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Searching for Religious Authority (marji'iya): Muslims and Religious Leadership in Kenya

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The Right to Give Religious Verdict (fatwa)

The responsibility of delivering fatwa in Kenya used to lie solely upon the Chief Kadi who assumed the role of Sheikh al-Islam or mufid. This was the case during British rule and later the Busaidi sultanate in the coastal strip of Kenya. The famous issue of moon-sighting for the starting and ending of the month of Ramadhan was centralised in the Chief Kadi’s office. However, after independence, the delivery of fatwa was decentralised in various fraternities which led to much controversy on the issue of moon-sighting. This article seeks to trace the background of the institution of religious authority (marji'iya) in Kenya and its development in the post-independence era.

Muslim Religious Leadership in the Colonial Period

Ulama have been spearheading scholarship in the East African Coast since the colonial periods. This was apparent with the Chief Kadhis who, apart from their official duties as judicial officers, had contributed enormously in various disciplines including mosque-seminars, published literature and poetry. This legacy has been maintained through a scholarly chain stretching from the end of the nineteenth-century to the middle of the twentieth-century. Due to their intellectual works, the Chief Kadhis earned recognition from both the State and society. They used to serve and socialize extensively with the public in various spheres, hence enjoying public recognition.

The British adopted an indirect policy in the East African Protectorate. The ulama were accommodated within the colonial framework and occupied a significant place in the Protectorate. The British used titles such as Sheikhul Islam and Kadhis to refer to these scholars. One of the earliest regulations promulgated by the British was the 1897 Regulations that provided for the “Mussulman Ecclesiastical Courts”. The 1897 Regulations established the offices that accommodated these scholars in the following provisions:

A court is hereby constituted, to be called the Chief Cadi’s Court. It shall be pre-
sided over by a Chief Cadi for the whole of the Coast region, who shall be called the Sheik-ul-Islam. The Sheik-ul-Islam shall be appointed by the Commissioner, but all other Cadis shall be appointed by the Sub-Commissioners of provinces.1

Some of the time occupied the dual role of kadhis and muftis. With the passage of time, this position of the time was to change, thus raising the need to search for new religious authority (marji‘iyya). The colonial state gradually reduced the significance of ulama, a legacy that was to be inherited in the post-independence era.

Establishment of the Majlis Ulama

in Kenya

The office of the Mufti has occupied a significant place in the history of Islam. The primary function of the mufta was to give religious opinions (ifta). Through the process of ifta, Muslim rulers strove to exert control over the scholars to assure the smooth running of state affairs. The status of scholars was therefore to “serve as judges behind which the powers-to-be could tighten their grip at the process of ifta”.

In Kenya, the responsibility of giving fatwa on religious matters used to be the prerogative of the Chief Kadhi who was appointed by the State. However, religious verdicts of the Chief Kadhi, especially related to the issue of moon-sighting, were always a subject of controversy within Muslim circles. This was partly due to the fact that the Chief Kadhi is viewed to be a state-dictator with little recognition by some circles that enjoy Muslim popular support. The Supreme Council of Kenyan Muslims (Supkem) were not spared from this criticism despite the fact that this umbrella body is said to be independent of state interference. In this climate, an interesting development has recently emerged with the birth of the embryonic institution of Majlis al-ulama-kenya. The establishment of Majlis ulama in Kenya seems to be triggered by the loss of confidence by some Muslim circles in the state-appointed institutions, as the editorial from a Muslim journal points out:

With the passage of time, this position of the ulama was to change, thus raising the need to search for a 'new' religious authority (marji’iyya).

“For years, it was an acknowledged fact that for the community to effectively gain its place in society, it had to have a firm basis of unity. Various attempts were made to attain this goal but unfortunately, they all came to naught.”

There have been three attempts to establish a majlis ulama that would involve Muslim scholars countrywide. The first initiative was pioneered by the Supreme Council of Kenyan Muslims (Supkem). The Council brought together Muslim organisations from various parts of the country to form an umbrella body that would represent Muslims to the government. Supkem was set up by Muslim organisations in Kenya whose membership comes from the grassroots level. Being independent, it is able to negotiate issues with the government on behalf of the Muslims in Kenya. It also serves as a liaison between the Muslim community, the government and the foreign missions. The establishment of this umbrella body differs from its counterparts in the East African region, for instance the Muslim Council of Tanzania, (Bakwata) which was founded with the blessings of the government.

Supkem organised a meeting that was held at Huruma Secondary school on 27th April 1986 where the delegates agreed to form Majlis ulama “to guide the members where Islamic matters need Quranic guidance”. Ninety scholars, affiliated with a variety of Muslim groups, attended as delegates. However, the idea materialised on 10th August 1994 when the majlis was established and officers selected. The executive officers were elected from prominent scholars that included Sheikh Harith Sawahe (chairman), Sheikh Ahmad Msallam (vice chairman) and Sheikh Ali Shom (secretary). First on the agenda of the meeting, the Majlis discussed the issue pertaining to the sighting of the moon. Supkem offered secretarial services and an office for the Majlis. The first meeting was held on 10th August 1994 and another was scheduled to take place on 10th September 1994, but it did not materialise.

The second initiative was spearheaded by Jumiyatu Al-Duatu Ila Sunnat, which held a gathering of Ahli Sunna Ulamaa on the 2nd and 3rd June 1990 in Mom-
Basa. The chief guest was the Religious Attaché of The Royal Embassy of Kingdom of Saudi Arabia. Among the issues deliberated was the importance of mediating between disputing Islamic scholars. The other items were how to unite Muslim scholars so that they coordinate their work and speak with one voice on religious matters and the issue of Shi'ism in the present time. The members agreed to establish a committee of ulama (lujnati ulama) consisting of 11 members.

The main objective in forming the majlis was to have a special body of "specialists" whereby all ulama can come together to discuss, plan, give rulings, recommend and inform all Muslims, and any other party, on issues of a religious nature or other matter affecting the welfare of Muslims. For the second time the establishment of majlis ulama was not successful.

The majlis ulama was finally established under the auspice of the newly formed Nairobi Masajid Joint Programme, which was strongly influenced by the South African experience. The Majlis Journal noted "seeds of the Majlis Ulama-Kenya were ironically planted thousands of miles away in South Africa two years ago" ... the establishment of the Majlis was a phenomenal occurrence in this country in that it brought together – for the first time in the history of Islam in Kenya – the largest gathering of Islamic scholars from all parts of the country.7

Eleven Muslim professionals from the Nairobi Joint Masajid Programme visited South Africa from the 9th to the 21st of August 2003 "to acquaint themselves with the extraordinary success which their brothers in the Rainbow Nation have undergone". The group visited the Majlis ulama of the Transvaal Province and was impressed by "the successful organization of the religious structures which have in essence contributed to the growth of the Muslim community in South Africa".

In Kenya, the responsibility of giving fatwa on religious matters used to be the prerogative of the Chief Kadhi who was appointed by the State.

One (3rd–5th September 2004) and Makindu Two (8th–10th October 2004). After these scholarly gatherings, an 11 man-Technical Committee was put in place to set up the structure of the Majlis Ulama and draft the constitution, which was subject to approval by the scholars. Efforts of the Technical Committee culminated in organizing, for the first time in the history of Kenya's Muslims, a meeting that brought together more than 500 hundred Muslim scholars at the Nairobi Muslim Academy from the 15th to the 17th of April 2005.

Inauguration of the Majlis ulama-Kenya was attended by several Muslim dignitaries, including the Chief Kadhi of Kenya and Muslim members of parliament. The chief guest was the National Heritage Minister Najib Balala. The Chief Kadhi blessed the inauguration ceremony by mentioning: "It is my hope that the Majlis Ulama-Kenya would be the unifying vehicle for Muslims in the country. I was myself involved in its formation and I fully support it in its ideals which centre on uniting Muslims of Kenya".

The establishment of the Majlis Ulama-Kenya did not pass without criticism. In a pre-recorded message that was read during the inauguration of the majlis, the Chairman of the Supreme Council of Kenyan Muslims noted that "majlis ulama has to have a specific role. What they are trying to do is a non-start, taking over what is already there. The most important role they can have is to bring Muslims together in giving fatwa to be accepted by all Muslims." He further noted that "the majlis so far only enjoys the support of those who are affiliated with the same madhab and does not enjoy a popular recognition". Some Muslims have questioned the rationale of a process to register another institution beside the Supkem.

However, the majlis has dispelled these fears by stressing that the majlis would work closely with other bodies to bring about development within the Muslim community and that the majlis will supplement the efforts of other organizations for the betterment of Muslims in the country.
Muslim Personal Law and the Referendum on the Constitution of Kenya

Since Kenya gained independence in 1963, the right of Muslims to have their own courts has been entrenched in the constitution. The 1963 Constitution provided separate articles on the establishment and formulation of the Kadi’s courts, allowing them full jurisdiction in determining questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion.

The Attorney General of Kenya published a proposed constitution for which Kenyans voted in a referendum on 21st November 2005. Several articles of the proposed constitution have been criticised by Kenyans. The majority of Muslims in Kenya felt that the proposed constitution was not to their advantage. Muslims were dismayed by the inclusion of Kadi courts under a blanket article referring to ‘religious courts’ but also includes Christian and Hindu courts.

Muslims’ fear emanates from the fact that the Parliament has been given the power to determine the jurisdiction of the religious courts, as well as establishing other religious and traditional courts. Others anticipated that if the proposed constitution was adopted, then the religious courts could be overruled by an act of Parliament which requires a simple majority. Results of the Referendum were released on Tuesday 22nd November 2005 whereby 57% of the Kenyan voters rejected the proposed constitution of Kenya. Muslims dominated constituencies in the Coast and Northern Eastern Province, which voted against the document by margins of 80% and 75%, respectively. A columnist in a daily newspaper wrote: “The Islamic constituency in the country voted against the referendum to frail.”

For the first time, the Majlis Ulama-Kenya has come out in public with a stand to oppose the proposed constitution. The Amir (chairman), Sheikh Khalil Khamis, of the Majlis made a press release after Friday prayers at the Jamia mosque in Nairobi, expressing the position of the Majlis on behalf of Kenyan Muslims.

Later, the Chief Kadi of Kenya, Sheikh Hammad Mohamed Kassim, made a similar statement rejecting the proposed Constitution. Responding to the Chief Kadi’s statement, two Muslim Cabinet Ministers called for the dismissal of the Chief Kadi on his stand against the proposed constitution. A weekly Muslim bulletin noted “the cabinet ministers have called on Sheikh Hammad to steer from the raging constitutional debate or face the axe”.

Conclusion

Since the inception of the Majlis Ulama-Kenya on 17th April 2005, two events have occurred demonstrating the unified voice of the Muslim leadership and majority of the Muslim population. The first event was the sighting of moon for the end of Ramadhan that was declared on 2nd November 2005. For the first time in many years, Muslims in Kenya celebrated Eid ul fitr on Thursday 3rd November 2005 with their fellow faithful worldwide. The Chief Kadi of Kenya declared the Eid ul fitr with the support of the Majlis Ulama-Kenya and majority of Muslims in the country. The second incident is the unified stand of opposing the proposed constitution of Kenya that has earned blessings of the Majlis Ulama-Kenya and the Chief Kadi of Kenya.

Results of the referendum have demonstrated the strength of the majority of Muslims in Kenya who have rejected the proposed constitution under the joint leadership of the Majlis Ulama-Kenya and the Chief Kadi. These events could be interpreted as fruits of the Majlis Ulama-Kenya; having partly accomplished the objective of uniting Muslims in Kenya. It remains to be seen whether the Majlis Ulama-Kenya will maintain its momentum with the tide of the time in bringing together the Muslims in Kenya.

Notes

1. Sec. 36 The East Africa Order in Council 1897
4. Interview with Prof. Adbulghafir Hemed El-Busaidy, Chairman of the Supreme Council of Kenya Muslims, Nairobi, 23rd October 2005
5. Brief report on the Seminar of Ahli Sunna Scholars held on 2nd-3rd June 1990 at Madrasatul, Munawwara Mombasa (in Kiswahili)
10. Mr. Jaiadi Kisero, Managing Editor of the East African, Daily Nation, 23rd November 2005
11. The Friday Bulletin, Shawwal 09 1426/November 11, 2005, pp.1