



Strathmore University

Law School

**STRIKING A BALANCE BETWEEN SELF REGULATION AND STATE
REGULATION OF CHRISTIAN CHURCHES IN KENYA**

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree,
Strathmore University Law School

By

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March 2025

Word count:11972

Declaration

I, **COLLINS MAGERIA WACHIRA** , do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

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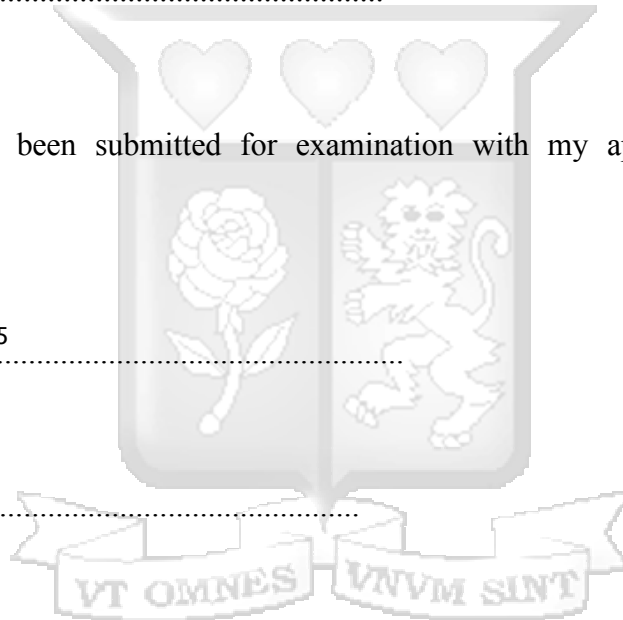
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Date: 



Acknowledgements

I am profoundly grateful to my supervisor, **Dr. Peter Kwenjera** , for his invaluable guidance, thoughtful insights, and unwavering support throughout this dissertation. Your expertise and encouragement have been essential in shaping this work. I am also deeply thankful to my family for their endless love, prayers, and encouragement, which have been my greatest source of strength throughout this journey. To my friends, I truly appreciate your constant motivation and belief in me, especially during the most challenging moments. This dissertation would not have been possible without the support of each of you, and for that, I am profoundly grateful.



List of Legal Instruments

African Charter on Human and Peoples' Rights

Companies Act, Cap 486 Laws of Kenya

Constitution of Kenya 2010

Constitution of Rwanda 2015

International Covenant on Civil and Political Rights

Societies Act, Cap 108 Laws of Kenya

Trustees (Perpetual Succession) Act, Cap 164 Laws of Kenya

Universal Declaration of Human Rights



List of cases

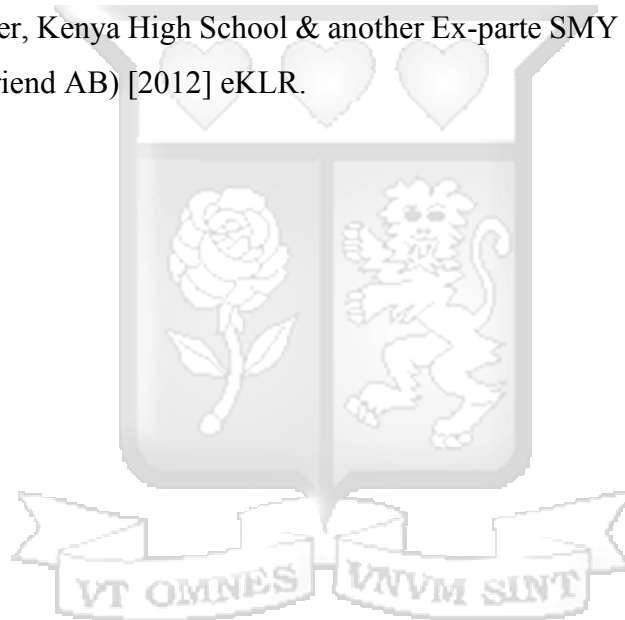
Atheists in Kenya Society v. The Registrar of Societies & Others (2018) eKLR.

David Kariuki Ngari v Fred Matiang'i Cabinet Secretary Ministry of Interior and Coordination of National Security & 3 others (2019) eKLR.

Fugicha v Methodist Church in Kenya (Suing Through its Registered Trustees) & 3 others [2016] KECA 273 (KLR).

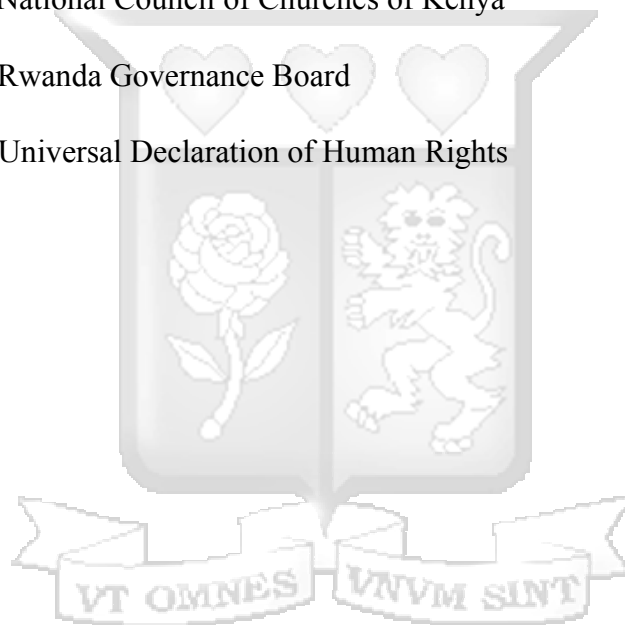
La Nyavu Gardens Limited v Wilson Munguti Mbithi & 2 Others (2012) eKLR.

Republic v Headteacher, Kenya High School & another Ex-parte SMY (a minor suing through her mother and next friend AB) [2012] eKLR.



List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
EAK	Evangelical Alliance of Kenya
FBO	Faith-Based Organization
ICCPR	International Covenant on Civil and Political Rights
KCCB	Kenya Conference of Catholic Bishops
NCKK	National Council of Churches of Kenya
RGB	Rwanda Governance Board
UDHR	Universal Declaration of Human Rights



Abstract

In recent years there have been numerous occurrences of financial exploitation and religious extremism by pastors in christian-based churches. Churches have been highly commercialized at the expense of the vulnerable congregation, begging the question whether the right to freedom of religion is being enjoyed and upheld in the right manner. This dissertation focuses on the current regulatory framework governing churches, highlighting the major shortcomings that have led to numerous occurrences of financial exploitation as well as the rise of religious extremism. The dissertation delves into the reasons why the state should regulate churches by highlighting the notorious activities orchestrated to exploit people. Self regulation mechanisms present are also discussed, highlighting how a hybrid model approach can effectively regulate churches. Based on the findings, the dissertation makes recommendations on how to maintain a healthy balance between state and self regulation of churches, ensuring religious freedom is enjoyed and the role of the government as a regulator is strengthened. The findings of this dissertation show that effective regulation of churches through reforming the legal framework will curb financial exploitation and religious extremism, posing a threat to national security.

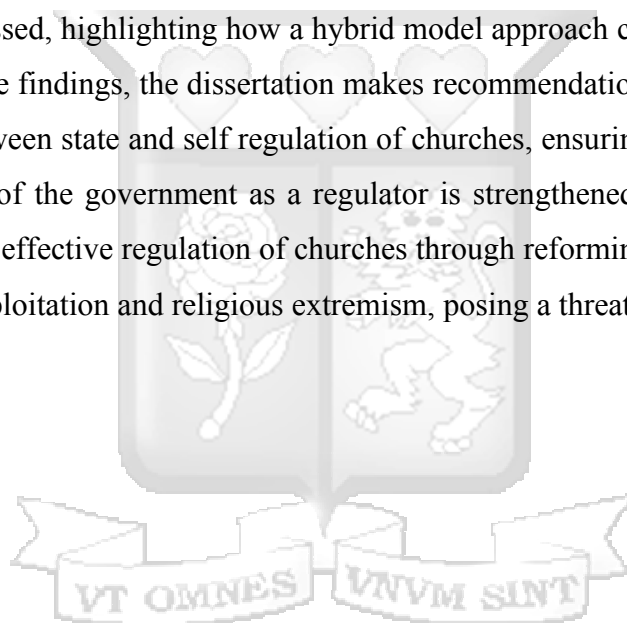


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CHAPTER ONE: INTRODUCTION

1.1 Background

The religious landscape of Kenya is home to many different faiths, including Christianity, Islam, Hinduism, and traditional African religions. Christianity is the most common religion, with 85.5% of the population being Christians and a large portion of them practising in churches as places of worship¹. These churches include a range of denominations, each with their own doctrines and customs, including Protestants, Catholics and Evangelical churches². For many Kenyans, religion is a cornerstone of daily life, offering spiritual guidance and fostering a sense of community. Its profound ties to the nation's history, politics and social dynamics also highlights its significant influence in the country³.

The right to freedom of conscience, religion, belief, and opinion is guaranteed not only by the Constitution of Kenya but also by several international instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). These international agreements form part of Kenya's legal framework by virtue of Article 2(6) of the Constitution, which states that any treaty or convention ratified by Kenya forms part of the country's laws. Kenya is therefore obligated to uphold and protect freedom of thought, conscience, and religion, ensuring that individuals can practice their faith without interference from the state.

The right is enshrined in article 32 of the Constitution of Kenya⁴. Subsection 2 of the article stipulates that "Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship". The state therefore has a duty to ensure the enjoyment of this right as outlined in the constitution. This right however is not absolute. The right to freedom of religion can be limited in law under article 24 to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human

¹ Kenya National Bureau of Statistics, 2019 Kenya Population and Housing Census: Volume IV - Distribution of Population by Socio-Economic Characteristics, Nairobi, 2019, 12.

² Kenya National Bureau of Statistics, 2019 Kenya Population and Housing Census: Volume IV - Distribution of Population by Socio-Economic Characteristics, Nairobi, 2019, 12.

³ Droz Y & Gez YN, 'Christian Forms of Religion in Kenya 'in Fouéré M-A, Pommerolle M-E & Thibon C (eds), *Kenya in Motion 2000-2020*, Africae, Nairobi, 2021, 285.

⁴ Article 32, *Constitution of Kenya* (2010).

dignity, equality and freedom, taking into account relevant factors such as the nature of the right or fundamental freedom and the importance of the purpose of the limitation⁵. The scope of the limitations permissible under this right have been decided in a number of cases such as the *Kenya High*⁶ case and the *Mohamed Fugicha*⁷ case. The courts in these cases ruled that schools were justified in restricting religious dress, as it was a reasonable limitation on the right to freedom of religion. The decision in the Fugicha case was however overturned by the Court of Appeal, moving away from assertive secularism that aims to exclude religion from the public sphere to passive secularism which allows for visible symbols of religion in the public sphere.

In the case of *Atheists in Kenya Society v. The Registrar of Societies & Others*⁸, the High Court of Kenya addressed the suspension of the Atheists in Kenya society's registration. The Atheists in Kenya challenged this suspension, arguing that it violated their constitutional rights, including the freedom of association and freedom of conscience, religion, belief, and opinion as enshrined in Articles 36 and 32 of the Kenyan Constitution. The court held that the suspension of the society's registration was unconstitutional and violated the petitioners' rights to freedom of association. The court judiciously avoided the issue of the right to freedom of religion by focusing on procedural flaws in the Registrar of Societies' actions, such as failing to follow the proper statutory process for suspending the society's registration.

Article 8 of the constitution states that Kenya is a secular state⁹, meaning that the state is neutral in matters of religion and does not favour or endorse any religion. Thus, the government largely has not regulated churches. Churches in Kenya self regulate through umbrella bodies, which are groups comprising different independent churches that share similar doctrines. There are several Christian umbrella bodies such as Evangelical Alliance of Kenya (EAK), National Council of Churches of Kenya (NCCCK) and Kenya Conference of Catholic Bishops (KCCB). These bodies have standardized codes of conduct, they oversee theological and educational standards as well as provide for internal dispute resolution mechanisms of churches. However, these codes only apply to churches that are members of the umbrella bodies and are not all

⁵ Article 24, *Constitution of Kenya* (2010).

⁶ *Republic v Headteacher, Kenya High School & another Ex-parte SMY (a minor suing through her mother and next friend AB)* [2012] eKLR.

⁷ *Fugicha v Methodist Church in Kenya (Suing Through its Registered Trustees) & 3 others* (2016) eKLR.

⁸ *Atheists in Kenya Society v. The Registrar of Societies & Others* (2018) eKLR.

⁹ Article 8, *Constitution of Kenya* (2010).

encompassing leaving out numerous churches. The umbrella bodies are also not anchored in law¹⁰.

Under the current legal framework, churches are classified as societies under the Societies Act enacted in 1968, which provides for registration and regulation of churches¹¹. They are also regulated by the Trustees (Perpetual Succession) Act which enables churches to hold property under a trust since the Societies Act does not confer legal personality to churches¹². A church can also be registered as a company limited by guarantee under the Companies Act¹³. There is evidently a highly fragmented framework that makes regulatory oversight difficult. The registration requirements outlined are also inadequate since the Societies Act does not define who can register for a church, paving way for all, including con artists to apply for registration of churches. This has posed a major challenge since some pastors have taken advantage of this loophole by registering churches and promoting extreme indoctrination leading to financial exploitation and radicalization. Some of these teachings include denouncing formal education as well as healthcare services¹⁴.

This has been evidenced by the gruesome events of the Shakahola massacre that took place in March 2023. Pastor Paul Mackenzie of the Good News International Ministries proclaimed to his congregants that the world was nearing the end times and that to meet Jesus, they had to starve themselves to death¹⁵. His radical teachings led followers to surrender their lives as well as their wealth. The children were scheduled to die first, followed by young people who were to be followed by women. The men were to delay their deaths so as to help bury the bodies following which they were to die thereafter. This became a national security concern as the events claimed the lives of about 429 people. This ordeal has raised key questions about the extent of government oversight in ensuring accountability of pastors in church activities

¹⁰ Presidential task force, *Review of the legal and regulatory framework governing religious organisations in Kenya*, January 2024, 25.

¹¹ Section 2, *Societies Act* (Act No.4 of 1968).

¹² Section 2, *Trustees (Perpetual Succession) Act* (Act No. 22 of 1987).

¹³ Section 4, *The Companies Act* (No. 17 of 2015).

¹⁴ Senate Ad Hoc Committee, *Final Report on the Proliferation of Religious Organisations and Circumstances Leading to Deaths in Shakahola*, 2023, 48.

¹⁵ Senate Ad Hoc Committee, *Final Report on the Proliferation of Religious Organisations and Circumstances Leading to Deaths in Shakahola*, 2023, 48.

1.2 Problem Statement

The current framework is highly fragmented, complicating the regulatory landscape since churches can register as societies, trusts or companies limited by guarantee. This adds administrative complexities and burdens. Furthermore, Section 2 of the Societies Act classifies societies as a “*club, company, partnership or other association of ten or more persons*”¹⁶. The Registrar of Societies, who oversees monitoring the numerous societies including those of a religious nature such as churches, lacks the requisite oversight capacity to regularly do audits and inspections on activities of churches. There are about 100,000 societies that have been registered by the registrar, with 40,000 of them being of a religious nature¹⁷.

The societies created under the Societies Act are not body corporates. This makes it difficult to monitor and adhere to the legal requirements placed on churches regarding registration and transparency. The Societies Act also lacks clear provisions on who can register a church, thereby allowing even ill-intentioned individuals to establish and operate churches. This has led to numerous cases of financial exploitation and spreading of extremist teachings, as evidenced by the Shakahola massacre, where extreme indoctrination resulted in and economic exploitation and mass deaths of congregants.

Despite there being a number of umbrella organisations that have self-regulation mechanisms, their lack of legal grounding within the regulatory framework and limited scope due to voluntary membership have proven insufficient in addressing these issues. These challenges raise pertinent concerns about the accountability of leaders in churches, the sufficiency of the existing regulatory frameworks, and the balance between safeguarding freedom of religion and protecting public safety.

¹⁶ Section 2, Societies Act (Act No.4 of 1968).

¹⁷ Senate Ad Hoc Committee, *Final Report on the Proliferation of Religious Organisations and Circumstances Leading to Deaths in Shakahola*, 2023, 88.

1.3 Research Objectives

1. To examine the current regulatory framework governing churches in Kenya
2. To evaluate the modes and merits of both state and self regulation of churches in addressing financial exploitation and religious extremism.
3. Evaluate best practices through a comparative study of Rwanda in curbing religious extremism and financial exploitation.

1.4 Research Questions

1. Whether the current legal framework governing registration of churches is adequate to tackle financial exploitation and religious extremism.
2. What are the advantages and disadvantages of state regulation and self regulation of churches and how can the two modes be harmonized to create a hybrid model for effective regulation of churches.
3. What lessons can be drawn from the comparative study on Rwanda of mechanisms used in state regulation and self regulation of churches to effectively regulate churches.

1.5 Justification

This dissertation is significant because it addresses the pressing need to balance the demand for increased transparency and accountability among Kenyan churches with the enjoyment of the constitutional right to freedom of religion. The dissertation examines the fragmented legal framework that governs churches and identifies the regulatory gaps that have made it possible for religious extremism and financial exploitation to flourish. The results offer key insights regarding ways to improve regulatory frameworks to prevent such activities while maintaining the enjoyment of religious freedoms protected by the Constitution. Furthermore, the study stresses the necessity of a legislative framework that protects against the exploitation of

religious platforms to spread harmful ideologies, given that religious extremism has become a significant national security risk.

The dissertation also offers practical, context-specific recommendations that strike a balance between self-regulation and state regulation of churches. By analyzing both the strengths and weaknesses of the existing frameworks and drawing lessons from regulatory practices in Rwanda, the dissertation aims to propose solutions tailored to Kenya's unique social and cultural context.

1.6 Hypothesis

The lack of a cohesive and comprehensive legal framework for regulating churches in Kenya contributes to financial exploitation and religious extremism as evidenced by cases like the Shakahola massacre.

Implementing laws that integrate state supervision and self-regulation by religious umbrella bodies will improve accountability and transparency among pastors in churches.

1.7 Theoretical framework

1.7.1 Sociological jurisprudence

One of the theories that guides this dissertation is sociological jurisprudence. The dissertation studies the impact of legal changes on societal improvement and development. One of the proponents of sociological jurisprudence was Roscoe Pound, who discusses the state of sociological jurisprudence and states that it is concerned with the social effects of legal doctrines and institutions, the sociological study of legislation, effectiveness of legal rules and how to advance the purposes of law¹⁸. He therefore considers law as a social phenomenon, a social institution which should be studied and compared with social conditions and social progress of the society at large. His views agree with those of Rudolph Von Jhering, a German jurist. Jhering emphasized the social function of law and maintained that it should be adjusted to reflect evolving social realities¹⁹. He believed that the goal of the law was to protect societal

¹⁸ Pound R, 'Outline of lectures on jurisprudence' 5 *Harvard University Press*, Cambridge, 1943, 272.

¹⁹ Von Jhering, 'Law as a means to an end' 5, Riverdale Press, Boston, 1913, 33.

norms. Law must evolve to meet the ever-changing needs of civilization, and that it is society's responsibility from time to time, to shape the law in conformity to new conditions. It can be argued that the regulation of churches through legislation would help curb the current challenges due to non-regulation such as exploitation by pastors of vulnerable members of society.

1.7.2 Public interest theory

The public interest theory of regulation is also deemed relevant to the study. Richard Posner discusses this theory in detail and posits that regulation is supplied in response to the demands of the public for the correction of inefficient and inequitable market practices²⁰. The assumption is that economic markets are extremely fragile and are prone to operate very inefficiently or inequitably if left alone. This theory relates to religion as there have been undesirable results coming from religious activities. Religious regulation is supported by public interest theory because it could improve citizen welfare. Pastors exploiting vulnerable individuals for donations, misusing funds for personal gain as well as promoting harmful doctrines are some of the social evils that are shunned by the society. It is therefore prudent for the government to intervene in order to address the social concerns affecting its citizens and provide solutions to those problems.

1.8 Literature Review

The jurist Daniel Nsereko in his paper "Religion, the state, and law in Africa" distinguished three general categories of the interactions between religion and the state in African states²¹. The categories are; (1) the supremacy of religion over the state; (2) the division of church and state; and (3) the submission of religion to the state. He emphasises that in separation of the church and the state, the state stays neutral towards all religions in the country. He however does acknowledge that full separation is not always possible since the role of the state and church often overlap in areas such as education, health and social services²². The article notes that the freedom of religion may not always be absolutely guaranteed due to reasons such as public safety, order or the fundamental rights and freedoms of others. This dissertation

²⁰ Richard R, 'Theories of economic regulation' 5 *University of Chicago Journal* 2, 1974,336.

²¹ Nsereko D, ' Religion, the State and the Law in Africa' *Journal of Church and State*,28, 1986, 270.

²² Nsereko D, 'Religion, the State and the Law in Africa' 272.

addresses the practical implications of these overlaps on accountability and national security by proposing solutions to bridge the gap between state oversight and religious autonomy.

In her article *'Religious pluralism in practice: Defining secularism in Kenya's headscarf cases'*²³ Mukami Wangai analyses how the Kenyan conceptualization of secularism is different from other countries such as France since different models of secularism are adjusted to fit local contexts. The article sheds light on how Kenya adopts a passive form of secularism which advances religious pluralism rather than maintaining and protecting a secular order. This dissertation advances this by exploring how passive secularism as practiced can accommodate a hybrid model of regulation to address the issues of religious indoctrination and financial exploitation.

In the article *'The Vetting Impasse: The 'Churches Law' and Kenya's Religious Regulation Debate'*²⁴, Yonatan N. Gez discusses the religious landscape by highlighting the role religion has played in Kenya historically. The article analyses some of the shortcomings of the existing legislation governing regulation of churches such as churches resorting to bribery to register churches as well as cases of religious extremism alluding. Gez sheds light on the inadequacy of self regulation mechanisms exercised by umbrella organisations as well as the internal vetting mechanisms²⁵. This dissertation goes beyond identifying regulatory shortcomings by proposing practical solutions including accountability measures to address national security risks associated with extremist doctrines.

Brenda Awour in her thesis *'The debate for and against state regulation of churches'* delves into the debate on merits and demerits of state regulation²⁶. The thesis gives compelling arguments for regulation of churches, citing that self interest could lead to unaccountable leaders in churches. It also proposes that self regulation of churches should not take place without intervention of the state. Brenda Awour conducts fieldwork, comprising interviews with various church leaders and the deputy registrar of societies²⁷. She points out that the state would however be faced by many challenges including constitutional ones by trying to

²³ Mukami W, 'Religious pluralism in practice: Defining secularism in Kenya's headscarf cases' 3 *Strathmore Law Journal* 1, 2017, 182.

²⁴ Yonatan G, 'The Vetting Impasse' 50 *Journal of Religion in Africa*, 2020, 62.

²⁵ Yonatan G, 'The Vetting Impasse' 67.

²⁶ Brenda Awuor Odiemo, *The Debate for and Against State Regulation of Churches in Kenya*, LLM Thesis, University of Nairobi, 2016, 62.

²⁷ Brenda A, *The Debate for and Against State Regulation of Churches in Kenya*, LLM Thesis, University of Nairobi, 2016, 70.

implement new regulations. She gives recommendations that some of the challenges could be curbed by involving church leaders in the formulation of the laws. This dissertation builds on this and integrates the dimension of national security, addressing how religious extremism has become a threat to the public safety of congregants in churches.

In the article "*Religion and Life Satisfaction Worldwide: The Role of Government Regulation*," authors Marta Elliot and R. David Hayward carry out empirical studies to examine the relative effects of religious identity and participation in organized religion on psychological well-being²⁸. The study, conducted across 65 countries, included various religious groups, such as Catholics, Buddhists, Protestants, and Muslims. The key finding of their research indicates that individuals who actively participate in organized religion tend to experience higher life satisfaction, particularly when government regulation is relatively low. The article provides valuable insight into how different forms of government regulation influence people's well-being. However, the authors acknowledge the need for further research on the relationship between religious participation and psychological well-being in highly regulated societies.. This dissertation addresses how the inadequate legal frameworks governing religious organizations impact not only psychological well-being but also societal stability and safety, posing national security risks.

Following the Shakahola tragedy, the President of Kenya, through Kenya Gazette Notice No. 5661, appointed a Task Force on Religious Organizations to assess the legal and policy gaps contributing to religious extremism and cultism. The mandate of the task force was to evaluate existing regulatory mechanisms, identify weaknesses, and recommend measures to enhance oversight²⁹. The findings of the report show that some of the factors leading to emergence of extremism and cultism are high levels of poverty, lack of adequate civic education and unemployment. Additionally, they found that there were existing gaps in the regulatory frameworks governing religious organisations such as lack of clarity in the nature of crimes committed as well as regulation of media content. In their recommendations, the taskforce proposed that there be adopted a hybrid model of regulation of religious organisations which encompasses both self and state regulation mechanisms in accordance with the constitution.

²⁸ Martha E and Hayward D, *Religion and Life Satisfaction Worldwide: The Role of Government Regulation*, Oxford University Press, Nevada, 2009, 286.

²⁹ Presidential task force, *Review of the legal and regulatory framework governing religious organisations in Kenya*, January 2024, 3.

This report provides direct public feedback on the current regulations and this is important in knowing what regulatory areas to improve on without unlawfully limiting the right to freedom of religion. This dissertation goes beyond the task force’s broad policy approach by specifically analyzing how the fragmented legal framework allows financial exploitation and religious extremism to flourish and how a well structured hybrid model can effectively bridge these gaps.

1.9 Research Methodology

This dissertation employs a doctrinal legal research methodology, relying on both primary and secondary sources. The primary sources used in the dissertation include legal instruments such as the statutes, court decisions, and government reports to analyze the existing legal framework governing churches. These sources provide firsthand legal and policy insights that form the basis for assessing the effectiveness of current regulations.

The dissertation relies also on secondary sources such as books, dissertations, journal articles, newspaper reports, and other authoritative internet sources. These materials help contextualize the legal and regulatory landscape governing churches.

This dissertation also incorporates a comparative study of church regulation in Rwanda to evaluate the effectiveness of different regulatory models. The study will involve analyzing Rwanda’s legal and policy framework on religious regulation, including legislation, and enforcement mechanisms used by the state to curb financial exploitation and religious extremism.

1.10 Limitations

The Societies Act regulates the registration of all societies in Kenya, including religious organizations. However, this dissertation specifically focuses on the regulation of churches, which fall under Christianity. As a result, the findings will not extend to or represent other religious societies in Kenya

1.11 Chapter Breakdown

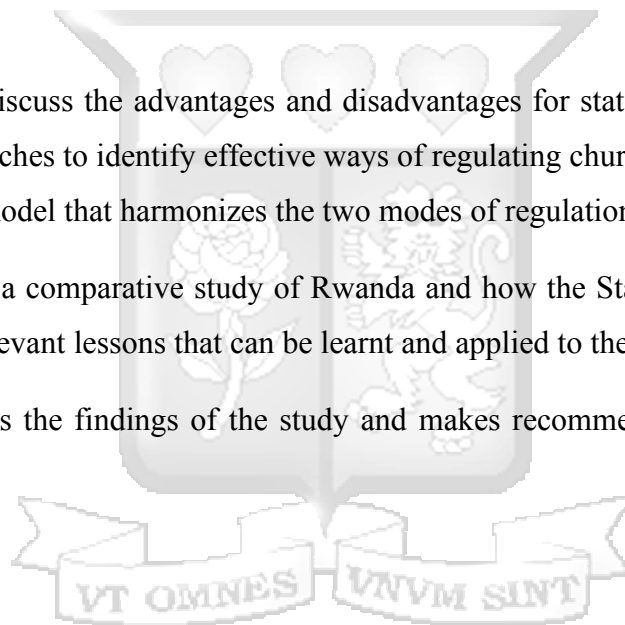
Chapter one lays out the background of the study and the statement of the problem of the study. It outlines the research objective, research questions, research aim hypothesis and justification of the research. This chapter will serve as a roadmap for readers to follow as the study progresses, providing them with a clear understanding of the purpose of the research and a guide for interpreting the findings of subsequent chapters.

Chapter two will discuss the current regulatory framework governing churches by highlighting national and international legal instruments that have a bearing on the freedom of religion

Chapter three will discuss the advantages and disadvantages for state regulation as well as self regulation of churches to identify effective ways of regulating churches. The chapter also delves into a hybrid model that harmonizes the two modes of regulation.

Chapter four entails a comparative study of Rwanda and how the State regulates churches. This is to establish relevant lessons that can be learnt and applied to the Kenyan context.

Chapter five provides the findings of the study and makes recommendations based on the findings.



2.0 CHAPTER TWO: ANALYZING THE REGULATORY FRAMEWORK GOVERNING REGULATION OF CHURCHES

2.1 Introduction

The regulation of religious organizations presents a delicate balance between upholding religious freedom, as guaranteed under both international and national legal frameworks, and ensuring accountability and transparency. This chapter examines the existing legal framework governing churches in Kenya, including previous regulatory attempts, international legal instruments, and national legislation that shape the regulation of churches. Analyzing these frameworks provides insights into their strengths and weaknesses, forming the basis for identifying areas where regulatory mechanisms can be improved.

2.2 Previous attempts to regulate religious activity

A committee was appointed on October 21, 1994, by the then President Daniel Moi aimed at investigating allegations of devil worship linked to drug abuse and anti-social activities. The commission found that the cult existed and that it mainly targeted young people and those from low-income backgrounds³⁰. Some of the key recommendations included establishing a specialized police unit for occult crime investigations and enhancing public education on drug abuse. Although the Commission completed the report and sent it to the President, the recommendations were never implemented.

To address the shortcomings of the existing legal framework regarding the registration and supervision of religious organizations, the State in 2015, acting through the Office of the Attorney General, formulated the Societies (Religious Societies) Rules³¹. This was aimed at establishing order in the religious sector, which had been accused with radicalism and the commercialization of religion. Some provisions of the draft regulations included enhanced registration requirements and maintaining member registers. Despite these comprehensive

³⁰ Presidential task force, *Review of the legal and regulatory framework governing religious organisations in Kenya*, January 2024, 44.

³¹ Senate Ad Hoc Committee, *Final Report on the Proliferation of Religious Organisations and Circumstances Leading to Deaths in Shakahola*, 2023, 14.

regulations aimed at enhancing oversight and accountability within religious organizations, the draft rules were never enacted.

2.3 The current regulatory framework

2.3.1 International Instruments Applicable to Religion in Kenya

Kenya's legal system is based in part on broad and ratified rules of international law, as stated in Articles 2(5)³² and (6)³³ of the Constitution. These provisions establish that general rules of international law form part of Kenyan law, and that treaties ratified by Kenya automatically become part of domestic law. Consequently, several international legal instruments play a role in shaping Kenya's protection, regulation, and governance of religious freedom.

2.3.1.1 Universal Declaration of Human Rights, 1948 (UDHR)

Article 18 of the UDHR upholds the right to freedom of thought, conscience, and religion³⁴. It includes the freedom to choose and change one's religion, as well as the right to express religion through teaching, practice, worship, and observance, both individually and collectively. It also protects the exercise and expression of religion by individuals and religious organizations. This is significant for Kenya as it establishes the universal protection of the right to freedom of thought, conscience, and religion, serving as a guiding principle for states in managing religious organizations.

2.3.1.2 International Covenant on Civil and Political Rights, 1976 (ICCPR)

Article 18 of the ICCPR ensures the freedom of religion, granting individuals the right to adopt or maintain a religion or belief of their choice and to express that religion through worship, observance, practice, and teaching³⁵. This freedom may only be restricted³⁵ by law when necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others. Additionally, parents are entitled to provide their children with religious and moral education in accordance with their beliefs. The ICCPR is important for religious organizations in Kenya as it protects the expression of religious freedom, emphasizing that any limitations must be legally justified.

³² Article 2(5), *Constitution of Kenya* (2010).

³³ Article 2(6), *Constitution of Kenya* (2010).

³⁴ Article 18, Universal Declaration of Human Rights, 10 December 1948, UNGA Res 217 A (III).

³⁵ Article 18, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171.

2.3.1.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 2 of the ICESCR states that state parties are obligated to ensure that the rights outlined in the Covenant are exercised without discrimination of any kind, including race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status³⁶. This is particularly relevant to the governance of religious organizations in Kenya, as it supports the principle of non-discrimination for individuals in the pursuit of their economic, social, and cultural rights, regardless of their religion.

2.3.1.4 Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief, 1981

This Declaration specifically targets intolerance and discrimination based on religion or belief³⁷. It affirms the right to freedom of thought, conscience, and religion, including the right to choose a religion or belief and to express it through worship, observance, practice, and teaching. Coercion that undermines this freedom is not allowed. This is significant for religious organizations in Kenya, as it protects the expression of religion while allowing limitations only when necessary to safeguard public safety, order, health, morals, or the fundamental rights and freedoms of others.

2.3.1.5 African Charter on Human and Peoples' Rights, 1981 (ACHPR)

Article 8 of the ACHPR guarantees the freedom of conscience and the practice of religion, with any limitations or restrictions subject to maintaining law and order³⁸. This provision is applicable to religious organizations in Kenya, as the ACHPR aims to promote and protect human rights, including religious freedoms across the African continent.

³⁶ Article 2, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3.

³⁷ Article 1, *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, 25 November 1981, UNGA Res 36/55.

³⁸ Article 8, *African Charter on Human and Peoples' Rights*, 27 June 1981, 1520 UNTS 217.

2.3.2 National laws

2.3.2.1 Constitution of Kenya

The Preamble of the Constitution acknowledges the supremacy of the Almighty God, affirming the existence of a supreme deity.

Article 8³⁹ establishes that there shall be no state religion, ensuring a separation between church and state, meaning that neither institution has authority over the other.

Article 32⁴⁰ grants every person the right to freedom of religion, conscience, thought, belief, and opinion. Individuals can freely express their religion both publicly and privately through worship, practice, teaching, and observance. It explicitly prohibits discrimination based on belief or religion in access to institutions, employment, or facilities and protects individuals from being forced to act against their beliefs.

Article 36⁴¹ addresses freedom of association, stating that everyone has the right to join, form, or participate in any association and also the right not to be compelled to join one. Furthermore, Article 36(3) mandates that any laws requiring registration of an association must ensure that registration is not unreasonably withheld or revoked, and that individuals have the right to a fair hearing before cancellation.

Article 45⁴² empowers Parliament to enact laws recognizing personal and family law systems based on religious beliefs, which is significant for religious organizations as it allows for the regulation of personal and family matters according to religious principles.

Article 27⁴³ guarantees equality and freedom from discrimination, explicitly stating that religion, conscience, and belief are grounds on which discrimination is prohibited. This provision protects the right to freedom of conscience, religion, belief, and opinion, as long as these rights do not infringe upon others.

While the Constitution protects these rights and freedoms, they are not absolute. Article 24 permits Parliament to legislate limitations on these rights, provided such limitations are

³⁹ Article 8, Constitution of Kenya (2010).

⁴⁰ Article 32, Constitution of Kenya (2010).

⁴¹ Article 36, Constitution of Kenya (2010).

⁴² Article 45, Constitution of Kenya (2010).

⁴³ Article 27, Constitution of Kenya (2010).

reasonable within an open and democratic society that values human dignity and equality, considering all relevant factors.

Thus, Article 24⁴⁴ ensures that any restrictions on fundamental freedoms and rights must be legally authorized and align with principles of reasonableness and justifiability, guaranteeing that limitations on the practice of religion are appropriately justified and consistent with lawful objectives. The Kenyan courts have interpreted this limitation provision in a number of cases such as the *Kenya High* case and the *Mohammed Fugicha* case

2.3.2.2 The Societies Act, Cap 108

The Societies Act is the primary legislation governing the registration and management of societies in Kenya. According to Section 2, a society includes any branch, club, company, partnership, or organization of ten or more people, regardless of their origin or purpose, founded or headquartered in Kenya⁴⁵. Churches, as a society with a religious purpose and ten or more members, fall under this definition. The Act does not distinguish between churches and other types of societies, treating religious organizations the same as clubs, partnerships, or political groups. This one-size-fits-all approach fails to account for the unique nature of religious institutions.

To register a church, an application must be submitted using the prescribed form as per Rule 2 of the Societies Rules. The Registrar may refuse registration if the society is linked to a political organization outside Kenya or if any proposed officer has previously been involved with a society that was denied registration or had its registration cancelled under Section 12⁴⁶. Unregistered societies, unless exempted, are considered unlawful. Managing an unlawful society is an offense under Section 5, punishable by a fine of up to Kshs. 10,000, imprisonment for up to one year, or both⁴⁷.

However, the Registrar may exempt specific societies from all or some provisions of the Act under Section 10, subject to conditions he deems appropriate, which can be amended or cancelled at any time⁴⁸. Well-organized religious organizations demonstrating good governance are eligible to apply for such exemptions. Societies may seek exemption from

⁴⁴ Article 24, Constitution of Kenya (2010).

⁴⁵ Section 2, The Societies Act (Cap 108 of 1968).

⁴⁶ Section 12, The Societies Act (Cap 108 of 1968).

⁴⁷ Section 5, The Societies Act (Cap 108 of 1968).

⁴⁸ Section 10, The Societies Act (Cap 108 of 1968).

registration as per Section 9. Additionally, Section 30(1) mandates that all registered societies file annual returns, while exempted societies are not required to do so⁴⁹.

2.3.2.3 Trustees (Perpetual Succession) Act, (Cap 164)

The Trustees (Perpetual Succession) Act regulates the registration of trusts. Since societies established under the Societies Act do not possess legal personality, they cannot own property in their own name. Therefore, if a religious organization wishes to acquire property, it must be held in trust for the benefit of the organization. A charitable trust is defined in the Act as a trust formed for the exclusive purpose of the relief of poverty, the advancement of education, religion or human rights and fundamental freedoms, or the protection of the environment or any other purpose beneficial to the general public⁵⁰. Registering as a trust allows religious organizations to own property by registering trusts under this Act.

2.3.2.4 The Companies Act, 2015

The Societies Act does not permit religious institutions to be incorporated as corporate bodies. As a result, they often create companies limited by guarantee to manage their properties, conduct fundraising, or oversee umbrella associations⁵¹. The Attorney General however informed the Senate *Ad hoc* committee that there are no religious organizations registered outside the framework of the Societies Act⁵².

2.4 Conclusion

Kenya's legal framework concerning religion is shaped by both international instruments and national laws that ensure the protection and promotion of religious freedoms. In line with international commitments found in the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, the country's constitution protects the fundamental rights to freedom of religion, conscience, and association. National laws, such as the Societies Act further facilitate the

⁴⁹ Section 30, The Societies Act (Cap 108 of 1968).

⁵⁰ Section 3, Trustees (Perpetual Succession) Act (Cap 164).

⁵¹ Section 4, Companies Act (Act No. 17 of 2015).

⁵² Senate Ad Hoc Committee, *Final Report on the Proliferation of Religious Organisations and Circumstances Leading to Deaths in Shakahola*, 2023, 12.

operation of churches, providing structures for their registration and governance albeit them being insufficient to adequately regulate churches.



3.0 CHAPTER THREE: REGULATION OF CHURCHES IN KENYA: ADDRESSING FINANCIAL EXPLOITATION AND RELIGIOUS EXTREMISM

3.1 Introduction

State intervention in the regulation of churches is primarily aimed at promoting transparency and accountability among church leaders. Given the inherent tendencies of human nature, which often leans toward self-interest, pastors may exploit their congregants if left unchecked. Such exploitation can lead to financial mismanagement and religious extremism, all under the guise of religious practice. The current regulatory framework has significant oversight inadequacies that fail to address these issues effectively, necessitating the need for urgent reforms. This chapter examines the extent of financial exploitation, religious extremism, and the role of self-regulation as an alternative to state intervention.

3.2 Financial Exploitation in Churches

Financial exploitation by pastors has become a pressing concern in Kenya. One of the primary reasons for state intervention in the regulation of churches is to promote transparency and accountability among church leaders. Given the inherent tendencies of human nature which often lean toward self-interest, there is a significant risk that these leaders may misuse their authority if left unchecked⁵³. Many churches collect substantial amounts of money through tithes, offerings, and donations, yet there are limited accountability mechanisms to ensure transparency in their financial management. The registrar of societies is unable to properly audit the registered churches since they are numerous in number and keeping up has been a significant challenge, enabling financial misappropriation to be propagated.

Financial misconduct within churches extends beyond fraudulent healing schemes. Some leaders have been exploiting their congregants through other financial schemes such as Saccos, under the guise of enabling people to acquire plots of lands.

⁵³ Ter Voert M and Felling A, 'The Effect of Religion on Self-Interest Morality' 35(4) *Review of Religious Research*, 1994, 302.

Many pastors leverage their authority to amass wealth at the expense of their congregants. These illicit activities not only harm individual congregants but also pose broader economic risks, undermining the credibility and trust of churches by the public⁵⁴.

A notable case on fraudulent healing schemes is that of Pastor Victor Kanyari, who manipulated his followers by promising miraculous healings in exchange for money. He convinced congregants to give ‘*mbegu ya 310*’ (a monetary seed offering) based on biblical references, deceiving them into believing that they would receive divine intervention. Investigative reports later revealed that Kanyari staged fake healings, using potassium permanganate to simulate blood during foot-washing rituals⁵⁵.

In 2015, CITAM (Christ is the Answer Ministries) faced allegations involving retired Bishop Boniface Adoyo and church elders Haron Nyakundi and Dr. Joyce Gikunda. Members accused them of mismanaging funds in a land-buying project initiated to help congregants acquire property in Karen, Nairobi⁵⁶. The project managed by La Nyavu Gardens Ltd, a company in which the accused were directors, collected substantial sums from members for land purchases and infrastructure development⁵⁷. The church company had collected 254 million to purchase 572 acres of land. However, members alleged that despite full payment, they neither received the promised plots nor saw the development of necessary infrastructure.

In 2018, David Kariuki Ngare, commonly known as Pastor Gakuyo faced allegations of misappropriating over Ksh 1 billion from the Sacco's members⁵⁸. Ekeza is estimated to have signed up 50,000 members who deposited about Sh2.56 billion. Investigations revealed that funds meant for member investments were allegedly diverted to his personal accounts and businesses⁵⁹. In March 2018, the government deregistered Ekeza Sacco due to financial mismanagement. Subsequently, in 2024, Gakuyo was arrested and charged in court over the

⁵⁴ Voert and Felling, ‘The effect of religion on self-interest morality’, 302.

⁵⁵ Omboki A, ‘At Kanyari’s church, one has to ‘plant a seed’ to receive blessings’ Daily Nation , 8 December 2019

<https://nation.africa/kenya/news/at-kanyari-s-church-one-has-to-plant-a-seed-to-receive-blessings-23048> on 11 February 2025.

⁵⁶ Paul Ogemba, ‘Bishop and church elders caught up in 72-acre land scam’ Daily Nation , 2 July 2020 <https://nation.africa/kenya/news/bishop-and-church-elders-caught-up-in-72-acre-land-scam-1137514> on 11 February 2025.

⁵⁷ La Nyavu Gardens Limited v Wilson Munguti Mbithi & 2 Others (2012) eKLR.

⁵⁸ David Kariuki Ngari v Fred Matiang’i Cabinet Secretary Ministry of Interior and Coordination of National Security & 3 others (2019) eKLR.

⁵⁹ Mary Wambui, ‘Ekeza sacco members receive Sh750m in cash and land’ Nation Africa, July 26, 2021 <https://nation.africa/kenya/news/ekeza-sacco-members-get-cash-and-land-3486494> on 11 February 2025.

alleged fraud and the case is ongoing⁶⁰. The financial exploitation of congregants by church leaders as highlighted underscores the urgent need for enhanced regulation, transparency, and accountability within religious institutions.

3.3 Religious extremism

Religious extremism can be defined as an ideological commitment that is expressed through actions demonstrating a deep loyalty to a belief system⁶¹. It manifests when individuals or groups adopt extreme ideologies and use religious teachings to justify harmful actions, including terrorism, radicalization, and social division. Religious extremism is not only a threat to individuals but also a grave national security concern⁶².

The rise of religious extremism in Kenya can be attributed to several interrelated factors. One of the factors is due to the weak regulatory framework. Since anyone can register a church without having their theological training background checked, there is the inherent risk that individuals with ill motives will masquerade as legitimate pastors. This inadequacy in regulation poses serious risks, as these opportunistic figures can propagate harmful ideologies⁶³. These individuals often manipulate their followers, leading to financial ruin, psychological harm, and in extreme cases, loss of life. Psychological manipulation plays a significant role in religious extremism as leaders exploit the vulnerability of congregants⁶⁴.

Socio-economic challenges also contribute to religious extremism by creating conditions of desperation and vulnerability that extremist pastors exploit⁶⁵. High poverty and unemployment rates leave individuals struggling to meet their basic needs, making them more susceptible to promises by pastors of financial relief, miracles, or divine intervention in exchange for loyalty and obedience. Lack of education also plays a role, as individuals with limited access may be

⁶⁰ Richard Munguti, 'Ekeza Sacco boss David 'Gakuyo' Ngare to cool his heels in police cell' Nation Africa, 24 February 2024
<https://nation.africa/kenya/news/gakuyo-to-remain-in-police-custody-ahead-of-his-charging--4534884> on 11 February 2025.

⁶¹ Hassan H, 'Religion as a security threat: Case studies of extremist Christian movements in Africa' 51 *Journal of Religion in Africa* 3-4, 2021, 430.

⁶² Mbaya KB and Muriuki P, *National Crime (Religion and Crimes in Kenya)*, National Crime Research Centre, 2024,16.

⁶³ Presidential task force, Review of the legal and regulatory framework governing religious organisations in Kenya, January 2024,47.

⁶⁴ Loewenthal KM & Lewis CA, 'Mental Health, Religion and Culture' *The Psychologist*, 2011, 3
<https://www.researchgate.net/publication/285929212> on 11 February 2025.

⁶⁵ Rink A and Sharma K, 'The Determinants of Religious Radicalization: Evidence from Kenya' 35(4) *Journal of Conflict Resolution*, 2016, 8.

more easily manipulated by extremist doctrines that promote isolationism, unquestioning faith, and rejection of mainstream society⁶⁶. Socioeconomic instability provides fertile ground for propagation of radical ideologies, as individuals seeking hope, stability, and meaning become vulnerable to manipulation by charismatic leaders who exploit their circumstances for personal or ideological gain.

A tragic example of the consequences of religious extremism is the Shakahola massacre, where Pastor Paul Mackenzie of the Good News International Ministries convinced his followers that starvation was the path to salvation, leading to the deaths of over 400 people. This incident underscores the risks posed by religious radicalization and the necessity of a regulatory framework that can detect and prevent extremism before it escalates.

3.4 The need for a balance

Secularism is a governance principle that ensures the separation of religion and the state, preventing government endorsement or suppression of any religion. There are different models of secularism globally⁶⁷:

- (i) **Strict Secularism:** This approach emphasizes a clear separation between religion and state affairs, often limiting religious expressions in public institutions to maintain neutrality.
- (ii) **Secularity (Accommodative Secularism):** This perspective allows for a more inclusive approach, accommodating religious expressions in public spaces to reflect the country's diverse religious landscape.

Strict secularism ensures that religious organizations and beliefs have no bearing on laws, policies, or government operations by totally separating the state from religion. This model enforces strict neutrality of the state, prohibiting religious symbols or expressions in public institutions and often limiting the role of religion in public life. France follows this model that completely separates religion from the state⁶⁸. Religious symbols and attire such as hijabs, crosses and kippahs are banned in public schools and government institutions.

⁶⁶ Ikpe E, Adegoke D, Olonisakin F and Aina F, 'Understanding Vulnerability to Violent Extremism: Evidence from Borno State, Northeastern Nigeria' *African Security* (2023) 7 <https://doi.org/10.1080/19392206.2023.2185746> on 11 February 2025.

⁶⁷ Mukami, 'Religious pluralism in practice', 182.

⁶⁸ Mukami, 'Religious pluralism in practice', 182.

Kenya follows a passive secularism model, which recognizes religious pluralism while ensuring that the state does not establish or favour any religion⁶⁹. This principle is reflected in establishing that Kenya is a secular state, meaning that religion should not dictate government policies, nor should the state interfere with religious practices unless they pose a threat to public safety, morality, or national security. Kenya's approach allows for religious pluralism and accommodation of diverse beliefs and practices. The Preamble of the constitution accurately acknowledges this cultural and religious diversity amongst the people of Kenya. This model aligns with the country's historical and traditional background, reflecting a society where religion plays a central role in individual and communal identity as well as playing an integral part in fostering social cohesion.

Article 32⁷⁰ guarantees every individual the right to freedom of conscience, religion, thought, belief, and opinion. This includes the right to practice, teach, and manifest one's religion publicly or privately. However, this right is not absolute. It can be limited under Article 24⁷¹, which allows restrictions when necessary to protect public safety, order, health, and the rights of others.

It is therefore imperative that a balance is maintained since overregulation could suppress religious freedoms while under-regulation could allow potential abuses to occur. The state should not dictate religious beliefs but must ensure compliance with laws. Article 32 emphasizes religious expression must be protected but also responsibly exercised. This constitutional guarantee is not an endorsement of unchecked religious authority but rather a safeguard for legitimate religious practices that do not infringe on the rights of others.

3.5 Self Regulation of Churches

Whilst state regulation is necessary to address the challenges posed by rogue pastors, the government must strike a balance. Regulatory measures imposed by the state should respect Kenya's constitutional commitment to religious freedom and pluralism, ensuring that they do not inadvertently suppress the very freedoms they aim and seek to protect. The state can do so by promoting self regulation mechanisms for churches. This can be done through umbrella bodies. An umbrella body is a religious body consisting of several religious societies that come

⁶⁹ Mukami, 'Religious pluralism in practice', 183.

⁷⁰ Article 32, *Constitution of Kenya* (2010).

⁷¹ Article 24, *Constitution of Kenya* (2010).

together because they share a common doctrine. There are various christian umbrella bodies present in Kenya such as the Kenya Conference of Catholic Bishops, the Evangelical Alliance of Kenya and the National Council of Churches of Kenya among others⁷². They have numerous churches that are registered members and who adhere to the bodies' codes of conduct.

Umbrella bodies play a critical role in empowering churches to govern themselves effectively, as they promote a culture of accountability and transparency within the religious community. By joining umbrella bodies that share similar theological beliefs and practices, churches can align themselves with like-minded institutions and benefit from a collective framework of governance. These bodies usually establish codes of conducts that outline the expected standards of behavior for their member churches. They establish disciplinary mechanisms for their members to address issues such as member misconduct⁷³. This guarantees that cases of financial mismanagement, power abuse, or unethical behavior that occur are handled internally in a fair, open and timely manner. This internal accountability process ensures that any wrongdoing is handled in a way that maintains the integrity of the church and upholds the trust of its members. They offer avenues for the peaceful resolution of conflicts that arise between member churches or amongst church leaders.

Self regulation also ensures that religious autonomy is safeguarded. The existence of umbrella bodies offers a welcome alternative to state intervention, which many church leaders prefer to avoid⁷⁴. State regulation carries an inherent risk of overreach by government authorities, which could infringe on the right to freedom of religion. Umbrella bodies however are more likely to protect the institution of religion by upholding the core tenets of religious doctrines as well as acknowledging doctrinal diversity of churches.

The government is not best placed to determine what doctrine is right or wrong. Umbrella bodies provide a more specialized oversight role as they are equipped with a better understanding of doctrinal and administrative matters regarding churches that government authorities lack⁷⁵. They have the requisite expertise to differentiate between legitimate spiritual

⁷² Makokha JW, 'The socio-legal framework of religious regulation in Kenya and its influence on citizen behaviour' CORAT Africa, 2024, 17.

⁷³ Hill M, 'The regulation of Christian churches: Ecclesiology, law and polity' *Theological Studies*, 72(1), 2016, 6.

⁷⁴ Makokha JW, 'The socio-legal framework of religious regulation in Kenya and its influence on citizen behaviour' CORAT Africa, 2024, 16.

⁷⁵ Kgatle MS, 'The role of ecumenical bodies in curbing abuses in New Prophetic Churches in South Africa' *In die Skriflig*, 56(1), 2022,5.

practices and harmful practices. This enables them to provide tailored governance structures that offer specific solutions to different religious contexts rather than generic regulatory mechanisms⁷⁶. This is essential for the credibility and long-term sustainability of churches

Ecumenical bodies also play a better role in early detection and prevention of harmful religious practices than the government. Their proximity to member churches allows them to identify misconduct and step in before things escalate, ensuring that behavior that goes against common moral and theological principles is curbed⁷⁷. This proactive approach becomes especially crucial when addressing religious extremism where early intervention might prevent serious harm. They can help to create an environment where churches feel encouraged to report concerns and seek guidance on how to deal with problematic practices by encouraging communication, collaboration, and understanding between various Christian traditions.

Despite the numerous advantages that self regulation has over state regulation, it has its shortcomings. Ensuring enforcement in cases of non-compliance by individual churches with established standards can be a significant challenge. Without formal backing from the state, the capacity of a self-regulatory body to guarantee adherence to its set rules is often limited. This can significantly weaken their ability to hold members accountable and maintain order. In cases where non-compliance persists, it not only undermines the authority of the self-regulatory body but also erodes public confidence in its capacity to uphold ethical and moral standards.

3.6A Hybrid Model

To create a healthy interplay between state regulation and self-regulation, a hybrid model should be established; one that ensures government oversight without infringing on religious freedoms while enabling religious organizations to self-regulate responsibly. This entails;

(a) Enactment of a Distinct Law on churches

Currently, religious organizations in Kenya operate under the Societies Act, which does not address their unique ethical and governance challenges particular to churches. The new law should provide clear guidelines for registration, operation, and accountability. It would establish requirements for financial transparency and protection of congregants from

⁷⁶ Kgatele, 'The role of ecumenical bodies in curbing abuses', 7.

⁷⁷ Mbaya KB and Muriuki P, *National Crime (Religion and Crimes in Kenya)*, National Crime Research Centre, 2024,65.

radicalization. It should also outline the nature of crimes done under the guise of religious practice as well as impose penalties. The law should also confer legal personality to churches, allowing them to hold property in their name and not in the name of trustees as is the case currently.

(b) Establishment of an Independent Religious Oversight Commission

Churches have been operating without oversight leading to financial misconduct, and extremist teachings to be propagated. The commission should be formed to monitor compliance with legal and ethical standards and investigate complaints of abuse, financial fraud, or extremism threatening public safety. The commission should not interfere in doctrinal matters but should ensure churches adhere to legal obligations regarding financial transparency and public safety.

(c) Strengthening Self-Regulation Through Umbrella Bodies

Many churches prefer to self regulate instead of being regulated by the government. However, they lack the legal grounding in law. The government should formally recognize umbrella bodies in law and require that all churches should register under an umbrella body of their choice, preferably one in which they share common doctrines. Members of umbrella bodies will therefore have to adhere to their codes of conduct. Churches that do not want to affiliate with an umbrella body should be regulated by the state directly. This ensures that all churches have been encompassed and can be effectively regulated to curb potential abuses. There should be set a minimum number of churches that can be part of an umbrella body for accountability and uniformity purposes.

3.7 Conclusion

While financial exploitation and religious extremism present genuine concerns that necessitate state intervention, excessive government regulation risks infringing on religious freedoms and constitutional rights. The role of religious umbrella bodies in self-regulation offers a viable alternative to state control, promoting internal accountability while preserving religious autonomy. However, the current self-regulation framework has its limitations, since they are not anchored in law. A hybrid model that combines government oversight with strengthened self-regulatory mechanisms may offer a more effective method of regulation.

4.0 CHAPTER 4: COMPARATIVE STUDY ON REGULATION OF CHURCHES IN RWANDA

4.1 Introduction

This chapter examines Rwanda's regulatory framework for religious organizations, drawing comparisons with Kenya to identify best practices and lessons that can enhance Kenya's religious governance. Rwanda serves as an ideal case study due to its demographic similarities with Kenya, its constitutional commitment to secularism, and its recent regulatory reforms targeting religious institutions.

Rwanda has a population of 13,246,394, according to the 2022 Fifth Population and Housing Census (PHC)⁷⁸. Like Kenya, it is a predominantly Christian nation, with 92% of its population identifying as Roman Catholic, Protestant, or Evangelical. Muslims constitute approximately 2%, while followers of traditional religions account for less than 1%. Around 3% of the population does not adhere to any religion⁷⁹. This religious composition closely mirrors Kenya's, where Christianity also dominates, alongside a minority presence of Islam, indigenous faiths, and non-religious groups. The comparable religious landscape makes Rwanda a valuable point of reference in understanding how regulatory frameworks can balance religious diversity, state oversight, and constitutional protections for religious freedom.

The chapter explores the historical role of religious institutions in Rwanda, the evolution of its regulatory framework, and the role of state institutions in overseeing religious affairs. It examines Rwanda's recent regulatory reforms, which have sought to enhance financial transparency, and prevent exploitative practices within religious organizations. By analyzing Rwanda's successes and challenges in religious regulation, this study provides critical insights into how Kenya can refine its approach.

⁷⁸ National Institute of Statistics Rwanda, *Rwanda Population 2022*, 3 March, 2023.

⁷⁹ National Institute of Statistics of Rwanda, *Rwanda Demographic and Health Survey 2019-20 Final Report*, September 2021,37.

4.2 Historical Perspective

Rwanda's colonial history significantly influenced its religious landscape. European missionaries and colonial administrators imposed a racialized interpretation of ethnic identities among the Tutsi and Hutu, influenced by the Hamitic Hypothesis. The theory suggested that Tutsis were superior "Hamitic" people of Caucasian descent, while Hutus were "Bantu" and considered to be inferior. The Catholic Church played a role in reinforcing this ideology as it became closely aligned with the colonial administration⁸⁰.

During the 100 days of genocide between April and July 1994, churches became sites of both hope and horror. Some clergy members actively participated in the genocide⁸¹. Some priests and nuns collaborated with the Interahamwe militias, providing them with lists of Tutsi refugees hiding in churches. The use of churches as killing fields is well-documented. Large massacres occurred at churches such as Gikongoro, Butare, and Kibuye, where Tutsis had gathered under false promises of protection⁸². Attackers used grenades, firearms, and machetes to exterminate entire groups within church compounds. Eyewitness testimonies and survivor accounts corroborate these events, painting a grim picture of churches becoming spaces of horror rather than refuge.

While individual clergy members helped victims, the Church as an institution remained largely silent. The continued support of the government regime at a time of war was interpreted by the public as an endorsement of anti-Tutsi message. A month into the massacres the Catholic bishops and leaders of Protestant churches issued a joint call for restoration of peace and security⁸³. However, they accused each side equally without even alluding to the systemic slaughter of Tutsi's. Certain individual clergy members and small religious communities within Rwanda attempted to protect Tutsi civilians, often at great personal risk⁸⁴. However, these efforts were isolated and insufficient to counteract the widespread complicity of religious institution.

⁸⁰ Court A, 'The Christian Churches, the State, and Genocide in Rwanda' 44(1) *Missionalia*, 2016vv, 59.

⁸¹ Rita Deliperi, 'Accepting the Unacceptable: Christian Churches and the 1994 Rwandan Genocide' (2020) *E-International Relations*, 2.

⁸² Longman T, 'Church politics and the genocide in Rwanda' *Journal of Religion in Africa*, 2, 2001, 181.

⁸³ Longman, 'Church politics and the genocide in Rwanda', 180.

⁸⁴ Longman, 'Church politics and the genocide in Rwanda', 181.

4.3 Regulation of churches in Rwanda

4.3.1 Legal provisions

Article 4⁸⁵ of the Rwandan constitution states that The Rwandan State is an independent, sovereign, democratic, social and secular Republic. This means that the government is neutral in religious matters and does not endorse or privilege any faith, ensuring equal treatment of all religion. The freedom of religion is guaranteed in section 37⁸⁶ which states that; *Freedom of thought, conscience, religion, worship and public manifestation thereof is guaranteed by the State in accordance with the law. Propagation of ethnic, regional, racial discrimination or any other form of division is punished by law.*

Additionally, Article 39⁸⁷ guarantees freedom of association, which does not require prior authorization requirements. This right must be exercised in accordance with the legal requirements. The right entails enabling citizens to enjoy the right communally with others. The right to freedom of religion can be limited under the general limitation of rights clause in article 41⁸⁸. It states that *'In exercising rights and freedoms, everyone is subject only to limitations provided for by the law aimed at ensuring recognition and respect of other people's rights and freedoms, as well as public morals, public order and social welfare which generally characterise a democratic society.'*

The penal code of Rwanda criminalizes discrimination on religious grounds by being liable to a term of imprisonment of more than five (5) years to seven (7) years and a fine of one hundred thousand (Ksh. 9217) to one million Rwandan francs (Ksh. 92,174)⁸⁹.

4.3.2 The Rwanda Governance Board

The Rwanda Governance Board (RGB) is generally mandated to promote good governance principles and monitor service delivery across public and private sector institutions as well as Civil Society Organizations. It plays a pivotal role in overseeing the regulation of faith-based organizations (FBOs) within the country, ensuring that the constitutional guarantee of freedom

⁸⁵ Article 4, Constitution of Rwanda (2015).

⁸⁶ Article 37, Constitution of Rwanda (2015).

⁸⁷ Article 39, Constitution of Rwanda (2015).

⁸⁸ Article 41, Constitution of Rwanda (2015).

⁸⁹ Section 227, Determining Offences and Penalties in General (Rwanda).

of thought, conscience, religion, and worship is upheld in accordance with the law⁹⁰. The RGB is responsible for registering FBOs and monitoring their operations.

Faith-based organisations in Rwanda are classified into the following categories:

- (a) Organisation– This is a faith-based organisation referred to as a religious denomination.
- (b) Ministry– A faith-based affiliation to an organisation that conducts development-oriented activities.
- (c) Umbrella– A union of organisations with legal personality.

Its oversight includes setting requirements for FBO membership, evaluating their activities, and ensuring financial autonomy. Additionally, the RGB mandates that FBOs submit annual activity reports and budget execution reports to promote transparency and accountability. The Board also establishes criteria for appointing preachers and regulates conditions related to places of worship. Through these functions, the RGB aims to maintain a balance between religious freedom and public safety, ensuring that religious practices contribute positively to society while preventing potential abuses associated with financial exploitation or extremist ideologies.

Faith-based organisations are only allowed to operate in Rwanda when they have legal personality. For one to start and register a faith-based organisation one requires⁹¹;

(i) Official Application & Local Approval

An application letter addressed to the CEO of the Rwanda Governance Board (RGB) and a letter from district authorities certifying compliance with construction standards. Ensuring that churches meet proper construction standards helps guarantee proper sanitation and the safety of congregants

(ii) Legal & Governance Documents

Notarized statutes, notarized minutes of the General Assembly establishing the organization, and a statement explaining the organization's doctrine (Statement of Faith).

⁹⁰ <<https://www.rgb.rw/>>

⁹¹ <<https://www.rgb.rw/>>

Requiring a doctrine of faith statement ensures that religious organizations clearly define their beliefs, preventing vague or misleading representations. This promotes transparency and helps distinguish legitimate faith-based groups from potentially fraudulent or extremist organizations

(iii) Leadership Credentials

Names, responsibilities, full addresses, and CVs of the Legal Representative and Deputy, along with their non-criminal records. The Legal Representative must hold a valid bachelor's degree certificate in religious studies, or any other degree supplemented by a recognized institution in religious studies.

Requiring the religious leaders to have a bachelor's degree in religious studies helps ensure professionalism and theological knowledge among religious leaders. However, instead of the government enforcing this requirement, it would be more appropriate for umbrella organizations to set the educational standards for their member institutions. Faith communities have diverse traditions, some prioritize formal education, while others emphasize mentorship, spiritual calling, and practical experience. Allowing umbrella organizations to regulate this ensures that standards align with the needs and values of each religious group while maintaining leadership quality.

(iv) Doctrinal & Organizational Requirements

A notarized statement explaining the organization's doctrine (Statement of Faith), an annual action plan with a defined budget source, and a partnership document from a religious umbrella organization of choice.

The requirement for faith-based organizations to obtain a partnership document from an umbrella religious body is an important regulatory requirement. It encourages accountability and self-regulation amongst churches, helping to prevent the rise of exploitative and extremist groups. Additionally, umbrella bodies provide mentorship, support, and dispute resolution mechanisms, ensuring that churches are more organized and responsible.

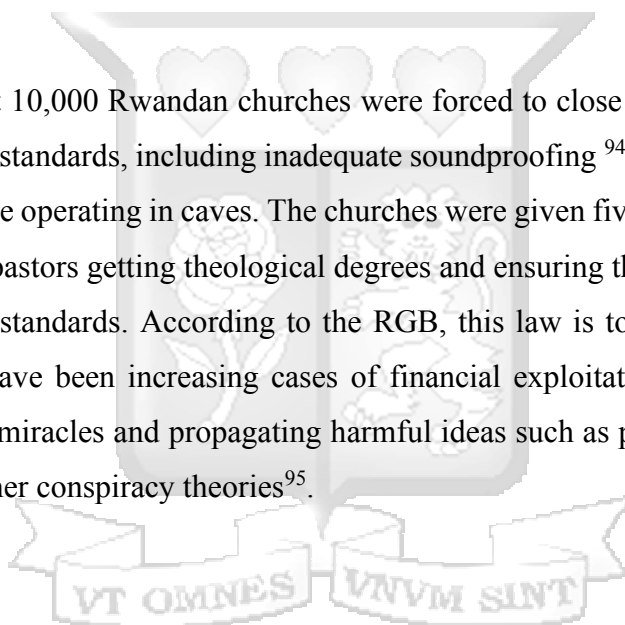
(v) Financial & Administrative Compliance

Proof of payment of a non-refundable fee of 300,000 Frw (Ksh.27,652). The fee serves to cover various administrative costs associated with processing and overseeing faith-based organization.

4.3.3 Reforms done by the government on regulation of churches

In 2018, the Government of Rwanda took significant measures to regulate churches. The first crackdown by authorities ordered the closure of more than 8,000 churches across Rwanda, including 700 in the capital city of Kigali⁹². This came after a proposed new law on regulation of churches⁹³. The laws required among other things that preachers have theological training before opening churches as well as ensure churches and prayer houses are built in an organized manner and remain safe for people. The government cited issues such as inadequate sanitation facilities and non-compliance with building codes as primary reasons for the closures. The crackdown was carried out by the local authorities with the support of the Rwanda Governance Board.

In August 2024, about 10,000 Rwandan churches were forced to close due to noncompliance with health and safety standards, including inadequate soundproofing⁹⁴. Some of the churches closed were found to be operating in caves. The churches were given five years to comply with the new laws such as pastors getting theological degrees and ensuring the churches were up to building and sanitary standards. According to the RGB, this law is to protect the people of Rwanda since there have been increasing cases of financial exploitation of congregants by promising to perform miracles and propagating harmful ideas such as promoting anti vaccine disinformation and other conspiracy theories⁹⁵.



⁹² Dr. Emma Charlene Lubaale, *Assessing the Human Rights Implication of Calls for Regulation of Faith-Based Organisations in Africa*, 2019, 1.

⁹³ Dr. Emma Charlene Lubaale, *Assessing the Human Rights Implication of Calls for Regulation of Faith-Based Organisations in Africa*, 2019, 11–25.

⁹⁴ Wycliffe Muia, 'Rwanda shuts 4,000 churches in safety crackdown' 2 August 2024 - <https://www.bbc.com/news/articles/c6p2p9dkdzxo> on 11 February 2025.

⁹⁵ Tasamba J, 'Why has Rwanda shut thousands of churches and banned faith groups?' 9 August 2024 <https://www.aa.com.tr/en/africa/why-has-rwanda-shut-thousands-of-churches-and-banned-faith-groups/3325559> > on 11 February 2025.

4.4 Relevant Lessons to be learnt by Kenya

1. Need for Enactment of a Distinct Law Focusing on Religious Matters

There is a need for a specific legal framework that addresses the unique challenges and dynamics of churches. The legislation would provide clear guidelines for registration, operation, and accountability of churches, ensuring they adhere to ethical standards and protect congregants from exploitation. The law governing faith-based organisations is specific to the governance of churches unlike the Societies Act in Kenya which encompasses all societies in Kenya.

2. Need to Establish a Body/Commission to Oversee Religious Organizations

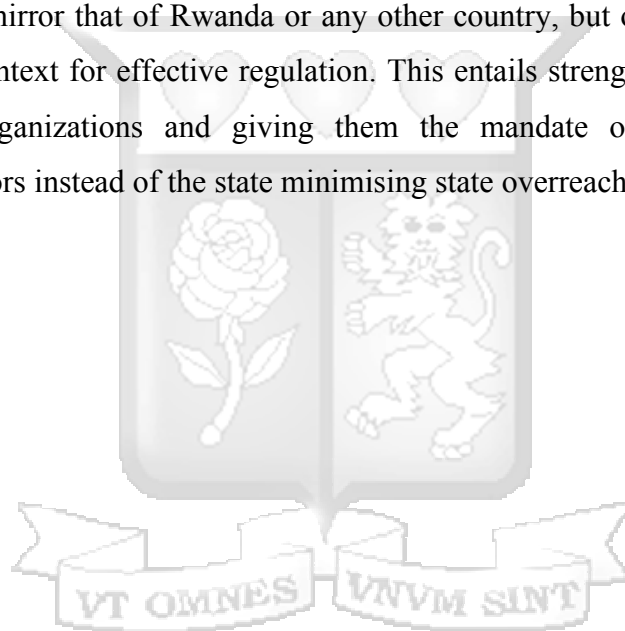
The creation of an independent body or commission dedicated to overseeing religious organizations would enhance accountability and transparency. This entity could monitor compliance with regulations and investigate complaints, similar to the Rwanda Governance Board. The body ensures that legal and ethical compliances are adhered to by churches. The government is not best placed to deal with these religious matters and this should be left to those with knowledge and expertise. This means that the commission should have people with diverse religious backgrounds entailing theological training and practical experience.

3. Need to Strengthen Umbrella Bodies to Facilitate Self-Regulation by Religious Organizations

Strengthening umbrella bodies would enable religious organizations to engage in self-regulation effectively. The Rwanda Governance Board specifies that pastors should have theological degrees. It would be more effective if these requirements are dictated by umbrella bodies rather than the state. A government-mandated academic requirement risks interfering with religious doctrine by imposing one-size-fits-all qualifications that may not align with different faith traditions. These bodies can establish theological standards, provide training for leaders, and create frameworks for ethical conduct within their communities, fostering a culture of responsibility and mutual accountability among different faith groups.

4.5 Conclusion

Like Kenya, Rwanda is a secular state mandating the state and religion to be separate. Their regulation of churches has been a reactionary approach which started from the genocide of 1994 where churches became complicit, allowing the genocide to occur. Post genocide and following the proliferation of churches, the government has taken a strict stance on their regulation. Some of the challenges such as proliferation of churches are what Kenya faces. For a long time, the government has allowed churches to operate almost freely with little regulation, leading to a huge increase in the number of churches which has led to propagation of undesired vices such as financial exploitation and religious extremism. However, owing to the different contexts in which the Kenya and Rwanda are in, it is imperative that Kenya uses a regulatory model that does not mirror that of Rwanda or any other country, but one that aligns with its social and cultural context for effective regulation. This entails strengthening self-regulation through umbrella organizations and giving them the mandate of imposing academic requirements for pastors instead of the state minimising state overreach.



5.0 CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

This dissertation has undertaken a detailed exploration of the regulatory framework governing Christian churches in Kenya, emphasizing the need for a balance between self-regulation and state oversight. It began by highlighting the significant role religion plays in Kenyan society, as well as the constitutional protections for freedom of religion. However, this dissertation underscored how this freedom has, in some instances, been abused, leading to financial exploitation and religious extremism of people. Through a systematic analysis of the existing regulatory landscape, the research has pointed out significant vulnerabilities in church registration, oversight, and accountability mechanisms.

Chapter 1 provided a background of the problem, stating how the current fragmented legal framework has allowed for unethical practices by some religious leaders. It identified financial exploitation, radicalization, and the lack of accountability as pressing issues that require regulatory reform. The recent Shakahola massacre has shown the extremity of what could happen if the state remains passive in relation to regulation of churches. Chapter 2 examined the existing regulatory framework, including the Societies Act, the Trustees (Perpetual Succession) Act, and the Companies Act, alongside international instruments such as the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights. It was also established that there are both legal and institutional challenges encountered as churches go through the registration process.

Chapter 3 delved into the dual challenges of financial exploitation and religious extremism. It discussed how rogue religious leaders manipulate vulnerable congregants for monetary gain and propagate extremist ideologies, often at the expense of public safety. The chapter also explored the mechanism of self-regulation by umbrella bodies and the limitations. The inadequacies in state oversight mechanisms should be strengthened by a hybrid model of regulation entailing the use of umbrella bodies. Chapter 4 provided a comparative analysis of Rwanda's regulatory model. Rwanda's approach, which combines stringent state oversight with self-regulation mechanisms, was shown to offer some valuable lessons for Kenya. The establishment of the Rwanda Governance Board and the enactment of specific laws for faith-

based organizations have significantly curbed exploitative and extremist practices, lessons that can be learned and applied to Kenya.

5.2 RECOMMENDATIONS

(i) Enact a Specific Law for Religious Organizations

The state should introduce a comprehensive legal framework that is specific to churches. The Societies Act is not adequate to deal with oversight and ensure accountability of churches. The framework should clearly define the requirements for registration and accountability of church leaders. This law should address financial transparency to prevent exploitation while also specifying the nature of crimes and penalties for promoting extremist ideologies. The law should confer legal personality to churches therefore removing the requirement for churches to register under the Trustees (Perpetual Succession) Act to hold property.

(ii) Create a Religious Organizations Regulatory Authority

Establish a dedicated body to oversee religious organizations, ensuring compliance with legal and ethical standards. This authority will serve as a watchdog to detect and address financial improprieties and extremist teachings before they escalate. This regulatory authority should be able to receive and investigate complaints pertaining to financial misappropriation and religious extremism. As the government does not have the required expertise relating to religious matters, the commission should comprise of members with diverse religious background. This includes individuals with formal theological training, practical ministry experience as pastors and representatives from various faith traditions to ensure balanced and fair decision-making. By incorporating these qualifications, the regulatory body can provide informed oversight while respecting the autonomy of churches.

(iii) Legal Recognition of Umbrella Bodies

Formally recognize and empower religious umbrella bodies to play a regulatory role. These bodies should develop codes of conduct, ensure adherence to ethical norms, and mediate disputes among their member churches, preventing the spread of harmful doctrines and financial irregularities. Umbrella bodies are better placed to deal with religious matters than the state and thus this self regulatory mechanism should be empowered for effective regulation. Umbrella organizations understand differences in faith doctrines and can create

guidelines that respect theological diversity which the state may struggle to do. All churches should register with an umbrella body of their choice to ensure proper regulation. Those that choose not to affiliate with any umbrella body should be subject to state regulation. A minimum should be set on the number of churches that can be affiliated to one umbrella,

The findings of this dissertation highlight the urgent need for reforms to curb financial exploitation and religious extremism in Kenya. By adopting a hybrid regulatory model that combines effective state oversight with robust self-regulation mechanisms, Kenya can protect its citizens while preserving allowing enjoyment of the right. These measures will not only restore public trust in religious institutions but also contribute to national security and societal well-being.



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