problem.

## **CHAPTER TWO**

### **Literature Review**

This study does not arise from a vacuum. There are some scholars from both Tanzania mainland and outside Tanzania mainland who have written excellent works pertaining to it. In this literature review I identify some of the current works from these scholars on kadhis' courts with a view to understand how these works are relevant to my study, how they are not, and the unique contribution of each on the matter. The works to be employed in this literature review include published works, non-published works, dissertations, papers, articles, journals, and the official government research report. These works are used for this literature review due to their relevance to the demand for kadhis' courts and other issues surrounding this matter.

#### **2.0 Kadhis' Courts and Islamic Law**

*Taarifa ya Kamati Ndogo ya Bunge Juu ya Uanzishwaji wa Mahakama/Taasisi ya Kadhi Tanzania Bara (The Parliamentary Subcommittee Report on the Establishment of the Kadhi's Court/ Institution of the Kadhi in the Tanzania Mainland)* is a research report on the establishment of the kadhis' courts in the Tanzania mainland that was done in Dar es Salaam and Zanzibar by the parliament of Tanzania through its subcommittee (Task Force) from 1998 to 2000. This research report, which was completed on July 15, 2000 was to be tabled in the National Assembly for the discussion.

The report has 91 pages and is made up of eight chapters covering the following: introduction: summary of the works of the committee, the origin of the demand for kadhis' courts, the formation of the committee, works of the committee, time, and geographical location,

and organization of the report (chapter one); the meaning and the importance of the kadhi, legal jurisdiction, procedure for the cases presented at kadhis' courts, and the legality of the kadhi (chapter two); history of kadhis' courts in the Tanzania mainland (chapter three); the current absence of the kadhi and the challenges to the enforcement of Islamic law (chapter four); the current legal system of Tanzania and the establishment of kadhis' courts (chapter five); experience from Zanzibar and Kenya (chapter six); conclusion (chapter seven); suggestions and recommendations (chapter eight). This committee was a task force of seven members, two of them Christians and the rest Muslims. Only one committee member was a female.

It was due to pressure from Augustino Lyatonga Mrema, Temeke Constituency Member of Parliament and opposition party chairperson of NCCR-Mageuzi, and retired Colonel Yussuf B. Ramia, Bagamoyo Constituency Member of Parliament, that the government undertook this study. They raised the matter in the National Assembly in 1998, claiming to represent the long-time grievance of the Muslims over the demand for kadhis' courts. According to this report, the first official request for the establishment of kadhis' courts was made by the late Mufti Sheikh Hemed bin Juma Hemed during the annual meeting of the Muslim Council of Tanzania (BAKWATA) held at Muzumbe in Morogoro Region in 1985. This request was rejected by the government under the administration of President Alhaji Hassan Mwinyi.

In relation to the questions and objectives of my study, this research report wrestles with the issues of whether the Muslims want kadhis' courts, the reasons for wanting them, and the solution to their demand for kadhi's courts. Other issues raised from this report that are relevant to my study include the meaning of the term kadhi; the appointment, qualifications, role of

kadhi; the importance of kadhis' courts, along with their structure; the chief kadhi, his appointment as well as his role; kadhis' courts and women's rights, kadhis' courts and human rights; the Tanzanian Constitution of 1977 and Islamic law.

The Task Force found that the claim for kadhis' courts was real and all Muslim groups interviewed were supportive of these institutions. Kadhis' courts are part of worship so that their absence denies the Muslims their right to worship. Furthermore, the existing civil courts have many weaknesses including lack of knowledge of Islamic law among the magistrates and judges. Moreover, Islamic law is undermined by the current civil courts and some of the provisions of the law are oppressive to Muslims. Unlike civil laws, Islamic law is absolute law and cannot be challenged by any authority. Similarly, Islamic law is always fair and kept updated. Some magistrates and judges use abusive language about Islam during their ruling. Kadhis' courts are also required because of some foreign influences in the current courts that are contrary to Islamic law. Some of these influences include the doctrine of precedent and *stare decisis*, judicial rulings based on foreign judicial systems (India and UK) and the work of orientalist scholars; the use of books of the law in civil courts that are in the English language and written by authors from India (where the majority of Muslims are Shiites). According to this report the establishment of kadhis' courts would promote unity among Tanzanians. The report goes on to say that for a Muslim to take a case related to personal matters to civil courts is a rebellion against God.

In support of my major thesis for this study, this report shows that Zanzibar and Kenya cannot be used as justification for the establishment of kadhis' courts in the Tanzania mainland because of the different contexts. The change of the existing personal laws on the mainland, for

example, can cause problems to some Muslims who are comfortable with such laws.

Furthermore, unlike in Zanzibar, a pluralistic culture is more dominant than Islam in Tanzania mainland. Similarly, Muslims are a majority in Zanzibar, while the population of Christians in the Tanzania mainland is bigger than that of the Muslims.

Despite the time and money from taxpayers invested in this project for two years, the committee concluded with ambiguous suggestions as follows: if kadhis' courts were to be established significant amendments for the following laws must take place: a wider interpretation of section 19 of the Tanzanian Constitution of 1977, so that the right to religion should not be restricted; the Judicature and Application of Laws of 1961, besides recognizing the Islamic law, should state that these personal laws are to be regulated by the respective religious communities; the law of marriage of 1971 should be amended so that marriage and divorce among Muslims are tackled directly by kadhis' courts; section 112 of the Constitution should be amended, Muslims should be part of the Judicial Service Commission who will serve in kadhis' courts; the current Unified Judicial System is to be retained.<sup>28</sup>

This study differs with the parliamentary research report concerning the scope of geographical location, time frame, sampling, methods employed for the data collection, questions and objectives, motives, and approaches on how to address the matter. In regards to the scope of geographical location and time, the Task Force did its research on the matter in Dar es Salaam (the Tanzania mainland) and Zanzibar (the Isles), while the data collection for this study was done in Dar es Salaam and Kigoma (the Tanzania mainland), so that the findings of

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<sup>28</sup> Tanzania Parliament, *Taarifa ya Kamati Ndogo ya Bunge ya Uanzishwaji wa Mahakama/ Taasisi ya Kadhi Tanzania Bara*" (Research Report on the Establishment of the Kadhis' Courts in the Tanzania Mainland). This research was conducted in Dar es Salaam and Zanzibar from 1998 to 2000, and was completed on July 13, 2000.

this study represent the voice of a majority of the Tanzanians who are affected by the pressure for kadhis' courts. In contrast to the time frame of the Parliamentary Committee finding (which treated 1960 to 2000), this study assesses the current situation of the demand for kadhis' courts, so that some of the findings of the Committee do not reflect the current situation of the Muslim demand for kadhis' courts. The current divisions and conflicts between Muslims themselves, Muslims and the government, Muslims and Christians, Christians and the government, for example, are not reflected in the government research report.

Gender, religion, age and political balance were taken into a consideration for data collection for this study. Tanzanians from diverse backgrounds were given the opportunity to share their views regarding the matter. In contrast, the majority of the people who were interviewed by the Task Force were Muslims and government officials. Only one Roman Catholic priest, Peter Smith (page 78 of the the 2000 government document on kadhis' courts), was interviewed. Religious and gender imbalance is evident in this report. My argument is that the exclusion of other key stakeholders on this serious national issue caused deterioration the situation by creating serious divisions and conflicts among the Tanzanians. Furthermore, this unhealthy move implies that this matter was a concern between the government and Muslims, which is not the case.

Whereas the Committee used discussions and documents from its respondents for data collection, focus group discussion and face-to-face interviews were used for the data collection for this study. Unlike this study, the Committee research report does not talk about the negative impact of the demand for kadhis' courts and how the government was dealing with the matter. In my view, the main motive for the government's research report on the matter was

purely political intended to woo Muslim votes. This political motive is demonstrated by the way the issue of kadhis' courts was being handled by the government. All the committee members were politicians, excluding Muslims, most of the interviewees were politicians, the report's findings were to be discussed by politicians, and after completion of the report nothing was done to implement the Task Force's recommendations.

In contrast to the government's research report findings, not all Muslims are supportive of the establishment of kadhis' courts. Ahmadiyya Muslim Jamaat Tanzania, for example, is against the demand for the kadhis' courts. The Parliament Research report gives ambiguous suggestions and recommendations on the matter in its support for the current unified judicial system at the same time showing possibilities for the establishment of kadhis' courts through amendments to some provisions in both the current constitutions and laws. This is a total contradiction to the observation of the same report about the distinctive context of the Tanzania mainland which does not allow the establishment of kadhis' courts.

“The Challenges of Imposition of Islamic Law in the Pluralistic Society and the Awareness of Christian Council of Tanzania” is a Bachelor of Divinity thesis done by Henry Mgombele at Theofilo Kisanje University, Tanzania, in 2012. Mgombele's thesis is an academic research project with an intention to prove how the the Islamic law was being imposed in a secular government of Tanzania and how the Christian Council of Tanzania reacted to the matter. According to Mgombele, the demand for Islamic law is attributed to educational and economic injustices against the Muslims, the Islamization of the world, an attempt to unify Muslims worldwide against Israel, and the spread of Arab civilization. According to Mgombele, the Christian Council of Tanzania rejected the demand for Islamic law because of the current

Constitution which establishes Tanzania as a secular government. In his recommendation, Mgombele commends the Tanzania government's decision to reject the Muslims demand for Islamic law, insisting on the need for all Tanzanians to be patriotic to their beloved country, regardless of their respective religious affiliations.<sup>29</sup>

Mgombele is in agreement with my study in his findings of educational, economic injustices and Islamization of Tanzania as some of the leading factors for the demand for Islamic laws and on the negative effects of such demand. Unlike this study, Mgombele's is focused more on Islamic laws and not on kadhis' courts. Though kadhis' courts and Islamic laws are closely related, Tanzanian Muslims have never demanded for Islamic law; rather, their demand has been for kadhis' courts. Mgombele complicates the matter by his plural use of Islamic laws. Which Islamic laws do Tanzanian Muslims demand? Unfortunately, Mgombele leaves us in a dilemma by giving a general answer to this question. In contrast to my study, Mgombele's research deals with two issues: the imposition of Islamic laws and the awareness of the Christian Council of Tanzania about the matter. Mgombele's commendation for the government's rejection of the Muslims' demand for Islamic laws does not reflect the current situation. As I will argue in this study, the current government has been encouraging this unconstitutional demand for its political interests. My argument is supported by the government's decision to table the bill for the amendments of some provisions of law to allow the operation of the kadhis' courts. Such a move cannot be ignored by any serious study. Moreover, the Mgombele's study is in Kasulu town, while the scope of my study is in Dar es Salaam and Kigoma. Furthermore, while Mgombele collected data for his study from Christian Council of Tanzania individuals and

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<sup>29</sup> Herry Mgombele, "The Challenge of Imposition of Islamic Laws in the Pluralistic Society and the Awareness of Christian Council of Tanzania," (BA thesis, Theofilo Kisanji University, 2012), no page numbers.

Muslim individuals from Kasulu town, the data for this study was collected from Muslim organizations, groups, denominations, individuals, students, scholars, politicians, non-Muslim organizations, denominations, groups, individuals, students, scholars, and politicians. Unlike, Mgombels's this study looks at the demand for kadhis' courts as a national issue affecting all Tanzanians.

“Possibility and Rationale of Establishing Kadhi's Courts in Tanzanian mainland,” is a paper presented by H. I. Majamba (a senior lecturer, faculty of law, at the University of Dar es Salaam) at the twentieth REDET RMC workshop, held in the Council Chamber, at the University of Dar es Salaam, on November 10, 2007. In this paper, Majamba justifies his argument for the establishment of kadhis' courts by appealing to the existence of these courts during the pre-colonial era, colonial regime, and independence period. He also uses concrete case studies for the smooth operation of kadhis' courts in Kenya, Zanzibar, Ethiopia, Nigeria, Uganda, and Gambia. In his proposal Majamba argues for either making amendments to some provisions of the law or a constitutional review to accommodate kadhis' courts.<sup>30</sup>

Majamba is in agreement with my study on the reality of the current demand for *kadhis'* courts in the Tanzania mainland, though he does not clarify whether such demand represents the interest of all Muslims. Majamba also does not tell the negative side of the demand for the establishment of kadhis' courts, the factors involved in such a demand, measures that have been taken to address the issue, and how appropriate these approaches are in addressing this matter. By showing only the positive side of the the Muslim demand, Majamba demonstrates his

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<sup>30</sup> Hamudu I. Majamba, “Possibilities and Rationale of the Establishment of *Kadhi's* Court in Tanzania Mainland” (Paper, Council Chamber; University of Dar es Salaam, November 10, 2007).

ignorance of the current divisions and conflicts posed by kadhis' courts. Similarly, using Zanzibar, Kenya, Uganda, Nigeria, Ethiopia, and Gambia to justify his argument shows Majamba's unawareness of the unique context of the Tanzania mainland compared to these countries. Furthermore, Kajamba's proposal contradicts his own observation on the issue in his paper titled "Perspectives on the Kadhis' courts in Zanzibar." Kajamba observes the challenges of kadhis' courts in Zanzibar and how such challenges violate some fundamental rights of women.

In her book Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar Elke E. Stockreiter uses Islamic courts' records in Arabic to re-examine the operation of Islamic courts, gender, and social relations in Zanzibar town under British rule (1890-1963). Some of the issues raised by Stockreiter that are related to my study include the existence of kadhis' courts during the pre-colonial period, during the colonial era, and after the revolution of Zanzibar; the appointments, qualifications, and role of kadhis, the operations of the kadhis' courts; their procedure, language, and the scope of their jurisdiction; kadhis' courts, gender, and other marginalized groups. In her discussion on these issues, Stockreiter argues that the British colonial government's views over *shari'a* led to judicial reforms that restricted the scope of kadhis' courts to family and personal status matters. According to the British colonial government, the Islamic legal system was against human dignity, justice, human rights, civilization, and modernization. Despite judicial reforms, the British colonial government regarded Zanzibar as an Arab state, so that Islamic law was maintained as the fundamental law.

Under British colonial rule, the role of kadhis changed from being servants of the law and community to being servants of their colonial masters. But the kadhis were able to maintain their autonomy in their primary role. Abolition of the slave trade empowered the marginalized groups (women, ex-slaves, immigrants, and the poor) to claim their rights to social and economic opportunities. Similarly, kadhis gave women legal resources through the Islamic courts to claim their fundamental rights, including divorce. One such legal resource was the Qur'an together with different doctrines of Islamic philosophical schools. In spite of its positive aspects, the British colonial regime created ethnic, racial, and other forms of discrimination through its legal categories.<sup>31</sup>

It is important here to stress that apart from its rationale to promote justice, human dignity, civilization, modernization, and human rights, the new British colonial judicial system intended to protect political and economic interests of the British and to spread the cultural, political influence of the West as Issa B. Oba observes:

the British were of the opinion that courts were not just meant to administer justice but rather the English court system was regarded as an extension of western civilization... The fundamental position of the British colonial policy was the belief that imperial rule could be justified by a commitment to rule of law.<sup>32</sup>

The current legal system in both Zanzibar and Tanzania mainland, for example, has elements from both India and the United Kingdom.

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<sup>31</sup> Elke E. Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar* (New York: Cambridge University Press, 2015), 1ff.

<sup>32</sup> Issa B. Oba, "Evolution of Kadhis Courts in Zanzibar." *Journal of Law.* *Journal of Law, Policy and Globalization.* Vol. 37 (2015). Accessed October 15, 2015, <http://www.iiste.org/Journals/index.php/JLPG/article/viewFile/22543/22918>.

There are many differences between Stockreiter's book and this study. The geographical context of Stockreiter's discussion is Zanzibar town while the geographical context of this study is Tanzania mainland. Stockreiter's findings reflect kadhis' courts neither in Zanzibar as a country or in Tanzania mainland. Whilst this study investigates the current demand for kadhis' courts in the Tanzania mainland, the time frame for the Stockreiter discussion is 1890-1963. Moreover, while the kadhis' courts are a major theme of this study, Islamic law, gender, and social changes in post-abolition in Zanzibar town are dominant themes in Stockreiter's book.

In his paper entitled "Perspectives on the Kadhi's Courts in Zanzibar," Hamud Majamba attempts to direct the debate over kadhis' courts in Tanzanian mainland by using experiences from Zanzibar. Excluding the historical background of kadhis' courts in Zanzibar, in this paper Majamba raises the issues of features of kadhis' courts (both positive and negative), gender imbalance (male dominance over female), potential areas of conflicts (Islamic family law, the influence of common-law principles, the international legal order, and the restriction of the jurisdiction of the Court of Appeal), and diversity of Muslim sects. These potential areas of conflicts affect negatively the smooth operation of kadhis' courts. The restriction of the jurisdiction of the Court of Appeal of Zanzibar is based on the exclusive nature of the jurisdiction of the kadhis' courts. In his proposal to address these potential areas of conflicts and other related challenges, Majamba argues for the need to harmonize or compromise Islamic law, Common-law principles, and international legal order.

Majamba's paper bridges a vacuum of a historical development of kadhis' courts that is left by Stockreiter. Unlike Stockreiter, however, Majamba's discussion on the matter is in the context of Zanzibar as a country. In contrast to Stockreiter's observation, kadhis' courts

disempower women because of their patriarchal elements. It is important here to understand that, although kadhis' courts in Zanzibar have constitutional recognition, Zanzibar has a secular government. The serious challenges raised by Majamba in relation to kadhis' courts depicts negative experience of the operation of these courts. Thus Zanzibar is not a positive justification for the establishment of kadhis' courts in Tanzania mainland. Majamba's paper differs with my study in areas of themes, context, aims, questions, objectives, content, methods, and his recommendations.

In his journal entitled "Kadhis' Courts in Kenya's Constitutional Review (1998-2010): A Changing Approach to Politics and State Approach to Politics and State Among Kenyan Muslims" Abdulkader Tayob<sup>33</sup> observes that the issue of kadhis' courts in the constitutional review process (1998-2010) in Kenya created conflicts and divisions between Christians (majority) and Muslims (minority). While the Muslims defended the inclusion of some aspects of kadhis' courts in the constitution, Christians were against the proposal. Tayob argues that the major motivating factor for the Kenyan Muslims' pressure for kadhis' courts was political and not religious. In their attempt to achieve this political goal, the Muslims offered different responses to questions that were raised by the Christians against their political dream.

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<sup>33</sup> Abdulkader Tayob, "Kadhis' Courts in Kenya's Constitutional Review (1998-2010): A Changing approach to Politics and State among Kenyan Muslim Leaders," *Islamic Africa*, 4, (Spring 2013); pp. 103-124, accessed September 222015, <http://www.jstor.org/stable/42636214>.

The Christian precedence in Kenyan politics has been denying the Muslims the right to benefited fully from the national context. In contrast, some scholars believe that some Muslims benefited the national resources during the authoritarian regime of President Daniel Arap Moi. The contentious issue raised by the Muslims during the national constitutional review included the provisions for an appeals process within kadhis' courts prior to the transfer of cases to civil high courts, training for kadhis, the expansion of the jurisdiction of kadhis' courts to small claims related to financial transactions, and criminal issues. In a response to these issues, the churches argued that Islam was being favored by the government at the expense of other religions and that Muslims intended to Islamize the country, while others linked the Muslim demand to Muslim extremism. Tayob goes on to observe that the objection to kadhis' courts did not mean that Christians were in favor of a secular government. Rather, they wanted their own Christian values and symbols to be infused in Kenya. Muslim activists were also actively involved in the debate on kadhis' courts.

The difference between Tayob's argument and this study is obvious. Tayob discusses kadhis' courts in the Kenyan context. The demand for kadhis' courts in this study is based on the Tanzanian mainland context. Kadhis' courts are in operation in Kenya, and they are recognized by the constitution of the country. What the Kenyan Muslims want is expansion of the jurisdiction of the courts, which would enable them to benefit more from the national situation. The Tanzanian constitution does not recognize the operation of kadhis' courts on the mainland, though it gives religious freedom to all religions.

In his article "Civil and Religious Law in England: a Religious Perspective" is the foundation lecture presented by Rowan Williams presents a Western perspective on kadhis'

courts from a country perceived to be predominantly Christian. Moreover, this lecture disproves the generalization that shari'a is perceived negatively in the West. Most importantly, in this lecture Williams raises some issues relevant to my study.

According to Williams, the demand of Muslims in Britain for the freedom to live under shari'a is discouraged by negative understanding of shari'a among the British. Shari'a is associated with oppression against women, brutal punishments, and other forms of violation of human rights. This negativity towards shari'a has led some Muslim scholars to avoid any mention of use of the term for their own safety. In contrast to such negativity, Williams argue that shari'a is the absolute will of God for the universe, and the Muslim demand for the shari'a does not refer to a universal fixed code established once and for all people. Rather, Muslims want some aspects of the shari'a administered by jurists. Shari'a has nothing to do with the Muslim dominion over non-Muslims, and being a pluralistic society does not mean denying one's freedom of faith.

What Williams advocates is the possibility of accommodate minor religious groups, including Islam in the British secular state. Such inclusion refers to the legal recognition of kadhis' courts or shari'a. Williams does not advocate the extension of the jurisdiction of shari'a in criminal matters. In his view Muslims who advocate criminal punishments are primitivists, and such people are to be dealt with seriously. Williams admits that his proposal for the judicial pluralism does not guarantee absence of conflicts, but the positive recognition of different faiths

is vital for the promotion of peace and unity. A secular judicial monopoly can never guarantee these aspects which are critical to the progress of the country.<sup>34</sup>

The context of Williams's discussion is different from the context of this study. Williams is wrestling with the need to accommodate shari'a in the context of the United Kingdom. Furthermore, Williams is supportive of the Muslim cry for the implementation of sharia' (a Christian advocating the rights of Muslims). My study indicates that it is the Muslims themselves who are claiming for the establishment of kadhis' courts. While Muslims in the Britain seem to be voiceless their counterparts in the Tanzania mainland have a voice. Moreover, unlike in the United Kingdom, the Tanzanian government is in close collaboration with Muslims on the matter. Furthermore, all Christians in Tanzania mainland are against the Muslims' demand. In contrast to Williams's thesis, my study does not support the Muslim demand for the establishment of *kadhis'* courts. Other points of difference include themes, aim and questions, and objectives

## **2.1 Constitutions, Secular governments, Religious freedom, Justice, and Democracy**

In their book Secular Government Religious People, Ira C. Lupu and Robert W. Tuttle<sup>35</sup> wrestle with different views regarding what it means to be a secular government and the impact of such views on the religious freedom of faith communities. In the major thesis of this book Lupu and Tuttle argue that the current conflicts over the relationship between the American government and religions are demonstrated in the language of human rights. Such conflicts are

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<sup>34</sup> Rowan Williams "Civil and Religious Law in England: a Religious Perspective," in *Shari'a in the West*, ed. Rex Ahdar and Nicholas Aroney (New York: Oxford University Press, 2010), 293,303.

<sup>35</sup> Ira C. Lupu and Robert W. Tuttle, *Secular Government Religious People* (Grand Rapids, Michigan: William B. Eerdmans, 2014), 1-5.

due to the non-established principle that limits the scope of jurisdiction of the government to religious matters.

This book is relevant to my study because of its theme of secular government and religions. This theme is one of the contentious issues raised by both Muslim and non-Muslim participants. While non-Muslims appeal to the constitution which states that Tanzania has a secular government to oppose the establishment of kadhis' courts, Muslim participants use the same constitution to justify their demand. I will use their discussion of secular government and religion in my critique of my respondents' views. In my view, these two groups have a different understanding of a secular government. I will discuss this matter extensively in chapter four of this study. Moreover, this book teaches that our understanding of a secular government has the impact on the relationship between the government and religious communities as well as on our lives. This book defers with my study because it is in the American context and its major topic is on a secular government and religions.

Religious Freedom in the World edited by Paul A. Marshall is a useful resource for my study because unlike Ira C. Lupu and Robert W. Tuttle, this book discusses the religious freedom in a secular government in a wider context. Authors of this book show how the term "secular government" is defined in different contexts and how its definitions affect religious freedom. In his major thesis of his topic titled "Secular and Religious, Church and State," Paul A. Marshall<sup>36</sup> observes a common opinion in the West that favors a secular state as solution on the restriction of human rights, including religious freedom. In contrast to this view, Marshall argues that the

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<sup>36</sup> "Secular and Religious, and Church State" in *Religious Freedom in the World*, Paul A. Marshall ed (Washington DC: Rowan & Littlefield Publishers: Washington DC, 2008), 12,

validity of this opinion depends on the meanings of the word “secular.” In support of his argument Marshall uses concrete examples from different countries to show how the meanings of this term can either protect or violate human rights. Unlike this book my study discusses the controversy surrounding kadhis’ courts in Mainland Tanzania. Furthermore, Muslims, Christians, and the Tanzanian government are main character of this contentious issue. However, his discussion has given language and a frame work of reference for some of my critique of the Tanzanian situation.

Justice is a major theme raised by this demand for kadhis’ courts. In order to deal with this matter adequately I have used Nicholas Wolterstorff’s definition of justice. In his book Justice in Love, Wolterstorff<sup>37</sup> raises issues of definitions of justices, love, justice and the good, justice and love, just and unjust generosity. Justice is one of the dominant issues raised by both Muslims and Christians in support of kadhis’ courts as well as in disapprove of these courts. Wolterstoff discusses the same theme in his books Until Justice & Peace Embrace and Justice: Rights and Wrongs. In his book Justice: Rights and Wrongs, Wolterstorff<sup>38</sup> states his major thesis by showing the source of justice (inherent rights), the meaning of rights (normative social relationships), the implication of the failure to do what is right to others (the violation of others’ rights), and rights as boundary-markers for the pursuit of our welfare. Though justice is raised by the debate of kadhis’ courts, this study differs with Wolterstoff in that he discusses the concept and principle of justice in general while I am employing his definition to discuss a particular question about kadhis’ courts. It provides language and frame work of reference.

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<sup>37</sup> Nicholas Wolterstorff, *Justice in Love* (Grand Rapids, Michigan: William B. Eerdmans, 2011), 75, 85, 142, 207.

<sup>38</sup> Wolterstoff, *Justice: Rights and Wrongs* (Princeton: Princeton University, 2008), 4-5.

In his journal article "Religion, Democracy, and the "Twin Tolerations"" Alfred Stepan<sup>39</sup> advocates the need for a clear distinction and mutual respect between political authorities and religious leaders, individuals and groups through his theory of "Twin Tolerations. In his view, the implementation of the principle of differentiation would advance democracy. In his criticism to a Western culture that tends to separate religion and state, Stepan cites Samuel P. Huntington to point out that in other World's major religions such as Islam, Confucianism there is no such a separation between the two. In contrast to a Western point of view, God is Caesar in Islam, Caesar is God in Confucism, and God is Caesar's junior partner in Orthodoxy. According to Stepan, only a democratic constitution can guarantee democracy. Authentic democracy gives individuals, groups, and institutions freedom to participate in all activities, including political activities as long as they do not violate the law. A democratic state gives complete freedom of worship to religious institutions. In support of his view, Stepan uses a concrete example of five of the European Union's fifteen member states that had established churches in 1990, and yet these states were democratic. Furthermore, some of the European Union states that had no established churches their constitutions gave religious freedom to their citizens. Similarly, some of these countries had religious political parties. Regarding secularism, Stepan clarifies that there can be a democratic and non-democratic secularism. He also observes the existence of democracy among Islamic states. In his reaction to a misunderstanding of the American constitution Stepan argues that the constitutional amendment did not prohibit original thirteen states from having their own established religions.

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<sup>39</sup> Alfred Stepan "Religion, Democracy, and the "Twin Tolerations" 4, (October 2000), Journal of Democracy, , 37-56.

Stepan's work is relevant to this study because it gives a deeper understanding of the significant role of democracy in promoting religious freedom, the extent and limit of such freedom, the need for a democratic constitution, the meaning of a secular state. Most importantly, Stepan addresses religious prejudice manifested in linking the Muslim demand for kadhis' courts with the violation of human rights by showing the existence of democracy among Islamic states. Moreover, Stepan criticizes such a view by demonstration lack of religious freedom among some non-Muslim nations. Stepan's objective approach gives a bigger picture of issues surrounding the demand for kadhis' courts in Mainland Tanzania. What makes Stepan's work differ from this study are themes, context, aims, objectives, and questions.

## **2.2 Muslim-Christian Relations and Interreligious Dialogue**

Laurence E. Y. Mbogoni discusses the impact of social, political, religious, and economic issues on Christian-Muslim relations in Tanzania between the 1880s and the 1990s in his book The Cross Versus the Crescent: Religion and Politics in Tanzania from the 1880s to the 1990s. One of the issues raised by the Muslim demand for kadhis' courts is the relationship between Muslims and Christians. This issue is addressed by Mbogoni<sup>40</sup> in this book. Mbogoni's book differs from this study regarding major theme, content, time frame, aim, objectives, and questions.

Interreligious Documents: Guidelines for Dialogue between Christians and Muslims is a useful resource for this study due to its focus on dialogue between Muslims and Christians. Dialogue is one of the proposals suggested by both Muslim and non-Muslim participants in

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<sup>40</sup> Mbogoni, *The Cross Versus the Crescent*, 21-41, 63-89, 107-185.

dealing with the negative impact of the demand for Kadhis' courts. Through this book, Maurice Borrmans<sup>41</sup> gives guidelines for a meaningful dialogue between Muslims and Christians.

In summary, the current works used for this literature review have both similarities and differences with my study. These works have been valuable in giving language, concepts and frameworks which I employ in my analysis. Some of the differences identified include time frame, contexts, themes, theses, aims, questions to be addressed, statement of the problems, sampling, objectives, motives, methods, and approaches. These differences depict the inadequacies of these works to address the Muslim demand for kadhis' courts in Tanzania mainland. They also demonstrate the distinction between these works and this study, the seriousness of the demand for kadhis' courts, and inadequacies of these works to deal with the matter, implying the need for further work. This study is one of those further works. Below I show the the difference this study intends to make.

### **2.3 Contribution of the Study**

This study is distinctive because of its contribution to a deeper and accurate understanding of the factors favoring the contemporary Muslim demand for kadhis' courts and the impacts of such demands on the lives of Tanzanians. This understanding is entirely based on primary information from different Muslim groups, non-Muslim groups (of sexes, different ages, varied backgrounds, and from different parts of the Tanzania mainland), the government, and my objective analysis of the findings. A deeper and more accurate understanding of the causes and effects of the matter is vital for the identification of relevant approaches in addressing the causes

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<sup>41</sup> Maurice Borrmans, *Interreligious Documents: Guidelines for Dialogue between Christians and Muslims* (New York: Paulist Press, 1990), 28-42.

of the demand for the kadhis' courts. Thus, this study makes recommendations for appropriate measures in dealing with the issues surrounding the demand for kadhis' courts. It is hoped that if followed, the recommendations will lead to a lasting solution to this matter. Such relevant measures give a lasting solution to the demand for kadhis' courts. The data collected is the basis of the discussion and this, I present in the next chapter. This argument is proved by the data collection report in the next chapter. Last and not least, this study is intended to be an academic resource for further studies in kadhis' courts both in Tanzania and outside Tanzania. But as such it is a contribution to the study of Islam in Tanzania and in particular the place and role of kadhis' courts.

## CHAPTER THREE

### Data Collection Report

#### 3.0 Introduction

This chapter presents data collection reports based on focus group discussion and face-to-face interviews conducted in both Dar es Salaam and Kigoma from June 20 to August 2, 2015. A total number of one hundred ninety-four people participated in these interviews. Twenty-nine of these participants are from Dar es Salaam and one hundred sixty-five respondents are from Kigoma. The Muslim participants from both Dar es Salaam and Kigoma are ninety-eight. Twenty-three Muslim participants reside in Dar es Salaam, and seventy-five Muslim participants are from Kigoma. The Christian participants from these two geographical locations are thirty-six; five Christian respondents are from Dar es Salaam and thirty-one Christian participants reside in Kigoma. Sixty participants do not identify their religious affiliations; one participant is from Dar es Salaam and fifty-nine participants are from Kigoma.

The following participated in the interviews which were conducted in Dar es Salaam: BAKWATA<sup>42</sup> (represented by the national chief kadhi), Supreme Council of Muslim organizations and institutions (represented by four *ulamas* or Muslim scholars), Ahmadiyya Muslim Jamatt Tanzania (represented by fifteen people); two private Muslim lawyers and attorneys of the high court (Said El Mammry and Abdullah Saffari); the Eastern and Coastal Diocese of the Evangelical Lutheran Church of Tanzania, represented by one person; the Archdiocese of Dar es Salaam of the Roman Catholic Church of Tanzania, represented by one

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<sup>42</sup> BAKWATA is an abbreviation of Swahili *Baraza Kuu la Waisalamu Tanzania* (Tanzania National Muslim Council).

person; free Pentecostal churches of Tanzania, represented by one person; Arcardo Ntagazwa (ex-minister in the first, second, and third governments of Tanzania); Cecil Simbaulanga (founder and the current director of the Bible Says organization); Abilahi Hassan Mcheyo, the Dar es Salaam Regional *Chama Cha Mapinduzi*,<sup>43</sup> secretary; and Sihaweji Mketo (strategic organization and Parliament director of Civil United Front, CUF, the opposition party).

Mcheyo identifies himself as a Muslim, and Mketo does not identify his religious affiliation. Thus a total number of twenty-nine people (twenty-three Muslims, five Christians, and the representative of CUF) participated in these interviews. In contrast to the Christian organizations, officials of the Ahamadiyya Muslim Jamatt Tanzania and the Supreme Council of Muslims organizations and institutions wanted their organizations to be represented by many members. Thus the Muslim participants outnumber the Christian respondents.

Participants from Kigoma include Kibondo Paralegal Unit (represented by seventeen people); the ruling party CCM, Kibondo District (represented by six politicians), Anglican Diocese of Kibondo (represented by its current bishop, Sospeter Ndenza); Kibondo Nursing College (represented by forty-two students); Bible Society of Tanzania (represented by five people); Kibondo Secondary School (represented by seventeen female Muslim female students and eleven female Christian students); Malagarasi Secondary School (represented by six Muslim students and nine Christian students), and Kakangaga Muslim Secondary School (represented by fifty-one Muslim students). Five politicians from the ruling party are Christians, and one politician is a Muslim.

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<sup>43</sup> *Chama Cha Mapinduzi (CCM)* is a Swahili expression for Revolutionary Party, the current ruling party.

The participants from Kigoma are one hundred sixty-five. The Muslim participants are seventy-five, the Christian participants are thirty-one, and fifty-nine participants do not give their religious affiliations. The representatives of Kibondo Paralegal Unit and Kibondo Nursing College fall into this category. But most of the participants from these two institutions were Christians. The difference in number of these participants from these two locations is due to complicated process of access to learning institutions in Dar es Salaam (such as University of Dar es Salaam and Open University of Tanzania) compared Kigoma.

The interviewees responded to eight questions: What is your understanding about a kadhi and kadhis' courts? Do Tanzanian Muslims want the establishment of kadhis' courts? Why do Tanzanian Muslims want the establishment of the kadhis' courts? Why should the establishment of kadhis' court be allowed to Muslims? Why should the establishment of kadhis' courts not be allowed to Muslims? How does the Muslim demand for kadhis' courts affect the country? How is the Muslim demand for kadhis' courts being addressed? How is the Muslim demand for kadhis' courts to be addressed?

### **3.1 Reports from Dar es Salaam**

#### **BAKWATA**

According to Abdullah Yusufu Ali Yusufu<sup>44</sup> (the current chief kadhi in Tanzania mainland, and representative of BAKWATA), a kadhi is a Muslim judge and ruler. As a chief kadhi his jurisdiction is restricted to seven areas: marriage, divorce, inheritance, wills, religious endowment, child guardianship, and dispute resolution. Yusufu goes on to say that all of the

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<sup>44</sup> Abdullah Yusufu Ali Yusufu, interview by the researcher, BAKWATA (The Muslim Council of Tanzania, headquarters); Dar es Salaam, June 29, 2015.

Tanzanian Muslims are in favor of the establishment of kadhis' courts because kadhis' courts are a part of worship in Islam. The courts were in operation on the mainland prior to the arrival of colonialists and during the colonial era, and the current civil courts have Christian, English, and Indian elements. Moreover, the current kadhi' court, which started in 2012, has no teeth because of its lack of legal recognition. Other reasons include the failure of current civil courts to address the issues facing Muslims, and the operation of kadhis' courts in some countries (USA, UK, South Africa, Kenya, and Uganda) that are predominantly Christian. In his reaction to eleven Muslim institutions that do not recognize his position, Yusufu defends his appointment by the Mufti by appealing to the Prophet Muhammad who appointed his first caliphates without any consultation. He expresses his disappointment for some Tanzanians who are not supportive of kadhis' courts due to politics and religion. He identifies Christians and the National Assembly as the major obstacles to the Muslim agenda. In his view the Christians and the National Assembly do not want the Muslims. Yusufu does not see any negative impacts of the Muslim demand on the country because Islam is a religion of peace. Yusufu commends the government' support and help for the Muslim demand in spite of opposition from both the National Assembly and the Christians. Yusufu proposes the establishment of kadhis' courts with the government's funds. The Christians should not oppose this demand because the current civil courts favor them.

#### Supreme Council of Muslims Organizations and Institutions

Juma Rajab Mfuu, Hassan Juma Mluve, and Abdulhamid Martin<sup>45</sup> representatives of the Supreme Council of Muslim institutions and organizations were in agreement with the chief

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<sup>45</sup> Juma Rajab Mfuu, Hassan Juma Mluve, and Abdulhamid, interview by the researcher, Dar es Salaam, July 1, 2015.

kadhi's definition of a kadhi. In their views, a kadhi is also a social leader. The prophet Muhammad was the first kadhi; his death and the expansion of Islam were the major factors in the establishment of kadhis' courts. According to the trio, their Council, which is made up of eleven Muslim institutions and organizations is supportive of the establishment of kadhis' courts. Thus on January 19, 2015 the Council gave its official proposal on the matter to the Parliament secretary through its lawyer Yahaya Mwanjala Njama. In this proposal the Council wants legal recognition of kadhis' courts. These courts are to be financed by the government. The proposal also suggests the creation of two boards, one for the appointment of both kadhis and the chief kadhi, and the other for the employment of kadhis. All kadhis are to be employed by the government and kadhis' courts are to be autonomous in their operation. These participants argue that the government's bill on kadhis' courts is silent on the appointment of kadhis, and the jurisdiction of the Mufti for the appointment of the chief kadhi is wrong because the chief kadhi is superior to the Mufti. Moreover, the extension of the jurisdiction of *kadhis'* courts is not mentioned in the bill. According to the interviewees their institution does not recognize both the current chief kadhi and the Mufti because the two are the government's puppets. In their view, the establishment of kadhis' courts will help to preserve customs and traditions of Islam and to address challenges facing the Muslims. Muslim family issues such as marriage, divorce, and inheritance are not supposed to be raised in the civil courts. In contrast to civil courts, kadhis' courts are guided by Qur'an, Sunna, past Muslim scholars and Muslim custom and traditions. These interviewees point out that many Tanzanians are against kadhis' courts because of their lack of understanding of the matter, religious competition, and the notion that Muslims would benefit from their tax. Christians are the major hindrance to the Muslim demand. Hostility, divisions, and conflicts between Muslims and non-Muslims are raised by this group as the

negative impact of the Muslim demand for kadhis' courts. The government is advised to address this issue through a dialogue. This dialogue should involve both Muslim and non-Muslim groups. Furthermore, the Christians are to stop from discouraging the government in its plan to tackle the issue.

### Ahmadiyya Muslim Jamatt Tanzania

Fifteen leaders and members of Ahmadiyya Muslim Jamatt Tanzania were interviewed at the headquarters of this Muslim organization.<sup>46</sup> This sect has a population of thirty thousand members countrywide. Love, peace, and a single leadership are some of the distinctive features of this Muslim denomination. According to the participants a kadhi is a Muslim judge and kadhis' courts refer to Islamic courts. This denomination is against the establishment of kadhis' courts because these Islamic courts are only applicable to Islamic states. Kadhis' courts in the Tanzanian context will cause divisions and conflicts among the Tanzanians. The participants argue that corporal punishments such as stoning to death, slashing and cutting off hands are not part of Islam. But they were borrowed from both Judaism and other pagan religions in Arab countries. In their view, the participants say, the current demand for the establishment of kadhis' courts is being influenced by terrorist groups such as Boko Haram, ISIS, Al Qaeda, and Al Shabab because these groups have the same demand. This demand is a demonstration of a lack of trust in Allah and the current Muslim leadership. It is also motivated by self-interest and politics. This group goes on to say that the Ahmadiyya Muslims in Tanzanian mainland are not interested in kadhis' courts because of their strong spiritual leadership and sufficient financial

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<sup>46</sup> Fifteen leaders and members of Ahmadiyya Muslim Jamatt Tanzania, interview by the researcher, Dar es Salaam, August 2, 2015

resources for the sustainability of their organization. This demand has a direct link with terrorist groups and the government should not entertain it. The Tanzanian government has demonstrated its willingness to support the Muslim demand, but the fierce opposition from the Christians has always been the major challenge to the implementation of kadhis' courts. The interviewees propose the rejection of the Muslim demand and a serious investigation of the proponents of this matter.

### Said El Mammry

Said El Mammry, a Muslim private lawyer and attorney of the High Court supports the establishment of kadhis' courts, which have a constitutional recognition, with government funds. Furthermore, these courts need to have teeth so that their ruling is not to be challenged by any government authorities. The jurisdiction of these courts is to be restricted to family matters. In his view, Islamic corporal punishments are primitive acts. His argument for the government's financial support for these courts is based on the fact that the operation of kadhis' courts will reduce the burden of cases from civil courts. Such government' financial support is to cover salaries for kadhis, clerks, and other workers, and scholarship for further Islamic law study of by the kadhis. According to Maammry, only Muslims will work as kadhis. The Muslims want kadhis courts because of the dominance of Christians in the current civil courts and the ruling of such courts against Islam. The Christian dominance in the current judicial system is attributed to Christian missionaries' schools, which favored Christians at the expense of the non-Christian Tanzanians. The failure to address the Muslim demand might affect negatively the peace and unity of this country. In dealing with this matter the ruling party (CCM) pledged in its 2015 general elections manifesto their support for the establishment of these courts. This pledge has

never been implemented. Similarly, President Kikwete ordered the current prime minister and the Mufti to create a special committee to propose how to tackle the issue. The committee was composed of seventeen Muslims and the same number of non-Muslims. Mammry was one of the Muslims who were committee members. Unfortunately, the Christians rejected the proposal. In his view the Christians do not want Muslims which is why they are always against kadhis' courts. In his proposal, Maammry advocates the unity and peace of the country and the need for the Christians to change their negative understanding of the Muslim demand for kadhis' courts. The government and both Muslim and non-Muslim leaders should work together in finding the lasting solution to the current conflicts and tensions over the matter.<sup>47</sup>

#### Abdullah Saffari

Abdullah Saffari<sup>48</sup> (a Muslim professor of law, private lawyer, and attorney of the High Court) echoes Maammry on the establishment of kadhis' courts. In his view, kadhis' courts are to be understood in the light of the holistic nature of Islam. There is no separation between politics and religion in Islam. His support for kadhis' courts does not include criminal matters which can only be applied in Islamic states. The operation of kadhis' courts in Tanzania mainland was terminated by the founder and father of the nation, the late President Nyerere, in 1964 without consultation with the Muslims. Similarly, Nyerere abolished the East African Muslim Welfare Society in 1968 by replacing it with BAKWATA (the government's puppet). Despite case number 104/2002, which was filed by four sheikhs at the High Court of Tanzania against this move, the High Court under the government's directive has not issued a ruling on

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<sup>47</sup> Said El Mammry, interview by the researcher, Dar es Salaam, July 02, 2015.

<sup>48</sup> Abdullah Saffari, interview by the researcher, Dar es Salaam, July 3, 2015.

this matter. BAKWATA is corrupt and it wants kadhis' courts to be under its control for its self-interest. All Muslims want kadhis' courts to be able to address injustices of arrests, imprisonment, unemployment, politics, and religious prejudices. Saffari lost his position of director of studies at a college of diplomacy due to his criticism to the government over oppression of Muslims. According to Saffari, only twelve percent of Muslims are admitted to the public universities and colleges due to Christian dominance in the National Examinations Council. Nyerere was in favor of Muslims during the struggle for the political independence, but after the independence he forgot them. The Christians are the main obstacle to the Muslim demand. The government has done nothing to address the matter, and even its plan to prepare the bill for amendments was political. The future of Tanzania is in jeopardy and if the Muslim demand is not dealt with, this country is going to be like the current situation in Egypt and Algeria. Saffari suggests the need for the government to admit religious bias as the serious challenge in the country; freedom for the Muslims, the creation of a special commission to deal with the issues facing the Muslims, the abolition of Christian domination in all government sectors, and the approval for the establishment of kadhis' courts.

#### Eastern and Coastal Diocese of the Evangelical Lutheran Church of Tanzania

Chediel Lwiza<sup>49</sup> a priest, dean, and assistant to the Bishop of the Eastern and Coastal Diocese of the Evangelical Lutheran Church of Tanzania, understands kadhis' courts as Islamic institutions that deal with religious issues among Muslims. He also agrees that the Muslim claim for kadhis' courts is real. In his understanding this demand is due to the worldwide Muslim movement to Islamize the world, including Tanzania, and struggle for freedom to worship.

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<sup>49</sup> Chediel Lwiza, interview by the researcher, Dar es Salaam, July 3, 2015.

Lwiza is against the Muslim demand because kadhis' courts are for the Muslims, so that the government and non-Muslim Tanzanians are not to be involved in this matter. Lwiza observes that this matter is creating serious divisions and conflicts in the country. In his view, the Muslim demand is an intolerable blasphemy. Due to this demand, the future of this country is unpredictable, and there is a possibility for religious war if this matter is approved. Lwiza is not comfortable with the manner in which the government is handling this matter. In his view the current government is supportive of this unconstitutional Muslim demand, and he appeals to the government to comply with the constitution.

#### Archdiocese of Dar es Salaam of the Roman Catholic Church of Tanzania

Padre Deunis Wigira is the general secretary of the Archdiocese of Dar es Salaam in the Roman Catholic Church of Tanzania. Wigira says that the Roman Catholic Church of Tanzania holds the same position as the Tanzania Christian Forum on this matter. In his reaction to the Muslim demand, Wigira says that the Roman Catholic Church has spiritual courts called inter-diocesan tribunals to deal with marital matters and other Christian issues. But the church has never demanded the legal recognition of such courts and financial support from the government. If the government implements kadhis' courts, the same will have to apply to courts of non-Muslim religious communities.

#### Free Pentecostal Church of Tanzania

Rusekero Mwaipiana is a pastor of the Free Pentecostal Church of Tanzania headquartered in Dar es Salaam. In his understanding a kadhi is someone who is against the Tanzanian constitution. Asked whether Muslims demand kadhis' courts, Mwaipiana responds

that only Muslims have an answer to this question. In his observation the debate on kadhis' courts is dividing Tanzanians, and the government's approaches in handling this demand are in favor of the Muslims at the expense of the Christians. Mwaipiana proposes the matter to be left to the Muslims themselves since it is related to their faith.<sup>50</sup>

### Arcado Ntagazwa

Arcado Ntagazwa is an ex-minister in the first, second and third Tanzanian governments, chairperson of the 1998-2000 Parliament Subcommittee on the establishment of kadhis' courts, and current chairperson of the board of trustees of *Chama Cha Demokrasia na Maendeleo* (CHADEMA), the opposition party. According to him,<sup>51</sup> kadhis' courts are spiritual courts for Muslims and the scope of jurisdiction of these courts lie in marriage, divorce, inheritance, and religious endowment among others. Echoing Wigira, Ntagazwa points out that the Roman Catholic Church has its own spiritual courts to deal with marriage issues. In his opinion, the major contributing factors for the Muslim demand include the exclusion of Muslims from Christian missionaries' schools during the colonial era and the Muslims' concentration on the study of Qur'an at the expense of formal education. These two major factors denied many Muslims political, social, and economic opportunities. But Ntagazwa clarifies that this first issue was addressed by Nyerere, who confiscated all schools owned by religious institutions. Due to this policy all schools were owned by the government and all Tanzanians had access to them regardless of their faith affiliations. In his view, the current constitution does not allow the Muslim demand. Furthermore, if the government is ready to finance such courts it should also to

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<sup>50</sup> Rusekero Mwaipiana, interview by the researcher, Dar es Salaam, July 5, 2015.

<sup>51</sup> Arcado Ntagazwa, interview by the researcher, Dar es Salaam, July 5, 2015.

the same to other religious courts. The Muslims want to create employment for themselves through kadhis' courts. The government's bill on kadhis' courts was intended to win Muslims' votes. Ntagazwa concludes his discussion arguing that the Muslim should re-examine their faith in Allah. If they have trust in God, why do they seek the government's support for their spiritual matters? Is the government more powerful than their God? Is their God unable to provide for their needs?

### Cecil Simbaulanga

Cecil Simbaulanga<sup>52</sup> is an Anglican evangelist, founder and director of Bible Says Project. Simbaulanga told me that his views about kadhis' courts in Tanzania mainland are in several papers and books he wrote. I was able to get some of them. Simbaulanga argues that the Muslim demand for kadhis' courts is a strategic plan to Islamize Tanzania and that this strategy has foreign influence. The main purpose of this plan is to do away with Christianity. Simbaulanga has been a victim of arrests, stoning, and beating due to his stand on kadhis' courts and other contemporary issues related to the Tanzanian Muslims

### Abilahi Hassan Mcheyo

Abilahi Hassan Mcheyo<sup>53</sup> is the Dar es Salaam Regional ruling party (CCM) general secretary. His understanding of kadhis' courts is that they are religious institutions in Islam whose major purpose is to direct and judge various issues related to Muslims. Mcheyo says that the Muslim demand is real, and it was presented to the National Assembly for the discussion.

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<sup>52</sup> Cecil Simbaulanga, interview by the researcher, Dar es Salaam, August 2, 2015.

<sup>53</sup> Abilahi Hassan Mcheyo, interview by the researcher, Dar es Salaam, July 2, 2015.

Mcheyo does not know the reasons for this demand; as a Muslim believer his role is to follow what he is told by his Muslim leaders. In spite of his support for the establishment of kadhis' courts, Mcheyo is against corporal punishments because of their inappropriateness in a contemporary situation. In his opinion, kadhis' courts will protect morality in Islam. He admits however, that this demand is causing divisions among the Tanzanians. Regarding the measures taken by the government to deal with this matter, Mcheyo says that the CCM national general secretary points out that the issue is in the National Assembly for its resolution, under the office of the prime minister. He also explains that there is a full involvement of all key stakeholders in this matter. But the major hindrance to the implementation of kadhis courts is politics. This issue is given serious attention during the general elections. Mcheyo is optimistic about the implementation of the Muslim demand. In his final remarks he proposes the need for a mutual dialogue on this matter among Muslims, the government, and other stakeholders. The government should give its clear stand on this issue. Kadhis' courts should be for the interest of both the Muslims and the country as a whole.

#### Civil United Front (CUF)

Shaweji Mketo <sup>54</sup> is a strategic organization and Parliament director of Civil United Front (CUF), the opposition party. According to Shaweji the Muslim demand for e kadhis' courts is an undeniable fact, and one of the reasons for this demand is the difference between the Islamic courts and civil courts. One of the distinctive features of kadhis' courts is the use of the Qur'an as the primary guiding principle in kadhis' ruling. The Muslim demand is facing strong opposition because of the current constitution, the direct involvement of the government, and

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<sup>54</sup> Shaweje Mketo, interview by the researcher, Dar es Salaam, July 4, 2015.

different opinions among Tanzanians. The government is to blame for its pledge for kadhis' courts during the 2005 general elections. If urgent action is not taken to address this matter, it might lead to religious wars between Muslims and Christians. Shaweji goes on to explain that religious bias is a serious challenge in the country. In the 2010 general elections, for instance, CHADEMA, the opposition party, was stronger than the ruling party because of its support and help from the Christians. In his proposal he suggests that the problem is the current government and the Muslim demand; if the government were firm in its decision, this demand would not have existed. Religion should not be used for political survival.

### **3.2 Reports from Kigoma**

#### Kibondo Paralegal Unit

Kibondo Para-Legal Unit<sup>55</sup> is a voluntary group of people from different backgrounds that operates under the Kibondo District Commissioner's office. The group is affiliated with Tanzania Women's Aid Center and is in a process of registering itself as a not-for-profit organization. This group is committed to offering legal aid to all people free of charge. According to this group kadhis' courts are courts that operate under Islamic principles, deal with matters related to Muslims, and deal with immorality among Muslims. All participants from this group are aware of the Muslim demand for kadhis' courts. Leading factors for this matter include the strategic plan to make Tanzania an Islamic state, a total rejection of the current civil courts, revenge against injustices, freedom of worship, protection of morality, oppression of Christians by Muslims, encouragement of unity among Muslims to be able to help the

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<sup>55</sup> Kibondo Para-Legal Unit, interview by the researcher, Kibondo; Kigoma, June 19, 2015.

Palestinians, the prevalence of illicit sexual intercourse, indecent clothes in society, President Kikwete's promise of kadhis' courts in 2005 through the ruling party (CCM) manifesto, creation of employment among the Muslims, poor leadership of the current government, the influence of Christianity, and lack of legal recognition of the current office of the chief kadhi. Four participants from this group are in favor of the establishment of kadhis' courts; the rest (thirteen respondents) are not. Those who support the matter argue that the establishment of kadhis' courts will reduce the current tensions and conflicts, will foster respect between the Muslims and Christians, and strengthen the unity of the country. Those who oppose these courts believe that kadhis' courts will lead to wars, religious prejudices, oppression of women, increase of divorce among Muslims, and oppression against the Christians. According to this group, the government gave the Tanzanians an opportunity to give their opinions on the matter during the constitutional review and through the National Assembly. Research on this issue was also carried out by the government. Five respondents argued that the government had done nothing to tackle the matter, however. This matter is causing serious conflicts and divisions, religious prejudices, hostility, mistrust, and fears among the Tanzanians. One respondent explains that some Christians tell their fellow Christians throughout the country not to vote for the Muslims for any position for the general elections on October 25, 2015. This group proposes the need for creating awareness on the matter through education throughout the country, a clear explanation of both advantages and disadvantages of kadhis' courts, a wise decision on the matter, a trust in the current civil courts, and the use of the democratic right to elect competent and patriotic leaders who can unite them.

### CCM Politicians from Kibondo District

Six politicians from the ruling party (CCM)<sup>56</sup> gave their views on the matter. These politicians were running for the parliamentary seat through the *CCM* for the Muhambwe constituency. One of these participants is the district *CCM* secretary. According to this group the Muslim demand for kadhis' courts is real and the root causes for this demand is the plan to Islamize Tanzania, the influence of terrorist groups like Al Shabaab, politics, struggle for freedom of worship, a desire to be guided by *shari'a*, and injustices against Muslims. Three of the interviewees were comfortable with the establishment of kadhis' courts provided that they are not included in the constitution, their operation does not depend on government funds, and the scope of their jurisdiction is limited to family matters. Three participants are against kadhis' courts regardless of the limit of the scope of their jurisdiction. Two respondents commend the government's approaches in dealing with the matter. One person does not agree with the inclusion of kadhis' courts in the *CCM* manifesto for 2005 general elections. The same person is against the government's bill on kadhis' courts. One participant proposes the establishment of kadhis' courts; the rest say that such courts are irrelevant to the contemporary situation.

### Workers of Bible Society of Tanzania

Juvenal M. Kabunduguru (Kagera Region), Joram Ntakije (Kigoma Region), Nawanje Emmanuel (Dodoma Region), Leonard Londo (Songea Region), Ipyana Mwangota (Mbeya Region), workers for the Bible Society of Tanzania, participated in a group focus discussion

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<sup>56</sup> Six politicians of the ruling party (CCM), interview by the researcher, Kibondo; Kigoma, July 25, 2015.

interview. According to this group<sup>57</sup> kadhis are Muslim judges and kadhis' courts are Islamic courts that operate under the Islamic principles. This group is aware of the Muslim demand for kadhis courts. The causes for this issue is to dominate social, political, economic, and religious spheres of the country, to Islamize Tanzania, to claim religious freedom, to introduce severe Islamic corporal punishments, and to create more employment for Muslims. This group does not support the Muslim demand because of the reasons mentioned above. In addition, the participants in this group are against kadhis' courts in the constitution, their operation with government's funds, and their violation of human rights. One participant argues that the goal of the Muslims' demand is to have non-restricted jurisdiction of kadhis' courts. Muslims worldwide share common elements that unite them irrespective of their different contexts. Thus the claim of the Tanzanian Muslims that their kadhis' courts will be different from those of Sudan, Nigeria, Algeria, Indonesia, and Afghanistan is illogical. According to this group, the government is supportive of the Muslim demand for political purposes. Because of politics even some Christian government officials such as Peter Mizengo Pinda, the current prime minister, and Bernard Membe, minister for cooperation and foreign affairs, support kadhis' courts for their political survival. They were among the presidential candidates but they were not successful. The government's efforts were defeated by both the Christians and the current constitution. The issue of kadhis' courts is threatening peace and security of the country. This group pleads that the establishment of kadhis' courts is not to be tolerated.

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<sup>57</sup> Juvenal Kabunduguru, Joram Ntakije, Nawanje Emmanuel, Leonard Londo, and Ipyana Mwangota, interview, Kibondo; Kigoma, July 12, 2015.

## Anglican Diocese of Kibondo

Sospeter Ndenza is the Anglican Bishop of Kibondo Diocese, in Kibondo District of Kigoma Region. In his understanding<sup>58</sup> kadhis courts are Islamic institutions that are a part of Muslim worship. Ndenza acknowledges the current debate on the matter and says that the contributing factors for this debate include the use of kadhis' courts for dispute resolution of family matters such as marriage, divorce, inheritance, and child guardianship. According to Ndenza the Diocese of Kibondo does not oppose kadhis' courts but is against the inclusion of these Islamic courts in the constitution, their financial sustainability from the government, and their corporal punishments that violate human rights. Moreover it is unconstitutional for the government to support these courts. Ndenza goes on to say that the opposition against these courts is not only from the Christians but also from some Muslims. Using the experience from Zanzibar, Ndenza states that during Ramadan non- Muslims are not allowed to eat publicly, and all hotels excluding the tourist ones are closed. This is a violation of human rights. It is also a strategic plan to force the non-Muslims in Zanzibar to convert to Islam. Churches through Tanzania Christian Forum have been warning against the government's plan to support the Muslim agenda through official statements to President Kikwete, the Prime Minister (Pinda), and the current speaker of the National Assembly. Furthermore, bishops had a special meeting with Christian government ministers and members of Parliament to advise them to reject the bill, and they were successful. According to Ndenza, the country is serious divided, and the only way to save it is to withdraw the plan to establish these courts. Ndenza does not see any consensus on the matter. In his final remarks, he says that as a member of Tanzania Christian Forum his

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<sup>58</sup> Sospeter Ndenza, interview by the researcher, Kibondo; Kigoma, July 15, 2015.

diocese does not support the matter. Kadhis' courts are for Muslims, and non-Muslims should not be forced to participate in this matter.

### Kibondo Nursing College

Forty-two students (both Muslims and non-Muslims) from Kibondo Nursing College participated in a group focus discussion interview.<sup>59</sup> Seventeen respondents do not know the meanings of kadhis and kadhis' courts. Others understand kadhis' courts as Islamic courts whose jurisdiction is based on the Qur'an, courts that are distinct from the government courts, Islamic courts that protect the rights of Muslims by following Islamic laws, to combat the immorality of society, and Islamic courts that deal with criminal cases. All respondents are aware of this issue, and their responses to the causes of this demand include the desire of Muslims to be judged according to their faith, to ensure that the Islamic laws are followed, to spread their faith, to protect their rights, to start a religious war (jihad) against non-Muslims, to be free, to promote unity among themselves, to do away with Christianity, to encourage homosexuality, to create employment, to protest Christian influence in the current civil courts and their injustice against Muslims, to keep secrecy, and to punish those who behave contrary to Muslim beliefs. Eleven respondents did not know the reasons for the Muslim demand for kadhis' court. Twenty-six interviewees are against the establishment of the courts, ten respondents are supportive of the matter, and six participants have no position about the matter. Those who are against kadhis' courts point out that these institutions are not for the interest of the country, and are dividing Tanzanians. Those who support the demand say that the implementation of kadhis' courts will foster peace and solidarity among Tanzanians. Seventeen people do not know what the

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<sup>59</sup> Forty-two students of Nursing College, interview by the researcher, Kibondo Nursing College, July 25, 2015.

government is doing to address the matter. Nine participants say that the government is doing nothing. The rest mentioned education on the matter or constitutional review as measures taken by the government in handling this issue. Most of the participants from this group prefer the withdrawal of this demand; others support its legal establishment.

#### High school Muslim and non-Muslim Female Students from Kibondo Secondary School

A group focus discussion interview was administered to twenty eight high school female students (i.e. seventeen female Muslims and eleven non-Muslim female students) from Kibondo Secondary School. These students are from Arusha, Shinyanga, Geita, Mara, Kigoma, Dodoma, Dar es Salaam, and Mbeya.<sup>60</sup> According to Muslim female students kadhis' courts are Islamic courts for punishing criminals by cutting off their hands, stoning them to death, and slashing them. Thieves, adulterers/adulteresses and false witnesses are some criminals who are identified by these participants. Unlike civil courts, kadhis' courts govern a country justly. For non-Muslim female students, kadhis courts refer to Islamic laws for the creation of high political positions in the government for Muslims, Islamic courts that operate under Islamic principles, Islamic courts for punishing those who behave contrary to Islamic ethics, oppressive Islamic laws or Islamic laws for the protection of social, political, economic, and religious rights for the Muslims. Some think they are part of a Muslim strategic plan to rule Tanzania. Participants from both sides (Muslims and non-Muslims) are aware of the demand for kadhis' courts but they have differing views on the root causes of this demand. For the non-Muslim participants, causes include lack of understanding of the current constitution among the Muslims, the plan to rule

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<sup>60</sup> 28 Muslim and non-Muslim female students, interview by the researcher, Kibondo Secondary School, July 26, 2015.

Tanzania under Islamic laws, desire for freedom of using Islamic laws, punishment against criminals, religious bias, self-interest, the spread of Islam, dissatisfaction with civil courts, Islamization of the country, influence from other Islamic states and the protection of the rights of the Muslims. Four participants do not know the leading factors for the Muslim demand.

According to the Muslim participants, the factors for this demand are the desire for Muslims to be judged by Islamic laws, the increase of immorality among the Muslims, and the desire for religious, moral, social, political, and economic freedom. Other factors include unity among Muslims; obedience to Allah; encouragement of good ethical behavior through severe punishments; social, political and economic developments; strengthening Islamic faith; fostering patriotism, respect, and equality. Only two Muslim female participants respond negatively to the demand for kadhis' courts. All non-Muslim female participants do not support this demand. Two Muslim participants do not see any negative impacts and one Muslim participant knows nothing about this issue. Some of the negative impacts of this issues raised by this Muslim group included violation of human rights, conflicts, divisions, hostility, discrimination between Muslims and non-Muslims, violation of the constitution, and irrelevance of these courts to the context of the Tanzania mainland. The same issues are also raised by all non-Muslim participants. Three Muslim respondents know nothing about the government's efforts in dealing with the Muslim demand; seven participants say that the government is not doing anything; one person argues that the government is encouraging dialogue over the matter, and the rest have not responded to this question. Four non-Muslim respondents have no idea about what the government is doing to resolve this issue, and one participant replies that the government is doing nothing. Others participants explain that the government gave the opportunity to Tanzanians to give their view on the matter during the constitutional review. The matter was also

presented to the National Assembly and it was passed, but the president declined to sign the bill. The government is in a dilemma over this issue due to fierce opposition from some Tanzanians. Five Muslim participants suggest that the establishment of kadhis' courts should not be allowed because of its negative effects; one participant proposes that kadhis' courts are to be allowed only if they will not divide Tanzanians. The rest want kadhis' courts to be established. All non-Muslim participants propose that the Muslim demand be discouraged.

#### High School Muslim and non-Muslim Students from Malagarasi Secondary School

Fifteen high-school students (six Muslims and nine Christians) from Malagarasi Secondary School participated in a group focus discussion interview.<sup>61</sup> According to the Muslim students *kadhis'* courts deal with spiritual matters in Islam (Deuteronomy 24:2; Qur'an, Suratul Nuru, 24:2). Kadhis' courts are Islamic courts whose jurisdiction is based on Qur'an, Sunna, and Islamic laws and principles. The Muslims want kadhis' courts because of the challenges of marriage and inheritance, to emulate the life of the Prophet Muhammad, to foster peace and integrity in society, to address prostitution, to reduce extreme poverty by forcing Muslim rich people to pay tithe, and to claim freedom to worship. Three Muslim female students support kadhis' courts with jurisdiction over both family matters and criminal cases. Islamic corporal punishments are God's will and are vital in reducing corruption, prostitution, theft, indecent clothes, and false witness. The three said that they do not see such severe punishment as a violation of human rights. In the view of non-Muslim students, kadhis' courts refer to Islamic courts that tackle issues of marriage, inheritance, and other practices in Islam. These Islamic courts operate under the guidance of Qur'an, and other Islamic principles. The leading causes for

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<sup>61</sup> Fifteen High-School Students, interview by the researcher, Malagarasi Secondary School; Kibondo, July 25, 2015.

the Muslim demand for kadhis' courts are to address religious and social issues facing the Muslims based on a Qur'an; to protect Islamic ethics and freedom of worship, to spread Islam, and to operate severe punishment without the government's interference. All Muslim students support the establishment of kadhis' courts. But one student clarifies that the scope of jurisdiction of such courts should be limited to family matters. All non-Muslim students are against kadhis' courts. One of these students, who witnessed the brutal killing of Pastor Mathayo Kachira on February 11, 2013, during violent religious clashes between Muslims and Christians over the meat industry, says that the establishment of these courts will put the country in a terrible situation because other religious communities will also demand the establishment of their courts with government funds. The participant argues that there is a dangerous hidden agenda for this demand. Non-Muslim participants raise conflicts, tensions, divisions, mistrust, and fears as some of the current impacts of the demand for kadhis' courts. One of them explains that if this matter is not addressed this country is heading to religious wars between Muslims and non-Muslims. For the Muslim participants the only solution to the current divisions and conflicts is to allow the establishment of kadhis' courts. If this demand is not addressed then the future of this country is in jeopardy. Two Muslim students point out that the government is doing nothing to address the matter, one participant has no idea, and one respondent says that the government had allowed the Tanzanians to decide on the matter through the constitutional review. Two non-Muslim participants are unaware of what the government is doing to tackle the issue, and one participant says that the only thing she or he knows is that kadhis' courts were abolished by Nyerere after the independence. One respondent replies that the government's efforts have been discouraged by fierce opposition from the Christians. Another person responds that the government is doing nothing because the establishment of kadhis' courts is against the

constitution, and third person says that the government took the matter to the National Assembly for discussion. All Muslim participants support for the establishment of kadhis' courts as soon as possible. In contrast, the non-Muslim participants reject the matter.

#### Muslim Students from Kakangaga Muslim Secondary School

Fifty-one Muslim students from Kakangaga Muslim Secondary School participated in a group focus interview.<sup>62</sup> According to this group kadhis' courts are Islamic courts using Islamic laws and spiritual courts based on Quran and Sunna. All participants acknowledge the Muslim demand for kadhis' courts and say that the causes for this demand are injustices in civil courts, immorality in society (theft, prostitution, indecent clothes, especially for women, obedience to the teaching of Qur'an and Sunna). Also it is against the will of God for a Muslim to appear before civil courts. One participant believes that kadhis' courts would unite the Tanzanian Muslims with other Muslims worldwide. The participants support the Muslim demand based on the above reasons. According to these participants the only negative effect of this demand is opposition from the Christians, which is creating tensions and conflicts among the Tanzanians. This opposition is due to a misunderstanding of the Muslim demand. The Christians are also blamed for their opposition to the government's willingness to support Muslims in this matter. One participant argues that the Christian opposition against the Tanzanian Muslims depicts how Muslims worldwide are undergoing systematic oppression by Christians. Some Western countries are mentioned to have influenced this opposition. These participants propose equal treatment for all religious communities in the Tanzania mainland, the right of freedom of

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<sup>62</sup> Fifty-one Muslim students, interview by the researcher, Kakangaga Muslim Secondary School; Kibondo, June 20, 2015.

worship for Muslims, and the government's approval for the establishment of kadhis' courts. Refusal of the establishment of these courts has serious negative impacts on this country.

### **3.3 A Summary of Data Collection Reports**

A kadhi is a Muslim judge, ruler and social leader. Kadhis' courts are Islamic courts. Whereas Muslim and non-Muslim participants from Dar es Salaam restrict the scope of jurisdiction of these courts to Muslim family matters, the participants from Kigoma (both Muslim and non-Muslims) extend the jurisdiction of kadhis' courts to criminal matters and corporal punishments. The Muslim claim for kadhis' courts is justified by the majority of these participants (both Muslims and non-Muslim) from both Dar es Salaam and Kigoma. There are complex factors leading to the Muslims claim for kadhis' courts. Some of the major factors raised by both Muslim and non-Muslim participants include freedom of worship, distinctiveness of kadhis' courts, injustices, the irrelevance of some elements in civil courts to Islamic beliefs, lack of legal recognition of the current kadhis' courts, mistrust among the Muslims, the creation of employment for Muslims, Islamization of the country, religion, politics, leadership crisis of the current government, the influence from some terrorist groups and Islamic states, immorality in society, and extension of kadhis' courts to criminal matters and corporal punishments.

The Muslim claim is rejected by most non-Muslim participants due to the current constitution, financial sustainability of kadhis' courts by the government, the inclusion of these courts in the constitution, and the effects of kadhis' courts. According to these participants (both Muslims and non-Muslims), the Muslim claim is causing divisions, conflicts, fears, mistrust, and religious prejudices among Tanzanians. This matter might lead to religious wars. The participants have differing views on the government's response to the Muslim demand. Most

non-Muslim participants disapprove the government. Whilst the majority of Muslim participant propose the implementation of the Muslim demand as a last solution on this issue the non-Muslim participants reject the issue. In the next chapter I will give my critical analysis on these views of the participants.

## CHAPTER FOUR

### A Critical Analysis of the Data Collection Reports

#### **4.0 Similarities and Differences among Muslims and Non-Muslims from Dar es Salaam and Kigoma.**

My critical analysis in this chapter focuses on similarities and differences among the participants, distinctive features from the Dar es Salaam and Kigoma reports, my observations, major issues surrounding the controversy of kadhis' courts, and the assessment of the views of these participants in light of both the objectives and the major thesis of this study. Similarities and differences among these participating groups concerning the study questions are some of the striking features of these two reports. These features are evident even among some participants who share common religious, political, and social convictions.

Points of similarity among these participants include their awareness of the Muslim claim for kadhis' courts, some of the causes of this claim (politics and religion), its negative effects (divisions, conflicts, and violent religious clashes, commitment to dealing with this issue (all participants offer proposals to address this challenge), and both moderate and extreme views of how to do so. These participants have contrasting views on some leading causes of this demand, whether this matter should be allowed, accountability for the negative impact of this claim, the scope of jurisdiction of kadhis' courts, the government's response to this issue (some commend it; some disapprove of it), and proposals on how this matter is to be addressed.

For the Muslim participants, the major causes of the demand are freedom of worship, injustices perceived, and distinctiveness of kadhis courts, immorality, and the irrelevance of

some aspects of civil courts to Islamic tenets. The majority of these participants support kadhis' courts. According to these respondents, Christians are accountable for the negative impact of this matter given that Islam is a religion of peace and Christians are a major obstacle for the Muslim demand. Most participants commend the government's response to the Muslim claim and propose the implementation of kadhis' courts. Disagreements among these Muslim participants are centered on superiority between the chief kadhi and the Mufti, the appointment of the national chief kadhi, validity of the current office of the chief kadhi and BAKWATA, the government's bill on kadhis' courts, the scope of jurisdiction of these courts, the government's reaction to this claim, and how this issue is to be dealt with.

The non-Muslim participants agree concerning some causes of the Muslim demands (the Islamization of the country, eradication of Christianity, influences from terrorist groups and some Islamic countries, extension of kadhis' courts to criminal matters and corporal punishments, and creation of employment for the Muslims). They also reject the kadhis' courts, criticize the government's involvement in this matter, and negatively view the Muslims' claims. Most participants from this group reject kadhis' courts. The government is blamed by the participants for the negative impact of this matter, and they all disapprove of the government's reaction to the Muslim demand. The major disagreement among these participants is on their rejection of kadhis' courts. Whereas the majority of them reject these courts regardless of the scope of their jurisdiction, a few of them support kadhis' courts whose jurisdiction is limited to Muslim family matters. According to these participants, these courts should neither be included in the constitution nor be financed by the government.

Major distinctive features of the Dar es Salaam report are the desire to limit kadhis' courts to Muslim family matters, divisions and mistrust among the Muslims, hostility between Muslims and Christians, and unity among the Christians. The extension of jurisdiction of kadhis' courts to criminal matters and corporal punishments, and unity among the Muslim participants are major features of the Kigoma report. Unlike their Muslim counterparts in Dar es Salaam, the Muslim participants from Kigoma are united besides their different views on kadhis' courts. Christian participants remain united too. Corporal punishments are prominent also among the non-Muslim participants. Most Muslim students from Kibondo and Malagarasi secondary schools are supportive of these harsh punishments. In contrast to Muslims, the Christian participants have negative views toward these harsh punishments.

### Observations

Issues of human rights, gender inequality, and relations between non-Muslim and Christian religious communities (African traditionalists, Baha'is, and Hindus,) are neglected by the Dar es Salaam participants. Concerning human rights and gender inequality, the Dar es Salaam participants are silent on how kadhis' courts promote and violate human rights. Issues of gender inequality raised by kadhis' courts include kadhis (very few women are kadhis), property ownership, divorce, corporal punishments (Muslims women are the most victims of these punishments), inheritance, and witness in these courts. These issues are discussed in the next paragraphs of this chapter. The rights of non-Muslim and Christian Tanzanians are also ignored by the Kigoma participants. Similarities between the Muslim and Christians participants over some issues do not necessarily imply agreement between these participants in such matters. Responsibility for the negative impact of the Muslim demand, for example, though

acknowledged by both Muslim and non-Christian participants, is not admitted by anyone. Each side attributes this negative impact to the other side. Similarly, while freedom of worship is raised as an issue by both Muslim and some Christian groups as one of the root causes of this debate, the majority of Christian groups are against establishing kadhis' courts. According to Muslim participants, kadhis' courts are a part of Muslim worship and worship is one of the aspects of religious freedom. For a full realization of Muslim worship, these courts must be included in the constitution, the operation of kadhis' courts be financed by the government, the national Muslim chief kadhi be appointed by the government, and the official establishment of kadhis' courts be announced by the President. In their reaction to the Muslim demand, most Christian participants argue that the Muslim demand is against the constitution, Muslims want to create employment among themselves through these courts, to Islamize the country, to eradicate Christians, to introduce corporal punishments, and to dominate political, social, economic, and religious spheres in the country. I will give my opinion about the validity of issues raised by these two groups in the next paragraphs.

#### **4.1 Constitutionalism, Secularism, Justice, and Muslim-Christian Relations**

The desire to have government recognized kadhis' courts is based on three major Muslim demands: the inclusion of kadhis' courts in the constitution, the financial support from the government for the operation of these courts and scholarships for Islamic judicial study, the appointment of the national chief kadhi and the official announcement of the establishment of kadhis' courts by the President. These demands raise issues of constitutionalism, secularism, religious freedom, justice, and how people from different faiths are to relate in a pluralistic

society. In my view, these issues must be dealt with first if this issue is to be addressed adequately.

### A Secular Government

The Muslim claim to include kadhis' courts in the constitution is challenged by non-Muslim participants by arguing that such a claim is against the constitution which states that Tanzania has a secular government. This argument raises one major question: what does a secular government entail? According to Paul A. Marshall,<sup>63</sup> the most common meaning of the word "secular" is non-religious. In the United States of America and in India this term is understood as openness, non-discrimination and non-interference with religious matters, and exclusion of religion from public life in France and Japan. In their reaction to hostile views to a secular government Ira C. Lupu and Robert W. Tuttle<sup>64</sup> point out that the idea of secular government explains the limited jurisdiction of a government to encroach on the religious freedom of its citizens. In the American context the term "secular" is understood as the non-establishment principle and the free exercise principle. (There are 2 parts—government can't set up a state religion and government can't prevent people from practicing their religion.) In Lupu's and Tuttle's view, the non-establishment principle has three major implications: first, the government should not be biased in religious matters; second, the scope of the state's authority in religious matters is restricted; third, the government is prohibited from imposing religion on its people. Stepan<sup>65</sup> is in agreement with Lupu and Tuttle on this matter. In his criticism to those who

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<sup>63</sup> Marshall, *Religious Freedom in the World*, 12.

<sup>64</sup> Lupu and Tuttle, *Secular Government Religious People*, 4, 7, 26-29.

<sup>65</sup> Stepan, Religion, Democracy, and the Twins Tolerations. *Journal of Democracy*, 38.

see separation between state and religion, Stepan states that in Islam, Confucianism and Orthodox the two are inseparable. One of the leading factors for the exclusion of religion from constitutions is that some of the religiously identified states violate human rights. In contrast to this opinion, Paul A. Marshall<sup>66</sup> asserts that the religiously identified states are not necessarily the worst violators of human rights. Furthermore a secular government is not a guarantee of religious freedom. China, North Korea, Belarus, Uzbekistan, Turkmenistan, and Cuba for example, although they have secular governments, these countries violate human rights by their restriction of religious freedom. Similarly, some of the European states that have state churches discriminate against church members. In Greece for instance, the Eastern Orthodox Church of Christ is favored at the expense of non-Orthodox churches. The government pays the Orthodox clergy salaries as well as finances church building projects. Non-Christian and non-Orthodox Christians suffer discrimination. Furthermore, in England, the monarch and some other government officials must be members of the Anglican Church, twelve Anglican bishops sit in the House of Lords, and some Church officials such as bishops and the Archbishop of Canterbury are appointed by the Queen. In Germany (though there is no state church) the government finances the Catholic and Lutheran Churches. Likewise the Belgium government finances churches and other religious institutions. Unlike in the past, Spain finances the Roman Catholic educational projects. Marshall concludes that “Europe has countries with state churches that are funded, with state churches that fund all religious groups and equivalent secular groups, with state churches that are not funded, without state churches that do fund some or all religious groups, and without state churches that do not fund religious groups.”<sup>67</sup> These concrete

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<sup>66</sup> Marshall, Religious Freedom in The World, 13-15.

<sup>67</sup> Marshall, Religious Freedom in the Wrld,15

examples imply that as a signatory of the Universal Declaration of Human Rights and African Charter on Human and Peoples' Rights as well as a democratic secular state the Tanzanian government should allow the Muslims to exercise their religious freedom by including kadhis' courts in the constitution.

In summary, the following points arise from the above examples: first a secular democratic system of a government needs to be understood as a positive thing because its main purpose is to show the extent of religious freedom of groups and individuals as well as to limit the authority of a government to establish a state church. Due to different interpretations of secular democracies countries have complete religious freedom, some have limited religious freedom, and others have no religious freedom. I argue that the Muslim demand for kadhis' courts and the reaction to this demand by non-Muslim participants and the government depict how the term secularism is understood by these groups.

In my view, the above examples have the following implications: first, a secular government is friendly and not hostile to religious communities. In this context, the Muslim demand for kadhis' courts is driven by this understanding of a secular government. The weakness of this understanding is its failure to understanding the limitation of religious freedom and authority of a state over religious communities. The Christian reaction to the Muslim demand implies the limit of religious freedom and the authority of a government over religions. The weakness of this position is that being a secular government means being hostile to religious communities. Second, a secular government can be either democratic or non-democratic. Well established democratic states give complete religious freedom to their citizens, including funds for their religious institutions (though sometimes depends on the context and judicial

interpretation). As a democratic state Tanzania can fund the operation of kadhis' courts. Third, the existence of democracy and protection of human rights of Muslim women in some predominantly Islamic states such as Indonesia, Pakistan, Turkey prove wrong those who link the Muslim demand with violation of human rights. In his clarification of this matter, Alfred Stepan observes<sup>68</sup> that half of the World Muslims live in democracies, near democracies, or intermediate democracies. In Stepan's view those who associate Islam to violation of human rights they have a problem to equate Islam to Arab culture. Some of the issues raised by Christian participants leading factors for the Muslim demand are influences of Al Shabbab and Boko Haram, and other fundamentalist Islamic groups. In response to these views, Stepan says that the real problem is Islam and not such groups. Fourth, lack of democracy of the Orthodox churches implies that the Christian rejection of kadhis' courts might be a demonstration of lack of democracy among Christian groups. The same applies to tensions and conflicts among some Muslims due to this demand. Fifth, the decision of some states such as the United Kingdom that are predominantly Christian to fund church related projects implies Tanzanian Christians can also support the Muslim demand. I will discuss my points in detail in the next paragraphs.

### Religious freedom

The controversy of kadhis' courts raises the issue of religious freedom. Some Muslim participants say that kadhis' courts are a part of Muslim worship. Furthermore, kadhis' courts are religious institutions. Worship and religious institutions are some of the religious aspects protected by the Universal Declaration of Human Rights. According to Alfred Stepan,<sup>69</sup> there

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<sup>68</sup> Stepan, Religion, Democracy and the Twin Tolerations" *Journal of Democracy*, 48-53.

<sup>69</sup> Ibid, 39-52.

cannot be democracy without a democratic constitution. Democratic constitutions respect fundamental liberties and protect minority rights. In a democratic state all groups, including religious ones have the right to full participation in all activities provided that they do not violate the constitution. In Germany, Australia, Belgium, and the Netherlands, for instance, Christian political parties have been ruling in these countries besides their secular institutions. In a democratic country religious groups and individuals are to exercise their complete freedom to worship both privately and publicly (they do not violate the law). Despite their secular constitutions, five of the European Union's fifteen member states grant churches freedom of worship, including funds to support their projects. But some of these countries like France do not allow wearing of religious symbols and dress in schools. In contrast to those who see Islamic states as a threat to democracy, Stepan argues that democracy is evident in Indonesia, Pakistan, Bangladesh, and Turkey. The major obstacles to democracy in these countries are military and intelligence organizations. Paul A. Marshall<sup>70</sup> lists Botswana, Mali, Namibia, Senegal, South Africa, and Kenya as free countries, Cameroon, Tanzania, Chad, Comoros, Ethiopia, Nigeria, and Zimbabwe as partly free countries, and Mauritania, Eritrea, and Sudan as non-free countries. Tanzania is also in partly free category in terms of religious freedom. According to the International Religious Freedom Report for 2014,<sup>71</sup> religious freedom in Tanzania is threatened by some violent religious attacks targeting some religious leaders and the failure of the governments of Mainland Tanzania and Zanzibar to take serious actions against those who are

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<sup>70</sup> Marshall, *Religious Freedom in the World*, 2-3

<sup>71</sup> "International Religious Freedom Report for 2014", U. S. Department of State, accessed April 7, 2016, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>.

behind the religious violence. Examples of these countries prove wrong some of my participants who link the Muslim demand with some terrorist groups, Islamization of the country, eradication of Christians, corporal punishments, and the violation of human rights. Such a view is religious prejudice.

The controversy of kadhis' courts in Mainland Tanzania demands for the assessment of religious freedom and democracy in the country. It raises the question of whether the Tanzanian secular constitution is democratic or not. And if it is, to what extent? In a democratic country all groups enjoy freedom. According to chapter one, part one (1) of the constitution of the United Republic of Tanzania of 1977<sup>72</sup>, Tanzania is a democratic secular and socialist state. The lack of provisions in the constitution that allows the establishment of religious courts threatens religious freedom of some individuals and groups.

### Justice

Justice is central to the Muslim demand for kadhis' courts. According to Nicholas Wolterstorff,<sup>73</sup> the term "justice" (*iustitia*) was defined first by Ulpian, the third-century Roman jurist as "a steady and enduring will to render to each his or her *ius* (*suum ius cuique tribuere*)." Wolterstorff translates the Latin word *ius* as a right. Thus justice refers to rendering one his or her right or desert. Wolterstorff observes a distinction between rights (primary justice) and just

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<sup>72</sup> The Constitution of the United Republic of Tanzania," accessed April 2, 2016, [http://www.egov.go.tz/egov\\_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20\\_English%20Version\\_%202009.pdf](http://www.egov.go.tz/egov_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20_English%20Version_%202009.pdf).

<sup>73</sup> Nicholas Wolterstorff, *Justice in Love* (Grand Rapid, Michigan: William B. Eerdmans, 2011), 85.

deserts (collective justice). The primary justice is present in society when members of society can enjoy their rights. Wolterstorff<sup>74</sup> goes on to clarify that:

Rights are not some odd sort of entity that we possess and then enjoy or fail to enjoy. One possesses a right to something; and one enjoys some right when one enjoys, or is rendered, that to which one has right.... To have right to something is to stand in a certain kind of normative social relationship; sociality is built into the nature of rights. More specifically: having a right to something is always having it with respect to someone, having it against someone.

Rights are normative bonds between one to others and these bonds are already there (they are not generated). A right can also refer to treatment of one in a good manner. In Niebuhr's view justice is linked with conflicts. This view of justice is inadequate because humanity is to be treated justly in all situations.<sup>75</sup>

In Wolterstorff's view, rights are not in a vacuum. They are influenced by the community and affect the community. Our democratic communities can affect our rights either positively or negatively. There is a tension between our rights and society surrounding us. This tension is evident in the context of Mainland Tanzania. The Muslim demand is a demonstration of tension between the struggle for religious freedom and opposition against such struggle. The community is to protect the rights of individuals and groups.

According to Wolterstorff, justice in Christianity is grounded on the love command (love your neighbor as yourself) and the Golden Rule (Do to others as you would have them do to you). The agape (unconditional love) has the implication of caring about others. Thus love is care. There are three major rules of application for care: first, one's care about someone should

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<sup>74</sup> Ibid 86.

<sup>75</sup> Ibid, 90.

never be discouraged; second, one should care about him or herself; and third, one should never impose evil on someone.<sup>76</sup> Justice is also defined as fairness, equality, and equity.<sup>77</sup> Ron Sider<sup>78</sup> identifies four categories of justice: commutative justice (fairness in agreement and exchanges between private parties); retributive justice (appropriate punishment for the breach of law); procedural law (fair and just procedures and processes); and distributive justice (economic justice or equal distribution of resources).

Issues raised by the Muslim demand relevant to distributive justice include the Christian claim of Muslim dominance on political opportunities during the Kikwete's administration, the Muslim claim of Christian dominance on social, political, and economic opportunities since colonial era, and the operation of kadhis' courts with government funds. These issues have also implications for commutative justice.

The view that the government is in favor of one side at the expense of the other over this demand, and the complaint of some Muslims that the government is supportive of BAKWATA, , neglecting other Muslim groups through its divide and rule ideology, and religious prejudices raise the issue of commutative justice.

The abolition of kadhis' courts by the government in 1963 and the East African Muslim Welfare society, the 2014 government bill for the amendment to allow kadhis' courts, the 2005 CCM's promise for kadhis' courts, mistrust in the current offices of the national chief kadhi, the mufti, and BAKWATA, and the controversy over the appointment of the national chief kadhi

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<sup>76</sup> Wolterstorff, Justice in Love, 93-133,

<sup>77</sup> "Differing Definitions of Justice, 19998-2015," International Online Training Program on Intractable (Conflict Research Consortium, University of Colorado), [www.colorado.edu/conflict/peace/problem/defjust.htm](http://www.colorado.edu/conflict/peace/problem/defjust.htm).

<sup>78</sup> "4 Types of Justice,"2016, Faithful Politics Organization, [www.colorado.edu/conflict/peace/problem/defjust.htm](http://www.colorado.edu/conflict/peace/problem/defjust.htm).

and superiority between the chief kadhi and mufti, and Christian opposition to kadhis' courts raise the issue of procedural justice. These issues have also the implication for commutative justice. In Wolterstorff's definition of the term "justice", the Muslim controversy of kadhis' courts has the implication for human right. Besides most of these participants being Christians, they do not understand justice as an unconditional love and care for others. Wolterstorff's understanding of justice is useful in changing the view of these participants. Justice from a Christian perspective is grounded on our love for God and our neighbors. The unconditional love of Christ for sinful people through his sacrificial death on the cross is to be emulated by those who have trust in him.

### Muslim-Christian Relations

In addition to the government, the controversy of kadhis' courts is dominated by some Muslim and some Christian participants. While some Muslims pressurize for the implementation of this demand some Christians pressurize for its rejection. Muslims view Christians as beneficiaries of social, economic, political, and religious privileges, and a major obstacle for their demand for kadhis' courts. For Christian participants, the major purpose of Muslim demand is to eliminate Christian influence to introduce Islamic corporal punishments, to Islamize Tanzania, and to dominate social, political, economic, and religious opportunities.

Lawrence E. Y. Mbogoni<sup>79</sup> gives a historical background of the relationship between Muslims and Christians in Tanzania from the 1890s to the 1990s. In his introductory remarks, Mbogoni notes that the relationship between these two religions worldwide has been characterized by conflicts about salvation, religious beliefs accompanied by intolerance, and the claim of exclusive possession of ultimate truth. In its claim of exclusive nature, for instance, the

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<sup>79</sup> Mbogoni, *The Cross Versus The Crescent*, 2

Roman Catholic Church through the Vatican II announced that there was no salvation outside the church. Similarly, Muslims have been arguing that those who have no faith in Allah are accursed and their destiny is hell. What Mbogoni does not say is the role of Christian crusades during the middle Ages. Many Muslims lost their lives due to these military wars I should also clarify that those conflicts between these two religions are motivated by theological, political, economic, and social issues given that in Islam, Allah or God is Caesar (secular and sacred are inseparable). In the Tanzanian context Mbogoni<sup>80</sup> observes religious prejudice and intolerance among Muslims and Christians. Between the 1890s and 1990s, for example, Christians prejudiced against Muslims; the European rule favored Christians at the expense of Muslims; the church in Tanzania was linked with colonial structure; the Portuguese were hostile to Muslims and carried out crusades against Muslim coastal city states of Kilwa and Zanzibar (in 1622); Muslims and Christians clashed when Muslims fought against German and British regimes (in the nineteenth century); Christian and Islamic fundamentalism was characterized by polemical public lectures; the riot of Muslims at Mwembechai Mosque in Dar es Salaam over pork butcheries on February 13, 1998, and the *hijab* debate in 1993. The Mwembechai's riot resulted in deaths and arrests of some Muslims. Due to Muslim pressure for the *hijab*, the government approved the wearing of the *hijab* by Muslim students in 1995.

The relations between different religions are complex due to different factors such as doctrinal, social, political, and economic issues. One hand, Muslims and Christians are highly tolerant, live together, and cooperate in their daily activities. On other hand, there has been violence in some areas as follows: Kibiti Secondary School was closed in November 2012 following violent religious clashes between Christian and Muslim students; Immanuel

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<sup>80</sup> Mbogoni, *The Cross Versus The Crescent*, 2-3,153, 158, 171-185.

Josephat,<sup>81</sup> a fourteen-year-old Christian boy from Dar es Salaam, urinated on a Quran on October 12, 2012, to “prove” that it was not a sacred book. Muslims reacted to the act by Emmanuel by destroying seventeen church buildings in Dar es Salaam, Kigoma, and Zanzibar. Pastor Mathayo Kachira<sup>82</sup> of Geita Assemblies of God was beheaded on February 11, 2013 following religious clashes between Muslims and Christian youth over meat industry; Arumeru District Sheik Said Juma Makamba received tossed acid on May 22, 2013; in May 2013, Sheikh Mohamed Omary Said was the victim of a brutal attack; Arusha Region BAKWATA secretary Sheik Abdul Karimu suffered a bomb attack on October 24 2012: there was an acid attack on Sheik Fadhili Soroga on February 6, 2012; church officials<sup>83</sup> from Bukoba District on October 11, 2014 condemned the burning down of Buyekera Hill (two times), Rugambwa Church of Hofan Ministries, Living Water Church, Magoti International Assemblies of God, Kihwa Tanzania Assemblies of God, Ruhanga Tanzania Assemblies of God, Kakindo Pentecost Assemblies of God, Kasharu Tanzania Evangelical Assemblies of God, threats to and stone attacks on Christians while worshipping at Buyekera Pentecost Assemblies of God, stone attacks against Christians of Kibeta Tanzania Evangelical Assemblies of God, stone attack against Harvest Church, failed attempt to kill Bishop Sesso Lazaro while he was leading a service in a

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<sup>81</sup> Frank Aman and Bernard Lugongo, “Religious Tolerance in Tanzania: 122 Arrested Over Mbagala Riot, Burnings of Churches” accessed March 26, 2016, (<http://jabashadrack.blogspot.com/2012/10/religious-tolerance-in-tanzania-chaos.html>)

<sup>82</sup> Terdman Moshe “Slaughtering of Animals: A Borne of Contention Between Muslims and Christians in Tanzania,” accessed March 26, 2016, <http://muslimsinfrica.wordpress.com/2013/03/27/slaughtering-of-animals-a-bone-of-contention-between-muslims-and-christians-in-tanzania-dr-moshe-terdman/>

<sup>83</sup> Gillias Mpoki, “Tamko la Wakristo Bukoba Kuhusiana na Mauaji Pamoja na Uchomaji Wa Makanisa Tarehe 11/10/2014” accessed March 26, 2016, <http://mpokigwa.blogspot.com/> (<http://mpokigwa.blogspot.com/2014/10/tamko-la-wakristo-bukoba-kuhusiana-na.html>).

church, and the circumstance that led the death of Pastor Jackson of Kashabo Tanzania Assemblies of God.

Besides these challenges, according to the Afrobarometer,<sup>84</sup> Tanzania has high level of religious tolerance for ninety-six percent. In contrast, according to Paul A. Marshall Tanzania is one of the partly free African countries in regard to religious freedom. These differing findings on this matter are due to methods and sampling employed for data collection, time frame and geographical locations. Lissi Rasmussen<sup>85</sup> observes that the harmonious living between Christians and Muslims in Africa is due to multi-religious context, the commitment of Muslims and Christians to their African ethnic identity, and the tolerant nature of African traditional religions.

In my view, these interpretations of secularism, religious freedom, justice, and Christian-Muslim relations are vital in addressing the issues surrounding the debate of kadhis' courts. My first point is that the Muslim demand for kadhis' courts is convincing and needs a serious attention. Although a constitution is the fundamental law of any country it is dynamic and not static. In a democratic state a constitution can be amended to meet the needs of its people (individuals and groups). A democratic state respects the rights of majority and minority, groups and individuals. In Kenya and Uganda, for example, though Muslims are minority their

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<sup>84</sup> Afro-Barometer, Good neighbors? Africans express high levels of tolerance for many, but not for all, 2016, No 74 (March 26, 2016) accessed March 26, 2016, <http://afrobarometer.org/publications/tolerance-in-africa>.

<sup>85</sup> Lissi Rasmussen, *Christian-Muslim Relations in Africa: The Case of Northern Nigeria and Tanzania Compared* (London; New York: British Academic Press, 1993), 1.

constitutions have provisions for kadhis' courts. According to Pew Research Center,<sup>86</sup> the population of Christianity in Kenya is 84 percent compared 9.7 percent of Islam. Like Mainland Tanzania, Kenya and Uganda have secular governments. In a secular democratic government people have religious freedom. As noted above, there are religious political parties in some European countries, including Germany; some church related activities in Germany and the United Kingdom are funded by their respective governments. In democratic state religious communities and their respective governments are partners.

The inclusion of kadhis' courts raises the issue of justice. These courts are religious institutions and according to the Universal Declaration of Human Rights,<sup>87</sup> religious freedom is one of the fundamental human rights. Kadhis' courts were in existence prior and during the colonial rule and had legal recognition. The legal recognition of kadhis' courts in Zanzibar (which is part of Tanzania) makes the Muslim demand so convincing. Granting the right to one group in a country at the same time denying the same right to the other group of the same country is unfair. The operation of kadhis' courts with government funds is reasonable because secular states such as Germany, Denmark, and the United Kingdom that finance church related projects. More importantly, financial supports from the government for these institutions will increase their effectiveness. The government will also be able to monitor the operation of these courts. Thus address suspicion among some participants that Muslims have a hidden agenda for

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<sup>86</sup>Pew Research Center, 2016, accessed March 27, 2016, [http://www.globalreligiousfutures.org/countries/kenya#/?affiliations\\_religion\\_id=0&affiliations\\_year=2010&region\\_name=All%20Countries&restrictions\\_year=2013](http://www.globalreligiousfutures.org/countries/kenya#/?affiliations_religion_id=0&affiliations_year=2010&region_name=All%20Countries&restrictions_year=2013).

<sup>87</sup> Natan Lerner, *Religion and Human Rights: Religion, Beliefs, and International Human Rights* (Mary knoll, NY: Orbis Books, 2000), 12-14, 24, 46.

their demand. I do not have problem with the appointment of the chief kadhi by the President provided that all Muslim groups are involved in the whole process and the role of the President will be to announce the name of that person. The same applies to the official announcement of the establishment of these courts. The appointment of the national chief kadhi by the President will minimize divisions and conflicts among Muslims because the chief kadhi will be recognized by all Muslim groups. As a national spiritual leader the chief kadhi needs to be representative of Muslim groups.

My second point is that Muslims must unite if their demand is to succeed. Divisions among Muslims, the shortage of qualified kadhīs, violations of human rights in some countries in which kadhīs' courts are in operation are some of the challenges facing this demand. Based on my findings, Muslims are divided over the validity of kadhīs' courts in Mainland Tanzania; the chief kadhi and his appointment; mufti and BAKWATA; the superiority between the chief kadhi and mufti. Some Muslims-including Ahmadiyya Muslim Jama'at Tanzania are not interested in these courts; most Muslim organizations do not recognize the current office of the chief kadhi, mufti, and BAKWATA because in their view, these offices are government's puppets. Some Muslims believe that these offices were established by the government for its political interest and they do not represent the interest of most Muslims. According to the 2000 government research report on kadhīs' courts, the shortage of Muslims who are competent in Islamic law is one of the obstacles to this demand. The link of the violation of human rights to these courts is associated with Islamic corporal punishments in some Islamic states such as Sudan and Afghanistan. But this is religious prejudice because there are many Islamic states in which corporal punishments are not permissible. Divisions among some Muslims over this matter are due to complex issues such as different Islamic schools of thought, the government, and person

interest among some Muslims. In the next section I intend to wrestle with these issues and other issues raised by the participants in their attempt to either support or oppose kadhis' courts.

#### **4. 2 The Assessment of the Participants' Views in Light of the Study Objectives**

This assessment focuses on major issues relevant to the objectives of this research. These issues are raised by the participants in two categories: Muslim and non-Muslims.

##### **Muslim Participants' Views**

The Muslim demand for kadhis' courts is affirmed by most participants from this group. The failure of most participants to give detailed information about this awareness might be attributed by the nature of the question (closed question).

##### Causes and Effects of the Muslim Claim for Kadhis' Courts

The claim concerning injustices against Muslims is justified by Lawrence E. Y. Mbogoni.<sup>88</sup> According to his findings, in 1955 there were 656 public primary schools, 1,692 Christian primary schools, 28 Muslim primary schools, 104 public rural middle schools, 223 Christian rural middle schools, 10 public secondary schools, 16 Christian secondary schools, 11 public teacher-training centers, 23 Christian teacher-training centers, 7 public technical and medical schools, and 5 Christian technical and medical schools. In the mid-1950s Muslims had limited access to education compared to Christians. Unlike Muslims, Christians had access to both mission-funded schools and public schools. Muslims were forced to compete for fewer educational opportunities in the few public schools but such a competition favored Christians. Mzumbe Secondary School in Morogoro Region, for example in 1953, its teaching staff

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<sup>88</sup> Mbogoni, *The Cross Versus the Crescent*, 107-111, 118-19, 144-45, 152.

consisted of six Christians and one Muslims, the school has a total of 29 students, 14 students were Muslims and the rest were Christians. At present, fifty percent of the learning institutions and medical centers are owned by Christians. In line with Mbogoni, J. N. K. Mugambi<sup>89</sup> notes that the exclusion of Muslims from these schools resulted in denial to political and economic opportunities to them, given that the vision of these learning institutions was to prepare new converts for employment in secular sectors. Mugambi's argument holds water because prominent African leaders such as Julius Kambarage Nyerere (Tanzania), Jomo Kenyatta (Kenya), Nelson Mandela (South Africa), and Kwame Nkrumah (Ghana) are products of these Christian schools. Here I disagree with Ntagazwa, who argues that this injustice was addressed by Nyerere through his policy of nationalization of these schools. While Nyerere's policy is commendable, the exclusion of the Muslims from these schools has negative impact on their lives today. Furthermore, this policy was withdrawn during the 1990s. While Christian schools were both established and funded by Western missionaries, Muslim schools were built and funded by local Muslims. Mbogoni<sup>90</sup> observes that though Christian teachers did not coerce non-Christian students to convert to Christianity, their Christian lifestyle and social superiority had a significant influence on such students. Mbogoni agrees with Ntagazwa that Muslims are also to blame for denying themselves formal education due to their preference of Qur'anic schools that were hostile to secular education. Additionally, social services, including secular education, are not a priority for African Muslims. Mbogoni's generalization does not reflect the current situation in the Tanzanian context. In contrast to his findings, Tanzanian Muslims are currently investing in educational and medical services. Apart from providing educational and employment

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<sup>89</sup> J. N. K. Mugambi, *African Heritage and Contemporary Christianity* (Nairobi; Kenya: Longman Kenya, 1989), 44-45.

<sup>90</sup> Mbogoni, *The Cross Versus the Crescent*, 108-109, 144-45, 152.

opportunities for Muslims, these services attract non-Muslim Tanzanians to Islam. Aga Khan Tanzania<sup>91</sup> for example, has invested in rural economic development, education, early childhood, health, and civil society. Discrimination against Muslims from Christian schools is undeniably true. The denial of Muslims to social, political, educational, and economic opportunities have implication to distributive justice.

In its response to grievances of Muslims over social political and economic injustices against them, on December 6, 2012,<sup>92</sup> Tanzania Christian Forum argued that 90 percent of positions in the government under the Kikwete administration were held by the Muslims and 100 percent of positions in the revolutionary government of Zanzibar were also held by Muslims. The president, vice president, general inspector of police, chief justice, and chief director of Tanzania Intelligence and Security Services (TISS) were Muslims. Furthermore, two-thirds of the 2014 Constitutional Review members were Muslims. This report gives one side of a coin (political positions). My argument is that while Muslims enjoyed political opportunities during the first five years of president Kikwete, Christians have been enjoying more social, political, and economic opportunities than Muslims since the colonial era. Unlike other professions, political positions are not sustainable careers in the Tanzanian context. Some of political positions mentioned by Christian Forums are currently being held by Christians. Most importantly, the appointments to political positions are influenced by the constitutional and demographical issues. The constitution requires that the president and vice president should come from different parts of the United Republic of Tanzania (Zanzibar and Mainland

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<sup>91</sup> Aga Khna Development Networks, 2007, accessed March 26, 2016, [http://www.akdn.org/publications/2014\\_akf\\_tanzania\\_country\\_summary.pdf](http://www.akdn.org/publications/2014_akf_tanzania_country_summary.pdf).

<sup>92</sup> Tanzania Christian Forum. 2012. *Mkutano Mkuu wa Nne wa Jukwaa la Kikristo Tanzania* (The Fourth General Meeting of Tanzania Christian Forum), official statement, Dar es Salaam, Tanzania, December 6, 2012, p. 3.

Tanzania). Similarly, the constitution requires geographical balance (Mainland Tanzania and Zanzibar) for appointments of the cabinet and other positions in the government. Unlike Mainland Tanzania, Zanzibar has representatives in the National Assembly. Moreover, unlike Mainland Tanzania, the high Muslim population in Zanzibar (98 percent) favors Muslims for political opportunities. Most importantly, the constitution gives the President jurisdiction to appoint anyone he wants for any position. A democratic constitution is vital here if people are to enjoy their rights. The Muslim pressure forced Kikwete to appoint many Muslim to various positions. I commend Kikwete because his decision minimized the Muslim pressure. I argue that any democratic government needs to empower its minority groups. Christian Forum raises distributive justice that raises another question: who deserves justice between Muslims and Christians? Tanzania Christian Forum is also right to raise this distributive justice. The issue raises other issues of constitutionalism, secularism, and Muslim-Christian relations.

According to the 2000 Parliamentary Subcommittee on kadhis' courts, the new government under Nyerere opted to abolish kadhis' courts, including customary courts, by adopting the unified judicial system to foster the unity of the new nation.<sup>93</sup> This decision was a reaction to the British judicial system that created religious, social, and ethnic divisions among Tanzanians.<sup>94</sup> I am supportive of the Nyerere's government in promoting the unity, justice, and peace in the country through this new judicial system. The peace and unity of the country that both Muslims and non-Muslims enjoy today are the fruit of this unified judicial system. But I

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<sup>93</sup> United Republic of Tanzania. 2000. *Taarifa ya Kamati ndogo ya Bunge juu ya Uanzishwaji wa Mhakama/Taasisi ya Kadhi Tanzania Bara* (A Parliamentary Subcommittee on the Establishment of the Kadhi' Court in Mainland Tanzania), Report, Dodoma, Tanzania, July 2000.

<sup>94</sup> Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar*, 243.

am not convinced by the decision to abolish kadhis' courts and the East African Muslim Welfare Society. The engagement of the East African Muslim Welfare Society (EAMWS) in politics, its partnership with Muslims in the Middle East, its influence in society, and its extreme views among its members led to its abolition by the Nyerere's administration in 1965. Furthermore, BAKWATA was formed by a separate group of EAMWS with Nyerere administration's support the same year to replace the EAMWS.<sup>95</sup> In this context, Muslims are right to demand for their kadhis' courts as well as for the EAMWS. British colonial judicial system and not kadhis' courts divided Tanzanians along their political, ethnic, social, and religious lines. Regarding the EAMWS, individuals who created suspicious situation were to be dealt with rather than abolishing this institution. Most importantly, the abolition of these religious institutions violated religious freedom of Muslims. The action demonstrates how a secular government was understood by the Nyerere's administration. Muslims did not enjoy their religious complete democracy. Muslims are also to blame for divisions among themselves.

In his reaction to the 2008 official statement of Tanzania Christian Forum against the establishment of kadhis' courts, Saffari<sup>96</sup> cites section 19 of the Tanzanian constitution to justify freedom of worship as one of the human rights. This right is protected by the Charter of the United Nations (1945) and in its Universal Declaration of Human Rights (1948) section 18 as well as by the International Covenant on Civil and Political Rights, European Convention of Human Rights (1950), American Convention on Human Rights (1969), and section 8 of the African Charter on Human and Peoples' Rights. In his view, Saffari argues that the right to

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<sup>95</sup> Mbogoni, *The Cross Versus the Crescent*, 132-136.

<sup>96</sup> Saffari, *Kadhia ya Maaskofu na Mahakama ya Kadhi* (The Problem of Bishops on Kadhis' Courts), (paper, Dar es Salaam, 2008).

worship is given a more practical meaning by section 18 of the Universal Declaration of Human Rights than by section 19 of the Tanzanian constitution. Kadhis' courts will fulfill this right by dealing with marriage and inheritance among the Muslims. Section 18 (2) of the Magistrates Courts Act of 1984 recognizes the use of Islamic law in inheritance. In contrast to the Christian statement on the establishment of kadhis' courts, Saffari clarifies that these courts were in operation before independence and that they were abolished by the Magistrates Courts Act in 1963. Unlike Tanzanian Christians, the British respected these courts. According to Saffari, the establishment of these courts does not violate section 19 (2 and 3) of the constitution because of section 19 (1 and 2). In his attempt to address fears among Christians over the possibility of kadhis' courts as a violation of violate the constitution, Saffari defends his proposal by appealing to the government to finance these courts. He then clarifies that all courts in the world have three functions; to interpret law, to give direction on controversial issues, and to issue judgments. The role of the government is twofold: to provide necessary facilities for these courts and to reinforce their rulings and to finance them. The government must finance these courts because it is its role to. Other governments in which kadhis' courts are operative finance them; these courts will reduce the burden on civil courts by dealing with divorce, inheritance, and marriage; courts for land dispute settlements and labor and commerce are financed by the government, and kadhis' courts must be regulated by the government in order to maintain their effectiveness. Saffari concludes his argument by appealing to the government to implement kadhis' courts as soon as possible. According to him the right of a Muslim does not depend on the approval of a Christian.

In support to Saffari's arguments, Nataan Lerner<sup>97</sup> cites Krishnaswami to clarify that the right to freedom of worship or religious freedom as explained by the Universal Declaration of Human Rights refers to protection of religion; its teaching, practice, worship, and observance. The right to worship means equal protection of all forms of worship, places of worship, and required objects for the performance of rites. Other aspects of this right cover pilgrimages to sacred places, marriage and burial rites, spread of religion, training of religious personnel, and exemption from any form of practices contrary to religious convictions. Similarly, the United Nations Declaration on Intolerance and Discrimination protects freedom of worship or assembly; the freedom to establish and maintain humanitarian organizations; the freedom to make and use articles and materials related to religious rites, customs, and belief; freedom of writing and publication; freedom to teach religion in appropriate places, freedom to raise money and receive financial support from voluntary individuals and organizations; freedom to communicate with individuals and communities on religious matters at both national and international levels. The freedom of a religion is also guaranteed by the African Charter on Human and Peoples' Rights, articles 8 and 9. But this charter is criticized for its failure to contain any specific provision on change of religion. Saffari defends kadhis' courts from a democratic secular government's perspective but as Lerner<sup>98</sup> points out some of the rights to religious freedom "are tied to the constitutional system of the country and affected by the nature of the relationship between religion and state in the country.

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<sup>97</sup> Natan Lerner, *Religion and Human Rights: Religion, Beliefs, and International Human Rights*, 12-14, 24, 46.

<sup>98</sup> *Ibid*, 24.

Saffari contradicts himself by commending the British colonial regime for respecting kadhis' courts while at the same time accusing its elements in the current civil courts. My argument is that kadhis' courts were maintained by British rule for its political and economic interests. The contradictory statement from Saffari is also evident in the government's involvement in the Muslim claim. While in his paper *Kadhia ya Maaskofu na Mahakama ya Kadhi* Saffari prohibits the involvement of the state in kadhis' courts, in *Kuanzishwa Mahakama ya Kadhi Tanzania* (The Establishment of Kadhis' Court in Tanzania) he says that that the government must regulate these courts for their effectiveness. Accordingly, he, representatives of the Supreme Council of Muslim organizations and institutions, and Mammry all demand the official inclusion of these courts in the constitution, their financial sustainability from the government, appointment of the chief kadhi by the president and official announcement of the establishment of these courts by the president. Besides these contradictions I agree with Saffari about the need for the government to regulate these courts. Such limited involvement of the government in the operation of these courts is vital in insuring that they operate with accordance to the constitution.

Abdullah Ahmed An-A'im observes that freedom of worship can only be realized fully by a Muslim in a secular government where the government does not involve itself in *shari'a*:

By its nature and purpose *Shari'a* can only be freely observed by believers; its principles lose their religious authority and value when enforced by the state. From this fundamental religious perspective, the state must not be allowed to claim the authority of implementing *Shari'a* as such. Muslims everywhere, whether minorities or majorities, are bound to observe *Shari'a* as a matter of religious obligation. And that this can best be achieved when the state is neutral regarding all religious doctrines.<sup>99</sup>

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<sup>99</sup> Abdullah Ahmed An-Na'am, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge, Massachusetts: Harvard University Press, 2008), 1, 3-4.

An-A'im is not against the Muslim demand for kadhis' courts. Rather, he is in agreement with Saffari by advocating a democratic secular government that respects religious freedom of Muslims. In An-A'im's view, Muslims who are against a democratic secular state belong to what Bassam Tibi<sup>100</sup> calls "Islamism" (fake Islam) and not Islam (authentic Islam). According to Malise Ruthven,<sup>101</sup> Islamism is characterized by Islamic fundamentalism and political ideology.

**The Distinctiveness of Kadhis' Courts and the Irrelevance of the Current Civil Courts, Obedience to Allah and His Prophet Muhammad, Legal Recognition of Land Dispute Settlements, Labor and Commercial Courts.**

According to the participants, in contrast to civil courts, the rulings of kadhis' courts are fair. In the view of these participants, the distinctiveness of kadhis' courts implies prohibition for a Muslim to raise issues related to marriage, divorce, inheritance, and child guardianship in civil courts. The supreme authority of a kadhi is attested by Muslim students from Kigoma who say that kadhis' courts will force rich Muslims to give their money to the poor. This argument is also supported by the 2000 Parliament research report. According to this report,<sup>102</sup> unlike the mufti and imam, a kadhi possesses a *mulzimun* (the authority to force a decision). His or her ruling cannot be challenged by any authority. In her support for the absolute authority of a kadhi, Nimis<sup>103</sup> points out that a kadhi has authority over the government and his or her ruling must be

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<sup>100</sup> Bassam Tibi, *Islamism and Islam* (New Haven: Yale University Press, 2012), 1-6.

<sup>101</sup> Malise Ruthven, *Islam: a Very Short Introduction* (New York: Oxford University Press, 2012), 26.

<sup>102</sup> United Republic of Tanzania. 2000. *Taarifa ya Kamati ndogo ya Bunge juu ya Uanzishwaji wa Mahakama/Taasisi ya Kadhi Tanzania Bara, document, 15.*

<sup>103</sup> Nimis, interview by the researcher, University of the South, USA, and November 16, 2015.

enforced by a state. Asked why some kadhis seem not to possess such an absolute authority, Nimis responds that those ones are muftis and not kadhis. Nimis concludes that, given such an absolute jurisdiction of a kadhi, kadhis' courts are applicable to Islamic states. I must clarify that the Muslim demand for kadhis' courts does not include kadhis whose jurisdiction is over the government. Given that all religions have their distinctive features that represent their identities, the uniqueness of Islam is not a substantial justification for the Muslim demand. Christians, for example, are prohibited from presenting their concerns in civil courts (see 1 Cor 6:1). To me religious freedom and justice is the substantial justification for this demand. The Muslims are uncomfortable with the Tanzanian civil courts because of their Christian, English, and Indian elements. This argument finds support from the 2000 Tanzania Parliament subcommittee research report. According to this report, the doctrine of precedent or *stare decisis*, dependence of the rulings of these courts on foreign authorities, and the use of the books of law written in English and Indian languages are against Islamic faith. Most of the Western orientalist scholars whose ideas are used in civil courts are against Islamic courts. Furthermore, the majority of Indian Muslims are Shiites, thus using their ideas in the Tanzanian civil courts where the majority of Muslims are Sunnis is unfair. These courts are also criticized for the use of disrespectful language to both Muslims and Islam by some judges. Most importantly, a Muslim is prohibited from raising issues of marriage, divorce, and inheritance in a civil court.<sup>104</sup> The Christian influence on these courts is related to the British colonial rule that was predominantly Christian, and Christian dominance is evident in these civil courts.

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<sup>104</sup> Tanzania Government. 2000. *Taarifa ya Kamati ndogo ya Bunge juu ya Uanzishwaji wa Mahakama/Taasisi ya Kadhi Tanzania Bara*, 43-47.

I am convinced by these arguments in terms of their probity and I should clarify in the following points. First, such elements as are against Islamic faith are some of the consequences of colonialism. Second, all Tanzanians still suffer the negative impact of colonialism. It affected negatively their cultures, religions, politics, philosophy, thinking, economy, and world views. The slave trade, for example: both Muslim and non-Muslims were victims of this brutality. English elements are evident in the Tanzanian educational system and in Christian liturgical books. Third, kadhis' courts might not be a lasting solution to these issues. What if a Muslim is sued by a non-Muslim in a civil court on an issue related to marriage, divorce, or inheritance? Or what about a Muslim who is married to a non-Muslim? Civil courts have legal jurisdiction to summon anyone regardless of his or her faith. Fourth, the current constitution allows Muslims to address the issues of marriage, divorce, and inheritance by using their courts provided that such courts do not violate the existing laws, fifth, civil courts operate in accordance with the constitution and not Christian influence or dominance. Tanzanians are employed in these courts and other government sectors because of their academic and professional qualifications and not their religions. There are two major factors accounting for the presence of many Christians in both government and non-governmental factors: first secular education has been one of the priorities of Christians since the colonial era. Second, Christians are a majority of the population in the country. My argument is that people should not be discriminated against because of their minority status. The use of abusive language in civil courts is prohibited by the law. According to the constitution, all people are equal before the law. The constitution protects the dignity of all people. Thus judges who use derogatory language should be accountable for their actions. Here I must clarify that, like other human-led institutions, civil courts have both positive and negative elements. The problem is human tendency not civil courts. The serious universal problem of

humanity is sin. While the idea of addressing these challenges by the establishment of kadhis' courts sounds good I would propose the need for Muslims to have more representation in civil courts. The disapproval of civil courts by Muslims may also imply inefficiencies of these courts due to complex issues. Abusive languages used by some magistrates and judges (as raised in the 2000 government report), and English, Indian, and Christian elements in these courts raise issues of fairness and human rights. Moreover, the argument that civil courts are irrelevant to Muslims has the implication of procedural justice.

In their response to this controversy representatives of Ahmadiyya Muslim Jamatt Tanzania and Ntagazwa oppose the Muslim demand by saying that the authority of the people of God depends on their trust in God and not in anything else. God is the source of everything. People of faith should strive to be recognized by their God and not by this world. I do concur with these participants given that our total commitment to God must be manifested in our trust in him for everything. I disagree with them because trusting in God does not mean embracing injustice. Justice is one of the attributes of God and the Old Testament's prophets like Amos and Nehemiah emphasized the need for their contemporaries to treat each other justly. Furthermore, from a Christian understanding, doing justice to others is a manifestation of our trust in God. Justice is about our conditional love for others and cares about their needs. Christians are to demonstrate their genuine trust in God by extending their conditional love to Muslims as well as by supporting them in their struggle for attributive and procedural justice. What the Muslim participants do not clarify is how government funds for these courts will benefit all Muslim groups, including women and those Muslims who belong to Shia. According to the Muslim participants, only male Muslims who belong to Sunni will work in these courts as kadhis. Gender inequity is another challenge here. Commenting on the exclusion of female Muslims from the

office of kadhi, Nimis<sup>105</sup> argues that what matters in this office is qualifications, and not sex. She says that in Egypt, for instance, some female Muslims work as kadhis.

It is undeniable that the legal recognition of land dispute settlements, labor and commercial courts are financed by the government but, unlike kadhis' courts these courts have no religious affiliations, and they serve all Tanzanians regardless of their religious backgrounds. I agree with a view that the establishment of kadhis' courts will address the current volume of cases of inheritance, divorce, and marriage in civil courts due to spiritual dimension of these courts. In addition, Muslims and other faith communities can reduce this burden on civil courts by changing their ethical behavior. Religions have a critical role in transforming society if their religious freedom is protected. Religions are the most respected institutions in Mainland Tanzania due to their holistic nature. But, in this context the religious freedom of Muslim is being threatened by religious prejudices surrounding the demand for kadhis' courts.

### **The Lack of Legal Recognition of the Current Office of the Chief Kadhi and Mistrust in the Current National Muslim Leadership and BAKWATA.**

While the lack of legal recognition of the current office of the national chief kadhi is undeniable, Muslims have to deal with their internal issues such as mistrust, conflicts, divisions and the allegation of corruption of BAKWATA and the office of the national chief kadhi. These internal issues are to be dealt with by Muslims themselves and should not be imposed on non-Muslims. I am aware of how difficult it is to address such challenges given that there are

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<sup>105</sup> Nimis, interview by the researcher, University of the South Sewanee, Tennessee, USA, November 16, 2015.

complex factors leading to the issues facing Muslims today. But my idea is that for Muslims to be successful in this demand they must unite.

**The Prevalence of immorality in Society, a Desire to Spread Islam, Legal Existence of Kadhis' Courts in some Western Countries, and a Desire to Advance Unity among Muslims and Developments in the Country.**

According to these participants, the prevalence of immorality in Tanzania is manifested in corruption, theft, prostitution, indecent clothes, lies, and street children. The term “society” is used by these participants to refer to both Muslims and non-Muslims. Indecent clothes refer to clothes that show some body parts of women; such clothes attract men to have illicit sexual intercourse with women. A *hijab* is proposed by these participants as respectful clothing for a devout female Muslim. Immorality is viewed by these participants as serious threat not only to a wider society but also to Islamic ethical, doctrinal, traditional, and cultural values. Every committed Muslim must defend these values against immorality. To defend these values is to defend Islam and those who defend Islam will be rewarded by Allah. Defending these values will also encourage social, political, economic, and religious prosperity of the country. In their opinions, these participants see Islamic corporal punishments as appropriate measures to address immorality.

I agree with these participants about immorality as one of the serious contemporary issues affecting the country and about the urgent need to address it. Corruption, for instance, is said to be one of the major factors for extreme poverty among Tanzanians. According to

Transparency International 2015 report on perceived levels of corruption,<sup>106</sup>Tanzania is ranked 117 out of 168 countries and its score is 25. I disagree with the view of these participants about the issues of clothes, implications of their understanding of society, and proposed measures to deal with immorality. The inclusion of non-Muslims in the issue of immorality by Muslim students from Malagarasi and Kibondo secondary schools implies the extension of kadhis' courts to them. According to these participants, corporal punishments would help Christian and Muslim women to behave in good manner. Such an action is against the constitution that protects religious freedom of individuals. The same applies to clothes. Individuals have freedom to choose what to wear provided that such freedom does not violate the law. To avoid the violation of human rights, there must be the law that protects the religious freedom of Muslims and the rights of non-Muslims. The dignity of women is undermined by treating them as sexual objects that are a major cause of illicit sexual intercourse. These views also generalize men as weak sexual beings. The extension of kadhis' courts to criminal matters and the use of severe punishments violate the constitution and human rights. The constitution gives jurisdiction on criminal matters to civil courts only. Human rights are violated by Islamic brutal punishments of cutting off hands, slashing, and stoning to death for those who are found guilty by kadhis' courts. Extension of kadhis' courts to criminal matters and corporal punishments is rejected by the Muslim participants from Dar es Salaam. The argument that kadhis' courts will advance unity among Muslims and the social, political, economic, and religious prosperity of the country is true on one hand but also not. It is true because of the presence of peace and unity among some

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<sup>106</sup> Transparency International, 2015, "Corruption Perceptions Index 2015, accessed April 4, 2016", <http://www.transparency.org/cpi2015#downloads>.

countries in which kadhis' courts are operative such as Kenya, Zanzibar, and Uganda. Moreover, religion plays a key role in promoting peace and unity among people. It is not true because of the violation of human rights in some Islamic states in which kadhis' courts are operative. Some of these countries include Somalia, Sudan, Afghanistan, Northern Nigeria, and Egypt. The term "development" is also to be understood broadly. It includes distributive, procedural, retributive, and commutative justice. To me, justice is the major criterion of human development. A society cannot claim to be prosperous while some of its members are being discriminated against because of their gender or religion or stoned to death or slashed or dismembered in the name of a religion. Matthew Lippman, Sean McConville, and Mordechai Yerushalmi<sup>107</sup> discuss Islamic criminal law and punishment extensively. According to them, the chief purpose of Islamic criminal law is fourfold: protection of public safety against physical attacks, humiliation, and insult; family against sexual infidelity in marriage; property against theft and destruction; and state and religion against rebellion. Crimes under Islamic law include, adultery if attested by (four witnesses and) punishable by stoning to death for married people or 100 lashes for unmarried people; apostasy (two witnesses or confession), punishable by beheading for males or imprisonment until penitence for females; theft (two witnesses or confession), punishable by cutting off the hand at wrist for the first offense, cutting off second hand at wrist for second offence, amputation of foot at ankle or imprisonment until repentance for the third offense; sodomy (four witnesses or confession) punishable by death by sword, incineration, live burial, or being thrown from a high building and stoned to death.

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<sup>107</sup> Matthew Lippman, Sean McConville, and Mordechai Yerushalmi, *Islamic Criminal Law and Procedure: An Introduction* (New York: Praeger, 1988), 38, 42-44, 53, 60-61, 66-67.

Islamic criminal law includes respect for an individual, equality, protection, full protection of non-Muslims (*dhimmis*), conformity of judicial and governmental decisions to shari'a (those who are guilty must be informed about shari'a before they can be found guilty) and the accused is innocent until proven guilty.

According to Matthew Lippman, Sean McConville, and Mordechai Yerushalmi, the kadhi plays a key role in Islamic courts. He is appointed a state ruler and he must be a male (though the Hanafi School accepts female kadhīs); he must possess cognized academic qualifications, wisdom, knowledge of the past, religious piety, and knowledge of *shari'a*. More importantly, kadhi must be trustworthy. The kadhi protects the marginalized and weak. His ruling cannot be challenged, but an appeal may be sent to the state ruler. Lippman, McConville, and Yerushalmi discuss this matter in the context of an Islamic state.

Harris Zafar<sup>108</sup> wrestles with some issues raised by Lippman, McConville, and Yerushalmi. According to Zafar, absolute justice is the basis of *shari'a* in Islam. The term “justice” refers to fairness. Justice is taken seriously in cases of corporal punishment. The level of moral standards in society and unquestionable moral values of witnesses are taken into consideration prior to the implementation of punishment. Thus Islamic corporal punishment cannot be enforced in a moral society. Stoning to death for adultery is not justified by the Qur'an but by the *Hadith* and *Sunnah*. The Qur'an allows slashes for pre-marital and extra-marital relationships. Though cutting off a hand for theft is allowed in the Qur'an, this act alone cannot create a just society.

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<sup>108</sup> Harris Zafar, *Demystifying Islam: Tackling the Tough Questions* (Lanham: Rowan & Littlefield, 2014), 63, 70, 72-78.

The Muslims' reference to the United States of America, the United Kingdom, South Africa, Kenya, and Uganda to make a case for their demand is convincing. These participants raise a distributive justice to argue that if kadhis' courts are in operation in these countries that are pronominally Christian why not in Mainland Tanzania? Besides the context of Mainland Tanzania being different from these countries, justice as the fundamental right is universal. All people regardless of their geographical locations needs to be treated justly. Furthermore, religious freedom is guaranteed by the Universal Declaration of Human Rights. Article 7 of the first amendment of the U.S. constitution of December 15, 1791, for example, states that "Congress shall not make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of press, or of the right of people peaceably to assemble, and to petition the government for a redress of grievances."<sup>109</sup> This provision prohibits the establishment of a religion by the state and protects the religious freedom of individuals to exercise their own religious beliefs. In contrast to the Muslim claim, kadhis' courts in the U.S are neither included in the constitution nor financed by the government. These courts were established by U.S. Muslims and they are consulted in a voluntary basis. According to Nimis,<sup>110</sup> there are Muftis in the U.S. and not kadhis. These muftis do not possess qualifications in shari'a. Some Muslims consult them but others choose to go to civil courts.

Some Muslim participants, including Saffari and Mammry are silent on the rapid emergence of some Muslim fundamentalist groups who want to impose shari'a on both Muslim and non-Muslims. In the United Kingdom, for example, following the approval of the operation

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<sup>109</sup> Franklyn S. Haiman, *Religious Expression and American Constitution* (East Lansing; Michigan: Michigan State University Press, 2003), 11.

<sup>110</sup> . Nimis, interview by the researcher, University of the South, November 6, 2015.

of kadhis' courts among Muslims in this country some extreme Muslim groups have a wrong interpretation of shari'a want to impose Islamic law on people.<sup>111</sup> The Dar es Salaam Muslim participants address the matter indirectly by discouraging Islamic corporal punishments. I must clarify that there are both democratic and non-democratic states. Ingrid Mattson, a Muslim professor of Islamic studies at the University of Western Ontario, says that the application of kadhis' courts depends on complex issue: "the actual practice of the courts necessarily depends on the culture, constitution and history of the country--lots of variation here."<sup>112</sup>

According to the Muslim participants, hostility, divisions, and conflicts are the effects of the Muslim claim for kadhis' courts. These participants deny their liability for these actions. They instead attribute them to Christians. In addition, the chief kadhi argues that Islam is a religion of peace. This denial of accountability is not convincing because prior to this claim there was not negative impact. Conflicts over the Muslim demand are also evident among Muslims themselves. In my view some Muslims, Christians, and the government are accountable for the impact of this demand, but their accountability differs in degree. The government has contributed to this conflict more than either Muslims or Christians. It is blamed by most participants, including Ntagazwa, Saffari, Mammry, Mcheyo (the ruling party, CCM), Mketo (the opposition party, CUF), representatives of Kibondo Paralegal Unit, six members of the ruling party (CCM), and representatives of Bible Society of Tanzania<sup>113</sup>.

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<sup>111</sup> Akyol, *Islam without Extremes*, 2011,259.

<sup>112</sup> Ingrid Mattson, interview, by the researcher, University of Western Ontario, November 19, 2015.

<sup>113</sup> Ntagazwa, interviewed July 5, 2015; Safari, interviewed by the researcher, July 3, 2015; Mammry, interviewed July 2, 2015; Mcheyo, interviewed July 2, 2015; Shawanje, interviewed July 5, 2015, Kibondo Paralegal Unit, interviewed July 19, 2015; six representatives of CCM, interviewed July 25, 2015, and representatives of Bible Society of Tanzania, interviewed July 12, 2015.

### Should Kadhis' Courts Be Allowed?

Most participants support the implementation of kadhis' courts because of the factors raised by these participants for the claim of these courts (which I have already addressed). Few participants (Ahmadiyya Muslim Jamatt Tanzania and respondents from Kigoma) are against the establishment of these courts because of the constitution, the proposal to use government funds for these courts, the negative impact of these courts on the country, the irrelevance of the Muslim claim to contemporary society, and terrorist influences. As I have argued, the response to these questions is influenced by the participants' interpretations of constitutionalism, secularism, justice, among others. Even among participants who share common convictions they have different understandings over these issues.

### The Government's Response to the Muslim Claim

Muslims are divided on the government's role in handling this matter. Whereas some commend the government, others disapprove of its actions. But in their conclusion they unite in accusing Christians as a chief obstacle to their right. This controversy presents two interesting things: first, the government as a dividing factor among Muslims through its divide and rule ideology), and second, Christians as a uniting factor among Muslims (Christians are viewed by all Muslim groups as their major obstacle for their demand). These participants are also to blame for divisions and conflicts among themselves on this matter. The causes of these divisions are different Islamic philosophical schools and self-interest (who will benefit and who will not).

I agree with these participants in their attribution of the failure of the Muslim claim to politics and religious competition. I differ with them however, for their attribution of this failure to religious prejudice and their claim that Christians lack an understanding of the matter. The rejection of this claim has nothing to do with prejudice against Muslims. Christians do respond to

the demands raised by the Muslims for inclusion of the Islamic courts in the constitution, financial support from the government for these courts, and official announcement of the establishment of these courts by the government. Moreover, the Kigoma report shows that the Christian lack of understanding of some issues related to this claim is evident to both Muslim and non-Muslim participants.

By definition, politics is “a process by which a group of people govern themselves...Politics is an inevitable part of people living together. It exists in families, social groups, corporations... Without politics people would be completely on their own.”<sup>114</sup> Politics can also be abused and cause destruction to society. The CCM government’s support for the Muslim demand for kadhis’ court is political. The political dimension of this demand is proved by both its start and development. Based on the 2000 government research report, the Muslim claim was raised first by Agostino Mrema and Yussuf B. Ramia in the National Assembly in 1998.<sup>115</sup> The two wanted to sustain their political careers by pretending to be sympathetic to Muslims. Due to the political influence of Mrema on Muslims over this matter, the CCM included kadhis’ courts in its 2005 CCM manifesto. The fierce opposition, especially from the Christians forced withdrawal of this promise from the 2010 CCM manifesto. Following Kikwete’s slim win of 61% (compared with 80% in 2005<sup>116</sup>) in the 2010 general elections, the CCM government proposed the controversial bill in 2014. The political goal of this bill was to

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<sup>114</sup> Robert Weissberg, *Politics: A Handbook for Students* (San Diego: Harcourt Brace Jovanovich, 1985), 2.

<sup>115</sup> Tanzania Parliament, *Taarifa ya Kamati Ndogo ya Bunge ya Uanzishwaji wa Mahakama/ Taasisi ya Kadhi Tanzania Bara*” (Research Report on the Establishment of the Kadhis’ Courts in the Tanzania Mainland, Dar es Salaam and Zanzibar), July 13, 2000.

<sup>116</sup> “Election 2010 Results”, 2007, Tanzanian Affairs, accessed March 28, 2016, <https://www.tzaffairs.org/2011/01/election-2010-results/>.

win Muslim votes for the national referendum of the proposed constitution that was to be held in April 2015, and the general elections that were held in October 2015. As I have said in chapter one, this bill was a result of Muslim pressure for the kadhis' courts. The bill is criticized by Saffari<sup>117</sup> for its failure to comply with constitutional procedures on the establishment of kadhis' courts, identify qualifications of the chief kadhi, and to bear the cost for the operation of these courts. Saffari is also uncomfortable with the authority of the minister for constitutional affairs over these courts. The political motivation for this claim is also attested to by Mketu. . According to him, the pressure of kadhis' courts is stronger when the general elections approach. The relevance of the Muslim demand to the appointment of judges in Tanzania is addressed in chapter five. In brief, according to the current constitution of 1977 (chapter five, part III),<sup>118</sup> the chief justice and judges of the High Court are appointed by the President, and magistrates are appointed by the Judicial Service Commission. Similarly, Muslims want the chief kadhi be appointed by the President because in African culture, the appointment to a particular position by a higher authority symbolizes confidence, respect, recognition, and trust. The competition of Islam and Christianity stems from the fact that the two are missionary religions. Their existence depends on both quantitative and qualitative growth. Each of these two religions has its own approaches for the accomplishment of its mission. The right to spread one's faith is protected by the constitution. This religious competition for new converts between these religious communities has been characterized by public debates or *Mihadhara*; use of DVDs, newspapers, magazines, and other literature; local radio stations owned by these religions, open-air addresses; and door- to-door visits. Most public debates and open-air addresses result in chaos.

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<sup>117</sup> Saffari, *Kuanzishwa kwa Mahakama ya Kadhi* (the Establishment of the Kadhi' Court), paper, Dar es Salaam, 2014.

<sup>118</sup> "The Constitution of the United Republic of Tanzania", accessed April 3, 2016,

## The Muslim Claim for Kadhis' Courts and the Future of the Country

According to Saffari, the failure to address the Muslim claim for kadhis' courts will lead to religious revolutionary movements, and then Tanzania will be like Egypt and Algeria. Though the context of Tanzania mainland is different from that of Egypt and Algeria, Saffari's claim is not to be overlooked. Echoing my argument, Miroslav Volf points out that "without peace and justice between these two religious communities, there can be no meaningful peace....The future of this [country] depends on peace between Muslims and Christians."<sup>119</sup> Volf's remark excludes Muslim and non-Christian Tanzanians. Since the Muslim claim is a national issue, I must add that without justice between Muslims and non-Muslims there can be no authentic peace in Tanzania country. The future of Tanzania will be determined by how this claim is handled. The government is a key player in this matter. In his proposal on issues facing Muslim-Christian relations, Volf<sup>120</sup> suggests the need to embrace what Christians and Muslims share in common, namely: their belief in the oneness of God, and the commitment to love God and neighbor. In his view, these tenets are profound resources in which Christians and Muslims can build their peaceful relations. Volf is in agreement with Rebecca Kratz Mays. One of her proposed guidelines for dialogue is the need for parties participating in dialogue to have positive attitude. In the context of this study, love for God and neighbor is the basis for victory over the divisive issues of religious prejudices and mistrust affecting Muslim-Christian relations. Proposals on

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<sup>119</sup> Miroslav Volf, "A Common Word for Common Future," in *A Common Word: Muslims and Christians on Loving God and Neighbor*, ed. Miroslav Volf, Ghazi bin Muhammad and Melissa Yarrington (Grand Rapids: EERDMANS, 2010), 28.

<sup>120</sup> Ibid, 19.

## How the Muslim Claim Is to be Addressed

In their proposal these participants urge that Christians stop opposing the Muslim claim because the courts as civil courts favor them; they advocate national dialogue, admission of religious prejudice by the government, equal treatment for all Tanzanians, creation of a special commission to handle this matter, abolition of Christian dominance in governmental sectors, and implementation of kadhis' courts. I am supportive of the participants' proposal for dialogue. I should however, add that a meaningful dialogue must follow its guidelines provided by Rebecca Kratz Mays in the next paragraph.

According to Rebecca Kratz Mays<sup>121</sup>, effective dialogue must follow the following Ten Commandments (ten guidelines); 1. to learn and act accordingly; 2. a two-sided task; 3 honest and sincerity; 4. Comparison of one's ideas with others'; 5. Self-definition (each participant must define him or herself); 6. Positive attitude; 7. Equal participation; 8. Mutual trust; 9. Self-criticism; and 10. Experience of partner's religion from within (do not learn one's religion from your own religious point of view). The main purpose of dialogue is to learn, understand the reality of the matter and change. The Muslim demand is a call for Christians to learn and understand the reality of this matter and changes their views (when possible). Similarly, Christian opposition to the Muslim demand is an invitation for the Muslim to learn and understand issues raised by Christians. Both parties must participate fully in this matter. This demand should be dealt with objectively. Religious prejudices and extremist views have no place. Dialogue is not about competition but mutual conversations. Muslims and Christians must be honest and sincere about this demand, Mutual trust in dialogue is vital in addressing issues of mistrust and suspicion surrounding the Muslim demand. If we are to do justice, the Muslim

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<sup>121</sup> Rebecca Kratz Mays, *Interfaith Dialogue at the Grass Roots* (PA: Ecumenical Press, 2011), 20-23.

demand needs to be understood from a Muslim perspective. Dialogue is the best way to address the Muslim demand given that like other Africans, Tanzanians deal with issues affecting them by meeting together and discussing them. Equal participation in dialogue reflects Wolterstorff understands of justice as fairness, and the right. I must however, admit that dialogue about the Muslim demand in the Tanzanian context is complicated due to complex issues surrounding it such as politicians, the government, divisions among Muslims, and issues of attributive and procedural justice.

### **Non-Muslims' Views.**

Most participants from this group are aware of the Muslim claim for the kadhis' courts. Like the Muslim participants, these respondents do not give detailed information to prove their awareness on this matter.

### Causes and Effects of the Muslim Claim for the Kadhis' Courts

Most participants in this group are against the issues raised by Muslims to support the demand for kadhis' courts. Their interpretations of a secular government, their negative understanding of Muslim demand, and the current unhealthy relationship between Muslims and Christians might have affected their disapproval of kadhis' courts.

### **The Islamization of the Country Influences of Some Terrorist Groups and Some Islamic Countries, Revenge Against Christians and Eradication of Them.**

The Islamization of the country, accompanied by oppression, revenge, and eradication of Christians, is not included in the Muslim demand for kadhis' courts. But the desire for Muslim dominance over Christians and the raising of other injustices linked to Christians have negative implications. The chief kadhi, for example, argues that Christians should stop from opposing Muslims demand because civil courts favor them. Similarly, Mammry argues that Christians do

not want Muslims to live in this country. This negativity might result in revenge. The Muslim plan to Islamize the world is also raised by Herry Mgombele<sup>122</sup> and Kenyan Christians.<sup>123</sup>

The term ‘Islamization’ is defined by Nissim Rejwan<sup>124</sup> as referring to a revival of one’s awareness toward acknowledgment of God as his or her creator. This awareness implies accountability before God. The methods of Islamization differ depending on different schools of Muslim thought. Rejwan uses this definition to avoid the common understanding of this term, which tends to focus on the process of converting people to Islam. Based on the participants’ understanding, Islamization is a negative thing. This understanding does not contradict Rejwan’s definition of the matter. It rather implies different interpretations of the term by the Islamic schools of thought. Although Stig Jarle Hansen<sup>125</sup> notes Islamic *shari’a* courts playing a significant role in the development of the Al Shabaab terrorist group in Somalia, some participants’ views to link the Muslim demand with Al Shabaab and Boko Haram are not convincing. None of the Muslim participants supports these terrorist groups in these two reports. Moreover, the similarity between the Muslim demand and characteristics of such terrorist groups does not necessarily imply the influence of these groups on the Tanzanian Muslim demand.

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<sup>122</sup> Hery Mgombele, “The Challenge of Imposition of Islamic Laws in the Pluralistic Society and the Awareness of Christian Council of Tanzania,” BA thesis, Theofilo Kisanji University, 2012, no page numbers

<sup>123</sup> Abdulkader Tayob, “Kadhis’ Courts in Kenya’s Constitutional Review (1998-2010): A Changing approach to Politics and State among Kenyan Muslim Leaders,” *Islamic Africa*, 4, (Spring 2013); pp. 103-124, accessed September 22, 2015, <http://www.jstor.org/stable/42636214>

<sup>124</sup> Rejwan, *The Many Faces of Islam*, 55.

<sup>125</sup> Stig Jarle Hansen, *Al-Shabaab in Somalia: The History and Ideology of a Militant Islamist Group, 2005-2012* (Oxford: Oxford University Press, 2013), 22-23.

These terrorist groups have other features that differentiate them from the Muslim demand. I must also clarify that members of these terrorist groups are from different religions.

Participants' prejudices against Muslims are influenced by their current unhealthy relationships with Muslims as well as their understanding of a secular government. In contrast to their views like in other countries Islamic states have both democratic and non-democratic governments. The negative views toward Muslims imply that Muslims are denied their rights because of their religion. This is religious prejudice. Nicholas Wolterstorff's theology of justice offers a solution to this dilemma. Wolterstorff<sup>126</sup> understands justice as the enjoyment of human rights and each individual or group has its own rights to be enjoyed. In his view, justice is essential for peace. In other words, without justice there is no authentic peace. Peace is a fruit of justice must be manifested in relationships. According to Wolterstorff, relationships are the highest of enjoyment of peace. Peace is about the right harmonious relationships to God and delight in his service; the right harmonious relationship to human beings and delight in human society or community. Wolterstorff discusses justice from a religious perspective and his understanding of justice is very relevant to this context. Christians and Muslims need to value their relationships if they are to experience the highest of enjoyment of peace. The protection of their religious rights is a key for this peace. Muslims demand their religious right and their demand does not violate the religious rights of Christians.

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<sup>126</sup> Nicholas Wolterstorff, *Until Justice and Peace Embrace: The Kuyper Lectures for 1981* delivered at the Free University of Amsterdam (Michigan: W. B. Eerdmans, 1983), 70-72.

## **Lack of Trust in God and Current Muslim Leadership, Poor Leadership of the Current Government, and Self-Interest.**

The association of the Muslim demand with the lack of trust in God is not convincing because Muslims are demanding their right. The same applies to a view that the Muslim demand is motivated by distrust in current Muslim leadership because even the current Muslim leadership is in favor of this demand. Besides its weaknesses, the government's decision to conduct a research on this demand, to present it at the National Assembly for a discussion, to allow Tanzanians to give their views on the matter during the 2014 constitutional review referendum, and to approve the operation of the office of the chief kadhi in 2012 is commendable. But the government is criticized for its failure to show its clear position over the matter for its political interest. The government's approaches in dealing with the Muslim claim depict a leadership crisis. In my opinion, self-interest on this matter is evident among Muslims, Christians, and the government. The debate of kadhis' courts is dominated by these three groups as if they alone were owners of the country. Other Tanzanian groups such as traditionalists, Bahias, and Hindus are neglected in this national issue. The Muslims have religious, social, and economic interest in this matter. The government is experiencing political interest. Christians are against the Muslim demand because of its negative impact on their religious, social, political, and economic interests. The unwillingness of any one of these groups to let go its interest makes this matter more complicated.

## **Homosexuality, Religion, Politics, and Lack of Understanding of the Constitution**

The argument that Muslims want Islamic courts to encourage homosexuality does not do justice to them. The Tanzanian Muslims' position on this matter is clear and there is no any Muslim who has been linked to this issue. Religious bias, prejudice, and competition is

mentioned by both Muslim and non-Muslim participants. Shaweji Mketo (CUF) and Kibondo Paralegal Unit shed light on this issue. According to Mketo the opposition party (CHADEMA) was stronger than the ruling party (CCM) in the 2010 general elections because of Christian support. In line with Mcheyo's statement, Kibondo Paralegal Unit argues that Christians are instructed by their leaders not to vote for any Muslim candidate for the 2015 general elections. Based on these two examples, religious bias is accompanied by prejudice. In my view, the current government plays a key role in encouraging religious prejudice. My argument is supported by the involvement of the government in the debate and by the official statements from both Muslims and Christians on this issue. The Christians in particular accuse the government of favoritism towards Muslims at their expense. Yet the government seems to cooperate well with Muslims compared to Christians. This cooperation is demonstrated by some Muslim participants who commend the government's actions on the Muslim claim while at the same time accusing Christians of opposition to the government's move. Religious bias is against the constitution which gives equal treatment to all religions and guarantees equal treatment to all Tanzanians regardless of their faith affiliations.

The claim that a lack of understanding of the constitution is one of the factors for the Muslim demand has both strengths and weaknesses. The claim is true given the fact that the majority of Tanzanians who live in rural areas have no access to the constitution. Illiteracy, ignorance and poverty deny them this vital document. Furthermore, the way these participants react to this controversy demonstrates their shallow understanding of the constitution. The claim is not true because most proponents of kadhis' courts are competent lawyers. Saffari and Mammry, for example, are private lawyers and attorneys of the high court.

## **The Creation of Employments for Muslims and Plan to Encourage Unity Among Muslims**

The link of employment to the Muslim claim is raised by many Christian participants. The Muslim claim for financial support from the government for the operation of kadhis' courts and scholarships for Islamic judicial study might imply the creation of employment among Muslims. My view is supported by Mammry, Saffari, the national chief kadhi, and representatives of Supreme Council of Muslim institutions and organizations who clarify that government funds will cover the cost for the operation of kadhis' courts and Islamic legal study.

As I have said, this demand is not something new. Many states that have secular governments such as England and Germany finance their religious institutions' projects. This claim should also not be linked to poverty. The majority of the proponents of this idea have reliable jobs that pay well.

According to some of the participants, Muslims want kadhis' courts to encourage unity among themselves and to enable them to help Palestinians. This issue is also raised by some Muslim participants. One of the Islamic institutions complained about how Tanzanian Muslims are not happy with the way their fellow Muslims in Palestine are being treated by Jews and some Western countries such as the United States of America and the United Kingdom. The unity among Muslims is grounded on the unity of God (there is one God, Allah) and his Prophet Muhammad, and the five pillars of Islam. While these courts may help to promote Muslim unity, the establishment of these courts might not solve all challenges facing Muslims. Conflicts and divisions among Muslims are caused by complex issues such as different Islamic schools of thought, social, economic, and political injustices. Moreover, the current Muslim demand for kadhis courts is creating conflicts and divisions among Muslims instead of uniting them. In contrast to Muslims, these participants attribute these negative effects to the government.

## Should Kadhs' Courts Be Allowed?

Some of the issues raised by these participants to reject the Muslim demand are the constitution, human rights, extension of these courts to criminal cases and corporal punishments, eradication of Christians, divorce, negative effects of these courts, their irrelevance to the Tanzanian context. To repeat my argument in a democratic secular government people cannot denied their religious freedom because of a constitution. Echoing my statement Russell Sandberg<sup>127</sup> points out that the Anglican Church in the United Kingdom has its own courts with legal recognition. These courts are a part of the law of land. Human rights are raised by both Muslim and Christian participants from Kibondo and Malagarasi secondary schools. Whereas female Muslims defend gender discrimination surrounding polygamy, inheritance, divorce, and property ownership, their counterpart female Christians criticize these practices as injustices and violation of human rights. Majamba<sup>128</sup> sees gender imbalance as the most serious challenge facing kadhis' courts in Zanzibar. Women are the of gender inequity. According to Majamba, 95 percent of cases of marriage dispute presented in kadhis' courts end up in divorce. Men decide to divorce their wives without their consent. Ahmed E. Souaiaia<sup>129</sup> wrestles with the issue of gender inequity among Muslim women. According to the majority of Sunni jurists, Souaiaia says, in classical Islamic law the property inheritance for daughters is based on three major principles: first, the daughter is to inherit a fixed share of one-half of property (if there is no brother);

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<sup>127</sup> Russell Sandberg, *Law and Religion* (Cambridge, UK; New York: Cambridge University, 2011), 64.

<sup>128</sup> Majamba, "Perspectives on *Kadhi's* Courts in Zanzibar," 9-13.

<sup>129</sup> Ahmed E. Souaiaia, *Contesting Justice: Women, Islam, Law, and Society* (Albany: State University of New York Press, 2008), 64-67.

second, a fixed share of two-third for two daughters; third, if there is a brother, she will inherit an estimated share. According to the Qur'an the share of a son is equal to the share of two females.

Polygamy plays a significant role in denying women their right to property ownership, “for example, if a husband dies and leaves behind an estate worth \$800,000 and no children, the wife’s inheritance is \$200,000. However, if her husband was married to three other wives besides her, she would only receive \$50,000.”<sup>130</sup> Judith E. Tucker<sup>131</sup> observes that Muslim men enjoy their legal authority because of their role as providers for the family. Basically, men and women are treated equally by the Qur'an. Jurists from different schools of thought have contributed to gender inequality because of their interpretations on some Qur'anic verses: “Out of a total 6,660 verses in the Qur'an, it has been argued that only six establish some kind of male authority over women. One of the most critical Qur'an passages is found in chapter 4, verse 34.”<sup>132</sup> In her support for the equal treatment of men and women in Islam, Tucker asserts that during the post- Ottoman period women used Islamic courts to protect their social, religious, and economic rights. Some of these women sent their agents to the courts while others went by themselves.

According to Tucker,

women registered sales and purchases of property, they recorded business partnership and loans, they endowed *waqfs* (entailing property for religious or charitable causes) in large numbers, and they entered into contracts of marriage... Women pursued debtors, accused assailants, questioned the legality of marriage contracts, sued former husbands for dowers, protested unfair divisions of inheritance, and argued about child support.<sup>133</sup>

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<sup>130</sup> Ibid, 87-88.

<sup>131</sup> Judith E. Tucker, *Women, Family, and Gender in Islamic Law* (Washington Georgetown University Press, 2008), 24-25.

<sup>132</sup> Ibid, 24.

<sup>133</sup> Ibid, 32-33.

Tucker's argument is echoed by Stockreiter. In her observation, Stockreiter<sup>134</sup> notes that kadhis' courts were the place where Muslim women could claim their social, religious, and economic rights during the British colonial era in Zanzibar. The teaching of the Qur'an about female protection, availability of different legal options based on different schools, role of kadhis, and social and economic pressure served as useful empowering resources for such women. According to Tucker's and Stockbreeder's findings, it is apparent that gender discrimination is against the teaching of the Qur'an. It is rather a cultural feature. Culture is dynamic and not static. But the existence of some Qur'an verses that favor men at the expense of women and the autonomy of different schools in Islam pose a challenge to this matter. An-Na'im's approach offers a solution to this dilemma. According to him,<sup>135</sup> we must understand human rights from an Islamic perspective if we are to protect the human rights as contained in the Universal Declaration of Human Rights. The Qur'an passages that assert human rights are to be used to address injustices against women and non-Muslim citizens, and Qur'an verses that are against human rights are to be reinterpreted in light of contemporary understanding of human rights, including the Universal Declaration of Human Rights. According to An-Na'im, this approach is also to be applied to all religions. In his view, human rights cannot be understood in a vacuum. Religions are useful resources for promoting human rights. I agree with An-Na'im. His approach helps us to understanding human rights from our own religious contexts with a critical eye. It gives us a deeper understanding of our positive religious values, which are to be used to promote

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<sup>134</sup> Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar*, 198.

<sup>135</sup> An-Na'im, "Islam and Human Rights" *Religion & Human Rights: An Introduction*, John Witte and M. Christian Green eds (New York: Oxford University Press, 2012), 62-68.

gender equality. This approach also enables us to identify and address the causes of patriarchal religious aspects that undermine the dignity of women.

In contrast to those who criticize kadhis' courts for their violation of the rights of women, Tanzanian Muslim Women Foundation <sup>136</sup> responds that the establishment of kadhis' courts will protect the rights of Muslim women. This view is also supported by Muslim female students from Kibondo and Malagarasi secondary schools who are in favor of Islamic corporal punishments. In her reaction to this opinion, Nimis<sup>137</sup> explains that one of the reasons Muslim women are supportive of kadhis' courts is ignorance. Canadian Muslim women, for example, were in favor of the establishment of kadhis' courts in Canada. The same Muslim women are currently complaining about the violation of their rights by these courts.

#### The Government's Response to the Muslim Claim

This group disapproves the government's reaction to this controversy. In my observation some participants of this group are against the government as well as Muslims because the Muslim demand does not favor them.

#### The Muslim Claim for Kadhis' Courts and the Future of the Country

The pessimistic views of the participants from both Dar es Salaam and Kigoma about the future of the country demonstrate their unwillingness to change their positions in the interest of this country. While the Muslim participants see the implementation of this demand as the basis for peace in the country, the majority of non-Muslim participants see the withdrawal of the foundation of a bright future of the country. I argue that the future of this country over this

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<sup>136</sup> Tanzania Parliament. 2000. "*Taarifa ya Kamati ndogo ya Bunge juu ya Uanzishwaji wa Mahakama/Taasisi ya Kadhi Tanzania Bara*", July, 2000, 39-40.

<sup>137</sup> Nimis, interview by the researcher, University of the South, November 16, 2015.

matter lies at the hands of the government. Prince Ghazi bin Muhammad<sup>138</sup> warns against neglect of serious issues affecting society. Ethnic conflicts, mistrust, and disrespect resulted in genocide that claimed the lives of over one million people in Rwanda.

#### Proposal on How the Claim Is to be Addressed

The rejection of kadhis' courts regardless of their jurisdiction violates the right to worship. This right is provided and protected by the constitution. Participants who propose the establishment of kadhis' courts by Muslims if they are self-financed and deal with Muslim family matters have a point. But this proposal does not address the primary issues surrounding this controversy. While the proposal that kadhis' courts are to be implemented as long as other non-Muslim religious courts are implemented seems convincing, the proposal is not helpful. Advocates of this view contradict themselves by opposing the Muslim demand and at the same time supporting it. This view demonstrates the prejudice and self-interest surrounding this debate. Muslims are denied their claim because of their religion and the assumption that they alone will benefit from the government funds. The proposal for the implementation of kadhis' courts if they are for the interest of the country needs a clarification. To me Muslims should be given these courts because it is their right. Moreover, the participants' reaction to the Muslim demand demonstrates participants' understanding of the word "justice". The same applies to the terms "constitutionalism and secularism." The debate for kadhis' courts requires a critical evaluation of the participants' understanding of justice, categories of justice raised by this matter and its validity, and how this controversy is to be addressed.

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<sup>138</sup> Ghazi bin Muhammad, "A Common Word Between Us and You," in *A Common Word: Muslims and Christian on Loving God and Neighbor*, ed. Miroslav Volf, Ghazi bin Muhammad, and Melissa Yarrington (Grand Rapids: Erdmann, 2010), 3.

In summary, the Muslim demand raises the issues of constitutionalism, secularism, justice, human rights, and multi-faith relations. The complexity of the Muslim demand is based on different interpretations of these major themes. Some of such interpretations are helpful others are not. Issues raised by both two sides (Muslims and Christians) demonstrate their understanding of these principles. The right understanding of these principles is vital if the Muslim demand is to be dealt with adequately. Based on my observation, a democratic secular constitution is dynamic. As a democratic document, a constitution protects human rights to individuals and groups, including religious freedom. A democratic constitution is the basis for a democratic secular government. As a dynamic document, a constitution can be amended to meet the rights of individuals and groups. The Muslim demand calls for the amendment of the constitution to allow the establishment of kadhis' courts. A democratic secular government is friendly to religious communities. Under a secular democratic government individuals and groups enjoy their rights, including religious freedom. A secular democratic government is meant to ensure that a government does not interfere the religious freedom of individuals and groups at the same time such individuals and groups do not use their religious freedom or their rights to violate the law. With this balance, the right of individuals and groups are protected and the order of society is kept. In other words, the right has a duty. Justice is understood as fairness and the right. The definition of justice as love and care implies duty. There are several categories of justice. The Muslim demand raises procedural, commutative, and distributive justice, and human rights. In the next chapter I will give my conclusion and recommendations on this matter.

## CHAPTER FIVE

### Conclusion and Recommendations

#### 5.0 Conclusion

In this study I have attempted to offer a critical analysis of the Muslim demand for kadhis' courts in Mainland Tanzania in five chapters. The Muslims demand is a long struggle for religious freedom that started in 1963 when kadhis' courts were abolished by the government. This demand requires an urgent response as M. T. Moonzajer points out: "Freedom of Religion is the only and only way toward Universal peace."<sup>139</sup> Moonzajer' remark is very relevant to the context of Mainland Tanzania given that religion is part of the lives of Tanzanians. Most importantly, religious freedom is one of the fundamental human rights. As I have argued in the major thesis of this study in chapter one, I support the inclusion of kadhis' courts in the constitution, the appointment of the national chief kadhi by the government, and the official announcement of the establishment of these courts by the President. Regarding the operation of kadhis' courts with government funds, I have proposed the need for the discussion on this matter by representatives of all groups in Mainland Tanzania. In this last chapter I intend to draw out some conclusions and recommendations on the way forward for Tanzania in the wake of demand for kadhis' courts.

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<sup>139</sup> Good Reads, 2016 "Quotes about Freedom of Religion, accessed April 6, 2016, <http://www.goodreads.com/quotes/tag/freedom-of-religion>.

## Is the Muslim demand Understandable?

The Muslim demand for kadhis' courts in Mainland Tanzania must be assessed from a larger context of Islam if justice is to be done to this matter. *Shari'a* which is administered in kadhis' courts is what makes these courts essential in Islam. *Shari'a* is understood in Islam to be unchangeable and superior to kadhis' courts because of its sources, namely Qur'an, *Sunna*, and *Hadith*). As Malise Ruthven<sup>140</sup> clarifies, *shari'a* is God's disclosure to Muslims and pathway to heaven. Shari'a promotes moral character of Muslims sustaining their (Muslims) holistic lives. Muslims are reminded of their vertical and horizontal role (love for God and humanity) through *shari'a*. This moral aspect of kadhis' courts is evident in the data collection reports. Some of the issues raised by Muslim participants to support this demand are the prevalence of immorality among Muslims as well as among non-Muslim Tanzanians, code of dress (a hijab), English, Indian, and Christian elements in civil courts, corruption, and prostitution. According to the participants, kadhis' courts are vital for the defense of Islamic tenets or values. Most importantly, kadhis' courts encourage a special relationship between Muslims and Allah, their creator. Thus Muslims view these courts as part of worship. This opinion is also raised in the 2000 government's research report (in the literature review above). According to Arskal Salim,<sup>141</sup> after many years of resistance to kadhis' courts in Aceh, Indonesia, these courts were eventually implemented by the government to escape the punishment of God. Devout Muslims saw the 2004 Tsunami as God's punishment to Aceh people for their opposition against kadhis' courts. In this Muslim context, kadhis' courts represent Muslim beliefs (theologies, practices, and

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<sup>140</sup> Ruthven, *Islam: A Very Short Introduction*, 53-88.

<sup>141</sup> Arskal Salim, *Contemporary Islamic Law in Indonesia* (Edinburg: Edinburg Press 2015), 11, 38-49.

morality). Muslim beliefs are what make Islam distinctive. To reject the Muslim demand for kadhis' courts is to reject Muslim beliefs, distinctiveness, and identity.

The inclusion of kadhis' courts in the constitution, the operation of kadhis' courts and Islamic legal study with government funds, the appointment of the national chief kadhis by the government, and the official announcement of the establishment of kadhis' courts by the President are understandable because of the importance of kadhis' courts in Islam (as explained above), holistic nature of Islam, legal recognition of kadhis' courts in Zanzibar, the current judicial system in Mainland Tanzania, the effectiveness of the operation of kadhis' courts, justice, religious freedom, concrete examples from other secular states, and Tanzania as a signatory of the Universal Declaration of Human Rights and African Charter on Human and People's Rights. In Islam religion, social, political, and economic issues are inseparable. This holistic nature of Islam is based on its founder. While in Medina, Muhammad acted as a religious, political, and social leader. It is with this view that some of my respondents understand a kadhi as a religious, social, and political leader. In support of this holistic nature of Islam, Alfred Stepan<sup>142</sup> cites Samuel P. Huntington who points out that God is Caesar in Islam. Therefore the Muslim demand has religious, politician, and economic, dimension. The inclusion of kadhis' courts in the constitution, and the involvement of the government in the appointment of the chief kadhi and implementation of these courts have both religious and political dimensions. The economic aspect of this demand is manifested in the need for the government to finance these courts. But from a Muslim perspective, all these political and economic aspects are religious. Hence, this demand is about struggle for religious freedom and justice. According to

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<sup>142</sup> Stepan Religion and Democracy and the "Twin Tolerations," *Journal of Democracy*, 38.

the Tanzanian constitution of 1977 chapter one, part one (1),<sup>143</sup> Tanzania is one state and a Sovereign United Republic and its territory consist of Mainland Tanzania and Tanzania Zanzibar. Similarly, chapter one, part one (1) of the constitution of Zanzibar<sup>144</sup> states that Zanzibar is an integral part of the United Republic of Tanzania. Unlike Mainland Tanzania, kadhis' courts are in operation in Zanzibar with government funds, they are in the constitution, the chief kadhi is appointed by the President, and is a member of the Judicial Service Commission. Chapter six, part three (100)<sup>145</sup> of the Zanzibar constitution gives the House of Representatives jurisdiction to establish other courts subordinate to the High Court and the power and jurisdiction of such courts is provided by law. Kadhis' courts fall in this category of courts. According to part five (g) the chief kadhi shall be one of the eight member of the Judicial Service Commission responsible for advising the President on the appointment of chief justice, and recommending to the President on the appointment of judges for the High Court among others.

Based on this constitutional provision of kadhis' courts in 1985, the House of Representatives passed the Kadhis' Courts Act No. 3 of 1985<sup>146</sup>. This Act entails the

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<sup>143</sup> "The Constitution of the United Republic of Tanzania of 1977," The United Republic of Tanzania, 2013, accessed April 1, 2016, [https://search.yahoo.com/search;\\_ylc=X3oDMTFiN25laTRvBF9TAzlwMjM1MzgwNzUEaXRjAzEEc2VjA3NyY2hfcWEc2xrA3NyY2h3ZWI-?p=Is+Islam+ethical%3F&fr=yfp-t-479&fp=1&toggle=1&cop=mss&ei=UTF-8](https://search.yahoo.com/search;_ylc=X3oDMTFiN25laTRvBF9TAzlwMjM1MzgwNzUEaXRjAzEEc2VjA3NyY2hfcWEc2xrA3NyY2h3ZWI-?p=Is+Islam+ethical%3F&fr=yfp-t-479&fp=1&toggle=1&cop=mss&ei=UTF-8).

<sup>144</sup> "The Constitution of Zanzibar," Ikulu Zanzibar, 2012-2016, accessed April 1, 2016, 13. <http://www.ikuluzanzibar.go.tz/uploads/Zanzibar-Constitution-1984.pdf>.

<sup>145</sup> Ibid, 68-70.

<sup>146</sup> The Judiciary Zanzibar, 2014, "The Kadhis' Courts Act No 3 of 1985," accessed April 1, 2016, 1-6, [http://www.judiciaryzanzibar.go.tz/act\\_1/The%20Kadhis%20Court%20Act%20No%2003%20of%201985.pdf](http://www.judiciaryzanzibar.go.tz/act_1/The%20Kadhis%20Court%20Act%20No%2003%20of%201985.pdf).

establishment of kadhis' courts, chief kadhi and senior kadhi, kadhi, jurisdiction of kadhis' courts, evidence, records and returns, procedure and practice, appeal from kadhis' courts, and protection of kadhis. This Act establishes offices of the chief kadhi's courts in Zanzibar and kadhis' courts in all districts. The chief kadhi is to be appointed by the President and he or she must take the oath of allegiance before he or she takes his or her office. The chief kadhis is required to be a Muslim with knowledge of Islamic law. There are two senior kadhis one in Zanzibar and the other in Pemba. The two with the chief kadhi are invested with jurisdiction on appeals from kadhis' courts. The chief kadhi or a senior kadhi has authority to give a ruling. The number of kadhis should be no less than ten and no more than fifteen are to be appointed the Judicial Service Commission in consultation with the chief kadhi. The jurisdiction of kadhis' courts is restricted to Muslim family matters; kadhis' courts are subordinate to the High Court; cases may be held anywhere. Laws and rules of evidence applied to kadhis' courts are that of a chief kadhi' relevant to Islamic law; witnesses are to be heard without discrimination of religion and sex; evidence is to be assessed based on its credibility and not number, and proceedings are to be recorded and presented to the High Courts in case of an appeal. At the High Court the chief justice in consultation with the chief kadhi may issue a ruling. Appeals should be heard by a judge of the High Court in the presence of four sheiks. A decision based on the majority opinion of the member of the High Court is final; and a kadhi cannot be sued in civil courts because of his or her ruling or decision in kadhis' courts.

While the legal operation of kadhis' courts in Zanzibar raises the issue of commutative and procedural justice, fairness, and human rights, it justifies the Muslim demand for kadhis' courts in Mainland Tanzania and challenges some of the negative views among some Christian participants over these courts. By commutative justice I mean that there was no agreement

between the government and Muslims in Mainland Tanzania about the abolition of kadhis' courts in Mainland and the maintenance of the same courts in Zanzibar. Based on Nicholas Wolterstorff's definition of justice<sup>147</sup>, the Muslim demand has also the implication for human rights. In this context, religious freedom is the right being denied to Muslims. The procedural justice in this context refers to the failure of the government to consult Muslims over the termination of kadhis' courts. Given that kadhis' courts in Zanzibar are financed by the government, the Muslim demand has the implication for distributive justice. Giving the right to some people of the country and denying the same right to other people from the same country is unfair. Such a decision creates divisions among Tanzanians. The case of Zanzibar validates the Muslim demand in Mainland Tanzania. In addition, while the introduction of the single judicial system after independence is commendable, the abolition of kadhis' courts is not. The British colonial judicial system and not kadhis' courts divided Tanzanians along their religious, social, political, and ethnic lines.

The Muslim demand for the appointment of the chief kadhi by the government reflects the current judicial system of Mainland Tanzania. According to chapter five part III of the Tanzania's constitution of 1977<sup>148</sup>, the chief justice, judges of the High Court and magistrates are appointed by the government either through the President (having been advised by the Judicial Service Commission) or by the Judicial Service Commission. This demand is also relevant to

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<sup>147</sup> Wolterstorff, *Justice in Love*, 85.

<sup>148</sup> "The Constitution of the United Republic of Tanzania," accessed April 2, 2016, [http://www.egov.go.tz/egov\\_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20English%20Version%202009.pdf](http://www.egov.go.tz/egov_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20English%20Version%202009.pdf).

the African context. The appointment to a position by a recognized and respected higher authority builds a trust, confidence, respect, and cooperation between the appointee and his or her community. This view is also relevant to Muslim understanding of religion and politics. Most importantly, the appointment of the chief kadhi by the government will help in addressing issues of tensions and conflicts, and mistrust among Muslims. The chief kadhis' appointed by the government after consultation with all Muslim groups will be recognized as a national spiritual leader by all Muslim groups. The same applies to the official announcement of the establishment of kadhis' courts by the President. In my view, there is nothing Christians will lose with involvement of the government in this matter. Christians and Muslims, for example, have been inviting government officials for the establishment of various projects. Being a signatory of the Universal Declaration of Human Rights and African Charter on Human and Peoples' Rights implies the commitment of the Tanzanian government to the protection of human rights, including religious freedom.

Unlike other religious courts, kadhis' courts are a distinctive judicial system due to complex issues, including the holistic nature of Islam and different Islamic schools of thought. The involvement of the government in the operation of these courts will increase their effectiveness. More importantly, the government will ensure kadhis' courts operate in accordance with the law. The inclusion of some courts of the Church of England in the constitution of the United Kingdom, existence of religious freedom in France and other secularist states, and financial support to church related projects by some European countries such as Germany and Denmark justify the Muslim demand.

As discussed above in reference to the discussion of the concepts earlier in chapter four of this study, the Muslim demand is reasonable because of various interpretations of constitutionalism, secularism, and justice. A constitution is dynamic and a democratic constitution is the basis of a democratic secular state. A democratic secular state protects human rights. Justice is one of the human rights. In this study, the Muslim demand raises attributive, procedural, and commutative justice. These reasons for the understandability of the Muslim demand are the basis for my support for this matter.

#### Why the Muslim demand faces challenges?

Even though the Muslim demand for these courts is understandable, there are, however, some challenges. The Muslim demand is reasonable but it faces the following challenges.

First, not all Muslims want kadhis' courts. The rejection of this demand by the representatives of Ahmadiyya Muslim Jamatt, and some Muslims from Kigoma indicates that there are some Muslims who are not interested in his matter. Moreover, it seems that though some Muslim participants support this demand, their decision may not reflect the wish of the majority of Muslims.

Second; the current constitution does not have provisions for kadhis' courts. The implementation of the Muslim demand requires constitutional amendment and for the constitutional amendment to happen needs a national referendum. The decision of Tanzanians to vote against kadhis' courts in the 2014 national referendum for a constitutional review complicates this demand. This constitutional challenge is also raised in the 2000 government

report on kadhis' courts. According to this report (found in chapter two), for the Muslim demand to be implemented the constitutional amendment is unavoidable.

Third, the implementation of this demand requires the approval of the majority Tanzanians. The decision of Tanzanians to vote against kadhis' courts in the 2014 national referendum for a constitutional review complicates this demand.

Fourth, some issues raised by this demand raise more questions than answers. Some of the issues raised by Muslims for their support for kadhis' courts are religious, social, political, and economic injustices such as the abolition of the East African Muslim Welfare Society and its replacement with BAKWATA, and the dominance of Christians in private and government sectors. The validity of these issues is undeniable. Christians have enjoyed the fruit of independence more than Muslims because of their access to schools introduced by Western Christian missionaries. Citing a Muslim research report on employment between Christians and Muslims conducted by DAWAT African Muslim Agency, Herry Mgombele<sup>149</sup> observes that between 1980 and 1990, 75 percent of Christians were employed by the government and 25 percent of Muslims were employed; between 1990 and 2000, 65 percent were Christians and Muslims were 35 percent. According to this report, between 1960 and 1980 70 percent of Christians were degree holders (at university level); Muslims were 29 percent, and other non-Christians were 2 percent. This finding implies that Muslims still suffer the negative impact of colonial discrimination against them. The major question raised by these injustices against Muslims is whether they are relevant to the Muslim demand? The possible answer to this

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<sup>149</sup> Mgombele, "The Challenges of Imposition of Islamic Law in a Pluralistic Society and the Awareness of Christian Council of Tanzania" (BA Thesis, Teofilo Kisanji University, 2012), 29.

question I think is not. And the clarification for this answer is that these procedural and attributive injustices were committed by some Western colonialists who no longer live and these issues have nothing to do with Muslim worship. This simple answer applies to the abolition of the EAMWS. But this answer gives a half of truth because in Islam there is no separation between religion and social, economic and political issues. Like in African traditional religions, everything is religious in Islam. Thus Muslims are right to associate such injustices with their demand. But the link of such injustices to the Muslim demand in a multi-faith society like Mainland Tanzania is not convincing. The association of these issues with this demand implies that this matter gives space for Muslims to presents their grievances. I will address this matter in my recommendations.

Fifth, some external and internal factors discourage the implementation of this demand. Some of the external issues are some Christians and the government. Some of the internal issues facing the Muslim demand include divisions, mistrust, different Islamic schools of thought, superiority between the chief kadhis' and mufti, and the appointment of the chief kadhis.

#### Views of Muslims, Christians, and the Government

Muslim participants' views about this demand are simple and clear. They want freedom of worship; to maintain the identity of their faith (against English, India, and Christian influences, and immorality); and equal allocation of social, political, and economic opportunities between some Christians and some Muslims and between Muslims. In support of their demand Muslims reference the international human rights bodies, some provisions of the current constitution (to prove that their demand does not violate the constitution), injustice against them by some Christians, the operation of kadhis' courts in other secular states. It is important to

understand that the Muslim demand is influenced by the holistic nature of Islam. The constitutionalism, secularism, and justice are given interpretations from this perspective.

Christians respond to the Muslim demand by raising issues of constitutionalism, secularism, justice, human rights, and dominance. These participants view a constitution as something static, and a secular government as indifferent to religion. According to these participants the implementation of the Muslim demand does not do justice to Christians. Thus some participants propose the inclusion of all non-Muslim religions into the constitution. Some Christians argue that the approval of the Muslim demand will violate human rights through Islamic corporal punishments and the most victims of such brutality are Christians. Prejudices against Muslims seem to dominate views of these participants. Christian opposition to Muslim demand has the implication for procedural, attributive, and commutative justice. The inclusion of kadhis' courts in the constitution raises a procedural justice (it is against the constitution), the operation of kadhis' courts raises distributive justice, and the appointment of the chief kadhi by the government and the official announcement of the establishment of kadhis' courts by the President raises issues of fairness and procedural justice.

The government's response to the Muslim demand is ambiguous. The government lacks a clear position on this issue because of the issues' complexity (the current constitution, its negative impact on the 2015 general elections, and Christians-Muslim relations). Due to the complexity of this demand the 2000 government's research report on kadhis' courts and the ruling party promise for kadhis' courts in 2005 has never been implemented. Some measures taken by the government to address this matter include allowing Tanzanians to give their views

regarding the Muslim demand through the 2014 constitutional review, the 2000 parliament research report, and discussion of this demand by the National Assembly in 2014 and 2015.

### Issues raised by the Muslim demand for the government and for multi-faith relations

The Muslim demand raises issues for the government of Tanzania and for relations between Tanzanians of multiple faiths. The major issues raised by this demand are mistrust, constitutionalism, secularism, justice, religious freedom, Christian-Muslim relations, religious prejudice, religious intolerance, poor leadership, politics, bias, and self interests. Mistrust is evident between some Muslims and some Christians, between Muslims, between some Christians and the government and between some Muslims and the government. Between some Christians and some Muslims mistrust is grounded on the purpose of the Muslim demand, and between Muslims mistrust is manifested by the exclusion of some Muslim groups from this matter, factors for this demand, and failure among some Muslim groups, to recognize the offices of the chief kadhi, BAKWATA, and mufti. The issue of mistrust among Muslims is raised by participants representing Supreme Council of Muslim organizations and institutions, Ahmadiyya Muslim Jamatt Tanzania, Mammry, and Safari.<sup>150</sup> These participants complain for being excluded from this matter by BAKWATA. In their view, BAKWATA is corrupt and it is the government's puppet because it was established by the government and BAKWATA. Some Christians accuse the government for supporting Muslims and some Muslims blame the government for its failure to implement the demand. The constitution is mentioned by most Muslim and Christian participants to either support or oppose the Muslim demand. There are

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<sup>150</sup> Supreme Council of Muslim organizations and institutions, interviewed July 1, 2015 by the researcher, Ahmadiyya Muslim Jamatt Tanzania, interviewed by the researcher, August 2, 2015, Mammry, interviewed by the researcher on July 2, 2015, and Saffari, interviewed by the researcher, July 3, 2015.

several interpretations of the constitution given by these participants the major one being that the current constitution does not allow the establishment of kadhis' courts. The rejection of the inclusion of kadhis' courts by Tanzanians during the 2014 national constitutional review referendum implies the common understanding of a constitution and a secular government among Tanzanians. The constitution is also mentioned by the 2000 government research report as the major obstacle to the Muslim demand. In contrast to these views, I argue that the constitution itself is not the obstacle to this demand. The real major obstacle is Tanzanians. If Tanzanians decide to become democratic their constitution will be democratic. As I have been saying in this study, a constitution is dynamic and not static. A secular democratic constitution gives space of freedom to all people provided that such freedom does not breach the law. A good example to learn from is a secular democratic constitution of Zanzibar. This constitution has the provision for the establishment of other courts. It is through this type of religious freedom kadhis' courts were established. If Zanzibar (which is part of Tanzania and has a secular democratic constitution) has managed to offer religious freedom to its people, why not Mainland Tanzania? I am aware of various interpretations of "democratic" and their impact on the relationship between state and religious communities. The issue I am trying to raise is the need for a democratic secular constitution that guarantees religious freedom to individuals and groups.

The secular state of our government is also mentioned by all Christian participants as a major hindrance to the Muslim demand. My argument is that being a democratic secular state does not mean violation of human rights. In this study I have given examples of secular states that protect religious freedom of their people as well as support their religious institutions. Moreover, secular states like France which in the past were hostile to religions, are now giving religious freedom to its people. Similarly, some courts of the Anglican Church in the secular

government of the United Kingdom have legal recognitions. The lack of provisions for religious courts in the constitution questions the democracy of our country. Three major issues raised in the 2000 government report on kadhis' courts against the establishment of kadhis' courts in Mainland Tanzania are as follows: first, unlike Mainland Tanzania, the Muslim population in Zanzibar is high; second, a pluralistic religious context of Mainland Tanzania does not allow kadhis' courts; and third, the establishment of kadhis' courts in Mainland Tanzania requires constitutional amendment. The first and third reasons are irrefutable facts but they are not substantial justification for the rejection of kadhis' courts. Kenya and Uganda, for example had the same challenge but they amended their constitutions to allow the establishment of kadhis' courts. Being a pluralist religious society does not mean denying one his or her religious freedom. In contrast, a pluralistic society is characterized by religious tolerance, respect, trust, and religious freedom.

The demand for kadhis' courts raises issues of procedural and distributive justice, fairness and love. Procedural justice refers to the abolition of kadhis' courts in 1963 and EAMWS by the government without consultations with all Muslim groups, the 2014 amendment bill for the establishment of kadhis' courts without consultation with all Muslim groups, the establishment of the current office of the national chief kadhi in 2012 without consultation with all Muslim groups, and the appointment of the chief kadhi without consultation with all Muslim groups. The 2014 bill is also a procedural injustice because it was against the constitution. The establishment of kadhis' courts requires constitutional amendment and not something else. These issues have also implications for the human rights and fairness. The Muslim demand to include kadhis' courts in the constitution with government funds, the appointment of the national chief kadhi by the government and the announcement of the establishment of these courts by the

President raises issues of human rights, fairness, procedural, and distributive justice. The dominance of Christians on social, political, and economic opportunities raises the issues of distributive justice and fairness. Religious freedom is one of the human rights. The Muslim demand is a struggle for religious freedom. The denial of the Muslim demand has an aspect of religious prejudice. The demand is rejected on the ground that a particular group will benefit from it. To paraphrase the words of Alfred Stepan,<sup>151</sup> kadhis' courts are not a problem. The problem is the interpretation of these courts by some religious communities that may lead to radicalism. Religious prejudice is also manifested in linking Muslim demand with violation of human rights, terrorist groups, and eradication of Christians. It is also manifested in the assumption that Christians hate Muslims. Religious intolerance manifested in failure of some Christians to listen to the Muslims about their demand, rejection of the demand, and extremist views from both some Christians and some Muslims. The unhealthy Christian-Muslim relations are demonstrated by that each side accuses the other side over that. These accusations are common between some Christian and some Muslim elites. A concrete example is the accusation between Tanzania Christian Forum (some church officials) and Muslim scholars (*ulamaa*), BAKWATTA officials, and some Muslim lawyers (Saffari and Mammry). The accusations are evident in chapter one of this study (problem of the study) and in chapter three (data collection reports). Poor leadership of the government in this study is mentioned by some participants from both sides and it is manifested in lack of a clear position of the government on this issue creating divisions between Muslims and Christians and between Muslims. Self interest on this matter is evident in all parties (Muslims, Christians, and the government). While Christians and Muslims

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<sup>151</sup> Stepan, *Religion, Democracy, and the "Twins,"* 48.

have religious, social, political, and economic interest in this demand, the government has political interest.

In response to these issues honest, constitutional amendments, right interpretations of constitutionalism, secularism, and justice, democracy, interreligious training, and competent leadership are imperative if this demand is to be implemented. The government, Christians, and Muslims need to be honest. Honesty is vital if we are to address the issue of mistrust. The government needs to show its clear position about the matter and reasons for such a position. To me honesty means speaking, being transparent, objective, and trustworthy. The constitutional amendment should allow provisions for the establishment of other courts, including religious ones. This does justice to all groups because the provision gives freedom to all groups (no one is left out). There is the need for education to the public on the right interpretations of constitutionalism, secularism, democracy and justices that promote authentic democracy and human rights. Ongoing interreligious trainings at the grass root will help Muslims and Christians meet to gather and discuss issues affecting their relations such as religious tolerance, prejudice, mistrust and other social, political and economic issues. Muslims, Christians, and other Tanzanians can use their democratic right to elect competent leaders.

In summary, the inclusion of kadhis' courts in the constitution, the appointment of kadhis' courts by the government, and the official announcement of the establishment of kadhis' courts by the President are convincing. The operation of kadhis' courts with government funds is vital for the effectiveness of these courts but given that all Tanzanians will finance these courts through their taxes this matter requires a national dialogue involving the government and representatives of all groups to reach consensus. Given that the current constitution has no

provisions for kadhis' courts, there is the need for the constitutional amendment to allow the establishment of other courts, including kadhis' courts. Below are my recommendations on this matter.

## **5.1 Recommendations**

Muslims, Christians, and the government are the main characters in this study, they have a significant role in addressing the Muslim demand.

### Recommendations for the Government

The government should make arrangements for the constitutional amendment to allow the establishment of other courts. The government needs to demonstrate its clear position on the Muslim demand to minimize unnecessary tensions and conflicts between some Muslims and Christians and between some Muslims. The delay to issue a ruling of a case filed by some Muslims against the abolition of the EAMWS, negative views of some Muslims toward civil courts, the allegation of use of abusive language against Islam and Muslim by some judges are a demonstration of lack of effectiveness of our judicial system. The government needs to invest its resources in judicial system. The government should desist from creating tensions and conflicts between some Christian and some Muslims through the Muslim demand. The primary role of any government is to promote justice, peace, unity, and security among its citizens. The best way for the government to win votes from The Tanzanians is to attend to their challenges of extreme poverty, climate change, HIV and AIDS, Malaria, social, political, and economic injustices. The CCM government needs all Tanzanians from diverse religious backgrounds if it is to remain in power. The best way to attract them is to treat them equally. The government has

a significant role for the constitutional amendment to allow the establishment of other courts. There is the need for the government to empower Muslims by supporting their educational and economic projects. Similarly, the government needs to provide spaces in which religious communities can express their challenges.

### Recommendations for Christians

In their pursuit for attributive, commutative, procedural justice, fairness, and rights regarding the Muslim demand, Christians are to be guided by a Christian theological understanding of these concepts. Unconditional love and care for Muslims is a key if Christians are to emulate Christ. This theology should also be the basis for the interpretations of the principles of constitutionalism, secularism, democracy, and religious freedom. Tanzanian Christians are to demonstrate their authentic trust in God by extending their charity to Muslims. According to Gary A. Anderson,<sup>152</sup> charity is a manifestation of one's faith in God, a service to God, and a loan to God. Christians can show their charity to Muslim by supporting their demand for kadhis' courts. Christian unconditional love breaks human barriers of religious, culture, sex, nationality, and ethnicity.

### Recommendations for Muslims

Vertical and horizontal love (love for God and for humanity) is also the dominant theme in Islam. The name "Islam" (peace) demonstrates that Islam is a religion of peace. These tenets should motivate Muslims in their struggle for attributive, procedural, and commutative justice. Muslims should let go some historical injustices against them as the negative impact of

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<sup>152</sup> Cary A. Anderson, *Charity: The Place of the Poor in the Biblical Tradition* (New Haven: Yale University, 2013), 15, 35.

colonialism. Muslims need to unite if they are to be successful in their struggle for justice. Different Islamic schools of thought, denominational differences, and politicians should not divide them. There is the need for Muslim to increase their investment in education. Similarly, Muslims should invest in Islamic legal study to address the lack of qualified kadhis.

### Recommendations for Interfaith Relations

Christians and Muslims both have a significant role to play in encouraging mutual relationship among them. Justice (grounded on love) is a key for the sustainability of such a relationship. Religious diversity does not imply enmity but an invitation to learn from each other with the purpose of understanding, recognizing, and appreciating our religious identities. In the Genesis creation account, God commends the diverse creatures he created (Genesis 1:31). Mutual relationship does not mean religious uniformity but harmonious living irrespective of our diversities. Interreligious dialogue is vital for mutual relationship. Meaningful interfaith dialogue is characterized by respect, tolerance, trust, love, justice, equality, and readiness for change. Kenyan Muslims demonstrated their genuine love for God and neighbors by protecting Christians from terrorist Al Shabaab militants' attacks on December 21, 2015.<sup>153</sup> These Muslims showed by their deeds what authentic Islam is about. Similarly, Egyptian Muslims (who are a majority) on April 1, 2015, donated money towards the construction of a Coptic church in Cairo.<sup>154</sup> These examples imply that religious diversity is not enmity. Muslims and Christians

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<sup>153</sup> *Daily Nation*, "Muslims Shielded Christians from Al Shabaab" accessed January 8, 2016, (2012), <http://www.nation.co.ke/counties/Two-dead-3-injured-Mandera-bus-attack/-/1107872/3004522/-/12gsxkc/-/index.html>.

<sup>154</sup> *Orthodox Christian Laity*, "Muslims Raise Funds to Build Coptic Church in Cairo" (2016), accessed January 8, 2016, <http://ocl.org/egypt-muslims-raise-funds-to-build-coptic-church-in-cairo/>.

must curb their religious, social, political and economic injustices by embracing the African cultural value of brotherhood as manifested by communal living, sharing our natural resources, interdependence, respect for the value of an individual, love, equality, tolerance, unity, peace, and mutual protection. This spirit of brotherhood is what Desmond Tutu calls *Ubuntu* (personhood). In his attempt to unite Tanzanians after independence, Nyerere maintained this value through his policy of *ujamaa* (socialism). Tanzanians should use their democratic right to reject those who divide them along religious, political, social, ethnic, and cultural lines. The future of Tanzania depends on how Tanzanians use this democratic right and how the government reacts to the democratic decision of its citizens. The constitutional democratic decision of Tanzanians should be respected by the government. Moreover, Tanzanians have the constitutional right to question those involved in violation of the constitution, religious tensions and conflicts, corruption, and abuse of power, and bring them to a court of law. Tanzanians should not allow the government to exclude them from full participation in national issues that affect them.

#### The Relevance of this Study to Christian Ministry

Christian ministry becomes relevant to different people from different backgrounds when it is able to identify and address issues facing them. The Muslim demand for kadhis' courts is one of the contemporary issues facing Christian ministry in the context of Mainland Tanzania. This thesis is an academic resource for issues surrounding kadhis' courts in both Mainland Tanzania and outside Mainland Tanzania.

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Abilahi Hassan Mcheyo, interviewed by the researcher, Dar es Salaam, July 2, 2015.

Arcardo Dennis Ntagazwa, interview by the researcher, Dar es Salaam, July 5, 2015.

Chediel Lwiza (Eastern and Costal Diocese of the Evangelical Lutheran of Tanzania,

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Deunis Wigira (Archdiocese of Dar es Salaam of the Roman Catholic Church of Tanzania),

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Fifteen high-school students, interviewed by the researcher, Malagarasi Secondary School,  
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Fifty-one Muslim students, interviewed by the researcher, Kakangaga Muslim Secondary  
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Forty-two students (Kibondo Nursing College), interviewed by the researcher, Kibondo  
July 22, 2015.

Ingrid Mattson, interviewed by the researcher, University of Western Ontario, USA,  
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