

An Islamic Perspective on Advancing Women's Property Rights

Meet our Panel Speaker - Dr. Ai Fatimah Nur Fuad



- Associate Professor and Vice Dean of Academic Affairs, Faculty of Islamic Studies, University of Muhammadiyah Prof. DR. HAMKA, Jakarta.
- Ph.D and MA graduate on Religion and Public Life, from University of Leeds, UK .
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Meet our Panel Speaker - Mohammed Hassanow Ali



- Health Project Coordinator Supreme Council of Kenya.
- Humanitarian specialist with more than 14 years of expertise.
- Expert in project planning, execution, monitoring, and evaluation.
- Possess in-depth knowledge of carrying out interventions from a Muslim perspective.

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Meet our Panel Speaker - Umar Nyanzi



- President, Muslim Centre for Justice and Law, Uganda.
- An Advocate of the High Court of Uganda and a practitioner in Human rights and family law.
- Has Post Graduate Diploma in Legal Practice (LDC), Bachelor's Degree in Law (Makerere University) and training in Corporate Governance.
- Previously managed programs in Access to justice, Human Rights and Peace building

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Meet our Moderator -Prof. Alimatul Qibtiyah



- Commissioner at National Commission on Violence against Women (Komnas Perempuan)
- Professor on Gender Studies at Islamic State University, Indonesia).
- Actively involved at the Center for Women's Studies, Kalijaga Institute for Justice as well as at Center for Islam and Social Transformation.
- She is the founder of Academi Feminis Muslim

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Islamic View of Property Rights for Women

Ai Fatimah Nur Fuad

Data in various countries with Muslim-majority populations show that men have more *property* than women (O Neil and Toktas, 2015; 2015). This is partly influenced by a patriarchal culture that provides more opportunities for men and less space for women to work. The patriarchal culture indirectly creates a division of labor that places men more likely to get wealth; men work outside the home while women take care of domestic issues such as taking care of children at home. In other words, in a patriarchal culture, men are placed as economic actors. On the other hand, women who are required to take care of domestic problems will have an economic dependence on their husbands. It is not surprising that property ownership in patriarchal culture is the domain of men.

Basically, in the context of developed societies, women's opportunities to work are getting more and more open. Women also get access to higher education which has an impact on the type of work that will be better and guarantee their financial independence (Bishin and Cherif, 2017). Women are able to own houses, vehicles, land, jewellery, and other forms of property with the ownership documents in their own names. Unfortunately, in certain communities, there are still women who do not have full control over the management of their assets. For instance, women in certain Muslim communities who wish to sell, rent, and manage their property must be accompanied by a male witness to testify to their identity or seek permission from their husbands or brothers. The domination of men in the ownership and management of the property is part of a patriarchal culture. This condition shows that although progress in Muslim society has provided many benefits to women such as access to education and employment, the patriarchal culture still places women in a subordinate position.

In Islamic teachings, women are given the same potential as men to work outside the home, get a salary/wages, and own property. Property (*al-maal*) which is mentioned 82 times in the Quran has an important and strategic value in achieving the welfare of the owner's life, both male and female (see QS *Al-Baqarah* [2]: 177, 155, 261-262, 247, QS *Al-Imran* [3]: 186, QS *An-Nisa* [4]: 5, QS *Al-Kahf* [18]: 46, QS *Al-Anfal* [8]: 28). Islam also regulates how men and women can properly own property (QS *An-Nur* [24]: 33, QS *An-Nisa* [4]: 5 and 29), as well as how to collect, manage and transfer ownership (QS *An-Nisa* [4]: 95). These verses are addressed to all human beings (*yaa ayyuhan naas*) without gender discrimination. The hadith of the Prophet reads: "*The best among you are not those who neglect this life for the life to come or those who neglect the life to come for the sake of the present life. On the contrary, each serves as a path to the other*", advising everyone, including women, to work and take care of their worldly affairs. In Islam, managing the property (worldly affairs) is one of the elements of the five principles that must be protected by every human being (*al-dharuriyyat al-khamsah*) namely soul, mind, religion, property, and offspring. This is the goal of the implementation of sharia (*maqashid syari'ah*).

In Islamic history, having wealth and being rich is not solely male-dominated. Prophet Muhammad's wife, Siti Khadija, was a wealthy businesswoman who supported his preaching. Muslim women have enjoyed property rights for centuries. Islam's respect for women's property rights was well known during the Ottoman period that Christian and Jewish women at that time pursued inheritance rights through Islamic courts because their religious law did not provide equal rights (Kuran, 2004).

Islam guarantees equal rights to women and men in the ownership and management of property, whether obtained from work or from marriage and inheritance. In marriage, women have the right to get property both as a dowry and *nafaqah* (subsistence). Women have the right to get a dowry when they get married (QS *An-Nisa* [4]:4). The dowry can be in the form of money, goods, or jewellery; the amount is mutually agreed upon between husband and wife before the marriage contract. Dowry is a woman's property in Islam and she is entitled to its management according to her wishes. In addition to the dowry, women are also entitled to

subsistence from their husbands which she can spend according to the needs of the family (QS An-Nisa [4]:34, QS At-Talaq [65]:7). Subsistence is a basic need that a husband must provide to his wife and children, namely in the form of food, clothing, and a house. However, in a hadith of the Prophet from Sahih Bukhari, it is narrated that Zaynab and a woman from the Ansar tribe actually became the breadwinner for her husband and her family. When they told this to the Messenger of Allah, the Messenger of Allah replied that they got two rewards, namely the reward of relatives (*ajru al-qoroobah*) and the reward of alms (*ajru ash-shodaqoh*).

In contemporary society, we see a similar phenomenon in which some women become the breadwinners and providers for their husbands and children. Research by the KOMNAS Perempuan (National Commission of Women) shows that there is an increasing trend of male households earning less than their wives. Some women also do not get the dowry from their husbands. Some local cultures place women as applicants and require them to bring a certain amount of property that is given to the prospective groom, as in matrilineal customs. In this local culture, descent and kinship are arranged according to the maternal line which places women superior to men, and it is the women (wives) who take the husbands home after marriage.

The two verses regarding dowry and subsistence came down in the context when most women in pre-Islamic times only took care of domestic affairs and did not have economic access so that men were given the responsibility to provide dowry and subsistence to women (Hitti, 1984; Hodgson, 1974). Therefore, the obligation of men to give a dowry and subsistence cannot be separated from the patriarchal culture in Arabia at that time which required women to take care of domestic affairs only. In the spirit of gender equality, when women are allowed to work outside the home, obviously this has implications for subsistence matters, where the living can be both a shared obligation and responsibility between husband and wife, and it can even become the wife's responsibility in certain conditions such as when the husband gets sick or gets laid off.

Another implication is related to women's inheritance. The provision of inheritance 2:1, namely that women inherit half a portion of men (QS An-Nisa [4]:11) is considered fair because the husband is obliged to give dowry and subsistence to his wife. In the interpretation of Al-Qurtubi and At-Tabari, the half portion for women is fair because husbands have greater economic responsibilities than women. Therefore, the principle of justice in the distribution of inheritance certainly needs to be re-read. A religious text cannot be separated from the context at the time of its revelation. In the context of Arab society when the inheritance verse was revealed, the concept of men inheriting twice as much as women were already very progressive and revolutionary because women in pre-Islamic times were deprived of an inheritance. Inheritance to women at that time was abolished because according to Abid Al-Jabiri (2001) it often led to conflicts among tribes. The Arab marriage tradition at that time was a marriage between two different tribes, which caused the woman and property from the origin of the woman's tribe to turn into the property of the man's tribe. The tribe of the woman (wife) feels deprived of their rights because the ownership of their tribal assets such as camels, horses, and others have shifted to the tribe of the man (husband). QS An-Nisa [4] verse 7 and verse 11 came down with the spirit of giving inheritance rights and property protection to women and their tribes. So, the principle of justice is not about half numbers, but in the spirit of giving inheritance and in protecting women's rights.

Early Islamic traditions also show that religious practice is not only built through understanding the text but through understanding the dynamic changing context while maintaining the spirit of Islamic justice as well. For example, Caliph Umar ibn al-Khattab had done *ijtihad* (legal stipulation) *tsulusul baaqi* (one-third remaining) in his time. This *ijtihad* stipulates that women are not obliged to receive half the inheritance from men. Likewise, the distribution of *fai'* property (wealth obtained from non-Muslims by peaceful or voluntary means) and *ghanimah* (wealth obtained from non-Muslims through battle/war) at that time was the result of Umar's *ijtihad* whose distribution was carried out following the needs of the context at that time, and not based on the existing division of the Quran (Hitti, 1984). The consideration of Umar's *ijtihad* was the principle of justice in accordance with the context of his time.

A case for Realisation of property rights of Muslim widows at succession in Uganda.

The right of all Ugandans to own property regardless of gender, is duly recognised by the Ugandan Constitution¹. Property can be acquired through purchase, donation, and operation of law or inheritance. The Ugandan Succession Act² is to the effect that a person can either die testate or Intestate. A person dies testate where he or she leaves a valid Will³ or intestate where he or she does not leave a will or the will left is invalid.

In Uganda, Muslims consider succession matters as act of worship [Ibaadah]⁴. The Ugandan constitution recognises a right to culture⁵ and religion⁶. The Marriage and Divorce of Muhammedans Act⁷ permits Muslims to marry and divorce in accordance with Sharia. However, there is no law which mandates Muslims to automatically apply Sharia at Succession⁸. Whether a person dies intestate or not, the executor has to get letters of administration⁹ in case of intestacy and letters of probate in case of testacy. These Letters of administration and probate which are issued by courts of law empower the administrator to confer legal interest in the property to the intended beneficiaries.

In case of death of a Muslim man, widows face a challenge in realising their property rights manifesting in failure to obtain property or legal interest in the property. Widows are first put to test of proving their marriage so as to qualify as widows within the law¹⁰. Though some courts have taken up the presumption of Muslim marriage¹¹, this theory has not gained general acceptability in the legal spheres. Even though the law provides for registration of marriages¹², most Muslim marriages are not registered since Islam does not prescribe registration of a marriage as a pre-condition for its validity¹³. Many fail to get their share of the deceased's estate because they cannot prove that they are wives. Further still, property is distributed without regard to the joint contribution of the woman¹⁴ and in some cases,

¹ Article 26 (1) of the 1995 Constitution of the Republic of Uganda.

² Chapter 162, Laws of Uganda.

³ Section 50 of the Succession Act Cap.162 sets the requirements of a valid Will which include being witnessed by 2 persons, being in writing and distributing property to the beneficiaries.

⁴ Access to Justice Baseline Report, MCJL,201

⁵ Article 37 of the 1995 Constitution of the Republic of Uganda, *supra*

⁶ Article 29 of the 1995 Constitution of the Republic of Uganda, *supra*

⁷ Cap.259, Laws of Uganda

⁸ *Abasi Magunda & Anor Vs Sulaiman Senoga & Ors*, cited in Position Paper on Islam and Inheritance; a case for study of Muslim Traditions versus Ugandan Legal regime, MCJL,2017

⁹ Section 192 of the Succession Act, Act.162.

¹⁰ Under section 101 of Uganda's Evidence Act, burden of proof lies on that person who alleges existence of a certain fact.

¹¹ Presumption of marriage according to Sunni Sect was approved by Uganda's courts in HCCS 466 of 2013; *Hajjat Nuliyat Nuliyat Memetebikurirwa versus Micro Finance Support Centre Ltd* and Anor citing with approval the case of *Ali s/o Pazi vs. Hamisi Mohamed [1968] EA 111 at P.1*

¹² Section 5 of the Marriage and Divorce of Mohamedans Act, Cap.252

¹³ Section 16 (a) of the Marriage and Divorce of Mohamedans Act Cap.252

¹⁴ At common law which is applicable to Uganda by virtue of section 16 of the Judicature Act, a woman's contribution is quantifiable considering domestic chores even in absence of direct contribution. This was approved by the Supreme court in *Rwabinumi Versus Hope Bahimbisomwe, SC Civil Appeal No.10 of 2009*

women have been evicted from matrimonial homes by the heirs¹⁵. Where women have got property, they cannot transfer titled properties in their names because of and the absence of letters of administration by the religious leaders conducting the distribution. When a Muslim widow re marries¹⁶ and dies, sometimes her children from the new marriage have in most cases been precluded from inheriting what the deceased widow inherited from her deceased husband.

Be it as it may, Islam in principle recognises a woman's right to inherit property from her deceased husband and relatives¹⁷ in the prescribed proportion¹⁸. Contrary to pre Islamic and customary practices, Islam forbids widow inheritance¹⁹, which is an assurance for respect of women's dignity. The procedural aspects of how a widow legally gets what she is entitled to depends on the succession laws of a given country. It is therefore important to integrate procedural aspects in teachings on how widows can get legal interest in the properties. Other humane aspects like leaving the residential holding for the widow and children should be integrated in Islamic jurisprudence if widows are to realise property rights.

As part of the campaign to promote access to justice for Muslim widows in Uganda, Muslim Centre for Justice and Law (MCJL), a faith based non-governmental organisation has undertaken programs aiming at tackling discriminative approaches manifesting in Muslim communities that hinder realisation of property rights of widows. The Organisation was formed in 2010, to voice out and advocate for the Muslims in the access to justice and human rights spheres. MCJL has successfully employed legal aid provision, strategic advocacy on matters of operationalisation of Muslim personal law, research and strategic networking. MCJL trained has trained 50 Qadhis courts adjudicators in 5 districts with a diploma in law, published researches on human rights and gender in muslim communities, represented over 7000 women with property related disputes and conducted legal and human rights awareness on radio, Television, and community barazas. These interventions have been done in collaboration with religious actors.

Through Legal aid, MCJL has represented about 1700 women including widows whose property rights were violated through Mediation and litigation in courts of law. The Centre has also conducted legal advice which has empowered women to know and later demand their property rights whenever trampled upon. MCJL has conducted a number of researches²⁰ which have informed policy both locally and nationally²¹. In advocacy, MCJL has held talk

¹⁵ The new Succession Amendment Act, 2021 protects a right to residential holding and prohibits eviction of surviving spouses, however, the practice differs in many regions.

¹⁶ Quran 2:234

¹⁷ Quran 4:7

¹⁸ Quran 4:11, 33

¹⁹ Quran 4:19; Widow Inheritance is a practice of marrying women without their consent upon death of their husbands. The practice was practiced by the relatives of the deceased husband who regarded the woman as property to inherit.

²⁰ These researches can be accessed on www.mcjl.ug

²¹ In the Hansard of 3rd May, 2021, the Attorney General informed Parliament having consulted MCJL on the Qadhis courts Bill. MCJL has offered her reached to Parliament and utilised in legislative process.

shows on radio, TV, and conducted community sensitizations on issues uniquely affecting widows in Muslim communities. Through strategic networks, MCJL signed a memorandum of understanding with Uganda registration Services Bureau (URSB) to enhance registration of Muslim marriages and joint awareness campaigns of religious leaders and the general public are being undertaken. These interventions will inevitably enhance access to property rights of Muslim widows.

In a plight to realise property rights of widows in Muslim communities, the involvement of religious leaders in all processes has been of great significance. Building capacity of religious leaders fosters sustainability of the interventions done by MCJL even after conclusion of the projects. As a recommendation, there is need for continued development of jurisprudence by the scholars to find acceptable minimums for some of the access to justice challenges. This can be done through theological discussions contextualised to Uganda's concept to draw a balance between the secular law and Islamic practices. It is also important for Parliament to draft and pass a comprehensive Muslim personal law as envisaged under article 129 (1) (d) of the 1995 constitution of the Republic of Uganda.

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Affiliated institution: Supreme council of Kenya Muslim (SUPKEM)

Title of practice paper: An epitomize of women property ownership from Islamic perspectives

Description of women rights violation

North eastern Kenya is predominantly occupied by the Somalis who are mainly Muslims. The Somalis are patriarchal community who also practice polygamy. In north eastern Kenya there are many women rights violations that occur with most of them not being reported.

In the region the main problem that is encouraging the violation of women rights is long standing cultural practices that are wrongfully misinterpreted to mean a religious obligation.

In Islam, a woman is held at high standard and a whole chapter of the holy Quran is dedicated to them. Although women and men were created differently in terms of physical capabilities this does not in any way deprive them of rights if not advantage them for equity as regards Islam.

In Islam, women have the right to own property, inherit, buy, sell, transfer and bequeath.

However, due to the long standing cultural practices this right is usually violated. For instance in the Somali set up, there is a common practice that inheritance is not actualized on time to tactfully deny women their rights. They say that there is no reason to share the property and that the property can just be kept as a whole and in most cases it remains under the custody of the men since the women are usually married away and are not in the homestead. During this period the men use the inheritable property the way they want and thus end up using even the share of the women. Sometimes the women get old and die and end up not even inheriting a single share of the property.

There is also a common cultural practice where the father shares his property among the boys so that nothing remains for inheritance thus denying the girl child her right to inherit and own property. This is usually called "*wahat*". It refers to an allocation of property given to the boy child immediately he is born. This is a discriminative practice among the Somali community and denies the girl child her right to own and inherit property. The girl child is also denied education because there is a belief among the Somalis that the ultimate goal of education is to get wealth

and that the wealth of the woman belongs to her husband and will never be of any benefit to the family.

There is also a common religious misinterpretation that a woman cannot own and transfer her property at will and that whatever she belongs including herself belongs to the man. It wrongfully deprives them of their rights to own property, buy, sell and transfer at will.

Due to the current modernization and as a result of the advocacy for women rights by various organizations there has been an attempt to fight women right violations head on. The strategy has been more of enforcement than perception change. This usually results to short term solutions that do not result to a long term achievement. The target groups for women right advocacy has mainly been women themselves thus ignoring the perpetrators of the violations. Men still see that western organizations are trying to empower their women so that they become disobedient and start asking for things that they are not entitled to. This has further led to a war between the women and men thus resulting to further women right violations such as gender based violence, early marriages, forced marriages, domestic violence among others.

What Islam has to do with the stated women rights violations

The main cause of the stated women right violations are long standing cultural practices that are now interpreted to mean an Islamic obligation. There are beliefs among the Somali that a woman cannot own and transfer a property at will and that anything she owns belongs to her husband. This wrong concept has encouraged the discrimination of the girl child in regards to inheritance. Men see no need of allocating property to a girl child which will ultimately belong to another man. In this spirit there are embedded mechanisms in the community to tactfully deny the girl child inheritance. For this reason Islam is wrongly used by men to deny women their right to inherit, own, sell, buy and bequeath property. There is also a wide belief that women plus what they own belongs to their husbands and that they cannot at will transfer their property without the consent of their husbands. This belief has caused more women right violations because men stick to it while the women are attempting to free themselves from the hook. Men usually wrongfully use Islam as a base to cause this women right violation. In Islam a woman has all the right to transfer her property at will. But in the spirit of harmonious relationship and in the spirit of building a strong foundation for the marriage it encourages that she consults her husband just

as the husband is also encouraged to consult his wife. However, there is no obligation on her part to consult her husband in transferring her property and using it the way she wants so long as it's a halal means as far as Islam is concerned. In terms of inheritance the Quran has clearly stated it on how the inheritance should be shared and once the person who is being inherited dies.

Our organization

We are working with supreme council of Kenya Muslims (SUPKEM) which is an umbrella body of all Muslim organizations in Kenya. Muslims in Kenya as in any part of the world have diverse problems and needs. To solve these problems, Groups, Committees, Societies and Organizations are formed. Each of these Organizations aims at improving the life of its members; and by life it means the short life on the surface of the earth (Umri) and the eternal life hereafter.

These Organizations may be approaching the same issues and problems in uncoordinated ways and may be duplicating them. Efforts to bring about the coordination of these activities and common approach to issues and problems led to the idea of the formation of Supreme Council of Kenya Muslims. The Council was formed with a clear vision of a united and therefore strong peace loving and law abiding Muslim Community in the country. The council endeavors to establish a community with clear, strong and established links with the Government and also with national and international organizations. The council has offices in all the 47 counties in Kenya and is currently engaged on various activities with a focus on six thematic areas; Advocacy, peace building and conflict resolution, Education, livelihood program, disaster response and humanitarian works and health.

Objectives of our organization in ending women right

The goal of Supkem is to carry out and discharge the obligations, duties and responsibilities Muslims owe as a Community to Islam and bring about the spirit of brotherhood and unity among Muslims in Kenya.

In an attempt to achieve its goal of promoting brotherhood and unity among the Muslims, we are obligated to demystify some of the misconceptions that threaten this unity. We focus on addressing

the root cause and endeavor to propose strategies that promote long term solution to issues. One of the key focuses of our organization is addressing women right violations such as SGBV, early marriages, FGM, domestic violence, gender discrimination among other violations. The organization has come to the realization that there is knowledge gap on Islam and women right especially on the right of the woman to own property, buy, sell and transfer and this is critical realization as regards the objectives of our organization in ending women right violations.

Our faith based strategies in addressing women right violations

Having been engaged in advocacy work for quite sometimes the organization has come to the realization that matters of women right has deep rooted misinterpretation and that it requires elaborate and careful strategies to address it. With this realization the organization usually uses the following strategies in addressing it;

- Use of men as a target group in women right advocacy- The organization has realized that often most attempts to address women right violations has focused on empowering women. This has partially solved the matter of women right but not to the scale required. This one sided focus has in sometimes resulted to cause more women right violations because when the woman is empowered without changing the perception of the man then it often results to men being resistant and this further results to family breakage, profiling of educated women, GBV among other problems. In order to address this matter conclusively the organization has embraced on perception changing by demystifying religious misconceptions that result to women right violations as we also empower women by educating them on their right as granted by the religion of Islam.
- Use of Islamic religion as an advocate for women right- Islam has elaborately discussed the right of women and is regarded as the best promoter of women right over the world. However, due to little knowledge on the religion some people wrongly translated retarded culture as Islamic religion. The organization therefore is keen on educating the public on women rights in Islam and tries to separate culture from religion especially in north eastern region where there is a lot of mix up between culture and Islamic religion.
- Develop a contextual body of knowledge on women rights and Islam- The organization has realized that there is minimal body of knowledge that demystifies some of the

cultural misconceptions that are wrongly assumed to be religious especially in north eastern Kenya context. The organization strives to build this knowledge so as to bridge the gap knowledge that exists in the region.

Our achievements

The organization has been actively engaged in advocacy work with a specific focus on women right issues. We have advocated against SGBV among other women right violations in the region. In north eastern counties the council has closely worked with civil society organizations, human right organizations and the government to ensure that women right violations is eradicated at least in the long run. In Wajir County the council has spearheaded the formation of Wajir county civil society consortium which is a consortium of all the organizations in the county. The main focus of the consortium is to advocate against human right violations including women right violations such as GBV in the county. The formation of this body by Supkem has been the greatest achievement towards addressing women right violations in the county. The consortium closely works with a body of Islamic scholars who act as advisory committee to ensure that any advocacy made by the body does not contravene the teachings of Islam.

Recommendations

- There is need to focus on strategies that change perceptions rather than strategies that focus on short term measures to address women right violations
- There is need to develop body of knowledge to enhance perception change and demystify religious misconceptions
- There is need to focus on holistic solutions to problems than partial solutions to problem on women right violations