



8-7-2024

Religious Courts and Tribunals in Africa: an Overview

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Hill KC, Mark (2024) "Religious Courts and Tribunals in Africa: an Overview," *Notre Dame Journal of International & Comparative Law*. Vol. 14: Iss. 3, Article 4.

Available at: <https://scholarship.law.nd.edu/ndjicl/vol14/iss3/4>

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RELIGIOUS COURTS AND TRIBUNALS IN AFRICA: AN OVERVIEW

MARK HILL KC*

TABLE OF CONTENTS

INTRODUCTION	2
I. RELIGIOUS COURTS AND TRIBUNALS	3
<i>A. TYPES OF RELIGIOUS COURTS AND TRIBUNALS</i>	3
<i>B. WHERE RELIGIOUS COURTS AND TRIBUNALS OPERATE</i>	3
II. PROCEDURES FOR MEDIATION AND ARBITRATION IN RELIGIOUS COURTS AND TRIBUNALS	6
<i>A. FUNDING PROVIDED BY THE STATE</i>	8
<i>B. SUBJECT MATTER</i>	9
III. ENFORCEABILITY AND RECOGNITION BY THE STATE.....	12
IV. GOVERNMENTAL OVERSIGHT AND REVIEW.....	13
CONCLUDING REMARKS.....	18

* Global Professor and Distinguished Fellow, University of Notre Dame London Law Programme. I am grateful to Mr. Andrew Scarafile of the University of Notre Dame for his research assistance. This is a revised version of a paper previously published in M Christian Green (et al) (eds) *Law, Religion and Reconciliation in Africa* (Sun Media, Stellenbosch, 2024).

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.

In her monograph, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, the distinguished legal theorist, Ayelet Shachar, explores how multiple affiliations, particularly amongst minority religious groups, has problematised the increased legal recognition of communal religious identities.¹ It is not the purpose of this Article to address the deep philosophical question of whether a citizen can truly show allegiance both to a state and to a faith, nor the derivative jurisprudential questions that arise.² 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, and I am grateful to ACLARS for making room in its Cote d'Ivoire conference for a panel devoted to the results of nascent research in this field from leading African scholars. An early version of this Article was presented at that panel, supplemented by detailed national reports from Algeria, Kenya, Nigeria, South Africa and Zimbabwe.³ The research questions which the panel set out to address can be broadly summarised as follows:

- (i) Are religious courts or tribunals used for the resolution of disputes?
- (ii) What are the procedures?
- (iii) Do the civil (state) courts recognise and/or enforce decisions of religious courts or tribunals?
- (iv) Are religious courts or tribunals subject to governmental oversight or judicial review?

This overview seeks to follow the format of those research questions.

¹ AYELET SHACHAR, *MULTICULTURAL JURISDICTIONS* (2001). For a thoughtful consideration, but in a non-African context, see Rowan Williams, *Civil and Religious Law in England*, in *ISLAM AND ENGLISH LAW: RIGHTS, RESPONSIBILITIES AND THE PLACE OF SHARIA 20* (Robin Griffith-Jones ed., 2013).

² There is already considerable scholarship in the field. In the European context, see *ISLAM, RELIGIOUS LIBERTY AND CONSTITUTIONALISM IN EUROPE* (Mark Hill & Lina Papadopoulou eds., 2024).

³ I am indebted to Dr. Mahfoud Ali Zoui, Professor Faith Kabata, Professor Idowo Akinloye, Professor Helena Van Coller, and Professor Fortune Sibanda, with Dr. Bernard Humbe.

I. RELIGIOUS COURTS AND TRIBUNALS

A. *TYPES 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 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 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 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 (secular) civil legal system. Governments may limit the authority of these religious tribunals and courts merely to adjudicating on disputes amongst co-religionists, but this is not always the case. Some religious courts and tribunals permit nonmembers to make use of their services, and in some countries the state affords this civil recognition. States 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 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.

B. *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.⁴ Most major organised religions operate religious

⁴ For a general overview, see Mark Hill, *Religious Law*, in ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW (Jan M. Smits et al. eds., 2023). See also Mark Hill, *The Regulation of*

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.⁵ The same is true in Judaism where rabbinical courts (called *Beth 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.⁶

The most prevalent form of religious tribunal in Africa is Islamic tribunals that use traditional Islamic law (also called sharia law) to decide cases. These Islamic courts may be formally organised locally or take the form of a local Imam acting as judge or arbiter.⁷ Multiple religious courts usually operate below the juridical radar of the state; for example, South Africa has Catholic, Jewish and traditional Islamic courts that operate within its territory but with no formal recognition from the state.⁸

A minority of African countries have religious law embedded in their legal systems. In some states, such as Uganda, these institutions receive no financial or other support from government, but their decisions are nonetheless recognised by national courts.⁹ 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 which are integrated into national court systems are Islamic. However, Morocco has one state-recognised Jewish court in Casablanca.¹⁰

These Islamic legal systems are commonly divided into two categories: “dual” systems or “classical Sharia” systems.¹¹ A “dual”

Christian Churches: Ecclesiology, Law and Polity, HTS THEOLOGICAL STUD., a3382, Nov. 23, 2016, at 1; Norman Doe, *The Ecumenical Value of Comparative Church Law: Towards the Category of Christian Law*, ECCLESIASTICAL L.J., April 2015, at 135; CHURCH LAWS AND ECUMENISM: A NEW PATH FOR CHRISTIAN UNITY (Norman Doe ed., 2021).

⁵ See *What Is the Purpose of a Tribunal?*, CATH. DIOCESE RALEIGH, <https://dioceseofraleigh.org/tribunal/what-purpose-tribunal> [<https://perma.cc/Z77Q-5WNY>] (last visited May 26, 2024); *What Is the Tribunal?*, ROMAN CATH. DIOCESE FALL RIVER: OFF. TRIBUNAL & CANONICAL SERVS., <https://www.fallrivertribunal.com/aboutus/whatistribunal/> [<https://perma.cc/FL4C-HQXM>] (last visited May 26, 2024); *Office of Canonical Services and Tribunal*, DIOCESE MANCHESTER, <https://www.catholicn.org/about/who-we-are/administration/tribunal/> [<https://perma.cc/T6SH-S5FZ>] (last visited May 26, 2024).

⁶ Menachem Posner, *What Is a Beit Din?*, CHABAD.ORG, https://www.chabad.org/library/article_cdo/aid/3582308/jewish/What-Is-a-Beit-Din.htm [<https://perma.cc/7L88-RXEM>] (last visited May 26, 2024).

⁷ Kate Hairsine, *Shariah Law in Africa Has Many Faces*, DW NEWS (Jan. 28, 2022), <https://p.dw.com/p/46DeP> [<https://perma.cc/RRC8-BS7R>].

⁸ See Tanja Herklotz, *Religious Courts*, in MAX PLANCK ENCYCLOPEDIA OF COMPARATIVE CONSTITUTIONAL LAW, No. 690 (Rainer Grote et al. eds., 2020).

⁹ *Sharia (Qadhis) Courts Decisions Are Legal and Binding*, MUSLIM CTR. JUST. & L., <https://mcjl.ug/articles/sharia-qadhis-courts-decisions-are-legal-and-binding/> [<https://perma.cc/U2U2-N3LT>] (last visited May 26, 2024) [hereinafter *Sharia (Qadhis) Courts*].

¹⁰ Fatine Alaoui, *The Hebrew Court of Casablanca: Judgments in the Name of His Majesty and the Talmud*, MOROCCO JEWISH TIMES (Feb. 28, 2020), <https://www.mjtnews.com/2020/02/28/the-hebrew-court-of-casablanca-judgments-in-the-name-of-his-majesty-and-the-talmud/> [<https://perma.cc/9AES-56FU>].

¹¹ See Ashlea Hellmann, *The Convergence of International Human Rights and Sharia Law: Can International Ideals and Muslim Religious Law Coexist?* 5–6 (N.Y. State Bar Ass'n, Writing Competition) <https://nysba.org/NYSBA/Sections/International/Awards/2016%20Pergam%20Writing%20Competition/submissions/Hellmann%20Ashlea.pdf> [<https://perma.cc/79B4-9SFF>].

system is one where secular law is enforced by the national courts, but Muslims have the option to have their claims heard before a sharia court recognised by the state.¹² 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.¹³

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.¹⁴ These customs can be oral tradition and have a variety of sources, including community tradition influenced by religion.¹⁵ 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.¹⁶ The religious courts in these countries exercise a jurisdiction limited either 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 law courts only operate in the Nigerian states that have opted to follow sharia law.¹⁷ Currently, twelve of Nigeria’s thirty-six states (and the Federal Capital Territory) have opted into sharia law.¹⁸ In Tanzania, religious courts (called *Kadhis*) only operate in the Zanzibar and Kwara states.¹⁹

Other African countries which employ a “dual” system limit religious court jurisdiction by the religion of people who can access them. This is the case with Islamic courts in Djibouti,²⁰ Ethiopia,²¹ Eritrea,²² The

¹² *Id.* at 5.

¹³ *Id.* at 6.

¹⁴ See Muna Ndulo, *African Customary Law, Customs, and Women’s Rights*, 18 *IND. J. GLOB. LEGAL STUD.* 87 (2011).

¹⁵ *Id.*

¹⁶ See Hellmann, *supra* note 11, at 5; see also Kali Robinson, *Understanding Sharia: The Intersection of Islam and the Law*, COUNCIL ON FOREIGN RELS. (Dec. 17, 2021, 2:00 PM), <https://www.cfr.org/backgrounder/understanding-sharia-intersection-islam-and-law> [<https://perma.cc/49BU-JB22>].

¹⁷ OFF. OF INT’L RELIGIOUS FREEDOM, U.S. DEP’T OF STATE, 2021 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: NIGERIA (2022) [hereinafter 2021 REPORT: NIGERIA].

¹⁸ *Id.*

¹⁹ Issa Babatunde Oba, *Legal Framework of Kadhis’ Courts in Zanzibar During the Post Colonial Era*, 86 *J.L. POL’Y & GLOBALIZATION* 30, 39 (2019).

²⁰ Michael Bogdan, *Legal Pluralism in the Comoros and Djibouti*, 69 *NORDIC J. INT’L L.* 195, 203 (2000).

²¹ OFF. OF INT’L RELIGIOUS FREEDOM, U.S. DEP’T OF STATE, 2021 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: ETHIOPIA (2022).

²² Luwam Dirar & Kibrom Tesfagabir, *Introduction to Eritrean Legal System and Research*, N.Y.U. L.: HAUSER GLOB. L. SCH. PROGRAM (Mar. 2011), <https://www.nyulawglobal.org/globalex/Eritrea.html> [<https://perma.cc/HLA5-GLWG>].

Gambia,²³ Kenya²⁴ and Morocco.²⁵ In Tanzania and Nigeria, the regional sharia courts are limited to Muslims.²⁶

Some African nations do not limit state-recognised religious courts and tribunals by the faith of those subject to them 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 law in certain areas of law.²⁷

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.²⁸ Sudan used to follow this model and had no religious-civil law distinction until it formally became a secular country in 2020; however, recent governmental unrest has led some to question whether this is merely a decree or reality.²⁹

II. PROCEDURES FOR MEDIATION AND ARBITRATION 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. 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 *Beth Din* follows 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*.³⁰ A *Beth Din* may send three *hazmanas* before issuing a contempt decree against the nonrespondent.³¹ Once a claim is brought to the *Beth Din* and the parties appear, the matter is usually heard

²³ Flora Ogbuitempu, *Guide to Gambian Legal Information*, N.Y.U. L.: HAUSER GLOB. L. SCH. PROGRAM (May 2012), <https://www.nyulawglobal.org/globalex/Gambia.html> [<https://perma.cc/JJ42-3K77>].

²⁴ *Kadhis Courts*, JUDICIARY OF KENYA, <https://judiciary.go.ke/kadhis-courts/> [<https://perma.cc/54VX-PJY7>].

²⁵ OFF. OF INT'L RELIGIOUS FREEDOM, U.S. DEP'T OF STATE, 2021 REPORT ON RELIGIOUS FREEDOM: MOROCCO (2022) [hereinafter 2021 REPORT: MOROCCO].

²⁶ See 2021 REPORT: NIGERIA, *supra* note 17; Bogdan, *supra* note 20.

²⁷ Mohamed S.E. Abdel Wahab, *Update: An Overview of the Egyptian Legal System and Legal Research*, N.Y.U. L.: HAUSER GLOB. L. SCH. PROGRAM (Dec. 2019), <https://www.nyulawglobal.org/globalex/Egypt1.html> [<https://perma.cc/9962-EU4R>]; Bogdan, *supra* note 20, at 204.

²⁸ Keli Vrindavan Devi Dasi, *Update: Law and Legal Systems in Mauritania*, N.Y.U. L.: HAUSER GLOB. L. SCH. PROGRAM (Dec. 2022), <https://www.nyulawglobal.org/globalex/Mauritania1.html> [<https://perma.cc/6WZY-PJ24>].

²⁹ OFF. OF INT'L RELIGIOUS FREEDOM, U.S. DEP'T OF STATE, 2021 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: SUDAN (2022).

³⁰ BETH DIN OF AM., LAYMAN'S GUIDE TO DINEI TORAH 2, <http://bethdin.org/wp-content/uploads/2015/07/LaymansGuide.pdf> [<https://perma.cc/X976-UG74>] (last visited May 26, 2024).

³¹ *Id.*

and decided at a single hearing.³² Cases are customarily heard by a three-judge panel but can be referred to a single judge (called a *dayan*) with party consent.³³ 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.³⁴ Each side then presents their case and may be interrupted at any time by the judges for questions.³⁵ The parties go back and forth responding to the other side’s arguments, with judicial intervention, until both sides have fully presented their cases.³⁶ Witnesses, both factual and expert, are questioned by judges, not the parties.³⁷ 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.³⁸ Decisions are usually given in writing by the panel.³⁹

Catholic religious courts follow a strict structure laid out under canon law. Those rules of procedure are contained in codified Canon Law.⁴⁰ Parties commonly represent themselves unless the judge deems an advocate to be necessary.⁴¹ The adjudicator is appointed by the diocesan bishop and is usually an expert in canon law.⁴² Most matters are determined on the papers without convening a hearing.

There is no uniform system of Islamic sharia law 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 sharia law.⁴³ Four are Sunni, the Hanbali, Maliki, Shafi'i and Hanafi schools; and one is Shia, the Jaafari school.⁴⁴ The Maliki school of Islamic law is most prevalent in Africa.⁴⁵ 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.⁴⁶ 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.⁴⁷

Despite these variances, there are common concepts among Islamic courts. Notably, the western concept of a lawyer acting as advocate on

³² *Arbitration (Dinei Torah)*, UNITED SYNAGOGUE, <https://oldsite.theus.org.uk/article/arbitration-dinei-torah> [<https://perma.cc/R7P6-8U8T>] (last visited June 24, 2024).

³³ *Id.*

³⁴ BETH DIN OF AM., *supra* note 30, at 3.

³⁵ *Id.*

³⁶ *Id.* at 4.

³⁷ *See Arbitration (Dinei Torah)*, *supra* note 32.

³⁸ BETH DIN OF AM., *supra* note 30, at 4.

³⁹ *Id.* at 5.

⁴⁰ *See Eithne D’Auria, Catholicism: Church Tribunals in Roman Catholic Canon Law*, CARDIFF U. CTR. L. & RELIGION (Jan. 5, 2009), <http://www.law.cardiff.ac.uk/clr/networks/Catholicism.pdf> [<https://perma.cc/MP53-PWK2>].

⁴¹ *Id.*

⁴² *Id.*

⁴³ *What Is Sharia Law? What Does It Mean for Women in Afghanistan?*, BBC NEWS (Aug. 19, 2021), <https://www.bbc.co.uk/news/world-27307249> [<https://perma.cc/EYM5-9TKU>].

⁴⁴ *Id.*

⁴⁵ Robinson, *supra* note 16.

⁴⁶ *Id.*

⁴⁷ *See What Is Sharia Law?*, *supra* note 43.

behalf of a party is foreign in Islamic religious tribunals.⁴⁸ In Islamic law, legal representation is “merely a form of agency.”⁴⁹ The legal representative, known as a *wikalah*, only acts as a stand-in for the party and needs no legal training.⁵⁰ 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.⁵¹ Islamic judges undertake the traditional lawyerly task of examining witnesses and cross-examining parties.⁵² 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.”⁵³ 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 law 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.⁵⁴ In contrast, Comoros, which hears all family and inheritance law cases according to Islamic law, decides these issues in special “courts of the *cadis*.”⁵⁵ Cases in those *cadis* courts are heard under the *cadis* court’s specifically derived special procedure.⁵⁶

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 and civil courts were merged in 1983.⁵⁷ In Mauritania, there are seven courts of first instance, based on the type of law being heard.⁵⁸ All these courts have various procedures and range from one-judge to three-judge panels.⁵⁹

A. 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

⁴⁸ See Abdulummini A. Oba, *Lawyers, Legal Education and the Shari’ah Courts in Nigeria*, 49 J. LEGAL PLURALISM 113, 128 (2000).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 129.

⁵² *Id.* (citing OMONIYI ADEWOYE, *THE LEGAL PROFESSION IN NIGERIA 1865–1962*, at 3 (1977)).

⁵³ *Id.* at 137.

⁵⁴ Wahab, *supra* note 27.

⁵⁵ Bogdan, *supra* note 20, at 204.

⁵⁶ *Id.*

⁵⁷ Dasi, *supra* note 28.

⁵⁸ *Id.*

⁵⁹ *Id.*

Côte d'Ivoire both provide public funds to religions and accordingly those funds may trickle down into the religious body's adjudication system.⁶⁰

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.⁶¹

Otherwise, these courts are internally funded, either through fees paid to access them or by the religious organisation which runs them. For African countries that 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.⁶² In the countries that fold religious law enforcement into their civil legal systems, namely Comoros, Egypt, and Mauritania, 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).

B. SUBJECT MATTER

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 that 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).⁶³ 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 any secular divorce decree has no effect on the marital status of the individual in the eyes of the church.⁶⁴ Therefore, a civil divorce must be accompanied by a declaration of nullity by the Catholic ecclesiastical authority.⁶⁵ Orthodox Judaism also does not recognise civil

⁶⁰ See BUREAU OF COUNTERTERRORISM, U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2021: CÔTE D'IVOIRE (2022); BUREAU OF DEMOCRACY, HUM. RTS., & LAB., U.S. DEP'T OF STATE, 2017 HUMAN RIGHTS REPORT: GUINEA (2018).

⁶¹ See EMILIA ONYEMA, 2020 ARBITRATION IN AFRICA SURVEY REPORT (2020), <https://eprints.soas.ac.uk/33162/1/2020%20Arbitration%20in%20Africa%20Survey%20Report%2030.06.2020.pdf> [https://perma.cc/YS4T-R595].

⁶² See, e.g., Bogdan, *supra* note 20, at 207.

⁶³ See Herklotz, *supra* note 8.

⁶⁴ *Personal and Family Issues: Marriage and Divorce—CCEA*, BBC NEWS: BITESIZE, <https://www.bbc.co.uk/bitesize/guides/zrr7y9q/revision/5> [https://perma.cc/X8GF-388A] (last visited May 26, 2024).

⁶⁵ *Id.*

divorces and require a Jewish divorce decree, known as a *Get*, to recognise the divorce.⁶⁶

In Islam, where divorce is permitted but the method of divorce varies, the decision of an Islamic court may be needed to grant the specific sharia rite of divorce the parties desired in addition to the civil court.⁶⁷ 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).⁶⁸ Islamic couples seeking to dissolve their marriages may either need, or opt to obtain, divorce decrees in both the civil and religious courts.

While nonstate 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 not have state-backed enforcement authority. However, these bodies may have a “soft” enforcement authority within the communities they operate in 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 judgment can be made subject to a *cherem*, or community shunning.⁶⁹¹²

In the countries that officially recognise some 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 is as follows:

- *Comoros*: Jurisdiction is limited to matters of personal status, family-law and inheritance-law disputes, and cases are heard under sharia law.⁷⁰
- *Djibouti*: Jurisdiction is limited to personal-status and family-law matters, and cases are heard under sharia law.⁷¹
- *Egypt*: Civil law courts hear religious claims under Islamic law in personal-status cases.⁷²
- *Eritrea*: Jurisdiction is limited to matters of personal status, family-law and inheritance-law disputes, and cases are heard under sharia law.⁷³
- *Ethiopia*: Jurisdiction is granted in two areas and all cases are heard under sharia law. First are family-law matters, namely:

⁶⁶ Phil Lieberman, *What You Need to Know About a Get*, RABBINICAL ASSEMBLY, https://www.rabbinicalassembly.org/sites/default/files/public/online_resources/what_you_need_to_know_about_a_get.pdf [https://perma.cc/8FZQ-6QNY] (last visited May 26, 2024).

⁶⁷ See Kecia Ali, *Muslim Sexual Ethics: Divorce*, BRANDEIS U.: FEMINIST SEXUAL ETHICS PROJECT (July 1, 2003), <https://www.brandeis.edu/projects/fse/muslim/divorce.html> [https://perma.cc/AE7L-U5ZC].

⁶⁸ Ruth Levush, *Religious Matrimonial Laws in Selected Middle East and African Countries*, LIBR. CONG.: BLOGS (Aug. 31, 2017), <https://blogs.loc.gov/law/2017/08/religious-matrimonial-laws-in-selected-middle-east-and-african-countries/> [https://perma.cc/67ZZ-5828].

⁶⁹ George N. Barrie, *Judicial Review and Religious Freedom in South Africa*, 2005 J. S. AFRICAN L. 162, 164 (2005).

⁷⁰ Bogdan, *supra* note 20, at 203.

⁷¹ OFF. OF INT’L RELIGIOUS FREEDOM, U.S. DEP’T OF STATE, 2021 INTERNATIONAL RELIGIOUS FREEDOM REPORT: DJIBOUTI (2022).

⁷² Wahab, *supra* note 27.

⁷³ Dirar & Tesfagabir, *supra* note 22.

“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.”⁷⁴ Second are inheritance and some property-law cases, including “cases concerning *waqfs*, gifts, succession, or wills, provided that donor is a Muslim or deceased was a Muslim at time of death.”⁷⁵

- *The Gambia*: Jurisdiction is limited to Islamic marriage, family, child-custody and inheritance matters.⁷⁶
- *Kenya*: Muslims may use *Kadhis* courts in cases regarding “personal status, marriage, divorce and inheritance.”⁷⁷
- *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.⁷⁸ Accordingly, courts do not have a limited jurisdiction.
- *Morocco*: Specialised family-law courts hear personal status cases according to sharia law regardless of religion.⁷⁹ In Casablanca, practicing Jews have personal-status cases heard before the state-sponsored rabbinical court.⁸⁰
- *Nigeria*: In the states where sharia law 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.⁸¹
- *Tanzania*: State-sponsored religious courts are only available in two states and only adjudicate cases related to Muslim family law.⁸²
- *Uganda*: Civil courts only recognise and enforce the verdicts of the religious courts in regard to personal-status claims.⁸³

In the criminal context, there are stark disparities in the application of sharia versus civil law. Even for the same offense, an individual who opts to have their case heard by a sharia law court rather than a civil law court may be opening themselves up to a much greater penalty. For example, both the Nigerian civil courts as well as the state sharia-law courts criminalize words or gestures intended to cause offense to a religion as

⁷⁴ *Ethiopia, Federal Democratic Republic of*, EMORY L.: ISLAMIC FAMILY LAW, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/ethiopia-federal-democratic-republic-of/> [https://perma.cc/836P-ZYTJ] (last visited May 26, 2024).

⁷⁵ *Id.*

⁷⁶ Ogbuitepu, *supra* note 23.

⁷⁷ CONSTITUTION OF KENYA art. 24, cl. 4 (2010).

⁷⁸ CONSTITUTION art. 5 (1991) (Mauritania).

⁷⁹ *Morocco, Kingdom of (& Western Sahara)*, EMORY L.: ISLAMIC FAMILY LAW, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/morocco-kingdom-of-western-sahara/> [https://perma.cc/X567-9SL9] (last visited May 26, 2024).

⁸⁰ 2021 REPORT: MOROCCO, *supra* note 25.

⁸¹ OFF. OF INT'L RELIGIOUS FREEDOM, U.S. DEP'T OF STATE, 2022 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: NIGERIA (2023); Yemisi Dina, *Update: Guide to Nigerian Legal Information*, N.Y.U. L.: HAUSER GLOB. L. SCH. PROGRAM (Aug. 2020), <https://www.nyulawglobal.org/globalex/Nigeria1.html> [https://perma.cc/MF94-8VWU].

⁸² Oba, *Legal Framework*, *supra* note 19, at 8.

⁸³ *Sharia (Qadhis) Courts*, *supra* note 9.

blasphemy.⁸⁴ Under a civil-law conviction for blasphemy, an individual can be sentenced to a maximum of up to two years in prison;⁸⁵ a conviction for the same offense under sharia law carries a sentence of death.⁸⁶ 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 law, there are evident gender disparities in its application.⁸⁷ Consider the sharia offense of *zina* (sex outside of marriage). Under the version of sharia applied in Nigeria, a conviction for *zina* requires four witnesses who saw the sexual act in question being committed.⁸⁸ 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 rate than men for the same offense.⁸⁹ 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.⁹⁰ This inequality gives men an advantage when selecting a forum to bring their legal claims. However, to change the sharia law applied 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.

III. 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 law.⁹¹ This created problems in

⁸⁴ Criminal Code Act (2000) Cap. (19), § 204 (Nigeria); KANO STATE SHARIA PENAL CODE (1991) § 382(b) (Nigeria).

⁸⁵ Criminal Code Act (2000) Cap. (19), § 204 (Nigeria).
Criminal Code Act (2000) Cap. (19), § 204 (Nigeria).

⁸⁷ See, e.g., Uzoamaka N. Okoye, *Women's Rights Under the Shari'a: A Flawed Application of the Doctrine of "Separate but Equal,"* 27 WOMEN'S RTS. L. REP. 103 (2006); John Hursh, *Advancing Women's Rights Through Islamic Law: The Example of Morocco*, 27 BERKELEY J. GENDER L. & JUST. 252 (2012).

⁸⁸ Kia N. Roberts, Note, *Constitutionality of Shari'a Law in Nigeria and the Higher Conviction Rate of Muslim Women Under Shari'a Fornication and Adultery Laws*, 14 S. CAL. REV. L. & WOMEN'S STUD. 315, 316 (2005).

⁸⁹ See *id.* at 316–18.

⁹⁰ Immigr. & Refugee Bd. of Canada, *Nigeria: Availability of Divorce for Women in a Muslim Marriage Who Have Experienced Domestic Abuse*, U.N. HIGH COMM'R FOR REFUGEES: REF WORLD (Apr. 9, 2001), <https://www.refworld.org/docid/3df4be7f1e.html> [<https://perma.cc/KX3U-NCRZ>].

⁹¹ Charlene Kreuser & Amy-Leigh Payne, *Constitutional Court's Decision on Muslim Marriages Does Not Go Far Enough to Protect Women and Children*, MAIL & GUARDIAN (July 15, 2022) <https://mg.co.za/article/2022-07-15-constitutional-courts-decision-on-muslim-marriages-does-not-go-far-enough-to-protect-women-and-children/> [<https://perma.cc/PH4C-CR9B>].

determining child custody and alimony payments when Islamic marriages were dissolved because the offspring of these unions and the marital status of the parties themselves were not recognised under South African civil law.⁹² As a result, the South African Supreme Court ruled in *Women's Legal Centre Trust v. President of the Republic of South Africa and Others* that marriages registered under sharia law had to be recognised by the state courts.⁹³ 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 if they contradict civil law.⁹⁴ 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.”⁹⁵ 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.⁹⁶

In African countries that have a common law system, there is some case law which supports the position of civil court review of religious legal decisions stretching from the mid-nineteenth to the late twentieth century.⁹⁷ The most decision in this vein is *Odendaal v Loggerenberg (I)* where the Supreme Court of South Africa held that “judicial intervention would follow if a domestic religious tribunal had not complied with the ‘elementaire beginsels van geregtigheid’” or “elementary principles of justice.”⁹⁸ 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 as well as their free exercise of religion.⁹⁹

For the countries that 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 judicial review by a higher court.

IV. 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

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Barrie, *supra* note 69, at 163.

⁹⁵ *Id.* (citing LAWRENCE BAXTER, ADMINISTRATIVE LAW 101 (1984)).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* (quoting *Odendaal v. Loggerenberg en Andere NNO (I)* 1961 (1) SA 712 (O) at 719 (S. Afr.)).

⁹⁹ See *infra* Part IV.

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.¹⁰⁰ 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.¹⁰¹

State oversight of nonstate religious courts and tribunals follows a general policy of nonintervention except in extraordinary cases. The reasoning that underpins the secular governmental court hesitation to enforce these judgements is exemplified by *Taylor v. Kurtstag NO*, a 2003 case heard by the Witwatersrand Local Division of the High Court of Johannesburg.¹⁰² There, a Jewish couple agreed to have the financial maintenance and custody aspects of their divorce adjudicated by a *Beth Din*.¹⁰³ When it became clear the husband planned to ignore the ruling of the *Beth Din*, the court declared a *cherem* (or excommunication notice) against the husband.¹⁰⁴ As a result, he was shunned by the Orthodox community in Johannesburg which was not allowed to socialize with him or patronize his business.¹⁰⁵

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.¹⁰⁶ 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, it declined to enjoin the verdict, finding it "reasonable and justifiable since a *cherem* enables the Jewish community "to protect the integrity of Jewish law and custom by ensuring conformity therewith."¹⁰⁷ The Witwatersrand Local Division court relied on two grounds in justifying its decision to not enjoin the imposition of the *cherem*: consent and freedom of religion.

On the first point, consent, the Division court found that the applicant had in effect consented to the jurisdiction of the *Beth Din* court when he agreed to be bound by its ruling.¹⁰⁸ 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."¹⁰⁹ 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

¹⁰⁰ D'Auria, *supra* note 40, at 2.

¹⁰¹ *Id.*

¹⁰² Barrie, *supra* note 69, at 164.

¹⁰³ Waheeda Amien & Khaleel Rajwani, *Equalizing Gendered Access to Jewish Divorce in South Africa*, 52 J. LEGAL PLURALISM & UNOFFICIAL L. 330, 337 (2020).

¹⁰⁴ Barrie, *supra* note 69, at 162.

¹⁰⁵ *Id.*

¹⁰⁶ Amien & Rajwani, *supra* note 103, at 336.

¹⁰⁷ *Id.* (emphasis added) (quoting *Taylor v. Kurtstag NO* 2005 (1) SA 362 (W) at para. 58 (S.

Afr.)).

¹⁰⁸ *Id.*

¹⁰⁹ *Taylor*, (1) SA 392 at para. 35.

associate with the applicant if they wished.¹¹⁰ 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.¹¹¹

Second, on the point of free exercise, the Division 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.¹¹² 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.¹¹³ Since the *cherem* is an established part of Judaism, adherents are "obliged to demonstrate fidelity to it, which included accepting the Cherem."¹¹⁴ As a result, the court saw that enjoining the *cherem* would be tantamount to government limitation of religious free exercise.¹¹⁵

As *Taylor* shows, even violations of constitutional rights may be excused by this rationale for state nonintervention. 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 their lack of a *get* (the permission of the husband) as required under Jewish law.¹¹⁶ There, the 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.¹¹⁷

An example of the latter is *Raik v. Raik*, a 1993 case which largely mirrored the facts and decision from *Amar*.¹¹⁸ 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.¹¹⁹ In *Raik*, the court found that the pattern of abuse was sufficient to intervene and overrule the *Beth Din* court.¹²⁰

In the African countries that have state-sponsored religious courts and tribunals, the decisions of those court 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

¹¹⁰ Amien & Rajwani, *supra* note 103, at 336.

¹¹¹ *Id.*

¹¹² Barrie, *supra* note 69, at 164.

¹¹³ *Id.*

¹¹⁴ *Id.* at 165.

¹¹⁵ *Id.*

¹¹⁶ Amien & Rajwani, *supra* note 103, at 337–38 (citing *Amar v. Amar* 1999 (3) SA 604 (W) (S. Afr.)).

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 335 (discussing *Raik v. Raik* 1993 (2) SA 617 (W) (S. Afr.)).

¹¹⁹ *Id.*

¹²⁰ *Id.*

all cases are heard in. In cases where separate religious courts operate, either run by the state 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: Kadhis* courts are incorporated into the national judicial structure and operate at the lowest level of the tripartite system. The decisions of *Kadhis* courts are reviewable by both the Court of Appeals,¹²¹ 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.¹²² These methods of judicial review only consider 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.¹²³
- *Djibouti: Kadhis* courts have a separate judicial review system than civil courts. Decisions in lower *Kadhis* courts can be appealed to a *Kadhis* appeals court.¹²⁴ From there, cases may then be appealed to the Supreme Court of Djibouti (called the Court of Cassation) which has final decision making authority.¹²⁵ 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.¹²⁶ Whenever the Court hears matters of Islamic law, they are joined by independent Islamic law assessors appointed by the President of Djibouti.¹²⁷
- *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.¹²⁸ They then may be appealed up to the Court of Cassation which is the final interpretive body of the law.¹²⁹ In some instances, cases may be further appealed to the Supreme Court of Egypt but only in instances that deal with questions of constitutionality.¹³⁰ As the Egyptian Constitution lays out that the principles of Islamic sharia are the principal source of legislation it is unlikely that a case

¹²¹ Michael Gyan Nyarko, *Introduction to the Law and Legal System of the Islands of Comoros*, N.Y.U. L.: HAUSER GLOB. L. SCH. PROGRAM (Oct. 2020), <https://www.nyulawglobal.org/globalex/Comoros.html> [https://perma.cc/82E5-ZY9D].

¹²² CONSTITUTION art. 96, cl. 3 (2018) (Comoros).

¹²³ *Id.* art. 97.

¹²⁴ Bogdan, *supra* note 20, at 207.

¹²⁵ Mustafe Mohamed H. Dahir, *Update: Researching the Legal System of the Republic of Djibouti*, N.Y.U. L.: HAUSER GLOB. L. SCH. PROGRAM (June 2022), <https://www.nyulawglobal.org/globalex/Djibouti1.html> [https://perma.cc/A8HM-MUKM].

¹²⁶ Bogdan, *supra* note 20, at 206.

¹²⁷ *Id.*

¹²⁸ Wahab, *supra* note 27.

¹²⁹ *Id.*

¹³⁰ *Id.*

based on the constitutionality of religious law itself would ever reach the high Egyptian court.¹³¹

- *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.¹³²
- *Ethiopia*: Sharia courts operate in a tripartite legal structure on the federal level, distinct from the civil court system.¹³³ Cases first are heard in the Federal First-Instance Court of Sharia and can be appealed up to the Federal High Court of Sharia.¹³⁴ Those decisions may then be appealed to the Federal Supreme Court of Sharia.¹³⁵ All decisions of that court are accountable to the Federal Judicial Administration Commission in some extreme situations dealing with constitutional law.¹³⁶
- *The Gambia*: The Islamic sharia legal system is totally separate and unreviewable by the government. Lower *Kadhis* court decisions are reviewed by a *Kadhis* court of appeals consisting of a three-member panel.¹³⁷
- *Kenya*: Lower *Kadhis* court decisions are reviewable by an Upper *Kadhis* court.¹³⁸ The decisions 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.¹³⁹
- *Mauritania*: Sharia is embedded in all areas of Mauritanian law and all courts hear cases concerning Islamic law.¹⁴⁰ The lower courts are divided into six branches: general regional courts (*Wilaya*), district (*Moughataa*) courts, Customary Courts, Criminal Courts, Commercial Courts, and Labour Courts.¹⁴¹ Those courts are answerable to their own specific courts of appeal and then may be further reviewable by the Supreme Court.¹⁴² In some cases, matters of constitutional law may be further referred to the Constitutional Council.¹⁴³
- *Morocco*: Decisions of religious courts are not reviewable by civil courts in Morocco.¹⁴⁴

¹³¹ دستور جمهورية مصر العربية [CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT] art. 2 (2014).

¹³² Dirar & Tesfagabir, *supra* note 22.

¹³³ Girmachew Alemu Aneme, *Update: Introduction to the Ethiopian Legal System and Legal Research*, N.Y.U. L. SCH.: HAUSER GLOB. L. SCH. PROGRAM (Feb. 2020), <https://www.nyulawglobal.org/globalex/Ethiopia1.html> [<https://perma.cc/J4P7-NBGV>].

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ CONSTITUTION OF THE REPUBLIC OF THE GAMBIA art. 137A (1) (1997).

¹³⁸ CONSTITUTION OF KENYA art. 66 (2010).

¹³⁹ Tom Ojienda et al., *Update: Researching Kenyan Law*, N.Y.U. L. SCH.: HAUSER GLOB. L. SCH. PROGRAM (Apr. 2020), <https://www.nyulawglobal.org/globalex/Kenya1.html> [<https://perma.cc/T8EQ-3B27>].

¹⁴⁰ Dasi, *supra* note 28.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *See Morocco, supra* note 79.

- *Nigeria*: State sharia-law courts can be reviewed by the federal Sharia Court of Appeal which oversees all state applications of sharia law.¹⁴⁵ Those decisions can then be appealed to the secular Court of Appeal and subsequently to the Nigerian Supreme Court.¹⁴⁶
- *Tanzania*: Regional courts that impose sharia personal law are not reviewable federally.¹⁴⁷ *Kadhis* court decisions may be appealed to the *Kadhis* Appeals Court and then further to the High Court of the Region.¹⁴⁸
- *Uganda*: The government does not review the decisions of the sharia courts.

CONCLUDING REMARKS

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 (and the Jewish court in Morocco only operates for the city of Casablanca).¹⁴⁹ Other countries even constitutionally recognise the legality of tribunals of other faiths but 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.¹⁵⁰

There is further intrareligion favouritism in governments that sponsor religious courts and tribunals depending on the denomination. Africa predominately follows Sunni Islam and the Maliki school of sharia law interpretation which leaves many non-Sunni Muslims disadvantaged in the courts.¹⁵¹ This also can lead to outright discrimination against minority Muslim denominations in the countries that apply sharia law 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 inconsistent with the majority interpretation of Sunni Islam but not blasphemous according to the minority denomination of Islam that the accused belongs to.¹⁵²

In some cases, religious courts are further favoured by being granted less oversight than civil courts. This is the case in countries like Tanzania

¹⁴⁵ Dina, *supra* note 81.

¹⁴⁶ *Id.*

¹⁴⁷ Seka Kasera & Christabel Manning, *Update: Tanzanian Legal System and Legal Research*, N.Y.U. L.: HAUSER GLOB. L. SCH. PROGRAM (Aug. 2020), <https://www.nyulawglobal.org/globalex/Tanzania1.html> [<https://perma.cc/Y4FG-VYCW>].

¹⁴⁸ *Id.*

¹⁴⁹ *See Morocco, supra* note 79.

¹⁵⁰ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 3.

¹⁵¹ Robinson, *supra* note 16.

¹⁵² Hamza Ibrahim, *Nigerian Appeals Court Throws Out Blasphemy Convictions that Caused Outcry*, REUTERS (Jan. 21, 2022), <https://www.reuters.com/article/us-nigeria-crime-blasphemy-idUSKBN29Q2G6> [<https://perma.cc/U2NA-GYJE>]. In the case of Yahaya Sharif-Aminu, a Sufi Muslim was 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.

where the Court of Appeal is not given jurisdiction to oversee the cases of the *Kadhis* courts,¹⁵³ and The Gambia where *Kadhis* have their own appeals structure separate from the civil system.

¹⁵³ *Court of Appeal of Tanzania*, TANZLII, <https://tanzlii.org/judgments/TZCA/> [<https://perma.cc/9YN6-Q9QV>] (last visited June 24, 2024).