

# Strathmore University

---

## Law School

### **GOOD FENCES MAKE GOOD NEIGHBOURS: REGULATING RELIGIOUS INSTITUTIONS TO PROMOTE POLITICAL NEUTRALITY**

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree

Strathmore University Law School

By

Angélique Umutesi Muhavani

135742

Prepared under the supervision of

Mr Mark Mathenge

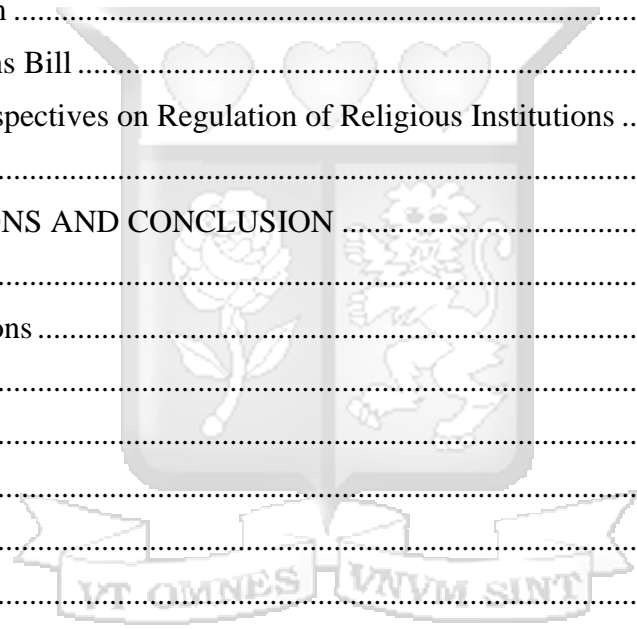
February 2024

Word Count: 15,332

## Table of Contents

Acknowledgements .....	iii
Declaration .....	iv
Abstract .....	v
List of Abbreviations and Acronyms .....	vi
List of Cases .....	vii
List of Statutes.....	viii
<b>CHAPTER 1: INTRODUCTION .....</b>	<b>1</b>
1.1 Background .....	1
1.2 Problem Statement .....	5
1.3 Research Objectives .....	5
1.4 Research Questions .....	5
1.5 Hypothesis.....	6
1.6 Justification of the Study.....	6
1.7 Theoretical Framework .....	6
1.8 Literature Review .....	8
1.8.1 On the political functions of religious institutions .....	9
1.8.2 On the politicisation of religion.....	10
Contribution.....	11
1.9 Research Methodology.....	11
1.10 Limitations .....	12
1.11 Chapter Breakdown.....	12
1.11.1 Chapter One: Introduction.....	12
1.11.2 Chapter Two: The Place of Religious Institutions in the Political Arena .....	12
1.11.3 Chapter Three: Risks of Religious Politicking in Kenyan Society .....	13
1.11.4 Chapter Four: State Regulation of Religious Institutions.....	13
1.11.5 Chapter Five: Recommendations and Conclusion.....	13
<b>CHAPTER 2: THE PLACE OF RELIGIOUS INSTITUTIONS IN THE POLITICAL ARENA.....</b>	<b>14</b>
2.1 Introduction .....	14
2.2 Political Sociology of Religion .....	14
2.3 Freedom of Religion and the Concept of Secularity .....	16
2.4 Religious Institutions as part of Civil Society.....	21
2.5 Conclusion.....	23
<b>CHAPTER 3: RISKS OF RELIGIOUS POLITICKING IN KENYAN SOCIETY .....</b>	<b>24</b>

3.1 Introduction .....	24
3.2 Political Adoption of Religious Rhetoric .....	24
3.3 Exacerbation of Existing Polarisation .....	26
3.4 The Loss of Credibility .....	27
3.5 Co-optation of the State .....	29
3.6 Hinderance on Collaborative Development Efforts in Governance.....	30
3.7 Betrayal and Disillusionment Among Religious Followers.....	31
3.8 Conclusion.....	32
<b>CHAPTER 4: STATE REGULATION OF RELIGIOUS INSTITUTIONS .....</b>	<b>34</b>
4.1 Introduction .....	34
4.2 The Shakahola Incident.....	35
4.3 The Moratorium .....	39
4.4 The Associations Bill .....	39
4.5 Analysis of Perspectives on Regulation of Religious Institutions .....	40
4.6 Conclusion.....	45
<b>RECOMMENDATIONS AND CONCLUSION .....</b>	<b>46</b>
5.1 Findings.....	46
5.2 Recommendations .....	47
5.3 Conclusion.....	47
<b>BIBLIOGRAPHY .....</b>	<b>49</b>
Books.....	49
Book Chapters .....	50
Journal Articles .....	51
Reports .....	54
Theses.....	55
Online Resources.....	55
News Articles .....	55



## Acknowledgements

I would like to thank my parents and brothers for all the encouragement, patience, and strength they have gracefully given me throughout this journey. I would further like to extend my gratitude to my supervisor, Mr Mark Mathenge for his guidance and generosity. To my mentors and friends who are too many to list, my heart is full, and I am forever indebted to you, thank you!



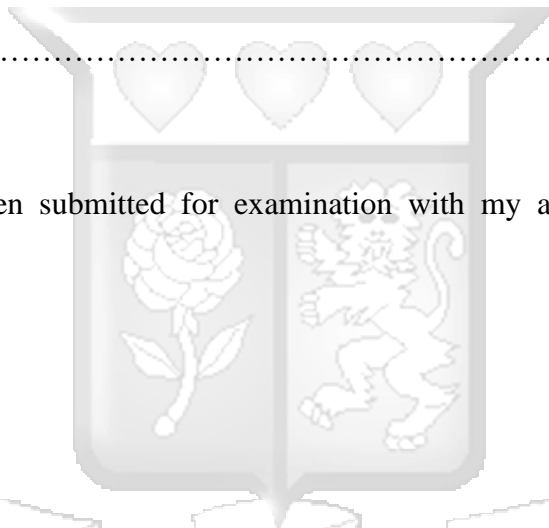
**Declaration**

I, ANGÉLIQUE UMUTESI MUHAVANI, 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.

Signed: .....ANGÉLIQUE UMUTESI MUHAVANI.....

Date: .....21/02/2024.....

This dissertation has been submitted for examination with my approval as a University Supervisor.



Signed: ........

Mr Mark Mathenge

## Abstract

*“Faith consists in believing when it is beyond the power of reason to believe.” - Voltaire*

Religious leaders, seen as spiritual guides, have, in nearly every Kenyan election exploited the opportunity to use their authority for the benefit of a chosen political party or candidate. The result is the creation of a clientelistic relationship between state offices and religious institutions, corrupting the nature of each, and threatening the freedoms of the Kenyan people and believers. The use of religious authorities to legitimise one’s politics is a recurrent problem in Kenya. Though addressed by legislation on the political end, its counterpart, religious politicking, is not. This study, seeking the regulation of the political activity of religious institutions, will thus establish that the principle of separation of church and state confers duties not merely on the state, but also on religious institutions. With the objective of political neutrality of these institutions, the research determines that the harms caused by partisan religious politicking flood the academic plain beyond the legal and political disciplines. Having both immediate and long-term effects on the health of the democracy, state of social stability and religiosity of congregants, the study establishes that there is urgent need for legal restriction. The existing legislative and regulatory framework, however, is inoperative, marked by lacunae, it poses challenges to the proper monitoring of religious actors and thus quick response to damage emanating from rogue unprincipled actions. The author thus calls for the adoption of a hybrid regulatory approach incorporating both state and self-regulation and the provision for neutral political involvement by religious leaders and their institutions in the proposed Religious Organisations Bill.

## List of Abbreviations and Acronyms

CIPK	Council of Imams and Preachers of Kenya
CKRC	Constitution of Kenya Review Commission
CORD	Coalition for Reforms and Democracy
EAK	Evangelical Alliance of Kenya
ICCPR	International Covenant on Civil and Political Rights
JIAM	The Jesus is Alive Ministries
KCCB	Kenya Conference of Catholic Bishops
MoU	Memorandum of Understanding
NAMLEF	National Muslim Leaders Forum
NCKK	The National Council of Churches of Kenya
SUPKEM	Supreme Council of Kenya Muslims
UDHR	Universal Declaration of Human Rights



## List of Cases

*Republic v The Head Teacher Kenya High School & another ex parte SMY* (2012) eKLR.

*Mohamed Fugicha & 3 others v Methodist Church in Kenya* (2016) eKLR.



## List of Statutes

Basic Education Act (Cap 211)

Constitution of Kenya (2010)

Customs and Excise Act (Cap 472)

Election Offences Act (No. 37 of 2016)

Elections Act (No. 24 of 2011)

Income Tax Act (Cap 470)

Public Benefit Organisations Act (No. 18 of 2013)

Public Benefit Organisations Act (No. 18 of 2013).

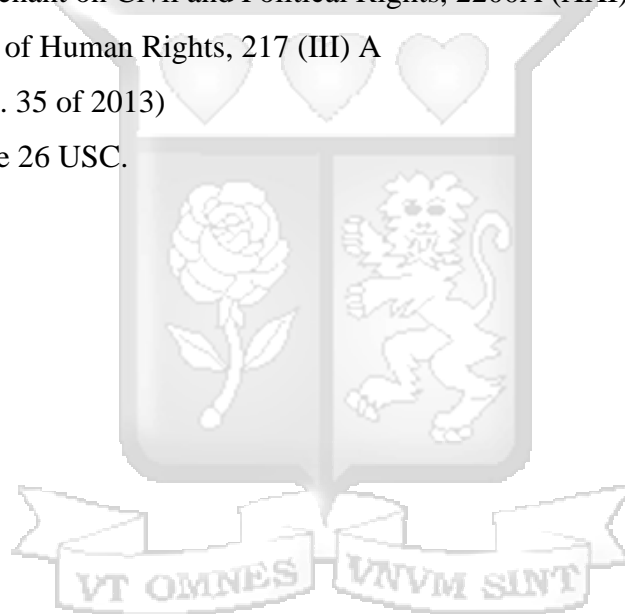
Societies Act (Cap 108)

The International Covenant on Civil and Political Rights, 2200A (XXI)

Universal Declaration of Human Rights, 217 (III) A

Value Added Tax (No. 35 of 2013)

Internal Revenue Code 26 USC.



## CHAPTER 1: INTRODUCTION

### 1.1 Background

The purpose of religion in society is socialisation through values, promoting social solidarity, and establishing social control. It provides a blueprint for a virtuous life all through the creation and conveyance of a collective conscience based on unity and cohesion.<sup>1</sup> Modern functionalism views society as a set of institutions interdependent for survival and promotion of the success of the populace.<sup>2</sup> Religious institutions in Kenya, have thus, in their capacity, sought to impart wisdom through their doctrine by informing political discourse.<sup>3</sup> They have played a vital role in promoting democracy and shaping the political economy by drawing focus to social, economic and political issues plaguing their congregants and the nation as a whole.<sup>4</sup> The activities of religious institutions in the political sphere has taken various forms in the history of the nation; from sermons on the value of freedom and democracy, promotion of political doctrine, denunciation of repression and authoritarianism, to exercise of the constitutional right to vote and endorsement of political candidates and aspirants.

However, in culturally diverse societies, there exists the possibility of social institutions experiencing dysfunction, which can result in the division of people.<sup>5</sup> Churches in Kenya, though having a history of promoting the rule of law particularly in relation to governance and informing the qualities of leadership, most of which have been echoed by the progressive 2010 Constitution, have fallen, on occasion, victim to partisanship. This has the effect of undermining public trust in the electoral process as well as increasing polarization and social

---

<sup>1</sup> Durkheim E and Swain JW, *The Elementary Forms of the Religious Life (English translation)* George Allen and Unwin Limited, London 1915, 47.

<sup>2</sup> Turner J H and Maryanski A, *Functionalism*, Menlo Park, CA: Benjamin/Cummings Publishing Company, 1979, 13.

<sup>3</sup> Parsitau, DS 'Taming Rogue Clergy and Churches: God, Scandals, Government and Religious Regulation in Kenya' in Green MC, Hackett RIJ, Hansen L & Venter F (eds) *Religious Pluralism, Heritage and Social Development in Africa*, First edition, SUN MeDIA, Stellenbosch, 2017, 244.

<sup>4</sup> Omare SG and Tanui MK, 'The Role of The Church in Fighting Machiavelism in Kenyan Politics' 3 *International Journal of Current Research* 9, 2011, 1-12.

See also – Ndereba KM, 'Towards a Kenyan Political Theology: The importance of church history for contemporary public life' 13 *African Journal of History and Culture* 2, 2021, 102-109.

Kinas MV, Karega JB, and Chacha BK, 'The Role of Church in State and Public Affairs During the Moi Era, 1978-2002' 1 *Journal of Philosophy, Culture and Religion* 1, 2018.

Munyae IM and Adar KG, 'Human Rights Abuse in Kenya Under Daniel Arap Moi, 1978-2001' 5 *African Studies Quarterly* 1, 2001, 5-8.

<sup>5</sup> Schwinn T, 'False Connections: Systems and Action Theories in Neofunctionalism and in Jurgen Habermas' 16 *Sociological Theory* 1, 1998, 81-82.

See also - Bruce S, *Religion in Modern Britain*, Oxford University Press, Oxford, 1995, 88.

tension. This was seen first-hand in 2007, a period of violence which tore the country into opposing political camps underlined by ethnic identity and furthered by church endorsements. Some churches 'prophesied' the winner of the presidential seat on ethnic lines, while others went so far as to anoint 'God's chosen ones'. The effect was burnt down churches and a fall from the favour of the people, as Kenyan society could no longer trust and respect their religious leaders.<sup>6</sup> The National Council of Churches of Kenya (NCCCK) went on to apologise for not encouraging peace and remaining non-partisan with several churches releasing statements of political neutrality and a peace campaign leading up to the 2013 elections, however, many still openly endorsed candidates.<sup>7</sup>

To emphasise, the author uses 'neutral' and 'non-partisan' interchangeably throughout the work to mean the involvement in politics in a way that does not indicate a preference for one party or candidate. Since 2008, Kenya has learned from past mistakes made by key political and social players and continues to do so in order to prevent the recurrence of similar events in the future. This is reflected in changes to the legal system's electoral framework to promote free and fair elections as envisioned in the primary law of the land.<sup>8</sup> Statutory provisions stipulate acceptable conduct for political parties and candidates by disapproving any campaign activity in places of worship or at burial ceremonies, and importantly, prohibiting discrimination based on ethnic or social origin, religion, culture or belief.<sup>9</sup> The law has also adapted to establish the political neutrality of organisations that exist to promote the public benefit of society, having a charity function.<sup>10</sup> This is conveniently set out in the Public Benefit Organisations Act which is applicable to voluntary membership, autonomous and non-profit making organisations with objectives in education, environmental conservation, culture, and health among others.<sup>11</sup> Religious institutions however, are excluded from the Act.<sup>12</sup> Even though they generally contribute to the public good and retain tax exemption status, they are registered under and governed by the Societies Act, limited to registration and financial

---

<sup>6</sup> Inter-Religious Council of Kenya, *The Role of Free and Independent Churches In the Context of Politics and Society in Kenya*, November 2021, 6.

<sup>7</sup> Haider H, 'Religious leaders and the prevention of electoral violence' Helpdesk Research Report, GSDRC, University of Birmingham, 2016, 15.

See also – Deacon G, Gona G, Mwakimako H, and Willis J, 'mazrui: Islam and Christianity on the Kenyan coast', 35 *Journal of Contemporary African Studies* 2, 2017, 160-161.

<sup>8</sup> Article 38, Constitution of Kenya (2010).

<sup>9</sup> Paragraph 6 (d) & (j) Second Schedule: Electoral Code of Conduct, *Elections Act* (No. 24 of 2011).

See also – Section 13(f)(i), *Election Offences Act* (No. 37 of 2016).

<sup>10</sup> Section 66(3), *Public Benefit Organisations Act* (No. 18 of 2013).

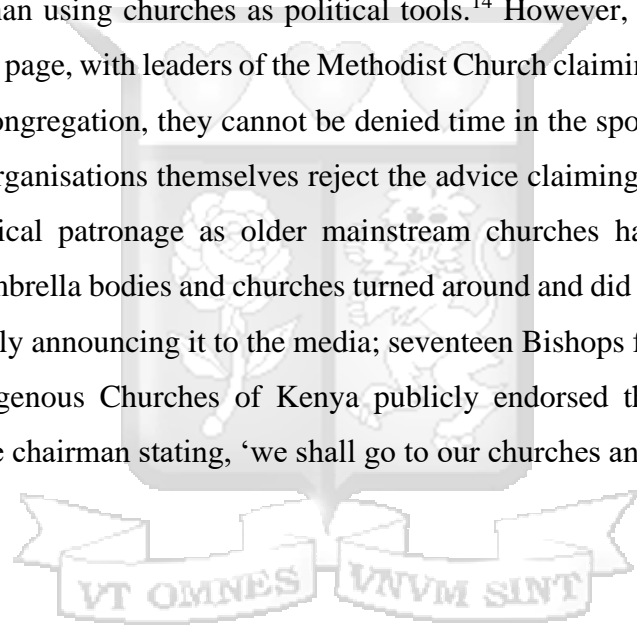
<sup>11</sup> Section 5(1), *Public Benefit Organisations Act* (No. 18 of 2013).

See also - Paragraph 1 Sixth Schedule, *Public Benefit Organisations Act* (No. 18 of 2013).

<sup>12</sup> Section 5(2)(d) & (e), *Public Benefit Organisations Act* (No. 18 of 2013).

transparency duties.<sup>13</sup> Their legal status is unique, being neither charities nor profit-seeking entities, their primary ‘service’ is moral, psychological and spiritual development. Without full appreciation of the nuance, the law is therefore silent on neutrality of religious institutions; the Societies Act makes no mention of creation of political affiliations, endorsements, campaigns, or involvement in political activity in general with national players.

This legal loophole has created an avenue for exploitation. In recent years umbrella church organisations have made efforts to curb the practice of partisanism by religious leaders in their formal capacity by issuing advisory notices and appealing to the nation’s clergy on media outlets to steer clear of identity politics and support of political sides. The Archbishop of Mombasa Catholic Diocese even urged church leaders with political affiliations to resign and switch fields rather than using churches as political tools.<sup>14</sup> However, not all denominations have been on the same page, with leaders of the Methodist Church claiming, as some candidates are members of the congregation, they cannot be denied time in the spotlight. Other churches within the umbrella organisations themselves reject the advice claiming that they have a right to benefit from political patronage as older mainstream churches have.<sup>15</sup> Some religious leaders, under their umbrella bodies and churches turned around and did exactly what they said they would not, proudly announcing it to the media; seventeen Bishops from the Federation of Evangelical and Indigenous Churches of Kenya publicly endorsed then Deputy President William Ruto with the chairman stating, ‘we shall go to our churches and persuade our people



---

<sup>13</sup> Paragraph 10 First Schedule, *Income Tax Act* (Cap 470).

See also – Paragraph 11(a) Part II First Schedule: Exempt Supplies, *Value Added Tax* (No. 35 of 2013).

Paragraph 13 Third Schedule, *Customs and Excise Act* (Cap 472).

Part II; Section 30 & 31, *Societies Act* (Cap 108).

<sup>14</sup> Evangelical Alliance of Kenya, *Pastoral Letter to the Evangelical Church in Kenya: Advisory on keeping the worship places Holy unto the Lord*, Evangelical Alliance of Kenya, 2021.

See also – Onyango E, ‘Why Kenyans churches are banning politicians from pulpits’, BBC, 24 October 2021 <https://www.bbc.com/news/world-africa-58666703> on 3 March 2023.

Ndunda E, ‘No campaigns in churches, bishops now tell aspirants’, Standard Media, March 2022 <https://www.standardmedia.co.ke/coast/article/2001421511/no-campaigns-in-churches-bishops-now-tell-aspirants> on 2 March 2023.

‘Church and Politics: Role of clergy in modern day politics’, KTN News, 25 January 2021 <https://www.youtube.com/watch?v=wdH0N5aAZag&t=209s> on 2 March 2023.

<sup>15</sup> Soriano J, ‘Politics No Longer Has a Place in Kenyan Churches’, Evangelical Focus, 11 April 2022 <https://evangelicalfocus.com/world/16317/politics-no-longer-has-a-place-in-kenyan-churches> 2 March 2023.

See also – Otieno J, ‘Kenya: Politicians using churches as political battleground to bypass rally ban’, The African Report, 14 September 2021 <https://www.theafricareport.com/126685/kenya-politicians-using-churches-as-political-battleground-to-bypass-rally-ban/> on 2 March 2023 – Rev. Timothy Njoya of the Presbyterian Church of East Africa accuses clergymen of giving into insatiable desires of ‘donations’, making the church a toll station for an aspirant to pay one’s way to success.

to elect H.E William Ruto as the fifth President of the Republic of Kenya'.<sup>16</sup> The Association of Pentecostal and Evangelical Churches followed suit having an agreement signed with the Kenya Kwanza Coalition on 5 May 2022, and more than two-thousand church leaders from Nakuru did the same a month before the general election.<sup>17</sup> Mobilising votes from the evangelicals was a given, being one of the largest Christian denominations and the current president having 'invested' in the church through generous donations over the years.<sup>18</sup>

The reality is unfortunate as it fosters division; the biasedness of churches is imparted or in some instances, amplifies that of their congregants not only causing social friction, but also legitimising that into government. An example is when the Mombasa Pentecostal Church moved to endorse a notably anti-Arab-Muslim gubernatorial candidate in the 2013 election, this was considered antagonistic towards the ethno-religious community.<sup>19</sup> The government's attachment to the Christian majority has led to the attainment of the Muslim minority as second-class citizens.<sup>20</sup> Furthermore, the co-optation of religious leaders has caused fragmentation of the religious space. Religious leaders and their umbrella bodies can no longer be trusted by their congregants. This is seen when young people feel alienated by their spiritual leaders as with the Supreme Council of Kenya Muslims (SUPKEM). Not only is this decline in respect of the institutional heads detrimental for the social function of religion in Kenyan society, but it also inhibits public participation and democracy as the state engages with bodies that are meant to represent the views of their followers, but instead only seek the advancement of their own interests.<sup>21</sup>

---

<sup>16</sup> Awichi L, 'Boost for Ruto as church leaders endorse him for presidency', The Star, 6 May 2022 <https://www.the-star.co.ke/news/2022-05-06-boost-for-ruto-as-church-leaders-endorse-him-for-presidency/> 2 March 2023.

<sup>17</sup> Matara E, 'Over 2,000 Nakuru church leaders endorse DP Ruto for Presidency' Nation Media, 8 July 2022 <https://nation.africa/kenya/counties/nakuru/over-2-000-nakuru-church-leaders-endorse-dp-ruto-for-presidency-3873444> 2 March 2022.

<sup>18</sup> Faria J, Statista, *Distribution of the population in Kenya as of 2019, by Religion*, 2022.

Hochet-Bodin N, 'In Kenya, evangelical churches have a growing influence in government' Le Monde, 7 December 2022 [https://www.lemonde.fr/en/le-monde-africa/article/2022/12/07/in-kenya-the-growing-influence-of-evangelical-churches-in-government\\_6006830\\_124.html](https://www.lemonde.fr/en/le-monde-africa/article/2022/12/07/in-kenya-the-growing-influence-of-evangelical-churches-in-government_6006830_124.html) on 3 March 2023.

See also – Otieno J, 'Kenya 2022: Whose mobilising strategy will win voters?' The Africa Report, 5 August 2022 <https://www.theafricareport.com/228874/kenya-2022-whose-mobilising-strategy-will-win-voters/> on 3 March 2023.

<sup>19</sup> Deacon G, 'Driving the Devil Out: Kenya's Born Again Election' 45 *Journal of Religion in Africa* 2, 2015, 214.

<sup>20</sup> Malka H, *Faith in the Balance: Regulating Religious Affairs in Africa*, Rowan & Littlefield, London, 2020,139.

<sup>21</sup> Downie R, 'Kenya: Cooperation, Co-optation, and Confrontation' in Malka H(ed), *Faith in the Balance: Regulating Religious Affairs in Africa*, Rowan & Littlefield, London, 2020, 107-110.

See also – 'Muslims deny backing Raila bid for top Job', Nation Africa, 24 December 2012 <https://nation.africa/kenya/news/politics/muslims-deny-backing-raila-bid-for-top-job--841646> on 5 March 2023.

## **1.2 Problem Statement**

Religious institutions engage in partisan political activity by direct and indirect endorsement of political candidates and parties during campaign periods. As dispensers of a social good, this goes beyond their socio-political role and poses a threat to the principle of separation of church and state. This practice undermines democratic values as it sways the voters' opinions leading to an unfair electoral process, damages the trust believers have in their religious authorities as well as an incoming government elected on religious favouritism, and further exacerbates ethnic division in an already polarised country. As a result of the limited regulation of religious institutions, seen in the skeletal nature of the Societies Act, our government has opened itself to the possibility of religious capture and the ultimate facilitation of discrimination. For Kenya, being both ethnically and religiously diverse, allowing the persistence of identity politics limits our capacity to protect the rule of law. This study will thus seek to assess whether the influence and role of religious institutions in Kenya warrants an amendment to the legal framework in regulating their political activities to ensure neutrality.

## **1.3 Research Objectives**

- a) To determine the place of religious institutions in the political arena, cognisant of the principle of separation of church and state and Article 8 of the Constitution of Kenya.
- b) To assess the risks of religious politicking in Kenyan society.
- c) To study the viability of state regulation of religious institutions, particularly over self-regulation.
- d) To propose how the legal framework may be amended in order to create liability for religious institutions engaging in partisan political activity while balancing political rights, and freedoms of opinion and expression enshrined in the constitution.

## **1.4 Research Questions**

- a) What is the place of religious institutions in the political arena, cognisant of the principle of separation of church and state and Article 8 of the Constitution of Kenya?
- b) What are the risks of religious politicking in Kenyan society?

- c) What attempts have been made by the state to regulate religious institutions, and what lessons can be learned from discussions on self-regulation?
- d) How may the legal framework be amended in order to create liability for religious institutions engaging in partisan political activity while balancing political rights, and freedoms of opinion and expression enshrined in the constitution?

### **1.5 Hypothesis**

The influence and role of religious institutions in Kenya warrants an amendment to the legal framework governing the field in regulating their political activities to ensure neutrality.

### **1.6 Justification of the Study**

The inclination of religious institutions to align with particular political factions or candidates within a pluralistic society fuels division and hierarchy of opinion, particularly in light of clientelism. This leads to discrimination in the established government and mistrust of the supposedly autonomous religious institutions, hurting interests of religious groups with dissenting leaders and causing dysfunction of a social institution created primarily for the spiritual solace of congregants. The study will be useful to legislators and policy makers as the overall discussion on regulation of religious institutions proceeds. It will also aid adjudicators in determining questions on religious discrimination and the advancement of state religion contrary to Article 8 of the Constitution of Kenya as well as corruption within religious institutions involving the political elite. Lastly, the author hopes to contribute to the body of research in the fields of sociology and theology on the sociological and political functions of religious authority, especially in pluralistic societies. Moreover, the author hopes to add to the scholarly discourse on political endorsements.

### **1.7 Theoretical Framework**

#### Public Interest Theory of Regulation

Originally an economic theory, it posits that government regulation serves to safeguard the welfare of the public. The theory is as old as the political philosophy of government intervention. The regulators and judiciary are made the authority on what amounts to public interest within the society. Traditionally, the judiciary will restrain itself from interference

unless the regulatory body exceeds its vested authority by acting ultra vires.<sup>22</sup> According to Richard Posner, the theory works on the assumption that markets are fragile and will work inequitably if left alone.<sup>23</sup> The public interest has been defined as commonly held value in a society. This embodies agreed principles or a majoritarian ethic to which the society is to be governed.<sup>24</sup> It thus asserts that regulation of industries is in the achievement of the common good, and the self-interest of these industries will thus inform the shape and rigour of regulation to follow.

Scholars have critiqued the application of the noble theory most often in favour of its alternative the private interest theory. Posner, in his reformulation and further reformulation, suggests that regulation on this basis fails due to the institutional neglect by the legislative body. The private interest theory bred the capture theory developed by Stigler describing a risk of regulation as the oversight body gets dominated by the industry actors it regulates appealing its policy to their private interest over the public good.<sup>25</sup> Lastly is the common argument that industry can regulate itself.<sup>26</sup>

State regulation, established for public interest, has the primary objective of achieving the common-good of society are expected to shape the behaviour of private entities to society's commonly held ideals.<sup>27</sup> Though such ideals are easily identified by the dominant religious beliefs in a society, states have often used this opportunity to form an attachment to a particular denomination or religion hoping to build a homogenous society.<sup>28</sup> This approach advances one group or set of beliefs over others.

Hamilton writes that there is an assumption that religious institutions operate at a pure level, detached from the dirtiness of politics.<sup>29</sup> However, their influence is greatly understated. Wielding significant social power, religious leaders, like many other lobbyists, are capable of

---

<sup>22</sup> Hantke-Domas M 'The Public Interest Theory of Regulation: Non-Existence or Misinterpretation?' *European Journal of Law and Economics* 15, 2003, 165–171.

<sup>23</sup> Posner RA, 'Theories of Economic Regulation' 5 *The Bell Journal of Economics and Management Science* 2, 1974, 336.

<sup>24</sup> Sorauf FJ, 'Public Interest Reconsidered', 19 *The Journal of Politics* 4, 1957, 619.

<sup>25</sup> Ginosar A, 'Public-Interest Institutionalism: A Positive Perspective on Regulation', 46 *Administration & Society* 3, 2014, 303-304.

<sup>26</sup> Shleifer A, 'Understanding Regulation' 11 *European Financial Management* 4, 2005, 440.

<sup>27</sup> Cordery CJ, 'The state relationship with religion: Defined through disciplinary procedures of accounting and regulation', 24 *Accounting History* 3, 2009, 357.

<sup>28</sup> Cordery CJ, 'The state relationship with religion: Defined through disciplinary procedures of accounting and regulation', 24 *Accounting History* 3, 2009, 358.

<sup>29</sup> Hamilton M A, *God vs. the Gavel: The Perils of Extreme Religious Liberty*, 2nd edition, Cambridge University Press, Cambridge, 2014, 338.

manipulating legislative and policy direction. As such, legislators are tasked to ensure that, in making considerations on the legal framework, they do not sell out public interest for religious handouts.

A clear separation between the two social structures in modern society is a direct response to the increase in competition of power from other denominations and religions born as a result of migration, globalisation and general religious pluralism.<sup>30</sup> Amidst scandals involving religious institutions, leaders of these faith-based organisations have called for self-regulation limiting government overreach in fear of the violation of their fundamental rights and freedoms.<sup>31</sup> However, internal regulation has proven unreliable and inconsistent. The churches advancing the self-regulation argument have relied on umbrella bodies. These bodies have optional membership and the varying teachings within each denomination makes universal consensus difficult.<sup>32</sup>

Yonatan Gez posits that the legislative impasse on proper regulation of religious institutions can be attributed to the unresolved role of religion within the state. It is unclear by the legislative and policy framework whether Kenya is a secular country committed to separation of church and state or a 'country under God'.<sup>33</sup> Though Article 8 of the Constitution is plain as day, the provisions' actualisation is amiss.

## 1.8 Literature Review

Few studies on regulation of religious institutions in Kenya exist. The academic conversation has been silent on regulation specifically on the political activities of the church in fostering neutrality through legislative change. Deacon and Parsitau, recent scholars on the matter draw attention to the neo-pentecostal wave flooding the current political environment and the Marxist harms of the doctrine encouraging acceptance of the status quo in hopes of spiritual deliverance through the prosperity gospel. Gez, on the other land, discusses vetting of religious leaders to discourage false prophets and protect congregants from exploitation. Any mention

---

<sup>30</sup> Cordery CJ, 'The state relationship with religion: Defined through disciplinary procedures of accounting and regulation', 24 *Accounting History* 3, 2009, 374.

<sup>31</sup> Downie R, Kenya under Growing Pressure to Regulate 'Spiritual Fraudsters', Centre For Strategic and International Studies, 23 September 2019 <https://www.csis.org/analysis/kenya-under-growing-pressure-regulate-spiritual-fraudsters> on 6 March 2023.

<sup>32</sup> Awuor OB, 'The Debate For and Against State Regulation of Churches in Kenya' Unpublished LLM Thesis, University of Nairobi, 2016, 9.

<sup>33</sup> Gez Y N, 'The vetting impasse: The 'churches law' and Kenya's religious regulation debate' 50 *Journal of Religion in Africa* 1-2, 2021, 70.

to electoral activity is done in passing as dystopian matters-of-fact by scholars without in-depth discussion on possible solutions.

### 1.8.1 On the political functions of religious institutions

Konrad Adenauer Stiftung conducted a two-month study on 59 free independent churches to identify their political functions.<sup>34</sup> They determined that at its core, the church's mission is preaching, healing, and spiritual guidance for vulnerable community members. 82% of respondents in the study hailed the church as spiritual oversight, praying for community and good governance.

Historically, the role played by religious institutions has been described as paradoxical. In the struggle for independence, African churches in Kenya supported the colonial regime opting for political diplomacy over freedom. However, at times religious institutions have been known to take an activist role in exposing moral short falls of politicians such as the misuse of public funds. Notable historical figures such as Rev. Timothy Njoya, Archbishop Ndingi mwana a'Nzeki, and Bishop Henry Okullu have led discussions in denunciation of injustice on socio-political matters challenging oppression. The NCCCK alongside the Catholic Episcopal Conference were invaluable in the realisation of multipartyism in 1992.

Through the Dialogue Reference Group, religious leaders have facilitated mediation between prominent figure heads such as the process leading up to the 2017 General Election. Religious institutions further influence public affairs having subsidiary social institutions such as schools and hospitals and are thus consulted and participate in their capacity as stakeholders.

Mwaura and Martinon assert that despite some laps in credibility and integrity, the church still has a fundamental duty as advocate for social justice and conciliator in times of social division.<sup>35</sup> The same is echoed by Deacon recalling the church's history with violence and calling it to peacebuilding.<sup>36</sup>

---

<sup>34</sup> Inter-Religious Council of Kenya, *The Role of Free and Independent Churches In the Context of Politics and Society in Kenya*, November 2021, 1-39.

<sup>35</sup> Mwaura PN & Martinon CM, 'Political Violence in Kenya and Local Churches' Responses: The case of the 2007 post-election crisis', 8 *The Review of Faith & International Affairs* 1, 2010, 45.

<sup>36</sup> Deacon G, 'The Political Role of Christian Churches' in (eds) Nic Cheeseman et al. *The Oxford Handbook of Kenyan Politics*, 2020, 147.

### 1.8.2 On the politicisation of religion

The continued use of religious rhetoric has created religious constituencies that drive election results.<sup>37</sup> Churches will often favour candidates and political leaders by bringing them to their pulpits thus asserting their power and claiming spiritual authority for their political leverage.<sup>38</sup> It leads to a scenario where key Christian actors end up holding a de facto privileged position in the political culture as a result of neopatrimonial alliances.<sup>39</sup>

Parsitau argues that President Moi's alliance with Evangelical and Pentecostal churches resulted in the churches portraying him as a peaceful God-fearing leader. Televangelists and bishops alike publicly endorsed the former president claiming his appointment by god to be in the highest seat.<sup>40</sup> Substantively, Grzymala-Busse argues that the politicisation of religion weakens religious groups. Covert partisan coalitions and political mobilisation poses more demerits than merits for the religious institutions which then face social backlash and criticism for underhand dealings.<sup>41</sup>

German philosopher Bockenforde criticised Catholic bishops for distributing campaign pamphlets as he considered it to be political meddling, an interference to personal electoral choices. Concurring with Adolf Arndt, he posed the question 'how could democracy succeed if electoral decisions and political commitments were not taken according to political considerations but to pre-political commitments that were not open to rational engagement and debate?'<sup>42</sup>

Audi writes that religious argument can only be used when there exists a rational secular argument aligning with it. His rationale being for the protection of society from domination of

---

<sup>37</sup> Parsitau DS, 'The Civic and Public Roles of Neo-Pentecostal Churches in Kenya (1970-2010)' Unpublished PhD Thesis, Kenyatta University, Nairobi, 2014, 25. – Parsitau heralded the 'pentecostalization of governance and politics'.

See also - Gez Y N, 'The vetting impasse: The 'churches law' and Kenya's religious regulation debate' 61.

<sup>38</sup> Inter-Religious Council of Kenya, *The Role of Free and Independent Churches In the Context of Politics and Society in Kenya*, November 2021, 8.

<sup>39</sup> Gez Y N, 'The vetting impasse: The 'churches law' and Kenya's religious regulation debate' 71.

See also – Luke Awich, 'Muslim clerics seek Raila's intervention over 'state sponsored' religious discrimination', *The Star*, 2 March 2023 <https://www.the-star.co.ke/news/2023-03-02-muslim-clerics-seek-railas-intervention-over-state-sponsored-religious-discrimination/> on 5 March 2023.

<sup>40</sup> Parsitau DS, 'From prophetic voices to lack of voice: Christian Churches in Kenya and the dynamics of voice and voicelessness in a multi-religious space', Egerton University, Kenya, 2012,1-4.

<sup>41</sup> Grzymala-Busse A, 'Weapons of the Meek: How churches influence public policy', 68 *World Politics* 1, 2016, 1-3.

<sup>42</sup> Stein T and Kunkler M, 'Ernst-Wolfgang Bockenforde: Inner Catholic Critic and Advocate of Open Neutrality' *Oxford Journal of Law and Religion* 7, 2018, 4-5.

particular religious groups.<sup>43</sup> He further acknowledged the principle of political neutrality of the church but asserted he does not believe it should be codified. He noted that non-observance nonetheless would result in capture of political offices by religious institutions resulting in religious polarization. He affirmed that as the church plays a political function sometimes it is difficult to notice when the leaders have overstepped their boundaries, however, the distinction is clear for instance when there is endorsement of political parties or candidates.<sup>44</sup> His argument from non-codification, the author believes, is based on his context, the argument may be countered considering Kenya's context as a historically traumatized nation recovering from ethnic clashes furthered by religious partisanism in a pluralistic society.

### Contribution

This study will add to the body of scholarly work on religious regulation from a notably absent political perspective. It shall present a substantive institutional design of what Gez refers to as 'churches law' hoping to fill the gaps in the Societies Act. It will further foster more robust discussion on electoral laws and the duties of political actors, or social actors with political roles. The author further expects the study to be useful to fields of sociology, theology, and political science.

### **1.9 Research Methodology**

This study shall be conducted through doctrinal research. It shall constitute largely of qualitative data analysis and review of primary and secondary sources. A few of the primary sources shall include the Constitution of Kenya, the Societies Act, the 2018 Associations Bill, and gazette notices. The secondary sources shall comprise of books, journal articles, reports, and media articles from reputable media houses. The research shall be desk-based and incorporate deductive reasoning.

In establishing the place of religious institutions in political discourse, a doctrinal and philosophical analysis shall be utilised. Primarily it would involve constitutional interpretation as well as reliance on sociological and political principles in dissecting the principle of

---

<sup>43</sup> Audi R, 'The place of religious argument in a free and democratic society', 30 *San Diego Law Review* 4, 1993, 677-702.

<sup>44</sup> Audi R, 'The Separation of Church and State and the Obligations of Citizenship' 18 *Philosophy & Public Affairs* 3, 1989, 275-276.

separation of church and state. This will create a clear picture for the expectation of religious institutions and delineate the particulars of political neutrality.

To assess the effects and risks of religious politicking, the paper shall incorporate a historical as well as philosophical analysis. It shall go into Kenya's history with the abuse of religious ideology for the advancement of political achievement and the violent effects in 2008. It shall further discuss the overall implications on voter activity, democracy, and the respect to the religion as a social institution.

The analysis of state regulation debates over religious institutions shall carry doctrinal as well as historical analyses. This section shall discuss concerns brought about by clergy members, legislators and the judiciary over controversies within religious institutions and proposed solutions. There shall be an evaluation of the self-regulation argument through the use of umbrella bodies considering their history and effective operation over the decades of their existence. This will determine whether they may be legitimized into law as regulatory bodies.

## **1.10 Limitations**

The main limitation of this study is likely the minimal collection of empirical sources within its specific scope. Given Kenya's multicultural and religious nature, coupled with its history of ethnic violence, the unique circumstances upon which this paper is based may not be paralleled in many other jurisdictions, if at all.

## **1.11 Chapter Breakdown**

### 1.11.1 Chapter One: Introduction

The first chapter is introductory; a general overview of the study's objectives, key literature, and main claim. The chapter provides the lens through which the study shall be carried out as well as the procedure for practical follow-through.

### 1.11.2 Chapter Two: The Place of Religious Institutions in the Political Arena

The second chapter involves a sociological and political discussion of the functions of religion and its devolved institutions in political discourse. It covers constitutional and political theory of state secularism and comes to a conclusion by the author of the role religious institutions are meant to play in politics.

### 1.11.3 Chapter Three: Risks of Religious Politicking in Kenyan Society

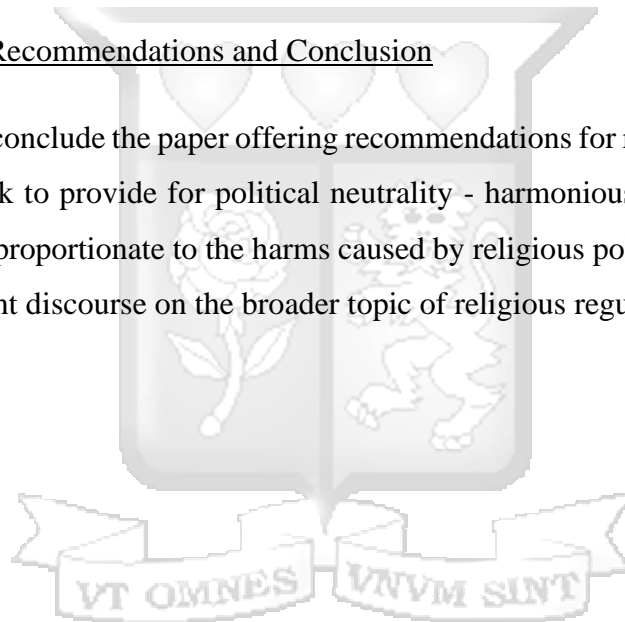
The third chapter encompasses an analysis of religious politicking in society. It seeks to disclose the effects of the activity, dangers it poses to the greater society, and the political framework, with theoretical and practical examples from Kenya and other jurisdictions.

### 1.11.4 Chapter Four: State Regulation of Religious Institutions

The fourth chapter shall lay out the current political and legislative discourse on state regulation over religious institutions. It shall highlight the accepted and disapproved ideas, their reception by the general public, stakeholders, and state officers, as well as underlying reasoning for each decision.

### 1.11.5 Chapter Five: Recommendations and Conclusion

The fifth chapter will conclude the paper offering recommendations for review and amendment of the legal framework to provide for political neutrality - harmonious with the functions of religious institutions, proportionate to the harms caused by religious politicking, and informed by previous and current discourse on the broader topic of religious regulation.



## CHAPTER 2: THE PLACE OF RELIGIOUS INSTITUTIONS IN THE POLITICAL ARENA

### 2.1 Introduction

Religious institutions are motivated to engage in politically charged activities because they care deeply about a wide range of social and ethical issues that are important to their faith communities. These include conflict resolution, reproductive rights, queer rights, criminal justice, family dynamics, socioeconomic matters, housing instability, environmental justice among others. As they lack legislative or law enforcement capacity, they are limited in their ability to create change.

In this chapter, the author shall discuss the power and authority possessed by religion as a social institution, the limitations of such as directed by the law through the principle of separation of church and state, as well as the resultant appropriate functions these institutions can take being members of civil society.

### 2.2 Political Sociology of Religion

Religion, in the functionalist view of sociology, is a social institution existing among others all operating in balance to promote social harmony.<sup>45</sup> The institution serves as a moral guide to its subscribers, taking on the function of explaining extraordinary phenomena encountered by the members of the society.<sup>46</sup> If we are to then question what role religious institutions can play within society, the author found it imperative to discuss the basis of authority the social institution holds to begin with. Bartholomew suggests that while power is the ability to impose one's will on others, authority is power that has been formally sanctioned by the societal framework within which it operates.<sup>47</sup> Durkheim, describes society's demand for individuals to conform and serve its interests, not through physical force, but through what he calls "moral power." This moral influence is exerted through the shared representations of virtue creating a collective consciousness. Durkheim defines religion as a 'social fact,' indicating that it exists beyond individual consciousness and exerts a form of constraint on the society from which it emerges. This constraint, he argues, manifests through social sanctions and a widespread sense

---

<sup>45</sup> Bissell P, Traulsen J, and Haugbølle L, 'An Introduction to Functionalist Sociology: Talcott Parsons' Concept of the 'Sick Role' 10 *The International Journal of Pharmacy Practice* 1, 2002, 61.

<sup>46</sup> McGuire M, *Religion, The Social Context*, Wadsworth Publishing Co., USA, 1997, 12.

<sup>47</sup> Bartholomew J, 'A Sociological View of Authority in Religious Organizations' 23 *Review of Religious Research* 2, 1981, 120.

of obligation to the rules and practices. In essence, religion operates as a force that directs behaviour and thought within a society to achieve its ideal form, imposing a sense of obligation and conformity upon its members.<sup>48</sup> Religion is essentially social, it is the 'concentrated expression of the whole collective life'.<sup>49</sup>

Rousseau delineates three types of religion relating to the citizen, the priest, and that of man. The religion of the citizen, confined within national borders, is sanctioned by law, prescribing dogmas and rituals, and linking service to the state with service to its deity. While having the ability to foster unity and patriotism, it risks tyranny and intolerance. This is seen with instances of religious radicalisation as fundamentalism inspires violent extremism among certain believers manifesting in terrorism. The religion of the priest divides loyalties between church and state, leading to moral and political conflicts. It gives the individual "two codes of legislation, two rulers, and two countries." It is deemed harmful and disruptive. Lastly, the religion of man, exemplified by Christianity, emphasizes universal brotherhood but tends to detach individuals from worldly affairs, promoting dependence and servitude to the most high rather than effective political engagement. Rousseau argues that attempts to harmonize Christianity with politics are futile, as evidenced by the inherent contradictions between religious and civic duties. He rejects the concept of a 'Christian republic', asserting that religion, while foundational to the state, must align with principles conducive to good governance, leading him to develop his theory of civil religion.<sup>50</sup>

As this paper centres on religious institutions, the author takes particular notice of 'religion of priests'. Rousseau expresses that this variety is so 'clearly' harmful. It is detrimental to social unity and because of that is 'worthless'. Its effect is confusion and agitation for the common person as they are pushed into a whirlpool of contradictions. The priestly interest would forever hold more weight than that of the state leaving room for religious leaders to undermine state authority. Though this position seems harsh, Rousseau's work grounds Durkheim's ideas in political reality. The theological discussion of religion's authority identifies it as derived from

---

<sup>48</sup> Wuthnow R, *Religion's Power: What Makes it Work*, Oxford University Press, New York, 2023, 89.

See also - Turner B, *The New Blackwell Companion to the Sociology of Religion*, Blackwell Publishing Ltd, West Sussex, UK, 2010, 22-23.

<sup>49</sup> Gisbert P, 'Social Facts in Durkheim's System' 54 *Anthropos* 3/4, 1959, 358.

<sup>50</sup> Cristi M, *From Civil to Political Religion: The Intersection of Culture, Religion and Politics*, Wilfrid Laurier University Press, Ontario, Canada, 2006, 18-22.

the divine, superseding all that is naturally perceived and comprehended.<sup>51</sup> However, religion as a social institution, does not exist in isolation, it functions as a cog among others in the machinery of society and thus must have bounds. This development primarily underscores the purpose of regulation and the development of a legislative framework to curtail the ‘most vicious elements of fallen human nature’ that may pose a threat to democracy.<sup>52</sup> Concluding his chapter on civil religion in the 'Social Contract', he expresses that each individual is free to privately hold whatever personal opinions or beliefs they choose, without any interference from the sovereign/state. The sovereign entity has no authority or right to monitor or keep track of an individual's private thoughts or ideological leanings. However, ‘the dogmas of that religion concern the state and its members only so far as they have reference to morality and to the duties which he who professes them is bound.’<sup>53</sup>

### **2.3 Freedom of Religion and the Concept of Secularity**

Philpott describes religion as sought for its own sake, a dimension of human flourishing. It is a purposive action that people perform to seek right relationship with a superhuman power, which is an inherently valuable end.<sup>54</sup> Therefore, one of the contributing factors to the construction of modern constitutional democracy was the acknowledgement of the right to religious freedom.<sup>55</sup> The right to freedom of religion is recognised and observed in international law under the Universal Declaration of Human Rights (UDHR) as an individual right of persons including the right to change their religion or belief and further the right to manifest their religion in teaching, practice, observance and worship. The UDHR subsequently calls on every organ of society to respect the right to the freedom of opinion and expression which incorporates the freedom to hold opinions as well as impart information irrespective of frontiers.<sup>56</sup> The International Covenant on Civil and Political Rights (ICCPR) elaborates on the conditions upon which these rights may be limited. It provides that the freedom of religion may

---

<sup>51</sup> Snowden J, 'Authority in Theology' 51 *The Biblical World* 2, 1918, 82 & 89 - God is seen as the supreme source and authority of truth and light.

See also Ryan F, 'Auctoritas in the Theology of St Thomas' 88 *New Blackfriars* 1016, 2007, 445-446.

<sup>52</sup> Kanjama C, 'Freedom of the Media in Kenya' In (eds) Mwita C, and Franceschi G, *Media and the Common Good : Perspectives on Media, Democracy and Responsibility*, LawAfrica Publishing, 2010, 66.

<sup>53</sup> Rousseau J, translated with an Introduction by Cole G D H, *The Social Contract and Discourses*, J.M. Dent and Sons, London and Toronto, 1913, 114.

<sup>54</sup> Philpott D, 'Why Religious Freedom is a Human Right' *American Journal of Jurisprudence*, 2023, 2024.

<sup>55</sup> Hollenbach D 'Contexts of the Political Role of Religion: Civil Society and Culture' 30 *San Diego Law Review* 4, 1993, 884.

Garnett R, 'Religious Freedom, Church Autonomy, and Constitutionalism' *Drake L. Rev.* 57, 2008, 903.

<sup>56</sup> Article 18 & 19, *Universal Declaration of Human Rights*, 10 December 1948, 217 (III) A.

be limited by law where there is need to safeguard public safety, order, health, morals or balancing the protection of the fundamental rights and freedoms of other persons. The following provision likewise stipulates that the right to the freedom of expression may be subject to limitations on the basis of protecting the rights and reputations of persons as well as in upholding national security, public order, health or morals.<sup>57</sup>

In Kenya, the rights apply both as a result of ratification under Article 2(6), as well as part of the Bill of Rights in the Constitution which provides the right to freedom of conscience, religion, belief and opinion.<sup>58</sup> The first two subsections of the provision include the freedom of thought and the right to manifest religious belief individually or communally. It includes, in addition, the freedom from discrimination on this ground as well as the right not to engage in activity contrary to one's beliefs. Every person further has the freedom of expression as outlined in the succeeding provision.<sup>59</sup> The Constitution also details the circumstances under which these rights may be limited.<sup>60</sup> Any limitation on an enshrined right, apart from those absolute, must be established legally and must be reasonable and justified according to the principles of democracy that reflect human dignity, equality, and freedom. When assessing the legitimacy of such limitations, various factors must be considered, including the nature of the right, the importance of the objective behind the limitation, the scope of the limitation, and the assurance that one's personal enjoyment of rights does not infringe upon the rights of others. Additionally, the provision requires an evaluation of possible alternative, less restrictive methods to attain the intended object of the limitation. A regime regulating the permissible political endeavours of religious institutions will likely limit these rights and freedoms. The study shall demonstrate the necessity of these means by clearly describing the church's often neglected responsibility as well as the possible dangers of maintaining the status quo.

Of note is Article 8 which states that there shall be no state religion.<sup>61</sup> It is from this provision that we derive our authority on the pronouncement of Kenya's adoption of secularism. This principle is extended to the political and electoral process as a political party cannot be founded on a religious basis.<sup>62</sup> Political parties, candidates, and officials of a referendum committee are

---

<sup>57</sup> Article 18 & 19, *The International Covenant on Civil and Political Rights*, 16 December 1966, 2200A (XXI).

<sup>58</sup> Article 2(6), *Constitution of Kenya* (2010).

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

<sup>59</sup> Article 33, *Constitution of Kenya* (2010).

<sup>60</sup> Article 24, *Constitution of Kenya* (2010).

<sup>61</sup> Article 8, *Constitution of Kenya* (2010).

<sup>62</sup> Article 91(2), *Constitution of Kenya* (2010).

directed by the Electoral Code of Conduct listed under the second schedule to refrain from activity that discriminates based, among others, religion, conscience and belief in connection with the election and political activity.<sup>63</sup>

The achievement of the principle is dependent on not merely the state refraining from interfering with religious dogma, but also religion from interfering with state and governance activity. Locke believed that a political order separating the two arenas was in itself a significant achievement made through reforming political authority as well as religious belief and practice.<sup>64</sup> Liberal politics, he contends, cannot discard religion, referring to it as the ‘soul’ of the state’s ‘body’. The soul needs to be moulded with political imperative. The division functions to shield politics from sectarian religious interference and to safeguard religion from the secular influence of politics.<sup>65</sup> His argument for the freedom of religion rests on rationality. He contends that as rational creatures seeking happiness, not just presently but also in afterlife, we must have unrestricted liberty to discover the truth and righteous path to follow set by the creator. This right is inalienable as for a rational creature, he cannot ‘abandon the care of [his] own salvation’ nor allow another to think for him.<sup>66</sup> He further conceives of the right to toleration; this he describes as one’s right to be protected from force and imbues a duty all members of society, not just the state.<sup>67</sup> However, toleration can be denied, when a religious institutions is formed “that all those who enter into it, do thereby, ipso facto, deliver themselves up to the Protection and Service of another Prince”.<sup>68</sup>

The principle provides for a benign neutrality of the state to all religions, while in turn the church steers clear of politics in the narrow sense in order not to control the state. The narrow sense here is the acknowledgement of the fact that the church and state often collaborate in matters of education, healthcare and social services to the community.<sup>69</sup> In pluralistic societies, the transfer of many issues from the religious to the secular domain is crucial in maintaining tolerance. Without at least some level of secularism, there is insufficient common ground for

---

<sup>63</sup> Section 6(j) *Elections Act* (Cap 7).

<sup>64</sup> Macedo S, ‘Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism’ 26 *Political Theory* 1, 1998, 64.

<sup>65</sup> Macedo S, ‘Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism’ 26 *Political Theory* 1, 1998, 75.

<sup>66</sup> Heyman S, ‘The Light of Nature: John Locke, Natural Rights, and the Origins of American Religious Liberty’ 101 *Marquette Law Review* 3, 2018, 749.

<sup>67</sup> Heyman S, ‘The Light of Nature: John Locke, Natural Rights, and the Origins of American Religious Liberty’ 101 *Marquette Law Review* 3, 2018, 751.

<sup>68</sup> Heyman S, ‘The Light of Nature: John Locke, Natural Rights, and the Origins of American Religious Liberty’ 101 *Marquette Law Review* 3, 2018, 760.

<sup>69</sup> Nsereko D, ‘Religion, the State, and the Law in Africa’ 28 *Journal of Church and State* 2, 1986, 269–87.

different religious communities to coexist peacefully.<sup>70</sup> The importance of secular politics is thus reiterated. As applied to Kenya this would address pluralism in its most potent forms: religion, multipartyism and ethnicity. The latter being the elephant in the room, a prominent cleavage in Kenyan society underlying many political decisions and outcomes.

Kenya's position on the principle is ill-understood at times.<sup>71</sup> The law is often clear but in practice, religion is ubiquitous to the Kenyan people causing ideological conflict. Given the vital role of religion in the everyday lives and cultural fabric of this society, it significantly influences people's experiences and perspectives.<sup>72</sup> Take for instance the presence of Kadhis' Courts, which though declared unconstitutional, as far as that was possible, considering they are entrenched in the Constitution and Justices Nyamu, Wendo and Emucule were essentially putting one constitutional provision against two others, they persist non the less. An interesting point is noted by the Constitution of Kenya Review Commission (CKRC) in their preliminary objection that trite constitution-making doctrines exist justifying the inclusion of 'political settlements arising out of historical considerations'<sup>73</sup> The inclusion of these courts could be seen as inclusion of the Muslim minority as opposed to discrimination against the other religions, though conflicting with strict separationism, respect is paid to historical events that have shaped Kenyan political and social culture.<sup>74</sup>

The criticism has also been made that though de jure secular, Kenya's actual state practice is deeply infused with Christianity.<sup>75</sup> Kuru lends an interesting perspective here arguing that there are different forms of secularism, assertive secularism involves a strict separation between church and state.<sup>76</sup> This is the view that religion should be confined to the private sphere of life as is seen in Turkey and France. Kenya does not subscribe to this strict form of secularism. The

---

<sup>70</sup> Yinger J, 'Pluralism, Religion, and Secularism' 6 *Journal for the Scientific Study of Religion* 1, 1967, 27.

<sup>71</sup> Michael B, Lin A, and Berlinerblau J, 'Secular Africa? Making Sense of Noncompliance to Secular Constitutions in Sub-Saharan Africa' 63 *Journal of Church and State* 1, 2021, 16.

<sup>72</sup> Stoddard E, 'The Ubiquity of Religion in Kenya', 15 Dec 2014 <https://berkeleycenter.georgetown.edu/posts/the-ubiquity-of-religion-in-kenya> on 30 Jan 2024.

<sup>73</sup> *Jesse Kamau & 25 others v Attorney General* (2010) eKLR.

<sup>74</sup> Ambani J, *Africa and the Decolonisation of State-Religion Policies*, Brill, Boston, 2021, 34-35. - From as far back as the 14<sup>th</sup> Century, Islam has had a great influence on the Kenyan people, especially on the coast. The Sultan of Zanzibar governed the coastal strip and under his regime Kadhis applied sharia law in judicial disputes. This regime was respected in the later arrival of British colonialists though limiting the courts' jurisdiction to personal matters. The same is reflected in the 2010 Constitution.

<sup>75</sup> Gez Y, Beider N, and Dickow H, 'African and not religious: The state of research on Sub-Saharan religious nones and new scholarly horizons' 57 *Africa Spectrum* 1, 2022, 59.

<sup>76</sup> Kuru A, 'Passive and Assertive Secularism: Historical Conditions, Ideological Struggles, and State Policies toward Religion', 59 *World Politics* 4, 2007, 597.

country is secular but is constituted of a religious populace and a consequence of that is the adoption of passive secularism, a policy of being tolerant towards religion in the public sphere. Evidence of this is found in the preamble of the Constitution, with the mention of 'Almighty God', the history of Kenya in permitting public manifestations of religion (e.g. a church choir present during the election results announcement) and the education law that makes room for religious education.<sup>77</sup> On the mention of 'God', Deagon writes that it is not the imposition of a state religion but rather based on the shared heritage and tradition of a state thus furthering solidarity in democracy.<sup>78</sup>

In development of this view, we discuss secularity. Differing from secularism, it represents an approach to the relationship between religion and the state that refrains from aligning the latter with any specific religion or ideology by aiming to establish a neutral framework that can accommodate diverse religions and beliefs. It recognises the plurality and incommensurability of values, which means that there are many different and irreducible values that may conflict with each other, and that there is no single metric to measure or compare them. Secularism, on the other hand, assumes that there is one ultimate value or truth that can be reduced and commensurated, and that it has the authority to decide what it is.<sup>79</sup> Secularity also provides a thin theory of the good, which means a modest and minimal framework that can accommodate diverse and conflicting conceptions of the good. Secularism, in contrast, provides a thick theory of the good; a detailed and comprehensive doctrine that leaves no room for disagreement or dissent.<sup>80</sup>

Therefore, Kenya leans more towards secularity in its inclusion of religion in various legal and political spaces. But acknowledging that a line needs to be drawn at some point is crucial to maintaining Article 8.<sup>81</sup> As such in determining the limits of religious institutions capacity, we

---

<sup>77</sup> Kinyanjui M, Return of Bomas choir as IEBC launches 2022 polls report, *The Star*, 16 Jan 2023, <https://www.the-star.co.ke/news/2023-01-16-return-of-bomas-choir-as-iebc-launches-2022-polls-report/> on 1 February 2024.

Section 3(1), *Basic Education Act* (Cap 211).

<sup>78</sup> Deagon A, 'The Name of God in a Constitution: Meaning, Democracy, and Political Solidarity' *Oxford Journal of Law and Religion* 8, 2019, 473.

<sup>79</sup> Scharffs B, 'Four Views of the Citadel: The Consequential Distinction between Secularity and Secularism' *Religion and Human Rights* 6, 2011, 115-116.

<sup>80</sup> Scharffs B, 'Four Views of the Citadel: The Consequential Distinction between Secularity and Secularism' *Religion and Human Rights* 6, 2011, 121.

<sup>81</sup> Constitution of Kenya Review Commission, *The Final Report*, 2005, 101. - CKRC, in 2005, recommended the commitment to tolerance in observing the diverse nature of the Kenyan people. In doing so, it encouraged dedication to quash the politicisation of religion.

draw from Casanova's writing. He notes that there are three instances in which the deprivatisation of religion is justified<sup>82</sup>:

a) When religion enters the public sphere to safeguard not only its own freedom but also other modern freedoms and rights, and to resist authoritarianism policies. Examples include the Catholic Church's involvement in democratization processes in Spain, Poland, and Brazil.

b) When religion challenges the absolute autonomy of secular spheres and their organization formulated or exercised without considering ethical or moral principles. For instance, questioning the justice of capitalist economic systems.

c) When religion defends traditional life from state intrusion, prompting public discussion on ethical norms. An example being the church's advocacy against abortion.

In the first instance, religion contributes to establishing a liberal political and social order. In the second and third instances, it questions and challenges the limits of this order. Guided by this metric, we determine religious institutions to function as civil society organisations when wearing a political hat.

## **2.4 Religious Institutions as part of Civil Society**

As discussed, religious institutions and faith-based organisations often participate in the political sphere as part of civil society looking to advocate for the improvement of their members as an interest group. This can take the form of radical opposition to the violation of the rule of law, peace building initiatives through interfaith or interethnic dialogue as well as making efforts to spur voter activity. Hollenbach asserts that religious groups, functioning as public communities within civil society, possess an advocacy right equal to that of non-religious groups in contributing to the formulation of policies within a pluralistic society. However, they are discouraged from functioning like interest groups in majoritarian politics.<sup>83</sup> He construes that it may be impossible or even undesirable to strictly divide politics and culture, as public policy should reflect the cultural consensus about the social good that is

---

<sup>82</sup> Casanova J, *Public Religions in the Modern World*, University of Chicago Press, Chicago, 1994, 57-58.

<sup>83</sup> Hollenbach D 'Contexts of the Political Role of Religion: Civil Society and Culture' 30 *San Diego Law Review* 4, 1993, 897.

present among the people. Therefore, a move to fully privatise religion would be an effort to hamper on civil society with domination by the state.<sup>84</sup>

In the late 1980s, African church leaders, recognizing the harmful effects of poverty, corruption, and structural adjustment policies plaguing their communities, decided to take action. Many mission church leaders actively supported pro-democracy movements and human rights advocacy through the wave of multipartyism that washed over thirty-five African countries in the following decade. This is exemplified by the case of the Kenyan Anglican Bishop, Alexander Kipsang Muge, who is said to have been assassinated in 1990 due to his vocal pro-democracy stance. Some churches of NCKK also took a stand against the queuing system of voting being undemocratic causing a great loss in membership of the umbrella body over fear of political attacks.<sup>85</sup> However, not all mission churches promoted democracy; some, like those in Rwanda and South Africa, backed oppressive regimes.<sup>86</sup> In Kenya, the Evangelical Fellowship of Kenya, which included influential Pentecostal churches, remained silent on multiparty politics, emphasizing obedience to President Daniel arap Moi, whom they portrayed as divinely chosen, opting out of challenging authoritarianism.

After the 2007 elections and ensuing violence, Catholic church leaders actively engaged in humanitarian efforts and peace mediation. Bishops boldly condemned the conflict's perpetrators having affected the dioceses. Inspired by their leaders, some members of the church proactively providing assistance to affected communities and urging political leaders to prioritize justice for lasting peace. These collective efforts reflect a genuine commitment to solidarity and addressing Kenya's suffering. Mainline Protestants, though initially divided by organizational concerns during Kibaki's term, also rallied towards humanitarian aid and reconciliation post-2007 violence.<sup>87</sup> In the same vein, during electoral periods of 2013 and 2017, Pentecostal and Mainline/Catholic Churches encouraged their congregants to vote and prayed for peace for the country during sermons.<sup>88</sup>

---

<sup>84</sup> Carothers T and William B, 'Civil Society' *Foreign Policy*, 117, 1999, 19.

<sup>85</sup> Maupeu H, 'Une Opposition en régime autoritaire: L'Exemple du Réveil Est-Africain au Kenya', 25 *Canadian Journal of African Studies* 2, 1991, 257.

See also - Gitari D, 'Church and Politics in Kenya', 8 *Transformation: An International Journal of Holistic Mission Studies* 3, 1991, 7-17.

<sup>86</sup> Patterson A, 'Christianity and Democracy', in (eds) Lynch G and VonDoepp P, *Routledge Handbook of Democratization in Africa*, Routledge, New York, 2020, 276-277.

<sup>87</sup> McClendon G and Riedl R, *From Pews to Politics: Religious Sermons and Political Participation in Africa*, Cambridge University Press, Cambridge, 2019, 200-201.

<sup>88</sup> McClendon G and Riedl R, *From Pews to Politics: Religious Sermons and Political Participation in Africa*, Cambridge University Press, Cambridge, 2019, 88.

In recent years, high unemployment, overcrowding and inadequate state services in urban areas have led to increased political involvement by the Pentecostal church. Unlike in rural areas, where kinship and ethnic ties are prevalent, churches often serve as the foundation for the moral economy in cities. Pastors play a dual role as spiritual guides and facilitators connecting people to government services, educational and employment opportunities, and NGO projects. Their efforts aim to combat social issues while promoting Christian tenets of hope and dignity. For instance, in Zambia's Copperbelt slums, Pentecostal pastors advocated for a generator for a local clinic and materials for a market shelter in 2011, demonstrating how church leadership can exert social, economic, and political influence in areas where state presence is amiss.<sup>89</sup> Their actions can be said to underscore the Christian duty to take care of the flock entrusted to them, and thus altruism and advocacy for the common good are fundamental to church practice.

## 2.5 Conclusion

Religious institutions and their leaders are empowered by society, tasked to provide guidance to believers on matters of morality and spirituality. As such, their opinions and positions hold significant weight for members of their congregation.

There is therefore a need to examine how the use of their authority and power in spheres outside of their own may negatively or positively impact the larger society and social structure. Their allegiance, though theologically understood to be placed solely in a supreme being, must be tempered when getting involved in politics. This is because of the principle of separation of church and state. Neutrality is of value in maintaining the consistent functionality of both realms.

However, neutrality looks different depending on the context. In Kenya, a neutral church does not stand on the sidelines as their congregants' rights are threatened and past events prove this assertion. It is in their capacity as members of civil society that religious institutions rightly engage in politics. The line is drawn where their actions would amount to direct or indirect endorsement of a party or politician for its own sake, adopting a clientelistic function.

---

<sup>89</sup> Patterson A, Christianity and Democracy, in (eds) Lynch G and VonDoepp P, *Routledge Handbook of Democratization in Africa*, Routledge, New York, 2020, 280.

## CHAPTER 3: RISKS OF RELIGIOUS POLITICKING IN KENYAN SOCIETY

### 3.1 Introduction

The overlap of religion and politics can lead to significant harm to the social and political systems. This is why the Janus-faced problem has been addressed on one end. The restrictions on politicians and political parties with regard to religion speak to the citizen's right to free, fair and regular elections. To address the other end, this paper conceptualises religious politicking as the active engagement of religious institutions in political processes with the object or effect of favouring a political party or politician. The most common ways this may manifest include active endorsement, advocacy or mobilisation of voters. Some methods of politicking may be a little more subtle with snide remarks made to the detriment of the opposing party.<sup>90</sup> Regardless, it is an unfortunate reality that political campaigns often employ clientelistic mobilisation strategies. Koter writes that religious leaders are 'employed' as electoral intermediaries, having pre-existing relations of dependence, they prove valuable to politicians. He notes that African political parties subcontract voter mobilisation to these intermediaries making use of their 'hierarchical ties'.<sup>91</sup> This chapter shall thus highlight the detrimental effects of this practice religious institutions choose to partake in.

### 3.2 Political Adoption of Religious Rhetoric

The political partisanship of religious institutions has created an accepting environment for the appropriation of religious symbols and language by political candidates throughout their campaigns. 2013 saw the 'pentecostalisation of politics' in Kenya as clergy constantly slipped into communitarian positions having the effect of undermining national unity. The 'prayer-meetings-turned-rallies' launching the election campaign for Kenyatta and Ruto were held at the premises of the NCKC and the Catholic Pastoral Centre, respectively, with the participation of several bishops and pastors who endorsed their candidature and denounced their opponents. Bishops Emeritus called for the unity of Eastern Kenyans against the "false accusations of internal and external enemies". Using religious symbols and language, the pair employed a Pentecostal approach to Christianity, which focused on the power of the Holy Spirit, the privilege of being "saved", god's forgiveness and justice, and the idea of being "born-again".

---

<sup>90</sup> Rosenberg E, and Smith A, 'What Drives Religious Politicking? An Analysis of 24 Democratic Elections', 14 *Politics and Religion* 3, 2021, 736.

<sup>91</sup> Koter D, 'King Makers: Local Leaders and Ethnic Politics in Africa' 65 *World Politics* 2, 2013, 192-195.

They also used prayer meetings, confessions, testimonies, and emotion to persuade and mobilise their supporters.

Bishop Cornelius Korir extended a warm reception to Ruto at the Catholic Pastoral Centre, with several pastors voicing support for him and condemning Raila Odinga for his alleged involvement in the 2008 post-election violence. On the other hand, Prophet David Owuor and his organization aligned themselves with Raila's cause, orchestrating a significant "national repentance" gathering at Uhuru Park on behalf of the Coalition for Reforms and Democracy (CORD). Despite the Catholic Church's call in November 2012 to reject candidates lacking integrity, certain local clergy in the Central Province still campaigned for the Jubilee coalition.<sup>92</sup> As a result both religious and political events, somewhat indistinguishable it seems, make common use of symbols, colour, ceremony, and entertainment, all positive element of sociality and prompting a sense of belonging, but at the same time discourage attendees from questioning the status quo.<sup>93</sup> Khaisie avers that the use of religious rhetoric, particularly 'God' by politicians may have the unfortunate effect of politics defiling religion.<sup>94</sup>

Though some may view the appropriation of religious vocabulary this way as merely expression or manifestation of one's personal beliefs, the author begs to differ. The use of religious language in political campaigns can not only have an alienating effect on people not ascribed to an Abrahamic religion (as that is the common character of the terms used), but also serve as a propaganda technique manipulating the electorate. Language in this sense connotes piety of the user and may be used to negate the morality of the opponent on unfounded means having the effect of disapproval by the audience. Religious ethos as a persuasive element goes to the heart of a faithful voter but forms a harmful and ineffective register when the populace and selection are diversified in belief and principles.<sup>95</sup> It is for this reason that it amounts to an election offence. The law prohibits any actions that hinder free political canvassing and

---

<sup>92</sup> Maupeu H, 'Kenyan Elections: The ICC, God and the 2013 Kenyan General Elections' in Thibon C, Fouéré M, Ndeda M, and Mwangi S (eds) *Kenya's Past as Prologue: Voters, Violence and the 2013 General Election*, Twaweza Communications Ltd, Nairobi, 2014, 32-33.

<sup>93</sup> Patterson A, 'Christianity and Democracy', in (eds) Lynch G and VonDoepp P, *Routledge Handbook of Democratization in Africa*, Routledge, New York, 2020, 281.

See also Nyairo J, 'The Circus Comes to Town: Performance, Religion and Exchange in Political Party Campaigns' in Njogu K and Wekesa P W, *Kenya's 2013 General Election Stakes, Practices and Outcomes*, Twaweza Communications, 2015, 137.

<sup>94</sup> Khaisie J, Simwa S, and Gwachi J, 'Fear Mongering and Appeal to The Name of God as Propaganda Techniques in the Kenyan 2013 Presidential Debate', *2 Journal of Research Innovation and Implications in Education* 4, 2018, 2-6.

<sup>95</sup> Kenya National Bureau of Statistics, *Demographic and Health Survey 2022, Key Indicators Report*, 10.

campaigning.<sup>96</sup> Such interference includes using language that is threatening, abusive, or insulting, or engaging in any actions that could promote hatred, incite violence, or attempt to influence voters based on factors such as ethnicity, race, religion, gender, or any other form of discrimination.

As further put by Nyairo, Christian religious discourse is the new ethnic in Kenya.<sup>97</sup> It is through this practice that a neo-Pentecostalist narrative has been woven into the ideas of development and citizenship establishing who is and is not a good Kenyan.<sup>98</sup> It goes beyond the manipulation of naive voters or making moral demands for fair electoral processes. It is the implicit establishment of a Christian state. When Kenyatta quoted Genesis 12:2 at a Nakuru rally in 2016, proclaiming our nation will be made great and further blessed, the Kenyan nation he asked to be blessed, was a Christian nation, excluding those who are not Christian, even while speaking in the presence of imams.<sup>99</sup>

### 3.3 Exacerbation of Existing Polarisation

Cognizant of the ethnic rifts within our country, a number of Kenyan civil society organizations have advocated against ethnic competition. Most of these groups comprised of and led by professional, civic, and religious actors have been instrumental in past Constitutional reform efforts. However, they have not had the best track record or results in reducing polarization. Though many hoped these leaders would alter the course of national politics away from ethnic divides, they have failed to solidify lasting change, mostly because they are hindered ethnic loyalty by themselves. According to Khadiagala, these civil society groups tend to unite during national crises like electoral violence or terrorist attacks, but once these emergencies subside, they revert to their ethnic affiliations. Comparing them to the middle class: outwardly cosmopolitan and progressive in everyday life yet drawn to ethnic lines during elections.<sup>100</sup>

---

<sup>96</sup> Section 13(f)(1), *Election Offences Act* (Cap 66).

<sup>97</sup> Nyairo J, 'The Circus Comes to Town: Performance, Religion and Exchange in Political Party Campaigns' in (eds) Njogu K and Wekesa P, *Kenya's 2013 General Election: Stakes, Practices and Outcomes*, Twaweza Communications Ltd, Nairobi, 135.

<sup>98</sup> Deacon G, 'The Political Role of Christian Churches' in (ed) Cheeseman N, *The Oxford Handbook of Kenyan Politics*, Oxford University Press, 2020, 145-147.

<sup>99</sup> Deacon G, 'The Political Role of Christian Churches' in (ed) Cheeseman N, *The Oxford Handbook of Kenyan Politics*, Oxford University Press, 2020, 145.

<sup>100</sup> Khadiagala G, 'Persistent Ethnic Polarization in Kenya', in *Democracies Divided: The Global Challenge of Political Polarization* (eds) Carothers T, O'Donohue A, Brookings Institute Press, Washington, D.C, 2019, 63-64.

Arriola conducted a study on the role of intergroup trust in endorsements.<sup>101</sup> The persuasive power of endorsements, he writes, stems from in-group trust. Voters are more likely to choose an out-group candidate because they believe the in-group endorser is acting in good faith. The voter puts themselves in a vulnerable position on the presumption that the in-group endorser acts benevolently in the shared interest of the group. By publicly vouching for an outgroup candidate, the endorser encourages the voters to transfer their trust to them. The effect is much higher in urban centres as he notes that greater intergroup contact allows the endorsements to serve as a stronger persuasive tool for mobilisation. Consider then if the in-group endorser commands spiritual authority over a majority of Kenyans, being part of the dominant religious faction or denomination, what the result would be. The votes of that faction or demographic would be of significantly more importance than those of others, their interests would be more important than the others, and from a bird's eye view, they would be more important than the others. Even after the election period is over, their social and political position of superiority will be legitimised and sustained in policy and law to ascertain re-election five years later. Afrobarometer determined that in Kenya, trust in religious leaders decreases with respondents' education level, from 80% among those with no formal schooling to 60% among those with post-secondary qualifications. Trust levels are higher in rural than in urban areas (75% vs. 62%) and increase with age, from 68% among 18 to 25-year-olds to 77% among those above age 65. With a clear idiosyncratic lens, we can deduce that it is the highly vulnerable in society, those with the least social capital and intellectual rigour to notice the implicit bias nudging them to vote in a particular line, who are most susceptible to this form of politicking, a practice that corrupts their rational receptors of a favourable candidate.

### **3.4 The Loss of Credibility**

Tying into the previous risk, the long-term effect is a loss of credibility of these institutions and their leaders. During the 2007-2008 post-election violence, religious figures experienced a shift in their perceived credibility and impartiality. Some aligned themselves with specific ethnic political factions, drawing criticism toward faith-based organizations and religious institutions in the aftermath of the post-election unrest.<sup>102</sup> When the violence erupted, religious groups were already divided and compromised, resulting in a hesitant and cautious response to earnest

---

<sup>101</sup> Arriola L, Choi D, and Gichohi M, 'Increasing Intergroup Trust: Endorsements and Voting in Divided Societies' 84 *The Journal of Politics* 4, 2022, 2107-2122.

<sup>102</sup> Powell M, 'Transitional Justice and Religion: An Examination of Faith-Based Actors in Kenyan Civil Society' 7 *Inquiries Journal/Student Pulse* 10, 2015.

requests for moral direction. The Kenya National Commission on Human Rights highlighted the failure of religious and faith-based organizations, as not one appeared impartial enough to provide moral guidance. Their leaders lacked the necessary credibility and unity to serve as honest mediators in the eyes of their followers and society.<sup>103</sup>

While some advocated for peace and coexistence, others exploited their positions, contributing to a complicated outcome and loss of face.<sup>104</sup> Calls for justice were often interpreted as siding with Luos and Kalenjins. Activist John Githongo, in an interview with the British Broadcasting Corporation (BBC), remarked that responsibility for the violence lay not only with political, but also with religious leaders. Though we would like to believe these ties have loosened over the years, Cheeseman, Lynch and Willis report that in the 2017 election period, religious leaders in Central and Rift Valley supported Jubilee while those in Western and Nyanza expressed support for Odinga citing an instance at a National Super Alliance (NASA) rally where a charismatic bishop in a #LuoLivesMatter T-shirt proclaimed 'Raila will take us to Canaan'.<sup>105</sup>

Religious leaders thus overlap their ethnic and religious identities during election periods to let the tools of the latter progress the former. The situation worsens when a financial transaction is involved. 65% of Kenyans perceive corruption among some if not most religious leaders. This perception of religious leaders in this regard has only worsened between 2014 and 2019. 55% of Kenyans thus concede the need for increased government regulation of these bodies.<sup>106</sup> Though Kenyans want to see leaders who prioritize reconciliation, national unity, and economic progress, the reality differs significantly from these aspirations.<sup>107</sup> When religious institutions and their leaders accept financial contributions from politicians, it compromises their integrity. The Church loses its voice, conscience and ability to hold politicians and the

---

<sup>103</sup> Berkley Center for Religion, Peace & World Affairs, 'Faith and Development in Focus: Kenya' World Faiths Development Dialogue, March 2017, 46.

<sup>104</sup> Gifford P, 'Christianity Co-opted', in (eds) Knighton B, *Religion and Politics in Kenya: Essays in Honor of a Meddlesome Priest*, Palgrave Macmillan, USA, 2009, 216.

<sup>105</sup> Cheeseman N, Lynch G, and Willis J, *The Moral Economy of Elections in Africa*, Cambridge University Press, UK, 2020, 201-203.

<sup>106</sup> Afrobarometer, *For religious leaders in Africa, popular trust may present opportunity, challenge in times of crisis Dispatch No. 536*, 2022, 1-27.

<sup>107</sup> Parsitau D, 'The Clergy and Politicians: An Unholy Alliance' The Elephant, 9 April 2021 <https://www.theelephant.info/analysis/2021/04/09/the-clergy-and-politicians-an-unholy-alliance/> on 21 Dec 2023.

state accountable. In fact, Wachira Maina calls charitable donations from politicians a bait and switch ploy.<sup>108</sup>

They ultimately undermine their role as members of civil society in keeping the state honest and accountable. Clergy often engage in voter education but turn around and conduct fundraisers for specific parties, praise the generous donations made by specific candidates to church projects, and conduct public 'blessings' of aspirants. All this while handing out pamphlets advising citizens to steer clear of candidates who give handouts.<sup>109</sup> Their questionable neutrality indicates that co-ethnicity and/or patronage have determined their loyalties.

### 3.5 Co-optation of the State

O'Dea discusses the dilemma of power when it comes to the institutionalisation of religion.<sup>110</sup> It becomes a repository for many of the values from which life of society derives its legitimation.<sup>111</sup> Therefore, preserving religious beliefs and maintaining religious organizations can become entangled with broader societal issues related to public order and political loyalty, regardless of whether there is a legal separation of church and state. Religious leaders may thus be tempted to leverage the close connection between religion and cultural values to strengthen the position of their religious organizations, or even their own stature. This can lead to a society that struggles to tolerate religious dissent, as it may be viewed as a threat to the consensus upon which social solidarity relies. The effect is multiplied where a particular religious denomination is at the head within a pluralistic society, not merely based on voluntary conversion, but also as a result of political lobbying securing their high influence.

However, as the old adage goes, you cannot have your cake and eat it, while this 'union of the alter and the throne' may strengthen religion's position within society, it can also weaken it in significant ways. It may alienate members of religious groups who hold political opposition views to those of their priests and may also alienate political oppositionists who would otherwise have remained religiously neutral thus limiting new membership and conversion. In

---

<sup>108</sup> Africa Centre for Open Governance, *State Capture: Inside Kenya's Inability to Fight Corruption*, 2019, 3.

<sup>109</sup> Cheeseman N, Lynch G, and Willis J, *The Moral Economy of Elections in Africa*, Cambridge University Press, UK, 2020, 201-203.

<sup>110</sup> O'Dea T and Yinger J, 'Five Dilemmas in the Institutionalization of Religion' 1 *Journal for the Scientific Study of Religion* 1, 1961, 37-38.

<sup>111</sup> Williams R, 'Religion as Political Resource: Culture or Ideology?' 35 *Journal for the Scientific Study of Religion* 4, 1996, 370.

addition, the members of the congregation who would prefer to keep the two realms distinct under their different functions would feel discouraged from participating under either umbrella. It could further create a somewhat superficial religiosity, where people overtly portray religiosity with dress or other practices, but their true beliefs may conflict with the doctrine or principles and values of their leader. In essence it encourages a disconnect between professed religious faith and genuine conviction, in the worst cases leading to the abandonment of their church and accompanying beliefs, or what Casanova calls 'soteriological withdrawal'.

Concerned about the rule of law and the responsibilities of the state, Casanova, as restated by Dionisio, notes that public religion located in political society through political parties, elections, political leadership... endangers the autonomy of the political subsystem and its capacity to protect and safeguard the rights of all citizens inclusive of the non-religious.<sup>112</sup> It endangers democratic tenets of freedom of religion and conscience, its own moral autonomy being at risk of instrumentalisation by the political society or the state, as well as its own survival as their newfound coercive authority replaces their moral authority.<sup>113</sup> He avers that it is in European states, where religion has been closest with the state that churches are emptiest.

### **3.6 Hinderance on Collaborative Development Efforts in Governance**

In Caramazza's study on religious leaders and Kenyan members of parliament, the objective was to reveal a potential avenue for church-state collaboration in development efforts and social transformation. However, it uncovered a concerning trend; the elected officials believed that the attention they receive from religious leaders most often aligns with their personal interests rather than the calling to better the wider community.<sup>114</sup> Instead of being approached to assist in the church's mission, legislators often encounter requests to endorse individual projects initiated by religious leaders, even when those initiatives lack clear advantages for their congregations. As a result, this dynamic steers them away from and transformative efforts for positive collaboration and encourages a culture of favouritism, ultimately creating an environment conducive to corruption. This depiction of the interaction between religious and

---

<sup>112</sup> Dionisio E, 'Catholic Partisanship in the 2013 Elections: 'Churchifying' Democracy or Democratizing the Church?' 62 *Philippine Sociological Review*, 2014, 19.

<sup>113</sup> Constitution of Kenya Review Commission, *The Final Report*, 2005, 339. - Further, it erodes the spirit of the Constitution as the CKRC noted that there should not be a religious test or requirement to joining a public seat.

<sup>114</sup> Caramazza G, 'Religious Leaders and Kenya Members of Parliament: Lost Chance or a Relationship for Social Transformation?' 1 *African Journal of Social Transformation*, 1, 2018, 52.

See also - Rosenberg E, and Smith A, 'What Drives Religious Politicking? An Analysis of 24 Democratic Elections', 14 *Politics and Religion* 3, 2021, 739-740.

political leaders implies a relationship marked by convenience and exploitation, with little space for genuine synergy.

Furthermore, the politicisation of religion harms a country's progress towards democracy. It can lead to disproportionate development, systemically widening the wealth gap. This is exemplified best with the Ghanaian President Akufo-Addo announcing the national cathedral project in 2017 with the use of state funds as seed money, a blatant display of Christian dominance.<sup>115</sup>

### **3.7 Betrayal and Disillusionment Among Religious Followers**

An unfortunate possible outcome of religious leaders attempting to liaise with politicians in an attempt to exchange back scratches is betrayal. Islamic organisations, Council of Imams and Preachers of Kenya (CIPK) and the National Muslim Leaders Forum (NAMLEF), through a memorandum of understanding (MoU) backed Raila Odinga in the 2007 election period going so far as to call upon their Muslim followers to support ODM during Friday prayers. The result of the election was a power-sharing agreement between Odinga and Kibaki as the former took over the Prime Minister position. CIPK and NAMLEF believing better conditions for Muslim citizens would result were ultimately disappointed. The union disintegrated before the 2013 elections as Odinga failed to fulfil his promises outlined in the MoU. He failed to take action in freeing members of the Muslim community who had been incarcerated in Ethiopia, furthermore, members of the community still faced challenges in accessing national identification documents as well as stagnant growth in the coastal and northeastern areas primarily inhabited by Muslims.<sup>116</sup>

Where promises were kept, they regrettably benefited only a select few; though Muslim youth anticipated more political representation in the form of civil service appointments, only a handful were lucky. Najib Balala served as minister of tourism, while Sheikh Dor gained an MP position. Even then, meaningful conversation was amiss and Odinga distanced himself from the leaders when he noticed their positions would not benefit him in the 2013 election period. The result was deep feelings of betrayal expressed by Sheikh Khalifa, Sheikh Hasan

---

<sup>115</sup> Sackey I and Dexia G, 'The Politics of Ethnicity and Religion in Africa: A Comparative Study of Ghana and Cote D'voire' 3 *Journal of Educational Research and Policies* 2, 2021, 123.

Haynes J, 'Christian Nationalism and Politics in Ghana' 14 *Religions* 9, 2023.

<sup>116</sup> Elischer S, 'Partisan Politics Was Making People Angry: The Rise and Fall of Political Salafism in Kenya', 10 *The Journal of the Middle East and Africa* 2, 2019, 10.

Omar of CIPK and Sheikh Abdullahi Abdi. The negligible response to their concerns has also been seen to have contributed to the radicalisation of young Salafis promoting extremism and militancy in a desperate attempt to enforce the change they never saw.<sup>117</sup>

Despite this, the clientelism persisted with CIPK leadership as Sheikh Dor returned to the MP seat for Jubilee Alliance. Gathering over 400 Muslims in the lead up to the 2017 election, CIPK enticed them to swear on oath that they would support Uhuru Kenyatta's rerun, notwithstanding the negative public image the Muslim community had of him. Sheikhs openly campaigning for Kenyatta expressed to their congregation that his first term brought considerable benefits and nothing but love for the community and so they had no choice but to reciprocate.

The actions of NAMLEF and CIPK did not go unnoticed. They alienated large sections of their followers through their participation in partisan politics. With their needs still unaddressed, the Kenyan Muslim population experienced heightened political disinterest believing that reintroduction of multipartism in 1991 has resulted in their systematic exclusion from politics. Importantly, the groups' social and political influence declined losing face in and outside of Nairobi.<sup>118</sup>

### **3.8 Conclusion**

Religious politicking risks the destruction of both representative democracy and religious authority. The resultant harms are felt by the people, the most vulnerable and marginalised bear the brunt of it all, having a legitimate expectation that their interests are prioritised, they are met with the harsh reality that individual self-interest, ethnic loyalties and religious/denominational fealty take precedent over the common good. Ultimately, the connection can weaken the bonds of religious communities and hinder societal consensus by imposing unnecessary additional criteria for agreement in political or civic decisions. Despite this, some level of overlap between the two fields is unavoidable, so we need to strike a delicate balance between religion, power, and authority structures within our society. Specifically, we need a system that contemplates the freedom of religion, worship and expression as against the risks of public religion.

---

<sup>117</sup> Elischer S, 'Partisan Politics Was Making People Angry: The Rise and Fall of Political Salafism in Kenya', 10 *The Journal of the Middle East and Africa* 2, 2019, 11.

<sup>118</sup> Elischer S, 'Partisan Politics Was Making People Angry: The Rise and Fall of Political Salafism in Kenya', 10 *The Journal of the Middle East and Africa* 2, 2019, 15.

Though, Dionisio writes that partisanship can be a good thing, creating interesting political debates and challenging religious institutions into translating their faith-based arguments for the non-believers. The perspective is shared that religious institutions should merely be seen as civil society agents who endorse candidates, and it is not until a long-standing alliance or identification with a party can it be a cause for concern.<sup>119</sup> In response, the author puts forth that it is of no benefit to value the duration of the relationship rather than examining the content of the act itself. Especially in a pluralistic society like Kenya, religious politicking makes a mockery of representative democracy and degrades the fabric of social unity.



---

<sup>119</sup> Dionisio E, 'Catholic Partisanship in the 2013 Elections: 'Churchifying' Democracy or Democratizing the Church?' 62 *Philippine Sociological Review*, 2014, 23-31.

## CHAPTER 4: STATE REGULATION OF RELIGIOUS INSTITUTIONS

### 4.1 Introduction

With perspective on the role religious institutions are limited to in political society as well as the risks that may materialise in the event they go beyond that role, this chapter shall examine the means in which effective regulation of the bodies may be carried out. The chapter shall highlight the prominent legislative and regulatory provisions governing religious institutions. It will then discuss present and historical attempts to regulate the bodies such as with the Shakahola incident, the Associations Bill, and the Draft Societies Rules of 2015. In doing so, the paper makes reference to key arguments made by the community of religious leaders with respect to regulation of their field as well as contrary arguments given. The paper shall further elaborate on other scholarly arguments on state regulation of religious institutions not confined to the Kenyan sphere in an attempt to evaluate their positions.

Religious institutions are grouped as societies and thereby governed by the Societies Act. Section 9 of the Act provides that all societies within 28 days of their formation must apply for registration with the Registrar of Societies.<sup>120</sup> The Registrar may decline registration where they have reason to suspect it has an unlawful purpose or an objective injurious to peace, welfare, or good order in Kenya, or if they believe such would be threatened by the registration.<sup>121</sup> The importance of peace, welfare and good order is again emphasised under Section 12 of the Act.<sup>122</sup> Where a society is likely to operate in a manner incompatible with the three, then the registrar may cancel or suspend its registration. The same goes for when a society has, without giving notice to the Registrar, become a branch of or affiliated to, or connected with, any organisation or group established outside our borders having a political character.<sup>123</sup> The registration of a society does not confer separate legal personality, it is thus legally indistinguishable from its members unless the applicant also registers as a company limited by guarantee under the Companies Act or a limited liability partnership under the Limited Liability Partnership Act. However, religious institutions nearly always incorporate a trust to hold their property under the Trustees Perpetual Succession Act. In addition, under tax law, religious institutions are eligible for tax exemptions.<sup>124</sup> Income of an institution for the

---

<sup>120</sup> Section 9, *Societies Act* (Cap 108).

<sup>121</sup> Section 11 (2)(a), *Societies Act* (Cap 108).

<sup>122</sup> Section 12, *Societies Act* (Cap 108).

<sup>123</sup> Section 12 (1)(j), *Societies Act* (Cap 108).

<sup>124</sup> Para. 10, First Schedule, *Income Tax Act* (Cap 470).

purposes of the alleviating indigence or distress of the public, or otherwise utilised for the promotion of religion or education is exempt from tax.

## 4.2 The Shakahola Incident

In March of 2023, Shakahola, in Kilifi County, suffered a great tragedy as over 430 lives were lost to the effects of religious extremism. Pastor Paul Mackenzie, who led the Good News International Ministries (deregistered), now dubbed a cult leader, is believed to have directly or indirectly led these people to their demise by persuading them to starve themselves to death to 'meet God' while isolated in the remote Shakahola Forest. Kenyans stood shaken watching the numbers rise through daily and weekly news reports of the incident as more graves were uncovered in the police investigations.<sup>125</sup>

Responding to public concern, the Senate formed an ad hoc committee, Committee to Investigate the Proliferation of Religious Organisations and the Circumstances Leading up to the Deaths of more than 95 People in Shakahola, Kilifi County, on the 27th of April 2023, which was tasked in investigating the cause of death of Pastor Mackenzie's followers, the role he played in facilitating their deaths, and develop a legislative proposal on the regulation of religious activity among other duties.<sup>126</sup> The President, through a gazette notice constituted a Commission of Inquiry Appointed to Inquire into the Shakahola Tragedy on the 4<sup>th</sup> of May 2023, sending out an apology to the Kenyan people for the state's incompetence.<sup>127</sup> The commission's mandate included to inquire into the deaths, torture, inhumane and degrading treatment of those linked to the Church, to inquire into the legal, institutional, and administrative faults that may have contributed to the incident making recommendations for accountability measures, preventative legal and regulatory reforms as well as give advice on

---

<sup>125</sup> Kingi W, 'Shakahola is an Accident in Our Mad Rush to Self-Destruction' *The Standard*, 9 June 2023, [www.standardmedia.co.ke/opinion/article/2024/shakahola-is-an-accident-in-our-mad-rush-to-self-destruction](https://www.standardmedia.co.ke/opinion/article/2024/shakahola-is-an-accident-in-our-mad-rush-to-self-destruction) on 1 Feb 2024.

See also - BBC News, 'Children 'starved first' in Kenya cult' *BBC News*, 14 May 2023 <https://www.bbc.com/news/world-africa-65588273> on 1 Feb 2024.

See also - Kithi, M, 'Shakahola Deaths Pass the 400 Mark after Detectives Retrieve 12 More Bodies' *The Standard*, 10 Aug 2023, <https://www.standardmedia.co.ke/national/article/2001410123/shakahola-deaths-pass-the-400-mark-after-detectives-retrieve-12-more-bodies>, on 1 Feb 2024.

<sup>126</sup> Parliament of Kenya, 'Ad-hoc Committees' 5 May 2023 <http://parliament.go.ke/the-senate/committees/ad-hoc-committees> on 30 December 2023.

<sup>127</sup> Hussein F, 'Ruto apologises to Kenyans over Shakahola massacre, defends media gag' *Nation*, 15 May 2023, <https://www.nation.co.ke/news/ruto-apologises-to-kenyans-over-shakahola-massacre-defends-media-gag/1056-5599870-9kxq3bz/index.html>. on 30 Dec 2023.

Gazette Notice No. 5660, Vol. CXXV-No. 103, *The Kenya Gazette*, 5 May 2023.

any matter concerning the topic. He further appointed the Presidential Taskforce on the Review of the Legal and Regulatory Framework Governing Religious Organisations in Kenya whose aims shall include to formulate proposals on standards and minimum educational certification requirements for all religious organizations before permitted registration and operation in Kenya, as well as formulate proposals on a framework for regulation, annual reporting, compliance, monitoring, and enforcement action applicable to all religious organizations.<sup>128</sup>

Yet to make a recommendation, the Taskforce's term has been extended by ninety days.<sup>129</sup> The Ad-hoc Committee, however, has produced a final report on its findings. It noted gaps in the legal framework<sup>130</sup>:

- **Fragmentation:** The registration process for religious organizations is dispersed across three to four Acts; including the Societies Act, the Trustees (Perpetual Succession) Act, the Companies Act, and the Limited Liability Partnerships Act. This fragmentation is problematic because there is an absence of a clear approval and enforcement agency ensuring compliance with the law.
- **Qualifications:** The existing legislation allows anyone to register a religious organization without any measure or requirement for qualification. Consequently, there has emerged religious leaders who promote values conflicting with rights enshrined in the Constitution.
- **Branches:** The law is silent on the opening of branches for religious institutions. As a result, the legal status of branches remains ambiguous. Key questions include whether branches are obligated to file annual returns and whether funds derived from branches are commingled with those of their primary institution. Additionally, the issue of liability for criminal activities committed within branches remains unresolved.
- **Transparency and Accountability:** There is a need for accountability and transparency with specific regard to the actions religious leaders take, the doctrines they share, membership within the body, as well as the utilization of funds collected from congregants.

---

<sup>128</sup> Gazette Notice No. 5661, Vol. CXXV-No. 103, *The Kenya Gazette*, 5 May 2023.

<sup>129</sup> Saya Magdaline, 'Ruto extends Church laws review taskforce term by 90 days', *The Star*, 9 Dec 2023, <https://www.the-star.co.ke/news/realtime/2023-12-09-ruto-extends-church-laws-review-taskforce-term-by-90-days/> on 3 Jan 2024.

<sup>130</sup> The Senate, *Report of the Ad Hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances Leading to More than 95 Deaths in Shakahola Kilifi County*, 2023, 145-146.

- Umbrella Bodies: The Act does not account for umbrella bodies and the role they may play. For Christianity for instance, umbrella bodies such as the Kenya Conference of Catholic Bishops (KCCB), National Council of Churches of Kenya (NCCCK), Evangelical Alliance of Kenya (EAK) have optional membership with a significant number of churches not joined. These bodies lack the capacity to effectively monitor religious teachings therefore making it easier to indoctrinate, radicalize, and exploit vulnerable individuals.
- Finances: for the maintenance of a clean ledger, there is a recommendation for the mandated retention of tax experts by these institutions.
- Penalties: The penalties are too lenient ranging from two thousand shillings to five thousand shillings and at maximum ten thousand shillings. This in the view of the Law Society of Kenya (LSK), encourages violation rather than acts as a deterrent.
- Liability: The law fails to provide for strict liability provisions for civil or criminal wrongs in violation of fundamental human rights conducted on property of a religious institution.
- Lastly, there is no provision on dispute resolution mechanisms thus all societies disputes end up in the court system.

Thus, in making recommendations, the Committee expressed the need for a single, all-inclusive statute specifically addressing religious institutions.<sup>131</sup> It called for the enactment of a Religious Organisations Bill that shall fill in these gaps including providing for the registration of consortium/umbrella bodies that shall be tasked with submitting a theological training curricula, guidance on the exercise as well as activities of the organisations to a formulated Office of the Registrar of Religious Organisations.

In conducting their investigation, the Committee consulted different stakeholders for their opinions. The Jesus is Alive Ministries (JIAM) and the Repentance and Holiness Ministries rejected the proposal for regulation. Appearing before the Committee on the 24th of July 2023, Bishop Margaret Wanjiru expressed that sufficient regulation of religious institutions already exists under the registration requirements of the Societies Act, licensing under the Marriage Act as well as offences under the Penal Code. She argued for self-regulation in the view that religious matters belong to the spiritual realm. She called for a new law legitimising religious

---

<sup>131</sup> The Senate, *Report of the Ad Hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances Leading to More than 95 Deaths in Shakahola Kilifi County*, 2023, 147-148.

umbrella bodies. Counsel for Prophet David Owuor of Repentance and Holiness concurred with the general argument reiterating that the legal framework is sufficient, and that implementation is all that is lacking.<sup>132</sup>

Amnesty International observed the need for caution in the government's next steps even in the wake of a religion-fuelled tragedy, the freedom of conscience, belief, religion and opinion cannot be curtailed, thus advocating for self-regulation with the position of the Registrar of Societies limited to overseeing field activity.<sup>133</sup> KCCB expressed to the Committee that state regulation was discriminatory, often singling out specific faiths and running the risk of having a biased regulator, thus in contravention of Article 27 of the Constitution.<sup>134</sup> They further put forth that most religious institutions have distinct modes of administration and organisation informed by their beliefs and tenets making it a hassle to consolidate into a single form, even under an umbrella body. Another concern was the likelihood of regulation subjecting religious institutions to manipulation by politicians and other groups. Both the KCCB and NCKK advocated for 'peer monitoring' by religious institutions under umbrella bodies to address the Committee's concerns. The Hindu Council of Kenya suggested the current laws be strengthened as opposed to adding another layer of legislation.<sup>135</sup>

In direct opposition, local religious leaders from Kilifi noted that only those not teaching good doctrine would be apprehensive about any regulation. Instead, they suggested mandatory theological certification for heads of religious institutions. The Attorney General Justin Muturi, appearing before the Committee on 10th May 2023 expressed that the Societies Act is 'loose... and not fit for purpose'. Noting that the Act limits the powers of the Registrar from punishing societies that violate the laws, he calls on the Parliament to fast track his new Bill that may tackle the inefficiencies.<sup>136</sup> Professor Damaris Parsitau, appearing before the Committee in her capacity as the President of the African Association for the Study of Religion, further submitted

---

<sup>132</sup> Parliament of Kenya, 'Support Self Regulation of Religious Institutions, Prophet Owuor Tells Shakahola Committee' Parliament of Kenya, 24 July 2023, <https://www.parliament.go.ke/support-self-regulation-religious-institutions-prophet-owuor-tells-shakahola-committee> on 20 Dec 2023.

<sup>133</sup> The Senate, *Report of the Ad Hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances Leading to More than 95 Deaths in Shakahola Kilifi County*, 2023, 100.

<sup>134</sup> Article 27, *Constitution of Kenya* (2010).

<sup>135</sup> The Senate, *Report of the Ad Hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances Leading to More than 95 Deaths in Shakahola Kilifi County*, 2023, 101.

<sup>136</sup> Parliament of Kenya, 'Weak Law Is The Reason Why We Can't Regulate Religious Groups, Says AG Muturi' Parliament of Kenya, 10 May 2023, <https://www.parliament.go.ke/weak-law-is-the-reason-why-we-cant-regulate-religious-groups-says-ag-muturi> on 30 Dec 2023.

that the outward manifestation of belief is not an absolute right.<sup>137</sup> Though the long-established mainstream churches have set frameworks for self-regulation, newer Pentecostal and charismatic churches do not. She expressed that "while it is true that some people are called to serve God, there is also no doubt in my mind that many have called themselves."<sup>138</sup> Other concerns she raised were on the exploitation of women and girls, as well as the sick and persons with disabilities, prompting grave ethical concerns.

### **4.3 The Moratorium**

In November 2014, Then Attorney General Githu Muigai banned further registration of religious institutions pending new regulations. The ban persisted despite hefty criticism.<sup>139</sup> The reason being the reoccurrence of unconscionable activity by certain religious leaders that posed harm to their congregants as well as the radicalisation of youth.<sup>140</sup> The following year, the AG drafted the Societies (Religious Societies) Rules to supplement the Act. However, following an outpour of criticism, they were never published. Some of its contents included provisions for the registration of umbrella bodies, requiring the registration of all religious societies to fall under an umbrella body, failure to which would amount to an offence.<sup>141</sup> Terming them 'umbrella societies', the rules defined one to mean a larger society comprised of societies sharing a common doctrine. To qualify for membership as an umbrella society, it shall have at least two thousand five hundred religious societies as members. It shall further be required to set a code of conduct for its members, review doctrine and religious teaching for membership as well as set up an internal dispute resolution mechanism. It also required them to provide audited accounts, keep an updated registrar of its members in addition to an updated list of religious leaders when filing annual returns. The ban was lifted seven and a half years later in June 2022 upon the creation of administrative guidelines and standard operating procedures.

### **4.4 The Associations Bill**

---

<sup>137</sup> The Senate, *Report of the Ad Hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances Leading to More than 95 Deaths in Shakahola Kilifi County*, 2023, 102.

<sup>138</sup> The Senate, *Report of the Ad Hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances Leading to More than 95 Deaths in Shakahola Kilifi County*, 2023, 107.

<sup>139</sup> Nation Team, 'President deems ban on registration of churches 'illegal'' Nation, 11 Mar 2017, <https://nation.africa/kenya/news/president-deems-ban-on-registration-of-churches-illegal--371754> on 24 Dec 2023.

<sup>140</sup> Moseti B, 'AG defends ban on church registration' Nation, 13 Mar 2017 <https://www.nation.co.ke/kenya/news/ag-defends-ban-on-church-registration-3297241> on 30 Dec 2023.

<sup>141</sup> The Senate, *Report of the Ad Hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances Leading to More than 95 Deaths in Shakahola Kilifi County*, 2023, 14-16.

In November of 2015, the Kenya Law Reform Commission released their report after reviewing the Societies Act as requested by AG Githu Muigai.<sup>142</sup> The result was the Associations (Registration and Incorporation) Bill, 2015, drafted with the intention of consolidating and replacing the Public Benefits Organisations Act, the Trustee (Perpetual Succession) Act, and the Societies Act.

The Committee noted eight key weaknesses with the Societies Act and surrounding system:

- Manual registration
- Multilateral registration
- Inadequate penalties
- Inadequate mechanisms for solving disputes
- Lack of clarity regarding membership
- Lack of requirement for identification of officials
- Absence of self-regulation mechanisms
- Legal personality

In the draft Bill, a religious institution is included in the definition of an 'association' alongside clubs, companies, trusts or partnerships, established, headquartered, with its chief place of business or having a branch in Kenya and; formed for a charitable purpose having at least five members and whose profits are not distributed to its members. Notable changes include powers granted to the Registrar of Associations to declare an association unlawful if it is engaged in immoral or illegal activity, refusal for registration where the Registrar is satisfied that the association is affiliated to any political organisation or association as well as the creation of an associations tribunal. It was later developed into the Associations Bill, 2018 which changed the membership requirement to ten or more persons and removed the need for charitable purpose from its definition.<sup>143</sup> Further changes were made but keeping the political affiliation clause and without adding a self-regulation framework.<sup>144</sup> The bill has not seen a revival since.

#### **4.5 Analysis of Perspectives on Regulation of Religious Institutions**

---

<sup>142</sup> Kenya Law Reform Commission, *Report of the Committee on the Review of the Societies Act Cap 108 Laws of Kenya*, 2015, 1-69.

<sup>143</sup> Section 2, *Associations Bill* (2018).

<sup>144</sup> Section 17(1)(a), *Associations Bill* (2018).

Kenyan are preoccupied with what Gez calls 'the three Ss': scandals, schisms and sects, especially with wide media coverage on the same. It is evidently the result of one of these three that public discourse on the regulation of religion is often reinvigorated.<sup>145</sup> He notes that the lack of consensus on a regime despite agreement on the failure of the status quo, stems from the power struggle between the two sides. Provisions related to integrity, accountability, and standardisation have been seen as governmental overreach.<sup>146</sup>

Despite this, there seems to be a consensus that the Societies Act is inoperative, and change is necessary. Though all three instances exemplify responsive regulation, the most recent is the straw that broke the camel's back and shows promise of lasting action. The characteristic dissenters were less emphatic in their usual opposition calling instead for empowerment by the state to effect their self-regulatory positions in the best way possible. As acknowledged in previous chapters, though religious matters may be matters of the spirit, they are of state interest when they threaten public order, safety, and the capacity of other persons to reap the full breadth of their fundamental rights and freedoms. Indeed, there is a risk of biased regulation and discrimination, however, administrative law and the court system exist to ensure proper checks and balances providing fair and equitable processes.

One could further argue that regulation is unneeded because the courts serve as a means of redress for harm caused. However, there is limited precedent in this jurisdiction regarding the responsibilities of such institutions. This is not surprising given the high religiosity of the Kenyan population. Additionally, judicial decisions are reactive rather than proactive interventions; the court must be prompted to address a matter, which is not very effective as a preventative measure, a goal pursued by regulation.<sup>147</sup> However, traditional regulation, properly exemplified by the Associations Bill, is highly restrictive and may encourage clientelism as opposed to creating peaceful coexistence among religious groups and toleration by the state. Patrikios and Xezonakis make note of this arguing for 'light touch' regulation instead.<sup>148</sup>

---

<sup>145</sup> Gez Y N, 'The vetting impasse: The 'churches law' and Kenya's religious regulation debate' *50 Journal of Religion in Africa* 1-2, 2021, 65.

<sup>146</sup> Gez Y N, 'The vetting impasse: The 'churches law' and Kenya's religious regulation debate' *50 Journal of Religion in Africa* 1-2, 2021, 70.

<sup>147</sup> Neo J, 'Conceptualising the Regulation of Religion' in (eds) Neo J, Jamal A and Goh D, *Regulating Religion in Asia: Norms, Modes and Challenges*, Cambridge University Press, Cambridge, 2019, 40.

<sup>148</sup> Patrikios S and Xezonakis G, 'Religious market structure and democratic performance: Clientelism' *61 Electoral Studies*, 2019, 1.

The argument has further been made that limitations on the right to freedom of religion may be justified if the mischief sought to be restricted is not a core practice or activity of the faith in question. While numerous reasons may be given to prove that campaigning for a political candidate is not core to an entity primarily focused on the spiritual enrichment of its members, at the risk of state authorities dictating religious doctrine, this paper relies heavily on neutrality founded on no harm being brought to the freedoms and civil equality of others.<sup>149</sup> This, according to Raza, is the healthiest way of approaching limitation.

Beyond the prevailing circumstances, Jianlin Chen analyses the religious landscape in the concept of a market structure, religious competition being a theological contest. Writing in favour of regulation, he notes that it helps reduce the disparate impact of political competitiveness on religious competitiveness. This goes especially for religions that are theologically adverse or poorly organized for political participation.<sup>150</sup> Their religious practices are less likely to be exempted from the majority practice if there is sole reliance on the political process.<sup>151</sup> This can be seen in the religious dress cases in Kenya where the High Court in both matters denied the altering of a school dress code to permit the hijab for Muslim female students.<sup>152</sup> Although the Court of Appeal ultimately overturned the decision in the latter case in 2016 highlighting the presence of indirect discrimination.

Interestingly, in the USA, religious politicking is barred under taxation law. It is for this reason and the non-constitutional norm that hyper-partisan politics by these institutions is improper being outside their sphere of authority. It is reasoned that permitting the direct political participation of tax-exempt entities would amount to subsidised campaigning for the candidate and thus bestow an unfair advantage.<sup>153</sup> There have thus been calls for self-restraint of these

---

<sup>149</sup> Raza F, 'Limitations to the Right to Religious Freedom: Rethinking Key Approaches', 9 *Oxford Journal of Law and Religion* 3, 2020, 20-23.

<sup>150</sup> It should be noted that the state also has a duty to protect vulnerable religious groups as set out in Article 21(3) *Constitution of Kenya* (2010).

<sup>151</sup> Chen J, 'Money and Power in Religious Competition: A Critique of the Religious Free Market' 3 *Oxford Journal of Law and Religion* 2, 2014, 229.

<sup>152</sup> *Republic v The Head Teacher Kenya High School & another ex parte SMY* (2012) eKLR.

*Mohamed Fugicha & 3 others v Methodist Church in Kenya* (2016) eKLR.

<sup>153</sup> Section 501(c)(3), *Internal Revenue Code* 26 USC.

See also - Tobin B, 'Political Campaigning by Churches and Charities: Hazardous for 501(c)(3)s, Dangerous for Democracy' 95 *The Georgetown Law Journal* 5, 2007, 1362-1363.

entities.<sup>154</sup> This paper however goes a step further arguing that partisanism, even in its mild form can be detrimental to the social and legal order and thus should be legally prevented, as discouragement has not proven very effective in the Kenyan context.

In other instances, regulation is deemed essential due to the disparate levels of influence held by various religious groups.<sup>155</sup> Majority groups tend to dominate the political discourse potentially abusing their unrestricted freedom. Implementing regulations may actually enhance democratic principles by ensuring fair representation and preventing the undue influence of certain religious actors. Additionally, unlike typical industries, the state cannot provide incentives to specific religious actors for compliance, as this would constitute favouritism and undermine its duty set out in Article 8.

When choosing how to regulate, however, one must be critical. For this, we consider Coglianese and Mendelson who write that there are four fundamentals of any regulatory framework: target, regulator, command and consequences.<sup>156</sup> The target is the body to which the law would be applied, in this case religious institutions and their leaders. The regulator is the entity the rules emanate from, this can be the council of an umbrella body as a non-governmental standard setting body or the government itself through the proposed Registrar of Religious Organisations. The command is the substance of the rules created. These can be divided as specific to means or ends. Means commands, mandating a particular action, are successful when there is a clear understanding of the actions needed to curtail a problem, they however require a high level of similarity between targets for the blanket application of the rule that will not prejudice any player and can be effected across the board. An ends command is outcome oriented; it calls for the achievement of a regulatory goal by whatever means the target chooses.<sup>157</sup> Commands can also be divided into 'specific' and 'general'.<sup>158</sup> Lastly is consequences behind a regulatory command. Consequences can be either positive or negative

---

<sup>154</sup> Marshall W P, 'Government Regulation of Religious Organisations: The Example of Religious Fraud', *Columbia Law School Charities Regulation and Oversight Project Policy Conference on The Future of State Charities Regulation*, 2013, 4.

<sup>155</sup> Gez Y N, 'Who do FBOs Speak For? The Conundrum of Representation' in (ed) Weiss H, *Muslim Faith-Based Organizations and Social Welfare in Africa*, Springer Nature, Cham, 2020, 45.

<sup>156</sup> Coglianese C and Mendelson E, 'Meta-Regulation and Self-Regulation' in (eds) Cave M, Baldwin R, and Lodge M, *The Oxford Handbook on Regulation*, Oxford University Press, London, 2010, 3.

<sup>157</sup> Coglianese C and Mendelson E, 'Meta-Regulation and Self-Regulation' in (eds) Cave M, Baldwin R, and Lodge M, *The Oxford Handbook on Regulation*, Oxford University Press, London, 2010, 4.

<sup>158</sup> Coglianese C and Mendelson E, 'Meta-Regulation and Self-Regulation' in (eds) Cave M, Baldwin R, and Lodge M, *The Oxford Handbook on Regulation*, Oxford University Press, London, 2010, 5.

such as fines for non-compliance or regulatory exemptions for compliance.<sup>159</sup> Weighing consequences is of importance for a command in distinguishing voluntary action from obligation.

Religious institutions, however, are not merely private actors, religion has both a public and private ambit and is a social good also recognised as an inherent human right. Also taking into consideration the wall of separation, the regulator cannot solely be the state. It is for these reasons that the author believes a mandated partial self-regulation approach is most appropriate. This type of regulation limits privatization to either rulemaking or enforcement, not both by the target. There are two main approaches; either through the public enforcement of privately written rules, or governmentally mandated internal enforcement of publicly written rules.<sup>160</sup>

The former seems to be the approach take with the proposed Religious Organisations Bill. It is by these means that the targets can keep some level of authority, being under their umbrella bodies, while fulfilling state requirements. The means commands shall thus be set by the umbrella bodies and the use of an autochthonous method will encourage compliance with the presumption that, being most knowledgeable in the doctrine, they will be specific and backed by institutional or social consequences to reinforce them. The state can then take an oversight role enforcing the rules set by the umbrella bodies. Furthermore, Gunningham identified conditions necessary for successful self-regulation as when there is a strong overlap of public and private interest or when there are external pressures.<sup>161</sup> With regard to religious institutions, at present, both exist, as seen by the discussions on the Shakahola incident. With that benefit, self-regulation with broad government oversight and accountability measures ensures autonomy while also achieving the common good. A set of limitations to the political rights of these organisations may be guided by the Public Benefits Organisations Act. An ends command prohibiting political partisanism could lie within the statute.<sup>162</sup> Specific means commands such as ‘political candidates shall not be invited onto the pulpit’ could be made by the umbrella bodies as well as outlined permissible political activity on approval of the Registrar to ensure transparency.<sup>163</sup>

---

<sup>159</sup> Coglianesi C and Mendelson E, 'Meta-Regulation and Self-Regulation' in (eds) Cave M, Baldwin R, and Lodge M, *The Oxford Handbook on Regulation*, Oxford University Press, London, 2010, 6.

<sup>160</sup> Gunningham N, and Rees J, 'Industry Self-Regulation: An Institutional Perspective' 19 *Law & Policy* 4, 2002, 365.

<sup>161</sup> Gunningham N, and Rees J, 'Industry Self-Regulation: An Institutional Perspective' 19 *Law & Policy* 4, 2002, 390.

<sup>162</sup> Section 27(1)(e) *Public Benefits Organisations Act* (No. 18 of 2013).

<sup>163</sup> Section 66(3) *Public Benefits Organisations Act* (No. 18 of 2013).

## 4.6 Conclusion

Regulation has the potential to affect how religious communities organise themselves, interact with other religious communities as well as structure their internal functions and doctrines.<sup>164</sup> Religion and religious institutions are recognised and identified in the law in a complicated and multifaceted manner. From general regulation such as anti-discrimination law to religion-specific statutory regulation such as tax exemptions and finally specific institutional regulation.<sup>165</sup> The latter is what this chapter sought to examine. It looked into the nature of the Societies Act currently, shining light on its deficiencies through recent historical attempts to change the regime. It further discussed the merits and demerits of regulation in this regard and the possible steps forward for the sector incorporating a collaborative approach to self-regulation that may pose the least restrictive and yet effective means to limiting fundamental freedom.



---

<sup>164</sup> Neo J, 'Regulation of religious communities in a multicultural polity' in (eds) Elgar E, *Research Handbook on Law and Religion*, 2018, 8.

<sup>165</sup> Neo J, 'Regulation of religious communities in a multicultural polity' in (eds) Elgar E, *Research Handbook on Law and Religion*, 2018, 15.

## RECOMMENDATIONS AND CONCLUSION

### 5.1 Findings

This study was an examination of the political activity of religious institutions, seeking to establish that the influential role of religious institutions in Kenya warrants an amendment to the legal framework to incorporate neutrality.

The first chapter is introductory. It laid out the background to the study sharing the evidence of recent events that have prompted the investigation of the politics of religious institutions. It further provides the justification of the study, relevant literature as well as the objectives of the study. The work sought to: determine the place of religious institutions in the political arena, cognisant of the principle of separation of church and state and Article 8 of the Constitution of Kenya, assess the risks of religious politicking in Kenyan society, examine the viability of state regulation of religious institutions, particularly over self-regulation, and propose how the legal framework may be amended in order to create liability for religious institutions engaging in partisan political activity while balancing political rights, and freedoms of opinion and expression enshrined in the constitution.

The second chapter discusses the political sociology of religious institutions, where they get their authority and to whom they are accountable to. It further discusses the legal principle of separation of church and state as well as the foundations of the right to freedom of religion before making a determination that within the political sphere, religious institutions function as a member of civil society for the interests of their congregants.

The third chapter discusses the risks religious politicking may pose to Kenyan society. It consolidates them into six being the political adoption of religious rhetoric, exacerbation of existing polarisation, the loss of credibility, state capture, hinderance on collaborative development efforts in governance, and betrayal and disillusionment among religious followers. It was established that there are numerous reasons to consider the adoption of stricter rules on the political activities of religious institutions.

The fourth chapter discusses the regulation of religious institutions. It considers the recent attempts to change the current law and the hinderances to consensus and any progress. It determines an appropriate approach that addresses the needs of both the interested stakeholders and the state in solving the problems mushrooming from a poor regulatory framework.

This chapter closes the study by outlining the findings from each objective, making recommendations on the way forward, and adding a few concluding remarks on the general overview of the project.

## **5.2 Recommendations**

The Societies' Act is ineffective and greatly lacking in capacity, however, since it governs societies other than religious institutions, which this study has not examined, the legislature should distinguish religious institutions from the Act and place them under their own statute.

The legislature should pass the proposed Religious Organisations Bill to treat these institutions with the unique nature and framework they call for.

The Act should include a provision on political neutrality both for registration requirements as seen in the Associations Bill but also in regular operation. It should further delegate the prescriptive duty of ensuring the same to the umbrella bodies through more specific rules subject to approval by the Registrar.

The statute should include strict financial transparency requirements and penalties for non-compliance to curb suspicious transactions between religious leaders and politicians and curtail fundraising for politically partisan purposes.

The religious community should set in place umbrella bodies based on similar doctrine to serve as first point of reference in the case of misconduct of a religious leader heading an institution under it.

In the spirit of peer monitoring, third party religious institutions as well as members of civil society should serve as watchdogs to the activities of the entities.

## **5.3 Conclusion**

The aim of this study was to provide a comprehensive set of arguments for the possible inclusion of legislation restricting religious actors with specific regard to politics. The paper has discussed the role these institutions play in the political field, the risks they pose when they exceed their mandate and the options for strengthening the laws limiting them. It has incorporated sociological, psychological, economic and political perspectives in determining a solution to the problem.

The study has established that there is a distinct political sociology of religion serving as a foundation to the principle of separation of church and state. It has determined that religion as a right is adopted in different characters dependent on the population and jurisdiction, as such, there is no universal approach to understanding the state-religion dynamic. The study has further elaborated on the harms a corruption of this relationship may pose to religion and the state in the loss of trust, as well as the people in worsening already existing divide.

Indeed Kenya is a very religious society and to respond to Bishop Ntombura's concern that, 'some of the politicians are our pastors,' the author puts forth that this is more so evidence of our regulatory failure than it is legitimate justification for the practice.<sup>166</sup> When entering the political field as a candidate or filling a seat, a religious leader ought to renounce their leadership position in their religious institution. Acknowledging religion as personal conviction, this limitation does not take away from one's identity. On the contrary, they must see themselves in this new role as a leader of a larger, more diverse set of people, whose rights and freedoms also deserve recognition and protection under Article 24(1)(d).

It may be difficult to set a strict rule on regulating religious leaders especially acknowledging the absent literature distinguishing the motives of these religious actors in the political sphere; some being theological considerations, the wellbeing of their communities, or personal enrichment. Regardless, this problem presents an interesting avenue on considerations to have when drafting a new 'churches law'. Religious institutions in Kenya have for too long enabled the impunity of politicians in electoral periods, and abused the social authority vested in them by true believers. The state must thus step in to redraw the line and uphold the principles of democracy.

---

<sup>166</sup> Nzwili F, 'Most Kenyan Churches Ban Politicians from Pulpits, Except for Methodists' Christianity Today, 24 Sep. 2021, <https://www.christianitytoday.com/news/2021/september/kenya-churches-ban-politicians-pulpits-methodists.html> on 30 Nov 2023.

## BIBLIOGRAPHY

### Books

- Ambani J, *Africa and the Decolonisation of State-Religion Policies*, Brill, Boston, 2021.
- Bruce S, *Religion in Modern Britain*, Oxford University Press, Oxford, 1995.
- Casanova J, *Public Religions in the Modern World*, University of Chicago Press, Chicago, 1994.
- Cheeseman N, Lynch G, and Willis J, *The Moral Economy of Elections in Africa*, Cambridge University Press, UK, 2020.
- Cristi M, *From Civil to Political Religion: The Intersection of Culture, Religion and Politics*, Wilfrid Laurier University Press, Ontario, Canada, 2006.
- Durkheim E and Swain JW, *The Elementary Forms of the Religious Life (English translation)* George Allen and Unwin Limited, London 1915.
- Hamilton M A, *God vs. the Gavel: The Perils of Extreme Religious Liberty* 2nd edition, Cambridge University Press, Cambridge, 2014.
- Malka H, *Faith in the Balance: Regulating Religious Affairs in Africa*, Rowan & Littlefield, London, 2020.
- McClendon G and Riedl R, *From Pews to Politics: Religious Sermons and Political Participation in Africa*, Cambridge University Press, Cambridge, 2019.
- McGuire M, *Religion, The Social Context*, Wadsworth Publishing Co., USA, 1997.
- Rousseau J, translated with an Introduction by Cole G D H, *The Social Contract and Discourses*, J.M. Dent and Sons, London and Toronto, 1913.
- Turner B, *The New Blackwell Companion to the Sociology of Religion*, Blackwell Publishing Ltd, West Sussex, UK, 2010.
- Turner J H and Maryanski A, *Functionalism*, Menlo Park, CA: Benjamin/Cummings Publishing Company, 1979.
- Wuthnow R, *Religion's Power: What Makes it Work*, Oxford University Press, New York, 2023.

## Book Chapters

Coglianesse C and Mendelson E, 'Meta-Regulation and Self-Regulation' in (eds) Cave M, Baldwin R, and Lodge M, *The Oxford Handbook on Regulation*, Oxford University Press, London, 2010, 146-169.

Deacon G, 'The Political Role of Christian Churches' in (eds) Nic Cheeseman et al. *The Oxford Handbook of Kenyan Politics*, 2020, 137-149.

Downie R, 'Kenya: Cooperation, Co-optation, and Confrontation' in Malka H(ed), *Faith in the Balance: Regulating Religious Affairs in Africa*, Rowan & Littlefield, London, 2020, 85-110.

Gez Y, 'Who do FBOs Speak For? The Conundrum of Representation' in (ed) Weiss H, *Muslim Faith-Based Organizations and Social Welfare in Africa*, Springer Nature, Cham, 2020, 39-60.

Gifford P, 'Christianity Co-opted', in (eds) Knighton B, *Religion and Politics in Kenya: Essays in Honor of a Meddlesome Priest*, Palgrave Macmillan, USA, 2009, 201-221.

Kanjama C, 'Freedom of the Media in Kenya' In (eds) Mwitwa C, and Franceschi G, *Media and the Common Good : Perspectives on Media, Democracy and Responsibility*, LawAfrica Publishing, 2010, 57-77.

Khadiagala G, 'Persistent Ethnic Polarization in Kenya', in *Democracies Divided: The Global Challenge of Political Polarization* (eds) Carothers T, O'Donohue A, Brookings Institute Press, Washington, D.C, 2019, 38-64.

Maupeu H, 'Kenyan Elections: The ICC, God and the 2013 Kenyan General Elections' in Thibon C, Fouéré M, Ndeda M, and Mwangi S (eds) *Kenya's Past as Prologue: Voters, Violence and the 2013 General Election*, Twaweza Communications Ltd, Nairobi, 2014, 33-51.

Neo J, 'Conceptualising the Regulation of Religion' in (eds) Neo J, Jamal A and Goh D, *Regulating Religion in Asia: Norms, Modes and Challenges*, Cambridge University Press, Cambridge, 2019, 38-58.

Nyairo J, 'The Circus Comes to Town: Performance, Religion and Exchange in Political Party Campaigns' in (eds) Njogu K and Wekesa P, *Kenya's 2013 General Election: Stakes, Practices and Outcomes*, Twaweza Communications Ltd, Nairobi, 124-141.

Parsitau, DS "Taming Rogue Clergy and Churches: God, Scandals, Government and Religious Regulation in Kenya" in Green MC, Hackett RIJ, Hansen L & Venter F (eds) *Religious Pluralism, Heritage and Social Development in Africa*, First edition, SUN MeDIA, Stellenbosch, 2017, 241-257.

Patterson A, 'Christianity and Democracy', in (eds) Lynch G and VonDoepp P, *Routledge Handbook of Democratization in Africa*, Routledge, New York, 2020.

## Journal Articles

Arriola L, Choi D, and Gichohi M, 'Increasing Intergroup Trust: Endorsements and Voting in Divided Societies' 84 *The Journal of Politics* 4, 2022.

Audi R, 'The place of religious argument in a free and democratic society', 30 *San Diego Law Review* 4, 1993.

Audi R, 'The Separation of Church and State and the Obligations of Citizenship' 18 *Philosophy & Public Affairs* 3, 1989.

Bartholomew J, 'A Sociological View of Authority in Religious Organizations' 23 *Review of Religious Research* 2, 1981.

Bissell P, Traulsen J, and Haugbølle L, 'An Introduction to Functionalist Sociology: Talcott Parsons' Concept of the 'Sick Role' 10 *The International Journal of Pharmacy Practice* 1, 2002.

Caramazza G, 'Religious Leaders and Kenya Members of Parliament: Lost Chance or a Relationship for Social Transformation?' 1 *African Journal of Social Transformation*, 1, 2018.

Carothers T and William B, 'Civil Society' *Foreign Policy*, 117, 1999.

Chen J, 'Money and Power in Religious Competition: A Critique of the Religious Free Market' 3 *Oxford Journal of Law and Religion* 2, 2014.

Cordery CJ, 'The state relationship with religion: Defined through disciplinary procedures of accounting and regulation', 24 *Accounting History* 3, 2009.

Deacon G, 'Driving the Devil Out: Kenya's Born-Again Election' 45 *Journal of Religion in Africa* 2, 2015.

Deacon G, Gona G, Mwakimako H, and Willis J, 'Mazrui: Islam and Christianity on the Kenyan coast', 35 *Journal of Contemporary African Studies* 2, 2017.

Deacon G, 'The Political Role of Christian Churches' in (ed) Cheeseman N, *The Oxford Handbook of Kenyan Politics*, Oxford University Press, 2020.

Deagon A, 'The Name of God in a Constitution: Meaning, Democracy, and Political Solidarity' *Oxford Journal of Law and Religion* 8, 2019.

Dionisio E, 'Catholic Partisanship in the 2013 Elections: 'Churchifying' Democracy or Democratizing the Church?' 62 *Philippine Sociological Review*, 2014.

Elischer S, 'Partisan Politics Was Making People Angry: The Rise and Fall of Political Salafism in Kenya', 10 *The Journal of the Middle East and Africa* 2, 2019, 10.

Garnett R, 'Religious Freedom, Church Autonomy, and Constitutionalism' *Drake L. Rev.* 57, 2008.

Gez Y N, 'The vetting impasse: The 'churches law' and Kenya's religious regulation debate' 50 *Journal of Religion in Africa* 1-2, 2021.

Gez Y N, Beider N, and Dickow H, 'African and not religious: The state of research on Sub-Saharan religious nones and new scholarly horizons' *57 Africa Spectrum* 1, 2022.

Ginosar A, 'Public-Interest Institutionalism: A Positive Perspective on Regulation', *46 Administration & Society* 3, 2014.

Gisbert P, 'Social Facts in Durkheim's System' *54 Anthropos* 3/4, 1959.

Gitari D, 'Church and Politics in Kenya', *8 Transformation: An International Journal of Holistic Mission Studies* 3, 1991.

Grzymala-Busse A, 'Weapons of the Meek: How churches influence public policy', *68 World Politics* 1, 2016.

Gunningham N, and Rees J, 'Industry Self-Regulation: An Institutional Perspective' *19 Law & Policy* 4, 2002.

Haider H, 'Religious leaders and the prevention of electoral violence' Helpdesk Research Report, GSDRC, University of Birmingham, 2016.

Hantke-Domas M 'The Public Interest Theory of Regulation: Non-Existence or Misinterpretation?' *European Journal of Law and Economics* 15, 2003.

Haynes J, 'Christian Nationalism and Politics in Ghana' *14 Religions* 9, 2023.

Heyman S, 'The Light of Nature: John Locke, Natural Rights, and the Origins of American Religious Liberty' *101 Marquette Law Review* 3, 2018.

Hollenbach D 'Contexts of the Political Role of Religion: Civil Society and Culture' *30 San Diego Law Review* 4, 1993.

Khaisie J, Simwa S, and Gwachi J, 'Fear Mongering and Appeal to The Name of God as Propaganda Techniques in the Kenyan 2013 Presidential Debate', *2 Journal of Research Innovation and Implications in Education* 4, 2018.

Kinas MV, Karega JB, and Chacha BK, 'The Role of Church in State and Public Affairs During the Moi Era, 1978-2002' *1 Journal of Philosophy, Culture and Religion* 1, 2018.

Koter D, 'King Makers: Local Leaders and Ethnic Politics in Africa' *65 World Politics* 2, 2013.

Kuru A, 'Passive and Assertive Secularism: Historical Conditions, Ideological Struggles, and State Policies toward Religion', *59 World Politics* 4.

Macedo S, 'Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism' *26 Political Theory* 1, 1998.

Marshall W P, 'Government Regulation of Religious Organisations: The Example of Religious Fraud', *Columbia Law School Charities Regulation and Oversight Project Policy Conference on The Future of State Charities Regulation*, 2013.

Maupeu H, 'Une Opposition en régime autoritaire: L'Exemple du Réveil Est-Africain au Kenya', *25 Canadian Journal of African Studies* 2, 1991.

Michael B, Lin A, and Berlinerblau J, 'Secular Africa? Making Sense of Noncompliance to Secular Constitutions in Sub-Saharan Africa' 63 *Journal of Church and State* 1, 2021.

Munyaee IM and Adar KG, 'Human Rights Abuse in Kenya Under Daniel Arap Moi, 1978-2001' 5 *African Studies Quarterly* 1, 2001.

Mwaura PN & Martinon CM, 'Political Violence in Kenya and Local Churches' Responses: The case of the 2007 post-election crisis', 8 *The Review of Faith & International Affairs* 1, 2010.

Ndereba KM, 'Towards a Kenyan Political Theology: The importance of church history for contemporary public life' 13 *African Journal of History and Culture* 2, 2021.

Neo J, 'Regulation of religious communities in a multicultural polity' in (eds) Elgar E, *Research Handbook on Law and Religion*, 2018.

Nsereko D, "Religion, the State, and the Law in Africa" 28 *Journal of Church and State* 2, 1986.

O'Dea T and Yinger J, 'Five Dilemmas in the Institutionalization of Religion' 1 *Journal for the Scientific Study of Religion* 1, 1961.

Omara SG and Tanui MK, 'The Role of The Church in Fighting Machiavelism in Kenyan Politics' 3 *International Journal of Current Research* 9, 2011.

Parsitau DS, 'From prophetic voices to lack of voice: Christian Churches in Kenya and the dynamics of voice and voicelessness in a multi-religious space', Egerton University, Kenya, 2012.

Patrikios S and Xezonakis G, 'Religious market structure and democratic performance: Clientelism' 61 *Electoral Studies*, 2019.

Philpott D, 'Why Religious Freedom is a Human Right' *American Journal of Jurisprudence*, 2023.

Posner RA, 'Theories of Economic Regulation' 5 *The Bell Journal of Economics and Management Science* 2, 1974.

Powell M, 'Transitional Justice and Religion: An Examination of Faith-Based Actors in Kenyan Civil Society' 7 *Inquiries Journal/Student Pulse* 10, 2015.

Raza F, 'Limitations to the Right to Religious Freedom: Rethinking Key Approaches', 9 *Oxford Journal of Law and Religion* 3, 2020.

Rosenberg E, and Smith A, 'What Drives Religious Politicking? An Analysis of 24 Democratic Elections', 14 *Politics and Religion* 3, 2021.

Rosenberg E, and Smith A, 'What Drives Religious Politicking? An Analysis of 24 Democratic Elections', 14 *Politics and Religion* 3, 2021.

Ryan F, 'Auctoritas in the Theology of St Thomas' 88 *New Blackfriars* 1016, 2007.

Sackey I and Dexia G, 'The Politics of Ethnicity and Religion in Africa: A Comparative Study of Ghana and Cote D'voire' 3 *Journal of Educational Research and Policies* 2, 2021.

Scharffs B, 'Four Views of the Citadel: The Consequential Distinction between Secularity and Secularism' *Religion and Human Rights* 6, 2011.

Schwinn T, 'False Connections: Systems and Action Theories in Neofunctionalism and in Jurgen Habermas' 16 *Sociological Theory* 1, 1998.

Shleifer A, 'Understanding Regulation' 11 *European Financial Management* 4, 2005.

Snowden J, 'Authority in Theology' 51 *The Biblical World* 2, 1918.

Sorauf FJ, 'Public Interest Reconsidered', 19 *The Journal of Politics* 4, 1957.

Stein T and Kunkler M, 'Ernst-Wolfgang Bockenforde: Inner Catholic Critic and Advocate of Open Neutrality' *Oxford Journal of Law and Religion* 7, 2018.

Tobin B, 'Political Campaigning by Churches and Charities: Hazardous for 501(c)(3)s, Dangerous for Democracy' 95 *The Georgetown Law Journal* 5, 2007.

Williams R, 'Religion as Political Resource: Culture or Ideology?' 35 *Journal for the Scientific Study of Religion* 4, 1996.

Yinger J, 'Pluralism, Religion, and Secularism' 6 *Journal for the Scientific Study of Religion* 1, 1967.

## Reports

Africa Centre for Open Governance, *State Capture: Inside Kenya's Inability to Fight Corruption*, 2019.

Afrobarometer, *For religious leaders in Africa, popular trust may present opportunity, challenge in times of crisis Dispatch No. 536*, 2022.

Berkley Center for Religion, Peace & World Affairs, 'Faith and Development in Focus: Kenya' World Faiths Development Dialogue, March 2017.

Constitution of Kenya Review Commission, *The Final Report*, 2005.

Faria J, Statista, *Distribution of the population in Kenya as of 2019, by Religion*, 2022.

Inter-Religious Council of Kenya, *The Role of Free and Independent Churches In the Context of Politics and Society in Kenya*, November 2021.

Kenya National Bureau of Statistics, *Demographic and Health Survey 2022, Key Indicators Report*.

The Senate, *Report of the Ad Hoc Committee to Investigate the Proliferation of Religious Organisations and Circumstances Leading to More than 95 Deaths in Shakahola Kilifi County*, 2023.

## Theses

Awuor OB, 'The Debate For and Against State Regulation of Churches in Kenya' Unpublished LLM Thesis, University of Nairobi, 2016.

Parsitau DS, 'The Civic and Public Roles of Neo-Pentecostal Churches in Kenya (1970-2010)' Unpublished PhD Thesis, Kenyatta University, Nairobi, 2014.

## Online Resources

Downie R, Kenya under Growing Pressure to Regulate 'Spiritual Fraudsters', Centre For Strategic and International Studies, 23 September 2019 <https://www.csis.org/analysis/kenya-under-growing-pressure-regulate-spiritual-fraudsters>

Evangelical Alliance of Kenya, *Pastoral Letter to the Evangelical Church in Kenya: Advisory on keeping the worship places Holy unto the Lord*, Evangelical Alliance of Kenya, 2021, <https://eakenya.org/>

Parsitau D, 'The Clergy and Politicians: An Unholy Alliance' The Elephant, 9 April 2021 <https://www.theelephant.info/analysis/2021/04/09/the-clergy-and-politicians-an-unholy-alliance/>

Stoddard E, 'The Ubiquity of Religion in Kenya', 15 Dec 2014 <https://berkleycenter.georgetown.edu/posts/the-ubiquity-of-religion-in-kenya>

## News Articles

'Church and Politics: Role of clergy in modern day politics', KTN News, 25 January 2021 <https://www.youtube.com/watch?v=wdHON5aAZag&t=209s>

'Muslims deny backing Raila bid for top Job', Nation Africa, 24 December 2012 <https://nation.africa/kenya/news/politics/muslims-deny-backing-raila-bid-for-top-job--841646>

Awichi L, 'Boost for Ruto as church leaders endorse him for presidency', The Star, 6 May 2022 <https://www.the-star.co.ke/news/2022-05-06-boost-for-ruto-as-church-leaders-endorse-him-for-presidency/>

BBC News, 'Children 'starved first' in Kenya cult' BBC News, 14 May 2023 <https://www.bbc.com/news/world-africa-65588273> on 1 Feb 2024.

Hochet-Bodin N, 'In Kenya, evangelical churches have a growing influence in government' Le Monde, 7 December 2022 [https://www.lemonde.fr/en/le-monde-africa/article/2022/12/07/in-kenya-the-growing-influence-of-evangelical-churches-in-government\\_6006830\\_124.html](https://www.lemonde.fr/en/le-monde-africa/article/2022/12/07/in-kenya-the-growing-influence-of-evangelical-churches-in-government_6006830_124.html)

Hussein F, 'Ruto apologises to Kenyans over Shakohola massacre, defends media gag' Nation, 15 May 2023, <https://www.nation.co.ke/news/ruto-apologises-to-kenyans-over-shakohola-massacre-defends-media-gag/1056-5599870-9kxq3bz/index.html>

Kingi W, 'Shakahola is an Accident in Our Mad Rush to Self-Destruction' *The Standard*, 9 June 2023, [www.standardmedia.co.ke/opinion/article/2024/shakahola-is-an-accident-in-our-mad-rush-to-self-destruction](http://www.standardmedia.co.ke/opinion/article/2024/shakahola-is-an-accident-in-our-mad-rush-to-self-destruction)

Kinyanjui M, Return of Bomas choir as IEBC launches 2022 polls report, *The Star*, 16 Jan 2023, <https://www.the-star.co.ke/news/2023-01-16-return-of-bomas-choir-as-iebc-launches-2022-polls-report/>

Kithi, M, 'Shakahola Deaths Pass the 400 Mark after Detectives Retrieve 12 More Bodies' *The Standard*, 10 Aug 2023, <https://www.standardmedia.co.ke/national/article/2001410123/shakahola-deaths-pass-the-400-mark-after-detectives-retrieve-12-more-bodies>.

Luke Awich, 'Muslim clerics seek Raila's intervention over 'state sponsored' religious discrimination', *The Star*, 2 March 2023 <https://www.the-star.co.ke/news/2023-03-02-muslim-clerics-seek-railas-intervention-over-state-sponsored-religious-discrimination/>

Matara E, 'Over 2,000 Nakuru church leaders endorse DP Ruto for Presidency' *Nation Media*, 8 July 2022 <https://nation.africa/kenya/counties/nakuru/over-2-000-nakuru-church-leaders-endorse-dp-ruto-for-presidency-3873444>

Moseti B, 'AG defends ban on church registration' *Nation*, 13 Mar 2017 <https://www.nation.co.ke/kenya/news/ag-defends-ban-on-church-registration-3297241>

Nation Team, 'President deems ban on registration of churches 'illegal'' *Nation*, 11 Mar 2017, <https://nation.africa/kenya/news/president-deems-ban-on-registration-of-churches-illegal--371754>

Ndunda E, 'No campaigns in churches, bishops now tell aspirants', *Standard Media*, March 2022 <https://www.standardmedia.co.ke/coast/article/2001421511/no-campaigns-in-churches-bishops-now-tell-aspirants>

Nzwili F, 'Most Kenyan Churches Ban Politicians from Pulpits, Except for Methodists' *Christianity Today*, 24 Sep. 2021, <https://www.christianitytoday.com/news/2021/september/kenya-churches-ban-politicians-pulpits-methodists.html>

Onyango E, 'Why Kenyans churches are banning politicians from pulpits', *BBC*, 24 October 2021 <https://www.bbc.com/news/world-africa-58666703>

Otieno J, 'Kenya 2022: Whose mobilising strategy will win voters?' *The Africa Report*, 5 August 2022 <https://www.theafricareport.com/228874/kenya-2022-whose-mobilising-strategy-will-win-voters/>

Otieno J, 'Kenya: Politicians using churches as political battleground to bypass rally ban', *The African Report*, 14 September 2021 <https://www.theafricareport.com/126685/kenya-politicians-using-churches-as-political-battleground-to-bypass-rally-ban/>

Parliament of Kenya, 'Ad-hoc Committees' 5 May 2023 <http://parliament.go.ke/the-senate/committees/ad-hoc-committees>

Parliament of Kenya, 'Support Self Regulation of Religious Institutions, Prophet Owour Tells Shakahola Committee' Parliament of Kenya, 24 July 2023, <https://www.parliament.go.ke/support-self-regulation-religious-institutions-prophet-owour-tells-shakahola-committee>

Parliament of Kenya, 'Weak Law Is The Reason Why We Can't Regulate Religious Groups, Says AG Muturi' Parliament of Kenya, 10 May 2023, <https://www.parliament.go.ke/weak-law-is-the-reason-why-we-cant-regulate-religious-groups-says-ag-muturi>

Saya Magdaline, 'Ruto extends Church laws review taskforce term by 90 days', The Star, 9 Dec 2023, <https://www.the-star.co.ke/news/realtime/2023-12-09-ruto-extends-church-laws-review-taskforce-term-by-90-days/>

Soriano J, 'Politics No Longer Has a Place in Kenyan Churches', Evangelical Focus, 11 April 2022 <https://evangelicalfocus.com/world/16317/politics-no-longer-has-a-place-in-kenyan-churches>.

