

Law, Religion and Reconciliation in Africa



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12 RELIGIOUS COURTS AND TRIBUNALS IN AFRICA: AN OVERVIEW

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INTRODUCTION

We are all familiar with legal systems: from constitutional experts to school children. The rule of law and due process are concepts with centuries of tradition and respect. Generally, legal systems are seen as being universal and monolithic: a state legislature makes laws for a defined territory, which are enforced through an independent body of courts with defined rights of appeal. But this image of universality is somewhat superficial and potentially misleading. Of course, citizens bear allegiance to the state and are bound by the laws enacted through the democratic process. But many citizens also owe allegiance to other systems of law, particularly the laws and regulations of religious organisations to which they belong, and into which many are born.

The Abrahamic faiths hold to a common principle, which is also to be found in African traditional religion, namely that individuals ought first to seek to be reconciled with one another before taking their disputes to state authorities. This bias towards reconciliation, seen as a gospel imperative for Christians, entails what is often seen as a modern concept, namely alternative dispute resolution. This arose in response to the cost and complexity of secular litigation. But the concept of being reconciled with one's neighbour before recourse to the courts and tribunals of the state has a long and distinguished heritage amongst people of faith. One finds within institutional religions sophisticated systems to resolve disputes internally, through mediation and arbitration, without reference to the secular judges and state courts. In her monograph, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, Ayelet Shachar, explores how multiple affiliations, particularly amongst minority religious groups, has problematised the increased legal recognition of communal religious identities.³ It is not the purpose of this chapter to address the deep philosophical question of whether a citizen can truly

1 Distinguished Global Professor of the Practice and Senior Global Fellow with the Religious Liberty Institute, University of Notre Dame London Law Programme; Visiting Professor, University of Pretoria, South Africa.

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3 See Shachar A. 2001. *Multicultural Jurisdictions: Cultural Differences and Women's Rights* Cambridge: Cambridge University Press. For a thoughtful consideration, but in a non-African context, see Williams R. 2013. "Civil and religious law in England", in Griffith-Jones R (ed), *Islam and English Law: Rights, Responsibilities and the Place of Sharia*. Cambridge: Cambridge University Press.

show allegiance both to a state and to a faith, nor the derivative jurisprudential questions that arise.⁴ Rather, it seeks to perform the more mundane but nonetheless significant task of identifying the existence of religious courts and tribunals in Africa and describing the supplementary jurisdiction in which they operate with various degrees of recognition from organs of the state. This is an underdeveloped field of study, but it is worthy of investigation.⁵ The following research questions help define the content and extent of this study: (1) Are religious courts or tribunals used for the resolution of disputes? (2) What are the procedures? (3) Do the civil (state) courts recognise and enforce decisions of religious courts or tribunals? (4) Are religious courts or tribunals subject to governmental oversight or judicial review?

CATEGORIES OF RELIGIOUS COURTS AND TRIBUNALS

Religious courts and tribunals are used for the resolution of disputes in many countries in Africa; however, the binding nature and enforceability of their decisions and adjudications varies from one jurisdiction to another. These institutions can be broadly separated into three categories by the level of authority they hold within the national jurisdiction in which they operate.

The first category of religious courts and tribunals are those which do not receive governmental recognition as official adjudicatory bodies. Individuals, usually adherents of a particular faith, are either required by religious law to have their cases adjudicated by those bodies, or voluntarily submit to their jurisdiction. However, the rulings of these bodies are unenforceable in secular state courts. Compliance with the decisions of these religious courts or tribunals depends on the regulatory instruments of the religious organisations, which may include disfellowship (shunning) or loss of membership.

The second category of religious courts and tribunals are those which receive official recognition from the state but in a limited form. These limitations generally relate to the subject matter of the dispute (often family law) or to the individual concerned (a church minister or, more broadly, adherents of the faith) or they may be territorial. Some countries only recognise the authority of religious courts and tribunals to hear matters in certain areas of law. In other countries, or particular regions of countries, religious courts and tribunals are allowed to operate a parallel legal system deploying religious law, which citizens may use in preference to the state's system. Governments may limit the authority of these religious tribunals and courts merely to adjudicating on disputed amongst co-religionists, but this is not always the case. Some religious courts and tribunals permit non-members to make use of their services, and in some countries the state affords this civil recognition. States

4 There is already considerable scholarship in the field. In the European context, see Hill M and Papadopoulou L (eds). 2024 *Islam, Religious Liberty and Constitutionalism in Europe*. London: Bloomsbury Publishing.

5 I am indebted to Professor Faith Kabata and Professor Idowo Akinloye, whose chapters in this volume pursue in greater detail the matters discussed here with specific reference to Kenya and Nigeria respectively.

generally provide a means by which the civil courts will enforce the adjudications of religious courts and tribunals.

The third category of religious courts and tribunals are those which operate as part of the state's official legal system. In those jurisdictions, there is no distinction between religious and secular courts. Those religious courts and tribunals are part of the national legal system with judicial means of applying and interpreting religious law.

WHERE RELIGIOUS COURTS AND TRIBUNALS OPERATE

Countries with religious organisations functioning within their borders are likely to have one or more different types of religious courts or tribunals operating on their territory, with or without official recognition from the government.⁶ Most major organised religions operate religious adjudicatory bodies as a part of their structure of governance in their church. Some of these bodies only operate to discipline clergy while other organs hear and determine disputes between adherents that involve religious law. In Catholicism, for example, every diocese is required to have a tribunal to hear matters of canon law.⁷ The same is true in Judaism, where rabbinical courts (called *batei din*) hear claims between disputing (and not exclusively Jewish) parties. In some Orthodox Jewish communities, parties are required to seek legal redress in a *beth din* before proceeding to the civil legal system.⁸

The most prevalent form of religious tribunal in Africa is the Islamic tribunal that uses traditional Islamic law (also called *sharia*) to decide cases. These Islamic courts may be formally organised in a particular locale or take the form of a local imam acting as judge or arbiter.⁹ Multiple religious courts usually operate below the juridical radar of the state; for example, South Africa has Catholic, Jewish and Islamic courts that operate within its territory but with no formal recognition from the state.¹⁰

A minority of African countries have religious law embedded in their legal system. In some states, such as Uganda, these institutions receive no financial or other

6 For a general overview see Hill M. 2023. "Religious Law", in Smuts JM et al (eds). 2024 *Elgar Encyclopedia of Comparative Law*. Cheltenham: Edward Elgar Publishing. See also, Hill M. 2016. "The regulation of Christian churches: Ecclesiology, law and polity", *Theological Studies*, 72(1); Doe N. 2015. "The Ecumenical Value of Comparative Church Law: Towards the Category of Christian Law", *Ecclesiastical Law Journal* 17:135-169. See also Doe N (ed). 2021. *Church Laws and Ecumenism: A New Path for Christian Unity* London: Routledge.

7 See Catholic Diocese of Raleigh. "What is the Purpose of a Tribunal?"; Catholic Diocese of Fall River, Massachusetts. "What is the Tribunal?", Fall River Diocesan Tribunal; Catholic Diocese of Manchester, New Hampshire. Year? "About the Office of Canonical Services". All of these documents were accessed from the diocesan websites in March 2023.

8 Posner M. n.d. "What Is a Beit Din?" Chabad.org.

9 Hairsine K. 2022. "Shariah law in Africa has many faces", DW News, 28 January.

10 See Herklotz T. 2020. "Religious Courts", in *Max Planck Encyclopedia of Comparative Constitutional Law*. Oxford: Oxford Constitutional Law.

support from government, but their decisions are nonetheless recognised by national courts.¹¹ In other countries, special religious courts and tribunals are operated by and with the support of the state. In Africa, the vast majority of religious courts that are integrated into national court systems are Islamic. However, Morocco has one state-recognised Jewish court in Casablanca.¹²

These Islamic legal systems are commonly divided into two categories: “dual” systems or “classical *sharia*” systems.¹³ A “dual” system is one where secular is enforced by the national courts, but Muslims have the option to have their claims heard before sharia courts recognised by the state.¹⁴ In contrast, a “classical *sharia*” system merges *sharia* and civil law. African countries that employ a “classical *sharia*” model usually have *sharia* law as one source, or the only source, of their civil law.¹⁵

The precise number of African countries that use either a “dual” or “classic” Islamic legal system is disputed. This is both because of varying definitions of “Islamic law” and because of divergences in categorisation of “religious law.” Some African countries have “customary law” courts based on the traditional law of local communities.¹⁶ These customs can be oral tradition and have a variety of sources, including community tradition influenced by religion.¹⁷ The distinction between tradition and religion is often blurred and, accordingly, it is disputed whether these courts are “religious” in the literal sense.

African countries that can be classified as having state-recognised religious courts in the “dual” system model are: Morocco, Egypt, Nigeria, the Gambia, Djibouti, Eritrea, Ethiopia, Kenya, Comoros and Tanzania.¹⁸ The religious courts in these countries exercise a jurisdiction that may be limited by geography, category of persons within the court’s jurisdiction or subject matter. Two of these countries, Nigeria and Tanzania, apply Islamic law regionally. In Nigeria, sharia courts only operate in the Nigerian states that have opted to follow *sharia*.¹⁹ Currently, twelve of Nigeria’s thirty-six states (and the Federal Capital Territory) have opted into

11 Muslim Centre for Justice and Law. n.d. “Sharia (Qadhis) Courts Decisions Are Legal and Binding”. Kampala: MCJL.

12 Alaoui F. 2020. “The Hebrew Court of Casablanca: Judgments in the Name of His Majesty and the Talmud”, *Moroccan Jewish Times*, 28 February.

13 See Hellman A. 2016. “The Convergence of International Human Rights and Sharia Law: Can International Ideals and Muslim Religious Law Coexist?”, *New York State Bar Association*, 5-6.

14 Hellman, “The Convergence of International Human Rights and Sharia Law”, 5.

15 Hellman, “The Convergence of International Human Rights and Sharia Law”, 6.

16 See Ndulo M. 2011. “African Customary Law, Customs, and Women’s Rights”, *Indiana Journal of Global Legal Studies* 18(1): art 5.

17 Ndulo, “African Customary Law, Customs, and Women’s Rights”.

18 See Hellman, “The Convergence of International Human Rights and Sharia Law”.

19 United States Department of State, Office of International Religious Freedom. 2022. “2021 Report on Religious Freedom: Nigeria”. Washington, DC: US State Department, 2 June.

sharia.²⁰ In Tanzania, religious courts (called Kadhis' Courts) only operate in the Zanzibar and Kwara states.²¹

Other African countries employ a "dual" system which limits access to religious courts to those of a particular faith. This is the case with Islamic courts in Djibouti,²² Ethiopia,²³ Eritrea,²⁴ the Gambia,²⁵ Kenya²⁶ and Morocco.²⁷ In Tanzania and Nigeria, the regional sharia courts are limited to Muslims.²⁸ Some African nations do not limit state-recognised religious courts and tribunals by the faith of those subject to it but rather by the area of law over which those courts have jurisdiction. This is the case in Comoros and Egypt where all people, regardless of their faith, are held to *sharia* in certain areas of law.²⁹ Only one country uses Islam as the full underpinning of its legal system: Mauritania. There, non-Muslims are governed and judged wholly based on Islamic law and practice in the national courts.³⁰ Sudan used to follow this model and had no distinction between religious and civil law until they formally became a secular country in 2020; however, recent governmental unrest has led some to question whether this is merely a decree or reality.³¹

PROCEDURES IN RELIGIOUS COURTS AND TRIBUNALS

The procedures of religious courts and tribunals vary by the particular faith group concerned and the place of the court or tribunal in the nation's legal structure.

20 US State Department, "2021 Report on Religious Freedom: Nigeria".

21 Oba IB. 2019. "Legal Framework of Kadhis' Courts in Zanzibar During the Post-Colonial Era", *Journal of Law, Policy, and Globalization* 86:30.

22 Bogdan M. 2000. "Legal Pluralism in the Comoros and Djibouti", *Nordic Journal of International Law* 69:203.

23 United States Department of State, Office of International Religious Freedom. 2022. "2021 Report on Religious Freedom: Ethiopia". Washington DC: US State Department, 2 June.

24 Dirar L and Tesfagabir K. 2011. "Introduction to Eritrean Legal System and Research", GlobaLex, March. New York: Hauser Global Law School Program, New York University School of Law.

25 Ogbuitepu F. 2012. "Guide to Gambian Legal Information", GlobaLex, May.

26 Republic of Kenya Judiciary. "Kadhis' Courts". Online at: <https://judiciary.go.ke/kadhis-court>.

27 United States Department of State, Office of International Religious Freedom. 2022. "Morocco", *2021 Report on Religious Freedom*, Washington, DC: US State Department, 2 June.

28 See US State Department. "2021 Report on Religious Freedom: Nigeria"; Bogdan, "Legal Pluralism in the Comoros and Djibouti".

29 Abdel Wahab MSE. 2019. "An Overview of the Egyptian Legal System and Legal Research", GlobaLex, November/December; Bogdan, "Legal Pluralism in the Comoros and Djibouti", 204.

30 Devi Dasi KV. 2022. "Law and Legal Systems in Mauritania", GlobaLex, December.

31 United States Department of State, Office of International Religious Freedom, 2022. "2021 Report on International Religion Freedom: Sudan". Washington, DC: US State Department, 2 June.

In countries in the first category, where the state does not recognise the binding authority of religious courts and tribunals, the process is wholly extrajudicial and according to the rules of the faith hearing the claim. Users of the court or tribunal apply for assistance in the discrete matter they need resolved and have that claim heard according to the procedure prescribed under that religion's law.

Jewish *batei din* follow a common general structure under Jewish law, with variance by the laws of the specific tribunal. Under traditional Jewish law, two parties can agree to have their case heard before the *beth din* or one party can request that the court summons another party before it by issuing a *hazmana* (akin to a summons).³² A *beth din* may send three *hazmanas* before issuing a contempt decree against the non-respondent.³³ Once a claim is brought to the *beth din* and the parties appear, the matter is usually heard and decided at a single hearing.³⁴ Cases are customarily heard by a three-judge panel but can be referred to a single judge (called a *dayanim*) with party consent.³⁵ If the two sides cannot agree on a forum, they may create a "joint *beth din*" known as a *zabala*, where each side picks one judge and then the two selected judges pick a third to hear the case.³⁶ Each side then presents their case and may be interrupted at any time by the judges for questions.³⁷ The parties go back and forth responding to the other side's arguments, with judicial intervention, until both sides have fully presented their cases.³⁸ Witnesses, both factual and expert, are questioned by judges, not the parties.³⁹ Under traditional Jewish law, witnesses must be Jewish males over the age of thirteen, but this requirement has fallen out of favour in recent years.⁴⁰ Decisions are usually given in writing by the panel.⁴¹

Catholic religious courts follow a strict structure laid out under canon law. Those rules of procedure are contained in codified canon law.⁴² Parties commonly represent themselves unless the judge deems an advocate to be necessary.⁴³ The adjudicator is appointed by the diocesan bishop and is usually an expert in canon law.⁴⁴ Most matters are determined on the papers without convening a hearing.

32 Beth Din of America. 2015 *Layman's Guide to Dinei Torah*, BethDin.org, July, 2.

33 Beth Din of America. 2015 *Layman's Guide to Dinei Torah*, 2.

34 The United Synagogue, "Arbitration (Dinei Torah)". <https://www.bethdin.org.uk/>

35 The United Synagogue, "Arbitration (Dinei Torah)".

36 Beth Din of America, 2015 *Layman's Guide to Dinei Torah*, 3.

37 Beth Din of America, 2015 *Layman's Guide to Dinei Torah*, 3.

38 Beth Din of America, 2015 *Layman's Guide to Dinei Torah*, 4.

39 See The United Synagogue, "Arbitration (Dinei Torah)", 29.

40 Beth Din of America, 2015 *Layman's Guide to Dinei Torah*, 4.

41 Beth Din of America, 2015 *Layman's Guide to Dinei Torah*, 5.

42 See D'Auria E. 2009. "Church tribunals in Roman Catholic Canon Law". Cardiff University Centre for Law and Religion, 5 January.

43 D'Auria, "Church tribunals in Roman Catholic Canon Law".

44 D'Auria, "Church tribunals in Roman Catholic Canon Law".

There is no uniform system of Islamic law, or *sharia*, as it is based on interpretations of religious texts and accordingly there is no common structure of sharia courts. There are five major schools of Islamic law.⁴⁵ Four are Sunni, the Hanbali, Maliki, Shafi'i and Hanafi schools; and one is Shia, the Jaafari school.⁴⁶ The Maliki school of Islamic law is most prevalent in Africa.⁴⁷ The Maliki school is originalist in nature, as it bases its interpretations on the common understanding of the people of seventh century Medina, which Maliki adherents believe is the best preservation of the actual teachings of the Prophet Muhammad.⁴⁸ *Sharia* is also heavily influenced by local custom, which causes both the law applied and the procedure of the courts and tribunals applying it to vary between one region and another by geographic area.⁴⁹

Despite these variances, there are common concepts among Islamic courts. Notably, the Western concept of a lawyer acting as advocate on behalf of a party is foreign in Islamic religious tribunals.⁵⁰ In Islamic law, legal representation is "is merely a form of agency."⁵¹ The legal representative, known as a *wikalah*, only acts as a stand in for the party and needs no legal training.⁵² Legal expertise in Islamic tribunals is usually provided by a mufti, who operates as an independent and impartial expert who exercises his "religious duty" to make his legal knowledge of the subject known to the court.⁵³ Islamic judges undertake the traditional lawyerly task of examining witnesses and cross-examining parties.⁵⁴ Further, they do not have evidentiary rule constraints. Judges in Islamic courts are "entitled to use all relevant facts and apply all relevant laws whether or not these were canvassed by the parties."⁵⁵ This means that Islamic judges can consult whatever legal sources they wish to outside the record in deciding upon their rulings.

In the African countries that apply Islamic *sharia* to everyone, the civil procedure of the courts is usually set out under the nation's civil law. Egypt, which applies sharia-derived law mainly in personal and family contexts, uses traditional French legal procedure and hears cases in their usual civil courts.⁵⁶ In contrast, Comoros,

45 "What is Sharia law? What does it mean for women in Afghanistan?", BBC News, 19 August 2021.

46 "What is Sharia law? What does it mean for women in Afghanistan?".

47 Robinson K. 2021. "Understanding Sharia: The Intersection of Islam and the Law", *Council on Foreign Relations*, 17 December.

48 Robinson, "Understanding Sharia".

49 See "What is Sharia law?", BBC News.

50 See Oba AA. 2000. "Lawyers, Legal Education, and the Shari'ah Courts in Nigeria", 28 November, 128. Online at <https://commission-on-legal-pluralism.com/system/commission-on-legal-pluralism/volumes/49/oba-art.pdf>.

51 Oba, "Lawyers, Legal Education, and the Shari'ah Courts in Nigeria".

52 Oba, "Lawyers, Legal Education, and the Shari'ah Courts in Nigeria".

53 Oba, "Lawyers, Legal Education, and the Shari'ah Courts in Nigeria".

54 Oba, "Lawyers, Legal Education, and the Shari'ah Courts in Nigeria".

55 Oba, "Lawyers, Legal Education, and the Shari'ah Courts in Nigeria", 137.

56 Abdel Wahab, "An Overview of the Egyptian Legal System and Legal Research"

which hears all family and inheritance law cases according to Islamic law, decides these issues in special “courts of the *cadis*.”⁵⁷ Cases in those *cadis*’ courts are heard under the *cadis*’ courts’ specifically derived special procedure.⁵⁸

Mauritania, which has a wholly intertwined civil and religious law system, has heard both religious and secular cases in the same court system and under the same rules of procedure since the sharia courts and civil courts were merged in 1983.⁵⁹ In Mauritania, there are seven courts of first instance, based on the type of law being heard.⁶⁰ All these courts have various procedures and range from one judge to three judge panels.⁶¹

FUNDING PROVIDED BY THE STATE

As with jurisdiction, the methods of funding religious courts and tribunals in Africa vary from state to state. Self-evidently, African countries which do not recognise religious courts provide no direct financial support. However, these courts can be funded indirectly by the state in two ways. First, states can fund religious courts through giving public funds to the religious organisations that operate them. For example, Guinea and Côte d’Ivoire both provide public funds to religions, and accordingly those funds may trickle down into the religious body’s adjudication system.⁶² Second, states can provide grants to organisations which conduct independent arbitration. As many religious organisations, notably Jewish *beth din* and Islamic tribunals, offer arbitration, state grants may indirectly fund these tribunals.⁶³ Otherwise, these courts are internally funded, either through fees paid to access them or by the religious organisation which runs them.

For African countries which partially recognise religious courts, there usually is some form of state funding. In Djibouti, Ethiopia, Eritrea, the Gambia, Kenya, Morocco, Nigeria and Tanzania, the countries that operate “dual” legal systems, courts are directly funded by the government, but the funding is separate from the state’s funding of the civil legal system.⁶⁴ In the countries that fold religious law enforcement into their civil legal systems, namely Comoros, Egypt and Mauritania,

57 Bogdan, “Legal Pluralism in the Comoros and Djibouti”, 204.

58 Bogdan, “Legal Pluralism in the Comoros and Djibouti”, 204.

59 Devi Dasi, “Law and Legal Systems in Mauritania”.

60 Devi Dasi, “Law and Legal Systems in Mauritania”.

61 Devi Dasi, “Law and Legal Systems in Mauritania”.

62 See United States Department of State, Bureau of Counterterrorism, “Country Reports on Terrorism 2021: Côte d’Ivoire”. Washington, DC: U.S. Department of State; United States Department of States, Bureau of Democracy, Human Rights, and Labor. 2018. “2017 Country Reports on Human Rights Practices: Guinea”, Washington, DC: U.S. Department of State.

63 See Onyema E. 2020. “2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats”. London: SOAS University, 30 June.

64 See, e.g, Bogdan, “Legal Pluralism in the Comoros and Djibouti”, 207.

national governments fully fund the courts and tribunals that hear religious law, as those organs hear both civil and religious matters (and many shared matters as civil and religious law have no distinction).

SUBJECT MATTER OF RELIGIOUS COURTS

In the countries which do not recognise religious courts and tribunals, the institutions themselves wholly determine the extent of their jurisdiction. Some religious courts and tribunals only have jurisdiction over internal regulation and discipline matters. In the religious courts and tribunals which do extend jurisdiction beyond church employees, the most common subject matter limitation is to personal law matters, such as marriage and divorce, guardianship, adoption and inheritance.⁶⁵ This is because many religions do not recognise civil personal status judgments, especially in relation to divorce, to affect the personal status of the individual within the religious community. This is true in Catholicism, Judaism and some denominations of Islam. Accordingly, these faiths require people to obtain both civil and religious legal determinations to obtain the same status recognition in religious and secular society.

For example, the Catholic Church does not recognise the concept of civil divorce, and a secular divorce decree has no effect on the marital status of the individual in the eyes of the church.⁶⁶ Therefore, a civil divorce must be accompanied by a declaration of nullity by the Catholic ecclesiastical authority.⁶⁷ Orthodox Judaism also does not recognise civil divorces and requires a Jewish divorce decree, known as a *get*, to recognise the divorce.⁶⁸

In Islam, where divorce is permitted but the method of divorce varies, the decision of an Islamic court in addition to the civil court may be needed to grant the specific *sharia* rite of divorce that the parties desire.⁶⁹ In Islam, divorces may be revocable (where there is a waiting period known as an *idda* before a divorce becomes final) or irrevocable (where the divorce decree is final).⁷⁰ Islamic couples seeking to dissolve their marriage may either need, or opt to obtain, a divorce decree in both the civil and religious courts.

While non-state recognised religious courts and tribunals may hear claims regarding a variety of other matters covered under the law of religion of the tribunal beyond personal status claims, these instances are not as common, because the tribunals do

⁶⁵ See Herklotz, "Religious Courts".

⁶⁶ "Personal and family issues: Marriage and divorce", BBC News, n.d.

⁶⁷ "Personal and family issues: Marriage and divorce", BBC News, n.d.

⁶⁸ Lieberman P. n.d. "What You Need to Know About a Get", RabbinicalAssembly.org. New York: The Rabbinical Assembly.

⁶⁹ See Ali K. "Muslim Sexual Ethics: Divorce", The Female Sexual Ethics Project. Waltham, MA: Brandeis University.

⁷⁰ Levush R. 2017. "Religious Matrimonial Laws in Selected Middle East and African Countries", *Library of Congress Blogs*, 31 August.

not have state-backed enforcement authority. However, these bodies may have a “soft” enforcement authority within the communities in which they operate, which still makes them an attractive dispute resolution method for members of the faith. For example, in *beth din* courts, parties that do not comply with judgement can be made subject to a *cherem*, or community shunning.⁷¹

In the countries which officially recognise religious courts and tribunals, their jurisdiction is also mainly limited to personal law matters. A review of the jurisdiction of the religious courts and tribunals of each African country that recognises their decisions are as follows.

Comoros	Jurisdiction is limited to matters of personal status, family law and inheritance law disputes and cases are heard under <i>sharia</i> . ⁷²
Djibouti	Jurisdiction is limited to personal status and family law matters and cases are heard under <i>sharia</i> . ⁷³
Egypt	Civil law courts hear religious claims under Islamic law in personal status cases. ⁷⁴
Eritrea	Jurisdiction is limited to matters of personal status, family law and inheritance law disputes and cases are heard under <i>sharia</i> . ⁷⁵
Ethiopia	Jurisdiction is granted in two areas and all cases are heard under <i>sharia</i> . First are family law matters, namely: “marriage, divorce, maintenance, guardianship of minors, and family relationships provided that marriage to which case pertains was concluded under Islamic law or parties are all Muslims.” ⁷⁶ Second are inheritance and some property law cases, including “cases concerning <i>waqfs</i> , gifts, succession or wills, provided that donor is a Muslim or deceased was a Muslim at time of death”. ⁷⁷
The Gambia	Jurisdiction is limited to Islamic marriage, family, child custody and inheritance matters. ⁷⁸
Kenya	Muslims may use Kadhis’ Courts in cases regarding “personal status, marriage, divorce and inheritance”. ⁷⁹

71 Barrie GN. 2005. “Judicial Review and Religious Freedom in South Africa”, *Journal of South African Law* (2005):164.

72 Bogdan, “Legal Pluralism in the Comoros and Djibouti”, 203.

73 United States Department of State, Office of International Religious Freedom. 2022. “2021 Report on Religious Freedom: Djibouti”. Washington, DC: US Department of State, 2 June.

74 Abdel Wahab, “An Overview of the Egyptian Legal System”.

75 Dirar & Tesfagabir, “Introduction to Eritrean Legal System and Research”.

76 “Ethiopia, Federal Democratic Republic of”, Islamic Family Law, Law and Religion Program, Emory University School of Law. Online at: <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/ethiopia-federal-democratic-republic-of/>.

77 “Ethiopia, Federal Democratic Republic of”, Islamic Family Law.

78 Ogbuitempu, “Guide to Gambian Legal Information”.

79 Constitution of Kenya, 2010, art 24, cl 4.

Mauritania	Every area of law is intermixed with Islamic law. The Constitution of Mauritania recognises that “Islam is the religion of the people and of the State.” ⁸⁰ Accordingly, courts do not have a limited jurisdiction.
Morocco	Specialised family law courts hear personal status cases according to <i>sharia</i> regardless of religion. ⁸¹ In Casablanca, practicing Jews have personal status cases heard before the state sponsored rabbinical court. ⁸²
Nigeria	In the states where <i>sharia</i> operates, courts have jurisdiction over every legal matter if at least one party is Muslim, or all parties agree to have their case adjudicated by the religious court. ⁸³
Tanzania	State-sponsored religious courts are only available in two states and only adjudicate cases related to Muslim family law. ⁸⁴
Uganda	Civil courts only recognise and enforce the verdicts of the religious courts in regard to personal status claims. ⁸⁵

In the criminal context, there are stark disparities in the application of *sharia* versus civil law. Even for the same offence, an individual who opts to have their case heard by a sharia court rather than a civil law court may be opening themselves up to a much greater penalty. For example, both the Nigerian civil courts and the state sharia courts criminalise words or gestures intended to cause offence to a religion as blasphemy.⁸⁶ Under a civil law conviction for blasphemy, an individual can be sentenced to a maximum of up to two years in prison,⁸⁷ a conviction for the same offence under *sharia* carries a sentence of death.⁸⁸ Although one has to consent to the jurisdiction of sharia courts in countries that follow the “dual” model, this disparity raises questions of whether this amounts to religious discrimination against Muslims by opening them up to significantly greater liability merely because of their faith.

Similarly, within *sharia*, there are evident gender disparities in its application.⁸⁹ Consider the *sharia* offence of *zina* (sex outside of marriage). Under the version of

80 Constitution of Mauritania, 1991, s 6.

81 “Morocco, Kingdom & Western Sahara”, Islamic Family Law, Law and Religion Program, Emory University School of Law. Online at: <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/morocco-kingdom-of-western-sahara/>

82 US DOS/OIRF, “2021 Report on Religious Freedom: Morocco”.

83 US DOS/OIRF, “2021 Report on Religious Freedom: Nigeria”; Dina, “UPDATE: Guide to Nigerian Legal Information”.

84 Oba, “Legal Framework of Kadhis’ Courts in Zanzibar”, 8.

85 Muslim Centre for Justice and Law, “Sharia (Qadhis) Courts Decisions Are Legal and Binding”.

86 Nigerian Criminal Code Act (2000), s 204; Section 382(b) of the Kano State Sharia Penal Code, s 382(b).

87 Nigerian Criminal Code Act (2000), s 204.

88 Kano State Sharia Penal Code, s 382(b).

89 See, e.g., Okoye UN. 2006. “Women’s Rights Under the Shari’a: A Flawed Application of the Doctrine of ‘Separate but Equal’”, *Women’s Rights Law Reporter* 27:103; Hursh J. 2012.

sharia applied in Nigeria, a conviction for *zina* requires four witnesses who saw the sexual act in question being committed.⁹⁰ However, in cases where a woman is pregnant, the four-witness requirement is waived, leading to a situation where women have a much higher conviction than men for the same offence.⁹¹ Gender inequality is also evident in Islamic divorce, where women and men are seen differently by the court. In Islam, a man can sue for divorce without the consent of his wife, but the reverse is not true.⁹² This inequality gives men an advantage when selecting a forum to bring their legal claims. However, to change the application of *sharia* would have theological implications. This sets up a clash between fundamental human rights guaranteed under international law that each country must weigh when deciding to recognise and sponsor religious courts.

ENFORCEABILITY AND RECOGNITION BY THE STATE

Countries that do not recognise the authority of religious courts and tribunals do not enforce the judgments of those courts. However, in limited circumstances relating to personal status, they may recognise the determinations of religious courts which, if unrecognised, would cause problems in wider society. This is particularly true regarding marriages and divorces. For example, until 2022, South Africa did not recognise Muslim marriages registered under *sharia*.⁹³ This created problems in determining child custody and alimony payments when Islamic marriages were dissolved, because the marital status of the parties and the legitimacy of their offspring were not recognised under South African civil law.⁹⁴ As a result, the South African Supreme Court ruled in *Women's Legal Centre Trust vs President of the Republic of South Africa and Others* that marriages registered under *sharia* had to be recognised by the state courts.⁹⁵ While status determinations by religious law and courts, in some instances, may be recognised by civil authorities, the rulings themselves are not.

Even though the rulings of religious courts and tribunals are generally not recognised for enforcement purposes, some argue that under the common law tradition, their decisions should be reviewable for the purpose of enjoining them

"Advancing Women's Rights Through Islamic Law: The Example of Morocco", *Berkeley Journal of Gender and Law* 27:252.

90 Roberts KN. 2005. "Constitutionality of Shari'a Law in Nigeria and the Higher Conviction Rate of Muslim Women Under Shari'a Fornication and Adultery Laws", *Southern California Review of Law and Women's Studies* 14:316.

91 See Roberts, "Cosntitutionality of Shari'a Law in Nigeria", 316-18.

92 Immigration and Refugee Board of Canada, Research Directorate. 2001. Nigeria: Availability of Divorce for Women in a Muslim Marriage who Have Experienced Domestic Abuse, NGA36642.E, 9 April.

93 Kreuser C and Payne AL 2022. "Constitutional court's decision on Muslim marriages does not go far enough to protect women and children", *Mail & Guardian*, 15 July.

94 Kreuser and Payne, "Constitutional court's decision on Muslim marriages".

95 Kreuser and Payne, "Constitutional court's decision on Muslim marriages".

if they contradict civil law.⁹⁶ Those who support this proposition argue that “any private institution which exercises powers over individuals is obliged to observe common law principles which do not differ in principle from those applied to public bodies.”⁹⁷ Since religious courts and tribunals “are in a position to act just as coercively as public bodies and their decisions can have far reaching effects,” proponents of this form of judicial review believe civil courts in the common law tradition are obligated to regulate them to some degree to ensure justice.⁹⁸

In African countries that have a common law system, there is some limited case law from the mid-nineteenth to the late twentieth century which supports the position of civil court review of religious legal decisions.⁹⁹ The most noteworthy decision in this vein is *Odendaal v Loggerenberg*, where the Supreme Court of South Africa held that “judicial intervention would follow if a domestic religious tribunal had not complied with the ‘elementêre beginsels van geregtigheid’” or “elementary principles of justice.”¹⁰⁰ However, in practice, civil oversight is seldom carried out, as civil judicial intervention in religious courts and tribunals is seen as violating an individual’s free will and their free exercise of religion.

For the countries which sponsor religious courts and tribunals or fold the enforcement of religious law into their legal system, the decisions of the state-sponsored court are given full faith and credit under national law. The decisions of these bodies are enforceable to the extent that they are subject to the judicial review by a higher court.

GOVERNMENTAL OVERSIGHT AND REVIEW

In general, religious courts and tribunals not supported by the state do not have governmental judicial review or oversight. Though, some of these bodies still have internal oversight and judicial review through the given religion’s internal appeal system. Notably, Catholic diocesan courts have an appeals structure consisting of four levels: the diocesan, metropolitan, regional and Holy See.¹⁰¹ Although sometimes issues of first instance may appear at different levels of the canon law court structure, a general process of internal review and oversight is in place.¹⁰²

State oversight of non-state religious courts and tribunals follows a general policy of non-intervention except in extraordinary cases. The reasoning that underpins the secular governmental court hesitation to enforce these judgements is exemplified by *Taylor v Kurtstag NO, Rabbi MA (in his capacity as Rosh Beth Din)*, a 2003 case

96 See Barrie, “Judicial Review and Religious Freedom in South Africa”, 163.

97 Barrie, “Judicial Review and Religious Freedom in South Africa”, 163 (summarizing Baxter L. 1984. *Administrative Law*. Cape Town: Juta, 10).

98 Barrie, “Judicial Review and Religious Freedom in South Africa”, 163.

99 Barrie, “Judicial Review and Religious Freedom in South Africa”, 163.

100 Barrie, “Judicial Review and Religious Freedom in South Africa”, 163 (quoting *Odendaal v Loggerenberg* (1) 1 SA 712, 719 (1991)).

101 D’Auria, “Church tribunals in Roman Catholic Canon Law”, 2.

102 D’Auria, “Church tribunals in Roman Catholic Canon Law”, 2.

heard by the Witwatersrand Local Division of the High Court of Johannesburg.¹⁰³ There, a Jewish couple agreed to have the financial maintenance and custody aspects of their divorce adjudicated by a Beth Din.¹⁰⁴ When it became clear the husband planned to ignore the ruling of the Beth Din, the court declared a *cherem* (excommunication notice) against the husband.¹⁰⁵ As a result, he was shunned by the Orthodox community in Johannesburg, which was not allowed to socialise with him or patronise his business.¹⁰⁶

The husband then filed a claim in South African civil court to enjoin the *cherem*, claiming that its enforcement would infringe upon his constitutional rights as well as defame him.¹⁰⁷ While the civil court agreed that the imposition of a *cherem* both infringed on the applicant's constitutional rights and was unenforceable by the South African legal system, they declined to enjoin the verdict, finding it "reasonable and justifiable since a *cherem* [emphasis added] enables the Jewish community "to protect the integrity of Jewish law and custom by ensuring conformity therewith."¹⁰⁸ The Witwatersrand Local Division Court relied on two grounds in justifying their decision to not enjoin the imposition of the *cherem*: consent and freedom of religion.

On the first point, consent, the court found that the applicant had in effect consented to the jurisdiction of the *beth din* when he agreed to be bound by its ruling.¹⁰⁹ The court found that acceptance of the ruling was not coercion because "[a]dherents consensually undertake to submit themselves to the discipline which has been imposed on them in consequence of their practice of Orthodox Judaism."¹¹⁰ In regard to the *beth din* and the Jewish Orthodox community, which was supposed to impose the *cherem*, the court found that they respectively had the freedom to ask others not to associate with the applicant and to not associate with the applicant if they wished.¹¹¹ In enjoining the *cherem*, the court found that they would essentially be interfering in a religious community's decision to exclude an individual from their society and be put in the position of regulating social niceties. Following this line of reasoning, the court found that in enjoining the *beth din*, they would be violating the rights of the Johannesburg Orthodox Jewish community.¹¹²

103 Barrie, "Judicial Review and Religious Freedom in South Africa", 164.

104 Amien A and Raiwani K. 2020. "Equalizing Gendered Access to Jewish Divorce in South Africa", *The Journal of Legal Pluralism and Unofficial Law*, 3 November, 7.

105 Barrie, "Judicial Review and Religious Freedom in South Africa", 162.

106 Barrie, "Judicial Review and Religious Freedom in South Africa", 162.

107 Amien and Raiwani, "Equalizing Gendered Access to Jewish Divorce in South Africa", 7.

108 Amien and Raiwani, "Equalizing Gendered Access to Jewish Divorce in South Africa", 7. (quoting *Taylor v Kurtstag NO, Rabbi MA (in his capacity as Rosh Beth Din)*, case no. 24825/03 (unreported) of 15-09-2004 (W)).

109 Amien and Raiwani, "Equalizing Gendered Access to Jewish Divorce in South Africa", 7.

110 *Taylor v Kurtstag NO, Rabbi MA (in his capacity as Rosh Beth Din)*, case no. 24825/03 (unreported) of 15-09-2004 (W), para. 35.

111 Amien and Raiwani, "Equalizing Gendered Access to Jewish Divorce in South Africa", 7.

112 Amien and Raiwani, "Equalizing Gendered Access to Jewish Divorce in South Africa", 7.

Second, on the point of free exercise, the court found that in enjoining the ruling of the *beth din*, they would be violating the freedom of religion of those within the religious community.¹¹³ This was because the court found that a *cherem* was a well-established concept in Jewish law and thus part of traditional Orthodox Jewish religious exercise.¹¹⁴ Since the *cherem* is an established part of Judaism, adherents are “obliged to demonstrate fidelity to it, which included accepting the Cherem.”¹¹⁵ As a result, the court saw that enjoining the *cherem* would be tantamount to government limitation of religious free exercise.¹¹⁶

As *Taylor* shows, even violations of constitutional rights may be excused by this rationale for state non-intervention. However, there still may be extraordinary cases where intervention is warranted. These interventions are a far cry from the broad judicial review advocated for by *Odendaal* and would only come into play when religious court action or inaction is so egregious that it outweighs the constitutional free exercise considerations or puts a person at risk of serious bodily harm.

An example of the former is *Amar v. Amar*, a 1999 decision in the same South African court as *Taylor*, which granted a Jewish couple a divorce despite the lack of the husband’s permission in the form of a *get*, as required under Jewish law.¹¹⁷ There, the Witwatersrand Local Division Court determined that the husband was refusing to grant a *get* as a means of extorting a favourable settlement from his wife and, as a result, the court stepped in, granted the divorce and determined a settlement of their own.¹¹⁸

An example of the latter outcome is *Raik v. Raik*, a 1993 case which largely mirrored the facts and decision from *Amar*.¹¹⁹ The main distinction between the two cases was that the refusal to grant a *get* in *Raik* was part of a pattern of emotional and physical abuse on the part of the husband.¹²⁰ In *Raik*, the court found that the pattern of abuse was sufficient to intervene and overrule the *beth din* court.¹²¹

In the African countries that have state-sponsored religious courts and tribunals, the decisions of those courts are subject to review by other courts in that country’s legal system. When the civil legal system applies religious law, that appeal is heard through the same judicial review system in which all other cases are heard. In cases where

113 Barrie, “Judicial Review and Religious Freedom in South Africa”, 164.

114 Barrie, “Judicial Review and Religious Freedom in South Africa”, 164.

115 Barrie, “Judicial Review and Religious Freedom in South Africa”, 165.

116 Barrie, “Judicial Review and Religious Freedom in South Africa”, 165.

117 Amien and Raiwani, “Equalizing Gendered Access to Jewish Divorce in South Africa”, 8-9 (discussing *Amar v. Amar* 2 All SA 376 (W) (1999)).

118 Amien and Raiwani, “Equalizing Gendered Access to Jewish Divorce in South Africa”, 8-9.

119 Amien and Raiwani, “Equalizing Gendered Access to Jewish Divorce in South Africa”, 6 (discussing *Raik v. Raik* 2 SA 617 (W) (1993)).

120 Amien and Raiwani, “Equalizing Gendered Access to Jewish Divorce in South Africa”, 6.

121 Amien and Raiwani, “Equalizing Gendered Access to Jewish Divorce in South Africa”, 6.

separate religious courts operate, whether run by or sponsored by the state, separate appeals processes may exist. A review of the appeals processes for the religious courts and tribunals of each African country that recognises their decisions is as follows.

Comoros	Cadi Courts are incorporated into the national judicial structure and operate at the lowest level of the tripartite system. The decisions of Cadi Courts are reviewable by both the Court of Appeals, ¹²² and, since the imposition of a new Constitution in 2018, the Supreme Court whose “decisions ... are not liable to any recourse and impose themselves on ... all the jurisdictions of the national territory.” ¹²³ These methods of judicial review only considers matters of law, not theology, as the Constitution of Comoros recognises Sunni Islam as the official religion of the state and draws on that religion when enacting laws. ¹²⁴
Djibouti	Cadi Courts have a separate judicial review system than civil courts. Decisions in lower Cadi Courts can be appealed to a Cadi Appeals Court. ¹²⁵ From there, cases may then be appealed to the Supreme Court of Djibouti (called the Court of Cassation), which has final decision-making authority. ¹²⁶ The Supreme Court has a specific “chamber” which hears Islamic law cases, but the panel of judges is composed of the same five Justices who normally sit on the Supreme Court. ¹²⁷ Whenever the Court hears matters of Islamic law, they are joined by independent Islamic law assessors appointed by the President of Djibouti. ¹²⁸
Egypt	As Islamic law is used by Family Division civil courts, decisions are reviewed through the normal appeals process. First, cases can be referred to the Court of Appeals for Family law. ¹²⁹ They then may be appealed up to Court of Cassation, which is the final interpretive body of the law. ¹³⁰ In some instances, cases may be further appealed to the Supreme Court of Egypt, but only in instances that deal with questions of constitutionality. ¹³¹ As the Egyptian Constitution lays out that the “principles of Islamic Sharia are the principle source of legislation” it is unlikely that a case based on the constitutionality of religious law itself would ever reach the high Egyptian court. ¹³²
Eritrea	Sharia courts are siloed from the regular civil legal system and are generally unreviewable; however, their decisions are reviewable by the High Court but only for Constitutional questions. ¹³³

122 Nyarko MG. 2020. *“Introduction to the Law and Legal System of the Islands of Comoros”*, GlobalLex, October.

123 Constitution of Comoros, art 96, cl 3.

124 Constitution of Comoros, art 97.

125 Bogdan, *“Legal Pluralism in the Comoros and Djibouti”*, 207.

126 Dahir MMH. 2022. *“Researching the Legal System of the Republic of Djibouti”*, GlobaLex, June.

127 Bogdan, *“Legal Pluralism in the Comoros and Djibouti”*, 206.

128 Bogdan, *“Legal Pluralism in the Comoros and Djibouti”*, 206.

129 Abdel Wahab, *“An Overview of the Egyptian Legal System”*.

130 Abdel Wahab, *“An Overview of the Egyptian Legal System”*.

131 Abdel Wahab, *“An Overview of the Egyptian Legal System”*.

132 Constitution of Egypt, art 2.

133 Dirar and Tesfagabir, *“Introduction to Eritrean Legal System and Research”*.

Ethiopia	Sharia courts operate in a tripartite legal structure on the federal level, distinct from the civil court system. ¹³⁴ Cases first are heard in the Federal First Instance Court of Sharia and can be appealed up to the Federal High Court of Sharia. ¹³⁵ Those decisions may then be appealed to the Federal Supreme Court of Sharia. ¹³⁶ All decisions of that court are accountable to the Federal Judicial Administration Commission in certain extreme situations dealing with constitutional law. ¹³⁷
The Gambia	The Islamic legal system is totally separate and unreviewable by the government. Lower Cadi Court decisions are reviewed by a Cadi Court of Appeals consisting of a three-member panel. ¹³⁸
Kenya	A Lower Kadhis' Court decision is reviewable by an Upper Kadhis' Court. ¹³⁹ A decision of the Upper Kadhis' Court is reviewable by the Kenyan High Court and the decisions of the Kenyan High Court are further reviewable by Kenya's Court of Appeals. ¹⁴⁰
Mauritania	<i>Sharia</i> is embedded in all areas of Mauritanian law and all courts here cases concerning Islamic law. ¹⁴¹ The lower courts are divided into six branches: general regional courts (<i>Wilaya</i>), district (<i>Moughataa</i>) courts, Customary Courts, Criminal Courts, Commercial Courts, and Labour Courts. ¹⁴² Those courts are answerable to their own specific courts of appeal and then may be further reviewable by the Supreme Court. ¹⁴³ In some cases, matters of constitutional law may be further referred to the Constitutional Council. ¹⁴⁴
Morocco	Decisions of religious courts are not reviewable by civil courts in Morocco. ¹⁴⁵
Nigeria	State sharia courts can be reviewed by the federal Sharia Court of Appeal, which oversees all state applicants of <i>sharia</i> . ¹⁴⁶ Those decisions can then be appealed to the secular Court of Appeal and subsequently to the Nigerian Supreme Court. ¹⁴⁷

134 Aneme GA. 2020. Introduction to the Ethiopian Legal System and Legal Research”, GlobaLex, February.

135 Aneme, “Introduction to the Ethiopian Legal System and Legal Research”.

136 Aneme, “Introduction to the Ethiopian Legal System and Legal Research”.

137 Aneme, “Introduction to the Ethiopian Legal System and Legal Research”.

138 Constitution of the Gambia, art 137A (1).

139 Constitution of Kenya, 2010, art 66.

140 Ojienda T, Ojienda B and Otieno G. 2020. “Researching Kenyan Law”, GlobaLex, April 2020.

141 Devi Dasi, “Law and Legal Systems in Mauritania”.

142 Devi Dasi, “Law and Legal Systems in Mauritania”.

143 Devi Dasi, “Law and Legal Systems in Mauritania”.

144 Devi Dasi, “Law and Legal Systems in Mauritania”.

145 “Morocco, Kingdom & Western Sahara”, Islamic Family Law.

146 Dina. 2020. “UPDATE: Guide to Nigerian Legal Information”, GlobaLex, August.

147 Dina. 2020. “UPDATE: Guide to Nigerian Legal Information”.

Tanzania	Regional courts that impose <i>sharia</i> personal law are not reviewable federally. ¹⁴⁸ Kadhis’ court decisions may be appealed to the Kadhis’ Appeals Court and then further to the High Court of the Region. ¹⁴⁹
Uganda	The government does not review the decisions of the sharia courts.

At this point in the analysis, a key question arises: Are some religious courts or tribunals afforded greater privileges or status than others within national frameworks? If so, how? In Africa, Islamic courts are, in most cases, given a greater status than other religious courts and tribunals. For the countries that recognise the jurisdiction of religious courts, only Morocco officially recognises the decisions of a religious court that is not Islamic, the Jewish court which Morocco only operates for the city of Casablanca.¹⁵⁰ Other countries constitutionally recognise the legality of tribunals of other faiths, but they only sponsor and recognise the judgements of Islamic courts. For example, under the Egyptian Constitution, the “principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their personal status, religious affairs, and selection of spiritual leaders,” but there is no government body to provide this guidance.¹⁵¹

There is further intra-religion favouritism in governments that sponsor religious courts and tribunals depending on the denomination. Africa predominately follows Sunni Islam and the Maliki school of *sharia* interpretation, which leaves many non-Sunni Muslims disadvantaged in the courts.¹⁵² This also can lead to outright discrimination against minority Muslim denominations in the countries that apply *sharia* in the criminal context. An example of this comes from Nigeria, where minority Muslims have been charged with crimes, most commonly blasphemy, for making statements which are inconsistent with the majority interpretation of Sunni Islam but not blasphemous according to the minority denomination of Islam to which the accused belongs.¹⁵³ In some cases, religious courts are further favoured by being subject to less oversight than civil courts. This is the case in countries like Tanzania, where the Tanzanian Supreme Court is not given jurisdiction to oversee the cases of the Kadhis’ Courts, and the Gambia, where *cadis* have their own appeals structure separate from the civil system.

148 Kasera S and Manning C. 2020. “Tanzanian Legal System and Legal Research”, GobaLex, August.

149 Kasera and Manning, “Tanzanian Legal System and Legal Research”.

150 “Morocco, Kingdom & Western Sahara”, Islamic Family Law.

151 Constitution of Egypt, art 3.

152 Robinson, *supra* note 44. “Understanding Sharia”.

153 See, e.g., the case of Yahaya Sharif-Aminu, a Sufi Muslim convicted and sentenced to death for blasphemy for a song he recorded that was blasphemous under the Sunni interpretation of Islam but not his own faith. Ibrahim H. 2022. “Nigerian Appeals Court Throws out Blasphemy Convictions that Caused Outcry”, Reuters, 21 January.

CONCLUSION

The overview provided in this chapter, augmented by the detailed country analyses for Nigeria and Kenya in the chapters that follow, reveals that although the topic of religious courts and tribunals in Africa has largely been neglected in terms of scholarship, there is a rich seam of law and practice to be mined. The gospel imperative of being reconciled with one's neighbour finds expression in the other Abrahamic faiths throughout the continent and in traditional African religion. Religious courts and tribunals provide a means of promoting and facilitating such reconciliation, both amongst co-religionists and more widely. But the supplemental legal systems of which religious courts and tribunals are evidence, are more prevalent, more extensive, and more pervasive than is perhaps widely understood. It reflects the multiple allegiances of citizens: not merely to their state, but to faith, family and tradition too, in a variety of ways both formal and informal.

Religious courts and tribunals are widely used for the resolution of disputes throughout Africa. Some are formally recognised by governments and state authorities, whilst others are wholly integrated into the secular justice system. Some claim jurisdiction over the adherents of a particular faith, whilst others claim universal authority to adjudicate. Procedures vary from one religious group to another and from one country to another, and the coverage in this overview cannot do justice to the complexity of these matters. A balance needs to be struck between the autonomy of religious organisations – reflecting the associational element of the right to freedom of religion – and ensuring that procedural fairness and due process remain at the heart of realisable civil rights. The chapter consciously makes no judgment on whether every country discussed has struck the right balance. Its purpose instead is to be descriptive and analytical, offering categories and principles for a comparative study. Without question, the subject is ripe for further animated discussion amongst the distinguished scholars of ACLARS and further afield.