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## **A Contention for the Separation of Church and State in Kenya**

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### **Abstract**

The separation of church and state in Kenya has always been a polarizing issue due to its contentious nature. A significant problem, often overlooked in research, is the misunderstanding of the wording in the 2010 Constitution and the interpretation of High Court judgments concerning the separation issue. The interactions between political processes and the church in Kenya exacerbate this problem. If researchers fail to address the separation issue, Kenya may face similar challenges to those seen in the Western world. On one hand, if separation is not understood as a division of institutional jurisdictions rather than an extreme separatist view, the expression of religious beliefs could be severely restricted. Furthermore, without institutional separation, the church is likely to lose its moral authority and voice, especially if it becomes too closely aligned with the state. Lastly, without separation, the state may end up dictating religious expression if it assumes control over religious directions within the country. This study employed a qualitative research methodology through a literature review to understand the necessity of the separation of church and state. The literature review included an examination of the wording in both the revised 2008 and the 2010 Constitutions concerning relevant sections. Additionally, scholarly works discussing the involvement of the Kenyan church in the political process, Protestant Reformation views on separation, and the separation of politics and the state were reviewed. This paper aims to demonstrate that there should be a separation of church and state, provided it does not imply a separation of church and politics.

## Introduction

The Kenyan political regime inaugurated in 2022 brought to light the question of the separation of church and state, due to what many perceive as close relations between the government and evangelicals in the country. Notably, when the incumbent was declared the President of the Republic of Kenya, much of the international media referred to him as the 'evangelical president.' However, such observations may have been influenced by non-Kenyan concerns, reflecting his similar views to right-wing evangelicals in the US (Njoya 2023). Immediately after the president's victory, the state invited approximately forty evangelical pastors to 'purify' the State House (Hochet-Bodin 2022). Furthermore, the Office of the First Lady, which partly focuses on 'faith diplomacy,' has notably invited several Pentecostal leaders and instituted prayer services in the State House, causing some pushback from certain quarters of the populace (Kimari 2023).

The seeming politicization of religion, which stretches far back and is intertwined with the conduct of state affairs under the current regime, raises concerns about the separation of church and state. A further challenge to this issue is the misunderstanding of the constitutional underpinning and wording. The 2010 Constitution of Kenya implies a secular state, specifically under Article 8, which explicitly states that there shall be no state religion (Laws of Kenya: The Constitution of Kenya 2010). This interpretation has led to much contention. Moreover, the constitution, through the wording in certain sections, is perceived to suggest that the state prefers some religions over others, although this is not the case. Thus, there is an impression that Kenya seems to operate on a religiously-minded constitution that blurs the lines of separation.

Over time, there have been many different opinions concerning the separation of church and state. Bishop Oginde, one of the leading clergy, has argued that the church cannot be wholly separated from the state, contending that both entities are concerned with the affairs of their populace and that any leader who wants to lead must take into account the holistic nature of the people, which includes religion (Ng'ang'a 2020). On the other hand, former Prime Minister Raila Odinga, one of the leading political figures in Kenya, has stated

that Kenya is a 'secular state' (Kimari 2023), a sentiment echoed by the leader of the atheist movement, Mr. Harrison Mumia (Mumia 2015).

Additionally, both individuals and institutions have, in the past, lodged several cases in Kenyan courts over religious beliefs. Notably, there was a case lodged in the High Court by several clergy who argued that Section 66 of the 2008 revised Kenyan constitution, which established the Kadhi Courts (a constitutional court limited to determining Islamic law in matters of marriage, divorce, personal status, and inheritance), was unconstitutional because it violated the principle of separation between church and state ('Jesse Kamau & 25 others v Attorney General' 2010). The High Court ruled in their favor and stated that Kenya was a secular state (Mujuzi 201:316). Thus, the problem of the church's involvement in political processes and the misunderstanding of the constitution's wording form the primary grounds on which the question of the separation between the church and the state exists.

## **Political History and its Influence on the Question of Separation**

As is evident from the many divergent views, whether the Kenyan constitution envisages a separation between church and state is crucial to Kenyan society. The fundamental reason is that it cannot be denied that religion, particularly the church in Kenya, played a crucial role in the country's democratization (Kodia 2014:64). Prior to the current Kenyan constitution, the interactions between the church and the state had a long history from the time Kenya was declared an independent state, post-independence. The interactions between the church and state are to be considered with the understanding that both entities actively participate in politics.

From post-independence up to 1992, Kenya was under one-party rule by KANU (Kenya African National Union - a longstanding political party that ruled Kenya for nearly forty years). Under this closed political system, the church sometimes proved to be a challenge to the state. After independence, there was church and state cooperation to consolidate the gains that came with the emancipation of Kenya's people (Githiga 2001). Under President Jomo Kenyatta's regime (1963-1978), some ecclesial bodies agreed to act as society's conscience (Orobator 2009:183). The then-president had asked the

church to help with nation-building efforts, primarily to create a cohesive society. Some of the efforts by churches included issuing exhortations and pastoral letters to public office bearers (Orobator 2009:183).

Nonetheless, the regime's failings became evident over time, and the church began to break its silence over the seemingly authoritarian rule. Through the umbrella body, the National Christian Council of Kenya, the church was called to show concern for politics. It was vocal, especially regarding the assassination of leading politicians such as Tom Mboya and J. M. Kariuki (Kamau 2023). The one-party regime continued under President Daniel Moi (1978-2002), a period many termed as dictatorial and retrogressive (Murunga 2014:151). During President Moi's rule, there was increased enthusiasm for the struggle for liberation, and both the church and the 'Civil Society' were at the forefront of the reforms. Some researchers (Chacha 2010; Parsitau 2012) have extensively examined the relationship between Moi and the church during his twenty-four-year rule. Between 1986 and 1992, the main contention was about civil liberties, which the church, through the National Christian Council of Kenya and the Catholic Church, earnestly contended for as the government infringed on citizens' civil rights. One way the umbrella body criticized the government's electoral practices was through its publication "Beyond," whose editor, Bedan Mbugua, was jailed for criticizing the government, leading to its publications being banned entirely (Perlez 1988). The publication criticized the newly introduced queuing system in 1988.

However, the most iconic moment occurred during the 1990 struggle for multi-party democracy, when notable clergymen from the Anglican, Presbyterian, and Catholic churches were at the forefront of the reforms. These reforms involved calling for constitutional changes, particularly the repeal of Section 2A of the contemporary constitution, which entrenched one-party rule. The call for constitutional reform bore fruit, making Kenya a multi-party state. During this period, the church declared, primarily through the NCKC, that it was the only establishment capable of speaking on behalf of the people, thus establishing itself as an active player in the political arena (Sabar-Friedman 1997:25). The church asserted itself as the people's spokesperson by sponsoring civil society, forming conventions, and actively participating in demonstrations. Additionally, the move towards constitutional reform was also spearheaded by the church between 1994 and 2002. Several outfits driven

by both the church umbrella body and the Catholic Church helped advocate for successful constitutional reform (David and Katola 2016:47).

During President Mwai Kibaki's era (2002-2013), the relationship between the church and the state took a turn. In the run-up to the elections from which Mwai Kibaki would emerge victorious, it was evident that the majority of the mainline churches were in solidarity with the opposition to which he belonged, as they were keen on ousting then-President Moi. The strong resolve to end Moi's regime was fueled by widespread public clamor for constitutional change and reform of his evidently oppressive and corrupt government. When President Kibaki came to power, one researcher suggests there was a 'worrisome trend' among the churches regarding their voice on the moral ills of the government and their active participation in civic and public engagements (Kinas 2018:28). The church's silence and reluctance to criticize the then-regime were evident. It is also noted that the resurgence of Pentecostal and evangelical Christians, especially their activism in the socio-political arena, posed severe challenges to the public roles assumed by the mainline churches as they largely remained silent on bad governance (Kinas 2018:30). At a critical point in Kenya's political history, when the church was expected to call for peace and reconciliation, particularly during the 2007-2008 post-election violence, the church's silence (among both Pentecostal and mainline churches) was manifest as it took a partisan stand and failed to negotiate for peace (Maupeu 2013:41). By the time Mwai Kibaki left office, the church had largely lost its credibility and legitimacy, and there was now a developing division between the mainline and Pentecostal churches with the latter's influence being more prominent.

The backdrop of the Pentecostal churches' influence stems from the post-election violence period when the country sought justice for the crimes committed against its populace. Among the people mentioned as those who led the post-election violence were Uhuru Kenyatta and William Ruto, who were subsequently prosecuted by the International Criminal Court. Despite many efforts to halt the process, all failed, and, as one researcher puts it, the two would turn to prayers for their acquittal (Maupeu 2013:39). Eventually, the two entered a political marriage of convenience, eying the presidency, and traversed the country conducting 'prayer meetings' led mainly by Pentecostal clergy. Notably, neither of them belonged to the churches that led the prayer

rallies. A leading daily pointed out that there was a ‘re-consolidation of Christianity as a state religion’ (Macharia 2013). The impression created was that Kenya favored a particular religion over all others, and both of them expressed that the state’s mandate was to provide an environment where the will of God could be expressed (Maupeu 2013:41). Uhuru and Ruto announced their joint presidential candidacies to succeed President Mwai Kibaki, within the confines of religious gatherings—Uhuru at the National Council of Churches of Kenya premises and Ruto at a Catholic church in Eldoret. The intertwine between politics and Christianity re-emerged as the church took a stance that the duo had been falsely accused (David and Katola 2016:53). The duo won the elections, and their regime was termed a ‘Christianized’ government.

When President Uhuru Kenyatta (2013-2022) took over from Mwai Kibaki, the church became central in the political life of the country, but this time there was a clear division between mainline churches and Pentecostal churches. The church did not speak with one voice, and it became evident that the Pentecostal churches supported the government. During the Jubilee government era (the ruling party during President Uhuru Kenyatta’s regime), the Pentecostal movement had significant influence over the political life of the country. Their influence had started when the historical mainline churches were conspicuously left out of the campaigns when Uhuru Kenyatta and William Ruto vied for the presidency (Maupeu 2013). Consequently, the voice of the church, now divided, was never taken seriously by the regime whenever it spoke out against the extensive corruption in the government.

The current regime, led by President William Ruto, has been under scrutiny due to the continued close relationship with the church, primarily the Pentecostal churches. However, the president’s relationship with the church did not begin with his ascent to the country’s highest office. This relationship was evident when he campaigned with former President Uhuru Kenyatta in the run-up to the 2013 elections. During the run-up to the constitutional referendum in 2010, William Ruto was one of the most prominent figures opposing the new constitution. As the Minister for Higher Education, he led the ‘No’ camp that opposed the new constitution. The evangelical churches were also opposed to the new constitution. Although each had different reasons for their opposition—the former on political issues such as the

excessive powers of the presidency and land issues, and the latter on moral issues and the Kadhi courts—they were aligned in a relationship of convenience. In the end, Kenyans ratified the new constitution, and the church failed to convince the populace based on their moral stance.

Fast forward to the 2022 elections, President Ruto leveraged his relationship with the church to bolster his victory. He aligned himself with Pentecostal churches, especially those led by clergy who had risen from humble beginnings to lead mega-churches. His choice to align with the Pentecostals is evident, especially considering that both the First Lady and the Deputy President’s wife have deep roots in the movement.

Historical evidence sheds light on the church’s involvement with the state and its presentation as a political entity. It is evident that religion has been an integral part of the political process in Kenya. Moreover, religion has a significant influence on Kenyan politics, which subsequently blurs the lines of interaction between church and state. Many political actors in state offices often associate themselves with various religious organizations. It is well-known that the church has often received many handouts from politicians, an act often interpreted as politicians buying the church and its clergy. As a result, it has been observed that the church is frequently compromised due to political affiliations. These affiliations often rob the church of its moral strength to stand up to the state whenever atrocities are committed against the people, a mandate expected of the church as the moral voice of society. Thus, the complexity of these interactions continues to blur the question of the separation of church and state.

## **The Constitutional Dilemma Regarding its View of Religion**

Apart from the church’s involvement in politics concerning the question of the separation of church and state, there is the challenge of understanding the true nature of the Kenyan state insofar as it is a religious or secular state. Part of this challenge lies in the misunderstanding of the intention behind the wording in the current 2010 constitution. In the earlier mentioned judgment passed by the Kenyan High Court regarding Section 66 of the 2008 revised constitution, the judges stated that Kenya, as a republic, is a secular state (*‘Jesse Kamau and 25 others v Attorney General’* 2010). Under the current

constitution, the impression that there shall be no state religion (Laws of Kenya: The Constitution of Kenya 2010) has therefore been interpreted to mean that the country is a secular state, but a part of the populace sees a problem with that interpretation. However, the reference to Kenya being a secular state brings about contention because of differing understandings of the term 'secular.'

It is essential to note that the interactions between the church and the state have occurred under almost similar pronouncements across various constitutional dispensations. However, the previous revised constitution and the current constitutional dispensation are more pronounced. In the previous constitution of Kenya, revised in 2008, Section 78 under the Bill of Rights entrenched freedom of conscience, which included religious freedom (National Council for Law Reporting, 2008). The constitution provided that every person had the right to change their religion or belief and manifest and propagate their religion or belief, whether in private or public. Further, under Section 82, the constitution provided that no person should be discriminated against. It clearly emphasized that the constitution sought to treat all religions equally without favoring any particular belief.

In the current constitutional dispensation, the interaction between the state and the church has two faces. First, the Kenyan constitution promulgated in 2010 envisages a state where there is no favoritism towards any religious entity, as stated in Chapter Two, Article 8: 'There shall be no state religion.' Consequently, Chapter Four, which details the Bill of Rights, promotes freedom of conscience, religion, belief, and opinion under Article 32. Thus, the state is not bound or confined to any religious institution or entity, as is the will of the people enshrined in the Kenyan constitution. Although this is the case, a realistic examination of the interaction between religion and the state reveals a blurred line. A closer look at the constitution reveals many hints of religious inclination illustrated by certain wordings. The preamble contains the words: 'We, the people of Kenya... acknowledging the supremacy of the Almighty God of all creation.'

Additionally, the national anthem and the oaths of office for public servants include religious declarations, ending with the words 'so help me God.' Lastly, there is the contentious issue of establishing Kadhi courts in the 2010



constitution under Article 169 (1)(b), with provisions set out in Article 170. The constitution provides Muslims with their own judicial system, though limited to determining questions regarding Muslim law. The Kadhi courts are funded by the state, which led to a case brought forward by Christian clergy seeking an interpretation of the separation of state and religion during the voting process for the new 2010 constitution.

Furthermore, the state appears to advance religious causes within its institutions, particularly by employing clergy in both the army and police force. Schools in Kenya also require religious education, whether Christian, Muslim, or Hindu. It is evident that religion plays a critical role in the political space, as traced through various regimes that have ruled the country. It is estimated that approximately 85.5% of the Kenyan population is Christian, while 11% is Muslim (Office of International Religious Freedom 2023). Hence, the state does not seem to have a clear notion of separation between itself and religion as envisaged in the constitution. It is correct to conclude that religion is a significant component of Kenyan society, and there is a clear interaction between them. Although the constitution pronounces the separation of state and religion, it is dotted with religious language. As prescribed by the constitution, both the state and religion (of which the church is an entity) provide for the proper functioning of Kenyan society. However, there remains contention on the question of the separation of church and state, making it necessary to delineate the meaning and intentions of the constitution regarding this issue.

## **Historicity of the Contentions**

It is essential to understand that the contention for the separation between the church and state exists not only in Kenya but also across other contexts, to better understand the contestation. Researchers have reported that the relationship between the church and the state on the African continent has been characterized by complexity, ambiguity, and uncertainty (Orobator 2009:182). While Kenyan law implies the existence of a secular state, an explicit pronouncement was made through the 2010 ruling provided by the High Court. Nonetheless, to many, its principles remain obscure and blurred by the realities evident in society. Therefore, the separation model between the church and the state in Kenya appears theoretical rather than practical

when examined in real-life contexts. This blurred distinction is not unique to Kenya; the question of the separation between church and state has been raised in the past, especially during the Reformation in the fifteenth and sixteenth centuries. Notably, two significant voices in the Protestant faith, Martin Luther and John Calvin, were prominent in their pronouncements on the relationship between the church and the state.

According to Luther, the church was primarily a spiritual entity, characterized by spiritual relationships among its members (Gane 1970:120). Thus, he argued that the church was not superior to the state in temporal (earthly) matters, and the clergy were not a special class exempt from the state's secular control. Luther declared that all Christians were subject to secular authority. He further stated that the church's domain was limited to matters of faith and morals, while secular judges dealt with issues of money, property, life, and honor. Luther also maintained the autonomy of the local church. He believed that human government was secular but not separate from God's rule and was restricted to temporal matters. Secular law was to be firmly established, and human government had the right to exercise the sword's power because it was ordained by God. For him, any rebellion against the divinely established secular rule was a rebellion against God, and all people, including believers, were to obey secular authority unless commanded to sin (Gane 1970:134).

On the other hand, John Calvin espoused the separation of church and state but not the separation of religion and state (Gatgounis 1996:60). Calvin, like Luther, believed that God ruled over both the church and the state, but he saw both as spiritual entities though distinct organizations. Calvin argued that the church and state were mutually inclined: the state was to provide an environment that enabled the church to carry out its evangelism and mission mandate, while the church had the duty of producing model citizens. Similarly, Calvin agreed with Luther that the state should exercise jurisdiction over temporal matters while the church assumed jurisdiction over doctrinal and spiritual matters. However, Calvin emphasized that the church and state were distinct yet overlapping spheres. He believed both shared a unity of purpose in opposing evil, whether spiritual, social, doctrinal, or moral. Calvin envisioned a religious republic where the church and state, as two divinely instituted bodies, were united in their opposition to evil. Calvin also forbade any form of rebellion against the civil government, as he believed it was rightly ordained

by God (Gatgounis 1996:70, 72). Thus, according to Calvin, there was no distinction between religious life and other aspects of life, including politics, meaning religion was apparent and present throughout life.

## **The Issue of Secularism**

It is imperative to address the issue of secularism as implied in the High Court case of Jesse Kamau and twenty-five others versus the Attorney General, which asserted that Kenya is a secular state as interpreted from the constitution ('Jesse Kamau & 25 others v Attorney General' 2010). When the High Court declared Kenya to be a secular state based on the constitution, the pronouncement brought challenges and contentions. The word secularism, in any context with a majority of religious adherents, creates a significant schism between the religious and non-religious, and even among the religious populace. Depending on the interpretation adopted, the term evokes many divergent and emotive responses. However, the meaning of the term is not as many modern people think it is. As one writer puts it, secularism is not necessarily an unreligious or un-Christian term and must be distinguished from modern thinking (Headley 1987:23). Historically, especially during the Reformation, secularism referred to matters not under the authority of the church, i.e., temporal matters relating to the natural world as contrasted with those that are eternal in the Christian faith.

Nonetheless, it is evident that much of the emotive response associated with the term stems from its association with 'godlessness'. This was evident during Kenya's 2022 elections when former Prime Minister Raila Odinga reiterated that Kenya is a secular state. He was subsequently branded an atheist, and his political party was primarily associated with people who did not 'fear the Lord' or were perceived as non-religious. Such sentiments continue to exist among the modern-day populace, making the issue of separation of church and state more contentious.

Ogbu (2014), in his research paper, provides a comprehensive overview of secularism, placing it in a historical perspective. According to the article, the term secularism has evolved over the ages. When first used in the late eleventh and twelfth centuries, the term was understood spiritually. The distinction between the secular and spiritual was never construed as a separation of

religious and political affairs. In the modern era, Ogbu posits that secularism aims to separate religion and politics to ensure that the state's existence is not founded on theology. The modern stance on secularism can be traced to the Renaissance and Reformation, where the sovereign state that assumed secularism emerged supreme over religious claims, forcing the church to subordinate its authority to the secular state. He explains that it is based on this philosophy that many modern states adopted secularism.

The contemporary meaning of secularism presents a challenge. Ogbu posits that, while many people associate secularism with godlessness because some atheists openly condemn religious practices and doctrines, that is not the meaning conveyed by secularism. He suggests that, in reality, a secular state is meant to create an enabling environment for the freedom of religion. Ogbu also notes various spectrums associated with secularism, arguing that a state cannot be deemed less secular because it accommodates religious life in a non-discriminatory manner, whether in favor of or against any religion (Ogbu 2014:11). Thus, the association of secularism with godlessness is a modern misinterpretation, especially contrasting with the Reformation era when the separation of state and church was a significant concern.

In the previously mentioned High Court case that clarified Kenya as a secular state, the judges used several criteria to declare the Kenyan state secular (Mujuzi 2011:316), none of which indicate 'godlessness'. The opinions of the High Court judges align with similar views regarding Nigeria, which has nearly identical language in its constitutional wording and historical views (International Centre for Nigerian Law, 1999). It is provided that the state of Nigeria practices egalitarian and protective secularism marked by no official state religion. However, the state is obligated to offer protection and encouragement to all religions based on their equality under the law (Ogbu 2014). Thus, according to such interpretations, secularism refers to the fact that a state has no preference for one religion over another.

## **The State and Politics**

Finally, it is essential to make a valid distinction between the state and politics. Research has shown that John Calvin contemplated no distinction between religious life and politics because religion permeated all aspects of life,

including politics. One researcher who studied the interaction of religion and politics posits that both are closely linked and that it is difficult to draw a line of separation, especially if we widen the scope of the term politics (Levine 1979). According to the author, if we consider issues such as calling out injustice as political, then even religion addresses these matters (Levine 1979:8). Researchers have demonstrated that the church in Kenya is actively involved in contemporary politics.

Another researcher who distinguishes between the state and politics uses Islam as the basis of his argument. He posits that it is essential for Islam as a religious outfit and the state to be institutionally separate to safeguard individuals' religious choice, in this case, being a Muslim as a matter of conviction rather than coercion (An-Na'im 2000:1). According to this researcher, this separation is only possible within a secular state, where Sharia law does not rule the state. The researcher contends that Islam and the state should remain separated, but not Islam and politics. The premise of the argument is that Sharia law can only be observed freely by believers. If the state tries to enforce it, the principles and values of the religion are compromised. Similarly, the practice of Christianity or any other religion should be left to the believer, who should practice the religion freely without state coercion to preserve the principles and values of their faith.

Furthermore, the researcher states that we should not interpret the functions of the state that ensure the exercise of religion in a secure environment to mean that the state has authority over religion (An-Na'im 2000:2). The state's actions are secular since those who occupy state offices are not under the authority of any religion, such that, based on human judgments, they develop official policies and formal legislation. Consequently, these functions cannot be deemed religious. Therefore, based on this premise, the researcher points out that this is what it means to have the separation of Islam and the state. The state is responsible for carrying out functions that ensure the proper functioning of society through policies and legislation, which are secular functions. These functions enable the continuity of other institutions, such as the judiciary and administrative agencies, which we can distinguish from the ruling regime instituted democratically through a political process. In a democratic environment, we expect the state to advance policies and legislation for the good of its people while also creating an enabling

environment for competing political views. Thus, we expect the state to exercise power legitimately, using instruments of power to ensure that policies and legislation are adhered to by the populace for the proper functioning of society. However, as the law provides, the use of power by the state must be neutral and not violate the law, which is why there is a need for constant checks through active political engagement that religious institutions are welcome to participate in, and through balances as provided by the law.

Based on such a view, it is evident that there will always be a constant interaction between the state and politics, as those who advance politics are actors with competing views aimed at the public good. The distinction is necessary because of the risks associated with the state's necessary and legitimate use of force. As the entity mandated to ensure the proper functioning of society, the state must strike a balance with its activeness in politics since there is a need for mediation in the case of competing views. The truth is that a complete separation of politics and the state is not possible because political actors are concerned with the running of the state. Nonetheless, a division must be advocated for; one researcher describes it as a dichotomy, although he found the term too strict (Overeem 2021:14). According to the researcher, there should be a division between public administration, considered a function of the state, and politics (Overeem 2021). John Calvin had similar thoughts, contemplating that while the magisterium and the princes in authority were still members of the spiritual estate and part of the church, religion, including politics, could never be completely separated (Gatgounis 1996). However, a separation between the state and the church is necessary because many circumstances exclude people from the political process, and they need to trust that the state will protect them whenever their rights are violated.

During the one-party rule in Kenyan society, the state acted as the immediate agent of the ruling party, which was the political arm of the state. This political climate trapped Kenyans between the state and the ruling party. When the state violated their rights, there was no redress because no administrative or legal remedy existed outside of its control. The lack of distinction between the state and politics severely undermined the nation's peace, stability, and development. When citizens are denied protection from the state and an opportunity to air their views through active political participation, resistance

is inevitable, as witnessed in the early 1990s. Active citizens, including Christians, should be allowed to have and express their political views, which fall under the purview of religion, openly and under the state's safeguard. This ensures that, in exercising their rights, they do not violate others' rights. Therefore, it is necessary that the constitution and the rule of law, which protect people's rights, exist. These instruments ensure and enable active citizen participation, especially in democratic governance through organized political action, which is often highly influenced by religious beliefs. On this basis, the separation of the church and politics is not a realistic possibility because politics remains within the scope of religious activity. It is upon this understanding that the interaction between the church and politics occurs. However, a distinction should be made between the interaction of the church and the state, and by extension, the state and politics.

## **Conclusion**

It has become evident that, now more than ever, the Kenyan people deeply value religion and politics in their lives. Christianity and other religious affiliations, along with active participation in politics, form the cornerstone of their national identity. While it is prudent to recognize that other religions are part of Kenyan society, Christianity plays a significant role. Nonetheless, concerning the interactions between the church and the state, one thing is clear: both religion and politics remain integral to Kenyan society. As established, the interactions of religion, including the church, with the state should not be conflated. The distinction means that religion, the state, and politics should not be confused. It is evident that we cannot separate religion from public life, which includes politics, as it impacts many aspects of the populace in social, economic, and political spheres. Thus, we need to advocate for a separation between the church and state as long as it does not imply the separation of religion and politics.

Further, it is important to clarify that a secular state does not mean godlessness or the absence of religion; rather, it entails providing an enabling environment for all faiths. Kenyan society exists in a religio-political context, where politics, under the purview of religion, remains integral to the populace's lives. The constitution presumes the separation of the state and church, ensuring no favoritism towards the Christian religion over others. This

separation affirms a distinction in function and jurisdiction: the state controls temporal affairs, while the church handles religious matters associated with faith, as defined by Martin Luther. The church should not overstep its jurisdiction in state functions, just as the state should not overstep its jurisdiction in religious matters. The constitution's wording, as interpreted by the courts, aims to create an environment where both religion and the state can interact for the citizenry's good.

To avoid contention, it is crucial that the state does not employ its resources for religious purposes, specifically Christian matters, as this could curtail religious freedoms. The church should also avoid being part of the state machinery in executing its mandate. Misunderstanding the constitution can lead to significant challenges, as shown by the interpretation of Section 8, which implies Kenya is a secular state. If we understand secularism to mean a jurisdiction not under the church's authority, we can see that the state has no preference for one religion over another. This aligns with the Kenyan High Court's interpretation, where the state operates as a secular institution not under church authority but mandated to provide an enabling environment for the church, as seen in the Court of Appeal case 'Seventh Day Adventist Church (East Africa) Limited v Minister for Education & 3 others' (2017). Therefore, the term secular should not be associated with godlessness but rather with ensuring no favoritism towards any religion.

In advocating for the separation of church and state, we must avoid pushing for a permanent wall of separation. Advocates for a permanent wall aim to exclude religion from public life, which could lead to the state becoming overly anti-religious and repressing religion's moral conscience. Christians, considered the 'church', must be allowed to participate in politics. However, the state should not adopt a state religion, as this would curtail religious liberty. There is a need for separation between the church and the state to safeguard religious liberty.

In the current regime, it is difficult to distinguish whether there is a separation of church and state. While the largely Christian populace may find the state's close relationship with the church reasonable, the lack of defined limits and jurisdictions is dangerous. It weakens the church's voice when the government abuses its power. The church can use its political voice to check the state's



conscience and pursue the people's good, but without separation, its political voice is lost. Kenya must separate religion from state affairs. Monetary handouts to the clergy and conducting religious services in State House under state diplomacy have curtailed the church's voice. The office of the first lady should not be involved in faith diplomacy, as it constitutes the state overstepping its jurisdiction in religion. Therefore, we should advocate for the separation of church and state, meaning a separation of powers and jurisdiction in temporal and religious matters, but not to the extent of separating religion and politics.

## Bibliography

- An-Na'im, A.A. 2000. 'Islam, State and Politics: Separate but Interactive. *Yearbook of Islamic and Middle Eastern Law* 5, pp. 29–42.
- Chacha, B. K. 2010. Pastors or Bastards? The Dynamics of Religion and Politics in the 2007 General Elections in Kenya. In: Kanyinga, K. and Okello, D. (eds), *Tensions and Reversals in Democratic Transitions*, pp. 101–135. Nairobi: Society for International Development and IDS University of Nairobi.
- David, S.K., and Katola, M.T. 2016. The Church-State Relationship in Kenya after the Second Liberation Struggle. *Journal of Educational Policy and Entrepreneurial Research* 3(12), pp. 44–59.
- Gane, E. 1970. Luther's View of Church and State. *Andrews University Seminary Studies* 8(2), pp. 120–143.
- Gatgounis, G.J. 1996. The Political Theory of John Calvin. *The Churchman* 110(1), pp. 53–59.
- Githiga, G.G. 2001. *The Church as the Bulwark against Authoritarianism: Development of Church and State Relations in Kenya with Particular Reference to the Years after Political Independence 1963-1992*. Oxford: Regnum.
- Headley, J.M., 1987, 'Luther and the problem of secularization', *Journal of the American Academy of Religion* 55(1), 21–37.
- Hochet-Bodin, N. 2022. In Kenya, Evangelical Churches have a Growing Influence in Government. Accessed on 16 October 2023, from [www.lemonde.fr/en/le-monde-africa/article/2022/12/07/in-kenya-the-growing-influence-of-evangelical-churches-in-government\\_6006830\\_124.html](http://www.lemonde.fr/en/le-monde-africa/article/2022/12/07/in-kenya-the-growing-influence-of-evangelical-churches-in-government_6006830_124.html)
- 'Jesse Kamau & 25 others v Attorney General'. 2010. High Court of Kenya, Miscellaneous Civil Application 890 of 2004, from <http://kenyalaw.org/caselaw/cases/view/67502>

- Kamau, J. 2023. Has the Church become Kenya’s New Burden? Accessed on 16 October 2023, from [nation.africa/kenya/news/has-the-church-become-kenya-s-new-burden—4193072](http://nation.africa/kenya/news/has-the-church-become-kenya-s-new-burden—4193072)
- Kimari, G. 2023. Kenya’s a Secular State: We must Separate Religion, State Affairs. Accessed on 16 October 2023, from [www.standardmedia.co.ke/article/2001458948/kenyas-a-secular-state-we-must-separate-religion-state-affairs](http://www.standardmedia.co.ke/article/2001458948/kenyas-a-secular-state-we-must-separate-religion-state-affairs)
- Kinas, M.V. 2018. The Role of Church in State and Public Affairs during the Kibaki Era, 2002-2013. *European Journal of Philosophy Culture and Religion* 2(1), pp. 27–40.
- Kodia, D.H. 2014. The Role of the Church in Democratization Process in Kenya. *International Journal of Innovative Research and Development* 3(5), pp. 64–69.
- Laws of Kenya: The Constitution of Kenya, 2010. Nairobi, Kenya: National Council for Law Reporting, from [http://www.parliament.go.ke/sites/default/files/2023-03/The\\_Constitution\\_of\\_Kenya\\_2010.pdf](http://www.parliament.go.ke/sites/default/files/2023-03/The_Constitution_of_Kenya_2010.pdf)
- Levine, D.H. 1979. Religion and Politics, Politics and Religion: An Introduction. *Journal of Interamerican Studies and World Affairs* 21(1), pp. 5–29.
- Macharia, K. 2013. The Kenya Election and the Militarization of ‘Peace’. Accessed on 16 October 2023, from [www.theeastafrican.co.ke/tea/oped/comment/the-kenya-election-and-the-militarisation-of-peace--1315252](http://www.theeastafrican.co.ke/tea/oped/comment/the-kenya-election-and-the-militarisation-of-peace--1315252)
- Maupeu, H. 2013. Kenyan Elections: The ICC, God and the 2013 Kenyan General Elections. *Afrique contemporaine* 247(3), pp. 33–51.
- Mujuzi, J.D. 2011. Separating the Church from State: The Kenyan High Court’s Decision in “Jesse Kamau and 25 Others v Attorney General” (Judgment of 24 May 2010). *Journal of African Law* 55(2), pp. 314–319.

- Mumia, H. 2015. Kenya’s “Pope holiday” puts Church and State too close for Comfort. Accessed on 18 October 2023, from [www.cnn.com/2015/11/26/opinions/harrison-mumia-kenya-pope-op-ed/index.html](http://www.cnn.com/2015/11/26/opinions/harrison-mumia-kenya-pope-op-ed/index.html)
- Murunga, G.R. 2014. Elite Compromises and the Content of the 2010 Constitution. In: Murunga, G.R., Okello, D. and Sjögren, A. (eds), *Kenya: The Struggle for a New Constitutional Order*, pp. 144–162. London: Zed Books.
- Ng’ang’a, G. 2020. Church should be Separated from the State. Accessed on 18 October 2023, from [www.standardmedia.co.ke/news/article/2001363788/church-should-be-separated-from-the-state](http://www.standardmedia.co.ke/news/article/2001363788/church-should-be-separated-from-the-state)
- Njoya, W. 2023. Evangelicals and Ruto: How Do We Make Sense of the Relationship Between Church and State in Kenya? Accessed on 17 October 2023, from [www.theelephant.info/analysis/2023/02/12/evangelicals-and-ruto-how-do-we-make-sense-of-the-relationship-between-church-and-state-in-kenya/](http://www.theelephant.info/analysis/2023/02/12/evangelicals-and-ruto-how-do-we-make-sense-of-the-relationship-between-church-and-state-in-kenya/)
- Office of International Religious Freedom. 2023. Kenya 2022 International Religious Freedom Report. Washington, DC: United States Department of State.
- Ogbu, O. 2014. ‘Is Nigeria a Secular State? Law, Human Rights and Religion in Context. *The Transnational Human Rights Review* 1(1), pp. 135–178.
- Orobator, A.E. 2009. Church, State, and Catholic Ethics: The Kenyan Dilemma. *Theological Studies* 70(1), pp. 182–185.
- Overeem, P. 2021. Public Administration and Politics: The Art of Separation. In: Bryer, T.A. (ed.), *Handbook of Theories of Public Administration and Management*, pp. 7–18. Cheltenham: Edward Elgar Publishing.
- International Centre for Nigerian Law. 1999. Constitution of the Federal Republic of Nigeria. Accessed on 29 October 2024 from

<http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

National Council for Law Reporting. 2008. The Constitution of Kenya. Accessed on 30 October 2024 from

[https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Constitution%20of%20Kenya%20\(Repealed\).pdf](https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Constitution%20of%20Kenya%20(Repealed).pdf).

Perlez, J. 1988. Magazine Editor jailed by Kenya. Accessed on 19 October 2023, from [www.nytimes.com/1988/08/19/world/magazine-editor-jailed-by-kenya.html](http://www.nytimes.com/1988/08/19/world/magazine-editor-jailed-by-kenya.html)

Sabar-Friedman, G. 1997. Church and State in Kenya, 1986–1992: The Churches' Involvement in the "Game of Change". *African Affairs* 96(382), pp. 25–52.

'Seventh Day Adventist Church (East Africa) Limited v Minister for Education & 3 others'. 2017. Court of Appeal at Nairobi, Civil Appeal 172 of 2014.