

Religious Law and Women's Human Rights:
Reflections upon the African Human Rights System

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In countries throughout Africa, governments have delegated judicial authority to religious courts and have permitted the application of religious laws. This paper suggests that these practices may violate women's human rights for at least four reasons. First, women are restricted from holding leadership positions within many religious institutions, and are therefore prevented from helping interpret the religious precepts and develop the law that is being applied by the religious courts. This exclusion of women violates their right to participate in governance, democracy and decision-making, which are essential components of law-making. Second, women are banned from serving as judges on many religious courts, thus calling into question the impartiality (both actual and perceived) of these tribunals, and thereby violating the right to trial by an impartial tribunal. Third, the law that is being applied by religious courts is often discriminatory against women, such as family law. This violates the right to equal protection of the law and to non-discrimination. Fourth, the fact that the law is based upon a particular interpretation of religion held by the judges sitting on the religious courts may violate the right to religious freedom held by the parties brought before the courts (e.g., if religious beliefs and interpretations of the parties differ from those held by the judges, whether or not they adhere to the same religion). This violates the right to freedom of religion or belief. In light of these concerns, this paper examines the African human rights system, and explores how this system might address the tensions between religious rights on one hand and women's human rights on the other.